



VAL DE VIE
ANNO 1783

PEARL VALLEY

— HOME OWNERS ASSOCIATION —

CONSTITUTION OF

THE

PEARL VALLEY GOLF & COUNTRY ESTATE

HOMEOWNERS' ASSOCIATION

1. NAME AND ESTABLISHMENT

The **Pearl Valley Golf & Country Estate Home Owners' Association** (the Association) is an Association, constituted as a body corporate, in terms of section 29 of the Land Use Planning Ordinance, No 15 of 1985 in accordance with the conditions imposed by the Boland District Municipality when approving in terms of section 25 (1) and 42 of the said Ordinance of the subdivision of the Land defined in clause 2.18 hereof came into existence upon the first registration in the Deeds Office of an Erf.

2. DEFINITIONS

In this Constitution, unless the context indicates the contrary;

- 21 "Acres Precinct" means Remainder Erf 644 Pearl Valley Estate, in the Drakenstein Municipality, Registration Division Paarl, Western Cape or any subdivided portions originating therefrom;
- 22 "Alienate" means alienate any Erf / Sectional Title Unit or part thereof and includes by way of sale, exchange, donation, deed, intestate, will, cession, assignment, court order or insolvency, irrespective whether such alienation is subject to a suspensive or resolutive condition, and alienation shall have a corresponding meaning;
- 23 "Association" means Pearl Valley Golf & Country Estate Homeowners' Association and shall be a Body Corporate established pursuant to the provisions of Section 29 of the Land Use Planning Ordinance No 15 of 1985;
- 24 "Auditors" means the auditors of the Association;
- 25 "Body Corporate" means a body corporate of any Sectional Title Scheme in the Estate;
- 26 "Club" means the Pearl Valley Golf Club established for the members of the Golf Course situated on Erf 1 Pearl Valley Estate, situate in the Drakenstein Municipality, Administrative District Paarl, Western Cape Province, (formerly portion 1 of the Farm Safariland No. 1265, Division of Paarl, Western Cape Province) but shall exclude the Golf Course and the Club Facilities;
- 27 "Club Facilities" shall mean the club house, driving range, pavilions, tennis courts, sports facilities, the boma on Watervliet, gymnasium, kitchens, refreshment rooms and other conveniences built and/or erected on the Estate for the general functioning of the Club and any improvements thereto;
- 28 "Developer" means Pearl Valley Investments (Pty) Ltd (registration number 2015/068356/07) and its successors in title and permitted assignees;
- 29 "Erf / Erven" means any of the residential Erven depicted on the existing or any future General Plans of Subdivision of the Land whether registered or not in accordance with the Deeds Registries Act No. 47 of 1937 including further subdivisions or consolidations thereof and including Watervliet, but excluding the Private Areas and Non-residential Erven as defined herein;
- 210 "Estate" means the **Pearl Valley Golf & Country Estate** to be developed on the Land;
- 211 "Final Date" shall mean –
- 2.11.1 24 (twenty four) months after the date of registration of transfer of an Erf into the name of the Owner ("**Transfer Date**") in respect of Erven not in the Acres Precinct;
- 2.11.2 36 (thirty-six) months of the Transfer Date in the case of an Erf in the Acres Precinct that is less than 1 ha (one hectare) in extent; and
- 2.11.3 48 (forty-eight) months of the Transfer Date in the case of an Erf in the Acres Precinct that is 1 ha (one hectare) or more in extent,

unless otherwise agreed between the Association and the Owner in terms of clause 27.5 below;

- 2.12 "Financial Year" means the Financial Year of the Association to be determined from time to time by the Trustees.
- 2.13 "General Plan" means the Approved General Plan(s) in respect of the various phases of the subdivision of the Land as approved from time to time by the Surveyor General at Cape Town;
- 2.14 "Golf Course" shall mean the 18 hole golf course constructed on Erf 1 Pearl Valley Estate situate in the Drakenstein Municipality, Administrative District Paarl, Western Cape Province (formerly Portion 1 of the Farm Safariland No. 1265, Division of Paarl, Western Cape Province), as depicted on the General Plans of the Subdivision of the Land;
- 2.15 "Golf Course Owner" means the registered owner of the Golf Course and/or Club Facilities and its successors in title and permitted assignees;
- 2.16 "Hotel Developer" means the developer of the Hotel Scheme being Terra Nova Awards (Pty) Ltd (registration number 2005/027885/07) and its successors in title and permitted assignees;
- 2.17 "Hotel Scheme" means the Sectional Title Scheme on the Estate known as the MANTIS PEARL VALLEY HOTEL SECTIONAL TITLE SCHEME;
- 2.18 "Land" means:
- 2.18.1 Erf 1 Pearl Valley Estate, situate in the Drakenstein Municipality, Administrative District Paarl, Western Cape Province (formerly Portion 1 of the Farm Safariland No. 1265, Division of Paarl, Western Cape Province) or any properties originating therefrom;
- 2.18.2 Watervliet or any subdivided portions originating therefrom whether or not to be consolidated with Erf 1 Pearl Valley Estate; and
- 2.18.3 the relevant subdivided portions of Portion 3, Portion 11 and portion 6 of the Farm Kliprug No. 826 situate in the Drakenstein Municipality, Administrative District Paarl, Western Cape Province (more commonly known as "the Spillover Erven"), whether or not to be consolidated with Erf 1 Pearl Valley Estate; and
- 2.18.4 the Acres Precinct;
- provided that the total number of Erven on Erf 1 Pearl Valley Estate (2.18.1above) shall not exceed 500 in terms of the development approval;
- 2.19 "Levy/Levies" means the levy referred to in clause 24;
- 2.20 "Local Authority" means the Drakenstein Municipality or its successor in title;
- 2.21 "Lodges Scheme" means the Sectional Title Scheme on the Estate known as the PEARL VALLEY RESORT LODGES SECTIONAL TITLE SCHEME;
- 2.22 "Member" means a member as defined in clause 5 hereof;
- 2.23 "Non-residential Erven" means erven other than those defined in clauses 2.9 and 2.27, including but not necessarily limited to those erven on which the Golf Course and Club Facilities have been established;
- 2.24 "Observer" means the person appointed by the Golf Course Owner in terms of clause 7.9 below

- 225 "Owner/Owners" means the registered owner of an Erf/Erven and, in respect of a Sectional Title Scheme in the Estate, the registered owner of a Sectional Title Unit as well as the Body Corporate established in respect of such Sectional Title Scheme;
- 226 "person" shall include a Company, Close Corporation, Trust, Partnership or other Association of persons entitled by law to hold title to immovable property;
- 227 "Participating Unit" means a Sectional Title Unit in the Hotel Scheme that participates in the Rental Pool by way of its Owner making such unit available for letting, in accordance with a rental pool agreement;
- 228 "Private Areas" means the erven on the Estate, which are identified as private roads, private open spaces, lakes and waterways as set out in **Annexure A** hereto;
- 229 "Rental Pool" means the rental pool operated by Mantis Pearl Valley Hotel (Pty) Ltd (registration number 2015/403393/07) or its successor in title or assignees in respect of the Participating Units in the Hotel Scheme;
- 230 "Sectional Titles Act" means the Sectional Titles Act No 95 of 1986, as amended;
- 231 "Sectional Title Scheme" means any scheme on the Estate established in terms of the provisions of the Sectional Titles Act;
- 232 "Sectional Title Unit(s)" means a unit in a Sectional Title Scheme, as contemplated in the Sectional Titles Act;
- 233 "Spouse" means the husband, wife or life partner of an Owner under any law or custom that is recognised by South African law;
- 234 "Trustees" means the Board of Trustees of the Association;
- 235 "Watervliet" means Erf 828 Pearl Valley Estate in the Drakenstein Municipality, Registration Division Paarl, Western Cape or any subdivided portions originating therefrom;
- 236 Unless the context otherwise indicates, any words importing the singular shall also include the plural and vice versa, words importing any one gender shall also include the others.

3. MAIN BUSINESS OF ASSOCIATION

The main business of the Association is to promote, advance and protect the communal interests of Owners (including occupiers of dwellings in the Estate) and in particular in so promoting such communal interests to ensure acceptable aesthetic, architectural and environmental standards on the Land, and if so relinquished by the Golf Course Owner to and in favour of the Association, to promote, maintain and manage the Golf Course, Club, and Club Facilities established or to be established on the Land.

4. MAIN OBJECT AND POWERS

The main objects and powers of the Association are:

- 4.1 The exercise of control over:

- 4.1.1 the maintenance of all dwellings, including the external facades and roofs thereof, which maintenance is to be carried out by and at the expense of the Owner;
- 4.1.2 the maintenance of all buildings and/or structures erected or to be erected on the Estate and which maintenance is to be carried out by and at the expense of the Association, but excluding dwellings and those buildings reserved by the Developer and/or Golf Course Owner as stipulated in this Constitution;
- 4.1.3 the maintenance of all Private Areas including the landscaping of same, all facilities and amenities located on Private Areas and all services and which maintenance is to be carried out by and at the expense of the Association, but excluding those services located in or on Erven or Sectional Title Units;
- 4.1.4 the maintenance and upkeep of the Golf Course and Club Facilities after acquired from the Golf Course Owner by way of transfer or sale;
- 4.1.5 the maintenance and upkeep of all private combined services (water, sewers, sewerage pump stations, roads, storm water and electrical services);

and the following ancillary objects: -

- 42 the promotion, advancement and protection of the interests of the Members generally, in all matters affecting the Estate;
- 43 to enter into service agreements with the Local Authority or any other authority or supplier of services;
- 44 to implement and maintain security measures and systems for controlled access to the Estate;
- 45 to prescribe measures for the landscaping and development of Erven on the Estate, and for the architectural design and building of improvements to Erven and Sectional Title Units on the Estate so as to ensure a harmonious and aesthetic development of the Estate, and to prescribe measures for the maintenance of such standards of development;
- 46 to register where necessary various service servitudes over Private Areas in favour of the Local Authority and to register servitudes in favour of the Erven in the Estate over other land owned by the Association as are from time to time required.
- 47 to acquire by way of lease or ownership or otherwise, erven in the Estate constituting Private Areas for the purposes of road access to the Estate and to register transfer of ownership thereof in the name of the Association; to acquire and hold servitudes in the Association's favour for access to the Estate and also for the supply of services, including communication and surveillance and water to the Estate; and to register servitudes over the Association's erven in favour of Erven for communication and surveillance;
- 48 to acquire by way of lease, ownership, servitude or otherwise, portions of any adjoining properties for the purpose of extensions to Private Areas and in the case of ownership, to consolidate such portions of the Land as defined;
- 49 if so acquired from the Golf Course Owner by way of transfer or sale, to secure the registration of the ownership of the Club and/or the Golf Course and/or the Club Facilities and such portions of the remainder of the Estate which have not been reserved by or for the benefit of the Golf Course Owner;

- 4.10 the formulation, enforcement, modification, amendment, additions and deletions of Estate Rules and Regulations;
- 4.11 if relinquished by the Golf Course Owner, and if not reserved by and for the benefit of the Golf Course Owner, to delegate to any management company, the management and operational functions of: -
- 4.11.1 the Golf Course; and/or
- 4.11.2 the Club; and/or
- 4.11.3 the Club Facilities;
- 4.12 to delegate the management of the Association to a third party;
- 4.13 to include in the Title Deeds of the Private Areas to be transferred to the Association, that save for the Association's successors in title, all such erven shall not be sold, Alienated, otherwise disposed of or transferred to any other party, nor mortgaged;
- 4.14 to incorporate any adjoining property/ies into and within the ambit of the Association and to incorporate owners of any such adjoining property/ies and any subdivisions thereof as Members of the Association or the incorporation of the Association into another Association, which decisions will require a special resolution by the Members, subject to the provisions of this Constitution;
- 4.15 to register servitudes of access and infrastructure over the Private Areas in favour of the Golf Course Owner;
- 4.16 to pay the bulk water account;
- 4.17 to inspect, repair, replace and/or test any water meter serving an Erf. The cost for the normal wear and tear of the water meter will be borne by the Association. Any damage to a water meter due to negligence, vandalism, or theft will be for the individual Owners' account.

5. MEMBERSHIP

- 5.1 Membership of the Association shall be compulsory for every Owner on the Estate.
- 5.2 Such membership shall commence simultaneously with the transfer of an Erf/ Sectional Title Unit into the name of the Owner, alternatively, in the case of a Body Corporate, on the date of the establishment of the Body Corporate.
- 5.3 The Golf Course Owner shall, by virtue of its ownership of the Golf Course, Club and Club Facilities, become and remain a member of the Association subject to such rights and limitations as are contained herein. Membership shall be limited to the Golf Course Owner, to all the Owners in the Estate and to the Body Corporate of every Sectional Title Scheme established on the Estate, provided that:
- 5.3.1 a person who is entitled to obtain a certificate of registered title to any Erf or Sectional Title Unit shall be deemed to be the Owner thereof;
- 5.3.2 where an Erf or a Sectional Title Unit is owned by more than one person, a company, close corporation, partnership or trust all the Owners or the holders of proprietary interests in

such company, close corporation, partnership or trust shall together be deemed to be one Member of the Association and shall have the rights and obligations of one Member of the Association and nominate one person to represent them and vote at meetings of the Association.

- 5.3.3 save for the Developer, an Owner shall not be entitled to consolidate more than two Erven and any consolidated Erf shall be treated as one Erf. Any Owner or person other than the Developer wishing to consolidate two Erven may only do so with the consent of the Association and subject to such terms and conditions as may be imposed by the Association in its sole discretion. In event of a consolidation of Erven the Golf Course Owner may, in its sole discretion, elect to charge membership fees equal to the number of original Erven in respect of such consolidated Erf.
- 54 When a Member ceases to be the Owner of an Erf or a Sectional Title Unit, he shall ipso facto cease to be a Member of the Association.
- 55 A Member shall not be entitled to:
 - 5.5.1 sell or transfer an Erf or a Sectional Title Unit unless it is a condition of the sale that:
 - 5.5.1.1 the transferee becomes a Member of the Association;
 - 5.5.1.2 the registration of transfer of the Erf or Sectional Title Unit into the name of the transferee shall *ipso facto* constitute the transferee as a Member of the Association;
 - 5.5.1.3 he first obtains the written consent of the Association, which consent will be given provided the purchaser of such Erf or Sectional Title Unit agrees in writing to abide by the terms of the Constitution of the Association and any rules and regulations made in terms of the Constitution, and provided further that such Member has paid all levies and any other amounts owing by him to the Association and all outstanding annual / monthly subscriptions to the Club as at the date of transfer of the Erf or the Sectional Title Unit. The restriction against alienation and transfer referred to herein shall be registered against the Title Deeds of all Erven.
- 56 A Member shall not without the prior written approval of the Association:
 - 5.6.1 erect any building and/or structures of any nature whatsoever on his Erf;
 - 5.6.2 make any changes or alterations to existing buildings and/or structures on his Erf, including changes to external colour scheme;
 - 5.6.3 install or fix burglar bars to any external windows or doors of the buildings on his Erf or to any external windows and doors of his Sectional Title Unit;
 - 5.6.4 erect or construct any pergolas, patio awnings, shade ports, car ports, washing lines, Wendy houses, walls or any other structures which may affect the external appearance of the improvements on his Erf or his Sectional Title Unit;
 - 5.6.5 subject to clause 32.6, sink a borehole or a well or construct any water body/water feature or pond on his Erf;
- 57 The consent of the Association as contemplated in clause 27 shall only be given –
 - 5.7.1 after detailed plans of the proposed work have been submitted to the Association, or any person nominated by the Association;

- 5.7.2 the Association or their nominee are satisfied that the proposed work is in accordance with the architectural and landscape design guidelines, for the purposes of which, the Association or their nominee shall be the sole arbiter and their decision shall be final and binding on the Member; and
- 5.7.3 the Member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the Trustees or their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature.
- 58 Neither an Owner, nor a Body Corporate, may resign as a Member of the Association.
- 59 The Association may, by regulation, issue a membership certificate, which certificate shall be in such form as may be prescribed by the Association.
- 510 The rights and obligations of a Member shall not be transferable and every Member shall –
- 5.10.1 to the best of his ability further the objects and interests of the Association;
- 5.10.2 observe all the Rules and Regulations made by the Association;
- 5.10.3 be jointly liable with all the Members for expenditure properly incurred in connection with the Association, insofar as third parties are concerned, provided that nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the mortgagee of that Member's Erf or Sectional Title Unit.

6. MANAGEMENT

- 61 The affairs of the Association shall be managed and controlled by a Board of Trustees consisting of 6 (six) Trustees all of whom are to be elected by majority vote by Members of the Association.
- 62 The Trustees and subsequent Trustees, shall after proposal and seconding, be elected by ballot or show of hands (if the meeting so determines) of those Members who attend the general meeting of the Association, and 2 (two) successive Trustees shall be elected likewise at each second annual general meeting of the Association and the balance at each successive annual general meeting, provided that no Member or Spouse shall be eligible for election unless he shall have been duly nominated and seconded in writing by other Members and such written nomination, duly endorsed by the nominee, shall have been handed to the Association secretary not later than the day preceding the meeting and provided further that an Owner shall only be eligible to serve as a Trustee if his levies and his Club subscription fees for the current year shall have been duly paid, or in the case of a Spouse, he has obtained the written consent of the Owner with whom he shares the relationship and such Owner's levies and Club subscription fees for the current year shall have been duly paid.. If the Owner is a company, close corporation, trust or other association of persons, the duly authorised representative of such entity shall be eligible to serve as a Trustee.
- 63 The Trustees shall from their ranks elect a chairperson. A quorum of the Trustees shall consist of a majority of the trustees. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Trustees then present shall be a quorum.
- 64 All matters at any meeting shall be determined by a majority of those present and voting. In the

event of an equality of votes, the chairperson of any meeting shall have a casting as well as deliberative vote.

- 65 A decision that could be voted on by the board of Trustees may instead be adopted by written consent of a majority of the Trustees, given in person or by electronic communication, provided that each Trustee and the Observer has received notice of the matter to be decided. A decision made in the manner contemplated in this clause is of the same effect as if it had been approved by voting at a Trustee meeting.
- 66 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 and provided-
- 6.6.1 meetings of the Trustees shall be held at least once every quarter;
 - 6.6.2 the chairperson always has the right to convene meetings of Trustees;
 - 6.6.3 a Trustee may, provided he has the support in writing of at least 1 (one) other Trustee, at any time convene a meeting of Trustees by giving to the other Trustees not less than 5 (five) Business 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.
- 67 The Trustees shall cease to hold office: -
- 6.7.1 at every second annual general meeting vis-à-vis 2 (two) of the Trustees who are to be decided on by the Trustees and at every annual meeting vis-à-vis the remaining Trustees and such remaining number of Trustees shall be eligible for re-election;
 - 6.7.2 by notice to the Board of Trustees if he resigns his office;
 - 6.7.3 if he is removed from office by the majority vote of the Trustees;
 - 6.7.4 if he absents himself from three (3) consecutive meetings of the Trustees without leave of absence;
 - 6.7.5 if he or the Owner he represents / is a Spouse of ceases to be the Owner of the Erf or the Sectional Title Unit and a Member of the Association;
 - 6.7.6 upon his estate being sequestrated, whether provisionally or finally;
 - 6.7.7 upon the commission by him of any act of insolvency;
 - 6.7.8 upon his conviction of any offence involving dishonesty;
 - 6.7.9 upon the formal withdrawal by the Owner of his written consent, as provided for in clause 6.2, in the case of a Spouse alternatively upon the termination of the relationship between the Owner and the Spouse with whom he shares such relationship, whichever event is the earlier.
- 68 Vacancies on the Board of Trustees may be filled by co-option at the instance of the majority of the Trustees and such co-opted Trustees will serve until the next Annual General Meeting.
- 69 Trustees shall receive no remuneration but will be entitled to a refund of reasonably incurred expenses in the execution of their duties.

- 610 No Trustee shall be liable to the Association or any Member thereof or to any other person whomsoever for any act or omission by himself, the Association or its servants or agents. Every Trustee is indemnified by the Association against any loss suffered by him in consequence of any purported liability provided that such Trustee has, upon the basis of information known to him, acted in good faith and without gross negligence and/or without dishonesty.
- 611 Meetings of the Trustees shall be held as frequently as may be decided by the Trustees, and minutes shall be kept of all meetings and decisions.
- 612 Proper books of account of the administration and finances of the Association shall be kept and financial accounts shall be drawn and audited annually, by the Auditors.

7. STATUS AND RIGHTS OF THE DEVELOPER, GOLF COURSE OWNER AND HOTEL DEVELOPER

- 71 No person or any Member of the Association shall prevent or hinder in any way the Developer from;
- 7.1.1 gaining access to and egress from the Estate;
 - 7.1.2 continuing its building and/or construction operations at the Estate;
 - 7.1.3 marketing and selling any Erven or Sectional Title Units;
 - 7.1.4 generally carrying on its business operations, provided that the provisions of clause 7.1.1 shall not be interpreted as allowing the Developer access onto any of the Erven already transferred to a Member unless 48 hours prior written notice has been given to the Member concerned, unless such access is required to conduct its normal building operations or to inspect work in progress. The Developer shall make good any subsequent damage to plants, property or improvements thereon to the satisfaction of the Member. No Member shall be entitled to refuse the Developer reasonable and immediate access if the required notice has been given.
- 72 The Developer has reserved the right and shall be entitled to build and establish on the Land any amenities and facilities as it in its sole discretion deems fit. The Developer has furthermore reserved the right to subdivide from the Land the sites for such aforesaid amenities and facilities as separate erven and shall be entitled to dispose of and/or operate the aforementioned amenities and facilities for its own benefit, separate and independent from the remainder of the Estate.
- 73 To the extent that the Developer so requires to conduct its business operations as Developer, the Developer shall have access to and from the Estate and shall further be entitled to register such service servitudes in connection with any further development it may undertake within the Estate, and the Association accordingly agrees and undertakes to register said required service servitudes as and when necessary.
- 74 No person or any Member of the Association shall prevent or hinder in any way the Hotel Owner from –
- 7.4.1 gaining access to and egress from the Estate; and/or
 - 7.4.2 continuing its building and/or construction operations in respect of the Hotel Scheme;
 - 7.4.3 marketing and selling any Sectional Title Units in the Hotel Scheme;

- 7.4.4 generally carrying on its business operations as owner and developer of the Hotel and to develop the final phase of the Hotel, provided that the provisions of clause 7.4.1 shall not be interpreted as allowing the Hotel Owner access onto any of the Erven owned by other Members.
- 75 No person or any Member of the Association shall prevent or hinder in any way the Golf Course Owner from –
- 7.5.1 gaining access to and egress from the Estate; and/or
- 7.5.2 generally carrying on its business operations as owner of the Golf Course, Club and Club Facilities, provided that the provisions of clause 7.5.1 shall not be interpreted as allowing the Golf Course Owner access onto any of the Erven owned by other Members.
- 76 The Golf Course Owner has reserved the right to designate the Golf Course and Club Facilities as separate erven and to retain or transfer or sell the ownership thereof for its own benefit.
- 77 In as much as the Golf Course and Club Facilities fall within the Estate and access thereto will be necessitated via Private Areas, the Association shall be obliged and is hereby irrevocably authorised and empowered on behalf of the Members to give right of way servitudes over Private Areas to and in favour of the Golf Course and Club Facilities.
- 78 The Golf Course Owner shall have the right to register servitudes in respect of the installation of civil services for the Golf Course, Club and/or Club Facilities over the Private Areas and/or Erven in the Estate, but shall be obligated to reinstate such properties if it exercises its right to install such services thereon. The Association shall accordingly be obliged and is hereby irrevocably authorised and empowered on behalf of the Members to grant the registration of such servitudes over Private Areas. In the event of such services being installed by the Golf Course Owner it will retain the obligation to restore the Association property or private property after installation of such services.
- 79 The Golf Course Owner shall, for so long as it is a Member, have the right to, on written notice to the Trustees to this effect, appoint a natural person as observer to the board of Trustees, who shall have the right to receive notice of, attend and be heard at all Trustee meetings, but shall not have the right to vote on any resolution proposed to the Trustees and shall be subject to any terms of confidentiality prescribed by the Trustees in respect of such meetings from time to time.
- 7.10 The Golf Course Owner has the right to hold golf tournaments and other events at the Club Facilities and on the Golf Course and shall be entitled to allow unaccompanied guests entry into the Estate in order for them to use the Golf Course and Club Facilities for those purposes and such entrance into the Estate is guaranteed by the Association subject to such rules and regulations in this regard agreed to between the Association and the Golf Course Owner in good faith.

8. RIGHTS OF OWNERS OF HOTEL SCHEME SECTIONAL TITLE UNITS

The Association guarantees to and in favour of the Hotel Scheme Body Corporate, Owners of the Sectional Title Units and their duly appointed agents that hotel guests staying in the Sectional Title Units in the Hotel Scheme will be granted entry into the Estate to enable them to access such Sectional Title Units in which they are staying, subject to such rules and regulations in this regard agreed to between the Association and the Hotel Scheme Body Corporate in good faith.

9. WATERVLIED

- 91 It is recorded that the Developer and the Owner of Watervliet intend on applying in terms of the Subdivision of Agricultural Land Act No. 70 of 1970 (as amended) for the subdivision of the portion of Watervliet below the 100 year flood line ("**Portion B**") from portion of Watervliet above the 100 year flood line ("**Portion A**").
- 92 Until subdivision as aforesaid has occurred Watervliet shall be treated the same as all other Erven on the Estate in calculating the levies payable by Watervliet or any subdivisions thereof.
- 93 On successful subdivision as aforesaid –
- 9.3.1 Portion A shall be regarded as an Erf and shall only attract the equivalent of the levy payable by an Erf from time to time
 - 9.3.2 Portion B will not attract payment of a levy; and
 - 9.3.3 the Owner of Portion B shall ensure that at all times such portion shall only be utilised for agricultural activities and/or equestrian activities and/or other recreational activities.
- 94 Notwithstanding any contrary provision contained elsewhere in this Constitution, the provisions of this clause 9 and its sub-clauses shall not be amended or deleted without the prior written approval of the Owner of Watervliet or the Owner of Portion A and the Owner of Portion B (if applicable), which approval may be withheld in the sole and absolute discretion of such Owner/s.

10. ACCESS TO THE ESTATE AND SERVITUDES

It is recorded that officials, employees and contractors employed by the Association, Local Authority and/or any public service company shall, at all times, have reasonable access to the Erven and Private Areas for purposes of inspecting and/or maintaining all services.

11. TERMINATION OF MEMBERSHIP

- 111 When a Member ceases to be an Owner he shall *ipso facto* cease to be a Member of the Association.
- 112 The Golf Course Owner shall be entitled to cede all or any of its rights in terms of this Constitution and the transferee shall be entitled to take transfer of the rights so ceded.
- 113 The Golf Course Owner may at any time in writing, abandon in whole or in part, any rights conferred on it in terms of this Constitution.

12. MEETINGS

- 121 The annual general meeting shall be held on a date fixed by the Trustees no later than 6 (six) months after the end of the Financial Year and at least twenty-eight (28) days' written notice thereof, including the agenda shall be sent to all Members by the Manager of the Estate. A full annual report of the Trustees shall be tabled at every annual general meeting. Each said meeting shall also include the election of Trustees for the forthcoming year, adoption of financial reports and the consideration of the Levy as determined by the Trustees for the forthcoming year.
- 122 Special general meetings may be called by the Trustees whenever they consider it desirable and shall be called upon the requisition in writing of the majority of the Trustees, on twenty-eight (28) days written notice by the Manager of the Estate specifying the business to be discussed.
- 123 At all meetings the chair shall be taken by the chairperson of the Trustees. In the absence of the chairperson, the Members present shall elect a chairperson.
- 124 The chairperson shall not have a casting vote and a quorum at all general meetings shall consist of Members (including persons holding proxies on behalf of Owners), owning at least 25% of the total votes.
- 125 If within half an hour from the time appointed for any meeting of the Association, a quorum is not present, the meeting shall be adjourned to a date not earlier than fourteen (14) days and not later than thirty (30) days after the date of such adjourned meeting on written notice to the Members. If at such adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the Members present in person or by proxy and entitled to vote shall form a quorum.
- 126 At all meetings votes on any matter shall be by show of hands of those present, unless the meeting decides otherwise, the majority vote to count.

13. VENUE OF MEETINGS

General meetings of the Association shall take place at such place/s as shall be determined by the Trustees from time to time.

14. AGENDA AT MEETINGS

In addition to any other matters required to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting.

- 141 the consideration of the chairperson's report;
- 142 the election of the Trustees;
- 143 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions.
- 144 the consideration of the balance sheet and income statement of the Association for the last Financial Year of the Association.
- 145 the consideration and approval of the report of the Auditors;
- 146 the consideration of the Levy, for the next financial year, subject to clause 24.8 below; and
- 147 the consideration and the fixing of the remuneration of the Auditors for the Financial Year of the Association for the next financial year;

148 the consideration of the budget for the following financial year.

15. PROXIES

151 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorized 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 provided that person is duly authorized thereto. Where a Member is a company, the proxy may be signed by the chairperson of the board of directors of the company or by its secretary, and where an association of persons, by the secretary thereof.

152 The instrument appointing the proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited at the office of the Association's secretary at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument, is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date of its execution.

Any instrument appointing a proxy and submitted as set out above, may be cancelled prior to the expiration of 12 months, provided that written notice of the cancellation thereof is received by the Association's secretary at least one hour prior to the time fixed for any meeting of the Association.

153 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the revocation of the proxy, unless such revocation shall have been received by the Association's secretary at least one hour before the time fixed for the holding of the meeting.

16. VOTING

16.1 At every general meeting: -

16.1.1 every Member that is the Owner of an Erf or his duly authorised representative in the case of clause 5.3.2 being applicable, in person or by proxy and entitled to vote 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;

16.1.2 the Members that are Owners of Sectional Units in a specific Sectional Title Scheme other than the Hotel Scheme and the Lodges Scheme and the relevant Body Corporate shall have a total number of votes per Sectional Title Scheme equal to the number of Levies (as per clause 24.7) payable by such Body Corporate to the Association, as determined in accordance with the provisions of clause 24.7.3, which votes shall be exercised at general meetings by a representative appointed by the relevant Body Corporate from time to time for such purpose and which votes may not be split;

16.1.3 the Owners of the Participating Units in the Hotel Scheme and the Body Corporate shall have 1 (one) vote for every 5 (five) Participating Units (as per clause 24.8) which votes shall be exercised at general meetings by a representative appointed by the relevant Body Corporate from time to time for such purpose and which votes may not be split;

16.1.4 every Member that is the Owner of a Sectional Title Unit in the Hotel Scheme that is not a Participating Unit or his duly authorised representative in the case of clause 5.3.2 being applicable, in person or by proxy and entitled to vote shall have 1 (one) vote for each such Sectional Title Unit registered in his name provided that if the Sectional Title Unit is registered in more than one person's name, then they shall jointly have 1 (one) vote;

- 16.1.5 the Owners of Sectional Title Units in the Lodges Scheme or his duly authorised representative in the case of clause 5.3.2 being applicable, in person or by proxy and entitled to vote shall have 1 (one) vote for each such Sectional Title Unit registered in his name provided that if the Sectional Title Unit is registered in more than one person's name, then they shall jointly have 1 (one) vote, it being recorded that the Body Corporate of the Lodges Scheme shall not have a separate vote as a Member;
- 16.1.6 for so long as the Golf Course Owner pays no levies in respect of the Golf Course, Club and Club Facilities, the Golf Course Owner shall not be entitled to vote in its capacity as owner of the Golf Course, Club and Club Facilities, but shall be entitled to attend general meetings.
- 162 Save as expressly provided for herein, no person other than a Member, and who shall have paid the Levy and other amount (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, and who shall have paid his annual / monthly Club subscription fees as determined in accordance with clauses 29.1 and 29.3, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 163 At any general meeting a resolution put to the vote of the meeting shall be decided on a poll.
- 164 Notwithstanding the provisions of clause 16.3 aforesaid, voting on the election of a chairperson of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote, unless a poll is(before or on declaration of the result of the show of hands) demanded by the chairperson or any of the Members in terms of clause 16.5 below. The votes shall be calculated as per clause 16.1.
- 165 When a poll is demanded, it shall be taken in such manner as the chairperson may direct, either immediately or after an interval or adjournment.
- 166 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.
- 167 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the general meeting shall not be entitled to a casting vote.
- 168 Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry into the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the chairperson of the meeting as to the result of any voting at the meeting.
- 169 In the event of an Erf being subdivided then each Owner of a sub-divided portion thereof shall hold one vote per levy payable in respect of each subdivided portion and in the event of consolidation the Owner of the consolidated Erf's number of votes shall be equal to the number of levies payable in respect of such consolidated Erf.

17. SPECIAL RESOLUTION

- 171 Notwithstanding the provisions of clause 12.2, a resolution by the Association shall be a special resolution if at a general meeting (special general meeting) of which not less than 28 clear days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which Members holding in aggregate not less than 25% of the total votes of all the Members entitled to vote thereat, are present in person or by proxy, the resolution has been passed by not less than two thirds of the number of Members of the Association entitled to vote at the meeting who are present in person or by proxy.
- 172 If less than 25% of the total votes of all the Members entitled to attend the meeting and to vote thereat are present or represented at a meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned to a date not earlier than 14 days and not later than 30 days after the date of the meeting and the provisions of clause 17.3 below shall apply in respect of such adjournment.
- 173 Whenever a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 174 At the adjourned meeting, the Members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than two thirds of the votes of such Members, shall be deemed to be a special resolution even if less than 25% of the total votes are represented at such adjourned meeting.

18. ACCOUNTS

- 181 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 the Members of the accounts and books of the Association, or any of them, and subject 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.
- 182 At each annual general meeting the Trustees shall lay before the Association a proper income and expenditure account for the preceding Financial Year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last Financial Year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustees and the Auditors, and there shall be attached to the notice sent to Members convening each annual general meeting, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

19. AUDIT

The accounts of the Association shall be audited by the Auditors at least once a year.

20. SERVICE OF NOTICES

- 201 A notice shall be in writing and shall be given or served by the Association on any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the address of the Erf or Sectional Title Unit owned by him or by electronic mail at the e-mail address nominated by such Member.
- 202 No Member shall be entitled to have a notice served on him at any address not within the Republic

of South Africa, but any Member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of service of notices, or such other address as the Member is obliged to furnish to the Association.

- 203 Any notice by post shall be deemed to have been received within 4 (four) days from the date when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient proof that the letter containing the notice was properly addressed and posted. Any notice by e-mail shall be deemed to have been received on the same day as same was transmitted by the sender.
- 204 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

21. INDEMNITY FOR TRUSTEES

- 211 All Trustees shall be indemnified by the Association against any liabilities bona fide incurred by them in their respective capacities and in the case of a Trustee in his capacity as chairperson or vice-chairperson, whether pursuing or defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court or the arbitrator where applicable.
- 212 Every Trustee servant, agent and employee of the Association, shall be indemnified by the Association against all costs, losses and expenses (including traveling expenses) which such person/s may incur or become liable for by reason or contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties including, in the case of a Trustee, his duties as chairperson or vice-chairperson. The Trustees shall pay such costs, losses and expenses out of the funds of the Association. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, or deed performed or omitted to be performed by him jointly or severally in connection with the discharge of his duties provided that any such act or deed was performed or omitted to be performed in good faith.
- 213 A Trustee shall not be liable for the acts, neglects or defaults of the Auditors or of any other Trustee, whether in their capacities as Trustee or as chairperson or vice-chairperson or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustees for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or delictual act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatsoever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or intentional breach of duty or breach of trust.

22. ARBITRATION

- 221 Any dispute, question or difference arising at any time between Members or between Members and Trustees out of or in regard to;
- 22.1.1 any matters arising out of this Constitution; or
- 22.1.2 the rights and duties of any of the parties mentioned in this Constitution; or
- 22.1.3 the interpretation of this Constitution;

shall be submitted to the Trustees and unless such dispute is resolved by the Trustees to the satisfaction of the parties to the dispute within 30 days of such submission, the dispute shall be

referred to and be decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.

- 222 Arbitration shall be held in Cape Town informally and otherwise upon the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that, if possible, it shall be held and concluded within 21 business days after it has been demanded.
- 223 Save as otherwise specifically provided herein, the arbitrator shall be, if the question in dispute is:
- 22.3.1 primarily an accounting matter – an independent accountant;
 - 22.3.2 primarily a legal matter – a practicing counsel or attorney of not less than 10 years standing,
 - 22.3.3 any other matter – an independent and suitably qualified person appointed by the Auditors;
- as may be agreed upon between the parties to the dispute.
- 224 If agreement cannot be reached between the parties to the dispute on whether the question in dispute falls under clauses 22.3.1, 22.3.2 or 22.3.3 or on a particular arbitrator in terms of clause 20.3 within three business days after the arbitration has been demanded, then:
- 22.4.1 the President for the time being of the Law Society of the Western Cape or its successors shall determine whether the question in dispute falls under clauses 22.3.1, 22.3.2 or 22.3.3; or
 - 22.4.2 the President for the time being of the Law Society of the Western cape shall appoint the arbitrator in terms of clause 20.3 within 7 business days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 business days referred to in clause 22.2 above.
- 225 The arbitrator shall make his award within 7 days after completion of the arbitration and shall, in giving his award, have regard to the principles laid down in this Constitution. The arbitrator may determine that the costs of the arbitration and the applicable scale be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 226 The decision of the arbitrator shall be final and binding and may be made an order of the Cape Provincial Division of the High Court of South Africa or its successor/s upon the application of any party to the arbitration.
- 227 Notwithstanding anything to the contrary in clauses 22.1 to 22.6 inclusive, the Trustees shall be entitled in their sole and absolute discretion to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any court having jurisdiction.

23. AMENDMENTS TO CONSTITUTION

This Constitution, or any part thereof, shall not be repealed or amended, save by a Special Resolution adopted at an annual general meeting or a special general meeting of the Members and subject further to the prior written consent of the Golf Course Owner, the Developer, the Owner of the relevant portion/s of Watervliet, the Body Corporate of the Hotel Scheme and the Hotel Developer being obtained in respect of the clauses as indicated in **Annexure B** hereto.

24. LEVIES

- 241 The Trustees may from time to time, impose upon the Members, Levies, for the purpose of meeting all the expenses in relation to the facilities and services, and for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and the Association's affairs. In calculating the amount of the Levies, the Trustees shall take into account income, if any, earned by the Association. Such Levies shall not include costs incurred for the maintenance of the Golf Course and Club Facilities.
- 242 The Trustees may from time to time, when necessary, impose special levies upon the Members or call upon them to make special contributions in respect of all such expenses as are mentioned in clause 24.1 and 30.4 and the amount of such special Levies. The manner of payment thereof by Members shall be at the discretion of the Trustees.
- 243 It is recorded that the Developer shall not be responsible for the payment of any ordinary or special Levies in respect of –
- 24.3.1 any unsold Erven or incomplete Sectional Title Units still held by it, save where the Erf in question has been developed by the Developer and is occupied by a third party. For purposes hereof, "developed" shall mean the erection and completion of any habitable structure; and
 - 24.3.2 any land which will finally constitute the Private Areas of the Estate.
- 244 The Golf Course Owner shall not be required to pay Levies on any properties that constitute the Golf Course and/or Club Facilities.
- 245 It is further recorded that the Developer and the Golf Course Owner shall also not be liable to contribute towards any expenses of the Association e.g., security costs of the Association.
- 246 Any amount due by a Member by way of a Levy shall be a debt due by him to the Association. The obligation of a Member to pay a Levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear Levies. No Levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member's successor-in-title to an Erf or a Sectional Title Unit shall be liable, as from the date upon which he becomes a Member pursuant to the transfer of that Erf or Sectional Title Unit into his name, to pay the Levy attributable to that Erf or Sectional Title Unit. No Member shall be entitled to transfer his Erf or Sectional Title Unit until the Association has certified that the Member has at the date of transfer paid all amounts owing by him to the Association.
- 247 In calculating the Levy payable by each Member, the Trustees may as far as reasonably practical, and in their sole discretion:
- 24.7.1 assign those costs arising directly out of or directly attributable to the Erf itself to the Owner thereof;
 - 24.7.2 subject to clause 24.7.1 assign those costs relating to the Land generally to the Owners of all Erven equally, provided however that the Trustees may in any case where considered equitable to do so, assign to any Member any greater or lesser share of the costs as may be reasonable in the circumstances; and
 - 24.7.3 assign a proportion of those costs attributable generally or specifically to a particular Sectional Title Scheme by the Association ("**the Sectional Title HOA Levy**"), it being agreed that the Body Corporate of such Sectional Title Scheme shall determine the pro-rata portion due by each Owner of a Sectional Title Unit in the said Sectional Title Scheme in respect of

such Sectional Title HOA Levy and the Body Corporate shall be responsible for collecting such pro-rata amounts from each Owner of a Sectional Title Unit for payment to the Association. The Owners agree to be jointly and severally liable with the Body Corporate to and in favour of the Association for payment of each such pro-rata portion of the Sectional Title HOA Levy.

248 Notwithstanding the provisions of clause 24.7.3 above, it is recorded that –

24.8.1 in respect of the Hotel Scheme, the Sectional Title HOA Levy shall only apply to Participating Units and all other Sectional Title Units in the Hotel Scheme shall pay a full Levy. The Participating Units shall pay the equivalent of 20% of the Levy payable by an Erf, but Sectional Title Units in the Hotel Scheme that are not Participating Units will attract the same Levy to the Association per such unit as an Erf or as may be assigned to a single Sectional Title Unit in the Estate that is not a Participating Unit;

24.8.2 in respect of the Lodges Scheme the Sectional Title HOA Levy shall not apply and all Sectional Title Units in the Lodges Scheme shall pay a full Levy to the Association.

249 The Trustee's decision in calculating the Levy shall be final and binding on all Members subject thereto that increasing the Levy contributions payable by the Members by 25% (twenty five percent) or more from one year to the next shall require a special resolution of the Members, save that this limitation shall not be applicable to special levies raised by the Association.

24.10 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every Levy and other sum (if any), which shall be due and payable to the Association in respect of his membership thereof.

24.11 Interest shall accrue to all arrear Levies and other amounts owing by a Member to the Association at the maximum interest rate permitted by the National Credit Act No. 34 of 2005.

24.12 Notwithstanding the provisions of clause 24.11 and without prejudice to its right to recover interest as set out in clause 24.11, the Association shall be entitled to penalize any Member who fails to pay a Levy (or any other debt due to the Association) timeously, or who fails to complete the construction of his dwelling and the establishment and landscaping of his garden within the stipulated time period, in an amount to be determined by the Trustees from time to time.

24.13 Where an Erf is owned by a company, close corporation or trust, the directors/members/trustees of such company / close corporation / trust shall be obliged to bind themselves, jointly and severally, in their personal capacities to the satisfaction of the Trustees, as sureties and co-principal debtors with the said company / close corporation / trust to and in favour of the Association for the due and punctual performance by the said company / close corporation / trust of its obligations to the Association howsoever arising.

25. POWERS OF THE TRUSTEES

25.1 The management and administration of the Association shall vest in the Trustees which may exercise all such powers of the Association and do, on behalf of the Association, all such acts as may be exercised and done by the Association itself.

25.2 Subject to the express provisions 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 in general meeting, subject however to such rules as may have been made by the Association in general meeting or as may be made by the Trustees from time to time.

253 Save as specifically provided otherwise in this Constitution, the Trustees shall at all times have the rights to engage on behalf of the Association, the services of accountants, Auditors, Attorneys, advocates, architects, engineers, town planners, managing agents, environmental consultants, and any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustees and on such terms as the Trustees shall decide, subject to any of the provisions of these presents.

254 The Trustees shall further have the power

25.4.1 to require that any construction of any sort on the Estate shall be supervised to ensure that the provisions of this Constitution and the Estate rules are complied with and that all such construction is performed in a proper and workmanlike manner; and

25.4.2 to issue, add to or amend from time to time architectural and landscape design guidelines, environmental design and maintenance manual or instruction in respect of the Estate, and to ensure the manual is complied with at all times.

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

256 The Trustees shall have the right to appoint committees consisting of such number of Members and such outsiders, including a managing agent, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the Trustees may from time to time deem necessary.

257 The Trustees shall appoint an architectural review committee to exercise the powers set out above in clause 23.4 which may, but shall not necessarily consist of;

25.7.1 a practicing professional architect or town planner duly qualified to practice as such for his own account in the Republic of South Africa and a landscape architect;

25.7.2 one Trustee;

25.7.3 such other Members as the Trustees may determine.

258 Members of the architectural review committee shall not be required to be Members of the Association.

All plans for buildings, out-buildings, structures, additions and alterations shall be approved by the architectural review committee, or any person designated by them for the purpose. Should any Member feel aggrieved by the decision of the architectural review committee, he shall be entitled to lodge an appeal with the Trustees, who shall be entitled to rescind the decision of the architectural review committee after having given due consideration thereto and if in their sole and absolute discretion the circumstances so allow. The buildings erected by the Golf Course Owner and the Hotel Developer and the Developer shall similarly be approved by the architectural review committee, but such approval shall not be unreasonably withheld.

26. ALIENATION

26.1 Alienation by Members:

- 26.1.1 a Member shall not in any manner Alienate an Erf or a Sectional Title Unit unless:
- 26.1.1.1 the proposed transferee has irrevocably bound himself to become a Member of the Association and to observe the Constitution and rules of the Association for the duration of his ownership of the Erf or Sectional Title Unit;
 - 26.1.1.2 the Association has given its written consent thereto and has issued a clearance that all amounts owing to the Association and to the Club by such Member have been paid and that the Member is not in breach of any of the provisions of this Constitution; and
 - 26.1.1.3 The proposed transferee acknowledges that upon the registration of transfer of the Erf or the Sectional Title Unit into his name he shall *ipso facto* become a Member of the Association.
- 26.1.2 The provisions of clause 26.1 shall apply mutatis mutandis to any alienation of any undivided share in an Erf or a Sectional Title Unit.
- 26.1.3 This Constitution shall also bind any person occupying an Erf or a Sectional Title Unit and no Member shall let or otherwise part with occupation of his Erf or Sectional Title Unit whether temporarily or otherwise unless the proposed occupier has agreed to be bound by this Constitution. Notwithstanding this, an Owner shall always remain bound by this Constitution and be required to ensure compliance therewith by an occupier.
- 26.1.4 Neither an Owner nor a body corporate may at any time resign as a Member of the Association.
- 26.1.5 Such restrictions as are registrable will be registered against the title deeds of all the Erven and Sectional Title Units in order to give effect to the terms of this clause. The Members shall be bound by this clause whether or not such restrictions are registered.
- 26.1.6 Owners shall only be entitled to lease their Erven or Sectional Title Units or to have their Erven or Sectional Title Units managed by an agent through the letting/management agents accredited by the Association.

262 Alienation of Private Areas;

- 26.2.1 Neither the whole nor any portion of the Private Areas may be:
- 26.2.1.1 sold, let, Alienated or otherwise disposed of, sub-divided or transferred; or
 - 26.2.1.2 mortgaged; or
 - 26.2.1.3 subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude other than servitudes in favour of the Local Authority for services and those referred to in this Constitution and particularly those referred to in clause 4.7;

without the sanction of a special resolution of the Association and the prior written consent of the Local Authority.

27. OBLIGATIONS TO BUILD

In order to maintain high standards and to ensure an attractive and harmonious development: -

- 27.1 Subject to the provisions of clause **Error! Reference source not found.**, no building or structure may be erected on the Estate and/or the external appearance (including the colour) or any existing or future building or structure may not be changed unless the architectural design plans and specifications (including materials) of such building or structure have been approved by the Association or a person nominated by the Association.
- 27.2 All buildings and structures shall be built in a good and proper and workmanlike manner and strictly in accordance with the plans and specifications approved in accordance with 27.1 above.
- 27.3 Any dwelling or improvements to be erected on the Estate shall comply with the Architectural and Landscape Design Guidelines and other specifications as set out therein, and:
- 27.3.1 the Member may mandate an architectural firm (non-designated architect) to design and supervise the construction of the dwelling and other improvements to be erected on his Erf. Plans for any such dwelling or improvements shall be submitted to and be approved by the Association, prior to submission thereof to the Local Authority.
- 27.3.2 an Architectural scrutiny fee and a landscape scrutiny fee in such amounts as may be determined from time to time by the Association, shall be borne and paid by the Member to the Association, together with the submission of the plans as aforesaid. The Association shall have absolute discretion in approving or refusing to approve such plans and specifications.
- 27.4 The costs of preparing detailed building plans as well as the cost of obtaining Local Authority approval of any plans and scrutiny fees shall be payable by the said Member.
- 27.5 The Member acknowledges that the erection of the dwelling and the establishment and landscaping of the garden shall be completed by the Final Date, which date may be extended by the Association, which extension will only be valid if reduced to writing and signed by the Association and the Owner. Completion shall have occurred only upon the issue of a Certificate of Completion and the issue of a Landscaping Certificate by the Association.
- 27.6 If the Member fails to complete the construction of the dwelling by the Final Date, the Association shall charge a penalty levy to the Owner on such basis as the Trustees may determine from time to time.
- 27.7 If the Member fails to commence the construction of the dwelling by the Final Date, the Association shall be entitled, without prejudice to any other rights which it may have in terms of this Constitution, and/or at law at its election to require the Member, to landscape and irrigate the Erf at the cost and expense of the Owner, failing which the Association shall be entitled to do same on the Owners behalf and recover from the Owner all amounts so disbursed.
- 27.8 Notwithstanding anything to the contrary foregoing:
- 27.8.1 and notwithstanding the fact that a Member is up to date with payment of his Levies and any other amount that may be due to the Association, in the event that the construction of the dwelling and the establishment and landscaping of the garden are not completed by the Final Date (or within such extended period as set out above), the rights to the use of the Golf Course and Club Facilities by the Member shall automatically be suspended until such time as the construction of the dwelling and the establishment and landscaping of the garden have been completed which shall be evidenced by a Certificate of Completion and a Landscaping Certificate referred to in 25.5 above;

- 27.8.2 in the event that the buildings have not been erected in accordance with the approved building plans and/or Architectural design guidelines, the Association shall be entitled without prejudice to its other rights in terms of this Constitution or in law, to impose such fine as it may determine expedient from time to time on the Member which amount shall be payable by the Member on demand.
- 279 Notwithstanding anything to the contrary foregoing, if construction of the dwelling and the establishment and landscaping of the garden have not been completed within the time period prescribed in this clause or within such extended period as may be granted as set out above the Association shall, in its sole discretion be entitled to give notice in writing to the Member to complete the construction of the dwelling, and the establishment and landscaping of the garden within a period of (seven) 7 months from the date of such notice and failing compliance with such notice, the Association shall have the right to re-purchase the Erf from the Member, who shall be obliged at its cost to re-transfer the Erf to the Association at the original purchase price paid by the first purchaser of the Erf from the Developer, less any damages as may be suffered by the Association consequent upon the Member's breach and which shall include damages necessarily incurred by the Association in the demolition and removal of any partially constructed buildings on the Erf. The Member shall not be entitled to receive any compensation for any improvements made by it to the Erf.
- 27.10 Registration of the transfer pursuant to clause 27.9 above shall be attended to by the Association's conveyancers and the Member hereby irrevocably appoints the Association as his attorney and agent for the purpose of signing the Power of Attorney to pass transfer and all other transfer documents as may be requisite in order to give effect to the foregoing.
- 27.11 The stipulations contained in this clause 25 shall be binding on the Member and his successors in title and the Member shall include such stipulations in a Deed of Alienation for the sale of the Erf to a purchaser thereof.
- 27.12 The Association shall be entitled to withhold its consent to the transfer of the Erf unless the proposed Member has undertaken in writing to be bound by this Constitution with effect from the date on which the Member's obligations cease.
- 27.13 The proposed Member shall not, prior to transfer, effect any improvements to the Erf without first obtaining the written consent of the Association. Under no circumstances shall the Association be liable to compensate the proposed Member for any such improvements to the Erf, whether made with or without the Association's consent.
- 27.14 The Association, shall provide a panel of pre-selected and accredited building contractors and the Member shall select a building contractor from such panel alternatively a building contractor approved by the Association to erect any improvements on the Erf, and the Member shall sign an agreement with such contractor for the construction of improvements on the Erf.
- 27.15 The foregoing obligations relating to the erection of a dwelling on each Erf shall not apply to the erven still registered in the name of the Developer whether separately or as part of the remainder of the Land.
- 27.16 It shall always remain an Owner's obligation to ensure that he is in possession of the latest version of the documentation referred to in clause 25.4.2.

28. ESTATE RULES

- 28.1 Subject to this Constitution, to any restriction imposed or direction given at a general meeting of the Association and subject to any condition imposed by the Local Authority, in approving the

rezoning and subdivision of the Land, the Trustees may from time to time make rules and vary or modify these rules, in regard to *inter alia*;

- 28.1.1 the standards and guidelines of all buildings and out-buildings, structures of any nature, swimming pools and all additions or alterations of any such buildings, out-buildings or structures erected or to be erected on the Erven in accordance with the architectural and landscape design guidelines and in particular to control the design and colour of the exterior of such buildings, out-buildings or structures and the materials to be used on such exteriors to ensure an attractive and aesthetically pleasing character to all buildings on the Estate;
- 28.1.2 the siting of all buildings and improvements on the Erven, the use of motor vehicles and the parking of vehicles, including trucks, caravans, trailers and boats and the use of the roads;
- 28.1.3 the use of Private Areas and the restrictions for the use and enjoyment thereof including the preservation of the natural environment vegetation and fauna and flora on the Estate;
- 28.1.4 the keeping of pets and the right to prohibit, restrict or control the keeping of any animals which they regard as dangerous or a nuisance;
- 28.1.5 the conduct of any persons within the Estate for the prevention of nuisance of any nature to any member;
- 28.1.6 the use of services including the right to charge a reasonable fee for the use thereof;
- 28.1.7 the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the Members and/or the residents of the Estate;
- 28.1.8 the maintenance of all buildings, out buildings, structures, improvements of any nature and landscaping of individual Erven and the Estate;
- 28.1.9 the control of the number of occupiers permitted on any one Erf or in any Sectional Title Unit;
- 28.1.10 the admission of any person to the Estate, and the eviction of any person not entitled to be thereon;
- 28.1.11 maintenance of Private Areas;
- 28.1.12 refuse disposal;
- 28.1.13 use of waterways and amenities relating thereto;
- 28.1.14 the operation of business operations and the restrictions relating thereto;
- 28.1.15 installation of air conditioning units, television aerials, satellite dishes and any other communication equipment;
- 28.1.16 littering;
- 28.1.17 responsibility of the Members for the activities of domestic employees and their guests and access of such persons to the Estate;

- 28.1.18 security;
 - 28.1.19 traffic control, including speed limits, parking and the regulation of all forms of motorised or electric vehicles;
 - 28.1.20 the accreditation and regulation of garden service contractors and landscaping contractors;
 - 28.1.21 letting and re-selling of Erven and Sectional Title Units, including restrictions on sub-letting and short term letting;
 - 28.1.22 the imposition of fines and other penalties;
 - 28.1.23 the maintenance of and improvements to the Golf Course and Club Facilities, if so relinquished by the Golf Course Owner, and if so acquired by the Association;
 - 28.1.24 accreditation and regulation of estate agents for re-sale and letting of Erven and Sectional Title Units on the Estate;
 - 28.1.25 accreditation and regulation of building contractors for the erection of any improvements on an Erf (other than an Erf owned by the Developer, Golf Course Owner or Hotel Developer);
 - 28.1.26 the use and the right of use of the Golf Course, Club Facilities and Club (if so relinquished by the Golf Course Owner and if so acquired by the Association) by Members, their families and their bona fide invited guests.
- 282 For the enforcement of any of the rules made by the Trustees in terms of this clause, or of any of the provisions of this Constitution generally, the Trustees may:
- 28.2.1 give notice to the Member concerned requiring him to remedy such breach within such period as the Trustees may determine; and/or
 - 28.2.2 take or cause to be taken such steps, as they may consider necessary to remedy the breach of the rule or provision of which the Member may be guilty, and debit the cost of so doing to the Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Association; and/or
 - 28.2.3 take such action including the imposition of a fine, or proceedings in court, as they may deem fit.
- 283 Should the Trustees institute any legal proceedings against any Member or resident on the Estate for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 284 In the event of any breach of the rules by the members of any Member's household or his guests or lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Trustees may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 285 The process relating to disputes by Members of disciplinary steps taking against them for a breach of the Constitution or the rules of the Association will be dealt with in the Association's rules.
- 286 Notwithstanding anything to the contrary herein contained, the Trustees may in the name of the

Association enforce the provisions of any rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel, as they may deem fit.

287 The Association may in general meeting make any rules in regard to any matter and may also vary or modify any rule made by it or by the Trustees from time to time, which rules will be in addition to the standard Estate rules promulgated by the Trustees from time to time.

288 All rules must be reasonable and must apply equally to all Owners of Erven put to substantially the same use and to all Owners of Sectional Title Units put to substantially the same use.

29. THE GOLF COURSE, CLUB AND CLUB FACILITIES

291 The Golf Course Owner has established the Golf Course, Club and Club Facilities on the Estate.

292 As a right of the Golf Course Owner, Membership of the Club shall be compulsory for all Owners, except Owners of Participating Units. All and any subscription fees due by an Owner other than Owners of Participating Units entitling the Owner, his family and guests' entry into any of the Club Facilities shall be compulsory and shall be included in such Owner's annual/monthly Club subscription fees.

293 The Golf Course Owner shall either directly or through its agents or assigns, maintain the Golf Course and Club Facilities. All entrance fees, annual/monthly subscriptions, green fees and/or usage fees shall be determined from time to time by the Golf Course Owner and its successors to the Golf Course and/or Club and/or Club Facilities.

294 The Golf Course Owner shall either directly or through its agents and assigns own the Club, Club Facilities and Golf Course until such time as it, in its sole and absolute discretion may elect to transfer or sell one or some or all of the above to a third party or the Association.

295 Should the Golf Course Owner elect to transfer or sell one or more or all of the Club, Golf Course and/or Club Facilities to the Association:

29.5.1 the Association shall be obliged to take transfer of same when tendered by the Golf Course Owner at a nominal price of R1.00 in which case the asset to be transferred shall be debt free and the Association shall be obliged to assume liability for all hire purchase/instalment sale/lease agreements entered into by the Golf Course Owner in respect of the asset which are necessary for the successful operation and maintenance of the asset, provided that such liability has been reasonably incurred ; or

29.5.2 at the sole and absolute discretion of the Golf Course Owner, the Association may purchase same at a price and on terms mutually agreed between the parties;

29.5.3 transfer of the asset in question shall take place as soon as reasonably possible after the Golf Course Owner tenders the asset to the Association at a nominal price of R1.00 in terms of 27.5.1 above or after the parties reach agreement on the price and terms of sale in terms of 27.5.2 above.

296 The costs involved in the registration of transfer of ownership of the asset in question shall be borne equally by the Golf Course Owner and the Association. As the Golf Course Owner wishes to be associated with the Pearl Valley name and logo, as a trade name and trademark for any future development, the Golf Course Owner reserves the right to retain the rights to the use of the name of Pearl Valley and its logo, which are registered trademarks. Furthermore, the Golf Course Owner reserves the right to retain the trading rights to the golf pro shop.

297 In the event of the transfer or sale of one or more or all of the aforesaid assets, the Association shall

be obliged to accept all the movable assets, equipment and machinery associated with the asset in question, in the condition that it is in at the time of the transfer or sale and shall have no claim against the Golf Course Owner in respect of any damaged, worn out, broken or unserviceable article. The Golf Course Owner undertakes to use its best endeavours to maintain in a state of good repair any such movable assets, equipment and machinery until the time of transfer or sale and to replace such of these articles as may become unserviceable from time to time.

298 Transfer of the Private Areas and transfer of the Golf Course, Club Facilities and/or Club shall be “voetstoots” and as it/they stand and the Association shall have no claim against the Golf Course Owner in respect of any construction works, buildings, maintenance etc., which might be incomplete at the time of such transfer or sale.

299 The Golf Course Owner may at any time and in its sole discretion transfer or sell one or more or all of the Golf Course, Club and Club Facilities to any third party or entity provided that it has first afforded the Association the right to purchase the asset(s) in question at the same price and on the same terms as proposed. The Association shall not have a right of first refusal as set out above in circumstances where the Golf Course Owner has a direct or an indirect interest in the third party or entity in question. In the event of any of the aforementioned assets being transferred or sold to a third party or entity, then such third party or entity shall assume the rights and obligations of the Golf Course Owner under this Constitution and/or the Constitution of the Club in respect of the asset in question.

29.10 The owners of the Non-residential Erven shall not be liable to pay any Levies to the Association.

29.11 All Members of the Association shall be entitled to make use of the Golf Course and Club Facilities upon such terms as may be prescribed from time to time by the Golf Course Owner in relation to such use, unless as otherwise provided herein and in the constitution of the Club.

29.12 The unaccompanied paying guests of any hotel, spa and any other amenities and facilities established on the Land shall be entitled to the right of use of the Golf Course and/or Club Facilities and other amenities and facilities established on the Land subject to the rules and regulations prevailing to the use thereof at the time. Such rights of access to the said facilities are guaranteed by the Association, subject to the rules and regulations in respect of such facilities prevailing at the time and which rules will be agreed to between the Association and the Golf Course Owner in good faith.

30. MAINTENANCE OF DWELLINGS AND GARDENS ON THE ERVEN

30.1 The Association shall be responsible for exercising control over the painting of the exterior of all residential dwellings and Sectional Title Units on the Estate. The responsibility and cost of the painting, maintenance and upkeep of the dwellings aforementioned remains the responsibility of the Owners or the body corporate (as the case may be).

30.2 In the event that an Owner or body corporate should fail to comply with his obligations in relation to the painting, maintenance and upkeep of his dwelling as stipulated in clause 30.1, then the Association shall be entitled to engage the services of all necessary and requisite contractors to effect such work including the outsourcing of such work.

30.3 The costs of effecting the work in terms of clause 30.2 shall be paid by the Association, who shall be entitled to recover the cost thereof from the Owner or body corporate in question on demand.

30.4 Each Member shall be responsible for payment of all rates and taxes, as well as all water, electricity and all other services consumed in respect of his Erf or his Sectional Title Unit.

31. FURTHER OBLIGATIONS OF MEMBERS

31.1 Each Member shall

31.1.1 maintain his Erf in accordance with the Architectural and Landscape Design Guide and the Association rules respectively;

31.1.2 maintain in a neat and tidy condition and in a state of good repair all improvements on his Erf;

31.1.3 not do or allow to be done on any Erf or any Sectional Title Unit anything which, in the opinion of the Trustees, is, injurious, objectionable, detrimental or a public or private nuisance or a source of damage or disturbance to any Member, resident or occupier of any Erf or Sectional Title Unit in the Estate;

31.1.4 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;

31.1.5 not erect or permit the erection of any advertising boards on any Erf without the written approval of the Association;

31.1.6 adequately insure the improvements on his Erf and, if requested by the Association, 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 partial destruction in accordance with the original approved plans or, in the event of total destruction, in accordance with the Architectural and Landscape Design Guide;

31.1.7 comply with all security procedures implemented from time to time;

31.1.8 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on Private Areas and that planting on his Erf does not interfere with the pedestrian traffic or obscure the vision of motorists;

31.1.9 not be permitted to keep dogs or other animals without the permission of the Association, which will determine the conditions from time to time under which they may be kept, and which may refuse permission without giving reasons.

Any permission granted will be subject to the resident ensuring that the dog and/or other animal does not create a disturbance at any time, or become a nuisance;

Dogs must be kept on a leash when not on the Member's Erf. The person in control of the dog must ensure that:

31.1.9.1 Other dogs are not interfered with;

31.1.9.2 Golfers, joggers, walkers and other persons are not harassed;

31.1.9.3 Dogs do not cause traffic incidents; and

31.1.9.4 Dogs are not the cause of uncleared fouling of the sidewalks, the Golf Course, or any Private Areas

31.2 a Member shall not be entitled to apply for the rezoning of his 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 Sectional Title Unit for any purpose other than the permitted use applicable upon establishment of the Estate;

31.3 no share block scheme as contemplated in the Share Blocks Control Act No. 59 of 1980 and/or time-sharing scheme as contemplated in the Property Time-sharing Act No. 75 of 1983 as amended

and/or any other similar scheme or arrangement may be conducted on the Erf or the Sectional Title Unit, nor shall a guesthouse or bed and breakfast or similar business be operated on any Erf or in any Sectional Title Unit, without the prior written consent of the Association and in accordance with the Association's rules, but this shall not apply to the approved so-called Golf Lodges in the Acres Precinct, which operate on a fractional ownership basis.

32. WATER

- 321 The Association has a duty of care towards the environment and is required to adhere to the applicable Environmental Authorisation ("EA") and Environmental Management Programmes ("EMPr") as approved by the Department of Environmental Affairs & Development Planning ("DEA&DP") in terms of the National Environmental Management Act (Act No. 107 of 1998) ("NEMA") as well as the Water Use Licenses in respect of the Development ("WULs") issued by the Department of Water & Sanitation ("DWS") in terms of the National Water Act (Act No. 36 of 1998) ("NWA").
- 322 Members shall adhere to the aforementioned approvals and the Association's water management plan from time to time insofar as it relates to their Erven or Units and are not allowed to lodge an individual application for uses or activities not authorised in terms of the said approvals. This includes, but is not limited to, an EA application to DEA&DP and/or a WUL application to DWS.
- 323 The Golf Course Owner, who as the holder the WULs utilizes the water to irrigate the Golf Course, undertakes to and in favour of the Association that it will use its best endeavours to make sufficient irrigation water available to the Association in terms of the Association's water management plan from time to time, but not to the detriment of the Golf Course's own irrigation in times of water shortages or drought.
- 324 The costs of obtaining and distributing water in terms of the WULs and the Association's water management plan shall be apportioned according to the use thereof.
- 325 Any party entitled to water in terms of a WUL and the Association's water management plan shall be entitled to register at his cost a servitude for the pumping, storage and distribution of such water over properties in the Estate.
- 326 No Member or Resident shall be entitled to sink any borehole or well on any Erf except with the written approval of the Association and except in accordance with the WUL and the water management plan, except as otherwise permitted and agreed by the Association with the Owner of Watervliet in respect of boreholes on Watervliet.

33. STATUS OF THE ASSOCIATION

The Association shall be an Association:

- 331 with legal personality, capable of suing and being sued in its own name, and
- 332 none of whose Members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in, and be controlled by, the Board of Trustees in terms hereof, and
- 333 not for profit, but for the benefit of the Members, and
- 334 with the right to acquire, hold, lease, offer as security and Alienate property, both movable and immovable subject to the provisions of clause 4.13 and 26.2.1.

34. PERSONAL LIABILITY OF MEMBERS

- 34.1 No Member of the Association shall incur any personal liability in respect of acts done or liabilities incurred by, or on behalf of the Association.
- 34.2 The Association shall not be liable for any damage caused to private residences and private property by golf balls and the Owners shall be obliged to ensure that adequate insurance is effected at their cost to cover such eventualities.

35. HAND OVER AND INDEMNITY

- 35.1 The Developer and the Association will identify the Private Areas to be handed over to the Association for no value and on completion of such agreed list of Private Areas it will annexed as **Annexure A** to this Constitution and the transfer thereof to the Association shall be attended to as soon as is reasonably possible.
- 35.2 The Developer shall not be liable to compensate the Association in respect of any claims, losses, expenses, or damages suffered by the Association as a result of any act or omission on the part of the Developer in respect of any civil services installation on the Estate or any licence or permit obtained by the Developer in respect of the Estate or any part thereof, except where such claims, losses, expenses, or damages was occasioned by the wilful misconduct or gross negligence of the Developer.

36. EXCLUSION OF LIABILITY AND INDEMNITY

- 36.1 Neither the Association nor its Trustees nor the Developer nor the Golf Course Owner nor their agents or assigns shall be responsible or may be held liable for any loss, damage or injury including consequential losses, suffered by or caused to any person or property anywhere on or about the Estate, whether or not such loss, damage or injury is occasioned by any act or omission of the Association, its Trustees, the Developer, the Golf Course Owner, their agents or assigns or anyone else for whose action they or any of them would be liable in law, by reason of vis major, casus fortuitus, rain or other water, riots, strikes, theft or burglary without forcible entry, or by reason of any condition on or off the Estate, or any defective building, construction, road or dam or caused by any golfing or sporting activity or other activity carried out on the Golf Course or on the Land or whilst utilising the Club Facilities or the Private Areas or anywhere else on the Estate, or by any other cause of whatsoever nature and howsoever arising.
- 36.2 Each Member of the Association shall, at all times, hold the Association and all Members of the Association, the Trustees of the Association, the Developer, the Golf Course Owner and their agents and assigns indemnified against and harmless from and shall in no manner whatsoever seek to hold any of them liable for any injury, loss or damage suffered by such Member of the Association, their family members, guests or invitees, as a result of personal injury, death or patrimonial loss arising directly or indirectly from any persons entering the Estate or utilising the Golf Course, Club, Club Facilities or the Private Areas or participating in any other activity of the Association or within the Estate whether or not such injury or loss or damage can be attributed directly or indirectly to negligence of whatsoever nature or degree on the part of the Association, any Member of the Association, the Trustees of the Association, the Developer, the Golf Course Owner, their agents or assigns and/or any of their officials, employees and/or agents.

ANNEXURE A

DIAGRAM OF PRIVATE AREAS

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ANNEXURE B

CLAUSES REQUIRING CONSENT TO AMEND

No.	Party to consent to amendment	Clause
1.	Golf Course Owner	a) 2.6 b) 2.7 c) 2.14 d) 2.15 e) 2.23 f) 2.24 g) 5.3 h) 5.3.3 i) 5.5.1.3 insofar as it relates to Club subscription fees j) 6.2 insofar as it relates to Club subscription fees k) 7.5 to 7.10 l) 11.2 m) 11.3 n) 16.1.6 o) 16.2 insofar as it relates to Club subscription fees p) 23 insofar as it relates to the Golf Course Owner q) 24.4 r) 24.5 s) Error! Reference source not found. t) 29 u) 32.3 v) 36
2.	Developer	a) 2.8 b) 2.11 c) 2.23 d) 7.1 e) 7.2 f) 16.2 g) 23 insofar as it relates to the Developer h) 24.3 i) 24.5 j) 27.5 k) 27.15 l) 36
3.	Body Corporate of Hotel Scheme	a) 2.16 b) 2.23 c) 2.25 d) 8 e) 23 insofar as it relates to the Body Corporate of the Hotel Scheme
4.	Owner of relevant Watervliet Portion/s	a) 2.18.2 b) 2.23

		<ul style="list-style-type: none"> c) 2.25 d) 2.35 e) 32.6 f) 9 g) 23 insofar as it relates to the Owner of the relevant Watervliet Portion/s
5.	Hotel Developer	<ul style="list-style-type: none"> a) 2.16 b) c) 7.4 d) 23 insofar as it relates to the Hotel Developer e) Error! Reference source not found.

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