



# PEARL VALLEY

— HOME OWNERS ASSOCIATION —

**CONSTITUTION OF**

**THE**

**PEARL VALLEY GOLF & COUNTRY ESTATE HOME**

**OWNERS' 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 2.14 hereof and shall come 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 "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 resolute condition, and alienation shall have a corresponding meaning.
- 22 "Association" means Pearl Valley Golf & Country Estate Home Owners' 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.
- 23 "Auditors" means the auditors of the Association.
- 24 "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.
- 25 "Club Facilities" shall mean the club house, driving range, pavilions, kitchens, refreshment rooms and other conveniences built and/or erected on the Estate for the general functioning of the Club and any improvements thereto.
- 26 "Developer" means Pearl Valley Investments (Pty) Ltd (registration number 2015/068356/07) and its successors in title and permitted assignees, which shall, for the avoidance of doubt include, but not be limited to, any juristic person to which it sells its business as developer of the Estate as a going concern;
- 27 "Development Period" means the period commencing 19<sup>th</sup> April 2001 until all the Erven and Sectional Title Units in the Estate have been transferred from the Developer; alternatively, on the date on which the Developer notifies the Association in writing that it terminates the Development Period;
- 28 "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 but excluding the Private Areas and Non-residential Erven as defined herein;
- 29 "Estate" means the **Pearl Valley Golf & Country Estate** to be developed on the Land.
- 210 "Final Date" shall mean the date 24 (twenty-four) months after :
  - 2.10.1 the date of registration of transfer of the Erf into the name of a first purchaser in the case of a sale concluded as between the Developer and a first purchaser of an Erf ; or

- 2.10.2 the date of registration of transfer of the Erf into the name of a bona fide purchaser in the case of a sale concluded between an Owner, other than the Developer, and a bona fide purchaser of an Erf, unless otherwise agreed between the Developer and the Owner in a Deed of Sale.
- 2.11 "Financial Year" means the Financial Year of the Association to be determined from time to time by the Trustees.
- 2.12 "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; "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 ;
- 2.13 "Land" means:
- 2.13.1 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.
- Land may also include, if required by the Developer for any extension of the Estate :
- 2.13.2 The Farm Watervliet A No. 1221, situate in the Drakenstein Municipality, Administrative District Paarl, Western Cape Province, or any subdivided portions originating therefrom whether or not to be consolidated with Erf 1 Pearl Valley Estate; and
- 2.13.3 Portion 3, portion 11 and portion 6 of the Farm Kliprug No. 826 situate in the Drakenstein Municipality, Administrative District Paarl, Western Cape Province, or any subdivided portions originating therefrom, whether or not to be consolidated with Erf 1 Pearl Valley Estate; and
- 2.13.4 Any other adjacent properties which the Developer may own or acquire from time to time, provided that the total number of Erven on Erf 1 Pearl Valley Estate (2.14.1 above) shall not exceed 500 in terms of the development approval.
- 2.14 "Levy/Levies" means the levy referred to in Clause 22.
- 2.15 "Local Authority" means the Drakenstein Municipality.
- 2.16 "Member" means a member as defined in clause 5 hereof.
- 2.17 "Non-residential Erven" means erven other than those defined in clause 2.8 and 2.21, including but not necessarily limited to the Golf Course, Club Facilities, Recreational Facilities, Hotel, Spa, Restaurants, etc.
- 2.18 "Owner/Owners" means the registered owner of an Erf/Erven save where a sectional title scheme has been established on the Erf/Erven in which case the Owner shall be deemed to be the registered owner of a Sectional Title Unit as well as the Body Corporate established in respect of such sectional title scheme.
- 2.19 "person" shall include a Company, Close Corporation, Trust, Partnership or other Association of

persons entitled by law to hold title to immovable property.

- 220 "Private Areas" means all erven on the Estate, which are identified as private roads, private open spaces, lakes and waterways
- 221 "Recreational Facilities" means such facilities proposed to be established on the Estate alternatively on property owned by the Developer adjacent to the Estate and added to from time to time, but which shall exclude the Golf Course, Club Facilities and the hotel, spa, restaurants and other amenities and facilities proposed to be established by the Developer in terms of Clause 7.2.
- 222 "Residential Lodge(s)" means the improvements to be erected on the Erven incorporated in Phase 1A depicted on the General Plans of Subdivision of the Land as approved from time to time by the Surveyor General at Cape Town.
- 223 "Sectional Title Unit(s)" means the Sectional Title Units to be erected by the Developer, or any other developer, and incorporated in a sectional title scheme.
- 224 A "Spouse" means the husband, wife or life partner of an Owner under any law or custom that is recognised by South African law.
- 2.25 "Trustees" means the Board of Trustees of the Association.
- 2.26 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 Developer, to promote, maintain and manage the Golf Course, Club, Club Facilities and Recreational Facilities 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, other than dwellings and those buildings reserved by the Developer as stipulated in this Constitution, which maintenance is to be carried out by and at the expense of the Association;
- 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 but excluding those services located in or on Erven or Sectional Title Units, which maintenance is to be carried out by and at the expense of the Association;
- 4.1.4 the maintenance and upkeep of the Golf Course, Club Facilities and Recreational Facilities

if so acquired from the Developer 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 On the termination of the Development Period, 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 Developer 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/or the Recreational Facilities and such portions of the remainder of the Estate which have not been reserved by or for the benefit of the Developer.
- 4.10 The formulation, enforcement, modification, amendment, additions and deletions of Estate Rules and Regulations.
- 4.11 If relinquished by the Developer, and if not reserved by and for the benefit of the Developer, 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 ; and/or
  - 4.11.4 the Recreational 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.
- 4.15 To register servitudes of access over the Private Areas in favour of the Developer.
- 4.16 To pay the bulk water account.

The Trustees will be responsible and have the right to inspect, repair, replace and/or test any water meter serving an Erf. 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:-
  - 5.1.1 every Owner in the Estate; and
  - 5.1.2 at the election of the Developer to extend the Estate, the Owners of Erven on the adjoining portions of land referred to in 2.14.2 and 2.14.3 and 2.14.4 ; and
  - 5.1.3 the body corporate of every sectional title scheme established on the Estate,
- 52 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.
- 53 The Developer shall, by virtue of its ownership of Erven and Sectional Title Units as defined herein and other Non- residential Erven, comprising inter alia the Golf Course, Club Facilities, Recreational Facilities and other amenities and facilities to be developed by and for the benefit of the Developer, become and remain a member of the Association subject to such rights and limitations as are contained herein. Membership shall be limited to the Developer in its capacity as such, 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 wishing to consolidate two Erven may only do so with the consent of the Developer, during the Development Period and thereafter the Association and subject to such terms and

conditions as may be imposed by the Developer / the Association in their sole discretion.

- 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 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 25 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.
- 5.10 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**

- 6.1 During the Development Period, the affairs of the Association shall be managed and controlled by a Board of Trustees consisting of ten (10) Trustees to remain in office for one year, five (5) of whom shall be representatives of the Developer, one (1) of whom shall be a representative of the Club, which Trustee is appointed by the Club's committee on an annual basis, with the remaining four (4) to be elected by majority vote by Members of the Association.
- 6.2 On the expiry of the Development Period a general meeting of Members shall be called for the purpose of electing the ten (10) Trustees.
- 6.3 The four (4) Trustees to be elected by majority vote by Members of the Association as contemplated by clause 6.1, 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 successive Trustees shall be elected likewise at each successive annual general meeting of the Association, 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. Save for the five (5) representatives of the Developer, only Owners or Spouses shall be eligible to serve as Trustees. An Owner shall not be eligible to serve as a Trustee in the event that he has given his Spouse written consent to stand for nomination as a Trustee or if his Spouse is the Trustee representative of the Club's committee and a Spouse shall not be eligible to serve as Trustee in any capacity, if the Owner with whom he shares the relationship is the Trustee appointed by the Club's committee. 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.
- 6.4 The Trustees shall consist of a chairperson, vice chairperson, secretary/treasurer and seven Trustees. The Trustees shall from their ranks elect a chairperson, provided that the chairperson, until the expiry of the Development Period, shall be a representative of the Developer. A quorum of the Trustees shall consist of eight (8) trustees (of which five (5) shall comprise representatives of the Developer until the expiration of the Development Period). 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. 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.

6.4A 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 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.

6.4B 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-

6.4B. 1 meetings of the Trustees shall be held at least once every 6 (six) months;

6.4B. 2 the Chairman always has the right to convene meetings of Trustees;

6.4B.3 a Trustee may, provided he has the support in writing of at least 4 (four) other Trustees, 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.

65 The Trustees, except for the representatives of the Developer during the Development Period, shall cease to hold office:-

6.5.1 at every annual general meeting, but shall be eligible for re-election;

6.5.2 by notice to the Board of Trustees if he resigns his office;

6.5.3 if he is removed from office by the majority vote of the Trustees;

6.5.4 if he absents himself from three (3) consecutive meetings of the Trustees without leave of absence;

6.5.5 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;

6.5.6 upon his estate being sequestrated, whether provisionally or finally;

6.5.7 upon the commission by him of any act of insolvency;

6.5.8 upon his conviction of any offence involving dishonesty;

6.5.9 upon the formal withdrawal by the Owner of his written consent, as provided for in clause 6.3, 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;

6.5.10 in the case of the Trustee representing the Club, if the Club formally notifies the Board of

Trustees that he is no longer their appointed representative.

- 66 Vacancies on the Board of Trustees may be filled by co-option at the instance of the majority vote of the Members.
- 67 Trustees shall receive no remuneration, but will be entitled to a refund of reasonably incurred expenses in the execution of their duties.
- 68 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.
- 69 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.
- 6.10 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 OF THE DEVELOPER**

- 7.1 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 immediate access if the required notice has been given.
  - 7.1.5 the Developer shall have the sole right of appointment and dismissal of any managing agent during the Development Period.
- 72 The Developer has reserved the right and shall be entitled to build and establish on the Land a hotel, spa, restaurants and any other 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 The Developer has reserved the right in its sole discretion, to establish and locate the amenities and facilities referred to in 7.2 on any portion of the Land, save such Erven that have already been sold to Owners other than the Developer, with the approval of the Local Authority.

- 74 The Developer has reserved the right to designate the Golf Course, Club Facilities, Recreational Facilities and such other amenities and facilities referred to in 7.2 as separate erven and to retain or transfer or sell the ownership thereof for its own benefit.

## **8. ACCESS TO THE ESTATE AND SERVITUDES**

- 81 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.
- 82 In as much as the Golf Course, Club Facilities, Recreational Facilities and other facilities and amenities referred to in 7.2 above fall within the Estate and access thereto will be necessitated via Private Areas, the Association shall be obliged and is hereby irrevocably authorized and empowered on behalf of the Members to give servitudes of access over Private Areas to and in favour of the Golf Course, Club Facilities, Recreational Facilities and other facilities and amenities aforesaid.

## **9. TERMINATION OF MEMBERSHIP**

- 91 When a Member ceases to be an Owner he shall *ipso facto* cease to be a Member of the Association.
- 92 The Developer 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.
- 93 The Developer may at any time in writing, abandon in whole or in part, any rights conferred on it in terms of this Constitution.
- 94 The Developer shall, when it is no longer the Owner of any Erven or Sectional Title Units or Non-Residential Erven, cease to be a Member of the Association.

## **10. MEETINGS**

- 101 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 twenty eight (28) days written notice thereof, including the agenda shall be sent to all Members by the Association secretary. 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 determination and approval of the Levy for the forthcoming year.
- 102 Special general meetings may be called by the Trustees whenever they consider it desirable and shall be called upon the requisition in writing of no less than five (5) Trustees, on twenty eight (28) days written notice by the Association secretary specifying the business to be discussed.
- 103 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.
- 104 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.
- 105 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.

- 106 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.

## **11. 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.

## **12. 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.

- 121 the consideration of the chairperson's report to the Trustees;
- 122 the election of the Trustees;
- 123 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.
- 124 the consideration of the balance sheet and income statement of the Association for the last Financial Year of the Association.
- 125 the consideration and approval of the report of the Auditors;
- 126 the consideration and approval of the Levy, for the next financial year; and
- 127 the consideration and the fixing of the remuneration of the Auditors for the Financial Year of the Association for the next financial year;
- 128 the consideration and approval of the budget for the following financial year.

## **13. PROXIES**

- 131 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.
- 132 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.

- 133 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.

#### **14. VOTING**

- 14.1 At every general meeting:-

14.1.1 The Developer shall during the Development Period have 5 000 (Five Thousand) votes and shall in addition have one (1) vote for each Erf or Sectional Title Unit not as yet transferred by the Developer to an Owner. A representative of the Developer shall in person, or by proxy be entitled to cast such votes;

14.1.2 every other Member 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 one vote for each Erf or Sectional Title Unit registered in his name provided that if an Erf or Sectional Title Unit is registered in more than one persons name, then they shall jointly have one vote.

- 14.2 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 Cub subscription fees as determined in accordance with clause 27 (2) and 27(3), shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

- 14.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairperson of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

- 14.4 Notwithstanding the provisions of clause 14.3 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 14.5 below.

- 14.5 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.

- 14.6 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.

- 14.7 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 be entitled to a casting vote.

- 14.8 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.

- 149 In the event of an Erf being subdivided then each Owner of a sub-divided portion thereof shall hold one vote.

## **15. SPECIAL RESOLUTION**

- 151 Notwithstanding the provisions of clause 10.2, a resolution by the Association shall be a special resolution if at a general meeting of which not less than 21 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 75% of the number of Members of the Association entitled to vote at the meeting who are present in person or by proxy.
- 152 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 15.3 below shall apply in respect of such adjournment.
- 153 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.
- 154 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 75% 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.

## **16. ACCOUNTS**

- 161 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.
- 162 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.

## **17. AUDIT**

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

## **18. SERVICE OF NOTICES**

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 The non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

## **19. INDEMNITY**

- 19.1 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.
- 19.2 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.
- 19.3 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.

## **20. ARBITRATION**

- 20.1 Any dispute, question or difference arising at any time between Members or between Members and Trustees out of or in regard to;
- 20.1.1 any matters arising out of this Constitution; or
- 20.1.2 the rights and duties of any of the parties mentioned in this Constitution; or
- 20.1.3 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.
- 20.2 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.
- 20.3 Save as otherwise specifically provided herein, the arbitrator shall be, if the question in dispute is :
- 20.3.1 primarily an accounting matter – an independent accountant ;
- 20.3.2 primarily a legal matter – a practicing counsel or attorney of not less than 10 years standing,
- 20.3.3 any other matter – an independent and suitably qualified person appointed by the Auditors;
- as may be agreed upon between the parties to the dispute.
- 20.4 If agreement cannot be reached between the parties to the dispute on whether the question in dispute falls under clauses 20.3.1, 20.3.2 or 20.3.3 or on a particular arbitrator in terms of clause 20.3 within three business days after the arbitration has been demanded, then :
- 20.4.1 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 20.3.1, 20.3.2 or 20.3.3 ; or
- 20.4.2 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 20.2 above.
- 20.5 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.
- 20.6 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.
- 20.7 Notwithstanding anything to the contrary in clauses 20.1 to 20.6 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.

## **21. AMENDMENTS TO CONSTITUTION**

- 21.1 This Constitution, or any part thereof, shall not be repealed or amended, and no new rules shall be



made, save by a Special Resolution adopted at an annual general meeting or a general meeting of the Members and subject further to the prior written consent of the Local Authority being obtained for the amendment of this clause and clauses 1, 2, 3, 4, 5, 7 and 32 of this Constitution and subject further to the prior written consent of the Developer during the Development Period being obtained for the amendment of this clause and clause 32 of this Constitution.

212 The following rules shall not, unless as otherwise provided for herein, be repealed or amended:

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

21.2.2 The Association guarantees the rights of unaccompanied paying guests at any hotel, spa or any other amenities and facilities to be established by the Developer or its nominees or assigns on the Land to utilize the Golf Course, Club Facilities and Recreational Facilities subject to the rules and regulations prevailing at the time.

21.2.3 The Developer has the right to hold golf tournaments and other events at the Club and be entitled to allow unaccompanied guests to use the Golf Course, Club Facilities and Recreational Facilities for those purposes.

21.2.4 The Association be entitled to register servitudes over the Estate in favour of the Local Authority where required and such other servitudes as are required to enable the Association to carry out all or any maintenance or services which it may undertake or have undertaken to perform.

21.2.5 The Association shall have the power to acquire ownership or to lease and to register servitudes over and in favour of portions of any adjoining properties for the purpose of extensions to the Golf Course, Club Facilities, Private Areas and Recreational Facilities and in the case of ownership, to consolidate such portions with the Land, if required.

## **22. LEVIES**

22.1 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, Club Facilities or Recreational Facilities.

22.2 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 22.1 and 28.4 and the amount of such special Levies. The manner of payment thereof by Members shall be at the discretion of the Trustees.

22.3 The Developer shall not be responsible for the payment of Levies in respect of any unsold Erven or 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. The Developer shall also not be required to pay Levies on any properties still held by it as may constitute the Golf Course, Club Facilities, Recreational Facilities and erven reserved for other facilities and amenities which may include a hotel, spa and restaurant and erven reserved for the erection of any required support buildings and any land which will finally constitute the Private Areas of the Estate. The Developer shall however

pay a *pro rata* share of the rates and taxes (if any) as levied by the Local Authority, proportionate to the extent of the land still held by it.

Notwithstanding the provisions of clause 22.1, 22.2 and 22.3 the Developer's contribution towards the expenses shall be limited to the shortfall between the operating costs and the ordinary Levies receivable.

- 224 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.
- 225 In calculating the Levy payable by each Member, the Trustees may as far as reasonably practical, and in their sole discretion:
- 22.5.1 assign those costs arising directly out of or directly attributable to the Erf/ Sectional Title Unit itself to the Owner thereof, or to the body corporate where the Erf is a sectional title scheme based on the actual roof and exterior facade areas of the structures erected thereon or based on any other factors as determined by the Trustees.
- 22.5.2 subject to clause 22.5.1 assign those costs relating to the Land generally to the Owners of all Erven and Sectional Title Units 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.
- 226 The Trustee's decision in calculating the Levy shall be final and binding on all Members.
- 227 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.
- 228 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.
- 229 Notwithstanding the provisions of clause 22.8 and without prejudice to its right to recover interest as set out in clause 22.8, 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.
- 22.10 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.

## **23. POWERS OF THE TRUSTEES**

- 23.1 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.
- 23.2 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.
- 23.3 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.
- 23.4 The Trustees shall further have the power
- 23.4.1 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;
- 23.4.2 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.
- 23.5 The Trustees shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 23.6 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.
- 23.7 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;
- 23.7.1 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;
- 23.7.2 one Trustee who, during the Development Period, shall be a representative of the Developer;
- 23.7.3 such other Members as the Trustees may determine.
- 23.8 Members of the architectural review committee shall not be required to be Members of the Association.
- 23.9 Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected

by the Developer, 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.

## **24. ALIENATION**

### **24.1 Alienation by Members:**

24.1.1 a Member shall not in any manner alienate an Erf or a Sectional Title Unit unless:

24.1.1.1 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 ;

24.1.1.2 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

24.1.1.3 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.

24.1.2 The provisions of clause 24.1 shall apply mutatis mutandis to any alienation of any undivided share in an Erf or a Sectional Title Unit.

24.1.3 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.

24.1.4 Neither an Owner nor a body corporate may at any time resign as a Member of the Association.

24.1.5 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.

24.1.6 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 appointed by the Developer during the Development Period and thereafter the Association.

### **24.2 Alienation of Private Areas;**

24.2.1 Neither the whole nor any portion of the Private Areas may be:

24.2.1.1 sold, let, alienated or otherwise disposed of, sub-divided or transferred; or

24.2.1.2 mortgaged; or

- 24.2.1.3 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.

## **25. OBLIGATIONS TO BUILD**

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

- 25.1 Subject to the provisions of clause 23.9, 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.
- 25.2 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 25.1 above.
- 25.3 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:
- 25.3.1 in respect of the Residential Lodges, the Developer during the Development Period and thereafter, the Association, shall appoint an Architect or Architects ("the designated architect") to design and supervise the construction of same.. Each person purchasing an Erf on which a Residential Lodge is to be erected shall in such case be obliged to utilize the services of the designated architect and shall be liable for the costs incurred in the preparation and approval of such plans and any supervision fees. Fees will be in accordance with the Standard Service as prescribed by the South African Institute of Architects.
- 25.3.2 In respect of the dwellings other than Residential Lodges, 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 Developer during the Development Period and thereafter the Association, prior to submission thereof to the Local Authority.
- 25.3.3 An Architectural scrutiny fee and a landscape scrutiny fee in such amounts as may be determined from time to time by the Developer during the Development Period and, thereafter by the Association, shall be borne and paid by the Member to the Developer or the Association, as the case may be, together with the submission of the plans as aforesaid. The Developer or its nominee or the Association, as the case may be shall have absolute discretion in approving or refusing to approve such plans and specifications.
- 25.4 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.
- 25.5 The Member acknowledges that the erection of the dwelling and the establishment and landscaping of the garden shall be completed :

25.5.1 in the case of a sale concluded as between the Developer and the first purchaser of an Erf, within 24 (Twenty-Four) months of the date of registration of transfer of the Erf into the name of the said first purchaser ; or

25.5.2 in the case of a sale concluded between an Owner other than the Developer, and a bona fide purchaser of an Erf, within 24 (Twenty Four) months of the date of registration of transfer of the Erf into the name of the said bona fide purchaser.

#### The Final Date

The Final Date may be extended by the Developer in its sole and absolute discretion during the Development Period, and thereafter the Association, which extension will only be valid if reduced to writing and signed by both the Developer/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 Developer during the Development Period and thereafter the Association.

25.6 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.

25.7 Notwithstanding anything to the contrary foregoing:

25.7.1 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 within the period stipulated in 25.5 above (or within such extended period as set out above), the rights to the use of the Golf Course, Club Facilities and Recreational 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;

25.7.2 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.

25.8 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 Developer, during the Development Period, and thereafter the Association shall, in it's 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 Developer or the Association as the case may be shall have the right to re-purchase the Erf from the Member, who shall be obliged at it's cost to re-transfer the Erf to the Developer/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 Developer/Association consequent upon the Member's breach and which shall include damages necessarily incurred by the Developer/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.

- 25.9 Registration of the transfer pursuant to 25.8 above shall be attended to by the Developer's/Association's conveyancers and the Member hereby irrevocably appoints the Developer/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.
- 25.11 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.
- 25.12 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.
- 25.13 The proposed Member shall not, prior to transfer, effect any improvements to the Erf without first obtaining the written consent of the Developer during the Development Period and thereafter the Association. Under no circumstances shall the Developer during the Development Period and thereafter the Association be liable to compensate the proposed Member for any such improvements to the Erf, whether made with or without the Developer's/Association's consent.
- 25.14 The Developer, during the Development Period, and thereafter 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 Developer or the Association as the case may be, 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.
- 25.15 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.
- 25.16 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 23.4.2.

## **26. ESTATE RULES**

- 26.1 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*;
- 26.1.1 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;
- 26.1.2 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;

- 26.1.3 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;
- 26.1.4 the right to prohibit, restrict or control the keeping of any animals which they regard as dangerous or a nuisance;
- 26.1.5 the conduct of any persons within the Estate for the prevention of nuisance of any nature to any member;
- 26.1.6 the use of services and Recreational Facilities (if so relinquished by the Developer and if so acquired by the Association) including the right to charge a reasonable fee for the use thereof;
- 26.1.7 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;
- 26.1.8 the maintenance of all buildings, out buildings, structures, improvements of any nature and landscaping of individual Erven and the Estate;
- 26.1.9 the control of the number of occupiers permitted on any one Erf or in any Sectional Title Unit;
- 26.1.10 the admission of any person to the Estate, and the eviction of any person not entitled to be thereon;
- 26.1.11 maintenance of Private Areas;
- 26.1.12 refuse disposal;
- 26.1.13 use of waterways and amenities relating thereto;
- 26.1.14 the operation of business operations and the restrictions relating thereto;
- 26.1.15 installation of air conditioning units, television aerials, satellite dishes and any other communication equipment;
- 26.1.16 littering;
- 26.1.17 responsibility of the Members for the activities of domestic employees and their guests and access of such persons to the Estate;
- 26.1.18 security;
- 26.1.19 letting and re-selling of Erven and Sectional Title Units;
- 26.1.20 the imposition of fines and other penalties;
- 26.1.21 the maintenance of and improvements to the Golf Course, Club Facilities and Recreational Facilities, if so relinquished by the Developer, and if so acquired by the Association;
- 26.1.22 accreditation of estate agents for re-sale of Erven and Sectional Title Units on the Estate



after the Development Period;

- 26.1.23 the use and the right of use of the Golf Course, Club Facilities, Club and Recreational Facilities (if so relinquished by the Developer and if so acquired by the Association) by Members, their families and their bona fide invited guests.
- 26.2 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:
- 26.2.1 give notice to the Member concerned requiring him to remedy such breach within such period as the Trustees may determine; and/or
- 26.2.2 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
- 26.2.3 take such action including the imposition of a fine, or proceedings in court, as they may deem fit.
- 26.3 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.
- 26.4 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.
- 26.5 If any Member disputes the fact that he has committed a breach of any of the rules, an appeal committee consisting of three (3) Members, of which two (2) shall during the Development Period be appointed by the Developer and the 3<sup>rd</sup> Member (and all three Members after the Development Period) be appointed on a rotational basis by the Trustees from a panel of ten (10) Members willing to fulfill this function. The appeal committee shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as such appeal committee may direct. The decision of the appeal committee shall be final and binding.
- 26.6 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.
- 26.7 The Association may in general meeting itself 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.
- 26.8 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.

## **27. THE GOLF COURSE, CLUB, CLUB FACILITIES AND RECREATIONAL FACILITIES**

- 27.1 The Developer shall be entitled in its sole discretion to establish the Golf Course, Club, Club Facilities and other proposed Recreational Facilities on the Estate and/or on adjoining property/ies

for the benefit of the Members of the Association.

- 272 Membership of the Club shall be compulsory for all Owners. All and any subscription fees due by an Owner entitling the Owner, his family and guests entry into any of the Recreational Facilities shall be included in such Owner's annual/monthly Club subscription fees.
- 273 The Developer shall either directly or through its agents or assigns, maintain the Golf Course, Club Facilities, Recreational Facilities and the other facilities and amenities. All entrance fees, annual/monthly subscriptions, green fees and/or usage fees shall be determined from time to time by the Developer and its successors to the Golf Course and/or Club and/or Club Facilities and/or Recreational Facilities and/or other facilities and amenities.
- 274 The Developer shall either directly or through its agents and assigns own the Club, Club Facilities, Golf Course and Recreational Facilities 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.
- 275 Should the Developer elect to transfer or sell one or more or all of the Club, Golf Course, Club Facilities and Recreational Facilities to the Association :
- 27.5.1 the Association shall be obliged to take transfer of same when tendered by the Developer 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 Developer 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
- 27.5.2 at the sole and absolute discretion of the Developer, the Association may purchase same at a price and on terms mutually agreed between the parties ;
- 27.5.3 transfer of the asset in question shall take place as soon as reasonably possible after the Developer 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.
- 276 The costs involved in the registration of transfer of ownership of the asset in question shall be borne equally by the Developer and the Association. As the Developer wishes to be associated with the Pearl Valley name and logo, as a trade name and trademark for any future development, the Developer 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 Developer reserves the right to retain the trading rights to the golf pro shop.
- 277 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 Developer in respect of any damaged, worn out, broken or unserviceable article. The Developer 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.
- 278 Transfer of the Private Areas on the expiry of the Development Period and transfer of the Golf Course, Club Facilities, Club and Recreational Facilities shall be "voetstoots" and as it/they stand and the Association shall have no claim against the Developer in respect of any construction works, buildings, maintenance etc, which might be incomplete at the time of such transfer or sale.

- 279 The Developer may at any time and in its sole discretion transfer or sell one or more or all of the Golf Course, Club, Club Facilities and Recreational 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 Developer 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 Developer under this Constitution and/or the Constitution of the Club in respect of the asset in question.
- 27.10 The owners of the Non-residential Erven shall not be liable to pay any Levies to the Association.
- 27.11 The guests of any hotel, spa and any other amenities and facilities proposed to be established on the Land shall be entitled to the right of use of the Golf Course, Club Facilities, Recreational Facilities and other amenities and facilities established on the Land subject to the rules and regulations prevailing at the time.

## **28. MAINTENANCE OF DWELLINGS AND GARDENS ON THE ERVEN**

- 28.1 The Association shall be responsible for exercising control over the painting of the exterior of all residential dwellings, including Residential Lodges 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).
- 28.2 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 28.1, 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.
- 28.3 The costs of effecting the work in terms of 28.2 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.
- 28.4
- 28.5 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.

## **29. FURTHER OBLIGATIONS OF MEMBERS**

- 29.1 Each Member shall
- 29.1.1 maintain his Erf in accordance with the Architectural and Landscape Design Guide and the Association rules respectively;
  - 29.1.2 maintain in a neat and tidy condition and in a state of good repair all improvements on his Erf;
  - 29.1.3 not do or suffer 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 ;
  - 29.1.4 not, during construction/erection of improvements, permit the erection of more than 1 (one) advertising board on a 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;

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

29.1.6 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;

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

29.1.8 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;

29.1.9 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:

- 29.1.9.1 Other dogs are not interfered with;
- 29.1.9.2 Golfers, joggers, walkers and other persons are not harassed;
- 29.1.9.3 Dogs do not cause traffic incidents; and
- 29.1.9.4 Dogs are not the cause of uncleared fouling of the sidewalks, the Golf Course, or any Private Areas

292 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;

293 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 be operated on the Erf or the Sectional Title Unit, without the prior written consent of the Developer during the Development Period and the Association thereafter.

### **30. STATUS OF THE ASSOCIATION**

The Association shall be an Association:

301 with legal personality, capable of suing and being sued in its own name, and  
302 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

303 not for profit, but for the benefit of the Members, and

304 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 24.2.1.

**31. PERSONAL LIABILITY OF MEMBERS**

- 31.1 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.
- 31.2 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.

**32. INCORPORATION OF FURTHER PHASES**

The Developer has a continuing and permanent interest to ensure that certain basic provisions are entrenched in perpetuity to ensure the success of the Estate. Accordingly, none of the following provisions may be deleted or varied in any way, in terms of clause 21 without the prior written consent of the Developer:

- 32.1 the Developer has the right at any time and from time to time to extend or alter the area or composition of the Estate by requiring the Association to incorporate into the Estate any part/s of any adjoining properties owned by the Developer from time to time as further phases of the Estate which the Developer shall be entitled to develop as it may deem fit;
- 32.2 should any further property be incorporated into the Estate, the Developer shall be entitled to require that the first and all subsequent Owners of Erven therein become Members of the Association in respect of those parts from such date as the Developer may determine, and on the same terms and conditions as are applicable to the other Members of the Association. The Members shall be bound by any such requirement of the Developer.

**33. EXCLUSION OF LIABILITY AND INDEMNITY**

- 33.1 Neither the Association nor its Trustees nor the Developer nor its 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, its 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 utilizing the Club Facilities or the Recreational Facilities or the Private Areas or anywhere else on the Estate, or by any other cause of whatsoever nature and howsoever arising.
- 33.2 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 and the Developer's 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 utilizing the Golf Course, Club, Club Facilities, the Recreational 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 Developer's agents or assigns and/or any of their officials, employees and/or agents.

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