



SARDINIA BAY

Golf & Wildlife Estate

HOMEOWNERS ASSOCIATION

CONSTITUTION

CONTENTS

1. NAME
2. INTERPRETATIONS AND DEFINITIONS
3. RECORDAL
4. COMMENCEMENT DATE AND STATUS
5. MEMBERSHIP OF THE ASSOCIATION AND MEMBERS
OBLIGATIONS AND RESTRICTIONS
6. CESSATION OF MEMBERSHIP
7. OBJECTS AND PURPOSE
8. LEVIES
9. ENTRENCHED PROVISIONS
10. RESPONSIBILITY FOR PAYMENT OF RATES, TAXES AND
SERVICES
11. SERVICES
12. ARCHITECTURAL GUIDELINES
13. CONDUCT RULES
14. MANAGEMENT RULES (GENERAL)
15. MANAGEMENT AND CONDUCT RULES (ENVIRONMENT)
16. TRUSTEES
17. REMOVAL & ROTATION OF TRUSTEES
18. OFFICE OF TRUSTEES
19. FUNCTIONS & POWERS OF THE TRUSTEES
20. OTHER PROFESSIONAL OFFICERS
21. PROCEEDINGS OF THE TRUSTEES
22. GENERAL MEETINGS
23. NOTICE OF MEETINGS
24. SERVICE OF NOTICES
25. VENUE OF MEETINGS
26. QUORUM
27. AGENDA AT MEETINGS
28. PROCEDURE AT GENERAL MEETINGS
29. PROXIES
30. VOTING
31. FINANCIAL YEAR END
32. ACCOUNTS
33. AUDIT
34. INDEMNITY
35. PRIVILEGE IN RESPECT OF DEFAMATION
36. DEALINGS WITH COMMON PROPERTY
37. ARBITRATION
38. PHASES
39. AMENDMENT OF DRAFT GENERAL PLANS

ANNEXURES:

- A Conduct Rules
- B Architectural Guidelines
- C Contractors Rules and Regulations
- D Landscaping Plant List

1. **NAME**

The name of the Association is "The Sardinia Bay Golf & Wildlife Estate Homeowners Association".

2. **INTERPRETATION AND DEFINITIONS**

2.1 The headnotes to the paragraphs in this constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

2.2 Words importing the singular shall include the plural and vice versa.

2.3 Words importing the masculine shall include the feminine and a reference to a natural person includes legal persons and vice versa.

2.4 When any number of days is prescribed in this Constitution the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday, in which event the last day shall be on the next succeeding day which is not a Saturday, Sunday or public holiday.

2.5 Where figures are referred to in words and numerals if there is any conflict between the two the words shall prevail.

2.6 If any provision of this Constitution is in conflict or inconsistent with any law, the invalidity of such provision shall not affect the validity of the remainder of the provisions of this Constitution.

2.7 The annexures to this Constitution form a part of this Constitution and are specifically incorporated herein.

2.8 Unless the context clearly indicates a contrary intention, the following words and expressions shall bear the following meanings:

2.8.1 **alienate** means alienate any erf or part thereof and includes alienation by way of sale, exchange, donation, deed, intestate

hereto.

- 2.8.9 **Constitution** means this document with annexures hereto.
- 2.8.10 **Contractor** means a building contractor appointed or approved in terms of clause 40 or the Architectural Guidelines and employed by an owner of a residential erf for the construction of improvements on that erf and Building Contractor and Builder shall have a corresponding meaning.
- 2.8.11 **Developer** means Aleco Properties 509 (Pty) Ltd, (Registration No 2011/008775/07), a duly registered South African private limited liability company that is also the owner of the development, its nominee, or its successors in title.
- 2.8.12 **Developer Trustee** means a Trustee appointed by the Developer.
- 2.8.13 **Development** means certain immovable property being Remainder Erf 378 Theescombe on which the 9 hole Sardinia Bay short golf course is established and the residential estate to be established around the golf course as depicted on the Draft General Plan and includes all erven depicted on the said plan (provided that the Developer reserves the right to amend the Draft General Plans in accordance with the provisions of clause 39 hereunder) and SBE shall have a corresponding meaning.
- 2.8.14 **Development Period** means the period from the date of the approval of the Development by the relevant local authority until the Developer

notifies the Association that the Development Period is at an end or until all the erven have been registered in the names of the first owners; whichever shall first occur.

- 2.8.15 **Draft General Plans** means the existing draft General Plans pertaining to the subdivision of Erf 4072 Theescombe which is attached as Annexure 1 to the agreements of sale relating to the sale of the residential erven.
- 2.8.16 **Environmental Management Plan** means the Environmental Management Plan applicable to the Development, a copy of which is available on the website www.sardiniabayestate.co.za or in electronic format.
- 2.8.17 **Erf** means every Erf in the Development which in terms of the subdivision of the Development enjoys single residential use rights and shall include any additional residential erven which may be created and approved over and above the existing residential erven depicted on the General Plan and "Residential Erven" shall have a corresponding meaning.
- 2.8.18 **Estate** means the Development and SBE shall have a corresponding meaning.
- 2.8.19 **General Plans** means the final General Plans pertaining to the subdivision of Erf 4072 Theescombe as approved by the Surveyor General and any amendment thereto.

- 2.8.20 **Improvement** means any structure of whatsoever nature constructed or erected or to be constructed or erected on any of the Residential Erven.
- 2.8.21 **Initial Trustees** means _____
- 2.8.22 **Levy** means the levies referred to in clause 8 hereof.
- 2.8.23 **Member** means every registered Owner of an Erf. If a Member consists of more than one person such person shall be jointly and severally liable in solidum for all Owner's obligations in respect of the Erf in question.
- 2.8.24 **Member Trustees** means Trustees appointed by the Members.
- 2.8.25 **Owner** means the registered Owner of an Erf.
- 2.8.26 **Private Nature Reserve** means Erven 4065, 4068 and 4070 Theescombe depicted on the Draft General Plan and Nature Reserve shall have a corresponding meaning.
- 2.8.27 **Trustee** means the Trustees of the Association, collectively from time to time and includes alternate and co-opted Trustees.
- 2.8.28 **SBDRC** means The Sardinia Bay Golf & Wildlife Estate Design Review Committee.
- 2.8.29 **Contractors Rules and Regulations** means
The Contractors Rules and Regulations

attached to this Constitution as Annexure C and SBCRR and CRR shall have a corresponding meaning.

2.8.30 **Landscaping Plant List** means the plant list attached to this Constitution as Annexure D and Permissible Plant List shall have a corresponding meaning.

3. RECORDAL

3.1 It is recorded that the Developer will remain the owner of Erven 3969 and 4067 Theescombe. At the time of the approval of the Development by the relevant authorities the proposed zoning of Erf 3969 Theescombe was Special Purposes (Sports Centre) and that of Erf 4067 Theescombe was Special Purposes (Clubhouse and Restaurant). However the Developer reserves the right to develop these properties as it sees fit in its absolute and sole discretion provided that the approval for the development of the abovementioned erven shall be obtained by the Developer from the relevant authorities if the zoning and usage changes from the aforementioned zoning and usage.

3.2 The Developer is desirous of ensuring that the entire development comprising all the components is developed and managed during and after the completion of the development in a harmonious manner and in a manner that has due regard to the best interests of the Developer and all the Members, and this Constitution has been drafted pursuant to achieving that goal.

4. COMMENCEMENT DATE AND STATUS

4.1 The Association will come into existence upon the final approval for the development being obtained from the local authority and the approval of the General Plans by the Surveyor General.

4.2 Pursuant to its Constitution the Association shall:

4.2.1 be a legal entity and exist independently of its members;

- 4.2.2 enjoy perpetual succession;
- 4.2.3 be capable of being sued or to sue with reference to any agreement entered into by the Association, any damage caused to any property of the Association or any matter arising from this Constitution;
- 4.2.4 not operate for profit but for the benefit of the members;
- 4.3 No member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees.

5. **MEMBERSHIP OF THE ASSOCIATION AND MEMBERS' OBLIGATIONS AND RESTRICTIONS**

- 5.1 Membership of the Association shall be compulsory for every registered owner of an erf in the Development.
- 5.2 Membership shall commence together with registration of transfer of an erf into the name of the transferee.
- 5.3 Membership of the Association shall be limited to the registered owners of erven in the Development provided that:
 - 5.3.1 the Developer shall be deemed to be and shall be a member of the Association for as long as the Developer remains an owner of any portion of the development and, without derogating from the generality of the above, any of the erven (including erven other than residential erven) or until the end of the Development Period whichever is the later;
 - 5.3.2 where any such registered owner is more than one person, all the registered owners of the erf shall be deemed jointly and severally to be one member of the Association and shall nominate one of them to represent them and to vote at meetings of the Association.

When a member ceases to be the registered owner of an erf, he shall *ipso facto* cease to be a member of the Association, save for the Developer

who shall remain a member of the Association during the Development Phase.

- 5.4 The rights and obligations of the members shall rank in accordance with the provisions of this Constitution.
- 5.5 Anything to the contrary hereinbefore contained or implied notwithstanding, the cessation of his membership shall in no way release a member from any obligation undertaken by him prior to the cessation of his membership pursuant to:
- 5.5.1 any provision of the Constitution of the Association; or
- 5.5.2 any further or ancillary guarantee, commitment or obligation which such member may have undertaken.
- 5.6 Membership shall be personal to the natural person or entities in question and may not be assigned or transferred by them to any other natural person or entity.
- 5.7 The Association shall maintain at their office a register of members, which shall be open to inspection by members.
- 5.8 The Trustees may by regulation provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustees.
- 5.9 The Trustees may by regulation further prescribe appropriate application documentation including *inter alia* the following:
- 5.9.1 an application to register as a member of the Association;
- 5.9.2 an undertaking by a proposed member to comply with all the obligations imposed on members in terms of the Constitution, including adherence to the provisions of the EMP, which undertaking must be signed by the proposed member and deposited with the Association prior to the Association issuing a clearance certificate or consent to transfer a unit or erf in favour of such a proposed member from any existing member,

provided always that this paragraph will not apply in respect of the transfer or alienation by the Developer of an erf in favour of a proposed member.

- 5.10 The registered owner of any erf shall not be entitled to resign as a member of the Association.
- 5.11 Every member is obliged to comply with:
- 5.11.1 the provisions of this Constitution and the provisions of all Annexures to this Constitution including but not limited to: the Conduct Rules as well as any rules or regulations passed by the Association; the Architectural Guidelines; the Contractors Rules and Regulations and the Environmental Management Plan;
- 5.11.2 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a member in its capacity as a member;
- 5.11.3 any directive given by the Trustees in enforcing the provisions of this Constitution;
- 5.11.4 any condition, by-law, regulation and the like imposed by any local or government authority in respect of the Development.
- 5.12 The members shall be jointly liable for expenditure incurred in connection with the Association. If a member consists of more than one person such persons shall be jointly and severally liable *in solidum* for all obligations of a member in terms of this Constitution.
- 5.13 A member shall not sell, alienate or give transfer of an Erf unless:
- 5.13.1.1 the proposed transferee has irrevocably bound himself to become a member of the Association and to observe the provisions of the Constitution for the duration of his ownership of the erf;
- 5.13.1.2 the Association acting through the Trustees or their appointed representative have issued a prior written clearance that all outstanding levies and all amounts of whatever nature owing to the Association by

such member have been paid and that the member is not in breach of any of the provisions of this Constitution; and

- 5.13.1.3 the proposed transferee acknowledges that upon registration of transfer of the erf into his name, he shall *ipso facto* become a member of the Association;
- 5.13.1.4 the conditions set out above are incorporated in the relevant Deed of Sale in terms whereof the transferee acquires the erf in question.
- 5.13.1.5 For the avoidance of doubt it is recorded that the provisions of this clause do not apply to the Developer, that there will be no restriction whatsoever on the ability of the Developer to pass transfer of any erf and that accordingly the Developer does not need a clearance certificate from the Association before it will be entitled to alienate or transfer any erf to any person or entity.
- 5.14 No member shall apply to the local authority or any other relevant authority for the subdivision or rezoning of an erf owned by the member, or make application for any consent, usage or waiver or departure or any other dispensation whatsoever in respect thereof provided that this condition shall not apply to the Developer in respect of the development of Erven 3969 and 4067 Theescombe.
- 5.15 No more than one dwelling together with such outbuildings as are ordinarily required to be used in connection thereof, shall be erected on any Member's Erf.
- 5.16 A member is required to ensure that the occupant of his erf, whether such occupation arises from an agreement of lease or otherwise, complies with all applicable provisions of this Constitution and the regulations. Without detracting from the foregoing the member shall remain bound by this Constitution notwithstanding such occupation and be jointly and severally liable for the acts and omissions of the occupant and for fulfilling his obligations under this Constitution.
- 5.17 To ensure compliance with clause 5.16 each member shall, if it leases out any home in the Development:

5.17.1 enter into a written lease with the tenant in which the tenant is required to accept compliance with all the provisions of the Constitution isofar as they may be applicable to such tenant and all the rules issued by the Association, and to give an undertaking that he will abide by such provisions of the Constitution as may be applicable and all the rules of the Association, and in which lease agreement the tenant is required to report to the Association and register his full details for security reasons prior to the taking of occupation;

5.17.2 be responsible to ensure that the tenant does thus register himself with the Association prior to taking occupation.

6. **CESSATION OF MEMBERSHIP**

No Member ceasing to be a Member of the Association for any reason shall, (nor shall any such Member's executors, curators, Trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrears of levies or other sums due from him to the Association at the time of his so ceasing to be a Member.

7. **OBJECTS AND PURPOSE**

The general purpose and object of the Association is to promote, advance and protect the interests of its members and facilitate harmonious relationships amongst the members whilst at the same time ensuring that the members comply with all the obligations imposed upon them in terms of this Constitution and such other obligations as they may be bound to perform and, without derogating from the generality of the above, more specifically:-

7.1 to oversee, maintain and control the Development;

7.2 to ensure the general high standard of the Development;

7.3 to promote, advance and protect the development and the interests of the

Association;

- 7.4 to regulate and control the harmonious development of the Development;
- 7.5 to promote a high standard of improvements on the Development;
- 7.6 to take transfer of the common property and to maintain the common property;
- 7.7 to enter into agreements of servitude in its favour for the benefit of its members;
- 7.8 to ensure that there is adequate security provided for members;
- 7.9 to provide or enter into agreements for the provision of maintenance, upkeep, upgrading and installation of services where required including, but not limited to services relating to water, electricity, sewerage, security, road maintenance, maintenance of the golf course and the private nature reserve and any common property;
- 7.10 to pay all rates and taxes, other service charges, other taxes and/or levies charged and payable to any local authority in respect of the common property of the development as well as salaries and/or wages of employees of the Association and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association including all or any expenses reasonably or necessarily incurred in the attainment of the objects of the Association or the pursuits of its business;
- 7.11 to impose levies upon the members of the Association for the purpose of meeting all the expenses which the Association has incurred or to which the Trustees reasonably anticipate the Association will incur in the attainment of the objects of the Association or the pursuit of its business;
- 7.12 to control the registration of transfer of residential erven in the development and ensure compliance with conditions imposed by the local authority when approving the rezoning and/or subdivision of the property comprising the development as well as any conditions imposed by the

Developer in the agreement of sale between the Developer and the first owner of each residential erf;

7.13 to administer, enforce and ensure compliance with the Conduct Rules and any other rules and regulations created by the Association, the Architectural Guidelines, the Builders Code of Conduct and the Environmental Management Plan.

8. **LEVIES**

8.1 The Association shall establish and maintain a levy fund for the purposes of meeting all expenses of the Association in respect of:

8.1.1 the control, management and administration of the Development, including specifically (but not limited to) the protection and replacement, where required, of indigenous vegetation, weeding programs to control alien vegetation and implementation of the EMP generally;

8.1.2 in general the attainment of its main objects as described in its Constitution;

8.1.3 the maintenance of common property and the costs of services such as electricity, water and sewerage consumed or used on the common property;

8.1.4 the supply of any services rendered to the Association;

8.1.5 payment of all expenses necessary or reasonably incurred in connection with the management of the Association;

8.1.6 the costs of the provision of security to the Development;

8.1.7 in general the cost of fulfilling any of the obligations of the Association.

8.2 The Trustees shall estimate the amount which will be required by the Association to meet the expenses referred to in 8.1 during each year, together with such estimated deficiency, if any, as shall result from the preceding year and may include in such estimate an amount to be held in

reserve to meet anticipated future expenditure not of an annual nature.

- 8.3 The Association shall be entitled to require members, in accordance with the procedures set out in 8.4 below, to make contributions to such levy fund (in the form of levies), for the purposes of satisfying the expenses referred to in clause 8.1.
- 8.4 The procedure for raising and collecting levies shall be as follows:
- 8.4.1 The Trustees shall submit the estimated expenditure referred to in 8.2 to the annual general meeting of the Association for consideration. It is recorded that:
- 8.4.1.1 the meeting shall be obliged to approve the following items of expenditure that are charged to the Association by the Developer or outside third parties:
- 8.4.1.1.1 all rates and taxes payable by the Association to the local authority in respect of the common property, as well as any service charges payable by the Association to the local authority in respect of the Development;
- 8.4.1.1.2 the costs of security services, including security guards, monitoring and surveillance;
- 8.4.1.1.3 the fee payable to any Estate Manager with whom the Association has entered into an agreement;
- 8.4.1.2 The Association shall have a discretion in regard to approval of the level of services, and the cost thereof, in respect of any services not detailed in 8.4.1.1 above.
- 8.4.2 The Association shall have its annual general meeting within 60 days of the financial year end of the Association and, subject to 8.4 above, decide on proposed increases of the levies and the amounts to be charged to members in respect thereof.
- 8.5 The Association may, from time to time by resolution adopted by the Trustees, make special levies upon members, effective from the date of

passing of the applicable resolution, in respect of such expenses referred to in clause 8.1 which have not been included in the levies approved by the annual general meeting in terms of 8.4, and such levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the Trustees may determine in its resolution. The decision of the Trustees in calculating such special levies shall be final and binding on all members.

- 8.6 Any amount due by a member by way of a levy shall be a debt due by him to the Association payable on such time or times as determined by the Trustees. The Trustees may determine that a levy is payable annually in advance in respect of the year for which it is calculated or in such monthly instalments as it may determine.
- 8.7 Until such time as a new levy pertaining to the forthcoming year has been determined pursuant to the provisions of this clause 8 above, every member of the Association shall continue to pay the existing levy currently in force, on account of the new levy yet to be determined.
- 8.8 The obligation of a member to pay a levy shall cease upon his ceasing to be a member, save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a member.
- 8.9 No levies paid by a member shall be repayable by the Association upon cessation of the member's membership.
- 8.10 A member's successor in title to an erf shall be liable, as from the date upon which he becomes a member pursuant to registration of transfer of such erf in his name, to pay the levies attributable to that erf.
- 8.11 A member shall be obliged to pay interest on any levy not paid on the due date at the Prime Rate charged by Standard Bank from time to time plus 3 percentage points per annum calculated on the levies due from time to time from the due date until the date that the arrear levies have been paid in full to the Association.
- 8.12 The Association shall be entitled to require a member to sign a debit order authority to allow the Association or its authorised agent to collect levies

directly from an operating bank account.

8.13 If any member fails to make payment on due date of levies and/or other amounts payable by such member including interest, the Association may give notice to such member requiring him to remedy such failure within such period as the Association may determine and should he fail timeously to make such payments, the Association may institute legal proceedings against such member without further notice and such member will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in recovering such amounts.

8.14 No member shall (unless otherwise determined by the Trustees) be entitled to any of the privileges of membership including:

8.14.1 his right of access to and use of any of the common property; and

8.14.2 his right to vote

until he shall have paid every levy and interest thereon and any other amount which may be due and payable by him to the Association.

8.15 The Association shall not be entitled to undertake on behalf of its members any permanent works of major capital nature without the sanction of a resolution of the members adopted during a general meeting of members. In this sub-clause "works of a major capital nature" means works that will cost more than R50,000.00 (Fifty Thousand Rand) (excluding Value Added Tax).

8.16 In calculation of the levy payable by any member, the Trustees shall as far as reasonably practical apportion those costs relating to the common property to the owners of all erven equally, provided however that the Trustees may in any case where it considers it equitable to do so, apportion to any member any greater or lesser share of the costs as may be reasonable in the circumstances.

8.17 The Association may come to agreement with the Developer for the

repayment by the Association to the Developer of ongoing costs or expenses incurred by the Developer for the provision of services to the owners.

8.18 Should any dispute arise at any time between the members and the Trustees in regard to the determination or calculation of the levies, the decision of the auditors for the time being of the Association (acting as experts and not arbitrators) in regard to such dispute shall be final and binding on the members and the Trustees.

8.19 In the event of any dispute arising in regard to the determination or calculation of any levy, every member shall until the determination of such dispute continue to pay the levies determined by the Trustees.

9. **ENTRENCHED PROVISIONS**

9.1 The Developer has a continuing and permanent interest to ensure that certain basic provisions are entrenched during the Development Period to ensure the success of the Development. Accordingly none of the following provisions of clauses 9.1.1 to 9.1.3 (both inclusive) may be deleted or varied in any way in terms of this Constitution, without the prior written consent of the Developer during the Development Period:

9.1.1 The Association may register, where necessary, various service servitudes across the Development in favour of the local authority, the Developer and/or the Association, whether in respect of any separate erven or the common property.

9.1.2 No member shall be entitled to object to the subdivision and/or development of any part of the development area provided that such subdivision and/or development is not inconsistent with the General Plan approved by the relevant authorities for that part of the development area, nor shall they be entitled to object to any such new development.

9.1.3 The Association shall at all times be entitled to draw electricity from erven adjacent to services in road reserves for the purpose of powering such systems for the benefit of the Development. The costs thereof shall be borne by the Association but recovered as part of the levy upon members.

10. **RESPONSIBILITY FOR PAYMENT OF RATES, TAXES AND SERVICES**

10.1 **RATES AND TAXES**

10.1.1 The Association shall be responsible to pay all rates and taxes in respect of the common property to the council.

10.1.2 All other members as owners of erven, shall be responsible to pay rates and taxes in respect of their property to the council.

11. **SERVICES**

The responsibility for payment of services and the method of service supplies shall be regulated as set out hereunder:

11.1 **POTABLE WATER SUPPLY**

11.1.1 Water will be supplied and metered in bulk at the boundary of the Development by the council.

11.1.2 The management and maintenance of the complete internal water supply system in the Development will be the responsibility of the Association and all supplies of water will be managed and administered in the entire discretion of the Association.

11.1.3 The Developer shall install the infrastructure for the water supply to the boundary of each erf in the Development. The Association will be responsible for the cost of maintenance and servicing of pipelines, pumps, meters, equipment and materials in respect of the internal potable water supply system.

11.1.4 The members of the Association shall be liable for and shall pay to the Association on demand all charges arising from water supplied to or consumed in or on an erf and the dwelling house thereon, as well as the common property.

11.1.5 The liability of members of the Association for such charges shall be in

accordance with separate sub-meters serving the erven of members which the Association shall be entitled to install at the cost of such member, as the case may be.

11.1.6 Where water charges are calculated and payable in terms of clause 11, any Value Added Tax levied in respect of the supply of such water shall be paid by the member in question.

11.1.7 The Association will be entitled to charge interest at the Prime Rate charged by Standard Bank from time to time plus 3 percentage points on any charges payable by a member in terms of this clause 11 which interest will be calculated from the due date on the balance of the charges owing from time to time until it has been paid in full.

11.1.8 The council will be responsible for the maintenance of the potable water supply system up to the bulk supply point at the boundary of the Development.

11.2 **ELECTRICITY**

11.2.1 Electricity will be supplied in bulk at the boundary of the Development by the council. This will be known as the Point of Supply (POS).

11.2.2 The POS will contain an intake substation with the necessary switchgear and a bulk supply meter to the development. Ownership of this equipment (together with the responsibility to operate, maintain and repair) will vest in the council.

11.2.3 The Developer shall install the infrastructure for the electricity supply to the boundary of each erf in the Development.

11.2.4 The Association will be responsible for the operation and maintenance of the internal reticulation of electricity in the Development and shall further be responsible to appoint a responsible person as defined in terms of the Occupational Health and Safety Act to exercise this function on its behalf.

11.2.5 Each member's electricity consumption will be metered separately and it will be required of the Association or its contractors to conduct monthly

readings and issue accounts in respect thereof to members together with the monthly levy statements.

- 11.2.6 Lighting on the common property shall be supplied through separate electricity supply meters and the cost incurred by the Association in respect thereof shall be recovered from members as part of the levies imposed by the Association.

11.3 **SECURITY, COMMUNICATIONS AND TV**

The Association shall be responsible for the maintenance of the security systems (if any) including, but not limited to, internal communication systems, intercoms, gates, gate booms and the like and shall also be responsible for the provision of TV signals within the Development and shall further take all the steps necessary to provide and maintain adequate security measures for the Development.

11.4 **MAINTENANCE OF COMMON PROPERTY**

The on-going maintenance of the common property including, but not limited to, the golf course shall be the responsibility of the Association. With regards specifically to the golf course it is recorded that the Developer and/or the Association intends entering into an agreement with a third party for a fixed period which shall be binding on the Association in terms of which:

- 11.4.1 The Association shall let to the third party and the third party shall hire from the Association the land comprising the golf course.
- 11.4.2 The third party shall be entitled to operate the golf course for his own account and shall be entitled to all profits derived from operating the golf course business as aforementioned and shall be responsible for all expenses incurred in the operation of the business including but not limited to the costs of maintaining the golf course.
- 11.4.3 Upon the termination of the aforementioned agreement the Association, as the owner of the property comprising the golf course, shall be entitled

to deal therewith as it sees fit.

11.5 **SEWERAGE**

The Association will be responsible for the maintenance of the internal sewer reticulation serving the Development as well as the maintenance of the sewerage treatment plant.

11.6 **STORM WATER SYSTEM**

The Association will be responsible for the maintenance of the internal storm water system serving the Development.

11.7 **GENERAL**

11.7.1 The Association and/or its authorised representatives shall have the right to convey water, electricity, sewerage, telephone, information technology, telecommunication, security communication and any other services over any Erf or building or the Common Property, and shall have the right of access to such premises for the purposes of installing, replacing and/or repairing such services.

11.7.2 The members of the Association will allow reasonable access to employees or representatives of the Association into buildings or over erven for purposes of maintaining any pipes or equipment or in general any of the systems necessary for the conveyance or provision of the services referred to above. Furthermore and without derogating from the aforesaid all members of the Association will be obliged to provide their co-operation and allow reasonable access to employees or representatives of the Association to enable them to install, implement and maintain any pipes or other modes of conveying of the services referred to above.

11.7.3 The Developer during the Development Period and thereafter the Association shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, sewerage, telephone lines, information technology, security systems and any other type of services and/or servitudes of encroachment or servitudes in

respect of any common walls or structural support or any other servitudes in respect of any other type of use over any erf or the Common Property in favour of the Association that in the opinion of the Developer or Association is reasonably necessary for the proper functioning of the Development or the whole or any part of the Development. The Association accepts and shall be bound by and consents to registration of such reciprocal servitudes between members of the Association and the Association as provided for herein.

12. **ARCHITECTURAL GUIDELINES**

12.1 The Architectural Guidelines constitute an integral part of this Constitution and are specifically incorporated herein. It is recorded that the Architectural Guidelines contain the procedures, requirements and guidelines to be adhered to by every member who wishes to effect construction, improvements or alterations to or undertake any renovation of any erf or dwelling house. The Architectural Guidelines that will be in force are those contained in the annexure hereto.

12.2 All improvements shall be of sound construction and shall comply with the provisions of the Architectural Guidelines contained in this Constitution.

12.3 No construction or erection of any improvements or alterations to and no renovations of any erf that is undertaken by any party other than the Developer may commence prior to the due and proper approval of plans for such construction, improvements, alterations or renovation by both The Sardinia Bay Golf & Wildlife Estate Design Review Committee (SBDR) and, where required, the local authority, in accordance with the following provisions:

12.3.1 the member shall submit to the SBDR for approval a full set of the proposed building plans or alteration plans which indicate both construction and design details;

12.3.2 the member shall be liable for payment of the reasonable cost of professional scrutinising and examination of such plans by the SBDR;

12.3.3 after approval of such plans by the SBDR the plans shall be submitted to

the local authority for approval. No plan shall be submitted to the local authority unless it bears the endorsement of approval of the SBDRRC, clearly dated, certifying that the plan complies with the Architectural Guidelines.

12.4 When effecting the constructing, improvements or alterations or renovations contemplated in this clause the member shall at all times comply strictly with the Architectural Guidelines as well as all conditions and standards imposed by the local authority insofar as these may be additional to the provisions of the Architectural Guidelines. No member shall be entitled to deviate in any manner whatsoever from the plan approved by the SBDRRC and the local authority unless the prior written approval of both the SBDRRC and the local authority for such proposed deviation has been obtained.

12.5 No member shall be entitled to challenge or contest any of the provisions of the Architectural Guidelines. No application for the amendment of the Architectural Guidelines shall be made to the local authority unless prior written consent of the Developer in the Development Period and thereafter the SBDRRC has been obtained thereto.

13. **CONDUCT RULES**

The conduct rules of the Association are those contained in Annexure A hereto (as amended) and constitute an integral part of this Constitution and are specifically incorporated herein.

14. **MANAGEMENT RULES (GENERAL)**

The management rules in force on establishment of this Association shall be those outlined in this Constitution and shall form an integral part of this Constitution.

15. **MANAGEMENT AND CONDUCT RULES (ENVIRONMENT)**

15.1 A comprehensive environmental management plan (EMP) has been prepared for the Development. The said EMP and all its provisions are incorporated herein as if specifically listed. Every member of the

Association shall be obliged to observe and adhere strictly to the provisions thereof.

- 15.2 The EMP shall serve as a point of reference to the Association, the Developer, contractors and all members in maintaining and interacting with the sensitive indigenous environment of the Development. A copy of the EMP shall at all times be available at the offices of the Association or on the website www.sardiniabayestate.co.za.
- 15.3 The Environmental Control Officer (ECO) appointed by the Developer to monitor and oversee the implementation of EMP shall at all times be consulted on any issue that may arise in relation to the protection and maintenance of the environment of the Development. To this end it is recorded that the decision of the ECO on which constitutes unacceptable building or environmental management practices shall be final and binding on the Developer, the Association, its members, guests and contractors.
- 15.4 Without derogating from the specific provisions of the EMP, all members of the Association, their guests and contractors must be aware of the following:
- 15.4.1 Indigenous vegetation and wild animals, including reptiles, amphibians and birds, may not be harmed in any way. Accordingly, no snares may be set in the Development.
- 15.4.2 No domesticated animals, whether household, agricultural or any other variety, are allowed in the Private Nature Reserve or any other common property unless they are physically restrained by their owners at all times by means of a leash or other suitable restraint. In addition all such animals must at all other times be contained by every owner within the boundaries of that owner's erf.
- 15.4.3 No alien vegetation may be planted anywhere in the Development, including the residential erven and members are obliged to have their gardens planted with indigenous trees, shrubs and water wise plants endemic to the area. The ECO will assist members in this regard and the Developer will similarly make available a list of acceptable trees, shrubs and plants.

16 **TRUSTEES**

16.1 The first Trustees shall be two Trustees appointed by the Developer, i.e. Developer Trustees who shall take up office on the commencement date detailed in clause 4 and shall serve until the first Annual General Meeting. Thereafter the Trustees of the Association shall for the Development Period be divided into two classes, namely Developer Trustees and Member Trustees.

16.2 During the Development Period there shall be not more than five (5) Trustees of the Association of whom:

16.2.1 two (2) shall be Member Trustees appointed by the Members; and

16.2.2 the remaining Trustees shall be Developer Trustees appointed by the Developer.

16.3 After termination or expiration of the Development Period there shall be not more than six (6) Trustees and all the Trustees shall be appointed by the Members subject to the proviso that the Developer shall at all times be entitled to appoint one (1) Developer Trustee. Should the Developer, after the expiry of the Development Period, elect to exercise his right to appoint a Developer Trustee then in such event the remaining Trustees shall be appointed by the Members. For example if there are six Trustees and the Developer exercises his right to appoint a Trustee the Members shall be entitled to appoint the remaining five Trustees.

17. **REMOVAL & ROTATION OF TRUSTEES**

17.1 Save as set forth in 17.2 below, each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting each Trustee shall be deemed to have retired from office upon the election or re-election of the new Trustees, but each Trustee will be eligible for re-election to the Trustees at such meeting.

17.2 A Trustee shall be deemed to have vacated his office as such upon:

- 17.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
- 17.2.2 his making any arrangement or compromising with his creditors;
- 17.2.3 his conviction for any offence involving dishonesty;
- 17.2.4 his becoming of unsound mind or being found lunatic;
- 17.2.5 his resigning from such office in writing delivered to the Secretary;
- 17.2.6 his death;
- 17.2.7 him being removed from office as provided for in the Companies Act, provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustees.
- 17.3 Upon any vacancy occurring on the Trustees prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by the remaining Trustees.

18. **OFFICE OF TRUSTEES**

- 18.1 Within 7 (seven) days of the holding of the first Annual General Meeting, the Trustees shall meet and shall elect from its own number the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairman or Vice-Chairman shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any of the aforesaid offices at any time, the Trustees shall immediately meet to appoint one of their number as a replacement to such office.
- 18.2 Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Trustees, and all general meetings of Members, and

shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustees or by the Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.

18.3 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or by the Trustees.

18.4 Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, Vice-Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

19. **FUNCTIONS & POWERS OF THE TRUSTEES**

19.1 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 and, save as may be expressly provided in this constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not either by virtue of the provisions of the Companies Act, or by this constitution required to be exercised or done by the Association in general meeting, subject nevertheless to any regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustees which would have been valid if such regulation had not been made.

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

19.3 The Trustees shall have the right to co-opt as a Trustees any person or persons chosen by them. A co-opted Trustee shall enjoy all the rights

and be subject to all the obligations of the Trustees.

- 19.4 The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee, in such reasonable manner as they shall decide from time to time.
- 19.5 The Trustees may make rules, regulations and/or by-laws, not inconsistent with this constitution, or any direction given at any General Meeting:
- 19.5.1 as to the settlement of disputes, generally;
- 19.5.2 for the furtherance and promotion of any of the objects of the Association;
- 19.5.3 for the better management of the affairs of the Association;
- 19.5.4 for the advancement of the interests of Members;
- 19.5.5 for the regulation and control of the conduct of Members and occupants of the Development, whether on Erven or on Common Property.
- 19.5.6 governing the manner and methods of the use of the common property by or on behalf of the Members of the Association or any occupant;
- 19.5.7 for the conduct of Trustees meetings and general meetings; and
- 19.5.8 to assist them in administering and governing its activities generally; and shall be entitled to cancel, vary or modify any of the same from time to time.
- 19.6 For the purpose of transacting their business as provided herein, the Trustees shall be entitled to open and operate a banking account in the name of the Association at a registered banking institution.

20 **OTHER PROFESSIONAL OFFICERS**

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, any other professional person or firm and/or any other employee/s whatsoever, for any reasons deemed necessary by the Trustees and on such terms as the Trustees shall decide.

21. **PROCEEDINGS OF THE TRUSTEES**

- 21.1 The Trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.
- 21.2 Meetings of the Trustees shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter then no meeting of the Trustees needs be held for that quarter.
- 21.3 The quorum necessary for the holding of any meeting of the Trustees shall be 2 (two) Trustees where there are 4 (four) Trustees and 3 (three) Trustees where there are more than 4 (four) Trustees, provided that, during the Development Period, the Developer is present at all times and represented by at least 50% [fifty per centum] of such quorum.
- 21.4 The Chairman shall preside as such at all meetings of the Trustees, provided that should at any meeting of the Trustees the Chairman not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 21.5 Any resolution of the Trustees shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a resolution the Chairman of the Trustees shall have a second or casting vote.
- 21.6 A Trustee shall take minutes of every Trustees meeting, although not necessarily verbatim, which minutes shall be reduced to writing without

undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of Trustees meetings shall after certification as aforesaid be placed in a Trustees Minute Book to be kept in accordance *mutatis mutandis*, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustees Minute book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Association Members and Local Authority.

- 21.7 All competent resolutions recorded in the minutes of any Trustees meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustees shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustees.
- 21.8 Save as otherwise provided in this constitution, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 21.9 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustees duly convened.

GENERAL MEETINGS

22. **GENERAL MEETINGS OF THE ASSOCIATION**
- 22.1 The Association shall, within twelve months of the date of the first registration of transfer of an Erf from the Developer to an Owner, but not later than 30 November 2013, hold a meeting as its first Annual General Meeting. Such meeting shall be called by the Developer Trustees. Should they fail to call the meeting the meeting shall be convened by any Member by giving notice as prescribed in clause 23. Thereafter within three months of the financial year end of the Association it shall hold second and subsequent Annual General Meetings.
- 22.2 Such annual general meeting shall be held at such time and place subject to the foregoing provisions, as the Trustees shall decide from time to time.

22.3 All general meetings other than annual general meetings shall be called special general meetings.

22.4 The Trustees may, whenever they think fit, convene a special general meeting, and a special general meeting shall also be convened on the request of not less than 25% (twenty five percentum) of the Members or should the Trustees fail to do so, such meeting may be convened by the requisitionists themselves provided that notice thereof has been given in terms of clause 23.

23. **NOTICE OF MEETING**

23.1 The annual general meeting and a meeting called for the passing of a special resolution, shall be called with not less than 21 (twenty one) days notice in writing. A special general meeting, other than one called for the passing of a special resolution, shall be called with not less than 14 (fourteen) days' notice in writing. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these presents, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinaftermentioned or in such other manner, if any as may be prescribed by the Trustees to such persons as are under these presents entitled to receive such notices from the Association; provided that any meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed by not less than 75% (seven five percentum) of Members having the right to attend and vote at the meeting.

23.2 The accidental omission to give notice of any resolution or to present any document required to be given or sent in terms of this Constitution shall not invalidate the proceedings at or any resolution passed at any meeting.

24. **SERVICE OF NOTICES**

24.1 A notice shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at his chosen postal address or

by way of hand delivery to the Erf owned by the Member in which latter case the notice shall be deemed to be validly given if it is handed to any person over the age of 16 who appears to be in occupation of the dwelling on the Erf.

24.2 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 the service of notices.

24.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and proof of the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

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

25. **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.

26. **QUORUM**

26.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business and when any resolution is to be passed. The quorum necessary for the holding of any general meeting shall be such, that of the Members entitled to vote, one-half of the total votes of all Members of the Association entitled to vote shall be represented at the meeting, save that not less than 5 (five) Members must be present in person or by proxy and provided further that during the Development Period at least 1 (one) representative of the Developer is present at such meeting.

26.2 If within half an hour from the time appointed for the holding of a general

meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum.

27. **AGENDA AT MEETINGS**

27.1 In addition, to any other matters as would be required by the Companies Act to apply to a company or to these presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

27.1.1 the consideration of the Chairman's report to the Trustees;

27.1.2 the election of the Trustees;

27.1.3 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;

27.1.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;

27.1.5 the consideration of the report of the Auditors.

28. **PROCEDURE AT GENERAL MEETINGS**

28.1 The Chairman shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice-Chairman, shall act as Chairman at such meeting, provided further that should the Vice- Chairman also not be present within five minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

28.2 The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten 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.

28.3 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

29. **PROXIES**

29.1 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 authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the Chairman of the Board of Directors of the Company or by its secretary, where an association of persons, by the secretary thereof, where a close corporation, by any Member and where a trust, by any Trustee.

29.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a certified copy thereof shall be deposited at the Association's office no less than 24 hours before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is authorised to vote. No instrument appointing a proxy, shall be valid after the expiration of 12 (twelve) months from the date of its execution.

30. **VOTING**

- 30.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Erf registered in his name provided that if an Erf is registered in the name of more than one person then all such co-owners shall jointly have only one vote. The Developer shall, during the Development Period, be entitled to three votes in respect of each Erf held by it in terms of the General Plan and after the Development Period shall be entitled to one vote in respect of each Erf held by it.
- 30.2 Save as expressly provided for in these presents, no person other than a Member duly registered, who has paid every levy and other sum (if any) due and payable to the Association and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 30.3 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 Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 30.4 Notwithstanding the provisions of 30.3 aforesaid, voting on the election of a Chairman 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.
- 30.5 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 not be voted upon.
- 30.6 Subject to the provisions of clause 30.7 hereunder a resolution or the amendment of a resolution, shall be carried out by 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 Chairman of the general meeting shall be entitled to a casting vote in addition to his vote as Member.

30.7 Notwithstanding anything contained in this constitution, any resolution or the amendment of a resolution which would have the effect of amending or repealing any part of this constitution shall require a 75% (three quarters) majority of all Members entitled to vote before the resolution may be passed and shall be known as a special resolution.

30.8 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 Chairman 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 Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes 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 Chairman of the meeting as to the result of any voting at the meeting.

31. **FINANCIAL YEAR END**

The financial Year End of the Association is the end of February each year.

32. **ACCOUNTS**

32.1 The Association in a 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.

32.2 At each Annual General Meeting the Trustees shall lay before the Association a proper income and expenditure account for the immediately

preceding financial year of the association, or in the case of the first account, for the period since the transfer of the first Erf into the name of the first Owner, 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 (all of which shall be framed in accordance with the provisions of the Companies Act) and any other documents required by law to accompany same.

33. **AUDIT**

33.1 Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

33.2 The Auditors shall perform such duties as are performed by Auditors of any registered company.

34. **INDEMNITY**

34.1 All the Trustees and the Auditors shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a Trustee Member, in his capacity as Chairman, Vice- Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.

34.2 Every Trustee, every servant, agent and employee of the Association, and the Auditors shall be indemnified by the Association against (and it shall be the duty of the Trustees out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any 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 the case of a Trustee Member, his duties as Chairman of Vice-Chairman. 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, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

- 34.3 A Trustee shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustees, whether in their capacities as Trustee Members or as Chairman or Vice-Chairman, 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 or criminal 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 whatever 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 breach of duty or breach of trust.

35. **PRIVILEGE IN RESPECT OF DEFAMATION**

Every Member of the Association and every Trustee Member shall be deemed by virtue of his Membership or, as the case may be, his holding office as a Trustee Member, to have waived as against every other Trustee Member, the Trustees, the Chairman or Vice-Chairman, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Trustees, or any sub-committee, all claims and rights of action which such Member or Trustee Member might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee Member, or any reference to such Member or Trustee Member, made at any Trustees meeting or general meeting, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of these presents, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee Member, or otherwise injurious to the dignity, reputation, business or financial interest

of such Member or Trustee Member, whether such statement be true or false.

36. **DEALINGS WITH THE COMMON PROPERTY**

Neither the whole nor any portion of the common property shall be:

- 36.1 sold, alienated, otherwise disposed of, subdivided or transferred; or
- 36.2 subjected to a mortgage; or
- 36.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude (save for those specifically provided for herein); or
- 36.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities, other than as contained in this constitution and in the approved layout plan, without the sanction of a special resolution of the Members of the Association.

37. **ARBITRATION**

- 37.1 Should any dispute, question or difference arise between Members or between a Member and Trustees out of or in regard to:
 - 37.1.1 the interpretation of;
 - 37.1.2 the effect of;
 - 37.1.3 their respective rights or obligations under;
 - 37.1.4 a breach of

this Constitution (save for non-payment of levies or any other amounts due by a Member in terms of this Constitution), such dispute shall be decided by arbitration in the manner set out in this clause 37.

- 37.2 In respect of any claim arising from non-payment of levies or any other amount due by a Member to the Association in terms of this Constitution, the Association and Trustees shall continue to enjoy common law rights and shall not be required to proceed to arbitration and shall not be

precluded from instituting legal proceedings in any court of competent jurisdiction.

- 37.3 The arbitration referred to in clause 37.1 shall:
- 37.3.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and
- 37.3.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded; and
- 37.3.3 be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.
- 37.4 The arbitrator shall be a practicing advocate or attorney of not less than 15 (fifteen) years standing appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing such agreement within the 7 (seven) day period, appointed by the President of the Law Society of the Cape of Good Hope.
- 37.5 The arbitrator shall in giving his award have regard to the principles contained in this Constitution and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision. The arbitrator's decision shall be presented within 10 (ten) dates after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 37.6 Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings:
- 37.6.1 shall be final and binding on each of them; and

- 37.6.2 shall be carried into effect immediately; and
 37.6.3 may be made an order of any Court that has jurisdiction over the parities or the Property.

37.7 Notwithstanding anything to the contrary contained in this clause 37, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Constitution, including the Architectural Guidelines.

38. **PHASES**

The Developer intends to develop and market the Development in phases as the Developer deems fit. For as long as the Developer is a member of the Association, the Developer shall enjoy unrestricted rights with regard to the marketing of the Development and, in particular, the right to erect signage within the Development.

39. **AMENDMENT OF DRAFT GENERAL PLANS**

The Developer reserves the right to amend the draft General Plans insofar as it may be necessary to (a) obtain the approval for the subdivision of the properties and/or (b) comply with any conditions of subdivision imposed by the local authority and/or (c) ensure the viability of the Development and for any other reason as may be reasonably necessary. The Developer shall however endeavour in as far as is practicably possible to obtain approval of the subdivision substantially in accordance with the draft General Plans.

40. **APPROVED BUILDING CONTRACTORS**

The Developer and/or the Association shall compile a list of approved building contractors from time to time and the erection of a dwelling house and any improvement on any residential erf by a member may only be carried out by one of the contractors on the list or by another contractor approved by the SBDRC and such contractor shall be bound by the Contractors Rules and Regulations (CRR).

41. **GOLF COURSE**

41.1 The HOA, represented by the developer, has entered into an agreement (the contract) with an independent contractor (the contractor) to operate the golf course as a business for his own account. The HOA will accordingly, during the currency of the contract, not be responsible for the maintenance of the golf course. In terms of the contract the contractor shall be liable, *inter alia*, for the costs of maintaining the golf course and shall be entitled to all profits derived therefrom. For the duration of the contract the public and the owners shall be entitled to play on the golf course provided they pay the fee prescribed by the contractor. The developer shall endeavour to negotiate a preferential fee on behalf of the owners.

41.2 The contractor shall, for the duration of the contract, operate the golf course business from the existing club house facility which is situated on Erf 4067 (the ownership of which erf shall be retained by the developer). If, after expiry of the contract, the aforementioned club house facility is for any reason no longer available as a club house or alternatively the developer and the other owners are not able to reach agreement on the conditions upon which the existing club house facility may be used, then in such event the developer undertakes to make another club house facility available to the owners on Erf 4067 or Erf 4066 (the golf course erf). Such club house shall be constructed of brick and mortar, shall be not less than 50 square metres in extent and shall have no less than one gents toilet and one ladies toilet. The costs and incidental to the erection of such an alternative club house facility shall be borne by the developer including, but not limited to, costs of construction, any legal costs and costs of obtaining the necessary approval for the erection of the club house.

--oo0oo--