

THE SIMOLA GOLF & COUNTRY ESTATE

HOMEOWNERS' ASSOCIATION

CONSTITUTION

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1 INTERPRETATION

In these presents:

1.1 The following words shall, unless the context otherwise required, have the meanings hereinafter assigned to them:

1.1.1 **"Alienate"** means alienating any Erf or part thereof and includes by way of sale, exchange, donation, deed, intestate, succession, will, cession, assignment, court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive or resolute condition and alienation shall have a corresponding meaning;

1.1.2 **"Architects"** means such architect or panel of architects appointed by the Seller to act as such from time to time including an architect serving on the Design Review Committee in respect of the Development Scheme and includes a partner or member of such firm or their successors or nominees or an architect approved by the Design and Review Panel;

1.1.3 **"Architectural and Landscape Design Manual"** means the Architectural and Landscape Design Manual prepared for and applicable to Simola, and including all / any amendments made thereto from time to time and as enforced by the Architectural Design and Review Panel and which, although forming part of the Constitution, are not subject to the provisions of clause 41 in regard to the amendment thereof;

1.1.4 **"Architectural Design & Review Panel"** means a panel appointed by the developer, consisting of architects and such other persons as he may deem fit from time to time with duties allocated to them from time to time otherwise known as the Design Review Committee;

1.1.5 **"Association"** means Simola Golf & Country Estate Homeowners' Association;

1.1.6 **"Accountants"** means the Accountants appointed by the Association from time to time;

1.1.7 **"Auditors"** means registered Public Accountants and Auditors under the Public Accountants and Auditors Act No. 80/1991 appointed by the Association;

1.1.8 **"Business day"** means weekdays other than Saturdays, Sundays and Public Holidays;

- 1.1.9 **"Chairman"** means the Chairman of the Trustees;
- 1.1.10 **"Common Property"** means such Property that is designated as Common Property in terms of the Conditions of Approval for the development scheme of the Developer including certain general or additional sporting facilities that the Association may in future create;
- 1.1.11 **"Conduct Rules"** mean the Simola Golf & Country Estate Homeowners' Association Conduct Rules, and which, although forming part of the Constitution, are not subject to the provisions of clause 41 in regard to the amendment thereof;
- 1.1.12 **"CSOS legislation"** means the Community Schemes Ombud Service Act, Act 9 of 2011 and all regulations enacted in terms of Section 29 thereof (as amended from time to time);
- 1.1.13 **"Developer"** means Simola Golf & Country Estate (Pty) Ltd;
- 1.1.14 **"Development"** means the scheme proposed for the development by the Developer in various phases consisting *inter alia* of the erven, golf villas, golf course, clubhouse, luxury hotel, gatehouse and security infrastructure, other amenities, services and buildings erected or to be erected substantially in accordance with the approved Development Plan, as amended from time to time, on the property known as Simola Golf and Country Estate, situate on Erf 9242, Knysna and Remainder of Erf 4019, Knysna and Erf 7847, Knysna and all such additional adjacent property as the Developer may acquire from time to time and incorporate into the Development;
- 1.1.15 **"Development Period"** means the period from the date the development commenced until the Developer notifies the Homeowners Association that it has completed the Development;
- 1.1.16 **"Erf"** means one of the Erven;
- 1.1.17 **"Erven"** means the freehold erven resulting from the subdivision of Erf 9242, Knysna, and Remainder of Erf 4019, Knysna and Erf 7847, Knysna situate in the Municipality of Knysna and registration thereof in the Deeds Office;
- 1.1.18 **"Local Authority"** means the Municipality of Knysna or its successor;
- 1.1.19 **"Member"** means a member of Simola Golf & Country Estate Homeowners' Association being a registered owner;

- 1.1.20 **"month"** means calendar month;
- 1.1.21 **"office"** means the administrative office of the Association;
- 1.1.22 **"Resolution"** means a Resolution other than a Special Resolution passed at an Annual General Meeting or any other General Meeting by an ordinary majority of the total votes represented at such meeting by Members present in person or by proxy;
- 1.1.23 **"Special Resolution"** means a Resolution passed at an Annual General Meeting or any other General Meeting whereat Members present in person or by proxy represent not less than 25% (twenty five per centum) of the total votes; and passed by majority of at least 75% (seventy five per centum) of the total votes represented by Members present in person or by proxy;
- 1.1.24 **"Registered Owner"** means the party or parties acquiring ownership and taking transfer of one or more Erven in the Development;
- 1.1.25 **"these presents"** means the Constitution and Conduct Rules of the Association from time to time in force;
- 1.1.26 **"Trustees"** means the Trustees of the Association from time to time and includes alternate and co-opted Trustees;
- 1.1.27 **"Vice-Chairman"** means the Vice-Chairman of the Trustees;
- 1.1.28 **"in writing"** means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
- 1.1.29 **"year"** means financial period of 12 (twelve) months ending the last day of every February of each year.

1.2 Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and *vice versa* and words importing any one gender only shall include the other genders.

2 MEMBERS OF THE ASSOCIATION

- 2.1 The Association which is hereby constituted and initially comprising of a single Member, namely, the Developer.
- 2.2 Every Registered Owner shall upon registration into his name of an Erf *ipso facto* become a Member subject to the terms contained herein and in particular in clauses 6 to 10 hereof.

3 MAIN OBJECT

The Association is established in terms of Section 29 of the Land Use Planning By Law, 2015, and

subject to the appropriate Environmental Management Plan (EMP), the Association shall have as its main objects *inter alia* the following objects:

- 3.1 To promote good governance as envisaged by the applicable CSOS legislation.
- 3.2 The advancement of the development.
- 3.3 The protection and communal interest of the members.
- 3.4 The control of all future alterations, extensions or renovations to all properties forming part of the Development.
- 3.5 To ensure that all future alterations, extensions or renovations are carried out in accordance with approved Plans submitted to the relevant authorities.
- 3.6 The use and control of communal facilities and its property and like matters of common interest and where necessary or appropriate to issue Conduct Rules governing the use of its assets or of its members and to amend or add to its objects in the future.
- 3.7 To acquire ownership of the Common Property at the end of the Development Period or any earlier date at the request of the Developer and of all roads and services, but specifically excluding the electrical reticulation, and to be responsible for the maintenance and upkeep thereof.
- 3.8 To maintain the roads and road reserves and services in accordance with the services agreement entered into with the local authority.
- 3.9 To enter into the necessary agreements with the local authorities and suppliers of services.
- 3.10 To implement and maintain security measures and systems to control access to the Estate.
- 3.11 To promote and protect the interests of all members of the Association in all matters affecting the Estate.
- 3.12 To exercise control after the Developer has completed the Development over:
 - 3.12.1 all buildings and improvements erected on the erven;
 - 3.12.2 the exterior facades and roofs of dwellings and maintenance thereof by the owner;
 - 3.12.3 the maintenance of buildings, roads, services and facilities on the Common Property;
 - 3.12.4 the out-sourcing of any of its functions to suitable contractors.
- 3.13 To administer and enforce the Conduct Rules, Architectural and Landscape Design Manual as may be determined from time to time by the Members in a General Meeting.

4 MAIN BUSINESS

- 4.1 The main business of the Association shall be the general management and administration of the common interest of owners in the Development.
- 4.2 Such business shall include such activities or obligations which may be in the interests of the

Home Owners for which the Local Authority is not responsible in terms of the Conditions of Establishment issued under the Land Use Planning By Law; 2015 or otherwise.

5 COMMON PROPERTY

5.1 Neither the whole nor any portion of the Common Property shall be:

5.1.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or

5.1.2 mortgaged; or

5.1.3 subjected to any rights, whether registered in a Deeds Registry or not of use, occupation or servitude (save those enjoyed by the Members in terms hereof);

without the sanction of a Special Resolution of the Association.

5.2 The Association is hereby:

5.2.1 specifically empowered to acquire ownership and take transfer of the Erf or Erven comprising the Common Property from the Developer and those that might belong to the Association in future.

5.2.2 the Association shall specifically authorise two Trustees of the Association to sign all documents and perform all acts necessary to acquire ownership of the Erf or Erven comprising such areas, on behalf of the Association, by means of an ordinary Resolution.

5.2.3 the transfer of the Erf or Erven comprising the Common Property and sporting facilities shall be effected by the Developer's Attorneys, and all costs relating to such transfer shall be borne by the Developer.

5.3 The responsibility for the maintenance of the Common Property before ownership thereof is acquired by the Association shall be that of the Association.

6 MEMBERSHIP

Membership of the Association shall be limited to the Developer (for as long as it is a Registered Owner) and Registered Owners resulting from the Development, provided that where any such owner is a body corporate or a similar body of persons or more than one person, all the Registered Owners of that Erf shall be deemed jointly and severally to be one Member of the Association. Such member/s shall nominate one natural person to represent it at meetings of the Homeowners Association.

7 RESIGNATION

7.1 A Registered Owner may not resign as a Member.

7.2 When a Member ceases to be the Registered Owner of an Erf, he shall *ipso facto* cease to be a Member of the Association.

8 TITLE DEED CONDITIONS AND RESTRICTIONS

8.1 The following conditions or conditions of similar import or as may be required by any authority

shall be embodied in the Title Deed relating to each Erf resulting from the Development as a condition of title, namely:

- 8.1.1 No erven may be transferred without the consent of the Association, which conditions shall substantially reads as follows:

"The Erf shall not be transferred without the written consent of the Simola Golf & Country Estate Homeowners' Association of which the Transferee and his successors in title shall be a Member.";

- 8.1.2 The Registered Owner shall construct and complete a dwelling unit on the Erf within 3 (three) years of registration of transfer of the Erf into the name of the Registered Owner, which condition shall substantially reads as follows:

"The Transferee or his successor in title shall construct and complete a dwelling unit duly approved on the property within 3 (three) years of date of registration of transfer of the property into the name of the Transferee, or such extended period as the Transferor may agree to in writing, failing which the Transferor shall be entitled upon request, and the Transferee be obliged at his own cost, to retransfer the property to the Transferor at the same price which it was originally sold for or at a fair market value at the time, whichever is less, less the VAT and agent's commission paid on the original transfer to the Transferee.";

- 8.2 Consent to the transfer of the Erf shall not be unreasonably withheld provided that:

- 8.2.1 The Registered Owner of the Erf in question has fulfilled all his financial obligations to the Association in terms of this Constitution; and
- 8.2.2 The Agreement of Sale concluded between the Registered Owner and Purchaser of the said Erf contains all of the restrictions set out in clause 8.3 hereunder.

- 8.3 The following restrictions will be applicable to all Registered Owners of the Association and will be included in Deed of Sale as provided for in clause 8.2 above, namely:

- 8.3.1 No erven may be transferred without the consent of the Association as set out in clause 8.1 of the Association's Constitution.

- 8.3.2 The Registered Owner / Purchaser shall construct and complete a dwelling unit on the Erf within three years of registration of transfer of the Erf into the name of the Registered Owner / Purchaser, as set out in clause 8.1 of the Association's Constitution.

- 8.3.3 The Developer / Seller shall be entitled to vary the Development Plan in such manner as may be approved by the Local Authority provided the rights of the Registered Owner / Purchaser are not materially prejudiced thereby. Any dispute as to whether a variation of the Development Plan or the Development may create material prejudice to the Registered Owner / Purchaser, shall be determined by the Developer's Architect whose decision shall be final and binding on the parties.

- 8.3.4 The Registered Owner / Purchaser acknowledges that he is aware that the development will

take place in phases. The Developer / Seller expressly reserves the right in its sole and entire discretion to incorporate the whole or any portion of adjoining land into the Development subject only to approval by the Local Authority. The Registered Owner / Purchaser undertakes not to object to any such incorporation and such portion or the whole of the adjoining land incorporated into the Development shall be subject to the Homeowners Association's Constitution which shall also apply to any Registered Owner / Purchaser of any sub-divided erven thereof.

- 8.3.5 The Developer / Seller reserves the right and shall be entitled to build and establish on the land, a golf course, a clubhouse, a luxury hotel, luxury lodges, river club lodges, golf lodges, a sports centre, several sectional title developments and such other amenities and facilities as it in its sole and entire discretion shall decide. The Developer / Seller furthermore reserves the right to sub-divide from the land the sites for such aforesaid improvements, amenities and facilities as separate erven and shall be entitled to operate the aforementioned for its own benefit, separate and independent from the remainder of the development, subject only to approval of the Local Authority. The Developer / Seller further reserves the right and shall be entitled to develop the Development in such phases as it in its sole and entire discretion shall decide, substantially in accordance with the Development Plan, and to incorporate such additional adjacent property as the Developer / Seller may acquire from time to time and incorporate same into the Development.
- 8.3.6 The Registered Owner / Purchaser may only use an architect on the Design Review Committee or an architect approved by such panel. In the event of the panel approving the Registered Owner's / Purchaser's own architect, then all plans shall be submitted to the panel for approval prior to commencement of construction and the costs of approval shall be for the account of the Registered Owner / Purchaser.
- 8.3.7 All improvements and/or alterations constructed on an Erf must conform to the Architectural and Landscape Design Manual and must be approved by the Architectural Design and Review Panel and the Local Authority prior to commencement of such work. On completion of the Development all rights vesting in the Design Review Committee shall accrue to the Homeowners Association. The Registered Owner / Purchaser undertakes to abide by the guidelines stipulated by the Panel for the submission of plans covering the construction, alteration, specifications and any other requirements as designated by the said Panel and to pay the scrutiny fees of the Panel.
- 8.3.8 No construction work may be carried out on an Erf except by a building contractor appointed to the Panel of builders approved by the Developer / Seller / Association unless the Developer / Seller / Association issues written consent to another contractor being used. In such event, the building contractor shall furnish the Developer / Seller / Association with an undertaking to comply with all requirements, security and otherwise, before the building contractor and its employees will be allowed access to an Erf.
- 8.3.9 The Registered Owner / Purchaser acknowledges that he is aware that no construction will be

permitted by the local authority on slopes steeper than 1:4.

- 8.3.10 An Erf shall be used solely for residential purposes. 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 and/or any other similar scheme or arrangement may be conducted on an Erf, nor shall a guest house, bed and breakfast, Air B&B or similar establishment be operated on an Erf, without the prior written consent of the Developer / Seller during the development period and thereafter the Homeowners Association. Without limiting the generality of the foregoing, no auction, business, profession or any commercial activity, with the exception of people doing work from home that does not involve access or presence of any member of the general public, may be conducted from an Erf without the prior written consent of the Developer during the development period and the Association thereafter. The Developer / Seller and/or the Association, as the case may be shall not be required to furnish any reasons for declining any request to utilize an Erf for the above purposes.
- 8.3.11 No boats and/or caravans and/or trailers and/or other vehicles shall be parked or stored on an Erf other than in enclosed garage if, in the sole opinion of the Homeowners Association, they are parked in such a way as to constitute a nuisance, obstruction or eye-sore.
- 8.3.12 The Registered Owner / Purchaser hereby consents to the required servitudes being registered over an Erf that may be necessary for the installation of surveillance and communication systems, water pipes, irrigation and other services and undertakes to co-operate and to sign all documents necessary for registration of such servitudes.
- 8.3.13 The Registered Owner / Purchaser shall not be entitled to sub-divide an Erf without the prior written consent of the Developer / Seller / Association.
- 8.3.14 The Registered Owner / Purchaser shall not without prior written approval of the Developer / Seller / Association:
- 8.3.14.1 let his Erf for occupation unless a lease agreement, approved by the Developer / Seller or its Agent during the Development Period and thereafter by the Association, has been entered into between the Owner and the tenant which shall provide *inter alia* that such tenant agrees to be bound by all the terms and conditions of this Home Owners' Association and any other applicable rules, provided that additional amendments may be effected to ensure compliance with this Constitution.
- 8.3.14.2 let his Erf overnight or for periods of less than 30 (thirty) days unless such letting is done in accordance with the applicable "letting pool" rules pertaining exclusively to sectional title units in the Simola Hotel Sectional Title Scheme.

9 RIGHTS AND OBLIGATIONS

The rights and obligations of a Member shall not be transferable and every Member shall:

- 9.1 to the best of his ability further the objects and interests of the Association;

9.2 observe all Conduct Rules made by the Association or the Trustees;

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.

10 LEVIES

10.1 All members will be liable to pay levies to the Home Owners Association as it may decide from time to time it being the obligation of each Owner to pay his normal rates, taxes and other charges levied by the Local Authority.

10.1.1 Notwithstanding the above, it is recorded that:

10.1.1.1 Simola Hotel Body Corporate will be regarded as one member in accordance with clause 6 above.

10.1.1.2 In the event of Share Block Companies being established in respect of any of the erven, or any sectional title schemes be established, such Share Block Companies or respective sectional title schemes shall be regarded as one member.

10.1.1.3 The registered owners of the Golf Course, situate on stands 146, 147 and 148 (practice range) as indicated on the development plan DRG nr. SIM14 dated 24 October 2006, shall, whilst they are members, not be required to pay any levy to the Simola Golf & Country Estate Home Owners Association, whether it be normal levies or special levies.

10.1.1.4 The registered owners of stand 141 (maintenance area) as indicated on layout plan DRG nr. SIM14 dated 14 October 2006, will also be excluded from the obligation to pay any levies to the Simola Golf & Country Estate Home Owners Association, whether such levies are normal or special levies. It is recorded that the maintenance sheds situate on stand 141 will be allocated, one to the Home Owners Association and one to the Golf Course.

10.2 The Trustees shall estimate the amount which shall be required by the Association to meet the aforesaid expenses during each operational year or any portion thereof, together with the estimated deficiency, if any, as may have resulted from the preceding operational year or portion thereof, and shall be entitled to make a levy upon the Registered Owner, equal as nearly as is reasonably practical to such estimated amount. The Trustees may include in such levies an amount to be held in reserve to meet any anticipated future expenditure not of an annual nature, such expenses to be incurred for the Development. Every such levy shall be payable monthly at the discretion of the Trustees.

10.3 The Trustees, may from time to time, impose special levies upon the Members if reasonably so required for purposes of running the Association and which are not included in any estimate made in terms of clause 10.2 and such levies may be imposed and be payable in one sum or by such instalments and at such time or times as the Trustees shall deem fit. It is the declared policy of the Association to avoid as far as possible the imposition of levies in addition to the income generated from its investments.

- 10.4 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 Registered Owner, save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Registered Owner. 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 shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Erf, to pay the levy attributable to that Erf.
- 10.4.1 In calculating levies the Trustees shall take into account income, if any, earned by the Association.
- 10.4.2 The levy payable by Members shall be determined and calculated on a tiered levy system which will use the first phase of the Development as a benchmark.
- 10.4.3 It is specifically recorded that any arrear levies shall bear interest at prime overdraft rate plus 3% (three per centum) per annum compounded monthly in advance which shall become immediately due and payable.
- 10.5 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.

11 MEMBERS' OBLIGATIONS

- 11.1 The Trustees may from time to time make Conduct Rules governing *inter alia*:
- 11.1.1 the Member's rights to use, occupation and enjoyment of the Common Property and sporting facilities;
- 11.1.2 the external appearance of and the maintenance of the Common Property, sporting facilities and the buildings or other improvements erected thereon.
- 11.2 The Trustees may from time to time enter into agreement(s) with third parties on behalf of the Association, *inter alia*, the Local Authority, governing the matters set out in clause 11.1 and any other matters incidental thereto.
- 11.3 Each Member undertakes to the Association that he shall comply with:
- 11.3.1 the provisions of this Constitution;
- 11.3.2 any Conduct Rules made in terms of clause 11.1;
- 11.3.3 the design in accordance with the Design Criteria, duly approved by the Design and Review Panel during the development period who will have an overriding authority to approve or veto all aspects of the development whilst he remains a member whereafter the Board of Trustees or an Architectural Sub-Committee appointed by them in respect of every building and/or structure to be erected in the Development and shall be of sound construction in accordance with such approval;

- 11.3.4 any agreements referred to in clause 11.1 insofar as those agreements may directly or indirectly impose obligations on him;
- 11.3.5 any reasonable requirements by the Developer in respect of future development of Erven in the Development or alterations to existing infra-structure or future infra-structure, including roads or access ways.
- 11.4 Each Member further undertakes to the Association that he shall comply with, *inter alia*, the following specific instructions to be issued by the Trustees:
- 11.4.1 That any future buildings or future development shall be in accordance with a standard approved by the Developer, and after the Developer has ceased to be a Member, by the Trustees;
- 11.4.2 That the Development and more particularly the Common Property and all amenities shall be maintained in good and tidy condition in compliance with standards set from time to time by the Trustees;
- 11.4.3 That no additions or alterations to approved buildings shall be effected until the Design Review Committee appointed by the Developer for as long as he is a member of this Association and thereafter the Trustees has in writing approved the design and/or construction plans including material and colour specifications for the erection of any building or structure and without limiting the generality of the foregoing, specifically including a dwelling house, outside buildings, fences or walls;
- 11.4.4 That the Architectural Design and Review Panel shall be the judges as to the suitability of the design and/or construction method, material or colours, and any other factors such as, but not limited to the location and situation of the dwelling on the Erf, taking into consideration the view from adjacent properties and any other factors which it may deem relevant, and their decision shall be final;
- 11.4.5 That each Registered Owner shall care for any trees on the Erf registered in his name and he shall not remove or cut down, or cause to be removed or cut down any trees situated as aforesaid, without the prior written consent of the Trustees in addition to any consent required in respect of trees or other flora protected by law;
- 11.4.6 That each Registered Owner shall establish and maintain a garden on the Erf registered in his name according to a standard approved by the Trustees;
- 11.4.7 That each Registered Owner shall maintain in a neat and tidy condition all buildings and/or structures erected on the Erf registered in his name;
- 11.4.8 That each Registered Owner shall adequately insure all buildings and/or structures erected on the Erf registered in his name (and if requested, to furnish proof of such insurance to the Trustees) and in the event of total/partial destruction shall within a reasonable time period make good such damage or reconstruct in accordance with the original approved plans or in the event of total reconstruction in accordance with the Trustees' approval *mutatis mutandis* the

provisions of clauses 11.4.1 to 11.4.3 inclusive;

11.4.9 That no Registered Owner shall, without the prior written consent of the Trustees:

11.4.9.1 alter the previously approved external colour scheme of buildings/structures erected on the Erf registered in his name or in the Common Property and sporting facilities;

11.4.9.2 erect/construct on the Erf registered in his name any solar heating system, outdoor radio aerial, outdoor television aerial or other aerial(s) and/or similar structures;

11.4.10 Each Registered Owner shall be obliged to obtain the approval of the Local Authority in respect of any buildings and/or structures to be erected on the Erf registered in his name and he shall further be obliged to comply with all conditions and standards imposed by such Local Authority.

11.4.11 In granting any approval in terms hereof the Trustees shall have the right to determine the siting of all buildings and/or structures (including garden/boundary/link walls) to be erected on the Erf and to impose such conditions as the Trustees deem necessary.

11.5 If any Registered Owner, tenant or occupier of an Erf by act or omission commits a breach of any of these conditions and fails to remedy such breach after the Trustees have given the Registered Owner written notice to make good such breach within a time specified in such notice then:

11.5.1 The Trustees and/or the Developer and/or the owner of any erf shall be entitled without further notice to the Registered Owner to institute proceedings against the Registered Owner in any Court of competent jurisdiction to obtain redress against the Registered Owner and without detracting from the generality of the foregoing including obtaining of an interdict against the Registered Owner.

11.5.2 The Trustees (or those employed by the Trustees on behalf of the Association) may enter upon the Erven, and Common Property and sporting facilities to take such action as may be required (as determined in the discretion of the Trustees) to remedy the breach and the Registered Owner concerned shall be liable to the Association for all costs plus Value Added Tax at the statutory rate from time to time so incurred which costs shall be due and payable upon demand. The foregoing action shall, without detracting from the generality of the foregoing, include the obtaining of the services of a garden service company.

12 BREACH

12.1 Any Member who fails to make payment to the Association on due date of any levy or other amounts payable by such Member, or who otherwise breaches or fails in the observance of any of the provisions of these presents, may, if so determined by a Resolution passed by not less than 3 (three) of the Trustees:

12.1.1 be fined by the Association in an amount not exceeding an amount equal to double the sum outstanding;

12.1.2 be ordered to pay to the Association or any Member or other person aggrieved by the breach

or failure in question, such sum as the Trustees after suitable enquiries shall deem fit;

- 12.1.3 be liable for and pay all legal costs including costs as between attorney and client, including Value Added Tax thereon at the statutory rate, collection commission, expenses and charges incurred by the Association in obtaining the recovery of arrear accounts or any other arrear amounts due and owing by such Member to the Association;

as in each case shall have been determined by the Trustees as aforesaid.

- 12.2 The Member concerned shall be invited to attend such meeting of Trustees by notice in writing delivered to such Member not less than 21 (twenty one) days prior to the holding thereof, and such Member shall be given the right to speak thereat, and to be represented lawfully, but not to be present at the voting or to take part in the proceedings, other than as allowed by the Chairman of such meeting.
- 12.3 The Trustees shall be entitled to charge interest on arrear amounts (including amounts due in terms of clause 12.1.1) at such rate as they may from time to time determine.
- 12.4 Nothing in the foregoing shall derogate from or in any way diminish the right of the Association represented by an authorised Trustee to institute proceedings in any Court of competent jurisdiction for recovery of any money due by a Member or in respect of any breach not covered by the arbitration procedures herein set out.

13 CESSATION OF MEMBERSHIP

No Member ceasing to be a Member of the Association for any reason shall (nor shall any such Member's executor, curator, 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 accounts or other sums due from him to the Association at the time of his so ceasing to be a Member.

14 TRUSTEES

- 14.1 There shall be a Board of Trustees of the Association which shall consist of not less than 3 (three) and not more than 6 (six) persons, the exact number to be determined from time to time at the Annual General Meeting of the Association.
- 14.2 Trustee shall be an individual, but need not himself be a Member of the Association, provided that a majority of Trustees after completion of the development period shall be Members. A Trustee, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of these presents.
- 14.3 For as long as the Developer is a Member during the Development Period, it shall be entitled to nominate and appoint 3 (three) of the Trustees.

15 APPOINTMENT AND ELECTION OF TRUSTEES

- 15.1 All the initial Trustees shall be appointed by the Developer and until so appointed the Developer shall, notwithstanding clause 14.2 be sole Trustee.

15.2 Upon termination of the term of office of the Trustees aforesaid, as set forth in clause 16, Trustees as set forth in clause 14.2 shall be:

15.2.1 nominated;

15.2.2 elected to office, upon acceptance of such nominations,

by Members of the Association present in person or by proxy at the first Annual General Meeting of the Association and at each Annual General Meeting held thereafter.

16 REMOVAL AND ROTATION OF TRUSTEES

16.1 Save as set forth in clause 16.2, 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 as such, but will be eligible for re-election to the Trustees at such meeting.

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

16.2.1 his estate being sequestered, whether provisionally or finally, or his surrendering his estate;

16.2.2 his making any arrangement or composition with his creditors;

16.2.3 his conviction for any offence involving dishonesty;

16.2.4 his becoming of unsound mind or being found lunatic;

16.2.5 his resigning from such office in writing delivered to the registered office of the Association;

16.2.6 his death; or

16.2.7 his being removed from office by a Resolution of the Members of the Association, requiring a simple majority, before the termination of his period of office;

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.

16.3 Should such Trustee, as contemplated in clauses 24 or 25, the Trustee nominated by the Developer, the Developer shall have the right to appoint a further Trustee in his place. If the office of a Trustee falls vacant prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining Trustees for the time being, and shall hold office until the next General Meeting when he may be eligible for re-election.

17 OFFICE OF TRUSTEES

17.1 The Chairman and Vice-Chairman, shall hold their respective offices until the next Annual General Meeting following the date of their appointment, provided that any such office shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.

17.2 For as long as the Developer is a member of the Association the Development Period, it shall

have the right to appoint the Chairman and Vice Chairman of the Association whereafter the Trustees shall have the right to appoint from amongst themselves a Chairman and Vice Chairman.

- 17.3 As soon as reasonably possible after the holding of an Annual General Meeting, the Trustees shall meet and shall elect from their own number the Chairman and Vice-Chairman. 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 time, the Trustees shall within 21 (twenty one) days meet to appoint one of their number as a replacement in such office.
- 17.4 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 Members, and to allow or refuse to permit guests to speak at any such meetings, provided however, that any such guests shall not be entitled to vote at any such meetings.
- 17.5 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 the Trustees.
- 17.6 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Trustees and/or Chairman, 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.

18 FUNCTIONS AND POWERS OF TRUSTEES

- 18.1 Subject to the express provisions of these presents, 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 these presents, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by these presents required to be exercised or done by the Association in General Meeting subject nevertheless to such Conduct Rules as may be prescribed by the Association in General Meeting from time to time, provided that no Conduct Rule made by the Association in General Meeting shall invalidate any prior act of the Trustees which would have been valid if such Conduct Rule had not been made.
- 18.2 The Trustees shall have the right to vary, cancel or modify any of their decisions and Resolutions from time to time.
- 18.3 The Trustees shall have the right to co-opt any person or persons chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees, provided that such co-opted Trustee shall only serve until the next Annual General Meeting.
- 18.4 The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee of these presents, in such reasonable manner as they shall decide from time

to time.

18.5 The Trustees may make rules and by-laws, not inconsistent with these presents, or any Conduct Rules prescribed by the Association in General Meeting:

18.5.1 as to disputes generally;

18.5.2 for the furtherance and promotion of any of the objects of the Association;

18.5.3 for the better management of the affairs of the Association;

18.5.4 for the advancement of the interests of Members;

18.5.5 for the conduct of Trustees at meetings of Trustees and Meetings for the Association;

18.5.6 to recoup expenditure from Members in accordance with clauses 11 to 16 infra or otherwise;
and

18.5.7 to assist it in administering and governing its activities generally and with derogating from the generality of the above and shall be entitled to cancel, vary or modify any of the same from time to time.

18.6 The Trustees shall comply with the provisions of the applicable CSOS legislation and in particular:

18.6.1 Section 59 read with Regulation 18 in regard to recovering levies, lodgement of documents and filing of all statutory returns;

18.6.2 Regulation 14 regarding the specific duties and obligations; and

18.6.3 Obtaining and maintaining fidelity insurance as prescribed by Regulation 15.

19 PROCEEDINGS OF MEETINGS OF TRUSTEES

19.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of these presents.

19.2 Meetings of the Trustees shall be held at least annually.

19.3 The Chairman may upon notice to other Trustees call a meeting at more frequent intervals as and when he deems it necessary.

19.4 2 (Two) Trustees may at any time convene a meeting of Trustees by giving to the other Trustees not less than 21 (twenty one) 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. A resolution in writing signed by all the Trustees or their duly appointed representatives shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and constituted.

19.5 The quorum necessary for the holding of any meeting of Trustees shall be 3 (three) Trustees and if only 3 (three) Trustees are appointed, then the quorum shall be 2 (two) Trustees, provided however in order for there to be a valid quorum at least one of the Trustees present must be one

of those appointed by the Developer for as long as the Developer is a member of the Association.

- 19.6 The Chairman shall preside as such at all meetings of Trustees provided that should at any meeting of Trustees the Chairman not be present within 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.
- 19.7 A Trustee may be represented at a Meeting of Trustees by a proxy, who shall not be a Trustee of the Association.
- 19.8 The instrument appointing a proxy shall be in writing signed by the Trustee concerned or his duly authorised agent in writing, but need not be in any particular form.
- 19.9 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed or a notarially certified copy thereof shall be deposited at the office 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.
- 19.10 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the remaining Trustees at least one hour before the time fixed for the holding of the meeting.
- 19.11 The Trustees shall:
- 19.11.1 ensure that minutes are taken of every meeting of Trustees, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting;
- 19.11.2 cause such minutes to be kept of all meetings of the Trustees in a Minute Book of Meeting of Trustees kept for the purpose;
- 19.11.3 ensure that an Attendance Register is circulated and signed at all Meetings.
- 19.12 The Trustees shall keep all Minute Books of Meetings of Trustees in perpetuity.
- 19.13 On the written application of any Member, the Trustees shall make all Minutes of their proceedings available for inspection by such Member.
- 19.14 All competent Resolutions recorded in the minutes of any meeting of Trustees shall be valid and of full force and effect as therein recorded, with effect from the passing of such Resolutions, and until varied or rescinded, but no Resolution or purported Resolution of 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.
- 19.15 Save as otherwise provided in these presents, the proceedings at any meeting of Trustees shall

be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

19.16 A Resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of Trustees duly convened.

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 person, professional or otherwise, 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.

21 GENERAL MEETINGS OF THE ASSOCIATION

21.1 The Association shall before end of February each calendar year, hold a General Meeting as its Annual General Meeting in respect of the financial year ended February for the prior year, in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices calling it, in terms of clause 22.1 infra.

21.2 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.

21.3 The Trustees shall be entitled, if necessitated by special circumstances, to conduct an Annual General Meeting or any other General Meeting electronically and on any of the generally accepted and recognised electronic meeting platforms subject to compliance with all quorum requirements set out in clause 25.

21.4 The Trustees may, whenever they deem fit, convene a General Meeting, and a General Meeting shall also be convened on a requisition made by not less than 15% (fifteen per centum) of Members eligible to vote, or in default, may be convened by the requisitionists themselves, provided that notice thereof be given in terms of clause 22.1 infra.

22 NOTICE OF MEETINGS

22.1 An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called by 21 (twenty one) days' notice in writing at the least, and a General Meeting, other than one called for the passing of a Special Resolution, shall be called by 14 (fourteen) days' notice in writing at the least. 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 hereinafter mentioned 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 a General 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:

- 22.2 In the case of a meeting called as the Annual General Meeting, by an ordinary majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy, being a majority together holding not less than 20% (twenty per centum) of the total voting rights of all Members;
- 22.3 In the case of any other General Meeting, by an ordinary majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy, being a majority together holding not less than 10% (ten per centum) of a total voting rights of all Members.
- 22.4 The accidental omission to give notice of a meeting or of any Resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or in terms of the Act, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings at, or any Resolution passed at, any meeting.

23 SERVICE OF NOTICES OF MEETINGS

- 23.1 A notice of a meeting shall be in writing and shall be given or served by the Association upon any Member, either personally, by prepaid registered letter or e-mail, properly addressed to the Member at an address nominated by him in the Republic of South Africa or a designated e-mail address..
- 23.2 No Member shall be entitled to have a notice of a meeting served on him at any address not within the Republic of South Africa other than by e-mail, 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.
- 23.3 Any notice of a meeting sent by post shall be deemed to have been served at the time when the letter containing the same was posted or transmitted by e-mail, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted or e-mailed.
- 23.4 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

24 VENUE OF MEETINGS

General Meetings of the Association shall take place at a venue on the Development or at Simola Golf & Country Club upon notice as determined by the Chairman, or in exceptional circumstances, electronically or at a venue as shall be determined by the Trustees from time to time.

25 QUORUM

- 25.1 No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any General Meeting shall be such of the Members entitled to attend and vote thereat in person or by proxy, as together for the time being represent 25% (twenty five per centum) of the total votes of all Members of the

Association entitled to vote for the time being. Notwithstanding the foregoing for as long as the Developer is a member, he shall be entitled to appoint a Chairman of any such meeting.

- 25.2 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, the Members present shall be a quorum.

26 AGENDA AT MEETINGS

In addition, to any other matters required by legislation or these presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- 26.1 the consideration of the Chairman's report to the Trustees;
- 26.2 the election of the Trustees;
- 26.3 the consideration of the financial statement of the Association for the last financial year of the Association preceding the date of such meeting;
- 26.4 the consideration of the budget as presented by the Trustees;
- 26.5 any other business pertinent to such meeting including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions;

27 PROCEDURE AT GENERAL MEETINGS

- 27.1 The Chairman shall preside as such at all General Meetings, provided that should he 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 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.
- 27.2 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 14 (fourteen) 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 adjournment meeting.
- 27.3 Except as otherwise set forth in these presents, all General Meetings shall be conducted in accordance with procedures to be stipulated by the Trustees from time to time, which procedures shall be recorded in the Notices referred to in clause 23 inclusive.

28 MINUTES OF MEETINGS OF THE ASSOCIATION

28.1 The Trustees shall:

28.1.1 ensure that minutes are taken of every meeting of the Association, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting;

28.1.2 cause such minutes to be kept of all meetings of the Association in a Minute Book of Meetings of the Association kept for the purpose;

28.2 The Trustees shall keep all Minute Books of Meetings of the Association in perpetuity.

28.3 On the written application of any Member, the Trustees shall make all Minutes of the proceedings and/or meetings of the Association available for inspection by such Member.

28.4 All competent Resolutions recorded in the minutes of any meeting of the Association shall be valid and of full force and effect as therein recorded, with effect from the passing of such Resolutions, and until varied or rescinded, but no Resolution or purported Resolution of the Association shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such Resolution is competent within the powers of the Association.

28.5 Save as otherwise provided in these presents, the proceedings at any meeting of the Association shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

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.

29.2 The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of these 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, and where an association of persons, by the Secretary thereof.

29.3 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed or a notarially certified copy thereof shall be deposited at the office 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. Any instrument appointing a proxy shall be valid until withdrawn or altered by the grantor thereof.

29.4 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustees at least one hour before the time fixed for the holding of the meeting.

30 VOTING

- 30.1 At every General Meeting every Member in person or by proxy and entitled to vote, shall be allocated 1 (one) vote per single residential Erf; provided that if a single residential Erf is registered in more than one person's name, then they shall jointly have 1 (one) vote.
- 30.2 At any meeting of Members a Resolution put to the vote of the meeting shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by any Member.
- If a poll is duly demanded it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the Resolution of the meeting at which the poll was demanded.
- 30.3 Save as expressly provided for in these presents, no person other than a Member duly registered, and who shall have paid every account and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any General Meeting.
- 30.4 At any General Meeting a Resolution put to the vote of the meeting shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy.
- 30.5 Voting on the election of a Chairman of a General Meeting as referred to in clause 27.1 (if necessary) or on any question of adjournment, shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy.
- 30.6 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.
- 30.7 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 vote, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 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, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the Minutes of the Association to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the 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 of each year.

32 ACCOUNTS

32.1 The Trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association, including:

32.1.1 a record of the assets and liabilities of the Association;

32.1.2 a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;

32.1.3 a register of Members showing in each case their addresses;

32.1.4 individual ledger accounts in respect of each owner.

32.2 On the application of any Member the Trustees shall make all or any of the books of account and records available for inspection by such Member.

32.3 The Trustees shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.

32.4 The Association in General Meeting of the Trustees, may from time to time make reasonable conditions and provisions 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 provisions, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

32.5 At each Annual General Meeting the Trustees shall lay before the Association audited financial statements for the immediately preceding financial year of the Association, or in the case of the first period since the date of incorporation of the Association made up for that period. Such financial statements shall have been drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees and/or as recommended by Auditors, and shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in clause 50 supra, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

33 DEPOSIT AND INVESTMENT OF FUNDS

33.1 The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a General Meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or Investment in terms of clause 33.2.

33.2 Any funds not immediately required for disbursements may be invested in a savings or similar account with any other registered deposit receiving institution approved by the Trustees from time to time.

33.3 Interest on moneys invested shall be used by the Association for any lawful purpose.

34 AUDIT

34.1 At least once in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

34.2 The duties of the Auditors shall be regulated in accordance with generally accepted accounting practice and applicable professional standards in terms of the Public Accountants' and Auditors' Act.

35 INDEMNITY

35.1 All 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 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.

35.2 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 in the case of a Trustee, his duties as Chairman or 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.

35.3 A Trustee shall not be liable for the acts, receipts, neglects or defaults of the Auditors or any of the other Trustees, whether in their capacities as Trustee 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 moneys 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 moneys 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.

36 ARBITRATION

36.1 Should any dispute, question or difference arise between Members or between a Members and Trustees of or in regard to:

36.1.1 the interpretation of these presents; or

36.1.2 the effect of these presents: or

36.1.3 their respective rights or obligations under these presents; or

36.1.4 a breach of (save for non-payment of levies or any other amount due by a member in terms of this Constitution) this Constitution;

such dispute shall be referred to the office of the Ombudsman established in terms of CSOS legislation and in terms of the rules in place from time to time by virtue of such legislation and in particular chapter 3 thereof.

36.2 In respect of any claim arising from non-payment of levies or any other payment due by a Member, or *vice versa*, to the Member, to/from 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 proceeding in any court of competent jurisdiction.

36.3 Notwithstanding anything to the contrary contained in this clause 37, the Trustees shall be entitled to institute legal proceeding on behalf of the Association by way of application, action or otherwise in any court having jurisdiction for the purpose of restraining or interdicting breached of any of the provisions of this Constitution, including the Conduct Rules and Architectural and Landscape Design Manual.

37 DOMICILIUM CITANDI ET EXECUTANDI

37.1 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:

37.1.1 Such address shall be the address of the Chairman or other resident Trustee duly appointed at a General Meeting, or the administrative office of the Association;

37.1.2 The Trustees shall give notice to all members of any change of such address.

37.2 The *domicilium citandi et executandi* of each Member shall be the address in the Republic of South Africa nominated by the Member as contemplated in clause 52 hereof, provided that he shall be entitled from time to time to change the said domicilium but that any new domicilium selected shall be in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Association at its domicilium.

38 LAW APPLICABLE

The Laws of the Republic of South Africa shall apply to the interpretation and implementation of this Agreement and any dispute shall be settled in accordance with such Law.

39 DEVELOPER'S RIGHT OF DEVELOPMENT

- 39.1 The Developer reserves the right to develop the development with Erven and/or dwelling units thereon substantially as indicated on the approved Development Plan which shall form part of the development at any time in the future. The Developer expressly reserves the right in its sole discretion to incorporate the whole or any portion of adjoining land into the development subject only to approval of the Local Authority. The Home Owners Association undertakes not to object to any such incorporation and such portion of the whole of such land incorporated into the development shall be subject to the Home Owners Association Constitution which shall also apply to any purchaser of any sub-divided portion thereof.
- 39.2 No member, other than the Developer shall have any right whatsoever to the income from the sale of any Erf in the Development or property which is still in future to be subdivided during the Development Period.
- 39.3 The Developer shall in all respects exercise his rights to develop reasonably and conform to the approved Development Plan and any amendments and/or additions thereto, as provided for in this Constitution, and general features of the Development as approved by the local Authority.

40 AMENDMENT OF CONSTITUTION

- 40.1 The Developer may amend this Constitution during the development period.
- 40.2 After the expiry of the development period this Constitution may be amended only by a majority of 75% (seventy five percent) of the total voting rights of members present in person or by proxy, a quorum for such meeting being at least 50% (fifty percent) of members.
- 40.3 No amendment to the Constitution may be made after expiry of the development period unless the Member or Members proposing such amendment have given written notice in observance of the provisions of this Constitution and details of such proposal to the Trustees for inclusion on the agenda.
- 40.4 All amendments to the Constitution once approved are to be submitted to and filed with:
- 40.4.1 the local authority;
- 40.4.2 Knysna Municipality;
- 40.4.3 The office of the Ombudsman in terms of the provisions of CSOS legislation where applicable and in particular Regulation 16 thereof.

41 SPORTING FACILITY

The Trustees shall draft rules for members which are to govern the use of the sporting facilities which may be developed by the Home Owners Association which rules shall be binding until the first annual general meeting. At such meeting the rules shall be adopted with or without amendments by the meeting.

42 PROTECTION OF PERSONAL INFORMATION

The Association shall at all times during the performance of its obligations in terms of this Agreement and in compliance with the provisions of the Protection of Personal Information Act ("POPIA"), ensure:

- 42.1 the proper identification of all personal information the Association is authorised to process, how such personal information can be accessed, the purpose of processing thereof and what the Association may or may not do with such information and how long the Association may retain it;
- 42.2 that personal information is complete, accurate and up to date, and not misleading;
- 42.3 that personal information is only processed with a Member's express written knowledge or permission, treated as confidential and not disclosed unless required by law or authorised by a Member;
- 42.4 the processing of personal information in accordance only with this Agreement and to comply with POPIA;
- 42.5 that each of its employees, agents and/or representatives is aware of the Association's obligations under POPIA and this Agreement and have committed themselves to keeping personal information confidential;
- 42.6 that specific technical, administrative and physical security measures are continuously implemented to protect any personal information from loss or damage, or unauthorised access, processing or destruction;
- 42.7 that the security measures implemented be regularly assessed, reviewed and updated and that expert advice be obtained before making any changes to the aforesaid security measures;
- 42.8 the right of a Member to request or perform an audit of the Association's security measures and to assess and verify that the processing is done in accordance with POPIA and this Agreement;
- 42.9 that no outsourcing or processing of personal information to third parties takes place without a Member's written permission;
- 42.10 that if the Association does outsource the processing of personal information, an agreement be concluded with the third party processor containing similar requirements on processing of personal information;
- 42.11 immediate notification to a Member should the Association suspect or believe that personal information has been accessed or acquired by unauthorised persons or used in a manner inconsistent with this Agreement or POPIA;
- 42.12 the liability for any claims against a Member as a result of a breach by the Association of the provisions of POPIA or this Agreement;
- 42.13 assistance to a Member to respond to any queries or requests for access to personal information,

and/or requests for the correction, destruction or deletion of personal information; and
42.14 free of charge, the immediate return, deletion or destroying of personal information in its possession if this Agreement or the membership of a Member is terminated for whatever reason.