

CONSTITUTION

OF THE

DEVONVALE GOLF AND WINE ESTATE PHASE 2

HOMEOWNERS' ASSOCIATION

1. NAME AND ESTABLISHMENT

The **Devonvale Golf and Wine Estate Phase 2 Home Owners' Association** (the Association) is an Association, in terms of section 60 of the Stellenbosch Municipal Land Use Planning By-law, promulgated by notice number 354/2015 dated 20 October 2015, in accordance with the conditions imposed by the competent authority when approving the rezoning and subdivision of the Land as defined in clause 3.14 hereof and as subsequently amended by the Stellenbosch Zoning Scheme By-law which came into effect on 1 November 2019.

2. MAIN BUSINESS

The main business of the Association is to promote, advance and protect the communal interests of Owners (including occupiers of dwellings in the Estate) and in particular in so promoting such communal interests to ensure acceptable aesthetic, architectural and environmental standards on the Land

3. DEFINITIONS

In this Constitution, unless the context indicates the contrary;

- 3.1 **“alienate”** means alienate any Erf or part thereof and includes by way of sale, exchange, donation, deed, intestate, will, cession, assignment, court order or insolvency, irrespective whether such alienation is subject to a suspensive or resolutive condition, and alienation shall have a corresponding meaning.
- 3.2 **“Association”** means **Devonvale Golf and Wine Estate Phase 2 Homeowners' Association**, and shall be an association established pursuant to the provisions of Section 60 of the Stellenbosch Municipal Land Use Planning By-law dated 20 October 2015.
- 3.3 **“Auditors”** means the auditors of the Association.
- 3.4 **“Club”** means the golf club for the golf course, which is not part of the Estate, situated on a different property, the ownership of which does not vests in the Developer, inclusive of Club Facilities.
- 3.5 **“Club Facilities”** shall mean the club house, driving range, pavilions, kitchens, refreshment rooms and other conveniences built and/or erected on the DVWGE, which is not part of the Estate, situated on a different property, the ownership of which does not vests in the Developer, for the general functioning of the Club and any improvements thereto.
- 3.6 **“Developer”** means Devonvale Phase Two (Pty) Ltd, Registration Number 2022/582995/07 and its successors in title and permitted assignees.
- 3.7 **“Development Period”** means the period commencing on the date of sale of the first erf and continue until all the Erven in the Estate have been transferred from the Developer
- 3.8 **“Devon Vale Wine and Golf estate (DVWGE)”** means the Wine and Golf Estate established on the Farm Number 1512 Stellenbosch (of which certain portions have been renumbered Erf 1 and 179 Devonvale), situated in the Stellenbosch Division and Municipality, including the existing residential development (phase 1) on the south eastern side of the estate, south of the main entrance to the estate, this phase 2 development, and the 6 (six) Agricultural Holdings on the Southern Side (known as the Gentleman's estates) inclusive of the Club- and Club Facilities as defined in clauses 3.4 and 3.5 above.

- 3.9 **"Erf / Erven"** means any of the residential Erven depicted on the General Plans of Subdivision for Erf 180, 181, 182 or 183 (all portions of erf 179) Devonvale approved by the Surveyor- General with S.G. numbers 923/2016, 924/2016, 925/2016 and 926/2016, respectively, whether registered or not in accordance with the Deeds Registries Act No. 47/1937.
- 3.10 **"Estate"** means the **Devonvale Golf and Wine Estate Phase 2** to be developed on the Land.
- 3.11 **"Final Date"** shall mean the date 24 (twenty-four) months after the date of registration of transfer of the Erf into the name of a first purchaser in the case of a sale concluded as between the Developer and a first purchaser of an Erf.
- 3.12 **"Financial Year"** means the Financial Year of the Association to be determined from time to time by the Trustees.
- 3.13 **"General Plan"** means the Approved General Plan(s) referred to in clause 3.9.
- 3.14 **"Golf Course"** shall mean the existing 18-hole golf course which is part of the DVWGE.
- 3.15 **"Land"** means the 45 erven, zoned Conventional Residential, Private Roads and Open Spaces indicated on the General Plans referred to in clause 3.9 above.
- 3.16 **"Levy/Levies"** means the levy referred to in Clause 22.
- 3.17 **"Local Authority"** means the Stellenbosch Municipality.
- 3.18 **"Member"** means a member as defined in clause 5 hereof.
- 3.19 **"Non-residential Erven"** means erven other than those defined in clause 3.9 and the erven in phase 1 development, including but not necessarily limited to the Golf Course, Club Facilities, etc.
- 3.20 **"Owner/Owners"** means the registered owner of an Erf/Erven.
- 3.21 **"Person"** shall include a Company, Close Corporation, Trust, Partnership or other Association of persons entitled by law to hold title to immovable property.
- 3.22 **"Private Areas"** means all erven on the Estate, which are identified as private roads and private open spaces.
- 3.23 **"Spouse"** means the husband, wife or life partner of an Owner under any law or custom that is recognised by South African law.
- 3.24 **"Trustees"** means the Board of Trustees of the Association.
- 3.25 Unless the context otherwise indicates, any words importing the singular shall also include the plural and vice versa, words importing any one gender shall also include the others.

4. MAIN OBJECT AND POWERS

The main objects and powers of the Association are:

- 4.1 The exercise of control in the Estate over:
 - 4.1.1 the maintenance of all dwellings, including the external facades and roofs thereof, which maintenance is to be carried out by and at the expense of the Owner;
 - 4.1.2 the maintenance of all buildings and/or structures erected or to be erected on the Estate, other than dwellings and those buildings reserved by the Developer as stipulated in this Constitution, which maintenance is to be carried out by and at the expense of the Association;
 - 4.1.3 the maintenance of all Private Areas including the landscaping of same, all facilities and amenities located on Private Areas and all services but excluding those services located in or on Erven, which maintenance is to be carried out by and at the expense of the Association;
 - 4.1.4 the maintenance and upkeep of all private combined services (water, sewers, sewerage pump stations, roads, storm water and electrical services);

and the following ancillary objects: -

- 4.2 The promotion, advancement and protection of the interests of the Members generally, in all matters affecting the Estate.
- 4.3 To enter into service agreements with the Local Authority or any other authority or supplier of services.
- 4.4 To implement (where necessary) and maintain, in cooperation with the DVWGE, security measures and systems for controlled access to the Estate.
- 4.5 To prescribe measures for the landscaping and development of Erven on the Estate, and for the architectural design and building of improvements to Erven on the Estate so as to ensure a harmonious and aesthetic development of the Estate, and to prescribe measures for the maintenance of such standards of development.
- 4.6 To register where necessary various service servitudes over Private Areas in favour of the Local Authority and to register servitudes in favour of the Erven in the Estate over other land owned by the Association as are from time to time required.
- 4.7 To acquire by way of lease or ownership or otherwise, erven in the Estate constituting Private Areas for the purposes of road access to the Estate and to register transfer of ownership thereof in the name of the Association; to acquire and hold servitudes in the Association's favour for access to the Estate and also for the supply of services, including communication and surveillance and water to the Estate; and to register servitudes over the Association's erven in favour of Erven for communication and surveillance.
- 4.8 The formulation, enforcement, modification, amendment, additions and deletions of Estate Rules and Regulations.
- 4.9 To delegate the management of the Association to a third party.

- 4.10 To include in the Title Deeds of the Private Areas to be transferred to the Association, that save for the Association's successors in title, all such erven shall not be sold, alienated, otherwise disposed of or transferred to any other party, nor mortgaged.
- 4.11 To register servitudes of access over the Private Areas in favour of the Estate.
- 4.12 To pay the bulk water account.
- 4.13 Trustees to be responsible and have the right to inspect, repair, replace and/or test any water meter serving an Erf. Cost for the normal wear and tear of the water meter will be borne by the Association. Any damage to a water meter due to negligence, vandalism, or theft will be for the individual Owners' account.
- 4.14 To collect the membership levies and subscription fees on behalf of the Club and Club facilities.

5. MEMBERSHIP

- 5.1 Membership of the Association shall be compulsory for:
 - 5.1.1 Every Owner in the Estate, except for the Developer;
- 5.2 Such membership shall commence simultaneously with the transfer of an Erf into the name of the Owner.
- 5.3 Membership shall be limited to all the Owners in the Estate, excluding the Developer, provided that:
 - 5.3.1 a person who is entitled to obtain a certificate of registered title to any Erf shall be deemed to be the Owner thereof;
 - 5.3.2 where an Erf is owned by more than one person, a company, close corporation, partnership or trust all the Owners or the holders of proprietary interests in such company, close corporation, partnership or trust shall together be deemed to be one Member of the Association and shall have the rights and obligations of one Member of the Association and nominate one person to represent them and vote at meetings of the Association.
 - 5.3.3 save for the Developer, an Owner shall not be entitled to consolidate more than two Erven and any consolidated Erf shall be treated as one Erf. Any Owner or person wishing to consolidate two Erven may only do so with the consent of the Developer, during the Development Period and thereafter the Association and subject to such terms and conditions as may be imposed by the Developer / the Association in their sole discretion.
- 5.4 When a Member ceases to be the Owner of an Erf, he shall ipso facto cease to be a Member of the Association.
- 5.5 A Member shall not be entitled to:
 - 5.5.1 sell or transfer an Erf unless it is a condition of the sale that;
 - 5.5.1.1 the transferee becomes a Member of the Association;

5.5.1.2 the registration of transfer of the Erf into the name of the transferee shall *ipso facto* constitute the transferee as a Member of the Association.

5.5.1.3 he first obtains the written consent of the Association, which consent will be given provided the purchaser of such Erf agrees in writing to abide by the terms of the Constitution of the Association and any rules and regulations made in terms of the Constitution, and provided further that such Member has paid all levies and any other amounts owing by him to the Association and all outstanding annual / monthly subscriptions to the Club as at the date of transfer of the Erf. The restriction against alienation and transfer referred to herein shall be registered against the Title Deeds of all Erven.

5.6 A Member shall not without the prior written approval of the Association:

5.6.1 erect any building and/or structures of any nature whatsoever on his Erf;

5.6.2 make any changes or alterations to existing buildings and/or structures on his Erf, including changes to external colour scheme;

5.6.3 install or fix burglar bars to any external windows or doors of the buildings on his Erf;

5.6.4 erect or construct any pergolas, patio awnings, shade ports, car ports, washing lines, wendy houses, walls or any other structures which may affect the external appearance of the improvements on his Erf;

5.6.5 sink a borehole or a well or construct any water body/water feature or pond on his Erf.

5.7 The consent of the Association as contemplated in clause 25 shall only be given;

5.7.1 after detailed plans of the proposed work have been submitted to the Association, or any person nominated by the Association;

5.7.2 the Association or their nominee are satisfied that the proposed work is in accordance with the Architectural and Landscape Architectural Framework, for the purposes of which, the Association or their nominee shall be the sole arbiter and their decision shall be final and binding on the Member; and

5.7.3 the Member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the Trustees or their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature.

5.8 The Association may, by regulation issue a membership certificate, which certificate shall be in such form as may be prescribed by the Association.

5.9 The rights and obligations of a Member shall not be transferable, and every Member, except for the Developer shall;

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

5.9.2 observe all the Rules and Regulations made by the Association;

5.9.3 be jointly liable with all the Members for expenditure properly incurred in connection with the Association, insofar as third parties are concerned, provided that nothing

contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the mortgagee of that Member's Erf.

- 5.9.4 Be obliged to remain a member of the Club and the associated Club Facilities for the duration of his membership to the association.

6. MANAGEMENT

- 6.1 The affairs of the Association shall be managed and controlled by a Board of Trustees consisting of 5 (five) Trustees to remain in office for one year, 1 (one) of whom shall be a representative of the Club (and as such be nominated by the Club), the remaining 4 (four) to be elected by a majority vote of the Members of the Association.
- 6.2 Within 60 (sixty) days of establishment of the Association the Developer shall call a general meeting of Members for the purpose of electing the trustees as provided in clause 6.1 above.
- 6.3 The Trustees to be elected by majority vote by Members of the Association as contemplated by clause 6.1, and subsequent Trustees, shall after proposal and seconding, be elected by ballot or show of hands (if the meeting so determines) of those Members who attend the general meeting of the Association, and successive Trustees shall be elected likewise at each successive annual general meeting of the Association, provided that no Member or Spouse shall be eligible for election unless he shall have been duly nominated and seconded in writing by other Members and such written nomination, duly endorsed by the nominee, shall have been handed to the Association secretary not later than the day preceding the meeting and provided further that an Owner shall only be eligible to serve as a Director if his levies and his Club Subscription fees for the current year shall have been duly paid, or in the case of a Spouse, he has obtained the written consent of the Owner with whom he shares the relationship and such Owner's levies and Club subscription fees for the current year shall have been duly paid. Save for the representatives of the Developer, only Owners or Spouses shall be eligible to serve as Trustees. An Owner shall not be eligible to serve as a Trustee in the event that he has given his Spouse written consent to stand for nomination as a Trustee or if his Spouse is the Trustee representative of the Club's committee and a Spouse shall not be eligible to serve as Trustee in any capacity, if the Owner with whom he shares the relationship is the Trustee appointed by the Club's committee. If the Owner is a company, close corporation, trust or other association of persons, the duly authorised representative of such entity shall be eligible to serve as a Trustee.
- 6.4 The Trustees shall be a total of 5 (five) and consist of a chairperson, secretary/treasurer or managing agent appointed for this function. The Trustees shall from their ranks elect a chairperson. A quorum of the Trustees shall consist of 3 (three) Trustees. Should a quorum not be formed as aforesaid, the meeting shall stand adjourned until a time to be decided upon by the chairperson. All matters at any meeting shall be determined by a majority of those present and voting. In the event of an equality of votes, the chairperson of any meeting shall have a casting as well as deliberative vote.
- 6.5 The Trustees, shall cease to hold office: -
- 6.5.1 at every Annual General Meeting ('AGM'), but shall be eligible for re-election;
 - 6.5.2 by notice to the Board of Trustees if he resigns his office;
 - 6.5.3 if he is removed from office by the majority vote of the Trustees;
 - 6.5.4 if he absents himself from 3 (three) consecutive meetings of the Trustees without leave of absence;

- 6.5.5 if he or the Owner he represents / is a spouse of ceases to be the Owner of the Erf a Member of the Association;
- 6.5.6 upon his estate being sequestrated, whether provisionally or finally;
- 6.5.7 upon the commission by him of any act of insolvency;
- 6.5.8 upon his conviction of any offence involving dishonesty;
- 6.5.9 upon the formal withdrawal by the Owner of his written consent, as provided for in clause 6.3, in the case of a Spouse alternatively upon the termination of the relationship between the Owner and the Spouse with whom he shares such relationship, whichever event is the earlier;
- 6.6 Vacancies on the Board of Trustees may be filled by co-option at the instance of the majority vote of the Members.
- 6.7 Trustees shall receive no remuneration but will be entitled to a refund of reasonably incurred expenses in the execution of their duties.
- 6.8 No Trustee shall be liable to the Association or any Member thereof or to any other person whomsoever for any act or omission by himself, the Association or its servants or agents. Every Trustee is indemnified by the Association against any loss suffered by him in consequence of any purported liability provided that such Trustee has, upon the basis of information known to him, acted in good faith and without gross negligence and/or without dishonesty.
- 6.9 Meetings of the Trustees shall be held as frequently as may be decided by the Trustees, and minutes shall be kept of all meetings and decisions.
- 6.10 Proper books of account of the administration and finances of the Association shall be kept, and financial accounts shall be drawn and audited annually, by the Auditors.

7. STATUS OF THE DEVELOPER

- 7.1 No person or any Member of the Association shall prevent or hinder in any way the Developer from;
 - 7.1.1 gaining access to and egress from the Estate.
 - 7.1.2 continuing its building and/or construction operations at the Estate.
 - 7.1.3 marketing and selling any Erven.
 - 7.1.4 generally carrying on its business operations, provided that the provisions of clause 7.1.1 shall not be interpreted as allowing the Developer access onto any of the Erven already transferred to a Member unless 48 (forty eight) hours prior written notice has been given to the Member concerned, unless such access is required to conduct its normal building operations or to inspect work in progress. The Developer shall make good any subsequent damage to plants, property or improvements thereon to the satisfaction of the Member. No Member shall be entitled to refuse the Developer immediate access if the required reasonable notice has been given.
 - 7.1.5 the Developer shall have the sole right of appointment and dismissal of any managing agent during the Development Period.

8. ACCESS TO THE ESTATE AND SERVITUDES

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

9. TERMINATION OF MEMBERSHIP

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

10. MEETINGS

- 10.1 The annual general meeting shall be held on a date fixed by the Trustees no later than 6 (six) months after the end of the Financial Year and 28 (twenty-eight) days written notice thereof, including the agenda shall be sent to all Members by the Association secretary. A full annual report of the Trustees shall be tabled at every annual general meeting. Each said meeting shall also include the election of Trustees for the forthcoming year, adoption of financial reports and the determination and approval of the Levy for the forthcoming year.
- 10.2 Special general meetings may be called by the Trustees whenever they consider it desirable and shall be called upon the requisition in writing of no less than 3 (three) Trustees, on 28 (twenty-eight) days written notice by the Association secretary specifying the business to be discussed.
- 10.3 At all meetings the chair shall be taken by the chairperson of the Trustees. In the absence of the chairperson, the Members present shall elect a chairperson.
- 10.4 The chairperson shall not have a casting vote and a quorum at all general meetings shall consist of Members (including persons holding proxies on behalf of Owners), owning at least 25% of the total votes.
- 10.5 If within half (1/2) an hour from the time appointed for any meeting of the Association, a quorum is not present, the meeting shall be adjourned to a date not earlier than 14 (fourteen) days and not later than 30 (thirty) days after the date of such adjourned meeting on written notice to the Members. If at such adjourned meeting a quorum is not present within half (1/2) an hour of the time appointed for the meeting, the Members present in person or by proxy and entitled to vote shall form a quorum.
- 10.6 At all meetings votes on any matter shall be by show of hands of those present, unless the meeting decides otherwise, the majority vote to count.

11. VENUE OF MEETINGS

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

12. AGENDA AT MEETINGS

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

12.1 the consideration of the chairperson's report to the Trustees;

12.2 the election of the Trustees;

12.3 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.

12.4 the consideration of the balance sheet and income statement of the Association for the last Financial Year of the Association.

12.5 the consideration and approval of the report of the Auditors;

12.6 the consideration and approval of the levy/levies, for the next financial year; and

12.7 the consideration and the fixing of the remuneration of the Auditors for the Financial Year of the Association for the next financial year;

12.8 the consideration and approval of the budget for the following financial year.

13. PROXIES

13.1 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 authorized agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf provided that person is duly authorized thereto. Where a Member is a company, the proxy may be signed by the chairperson of the board of Trustees of the company or by its secretary, and where an association of persons, by the secretary thereof.

13.2 The instrument appointing the 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 office of the Association's

Managing Agent at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument, is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution.

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

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

14. VOTING

- 14.1 At every general meeting: -

- 14.1.1 the Developer shall during the Development Period have 50 (fifty) votes and shall in addition have 1 (one) vote for each Erf not as yet transferred by the Developer to an Owner. A representative of the Developer shall in person, or by proxy be entitled to cast such votes.
- 14.1.2 Once the development is completed the Developer will retain a veto right regarding any decision that may influence the aesthetic values as envisaged by the Developer at the commencement of the development.
- 14.1.3 every other Member or his duly authorised representative in the case of clause 5.3.2 being applicable, in person or by proxy and entitled to vote shall have one vote for each Erf registered in his name provided that if an Erf is registered in more than one person's name, then they shall jointly have one vote.
- 14.2 Save as expressly provided for herein, no person other than a Member, and who shall have paid the Levy and other amount (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, and who shall have paid his annual / monthly Club subscription fees as determined in accordance with clause 27 (2) and 27(3), shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 14.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairperson of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 14.4 Notwithstanding the provisions of clause 14.3 aforesaid, voting on the election of a chairperson of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote, unless a poll is (before or on declaration of the result of the show of hands) demanded by the chairperson or any of the Members in terms of clause 14.5 below.
- 14.5 When a poll is demanded, it shall be taken in such manner as the chairperson may direct, either immediately or after an interval or adjournment.
- 14.6 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 14.7 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the general meeting shall be entitled to a casting vote.

- 14.8 Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry into the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the chairperson of the meeting as to the result of any voting at the meeting.
- 14.9 In the event of an Erf being subdivided then each Owner of a sub-divided portion thereof shall hold one vote.

15. SPECIAL RESOLUTION

- 15.1 Notwithstanding the provisions of clause 10.2, a resolution by the Association shall be a special resolution if at a general meeting of which not less than 21 (twenty one) clear days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which Members holding in aggregate not less than 50% (fifty per centum) of the total votes of all the Members entitled to vote thereat, are present in person or by proxy, the resolution has been passed by not less than 75% (seventy five per centum) of the number of Members of the Association entitled to vote at the meeting who are present in person or by proxy.
- 15.2 If less than 50% (fifty per centum) of the total votes of all the Members entitled to attend the meeting and to vote thereat are present or represented at a meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned to a date not earlier than 14 (fourteen) days and not later than 30 (thirty) days after the date of the meeting and the provisions of clause 15.3 below shall apply in respect of such adjournment.
- 15.3 Whenever a meeting is adjourned for 10 (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.
- 15.4 In the event that a quorum is not present at the adjourned meeting a fresh notice as provided for in clause 15.1 above shall be issued.

16. ACCOUNTS

- 16.1 The Association in general meeting or the Trustees, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 16.2 At each AGM the Trustees shall lay before the Association a proper income and expenditure account for the preceding Financial Year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last Financial Year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustees and the Auditors, and there shall be attached to the notice sent to Members convening each annual general meeting, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

17. AUDIT

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

18. SERVICE OF NOTICES

- 18.1 A notice shall be in writing and shall be given or served by the Association on any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the address of the Erf owned by him or by electronic mail at the e-mail address nominated by such Member.
- 18.2 No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of service of notices, or such other address as the Member is obliged to furnish to the Association.
- 18.3 Any notice by post shall be deemed to have been received within 7 (seven) days from the date when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient proof that the letter containing the notice was properly addressed and posted. Any notice by e-mail shall be deemed to have been received on the same day as same was transmitted by the sender.
- 18.4 The non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

19. INDEMNITY

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

damage or misfortune whatsoever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or intentional breach of duty or breach of trust.

20. ARBITRATION

20.1 Any dispute, question or difference arising at any time between Members or between Members and Trustees out of or in regard to;

20.1.1 any matters arising out of this Constitution; or

20.1.2 the rights and duties of any of the parties mentioned in this Constitution; or

20.1.3 the interpretation of this Constitution;

shall be submitted to the Trustees and unless such dispute is resolved by the Trustees to the satisfaction of the parties to the dispute within 30 (thirty) days of such submission, the dispute shall be referred to and be decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.

20.2 Arbitration shall be held in Cape Town informally and otherwise upon the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that, if possible, it shall be held and concluded within 21 (twenty one) business days after it has been demanded.

20.3 Save as otherwise specifically provided herein, the arbitrator shall be, if the question in dispute is:

20.3.1 primarily an accounting matter – an independent accountant;

20.3.2 primarily a legal matter – a practicing counsel or attorney of not less than 10 (ten) years standing,

20.3.3 any other matter – an independent and suitably qualified person appointed by the Auditors;

as may be agreed upon between the parties to the dispute.

20.4 If agreement cannot be reached between the parties to the dispute on whether the question in dispute falls under clauses 20.3.1, 20.3.2 or 20.3.3 or on a particular arbitrator in terms of clause 20.3 within 3 (three) business days after the arbitration has been demanded, then:

20.4.1 the President for the time being of the Legal Practice Council or its successors shall determine whether the question in dispute falls under clauses 20.3.1, 20.3.2 or 20.3.3; or

20.4.2 the President for the time being of the Legal Practice Council shall appoint the arbitrator in terms of clause 20.3 within 7 (seven) business days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 (twenty one) business days referred to in clause 20.2 above.

20.5 The arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in this Constitution. The arbitrator may determine that the costs of the arbitration and the applicable scale be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

- 20.6 The decision of the arbitrator shall be final and binding and may be made an order of the Cape Provincial Division of the High Court of South Africa or its successor/s upon the application of any party to the arbitration.
- 20.7 Notwithstanding anything to the contrary in clauses 20.1 to 20.6 inclusive, the Trustees shall be entitled in their sole and absolute discretion to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any court having jurisdiction.

21. AMENDMENTS TO CONSTITUTION

- 21.1 This Constitution, or any part thereof, shall not be repealed or amended, and no new rules shall be made, save by a Special Resolution adopted at an annual general meeting or a general meeting of the Members and subject further to the prior written consent of the Local Authority and Devonmust (Pty) Ltd being obtained for the amendment of this clause and clauses 1, 2, 3, 4, 5 and 7 of this Constitution and subject further to the prior written consent of the Developer during the Development Period being obtained for the amendment of this clause.
- 21.2 The following rules shall not, unless as otherwise provided for herein, be repealed or amended:
- 21.2.1 All Members of the Association shall be entitled to make use of the Golf Course, Club Facilities and Recreational Facilities upon such terms as may be prescribed from time to time in relation to such use, unless as otherwise provided herein and in the Constitution of the Club.
- 21.2.2 The Association guarantees the rights of unaccompanied paying guests at any hotel, spa or any other amenities and facilities to be established by the Developer or its nominees or assigns on the Land to utilize the Golf Course, Club Facilities and Recreational Facilities subject to the rules and regulations prevailing at the time.
- 21.2.3 The Association be entitled to register servitudes over the Estate in favour of the Local Authority where required and such other servitudes as are required to enable the Association to carry out all or any maintenance or services which it may undertake or have undertaken to perform.
- 21.2.4 The Association shall have the power to acquire ownership or to lease and to register servitudes over and in favour of portions of any adjoining properties for the purpose of extensions to the Golf Course, Club Facilities, Private Areas and Recreational Facilities and in the case of ownership, to consolidate such portions with the Land, if required.

22. LEVIES

- 22.1 The Trustees may from time to time, impose upon the Members, Levies, for the purpose of meeting all the expenses in relation to the facilities and services, and for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and the Association's affairs. In calculating the amount of the Levies, the Trustees shall take into account income, if any, earned by the Association. Such Levies shall not include costs incurred for the maintenance of the Golf Course, Club Facilities or Recreational Facilities.

- 22.2 The Trustees may from time to time, when necessary impose special levies upon the Members or call upon them to make special contributions in respect of all such expenses as are mentioned in clause 22.1 and the amount of such special Levies. The manner of payment thereof by Members shall be at the discretion of the Trustees.
- 22.3 The Developer shall not be responsible for the payment of Levies in respect of any unsold Erven, save where the Erf in question has been developed by the Developer and is occupied by a third party. For purposes hereof, "developed" shall mean the erection and completion of any habitable structure. The Developer shall however pay a *pro rata* share of the rates and taxes (if any) as levied by the Local Authority, proportionate to the extent of the land still held by it. Notwithstanding the provisions of clause 22.1, 22.2 and 22.3 the Developer's contribution towards the expenses shall be limited to the shortfall between the operating costs and the ordinary Levies receivable.
- 22.4 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 Member of the Association, without prejudice to the Association's right to recover arrear Levies. No Levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member's successor-in-title to an Erf shall be liable, as from the date upon which he becomes a Member pursuant to the transfer of that Erf into his name, to pay the Levy attributable to that Erf. No Member shall be entitled to transfer his Erf until the Association has certified that the Member has at the date of transfer paid all amounts owing by him to the Association.
- 22.5 In calculating the Levy payable by each Member, the Trustees may as far as reasonably practical, and in their sole discretion:
- 22.5.1 assign those costs arising directly out of or directly attributable to the Erf itself or the Owner thereof,
- 22.6 The Director's decision in calculating the Levy shall be final and binding on all Members.
- 22.7 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every Levy and other sum (if any), which shall be due and payable to the Association in respect of his membership thereof.
- 22.8 Interest shall accrue to all arrear Levies and other amounts owing by a Member to the Association at the maximum interest rate permitted by the National Credit Act No. 34 of 2005.
- 22.9 Notwithstanding the provisions of clause 22.8 and without prejudice to its right to recover interest as set out in clause 22.8, the Association shall be entitled to penalize any Member who fails to pay a Levy (or any other debt due to the Association) timeously, or who fails to complete the construction of his dwelling and the establishment and landscaping of his garden within the stipulated time period, in an amount to be determined by the Trustees from time to time.
- 22.10 Where an Erf is owned by a company, close corporation or trust, the Trustees/members/Directors of such company / close corporation / trust shall be obliged to bind themselves, jointly and severally, in their personal capacities to the satisfaction of the Trustees, as sureties and co-principal debtors with the said company / close corporation / trust to and in favour of the Association for the due and punctual performance by the said company / close corporation / trust of its obligations to the Association howsoever arising.

23. POWERS OF THE TRUSTEES

- 23.1 The management and administration of the Association shall vest in the Trustees which may exercise all such powers of the Association and do, on behalf of the Association, all such acts as may be exercised and done by the Association itself.
- 23.2 Subject to the express provisions of this Constitution, the Trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of any managing agent, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association in general meeting, subject however to such rules as may have been made by the Association in general meeting or as may be made by the Trustees from time to time.
- 23.3 Save as specifically provided otherwise in this Constitution, the Trustees shall at all times have the rights to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, architects, engineers, town planners, managing agents, environmental consultants, and any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustees and on such terms as the Trustees shall decide, subject to any of the provisions of these presents.
- 23.4 The Trustees shall further have the power:
- 23.4.1 to require that any construction of any sort on the Estate shall be supervised to ensure that the provisions of this Constitution and the Estate rules are complied with and that all such construction is performed in a proper and workmanlike manner.
 - 23.4.2 to issue, add to or amend from time to time Architectural and Landscape Architectural Framework, environmental design and maintenance manual or instruction in respect of the Estate, and to ensure the manual is complied with at all times.
- 23.5 The Trustees shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 23.6 The Trustees shall have the right to appoint committees consisting of such number of Members and such outsiders, including a managing agent, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the Trustees may from time to time deem necessary.
- 23.7 The Trustees shall appoint an architectural review committee to exercise the powers set out above in clause 23.4 which may, but shall not necessarily consist of:
- 23.7.1 a practicing professional architect or town planner duly qualified to practice as such for his own account in the Republic of South Africa and a landscape architect;
 - 23.7.2 one Director who, during the Development Period, shall be a representative of the Developer;
 - 23.7.3 such other Members as the Trustees may determine.
- 23.8 Members of the architectural review committee shall not be required to be Members of the Association.

- 23.9 Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the Developer, all plans for buildings, out-buildings, structures, additions and alterations shall be approved by the architectural review committee, or any person designated by them for the purpose. Should any Member feel aggrieved by the decision of the architectural review committee, he shall be entitled to lodge an appeal with the Trustees, who shall be entitled to rescind the decision of the architectural review committee after having given due consideration thereto and if in their sole and absolute discretion the circumstances so allow.
- 23.10 The trustees shall collect the annual compulsory membership subscription- levies and subscription fees for the Club and Club Facilities as provided for in clauses 28.1.1 & 28.1.2 hereunder from the members and pay it to the Club.

24. ALIENATION

24.1 Alienation by Members:

24.1.1 A Member shall not in any manner alienate an Erf unless:

24.1.1.1 the proposed transferee has irrevocably bound himself to become a Member of the Association and to observe the Constitution and rules of the Association for the duration of his ownership of the Erf;

24.1.1.2 the Association has given its written consent thereto and has issued a clearance that all amounts owing to the Association by such Member have been paid and that the Member is not in breach of any of the provisions of this Constitution; and

24.1.1.3 the proposed transferee acknowledges that upon the registration of transfer of the Erf into his name he shall *ipso facto* become a Member of the Association.

24.1.2 The provisions of clause 24.1 shall apply mutatis mutandis to any alienation of any undivided share in an Erf.

24.1.3 This Constitution shall also bind any person occupying an Erf and no Member shall let or otherwise part with occupation of his Erf whether temporarily or otherwise unless the proposed occupier has agreed to be bound by this Constitution. Notwithstanding this, an Owner shall always remain bound by this Constitution and be required to ensure compliance therewith by an occupier.

24.1.4 Such restrictions as are registrable will be registered against the title deeds of all the Erven in order to give effect to the terms of this clause. The Members shall be bound by this clause whether or not such restrictions are registered.

24.2 Alienation of Private Roads, Private Areas and/or Common Areas;

24.2.1 Neither the whole nor any portion of the Private Roads, Private Areas and/or Common Areas may be sold, let, alienated or otherwise disposed of, sub-divided, transferred or mortgaged, or be subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude other than servitudes in favour of the Local Authority for services and those referred to in this Constitution, without the sanction of a special resolution of the Association and the prior written consents of the Local Authority, the Developer whilst within the development period, and Devonmust (Pty) Ltd.

25. OBLIGATIONS TO BUILD

The Owner must comply with the Architectural and Landscape Architectural Framework and in order to maintain high standards and to ensure an attractive and harmonious development: -

- 25.1 Subject to the provisions of clause 23.9, no building or structure may be erected on the Estate and/or the external appearance (including the colour) or any existing or future building or structure may not be changed unless the architectural design plans and specifications (including materials) of such building or structure have been approved by the Association or a person nominated by the Association.
- 25.2 All buildings and structures shall be built in a good and proper and workmanlike manner and strictly in accordance with the plans and specifications approved in accordance with 25.1 above.
- 25.3 The member is bound to contract with the approved builder of the Developer to erect a dwelling on the Erf.
- 25.4 The member will, in terms of the building contract entered into with the contractor which document will be attached to the Deed of Sale, appoint the Developer as the contract manager who will be the link between the building contractor and the member. The Developer in his capacity as contract manager will be receiving a management fee for the services that he will be rendering in terms of the building contract.
- 25.5 Each erf will have a specific set of building plans which is unique and specifically designed for the erf taking into account location and aesthetics, containing the minimum specification required by the Developer. The member will have the option to amend the specifically designed building plans, in accordance with the specification schedule save for the minimum specifications that will have to remain unchanged.
- 25.6 The costs of preparing amended building plans as well as the cost of obtaining Local Authority approval of the said plans will be payable by the Member.
- 25.7 **The Member shall commence the construction of the Dwelling within 2 (Two) years from transfer having taken place, and complete the construction and establish and landscape the garden on the Property within 1 (One) year of such commencement.**
- 25.8 Notwithstanding anything to the contrary foregoing and notwithstanding the fact that a Member is up to date with payment of his Levies and any other amount that may be due to the Association, in the event that the construction of the dwelling and the establishment and landscaping of the garden are not completed within the period stipulated in 25.7 above (or within such extended period as set out above), the rights to the use of the Golf Course, Club Facilities and Recreational Facilities by the Member shall automatically be suspended until such time as the construction of the dwelling and the establishment and landscaping of the garden have been completed.

- 25.9 Notwithstanding anything to the contrary foregoing, if construction of the dwelling and the establishment and landscaping of the garden have not been completed within the time period prescribed in this clause or within such extended period as may be granted as set out above, the Developer, during the Development Period, and thereafter the Association shall, in its sole discretion be entitled to give notice in writing to the Member to complete the construction of the dwelling, and the establishment and landscaping of the garden within a period of 7 (seven) months from the date of such notice and failing compliance with such notice, the Developer or the Association as the case may be shall have the right to re-purchase the Erf from the Member, who shall be obliged at its cost to re-transfer the Erf to the Developer/Association at the original purchase price paid by the first purchaser of the Erf from the Developer, less any damages as may be suffered by the Developer/Association consequent upon the Member's breach and which shall include damages necessarily incurred by the Developer/Association in the demolition and removal of any partially constructed buildings on the Erf. The Member shall not be entitled to receive any compensation for any improvements made by it to the Erf.
- 25.10 Registration of the transfer pursuant to 25.9 above shall be attended to by the Developer's/Association's conveyancers and the Member hereby irrevocably appoints the Developer/Association as his attorney and agent for the purpose of signing the Power of Attorney to pass transfer and all other transfer documents as may be requisite in order to give effect to the foregoing.
- 25.11 Should the Developer not re-purchase the Property as envisaged in clause 25.9 above and if **construction of the dwelling and the establishment and landscaping of the garden have not been completed within the time period prescribed in this constitution, then the Association shall levy a penalty against the Member for not complying, which penalty shall not exceed one months' normal levy.**
- 25.12 The stipulations contained in this clause 25 shall be binding on the Member and his successors in title and the Member shall include such stipulations in a Deed of Alienation for the sale of the Erf to a purchaser thereof.
- 25.13 The Association shall be entitled to withhold its consent to the transfer of the Erf unless the proposed Member, has undertaken in writing to be bound by this Constitution with effect from the date on which the Member's obligations cease.
- 25.14 The proposed Member shall not, prior to transfer, effect any improvements to the Erf without first obtaining the written consent of the Developer during the Development Period and thereafter the Association. Under no circumstances shall the Developer during the Development Period and thereafter the Association be liable to compensate the proposed Member for any such improvements to the Erf, whether made with or without the Developer's/Association's consent.
- 25.15 The foregoing obligations relating to the erection of a dwelling on each Erf shall not apply to the erven still registered in the name of the Developer whether separately or as part of the remainder of the Land.
- 25.16 It shall always remain an Owner's obligation to ensure that he is in possession of the latest version of the documentation referred to in clause 23.4.2.

26 **THE FINAL DATE**

- 26.1 The Final Date may be extended by the Developer in its sole and absolute discretion during the Development Period, and thereafter the Association, which extension will only be valid if reduced to writing and signed by both the Developer/Association and the Owner. Completion shall have occurred only upon the issue of a Certificate of Completion and the issue of a Landscaping Certificate by the Developer during the Development Period and thereafter the Association.
- 26.2 If the Member fails to commence the construction of the dwelling by the Final Date, the Association shall be entitled, without prejudice to any other rights which it may have in terms of this Constitution, and/or at law at its election to require the Member, to landscape and irrigate the Erf at the cost and expense of the Owner, failing which the Association shall be entitled to do same on the Owners behalf and recover from the Owner all amounts so disbursed.

27 **ESTATE RULES**

- 27.1 Subject to this Constitution, to any restriction imposed or direction given at a general meeting of the Association and subject to any condition imposed by the Local Authority, in approving the rezoning and subdivision of the Land, the Trustees may from time to time make rules and vary or modify these rules, in regard to among other things:
- 27.1.1 the standards and guidelines of all buildings and out-buildings, structures of any nature, swimming pools and all additions or alterations of any such buildings, out-buildings or structures erected or to be erected on the Erven in accordance with the Architectural and Landscape Architectural Framework and in particular to control the design and colour of the exterior of such buildings, out-buildings or structures and the materials to be used on such exteriors to ensure an attractive and aesthetically pleasing character to all buildings on the Estate;
 - 27.1.2 the siting of all buildings and improvements on the Erven, the use of motor vehicles and the parking of vehicles, including trucks, caravans, trailers and boats and the use of the roads;
 - 27.1.3 the use of Private Areas and the restrictions for the use and enjoyment thereof including the preservation of the natural environment vegetation and fauna and flora on the Estate;
 - 27.1.4 the right to prohibit, restrict or control the keeping of any animals which they regard as dangerous or a nuisance;
 - 27.1.5 the conduct of any persons within the Estate for the prevention of nuisance of any nature to any member;
 - 27.1.6 the use of services and Recreational including the right to charge a reasonable fee for the use thereof;
 - 27.1.7 the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the Members and/or the residents of the Estate;
 - 27.1.8 the maintenance of all buildings, out buildings, structures, improvements of any nature and landscaping of individual Erven and the Estate;
 - 27.1.9 the control of the number of occupiers permitted on any one Erf;

- 27.1.10 the admission of any person to the Estate, and the eviction of any person not entitled to be thereon;
 - 27.1.11 maintenance of Private Areas;
 - 27.1.12 refuse disposal;
 - 27.1.13 use of waterways and amenities relating thereto;
 - 27.1.14 the operation of business operations and the restrictions relating thereto;
 - 27.1.15 installation of air conditioning units, television aerials, satellite dishes and any other communication equipment;
 - 27.1.16 littering;
 - 27.1.17 responsibility of the Members for the activities of domestic employees and their guests and access of such persons to the Estate. This estate must be in possession of the personal information of all domestic workers and must be duly informed should a domestic employee's service be terminated;
 - 27.1.18 security;
 - 27.1.19 letting and re-selling of Erven;
 - 27.1.20 the imposition of fines and other penalties;
- 27.2 For the enforcement of any of the rules made by the Trustees in terms of this clause, or of any of the provisions of this Constitution generally, the Trustees may:
- 27.2.1 give notice to the Member concerned requiring him to remedy such breach within such period as the Trustees may determine; and/or
 - 27.2.2 take or cause to be taken such steps, as they may consider necessary to remedy the breach of the rule or provision of which the Member may be guilty, and debit the cost of so doing to the Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Association; and/or
 - 27.2.3 take such action including the imposition of a fine not exceeding the member's monthly levy, or proceedings in court, as they may deem fit.
- 27.3 Should the Trustees institute any legal proceedings against any Member or resident on the Estate for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 27.4 In the event of any breach of the rules by the members of any Member's household or his guests or lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Trustees may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.

- 27.5 If any Member disputes the fact that he has committed a breach of any of the rules, an appeal committee consisting of 3 (three) Members, of which 2 (two) shall during the Development Period be appointed by the Developer and the 3rd Member (and all three Members after the Development Period) be appointed on a rotational basis by the Trustees from a panel of 10 (ten) Members willing to fulfil this function. The appeal committee shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as such appeal committee may direct. The decision of the appeal committee shall be final and binding.
- 27.6 Notwithstanding anything to the contrary herein contained, the Trustees may in the name of the Association enforce the provisions of any rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel, as they may deem fit.
- 27.7 The Association may in general meeting itself make any rules in regard to any matter and may also vary or modify any rule made by it or by the Trustees from time to time.
- 27.8 All rules must be reasonable and must apply equally to all Owners of Erven put to substantially the same use.

28.1 THE GOLF COURSE, CLUB, CLUB FACILITIES

- 28.1.1 One nominated full membership of the Club shall be compulsory for each erf. All and any subscription fees due by an Owner entitling the Owner, his family and guests' entry into any of the Recreational Facilities shall be included in such Owner's annual/monthly Club subscription fees.
- 28.1.2 The subscription fees will be collected annually by the Association and paid to the Club on receipt thereof. The member shall be obliged to pay the normal annual subscription fees unless it is discounted by the club at its discretion.
- 28.1.3 On termination of a member's membership, the pro rata portion of the subscription fees for the remainder of the year will not be refunded to the member, however, the new owner will be credited accordingly. The member must therefore collect these fees directly from the new owner.
- 28.1.4 All club, Club, and Recreational entrance fees, annual/monthly subscriptions, green fees and/or usage fees shall be determined from time to time by the relevant establishment and its successors to the Golf Course and/or Club and/or Club Facilities and/or Recreational Facilities and/or other facilities and amenities.
- 28.1.5 The owners of the Non-residential Erven shall not be liable to pay any Levies to the Association.

28.2 MAINTENANCE OF DWELLINGS AND GARDENS ON THE ERVEN

- 28.2.1 The Association shall be responsible for exercising control over the painting of the exterior of all residential dwellings on the Estate. The responsibility and cost of the painting, maintenance and upkeep of the dwellings aforementioned remains the responsibility of the Owners.

- 28.2.2 In the event that an Owner should fail to comply with his obligations in relation to the painting, maintenance and upkeep of his dwelling as stipulated in clause 28.1.1, then the Association shall be entitled to engage the services of all necessary and requisite contractors to affect such work including the outsourcing of such work.
- 28.2.3 The costs of effecting the work in terms of 28.1.2 shall be paid by the Association, who shall be entitled to recover the cost thereof from the Owner in question on demand.
- 28.2.4 The Owner shall be responsible for the maintenance and upkeep of all residential gardens (including any irrigation systems). In the event that an Owner should fail to comply with his obligations in relation to upkeep of the garden, then the Association shall be entitled to engage the services of all necessary and requisite contractors to affect such work, including the outsourcing of such work. In such an event, the costs associated with the maintenance and upkeep of residential gardens shall be paid by the Association who shall be entitled to recover the cost thereof from the Owner in question, on demand.
- 28.2.5 Each Member shall be responsible for payment of all rates and taxes, as well as all water, electricity and all other services consumed in respect of his Erf.

29 FURTHER OBLIGATIONS OF MEMBERS

- 29.1 Each Member shall: -
- 29.1.1 maintain his Erf in accordance with the Architectural and Landscape Design Guide as per Annexure A;
- 29.1.2 maintain in a neat and tidy condition and in a state of good repair all improvements on his Erf;
- 29.1.3 not do or suffer to be done on any Erf anything which, in the opinion of the Trustees, is, injurious, objectionable, detrimental or a public or private nuisance or a source of damage or disturbance to any Member, resident or occupier of any Erf in the Estate;
- 29.1.4 not, during construction/erection of improvements, permit the erection of more than 1 (one) advertising board on a Erf and such permitted board shall not have a surface area exceeding 1 (one) square meter and shall be removed immediately upon conclusion of the building contract for the improvements;
- 29.1.5 not erect or permit the erection of any advertising boards on any Erf without the written approval of the Association;
- 29.1.6 adequately insure the improvements on his Erf and, if requested by the Association, furnish proof of such insurance to them and, in the event of total/partial destruction he shall within a reasonable time period, make good such damage or partial destruction in accordance with the original approved plans or, in the event of total destruction, in accordance with the Architectural and Landscape Design Guide;
- 29.1.7 comply with all security procedures implemented from time to time;
- 29.1.8 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on Private Areas and that planting on his Erf does not interfere with the pedestrian traffic or obscure the vision of motorists; and

29.1.9 not be permitted to keep dogs, livestock, poultry or other animals without the permission of the Association, which will determine the conditions from time to time under which they may be kept, and which may refuse permission without giving reasons. Any permission granted will be subject to the resident ensuring that the dog and/or other animal does not create a disturbance at any time or become a nuisance. Dogs must be kept on a leash when not on the Member's Erf. The person in control of the dog must ensure that:

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

29.2 a Member shall not be entitled to apply for the rezoning of his Erf with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Erf or Sectional Title Unit for any purpose other than the permitted use applicable upon establishment of the Estate;

29.3 no share block scheme as contemplated in the Share Blocks Control Act No. 59 of 1980 and/or time-sharing scheme as contemplated in the Property Time-sharing Act No. 75 of 1983 as amended and/or any other similar scheme or arrangement may be conducted on the Erf or the Sectional Title Unit, nor shall a guesthouse be operated on the Erf or the Sectional Title Unit, without the prior written consent of the Developer during the Development Period and the Association thereafter.

30. STATUS OF THE ASSOCIATION

The Association shall be an Association:

- 30.1 with legal personality, capable of suing and being sued in its own name, and
- 30.2 none of whose Members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in, and be controlled by, the Board of Trustees in terms hereof, and
- 30.3 not for profit, but for the benefit of the Members, and
- 30.4 with the right to acquire, hold, lease, offer as security and alienate property, both movable and immovable subject to the provisions of clause 24.2.1.

31. PERSONAL LIABILITY OF MEMBERS

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

32. EXCLUSION OF LIABILITY AND INDEMNITY

- 32.1 Neither the Association nor its Trustees nor the Developer nor its agents or assigns shall be responsible or may be held liable for any loss, damage or injury including consequential losses, suffered by or caused to any person or property anywhere on or about the Estate, whether or

not such loss, damage or injury is occasioned by any act or omission of the Association, its Trustees, the Developer, its agents or assigns or anyone else for whose action they or any of them would be liable in law, by reason of vis major, superior force, rain or other water, riots, strikes, theft or burglary without forcible entry, or by reason of any condition on or off the Estate, or any defective building, construction, road or dam or caused by any golfing or sporting activity or other activity carried out on the Golf Course or on the Land or whilst utilizing the Club Facilities or the Recreational Facilities or the Private Areas or anywhere else on the Estate, or by any other cause of whatsoever nature and howsoever arising.

- 32.2 Each Member of the Association shall, at all times, hold the Association and all Members of the Association, the Trustees of the Association, the Developer and the Developer's Agents and assigns indemnified against and harmless from and shall in no manner whatsoever seek to hold any of them liable for any injury, loss or damage suffered by such Member of the Association, their family members, guests or invitees, as a result of personal injury, death or patrimonial loss arising directly or indirectly from any persons entering the Estate or utilizing the Golf Course, Club, Club Facilities, the Recreational Facilities or the Private Areas or participating in any other activity of the Association or within the Estate whether or not such injury or loss or damage can be attributed directly or indirectly to negligence of whatsoever nature or degree on the part of the Association, any Member of the Association, the Trustees of the Association, the Developer, the Developer's agents or assigns and/or any of their officials, employees and/or agents.

33 INTERNAL RULES

33.1 SECURITY

- 33.1.1 Security is an important feature of the Estate and owners and their visitors must at all times assist and comply with the security systems and procedures implemented on the Estate, particularly with regard to access control.
- 33.1.2 The perimeter security, patrols and access controls serve as deterrent and detection factors only and do not guarantee an intrusion-free Estate.
- 33.1.3 Owners and their visitors and employees must adhere to security procedures and respect the security personnel's role. Security guards may under no circumstances be abused or obstructed from performing their functions.
- 33.1.4 The guardhouse has a panic/burglar alarm receiver for those who have installed their own compatible system.
- 33.1.5 Visitors must register at the entrance gate and complete the required form prior to access.
- 33.1.6 Owners are permitted to employ their own domestic assistants, butlers, au-pairs, chauffeurs, garden contractors and chefs (collectively referred to as "domestic staff"). All domestic staff must be registered with security and shall carry the issued identification badge at all times while on the Estate save when they are on the property where they are employed.

33.2 LANDSCAPING AND PROPERTY MANAGEMENT

- 33.2.1 All horticultural and landscape aspects of the Estate including sidewalks, traffic islands and private areas will be managed by the Association.
- 33.2.2 The Association will maintain all communal gardens. The gardens of individual properties must be maintained by the registered owner. This includes grass cutting, edging, weeding and turning over of the beds, pruning of excessive shrub growth and removal of cuttings and dead plants.

- 33.2.3 Owners are obligated to have their landscape and garden plan approved by the Association and the primary principals of the garden plan must be completed by the Final Date.
- 33.2.4 Owners are responsible for the maintenance and upkeep of their own garden irrigation systems.
- 33.2.5 An owner is permitted to improve and supplement the trees and plants in his garden and within his property's boundaries (i.e. not on the sidewalk or on the Golf Course). Such improvements and supplements must be approved by the Association prior to them being planted.
- 33.2.6 In order to create the desired continuity of landscaping, all landscaping must be approved by the Association.
- 33.2.7 An owner must maintain all aspects relating to the exterior of his house, including but not necessarily limited to painted surfaces, fencing, pools and paving, at a level of upkeep, neatness and tidiness to the satisfaction of the Association.

33.3 PROPERTY APPEARANCE

- 33.3.1 The planning concept for Devonvale is one of openness and visual transparency. Garden areas on both street and golf course sides of any house are therefore open to viewing and must be kept clear and uncluttered.
- 33.3.2 The storage of materials, wendy-houses, tool sheds, boats, windsurfers, trailers, caravans, building materials, bird aviaries, motorcycles, inflatable pools and any other unsightly objects are not permitted in gardens or driveways. In particular, but without limiting the generality of the aforementioned, an owner shall not hang any flag, washing or laundry or any other items that are visible from the road or the golf course, or over any boundary fence.
- 33.3.3 Owners are encouraged to keep their garage doors closed whenever possible in the interests of the general appearance of the Estate.
- 33.3.4 Fixtures and other items such as wash lines, air-conditioning ducts and units, swimming pool pumps, satellite dishes, solar heating panels, evaporative cooling radiators, kennels, etc should be sited as discretely and out of view as possible, screened where possible, and may only be installed subject to prior written approval of Association.
- 33.3.5 In the interests of all owners, each owner is required to carry sufficient building insurance cover for their immovable property in order to ensure that any damage to the immovable property may be repaired.

33.4 ESTATE APPEARANCE

- 33.4.1 Owners are requested to leave the private areas in a clean and acceptable condition, and to conscientiously dispose of any litter wheresoever same may be found.
- 33.4.2 No trees or plants in private areas may be damaged or removed.
- 33.4.3 Swimming pool water must be discharged into a sewer drain, and not into any storm water pipe or drain.
- 33.4.4 No fires, braaiing or barbecuing is permitted except on an owner's property or in designated areas.

33.5 ANIMALS AND PETS

- 33.5.1 Pets are permitted at the discretion and with written consent of the Association. Such consent may be withdrawn at any time, without reason, justification or liability. An owner of a pet shall be obliged to immediately remove such pet from the Estate in the event that such pet causes a nuisance, is not controlled on a leash, or displays aggressive behaviour.
- 33.5.2 In light of neighbour proximity and the openness of gardens, cats and dogs need to be strictly controlled by owners, both on and off their property.
- 33.5.3 Every cat and dog must be registered and wear a tag displaying the owner's name and stand number. Dogs must be controlled on a leash in all private areas and must not harass or be allowed to harass other persons, children, cyclists, joggers or pets. Dog excrement must be immediately removed by an owner.
- 33.5.4 Dogs are strictly forbidden on the Golf Course.
- 33.5.5 At all times, and particularly at night, pets must not create a disturbance or a nuisance, and should not be left unattended.
- 33.5.6 The natural fauna on the Estate is to be protected and must not be chased or attacked by pets.
- 33.5.7 The maximum number of dogs and cats that may be kept on an Erf is 2 dogs and 2 cats.

33.6 NEIGHBOUR RELATIONS

- 33.6.1 Noise levels must always be kept to a minimum.
- 33.6.2 The volume of TV, music, radios, partying, children and power tools, etc, must be moderated in consideration of other owners. It must also be understood that the Association and its Trustees, the Developer and its agents, are not responsible for "instant policing" of such problems. Neighbours and security must be notified of imminent parties or social activities, and all owners must conform to moderate restraints.
- 33.6.3 No business activity or hobby which causes aggravation or nuisance to other owners, may be conducted at Devonvale. Save and except for domestic staff and carers, no staff that require daily access to the Estate may be employed by owners.
- 33.6.4 No activities are permitted in the private areas if they cause unreasonable nuisance to other owners.
- 33.6.5 No fireworks of any kind are permitted on the Estate.

33.7 REFUSE AND RECYCLABLE MATERIALS

- 33.7.1 A refuse removal service is provided on a weekly basis. Information of the times and days and method of removal will be provided.
- 33.7.2 No refuse, garden spoil, or rubble may be dumped on vacant stands.
- 33.7.3 All refuse must be stored in bins and out of sight from the road and Golf Course.
- 33.7.4 Refuse bins may only be put out on the road verge on day of collection and must be removed on

the same day.

33.7.5 Procedures will be stipulated for the collection and sorting of recyclable materials and provision will be made for centralised containers for recyclable materials including cardboard, glass, metal, plastic and green waste.

33.7.6 The service provider appointed to collect recyclable waste will be compliant in terms of all Environmental legislation and/or approved by the Local Council's Solid Waste Management Department.

33.8 SWIMMING POOLS

33.8.1 Plans for swimming pools must be submitted and approved by the Association and Council, as per any other external building works, before work may commence.

33.8.2 More specific and detailed rules for the planning and construction of swimming pools will be incorporated within the Architectural and Building Rules to be established from time to time.

33.8.3 The filling and/or refilling of swimming pools must be pre-approved in writing by the municipal council.

33.9 GOLF COURSE

33.9.1 The Club will manage and control all aspects of golf, sport, recreation and social activities of its members, including the clubhouse and recreational facilities.

33.9.2 Although the Golf Course is a major added-value aspect of every owner's property, it is a separately owned, private property. Limited access is allowed to the Golf Course for those not officially playing golf, by consent of the owner of the Golf Course and the Club, confined to:

33.9.3 After hours, when play on that part of the Golf Course is completed; and

33.9.4 Walkers and joggers whose activities are restricted to the cart and other designated paths and the fringes of the Golf Course.

33.9.5 The owner of the Golf Course shall further be entitled to make rules relating to the recovery of golf balls from an owner's property, the driving of carts, machinery and equipment necessary for playing golf and the maintenance and irrigation of the Golf Course, including at night. All owners will be bound to observe such rules.

33.9.6 No games and sports, save for golf, are permitted on the Golf Course. No picnicking or braaiing is allowed on the Golf Course.

33.9.7 No private carts are allowed on the Golf Course unless used for the purpose of playing golf. No vehicles are allowed on the Golf Course at any time, save and except when used for authorized maintenance or sales promotional purposes. Golf carts must be registered and annual "trail fees" paid.

33.9.8 The retrieval of golf balls from any lakes and water features shall be the sole entitlement of the Club. Owners are not permitted to recover golf balls from the lakes and water features.

- 33.9.9 Owners shall not hinder or unreasonably disturb golfers whilst playing. The owner of the Golf Course, its Trustees, officers, employees or contractors shall not be liable for any loss of life, personal injury or damage to property suffered by any person whilst in or on the Estate or any part hereof arising from the flight of golf balls or from any other cause whatsoever relating to the use of the Golf Course.
- 33.9.10 No motorcycling or rollerblading will be allowed on the Golf Course, cart paths and other paths designated for golf carts.
- 33.9.11 The practicing of golf on the Golf Course is forbidden. Golf may only be practiced at the areas designated for practice purposes i.e. the driving range, the practice green(s) and practice chipping area(s).

33.10 GOLF CARTS

- 33.10.1 Privately owned carts that are used to commute around the Estate are encouraged, provided they remain on the roads and are in the control of a licensed driver at all times, with no more occupants than designed for. Normal traffic regulations and considerations are applied.
- 33.10.2 All carts must be registered with the Club, and a registration number (your stand number) must be displayed on the golf cart.
- 33.10.3 Unless used for playing golf, no carts are permitted on the Golf Course.
- 33.10.4 Certain designated paths that cross the Golf Course, but that link parts of the Estate, are permitted for cart usage after playing hours, provided due consideration is given to pedestrians, and carts remain on the path route. This situation will be reviewed on an ongoing basis by the Club and the Association as the Estate is built out.
- 33.10.5 Carts must be electric, silver in colour and in good condition. Carts that are used after sunset must have lights.

33.11 WALKING, JOGGING, CYCLING, BLADING ETC

- 33.11.1 Walking and jogging are obviously encouraged throughout the Estate, but only after playing hours in respect of the Golf Course
- 33.11.2 Cycling may only take place on the roads and in areas specifically designated for cycling. Cycling may take place on the cart paths but only after playing hours in respect of the Golf Course.
- 33.11.3 Roller blading, skateboarding and similar activities shall be confined to designated recreation areas.

33.12 THE CLUB FACILITIES

- 33.12.1 As the Club Facilities (defined as the club house, driving range, pavilions, refreshment rooms and other conveniences built and/or erected on the Estate for the general functioning of the Club and any improvements thereto) are owned, operated and managed by the owners of DVWGE, the Club Manager shall be entitled to regulate the use of and access to the Club Facilities in its sole and absolute discretion and shall accordingly be entitled to prescribe rules governing the use of and access to the Club Facilities from time to time.

- 33.12.2 As such, the right of admission to the Club Facilities is strictly reserved and the Club Manager shall be entitled to deny access to the Club Facilities to any person it so desires. Without limiting the generality of the aforesaid, the Club Manager may deny access to the following persons:
- 33.12.3 Persons whose attire is perceived to be inappropriate by the Club Manager;
- 33.12.4 Persons who are rowdy, use foul language and generally cause a nuisance/disturbance to other persons using the Club Facilities;
- 33.12.5 Persons who are drunk and disorderly;
- 33.12.6 Persons who are in arrear with payments due to the Club and/or the Association; and
- 33.12.7 Persons whose behaviour is deemed to be not becoming of the Estate or not in the best interests of the Estate.
- 33.12.8 No person shall have any claim of any nature whatsoever against the Developer, the Club, nor the Association, by reason of such person being denied access to the Club Facilities.

33.13 SERVICES

- 33.13.1 Save and except for the water and electricity supplier, Stellenbosch Municipality and Telkom, all other completed services and roads of the Estate are privately owned by the DVWGE and/or the Association, and accordingly operated and maintained by the DVWGE or the Association.
- 33.13.2 Filling or re-filling of swimming pools must be approved by the Association before commencement.

33.14 RE-SALES AND LETTING

- 33.14.1 In the case where the beneficial ownership or control of a company, close corporation, trust or other association which owns a property in the Estate is changed or transferred, the transferor must notify the Association forthwith of the change or transfer and with the full names and addresses of the new representatives.
- 33.14.2 Any lease agreement in respect of a property in the Estate must be in writing and must include an undertaking by tenant to comply with the provisions of both the Constitution of the Association (where applicable) and the rules and regulations made and determined in accordance therewith.
- 33.14.3 In order to protect the integrity of the permanent residential component on the Estate and ensure exclusivity on the Estate, rental of properties Devonvale shall be for the following minimum periods:
- 33.14.3.1 in respect of all residential Erven: 7 (seven) days.
- 33.14.4 Provided that the Developer during the development period, and thereafter the Association, on notice to all members, may relax the minimum rental periods in respect of residential Erven and Residential Lodges for the duration of any major tournament hosted by the Developer and/or the Club or for such other event/function which the Developer/the Association may decide from time to time. The extent of such relaxation as also the period during which such relaxation shall be of force and effect shall be within the sole discretion of the Developer/the Association.

33.14.5 All tenants must register themselves and the guests who are staying with them at security on arriving at the Estate. A copy of their written agreement of lease must also be handed in to security on arrival.

33.15 LEVY PAYMENTS

33.15.1 Levies are payable in advance, on the 1st day of the month, and interest is payable on arrears. Levies may not be withheld for any reason whatsoever. Those who jointly own a property are liable for levies jointly and severally.

33.15.2 In the event of default of payment of levies, the Association shall be entitled, in addition to any other rights it has at law, to take such action against the defaulting owner as is contemplated as below.

33.15.3 Owners are urged to arrange a debit order for the payment of levies in order to streamline this process.

33.15.4 Notwithstanding the Developer/Association's rights entrenched in the Association, and subject to below, all Owners who:

33.15.4.1 fail to complete the construction of their dwelling and the establishment and landscaping of their garden by the date on which they are obligated to do so as set out below of the Association Constitution; or

33.15.4.2 fail to complete any renovation/alteration within a period of 12 (twelve) months, shall be penalized whilst they are in breach by having to pay a penalty equal to 1 (one) basic monthly Association levy in addition to the monthly Association levy with effect from the first day of the month following the month in which the breach occurs.

33.15.5 Any penalty imposed in accordance with the provisions as above shall be suspended for a maximum period of 12 (twelve) months calculated from the first day of the month following the month in which an Owner commences with the bona fide construction of his dwelling, provided that:

33.15.5.1 the construction and any landscaping associated therewith is continued with in a bona fide manner; and

33.15.5.2 such Owner is not in arrears with payment of his Levies and/or any other amounts due to the Association and continues to timeously pay his Levies and any other amounts that may become due to the Association, until such time as a Certificate of Completion and a Landscaping Certificate have been issued.

34. LEVY STABILISATION FUND

34.1 As soon as the Association comes into existence it shall establish a Levy Stabilization Fund (The "LSF") for the purpose of supplementing normal- or special levies or meeting of any extraordinary expenditure or expenditure of a capital nature to be incurred by the Association or for any purpose that the Association may deem fit in carrying out its main objects and the provisions in terms of this Constitution.

34.2 It is a condition of membership that the Owner of each Erf (excluding the Developer and any shareholders of the Developer) shall be liable to contribute 0.25% (zero comma two

five percent) of the gross selling price of the Property (or a portion thereof), or the fair market value thereof, whichever is higher, or in the absence of a selling price the gross market value of the Property (or a portion thereof), that has been alienated to the LSF, which amount shall become due and payable as set out in clause 34.3 and 34.4 below.

34.3 When an Erf is sold by private treaty or otherwise or in any way disposed of (except for the exclusion in clause 34.5 hereunder), the registered Owner shall be obliged to pay the LSF contribution to the Association.

34.4 In the case of an alienation of 50% (fifty percent) or more of the shares in a Company or 50% (fifty percent) or more of a membership in a Close Corporation or the cession of 50% (fifty percent) or more of the beneficiaries in a Trust of their interest in such a trust, which is a member, a contribution to the LSF shall upon such alienation becomes due and payable as envisaged in clause 34.2 above.

34.4.1 Notwithstanding that any of the named entities remains the Owner of the Erf, the object, in this regard, shall be to ensure that where there is a material change in the beneficial ownership or controlling interest of that entity, such entity shall become liable for a contribution to the LSF on the same basis that would have applied if the said entity had become a “new Owner” of the Erf.

34.5 Notwithstanding the above, a material change in beneficial ownership or in the controlling interest which results from alienation by way of succession, whether testate or intestate, shall not give rise to an obligation on the part of the member or to pay a contribution to the LSF.

34.6 All payments are payable on date of registration of transfer of the property or on the effective date of transfer of any of the other provisions.

34.7 In the event of a dispute as to whether a selling price or value of disposal is at the fair market value, then such fair market value shall be determined by 50% (fifty percent) of the aggregate of two sworn appraisements. The Association shall nominate one sworn appraiser and the member the other one. Costs of these two sworn appraisals shall be shared by the Association and the Member.

34.8 The Association shall not issue a levy clearance certificate or give its consent to Transfer the Property unless the payment due to the LSF has been secured to the satisfaction of the Association

34.9 The provisions of this clause 34 shall not apply to the Developer and any shareholder of the Developer.

35. PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013 (“POPIA”)

35.1 The Association is obligated to ensure that it complies with the POPIA.

35.2 Primarily the POPIA requires the Association to ensure that eight conditions are complied with when the Association processes personal information. This is in terms of Chapter 3 of POPIA.

35.3 The Association is accountable for the personal information it processes and stays accountable and responsible for that personal information.

- 35.4 Personal information can only be processed by the Association if done so lawfully. The Association processes personal information for the purposes of the administration and management of the scheme.
- 35.5 The Association can only collect personal information for a specific, explicitly defined and lawful purpose. The Association processes personal information for the purposes of the administration and management of the scheme.
- 35.6 The further processing of personal information by the Association can only be performed if compatible with the original purpose that the personal information was collected for.
- 35.7 The Association must take reasonable and practicable steps to ensure that personal information records are complete, accurate, not misleading, and updated where necessary.
- 35.8 The Association undertakes to be transparent about why they need a Member's personal information and how they intend using and processing it.
- 35.9 The Association undertakes to take appropriate, reasonable, technical and organisational measures to secure the integrity and confidentiality of the personal information it processes and to prevent loss, damage, unauthorised destruction and unlawful processing of the personal information.
- 35.10 Members have the right to ask whether the Association holds certain personal information about them, to request copies of their personal information records and the details of all third parties who have or had access to that information.
- 35.11 Personal information is primarily information of a Member such as their ID number, email address, physical address, telephone number, biometric information and private correspondence sent by that person.
- 35.12 The Association must at all times maintain an updated POPIA manual, compliant with the POPIA and any amendments thereto.
- 35.13 The approved POPIA manual for the Association must set out the above eight conditions, the obligations of the Association in respect of the POPIA and the rights of Members in regard to the POPIA.
- 35.14 The POPIA Manual and its contents are binding upon the Members of the Association.
- 35.15 The Association must appoint an Information Officer to ensure compliance with the POPIA.
- 35.16 The Information Officer, in their discretion, taking into consideration the provisions of the POPIA, must determine which record/s and/or document/s are confidential, and may not be distributed without the prior written consent of the person/s to which it relates.
- 35.17 Failure by a Member to comply with the contents of the POPIA manual may result in a complaint being lodged by the Trustees with the Information Regulator.
- 35.18 Members have the right to submit a complaint to the Information Regulator appointed in terms of the POPIA when there has been interference with the protection of their personal information.

35.19 Civil proceedings may also be instituted against the Association by Members when there has been interference with the contents of the Member's personal information.

36 PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 ("PAIA")

36.1 The Association is obligated to ensure that it complies with the PAIA.

36.2 Primarily the PAIA requires the Association to ensure and promote an individual's constitutional right of access to information of the Association. The main objective is to promote openness, accountability and effective governance by the Association.

36.3 The Association must at all times maintain an updated PAIA manual, compliant with the POPIA and any amendments thereto, describing the types of records the Association holds and procedures in place when access to information is requested.

36.4 The PAIA Manual and its contents are binding upon the Members of the Association.

36.5 The Information Officer of the Association, in their discretion, taking into consideration the provisions of the POPIA, must determine which record/s and/or document/s are confidential, and may not be distributed without the prior written consent of the Member/s or person/s to which it relates.

36.6 Upon receipt of a request for access to the records and documents of the Association for the purpose of inspection and copy/ies, the Information Officer must ensure that such request is made by a registered member/s or a person duly authorised in writing by the registered member/s or its duly authorised representative.

36.7 When receiving a request for access to the records and documents of the Association for the purpose of inspection and copy/ies, the Information Officer must ensure that such request is in compliance with the POPIA, in that no such request will be permitted if the reason for such request is not provided by the party requesting such access for inspection and copy/ies, and further if the reason/s provided are not deemed reasonable in regard to the administration and management of the Association, or any legitimate purpose applicable in terms of its governing documentation.

36.8 When a requesting party is in receipt of any record/s and/or document/s of the Association, such person is responsible to ensure compliance with the POPIA in their intended use of the record/s and/or document/s so obtained.

37 BUILDING REQUIREMENTS

37.1 The Dwelling that is to be erected on the Property must comply with the approved Architectural and Landscape design guidelines.

37.2 No building or structure may be erected on the Property nor may the external appearance (including the colour) of any existing or future building or structure be changed unless the architectural design plans and specifications (including materials) of such building or structure have been approved by the Association, or a person nominated by the Association.

- 37.3 All buildings and structures shall be built in a good and proper and workmanlike manner and strictly in accordance with the plans and specifications approved in accordance with clause 37.1 above.
- 37.4 An Architectural scrutiny fee and a landscape scrutiny fee in such amounts as may be determined from time to time by the Developer during the Development Period and, thereafter by the Association, shall be paid by the Member to the Developer or the Association, as the case may be, simultaneously with the submission of the plans as aforesaid.
- 37.5 The costs of amendment of the designed building plans as well as the cost of obtaining Local Authority approval of any plans and scrutiny fees shall be payable by the Member.
- 37.6 The Member shall commence the construction of the Dwelling within 2 (Two) years from transfer having taken place, and complete the construction and establish and landscape the garden on the Property within 1 (One) year of such commencement.**
- 37.6.1 The construction of the Dwelling is deemed to be completed on issuing of an Occupancy Certificate by the Local Authority and the written confirmation by the Association that it considers the construction to be completed and the garden to be landscaped.**
- 37.7 Members who are owners of vacant erven who exceed the 2 (Two) year building period, and the 1 (One) year period to complete as set out in Clause 37.6 above, will be liable to pay a penalty equal to R10 000.00 (Ten Thousand Rand) per month, commencing on the first day of the month following the expiration of the 2 (Two) year building period and/or the 1 (One) year completion period, which monthly penalty will be levied for every month thereafter until all construction and building operations on such property have been completed. This penalty will increase to R20 000.00 (Twenty Thousand Rand) per month from the third year calculated from the Transfer Date should the building not be completed and the garden not landscaped. The monthly building penalty of R10 000.00 (Ten Thousand Rand) and R20 000.00 (Twenty Thousand Rand), respectively will escalate annually by 10% (Ten per cent), effective 1 January of each consecutive year. However, the provision for a penalty shall not apply to the Developer or any of its shareholders or their nominees.**
- 37.8 The stipulations contained in this clause 37 shall be binding on the Member and his successors in title and the Member undertakes to include such stipulations in any deed of alienation for the sale or disposal of the Property to a purchaser or other party.
- 37.9 The Member shall be obliged to pay his subscription fees during the period of his suspension and shall not be entitled to claim a discount or rebate on his subscription fees for any period during which his rights have been suspended.

38 PRIVATE OPEN SPACES AND COMMON PROPERTY

- 38.1 Further the provisions contained in Clause 24.2.1, the specific Private Areas and/or Common Areas located between Erven 195 and 196, and Erven 196 and 197, as indicated on General Plan no. SG924/2016, shall remain open and may not be fenced-in or built upon, by any of the Property Owners and/or the Developer of this Development.
- 38.2 Devonmust (Pty) Ltd, its successors in title and/or assigns, as the owners of the Golf Course located on Remainder Erf 179 Devonvale, shall become and remain entitled to the exclusive use of the open spaces described in Clause 38.1 above, to move freely and unhindered onto and over these areas in order to service and/or maintain the water pipelines, located beneath the surface, for the conveyance of water from the dam to the golf course, for irrigation purposes.