

**REPUBLIC OF SOUTH AFRICA**  
**COMPANIES ACT, 1973**

**MEMORANDUM OF ASSOCIATION  
OF A COMPANY NOT HAVING A SHARE CAPITAL**

Section 54(1); regulation 17(3)

|                                       |
|---------------------------------------|
| Registration Number<br>2003/009588/08 |
|---------------------------------------|

The financial year of the Company ends on the last day of February of each year.

**1 NAME**

1.1 The name of the Company is **DE ZALZE WINELANDS GOLF ESTATE HOME OWNERS ASSOCIATION (ASSOCIATION INCORPORATED UNDER SECTION 21)**.

1.2 The name of the Company in another official language of the Republic is –  
**N/A**

## **2 PURPOSES DESCRIBING MAIN BUSINESS**

The main business which the Company is to carry on is the business of controlling and managing common facilities and amenities in respect of the property development known as De Zalze Winelands Golf Estate, including all sub-divisions and/or consolidations thereof for the mutual use and benefit of members and their invitees.

## **3 MAIN OBJECT**

The main object of the Company is to create an association amongst the members of the Company which will entitle the members to share in the use of and benefit from recreational facilities (including but not limited to a golf course), security facilities, parking facilities, gardens, terraces, agricultural areas and other common areas and facilities (“common facilities”) on a common basis subject to a lease and/or management agreement with the golf course operator in respect of the golf course, to share the costs incurred in keeping, repairing and maintaining the common facilities as a common expense and generally to regulate and control access to and the use of the common facilities.

## **4 ANCILLARY OBJECTS EXCLUDED**

The specific ancillary objects referred to in Section 33(1) of the Companies Act, 1973 which are excluded from the unlimited ancillary objects of the Company are all the ancillary objects which are not in accordance with the main object of the Company.

## **5 POWERS**

5.1 The specific powers which are excluded from the plenary powers of the company as set out in Schedule 2 to the Companies Act, 1973 are as follows –

5.1.1 Power (f). The Company shall not be entitled to lend money to any person or company.

5.1.2 Power (s). The Company shall not be entitled to distribute in specie or in kind any of its assets among its members.

5.2 The specific powers or part of any specific powers of the Company set out in Schedule 2 to the Companies Act, 1973, which are qualified under Section 34 of the Companies Act, 1973, are as follows –

5.2.1 Power (k) is to be modified to read –

“to form and have an interest in any company having the same or similar objects to the Company and which is also exempt from tax in terms of section 10(1)(e) of the Income Tax Act, No 58 of 1962 (“the Tax Act”), for the purpose of acquiring the undertaking of all or any of the assets or liabilities of that company or companies or for any other purpose which may seem directly or indirectly calculated to benefit the company and to transfer to any such company or companies the undertaking or all of any assets or liabilities of the Company.”

5.2.2 Power (l) is to be modified to read –

“to amalgamate with any other companies or bodies, having objects the same as or similar to those of the Company, which are also exempt from tax in terms of section 10(1)(e) of the Tax Act.”

5.2.3 Power (m) is to be modified to read –

“to take part in the management, supervision and control of the business or operations of any other company or business or body having the same or similar objects as the Company and to enter into a partnership having objects the same as or similar to those of the Company; provided that such other companies or bodies are also exempt from tax in terms of section 10(1)(e) of the Tax Act .”

5.2.4 Power (n) is to be modified to read –

“to remunerate any person or persons for services rendered in connection with its formation or with the conduct or the development of its business.”

5.2.5 Power (o) is to be modified to read –

“to make donations to persons, associations or companies, other than members and directors of the Company, in furtherance of the objects of the Company provided that such donations will only be made in accordance with the main object of the Company.”

5.2.6 Power (r) is to be modified to read –

“to pay gratuities and pensions and establish pension schemes and other incentive schemes in respect of its officers and employees.”

## **6 CONDITIONS**

The special conditions which apply to the Company and the requirements, if any, additional to those prescribed in the Companies Act, 1973 for their alteration are as follows –

6.1 The income and property of the Company, howsoever derived, shall be applied solely towards the promotion of its main object, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever, to the members of the Company or to its holding company or subsidiary; provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or manager or servant of the Company or to any member thereof in return for any services actually rendered to the Company.

6.2 Upon its winding-up, de-registration or dissolution, the assets of the Company remaining after the satisfaction of all its liabilities shall be given or transferred to some other company or institution or companies or institutions, having objects the same as or similar to the main object of the Company and which are also exempt from tax in terms of section

10(1)(e) of the Tax Act, to be determined by the members of the Company at or before the time of its dissolution, or failing such determination, by the Court.

- 6.3 The Company shall not pay any dividends to its members.
- 6.4 The Company shall submit copies of any amendments to its Memorandum or/and Articles of Association to the Commissioner: South African Revenue Services (“SARS”).
- 6.5 The Company shall not knowingly be a party to or permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Tax Act or any other Act administered by the Commissioner: SARS.

## **7 GUARANTEE**

- 7.1 The liability of members is limited to the amount referred to in article 7.2.
- 7.2 Each member undertakes to contribute to the assets of the Company in the event of it being wound up while he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before he ceased to be a member, and of the costs, charges and expenses of the winding-up, and for adjustment of the rights of the contributories among themselves (in addition to unpaid levies owing by him to the Company) of an amount of R250,00 (two hundred and fifty Rand).

## **8 DEFINITIONS**

In this memorandum, unless the context indicates otherwise, words and expressions defined in the Articles of Association of the Company shall have the same meaning.

**REPUBLIC OF SOUTH AFRICA**  
**COMPANIES ACT, 1973**

**ARTICLES OF ASSOCIATION  
OF A COMPANY NOT HAVING A SHARE CAPITAL**

Section 60 (1); Regulation 18

|   |
|---|
| Registration No. of Company<br>2003/009588/08 |
|---|

**NAME OF COMPANY**

**DE ZALZE WINELANDS GOLF ESTATE HOME OWNERS ASSOCIATION**  
**(ASSOCIATION INCORPORATED UNDER SECTION 21)**

- A The Articles of Table A or Table B contained in Schedule 1 to the Companies Act 1973, shall not apply to the Company.
- B The Articles of the Company are as follows.

**1 INTERPRETATION**

- 1.1 The headings contained in the Articles are intended for reference purposes only and shall not be taken into account in the interpretation thereof. In the interpretation of the Articles the words

contained in the first column of the table set out below shall bear the meaning set out opposite each of them in the second column thereof, unless the contents or context otherwise requires.

|       | <b>Words</b>               | <b>Meanings</b>  |
|-------|----------------------------|--|
| 1.1.1 | “the Act”                  | the Companies Act No. 61 of 1973, including any amendment, consolidation or re-enactment thereof;  |
| 1.1.2 | “agricultural erf”         | any erf which is in terms of the Zoning and Subdivision Approvals zoned for agricultural purposes;   |
| 1.1.3 | “architectural guidelines” | the general and specific architectural guidelines of the development as amended from time to time. Any amendments having an effect on the Zoning and Subdivision Approvals will be subject to the approval of the local authority; |
| 1.1.4 | “the Articles”             | these Articles of association as now framed or as from time to time amended in accordance with 38;   |
| 1.1.5 | “the Association”          | De Zalze Winelands Golf Estate Home Owners Association (Association incorporated under Section 21);  |
| 1.1.6 | “auditors”                 | auditors of the Association;   |
| 1.1.7 | “body corporate”           | in relation to a sectional title scheme, the body corporate established for that scheme in terms of the Sectional Titles Act;  |

|        |                        |  |
|--------|------------------------|--|
| 1.1.8  | “business unit”        | any unit which is used for business purposes with the consent of the local authority and subject to these Articles;  |
| 1.1.9  | “the chairman”         | the chairman of the board of directors;  |
| 1.1.10 | “club”                 | the golf club to be established in respect of the golf course;   |
| 1.1.11 | “common property”      | a part of the land which is not subject to an exclusive right of use by a member but excluding, in the case of an erf on which a sectional title scheme is developed, common property as defined in the Sectional Titles Act, which is not subject to an exclusive right of use by a member in terms of that scheme; |
| 1.1.12 | “Deeds Registries Act” | the Deeds Registries Act No. 47 of 1937, including any amendment, consolidation or re-enactment thereof;   |
| 1.1.13 | “the developer”        | De Zalze Development (Proprietary) Limited, registration number 1997/005538/07, its successors in title or assigns;  |
| 1.1.14 | “the development”      | the golf, agricultural and residential estate known as De Zalze Winelands Golf Estate to be established by the developer and Kleine Zalze on the land and any additional property onto which the developer extends the development in accordance with an approved development plan;                                  |
| 1.1.15 | “development period”   | that period commencing on the incorporation of the Association and ending  |



when the developer has effected transfer of the last erf owned by it or upon the expiration of a period of 5 (five) years from the date that the developer effects transfer of the first erf owned by it, whichever event occurs first in time;

- 1.1.16            “De Zalze Farming”        De Zalze Farming (Proprietary) Limited, registration number 1996/006994/07, a private company duly incorporated in accordance with the laws of the Republic of South Africa;
- 1.1.17            “the directors”                the directors for the time being of the Association and the alternate directors thereof or, as the case may be, the directors assembled at a meeting of directors at which a quorum is present;
- 1.1.18            “erf”                                any one of the erven resulting from the consolidation and subdivision of any part of the land;
- 1.1.19            “facilities”                        the golf course and the golf club house and all and any of their facilities, and all and any facilities or amenities of whatsoever nature which may be provided within the development on the common property;
- 1.1.20            “Farm 507”                        Farm 507 situate in the Division of Stellenbosch, in extent 61,2135 (sixty one comma two one three five) hectares held by De Zalze Farming under Deed of Transfer T68724/1996;
- 1.1.21            “Farm 508”                        Farm 508 situate in the Division of Stellenbosch, in extent 40,6467 (forty

|        |                    |  |
|--------|--------------------|--|
|        |                    | comma six four six seven) hectares held by Kleine Zalze under Deed of Transfer T74010/1996;  |
| 1.1.22 | “Farm 510”         | Portion 3 of the Farm 510 situate in the Division of Stellenbosch, in extent 25,4661 (twenty five comma four six six one) hectares held by De Zalze Farming under Deed of Transfer T6476/1901;   |
| 1.1.23 | “Farm 998”         | Farm 998 situate in the Division of Stellenbosch, in extent 170,6520 (one hundred and seventy comma six five two) hectares held by the developer under Deed of Transfer T5811/1961;  |
| 1.1.24 | “Gazette”          | the Government Gazette of South Africa;  |
| 1.1.25 | “general meeting”  | an annual general meeting or a general meeting of the Association;   |
| 1.1.26 | “the golf course”  | the golf course and all sporting, recreational and other facilities situate on the golf course land;   |
| 1.1.27 | “golf course land” | the land on which the golf course is situated, which falls within the development and over land in respect of which servitudinal rights have been obtained;  |
| 1.1.28 | “Kleine Zalze”     | Kleine Zalze (Proprietary) Limited, registration number 1968/002061/07, a private company duly incorporated in accordance with the laws of the Republic of South Africa or, in the event of an alienation and transfer by Kleine Zalze (Proprietary) Limited of the remainder of |

Farm 508 or any portion thereof, “Kleine Zalze” shall refer to the successor(s) in title to Farm 508 or any subdivisions thereof;

- 1.1.29 “Kleine Zalze Realisation”  
Kleine Zalze Realisation (Proprietary) Limited, registration number 1999/016952/07, a private company duly incorporated in accordance with the laws of the Republic of South Africa;
- 1.1.30 “the land”  
Farm 507, Farm 508, Farm 510 and Farm 998, and includes all consolidations and subdivisions of such land or a portion thereof as well as any improvements thereto;
- 1.1.31 “levy”  
the levy or levies referred to in article 5;
- 1.1.32 “local authority”  
the local authority having jurisdiction over the development, meaning a municipality or any other statutory local authority;
- 1.1.33 “Management Framework”  
the management framework for the development dated April 2002 prepared by Dennis Moss Partnership, as approved by the local authority;
- 1.1.34 “the manager”  
the manager (if any) appointed in terms of article 10 from time to time;
- 1.1.35 “member”  
a member of the Association as envisaged in article 2.3;
- 1.1.36 “memorandum”  
the memorandum of association for the time being of the Association;

|        |                         |   |
|--------|-------------------------|---|
| 1.1.37 | “minutes”               | the minutes of a general meeting or a directors' meeting, as the case may be;   |
| 1.1.38 | “non-permanent unit”    | any unit or sectional title unit which is in terms of the Zoning and Subdivision Approvals zoned for resort or residential purposes and on or in respect of which is operated a guest house, a hotel or lodges or villas; |
| 1.1.39 | “the office”            | the registered office of the Association;   |
| 1.1.40 | “owner”                 | a registered owner of a unit;   |
| 1.1.41 | “permanent unit”        | any unit on which is or is to be constructed a dwelling or apartment offering residential accommodation which is not a non-permanent unit ;   |
| 1.1.42 | “the property/ies”      | the portions of land which comprise the development;  |
| 1.1.43 | “the register”          | the register of members of the Association;   |
| 1.1.44 | “the rules”             | the rules made by the directors in terms of the Articles as they apply from time to time;   |
| 1.1.45 | “the secretary”         | the secretary of the Association for the time being;  |
| 1.1.46 | “Sectional Titles Act”  | the Sectional Titles Act No. 95 of 1986, including any amendment, consolidation or re-enactment thereof;  |
| 1.1.47 | "sectional title scheme | a sectional title scheme established in terms of the Sectional Titles Act;  |

|        |                        |   |
|--------|------------------------|---|
| 1.1.48 | “sectional title unit” | a unit in a sectional title scheme within the development, the tenure in which is in terms of the Sectional Titles Act;   |
| 1.1.49 | “services”             | such utilities and amenities as may be provided by or on behalf of the Association for owners and residents within the development;   |
| 1.1.50 | “SMA Trust”            | the De Zalze Winelands Golf Estate Special Management Area Trust to be established by the developer in regard to the development;   |
| 1.1.51 | “South Africa”         | the Republic of South Africa or the territory comprised therein from time to time;  |
| 1.1.52 | “unit”                 | an erf forming part of the development capable of individual tenure in terms of the Deeds Registry Act and shown on a general plan, diagram and shall include an agricultural erf, a business unit, a non-permanent unit and a permanent unit, which is not a sectional title unit; |
| 1.1.53 | “vice-chairman”        | the vice-chairman of the board of directors;  |
| 1.1.54 | “in writing”           | written or reproduced by any substitute for writing or partly written and partly so reproduced and including printing, typewriting or lithography or any other mechanical process, or partly one and partly another;  |

- 1.1.55 “Zoning and Subdivision Approvals” the Zoning and Subdivision Approvals granted by the local authority in respect of the development.
- 1.2 Unless the context otherwise requires –
- 1.2.1 words importing the singular number shall include the plural number and *vice versa*;
- 1.2.2 words importing the masculine gender shall include the feminine gender;
- 1.2.3 words importing natural persons shall include firms and corporate bodies;
- 1.2.4 the word “meeting” shall include an adjourned meeting;
- 1.2.5 any reference to any provision of the Act shall include such provision as it may be modified or re-enacted from time to time.
- 1.3 Subject to article 1.1, any words or expressions defined in the Deeds Registry Act, or in the Act shall, unless the context otherwise requires, bear corresponding meanings in these Articles.
- 1.4 Subject to any provisions in these Articles to the contrary and notwithstanding any omission of any provision from these Articles or the memorandum, the Association may do anything which the Companies Act authorises a company to do if so authorised by its Articles.

## **2 MEMBERSHIP**

- 2.1 Membership of the Association shall be compulsory for every owner of a unit and for the body corporate of every sectional title scheme established within the development, it being recorded that the owners of sectional title units shall not directly hold membership in the Association.

- 2.2 Membership shall commence simultaneously with registration of transfer of a unit into the name of the transferee and in the case of sectional title schemes, on the establishment of the body corporate of such schemes and an owner or body corporate may not resign as a member of the Association. In the event of a sectional title scheme being registered and no body corporate is simultaneously established for such scheme, the “developer” as defined in the Sectional Titles Act shall be the member of the Association for the relevant scheme until the body corporate comes into existence. Any references in these articles to “body corporate” shall in such event be a reference to the developer of the relevant scheme.
- 2.3 Membership of the Association shall be limited to –
- 2.3.1 the developer in its capacity as such during the development period;  
and
- 2.3.2 the registered owner of any unit in the development, provided that where a unit is owned by more than 1 (one) registered owner, all the registered owners of the unit shall be deemed jointly and severally to be 1 (one) member of the Association and be entitled to 1 (one) vote at meetings of the Association; and
- 2.3.3 the body corporate of sectional title schemes established within the development or, pending the establishment of the body corporate, the developer of such scheme as provided for in article 2.2 above.
- 2.4 Any person reflected in the records of the Deeds Registry concerned as the owner of a unit including, *inter alia*, the developer, shall be deemed to be the owner of such unit and shall further be deemed, *ipso facto*, to be a member of the Association. For the avoidance of doubt, this includes the owners of an agricultural erf and the golf course land.
- 2.5 No person other than a person referred to in article 2.3 shall be entitled to be a member of the Association.

- 2.6 When a member ceases to be the owner of a unit, he shall *ipso facto* cease to be a member of the Association. If a sectional title scheme is cancelled, the body corporate or developer of such scheme shall no longer be a member and membership shall then be held by the owner of the unit in which the sectional scheme was previously registered
- 2.7 The rights and obligations of a member shall not be transferable and every member shall observe the objects and interests of the Association as well as all rules made by the Association or the directors, provided that nothing contained in these Articles shall prevent a member from ceding his rights in terms of these Articles as security to the mortgagee of that member's unit.
- 2.8 In the instance of sectional title schemes, the body corporate of each sectional title scheme shall procure the compliance by all of its members of the obligations imposed on owners of units with regard to the use and enjoyment of the common property and facilities and the conduct rules in place from time to time. The members of such body corporates shall be entitled to the use and enjoyment of the common property and facilities as if such members were members of the Association.

### **3 REGISTER OF MEMBERS**

- 3.1 The Association shall keep a register of members at the place and in the manner specified in the Act.
- 3.2 The directors may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the directors.

### **4 MEMBERSHIP OF DEVELOPER**

- 4.1 If the developer, in one transaction alienates all its rights and/or its obligations in all undeveloped land vested in it in respect of the development, it shall be entitled to cede, assign or delegate to the



transferee all its rights and/or obligations in terms of these Articles and the transferee shall be entitled to exercise all such rights.

4.2 The developer may at any time, abandon in whole or in part the particular rights conferred upon it during the development period, and shall be deemed to have done so at the end of the development period, provided that nothing contained herein shall be construed as depriving the developer of any rights it may have in terms hereof or as an ordinary member of the Association.

4.3 The developer has the right at any time to extend or alter the area or composition of the development by requiring the Association to incorporate into the development any additional property from time to time which the developer shall be entitled to develop as it may deem fit.

4.4 Should any additional property be incorporated into the development, the developer shall be entitled to require the first and all subsequent owners thereof to become members of the Association in respect of those parts from such date as the developer may determine, and on the same terms and conditions as are applicable to the other members.

4.5 No member shall be entitled to object to the subdivision and/or development of any part of the development, provided that such subdivision and/or development is not inconsistent with the Zoning and Subdivision Approvals.

4.6 The developer shall cease to be a member of the Association when it is no longer the owner of a unit.

## **5 LEVIES**

5.1 Subject to the provisions of 13.4, the directors shall, from time to time, impose levies upon the members as consideration for the use by the members of the common property and for the purpose of meeting all the expenses which the Association has incurred, or

which the directors reasonably anticipate the Association will incur, in the care, repair, maintenance, cleaning, upkeep, improvements, provision of security and proper control of the common property and the furtherance of its objects in general. In calculating the amount of the levies, the directors shall take into account income (if any) earned by the Association.

- 5.2 It is recorded that 5% (five percent) of the total levies collected by the Association annually shall be transferred to the SMA Trust for purposes of, *inter alia*, assisting the Association to comply with the environmental management system of the development from time to time.
- 5.3 Levies shall be allocated amongst the members by the directors, in their sole discretion, who shall determine the minimum levy payable by a member (“the base levy/ies”) and thereafter, subject to 33.10, allocate the total levies to the members as follows –
- 5.3.1 owner of a permanent unit which is not a sectional title unit – 1 (one) base levy;
- 5.3.2 owner of the club – 5 (five) base levies;
- 5.3.3 owner of any unit comprising a hotel – 5 (five) base levies per multiple of 60 (sixty) rooms (or any portion thereof);
- 5.3.4 owner of the existing Kleine Zalze guest house – 2 (two) base levies;
- 5.3.5 owner of the Kleine Zalze wine cellar – 2 (two) base levies;
- 5.3.6 owner of the Kleine Zalze restaurant – 1 (one) base levy;
- 5.3.7 owner of the agricultural erven within the Kleine Zalze portion of the development – 1 (one) base levy;
- 5.3.8 owner of all agricultural erven within the remainder of the development – 1 (one) base levy;

- 5.3.9 body corporate of a sectional title scheme offering permanent or short-term residential accommodation – a number of base levies equal to the total number of bedrooms in all the sections in the relevant sectional title scheme divided by 4 (four), rounded up or down as the case may be to the nearest whole number;
- 5.3.10 the owners of Erven 196 to 207 De Zalze (both inclusive), comprising the Kleine Zalze Lodges established on these erven after the incorporation of the Association – 12 (twelve) base levies in total, subject thereto that should a sectional title register or registers be opened in future in respect of any of the aforesaid erven, then the base levies to apply to the body corporate or body corporates then to become the member or members shall be determined *mutatis mutandis* in accordance with the provisions of article 5.3.9 above;
- 5.3.11 the owner(s) of any future lodges, hotels or guest houses to be expanded or established on Erven 216 to 227 De Zalze (*both inclusive*) or any other subdivision of Erf 38 De Zalze or any further subdivisions of any of these erven – levies determined *mutatis mutandis* in accordance with the provisions of articles 5.3.3, 5.3.9 above;
- 5.3.12 owner of any other non-permanent unit not listed above which is not a sectional title unit – 1 (one) base levy;

provided that any member who is the owner of more than 1 (one) unit shall be liable to make payment of such abovementioned share of the total levies in respect of each unit owned by him.

- 5.4 If, in the sole discretion of the directors, any expense is directly attributable to or increased by the specific use to which any unit or sectional title scheme is put, the member who is the owner of the relevant unit, or the body corporate of the sectional title scheme, as the case may be, shall be liable for such expense or additional expense, as the case may be.

- 5.5 In the event that any facility or service is utilised by any member to such an extent as to reasonably justify a greater contribution to the relevant expense than a contribution calculated strictly in accordance with article 5.3, the directors shall be entitled to make such special levy upon the relevant member as may be reasonable in the circumstances.
- 5.6 During the development period, the directors' decision, other than where such decision is manifestly unjust or incorrect, in calculating or allocating the levy amongst the members in accordance with articles 5.3, 5.4 and 5.5 shall be final and binding on all the members. After the development period, should a dispute arise with regard to the manner in which the directors calculate or allocate the levy as aforesaid amongst the members, such dispute shall be determined in accordance with the provisions of article 37.
- 5.7 The levies shall be payable by members in equal monthly (or such other intervals as the directors may from time to time determine) instalments in advance by bank debit order on the first day of each month into the bank account of the Association or by any other method as determined by the directors from time to time.
- 5.8 The directors may from time to time impose special levies, in addition to the special levy imposed in terms of 5.18, upon the members or call upon them to make special contributions in respect of all such expenses which are envisaged in article 5.1. Such levies and contributions may be payable in one sum or by such instalments and at such time or times as the directors shall deem fit.
- 5.9 Any amount due by a member by way of a levy or interest thereon shall be a debt due by him to the Association and interest shall be payable on arrear levies at such rate as may from time to time be determined by the directors.
- 5.10 Notwithstanding the aforesaid, no levies shall be payable by the developer in respect of unsold units.

- 5.11 During the development period the developer shall pay the shortfall between the income derived from levies paid by owners in terms of article 5.3 and the actual expenditure of the Association in each financial year, but shall not otherwise be liable to pay or contribute to any levies or special levies.
- 5.12 Except as provided in article 5.11 above, during and after the development period the developer shall have no liability or obligation to pay or to contribute to any levies or special levies.
- 5.13 The obligation of a member to pay levies shall cease upon his ceasing to be a member, without prejudice to the Association's rights to recover arrear levies and interest thereon. No levies or interest paid by a member shall under any circumstances be repayable by the Association upon such member ceasing to be a member.
- 5.14 A member's successor in title to a unit shall be liable as from the date upon which he becomes the owner of that unit, to pay the levy and interest thereon attributable to that unit.
- 5.15 A member shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the Association in obtaining the recovery of arrear levies or any other arrear amounts due and owing by such member to the Association.
- 5.16 No member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and interest thereon, and any other sum, if any, which may be due and payable by that member to the Association, from whatsoever cause arising.
- 5.17 The Association may enter into arrangements with the lessee or operator as contemplated in 13.3 relating to the upkeep by the lessee or operator of certain areas (other than agricultural areas and roads) within the development, including, but not limited to, rivers and areas outside of the individual erven. The Association shall be entitled, in perpetuity, to pay to the lessee or operator, on a monthly basis, an

amount in payment for the aforementioned services rendered, which amount shall not exceed 30% (thirty percent) of all income received by the Association in the form of levies from members.

- 5.18 Subject to article 5.22 below, every –
  - 5.18.1 owner of a permanent unit , or where a permanent unit is owned by more than 1 (one) registered owner, all the registered owners of the permanent unit jointly and severally; and
  - 5.18.2 shareholder of a company owning a permanent unit, or member of a close corporation owning a permanent unit, or beneficiary of a trust owning a permanent unit,

shall be liable to pay to the Association a special levy equal to 1% (one percent) of the value of the owner's permanent unit or shareholders interest or members interest or beneficial interest, as the case may be, at the time his permanent unit or shareholders interest or members interest or beneficial interest, as the case may be, is sold, transferred, alienated or otherwise disposed of to any person. For purposes of this article 5.18, "value" means the price at which the permanent unit or shareholders interest or members interest or beneficial interest, as the case may be, is sold, transferred, alienated or otherwise disposed of, provided that where in the opinion of the directors any such sale, transfer, alienation or disposal is not in terms of an arms-length transaction or amounts to a donation, "value" shall mean the market value thereof as determined by a valuer appointed by the directors. Any dispute that may arise in respect of the valuation procured by the directors shall be determined in accordance with the provisions of article 37.

- 5.19 The special levy contemplated in 5.18 shall –
  - 5.19.1 be payable to the Association against registration of transfer of the owner's permanent unit to a third party or against transfer of the shareholders interest or members interest or beneficial interest, as the case may be;

- 5.19.2 be imposed upon the owners for purposes of accumulating a capital reserve fund which will only be used to meet the capital expenditure requirements (including necessary expenditure in relation to the maintenance of capital infrastructure) and not operating expenses of the Association and the golf course. The lessee or operator of the golf course shall have the right to receive payment of 50% (fifty percent) of such special levies or such other amount as may be agreed between the directors and the lessee and/or operator in terms of the lease and management agreement contemplated in 13.3.
- 5.20 The obligation to pay the special levy contemplated in 5.18 shall be deemed to have accrued prior to transfer and accordingly transfer shall be without prejudice to the Association's right to recover such special levy, and interest thereon, after transfer.
- 5.21 No special levy contemplated in 5.18 shall be payable by -
- 5.21.1 the developer, Kleine Zalze or Kleine Zalze Realisation in respect of units or sectional title units transferred by the developer, Kleine Zalze or Kleine Zalze Realisation to any third party;
- 5.21.2 the developer, Kleine Zalze, Kleine Zalze Realisation or any subsidiary or associate company of the developer, Kleine Zalze, Kleine Zalze Realisation in respect of the transfer of any unit or sectional title unit to give effect to an internal reorganisation of the property held by any of these entities.
- 5.22 The special levy contemplated in 5.18 shall only be payable in respect of permanent units or shareholders interest or members interest or beneficial interest, as the case may be, transferred after 1 January 2007.
- 5.23 The provisions of articles 5.18 to 5.22 (both inclusive) shall apply *mutatis mutandis* to every owner of a sectional title unit, it being the intention that such owner shall also be liable to pay to the Association a special levy equal to 1% (one percent) of the value of the owner's

sectional title unit or shareholder's interest or member's interest or beneficial interest, as the case may be, at the time his sectional title unit or shareholder's interest or member's interest or beneficial interest, as the case may be, is sold, transferred, alienated or otherwise disposed of to any person. The body corporate of each sectional title scheme shall procure that its management rules provide for this obligation of its members. The body corporate shall be liable for and shall pay to the Association all amounts to become due to it in terms of this article.

5.24 If a unit is owned by more than 1 (one) person, all the persons owning a share or any interest in that unit shall be jointly and severally liable to the Association for:

5.24.1 the punctual payment of all levies and any other amounts payable in respect of that unit;

5.24.2 the due performance by all the persons owning a share or any interest in that unit of all their obligations;

in terms of, or in connection with or arising in any way whatsoever out of the memorandum and/or the Articles, or any amendment thereof.

5.25 The Association shall invoice the body corporate of a sectional title scheme for all levies payable in respect of the relevant sectional title scheme and the body corporate shall be liable for payment of such levies and shall be responsible to collect the contributions to such levies from its members.

## **6 OBLIGATIONS OF THE ASSOCIATION**

6.1 The obligation to control, manage and administer the development and the common property (other than the golf course which shall be managed and controlled in accordance with the provisions of 13.4) shall vest in the Association.



- 6.2 The responsibility for the management and control of the development shall be transferred from the developer to the Association on transfer of the first unit and the common property and all facilities thereon shall be transferred in a completed state, provided that if any facilities are incomplete at the date of transfer, the developer shall retain responsibility for the completion thereof, which it shall undertake as soon as practically possible.
- 6.3 The Association shall, in managing the common property and the development in general –
- 6.3.1 ensure that all conditions of approval and scheme regulations for the development are complied with;
- 6.3.2 have due regard to the principles recorded in the Management Framework, the obligations of the SMA Trust and in any environmental management system for the development prepared by the developer; and
- 6.3.3 comply with the obligations placed on the Association in terms of the management framework and the environmental management system, including, but not limited to, the preparation of environmental audit reports and the submission thereof to the local authority.
- 6.4 All facilities and services on the development are to be procured and installed by the developer strictly in accordance with any agreement reached between the developer and a local authority.
- 6.5 The Association and/or the developer may register, where necessary, servitudes across the development in favour of any statutory authority, the developer and/or the Association, whether in respect of any units or sectional title schemes or the common property (including the golf course), provided that the Association may not register any servitudes across any units or sectional title schemes not owned by the Association unless it is compelled to in terms of any agreement or by law.

- 6.6 The developer and Kleine Zalze Realisation have entered into an agreement in respect of the development (“the development agreement”) in terms of which, *inter alia*, they have reciprocal rights and obligations relating to various servitudes registered or to be registered within the development and the developer, Kleine Zalze Realisation and Kleine Zalze undertake to, where necessary, register or procure the registration of such servitudes. The aforementioned servitudes include, but are not limited to, the following –
- 6.6.1 Kleine Zalze shall cede to the Association the joint use and entitlement to the entrance road servitude from a point on the Techno Park entrance road along a route to the point where the road to be constructed connects with the new road to be constructed on Farm 508;
- 6.6.2 to the extent that any part of the entrance road to the estate, to be constructed to the north of the Blaauwklippen River starting at the Kleine Zalze entrance to be constructed on the Techno Park road and ending on the bridge across the Blaauwklippen River to the south of the cellar erected on Farm 508, forms part of and falls on the remainder of the Farm 508 of which Kleine Zalze retains ownership, Kleine Zalze shall register a servitude right of way over this portion of Farm 508 in favour of the Association;
- 6.6.3 Kleine Zalze shall register in favour of the developer a servitude in perpetuity in terms of which the developer shall have the right to occupy and use that area of the Farm 508 forming part of the golf course, which servitude shall be registered in accordance with the terms and conditions contained in the development agreement which provide, *inter alia*, that –
- 6.6.3.1 the servitude area may at all times be used only as a golf course area;
- 6.6.3.2 the maintenance and upkeep of the servitude area shall be undertaken by the holder from time to time of the servitude rights to the servitude area;

- 6.6.3.3 the servitude area shall at all times be maintained in a pristine condition;
- 6.6.3.4 in the event of the holder of the right to the servitude area failing to discharge its obligations to maintain the servitude area, Kleine Zalze shall be entitled, after having given the holder of the servitude rights 10 (ten) days' notice to remedy the breach of its obligations, to undertake such works as may be required to remedy the breach and thereafter to recover any costs so incurred by it from the holder of the servitude rights;
- 6.6.3.5 Kleine Zalze shall be entitled to terminate the servitude on written notice to the holder of the servitude rights in the event that the servitude area should in future not be substantially utilised as part of a golf course for an ongoing period of 6 (six) months (it being recorded that sporadic and/or intermittent usage during such period shall not for purposes of the foregoing qualify as a substantial use);
- 6.6.3.6 should Kleine Zalze terminate the servitude rights as contemplated above, the servitude area shall thereafter be used only for *bona fide* farming activities or as private open space area;
- 6.6.4 servitudes which may have to be granted over land within the development, which servitudes are to secure and protect any new services to be installed or constructed for purposes of the development of the estate.
- 6.7 The Association shall register a local office with the local authority for the payment of District Council levies or such other levies that may be applicable from time to time.

## **7 RULES**

- 7.1 Subject to any restriction imposed or direction given at a general meeting and the provisions of 13.4, the directors may from time to

time make rules in regard to the development, including, and without limiting the generality of the foregoing, with regard to –

- 7.1.1 the use and enjoyment of any common facilities;
- 7.1.2 the preservation of the natural environment including vineyards, vegetation and flora and fauna;
- 7.1.3 the use and allocation of private parking areas forming part of the development for owners and their guests;
- 7.1.4 the right to prohibit, restrict or control the keeping of animals which they regard as dangerous or a nuisance;
- 7.1.5 the use of recreation and entertainment areas and amenities and facilities and the right to levy charges for the use thereof;
- 7.1.6 the use and control of a business unit or business premises forming part of the development;
- 7.1.7 the storage of flammable and other harmful substances;
- 7.1.8 the conduct of any person and the prevention of nuisance of any nature to the owner of any property forming part of the development;
- 7.1.9 the introduction of traffic calming measures;
- 7.1.10 the introduction and maintenance of security facilities;
- 7.1.11 the imposition of fines and other penalties that may be payable by and enforced against members of the Association;
- 7.1.12 generally such other matters as may be necessary for the harmonious and beneficial use and enjoyment of the development;
- 7.1.13 the maintenance of all buildings, outbuildings and structures, improvements of any nature as well as landscaping within the development;

- 7.1.14 the control of the number of occupiers or residents permitted on any one unit or sectional title unit;
- 7.1.15 the imposition of fines by the Association for a contravention of the rules, including, *inter alia*, the failure by an owner to complete construction of a dwelling within the time limits prescribed by the Association from time to time;
- 7.1.16 the admission of any person within the development and the eviction of any person not entitled to be present thereon;
- 7.1.17 the siting of all buildings, outbuildings, structures of any nature, swimming pools and all additions and alterations thereto;
- 7.1.18 the aesthetic appearance, design, specifications and maintenance of dwelling houses and/or outbuildings;
- 7.1.19 restrictions against parking and storing boats, caravans and trailers;
- 7.1.20 the nature, content and design of the gardens within any unit including the establishment and maintenance of landscaping in these areas;
- 7.1.21 the nature of the common property adjacent to any unit including the establishment and maintenance of landscaping in these areas; and
- 7.1.22 the installation, operation and maintenance of irrigation in the common property.
- 7.2 All rules made by the directors in accordance with the provisions of article 7.1 shall be reasonable and shall apply equally to all owners.
- 7.3 The Association may, in general meeting, itself make rules in regard to any matter and may also vary or modify the rules.
- 7.4 Each member undertakes to the Association that he shall comply with all rules made in terms of article 7.1.

## **8 ENFORCEMENT**

8.1 For purposes of the enforcement of any of the rules made by the directors in terms hereof, the directors may –

8.1.1 give notice to a member concerned requiring him to remedy such breach within such period as the directors may determine;

8.1.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall then be deemed to be a debt owing by the member concerned to the Association;

8.1.3 take such other action, including court proceedings, as they may deem fit.

8.2 In the event of any breach of the rules by any member's tenants or guests, or, in the instance of a body corporate, the members of the body corporate, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the directors may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.

8.3 In the event of any member disputing the fact that he has committed a breach of any of the rules as aforesaid, a committee of three directors appointed by the chairman for that purpose, shall adjudicate upon the issue at such time and in such manner and according to such procedure as the chairman may direct. The decision of the directors shall be final and binding on a member.

8.4 Notwithstanding the foregoing, the directors may, in the name of the Association, enforce the provisions of the rules by proceedings in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.

8.5 It shall be the duty of the manager, or such other person or body as may be empowered by the directors, to ensure compliance by the members with the rules, and to this end, to issue such notices or do such things as may be necessary or requisite.

8.6 Should the directors institute any legal proceedings against any member for the enforcement of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs incurred from the member concerned, calculated as between attorney and own client, including tracing fees and collection commission.

## **9 MAINTENANCE AND FACILITIES**

9.1 Subject to the provisions of 13.4, the directors shall have control of all recreational facilities, security facilities, parking and other common facilities and amenities and all agricultural land within the common property.

9.2 Subject to the provisions of 13.4, the directors shall have the power, without prejudice to any other rights of the Association, to –

9.2.1 provide and maintain recreational facilities for use by members;

9.2.2 provide and maintain security facilities and services on and about the development;

9.2.3 maintain the services and roads on and about the development;

9.2.4 engage the services of a security company or other personnel to patrol the development and generally to provide security services to the development;

9.2.5 control access to the development;

9.2.6 provide and maintain entrance gates and guardhouses to control access to the development;

- 9.2.7 control parking and introduce traffic calming measures;
- 9.2.8 perform such other acts and functions as may be reasonably necessary to give effect to the main object of the Association.

## **10 MANAGER**

- 10.1 During the development period a manager shall be appointed by the developer and the developer shall, in its sole and absolute discretion, determine the fees or remuneration to be paid by the Association to the manager and the other terms and conditions of his contract of appointment. This contract of appointment may extend beyond the development period, provided that the developer shall endeavour to procure in making such appointment that it may, if so required by the Association in general meeting, and subject to the requirements of law, be terminated on reasonable notice after the end of the development period.
- 10.2 After the development period, in the event that an existing manager's contract of appointment is terminated in terms of 10.1, successor managers shall from to time be appointed by the Directors and the Directors shall determine the fees or remuneration to be paid by the Association to such managers and all the other terms and conditions of their contracts of appointment, it being contemplated that at all times the affairs of the Association will be entrusted in whole or in part to a professional manager with appropriate executive powers so as to conform to the requirements of good corporate governance.
- 10.3 The contract with the manager shall provide for the appointment to be revoked and for the manager to cease to hold office, if –
- 10.3.1 where the manager is a company, an order is made for its provisional or final liquidation, or where the manager is a natural person, he surrenders his estate as insolvent or his estate is sequestrated; or



- 10.3.2 the manager is convicted of an offence involving fraud or dishonesty; or
- 10.3.3 after the development period, a special resolution of the members of the Association is passed to that effect, provided that in such event the manager so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.
- 10.4 Subject to the provisions of the Articles and the terms of his appointment, the manager shall have such powers to manage and control the business and affairs of the Association (other than the golf course land which shall be managed and controlled in accordance with the provisions of 13.4) as may be conferred upon him by the directors from time to time. The manager shall keep full records of his administration and shall report to the Association on all matters which in his opinion detrimentally affects the value of the units.
- 10.5 Should a manager not be appointed in terms of this article 10, then all references in the Articles to the manager shall be deemed to be a reference to the directors.

## **11 ALIENATION AND OCCUPATION**

- 11.1 No unit, or any share or interest in any unit or sectional title unit or any share or interest in a sectional title unit, may be sold, transferred, leased, alienated or otherwise disposed of to any person without the prior written approval of the Association which approval shall not be unreasonably withheld, and unless –
- 11.1.1 the person to whom the unit (or any share or interest in the unit) is to be alienated has agreed in writing to be and remain a member of the Association for so long as he is and remains the owner of the unit or share or interest in the unit, as the case may be;
- 11.1.2 the person to whom the sectional title unit (or any share or interest in such unit) is to be alienated has agreed in writing to abide with all

the terms and conditions of these articles insofar as they relate to the use and enjoyment of such sectional title unit and the use and enjoyment of the common property and facilities; and

11.1.3 the conveyancer nominated in terms of a written deed of sale is obligated to pay on behalf of the owner of the unit or sectional title unit the special levy, if applicable, contemplated in 5.18 and 5.23 to the Association against transfer of the unit, any share or any interest in any unit or the sectional title unit or any share or interest in such sectional title unit. The deed of sale shall furthermore record that the obligation imposed on the conveyancer is imposed for the benefit of the Association which may accept such benefit at any time in writing to the conveyancers; and

11.1.4 the person to whom the shareholders interest or members interest or beneficial interest in any unit or sectional title unit, as the case may be, is to be alienated has agreed in writing to pay on behalf of the owner the special levy, if applicable, contemplated in 5.18 and 5.23 to the Association against transfer of the shareholders interest or members interest or beneficial, as the case may be;

11.1.5 the Association has certified in writing that –

11.1.5.1 provisions of article 11.1 have been complied with; and

11.1.5.2 levies for any unit or share or interest in a unit for a period of not less than 3 (three) months after the date of the certificate in question have been paid or secured to the satisfaction of the Association; and

11.1.6 transfer is effected before the expiry of the period referred to in article 11.1.5.2.

11.2 Notwithstanding the provisions of article 11.1, registration of transfer of a unit to any person shall *ipso facto* constitute that person as a member of the Association.

- 11.3 For the purposes of these Articles, the alienation by a shareholder of his shares in a company owning a unit or a sectional title unit or the alienation by a member of his member's interest in a close corporation owning a unit or a sectional title unit or the alienation by a beneficiary of his interest in a trust owning a unit or a sectional title unit, shall be deemed to be the alienation of a unit for purposes of 11.1.

## **12 BUILDING REQUIREMENTS**

- 12.1 In order to maintain high standards and to ensure an attractive and harmonious development, no building or structure may be erected on any unit or sectional title scheme and the external appearance of any existing or future building or structure may not be changed unless the architectural designs of such building or structure have been prepared and submitted by persons or firms registered with the SA Institute of Architects, are in line with the architectural guidelines for the development and have been approved in writing by the Association or the manager. The Association shall be entitled to charge a reasonable fee agreed to by the Association from time to time for the inspection of any plans and/or specifications submitted to it for approval, whether or not approval is granted and to charge a reasonable fee agreed to by the Association from time to time for the inspection of any plans and/or specifications re-submitted to it for approval.
- 12.2 The Association shall further be entitled to charge a reasonable fee agreed to by the Association from time to time for the removal of building rubble and for supervision of building operations being undertaken on the development.
- 12.3 Prior to commencing construction of any building or structure on a unit or sectional title scheme, the owner or body corporate shall be obliged to deposit such amount as may be determined by the Association from time to time with the directors. Such deposit shall bear interest from time to time at a rate to be determined by the

Association, may be retained by the Association as “rouwkoop” or as a genuine pre-estimate of liquidated damages in the event that the owner breaches any of the provisions of these Articles or the rules relating to building requirements and standards and may be applied by the Association to ensure compliance by the owner or his sub-contractors of his obligations as a member of the Association.

12.4 All buildings and structures shall be built in a good and proper and workmanlike manner and strictly in accordance with the architectural designs approved in accordance with article 12.1, and all erven and improvements thereon shall be kept and maintained in a neat and tidy condition to the satisfaction of the Association.

12.5 If any building or structure is erected in contravention of these Articles or the architectural guidelines, the Association shall be entitled to demolish such building or structure and to claim all costs associated therewith from the owner or resident of the unit or from the Body Corporate of the sectional title scheme on which the building or structure was erected.

12.6 The Association shall further be entitled to create a fund to be used during the development period to defray the costs of maintenance of the roads within the development and the members shall be obliged to contribute a reasonable amount to such fund as determined by the developer from time to time.

### **13 GOLF CLUB AND THE GOLF COURSE**

13.1 A golf club and clubhouse will be established and built for the benefit of the club members.

13.2 The developer shall –

13.2.1 transfer to the Association the portion of the golf course land owned by the developer; and

- 13.2.2 procure the registration of a servitude/s in favour of the Association in respect of the portion/s of the golf course land not owned by the developer (including, without limitation, the servitude contemplated in 6.6.3).
- 13.3 Thereafter, the Association shall lease the golf course land to a company (“the lessee”) established by the developer and Kleine Zalze for purposes of holding leasehold rights in respect of the golf course and which lessee shall –
- 13.3.1 be responsible for the management, operation, maintenance and control of the golf course land and golf course; and
- 13.3.2 have the right to enter into a management agreement (“the management agreement”) with an operator (“the operator”) for the management, operation, maintenance and control of the golf course land and golf course on its behalf,
- subject to the terms and conditions contained in a written lease agreement (“the lease”) to be entered into between the Association and the lessee.
- 13.4 Although the club, the golf course and the golf course land will form part of the common property and facilities, –
- 13.4.1 the manner in which the club, the golf course and the golf course land will be managed, operated, maintained and controlled and the manner in which the expenses in respect of such management, operation, maintenance and control will be met, shall, notwithstanding any provisions to the contrary contained in these Articles, be governed by the terms and conditions of the lease and the management agreement;
- 13.4.2 the Association’s members’ use and enjoyment of the golf course and the club will be subject to the terms and conditions of the lease and the management agreement and the Constitution of the club

and the rules and regulations applicable from time to time in relation to the use and enjoyment of the golf course and club.

- 13.5 In terms of the Constitution of the club -
  - 13.5.1 membership of the club will include the following categories of members -
    - 13.5.1.1 founder members;
    - 13.5.1.2 owner golf members as contemplated in 13.5.2;
    - 13.5.1.3 non-owner golf members;
    - 13.5.1.4 hotel/resort members;
    - 13.5.1.5 corporate members;
    - 13.5.1.6 such other forms of membership as determined in accordance with the Constitution of the club from time to time, including, but not limited to, individual membership, couple membership, family membership and absentee/country membership;
  - 13.5.2 each owner of a unit or sectional title unit, or in the case of more than one owner, the owners collectively, shall be entitled in respect of each unit or sectional title unit owned by such owner/s to nominate from time to time 2 (two) persons to become members of the club ("owner golf member") who will be entitled to be and remain members for as long as the owner/s nominating such members remain/s the owner/s of the unit or sectional title unit concerned, subject to the provisions of the Constitution of the club from time to time (including any rules made thereunder);
  - 13.5.3 the board of the club may from time to time make, vary or modify conduct rules applicable to the club, subject to the provisions of the Constitution of the club from time to time;

- 13.5.4 the members of the club will be afforded special rights with regards to the booking of playing times, subject to the provisions of the Constitution of the club from time to time.

#### **14 RIGHTS OF ACCESS OF MEMBERS TO AGRICULTURAL ERVEN**

- 14.1 The members shall be entitled to limited access to and over all agricultural erven which form part of the development.
- 14.2 The right of access, as envisaged in 14.1, shall be subject to the following provisions –
- 14.2.1 such access shall be used only for purposes of recreational walking, jogging or cycling;
- 14.2.2 the access shall be limited to such defined routes and areas as may be determined from time to time by the owner(s) of the agricultural erven;
- 14.2.3 the owner(s) of the agricultural erven shall be entitled from time to time to issue reasonable directives to the members regarding the exercise by such members of their right of access over the agricultural land;
- 14.2.4 the owner(s) of the agricultural erven shall be entitled to temporarily suspend the right of access of members, should any of the members not adhere strictly to all directives issued with regard to the exercise of the rights of access over the agricultural land.
- 14.3 In the event that an owner of an agricultural erf, save for the Association, should have to incur any necessary expenses in establishing and/or maintaining any defined routes or areas in respect of which the right of access of the members may be exercised, as envisaged above, such owner shall be entitled to recover from the Association any necessary expenses so incurred. Notwithstanding the aforesaid, any contribution so made by the Association will not vest in the Association or any of its members any

permanent rights in respect of any of the defined access routes or areas, it being recorded that such access routes and/or areas and, generally, the access to the agricultural erven shall at all times be under the control of and at the behest of the owner(s) of such agricultural erven.

## **15 SPECIFIC PROVISIONS TO APPLY TO NON-PERMANENT UNITS**

- 15.1 No non-permanent unit which is intended to be used as part of a syndication ownership scheme, fractional ownership scheme, a time share scheme, a share block scheme or some other scheme or arrangement of similar nature shall be owned directly or indirectly by more than 13 (thirteen) persons without the prior written consent of the Association.
- 15.2 Not more than 2 (two) persons per bedroom shall at any time occupy or reside in any non-permanent unit, whether temporarily or otherwise.
- 15.3 No owner of any non-permanent unit which is a sectional title unit or of any share or any interest in that sectional title unit shall in any way:
  - 15.3.1 advertise that unit or any part thereof for letting, occupation or use for any purpose unless it complies with such reasonable regulations or guidelines as the Association may impose from time to time relating the advertising or letting, occupation or use of non-permanent units.
  - 15.3.2 let, permit any person to occupy, or use that non-permanent unit or any part thereof, unless:
    - 15.3.2.1 this is done through a central reservation system approved by the Association in writing and which is operated for the specific sectional title scheme or business unit by a single operator; and



15.3.2.2 such operator has agreed and undertaken in writing to comply with such terms and conditions as the Association may reasonably require from time to time, in terms of which such operator is, *inter alia*, to be responsible to the Association for ensuring that:

15.3.2.2.1 any person/s to whom that unit is let or who is permitted to occupy, or use that unit or any part thereof; and

15.3.2.2.2 all other persons who occupy that unit through any person/s to whom that unit is let or who is permitted to occupy, or use that unit;

comply with the relevant provisions of these articles and any rules and regulations imposed in terms thereof;

15.3.3 let, permit any person to occupy, or use that unit or any part thereof without the prior written consent of the Association, unless the central reservation system reflects the name/s and residential address/es of such persons for the period over which such person/s will be resident in that unit, it being recorded that this restriction shall not preclude the occupation and use of any such units by persons who are logged onto the central reservation system without prior reservations having been made;

15.3.4 let, permit any person to occupy or use that unit or any part of that unit for permanent use or occupation and where any person uses or occupies that unit for more than 180 (one hundred and eighty days) during any period of 12 (twelve) months the onus shall rest on that person to prove that he or she is not occupying that unit for permanent use or occupation.

## **16 GENERAL MEETINGS**

16.1 The Association shall from time to time hold annual general meetings as provided in the Act.

- 16.2 Save as may be provided in the Act, members may not convene a general meeting of the Association, except where all the directors have become incapacitated or have ceased to be directors, in which event 2 (two) or more members may convene a general meeting on due notice to all members entitled thereto, and may recover the cost of so doing from the Association.
- 16.3 The directors –
- 16.3.1 may, whenever they deem fit, convene a general meeting of the Association;
- 16.3.2 shall convene a general meeting if requisitioned in terms of the Act.

## **17 VENUE OF MEETINGS**

- 17.1 Subject to the provisions of the Act, all general meetings, whether annual or otherwise, shall be held at such time and place as may be determined by the directors from time to time.
- 17.2 Notwithstanding the provisions of article 17.1, the members may, by simple majority, direct that the annual general meeting of the Association shall be held at such other place as the members may deem fit.

## **18 NOTICE OF GENERAL MEETINGS**

- 18.1 Not less than 21 (twenty one) clear days notice shall be given of all annual general meetings or meetings called for the passing of a special resolution and not less than 14 (fourteen) clear days notice shall be given of any other general meeting –
- 18.1.1 in the manner hereinafter determined;
- 18.1.2 to such persons as are, in accordance with the provisions of the Articles, entitled to receive notice of all meetings from the Association.

- 18.2 The notice shall specify the place, day and time of the meeting and the nature of the business to be transacted thereat.
- 18.3 Whenever notice of a meeting is given pursuant to this Article, the Association shall forward a copy thereof to the auditors of the Association and to the manager.
- 18.4 The accidental omission to give notice of a meeting or, where applicable, to send an instrument of proxy therewith, or the failure to receive a notice or proxy by any person entitled thereto, or the late receipt thereof, shall not invalidate the proceedings at that meeting.

## **19 PROCEEDINGS AT GENERAL MEETINGS**

- 19.1 The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the annual financial statements, the election of directors and the appointment and remuneration of the auditors.
- 19.2 The quorum for a general meeting shall be 5% (five percent) of the members entitled to vote at such general meeting, provided that there shall always be at least 3 (three) members present in person.
- 19.3 No business shall be transacted at any general meeting unless a quorum is present.
- 19.4 A corporate body, being a member of the Association, and which is represented by a duly appointed representative, shall be deemed to be a member personally present for the purpose of this Article. In the event of any unit being owned by more than one party, the co-owners of any such unit shall appoint from amongst them one co-owner who alone shall be entitled to attend, participate and vote at any general meeting.
- 19.5 If –
- 19.5.1 within 10 (ten) minutes from the time appointed for the meeting; or

19.5.2 at any time during the course of the meeting,

a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved.

19.6 If a meeting is dissolved as in article 19.5 above, it shall stand adjourned to a date not earlier than 7 (seven) days and not later than 21 (twenty one) days after the date of the meeting as the chairman may determine, and at the same time and place or, if not possible, at such other time and/or place as the chairman of the meeting shall appoint.

19.7 If at such adjourned meeting a quorum is not present within 10 (ten) minutes from the time appointed for holding the meeting, then any two members who are present in person or by proxy and are entitled to vote shall be a quorum and may transact the business for which the meeting was called.

19.8 The chairman, or, in his absence, the vice-chairman (if any), shall preside as chairman at every general meeting of the Association.

19.9 If there is no such chairman or vice-chairman, or at any meeting neither the chairman nor the vice-chairman is present within 10 (ten) minutes after the time appointed for the meeting, or if neither of them is willing to act as chairman, the directors present, shall choose one of their number to act as such, but if 1 (one) director only is present, he shall preside as chairman if he is willing so to act.

19.10 In the absence of a chairman in terms of article 19.8 and 19.9, the members present shall elect one of their number to act as chairman.

19.11 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting, except such business as may lawfully have been transacted at the meeting which was adjourned.

- 19.12 Where a meeting has been adjourned in terms of article 19.6 or article 19.11, the Association shall, upon a date not later than 3 (three) days after the adjournment, publish in a newspaper circulating in the province where the office is situate, a notice stating –
- 19.12.1 the date, time and place to which the meeting has been adjourned;
- 19.12.2 the matter before the meeting when it was adjourned; and
- 19.12.3 the grounds for the adjournment.
- 19.13 At a general meeting a resolution put to the vote of the meeting shall be decided on the basis set out in article 20.
- 19.14 A declaration by the chairman of the meeting that a resolution has not been passed by a particular majority, or rejected (and an entry to that effect in the minute book) shall be conclusive evidence of that fact.
- 19.15 In the case of an equality of votes the developer, during the development phase, shall have a second or casting vote.
- 19.16 The chairman of a meeting may appoint any firm or persons to act as scrutineers for the purpose of checking the powers of attorney received and for counting the votes at the meeting, and act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.
- 19.17 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution unless –
- 19.17.1 it be brought to the attention of the chairman at the meeting; and
- 19.17.2 in the opinion of the chairman of the meeting, it be of sufficient magnitude to vitiate the resolution.
- 19.18 Any objection to the admissibility of any vote shall be raised –

19.18.1 at the meeting or adjourned meeting at which the vote objected to was recorded; or

19.18.2 at the meeting or adjourned meeting at which the result of the poll was announced,

and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

19.19 Even if he is not a member, any director, or the Association's attorney (or where the Association's attorneys are a firm, any partner or director thereof), may attend and speak at any general meeting, but may not vote unless he is a member or the proxy or representative of a member.

## **20 VOTES OF MEMBERS**

20.1 At every general meeting –

20.1.1 the owner/s of a unit shall have 1 (one) vote in respect of each unit, it being specifically recorded that there shall at all times be only 1 (one) vote in respect of each unit notwithstanding the number of registered co-owners of such unit; and

20.1.2 a body corporate of a sectional title scheme shall have a number of votes equal to the number of base levies payable by such body corporate to the Association which votes shall be cast by the chairman of the body corporate of the relevant sectional title scheme or his or her nominee Any corporate body which is a member may, by resolution of its directors or other governing body, appoint a person to act as its representative at any general meeting of the Association.

20.1.3 subject to article 20.1.2, where a unit is owned by more than 1 (one) registered owner, only 1 (one) of the registered owners of the unit shall be permitted to attend, speak and/or vote at the meeting.

- 20.2 Any corporate body which is a member may, by resolution of its directors or other governing body, appoint a person to act as its representative at any general meeting of the Association.
- 20.3 Such representative shall be entitled to exercise the same rights on behalf of the corporate body which he represents as that corporate body could exercise if it were an individual who was a member of the Association.
- 20.4 The rights of any co-owners including, *inter alia*, the voting rights, shall be cast by the liaison officer appointed in terms of article 36.
- 20.5 The directors may, but shall not be obliged, to require proof to their satisfaction of the appointment or authority of such representative.
- 20.6 Subject to any express provision to the contrary contained in these Articles, no member other than a member duly registered, and who shall have paid every levy and other sum, if any, due and payable to the Association, shall be entitled to vote at a general meeting.
- 20.7 No resolution of members shall be passed unless the developer, during the development period, has voted in favour thereof.

## **21 PROXIES**

- 21.1 The appointment of a proxy shall be in writing under the hand of the person making such appointment or his agent, duly authorised in writing. If the appointee be a corporate body, the power of attorney shall be signed in the manner which and by the person who binds that corporate body.
- 21.2 The agent under a power of attorney of a member is entitled, if so authorised by the power of attorney, to vote on behalf of and represent such member at any meeting of the Association.
- 21.3 A proxy must be a member of the Association and a member may appoint more than 1 (one) proxy to act on his behalf on the same occasion.

21.4 The directors may, if they think fit, send out with the notice of any meeting, forms of proxy for use at the meeting. Every instrument of proxy, whether for a specified meeting or otherwise, shall be in the form or to the effect of the following, or in such other form as the directors may approve, in either case under the heading of or referring to the Association's name.

"I/We,.....of.....  
 ..... being a  
 member(s) of ..... (Association  
 incorporated under Section 21), hereby appoint .....  
 ..... of ..... or failing him  
 ..... of ..... or  
 failing him ..... of  
 ..... or failing him the chairman of the meeting  
 as my/our proxy to vote for me/us and on my/our behalf at the  
 annual general or general meeting (as the case may be) of the  
 Association to be held on the ..... day of  
 ..... and at any adjournment thereof  
 as follows –

|                     | In favour of | Against | Abstain |
|---------------------|--------------|---------|---------|
| Resolution No ..... | .....        | .....   | .....   |
| Resolution No ..... | .....        | .....   | .....   |
| Resolution No ..... | .....        | .....   | .....   |

(Indicate instruction to proxy by way of a cross in the space provided above.)

Unless otherwise instructed, my/our proxy may vote as he thinks fit.

Signed this ..... day of .....

\_\_\_\_\_  
 Signature.



(Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy need not also be a member of the Association)”

21.4.1 Any power of attorney and any instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of such power of attorney shall be deposited at the office or at such other place within South Africa as is specified for that purpose in the notice convening the meeting, not less than 48 (forty eight) hours (excluding Saturdays, Sundays and public holidays) before the time appointed for holding –

21.4.1.1 the meeting or adjourned meeting at which the person named in such instrument proposes to vote;

21.4.1.2 a poll, where a poll is to be held after a meeting or adjourned meeting.

21.4.2 If the power of attorney or other instrument of proxy is not deposited timeously, it shall not be treated as valid.

21.4.3 Unless specifically otherwise stated in the proxy, no instrument appointing a proxy shall be valid after the expiration of 6 (six) months from the date thereof except at a poll demanded at a meeting originally held within the 6 (six) months after the date of such instrument, or at an adjourned meeting of a meeting held within such period.

21.5 A vote by virtue of a power of attorney or an instrument of proxy shall be valid notwithstanding the previous legal incapacity of the principal or revocation of the power of attorney or instrument of proxy, unless an intimation in writing of such legal incapacity is received by the Association at the office not less than 24 (twenty four) hours before commencement of the meeting or the taking of the poll at which the instrument of proxy is used.

## **22 DIRECTORS**

- 22.1 There shall be a board of directors of the Association which shall consist of not less than 4 (four) and not more than 7 (seven) directors.
- 22.2 Each director shall be an individual but need not himself be a member of the Association. A director, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by the provisions of these Articles.
- 22.3 Any person or group of persons appointing a director shall be entitled to remove that director and to replace the director so removed with another director.
- 22.4 Each director shall be entitled to appoint an alternate director to act in his place and stead.

## **23 POWERS OF DIRECTORS**

- 23.1 The management and control of the business of the Association shall be vested in the directors who, in addition to the powers and authorities expressly conferred upon them by these Articles, may exercise all powers and authorities and perform all acts which may be exercised or done by the Association, and are not hereby or by the Act expressly reserved to the Association in general meeting. Such management and control may not be inconsistent with the Articles nor with the provisions of the Act, and the general powers given by this article shall not be limited or restricted by any special authority or power given to the directors by any other Article.
- 23.2 The directors may from time to time, and with the consent of the members, borrow such amounts for the purpose of the Association as the members may approve from time to time.
- 23.3 The directors may delegate any of their powers to an executive or other committee, whether consisting of a member or members of their body or not as they think fit. Any committee so formed shall, in

the exercise of the powers so delegated, conform to any regulations authorising the appointment of sub-committees that may from time to time be prescribed by the directors.

23.4 The directors shall not be entitled to undertake, on behalf of the Association, any works of a capital nature, without the sanction of a resolution of the Association in general meeting.

23.5 A director is required to –

23.5.1 perform the functions of office in good faith, honesty and in a transparent manner; and

23.5.2 at all times act in the best interests of the Association, and in such a way that the credibility and integrity of the Association is not compromised in any way.

## **24 REMUNERATION**

24.1 The directors shall be entitled to such remuneration as the Association in general meeting may from time to time determine, which remuneration shall be divided among the directors in such proportions as they may agree, or in default of such agreement, equally, except that in such event any director holding office for less than a year shall only rank in such division in proportion to the period during which he has actually held office. Remuneration shall accrue to the directors from day to day.

24.2 Any director who –

24.2.1 serves on any executive or other committee; or

24.2.2 devotes special attention to the business of the Association; or

24.2.3 otherwise performs or binds himself to perform services which, in the opinion of the directors, are outside the scope of the ordinary duties of a director,

may be paid such extra remuneration or allowances in addition to or in substitution of the remuneration to which he may be entitled as a director, as a disinterested quorum of the directors may from time to time determine.

- 24.3 The directors shall also be paid all their travelling and other expenses necessarily expended by them in connection with the business of the Association and their attendance at meetings of the directors or of committees of the directors of the Association.

## **25 DISQUALIFICATION FROM OFFICE AND LIMITATIONS**

- 25.1 Without prejudice to any contrary provisions in the Articles, the office of a director shall be vacated in any of the following events –
- 25.1.1 if his estate is sequestrated or he assigns his estate or enters into a general compromise with his creditors;
  - 25.1.2 if he is found to be or becomes of unsound mind;
  - 25.1.3 if a majority of his co-directors sign and deposit at the office a written notice wherein he is requested to vacate his office (which shall become operative on deposit at the office);
  - 25.1.4 if he shall, pursuant to the provisions of the Act or any order made thereunder, be prohibited from acting as a director;
  - 25.1.5 if he resigns his office by notice in writing to the Association;
  - 25.1.6 if he is absent from meetings of the directors for 6 (six) consecutive months without leave of the directors otherwise than on the business of the Association;
  - 25.1.7 if the directors resolve that his office be, by reason of such absence, vacated, provided that the directors shall have the power to grant to any director a leave of absence for a definite or indefinite period.

- 25.2 A director may hold any other office or place of profit under the Association (except that of auditor) in conjunction with his office of director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a director) and otherwise as a disinterested quorum of the directors may determine.
- 25.3 A director of the Association may be or become a director or other officer of, or otherwise interested in, any company promoted by the Association or in which the Association may be interested as shareholder or otherwise and (except in so far as otherwise decided by the directors) he shall not be accountable for any remuneration or other benefits received by him as a director or officer of or from his interest in such other company.
- 25.4 Any director may act by himself or through his firm in a professional capacity for the Association (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director.
- 25.5 A director who is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Association, shall declare the nature of his interest in accordance with the Act.
- 25.6 No director or intended director shall be disqualified by his office from contracting with the Association with regard to –
- 25.6.1 his tenure of any other office or place of profit under the Association or in any company promoted by the Association or in which the Association is interested;
- 25.6.2 professional services rendered or to be rendered by such director;
- 25.6.3 any sale or other transaction.

- 25.7 A director may not vote or be counted in the quorum (and if he shall do so his vote shall not be counted) on any resolution for his own appointment to any other office or place of profit under the Association or in respect of any contract or arrangement in which he is interested, but this prohibition shall not apply to –
- 25.7.1 any arrangement for giving to any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the Association; or
- 25.7.2 any arrangement for the giving by the Association of any security to a third party in respect of a debt or obligation of the Association which the director has himself guaranteed or secured; or
- 25.7.3 any contract or arrangement with a corporation in which he is interested by reason only of being a director, officer, creditor or member of such corporation;

and these prohibitions may at any time be suspended or relaxed either generally, or in respect of any particular contract or arrangement, by the Association in general meeting.

- 25.8 A contract which violates the terms of article 25.7 can be ratified by the Association in general meeting.
- 25.9 The terms of article 25.7 shall not prevent a director from voting as a member at a general meeting at which a resolution in which he has a personal interest is tabled.
- 25.10 The directors may exercise the voting powers conferred by the shares held or owned by the Association in any other company in such manner in all respects as they think fit, including the exercise thereof in favour of any resolution appointing themselves or any of them to be directors or officers of such other company or for determining any payment of or remuneration to the directors or officers of such other company.

25.11 A director may vote in favour of a resolution referred to in article 25.7 for the exercise of the voting rights in the manner described in article 25.10 notwithstanding that he may be, or is about to become, a director or other officer of such other company and for that or any other reason may be interested in the exercise of such voting rights in the manner aforesaid.

## **26 RETIREMENT OF DIRECTORS**

- 26.1 Subject to the provisions of 25.1, each director shall hold office as such from the date of his appointment until the next annual general meeting following his appointment, or, at his discretion, until the 2<sup>nd</sup> (second) annual general meeting following his appointment at which annual general meeting each director shall be deemed to have retired from office.
- 26.2 A director retiring, or who is deemed to be retiring, at a meeting shall retain office until the election of directors at that meeting has been completed.
- 26.3 Retiring directors shall be eligible for re-election.
- 26.4 No person, other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of a director at any general meeting, unless –
- 26.4.1 not more than 14 (fourteen), but at least 7 (seven) clear days before the day appointed for the meeting, there shall have been delivered at the office a notice in writing by a member (who may also be the proposed director) duly qualified to be present and vote at the meeting for which such notice is given;
- 26.4.2 such notice sets out the member's intention to propose a specific person for election as director; and

- 26.4.3 notice in writing by the proposed person of his willingness to be elected is attached thereto (except where the proposer is the same person as the proposed).
- 26.5 The Association may at the meeting at which a director retires, fill the vacated office by electing a person thereto and in default the retiring director, if willing to continue to act, shall be deemed to have been re-elected, unless –
- 26.5.1 it is expressly resolved at such meeting not to fill such vacated office; or
- 26.5.2 a resolution for the re-election of such director shall have been put to the meeting and rejected.
- 26.6 The Association in general meeting or the directors may appoint any person as director to fill a casual vacancy.

## **27 PROCEEDINGS OF DIRECTORS MEETINGS**

- 27.1 The directors may meet for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit.
- 27.2 Until otherwise determined by the directors, 4 (four) directors shall form a quorum.
- 27.3 The chairman may at any time, and the secretary, upon the request of a director shall, at any time, convene a meeting of the directors.
- 27.4 The directors shall determine the number of days notice to be given for directors meetings, and the form of that notice.
- 27.5 A director who is not in South Africa shall not be entitled to notice of any meeting.
- 27.6 The directors may elect a chairman and a vice-chairman (to act in the absence of the chairman) of their meetings.



- 27.7 If no chairman or vice-chairman is elected, or if at any meeting the chairman or vice-chairman is not present within 5 (five) minutes after the time appointed for holding the meeting, the directors present shall choose one of their number to be chairman at such meeting.
- 27.8 All questions arising at any meeting shall be decided by a majority of votes provided that no resolution shall be passed unless at least 2 (two) directors appointed by the developer during the development phase shall have voted in favour thereof.
- 27.9 In the case of an equality of votes, the chairman shall not have a second or casting vote.
- 27.10 A meeting of the directors at which a quorum is present shall be entitled to exercise all or any of the powers, authorities and discretions conferred by or in terms of the Articles which are vested in or are exercisable by the directors generally.
- 27.11 A resolution in writing signed by –
- 27.11.1 all the directors; or
- 27.11.2 all the directors who may at the time be present in the town where the office is situate and who form a quorum;
- shall be as valid and effectual as a resolution passed at a meeting of the directors duly called and constituted.
- 27.12 Such resolutions –
- 27.12.1 may consist of one or more documents so signed;
- 27.12.2 shall have regard to the provisions of Section 236 of the Act;
- 27.12.3 shall be delivered to the secretary without delay, and shall be recorded by him in the Association's minute book.

- 27.13 Such resolution shall be deemed to have been passed on the day it was signed by the last director or alternate director who is entitled to sign it.
- 27.14 A resolution referred to in article 27.11 which is not signed by all the directors shall be inoperative if it shall purport to authorise any act which a meeting of the directors has decided shall not be authorised, until confirmed by a meeting of directors.
- 27.15 The meetings and proceedings of any committee consisting of 2 (two) or more directors shall be governed by the provisions hereof in regard to meetings and proceedings of the directors so far as the same are applicable thereto and are not superseded by any regulations made by the directors.
- 27.16 All acts performed by the directors or by a committee of directors or by any person acting as a director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director or member of such committee.

## **28 MINUTES**

- 28.1 The directors shall cause minutes to be made of –
- 28.1.1 all appointments of officers made by the directors;
- 28.1.2 the names of the directors present at each meeting of the directors;
- 28.1.3 all resolutions and proceedings at each meeting of the Association;
- 28.1.4 all resolutions and proceedings at each meeting of the directors.

- 28.2 Minutes of any resolutions and proceedings mentioned in article 28.1 appearing in one of the minute books of the Association, shall be proof of the facts therein stated if signed by –
- 28.2.1 any person purporting to be the chairman of the meeting to which it relates; or
- 28.2.2 any person present at the meeting and appointed by the directors to sign in the chairman's place; or
- 28.2.3 the chairman of a subsequent meeting of the directors.
- 28.3 Any extract from or copy of those minutes purporting to be signed by –
- 28.3.1 the chairman of that meeting; or
- 28.3.2 any director; or
- 28.3.3 the secretary;

shall be *prima facie* proof of the facts therein stated.

## **29 PROFESSIONAL OFFICERS**

- 29.1 The directors shall, at all times, have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, advocates, architects, engineers, estate managers and any professional person or firm and/or any other employees whatsoever for any reason deemed necessary by the directors.
- 29.2 The engagement of the professional officers referred to in article 29.1 shall be on such terms as the directors shall decide, subject to any of the provisions of these Articles.
- 29.3 Any power of attorney may contain such provisions for the protection and convenience of persons dealing with any agent appointed by the directors as the directors may think fit.

### **30 AUTHORISATION OF DOCUMENTS**

30.1 Any director or the secretary or any person appointed by the directors for the purpose shall have power to authenticate –

30.1.1 the memorandum and Articles of association;

30.1.2 any resolutions passed by the Association or the directors;

30.1.3 any books, records, documents and accounts relating to the business of the Association;

and to certify copies thereof or extracts therefrom as true copies or extracts.

30.2 Where any books, records, documents or accounts are elsewhere than at the office, the local manager or other officer of the Association or other person having the custody thereof shall be deemed to be a person duly appointed by the directors for the abovementioned purpose.

30.3 Subject to the provisions of the Act, a member shall not be entitled to demand that –

30.3.1 any book, document or record be shown to him;

30.3.2 any information concerning the Association's affairs be disclosed to him,

if the directors in their sole and absolute discretion (which may not be disputed) consider that it is not in the Association's interest to show that book, document or record to the member, or to disclose that information to him.

### **31 ACCOUNTING RECORDS**

31.1 The directors shall cause to be kept such accounting records as are prescribed by the Act.

- 31.2 The accounting records shall be kept at the office or (subject to the provisions of the Act) at such other place as the directors deem fit, and shall at all times be open to inspection by the directors.
- 31.3 A copy of all financial statements (including every document required by law to be annexed thereto) which are to be laid before the Association in general meeting, together with copies of the directors' and auditors' reports, shall be delivered or sent by post to the registered address of each member and to every person entitled to receive notice of a general meeting.
- 31.4 The documents referred to in article 31.3 shall be sent at least 21 (twenty one) days before such general meeting provided that such documents need not be sent to any person who is not entitled to receive notice of general meetings of the Association or whose address is not known to the Association.
- 31.5 At least once in every financial year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by the auditors.

## **32 NOTICES**

- 32.1 Any notice or other document may be served by the Association upon any member by –
- 32.1.1 delivering it to him personally; or
- 32.1.2 sending it by post in a prepaid letter, envelope or wrapper, addressed to such member at his registered address.
- 32.2 Any member described in the register of members by an address not within South Africa and who shall from time to time furnish the Association with an address within South Africa at which notices can be served upon him, shall be entitled to have notices served upon him at such address.

- 32.3 Save as determined in the Articles or in the Act, no member other than a registered member whose address appears in the register of members as in South Africa, shall be entitled to receive any notice from the Association.
- 32.4 Any notice or other document, if served by post, shall be deemed to have been served at the time when the same was posted, and in proving such service, it shall be sufficient to prove that the notice or document was properly addressed, stamped and posted.
- 32.5 Save as otherwise expressly provided, where a given number of days notice, or notice extending over any period is required to be given, the day of service shall not be counted in the number of days or other period.

### **33 ENTRENCHED PROVISIONS**

The developer and Kleine Zalze (as owner of Farm 508) have a continuing and permanent interest in ensuring that certain provisions are entrenched in perpetuity for purposes of ensuring the success of the development. Accordingly, none of the following provisions may be deleted or varied in any way without the prior written consent of the developer and, only in respect of those provisions which specifically refer to Kleine Zalze –

- 33.1 the name of the development shall be “De Zalze Winelands Golf Estate” which name shall not be changed without the prior consent of Kleine Zalze and the developer;
- 33.2 if guest houses or resort lodges or other similar facilities are established on Farm 508 by Kleine Zalze, all persons occupying such accommodation shall from time to time be granted the same rights in respect of the golf course and the club as those granted to guests of any other hotel, guest house, guest lodge or any other temporary accommodation facilities to be erected by the developer on the development;

- 33.3 Kleine Zalze shall not be limited in any way regarding the use of the Kleine Zalze entrance and that part of the entrance road to the development to be constructed to the north of the Blaauwklippen River starting at the Kleine Zalze entrance to be constructed on the Techno Park Road and ending on the bridge to cross the Blaauwklippen River to the south of the cellar erected on Farm 508 (“the Kleine Zalze access road”), by it, its employees, agents and visitors, it being recorded that the access road will be used by agricultural vehicles and heavy duty trucks of Kleine Zalze, its suppliers and customers, provided that Kleine Zalze shall not permit any vehicles carrying abnormal loads, exceeding the load-bearing capacity to which the Kleine Zalze access road will be designed, to use the Kleine Zalze access road. Should any damage, other than normal wear and tear, be caused to the Kleine Zalze access road by any vehicles using the road at the instance of Kleine Zalze, such damage shall be repaired by Kleine Zalze at its expense;
- 33.4 the Kleine Zalze entrance and the Kleine Zalze access road shall not be available for use by members who own units situate to the south of the Blaauwklippen River or for use by owners of sectional title units in sectional title schemes situate to the south of the said river, the visitors, agents, employees or contractors of any such parties, as a general access route to the R44. Kleine Zalze, in consultation with the Association, shall be entitled to construct and maintain on the Kleine Zalze access road such appropriate traffic reduction measures as it may consider appropriate in order to prevent the use of the Kleine Zalze access road in contravention with the provisions of this article. Similarly, the internal roads on the south side of the development and the entrance gate established by the developer on the R44 shall not be available as a general access route to the R44 for owners of properties situate on the north side of the development;
- 33.5 Kleine Zalze shall be entitled to erect at the Kleine Zalze entrance, and similarly, the developer at any other entrance of the development, any such name and/or signboards and display such information as it may consider appropriate, subject only to

compliance with statutory regulations and restrictions, and furthermore subject to such signage being in keeping with the style, content and format to apply for all signage to be erected in respect of the development (which style, content and format is to be agreed upon between Kleine Zalze, the developer and the Association) and furthermore subject to such signage, unless otherwise agreed by the Association, being placed separately from any gatehouse structure to be constructed at any of the entrances;

- 33.6 subject to the developer's, the lessee's, the operator's and/or the Association's right to charge a reasonable fee and subject to the terms and conditions of the lease and management agreement as contemplated in 13.3 and the Constitution of the club and the rules made in terms thereof, members shall have a permanent right of access to the recreational and/or sporting facilities created by the developer on the development;
- 33.7 no member shall be entitled to object to the subdivision and/or development of any part of the development, provided that such subdivision and/or development is not inconsistent with the development plan approved by the local authority for the development;
- 33.8 no unit shall be subdivided or rezoned, and no units shall be consolidated, during the development period without the prior written consent of the developer or without the prior written consent of the Association after the termination of the development period;
- 33.9 ownership of a unit or sectional title unit does not confer any right in respect of property owned by the developer, including any right of way or access across such property;
- 33.10 the levies allocated by the directors to owners of various units and sectional title schemes in accordance with 5.3.2 - 5.3.8 shall not exceed the ratio as at the date of registration of the Association of such allocation of levies to the base levy payable by an owner of a permanent unit.



## 34 COMMERCIAL ACTIVITIES

- 34.1 Commercial activities will be carried out on agricultural erven and business units within the development and it will be in the interests of the development to ensure the commercial viability of such commercial activities. Accordingly, the Association shall not make any unreasonable decisions to the detriment of business units and agricultural erf owners.
- 34.2 Any dispute that may arise in respect of any decision taken by the Association shall be determined in accordance with the provisions of article 37.
- 34.3 Subject to article 34.4, no commercial activities of any nature whatsoever, including, but not limited to, the operating of a bed and breakfast and/or guest house, shall be undertaken from any unit or sectional title scheme.
- 34.4 Notwithstanding the provisions of 34.3, –
- 34.4.1 the developer and/or its representatives shall be entitled to carry on the business of an estate agency within the development;
- 34.4.2 the developer shall be entitled to develop and operate “golf villas”, subject to the provisions of these articles; and
- 34.4.3 the developer of Remainder Erf 557 shall be entitled to develop and operate golf lodges on that property, subject to the provisions of these articles; and
- 34.4.4 Kleine Zalze shall be entitled to –
- 34.4.4.1 continue operating the existing guest house, restaurant, cellar and wine storage facilities; and
- 34.4.4.2 extend and expand the existing guest house, restaurant, cellar and wine storage facilities onto such areas agreed to between Kleine Zalze and the developer; and

- 34.4.4.3 erect an additional farm homestead and outbuilding on the portion of Farm 508 agreed to between Kleine Zalze and the developer and to erect a homestead and outbuilding on the portion of Farm 998 to be transferred to Kleine Zalze, subject to such homestead and outbuildings being erected on areas agreed to by the developer.

## **35 INDEMNITY**

- 35.1 Every director, manager, secretary, auditor and officer of the Association shall be indemnified out of the funds of the Association against –
- 35.1.1 all liabilities incurred by him in that capacity;
- 35.1.2 expenditure in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted; or
- 35.1.3 costs in connection with any application under Section 248 of the Act in which relief is granted to him by the Court.
- 35.2 Every such person shall be indemnified by the Association against, and it shall be the duty of the directors out of the funds of the Association to pay all costs, losses and expenses for which any such person may become liable by reason of –
- 35.2.1 any contract entered into; or
- 35.2.2 any act done by him;
- in his capacity as director, secretary, manager, auditor or officer of the Association or in any way in the discharge of his duties.
- 35.3 Subject to the provisions of the Act, no director, manager, secretary, auditor, officer or servant of the Association shall be liable for –

- 35.3.1 any act, receipt, neglect or fault of any other such officer or servant of the Association; or
- 35.3.2 the insufficiency or deficiency of any security in or upon which any of the monies of the Association have been invested; or
- 35.3.3 any loss or damage arising from the insolvency or delict of any person with whom any monies, securities or effects have been deposited; or
- 35.3.4 any loss or damage occasioned by any error of judgment or oversight on his part; or
- 35.3.5 any other loss, damage or misfortune whatever which shall happen in the execution of his duties of office or in relation thereto;

unless the same occurs through his own dishonesty or negligence.

- 35.4 Any person using any of the services, land, sporting or recreational facilities of the Association, does so entirely at his own risk, and no person shall have any claim against the Association of whatsoever nature arising from such use, nor for anything which may befall any person during the course of such use, whether caused by human or animal agency, natural phenomenon or otherwise.
- 35.5 No person shall have any claim against the Association, the directors or manager in respect of fire or any substance, liquid or gas escaping from the property of the Association and causing damage to any person or property of any member, provided however that the Association shall take such reasonable steps in its power to prevent or minimise the effect of such escape.
- 35.6 Neither the Association, the directors, nor the manager shall be responsible or may be held liable for any loss, damage or injury, including consequential loss, suffered by or cause to any person or property anywhere on or about the development, whether or not such loss, damage or injury is occasioned by an act or omission of the

Association, the directors or the manager or anyone else for whose actions they or any of them would be liable in law, or by reason of *vis major*, rain, floods, riots, strikes, theft or burglary with or without forcible entry, or by reason of any condition on or of any part of the Association's property or premises or building structures, or any defective facilities of the Association, or cause by any sporting activity carried out on the development or by any other cause of whatsoever nature and howsoever arising.

- 35.7 Each and every member individually shall indemnify and hold harmless the Association against all or any claims of whatsoever nature which may be brought against the Association by any member, members of his family or any person within the development at the invitation of or under the control of any member concerned of whatsoever nature and howsoever arising.

## **36 CO-OWNERS**

- 36.1 Where any unit is owned by more than 1 (one) person, the co-owners concerned shall elect one of their number as the liaison officer for the unit concerned, and shall notify the Association of the name and address of such liaison officer.
- 36.2 Any notices which may be required to be given in respect of any unit referred to in article 36.1 shall be given to the liaison officer and served upon such liaison officer in terms of article 32 above, shall be deemed for purposes of these Articles to have been served upon every such member.
- 36.3 In the event of the co-owners failing to elect a liaison officer as aforesaid, the service of any notice upon 1 (one) of the co-owners shall be deemed to be service upon all the co-owners.
- 36.4 Any notice required to be served upon any body corporate shall be deemed to have been properly served in terms of article 32 at the address given as the *domicilium citandi et executandi* of that body.

### **37 DISPUTES AND DISPUTE RESOLUTION**

- 37.1 If the necessary quorum and/or majority for the passing of any resolution of directors cannot be obtained the matter forming the subject matter of the proposed resolution shall be referred to the members for resolution.
- 37.2 If the necessary quorum and/or majority for the passing of any resolution of members cannot be obtained a dispute shall be deemed to exist which dispute shall be determined by an expert in terms of this article.
- 37.3 Any dispute, in addition to a dispute envisaged in article 37.2, arising out of or in connection with the articles must be determined in accordance with the provisions of this article 37, except when an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 37.4 On a dispute arising, the party wishing to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 (fourteen) days of such notice, either of the parties may refer the dispute to determination in accordance with the expert provisions contained in this article.
- 37.5 In respect of a dispute envisaged in article 37.2 and if a party exercises his rights in terms of article 37.4 to refer a dispute for determination, such dispute shall be determined by an expert who shall be, if the matter in dispute is principally –
- 37.5.1 a legal matter, a practising advocate or attorney of Cape Town of at least 15 (fifteen) years standing; or
- 37.5.2 an accounting matter, a practising chartered accountant of Cape Town of at least 15 (fifteen) years standing; or
- 37.5.3 any other matter, an independent and suitably qualified person;

agreed upon between the parties to the dispute.

- 37.6 Should the parties to the dispute fail to agree on an expert within 14 (fourteen) days after the dispute has arisen, the expert shall be appointed at the request of any party to the dispute by the president for the time being of the Cape Law Society (or such other body as may then govern the attorneys profession in the Western Cape Province) according to the guidelines set out in article 37.5.
- 37.7 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of natural justice.
- 37.8 The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (twenty one) days, or so soon thereafter as possible, after it has been demanded.
- 37.9 The expert shall be entitled to determine how, when and by whom submissions are to be made to him.
- 37.10 The expert shall act as an expert and not as an adjudicator or arbitrator.
- 37.11 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 37.12 Any determination of the expert in respect of a dispute envisaged in article 37.2 shall be deemed (insofar as necessary) to be a resolution of the members and to be agreed between the parties to the dispute.
- 37.13 The expert shall be entitled to make an award for payment of costs.
- 37.14 The provisions of this article 37 constitute the irrevocable consent of the parties to any proceedings in terms hereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that it is not bound by such provisions.

37.15 The provisions of this article 37 shall be deemed to be severable from the rest of these articles and shall remain binding and effective as between the parties, notwithstanding that these articles may otherwise be cancelled or declared of no force and effect for any reason.

### **38 AMENDMENT OF ARTICLES**

38.1 Subject to the provisions of 33 and 38.2, the provisions of these articles may be amended by special resolution given at a general meeting called specifically for such purpose. The notice of such meeting shall, *inter alia*, set out in specific terms of the proposed amendment of these articles.

38.2 Notwithstanding the provisions of 38.1, the provisions of these articles shall not be amended without the prior written consent of the local authority where such amendment(s) have an effect on the Zoning and Subdivision Approvals.

### **39 GENERAL**

39.1 The provisions of the Articles shall be binding upon all members and all persons occupying any unit or sectional title unit by, through or under any member, whatever the nature of such occupation.

39.2 No member ceasing to be a member of the Association for any reason shall (nor shall such members' executors, curators, trustees or liquidators) have any claim upon or interest in or rights to the funds or any property of the Association.

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