

CONSTITUTION

OF

HEROLDS BAY COUNTRY ESTATE

HOMEOWNERS ASSOCIATION

TABLE OF CONTENTS

1	DEFINITIONS	3
2	INTERPRETATION.....	6
3	RECORDAL.....	7
4	THE COMMON PROPERTY	7
5	STATUS.....	7
6	OBJECTS	7
7	MEMBERSHIP.....	8
8	MEMBERS OBLIGATIONS	8
9	IMPROVEMENTS AND ARCHITECTURAL GUIDELINES.....	9
10	FURTHER OBLIGATIONS OF MEMBERS.....	11
11	RESTRICTIONS	11
12	LEVIES	12
13	DEVELOPMENT CONTRIBUTION LEVY	13
14	BREACH.....	14
15	TRUSTEES.....	15
16	FUNCTIONS, POWERS AND DUTIES OF TRUSTEES.....	16
17	PROCEEDINGS OF TRUSTEES	18
18	MANAGING AGENT AND ESTATE MANAGER.....	20
19	GENERAL MEETINGS OF THE ASSOCIATION.....	20
20	NOTICE OF MEETINGS.....	21
21	PROXIES.....	22
22	QUORUM.....	22
23	AGENDA AT MEETINGS	23
24	PROCEDURE AT MEETINGS	23
25	VOTING	24
26	MINUTES OF MEETINGS OF THE ASSOCIATION.....	25
27	SPECIAL RESOLUTIONS.....	26
28	FINANCIAL YEAR END.....	27
29	ACCOUNTS.....	27
30	DEPOSIT AND INVESTMENT OF FUNDS.....	27
31	AUDIT	28
32	OWN RISK.....	28
33	ARBITRATION.....	28
34	DOMICILIUM	29
35	PROTECTION OF PERSONAL INFORMATION	29
36	AMENDMENT OF THE CONSTITUTION	30

1 DEFINITIONS

In this constitution and unless inconsistent with the context the following words and expressions shall have the meanings hereby assigned to them:

- 1.1 **"Alienate"** means alienating any Erf or part thereof and includes by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive or resolutive condition and "Alienation" shall have a corresponding meaning.
- 1.2 **"Architectural Guidelines"** means the Architectural and Landscape Design Guidelines prepared for and applicable to Herolds Bay Country Estate, a copy whereof is annexed hereto and includes all/any amendments made thereto from time to time.
- 1.3 **"Association"** means the Herolds Bay Country Estate Homeowners Association which is bound by the provisions of this Constitution.
- 1.4 **"Auditors"** mean the auditors of the Association.
- 1.5 **"Business"** means any commercial activity that has a negative or potentially negative impact on the common property including but not limited to security access, parking, refuse removal, use of the club house and swimming pool, noise and any other disturbances, or as defined in any applicable legislation or Local Authority bylaw.
- 1.6 **"Business Day"** means weekdays other than Saturdays, Sundays and Public Holidays.
- 1.7 **"Chairman"** means the Chairman of the Trustees.
- 1.8 **"Conduct Rules"** mean the Conduct Rules of the Herolds Bay Country Estate Homeowners Association, and which, although forming part of the Constitution, are not subject to the provisions of clause 35 in regard to the amendment thereof.
- 1.9 **"Common Property"** means those portions of Herolds Bay Country Estate not registered in the name of individual owners and comprising without detracting from the generality of the afore going, private roads, road verges, stormwater attenuation, street light posts, street furniture and other areas, including private

- open spaces and any buildings thereon and services for the maintenance of which the Local Authority is not responsible in terms of the ~~Land Use Planning By Law, 2015~~ LUP By-Law;
- 1.10 **"Constitution"** means this document with the annexures hereto approved in terms of sections 29 and 60 of LUP By-Law;
- 1.11 **"Developer"** means Long Island Trading 44 (Pty) Ltd, registration number 2015/059002/07;
- 1.12 **"Development Period"** means the period from the date of commencement of the development until the Developer notifies the Homeowners Association that it has completed the development or a maximum period of 10 (ten) years from the date of implementation;
- 1.13 **"DRC"** means a Design Review Committee referred to in clause 3 of the Architectural Guidelines;
- 1.14 **"CSOS legislation"** means the Community Schemes Ombud Service Act, Act 9 of 2011 and all regulations enacted in terms of Section 29 thereof (as amended from time to time).
- 1.15 **"Erf"** means every Erf in Herolds Bay Country Estate which is registered in the name of a Member but excludes those portions of Herolds Bay Country Estate which are common property registered in the name of the Association.
- 1.16 **"Estate Manager"** means a person appointed by the Association to manage Herolds Bay Country Estate under the auspices of the Trustees;
- 1.17 **"General Meeting"** means a duly convened and constituted meeting of all the Members and includes Annual General Meetings.
- 1.18 **"Herolds Bay Country Estate"** means certain immovable property which collectively is known as "Herolds Bay Country Estate" in terms of the approvals obtained from the Local Authority and includes all/any extension/s of the township approved by the Local Authority on the Parent Property;
- 1.19 **"Improvements"** mean any structure of whatever nature constructed or erected or to be constructed or erected on an Erf.
- 1.20 **"in writing"** means written, printed or lithographed or partly one and partly

another, and other modes of representing or producing words in a visible form including but not limited to electronic mail, but excluding “short message service” or WhatsApp or similar messages.

- 1.21 **"Levy"** means the levy raised on Members in terms of the authority conferred by the Constitution of the Association or the Trustees duly representing the Association.
- 1.22 **"Local Authority"** means the local authority having jurisdiction over Herolds Bay Country Estate, George Municipality, Western Cape.
- 1.23 **"LUP By-Law"** means the Land Use Planning By-Law 2015 for George Municipality promulgated on 15 July 2015 as amended and supplemented from time to time;
- 1.24 **"Managing Agent"** means any person or body appointed by the Association as an independent contractor to undertake any of the prescribed functions of the Association.
- 1.25 **"Member"** means the registered owner of any Erf or portion of an Erf and all subsequent registered owners who shall become a Member of the Association upon registration of transfer into their names and shall be bound by this Constitution. If a Member consists of more than one person such persons shall be jointly and severally liable *in solidum* for all obligations in terms of this Constitution. Where any Erf is owned by any legal entity other than an individual(s), then such entity shall appoint by resolution of the entity, a single individual who shall act and have all the rights and obligations of a Member on behalf of the entity, in so far as the entities dealings with the Association are concerned. The Association is entitled to request written proof of appointment or authorisation from any individual acting on behalf of a legal entity
- 1.26 **"Month"** means a calendar month.
- 1.27 **"Office"** means the administrative office(s) of the Association
- 1.28 **"Parent Property"** means Remainder Portion 7 (Portion of Portion 6) of the Farm Buffelsfontein No 204, in the Municipality and Division of George, Province Western Cape;
- 1.29 **"Resolution"** means a resolution other than a Special Resolution passed

by Members of the Association by an ordinary majority of the total votes represented at any validly constituted General Meeting of Members present in person or by proxy.

- 1.30 **"Special Resolution"** means a resolution passed by Members of the Association who are present or represented by proxy or by a representative recognised by law at an Annual General Meeting or any other General Meeting of the Association as required and specified in clause 24.5 read with clause 26 of this Constitution.
- 1.31 **"these presents"** means this Constitution, Architectural Guidelines and Conduct Rules of the Association in force from time to time.
- 1.32 **"Trustees"** means the Trustees of the Association who shall be Members or appointed representatives of Members, collectively from time to time and includes alternate and co-opted Trustees.
- 1.33 **"Unit"** means the residential building constructed on an Erf.
- 1.34 **"Vice Chairman"** means the vice chairman of the Trustees.
- 1.35 **"Year"** means a financial period of 12 (twelve) months ending on 31 December each year.

2 INTERPRETATION

- 2.1 The clause headings are for convenience and shall be disregarded in interpreting this Constitution.
- 2.2 Unless the context clearly indicates a contrary intention
- 2.2.1 The singular shall include the plural and *vice versa*;
- 2.2.2 A reference to any one gender shall include the other genders; and
- 2.2.3 A reference to natural persons includes legal persons and *vice versa*.
- 2.3 Words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause.
- 2.4 When any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.5 Where figures are referred to in words and in numerals, if there is any conflict between the two,

Constitution

the words shall prevail.

- 2.6 If any provision of this Constitution is in conflict or inconsistent with any law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.
- 2.7 If any provision in a definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the Members then, notwithstanding that it is only in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision in the body of this Constitution.
- 2.8 The annexure(s) to this Constitution are deemed to be incorporated in and form part of this Constitution.

3 RECORDAL

The Developer, for as long as he remains an owner of any Erf as well as the registered owner of each Erf in Herolds Bay Country Estate and all successors in title shall be Members of the Association.

4 THE COMMON PROPERTY

- 4.1 Neither the whole nor any portion of the Common Property shall be;
- 4.1.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 4.1.2 mortgaged; or
- 4.1.3 subjected to any rights, whether registered in a Deeds Registry or not of use, occupation or servitude (save those enjoyed by the Members in terms hereof)
- without the sanction of a Special Resolution of the Association.

5 STATUS

- 5.1 The Association shall:
- 5.1.1 have legal personality and be capable of suing and being sued in its own name; and
- 5.1.2 not operate for profit but for the benefit of the Members.
- 5.2 No Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees for the benefit and on behalf of the Association.

6 OBJECTS

- 6.1 The Association shall have as its objects:
- 6.1.1 to oversee, maintain and control Herolds Bay Country Estate;
- 6.1.2 to promote good governance as envisaged by the applicable CSOS legislation;

Constitution

- 6.1.3 to ensure the general high standard of Herolds Bay Country Estate;
- 6.1.4 to promote, advance and protect Herolds Bay Country Estate and the interests of the Association.
- 6.1.5 to protect the communal interests of the Members.
- 6.1.6 the regulation and control of harmonious enhancements/alterations to Herolds Bay Country Estate;
- 6.1.7 to promote a high standard of Improvements on Herolds Bay Country Estate;
- 6.1.8 to make, impose, administer and enforce the Conduct Rules and the Architectural Guidelines;
- 6.1.9 to manage the collective interests common to all Members, which includes expenditure applicable to the Common Property of such Members and the collection of levies for which such Members are liable;
- 6.2 The Association shall in general have the power to perform all such acts as are necessary to accomplish the fulfilment of the foregoing objects including, but not restricted, to powers specifically contained in this Constitution.

7 MEMBERSHIP

- 7.1 The Association shall have as its Members every registered owner upon registration of transfer of an Erf.
- 7.2 A registered owner of an Erf shall be a Member of the Association until he ceases to be the registered owner of such Erf.
- 7.3 When a Member ceases to be the registered owner of an Erf he shall *ipso facto* cease to be a Member of the Association.
- 7.4 A Member may not resign from the Association.

8 MEMBERS OBLIGATIONS

- 8.1 Every Member is obliged to comply with:
 - 8.1.1 the provisions of this Constitution;
 - 8.1.2 the provisions of the Architectural Guidelines;
 - 8.1.3 the provisions of the Conduct Rules, which code shall be available for inspection at the office of the Association, or be provided in electronic format to any Member on request;
 - 8.1.4 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member;
 - 8.1.5 any directive given by the Association and/or the Trustees in enforcing the provisions of this Constitution.

Constitution

- 8.2 The rights and obligations of a Member are not transferable, and every Member shall:
- 8.2.1 to the best of his ability, further the objects and interests of the Association; and
 - 8.2.2 observe all directives made or given by the Association and/or the Trustees;
- provided that nothing contained in this Constitution shall prevent a Member from ceding his rights as security to a Mortgagee of his Erf.
- 8.3 The Members shall be jointly liable for expenditure incurred in connection with the Association as more fully later referred to herein.
- 8.4 A Member shall not be entitled to alienate or transfer an Erf without the written consent of the Trustees which consent shall not be unreasonably withheld provided there has been compliance with the provisions of this Constitution.
- 8.5 A Member shall not be entitled to consolidate an Erf with one or more erven without such consolidation been approved by a Special Resolution to that effect passed by the Members in terms of this Constitution and such consolidation had been approved by the Local Authority.
- 8.6 A Member shall not alienate an Erf unless:
- 8.6.1 The proposed transferee has irrevocably bound himself to become a Member of the Association and to observe the Constitution for the duration of his ownership of the Erf;
 - 8.6.2 The Association has issued a clearance that all amounts owing to the Association by such Member has been paid and that the Member is not in breach of any of the provisions of this Constitution;
 - 8.6.3 The proposed transferee acknowledges that upon the registration of transfer of the Erf into his name, he shall *ipso facto* become a Member of the Association.
- 8.7 No Member shall let or otherwise part with the occupation of his Erf whether temporarily or otherwise unless the proposed occupier has contractually agreed to be bound by this Constitution. The Member shall, nonetheless, remain bound by the provisions of this Constitution and is required to ensure compliance therewith by such occupier.

9 IMPROVEMENTS AND ARCHITECTURAL GUIDELINES

- 9.1 The Architectural Guidelines constitutes an integral part of this Constitution and may, from time to time, be amended, in terms of the provisions of this Constitution.
- 9.2 All improvements shall be of approved design and of sound construction and shall comply with the provisions of the Architectural Guidelines.
- 9.3 Member must commence with erection of a dwelling Unit within 18 (eighteen) months from the date of registration of transfer of the Erf from the Developer to the first purchaser thereof or within such extended time period as may be granted in the sole discretion of the Developer (Long Island

Constitution

Trading 44 (Proprietary) Limited, Registration Number 2015/059002/07) or its successors in title, and upon such terms and conditions as the Developer may deem fit (and upon completion of the development period, by the Association, from time to time, and will be completed within 9 (nine) months from such commencement (this period excludes the normal Builders' shut-down period in December) (or within such extended time period as may be granted in the sole discretion of the Developer (Long Island Trading 44 (Proprietary) Limited, Registration Number 2015/059002/07) or its successors in title, and upon such terms and conditions as the Developer may deem fit (and upon completion of the development period, by the Association, from time to time. Completion shall have occurred only upon the issue of a completion certificate by the Association which shall only be issued after the lodgement with the Association of a copy of the occupancy certificate issued by the Local Authority and after a representative of the Association Authority and after a representative of the Association is satisfied that the buildings and landscaping on the Erf comply with the Architectural Guidelines.

- 9.4 The Trustees are empowered to impose sanctions or penalties on Members who fail to commence or complete construction of a dwelling Unit within the time limits prescribed above.
- 9.5 Clauses 9.3 and 9.4 shall not be applicable when an Erf, Unit or any other right registered or any interest therein is owned or held by the Developer.
- 9.6 A Member shall not commence any construction or Improvements unless the Member's contractor, together with the Member and the Member's architect, have concluded a Conduct Agreement annexed to the Architectural Guidelines and have lodged a copy thereof with the Trustees, and in this regard:
- 9.6.1 a full set of proposed building plans which indicate both construction and design details shall be submitted to the DRC for consideration;
- 9.6.2 plans that comply with the Architectural Guidelines can be approved by the DRC and any plans that deviate from the provisions of the Architectural Guidelines must be approved by the Trustees upon a positive recommendation by the DRC;
- 9.6.3 thereafter, the approved plans shall, where necessary, be submitted to the Local Authority for approval;
- 9.6.4 having obtained the approval of the Local Authority, the Member shall comply with all conditions and standards imposed by the Local Authority insofar as these may be additional to the requirements of the Architectural Guidelines read with the plans.
- 9.7 Approval of building plans will not be granted by the Local Authority without the prior written approval of the DRC or Trustees in terms of clause 9.6.2, which written approval will be granted in accordance with the processes and requirements of the Architectural Guidelines.
- 9.8 Members shall not:

Constitution

- 9.8.1 be entitled to deviate from any plan approved by the DRC or Trustees unless the Trustee's written approval for such proposed deviation has been obtained;
- 9.8.2 submit plans in respect of improvements to the Local Authority unless such plans have been pre-approved by the DRC or Trustees in terms of the provisions of this clause as read with the provisions of the Architectural Guidelines;
- 9.8.3 have any claim of whatsoever nature against the Association arising from any refusal of approval of plans and/or conditional approval;
- 9.8.4 breach any restrictions applicable to the Member's Erf.
- 9.9 Should the Association take steps against a Member pursuant to a breach of this clause 9, the Association shall further be entitled to recover from such Member who shall be liable to the Association for payment of all the Association's legal costs incurred on the scale as between attorney and own client.

10 FURTHER OBLIGATIONS OF MEMBERS

Each Member shall:

- 10.1 Maintain his Erf in accordance with the Architectural Guidelines as well as the Conduct Rules respectively with the proviso that should such Member fail to comply with the requirements of the Architectural Guidelines and/or the Conduct Rules, the Trustees will be empowered to take all steps in order to ensure compliance including the appointment of a third party or third parties necessary to carry out any processes for the purpose of compliance as well as imposing penalties as applicable from time to time;
- 10.2 Adequately insure the Improvements on his Erf and, if so requested by the Trustees, furnish proof of such insurance to them and, in the event of total/partial destruction, he shall, within a reasonable time period, make good such damage or reconstruction in accordance with the original approved plans or, in the event of the total destruction in accordance with the Architectural Guidelines;
- 10.3 Comply with all security procedures implemented from time to time;
- 10.4 Comply with the applicable environmental legislation and requirements as may be applicable to Herolds Bay Country Estate;
- 10.5 Shall only make use of the services of professionals and consultants approved by the Trustees in conjunction with the Design Review Committee in order to ensure uniformity and acceptable quality.

11 RESTRICTIONS

- 11.1 No Member shall apply for the rezoning of his Erf with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Erf for any purpose

Constitution

other than the permitted use applicable in terms of planning legislation and as recorded in the title deed of the said Erf: provided however that this provision shall not apply to the Developer for the duration of the Development Period;

- 11.2 No Member shall conduct any business on an Erf unless such business is consistent with the Conduct Rules and has been approved in writing by the Trustees, or use such Erf for purposes other than residential purposes.
- 11.3 A Member shall accept transfer of an Erf subject to all conditions and servitudes benefiting or burdening such Erf in the title deed thereof and/or as imposed or to be imposed by any competent authority and/or the Developer or the Association from time to time. It is hereby specifically recorded that Herolds Bay Country Estate will be subject to a servitude right of way in favour of the Parent Property in order to allow the Parent Property unrestricted access required for any residential purposes, farming and/or commercial activities and/or any future developments.
- 11.4 Notwithstanding any provision in this Constitution to the contrary, the Developer shall, for the duration of the Development Period, be entitled to vary the development layout in such a manner as may be approved by the Local Authority provided that the rights of a Member are not materially prejudiced thereby.

12 LEVIES

12.1 The Trustees shall

12.1.1 Establish and maintain an administrative fund which is reasonably sufficient and compliant with applicable CSOS legislation to cover at least the estimated annual operating cost:

12.1.1.1 for all expenses of the Association;

12.1.1.2 for the repair, control, maintenance, management and administration of the Association (including reasonable provision for future maintenance and repairs);

12.1.1.3 for the payment of any insurance premiums relating to the buildings or land; and

12.1.1.4 for the discharge of any duty or fulfilment of any obligation of the Trustees.

12.1.2 Establish and maintain a reserve fund in accordance with and compliant with applicable CSOS- or any other legislation in such amounts as are reasonably sufficient to cover future expenditure not of an annual recurring nature: provided that the amount of such reserve fund is to be in accordance with any applicable Resolution passed by the Members at a General Meeting.

12.1.3 Require Members, whenever necessary, to make contributions to such fund referred to in clauses 12.1.1 and 12.1.2 for the purpose of covering the expenses referred to in clause 12.1.1;

12.2 The Trustees may, by means of a Special Resolution, impose a special levy and recover amounts due and payable in terms of such Special Resolution by invoicing Members for such special levies effective as from the date of passing of a Special Resolution in respect of such expenses

referred to in clause 12.1.1 (which are not included in any estimate made in terms of clause 12.1.1) and such levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the Trustees shall deem fit, as decided in terms of the applicable Special Resolution.

- 12.3 Any amount due by a Member by way of a levy or other penalties and costs, shall be a debt due by him to the Association, payable within such time as determined by the Trustees. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Member. A Member's successor in title to an Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of such Erf to pay the levies attributable to that Erf. In calculating levies, the Trustees shall take into account income, if any, earned by the Association.
- 12.4 The Trustees shall determine the basis for the Levies payable in respect of the Erven in Herolds Bay Country Estate save that any change to the basis must be approved by the Members by passing a Special Resolution.
- 12.5 Where an Erf is registered in more than one person's name, then such persons shall be jointly and severally liable *in solidum* to pay such Levy.
- 12.6 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 12.7 All levies are due and payable by Members on the first day of the month in which such liability arose and, thereafter, on the first day of each and every following month. The Association shall invoice for such Levies approximately 1 (one) month prior to the Levy becoming due and payable.
- 12.8 Members shall be liable for payment of interest on outstanding amounts at the prime overdraft rate of the Association's bankers plus 5% (five percentum), but not exceeding the maximum annual rate permitted by law. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full month for the purposes of this calculation.
- 12.9 The Developer shall not, during the Development Period, be obliged to pay levies on any undeveloped portion of the property on which the development takes place.

13 DEVELOPMENT CONTRIBUTION LEVY

- 13.1 Where a Member wishes to alienate or transfer any Erf or any other right registered, or in the event that the said Erf or right is owned by a company, close corporation or trust, should the shareholder(s) or member(s) or trustee(s) or beneficiaries wish to alienate all their shares or membership interest or other interest in such entity, the relevant Member shall not be entitled to do so unless he pays to the Association a capital contribution levy which levy shall be calculated

Constitution

as follows: 0.5% (comma five per centum) of the gross selling price thereof or interest in a legal entity in which the Erf is held, whether the Member is an individual, a joint owner, company, close corporation or trust.

13.2 This levy shall be paid by the Member on transfer, or cession thereof.

13.3 The above provisions shall not be applicable when an Erf or any other right registered or any interest therein is transferred or ceded to or from the Developer.

14 BREACH

14.1 The Trustees may on behalf of and in the name of the Association institute legal proceedings in accordance with the provisions of this clause 14.

14.2 If any Member fails in the observance of any of the provisions of this Constitution and/or the provisions of the Architectural Guidelines and/or the Conduct Rules, the Trustees may on behalf of and in the name of the Association serve notice on such Member calling upon him to remedy such breach within a reasonable time specified in such notice and, failing timeous compliance may:

14.2.1 call upon such Member in writing to remove or alter within a specified period any portion of the Improvements or any addition erected contrary to the provisions of this Constitution read with the Architectural Guidelines and, failing which, the matter shall be referred to a General Meeting of the Association convened to afford Members the opportunity to give directions to the Trustees by means of a Special Resolution; and /or

14.2.2 enter upon the Erf (as the case may be) to take action as may be reasonably required to remedy the breach and the Member concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand; and/or

14.2.3 institute proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary and such Member shall be liable for and shall pay all costs of such proceedings on the scale between attorney and own client and all other expenses and charges incurred in obtaining relief, or as directed by the court.

14.3 If any Member fails to make payment on due date of levies or other amounts payable by such Member, the Trustees may give notice to such Member requiring him to remedy such breach within such period as the Trustees may determine and should he fail to timeously remedy his breach, the Trustees may, on behalf of the Association, institute legal proceedings against such Member without further notice.

14.4 Nothing in the afore going shall derogate from or in any way diminish the right of the Association to institute proceedings in any court of competent jurisdiction for recovery of any money due by any Member arising from any cause of action whatsoever or for any other relief.

14.5 In the event of any breach of this Constitution by the members of any Member's household or

his invitees or lessees, such breach shall be deemed to have been committed by the Member himself but, without prejudice to the foregoing, the Trustees shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the Member.

15 TRUSTEES

- 15.1 The Trustees of the Association shall comprise of 5 (five) Trustees, elected by the Members at a General Meeting of the Association.
- 15.2 The Developer shall be entitled to nominate and appoint a minimum of 3 (three) of the Trustees required in terms of clause 15.1 for the duration of the Development Period and thereafter 1 (one) Trustee for as long as he remains a Member.
- 15.3 A Trustee shall be a natural person but may be the representative of a Member who is not a natural person e.g. a trust, company or close corporation.
- 15.4 A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.
- 15.5 Subject to the provisions of clause 15.6, each Trustee shall continue to hold office until the Annual General Meeting of the Association following his appointment, at which meeting each Trustee shall be deemed to have retired from office as such but will be eligible for re-election at such meeting.
- 15.6 A Trustee shall be deemed to have vacated his office as such upon:
- 15.6.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
- 15.6.2 him making any arrangement or compromise with his creditors;
- 15.6.3 his conviction for any offence involving fraud or dishonesty;
- 15.6.4 him becoming of unsound mind or being found lunatic;
- 15.6.5 him resigning from such office in writing;
- 15.6.6 his death;
- 15.6.7 him being removed from office by a Resolution of the Members of the Association before the termination of his period of office;
- 15.6.8 him or the entity represented by him, ceases to be a Member of the Association;
- 15.6.9 his being disentitled to exercise a vote in terms of this Constitution.
- 15.7 Notwithstanding the fact that Trustee shall be deemed to have vacated his office as provided in clause 15.6, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the minute book of the

- Trustees. Should the office of a Trustee fall vacant prior to the next annual general meeting of the Association, the vacancy in question may be filled by the remaining Trustees and the person so appointed shall hold office until the next annual general meeting.
- 15.8 Within 7 (seven) days of the holding of each Annual General Meeting of the Association, the Trustees shall meet and shall elect from their own number the Chairman and Vice Chairman who shall hold office until the Annual General Meeting held next after his appointment, provided that the office of the Chairman shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be Trustee for any reason. In the event of any vacancy occurring in the aforesaid office the Trustees shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.
- 15.9 Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustees and all General Meetings of the Association and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustees or by Members and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings and provided further that a Member's spouse shall be entitled to speak at any meeting.
- 15.10 If the Chairman vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Vice Chairman shall assume the chair or should the Vice Chairman not be present then the Trustee(s) present at such meeting shall elect another Chairman for such meeting.
- 15.11 A Trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute, with the Association, by virtue of any interest he may have therein.
- 15.12 No contract concluded on behalf of the Trustees shall be valid and binding unless it is minuted as approved and signed by the Chairman and one Trustee, the latter specifically appointed as authorised signatory in terms of the resolution of Trustees whereby the Trustees bind the Association.
- 15.13 Trustees shall be entitled to be repaid all reasonable and *bona fide* declared and receipted expenses incurred by them in or about the performance of their duties as Trustees, including but not limited to any allowances which the Trustees may decide are reasonable compensation for telephonic and digital communication and / or travelling, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- 15.14 Trustees may not make loans on behalf of the Association to Members or to themselves

16 FUNCTIONS, POWERS AND DUTIES OF TRUSTEES

Constitution

- 16.1 Subject to the express provision of this Constitution, and any specific limitations specified by any Resolution(s) of the Association, the Trustees shall:
- 16.1.1 manage and control the business and affairs of the Association;
 - 16.1.2 have full powers in the management and direction of such business and affairs, including the right of termination or replacement of any existing Managing Agent or Estate Manager, but not a decision to commence using a Managing Agent or appoint an Estate Manager where one was not previously used, or to cease using a Managing Agent or terminate the services of an Estate Manager where one was being used in the prior period as such decision will be subject to a Special Resolution by Members in terms of this Constitution;
 - 16.1.3 exercise all such powers of the Association and act on behalf of the of the Association unless required by this Constitution to be done by the General Meeting of the Association but subject however to such resolutions as may have been taken by the Association in General Meeting provided that no resolution taken by the Association in General Meeting shall invalidate any prior act of the Trustees which would have been valid if such resolution has not been taken;
- 16.2 Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Trustees on such terms as the Trustees shall decide. The costs of any such appointments must have been provided for in the budget for the period in question and approved by Members at the previous Annual General Meeting.
- 16.3 The Trustees shall comply with the provisions of the applicable CSOS legislation and in particular:
- 16.3.1 Section 59 read with Regulation 18 in regard to recovering levies, lodgement of documents and filing of all statutory returns;
 - 16.3.2 Regulation 14 regarding the specific duties and obligations; and
 - 16.3.3 Obtaining and maintaining fidelity insurance as prescribed by Regulation 15.
- 16.4 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 16.5 The Trustees shall have the right to co-opt any person or persons chosen by them. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees and shall serve only until the next Annual General Meeting.
- 16.6 The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member of this Constitution in such reasonable manner as they shall decide from time to time.

Constitution

16.7 The Trustees may supplement/alter/amend the Conduct Rules not inconsistent with this Constitution or any resolutions of Association and all such changes will be communicated to the Members:

16.7.1 as to the resolution of disputes generally;

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

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

16.7.4 for the advancement of the interests of Members;

16.7.5 for the conduct of the Trustees at meetings of Trustees and meetings of the Association;

16.7.6 to levy and collect contributions from Members in accordance with the Constitution;

16.7.7 to levy and recover from Members moneys which are necessary to defray the necessary expenses of the Local Authority in the event of the Local Authority imposing any levies against the Association;

16.7.8 to assist it in administering and governing its activities generally.

16.8 Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include:

16.8.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and Improvements of all Erven in Herolds Bay Country Estate in strict accordance with the provisions of the Architectural Guidelines. The Trustees shall be entitled to require any Member, who shall be obliged to repaint or renovate his Improvements if in the reasonable opinion of the Trustees such Improvements require essential repairs or have become dilapidated;

16.8.2 the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as common sewage, electricity supply, landscaping, maintenance of private roads, refuse facilities, removal of refuse and suchlike, where applicable;

16.8.3 the institution or defence of actions in the name of the Association and to appoint legal representatives for such purpose.

16.9 The Trustees shall be entitled to review and amend the Architectural Guidelines from time to time and may take advice and recommendations from the DRC in this regard.

17 PROCEEDINGS OF TRUSTEES

17.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this Constitution.

17.2 Meetings of the Trustees shall be held at least once every 3 (three) months.

- 17.3 The Chairman always has the right to convene meetings of Trustees.
- 17.4 A Trustee may, provided he has the support in writing of 1 (one) other Trustee, at any time convene a meeting of Trustees by giving to the other Trustees not less than 21 (twenty one) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 17.5 A resolution in writing signed by all the Trustees shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and constituted.
- 17.6 The quorum necessary for the holding of any meeting of Trustees shall be at least 3 (three) of the elected Trustees, of which at least 1 (one) Trustee must be appointed by the Developer and 1 (one) Trustee elected by Members. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday, and if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time determined for the meeting, the Trustees then present shall be a quorum.
- 17.7 Any resolution of the Trustees shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the Chairman shall have a second or casting vote.
- 17.8 The Chairman shall preside as such at all meetings of Trustees provided that, should at any meeting of Trustees the Chairman not be present within 15 (fifteen) minutes after the time determined for the holding thereof, then the Vice Chairman shall assume the chair failing which those present of the Trustees shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 17.9 A Trustee may be represented at a meeting of Trustees by a proxy provided such proxy is a Trustee.
- 17.10 The instrument appointing a proxy shall be in writing and signed by the Trustee concerned but need not be in any particular form. The proxy shall be lodged with the Chairman at any time before the time determined for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.
- 17.11 The Trustees shall:
- 17.11.1 ensure that minutes are taken of every meeting of Trustees, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;
- 17.11.2 cause such minutes to be kept of all meetings of the Trustees;
- 17.11.3 keep all books of meetings of Trustees for 5 (five) years and electronic images of such books

Constitution

in perpetuity;

17.11.4 notify all Members when the minutes of a meeting of Trustees have been compiled; and

17.11.5 on the written application of any Member, make all minutes of their proceedings available for inspection by such Member, and should such a request for a copy be received from a Member, provide that Member with an electronic copy of those minutes requested.

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

17.13 Save as otherwise provided for in this Constitution, the proceedings at any meeting of Trustees shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide including the holding of such meetings electronically.

17.14 The minutes of all meetings of the Trustees shall be available to Members at all times and copies thereof shall be provided to a Member upon request

18 MANAGING AGENT AND ESTATE MANAGER

18.1 The Trustees shall, in addition to the powers contained herein, have the power from time to time, subject only to a Special Resolution to that effect having been passed by the Members in General Meeting, if deemed necessary, to appoint in terms of a written contract a Managing Agent and / or Estate Manager to control, manage and administer Herolds Bay Country Estate and to exercise such powers and duties as may be entrusted to the Managing Agent and /or Estate Manager, including the power to collect levies, provided that a Managing Agent and / or Estate Manager shall be appointed for 1 (one) year at a time, and unless the Trustees notify the Managing Agent and /or Estate Manger to the contrary, such appointment will be automatically renewed from year to year.

18.2 The Trustees shall ensure that there is included in the contract of appointment of Managing Agent and / or Estate Manager a provision to the effect that if the Managing Agent and / or Estate Manager is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Trustees may, without notice, cancel such contract of employment and the Managing Agent and / or Estate Manager shall have no claim whatsoever against the Trustees and/or the Association as a result of such cancellation.

19 GENERAL MEETINGS OF THE ASSOCIATION

19.1 The Association must hold an Annual General Meeting within 2 (two) months of the end of each financial year.

- 19.2 The Trustees will not be obliged to hold an annual general meeting, if before or within 1 (one) month of the end of a financial year, all Members in writing, waive their right to the meeting and consent in writing to motions that deal with all the items of business that must be transacted at the Annual General Meeting.
- 19.3 Annual General Meetings shall be held at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time or in exceptional circumstances or if otherwise so decided, be held electronically.
- 19.4 The Trustees may, whenever they deem fit, convene a General Meeting and a General Meeting shall also be convened on a requisition made by not less than 30% (thirty per centum) of Members or should the Trustees fail to do so such meeting may be convened by the requisitionists themselves provided that notice thereof be given in terms of clause 20.
- 19.5 Any General or Annual General Meeting may be conducted electronically should this be necessitated by circumstances and approved by the Trustees.

20 NOTICE OF MEETINGS

- 20.1 A General Meeting (Annual or ordinary) shall be called by not less than 21 (twenty one) days' notice. The notice shall specify the place, the day and the time of the meeting and, in the case of special business in addition to any other requirements contained in this Constitution, the general nature of that business and the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the Trustees to such persons as are, under this Constitution, entitled to receive such notices from the Association: provided that a General Meeting or an Annual General Meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is agreed to by not less than 60% (sixty per centum) of Members having a right to attend and vote at the meeting.
- 20.2 A General Meeting may be called on 7 (seven) days' notice if the Trustees have resolved that short notice is necessary due to the urgency of the matter and set out their reasons for this resolution.
- 20.3 Should any matter referred to in clauses 23.2.4 or 23.2.5 be on the agenda for discussion at a General Meeting or Annual General Meeting, copies of the relevant statements and budget should be included in the notice convening such meeting envisaged in clauses 20.1 and 20.2 above.
- 20.4 The accidental omission to give notice of any Resolution or Special Resolution or to present any document required to be given or sent in terms of this Constitution, shall invalidate such Resolution or Special Resolution but it shall not invalidate the proceedings of or any other Resolution which was properly constituted and passed at any General Meeting.

- 20.5 Notice of the Annual General Meeting and/or a General Meeting must be delivered by hand to a Member, at the Erf which he owns, and a copy must be sent to the electronic mail address which the Association has on record for each Member.
- 20.6 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of the meeting.
- 20.7 Voting at a General Meeting may proceed despite the lack of notice, if all Members waive their right to notice.

21 PROXIES

- 21.1 A Member may be represented at an annual general meeting and/or General Meeting by a proxy who must be a Member of the Association or any duly appointed representative of such Member provided however that the number of proxies held by any Member may not exceed 3 (three).
- 21.2 The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly appointed representative in writing but need not be in any particular form provided that where a Member is more than one person any one of those persons may sign the instrument appointing a proxy on such Member's behalf. Where a Member is a legal entity, the proxy may be signed by any person authorised by resolution of the board of directors of the company or by its secretary and, where an association of person, by the secretary thereof and, where a trust, by a person duly authorised by the trustees of such trust and, where a closed corporation by the members of the closed corporation.
- 21.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a true copy thereof shall be lodged with the Association at least 24 (twenty four) hours before the scheduled time for the commencement of the meeting or adjourned meeting concerned. The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.

22 QUORUM

- 22.1 No business shall be transacted at any Annual General Meeting or General Meeting unless a quorum is present when the meeting proceeds to business and when any Resolution or Special Resolution is to be passed. The quorum necessary for holding any meeting shall be 40% (forty per centum) of the total Members entitled to attend and vote thereat.
- 22.2 If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In all other cases, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the Members present shall constitute a quorum, however no Special Resolution can be passed at such a General Meeting.

23 AGENDA AT MEETINGS

23.1 The Trustees shall, in consultation with the Members, and without excluding any proposals made by Members, determine the agenda for an annual or General Meeting. The agenda must contain a description of the general nature of all business and a description of the matters that will be voted on at the meeting. Any Resolution or Special Resolution on the agenda to be voted on, should include the proposed wording.

23.2 In addition to any other matters required by legislation or by this Constitution to be dealt with at any annual general meeting, the following matters shall be dealt with at every annual general meeting:

23.2.1 the consideration of the Chairman's report;

23.2.2 receive reports of the activities and decision of Trustees since the previous meeting;

23.2.3 the election of Trustees;

23.2.4 the consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;

23.2.5 the consideration of the budget as presented by the Trustees and confirmation of levies as currently levied by the Trustees;

23.2.6 any other business pertinent to such meeting, including any Resolutions and Special Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions and Special Resolutions.

23.3 The order of business at General Meetings will be as follows:

23.3.1 confirm proxies, and other persons representing Members;

23.3.2 determine that there is a quorum;

23.3.3 present to the meeting proof of notice of the meeting or waivers of notice;

23.3.4 approve the agenda;

23.3.5 approve minutes from the previous General Meeting, if any;

23.3.6 deal with unfinished business, if any;

23.3.7 deal with any new or further business; and

23.3.8 adjourn the meeting.

24 PROCEDURE AT MEETINGS

24.1 The Chairman shall preside as such at all General Meetings provided that should he not be

present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Vice Chairman shall assume the chair, failing which the Trustees present at such meetings shall vote to appoint a chairman for the meeting, provided that such person is a Trustee and shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting. In the event that no Trustee is present, the Members present shall elect one of their number as chairman for that meeting.

24.2 The Chairman may, with the consent of any meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business that might have been transacted at the meeting from which the adjournment took place. No notice need be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) calendar days or more, in which event notice is to be given in the same manner as for the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

25 VOTING

25.1 At every Annual General Meeting or General Meeting a Member who is the registered owner of an Erf or their proxy shall be entitled to 1 (one) vote, provided that if an Erf is registered in more than one person's name, then such persons shall jointly have 1 (one) vote.

25.2 At any meeting of Members a Resolution or Special Resolution put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hand a poll shall be demanded by any Member. If a poll is duly demanded it shall be taken in such manner as the Chairman directs and the result of the poll shall be deemed to be the Resolution or Special Resolution of the meeting at which the poll was demanded. The form of any such poll shall be at the discretion of the meeting, with voting by ballot or by secret ballot not being excluded.

25.3 Save as expressly provided for in this Constitution, no person other than a Member duly registered and who paid every levy and other sum (if any) due and payable to the Association in respect of or arising out of his membership and who is not under suspension, shall be entitled to vote on any question either personally or by proxy.

25.4 At any General Meeting a Resolution put to the vote at the meeting shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereon present in person or by proxy.

25.5 At any General Meeting a Special Resolution put to the vote at the meeting shall be decided on a majority of votes of at least 75% (seventy five per centum) of Members entitled to attend and vote thereon present in person or by proxy.

25.6 Voting on any question of adjournment shall be decided on any ordinary majority of votes

represented by Members entitled to attend and vote thereon present in person or by proxy.

- 25.7 Every Resolution or Special Resolution and every amendment of a Resolution or Special Resolution proposed for adoption by a General Meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 25.8 Unless any Member present in person or by proxy at a meeting shall, before closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted and an entry in the minutes of the Association to the effect that any motion has been carried or lost with or without a record of the number of votes recorded in favour of or against such motion shall be conclusive evidence of the Resolution or Special Resolution so recorded if such entry confirms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

26 MINUTES OF MEETINGS OF THE ASSOCIATION

- 26.1 The minutes of meetings of the Association shall contain, inter alia:
- 26.1.1 the date, time and place of the meeting;
- 26.1.2 the names and role of the persons present, including details of the authorisation of proxies or other representative;
- 26.1.3 the text of all resolutions; and
- 26.1.4 the results of the voting on all motions.
- 26.2 Trustees shall:
- 26.2.1 ensure that minutes are taken of every meeting of the Association, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be circulated to all Members and shall, after any necessary corrections / changes, be certified correct by the Chairman on behalf of the attendees at the next meeting of the Association;
- 26.2.2 cause such minutes to be kept of all such meetings of the Association in a minute book of meetings of the Association kept for the purpose;
- 26.2.3 the Trustees shall provide a copy of all minutes of the proceedings of all meetings of the Association to all Members as soon as such minutes have been compiled.
- 26.3 The Trustees shall keep all minute books of meetings of the Association for 5 (five) years, and in digital format thereafter in perpetuity.
- 26.4 All Resolutions or Special Resolutions recorded in the minutes of any meetings of the Association

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

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

27 SPECIAL RESOLUTIONS

A Special Resolution is required to:

- 27.1 Amend or alter this Constitution in any way whatsoever;
- 27.2 Alienate any of the Common Property or Improvements thereon and held by the Association;
- 27.3 Increase the number of Erven and thereby Members in Herolds Bay Country Estate, whether by consolidation with any surrounding development or property, or by subdivision or any other means whatsoever;
- 27.4 Resolve to appoint a Managing Agent after a period of 6 (six) months or more during which no Managing Agent was appointed.
- 27.5 Resolve to stop using a Managing Agent without a replacement being appointed.
- 27.6 Amendments to the basis upon which Levies are determined.
- 27.7 Amendments to the basis upon which the minimum balance of the reserve fund of the Association is determined.
- 27.8 Make any substantive change to the manner in which the Association is operated and managed;
- 27.9 Make any substantive change to the services which the Association provides. Without being exhaustive or exclusive such changes would be:
 - 27.9.1 Employing, termination or doubling of the existing guarding services
 - 27.9.2 Discontinuing the gardening services provided by the Association to assist Members to keep street verges tidy;
 - 27.9.3 Installing major changes to the security perimeter such as electric fencing or similar;
 - 27.9.4 Termination of the refuse collection service;
 - 27.9.5 Termination of the provision of gym and games equipment; or
 - 27.9.6 Make or cause to be made, any changes to the Environmental Impact Study which was conducted prior to the establishment of Herolds Bay Country Estate, and which governs the

Constitution

manner in which the Erven and Common Property are managed from an environmental impact perspective.

27.10 Resolve any issue regarding the failure by a Member to remove or alter any improvement or addition done contrary to the provisions of the Constitution;

27.11 Any other matter determined to require a Special Resolution by this Constitution.

28 FINANCIAL YEAR END

The financial year end of the Association is the last day of December of each year.

29 ACCOUNTS

29.1 The Trustees shall cause proper books of account and records to be kept to accurately reflect the transactions and financial position of the Association including:

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

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

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

29.1.4 individual ledger accounts in respect of each Member.

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

29.3 The Trustees shall cause all books of account and records to be retained for a period of 5 (five) years after completion of the transactions, acts or operations to which they relate.

29.4 The Association in General Meeting may from time to time impose reasonable requirements as to the time and manner of the inspection by Members of the accounts and books of the Association, or any of them, and subsequent to such requirements, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

29.5 At each Annual General Meeting the Trustees shall present to the Association financial statements for the immediately preceding financial year of the Association. Such financial statements shall be drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees.

30 DEPOSIT AND INVESTMENT OF FUNDS

30.1 The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a General Meeting of the Association,

Constitution

such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.

- 30.2 Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution as defined in Section 1 of the Financial Sector Regulation Act, (Act 9 of 2017) approved by the Trustees from time to time.
- 30.3 Interest on moneys invested shall be used by the Association to any lawful purpose in the interest of the Association.

31 AUDIT

- 31.1 At least once a year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.
- 31.2 The duties of the Auditors shall be regulated in accordance with generally acceptable accounting practice and applicable professional standards.
- 31.3 The Auditors for the next financial year shall be appointed by the Trustees after a Resolution to that effect has been passed at the Annual General Meeting each year.

32 OWN RISK

Any person using any of the services, land or facilities of the Association does so entirely at his own risk.

33 ARBITRATION

- 33.1 Should any dispute, question or difference arise between Members or between a Member and Trustees of or in regard to:
- 33.1.1 the interpretation of these presents;
- 33.1.2 the effect of these presents;
- 33.1.3 their respective rights or obligations under these presents;
- 33.1.4 a breach of (save for non-payment of levies or any other amount due by a Member in terms of this Constitution) this Constitution,

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

- 33.2 In respect of any claim arising from non-payment of levies or any other amount due by a Member, or *vice versa*, to the Member, to/from the Association in terms of this Constitution, the Association and Trustees shall continue to enjoy common law rights and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.

33.3 Notwithstanding anything to the contrary contained in this clause 33, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purpose of restraining or interdicting breaches of any of the provisions of this Constitution, including the Architectural Guidelines and the Conduct Rules.

34 DOMICILIUM

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

34.1.1 such address shall be the address of Herolds Bay Country Estate or the Chairman or of a resident Trustee nominated by the Trustees or the address of any duly appointed Managing Agent;

34.1.2 the Trustees shall give notice to all Members of any change of such address.

34.2 The *domicilium citandi et executandi* of each Member shall be the street address of the Member's Erf.

34.3 It shall be competent to give notice by telefax or electronic mail where the Member's telefax number or electronic mail address is recorded with the Trustees.

34.4 Any notice to a Member:

34.4.1 Delivered by hand to the street address of that Member's Erf in a correctly addressed envelope shall be deemed to have been received on the 1st (first) day after the date of delivery (unless the contrary is proved); or

34.4.2 successfully transmitted by telefax to his chosen telefax number or by electronic mail to his chosen electronic mail address, shall be deemed to have been received on the 1st (first) day after the date of transmission (unless the contrary is proved).

34.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Member shall be adequate written notice or communication to such Member notwithstanding that it was not sent to or delivered at his *domicilium citandi et executandi*.

35 PROTECTION OF PERSONAL INFORMATION

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

35.1 the proper identification of all personal information the Association is authorised to process, how such personal information can be accessed, the purpose of processing thereof and what the Association may or may not do with such information and how long the Association may retain

Constitution

it;

- 35.2 that personal information is complete, accurate and up to date, and not misleading;
- 35.3 that personal information is only processed with a Member's express written knowledge or permission, treated as confidential and not disclosed unless required by law or authorised by a Member;
- 35.4 the processing of personal information in accordance only with this Agreement and to comply with POPIA;
- 35.5 that each of its employees, agents and/or representatives is aware of the Association's obligations under POPIA and this Agreement and have committed themselves to keeping personal information confidential;
- 35.6 that specific technical, administrative and physical security measures are continuously implemented to protect any personal information from loss or damage, or unauthorised access, processing or destruction;
- 35.7 that the security measures implemented be regularly assessed, reviewed and updated and that expert advice be obtained before making any changes to the aforesaid security measures;
- 35.8 the right of a Member to request or perform an audit of the Association's security measures and to assess and verify that the processing is done in accordance with POPIA and this Agreement;
- 35.9 that no outsourcing or processing of personal information to third parties takes place without a Member's written permission;
- 35.10 that if the Association does outsource the processing of personal information, an agreement be concluded with the third party processor containing similar requirements on processing of personal information;
- 35.11 immediate notification to a Member should the Association suspect or believe that personal information has been accessed or acquired by unauthorised persons or used in a manner inconsistent with this Agreement or POPIA;
- 35.12 the liability for any claims against a Member as a result of a breach by the Association of the provisions of POPIA or this Agreement;
- 35.13 assistance to a Member to respond to any queries or requests for access to personal information, and/or requests for the correction, destruction or deletion of personal information; and
- 35.14 free of charge, the immediate return, deletion or destroying of personal information in its possession if this Agreement or the membership of a Member is terminated for whatever reason.

36 AMENDMENT OF THE CONSTITUTION

- 36.1 The Constitution may be amended at the Annual General Meeting or a General Meeting duly

Constitution

convened for that purpose.

36.2 Subject to the provision of clause 36.1 above, any amendment to the Constitution shall be effected only by Special Resolution as envisaged in clause 27.1 above.

36.3 No amendment to the Constitution may be made unless the Member(s) proposing such amendment have given written notice, (in observance of clause 23 of the Constitution), and details of such proposal to the Trustees for inclusion on the agenda.

36.4 All amendments to the Constitution, once approved, are to be submitted to and filed with:

36.4.1 The Local Authority, George Municipality (Planning Department) for purposes of:

36.4.1.1 approval of amendments specifically provided for and required in terms of section 29 of the LUP By-Law; and

36.4.1.2 recording of any other amendments which does not require approval by the Local Authority.

36.4.2 South African Revenue Services for as long as the Association enjoys any income tax exempt status;

36.4.3 The office of the Ombudsman in terms of the provisions of the CSOS legislation, where applicable, and in particular Regulation 16 thereof.