

REPUBLIC OF SOUTH AFRICA COMPANIES Act, 1973

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

**(Section 60(1) and Regulation 18)
(Association Incorporated under Section 21)**

Registration No. of Association 95/00581/08

Name of Association: ZIMBALI ESTATE MANAGEMENT ASSOCIATION
(Association Incorporated under Section 21)

A.

The Articles of Table A or Table B in Schedule 1 to the Companies Act, 1973 shall not apply to the Association.

B.

The Articles of the Association are as follows:

1 INTERPRETATION

1.1 In these Articles, unless the context otherwise requires -

1.1.1 "Act" means the Companies Act of 1973 as amended from time to time;

1.1.2 "Articles" means the Articles of Association for the time being of the Association;

1.1.3 "Association" means Zimbali Estate Management Association (Association incorporated under Section 21);

1.1.4 "Board" means the Board of Directors of the Association for the time being;

1.1.5 "Body Corporate" means a body corporate as defined in Section 1 of the Sectional Titles Act, a Share Block Company as defined in Section 1 of the Share Blocks Control Act, and a Homeowners Association;

1.1.6 "Conservation-Amenity Area means the area covered by the Conservation-Amenity Management Plan as adopted in the Scheme;

1.1.7 "Developer" means Zimbali Development Company (Proprietary) Limited (Registration No. 68/09161/07), including its successors and assigns;

1.1.8 "Development Period" means the period reckoned from the date of registration of the Association to the date on which the Developer gives written notice to the Association of its resignation as a Member provided that no such notice shall be given until such time as all building work on the Estate has been substantially completed. For these purposes, the Estate shall be deemed to be substantially completed when 90% (NINETY PERCENT) of the subdivisional units have been sold;

1.1.9 "Directors" means the Directors of the Association for the time being;

1.1.10 "Estate" means all of the land which the Developer has set aside as part of the Estate, being that area which is indicated by the red border on the plan, available at the ZEMA offices, marked "A", it being recorded that the Estate is comprised of numerous subdivisions that have been created from the original parent properties and that numerous additional sub-divisions will be created pursuant to the ongoing development of the Estate. (It is accordingly impractical to record the precise descriptions of all of the properties which together constitute the Estate.);

1.1.11 "Hotel Member" means a Member who owns a Unit in the Estate which is zoned hotel in terms of the Scheme;

1.1.12 "Manager" means the person, corporation or association appointed by the Association, from time to time, to undertake the management of the Estate;

1.1.13 "Member" means an Owner, it being recorded that -

1.1.13.1 the Developer shall be a Member for the duration of the Development Period;

- 1.1.13.2 in the case of joint owners, the person nominated in terms of 2.1.4 below and, failing or pending such nomination, the first named person on the document of Title in respect of the Unit which is jointly owned (or its nominee if such first name joint owner is an artificial person), shall be deemed to be the representative Member (and as such also the representative of the other joint owners) for the purposes hereof, provided that all joint owners shall be bound by these Articles;
- 1.1.13.3 where the owner is an artificial person, its individual nominee shall be deemed to be the representative Member for the purposes hereof;
- 1.1.14 "Memorandum" means the Memorandum of Association for the time being of the Association;
- 1.1.15 "Office" means the registered office of the Association for the time being;
- 1.1.16 "Owner" means any person who is the owner of a Unit;
- 1.1.17 "Property Time Share Control Act" means the Property Time Share Control Act No. 75 of 1983 as amended and any regulations in force thereunder from time to time;
- 1.1.18 "Remainder of Zimbali" means the property described as:
- The Remainder of Erf 1 Port Zimbali Registration Division FU in the Dolphin Coast Transitional Local Council Area and in the Port Natal-Ebhodwe Joint Services Board Area, Province of KwaZulu-Natal, in extent 56,1843 (FIFTY- SIX COMMA ONE EIGHT FOUR THREE) hectares,
- or any portion thereof registered in the name of the Developer;
- 1.1.19 "Residential Member" means a Member other than the Developer (at least during the Development Period, it being recorded that after the Development Period the Developer might qualify as a Residential Member by virtue of owning a Unit in the Estate) and other than an Hotel Member;
- 1.1.20 "Scheme" means the Zimbali Town Planning Scheme as amended from time to time or any other approved scheme applicable to the Estate, from time to time;
- 1.1.21 "Sectional Titles Act" means the Sectional Titles Act No. 95 of 1986 as amended and any regulations in force thereunder from time to time;
- 1.1.22 "services" means water, sewerage, refuse removal, electricity, telecommunications, television aerials, television cables and such other utilities or services as are provided by the Association or any other supplier of services to the Estate, from time to time;
- 1.1.23 "Share Blocks Control Act" means the Share Blocks Control Act No. 59 of 1980 as amended and any regulations in force thereunder from time to time;

- 1.1.24 "Unit" means in relation to the Estate a sectional title unit under the provisions of the Sectional Titles Act, that portion of immovable property in respect of which a holder of a share block is granted the exclusive use as contemplated under the Share Blocks Control Act, or a subdivision capable of individual ownership as the case may be. (It is recorded that when a subdivision is developed in terms of a sectional title scheme, the single unit constituted by the subdivision will convert into a number of separate units represented by each sectional title unit created on the said subdivision.)
- 1.2 Words and expressions used and not otherwise defined in these Articles shall have the meaning assigned to them by the Act.
- 1.3 Words importing the singular shall include the plural; words importing the masculine, feminine and neuter shall include the others of such genders; and words importing persons shall include Bodies Corporate, and vice versa in each instance.
- 1.4 The heading above any of the Articles is intended for reference purposes only and shall not influence the interpretation of the Articles.

2 MEMBERSHIP

2.1 Membership of Association

- 2.1.1 Membership of the Association shall be obligatory for an Owner, and, during the Development Period, for the Developer.
- 2.1.2 No Owner shall transfer a Unit unless it is a condition of such transfer that the transferee, in a manner acceptable to the Association, agrees to become a Member and is admitted as a Member in terms of Article 2.2.1.
- 2.1.3 In order to procure compliance with the provisions of these Articles, it shall be registered as a condition of ownership of the Unit that no Unit shall be alienated without the written consent of the Association first being had and obtained, which consent shall be given if the proposed transferee is or will be admitted as a Member of the Association and the transferor has fulfilled all its obligations to the Association. For the purposes of this clause "alienate" means to alienate any unit or part thereof, and includes by way of sale, exchange, donation, deed, intestacy, will, cession, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or involuntary, and further irrespective as to whether such alienation is subject to a suspensive or resolutive condition. In the case of an artificial person such as a company, close corporation or trust, a material change in the "beneficial ownership" or in the "controlling interest" thereof shall be deemed to constitute an alienation for the purposes of these Articles and, in the event of there being any dispute as to whether there has been a material change in beneficial ownership or in the controlling interest, such matter shall be resolved by way of the procedures provided for in 20.12 below.
- 2.1.4 In the event of any Unit being owned in undivided shares by more than one Owner such co-owners shall nominate one of them to be the Member for the purposes of these Articles provided that all joint owners shall be bound by these Articles as if they were members.

2.1.5 Where a Unit is owned by an artificial person such as a company, close corporation or trust, such artificial person shall be obliged, by written notice to the Board of Directors of the Association, to nominate an individual person to represent the said Owner and such individual shall, for the purpose hereof, be deemed to be the representative Member of the Association and shall be bound to ensure that the Owner and all of its invitees shall comply fully with the provisions of these Articles and with any regulations pertaining to the Estate from time to time.

2.1.6 A Member (other than the original subscribers to the Memorandum and Articles of the Association) may not tender resignation of his membership of the Association.

2.2 Admission of Members

2.2.1 The initial Members of the Association shall be the persons subscribing to the Memorandum and Articles of Association. Thereafter the Members of the Association shall be the Developer and those persons who, from time to time, become members in accordance with the provisions of these Articles. The initial Members shall resign as Members as soon as there are sufficient substitute Members in terms of this clause.

2.2.2 The discretion as to the admission to membership of a proposed acquirer of a Unit is hereby conferred upon the Board. The Board shall not unreasonably decline to admit to membership of a particular applicant.

2.3 Rights and Duties of Members

2.3.1 Subject to the rights of membership as prescribed by the Act, membership of the Association shall confer upon each Member, unless otherwise stipulated, the following rights:

2.3.1.1 the right to inspect and/or receive copies of the annual financial statements of the Association;

2.3.1.2 the right to receive notices of, attend and speak at all general meetings of the Association, whether ordinary or extra-ordinary, in accordance with the provisions of these Articles;

2.3.1.3 should 25% (TWENTY FIVE PERCENT) of Members, or Members who together hold at least 25% (TWENTY FIVE PERCENT) of the voting rights in the Association, from time to time, so collectively decide, the right to call a general meeting.

2.3.2 No Member shall, by reason of membership of the Association, be entitled to share in or receive any profit of the Association.

2.4 Cessation of Membership

2.4.1 Membership of the Association shall cease:

2.4.1.1 upon a Member ceasing to be an Owner;

2.4.1.2 upon the issue of a final order of sequestration or liquidation of the Member concerned;

2.4.1.3 upon the death of a Member, or upon the Member being declared insane or incapable of managing his affairs;

2.4.1.4 in the case of the Developer on delivery of written notice to the Association as contemplated in clause 1.1.8;

2.4.2 In the event of a Member ceasing to be a Member in terms of 2.4.1.2 or 2.4.1.3 the legal representative of such Member shall, for all purposes, be recognised and be bound as the Member under these Articles.

2.5 **Liability of Members**

The liability of Members, as Members of the Association, shall be limited to R1,00 (ONE RAND) together with such other amount as may be owing by a Member to the Association, from time to time, from whatever cause arising.

2.6 **Register of Members**

The Association shall maintain at its office a register of Members as provided in Section 105 of the Act. The register of Members shall be open to inspection as provided in Section 113 of the Act.

3 **GENERAL MEETINGS**

3.1 **Annual General Meeting**

3.1.1 The Association shall hold a general meeting in every year as its annual general meeting on such date and at such time and place as may be determined by the Board, and shall specify the meeting as such in the notice calling it, provided, however, that the annual general meeting shall be held not later than 6 (SIX) months after the end of each financial year of the Association, and provided that not more than fifteen months shall elapse after the holding of the last preceding annual general meeting.

3.1.2 All general meetings, other than annual general meetings, shall be called extraordinary general meetings.

3.1.3 The Directors may, whenever they think fit, convene an extraordinary general meeting.

3.2 **Notice of General Meeting**

The annual general meeting and any meeting called for the passing of a special resolution shall be called by not less than 21 (TWENTY-ONE) clear days' notice in writing and any other general meeting shall be called by not less than 14 (FOURTEEN) clear days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it was given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such persons as are, under these articles, entitled to receive such notices from the Association: Provided that a meeting of the Association shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by all the Members having a right to attend the meeting.

3.3 Proceedings at General Meeting

- 3.3.1 The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the annual financial statements, decisions on the number of Directors and election of Directors when such decision is required in accordance with the provisions of these articles, and the appointment of an auditor, and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business.
- 3.3.2 No business shall be transacted in any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. The quorum for a general meeting of the company shall be 3 (THREE) Members entitled to vote, personally present, or if a member is a body corporate, represented provided that for the Development Period one of such Members must be a representative of the Developer.
- 3.3.3 If within half-an-hour after the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case 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 and if at such adjourned meeting a quorum is not present within half-an-hour after the time appointed for the meeting, the Members present in person or represented by proxy shall be a quorum provided that for the Development Period one of such Members (present in person or represented by proxy) must be a nominee or representative of the Developer.
- 3.3.4 Where a meeting has been adjourned as aforesaid, the Association shall, upon a date not later than 3 (THREE) working days (i.e. excluding public holidays, Saturdays and Sundays) after the adjournment, publish a notice in an English and Afrikaans newspaper circulating in the Zimbabwe area, stating:
- 3.3.4.1 the date, time and place to which the meeting has been adjourned;
- 3.3.4.2 the matter before the meeting when it was adjourned; and
- 3.3.4.3 the ground for the adjournment.
- 3.3.5 The chairman, if any, of the Board shall preside as chairman at every general meeting of the Association. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the Members shall elect one of their Members to be chairman for that meeting.
- 3.3.6 The chairman may, with the consent of any 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 shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of Articles 3.3.3 and 3.3.4 shall *mutatis mutandis* apply to such adjournment.

- 3.3.7 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands demanded by the Chairman or by a sufficient number of Members in terms of the provisions of the Act : that is, by at least 5 (FIVE) Members or by Members who together hold at least 10% (TEN PERCENT) of the votes in the Association), and, unless the poll is so demanded, the declaration by the Chairman that a Resolution has, on a show of hands been carried or carried unanimously or by a particular majority or negated, and an entry to that effect in a book containing the minutes of the proceedings of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn. If a poll is duly demanded, it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which a poll was demanded. Scrutineers shall be elected to determine the result of the poll. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which a show of hands takes place, or at which a poll is demanded, shall be entitled to a second or casting vote, subject to the provisions of Article 3.4.
- 3.3.8 The instrument appointing a proxy shall be under the hand of the appointer.
- 3.3.9 The instrument appointing a proxy shall be deposited at the office not less than forty- eight hours before the time for the holding of the meeting at which the person named in such instrument purports to attend or vote pursuant thereto or in respect thereof. In default of compliance herewith the instrument shall be treated as invalid for the purpose of attending or voting at that meeting or any adjournment thereof. No instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, unless the proxy otherwise provides.
- 3.3.10 A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided no intimation in writing of the death or revocation shall have been received at the office or by the chairman of the meeting before the vote is given.
- 3.3.11 An instrument appointing a proxy shall be in the following form or in any other form which the Directors shall approve.

ZIMBALI ESTATE MANAGEMENT ASSOCIATION
(Association Incorporated under Section 21)

"I/We

_____ of _____ being a Member/Members of the abovenamed Association, hereby appoint _____ of _____ or failing him _____ of _____ or failing him the chairman of the meeting as my/our proxy to vote for me/us on my/our behalf at the annual general or general (as the case may be) meeting of the Association, to be held on the _____ day of _____ 20_____ and at any adjournment thereof as follows:

	In favour of	Against	Abstain
Resolution to			
Resolution to			
Resolution to			
Resolution to			

(Indicate instruction by a cross or tick in the space provided). "Unless otherwise instructed, the proxy will vote as he thinks fit. "Signed this _____ day of _____ 20_____

SIGNATURE

"A Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, speak and vote in his stead. The proxy need not be a Member of the Association".

3.4 **Votes of Members**

Each Member present at a meeting of the Association in person or by proxy shall be entitled to one vote for every Unit which such Member (or the Owner of which he is the nominee) owns, save that where an Hotel Member has erected a hotel on his property, he shall be entitled to one vote for every two and a half (2½) bedrooms comprised in such hotel (e.g. should a hotel comprise fifty (50) bedrooms, the Member shall be entitled to twenty (20) votes); “provided always that for the duration of the Development Period, the Developer shall, for the purposes of voting on any proposed resolution which materially affects the Developer’s rights or interests in respect of the Association and/or the development of the Estate and/or the Developer’s membership of the Association and/or the Developer’s rights to appoint Directors to the Association’s Board of Directors, be deemed to have the same number of votes as are held, in aggregate, by all of the other members present in person or by proxy at the relevant meeting. If there is any dispute in regard to whether a proposed resolution materially affects the Developer’s rights or interests for the purposes of the above, such dispute shall be determined by summary arbitration in terms of Article 20.12 below with an independent senior counsel as the arbitrator. A proposed resolution which is subject to such a dispute may be put to the vote but the outcome thereof will be conditional upon the determination of the dispute to the extent that such is necessary in order to facilitate the determination of the outcome of the voting. By way of clarification, it is recorded that the outer boundaries of the Zimbali Estate will be limited to the outer boundary as depicted in the diagram, available at the ZEMA offices, marked “A” and accordingly the issue of whether a proposed Resolution materially affects the Developer’s rights or interests will be limited to issues pertaining to the development by the Developer of the Zimbali Estate as so circumscribed. (It is recorded, however, that if the Developer acquires any portion of those properties which fall within the abovementioned outer boundary but which are not currently part of the Zimbali Estate, the Developer shall be entitled, in terms of the powers conferred upon it in terms of Article 23, to incorporate such portion into the Zimbali Estate.). In addition, it is recorded that the future development of any undeveloped areas within the Zimbali Estate will be undertaken in accordance with the architectural and landscaping guidelines applicable to the Zimbali Estate.

4 **INSPECTION OF MINUTES**

The minutes kept of every general meeting and annual general meeting of the Association under Section 204 of the Act, may be inspected and copied as provided in Section 206 of the Act.

5 **DIRECTORS**

- 5.1 The Company shall have a maximum of seven (7) Directors.
- 5.2 The Hotel Members shall be entitled to appoint two (2) Directors and the Residential Members shall be entitled to appoint five (5) Directors.
- 5.3 Each Director shall hold office until the close of the Annual General Meeting following his appointment but shall be eligible for re-appointment.

- 5.4 The Directors to be appointed by the Residential Members shall be elected at each Annual General Meeting by secret ballot. The Directors to be appointed by the Hotel Members shall be appointed by agreement between them.
- 5.5 Should a person nominated and elected by the Residential Members cease to be a Director, the Residential Directors may appoint a person as a Director to fill the vacancy until the next Annual General Meeting.
- 5.6 Should a person appointed by the Hotel Members cease to be a Director, the Hotel Members may appoint a new Director by agreement between them.
- 5.7 The Chairman and deputy Chairman of the board shall be elected by the Directors from their number, annually as soon as practicable after each Annual General Meeting.
- 5.8 The Directors shall have the power to co-opt persons onto the Board for the purpose of assisting the Directors in carrying out any of their functions. Any person so co-opted onto the Board shall not be entitled to vote on any matter which comes up for consideration by the Board.”

6 **ALTERNATE DIRECTORS**

- 6.1 Any Director appointed by the Developer may for any reason and at or for any time appoint an alternate.
- 6.2 Any other Director may obtain leave of absence by a resolution of the majority of the Directors, and such Director may thereupon appoint an alternate to act for him during his absence with all powers and privileges enjoyed by him.

7 **DIRECTORS REMUNERATION**

- 7.1 A Director shall not directly or indirectly receive any remuneration for his services as a Director of the Association, provided that nothing in these Articles shall prohibit him from reimbursement of all travelling, subsistence and other expenses properly incurred by him in the execution of his duties in or about the business of the Association and which is authorised or approved by the Board.
- 7.2 If any Director commits a breach of Article 7.1 he shall forthwith cease to be a Director and shall not be eligible for re-election.

8 **POWERS AND DUTIES OF DIRECTORS**

- 8.1 The business of the Association shall be managed by the Directors who may on behalf of the Association pay all expenses incurred in promoting and incorporating the Association, and may exercise all such powers of the Association as are not required by the Act, or by these Articles, to be exercised by the Association in general meeting. Without in any way derogating from the generality of the foregoing, the Directors shall be entitled to exercise on behalf of the Association all and any of the common powers set out in paragraph 5 of the Memorandum of the Association and subject only to any contrary stipulation contained from time to time in the Memorandum and Articles of the Association.

- 8.2 The Board may from time to time entrust to and confer upon the manager, or any other designated official of the Association or consultant or any other person or firm, for the time being, such of the powers and authorities vested in it as it may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and subject to such terms and conditions and restrictions as it may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the Directors and may from time to time revoke or vary all or any of such powers and authorities.
- 8.3 Without in any way affecting the generality of Article 8.1 the Directors shall have the power to enter into contracts and agreements with third parties to give proper effect to the provisions of the Memorandum and Articles of the Association.
- 8.4 The Association in general meeting shall have the right to limit and restrict the powers of the Directors provided that no resolution of the Association shall invalidate any prior Act of the Directors which would otherwise have been valid.
- 8.5 The Directors shall have the power to make conduct rules from time to time as well as the power to substitute, add to, amend or repeal same, for the management, control, administration, use and enjoyment of the Estate, for the purposes of giving proper effect to the provisions of the Memorandum and Articles of the Association and for any other purpose which powers shall include the right to impose reasonable financial penalties to be paid by those Members who fail to comply with the provisions of these Articles or the rules. Notwithstanding the foregoing, any rule to be made by the Directors in terms of this Article shall be approved by a majority of Directors nominated by the Hotel Members, which approval of the Hotel Members shall not be unreasonably withheld.
- 8.5.1 **Conduct Rules**
- Subject to any restriction imposed or direction given at a General Meeting of the Association the Directors may from time to time make conduct rules in regard to:
- 8.5.1.1 the preservation of the natural environment,
- 8.5.1.2 vegetation and fauna and flora on the Estate,
- 8.5.1.3 the use and allocation of parking areas for owners and guests,
- 8.5.1.4 the right to keep animals, reptiles and birds,
- 8.5.1.5 the use of recreation and entertainment areas and amenities and facilities and the right to make a reasonable charge for such use,
- 8.5.1.6 the use and control of business premises,
- 8.5.1.7 the placing of movable objects upon the outside of buildings including the power to remove any such objects,
- 8.5.1.8 the storing of flammable and other harmful substances,
- 8.5.1.9 the conduct of any persons within the Estate and the prevention of nuisance of any nature to any Owner,

- 8.5.1.10 the use of land within the Estate,
- 8.5.1.11 where a Unit is owned in undivided shares by more than one Owner the use of such Unit by co-owners thereof and their rights inter se,
- 8.5.1.12 the use of roads, pathways and open spaces,
- 8.5.1.13 the imposition of fines and other penalties to be paid by Members.
- 8.5.1.14 any such matters as may in the opinion of the Directors require to be regulated from time to time.

8.5.2 **Enforcement of Conduct Rules**

- 8.5.2.1 The Directors may take or cause to be taken such steps as they may consider necessary to remedy the breach of any conduct rules of which the Member may be guilty and debit the costs of so doing to the Member concerned which amount shall be deemed to be a debt owing by the Member to the Association. In addition, the Directors may impose a system of fines or other penalties. The amounts of such fines and/or penalties shall be determined by the Board from time to time.
- 8.5.2.2 In the event of any breach of the conduct rules by any guests, invitees or other persons occupying the Unit such breach shall be deemed to have been committed by the Member and the Directors shall be entitled to take such action as they may deem fit against the responsible Member.
- 8.5.2.3 Notwithstanding the foregoing, the Directors may in the name of the Association enforce the provisions of any conduct rules by a similar application in a Court of competent jurisdiction and for this purpose may appoint such attorneys or Counsels they may deem fit.
- 8.6 Any conduct rules made by the Directors shall be reasonable, and shall apply equally to all owners of units put to substantially the same purpose.
- 8.7 The rules made by the Directors from time to time in terms of the powers granted to them shall be binding on all members.
- 8.8 The Association may, pursuant to its rights, obligations and duties in terms of these Articles and as provided for and contemplated under these Articles, incur such expenditure as is necessary and/or requisite and howsoever arising to enable it to give proper effect to the provisions of its Memorandum and Articles.

9 **MINUTES**

- 9.1 The Directors shall in terms of the Act cause Minutes to be kept:
 - 9.1.1 of all appointments of officers;
 - 9.1.2 of names of Directors present at every meeting of the Association and of the Directors; and
 - 9.1.3 of all proceedings at all meetings of the Association and/or the Directors.

9.2 Such Minutes shall be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the following meeting.

10 **DISQUALIFICATION OR RESIGNATION OF DIRECTORS**

The office of Directors shall be vacated if the Director:

10.1 ceases to be a Director by effluxion of the period of appointment, or becomes prohibited from being a Director by virtue of any provision of the Act or these Articles; or

10.2 resigns his office by notice in writing to the Association and the Registrar; or

10.3 becomes insolvent or assigns his Estate for the benefit of or compounds with his creditors; or

10.4 is found to be a lunatic or of unsound mind; or

10.5 is absent for three consecutive regular meetings of the Directors without obtaining prior leave of absence;

10.6 in the case of a nominee of the Developer, on the Developer revoking his appointment.

11 **PROCEEDINGS OF DIRECTORS**

11.1 The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit but shall meet at least 4 (FOUR) times during a financial year.

11.2 The Board shall appoint a company secretary.

11.3 The quorum for a meeting of Directors shall be three (3) Directors (or their alternates, if applicable), provided that at least one Director (or his alternate, if applicable) present shall be a nominee of the Hotel Members and one Director (or his alternate, if applicable) present shall be a nominee of the Resident Members. If at least one (1) Director appointed respectively by the Hotel and Residential members is not present within (thirty) 30 minutes of the time scheduled for the commencement of the meeting, then if there are at least three (3) Directors present, they shall constitute a quorum for that meeting.

11.4 If the Chairman is not present fifteen (15) minutes after the commencement of the meeting, the Directors shall choose one of their number to be Chairman of the meeting.

11.5 Questions arising at any meeting of the Directors shall be decided by majority vote of the Directors, present in person or by an alternate. Each Director shall be entitled to exercise one vote. In the event of an equality of votes the Chairman shall have a second or casting vote. Where a person is an alternate Director to more than one Director, or where an alternate Director is also a Director in his personal capacity, he shall have a separate vote on behalf of each of the Directors who he is representing in addition to his own vote. If any Resolution of the Directors is passed in circumstances where it has been opposed by at least two (2) Directors (or their alternates) appointed by either the Hotel Members or the Residential Members (as the case may be), and the Resolution materially affects the rights of the Hotel Members or of the Residential Members, the opposing group of

Directors shall be entitled to declare a dispute in respect of such Resolution by giving notice thereof at the meeting alternatively giving notice in writing to the Chairman of the Board of Directors and the General Manager of the Association within two (2) business days from the day on which the disputed resolution was passed. In such event the implementation of the Resolution shall be suspended pending the resolution of that dispute in terms of the dispute resolution mechanism provided for in Article 20.12 provided that:

- 11.5.1 the period of 60 days provided for in Article 20.12.1 shall not apply; and
- 11.5.2 the Arbitrator shall be a practicing senior advocate of at least 10 years standing as such, agreed by the parties or in the event that they cannot agree within 7 days, appointed at the request of either party by the Chairman for the time being of the KwaZulu-Natal Society of Advocates;
- 11.5.3 in the arbitration proceedings, the Dissenting Minority shall be Claimants and the Association the Respondent.
- 11.5.4 If there is any dispute in regard to whether the disputed resolution materially affects the rights of the opposing group such dispute shall be determined by the Arbitrator, in limine by summary arbitration.
- 11.6 The Directors may delegate any of their powers to committees consisting of such persons as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to the rules that may be imposed on it by the Directors.
- 11.7 A committee may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within 15 (FIFTEEN) minutes after the time appointed for holding the same, the committee Members present may elect one of their number to be chairman of the meeting.
- 11.8 A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the committee members present and in the event of an equality of votes the Chairman shall not have a second or casting vote.
- 11.9 All acts done by any meeting of the Directors or a committee of Directors or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and has qualified to be a Director.
- 11.10 **Limitation of Liability of Directors**

No Director shall be liable for any loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his office or in relation thereto unless the same happen through his own dishonesty, gross negligence or default, breach of duty or breach of trust.

12 **DELEGATION OF POWERS OF DIRECTORS**

The Board may from time to time entrust to and confer upon the Manager, or any other designated official of the Association or consultant or any other person or firm, for the time being, such of the powers and authorities vested in it as it may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and subject to such terms and conditions and restrictions as it may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the Directors and may from time to time revoke or vary all or any of such powers and authorities.

13 **ASSUMPTION OF LIABILITY**

The Association shall carry out all the functions and assume all powers as provided in Section 37 and Section 38 of the Sectional Titles Act as the Association may require be delegated to it by the relevant Body Corporate and those functions imposed in terms of Section 13, 15 and 19 of the Share Blocks Control Act as the Association may require be delegated to it by a Share Block Company, in relation to any Sectional Title or Share Block Scheme on the Estate. In addition to the foregoing any controlling body of any scheme operating on the Estate shall assign such powers and functions to the Association as the Association may require be delegated to it.

14 **FINANCE COMMITTEE**

14.1 There shall be established by the Board of Directors, in terms of Article 11.6, a finance committee which shall consist of 3 (THREE) persons of whom at least 2 (TWO) shall for the Development Period be nominees of the Developer. The individuals serving on the finance committee need not be Directors or Members of the Association.

14.2 The finance committee shall establish and maintain a levy fund sufficient in its opinion for the repair, upkeep, control management and administration of the Association and of the Estate including the provision of security services for the Estate, the payment of rates and taxes and other charges on the Estate levied by the local or any other authority, any charges for the supply of electric current, gas, water, fuel and sanitary and any other services to the Estate including any matter arising from the provisions of Article 13, and any services required by the Association to enable it to carry out its main and ancillary objects, for the covering of any losses, suffered by the Association, for the payment of any premiums of insurance and of all other expenses incurred or to be incurred in relation to the Estate and for the discharge of any other obligation of the Association. (Nothing in this Article shall be construed as obliging the Association to pay service charges due by Owners to the local or any other authority.)

14.3 Before every annual general meeting, the finance committee shall cause to be prepared an itemised estimate of the anticipated income and expenses of the Association during the ensuing financial year, which estimate shall be laid before the annual general meeting for consideration.

14.4 At every annual general meeting the Association shall approve, with or without amendment, the estimate of income and expenditure referred to in Article 14.3, and shall determine the amount estimated to be required to be levied upon the Members during the ensuing financial year.

- 14.5 The finance committee shall during the Development Period determine that portion of the total expenditure which is to be paid by the Developer and the balance of the expenditure shall be borne by the remaining Members.
- 14.6 The proportions in which Members shall make contributions towards the levy fund established in terms of Article 14.2 shall be determined by the Finance Committee (on the basis that if any disputes arise regarding the levy determination, such shall be referred to the Association's auditors for determination in accordance with 20.12 below), who in determining such proportions shall have regard to all circumstances prevailing at the time and to equity and shall be guided by the following
- 14.6.1 they shall assign those costs arising directly out of the Unit itself to the Member owning such Unit;
- 14.6.2 they shall assign those costs relating to the Estate generally, to the owners of all Units equally, subject to the proviso that Hotel Members shall contribute on the basis of two and a half (2½) hotel bedrooms being equal to one residential unit.
- 14.6.3 they may draw a distinction between the services rendered by the Association to a particular Body Corporate for a particular type of scheme, again taking into account the nature and the extent of the services rendered to that Body Corporate and the owners of that Body Corporate; provided however that the auditors may in any case where they consider it equitable to do so, assign to any owner any greater or lesser share of the costs as may be reasonable in the circumstances; and provided further that any replacement or other reserves so decided by the finance committee shall be likewise determined by the auditors in the foregoing proportions.
- 14.7 All contributions received from Members and the Developer shall forthwith be deposited in a separate account which the Association shall open and keep with a bank or building society.
- 14.8 The monies in the levy fund shall be utilised to defray the expenses referred to in article 14.2 above.
- 14.9 Notwithstanding any person ceasing to be a Member, all levies attributable to any period whilst such person was a Member, shall continue to be of full force and effect and recoverable from such person.
- 14.10 Any amount due by a Member or the Developer whether in respect of a levy or any other amount falling due for payment under these Articles, which remains unpaid after the same has fallen due, shall bear interest as from the due date of payment to the date of payment at a rate of interest equal to that charged by the Standard Bank of South Africa Limited at its prime overdraft rate plus 3 (THREE) percentage points, such interest shall be calculated and compounded monthly.
- 14.11 The Directors shall on the recommendation of the finance committee have the power to impose additional special levies on Members in respect of any unforeseen expenditure and shall determine how such levies are to be paid.
- 14.12 A Member shall not be entitled to be paid any amount standing to the credit of his levy account.

14.13 All contributions levied under the provisions of these Articles shall be due and payable on the passing of a resolution to that effect by the Directors and may be recovered by the Association by action in any Court (including any Magistrates Court) of competent jurisdiction from the persons who were Members at the time when such contributions became due.

14.14 **Levy Stabilisation Fund**

14.14.1 The Association may establish a levy stabilisation fund for the purpose of meeting any extraordinary expenditure and expenditure of a capital nature to be incurred by the Association in carrying out its main objects and the provisions of these Articles.

14.14.2 The amount to be contributed by new members pursuant to the Levy Stabilisation Fund shall be revised on an annual basis in accordance with the recommendation of the Board of Directors and subject to the approval of the Association at its Annual General Meeting. The object of the annual review shall be to maintain the Levy Stabilisation Fund at an appropriate level having regard to factors such as inflation.

14.14.3 The levy due by Hotel Members to the Levy Stabilisation Fund shall be calculated on the basis of five hotel bedrooms being equal to one residential unit. A Hotel Member's contribution to the Levy Stabilisation Fund shall be payable, in the first instance, upon transfer of the relevant Hotel property into its name. Such contribution shall be the same as that which would be payable, at the relevant time, by any other person acquiring a Unit in the Estate. However, upon completion of the construction of the Hotel and, thereafter, upon completion of any extensions thereto, the Hotel Member shall be obliged to pay further contributions calculated on the basis of 5 (FIVE) hotel bedrooms being equal to one Unit. (The Hotel Member shall be entitled to set-off its initial contribution against the amount for which it becomes liable following the completion of the Hotel, or the first phase thereof, as the case may be, the object being that the first 5 (FIVE) bedrooms of the Hotel shall be deemed to have been accounted for by the contribution paid by the Hotel Member pursuant to its purchase of the relevant sub-division prior to the construction of the Hotel.)

14.14.4 Each Owner in the Estate shall be liable to pay the relevant Levy Stabilisation Fund contribution as soon as reasonably practical in the circumstances after it acquires ownership of its Unit.

14.14.5 In the event of any Unit being sold, alienated or otherwise disposed of, the new owner shall be obliged to pay the Levy Stabilisation Fund contribution applicable at that time and the ex-owner shall not be entitled to a refund of the Levy Stabilisation Fund contribution paid by him.

14.14.6 In the case of deemed alienations of units by artificial persons (see Article 2.1.3 above), a further contribution to the Levy Stabilisation Fund shall, upon such alienation, become due by the artificial person, notwithstanding that the artificial person remains the owner of the Unit. The object, in this regard, shall be to ensure that where there is a material change in the beneficial ownership or controlling interest of the artificial person (for example, by the members of a close corporation selling their interests to one or more other persons or by the beneficiaries of a Trust ceding their interests to one or more other persons), the artificial person shall become liable for a further contribution to the Levy Stabilisation Fund on the same basis that would have applied if the said artificial person had become a "new owner" of the Unit. (Notwithstanding the above, a material change in

beneficial ownership or in the controlling interest which results from an alienation by way of succession, whether testate or intestate, shall not give rise to an obligation on the part of the artificial person or its new representative member to pay a contribution to the Levy Stabilisation Fund.)

14.14.7 In the event of there being any dispute regarding any amount alleged to be due in terms of Article 14.14, such dispute shall be determined in accordance with the provisions of 20.12 below.

14.15 The Association is not permitted to distribute any of its funds to any person other than to a similar organization.

15 **ACCOUNTING RECORDS**

15.1 The Directors shall cause such accounting records as are prescribed by the Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.

15.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Directors think fit, and shall always be open to inspection by the Members.

16 **ANNUAL FINANCIAL STATEMENTS**

16.1 The Directors shall from time to time, in accordance with the Act, cause to be prepared and laid before the Association in general meeting such financial statements, group annual financial statements and group report (if any) as are prescribed by the Act.

16.2 A copy of any annual financial statements and group reports which are to be laid before the Association in annual general meeting shall, not less than 21 (TWENTY-ONE) days before the date of the meeting, be sent to every Owner of the Association and to the Registrar: Provided that this Article shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.

17 **AUDIT**

An auditor shall be appointed in accordance with the Act.

18 **NOTICES**

18.1 A notice may be given by the Association to any Member either by advertisement or personally, or by sending it by post in prepaid letter addressed to such Member at his registered address, or if he has no registered address in the Republic at the address (if any) within the Republic supplied by him to the Association for the giving of notices to him or at the Unit of the Member. Any notice which may be given by advertisement shall be inserted in such newspaper as the Directors may from time to time determine.

18.2 Notice of every general meeting shall be given in any manner authorised:

- 18.2.1 to every Member of the Association except, in the case of notices to be given personally or sent by post, those Members who, having no registered address within the Republic, having not supplied to the Association an address within the Republic for the giving of notices to them;
- 18.2.2 to the auditor for the time being of the Association.
- 18.3 No other person shall be entitled to receive notice of general meetings.
- 18.4 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and any notice by advertisement shall be deemed to have been given on the day upon which the advertisement was published in the newspaper, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 18.5 The failure to give notice to any Member or the failure of any Member to receive a notice shall not vitiate any proceedings of the Association.

19 **WINDING UP OF ASSOCIATION**

In the event of the Association being wound up, its assets shall devolve upon such other corporation as the Members in such winding-up order determine, provided that such corporation:

- 19.1 has aims and objects similar to those of the Association; and
- 19.2 is also exempt from income tax in terms of Section 10(1)(e)(i)(cc) of the Income Tax Act, 1962 (or any replacement thereof).

20 **REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE ESTATE**

20.1 **Amenity of Estate**

In order to procure compliance with the nature and amenity of the Estate no Unit or other structure shall be built or erected on any Estate property and no thing shall be placed on or attached to a Unit or any other structure, visible from outside of the Unit or such other structure, other than in accordance with a written approval given by the Board of Directors and signed by the chairman who, before giving such approval, may require that there be lodged with them such description and/or drawing and/or plan as may be necessary, in the opinion of the Directors, to enable them to consider the matter. Any approval as contemplated herein may be subject to such condition as the Directors may deem fit. Notwithstanding the foregoing the provisions of this clause shall not be binding on the Developer for the Development Period.

20.2 **Conservation-Amenity Area**

The Association shall be obliged to maintain and control the Conservation-Amenity Area in accordance with the provisions of the Conservation-Amenity Management Plan as adopted in the Zimbali Town Planning Scheme as amended from time to time.

20.3 **Landscaping**

Save as may otherwise be agreed by the Directors any landscaping on the Estate shall be undertaken by the Association or on behalf of the Association and notwithstanding anything to the contrary herein or elsewhere contained no Member shall have any right to plant any tree, shrub, grass, flower or to remove or cut same or attempt to erect any fence or wall or any other structure or remove same on the Estate without the prior written consent of the Board. Notwithstanding the foregoing the provisions of this article shall not be binding on the Developer for the Development Period or Hotel Members. In the case of Hotel Members, it shall be sufficient that they obtain the consent of the Board of Directors to any landscaping plan which they wish to implement.

20.4 **Bodies Corporate**

All house rules applicable to any Body Corporate and/or relating to the use of Units or exclusive use areas attaching to any such Units, shall be subject to the approval of the Directors and contain such conditions and provisions as the Directors determine and shall be amended as required by the Directors, from time to time subject always to the provisions of the Share Blocks Control Act and the Sectional Titles Act. No rule shall be adopted or amended without the written consent of the Board of Directors first being had and obtained.

20.5 **Provision of Services**

The Association may, from time to time, contract with suppliers of services or itself provide services to the Estate and Bodies Corporate shall, from time to time, contract with and pay the Association or persons with whom the Association has contracted for such services provided to them.

20.6 **Private Roads and Open Spaces**

20.6.1 Members and their invitees and hotel guests shall be entitled to use all open spaces as well as private roads on the Estate subject to such rules as the Directors may lay down from time to time provided that at all times Owners shall have vehicular and pedestrian ingress and egress from their Unit to a public road.

20.6.2 No resolution for the winding up of the Association shall be passed prior to the rights of vehicular and pedestrian ingress and egress above referred to being secured by way of servitudes registered against the title of the Estate or the transfer of such accesses to a local authority, as public roads.

20.7 **Maintenance of Buildings**

The exterior of every building shall be maintained and kept in a clean, tidy and neat condition and no Owner shall be entitled to change the colour of any paint or any similar material to any exterior part of his building without the prior written consent of the Directors. An Owner shall, on receipt of a notice given by the Directors and signed by the chairman, undertake such work as may be specified in such notice relative to such Owner's building. Should an Owner fail to carry out any work as required by the Association after the Association has given the owner due notice so to comply the Association shall be entitled to carry out such work and to recover the reasonable cost thereof from the Owner.

20.8 **Occupation of Units**

Occupation and use of Units shall, at all times, be in compliance with the Scheme and the number of persons occupying a Unit may be determined, in the opinion of the Directors, from time to time. The Directors may, in their sole discretion, determine that any person, not being a Member, be denied access to the Estate and be required to leave. In the event of Owners wishing to hire out their Units they shall do so in consultation with and subject to such rules as the Association may, from time to time, lay down with regard to the number of persons occupying the Units and access to the Units by intended lessees and subject further to any intended lessees signing such undertaking as may be required by the Directors whereby the lessees agree to be bound by the provisions of these Articles and any other provisions which the Owner may be subject to from time to time. This Article shall not apply to Hotel Members.

20.9 **Responsibility for Guests, Invitees and Contractors**

Members shall be responsible for the conduct of their guests, invitees and contractors while such persons are upon the Estate and each Member shall, in terms hereof, indemnify the Association and hold it harmless against any claims, loss, expense or damage that the Association might otherwise incur in consequence of any unlawful act of omission on the part of any such guest, invitee or contractor or in consequence of the failure of any such person to comply with the Conduct Rules applicable at the relevant time.

20.10 **Security of Estate**

The Association shall be obliged to secure the perimeter of the Estate and to provide such other security as it deems appropriate, from time to time, to control egress and ingress to the Estate, so that only Owners, Members, lessees of Units, hotel guests or any of the foregoing persons, guests or invitees, representatives of the Developer, employees of the Developer and the Association and any other duly authorised persons are admitted. Notwithstanding the foregoing, it shall be incumbent upon Hotel Members to provide their own internal security in respect of their hotels on the Estate as well as such additional security, (which is approved of by the Association and which approval shall not be unreasonably withheld), as it deems fit for the Estate and for any other area for which it is responsible. It is recorded that it is the intention that the Association and Hotel Members will work together in regard to the issue of security on the Estate, the object being that effective security should be a top priority in the Estate.

20.11 **Enforcement of obligations of Owners**

Should any Owner or any lessee of an Owner or guest or invitee of an Owner or any hotel guest fail to perform any obligation incumbent upon him, if applicable, within the period of any notice given for compliance, the Association shall be entitled, but not obliged, to do such things and incur such expenditure as is, in the opinion of the Association, necessary and/or requisite to procure compliance. The costs thereby incurred by the Association shall be a debt due by the Owner concerned, which shall be payable on demand.

20.12 Determination of Disputes

- 20.12.1 In the event of any dispute or difference arising between the members inter se or between a Member and the Association as to the construction, meaning, interpretation or effect of any of the provisions or as to the rights, obligations or liabilities of the Association or any Member in terms of these articles, the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 60 (SIXTY) days, then such dispute or difference shall be submitted to arbitration in accordance with the provisions set out below.
- 20.12.2 The arbitrator shall be if the question in issue is:
- 20.12.2.1 primarily an accounting matter, an independent chartered accountant of not less than 15 (FIFTEEN) years standing as such appointed by the President for the time being of the South African Institute of Chartered Accountants in Natal;
- 20.12.2.2 primarily a legal matter, a practicing senior Advocate of not less than 10 (TEN) years standing as such, or a practicing attorney of not less than 15 (FIFTEEN) years standing as such, in either event as may be appointed by the President for the time being of the Natal Law Society;
- 20.12.2.3 any other matter, an independent person agreed upon between the parties and, failing agreement, as may be appointed by the President for the time being of the Natal Law Society regard being had to the needs of the dispute and the qualifications required therefor.
- 20.12.3 If agreement cannot be reached within 10 (TEN) business days after the arbitration has been demanded as to whether the question in issue falls under 20.12.2.1, 20.12.2.2 or 20.12.2.3, then a practicing Advocate of not less than 10 (TEN) years standing or alternatively practicing attorney of not less than 15 (FIFTEEN) years standing as such, as agreed between the parties and failing agreement as may be appointed by the President for the time being of the Natal Law Society as soon as possible thereafter, shall determine that issue so that an arbitrator can be appointed and the arbitration can proceed as soon as reasonably practical in the circumstances.
- 20.12.4 The arbitration referred to in 20.12.1 shall be held:
- 20.12.4.1 in a summary manner, i.e. on the basis that it shall not be necessary to observe or carry out either:
- 20.12.4.1.1 the usual formalities or procedure, which may be otherwise be prescribed in terms of the laws referred to in clause 20.12.4.3 below, or
- 20.12.4.1.2 the strict rules of evidence;
- 20.12.4.2 immediately and with a view to it being completed within 30 (THIRTY) days of the appointment of the arbitrator having particular regard to any urgency regarding the matter in issue, provided that should any party to such dispute delay or omit to fulfil any act required of it to enable the arbitration to be duly completed within the period aforesaid, any other party hereto shall be entitled at its election and upon the expiration of 6 (SIX) days' notice to the defaulting party to that effect, without such defaulting party having remedied its default or omission to the satisfaction of the arbitrator, either to require the

arbitrator summarily without hearing the parties to determine the rules of procedure for the finalising of the arbitration proceedings within such further period not exceeding 14 (FOURTEEN) days beyond the original 30 (THIRTY) day period as the arbitrator may determine, or alternatively and in the discretion of the party serving such 6 (SIX) day notice aforesaid, to require the arbitrator to proceed with the arbitration without the further participation of the defaulting party, in which event the defaulting party shall be barred from participating in the further conduct of the arbitration other than at the hearing thereof, and the decision of the arbitrator then to proceed with the arbitration, either with the presence or in the absence of the defaulting party, will be competent, or further alternatively and in the discretion of the parties serving the 6 (SIX) day notice aforesaid, such party shall be entitled to have recourse to the competent Court having jurisdiction, in which event the arbitrator shall then be entitled to make an award of any wasted costs occasioned by the proceedings, and whereupon such arbitration proceedings shall then terminate and the wasted costs borne by the party against whom the award is made, and the decision of the arbitrator as to such costs shall be final and binding upon the relevant parties;

- 20.12.4.3 otherwise, but subject to the relevant provisions hereof and subject to any other alternative directions which the arbitrator may and shall be competent to prescribe, under the provisions of the arbitration laws of the place in which the arbitration takes place as amended from time to time.
- 20.12.5 The arbitrator shall:
- 20.12.5.1 be entitled to make any award as to costs of the proceedings;
- 20.12.5.2 decide the matter submitted to him according to what he considers just and equitable in the circumstances, and shall have regard to the desire of the parties to dispose of such dispute expeditiously, economically and confidentially, and the strict rules of law need not be observed or taken into account by him in arriving at his decision.
- 20.12.6 The parties irrevocably agree that the decision of those arbitration proceedings:
- 20.12.6.1 shall be binding on all of them and shall be forthwith carried into effect;
- 20.12.6.2 may at the instance of any party hereto be made an Order of Court of competent jurisdiction, provided that such proceedings for such Order of Court shall not delay in any way at all the due execution and carrying into effect of the arbitrator's award.
- 20.12.7 Notwithstanding anything to the contrary contained in this article 20.12, the provisions hereof shall not preclude any party hereto from taking any action against any other party or parties to the dispute in any competent Court having jurisdiction where such action is reasonably required either to restrain temporarily pending the outcome of any arbitration proceedings as hereinbefore provided for, any party hereto from commencing or continuing any action or course of action or likewise to enforce temporarily pending such arbitration proceedings any omission by any party, which action, course of action or omission is or is likely to materially prejudice any party hereto, and regard being had to all the circumstances, is of such an urgent nature that it would not be appropriate merely to have recourse to arbitration proceedings, the parties agreeing that the test to be generally applied being that which would otherwise entitle any party hereto to an urgent interdict against any other party in accordance with the relevant laws applicable.

21 STATUS OF DEVELOPER

21.1 Notwithstanding anything to the contrary herein or elsewhere stated in the event of the Developer disposing of the Remainder of Zimbali to some third party, such third party shall mutatis mutandis be the Developer under these Articles. The decision of the Board as to what constitutes a sale of the Remainder of Zimbali shall be final and binding on the Members.

21.2 Immediately on the expiry of the Development Period the remaining Members of the Association shall forthwith take steps as may be necessary and/or requisite to ensure that such activities and/or services as were provided by the Developer will be provided by the Association.

22 DEVELOPER'S RIGHTS REGARDING ESTATE

The Developer shall be entitled to develop any land of which it is the owner in conformity with the Scheme, without the approval of the Association first being had and obtained.

23 PROPERTY TO BE INCORPORATED INTO THE ESTATE

The Developer may with the prior written consent of a majority of the Hotel Members, by notice in writing to the Association, advise the Association of any immovable property which is to be incorporated into the Estate. The definition of Estate in these articles shall be deemed to include such property from the date of receipt of such notice by the Association. Notwithstanding the above, the outer boundary of the Zimbali Estate shall not be extended beyond the outer boundary thereof as depicted in the diagram, available at the ZEMA offices, marked "A". The rectangular portion of property (six large adjacent stands) physically situate within the outer boundary and located in the western portion of the Zimbali Estate does not form part of the Zimbali Estate and may not be incorporated into the Zimbali Estate unless the Developer acquires one or more of the said stands, in which event the portion so acquired by the Developer may be incorporated into the Zimbali Estate provided that such proposed incorporation is approved by a majority vote passed at a Special General Meeting of the members of the Company and the provisions of any "blocking" mechanism contained in Article 3.4 shall not apply.

24 DISCLAIMER OF RESPONSIBILITY

24.1 The Association shall not be liable for any injury to any person, damage to or loss of any property, to whomsoever it may belong, occurring or suffered, upon the Estate regardless of the cause thereof nor shall the Association be responsible for any theft of property occurring on the Estate. Members hereby acknowledges that they shall not, under any circumstances have any claim or right of action whatsoever against the Association for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

24.2 The Association and/or its agents shall not be liable to any Member or any of the Member's lessees, or their respective employees, agents, servants, invitees or customers or any member of the public dealing with the Member or any lessee for any injury or loss or damage of any description which the Member or any such other person aforesaid may suffer or sustain whether directly or indirectly in or about the Estate, regardless of the cause thereof.

24.3 Members hereby accept responsibility for and indemnify the Association and its employees, servants and agents and lawful invitees against all claims by any person arising from any injury or loss or damage as contemplated in this clause 24.

25 **AMENDMENT OF ARTICLES**

These Articles may only be amended or varied by way of a special Resolution of Members, provided that no amendment or variation of article 14 shall be possible without the written consent of all Hotel Members, which consent shall not be unreasonably withheld.

Please note: Special resolutions numbers 1 to 7, as of April 2007, have been included in the Articles of Association.

26 **NOTICE OF AMENDMENT OF ARTICLES**

All amendments to the Memorandum and Articles of Association of the Company shall, as soon as reasonably possible after the passing of such amendment, be submitted to the Commissioner for the South African Revenue Service.