



**MEMORANDUM OF INCORPORATION
OF
ZIMBALI ESTATE MANAGEMENT ASSOCIATION (RF) NPC
REGISTRATION NUMBER: 1995/000581/08
(referred to in this Memorandum of Incorporation as “the
Association”)**

This Memorandum of Incorporation:

- Is in a form unique to the Association;
- Was adopted by Special Resolution of the Members;
- Shall take effect on the date on which the Memorandum is filed as envisaged in Section 16(9)(b) of the Act;
- Is in substitution for the existing Memorandum and Articles of Association of the Association.

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1. DEFINITION AND INTERPRETATION

In this Memorandum-

- 1.1 a reference to a section by number refers to the corresponding section of the Act;
- 1.2 words that are defined in the Act bear the same meaning in this Memorandum as in the Act;
- 1.3 unless the context otherwise requires –
 - 1.3.1 “**Act**” means the Companies Act No. 71, 2008, as amended and any Regulations in force thereunder from time to time or any legislation enacted to replace such Act;
 - 1.3.2 “**Alternate Director**” means a person elected or appointed to serve, as the occasion requires, as a member of the Board in substitution for a particular appointed Hotel Director of the Association;
 - 1.3.3 “**Architect**” means any one of the architects appointed by the Association on the Architectural Design Review Committee;
 - 1.3.4 “**Architectural Code**” means the Architectural Code as formulated by the Association, a copy of which is available at the offices of the Association and which may be amended by the Association from time to time;
 - 1.3.5 “**Architectural Design Review Committee**” means the committee appointed by the Association to act as, *inter alia*, an aesthetics committee with a view to ensuring that any development within the Estate is in accordance with the design and landscape protocols in force from time to time, the Town Planning Scheme and the Environmental Management Plan and with standards which will enhance the attraction of the Estate as a whole;
 - 1.3.6 “**Association**” means Zimbali Estate Management Association (RF) NPC, a non-profit Company registered under the Company laws of the Republic of South Africa under registration number 1995/000581/08;
 - 1.3.7 “**Auditors**” means the auditors of the Association from time to time;
 - 1.3.8 “**Board**” means the Board of Directors of the Association for the time being;
 - 1.3.9 “**Body Corporate**” means a Body Corporate as defined in Section 1 of the Sectional Titles Act No. 95 of 1986 and the Sectional Title Schemes Management Act No. 8 of 2011, a Share Block Company as defined in Section 1 of the Share Blocks Control Act, and a Homeowners Association, and “**Bodies Corporate**” shall have a corresponding meaning;
 - 1.3.10 “**Business Day**” means any day other than a Saturday, Sunday or South African Public Holiday;
 - 1.3.11 “**Chairman**” means the chairman of the Board for the time being;
 - 1.3.12 “**Common Areas**” means the common areas within the Estate which areas shall include, *inter alia*, open spaces, conservation areas and Protected Areas, community facilities, Roads, thoroughfares and all road verges within the

Estate and other common areas of the Estate registered in the name of the Association;

- 1.3.13 “**Commission**” means the Companies and Intellectual Property Commission established in terms of Section 185 of the Act;
- 1.3.14 “**Conduct Rules**” means Conduct Rules for the management of the Estate as provided for in Article 27 hereof as well as any regulations, guidelines, controls and protocols relating and/or ancillary thereto either adopted by the Board or its Architectural Design Review Committee from time to time or imposed by any competent authority;
- 1.3.15 “**Control**” means control as envisaged in Section 2(2) of the Act;
- 1.3.16 “**CSOSA**” means the Community Schemes Ombud Service Act No. 9 of 2011 (or any legislation enacted to replace such act) and the regulations in force thereunder from time to time;
- 1.3.17 “**Debt**” means any amount howsoever arising owed by a Member to the Association, including but not limited to amounts owed in respect of Levies, (which, for the avoidance of any doubt includes special levies, statutory levies, interest, penalties and legal fees);
- 1.3.18 “**Deeds Registries Act**” means the Deeds Registries Act No. 47 of 1937, as amended (or any legislation enacted to replace such Act) and the regulations in force thereunder from time to time;
- 1.3.19 “**Developer**” means Zimbali Development Company Proprietary Limited, Registration Number 1968/009161/07, including its successors and assigns, as developer of the eastern portion of the Estate and/or Zimbali Resort Developments Joint Venture between Zimbali Land Developments Proprietary Limited, Registration Number 1996/016290/07, and Zimbali Hotels & Resorts South Africa Proprietary Limited, Registration Number 2003/023856/07, including its successors and assigns as developer of the remainder of the Estate;
- 1.3.20 “**Directors**” means the directors of the Association from time to time (or Alternate Directors acting in the absence of the Directors) being collectively, the Hotel Directors and the Residential Directors;
- 1.3.21 “**Electronic Communication**” has the meaning set out in Section 1 of the Electronic Communications and Transactions Act No. 25 of 2002 as amended (or any legislation enacted to replace such act) and the regulations in force thereunder from time to time;
- 1.3.22 “**Erf**” means any land in the Estate, including any subdivision capable of separate ownership, whether such land is improved or not and “Erven” shall have a corresponding meaning;
- 1.3.23 “**Estate**” means all the land within the area indicated by the red border on the plan annexed hereto marked “A”, it being recorded that the Estate is comprised of numerous sub-divisions; It being impractical to record the precise descriptions of all of the Immovable Properties, which together, constitute the Estate;

- 1.3.24 “**Estate Manager**” means any Person appointed by the Association to attend to the day to day management of the affairs of the Association;
- 1.3.25 “**Finance Committee**” means the finance committee contemplated in Article 22;
- 1.3.26 “**Financial Year**” means the financial year of the Association which shall run from the first day of January in any year to the last day in December in the same year;
- 1.3.27 “**Hotel**” means the Immovable Properties depicted in red, orange and dark green described as or within the Erven on the plan annexed hereto marked “A”, being the Immovable Properties which are shown as Erf 249 Port Zimbali, Erf 189 Port Zimbali and Erf 18 Zimbali South;
- 1.3.28 “**Hotel Director**” means a director appointed to the Board by the Hotel Members, in the manner provided for in this Memorandum;
- 1.3.29 “**Hotel Members**” means the Owners of Immovable Property situate within or established on the Immovable Properties depicted in red, orange and dark green within the Erven on the plan annexed hereto marked “A”;
- 1.3.30 “**Hotel Room**” means a bedroom within a Hotel providing *inter alia*, long-term and short-term residential accommodation either for payment or for no payment;
- 1.3.31 “**IFRS**” means the International Financial Reporting Standards as adopted from time to time by the board of International Accounting Standards Committee, or its successor body, and approved for use in the Republic of South Africa from time to time by the Financial Reporting Standards Council established in terms of Section 203 of the Act;
- 1.3.32 “**Immovable Property**” means an Erf or a Unit in the Estate and includes a Hotel Room and any building or other improvements on an Erf whether of a permanent nature or not and “Immovable Properties” shall have a corresponding meaning;
- 1.3.33 “**Juristic Person**” means a company, close corporation, trust, body corporate, or unincorporated association of persons;
- 1.3.34 “**Levy**” means an amount determined by the Association from time to time, which the Members are required to pay to the Association to meet the rates, taxes, maintenance, insurance, operating and maintenance costs and all other expenses in respect of the Estate and “**Levies**” shall have a corresponding meaning;
- 1.3.35 “**Local Authority**” means the local authority having jurisdiction over the Estate;
- 1.3.36 “**Member**” means an Owner who is either a Residential Member or a Hotel Member;
- 1.3.37 “**Memorandum**” means this Memorandum of Incorporation including any schedules and annexures;

- 1.3.38 “**Office**” means the registered office of the Association for the time being;
- 1.3.39 “**Ordinary Resolution**” means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution at a Members meeting or by Members acting other than at a meeting as contemplated in section 60 of the Act;
- 1.3.40 “**Owner**” means any Person/s who is/are the registered Owner/s of an Immovable Property;
- 1.3.41 “**Person**” means any natural or Juristic Person or any other entity whether or not having a separate legal personality;
- 1.3.42 “**Property Developer**” means a Residential Member or Hotel Member who establishes a sectional title scheme, a Share Block Scheme, Property Time-Sharing Scheme or a township on any Erf, or holds the right to extend a scheme or township in respect of an Erf;
- 1.3.43 “**Property Time-Sharing Control Act**” means the Property Time-Sharing Control Act No. 75 of 1983 as amended from time to time (or any legislation enacted to replace such act) and the regulations in force thereunder from time to time;
- 1.3.44 “**Property Time-Sharing Scheme**” means a property time-sharing scheme as defined in the Property Time-Sharing Control Act;
- 1.3.45 “**Protected Areas**” means the area zoned conservation at the date of the MOI shown as Holy Hill and the further areas indicated in blue on the plan annexed marked “Annexure A”;
- 1.3.46 “**Regulations**” means regulations published pursuant to the Act;
- 1.3.47 “**Residential Director**” means a director elected to the Board by the Residential Members;
- 1.3.48 “**Residential Member**” means a Member other than a Hotel Member;
- 1.3.49 “**Road**” means the roads within the Estate and excludes driveways on Erven owned by Members or within sectional title schemes established on any Erf within the Estate;
- 1.3.50 “**Sectional Titles Act**” means the Sectional Titles Act No. 95 of 1986 as amended (or any legislation enacted to replace such Act) and any regulations in force thereunder from time to time;
- 1.3.51 “**Services**” means water, sewerage, gas, fuel, refuse removal, electricity, telecommunications, television aerials, television cables and such other utilities or services;
- 1.3.52 “**Security and Access Protocols**” means the access and security protocols and/or guidelines of the Association which may be amended by the Board from time to time;
- 1.3.53 “**Service Provider**” means a person or entity rendering any services to the Association or any Member;

- 1.3.54 “**Share Blocks Control Act**” means the Share Blocks Control Act No. 59 of 1980 as amended (or any legislation enacted to replace such act) and any regulations in force thereunder from time to time;
- 1.3.55 “**Share Block Scheme**” means a share block scheme as defined in the Share Blocks Control Act;
- 1.3.56 “**Special Resolution**” means a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution at a Members meeting or by Members acting other than at a meeting as contemplated in Section 60 of the Act;
- 1.3.57 “**STSMA**” means the Sectional Titles Schemes Management Act No. 8 of 2011 as amended from time to time (or any legislation enacted to replace such act) and the regulations in force thereunder from time to time;
- 1.3.58 “**Title Deed**” means a document evidencing a person’s legal right or title to Immovable Property, and for the purposes of this Memorandum includes a share certificate, certificate of Members Interest, Use and Occupation Agreement or any such similar documents;
- 1.3.59 “**Town Planning Scheme**” means the Land Use Management Scheme of the Kwadukuza Municipality as amended from time to time or any other approved scheme which replaces it and which is applicable to the Estate together with all applicable By-Laws from time to time;
- 1.3.60 “**Transferee**” means any Person, including a Juristic Person, to whom an Immovable Property is transferred in any manner;
- 1.3.61 “**Unit**” means in relation to the Estate:
- 1.3.61.1 a sectional title unit defined in the Sectional Titles Act where a sectional title scheme has been established on any Erf in the Estate; or
- 1.3.61.2 any right to extend any sectional title scheme by the erection of a sectional title unit as defined in the Sectional Titles Act where a sectional title scheme has been established on any Erf in the Estate;
- 1.3.62 “**Writing**” means in legible writing and in English and includes printing, typewriting, lithography or any other mechanical process as well as any Electronic Communication in a manner and a form permitted in terms of the Act and/or the Regulations thereunder;
- 1.3.63 “**Zimbali Country Club**” means the controlling body of the country club which manages and controls the golf course which is situated within the Estate pursuant to a lease agreement entered into with the Association;
- 1.4 the headings of the Articles are intended for reference purposes only and shall not affect the interpretation of this Memorandum;
- 1.5 unless the context otherwise requires, words importing the singular shall include the plural; words importing the masculine, feminine and neuter shall include the other genders; and words importing persons shall include Bodies Corporate and Juristic Persons, and *vice versa* in each instance;

- 1.6 words and expressions used and not otherwise defined in this Memorandum shall have the meaning assigned to them by the Act as in force at the date of registration of this Memorandum;
- 1.7 for the purposes of this Memorandum, whenever any number of days is prescribed, it excludes the first and includes the last day unless the last day falls on a Saturday, Sunday or South African gazetted public holiday, in which case the last day will be the next succeeding Business Day;
- 1.8 where figures are referred to in numerals and in words and there is any conflict between the two then the words shall prevail unless the context indicates a contrary intention;
- 1.9 where there is a conflict between a provision (whether express, tacit or implied) of this Memorandum and:
- 1.9.1 an alterable or elective provision of the Act, the provisions of this Memorandum shall prevail to the extent of the conflict; and
- 1.9.2 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail unless this Memorandum imposes on the Association a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this Memorandum shall prevail to the extent of the conflict;
- 1.10 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this Memorandum;
- 1.11 any reference to a notice shall be construed as a written notice and shall include a notice which is transmitted electronically in the manner and form permitted in terms of the Act and/or the Regulations thereunder;
- 1.12 any reference to statutes or regulations shall be deemed to include any lawful amendments thereto, re-enactments thereof or any legislation enacted to replace such statutes or regulations;
- 1.13 any reference to "Business Hours" shall be construed as being the hours between 8.00 am and 5.00 pm on any Business Day. Any reference to "time" shall be interpreted as South African Standard Time; and
- 1.14 any reference to "this Memorandum" shall be construed as a reference to this Memorandum as amended from time to time.

2. INCORPORATION AND NATURE OF THE ASSOCIATION AND ADOPTION OF MEMORANDUM

- 2.1 The Association is a pre-existing non-profit company with members as defined in the Act and, as such, continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Act, as contemplated in Item 2 of the Fifth Schedule to the Act, and this Memorandum replaces and supersedes the Memorandum and Articles of Association of the Association, effective from the date on which this Memorandum is filed with the Commission.
- 2.2 The Association is incorporated in accordance with, and governed by:

- 2.2.1 the unalterable provisions of the Act that are applicable to non-profit companies, subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this Memorandum in accordance with Section 15(2)(a)(iii); and
- 2.2.2 the alterable provisions of the Act, that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
- 2.2.3 the provisions of this Memorandum.
- 2.3 The Company wishes to replace its existing Articles of Association with this Memorandum. This Memorandum is in a form unique to the Association as contemplated in section 13(1)(a)(ii) of the Act.

3. THE OBJECTS OF THE ASSOCIATION

- 3.1 The Association is a non-profit company with members with the primary object of managing, providing, protecting and advancing the communal interests of Owners of Immovable Property, as well as the individual and collective interests common to all its Members, which includes expenditure applicable to the Common Areas within the Estate as well as common movable property within the Estate and providing, promoting and maintaining essential and community services, amenities and activities within the Estate. Without limiting the foregoing, the Association has the following additional objects:
 - 3.1.1 to represent the interests of Members and to endeavour to provide a united voice by which such interests may be expressed and to promote harmonious relations on the Estate;
 - 3.1.2 to control the development and maintenance of Immovable Property and/or common areas within the Estate and to ensure that such Immovable Property and/or common areas are developed and maintained in a manner that will derive maximum benefit for the Members;
 - 3.1.3 to collect Levies and other contributions towards funds of the Association for the attainment of the objectives of the Association or any other of them;
 - 3.1.4 to make and enforce regulations governing the use of Roads, open spaces, green belt areas, conservation areas and servitudes;
 - 3.1.5 to manage and protect the natural environment, vegetation, flora and fauna on the Estate;
 - 3.1.6 to regulate the keeping of animals within the Estate;
 - 3.1.7 to regulate and/or control the conduct of any person on or about the Estate and to impose monetary and other penalties upon Members disregarding and/or breaching the provisions of this Memorandum or the Conduct Rules made in terms hereof;
 - 3.1.8 to regulate and/or maintain Roads, Road verges, open spaces and conservation areas and/or other Common Areas within the Estate;

- 3.1.9 to provide and administer security within the Estate and make and enforce regulations in regard thereto which shall include controlled access to the Estate;
- 3.1.10 to make and enforce adherence by the Members, Property Developers and building contractors to, inter alia, any building design codes and contractors protocols, landscaping protocols, environmental authorisations, the applicable Environmental Management Plan and all other approvals for the Estate and to control the aesthetic appearance of the Estate, including landscaping, buildings and improvements;
- 3.1.11 in particular and in no way detracting from the generality of the aforesaid, to ensure that all buildings and other structures erected within the Estate, as well as any external fixtures and fittings thereto, comply with the aforesaid and generally to ensure that the external appearance of all buildings and other structures and all gardens and other areas in the Estate comply with the standards set out in the aforementioned documentation;
- 3.1.12 to make and apply appointment criteria for different categories of Service Providers, estate agents, managing agents, contractors and professionals employed by the Association or any Members to carry out work or perform any services within the Estate;
- 3.1.13 to regulate the placing of objects outside buildings within the Estate and the storing of flammable and other harmful substances within the Estate;
- 3.1.14 to perform the delegated functions and exercise the delegated powers of the Bodies Corporate within the Estate (in particular, but not limited to, sections 3, 4 and 5 of the STSMA) as the Association may require to be assigned to it by the Bodies Corporate on establishment and from time to time;
- 3.1.15 to maintain and repair services and infrastructure under the control of the Association;
- 3.1.16 to maintain and administer all Immovable Property and/or Common Areas in the ownership of the Association and to make and enforce regulations governing the use thereof by the Members and any other person admitted to the Estate;
- 3.1.17 subject to the provisions of this Memorandum, to formulate and implement Conduct Rules for the furtherance and promotion of any of the objects of the Association which shall include but not be limited to rules for the upkeep, maintenance and control of buildings, walling, fencing, gates, lighting, signage, landscaping, vegetation, access and egress, parking, Road use, advertising, exterior finishes of buildings, architectural theme, security, noise and general conduct and to ensure compliance with the Conduct Rules and any other applicable rules, guidelines and/or protocols of the Association;
- 3.1.18 to formulate and implement Conduct Rules concerning the conduct, rights and obligations of Members regarding the use of any Immovable Property, and/or Common Areas within the Estate;
- 3.1.19 in general to do all things necessary for the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs

of the Association and/or for the advancement of the interests of Members in the Estate;

3.1.20 any ancillary objects which are necessary to achieve the above objects.

3.2 The provisions of this Memorandum are consistent with the principles set out in item 1(2) to item 1(9) of Schedule 1 of the Act in so far as such principles are applicable to the Association and no amendment of this Memorandum shall be competent to the extent that it is contrary to or negates any such principles.

4. POWERS OF THE ASSOCIATION, RESTRICTIONS ON POWERS AND RESTRICTIVE CONDITIONS

4.1 Powers of the Association

4.1.1 The powers of the Association are limited by its objects referred to in Article 3.

4.1.2 The Association is a Juristic Person which has all the legal powers and capacity of an individual except to the extent that:

4.1.2.1 a Juristic Person is incapable of exercising any such power, or having any such capacity; or

4.1.2.2 this Memorandum or the Act places restrictions on the powers of the Association; or

4.1.2.3 any such powers or capacity are not in any way connected with the pursuit by the Association of the objects referred to in Article 3.

4.2 Restrictions on the Powers of the Association

4.2.1 The Association:

4.2.1.1 must apply all of its assets and income, however derived, to advance its stated objects as set out in Article 3;

4.2.1.2 subject to Article 4.2.1.1, may acquire and hold securities issued by a profit company or directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its objects;

4.2.1.3 must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was an incorporator of the Association, or who is a Member or Director, or person appointing a Director, of the Association, except:

4.2.1.3.1 as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Association;

4.2.1.3.2 as reasonable payment of, or reimbursement for, expenses incurred to advance an object of the Association;

4.2.1.3.3 as payment of an amount due and payable by the Association in terms of a *bona fide* agreement between the Association and that person or another;

- 4.2.1.3.4 as a payment in respect of any rights of that person, to the extent that such rights are administered by the Association in order to advance a stated object of the Association; or
- 4.2.1.3.5 in respect of any legal obligation binding on the Association;
- 4.2.1.4 must not provide a loan to secure a debt or obligation of or otherwise provide direct or indirect financial assistance to:
 - 4.2.1.4.1 a Director; or
 - 4.2.1.4.2 a Director of any company which is, in relation to the Association, a related or inter-related company; or
 - 4.2.1.4.3 a Director of the Developer; or
 - 4.2.1.4.4 a Director of any company which is, in relation to the Developer, a related or inter-related company; or
 - 4.2.1.4.5 any person related to any of the parties to whom or in respect of whom the Association may not, by virtue of the provisions of this Article 4.2.1.4, make a loan or secure a debt or obligation or otherwise provide direct or indirect financial assistance.
- 4.2.1.5 notwithstanding the provisions of Article 4.2.1.4, a transaction shall not be prohibited if it:
 - 4.2.1.5.1 is in the ordinary course of the Association's business and is for fair value; and
 - 4.2.1.5.2 constitutes an accountable advance to meet:
 - 4.2.1.5.2.1 legal expenses in relation to any matter concerning the Association; or
 - 4.2.1.5.2.2 anticipated expenses to be incurred by the person on behalf of the Association; or
 - 4.2.1.5.2.3 is to defray the person's expenses for removal at the Association's request; or
 - 4.2.1.5.2.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.
- 4.2.2 Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Association:
 - 4.2.2.1 no past or present Member or Director of the Association, or person appointing a Director of the Association, is entitled to any part of the net value of the Association after its obligations and liabilities have been satisfied; and
 - 4.2.2.2 the entire net value of the Association must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic of South Africa, voluntary Associations or non-profit trusts:

- 4.2.2.2.1 having objects similar to the Association's main object; and
- 4.2.2.2.2 as determined:
 - 4.2.2.2.2.1 in terms of this Memorandum; or
 - 4.2.2.2.2.2 by the Court, if no such determination is made in this Memorandum or by the Members or Directors.

4.2.3 The activities of the Association shall be confined to the Republic of South Africa.

4.3 **Restrictive Conditions**

This Memorandum contains restrictive conditions applicable to the Association as contemplated in section 15(2)(c) of the Act.

5. **AMENDMENT OF MEMORANDUM**

- 5.1 This Memorandum may, subject to Articles 5.3 and 10.1.1, be amended only by Special Resolution adopted at a Members' meeting, or otherwise in terms of a court order.
- 5.2 Amendments to the Memorandum may be proposed by the Board or by Members entitled to exercise at least 10% (ten percent) of the voting rights capable of being exercised in respect of the Special Resolution.
- 5.3 No amendment or variation of Articles 23 or 24 in regard to any provision applicable to Hotel Members shall be possible without the written consent of Hotel Members together holding more than 50% (fifty percent) of the votes of all Hotel Members, which consent shall not be unreasonably withheld.
- 5.4 In accordance with Section 16(7) of the Act, within 10 (ten) Business Days after the date of the Special Resolution referred to in Article 5.1, the Association must file a copy of the amended Memorandum with a copy of the Special Resolution and a Notice of Amendment, and pay the prescribed fee to the Commission.
- 5.5 A copy of the amendments to this Memorandum must, as soon as reasonably possible after the passing of such amendment, be submitted to the Commissioner for the South African Revenue Service.
- 5.6 The Board shall nevertheless have the power to alter this Memorandum to the extent necessary to correct patent errors in spelling, punctuation, reference, grammar or similar defects as envisaged in Section 17. A notice of any such alteration must be sent to each Member at least 10 (ten) Business Days prior to the date of filing of the notice of alteration with the Commission.
- 5.7 An amendment of this Memorandum will take effect from the later of:
 - 5.7.1 the date on and time at which the Commission accepts the filing of the notice of amendment contemplated in section 16(7) of the Act; or
 - 5.7.2 the date, if any, set out in the said notice of amendment.

6. FINANCIAL YEAR

The financial year end of the Association shall be 31 December of each year.

7. ACCOUNTING RECORDS

7.1 The Board shall cause such accounting records as are prescribed by the Act to be kept. Accounting records shall be deemed to be proper if they represent fairly the state of affairs and business of the Association and explain the transactions and financial position of the trade or business of the Association and are in accordance with IFRS.

7.2 The accounting records shall be kept at the Office, or at such other place or places as the Board thinks fit.

8. ANNUAL FINANCIAL STATEMENTS

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

8.2 A copy of the annual financial statements must be posted to each Member or sent by email provided that the Association shall not be obliged to send a copy thereof to any Member of whose address the Association is not aware.

9. APPOINTMENT OF AUDITORS

The Association elects to comply voluntarily with the requirement to have its annual financial statements audited as contemplated in Section 30(2)(b)(ii)(aa), provided that the Association shall only be required to comply with Part C of Chapter 3 of the Act in relation to such audit.

10. MEMBERSHIP

10.1 Membership of the Association

10.1.1 Membership of the Association shall be obligatory for an Owner, being either a Residential Member or a Hotel Member. This provision may never be altered by the Members.

10.1.2 Subject to the provisions of Article 11.8, all Members of the Association are voting members as contemplated in the Act.

10.1.3 No Member shall alienate Immovable Property unless it is a condition of such alienation that the transferee, in a manner acceptable to the Association, agrees to become a Member of the Association and the Zimbali Country Club and is admitted as a Member in terms of Article 10.4.

10.1.4 In order to procure compliance with the provisions of this Memorandum, it shall be registered as a condition against the Title Deeds of Immovable Property that no Immovable Property shall be alienated without the written consent of the Association first being had and obtained, which consent shall, subject to the provisions of Article 10.4, be given if the proposed transferee is or will be admitted as a Member of the Association and the transferring Member has fulfilled all his/its obligations to the Association.

- 10.1.5 For the purposes of this Memorandum “alienate”:
- 10.1.5.1 means to sell, dispose of, transfer, cede, assign, exchange, donate, bequeath (including intestacy) or otherwise dispose of, Immovable Property or any part thereof, in any manner including by way of a court order, insolvency or business rescue; and
- 10.1.5.2 in the case of a Juristic Person, includes a material change in the beneficial ownership or Control of the Juristic Person which shall be deemed to constitute an alienation for the purposes of this Memorandum, and in the event of there being any dispute as to whether there has been a change in the beneficial ownership or Control, such matter shall be referred to the Auditors for determination and whose decision shall be final and binding.
- 10.1.6 For all purposes including legal action the physical address of the Immovable Property of a Member shall be the domicilium citandi et executandi of a Member. If he wishes to change such domicilium address he must give written notice to that effect to the Association, provided however that any new domicilium shall be a physical address within the Republic of South Africa.
- 10.1.7 The domicilium citandi et executandi of the Association for all purposes including legal action is ZEMA Offices, North Gate Suites, Zimbali unless otherwise advised in writing to the Members by the Association, which new domicilium citandi et executandi shall become effective 30 (thirty) Days after such written notice has been furnished to the Members by the Association.
- 10.1.8 The domicilium citandi et executandi for any tenant/occupier (other than a Member who has provided the Association with a domicilium citandi et executandi) of Immovable Property for all purposes including legal action is the address of the Immovable Property.
- 10.1.9 The rights and obligations of membership commence on the day when a person becomes an Owner of Immovable Property and cease on the day when a person ceases to be an Owner of Immovable Property.
- 10.1.10 No Member ceasing to be a Member of the Association for any reason shall (nor shall such Member’s executors, curators, trustees, liquidators or business rescue practitioners) have any claim upon or interest in or rights to the funds or other property of the Association.
- 10.1.11 The Association may claim from any Member or his estate any arrears of Levies and interest or other sums due by him to the Association at the time of his ceasing to be a Member and a Member shall not be entitled to transfer Immovable Property owned by such Member until such time as the aforementioned amounts have been paid or secured to the satisfaction of the Association.
- 10.1.12 The rights and obligations of a Member shall not be transferable, other than with the prior written consent of the Board,
- 10.1.13 Every Member shall:
- 10.1.13.1 to the best of his ability further the objects and interests of the Association;

- 10.1.13.2 abide by this Memorandum and all Conduct Rules made by the Association or the Board from time to time;
- 10.1.13.3 pay all Levies and special Levies due by the Member to the Association;
- 10.1.13.4 comply with the development constraints of the Estate;
- 10.1.13.5 obtain the prior written consent of the Association of any building plans, including plans for exterior alterations to an existing building, before submission thereof for approval to any local or other authority and prior to the commencement of any building activity;
- 10.1.13.6 not use his Immovable Property or any part thereof, or any part of the Common Areas, or permit it to be used in such a manner and/or for such purposes as may be injurious to the Association;
- 10.1.13.7 not contravene or permit the contravention of any law, by-law, ordinance, proclamation, statutory regulation or contravene or permit the contravention of any of the conditions of title applicable to his Immovable Property; allow any persons as authorised in writing by the Board to enter onto his Immovable Property at all reasonable times and on reasonable notice for purposes of inspecting any structure or for any other purpose required by the Association from time to time in its application of this Memorandum and/or the Conduct Rules, provided that no such persons may enter inside any structure on a Member's property without the prior consent of the relevant Member or the Members tenant if the property is let out and, in the absence of such consent, on the production of a valid court order save in cases of genuine emergency when it shall be permissible to do so only if entry is required in the bona fide protection of life or property.

10.2 **Co-Owners**

- 10.2.1 If any Immovable Property is owned in undivided shares by more than one Owner, such co-Owners shall nominate in writing 1 (one) of them to be the duly authorised representative of the co-Owners, to act on their behalf in relation to all matters pertaining to the co-Owners' membership of the Association.
- 10.2.2 If the co-Owners of Immovable Property fail to nominate one of them as the duly authorised representative of the co-Owners, the co-Owner first named in the Title Deeds of the Immovable Property shall be recognised by the Association as the duly authorised representative of the co-Owners.
- 10.2.3 The co-Owners of Immovable Property shall be jointly and severally liable for the due performance of any obligation of a Member to the Association and all notices which may be required to be given to the Member or otherwise in respect of that Immovable Property, whether in terms of the Act or this Memorandum, shall be given to the person authorised in terms of clause 10.2.1, and failing which, in the event of 10.2.2 being applicable, the person first named in the Title Deeds of the Immovable Property.

10.3 **Juristic Persons as Members**

- 10.3.1 If a Member is a Juristic Person, the Juristic Person must, in a written format prescribed by the Association from time to time, appoint 1 (one) natural person to be its duly authorised representative, to act on that Member's behalf in

relation to all matters pertaining to the Member's membership of the Association. The instrument authorising such person to represent the Member must be lodged with the Association within 7 (seven) Days of the Member becoming a Member of the Association. Should a Member fail to furnish the Association with the aforementioned information then:

- 10.3.1.1 the director/member first appearing on the records of the Commission for the respective company or close corporation at the relevant time shall be deemed to be the duly authorised representative of such Juristic Person in the event of the Juristic Person being a company or close corporation;
- 10.3.1.2 the trustee of any trust whose name appears first on the relevant letters of authority or like document in the possession of the Association shall be deemed to be the duly authorised representative of such Juristic Person in the event of such Juristic Person being a trust.
- 10.3.2 The Member must notify the Association of any change of the identity or contact details of its representative, within 3 (three) Business Days after any such change.
- 10.3.3 A Member who is a Juristic Person must within 7 (seven) Days after becoming a Member, and within 7 (seven) Days after any change in its registered members, directors, shareholders, trustees and/or beneficiaries or any change in its governance documents taking effect:
 - 10.3.3.1 in the case of a close corporation or an unincorporated association, provide the Association with a list of its registered members and their respective interests and/or amended founding statement, constitution or other governance documents, as the case may be;
 - 10.3.3.2 in the case of a company, provide the Association with a list of its directors and shareholders and the details of their shareholding and/or memorandum of incorporation or other governance documents, as the case may be;
 - 10.3.3.3 in the case of a trust, provide the Association with a list of its trustees and beneficiaries and/or amended deed of trust and/or letters of authority, as the case may be.
- 10.3.4 The Board may impose a penalty on any Member that fails to comply with the requirements of Articles 10.3.2 and/or 10.3.3.
- 10.3.5 Where a Member is a Juristic Person the shareholders, directors, trustees and/or members (as the case may be) of such legal entity (other than directors or trustees acting in a professional capacity as such) shall be personally liable, jointly and severally with such Member, for the due performance by the Member of all of its obligations in terms of this Memorandum and the Conduct Rules.
- 10.3.6 A Member which is a Juristic Person must notify the Association in writing in the event of any material change in the beneficial ownership or Control of that Juristic Person, and shall be required to pay the amount specified in Article 24, calculated in proportion to the percentage change in ownership or Control, upon such change, failing which interest shall accrue on the outstanding amount due from the date of change in ownership or Control to the date of payment, at a rate of interest equal to 3% (three percent) above the published

prime rate of interest from time to time of the Standard Bank of South Africa Limited, which interest shall be calculated and compounded monthly in arrears.

10.4 **Admission of Members**

10.4.1 The Members of the Association shall be those Owners who, from time to time, become Members in accordance with the provisions of this Memorandum.

10.4.2 The Board has the authority to admit a transferee to membership of the Association. The Board shall not unreasonably decline to admit to membership a transferee in the event of the transferee having undertaken to comply with and abide by this Memorandum, the Conduct Rules and all of the Association's requirements, having been accepted for membership of the Zimbali Country Club and the Member from whom the transferee is taking transfer of Immovable Property has complied with this Memorandum, the Conduct Rules and all of the Association's requirements and the requirements of the Zimbali Country Club (including but not limited to and in no way detracting from the generality of the aforesaid, the payment of any monies due to the Association and to the Zimbali Country Club by such Member). The Board shall be entitled to call for the provision of a suretyship by a natural person where the proposed Member is a company, close corporation, trust or other corporate entity.

10.5 **Rights and Obligations of Members**

10.5.1 Subject to the other provisions of this Memorandum, membership of the Association shall confer upon each Member the following rights:

10.5.1.1 the right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the records of the Association as listed in section 26 of the Act which includes the following:

10.5.1.1.1 this Memorandum and any amendments thereto and the Conduct Rules made by the Association;

10.5.1.1.2 the records in respect of the Association's Directors;

10.5.1.1.3 the reports to Members and annual financial statements;

10.5.1.1.4 the notices and minutes of Members meetings and any communication to the Members; and

10.5.1.1.5 the register of Members;

10.5.1.2 the right to vote, either personally or by proxy, at all Members' meetings of the Association in accordance with the provisions of this Memorandum;

10.5.1.3 the right to receive notices, attend and speak at all meetings of the Association in accordance with the provisions of this Memorandum;

10.5.1.4 the right to procure the convening of a meeting should Members holding between them in aggregate not less than 10% (ten percent) of the voting rights in the Association collectively so decide;

- 10.5.1.5 the right to appoint persons concurrently as proxies as provided for in section 58(3)(a) of the Act; and
- 10.5.1.6 any and all other rights ascribed to the Members in terms of the Act.
- 10.6 No Member shall, by reason of membership of the Association, be entitled to share in or receive any profit of the Association.
- 10.7 **Liability for payment of levies**
- 10.7.1 Each Member must, for the duration of the Member's membership of the Association, pay Levies to the Association, as determined from time to time in accordance with Article 23.
- 10.7.2 All Levies must be paid to the Association monthly on or before a date determined by the Board from time to time, without deduction, demand or set-off.
- 10.8 **Cessation of Membership**
- 10.8.1 Membership of the Association shall cease:
- 10.8.1.1 upon a Member ceasing to be an Owner;
- 10.8.1.2 upon the issue of a final order of sequestration or liquidation of the Member concerned;
- 10.8.1.3 upon the death of a Member, or upon the Member being declared insane or incapable of managing his affairs;
- 10.8.2 In the event of the issue of a final order of sequestration or liquidation of a Member, the death of a Member, or a Member being declared insane or incapable of managing his own affairs, the trustee of a Member who is an insolvent, the executor or administrator of the Member's deceased estate, the *curator bonis* to a Member who is mentally incapacitated or incapable of managing his affairs or any person duly appointed by a competent authority to represent or act for such Member will for all purposes, be the only person recognised by the Association as a Member in relation to such Member's Immovable Property and shall be bound as a Member under this Memorandum.
- 10.8.3 Any person becoming entitled to membership as a consequence of the death or insolvency of a Member (which shall include the placing of a Member under business rescue) shall, upon such evidence being produced as may from time to time be required by the Board, have the right, either to be registered as a Member in respect of the Immovable Property or instead of being registered himself, to make such transfer of the Immovable Property as the deceased or insolvent could have made subject to the provisions of this Memorandum.
- 10.8.4 A person who submits proof of his appointment as the executor, administrator, trustee, curator, guardian, liquidator or business rescue practitioner in respect of the estate of a deceased Member of the Association or the estate of a Member who has been sequestered, liquidated, placed under business rescue or who is otherwise under a disability or as the liquidator or business rescue practitioner of any Juristic Person which is a Member of the Association shall be entered in the register of Members of the Association *nominee officii* and

shall thereafter, for all purposes, be deemed to be a Member of the Association for the duration of such appointment.

10.8.5 For as long as a Member is an Owner, such Member may not tender resignation of his membership of the Association.

10.9 **Register of Members**

10.9.1 The Association shall maintain at its Office a register of Members as provided in Section 24 of the Act. The register of Members shall be open to inspection by Members as provided for in Section 26(6) of the Act.

10.9.2 It shall be the Member's obligation to ensure that the information furnished to the Association is complete, accurate and up-to-date and the Association shall bear no responsibility for any incomplete, inaccurate or outdated information provided to it by its Members.

10.9.3 The register of Members shall be open to inspection as provided in Section 26 of the Act on reasonable notice during normal Business Hours of the Association.

11. **MEMBERS' MEETINGS**

11.1 **Calling of Members' Meetings**

11.1.1 The Association shall hold an 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 15 (fifteen) months shall elapse after the holding of the immediately preceding annual general meeting.

11.1.2 Subject to the provisions of Section 60 of the Act dealing with the passing of resolutions of Members otherwise than at a meeting of Members, the Board may call a Members' meeting at any time as provided for in Section 61(1) of the Act and in particular:

11.1.2.1 at any time that the Board is required by the Act or this Memorandum to refer a matter to Members for a decision; or

11.1.2.2 whenever required in terms of the Act to fill a vacancy on the Board; or

11.1.2.3 in the circumstances in Article 11.1.3 below.

11.1.3 The Board must in terms of Section 61(3) of the Act call a Members' meeting if one or more written and signed demands for such a meeting are delivered to the Association, and:

11.1.3.1 each such demand describes the specific purpose for which the meeting is proposed; and

11.1.3.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be

exercised in relation to the matter proposed to be considered at the meeting.

11.1.4 The Association must convene the Members' meeting contemplated in Article 11.1.3. As contemplated in Section 61(12) of the Act, if the Association fails to convene a Members' meeting for any reason other than as contemplated in section 61(11), a Member may apply to court for an order requiring the Association to convene a Members' meeting on a date, and subject to any terms, that the court considers appropriate in the circumstances.

11.1.5 The authority of the Association to conduct a Members' meeting entirely by electronic communication, or to provide for participation in a Members' meeting by electronic communication, as set out in Section 63 (2) and 62 (3) of the Act, is not limited or restricted by this Memorandum provided that the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively at the meeting.

11.2 **Notice of Members' Meetings**

11.2.1 The annual general meeting and any other Members' meeting shall be called by not less than 15 (fifteen) Business Days' notice in writing.

11.2.2 As contemplated in Section 62(3) of the Act, the notice convening a Members' meeting must be in writing and must include:

11.2.2.1 the date, time and place for the meeting;

11.2.2.2 the record date of the meeting;

11.2.2.3 the general purpose of the meeting, and any specific purpose if the meeting has been called in accordance with Article 11.1.3 of this Memorandum;

11.2.2.4 a copy of any proposed resolution of which the Association has received notice and which is to be considered at the meeting, and the percentage of voting rights required for the resolution to be adopted;

11.2.2.5 in the case of an annual general meeting:

11.2.2.5.1 the financial statements to be presented (or a summarised form thereof);

11.2.2.5.2 directions for obtaining a complete copy of the financial statements for the preceding financial year; and

11.2.2.5.3 a reasonably prominent statement that:

11.2.2.5.3.1 a Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting;

11.2.2.5.3.2 the proxy need not be a Member of the Association; and

11.2.2.5.3.3 the participants in the meeting are required to provide suitable identification.

- 11.2.3 The Board may determine the location of any Members' meetings provided that all Members meetings must be held at a venue in the Estate.
- 11.2.4 In accordance with Section 62(4) of the Act, if there was a material defect in the giving of the notice of a Members' meeting, the meeting may proceed if every Member who is entitled to exercise voting rights in respect of any item on the agenda for the Members' Meeting is present at the meeting and votes to ratify the defective notice.
- 11.2.5 In accordance with Section 62(5) of the Act, if a material defect in form or manner of giving notice of a Members' meeting only relates to one or more particular items on the agenda for the meeting:
- 11.2.5.1 those items can be severed from the agenda and the notice will remain valid in respect of the other items on the agenda; and
- 11.2.5.2 the meeting may continue to consider a severed matter if the defective notice in respect of that matter is ratified in accordance with Article 11.2.4.
- 11.2.6 In accordance with Section 62(6) of the Act, an immaterial defect in the form or manner of giving notice of a Members' meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Member to whom it was addressed does not invalidate any action taken at the meeting.
- 11.3 **Proceedings at Members' Meetings**
- 11.3.1 The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the presentation of the audited annual financial statements, the appointment and election of Directors when such decision is required in accordance with the provisions of this Memorandum, the appointment of an auditor, and any other matter raised by Members, notice of which was properly given.
- 11.3.2 In accordance with Section 63(1) of the Act, before any person may attend and participate in a Members' meeting:
- 11.3.2.1 that person must present reasonably satisfactory identification; and
- 11.3.2.2 the Chairman must be reasonably satisfied that the person has the right to participate in and vote at the meeting, as a Member or proxy of a Member.
- 11.3.3 As contemplated in Section 64(1) of the Act, a Members' meeting may not begin, and a matter to be decided at the meeting may not begin to be considered until at least 25 (twenty five) Members, or Members holding in aggregate not less than 10% (ten percent) of the voting rights of the Association, entitled to exercise voting rights in respect of at least one item on the agenda for the meeting, are present at the meeting, in person or by proxy.
- 11.3.4 If within half-an-hour after the time appointed for the meeting, a quorum is not present, the meeting is postponed without motion, vote or further notice, for one week.
- 11.3.5 The Association shall not be required to give further notice of a meeting that is postponed or adjourned in terms of Article 11.3.4 unless the location for the meeting is different from:

- 11.3.5.1 the location of the postponed or adjourned meeting; or
- 11.3.5.2 a location announced at the time of adjournment, in the case of an adjourned meeting.
- 11.3.6 As contemplated in Section 64(5) of the Act, the Chairman of the Members' meeting may extend the period of half-an-hour referred to in Article 11.3.4 for a reasonable period on the grounds that:
 - 11.3.6.1 exceptional circumstances affecting weather, transportation or electronic communication may have generally impeded or are generally impeding the ability of the Members to be present at the meeting; or
 - 11.3.6.2 one or more particular Members, having been delayed, have communicated an intention to attend the meeting, and those Members together with others in attendance, would satisfy the quorum requirements.
- 11.3.7 If at a postponed meeting a quorum is not present within half-an-hour after the time appointed for the meeting, the Members present in person shall be a quorum.
- 11.3.8 At a postponed Members' meeting, the Members may not consider any business other than the business which was on the agenda for the initial meeting.
- 11.3.9 As contemplated in Section 64(10) of the Act, a Members' meeting or the consideration of any matter being debated at the meeting, may be adjourned from time to time by a majority of the voting rights held by the persons who are present at the meeting and which are entitled to be exercised on at least one matter remaining on the agenda for the meeting, or the matter being considered, as the case may be.
- 11.3.10 As contemplated in Section 64(13) of the Act, a Members' meeting or a decision on a particular matter may not be adjourned in this manner beyond the earlier of:
 - 11.3.10.1 the date which is 120 (one hundred and twenty) Business Days after the record date of the meeting; or
 - 11.3.10.2 the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.
- 11.3.11 At the adjourned Members' Meeting, the Members may not consider any business other than the business which was on the agenda for the initial meeting, or in respect of which the initial meeting was adjourned.
- 11.3.12 The auditor of the Association, an attorney or any other professional or expert invited by the Board may attend and speak at any meeting of Members.
- 11.4 **Record Date for Exercise of Members' Rights**
 - 11.4.1 As contemplated in Section 59(1) of the Act, the Board may set a record date for the purposes of determining which Members are entitled to:
 - 11.4.1.1 receive notice of a Members' meeting;

- 11.4.1.2 participate in and vote at a Members' meeting;
- 11.4.1.3 decide any matter by written consent or electronic communication, as contemplated in Section 60 of the Act;
- 11.4.1.4 exercise any other rights.
- 11.4.2 As contemplated in Section 59(2) of the Act, the record date:
 - 11.4.2.1 may not be:
 - 11.4.2.1.1 earlier than the date on which the record date is determined; or
 - 11.4.2.1.2 more than 10 (ten) Business Days before the date on which the event or action for which the record date is being set, is scheduled to occur.
- 11.4.3 As contemplated in Section 59(3) of the Act, if, at any time, the Board fails to determine a record date as contemplated in Section 59 of the Act, the record date for the relevant matter is:
 - 11.4.3.1 in the case of a Members' meeting, the latest date by which the Association is required to give the Members notice of that meeting; or
 - 11.4.3.2 the date of the action or event, in any other case.
- 11.5 **Chairman of a Members' Meeting**
 - 11.5.1 The Chairman of the Board shall preside as Chairman at every Members' meeting. If there is no such Chairman, or if at any Members' meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as Chairman, the Vice Chairman shall preside as Chairman and whom failing, the Members shall elect one of their number to be Chairman for that meeting.
- 11.6 **Representation by Proxies**
 - 11.6.1 As contemplated in Section 58(1) of the Act, each Member may appoint one or more proxies to participate in, speak and vote at a Members' meeting, or vote in writing on that Member's behalf, as contemplated in Section 60 of the Act.
 - 11.6.2 A proxy need not be a Member of the Association.
 - 11.6.3 The instrument appointing a proxy shall be in writing, dated and actually signed by the Member and shall be in such form as the Board may approve. No electronic signatures shall be permitted.
 - 11.6.4 A copy of the instrument appointing a proxy shall be delivered to the Office of the Association by hand, by telefax or electronic communication (e-mail) or presented to the Chairman before the time at which the meeting for which the proxy is appointed is scheduled to begin, failing which the proxy shall not be entitled to attend the Members' meeting and/or act on behalf of the Member whom the proxy represents. The Board shall be entitled to call upon a Member to lodge the original instrument appointing the proxy with the Association within 7 (seven) Days of the date of the meeting or proceedings. For the sake of clarity, the instrument appointing a proxy shall include a copy of the identity document or registration document of the Member concerned as well as that of

the proxy and where the Member is a Juristic Person the instrument shall include a resolution of the Member authorising the signatory to sign the proxy.

- 11.6.5 In accordance with Section 58(4) of the Act, a proxy's appointment:
 - 11.6.5.1 is revocable unless the proxy instrument expressly states otherwise;
 - 11.6.5.2 unless the instrument provides that the appointment is irrevocable, may be revoked by the Member who made the appointment, by written notice to that effect, delivered to the proxy and to the Association, or by making a later inconsistent appointment of another proxy.
- 11.6.6 In accordance with Section 58(2) of the Act, a proxy instrument remains valid for:
 - 11.6.6.1 one year after the date on which it was signed; or
 - 11.6.6.2 any longer or shorter period expressly set out in the proxy instrument, unless it is revoked in accordance with Section 58(4) of the Act.
- 11.6.7 As contemplated by Section 58(4) of the Act, a proxy's appointment is suspended at any time and to the extent that a Member chooses to act directly and in person in the exercise of any rights as a Member.
- 11.6.8 As contemplated in Section 58(3)(b) of the Act, a proxy may not delegate to any third party, the proxy's authority to act on behalf of the Member whom the proxy represents.
- 11.6.9 A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or insolvency of the Member by whom the proxy was issued, or revocation of the proxy, if notice of the death, insolvency or revocation comes to the Association's attention after the proxy has already voted on the Member's behalf.
- 11.6.10 The authority of a Member's proxy to decide without direction from the Member whether to exercise or abstain from exercising any voting right of the Member, as set out in Section 58(7) of the Act, is not limited or restricted by this Memorandum.
- 11.6.11 The parent or guardian of a minor and the curator bonis of a Member may vote at any general meeting in the same manner as if he were the registered Member: provided that he shall, prior to the meeting, satisfy the Board that he is such parent, guardian or curator or that the Board has previously admitted his right to vote in respect of the membership. Co-executors of a deceased Member and co-liquidators of an insolvent Member whose names stand in the register of Members shall for the purposes of this Article be deemed to be joint holders of such membership.
- 11.7 **Resolutions of Members**
 - 11.7.1 For an Ordinary Resolution to be passed by the Members, it must be supported by more than 50% (fifty percent) of the voting rights exercised on the resolution as provided for in Section 65(7) of the Act.

- 11.7.2 For a Special Resolution to be passed by the Members, it must be supported by at least 75% (seventy five percent) of the voting rights exercised on the resolution as provided for in Section 65(9) of the Act.
- 11.7.3 A Special Resolution is not required for a matter to be determined by the Association except those matters set out in Section 65(11) of the Act or otherwise required by this Memorandum.
- 11.7.4 In the event of an equality of votes, the Chairman will not have a casting vote.
- 11.7.5 In accordance with the provisions of section 60 of the Act, a resolution that could be voted on at a Member's meeting may instead be:
- 11.7.5.1 submitted by the Board for consideration to the Members entitled to exercise the voting rights in relation to the resolution; and
- 11.7.5.2 voted on in writing by such Members entitled to exercise voting rights in relation to the resolution within a period of 20 (twenty) Business Days after the resolution was submitted to them.
- 11.7.6 A resolution contemplated in Article 11.7.5:
- 11.7.6.1 will have been adopted if it is in writing and signed, or supported, if it is an Ordinary Resolution by the holders of more than 50% (fifty percent) of the voting rights which may be exercised on the resolution and, if it is a Special Resolution by the holders of at least 75% (seventy five percent) of the voting rights which may be exercised on the resolution at a properly constituted Members' meeting; and
- 11.7.6.2 if adopted, will have the same effect as if it had been approved by voting at a meeting; and
- 11.7.6.3 may be signed in counterparts.
- 11.7.7 An election of a Director that could be conducted at a Member's meeting may instead be conducted by written polling of all of the Members entitled to exercise voting rights in relation to the election of that Director.
- 11.7.8 As contemplated in Section 60(4) of the Act, within 10 (ten) Business Days after adopting a resolution or conducting an election of Directors in accordance with Article 11.7.5 and 11.7.7, the Association must deliver a statement describing the results of the vote, consent process or election to each Member who was entitled to vote on or consent to the resolution, or vote in the election of the Director as the case may be.
- 11.7.9 For greater certainty any business of the Association that is required by the Act or this Memorandum to be conducted at an annual general meeting of the Association, may not be conducted in the manner contemplated in Article 11.7.5.
- 11.7.10 At a Members' meeting, an abstention shall not be counted as a vote for or against the resolution in question however where Members act other than at a meeting an abstention shall count as a vote against the resolution in question.

11.7.11 For the purpose of Article 11.7.5 “in writing” includes a resolution voted on electronically.

11.8 Votes and Voting Procedure

11.8.1 As contemplated in section 63(4) of the Act, at a Members' meeting, voting may be by a show of hands or by polling.

11.8.2 As contemplated in section 63(5) of the Act, in the case of voting by a show of hands, each Member has one vote irrespective of the number of voting rights that person would otherwise be entitled to exercise.

11.8.3 As contemplated in section 63(7) of the Act and despite any provision of this Memorandum to the contrary, a polled vote must be held on any particular matter to be voted on at a Members' meeting if demands for a polled vote are made the Chairman or (before or on the declaration of a vote by a show of hands) by:

11.8.3.1 at least 5 (five) Members (or their proxies) having the right to vote on the matter; or

11.8.3.2 Members (or their proxies) who are collectively entitled to exercise at least 10% (ten percent) of the voting rights entitled to be exercised on the matter.

11.8.4 As contemplated by section 63(6) of the Act, if voting on a particular matter is by polling, a Residential Member shall have one vote in respect of each Immovable Property owned by such Member and a Hotel Member shall have 1 (one) vote for every 2½ (two and half) Hotel Rooms owned by that Member which is equivalent to 40% (forty percent) of the vote of a Residential Member for each Hotel Room owned by that Member so for example should a Hotel Member own 50 (fifty) Hotel Rooms, the relevant Hotel Member shall be entitled to 20 (twenty) votes or if a Hotel Member owns two Hotel Rooms then the relevant Hotel Member shall be entitled to a vote which is equivalent to 80% (eighty percent) of the vote of a Residential Member which owns one Immovable Property. A Hotel Member shall only be entitled to exercise a vote in accordance with this article 11.8.4 for any additional Hotel Rooms erected once a temporary or permanent occupation certificate has been issued by the Local Authority in respect thereof.

11.8.5 If voting is conducted by a poll, scrutineers must be appointed by the Chairman to count the votes and to declare the result of the poll, and their declaration, which must be announced by the Chairman, is deemed to be the resolution of the meeting. If there is any dispute as to the admission or rejection of a vote, the Chairman of the meeting must determine the dispute, and his determination is final and conclusive.

11.8.6 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 not carried, 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. Unless any Member present in person or represented by proxy at a general meeting before the closure of the meeting has objected to any declaration made by the Chairman as to the result of any voting at the meeting, whether by a show of hands or by poll, 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 any entry into the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

- 11.9 Notwithstanding anything to the contrary herein contained, a Member shall not have the right to attend, to vote at or to speak at any meeting of Members, or as contemplated in terms of the provisions of Section 60 of the Act if:
- 11.9.1 such Member is in arrears with any Levies, special Levies, penalties, interest, service costs, legal costs or any other amount due to the Association in terms of this Memorandum or the Conduct Rules or otherwise, unless the amount due is disputed in writing by the Member and forms the subject of a dispute resolution process and subject to this Article 11.9.1 not applying to IFA Fair-Zim Hotel and Resort Proprietary Limited Registration Number 2006/038614/07 in it's capacity as a Hotel Member for so long as the business rescue proceedings which commenced voluntarily pursuant to the resolution adopted on 16 September 2020 is in force; or
- 11.9.2 such Member is in breach of any of his remaining obligations in terms of this Memorandum or the Conduct Rules and has failed to remedy such breach after having been called upon by the Association in writing to remedy such breach and he remains in breach, unless such breach is disputed in writing by the Member and forms the subject of a dispute resolution process.
- 11.10 A letter addressed to the Chairman of any such meeting by the Chairman of the Finance Committee shall constitute proof of non-payment of any arrear Levies by such Member and shall entitle the Chairman of a Member's meeting to prevent such Member or his proxy from speaking or voting at such meeting.

12. INSPECTION OF MINUTES

The minutes kept of every Members' meeting in accordance with Section 24(3) of the Act may be inspected and copied as provided in Section 26(1) of the Act by any Member, Director and the Association's auditor.

13. DIRECTORS

13.1 Appointment and Election

- 13.1.1 The Association shall have a minimum of 3 (three) and a maximum of 7 (seven) Directors. Any failure by the Association at any time to have the minimum number of Directors does not limit or negate the authority of the Board or invalidate anything done by the Board or the Association.
- 13.1.2 Subject to the provisions of Article 13.3 the Hotel Members shall be entitled to appoint 2 (two) Hotel Directors (and an Alternate Director to each of them) and the Residential Members shall be entitled to elect 5 (five) Residential Directors.
- 13.1.3 No Director shall be entitled to appoint any Person as an Alternate Director to himself.

13.2 Election of Residential Directors

- 13.2.1 The Residential Directors will be elected by the Residential Members at each annual general meeting, in accordance with the provisions of Article 13.2.3.
- 13.2.2 Each Residential Director shall, subject to the provisions of Article 13.2.3, serve for a period of 2 (two) years.
- 13.2.3 One-third of the Residential Directors in office will retire at each annual general meeting but remain in office until the Board (specifically, the Residential Directors component of the Board) has been re-constituted by Residential Members at the meeting. If the number of Residential Directors is not divisible by three then the number nearest to but not less than one-third shall retire from office. The Residential Directors so to retire shall be those who have been longest in office since their last election, but in the case of persons who became Residential Directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- 13.2.4 A Residential Director who retires at the annual general meeting is eligible for re-election.
- 13.2.5 At least 30 (thirty) Business Days before the date on which each annual general meeting is scheduled to be held, the Association shall send to each Residential Member written notice calling on the Residential Member to nominate persons for election as Residential Directors to the Board. This notice shall specify which Residential Directors are going to retire at the meeting and how many vacancies will be available on the Board.
- 13.2.6 The nominees for election as Residential Directors must be:
- 13.2.6.1 existing Residential Members or the spouse of a Residential Member or in the event of the Residential Member being a Juristic Person, the duly authorised representative of the Residential Member as provided for in Articles 10.3.1 and 10.3.2; and
- 13.2.6.2 primarily resident on the Estate.
- 13.2.7 The nominations must be submitted to the Office in writing by the date specified in the notice calling for nominations, and must include:
- 13.2.7.1 the full name of the nominee;
- 13.2.7.2 the name and signature of the Residential Member nominating the nominee; and
- 13.2.7.3 the signature of the nominee, accepting the nomination.
- 13.2.8 The nominee must include a copy of his curriculum vitae and/or a brief manifesto regarding why the nominee should be elected as a Residential Director.
- 13.2.9 A nomination received by the Association which does not meet the requirements set out in this Article 13.2, or in respect of a nominee who does not meet the eligibility requirements of the Act and this Memorandum, shall be disregarded.

- 13.2.10 In the notice calling the annual general meeting, the Board shall publish the names of the nominees who have been nominated for election as Residential Directors, and any such other information from the nominee's curriculum vitae and manifesto which the Board may reasonably consider appropriate.
- 13.2.11 At the annual general meeting, the Residential Members will vote on each nominee separately, in the order in which their nominations were received by the Association. Voting will either be by show of hands or by ballot. If any 5 (five) or more Residential Members demand voting by ballot, it must be done by ballot. If voting is by show of hands, a raised hand indicates a vote for a nominee and a lowered hand indicates that the Residential Member abstains from voting or is against that nominee. If voting is by ballot, a mark next to a nominee's name indicates a vote for the nominee and no mark indicates that the Residential Member abstains from voting on that nominee or is against that nominee.
- 13.2.12 The votes will be tallied at the meeting and those nominees receiving the highest number of votes in favour will be regarded as duly elected, up to the maximum number of vacancies available. If two or more successful nominees receive equal votes, they will all be included in the elected board up to the maximum number of vacancies available; provided that if any needs to be excluded because of the maximum number permitted then the order of voting will be determinative and the order of voting will be determined by the order in which nominations were received.
- 13.2.13 For the avoidance of doubt, a nominee does not need to receive a particular minimum number of votes in favour to be elected; rather his or her support is measured against the support given for other nominees.

13.3 **Appointment of Hotel Directors**

- 13.3.1 The 2 (two) Hotel Members who own the greatest number of Hotel Rooms shall each be entitled to appoint one Hotel Director (and an Alternate to that Hotel Director). The Hotel Members shall notify the Chairman at least 20 (twenty) Business Days before each annual general meeting of the names of the Hotel Directors (and any Alternate Directors) to be appointed. A retiring Hotel Director shall be eligible for reappointment by the Hotel Member who appointed him or her.
- 13.3.2 An Alternate Director shall serve in the place of 1 (one) or more Hotel Director/s named in the resolution appointing him during the Hotel Director's/s' absence or inability to act as Director. If a person is an Alternate Director to more than 1 (one) Hotel Director, he shall have a separate vote, on behalf of each Hotel Director he is representing in addition to his own vote, if any.

13.4 **Appointment of Advisors**

- 13.4.1 In addition, the Board shall be entitled to engage, on behalf of the Association, the services of accountants, auditors, attorneys, advocates, architects, engineers and other professional persons or experts for any reason deemed necessary by the Directors and on such terms as the Directors shall decide subject to the provisions of this Memorandum.

13.5 Removal

- 13.5.1 As contemplated in Section 66(4) of the Act, the Hotel Members may remove a Hotel Director at any time on written notice to that effect to the Association and the relevant Hotel Director.
- 13.5.2 The Residential Members may remove a Residential Director by Ordinary Resolution of the Residential Members adopted at a Members' meeting in accordance with the requirements of section 71(1) of the Act.

13.6 Vacancies on the Board

- 13.6.1 If a vacancy arises on the Board, in terms of section 70(3) of the Act, it must be filled:
 - 13.6.1.1 in the case of a vacancy from amongst the Hotel Directors, by the Hotel Members appointing a new Hotel Director in accordance with Article 13.3 above; and
 - 13.6.1.2 in the case of a vacancy from amongst the Residential Directors, by a new election conducted:
 - 13.6.1.2.1 at the next annual general meeting of the Association, if the Association is required to hold such a meeting; or
 - 13.6.1.2.2 in any other case, within 6 (six) months after the vacancy arose –
 - 13.6.1.2.2.1 at a Members' meeting called for the purpose of electing the Director; or
 - 13.6.1.2.2.2 by a poll of the Members entitled to exercise voting rights in an election of the Director, as contemplated in section 60(3).
- 13.6.2 If, as a result of retirement, resignation or otherwise, the total number of Directors falls below the prescribed number, the Board shall act promptly to bring the number of Directors up to the number as specified in Article 13.1.1.
- 13.6.3 The Chairman shall, in his/her sole discretion, allow parties who are not Members of the Association to attend board meetings and annual general meetings of the Association as observers.

13.7 Chairman

- 13.7.1 At the first Board meeting following the annual general meeting, and whenever a vacancy occurs, the Board shall from amongst its number, elect a Chairman and Vice Chairman.
- 13.7.2 The Chairman, or failing him the Vice Chairman, shall chair Board meetings and Members' meetings and perform such other duties determined by the Board from time to time.
- 13.7.3 The Chairman shall hold office from the date of his election until the first Board meeting held after the following annual general meeting. The Chairman shall be eligible for re-election.

- 13.7.4 If at any time, the Chairman, or failing him the Vice Chairman, is not present at a Board meeting within 15 (fifteen) minutes after the time at which the meeting was scheduled to begin, the Directors shall elect from one of their number a person to chair the Board meeting in the Chairman's and Vice Chairman's absence.
- 13.7.5 The office of Chairman shall ipso facto be vacated by a Director holding such office upon him ceasing to be a Director for any reason.
- 13.7.6 In the event of any vacancy of the aforesaid office occurring during the term for which the Chairman is elected, the Vice Chairman shall act as such and the Directors shall immediately appoint one of their members as a replacement.
- 13.8 **Disqualification from Office**
- 13.8.1 For the purposes of this Article, "Director" includes an Alternate Director, prescribed officer, and a person who is a member of a committee of the Board, or an audit committee.
- 13.8.2 In terms of Section 69(7) of the Act, a person is ineligible to be a Director of the Association, if that person is:
- 13.8.2.1 a Juristic Person; or
- 13.8.2.2 an unemancipated minor or is under a similar legal disability.
- 13.8.3 In terms of Section 69(8) of the Act, a person is disqualified from being a Director if:
- 13.8.3.1 that person has been prohibited by a court from being a Director, or has been declared delinquent in terms of Section 162 of the Act, or Section 47 of the Close Corporations Act, 1984; or
- 13.8.3.2 that person:
- 13.8.3.2.1 is an unrehabilitated insolvent;
- 13.8.3.2.2 is prohibited in terms of any public regulation to be a Director of the Association;
- 13.8.3.2.3 has been removed from an office of trust on the grounds of misconduct involving dishonesty; or
- 13.8.3.2.4 has been convicted in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence listed in Section 69(8)(b)(iv)(aa) to (cc) of the Act.
- 13.8.4 As contemplated in Section 70 of the Act, a person ceases to be a Director if he or she:
- 13.8.4.1 resigns or dies;
- 13.8.4.2 becomes incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time, subject to the provisions of Section 71(3) of the Act;

- 13.8.4.3 is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Association, in accordance with Section 162 of the Act;
- 13.8.4.4 becomes ineligible or disqualified in terms of Section 69, subject to the provisions of Section 71(3) of the Act; or
- 13.8.4.5 is removed:
 - 13.8.4.5.1 by resolution of the Members in terms of Section 71(1) of the Act;
 - 13.8.4.5.2 by resolution of the Board in terms of Section 71(3) of the Act; or
 - 13.8.4.5.3 by order of the court in terms of Section 71(5) or (6) of the Act.
- 13.8.5 In addition to the provisions of the Act, a Director shall immediately cease to hold office if he or she:
 - 13.8.5.1 is absent for 3 (three) consecutive Board meetings without obtaining prior leave of absence from the Board and if the Board so resolves; or
 - 13.8.5.2 becomes insolvent or assigns his Estate for the benefit of, or compounds with, his creditors; or
 - 13.8.5.3 is otherwise ineligible or disqualified from serving as a Director on the grounds set out in Section 69 of the Act; or
 - 13.8.5.4 in addition to satisfying the qualification and eligibility requirements set out in Section 69 of the Act, to become a Director of the Association where such person is a Member of the Association, such person must satisfy the following additional eligibility requirements and qualifications, namely:
 - 13.8.5.4.1 in respect of Residential Directors, he must be a paid up Member (ie not in arrears with any levy, penalty or other amount due to the Association), or a representative of a paid up Member where a Member is a Juristic Person and/or the spouse of a paid up Member at the time of his appointment as Director; and
 - 13.8.5.4.2 in respect of Residential Directors, he must not be in breach of any of his obligations as a Member of the Association in terms of this Memorandum or the Conduct Rules; and
 - 13.8.5.4.3 he must not be a nominee or representative of a Member where the Member is a Juristic Person and such Member is in breach of any of its obligations in terms of this Memorandum or the Conduct Rules.
- 13.8.6 A Director, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by the provisions of this Memorandum and any Conduct Rules promulgated insofar as he can be bound to such documents.
- 13.8.7 The Association may, notwithstanding the fact that any particular person is a Director, nevertheless engage the Director or entity in which such Director has a direct or indirect interest, to provide any services which the Association may from time to time require in return for reasonable consideration.

14. PERSONAL FINANCIAL INTERESTS AND CONDUCT

A Director must comply in all respects with the provisions of Sections 75 and 76 of the Act in respect of personal financial interests and standards of conduct required of a Director.

15. ALTERNATE DIRECTORS

15.1 An Alternate Director:

15.1.1 may not unless the Board agrees otherwise, attend or act at a Board meeting in such capacity if the Director whom he represents, is present at such meeting;

15.1.2 may be an existing Director of the Association, in which event, in addition to his own vote as a Director of the Association, he may vote separately in his capacity as an Alternate Director on behalf of each Director whom he represents;

15.1.3 may not sign any resolution passed otherwise than at a Board meeting unless the Director whom he represents is absent from the meeting, or is otherwise incapable of signing the resolution; and

15.1.4 may otherwise exercise all of the rights of the Director whom he represents, in the absence or incapacity of such Director, and is subject to all the duties of such Director.

16. DIRECTORS REMUNERATION

A Director shall not directly or indirectly receive any remuneration from the Association for his services as a Director, provided that nothing in this Memorandum shall prohibit him from reimbursement of all reasonable 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.

17. POWERS AND DUTIES OF THE BOARD

17.1 Except to the extent that Article 17.3 provides otherwise, the business and affairs of the Association shall be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Association as are not required by the Act or this Memorandum, to be exercised by the Association in general meeting.

17.2 Without in any way affecting the generality of Article 17.1 and subject to the provisions of Article 17.3, the powers of the Board shall include but not be limited to the following, the power:

17.2.1 to appoint and/or dismiss for and on behalf of the Association such employees as they deem fit in connection with the control, management and administration of the Estate;

17.2.2 to delegate one or more of their powers and duties to such persons as they deem fit and at any time to revoke such delegation;

17.2.3 to make Conduct Rules as provided for in Article 27;

- 17.2.4 to open and operate a current account and a savings and/or investment account with a banking institution and to disburse from such bank accounts such operational and capital expenditure as approved in the budget or as raised by way of any additional and/or special Levy;
- 17.2.5 to purchase, hire or otherwise lease or mortgage immovable or movable property in the furtherance of the Association's objects;
- 17.2.6 to ensure that Members adhere to the provisions of this Memorandum and the Conduct Rules and to do all things necessary for the enforcement, management, control and administration devolving upon the Board in terms of this Memorandum and the Conduct Rules and to impose sanctions and penalties as determined by the Board from time to time;
- 17.2.7 to establish for administrative expenses a fund sufficient in the opinion of the Board for the upkeep, control, management and administration required to be performed by the Board in terms of this Memorandum and the Conduct Rules and for the acquisition of such movables as may be required for purposes of providing the services required to be rendered by the Association;
- 17.2.8 subject to the applicable provisions of the Act and this Memorandum, to raise or borrow from the Members or any other persons any sums of money recommended by the Finance Committee for the purposes of the Association but subject to a limit of 10% (ten percent) of the budgeted annual levy income. All amounts required in excess of the aforesaid limit shall be subject to approval by way of an Ordinary Resolution of Members;
- 17.2.9 subject to the applicable provisions of the Act, to secure the payment or repayment of any sums of money borrowed or raised in terms of Article 17.2.8 or the payment of any debt, liability or obligation whatsoever of the Association in such manner and upon such terms and conditions in all respects as they deem fit but subject to the prior written approval of the Finance Committee, including without limitation by the mortgaging of any property of the Association or any part thereof;
- 17.2.10 to institute legal proceedings to protect the rights of the Association and to enforce the provisions of this Memorandum and the Conduct Rules and to defend any legal proceedings brought against the Association;
- 17.2.11 to enter into contracts necessary for the purposes and objects of the Association;
- 17.2.12 subject to a Special Resolution of the Members, to invest funds of the Association, provided that funds available for investment may only be invested with a financial institution as defined in section 1 of the Financial Services Board Act No. 97 of 1990.
- 17.3 Subject to Article 17.4, the Board may in performing its rights, duties and obligations and in giving effect to the provisions of this Memorandum, incur such unbudgeted expenditure as it considers necessary, provided that if such unbudgeted expenditure has not been approved in the manner provided for in Article 23.3, such unbudgeted expenditure must be approved by an Ordinary Resolution of the Members prior to being incurred if:

- 17.3.1 the unbudgeted expenditure is not of a capital nature and its value will in any Financial Year, in aggregate, exceed 2% (two percent) of the accumulated reserves of the Association prior to the unbudgeted expenditure being incurred; or
- 17.3.2 the unbudgeted expenditure is of a capital nature and its value will in any Financial Year, in aggregate exceed 10% (ten percent) of the accumulated reserves of the Association prior to the unbudgeted expenditure being incurred.
- 17.4 Should any item of expenditure exceed the thresholds referred to in Article 17.3 and be reasonably determined by the Board to be of an emergency nature, the prior approval of such expenditure by the Members shall not be required.
- 17.5 The Board shall ensure that a bank account or bank accounts are opened and maintained in the name of the Association and that all financial transactions to which the Association is a party are conducted through such account or accounts. Such bank accounts shall include, but not be limited to a current bank account and an investment account.
- 17.6 The Board shall fulfil the obligations and duties imposed upon it in terms of the CSOSA.

18. BOARD MEETINGS

18.1 Convening of Meetings

- 18.1.1 The Board may meet for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit provided that the Board must meet at least 4 (four) times during a financial year (which requirement may be waived, in respect of any quarter, by all of the Directors in writing).
- 18.1.2 As contemplated in Section 73(1) of the Act, the Chairman:
 - 18.1.2.1 may call a Board meeting at any time; and
 - 18.1.2.2 must call a Board meeting if required to do so by at least 2 (two) Directors.
- 18.1.3 The Board shall determine the form and time for giving notice of its meetings subject to the provisions of this Memorandum or the Conduct Rules. No meeting of the Board may be convened without notice to all of the Directors, however, as contemplated in Section 73(5) of the Act, if the Association fails to give the required notice of a Board meeting, or if there is a defect in the giving of the notice, the meeting may proceed if all of the Directors:
 - 18.1.3.1 acknowledge actual receipt of the notice;
 - 18.1.3.2 are present at the meeting; or
 - 18.1.3.3 waive notice of the meeting.

18.2 Quorum

- 18.2.1 The quorum for a Board meeting shall be 3 (three) Directors provided that at least 1 (one) Hotel Director and 1 (one) Residential Director must be present.

18.2.2 If within half an hour from the time appointed for a meeting, a quorum is not present, the meeting will stand adjourned to the same day in the next week, at the same time and place or, if that day is not a business day then to the next succeeding business day and, if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Directors present (provided there are at least 2 (two) Directors) will be a quorum. Notice of such adjournment must be provided to all of the Directors.

18.3 **Electronic Participation**

As contemplated in Section 73(3) of the Act, a Board meeting may be conducted entirely by electronic communication or one or more Directors may participate in a Board meeting by electronic communication, provided that all participants can participate effectively in the meeting and can communicate concurrently with each other without an intermediary.

18.4 **Voting**

18.4.1 Subject to Article 18.6 below, questions arising at any Board meeting shall be decided by majority vote of the Directors.

18.4.2 Each Director shall be entitled to exercise 1 (one) vote on a matter before the Board.

18.4.3 In the event of an equality of votes the Chairman shall have a second or casting vote in addition to his deliberative vote.

18.5 **Written Resolutions**

18.5.1 Subject to Article 18.6 below, in accordance with Section 74(1) of the Act, a decision which could be voted on at a Board meeting may instead be adopted by written consent of a majority of the Directors, given in person or by electronic communication, provided that each Director has received notice of the matter to be decided.

18.5.2 Within 10 (ten) Business Days after adopting a resolution in terms of this section, the Association must deliver a statement describing the results of the vote or consent process to every Director.

18.6 **Disputes**

18.6.1 If any resolution of the Directors is passed in circumstances where it has been opposed by at least 2 (two) Directors being either Hotel Directors or Residential Directors (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:

18.6.1.1 if the resolution is adopted at a Board meeting, giving notice thereof at the meeting, alternatively giving notice in writing to the Chairman of the Board and the general manager of the Association within 2 (two) Business Days from the day on which the disputed resolution was passed; or

18.6.1.2 if the resolution is passed by the Board in writing, giving notice thereof in writing to the Chairman of the Board and the general manager of the Association within 2 (two) Business Days from the day on which the

Association circulates the results of the written resolution to the Directors in accordance with Article 18.5.2 above.

- 18.6.2 In such event as that contemplated in Article 18.6.1 above, the resolution shall be deemed to not have been passed until the period specified in Article 18.6.1 has expired, or if a written notice of objection is given as provided for in Article 18.6.1, pending the resolution of that dispute in terms of the dispute resolution mechanism provided for in Article 31, read with the necessary changes to the context, provided that:
- 18.6.2.1 the period of 30 (thirty) days provided for in Article 31.1 shall not apply;
 - 18.6.2.2 the arbitrator shall be a practising senior advocate of at least 10 (ten) years standing as such, agreed by the parties or in the event that they cannot agree within 7 (seven) Business Days, then the arbitrator shall be appointed in accordance with the procedure set out in clause 31.4;
 - 18.6.2.3 in the arbitration proceedings, the dissenting Directors shall be the claimants and the Association shall be the respondent; and
 - 18.6.2.4 if there is any dispute in regard to whether the disputed resolution materially affects the rights of the Members concerned, such dispute shall be determined by the arbitrator, in limine, by summary arbitration.

19. MINUTES AND RESOLUTIONS

- 19.1 As contemplated in Section 73(6) of the Act, the Board must keep minutes of its meetings, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and must include in the minutes:
- 19.1.1 all appointments of officers;
 - 19.1.2 the names of Directors present at every Board meeting;
 - 19.1.3 any declaration made by a Director in terms of Section 75 of the Act, in writing or otherwise; and
 - 19.1.4 all proceedings at all meetings of the Association and/or Board.
- 19.2 As contemplated in Section 73(7) of the Act, resolutions of the Board:
- 19.2.1 must be dated and sequentially numbered; and
 - 19.2.2 subject to Article 18.6.2, are effective as of the date of the resolution, unless the resolution provides otherwise.
- 19.3 As contemplated in Section 73(8) of the Act, any minutes of a Board meeting, or a resolution, signed by the Chairman of the meeting, or by the Chairman of the next Board meeting is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be. All minutes of Board meetings shall, after signature by the Chairman, be placed in a minute book which shall be kept by the Directors in accordance with the provisions of the Act regarding the keeping of the minutes.

20. COMPANY SECRETARY

Except to the extent that the Association is required by the Act to appoint a company secretary, the Board shall not be obliged to appoint a company secretary.

21. COMMITTEES

- 21.1 Except to the extent that this Memorandum provides otherwise, the Board may -
 - 21.1.1 appoint any number of committees;
 - 21.1.2 delegate to any committee any of the authority of the Board; and
 - 21.1.3 from time to time entrust to and confer upon the Association's general 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 it 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 Board and may from time to time revoke or vary all or any of such powers and authorities.
- 21.2 Except to the extent that this Memorandum or a resolution of the Board establishing a committee provides otherwise, a committee:
 - 21.2.1 may include persons who are not Directors of the Association, but-
 - 21.2.1.1 any such person must not be ineligible or disqualified to be a Director in terms of Section 69;
 - 21.2.2 may consult with or receive advice from any person;
 - 21.2.3 has the full authority of the Board in respect of a matter referred to it in so far as the Board has delegated such authority to the committee;
 - 21.2.4 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 same, the committee members present may elect one of their number to be chairman of the meeting;
 - 21.2.5 may serve notices of meetings, meet and adjourn as it thinks fit;
 - 21.2.6 shall determine any question by a majority of votes of those committee members who are Directors and in the event of an equality of votes the chairman shall not have a second or casting vote;
 - 21.2.7 shall report to and be responsible to the Board and in the exercise of the powers so delegated conform to the rules that may be imposed on it by the Board.
- 21.3 The Board reserves the right to terminate the existence of any committee or withdraw, vary or suspend any of the rights, powers and duties so delegated to any committee.
- 21.4 The minutes of meetings of each committee shall be promptly provided to the Board.

- 21.5 The Board reserves the right to remove any committee member and similarly to appoint and/or co-opt further members to such committee.
- 21.6 Each committee shall meet as frequently as deemed necessary or as otherwise directed by the Board.

22. FINANCE COMMITTEE

There shall be established by the Board a finance committee which shall consist of not less than 3 (three) persons provided that at least 1 (one) person shall be a Residential Director and 1 (one) person shall be a Hotel Director or their nominees.

23. LEVIES

- 23.1 The Board shall be responsible for the collection of Levies and shall establish and maintain a Levy fund sufficient in its opinion for:
- 23.1.1 the repair, upkeep, control, management and administration of the Association and of the Estate;
 - 23.1.2 the provision and maintenance of security and other infrastructure as well as garden maintenance services for the Estate;
 - 23.1.3 the payment of rates and taxes and other charges on the Estate levied by the local or any other authority;
 - 23.1.4 any charges for the supply of Services to the Estate;
 - 23.1.5 any matter arising from the provisions of Article 26;
 - 23.1.6 the covering of any losses, suffered by the Association and for the payment of any premiums of insurance;
 - 23.1.7 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).
- 23.2 At least 2 (two) months prior to the Association's financial year-end, the Finance Committee shall cause to be prepared and submitted to the Board an annual budget, in a format to be approved by the Board, which provides, *inter alia*, an itemised estimate of the anticipated income and expenditure of the Association during the ensuing financial year, together with the consequent Levies required, which estimates will be subject to approval by the Board and may be amended by the Board before being laid before the Members at the annual general meeting for approval. The Board shall be entitled to include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature and any other amounts required to be levied by it in terms of the CSOSA.
- 23.3 The estimate of income and expenditure and the Levies referred to in Article 23.2 above shall be communicated to Members prior to the commencement of the financial year to which they apply. If the Members do not approve the budget when called upon to do so, then every Member shall continue to pay the Levies imposed in the previous financial year as an interim measure until such time as the amended budget is in fact approved.

- 23.4 The proportions in which Members shall make contributions towards the Levy fund established in terms of this Article 23 shall be determined by the Board which, in determining such proportions, shall have regard to all circumstances prevailing at the time and to equity and shall be guided by the provisions of Article 23.5. In the event of the Board for any reason failing to prepare and notify a Member timeously of the amount payable by them, such Member shall continue to pay the Levy and/or other amounts previously imposed until he has been notified of the new amount payable by him whereafter he shall pay such new amount as advised by the Association together with any applicable shortfall.
- 23.5 Subject to the provisions of Article 23.4 the Board:
- 23.5.1 shall assign those costs arising directly out of the Immovable Property itself to the Member owning such Immovable Property (nothing in this Memorandum shall be construed as obliging the Association to pay service charges and/or contributions due by Members to the relevant authorities);
- 23.5.2 shall assign those costs relating to the Estate generally, to the Owners of all Immovable Properties equally, provided that with effect from the date on which a Hotel Member has been issued a temporary or permanent occupation certificate by the Local Authority in respect of one or more Hotel Rooms erected on or in the Hotel Member's Immovable Property, Hotel Members shall contribute calculated on the basis of 2½ (two and half) Hotel Rooms built being equal to 1 (one) Immovable Property;
- 23.5.3 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 or scheme; provided however that the Finance Committee may in any case where it considers 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 Finance Committee in the foregoing proportions;
- 23.5.4 shall determine the proportions in which Property Developers shall make contributions of Levies and in determining such proportions, shall have regard to all circumstances prevailing at the time and to equity and shall be guided by the considerations as set out in Articles 23.5.1 to 23.5.3 and:
- 23.5.4.1 a Property Developer owning an Erf on which it is intended to create separate Units in terms of which no sectional title register has been opened, is liable for payment of 1 (one) Levy in respect of that Erf;
- 23.5.4.2 a Property Developer owning an Erf in terms of which a sectional title register has been opened in respect of a number of Units, is liable for the payment of one Levy on each of such Units;
- 23.5.4.3 a Property Developer owning an Erf in terms of which a sectional title register has been opened in respect of a number of Units and reserved a real right of extension to itself is liable for payment of one Levy in respect of each of such Units and one further Levy in terms of the real right of extension;

- 23.5.4.4 a Property Developer owning an Erf in terms of which he has not opened a sectional title register and has completed a number of Units on such subdivision and one or more or all of such completed Units are occupied, is liable for payment of one Levy in respect of each of such completed Units, from the earlier of the date of first occupation or the date of the issue of the temporary or permanent occupation certificate has been issued by the Local Authority. This Article shall not be construed as the Association granting any rights of occupation.
- 23.6 After approval of the budget referred to in Article 23.2 by the Members, the Association shall take reasonable steps and do all things necessary to ensure that the Levies approved in the budget are raised and recovered as provided for in this Memorandum.
- 23.7 All payments received by the Association shall forthwith be deposited in the bank account contemplated in Article 17.5 and shall be utilised to defray the expenses referred to in Article 23.1.
- 23.8 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.
- 23.9 Any amount due by a Member whether in respect of a Levy or any other amount falling due for payment under this Memorandum, which remains unpaid after 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, calculated and compounded monthly in arrears.
- 23.10 The Board shall have the power to impose additional special Levies, upon the recommendation of the Finance Committee, on Members in respect of any unforeseen expenditure and shall determine how such Levies are to be paid.
- 23.11 All amounts levied under the provisions of this Memorandum 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 notwithstanding the fact that such persons may have ceased to be Members of the Association.
- 23.12 A Member shall not be entitled to be paid any amount standing to the credit of his Levy account, unless such amount was paid by the Member in error, or the Sectional Titles Act or Share Blocks Control Act provide otherwise.
- 23.13 No Member shall withhold any payment in respect of Levies, interest or any other amount owing to the Association or claim any set-off against any debt of the Association in such Member's favour for whatever reason.
- 23.14 Notwithstanding anything contained in this Memorandum, the Board may, in its sole discretion, agree to a repayment arrangement with a Member in respect of any amount due by a Member to the Association in terms of this Memorandum or the Conduct Rules, subject to such conditions as the Board may impose. The Board, in managing the financial obligations and cash flow requirements of the Association, may in its sole election and discretion, agree to reduce, vary or discount the full outstanding balance remaining unpaid by a Member, subject to such conditions as the Board may impose.

- 23.15 Save for special Levies and Levy stabilisation fund contributions, all contributions levied upon Members in terms of this Memorandum shall be levied on an annual basis and recovered from Members on such basis and in such manner as shall be determined by the Board from time to time.
- 23.16 All payments made by a Member and received by the Association shall be allocated firstly towards interest and legal costs and thereafter towards capital. The Board reserves the right to allocate payments as it deems fit in the absence of any express allocation by the Member. In the absence of an express allocation by the Board or a Member all payments will be allocated to the Debt newest in time.
- 23.17 A Member's successor in title to the Immovable Property shall be liable as from the date on which he becomes a Member of the Association pursuant to the transfer of on Immovable Property or any portion thereof or share or interest therein to pay the Levy attributable to that Immovable Property in such manner as the Board may determine from time to time.
- 23.18 A Member shall be liable for and shall pay all expenses and/or legal costs, including costs as between attorney and own client, collection commission, expenses and charges incurred by the Association in obtaining recovery of arrear Levies or any other amounts due and owing by such Member to the Association.
- 23.19 Any amount due by a Member of a Levy, interest thereon, a penalty and any costs award shall be a Debt due by such Member to the Association.

24. LEVY STABILISATION FUND

- 24.1 The Association shall establish a Levy stabilisation fund for the purposes of meeting any extraordinary expenditure and expenditure of a capital nature to be incurred by the Association in carrying out its objects and the provisions of this Memorandum, contributions to which shall become due and payable in respect of each Immovable Property, on the date the Member occupies the Immovable Property or becomes the registered Owner of the Immovable Property, whichever date occurs first.
- 24.2 The amount to be contributed to the Levy stabilisation fund by new Members, calculated in proportion to the percentage of ownership acquired, shall be determined by the Board and may be revised by the Board from time to time and shall be subject to the approval of the Members at a general meeting.
- 24.3 The amount due by Hotel Members to the Levy stabilisation fund shall be calculated on the basis of 5 (five) Hotel Rooms being equal to 1 (one) Immovable Property owned by a Residential Member.
- 24.4 A Hotel Member's contribution to the Levy stabilisation fund shall be payable, in the first instance, upon transfer of the relevant Hotel into its name. Such contribution shall be the same as that which would be payable, at the relevant time, by any other person acquiring an Immovable Property in the Estate. If on transfer of the Hotel, construction of the Hotel is not complete or has not commenced, the contribution payable by the Hotel Member shall be equivalent to that payable in respect of one Immovable Property. However, upon the completion of the construction of a Hotel and, thereafter, upon the completion of any extensions thereto, Hotel Member's shall be obliged to pay further contributions calculated on the basis of 5 (five) Hotel Rooms being equal to 1 (one) Immovable Property owned by a Residential Member.

- 24.5 In the event of any Immovable Property or Hotel Room being sold, alienated or otherwise disposed of, the new Owner shall be obliged to pay the Levy stabilisation fund contribution applicable at the relevant time and the prior Owner shall not be entitled to a refund of the Levy stabilisation fund contribution paid by him.
- 24.6 In the case of a change in beneficial ownership or Control of a Juristic Member (see Article 10.3.6 above), a further contribution to the Levy stabilisation fund (in such amount as determined by the Board) shall, upon such alienation, become due by the Juristic Member, as set out in Article 10.1.5.2 read with Article 10.3.6, notwithstanding that the Juristic Member remains the Owner of the Immovable Property or Hotel Room. The object, in this regard, shall be to ensure that where there is a change in beneficial ownership or Control, the Juristic Member shall become liable for a further contribution to the Levy stabilisation fund on the same basis that would have applied if the said Juristic Member had become a “new Owner” of the Immovable Property or Hotel Room.
- 24.7 Notwithstanding the provisions of Articles 24.1 to 24.6 above, an alienation:
- 24.7.1 by way of succession (whether testate or intestate);
- 24.7.2 as a result of a divorce or dissolution of a marriage or civil or customary union and where the Immovable Property or share therein is acquired by a “spouse” as defined in the Transfer Duty Act No. 40 of 1949;
- 24.7.3 as a result of any transaction which the Board in its sole and unfettered discretion is satisfied is part of a genuine restructuring of a Members assets;
- 24.7.4 as a result of any transaction where the Board in its sole and unfettered discretion considers it equitable to do so; or
- 24.7.5 as a result of any other transaction which the Members in general meeting agree to exempt from the payment of the Levy stabilisation fund contribution,
- shall not give rise to an obligation to make a contribution to the aforesaid Levy stabilisation fund.
- 24.8 In those instances referred to in Article 24.7 where the obligation to make a contribution to the Levy stabilisation fund does not arise the Board shall also be entitled in its sole and unfettered discretion to waive payment of any private sales contribution and/or branding, administration and marketing charges which may be payable to the Association.

25. LIMITATION OF LIABILITY AND INDEMNITY

- 25.1 Subject to the provisions of the Act, and in particular Sections 75, 76 and 77 of the Act and the common law, no Director shall be held liable for any loss, damages or costs sustained by the Association whilst the Director acted within the course and scope of his duties or in the furthering of the interests of the Association, unless the loss, damages or costs occur as a consequence arising from an act or omission that constitutes wilful misconduct or wilful breach of trust on the part of the Director.
- 25.2 In accordance with the provisions of Section 78(4) of the Act, the Association may:
- 25.2.1 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Association; and

- 25.2.2 directly or indirectly indemnify a Director for the expenses referred to in Article 25.2.1, irrespective of whether it has advanced those expenses, if proceedings are abandoned, exculpate the Director or arise in respect of any liability other than liability referred to in Section 78(6) of the Act.
- 25.3 In accordance with Section 78(5) of the Act, the Association may indemnify a Director in respect of any liability, except liability provided for in Section 78(6) of the Act.
- 25.4 In accordance with Section 78(7) of the Act, the Association may purchase:
- 25.4.1 insurance to protect a Director against liability or expenses for which the Association may indemnify a Director in terms of this Article 24;
- 25.4.2 insurance to protect the Association against any contingency, including expenses or liability against which the Association is permitted to indemnify a Director.
- 25.5 The provisions of this Article 25 shall apply *mutatis mutandis* in respect of any former Director, Alternate Director, prescribed officer, or member or former member of any committee of the Board.

26. SECTIONAL TITLE, FRACTIONAL OWNERSHIP AND SHARE BLOCK SCHEMES: ASSIGNMENT OF POWERS AND FUNCTIONS AND RULES

- 26.1 The Association may on good cause 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 reasonably require be delegated to it by the relevant Body Corporate, and those functions imposed in terms of Sections 13, 15 and 19 of the Share Blocks Control Act as the Association may reasonably require be delegated to it by a Share Block Company, in relation to any sectional title or share block scheme on the Estate, but is not obliged to do so. In addition to the foregoing any controlling body of any scheme operating on the Estate shall, when requested by the Board to do so, assign such powers and functions to the Association as the Association may require be delegated to it. The provision of this Article shall not apply in respect of any Immovable property owned by a Hotel Member.
- 26.2 The rules of any sectional title scheme established within the Estate shall be aligned with and at all times be subservient to and in no way shall conflict with this Memorandum and any Conduct Rules of the Association and in the event that there is any conflict between the rules of a sectional title scheme and this Memorandum or the Conduct Rules, the provisions of this Memorandum and the Conduct Rules shall prevail.
- 26.3 It shall be the responsibility of the Body Corporate of each sectional title scheme within the Estate to furnish the Association with copies of its applicable Management and Conduct Rules and any amendments thereto on an ongoing basis together with copies of its management accounts and annual financial statements immediately upon request by the Association.
- 26.4 Where obligations are imposed on any Body Corporate of any sectional title scheme within the Estate in terms of this Memorandum or any Conduct Rules, the relevant Owners/Members comprising that Body Corporate shall be jointly liable as members of the Body Corporate to give effect to and comply with such obligations.

- 26.5 No Body Corporate of any sectional title scheme within the Estate shall pass any Rule in conflict with this Memorandum or any Conduct Rule and/or regulation made in terms thereof and all rules made by any sectional title Body Corporate shall require the prior written approval of the Association before being adopted by the Body Corporate.
- 26.6 An Owner of a sectional title Unit within the Estate shall pay a Levy to both the Body Corporate of such sectional title scheme and the Association.

27. CONDUCT RULES

- 27.1 The Board 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 purpose of giving proper effect to the provisions of this Memorandum and for any other purpose which powers shall include the right to impose reasonable penalties upon those Members who fail to comply with the provisions of this Memorandum or the Conduct Rules, provided that:
- 27.1.1 such power shall be exercised subject to the provisions of this Memorandum and any restriction or direction of the Association which may be given at a general meeting;
- 27.1.2 such power shall be exercised in the interests of the Estate, and the Board may expeditiously make, substitute, add to, amend or repeal any Conduct Rule to facilitate or control or manage the use and enjoyment of the Estate but may not make, substitute, add to, amend or repeal any Conduct Rule unless Members are given at least 30 (thirty) days written notice of the Boards intention to do so.
- 27.1.3 if the temporary suspension, variation or introduction of any conduct rule is necessitated by an emergency situation, the Board may resolve to immediately suspend, vary or introduce such conduct rule for such period as the Board in its sole discretion determines is reasonable and necessary but not beyond a general meeting of the Association unless at the general meeting the suspension, variation or introduction and the period thereof is approved by way of an Ordinary Resolution of the Members.
- 27.2 In no way detracting from the generality of the Board's powers outlined in Article 17, the Board may from time to time make Conduct Rules which shall include, but not be limited to, the following matters:
- 27.2.1 the preservation of the natural environment;
- 27.2.2 vegetation and fauna and flora on the Estate;
- 27.2.3 the use of the Association's common property by Members and guests;
- 27.2.4 the right to keep animals, reptiles and birds, or creatures of any nature;
- 27.2.5 the use of the Association's immovable and/or movable property, recreation and entertainment areas and amenities or facilities and the right to make a reasonable charge for such use;

- 27.2.6 the use of Immovable Property within the Estate as commercial or business premises;
- 27.2.7 the placing of objects upon the outside of buildings including the power to remove any such objects;
- 27.2.8 the storing of flammable and other harmful substances;
- 27.2.9 the conduct of any persons within the Estate and the prevention of nuisance of any nature to any Member;
- 27.2.10 subject to the provisions of Article 29.5.2, the use maintenance, management, administration and control of Common Areas, recreational areas, Roads, road frontages, parking areas, verges, pathways and the like;
- 27.2.11 where an Immovable Property is owned in undivided shares by more than one Owner the use of such Immovable Property by co-Owners thereof and their rights *inter se*;
- 27.2.12 where Immovable Property is owned by a Juristic Person, the use of such Immovable Property by the shareholders, members, trustees or beneficiaries, as the case may be, and their rights *inter se*;
- 27.2.13 the design guidelines for the establishment, installation and maintenance of gardens, excluding Hotel properties;
- 27.2.14 the use, upkeep, aesthetics and maintenance of Immovable Properties;
- 27.2.15 the number of residents allowed to reside in any Immovable Property;
- 27.2.16 the imposition of fines and other penalties to be paid by Members;
- 27.2.17 leasing of Immovable Property;
- 27.2.18 access to the Estate;
- 27.2.19 the appointment of estate agencies and estate agents and any other Service Providers by Members, including but not limited to relevant appointment criteria, period of appointment, number of agencies and agents and portion of commission payable to the Association;
- 27.2.20 private sales of Immovable Property by Members, provided that:
 - 27.2.20.1 Members can sell privately; and
 - 27.2.20.2 Members must use the standard Association sale agreement;
- 27.2.21 the recovery by the Association of branding, administration and marketing charges on the disposal of any Immovable Properties for its role in the management and administration of the sales process;
- 27.2.22 the placing or fixing of ornamentation or embellishments on the outside of buildings in the Estate, including the power to remove such objects;
- 27.2.23 the maintenance of the stormwater system by Members on their Immovable Property;

- 27.2.24 the control of commercial or business premises in the Estate (excluding the Hotel) and the use of Immovable Properties in the Estate;
- 27.2.25 the provision of security within and the right to control reasonable access to and from the Estate;
- 27.2.26 the control of signage of any kind;
- 27.2.27 the formulation of directives concerning processes to be followed regarding internal dispute resolution between Members and the Association;
- 27.2.28 the safety and other regulations applicable to the playing of any sport or engagement in any other recreational activity, including the control of the use of drones within the Estate;
- 27.2.29 rules that may become applicable or necessary from time to time to effectively discharge all of the obligations of the Association as the “responsible party” under the Protection of Personal Information Act No. 4 of 2013 and also the prescriptions of the Promotion of Access to Information Act No. 2 of 2000 for the proper protection, processing, control of and access to the personal information of its Members and any other data that may come under its control; and
- 27.2.30 any such matters as may in the opinion of the Board require to be regulated from time to time.
- 27.3 Any Conduct Rule made by the Board must be approved by a majority of Directors appointed by the Hotel Members, which approval shall not be unreasonably withheld.
- 27.4 The Board must publish any Conduct Rule made by the Board in terms of this Article 27 and approved in terms of Article 27.3, by delivering a copy of that Conduct Rule to each Member by electronic notice as provided for in this Memorandum.
- 27.5 Any Conduct Rule made by the Board and approved in terms of Article 27.3, will take effect immediately upon being passed by the Board or on such other date determined by the Board and Members duly notified by electronic notice as soon as reasonably possible after the date on which it has been approved and adopted by the Board and shall be binding on Members on an interim basis until put to the vote of Members at the next general meeting of Members and shall become binding on a permanent basis if ratified by Members by Ordinary Resolution but shall cease to be binding on Members if not so ratified.
- 27.6 Any Conduct Rules made by the Board shall be reasonable and shall, subject to the provisions of this Memorandum, apply equally to and be binding on all Members or “class” of Members as the case may be as well as any lessee, occupant, invitee, employee, member of any Member’s family and any other person coming onto the Estate by invitation of or at the instance of a Member.
- 27.7 The Conduct Rules made by the Board from time to time in terms of the powers granted to it shall be binding on all Members and each Member undertakes to the Association that he/she/it (including its members, shareholders, trustees, beneficiaries, tenants and invitees) shall comply with all Conduct Rules made by the Board.

- 27.8 The Board may, in the name of the Association, enforce the provisions of any of the Conduct Rules by proceeding with an application to a Court of competent jurisdiction and for this purpose shall be entitled to appoint such attorneys and/or advocates as it may deem fit.
- 27.9 The Conduct Rules of the Association are binding between the Association and each Member, among the Members, between the Association and each Director and between the Association and each Board Committee member. Each Member shall therefore observe all Conduct Rules of the Association and, to the best of his ability, further the objects and interests of the Association.
- 27.10 A Member or any other occupier of Immovable Property must not:
- 27.10.1 contravene the provisions of any law or by-law relating to the use of Immovable Property;
- 27.10.2 contravene the conditions of title applicable to the Immovable Property;
- 27.10.3 construct or place any structure or building improvement on a Common Area.
- 27.11 No business or any part thereof shall be conducted from an Immovable Property (other than a Hotel or any other Immovable Property specifically zoned for commercial or business use) without the prior written consent of the Association and provided further that all conditions of the relevant Town Planning Scheme, environmental authorisations and plans, by-laws and/or title deeds have been complied with.
- 27.12 Members shall not interfere with nor give instructions to any officers, employees, agents, Service Providers or contractors of the Association.

28. ENFORCEMENT OF CONDUCT RULES

- 28.1 The Board may take or cause to be taken any steps as it may consider necessary to remedy the breach of any Conduct Rules of which a Member may be guilty and debit the costs of so doing to the Member concerned which amount shall be deemed to be added to and be a part of the Levy owing by the Member to the Association. In addition, the Board may impose a system of fines or other penalties. The amount of such fines and/or penalties shall be determined by the Board from time to time.
- 28.2 In the event of any breach of the Conduct Rules by any guests, invitees, Service Providers or other persons coming onto the Estate by invitation of or at the instance of the Member, such breach shall be deemed to have been committed by the Member concerned and the Board shall be entitled to take such action as it may deem fit against such Member. Without prejudice to the foregoing, the Board may take or cause to be taken such steps against the person actually committing the breach as it may deem appropriate in terms of this Memorandum or otherwise in law.
- 28.3 The provisions of this Memorandum and any Conduct Rules shall be binding on all members of the Member's household, or his invitees, lessees, employees or any other person coming onto the Estate by invitation of or at the instance of the Member as if they were Members of the Association.

- 28.4 Notwithstanding the foregoing, the Board 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 it may deem fit.
- 28.5 For the enforcement of this Memorandum or any of the Conduct Rules of the Association, the Board may give notice to a Member to remedy any breach within a time period deemed reasonable by the Board and, if the breach is not remedied within the time period afforded to the Member concerned, in its sole discretion:
- 28.5.1 call for an explanation and/or an apology; and/or
 - 28.5.2 withdraw any consent previously given in respect of the matter in question; and/or
 - 28.5.3 cause to be taken such steps as it may consider necessary to remedy the breach and debit the cost of doing so to the Member, which shall then be deemed to be a Debt owing by the Member to the Association; and/or
 - 28.5.4 in the name of the Association, enforce the provisions of any Conduct Rule by any application and/or action in a Court of competent jurisdiction and for this purpose may appoint such attorneys or counsel as it may deem fit; and/or
 - 28.5.5 impose penalties in respect of the breach of any Conduct Rule as the Board deems fit.
- 28.6 In the event of any Member being in persistent or flagrant breach of this Memorandum or any of the Conduct Rules the Board may take such action, including proceedings in Court, as it may deem fit.
- 28.7 Any Member who is in continuing breach of this Memorandum or any of the Conduct Rules will be deemed to be guilty of a separate breach for every 24 (twenty four) hours or part of such period during which the breach continues.
- 28.8 The Association shall be entitled, in its sole and absolute discretion to refuse its written approval to the sale, alienation, mortgage, transfer or cession of any Immovable Property unless and until the provisions of this Memorandum and the Conduct Rules have been complied with by the Member.
- 28.9 In the event of any person disputing the fact that he has committed a breach of any of the Conduct Rules or this Memorandum, then the following procedure shall be followed and implemented:
- 28.9.1 a committee comprising such persons determined and appointed by the Board for the purpose, shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the Chairman of the Board may direct;
 - 28.9.2 the committee shall comprise of at least 1 (one) Member of the Board and such other parties as the Chairman of the Board may appoint who need not necessarily be Members of the Association or Directors of the Board;
 - 28.9.3 the committee shall convene a meeting to adjudicate upon the issue and in doing so consider the Member's written representations within a period of 10

(ten) Days, or as soon as reasonably possible, after receipt of the Members dispute notice which shall incorporate the Members written representations;

28.9.4 the decision of the Committee shall be final unless objected to in writing by the Member within a period of 10 (ten) Days of the date of the Member being notified of its decision;

28.9.5 should the Member refuse to accept the decision of the committee on any matter, such dispute shall then be referred to arbitration in terms of Article 31.

28.10 Only after the remedies available to a Member in terms of this Memorandum and the Conduct Rules have been exhausted may a Member lodge such a dispute as provided for in the CSOSA and the dispute resolution provisions of CSOSA will then apply.

29. REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL

29.1 Property Development

Any development of the Estate is subject to, and must comply with, the provisions of the applicable Town Planning Scheme.

29.2 Amenities of the Estate

In order to procure compliance with the nature and amenity of the Estate no building or other structure shall be erected on any Immovable Property and no thing shall be placed on or attached to an Immovable Property any other structure, visible from the outside of the Immovable Property or such other structure, other than in accordance with written approval given by the Association. The Association may, before giving such approval, require that there be lodged with it such description and/or drawing and/or plan as may be necessary, in the opinion of the Association, to enable it to consider the matter. Any approval contemplated herein may be subject to such condition as the Association may deem fit. This Article shall in no way alter or supersede any lawful requirements of or obligations to the Local Authority.

29.3 Common Areas and Environmental Controls

29.3.1 The Association shall be obliged to maintain and control the Common Areas in accordance with the provisions of the Environmental Management Plan as adopted by the Estate as amended from time to time.

29.3.2 In no way detracting from any other Article, a Member shall comply with all provisions contained in any Environmental Authorisation and Environmental Management Plan applicable to the Estate insofar as it affects his Immovable Property and his activities within the Estate.

29.3.3 No Immovable Property within the Estate shall be developed or utilised in any manner save in accordance with the Environmental Authorisation and Environmental Management Plan and in accordance with whatever guidelines are imposed by the Architectural Design Review Committee from time to time.

29.3.4 No transformation of the amenity or commercial development, nor any development or listed or specified activity as contemplated in the National Environmental Management Act 107 of 1998 or its Regulations, may take place

or be conducted or be permitted on the Protected Areas nor may they be used for any purposes other than tracks for walking, running, cycling or disabled persons, temporary structures, common amenities and the maintenance or improvement of the nursery or preservation of the property, and then only if permissible in terms of the Environmental Management Plan.

29.4 **Landscaping**

Save as may otherwise be agreed by the Board, any landscaping on the Estate in respect of Common Areas 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 remove or cut same (save for routine grass cutting or trimming to the extent permitted by ZEMA in terms of the Conduct Rules) 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 Association. Notwithstanding the foregoing the provisions of this Article shall not be binding on the Hotel Members. In the case of Hotel Members, it shall be sufficient that they obtain the consent of the Association to any landscaping plan which they wish to implement.

29.5 **Estate Roads and Open Spaces and Use Thereof**

29.5.1 The Association shall be responsible for the maintenance and upkeep of all Roads and all verges and rights of way within the Estate.

29.5.2 Members and their invitees shall be entitled to use all open spaces as well as Roads on the Estate, subject to such Rules as the Directors may lay down from time to time provided that at all times Members shall have vehicular and pedestrian ingress and egress from their Immovable Property to a public road.

29.5.3 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 Deeds of the Estate, or the transfer of such accesses to a local authority, as public roads.

29.6 **Buildings and Improvements and Maintenance of Buildings**

29.6.1 No building, extension or alteration of an existing building or any other structure shall be built or erected on any Immovable Property other than in accordance with the Town Planning Scheme and plans approved by the Association and the Local Authority.

29.6.2 Any approval by the Association shall be in writing and signed by a duly authorised representative of the Association.

29.6.3 Before giving such approval the Association may require, inter alia, that there be lodged with it:

29.6.3.1 such descriptions and/or drawings and/or plans as may be necessary in the opinion of the Association, to enable it to consider the matter;

29.6.3.2 the title deeds of the Immovable Property;

29.6.3.3 details of construction materials to be used;

29.6.3.4 the payment of a scrutiny fee set by the Association to peruse the aforesaid documentation (which fee shall be set by the Association in its sole and absolute discretion).

29.6.4 Any approval as contemplated herein may be subject to such conditions as the Association may deem fit.

29.6.5 In the event of any building or other structure being erected on an Immovable Property not in accordance with plans approved by the Association as set out in this Article, then in that event the Association shall be entitled to enforce compliance by the Member, at the Member's cost, with the building plans approved by the Association and recover the costs incurred by the Association from the relevant Member.

29.6.6 The exterior of every building shall be maintained and kept in a clean, tidy and neat condition and exterior finishes to comply with the architectural codes. No Member or Body Corporate 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 Association which consent shall not be unreasonably withheld. A Member shall, on receipt of a notice given by the Association, undertake such work as may be specified in such notice relative to such Member's building. Should a Member fail to carry out any work as required by the Association after the Association has given the Member due notice to comply the Association shall be entitled to carry out such work and to recover the reasonable costs thereof from the Member concerned.

29.6.7 In the event of any building being partially or totally destroyed and/or damaged then the Owner shall be liable, at his expense, to:

29.6.7.1 reinstate the building in accordance with the original building plans approved by the Association and the Local Authority or such other building plans approved by the Association or the Local Authority; or

29.6.7.2 repair the damage to the building;

within a period of 18 (eighteen) months of the occurrence of such partial or total destruction in the event of a building being partially or totally destroyed, or within a period of 6 (six) months of the occurrence of any damage to any building subject to any extension of time being granted by the Association and further subject to such conditions as may be imposed by the Association and/or the Local Authority, failing which the Owner shall be liable for the payment of an additional monthly levy to the Association equal to the monthly levy payable by him at the relevant time. The aforementioned levy shall be payable by the Owner to the Association from the first day of the month following the expiry of the relevant period to the date on which the building is reinstated or completed or the damage is repaired as the case may be. The Association shall be entitled, in its sole discretion, to extend and/or waive any of the aforementioned time periods and/or additional Levies on application by any Owner on good cause shown.

29.7 **Occupation of Immovable Property**

Occupation and use of Immovable Property shall, at all times, be in compliance with the Town Planning Scheme and the Conduct Rules and the number of persons occupying an Immovable Property may be determined, in the opinion of the

Association, from time to time. The Association may on good cause determine that any person, not being a Member or person lawfully residing within the Estate, be denied access to the Estate and be required to leave. In the event of Owners wishing to hire out their Immovable Property they shall do so subject to such rules as the Association may, from time to time, lay down with regard to the number of persons occupying the Immovable Property and access to the Immovable Property by intended lessees and subject further to any intended lessees signing such undertaking as may be required by the Association whereby the lessees agree to be bound by the provisions of this Memorandum and the Conduct Rules and any other provisions which the Member may be subject to from time to time. This Article shall not apply to Hotel Members.

29.8 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 or 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.

29.9 Security of Estate

29.9.1 The Association shall be obliged to secure the perimeter of the Estate and to provide such other security, including security within the Estate as it deems appropriate, from time to time, to control egress and ingress to the Estate, so that only Members, lessees of Immovable Property, 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 and shall be entitled to formulate Security and Access Protocols in regard thereto in order to regulate same. 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 they deem fit for the Estate and for any other area for which they are 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.

29.9.2 The Association or persons authorised by it shall be entitled to enter upon any Immovable Property for the purposes of maintaining the security perimeter fence of the Estate, maintaining any other security apparatus or structure and for the purposes of patrolling the Estate for security purposes.

29.9.3 In the event of the Association electing to install security equipment for the surveillance of the perimeter of the estate and the Common Areas all Members shall be obliged:

29.9.3.1 to permit the installation of any such equipment on the boundary of their Immovable Property; and

29.9.3.2 to abide by the terms and conditions as may be laid down by the Board from time to time in respect of such equipment and services.

30. ENFORCEMENT OF OBLIGATIONS OF MEMBERS

Should any Member or any lessee of a Member or guest or invitee of an Member 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 Member concerned, which shall be payable on demand.

31. DETERMINATION OF DISPUTES

- 31.1 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 this Memorandum, the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 30 (thirty) Days, then such dispute or difference shall be submitted to arbitration in accordance with the Rules of Association of Arbitrators (Southern Africa) NPC or its successor, subject to the provisions set out below.
- 31.2 The arbitrator shall be a suitably experienced and qualified attorney or advocate of not less than 10 (ten) years standing.
- 31.3 The parties shall use their best endeavours to reach agreement as to the appointment of the arbitrator.
- 31.4 In the event that agreement cannot be reached within 10 (ten) Business Days after the arbitration has been demanded as to the appointment of the arbitrator, then the arbitrator shall be appointed in accordance with the procedure set out hereunder:
- 31.4.1 The Claimant shall nominate 5 (five) potential arbitrators in writing. The Defendant shall be entitled to accept the nomination of 1 of the 5 (five) arbitrators. That arbitrator shall be the duly appointed arbitrator. Should that arbitrator refuse or fail to accept the appointment, then the process shall be repeated with the remaining 4 (four) arbitrators until an arbitrator acceptable to the Defendant accepts the appointment;
- 31.4.2 Should the Claimant fail to nominate 5 (five) arbitrators or the Defendant fails to accept 1 (one) nomination as envisaged in Article 31.4.1 then either party shall have the right to request the Association of Arbitrators (Southern Africa) NPC or its successor to appoint an arbitrator which appointment shall be final and binding on the parties.
- 31.5 The arbitration proceedings:
- 31.5.1 shall be subject to the application of the law of evidence;
- 31.5.2 shall take place in Durban, KwaZulu-Natal.
- 31.6 The parties shall use their best endeavours to complete the arbitration proceedings within a period of 90 (ninety) Days of the appointment of the arbitrator.

- 31.7 The parties irrevocably agree that the arbitrator's decision:
- 31.7.1 shall, save for manifest error or unless the parties otherwise agree in writing, be final and binding upon them and shall be forthwith carried into effect unless prior to the lapse of 30 (thirty) days from the date of the arbitrator's decision any of the parties lodge a dispute as provided for in the CSOSA in which event the dispute resolution provisions of the CSOSA will then apply and the arbitrator's decision shall then only be capable of being given effect to to the extent that it is not inconsistent with any relief granted or decision made in terms of the CSOSA;
 - 31.7.2 subject to Article 31.7.1, may at the instance of any party hereto be made an Order of Court of competent jurisdiction, provided that such proceedings shall not in any way delay the due execution and carrying into effect of the arbitrator's award.
- 31.8 The arbitrator shall:
- 31.8.1 be entitled to make any award as to costs of the proceedings;
 - 31.8.2 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.
- 31.9 The proceedings in the arbitration shall as far as practicable take place in private and be kept confidential.
- 31.10 Notwithstanding anything to the contrary contained in this Article 31, nothing herein contained shall prevent any of the disputing parties from obtaining interim relief on an urgent basis in proceedings in a court of competent 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 likely to materially prejudice any party hereto and, regard being held to all the circumstances, is of such 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 entitle any party hereto to an urgent interdict against any other party in accordance with the relevant laws applicable.

32. DEVELOPER'S RIGHTS REGARDING ESTATE

- 32.1 The Developer, its successors in title or assigns, shall be entitled to develop any land of which it is the owner in conformity with the Town Planning Scheme, and to sell, transfer, lease or cede same without the approval of the Association first being had and obtained.
- 32.2 It is recorded that a Member may have certain contractual obligations to the Developer in terms of an agreement of sale entered into between the Member and the Developer. Should there be any conflict between the rights and obligations of the Association in terms of this Memorandum and the rights of the Developer in

terms of the aforesaid agreement of sale, the provisions of the agreement of sale (the Developer's rights in terms thereof) shall prevail.

33. DISCLAIMER OF LIABILITY

- 33.1 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 acknowledge 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.
- 33.2 The Association and/or its agents shall not be liable to any Member or any 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 and the Members indemnify the Association and/or its agents against any such claims.
- 33.3 The exclusions of liability and indemnities in this Article 33 will not apply in respect of any loss by a person which is directly attributable to the criminal acts or gross negligence of the Association or any person acting for or controlled by the Association, if the Consumer Protection Act No. 68 of 2008 applies for the benefit of that person.

34. WINDING-UP OF ASSOCIATION

- 34.1 In the event of the Association being wound up, its assets shall devolve upon such other non-profit association, voluntary association or non-profit trust as the Members in such winding-up order determine; provided that such non-profit association, voluntary association or non-profit trust:
- 34.1.1 has aims and objects similar to those of the Association; and
- 34.1.2 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).

35. LEGAL COSTS

In no way detracting from the generality of any other provision of this Memorandum, in the event of the Association incurring any legal costs as a result of any breach of this Memorandum by any Member or incurred as a result of any other dispute with a Member, the Association shall be entitled to recover all such legal costs from such Member on an attorney and own client scale (alternatively the highest permissible scale of legal fees) in full whether or not legal action was actually instituted.

36. NOTICES

- 36.1 The Association may give notices, documents, records or statements or notices of the availability of the foregoing by personal delivery to the Members or by sending them prepaid through the post or by transmitting them by email or facsimile.

- 36.2 The Association shall not be bound to use any particular method of giving notices, documents, records or statements or notices of availability of the foregoing contemplated in this Memorandum, the Act or the Regulations promulgated in terms thereof in respect of which provision is made for deemed delivery, but if the Association does use such a method, the notice, document, record, statement or notice of availability thereof shall be deemed to be delivered on the day determined in accordance with the aforementioned Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given, the provisions of Article 1.7 shall be applied.
- 36.3 Notwithstanding the aforementioned, the giving of notices required for any purposes contemplated in the Act or in the Regulations thereunder is regulated by Table CR 3 (Annexure 3) to the Regulations, a copy of which is attached as Schedule 2 to this Memorandum.
- 36.4 Any notice sent by any means permitted in Table CR 3 aforesaid shall be deemed to have been delivered as provided for that method of delivery in such Table.
- 36.5 Each Member of the Association:
- 36.5.1 shall notify the Association in writing of an address within the Republic of South Africa for the purposes of receiving written notices from the Association which address shall be his registered address for the purposes of receiving written notices from the Association, and if he has not named such address, it shall be considered sufficient for the Association to serve notice at the Immoveable Property owned by the Member within the Estate; and
- 36.5.2 may notify the Association in writing of an email address and/or facsimile number which address shall be his address for the purposes of receiving notices by way of Electronic Communication.
- 36.6 A Member who has provided the Association with an electronic address will be deemed to have authorised the Association to use that address for the purpose of giving notices, documents, records, statements or notices of availability of the aforementioned to him and confirms that same can be conveniently printed by the Member within a reasonable time at a reasonable cost
- 36.7 Any Member whose address is an address that is not within the Republic of South Africa shall be obliged, from time to time and upon request, to furnish the Association with an address within the Republic of South Africa at which notices can be served upon him and the Association shall be entitled to have notices served upon him at such address and if he does not name such address it shall be considered sufficient for the Association to serve notice at the Immoveable Property owned by the Member in the Estate. Save as provided for in this Memorandum, no Member other than a registered Member whose address appears in the register of Members as being in the Republic of South Africa, shall be entitled to receive any notice from the Association.
- 36.8 Any notice required to be given by the Association to Members and not expressly prohibiting the provisions of this Article from applying shall be sufficiently given if given by posting it on the Association's website until at least the date when the event to which the notice refers occurs.

36.9 The failure to give notice to any Member or the failure of any Member or the failure of any Member to receive a notice shall not vitiate any proceedings of the Association.

37. FUNDAMENTAL TRANSACTIONS

37.1 As contemplated in item 2(1) of Schedule 1 to the Act, the Association may not:

37.1.1 amalgamate, merge with or convert to a profit company; or

37.1.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Association.

37.2 Any proposal to:

37.2.1 dispose of all or the greater part of its assets or undertaking; or

37.2.2 amalgamate or merge with another non-profit company,

must be submitted to the voting Members for approval in a manner comparable to that required of profit companies in accordance with sections 112 and 113 of the Act respectively.

37.2.3 Sections 115 and 116 of the Act, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in Article 37.2.

38. PROTECTION OF PERSONAL INFORMATION ACT

38.1 Members:

38.1.1 acknowledge that the Association will collect the Member's personal information, including but not limited to name(s), identity numbers, registration numbers, birth dates, email addresses, physical addresses, postal addresses, telephonic numbers, geographic locations and other correspondence which may be private and/or confidential;

38.1.2 acknowledge that the Association will use the personal information for the purposes of use in all matters pertaining to the Member as an Owner in the Estate;

38.1.3 consent to the Association processing the Member's personal information, including but not limited to collecting, recording, organising, disseminating and making the personal information available for the uses set out in clause 38.1.2 above;

38.1.4 consent to the Association collecting the Member's aforementioned personal information directly from the Member and from any other source;

38.1.5 consent to the Association retaining records of the Member's aforementioned personal information for so long as they, in their sole discretion, deem it necessary to do so;

38.1.6 accept the contents of this consent as adequate notification of the collection and processing of the Member's aforementioned personal information by the Association and consents to the Association not providing full notification in terms of Section 18 of the Protection of Personal Information Act No. 4 of 2013 which consent is permitted in terms of Section 18(4) of that Act.

39. ZIMBALI COUNTRY CLUB

Membership of the Zimbali Country Club shall be compulsory for all Owners who shall be bound by the constitution and rules of the Zimbali Country Club and liable for all and any subscriptions, entrance fees and debentures payable to the Zimbali Country Club by virtue of such membership in addition to all amounts payable to the Association. This Article shall not have retrospective effect.

Table CR 3 (Annexure 3) to the Companies Regulations – Methods and Times for Delivery of Documents (in terms of Regulation 7)

A notice or document to be delivered for any purpose contemplated in the Act or the Regulations promulgated in terms thereof may be delivered in any manner set out in this Table. Subject to regulation 7(2)(b) of the Act, a document delivered by a method listed in the second column of this Table will be deemed to have been delivered to the intended recipient on the date and at the time shown opposite that method, in the third column of the table.

Nature of person to whom the document is to be delivered	Method of delivery	Date and time of deemed delivery
ANY PERSON	By faxing the notice or a certified copy of the document to the person, if the person has a fax number; or	On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.
	By sending the notice or a copy of the document by electronic mail, if the person has an address for receiving electronic mail; or	On the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time.
	By sending the notice or a certified copy of the document by registered post to the person's last-known address; or	On the 7th day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.
	By any other means authorised by the High Court; or	In accordance with the order of the High Court.
	By any other method allowed for that person in terms of the following rows of this Table.	As provided for that method of delivery.
ANY NATURAL PERSON	By handing the notice or a certified copy of the document to the person, or to any representative authorised in writing to accept service on behalf of the person; or	On the date and at the time recorded on a receipt for the delivery.
	By leaving the notice or a certified copy of the document at the person's place of residence or business with any other person who is apparently at least 16 years old and in charge of the premises at the time; or	On the date and at the time recorded on a receipt for the delivery.
	By leaving the notice or a certified copy of the document at the person's place of employment with any person who is apparently at least 16 years old and apparently in authority.	On the date and at the time recorded on a receipt for the delivery.

Nature of person to whom the document is to be delivered	Method of delivery	Date and time of deemed delivery
THE TRIBUNAL	By entering the required information in an electronic representation of that form on the internet website, if any, maintained by the Tribunal, if the document is a prescribed form; or	On the date and at the time recorded by the Tribunal's computer system, as verified by fax reply to the sender of the information.
	By transmitting the document as a separate file attached to an electronic mail message addressed to the recording officer of the Tribunal; or	On the date and at the time recorded by the Tribunal's computer system, unless, within 1 business day after that date, the recording officer advises the sender that the file is unreadable.
	By sending a computer disk containing the document in electronic form, by registered post addressed to the recording officer of the Tribunal; or	On the date and at the time of delivery of the registered post to the recording officer of the Tribunal, as recorded by the post office, unless, within 1 business day after that date, the recording officer advises the sender that the disk is unreadable.
	By handing the document, or a computer disk containing the document in electronic form, to the recording officer of the Tribunal.	On the date and at the time noted in a receipt issued by the recording officer of the Tribunal unless, the document is on a computer disk, and, within 1 business day after that date, the recording officer advises the sender that the disk is unreadable.
THE COMMISSION	By entering the required information in an electronic representation of that form on the internet website, if any, maintained by the Commission, if the document is a prescribed form; or	On the date and at the time recorded by the Commission's computer system, as verified by fax reply to the sender of the information.
	By transmitting the document as a separate file attached to an electronic mail message addressed to the Commission; or	On the date and at the time recorded by the Commission's computer system, unless, within 1 business day after that date, the Commission advises the sender that the file is unreadable.
	By sending a computer disk containing the document in electronic form, by registered post addressed to the Commission; or	On the date and at the time of delivery of the registered post to the Commission, as recorded by the post office, unless, within 1 business day after that date, the Commission advises the sender that the disk is unreadable.
	By handing the document, or a computer disk containing the document in electronic form, to the Commission, or a responsible employee who is apparently in charge of the Commission's office.	On the date and at the time noted in a receipt issued by the Commission unless, the document is on a computer disk, and, within 1 business day after that date, the Commission advises the sender that the disk is unreadable.

Nature of person to whom the document is to be delivered	Method of delivery	Date and time of deemed delivery
A COMPANY OR SIMILAR BODY CORPORATE	By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within the Republic; or	On the date and at the time recorded on a receipt for the delivery.
	If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business.	On the date and at the time sworn to by affidavit of the person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
THE STATE OR A PROVINCE	By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.	On the date and at the time recorded on a receipt for the delivery.
A MUNICIPALITY	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any person acting on behalf of that person.	On the date and at the time recorded on a receipt for the delivery.
A TRADE UNION	By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union or for the purposes of section 13(2), if there is a union office within the magisterial district of the firm required to notify its employees in terms of these Regulations, at that office.	On the date and at the time recorded on a receipt for the delivery.
	If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.	On the date and at the time sworn to by affidavit of the person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
EMPLOYEES OF FIRM	By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.	On the date and at the time sworn to by affidavit of the person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
A PARTNERSHIP, FIRM OR ASSOCIATION	By handing the notice or a certified copy of the document to a person who is apparently in charge of the premises and apparently at least 16 years of age, at the place of business of the partnership, firm or association; or	On the date and at the time recorded on a receipt for the delivery.

Nature of person to whom the document is to be delivered	Method of delivery	Date and time of deemed delivery
	If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.	On the date and at the time recorded on a receipt for the delivery.
A STATUTORY BODY OTHER THAN THE COMMISSION AND TRIBUNAL	By handing the notice or a certified copy of the document to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body.	On the date and at the time recorded on a receipt for the delivery.