



**MEMORANDUM OF
INCORPORATION
OF THE
BOULEVARD, ZIMBALI LAKES
OWNERS ASSOCIATION NPC**

[This Association is constituted to undertake the functions and obligations assigned to the Association, and to protect and advance the interests of owners of immovable property in The Boulevard, Zimbali Lakes. This Memorandum acts as the Constitution of the Association and shall moreover serve as, and in lieu of, the Management Rules of each of the Bodies Corporate mentioned herein]

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1. DEFINITIONS AND INTERPRETATION

1.1 In this Memorandum, the following words and expressions shall, unless the context clearly indicates otherwise, have the following meanings:

Act	The Sectional Titles Act, No. 95 of 1986, as amended from time to time and any regulations made and in force thereunder, and subsequent to the date of its coming into effect, the Sectional Titles Schemes Management Act, 2011 (Act 8 of 2011) as amended from time to time, and any regulations made and in force thereunder. Any reference to a section of the Act herein shall, subsequent to said date, be deemed to be a reference to a corresponding section in the latter act.
Agreement of Sale	The agreement under which Property, or the bare dominium or a share therein or a Right in respect thereof is sold or purchased.
Alienation	To divest of ownership of a Property, or the bare dominium of a Property, or a share thereof, or a Right in respect thereof by way of a sale, exchange, donation, deed, endorsement, reservation, cancellation, intestate- or testate succession, cession, assignment, court order, insolvency, liquidation, prescription, or expropriation, and irrespective of whether the Alienation is subject to a suspensive or resolutive condition, and 'Alienate' or 'Alienating' shall have a corresponding meaning, provided that it shall be deemed to be an Alienation when a company, close corporation or trust that owns a Property nominates a new Nominated Occupant/s in respect of the Property, without the simultaneous transfer of the Property, or a Lease in respect thereof, and 'Deemed Alienation' shall have a corresponding meaning.
Architectural Guide	The Architectural Guide adopted for the Association as referred to in clause 39 of this Memorandum, as contained in the Design Guides.
Association	Boulevard Owners Association NPC (registration number: 2009/021466/08), incorporated as a Non-Profit company as defined in the Companies Act and a member association of the ZLR.
Associated Companies	means SPDSA (Pty) Ltd (Registration Number: 2017/490767/07), SPDSA Dev Co (Pty) Ltd (Registration Number: 2007/026479/07, Emboss Properties (Pty) Ltd (Registration Number: 1997/001187/07) and KWJD Legacy Developments (Pty) Ltd (Registration Number: 2021/876378/07) and/or any of their associated companies, holding companies or subsidiaries of the joint venture partners, its successor/s in title
Body Corporate	A Body Corporate of a Scheme in Boulevard, as described in section 36(1) of the Act.
Bodies Corporate	The Bodies Corporate of Boulevard or such additional bodies corporate as may be created, jointly or individually, as the context may indicate.
Boulevard	The proposed mixed use development on portions 303, 304, 305, 306, 307, 308, 310, 315, 316, 317, 318, 319, 320, 322 and 324 of Remainder Erf 1 Zimbali Lakes, to be known as Boulevard, Zimbali Lakes, consisting of residential Units, Hotel Suites and/or Units, retail and commercial facilities.

Budget	An estimate, per line item, of the anticipated income and expenses of the Association during the ensuing Financial Year.
Business Day	Every weekday other than a Saturday, Sunday, or proclaimed public holiday.
Chairperson	The Chairperson for the time being of the Board of Directors.
Clearance Certificate	A certificate required by an Owner wishing to Alienate Property in Boulevard and issued by the ZLR on receipt of the ZSC and ZFM Consent, which must be obtained prior to ZLR issuing the said clearance, as provided for in the ZLR Constitution.
Common Amenities and Facilities	Such common areas situated within Boulevard and the common amenities, services and facilities available to Residents as are referred to and stipulated in clause 6 of this Memorandum.
Common Property	The Common Property as defined in the Act of a Scheme and/or of the Schemes.
Companies Act	The Companies Act No. 71 of 2008, as amended.
Conduct Rules	The Conduct Rules adopted for the Association as referred to in clause 39 of the Memorandum and any conduct rules adopted by the Bodies Corporate, as the case may be, subject to prior approval by the ZLR and Association.
Developer/s	Zimbali Resort Developments Joint Venture Partnership, between Zimbali Land Developments Proprietary Limited (Registration Number: 1996/016290/07) and Zimbali Hotels & Resorts South Africa Proprietary Limited (Registration Number: 2003/023856/07) and/or any of the associated companies, holding companies or subsidiaries of the joint venture partners, or its successor/s in title with respect to the development of a Scheme or Schemes on any one of the Sub-divisions comprising Boulevard, including the Associated Companies.
Developer Director	A Director appointed by the Developer during the Development Period.
Development Manual	The Zimbali Lakes Resort Development Manual, as amended and added to from time to time by the Developer during the Development Period.
Development Period	The period from the date of signature of this Memorandum by the Developer until the Transfer Date upon which the Developer passes transfer of the last of its Properties in the Resort to an independent third party purchaser thereof.
Exclusive Use Area	An Exclusive Use Area as defined in the Act.

Fair Market Value	In respect of a Property, is the amount at which a willing seller would sell and a willing buyer would buy it, which amount shall be determined by the Directors, and in determining the amount the Directors may in their sole discretion accept the Sale Price (if any), including VAT and agent's commission, as the Fair Market Value or rely upon the valuation/s of a third party or parties, irrespective of whether such party or parties is or are sworn appraiser/s or not: Provided that if the Transferor disputes the amount in writing, the Directors shall appoint a sworn appraiser at the cost of the Transferor to determine the Fair Market Value, which determination shall be binding upon the Transferor and the Association.
Financial Institution	A financial institution as defined in section 1 of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001.
Financial Year	The period from 1 October each year to the last day of September of that year.
Governing Rules	The Governing Rules to govern, amplify and/or implement the provisions of the ZLR Constitution, to be drafted and approved by the Developer and implemented and enforced by the ZLR and the Association.
Hotel	That portion of Boulevard designated as such by the Developer and which is to be operated by the Hotel Operator as a Hotel and includes all the parking, retail and commercial sections, restaurant, back of house and leisure facilities which attach to the Hotel.
Hotel Operator	A Hotel Operator as approved by the Developer in writing from time to time to operate the Hotel.
Hotel Operator Standard	The physical and operational standards that the Developer and its affiliates use for hotels and resorts under management. The Developer's Standard includes Developer brand standards and shall be generally consistent with the standards in actual use in hotels and resorts operated by the Developer with respect to operations, service, furnishing and maintenance, and consistent with the long-term interests of those who purchase a Hotel Unit.
Hotel Unit	A sectional title unit within any Scheme in Boulevard designated by the Developer as part of the Hotel.
In writing	Written, printed or lithographed, or partly one or partly another and other modes of representing or producing words and/or figures in visible form.
Juristic Person/s	A company, close corporation, trust or other legal or juristic person (excluding the body corporate of a sectional title scheme).
Lakes Stabilisation Levy	The contribution or Levy payable by a Member to the ZLR, equal to 2% (two percent) of the Fair Market Value of the Property at the Alienation of his or her Property, the bare dominium thereof or a share therein or a Right in respect thereof, capped at a maximum amount of R250 000.00 (Two Hundred and Fifty Thousand Rand), or such other amount as the ZLR may determine from time to time, save as recorded in this Memorandum as it relates to the sale of a commercial venture, or an interest therein, as a going concern.

Landscaping Guide	The Landscaping Guide adopted by the ZLR for Boulevard, and as referred to in the Design Guides.
Lessee/s	The lessee/s of a Property, approved in writing by the Directors.
Lease	A written agreement pursuant to which an Owner parts with possession of his or her Property to a Lessee for a determined period of time exceeding 30 calendar days against payment of an agreed rental.
Levy	The monthly contributions payable by the Members to the Association, ZLR, relevant Body Corporate or the Lakes Stabilisation Levy payable by Owners as contemplated herein, as the case may be.
Levy Clearance Certificate	A certificate required by a Member wishing to Alienate Property in Boulevard and issued by the Association which consent certificate will not be issued until the relevant body corporate has provided its levy clearance certificate to the Association.
Management Participation Quota	The Management Participation Quota of a Section shall be a percentage expressed to four decimal places, and arrived at by dividing the floor area of the Section as indicated on the relevant sectional plan, correct to the nearest square meter, by the floor area of all the Sections in Boulevard, correct to the nearest square meter. The Quota so determined may be calculated and adjusted (where necessary) by the Directors once a year at the beginning of the Financial Year, in terms of the provisions of the Act.
Local Authority	KwaDukuza Municipality, its successors in title or assigns, having jurisdiction over the Resort.
Manager	A person as may be appointed by the Directors as an employee of the Association in terms of this Memorandum.
Managing Agent	Any person or entity as may be appointed by the Developer, during the Development Period, and thereafter by the Board of the Association, as an independent contractor to undertake any or all of the management functions of the Association, this Association and/or any Body Corporate in the Resort, subject to and in terms of the provisions of the ZLR Constitution and as may moreover be appointed in terms of clause 40 of this Memorandum.
Member	A Member of the Association as described in clause 4 of this Memorandum.
Month	A calendar month.
Nominated Occupant	The Occupant of a Property nominated in writing by the Owner or Transferee of the Property and approved in writing by the Directors: provided that there shall always be a Nominated Occupant for a Property, with the Owner being the Nominated Occupant in the event that the Property is not let to a Lessee.
Notarial Servitude/s	The various servitudes of right of way, access, encroachment and use and the additional rights and duties as may be applicable or required, as concluded or to be concluded between the ZLR and the Association and/or the Bodies Corporate as directed or prescribed by the Developer in its discretion.

Office	The <i>domicilium citandi et executandi</i> of the Association as determined from time to time in terms of clause 2(6) of this Memorandum.
Ordinary Resolution	At any general meeting an ordinary resolution put to the vote shall be decided on an ordinary majority of Members present or represented, and eligible to vote, provided that such provisions shall apply to the Association in its entirety in respect of every such resolution, and not to Bodies Corporate individually.
Owner	The registered owner of a Property in Boulevard, from time to time, who shall at all times be a Member of the Association and shall include a company, partnership, Directors of a trust, or other association of persons entitled in law to hold title to immovable property.
Plan	The lay-out plan attached to this Memorandum as Annexure A, depicting the entire Resort.
Prime Rate	The prime bank overdraft rate of interest charged by Nedbank Limited or its successor/s from time to time and more commonly known as its prime rate (in the case of a dispute, the rate may be certified by any manager or assistant manager of any branch of the said bank whose certificate shall be final and binding on the Association or Owner, as the case may be).
Property	Any Subdivision within Boulevard, whether such Subdivision is improved or not, and a sectional title Unit under the provisions of the Act, where a sectional title scheme has been established on any such Subdivision.
Registered Auditor	A person or firm registered as an auditor with the Independent Regulatory Board of Auditors established in terms of section 3 of the Auditing Profession Act, No. 26 of 2005.
Registered Mortgagee	Any mortgagee of whom the Association has been notified in writing as provided in section 44(1)(f) of the Act.
Registration Date	The date the Owner became the registered owner of the Property, or the bare dominium thereof or share therein, or the date the Right was registered, endorsed or cancelled in the Deeds Registry.
Resident/s	The Owner, Nominated Occupant/s, Lessee/s or other occupant/s of a Property, approved in writing by the Directors.
Resort	The entire extent of the Zimbali Lakes Resort, which comprises of the area outlined in red on the Plan, comprising all of the immovable property therein contained, and including such additional immovable property as may be incorporated into the Resort at the Developer's discretion, including any subdivision of properties in the Resort but excluding any property which is owned by the Local Authority (or which otherwise constitutes a public road) or is excluded by the Developer.
Design Guides	The Architectural Guidelines, the Landscaping Guide and the Sustainability Guidelines prepared by the Developer and enforceable as part of the ZLR Governing Rules.
Right	A long term lease agreement, or a personal servitude of usufruct, <i>usus</i> or <i>habitatio</i> to be registered in the Deeds Registry in respect of a Property or the cancellation of such Right.

Sale Price	The sale price or purchase price of a Property, the bare dominium thereof or a share therein or in respect of a Right, as disclosed in the Agreement of Sale, with such price to include VAT (if applicable) and agent's commission.
Scheme	A sectional title scheme as defined in the Act, being a Scheme on a Sub-division in Boulevard.
Section	A Section in any Scheme in Boulevard, as defined in the Act.
Services	The Services provided at the Hotel or at any other facility in Boulevard, and whether at an additional fee to monthly or other Levies or not.
Special Resolution	A resolution passed at a general meeting of the Association, which complies with the provisions of the Act in respect of a special resolution, provided that such provisions shall apply to the Association in its entirety in respect of every such resolution, and not to Bodies Corporate individually, and subject always to the ZLR Constitution and the Governing Rules.
Spouse	The spouse, wife, common law wife, husband, common law husband, or lifelong companion of a Resident and as may be defined in applicable legislation.
Sustainability Guidelines	The Guidelines related to the sustainable use of resources, as adopted by the ZLR from time to time in terms of the Design Guides.
Sub-division	Any portion of freehold property in The Boulevard, capable of separate, individual, legal ownership.
Transfer Date	The date of registration of the transfer of a Property, or the bare dominium thereof or share therein, or a Right in respect thereof from or by the Transferor to a Transferee, or where applicable, the date when the Right is cancelled.
Transferee	The person or Juristic Person to whom a Property, the bare dominium thereof or a share therein, or Right in respect thereof, is Alienated or transferred or in whose favour the Right is reserved.
Transferor	The Owner, the executor of his or her estate or any other person Alienating or transferring the Property, the bare dominium thereof or a share therein or a Right in respect thereof.
Director	A Director for the time being, a member of the Board of Directors
Directors	The Board of Directors of the Association.
Unit/s	In relation to a sectional title scheme shall mean a Section together with its undivided share in the common property of that particular sectional title scheme apportioned to that Section in accordance with the Management Participation Quota of such Section.
(the) Undertaking	The written letter of undertaking to secure the payment of the Lakes Stabilisation Levy to the ZLR on registration of transfer or Alienation of a Property, to be provided to the ZLR by the conveyancers attending to such registration of transfer or Alienation of a Property.

Unanimous Resolution	A resolution passed at a general meeting of the Association, which complies with the provisions of the Act in respect of a Unanimous Resolution, provided that such provisions shall apply to the Association in its entirety in respect of every such resolution, and not to Bodies Corporate individually, and subject always to the ZLR Constitution and the Governing Rules.
Vice-Chairperson	The Vice-Chairperson for the time being of the Board of Directors.
Year	A calendar year.
ZFM	Zimbali Facilities Management (Pty) Ltd with registration number: 2018/110668/07, a private company established by the Developer to own, operate and manage utilities in the Resort, a Member Association.
ZLR	The Zimbali Lakes Resort Management Association.
ZLR Constitution	The Constitution of the ZLR, which this Memorandum and the Association shall be subject to at all times.
ZSC	The Zimbali Sports Club (Pty) Ltd with registration number: 2018/561978/07, a Member Association.
ZSC and ZFM Consent	The written consent required from the ZSC and the ZFM, respectively prior to the issue by the ZLR of a Clearance Certificate.
ZSC Membership	the member base of the ZSC shall comprise, but not be limited to the following groups, being Owners or Residents of Zimbali Lakes Resort, owners or residents of Zimbali Coastal Resort, voluntary members, commercial, corporate members and members from outside either of these resorts. Each such grouping shall be entitled to distinct and different membership options, joining and usage fees, and broader offerings, and subject to rules related to access to and use of facilities at various times, and generally as may be determined by the proprietor of the ZSC from time to time.

- 1.2 The following rules shall apply in respect of the interpretation of this Memorandum:
- 1.2.1 The clause headings are for convenience and shall be disregarded in construing this Memorandum.
- 1.2.2 Unless the context clearly indicates a contrary intention, words importing:
- 1.2.2.1 the singular number only shall include the plural, and the converse shall also apply;
- 1.2.2.2 the masculine gender shall include the feminine, and neuter genders, and the neuter gender shall include the masculine and feminine genders;
- 1.2.2.3 a reference to natural persons shall include legal persons, and the converse shall also apply.
- 1.2.3 Words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause.
- 1.2.4 If there is a conflict between the words and numerals in the interpretation of a clause, the words shall prevail.

- 1.2.5 If any provision in a definition in this Memorandum is a substantive provision conferring rights or imposing obligations on any of the Members, Residents, Owners or the Association, then, notwithstanding that it is only in the definition clause of this Memorandum, effect shall be given to it as if it were a substantive provision of this Memorandum.
- 1.2.6 If any provision of this Memorandum is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Memorandum.
- 1.2.7 When any number of days is prescribed in this Memorandum, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or proclaimed public holiday.
- 1.3 It is the intention that this Memorandum of the Association be read with the ZLR Constitution, however, to the extent that there is any conflict in this regard the provisions of the ZLR Constitution shall prevail.

2. STATUS OF THE ASSOCIATION AND MEMORANDUM

- 2.1 The Association shall be known as the Boulevard Owners Association NPC and is established as a master association for the Properties and Bodies Corporate in Boulevard. This Memorandum shall also serve as the Management Rules of each of the Bodies Corporate for the purposes of section 10(2)(a) of the Sectional Title Schemes Management Act and each of the Bodies Corporate may make their own Conduct Rules, save for prior approval by the Association and ZLR
- 2.2 The Association was previously known as the Zimbali Office Estate Management Association NPC and this Memorandum of Incorporation replaces the Memorandum of Incorporation of the Association, in its entirety, and which Memorandum will become effective on the date of filing with CIPC. Any reference in an existing title deed to the ZOEMA will be replaced with this Association and any duties and obligations on this Association, in terms of the servitudes registered in its favour in existing deeds within the Boulevard, will be ceded and assigned to the ZLR.
- 2.3 The Association shall, subject to the provisions of the Act and the Companies Act and be responsible for the enforcement of the ZLR Constitution, the Governing Rules issued by the ZLR, the Design Guides, this Memorandum and any Conduct Rules issued in terms hereof, and for the control, administration and management of the Common Property for the benefit of all Members.
- 2.4 The alterable and unalterable provisions of the Companies Act, No. 71 of 2008 and the provisions in this Memorandum shall apply in relation to the Association but the Association does not elect to be bound by the provisions under Chapter 3 of the Companies Act.
- 2.5 The Association shall have perpetual succession and be capable of suing and of being sued in its corporate name in respect of:
- 2.5.1 any contract made by it;
- 2.5.2 any damage to the Common Property of any Scheme;
- 2.5.3 any matter in connection with the land or building/s for which the Association is liable or for which a Body Corporate is liable or for which the Owners are jointly liable;
- 2.5.4 any matter arising out of the exercise of any of its powers or the performance or non-performances of any of its duties under the Act, the Companies Act, the ZLR Constitution, the Governing Rules issued by the ZLR, the Design Guides, this Memorandum and any Conduct Rules issued in terms hereof.
- 2.6 The Directors shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association as required by section 3(1)(o) of the Sectional Title Schemes Management Act, subject to the following:

- 2.6.1 Such address shall be situated in the magisterial district in which the Scheme is situated and shall be the address of the chairperson or other Director duly appointed in general meeting or in the magisterial district in which the offices of any duly appointed Managing Agent are situated, being the address of such Managing Agent;
- 2.6.2 No change of such address shall be effective until written notification thereof has been received by the Registrar;
- 2.6.3 The Directors shall give notice to all Owners of any change of such address.

3. OBJECTIVES OF THE ASSOCIATION

- 3.1 The objectives of the Association are to function as a master association in respect of Boulevard and to perform all functions and exercise all powers of the Bodies Corporate, who cede and assign their powers and functions to the Association and to manage and control all the affairs of the Bodies Corporate, and in particular to:
 - 3.1.1 attend to the management and administration, including financial administration, of the Bodies Corporate and the Association, and to the exclusion of the Bodies Corporate, to exercise and perform all powers, functions and duties assigned to Bodies Corporate in terms of the Act;
 - 3.1.2 enforce compliance with the provisions of the Act, the ZLR Constitution, the Governing Rules, the Design Guides, this Memorandum and the Conduct Rules issued in terms hereof;
 - 3.1.3 promote and manage the collective interests of all its Members; and
 - 3.1.4 regulate, maintain and manage the Common Property and the reciprocal rights and duties of Members in respect thereof.
- 3.2 The Association does not pursue any pecuniary gain for itself or any of its Members and will not be permitted to distribute any of its funds other than in accordance with the provisions of the Act, the Companies Act and this Memorandum.
- 3.3 The main object of the Association is to manage the collective interests common to all its Members, which includes expenditure applicable to the Common Property of such Members and the collection of Levies for which such Members are liable.
- 3.4 The Association is not permitted to distribute its funds to any person other than to a similar association of persons, save as regards the remuneration of Directors as recorded in clause 13 below.
- 3.5 On dissolution of the Association, the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e) of the Income Tax Act.
- 3.6 Funds available for investment may only be invested or re-invested with registered financial institutions as defined in section 1 of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001.
- 3.7 The Association is not or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Service.
- 3.8 The Association shall submit annual returns for income tax together with financial statements to the South African Revenue Services or similar relevant government departments as required.

- 3.9 The objects of the Association are not subject to any restriction contemplated in section 19 (1)(b)(ii) of the Companies Act and the Association is not subject to any provision contemplated in section 15 (2)(b) or (c) of the Companies Act.

4. MEMBERSHIP

- 4.1 Membership of the Association is compulsory and automatic for every Owner.
- 4.2 Membership shall commence simultaneously with the registration of transfer of a Property into the name of the Transferee.
- 4.3 Save as regards the Developer referred to in 4.5 below, membership of the Association shall be limited to, and compulsory for, all registered Owners of Property, provided that where any such Owner is more than one person, all the Owners of that Property shall be deemed jointly and severally to be one Member.
- 4.4 When a Member ceases to own a Property in Boulevard, he or she shall automatically cease to be a Member of the Association.
- 4.5 The Developer's membership shall terminate upon expiry of the Development Period.
- 4.6 A registered Owner may not resign as a Member of the Association, nor may his or her membership be ceded to another. Provided that nothing contained in this Memorandum shall prevent a Member from ceding his or her rights in terms of this Memorandum as security to the Registered Mortgagee of his or her Property.
- 4.7 The rights and obligations of a Member shall not be transferable, and every Member shall:
- 4.7.1 to the best of his or her ability adhere to and promote the objects and interests of the Association;
- 4.7.2 observe and comply with the provisions of the Act, the Companies Act, the ZLR Constitution, the Governing Rules, the Design Guides, this Memorandum, any Conduct Rules issued in terms hereof, and the Directives made by the Directors of the ZLR in accordance with the provisions of the ZLR Constitution.
- 4.8 The Directors may provide for the issue of a membership certificate, which certificate shall be in such form as the Directors may prescribe.
- 4.9 The *domicilium citandi et executandi* of a Member shall be the address of the Property registered in his or her name.

5. FUNCTIONS AND POWERS OF THE ASSOCIATION

The Association shall exercise the powers and perform the functions entrusted to the individual Bodies Corporate as set out in the Act, the ZLR Constitution, the Governing Rules, this Memorandum, the Conduct Rules and the Design Guides, and such ancillary functions, which may not be in conflict with the provisions of the said authorities, specifically the ZLR Constitution or the Governing Rules, and as may be necessary in pursuit of its objectives. The Association will also have the following additional powers:

- 5.1 Upon authorisation by the ZLR in writing and the Members by Special Resolution, to borrow moneys required by it in the performance of its functions or the exercise of its powers or for any of the objects of the Association and upon such terms and conditions as the Directors shall decide, including but not limited to the payment of liabilities; the preserving or acquiring of any assets or equipment and the replacement of such equipment from time to time; with powers from time to time to consent to any alteration or variation of the terms applicable to the finance; and as security for any money so borrowed, the Association will be entitled to mortgage, pledge (either generally or specifically) or otherwise encumber, all or any portion of the Association's funds, in the manner and on terms and conditions as it sees fit, with the right also to replace such borrowings or security.

- 5.2 To enter into an agreement with any service provider, including the ZFM, Owner or Resident for the provision of amenities or services, which agreement concluded by the Association, the Board or the Developer shall be binding on Owners or Residents insofar as such agreement may directly or indirectly impose rights or obligations on an Owner and/or Resident.

6. THE COMMON AMENITIES AND FACILITIES

Members shall enjoy access and reasonable usage of the Common Amenities and Facilities, irrespective whether they are situated on the Common Property of any particular Scheme, subject to the reasonable conditions imposed from time to time by the ZLR or the Directors, as the case may be and subject to the Constitutions of the Member Associations, which Communal Property and Common Property of the Resort may include: all accesses, roads, walkways, open areas and services situated on the Communal Property or Common Property, save such installations or services owned and operated by the ZFM or other service providers and any such further amenities, facilities and services as might at any time be provided by the ZLR.

DIRECTORS:

7. FIDUCIARY POSITION OF DIRECTORS

Each of the Directors shall stand in a fiduciary relationship to Boulevard and to each of the Bodies Corporate, in accordance with the provisions of section 8 of the Sectional Title Schemes Management Act, as may be amended from time to time.

8. NUMBER OF DIRECTORS

The number of Directors shall be determined from time to time by the Members of the Association in general meeting, provided that there shall not be more than 5 (five) Directors after the Development Period provided further that during the Development Period there shall be a maximum of only 5 (Five) Directors and a minimum of 3 (Three) Directors, 3 (Three) of whom shall be appointees of the Developer. There are no other appointed or ex-officio Directors of the Association as contemplated in section 66 (4) of the Companies Act.

9. QUALIFICATIONS OF DIRECTORS

A Director or an alternate Director shall not be required to be an Owner or a nominee of an Owner who is a juristic person, in order to qualify for office as a Director, provided that:

- 9.1 the majority of the Directors (excluding the Directors appointed by the Developer during the Development Period, or the Hotel Operator or Managing Agent generally) are Owners, spouses of Owners, or representatives of an entity which is an Owner;
- 9.2 to qualify as an Owner for the purposes of appointment as a Director, he or she may be an Owner of Property in any of the Schemes.

10. NOMINATION AND ELECTION OF DIRECTORS AND TENURE OF OFFICE

- 10.1 Directors shall be elected at each annual general meeting of the Association, and shall, subject to clause 16, hold office until the next annual general meeting, but they shall be eligible for re-election, if so nominated.
- 10.2 Nominations by Members for the election of Directors at any annual general meeting of the Association shall be given in writing, accompanied by the nominated person's written consent, to be received at the Office not less than 48 (forty eight) hours before the annual general meeting: Provided that Directors may also be elected by way of nominations with the nominee's accompanying consent given at the annual general meeting itself, should the Directors have received insufficient nominations to comply with the provisions of clause 8 above: Provided further that no nomination or appointment as Director, of a person in breach of clause 37(3)(a) or 37(3)b), may be made or accepted.

- 10.3 The chairperson and deputy chairperson shall be elected by the Directors at their first meeting in the financial year, provided that for the Development Period, the chairperson and the deputy chairperson shall be Directors appointed by the Developer.

11. VACANCY IN NUMBER OF DIRECTORS

The Directors may fill any vacancy in their number. Any Director so appointed shall hold office until the next annual general meeting when he or she shall retire and be eligible for re-election as though he or she had been elected at the previous annual general meeting.

12. ALTERNATE DIRECTORS

- 12.1 The Directors may appoint another person, whether or not he or she is an Owner or Member, to act as an alternate Director during the absence or inability of a Director to act. The Director shall notify the Board of Directors, in writing, of the appointment of an Alternate Director.
- 12.2 An alternate Director shall have the powers and be subject to the duties of a Director as set out in this Memorandum.
- 12.3 An alternate Director shall cease to hold office if the principal ceases to be a Director, or if the alternate Director's appointment is revoked by the Board of Directors.

13. REMUNERATION OF DIRECTORS

- 13.1 Directors shall not be permanently employed by the Association, and shall only be entitled to receive reasonable remuneration for his or her services as a Director of the Association if so determined by a Special Resolution of the Members.
- 13.2 The Association may remunerate Directors at a rate as approved by a resolution of the Association as part of the budget for the scheme's administrative fund, provided that an alternate Director shall claim his or her remuneration, if any, from the Director whom he or she replaced and not from the Association, unless the Association has been instructed in writing by such Director to pay any portion of his or her remuneration to such alternate Director.
- 13.3 Directors shall be entitled to have refunded to them any disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.

14. VALIDITY OF ACTS OF DIRECTORS

Any act performed or resolution adopted by the Board of Directors shall, notwithstanding that it is after the performance of the act or adoption of the resolution discovered that there was some defect in the appointment or the continuance in office of any Director, be as valid as if such Director had been duly appointed or had duly continued in office.

15. INDEMNITY

- 15.1 Every Director, agent or other officer or servant of the Association shall be indemnified by the Association against all costs, losses, expenses and claims which he or she may incur or become liable for by reason of any act done by him or her in the discharge of his or her duties, unless such costs, losses, expenses or claims are in breach of the Director's fiduciary obligations to the Association or caused by the *mala fide* or grossly negligent act or omission of such person.
- 15.2 The Directors shall pay such indemnity out of the funds of the Association.
- 15.3 The indemnity referred to above shall not apply in favour of any Managing Agent appointed by the Association in accordance with clause 40.

16. REMOVAL OF DIRECTORS FROM OFFICE AND REPLACEMENT

- 16.1 A Director shall cease to hold office as such if:
- 16.1.1 by notice in writing to the Association, he or she resigns his or her office;
 - 16.1.2 he or she is declared by a court to be of unsound mind;
 - 16.1.3 he or she surrenders his or her estate as insolvent, or if his or her estate is sequestrated, whether provisionally or finally;
 - 16.1.4 he or she is convicted, or has been convicted in the republic or elsewhere, of theft, fraud, forgery, perjury or any other offence which involves dishonesty or if he or she is sentenced to imprisonment without the option of a fine;
 - 16.1.5 is removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money;
 - 16.1.6 by Ordinary Resolution of a general meeting of the Association, he or she is removed from office, provided that the intention to vote upon the removal from office has been specified in the notice convening the meeting;
 - 16.1.7 he or she is or becomes disqualified in terms of section 69 of the Companies Act, No. 71 of 2008 as may be amended, from being appointed or acting as a director of a company;
 - 16.1.8 he or she is absent from 3 (three) consecutive Directors' meetings without an apology;
 - 16.1.9 he or she fails or refuses to pay the Association any amount due by that Director after a court or adjudicator has given judgement or order payment of that amount.
- 16.2 The Association may, at a general meeting, appoint another Director in the place of any Director who has ceased to hold office in terms of clause 16.1 above, for the unexpired part of the term of office of the Director so replaced, provided that the Directors had not yet acted in terms of clause 11 to fill the vacancy.

17. FUNCTIONS, POWERS AND DUTIES OF DIRECTORS

- 17.1 The functions, duties and powers of the Association shall, subject to the provisions of the Act, the Companies Act, the ZLR Constitution and this Memorandum, and to any restriction imposed or directive given at a general meeting, be performed or exercised by the Directors holding office in terms of this Memorandum.
- 17.2 Subject to any restriction imposed or directive given at a general meeting, the powers of the Directors shall include the following:
- 17.2.1 To appoint for and on behalf of the Association such agents and employees as they deem fit in connection with:
 - 17.2.1.1 the control, management and administration of the Common Property; and
 - 17.2.1.2 the performance and exercise of any or all of the functions, duties, and powers of the Association;
 - 17.2.2 To delegate to one or more of the Directors such of their powers and duties as they deem fit and at any time to revoke such delegation;
 - 17.2.3 To form sub-committees for the consideration of specific issues. The members of such sub-committees may be such individuals as the Directors in their discretion think fit and need not only be Members of the Association, provided that the chairperson of any such sub-committee shall be a Director, appointed by the Directors. Provided further that such sub-committee shall have no power to bind the Association in law, or to make resolutions, which should in every instance

- be referred to the Board of Directors, at every subsequent Board meeting. Provided further that such sub-committee shall keep proper records and minutes of their meetings;
- 17.2.4 To perform all functions in respect of the issue of Levy Clearance Certificates, as provided for in the ZLR Constitution and in this Memorandum.
- 17.3 The Association must not make loans from the Association's funds without the authority of a Unanimous Resolution of the Members and may not, under any circumstances, make loans on behalf of the Association to Members.
- 17.4 No document signed on behalf of the Association shall be valid and binding unless it is signed by two (2) Directors, or by one (1) Director and the Manager or Managing Agent, except a Levy Clearance Certificate issued by the Association in terms of section 15B(3)(i)(aa) of the Sectional Titles Act, which shall be signed by 2 (two) Directors or the Managing Agent.
- 17.5 Without detracting from the scope of the additional duties specified herein and subject to the provisions of relevant clauses, the Directors shall in respect of The Boulevard perform the functions assigned to Directors of the Bodies Corporate by section 3 and section 7 of the Sectional Title Schemes Management Act.
- 17.6 The Directors shall do all things reasonably necessary for the control, management and administration of the affairs and of the Common Property of the Bodies Corporate and shall do all things reasonably necessary for the enforcement of the provisions of the ZLR Constitution, the Governing Rules, the Design Guides, this Memorandum and any Conduct Rules issued pursuant thereto.
- 17.7 The Directors may from time to time issue Directives to amplify the provisions of the Memorandum or the Conduct Rules, provided that such Directives may only relate to the practical implementation of a provision of this Memorandum or of the Conduct Rules and may not constitute a new clause of the Memorandum or new Conduct Rule.

DIRECTORS' MEETINGS:

18. WHEN TO BE HELD AND NOTICE

- 18.1 The Directors may give notice convening meetings, meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. It shall not be necessary to give notice to any Director for the time being absent from the Republic unless the meeting is one referred to in clause 18.6 below, but notice of any such meeting shall be given to his or her alternate, if one has been appointed, and such an alternate is in the Republic.
- 18.2 A Director may at any time convene a meeting of the Board of Directors by giving to the other Directors and all Registered Mortgagees referred to in clause 18.3 below, not less than 15 (fifteen) days written notice of a meeting proposed by him or her, which notice shall specify the time and place of the meeting and set out an agenda for the meeting, provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given. The Directors may proceed with a meeting despite a failure or defect in the giving of notice of its meetings.
- 18.3 A Member, Registered Mortgagee or the holder of a future development right shall, if they so require of the Directors in writing, be entitled to receive reasonable notice of all meetings of the Directors and the Directors must deliver to that person a copy of a notice of a meeting referred to in clause 18.2, a resolution referred to in clause 18.7 and notice of any adjournment of such a meeting, provided that the Association may recover from the person concerned the costs of delivery of such documents.
- 18.4 Members, Registered Mortgagees, holders of future development rights and the Managing Agent shall be entitled to attend meetings of the Directors and may speak on any matter on the agenda at such meetings but shall not, in his or her capacity as such, be entitled to propose any motion or vote thereat, provided that such persons are not entitled to attend those parts of the Directors meetings that deal with:

- 18.4.1 discussions of contraventions of the Act or rules; or
- 18.4.2 any other matters in respect of which the Directors resolve that the presence of any such persons would unreasonably interfere with the interests of the Association or any person's privacy.
- 18.5 A Member shall be entitled to attend and speak at any meeting of the Directors but shall not in his or her capacity as such, be entitled to vote thereat.
- 18.6 The Directors may conduct a meeting entirely by electronic communication and provide for participation in a meeting by electronic communication, if the method of electronic communication:
- 18.6.1 is accessible to all Directors and other persons entitled to attend the meeting;
- 18.6.2 permits all persons participating in the meeting to communicate with each other during the meeting
- 18.7 The Directors may by written resolution set the dates of and a standard agenda for their future meetings and delivery of a copy of this resolution is considered adequate notice of all such future meetings.

19. QUORUM AT DIRECTORS' MEETINGS

- 19.1 At a meeting of Directors, sixty per cent (60%) of the Directors shall form a quorum.
- 19.2 If the number of incumbent Directors falls below the number necessary to form a quorum, the remaining Director or Directors may continue to act, but only for the purpose of appointing or co-opting additional Directors to make up the quorum, or for the purpose of convening a general meeting of Members.
- 19.3 If at any meeting of Directors a quorum is not present within 30 (thirty) minutes of the appointed time for the meeting, such meeting shall stand adjourned to the next Business Day at the same time and the Directors then present, who shall not be less than 2 (two), shall then form a quorum.

20. CHAIRPERSON AND VICE-CHAIRPERSON OF THE DIRECTORS

- 20.1 At the commencement of the first meeting of Directors after an annual general meeting at which Directors have been elected, the Directors shall elect a chairperson and vice-chairperson from their number who shall both hold office as such until the next annual general meeting of the Association, provided that for the Development Period, the chairperson and the deputy chairperson shall be Directors appointed by the Developer.
- 20.2 The chairperson of the Board of Directors, or the vice-chairperson in the former's absence, shall represent the Association at all general or special meetings of the ZLR and shall vote thereat in accordance with his or her mandate from the Association.
- 20.3 The Directors at a Directors' Meeting or the Association at a special general meeting, in respect of either of which notice of the intended removal from office of the chairperson or vice-chairperson has been given, may remove the chairperson and/or vice-chairperson from his or her office, provided that only the Developer shall be entitled to remove a chairperson or vice-chairperson during the Development Period.
- 20.4 Should a chairperson vacate his or her office or no longer hold office because he or she has been removed by the Directors, Developer or the Association, the vice-chairperson shall, unless another chairperson has been elected by the Directors or the Developer, during the Development Period, fulfil the duties of the chairperson for the remainder of the chairperson's period of office.
- 20.5 If the chairperson vacates the chair during the course of a meeting or is not present or is for any other reason unable to preside at any meeting, the vice-chairperson at such meeting shall fulfil

the duties of the chairperson and shall have the same voting rights as the chairperson.

- 20.6 In the event that neither the chairperson nor the vice-chairperson is present or is for any reason unable to preside at any Directors' meeting, the Directors present at such meeting shall choose another chairperson for such meeting who shall have the same voting rights as the chairperson.

21. VOTING AT DIRECTORS' MEETINGS

- 21.1 All matters at any meetings of the Directors shall be determined by the majority of the votes of the Directors present and voting. Notwithstanding the aforesaid, during the Development Period, the Directors who are nominees of the Developer and are present at such meeting, shall, for the purposes of voting on any proposed resolution of the Board, be deemed, jointly and severally, to hold between them 51% of the votes of Directors present at the meeting.
- 21.2 At Directors' meetings, the chairperson shall have a casting vote in addition to his or her deliberative vote.
- 21.3 A Director shall be disqualified from voting in respect of any contract, or any litigation or proposed litigation, with the ZLR, the Association or any of the Bodies Corporate, by virtue of any interests he may have therein.
- 21.4 A resolution in writing signed by all the Directors for the time being present in the Republic and being not less than sufficient to form a quorum, shall be as valid and effective as if it had been passed at a meeting of the Directors duly convened and held.

22. INSURANCE

- 22.1 At the first meeting of the Trustees or as soon thereafter as possible, and annually thereafter, the Trustees shall, on behalf of the Bodies Corporate, take steps to insure all the buildings, including Sections, Common Property and all improvements to the Common Property of the Schemes within The Boulevard with the approved insurance provider (as appointed by the ZLR) to the full replacement value thereof. It is recorded that there will only be one approved insurance provider appointed by the ZLR for the entire Resort, to be utilised by Bodies Corporate of sectional title schemes and Owners of erven.
- 22.2 It will remain the responsibility of each body corporate or Owner, in the case of an erf, to advise the approved insurance provider of the current replacement value of all buildings or Units. The premiums will be paid by each Owner or body corporate directly to the insurance provider. The Board of the Association, together with the Trustees of the Member Associations, will review the insurance policies, in respect of all of the buildings in the Resort, to ensure that the replacement values are correctly recorded by the approved insurance provider.
- 22.3 In respect of Golf Cart Insurance:
- 22.3.1 In order to safeguard all stakeholders in the Resort, it is obligatory for all golf carts which are operated in the Resort to be adequately insured.
- 22.3.2 Each Owner of a golf cart shall annually arrange insurance cover for all golf carts registered in his or her name with the Association's approved insurance provider. The premium costs shall be paid by the owner directly to the insurer
- 22.3.3 Once an Owner has complied with the above, they will be issued with a sticker to be displayed on their golf cart at all times, which will allow the association the opportunity to easily identify those Owners who are compliant.

23. LEVIES AND LIABILITIES IN TERMS OF SECTIONS 3 AND 15 OF THE SECTIONAL TITLE SCHEMES MANAGEMENT ACT

- 23.1 Members shall be liable for payment of Levies and it shall be the duty of the Directors to determine and collect Levies from the Members in accordance with the provisions and in the proportions set forth in this clause.

- 23.2 The liability of Members to make contributions, and the proportions in which the Members shall make contributions for the purposes of section 3(1) of the Act, or may in terms of section 15 of the Act be held liable for the payment of a judgment debt of the Association or any of the Bodies Corporate, shall be borne by the Members in accordance with the following determination made in terms of Section 32(4) of the Act, namely in accordance with the Management Participation Quota attaching to each Member's respective Section.
- 23.3 The Members shall, at every annual general meeting, approve, with or without any amendments, the Budget prepared by the Directors. Such Budget shall be the basis for determining the amounts to be levied upon the Members by the Association during the ensuing financial year.
- 23.4 Within 14 (fourteen) days after each annual general meeting, the Directors shall, by passing a Directors' resolution:
- 23.4.1 determine the amounts to be levied upon each Owner in respect of the ensuing year;
- 23.4.2 determine the instalments in which such amounts are payable;
- 23.4.3 advise each Owner by way of written notice of such amount and the applicable instalments which notice must:
- 23.4.3.1 state that an Owner has an obligation to pay the specified levy; and
- 23.4.3.2 specify the due date for each payment; and
- 23.4.3.3 if applicable, state that interest at a rate specified in the notice will be payable on any overdue levies; and
- 23.4.3.4 include details of the dispute resolution process that applies in respect of disputed levies.
- and such Levies shall become due and payable, in the full instalments determined, upon the date of the Directors' resolution, provided that in the event of an Owner defaulting in the payment of any such instalment or part thereof, the Association must send a final notice to the Owner, which notice must state:
- (a) that the member has an obligation to pay the overdue levies and any applicable interest immediately; and
- (b) if applicable
- (i) the interest that is payable in respect of the overdue levies at the date of the final notice; and
- (ii) the amount of interest that will accrue daily until the payment of the overdue levies; and
- (c) that the Association intends to take action to recover the amount due if overdue levies and interest owing are not paid within 14 (fourteen) days after the date the final notice is given
- 23.5 The Directors may, from time to time, when necessary, impose Special Levies upon the Members or call upon them to make special contributions in respect of all such expenses as are mentioned in clause 23.2 above (which are not included in the Budget made in terms of clause 23.3 above), and which is required to meet a necessary expense that cannot reasonably be delayed until provided for in the budget for the next financial year. Such Levies and contributions may be made payable in one sum or by such instalments and at such time or times as the Directors shall think fit.
- 23.6 An Owner who extends his or her Section during a Financial Year in accordance with section 24 of the Act shall from the date of completion of the construction of his or her extension be liable to the Association for an adjusted Levy, calculated by the Directors in accordance with the new

- Management Participation Quota of his or her Section as determined by the Directors. The adjusted Levy shall be due and payable upon the date of the Directors' resolution, and shall be paid in instalments as determined by the Directors.
- 23.7 After the expiry of a Financial Year and until they become liable for contributions in respect of the ensuing Financial Year, Owners are liable for contributions in the same amounts and payable in the same instalments as were due and payable by them during the expired Financial Year: Provided that the Directors may, if they consider it necessary and by written notice to the Owners, increase the contributions due by the Owners by a maximum of ten percent (10%) to take account of the anticipated increased liabilities of the Association.
- 23.8 To ensure compliance with the provisions of the ZLR Constitution and this Memorandum, it shall be registered as a Condition of Ownership of Property that no Property shall be transferred without the prior written consent of the Association first being had and obtained in the form of a Levy Clearance Certificate, which consent shall be given if the proposed Transferee agrees to abide by the ZLR Constitution, the Governing Rules made in terms thereof, this Memorandum and the Conduct Rules of the Body Corporate, in a manner acceptable to the Association, and the Transferor has complied with all his obligations in and to the Association and the Body Corporate, including the payment of all levies due.
- 23.9 An Owner shall be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, expenses, including administrative expenses, and charges incurred or levied by the Association in obtaining the recovery of arrear Levies or any other arrear amount due and owing by such Owner to the Association, or in enforcing compliance with the Act, the ZLR Constitution, the Governing Rules, the Design Guides, this Memorandum and any Conduct Rules issued in terms hereof.
- 23.10 The Directors shall be entitled to charge interest on arrear amounts at such rate as they may from time to time determine, provided that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (34 of 2005), compounded monthly in arrears.
- 23.11 Should an Owner be more than 60 (Sixty) days in arrears with the payment of any levies due in terms of this Memorandum, or any other amount of any nature whatsoever due to the Association by such Owner (including but not limited to any fine that may be imposed by the Association or ZLR on any such Owner) and remain in arrears notwithstanding demand for payment by the Association, then in that event such Owner shall not be entitled either in person or by proxy to speak or vote at a meeting of members of the Association. A certificate by the chairperson of the board of the Association, dated not more than 15 (Fifteen) business days prior to any such meeting, shall constitute proof of non-payment of any arrear levies by such Owner and shall entitle the chairperson of such meeting of the Association to prevent such Owner or his proxy speaking or voting at such meeting (even if payment is made by such Owner before such meeting but subsequent to the aforesaid certificate having been signed by the chairperson of the Board).
- 23.12 In the event of there being a dispute between the Association and an Owner as to the amount of any levy due by the Owner, such dispute shall be referred to the Association's Auditors for a decision, whose decision shall be final and binding on the parties.
- 23.13 The Directors shall be entitled to impose Directives from time to time with reference to the payment of levies and for the purpose of credit control.
- 23.14 Owners shall be liable to the Association, the ZLR, the ZFM, and/or the relevant Body Corporate for the payment of the service charges as determined by the ZLR Directors in respect of any services rendered by the ZLR, the Association or the ZFM, as the case may be, to them. Specifically pertaining to the purchase of electricity, water or other services from the ZLR, ZFM, the Association or any other service provider, any shortfall with reference to the tariff paid by the Owner and the higher tariff paid by the Association, may be recovered from the Owner concerned.
- 23.15 Notwithstanding anything contained herein or elsewhere, the Developer shall, in his sole and absolute discretion, during the Development Period determine what portion, if any, of the total

expenditure of the Association is to be paid for by the Developer. For the avoidance of doubt, the Developer shall not pay any Levies of any nature in respect of any of its unsold Property in Boulevard.

ZLR Lakes Stabilisation Levy

- 23.16 Save as provided for in clause 23.23 below, every Owner shall, upon the Alienation of his or her Property, be liable to the ZLR for the payment of a Lakes Stabilisation Levy, calculated at 2% of the Fair Market Value of the Property or a fixed amount determined by the ZLR from time to time, whichever is the lower of the two. The initial maximum amount of any Lakes Stabilisation Levy payable by any Owner upon the Alienation of his or her Property shall be R250 000.00 (Two Hundred and Fifty Thousand Rand) and this maximum shall apply subject to an automatic minimum escalation every year, in accordance with the annual consumer price inflation index (CPI) published annually by Statistics South Africa, unless otherwise resolved by the Trustees and notified to the Owners. The payment of such Lakes Stabilisation Levy shall be secured by the delivery to the ZLR of the Undertaking, being a written letter of undertaking from the firm of conveyancers attending to the transfer of the Property from the Transferor to the Transferee, pursuant to which such firm undertakes on behalf of the Transferor to pay the Lakes Stabilisation Levy directly to the ZLR on date of registration of transfer.
- 23.17 Upon Alienating his or her Property, the Owner or Transferor of the Property shall pay the Lakes Stabilisation Levy to the Association, referred to in 23.16 above, calculated as the lower of R250 000.00 (Two Hundred and Fifty Thousand Rand) or the amount determined according to the following formula:

$$\text{Stabilisation Levy (R)} = \frac{\text{Fair Market Value or Sales Price (R)} \times 2}{100}$$

The key to the formula is as follows:

- Fair Market Value = the Fair Market Value of the Property on the date of Alienation**
- Sales Price = the gross sales price (including VAT & commission) at which the Transferor has managed to sell his or her Property, as evidenced by an agreement of sale.**

- 23.18 The purpose of the Lakes Stabilisation Levies shall be to stabilise the Levies payable to the ZLR by the Member Associations, specifically to provide a financial base with a view to capital expenditure, upgrades to infrastructure or unforeseen expenses, and for the ZLR to provide financial support in the event of a financial loss or shortfall incurred by any of the Member Associations.
- 23.19 The Lakes Stabilisation Levies shall be paid into the Levy Stabilisation Fund and shall only be used in furtherance of the objects of the ZLR and to defray unforeseen operational and other expenses for which the ZLR are liable. The Lakes Stabilisation Levies may not be distributed to the Member Associations of the ZLR, save in so far as it might be required to off-set a levy shortfall or financial loss incurred by any Member Association during the course of a Financial Year.

General Levy Provisions

- 23.20 No Lakes Stabilisation Levy shall be payable at the time when a Property is transferred to the surviving Spouse of a deceased natural person Owner, but the Lakes Stabilisation Levy shall become payable at the first subsequent Alienation of the Property from the surviving spouse.
- 23.21 No Lakes Stabilisation Levy shall be payable by the Developer upon the sale or re-sale by the Developer, or any of its associated or related companies, of any Property in Boulevard, and irrespective of whether such sale relates to a Deemed Alienation, the Alienation of the bare dominium of, or a share in, a Property, or the registration or cancellation of a Right in respect of a Property.

- 23.22 The provisions of clauses 23.16 shall apply *mutatis mutandis* to a Deemed Alienation, the Alienation of the bare dominium of, or a share in, a Property, the registration or cancellation of a Right in respect of a Property and a marriage in community of property.
- 23.23 Notwithstanding anything to the contrary herein contained, no Lakes Stabilisation Levy shall be payable by the Owner of any business or commercial venture within the Resort upon the sale of such business or commercial venture or any interest therein, provided that the sale of such business or commercial venture does not include the simultaneous Alienation of a Property in the Resort, and irrespective of the nature of such business or commercial venture. Should the aforesaid sale of a business or commercial venture or any interest therein include the Alienation of a Property, the Lakes Stabilisation Levy shall be payable *mutatis mutandis*.
- 23.24 The Lakes Stabilisation Levy shall moreover only be payable in respect of a Planned Unit Development ('PUD') Sub-division, and in particular in respect of the Units developed thereon, on the sale of a Unit so developed or within 24(twenty four) months of the compulsory issuing of an occupancy certificate by the Municipality in the event of a Unit being leased and not sold, whichever is the first to occur. The re-sale of an undeveloped PUD Sub-division nor the PUD developer sale (first individual sale) shall attract payment of a Lakes Stabilisation Levy
- 23.25 All contributions levied under the provisions of this Memorandum shall be due and payable by Members on the passing of a resolution to that effect by the Board and may be recovered by the ZLR and the Association by action in any Court (including any Magistrates Court) of competent jurisdiction from persons who were Owners at the time when such contributions became due.
- 23.26 No Property shall be transferred unless it is a condition of such transfer that the Transferee, in a manner acceptable to the ZLR and the Association, agrees to abide by the ZLR Constitution and this Memorandum in the manner prescribed by the ZLR and the Association.
- 23.27 In order to procure compliance with the provisions of the ZLR Constitution, it shall be registered as a Condition of Ownership of Property that no Property shall be transferred without the prior written consent of the ZLR first being had and obtained in the form of a Clearance Certificate, which consent shall be given if the proposed Transferee agrees to abide by the ZLR Constitution and the Governing Rules made in terms thereof, in a manner acceptable to the ZLR, and the Transferor has complied with all his obligations in and to the ZLR, including the furnishing of the Undertaking in respect of the Lakes Stabilisation Levy, and has similarly complied with all his obligations to the ZSC, as evidenced by the ZSC Consent and to the ZFM as is evidenced by the ZFM Consent. Every Owner shall be bound by the provisions of this clause, irrespective of whether the Condition of Ownership as aforesaid had been registered in the Pietermaritzburg Deeds Registry, or not;
- 23.28 Notwithstanding anything contained herein or elsewhere, the Developer shall not be required to obtain a Clearance Certificate from the ZLR when the Developer Alienates any Property owned by the Developer, nor shall consent be required from the ZLR to the mortgage of any Property simultaneously with the transfer thereof from the Developer.

Administrative and Reserve Funds

- 23.29 The administrative fund referred to in section 3(1)(a) of the Sectional Title Schemes Management Act must be used to fund the operating expenses of the Association for a particular financial year.
- 23.30 The reserve fund maintained in terms of section 3(1)(b) of the Sectional Title Schemes Management Act must be used for the implementation of the maintenance, repair and replacement plan of the Association referred to in clause 24.35 below.
- 23.31 The following amounts must be paid into the reserve fund:
- 23.31.1 any part of the annual levies designated as being for the purpose of reserves or the maintenance, repair and replacement plan;
- 23.31.2 any amounts received under an insurance policy in respect of damage or destruction of property

- for which the Association is responsible;
- 23.31.3 any interest earned on the investment of the money in the reserve fund;
- 23.31.4 any other amounts determined by the Association
- and all other Association income must be paid into the administrative fund.
- 23.32 Money may be paid out of the administrative fund in accordance with Directors resolutions and the approved budget for the administrative fund.
- 23.33 Money may be paid out of the reserve fund:
- 23.33.1 at any time in accordance with Directors resolutions and the approved maintenance, repair and replacement plan; or
- 23.33.2 if the Directors resolve that such a payment is necessary for the purpose of an urgent maintenance, repair or replacement expense, which purpose includes, without limitation:
- 23.33.2.1 to comply with an order of a court or an adjudicator;
- 23.33.2.2 to repair, maintain or replace any property for which the body corporate is responsible where there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage to persons or property
- 23.33.2.3 to repair any property for which the Association is responsible where the need for the repairs could not have been reasonably foreseen in preparing the maintenance, repair and replacement plan; or
- 23.33.2.4 to enable the Association to obtain adequate insurance for property that the body corporate is required to insure;
- provided that the Directors must report to the Members on any such expenditure as soon as possible after it is made.
- 23.34 Expenditure under clause 23.33.2:
- 23.34.1 must not exceed
- 23.34.1.1 the amount necessary for the purpose for which it is expended; or
- 23.34.1.2 any limitation imposed by the Association on expenditure; and
- 23.34.2 must comply with any restrictions imposed or directions given by Members.

Maintenance, repair and replacement plan

- 24.35 The Association or Directors must prepare a written maintenance, repair and replacement plan for the common property, setting out:
- 24.35.1 the major capital items expected to require maintenance, repair and replacement within the next 10 (ten) years;
- 24.35.2 the present condition or state of repair of those items;
- 24.35.3 the time when those items or components of those items will need to be maintained, repaired or replaced;
- 24.35.4 the estimated cost of the maintenance, repair and replacement of those items or components;

- 24.35.5 the expected life of those items or components once maintained, repaired or replaced; and
- 24.35.6 any other information the Association considers relevant.
- 24.36 The annual contribution to the reserve fund for the maintenance, repair or replacement of each of the major capital items must be determined according to the following formula [(estimated cost minus past contribution) divided by expected life].
- 24.37 A maintenance, repair and replacement plan takes effect on its approval by the Members in general meeting; provided that on approval of such a plan, Members may lay down conditions for the payment of money from the reserve fund.
- 24.38 The Directors must report the extent to which the approved maintenance, repair and replacement plan has been implemented to each annual general meeting.

24. RECORD OF THE MEMORANDUM, CONDUCT RULES AND DIRECTIVES

- 24.1 The Directors shall keep a complete record of the Memorandum, Conduct Rules, and Directives, as in force from time to time and must prepare and update the following records:
 - 24.1.1 minutes of general and Directors meetings, including the following information:
 - 24.1.1.1 the date, time and place of the meeting;
 - 24.1.1.2 the names and role of the persons present, including details of the authorization of proxies or other representatives;
 - 24.1.1.3 the text of all resolutions; and
 - 24.1.1.4 the results of the voting on all motions
 - 24.1.2 lists of Directors, Members and tenants with their:
 - 24.1.2.1 full names; and
 - 24.1.2.2 identity numbers, or in the case of non-South African citizens, their passport numbers; and
 - 24.1.2.3 section addresses and mailing addresses, if different; and
 - 24.1.2.4 telephone numbers; and
 - 24.1.2.5 email or other electronic addresses, if any.
 - 24.1.3 lists of:
 - 24.1.3.1 sections shown on the sectional plan, indicating in each case whether it is a primary or utility section, its participation quota and the name of the member in whose name it is registered
 - 24.1.3.2 exclusive use areas with descriptions of purposes and numbers, if any, indicating whether the rights to each area are conferred in terms of section 27 of the Sectional Titles Act or in terms of a rule, and a reference to the relevant rule where applicable; and
 - 24.1.3.3 registered bondholders with their names and addresses.
 - 24.1.4 details of all future development rights including:
 - 24.1.4.1 names and addresses of all registered holders of such rights; and
 - 24.1.4.2 copies of all documentation prepared in terms of section 25(2) of the Sectional Titles Act for any such right; and

24.1.5 any other records required by the regulations.

24.2 The Directors shall, on the written application of –

24.2.1 an Owner of a Unit, or

24.2.2 an occupier of a Unit, or

24.2.3 a prospective purchaser of a Unit, or

24.2.4 the holder of any registered sectional mortgage bond, or

24.2.5 the Managing Agent, or

24.2.6 the Auditor; or

24.2.7 a person authorised in writing by an Owner or registered sectional mortgage bondholder

make the records and documents referred to in this clause available for inspection by the persons listed above or supply to any such person a copy of the said records and documents, and may require them to pay a reasonable charge therefor, provided that the charge is not more than the reasonable cost associated with the process of making the copy, and the Directors may refuse to supply the copy until the fee is paid.

24.3 The Directors must comply with a request for inspection or copies as contemplated in clause 24.2 above within 10 (ten) days unless the request is in respect of this Memorandum, in which case the Directors must comply with the request within 5 (five) days.

25. IMPROVEMENTS TO THE COMMON PROPERTY OR THE REMOVAL THEREOF

25.1 The Directors may, if the Members of the Association by Unanimous Resolution so decide, effect or remove improvements of a luxurious nature on the Common Property.

25.2 The Directors may, if the Members of the Association by Special Resolution so decide, effect or remove improvements of a non-luxurious nature on the Common Property.

25.3 Notwithstanding the provisions of clause 25.2, should the Directors wish to effect or remove any non-luxurious improvements to the Common Property, they shall give written notice of their intention to effect or remove a non-luxurious improvement to the Common Property to all Members and such notice shall:

25.3.1 indicate the intention of the Directors to proceed with the non-luxurious improvement or removal thereof upon the expiry of a period of not less than 30 (thirty) days from the date of posting such notice; and

25.3.2 provide details of the improvement or removal thereof as to:

25.3.2.1 the cost thereof;

25.3.2.2 the manner in which it is to be financed and the effect upon Levies paid by Members, including details of any special contributions or loans by the Association that will be required for this purpose;

25.3.2.2 the need, desirability, and effect thereof;

25.3.2.3 a motivation for the improvements or removal thereof including drawings of the proposed improvements or removal thereof showing their effect and a motivation of the need for them;

and after expiry of such notice period the Directors may proceed with effecting such improvement or with the removal thereof: Provided that, at the written request of any Member, a special general meeting shall be convened in order to discuss and deliberate upon the proposals contained in the notice, at which meeting the Members may approve such proposals by means of a Special Resolution, with or without amendments: Provided further that in the event of such special general meeting being called, the Directors shall not proceed with their proposals until the holding of such meeting, whereupon they shall be bound by any Special Resolution ensuing therefrom.

25.4 The Association must, if so directed by a resolution of Members:

25.4.1 install and maintain separate meters to measure the supply of electricity, water, gas or the supply of any other service to each Member's sections and exclusive use areas and to the common property; and

25.4.2 recover from Members the cost of such supplies to sections and exclusive use areas based on the metered supply.

25.5 The Association may on the authority of a Special Resolution install separate pre-payment meters on the common property to control the supply of water or electricity to a section or exclusive use area; provided that all Members and occupiers of sections must be given at least 60 (sixty) days notice of the proposed resolution with details of all costs associated with the installation of the pre-payment system and its estimated effect on the cost of the services over the next three years.

25.6 If a pre-payment system referred to in clause 25.5 above is installed:

25.6.1 the Association is responsible to ensure that the system does not infringe on the constitutional rights of section occupiers to access basic services; and

25.6.2 any member who leases a unit to a tenant is responsible to ensure that the system does not infringe the rights of the tenant in terms of the Rental Housing Act, 1999 (Act No. 50 of 1999), or any other law.

26. MINUTES

26.1 The Directors shall:

26.1.1 keep minute books of all their proceedings, including all special meetings of the Board of Directors and meetings of Sub-committees;

26.1.2 cause minutes to be kept of all meetings of the Association in the minute books of the Association;

26.1.3 include in the minute book of the Association a record of all the Unanimous and Special Resolutions and other resolutions of the Association.

26.2 The Directors shall keep all minute books in perpetuity.

26.3 On the written application of any Member or Registered Mortgagee of a Unit, the Directors shall make all minutes of their proceedings and the minutes of the Association available for inspection by such Member or Registered Mortgagee, not later than 2 (two) weeks from the date of the request.

27. BOOKS OF ACCOUNT AND RECORDS

27.1 The Directors shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of The Boulevard including:

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

- 27.1.2 a record of all sums of money received and expended by the Association and the matters in respect of which such receipts and expenditure occurred;
- 27.1.3 a record disclosing all amounts recovered from Members of the Associations or any Managing Agent or other service provider acting on its behalf;
- 27.1.4 all other information necessary to allow Members to assess the Association's financial situation and their financial situation in regard to the Association.
- 27.1.5 a register of Owners and of Registered Mortgagees of Units and of all other persons having real rights in such Units (insofar as written notice shall have been given to the Directors by such Owners, mortgagees or other persons) showing in each case their addresses; and
- 27.1.6 individual ledger accounts in respect of each Owner.
- 27.2 The Association must keep separate books of account and bank accounts for its administrative and reserve funds referred to in sections 3(1)(a) and (b) of the Sectional Schemes Management Act.
- 27.3 On the application of any Owner, Registered Mortgagee or of the Managing Agent, the Directors shall make all or any of the books of account and records available for inspection by such Owner, mortgagee or Managing Agent, at the Office.
- 27.4 The Directors shall cause all books of account and records to be retained for a period of six (6) years after completion of the transactions, acts or operations to which they relate.

28. BUDGET, FINANCIAL STATEMENTS AND REPORT

- 28.1 Before every annual general meeting, the Directors shall cause to be prepared a Budget, which shall be laid before the annual general meeting of the Association for consideration.
- 28.2 The Budget shall include a reasonable provision for contingencies.
- 28.3 The Directors shall cause to be prepared, and shall lay before every annual general meeting for consideration, a financial statement in conformity with generally accepted accounting practice, which statements shall fairly present the state of affairs of the Association and its finances and transactions as at the end of the Financial Year concerned.
- 28.4 The financial statement shall include information and notes pertaining to the proper financial management by the Association, including:
- 28.4.1 an analysis of the periods of debts and the amounts due in respect of Levies and other contributions;
- 28.4.2 an analysis of the periods and the amounts due, owing by the Association to the ZLR and creditors, and in particular to any public or local authority or the ZFM in respect of rates, taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal;
- 28.4.3 the expiry dates of all insurance policies;
- 28.4.4 amounts advanced to the Association by way of levy finance, a loan, in terms of a guarantee insurance policy or otherwise, setting out the actual or contingent liability of the Association and the amounts paid by the Association and by any member in terms of such arrangement;
- 28.4.5 amounts in the reserve fund showing the amount available for maintenance, repair and replacement of each major capital item as a percentage of the accrued estimated cost and the rand value of any shortfall;
- 28.4.6 premiums and other amounts paid and payments received by the Association and any Member in terms of the insurance policies of the Association and the expiry date of each policy; and

- 28.4.7 amounts due and payable to the Community Schemes Ombud Service.
- 28.5 The Directors shall prepare a maintenance, repair and replacement plan in accordance with Rule 24.35 above for presentation at the annual general meeting.
- 28.6 The Directors shall prepare budgets for the administrative and reserve funds comprising itemised estimates of the anticipated income and expenses during the next financial year for presentation at the annual general meeting; provided that such budgets may include discounts not exceeding 10 per cent of a members' annual contributions applicable if all those contributions are paid on or before the due dates;
- 28.7 The Directors shall further cause to be prepared and shall lay before every annual general meeting a report signed by the chairperson and one Director, reviewing the affairs of the Association during the past year.
- 28.8 Unless all the sections in the scheme are registered in the name of one person, the Directors must present audited financial statements to a general meeting for consideration within four (4) months after the end of the financial year.
- 28.9 The Directors shall cause copies of the Budget, audited statements and reports referred to above, to be delivered to each Member, and to any mortgagee which has advised the Association of its interest, at least 14 (fourteen) days before the date of the annual general meeting at which they are to be considered.
- 28.10 The Directors shall keep copies of the schedules of insurance replacement values at the Office, where it shall be available for inspection by the Members and mortgagees.

29. AUDIT

At every annual general meeting, the Association shall appoint a Registered Auditor to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting. It shall be the task of the Registered Auditor to:

- 29.1 audit the books of the Association; and
- 29.2 advise the Directors of any financial or administrative irregularities in a report to the Directors.
- 29.3 The audit of the Association's annual financial statements:
- 29.3.1 must be carried out by an independent auditor who has not participated in the preparation of the annual financial statements or advised on any aspect of the accounts of the Association during the period being reported on;
- 29.3.2 need not be carried out in accordance with any recognized financial reporting framework of guidelines for financial accounting;
- 29.3.3 must include opinions as to whether or not:
- 29.3.3.1 the annual financial statements accurately reflect the financial position of the Association for the financial year under review, with such qualifications and reservations as the auditor considers necessary;
- 29.3.3.2 the Association has complied with the accounting requirements set out in this Memorandum with a specific description of any failure to comply with such requirements;
- 29.3.3.3 the books of account of the Association have been kept and its funds have been managed so as to provide a reasonable level of protection against theft or fraud; and
- 29.3.3.4 the financial affairs of the body corporate appear to be effectively managed;

29.3.4 must be completed within four (4) months of the end of the body corporate's financial year.

30. DEPOSIT AND INVESTMENT OF FUNDS

30.1 The Directors shall cause all monies received by the Association to be deposited to the credit of an interest-bearing account or accounts with a registered commercial bank in the name of the Association and, subject to every directive given by the ZLR or restriction imposed at a general meeting of the Association, such monies shall only be withdrawn for the purpose of payment of the expenses of the Association or for investment purposes of any surplus funds, provided that such investments shall only be made in the name of the Association.

30.2 The Directors may authorise an employee or the Managing Agent to administer and operate the accounts referred to in clause 30.1 above, subject to such conditions and restrictions as they may impose.

30.3 Any funds not immediately required for disbursement may be invested with any Financial Institution or Institutions approved by the Directors from time to time, provided that at least fifty percent (50%) of the funds shall be invested with any registered South African commercial bank/s approved by the Directors from time to time.

30.4 Interest on monies invested may be used by the Association for any lawful purpose as contemplated in this Memorandum.

31. NO REFUNDS OR DISTRIBUTION OF PROFITS OR ASSETS

31.1 The Members shall not be entitled to a refund of Levies lawfully levied upon them and duly paid by them.

31.2 No portion of the profits or gains of the Association shall be distributed to any Owner of a Unit or to any other person except upon destruction or deemed destruction of the building/s or where such profit or gain is of a capital nature.

GENERAL MEETINGS:

32. GENERAL MEETINGS OF MEMBERS

32.1 General meetings of Members shall be convened in accordance with the provisions of this Memorandum.

32.2 An annual general meeting shall be held within four (4) months of the end of each Financial Year.

32.3 Unless otherwise decided at a general meeting or by the Directors, the Financial Year of the Association shall run from the first day of January each year to the last day of December of the same year.

32.4 All general meetings other than the annual general meeting shall be called special general meetings.

32.5 The Directors may, whenever they think fit, and shall upon a request in writing made either by Members entitled to twenty five percent (25%) of the total numbers of all Sections or by any mortgagee holding mortgage bonds over not less than twenty five percent (25%) in number of the Units, convene a special general meeting. If the Directors fail to call a meeting so requested within 15 (fifteen) business days of the request, the Members or mortgagee concerned shall be entitled themselves to call the meeting.

32.6 At least 15 (fifteen) business days written notice of every general meeting, specifying the place within the magisterial district where the scheme is situated, the date and the hour of the meeting and, in the case of special business, the general nature of such business, shall be given to:

- 32.6.1 all Members;
- 32.6.2 all holders of registered mortgage bonds over Units who have advised the Directors of their interests; and
- 32.6.3 the Managing Agent; and
- 32.6.4 all holders of future development rights.
- 32.7 The notice of a general meeting must be accompanied by at least:
- 32.7.1 an agenda, as required in terms of these rules;
- 32.7.2 a copy or comprehensive summary of any document that is to be considered or approved by Members at the meeting; and
- 32.7.3 a proxy appointment form in the prescribed format.
- 32.8 The holders of registered mortgage bonds, holders of future development rights and the Managing Agent shall have the right to attend a meeting herein referred to and to speak at such meetings, but shall not, in their respective capacities as such, be entitled to propose any motion or vote thereat; provided that such persons are not entitled to attend any part of a general meeting if the Members resolve that their presence would unreasonably interfere with the interests of the Association or any person's privacy.
- 32.9 The notice referred to a person or entity referred to in clause 32.6 above shall be deemed to have been sufficiently given and delivered, if sent or delivered:
- 32.9.1 by hand with a written acknowledgement of receipt, or
- 32.9.2 by pre-paid registered post addressed to the domicilium address of the Member, and to the Managing Agent or any mortgagee as aforesaid, to the address of such Managing Agent or mortgagee as reflected in the records of the Association, or
- 32.9.3 by e-mail to the e-mail address as reflected in the records of the Association.
- 32.10 Inadvertent omission to give the notice referred to in clause 32.6 to any person entitled to such notice or the non-receipt of such notice by such person shall, save in the case of the persons contemplated in clause 32.6.2 and 36.2.4, not invalidate any proceedings at any such meeting, as long as the Association made a reasonable attempt to give the notice. Voting at a general meeting may proceed despite the lack of notice as required by this rule, if all persons entitled to receive notice in writing waive their right to notice.
- 32.11 A special general meeting of the Association may be called on shorter notice than that specified in clause 32.6, provided it is, in the opinion of the Directors justified by the circumstances and such shorter notice is condoned by the meeting by way of an Ordinary Resolution.
- 32.12 A special general meeting for the purposes of a Unanimous or Special Resolution may be convened for a date 30 (thirty) days after notice has been given to all Members. The Directors may convene such a meeting at shorter notice if, in the opinion of the Directors, it is necessary due to the urgency of a matter or due to the specific nature of a matter. All Members present and entitled to attend and vote at such special general meeting in person or by proxy or by representation by proxy must condone the shorter notice period.
- 33. BUSINESS AT THE ANNUAL GENERAL MEETING**
- 33.1 All business at any general meeting other than business referred to in clause 33.2 shall be special business.

- 33.2 The following business shall be transacted at an annual general meeting:
- 33.2.1 Consideration of the audited financial statements and report;
 - 33.2.2 Approval with or without amendment of:
 - 33.2.2.1 the schedules of replacement values; and
 - 33.2.2.2 the Budget (the itemised estimate of all anticipated income and expenditure, with specific reference to the Association's expected contributions to the ZLR).
 - 33.2.3 The appointment of an Auditor;
 - 33.2.4 The determination of the number of Directors for the ensuing year;
 - 33.2.5 The election of Directors for the ensuing year;
 - 33.2.6 Any special business of which due notice has been given;
 - 33.2.7 The giving of directions or the imposing of restrictions referred to in section 7(1) of the Sectional Title Schemes Management Act.
 - 33.2.8 Determination of the *domicilium citandi et executandi* of the Association;
 - 33.2.9 Submission for consideration of a report by the Directors on maintenance and improvements effected by them during the past Financial Year;
 - 33.2.10 approve the budgets for the administrative and reserve funds for the next financial year;
 - 33.2.11 receive reports of the activities and decisions of the Directors since the previous general meeting, including reports of committees;
 - 33.2.12 determine the extent of the insurance cover by the Association
 - 33.2.13 The confirmation by the Directors that any amendment, substitution, addition or repeal of the Memorandum and/or Conduct Rules (as contemplated in section 10(5) of the Sectional Title Schemes Management Act) have been submitted to the Chief Ombud for filing as contemplated in section 10(5)(a) of the said Act.

34. QUORUM AT GENERAL MEETINGS

- 34.1 No business shall be transacted at any general meeting unless a quorum of Members is present in person or by proxy at the time when the meeting proceeds to business.
- 34.2 A quorum at a general meeting shall be the number of Members holding at least one third of the votes in value, present in person or by proxy or by representation recognised in law, and entitled to vote provided that:
 - 34.2.1 the quorum for the passing of a Unanimous Resolution shall be eighty percent (80%) of the Members in number and value present in person or by proxy or by representative recognised in law and entitled to vote;
 - 34.2.2 the quorum for the passing of a Special Resolution shall be twenty percent (20%) of the Members in number and value present in person or by proxy or by representative recognised in law and entitled to vote;
 - 34.2.3 a representative of the Developer, present in person or by proxy or by representation recognised in law, must during the Development Period be present at the meeting for a quorum to be established.

34.3 If within half-an-hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, and if at the adjourned meeting a quorum is not present within half-an-hour of the time appointed for the meeting, the Members present in person or by proxy or by representative recognised in law and entitled to vote shall form a quorum.

34.4 Provided that at the adjourned meeting constituted without the necessary quorum as in clause 34.3. above, no Unanimous or Special Resolution may be passed.

35. CHAIRPERSON OF GENERAL MEETING

35.1 The chairperson of the Board of Directors shall preside as chairperson at every general meeting of the Association, unless otherwise resolved by Members at the meeting.

35.2 If there is no such chairperson or if, at any meeting, the chairperson of the Board of Directors is not present within 15 (fifteen) minutes after the time appointed for the holding of the meeting, or if he or she is unwilling or unable to act as chairperson, the vice-chairperson shall act as chairperson and, in the event that he or she is also unwilling or unable to act as chairperson, the Members present shall elect a person present to be chairperson.

35.3 A chairperson must:

35.3.1 maintain order, regulate the orderly expression of views and guide the members and other participants through the business of the meeting in accordance with the common law of meetings;

35.3.2 ensure that all motions and amendments proposed are within the scope of the notice and powers of the meeting;

35.3.3 ensure that the scheme's rules, the minute books and any other documents relevant to the items of business on the agenda are available at the meeting;

35.3.4 act fairly, impartially and courteously to all members and others entitled to attend the meeting;

35.3.5 ensure that all members and other persons entitled to speak are able to express their views without unnecessary disturbance or interruption;

35.3.6 adjourn the meeting, when it is not able to complete or continue with its business;

35.3.7 make decisions on points of procedure;

35.3.8 settle disputes by giving rulings on points of order; and

35.3.9 surrender the chair to a temporary chairperson elected by the members for any period during which the chairperson wishes to engage in the debate of any item of business.

35.4 A chairperson at a general meeting must not:

35.4.1 from the chair, attempt to influence members' views on any item of business; or

35.4.2 disclose in advance of a vote how the chairperson intends to vote on any item of business.

36. VOTING AT GENERAL MEETINGS

36.1 At any general meeting a resolution, except for a Special Resolution or an Unanimous Resolution, put to the vote of the meeting shall be decided on a show of hands unless prior to or on the declaration by the chairperson of the result of the vote, a poll is demanded by any person entitled to vote at such meeting or by the chairperson.

36.2 For the purpose of a Unanimous or Special Resolution voting shall be conducted by poll.

36.3 A declaration by the chairperson that a resolution has been carried on a show of hands shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

37. VOTES

37.1 On a show of hands the Owner or Owners of a Unit, or if the Owner is a juristic person, its representative, shall have one vote in respect of each Unit held by such Owner.

37.2 For the purpose of a poll, the value of the vote of the Owner or Owners of a Unit shall be one vote per Unit. Accordingly for the purpose of a Unanimous or Special Resolution the value of the vote of the Owner or Owners of a Unit shall be one vote per Unit.

37.3 Notwithstanding the aforesaid, during the Development Period, the Developer shall, for the purposes of voting on any proposed resolution of the Association, be deemed to have the higher of the actual number of votes that then vest in the Developer and the number of votes as are held, in aggregate, by all of the other Members present in person or by proxy at the relevant meeting.

37.4 Except in cases where a Special Resolution or a Unanimous Resolution is required under the Act or in this Memorandum, a Member shall not be entitled to vote at any general meeting if:

37.4.1 any Levies payable by him or her in respect of his or her Unit or Exclusive Use Area have not been duly paid or he/she fails or refuses to pay any amount due by that Member after a court or adjudicator has given a judgement or order for payment of that amount; or

37.4.2 he or she persisted in breach of any provisions of the Act, the ZLR Constitution, the Governing Rules, the Design Guides, this Memorandum, any Conduct Rules issued in terms thereof, notwithstanding written warning by the Directors, or the Managing Agent to refrain from breaching such provision:

Provided that any mortgagee shall be entitled to vote as such Member's proxy at any general meeting even though the Member may be prohibited by the provisions of this clause from voting.

37.5 Where an Owner of a Unit is as such a Director for a beneficiary of a trust, he or she shall exercise voting rights in respect of the Unit to the exclusion of persons beneficially interested in the trust and such persons shall not be entitled to vote.

37.6 When two or more persons are entitled to exercise one vote jointly, that vote shall be exercised only by one person (who may or may not be one of them) jointly appointed by them as their proxy, provided that either one of them may demand a poll.

37.7 Votes at a general meeting may be cast either personally or by proxy, whether on a poll or on a show of hands.

37.8 A proxy shall be appointed in writing under the hand of the appointer, or his or her agent duly appointed in writing and must be substantially in the prescribed form in terms of Section 6(5) of the Sectional Title Schemes Management Act, and shall be handed in at the Office, at least 24 hours prior to the commencement of the meeting; provided that the aforesaid provisions shall not apply in the case of any proxy created and contained in any registered mortgage bond, if such mortgage bond or a copy certified by a conveyancer, is produced at the meeting.

37.9 A proxy need not be an Owner, but shall not be the Managing Agent or any of his or her employees, or an employee of the Association.

GENERAL:

38. DUTIES OF OWNERS AND OCCUPIERS OF SECTIONS

38.1 In addition to his or her obligations in terms of section 13 of the Sectional Title Schemes

Management Act, an Owner:

- 38.1.1 shall not use his or her Section, Exclusive Use Area or any part of the Common Property, or permit it to be used, in such a manner or for such purpose as shall be injurious to the reputation of Boulevard;
- 38.1.2 shall not contravene, or permit the contravention, of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any license, relating to or affecting the occupation of Sections or the Common Property, or the carrying on of business in Boulevard, or so contravene or permit the contravention of the conditions of title applicable to his or her Section or any other Section or to his or her Exclusive Use Area or any other Exclusive Use Area;
- 38.1.3 shall not make alterations, which are likely to impair the stability of his or her Section or the use and enjoyment by other Members of any other Section, the Common Property or any Exclusive Use Area;
- 38.1.4 shall not do anything to his or her Section or Exclusive Use Area, which is likely to prejudice the aesthetic appearance of Boulevard;
- 38.1.5 shall, when the purpose for which an Exclusive Use Area is intended to be used, is shown expressly or by implication on or by a registered sectional plan, or specified in this Memorandum or the Conduct Rules, not use, nor permit such Exclusive Use Area to be used, for any other purpose: Provided that with the written consent of all Members such Exclusive Use Area may be used for another purpose;
- 38.1.6 shall not construct or place any structure, building or improvement on his or her Exclusive Use Area, without the prior written consent of the Directors, which shall not be unreasonably withheld and that the provisions of section 24 and section 25 or other relevant provisions of the Act, the ZLR Constitution, the Governing Rules, the Design Guides, this Memorandum or the Conduct Rules, will not be contravened;
- 38.1.7 shall maintain the hot water installation which serves his or her Section, or where such installation serves more than one Section, the Owners concerned shall maintain such installations pro rata, notwithstanding that such appliance is situated in part of the Common Property and is insured in terms of the policy taken out by the Association;
- 38.1.8 shall repair and maintain his or her Exclusive Use Area in a state of good repair and keep it in a clean and neat condition as required by and to the satisfaction of the Directors;
- 38.1.9 permit any person authorised in writing by the Association, at all reasonable hours on notice (except in case of emergency, when no notice shall be required), to enter his or her Section or Exclusive Use Area for the purpose of maintenance or for the purposes of ensuring that the provisions of the Act, the ZLR Constitution, the Governing Rules, the Design Guides, this Memorandum or the Conduct Rules are being observed.
- 38.2 An Owner who exercises his or her rights in terms of section 60(3) of the Act shall bear all costs to give effect thereto.
- 38.3 The provisions of the Act, the ZLR Constitution, the Governing Rules, the Design Guides, this Memorandum or the Conduct Rules, and the duties of an Owner in relation to the use and occupation of Sections and Common Property shall be binding on all Owners, lessees and occupants of Sections, and it shall be the duty of the Owner to ensure compliance with the provisions of the Act, the ZLR Constitution, the Governing Rules, the Design Guides, this Memorandum or the Conduct Rules by his or her lessee or occupant of his or her Section, including the family members, guests, visitors, employees or contractors of the Owner, the lessee or occupant.
- 38.4 If an Owner:
- 38.4.1 fails to repair or maintain his or her Section in a state of good repair as required by section 13(1)(c)

of the Sectional Title Schemes Management Act; or

- 38.4.2 fails to repair or maintain his or her Exclusive Use Area in a state of good repair and in a clean and neat condition as required by the Directors in accordance with clause 38.1.8 above,

and any such failure persists for a period of 30 (thirty) days after the giving of written notice to repair or maintain given by the Directors, or by the Managing Agent on their behalf, the Association shall be entitled to remedy the Owner's failure and to recover the reasonable cost of doing so from such Owner.

39. CONDUCT RULES AND DESIGN GUIDES

- 39.1 The Association shall create Conduct Rules in terms of section 10(2)(b) of the Sectional Title Schemes Management Act by Special Resolution, which shall serve with the Conduct Rules of the Bodies Corporate. The Conduct Rules must be filed as the substituted Conduct Rules of the respective Bodies Corporate at the Pietermaritzburg Deeds Registry. The Conduct Rules will come into operation on the last date of filing thereof.
- 39.2 The Conduct Rules of the Association may be substituted, added to, amended or repealed from time to time by Special Resolution of the Association and in accordance with the provisions of section 35 of the Act, provided however that it may never conflict with the Governing Rules issued by the ZLR.
- 39.3 The Conduct Rules of the Bodies Corporate must first be approved by the ZLR and the Association prior to submission at the Pietermaritzburg Deeds Registry
- 39.4 The Developer has developed a set of Architectural Guidelines in respect of physical alterations and attachments to buildings in Boulevard, with such Architectural Guidelines forming part of the Design Guides. The Architectural Guidelines, as well as the balance of the Design Guides, shall be effective and binding upon all Members. The Design Guides may only be amended with the Developer's prior written approval.

40. THE APPOINTMENT, POWERS AND DUTIES OF A MANAGING AGENT

- 40.1 Subject to the provisions of section 71) of the Sectional Title Schemes Management Act, the Directors may from time to time, and shall if required by the ZLR or a Registered Mortgagee of twenty five percent (25%) of the Units or by the Members in a general meeting, appoint in terms of a written contract, the terms and conditions of which will have been approved in writing by the ZLR, a Managing Agent to control, manage and administer the Common Property, the administration of the affairs of the Association, including any obligations of the Association to a public or local authority, on behalf of the Members, and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect Levies and to appoint a supervisor or caretaker.
- 40.2 A Managing Agent will be appointed for an initial period of one year and thereafter such appointment shall automatically be renewed from year to year unless the Association notifies the Managing Agent to the contrary: provided that notice of termination of the contract may be given by the Directors in accordance with a resolution taken at a Director meeting or an Ordinary Resolution taken at a general meeting, subject to approval by the ZLR.
- 40.3 The Directors shall ensure that there is included in the contract of appointment of any Managing Agent a provision to the effect that if he is in breach of any of the provisions of his or her contract, or if he or she is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Directors may, without notice, cancel such contract of appointment, and that the Managing Agent shall have no claim whatsoever against the Association or any of the Members as a result of such cancellation.
- 40.4 Any one or more of the Owners or mortgagees of Sections may, if the Managing Agent is in breach of the provisions of his or her contract or if he or she is guilty of any conduct which at common law would justify the termination of a contract between master and servant, require the

Directors to cancel the Managing Agent's contract in terms of clause 40.3. The aforesaid provisions shall in no way detract from the Directors' rights to cancel the Managing Agent's contract.

- 40.5 Any Owner or mortgagee who required the Directors to cancel the Managing Agent's contract in terms of clause 40.3 shall furnish the Directors with such security as they in their discretion may determine for the payment of and shall indemnify the Directors, the Association and the ZLR against:
- 40.5.1 all litigation costs reasonably incurred by the Directors in enforcing such cancellation against the Managing Agent; and
- 40.5.2 all other costs and damages arising out of such cancellation, purported cancellation or litigation for which the Directors or the Association might be liable up to the time such Owner or mortgagee formally notifies the Directors that he no longer requires them to pursue the action.
- 40.6 The Directors shall not be required to cancel the contract of appointment of the Managing Agent unless and until the Owner or mortgagee requiring cancellation in terms of clause 40.3 has furnished them with the security and indemnity as specified in clause 40.5.
- 40.7 The contract with the Managing Agent shall further provide for the appointment to be revoked, and such Managing Agent shall cease to hold office, if:
- 40.7.1 where the Managing Agent is a juristic person, an order is made for its provisional or final liquidation or, where the Managing Agent is a natural person, he or she applies for the surrender of his or her estate as insolvent or his or her estate is sequestrated either provisionally or finally or, where the Managing Agent is a company, it is placed under judicial management or business rescue; or
- 40.7.2 the Managing Agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the Managing Agent is a company or a close corporation, any of its directors or members is convicted of an offence involving an element of fraud or an element of dishonesty, or;
- 40.7.3 a Special Resolution of the Members of the Association is passed to that effect with the prior written consent of the ZLR: Provided that in such event the Managing Agent so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.
- 40.8 The Managing Agent shall keep full records of his or her administration and shall report to the Association, the ZLR and to all holders of registered sectional mortgage bonds who have notified the Association of their interests in terms of clause 32.6.2 of all matters which in his or her opinion detrimentally affect the value or amenity of the Common Property and any of the Sections.
- 40.9 The Directors shall give reasonable prior notice to the Managing Agent of all meetings of the Directors and he or she may with the consent of the Directors be present thereat.
- 40.10 The Directors shall from time to time furnish to the Managing Agent with copies of the minutes of all meetings of the Directors and of the Association.

41. RESTRICTION ON TRANSFER

- 41.1 As provided for in clause 23.8 above, no Alienation or transfer in respect of a Unit may be effected unless the Association has granted its consent to such transfer, evidenced by a Levy Clearance Certificate issued by the Directors on behalf of the Association.
- 41.2 The Association may withhold the issue of a Levy Clearance Certificate if:
- 41.2.1 any Levies or any other monies due in respect of such Property have not been paid, or remains unpaid or inadequate provision has been made in respect of the payment thereof; or

- 41.2.2 the ZLR refuses to issue a Clearance Certificate in terms of the ZLR Constitution; or
- 41.2.3 any building additions exist in respect of such Section, which have not been properly authorised and registered, as the case may be, in terms of the Act, the ZLR Constitution, the Governing Rules, the Design Guides, this Memorandum or the Conduct Rules; or
- 41.2.4 if the Owner of the Unit is substantially in breach of the provisions of the Act, the ZLR Constitution, the Governing Rules, the Design Guides, this Memorandum or the Conduct Rules to an extent reasonably to justify withholding such certificate; or
- 41.2.5 the format and content of the Agreement of Sale does not substantially comply with the format and content prescribed by the Developer, during the Development Period, or the Directors thereafter; or
- 41.2.6 the Directors do not approve of the Nominated Occupant/s in respect of the Section as nominated by the Transferee in terms of clause 43 of this Memorandum.

42. SALE OF UNITS

- 42.1 Whereas the Association recognises the needs of its Members to have assistance from competent and informed estate agents, the Directors are authorised to implement the ZLR policy for the accreditation of estate agents for Boulevard and to introduce accreditation procedures for estate agents in terms thereof and to grant accreditation to estate agents who comply with the ZLR requirements.
- 42.2 A Member or other Transferor of Property may only appoint an accredited estate agent to secure a prospective purchaser for the Unit.
- 42.3 All Agreements of Sale shall be concluded in terms of the standard written Agreement of Sale as prepared and required by the Developer, during the Development Period, and the Directors of the ZLR from time to time thereafter.
- 42.4 The Owner shall ensure that the prospective purchaser shall disclose in the Agreement of Sale all information required by the Directors, including the full names and identity numbers of the Nominated Occupant/s.
- 42.5 All agreements of sale shall be subject to a suspensive condition that it must be approved in writing by the Developer, during the Development Period, or the Directors, thereafter, failing which the agreement shall lapse. The Developer, or the Directors, as the case may be, shall provide the approval or refusal (as the case may be) expeditiously, acting reasonably.
- 42.6 All transfers of Units shall be conducted by the Attorney appointed from time to time by the Developer, during the Development Period, or the Directors, thereafter, in order to protect the interests of the Association and the ZLR in such transaction, specifically as regards the payment of the Stabilisation Levy. Notwithstanding the aforesaid, the Attorney shall be the agent of the Transferor.

43. OCCUPATION OF SECTIONS

- 43.1 A Section shall only be occupied by the Nominated Occupant/s as approved in writing by the Directors and shall not be otherwise occupied by any other person/s, provided that:
 - 43.1.1 it shall be deemed not to be a breach of this clause for the Owner or the Nominated Occupant/s of a Section, to let the Section, subject to the Directors approving the Lessee/s and/or Occupant/s in writing;
 - 43.1.2 it shall be deemed not to be a breach of this clause for the Lessee/s or Nominated Occupant/s of a Section to part with occupation, whether on a sub-lease or other basis, during the temporary absence on holiday or otherwise of such Nominated Occupant/s or Lessee/s, provided that the

Directors have consented thereto in writing, which consent will not unreasonably be withheld;

- 43.1.3 a Nominated Occupant/s or Lessee/s may temporarily house his or her family members, guests, or visitors in his or her Section for a period of up to 60 (sixty) days during any calendar year. The maximum occupancy of 2 (two) people per bedroom may not be exceeded at any time. An extension of such period will require the prior written consent of the Directors.
- 43.2 No Owner or Nominated Occupant/s of a Section shall let or grant a right of occupancy in respect of his or her Section, without the written consent of the Directors, who may attach reasonable conditions to their consent. To obtain the written consent of the Directors, the Owner or Nominated Occupant/s of the Section shall apply to the Directors in writing and shall furnish the Directors with the following information and documentation:
 - 43.2.1 a copy of the lease agreement, the terms of which must be agreed to by the Directors;
 - 43.2.2 the particulars and contact details of the intended Lessee/s or Occupant/s.
- 43.3 The Owners of Units will, subject to this Memorandum, the ZLR Constitution and the Governing Rules be allowed to operate or govern a short-term letting enterprise (for rental periods shorter than 30 days similar to an 'AirBnB' enterprise).

44. DISPUTE RESOLUTION

- 44.1 Any dispute between the Association and an Owner or between Owners arising out of or in connection with or related to the Act, this Memorandum or the Conduct Rules, save where an interdict or any other form of urgent relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these provisions. Disputes related to the ZLR Constitution, the Governing Rules or the Design Guides shall be dealt with as provided for in the ZLR Constitution.
- 44.2 If such dispute arises, the aggrieved party shall notify the other interested party or parties in writing and copies of such notification shall be served on the Directors and Managing Agent, if any, and should the dispute or complaint not be resolved within 14 (fourteen) days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration: Provided that, if an Owner declares a dispute with the Association, it shall be sufficient notice if notification is served on the Directors and the Managing Agent, if any, and such Owner will not be required to serve notice on each of the other Owners.
- 44.3 Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties or, in the instance of a stated case as contemplated above, the Directors, shall appoint an arbitrator who shall be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.
- 44.4 If the parties cannot agree as to the arbitrator to be appointed in terms of clause 44.3 within 3 (three) days after arbitration has been demanded, the President for the time being of the Law Society of Kwa-Zulu Natal or his or her nominee shall upon written application appoint an arbitrator within 7 (seven) days after he or she has been required to make the appointment so that the arbitration can be held and concluded without delay.
- 44.5 Arbitration shall be held informally or otherwise as the arbitrator may determine. The arbitrator shall have the right to require that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. Where possible the arbitration shall be concluded within 21 (twenty one) days after the matter has been referred to for arbitration in terms of clause 44.2 provided that security for costs has been furnished, if required by the arbitrator
- 44.6 The arbitrator shall make his or her award within 7 (seven) days from the date of the completion of the arbitration and shall in making his or her award, have regard to the principles laid down in

terms of the Act, the ZLR Constitution, the Governing Rules, the Design Guides, this Memorandum and the Conduct Rules. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he or she may determine and as he or she in his or her discretion, may deem appropriate, having regard to the outcome of the arbitration.

- 44.7 The decision of the arbitrator shall be final and binding and may be made an Order of the High Court upon application of any party to be affected by the arbitration.

45. APPLICABILITY OF THE ACTS

In applying the provisions of this Memorandum and the Conduct Rules the Directors and Members shall at all times conduct their affairs subject to the applicable provisions of the Act and the Companies Act whilst having regard to the ZLR Constitution, the Governing Rules and the Design Guides.

46. AMENDMENT OF THIS MEMORANDUM

This Memorandum may be amended from time to time by the Members by means of a Special Resolution: Provided that the Members may by means of a Special Resolution, approve amendments to the Memorandum by which the liability of the Owner of any Section to pay Levies to the Association, is modified and provided further that during the Development Period, this Memorandum shall not be varied or amended without the prior written consent of the Developer. Notwithstanding the aforesaid, during the Development Period the Developer shall be entitled to amend the Memorandum in its discretion and without reference to the Association.

47. DISCLAIMER OF RESPONSIBILITY

- 47.1 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 Boulevard regardless of the cause thereof nor shall the Association be responsible for any theft of property occurring within Boulevard. Owners, Residents and Lessees 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.
- 47.2 The Association and/or its agents shall not be liable to any Resident or Owner or any of the Owner's Lessees, or their respective employees, agents, servants, invitees or customers or any member of the public dealing with the Resident or Owner, for any injury or loss or damage of any description which the Owner or any such other person aforesaid may suffer or sustain whether directly or indirectly in or about Boulevard, regardless of the cause thereof.
- 47.3 Residents and Owners hereby indemnify the Association and its employees, servants and agents and lawful invitees and hold them harmless against all claims by any person arising from any injury or loss or damage as contemplated in this clause 47.

48. DELIVERY OF NOTICES

- 48.1 A notice by the Association to a Member in terms of this Memorandum, the Design Guides or the Conduct Rules shall be deemed to have been sufficiently given and delivered, if:
- 48.1.1 delivered by hand to the Member with a written acknowledgement of receipt, or
 - 48.1.2 sent by pre-paid registered post addressed to the *domicilium* address of the Member, or
 - 48.1.3 transmitted by e-mail to the e-mail address of the Member as reflected in the records of the Association.
- 48.2 A notice sent or delivered by registered post shall be deemed to have been received on the 5th (fifth) day after the date of posting. A notice by hand or e-mail shall be deemed to have been delivered on the date of delivery by hand or transmittal by e-mail.

49. HOTEL

- 49.1 All Owners acknowledge that their respective Properties, and the Schemes comprising their Units in Boulevard, forms part of a "Mixed Use Site" as defined in the KwaDukuza Town Planning Scheme that includes hotels, offices, commercial and retail components. The Developer shall be entitled, but not obliged, to conduct a Hotel, together with a commercial and retail sector, club house and the like anywhere in Boulevard and may cede this right (and all rights contained in this clause 49) to another party without any further consent of the Association.
- 49.2 It is a specific condition of ownership of a Property in Boulevard that the Hotel Operator will manage those common areas allocated to the Hotel in terms of the Rules, the Hotel and hospitality areas to be erected on Boulevard.
- 49.3 All Owners of Units in Boulevard acknowledge that certain areas and facilities within the respective Schemes do not form part of Common Property, and that their use and access to such facilities will be determined by the Developer, Hotel Operator and/or manager. In particular, Owners acknowledge and agree that the Developer may retain ownership of certain areas within the respective Schemes comprising Boulevard to ensure the proper operation and functioning of its retail, hospitality and commercial interests, such as the Hotel, and including but not limited to the lobby/reception area, corridors, bars, restaurants, coffee shops, hotel swimming pools, hotel rooms, meeting rooms and back of house area, commercial and retail section. Whilst it is intended that Owners and Residents will be permitted access through portions of the Hotel premises, such access will at all times be subject to the control and at the discretion of the Hotel Operator which may impose rules and reasonably allocated and proportioned costs in connection therewith.
- 49.4 The Developer will be entitled to cede and delegate its rights to manage its own areas consisting of Sections and allocated common properties to third parties without obtaining the consent of any Owner.
- 49.5 The Developer may demarcate any exclusive use areas to be allocated to the various Units in The Boulevard which areas shall not be deemed to be Common Property, but shall be allocated to the appropriate Unit by the Developer for the exclusive use of the Owner subject to such rules as may be imposed by the Hotel Operator from time to time. It is recorded that all the recreational facilities will be allocated exclusively to the Hotel.
- 49.6 Each Unit in the Schemes comprising Boulevard will have the use of one unallocated and unfixed parking bay within the Hotel complex as directed by and in terms of the rules imposed by the Hotel Operator from time to time. The Nominated Occupant of a Section may not park more than one vehicle in the designated parking areas at any one time. The allocation of the exclusive use areas shall be made in terms of the Rules of the Association unless the Developer elects in its sole discretion to create certificates of real rights in respect thereof and cede them to the relevant Owner. All other parking bays shall be allocated and belong to the Hotel.
- 49.7 Owners may let the Unit for continuous periods of 30 (thirty) days or more, subject to the terms and conditions set out in the Governing Rules.
- 49.8 The Hotel Operator or manager may impose such rules and regulations regarding the conduct of owners and guests or their invitees regarding the use of Units and the hospitality areas of the Hotel so as to maintain the Hotel to the Hotel Operator Standard.
- 49.9 In addition the Hotel Operator may impose a levy on all Unit Owners for administration of common areas and services and charges (levies, daily usage fee and the like) in respect of the use by the Owner of a Hotel Unit, such fee based on the cost of all consumables, housekeeping services, levies and the like supplied in respect of the Unit and form part of the levies due to the Association or the Hotel if such services are provided by the Hotel.

50. ZFM & ZSC

- 50.1 The ZFM, ZSC and any other entity established by the Developer to provide facilities and amenities to the Resident/s of Boulevard shall be privately owned. Information in respect of such business ventures may be obtained from the provisions of the ZLR Constitution or the respective entities, once established.
- 50.2 The Developer intends developing the Zimbali Sports Club (ZSC) and related facilities which may comprise and which may include: an 18 (Eighteen) hole golf course, tennis courts, , squash courts, cycling trails, walking trails and other sporting facilities, commercial and hospitality facilities, public and privately accessible areas so designed as to facilitate an aesthetic and harmonious blending within the environment and the hosting of corporate, local, national and international events.
- 50.3 No obligation rests on the Developer to provide all of the said facilities and neither is the above to be regarded as a comprehensive or definitive list of facilities or activities to be catered for. Every Owner and Resident will be obliged, at all times, to co-operate with the Developer in an endeavour to facilitate the success of the said developments, tournaments, events and competitions.
- 50.4 Also in this respect, it is recorded that no Owner or Resident will interfere with any of the proposed developments or lodge any objection with any competent authority in respect of any developments or events. In particular, without detracting from the generality of the aforesaid, no Owner or Resident will object to any application made by and on behalf of the Developer, its nominees or its agent for special usage consent, licenses for sporting, shopping, commercial rights, zoning applications, or removal of restrictive conditions applications.
- 50.5 Again, in no way detracting from the generality of the aforesaid, it is recorded that the Developer may, from time to time, erect temporary buildings and other structures in the Resort, including temporary structures during the aforesaid events, which may block or otherwise interfere with views from an Owner or Resident's Property. No Owner or Resident shall have the right to object to the construction of any such structures on the Resort, on the basis that such buildings or other structures block or otherwise interfere with the views from his or her Property, nor will they have any claim for any alleged diminishment in value of their Property arising out of any interference with the views from the Property by reason of the construction of such temporary buildings or other structures.
- 50.6 It is recorded that the ZSC and ZFM are private facilities and that no Owner or Resident (or any other subscriber) shall have any proprietary or voting rights in the ZSC or ZFM and shall not be entitled to partake in the management of the ZSC or ZFM. Admission to the ZSC shall be in the sole and absolute discretion of the Developer or the proprietor thereof and shall be categorised accordingly into the ZSC Membership. In no way detracting from the generality of the aforesaid, it is specifically recorded that persons, who are not owners of immovable property on the Resort, may become subscribers, at the proprietor's discretion.
- 50.7 All members of each of the Member Associations, save for the Evergreen Zimbali Lakes Body Corporate which is subject to the provisions of its Constitution, within the Resort shall be obliged to join the ZSC on the transfer date and pay a joining fee, prior to the transfer date, in respect of its class of membership as determined by the proprietor of the ZSC. The joining and subscription fees shall be subject to escalation, as determined by the proprietor from time to time. Membership of the ZSC shall not be mandatory for the Evergreen Zimbali Lakes Body Corporate or the residents of Evergreen Zimbali Lakes but such residents shall be entitled to join on a voluntary basis at the standard rates applicable to all members of the ZSC.
- 50.8 In the event of an Owner or Resident or his or her family breaching the rules and regulations of the ZSC, the proprietor shall be entitled to suspend such Owner or Resident's rights of use of the ZSC facilities, which suspension shall in no way alleviate the Owner or Resident's obligation to pay the annual subscription and other amounts due by the Owner or Resident to the proprietor.
- 50.9 The ZSC and ZFM will form an integral part of the Resort and the successful management and operation of its facilities and services is considered vital to the use and enjoyment Owners and Residents will derive from the Resort. To ensure the sustainability of the ZSC it shall be registered as a Condition of Ownership of Property that no Property shall be transferred without the prior written consent of the ZLR first being had and obtained in the form of the Clearance Certificate, which certificate shall be given upon receipt by the ZLR of the ZSC Consent, in addition to such other

requirements that may apply prior to the Clearance Certificate being issued. The ZSC shall only provide the ZLR with the ZSC Consent in the event that the Transferee shall have performed all his or her obligations to the ZSC in full. In addition, the ZLR will have to receive the ZFM Consent prior to transfer of the Transferee's Property to ensure that the Transferee's shall have performed all of his or her obligations to the ZFM in full.

- 50.10 In the event of an Owner leasing his or her Property to a Lessee, then and in that event, at the Owner's election, either:
- 50.10.1 The Owner shall nominate the Lessee as the beneficiary of the Owner's right of use of the ZSC, in which event the Lessee shall be entitled to exercise all the Owner's rights of use of the ZSC to the exclusion of the Owner. In the event of the Owner electing this option, the Owner shall remain responsible for all its obligations to the ZSC, including payment of the annual subscription and other amounts due to the proprietor, and it shall be the responsibility of the Owner to recover such amounts from its Lessee); alternatively
- 50.10.2 The Lessee shall have the option to become a (separate) subscriber of the ZSC, for the duration of his lease of the Property, should the Owner retain his Membership.
- 50.11 Any generator situated on the common property of a Scheme in the Boulevard is owned, maintained, and under the possession of Zimbali Utilities Company (ZUCO) and will not form part of the property of the body corporate of such Scheme. ZUCO will charge a monthly Generator Availability Fee to the body corporate and or individual members, as elected by the Body Corporate. It is recorded that ZUCO will always have the option to remove the generator, if necessary in its sole discretion.
