



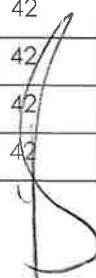
**CONSTITUTION
OF THE**

**ZIMBALI LAKES RESORT
MANAGEMENT ASSOCIATION**

This Association is constituted to undertake the conservancy and other functions and obligations assigned to the Association, and moreover to protect and advance the interests of owners of immovable property in the Resort, to protect, promote and maintain the essential services, amenities and activities in relation to the said property, to regulate the environment in the Resort and to control and co-ordinate development in the Resort with special regard to the upholding of aesthetic standards which will enhance the attractiveness of the Resort as a whole.

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1. DEFINITIONS AND INTERPRETATION

1.1 In this Constitution, 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 thereof or a share therein or a Right in respect thereof is sold or purchased.
Alienation	To divest of ownership of the Property, or the bare dominium of the 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 the Property nominates a new Nominated Occupant 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.
Apartment	means a set of room or rooms, which constitute a dwelling and which forms part of a building, which includes a number of apartments.
Architectural Guidelines	The Architectural Guidelines adopted for the Association as referred to in this Constitution (it is recorded that the Tatali Precinct shall have its own Architectural Guidelines, which shall be set and enforced by the Tatali Management Association).
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
Association	The Zimbali Lakes Resort Management Association.
BCOA	Beach Club Owners Association, a Member Association.
BOA	Boulevard Owners Association NPC, a Member Association.
Board	The Board of Trustees of the Association from time to time.
Body Corporate	A Body Corporate of a sectional title scheme in the Resort, as prescribed in the Act.

Business Day	Every weekday other than a Saturday, Sunday, or proclaimed public holiday.
Chairperson	The Chairperson for the time being of the Board of Trustees.
Clearance Certificate	A certificate required by an Owner wishing to Alienate Property in the Resort and issued by the Association on receipt of the Undertaking. Certificates from the ZFM, the relevant Member Association and the ZSC Consent, must be obtained prior to the ZLR issuing the said clearance certificate, as provided for in this Constitution.
Common Property	In relation to a sectional title scheme on the Resort, being the land included in the scheme and such part of the building/s in that scheme that are not included in a Section.
Communal Property	The common areas within the Resort not owned or managed by the Member Associations, <i>inter alia</i> comprising the private open spaces in the Resort, including certain public and private open spaces, parks, water features, water bodies and waterways, certain areas of indigenous bush, wetlands, certain road verges, private roads and public thoroughfares, walkways, common parking areas, the gateways, entrance buildings, security fences and infrastructure, boundary walls, landscaping and other improvements from time to time erected on the private open spaces in the Resort, controlled and managed by the Association, but excluding any residential Sub-divisions, Sections and any commercial enterprise on the Resort.
Design Review Committee	The Design Review Committee appointed by the Developer during the Development period, and by the Association thereafter.
Developer	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 and/or related companies, holding companies or subsidiaries of the joint venture partners, its successor/s in title or the Associated Companies.
Developer Trustee	A Trustee 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 Constitution 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.
Estate Agent	An estate agent contracted by an Owner for the letting or reselling of his or her Property, approved and listed by the Developer or the Association in terms of this Constitution in terms of criteria determined by the Developer during the Development Period and by the Association thereafter.
Evergreen Lakes	Zimbali The sectional title scheme to be opened by the developer Evergreen Property Developments (Pty) Ltd, within the Resort which is

	managed by the Evergreen Zimbali Lakes Body Corporate, which is an Evergreen Lifestyle Retirement Village.
Evergreen Zimbali Lakes Body Corporate	The owner's association to be established on transfer of the vacant property on which Evergreen Zimbali Lakes is to be built and subsequently the body corporate to be established in respect of upon the opening of the sectional title register for the Evergreen Zimbali Lakes. The Evergreen Zimbali Lakes Body Corporate will be a Member Association. (It is recorded that in the event of a sectional title register not been opened on the property, the term "Evergreen Zimbali Lakes Body Corporate" shall refer to the association that will be formed by the developer of the Evergreen Lifestyle Retirement Village to represent the occupants thereof).
Evergreen Lifestyle Retirement Village	The entire node known as Evergreen Lifestyle Retirement Village has been designated as a retirement village as constituting a residential facility as defined in the Older Persons Act, 2006, as being ' <i>a building or other structure used primarily for the purposes of providing accommodation and of providing a 24-hour service to older persons</i> ', with the retirement village to be registered as a residential facility with the national Department of Social Development pursuant to the provisions of Section 18 of the Older Persons Act, 2006. The provisions of the Housing Development Schemes for Retired Persons Act, 1988, shall similarly apply to the Retirement Village as being ' <i>a scheme, arrangement or undertaking in terms of which housing interests are alienated, or are offered for alienation, only to retired persons or mainly to such persons</i> '. Residents shall occupy Units in the Retirement Village pursuant to Life Rights.
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 Trustees, and in determining the amount the Trustees 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 Trustees 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 January each year to the last day of December of that year.
Governing Rules	The Governing Rules adopted for the Resort to govern, amplify and/or implement the provisions of this Constitution, to be drafted and approved by the Developer and implemented by the Association. The Governing shall include provisions for penalties for the contravention of the Rules or the provisions of this Constitution, as from time to time determined by the Board of Trustees.
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 an Owner to the Association, 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 Trustees may determine from time to time, and save as recorded in this Constitution as it relates to the sale of a commercial venture, or an interest therein, as a going concern.
Landscaping Guide	The Landscaping Guide adopted for the Association as referred to in this Constitution.
Lessee/s	The lessee/s of a Property, approved in writing by the Trustees.
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 amount payable by a Member Association as determined by the Board, from time to time (in terms of clause 17.1 of this Constitution).
Levy Clearance Certificate	A certificate required by an Owner wishing to Alienate Property in the Resort and issued by a Member Association who has jurisdiction over the relevant Owner's Property.
Levy Contribution Percentage	The proportions in which Member Associations shall contribute towards the levy fund, as determined by the Trustees in terms of 17.4 below.
Life Right	The right to occupy Property developed in terms of the Housing Development Scheme for Retired Persons Act, 65 of 1988, and endorsed as such against the title deed/s of the relevant housing development scheme.
Local Authority	KwaDukuza Municipality, its successors in title or assigns, having jurisdiction over the Resort.
Manager	A person as may be appointed by the Trustees as an employee of the Association in terms of this Constitution.
Managing Agent	Any person or entity as may be appointed by the Developer, during the Development Period, and thereafter by the Board, as an independent contractor to undertake any or all of the management functions of the Association, any Member Association and/or Body Corporate, subject to and in terms of the provisions of this Constitution.
Member Association	A Member Association as recorded in clause 5.2.2 of this Constitution including, in addition to the various owners' associations, commercial ventures in the Resort, the Evergreen Zimbali Lakes Body Corporate and the Developer.
MAC	The Constitution of any Member Association, approved by the Developer, which constitution may never conflict or alter any provisions of this Constitution and the Governing Rules or any of the

	documents or guidelines, including the Design Guides, referred to in this Constitution or the Governing Rules.
Month	A calendar month.
Nominated Occupant/s	The Occupant/s of a Property, nominated in writing by the Owner or Transferee of the Property and approved in writing by the Trustees: 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.
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 Association and/or the Member Associations as directed or prescribed by the Developer in its discretion.
Ordinary Resolution	At any general meeting an ordinary resolution put to the vote of the meeting shall be decided on an ordinary majority of Member Associations present or represented.
OCO A	Ocean Club Owners Association, a Member Association.
Owner/s	The registered Owner of Property in the Resort from time to time, who shall at all times be a member of the Member Association having jurisdiction in respect of his or her Sub-division or Section, and if he or she owns a Section, then he or she shall also be a member of the applicable Body Corporate who shall in turn also be a member of the relevant Member Association, and shall include a company, partnership, trustees of a trust, or other association of persons entitled in law to hold title to immovable property and shall specifically also include the Life Right holder to any Property or Unit within the Resort.
Plan	The lay-out plan attached hereto marked Annexure "A", depicting all immovable property within the entire Resort.
Precinct	The area administered by a Member Association (for example, the Precinct, administered by Ocean Club Owners Association, shall be the area of the properties within Ocean Club).
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 Member Associations or Owners, as the case may be).
Property	Any Subdivision within the Resort, 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, and includes the right to occupy Property pursuant to Life Right.
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.
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 Trustees, and includes specifically occupants pursuant to Life Right.
Resort	The entire extent of 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.
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.
ROA	The Ridge Owners Association, a Member Association.
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.
Section	A section as defined in the Act.
Scheme	The KwaDukuza Town Planning Scheme, or any successor thereto.
Short Term Lease	A written agreement pursuant to which an owner parts with possession of his/her property to a lessee for a determined period of time of less than 30 calendar days against payment of an agreed rental
Simplex	means a simplex or duplex, which constitutes a dwelling
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 Resort, capable of separate, individual, legal ownership.
TMA	means the Totali Management Association, a Member Association
Transfer Date	The date of registration of the transfer of the 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.
Trustee	A Trustee for the time being, a member of the Board of Trustees.
Trustees	The Board of Trustees 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 participation quota of such Section.
(the) Undertaking	The written letter of undertaking to secure the payment of the Lakes Stabilisation Levy to the Association on registration of transfer or Alienation of a Property, to be provided to the Association by the conveyancers attending to such registration of transfer or Alienation of a Property.
Vice-Chairperson	The Vice-Chairperson for the time being of the Board of Trustees.
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.
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 Association 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 Constitution:

1.2.1 The clause headings are for convenience and shall be disregarded in construing this Constitution.

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 Constitution is a substantive provision conferring rights or imposing obligations on any of the Member Associations, Residents, Owners or the Association, then, notwithstanding that it is only in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision of this Constitution.
- 1.2.6 If any provision of this Constitution is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.
- 1.2.7 When any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or proclaimed public holiday.
- 1.2.8 In interpreting this Constitution, no provision shall be construed in a limiting fashion or in accordance with the *Eiusdem Generis* Rule.
- 1.3 It is the intention that this Constitution of the Association be read with the Constitutions of the various Member Associations, however, to the extent that there is any conflict in this regard the provisions of this Constitution shall prevail.

2 RESORT STRUCTURE & CONTEXT

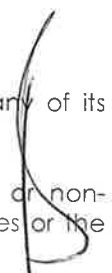
- 2.1 The entire Resort shall be managed by the Association, to achieve the objectives of the Association as recorded in this Constitution.
- 2.2 Given the relative size of the Resort, and the scope of the management functions to be undertaken by the Association, the Resort will be divided into specific and distinct nodes, as designated on the attached Plan. Each node will have an owners or management association to broadly perform the management function undertaken by the Association in terms of this Constitution, but only in respect of the specific node over which that owners or management association has jurisdiction.
- 2.3 All such owners- or management associations will be Member Associations of the Association, and will at all times perform their management obligations, and exercise their rights (all of which will be derived from the provisions of this Constitution), as directed by the Association and in such manner and upon such conditions as may be prescribed by the Board of Trustees from time to time.
- 2.4 Such Member Associations will contribute monthly to the Levy Fund to be established, in the proportions and to the extent as determined by this Constitution, to allow the Association to perform the management functions undertaken in this Constitution.
- 2.5 Every Owner of Property in the Resort will in turn be a member of the owners or management association having jurisdiction over the geographical location of his or her Property, as follows:



- 2.5.1 Every Owner of a Sub-division in that node shall be a member; or
- 2.5.2 If such Property is a Section or Unit within a sectional title scheme in that node, then the Owner shall be a member of the Body Corporate of that sectional title scheme and the Member Association and the Body Corporate of such sectional title scheme shall be obliged to assist the Member Association in the collection of levy and other amounts due to the Member Association by such Owners;
- 2.5.3 Every Owner of an endorsed Life Right in respect of any Property in the Resort shall be a member of the relevant Member Association.
- 2.6 For the avoidance of doubt, the Association shall not have individual Owners as its members. Owners shall be represented by, and be members of, the Member Associations for the geographical node within which their Property is located.
- 2.7 Every Owner will be obliged to pay a monthly levy to such Member Association to allow for the performance by that Member Association of its management functions and to allow such Member Association to pay the required levy contribution to the Association, as referred to hereinbefore. The Association may direct that such contributions be paid to it directly from every Owner, or via the Member Associations, in the discretion of the Association.
- 2.8 Every Owner shall moreover be liable to the Association for the payment of a Lakes Stabilisation Levy upon the Alienation of his or her Property in the Resort, in the manner provided for in this Constitution.
- 2.9 There shall initially be the Member Associations for the various nodes as reflected and designated on the attached Plan, and recorded in Clause 5 below, with additional Member Associations (including specifically commercial ventures designated by the Developer) to be added as members of the Association in the discretion of the Developer during the Development Period.

3 STATUS OF THE ASSOCIATION AND CONSTITUTION

- 3.1 The Association shall be known as the Zimbali Lakes Resort Management Association and is established as a master management association for the Member Associations and Resort.
- 3.2 The date of establishment of the Association shall be on such date as the Developer designates the establishment thereof in writing and signs this Constitution.
- 3.3 The Association shall be responsible for the enforcement of this Constitution, the Governing Rules, the Design Guides, and for the control, administration and management of the Communal Property for the benefit of all Member Associations and their respective Owners and Residents.
- 3.4 The provisions of the Companies Act, No. 71 of 2008, shall not apply in relation to the Association.
- 3.5 The Association shall be structured as a common law association not for profit and without capital.
- 3.6 The Association shall have perpetual succession and be capable of suing and of being sued in its corporate name in respect of:
- 3.6.1 any contract made by it;
- 3.6.2 any damage to the Communal Property;
- 3.6.3 any matter in connection with the land or building/s for which the Association or any of its Member Associations are liable;
- 3.6.4 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, this Constitution, the Governing Rules or the Design Guides.



- 3.7 None of the Owners or Residents in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association.
- 3.8 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:
- 3.8.1 Such address shall be situated in the magisterial district in which the Resort is situated;
- 3.8.2 The Trustees shall give notice to all Owners and Residents of any change of such address.

4. OBJECTIVES OF THE ASSOCIATION

- 4.1 The objectives of the Association are to promote the collective interests of all the Member Associations and, by extension, the Owners of Property in the Resort by functioning as a master management association in respect of the Resort and by performing all functions and exercising all powers, and by managing and controlling all the affairs of the Association, and in particular by:
- 4.1.1 attending to the management and administration, including financial administration, of the Association;
- 4.1.2 enforcing compliance with the provisions of the Act, the Constitution, the Governing Rules and the Design Guides;
- 4.1.3 promoting and managing the collective interests of all its Member Associations and, by extension, the Owners and Residents;
- 4.1.4 regulating, maintaining and managing the Communal Property, Common Property and the reciprocal rights and duties of Member Associations, Owners and Residents in respect thereof, including the maintenance, upkeep, upgrading and installation, where required and when not owned by the ZFM or other service provider.
- 4.1.5 to acquire and grant servitudes;
- 4.1.6 to control the nature and position of buildings, structures, installations and equipment relating to Property and to ensure compliance with the Development Manual, Design Guides, the Governing Rules and any other control measures in respect of the Resort required by law or this Constitution;
- 4.1.7 to enter into and to implement any contract relating to the provision of services, facilities or amenities, and the conditions of establishment of the Resort, and to incur any costs in this regard, it being recorded that the Association will be bound by any contracts concluded by the Developer on behalf of the Association and / or Managing Agent, either before or after the date of approval of this Constitution by the Local Authority; and
- 4.1.8 to enter into any agreement and other appropriate arrangement with any supplier, contractor or other third party, in relation to the administration, management and/or control of the Resort, to which the Member Associations will be similarly bound.
- 4.2 The Association does not pursue any pecuniary gain for itself, the Trustees (save as regards reasonable remuneration as recorded in clause 11 below) or any of its Member Associations, Residents or Owners and will not be permitted to distribute any of its funds other than in accordance with the provisions of this Constitution.
- 4.3 The main object of the Association is to manage the collective interest common to all its Member Associations and the Owners, which includes expenditure applicable to the Communal Property, Common Property (where applicable) and the collection of levies for which such Member Associations or Owners are liable.
- 4.4 The Association is not permitted to distribute its funds to any person other than to a similar association of persons.



- 4.5 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.
- 4.6 The Association is not, was not and will not knowingly be 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.
- 4.7 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.

5 MEMBERSHIP OF THE ASSOCIATION

5.1 General

- 5.1.1 Membership of the Association shall be compulsory for the Member Associations, representing Owners as its members, and for the Developer.
- 5.1.2 The Developer shall moreover be entitled to designate any commercial or other venture in the Resort as a Member Association, provided such commercial or other venture provides services, amenities or facilities primarily for the use and enjoyment of Owners and Residents of the Resort.
- 5.1.3 No Property shall be transferred unless it is a condition of such transfer that the Transferee, in a manner acceptable to the Association, agrees to abide by the Constitution in the manner prescribed by the Association.
- 5.1.4 In order to procure compliance with the provisions of this 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 Association 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 Constitution and the Governing Rules made in terms thereof, in a manner acceptable to the Association, and the Transferor has complied with all his obligations in and to the Association, 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 as envisaged in 25.9 below. 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;
- 5.1.5 Notwithstanding anything contained herein or elsewhere, the Developer shall not be required to obtain a Clearance Certificate from the Association when the Developer Alienates any Property owned by the Developer, nor shall consent be required from the Association to the mortgage of any Property simultaneously with the transfer thereof from the Developer.
- 5.1.6 A Member Association representing the interests of Owners who are members of such Member Association, may not tender resignation of its membership of the Association.
- 5.1.7 The rights and obligations of a Member Association shall not be transferable, and every Member Association shall:
- 5.1.7.1 to the best of its ability adhere to and promote the objects and interests of the Association;
- 5.1.7.2 observe and comply with the provisions of the Act, the legislation applicable to the Properties within the geographical area of its own association, this Constitution, the Governing Rules, the Design Guides and the Directives made by the Trustees in accordance with this Constitution.

5.2 Admission of Members

- 5.2.1 The members of the Association shall be the Developer, the Member Associations listed in 5.2.2 below and those additional Member Associations or persons designated by the Developer, from time to time during the Development Period, to become a member in accordance with the provisions of this Constitution.
- 5.2.2 The initial Member Associations shall be:-
- 5.2.2.1 The Developer;
- 5.2.2.2 The Ocean Club Owners Association (OCHOA), being the representative of the owners of the Properties in Ocean Club, including residential sectional title units, the hotel, the hotel units, sectional title commercial units and sectional title office units;
- 5.2.2.3 The Zimbali Sports Club (ZSC), represented by the designated representative of the proprietor of this facility;
- 5.2.2.4 Boulevard Owners Association (BOA), being the representative of the owners of the various Properties in Boulevard, including the hotel, the hotel units, residential sectional title units, commercial sectional title units and sectional title office units;
- 5.2.2.5 Tatali Management Association (TMA), being the representative of the owners of the various Properties in Tatali, including the hotel, the hotel units, the commercial parking operator, residential sectional title units, commercial sectional title units and sectional title office units;
- 5.2.2.6 The Evergreen Zimbali Lakes Body Corporate, being the Body Corporate to be established in terms of the Act, the sole member of which is the developer and owner of Evergreen Zimbali Lakes representing the holders of endorsed Life Right Units;
- 5.2.2.7 The Ridge Owners Association (ROA), being the representative of the owners of the various Properties in The Ridge residential node, including residential sectional title units and single residential Sub-divisions;
- 5.2.2.8 The Zimbali Facilities Management Company (ZFM), being the designated board member of this company;
- 5.2.2.9 Zimbali Fauna Centre (ZFC), being the designated representative of the proprietor of this facility;
- 5.2.2.10 Beach Club Owners Association (BCOA), being the representative of the owners of the various Properties in Beach Club.
- 5.2.3 Each Member Association shall be represented at any meeting of the Association by 1 (one) representative, being the Chairperson or a Vice Chairperson of the Member Association, or a representative nominated by the Trustees of such a Member Association, and shall all be of a single class, being voting members, each of whom shall have a single equal vote.
- 5.2.4 An Owner will become a member of the relevant Member Association upon taking transfer of a Property, which includes the endorsement of a Life Right against the title deed of a Property. An Owner may never resign as a member of the relevant Member Association whilst it owns Property in the Resort.
- 5.2.5 The terms and conditions of any MAC may never be in conflict with this Constitution, the Governing Rules or any of the related documents referred to in this Constitution. In the instance of any conflict, the terms and conditions of the Constitution, the Governing Rules or the related documents will prevail.
- 5.2.6 The terms and conditions of any MAC may not deviate from the definitions of Ordinary Resolution or Special Resolution as provided for in terms of this Constitution. No MAC may ever require a lesser approval percentage for any matter provided for in this Constitution and must follow this Constitution as far as resolution requirements are concerned.

- 5.2.7 The functions and powers of any Body Corporate must be assigned to the Member Association having geographical jurisdiction, as provided for in Section 6(4) of the Regulations promulgated in terms of the Sectional Title Schemes Management Act, Act 8 of 2011 (the Regulations), and the relevant Member Association must accept this assignment. For the avoidance of doubt, the Management Rules as contained in Annexure 1 to the Regulations, do not apply to any of the Bodies Corporate in the Resort.
- 5.2.8 The Developer shall be entitled, in its sole discretion and for the entire duration of the Development Period, to rename any or all of the Member Associations to such name and style as it deems appropriate.

5.3 Rights and duties of Member Associations

- 5.3.1 Subject to the rights of membership as prescribed by this Constitution, membership of the Association shall confer upon a Member Association, unless otherwise stipulated, the following rights:
- 5.3.1.1 the right to inspect and/or receive copies of the annual financial statements of the Association;
- 5.3.1.2 the right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for such copy, the information contained in the records of the Association, which it is recorded includes this Constitution and any amendments to it, any Governing Rules made by the Association, the records in respect of the Trustees, the reports to annual meetings and annual financial statements, the notices and minutes of annual meetings and any communications to the Member Associations;
- 5.3.1.3 the right to vote, either personally or by proxy, at all general meetings of the Association in accordance with the provisions of this Constitution;
- 5.3.1.4 the right to receive notices of, attend and speak at all general meetings of the Association, whether ordinary or extra-ordinary, in accordance with and subject to the provisions of this Constitution;
- 5.3.1.5 Should 5 (five) Member Associations collectively so decide, the right to procure the convening of a general meeting of the Association.
- 5.3.2 No Member Association shall, by reason of membership of the Association, be entitled to share in or receive any profit of the Association.

5.4 Powers of the Association

The Association may exercise the powers conferred upon it by or under this Constitution, and such powers shall include, but not be limited to, the powers—

- 5.4.1 to establish for administrative and operational expenses a fund sufficient in the opinion of the Board for the repair, upkeep, control, management and administration of the Communal Property (including provision for maintenance of all roads, security and services infrastructure as may not be owned by the ZFM or other service providers), for the payment of rates and taxes and other charges by any competent authority and of any premiums of insurance, and for the discharge of any duty or the fulfilment of any other obligation of the Association;
- 5.4.2 to establish for capital and any unforeseen operational expenses a stabilisation fund sufficient in the opinion of the Board to discharge such obligations as and when they arise;
- 5.4.3 to make and enforce such Governing Rules, including rules to regulate access and egress control and building operations, security protocols, and to issue and enforce the Design Guides and codes of Governing for builders as it may from time to time deem necessary to achieve its objects and to perform its functions;

- 5.4.4 to engage an estate manager, managing agent and such agents, employees, and other persons, professionals and service providers as it may deem necessary to assist the Association or Member Associations to achieve its objectives and to perform its functions;
- 5.4.5 to acquire movable property required to facilitate its functions;
- 5.4.6 when essential for the proper fulfilment of its functions, and subject to Ordinary Resolution approval by the Member Associations in general meeting, to acquire, sell or mortgage immovable property;
- 5.4.7 to borrow money required for the proper performance of its functions;
- 5.4.8 to secure repayment of moneys borrowed and interest thereon by the hypothecation of Levies or by mortgaging Property held by it;
- 5.4.9 to invest funds held by it with a Financial Institution as defined herein, in the discretion of the Trustees;
- 5.4.10 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 Member Associations, Owners or Residents insofar as such agreement may directly or indirectly impose rights or obligations on a Member Association, Owner and/or Resident;
- 5.4.11 to ensure compliance with any law relating to the Communal Property;
- 5.4.12 to do all other things reasonably necessary for—
 - 5.4.12.1 the control, management and administration of the affairs of the Association, including the maintenance of the Communal Property; and
 - 5.4.12.2 the implementation and enforcement of the provisions of this Constitution and the Governing Rules made thereunder.
- 5.4.13 to incur reasonable expenses in the discharge of any duty or fulfilment of any other obligation of the Association, from time to time to determine the amounts required to defray such expenses, and to raise these amounts by collecting Levies from Member Associations and Lakes Stabilisation Levies from Owners;
- 5.4.14 to construct, control, repair, replace and maintain all services, including infrastructure on servitude areas registered in its favour;
- 5.4.15 to maintain the water bodies, whether lakes, dams, wetlands or otherwise, on the Resort.

5.5 Cessation of Membership

- 5.5.1 Membership of the Association shall cease upon the issue of a final order of sequestration or liquidation of the Member Association concerned.
- 5.5.2 In the event of a Member Association ceasing to be a Member in terms of Clause 5.5.1 above, the liquidator or curator of such Member Association, appointed by the Master of the High Court, shall, for all purposes, be recognised and be bound as the Member under this Constitution.



5.6 Liability of each Member Association

The liability of each Member Association purely by virtue of being a member of the Association, shall be limited to R1,00 (One Rand), together with such other amount as may be owing by a Member Association to the Association, from time to time, from whatever cause arising.

5.7 Residents provisions

5.7.1 Residents shall enjoy access and reasonable usage of the Communal Property and the Common Property, irrespective of whether such amenities or facilities are situated within the jurisdiction of the Member Association of which such Resident or Owner is a member, subject to the reasonable conditions imposed from time to time by the Trustees 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 such further amenities, facilities and services as might at any time be provided by the Association.

5.7.2 It will be the Association's responsibility to maintain, repair and insure, inter alia, but not limited to, any structures, buildings, roads, lights, the entrances, the equipment, all movable and immovable assets of the Association that may be transferred, ceded or handed to or in favour of the Association. Registration of the transfer of the Communal Property, where designated as such by the Developer, will be effected at such time as the Developer shall direct and shall be attended to by the Attorneys appointed by the Developer.

5.7.3 The Association acknowledges that neither the Local Authority nor the Developer shall be responsible for, and the Association shall be solely responsible for, the care, repair, maintenance, cleaning, upkeep, improvements and proper control of the Communal Property and any structure or thing erected or contained therein or thereon, including private parking, electricity, telecommunications (save such owned by the ZFM) and any other private services or infrastructure, if applicable.

6 GENERAL MEETINGS

6.1 Annual General Meeting

The Association shall hold a general meeting in every year as its annual general meeting on such date and at such time and place as may be determined by the Trustees, and shall specify the meeting as such in the notice calling for it, provided, however, that the annual general meeting shall be held after the annual general meetings of the Member Associations and not later than 9 (Nine) months after the end of each financial year of the Association, and provided that not more than fifteen months shall elapse after the holding of the last preceding annual general meeting.

6.2 Notice of General Meeting

The annual general meeting shall be called by not less than 20 (Twenty) clear business days' notice in writing and any other general meeting shall be called by not less than 15 (Fifteen) clear business days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it was given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such persons as are, under this Constitution, entitled to receive such notices from the Association: Provided that a meeting of the Association shall, notwithstanding the fact that it is called by shorter notice than that specified in this clause, be deemed to have been duly called if it is so agreed by all the Member Associations having a right to attend the meeting.

6.3 Proceedings at General Meetings

6.3.1 Business

The annual general meeting shall deal with and dispose of such matters as may be raised by the Trustees and any other business of which due notice has been given, including the consideration of the annual financial statements as a standing agenda item. All business introduced before any other general meeting shall be considered special business.

6.3.2 Quorum

6.3.2.1 A quorum for a general meeting shall be no less than 6 (six) Member Association representatives personally present, in person or by proxy, and entitled to vote, provided that 1 (One) of such representatives must be the Developer's representative;

6.1.2.2 If within half-an-hour after the time appointed for the meeting, a quorum is not present, the meeting shall stand adjourned to a date not earlier than 7 (Seven) calendar days and not later than 21 (Twenty One) calendar days after the date of the meeting and if at such adjourned meeting a quorum is not present within half-an-hour after the time appointed for the meeting, the Member Associations present in person shall be a quorum.

6.1.2.3 Where a meeting has been adjourned as aforesaid, the Association shall, upon a date not later than 3 (Three) calendar days after the adjournment, send written notice to each Member Association, stating:

6.1.2.3.1 the date, time and place to which the meeting has been adjourned;

6.1.2.3.2 the matter(s) before the meeting when it was adjourned; and

6.1.2.3.3 the grounds for the adjournment.

6.4 Chairperson

6.4.1 The chairperson of the Board of Trustees shall preside as chairperson at every general meeting of the Association. If there is no such chairperson, or if at any meeting he or she is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Member Associations shall elect one of their representatives to chair the meeting. Notwithstanding the aforesaid, during the Development Period, the chairperson and deputy chairperson shall be nominees of the Developer.

6.4.2 The chairperson may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of clause 6.3 above shall *mutatis mutandis* apply to such adjournment.

6.5 Voting

6.5.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (at any time before or on the declaration of the result of the show of hands) demanded by the chairperson or by any Member Association, and unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried (by a particular majority) or failed, and an entry to that effect in a book containing the minutes of the proceedings of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against such resolution. A demand for a poll may be withdrawn. If a poll is duly demanded, it shall be taken in such a manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting in which the poll was demanded.

6.6 Proxy

- 6.6.1 The instrument appointing a proxy shall be in writing, dated and signed by the authorised representative of the Member Association and shall be in such form as the Trustees may approve.
- 6.6.2 The instrument appointing a proxy shall be deposited at the office of the Association not less than 48 (Forty Eight) hours before the time for the holding of the meeting at which the person named in such instrument purports to attend or vote pursuant thereto or in respect thereof. In default of compliance herewith the instrument shall be treated as invalid for the purpose of attending or voting at that meeting or any adjournment thereof. No instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, unless the proxy specifically provides otherwise.
- 6.6.3 A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous revocation of the proxy, provided no intimation in writing of the revocation shall have been received at the office or by the chairperson of the meeting before the vote is given.

6.7 Votes of Member Associations

- 6.7.1 Subject to the provisions of clause 6.7.2, on a show of hands, each Member Association present at a meeting of the Association, in person or by proxy, shall be entitled to one vote. Similarly, on a poll, which may be called for by any Member Association or its proxy or the chairperson of the meeting, each Member Association shall have one vote;
- 6.7.2 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 Member Associations present in person or by proxy at the relevant meeting.

7. RESOLUTIONS OF ASSOCIATION

- 7.1 For an ordinary resolution to be approved of by the Association, it must be supported by more than 50% (Fifty Percent) of the voting rights exercised on the resolution.
- 7.2 For a special resolution to be approved of by the Association, it must be supported by at least 75% (Seventy Five Percent) of the voting rights exercised on the resolution.

8. INSPECTION OF MINUTES

The minutes kept of every general meeting and annual general meeting of the Association, may be inspected and copied by the representatives of the Member Associations.

9. TRUSTEES (TERMS OF OFFICE)

- 9.1 The number of Trustees and the election thereof shall be determined from time to time by a majority vote of the trustees or directors, as the case may be, of the Member Associations in a general meeting subject to the following provisions:
- 9.1.1 During the Development Period, there shall be a maximum of 5 (Five) Trustees and a minimum of 3 (Three) Trustees, 3 (Three) of whom shall be appointees of the Developer and 2 (two) of which may be appointed by a majority resolution of the trustees or directors of the Member Associations.
- 9.1.2 After the expiry of the Development Period, there shall be a maximum of 10 (Ten) Trustees and a minimum of 2 (Two) Trustees;
- 9.1.3 A retiring Trustee shall be eligible for re-election;
- 9.1.4 An appointee of the Developer shall be a Trustee for so long as the Developer does not revoke his or her appointment.

- 9.2 Save as is set out in clauses 9.3 and 11, and save for the Trustees nominated by the Developer, each Trustee shall continue to hold such office from the date of his or her commencement of office until the Annual General Meeting next following his or her said appointment, at which meeting each Trustee shall be deemed to have retired from office as such but will be eligible for re-election to the Board at such meeting, provided that he shall have been nominated by the Member Association he represents.
- 9.3 If, as a result of retirement, resignation or otherwise, the total number of Trustees falls below the prescribed number, the Board of Trustees shall act promptly to bring the number of Trustees up to the level as specified in this Constitution. If the Trustee so retiring or resigning was the nominee of the Developer, his successor shall be appointed by the Developer. The validity of any resolutions taken or acts performed by the Board of Trustees during a period when the number falls short of that provided in 9.1 above shall not be prejudiced by such shortfall.
- 9.4 Any Trustee, with the exception of a Trustee appointed by the Developer, may be removed by a majority decision of the Board of Trustees, for any reason whatsoever.
- 9.5 The appointment by the Board of Trustees of any Trustee to fill any vacancy for whatever reason, shall be made within 45 (Forty Five) business days of the date upon which such vacancy occurs.
- 9.6 The Trustees shall have the power to co-opt persons for the purposes of assisting the Trustees in carrying out any of their functions. Any person so co-opted shall be entitled to attend board meetings but shall not be a Trustee and shall not be entitled to vote on any matter which comes up for consideration by the Board of Trustees.
- 9.7 The chairperson and deputy chairperson shall be elected by the Trustees at their first meeting in the financial year, provided that for the Development Period, the chairperson and the deputy chairperson shall be Trustees appointed by the Developer.

10. ALTERNATE TRUSTEES

- 10.1 Any Trustee appointed by the Developer may for any reason, and at or for any time, appoint an alternate, provided that such appointment is first verified by the Board of Trustees.
- 10.2 Any other Trustee may obtain leave of absence by a resolution of the majority of the Trustees, and the Board of Trustees may thereupon appoint an alternate to act for him during his absence with all powers and privileges enjoyed by him.

11. REMUNERATION OF TRUSTEES

- 11.1 A Trustee shall not be permanently employed by the Association, but shall be entitled to receive reasonable remuneration for his or her services as a Trustee of the Association, provided that such remuneration shall be verified as fair and reasonable by the Association's Registered Auditors, and provided further that nothing in this Constitution shall prohibit him or her from reimbursement of any travelling, subsistence and other expenses properly incurred by him or her in the execution of his or her duties in or about the business of the Association and which is authorised or approved by the Board of Trustees.
- 11.2 If any Trustee commits a breach of clause 11.1, he or she shall forthwith cease to be a Trustee and shall not be eligible for re-election.

12. POWERS AND DUTIES OF TRUSTEES

- 12.1 The business of the Association shall be managed by the Board of Trustees, who may on behalf of the Association pay all expenses incurred in promoting the Association, and may exercise all such powers of the Association as are not specifically required by this Constitution to be exercised by the Association in general meeting.
- 12.2 Without in any way affecting the generality of clause 12.1, the Board of Trustees shall have the power to enter into contracts and agreements with third parties, including specifically the ZFM and the proprietor of the ZSC, to give proper effect to the provisions of this Constitution.

- 12.3 Subject to any restriction imposed or directive given at a general meeting, the powers of the Trustees shall include the following:
- 12.3.1 To appoint for and on behalf of the Association such agents, including a Managing Agent as defined herein, and employees as they deem fit in connection with:
 - 12.3.1.1 the control, management and administration of the Communal Property or, where applicable, the Common Property; and
 - 12.3.1.2 the performance and exercise of any or all of the functions, duties, and powers of the Association;
 - 12.3.2 To delegate to one or more of the Trustees such of their powers and duties as they deem fit and at any time to revoke such delegation;
 - 12.3.3 To form sub-committees for the consideration of specific issues. The members of such sub-committees may be such individuals as the Trustees in their discretion think fit and need not only be Owners or members of the Member Associations, provided that the chairperson of any such sub-committee shall be a Trustee, appointed by the Trustees. 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 Trustees at the first subsequent Board meeting. Provided further that such sub-committee shall keep proper records and minutes of their meetings.
 - 12.3.4 To perform all functions in respect of the issue of Clearance Certificates.
 - 12.3.5 The Board of Trustees may not make loans from the Association's funds.
 - 12.3.6 No document signed on behalf of the Association shall be valid and binding unless it is signed by 2 (two) Trustees, or by 1 (one) Trustee and the Manager or Managing Agent, except a Clearance Certificate, which shall be signed by 1 (one) Trustee.
 - 12.3.7 The Trustees may from time to time issue Directives to amplify the provisions of the Constitution or the Governing Rules, provided that such Directives may only relate to the practical implementation of a provision of this Constitution or of the Governing Rules and may not constitute a new clause of the Constitution or new Governing Rule, and provided further that such Directives shall require the prior approval of the Developer during the Development period.
- 12.4 The Board may, pursuant to their rights, obligations and duties in terms of this Constitution and as provided for and contemplated under this Constitution, incur such expenditure as is necessary and/or requisite and howsoever arising to enable them to give proper effect to the provisions of the Constitution of the Association.
- 12.5 After the termination of the Development Period, the Association in general meeting shall have the right to limit and restrict the powers of the Board of Trustees, provided that no such resolution of the Association shall invalidate any prior act of the Trustees which would otherwise have been valid.

Governing Rules

- 12.6 The Board of Trustees shall have the power to make Governing Rules from time to time as well as the power to substitute, add to, amend or repeal same, for the management, control, administration, use and enjoyment of the Resort, for the purposes of giving proper effect to the provisions of the Constitution and for any other purpose, which powers shall include the right to impose reasonable financial penalties to be paid by those Member Associations or Owners who fail to comply with the provisions of this Constitution or the Governing Rules.
- 12.7 In no way detracting from the generality of the aforesaid, the Board of Trustees may from time to time make Governing Rules, including Governing Rules, applicable within the Resort, specifically in regard to:

- 12.7.1 the preservation of the natural environment;
 - 12.7.2 vegetation generally, and flora and fauna in the Resort;
 - 12.7.3 the Governing of any persons within the Resort and the prevention of unreasonable nuisance of any nature to any owner of immovable Property in the Resort;
 - 12.7.4 the use of Property within the Resort;
 - 12.7.5 the use of roads, pathways, waterways, wetlands, water bodies and open spaces;
 - 12.7.6 the imposition of fines and other penalties to be paid by Owners;
 - 12.7.7 the management, administration and control of the Communal Property;
 - 12.7.8 the Architectural Guide for the erection of all buildings and other structures, including service connections to buildings;
 - 12.7.9 the Landscaping Guide for the establishment, installation and maintenance of gardens, both public and private;
 - 12.7.10 the Sustainability Guide for the installation and operation of alternative energy sources, grey water systems and related ecologically friendly measures;
 - 12.7.11 the use by Owners and Residents generally of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings and gardens;
 - 12.7.12 the use of road frontages, verges and parking areas;
 - 12.7.13 security, in the widest sense of the word;
 - 12.7.14 the procedure in having building plans reviewed and accepted by the Design Review Committee and approved by the Local Authority; and
 - 12.7.15 the procedures and restrictions applicable to construction undertaken on the Resort from time to time, including specifically the accreditation of contractors;
 - 12.7.16 generally in regard to any other matter which the Association from time to time considers appropriate.
- 12.8 In making the aforesaid Rules, the Board of Trustees shall take cognisance of the fact that certain portions of the Resort shall be used for different purposes and therefore, certain conduct or Governing Rules may be applicable only to certain portions of the Resort (in accordance with its use) provided that, at all times, the Board of Trustees shall act in a fair and equitable manner in making such Governing Rules and provided further that during the Development period the Governing Rules shall only be amended with the prior written approval of the Developer.

Enforcement of Governing Rules

- 12.9 It shall, in the first instance, be the responsibility of the relevant Member Association to take or cause to be taken such steps as may be necessary to remedy the breach of any Governing Rules of which an Owner within its jurisdiction may be guilty and to debit the costs of so doing to the levy account of the Owner concerned, which amount shall be deemed to be a debt owing by the Owner to the Member Association.
- 12.10 Should the Board, in its sole discretion, consider the proposed remedy to be ineffectual, the Board may impose fines or penalties upon such Owner in terms of a system of fines or other penalties. The amounts of such fines and/or penalties shall be determined by the Board from time to time. The fines or penalties so imposed by the Association shall be enforced by the Member Association concerned, upon the written instruction by the Board, and shall similarly be a debt due to the applicable Member Association.

- 12.11 In the event of any breach of the Governing Rules by any Lessee or occupant of any Property owned by an Owner, such breach shall be deemed to have been committed by the Owner. Once the breach is established, the Board shall notify the Member Association having jurisdiction over such Owner of the breach and the relevant Member Association shall be afforded 15 (Fifteen) business days within which to have the breach by the Owner remedied. Should the Member Association fail to resolve the breach timeously, the Board shall be entitled, but not obliged, to impose such penalties and fines against the Owner as it deems fit in its discretion, to be dealt with in terms of 12.9 above, and may take such action as they deem fit.
- 12.12 The hotels in the Resort shall be exempt from the provisions of clause 12.11 above, to the extent that a breach of the Governing Rules by a hotel guest shall not be deemed to have been committed by the hotel or the owner of the hotel in question. Penalties and fines, if any, imposed by the Association may be recovered from hotel guests provided same is imposed by the Association and communicated to the hotel in writing prior to the hotel guest vacating the hotel. Penalties and fines recovered from hotel guests shall be paid to the Member Association having jurisdiction over the relevant hotel.
- 12.13 Notwithstanding the foregoing, the Board may in the name of the Association enforce the provisions of any Governing Rules, whether imposed by virtue of this Constitution or by any of the Member Associations, against any Owner or Resident by an application in a Court of competent jurisdiction and for this purpose may appoint such attorneys or counsels as they may deem fit.
- 12.14 Subject to the provisions above, any Governing Rules made by the Board shall reasonably be in the interest of the Association and the Resort, and, where applicable, shall apply equally to all Owners or "class" of owners, as the case may be.
- 12.15 The Governing Rules made by the Board from time to time in terms of the powers granted to them shall be binding on all Member Associations, the Owners or Residents they represent and all guests or visitors to the Resort.
- 12.16 In no way detracting from the generality of any other provision of this Constitution, in the event of the Association incurring any legal costs as a result of any breach of this Constitution or the Governing Rules by any Owner or Resident, the Association shall be entitled to recover all such legal costs from such Owner or Resident, as the case may be, on an attorney and own client scale in full whether or not legal action is actually instituted.
- 12.17 The Member Associations shall not make rules in conflict with the aforesaid Governing Rules of the Association and, in the event of conflict, the Governing Rules of the Association shall be final and binding.

13. MINUTES

- 13.1 The Board shall cause Minutes to be kept:
- 13.1.1 of all appointments of officers;
- 13.1.2 of names of Trustees present at every meeting of the Association and at every meeting of the Board; and
- 13.1.3 of all proceedings at all meetings of the Association and/or the Trustees.
- 13.2 Such Minutes, once they are approved as a true record of proceedings, shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the following meeting.

14. DISQUALIFICATION OR RESIGNATION OF TRUSTEES

The office of Trustee shall be vacated if the Trustee:-

- 14.1 ceases to be a Trustee by effluxion of the period of appointment;



- 14.2 commits an act that would disqualify him as a director of a company as provided for in the Companies Act, 2008;
- 14.3 resigns his office by notice in writing to the Association; or
- 14.4 becomes insolvent or assigns his estate for the benefit of or compounds with his creditors; or
- 14.5 is found to be a lunatic or of unsound mind; or
- 14.6 is absent for three consecutive regular meetings of the Board without obtaining prior leave of absence;
- 14.7 in the case of a Trustee appointed by the Developer, on the Developer revoking his appointment.
- 14.8 if the Trustee is otherwise ineligible or disqualified from serving as a Trustee on the grounds set out in Section 69 of the Companies Act, 2008.

15. PROCEEDINGS AT MEETINGS OF TRUSTEES

- 15.1 The Trustees may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit but shall meet at least 4 (Four) times during a financial year.
- 15.2 A Trustee may, on 7 (Seven) days' written notice to all other Trustees, at any time summon a meeting of the Board.
- 15.3 The quorum necessary for the transaction of the business of the Trustees shall be at least 50% of the total number of Trustees, provided that for the Development Period at least two of such Trustees must be Developer Trustees;
- 15.4 If at a meeting neither the chairperson nor the deputy chairperson is present within 10 (Ten) minutes after the time appointed for holding the same, the Trustees present may choose one of their number to be chairperson for that meeting.
- 15.5 Questions arising at any meeting of the Trustees shall be decided by a majority of votes of the Trustees, present in person or by an alternate. Each Trustee shall be entitled to exercise 1 (One) vote. Notwithstanding the aforesaid, during the Development Period, the Trustees 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, to hold between them 51% of the votes of Trustees present at the meeting.
- 15.6 All acts done in terms of any resolution passed at any meeting of the Trustees or a committee of Trustees or by any person acting as a Trustee, notwithstanding that it be afterwards discovered that there was some defect in their acting as aforesaid or that they or any of them were disqualified so to act, shall be as valid as if any such person acting as Trustee in a meeting of Trustees or a committee of Trustees had been duly appointed and had qualified to be a Trustee.
- 15.7 A Resolution signed by all of the Trustees shall be a valid Resolution notwithstanding that such Resolution may not have been passed at a meeting of the Board.

Committees

- 15.8 The Board may delegate any of their powers to committees consisting of such persons as they think fit, the chairperson of which committees may be appointed by the Board. Any committee so formed shall be in an advisory capacity to the Board and shall report to and be responsible to the Board and in the exercise of the powers so delegated, conform to the rules that may be imposed on it by the Board.
- 15.9 Should the Board not appoint the chairperson of a committee, the members of that committee shall elect a chairperson for its meetings. If at any meeting the chairperson is not present within 10 (Ten) minutes after the time appointed for holding the same, the committee members present may elect one of their number to be chairperson for that meeting.

- 15.10 A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the committee members present and in the event of an equality of votes the chairperson shall have a second or casting vote.

Limitation of Liability of Trustees

- 15.11 No Trustee shall be liable for any loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his or her office or in relation thereto unless the same occurs as a result of his or her own dishonesty, gross negligence or default, breach of duty or breach of trust.

16. DELEGATION OF POWERS OF AND OBLIGATIONS OF THE ASSOCIATION

- 16.1 The Board may from time to time entrust to and confer upon the Manager, or any other designated official of the Association or Managing Agent or consultant or any other person or firm, for the time being, such of the powers and authorities vested in it as it may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and subject to such terms and conditions and restrictions as it may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the Trustees, including the powers and authorities of the Trustees of any Member Association, and may from time to time revoke or vary all or any of such powers and authorities.
- 16.2 In addition, the Board may, from time to time, delegate to any of the Association's Member Associations any of the Association's obligations specific to that portion of the Resort managed by such Member Association on such terms and conditions as the Board deem fair and reasonable in the circumstances.
- 16.3 Furthermore, the Board may, from time to time, appoint an approved insurance provider, which will be responsible for providing for the insurance of all buildings within the Resort. 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.
- 16.4 In respect of Golf Cart Insurance:
- 16.4.1 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.
- 16.4.2 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
- 16.4.3 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.

17. LEVY FUNDS

Levy Fund

- 17.1 The Board shall establish and maintain a levy fund (as contemplated in clause 5.4.1 above) sufficient in their opinion for the repair, upkeep, control, management and administration of the Association and of the Resort including, but in no way limited to, the provision of security services for the Resort, landscape maintenance services, verge and private road maintenance, insurance premiums, the payment of rates and taxes and other charges on the Resort levied by the local or any other authority, any charges for the supply of electric current, gas, water, fuel and sewage disposal, refuse collection and any other services to the Resort and any services required by the Association to

enable it to carry out its main and ancillary objects and of all other expenses incurred or to be incurred in relation to the Resort and for the discharge of any other obligation of the Association (provided that nothing in this Constitution shall be construed as obliging the Association to pay service charges due by Owners to the relevant authority or service provider).

- 17.2 All levies due by Member Associations shall be payable to the Association immediately same become due and owing without deduction, demand or set-off.
- 17.3 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.
- 17.4 Subject to the provisions of clause 17.3, the Board shall in its sole discretion determine the proportions in which Member Associations shall contribute towards the levy fund in accordance with the following principles, having regard to all circumstances prevailing at the time and to the principles of reasonableness and equity:
- 17.4.1 they shall assign those costs arising directly out of a particular Precinct managed by a Member Association to such Member Association; and
- 17.4.2 they shall assign those costs relating to the Resort generally, (including but in no way limited to, the maintenance of the Communal Property or the Common Property, as the case might be, landscaping and security) as follows, namely : a Member Association shall be required to pay 1 (one) Levy in respect of each Subdivision within its Precinct, provided that :
- 17.4.2.1 in the event of a sectional title scheme being laid out on any such Subdivision, the Member Association shall be required to pay 1 (one) Levy for every Simplex sectional title unit;
- 17.4.2.2 in the event of the Subdivision being utilised for Hotel purposes and/or Apartments, the Member Association concerned, shall be required to pay 1 (one) levy for every three bedrooms developed on the Subdivision subject to a maximum levy payable of 1 (one) levy per sectional title dwelling unit;
- 17.4.2.3 ZSC shall be required to pay 1 (one) levy, until such time as the Club and its sports facilities have been finally completed, from which date it shall pay five levies and
- 17.4.2.4 the Evergreen Zimbali Lakes Body Corporate, shall be liable to pay 25% of 1 (one) levy for every dwelling unit completed on the Evergreen Lifestyle Retirement Village property.
- provided however that the Board may (subject to the provisions of clause 17.3 above) in any case where they consider it equitable to do so, assign to any Member Association any greater or lesser share of the costs as may be reasonable in the circumstances; and provided further that any establishment of an administrative Levy reserve, or the requirement for other reserves, shall be determined by the Board.
- 17.5 All contributions received from Member Associations and the Developer (if he so resolves pursuant to 17.3) shall forthwith be deposited into a separate account which the Association shall open and keep with a financial institution.
- 17.6 The monies in the levy fund shall be utilised to defray the expenses referred to in clause 17.1 above.
- 17.7 Subject to the provisions of clause 17.3, the Board shall have the power to impose additional special levies on Member Associations, and by extension on Owners, in respect of any unforeseen expenditure and shall determine how such levies are to be paid in accordance with the principles set out in clause 17.4.
- 17.8 Commercial and other ventures designated as Member Associations by the Developer shall pay a single levy per Property owned by such venture. The levy will be the same as the levies due by other Owners in respect of an equivalent Property as determined by the Member Association having jurisdiction over the relevant Property. The levy will be paid to the Member Association concerned, and not to the Association;

Member Association Levy Funds

- 17.9 The Member Associations shall in turn establish and maintain levy funds sufficient in the opinion of their respective boards of trustees to meet its respective obligations to the Association, and more broadly for the repair, upkeep, control, management and administration of the relevant Member Association and its Precinct (including, in particular, the Communal Property or Common Property in such Precinct) as well as, garden maintenance services, verge and parking maintenance, insurance premiums, the payment of rates and taxes and other charges levied by the local or any other authority, any charges for the supply of electric current, gas, water, fuel and sewage disposal, refuse collection and any other services received from the Association or the ZFM or the Local Authority and any services required by the relevant Member Association to enable it to carry out its main and ancillary objects, and of all other expenses incurred or to be incurred.
- 17.10 To ensure compliance with the provisions of this Constitution and that of any Member Association, it shall be registered as a Condition of Ownership of Property that no Property shall be transferred without the prior written consent of the relevant Member Association that has jurisdiction in respect of a Property 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 this Constitution, the Governing Rules made in terms thereof and the MAC of the relevant Member Association, in a manner acceptable to the Member Association, and the Transferor has complied with all his obligations in and to the Member Association, including the payment of all levies due.
- 17.11 Notwithstanding any Owner ceasing to be a member of any of the Member Associations, all levies attributable to any period whilst such person was a member of the said Member Association shall continue to be of full force and effect and recoverable by the Member Association or the Association from such person.
- 17.12 Any amount due by an Owner, whether in respect of a levy or any other amount falling due for payment under this Constitution or the constitution of a Member Association, which remains unpaid after the same has fallen due, shall bear interest as from the due date for payment to the date of payment at a rate of interest equal to that charged by Nedbank Limited as its prime overdraft rate plus 5 (Five) percentage points. Such interest shall be calculated and compounded monthly.
- 17.13 An Owner shall not be entitled to demand repayment of any amount standing to the credit of his levy account with a Member Association.
- 17.14 Should an Owner be more than 60 (Sixty) days in arrears with the payment of any levies due in terms of this Constitution or the MAC of the Member Association that he or she is a member of, or any other amount of any nature whatsoever due to a Member Association by such Owner (including but not limited to any fine that may be imposed by the Association or Member Association on any such Owner) and remain in arrears notwithstanding demand for payment by the Member 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 any one of the Member Associations. A certificate by the chairperson of the board of such Member Association, dated not more than 14 (Fourteen) 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 relevant Member 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).
- 17.15 In the event of there being a dispute between a Member 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.
- 17.16 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 a Member Association in obtaining the recovery of arrear Levies or any other arrear amount due and owing by such Owner to the relevant Member Association, or the Association in enforcing compliance with the Act, this Constitution, the Governing Rules or the Design Guides.

- 17.17 The Trustees shall be entitled to impose Directives from time to time with reference to the payment of levies and for the purpose of credit control.
- 17.18 Subject to the provisions of 17.3 above, the Developer shall not pay any Levies of any nature in respect of any of its unsold Property in the Resort.
- 17.19 Owners shall be liable to the Association for the payment of the service charges as determined by the Trustees in respect of any services rendered by the Association to them. Specifically pertaining to the purchase of water, electricity or other services from the Association, or the ZFM, or the Local Authority, 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. *Shouldn't these charges be payable by the Owner to the Member Association and then in turn to the Association?*

Lakes Stabilisation Levy

- 17.20 Every Owner shall, upon the Alienation of his or her Property, be liable to the Association for the payment of a Lakes Stabilisation Levy, calculated at 2% of the Fair Market Value of the Property or the sale price of the Property, (whichever the higher?), or a fixed amount determined by the Trustees 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 Association 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 Association on date of registration of transfer.
- 17.21 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 17.20 above, calculated as the lower of R250 000.00 (Two Hundred and Fifty Thousand Rand) or the amount determined according to the following formula:

$$\text{Stabilisation Le@}(R) = \frac{\text{Fair Market Value or Sales Price @ x 2 (whichever the higher)}}{100}$$

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.

- 17.22 The purpose of the Lakes Stabilisation Levies shall be to stabilise the Levies payable by the Member Associations, specifically to provide a financial base with a view to capital expenditure, upgrades to infrastructure or unforeseen expenses, and to provide financial support in the event of a financial loss or shortfall incurred by any of the Member Associations.
- 17.23 The Lakes Stabilisation Levies shall be paid into the Lakes Stabilisation Levy bank account and shall only be used in furtherance of the objects of the Association and to defray unforeseen operational and other expenses for which the Association are liable. The Lakes Stabilisation Levies may not be distributed to the Member Associations of the Association, 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

- 17.24 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.
- 17.25 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.
- 17.26 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 the Resort, 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.
- 17.27 The provisions of clause 17 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.
- 17.28 Notwithstanding anything to the contrary herein contained, no Lakes Stabilisation Levy shall be payable by the Owner of any business or commercial venture, including a hotel 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*.
- 17.29 All contributions levied under the provisions of this Constitution shall be due and payable by Member Associations and/or Owners, as the case may be, on the passing of a resolution to that effect by the Board and may be recovered by the Association by action in any Court (including any Magistrates Court) of competent jurisdiction from the Member Associations or persons who were Owners at the time when such contributions became due.
- 17.30 Neither the Evergreen Zimbali Lakes Body Corporate, nor the holder of a Life Right in respect of a Unit in Evergreen Zimbali Lakes, shall be obliged to pay the Lakes Stabilisation Levy as defined in this Constitution upon the Alienation of such Life Right. In the event that the developer of Evergreen Zimbali Lakes should decide to develop and/or sell the Property and/or any portions thereof and/or any Units thereon to any third parties for purposes other than a retirement village, such transactions shall immediately attract the payment of the Lakes Stabilisation Levy at the rate and on the conditions as may be applicable to all other Member Associations, in accordance with this Constitution.

18. RECORD OF THE CONSTITUTION, GOVERNING RULES, DIRECTIVES AND THE DESIGN GUIDES AND THEIR AVAILABILITY

- 18.1 The Trustees shall keep a complete record of the Constitution, Governing Rules, Directives and Design Guides, as in force from time to time.
- 18.2 The Trustees shall, on the application of –
- 18.2.1 A Member Association; or
- 18.2.2 an Owner of a Property; or
- 18.2.3 an Occupier of a Property; or



- 18.2.4 a prospective purchaser of a Property, including Life Right; or
- 18.2.5 the holder of any registered mortgage bond; or
- 18.2.6 the Manager; or
- 18.2.7 the Managing Agent; or
- 18.2.8 the Auditor;

supply to any such person a copy of the Constitution, Governing Rules, Directives and Design Guides in force, and may require them to pay a reasonable charge therefor.

19. ACCOUNTING RECORDS

- 19.1 The Board shall cause proper accounting records to be kept. Accounting records shall be deemed to be proper if they represent fairly the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.
- 19.2 The Board shall moreover perform an oversight function as regards the accounting records of the Member Associations and shall ensure that the Member Associations keep proper accounting records at a similar standard to that applied by the Association, as envisaged in 19.1 above.
- 19.3 The accounting records of the Association shall be kept at the administrative office of the Association or at such other place or places as the Board think fit, and shall always be open to inspection by the Member Associations.
- 19.4 The Trustees 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.

20. ANNUAL FINANCIAL STATEMENTS

- 20.1 The Trustees shall cause to be prepared, and shall lay before every annual general meeting of the Member Associations 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.
- 20.2 The financial statement shall include information and notes pertaining to the proper financial management by the Association, including:
 - 20.2.1 an analysis of the periods of debts and the amounts due in respect of Levies, Special Levies, Lakes Stabilisation Levies and other contributions;
 - 20.2.2 an analysis of the periods and the amounts due, owing by the Association to its creditors and in particular to any public, private or local authority in respect of rates, taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal;
 - 20.2.3 an analysis of the general state of the finances of the Member Associations, having regard to the annual financial statements of such Member Associations, prepared in conformity with 20.1 above and accepted by their members in the respective annual general meetings of the Member Associations;
 - 20.2.4 the expiry dates of all insurance policies.
- 20.3 The Trustees shall further cause to be prepared and shall lay before every annual general meeting a report signed by the chairperson and one Trustee, reviewing the affairs of the Association during the past year.



- 20.4 The Trustees shall cause copies of the audited statements and reports referred to above, to be delivered to each Member Association at least 20 (twenty) days before the date of the annual general meeting at which they are to be considered.
- 20.5 The Trustees shall keep copies of the schedules of insurance replacement values at its administrative office, where it shall be available for inspection by the Owners and mortgagees.

21 EVERGREEN LIFESTYLE RETIREMENT VILLAGE

- 21.1 An Evergreen Lifestyle Retirement Village will be established within the Resort, within the jurisdiction of the Evergreen Zimbali Lakes Body Corporate. For the avoidance of doubt, the Evergreen Zimbali Lakes Body Corporate will be the Member Association formed for Evergreen Zimbali Lakes on which the Evergreen Lifestyle Retirement Village will be built by the opening of a sectional title scheme. The Evergreen Zimbali Lakes Body Corporate will comprise one sole member which will be the developer of Evergreen Zimbali Lakes, Evergreen Property Developments (Pty) Ltd and which Body Corporate will essentially be an owner's association until a sectional title scheme is opened, at which point, the Evergreen Zimbali Lakes Body Corporate will actually become the body corporate of the scheme, the sole member of which will be the developer of the Evergreen Zimbali Lakes. On the opening of the sectional title scheme the constitution of the Evergreen Zimbali Lakes Body Corporate will constitute the conduct and management rules of the scheme, which will be subject to approval by the Developer, prior to the opening of the scheme.
- 21.2 Such Retirement Village will constitute a residential facility managed and operated by the developer, Evergreen Property Developments (Pty) Ltd, in conjunction with the Evergreen Zimbali Lakes Body Corporate.
- 21.3 The Evergreen Zimbali Lakes Body Corporate shall be responsible for enforcing compliance with the provisions of the Act, the Housing Development Scheme for Retired Persons Act, the Older Persons Act, the Constitution, the Governing Rules and the Design Guides.
- 21.4 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 and on the Alienation of a Life Right any such voluntary member will be required to obtain a ZSC Consent.

22 ZIMBALI FACILITIES MANAGEMENT COMPANY (ZFM)

- 22.1 The ZFM will supply the entire Resort with various utilities and services such as, without limitation, electricity and water (to the extent that it is able to lawfully acquire and supply such services), building maintenance, landscaping, water and energy solutions proposed in the Sustainability Guide, housekeeping and house servicing facilities, and all or any similar services, and supply same to the Members Associations or Owners, as the case may be, and render a charge therefore.
- 22.2 In addition the ZFM will install, own and operate a telecommunications network based on fibre optic or similar connectivity infrastructure throughout the Resort and will own and maintain same and charge end users for such products, which may include wireless internet access (Wi-Fi) services, telephony in the form of 'voice over internet protocol' (VOIP) services, television and related digital satellite feeds, and services ancillary thereto.
- 22.3 The ZFM shall be the sole provider of all and any services it may elect to offer to Residents of the Resort. To that end, Residents will not be permitted to engage a third party to provide similar services to that offered by the ZFM, provided that ZFM charges and fees will be reasonable and market related, and that the relevant services will be rendered in a commercially sound and effective manner.
- 22.4 All Property in the Resort is sold subject to a communication servitude in favour of the Developer and the ZFM for the purpose of entering upon the land and installing, maintaining, upgrading or replacing telecommunication infrastructure, equipment and fibre optic cable and other requisite cabling.

- 22.5 To enable the ZFM to carry out its functions, it is anticipated that the Developer will lease or transfer the maintenance buildings, store rooms and associated buildings on the Resort to the ZFM to enable it to properly carry out its functions.
- 22.6 The ZFM shall be a privately owned for-profit company and the Developer, or an associate company of the Developer, will be the initial shareholder of the ZFM. The Developer, or an associate company of the Developer (if applicable), shall be entitled, in its sole and absolute discretion, to sell its shareholding (or any portion thereof) in the ZFM, or the business (or any part thereof) of the ZFM, at any time and upon such terms as the Developer, or its associate company, as the case may be, deems fit.
- 22.7 Any sale envisaged in clause 23.6 shall not impact the ZFM's contractual obligations to the Association, the Member Associations, Owners or Residents in terms of the provision of services and supply agreements entered into, or to be entered into, between the ZFM and the Association, Member Associations, Owners or Residents (as the case might be), and the ZFM shall remain obliged to raise charges and fees that are reasonable and market related for the rendering of the relevant services in a commercially sound and effective manner.
- 22.8 The ZFM will form an integral part of the Resort and the successful management and operation of its services is considered vital to the use and enjoyment Owners and Residents will derive from the Resort. No Property shall be transferred without the prior written consent of the Association first being had and obtained in the form of the Clearance Certificate, which certificate shall be given upon receipt by the Association of the ZFM Consent, in addition to such other requirements that may apply prior to the Clearance Certificate being issued. The ZFM shall only provide the Association with the ZFM Consent in the event that the Transferee shall have performed all his or her obligations to the ZFM in full.

23 HOTELS AND RESORT

- 23.1 It is recorded that various Properties within the Resort form part of "Mixed Use" sites as defined in the KwaDukuza Town Planning Scheme. By virtue of its zoning, these sites allow for the development of hotels, offices, commercial and retail components in addition to residential development. The Developer intends (but will not be obliged) to develop and operate various hotels within the Resort, together with commercial, retail and other business interests, should zoning allow.
- 23.2 Certain areas and facilities within the Resort do not form part of the Communal Property or Common Property, and the use and access to such facilities by Owners, Residents and visitors will at all times be determined by the particular hotel operator, owner or manager. It is recorded, in particular, that the Developer will retain ownership of certain areas within the Resort to ensure the proper operation and functioning of the hotels to be developed including, but not limited to, the lobby/reception areas, corridors, bars, restaurants, coffee shops, hotel swimming pools, hotel rooms, meeting rooms and back of house areas, commercial and retail sections. Whilst it is intended that the Owners, Residents and their guests will be permitted access through portions of the hotels, such access will at all times be subject to the control and at the discretion of the hotel owner, operator or manager, who may impose rules and reasonably allocated and proportioned costs in connection therewith.
- 23.3 The Developer will be entitled to cede and delegate its rights to manage its own areas consisting of freehold property, sections or allocated common properties to third parties without obtaining the consent of any Owner or Resident.

24 ZIMBALI SPORTS CLUB

- 24.1 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.



- 24.2 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.
- 24.3 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.
- 24.4 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.
- 24.5 It is recorded that the ZSC is a private facility and that no Owner or Resident (or any other subscriber) shall have any proprietary or voting rights in the ZSC and shall not be entitled to partake in the management of the ZSC. 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.
- 24.6 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 and pay a joining fee 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.
- 24.7 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.
- 24.8 The ZSC will form an integral part of the Resort and the successful management and operation of its facilities 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 Association first being had and obtained in the form of the Clearance Certificate, which certificate shall be given upon receipt by the Association 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 Association with the ZSC Consent in the event that the Transferee shall have performed all his or her obligations to the ZSC in full.
- 24.9 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:
- 24.9.1 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

- 24.9.2 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.

25 IFA TRADEMARKS

25.1 "IFA Agreements" shall mean those agreements entered into between the Developer and/or its affiliated companies, and members of the IFA group of companies in relation to IFA developments including the Resort or the brand "ZIMBALI", from time to time. It is recorded that the Developer shall always own the 'IFA' and 'ZIMBALI' brands, trademarks and intellectual property.

25.2 It is recorded that:

25.2.1 the management, administration, maintenance and control of the hotels, rental programs and related activities in the Resort shall be undertaken by the Developer and/or the Developer's nominee in accordance with the Resort Standard, as referred to in Clause 25.5 below; and

25.2.2 the Resort Standard shall be adequately reflected in the operator rules published by the Developer or the Developer's nominee from time to time.

25.3 It is moreover recorded that:

25.3.1 the branding of any part of the Resort (and all components thereof) as an "IFA" Resort (including the use of the names "IFA", "ZIMBALI", "ZIMBALI LAKES" and all associated names, logos, slogans, products, and signage, or the names "BOULEVARD", "THE RIDGE", "EVERGREEN ZIMBALI LAKES", "OCEAN CLUB", "Tatali", "BEACH CLUB" used in conjunction with "ZIMBALI"), all of which are collectively referred to as "the Marks", are subject to the terms of the IFA Agreements;

25.3.2 The IFA Agreements include all domain names with the words "ZIMBALI" contained therein in any configuration or extension. No Owner or Resident or any parties related to the Owner or Resident shall use any such domain name without the prior written consent of the Developer. It shall be the responsibility of the Owner or Resident to enforce this provision against its relatives and related parties;

25.3.3 Pursuant to the IFA Agreements, the rights of the Developer (and thereafter, the Developer's nominee) to use the Marks are subject to certain terms and conditions, and may be terminated or restricted in certain circumstances; and

25.3.4 For the avoidance of doubt, the Developer (and thereafter, the Developer's nominee) retains the right to (i) cease to use any Marks which it has previously used, or adopt any Marks which it has not previously used, and/or (ii) change the name and branding of the Resort or the broader "ZIMBALI" (and all components thereof) without liability, and without obtaining the consent of any Owner or Resident to do so, and every Owner and Resident shall provide the Developer with all reasonable assistance in doing so. The Developer makes no guarantee or warranty relating to (i) the use of the Marks in connection with the Resort (or any part thereof), or (ii) the branding of the said Resort (or any part thereof) as a "IFA" Resort.

25.4 Every Owner or Resident shall immediately, if so instructed by the Developer (or thereafter the Developer's nominee), cease absolutely to use the names "IFA" or any other of the Marks in connection with the Property for any purpose whatsoever. For the avoidance of doubt, no Owner or Resident shall be entitled to use the Marks for any reason without the prior written consent of the Developer.

25.5 The Resort or the broader "ZIMBALI" and all components thereof shall form part of a world class resort, and the resort components thereof shall be managed by the Developer or its nominee in accordance with international standards applicable to similar resorts being not less than the standards prescribed by the IFA Agreements (the "Resort Standard"). These standards shall be adequately described in operator rules published by the Developer and/or its nominee from time

to time.

- 25.6 In terms of the relevant IFA Agreements the rights and duties of the Developer (or its nominee) will be capable of being ceded and assigned, either in whole or in part, to third parties.

26 ENTRENCHED PROVISIONS

- 26.1 The Developer has a continuing and permanent interest in ensuring that certain provisions in this Constitution are entrenched in perpetuity for purposes of ensuring the success of the Resort. Accordingly, none of the following provisions recorded in this clause 26 may be deleted or varied in any way without the prior written consent of the Developer.

- 26.2 The entrenched provisions in favour of the Developer are:

- 26.2.1 The name of the Resort shall be "Zimbali Lakes Resort", which name shall not be changed;

- 26.2.2 The Developer shall be entitled to erect at any entrance to the Resort any such name and/or signboards and display such information as it may consider appropriate, subject only to compliance with statutory regulations and restrictions, and furthermore subject to such signage being in keeping with the style, content and format to apply to all signage to be erected in respect of the Resort;

- 26.2.3 No Owner or Resident of the Resort shall be entitled to object to the subdivision and/or development of any part of the Resort;

- 26.2.4 No Property shall be subdivided or rezoned, and no Property shall be consolidated, without the prior written consent of the Developer during the Development Period or without the prior written consent of the Association after the termination of the Development Period, provided that this provision shall not apply to the Developer;

- 26.2.5 Ownership of a Property in the Resort does not confer any right in respect of Property owned by the Developer, including any right of way or access across such Property;

- 26.2.6 Subject to 17.3, the Developer shall not pay any Levies of any nature in respect of any of its unsold Property in the Resort, nor may the provisions of clause 17 be amended or deleted in any way;

- 26.2.7 The Developer shall be entitled to operate and conduct such business ventures and commercial activities within the Resort as it may deem appropriate in its sole and absolute discretion. Such ventures and activities may be undertaken during or after the Development Period and may be for profit and financial gain, without restriction as to the nature thereof. The Developer's commercial activities shall be restricted only by the limitations imposed by the applicable town planning scheme and conditions pursuant to which the Resort was established;

- 26.2.8 No Owner or Resident of the Resort shall be entitled to object to any commercial activity or business venture undertaken by the Developer inside the Resort and no such commercial activity or business venture shall be considered or deemed by any Owner or Resident to present a conflict of interest as regards the Developer's obligations towards the Resort or the Association;

- 26.2.9 The Developer's commercial activities and business ventures in the Resort is considered vital to the success and sustainability of the Resort, and it will accordingly be in the interests of the Owners, Residents and the Resort to ensure the commercial viability of such commercial activities and business ventures. Accordingly, the Association shall not make any decisions or impose any Rules or Directives to the detriment of the Developer's business ventures or commercial activities in the Resort;

- 26.2.10 The Developer will in certain instances sell Property, particularly Sub-divisions intended for Planned Unit Development ('PUD'), without the prior installation of bulk / reticulation engineering services infrastructure. Such agreements of sale will contain the purchaser's acknowledgement of the lack of services infrastructure, will be accompanied by the requisite Local Authority service level

agreement reflecting available bulk and a general plan reflecting the Property in question. No Owner or Resident shall be entitled to object to the transfer of such Property to the purchaser thereof, provided that such sale and transfer is not inconsistent with the development plan approved by the local authority for the Resort;

- 26.2 In addition to the provisions of 26.1, 26.2 and 26.5, all of which shall be entrenched provisions along with this 26.3 and 26.4, it is recorded that the primarily resort nature of the Resort must be safeguarded at all times in the interests of all Owners and Residents of the Resort. To that end it is recorded that no commercial activities or business ventures whatsoever, save for those operated by the Developer or the Developer's nominees, shall be permitted in the Resort at any time, unless otherwise authorised by the Developer and subject to the rules of the Member Association applicable to that Owner or Resident.
- 26.3 Without derogating from the generality of the above provision, it is recorded that no Owner or Resident, save for the Developer or Owners or Residents within the resort nodes of the Boulevard, Ocean Club or Tatali, as well as erven 385, 386, 387, 501 and 630 Zimbali Lakes (subject to the Governing Rules), will be permitted to govern or operate a short-term letting enterprise (rental periods shorter than 30 (thirty) calendar days) on a Property in the Resort at any time, including, but not limited to, an 'Airbnb' or similar operation, guest house or bed & breakfast establishment.
- 26.4 Commercial and other ventures designated as Member Associations by the Developer cannot, at any time, be removed as Member Associations of the Association, nor may their obligation to pay a single levy per Property, as provided for in clause 17.8, be amended without the prior written consent of the Developer.

27 AUDITOR

A Registered Auditor shall be appointed by the Board.

28 NOTICES

- 28.1 A notice may be given by the Association to any Member Association or Owner personally by hand at the address provided to the Association, or by sending it by electronic mail (e-mail) to the e-mail address (if any) supplied to the Association for the giving of notices.
- 28.2 Notice of every general meeting shall be given in any manner authorised:
- 28.2.1 to every Member Association.
- 28.2.2 to the auditor for the time being of the Association.
- 28.3 No other person shall be entitled to receive notice of general meetings.
- 28.4 Any notice delivered by hand or sent by e-mail shall be deemed to have been received on the date of dispatch thereof.
- 28.5 The failure to give notice to any Member Association or the failure of any Member Association to receive a notice shall not vitiate any proceedings of the Association.
- 28.6 Notwithstanding anything contained herein or elsewhere, the sending of any notice or other communication to a Member Association or Owner at an electronic mail address, nominated by such Member Association or Owner for these purposes in writing to the Association, shall be deemed to be good and proper services of such notice or other communication, in terms of this Constitution, and shall be deemed to have been received by the Member Association or Owner on the date that such communication or other notice was sent by electronic mail.

29 WINDING-UP OF ASSOCIATION

In the event of the Association being wound up, its assets (if any) shall devolve upon such other association not for gain as the Member Associations in such winding-up order determine, provided

that such association has aims and objects similar to those of the Association.

30 DESIGN REVIEW COMMITTEE

- 30.1 The Design Review Committee shall be comprised of:
- 30.1.1 during the Development Period, an architect, other competent professional and two (2) other individuals appointed by the Developer, one of whom shall be an expert in the areas covered by the Sustainability Guide; and
- 30.1.2 after the expiry of the Development Period, three (3) individuals appointed by the Board, provided that at all times at least one of the members of the Design Review Committee shall be an architect and one of the members shall be an expert in the areas covered by the Sustainability Guide.
- 30.2 The Design Review Committee shall act as, *inter alia*, an aesthetics committee with a view to ensuring any development within the Resort is in accordance with the Development Manual and with standards and an architectural theme which will enhance the attraction of the Resort as a whole.
- 30.3 The Board shall ensure that the Design Review Committee carries out all the functions and duties entrusted to it so as to give proper effect to the provisions of the Development Manual.
- 30.4 Any individual appointed to the Design Review Committee by the Developer may, for any reason or for any time, appoint an alternate, provided such alternate shall have similar expertise to the individual replaced.
- 30.5 The chairperson and deputy chairperson of the Design Review Committee shall be elected by the Committee at their first meeting in the first financial year of the Association, provided that, during the Development Period, the chairperson and deputy chairperson shall be members of the Committee nominated by the Developer.
- 30.6 A meeting of the Design Review Committee will take at least once every calendar month at designated dates and times, as the Committee may direct, but may be called by the Developer on 7 (Seven) days' written notice to the other members.

31 REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE RESORT

31.1 Buildings and improvements

- 31.1.1 In order to procure compliance with the nature and amenity of the Resort nothing shall be placed on or attached to a building or any other structure, visible from outside of the building or such other structure without the consent of the Design Review Committee and no building, extension or alteration to an existing building or other structure shall be built or erected within the Resort, other than in accordance with the Architectural Guide, the Sustainability Guide, the Development Manual and plans consented to in the first instance by the Design Review Committee, which consent shall be in writing and signed by a duly authorised representative of the Design Review Committee, and in the final instance be approved by the Local Authority.
- 31.1.2 The Design Review Committee shall be entitled to charge Owners a fee for scrutinising such plans, as determined by the Board in this regard.
- 31.1.3 Before giving such consent, the Committee may require that there be lodged with them such description and/or drawing and/or plan as may be necessary, in the opinion of the Committee, to enable them to consider the matter.
- 31.1.4 Any consent as contemplated herein may be subject to such conditions as the Design Review Committee may deem fit.
- 31.1.5 In the event of any building or other structure being erected, save in accordance with the plans consented to by the Design Review Committee as set out in this clause, then in that event, the Board shall be entitled to either:

- 31.1.5.1 make such amendments to such building or other structure in order to procure compliance with building plans consented to by the Design Review Committee and recover the costs of such alterations from the relevant Owner in question; or
- 31.1.5.2 instruct a contractor to remove such illegal alteration, addition or structure in its entirety and to recover the costs of such removal from the relevant Owner in question.
- 31.1.6 In addition to the remedies in 31.1.5 above, the Board shall be entitled to levy a penalty upon the relevant Owner on expiry of a 7 (Seven) day notice period, provided that:
- 31.1.6.1 such notice to the Owner shall be in writing and hand delivered to his or her Property; and
- 31.1.6.2 such notice shall call for the removal of the illegal alteration, addition or structure within 7 (Seven) days following such delivery; and
- 31.1.6.3 the Owner shall have failed to remove the said alteration, addition or structure within the aforesaid period.
- 31.1.7 Notwithstanding the foregoing, the provisions of this clause shall not be binding on the Developer during the Development Period.
- 31.1.8 This clause shall in no way alter or supersede any requirements of, or obligations to, the relevant Local Authority.

31.2 Landscaping

Save as may otherwise be agreed by the Board, any landscaping on Property to be undertaken shall be undertaken in accordance with a landscape plan consented to by the Design Review Committee pursuant to the Landscape Guide and no Owner shall commence landscaping of any Property until such time as such landscape plan has been consented to in writing.

31.3 Security of the Resort

The Association shall provide such security in the Resort as it deems appropriate, from time to time.

31.4 Maintenance of Communal Property and Municipal Services

- 31.4.1 The Association, or the Member Associations individually, as the case might be, shall take transfer of the various Properties comprising the Communal Property or the Common Property, as the case might be, as and when directed by the Developer to do so during the Development Period, which may be at different dates in respect of different Properties, but shall in any event be before the termination of the Development Period. The Association, or the Member Associations if applicable, shall be responsible for the maintenance, upkeep and repair of the Communal Property or Common Property so transferred. It is specifically recorded that there are certain servitudes stipulated in the title deeds of properties within the jurisdiction of the BOA where the BOA is responsible for the upkeep and maintenance of services applicable to such servitudes. This responsibility of the BOA as stipulated in such title deeds will be outsourced to the Association.
- 31.4.2 The Association shall negotiate and liaise with the Local Authority and other service providers in order to ensure a high level of services is provided to the Resort. However, in the event of the Local Authority, or any other provider of services to an area in or in the vicinity of the Resort, not having the means or being unwilling to maintain or provide the services normally provided by a local authority or, in the event of the Local Authority or any other service provider not maintaining the services normally provided by a local authority to a standard acceptable to the Association, then in that event, the Association may provide and maintain such services (in consultation, where possible, with such local authority or other service provider).

- 31.4.3 The Association shall be responsible for the landscaping and maintenance of the public sidewalks and parks within the Resort, but shall be entitled to delegate any such responsibility with respect to any area within the Resort to a Member Association having geographical jurisdiction over such area.
- 31.4.4 It is recorded that the Association will be the holder of a number of servitudes over various immovable properties within the Resort (including, but not limited to right of way servitudes, sidewalk servitudes, parking servitudes, landscaping servitudes, encroachment servitudes and non-user servitudes). Although the Board may from time to time, in its sole discretion and as it deems fit, pass on the benefit of these various servitudes to individual third parties, Member Associations or service providers, it shall be under no obligation to do so, and shall exercise these rights reasonably as it, in its sole discretion, deems it to be in the best interests of the Association and the Resort as a whole.

31.5 Construction periods and applicable penalties

- 31.5.1 Every Owner of a Property in the Resort shall commence with the construction of improvements on the Property (the plans and specifications of which shall have been consented to by the Design Review Committee in terms of clause 31.1.1 above and approved by the Local Authority) within a period of 60 (sixty) months after the Possession Date, which shall, for purposes of this clause, be defined as either
 - 31.5.1.1 the Registration Date; or
 - 31.5.1.2 such later date as the Developer may direct in writing with regard to those Sub-divisions intended for Planned Unit Development ('PUD') and which were Alienated and transferred to the Owner thereof without the prior installation of bulk / reticulation engineering services infrastructure.
- 31.5.2 Owners of single residential Sub-divisions shall complete the construction of their single residential dwellings within a period of 78 (seventy eight) months from the Possession Date.
- 31.5.3 Owners of a PUD Property shall be afforded 84 (eighty four) months from the Possession Date to complete such higher density development.
- 31.5.4 The Possession Date reflected in 31.5.1, being either the Registration Date or a date designated in writing by the Developer in respect of certain PUD Properties, will be the date from which the periods in 31.5.2 and 31.5.3 will be calculated irrespective of whether the Property was transferred to a third party subsequently. The respective dates in 31.5.2 and 31.5.3 shall be the "Completion Date" for purposes of this clause 31.5.
- 31.5.5 For the purpose of this sub-clause 31.5.5 and further, the following words shall have the meaning ascribed as follows:
 - 31.5.5.1 "Normal Levy": The normal monthly levy determined by the relevant Member Association from time to time in terms of clause 17 of this Constitution.
 - 31.5.5.2 "Extraordinary Levy": The additional monthly levy determined hereunder in terms of clause 31.5.6 below.
- 31.5.6 An Owner who is in breach of these provisions by not completing the Improvements by the Completion Date, will be liable to pay to the Association an Extraordinary Levy calculated as set out here-under, over and above the Normal Levy which will remain payable to the Member Association having jurisdiction over the Property:

YEARS SINCE POSSESSION DATE	YEARS IN BREACH	EXTRAORDINARY LEVY PAYABLE
Year 1 to Completion Date	Zero	Normal Levy
Completion Date plus 1	One year	Normal Levy plus 1 extra levy
Completion Date plus 2	Two years	Normal Levy plus 2 extra levies

Thereafter the total levy payable will be the Normal Levy (payable to the Member Association) plus the Extraordinary Levy of twice the Normal Levy (payable to the Association) until the

improvement on the Property shall have been completed.

- 31.5.7 If an Owner fails to comply with the provisions of this clause 31.5 to the extent that a Normal Levy plus an Extraordinary Levy of twice the Normal Levy becomes payable, the Developer shall be entitled, without prejudice to any other rights which it may have and/or at law and at its election to –
- 31.5.7.1 repurchase the Property from the Owner for an amount equal to the original purchase price paid by the Owner in terms of the Agreement of Sale entered into between the Developer and the original Owner (inclusive of VAT); or
- 31.5.7.2 sell the property to any third party for an amount not less than the original purchase price paid by the Owner in terms of the said Agreement of Sale referred to in 31.5.7.1. The Owner hereby irrevocably and *in rem suam* appoints the Developer as his or her duly authorised agent for purposes of such sale,
- provided that all costs of transfer shall be for the account of the Owner in either case.
- 31.5.8 Any further structural Improvements that an Owner wishes to make to his Property after finalisation of the construction of his residential dwelling should also be submitted to the Design Review Committee as provided for hereinbefore and has to be finalised within 6 (six) months of commencement of construction thereof.
- 31.5.9 Neither the Developer, as anticipated in clause 31.5.7.1, nor any new Owner anticipated in clause 31.5.7.2 above, shall be subject to the payment of Extraordinary Levies to the Association in either of the events referred to in clause 31.5.7. In both instances referred to in clause 31.5.7, the Developer shall be entitled to re-set the construction period to such period of time as the Developer may deem appropriate in its discretion.
- 31.5.10 For the avoidance of doubt, the new Owner anticipated in clause 31.5.7.2 shall become liable for the payment of Normal Levies due to the relevant Member Association from the Registration Date, whereas the Developer shall, pursuant to clause 26.2.6, not be so liable.

32 ENFORCEMENT OF OBLIGATIONS OF OWNERS

Should any Owner, or any Lessee of an Owner, or any Resident fail to perform any obligation incumbent upon him, if applicable, within the period of any notice given for compliance, and whether such obligation is imposed by an applicable Member Association or the Association itself, the Board shall be entitled, but not obliged, to do such things and incur such expenditure as is, in the opinion of the Board, necessary and/or requisite to procure compliance. The costs thereby incurred by the Association shall be a debt due by the Owner concerned, which shall be payable on demand. The Owner shall be obliged to bring to the attention of any Lessee of his Property, the rules and regulations of the Association and shall ensure such Lessee complies with the aforesaid rules and regulations. In addition, an Owner shall utilise its best endeavours to ensure that any invitee of the Owner who goes upon the Resort complies with the Association's rules and regulations.

33 DEVELOPER'S RIGHTS REGARDING THE RESORT

The Developer shall, during the Development Period, be entitled to develop any Property within the Resort of which it is the owner in conformity with the Scheme, without the approval of the Association. Without derogating from the generality of this provision, the Developer shall be entitled, but not obliged, to register a real right of extension, as defined in the Act, in respect of any and all sectional title scheme developments undertaken within the Resort.

34 INCORPORATION OF ADDITIONAL LAND

- 34.1 The Developer may, on notice in writing to the Board, have any land in the relative vicinity of the Resort (as currently defined in this Constitution) incorporated into the Resort. The date of such incorporation of any aforesaid additional land shall be the date on which notice is given by the Developer to the Board.

- 34.2 For the avoidance of doubt, the Developer may incorporate any additional land into the Resort (as currently defined in this Constitution) without reference to the Association.

35 EXCLUSION OF PROPERTY

The Developer may, on notice in writing to the Board, have any Property owned by the Developer excluded from the Resort. The date of such exclusion of any aforesaid Property shall be the date on which notice is given by the Developer to the Board.

36 AMENDMENT TO CONSTITUTION

Subject to the provisions of clause 26 and save as otherwise herein provided, this Constitution may only be amended or varied by way of a Special Resolution of the Member Associations, provided that during the Development Period, this Constitution 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 Constitution in his discretion and without reference to the Association.

37 DISCLAIMER OF RESPONSIBILITY

- 37.1 The Association shall not be liable for any injury to any person, damage to or loss of any property, to whomsoever it may belong, occurring or suffered, upon the Resort regardless of the cause thereof nor shall the Association be responsible for any theft of property occurring within the Resort. 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.
- 37.2 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 the Resort, regardless of the cause thereof.
- 37.3 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 38.

38 ARBITRATION

- 38.1 Subject to clause 17.14 above, in the event of any dispute or difference arising between an Owner and his or her respective Member Association, or between a Member Association and the Association, or between an Owner and the Association, as to the construction, meaning, interpretation or effect of any of the provisions or as to the rights, duties and/or liabilities of the Association or any Member Association or any Owner or Resident in terms of this Constitution, the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 30 (thirty) days, then such dispute or difference shall be submitted to arbitration in accordance with the provisions set out below.
- 38.2 Such arbitration shall be held:
- 38.2.1 at Durban and
- 38.2.2 under the provisions of the Arbitration Act No. 42 of 1965 of the Republic of South Africa as amended from time to time and the Association of Arbitrators Rules for the Governing of Arbitrations (Latest Edition).
- 38.3 The arbitrator shall be, if the question in issue is:
- 38.3.1 primarily an accounting matter, a practising auditor of not less than ten (10) years standing appointed by the President for the time being of the Institute of Chartered Accountants

- 38.3.2 primarily a legal matter, a practising attorney of not less than ten (10) years standing appointed by the President for the time being of the Legal Practice Council of Kwa-Zulu Natal at the request of either Party;
- 38.3.3 any other matter, an independent person agreed upon between the Parties and failing agreement as may be appointed by the President for the time being of the said Legal Practice Council at the request of either party.
- 38.4 If agreement cannot be reached within ten (10) business days after a dispute has been declared and an arbitration has been demanded as to whether the question in issue falls under clause 38.3.1, 38.3.2 or 38.3.3 above, then a practising attorney as agreed upon the parties and failing agreement then appointed at the request of either party to the dispute by the President for the time being of the said Society as soon as possible thereafter, shall determine whether the question in issue falls under clause 38.3.1, 38.3.2 or 38.3.3 above so that an arbitrator can be appointed in terms of clause 38.1 and the arbitration can be held and concluded as soon as possible.
- 38.5 The decision of the aforesaid arbitration proceedings shall be binding on the parties to the dispute, carried into effect and may be made an order of a court of competent jurisdiction. Nothing contained in this clause 38 shall however prohibit a party to a dispute from approaching any court of competent jurisdiction for urgent or semi-urgent interim relief.

A handwritten signature in black ink, followed by the date "1/8/23". The signature is stylized and somewhat illegible.A handwritten signature in black ink, consisting of a single, continuous, stylized stroke.