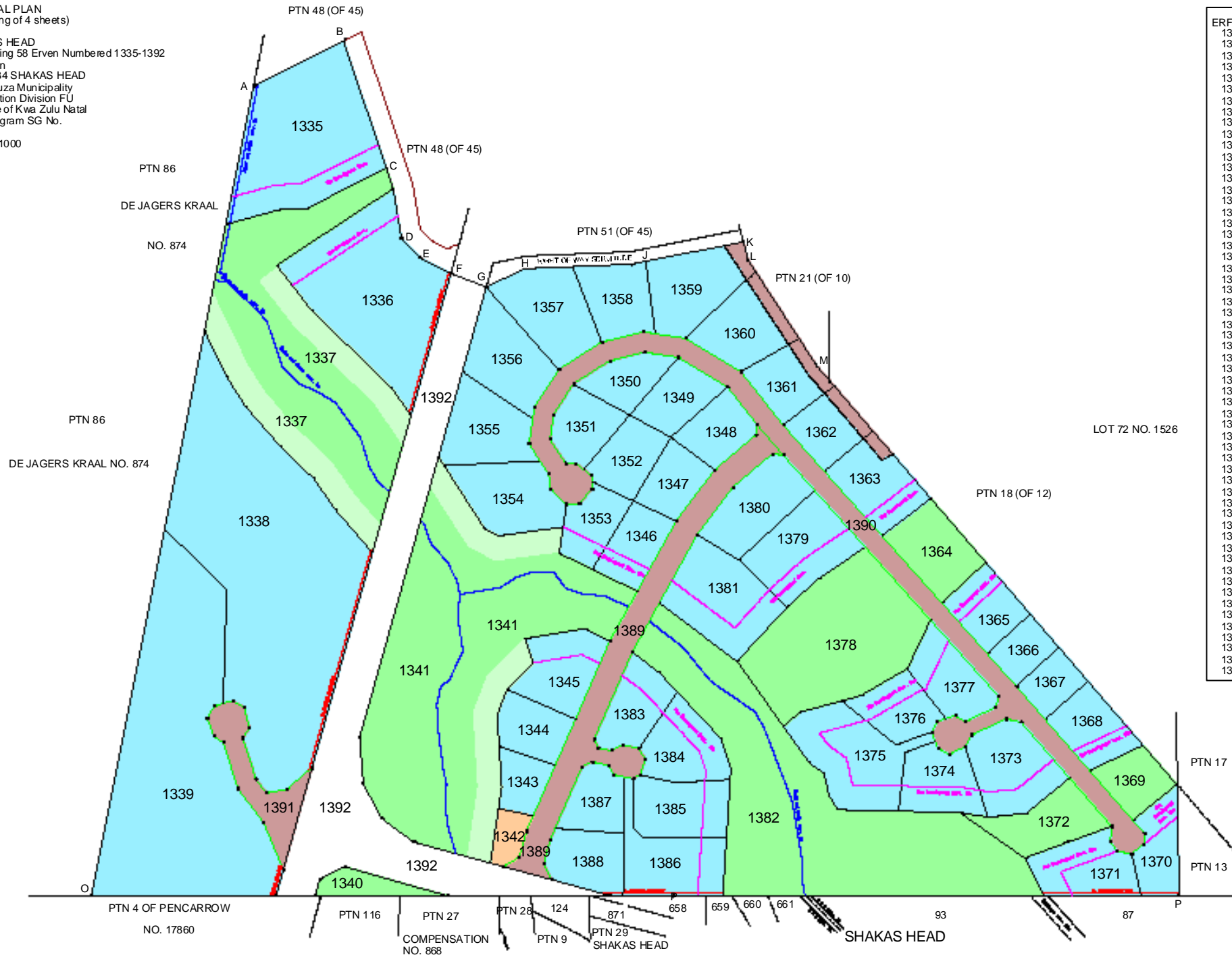


GENERAL PLAN
(consisting of 4 sheets)
of
SHAKAS HEAD
Comprising 58 Erven Numbered 1335-1392
situate on
ERF 1334 SHAKAS HEAD
Kwadukuza Municipality
Registration Division FU
Province of Kwa Zulu Natal
Vide Diagram SG No.

Scale 1:1000



ERF NO.	AREA
1335	1,1369 Ha
1336	1,1732 Ha
1337	2,2777 Ha
1338	2,9937 Ha
1339	2,4315 Ha
1340	1,334 m ²
1341	3,2670 Ha
1342	1,024 m ²
1343	1,682 m ²
1344	2,386 m ²
1345	3,452 m ²
1346	2,477 m ²
1347	2,220 m ²
1348	2,344 m ²
1349	2,417 m ²
1350	2,135 m ²
1351	2,478 m ²
1352	2,513 m ²
1353	2,307 m ²
1354	4,010 m ²
1355	3,803 m ²
1356	4,011 m ²
1357	4,280 m ²
1358	2,952 m ²
1359	4,229 m ²
1360	3,635 m ²
1361	2,605 m ²
1362	2,454 m ²
1363	3,472 m ²
1364	3,351 m ²
1365	2,554 m ²
1366	1,619 m ²
1367	1,618 m ²
1368	2,760 m ²
1369	2,123 m ²
1370	2,443 m ²
1371	3,395 m ²
1372	3,211 m ²
1373	4,157 m ²
1374	3,027 m ²
1375	5,596 m ²
1376	2,564 m ²
1377	2,990 m ²
1378	1,1967 Ha
1379	4,490 m ²
1380	3,819 m ²
1381	5,346 m ²
1382	2,5476 Ha
1383	2,824 m ²
1384	3,377 m ²
1385	3,467 m ²
1386	4,109 m ²
1387	2,265 m ²
1388	2,764 m ²
1389	9,016 m ²
1390	1,3795 Ha
1391	3,135 m ²
1392	2,2377 Ha

**IMBONINI PARK (PTY) LTD OWNERS’ ASSOCIATION
(IOA)**



OWNERS PARTICIPATION MANUAL

INDEX

IMBONINI PARK RULES

1.	Introduction	3
2.	Use of the Roads	3
3.	Tenants, Visitors & Employees	3-4
4.	Security	4
5.	Administration	4
6.	Environmental & Aesthetic Appearance	4-5
7.	Newsletters/ Advertising/ Canvassing	5
8.	Selling & Leasing of Property	5
9.	Signage	5-6

ARCHITECTURAL AND LANDSCAPING DESIGN GUIDELINES

INTRODUCTION

ARCHITECTURAL GUIDELINES

1.	General	9
2.	Prohibited Building Materials	9
3.	Architectural Specification for IMBONINI PARK	9
3.1.	Roof	9
3.2.	Entrance	9
3.3.	Services	9
3.4.	Building Signage and Graphics	9
3.5.	Security	9
3.6.	Fences and Other	9-10
3.7.	Walls	10
3.8.	Carports and Other Outdoor Furniture	10

LANDSCAPING GUIDELINES

4.	Landscape Objectives	11
5.	Landscape Structure	11
6.	General Planting Guidelines	11
7.	Specific Area Guidelines	11
7.1.	Service Area	11
7.2.	Building Areas	11
7.3.	Paving	11
7.4.	Irrigation	11
7.5.	Retaining Walls	11
8.	Permitted Plant Types	12
9.	Plant Types Not Permitted	12

PLAN SUBMISSION PROCEDURES

1.	Introduction	13
2.	Documents to be Submitted	13
3.	Site Layout Plans	13-14
4.	Scale	14
5.	Colour of Plans	14
A.	Site Layout Plans	14
B.	Fencing Plan	14
C.	Floor Plans	14
D.	Elevations	14
E.	Landscaping Plans	14
6.	Fees	15

BUILDERS AGREEMENT

1.	Conditions Regarding Building Contractor Activity	17
1.1.	Introduction	17
1.2.	Legal Status	17
1.3.	Terms & Conditions	17
	Signatures	17-18

IMBONINI PARK (PTY) LTD RULES

1.	INTRODUCTION	3
2.	USE OF THE ROADS	3
3.	TENANTS, VISITORS & EMPLOYEES	3-4
4.	SECURITY	4
5.	ADMINISTRATION	4
6.	ENVIRONMENTAL & AESTHETIC APPEARANCE	4-5
7.	NEWSLETTERS/ ADVERTISING/ CANVASSING	5
8.	SELLING & LEASING OF PROPERTY	5
9.	SIGNAGE	5-6

1. INTRODUCTION

- 1.1. The main objective of the development of IMBONINI PARK by the township developer is to provide an upmarket quality working environment by the promotion of a high standard of general design at Imbonini Park.
- 1.2. The rules are legally binding upon all Owners, Tenants and Employees working within Imbonini Park, as are any decisions taken by the Directors interpreting and applying these rules.
- 1.3. Registered owners of properties at Imbonini Park are responsible for ensuring that they, their tenants, their employees and visitors abide by these rules.
- 1.4. This manual forms an integral part of the Agreement of Sale and is a design tool, which will be used by the Design Review Committee (DRC), constituted by the Imbonini Park Owners' Association (IOA), to ensure that the overall design intentions are implemented. This document has been drawn up with the co-operation of the Local Authority and various professional consultants, who will refer to this document when reviewing the submission of building plans. The council will not consider and plan submissions, not first submitted to the DRC and IOA for approval.
- 1.5. Membership of the IOA is compulsory and each registered stand owner will be required to pay a monthly levy to defray all anticipated expenses incurred by the Association on park and landscaping maintenance, security, aesthetic control, newsletters and administration. Management of the IOA will be undertaken by the Township Developer, its successor in title or nominee.
- 1.6. In the event of annoyances, disputes or complaints arising for any reason, the involved parties should endeavour to settle the matter between themselves amicably, exercising understanding, tolerance and consideration. In instances occurring where problems cannot be resolved, the matters should be referred to the Directors in writing for arbitration and settlement.
- 1.7. The decision of the Directors will be final and binding in respect of the interpretation of these rules.
- 1.8. The Directors may also in their entire discretion and on the grounds of reasonableness, relax any architectural rule they deem just. Owners acknowledge that any such relaxation does not set any precedent whatsoever.
- 1.9. Should a difference between the IOA and an Owner not be resolved through normal avenues and litigation ensues, the owner and trustees consent to the jurisdiction of the Magistrates Court.

2. USE OF THE ROADS

- The roads are an integral part of Imbonini Park and must be respected and regarded as a vital element of the environment. They are not private Park roads but are the responsibility of the Local Authority.
- 2.1. The general speed limit is restricted to 40kph. All road signs must be adhered to with normal Traffic Authority penalties if not observed.
 - 2.2. Save for the above, all provisions of the Road Traffic Act 29 of 1989 apply, as well as any other municipal by-laws or Kwa-Zulu Province ordinances.
 - 2.3. Vehicles are not permitted to drive anywhere except on the roads. Parks and pavements are expressly off limits.
 - 2.4. Parking on sidewalks and / or pavement, except where directed to do so or in specially demarcated areas, is not permitted.
 - 2.5. The IOA reserves the right to prevent vehicles from entering the Park if they are found, or appear to be unroadworthy.
 - 2.6. Owners, tenants and employees should report the registration number of any vehicle that they consider to be contravening these rules and regulations, ie. speeding, not obeying road signs and any other contravention to the Park Manager.

3. TENANTS, VISITORS & EMPLOYEES

- 3.1. In the final analysis the responsibility to enforce the rules contained in this manual rests with the owners.
- 3.2. Should the Owner let his property, he shall, in writing, advise the IOA of the name, contact numbers of the Lessee, and the lease period. The Owner is obliged to inform the Lessee of the Park rules and regulations contained in this manual, and bind the Lessee to conform therewith.
- 3.3. The occupiers of any property within this Park, are responsible for the conduct of their visitors, contractors and employees, and must ensure that all such persons obey the Park rules. If these persons fail to adhere thereto, the IOA reserves the right to withdraw access cards to the transgressors. Owners acknowledge that as a result of any transgression of these rules they, their employees, contractors or visitors will not have rights of action against the IOA.

4. SECURITY

- 4.1. Security is of paramount importance in the Park. The Directors therefore go to great lengths to ensure maximum possible protection on the Park. Every time security protocol is not followed and regulations broken, it makes it easier for criminals and others to do the same.
- 4.2. Security personnel have a difficult and unenviable task. Everyone's support and co-operation is expected. Rather than being obstructed in their prescribed duties or abused, Owners and their staff should display a positive and supportive attitude towards the security staff whose loyalty and attitude toward the people they are employed to protect will in turn be enhanced
- 4.3. The gatehouses are manned 24 hours per day and the Park constantly patrolled by security guards.
- 4.4. Strict control over access to the Park for all contractors and Owners during construction phases will be in place. No access will be granted to contractors, sub-contractors, owners or tenants for construction purposes without the approval of the IOA and the DRC. It is the responsibility of Owners and / or tenants to ensure that all security rules set in motion are fully adhered to. Access approvals are not transferable unless under special circumstances and only on written request and permission is granted by the IOA.
- 4.5. Should levies be in arrears, the IOA reserves the right to immediately bar all access without notice to the defaulting party until the levies are paid up to date
- 4.6. Every Owner / tenant must also ensure that Contractors and others in their casual employ adhere specifically to the security stipulations contained in the Builders Code of Conduct and within the rules of this manual. Contractors, employees or visitors not adhering to the security regulations will be denied access to the Park.
- 4.7. All or any attempted burglaries, any boundary wall or fence climbing, indeed any act of a suspicious nature, must be reported immediately to the Park Manager during office hours or to the Security Supervisor after hours.
- 4.8. Owners / tenants are strongly discouraged from employing illegal immigrants, casuals or gardeners with criminal records.
- 4.9. The IOA Directors recommend that all Owners, as a further security measure, install an alarm system and / or panic button as soon as possible after completion and taking occupation of their premises, which system should be compatible with the electronics of the overall Park System and linked thereto. Information on such linkage will be available from the Park Manager. The IOA accepts no responsibility whatsoever for any losses sustained on the Park.
- 4.10. Contractors, sub-contractors, employees on foot, casual gardeners must enter the Park through the turnstiles at the gatehouse in accordance with the security provisions in force at time of entry.

5. ADMINISTRATION

- 5.1. Levies become due and payable from the date of transfer of the property or erf, and are payable monthly in advance on the first day of each and every calendar month.
- 5.2. Clearance Certificates, issued by the IOA, will not be issued in order to effect transfer, until such time as the Seller's levies are fully paid up. Purchaser's purchasing property in a Closed Corporation should exercise caution in taking transfer of members' interests, as any arrears levies will become the responsibility of the new member/s and the under mentioned rules and regulations will apply to the new Owner/s.
- 5.3. Interest will be charged on all accounts in arrears at the prime interest rate plus 2% as charged by the IOA's bank to its most favoured Clients.
- 5.4. No construction may take place, or continue, if and when levies are in arrears.
- 5.5. The IOA reserves the right to take legal action on any overdue accounts. Legal action will be taken in the form of a letter of demand from the IOA's attorneys on all accounts 60 (sixty) days in arrears and thereafter further action, as deemed necessary, in liaison with the IOA's attorneys, to recover monies outstanding.
- 5.6. Should the IOA hand over any levy arrears for collection, the Owner shall pay fees on the attorney and own client cost / fees, including collection commission and tracing fees if any, and interest at the rate referred to in clause 5.3.
- 5.7. Refund of development / landscaping deposits will first be offset against outstanding levies and only returned where the site / property has been inspected by the Park Manager and an occupation certificate has been issued by the Local Authority.
- 5.8. In accordance with the Memorandum and Articles of Association there is no excuse whatsoever for non-payment of levies.
- 5.9. A debit order facility is available and owners are urged to make use of this service and pay levies timeously.
- 5.10. Whilst all steps will be taken by the IOA to ensure contact and purchasers' details are correct in order to ensure that bills of account reach their correct destination, the onus is on the Owners to ensure that the details and / or any changes are correct and updated with the Park Manager.

6. ENVIRONMENT AND AESTHETIC APPEARANCE

- 6.1. Every owner has responsibility to maintain the pavement area between the road kerb and the boundary of his property, which includes watering of any lawns, trees, plants and shrubs planted either by the developer, Owner or the IOA on the pavement area.
- 6.2. No trees, plants or pavement lawn may be removed by the Owner or tenant without the permission of the IOA. If the pavement lawn, trees and / or plants are damaged in any way including as a result of building activity, it is the Owner's responsibility to reinstate such pavement to the satisfaction of the IOA, failing which the IOA will repair any damages at the Owner's expense. The cost of such reinstatement will be deducted from the Landscaping Deposits if the damages occur during construction. If after completion of construction, then the costs will form part of the levy payable during the month of such reinstatement.
- 6.3. Rubble or other refuse must not, under any circumstances, be dumped on the pavement areas, vacant stands or public areas. Building materials must be removed from the pavement areas within 72 (seventy two) hours of delivery.
- 6.4. All fencing, including fencing visible from the road or between properties, must be maintained and painted to the satisfaction of the IOA.
- 6.5. In the event of the above requirements not receiving satisfactory treatment or attention, the IOA, after having given the Owner written notice thereof, reserves the right to undertake the necessary work at the Owner's expense, and such costs will form part of the levy in the month of debiting.
- 6.6. A particular appeal is made to Owners and others to leave any pavements and public areas they may visit, in as clean a condition as was found and to develop the habit of picking up and disposing of any litter encountered in waste bins.
- 6.7. Vacant stands must be kept clean and grass cut on a regular basis to the satisfaction of the IOA and if not so cleaned or cleared, the IOA reserves the right to have the stand cleaned without notice and at the Owner's expense, which costs will form part of the levy in the month of debiting.

- 6.8. Garden refuse and refuse bags may NOT be placed on the pavement areas. Skip areas must be closed and out of public view.
- 6.9. Owners / tenants are urged to report to the Park Manager any incidents of builders or others littering or dumping rubbish / rubble where not permitted and / or on vacant stands.

7. NEWSLETTERS / ADVERTISING / CANVASSING

- 7.1. A Park newsletter and / or news flash bulletins will be published on a regular basis to advise Owners, tenants and employees of issues relating to the Park and surrounding areas. Owner's, tenants employees and advertisers are invited to participate by contributing any newsworthy items by way of editorials. Such should be submitted to the editor for incorporation subject to content and space availability.
- 7.2. No advertisements by way of leaflets, pamphlets etc. may be exhibited or distributed at the Gatehouse or within the Park unless on IOA official letterheads or for Park functions, notices etc.
- 7.3. Door to door canvassing is NOT permitted.

8. SELLING AND LEASING OF PROPERTY

- 8.1. The Owner must ensure that the buyer / tenant is informed about and receives a copy of this Owners Participation Manual and the Architectural and Landscaping Design Guidelines, and any other administrative regulations applicable at the time.
- 8.2. A Clearance Certificate must be obtained from the IOA at a cost of R 500-00 (five hundred Rand) excluding VAT prior to any transfer. This amount may be increased from time to time as the IOA sees fit.
- 8.3. Any architectural or landscape approval in terms of the rules contained in this Guideline, granted to the Seller in the case of a resale or Lessor, prior to the time of sale or lease must be communicated to the buyer or Lessee at the time of purchase or lease. The Buyer or Lessee will have no recourse against the IOA.
- 8.4. The seller of a property in the Park shall ensure that the sale agreement contains the following clauses:
- 8.4.1. The purchaser hereby acknowledges that upon registration of the property into its name, it will automatically become a member of the IMBONINI PARK OWNERS' ASSOCIATION (IOA), being a voluntary association formed and made up of all Owner of properties in the Park and for the purposes of the control and management of aesthetics, security and the communal interests of owners within the Park.
- 8.4.2. The purchaser agrees that it will be bound by and subject to the constitution of such Association. The constitution of the Association shall entitle the trustees to take the circumstances of each member's property into account in determining the levy payable in respect thereof. Further, the property is sold subject to the following terms and conditions which shall be embodied as servitudes or conditions of transfer in the title deeds of the property and which set out in the form appearing below, provided they may be varied by the Registrar of Deeds and are imposed as conditions in favour of the Association.
- 8.4.2.1. The owner of property, or of any sub-division thereof, or of any interest therein shall not be entitled to transfer the property, or any subdivision thereof, or any interest therein, without the prior written consent of the Association which shall not be withheld if all monies owing to the Association by the Owner to date of transfer have been paid;
- 8.4.2.2. Every owner of the property, or any subdivision thereof, or of any interest therein, shall automatically become and shall remain a member of the Association and be subject to its constitution until he / she ceases to be an owner as aforesaid. Neither the property or any subdivision thereof, nor any interest therein, shall be transferred to any person who has not bound himself / herself / itself to the satisfaction of such Association to become a member thereof;
- 8.4.2.3. Any building plans in respect of any improvements to be erected on the property as well as any improvements themselves shall be subject to the prior written approval of the Association.
- 8.4.2.4. The owner of the property shall not alter the access to or rezone, subdivide, consolidate or notarially tie the property without the prior written consent of the Association.
- 8.5. The above provisions are for the benefit of the Association and constitute a stipulation alteri which it may accept at any time before transfer of the property.
- 8.6. The purchaser agrees and accepts that :
- 8.6.1. Immediately on becoming the registered owner of the property it will automatically become a member of the Association and will be bound by the constitution of the Association, the terms of which it acknowledges being fully acquainted with;
- 8.6.2. for as long as it is the registered owner of the property it will remain a member of the Association and be bound by its constitution;
- 8.6.3. should it sell the property it will ensure that its purchaser is made fully aware of the Association;
- 8.6.4. It will not be entitled to sell, donate, grant any option or pre-emptive right in respect of alienate or transfer or in any way deal with the property without the prior written consent of the Association which shall not be withheld provided all monies owing to the Association to date of alienation or transfer have been paid.

9. SIGNAGE

9.1 Temporary On Site Advertisements :

- These signs include a wide variety of signs and advertisements, which are usually displayed to advertise a short-term use of the site. This includes signs temporarily displayed to:-
- Advertise that land, premises or developments are for sale or to let.
 - Advertise the fact that firms or individuals are carrying out building, engineering, and construction or landscaping works.
 - Temporary boards are to comply with the IOA design standards.

9.2 Temporary Sign Controls :

- Advertising and builders boards to the design and specification of the IOA are not to exceed sizes determined from time to time by the IOA.
- Advertising boards are to be constructed from exterior quality material and are to be mounted on substantial posts suitably stayed to withstand high wind loads.
- Boards must only be erected and displayed within the site boundaries of the premises or in such position as approved by the IOA.
- Signs must be parallel to the street frontages.
- Signs are limited to one per street frontage.
- Not more than 5 sign boards will be allowed per site whilst construction is in progress.

- Builder's boards must be removed within 1 (one) month of occupation of the building by the Owner / tenant / occupier.
- Permitted signage and advertising boards:
 - Two off advertising boards will be allowed for any of the following:
 - Main contractors.
 - Sub-Contractors
 - Suppliers
 - Tenants
 - Owners
 - Developers
 - One Full Architects notice board per site.

9.3 **Signs Not Permitted :**

- Transit advertising. This signage includes all carried advertising, movable advertising devices and advertising on normally vehicles including taxis, buses, trailers, tricycles etc.
- Pavement posters and notices. Pavement posters include all temporary signs erected within on the road reserve, parking areas, parklands or buildings and intended to advertise any meeting or function of religious, educational, cultural, charitable, social or sporting purposes.
- Owners / tenants / occupiers may not use advertising signage of any sort relating to the hire of staff or labour.
- Advertising on street furniture or structures.
- Banners and flags. Fabric banners fixed to fences, buildings or any other structure are not permitted.
- Spectaculars, large billboards and supa-fax.
- No signs of any nature other than those identifying the name of the occupier company will be permitted along the main adjacent arterial roads and highways.
- Small billboards, guard towers and super trilaterals.
- No election advertising is permitted.
- No signage may project above the ridge or parapet line of any building nor may any portion of any sign be able to be read against the sky.
- Product advertising for commercial purposes is not permitted. Trade names will only be permitted if the premises are occupied by the trademark owning company.

This document may be amended to cater for conditions that may not have been foreseen at the time of writing. The Directors reserve the right to make such amendments as they deem fit, which amendments shall be binding on all Imbonini Park Owners, tenants and occupiers.

IMBONINI

ARCHITECTURAL AND LANDSCAPING DESIGN GUIDELINES

INTRODUCTION	8
ARCHITECTURAL GUIDELINES	
1. GENERAL	9
2. PROHIBITED BUILDING MATERIALS	9
3. ARCHITECTURAL SPECIFICATIONS FOR IMBONINI PARK	9
3.1. ROOF	9
3.2. ENTRANCE	9
3.3. SERVICES	9
3.4. BUILDING SIGNAGE AND GRAPHICS	9
3.5. SECURITY	9
3.6. FENCES AND OTHER	9-10
3.7. WALLS	10
3.8. CARPORTS AND OTHER OUTDOOR FURNITURE	10
LANDSCAPING GUIDELINES	11
4. LANDSCAPE OBJECTIVES	11
5. LANDSCAPE STRUCTURE	11
6. GENERAL PLANTING GUIDELINES	11
7. SPECIFIC AREA GUIDELINES	11
7.1. SERVICE AREAS	11
7.2. BUILDING AREAS	11
7.3. PAVING	11
7.4. IRRIGATION	11
7.5. RETAINING WALLS	11
8. PERMITTED PLANT TYPES	12
9. PLANT TYPES NOT PERMITTED	12

INTRODUCTION

Imbonini Park has been specifically designed to provide a framework within which commercial business and office development can occur. The framework creates an architecturally balanced and aesthetically appealing classical corporate business park environment. The park offers accessibility, convenience, security, a park-like environment and strong corporate visibility and identity.

The basic planning objectives for the park are to establish an environment of quality by :

1. Designing buildings, which are aesthetically pleasing and in harmony with the high quality environment, thereby maximising the value of the developments in the park and protecting occupiers of buildings against undesirable adjoining development.
2. Landscaping to a standard, this will relate to adjoining open space.

The intention of the architectural building guidelines is to create an architecturally balanced park without hindering the creativity of individual styles and tastes. It is not the intention to unreasonably restrict building design, but rather to allow individual architectural expression.

The architectural guidelines are there to ensure that the character and quality of IMBONINI PARK is maintained, thereby protecting the value of your investment. These design guidelines are a condition of the purchase agreement and will be enforced by IOA. Any reference to IOA, shall include where relevant, a Design Review Committee (DRC) specially established by the IOA for the evaluation and control of the business park architecture.

The following principle design requirements have been adopted by the IOA:

- The minimum coverage allowed on any erf at Imbonini Park is 40% of the erf size. If two or more erven are consolidated, the 40% minimum coverage will be applied to the total site area.
- A minimum of 15% of the total site area must be landscaped. The sidewalk space between the road and the site boundary may not be included within this minimum landscaping area.
- It is preferable that erven along the main arterial roads external to the site are developed to the full coverage and F.A.R requirements thus maximising exposure for both the IOA and the Owners.
- No subdivisions of the sites published for sale will be allowed under any circumstances whatsoever.
- Consolidations of individual erven will be permitted subject to review by the IOA. Such requests will be entertained at time of sale and all submissions will be made to the IOA within 7 (seven) days of acceptance of the sale agreement.
- There is a mandatory landscaping zone along all of Imbonini Park's external fences and those properties which border onto the main external roadways of 5m, within which no parking or structures are permitted.
- Landscaping within this mandatory 5m "zone" must be in accordance with the requirements of the IOA, details of which may be obtained from the IOA Pack or the IOA board. The principles of this requirement are that a uniform landscaping theme is adopted along the entire frontage of the main roads adjacent to the Park.
- The township Developer shall provide sidewalk paving to a width of 1,2m along all internal road frontages; such paving shall be provided as soon as reasonably possible following completion of each individual site development. The balance of the verge area must be landscaped by each individual developer in accordance with the requirements of the IOA. The principles of this requirement are that a uniform landscaping theme is adopted for internal road frontages of the Park.

The Design Review Committee appointed by the IOA will consist of at least 7 (seven) members including the following :

- | | | | |
|----|--------------------|---|--|
| 1. | Mr Jason Lott | - | VLC Architects - Overall Imbonini Project Architects |
| 2. | Mr Lionel Chambers | - | VLC Architects - Overall Imbonini Project Architects |
| 3. | Mr Ed Peen | - | Imbonini Park (Pty) Ltd. – Township Management |
| 4. | Mr Paul Izzard | - | Imbonini Park (Pty) Ltd. – Township Management |
| 5. | Mr Peter Felix | - | Gateway Projects – Project Management |
| 6. | Mr Craig Eldridge | - | Drennan Maude & Partners – Civil Engineers |
| 7. | Mr Simon Bundy | - | Sustainable Development Projects – Landscaping & Environmental |
| 8. | T.B.A. | - | Consulting Structural Engineers |

The committee may appoint additional technical advisers to assist in evaluating specific submissions. In special circumstances, the committee will be prepared to consider modification or waivers of certain requirements laid down in this document.

Site Development Plans (SDP's) are to be submitted to obtain approval in principle for a proposed development thus preventing delays with building plans. This serves to point out early errors and any problem areas to developers' thereby expediting approval of a project. SDP's are to be submitted before commencing with the building plans.

It is strongly recommended that the Owner and his Architect consult with the DRC before commencing with building design and in any event prior to submission of final building plans.

ARCHITECTURAL GUIDELINES

1. GENERAL

Special consideration should be given to building design generally and to the choice of finishes in particular to ensure that the overall appearance of the Park is enhanced. The purpose of reviewing the above is to ensure that the highest quality of compatible and suitable development is consistently achieved. Variations to the design control will be considered by the IOA, subject to the particular submission being of exceptional architectural design and detailing.

When questions of judgement or interpretations arise, the parties shall endeavour to reach agreement, failing which the matter may be referred to the Township Developer, who, after considering representations from both parties, shall make a decision which shall be final and binding on all parties. Any revisions, additions or alterations to any portion of approved SDP's are subject to a re-submission by the owner (at their cost) to the DRC for further review and approval (and correction) by the DRC.

2. PROHIBITED BUILDING MATERIALS

To allow for diversity and interest a variety of architectural designs within the overall framework will be encouraged. To create architectural balance the following building materials **WILL NOT BE PERMITTED**:

- Pre-cast Walling of any material
- Chain linked fencing
- Split pole fencing
- Glass Fibre sheeting
- Galvanised sheeting

3. ARCHITECTURAL SPECIFICATIONS

3.1 Roof :

- Preference should be given to sheeting materials have a coloured, factory applied enamel finish, Colomet, Classicoat or similar.
- Roof configurations are to be hipped, gabled, curved or combinations thereof.
- Gutters should be integral with the design of the building.
- Air vents to roofs are to be coloured to match the sheeting applied to the building.
- Chimneys, towers and other roof additions / protrusions are to be approved by the DRC.

3.2 Entrance :

- No security gates attached to the buildings themselves may be visible from the outside.
- Any signage / logo installations to be approved by the DRC.

3.3 Services :

- All drainage and water supplies are to be concealed in service ducts and all other piping is to be chased into walls. No exposed service reticulation is permitted.
- All telephone and electrical reticulation is to be installed underground. No overhead or external surface wiring or cabling is allowed.
- All DSTV satellite dishes and other television or radio antennae are to be installed in a position that is hidden from the view of the general public wherever possible.
- External condenser units and connecting cables need to be concealed, if split unit air conditioners are used. Air conditioning units piercing the external skin of buildings will not be allowed, unless screened by suitable duct sleeves and covers, which is installed flush with the external walls.
- The colour of the exposed louvers for air conditioning is to match the surrounding plaster, brickwork or roof finish.

3.4 Building Signage and Graphics :

- It is preferable that any signage relating to a particular property is **NOT ATTACHED** to the actual building unless the Corporate Identity of that particular related entity calls for such an installation.
- Where possible, signage is to be allocated to a specifically designed "Pylon" system which will be issued by the IOA and approved by the DRC.
- All signage on a given project must be on a uniform style, material, letter type and mounting.
- Colour and texture must also be of a harmonious quality to blend and conform to Imbonini Park aesthetics.

3.5 Security :

- Razor wire and barbed wire are strictly not allowed.
- Burglar proofing to windows and security gates will be subject to the approval of the DRC.
- The architecture of separate security buildings must match the style and architecture of the main buildings or as approved by the DRC.

3.6 Fences and Other :

- All individual fencing proposals must be fully detailed on the site development plan when submitted to the DRC for its approval.
- Fencing to the building line from any boundary where the developer has erected the security fence, must match the security fence.
- The main Park perimeter fencing and all street boundary fencing internally to the Park will be of a uniform design issued by the IOA. Side boundary fencing may match that of the perimeter fencing or be of similar design. Individual developers will not be forced to match the perimeter fencing if not required.
- Fencing must be from 2,1m to 2,8m in height.

- Electrical strand fencing may also be installed within the fencing designs if required. 8 strand electrical fencing may be installed to the top of the fencing design on all side boundaries. The perimeter boundaries and internal street boundaries may only have full height electrical fencing installed inside those fencing installations.
- Walling or fencing of refuse areas to match the main building on the site. Size to conform to Local Authority requirements.
- Refuse areas must be located adjacent to the main or service entrance to the property.
- Paving of the internal site roads and parking allocations must be to the approval of the DRC.

3.7 **Walls :**

- At least the first 2,4m in height of any façade of any building measured up to eaves line must be finished with concrete facebrick, either smooth or rock-face variety, off-shutter concrete, pre-cast concrete, brick and painted plaster, paint or other approved finish.
- The DRC will consider variations to façade design subject to proportions and detailing being of a high architectural standard.
- Stock or clinker bricks WILL NOT be permitted or approved.

3.8 **Carports and Other Outdoor Furniture :**

- Benches, waste bins and other minor site features must be designed in a consistent manner and be suitably placed to form an integral part of the landscape.
- Carports may not be placed within the mandatory landscaping zones.
- The colour of shade cloth and supporting structures must be harmonious with the colour of the main building.

LANDSCAPING GUIDELINES

4. LANDSCAPING OBJECTIVES

- To create a quality landscape environment that provides an appropriate setting for the Park.
- The creation of a park-like environment within which various diverse businesses can be harmoniously located.
- To create an environment that projects a clean progressive quality image.
- To create a landscape that visually integrates the various developments and potentially diverse building types. To this end a list of recommended plant species has been included in this documentation.
- All landscape and external design work should be an integrated part of the site planning process and from the commencement of the design and implementation thereof it must be supervised by a responsible professional.
- To form an effectively structured landscape.
- To provide shade and climate control and screening where necessary.

5. LANDSCAPE STRUCTURE

- The major landscaping structuring devices in the landscape plan are the provision of mandatory landscaping zones and coverage on each of the stands within the Park.
- Quality individual site landscaping will be obligatory and controlled through the mechanisms provided herein. Individual site landscaping is encouraged to relate to the general design framework of the public open space, road and footpath system to be established by the IOA.
- The landscape design may vary from Erf to Erf throughout the Park, from formal to informal and from bold to fine textures.

6. GENERAL PLANTING GUIDELINES

- Plant forms of radically different characteristics, such as a combination of Pinus and Euphoria or plants which have obviously diverse climatic associations such as Aloe's and conifers are TO BE AVOIDED.
- The extensive use of robust ground covers is to be encouraged to avoid the "bitty / spotty" over planting of too many diverse planting types.
- The size and scale of materials should not conflict with the area into which they are planted. For example, large wide spreading trees can be used in large open spaces, whereas smaller narrow trees should be used where space is limited.
- Plant material should be selected to encourage bird life.
- Plants are to be hardy to the on site soil and climatic conditions and be disease resistant. They should require limited maintenance.
- Planting where possible should be used to reduce problems caused by excessive solar radiation from offices and cars.
- Predominantly deciduous trees are to be used on the northern faces of buildings to provide shading in summer and to allow warming solar radiation in winter.
- Good visual interest is to be maintained throughout the year; this can be achieved by introducing a limited proportion of deciduous material, which reflects the seasons. Plant material should however be dominated by evergreen materials to ensure good all year round appearance.
- Planting is to be positioned in a manner that avoids interference with sight lines and signage and does in no way interfere with pedestrian or vehicular circulation.
- Materials with dangerous thorny branches are only to be used in areas where no potential harm can be done to users.
- Large tree stock is recommended in key areas.
- Removal of any existing trees is subject to the approval of the IOA.
- Drought tolerant species and stones or pebbles should be used in situations under over hanging roofs.

7. SPECIFIC AREA GUIDELINES

7.1 Service Areas :

Care should be taken to minimise the impact of the parking areas, by utilizing larger stock at entrances and exists to car parks and at the end of car parking rows. Shade trees with high branching canopies are to be utilised in car parking areas where carparks are not installed.

In continuous parking areas, trees must be planted every 5 (five) parking bays either in the ground or in movable pots to the approval of the DRC & IOA.

7.2 Building Areas :

The areas around the buildings, and entrance areas, provide the principle opportunity for introducing variety within the overall landscape pattern. They should include densely planted ground covers, flowering shrubs and decorative trees in appropriate combinations of evergreen and deciduous species.

7.3 Paving :

Different paving types, colours and textures should denote separate uses such as roadway from parking and vehicular from pedestrian zones. All pedestrian walkways must be formed in concrete paving bricks, paving blocks or other sympathetic materials to relate to the planting and the building.

The preferred paving materials are to be sourced from INFRASET CONCRETE PAVING PRODUCTS or similar approved as deemed by the DRC as long as it is a "concrete" product.

7.4

Irrigation :

All development sites must indicate the method of site irrigation to be provided. All sites must provide a water connection point (the diameter to be determined by the IOA) on the street boundary for connection to the verge irrigation system to be provided and used by the IOA on completion of individual projects. All development sites are to include a complete fully automatic irrigation system. This includes the municipal sidewalk areas in front of all erven.

7.5

Retaining Walls :

Flexible retaining wall systems must be landscaped with suitable planting to the approval of the IOA and DRC.

8. PERMITTED PLANT TYPES**Planting Palettes :**

The following is a guide to landscapers and managers of the park. While the lists below are not exhaustive, they act as a general guide to acceptable species within particular habitats on Imbonini Park. It is suggested that interaction with the DRC & IOA be undertaken before introducing species not listed below onto the park.

Note the corresponding habitats which correlate with the species identified :

1	Moist grasslands
2	Coastal forest
3	Reed and sedge habitats
4	Wetlands, ponds
General	Suitable for most habitats, open space

The following is a list of suitable plant material for use on this development and should be followed in order to generate uniformity throughout this park.

GRASSES :

Chloris gayana	general	Cynodon dactylon	general - not in areas delineated as management areas 1 and 2
Dactyloctenium australe	general	Digitaria eriantha	general
Oplismenus hirtellus	2	Panicum maximum	general
Setaria lindenberiana	2, 1	Setaria megaphylla	1,
Sporobolus africanus	2	Staenotaphrum secundatum	general

HYGROPHILLIC HABITATS – PONDS ETC :

Cyperus papyrus	4	Kniphofia tysonii	1, 4
Nymphaea indica	4	Nymphaea nouchali	4
Potamogeton crispus	4	Phragmites australis	4
Typha capensis	4	Cyperus dives	4
Cyperus papyrus	4	Cyperus textiles	4
Zantedeschia aethiopica	1, 4		

TREES & SHRUBS :

Acacia nilotica	2	Acacia karoo	2,4 general
Allophylus natalensis	2, general	Aloe arborescens	4
Apodytes dimidiata	2, 4	Barringtonia racemosa	2, 4
Bridelia micrantha	2,4 general	Calpurnia aurea	general
Carissa macrocarpa	general	Celtis africana	general
Chrysanthemoides monilifera	2, 4, general	Chaetacme aristata	2, 3
Deinbolia oblongifolia	general	Dichrostachys cinerea	4
Dovyalis rhamnoides	2,4 general	Dovyalis caffra	4, general
Ficus burtt davii	2	Ficus trichopoda	5
Ficus sur	1, 2, 4	Harepephyllum caffrum	general
Kraussia floribunda	2, 4, general	Leonotis leonurus	general
Macaranga capensis	4, general	Mimusops caffra	2, general
Mimusops obovata	general	Pavetta revolute	general
Phoenix reclinata	general	Psychotria capensis	1
Putterlickia verucosa	4	Issoglossa woodii	2,4
Rauvolfia caffra	2, 4 general	Rhus nebulosa	general
Rhus dentate	4	Syzgium cordatum	1,3,5 general
Tabernaemontana ventricosa	5, general	Trema orientalis	general
Xylothea kraussiana	4	Voacanga thourarsii	5
Ziziphus mucronata	2, 4		

HERBS AND GROUND COVERS :

Agapanthus nana	general	Asparagus densiflorus	general
Aspilia natalensis	1	Asystasia gangetica	general
Barleria repens	general	Barleria obtusa	general
Bulbine natalensis	general	Ceratotheca triloba	general
Crinum moorei	1, general	Crocotoma aurea	1, general
Dietes bicolor	1	Eulophia sp	1, 2, 3
Laportea peduncularis	3	Plectranthus ciliatus	1

9. PLANT TYPES NOT PERMITTED

The following is a list of plant material **NOT TO BE USED** in this development.

Acacia dealbata	Acacia elata
Acacia melanoxylon	Agave sisalana
Agave vivipara	Arauja sericifera
Arundo donax	Azolla fillicoides
Bauhinia variegata	Bougainvillea sp
Canna indica	Casuarina equisetifolia
Cinnamomum camphora	Cortaderia selloana
Grevillea robusta	Hedychium sp
Ipomoea purpurea	Jacaranda mimosifolia
Morus alba	Nephrolepis exaltata
Pennisetum sp	Phytolacca dioica
Senna spp	Thevetia peruviana
Tipuana tipu	Triplaris americana
Tecoma stans	

PLAN SUBMISSION PROCEDURES

1.	INTRODUCTION	13
2.	DOCUMENTS TO BE SUBMITTED	13
3.	SITE LAYOUT PLANS	13-14
4.	SCALES	14
5.	COLOUR SCHEME OF PLANS	14
5.1.	SITE LAYOUT PLANS	14
5.2.	FENCING PLAN	14
5.3.	FLOOR PLANS	14
5.4.	ELEVATIONS	14
5.5.	LANDSCAPING	14
6.	SUBMISSION FEES	15

1. INTRODUCTION

In addition to the requirement for the Site and Building Plan Approval laid down by the Local Authority, the Imbonini Park Owners Association (IOA) has appointed a design review committee (IDRC) to scrutinise and approve Site Development Plans (SDP'S) in order to ensure conformity with the urban design proposals contained within the Architectural and Landscaping Design Guidelines.

The attention is drawn to all eventual end users and owners to the fact that the local authority will not consider any SDP's unless they have first been considered and approved by the IDRC.

In order to ensure the minimum of delays in approving plans, the owner is requested to conform to the requirements and procedures as outlined in this document.

2. DOCUMENTS TO BE SUBMITTED

SDP's may be submitted by the registered owner or their authorised agent, in which case a power of attorney or letter of authorisation to apply on behalf of the owner must be included.

The SDP submission must consist of two **A3 size brochures, which should contain coloured copies** of the following drawings:

- | | | |
|-------|--------------------------|--|
| 2.1.1 | Site Layout Plan. | All elements of 3. below must be included and clearly shown. |
| 2.1.2 | Fencing Plan. | A plan showing the perimeter fencing details to each boundary. |
| 2.1.3 | Floor Plans. | The floor plan must indicate the use of all floor areas (a typical layout can be indicated where repetition occurs). |
| 2.1.4 | Elevations. | The elevations must clearly indicate the type and colour of the material proposed for the elevation treatment. |
| 2.1.5 | Roof Plan. | This plan must show the colour, material and type of roof. |
| 2.1.6 | Landscaping Plan. | (Refer to Landscaping guide). |

3. SITE LAYOUT PLANS

The site layout plan must indicate all the following information:

- 3.1. The entrance and exit to / from the property and whether combined or separate.
- 3.2. Building lines, servitudes and other restrictions where applicable (e.g.: sewer and power lines), site boundaries and their dimensions, topographical information, special natural features, ground works, earth dams and treatment thereof.
- 3.3. Internal and external vehicular and pedestrian movement.
- 3.4. Parking (visitors, open and covered), type of paving (indicating gradient of slope)
- 3.5. Parking bays to be demarcated and parking spaces to be numbered.
- 3.6. Open spaces (walking paths, gardens etc.).
- 3.7. Building envelope for new buildings. Distances between proposed buildings and side, front and rear boundaries to be fully dimensioned.
- 3.8. Phasing, if applicable.
- 3.9. Contours (at 500mm height intervals) and floor heights related to site datum height.
- 3.10. Street names and north point to be clearly indicated.
- 3.11. Boundary treatment (position, material, height).
- 3.12. Position of refuse area. Indicate whether covered or not and access to.
- 3.13. Position of security and other outbuildings (if applicable)

- 3.14. Surface treatment of all internal roadways, walking paths and service areas / yards.
 3.15. Occupation of adjacent erven (building outline. IDRC will assist on new developments)
 3.16. Stand numbers of adjoining erven.
 3.17. Water, sewer and electrical connection points.
 3.18. Storm water management system and collection points. To be designed by qualified and registered Engineers and submitted with SDP.
 3.19. A schedule of land use rights as indicated within the schedule below:

	PERMITTED	PROVIDED
Site Area	_____ m ²	_____ m ²
F.A.R.	_____ (decimals)	_____ (decimals)
Height	_____ Storeys	_____ Storeys
Coverage	_____ %	_____ %
	_____ m ²	_____ m ²
Landscaped Area (min15%)	_____ %	_____ %
	_____ m ²	_____ m ²
Building Lines		
Boundary 1 (North)	_____ m	_____ m
Boundary 2 (South)	_____ m	_____ m
Boundary 3 (East)	_____ m	_____ m
Boundary 4 (West)	_____ m	_____ m
Schedule of Areas		
Use 1 (Specify)		_____ m ²
Use 2 (Specify)		_____ m ²
Use 3 (Specify)		_____ m ²
Etc.		
Parking		
Offices	_____ bays	_____ bays
Warehousing	_____ bays	_____ bays
Other uses (Specify)	_____ bays	_____ bays

4. SCALE

The following scales are acceptable:

1:100
 1:200
 1:250

1:500 will be acceptable for larger sites (10 000 m² and over).

Scale to be clearly indicated on all drawings and details. All notes and specifications etc. are to be clearly legible (normal photographic or copier reductions from A0 to A1 to A3 format are usually legible).

5. COLOUR OF PLANS

5.1 Site Layout Plans :

- | | |
|---------------------------------|--------------------------|
| 5.1.1. Landscaping | Shades of green |
| 5.1.2. Roads, parking, paving | Grey and shades of brown |
| 5.1.3. New buildings | Red |
| 5.1.4. Adjacent erven buildings | Black outline |

5.2 Fencing Plan :

- | | |
|-------------------|----------------------------------|
| 5.2.1 All aspects | Colours of materials to be used. |
|-------------------|----------------------------------|

5.3 Floor Plans:

- | | |
|-----------------------------------|-----------------|
| 5.3.1 Walls Brick | Red |
| 5.3.2 Walls Concrete | Green |
| 5.3.3 Floors (to indicate extent) | Beige or yellow |
| 5.3.4 Paving | Shades of grey |

5.4 Elevations:

- | |
|---|
| 5.4.1 Colours of materials to be used. Samples of building materials may be called for. |
|---|

5.5 Landscaping Plans:

- | | |
|------------------------|--------------------------|
| 5.5.1 Soft landscaping | Shades of green |
| 5.5.2 Paved areas | Grey and shades of brown |

6. SUBMISSION FEES

6.1. Plan submission scrutiny fee of R 2 000-00 (two thousand Rand).

6.2. Site landscaping deposit, calculated in accordance with a sliding scale as follows:

<u>Area of property</u>	<u>Amount payable</u>
0 – 2000m ²	R 30 000.00
2000 - 5000 m ²	R 35 000.00
5000 - 10000 m ²	R 45 000.00
10000 m ² plus	R 50 000.00

The landscaping deposit fee is refundable on completion of the building, less the cost to the IOA to complete any landscaping not completed in accordance with the approved landscaping plan, including the verge landscaping requirements as provided for in the Architectural and Landscaping Design Guidelines.

6.3. Site identification signage costs. This fee covers the cost to the Township Developer of providing site signage at the entrance to each stand during construction, within the road verge. The number of signs and the cost thereof shall be determined upon submission of the Site Development Plan.

The amounts stipulated above are subject to change at any time deemed necessary by the Township developers.

IMBONINI

AGREEMENT

ENTERED INTO BETWEEN

THE IMBONINI PARK OWNERS ASSOCIATION

AND

THE OWNERS

AND

HIS BUILDER



1.	CONDITIONS REGARDING BUILDER CONTRACTOR ACTIVITY	
1.1.	INTRODUCTION	17
1.2.	LEGAL STATUS	17
1.3.	TERMS AND CONDITIONS	17
	SIGNATURES	17-18



1. CONDITIONS REGARDING BUILDER CONTRACTOR ACTIVITY

1.1 Introduction :

Certain rules relating to building contractor activity on the park have been adopted by the Imbonini Park Owners' Association (IOA), the legal representative of property owners and tenants at Imbonini Park. The primary intention of these rules is to ensure that all building activity at Imbonini Park is conducted with the minimum inconvenience and disruption to owners / tenants. In the event of any queries in this respect, owners and / or their contractors are most welcome to contact the IOA's appointed Park Manager.

1.2 Legal Status :

The rules and regulations governing building activity as set out in this document are binding on all owners, their contractors and sub-contractors. Furthermore, all owners are obliged to ensure that their building contractors and sub-contractors are made aware of these rules and that they are strictly complied with. Owners are accordingly required to include these rules in their entirety in any building contracts concluded in respect of any property in the Park. The IOA has the right to suspend any building activity in contravention of any of the conditions and does not accept any losses sustained by an owner or contractor or sub-contractor as a result thereof, or any claims for damages of whatsoever nature.

1.3 Terms and Conditions :

1.3.1 Unless otherwise agreed by the IOA or its appointed representative. Contractor activity is limited to the following public time hours:

06h00 – 18h00 Normal weekdays.

08h00 – 14h00 Saturdays.

Note: Contractor activity is normally **NOT PERMITTED** on Sundays and Public Holidays without special consent from the Park Manager. Special applications for contractor activity after public hours and on Sundays and Public Holidays must be lodged with the IOA.

1.3.2 Contractor personnel are not permitted to remain on site between the hours of 18h00 and 06h00, on weekdays and between 14h00 Saturday to 06h00 Monday morning with specific consent of the Park Manager.

1.3.3 No contractor personnel are permitted to reside on the Park at any time whatsoever. Consent **WILL NOT BE** allocated for this practice.

1.3.4 All the Contractors and / or the Contractor's sub-contractors entering into the Park in an approved vehicle must have an access card for the said vehicle. Passengers must obtain a casual employee access card at the Security Check Point by showing a valid South African I.D. Document. The passengers will then be required to enter and / or exit the Park via the pedestrian access route.

1.3.5 The contractor shall provide facilities for rubbish disposal and ensure that the workers use the facility provided. Rubbish and / or rubble shall be removed weekly and at no time shall it be burnt or disposed of within the Park.

1.3.6 The contract site shall be kept clean and tidy at **ALL** times. Failure to do so by the Main Contractor will result in penalties at the discretion of the IOA.

1.3.7 Materials off-loaded by a supplier which encroach onto an adjacent sidewalk or roadway must be moved onto the main site by the Contractor within 72 (seventy two) hours. Material and / or rubble must not be allowed to remain on the roadway or adjacent sidewalk and it is the Contractor and Owner's responsibility to clear these areas of all such materials and / or rubble. The same applies to sand or rubble washed or moved onto the roads or adjacent sidewalks during building operations.

1.3.8 Deliveries from suppliers must be scheduled during Public Times only.

1.3.9 It is incumbent on the Contractors to provide toilet facilities for the workers in terms of Local Authority regulations. A minimum 3m x 3m screened area must be installed for use as a changing area for all contractors.

1.3.10 Building boards may only be erected if they comply and are approved by the IOA. Such boards are to be erected within the confines of the site and not on the roads or adjacent sidewalks. Sub-contractors boards are not permitted without special consent from the Park Manager. All boards must be removed immediately after completion of construction.

1.3.11 The Owner and Contractor shall be held responsible for damage to kerbs and / or plants on the sidewalks and / or damage to private or Park property. Costs to repair such items will be deducted from the landscaping deposit payable by the Owner should repairs not be carried out to approval of the IOA.

1.3.12 Should the IOA have any reservations with regard to the conduct of the Contractor and / or sub-contractor, the IOA shall endeavour to resolve the issue with the site owners, failing which and only as a last resort, the IOA reserves the right to suspend all building activity until such conduct is rectified, which it may do at any time and without notice, and free of recourse from the owners and / or contractors and / or sub-contractors.

1.3.13 This document is fully understood and accepted by the Contractor, Owner and / or any sub-contractor and the parties hereby undertake to comply with these rules, in addition to any further rules and regulations which may be introduced by the IOA from time to time.

THUS SIGNED and accepted this _____ day of _____ 2007

at _____.

WITNESSES

1. _____

OWNER OF ERF.....
IMBONINI PARK

2. _____

THUS SIGNED and accepted this _____ day of _____ 2007

at _____.

WITNESSES

1. _____

MAIN CONTRACTORS

Name : _____

2. _____

THUS SIGNED and accepted this _____ day of _____ 2007

at _____.

WITNESSES

1. _____

IMBONINI PARK OWNERS' ASSOCIATION

Name : _____

2. _____

THUS SIGNED and accepted this _____ day of _____ 2007

at _____.



SUSTAINABLE DEVELOPMENT PROJECTS cc

P O Box 1016 Ballito 4420. Tel / Fax 032 –9463382

DRAFT ENVIRONMENTAL MANAGEMENT PLAN

**EIA 7150
1st DRAFT**

**DEVELOPMENT OF COMMERCIAL AT IMBONINI PARK
WITH ASSOCIATED INFRASTRUCTURE**

"IMBONINI PARK"

January 2007

Prepared for : Imbonini Park (Pty) Ltd

**Prepared by : Sustainable Development Projects cc
P O Box 1016
Ballito
4420**

CONTENTS

1	INTRODUCTION
2	PROJECT DESCRIPTION
3	SITE DESCRIPTION
4	PROPERTY DEVELOPMENT PHASES
5	MANAGEMENT PROCEDURES
6	DUTIES OF THE ENVIRONMENTAL CONTROL OFFICER
7	PENALTIES & REMEDIATION
8	GENERAL REHABILITATION PROGRAMME
9	PROPOSED HABITAT REHABILITATION – MANAGEMENT ZONES

1. INTRODUCTION AND BACKGROUND

Following the decision of the DFA tribunal held on 17 December 2006 the applicant in respect of this development, Imbonini Park (Pty) Ltd has requested that an environmental management plan be compiled for the proposed development of the site. Such plan takes into consideration the findings of the EIA report (EIA 7150, dated October 2007 Sustainable Development Projects cc) and recommendations emanating from the Department of Agriculture and Environmental Affairs, KZN Wildlife and DWAF.

Note should be made that this document should remain as a dynamic document subject to further input relating to on site evaluation and input from competent authorities and the input of the compliance section of the Department of Agriculture and Environmental Affairs or parties acting within the mandate of South African Law or the Record of Decision. It is further recommended that the EMP be subject to review throughout the course of the construction phase of this project and subject to alteration by the ECO in conjunction with the Department of Agriculture and Environmental Affairs.

The purpose of the environmental management plan is to :

- 1 Inform the developer of the site of specific actions to be implemented prior to, during and following construction.
- 2 To inform the developer and any entity acquiring property within Imbonini Park of their obligations in respect of the Record of Decision emanating from the DAEA, or any legislation pertaining to the site either presented in the EIA process or arising at a future date.
- 3 To identify potential areas of environmental risk associated with the construction phase of the project.
- 4 To provide mitigatory measures to reduce environmental risk or alternatively alleviate problems as they have arisen.
- 5 Identify responsible parties for engagement in the management of the site.

The developer must ensure that :

1. That all purchasers and potential purchasers of property within Imbonini Park are informed of their obligations in terms of environmental management on site.
2. All purchasers are made aware of the obligations within this document.
3. All sales agreements with secondary purchasers on site refer to this document.
4. All property owners on site accept responsibility for implementation of the actions within this document during the construction and post construction phase of this project.

It is understood that a management association for the entire Park will be established. The managing authority is responsible for implementation of actions identified in the EMP.

2. PROJECT DESCRIPTION

The proposed development by Imbonini Park (Pty) Ltd, entails the establishment of approximately 45 platforms (between 42 and 50), one of which may house a 33/11kV transformer, as well as roads and related infrastructure. Such commercial development will exclude manufacturing businesses that are deemed to be of a "heavy" or "noxious" industrial nature (eg. Processing plants, welding, pulping, incineration of materials, those industries requiring dedicated water extraction; those industries requiring land fill or effluent discharge through dilution into wetland and aquatic systems).

The affected property was recently rezoned from agriculture to light industrial use and is presently under cane cultivation.

Application was made in terms of R1182 of the Environmental Conservation Act, 1997, (Act 73 of 1989) for the following:

- *Rezoning of land from agriculture or indeterminate to residential (S 2c)*
- *Establishment of sewerage treatment plants and associated infrastructure (1 o)*
- *The manufacturing, storage, handling and processing facilities for any substance which is considered dangerous or hazardous and controlled by National legislation.*
- *The construction of canals, channels and weirs including structures causing disturbance to the flow of water in a river bed, (diversions of normal flow of water and water transfer schemes between water catchments and impoundments (1i)*

The development is to be undertaken in a single phase over the entire site. Properties, in the form of platforms with services at their perimeter are to be sold for the construction of "top structures" required by secondary developers and other clients.

A brief description of items to be noted and involved in the first phase of development are provided below.

Service :

- 1 Hard-pan roads not exceeding 8m in width
- 2 Piped water provision by means of buried polypropylene piping
- 3 Piped sewerage – for transfer to the "Shakaskraal sewerage works"
- 4 11kV electrical overhead lines on wood-pole structures

A service agreement for the supply of services has been entered into with the relevant authorities.

Built Structure :

The applicant will not "construct" built structures. Platforms will be established as per town planning layout and sold to individual developers. Such platforms will be established according to engineering and geotechnical specifications, but would include :

- 1 Survey of "cut and fill" areas within site
- 2 Delineation of site via survey
- 3 Earthmoving activities to establish level site
- 4 Establishment of hardpanned road surfaces to site
- 5 Establishment of services to site (electrical, water, sewerage and telephone).
- 6 The estate is to be fenced and a gatehouse established at main entrance

Other facilities :

- 1 Landscaped verges and open space to be established
- 3 Rehabilitated wetland and conservation areas
- 4 Telkom infrastructure as and when required.

All built structures will follow plans approved by the KwaDukuza Municipality. Any specific requirements for approval in terms of environmental legislation for the undertaking of specific activities on site will be :

- Communicated to the purchaser of the site.
- Will be communicated to the KwaDukuza Municipality prior to construction.

3. SITE DESCRIPTION AND STATUS

Cultivation of the land is presently pursued. The most significant bio-physical components on site are the wetland and associated drainage lines serving the Umhlali River to the west.

A number of farm roads traverse the site and the identified wetland areas. The existing routes are, in general to be utilized by the applicant for the construction of hardpanned roadways. A single roadway over the secondary system will be established and is to be utilized for both construction and post construction phases.

Soils are primarily hill wash at surface with more clayey sandy soils be encountered at depth. The wetland areas comprise primarily of Katspruit and Warrington soils.

The riparian system is considered to be in a low to moderate state of functionality (SDP March 2006). Developments in the upper catchment of this system are considered to :

1. Be having extensive negative impacts on the lower reaches of the system within Imbonini Park and impacts include extensive and unnecessary engineering designed to reclaim wetland systems as well as reducing functionality of the wetlands / aquatic system.
2. The abovementioned developments are considered to not comply with general environmental legislation including National Water Act (1998) and Environmental Conservation Act (1989).

4 PROPOSED DEVELOPMENT "ROLL OUT"

The establishment base infrastructure at Imbonini Park will be accomplished over a single phase. The implementation of such phases will be undertaken according to the sale of property and the establishment of service to the area. The following information is deemed pertinent to the implementation of this management plan :

Estimated date of commencement of establishment of Imbonini Park	March 2007
Completion of Phase 1 bulks	June 2008
First occupation	June 2008

As the site is considered to be directly linked to a tributary affecting the Umhlali River, all sites should be treated at both the construction and post construction phases as "high management" areas. Review of Annexure "A" is required in this respect.

In respect of a high management area, it is envisaged that the Environmental Control Officer will provide a general documented evaluation form for any development occurring in this area. The evaluation should consist of :

- 1 Site assessment
- 2 Identification of edaphic factors and management of erosion potential
- 3 Consideration of site situation in respect of views from adjacent properties
- 4 Establishment of developmental footprint
- 5 Servicing of sites including stormwater management
- 6 Mitigation of impacts
- 7 Construction phase management planning
- 8 Post construction rehabilitation

5 MANAGEMENT PROCEDURES FOR IMBONINI PARK

Abbreviations :

ECO	Environmental Control Officer	Proj Man	Project Manager
Eng	Engineer	EMP	Environmental Management Plan
Dev	Developer	Env Cons	Environmental Consultant
DWAF	Department of Water Affairs and Forestry	Con	Contractor
DA&EA	Dept of Agriculture and Environmental Affairs	PESR	Preliminary Env Scoping Report

GENERAL

The following activities relate to the site generally, at Pre-Construction Phases

#	ACTIVITY	DESCRIPTION	MONITOR
1	Confirmation of RoD	Identification of all conditional requirements within RoD to be undertaken and adhered to by applicant.	ECO / Dev
2	Submission of EMP	EMP to be compiled and forwarded to DWAF and EKZN Wildlife for sanction and comment, as well as forwarded to municipality for comment. Submission of EMP for final approval to DA & EA.	Env Cons / Dev
3	Archaeological	Final archaeological audit to be completed. Ensure that destruction permits are in place for middens and archaeological sites if required. eThembeni Cultural Heritage...verbal confirmation as of 5 January 2007 indicating no sites located.	Env Cons / Dev
4	Municipal	Ensure that municipality has finalized all planning and building requirements prior to commencement of construction	Env Cons / Dev
5	Signage	Establish signage at main entrance to site Signage to include name of development ; name of proponent ; OHS officer ; ECO	Dev ; ECO
6	Appoint ECO	Environmental Control Officer to be nominated by estate developer. ECO to be appointed prior to commencement of earthworks (ground break). See recommendations on ECO	Dev
7	Detailed geo-technical investigation	Detailed geo-technical investigation to be carried out for each site, with municipal EMP requirements to be awaited.	Eco Dev
8	Water monitoring	Baseline and monthly readings to be undertaken at identified sites to assess impact of development on identified aquatic system. Recommended that baseline survey be undertaken prior to commencement of construction, followed by sample at one month thereafter and then at three monthly intervals until completion of all bulk earthworks. ECO and DWAF to consider further monitoring procedures once data has been reviewed. All assessments to be collated by ECO. SANAS registered laboratory to undertake all analysis. DWAF and DAEA to be provided with report on monthly basis or when appropriate. Indicators / analysis to include: Fluoride nitrate / nitrite chloride Organic carbon dissolved manganese total alkalinity sulphate potassium sodium Grab samples to be established at point of entry onto site and at identified site at lower point of riparian system.	ECO ; Dev ; DWAF ; DAEA
9	Hydrological Assessment	As per the Record of Decision it is recommended that a hydrologist be contracted to: determine stormwater impacts on the scouring and functionality of the riparian areas at the completion of the estate. identify the means and necessity for attenuation systems within the Park The hydrologist should be appointed following further review of this requirement once construction has commenced and information is at hand from the professional team.	ECO ; Dev
10	General Management	An environmental management committee is to be established. It is envisaged that this committee will operate during the construction phase within the general professional team and include: <ul style="list-style-type: none">DWAFEKZN WildlifeThe Environmental Control Officer Upon completion of the construction phase this committee may be incorporated into the Imbonini Park management committee.	Dev ; Eco

CONSTRUCTION PHASE

ROADS AND SERVICE

#	ACTIVITY	DESCRIPTION	MONITOR
11	Confirm Survey & Routing	Confirmation of final layout of roads and servitudes. Layout to be pegged and clearly delineated. ECO to inspect pegs and inform developer that final routes are acceptable. Final survey of 20 m wetland buffers required as well as riparian system/ wetland. Note 30m setbacks at certain points of site. Coloured pegs to be set in place at 20m from edge of delineated wetlands.	Eng ; ECO ; Dev
12	Final plan	Final plan indicating road layout including stormwater dissipation points to be forwarded to ECO. ECO to review stormwater dissipation points Engineer to establish headwalls on all outfalls.	Eng . ECO
13	Access	Access off Provincial Road Warning chevrons to be placed on road Municipality's Community Safety dept to be informed of commencement of construction.	Developer
14	Earthworks	ECO and eng to consider where cut and fill operations to take place on roads. Site(s) to be selected for stockpiling of earth and related material.	Eng ; ECO
15	Construction Camp	Construction camp to be established for road and service contractors in close proximity to entrance off MR 339 Site camps to follow EMP requirement stipulated below. ECO to confirm site.	Con. ; ECO
16	Plant Rescue	If ECO deems removal of plant specimens is required, then contractor must arrange for removal of identified specimen or specimens by competent individual. Specimens to be relocated to site designated by ECO. Compliance with National Forest Act and appropriate license from DWAF and Nat Cons Ord 15 /1974 may be required. ECO to assess such requirements.	ECO Dev
17	Earthworks Piping & cabling	1 Where pipes are being layen, route to be designated by use of lime indicator on ground surface. Excavated soil to be placed on adjacent ground ABOVE excavated trench. Where slope is greater than 1 : 2, sand bag bunds must be positioned at foot of stockpile.	Con, ECO Dev
18	Road crossing low lying areas and wetlands within Umhlali System.	Final confirmation of site survey of route along stream. Contractor to position sediment curtains at designated points above culvert and below culvert during construction. ECO to identify areas for additional curtains. Curtains to be maintained by contractor.	Surveyor ; ECO ; Applicant
19	Fencing of wetlands	All areas adjacent to wetland areas to be FENCED. Fencing to compose of 1.8m woodpole with weldmesh wire. Fence to be clad during construction phase with shade cloth (see item 17).	Dev. ECO
20	Construction of roads in wetland areas	80% shade cloth curtains to be sited above and below operation area at discretion of ECO and external authorities - Secure using sand bags or stakes. ECO to check on flow rates after introduction of curtains . Use of washed stone chip sand bags in rivers to prevent excessive sedimentation during earthworks.	Eco ; Contractor
21	Earthworks Piping & cabling	1 Stockpile to be removed and trench filled at completion of pipe laying activity. Stockpiles to be bunded. 2 Compaction, by hand of excavated site required. 3 Re-vegetation, utilizing grasses identified below to be undertaken. 4 Monitoring of servitude/route for invasion to be carried out by ECO.	Eng ; ECO ; Dev
22	Earthworks Over head cables	Sub-surface cabling preferred and to be utilized where possible Woodpole line to be utilized treated with CCA and with sleeve. Soil around excavated hole to be monitored for exotic invasion and treated.	Eng . ECO
23	Vegetative Rehabilitation	Road servitudes and cleared open ground to be suitably rehabilitated with appropriate vegetation, as indicated. Where required bunds and contour drains must be kept intact until vegetative yield is extensive enough to prevent soil slip and erosion. Eng. to advise on need for artificial containment. Grassed road verges to be established. Sods to be utilized on embankments. Note "rehabilitation" annexure, below.	Eng ; ECO
24	Vegetative Rehabilitation	Appropriate woody and shrub species to be utilized (see below) Watering of rehabilitated area and monitoring to be undertaken	Eng ; ECO ; Dev
25	Earthworks	All machinery to be maintained at appropriate level. No machinery noted to leak any hydrocarbons (ie brake fluid, fuel, oil etc) to be used on site. Drip trays to be placed under all static machinery. Refuelling at designated point only – see below.	
26	Earthworks – site management	All platforms to be designated in terms of extent of fill required. Sandbag berms to be established around toe of platform. Sand bags to be raised according to level of platform. All spillage of soil over sand bags to be recouped and placed onto platforms.	
27	Stabilisation of platforms	Suitable stormwater drainage from platforms to be established. Drainage into established stormwater system Establish temporary plastic culverts Establish temporary sumps Following construction of platform, unless construction of top structure occurs immediately, platforms to be grassed with : Turf – <i>Stenotaphrum secundatum</i> Seed – <i>Eragrostis tef</i> or <i>S secundatum</i> mix.	

LANDSCAPING AND OPEN SPACE MANAGEMENT

#	ACTIVITY	DESCRIPTION	MONITOR
28	Landscaper Information	Appointed landscaper for open space as well as individual landscapers and property owners to be appraised of EMP and need to maintain planting regime.	ECO
29	Landscape planning	<p>NOTE : Corridor system does not equate to "landscaped areas". Moderate to low landscape management required in corridors. Adjacent properties to comply with "high management area" landscape requirements (see "Annexure")</p> <p>All appointed landscapers, garden service contractors to be provided with copy of EMP and regulations pertaining to EMP.</p> <p>Landscaper to provide plan of site / Park indicating : 1 Layout of landscaped area 2. Planting regime 3 Management programme to be provided</p> <p>ECO to review plan and management programme. Programme to indicate 1 Use of indigenous vegetation 2. Exotic plant species, if required, to be placed in containers 3. Use of organic fertilizers only 4 Time frames 5 Post planting management.</p>	Dev ECO
30	Corridor systems	<p>Corridor habitats to include :</p> <p>1) Swamp forest 2) 'fen' or wetland system 3) Coastal forest 4) open water aquatic system 5) grasslands – moist</p> <p>See comments below.</p>	

SITE CAMP

#	ACTIVITY	DESCRIPTION	MONITOR
31	Identification of Site	Site camps for 'main' contractor to be centrally situated within Park. Minimal travel to be undertaken from MR to site camp. Recommended position of site camp(s) within or adjacent to MR339. Individual camps on lots to be confirmed by ECO.	Cont ; ECO; Estate
32	Fencing of Camp	Camp to be fenced and gated. Cladding using shade cloth or sack cloth to be instated on all camps .	Cont ECO
33	Establish bunds	Bunds or contour drains to be established on lowest point of camp site adjacent to fence. Bunds to be maintained.	Cont ECO
34	Establish ablutions	Ablution facilities to be established. Chemical, serviced toilet to be established within camp. No pit latrines are acceptable. Only chemical toilet to be utilized. No connection to municipal sewerage during construction phase.	Cont ECO
35	Establish Signage	Signage to be erected outside camp <i>indicating Lot No. Activity, Contractor, Developer and Contact number and name of responsible person.</i>	Con ECO
36	Temporary services	Electrical, water and telephone services to be provided. Routing of such services must be confirmed by contractor and service provider and confirmed by ECO	Con ; ECO
37	Waste disposal	Minimum of 2 skips to be placed at camp to be serviced on a minimum of weekly basis	Con ; Eco ; Dev
38	Materials	Inflammable / noxious material to be stored according to SABS Standards applicable to material	Con ECO
39	Labour Education	<p>1 Foreman on site to be provided with copy of EMP</p> <p>2 Labour to be made aware of conduct on site.</p> <p>3 Visitors to site camp to be managed by contractor</p> <p>4 Delivery vehicles on site to be managed by contractor.</p>	Con ECO
40	Labour Conduct	<p>1 Only security to remain on site between 6.00pm and 6.00 am or bona fide labour engaging in required construction work.</p> <p>2 All labour to enter and leave estate through main entrance at MR 339</p> <p>3 Labour must be informed of EMP requirements in respect of conduct</p> <p>4 No open fires permitted on site.</p> <p>5 Cooking of meals to be undertaken within construction site and / or camp. Only primus / gas or electrical stoves to be utilized.</p> <p>6 All ablutions to be undertaken in designated and appropriately designated site</p> <p>7 No poaching of fauna</p> <p>8 No removal of vegetation</p>	Con ECO
41	Fuel decanting	<p>1 Site for re-fuelling of earth machinery to be situated away from drainage lines and areas of ecological significance.</p> <p>2 Area to be lined with plastic and covered with sand.</p> <p>3 Area to be bunded with sand bags.</p> <p>4 Fuel to be placed in storage in locked receptacle.</p> <p>5 Foam propelled extinguisher to be placed on site.</p> <p>6 2 x litres of hydrocarbon absorbent to be placed on site at all times.</p>	Con ; Deve ; ECO

CONSTRUCTION OF STRUCTURES ON PLATFORMS GENERIC TO BE FOLLOWED IN RESPECT OF PESR

#	ACTIVITY	DESCRIPTION	MONITOR
42	Management level	ECO to confirm status of site – high management level.	Developer ; ECO
43	Signage	Signage to be erected outside of construction site, adjacent to main entrance to site. Signage to indicate, 1. Nature of development 2. Name of Developer 3. Name of Contractor and or Project manager 4. Name and Number of Contact Person responsible for Project.	Con ECO Dev
44	Survey	Confirmation of survey points to be made by developer and checked by ECO in line with survey diagram. PESR to be compiled by ECO / independent party prior to planning approvals. Geotechnical report to be compiled by specialist.	Con Dev Estate man
45	Floral / Faunal assessment	ECO to review site prior to commencement of construction. Plant rescue to be undertaken. Avoidance of removal of mature woody species if required, may mean application to DWAF to be undertaken (ito Nat For Act 1998)	ECO
46	Access	Confirmation of access routes to site through estate and access to property to be provided	Dev.; ECO
47	Fencing	Site to be fenced with 1.8m Bonnox fence / woodpole and gated. Fence to be clad with shade cloth or sacking	Con ECO
48	Site camp	To be established within site as per above.	Con ECO
49	Delineation of building area and site	The exact building area / perimeter to be noted. Removal of vegetation in earthworks operation to be limited to such area. Blanket stripping of site is NOT to be undertaken. Grassed areas to be maintained..	Con Dev ECO
50	Import of Material	Requirement for the import of material (topsoil etc) to be confirmed by eng , dev or con. ECO to be informed.	Con Dev ECO
51	Soil poisoning	Only registered soil poisoning expert to be utilized. Certificate to be copied to ECO.	Con ECO
52	Bunds and Erosion Prevention. Stormwater control	Bunds to be established above and below site, where site is established on land with gradient in excess of 1 : 2. Higher gradients require centrally situated bund to be identified by con and ECO. Cut-off drains to be established across earth roads. During high winds, site to be “damped off” to prevent excessive aeolian erosion. Stormwater to be led into bunds and / or established sump. No direct disposal of stormwater onto adjacent properties.	Dev Con ECO
53	Waste management	Site to have managed waste facility in place. 1 x skip recommended as minimum. Clearance of skip on weekly basis	Con
54	Temporary connections to service	ECO to review routes for temporary connections to services	ECO Est Man
55	Final connections to service	As per engineers plans with assessment by ECO	Con ECO
56	Burial of Material	No material to be buried on site unless with prior permission of ECO and confirmation of need for fill by engineer / architect.	Con ECO

OPERATIONAL / POST CONSTRUCTION PHASES

WETLAND AREAS

#	ACTIVITY	DESCRIPTION	MONITOR
57	Lighting	External lighting to not exceed 100w. Use of spot lighting on corridors to be prohibited.	ECO Devel Estate man
58	External Fires	No uncontained fires on site.	ECO Estates man
59	Fencing	1.8m high fence to be established and maintained along corridors. Use of wetland areas and buffers for loading and storage of material prohibited. Park and / or individual property owners abutting wetland areas to be responsible for management and maintenance of conservation areas /wetlands.	Estate Man. ECO
60	Spillage of hazardous material	All commercial activities under taken within Imbonini Park by tenants / landowners to be subject to requirements of legislation relating to such activity, including : National Water Act (1998) NEMA (1998) NEM Biodiversity Conservation Act (2001). National Forest Act (1998). Any spillage of hazardous material subject to reporting to the DWAF and conforming with requirements contained in National Water Act (1998). 2l hydrocarbon absorbent to be retained on site at all times for use in spillage.	Estate man

6 DUTIES OF THE ENVIRONMENTAL CONTROL OFFICER

An Environmental Control Officer (ECO) must be appointed by the developer to oversee the implementation of the development from commencement to closure of the construction phase, including landscaping. As such the developer must provide to the Department of Agriculture and Environmental Affairs proof of the appointment of such ECO within 1 (one) calendar month of the commencement of construction. The KwaDukuza Municipality also requires the appointment of a qualified ECO as part of the employment of service provision and general application of duty of care.

The ECO should have the following skills

- Relevant qualification
- Knowledge and understanding of the construction industry and building activities
- Knowledge of environmental management practices
- An understanding of ecological functioning particularly along the Kwa Zulu Natal coastal areas
- An understanding of legal issues and the law of contract
- Good written and verbal skills
- Professional indemnity
- Membership of recognised institution and / or organisation

The duties of the ECO shall include, inter alia:

- Monitoring implementation of the EMP
- Report in writing on a monthly basis on the EMP to Dept of Agriculture and Environmental Affairs, KZN Wildlife and the developer on the implementation of the EMP
- Interaction with various individual developers on matters relating to the EMP
- Other duties as assigned by parties to the record of decision and the developer.

7 PENALTIES & REMEDIATION ACTION

It is important to note that the EMP is to be sanctioned by various parties and authorities, both local and regionally as it will form part of the Record of Decision issued by the Department of Agriculture and Environmental Affairs in respect of the development at Imbonini Park. In addition, the National Environmental Management Act (1998) indicates that "duty of care" must be applied on such developments, approved by a public officer.

It is recommended that the ECO and the developer agree on the following issues prior to commencement of the project :

- Remedial action to be taken by contractors if environmental damage arises on estate as a result of action by contractors employed by the developer.
- Remedial action and financial penalties to be employed by Imbonini Park on individual developers

All contractors should not commence work unless they have signed an undertaking that makes the company and / or the developer / owner responsible to payment of penalties and remedial action on any transgressions of the EMP undertaken during the construction phase.

All transgressors should be entitled to one verbal warning given the level of severity of the transgression. Thus those contractors or developers who impact upon the environment in a limited manner should be warned, after review of the impacts by the ECO. Further transgressions should lead to financial penalties.

Financial penalties should be set at the following levels

- Level 1 Low impact – verbal warning
- Level 2 Moderate impacts as indicated by ECO – fine not exceeding R10 000
- Level 3 Severe impact and indicated by ECO – fine not exceeding R100 000 [Impacts upon high management areas]

All fines/ penalties to be paid to account in the name of Imbonini Park (Pty) Ltd. The ECO and developer must ensure payment has been made by transgressor. The following parties must, prior to commencement of work note in writing their obligations in respect of payment of fines for transgression :

Contractors
Individual property owners
Tenants
Other persons / entities as identified.

The services of an independent specialist can be called upon should a dispute arise over the level of severity. The specialist's decision shall be final. Should payments not be made, the ECO may call upon the Municipality to withhold occupation certificates for particular developments until such time as the fine / penalty has been paid.

Four varying habitats have been noted as being present within Imbonini Park either through continued management of existing habitats, through rehabilitation of particular areas or through anthropogenic intervention. Such habitats are identified and are given further elaboration and description below:

Habitat / Synusa	Description	General Status within site(2006)
Coastal forest	Forest consisting of larger canopied trees, often <i>Albizia adianthifolia</i> , ; <i>Strelitzia nicolai</i> ; <i>Apodytes dimidiata</i> and <i>Allophylus natalensis</i> . Some smaller shrub and trees in a sub-canopy with a herb and shrub layer of <i>Isoglossa woodii</i> often being present. Some <i>Mimusop</i> sp often common within forest.	Present generally secondary and planted.
Fen or wetland	A sedge dominated wetland comprising of <i>Phragmites</i> sp , <i>Typha capensis</i> and <i>Cyperus</i> spp. This is a precursor to moist forest systems such as "swamp forest".	Associated with lower lying portions of wetland system.
Moist grassland	Secondary , very limited on site. Open moist grasslands. Often an early sere leading to coastal forest or under certain conditions may remain as grassland. Orchidaceae predominate in extensively wet areas. Intermittent burning or mowing assists establishment.	Early secondary grasslands present within site.
Riparian / open water system	Within and around open water systems. <i>Nymphaea</i> (water lilies) and <i>Riccia</i> sp as well as <i>Ludwigia stolonifera</i> predominate.	Some relic specimens at lower points of system.

Planting Regimen and Pallettes :

The following planting palette is provided as a guideline for suggested species to be utilized in the establishment of open space within the development, as well as individual erven. The following habitats are specific to the area and identification of such habitats in conjunction with the particular erven under development should be made by all parties.

Hygrophyllic Communities :

Wet grassland - Seasonally wet area on high water table soils, woody specimens limited and dominated by grass, sedge and herbaceous plants. These areas may also be indicative of disturbed, permanently wet areas.

Riparian System - Generally those areas of the Etete and Umhlali River. Comprising mainly *Phragmites australis* with some woody species, the major channels lie well within the floodpans of these areas.

Mesophyllic Communities :

Dry grassland - A variety of mainly rain-fed grass and herbaceous plant species growing on well drained sandy substrates.

Secondary Forest - Mixed vegetation including dune forest elements. The rapid growing 'pioneer' trees include Pigeon wood (*Trema orientalis*) and Flatcrown (*Albizia adianthifolia*). This community will establish over former cultivated lands in a few years. Understorey or sub-canopy species will include grasses such as *Setaria megaphylla* and *Panicum maximum* as well as the shrub *Isoglossa woodii*.

Planting Pallettes :

The following is a guide to landscapers and managers of Imbonini Park. While the lists below are not exhaustive, they act as a general guide to acceptable species within particular habitats on Palm Lakes. It is suggested that interaction with the ECO be undertaken before introducing species not listed below onto the estate.

Note the corresponding habitats which correlates with the species identified

1	Moist grasslands
2	Coastal forest
3	Reed and sedge habitats
4	Wetlands, ponds
general	suitable for most habitats, open space

Grasses :

<i>Chloris gayana</i>	general
<i>Cynodon dactylon</i>	general – not in areas delineated as management areas 1 and 2
<i>Dactyloctenium australe</i>	general
<i>Digitaria eriantha</i>	general
<i>Oplismenus hirtellus</i>	2
<i>Panicum maximum</i>	general
<i>Setaria lindenberiana</i>	2 , 1,
<i>Setaria megaphylla</i>	1,
<i>Sporobolus africanus</i>	2
<i>Stenotaphrum secundatum</i>	general

Hygrophillic habitats – ponds etc :

<i>Cyperus papyrus</i>	4
<i>Kniphofia tysonii</i>	1,4
<i>Nymphoides indica</i>	4
<i>Nymphaea nouchali</i>	4
<i>Potamogeton crispus</i>	4
<i>Phragmites australis</i>	4
<i>Typha capensis</i>	4
<i>Cyperus dives</i>	4
<i>Cyperus papyrus</i>	4
<i>Cyperus textiles</i>	4
<i>Zantedeschia aethiopica</i>	1,4

Herbs / Ground Cover :

<i>Agapanthus nana</i>	general
<i>Asparagus densiflorus</i>	general
<i>Aspilia natalensis</i>	1
<i>Asystasia gangetica</i>	general
<i>Barleria repens</i>	general
<i>Barleria obtusa</i>	general
<i>Bulbine natalensis</i>	general
<i>Ceratotheca triloba</i>	general
<i>Crinum moorei</i>	1, general
<i>Crocosoma aurea</i>	1, general
<i>Dietes bicolor</i>	1
<i>Eulophia sp</i>	1,2,3
<i>Laportea peduncularis</i>	3
<i>Plectranthus ciliatus</i>	1

Trees and Shrubs :

<i>Acacia nilotica</i>	2
<i>Acacia karoo</i>	2,4 general
<i>Allophylus natalensis</i>	2, general
<i>Aloe arborescens</i>	4
<i>Apodytes dimidiata</i>	2,4
<i>Barringtonia racemosa</i>	2,4
<i>Bridelia micrantha</i>	2,4 general
<i>Calpurnia aurea</i>	general
<i>Carissa macrocarpa</i>	general
<i>Celtis africana</i>	general
<i>Chrysanthemoides monilifera</i>	2,4, general
<i>Chaetacme aristata</i>	2,3
<i>Deinbolia oblongifolia</i>	general
<i>Dichrostachys cinerea</i>	4
<i>Dovyalis rhamnoides</i>	2,4 general
<i>Dovyalis caffra</i>	4, general
<i>Ficus burtt davyii</i>	2
<i>Ficus trichopoda</i>	5
<i>Ficus sur</i>	1,2,4
<i>Harepephyllum caffrum</i>	general
<i>Kraussia floribunda</i>	2, 4, general
<i>Leonotis leonurus</i>	general
<i>Macaranga capensis</i>	4, general
<i>Mimusops caffra</i>	2, general
<i>Mimusops obovata</i>	general
<i>Pavetta revolute</i>	general
<i>Phoenix reclinata</i>	general
<i>Psychotria capensis</i>	1
<i>Putterlickia verucosa</i>	4
<i>Issoglossa woodii</i>	2,4
<i>Rauvolfia caffra</i>	2, 4 general
<i>Rhus nebulosa</i>	general
<i>Rhus dentate</i>	4
<i>Syzigium cordatum</i>	1,3,5 general
<i>Tabernaemontana ventricosa</i>	5, general
<i>Trema orientalis</i>	general
<i>Xylothea kraussiana</i>	4
<i>Voacanga throuarsii</i>	5
<i>Ziziphus mucronata</i>	2,4

Undesirable Species :

The following are generally undesirable species, while some are listed as invasive by the Department of Agriculture. Other species should be reviewed and considered from time to time.

Acacia dealbata :
Acacia elata
Acacia melanoxylon
Agave sisalana
Agave vivipara
Arauja sericifera
Arundo donax
Azolla fillicoides
Bauhinia variegata
Bougainvillea sp
Canna indica
Casuarina equisetifolia
Cinnamomum camphora
Cortaderia selloana
Grevillea robusta
Hedychium sp
Ipomoea purpurea
Jacaranda mimosifolia
Morus alba
Nephrolepis exaltata
Pennisetum sp
Phytolacca dioica
Senna spp
Thevetia peruviana
Tipuana tipu
Triplaris americana
Tecoma stans

PHOTOGRAPHIC ILLUSTRATIONS

“Curtain” with wood weir and filling of herringbone drainage systems.





Forest walk within Seaward Estates, utilizing Casuarina foliage and felled logs.



Sandbag berms and cladding has prevented slumping of soils into conservation area.

ESTABLISHMENT OF VERGES AND OPEN SPACE SYSTEMS ADJACENT TO VERGES REQUIRES LIMITED MANAGEMENT ON SITE.



Secondary coastal forest vegetation emerging next to moderately tended verge. Note retention of grasses and sub-canopy species.

**APPLICATION FOR MEMBERSHIP OF
IMBONINI PARK OWNERS' ASSOCIATION**

I/We (Full names) _____

of (Address) _____

_____ Code _____

The Purchaser/s of the Property described as:-

do hereby:-

1. Apply for membership of IMBONINI PARK OWNERS' ASSOCIATION (IOA) with effect from the registration of transfer of the abovementioned property into my/our name/s.
2. Agree to be bound by all the terms and conditions of the aforesaid IOA'S registered Articles of Association and Rules.
3. Confirm that I/we am/are fully aware of the provisions of the aforementioned Articles of Association and Rules dealing with injury to any person and damage or loss to any property, arising from any act or omission by or on behalf of IOA, and hereby accept full responsibility, and indemnify IOA, its employees, agents and lawful invitees against any claim arising therefrom.

Signed at _____ on the _____ day of _____

Application for membership of the IMBONINI PARK OWNERS' ASSOCIATION accepted / declined on the

_____.

Chairman: IMBONINI PARK OWNERS' ASSOCIATION

REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 1973
(As amended)

ARTICLES OF ASSOCIATION OF AN ASSOCIATION NOT HAVING A SHARE CAPITAL

(Section (60)(1) and Regulation 18)

(Association incorporated under Section 21)

Registration No.

Name of Association:

IMBONINI PARK OWNERS' ASSOCIATION

A.

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

B.

The Articles of Association are as follows:

1. INTERPRETATION

- 1.1 In these Articles, unless the context otherwise requires :
- 1.1.1 'ACT' - means the Companies Act No 61 of 1973 (as amended);
- 1.1.2 'ARTICLES' - means these Articles of Association and any amendment thereto by the ASSOCIATION;
- 1.1.3 'ASSOCIATION' - means IMBONINI PARK OWNERS' ASSOCIATION (Association Incorporated under Section 21) of which each OWNER shall be obliged to become a MEMBER;
- 1.1.4 'BOARD' - means the board of directors of the ASSOCIATION;
- 1.1.5 'BODY CORPORATE' - means a Body Corporate as defined in Section 1 of the Sectional Titles Act No 95 of 1986, (as amended);
- 1.1.6 'BUILDING/S' - means all structures constructed on the PROPERTY;
- 1.1.7 'DEVELOPER' - means Imbonini Park (Proprietary) Limited (Registration No 2005/027232/07), including its successors in title or assigns;
- 1.1.8 'DEVELOPMENT PERIOD' - means the period reckoned from the date of registration of the ASSOCIATION to the date on which the DEVELOPER gives written notice to the ASSOCIATION of its resignation as a MEMBER provided that no such notice shall be given until such time as all building work on IMBONINI PARK has been substantially completed. For these purposes, IMBONINI PARK shall be deemed to be substantially completed when 90% (NINETY PERCENT) of the subdivisions within IMBONINI PARK have been sold;
- 1.1.9 'EMPLOYEE' - means any person employed by a MEMBER and registered as such with the ASSOCIATION;
- 1.1.10 'DIRECTOR/S' - means a director of the ASSOCIATION;
- 1.1.11 'ENVIRONMENTAL MANAGEMENT PLAN' - means the Environmental Management Plan annexed to the SALE AGREEMENT;
- 1.1.12 'ERF' - means any freehold subdivision capable of individual ownership within IMBONINI PARK;
- 1.1.13 'LAND' - means **Portion 53 of the Farm Lot 72 No. 1526, Registration Division FU**, in the Province of KwaZulu-Natal, to be re-designated **Erf 1334 Shakas Head**;
- 1.1.14 'LANDSCAPING DEPOSIT' - means the amount as stipulated in the OWNERS PARTICIPATION MANUAL;
- 1.1.15 'MANAGER' - means the person or legal body appointed from time to time by the BOARD, to undertake the management of certain specific functions within IMBONINI PARK on behalf of the ASSOCIATION;
- 1.1.16 'MANAGING AGENT' - means the organization appointed by the DEVELOPER to attend to the daily management of the affairs of the ASSOCIATION;
- 1.1.17 'MEMBER/S' - means an OWNER or the DEVELOPER for so long as it is the registered owner of PROPERTY within IMBONINI PARK or a person as set out in 2.1;
- 1.1.18 'MEMORANDUM' - means the Memorandum of Association and any amendment thereto by the ASSOCIATION;
- 1.1.19 'NON-USER SERVITUDE' - means the area described as 20m Non-Dev Servitude shown on the PLAN;
- 1.1.20 'OFFICES' - means the registered offices of the ASSOCIATION;
- 1.1.21 'OWNER/S' - means the registered owner of PROPERTY or the undivided share in PROPERTY, provided that in the case of joint owners or legal persona, the nominated owner as provided in Article 2.1 shall be deemed to be the OWNER;
- 1.1.22 'OWNERS PARTICIPATION MANUAL' - means the Owners Participation Manual annexed to the SALE AGREEMENT;
- 1.1.23 'PLAN' - means the **Lay-out Plan No. 2006/932** relating to the TOWNSHIP as approved by the Development Tribunal on the 30th November 2006;

- 1.1.24 'PROPERTY' - means an ERF or a SECTION, or the right to extend a sectional title scheme by the erection of a unit (as contemplated in Section 25 of the Sectional Titles Act where a sectional title scheme has been established) within IMBONINI PARK;
- 1.1.25 'PUBLIC OPEN SPACE' - means the area described as Conservation Area as illustrated on the PLAN;
- 1.1.26 'SALE AGREEMENT' - means the agreement entered into between the DEVELOPER and a purchaser which resulted in the purchaser becoming an OWNER as defined herein;
- 1.1.27 'SECTION' - means a section/s as defined in the SECTIONAL TITLES ACT;
- 1.1.28 'SECTIONAL TITLES ACT' - means the Sectional Titles Act No 95 of 1986, (as amended), together with the Regulations applicable from time to time;
- 1.1.29 'SERVICES' - means maintenance of the PUBLIC OPEN SPACE, water, sewerage, refuse removal, provision of security and such other utilities or services as are provided by the ASSOCIATION within IMBONINI PARK or which may be required;
- 1.1.30 'IMBONINI PARK' - means the TOWNSHIP to be known as **IMBONINI PARK** as illustrated on the PLAN;
- 1.1.31 'TENANT' - means any person entitled to occupy PROPERTY in terms of the ASSOCIATION'S approved Lease Agreement;
- 1.1.32 'TOWNSHIP' - means the Private Township to be laid out on the LAND as approved by the Development Tribunal as illustrated on the PLAN.
- 1.2 Words and expressions used and not otherwise defined in these ARTICLES shall have the meaning assigned to them by the ACT.
- 1.3 Words importing the singular shall include the plural, words importing the masculine, feminine and neuter shall include the others of such genders; and words importing persons shall include Bodies Corporate, and vice versa in each instance.
- 1.4 The heading above any of the ARTICLES is intended for reference purposes only and shall not influence the interpretation of the ARTICLES.

2. MEMBERSHIP

2.1 Membership of the Association :

- 2.1.1 Membership of the ASSOCIATION shall be obligatory for every OWNER and the DEVELOPER.
- 2.1.2 No OWNER shall transfer his PROPERTY unless it is a condition of such transfer that the transferee, in a manner determined by the ASSOCIATION makes application to become a MEMBER and is admitted as such in terms of Article 2.2.
- 2.1.3 In order to procure compliance with the provisions of these ARTICLES, it shall be registered as a title deed condition of ownership that no PROPERTY, or portion thereof or interest therein shall be alienated or transferred without the written consent of the ASSOCIATION first being had and obtained, which consent shall be given if the proposed transferee is or will be admitted as a MEMBER of the ASSOCIATION and the transferor has complied with all his obligations to the ASSOCIATION (including but not limited to the payment of any monies due to the ASSOCIATION by such transferor). For the purpose of this clause "alienate" means to alienate any PROPERTY or portion thereof, or interest therein, and in no way detracting from the generality of the aforesaid, includes by way of sale, exchange, donation, deed, intestacy, will, cession, mortgage, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or involuntary, and further irrespective as to whether such alienation is subject to a suspensive or resolutive condition. In the case of a legal persona, such as a company, close corporation or trust, the material change in the "beneficial ownership" or in the "controlling interest" thereof, shall be deemed to constitute an alienation for the purposes of these ARTICLES.
- 2.1.4 In the event of any PROPERTY being owned in undivided shares by more than one OWNER, such co-owners shall nominate one amongst them to be the MEMBER for the purposes of these ARTICLES.
- 2.1.5 Where the OWNER is a legal persona, being either a Trust, Close Corporation or Company, the Trustees, Members or Directors as the case may be, shall appoint one amongst them to be the MEMBER for the purposes of these ARTICLES.
- 2.1.6 Where the OWNER is married in community of property the OWNER shall appoint one of them to be the MEMBER of the ASSOCIATION.
- 2.1.7 A MEMBER may not tender resignation of his membership of the ASSOCIATION.

2.2 Admission of Members :

- 2.2.1 The initial MEMBERS of the ASSOCIATION shall be the persons subscribing to the MEMORANDUM and ARTICLES; thereafter the MEMBERS shall be the DEVELOPER (during the DEVELOPMENT PERIOD) and those persons who, from time to time, become MEMBERS in accordance with the provisions of these ARTICLES. The initial MEMBERS shall resign as soon as there are sufficient substitute MEMBERS in terms of this clause.
- 2.2.2 The right to determine admission to membership of a proposed acquirer of PROPERTY is hereby conferred upon the BOARD. The BOARD shall not unreasonably decline to admit to membership an applicant in the event of the applicant having undertaken to comply with and abide by these ARTICLES and all the ASSOCIATION'S requirements, rules and regulations and the transferor having complied with these ARTICLES and all the ASSOCIATION'S requirements, rules and regulations (and in no way detracting from the generality of the aforesaid), has made payment of any amounts due by such transferor to the ASSOCIATION.

2.3 Rights and Duties of Members :

- 2.3.1 Subject to the rights of membership as prescribed by the ACT, membership of the ASSOCIATION shall confer upon a MEMBER, unless otherwise stipulated, the following rights:
- 2.3.1.1 the right to inspect and/or receive copies of the annual financial statements of the ASSOCIATION;
 - 2.3.1.2 the right to receive notices of, to attend and speak at all General Meetings of the ASSOCIATION, whether ordinary or extra-ordinary, in accordance with the provisions of these ARTICLES;
 - 2.3.1.3 the right to vote, either personally or by proxy, at all General Meetings of the ASSOCIATION in accordance with the provisions of these ARTICLES;
 - 2.3.1.4 should MEMBERS holding between them, in aggregate, not less than 25% (TWENTY FIVE PERCENT) of the voting rights in the ASSOCIATION, collectively so decide, the right to convene a General Meeting.
- 2.3.2 No MEMBER shall by reason of membership of the ASSOCIATION, be entitled to share in or receive any profit of the ASSOCIATION.
- 2.3.3 No MEMBER shall be entitled to exercise the rights ensuing from his membership of the ASSOCIATION, which has been conferred upon the DEVELOPER in terms of the SALE AGREEMENT, until such time as the DEVELOPER is no longer a MEMBER of the ASSOCIATION.

2.4 Cessation of Membership :

- 2.4.1 Membership of the ASSOCIATION shall cease:-
- 2.4.1.1 Upon a MEMBER ceasing to be an OWNER;
 - 2.4.1.2 upon the issue of a final order of sequestration or liquidation of a MEMBER;
 - 2.4.1.3 upon the death of a MEMBER, or upon the MEMBER being declared insane or incapable of managing his affairs,
 - 2.4.1.4 in the case of the DEVELOPER, upon termination of the DEVELOPMENT PERIOD;
 - 2.4.1.5 in the event of a MEMBER ceasing to be a MEMBER in terms of 2.4.1.2 or 2.4.1.3, the legal representative of such MEMBER shall, for all purposes be recognized and be bound as the MEMBER under these ARTICLES.

2.5 Liability of Members :

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

2.6 Register of Members :

- 2.6.1 The ASSOCIATION shall maintain at its OFFICES a register of MEMBERS as provided in Section 105 of the ACT;
- 2.6.2 The register of MEMBERS shall be open to inspection as provided in Section 113 of the ACT.

3. GENERAL MEETINGS

3.1 Annual General Meetings :

- 3.1.1 The ASSOCIATION shall hold a General Meeting every year to be known as its Annual General Meeting, on such a date and at such a time and place as may be determined by the BOARD, and shall specify the meeting as such in the notice calling it, provided:-
- 3.1.1.1 that the Annual General Meeting shall be held not later than **6 (SIX) months** after the end of each financial year of the ASSOCIATION; and
 - 3.1.1.2 that not more than **15 (FIFTEEN) months** shall elapse after the holding of the last preceding Annual General Meeting.

3.2 General Meetings :

- 3.2.1 All meetings, other than Annual General Meetings, shall be called General Meetings.
- 3.2.2 The DIRECTORS may at any time they deem fit, call General Meetings of the ASSOCIATION.

3.3 Notices of Meetings :

- 3.3.1 The Annual General Meeting and any meeting called for the passing of a Special Resolution shall be called by not less than **21 (TWENTY ONE) clear days** notice in writing.
- 3.3.2 Other General Meetings shall be called by not less than **14 (FOURTEEN) clear days** notice in writing.
- 3.3.3 Form of the Notice:
- 3.3.3.1 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 as may be prescribed by the ASSOCIATION in a General Meeting;
 - 3.3.3.2 Notice shall be given to such persons as are under these ARTICLES, entitled to receive such notice from the ASSOCIATION;

- 3.3.3.3 A meeting of the ASSOCIATION shall, notwithstanding the fact that it is called by shorter notice than that specified in these ARTICLES, be deemed to have been duly called if it is so agreed by a majority in number of the MEMBERS having a right to attend and vote at such meeting.

3.4 **Proceedings at Meetings :**

- 3.4.1 The Annual General Meeting shall deal with and dispose of all matters prescribed by the ACT, including:
- 3.4.1.1 the consideration of the audited annual financial statements;
- 3.4.1.2 decisions on the number of DIRECTORS and election of DIRECTORS when such decision is required in accordance with the provisions of these ARTICLES;
- 3.4.1.3 estimates of income and expenditure for the ensuing year;
- 3.4.1.4 the determination of levies;
- 3.4.1.5 the appointment of an auditor;
- 3.4.1.6 any other business laid before it.
- 3.4.2 All business laid before any other General Meeting shall be considered special business.

3.4.3 **Quorum :**

- 3.4.3.1 No business shall be transacted at any General Meeting unless a quorum of MEMBERS is present at the time when the meeting proceeds to business.
- 3.4.3.2 A Quorum shall be made up of:-
- 3.4.3.2.1 for a General Meeting, MEMBERS holding between, in aggregate, not less than **5% (FIVE PERCENT)** of the voting rights in the ASSOCIATION, present, in person or by proxy, and entitled to vote (subject to a minimum of 3 (THREE) MEMBERS personally present), provided that for the DEVELOPMENT PERIOD, 1 (ONE) of such MEMBERS must be the DEVELOPER or a nominee of the DEVELOPER;
- 3.4.3.2.2 for a General Meeting called for the passing of a Special Resolution, MEMBERS holding between them, in aggregate, not less than **25% (TWENTY FIVE PERCENT)** of the voting rights in the ASSOCIATION, present in person or by proxy, and entitled to vote, provided that for the DEVELOPMENT PERIOD, 1 (ONE) of such MEMBERS must be the DEVELOPER or a nominee of the DEVELOPER.
- 3.4.3.3 If within a half an hour after the time appointed for the meeting, a quorum is not present, the meeting:-
- 3.4.3.3.1 if convened upon the requisition of MEMBERS, shall be dissolved;
- 3.4.3.3.2 in any other case, shall stand adjourned to a date not earlier than **7(SEVEN) days** and not later than **21 (TWENTY ONE) days** after the date of the meeting and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the MEMBERS present in person shall be a quorum;
- 3.4.3.3.3 where a meeting has been adjourned as aforesaid, the ASSOCIATION shall not later than 7 (SEVEN) days after the adjournment, send a written notice to each MEMBER of the ASSOCIATION or alternatively publish a notice in an English newspaper circulating in the Ballito area stating :
- 3.4.3.3.3.1 the date, time and place to which the meeting has been adjourned;
- 3.4.3.3.3.2 the matter before the meeting when it was adjourned; and
- 3.4.3.3.3.3 the ground for the adjournment.
- 3.4.3.4 Where PROPERTY is owned in undivided shares or the OWNER is a legal persona, the co-owner, Trustee, Member or Director, as the case may be, who is not the appointed MEMBER in terms of Article 2.1, shall be entitled to attend any General Meeting of the ASSOCIATION, on identifying himself in terms of the procedure laid down in the Conduct Rules of the ASSOCIATION from time to time, provided that such person being present at any General Meeting shall not be considered for the purposes of establishing a quorum for such meeting.

3.4.4 **Chairman :**

- 3.4.4.1 The Chairman, if any, of the BOARD shall preside as Chairman at every General Meeting of the ASSOCIATION.
- 3.4.4.2 If there is no such Chairman, or if at any meeting he is not present within 15 (FIFTEEN) minutes after the time appointed for the holding of the meeting or is unwilling to act as Chairman, the MEMBERS shall elect one of their MEMBERS to be Chairman. Notwithstanding the foregoing, during the DEVELOPMENT PERIOD, the Chairman and deputy Chairman shall be nominees of the DEVELOPER.
- 3.4.4.3 The Chairman may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than business left unfinished at the meeting at which the adjournment took place.
- 3.4.4.4 When a meeting is adjourned, the provisions of Article 3.4.3.3 shall apply to such adjournment.

3.4.5 **Voting :**

- 3.4.5.1 Subject to the provisions of Article 3.5.1.1, at any General Meeting a resolution put to the vote of the meeting shall be decided on by 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 Chairman or by any MEMBER and unless a poll is so demanded a declaration by the Chairman that a resolution has, on a show of hands, been carried (by a particular majority) or negated, and an entry to that effect in a book containing the minutes of the proceedings of the ASSOCIATION, shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against such resolution.

- 3.4.5.2 A demand for a poll may be withdrawn.
- 3.4.5.3 If a poll is duly demanded it shall be taken in such a manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting in which the poll was demanded. Scrutineers shall be elected to determine the result of the poll. In the case of equality of votes, whether on a show of hands or on a poll, the Chairman of a meeting at which a show of hands took place, or at which a poll is demanded, shall be entitled to a second or casting vote, subject to the provisions of Article 3.5.
- 3.4.6 **Proxies :**
 - 3.4.6.1 The instrument appointing a proxy shall be signed by the appointer.
 - 3.4.6.2 The instrument appointing a proxy shall be deposited at the OFFICES not less than 48 (FORTY EIGHT) hours before the time for the holding of the meeting at which the person named in such instrument proposes to attend and vote pursuant thereto or in respect thereof.
 - 3.4.6.3 In default of compliance herewith, the instrument shall be treated as invalid for the purposes of attending or voting at that meeting or any adjournment thereof.
 - 3.4.6.4 No instrument, appointing a proxy shall be valid after the expiration of 6 (SIX) months from the date of its execution, unless the proxy otherwise provides.
 - 3.4.6.5 The right to vote in accordance with the terms of an instrument of proxy shall become invalid immediately upon the death of the principal or revocation by the proxy.
 - 3.4.6.6 The MEMBER'S appointment of the DEVELOPER, in terms of the SALE AGREEMENT, to attend any meeting of the ASSOCIATION and there and then to speak and vote on his behalf in regard to any Ordinary or Special Resolution and generally in respect of any other business of the ASSOCIATION, for the duration of the DEVELOPMENT PERIOD, shall for the purpose of these ARTICLES be regarded as accepted by the ASSOCIATION as a valid instrument of proxy.
 - 3.4.6.7 The DEVELOPER'S right to act under and in terms of the proxy conferred upon it under the provisions of Article 3.4.6.6:-
 - 3.4.6.8 Shall only lapse or terminate on the cessation of the DEVELOPER'S membership of the ASSOCIATION in terms of Article 2.4.1.4.
 - 3.4.6.9 The instrument appointing a proxy shall be in the following form or in such other form as approved by the DIRECTORS.

PROXY FORM

IMBONINI PARK OWNERS' ASSOCIATION

(Association incorporated under Section 21)

I/We:

Of:

being a member/members of the abovementioned Association do hereby appoint:

.....

of:

or failing him

of

or failing him the chairman of the meeting as my/our proxy to vote for me/us on my/our behalf at the Annual General or General Meeting, (as the case may be) of the Association, to be held on the day of200..... and at any adjournment thereof as follows.

For Against

Abstain

Resolution To

Resolution To

Resolution To

(Indicate instruction to proxy by way of a cross in the space provided)

Unless otherwise instructed, the proxy may vote as the thinks fit.

SIGNED atthis day of 200.....

SIGNATURE:

- A MEMBER entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy need not be a MEMBER of the ASSOCIATION.

3.5 Votes of Members :

- 3.5.1 Each MEMBER present at a meeting of the ASSOCIATION, either in person or by proxy, shall be entitled to one vote only, provided:-
 - 3.5.1.1 that for the DEVELOPMENT PERIOD, no resolution being either a Special or Ordinary resolution shall be carried unless the DEVELOPER or its nominee, being present, either in person or by proxy, votes in favour of such resolution; and
 - 3.5.1.2 where the MEMBER is the registered OWNER of more than 1 (one) PROPERTY within IMBONINI PARK, he shall have 1 (one) vote in respect of each PROPERTY owned by him.

4. INSPECTION OF MINUTES

- 4.1 The minutes kept of every General Meeting and Annual General Meeting of the ASSOCIATION under Section 204 of the ACT, may be inspected and copied as provided in Section 205 of the ACT.

5. DIRECTORS

5.1 Appointment :

- 5.1.1 During the DEVELOPMENT PERIOD there shall be not more than 5 (FIVE) DIRECTORS.
- 5.1.2 For the duration of the DEVELOPMENT PERIOD 80% (EIGHTY PERCENT) of the DIRECTORS of the BOARD shall be appointed by and be the DEVELOPER or its nominees.
- 5.1.3 After the expiry of the DEVELOPMENT PERIOD, the number of DIRECTORS, the manner of their election and retirement and their terms of office, shall be determined by the MEMBERS in a General Meeting, provided the number of DIRECTORS thereafter shall not be less than 7 (SEVEN).
- 5.1.4 The appointment of any DIRECTOR to fill any causal vacancy occurring on the BOARD for whatever reason, shall be made by the DIRECTORS within 45 (FOURTY FIVE) days of the date upon which such vacancy occurs, unless the MEMBERS otherwise determine in a General Meeting, provided such DIRECTOR shall retire from office at the next following Annual General Meeting, and shall then be eligible for re-election.
- 5.1.5 Only a MEMBER may be elected as a DIRECTOR of the ASSOCIATION.

5.2 Retirement :

- 5.2.1 A retiring DIRECTOR shall be eligible for re-election.
- 5.2.2 The retirement of a DIRECTOR shall not in itself necessitate that the individual resign his membership.

5.3 General :

- 5.3.1 If, as a result of retirement, resignation or otherwise the total number of DIRECTORS falls below the prescribed number, the BOARD shall act promptly to bring the number of DIRECTORS up to the level as required by these ARTICLES.
- 5.3.2 If the DIRECTOR so retiring or resigning was the nominee of the DEVELOPER, then during the DEVELOPMENT PERIOD, his successor shall be appointed by the DEVELOPER.
- 5.3.3 The validity of any resolutions taken or acts performed by the DIRECTORS during a period when their number falls short of that provided in 5.1.3 above, shall not be invalidated by such shortfall.
- 5.3.4 Any DIRECTOR, with the exception of a DIRECTOR appointed by the DEVELOPER, for any reason whatsoever, may be removed by a majority decision of the BOARD of DIRECTORS.
- 5.3.5 The DIRECTORS shall have the power to co-opt persons onto the BOARD for the purposes of assisting the DIRECTORS in carrying out any of their functions, provided however that any such person so co-opted onto the BOARD, shall not be entitled to vote on any matter which is considered by the BOARD.
- 5.3.6 The Chairman and deputy Chairman shall be elected by the DIRECTORS at their first meeting in the financial year, provided that for the DEVELOPMENT PERIOD, the Chairman and the deputy Chairman shall be DIRECTORS nominated by the DEVELOPER.

6. ALTERNATE DIRECTORS

- 6.1 The DEVELOPER may for any reason whatsoever appoint an alternate DIRECTOR in place of its appointed nominee.
- 6.2 Any DIRECTOR may obtain leave of absence by resolution of the majority of DIRECTORS, and such DIRECTOR may thereupon appoint an alternate to act for him during his absence with all such powers and privileges enjoyed by him, but subject to the terms, qualification and conditions applicable to the other DIRECTORS.
- 6.3 The appointment of such alternate DIRECTOR shall not, however, be valid unless confirmed by a resolution of the majority of DIRECTORS of the BOARD.

7. REMUNERATION OF DIRECTORS

- 7.1 A DIRECTOR shall not directly or indirectly receive any remuneration for his services as a DIRECTOR of the ASSOCIATION, provided that nothing in these ARTICLES shall prohibit him from reimbursement for all traveling, subsistence and other expenses properly incurred by him in the execution of his duties in or about the business of the ASSOCIATION and which have been authorized or approved by the BOARD.
- 7.2 If any DIRECTOR commits a breach of Article 7.1, he shall forthwith cease to be a DIRECTOR and shall not be eligible for re-election.

8. POWERS AND DUTIES OF THE BOARD

- 8.1 The business of the ASSOCIATION shall be managed by the BOARD who may on behalf of the ASSOCIATION pay all expenses incurred in promoting and incorporating the ASSOCIATION, and may exercise all such powers of the ASSOCIATION as are required by the ACT, or by these ARTICLES, to be exercised by the ASSOCIATION in a General Meeting.
- 8.2 Without in any way derogating from the generality of the foregoing, the BOARD shall be entitled to exercise on behalf of the ASSOCIATION all and any of the common powers set out in paragraph 5 of the MEMORANDUM, subject only to any contrary stipulation contained from time to time in the MEMORANDUM and ARTICLES.
- 8.3 The BOARD may from time to time entrust to and confer upon any designated official of the ASSOCIATION, Consultant or any other person or firm, for the timebeing, 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 power and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the DIRECTORS and may from time to time revoke or vary all or any such powers and authorities.
- 8.4 Without in any way affecting the generality of Article 8.1, the BOARD shall have the power to enter into contacts and agreements with third parties, including a MANAGER and a MANAGING AGENT, to give proper effect to the provisions of the MEMORANDUM and ARTICLES and in particular, to the management and control of IMBONINI PARK.
- 8.5 The ASSOCIATION in a General Meeting shall have the right to limit and restrict the powers of the BOARD provided that no resolution of the ASSOCIATION shall invalidate any prior act of the DIRECTORS that would otherwise have been valid.
- 8.6 The BOARD shall have the power to formulate Conduct Rules as well as the power to substitute, add to, amend or repeal the same from time to time in respect of the management, control, administration and use and enjoyment of IMBONINI PARK, NON-USER SERVITUDE and the PUBLIC OPEN SPACE, and for the purposes of giving proper effect to the provisions of the MEMORANDUM and ARTICLES.
- 8.7 The BOARD shall have the power to impose reasonable fines or other suitable penalties on those MEMBERS who fail to comply with the provisions of these ARTICLES or the Conduct Rules, and to debit the costs of so doing to the MEMBER concerned, which amount shall be deemed to be a debt owing by the MEMBER to the ASSOCIATION.
- 8.8 Any Conduct Rules made by the DIRECTORS shall reasonably be in the interest of the ASSOCIATION and IMBONINI PARK and shall apply to and be binding on every OWNER.
- 8.9 The BOARD shall have the power to ratify all contracts entered into with third parties by the DEVELOPER on behalf of the ASSOCIATION upon the termination of the DEVELOPMENT PERIOD.
- 8.10 The BOARD on behalf of the ASSOCIATION may, pursuant to its rights, obligations and duties in terms of these ARTICLES and as provided for and contemplated hereunder, incur such expenditure as may be necessary or requisite to enable it to give proper effect to the provisions of the MEMORANDUM and ARTICLES.
- 8.11 The BOARD shall have the power to enter into income agreements in respect of the PUBLIC OPEN SPACE and other contracts of similar nature, subject to such limits and restrictions imposed by the ASSOCIATION in a General Meeting from time to time.
- 8.12 The BOARD shall have all powers conferred on the DIRECTORS as set out in the ACT.

9. MINUTES

- 9.1 The DIRECTORS shall in terms of Section 204 of the ACT, cause minutes to be kept;
 - 9.1.1 of all appointments of officers;
 - 9.1.2 of the names of DIRECTORS present at every meeting of the ASSOCIATION and at every meeting of the DIRECTORS; and
 - 9.1.3 of all proceedings at all meetings of the ASSOCIATION and of the DIRECTORS.
- 9.2 Such minutes, once they are approved as a true reflection of the record of proceedings, shall be signed by the Chairman of the meeting at which the proceedings took place or by the Chairman of the next succeeding meeting.

10. DISQUALIFICATION OR RESIGNATION OF DIRECTORS

- The office of DIRECTOR shall be vacated if the DIRECTOR:
- 10.1 ceases to be a DIRECTOR by effluxion of the period of appointment; or
 - 10.2 becomes prohibited from being a DIRECTOR by virtue of any provision of the ACT or these ARTICLES; or
 - 10.3 resigns his office by notice in writing to the ASSOCIATION and the Registrar; or
 - 10.4 becomes insolvent or assigns his estate for the benefit of or compounds with his creditors; or
 - 10.5 is found to be lunatic or of unsound mind; or
 - 10.6 is absent for 3 (three) consecutive meetings of the DIRECTORS without obtaining prior leave of absence; or
 - 10.7 in the case of the nominee of the DEVELOPER, on the DEVELOPER revoking his appointment; or
 - 10.8 ceases to be an OWNER.

11. PROCEEDINGS OF BOARD

11.1 General :

- 11.1.1 The DIRECTORS may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, but shall meet at least 4 (four) times during a financial year.
- 11.1.2 A DIRECTOR or the Secretary of the BOARD on the requisition of a DIRECTOR, may on 7 (SEVEN) days written notice to all other DIRECTORS, at any time summon a meeting of DIRECTORS.
- 11.1.3 The quorum necessary for the transaction of the business of the DIRECTORS, otherwise than for the DEVELOPMENT PERIOD, shall be made up of at least 3 (THREE) DIRECTORS, provided that for the DEVELOPMENT PERIOD one of such DIRECTORS must be a nominee of the DEVELOPER.
- 11.1.4 If at a meeting the Chairman or the Deputy Chairman is not present within 15 (fifteen) minutes after the time appointed for holding same, the DIRECTORS present may choose one of their number to be Chairman of the meeting.
- 11.1.5 Issues arising at any meeting of the DIRECTORS shall be decided by a majority of votes of the DIRECTORS present in person, provided:
 - 11.1.5.1 That during the DEVELOPMENT PERIOD, no resolution of DIRECTORS shall be carried unless the nominees of the DEVELOPER votes in favour of same;
 - 11.1.5.2 each DIRECTOR shall be entitled to exercise 1 (ONE) vote;
 - 11.1.5.3 subject to the aforesaid, in the event of an equality of votes the Chairman shall have a second or casting vote;
 - 11.1.5.4 where a person is an alternate DIRECTOR to more than one DIRECTOR, or where an alternate DIRECTOR is also a DIRECTOR in his personal capacity, he shall have a separate vote on behalf of each of the DIRECTORS he is representing.

11.2 Committees :

- 11.2.1 The BOARD may delegate any of its powers to committees consisting of such persons as they think fit, who shall, in the exercise of the powers so delegated, conform to the rules that may be imposed on them by the BOARD.
- 11.2.2 A committee shall appoint a Chairman of its meetings, provided if no such Chairman is appointed, or if at any meeting the Chairman is not present within 15 (fifteen) minutes after the time appointed for the meeting, the committee members present may elect one of their number to be Chairman of the meeting.
- 11.2.3 A committee may meet and adjourn as it thinks fit.
- 11.2.4 Questions arising at any meeting shall be determined by a majority of votes of the committee members present and in the event of an equality of votes the Chairman shall have a second or casting vote.

11.3 Validity of Acts :

- 11.3.1 All acts done in terms of any resolution passed at any meeting of the DIRECTORS or a committee of DIRECTORS established in terms of Article 11.2 or by any person acting as a DIRECTOR, 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 valid as if any such person acting as DIRECTOR in a meeting of DIRECTORS or a committee of DIRECTORS established in terms of Article 11.2 had been duly appointed and had qualified to be a DIRECTOR.
- 11.3.2 A resolution signed by all DIRECTORS shall be a valid resolution notwithstanding that such resolution may not have been passed at a meeting of DIRECTORS.

12. LIMITATION OF LIABILITY OF DIRECTORS

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

13. FINANCE COMMITTEE

- 13.1 There shall be established under Article 11.2 a finance committee which shall consist of:
- 13.1.1 during the DEVELOPMENT PERIOD, of 1 (ONE) person being a nominee of the DEVELOPER, subject however to the right of the DEVELOPER to consent to an additional 1 (ONE) person;
- 13.1.2 upon termination of the DEVELOPMENT PERIOD, of at least 3 (THREE) MEMBERS with a maximum of 6 (SIX) MEMBERS.
- 13.2 The finance committee shall establish and maintain a levy fund sufficient in its opinion for:
- 13.2.1 generally the repair, control, upkeep and management and administration of the ASSOCIATION, of IMBONINI PARK as well as the PUBLIC OPEN SPACE and the NON-USER SERVITUDE;
- 13.2.2 the provision of security services for IMBONINI PARK;
- 13.2.3 the payment of rates, taxes and other charges levied by the Local Authority or any other Services Authority;
- 13.2.4 any charges for the supply and monitoring of electric current, water, fuel, sanitary, refuse removal and any other services to and on IMBONINI PARK;
- 13.2.5 any services required by the ASSOCIATION to enable it to carry out its main and ancillary objects;
- 13.2.6 for the covering of any losses suffered by the ASSOCIATION;
- 13.2.7 for the payment of any insurance premiums;
- 13.2.8 all other expenses incurred or to be incurred in relation to the management of IMBONINI PARK, the NON-USER SERVITUDE and the PUBLIC OPEN SPACE and the affairs of the ASSOCIATION;
- 13.2.9 for the discharge of any other obligation of the ASSOCIATION;
- 13.3 The finance committee shall prepare for every Annual General Meeting an itemized estimate of anticipated income and expenses of the ASSOCIATION during the ensuing financial year which estimate shall be laid before the Annual General Meeting for consideration.
- 13.4 At every Annual General Meeting the ASSOCIATION shall approve, with or without amendment, the estimate of income and expenditure referred to in Article 13.3 and shall determine the amount estimated to be required to be levied upon every MEMBER during the ensuing financial year.
- 13.5 The finance committee shall during the DEVELOPMENT PERIOD determine that portion of the total expenditure that is to be paid by the DEVELOPER and the balance of the expenditure to be borne by the MEMBERS.
- 13.6 The MEMBERS shall make contributions towards the levy fund established in terms of Article 13.2 in equal proportions.
- 13.7 The DEVELOPER is specifically excluded from and shall not be required to make any additional payment or contribution under the provisions of Article 13.5 towards the levy fund established by the ASSOCIATION in terms of Article 13.2 other than the levy payable as a MEMBER.
- 13.8 The amount levied upon each MEMBER under the provisions of Article 13.5, shall be paid by such MEMBER to the ASSOCIATION in equal monthly installments, monthly in advance, on the first day of each and every month, for the duration of the MEMBER'S ownership of his PROPERTY, subject to the terms and provisions of these ARTICLES.
- 13.9 The levy fund shall be utilized for the purposes referred to in Article 13.2.
- 13.10 Any MEMBER who ceased to be a MEMBER, notwithstanding such cessation of membership, shall still remain liable for the payment of all levies attributable to him during his period of membership of the ASSOCIATION.
- 13.11 Any amount due by any MEMBER, whether in respect of a levy or any other amount falling due for payment under these ARTICLES, which remains unpaid after the same has fallen due, shall bear interest as from the due date of payment to the actual date payment is received, at the rate of interest charged by Nedbank Limited on its prime overdraft rate plus 3% (THREE PERCENT) per annum calculated monthly in arrears.
- 13.12 The BOARD shall on the recommendation of the finance committee have the power to impose special levies on MEMBERS arising from extra-ordinary and unforeseen expenditure which was not available to be included under Article 13.4 and shall be empowered to determine how such special levies are to be paid.
- 13.13 The ASSOCIATION shall establish a Levy Stabilization Fund for the purpose of payment of any extra-ordinary and unforeseen expenditure or expenditure of a capital nature which might be incurred by the ASSOCIATION in the carrying out of its main objects and the provisions of these ARTICLES.
- 13.14 A MEMBER shall not be entitled to a refund of any pre-paid amount standing to the credit of his levy account, unless he has ceased to be a MEMBER.
- 13.15 All contributions levied under the provisions of these ARTICLES shall be due and payable on the passing of a resolution to that effect by the DIRECTORS and may be recovered by the ASSOCIATION instituting an action in any court (including any Magistrates' Court) of competent jurisdiction from the persons who were MEMBERS at the time when such contributions became due.
- 13.16 The ASSOCIATION shall collect a LANDSCAPING DEPOSIT upon the date of submission of plans for approval by the Design Review Committee as provided for in the OWNERS PARTICIPATION MANUAL.
- 13.17 The ASSOCIATION shall refund the LANDSCAPING DEPOSIT collected by it in terms of Article 13.16 above, within 60 (SIXTY) days from the date that an Occupational certificate is issued by the Local Authority, less the expenses incurred by the ASSOCIATION to complete any landscaping not completed in accordance with the approved landscaping plan, including the requirements as provided for in the OWNERS PARTICIPATION MANUAL.

14. ACCOUNTING RECORDS

- 14.1 The BOARD shall cause such accounting records as are prescribed by the ACT to be kept.
- 14.2 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 ASSOCIATION.

- 14.3 The accounting records shall be kept at the OFFICES of the ASSOCIATION or such other place or places as the DIRECTORS think fit and shall always be open to inspection by the MEMBERS.

15. ANNUAL FINANCIAL STATEMENTS

- 15.1 The BOARD shall from time to time, in accordance with the ACT, cause to be prepared and laid before the ASSOCIATION in General Meetings such financial statements as are prescribed by the ACT.
- 15.2 A copy of the annual financial statements which are to be laid before the ASSOCIATION in Annual General Meeting shall, not less than 21 (TWENTY ONE) days before the date of the meeting, be sent to every MEMBER of the ASSOCIATION and to the Registrar of Companies; provided that this Article shall not require a copy to be sent to any person of whose address the ASSOCIATION is not aware.
- 15.3 The financial year of the ASSOCIATION shall commence on the 1st day of October of each year and terminate on the 30th September of the following year.

16. AUDIT

- 16.1 An auditor shall be appointed in accordance with the ACT.
- 16.2 For the duration of the DEVELOPMENT PERIOD, the DEVELOPER shall be entitled to nominate and appoint the ASSOCIATION'S Auditor.

17. NOTICES

- 17.1 A notice may be given by the ASSOCIATION to any MEMBER:
- 17.1.1 by publication in such newspapers as the DIRECTORS may from time to time determine; or
- 17.1.2 by hand delivery to the MEMBER at his PROPERTY; or
- 17.1.3 by posting the notice in a prepaid envelope to the MEMBER at his registered address; or
- 17.1.4 if he has no registered address in the Republic of South Africa, at the address within the Republic of South Africa supplied by him to the ASSOCIATION for the service of notices; or
- 17.1.5 by affixing the notice to the ASSOCIATION'S Public Notice Boards.
- 17.2 Notice of every General Meeting shall be given in the manner authorized:
- 17.2.1 to every MEMBER of the ASSOCIATION. If a MEMBER has not supplied the ASSOCIATION with an address within the Republic of South Africa for the service of notice by hand or by registered post, then it shall be considered sufficient for the ASSOCIATION to serve notice at the address of the PROPERTY owned by the MEMBER;
- 17.2.2 to the auditor for the time being of the ASSOCIATION;
- 17.3 No other person shall be entitled to receive a notice of general Meetings.
- 17.4 Any notice sent by post shall be deemed to have been served at the time when the same was posted, and any notice given by publication, shall be deemed to have been served on the day upon which the notice was published in the newspaper and in proving the service of the notice by post, it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.
- 17.5 The failure to give notice to any MEMBER or the failure of any MEMBER to receive a notice shall not invalidate any proceedings of the ASSOCIATION.

18. WINDING UP OF THE ASSOCIATION

In the event of the ASSOCIATION being wound up, de-registered or dissolved, its assets after the satisfaction of all its liabilities, shall devolve upon such other corporation as the MEMBERS in such winding up order shall determine, provided that such corporation shall have aims and objectives similar to those of the ASSOCIATION.

19. REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF IMBONINI PARK

19.1 Conduct Rules :

The BOARD under the provisions of Article 8.6 shall have the power to formulate and amend Conduct Rules, which shall be binding on all MEMBERS, in respect of the management, control and administration of IMBONINI PARK as well as the NON-USER SERVITUDE and PUBLIC OPEN SPACE, which shall relate inter alia to the following:

- 19.1.1 the control of alienation of a MEMBER'S PROPERTY;
- 19.1.2 the use and allocation of membership cards to co-owners and legal persona;
- 19.1.3 the control of vehicles and general rules relating to road usage;
- 19.1.4 the use of roads;
- 19.1.5 the control of access and egress into IMBONINI PARK;

- 19.1.6 the general use by MEMBERS of the PUBLIC OPEN SPACE;
 - 19.1.7 the control of vegetation, flora and fauna within IMBONINI PARK;
 - 19.1.8 the control of the PUBLIC OPEN SPACE and NON-USER SERVITUDE;
 - 19.1.9 the control of water furrows, reservoirs, pump houses, irrigation systems and water pipes;
 - 19.1.10 the preservation of the natural environment;
 - 19.1.11 the admission of EMPLOYEES and visitors to IMBONINI PARK;
 - 19.1.12 the storage of flammable and other harmful substances;
 - 19.1.13 the use of PROPERTY within IMBONINI PARK;
 - 19.1.14 the conduct of any persons within IMBONINI PARK;
 - 19.1.15 the maintenance of each MEMBER'S PROPERTY and BUILDING;
 - 19.1.16 the control of advertisements, the lighting systems, street name-posts, directional boards, ASSOCIATION'S sign boards and light fittings;
 - 19.1.17 the procedure to be followed to enforce a breach of Conduct Rules by a MEMBER;
 - 19.1.18 the imposition of fines and other penalties on MEMBERS who contravene the Conduct Rules;
 - 19.1.19 such other matters as may in the opinion of the DIRECTORS require to be regulated from time to time in order to maintain and achieve the concept of IMBONINI PARK.
- The BOARD shall not have the power to amend any Conduct Rule where at a General Meeting a specific restriction or guide-line has in respect thereof been imposed and approved by the MEMBERS, provided that during the DEVELOPMENT PERIOD, the DEVELOPER shall not be restricted in any way by the provisions of this Article.

19.2 **Enforcement of Conduct Rules :**

- 19.2.1 The BOARD may take such steps as they may consider necessary to remedy the breach of any Conduct Rules by a MEMBER.
- 19.2.2 The BOARD shall formulate from time to time a schedule of the amount of the fines or other penalties in respect of any breach of the Conduct Rules.
- 19.2.3 The BOARD shall give notice of breach to the MEMBER concerned in the manner authorised and after providing the MEMBER with an opportunity to refute such allegation, shall adjudicate upon such issue, and where necessary, impose such fine or other penalty as is deemed pertinent;
- 19.2.4 Any MEMBER found guilty of a breach of the Conduct Rules and for which a fine is imposed, shall have the cost thereof debited to such MEMBER'S levy account, which amount shall be deemed to be a debt owing by such MEMBER to the ASSOCIATION;
- 19.2.5 In the event of a breach of the Conduct Rules by any TENANT, EMPLOYEE, guests, invitees or other person occupying the PROPERTY, such breach shall be deemed to have been committed by the MEMBER himself and the BOARD shall be entitled to take such action as they may deem fit against such MEMBER;
- 19.2.6 Notwithstanding the foregoing, the BOARD shall be authorized in the ASSOCIATION'S interests to enforce the provisions of any Conduct Rules by way of Court application;
- 19.2.7 for the purposes of enforcement of the Conduct Rules, the BOARD, as they deem fit, may appoint Attorneys or Counsel to act for the ASSOCIATION.
- 19.2.8 In no way detracting from the generality of any other provision of these ARTICLES, in the event of the ASSOCIATION incurring any legal costs as a result of any breach of these ARTICLES or the Conduct Rules by any MEMBER, the ASSOCIATION shall be entitled to recover all such legal costs from such MEMBER on an attorney and own client scale in full whether or not legal action is actually instituted.

19.3 **Nature and Amenity of IMBONINI PARK :**

- 19.3.1 The ASSOCIATION, in order to procure compliance with the nature and amenity of IMBONINI PARK, shall control the right of any MEMBER to erect or build any BUILDING on any PROPERTY, which BUILDING shall during and after the DEVELOPMENT PERIOD, strictly adhere to the OWNERS PARTICIPATION MANUAL and ENVIRONMENTAL MANAGEMENT PLAN and be subject to such rights of control which have been conferred upon the DEVELOPER and which may have been registered against the title deeds to the PROPERTY, and which said rights shall supercede the ASSOCIATION'S rights or be exercised by the DEVELOPER in conjunction with the ASSOCIATION, as the DEVELOPER solely at its discretion deems necessary.
- 19.3.2 The ASSOCIATION'S right of control shall include any extension or addition to any existing BUILDING, which when erected or constructed is visible from the outside of the PROPERTY.
- 19.3.3 Any MEMBER wishing to erect or build any BUILDING on his PROPERTY, shall submit to the Design Review Committee established in terms of Article 11.2 such approved plans, fees and ancillary documents as may be necessary in the opinion of the BOARD for it to grant approval thereto, provided the Design Review Committee:
 - 19.3.3.1 in its sole discretion may approve, refuse or require such amendments to be made to such application as may be deemed necessary to comply with the nature and amenity of IMBONINI PARK;
 - 19.3.3.2 may grant its approval subject to such conditions that it deems applicable;
 - 19.3.3.3 must grant its approval in writing and the Chairman shall be required to sign the same;
 - 19.3.3.4 may determine from time to time, the prescribed fee to be paid by the MEMBERS when submitting any application for approval in terms of this Article;
 - 19.3.3.5 may increase floor coverage of the BUILDING on the PROPERTY to the maximum permitted by the Local Authority, subject to the Town Planning Scheme in operation in respect of IMBONINI PARK;
 - 19.3.3.6 without affecting the generality of the foregoing, no MEMBER or BODY CORPORATE shall, without obtaining the prior written approval of the BOARD:
 - 19.3.3.6.1 change the colour of the exterior walls, roof, exterior of any doors and window frames, or any exterior fixtures or fittings of any BUILDING;

- 19.3.3.6.2 replace or remove any pergolas, blinds, shutter or ornaments attaching to or upon the exterior walls or surfaces of the BUILDING or other structure provided a MEMBER shall be entitled to renew such existing items as may require replacement, either with identical items or when this not possible, items of a similar nature or appearance;
- 19.3.3.6.3 make any additions or extensions to any BUILDING;
- 19.3.3.6.4 erect any additional buildings, structures or fences whether of a temporary or permanent nature upon any PROPERTY;
- 19.3.3.6.5 remove any fixture, fittings, doors, windows;
- 19.3.3.6.6 demolish any portions of any BUILDING or other structure;
- 19.3.3.6.7 erect or rebuild any structure which has been demolished;
- 19.3.3.6.8 erect or build any lean-to, carport or awning;
- 19.3.3.6.9 erect or build any structure from any material of whatsoever nature;
- 19.3.3.6.10 erect any BUILDING or structure on the PROPERTY other than within the designated area imposed or approved of by the DEVELOPER from time to time;
- 19.3.3.7 The ASSOCIATION in exercising its rights of control under the provisions of the ARTICLES, shall be bound by and strictly adhere to the OWNERS PARTICIPATION MANUAL and ENVIRONMENTAL MANAGEMENT PLAN, including conditions imposed by the DEVELOPER from time to time.

19.4 Landscaping :

- 19.4.1 The landscaping of the NON-USER SERVITUDE and PUBLIC OPEN SPACE, shall only be undertaken by or at the instance of the ASSOCIATION;
- 19.4.2 No MEMBER shall without the authority of the BOARD, be entitled on the NON-USER SERVITUDE or PUBLIC OPEN SPACE, to:
 - 19.4.2.1 plant, remove or trim any tree, shrub or grass;
 - 19.4.2.2 attempt to erect or remove any fence, wall or other structure.
- 19.4.3 Landscaping by OWNERS of their PROPERTY shall be undertaken in accordance with the OWNERS PARTICIPATION MANUAL and the ENVIRONMENTAL MANAGEMENT PLAN including conditions imposed by the DEVELOPER from time to time.

19.5 Rules of Body Corporates :

- 19.5.1 The statutory BODY CORPORATE Management and Conduct Rules and amendments thereto, shall be subject to the approval of the BOARD;
- 19.5.2 The BOARD'S right to determine from time to time, the Rules applicable to such Sectional Schemes, shall be subject to the provisions of the SECTIONAL TITLES ACT;
- 19.5.3 No rule shall be repealed, substituted, adopted or amended without the prior written consent of the BOARD first being had, and obtained;
- 19.5.4 The ASSOCIATION'S Conduct Rules and these ARTICLES shall at all times be observed by, applicable to and binding upon those MEMBERS of the BODY CORPORATES within IMBONINI PARK, and shall be adopted as the Rules applicable to the BODY CORPORATES.

19.6 Provision of Services :

- 19.6.1 The ASSOCIATION shall be entitled, from time to time, to enter into contracts with third parties for the provision of SERVICES to IMBONINI PARK.
- 19.6.2 The cost of providing such services shall be included in the amount of the levy payable by the MEMBERS to the ASSOCIATION provided the ASSOCIATION shall ensure that no MEMBER shall be liable for a pro-rata contribution in respect of a service which he does not actually receive.

19.7 Maintenance of Buildings :

- 19.7.1 Notwithstanding anything to the contrary herein or elsewhere stated each OWNER of an ERF shall be personally responsible for the repair and maintenance of the exterior and interior of it's BUILDING.
- 19.7.2 The OWNER of a SECTION shall be responsible for the repair and maintenance of the interior of it's SECTION, the exterior of the BUILDING to be maintained by the BODY CORPORATE.
- 19.7.3 Upon receipt of written notice given by the BOARD, a MEMBER shall undertake such repairs or maintenance to his BUILDING as may be specified in such notice.
- 19.7.4 In the event of failure by such MEMBER to timeously comply with the above notice, the BOARD shall be entitled to effect such repairs and maintenance and any costs so incurred, shall be a debt due to the ASSOCIATION by the MEMBER and shall be payable on demand.

19.8 Occupation of Buildings :

- 19.8.1 Occupation of BUILDINGS shall at all times, be in compliance with the Conduct Rules.
- 19.8.2 MEMBERS wishing to let their BUILDINGS, shall do so subject to such Rules and conditions as the ASSOCIATION may, from time to time impose, provided that any intended lessee shall sign the ASSOCIATION'S approved Lease Agreement, whereby the lessee agrees to be bound by the provisions of these ARTICLES and the Conduct Rules.

19.9 Infrastructure and Services :

19.8.3 The DEVELOPER and MEMBERS shall be obliged to consent to the provision, establishment, maintenance and repair of SERVICES required for infrastructure of IMBONINI PARK, which shall be effected at the cost of the ASSOCIATION.

19.8.4 Where such SERVICES are required to be laid across, within or along the boundary of any PROPERTY, or in such place or places as the ASSOCIATION may determine from time to time, the DEVELOPER and the OWNERS shall consent to the ASSOCIATION or such persons duly authorized by it, to enter upon the PROPERTY for the purpose of providing, establishing, maintaining and/or repairing such SERVICES, which rights may be contained in and set forth in every MEMBER'S title deed to his PROPERTY.

19.10 Security of IMBONINI PARK / Access :

19.10.1 The ASSOCIATION shall be obliged to secure the perimeter of IMBONINI PARK on a 24 hourly basis.

19.10.2 The ASSOCIATION shall be entitled to prohibit ingress to and egress from IMBONINI PARK to any person other than to MEMBERS, EMPLOYEES, TENANTS, any of the foregoing persons' guests or invitees or any other duly authorised persons.

19.10.3 The ASSOCIATION shall be entitled to provide such other security as it deems appropriate for the safety of the MEMBERS.

19.10.4 The ASSOCIATION may in its sole discretion, deny access to IMBONINI PARK to any person, not being a MEMBER, or request such person to leave IMBONINI PARK, if in its opinion such person constitutes a security risk.

19.10.5 The ASSOCIATION shall be obliged to implement an access system in terms of which access and egress to and from IMBONINI PARK can at all times be strictly and effectively controlled so as to ensure maximum security to all persons within IMBONINI PARK.

19.10.6 No MEMBER shall be entitled to refuse to be bound by the provision of any access system implemented by the ASSOCIATION.

19.11 Enforcement of Obligations of Members :

19.11.1 Should any MEMBER or any TENANT fail to perform any obligation incumbent upon them within the time period of any notice requesting compliance, the ASSOCIATION shall be entitled, but not obliged, at its discretion, to incur such expenditure as it deems necessary or requisite to procure actual compliance therewith.

19.11.2 The costs incurred by the ASSOCIATION shall be payable on demand by the MEMBER concerned.

19.12 Responsibility of Members for their Employees, Tenants, Guests or Invitees :

Every MEMBER shall be strictly responsible and accountable to the ASSOCIATION for their EMPLOYEES, TENANTS, guests and other invitees, whilst any such person is within IMBONINI PARK.

19.13 Conservation and Environment :

The ASSOCIATION and all MEMBERS shall ensure that no cultivation of exotic species of vegetation, damage, destruction or removal of any indigenous vegetation occurs or takes place within the NON-USER SERVITUDE and PUBLIC OPEN SPACE.

19.14 Resale of Member's Property :

19.14.1 The consent to sell or transfer PROPERTY within IMBONINI PARK must first be obtained in writing from the ASSOCIATION.

19.14.2 The selling/transferee OWNER must have satisfactorily settled all levies and other obligations to the ASSOCIATION prior to consent being given.

19.14.3 The transferee must agree to become a MEMBER of the ASSOCIATION.

19.14.4 Where an OWNER wishes to sell his PROPERTY the sale document MUST reflect precisely all requirements of, and obligations to the ASSOCIATION which are to be complied with.

19.15 Water / Electricity : Payments by Members :

19.15.1 The supply of water/electricity to the BUILDINGS is provided by the relevant Service Authority and is individually metered.

19.15.2 Every MEMBER shall be obliged to make payment to the relevant Service Authority of a water/electricity connection fee and a water/electricity meter charge.

19.15.3 The calculation of the consumption of electricity by MEMBERS and their payment in respect thereof, shall be controlled by the relevant Service Authority.

20. RATIFICATION OF CONTRACTS

20.1 The ASSOCIATION shall be obliged on termination of the DEVELOPMENT PERIOD to ratify all contracts currently then in existence and entered into by the DEVELOPER on behalf of the ASSOCIATION.

- 20.2 The ASSOCIATION shall instruct the BOARD to ratify all such contracts and to honor the same, and to perform in terms thereof until such time as the ASSOCIATION decides in a General Meeting to cancel or terminate the same.

21. STATUS OF DEVELOPER

- 21.1 In the event of the DEVELOPER disposing of IMBONINI PARK to some third party, such third party shall, mutates mutandis, be deemed to be the DEVELOPER under these ARTICLES.
- 21.2 The decision of the BOARD as to what constitutes a disposal of IMBONINI PARK shall be final and binding on the MEMBERS.
- 21.3 On expiry of the DEVELOPMENT PERIOD, the DEVELOPER will be under no obligation to continue any services provided by it either to the ASSOCIATION or in connection with IMBONINI PARK, the ASSOCIATION being entirely responsible for the continuation of such services, if it deems such service necessary.

22. COMPLETION OF THE IMBONINI PARK

- 22.1 The DEVELOPER shall be entitled to complete the development of IMBONINI PARK without reference to the ASSOCIATION first being had and obtained.
- 22.2 Where the development of IMBONINI PARK is concerned, the DEVELOPER shall in so far as is possible comply with these ARTICLES as if it were a MEMBER.
- 22.3 The DEVELOPER shall in no way be obliged to consult or obtain permission in any manner or form from the ASSOCIATION in regard to the completion of the development of IMBONINI PARK.
- 22.4 In the event of it being necessary for the DEVELOPER to rezone any land within IMBONINI PARK, the ASSOCIATION grants its consent to such application for rezoning provided such application confirms with any Town Planning Scheme in the course of preparation or any other Scheme applicable from time to time.
- 22.5 No MEMBER shall be entitled to object to any application contemplated by the DEVELOPER in terms of this Article, and the MEMBER hereby waives such right.

23. REPUDIATION OF LIABILITY

- 23.1 The ASSOCIATION (including its DIRECTORS, officers and Trustees) shall not be:-
- 23.1.1 liable for any injury to any person, damage to, or loss of any property, occurring or suffered upon IMBONINI PARK irrespective of the cause thereof;
- 23.1.2 responsible for any theft of property occurring on IMBONINI PARK.
- 23.2 No MEMBER shall:-
- 23.2.1 have any claim or right of action against the ASSOCIATION for any damages or loss suffered;
- 23.2.2 be entitled to withhold or set off payment of any amount due to the ASSOCIATION by the MEMBER as a result of any loss or damage suffered.
- 23.3 The ASSOCIATION or its duly appointed agents shall not be liable to the MEMBERS or their TENANTS, EMPLOYEES, invitees or generally to any person who might have entered IMBONINI PARK, for any injury, loss or damage of any description, which the MEMBER or such other person may have suffered or sustained, whether directly or indirectly in or about IMBONINI PARK, regardless of the cause thereof.

24. NON-USER SERVITUDE

The OWNERS of effected PROPERTIES shall receive transfer of their respective PROPERTIES subject to the NON-USER SERVITUDE registered in favour of the ASSOCIATION.

25. AMENDMENT OF ARTICLES

- 25.1 These ARTICLES may only be amended or varied by way of a special resolution of MEMBERS, provided that during the DEVELOPMENT PERIOD, these ARTICLES shall not be varied or amended without the prior written consent of the DEVELOPER.
- 25.2 Notwithstanding anything contained herein or elsewhere the DEVELOPMENT CODE and the ENVIRONMENTAL MANAGEMENT PLAN shall not be amended or varied, at any time, save by way of a special resolution of MEMBERS and the prior written consent of the DEVELOPER.

MEMORANDUM OF INCORPORATION

(Issued in pursuance of the Companies Act 71 of 2008)

NAME OF COMPANY : IMBONINI PARK OWNERS ASSOCIATION NPC

REGISTRATION NUMBER : 2008/008852/08

(which is a non profit company with members and is referred to in this Memorandum of Incorporation as "The Association")

MEMORANDUM OF INCORPORATION

of

IMBONINI PARK OWNERS' ASSOCIATION NPC

which is referred to in the rest of this Memorandum of Incorporation as "the Association".

The Association is a Non-Profit company with members, with the following objects:

To promote, advance and protect the common interests of all owners and occupiers of the Township to be laid out on Erf 1334 Shakashead (previously described as Portion 53 of the Farm Lot 72 No. 1526) and in particular, in so promoting such common interest, to ensure acceptable aesthetic, architectural and environmental standards in the Township, and to promote and maintain all essential and community services, amenities and activities within the Township.

This Memorandum of Incorporation was adopted by the Company on **22 FEBRUARY 2013**. The former Memorandum of Incorporation of the Company (being its "*Memorandum of Association*" and "*Articles of Association*" adopted in terms of the repealed Companies Act 61 of 1973, as amended) was repealed in its entirety and simultaneously replaced by this Memorandum of Incorporation, in accordance with the Act, by special resolution of the shareholders of the Company.

Name and address	Identity or Registration #	Signature	Date

The Memorandum of Incorporation is as follows:

1 INTERPRETATION

- 1.1 In this Memorandum of Incorporation, unless the context otherwise requires –
 - 1.1.1 "Act" means the Companies Act 71 of 2008 as amended from time to time;
 - 1.1.2 "Association" means the Imbonini Park Owners Association NPC;
 - 1.1.3 "Beneficial Interest" means, in the event of the Member being :
 - 1.1.3.1 a close corporation, the entire member's interest in the close corporation;
 - 1.1.3.2 a company, all the issued shares in that company; or
 - 1.1.3.3 a trust, the entire beneficial interest in that trust (as the case may be);
 - 1.1.4 "Board" means the Board of Directors of the Association for the time being;
 - 1.1.5 "Body Corporate" means a body corporate as defined in Section 1 of the Sectional Titles Act or a Share Block Company as defined in Section 1 of the Share Blocks Control Act;

- 1.1.6 "Common Spaces" means the common areas within the Park, which areas shall include, inter alia, open spaces, parks, certain areas of indigenous bush, certain road verges, private roads and public thoroughfares within the Park;
- 1.1.7 "Design Review Panel" means the panel as provided for in Article 20 hereof;
- 1.1.8 "Developer" means Imbonini Park (Pty) Ltd, including its successors and assigns (as read with Article 30 hereof);
- 1.1.9 "Development Period" means the period from the date of registration of this Memorandum of Incorporation until such time as the Developer gives written notice to the Association of the termination of the Development Period (provided that no such notice shall be given by the Developer until such time as **90% (ninety percent)** of the Sub-Divisions in number, have been transferred from the Developer);
- 1.1.10 "Directors" means the directors of the Association for the time being;
- 1.1.11 "Environmental Management Restrictions" means :
 - 1.1.11.1 the Environmental Authorisation, issued by the KZN Agriculture, Environmental Affairs & Rural Development Department for the Park (Reference No. EIA 7150) dated 17 November 2006; and
 - 1.1.11.2 the Environmental Management Plan "EIA EIA 7150" prepared by Sustainable Development Project CC and dated June 2006;
- 1.1.12 "Finance Committee" shall mean the committee appointed in accordance with Article 11.9 hereof;
- 1.1.13 "Individual Ownership" means ownership by a natural or Juristic Person or persons;
- 1.1.14 "Juristic Person" means a company, close corporation, trust or other legal or juristic person (excluding the body corporate of a sectional title scheme);
- 1.1.15 "KwaDukuza Municipality" means the KwaDukuza Municipality, its successors in title or assigns;
- 1.1.16 "Managing Agent" means the managing agent appointed by the Board to attend to the daily management of the affairs of the Association;
- 1.1.17 "Manager" means the person, corporation or association appointed by the Association, from time to time, to undertake the management of the Park;
- 1.1.18 "Member" means:-
 - 1.1.18.1 an Owner; and
 - 1.1.18.2 the Developer, during the Development Period (although, it is recorded that, the Developer shall continue to be a Member after the expiry of the Development Period, if the Developer is then an Owner);
- 1.1.19 "MOI" means the Memorandum of Incorporation for the time being of the Association;
- 1.1.20 "Office" means the registered office of the Association for the time being;
- 1.1.21 "Owner" means any person who is the registered owner of a Subdivision or an undivided share in a Subdivision, provided that, for the purposes of this Memorandum of Incorporation, the Body Corporate of any sectional title scheme on a Subdivision, shall be deemed to be the owner of such Subdivision (it being specifically recorded, for the purposes of clarity, that the owner of a sectional title unit shall not be deemed to be an "Owner" for the purposes of this MOI);
- 1.1.22 "Park" means the property shown on the Plan, comprising the immovable property more fully described as Erf 1334 Shakashead (formerly known as Portion 53 of the Farm Lot 72 No. 1526) and any other property that may be included in the Park as contemplated in Article 26 hereof, including any Subdivision or consolidation of the aforesaid properties but excluding any property which is owned by the KwaDukuza Municipality (or which otherwise constitutes a public road) or is excluded by the Developer in terms of Article 28 hereof;
- 1.1.23 "Participation Manual" means the Association's Participation Manual, drafted by the Developer, and as amended and added to from time to time by the Developer during the Development Period, and thereafter, by the Board;
- 1.1.24 "Plan" means the plan referred to in the Judgment of the Development Tribunal (Reference 2006/932) in terms of which the Park was approved of in terms of the Development Facilitation Act 67 of 1995, the reference of such Plan being "IMBO12-Rev4" and dated October 2005;
- 1.1.25 "Platform Area" means :
 - 1.1.25.1 in respect of a Subdivision owned by any Member other than the Developer, that portion of such Subdivision which is designated in the contract of sale, in terms which that Subdivision was originally alienated by the Developer, as the portion on which a building(s) may be erected, the precise extent of which is to be determined in accordance with the provisions of the aforesaid contract of sale. Should there be any dispute as to the extent of any Platform Area in this regard, a certificate by a

duly authorised representative of the Developer in this regard shall be *prima facie* proof of same. It is recorded that no subsequent change in the Platform Area shall be taken into account for the purposes of this definition, it being the intention that the original extent of the Platform Area, as determined by the Developer's surveyors in terms of the contract of sale, shall be the extent of the Platform Area for the purposes of this Memorandum of Incorporation;

- 1.1.25.2 in respect of any Subdivision owned by the Developer, that portion of such Subdivision on which a building(s) may be erected. Should there be any dispute as to the extent of the Platform Area in this regard, a certificate by the Developer's appointed surveyor confirming such extent, shall be *prima facie* proof of same;
- 1.1.26 "Rules" mean the conduct rules made by the Board in accordance with the provisions of Article 8.5 hereof;
- 1.1.27 "Scheme" means the Umhlali Beach Town Planning Scheme or any successor thereto;
- 1.1.28 "Sectional Titles Act" means the Sectional Titles Act No. 95 of 1986 as amended and any regulations in force thereunder from time to time;
- 1.1.29 "Services" means water, sewerage, refuse removal, electricity, telecommunications, security, maintenance of common property and such other utilities or services as may be provided by the Association or any other supplier of services to the Park, from time to time;
- 1.1.30 "Share Blocks Control Act" means the Share Blocks Control Act No. 59 of 1980 as amended and any regulations in force thereunder from time to time;
- 1.1.31 "Sub-Division" means any portion of freehold property in the Park, whether improved or not, capable of separate, individual, legal ownership;
- 1.1.32 "Total Platform Area" means :
- 1.1.32.1 for purposes Article 3.4.1, the sum total of Platform Area owned by all Members; and
- 1.1.32.2 for the purposes of Article 14.4.2, the sum total of Platform Area owned by all Members excluding, during the Development Period, any Platform Area owned by the Developer.
- 1.1.33 "Unit" means a sectional title unit (as contemplated in the Sectional Titles Act) in respect of any Sectional Title Scheme laid on a Subdivision;
- 1.1.34 "Voting Percentage" in respect of any Subdivision means the extent of the Platform Area of that Subdivision expressed as a percentage of the Total Platform Area.
- 1.1.35 Words and expressions used and not otherwise defined in this Memorandum of Incorporation shall have the meaning assigned to them by the Act.
- 1.1.36 Words importing the singular shall include the plural; words importing the masculine, feminine and neuter shall include the others of such genders; and words importing persons shall include Bodies Corporate, and vice versa in each instance.
- 1.1.36 The heading above any of this Memorandum of Incorporation is intended for reference purposes only and shall not influence the interpretation of the Articles.
- 1.1.37 In interpreting this Memorandum of Incorporation, no provision shall be construed in a limiting fashion or in accordance with the *Eiusdem Generis* Rule.

2 MEMBERSHIP

2.1 Membership of Association

- 2.1.1 Membership of the Association shall be obligatory for an Owner.
- 2.1.2 No Subdivision shall be transferred unless it is a condition of such transfer that the transferee, in a manner acceptable to the Association, agrees to become a Member and is admitted as a Member in terms of Article 2.2.1.
- 2.1.3 No Unit shall be transferred unless as a condition of such transfer that the transferee agrees to abide by this Memorandum of Incorporation and the Rules made in terms hereof, and in a manner acceptable to the Association.
- 2.1.4 In order to procure compliance with the provisions of this Memorandum of Incorporation :
- 2.1.4.1 it shall be registered as a Condition of Ownership of a Subdivision that no Subdivision shall be alienated without the prior written consent of the Association first being had and obtained which consent shall be given if the proposed transferee is or will be admitted as a Member of the Association and the transferor has complied with all his obligations to the Association (including but not limited to the payment of any monies due to the Association by such transferor); and
- 2.1.4.2 shall be registered as a Condition of Ownership of a Unit, that no Unit shall be alienated without the prior written consent of the Association first being had and obtained which consent shall be given if the transferor has complied with all its obligations to the

Association (including but in no way limited to the payment of monies due to the Association by the transferor) and the transferee has complied with its obligations in terms hereof.

Notwithstanding anything contained herein or elsewhere, the Developer shall not be required to obtain the consent of the Association when transferring any Subdivision owned by the Developer nor shall consent be required from the Association to mortgage any Subdivision simultaneously with the transfer thereof from the Developer.

For the purposes of this clause "alienate" means to alienate Subdivision or Unit or part thereof, and in no way detracting from the generality of the aforesaid, includes by way of sale, exchange, donation, deed, intestacy, will, cession, mortgage, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or involuntary, and further irrespective as to whether such alienation is subject to a suspensive or resolute condition.

2.1.5 In the event of a Subdivision being owned in undivided shares by more than one owner, such co-owners shall nominate one of them to be the Member for the purposes of this Memorandum of Incorporation provided that all joint owners shall be bound by this Memorandum of Incorporation as if they were Members. Such nomination shall be made in writing to the Association within 7 (Seven) days of such parties becoming Owners.

2.1.6 A Member may not tender resignation of his membership of the Association.

2.2 Admission of Members

2.2.1 The members of the Association shall be the Developer, during the Development Period, and those persons who, from time to time, become a member in accordance with the provisions of this Memorandum of Incorporation.

2.2.2 The right to determine admission to membership of a proposed acquirer of a Subdivision is hereby conferred upon the Board. The Board shall not unreasonably decline to admit to membership an applicant in the event of the applicant having undertaken to comply with and abide by this Memorandum of Incorporation and all the Association's requirements, rules and regulations and the party from whom the applicant is taking transfer of a Subdivision, has complied with this Memorandum of Incorporation and all the Association's requirements, rules and regulations (and in no way detracting from the generality of the aforesaid), has made payment of any amounts due by such transferor to the Association.

2.2.3 Members shall all be of a single class, being voting members, each of whom shall have a vote, the value of which shall be calculated in accordance with the provisions of Article 3.4.1 hereof.

2.3 Rights and duties of Members

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

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

2.3.1.2 the right to 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 Company as listed in Section 26 of the Act, which it is recorded includes the following, namely:

2.3.1.2.1 the Company's Memorandum of Incorporation and any amendments to it and any Rules made by the Company;

2.3.1.2.2 the records in respect of the Company's directors;

2.3.1.2.3 the reports to annual meetings and annual financial statements;

2.3.1.2.4 the notices and Minutes of annual meetings and any communications to the members; and

2.3.1.2.5 the register of members;

2.3.1.3 the right to vote, either personally or by proxy, at all general meetings of the Association in accordance with the provisions of this Memorandum of Incorporation;

2.3.1.4 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 Memorandum of Incorporation;

2.3.1.5 should Members holding between them, in aggregate, not less than 5% (Five Percent) of the voting rights in the Association, collectively so decide, the right to procure the convening of a general meeting in terms of Section 61 of the Act.

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

2.4 Cessation of Membership

2.4.1 Membership of the Association shall cease:

2.4.1.1 upon an owner of a Subdivision ceasing to be an Owner;

- 2.4.1.2 upon the issue of a final order of sequestration or liquidation of the Member concerned;
- 2.4.1.3 upon the death of a Member, or upon the Member being declared insane or incapable of managing his affairs.
- 2.4.2 In the event of a Member ceasing to be a Member in terms of Article 2.4.1.2 or 2.4.1.3 the legal representative of such Member shall, for all purposes, be recognised and be bound as the Member under this Memorandum of Incorporation.
- 2.5 **Liability of each Member**
- The liability of each Member as 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 to the Association, from time to time, from whatever cause arising.
- 2.6 **Register of Members**
- The Association shall maintain at its office a register of Members as provided in Section 24 of the Act. The register of Members shall be open to inspection as provided in Section 26 of the Act.
- 3 **GENERAL MEETINGS**
- 3.1 **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 Board, and shall specify the meeting as such in the notice calling it, provided, however, that the annual general meeting shall be held not later than **6 (Six) months** after the end of each financial year of the Association, and provided that not more than 15 (fifteen) months shall elapse after the holding of the last preceding annual general meeting.
- 3.2 **Notice of General Meeting**
- The annual general meeting and any meeting called for the passing of a Special Resolution shall be called by not less than **21 (Twenty One) clear 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 Memorandum of Incorporation, entitled to receive such notices from the Association: Provided that a meeting of the Association shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by all the Members having a right to attend the meeting.
- 3.3 **Proceedings at General Meetings**
- 3.3.1 **Business**
- The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the audited annual financial statements, a decision on the number of directors, and election of directors when such decision is required in accordance with the provisions of this Memorandum of Incorporation, and the appointment of an auditor, and any other business of which due notice has been given. All business laid before any other general meeting shall be considered special business.
- 3.3.2 **Quorum**
- 3.3.2.1 A quorum for :
- 3.3.2.1.1 a general meeting of Members (including the Annual General Meeting but excluding a meeting called for the purposes of passing a special resolution), shall be Members holding between them, in aggregate, not less than **5% (Five Percent)** of the voting rights in the Association, present, in person or by proxy, and entitled to vote (subject to a minimum of 2 (Two) Members being personally present), provided that for the Development Period, 1 (One) of such Members must be the Developer; and
- 3.3.2.1.2 a general meeting of Members called for the passing of a special resolution, shall be Members holding between them, an aggregate, of not less than **25% (twenty five percent)** of the voting rights in the Association, present in person or by proxy, and entitled to vote (subject to a minimum of 2 (Two) Members being personally present), provided that for the Development Period, 1 (One) of such Members must be the Developer.
- 3.3.3 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) days** and not later than **21 (Twenty One) days** after the date of the meeting and if at such adjourned meeting a quorum is not present within half-an-hour after the time appointed for the meeting, the Members present in person shall be a quorum.
- 3.3.4 Where a meeting has been adjourned as aforesaid, the Association shall, upon a date not later than **3 (Three) days** after the adjournment, send written notice to each Member of the Association or, alternatively, publish a notice in two recognised newspapers circulating in the Ballito area, stating:
- 3.3.4.1 the date, time and place to which the meeting has been adjourned;

3.3.4.2 the matter before the meeting when it was adjourned; and

3.3.4.3 the grounds for the adjournment.

Chairman

3.3.5 The chairman, if any, of the Board shall preside as chairman at every general meeting of the Association. If there is no such chairman, or if at any meeting he is not present within fifteen (15) minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the Members shall elect one of their Members to be chairman. Notwithstanding the foregoing, during the Development Period, the chairman and deputy chairman shall be nominees of the Developer.

3.3.6 The chairman may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of Articles 3.3.3 and 3.3.4 shall *mutatis mutandis* apply to such adjournment.

Voting

Subject to the provisions of Article 3.4.2, 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 Chairman or by any Member, and unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried (by a particular majority) or negated, and an entry to that effect in a book containing the minutes of the proceedings of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of 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 Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting in which the poll was demanded. Scrutineers shall be elected to determine the result of the poll. In the case of an equality of votes, whether on the show of hands or a poll, the Chairman of the meeting at which it was taken shall be entitled to a second or casting vote, subject to the provisions of Article 3.4 below.

Proxy

3.3.8 The instrument appointing a proxy shall be in writing, dated and signed by the Member and shall be in such other form as the Board may approve.

3.3.9 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 otherwise provides.

3.3.10 A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided no intimation in writing of the death or revocation shall have been received at the office or by the chairman of the meeting before the vote is given.

3.3.11 In the event of a Member being a juristic person, or the Body Corporate of a sectional title scheme, such Member shall lodge at the offices of the Association, a resolution authorising a particular natural person to represent the Member generally and to exercise the Member's vote on its behalf. Such Resolution shall be lodged at the offices of the Association at least 48 (Forty Eight) hours before the time for the holding of any meeting at which a Member wishes to be represented and/or vote.

3.4 Votes of Members

3.4.1 Subject to the provisions of Article 3.4.2, on a show of hands, each Member present at a meeting of the Association, in person or by proxy, shall be entitled to one vote. On a poll, which may be called for by any Member or his proxy or the Chairman of the meeting, the value of each Member's vote shall be calculated in accordance with the Voting Percentage (provided that for the purposes of this Article, a Body Corporate of a Sectional Title Scheme laid on a Subdivision, shall be deemed to be the Owner of the entire Platform Area on that Subdivision).

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

3.5 RESOLUTIONS OF MEMBERS

3.5.1 For an ordinary resolution to be approved of by Members, it must be supported by more than **50% (Fifty Percent)** of the voting rights exercised on the resolution.

3.5.2 For a special resolution to be approved of by members, it must be supported by at least **75% (Seventy Five Percent)** of the voting rights exercised on the resolution.

4 INSPECTION OF MINUTES

The minutes kept of every general meeting and annual general meeting of the Association under Section 24 of the Act, may be inspected and copied as provided in Section 26 of the Act.

5 **DIRECTORS (TERMS OF OFFICE)**

5.1 The number of Directors and the election thereof shall be determined from time to time by the Members in general meeting subject to the following provisions:

5.1.1 during the Development Period, there shall be a maximum of 5 (Five) Directors and a minimum of 2 (Two) Directors, 4 (Four) of whom shall be nominees of the Developer;

5.1.2 after the expiry of the Development Period, there shall be a maximum of 7 (Seven) Directors and a minimum of 2 (Two) Directors;

5.1.3 a retiring Director shall be eligible for re-election;

5.1.4 a nominee of the Developer shall be a director for so long as the Developer does not revoke his appointment.

5.2 Save as is set out in Article 5.3 and Article 10, and save for the Directors nominated by the Developer in terms of Article 5.1, each Director shall continue to hold such office from the date of his commencement of office until the Annual General Meeting next following his said appointment, at which meeting each Director shall be deemed to have retired from office as such but will be eligible for re-election to the Board at such meeting.

5.3 If, as a result of retirement, resignation or otherwise, the total number of Directors falls below the prescribed number, the Board shall act promptly to bring the number of Directors up to the level as specified in this Memorandum of Incorporation. If the Director 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 during a period when the number falls short of that provided in 5.1 above shall not be prejudiced by such shortfall.

5.4 Any Director, with the exception of a Director appointed by the Developer, may be removed by a majority Board decision, for any reason whatsoever.

5.5 The appointment by the Board of any Director to fill any vacancy for whatever reason, shall be made within 45 (Forty Five) days of the date upon which such vacancy occurs.

5.6 The Directors shall have the power to co-opt persons for the purposes of assisting the Directors in carrying out any of their functions. Any person so co-opted shall be entitled to attend board meetings but shall not be a director and shall not be entitled to vote on any matter which comes up for consideration by the Board.

5.7 The chairman and deputy chairman shall be elected by the Directors at their first meeting in the financial year, provided that for the Development Period, the Chairman and the Deputy Chairman shall be directors nominated by the Developer.

5.8 Save for the Directors nominated by the Developer during the Development Period, a Director shall be required, at the date of his appointment, and for the duration of the period that he holds the position of Director, to be a person in the employ of, or with a pecuniary interest in, a Member.

6 **ALTERNATE DIRECTORS**

6.1 Any Director 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.

6.2 Any other Director may obtain leave of absence by a resolution of the majority of the Directors, and the Board may thereupon appoint an alternate to act for him during his absence with all powers and privileges enjoyed by him.

7 **REMUNERATION OF DIRECTORS**

7.1 A Director shall not directly or indirectly receive any remuneration for his services as a director of the Association, except as reasonable remuneration for goods delivered or services rendered to it, or as otherwise permitted in terms of the Act.

7.2 If any Director commits a breach of Article 7.1 he shall forthwith cease to be a Director and shall not be eligible for re-election.

8 **POWERS AND DUTIES OF DIRECTORS**

8.1 The business of the Association shall be managed by the Board, who may on behalf of the Association pay all expenses incurred in promoting and incorporating the Association, and may exercise all such powers of the Association as are not specifically required by the Act, or by this Memorandum of Incorporation, to be exercised by the Association in general meeting.

8.2 Without in any way affecting the generality of Article 8.1 the Board shall have the power to enter into contracts and agreements with third parties to give proper effect to the provisions of this Memorandum of Incorporation (including, but in no way limited to, the appointment of a Managing Agent and in respect of the management and control of the Park).

8.3 The Board may, pursuant to their rights, obligations and duties in terms of this Memorandum of Incorporation and as provided

for and contemplated under this Memorandum of Incorporation, incur such expenditure as is necessary and/or requisite and howsoever arising to enable them to give proper effect to the provisions of the Memorandum of Incorporation of the Association.

- 8.4 After the termination of the Development Period, the Association in a general meeting, shall have the right to limit and restrict the powers of the Board, provided that no such resolution of the Association shall invalidate any prior act of the Directors which would otherwise have been valid.

Conduct Rules

- 8.5 The Board shall have the power to make conduct rules from time to time as well as the power to substitute, add to, amend or repeal same, for the management, control, administration, use and enjoyment of the Park, for the purposes of giving proper effect to the provisions of the Memorandum of Incorporation and for any other purpose, which powers shall include the right to impose reasonable financial penalties to be paid by those Members who fail to comply with the provisions of this Memorandum of Incorporation or the conduct rules.

- 8.5.1 In no way detracting from the generality of the aforesaid, the Board may from time to time make conduct rules, applicable within the Park, specifically in regard to, inter alia:

8.5.1.1 the preservation of the natural environment;

8.5.1.2 vegetation and flora and fauna in the Park;

8.5.1.3 the placing of movable objects upon or outside the buildings included in the Park, including the power to remove any such objects;

8.5.1.4 the storing of flammable and other harmful substances;

8.5.1.5 the conduct of any persons within the Park and the prevention of nuisance of any nature to any owner of immovable property in the Park;

8.5.1.6 the use of property within the Park;

8.5.1.7 the use of roads, pathways and open spaces;

8.5.1.8 the imposition of fines and other penalties to be paid by members of the Association;

8.5.1.9 the management, administration and control of the common areas, open spaces and savannahs;

8.5.1.10 the Design Guidelines for the erection of all buildings and other structures, including service connections to buildings;

8.5.1.11 the Design Guidelines for the establishment, installation and maintenance of gardens, both public and private;

8.5.1.12 the use by owners and their tenants of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings;

8.5.1.13 security;

8.5.1.14 the procedure in having building plans approved of by the Design Review Panel and the Local Authority;

8.5.1.15 the conditions to be inserted, in favour of the Association, in any contract in terms of which any Subdivision is alienated or otherwise disposed of; and

8.5.1.16 generally in regard to any other matter which the Association from time to time considers appropriate.

8.5.2 Enforcement of Conduct Rules

- 8.5.2.1 The Board may take or cause to be taken such steps as they may consider necessary to remedy the breach of any conduct rules of which the Member may be guilty and debit the costs of so doing to the Member concerned which amount shall be deemed to be a debt owing by the Member to the Association. In addition the Board may impose a system of fines or other penalties. The amounts of such fines and/or penalties shall be determined by the Board from time to time.

- 8.5.2.2 In the event of any breach of the conduct rules by any tenant or occupier of any property owned by the Member, such breach shall be deemed to have been committed by the Member and the Board shall be entitled to take such action as they deem fit against the responsible Member.

- 8.5.2.3 Notwithstanding the foregoing, the Board may in the name of the Association enforce the provisions of any conduct rules by an application in a Court of competent jurisdiction and for this purpose may appoint such attorneys or Counsels they may deem fit.

- 8.6 Any conduct rules made by the Board shall reasonably be in the interest of the Association and the Park and, where applicable, shall apply equally to all Members or "class" of Members, as the case may be.

- 8.7 The conduct rules made by the Board from time to time in terms of the powers granted to them shall be binding on all Members.
- 8.8 In no way detracting from the generality of any other provision of this Memorandum of Incorporation, in the event of the Association incurring any legal costs as a result of any breach of this Memorandum of Incorporation by any Member, the Association shall be entitled to recover all such legal costs from such Member on an attorney and own client scale in full whether or not legal action is actually instituted.

9 MINUTES

- 9.1 The Board shall, as provided for in the Act, cause Minutes to be kept:
- 9.1.1 of all appointments of officers;
- 9.1.2 of names of Directors present at every meeting of the Association and at every meeting of the Directors; and
- 9.1.3 of all proceedings at all meetings of the Association and/or the Directors.
- 9.2 Such Minutes, once they are approved as a true record of proceedings, shall be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the following meeting.

10 DISQUALIFICATION OR RESIGNATION OF DIRECTORS

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

- 10.1 ceases to be a Director by effluxion of the period of appointment, or becomes prohibited from being a Director by virtue of any provision of the Act or this Memorandum of Incorporation; or
- 10.2 resigns his office by notice in writing to the Association and the Registrar; or
- 10.3 becomes insolvent or assigns his estate for the benefit of or compounds with his creditors; or
- 10.4 is found to be a lunatic or of unsound mind; or
- 10.5 is absent for three consecutive regular meetings of the Directors without obtaining prior leave of absence;
- 10.6 in the case of a Director appointed by the Developer, on the Developer revoking his appointment.
- 10.7 if the Director is otherwise ineligible or disqualified from serving as a Director on the grounds set out in Section 69 of the Act.
- 10.8 if a Director (other than a Director nominated by the Developer during the Development Period), ceases to a person in the employ of, or with a pecuniary interest in, a Member (see Article 5.8 in this regard).

11 PROCEEDINGS AT MEETINGS OF DIRECTORS

- 11.1 The Directors 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.
- 11.2 Any Director may, on 7 (Seven) day's written notice to all other Directors, at any time summon a meeting of the Directors.
- 11.3 The quorum necessary for the transaction of the business of the Directors shall be a simple majority of Directors in number, provided that for the Development Period at least one (1) of such Directors must be the nominee of the Developer.
- 11.4 If at a meeting neither the chairman nor the deputy chairman is present within 10 (Ten) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman for that meeting subject to the provisions of Article 5.7.
- 11.5 Questions arising at any meeting of the Directors shall be decided by a majority of votes of the Directors, present in person or by an alternate. Each Director shall be entitled to exercise 1 (One) vote, provided that, subject to what is provided for below, in the case of an equity of votes the Chairman shall have a second or casting vote. Notwithstanding the foregoing, during the Development Period, the Directors who are nominees of the Developer and are present at such meeting, shall, for the purposes of voting on any proposed resolution of the Board, be deemed, jointly, to hold between them 51% (fifty one percent) of the votes of Directors present at the meeting.
- 11.6 All acts done in terms of any resolution passed at any meeting of the Directors or a committee of Directors or by any person acting as a Director, 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 Director in a meeting of Directors or a committee of Directors had been duly appointed and had qualified to be a Director.
- 11.7 A Resolution signed by all of the Directors shall be a valid Resolution notwithstanding that such Resolution may not have been passed at a meeting of the Board.

- 11.8 A meeting of the Board of Directors may be conducted by electronic communication or one or more Directors may participate in a meeting by electronic communication, as contemplated, and subject to the provisions of Section 73(3) of the Act.

Committees

- 11.9 The Board may delegate any of their powers to committees consisting of such persons as they think fit, the Chairman 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.
- 11.10 Should the Board not appoint the chairman of a committee, the members of that committee shall elect a chairman of its meetings. If at any meeting the chairman 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 chairman for that meeting.
- 11.11 A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the committee Members present and in the event of an equality of votes the chairman shall have a second or casting vote.
- 11.12 **Limitation of Liability of Directors**

Subject to the provisions of the Act, no Director shall be liable for any loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his office or in relation thereto unless the same occurs as a result of his own dishonesty, gross negligence or default, breach of duty or breach of trust.

12 DELEGATION OF POWERS OF DIRECTORS

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

13 ASSIGNMENT OF POWERS AND FUNCTIONS

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

14 LEVY FUND

- 14.1 The Board shall establish and maintain a levy fund sufficient in their opinion for the repair, upkeep, control, management and administration of the Association and of the Park including but not limited to the provision of security services for the Park, garden maintenance services, verge and private road maintenance, insurance premiums, the payment of rates and taxes and other charges on the Park 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 Park including any matter arising from the provisions of Article 13, and any services required by the Association to enable it to carry out its main and ancillary objects, for the covering of any losses suffered by the Association, for the payment of any premiums of insurance and of all other expenses incurred or to be incurred in relation to the Park and for the discharge of any other obligation of the Association (provided that nothing in this Memorandum of Incorporation shall be construed as obliging the Association to pay service charges due by Owners to the relevant authority).
- 14.2 All levies due by Members shall be payable to the Association immediately same become due and owing without deduction, demand or set-off and shall be payable in the manner prescribed by the Board.
- 14.3 Notwithstanding anything contained herein or elsewhere, during the Development Period, the Developer alone in his sole and absolute discretion, shall determine what portion of the total expenditure of the Association is to be paid by the Developer.
- 14.4 Subject to the provisions of Articles 14.3, the Board shall determine the proportions in which Members shall contribute towards the levy fund in accordance with the following principles, having regard to all circumstances prevailing at the time and to equity:
- 14.4.1 they shall assign those costs arising directly out of the Subdivision itself to the Member owning such Subdivision;
- 14.4.2 they shall assign those costs relating to the Park generally, (including but in no way limited to, the maintenance of the Common Spaces) to a Member on a pro rata basis in accordance with the Voting Percentage;
- 14.4.3 they may draw distinction between services rendered by the Association to a particular Body Corporate for a particular Scheme, again taking into account the nature and extent of the services rendered to that Body Corporate.

provided however that the Board may (subject to the provisions of Article 14.3 above) in any case where they consider it equitable to do so, assign to any owner any greater or lesser share of the costs as may be reasonable in the circumstances;

and provided further that any replacement or other reserves shall be determined by the Board.

- 14.5 All contributions received from Members and the Developer shall forthwith be deposited in a separate account which the Association shall open and keep with a financial institution.
- 14.6 The monies in the levy fund shall be utilised to defray the expenses referred to in clause 14.1 above.
- 14.7 Notwithstanding any person ceasing to be a Member, all levies attributable to any period whilst such person was a Member, shall continue to be of full force and effect and recoverable from such person.
- 14.8 Any amount due by a Member whether in respect of a levy or any other amount falling due for payment under this Memorandum of Incorporation, 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 **Investec Bank Limited** as its prime overdraft rate plus **3 (Three) percentage points**. Such interest shall be calculated and compounded monthly.
- 14.9 Subject to the provisions of Article 14.3, the Board shall have the power to impose additional special levies on Members in respect of any unforeseen expenditure and shall determine how such levies are to be paid in accordance with the principles set out in Article 14.4.
- 14.10 A Member shall not be entitled to demand repayment of any amount standing to the credit of his levy account.
- 14.11 All contributions levied under the provisions of this Memorandum of Incorporation shall be due and payable by Members on the passing of a resolution to that effect by the Board and may be recovered by the Association by action in any Court (including any Magistrates Court) of competent jurisdiction from the persons who were Members at the time when such contributions became due.
- 14.12 The Board shall establish a Levy Stabilisation Fund for the purposes of meeting extraordinary expenditure and expenditure of a capital nature, to be incurred by the Association in carrying out its main objects under provisions of this Memorandum of Incorporation. In the event of any Subdivision or Unit being sold, alienated or otherwise disposed of, the new owner shall be obliged to pay the Levy Stabilisation Fund contribution applicable at that time and the ex-owner shall not be entitled to a refund of the Levy Stabilisation Fund contribution paid by him. Further, in the event of a member being a Juristic Person and the Beneficial Interest in such Juristic Person being alienated or otherwise disposed of, the new holder of such Beneficial Interest shall similarly be obliged to pay the Levy Stabilisation Fund contribution applicable at the time, and the ex-holder of such Beneficial Interest shall not be entitled to a refund of any Levy Stabilisation Fund contribution paid.
- 14.13 Should a Member be more than 60 (Sixty) days in arrears with the payment of any levies due in terms of this Memorandum of Incorporation or any other amount of any nature whatsoever due to the Association by such Member (including by not limited to any fine that may be imposed by the Association on any such Member) and remain in arrears notwithstanding demand for payment by the Association, then in that event such Member shall not be entitled either in person or by proxy to speak or vote at a meeting of Members of the Association. A certificate by the Chairman of the Board, dated not more than 14 (Fourteen) days prior to any such meeting, shall constitute proof of non-payment of any arrear levies by such Member and shall entitle the Chairman of such meeting of the Members of the Association to prevent such Member or his proxy speaking or voting at such meeting (even if payment is made by such Member before such meeting but subsequent to the aforesaid certificate having been signed by the Chairman of the Board).
- 14.14 In the event of there being a dispute as to the amount of any levy due by the Member, such dispute shall be referred to the Association's Auditors for a decision, whose decision shall be final and binding on the parties.

15 ACCOUNTING RECORDS

- 15.1 The Board shall cause such accounting records as are prescribed by the Act to be kept. Accounting records shall be deemed to be proper if they represent fairly the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.
- 15.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Board think fit, and shall always be open to inspection by the Members during normal business hours on normal business days.

16 ANNUAL FINANCIAL STATEMENTS

- 16.1 The Board shall from time to time, in accordance with the Act, cause to be prepared and laid before the Association in general meeting such financial statements as are prescribed by the Act.
- 16.2 A copy of any annual financial statements shall be laid before the Association in annual general meeting. A copy of the aforesaid financial statements shall, not less than 21 (Twenty One) days before the date of the meeting, be sent to every Member of the Association: Provided that this Memorandum of Incorporation shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.
- 16.3 The financial year of the Association shall commence on the first day of **July** and shall terminate on the **30 June** each year, unless otherwise determined by the Board.

17 AUDITOR

An auditor shall be appointed by the Board in accordance with the Act.

18 NOTICES

- 18.1 A notice may be given by the Association to any Member either by advertisement or personally, or by sending it by post by prepaid letter addressed to such Member at his registered address, or if he has no registered address in the Republic at the address (if any) within the Republic supplied by him to the Association for the giving of notices to him. Any notice which may be given by advertisement shall be inserted in such newspaper as the Board may from time to time determine.
- 18.2 Notice of every general meeting shall be given in any manner authorised:
- 18.2.1 to every Member of the Association. If a Member has not supplied the Association with an address within the Republic of South Africa for the service of notice by hand or by registered post, then it shall be considered sufficient for the Association to serve notice at the address of the Subdivision owned by the Member;
- 18.2.2 to the auditor for the time being of the Association.
- 18.3 No other person shall be entitled to receive notice of general meetings.
- 18.4 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and any notice by advertisement shall be deemed to have been given on the day upon which the advertisement was published in the newspaper, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted. Any notice delivered by hand to a Member shall be deemed to have been received by such Member on the date of delivery.
- 18.5 The failure to give notice to any Member or the failure of any Member to receive a notice shall not vitiate any proceedings of the Association.
- 18.6 Notwithstanding anything contained herein or elsewhere, the sending of any notice or other communication to a Member at an electronic mail address, nominated by such Member 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 Memorandum of Incorporation, and shall be deemed to have been received by the Member on the date that such communication or other notice was sent by electronic mail.

19 WINDING-UP OF ASSOCIATION

Subject to the provisions of Article 21.4.2, in the event of the Association being wound up, its assets (if any) shall devolve upon such other corporation as the Members in such winding-up order determine, provided that such corporation has aims and objects similar to those of the Association.

20 DESIGN REVIEW PANEL

- 20.1 The Design Review Panel shall be established as contemplated in Article 11.9 and shall be comprised of:
- 20.1.1 during the Development Period, an architect, urban designer or other competent professional and two (2) other individuals appointed by the Developer; and
- 20.1.2 after the expiry of the Development Period, three (3) individuals appointed by the Board provided that at all times at least one (1) of the members of the Design Review Panel shall be an architect.
- 20.2 The Design Review Panel shall act as, *inter alia*, an aesthetics committee with a view to ensuring any development within the Park is in accordance with the Participation Manual, the Scheme and with standards and an architectural theme which will enhance the attraction of the Park as a whole.
- 20.3 The Board shall ensure that the Design Review Panel carries out all the functions and duties entrusted to it so as to give proper effect to the provisions of the Participation Manual.
- 20.4 Any individual appointed to the Design Review Panel by the Developer may, for any reason or for any time, appoint an alternative.
- 20.5 The Chairman and Deputy Chairman of the Design Review Panel shall be elected by the Panel at their first meeting in the financial year of the Association, provided that, during the Development Period, the Chairman and Deputy Chairman shall be members of the Panel nominated by the Developer.

21 REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE PARK

21.1 Buildings and improvements

- 21.1.1 In order to procure compliance with the nature and amenity of the Park nothing shall be erected or built on any Subdivision or placed on or attached to a building or any other structure, visible from the outside of the building or such other structure without the consent of the Design Review Panel and no building, extension or alteration to an existing building or other structure shall be built or erected within the Park, other than in accordance with the Scheme, the Participation Manual and plans approved by the Design Review Panel which approval shall be in writing and signed by a duly authorised representative of the Design

Review Panel. The Design Review Panel shall be entitled to charge members a fee, as determined by the Board in this regard. Before giving such approval, the Panel 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 Panel, to enable them to consider the matter. Any approval as contemplated herein may be subject to such conditions as the Design Review Panel may deem fit. In the event of any building or other structure being erected, save in accordance with the plans approved of by the Design Review Panel as set out in this clause, then in that event, the Board shall be entitled to make such amendments to such building or other structure in order to procure compliance with building plans approved of by the Design Review Panel and recover the costs of such alterations from the relevant owner in question which amount shall be deemed to be part of the levy due by the Member to the Association. Notwithstanding the foregoing, the provisions of this clause shall not be binding on the Developer during the Development Period. This clause shall in no way alter or supersede any requirements of, or obligations to, the relevant Local Authority.

- 21.1.2 Members shall ensure that their property is kept in a neat and tidy state at all times. In no way detracting from the generality of the aforesaid, Members shall ensure that, while their Property is undeveloped, it is kept grassed and mowed.

21.2 Landscaping

- 21.2.1 Save as may otherwise be agreed by the Board, any landscaping on property to be undertaken by a Member shall be undertaken in accordance with a landscape plan approved by the Design Review Panel and no Member shall commence landscaping of any Subdivision until such time as such landscape plan has been approved in writing. In addition, Members shall be liable for payment of a landscaping deposit upon submission of the aforesaid landscaping plan for approval, in accordance with the provisions of the Participation Manual.

- 21.2.2 Notwithstanding anything to the contrary herein or elsewhere contained, no Member shall have the right to landscape any part of the Park (including, but in no way limited to, the planting, removal or trimming of any tree, shrub or grass) or attempt to erect any fence or wall or any other structure or remove same on any property without the prior written consent of the Design Review Panel. Notwithstanding the foregoing, the provisions of this clause shall not be binding on the Developer during the Development Period.

- 21.2.3 It is recorded that prior to taking transfer of a Subdivision, a Member shall be required to pay a landscaping deposit to the Association in such amount and on such terms and conditions, as may be decided upon by the Board, from time to time.

21.3 Provision of Services

- 21.3.1 The Association may, from time to time, contract with suppliers of services to provide services to the Park.
- 21.3.2 In no way detracting from the generality of the aforesaid, it is recorded that should the local authority or any other service provider not have the means, or be unwilling, to maintain or provide the normal municipal services within the Park, the Association may, if the Board in its sole discretion deems it appropriate, take over the responsibility for providing and maintaining such services.
- 21.3.3 The cost of providing such services shall be included in the amount of the levy payable by Members to the Association provided the Association shall ensure that no Member shall be liable for a pro rata contribution in respect of a service which he does not actually receive.

21.4 Common Spaces and Private Roads

- 21.4.1 Members, their employees and invitees shall be entitled to use all common spaces and Private Roads, owned or managed by the Association in the Park, subject to the rules and restrictions as the Board may lay down from time to time, provided that at all times Owners shall have vehicular and pedestrian ingress and egress from their property to a public road, subject to security measures as the Board may implement from time to time.
- 21.4.2 No resolution for the winding up of the Association shall be passed prior to the rights of vehicular and pedestrian ingress and egress above referred to being secured by way of servitudes registered against the title of the Park or the transfer of such accesses to a local authority, as public roads.

21.5 Maintenance of Building

Save where such work is carried out by the Association, the exterior of every building shall be maintained and kept in a clean, tidy and neat condition by the Member and no Member shall be entitled to apply paint or any similar material to any exterior part of his building without the prior written consent of the Association which consent shall not unreasonably be withheld. An Owner shall, on receipt of a notice given by the Association, undertake such work as may be specified in such notice relative to such Owner's building. Should an Owner fail to carry out any work as required by the Association, after the Association has given the owner notice, which the Association deems reasonable in the circumstances, so to comply, the Association shall be entitled to carry out such work and to recover the reasonable cost thereof from the Member concerned which amount shall be deemed to be part of the levy due by the Member to the Association.

21.6 Occupation of Building

Occupation and use of a building shall, at all times, be in compliance with the Scheme, the Participation Manual and this Memorandum of Incorporation. No Member shall use any building within the Park or allow any other person to use such building for purposes not permitted by the Scheme or this Memorandum of Incorporation or the Rules, nor occupy any building not approved of by the Design Review Panel and confirmed in writing by the Design Review Panel as being complete and

compliant with its requirements.

21.7 **Services**

Inasmuch as the provision, establishment, maintenance and repair of services may be required to take place in the Park, Members shall be obliged to accept the laying out and installation of such services across their Subdivision, in such places as the Design Review Panel determines, from time to time. The Design Review Panel or persons authorised by it, shall be entitled to enter upon such Subdivision for the purpose of providing, establishing, maintaining and/or repairing the services, provided that such work shall be carried out with as little inconvenience to the affected party as reasonably possible.

21.8 **Security of the Park**

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

Maintenance of Common Spaces, Private Roads and Municipal Services

21.9 The Association shall be responsible for the maintenance, upkeep and repair of the Common Spaces. Further, in the event of the Local Authority, or any other provider of services to an area in, or in the vicinity of the Park, 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).

21.10 It is recorded that the Association will be the holder of a number of servitudinal rights over various immovable properties within the Park (including, but not limited to right of way servitudes, sidewalk servitudes, parking servitudes, landscaping 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 servitudinal rights to individual Members 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 its Members as a whole.

21.11 **Environmental Management Plan**

Notwithstanding anything contained herein or elsewhere, no immovable property within the Park shall be developed or utilized in any manner save in accordance with the Environmental Management Plan.

21.12 **Participation Manual**

Notwithstanding anything contained herein or elsewhere, no immovable property within the Park shall be developed save in accordance with the provisions of the Participation Manual.

22 **SECTIONAL TITLE SCHEMES**

22.1 As provided for in Article 1 hereof, in the event of a Sectional Title register being opened on any Subdivision, as contemplated in terms of the Sectional Titles Act, then in that event, the Body Corporate of such sectional title scheme (as opposed to the individual owners of the sectional title units therein) shall be the member of the Association in respect of that particular Subdivision.

22.2 It is recorded that although the aforesaid Body Corporate, as the member of the Association, is obliged to comply with the provisions of the Memorandum of Incorporation and the Rules, (and further obliged to ensure that the Body Corporate's members, guests and invitees or any other person who may come upon the land in question or the Park by virtue of their rights thereto, do likewise) each owner of each sectional title unit in such sectional title scheme shall, should the Board, so require, be obliged to sign an undertaking in favour of the Association agreeing to comply with the Memorandum of Incorporation and Rules and to pay a portion of the levy due by the Body Corporate to the Association (which portion shall be calculated by multiplying the total levy payable by the Body Corporate by the participation quota, as contemplated in the Sectional Titles Act, of that particular member's section) directly to the Association in the event of the Body Corporate failing to make payment of the total monthly levy to the Association timeously.

22.3 The levy and other amounts due by the Body Corporate to the Association shall constitute a first charge on all amounts collected by the Body Corporate from its members.

22.4 The rules of the Body Corporate of any Sectional Title Scheme within the Park, shall in no way contradict, and shall be in every way be subservient to, this Memorandum of Incorporation and the Rules made by the Board in terms hereof.

23 **ENFORCEMENT OF OBLIGATIONS OF OWNERS**

Should any Member, or any lessee of a Member, fail to perform any obligation incumbent upon him, if applicable, within the period of any notice given for compliance, 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 Member concerned, which shall be payable on demand. The Member shall be obliged to bring to the attention of any tenant of his property, the rules and regulations of the Association and shall ensure such tenant complies with the aforesaid rules and regulations. In addition, a Member shall utilise its best endeavours to ensure that any invitee of the Member who goes upon the Park complies with the Association's rules and regulations.

24 DETERMINATION OF DISPUTES

- 24.1 Subject to Article 14.13 above, in the event of any dispute or difference arising between the Members inter se or between a Member and the Association as to the construction, meaning, interpretation or effect of any of the provisions or as to the rights, obligations or liabilities of the Association or any Member in terms of this Memorandum of Incorporation, the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 90 (ninety) days, then such dispute or difference shall be submitted to arbitration in accordance with the provisions set out below.
- 24.2 The arbitrator shall be if the question in issue is:
- 24.2.1 primarily an accounting matter, an independent chartered accountant of not less than 15 (fifteen) years standing as such appointed by the President for the time being of the South African Institute of Chartered Accountants in Kwazulu-Natal;
- 24.2.2 primarily a legal matter, a practising senior Advocate of not less than 10 (ten) years standing as such, or a practising attorney of not less than 15 (fifteen) years standing as such, in either event as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or any body enacted to replace such Society);
- 24.2.3 any other matter, an independent person agreed upon between the parties and, failing agreement, as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or any body enacted to replace such Society) regard being had to the needs of the dispute and the qualifications required therefor.
- 24.2.4 If agreement cannot be reached within 10 (ten) business days after the arbitration has been demanded as to whether the question in issue falls under 24.2.1, 24.2.2 or 24.2.3, then a practising Advocate of not less than 10 (ten) years standing or alternatively practising attorney of not less than 15 (fifteen) years standing as such, as agreed between the parties and failing agreement as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or any body enacted to replace such Society) as soon as possible thereafter, shall determine that issue so that an arbitrator can be appointed and the arbitration can proceed as soon as reasonably practical in the circumstances.
- 24.2.4.1 The arbitration referred to in 24.1 shall be held:
- 24.2.4.1.1 in a summary manner, i.e. on the basis that it shall not be necessary to observe or carry out either:
- 24.2.4.1.2 the usual formalities or procedure, which may be otherwise be prescribed in terms of the laws referred to in clause 24.4.3 below, or
- 24.4.1.2 the strict rules of evidence;
- 24.4.2 immediately and with a view to it being completed within 30 (thirty) days of the appointment of the arbitrator having particular regard to any urgency regarding the matter in issue, provided that should any party to such dispute delay or omit to fulfil any act required of it to enable the arbitration to be duly completed within the period aforesaid, any other party hereto shall be entitled at its election and upon the expiration of 6 (six) days' notice to the defaulting party to that effect, without such defaulting party having remedied its default or omission to the satisfaction of the arbitrator, either to require the arbitrator summarily without hearing the parties to determine the rules of procedure for the finalising of the arbitration proceedings within such further period not exceeding 14 (fourteen) days beyond the original 30 (thirty) day period as the arbitrator may determine, or alternatively and in the discretion of the party serving such 6 (six) day notice aforesaid, to require the arbitrator to proceed with the arbitration without the further participation of the defaulting party, in which event the defaulting party shall be barred from participating in the further conduct of the arbitration other than at the hearing thereof, and the decision of the arbitrator then to proceed with the arbitration, either with the presence or in the absence of the defaulting party, will be competent, or further alternatively and in the discretion of the party serving the 6 (six) day notice aforesaid, such party shall be entitled to have recourse to the competent Court having jurisdiction, in which event the arbitrator shall then be entitled to make an award of any wasted costs occasioned by the proceedings, and whereupon such arbitration proceedings shall then terminate and the wasted costs borne by the party against whom the award is made, and the decision of the arbitrator as to such costs shall be final and binding upon the relevant parties;
- 24.4.3 otherwise, but subject to the relevant provisions hereof and subject to any other alternative directions which the arbitrator may and shall be competent to prescribe, under the provisions of the arbitration laws of the place in which the arbitration takes place as amended from time to time.
- 24.5 The arbitrator shall:
- 24.5.1 be entitled to make any award as to costs of the proceedings;
- 24.5.2 decide the matter submitted to him according to what he considers just and equitable in the circumstances, and shall have regard to the desire of the parties to dispose of such dispute expeditiously, economically and confidentially, and the strict rules of law need not be observed or taken into account by him in arriving at his decision.
- 24.6 The parties irrevocably agree that the decision of those arbitration proceedings:
- 24.6.1 shall be binding on all of them and shall be forthwith carried into effect;
- 24.6.2 may at the instance of any party hereto be made an Order of Court of competent jurisdiction, provided that such proceedings

for such Order of Court shall not delay in any way at all the due execution and carrying into effect of the arbitrator's award.

- 24.7 Notwithstanding anything to the contrary contained in this Article 24, the provisions hereof shall not preclude any party hereto from taking any action against any other party or parties to the dispute in any competent Court having jurisdiction where such action is reasonably required either to restrain temporarily pending the outcome of any arbitration proceedings as hereinbefore provided for, any party hereto from commencing or continuing any action or course of action or likewise to enforce temporarily pending such arbitration proceedings any omission by any party, which action, course of action or omission is or is likely to materially prejudice any party hereto, and regard being had to all the circumstances, is of such an urgent nature that it would not be appropriate merely to have recourse to arbitration proceedings, the parties agreeing that the test to be generally applied being that which would otherwise entitle any party hereto to an urgent interdict against any other party in accordance with the relevant laws applicable.

25 DEVELOPER'S RIGHTS REGARDING THE PARK

- 25.1 The Developer shall, be entitled to develop any property within the Park of which it is the owner in conformity with the Scheme, without the approval of the Association.
- 25.2 The Developer shall be entitled to bring any application that may be required (including a rezoning application) in order to change the use of any Subdivision owned by the Developer, the consent of the Association, or any Member(s) not being required. In the event of the Developer bringing any such aforesaid application, no Member shall be entitled to unreasonably object to such application and waives its right to object to same, in favour of the Developer.

26 INCORPORATION OF ADDITIONAL LAND

- 26.1 The Developer may, on notice in writing to the Board, have any land contiguous to the Park (as currently defined in this Memorandum of Incorporation) incorporated into the Park. 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. (Provided that, for the purposes of this clause 26.1, any property separated from the Park by a public road, shall be regarded as contiguous to the Park).
- 26.2 In addition, the Developer may, with the prior written consent of the Board, incorporate any additional land into the Park which is not contiguous to the Park (as currently defined in this Memorandum of Incorporation).

27 DISCLAIMER OF RESPONSIBILITY

- 27.1 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 Park regardless of the cause thereof nor shall the Association be responsible for any theft of property occurring within the Park. Members 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.
- 27.2 The Association and/or its agents shall not be liable to any Member or any of the Member's lessees, or their respective employees, agents, servants, invitees or customers or any member of the public dealing with the Member, for any injury or loss or damage of any description which the Member or any such other person aforesaid may suffer or sustain whether directly or indirectly in or about the Park, regardless of the cause thereof.
- 27.3 Members hereby indemnify the Association, its Directors 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 27.

28 EXCLUSION OF PROPERTY

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

29 AMENDMENT TO MEMORANDUM OF INCORPORATION

- 29.1 Save as otherwise herein provided, this Memorandum of Incorporation may only be amended or varied by way of a Special Resolution of Members, provided that during the Development Period, this Memorandum of Incorporation shall not be varied or amended without the prior written consent of the Developer.
- 29.2 In addition, the Environmental Management Restrictions, may only be amended or varied by way of a special resolution of Members and with the prior written consent of the Developer.

30 STATUS OF DEVELOPER AND SUCCESSOR IN TITLE

In the event of the Developer disposing of all the Sub-Divisions it owns to a single third party, prior to the expiry of the Development Period, then in such event, the aforesaid third party shall be substituted as "the Developer", under this Memorandum of Incorporation and shall assume all the powers and obligations, of the Developer, mutatis mutandis, in terms of this Memorandum of Incorporation.

FINES FOR IMBONINI PARK, SHAKASHEAD IN TERMS OF THE OWNERS MANUAL, ENVIRONMENTAL MANAGEMENT PLAN AND MEMORANDUM OF INCORPORATION

All owners in Imbonini Park are bound by the above documents and signed and acknowledged same when purchasing in Imbonini Park – whether freestanding land or Sectional Title Units. Body Corporate's of Sectional Title developments are the members of the Association and as such are the responsible entity for occupiers in a Sectional Title development.

1. Tenants :

Reference – Clause 3 – Owners Manual

- (a) All owners who let properties in Imbonini Park are obliged to furnish the IPOA with the tenant's details, contact numbers and the period of the lease. Fine for failing to do so – R 500 per month until details are furnished.
- (b) All owners are obligated to ensure that their tenant's are bound by all rules and guidelines in Imbonini Park. Failure of tenants to abide by rules in the Park will result in owners / Body Corporate's being fined in respect of whichever rule has been contravened by the tenant. Owners are responsible for the conduct of their tenants and all invitees in the Park.

2. Roads :

Reference – Clause 2 – Owners Manual

- (a) Roads are Municipal and normal traffic laws apply in terms of the Road Traffic Act 29 of 1989. Speed Limit is 60 km/hour.
- (b) Parking / driving in environmental areas, on verges / pavements is prohibited. Fine – R 1 000. 2nd Offence – R 2 000. 3rd Offence – R 3 000. Repairs required to these areas will be effected by the IPOA and will be for the owner / Body Corporate of the property's account.
- (c) Illegal parking in roads causing obstruction to other occupiers and road users. Fine – R 1 000 per infraction.

3. Environment and Aesthetic Appearance :

Reference – Clause 6 – Owners Manual

- (a) All owners are responsible for maintaining their sites in a sightly condition. Fine for lack of maintenance of properties after request to do so – R 5 000. Cost of IPOA effecting such maintenance will be for the owner's / Body Corporate's account should same not be effected timeously.
- (b) All owners are responsible for ensuring common areas such as pavements and all properties and vacant sites are kept free of litter and refuse. Fine – R 1 000 after request to clean up and cost of clean up if not cleaned up timeously.
- (c) Dumping or storage of goods or refuse on pavement areas and vacant sites. Fine – R 2 000 after request to remove same and cost of removal of offending items should they not be removed timeously. *Note –

building materials for new developments need to be removed within 72 hours of delivery.

- (d) Lack of maintenance and unsightly vacant sites. Fine - R 2 000 after request to clean up. Cost of clean up for owners account should not be effected timeously.

4. Illegal Signage :

- (a) Signage of any sort in common areas or on fences. Banners, flags, billboards, amongst others are not allowed. Fine – R 1 000 plus cost of removal of same should removal not be timeous.

5. Environmental Management Plan :

Imbonini is governed by a strict environmental management plan set down by Government. Contravention of any of the conditions of the plan will result in Government fines of anything up to a R1,0m depending on the offence. The IPOA is also at liberty to fine offenders as follows :

- (a) Low Impact – first - verbal warning. Fine R 2 000 for each continued offence.
- (b) Medium Impact – fine not exceeding R 10 000.
- (c) High Impact – fine not exceeding R 100 000.

Specific note needs to be taken of occupiers flushing effluent into the stormwater system even after repeated requests to desist from the practice and advice being given on special drainage to be installed to ensure that effluent does not enter the stormwater system. This practice is considered medium impact and fines will continue to be levied against owners / Body Corporates for occupiers continuing the practice.