

SALES DOCUMENTATION

MAISON

ANNEXURES

VILLAGE MANAGEMENT ASSOCIATION: CONSTITUTION

MOORING AREAS AND WATERWAYS: CONDUCT RULES (Draft)

ACKNOWLEDGEMENT BY PURCHASER

The PURCHASER hereby acknowledges and agrees that he has read the ANNEXURES contained herein, and has familiarised himself with the content thereof.

DATED at _____ this _____ day of _____ 20__

AS WITNESSES:

AS WITNESSES:

1. _____

PURCHASER

2. _____

SALES DOCUMENTATION: MAISON

ANNEXURES

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VILLAGE MANAGEMENT ASSOCIATION

**an Association registered under the Registration of Associations Act
(Cap 201 of the Laws of Seychelles)**

CONSTITUTION

CONSTITUTION

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1. DEFINITIONS AND INTERPRETATION

- 1.1 In this CONSTITUTION, the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them –
- 1.1.1 "ACCESS ROAD" means –
- 1.1.1.1 the causeway linking EDEN ISLAND to the tarred road system on Mahé; and
- 1.1.1.2 the road traversing the COMMERCIAL DEVELOPMENT COMPONENT providing access to the RESIDENTIAL DEVELOPMENT COMPONENT;
- 1.1.2 "APARTMENT" means a unit (as that term is defined in section 2 of the CONDOMINIUM ACT) on a CONDOMINIUM PROPERTY;
- 1.1.3 "ASSOCIATION" means the Eden Island Village Management Association registered under the Registration of Association Act (Cap 201 of the Laws of Seychelles);
- 1.1.4 "AUDITORS" means the auditors of the ASSOCIATION from time to time;
- 1.1.5 "BERTH(S)" means every mooring berth situated within the RESIDENTIAL DEVELOPMENT COMPONENT and such mooring berths situated within the COMMERCIAL DEVELOPMENT COMPONENT, which mooring berths are adjacent to the RESIDENTIAL DEVELOPMENT COMPONENT;
- 1.1.6 "BERTH LEASE" means a written lease agreement in terms of which the DEVELOPER or the ASSOCIATION (as the case may be) lets a BERTH to an OWNER;
- 1.1.7 "BOARD" means the board of OFFICERS of the ASSOCIATION from time to time;
- 1.1.8 "CAPITAL CONTRIBUTION FEE" means the capital contribution fee determined in accordance with 17.16 or 17.19 of this CONSTITUTION as a result of a DEALING;
- 1.1.9 "CHAIRPERSON" means the chairperson of the BOARD from time to time;
- 1.1.10 "CHANGE IN CONTROL" means any change or alteration in any way whatsoever of the CONTROLLING VOTING POWER in an OWNER;
- 1.1.11 "CMA" means the Eden Island Commercial Management Association to be constituted and duly registered under the Registration of Associations Act (Cap 201 of the Laws of Seychelles) and which will have as its members the lessees within the COMMERCIAL DEVELOPMENT COMPONENT;
- 1.1.12 "COMMERCIAL DEVELOPMENT COMPONENT" means –
- 1.1.12.1 that portion of EDEN ISLAND that is being developed as commercial property and duly registered in terms of the Land Registration Act (Cap 107 of the Laws of Seychelles) and leased to the DEVELOPER by the Government of the Republic of Seychelles;
- 1.1.12.2 any land area reclaimed and incorporated in the COMMERCIAL DEVELOPMENT COMPONENT from time to time; and
- 1.1.12.3 any other extension/s or alteration/s to the COMMERCIAL DEVELOPMENT COMPONENT by the DEVELOPER from time to time;
- and includes any and all subdivisions, consolidations and amalgamations thereof;
- 1.1.13 "COMMON AREAS" means those areas of the DEVELOPMENT including those set out in Annexure "A" hereto (to which will be added all other areas which have been, or are to be, designated as common areas by the ASSOCIATION or the DEVELOPER), other than registered PARCELS on which DWELLINGS have been, or are to be, erected, including any IMPROVEMENTS that may have been erected on or made to such COMMON AREAS;
- 1.1.14 "COMPANIES ACT" means the Companies Act, 1972 (as amended), of the Republic of Seychelles;
- 1.1.15 "CONDOMINIUM ACT" means the Condominium Property Act (Cap 41A of the Laws of Seychelles) as amended;
- 1.1.16 "CONDOMINIUM BUILDING(S)" means a subdivided building (as contemplated in the CONDOMINIUM ACT) erected on a CONDOMINIUM PROPERTY;

- 1.1.17 "CONDOMINIUM PROPERTY" means a PARCEL in respect of which a condominium plan (as that term is defined in the CONDOMINIUM ACT) has been, or is to be, registered;
- 1.1.18 "CONSTITUTION" means the constitution set out in this document, as amended and shall be deemed to include all rules and regulations made thereunder and or issued in terms thereof from time to time;
- 1.1.19 "CONTROLLING VOTING POWER" means –
- 1.1.19.1 in relation to a company, the right or power in any way whatsoever including, without limitation, by virtue of holding or beneficially owning shares, stock, debentures or any other kind of interest in such company, or the holding company/ies of that company –
- 1.1.19.1.1 to cast, or to direct to be cast, a sufficiency of votes at any general meeting of the members of that company, to carry an ordinary resolution of such members against the opposite vote of all the other members of that company who are entitled to attend and to vote at such meeting; and/or
- 1.1.19.1.2 to control the appointment and/or removal of the director/s holding the majority of voting rights at any meeting of the board of directors of that company;
- 1.1.19.2 in relation to a trust, the right or power in any way whatsoever –
- 1.1.19.2.1 to control the appointment or removal of the trustee/s holding the majority of voting rights at any meeting of the trustees of that trust; and/or
- 1.1.19.2.2 to control the appointment, nomination and/or removal of the beneficiary/ies being entitled to more than 50% of the capital or income of that trust;
- 1.1.19.3 in relation to an association, or other entity or body corporate, the right or power in any way whatsoever, including, without limitation, by virtue of holding or beneficially owning any kind of interest in such association, or other entity or body corporate –
- 1.1.19.3.1 to cast, or to direct to be cast, a sufficiency of votes at any meeting of members or shareholders of that association, other entity or body corporate, to carry an ordinary resolution of such members or shareholders against the opposite votes of all the other members or shareholders of that association, or other entity or body corporate; and/or
- 1.1.19.3.2 to control the appointment and/or removal of the directors or other office bearers (as the case may be) who control and/or manage the affairs of that association, or other entity or body corporate;
- 1.1.20 "DEAL" or "DEALING" means, in relation to a UNIT, the dealing with that UNIT or any part thereof or the dealing with any interest of whatsoever nature in respect of that UNIT (including, for the avoidance of doubt, any share, stock, right or partnership interest in the entity or body corporate owning that UNIT), including any sale, granting of any option or pre-emptive right, transfer, disposition, transmission, lease for a period exceeding two years (including any renewal periods) and other encumbrance of that or in respect of that UNIT or part thereof or interest of whatsoever nature in respect of that UNIT, and includes any CHANGE IN CONTROL in respect of that UNIT or part thereof or interest therein, irrespective of whether such dealing or CHANGE IN CONTROL (as the case may be) is subject to a suspensive or resolute condition;
- 1.1.21 "DESIGN GUIDELINES" means the guidelines relating to the aesthetics of the DEVELOPMENT generally, including EPV's and landscaping, which guidelines include the specific design and construction requirements prepared and made applicable to the DEVELOPMENT as contemplated in 11, as amended from time to time;
- 1.1.22 "DEVELOPED LAND" means those PARCELS which have been –
- 1.1.22.1 transferred to MEMBERS;
- 1.1.22.2 transferred to the ASSOCIATION as COMMON AREAS; or
- 1.1.22.3 registered as CONDOMINIUM PROPERTIES;
- 1.1.23 "DEVELOPER" means Eden Island Development Company (Seychelles) Limited (registration number 843-959-1), a company duly registered and incorporated according to the laws of the Republic of Seychelles, and includes its successor/s in title and assign/s;
- 1.1.24 "DEVELOPER OFFICER(S)" means an officer of the ASSOCIATION appointed by the DEVELOPER from time to time;
- 1.1.25 "DEVELOPMENT" means the development of the RESIDENTIAL DEVELOPMENT COMPONENT;

- 1.1.26 "DEVELOPMENT NODE(S)" means any area of the RESIDENTIAL DEVELOPMENT COMPONENT which is designated by the DEVELOPER as a separate portion, node or precinct of the DEVELOPMENT in terms of 6.5;
- 1.1.27 "DEVELOPMENT PERIOD" means the period from the date of establishment of the ASSOCIATION as contemplated in 2 until the date on which the transfer of the last UNIT from the DEVELOPER to an OWNER is registered, or until 30 June 2017, whichever is the earlier;
- 1.1.28 "DWELLINGS" means all VILLAS, MAISONS and CONDOMINIUM BUILDINGS comprising the DEVELOPMENT;
- 1.1.29 "EDEN ISLAND" means the island known as Eden Island, which island is situated offshore, opposite Roche Caiman, Mahé, Republic of Seychelles, including any and all consolidations or subdivisions thereof, as well as all areas reclaimed from time to time;
- 1.1.30 "EPV" means an electrically powered vehicle, also known as a buggy;
- 1.1.31 "IMPROVEMENTS" means all and any DWELLINGS, buildings or other structures on any PARCEL or on the COMMON AREAS, including landscaping and planting, roads, pavements, irrigation, infrastructure services and or similar structures;
- 1.1.32 "LAND REGISTRATION ACT" means the Land Registration Act (Cap 107 of the Laws of Seychelles) (as amended);
- 1.1.33 "LEVY" or "LEVIES" means any levies for which the MEMBERS are liable in terms of this CONSTITUTION, as set out in 17;
- 1.1.34 "MAISON(S)" means a duplex building erected, or to be erected, on a PARCEL, which building may share a common boundary wall with the building(s) on the adjacent PARCEL(S);
- 1.1.35 "MANAGEMENT CORPORATION" means the body corporate constituted for a CONDOMINIUM BUILDING in accordance with section 13(1) of the CONDOMINIUM ACT as represented by its council constituted under section 16 of the CONDOMINIUM ACT;
- 1.1.36 "MANAGER" means any person or body appointed or employed by the ASSOCIATION to undertake any of the functions of the ASSOCIATION, as contemplated by 18;
- 1.1.37 "MEMBER(S)" means every member of the ASSOCIATION, as set out in 7;
- 1.1.38 "MEMBER OFFICER(S)" means an officer of the ASSOCIATION appointed by the OWNERS from time to time;
- 1.1.39 "MOORING AREAS" means the BERTHS, the primary and secondary breakwater, wave attenuator, harbour entrance and lights, together with all ancillary facilities located within those areas;
- 1.1.40 "OFFICER(S)" means the DEVELOPER OFFICERS and the MEMBER OFFICERS collectively, and includes alternate and co-opted OFFICERS;
- 1.1.41 "ORDINARY RESOLUTION" means a resolution passed at any general meeting of MEMBERS, by an ordinary majority of the total votes represented at that meeting, whether personally present or by proxy;
- 1.1.42 "OWNER(S)" means the registered owner of a SINGLE RESIDENTIAL PARCEL and or an APARTMENT as the context may indicate;
- 1.1.43 "PARCEL" means any parcel (as that term is defined in the LAND REGISTRATION ACT) within the DEVELOPMENT, together with all IMPROVEMENTS (if any) thereon;
- 1.1.44 "PARTICIPATION QUOTA" means, in relation to a PARCEL, a percentage expressed in four decimals calculated by the BOARD in terms of 17.3;
- 1.1.45 "PUBLIC UTILITIES CORPORATION" means the statutory body established for the purposes of providing public utilities services in the Republic of Seychelles and also in respect of the DEVELOPMENT (if applicable);
- 1.1.46 "RECLAMATION AGREEMENT" means the written agreement for reclamation works around EDEN ISLAND entered into between the Republic of Seychelles and the DEVELOPER on or about 28 October 2005, as amended;
- 1.1.47 "RENTAL POOL" means the rental pool established by the DEVELOPER and managed by the RENTAL POOL MANAGEMENT COMPANY in accordance with the applicable regulations, rules, and or consents required for such an operation by the laws of the Republic of Seychelles for the purposes of lettings (whether long term or short term) of UNITS, (or any part thereof);

- 1.1.48 "RENTAL POOL MANAGEMENT COMPANY" means Eden Island Rental Pool Management Company (Seychelles) Limited (registration number 847-204-1), a company duly registered and incorporated according to the laws of the Republic of Seychelles, which is responsible for managing and administering the RENTAL POOL;
- 1.1.49 "RESIDENTIAL DEVELOPMENT COMPONENT" means –
- 1.1.49.1 that portion of EDEN ISLAND that is being developed as residential property in freehold title in terms of the Land Registration Act (Cap 107 of the Laws of Seychelles);
- 1.1.49.2 any land area reclaimed and or converted from time to time and incorporated in the RESIDENTIAL DEVELOPMENT COMPONENT; and
- 1.1.49.3 any other extension/s or alteration/s to the RESIDENTIAL DEVELOPMENT COMPONENT by the DEVELOPER from time to time;
- and includes any and all subdivisions, consolidations and amalgamations thereof;
- 1.1.50 "RESIDENTIAL MEMBER" means every MEMBER referred to in 7.1.2 and 7.1.3;
- 1.1.51 "RESOLUTION" means an ORDINARY RESOLUTION and/or a SPECIAL RESOLUTION as the context may indicate;
- 1.1.52 "SINGLE RESIDENTIAL PARCEL" means a PARCEL on which a MAISON or a VILLA has been, or is to be erected;
- 1.1.53 "SPECIAL RESOLUTION" means a resolution passed at any quorate general meeting of MEMBERS, by not less than 75% of the total voting rights of all MEMBERS whether personally present or by proxy;
- 1.1.54 "UNDEVELOPED LAND" means those areas of the RESIDENTIAL DEVELOPMENT COMPONENT other than the DEVELOPED LAND;
- 1.1.55 "UNIT" means any SINGLE RESIDENTIAL PARCEL and or APARTMENT, as the context may indicate;
- 1.1.56 "VILLA(S)" means a free-standing building erected, or to be erected, on a PARCEL;
- 1.1.57 "WATERWAYS" means all water channels (whether constructed, created or occurring naturally) and channel edges traversing the RESIDENTIAL DEVELOPMENT COMPONENT;
- 1.1.58 any reference to the singular includes the plural and vice versa;
- 1.1.59 any reference to natural persons includes artificial persons and vice versa;
- 1.1.60 any reference to a gender includes the other genders (including neuter).
- 1.2 Where applicable, the provisions of 1.1 shall impose substantive rights and obligations as provided in the provision concerned.
- 1.3 The clause headings in this CONSTITUTION have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.4 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.5 No provision of this CONSTITUTION or any related document shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party having or being deemed to have structured or drafted such provision.
- 1.6 Where the consent and/or approval of the DEVELOPER, the BOARD and/or the ASSOCIATION is required, such consent shall be in its sole discretion, save as otherwise expressly provided in this CONSTITUTION.
- 1.7 This CONSTITUTION shall be governed by and construed and interpreted in accordance with the laws of the Republic of Seychelles, and the ASSOCIATION and every MEMBER consents to the jurisdiction of any competent court of the Republic of Seychelles for purposes of any proceedings instituted in connection with this CONSTITUTION, subject to the provisions of 30.
- 1.8 Where the laws of the Republic of Seychelles do not know or recognise any legal term or phrase contained in this CONSTITUTION, or any legal principle to which any of the provisions, terms, phrases or words contained in this CONSTITUTION relate, that legal term, or phrase, or legal principle, shall be interpreted in accordance with the laws of the Republic of South Africa, and shall be implemented accordingly.

2. COMMENCEMENT DATE

The ASSOCIATION shall be deemed to have come into existence on the earlier of the following dates –

- 2.1 the date of the first registration of transfer of a SINGLE RESIDENTIAL PARCEL or an APARTMENT (as the case may be) from the DEVELOPER to an OWNER; and
- 2.2 the date on which the DEVELOPER established the ASSOCIATION.

3. LEGAL STATUS AND LIMITED LIABILITY

The ASSOCIATION is a body corporate registered as an association under the Registration of Associations Act (Cap 201 of the Laws of Seychelles), as amended, and as such –

- 3.1 its assets, liabilities, rights and obligations shall vest in it independently of its MEMBERS;
- 3.2 it shall have perpetual succession;
- 3.3 all legal proceedings shall be brought by or against the ASSOCIATION, in the name of the ASSOCIATION, and the BOARD may authorise any person/s to act on behalf of the ASSOCIATION and to sign all such documents and take all such steps as may be necessary in connection with any such legal proceedings; and
- 3.4 its MEMBERS shall not, by reason of their membership, be liable for the liabilities and obligations of the ASSOCIATION.

4. OBJECTS

- 4.1 The object(s) of the ASSOCIATION is as contemplated by section 2 of the Registration of Associations Act (Cap 201 of the Laws of Seychelles) and for purposes of facilitating the operation of the DEVELOPMENT, shall include, without limitation, the following -
 - 4.1.1 accommodating all permitted uses to which the DEVELOPMENT (or any part thereof) may be part;
 - 4.1.2 the control of the aesthetic appearance of the DEVELOPMENT;
 - 4.1.3 the regulation and control of the harmonious development of the DEVELOPMENT;
 - 4.1.4 the promotion of a high standard of improvements within the DEVELOPMENT;
 - 4.1.5 the maintenance and control of the COMMON AREAS, MOORING AREAS and/or WATERWAYS;
 - 4.1.6 the construction, maintenance and access to any right of way easement over any part of the DEVELOPMENT in favour of the ASSOCIATION and/or its MEMBERS;
 - 4.1.7 the upkeep and maintenance of the ACCESS ROAD the cost of which is to be shared with the CMA and the DEVELOPER on such terms and conditions as may be agreed upon;
 - 4.1.8 the control over the compliance and the enforcement of the DESIGN GUIDELINES;
 - 4.1.9 the promotion of environmental awareness and responsibility amongst MEMBERS;
 - 4.1.10 to enter into service agreements and other appropriate agreements with the PUBLIC UTILITIES CORPORATION, the DEVELOPER, or any other relevant authority as supplier of services in connection with the DEVELOPMENT;
 - 4.1.11 to enter into any agreement and other appropriate arrangement with any supplier, contractor or other third party, in relation to the administration, management and/or control of the DEVELOPMENT;
 - 4.1.12 to enter into any agreement and other appropriate arrangement with the CMA regarding services shared between the ASSOCIATION and the CMA on EDEN ISLAND, and any other aspect relating to the cooperation and/or interrelation between the ASSOCIATION and the CMA in relation to EDEN ISLAND; and
 - 4.1.13 the promotion, advancement and protection of EDEN ISLAND and the interests of the ASSOCIATION generally.

5. POWERS

The ASSOCIATION has plenary powers (including all those normally enjoyed by a registered company) to enable it to achieve its objects, except for those powers expressly or impliedly excluded by this CONSTITUTION, or by the ASSOCIATION'S legal

status as an association registered under the Registration of Associations Act (Cap 201 of the Laws of Seychelles) (as amended).

6. DEVELOPMENT OF EDEN ISLAND

- 6.1 The DEVELOPER shall be entitled, at any time during the DEVELOPMENT PERIOD –
- 6.1.1 to incorporate into the RESIDENTIAL DEVELOPMENT COMPONENT any additional reclaimed areas as further phases which the DEVELOPER shall be entitled to develop as it may deem fit;
- 6.1.2 to exclude from the RESIDENTIAL DEVELOPMENT COMPONENT any areas, which the DEVELOPER shall be entitled to develop as it may deem fit; and/or
- 6.1.3 to alter the general use of certain areas within the RESIDENTIAL DEVELOPMENT COMPONENT.
- 6.2 The DEVELOPER shall, at any time during the DEVELOPMENT PERIOD, in its sole and absolute discretion, be entitled to apply for and, subject to approval by any relevant authority, to vary the layout, zoning, and/or boundaries of the RESIDENTIAL DEVELOPMENT COMPONENT and the MEMBERS shall be bound thereby and shall have no claim of whatsoever nature against the DEVELOPER arising therefrom. Insofar as the consent of a MEMBER is required for any of the foregoing, the DEVELOPER is irrevocably hereby granted a power of attorney by such MEMBER to grant any and all such consents on behalf of such MEMBER, as may be required.
- 6.3 Should any further areas be incorporated into the DEVELOPMENT, the DEVELOPER shall require from the ASSOCIATION that the first and all subsequent registered owners of such further areas, become MEMBERS of the ASSOCIATION, on acquisition of ownership or on such earlier dates as the DEVELOPER may determine in its sole discretion, and on the same terms and conditions as are applicable to the other RESIDENTIAL MEMBERS.
- 6.4 The DEVELOPER intends to develop and market the RESIDENTIAL DEVELOPMENT COMPONENT and the COMMERCIAL DEVELOPMENT COMPONENT in phases, as the DEVELOPER deems fit and, for the duration of the DEVELOPMENT PERIOD, the DEVELOPER shall enjoy unrestricted rights with regard to the marketing of the RESIDENTIAL DEVELOPMENT COMPONENT and the COMMERCIAL DEVELOPMENT COMPONENT and, in particular, the right to erect signage within the RESIDENTIAL DEVELOPMENT COMPONENT and the COMMERCIAL DEVELOPMENT COMPONENT.
- 6.5 The DEVELOPER shall be entitled, at any time during the DEVELOPMENT PERIOD, to create DEVELOPMENT NODES for the purpose of managing and administering the DEVELOPMENT.
- 6.6 It is recorded that no MEMBER and or OWNER (as the case may be) shall be entitled, at any time after the DEVELOPMENT PERIOD, to change, amend, vary and or substitute the zoning and or right(s) of use of any portion of the RESIDENTIAL DEVELOPMENT COMPONENT to anything other than for residential purposes, specifically not ever for commercial and or retail purposes.

7. MEMBERSHIP

- 7.1 The ASSOCIATION shall have as its MEMBERS –
- 7.1.1 the DEVELOPER in its capacity as such, for the duration of the DEVELOPMENT PERIOD, provided that where the DEVELOPER comprises more than one person, such persons shall be deemed jointly to be one MEMBER;
- 7.1.2 every freehold title owner of a SINGLE RESIDENTIAL PARCEL upon registration of transfer of the relevant PARCEL into its name, provided that where such person comprises more than one person, they shall be deemed jointly to be one MEMBER, and shall be responsible jointly and severally for the obligations of such membership;
- 7.1.3 every MANAGEMENT CORPORATION of a CONDOMINIUM BUILDING in accordance with section 13(1) of the CONDOMINIUM ACT; and
- 7.1.4 every registered freehold title owner of a portion or portions of UNDEVELOPED LAND, provided that where such person comprises more than one person, they shall be deemed jointly to be one MEMBER of the ASSOCIATION and shall be responsible jointly and severally for the obligations of such membership.
- 7.2 For the avoidance of doubt, it is specifically recorded that every individual condominium title owner of an APARTMENT shall, by virtue of its condominium title and membership in the MANAGEMENT CORPORATION, and without the need to do anything further, also be bound by the provisions of this CONSTITUTION, and all rules and/or regulations made in terms of this CONSTITUTION shall apply to all such condominium title owners of APARTMENTS, *mutatis mutandis*.
- 7.3 Save for the DEVELOPER, a MEMBER may not resign as a MEMBER.
- 7.4 When a MEMBER, save for the DEVELOPER, ceases to own any PARCEL or portion of UNDEVELOPED LAND (as the case may be), it shall *ipso facto* cease to be a MEMBER of the ASSOCIATION.

- 7.5 The rights and obligations of a MEMBER, save for the DEVELOPER, are not transferable and every MEMBER shall, to the best of its ability, further the objects and interests of the ASSOCIATION.
- 7.6 The DEVELOPER shall be entitled to cede all or any of its rights, and/or to delegate all or any of its obligations in terms of this CONSTITUTION (and the ASSOCIATION and all its MEMBERS hereby consent to such delegation) and the transferee shall be entitled to exercise all or any such rights. The DEVELOPER shall be entitled at any time and from time to time to abandon, in whole or in part, any rights conferred upon it in terms of this CONSTITUTION.

8. RIGHTS OF MEMBERS

Membership of the ASSOCIATION shall confer upon a MEMBER, *inter alia*, the following rights, subject to the provisions of this CONSTITUTION –

- 8.1 the right to be elected to office as an OFFICER of the ASSOCIATION;
- 8.2 the right to make use (subject to the provisions of this CONSTITUTION and any rules promulgated thereunder) of the COMMON AREAS and any facilities thereon;
- 8.3 the right to inspect and/or receive copies of the annual financial statements of the ASSOCIATION and any rules of the ASSOCIATION;
- 8.4 the right to vote at all general meetings of MEMBERS in accordance with the provisions of this CONSTITUTION;
- 8.5 the right to receive notices of, attend and speak at all general meetings of MEMBERS in accordance with the provisions of this CONSTITUTION; and
- 8.6 the right to convene a general meeting of MEMBERS (other than an annual general meeting), provided that the MEMBERS holding between them, in aggregate, not less than one third of the voting rights of the ASSOCIATION collectively so decide.

9. OBLIGATIONS OF MEMBERS

- 9.1 Every MEMBER is obliged to comply with –
- 9.1.1 the provisions of this CONSTITUTION and all rules and/or regulations made in terms of this CONSTITUTION;
- 9.1.2 any notice or order made by a court of competent jurisdiction, or any law, by-law, ordinance, proclamation or statutory regulation imposed by any relevant authority in relation to its DWELLING;
- 9.1.3 any agreement lawfully concluded by the ASSOCIATION insofar as such agreement may directly or indirectly impose obligations on a MEMBER; and
- 9.1.4 any directive given by the ASSOCIATION and/or the BOARD in enforcing the provisions of this CONSTITUTION and/or any rules and/or regulations made in terms of this CONSTITUTION.
- 9.2 Each MEMBER shall –
- 9.2.1 ensure the maintenance of its PARCEL in a neat and tidy condition and in a state of good repair;
- 9.2.2 not park, or permit the parking of, any commercial vehicle, boat, caravan, trailer or any vehicle not in good working order on any road, pavement or parking area within the DEVELOPMENT or other COMMON AREA, and if such vehicle, boat, caravan, or trailer is to be parked on that OWNER'S PARCEL, it shall not be visible from any street in the DEVELOPMENT, or from any WATERWAY or DWELLING;
- 9.2.3 not do or suffer to be done on any PARCEL, anything which, in the opinion of the DEVELOPER, for the duration of the DEVELOPMENT PERIOD and thereafter the BOARD, is noisome, unsightly, injurious, objectionable or detrimental, or a public or private nuisance, or a source of damage or disturbance to any MEMBER, tenant or occupier of any other PARCEL or APARTMENT;
- 9.2.4 ensure that no animals or birds are housed on its PARCEL;
- 9.2.5 not erect or permit the erection of any advertising boards, satellite dishes, aerials on any PARCEL, COMMON AREA or EPV;
- 9.2.6 not permit the number of occupants of its DWELLING to exceed two persons per bedroom;

- 9.2.7 comply with all security procedures and controls imposed by the ASSOCIATION and/or the BOARD from time to time;
- 9.2.8 ensure that it and its invitees do not damage or destroy trees, vegetation and landscaping on the COMMON AREAS, including along the edges of the WATERWAYS, and that planting on its PARCEL does not interfere with pedestrian traffic or obscure the vision of motorists and/or drivers of EPV's;
- 9.2.9 afford employees, agents and representatives of the DEVELOPER and the ASSOCIATION full access at all times to do all things reasonably necessary to construct and/or stabilise and/or maintain all COMMON AREAS, including the WATERWAY edges and, if applicable, the communal boardwalk(s) abutting that MEMBER'S PARCEL;
- 9.2.10 not use any building or other structure constructed within the DEVELOPMENT, or not allow any other person to use such building or other structure, for purposes not permitted by its zoning or this CONSTITUTION or all rules and/or regulations made in terms of this CONSTITUTION;
- 9.2.11 not lease or otherwise part with occupation of its PARCEL (or any parts thereof), whether temporarily or otherwise, unless that MEMBER ensures that the proposed occupier agrees in writing to be bound by the relevant provisions of this CONSTITUTION and all rules and/or regulations made in terms of this CONSTITUTION;
- 9.2.12 not consolidate a PARCEL with one or more other PARCELS, without the prior written approval of the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter, the BOARD;
- 9.2.13 not apply for the subdivision or rezoning of its PARCEL with a view to procuring a variation, amendment or substitution of use rights;
- 9.2.14 not conduct, or permit to be conducted or use, or permit the use of a PARCEL for purposes other than residential use, or change the nature of any PARCEL, unless a SPECIAL RESOLUTION has been obtained approving the use to which the PARCEL is to be put, and any relevant authority has, to the extent that it may be necessary, granted approval authorising such use in terms of applicable laws and regulations.

10. RESTRICTION ON TRANSFER

- 10.1 No OWNER shall DEAL with any UNIT unless two authorised OFFICERS (one of whom must be a DEVELOPER OFFICER if during the DEVELOPMENT PERIOD), or their duly authorised representatives, have certified in writing that the ASSOCIATION approves that DEALING. A condition to that effect shall be inserted in each transfer deed in respect of every UNIT.
- 10.2 Such certificate shall be withheld if –
 - 10.2.1 that OWNER is indebted to the ASSOCIATION (or the MANAGEMENT CORPORATION, as the case may be) in any way in respect of LEVIES or other amounts due to the ASSOCIATION (or the MANAGEMENT CORPORATION), and has failed to provide such security for the payment thereof as the BOARD may deem adequate;
 - 10.2.2 that OWNER is in breach of any of the provisions of this CONSTITUTION or any rules and/or regulations made in terms of this CONSTITUTION;
 - 10.2.3 the person intending to acquire the UNIT has failed or refused to irrevocably bind itself in writing to become a MEMBER of the ASSOCIATION (or so far as required) and to observe the CONSTITUTION for the duration of its ownership of the UNIT, in such form as the BOARD may deem fit; and/or
 - 10.2.4 that OWNER has failed or refused to make payment to the ASSOCIATION of a reasonable fee (as determined by the BOARD from time to time) for the issue of such certificate.
- 10.3 Where an OWNER DEALS with a UNIT and that OWNER leases a BERTH in terms of a BERTH LEASE, the access to which BERTH can only be provided by having access to the UNIT of that OWNER, the certificate referred to in 10.2 shall also be withheld if the person intending to acquire that UNIT has failed or refused to unconditionally accept cession and assignment of all rights and all obligations in terms of that BERTH LEASE, in such form as the BOARD may deem fit.

11. DESIGN GUIDELINES

- 11.1 For the purposes of maintaining the high standard of the appearance and design of the DEVELOPMENT and of ensuring an attractive and harmonious appearance thereof, during the DEVELOPMENT PERIOD, only the DEVELOPER may issue DESIGN GUIDELINES. The DESIGN GUIDELINES shall constitute an integral part of this CONSTITUTION and may only be amended and/or substituted (in whole or in part) from time to time by the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter, by a SPECIAL RESOLUTION.
- 11.2 All IMPROVEMENTS on the DEVELOPED LAND shall comply with the provisions of the DESIGN GUIDELINES.

- 11.3 No construction, erection or alteration of, or addition to, any IMPROVEMENTS on the DEVELOPED LAND ("WORKS") may commence or be carried out without the prior written approval of the plans and specifications in respect of the WORKS by the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter, by the BOARD. In this regard, a full set of proposed plans and specifications in respect of the WORKS prepared in accordance with the DESIGN GUIDELINES shall, for the duration of the DEVELOPMENT PERIOD, be submitted to the DEVELOPER, and thereafter, to the BOARD.
- 11.4 For the duration of the DEVELOPMENT PERIOD, the DEVELOPER shall, in its sole and absolute discretion, determine whether the plans and specifications in respect of the WORKS comply with the DESIGN GUIDELINES, and its determination in this regard shall be final and binding upon the MEMBER concerned. On expiration of the DEVELOPMENT PERIOD, such determination shall be made by the BOARD, in its sole and absolute discretion.
- 11.5 The DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter, the BOARD, shall be entitled to withhold any approval contemplated by this 11, subject to compliance with such modifications or amendments to the plans and specifications in respect of the WORKS and/or with such other conditions as the DEVELOPER or the BOARD (as the case may be) may request or impose in their sole discretion.
- 11.6 Any approval granted by the DEVELOPER or the BOARD (as the case may be) shall be in writing and be signed on behalf of the DEVELOPER or the BOARD by a duly authorised person. Before giving such approval, the DEVELOPER or the BOARD (as the case may be) may require the following to be lodged with them –
- 11.6.1 such descriptions, drawings and/or plans as may be necessary to enable them to consider the matter;
- 11.6.2 details of construction materials to be used; and
- 11.6.3 any other documentation as they may require.
- 11.7 No approval shall be granted unless all contractors being appointed to carry out the WORKS (or any part thereof) have waived their respective lien(s) in respect of the WORKS (or any part thereof) or in respect of the COMMON AREAS (if applicable), in writing, in a form acceptable to the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter, the BOARD, in their sole and absolute discretion.
- 11.8 Each OWNER and or MEMBER shall, when submitting the plans and specifications in respect of the WORKS to the DEVELOPER or the BOARD (as the case may be) in terms of this 11, pay to the ASSOCIATION a deposit in an amount to be determined from time to time by the DEVELOPER or the BOARD (as the case may be), which amount shall be held by the ASSOCIATION in trust.
- 11.9 Upon completion of the WORKS, the ASSOCIATION shall if the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter the BOARD, is satisfied, in its sole and absolute discretion, that the COMMON AREAS (or any part thereof) have not sustained any damage resulting from or incidental to the WORKS and that the WORKS have been carried out in accordance with the duly approved plans and specifications, release the deposit to the OWNER and or MEMBER.
- 11.10 Should –
- 11.10.1 the COMMON AREAS (or any part thereof) have sustained any damage of whatsoever nature resulting from or incidental to the WORKS; and/or
- 11.10.2 the WORKS not have been carried out in accordance with the duly approved plans and specifications;
- the OWNER and or MEMBER shall, within 21 days of having been requested to do so in writing –
- 11.10.3 repair the damage; and/or
- 11.10.4 make such alterations to the IMPROVEMENTS in order to procure compliance with the duly approved plans and specifications;
- to the satisfaction of the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter, the BOARD, failing which, the DEVELOPER or the BOARD (as the case may be) shall be entitled, notwithstanding any rights which the DEVELOPER, the BOARD, and or the ASSOCIATION may have as a result of such failure, to appoint an independent contractor or contractors to repair the damage or make such alterations, and to apply the deposit to all costs of such repair and/or alteration.
- 11.11 If the amount paid to the ASSOCIATION as a deposit is not sufficient to cover the costs of such repair or alteration (as the case may be) by the independent contractor or contractors appointed by the DEVELOPER, or the BOARD, the ASSOCIATION shall be entitled to recover the shortfall from the OWNER and or MEMBER. Any shortfall so due by an OWNER and or MEMBER shall be paid with, and in addition to, the LEVIES due by that OWNER and or MEMBER to the ASSOCIATION.

- 11.12 Once approved by the DEVELOPER or the BOARD (as the case may be), the plans and specifications shall be submitted to all relevant authorities for approval, and having obtained the approval of any relevant authorities, the OWNER and or MEMBER concerned shall comply with all conditions and standards imposed by any relevant authority insofar as these may be additional to the requirements of the DESIGN GUIDELINES read together with the approved plans and specifications.
- 11.13 Any plans, notwithstanding approval by all relevant authorities, which have not been prepared and/or submitted and/or approved in compliance with the provisions of this 11, shall be invalid.
- 11.14 The OWNER and or MEMBER shall be liable for all fees, costs and disbursements in respect of the scrutiny, review and consideration of plans submitted by the OWNER and or MEMBER to the DEVELOPER or the BOARD (as the case may be).
- 11.15 If an OWNER and or MEMBER fails to comply with any obligation contained in this 11, the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter, the BOARD, shall be entitled, but not obliged, in addition to any other rights which they may have or remedies which may be available to them in terms of this CONSTITUTION or otherwise in law, to –
- 11.15.1 impose a daily financial penalty, the amount of which shall be determined from time to time by the DEVELOPER or the BOARD (as the case may be), on notice to the OWNER and or MEMBER, should the OWNER and or MEMBER fail to comply with any obligations contained in this 11; and
- 11.15.2 enter upon any PARCEL in order to inspect that PARCEL and any IMPROVEMENTS constructed thereon.

12. RULES OF THE ASSOCIATION

- 12.1 Subject to any restrictions imposed or directions given at a general meeting of MEMBERS, the BOARD may (but shall not be obliged to) from time to time, make rules, and amend or modify those rules, in relation to the objects and business of the ASSOCIATION and all affairs of the DEVELOPMENT including the following –
- 12.1.1 the management and control of certain of the administrative functions in relation to the DEVELOPMENT;
- 12.1.2 the furtherance and promotion of any of the objects of the ASSOCIATION including the promotion of better management of the affairs of the ASSOCIATION and the advancement of the interests of the MEMBERS;
- 12.1.3 the use, occupation and enjoyment of the COMMON AREAS (or any part thereof);
- 12.1.4 the management, use and enjoyment of the MOORING AREAS and the WATERWAYS;
- 12.1.5 the preservation of the natural environment within the DEVELOPMENT;
- 12.1.6 the pedestrian, EPV and vehicular traffic including parking within the DEVELOPMENT;
- 12.1.7 the carrying out of any operations within the DEVELOPMENT;
- 12.1.8 the conduct of any OWNER, tenant, resident or visitor of the DEVELOPMENT;
- 12.1.9 the nature, content and design of garden and landscaped areas within the DEVELOPMENT;
- 12.1.10 the admission of any person within the DEVELOPMENT, including the conditions upon which persons may enter the DEVELOPMENT, and the eviction of any person who is not entitled to be present within the DEVELOPMENT;
- 12.1.11 the storage of flammable and other harmful substances;
- 12.1.12 the enforcement of any rules made in terms of this CONSTITUTION and the adjudication of disputes relating to the application and/or interpretation of any rules or any provision of this CONSTITUTION;
- 12.1.13 the introduction of fines and other penalties that may be payable by any MEMBER, tenant, resident or visitor for contravening or failing to comply with any of the provisions of this CONSTITUTION or any rules and regulations made thereunder.
- 12.2 Any rules made in terms of this 12 shall be binding upon –
- 12.2.1 every MEMBER;
- 12.2.2 every condominium title owner of an APARTMENT, and every MANAGEMENT CORPORATION shall procure that all its members will comply with any rules made in terms of this CONSTITUTION and every MANAGEMENT

CORPORATION acknowledges and agrees that it will be liable for any breach or non-compliance of any of its members; and

- 12.2.3 every resident within the DEVELOPMENT, and every MEMBER shall procure that all its representatives, tenants, members of the household, visitors, invitees and other persons related to that MEMBER comply with any rules made in terms of this CONSTITUTION and every MEMBER acknowledges and agrees that it will be liable for any breach or non-compliance by any of its representatives, tenants, family members, visitors, invitees and other persons related to that MEMBER.

13. **RESALE AND LETTING**

- 13.1 Each OWNER acknowledges and agrees that it is in the interests of the ASSOCIATION and all its MEMBERS that the marketing and sale of UNITS will be managed and carried out in a consistent and uniform fashion. Accordingly, each OWNER agrees that, if and when it intends to DEAL with a UNIT, it will not, for the duration of the DEVELOPMENT PERIOD, utilise any sales and marketing agent other than the sales and marketing agent nominated by the DEVELOPER, without the prior written approval of the DEVELOPER, which approval shall not be unreasonably withheld and after the DEVELOPMENT PERIOD, it will only utilise such alternative sales and marketing agent as decided by a SPECIAL RESOLUTION.
- 13.2 Each MEMBER acknowledges and agrees that the arrangement contemplated in 13.1 is exclusively directed to, and contributes to, the improvement of the supply of the services to be rendered by such sales and marketing agent and that the restrictions imposed on the OWNERS thereby are indispensable to the attainment of the objectives in 13.1.
- 13.3 When DEALING with a UNIT, every OWNER shall utilise (or cause to be utilised) such documentation including, without limitation, such agreement of sale, as prescribed by the ASSOCIATION from time to time.
- 13.4 It is recorded that the DEVELOPER has established the RENTAL POOL and that any OWNER who wishes to let its UNIT through the RENTAL POOL shall be required to do so on such terms and subject to such conditions as the relevant OWNER and the RENTAL POOL MANAGEMENT COMPANY may agree in writing, from time to time.
- 13.5 Non-compliance by any OWNER with the provisions of this 13 will constitute a breach of the CONSTITUTION and such OWNER hereby indemnifies the ASSOCIATION, the DEVELOPER and or the RENTAL POOL MANAGEMENT COMPANY against any claim which may be imposed on any of them by any relevant authority in respect thereof.
- 13.6 Any letting or subletting of UNITS (or any parts thereof) shall be subject to all such other approvals by the relevant authorities which may be necessary and/or required for such letting or subletting, including, without limitation, the obtaining of sanction to a person who is not a Seychellois, and every OWNER shall be responsible for obtaining all such approvals and hereby indemnifies the ASSOCIATION, the DEVELOPER and or the RENTAL POOL MANAGEMENT COMPANY against any claim which may be imposed on any of them by any relevant authority in respect thereof.

14. **SERVICES AND MAINTENANCE**

14.1 **water, electrical and sewerage systems**

- 14.1.1 The ASSOCIATION shall at all times facilitate the provision of services and/or maintenance relating to water, electricity, information technology infrastructure and sewerage systems to the DEVELOPMENT, as well as the reading of meters and the issuing of accounts to MEMBERS.
- 14.1.2 Every MEMBER –
- 14.1.2.1 shall promptly pay for all electricity, water and sewerage services consumed or rendered (as the case may be) in respect of that MEMBER'S PARCEL; and
- 14.1.2.2 shall not alter, interfere with or overload the electricity, lighting or heating installations on the relevant PARCEL.
- 14.1.3 The ASSOCIATION, the PUBLIC UTILITIES CORPORATION (if applicable) and/or such other contracted or statutory body providing water, electrical and/or sewerage services shall enjoy reasonable access to the DEVELOPMENT including all PARCELS for the provision of those services and the maintenance relating to the water, electricity and sewerage systems as well as for purposes of inspection and reading of meters.
- 14.1.4 No persons other than the duly authorised representatives of the ASSOCIATION, the PUBLIC UTILITIES CORPORATION (if applicable) or such other contracted or statutory body contemplated in 14.1.3 shall interfere with, or connect to, any system or meter relating to the water, electrical and sewerage systems within the DEVELOPMENT.
- 14.1.5 Notwithstanding any provisions contained in this CONSTITUTION, no MEMBER shall have any claim of whatsoever nature and howsoever arising against the ASSOCIATION, whether for damages, consequential damages or

otherwise, in the event of any failure relating to the provision of water, electricity or sewerage services as contemplated in this 14.1.

14.2 **refuse removal**

14.2.1 The ASSOCIATION shall at all times facilitate the removal of refuse and to this end, all MEMBERS shall be obliged to –

14.2.1.1 make payment of the charges imposed by the ASSOCIATION from time to time in respect of such refuse removal services;

14.2.1.2 abide by such terms and conditions as may be laid down by the ASSOCIATION from time to time in respect of such refuse removal services; and

14.2.1.3 allow persons duly authorised by the ASSOCIATION to enter upon any part of any PARCEL for purposes of collecting the refuse.

14.2.2 Notwithstanding any provisions contained in this CONSTITUTION, no MEMBER shall have any claim of whatsoever nature and howsoever arising against the ASSOCIATION, whether for damages, consequential damages or otherwise, in the event of any failure relating to the removal of refuse as contemplated in 14.2.

14.3 **security services**

14.3.1 The ASSOCIATION may provide security and related services for MEMBERS and to this end, all MEMBERS shall be obliged to –

14.3.1.1 permit the installation of any security apparatus on their respective PARCELS as may be determined by the ASSOCIATION from time to time;

14.3.1.2 make payment of the charges raised by the ASSOCIATION in respect of such security services, where those charges are not included in the LEVIES;

14.3.1.3 abide by such terms and conditions as may be laid down by the ASSOCIATION from time to time in respect of such security equipment and services; and

14.3.1.4 allow persons duly authorised by the ASSOCIATION to enter upon any part of a PARCEL for purposes of maintaining the security perimeter fence, or any other security apparatus, or for purposes of patrolling.

14.3.2 Notwithstanding any provisions contained in this CONSTITUTION, no MEMBER shall have any claim of whatsoever nature and howsoever arising against the ASSOCIATION, whether for damages, consequential damages or otherwise, in the event of any failure relating to the provision of security and related services as contemplated in this 14.3.

14.4 **garden services**

14.4.1 The ASSOCIATION shall at all times provide for the maintenance, repair and upkeep of all gardens attributable to PARCELS (where applicable) and shall provide garden and related services for MEMBERS. To this end, all MEMBERS shall be obliged to –

14.4.1.1 make payment of the charges raised by the ASSOCIATION from time to time in respect of such garden services;

14.4.1.2 abide by such terms and conditions as may be laid down by the ASSOCIATION from time to time in respect of such garden services; and

14.4.1.3 allow persons duly authorised by the ASSOCIATION to enter upon any part of their PARCEL for purposes of maintaining or repairing the garden attributable to that PARCEL (where applicable).

14.4.2 Notwithstanding any provisions contained in this CONSTITUTION, no MEMBER shall have any claim of whatsoever nature and howsoever arising against the ASSOCIATION, whether for damages, consequential damages or otherwise, in the event of any failure relating to the maintenance, repair and upkeep of the gardens as contemplated in this 14.4.

15. **COMMON AREAS**

15.1 The DEVELOPER may, free of consideration and at any time, transfer ownership of all or any of the COMMON AREAS to the ASSOCIATION if and when the DEVELOPER may deem fit including –

- 15.1.1 road reserves (being roads, pavements, parking areas and planted areas);
 - 15.1.2 parks and parkland areas;
 - 15.1.3 common recreational areas;
 - 15.1.4 the MOORING AREAS;
 - 15.1.5 the WATERWAYS;
 - 15.1.6 PARCELS designated by the DEVELOPER for ASSOCIATION use; and
 - 15.1.7 any other areas designated as COMMON AREAS by the DEVELOPER.
- 15.2 The risk in all COMMON AREAS shall pass to the ASSOCIATION upon formation of the ASSOCIATION, from which time the ASSOCIATION (notwithstanding ownership in the COMMON AREAS) shall be solely responsible for the maintenance, repair and upkeep thereof, as well as the payment of rates and taxes (if any) and all other charges attaching thereto.
- 15.3 Notwithstanding any other provision to the contrary contained in this CONSTITUTION, it is recorded that the COMMON AREAS shall remain COMMON AREAS after the DEVELOPMENT PERIOD and that the ASSOCIATION may never convert or change same to anything other than COMMON AREAS, at any time.

16. WATERWAYS AND MOORING AREAS

- 16.1 The ASSOCIATION shall be solely responsible for the maintenance, repair and upkeep of the WATERWAYS and the MOORING AREAS as well as for payment of rates and taxes (if any) and all other charges attaching thereto, to the satisfaction of the DEVELOPER and any relevant authority, if applicable.
- 16.2 The DEVELOPER shall during the DEVELOPMENT PERIOD be entitled at any time and from time to time –
- 16.2.1 to allocate and reallocate BERTHS to OWNERS, subject to the BERTH LEASES with the relevant OWNER or other interested parties;
 - 16.2.2 to lease from the ASSOCIATION any such BERTHS as the DEVELOPER may stipulate from time to time, other than BERTHS which are only accessible by accessing an OWNER'S UNIT.
- 16.3 Subject to the provisions of the relevant BERTH LEASES and any harbour rules, the WATERWAYS and the MOORING AREAS shall at all times be maintained by the ASSOCIATION and the cost of maintenance for each BERTH and administrative charges connected therewith shall be imposed on the MEMBER who has the use rights in respect of such BERTH in terms of the relevant BERTH LEASE.
- 16.4 Notwithstanding any other provision to the contrary contained in this CONSTITUTION, it is recorded that the WATERWAYS and MOORING AREAS shall remain WATERWAYS and MOORING AREAS after the DEVELOPMENT PERIOD and that the ASSOCIATION may never convert or change same to anything other than WATERWAYS and MOORING AREAS, at any time.

17. LEVIES

- 17.1 The MEMBERS shall be jointly liable for all expenditure incurred by the ASSOCIATION in the furtherance of its objects in terms of this CONSTITUTION. To this end, the BOARD may, from time to time, impose LEVIES upon the MEMBERS for purposes of meeting all expenses which the ASSOCIATION has incurred, or which the BOARD reasonably anticipates the ASSOCIATION will incur, in the fulfilment of all its functions including the upkeep of the COMMON AREAS, the provision of security services (if applicable) and the management and administration of the DEVELOPMENT, and generally in the furtherance of its objects.
- 17.2 The BOARD shall, not less than 30 days prior to the end of each financial year (or so soon thereafter as is reasonably possible), prepare and cause to be served upon every MEMBER a notice containing an estimate of the amount which shall be required by the ASSOCIATION to meet its expenses during the following financial year, which notice shall specify separately the estimated deficiency (if any) resulting from the preceding year.
- 17.3 The BOARD may also include in such estimate an amount to be held in a reserve fund to meet anticipated expenditure not of an annual nature.
- 17.4 Every such LEVY shall be payable in advance in monthly instalments, due on the first day of each and every month. All LEVIES and other amounts due by a MEMBER to the ASSOCIATION shall be paid free of exchange by means of electronic transfer system into the account nominated by and in the form prescribed by the BOARD from time to time and, in this respect, every MEMBER shall sign all such documents and do all such other things which are necessary to arrange for that electronic transfer (including, without limitation, the execution of a debit order).

- 17.5 In the event of the BOARD for any reason whatsoever failing to timeously prepare and serve the estimate referred to in 17.2, every MEMBER shall, until receipt of such estimate, continue to pay the LEVY previously imposed.
- 17.6 In addition, the BOARD may, from time to time, impose special LEVIES upon the MEMBERS in respect of all such expenses contemplated in 17.1, which are not included in any estimate made in terms of 17.2, and may, in imposing such LEVIES, determine the terms of payment thereof.
- 17.7 Arrear LEVIES shall bear interest on the daily balance at the maximum rate permitted from time to time by the laws of the Seychelles.
- 17.8 Any amount due by a MEMBER by way of LEVY and/or interest thereon shall be a debt due by such MEMBER to the ASSOCIATION and a document purporting to be signed by the BOARD specifying such debt shall be prima facie proof thereof.
- 17.9 Notwithstanding that a person ceases to be a MEMBER, it shall remain liable for, and the ASSOCIATION shall have the right to recover from it, all LEVIES due up to the date of it ceasing to be a MEMBER, together with interest thereon.
- 17.10 No LEVIES or interest paid by a MEMBER shall under any circumstances be refundable by the ASSOCIATION upon it ceasing to be a MEMBER, and a MEMBER, on ceasing to be such, shall have no claims whatsoever to any monies or assets of the ASSOCIATION howsoever arising.
- 17.11 A MEMBER'S successor in title to a PARCEL shall be liable, as from the date upon which it becomes an OWNER, to pay the LEVY, and any interest thereon, attributable to its PARCEL.
- 17.12 Subject to 17.13 and 17.22, the LEVY payable by each MEMBER shall be calculated by the BOARD in proportion to the PARTICIPATION QUOTA attributable to such MEMBER'S PARCEL (which includes, for the avoidance of doubt, a CONDOMINIUM PROPERTY in case of that MEMBER being a MANAGEMENT CORPORATION) provided that the BOARD shall, as far as reasonably practical, assign –
- 17.12.1 those expenses relating to the DEVELOPMENT generally, to all MEMBERS;
- 17.12.2 those expenses arising directly out of a PARCEL itself, to the MEMBER owning that PARCEL; and
- 17.12.3 a proportion of those expenses attributable generally to a particular number of PARCELS, to the MEMBERS owning such PARCELS.
- 17.13 The BOARD shall calculate each MEMBER'S PARTICIPATION QUOTA by taking into account inter alia –
- 17.13.1 the extent of the PARCEL of that MEMBER in relation to the aggregate extent of all PARCELS;
- 17.13.2 the type and size of DWELLING/s erected on the PARCEL of that MEMBER;
- 17.13.3 in the case of a SINGLE RESIDENTIAL PARCEL, the purchase price achieved on the most recent sale of that PARCEL (or any right/s in respect of that PARCEL) in relation to the average purchase prices achieved on the sales of all SINGLE RESIDENTIAL PARCELS within that period; and
- 17.13.4 in the case of a CONDOMINIUM PROPERTY, the average purchase price achieved on the sales of APARTMENTS on that CONDOMINIUM PROPERTY within the past 18 month period in relation to the average purchase price achieved on the sales of all APARTMENTS within the DEVELOPMENT within that period.
- 17.14 The assignment of expenses to MEMBERS in terms of 17.12 shall be done equitably, provided, however, that the BOARD may in any case where it, in its absolute and sole discretion, considers it equitable to do so, assign to any MEMBER any greater or lesser share of the expenses as they may consider appropriate in the circumstances. Any decision made by the BOARD in respect of the assignment of expenses in terms of 17.12 shall be final and binding upon the MEMBERS.
- 17.15 No OWNER shall be entitled to any of the privileges of a MEMBER whilst any LEVY or interest thereon, and/or any other amount, which may be due and payable by that OWNER to the ASSOCIATION (directly or indirectly) from whatsoever cause arising, remains unpaid. The MEMBER'S obligations shall not, however, be suspended or discharged whilst its privileges are not exercisable as aforesaid.
- 17.16 Should any OWNER DEAL with a UNIT, that OWNER shall be liable to pay to the ASSOCIATION a CAPITAL CONTRIBUTION FEE of 1% of the fair market value of such UNIT.
- 17.17 The CAPITAL CONTRIBUTION FEE shall –
- 17.17.1 be payable to the ASSOCIATION on the effective date of the DEALING in relation to that UNIT; and
- 17.17.2 be imposed upon the MEMBERS for purposes of meeting capital expenditure requirements of the ASSOCIATION.

- 17.18 The obligation to pay the CAPITAL CONTRIBUTION FEE shall be deemed to have accrued prior to the DEALING and accordingly the DEALING shall be without prejudice to the ASSOCIATION'S right to recover the CAPITAL CONTRIBUTION FEE, and interest thereon, after the DEALING.
- 17.19 Should the ASSOCIATION not accept the selling price for the purposes of calculating the CAPITAL CONTRIBUTION FEE, the fair market value of the UNIT shall be determined by a valuer appointed by the BOARD who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the OWNER and the ASSOCIATION.
- 17.20 Should a MANAGEMENT CORPORATION fail to pay any LEVIES due by it on due date, the ASSOCIATION shall be entitled (but not obliged) to claim those LEVIES from every member of the MANAGEMENT CORPORATION, *pro rata* to that member's share value in terms of the relevant condominium plan.
- 17.21 Any certificate signed by a DEVELOPER OFFICER, or by a MEMBER OFFICER, specifying any amount due by a MEMBER shall be prima facie proof that such amount is so due.
- 17.22 Notwithstanding anything contained in this 17, the DEVELOPER and any owner of a portion or portions of UNDEVELOPED LAND shall not be liable for the payment of any LEVIES or any CAPITAL CONTRIBUTION FEE.

18. **MANAGER**

- 18.1 The BOARD may employ or appoint (as the case may be), in terms of a written contract, a MANAGER to control, manage and administer the ASSOCIATION and the DEVELOPMENT, and to exercise such powers and duties as may be generally entrusted to a MANAGER, including the power to collect LEVIES.
- 18.2 The MANAGER'S contract of employment or appointment (as the case may be) shall provide, inter alia, that –
- 18.2.1 the MANAGER shall be entitled to a salary or management fee (as the case may be); and
- 18.2.2 the MANAGER shall cease to hold office if –
- 18.2.2.1 he is in breach of any of the provisions of his contract of employment or appointment (as the case may be);
- 18.2.2.2 he surrenders his estate as insolvent or his estate is sequestrated (where the MANAGER is a natural person), or an order is made for its provisional or final liquidation (where the MANAGER is a company); or
- 18.2.2.3 the MANAGER is convicted of an offence involving fraud or dishonesty or, where the MANAGER is a company, any of its directors are convicted of an offence involving fraud or dishonesty;
- 18.2.2.4 the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter the BOARD, requires the MANAGER to cease to hold office.
- 18.3 In the event that the MANAGER be co-opted to the board of officers of the CMA, or any officer of the CMA be co-opted to the BOARD, the MANAGER or such officer of the CMA, shall be entitled and obliged to serve as a co-opted member of the board of officers of the CMA or the BOARD (as the case may be) and shall represent the interests of the ASSOCIATION or the CMA (respectively) and the DEVELOPMENT generally.

19. **CHAIRPERSON**

- 19.1 The BOARD shall within 14 days of each annual general meeting of the ASSOCIATION, appoint from their number a CHAIRPERSON, who shall hold office until the next annual general meeting, provided that the office of the CHAIRPERSON shall *ipso facto* be vacated by an OFFICER holding such office upon his ceasing to be an OFFICER for any reason, in which event the BOARD shall immediately appoint one of their number as a replacement CHAIRPERSON.
- 19.2 Except as otherwise provided in this CONSTITUTION, the CHAIRPERSON shall preside at all meetings of the BOARD and at all general meetings of MEMBERS (including the annual general meeting) and, in the event of the CHAIRPERSON not being present within 15 minutes of the scheduled meeting time, or in the event of his inability or unwillingness to act, a CHAIRPERSON appointed by the BOARD shall preside in his stead.
- 19.3 For the duration of the DEVELOPMENT PERIOD, the CHAIRPERSON as appointed in terms of 19.1, shall be subject to the DEVELOPER's consent, which consent will not be unreasonably withheld.

20. **OFFICERS**

20.1 **appointment**

- 20.1.1 The BOARD shall –

- 20.1.1.1 comprise 6 OFFICERS, being 2 DEVELOPER OFFICERS and 4 MEMBER OFFICERS; and
- 20.1.1.2 upon expiry of the DEVELOPMENT PERIOD, comprise 6 OFFICERS, being 6 MEMBER OFFICERS;
subject to the provisions of 20.1.6.
- 20.1.2 The DEVELOPER shall appoint the DEVELOPER OFFICERS and each DEVELOPER OFFICER shall be an individual but need not himself be an OWNER.
- 20.1.3 Similarly, each MEMBER OFFICER shall be an individual but need not himself be an OWNER, provided that the majority of MEMBER OFFICERS shall be OWNERS or spouses of OWNERS or, in the event of MEMBERS being a juristic person, a partnership or a trust, an office bearer, partner or trustee of those MEMBERS.
- 20.1.4 Subject to 20.1.2 and 20.1.3, the BOARD –
- 20.1.4.1 may co-opt any person(s) chosen by it onto the BOARD;
- 20.1.4.2 may invite any officer of the CMA to attend BOARD meetings,
irrespective of whether such person(s) is a MEMBER.
- 20.1.5 An OFFICER shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this CONSTITUTION.
- 20.1.6 The DEVELOPER shall be entitled, at any time during the DEVELOPMENT PERIOD, to change the composition of the BOARD and the number of OFFICERS in accordance with the DEVELOPMENT NODES as contemplated in 6.5 whereupon –
- 20.1.6.1 the number of MEMBER OFFICERS shall be equal to the number of DEVELOPMENT NODES from time to time;
and
- 20.1.6.2 the MEMBERS of every DEVELOPMENT NODE shall collectively be entitled to appoint 1 OFFICER.
- 20.2 **vacation of office**
- 20.2.1 An OFFICER shall be deemed to have vacated his office if –
- 20.2.1.1 he has become disqualified from acting as a director in terms of the provisions of the COMPANIES ACT and/or any other applicable law;
- 20.2.1.2 he is convicted of any offence involving dishonesty;
- 20.2.1.3 he becomes of unsound mind or is found to be a lunatic;
- 20.2.1.4 he dies;
- 20.2.1.5 being a MEMBER OFFICER, he is disentitled in terms of this CONSTITUTION from exercising a vote as a MEMBER;
- 20.2.1.6 his estate is sequestrated (whether provisionally or finally) or he enters into a general compromise with his creditors;
- 20.2.1.7 he resigns from his office by notice in writing to the ASSOCIATION;
- 20.2.1.8 he is absent from more than two general meetings of MEMBERS without leave from the BOARD, otherwise than on the business of the ASSOCIATION; and/or
- 20.2.1.9 the BOARD resolves that his office should be vacated.
- 20.2.2 Upon any vacancy occurring in the BOARD prior to the next annual general meeting of MEMBERS, the vacancy in question shall be filled by a person nominated by those remaining on the BOARD, provided that insofar as the vacation is by a DEVELOPER OFFICER, the nomination shall be made by the DEVELOPER in its sole and absolute discretion.

20.3 **retirement from office**

20.3.1 At the second anniversary of the annual general meeting of MEMBERS at which a MEMBER OFFICER was appointed, such MEMBER OFFICER(S) shall retire.

20.3.2 A MEMBER OFFICER retiring at an annual general meeting of MEMBERS as aforesaid, shall remain to be an OFFICER until the election of new MEMBER OFFICERS has been completed.

20.3.3 Retiring MEMBER OFFICERS shall be eligible for re-election.

20.3.4 No person, other than a MEMBER OFFICER retiring at the annual general meeting of MEMBERS shall, unless recommended by the OFFICERS, be eligible for election as a MEMBER OFFICER, or unless at least 5 days before the day appointed for the annual general meeting of MEMBERS, there shall have been delivered to the ASSOCIATION's office, a written notice by a MEMBER (who may also be the proposed MEMBER OFFICER) duly qualified to be present and vote at the annual general meeting in question, setting out the MEMBER'S intention to propose a named person for election as a MEMBER OFFICER, together with a written notice by the proposed MEMBER OFFICER of his willingness to be elected. All persons so named for election as a MEMBER OFFICER shall be specified in the notice to the annual general meeting in question.

20.3.5 The DEVELOPER shall, by written notice to the BOARD, be entitled to remove any DEVELOPER OFFICER and, upon such removal, or upon any DEVELOPER OFFICER ceasing to hold such position for any other reason, by written notice, appoint another person in his stead.

20.4 **functions, powers and duties of the BOARD**

20.4.1 The BOARD shall, subject to the provisions of this CONSTITUTION and any rules and/or regulations made thereunder, have full powers in the management and direction of the business and affairs of the ASSOCIATION, and may exercise all such powers and do all such acts on behalf of the ASSOCIATION as are not required by this CONSTITUTION or in law to be exercised or done by the ASSOCIATION in a general meeting of MEMBERS.

20.4.2 The BOARD shall at all times have the right to engage, on behalf of the ASSOCIATION, the services of accountants, auditors, attorneys, solicitors, barristers, architects, engineers and any other professional firm or person whatsoever for any reasons deemed necessary or desirable by the BOARD and on such terms as the BOARD shall decide.

20.5 **delegation of powers**

The BOARD may from time to time entrust and confer upon the MANAGER or any sub-committee, or any other designated official of the ASSOCIATION, such of the powers and authorities vested in them as they deem fit, for such period and purpose, and subject to such conditions and restrictions as they deem fit, which powers and authorities may, at any time, be revoked and/or varied by the BOARD.

20.6 **OFFICERS' expenses**

20.6.1 The OFFICERS shall be entitled to recover from the ASSOCIATION all reasonable and bona fide expenses incurred by them in or about the performance of their duties as OFFICERS, including travelling costs and accommodation expenses.

20.6.2 Save as aforesaid, OFFICERS shall not be entitled to any remuneration for the performance of their duties in terms hereof.

20.7 **proceedings of the BOARD**

20.7.1 The BOARD may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit, subject to the provisions of this CONSTITUTION.

20.7.2 Meetings of the BOARD shall be held at least 4 times during the ASSOCIATION'S financial year.

20.7.3 The CHAIRPERSON shall always have the right to convene a meeting of the BOARD by giving the other OFFICERS not less than 7 days' written notice of the meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.

20.7.4 Similarly, an OFFICER may at any time, provided he has the support in writing of not less than 1 other OFFICER, convene a meeting of the BOARD by giving the other OFFICERS not less than 14 days' written notice of the meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.

- 20.7.5 The quorum necessary for the holding of any meeting of the BOARD shall be 3 OFFICERS present in person or by proxy (if applicable), provided that, for the duration of the DEVELOPMENT PERIOD, there shall be no quorum unless at least 1 DEVELOPER OFFICER is present. If no quorum is present within 15 minutes of the scheduled meeting time, the meeting shall stand adjourned until the same time on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the OFFICERS then present shall constitute a quorum, provided that for the duration of the DEVELOPMENT PERIOD, there shall be no quorum unless 1 DEVELOPMENT OFFICER is present.
- 20.7.6 Any decision of the BOARD signed by the OFFICER/S holding the majority of voting rights in terms of 20.7.7 shall be valid and effectual as if it had been passed at a meeting of OFFICERS duly called and constituted.
- 20.7.7 Each OFFICER shall at any meeting of the BOARD have one vote, provided that for the duration of the DEVELOPMENT PERIOD, the DEVELOPER OFFICER(s) present at that meeting shall together have the combined votes of all MEMBER OFFICERS, whether present at such meeting or not, plus one vote. In the event of an equality of votes for and against a RESOLUTION, the CHAIRPERSON shall have a second or casting vote.
- 20.7.8 The CHAIRPERSON shall preside as such at all meetings of the BOARD, provided that should the CHAIRPERSON not be present at any meeting of the BOARD within 15 minutes of the scheduled meeting time, the OFFICERS present shall appoint a CHAIRPERSON for purposes of the meeting, who shall exercise all the powers and duties of the CHAIRPERSON in relation to such meeting.
- 20.7.9 An OFFICER may be represented at a meeting of the BOARD by a proxy, provided such proxy is an OFFICER. The instrument appointing a proxy shall be in writing and signed by the OFFICER concerned, but need not be in any particular form. The proxy shall be deposited with the CHAIRPERSON at any time before the scheduled meeting time and shall be valid only for such meeting (or any adjournment thereof). In the event that a proxy form does not specifically state how the relevant proxy should vote in respect of any item to be voted on at a BOARD meeting, the proxy shall be entitled to exercise his own discretion in relation to each such item on which he is required to vote.
- 20.7.10 The BOARD shall –
- 20.7.10.1 ensure that minutes are taken of every meeting of the BOARD, which minutes shall be reduced to writing without undue delay after the meeting has closed, and shall then be certified as correct by the CHAIRPERSON of the meeting;
- 20.7.10.2 cause such minutes to be kept of all meetings of the BOARD in a minute book of meetings of the BOARD kept for that purpose;
- 20.7.10.3 keep all minute books of meetings of the BOARD in perpetuity; and
- 20.7.10.4 on the written application of any MEMBER, make all minutes of their proceedings available for inspection by such MEMBER.
- 20.7.11 All decisions recorded in the minutes of any meeting of the BOARD shall be valid and of full force and effect as therein recorded with effect from the passing of such decisions and until varied or rescinded, provided that no decision or purported decision of the BOARD shall be of any force or effect, or binding upon the MEMBERS, or any of the OFFICERS, unless such decision is competent within the powers of the BOARD.
- 20.7.12 Save as otherwise provided in this CONSTITUTION, the proceedings at any meeting of the BOARD shall be conducted in such reasonable manner and form as the CHAIRPERSON of the meeting shall decide.

21. GENERAL MEETINGS

21.1 annual general meetings and extraordinary general meetings

- 21.1.1 The ASSOCIATION shall from time to time hold general meetings of MEMBERS.
- 21.1.2 The ASSOCIATION shall, within 6 months of each financial year end, hold its annual general meeting(s).
- 21.1.3 Subject to 21.1.2 and 21.1.5, each general meeting of MEMBERS shall be held at such time, place and in such a manner, as the BOARD shall determine.
- 21.1.4 All general meetings of MEMBERS other than the annual general meeting shall be called extraordinary general meetings.
- 21.1.5 The BOARD may, whenever it deems fit to do so, convene an extraordinary general meeting of MEMBERS. Furthermore, the BOARD shall convene an extraordinary general meeting of MEMBERS if so requested by

MEMBERS holding between them, in aggregate, not less than 25% of the total voting rights of all MEMBERS, or if so requested by the DEVELOPER at any time during the DEVELOPMENT PERIOD.

21.2 notices of general meetings

21.2.1 All general meetings shall be called by not less than 21 days' written notice, provided that the DEVELOPER (during the DEVELOPMENT PERIOD) or thereafter the BOARD, in a case of urgency, may request that any general meeting shall be called upon 7 days' written notice.

21.2.2 In each case the notice –

21.2.2.1 shall be exclusive of the day on which it is given;

21.2.2.2 shall specify the place, day and time of the meeting;

21.2.2.3 in the case of special business, shall specify the general nature of that business;

21.2.2.4 in the case of a SPECIAL RESOLUTION, shall specify the terms and effect of the SPECIAL RESOLUTION and the reasons for it.

21.2.3 A general meeting of MEMBERS shall, notwithstanding that it is called by shorter notice than that specified in 21.2.1, be deemed to have been duly called if it is so agreed –

21.2.3.1 in the case of a meeting called as the annual general meeting, by 75% the MEMBERS having a right to attend and vote at the meeting; and

21.2.3.2 in the case of an extraordinary general meeting of MEMBERS, by a majority in number of the MEMBERS having a right to attend and vote at the meeting.

21.2.4 The non-receipt of notice of a general meeting by any person entitled to receive such notice shall not invalidate the proceedings at, or any RESOLUTION passed at, the general meeting in question.

21.3 quorum

21.3.1 No business shall be transacted at any general meeting of MEMBERS unless a quorum is present when the meeting proceeds to business. The quorum shall be not less than 3 MEMBERS present in person or by proxy, which, together, hold not less than 10% of the total voting rights of MEMBERS at a general meeting, provided, however, that –

21.3.1.1 there shall be no quorum unless at least one individually registered owner each of an APARTMENT, MAISON and VILLA are collectively present in person or by proxy; and

21.3.1.2 for the duration of the DEVELOPMENT PERIOD, there shall be no quorum unless the DEVELOPER is present.

21.3.2 If no quorum is present within 15 minutes of the scheduled meeting time, the meeting shall stand adjourned until the same day in the next week and, if at such adjourned meeting, a quorum is not present within 30 minutes of the scheduled meeting time, the MEMBER/S then present shall constitute a quorum, provided that for the duration of the DEVELOPMENT PERIOD, there shall be no quorum at such adjourned meeting unless the DEVELOPER is present.

21.4 agenda at general meetings

21.4.1 In addition to any other matters required by law or in terms of this CONSTITUTION to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting –

21.4.1.1 the review of the BOARD'S and ASSOCIATION'S activities for the preceding year;

21.4.1.2 the consideration of the CHAIRPERSON'S report;

21.4.1.3 the noting, recordal and ratifying (in so far as may be required) of the appointment of the DEVELOPER OFFICERS by the DEVELOPER;

21.4.1.4 the election of MEMBER OFFICERS;

21.4.1.5 the consideration of any other matters raised at the meeting, including any RESOLUTIONS proposed for adoption, and the voting upon any such RESOLUTIONS;

- 21.4.1.6 the consideration of the ASSOCIATION'S accounts for the preceding financial year; and
- 21.4.1.7 the consideration of the AUDITOR'S report.
- 21.4.2 No business shall be dealt with at any extraordinary general meeting of MEMBERS unless written notice has been given to the OFFICERS not less than 7 days before such meeting by the person proposing to raise such business of his intention to do so; provided, however, that the CHAIRPERSON may relax this provision if authorised by ORDINARY RESOLUTION of the meeting concerned.
- 21.5 **proxies**
- 21.5.1 A MEMBER may be represented at a general meeting of MEMBERS by a proxy, provided that –
- 21.5.1.1 where a MEMBER is a MANAGEMENT CORPORATION, that MEMBER'S proxy shall be an OWNER and such proxy's authority shall be proven by such written documentation as the BOARD may deem fit; and
- 21.5.1.2 where a MEMBER, save for the DEVELOPER and a MANAGEMENT CORPORATION, is an artificial person, that MEMBER'S proxy shall be an OWNER and such proxy's authority shall be proven by such written documentation as the BOARD may deem fit;
- 21.5.1.3 where a MEMBER is a natural person, that MEMBER'S proxy shall be any OWNER.
- 21.5.2 The instrument appointing a proxy shall be in writing and signed by the MEMBER concerned, or his duly authorised agent, but need not be in any particular form; provided that where a MEMBER is more than one person, a majority of those persons shall sign the instrument appointing a proxy on such MEMBER'S behalf. In the event that a proxy form does not specifically state how the relevant proxy should vote in respect of any item to be voted on at a general meeting, the proxy shall be entitled to exercise his own discretion in relation to each such item on which he is required to vote.
- 21.5.3 The instrument appointing a proxy, as well as the power of attorney or other authority (if any) under which it is signed, shall be delivered to the ASSOCIATION'S office at least 72 hours before the scheduled meeting time.
- 21.5.4 The instrument appointing a proxy shall be valid only for the specific meeting (or any adjournment thereof).
- 21.5.5 The BOARD may require proof to its satisfaction of the appointment or authority of such office bearer.
- 21.6 **voting**
- 21.6.1 Subject to 21.6.2 and 21.6.6, at every general meeting of MEMBERS –
- 21.6.1.1 every MEMBER owning a SINGLE RESIDENTIAL PARCEL, present at such meeting or represented by proxy, shall have one vote for each internal square metre of floor area of that MEMBER'S MAISON or VILLA (as the case may be);
- 21.6.1.2 every MANAGEMENT CORPORATION, present at such meeting or represented by proxy, shall have one vote for each internal square metre of floor area of the APARTMENTS in the relevant CONDOMINIUM BUILDING;
- 21.6.1.3 in the event that any individual condominium title owner is present or represented by proxy at such meeting, the individual condominium title owner shall have one vote for each internal square metre of floor area of his APARTMENT and such vote(s) shall be subtracted from the number of votes, as contemplated in 21.6.1.2, of the MANAGEMENT CORPORATION for the relevant CONDOMINIUM BUILDING of which he APARTMENT forms part;
- 21.6.1.4 every registered owner of a portion or portions of UNDEVELOPED LAND, present at such meeting or represented by proxy, shall have one vote for each square metre of UNDEVELOPED LAND; and
- 21.6.1.5 on expiration of the DEVELOPMENT PERIOD and in the event of an equality of votes, the CHAIRPERSON shall have a casting vote.
- 21.6.2 Notwithstanding the provisions of 21.6.1, for the duration of the DEVELOPMENT PERIOD, the DEVELOPER shall have, in addition to its votes as OWNER and/or as registered owner of a portion or portions of UNDEVELOPED LAND, the votes equal to the combined votes of all MEMBERS multiplied by 2.
- 21.6.3 After the expiry of the DEVELOPMENT PERIOD –
- 21.6.3.1 every ORDINARY RESOLUTION shall be subject to –

- 21.6.3.1.1 an ordinary majority of the total votes of the MEMBERS present or represented at that meeting of MEMBERS; and
- 21.6.3.1.2 an ordinary majority of the total votes of MEMBERS, falling into the category of MEMBERS referred to in 7.1.2, present or represented at that meeting of MEMBERS;
- 21.6.3.2 every SPECIAL RESOLUTION shall be subject to –
- 21.6.3.2.1 a majority of not less than 75% of the total voting rights of all MEMBERS present or represented at that meeting of MEMBERS; and
- 21.6.3.2.2 a majority of not less than 75% of the total votes of all MEMBERS, falling into the category of MEMBERS referred to in 7.1.2, present or represented at that meeting of MEMBERS.
- 21.6.4 A RESOLUTION put to the vote of a general meeting shall be decided on a poll.
- 21.6.5 The election of a CHAIRPERSON and the taking of a poll shall be taken immediately and in such manner as the CHAIRPERSON of the general meeting directs.
- 21.6.6 Save as expressly provided for in this CONSTITUTION, and subject to the reasonable discretion of the BOARD, no person other than an OWNER and or MEMBER (as the case may be) who has paid every LEVY and other amount (if any) due and payable by it to the ASSOCIATION in respect of or arising out of its membership, and whose membership is not under suspension, shall be entitled to be present or to vote at any general meeting of MEMBERS.
- 21.6.7 Every RESOLUTION and amended RESOLUTION proposed for adoption at a general meeting of MEMBERS shall be seconded at the meeting concerned and, if not so seconded, shall be deemed not to have been proposed, provided that any RESOLUTION or amended RESOLUTION proposed for adoption by the DEVELOPER need not be seconded.
- 21.6.8 Every RESOLUTION recorded in the minutes of any general meeting of MEMBERS shall be valid and of full force and effect as therein recorded, with effect from the passing of such RESOLUTIONS, and until varied or rescinded, but no RESOLUTION or purported RESOLUTION of the MEMBERS shall be of any force or effect, or binding upon the MEMBERS or the BOARD, unless such RESOLUTION is competent within the powers of the ASSOCIATION.
- 21.6.9 Unless any MEMBER present in person or by proxy at a general meeting of MEMBERS, before the closure of the meeting, has objected to any declaration made by the CHAIRPERSON of the meeting as to the result of any voting at the meeting, or as to the propriety or validity of the procedure at such meeting, such declaration by the CHAIRPERSON shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted.
- 21.7 **minutes of general meetings**
- The BOARD shall –
- 21.7.1 ensure that minutes are taken of every general meeting of MEMBERS, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified as correct by the CHAIRPERSON of the meeting;
- 21.7.2 distribute the minutes to all MEMBERS;
- 21.7.3 cause the minutes to be kept in a minute book of meetings of MEMBERS kept for that purpose; and
- 21.7.4 keep all minute books of meetings of MEMBERS in perpetuity.
22. **DEPOSIT AND INVESTMENT OF FUNDS**
- 22.1 The BOARD shall cause all monies received by the ASSOCIATION to be deposited to the credit of an interest-bearing account/s with a registered financial institution in the name of the ASSOCIATION and, subject to any direction given or restriction imposed at a general meeting of MEMBERS, such monies (save for any monies received as CAPITAL CONTRIBUTION FEES which shall be retained by the ASSOCIATION shall only be withdrawn for purposes of payment of the expenses of the ASSOCIATION, or for investment.
- 22.2 Any funds not immediately required for the payment of the ASSOCIATION'S expenses may be invested in a savings or similar account with any financial institution, or any other registered deposit-receiving institution, approved by the BOARD from time to time.
- 22.3 Interest on monies invested shall be used by the ASSOCIATION for any lawful purpose in the interest of the ASSOCIATION.

23. AUDITORS AND SECRETARY

The MEMBERS shall, by way of ORDINARY RESOLUTION passed at a general meeting of MEMBERS, nominate the auditors and secretary of the ASSOCIATION from time to time, provided that for the duration of the DEVELOPMENT PERIOD, the DEVELOPER may nominate the AUDITORS and the secretary of the ASSOCIATION.

24. FINANCIAL YEAR END

The financial year end of the ASSOCIATION shall be the last day of December of each year.

25. BOOKS AND ACCOUNTS

25.1 The BOARD shall cause proper books of account and records to be kept so as to fairly explain the transactions and financial position of the ASSOCIATION, which books of account and records shall include –

25.1.1 a record of the assets and liabilities of the ASSOCIATION;

25.1.2 a record of all sums of money received and expended by the ASSOCIATION and the matters in respect of which such receipt and expenditure occurred;

25.1.3 a register of MEMBERS showing, in each case, their addresses; and

25.1.4 individual ledger accounts in respect of each MEMBER.

25.2 The BOARD shall cause all books of account and records to be retained for a period of 6 years after completion of the transactions, acts or operations to which they relate.

25.3 A MEMBER or person having an interest in the funds of the ASSOCIATION may inspect the books at all reasonable hours at the OFFICE, except that such MEMBER or person shall not, unless he is an OFFICER, or is specially authorised by a RESOLUTION to do so, have the right to inspect the loan or debit account of any other MEMBER without the written consent of that MEMBER.

26. AUDIT

26.1 At least once in every year, the accounts of the ASSOCIATION shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by the auditors of the ASSOCIATION.

26.2 The duties of the auditors of the ASSOCIATION shall be regulated in accordance with general practice and applicable professional standards applicable in the Republic of Seychelles.

27. LIABILITY AND INDEMNITY

27.1 The ASSOCIATION, its OFFICERS, representatives and/or employees shall not be liable to any MEMBER, or any of the MEMBER'S tenants, or their respective employees, agents, invitees or customers, for any injury, loss or damage of any description which the MEMBER, or any such other person, may suffer or sustain, whether directly or indirectly, in or about EDEN ISLAND, regardless of the cause thereof, nor shall the ASSOCIATION, its OFFICERS, representatives and/or employees be responsible for any theft or loss of property occurring within EDEN ISLAND.

27.2 MEMBERS shall not, under any circumstances, have any claim or right of action whatsoever against the ASSOCIATION, its OFFICERS, representatives and/or employees for damages, loss or otherwise, nor shall MEMBERS be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

27.3 Every OFFICER and other office bearer of the ASSOCIATION shall be indemnified out of the funds of the ASSOCIATION against –

27.3.1 any liabilities of that OFFICER or other office bearer in discharge of such person's function and/or duty as OFFICER or other office bearer;

27.3.2 any liabilities of that OFFICER or other office bearer resulting out of any contract entered into by that OFFICER or other office bearer on behalf of the ASSOCIATION with due authority, or out of any other act done with due authority; and

27.3.3 any expenditure reasonably incurred in defending any proceedings, whether civil or criminal, in which judgment is given in that OFFICER'S or other office bearer's favour, or in which he is acquitted.

27.4 No OFFICER or other office bearer of the ASSOCIATION shall be liable for –

- 27.4.1 any act, receipt, neglect or fault of that OFFICER or other office bearer;
- 27.4.2 the insufficiency or deficiency of any security in or upon which any of the monies of the ASSOCIATION have been invested;
- 27.4.3 any loss or damage arising from the insolvency or delict of any person with whom any monies, securities or effects have been deposited;
- 27.4.4 any loss or damage occasioned by any bona fide error of judgment or oversight on that OFFICER'S or other office bearer's part; or
- 27.4.5 any injury or other loss or damage or misfortune which has occurred in the execution of that OFFICER'S or other office bearer's duty of office or in relation thereto; unless such liability occurs as a result of gross negligence or intent, or deliberate breach of any of his fiduciary duties.
- 27.5 Any person residing on the DEVELOPMENT and/or using any of the facilities within the DEVELOPMENT does so entirely at his own risk, and no person shall have any claim against the DEVELOPER and/or ASSOCIATION and/or the OFFICERS, representatives and/or employees of either, of whatsoever nature and howsoever arising for such residing or use, nor for anything which may befall any person during that person residing on the DEVELOPMENT and/or using any the facilities within the DEVELOPMENT.
- 27.6 Each MEMBER shall indemnify the DEVELOPER and ASSOCIATION and every OFFICER, representative and/or employee of either against all or any claims of whatsoever nature which may be brought against the ASSOCIATION or the DEVELOPER (as the case may be) by a representative, household member, tenant, employee, visitor, invitee of, or other person related to or under the control of, that MEMBER.

28. **MANAGEMENT CORPORATIONS**

For the avoidance of doubt and notwithstanding anything elsewhere in this CONSTITUTION, it is recorded that, the provisions of this CONSTITUTION shall also apply to all condominium title owners of APARTMENTS, *mutatis mutandis*, and every MANAGEMENT CORPORATION shall procure that the provisions of this CONSTITUTION be included in the relevant rules of the MANAGEMENT CORPORATION and that every member of such MANAGEMENT CORPORATION complies in all respects with this CONSTITUTION, *mutatis mutandis*. Every MANAGEMENT CORPORATION shall be liable for any breach or non-compliance of any of the provisions with this CONSTITUTION by any of its members.

29. **BREACH**

- 29.1 If any MEMBER fails in the observance of any of the provisions of this CONSTITUTION, or any rules and/or regulations made in terms hereof, and/or fails to comply with the provisions of the DESIGN GUIDELINES, and/or fails to observe any applicable laws, by-laws or any other regulations imposed by any relevant authority in relation to EDEN ISLAND (or any part thereof), the BOARD may, on behalf of the ASSOCIATION, serve notice on such MEMBER calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance –
 - 29.1.1 enter upon the MEMBER'S PARCEL to take such action as may be reasonably required to remedy the breach, and the MEMBER concerned shall be liable to the ASSOCIATION for all costs so incurred, which costs shall be due and payable upon demand; or
 - 29.1.2 call upon such MEMBER in writing to remove or alter any building, or other structure, or other IMPROVEMENTS erected or effected contrary to this CONSTITUTION, and/or any rules and/or regulations made in terms of this CONSTITUTION; or
 - 29.1.3 institute proceedings, subject to 30 in any court of competent jurisdiction for such relief as the BOARD may consider necessary, and such MEMBER shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client as well as all other expenses and charges incurred in obtaining relief; and/or
 - 29.1.4 impose a daily financial penalty, the amount of which shall be determined from time to time by the BOARD, on notice to the MEMBER.
- 29.2 In addition, if any MEMBER fails to make payment on the due date of LEVIES or other amounts payable by such MEMBER, the BOARD may give notice to such MEMBER requiring him to remedy such breach within 5 business days, and should he fail to timeously remedy his breach, the BOARD may, on behalf of the ASSOCIATION, institute legal proceedings against such MEMBER without further notice, and such MEMBER will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses incurred by the ASSOCIATION in obtaining recovery of the amounts due to it.
- 29.3 Nothing in this 29 shall derogate from, or in any way diminish, the right of the ASSOCIATION to institute proceedings in any court of competent jurisdiction for recovery of any money due by any MEMBER arising from any cause of action whatsoever, for the enforcement of any other obligation of a MEMBER in terms of this CONSTITUTION, or for any other relief.

29.4 In the event of any breach of this CONSTITUTION by any person in any OWNERS' household or its employees, invitees or lessees, such breach shall be deemed to have been committed by the OWNER itself; provided that the ASSOCIATION shall be entitled, but not obliged, in addition to any other rights which it may have or remedies which may be available to it, to take such steps against the person actually committing the breach, with or without proceeding against the OWNER.

30. **ARBITRATION**

30.1 Subject to any specific provisions to the contrary in this CONSTITUTION, in the event of any dispute of any nature whatsoever arising between the ASSOCIATION and/or the MEMBERS and/or the DEVELOPER, or any one of them, on any matter provided for in, or arising out of this CONSTITUTION, that dispute shall be referred to and be determined in accordance with this 30.

30.2 The provisions of this 30 shall, however, not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.

30.3 The arbitration shall be held –

30.3.1 at Victoria, Mahé, Republic of Seychelles;

30.3.2 on the basis that the proper law of this CONSTITUTION shall be the law of the Republic of Seychelles; and

30.3.3 with only the parties and their legal and other representatives present thereat;

30.3.4 in terms of the Commercial Code Act (Chapter 38) of the Laws of Seychelles (Book I, Title IX, articles 110 to 189); and

30.3.5 before a sole arbitrator, subject to 30.84.

30.4 The arbitrator shall be, if the matter in dispute is principally –

30.4.1 a legal matter, a practising advocate or attorney, from either the Republic of Seychelles, the Republic of South Africa or the United Kingdom, of at least 15 years standing;

30.4.2 an accounting matter, a practising chartered accountant either from the Republic of Seychelles, Republic of South Africa or the United Kingdom, of at least 15 years standing;

30.4.3 any other matter, a suitably qualified independent person either from the Republic of Seychelles, the Republic of South Africa or the United Kingdom, of at least 15 years standing.

30.5 Should the parties fail to agree whether the dispute is principally a legal, accounting or other matter within 30 days of a party declaring a dispute for purposes of this 30, the matter shall be deemed to be a legal matter.

30.6 Should the parties fail to agree on an arbitrator within 30 days of a party declaring a dispute for purposes of this 30, the arbitrator shall be appointed at the request of either party to the dispute by the Chief Justice of the Supreme Court of the Seychelles according to the provisions of 30.4 and the parties hereby indemnify the Chief Justice against any claims resulting from the appointment of such arbitrator.

30.7 The arbitrator shall have the power to fix all procedural rules for the holding of the arbitration, including discretionary powers to make orders as to any matters which he may consider proper in the circumstances of the case with regard to submissions, pleadings, inspection of documents, examination of witnesses and any other matter relating to the conduct of the arbitration. The arbitrator may receive and act on all such evidence, whether oral or written, strictly admissible or not, as he in his discretion may deem fit.

30.8 The award of the arbitrator shall be binding upon the parties subject to the parties' right to lodge an appeal against such award within a period of 5 days after the award was given, which appeal will be referred to a tribunal of 3 arbitrators appointed in accordance with 30.4, and to which appeal the provisions of this 30 shall apply mutatis mutandis.

30.9 The parties agree to keep the arbitration, including the subject matter of the arbitration and the evidence heard during the arbitration confidential, and not to disclose the same to anyone, except to their respective shareholders (if applicable), and except for purposes of the arbitration proceedings in terms of this 30 any review thereof, and/or obtaining interim relief in terms of 30.2.

30.10 The provisions of this 30 –

30.10.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no such party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and

30.10.2 constitute a separate agreement, severable from the rest of this CONSTITUTION and shall remain in effect despite determination of, or invalidity for any reason, of this CONSTITUTION.

31. **NOTICES AND DOMICILIUM**

31.1 The BOARD shall from time to time determine the address constituting the domicilium citandi et executandi of the ASSOCIATION, subject to the following –

31.1.1 such address shall be the address of the CHAIRPERSON, or of a MEMBER OFFICER nominated by the BOARD; and

31.1.2 the BOARD shall give notice to all MEMBERS of any change of such address.

31.2 The domicilium citandi et executandi of a MEMBER shall be –

31.2.1 the street address of that MEMBER'S PARCEL;

31.2.2 for a MANAGEMENT CORPORATION, the street address of the relevant CONDOMINIUM PROPERTY;

31.2.3 for the DEVELOPER, its registered office from time to time; and

31.2.4 for the registered owner of a portion of UNDEVELOPED LAND, at the DEVELOPER'S domicilium citandi et executandi.

31.3 It shall be competent to give notice by facsimile or electronic mail where the MEMBER'S facsimile number or email address is recorded with the BOARD.

31.4 A MEMBER may, by notice in writing to the BOARD, alter its domicilium citandi et executandi, provided such new address shall not be a post office box or poste restante, and provided further that such new address is within the Republic of Seychelles.

31.5 Any notice given in terms of this CONSTITUTION shall be in writing and shall –

31.5.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

31.5.2 if delivered by recognised national or international courier service be deemed to have been received by the addressee on the first business day following the date of such delivery by the courier service concerned;

31.5.3 if transmitted by facsimile or electronic mail be deemed to have been received by the addressee one business day after despatch.

31.6 Notwithstanding anything to the contrary contained in this CONSTITUTION, a written notice or communication actually received by a MEMBER, including via electronic mail, shall be adequate written notice or communication to such MEMBER notwithstanding that it was not sent to or delivered at his domicilium citandi et executandi.

32. **AMENDMENT OF CONSTITUTION**

32.1 This CONSTITUTION may be amended by SPECIAL RESOLUTION passed at a general meeting of MEMBERS called specifically for such purpose; provided that during the DEVELOPMENT PERIOD, this CONSTITUTION shall not be amended or varied without the prior written consent of the DEVELOPER, which prior written consent shall not be unreasonably withheld.

32.2 Notwithstanding the provisions of 32.1, none of the provisions contained in 6, 13, 15.3, 16.4, 17.22,27 and this 32 may be amended or varied at any time without the prior written consent of the DEVELOPER which prior written consent shall not be unreasonably withheld.

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MOORING AREAS AND WATERWAYS

CONDUCT RULES (Draft)

CONDUCT RULES

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1. INTRODUCTION

- 1.1 In these CONDUCT RULES, words and expressions defined in the CONSTITUTION shall have the same meaning.
- 1.2 The BOARD, may in terms of the CONSTITUTION, make rules, and amend or modify those rules, relating to, *inter alia*, the management and use of the MOORING AREAS and the WATERWAYS.
- 1.3 The BOARD has adopted these CONDUCT RULES set out in this document relating to the use of the MOORING AREAS and WATERWAYS.
- 1.4 These CONDUCT RULES shall apply to all BERTH HOLDERS and USERS of the MOORING AREAS and the WATERWAYS, and any of the facilities relating thereto.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In these CONDUCT RULES the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them –
 - 2.1.1 "ASSOCIATION" means the Eden Island Village Management Association registered under the Registration of Association Act (Cap 201 of the Laws of Seychelles);
 - 2.1.2 "BERTH HOLDER" means any person who has entered into a BERTH LEASE in respect of any BERTH;
 - 2.1.3 "BERTHING RIGHTS" means the sole and exclusive right of a BERTH HOLDER to the use and enjoyment of a designated BERTH in terms of the relevant BERTH LEASE and in accordance with these CONDUCT RULES;
 - 2.1.4 "CONDUCT RULES" means the rules relating to the use of the MOORING AREAS and WATERWAYS set out in this document, as amended from time to time;
 - 2.1.5 "CONSTITUTION" means the constitution of the ASSOCIATION, as amended and shall be deemed to include all rules and regulations made thereunder and or issued in terms thereof from time to time;
 - 2.1.6 "MANAGER" means any person or body appointed or employed by the ASSOCIATION for purposes of managing the MOORING AREAS (or any part thereof) in order to ensure compliance with these CONDUCT RULES, the BERTH LEASES and/or all rules and regulations imposed by any relevant authority (if applicable);
 - 2.1.7 "MANAGEMENT CORPORATION" means the body corporate constituted for in accordance with section 13(1) Condominium Property Act (Cap 41A of the Laws of Seychelles) as represented by its council constituted under section 16 of the aforementioned Act;
 - 2.1.8 "MANAGEMENT CORPORATION RULES" means any and all rules and regulations passed by a MANAGEMENT CORPORATION;
 - 2.1.9 "SERVICES" means the facilities provided by the ASSOCIATION in respect of each BERTH including, without limitation, facilities relating to the supply of water and metered power, connections for television and telephone, communal area lighting, removal of sewerage and solid refuse, fire fighting and fuel docking;
 - 2.1.10 "USER" means any BERTH HOLDER, any member of the BERTH HOLDER'S household, any employee, crew member, contractor or other invitee of the BERTH HOLDER, and any other person using a BERTH for any purpose whatsoever;
 - 2.1.11 "VESSEL" means a waterborne vessel of any size, type or description;
 - 2.1.12 any reference to the singular includes the plural and *vice versa*;
 - 2.1.13 any reference to natural persons includes artificial persons and *vice versa*;
 - 2.1.14 any reference to a gender includes the other genders (including neuter);
 - 2.1.15 any reference to months or years shall be construed as calendar months or years.
- 2.2 Where applicable, the provisions of 2.1 shall impose substantive rights and obligations on the parties as provided in the provision concerned.
- 2.3 The clause headings in these CONDUCT RULES have been inserted for convenience only and shall not be taken into account in their interpretation.

- 2.4 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.5 No provision of these CONDUCT RULES shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party having or being deemed to have structured or drafted such provision.
- 2.6 The *eiusdem generis* rule shall not apply and whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.
- 2.7 When these CONDUCT RULES prescribe any number of days, such days must be reckoned exclusively of the first and inclusively of the last day. If the last day falls on a day that is not a business day, it will be deemed to fall on the next business day.
- 2.8 These CONDUCT RULES shall be governed by and construed and interpreted in accordance with the laws of the Republic of Seychelles, and the ASSOCIATION and every BERTH HOLDER consents to the jurisdiction of the Courts of the Seychelles for purposes of any proceeding instituted in connection with these CONDUCT RULES.
- 2.9 Where the laws of the Republic of Seychelles do not know or recognise any legal term or phrase contained in these CONDUCT RULES, or any legal principle to which any of the provisions, terms, phrases or words contained in these CONDUCT RULES relate, the legal term or phrase, or legal principle, shall be construed and interpreted in accordance with the laws of the Republic of South Africa, and shall be implemented accordingly.

3. RIGHTS OF BERTH HOLDERS

Subject to the BERTH HOLDER abiding by the provisions of these CONDUCT RULES, every BERTH HOLDER shall be entitled to –

- 3.1 access to and egress from his BERTH (whether by way of roads situated within the DEVELOPMENT or otherwise);
- 3.2 moor his VESSEL at his BERTH and navigate his VESSEL to and from his BERTH; and
- 3.3 use the SERVICES through the conduits and connection points nearest to his BERTH in accordance with the provisions of 6.

4. OBLIGATIONS OF BERTH HOLDERS

4.1 safety

4.1.1 Every BERTH HOLDER shall –

- 4.1.1.1 comply with all instructions of the LESSOR, the ASSOCIATION, the MANAGER and/or any relevant authority (or their respective duly authorised representatives) regarding the safe and efficient operation of the MOORING AREAS and the WATERWAYS;
- 4.1.1.2 ensure that his VESSEL is, at all times, seaworthy and in a fit and proper condition;
- 4.1.1.3 take all necessary and reasonable precautions against the outbreak of fire in or upon his VESSEL, and ensure that there is at least one suitable, operational fire extinguisher for every 5 metres of VESSEL, on his VESSEL at all times;
- 4.1.1.4 whenever he intends to use his VESSEL outside the WATERWAYS or otherwise absent his VESSEL from the MOORING AREAS for any reason whatsoever, notify the MANAGER, or his duly authorised representative, of the time and date of departure of his VESSEL from the WATERWAYS, and the anticipated time and date of return of his VESSEL to the WATERWAYS;
- 4.1.1.5 report any incident or accident of a serious nature which occurs aboard his VESSEL to the ASSOCIATION and the MANAGER and/or their respective duly authorised representatives;
- 4.1.1.6 secure his VESSEL with such bow, stern and spring lines as may be appropriate to provide a safe and secure connection to the BERTH in all weather conditions;
- 4.1.1.7 ensure that his VESSEL is properly and safely secured and attached to his BERTH at all times;
- 4.1.1.8 ensure that halyards, lines, flags and other items attached to his VESSEL are secured so as not to cause any nuisance, annoyance or inconvenience to any USER, other BERTH HOLDER or person residing in the vicinity of the MOORING AREAS;
- 4.1.1.9 provide all necessary warps and fenders for both sides of his VESSEL;

- 4.1.1.10 ensure that his VESSEL'S lines are maintained in good condition and are of a size and design suitable for his VESSEL and, where necessary, provide chafing gear or other line protection, for his VESSEL;
- 4.1.1.11 navigate and control his VESSEL in a safe and seamanlike manner so as not to cause danger, damage or inconvenience to any other USER or VESSEL;
- 4.1.1.12 ensure that his VESSEL proceeds at a speed which is safe in relation to prevailing weather and sea conditions and, at all times, comply with the existing speed restriction of 3 knots within the WATERWAYS;
- 4.1.1.13 ensure that his VESSEL is, at all times, able to proceed under its own power;
- 4.1.1.14 ensure that children are accompanied by a responsible adult whilst in or around the MOORING AREAS or WATERWAYS;
- 4.1.1.15 ensure that children and non-swimmers wear personal flotation devices aboard his VESSEL and in or around the WATERWAYS; and
- 4.1.1.16 ensure that he, his employees, crew, contractors and/or other invitees take the necessary care in observing these CONDUCT RULES and general safety standards applicable to the use of the MOORING AREAS and the WATERWAYS.
- 4.1.2 In addition, every BERTH HOLDER acknowledges and agrees that –
 - 4.1.2.1 the International Rules for the Prevention of Collisions at Sea shall apply to the MOORING AREAS and the WATERWAYS and its approaches;
 - 4.1.2.2 all VESSELS entering, departing or moving within the MOORING AREAS or the WATERWAYS are to do so only under mechanical means;
 - 4.1.2.3 all VESSELS leaving their BERTHS, or entering the MOORING AREAS or the WATERWAYS from a seaward direction, at night or during adverse weather conditions, are first to sound the sound signal of 3 blasts on the VESSEL'S horn, namely one short blast followed by one long blast followed by one short blast (the Morse letter "R"). On hearing this signal –
 - 4.1.2.3.1 every VESSEL underway is to answer with the same sound signal;
 - 4.1.2.3.2 VESSELS underway and departing the WATERWAYS shall have right of way over VESSELS entering so that there is only ever 1 VESSEL within the WATERWAYS' entrance area at any given time; and
 - 4.1.2.3.3 VESSELS not yet underway are to remain at their respective BERTHS for at least 3 minutes after hearing the sound signal in order to allow the signalling VESSEL to complete its manoeuvres.
- 4.2 **VESSEL**
 - 4.2.1 Every BERTH HOLDER shall provide written details of his VESSEL to the MANAGER and the ASSOCIATION, as may be required by them from time to time.
 - 4.2.2 No BERTH HOLDER shall use, or permit the use of his BERTH for any purpose other than mooring the VESSEL, details of which he has provided in terms of 4.2.1, without the prior written consent of the LESSOR and the ASSOCIATION.
 - 4.2.3 Should a BERTH HOLDER dispose of his VESSEL and wish to use his BERTH for the purposes of mooring another VESSEL, that BERTH HOLDER, shall provide details of the new VESSEL within 5 days of having acquired that new VESSEL.
 - 4.2.4 The length and beam of the hull of any VESSEL moored at any BERTH may not exceed the length and width of that BERTH.
- 4.3 **mooring lines**

Every BERTH HOLDER shall ensure that –

 - 4.3.1 no mooring lines or cables are laid across the MOORING AREAS walkways;
 - 4.3.2 the bitter ends of all lines are kept short and close to any cleats or tie-off fixtures; and
 - 4.3.3 permanent mooring lines or cables left behind when putting to sea are left coiled on a pole support or around a cleat.

4.4 **environment**

No BERTH HOLDER shall –

- 4.4.1 bring into the MOORING AREAS in the WATERWAYS, nor store on his VESSEL, any dangerous, inflammable, poisonous or noxious substances other than in properly secured containers specifically designed to contain such substances against leakage;
- 4.4.2 discard or discharge any refuse or waste materials such as oil, petrol, tar, paint, detergent, sewerage or other debris into the WATERWAYS waters or elsewhere in the MOORING AREAS; and
- 4.4.3 refuel his VESSEL within the MOORING AREAS in the WATERWAYS, other than in the area expressly reserved for and indicated as the refuelling area in the WATERWAYS.

4.5 **prevention of nuisance**

No BERTH HOLDER shall –

- 4.5.1 operate, or permit to be operated, in or around the MOORING AREAS or in the WATERWAYS, any engine generator, other machinery, radio, television or any apparatus, so as to cause any nuisance, annoyance or inconvenience to any USER or occupier of any property in the vicinity of the MOORING AREAS in the WATERWAYS;
- 4.5.2 use his VESSEL or the MOORING AREAS and/or the WATERWAYS in any way which may cause nuisance, annoyance or inconvenience to any USER or occupier of property in the vicinity of the WATERWAYS; and
- 4.5.3 do anything, or permit anything to be done, in or around the WATERWAYS which, in the opinion of the ASSOCIATION, the MANAGER and/or their respective authorised representatives, is noisome, unsightly, injurious, objectionable or detrimental, or a public or private nuisance, or a source of damage or disturbance to any USER or occupier of any property in the vicinity of the MOORING AREAS in the WATERWAYS.

4.6 **recreational activities**

No BERTH HOLDER shall –

- 4.6.1 fish, or permit fishing, in or around the MOORING AREAS in the WATERWAYS;
- 4.6.2 allow any scaling, gutting, clearing or processing of raw fish aboard his VESSEL or in or around the MOORING AREAS in the WATERWAYS, nor throw any part of any fish, fish offal or bait overboard into the MOORING AREAS or in the WATERWAYS waters; and
- 4.6.3 permit any swimming, diving, water-skiing, hydroplaning or use of jet skis, surfboards or windsurfing boards in the MOORING AREAS or the WATERWAYS' waters.

4.7 **dinghies and tenders**

Every BERTH HOLDER shall ensure that –

- 4.7.1 all dinghies or tenders attributable to his VESSEL are stowed aboard his VESSEL;
- 4.7.2 any dinghy or tender placed in the MOORING AREAS waters is so placed only in order to test the lowering and raising gear, or to facilitate washing topsides of the BERTH HOLDER'S VESSEL; and
- 4.7.3 all dinghies or tenders are clearly marked with the name of the VESSEL on which they are stowed.

4.8 **compliance**

Every BERTH HOLDER shall be obliged to comply with –

- 4.8.1 all laws, statutes, regulations and by-laws applicable to the MOORING AREAS and the WATERWAYS;
- 4.8.2 these CONDUCT RULES and all rules and regulations made in terms of these CONDUCT RULES;
- 4.8.3 the BERTH LEASE applicable in respect of his BERTH;
- 4.8.4 the CONSTITUTION;

- 4.8.5 any agreement lawfully concluded by the ASSOCIATION in relation to the MOORING AREAS and/or WATERWAYS insofar as such agreement may, directly or indirectly, impose obligations on a BERTH HOLDER; and
- 4.8.6 any directive given by the ASSOCIATION, the MANAGER and/or their respective duly authorised representatives in enforcing the provisions of these CONDUCT RULES and/or any rules or regulations made in terms of these CONDUCT RULES.
- 4.9 **maintenance and use**
- Every BERTH HOLDER shall –
- 4.9.1 maintain his VESSEL in a neat and tidy condition and in a state of good repair;
- 4.9.2 afford the ASSOCIATION, the MANAGER and/or their respective duly authorised representatives full access to do all things reasonably necessary to maintain the MOORING AREAS and WATERWAYS (or any part thereof);
- 4.9.3 not use, or permit the use of, his BERTH for any purpose other than the mooring of his VESSEL;
- 4.9.4 in the absence of the express prior written consent of the ASSOCIATION, moor his VESSEL in its allocated BERTH, and not elsewhere in the MOORING AREAS and/or the WATERWAYS; and
- 4.9.5 use his VESSEL for private purposes only and not charter his VESSEL to any third party, or otherwise cause the VESSEL to be used commercially, without the prior written consent of the LESSOR and the ASSOCIATION, which may be withheld for any reason.
- 4.10 **insurance**
- 4.10.1 Every BERTH HOLDER shall, for the duration of the BERTH LEASE applicable to his BERTH, comprehensively insure, with a reputable insurer, the following –
- 4.10.1.1 his VESSEL, against loss by fire;
- 4.10.1.2 his VESSEL, against damage to the hull (ie so-called “hull insurance”);
- 4.10.1.3 the use of his VESSEL, against loss or damage to the MOORING AREAS and/or the WATERWAYS or any other VESSEL; and
- 4.10.1.4 the use of his VESSEL, against legal liability for damage to property or personal injury to any USER or other third party.
- 4.10.2 The BERTH HOLDER shall further –
- 4.10.2.1 punctually pay all insurance premiums which will from time to time fall due for payment in terms of such insurance policy and shall comply with all of the other terms of the policy; and
- 4.10.2.2 on request of the ASSOCIATION or the LESSOR (as the case may be), deliver to the ASSOCIATION or the LESSOR (as the case may be) proof of insurance cover together with receipts or other proof of payment of the insurance premiums in respect thereof.
- 4.10.3 If a BERTH HOLDER defaults in any of his obligations to insure in terms of this clause, the LESSOR and the ASSOCIATION shall be entitled, without prejudice to any other rights it may have, to effect the requisite insurance cover and recover the reasonable cost thereof from the BERTH HOLDER concerned, on demand.
- 4.10.4 In the event of the MOORING AREAS and/or the WATERWAYS being damaged or destroyed by fire, or any other cause whatsoever, as a result of any act, omission or other default on the part of the BERTH HOLDER, and in the further event of any insurance cover applicable in respect of such damage or destruction being insufficient to reinstate the MOORING AREAS and/or the WATERWAYS, the BERTH HOLDER concerned shall be responsible for the payment of the difference, if any, between the cost of such reinstatement and the amount recovered from the insurer in respect of such damage or destruction.
- 4.11 **access to and egress from BERTHS**
- 4.11.1 In no circumstances shall any vehicle be parked so as to obstruct any USER’S access to and egress from any BERTH, roadway, slipway, or any other working area within the MOORING AREAS.

4.11.2 The ASSOCIATION reserves the right to remove or clamp any parked or stationary vehicle that interferes with the activities or the convenience of any USER, and reserves the further right to charge a BERTH HOLDER for any costs incurred in moving or storing any such vehicle.

4.12 **security**

Every BERTH HOLDER shall comply with all security procedures and controls imposed by the LESSOR, the ASSOCIATION and the MANAGER and/or their respective duly authorised representatives, in and around the MOORING AREAS and the WATERWAYS, from time to time.

4.13 **own risk**

Every BERTH HOLDER shall inform its employees, crew, contractors and/or other invitees that –

4.13.1 they enter upon, remain and depart from the MOORING AREAS and/or WATERWAYS at their own risk; and

4.13.2 any person seeking to use the MOORING AREAS and/or the WATERWAYS shall not be entitled to do so until such person has bound himself to comply with these CONDUCT RULES.

4.14 **subletting**

No BERTH HOLDER shall, in the absence of the prior written consent of the ASSOCIATION (which consent shall not be unreasonably withheld), let or otherwise part with possession or occupation of his BERTH and/or his BERTHING RIGHTS, whether temporarily or otherwise and whether by way of an agreement of sub-lease or otherwise.

4.15 **advertising**

Advertising is not permitted in or around the MOORING AREAS and/or the WATERWAYS. Accordingly no BERTH HOLDER shall be entitled to display any "FOR SALE", "FOR RENT" or "TO LET" or similar notice on his VESSEL, his BERTH, or in any other part of the MOORING AREAS and/or the WATERWAYS.

5. **RIGHTS OF THE ASSOCIATION AND THE LESSOR**

The ASSOCIATION and the LESSOR shall each be entitled, in their sole and absolute discretion –

5.1 to allow VESSELS in distress to be berthed within the MOORING AREAS;

5.2 in the case of necessity or emergency and without prior notice to the BERTH HOLDER, to require a BERTH HOLDER to move and re-berth his VESSEL, or to move and re-berth the VESSEL itself, to any alternative location within the MOORING AREAS or the WATERWAYS;

5.3 to board, enter (by force if necessary), or carry out any emergency works on a BERTH HOLDER'S VESSEL without prior notice to the BERTH HOLDER concerned if, in the opinion of the ASSOCIATION or the LESSOR (as the case may be), such emergency works are necessary for the safety of –

5.3.1 the VESSEL concerned;

5.3.2 any other VESSEL in or around the MOORING AREAS or the WATERWAYS; and/or

5.3.3 any USER;

on the basis that the BERTH HOLDER shall pay all reasonable charges incurred by the ASSOCIATION and/or the LESSOR in executing such emergency works;

5.4 to replace any damaged part of the mooring lines with which a BERTH HOLDER attaches his VESSEL to his BERTH, and the BERTH HOLDER concerned shall pay all reasonable charges incurred by the ASSOCIATION and/or the LESSOR in effecting such replacement;

5.5 to take such action as they deem necessary to prevent or abate any noise or nuisance as contemplated by 4.5, caused by any BERTH HOLDER, and the BERTH HOLDER concerned shall pay all reasonable charges incurred by the ASSOCIATION and/or the LESSOR in taking such action;

5.6 remove from the MOORING AREAS and the WATERWAYS, anything discarded or discharged into the WATERWAYS' waters by a BERTH HOLDER from his VESSEL, and the BERTH HOLDER concerned shall pay all reasonable charges incurred by the ASSOCIATION and/or the LESSOR in removing such refuse or discharge; and

5.7 if a BERTH HOLDER'S VESSEL is, in the opinion of the ASSOCIATION, improperly secured, to refasten the VESSEL, and the BERTH HOLDER concerned shall pay all reasonable charges incurred by the ASSOCIATION in such refastening.

6. PROVISION OF SERVICES

6.1 The SERVICES shall be provided by the ASSOCIATION to each BERTH on the following basis –

6.1.1 the SERVICES (where applicable) shall be used through the conduits and connection points nearest to a BERTH;

6.1.2 the ASSOCIATION cannot guarantee a continuous supply of SERVICES as power cuts and breakdowns will, in certain instances, be beyond its control;

6.1.3 cables and connectors not supplied by the ASSOCIATION must be approved by the ASSOCIATION, and no BERTH HOLDER shall seek to connect or reconnect the cables and connectors prior to receiving such approval;

6.1.4 overloading of cables and connectors will activate trips and immediate reconnection may not be possible; and

6.1.5 shared supply of the SERVICES among 2 or more BERTHS shall not be permitted.

6.2 The ASSOCIATION may, from time to time, check the electrical safety of any VESSEL in order to ensure that that the correct polarity is maintained and that the VESSEL concerned is not introducing stray current into MOORING AREAS or WATERWAYS.

6.3 Notwithstanding any provisions contained in these CONDUCT RULES or the CONSTITUTION, no BERTH HOLDER shall have any claim of whatsoever nature and howsoever arising against the ASSOCIATION, whether for damages, consequential damages or otherwise, in the event of any failure relating to the provisions of SERVICES as contemplated in this 6.

7. MAINTENANCE OF MOORING AREAS AND WATERWAYS

The ASSOCIATION is responsible for the ongoing maintenance and management of the MOORING AREAS and the WATERWAYS to the satisfaction of any relevant authority, provided that the actual cost of maintenance of each BERTH (and the administrative charges connected therewith) shall be payable by the BERTH HOLDER who holds BERTHING RIGHTS in respect of such BERTH in accordance with the provisions of the relevant BERTH LEASE.

8. INDEMNITY

8.1 The LESSOR, the ASSOCIATION, the MANAGER and/or their respective duly authorised representatives shall not be liable to any BERTH HOLDER, or any BERTH HOLDER'S employees, crew, contractors or other invitees for any injury, loss or damage of any description, which the BERTH HOLDER, or any such other person, may suffer or sustain (whether directly or indirectly) in or about the MOORING AREAS or the WATERWAYS, regardless of the cause thereof, nor shall the LESSOR, the ASSOCIATION, the MANAGER and/or their respective duly authorised representatives be responsible for any theft of property occurring in or around the MOORING AREAS or the WATERWAYS.

8.2 No BERTH HOLDER shall under any circumstances have any claim or right of action whatsoever against the LESSOR, the ASSOCIATION, the MANAGER and/or their respective duly authorised representatives for any damages or other loss, nor shall BERTH HOLDERS be entitled to withhold or defer payment of any amount due by them in terms of these CONDUCT RULES and/or the BERTH LEASE applicable to their respective BERTH for any reason whatsoever.

8.3 Every BERTH HOLDER hereby indemnifies the LESSOR, the ASSOCIATION, the MANAGER and/or their respective duly authorised representatives and hold them harmless against all claims by any person arising from any injury or loss or damage as contemplated by this 8.

9. AMENDMENT OF CONDUCT RULES

These CONDUCT RULES may be supplemented and/or amended from time to time by the BOARD, provided that for the duration of the DEVELOPMENT PERIOD, any amendment, supplement or alteration of these CONDUCT RULES shall be subject to the prior written consent of the DEVELOPER.

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