

VILLAGE MANAGEMENT ASSOCIATION

**an Association registered under the Registration of Associations Act
(Cap 207 of the Laws of Seychelles)**

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 207 of the Laws of Seychelles);
- 1.1.4 "AUDITORS" means the auditors of the ASSOCIATION from time to time;
- 1.1.5 "BERTH" means every mooring berth situated within the RESIDENTIAL DEVELOPMENT COMPONENT and such mooring berths situated within the COMMERCIAL DEVELOPMENT COMPONENT, which berth border 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 a MEMBER or other interested party;
- 1.1.7 "BOARD" means the board of OFFICERS of the ASSOCIATION from time to time;
- 1.1.8 "CHAIRPERSON" means the chairperson of the BOARD from time to time;
- 1.1.9 "CHANGE IN CONTROL" means, in relation to a SINGLE RESIDENTIAL PARCEL, any change or alteration in any way whatsoever of the CONTROLLING VOTING POWER in the company, association, trust or other entity or body corporate, which is the OWNER of that SINGLE RESIDENTIAL PARCEL;
- 1.1.10 "COMMERCIAL DEVELOPMENT COMPONENT" means –
- 1.1.10.1 the land parcel 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 measuring, at the date of establishment of the ASSOCIATION, approximately 1,02 hectares;
- 1.1.10.2 any land area reclaimed and incorporated in the COMMERCIAL DEVELOPMENT COMPONENT from time to time; and
- 1.1.10.3 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 and consolidations thereof;
- 1.1.11 "COMMON AREAS" means those areas of the DEVELOPMENT other than registered PARCELS on which DWELLINGS have been, or are to be, erected, irrespective of whether IMPROVEMENTS have been erected or made on such areas, and includes all roads, pavements, and includes all other areas which have been, or are to be, designated as common areas by the ASSOCIATION or the DEVELOPER;
- 1.1.12 "COMPANIES ACT" means the Companies Act, 1972 (as amended), of the Republic of Seychelles;
- 1.1.13 "CONDOMINIUM ACT" means the Condominium Property Act (Cap 41A of the Laws of Seychelles) (as amended);
- 1.1.14 "CONDOMINIUM BUILDING" means a subdivided building (as contemplated in the CONDOMINIUM ACT) erected on a CONDOMINIUM PROPERTY;
- 1.1.15 "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;
- 1.1.16 "CONSTITUTION" means the constitution set out in this document, as amended from time to time, and shall be deemed to include all rules and regulations made thereunder from time to time;

- 1.1.17 "CONTROLLING VOTING POWER" means –
- 1.1.17.1 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 –
- 1.1.17.1.1 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
- 1.1.17.1.2 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;
- 1.1.17.2 in relation to a trust, the right or power in any way whatsoever –
- 1.1.17.2.1 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
- 1.1.17.2.2 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;
- 1.1.17.3 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 –
- 1.1.17.3.1 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 of that association, or other entity or body corporate; and/or
- 1.1.17.3.2 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;
- 1.1.18 "DEAL" or "DEALING" means in relation to a SINGLE RESIDENTIAL PARCEL, the dealing with that SINGLE RESIDENTIAL PARCEL or any part thereof or the dealing with any interest of whatsoever nature in respect of that SINGLE RESIDENTIAL PARCEL (including, for the avoidance of doubt, any share, stock, right or partnership interest in the entity or body corporate owning that SINGLE RESIDENTIAL PARCEL), 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 SINGLE RESIDENTIAL PARCEL or part thereof or interest of whatsoever nature in respect of that SINGLE RESIDENTIAL PARCEL, and includes any CHANGE IN CONTROL in respect of that SINGLE RESIDENTIAL PARCEL 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 resolutive condition;
- 1.1.19 "DESIGN GUIDELINES" means the guidelines relating to the design and construction requirements prepared for and applicable to the DEVELOPMENT, as contemplated in 11, as amended from time to time;
- 1.1.20 "DEVELOPED LAND" means those PARCELS which have been –
- 1.1.20.1 transferred by the DEVELOPER to OWNERS;
- 1.1.20.2 transferred by the DEVELOPER to the ASSOCIATION as COMMON AREAS; or
- 1.1.20.3 registered as CONDOMINIUM PROPERTIES in accordance with the CONDOMINIUM ACT;
- 1.1.21 "DEVELOPER" means Eden Island Development Company (Seychelles) Limited (registration number 843-959-1), a company duly registered and incorporated according to the company laws of the Republic of Seychelles, and includes its successor/s in title and assign/s as developer of the DEVELOPMENT (or any part thereof);
- 1.1.22 "DEVELOPER OFFICER" means an officer of the ASSOCIATION appointed by the DEVELOPER from time to time;
- 1.1.23 "DEVELOPMENT" means the development of the RESIDENTIAL DEVELOPMENT COMPONENT;
- 1.1.24 "DEVELOPMENT NODE" 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;
- 1.1.25 "DEVELOPMENT PERIOD" means the period from the date of establishment of the ASSOCIATION in terms of 2 until the date on which the transfer of the last SINGLE RESIDENTIAL PARCEL or APARTMENT (as the case may be) from

the DEVELOPER to an OWNER is registered, or until such earlier date as the DEVELOPER may stipulate to the ASSOCIATION in writing at any time;

- 1.1.26 "DWELLINGS" means all VILLAS, MAISONS and CONDOMINIUM BUILDINGS comprising the DEVELOPMENT;
- 1.1.27 "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;
- 1.1.28 "IMPROVEMENTS" means all and any DWELLINGS, buildings or other structures on any PARCEL or the COMMON AREAS, including landscaping and planting;
- 1.1.29 "LAND REGISTRATION ACT" means the Land Registration Act (Cap 107 of the Laws of Seychelles) (as amended);
- 1.1.30 "LEVIES" means any levies for which the MEMBERS are liable in terms of this CONSTITUTION, as set out in 17;
- 1.1.31 "MAISON" means a duplex building erected, or to be erected, on a PARCEL, which building shares a common boundary with the building on the adjacent PARCEL;
- 1.1.32 "MANAGEMENT CORPORATION" means the body corporate constituted by the OWNERS of APARTMENTS of a CONDOMINIUM BUILDING scheme in accordance with section 13(1) of the CONDOMINIUM ACT;
- 1.1.33 "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;
- 1.1.34 "MEMBER" means every member of the ASSOCIATION, as set out in 7;
- 1.1.35 "MEMBER OFFICER" means an officer of the ASSOCIATION appointed by the MEMBERS from time to time;
- 1.1.36 "MOORING AREAS" means the BERTHS, the mooring areas on the RESIDENTIAL DEVELOPMENT COMPONENT, the primary and secondary breakwater, wave attenuator, harbour entrance and lights, together with all ancillary facilities located within those areas;
- 1.1.37 "OFFICE" means the registered office of the ASSOCIATION from time to time;
- 1.1.38 "OFFICERS" means the DEVELOPER OFFICERS and the MEMBER OFFICERS collectively, and includes alternate and co-opted OFFICERS;
- 1.1.39 "ORDINARY RESOLUTION" means a resolution passed either at any meeting of the BOARD, or at any general meeting of MEMBERS, by an ordinary majority of the total votes represented at that meeting, whether personally present or by proxy;
- 1.1.40 "OWNER" means the registered owner of a SINGLE RESIDENTIAL PARCEL or an APARTMENT as the context may indicate;
- 1.1.41 "PARCEL" means every parcel (as that term is defined in the LAND REGISTRATION ACT) within the DEVELOPMENT, together with all IMPROVEMENTS (if any) thereon;
- 1.1.42 "PARTICIPATION QUOTA" means, in relation to a PARCEL, a percentage expressed in four decimals calculated by the BOARD in terms of 17.14;
- 1.1.43 "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);
- 1.1.44 "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;
- 1.1.45 "RESIDENTIAL DEVELOPMENT COMPONENT" means –
- 1.1.45.1 the land PARCEL duly registered as freehold title in terms of the Land Registration Act (Cap 107 of the Laws of Seychelles), measuring, at the date of establishment of the ASSOCIATION, approximately 47,037 (forty seven comma zero three seven) hectares;
- 1.1.45.2 any land area reclaimed from time to time and incorporated in the RESIDENTIAL DEVELOPMENT COMPONENT; and

- 1.1.45.3 any other extension/s or alteration/s of the RESIDENTIAL DEVELOPMENT COMPONENT by the DEVELOPER from time to time in terms;
- and includes any and all subdivisions or consolidations thereof;
- 1.1.46 "RESIDENTIAL MEMBER" means every MEMBER referred to in 7.1.2 and 7.1.3;
- 1.1.47 "RESOLUTION" means an ORDINARY RESOLUTION and/or a SPECIAL RESOLUTION as the context may indicate;
- 1.1.48 "SINGLE RESIDENTIAL PARCEL" means a PARCEL on which a MAISON or a VILLA has been, or is to be erected;
- 1.1.49 "SPECIAL RESOLUTION" means a resolution passed either at any meeting of the BOARD, or at any general meeting of MEMBERS, by not less than 75% of the total votes represented at that meeting, whether personally present or by proxy;
- 1.1.50 "UNDEVELOPED LAND" means those areas of the RESIDENTIAL DEVELOPMENT COMPONENT other than the DEVELOPED LAND;
- 1.1.51 "VILLA" means a free-standing building erected, or to be erected, on a PARCEL;
- 1.1.52 "WATERWAYS" means all water channels (whether constructed, created or occurring naturally) and channel edges traversing the RESIDENTIAL DEVELOPMENT COMPONENT;
- 1.1.53 any reference to the singular includes the plural and vice versa;
- 1.1.54 any reference to natural persons includes artificial persons and vice versa;
- 1.1.55 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 and/or approval may be withheld for any reason whatsoever and in the 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 29.
- 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 establishes the ASSOCIATION, as and when it may deem fit.

3. **LEGAL STATUS AND LIMITED LIABILITY**

The ASSOCIATION is a body corporate registered as an association under the Registration of Associations Act (Cap 207 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**

The objects of the ASSOCIATION are to facilitate the operation of the DEVELOPMENT and shall include, without limitation, the following, subject to the provisions of this CONSTITUTION –

- 4.1 the accommodation of all permitted uses to which the DEVELOPMENT (or any part thereof) may be part;
- 4.2 the control of the aesthetic appearance of the RESIDENTIAL COMPONENT;
- 4.3 the regulation and control of the harmonious development of the DEVELOPMENT;
- 4.4 the promotion of a high standard of improvements within the DEVELOPMENT;
- 4.5 the maintenance and control of the COMMON AREAS;
- 4.6 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;
- 4.7 the upkeep and maintenance of the ACCESS ROAD;
- 4.8 the control over the compliance and the enforcement of the DESIGN GUIDELINES;
- 4.9 the promotion of environmental awareness and responsibility amongst MEMBERS;
- 4.10 to enter into service agreements and other appropriate agreements with the PUBLIC UTILITIES CORPORATION or any other relevant authority as supplier of services in connection with the DEVELOPMENT; and
- 4.11 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;
- 4.12 the promotion, advancement and protection of EDEN ISLAND and the interests of the ASSOCIATION.

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 207 of the Laws of Seychelles) (as amended).

6. **DEVELOPMENT OF EDEN ISLAND**

- 6.1 The DEVELOPER shall be entitled, at any time and from to time –
 - 6.1.1 to incorporate into the RESIDENTIAL DEVELOPMENT COMPONENT or the COMMERCIAL DEVELOPMENT COMPONENT (as the case may be), any additional areas as further phases of the relevant development component, which the DEVELOPER shall be entitled to develop as it may deem fit;
 - 6.1.2 to exclude from the RESIDENTIAL DEVELOPMENT COMPONENT or the COMMERCIAL DEVELOPMENT COMPONENT (as the case may be) 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 or the COMMERCIAL DEVELOPMENT COMPONENT (as the case may be).
- 6.2 The DEVELOPER shall, at any time, 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/or the COMMERCIAL 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 be entitled to require from the ASSOCIATION that the first and all subsequent registered owners of PARCELS and each MANAGEMENT CORPORATION in respect of a PARCEL on such further areas, become MEMBERS of the ASSOCIATION, on such 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, *mutatis mutandis*.
- 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.

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 OWNER of a SINGLE RESIDENTIAL PARCEL upon registration of transfer of the relevant PARCEL into its name, provided that where an OWNER comprises more than one person, such persons 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 constituted by the OWNERS of APARTMENTS of a CONDOMINIUM BUILDING in accordance with section 13(1) of the CONDOMINIUM ACT; and
 - 7.1.4 every registered owner of a portion or portions of UNDEVELOPED LAND, provided that where an owner of a portion or portions of UNDEVELOPED LAND comprises more than one person, such persons shall be deemed jointly to be one MEMBER of the ASSOCIATION.
- 7.2 For the avoidance of doubt, it is specifically recorded that every OWNER of an APARTMENT shall, by virtue of its membership in the MANAGEMENT CORPORATION, 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 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 inspect and/or receive copies of the annual financial statements of the ASSOCIATION;
- 8.2 the right to vote at all general meetings of MEMBERS in accordance with the provisions of this CONSTITUTION;

- 8.3 the right to receive notices of, attend and speak at all general meetings of MEMBERS in accordance with the provisions of this CONSTITUTION; and
- 8.4 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 OWNER of a SINGLE RESIDENTIAL PARCEL 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, parking area within the DEVELOPMENT or other COMMON AREA, and if such vehicle/boat/caravan/trailer is to be parked on that OWNER'S PARCEL, it shall not be visible from any street or WATERWAY;
 - 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 save with the prior written approval of the DEVELOPER, during the DEVELOPMENT PERIOD, and thereafter, the BOARD;
 - 9.2.5 not erect or permit the erection of any advertising boards on any PARCEL or on any COMMON AREA, without the written approval of the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter, the BOARD;
 - 9.2.6 not permit the number of occupants of its DWELLING (as the case may be) 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;
 - 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 OWNER'S PARCEL;
 - 9.2.10 not use any building or other structure constructed within the DEVELOPMENT, or allow any other person to use such building or other structure, for purposes not permitted by this CONSTITUTION or all rules and/or regulations made in terms of this CONSTITUTION;
 - 9.2.11 not let or otherwise part with occupation of its PARCEL (or any parts thereof), whether temporarily or otherwise, unless that OWNER ensures that the proposed occupier agrees 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 change the nature of, any business on a PARCEL, or use, or permit the use of, such PARCEL for purposes other than residential use, unless the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, or thereafter, the BOARD has in writing approved 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.
- 9.3 The provisions of this 9 shall also apply to –
- 9.3.1 every MANAGEMENT CORPORATION, *mutatis mutandis*, save that any reference to PARCEL shall be a reference to the relevant CONDOMINIUM PROPERTY (or any parts thereof);
- 9.3.2 any OWNER of an APARTMENT, *mutatis mutandis*, save that any reference to PARCEL shall be a reference to the relevant APARTMENT, together with any area of the common elements (as that term is defined in the CONDOMINIUM ACT) on the relevant CONDOMINIUM PROPERTY in respect of which that OWNER has the right of exclusive use, and every MANAGEMENT CORPORATION shall procure that the provisions of this 9 will be included in the relevant rules of that MANAGEMENT CORPORATION and that every member of that MANAGEMENT CORPORATION will comply in all respects with the provisions of this 9. Every MANAGEMENT CORPORATION acknowledges and agrees that it will be liable for any breach and/or non-compliance by any of its members with the provisions of this 9; and
- 9.3.3 every tenant, sub-tenant and other occupier of any SINGLE RESIDENTIAL PARCEL or APARTMENT (or part thereof), *mutatis mutandis*, and every OWNER acknowledges and agrees that it will be liable for any breach by any tenant or sub-tenant in respect of its PARCEL or APARTMENT (or parts thereof) of any of the provisions of this 9.

10. RESTRICTION ON TRANSFER

- 10.1 No OWNER shall DEAL with its PARCEL 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 SINGLE RESIDENTIAL PARCEL.
- 10.2 Such certificate shall be withheld if –
- 10.2.1 that OWNER is indebted to the ASSOCIATION in any way in respect of LEVIES or other amounts due to the ASSOCIATION, 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 PARCEL has failed or refused to irrevocably bind itself in writing to become a MEMBER of the ASSOCIATION and to observe the CONSTITUTION for the duration of its ownership of the PARCEL, 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 PARCEL 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 PARCEL of that OWNER, the certificate referred to in 10.2 shall also be withheld if the person intending to acquire that PARCEL 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.
- 10.4 Every MANAGEMENT CORPORATION shall procure that the provisions of this 10 will be included in the relevant rules of that MANAGEMENT CORPORATION and that every member of that MANAGEMENT CORPORATION will comply in all respects with the provisions of this 10, *mutatis mutandis*. Every MANAGEMENT CORPORATION shall be liable for any breach or non-compliance of any of the provisions of this 10 by any of its members.

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 of the DEVELOPMENT, the DEVELOPER may make DESIGN GUIDELINES relating to the appearance, design and construction requirements applicable to the DEVELOPMENT. The DESIGN GUIDELINES shall constitute an integral part of this CONSTITUTION and may 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 the BOARD.
- 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 by the DEVELOPER or the BOARD (as the case may be). 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 in respect of the WORKS or the relevant PARCEL (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 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 11.3, 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 retained 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, are satisfied, in their 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 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 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, 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 MEMBER. Any shortfall so due by a MEMBER shall be paid with, and in addition to, the LEVIES due by that 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 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 MEMBER shall be liable for all costs in respect of the scrutiny and consideration of plans submitted by the MEMBER to the DEVELOPER or the BOARD (as the case may be).
- 11.15 If a 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 MEMBER, should the 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.
- 11.16 The provisions of this 11 shall apply to OWNERS of APARTMENTS, *mutatis mutandis*, and every MANAGEMENT CORPORATION shall procure that the provisions of this 11 will be included in the relevant rules of that MANAGEMENT CORPORATION and that every MEMBER of that MANAGEMENT CORPORATION will comply in all respects with the provisions of this 11. Every MANAGEMENT CORPORATION shall be liable for any breach or non-compliance of any of the provisions of this 11 or the DESIGN GUIDELINES by any of its MEMBERS.

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 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 and vehicular traffic including parking within the DEVELOPMENT;
 - 12.1.7 the carrying out of any business 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;
 - 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 OWNER of an APARTMENT, *mutatis mutandis*, 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, *mutatis mutandis*, 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 RESIDENTIAL MEMBER acknowledges and agrees that it is in the interest of the ASSOCIATION and all its MEMBERS that the marketing and sale of PARCELS will be managed and carried out in a consistent and uniform fashion. Accordingly, each RESIDENTIAL MEMBER shall, if and when it intends to DEAL with its PARCEL, not utilise any sales and marketing agent other than the sales and marketing agent nominated by the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter, the BOARD, without the prior written approval of the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter, the BOARD, which approval shall not be unreasonably withheld.
- 13.2 When dealing with a PARCEL, every RESIDENTIAL MEMBER shall utilise such documentation including, without limitation, such agreement of sale, as prescribed by the ASSOCIATION from time to time.
- 13.3 The DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter, the ASSOCIATION, may establish a rental pool for the purposes of administering all lettings (whether long term or short term) of PARCELS AND DWELLINGS (or any part thereof) ("EDEN ISLAND RENTAL POOL").
- 13.4 Should any RESIDENTIAL MEMBER, after the establishment of the EDEN ISLAND RENTAL POOL, let its PARCEL or DWELLING (or any part thereof), that letting shall be managed and administered by the EDEN ISLAND RENTAL POOL.
- 13.5 The DEVELOPER or the ASSOCIATION (as the case may be) shall be entitled to a management fee for the administration and management of the EDEN ISLAND RENTAL POOL.
- 13.6 The provisions of 13.4 shall not prevent a RESIDENTIAL MEMBER of letting its PARCEL or DWELLING (or any part thereof) to any tenant of its reasonable choice, or to offer its PARCEL or DWELLING (or any part thereof) for letting to any person, provided that any advertising of its PARCEL or DWELLING (or any part thereof) shall be subject to the prior written approval of the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter, the BOARD, which approval shall not be unreasonably withheld.
- 13.7 Any letting or subletting of PARCELS or DWELLINGS (or any parts thereof) shall be subject to all such approvals by the relevant authorities which may be necessary and/or required for such letting or subletting, including, without limitation, the sanctioning of such letting or subletting to a person who is not a Seychellois, and every RESIDENTIAL MEMBER shall be responsible for obtaining all such approvals and hereby indemnifies the ASSOCIATION, the DEVELOPER and the EDEN ISLAND RENTAL POOL (if established) against any claim which may be imposed on any of them by any relevant authority in respect thereof.
- 13.8 The provisions of this 13 shall also apply to all OWNERS of APARTMENTS, *mutatis mutandis*, and every MANAGEMENT CORPORATION shall procure that the provisions of this 13 will be included in the relevant rules of the MANAGEMENT CORPORATION and that every member of the MANAGEMENT CORPORATION complies in all respects with this 13. Every MANAGEMENT CORPORATION shall be liable for any breach or non-compliance of any of the provisions with this 13 by any of its members.

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 the provision of water, electricity and sewerage services 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 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 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 system 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 13.1.
- 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 this 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 (such as the HARBOUR);
 - 15.1.4 the MOORING AREAS;
 - 15.1.5 the WATERWAYS;
 - 15.1.6 PARCELS designated by the DEVELOPER for ASSOCIATION use, such as for example any PARCEL designated by the DEVELOPER for the construction of a security gatehouse; 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 (notwithstanding ownership in the COMMON AREAS), from which time the ASSOCIATION shall be solely responsible for the maintenance, repair and upkeep thereof, as well as the payment of rates and taxes and all other charges attaching thereto.

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 and all other charges attaching thereto, to the satisfaction of the DEVELOPER and any relevant authority, if applicable.
- 16.2 The DEVELOPER shall be entitled, at any time and from time to time –
 - 16.2.1 to allocate and reallocate BERTHS to OWNERS or other interested parties, 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 a BERTH which is only accessible by accessing an OWNER'S PARCEL.
- 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.

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 The BOARD shall, as soon as possible after formation of the ASSOCIATION, determine and notify the MEMBERS of an estimate as contemplated in 17.2 for the period from formation until the first annual general meeting of MEMBERS.
- 17.5 Every such LEVY shall be payable in advance in 12 equal 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, 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).
- 17.6 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.
- 17.7 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.
- 17.8 Arrear LEVIES shall bear interest on the daily balance at the maximum rate permitted from time to time by the laws of the Seychelles.
- 17.9 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.
- 17.10 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.
- 17.11 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.
- 17.12 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.
- 17.13 Subject to 17.14 and 17.23, 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 –
- 17.13.1 those expenses relating to the DEVELOPMENT personally, to all MEMBERS;
- 17.13.2 those expenses arising directly out of a PARCEL itself, to the MEMBER owning that PARCEL; and
- 17.13.3 a proportion of those expenses attributable generally to a particular number of PARCELS, to the MEMBERS owning such PARCELS.
- 17.14 The BOARD shall calculate each MEMBER'S PARTICIPATION QUOTA by taking into account –
- 17.14.1 the extent of the PARCEL of that MEMBER in relation to the aggregate extent of all PARCELS;
- 17.14.2 the type of DWELLING/s erected on the PARCEL of that MEMBER;
- 17.14.3 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
- 17.14.4 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.
- 17.15 The assignment of expenses to MEMBERS in terms of 17.13 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 MEMBERS 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 17.13 shall be final and binding upon the MEMBERS.

- 17.16 No MEMBER shall be entitled to any of the privileges of membership whilst any LEVY or interest thereon, and/or any other amount, which may be due and payable by that MEMBER to the ASSOCIATION 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.
- 17.17 Should any MEMBER DEAL with its PARCEL, that MEMBER shall be liable to pay to the ASSOCIATION a capital contribution fee equal to 1% of the fair market value determined in accordance with 17.20 or the selling price (whichever is the greater) of that PARCEL ("CAPITAL CONTRIBUTION FEE").
- 17.18 The CAPITAL CONTRIBUTION FEE shall –
- 17.18.1 be payable to the ASSOCIATION on the date of DEALING with that PARCEL; and
- 17.18.2 be imposed upon the MEMBERS for purposes of meeting capital expenditure requirements of the ASSOCIATION.
- 17.19 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.
- 17.20 Should the ASSOCIATION not accept the selling price for the purposes of calculating the CAPITAL CONTRIBUTION FEE, the fair market value of a PARCEL contemplated in 17.17 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 MEMBER and the ASSOCIATION.
- 17.21 Should a MANAGEMENT CORPORATION fail to pay any LEVIES due to 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.
- 17.22 Any certificate signed by a DEVELOPER OFFICER, for the duration of the DEVELOPMENT PERIOD, and thereafter, by a MEMBER OFFICER, specifying any amount due by a MEMBER shall be *prima facie* proof that such amount is so due.
- 17.23 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 entrusted to a MANAGER generally, 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
- 18.2.3 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;
- 18.2.4 the DEVELOPER, for the duration of the DEVELOPMENT PERIOD, and thereafter, requires the MANAGER to cease to hold office.

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 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 shall be a DEVELOPER OFFICER.

20. OFFICERS

20.1 appointment

20.1.1 The BOARD shall –

20.1.1.1 until the first general meeting of MEMBERS, comprise 3 DEVELOPER OFFICERS;

20.1.1.2 thereafter, the number of OFFICERS shall be increased to comprise 6 OFFICERS, being 3 DEVELOPER OFFICERS and 3 MEMBER OFFICERS; and

20.1.1.3 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 first DEVELOPER OFFICERS upon formation of the ASSOCIATION. Each DEVELOPER OFFICER shall be an individual but need not himself be a MEMBER.

20.1.3 Similarly, each MEMBER OFFICER shall be an individual but need not himself be a MEMBER, provided that the majority of MEMBER OFFICERS shall be MEMBERS or, in the event of MEMBERS being a juristic person, an office bearer of those MEMBERS.

20.1.4 Subject to 20.1.3, the BOARD may co-opt any person(s) chosen by it onto the BOARD, irrespective of whether such person(s) is a MEMBER.

20.1.5 A Trustee 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 NODE 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 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 of the BOARD, otherwise than on the business of the ASSOCIATION; and/or

- 20.2.1.9 the BOARD resolves that his office 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 every annual general meeting of MEMBERS, all MEMBER OFFICERS shall retire from OFFICE.
- 20.3.2 A MEMBER OFFICER retiring at an annual general meeting of MEMBERS shall retain OFFICE 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 to the OFFICE of 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 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 OFFICE 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 OFFICER 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 despatch 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, 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 DEVELOPER OFFICER is present.
- 20.7.6 Any RESOLUTION 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, provided that during the DEVELOPMENT PERIOD, every RESOLUTION of the BOARD shall be signed by a DEVELOPER OFFICER to be so valid and effectual.
- 20.7.7 Each OFFICER shall at any meeting of the BOARD have one vote, provided that for the duration of the DEVELOPMENT PERIOD, each DEVELOPER OFFICER present at that meeting shall 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 A DEVELOPER OFFICER (but not a MEMBER 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 DEVELOPER 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).
- 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 RESOLUTIONS 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 RESOLUTIONS and until varied or rescinded, provided that no RESOLUTION or purported RESOLUTION of the BOARD shall be of any force or effect, or binding upon the MEMBERS, or any of the OFFICERS, unless such RESOLUTION 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 12 months of the date of commencement of the ASSOCIATION, hold a general meeting as its first annual general meeting. Thereafter, the ASSOCIATION shall, within 6 months of each financial year end, hold its second and subsequent annual general meeting.
- 21.1.3 Subject to 21.1.2 and 21.1.5, each general meeting of MEMBERS shall be held at such time and place 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 voting rights of the ASSOCIATION, 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 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 a MANAGEMENT CORPORATION and an OWNER of a SINGLE RESIDENTIAL PARCEL are 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 unless the DEVELOPER is represented at the meeting in question.

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 activities for the preceding year;

21.4.1.2 the consideration of the CHAIRPERSON'S report;

21.4.1.3 the noting 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 natural person, that MEMBER may not be represented by a proxy;
- 21.5.1.2 where a MEMBER is a MANAGEMENT CORPORATION, that MEMBER'S proxy shall be a member of that MANAGEMENT CORPORATION'S council, and such member's authority shall be proven by such written documentation as the BOARD may deem fit; and
- 21.5.1.3 where a MEMBER, save for the DEVELOPER and a MANAGEMENT CORPORATION, is an artificial person, that MEMBER'S proxy shall be an office bearer of that MEMBER, and such office bearer's authority shall be proven by such written documentation as the BOARD may deem fit.
- 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.
- 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 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 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 square metre of FLOOR AREA of APARTMENTS in the relevant CONDOMINIUM BUILDING;
- 21.6.1.3 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
- 21.6.1.4 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 of a PARCEL 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 votes of 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 MEMBERS, falling into the category of MEMBERS referred to in 7.1.2, present or represented at that meeting of MEMBERS.
- 21.6.4 Any RESOLUTION put to the vote of a general meeting shall be decided on a show of hands, unless a poll (before or on the declaration of the result of the show of hands) is demanded by any MEMBER. Unless a poll is so demanded, a declaration by the CHAIRPERSON that a RESOLUTION has, on a show of hands, been carried unanimously, or by a particular majority, and an entry to that effect in the book containing the minutes of the proceedings of general meetings of MEMBERS, shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such RESOLUTION.
- 21.6.5 If a poll is demanded at a general meeting, on the election of a CHAIRPERSON or an adjournment, it shall be taken immediately and in such manner as the CHAIRPERSON, and on any other question shall be taken at such time and in such manner as the CHAIRPERSON of the general meeting directs.
- 21.6.6 Save as expressly provided for in this CONSTITUTION, no person other than a MEMBER 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 All RESOLUTIONS 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, whether by show of hands or otherwise, 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) 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

The MEMBERS shall, by way of ORDINARY RESOLUTION passed at a general meeting of MEMBERS, nominate the auditors 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. 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.

26. AUDIT

26.1 Once at least 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 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 representatives and/or employees be responsible for any theft 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 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 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 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 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. BREACH**
- 28.1 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 –
- 28.1.1 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
- 28.1.2 call upon such MEMBER in writing to remove or alter any building, or other structure, or other IMPROVEMENTS erected or effected contrary to the DESIGN GUIDELINES, this CONSTITUTION, and/or any rules and/or regulations made in terms of this CONSTITUTION; or
- 28.1.3 institute proceedings, subject to 29, 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
- 28.1.4 impose a daily financial penalty, the amount of which shall be determined from time to time by the BOARD, on notice to the MEMBER.
- 28.2 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.
- 28.3 Nothing in this 28 or in 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.
- 28.4 In the event of any breach of this CONSTITUTION by the members of any MEMBER'S household or its employees, invitees or lessees, such breach shall be deemed to have been committed by the MEMBER 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 MEMBER.
- 28.5 The provisions of this 28 shall apply *mutatis mutandis* to every OWNER of an APARTMENT in the event of such OWNER failing in the observance of any of the provisions of this CONSTITUTION, or any rules and/or regulations made in terms hereof, and/or failing to comply with the provisions of the DESIGN GUIDELINES, and/or failing to observe any applicable laws, by-laws or any other regulations imposed by any relevant authority in relation to EDEN ISLAND, or failing to make payment on the due date of LEVIES or other amounts payable by such OWNER.

29. ADJUDICATION

- 29.1 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, 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 by adjudication in accordance with this clause.
- 29.2 This clause shall not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the adjudicator.
- 29.3 The adjudication shall be held –
- 29.3.1 at Victoria, Mahé, Republic of Seychelles;
- 29.3.2 on the basis that the proper law of the agreement contained in this 29 and of this CONSTITUTION shall be the law of the Republic of Seychelles; and
- 29.3.3 with only the parties and their legal and other representatives present thereat.
- 29.4 The adjudicator shall be, if the matter in dispute is principally –
- 29.4.1 a legal matter, a practising advocate or attorney, from the Republic of Seychelles, Mauritius, the Republic of South Africa or the United Kingdom, of at least 10 years standing;
- 29.4.2 an accounting matter, a practising chartered accountant, either from the Republic of Seychelles, Mauritius, Republic of South Africa or the United Kingdom, of at least 10 years standing;
- 29.4.3 any other matter, a suitably qualified independent person, either from the Republic of Seychelles, Mauritius, the Republic of South Africa or the United Kingdom, as agreed upon between the parties.
- 29.5 Should the parties fail to agree whether the dispute is principally a legal, accounting or other matter, the matter shall be deemed to be a legal matter.
- 29.6 Should the parties fail to agree on an adjudicator within 30 days of the dispute arising, the adjudicator shall be appointed at the request of either party to the dispute by the Law Society of the Cape of Good Hope, South Africa, according to the provisions of 29.4.
- 29.7 The adjudicator shall have the power to fix all procedural rules for the holding of the adjudication, 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 adjudication. The adjudicator may receive and act on all such evidence, whether oral or written, strictly admissible or not, as he in his discretion may deem fit.
- 29.8 The award of the adjudicator 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 adjudicators appointed in accordance with 29.4, and to which appeal the provisions of this 29 shall apply *mutatis mutandis*.
- 29.9 The parties agree to keep the adjudication, including the subject matter of the adjudication and the evidence heard during the adjudication confidential, and not to disclose the same to anyone, except to their respective shareholders (if applicable), and except for purposes of the adjudication proceedings in terms of this 29, any review thereof, and/or obtaining interim relief in terms of 29.2.
- 29.10 The provisions of this clause –
- 29.10.1 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
- 29.10.2 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 these Rules.

30. NOTICES AND DOMICILIUM

- 30.1 The BOARD shall from time to time determine the address constituting the *domicilium citandi et executandi* of the ASSOCIATION, subject to the following –
- 30.1.1 such address shall be the address of the CHAIRPERSON, or of a MEMBER OFFICER nominated by the BOARD; and

- 30.1.2 the BOARD shall give notice to all MEMBERS of any change of such address.
- 30.2 The *domicilium citandi et executandi* of –
- 30.2.1 each OWNER of a SINGLE RESIDENTIAL PARCEL shall be the street address of that PARCEL;
- 30.2.2 each MANAGEMENT CORPORATION shall be at the street address of the relevant CONDOMINIUM PROPERTY;
- 30.2.3 the DEVELOPER shall be at its registered office from time to time; and
- 30.2.4 the registered owner of a portion of UNDEVELOPED LAND shall be at the DEVELOPER'S *domicilium citandi et executandi*.
- 30.3 It shall be competent to give notice by facsimile where the MEMBER'S facsimile number is recorded with the BOARD.
- 30.4 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.
- 30.5 Any notice given in terms of this CONSTITUTION shall be in writing and shall –
- 30.5.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 30.5.2 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;
- 30.5.3 if transmitted by facsimile be deemed to have been received by the addressee one business day after despatch.
- 30.6 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*.
31. **AMENDMENT OF CONSTITUTION**
- 31.1 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.
- 31.2 Notwithstanding the provisions of 31.1, none of the provisions contained in 6, 13, 17.23, 27 and this 31.2 may be amended or varied at any time without the prior written consent of the DEVELOPER.

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