

Republic of Mauritius

The Companies Act 2001  
(Act no. 15 of 2001)

CONSTITUTION  
OF  
**NEW FRONTIER PROPERTIES LTD**

## 1. INTERPRETATION

- 1.1. In this Constitution, unless the contrary intention appears or the context otherwise requires or admits:
- 1.1.1. "**Act**" or "**Companies Act 2001**" means the Companies Act 2001 of Mauritius, as may be amended and restated from time to time;
  - 1.1.2. "**Annual Meeting**" refers to a meeting of the Shareholders required to be held pursuant to Section 115 of the Act;
  - 1.1.3. "**Balance Sheet Date**" has the meaning set out in Section 216 of the Act;
  - 1.1.4. "**Board**" means the board of Directors of the Company;
  - 1.1.5. "**Company**" means New Frontier Properties Limited;
  - 1.1.6. "**Constitution**" means the Constitution of the Company, as it may be amended from time to time;
  - 1.1.7. "**Director**" means a director of the Company;
  - 1.1.8. "**JSE**" means the exchange, licensed under the Financial Markets Act of South Africa, No 19 of 2012, as amended from time to time, operated by the JSE Limited;
  - 1.1.9. "**JSE Listings Requirements**" means the Listings Requirements of the JSE applicable from time to time;
  - 1.1.10. "**Ordinary Resolution**" means a resolution that is approved by a simple majority of the votes of the Shareholders entitled to vote and voting on the matter which is the subject of the resolution;
  - 1.1.11. "**Paragraph**" means a paragraph of the Constitution;
  - 1.1.12. "**Registered Office**" means the registered office address of the Company;
  - 1.1.13. "**Secretary**" means the secretary of the Company;
  - 1.1.14. "**Section**" means a Section of the Act;
  - 1.1.15. "**SEM**" means the Stock Exchange of Mauritius Ltd;
  - 1.1.16. "**SEM Rules**" means the Listing Rules of the SEM, as may be amended from time to time;
  - 1.1.17. "**Share**" means a share issued by the Company;
  - 1.1.18. "**Shareholder**" or "**Member**" means any person holding one or more Share(s) in the share capital of the Company;
  - 1.1.19. "**Special Meeting**" means a meeting of Shareholders called in accordance with Section 116 of the Act;
  - 1.1.20. "**Special Resolution**" means a resolution that is approved by a 75% (seventy five percent) of the votes of the Shareholders entitled to vote and voting on the matter which is the subject of the resolution;
  - 1.1.21. "**Transmittee**" means a person who is the recipient to the title of any share, which share is the subject of a transfer of title of the share; and
  - 1.1.22. "**Securities**" means any shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company.

- 1.2. Reference to a statutory provision shall include such provision as from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- 1.3. Words importing the singular shall include the plural and vice versa and references to natural persons shall include juridical bodies whether incorporated or not;
- 1.4. The words "include", "including" and "in particular" shall not be construed as limiting the generality of any foregoing words;
- 1.5. Headings are for convenience only and shall not affect the interpretation hereof;
- 1.6. Reference to "days" shall mean calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of Mauritius from time to time;
- 1.7. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day;
- 1.8. If the due date for performance of any obligation in terms of this Constitution is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding business day; and
- 1.9. Words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act.

## **2. NAME**

The Name of the Company is New Frontier Properties Ltd.

## **3. OBJECTS**

The objects of the Company are to carry out any business activities relating to real estate including but without limitation, investment, development, operation, leasing and management of real estate assets, and which are not prohibited under the Laws of Mauritius and the laws of the countries where the Company is transacting business and to do all such things as are incidental or conducive to the attainment of the above objects. These objects will apply exclusively to business as defined with regard to global business in the Financial Services Act 2007, for which a Category 1 Global Business Licence is issued.

## **4. LIABILITY**

The liability of the Members is limited.

## **5. CAPITAL**

- 5.1. Subject to the provisions of Paragraph 19 hereinafter, the Members in general meeting may authorise the Board to issue shares, grant options and/or issue convertible securities at any time to any person and in any number as it thinks fit pursuant to Section 52 of the Companies Act 2001 and the JSE Listings Requirements. For the purposes of this Constitution, "general meeting" shall mean either an Annual Meeting or a Special Meeting of the Members as the case may be. **[LR10.9(a)]**
- 5.2. No shares or any interest or right to the shares shall be issued or granted by the Company to bearer. **[LR10.1]**
- 5.3. Where the Company issues shares which do not carry voting rights, the words "non-voting" shall appear in the designation of such shares.
- 5.4. Where the Company issues shares with different voting rights, the Company shall designate each class of shares, other than those with the most favorable voting rights, by inserting the words "restricted voting" or "limited voting".

- 5.5. The shares shall unless otherwise stated be fully paid up when issued and rank *pari passu* in all respects as amongst themselves including as to participation in the profits of the Company. **[LR10.5(a)]**
- 5.6. The capital of the Company shall consist of ordinary no par value shares and having attached to them the following rights: - **[LR10.2(a) and 10.5(a)]**
- 5.6.1. The right to one vote on a poll at a meeting of the Company on any resolution;
- 5.6.2. The right to an equal share in dividends authorised by the Board; **[LR10.5(b)]**
- 5.6.3. The right to an equal share in the distribution of the surplus assets of the Company.
- 5.7. After the first allotment of Shares by the Board, and subject to Paragraph 5.9 and 5.10, the Board may not issue additional Shares unless such Shares have first been offered to existing Shareholders in proportion to their shareholding (on such terms and in accordance with such procedures as the Board may determine), unless the relevant issue of Shares -**[LR10.1]**
- 5.7.1. is for the acquisition of assets, is a vendor consideration placing related to an acquisition of assets, or is an issue for the purposes of an amalgamation or merger; or
- 5.7.2. is an issue pursuant to options or conversion rights; or
- 5.7.3. is an issue in terms of an approved Share incentive scheme; or
- 5.7.4. is an issue of Shares for cash, which has been approved by the Shareholders by Ordinary Resolution, either by way of a general authority (which may be either conditional or unconditional) to issue Shares in its discretion or a specific authority in respect of any particular issue of Shares, provided that, if such approval is in the form of a general authority to the Directors, it shall be valid only until the next Annual Meeting of the Company or for 15 months from the date of the passing of the Ordinary Resolution, whichever is the earlier, and it may be varied or revoked by any general meeting of the Shareholders prior to such Annual Meeting; or
- 5.7.5. otherwise falls within a category in respect of which it is not, in terms of the SEM Rules and the JSE Listings Requirements, a requirement for the relevant Shares to be so offered to existing Shareholders; or
- 5.7.6. is otherwise undertaken in accordance with an authority approved by Shareholders in a general meeting of Shareholders,
- provided that if any entitlement to a fraction of a Share be administered in line with the JSE Listings Requirements and the Listing Rules of the Stock Exchange of Mauritius. After the expiration of the time within which an offer may be accepted, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the Shares offered, the Directors may, subject to the foregoing provisions, issue such Shares in such manner as they consider most beneficial to the Company.
- 5.8. The Board may exclude any Shareholder or category of Shareholders from an offer contemplated in Paragraph 5.7 if and to the extent that they consider it necessary or expedient to do so because of legal impediments or compliance with the laws or the requirements of any regulatory body of any territory, outside of Mauritius or South Africa that may be applicable to the offer.
- 5.9. The Board may, subject to Paragraph 5.7, the SEM Rules and the JSE Listings Requirements, issue Shares at any time, but only –
- 5.9.1. within the classes and to the extent that such issue is in compliance with the terms of this Constitution; and
- 5.9.2. to the extent that the authority of the Board to deal with the maximum number of Shares to be issued for listing purposes has not been specifically limited by an Ordinary Resolution adopted by the Shareholders and/or limited by the SEM or JSE.

- 5.10. Except to the extent that any such right is specifically included as one of the rights, preferences or other terms upon which any class of Shares is issued or as may otherwise be provided in this Constitution (as is set out in Paragraph 5.7), no Shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Shares issued by the Company.
- 5.11. The Company shall be entitled, pursuant to Section 92 of the Act, to keep one or more share registers at different places, provided that the principal share register be kept in Mauritius.
- 5.12. The company shall not issue more than one class of ordinary shares.
- 5.13. Except for the above restriction on the issue of ordinary shares, the company may issue other classes of shares, subject to the requisite amendments to this Constitution.
- 5.14. Each Share issued by the Company has associated with it an irrevocable right of the Shareholder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share as contemplated in Paragraph 12.11. Any alteration to the share capital of the company and/or any amendments to the rights attaching to any class of securities in the company, whether in issue or not, must be subject to the passing in general meeting of a special resolution of Members entitled to vote. **[LR10.5(e)]**

## **6. ALTERATION OF CONSTITUTION**

- 6.1. The Company may in accordance with the Companies Act 2001 alter its Constitution or any provision therein by Special Resolution of the Members provided that prior written approval has been sought and obtained from the SEM and the JSE for such alteration, deletion or addition. **[LR10.5(d)]**
- 6.2. For the purposes of Paragraph 6.1, an alteration shall include but not be limited to –
  - 6.2.1. the creation of any class of shares;
  - 6.2.2. the variation of any preferences, rights, limitations and other terms attaching to any class of shares;
  - 6.2.3. the conversion of one class of shares into one or more other classes;
  - 6.2.4. an increase in the number of securities of a class;
  - 6.2.5. a consolidation of securities;
  - 6.2.6. a sub-division of securities; and/or
  - 6.2.7. the change of the name of the company.

## **7. SPECIAL RESOLUTIONS**

A Special Resolution must be passed by a majority of not less than 75% (seventy-five percent) of the votes cast by all Members entitled to vote and voting on the question, present in person or represented by proxy, at a general meeting of which notice has been sent at least 15 business days before that meeting specifying the intention to propose the resolution has been duly given. **[LR10.11(a)]**

## **8. TYPE OF COMPANY**

The Company is a public company limited by shares.

## **9. REGISTERED OFFICE**

The Registered Office of the Company will be at B45 Twenty-Foot Road, 3<sup>rd</sup> Floor La Croisette, Grand Baie, Mauritius, or in such other place as the Board may from time to time determine.

## 10. BALANCE SHEET DATE

- 10.1. The Balance Sheet Date shall be determined by the Board. A copy of the annual report must be distributed to shareholders at least 15 business days before the date of the Annual Meeting at which they will be considered. **[LR10.19]**
- 10.2. The Company shall deliver a copy of its annual report to the Registrar of Companies of Mauritius (the “**Registrar of Companies**”) for registration at the same time as it delivers its financial statements to the Registrar of Companies.

## 11. TRANSFER OF SHARES

- 11.1. Subject to the provision of this Constitution, where shares are listed on the SEM or on another securities exchange, the shares of the Company shall be freely transferable and free from any lien. Each Member may transfer, without payment of any fee or other charges, save Brokerage Fees payable in relation to such transfer, all or any of his shares which have been fully paid. For the purposes of this Paragraph 11.1, “Brokerage Fees” shall mean the brokerage fees payable pursuant to the Stock Exchange (Brokerage) Regulations 1989.
- 11.2. For so long as the Company shall be admitted for listing on the SEM or the JSE, a Member wishing to transfer its shares, shall where physical Share Certificates have been issued to that Member, cause its shares to be dematerialized.
- 11.3. For so long as the Company shall be admitted for listing on the SEM, all shares transferred must be in the dematerialized form and must be conducted through the Automatic Trading System (the “ATS”) in accordance with the Trading Procedures.
- 11.4. In respect of shares held in certificated form, every instrument of transfer shall be executed by or on behalf of the transferor. Every instrument of transfer shall be left at the registered office of the Company (or such other place as the Board may from time to time determine) at which it is presented for registration accompanied by the certificate of the shares so transferred, and/or such other evidence as the Company may require, to prove the title of the transferor of his rights to transfer the shares. All authorities to sign instruments of transfer granted by Members exhibited with or to the Company at its registered office (or such other place as the Board may from time to time determine) shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company’s registered office (or such other place as the Board may from time to time determine) at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notice, the Company shall be entitled to give effect to any instrument signed under the authority to sign, and certified by any officer of the Company, as being in order before the giving and lodging of such notices. The transferor shall be deemed to remain the holder of such Share until the name of the transferee is entered in the Register in respect of it. **[LR10.2(b)]**
- 11.5. Transmission of shares
- 11.5.1. If title to a Share passes to a Transmitten, the Company may only recognise the Transmitten as having any title to that share.
- 11.5.2. A Transmitten who produces such evidence of entitlement to shares as the directors may properly require –
- 11.5.2.1. may, subject to the provisions of this Constitution choose either to become the holder of those shares or to have them transferred to another person; and
- 11.5.2.2. subject to the provisions of this Constitution, and pending any transfer of the shares to another person, has the same rights as the holder had.
- 11.5.3. Transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder’s death or bankruptcy or otherwise, unless they become the holders of those shares.

- 11.6. The Company shall not be bound to register more than four persons as the joint holders of any Share or shares and in the case of a Share held jointly by several persons. The Company shall not be bound to issue more than one certificate therefor (where applicable), and delivery of a certificate for a Share to one of several joint holders shall be sufficient delivery to all.

## 12. MEETINGS OF MEMBERS

### 12.1. Meetings and resolutions in lieu of meetings

- 12.1.1. The Board may convene meetings of the Members of the Company at such time and in such manner and places as the Directors consider necessary or desirable, including at any time that the Board is required by the JSE Listings Requirements. **[LR10.11(d)]**
- 12.1.2. The Board shall in each year convene an Annual Meeting of the Members of the Company, and such Annual Meeting shall be held;
- 12.1.2.1. not more than once in each year;
- 12.1.2.2. not later than six months after the Balance Sheet Date of the Company; and
- 12.1.2.3. not later than fifteen months after the previous Annual Meeting.
- 12.1.3. Subject to the provisions of Paragraph 12.3.2, a resolution in writing signed by Members who would be entitled to vote on that resolution at a meeting of Members and who together hold not less than 75% of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Members.
- 12.1.4. For the purposes of Paragraph 12.1.3, any resolution may consist of one or more similar documents in similar form (including letters, facsimiles, electronic mail, or other similar means of communications) each signed or assented to by or on behalf of one or more of the members specified in Paragraph 12.1.3.

### 12.2. Procedure at Meetings of Members

#### 12.2.1. Chairperson

- 12.2.1.1. Where the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Members, he shall chair the meeting.
- 12.2.1.2. Where no chairperson of the Board has been elected or if, at any meeting of Members, the chairperson of the board is not present within 15 minutes of the time appointed for the commencement of the meeting, the Directors present shall elect one of their numbers to be chairperson of the meeting.
- 12.2.1.3. Where no Director is willing to act as chairperson, or where no Director is present within 15 minutes of the time appointed for holding the meeting, the Members present may choose one of their numbers to be chairperson of the meeting.

#### 12.2.2. Notice of Meetings

- 12.2.2.1. Written notice of the time and place of a meeting of Members shall be sent to every Member entitled to receive notice of the meeting and to every Director, Secretary and auditor of the Company not less than 15 business days before the scheduled date of the meeting. Should the Company's shares be listed on the JSE at the time of such notice, at the same time as notices are sent to shareholders, a copy must be sent to the JSE and announced on the Stock Exchange News Services of the JSE. The giving of notice to members whose registered address is outside Mauritius shall not be prohibited. **[LR10.11(a), 10.11(b), 10.11(e), 10.11(f) and 10.18]**
- 12.2.2.2. The notice shall state:
- 12.2.2.2.1. the nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgement in relation to it; and

- 12.2.2.2. the text of any Special Resolution or Ordinary Resolution to be submitted to the meeting.
- 12.2.2.3. Any irregularity in a notice of a meeting shall be waived where all the Members entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or where all such Members agree to the waiver.
- 12.2.2.4. Any accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by a Member shall not invalidate the proceedings at that meeting.
- 12.2.2.5. The chairperson may, or where directed by the meeting, shall, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place, if the Board so resolves.
- 12.2.2.6. When a meeting of Members is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- 12.2.2.7. Notwithstanding anything to the contrary contained herein, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

### 12.3. Methods of holding meetings

- 12.3.1. A meeting of Members may be held either-
  - 12.3.1.1. by a number of Members who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
  - 12.3.1.2. by means of audio, or audio and visual, communication by which all Members participating and constituting a quorum, can simultaneously hear each other throughout the meeting.
- 12.3.2. To the extent required, a meeting called for in terms of the JSE Listings Requirements must be held in person. **[LR10.11(c)]**

### 12.4. Quorum

- 12.4.1. No business shall be truncated at any annual or Special Meeting and at an adjourned or postponed meeting unless a quorum is present. The presence of three (3) shareholders or their proxies who are between them able to exercise, in aggregate, at least 25% of the votes to be cast on the business to be transacted by the meeting, shall constitute a quorum. Once a quorum has been established, all the shareholders of the quorum must be present at the meeting to hear any matter that must be considered at the meeting. **[LR10.11(g)]**
- 12.4.2. Where a quorum is not present within 30 minutes after the time appointed for the meeting:
  - 12.4.2.1. in the case of a meeting called under section 118(1)(b) of the Companies Act 2001 the meeting shall be dissolved;
  - 12.4.2.2. in the case of any other meeting, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Directors may appoint; and
  - 12.4.2.3. where, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Members or their proxies present shall be quorum.

### 12.5. Voting

- 12.5.1. Where a meeting of Members is held in terms of Paragraph 12.3.1.1 unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
  - 12.5.1.1. voting by voice; or



- 12.5.1.2. voting by show of hands.
- 12.5.2. Where a meeting of Members is held under Paragraph 12.3.1.2, unless a poll is demanded, voting at the meeting shall be by the Members signifying individually their assent or dissent by voice.
- 12.5.3. A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority shall be conclusive evidence of that fact unless a poll is demanded in accordance with Paragraph 12.5.4.
- 12.5.4. At a meeting of Members, a poll may be demanded by:
  - 12.5.4.1. not less than five Members having the right to vote at the meeting;
  - 12.5.4.2. a Member or Members representing not less than 10 percent of the total voting rights of all Members having the right to vote at the meeting;
  - 12.5.4.3. by a Member or Members holding shares in the company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 percent of the total amount paid up on all shares that confer that right; or
  - 12.5.4.4. the chairperson of the meeting.
- 12.5.5. A poll may be demanded either before or after the vote is taken on a resolution
- 12.5.6. Where a poll is taken, votes shall be counted according to the votes attached to the shares of each Member present in person or by proxy and voting.
- 12.5.7. The chairperson of Members' meeting shall not be entitled to a casting vote.
- 12.5.8. For the purposes of Paragraph 12.5:
  - 12.5.8.1. the instrument appointing a proxy to vote at a meeting of the Company shall confer authority to demand or join in demanding a poll and a demand by a person as proxy for a Member shall have the same effect as a demand by the Member;
  - 12.5.8.2. subject to any rights or restrictions for the time being attached to any class of shares, every Members present in person or by proxy and voting by voice or by show of hands and every Member voting by postal vote (where this is permitted) shall have one vote. **[LR10.5(b)]**

## 12.6. Proxies

- 12.6.1. A Member may exercise the right to vote either by being present in person or by proxy.
- 12.6.2. A proxy for a Member may attend and be heard at a meeting of Member as if the proxy were the Member.
- 12.6.3. A proxy shall be appointed by notice in writing signed by the Member and the notice shall state whether the appointment is for a particular meeting or a specified term.
- 12.6.4. No proxy shall be effective in relation to a meeting unless:
  - 12.6.4.1. a copy of the notice of appointment is produced before the start of the meeting;
  - 12.6.4.2. any power of attorney or other authority under which the proxy is signed or a notarially certified copy shall also be produced;
  - 12.6.4.3. a proxy form shall be sent with each notice calling a meeting of the Company;
  - 12.6.4.4. the instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing or in the case of a corporation under the hand of an officer or of an agent duly authorised;

12.6.4.5. the instrument appointing a proxy shall be in the following form:

I/we ..... of ..... being Members of the able named Company hereby appoint.....or failing him/her, ..... of ..... as my/our proxy to vote for me/us at the meeting of the Company to be held on ..... and at any adjournment of the meeting.

Signed this ..... day of.....

12.6.5. The instrument appointing a proxy shall not be effective unless it is produced at least 24 hours before the start of a meeting.

## 12.7. Minutes

12.7.1. The Board shall ensure that minutes are kept of all proceeding at meetings of Members.

12.7.2. Minutes which have been signed as being correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## 12.8. Members Proposals

12.8.1. A Member may give written notice to the Board of a matter the Member proposes to raise for discussion or resolution at the next meeting of Members at which the Member is entitled to vote.

12.8.2. Where the notice is received by the Board not less than 28 days before the last day on which notice of the relevant meeting of Members is required to be given by the Board, the Board shall, at the expense of the Company, give notice of the Members' proposal and the text of any proposed resolution to all Members entitled to receive notice of the meeting.

12.8.3. Where the notice is received by the Board not less than 7 days and not more than 28 days before the last day on which notice of the relevant meeting of Members is required to be given by the Board, the Board shall, at the expense of the Company, give notice of the Members' proposal and the text of any proposed resolution to all Members entitled to receive notice of the meeting.

12.8.4. Where the notice is received by the Board less than 7 days before the last day on which notice of the relevant meeting of Members is required to be given by the Board, the Board may, where practicable, and at the expense of the Member, give notice of the Members' proposal and the text of any proposed resolution to all Members entitled to receive notice of the meeting.

12.8.5. Where the Directors intend that Members may vote on the proposal by proxy vote, they shall give the proposing Members the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing Members in support of the proposal, together with the name and address of the proposing Members.

12.8.6. The Board shall not be required to include in or with the notice given by the Board a statement prepared by a Member who the Directors consider to be defamatory, frivolous, or vexatious.

12.8.7. Where the costs of giving notice of the Member's proposal and the text of any proposed resolution are required to be met by the proposing Member, the proposing Member shall, on notice by the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

## 12.9. Corporations may act by representative

A body corporate which is a Member may appoint a representative to attend a meeting of Members on its behalf in the same manner as that in which it could appoint a proxy.

12.10. Votes of joint holders

Where two or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter shall be accepted to the exclusion of the votes of the other joint holders.

12.11. If any resolution is proposed as contemplated in Paragraph 5.14, the holders of such Shares ("**Affected Shareholders**") shall be entitled to vote at the meeting of ordinary Shareholders, provided that –

12.11.1. the votes of the Shares of that class held by the Affected Shareholders ("**Affected Shares**") shall not carry any special rights or privileges and each Affected Shareholder shall be entitled to 1 (one) vote for every Affected Share held; and

12.11.2. the total voting rights of all Securities, other ordinary Shares and any Securities which are special Shares created for the purpose of black economic empowerment in terms of the Broad-based Black Economic Empowerment Act, No 53 of 2004 and the Codes promulgated under such Act, shall not be more than 24.99% (twenty four point nine nine percent) of the total votes (including the votes of the ordinary Shareholders) exercisable at that meeting (with any cumulative fraction of a vote in respect of any Affected Shares held by an Affected Shareholder rounded down to the nearest whole number). **[LR10.5(c) and 10.5(e)]**

12.12. The record date for the purpose of determining which Shareholders are entitled to –

12.12.1. receive notice of a Shareholders' meeting;

12.12.2. participate in and vote at a Shareholders' meeting;

12.12.3. decide any matter by written consent;

12.12.4. receive a distribution; or

12.12.5. be allotted or exercise any other rights,

shall be determined by the Board, provided that, for as long as the JSE Listings Requirements apply to the Company and prescribe a record date, such record date shall be the record date so prescribed. **[LR10.15]**

### 13. DIRECTORS

13.1. Number

13.1.1. Subject to any subsequent amendment to change the number of Directors, the number of the Directors shall not be less than four (4). If the number falls below four, the remaining Directors shall as soon as possible, and in any event not later than three months from the date the number of Directors falls below the minimum, fill the vacancy or call a general meeting to fill the vacancy and the failure by the Company to have the minimum number of Directors during the said three month period does not limit or negate the authority of the Board or invalidate anything done by the Board while their number is below the minimum number fixed in accordance with this Constitution. After the expiry of the three month period the remaining Directors shall only be permitted to act for the purpose of filling vacancies or calling general meetings of Members. **[LR10.16(a) and 10.16(d)]**

13.1.2. Any Director appointed under Paragraph 13.1.1 shall hold office only until the next following Annual Meeting and shall then retire, but shall be eligible for appointment at that meeting. **[LR10.16(c)]**

13.1.3. Subject to Paragraph 13.1.5, the quorum for all Board meetings shall be three, of which at least one must at all times be an executive director.

13.1.4. Notwithstanding any other provision of this Constitution, at all times, in relation to any jurisdiction other than the United Kingdom, the number of Directors resident for tax purposes

in that other jurisdiction shall be less than the number of Directors solely resident in the United Kingdom for tax purposes.

- 13.1.5. No meeting of the Board shall be quorate unless a majority of Directors attending that meeting are physically present at the meeting in the United Kingdom.

13.2. Qualification

No Director shall be required to hold shares in the Company to qualify him for an appointment

13.3. Appointment

The Directors of the Company shall be appointed by the Company in annual or Special Meetings by Ordinary Resolution or at meetings of the Board in relation to appointments under Paragraph 13.1.1. **[LR10.16(b)]**

13.4. Retirement of Directors

- 13.4.1. Life Directorships are not permissible. **[LR10.16(k)]**

- 13.4.2. At each Annual Meeting of Members all the Directors shall retire from office and may make themselves available for re-election.

- 13.4.3. The Company at the meeting at which a Director retires under any provision of this Constitution may by ordinary resolution fill the office being vacated by electing thereto the retiring Director or some other person eligible for appointment. In default, the retiring Director shall be deemed to have been re-elected except in any of the following cases:

- 13.4.3.1. where at such meeting it is expressly resolved not to fill such office or a resolution for the re-election of such Director is put to the meeting and lost;

- 13.4.3.2. where such Director has given notice in writing to the Company that he is unwilling to be re-elected

- 13.4.3.3. where such Director has attained any retiring age applicable to him as director.

- 13.4.4. The retirement shall not have effect until the conclusion of the meeting except where a resolution is passed to elect some other person in the place of the retiring Director or a resolution for his re-election is put to the meeting and lost and accordingly a retiring Director who is re-elected will continue in office without a break.

- 13.4.5. At least 7 days' notice shall be given to the Company of any intention to propose a person for election as a Director at a meeting of the shareholders and the consent of such person in relation thereto shall be communicated to the Company at least seven days before the date of the meeting.

- 13.4.6. Notwithstanding anything to the contrary contained herein and subject to as may otherwise be provided by law, any director, managing Director or other executive Director may, by ordinary resolution passed at a meeting of shareholders called for purposes that include their removal or ceasing to hold office pursuant to section 139 of the Act, be removed from office before the expiry of their period of office subject however, to the right of any such Director to claim damages under any contract.

13.5. Remuneration of Directors

- 13.5.1. The remuneration of Directors shall be determined by the Remuneration Committee.

- 13.5.2. The Board may determine the terms of any service contract with a managing Director or other executive director.

- 13.5.3. The Directors may be paid all travelling, hotel and other expenses properly incurred by them in attending any meetings of the Board or in connection with the business of the Company and in attending meetings of the directors or of committees thereof; and, if any director is required

to perform extra services, to reside abroad or be specifically occupied about the Company's business, he may be entitled to receive such remuneration as may be determined by a disinterested quorum of directors, which may be either in addition to or in substitution for any other remuneration payable.. **[LR10.16(f)]**

- 13.5.4. If by arrangement with Board any Director shall perform or render any special duties or serves outside his ordinary duties as a Director and not in his capacity as a holder of employment or executive office, and, in such event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of directors. **[LR10.16(e) and 10.16(f)]**
- 13.5.5. A Director shall not vote on any contract or arrangement or any other proposal in which he or his associates have a material interest nor shall he be counted in the quorum present at the meeting.
- 13.5.6. Notwithstanding Paragraph 13.5.5 above, a Director shall be entitled to vote and be counted in the quorum at the meeting in respect of the following matters: -
  - 13.5.6.1. the giving of any security or indemnity either:
    - 13.5.6.1.1. to the Director in respect of money lent or obligations incurred or undertaken by him at the request of or for the benefit of the Company or any of its subsidiaries; or
    - 13.5.6.1.2. to a third party in respect of a debt or obligation of the Company or any of its subsidiaries for which the Director has himself assumed responsibility in whole or in part and whether alone or jointly under a guarantee or indemnity or by the giving of security;
  - 13.5.6.2. any proposal concerning an offer of shares or debentures or other securities of or by the Company or any other Company which the Company may promote or be interested in for subscription or purchase where the Director is or is to be interested as a participant in the underwriting or sub-underwriting of the offer;
  - 13.5.6.3. any proposal concerning any other Company in which the Director is interested only, whether directly or indirectly, as an officer or executive or shareholder or in which the Director is beneficially interested in shares of that Company, provided that he, together with any of his associates, is not beneficially interested in shares of that Company, provided that he, together with any of his associates, is not beneficially interested in five percent or more of the issued shares of any class of such Company (or of any third Company through which his interest is derived) or of the voting rights;
  - 13.5.6.4. any proposal or arrangement concerning the benefit of employees of the Company or its subsidiaries including:
    - 13.5.6.4.1. the adoption, modification or operation of any employees' share scheme or any share incentive or share option scheme under which he may benefit; or
    - 13.5.6.4.2. the adoption, modification or operation of a pension fund or retirement, death or disability benefits scheme which relates both to Directors and employees of the Company or any of its subsidiaries and does not provide in respect of any Director as such any privilege or advantage not generally accorded to the class of person to which such scheme or fund relates; and
  - 13.5.6.5. any contract or arrangement in which the Director is interested in the same manner as other holders of shares or debentures or other securities of the Company by virtue only of his interest in shares or debentures or other securities of the Company.
- 13.5.7. For the purposes of Paragraph 13.5.6, save for Paragraph 13.5.6.3, "associate" shall have, in relation to any director, the following meanings: -
  - 13.5.7.1. his spouse and any child or stepchild under the age of 18 years of the Director ("the individual's family") and;

- 13.5.7.2. the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object; and
- 13.5.7.3. any Company in the equity capital of which the individual and/or any member or members of the individual's family (taken together) are directly or indirectly interested so as to exercise or control the exercise of 20 percent or more of the voting power at meetings of shareholders, or to control the appointment and/or removal of Directors holding a majority of voting rights at Board meetings on all or substantially all matters, and any other Company which is its subsidiary.
- 13.5.8. For the purposes of Paragraph 13.5.6.3, "associate" shall have, in relation to a director, the following meaning: -
  - 13.5.8.1. a spouse, a person living "en concubinage" under the common law, any child or stepchild or any relative residing under the same roof as that director,
  - 13.5.8.2. a succession in which the Director has an interest;
  - 13.5.8.3. a partner of that director;
  - 13.5.8.4. any company in which the Director owns securities assuring him of more than 10 per cent of a class of shares to which are attached voting rights or an unlimited right to participate in earning and in the assets upon winding up;
  - 13.5.8.5. any controller of that director;
  - 13.5.8.6. any trust in which the Director has a substantial ownership interest or in which he fulfils the functions of a trustee or similar function;
  - 13.5.8.7. any company which is a related company.

## 13.6. Proceedings of Directors

### 13.6.1. Chairperson **[LR10.16(i)]**

- 13.6.1.1. The Directors may elect one of their number as chairperson of the Board and determine the period for which he is to hold office.
- 13.6.1.2. Where no chairperson is elected, or where at a meeting of the Board the chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

### 13.6.2. Notice of Meeting

- 13.6.2.1. A Director or, if requested by a Director to do so, an employee of the company, may convene a meeting of the Board by giving notice in accordance with this Paragraph.
- 13.6.2.2. A notice of a meeting of the Board shall be sent to every Director and the notice shall include the date, time, and place of the meeting and the matters to be discussed.
- 13.6.2.3. Any meeting at which the business of the meeting is to appoint a Director whether as an additional Director or to fill a casual vacancy shall be called by at least 30 business days' notice. Any person appointed by the Directors to fill a casual vacancy on or as an addition to the Board shall hold office only until the following Annual Meeting of shareholders, and shall then be eligible for re-election.
- 13.6.2.4. An irregularity in the notice of a meeting is waived where all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or where all Directors entitled to receive notice of the meeting agree to the waiver.

### 13.6.3. Methods of holding meetings

13.6.3.1. The Board or any committee thereof may meet at such times and in such manner and places within the United Kingdom (and not any other jurisdiction) as the Board may determine to be necessary or desirable.

13.6.3.2. A Director shall be deemed to be present at a meeting of the Board if he participates by telephone or other electronic means and all Directors participating in the meeting are able to hear and communicate with one another provided that a majority of Directors attending a meeting must be physically present at the meeting in the United Kingdom.

### 13.6.4. Alternate Directors

A Director may by a written instrument appoint an alternate who need not be Director and an alternate is entitled to attend meetings in the absence of the Director who appointed him and to vote or consent in the place of the Director provided that a Director who is resident in the United Kingdom for tax purposes may not appoint an alternate who is not resident solely in the United Kingdom for tax purposes.

### 13.6.5. Voting

13.6.5.1. Every Director has one vote.

13.6.5.2. The chairperson shall not have a casting vote.

13.6.5.3. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it.

13.6.5.4. A Director present at a meeting of the Board is presumed to have a need to, and to have voted in favour of, a resolution of the Board unless he expressly dissents from or votes against the resolution at the meeting.

### 13.6.6. Minutes

The Board shall ensure that minutes are kept of all proceedings at meetings of the Board.

### 13.6.7. Resolution in writing

A Resolution of Directors in writing, signed by a majority of Directors, then entitled to receive notice of a Board meeting, shall be valid and effective as if it had been passed at a meeting of the Board duly convened and held, without the need for any notice, provided that a majority of the signatories are resident for tax purposes solely in the United Kingdom. Any such resolution may take the form of one or more documents in writing (including facsimile or other similar means of communication) in like form each signed by one or more Directors. A copy of such resolution shall be entered in the minute book of the Board proceedings.

### 13.6.8. Directors may delegate;

13.6.8.1. subject to this Constitution and to Seventh Schedule to the Act, the Directors may delegate powers which are conferred on them:

13.6.8.1.1. to such person or committee;

13.6.8.1.2. by such means (including by power of attorney);

13.6.8.1.3. to such an extent;

13.6.8.1.4. in relation to such matters or territories; and

13.6.8.1.5. on such terms and conditions as they think fit.

13.6.8.2. If the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated.

- 13.6.8.3. Subject to this Constitution, the Directors may revoke any delegation in whole or part, or alter its terms and conditions.
- 13.6.8.4. Any delegation of powers by the Directors (or by any other person pursuant to Paragraph 13.6.8.2) shall, if the relevant delegation is to an individual, only be to an individual who is resident solely in the United Kingdom for tax purposes.
- 13.6.9. Committees
- 13.6.9.1. Committees to which the Directors (or any other person pursuant to Paragraph 13.6.8.2) delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the Constitution which govern the taking of decisions by Directors.
- 13.6.9.2. Notwithstanding any other provision of this Constitution but subject to the relevant provisions of the Companies Act 2001, at all times (i) at least half of the members of any committee to which any powers of Directors are delegated shall be solely resident in the United Kingdom for tax purposes and (ii) in relation to any jurisdiction other than the United Kingdom, the number of members of any such committee resident for tax purposes in that other jurisdiction shall be less than the number of members solely resident in the United Kingdom for tax purposes.
- 13.6.9.3. The Board is prohibited from making, amending or repealing any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Companies Act 2001 or the Constitution and the Board's capacity to make, amend or repeal such rules is hereby excluded. **[LR10.4]**

## **14. POWERS AND DUTIES OF DIRECTORS**

### 14.1. Borrowing Powers

The Directors may exercise all powers of the Company to borrow or raise or secure the payment of money or the performances or satisfaction by the Company of any obligation or liability and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue mortgages, charges, bonds, notes and other securities and other instrument whether outright or as security, for any debt liability or obligation of the Company or of any third party. In addition, such power shall be exercised, in compliance with Section 143 of the Companies Act 2001.

### 14.2. Overseas Seal and Branch Registers

- 14.2.1. The Company may exercise the powers conferred by the Companies Act 2001 with regard to having an official seal for use abroad, and those powers shall be vested in the Directors.
- 14.2.2. The Company may exercise the powers conferred by the Companies Act 2001 relating to the keeping of branch register and the Directors may (subject to the provision of that section) make and vary such regulations as they think fit regarding the keeping of any such branch register.

### 14.3. Management of Company

The business of the Company shall be managed by the Directors in the United Kingdom who may pay all expenses incurred in promoting or registering the Company and who may exercise all such powers of the Company as are, by the Companies Act 2001 or by this Constitution, required to be exercised by the Company in general meeting, subject, nevertheless, to the provision of this Constitution and to the provision of the Companies Act 2001.

### 14.4. Indemnity

Subject to the provisions of the Companies Act 2001, and any other statute for the time being in force, every Director or other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, and no Director or other officer



shall be liable for any loss, damage or misfortune which may happen to, or be incurred by the Company in the execution of his office, or in relation thereto.

#### 14.5. Directors expenses

The Company may pay any reasonable expenses which the Directors properly incur in connection with their attendance at:

- 14.5.1. meetings of Directors or committees of Directors;
- 14.5.2. general meetings of Members, or
- 14.5.3. separate meetings of the holders of any class of share or of debentures of the Company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.

### 15. MISCELLANEOUS PROVISIONS

#### 15.1. Payment of commission

- 15.1.1. The Company may not pay a commission at a rate not exceeding 10% to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Shares of the Company or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any Shares of the Company. **[LR10.14]**
- 15.1.2. Commission may be paid out of capital or profits, whether current or accumulated, or partly out of the one and partly out of the other.
- 15.1.3. Such commission may be paid in cash or, if authorized by the Company in general meeting, by the allotment of fully or partly paid-up Shares, or partly in one way and partly in the other.
- 15.1.4. The Company may, on any issue of Shares, pay such brokerage fee as may be lawful.

#### 15.2. Ratification of ultra vires acts

Where the provisions of this Constitution restrict or qualify the purposes, powers or activities of the Company, or limits the authority of the Directors to perform an act on behalf of the Company, the Members may not ratify any actions by the Company or the Directors that is inconsistent with any such limit, restriction or qualification or that is contrary to SEM Rules or the JSE Listings Requirements, unless otherwise agreed with the SEM or the JSE, as the case may be. **[LR10.3]**.

#### 15.3. Governance

The Directors may not undertake any action relating to the governance of the Company in contravention of this Constitution and/or any provision of the Companies Act 2001, and to the extent that they do not conflict with this Constitution and/or any provision of the Companies Act 2001, the JSE Listing Requirements and/or the SEM Rules.

#### 15.4. Arbitration

- 15.4.1. Any dispute, controversy or claim arising out of or in relation to this Constitution, including any question regarding its existence, validity or termination, shall be referred to and shall be finally resolved by arbitration under the rules of the LCIA-MIAC Arbitration Centre which rules are deemed to be incorporated by reference into this clause.
- 15.4.2. The juridical seat of arbitration shall be Mauritius and the International Arbitration Act 2008 shall apply to the arbitration.
- 15.4.3. The language to be used in the arbitration shall be the English language.
- 15.4.4. The number of arbitrators shall be one.
- 15.4.5. The parties agree to keep confidential all awards in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced

by another party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.

#### 15.5 Liens

The Company shall not take a lien or other charge on its own shares and no Share shall be issued without being fully paid up. **[LR10.12]**

#### 15.6 Right to inspect accounts and other records

15.6.1 A Member, subject to such conditions and regulations as the Directors may determine having regard to any obligation binding upon the Company to keep confidential information supplied to it by other person, may inspect personally or by his agent at any time and from time to time any account or book or document of the Company (and take and retain copies of them).

15.6.2 The Company will be audited on an annual basis.

15.6.3 A printed copy of the Annual Report of the Company prepared in accordance with the Companies Act 2001 shall, at least 15 days before the date of the meeting of shareholders, be delivered or sent by post to the registered address of every member.

#### 15.7 Winding up

15.7.1 If the Company is wound up, the liquidator may, with the authority of a Special Resolution:

15.7.2 divide among the Members in specie the whole or any part of the assets of the Company, (and may, for that purpose, value any assets and determine how the division will be carried out as between the Members or different classes of Members); and

15.7.3 vest the whole or any part of the assets of the Company in trustees upon such trusts for the benefit of the Members as the liquidator determines,

15.7.4 but no Member will be compelled to accept any assets in respect of which there is a liability.

#### 15.8 Variation of Rights

15.8.1 Where the share capital of the Company is divided into different classes of shares, the Company shall not take any action which carries the rights attached to a class of shares unless that variation is approved by a Special Resolution, or by consent in writing of the holders of 75 per cent of the shares of that class. **[LR10.9(c)]**

15.8.2 The quorum for a separate class meeting (other than an adjourned meeting) to consider a variation of the rights of any class of shares shall be the holders of one third of the issued shares of that class.

15.8.3 So long as the Company shall be a listed company, the preferences, rights, limitations or other terms of any class of shares of the Company must not be varied and no resolution may be proposed to shareholders for rights to include such variation in response to any objectively ascertainable external fact. **[LR10.5.(g)]**

15.8.4 Adequate voting rights, will in appropriate circumstances and as determined by the Board and Members of the Company, be secured to preference shareholders.

### 16 SECRETARY

#### 16.1 Appointment of Secretary

The Secretary shall be appointed by the Directors for such term at such remuneration and upon such conditions as they may think fit.

#### 16.2 Restriction

Any provision of the Companies Act 2001 or this Constitution requiring or authorising a thing to be done by or to a Director and the Secretary, shall not be satisfied by its being done by or to the same person acting both as Director and as or in place of the Secretary.

#### 16.3 Joint secretaries

If the Directors think fit, two or more persons may be appointed as joint secretaries.

#### 16.4 Removal

Any Secretary or joint secretary may at any time be removed from office by the Directors, but without prejudice to any claim for damages for breach of any contract of service between him and the Company.

### 17 DIVIDENDS AND RESERVES

#### 17.1 Declaration of Dividends

17.1.1 The Company in general meeting may declare dividends but may not declare a larger dividend than that declared by the Directors and no dividend shall be declared and paid except out of retained earnings and unless the Directors determine that immediately after the payment of the dividend the Company shall be able to satisfy the solvency test in accordance with Section 6 of the Companies Act 2001. **[LR10.17(a)]**

17.1.2 Dividends may be declared and paid in money, shares or other property.

17.1.3 The Company may cease sending dividend warrants by post if such warrants have been left uncashed on two successive occasions.

17.1.4 Notwithstanding Paragraph 17.1.3 above, the Company may cease sending dividend warrants after the first occasion on which such warrant is returned undelivered where after reasonable enquiries, the Company has failed to establish any new address of the registered holder.

17.1.5 Dividends are to be payable to shareholders registered as at a date subsequent to the date of declaration or date of confirmation of the dividend, whichever is the later.

#### 17.2 Computation of Profit

In computing the profits for the purpose of resolving to declare and pay a dividend, the Directors may include in their computation the net unrealised appreciation of the assets of the Company.

#### 17.3 Interim Dividends

The Directors may from time to time pay to the Members such interim dividends as appear to the Directors to be justified by the surplus of the Company.

#### 17.4 Entitlement to dividends

17.4.1 Subject to the rights of holders of shares entitled to special rights as to dividends, all dividends shall be declared and paid equally on all shares in issue at the date of declaration of the dividend.

17.4.2 If several persons are registered as joint holders of any share, any of them may give effectual receipt for any dividend or other monies payable on or in respect of the share. **[LR10.17(b)]**

#### 17.5 Reserves

The Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve or reserves which shall, at the discretion of the Directors, be applicable for meeting contingencies, or for any other purpose to which the profits of the Company may be properly applied, and pending such application may, at the like discretion, either be employed

in the business of the Company or be invested in such investments as the Directors may from time to time think fit.

#### 17.6 Notice

Notice of any dividend that may have been declared shall be given to each Member in the manner hereinafter mentioned all dividends unclaimed for five years after having been declared may be forfeited by resolution of the Directors for the benefit of the Company. The Company shall hold monies other than dividends due to Members in trust indefinitely until lawfully claimed by such Member. **[LR10.17(c)]**

#### 17.7 Interest

No dividend shall bear interest against the Company.

#### 17.8 Repayment of Capital

If a distribution by the Company is a repayment of capital, the Company shall not be entitled to make such distribution on the basis that it may be called up again. **[LR10.8]**

### 18 DEBT INSTRUMENTS

The Board may create and issue secured or unsecured debentures and the Board may authorise the Company to issue secured or unsecured debt instrument but no special privileges, such as attending and voting at general meetings and the appointment of directors, associated with any debt instruments to be issued by the Company may be granted and the authority of the Board in such regard is limited by this Constitution. **[LR10.10]**

### 19 CAPITALISATION SHARES

19.1 The Board shall not have the power or authority to –

19.1.1 approve the issuing of any shares of the Company as capitalisation shares; or

19.1.2 to issue shares of one class as capitalisation shares in respect of shares of another class; or

19.1.3 to resolve to permit shareholders to elect to receive a cash payment in lieu of a capitalisation share,

unless the SEM Rules and the JSE Listings Requirements have been complied with. **[LR10.6, 10.7 and 10.9(a)]**

19.2 For the purposes of the section, “capitalisation shares” shall mean, shares issued by the Company, whether by way of a bonus award or otherwise, in such manner that the Company’s reserves or unappropriated profits are in whole or in part applied in paying up such shares.

### 20 ACQUISITION BY THE COMPANY OF ITS OWN SHARES

Subject to SEM Rules, the Securities (Purchase of Own Shares) Rules 2008 and the JSE Listings Requirements, the Board may determine that the Company should acquire a number of its own shares. **[LR10.9(b)]**

### 21 ODD-LOT OFFERS

21.1 The Company shall be entitled to implement an odd-lot offer in accordance with the provisions of this Paragraph 21, provided that, if so required by the SEM Rules or the JSE Listings Requirements, the odd-lot offer shall be approved by the Shareholders in a general meeting, and the odd-lot shall otherwise be implemented in accordance with any applicable restrictions and procedures imposed by the SEM Rules and the JSE Listings Requirements, as the case may be.

21.2 If, upon implementation of any odd-lot offer made by the Company, there are holders of Shares holding in aggregate less than 100 (one hundred) Shares, or such other number of Shares as determined by the SEM to the JSE as amounting to an odd-lot (“**Odd-Lots**”) in the Company (“**Odd-**

**Lot Holders**"), then the Company shall, save in respect of Odd-Lot holders who have elected to retain their Odd-Lots in the Company –

21.2.1 cause the Odd-Lots to be sold in such manner as the Directors may direct; and

21.2.2 procure that the proceeds of such sales are paid to such Odd-Lot Holders.

21.3 All unclaimed proceeds of such sales (other than monetary proceeds) must be held by the Company in trust and, for clarity, may be invested by the Company in its discretion and any interest or other returns on such investment shall be for the account of the Company. Subject to the laws of prescription, proceeds of such sales which remain unclaimed for a period of 3 (three) years from the date on which they were declared (or such longer period as may be required under the laws of prescription) may be declared forfeited by the Directors for the benefit of the Company. The Directors may at any time annul such forfeiture upon such conditions (if any) as they think fit.

## **22 AUTHENTICATION OF DEED AND DOCUMENTS**

22.1 Deeds and documents

All deeds, acts and documents executed on behalf of the Company may be in such form and contain such powers, provisos, conditions, covenants, clauses and agreements as the Directors shall think fit, and shall be signed by two Directors or by such person or persons as the Directors may from time to time appoint.

22.2 Negotiable instruments and cheques paid out

All bills of exchange, promissory notes or other negotiable instruments shall be accepted, made, drawn or endorsed for and on behalf of the Company and all cheques or orders for payments shall be signed either by two Directors or by such other person or persons as aforesaid.

22.3 Endorsement of negotiable instruments and cheques paid in

Cheques or other negotiable instruments paid to the Company's bankers for collection and requiring the endorsement of the Company may be endorsed on its behalf by one Director or by the Secretary or by such other officer as the Directors may from time to time appoint.

22.4 Banking

All moneys belonging to the Company shall be paid to such bankers as the Directors shall from time to time in writing or by resolution of the Directors appoint and all receipts for money paid to the Company shall be signed by one director or by the Secretary or such other officer as aforesaid and such receipt shall be an effectual discharge for the money therein state to be received.

22.5 Legal domicile

For the execution of these presents, legal domicile is elected at the place of residence of the parties situate as aforesaid.

## **23 NOTICES**

23.1 A Notice, or any other document or communication, including but not limited to financial statements may be given by the Company to any Member, whether in or outside of Mauritius, either personally or by sending it by post, electronic mail, facsimile or telex to him at his registered address or to the address supplied by him to the Company for the giving of notices to him.

23.2 Any notice, if served by post, shall be deemed to have been served within 7 days after it was posted and in proving such service it shall be sufficient to prove that the notice was properly addressed, postal and delivery charges were paid and that the document was duly posted.

23.3 A notice may be given by the Company to the joint holders of a Share by giving notice to the joint holder named first in the register in respect of the share.

- 23.4 A notice may be given by the Company to the persons entitled to a Share in consequence of the death or bankruptcy of a Member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address supplied for the purpose by the persons claiming to be so entitled or (until such an address has been supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy has not occurred.
- 23.5 Any notice given by advertisement shall be published in at least two daily newspapers of wide circulation.
- 23.6 Any Member present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.
- 23.7 Notice of every general meeting of Members shall be given in any manner hereinbefore authorised to:
- 23.7.1 every Member, whether residing in or outside of Mauritius;
  - 23.7.2 every person upon whom the ownership of a Share devolves by reason of his being a legal representative or a trustee in bankruptcy of a Member;
  - 23.7.3 each Director of the Company,
- such other person as the Directors shall at any time and from time to time determine.

## 24 CERTIFICATES

All certificates for capital shall be under seal, or facsimile thereof, which shall only be affixed with the authority of the Directors.

## 25 SHARE WARRANTS

In case the Board proposed to issue share warrants to bearer, no new share warrant shall be issued to replace one that has been lost, unless the Company is satisfied beyond reasonable doubt that the original has been destroyed.

## 26 REAL ESTATE INVESTMENT TRUST

- 26.1 It is a cardinal principle that, for so long as the Company is the principal Company in a real estate investment trust ("**REIT**") for the purposes of Part 12 of the Corporation Tax Act 2010, as such Part may be modified, supplemented or replaced from time to time, no member of the group should be liable to pay tax under section 551 of the Corporation Tax Act 2010 (as such section may be modified, supplemented or replaced from time to time) on or in connection with the making of a distribution.
- 26.2 This Paragraph 26 supports such cardinal principle, by among other things, imposing restrictions and obligations on the Members of the Company and, indirectly, certain other persons who may have an interest in the Company, and shall be construed accordingly so as to give effect to such cardinal principle.
- 26.3 For the purposes of this Paragraph 26, the following words and expressions shall bear the following meanings:
- 26.3.1 "**distribution**" means any dividend or other distribution on or in respect of the shares of the Company and references to a distribution being paid include a distribution not involving a cash payment being made;
  - 26.3.2 "**distribution transfer**" means a disposal or transfer (however effected) by a person of his rights to a distribution from the Company such that he is not beneficially entitled (directly or indirectly) to such a distribution and no person who is so entitled subsequent to such disposal or transfer (whether the immediate transferee or not) is (whether as a result of the transfer or not) a substantial shareholder;

- 26.3.3 “**distribution transfer certificate**” means a certificate in such form as the Directors may specify from time to time to the effect that the relevant person has made a distribution transfer, which certificate may be required by the Directors to satisfy them that a substantial shareholder is not beneficially entitled (directly or indirectly) to a distribution;
- 26.3.4 “**excess charge**” means, in relation to a distribution which is paid or payable to a person, all tax or other amounts which the Directors consider may become payable by the Company or any other member of the group under section 551 of the Corporation Tax Act 2010 (as such section may be modified, supplemented or replaced from time to time) and any interest, penalties, fines or surcharge attributable to such tax as a result of such distribution being paid to or in respect of that person;
- 26.3.5 “**group**” means the Company and the other companies in its group for the purposes of section 606 of the Corporation Tax Act 2010 (as such section may be modified, supplemented or replaced from time to time);
- 26.3.6 “**HMRC**” means HM Revenue & Customs;
- 26.3.7 “**interest in the Company**” includes, without limitation, an interest in a distribution made or to be made by the Company;
- 26.3.8 “**person**” includes a body of persons, corporate or unincorporated, wherever domiciled;
- 26.3.9 “**relevant registered shareholder**” means a Member who holds all or some of the shares in the Company that comprise a substantial shareholding (whether or not a substantial shareholder);
- 26.3.10 “**reporting obligation**” means any obligation from time to time of the Company to provide information or reports to HMRC as a result of or in connection with the Company’s status as a REIT or the principal Company in a group REIT;
- 26.3.11 “**substantial shareholding**” means the shares in the Company in relation to which or by virtue of which (in whole or in part) a person is a substantial shareholder; and
- 26.3.12 “**substantial shareholder**” means any person whose interest in the Company, whether legal or beneficial, direct or indirect, may cause any member of the group to be liable to pay tax under section 551 of the Corporation Tax Act 2010 (as such section may be modified, supplemented or replaced from time to time) on or in connection with the making of a distribution to or in respect of such person including, at the date of adoption of this Paragraph 26, any holder of excessive rights as defined in section 553 of the Corporation Tax Act 2010.
- 26.4 Where under this Paragraph 26 any certificate or declaration may be or is required to be provided by any person (including, without limitation, a distribution transfer certificate), such certificate or declaration may be required by the Directors (without limitation) to:
- 26.4.1 be addressed to the Company, the Directors or such other persons as the Directors may determine (including HMRC);
- 26.4.2 include such information as the Directors consider is required for the Company to comply with any reporting obligation;
- 26.4.3 contain such legally binding representations and obligations as the Directors may determine;
- 26.4.4 include an undertaking to notify the Company if the information in the certificate or declaration becomes incorrect, including prior to such change;
- 26.4.5 be copied or provided to such persons as the Directors may determine (including HMRC); and
- 26.4.6 be executed in such form (including as a deed or deed poll) as the Directors may determine.
- 26.5 This Paragraph 26 shall apply notwithstanding any provisions to the contrary in any other Paragraph.

- 26.6 Each Member and any other relevant person shall serve notice in writing on the Company at the registered office on:
- 26.6.1 him becoming a substantial shareholder or him being a substantial shareholder on the date this Paragraph 26 comes into effect (together with the percentage of voting rights, share capital or dividends he controls or is beneficially entitled to, details of the identity of the Member(s) who hold(s) the relevant substantial shareholding and such other information, certificates or declarations as the Directors may require from time to time);
  - 26.6.2 him becoming a relevant registered shareholder or being a relevant registered shareholder on the date this Paragraph 26 comes into effect (together with such details of the relevant substantial shareholder and such other information, certificates or declarations as the Directors may require from time to time); and
  - 26.6.3 any change to the particulars contained in any such notice, including on the relevant person ceasing to be a substantial shareholder or a relevant registered shareholder.
- 26.7 Any such notice shall be delivered by the end of the second business day after the day on which the person becomes a substantial shareholder or a relevant registered shareholder (or the date this Paragraph 26 comes into effect, as the case may be), or after the change in relevant particulars occurs, or within such shorter or longer period as the Directors may specify from time to time.
- 26.8 The Directors may at any time give notice in writing to any person requiring him, within such period as may be specified in the notice (being seven days from the date of service of the notice or such shorter or longer period as the Directors may specify in the notice), to deliver to the Company at the registered office such information, certificates and declarations as the Directors may require to establish whether or not he is a substantial shareholder or a relevant registered shareholder or to comply with any reporting obligation. Each such person shall deliver such information, certificates and declarations within the period specified in such notice.
- 26.9 In respect of any distribution, the Directors may, if the Directors determine that the condition set out in Paragraph 26.8 is satisfied in relation to any shares in the Company, withhold payment of such distribution on or in respect of such shares. Any distribution so withheld shall be paid as provided in Paragraph 26.10 and until such payment the persons who would otherwise be entitled to the distribution shall have no right to the distribution or its payment.
- 26.10 The condition referred to in Paragraph 26.8 is that, in relation to any shares in the Company and any distribution to be paid or made on and in respect of such shares:
- 26.10.1 the Directors believe that such shares comprise all or part of a substantial shareholding of a substantial shareholder; and
  - 26.10.2 the Directors are not satisfied that such substantial shareholder would not be beneficially entitled to the distribution if it was paid,
- and, for the avoidance of doubt, if the shares comprise all or part of a substantial shareholding in respect of more than one substantial shareholder this condition is not satisfied unless it is satisfied in respect of all such substantial shareholders.
- 26.11 If a distribution has been withheld on or in respect of any shares in the Company in accordance with Paragraph 26.8 , it shall be paid as follows:
- 26.11.1 if it is established to the satisfaction of the Directors that the condition in Paragraph 26.9 is not satisfied in relation to such shares, in which case the whole amount of the distribution withheld shall be paid; and
  - 26.11.2 if the Directors are satisfied that sufficient interests in all or some of the shares concerned have been transferred to a third party so that such transferred shares no longer form part of the substantial shareholding, in which case the distribution attributable to such shares shall be paid (provided the Directors are satisfied that following such transfer such shares concerned do not form part of a substantial shareholding); and



- 26.11.3 if the Directors are satisfied that as a result of a transfer of interests in shares referred to in Paragraph 26.10.2 the remaining shares no longer form part of a substantial shareholding, in which case the distribution attributable to such shares shall be paid.
- 26.12 In Paragraph 26.10, references to the "transfer" of a Share include the disposal (by any means) of beneficial ownership of, control of voting rights in respect of and beneficial entitlement to dividends in respect of, that share.
- 26.13 A substantial shareholder may satisfy the Directors that he is not beneficially entitled to a distribution by providing a distribution transfer certificate. The Directors shall be entitled to (but shall not be bound to) accept a distribution transfer certificate as evidence of the matters therein stated and the Directors shall be entitled to require such other information, certifications or declarations as they think fit.
- 26.14 The Directors may withhold payment of a distribution on or in respect of any shares in the Company if any notice given by the Directors pursuant to Paragraph 26.7 in relation to such shares shall not have been complied with to the satisfaction of the Directors within the period specified in such notice. Any distribution so withheld will be paid when the notice is complied with to the satisfaction of the Directors unless the Directors withhold payment pursuant to Paragraph 26.8 and until such payment the persons who would otherwise be entitled to the distribution shall have no right to the distribution or its payment.
- 26.15 If the Directors decide that payment of a distribution should be withheld under Paragraphs 26.8 or 26.12, they shall within five business days give notice in writing of that decision to the relevant registered shareholder.
- 26.16 If any distribution shall be paid on a substantial shareholding and an excess charge becomes payable, the substantial shareholder shall pay the amount of such excess charge and all costs and expenses incurred by the Company in connection with the recovery of such amount to the Company on demand by the Company. Without prejudice to the right of the Company to claim such amount from the substantial shareholder, such recovery may be made out of the proceeds of any disposal pursuant to Paragraph 26.21 or out of any subsequent distribution in respect of the shares to such person or to the holders of all shares in relation to or by virtue of which the Directors believe that person has an interest in the Company (whether that person is at that time a substantial shareholder or not).
- 26.17 If a distribution is paid on or in respect of a substantial shareholding (which, for the avoidance of doubt, shall not include a distribution paid in circumstances where the substantial shareholder is not beneficially entitled to the distribution), the distribution and any income arising from it shall be held by the payee or other recipient to whom the distribution is transferred by the payee on trust absolutely for the persons nominated by the relevant substantial shareholder under Paragraph 26.16 in such proportions as the relevant substantial shareholder shall in the nomination direct or, subject to and in default of such nomination being validly made within 12 years after the date the distribution is made, for the Company.
- 26.18 The relevant substantial shareholder of shares of the Company in respect of which a distribution is paid shall be entitled to nominate in writing any two or more persons (not being substantial shareholders) to be the beneficiaries of the trust on which the distribution is held under Paragraph 26.15 and the substantial shareholder may in any such nomination state the proportions in which the distribution is to be held on trust for the nominated persons, failing which the distribution shall be held on trust for the nominated persons in equal proportions. No person may be nominated under this Paragraph 26.16 who is or would, on becoming a beneficiary in accordance with the nomination, become a substantial shareholder. If the substantial shareholder making the nomination is not by virtue of Paragraph 26.15 the trustee of the trust, the nomination shall not take effect until it is delivered to the person who is the trustee.
- 26.19 Any income arising from a distribution which is held on trust under Paragraph 26.15 shall until the earlier of (i) the making of a valid nomination under Paragraph 26.16 and (ii) the expiry of the period of 12 years from the date when the distribution is paid, be accumulated as an accretion to the distribution. Income shall be treated as arising when payable, so that no apportionment shall take place.
- 26.20 No person who by virtue of Paragraph 26.15 holds a distribution on trust shall be under any obligation to invest the distribution or to deposit it in an interest-bearing account.

26.21 No person who by virtue of Paragraph 26.15 holds a distribution on trust shall be liable for any breach of trust unless due to his own fraud or wilful wrongdoing or, in the case of an incorporated person, the fraud or wilful wrongdoing of its Directors, officers or employees.

26.22 If at any time, the Directors believe that:

26.22.1 in respect of any distribution declared or announced, the condition set out Paragraph 26.9 is satisfied in respect of any shares in the Company in relation to that distribution; or

26.22.2 a notice given by the Directors pursuant to Paragraph 26.7 in relation to any shares in the Company has not been complied with to the satisfaction of the Directors within the period specified in such notice; or

26.22.3 any information, certificate or declaration provided by a person in relation to any shares in the Company for the purposes of the preceding provisions of this Paragraph 26 was materially inaccurate or misleading,

the Directors may give notice in writing (a "disposal notice") to any persons they believe are relevant registered shareholders in respect of the relevant shares requiring such relevant registered shareholders within 21 days of the date of service of the notice (or such longer or shorter time as the Directors consider to be appropriate in the circumstances) to dispose of such number of shares as the Directors may in such notice specify or to take such other steps as will cause the condition set out in Paragraph 26.9 no longer to be satisfied. The Directors may, if they think fit, withdraw a disposal notice.

26.23 If:

26.23.1 the requirements of a disposal notice are not complied with to the satisfaction of the Directors within the period specified in the relevant notice and the relevant disposal notice is not withdrawn; or

26.23.2 a distribution is paid on a substantial shareholding and an excess charge becomes payable;

the Directors may arrange for the Company to sell all or some of the shares to which the disposal notice relates or, as the case may be, that form part of the substantial shareholding concerned. For this purpose, the Directors may make such arrangements as they deem appropriate. In particular, without limitation, they may authorise any officer or employee of the Company to execute any transfer or other document on behalf of the holder or holders of the relevant Share and, in the case of a Share in uncertificated form, may make such arrangements as they think fit on behalf of the relevant holder or holders to transfer title to the relevant Share through a relevant system.

26.24 Any sale pursuant to Paragraph 26.21 above shall be at the price which the Directors consider is the best price reasonably obtainable and the Directors shall not be liable to the holder or holders of the relevant Share for any alleged deficiency in the amount of the sale proceeds or any other matter relating to the sale.

26.25 The net proceeds of the sale of any Share under Paragraph 26.21 (less any amount to be retained pursuant to Paragraph 26.14 and the expenses of sale) shall be paid over by the Company to the former holder or holders of the relevant Share upon surrender of any certificate or other evidence of title relating to it, without interest. The receipt of the Company shall be a good discharge for the purchase money.

26.26 The title of any transferee of shares shall not be affected by an irregularity or invalidity of any actions purportedly taken pursuant to this Paragraph.

26.27 The Directors shall be entitled to assume without enquiry, unless any Director has reason to believe otherwise, that a person is not a substantial shareholder or a relevant registered shareholder,

26.28 The Directors shall not be required to give any reasons for any decision or determination (including any decision or determination not to take action in respect of a particular person) pursuant to this Paragraph and any such determination or decision shall be final and binding on all persons unless and until it is revoked or changed by the Directors. Any disposal or transfer made or other thing done

by or on behalf of the Board or any Director pursuant to this Paragraph shall be binding on all persons and shall not be open to challenge on any ground whatsoever.

- 26.29 Without limiting their liability to the Company, the Directors shall be under no liability to any other person, and the Company shall be under no liability to any Member or any other person, for identifying or failing to identify any person as a substantial shareholder or a relevant registered shareholder.
- 26.30 The Directors shall not be obliged to serve any notice required under this Paragraph upon any person if they do not know either his identity or his address. The absence of service of such a notice in such circumstances or any accidental error in or failure to give any notice to any person upon whom notice is required to be served under this Paragraph shall not prevent the implementation of or invalidate any procedure under this Paragraph.
- 26.31 The provisions of Paragraph 23 shall apply to the service upon any person of any notice required by this Paragraph. Any notice required by this Paragraph to be served upon a person who is not a Member shall be deemed validly served if such notice is sent through the post in a prepaid cover addressed to that person at the address if any, at which the Directors believe him to be resident or carrying on business or, in the case of a holder of depositary receipts or similar securities, to the address, if any, in the register of holders of the relevant securities. Service shall, in such a case, be deemed to be effected on the day of posting and it shall be sufficient proof of service if that notice was properly addressed, stamped and posted.
- 26.32 Any notice required or permitted to be given pursuant to this Paragraph may relate to more than one Share and shall specify the Share or shares to which it relates.
- 26.33 The Directors may require from time to time any person who is or claims to be a person to whom a distribution may be paid without deduction of tax under Regulation 7 of the Real Estate Investment Trusts (Assessment, Collection and Recovery of Tax) Regulations 2006 (as such regulations may be modified, supplemented or replaced from time to time) to provide such certificates or declarations as they may require from time to time.

In accordance with the Companies Act 2001, we, hereby certify that this is the Constitution of the hereinabove named Company.

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[...]  
For and on behalf of  
New Frontier Properties Ltd

Date: [...]