

**THE COMPANIES ACT 2001**  
**CONSTITUTION**  
**OF**  
**GREENBAY PROPERTIES LIMITED**  
**A PUBLIC COMPANY LIMITED BY SHARES**

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**1. NAME**

The Name of the company is GREENBAY PROPERTIES LIMITED.

**2. OBJECTS**

The objects of the company are to carry out any business activities relating to listed real estate securities and in fixed properties including but without limitation, investment, development, operation and management of real 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.

**3. LIABILITY**

The liability of the members is limited.

**4. CAPITAL**

- 4.1. Subject to the provisions of the Stock Exchange of Mauritius Listing Rules (“**SEM Rules**”), the Listings Requirements (“**Listings Requirements**”) of the Johannesburg Stock Exchange (“**JSE**”) or the requirements of any other exchange on which the company is listed and pursuant to Section 52 of the Mauritian Companies Act, 2001 (Act 15 of 2001) as amended (“**Companies Act 2001**”), the board may only issue unissued shares where shares of that particular class are listed and/or grant options if 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 such shares are issued for the acquisition of assets by the company. Notwithstanding the foregoing, shareholders in a general meeting may authorise the directors to issue unissued securities, and/or grant options to subscribe for unissued securities, as the directors in their discretion deem fit, provided that the corporate action(s) to which any such issue or grant of options relates, has/have to the extent required been approved by the JSE and the SEM.
- 4.2. No shares or any interest or right to the shares shall be issued or granted by the company to bearer.
- 4.3. The company may by way of special resolution from time to time and in accordance with the Companies Act 2001, subject to the Listings Requirements:
  - 4.3.1. create any class of shares;
  - 4.3.2. increase or decrease the number of shares of any class of the company’s shares;
  - 4.3.3. consolidate and reduce the number of the company’s shares of any class;

- 4.3.4.       subdivide its shares of any class by increasing the number of its issued shares of that class without an increase of its capital;
  - 4.3.5.       change the name of the company;
  - 4.3.6.       convert one class of shares into one or more other classes, save where a right of conversion attaches to the class of shares created; or
  - 4.3.7.       subject to paragraph 14.6, vary any preference rights, limitations or other terms attaching to any class of shares.
- 4.4.       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.
- 4.5.       The capital of the company shall consist of ordinary no par value shares (“**share(s)**”) and having attached to them the following rights: -
- (i)       The right to one vote in respect of one share held on a poll at a meeting of the company on any resolution;
  - (ii)       The right to dividends authorised by the board that is proportionate to their shareholding;
  - (iii)       The right to the distribution of the surplus assets of the company that is proportionate to their shareholding;
  - (iv)       The right to vote at every general/annual general meeting, whether in person or by proxy.

## **5. ALTERATION OF CONSTITUTION**

The company may in accordance with the Companies Act 2001 alter its Constitution or any provision therein by special resolution of the Shareholders provided that prior written approval has been obtained from the Stock Exchange of Mauritius Ltd, the JSE, or the requirements of any other exchange on which the company is listed for such alteration.

## **6. 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 Shareholders entitled so to do, present in person or represented by proxy, at a general meeting of which notice of at least 15 business days specifying the intention to propose the resolution as a special resolution has been duly given.

## **7. TYPE OF COMPANY**

The company is a public company limited by shares.

## 8. REGISTERED OFFICE

The Registered Office of the company will be at c/o Intercontinental Trust Limited, Level 3, Alexander House, 35 Cybercity, Ebene, Mauritius or in such other place as the board of Directors may from time to time determine.

## 9. BALANCE SHEET DATE

The Balance Sheet Date shall be determined by the board of directors (the “**board**”). A copy of the annual report must be distributed to shareholders at least 15 days before the date of the Annual General Meeting at which they will be considered. (For the purposes of this Constitution, “**Annual General Meeting**” shall mean the annual meeting of the Shareholders in accordance with Section 115 of the Companies Act 2001.)

The company shall deliver a copy of its annual report to the Registrar of Companies for registration at the same time as it delivers its financial statements to the Registrar of Companies.

## 10. TRANSFER OF SHARES

10.1. Shares of the company shall be freely transferable and free from any lien. Each Shareholder 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 by instrument of transfer in writing.

10.2. All authorities to sign instruments of transfer granted by Shareholders for the purpose of transferring shares which may be lodged, produced or 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 share register in respect of it.

10.3. In respect of shares which are listed on the Stock Exchange of Mauritius or on the JSE or on any other securities exchange, where such shares are held in certificated form, the holder of such shares shall prior to effecting a transfer, cause such shares to be dematerialised. All listed shares transferred must be conducted in accordance with the SEM Rules or the JSE Listing Requirements or such other applicable securities exchange rules. Such shares shall be freely transferable and each holder of such share may transfer all or any of its shares which have been fully paid.

10.3.1. *Transmission of shares*

- 10.3.1.1. If title to a share passes to a Transmittree, the company may only recognise the Transmittree as having any title to that share.
  - 10.3.1.2. A Transmittree who produces such evidence of entitlement to shares as the directors may properly require –
    - 10.3.1.2.1. 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
    - 10.3.1.2.2. 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.
  - 10.3.2. Transmittrees 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.
- 10.4 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.

## 11. MEETINGS OF SHAREHOLDERS

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

- 11.1.1. The board may convene meetings of the Shareholders of the company at such times and in such manner and places within the Republic of Mauritius as the directors consider necessary or desirable.
- 11.1.2. The board shall in each year convene an annual meeting of the Shareholders of the company, and such annual meeting shall be held:
  - 11.1.2.1. not more than once in each year;
  - 11.1.2.2. not later than six months after the Balance Sheet Date of the company; and
  - 11.1.2.3. not later than fifteen months after the previous annual meeting.

- 11.1.3. Other than where the SEM Rules, the JSE Listings Requirements or the requirements of any other exchange on which the company is listed requires a meeting of shareholders to be held in person, a resolution in writing signed by Shareholders holding not less than 75% of the votes entitled to be cast on that resolution at a meeting of Shareholders shall be valid as if it had been passed at a meeting of those Shareholders.
- 11.1.4. For the purposes of paragraph 11.1.3, 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 Shareholders specified in paragraph 11.1.3.

## 11.2. Procedure at Meetings of Shareholders

### 11.2.1. *Chairperson*

- 11.2.1.1. Where the directors have elected a chairperson of the board, and the chairperson of the board is present at a meeting of Shareholders, he shall chair the meeting.
- 11.2.1.2. Where no chairperson of the board has been elected or if, at any meeting of Shareholders, 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.
- 11.2.1.3. 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 Shareholders present may choose one of their numbers to be chairperson of the meeting.

### 11.2.2. *Notice of meetings*

- 11.2.2.1. Written notice of the time and place of a meeting of Shareholders shall be sent to every Shareholder 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. 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 (“SENS”). The giving of notice to shareholders whose registered address is outside Mauritius shall not be prohibited.
- 11.2.2.2. The notice shall state:

- 11.2.2.2.1. the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgement in relation to it; and
- 11.2.2.2.2. the text of any resolution to be submitted to the meeting.
- 11.2.2.3. Any irregularity in a notice of a meeting shall be waived where all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or where all such Shareholders agree to the waiver.
- 11.2.2.4. Any accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by a Shareholder shall not invalidate the proceedings at that meeting.
- 11.2.2.5. 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.
- 11.2.2.6. When a meeting of Shareholders is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- 11.2.2.7. 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 provided that an announcement must be released on SENS and the SEM which announcement must address the following:
  - 11.2.2.7.1. the reason for the adjourned/postponed meeting;
  - 11.2.2.7.2. the location and time for the adjourned/postponed meeting; and
  - 11.2.2.7.3. the shareholders present in person or by proxy at the adjourned/postponed meeting will be deemed to constitute a quorum.

### 11.3. Methods of holding meetings

A meeting of Shareholders may be held either:

- 11.3.1. by a number of Shareholders who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- 11.3.2. by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

#### 11.4. Quorum

- 11.4.1. No business shall be transacted at any annual or general meeting unless a quorum is present when the meeting proceeds to business.
- 11.4.2. At least 25% of all voting rights that are entitled to be exercised and at least three Shareholders entitled to attend and vote at the general meeting or annual general meeting present in person or by proxy shall constitute a quorum. Once a quorum is established, the shareholders that constitute a quorum must be present at the meeting to hear any matter that must be considered at the meeting.
- 11.4.3. Where a quorum is not present within 30 minutes after the time appointed for the meeting:
  - 11.4.3.1. in the case of a meeting called under section 118(1)(b) of the Companies Act, 2001 the meeting shall be dissolved;
  - 11.4.3.2. 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
  - 11.4.3.3. where, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their proxies present shall be a quorum.

#### 11.5. Voting

- 11.5.1. Where a meeting of Shareholders is held in terms of paragraph 11.3.1 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:
  - 11.5.1.1. voting by voice; or
  - 11.5.1.2. voting by show of hands.

- 11.5.2. Where a meeting of Shareholders is held under paragraph 11.3.2, unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- 11.5.3. 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 11.5.4.
- 11.5.4. At a meeting of Shareholders, a poll may be demanded by:
  - 11.5.4.1. not less than five Shareholders having the right to vote at the meeting;
  - 11.5.4.2. a Shareholder or Shareholders representing not less than 10 percent of the total voting rights of all Shareholders having the right to vote at the meeting;
  - 11.5.4.3. by a Shareholder or Shareholders 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
  - 11.5.4.4. the chairperson of the meeting.
- 11.5.5. A poll may be demanded either before or after the vote is taken on a resolution.
- 11.5.6. Where a poll is taken, votes shall be counted according to the votes attached to the shares of each Shareholder present in person or by proxy and voting.
- 11.5.7. The chairperson of a Shareholders' meeting shall not be entitled to a casting vote.
- 11.5.8. For the purposes of paragraph 11.5.4:
  - 11.5.8.1. 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 Shareholder shall have the same effect as a demand by the Shareholder;
  - 11.5.8.2. subject to any rights or restrictions for the time being attached to any class of shares, every Shareholders present in person or by proxy and voting by voice or by show of hands and every Shareholder voting by postal vote (where this is permitted) shall have one vote.

11.6. Proxies

11.6.1. A Shareholder may exercise the right to vote either by being present in person or by proxy.

11.6.2. A proxy for a Shareholder may attend and be heard at a meeting of Shareholder as if the proxy were the Shareholder.

11.6.3. A proxy shall be appointed by notice in writing signed by the Shareholder and the notice shall state whether the appointment is for a particular meeting or a specified term.

11.6.4. No proxy shall be effective in relation to a meeting unless:

11.6.4.1. a copy of the notice of appointment is produced before the start of the meeting;

11.6.4.2. any power of attorney or other authority under which the proxy is signed or a notarially certified copy shall also be produced;

11.6.4.3. a proxy form shall be sent with each notice calling a meeting of the company;

11.6.4.4. 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;

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

I/we ..... of ..... being Shareholders of the above 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 .....

11.7. Postal votes

11.7.1. A Shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with this paragraph 11.7.

- 11.7.2. The notice of a meeting at which Shareholders are entitled to cast a postal vote shall state the name of the person authorised by the board to receive and count postal votes at that meeting.
- 11.7.3. Where no person has been authorised to receive and count postal votes at a meeting, or where no person is named as being so authorised in the notice of the meeting, every director shall be deemed to be so authorised.
- 11.7.4. A Shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice in the manner in which his shares are to be voted to a person authorised to receive and count postal votes at that meeting.
- 11.7.5. The notice under paragraph 11.7.4 shall reach that person not less than 48 hours before the start of the meeting.
- 11.7.6. A person authorised to receive and count postal votes at a meeting shall:
- 11.7.6.1. collect together all postal votes received by him or by the company;
  - 11.7.6.2. in relation to each resolution to be voted on at the meeting, count :
    - 11.7.6.2.1. the number of Shareholders voting in favour of the resolution and the number of votes cast by each Shareholder in favour of the resolution; and
    - 11.7.6.2.2. the number of Shareholders voting against the resolution, and the number of votes cast by each Shareholder against the resolution;
  - 11.7.6.3. sign a certificate that he has carried out the duties set out in subparagraphs 11.7.6.2.1 and above which sets out the results of the counts required by subparagraph 11.7.2; and
  - 11.7.6.4. ensure that the certificate required by sub-paragraph 11.6.4.3 above 11.7.6.3 is presented to the chairperson of the meeting.
- 11.7.7. Where a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting shall:
- 11.7.7.1. on a vote by show of hands, count each Shareholder who has submitted a postal vote for or against the resolution;
  - 11.7.7.2. on a poll, count the votes cast by each Shareholder who has submitted a postal vote for or against the resolution.

11.7.8. The chairperson of a meeting shall call for a poll on a resolution on which he holds sufficient postal votes that he believes that, where a poll is taken, the result may differ from that obtained on a show of hands.

11.7.9. The chairperson of a meeting shall ensure that a certificate of postal votes held by him is annexed to the minutes of the meeting.

11.8. Minutes

11.8.1. The board shall ensure that minutes are kept of all proceedings at meetings of Shareholders.

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

11.9. Shareholders Proposals

11.9.1. A Shareholder may give written notice to the board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.

11.9.2. 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 Shareholders is required to be given by the board, the board shall, at the expense of the company, give notice of the Shareholders' proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

11.9.3. Where the directors intend that Shareholders may vote on the proposal by proxy or by postal vote, they shall give the proposing Shareholders 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 Shareholders in support of the proposal, together with the name and address of the proposing Shareholders.

11.9.4. The board shall not be required to include in or with the notice given by the board a statement prepared by a Shareholder who the directors consider to be defamatory, frivolous, or vexatious.

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

11.10. Corporations may act by representative

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

11.11. 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. DIRECTORS**

12.1. Number

12.1.1. Subject to any subsequent amendment to change the number of directors, the number of the directors shall not be less than four. 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. 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 Shareholders.

12.1.2. Any director appointed under paragraph 12.1.1 to fill a vacancy shall hold office only until the next following annual meeting and shall then retire, but shall be eligible for appointment at that meeting.

12.1.3. The quorum for all board meetings shall be two, of which at least one must at all times be an executive director.

12.2. Qualification

No director shall be required to hold shares in the company to qualify him for an appointment.

12.3. Appointment

12.3.1. The directors of the company shall be appointed by the company in general meeting or at meetings of the board provided that, in the case of director/s having been appointed by the board, such director/s' appointments are approved by shareholders at the next general meeting or annual meeting. Section 137 of the Companies Act 2001 shall not apply in respect of the appointment of more than one person in a single resolution as directors of the company.

12.3.2. The directors of the company, through the nomination committee, should recommend eligibility of directors, taking into account past performance and contribution made.

- 12.3.3. Shareholders may nominate directors which directors' appointment is subject to shareholder approval.

12.4. Retirement of directors

- 12.4.1. Life directorships are not permissible.
- 12.4.2. At each Annual General Meeting of Shareholders all the directors shall retire from office and may make themselves available for re-election.
- 12.4.3. 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:
- 12.4.3.1. 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;
- 12.4.3.2. where such director has given notice in writing to the company that he is unwilling to be re-elected;
- 12.4.3.3. where such director has attained any retiring age applicable to him as director.
- 12.4.4. 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 or deemed to have been re-elected will continue in office without a break.
- 12.4.5. 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.
- 12.4.6. 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 meeting called for purposes that include their removal or ceasing to hold office pursuant to section 139 of the Companies Act 2001, 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.

12.5. Remuneration of directors

- 12.5.1. The remuneration of directors shall be determined by the Remuneration Committee.
  - 12.5.2. The board may determine the terms of any service contract with a managing director or other executive director.
  - 12.5.3. 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, 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 is determined by a disinterested quorum of directors, which may be either in addition to or in substitution for any other remuneration payable.
  - 12.5.4. If by arrangement with the board any director shall perform or render any special duties or services outside his ordinary duties as a director and not in his capacity as a holder of employment or executive office, he may be paid such reasonable additional remuneration (whether, by way of salary, commission, participation in profits or otherwise) as a disinterested quorum of directors may from time to time determine.
  - 12.5.5. 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.
  - 12.5.6. Where a director or his associates has a material interest in any contract or arrangement or any other proposal, the chairperson shall request such director to recuse himself from the discussions unless the director is requested to provide specific input.
- 12.6. Proceedings of directors
- 12.6.1. *Chairperson*
    - 12.6.1.1. The directors may elect one of their number as chairperson of the board and determine the period for which he is to hold office.
    - 12.6.1.2. 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.
  - 12.6.2. *Notice of meeting*

- 12.6.2.1. 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.
- 12.6.2.2. 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.
- 12.6.2.3. 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.
- 12.6.2.4. 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.

12.6.3. *Methods of holding meetings*

- 12.6.3.1. The board or any committee thereof may meet at such times and in such manner and places within the Republic of Mauritius as the board may determine to be necessary or desirable.
- 12.6.3.2. 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 each other.

12.6.4. *Alternate directors*

A director may by a written instrument appoint an alternate who need not be a 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.

12.6.5. *Voting*

- 12.6.5.1. Every director has one vote.
- 12.6.5.2. The chairperson shall not have a casting vote.
- 12.6.5.3. 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.

12.6.5.4.

12.6.6. *Minutes*

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

12.6.7. *Resolution in writing*

12.6.7.1. A resolution in writing, signed or assented to by all directors then entitled to receive notice of a board meeting, is as valid and effective as if it had been passed at a meeting of the board duly convened and held.

12.6.7.2. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.

12.6.7.3. A copy of any such resolution must be entered in the minute book of board proceedings.

12.6.8. *Directors may delegate*

12.6.8.1. Subject to this Constitution, the directors may delegate powers which are conferred on them:

12.6.8.1.1. to such person or committee;

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

12.6.8.1.3. to such an extent;

12.6.8.1.4. in relation to such matters or territories; and

12.6.8.1.5. on such terms and conditions;

as they think fit.

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

12.6.8.3. The directors may revoke any delegation in whole or part, or alter its terms and conditions.

12.6.9. *Committees*

- 12.6.9.1. Committees to which the directors 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.
- 12.6.9.2. The directors may not make rules including rules of procedure for all or any committees, which are inconsistent with this Constitution.

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

#### 13.1. 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.

#### 13.2. Overseas Seal and Branch Registers

- 13.2.1. 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.
- 13.2.2. The company may exercise the powers conferred by the Companies Act 2001 relating to the keeping of branch registers and the directors may (subject to the provisions of that section) make and vary such regulations as they think fit regarding the keeping of any such branch register.

#### 13.3. Management of company

The business of the company shall be managed by the directors in Mauritius who may pay all expenses incurred in promoting or registering the company and who may exercise all such powers of the company as are not, by the Companies Act 2001 or by this Constitution, required to be exercised by the company in general meeting, subject, nevertheless, to the provisions of this Constitution and to the provisions of the Companies Act 2001.

#### 13.4. 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.

13.5. Directors' expenses

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

- 13.5.1. meetings of directors or committees of directors;
- 13.5.2. general meetings of Shareholders, or
- 13.5.3. separate meetings of the holders of any class of shares 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.

**14. MISCELLANEOUS PROVISIONS**

14.1. 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 shareholders may not ratify any action by the company or the directors that is inconsistent with any such limit, restriction or qualification.

14.2. 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 Listings Requirements, the SEM Rules or the requirements of any other exchange on which the company is listed.

14.3. 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.

14.4. Right to inspect accounts and other records

14.4.1. A Shareholder, 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 persons, 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).

14.4.2. The company will be audited on an annual basis.

- 14.4.3. A printed copy of the Annual Report of the company prepared in accordance with the Companies Act 2001 shall be delivered or sent by post to the registered address of every shareholder.

14.5. Winding up

If the company is wound up, the liquidator may, with the authority of a special resolution:

- 14.5.1. divide among the Shareholders 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 Shareholders or different classes of Shareholders); and
- 14.5.2. vest the whole or any part of the assets of the company in trustees upon such trusts for the benefit of the Shareholders as the liquidator determines,

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

14.6. Variation of Rights

- 14.6.1. In accordance with the provisions of the SEM Rules, the JSE Listings Requirements or the requirements of any other exchange on which the company is listed, where the share capital of the company is divided into different classes of shares, the company shall not take any action which varies 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% (seventy-five percent) of the shares of that class. varied and no resolution may be proposed to shareholders for rights to include such variation in response to any objectively ascertainable external fact.
- 14.6.2. 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.
- 14.6.3. 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.

14.7. Commission

The company may pay a commission at a rate not exceeding 10% of the issue price of a share to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any share of the company or for procuring or agreeing to

procure, whether absolutely or conditionally, subscriptions for any shares of the company.

## 15. SECRETARY

### 15.1. Appointment of Secretary

The Secretary (also known as the Company Secretary) shall be appointed by the directors for such term at such remuneration and upon such conditions as they may think fit.

### 15.2. 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.

### 15.3. Joint secretaries

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

### 15.4. 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.

## 16. DIVIDENDS AND RESERVES

### 16.1. Declaration of Dividends

16.1.1. Subject to the SEM Rules and the JSE Listings Requirements, or the requirements of any other exchange on which the company is listed, 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:

16.1.1.1. the company will be able to satisfy the solvency test in accordance with Section 6 of the Companies Act 2001; and

16.1.1.2. the realisable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital.

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

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

16.1.4. Notwithstanding paragraph 16.1.3 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.

16.2. Interim Dividends

The directors may from time to time pay to the Shareholders such interim dividends as appear to the directors to be justified by the surplus of the company.

16.3. Entitlement to dividends

16.3.1. Any dividend must be payable to shareholders registered as at a date subsequent to the date of declaration thereof or the date of confirmation of the dividend, whichever is the later.

16.3.2. 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.

16.4. 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.

16.5. Notice

Notice of any dividend that may have been declared shall be given to each Shareholder in the manner hereinafter mentioned and the company shall hold all monies due to Shareholders in trust indefinitely until lawfully claimed by such Shareholder but subject to the laws of prescription.

16.6. Interest

No dividend shall bear interest against the company.

**17. 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 instruments but no special privileges associated with any debt instruments such as attending and voting at general meetings and the appointment of directors to be issued by the company may be granted and the authority of the board in such regard is limited by this Constitution.

## 18. Capitalisation shares

The board shall not have the power or authority to –

- 18.1. approve the issuing of any shares of the company as capitalisation shares; or
- 18.2. to issue shares of one class as capitalisation shares in respect of shares of another class; or
- 18.3. to resolve to permit shareholders to elect to receive a cash payment *in lieu* of a capitalisation share,

unless the provisions of the Companies Act, the SEM Rules and the JSE Listings Requirements or the requirements of any other exchange on which the company is listed have been complied with.

For the purposes of this 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.

## 19. Acquisition by the company of its own shares

Subject to the SEM Rules, the Securities (Purchase of Own Shares) Rules 2007, the JSE Listings Requirements or the requirements of any other exchange on which the company is listed, the board may determine that the company should acquire a number of its own shares.

## 20. AUTHENTICATION OF DEEDS AND DOCUMENTS

### 20.1. 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.

### 20.2. 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 payment shall be signed either by two directors or by such other person or persons as aforesaid.

### 20.3. 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.

### 20.4. 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 stated to be received.

20.5. Legal domicile

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

**21. NOTICES**

- 21.1. A notice, or any other document or communication, including but not limited to financial statements may be given or published in any manner authorised by the Companies Act 2001 and, if applicable, the JSE Listings Requirements including, without limitation, by being transmitted electronically to Shareholders.
- 21.2. Subject to meeting all minimum requirements imposed by the Companies Act 2001 as regards public notices, the company is authorised to give or publish any notice, or any other document or communication, including but not limited to financial statements (collectively a “notification”) to its Shareholders by any method authorised by the Companies Act 2001, including by means of electronic transmission (including, without limitation, by way of email or short message service (SMS)), provided that the Shareholder has consented in writing to that form of communication being used by the company or other person providing the communication and the Shareholder has provided an electronic address to which such communication may be sent. Provided further that any consent made by such Shareholder may be revoked at any time on the provision of five (5) calendar days’ notice in writing (including electronic means) to the person sending the document.
- 21.3. 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.
- 21.4. 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 share register in respect of the share.
- 21.5. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a Shareholder 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.

- 21.6. Any notice given by advertisement shall be published in Mauritius in at least two daily newspapers of wide circulation and in South Africa in accordance with the provisions of the JSE Listings Requirements and in accordance with the provisions of any other exchange on which the company is listed.
- 21.7. Any Shareholder 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.
- 21.8. Notice of every general meeting of Shareholders shall be given in any manner hereinbefore authorised to:
- 21.8.1. every Shareholder, whether residing in or outside of Mauritius;
- 21.8.2. 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 Shareholder;
- 21.8.3. each director of the company
- such other person as the directors shall at any time and from time to time determine.

## **22. RECORD DATE FOR EXERCISE OF SHARHOLDERS RIGHTS**

The directors may set a record date for purposes of all transactions in a manner that satisfies the SEM Rules, the JSE Listings Requirements, the requirements of any other exchange on which the company is listed and any prescribed requirements.

## **23. CERTIFICATES**

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

## **DECLARATION**

We, the undersigned, hereby certify that this is the Constitution adopted in accordance with Section 23(c)(vii) of the Companies Act 2001.

<b>NAMES</b>	<b>ADDRESSES</b>	<b>SIGNATURES</b>
INTERCONTINENTAL TRUST LTD	Level 3, Alexander House, 35 Cybercity Ebene Mauritius	

This document is made in three originals.

Dated the .....

Witness to the above Signatures: