

# CONSTITUTION OF

## BEACHCOMBER HOSPITALITY INVESTMENTS LTD a public company limited by shares

### 1. CONSTITUTION AND THE COMPANIES ACT 2001

The provisions of the Companies Act No.15 of 2001 (the "Act") are modified, adopted and extended by this Constitution as hereinafter provided. Capitalised terms not otherwise defined have the meaning ascribed to them in Schedule 1.

### 2. NAME OF COMPANY

The name of the Company is Beachcomber Hospitality Investments Ltd. An application to change the name of the Company may be made with the approval of the Board but without the need for any shareholder approval.

### 3. PURPOSE

The purpose of the Company is to operate as a hospitality property company and own or lease resort hotels in the 4-star and 5-star hotel segment both in Mauritius and overseas. The Company will lease those resort hotels to tenants that are related as well as unrelated hotel managers to diversify its risk profile and generate rental yield.

### 4. REGISTERED OFFICE

4.1 The registered office of the Company is situated at Beachcomber House, Botanical Garden Street, Curepipe, 74213, or such other place within the Republic of Mauritius as the Company from time to time may determine by a resolution of Directors.

4.2 The Company, in addition to the registered office, may establish and maintain such other offices and places of business and agencies in Mauritius or elsewhere as the Directors may from time to time determine.

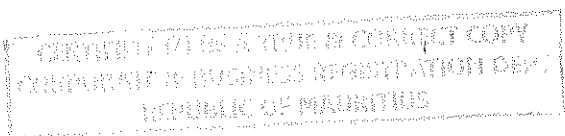
### 5. ACCOUNTING PERIOD

The accounting period shall begin and end on such dates as the Board may, from time to time, determine.

### 6. TYPE OF COMPANY AND LIABILITY OF MEMBERS

6.1 The Company shall be a public company with limited liability.

6.2 The liability of the Members is limited by shares and, subject to the other provisions of this Constitution, is limited to the amount for the time being remaining unpaid on each share held by him, her or it.



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7. DURATION

The duration of the Company is unlimited.

8. CAPACITY AND POWERS

8.1 The Company has full capacity to carry on or undertake any business or activity or do any act that is not prohibited under any laws for the time being in force in the Republic of Mauritius.

8.2 The Company shall have such rights, powers and privileges as are permitted by law for the time being in force in the Republic of Mauritius, which are necessary or conducive to the conduct, promotion or attainment of the objects of the Company.

9. ISSUE OF SHARES

9.1 Board may issue shares

- (a) Subject to the Act, this Constitution, the approval of an Ordinary Resolution and the terms of issue of any existing shares, the Board may issue shares (and rights or options to acquire shares) of any class at any time, to any person and in such numbers as the Board thinks fit.
- (b) Notwithstanding section 55 of the Act and unless the terms of issue of any class of Shares specifically provide otherwise, the Board may, subject to the approval of an ordinary resolution of the shareholders, issue shares that rank (as to voting, distribution or otherwise) equally with or in priority to, or in subordination to the existing shares without any requirement that the shares be first offered to existing shareholders.
- (c) If the Board issues Shares which do not carry voting rights the words "non-voting" shall appear in the designation of such shares, and if the Board issues Shares with different voting rights, the designation of each Class of Shares, other than those with most favourable voting rights, shall include the words "restricted voting" or "limited voting".

9.2 Consideration for Issue of Shares

- (a) Subject to clause 9.2(b), before the Board issues shares, it must:
  - (i) determine the amount of the consideration for which the shares will be issued and the terms on which they will be issued;
  - (ii) if the shares are to be issued for consideration other than cash, determine the reasonable present cash value of the consideration for the issue and ensure that the present cash value of that consideration is fair and reasonable to the Company and is not less than the amount to be credited in respect of the shares; and
  - (iii) resolve that, in its opinion, the consideration for the shares and their terms of issue are fair and reasonable to the Company and to all existing shareholders.



### 10.3 Restricted-Voting Preference shares

#### 10.3.1 Restricted-Voting Class A Preference Shares

The Restricted-Voting Class A Preference Shares shall be issued in Rupees denomination. The Restricted-Voting Class A Preference Shares shall be subject to the rights and obligations set out in Part 1 of Schedule 1.

#### 10.3.2 Restricted-Voting Class B Preference Shares

The Restricted-Voting Class B Preference Shares shall be issued in Euro denomination. The Restricted-Voting Class B Preference Shares shall be subject to the rights and obligations set out in Part 1 of Schedule 1.

## 11. VARIATION OF RIGHTS

- 11.1 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.
- 11.2 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.
- 11.3 Adequate voting rights will, in appropriate circumstances and as determined by the Board and the shareholders, be secured to holders of preference shares.

## 12. PURCHASE OR OTHER ACQUISITION OF OWN SHARES

### 12.1 Authority to acquire own shares

For the purposes of section 68 of the Act and subject to the SEM Listing Rules and the Securities (Purchase of Own Shares) Rules 2007, the Company shall be expressly authorised to purchase or otherwise acquire shares issued by it without the need for any prior approval of an ordinary resolution of the shareholders.

### 12.2 Authority to hold own shares

Subject to any restrictions or conditions imposed by law, the Company shall be expressly authorised to hold shares acquired by it pursuant to section 68 or 110 of the Act.

### 12.3 Authority to reissue shares held by the Company

The Company may transfer any of shares acquired by it pursuant to section 68 or 110 of the Act.

### 12.4 Purchase of any listed redeemable shares

If the Company purchases listed redeemable shares:



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- (a) purchases not made through the market or by tender shall be limited to a maximum price; and
- (b) if purchases are by tender, tenders shall be available to all shareholders alike.

### 13. TRANSFER OF SHARES

- 13.1 Fully paid-up shares shall be free from any restriction on the right of transfer and from all lien. Any transfer and other document relating to or affecting the title to any shares shall be registered with the Company without payment of any fee.
- 13.2 The Board may impose such restrictions as they may deem fit on the transfer of partly paid shares which are listed, provided that such restrictions shall not prevent dealings in respect of such partly paid shares from taking place on an open and proper basis.
- 13.3 Any transfer of shares that are not listed on a relevant securities exchange in Mauritius shall be by an instrument in writing. The instrument shall be executed by or on behalf of the transferor and the transferee and the transferor shall remain the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the share register in respect thereof.
- 13.4 Any transfer of shares that are listed on a relevant securities exchange in Mauritius shall be conducted through the Automated Trading System in accordance with the Trading Procedures of the Stock Exchange of Mauritius Ltd. Any shareholder wishing to transfer its shares shall, where physical share certificates have been issued, cause its shares to be dematerialised by depositing them with the Central Depository & Settlement Co. Ltd (CDS).

### 14. DIRECTORS' RIGHT TO REFUSE REGISTRATION OF TRANSFERS

- 14.1 Every change in the ownership of shares in the capital of the Company is subject to the limitations and restrictions set out in the Act.
- 14.2 Subject to compliance with sections 87 to 89 of the Act, the Board may refuse or delay the registration of any transfer of any share to any person, whether an existing shareholder or not, where:
  - (a) so required by law;
  - (b) registration would impose on the transferee a liability to the Company and the transferee has not signed the transfer;
  - (c) a holder of any such share has failed to pay on the due date any amount payable thereon either in terms of the issue thereof or in accordance with the Constitution (including any call made thereon);
  - (d) the transferee is a minor or a person of unsound mind;
  - (e) the transfer is not accompanied by such proof as the Board reasonably requires of the right of the transferor to make the transfer; or

ORDERED BY THE BOARD OF DIRECTORS  
IN ACCORDANCE WITH THE ARTICLES OF ASSOCIATION  
AND THE MEMORANDUM OF ASSOCIATION  
OF THE COMPANY

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- (c) the number of shares of that class held by each Shareholder within the last seven (7) years; and
- (d) the date of any:
  - (i) issue of shares to;
  - (ii) repurchase or redemption of shares from; or
  - (iii) transfer of shares by or to;

each shareholder within the last seven (7) years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

### 15.3 Secretary's duty to supervise the Company's registers

It shall be the duty of the secretary to take reasonable steps to ensure that all the registers required to be maintained by the Company, are properly maintained and that the appropriate entries are promptly entered on them.

### 15.4 Share register to be prima facie evidence of legal title

Subject to section 95 of the Act, the entry of the name of a person in the share register as holder of a share shall be *prima facie* evidence that the legal title to the share is vested in that person.

### 15.5 Share register to be evidence of rights

The Company may treat the registered holder of a share as the only person entitled to:

- (i) exercise the right to vote attaching to the share;
- (ii) receive notices in respect of the share;
- (iii) receive a distribution in respect of the share; and
- (iv) exercise the other rights and powers attaching to the share.

### 15.6 Trust not to be entered in share register

No notice of any trust, whether expressed, implied, or constructive, shall be entered in the share register.

## 16. PLEDGE OF SHARES

- 16.1 The Company shall keep a register, at its registered office or at such other place as may be notified to the Registrar of Companies pursuant to section 190(4) of the Act, in which pledges of shares or debentures shall be inscribed stating that the pledgee holds the shares or debentures not as owner but in pledge of a debt, the amount of which shall be mentioned. A pledge shall be sufficiently proved by the inscription in that register.

16.2 If the pledgee so requires, there shall be delivered to him a certificate, signed by the secretary, which shall enumerate the number of shares given in pledge and the amount and nature of the debt in respect of which the pledge was constituted.

16.3 Subject to the terms and conditions of the pledge, the owner of the shares given in pledge shall continue to be the party entitled to attend meetings of the Company and to vote with respect to such Shares and to cash all dividends in respect thereof.

## 17. SHARE CERTIFICATES AND STATEMENT OF RIGHTS

### 17.1 Issue and contents of share certificates

Every person whose name is entered as a shareholder on the share register shall be entitled without payment to receive a certificate under the seal of the Company in accordance with the Act. The Company shall, subject to Section 97(2) of the Act, within twenty-eight (28) days after the issue, or registration of a transfer, of shares in the Company, as the case may be, send a share certificate to every holder of those shares stating —

- (a) the name of the Company;
- (b) the class of shares held by that person; and
- (c) the number of shares held by that person.

This clause shall apply so long as the shares of the Company have not been deposited under a system conducted by a central depository and settlement company approved under the Securities (Central Depository, Clearing and Settlement) Act 1996.

The share certificates shall be under seal, or facsimile thereof, which shall only be affixed with the authority of the Directors.

### 17.2 Transfer to be accompanied by share certificate

Subject to section 97 of the Act, where a share certificate has been issued, a transfer of the shares to which it relates shall not be registered by the Company unless the form of transfer is accompanied by the share certificate relating to the shares (or by evidence as to its loss or destruction and, if required in accordance with clause 17.5(c), an indemnity in a form required by the Board).

### 17.3 Surrendered share certificate

Subject to section 97 of the Act and clause 17.1, where shares to which a share certificate relates are transferred, and the share certificate has been sent to the Company to enable registration of the transfer, the share certificate shall be cancelled and no further share certificate shall be issued except at the request of the transferee.

### 17.4 Transmission of shares

- (a) In the case of the death of a shareholder, the survivor (where the deceased was a joint holder) or the legal personal representative of the deceased (where the deceased was a sole holder) will be the only person recognised by the Company as

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having any title to the deceased's interest in the shares. Nothing contained in this clause 17.4(a) will release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by the deceased with other persons.

- (b) Notwithstanding clause 17.6, the assignee of the property of a bankrupt shareholder is entitled to be registered as the holder of the shares held by the bankrupt.

#### 17.5 Lost certificates

- (a) Subject to clauses 17.5(b) and (c), where a share certificate or any document of title to a debenture is lost or destroyed, the Company shall, on application being made by the owner and on payment of the fee specified in item 1 of the Third Schedule to the Act, issue a duplicate certificate or document to the owner.
- (b) The application shall be accompanied by a written undertaking that where the certificate or document is found, or received by the owner, it shall be returned to the Company.
- (c) Where the value of the shares or debentures represented by the certificate or document is greater than ten thousand (10,000) rupees, the Directors shall, before accepting an application for the issue of a duplicate certificate or document, require the applicant to furnish such indemnity as the Directors consider to be adequate against any loss following the production of the original certificate or document.

#### 17.6 Statement of Rights

- (a) The Company shall issue to any shareholder on request, a statement that sets out:
- (i) the class of shares held by the shareholder, the total number of shares of that class issued by the Company, and the number of shares of that class held by the shareholder;
  - (ii) the rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the shares held by the shareholder; and
  - (iii) the rights, privileges, conditions, and limitations attaching to the classes of shares other than those held by the shareholder.
- (b) The Company shall not be obliged to provide a Shareholder with a statement under paragraph (a), if:
- (i) a statement that complies with paragraph (a) has been provided within the previous six (6) months;
  - (ii) the shareholder has not acquired or disposed of shares since the previous statement was provided;
  - (iii) the rights attached to the shares have not been altered since the previous statement was provided; and

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- (iv) there are no special circumstances which would make it unreasonable for the Company to refuse the request.
- (c) A statement issued pursuant to paragraph (a) shall state in a prominent place that it is not evidence of title to the shares or of the matters set out in it.

18. CALLS ON SHARES AND FORFEITURE OF SHARES

18.1 Calls on shares

(a) Board may make calls

(i) The Board may, from time to time, make such calls as it thinks fit, upon the shareholders in respect of any amount unpaid on their shares and not by the conditions of issue made payable at a fixed time or times, and each shareholder shall, subject to receiving at least fourteen (14) days' written notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called.

(ii) A call made under subparagraph (i) may be revoked or postponed as the Board may determine.

(b) Timing of calls

A call may be made payable at such times and in such amount as the Board may determine.

(c) Liability of joint holders

The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

(d) Interest

(i) Where an amount called in respect of a share is not paid on or before the time appointed for payment thereof, the person from whom the amount is due shall pay interest on that amount from the time appointed for payment thereof to the time of actual payment at such rate as the Board may determine.

(ii) The Board may waive, wholly or partly, any interest payable under subparagraph (i).

(e) Instalments

Any amount which by the terms of issue of a share becomes payable on issue or at any fixed time shall for all purposes be deemed to be a call duly made and payable at the time at which by the terms of issue the same becomes payable and, in case of non-payment, all the relevant provisions of this Schedule relating to payment of interest and expenses, forfeiture or otherwise shall apply as if the amount had become payable by virtue of a call duly made and notified.



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(f) Differentiation as to amounts

The Board may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

(g) Amount paid up in advance of calls

Any amount paid up in advance of calls on any share may carry interest but shall not entitle the shareholder to participate in respect thereof in a dividend subsequently declared.

18.2 Forfeiture of shares

(a) Notice of default

Where any person fails to pay any call or any instalment of a call for which such person is liable at the time appointed for payment, the Board may, at any time thereafter, serve notice on such person requiring payment of the amount unpaid together with any interest which may have accrued.

(b) Final payment date

The notice under paragraph (a) shall name a further day, not earlier than the expiration of fourteen (14) days from the date of service of the notice, on or before which the payment required by the notice shall be made, and shall state that, in the event of non-payment on or before the time appointed, the shares in respect of which the amount was owing are liable to be forfeited.

(c) Forfeiture

(i) Where the requirements of the notice under paragraph (b) are not complied with, any share in respect of which the notice has been given may be forfeited, at any time before the required payment has been made, by resolution of the Board to that effect.

(ii) Any forfeiture under subparagraph (i) shall include all dividends and bonuses declared in respect of the forfeited share and not actually paid before the forfeiture.

(d) Sale of forfeited shares

(i) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board in its sole discretion thinks fit and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the Board thinks fit.

(ii) Where any forfeited share is sold within twelve (12) months of the date of forfeiture, the residue, if any, of the proceeds of sale after payment of all costs and expenses of such sale or any attempted sale and all amounts owing in respect of the forfeited share and interest thereon shall be paid to the person whose share has been forfeited.



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(e) Cessation of shareholding

A person whose share has been forfeited shall cease to be a shareholder in respect of the forfeited share, but shall, nevertheless, remain liable to pay to the Company all amounts which, at the time of forfeiture, were payable by such person to the Company in respect of the share, but liability shall cease if and when the Company receives payment in full of all such amounts.

(f) Evidence of forfeiture

A declaration in writing declaring that the declarant is a director of the company and that a share in the company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of such facts as against all persons claiming to be entitled to the share.

(g) Validity of sale

The Company may receive the consideration, if any, given for forfeited share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and such person shall then be registered as the holder of the share and shall not be bound to see the application of the purchase money, if any, nor shall such person's title to the share be effected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

19. LIEN

19.1 Lien

(a) The Company shall have a first and paramount lien, independently of and without the necessity for inscription, in priority to any other claim, upon every not fully paid share registered in the name of a shareholder (whether solely or jointly with others) and upon the proceeds of sale of those shares. This lien shall be for:

(i) all money payable (whether presently or not) in respect of shares held by the shareholder;

(ii) all other money presently payable by the shareholder to the Company on any account whatever; and

(b) the lien extends to all dividends from time to time declared in respect of the Shares.

19.2 Sale on exercise of lien

(a) Subject to this clause, the Company may sell in such a manner as the Board thinks fit any shares on which the Company has a lien. No sale may be made until:

(i) a sum in respect of which the lien exists is due and payable;

(ii) a notice in writing stating, and demanding payment of, the amount due and payable (in respect of which the lien exists) has been given to the current

registered holder of the share (or the person entitled to that share by reason of the registered holder's death or bankruptcy); and

- (iii) fourteen (14) days have expired since the giving of that notice.
- (b) The net proceeds of the sale of any shares sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, instalments or any other money in respect of which the lien existed. The residue, if any, shall be paid to the former holder of the shares.
- (c) For giving effect to any sale enforcing a lien in purported exercise of the powers given in this Constitution, the Board may authorise some person to transfer the shares sold to the purchaser. The purchaser will be registered as the holder of the shares comprised in the transfer and will not be bound to see to the application of the purchase money, nor will the purchaser's title to the shares be affected by an irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only, and against the Company exclusively. If the certificate for the Shares is not delivered up to the Company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the certificate not delivered up.

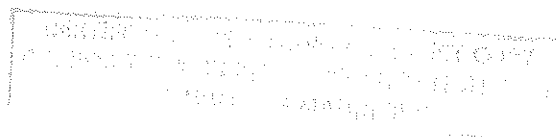
## 20. SHAREHOLDERS MEETINGS

### 20.1 Annual Meetings

- (a) The Board shall call an Annual Meeting of shareholders to be held:
  - (i) not more than once in each year;
  - (ii) not later than six (6) months after the balance sheet date of the Company; and
  - (iii) not later than fifteen (15) months after the previous Annual Meeting.
- (b) The business to be transacted at an Annual Meeting shall, unless already dealt with by the Company, include:
  - (i) the consideration and approval of the financial statements;
  - (ii) the receiving of any auditor's report;
  - (iii) the consideration of the annual report;
  - (iv) the appointment of any Directors including those whose annual appointment is required by the Act; and
  - (v) the appointment of any auditor pursuant to section 200 of the Act.

### 20.2 Special Meetings

A Special Meeting of shareholders may be called at any time by the Board and shall be so called on the written request of shareholders holding shares carrying together not less than five per cent (5%) of the voting rights entitled to be exercised on the issue.



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transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

- (iv) When a meeting of shareholders is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (e) Notwithstanding paragraphs (a), (b) and (c), it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### 20.6 Methods of holding meetings

A meeting of shareholders may be held either:

- (a) by a number of shareholders who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) 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.

#### 20.7 Quorum

- (a) Where a quorum is not present, no business shall, subject to paragraph (c), be transacted at a meeting of shareholders.
- (b) A quorum for a meeting of shareholders shall be present where shareholders holding at least one-fifth (1/5) of the share capital are present or represented or have cast postal votes.
- (c) Where a quorum is not present within thirty (30) minutes after the time appointed for the meeting:
  - (i) in the case of a meeting called under section 118(1)(b), the meeting shall be dissolved;
  - (ii) 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
  - (iii) where, at the adjourned meeting, a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the shareholders or their proxies present shall be a quorum if between them they are able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

#### 20.8 Voting

- (a) Where a meeting of shareholders is held under clause 20.1, 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 -



- (i) voting by voice; or
  - (ii) voting by show of hands.
- (c) Where a meeting of shareholders is held under clause 20.2, unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.
- (d) The affirmative vote of a majority of the shares entitled to vote shall be sufficient to carry any resolution or approve any matter submitted. 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 (d).
- (d) At a meeting of shareholders, a poll may be demanded by –
- (i) not less than five (5) shareholders having the right to vote at the meeting;
  - (ii) a shareholder or shareholders representing not less than ten (10) percent of the total voting rights of all shareholders having the right to vote at the meeting;
  - (iii) 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 ten (10) percent of the total amount paid up on all shares that confer that right; or
  - (iv) the chairperson of the meeting.
- (e) A poll may be demanded either before or after the vote is taken on a resolution.
- (f) 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.
- (g) The chairperson of a shareholders' meeting shall not be entitled to a casting vote.
- (h) (i) For the purposes of clause 20.8, the instrument appointing a proxy to vote at a meeting of a 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.
- (ii) Subject to any rights or restrictions for the time being attached to any class of shares, every shareholder 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.
- (iii) The chairperson may demand a poll on a resolution either before or after a vote thereon by voice or by show of hands.
- (iv) The demand for a poll may be withdrawn.



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(i) Where a poll is duly demanded, it shall, subject to paragraph (f), be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded.

(j) A poll demanded -

(A) on the election of a chairperson or on a question of adjournment, shall be taken immediately;

(B) on any other question, shall be taken at such time and place as the meeting directs,

and any business other than that on which a poll is demanded may be proceeded with pending the taking of the poll.

## 20.9 Proxies

(a) A shareholder may exercise the right to vote either by being present in person or by proxy.

(b) A proxy for a shareholder may attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

(c) 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.

(d) A corporate may execute a proxy under the hand of a duly authorised officer.

(e) (i) No proxy shall be effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.

(ii) Any power of attorney or other authority under which the proxy is signed or a notarially certified copy shall also be produced.

(iii) A proxy form shall be sent with each notice calling a meeting of the Company.

(iv) 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.

(v) The instrument appointing a proxy shall be in the following form -

### BEACHCOMBER HOSPITALITY INVESTMENTS LTD

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. The proxy will vote on the under-mentioned resolutions, as indicated:

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Resolutions:	For	Against	Abstain
1. [.....]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. [.....]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

- (f) The instrument appointing a proxy shall not be effective unless it is deposited at the registered office of the Company, or at such other place in Mauritius as is specified for that purpose in the notice convening the meeting, not earlier than twenty-four (24) hours before the start of the meeting.

#### 20.10 Postal votes

- (a) A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with this paragraph.
- (b) 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.
- (c) 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.
- (d) (i) 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 of the manner in which his shares are to be voted to a person authorised to receive and count postal votes at that meeting.
- (ii) The notice shall reach that person not less than forty-eight (48) hours before the start of the meeting.
- (e) A person authorised to receive and count postal votes at a meeting shall –
- (i) collect together all postal votes received by him or by the Company;
- (ii) in relation to each resolution to be voted on at the meeting, count –
- (A) 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
- (B) the number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution;
- (iii) sign a certificate that he has carried out the duties set out in subparagraphs (i) and (ii) which sets out the results of the counts required by subparagraph (ii); and

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- (iv) ensure that the certificate required by subparagraph (iii) is presented to the chairperson of the meeting.
- (f) Where a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting shall –
  - (i) on a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution;
  - (ii) on a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution
- (g) 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.
- (h) The chairperson of a meeting shall ensure that a certificate of postal votes held by him is annexed to the minutes of the meeting.

#### 20.11 Minutes

- (a) The Board shall ensure that minutes are kept of all proceedings at meetings of shareholders.
- (b) Minutes which have been signed correct by the chairperson of the meeting are *prima facie* evidence of the proceedings.

#### 20.12 Shareholder proposals

- (a) 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.
- (b) Where the notice is received by the Board not less than twenty-eight (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 shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- (c) Where the notice is received by the Board not less than seven (7) days and not more than twenty-eight (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 shareholder, give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- (c) Where the notice is received by the Board less than seven (7) days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board may, where practicable, and at the expense of the

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shareholder, give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

- (e) Where the directors intend that shareholders may vote on the proposal by proxy or by postal vote, they shall give the proposing shareholder the right to include in or with the notice given by the Board a statement of not more than one thousand (1000) words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
- (f) The Board shall not be required to include in or with the notice given by the Board a statement prepared by a shareholder which the directors consider to be defamatory, frivolous, or vexatious.
- (g) 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 giving notice to the Board, deposit with the company or tender to the company a sum sufficient to meet those costs.

#### 20.13 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.

#### 20.14 Votes of joint holders

Where two (2) 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.

#### 20.15 No voting right where calls unpaid

Where a sum due to the Company in respect of a share has not been paid, that share may not be voted at a shareholder's meeting other than a meeting of an interest group.

#### 20.16 Other proceedings

Unless otherwise expressly provided in this Constitution, a meeting of shareholders may regulate its own procedure.

### 21. DIRECTORS

#### 21.1 Number

The number of Directors shall not be less than five (5).

#### 21.2 Qualification

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

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### 21.3 Appointment

- (a) A Director shall hold office until his resignation, disqualification or removal in accordance with this Constitution.
- (b) A Director shall be appointed by an ordinary resolution of shareholders.
- (c) At least seven (7) days' notice shall be given to the Company of the intention to propose a person for election as Director at an Annual or Special Meeting and that person shall give at least seven (7) days' notice to the Company of his willingness to be elected as Director.
- (d) The latest date to give the notices referred to in paragraph (c) shall be not more than seven (7) days prior to the date of the Annual or Special Meeting at which the election of the Director shall take place.

### 21.4 Directors may fill up Casual Vacancy

The Directors shall have power at any time, and from time to time, to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors. The Directors so appointed shall hold office until the next following Annual Meeting and shall then be eligible for re-election.

### 21.5 Disqualification of Directors

A person will be disqualified from holding the office of Director if he or she:

- (a) is removed by an ordinary resolution of shareholders;
- (b) resigns in writing and is not reappointed in accordance with this Constitution;
- (c) becomes disqualified from being a Director pursuant to section 133 of the Act;
- (d) is (or, would but for the repeal of section 117 of the Companies Act 1984, be) prohibited from being a Director or promoter of or being concerned with or taking part in the management of the Company under section 337 or 338 of the Act;
- (e) dies;
- (f) attains or is over the age of seventy (70) years (but subject always to section 138 of the Act);
- (g) is under eighteen (18) years of age;
- (h) is an undischarged bankrupt; or
- (i) has been adjudged to be of unsound mind.

### 21.6 Removal before expiry of period of office

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

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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.

#### 21.7 Retirement of Directors by rotation

- (a) At the next Annual Meeting and at each subsequent Annual Meeting, one (1) independent Director and one (1) non-executive Director for the time being appointed by the Annual Meeting, shall retire from office.
- (b) Any retiring Director shall retain office until the dissolution or adjournment of the meeting at which he is due to retire.
- (c) The Directors to retire in every year shall be those who have served longest in office since their last election, but as between Directors who became Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot.
- (d) The Company at the Annual Meeting at which a Director so retires may fill the vacated office by electing a person thereto but no person other than a retiring Director shall unless recommended by the Directors be eligible for election to the office of Director unless not less than twenty-eight (28) days before the last day on which notice of the Annual Meeting is required to be given by the Board, there shall have been left at the registered office of the Company notice in writing signed by a shareholder duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose for consideration by the Board such person for election and also notice in writing signed by that person of his willingness to be elected. The decision of the Board shall be final.

## 22. PROCEEDINGS OF THE BOARD

### 22.1 Chairperson

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

### 22.2 Notice of meeting

- (a) 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 clause 22.2.
- (b) 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.

- (c) An irregularity in the notice of a meeting shall be 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.

### 22.3 Method of holding meetings

- (a) A meeting of the Board shall be held either:
  - (i) by a number of the Directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
  - (ii) by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

### 22.4 Quorum

- (a) A quorum for a meeting of the Board shall be three (3) Directors, provided that the quorum shall not include a Director having an interest in the transaction entered into, or to be entered into, by the Company as disclosed in accordance with clause 23.
- (b) No business shall be transacted at a meeting of Directors if a quorum is not present.
- (c) A Director having an interest as specified in clause 23 shall not be counted in a quorum in accordance with clause 22.4.
- (d) If within fifteen (15) minutes past the time appointed for any meeting of Board, the quorum is not present, such meeting shall stand adjourned to the next day at the same time and place provided such day is a working day and otherwise to the next following working day.

### 22.5 Alternate

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.

### 22.6 Voting

- (a) Every Director (other than a Director having an interest as specified in clause 23) shall have one vote.
- (b) The chairperson shall not have a casting vote.
- (c) A resolution of the Board shall be passed if it is agreed to by a majority of the Directors present.

### 22.7 Minutes

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

## 22.8 Resolution in writing

- (a) A resolution in Writing, signed or assented to, by all the Directors then entitled to receive notice of a Board meeting, shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- (b) Any such resolution may consist of several documents in like form each signed or assented to by one or more Directors.
- (c) A copy of any such resolution shall be entered in the minute book of Board proceedings.

## 22.9 Directors may delegate

- (a) Subject to the Act, the Directors may delegate powers which are conferred to them:
  - (i) to such person or committee;
  - (ii) by such means (including by power of attorney); and
  - (iii) on such terms and conditions as they think fit.
- (b) The Directors may revoke any delegation in whole or in part, or alter its terms and conditions.

## 22.10 Committees

- (a) 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 this Constitution which govern the taking of decisions by Directors.
- (b) The Directors may not make rules including rules of procedure for all or any committees, which are inconsistent with this Constitution.

## 23. REMUNERATION AND OTHER INTERESTS OF DIRECTORS

### 23.1 Authority to remunerate Directors

- (a) The shareholders by ordinary resolution, or the Board if it is satisfied that to do so is fair to the Company, shall approve:
  - (i) the payment of remuneration (or the provision of other benefits) by the Company to a Director for his services as a Director, or the payment of compensation for loss of office; and
  - (ii) the making of loans and the giving of guarantees by the Company to a Director in accordance with section 159(6) of the Act.
- (b) The Board shall ensure that, forthwith after authorising any payment under paragraph (a), particulars of such payment are entered in the interests register.



### 23.2 Other offices with Company held by Director

- (a) Any Director may act by himself, or his firm in a professional capacity for the Company; and the Director or the Director's firm will be entitled to remuneration for professional services as if the Director were not a Director. Nothing in this clause shall authorize a Director or a Director's firm to act as auditor for the Company.
- (b) A Director may hold any other office in the Company (other than the office of auditor), for such period and on such terms (as to remuneration and otherwise) as the Board shall determine.
- (c) Other than as provided in paragraph (b), a Director shall not be disqualified by virtue of his office from entering into any transaction with the Company. Any such transaction will be valid and enforceable to the same extent as if he was not a Director and not in a fiduciary relationship with the Company. No such Director shall be liable to account to the Company for any profit realised by the transaction by reason of the Director holding that office or of the fiduciary relationship thereby established.

### 23.3 Notice of interest to be given

- (a) A Director shall, forthwith after becoming aware of the fact that he is interested in a transaction or proposed transaction with the Company, cause to be entered in the interests register, and, where the Company has more than one (1) Director, disclose to the Board of the Company:
  - (i) where the monetary value of the Director's interest is able to be quantified, the nature and monetary value of that interest; or
  - (ii) where the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.
- (b) A Director shall not be required to comply with paragraph (a) where:
  - (i) the transaction or proposed transaction is between the Director and the Company; and
  - (ii) the transaction or proposed transaction is or is to be entered into the ordinary course of the Company's business and on usual terms and conditions.
- (c) For the purposes of paragraph (a), a general notice entered in the interests register, or disclosed to the Board to the effect that a Director is a shareholder, director, officer or trustee of another company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.
- (d) A failure by a Director to comply with paragraph (a) shall not affect the validity of a transaction entered into by the Company or the Director.

23.4 Interested Director may not vote

- (a) 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.
- (b) Notwithstanding paragraph (a) above, a Director shall be entitled to vote and be counted in the quorum at the meeting in respect of the following matters:
  - (i) the giving of any security or indemnity either:
    - i. 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
    - ii. 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;
  - (ii) 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;
  - (iii) any proposal concerning any other company in which the Director is interested only, whether directly, 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 five percent (5%) or more of the issued shares of any class of such company (or of any third-party company through which his interest is derived) or of the voting rights;
  - (iv) any proposal or arrangement concerning the benefit of employees of the Company or its subsidiaries including:
    - i. the adoption, modification or operation of any employees' share scheme or any share incentive or share option scheme under which he may benefit; or
    - ii. 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 persons to which such scheme or fund relates; and
  - (v) 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.

- (c) For the purposes of paragraph (b), the term 'associate' shall have, in relation to any director, the following meanings:
- (i) his spouse and any child or stepchild under the age of 18 years of the director (the 'individual's family');
  - (ii) 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
  - (iii) 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 twenty percent (20%) 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.
- (d) For the purposes of paragraph (b)(iii), associate shall have, in relation to a director, the following meaning:
- (i) a spouse, a director living "en concubinage" under the common law, any child or stepchild or any relative residing under the same roof as that director;
  - (ii) a succession in which the director has an interest;
  - (iii) a partner of that director;
  - (iv) any company in which the director owns securities assuring him of more than ten percent (10%) of a class of shares to which are attached voting rights or an unlimited right to participate in earnings and in the assets upon winding up;
  - (v) any controller of that director;
  - (vi) any trust in which the director has a substantial ownership interest or in which he fulfills the functions of a trustee or similar function;
  - (vii) any company which is a related company.

### 23.5 Disclosure of share dealing by Directors

- (a) A Director who has a relevant interest in any shares issued by the Company shall forthwith disclose to the Board the number and class of shares in which the relevant interest is held and the nature of the relevant interest.
- (b) A Director who acquires or disposes of a relevant interest in shares issued by the Company shall forthwith, after the acquisition or disposition disclose to the Board:

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- (i) the number and class of shares in which the relevant interest has been acquired or disposed of, as the case may be;
  - (ii) the nature of the relevant interest;
  - (iii) the consideration paid or received; and
  - (iv) the date of the acquisition or disposal.
- (c) The Director shall ensure that the particulars of the disclosures referred to in subparagraphs (a) and (b) above are entered in the interests register.

## 24. INDEMNITY

24.1 The Company shall indemnify a director or employee of the Company or a related company for any costs incurred by him or the Company in respect of any proceedings;

- (a) that relates to liability for any act or omission in his capacity as a director or employee; and
- (b) in which judgment is given in his favour, or in which he is acquitted, or which is discontinued or in which he is granted relief under section 350 of the Act or where proceedings are threatened and such threatened action is abandoned or not pursued.

24.2 To the full extent permitted under the Act, the Company shall indemnify a director or employee of the company or a related company in respect of -

- (a) liability to any person, other than the Company or a related company, for any act or omission in his capacity as a director or employee; or
- (b) costs incurred by that director or employee in defending or settling any claim or proceedings relating to any such liability.

provided, however, that no indemnity shall be payable in the case of fraud, gross negligence, willful misconduct, bad faith, material breach of this Constitution or material breach of any agreement with the Company or any related company, material breach of fiduciary duty or criminal activity.

24.3 To the full extent permitted under the Act, the Company may effect insurance for a Director or employee of the Company or related Company in respect of:

- (a) liability, for any act or omission in his capacity as a Director or employee;
- (b) costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by that Director or employee in defending any criminal proceedings:
  - (i) that have been brought against the Director or employee in relation to any act or omission in that person's capacity as a Director or employee;

- (ii) in which that person is acquitted; or
- (iii) in relation to which a *nolle prosequi* is entered.

24.4 The Board shall cause to be entered in the interests register or record or cause to be recorded in the minutes of Directors or disclose or cause to be disclosed in the annual report the particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or a related company. Any breach of this clause 24 will be dealt with as provided by section 161 of the Act.

24.5 For the purpose of this clause 24, "Director" means any officer of the Company or a registered agent and includes a person formerly holding anyone of the offices and "employee" includes former employees of the Company.

## 25. UNDERTAKINGS OF THE COMPANY

The Company shall, for so long as any Restricted-Voting Preference Share is in issue, comply with the undertakings set out in Part 2 of Schedule 1.

## 26. BORROWING POWERS

The Directors may exercise all powers of the Company to borrow or raise or secure the payment of money or the performance 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 Act.

## 27. DISTRIBUTIONS AND DIVIDENDS

27.1 Subject to the requirements of the Act, the Board may authorise and declare a dividend or other distribution at such time and of such amount (subject to the solvency test) and to any shareholders as it thinks fit. No approval of the shareholders shall be required before the Board makes a distribution.

27.2 Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this clause 26 as paid on the share.

27.3 All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but where any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.

27.4 The directors may deduct from any dividend payable to any shareholder all sums of money, if any, presently payable by him to the Company on account of calls or otherwise in relation to the shares of the Company.

- 27.5 No dividend shall bear interest against the Company.
- 27.6 Any dividend, interest, or other money payable in cash in respect of shares may be paid by wire-transfer to the bank account designated by the holder. In the case of joint holders, payment can be made by wire transfer to the bank account of that one of the joint holders who is first named on the share register or to such person as the holder or joint holders may in writing direct.
- 27.7 Every such cheque shall be made payable to the order of the person to whom it is sent.
- 27.8 Any one of the two (2) or more joint holders may give effectual receipts for any dividends, bonuses, or other money payable in respect of the shares held by them as joint holders.
- 27.9 Subject to the requirement of section 64 of the Act, the Board may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of proposed dividend or proposed future dividend.
- 27.10 All dividends unclaimed for one (1) year after having been authorised may be invested or otherwise made use of by the Board for the benefit of the Company until claimed, and all dividends unclaimed for five (5) years after having been declared may be forfeited by the Board for the benefit of the Company.
28. **AUDIT**
- 28.1 The Company shall at each Annual Meeting appoint auditors who shall be independent representatives of the shareholders to hold office until the next Annual Meeting.
- 28.2 The Company shall appoint an international recognized firm of independent certified public accountants as its auditors.
- 28.3 A person, other than a retiring auditor, shall not be capable of being appointed auditor at an Annual Meeting unless notice of an intention to nominate that person to the office of auditor has been given by the shareholders to the Company not less than ten (10) calendar days before the Annual Meeting and the Directors shall send a copy of any such notice to the retiring auditor and shall give notice thereof to the shareholders not less than seven (7) calendar days before the Annual Meeting provided that if, after a notice of the intention to nominate an auditor has been so given, an Annual Meeting is called for a date ten (10) calendar days or less after that notice has been given, the requirements of this provision as to time in respect of such notice shall be deemed to have been satisfied and the notice to be sent or given by the Company may, instead of being sent or given within the time required by this clause, be sent or given at the same time as the notice of the Annual Meeting.
- 28.4 The first auditor shall be appointed by the Directors and they shall hold office until removed by ordinary resolution.
- 28.5 The Directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act.
- 28.6 The remuneration of the auditor shall be fixed by the Board.

28.7 Every auditor shall have a right of access at all times to the books and accounts and vouchers of the Company and as regards books, accounts and vouchers of which the originals are not readily available shall be entitled to rely upon copies thereof or extracts therefrom certified by the representatives of the Company, and shall be entitled to require from the Directors and the officers of the Company such information and explanations as may be necessary for the performance of the duties of auditor, and the auditors shall make a report to the shareholders on the accounts examined by it, and on every balance sheet laid before the shareholders in a meeting during its tenure of the office in accordance with the requirements of the Act.

28.8 Any auditor shall, on quitting office, be eligible for re-election.

## 29. RECORD DATES

Subject to this Constitution, the Directors may fix any date as the record date for any dividend, distribution, allotment or issue and such record date may be on or at any time before any date on which such dividend, distribution, allotment or issue is paid or made on or at any time before or after any date on which such dividend, distribution, allotment or issue is declared provided that such recordal shall not amount to any activity not permitted by the Act.

## 30. SECRETARY

30.1 The Company shall at all times have a secretary that is qualified under the Act to act as secretary for the Company.

30.2 The Board shall appoint the secretary in accordance with sections 163 to 165 of the Act, for such term, at such remuneration and upon such conditions as it may think fit and any secretary so appointed may be removed by it.

30.3 The duties of the secretary shall be those prescribed by the Act together with such other duties as shall from time to time be prescribed by the Board.

## 31. THE SEAL

31.1 The Company shall have a common seal (the "Seal"), which shall have the name of the Company engraved on it in legible letters.

31.2 The Directors shall provide for the safe custody of the Seal, which shall only be used pursuant to a resolution passed at a meeting of the Directors, or a committee of the Directors authorized to use the Seal, and in the presence either of two (2) Directors or of one (1) Director and the Company Secretary or of such person or persons as the Directors may from time to time appoint, and such person or persons, as the case may be, shall sign every instrument to which the Seal is affixed.

## 32. ACCOUNTS

32.1 The Board shall cause proper books of account to be kept with respect to all the transactions, assets and liabilities of the Company in accordance with the Act and so as to enable the accounts of the Company to be prepared.

32.2 The books of account shall be kept at the registered office in Mauritius, or at such other place or places as the Board shall deem appropriate, and shall at all times be open to the inspection of the Directors, but no person, other than a Director or auditor or an officer, clerk, accountant, legal advisor, tax advisor, or such other person whose duty requires and entitles him or her to do so, shall be entitled to inspect the books, accounts, documents, or writings of the Company, except as provided by the Act or authorised by the Board or by the Company in a meeting of shareholders.

32.3 An electronic version of the Company's annual report (including the balance sheet and every document required by law to be annexed thereto and profit and loss account or income and expenditure account) shall, at least fourteen (14) days before the date of the meeting of shareholders, be delivered by email to every shareholder or posted on the Company's website, if it has one.

### 33. AUTHENTICATION OF DEEDS OR DOCUMENTS

All deeds, contracts, cheques, promissory notes, drafts, bills of exchange and the other negotiable instruments and all receipts for money paid by the Company, shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be by two (2) Directors jointly or in such other manner as the Board may determine.

### 34. ACTIONS AND PROCEEDINGS

34.1 The Company may sue or be sued in its corporate name acting through the Director or the company secretary and service of all summonses, processes, notices and the like shall be valid and effectual, if served at the registered office of the Company.

34.2 All powers to sue or to defend in Mauritius and to make any appeal from judgment of the Courts of Mauritius shall be signed by two (2) Directors jointly.

### 35. NOTICES

35.1 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.

35.2 Any summons, notice, order or other document required to be sent to or served upon the Company, or upon any officer of the Company may be sent or served by leaving the same or sending it through the post in a prepaid letter, envelope or wrapper or by courier or facsimile, addressed to the Company or to such officer at the registered office of the Company.

35.3 Any notice or other document, if served by post, shall be deemed to have been served as provided in the Act and in proving such service it shall be sufficient to prove that the letter containing the notice or document was properly addressed and duly posted.

35.4 Any notice or document delivered or sent by post to or left at the registered address of any shareholder in pursuance of this Constitution shall, notwithstanding that such shareholder be then dead or bankrupt and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any share registered in the name of such shareholder as sole or joint holder, unless his name shall at the time of the



service of the notice or document, have been removed from the register as the holder of the share, and such service shall for such purposes be deemed a sufficient service of such notice or document on all persons interested (whether jointly with or as claiming through or under him) in the share.

### 36. WINDING UP

- 36.1 Subject to clauses 36.2 and 36.3 and to the terms of issue of any shares in the Company, upon the winding up of the Company, the assets, if any, remaining after payment of the debts and liabilities of the Company and the costs of winding up (the surplus assets), shall be distributed among the shareholders in accordance with Part 1 of Schedule 1.
- 36.2 The holders of shares not fully paid up shall only receive a proportionate share of their entitlement being an amount paid to the company in satisfaction of the liability of the shareholder to the company in respect of the shares either under this Constitution or pursuant to the terms of issue of the shares.
- 36.3 Where the Company is wound up, the liquidator may, with the sanction of a special resolution of the shareholders, divide in kind amongst the members the assets of the company, whether they consist of property of the same kind or not, and may for that purpose set such value as he deems fair upon any property to be divided and may determine how the division is to be carried out as between the shareholders or different classes of shareholders.

### 37. UNTRACEABLE MEMBER AND POWER TO SELL

Where a shareholder's whereabouts is unknown and untraceable, the Board shall have the power to sell the shares of that shareholder provided that such power may not be exercised unless:

- (a) during a period of twelve (12) years, at least three (3) dividends in respect of the shares in question have become payable and no dividend during that period has been claimed; and
- (b) on expiry of the twelve (12) years, the Company gives notice of its intention to sell the shares by way of an advertisement published in at least two (2) widely circulated daily newspapers and notifies the Stock Exchange of Mauritius of such intention.

### 38. ALTERATION OF CONSTITUTION

Subject to the Act and the rights of the Preference Shareholders as set out in Schedule 1, the Company may alter its constitution or any provision therein provided that prior written approval has been sought and obtained from the Stock Exchange of Mauritius Ltd for such alteration.

### 39. EXERCISE OF CERTAIN VOTING RIGHTS WITH RESPECT TO KINGFISHER LTD

- 39.1 Notwithstanding anything in this Constitution, the Board shall not give effect to any ordinary resolution or special resolution of Kingfisher Ltd ("Kingfisher") approving the matters set out below, if (i) the Class A Preference Shareholders and the Class B Preference Shareholders shall have been given the opportunity to consider those decisions; and (ii) the Class A

B

Preference Shareholders and the Class B Preference Shareholders, shall have decided that the Board must not give effect to those decisions:

- (a) a change in the dividend policy of Kingfisher as set out in its constitution;
- (b) a change of control (as such term is defined in section 5 of the Act) of Kingfisher;
- (c) the acquisition or disposal of assets by Kingfisher with a value exceeding 20% of the total asset value of the Group;
- (d) the acquisition of assets by Kingfisher which are not Yielding Assets;
- (e) the acquisition of interests by Kingfisher in an entity owning assets that are not Yielding Assets;
- (f) the acquisition of interests in an entity that owns Yielding Assets but that has a dividend policy that is less favourable than that of Kingfisher;
- (g) incurring any capital expenditure representing more than 20% of the total asset value of the Group;

39.2 The Board shall suspend the implementation of any of the above decisions and the Chairman of the Board shall give at least seven (7) days' written notice to the Preference Shareholders of the decision. Thereafter, the procedure set out in paragraphs 3.3 to 3.11 of Schedule 1 shall apply *mutatis mutandis*.

We certify that this is the Constitution of Beachcomber Hospitality Investments Ltd



Name: Mrs Preeti Gopaul  
For ENL Secretarial Services Limited  
Company Secretary

Date: 12 May 2023

Schedule 1

In this Schedule, unless inconsistent with the context, the following expressions shall have the following meanings:

Accumulated Cash Reserves	means any portion of Distributable Earnings earned since the Issue Date and not distributed or expended by the Company.
Average Rental Yield	means the total rental of the Group for the twelve (12) preceding months divided by the total assets value of the Group as per the last available audited accounts.
Business Day	means a day (other than a Saturday or Sunday or public holiday) on which commercial banks are open in Mauritius.
Class A Preference Shareholder	means the holder of a Restricted-Voting Class A Preference Share.
Capital Contribution	means, in relation to a Preference Shareholder, the amount of cash contributed by that Preference Shareholder for Restricted-Voting Preference Shares purchased by that Preference Shareholder.
Class A Preference Shares Interim Threshold Amount	means the EUR Equivalent (determined on the corresponding Interim Dividend Declaration Date) of a MUR amount determined by applying the formula: $\{[(0.07 \times A_{MUR}) / 365] \times M\}$ , where 'A <sub>MUR</sub> ' is equal to the MUR amount of the capital contributed on the Restricted-Voting Class A Preference Shares in issue at that time, and 'M' is equal to the number of calendar days occurring during the relevant Interim Dividend Period.
Class A Preference Shares Final Threshold Amount	means the EUR Equivalent (determined as at a Final Dividend Declaration Date) of a MUR amount determined by applying the formula: $\{[(R \times A_{MUR}) / 365] \times N\}$ , where: (i) 'R' is equal to (a) 0.07 for the period expiring on 30 June 2032, (b) 0.075 for the period starting on 01 July 2032 and expiring on 30 June 2033, (c) 0.08 for the period starting on 01 July 2033 and expiring on 30 June 2034, (d) 0.09 for the period starting on 01 July 2034 and expiring on 30 June 2035 and shall thereafter be incremented by 0.01 for each subsequent period expiring on 30 June, (ii) 'A <sub>MUR</sub> ' is equal to the MUR amount of the capital contributed on the Restricted-Voting Class A Preference Shares in issue at that time, and (iii) 'N' is equal to the number of calendar days occurring during relevant the Final Dividend Period.
Class B Preference Shareholder	means the holder of a Restricted-Voting Class B Preference Share.
Class B Preference Shares Interim Threshold Amount	means the EUR amount determined by applying the formula: $\{[(0.07 \times B) / 365] \times M\}$ , where 'B' is equal to the EUR capital

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amount contributed in respect of the Restricted-Voting Class B Preference Shares in issue at that time, and 'M' is equal to the number of calendar days occurring during the relevant Interim Dividend Period.

Class B Preference Shares Final Threshold Amount

means the EUR amount determined by applying the formula:  $\{[(R \times B) / 365] \times N\}$ , where: (i) 'R' is equal to (a) 0.07 for the period expiring on 30 June 2032, (b) 0.075 for the period starting on 01 July 2032 and expiring on 30 June 2033, (c) 0.08 for the period starting on 01 July 2033 and expiring on 30 June 2034, (d) 0.09 for the period starting on 01 July 2034 and expiring on 30 June 2035 and shall thereafter be incremented by 0.01 for each subsequent period expiring on 30 June, (ii) 'B' is equal to the EUR capital amount contributed in respect of the Restricted-Voting Class B Preference Shares in issue at that time, and (iii) 'N' is equal to the number of calendar days occurring during the relevant Final Dividend Period.

Clawback Amount

means an amount equal to the lower of (i) the portion of the Interim Dividend Amount paid in respect of Ordinary Shares on the relevant Interim Dividend Payment Date, and (ii) the difference between the Preference Shares Final Threshold Amount and the Final Dividend Amount.

Clawback Event

means an event that shall occur on a Final Dividend Declaration Date if: (i) the Company declared an Interim Dividend Amount in respect of Ordinary Shares on the relevant Interim Dividend Declaration Date; and (ii) had it not been for the clawback referred to in paragraph 5, the Final Dividend Amount determined immediately following that Interim Dividend Declaration Date will be less than the aggregate of the amount referred to in paragraph (i)(a)(1) and the amount referred to in paragraph (i)(b)(1) of the Final Dividend Distribution Waterfall.

Cure Period

means the period of ninety (90) days starting on the date of the audited consolidated financial statements of the Company.

Decision

has the meaning given to that term in paragraph 3.1.

Debt

means an amount that has been borrowed from and is still owed to a bank or a financial institution or a third party. It includes inter alia, loans, bond and finance leases.

Distributable Earnings

The distributable earnings of any company within the Group shall be determined by applying the following formula: PAT - FvG + FvL, where:

'PAT' is the profit after tax;

'FvL' is the fair value losses accounted for in the profit and loss statement of each company within the Group prepared in

accordance with International Financial Reporting Standards and shall be limited to the Distributable Reserves; and

'FvG' is the fair value gains accounted for in the profit and loss statement of each company within the Group prepared in accordance with International Financial Reporting Standards.

Distributable Reserves	means the retained earnings for the relevant period as disclosed in the statement of financial position of each company within the Group prepared in accordance with International Financial Reporting Standards.
Dividend Declaration Date	means an Interim Dividend Declaration Date or a Final Dividend Declaration Date.
Dividend Payment Date	means an Interim Dividend Payment Date or a Final Dividend Payment Date.
Dividend Policy	means the Interim Dividend Policy and the Final Dividend Policy.
Dividend Record Date	means a date to be communicated by the Company to the Preference Shareholders and the Ordinary Shareholders on the relevant Dividend Declaration Date, in accordance with the applicable laws.
Eligible Financial Indebtedness	means Financial Indebtedness other than an indebtedness towards NMH.
Financial Indebtedness	means any indebtedness for or in respect of: (i) moneys borrowed and debit balances at banks; (ii) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent; (iii) any amount raised pursuant to any note purchase facility or the issue of bonds, debentures, loan stock or any similar instrument; (iv) any amount raised under any other transaction having the commercial effect of a borrowing; (v) any indebtedness for or in respect of any short-term counter-indemnity obligation in respect of a short-term guarantee, bond, documentary letter of credit or any other instrument issued by a bank or financial institution; and (vi) any contingent liability (to the extent not expressly referred to in another paragraph of this definition).
Force Majeure Event	means any event beyond the control of the Company, including but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, acts of public enemy, explosions, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, which, in any of the foregoing cases, by exercise of due diligence the Issuer could not

reasonably have been expected to avoid, and which, by the exercise of due diligence, it has been unable to overcome.

EUR	means Euro, the lawful currency of the European Union.
EUR Equivalent	means the EUR equivalent of MUR calculated by applying the FX Reference Rate on a relevant conversion date.
Final Dividend Amount	means the dividend amount calculated in accordance with the paragraph entitled 'Dividend Policy'.
Final Dividend Declaration Date	means a date, at latest, ninety (90) days after the end of a Final Dividend Period.
Final Dividend Distribution Waterfall	means the distribution waterfall set out in paragraph 4.8.
Final Dividend Payment Date	means a date occurring not later than ten (10) Business Days after a Dividend Record Date pertaining to a Final Dividend Declaration Date.
Final Dividend Period	means each of the following successive periods: (i) the first Final Dividend Period shall be a period starting on the Issue Date and ending on 30 June 2024; (ii) each subsequent period of twelve (12) months ending on 30 June; (iii) the last Final Dividend Period shall start on the day following the end of the most recent Final Dividend Period and end on the Redemption Date of the last Restricted-Voting Preference Share.
FX Reference Rate	means the foreign exchange rate determined by applying the average of the buying and selling rates of EUR using the TT rate published by The Mauritius Commercial Bank Limited at 10.00am on the relevant conversion date and communicated by the Company to the Preference Shareholders on the relevant conversion date.
Group	means the Company and its subsidiaries.
Group DSCR	means the ratio obtained by dividing the Group EBITDA during the twelve (12) months preceding the Ratio Test Date with the total of the Group's capital and interest repayments on the Group's Eligible Financial Indebtedness during the twelve (12) months preceding the Ratio Test Date.
Group EBITDA	means the Group's earnings before interest, tax, depreciation and amortisation.
Group LTV	means the ratio obtained by dividing the total Debt of the Group with the value of the investment properties of the Group.

Interim Dividend Amount	means the dividend amount calculated in accordance with the paragraph entitled 'Dividend Policy'.
Interim Dividend Declaration Date	means a date occurring not later than thirty (30) days after the end of an Interim Dividend Period.
Interim Dividend Distribution Waterfall	means the distribution waterfall set out in paragraph 4.3.
Interim Dividend Payment Date	means a date occurring not later than ten (10) Business Days after a Dividend Record Date pertaining to an Interim Dividend Declaration Date.
Interim Dividend Period	means each of the following periods: (a) the first Interim Dividend Period shall start on the Issue Date and end on 31 December 2023; (b) thereafter, an Interim Dividend Period shall start on the day following the expiry of a Final Dividend Period and end on the earlier of (i) the first six (6) months of each Final Dividend Period; and (ii) any period ending on a Redemption Date.
Issue Date	means the date on which the Preference Share Issue completes, which is expected to be 12 May 2023.
Issue Price	means an issue price of: (i) MUR 1,000 for each Restricted-Voting Class A Preference Share; and (ii) EUR 1,000 for each Restricted-Voting Class B Preference Share.
MUR	means Mauritian Rupee, the lawful currency of Mauritius.
NMH	New Mauritius Hotels Limited, a public company limited by shares bearing business registration number C06001439 incorporated under the laws of Mauritius and having its registered office at Beachcomber House, Botanical Garden Street, Curepipe 74213, Mauritius.
Ordinary Resolution	means a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the matter which is the subject of the resolution.
Ordinary Shareholder	means the holder of an Ordinary Share.
Ordinary Shares	means, as at the date of this Constitution, 1,000 ordinary shares of no-par value denominated in MUR; and 87,919,806 ordinary shares of no-par value denominated in EUR.
Ordinary Shares Interim Threshold Amount	means the EUR amount determined by applying the formula: $\{[(0.05 \times C) / 365] \times M\}$ , where 'C' is the EUR capital amount contributed in respect of the Ordinary Shares and 'M' is equal to the number of calendar days occurring during the relevant Interim Dividend Period.

Ordinary Shares Final Threshold Amount means the EUR amount determined by applying the formula:  $\{[(0.07 \times C) / 365] \times N\}$ , where 'C' is equal to the EUR capital amount contributed in respect of the Ordinary Shares and 'N' is equal to the number of calendar days occurring during the relevant Final Dividend Period.

Outstanding BHI Loan means the shareholders' loans made by NMH to the Company of an aggregate amount of EUR 61,416,256 and which bear interest at a rate of 7% percent per annum.

Preference Shareholder means the holder of a Restricted-Voting Preference Share as recorded in the Register.

Preference Shares Interim Threshold Amount means the aggregate of the Class A Preference Shares Interim Threshold Amount and the Class B Preference Shares Interim Threshold Amount.

Preference Share Issue means the issue of Restricted Voting Preference Shares of the Company in accordance with the Prospectus dated 29 March 2023.

Preference Shares Final Threshold Amount means the aggregate of the Class A Preference Shares Final Threshold Amount and the Class B Preference Shares Final Threshold Amount.

Preference Shares Surplus Amount means an amount representing the surplus paid to a Preference Shareholder over the Capital Contribution which is calculated in accordance with the following formula:

$$(P + (P + O + L)) \times S, \text{ where:}$$

$P$  is equal to  $a + b$  where  $a$  is the EUR Equivalent of the MUR capital amount contributed in respect of the Restricted-Voting Class A Preference Shares in issue on the day when the surplus is calculated and  $b$  is the EUR capital amount contributed in respect of the Restricted-Voting Class B Preference Shares in issue at that time,

$O$  is the EUR Equivalent (determined on the day when the surplus is calculated) of the capital contributed by the Ordinary Shareholders,

$L$  is the amount of the Outstanding BHI Loan immediately preceding the liquidation of the Company, and

$S$  is the amount of surplus assets.

Prospectus means the prospectus (deemed to be listing particulars) dated 29 March 2023 in respect of the issue of Restricted-Voting Preference Shares for Capital Contributions in an amount of up to EUR 40,300,000 by the Company.

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Ratio Test Date means 30 June or such other date which the Company elects as its balance sheet date.

Redemption Date means any Dividend Payment Date occurring after the fourth (4<sup>th</sup>) anniversary of the Issue Date.

Redemption Notice means a notice served by the Company to the Preference Shareholders at least ninety (90) days prior to a Redemption Date requiring the redemption of their Restricted-Voting Preference Shares.

Redemption Price means the redemption price per Restricted-Voting Preference Share which shall be determined by applying the following formula:  $a + b + c$ , where:

'a' is equal to the relevant Issue price per the relevant Restricted-Voting Preference Share,

'b' is equal to:

- (i)  $0.15a$  if redemption occurs before the sixth (6<sup>th</sup>) anniversary of the Issue Date;
- (ii)  $0.10a$  if redemption occurs on or after the sixth (6<sup>th</sup>) anniversary of the Issue Date but before the eighth (8<sup>th</sup>) anniversary of the Issue Date;
- (iii)  $0.05a$  if redemption occurs on or after the eighth (8<sup>th</sup>) anniversary of the Issue Date but before the tenth (10<sup>th</sup>) anniversary of the Issue Date;
- (iv)  $0.10a$  if redemption occurs on or after the tenth (10<sup>th</sup>) anniversary of the Issue Date but before the twelfth (12<sup>th</sup>) anniversary of the Issue Date; and
- (v)  $0.15a$  if redemption occurs on or after the twelfth (12<sup>th</sup>) anniversary of the Issue Date.

'c' is an amount equal to the higher of (i) zero, and (ii) an amount calculated by applying the following formula:  $(IP - DCFs) \times (1 + IRR)^n$  where:

'IP' is equal to the relevant Issue Price of the relevant Restricted-Voting Preference Share;

'DCF's' is calculated by applying the following formula:

$$\sum_{n=0}^N \frac{CF_n}{(1 + IRR)^n}$$

where:

'*n*' is equal to  $w/365$  where '*w*' is the number of days between the Issue Date and the Final Dividend Declaration Date calculated at each Final Dividend Date or at the Redemption Date (for the last relevant period);

'*N*' is the aggregate of *n* periods between the Issue Date of the relevant Restricted-Voting Preference Share and the Redemption Date;

'*CF<sub>n</sub>*' is equal to  $(x + y)$ , where '*x*' is equal to the aggregate of the Interim Dividend Amount and the Final Dividend Amount paid per relevant Restricted-Voting Preference Share for each relevant '*n*' period, and '*y*' is equal to the Issue Price of that Preference Share for the last '*n*' period; and

'*IRR*' is equal to, if redemption occurs (i) before the tenth (10<sup>th</sup>) anniversary of the Issue Date: 7.0%, (ii) on or after the tenth (10<sup>th</sup>) anniversary but before the eleventh (11<sup>th</sup>) anniversary of the Issue Date: 7.03%, (iii) on or after the eleventh (11<sup>th</sup>) anniversary but before the twelfth (12<sup>th</sup>) anniversary of the Issue Date: 7.09%, (iv) on or after the twelfth (12<sup>th</sup>) anniversary but before the thirteenth (13<sup>th</sup>) anniversary of the Issue Date: 7.20%, (v) on or after the thirteenth (13<sup>th</sup>) anniversary but before the fourteenth (14<sup>th</sup>) anniversary of the Issue Date: 7.33%, (vi) on or after the fourteenth (14<sup>th</sup>) anniversary but before the fifteenth (15<sup>th</sup>) anniversary of the Issue Date: 7.48%, (vii) on or after the fifteenth (15<sup>th</sup>) anniversary but before the sixteenth (16<sup>th</sup>) anniversary of the Issue Date: 7.64%, (viii) on or after the sixteen (16<sup>th</sup>) anniversary but before the seventeenth (17<sup>th</sup>) anniversary of the Issue Date: 7.81%, (ix) on or after the seventeenth (17<sup>th</sup>) anniversary but before the eighteenth (18<sup>th</sup>) anniversary of the Issue Date: 7.98%, (x) on or after the eighteenth (18<sup>th</sup>) anniversary but before the nineteenth (19<sup>th</sup>) anniversary of the Issue Date: 8.15%, (xi) on or after the nineteenth (19<sup>th</sup>) anniversary but before the twentieth (20<sup>th</sup>) anniversary of the Issue Date: 8.31%, (xii) on or after the twentieth (20<sup>th</sup>) anniversary but before the twenty-first (21<sup>st</sup>) anniversary of the Issue Date: 8.47%, (xiii) on or after the twenty-first (21<sup>st</sup>) anniversary of the Issue Date: 9.0%.

Redemption Proceeds

means the proceeds payable by the Company to a Preference Shareholder on the redemption of the Restricted-Voting Preference Shares.

Redemption Proceeds Payment Date

means a date not later than ten (10) Business Days after a Redemption Date.

Register

means the register of Restricted-Voting Preference Shares.

Relevant Preference Shareholders	means Preference Shareholders holding together not less than five (5) per cent of the number of Restricted-Voting Preference Shares in issue.
Restricted-Voting Class A Preference Shares	means Restricted-Voting Class A Preference Shares of no-par value denominated in MUR.
Restricted-Voting Class B Preference Shares	means Restricted-Voting Class B Preference Shares of no-par value denominated in EUR.
Restricted-Voting Preference Shares	means the Restricted-Voting Class A Preference Shares and the Restricted-Voting Class B Preference Shares.
Subordination Agreement <sup>1</sup>	means the subordination agreement between the Company and NMH for the subordination to the Restricted-Voting Preference Shares of the Outstanding BHI Loan.
Undertakings	means the undertakings set out in paragraph 8.
Yielding Asset	means an asset that generates a yield that is not below the Average Rental Yield preceding the date of acquisition of such asset.

## Part 1 - Rights and obligations attached to the Ordinary Shares and the Preference Shares

### 1. The Ordinary Shares

An Ordinary Share in the capital of the Company shall confer upon the holder thereof, the following rights:

- (a) *As regards voting:* An Ordinary Share shall entitle an Ordinary Shareholder to receive notice of, attend and vote at any meeting of Ordinary Shareholders. Each Ordinary Share shall carry one (1) vote on all resolutions at a meeting of Ordinary Shareholders at which a poll is demanded.
- (b) *As regards income:* Subject to the Act, an Ordinary Shareholder shall be entitled to dividends authorised by the Board which are subordinate, as appropriate, to the right of the Preference Shareholders to receive a preferential return in respect of their Restricted-Voting Preference Shares.
- (c) *As regards redemption:* The Ordinary Shares shall not be redeemable.
- (d) *As regards capital and surplus:* In a liquidation, dissolution or winding up of the Company, the right of the Ordinary Shareholders to repayment of their capital and to a share in the distribution of the surplus assets of the Company in accordance with paragraph 6.

### 2. The Restricted-Voting Preference Shares

- 2.1 The Restricted-Voting Preference Shares will be issued in registered form. No share certificates will be issued.

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2.2 Legal ownership of the Restricted-Voting Preference Shares, listed on the Official Market of the SEM, will be reflected in book entries recorded by the CDS and such records shall constitute the definitive evidence of a title of the Preference Shareholder to the number of the relevant Restricted-Voting Preference Shares shown in the CDS Account of that Preference Shareholder.

2.3 A Restricted-Voting Preference Share in the capital of the Company shall confer upon the holder thereof, the following rights:

(a) *As regards voting:* A Restricted-Voting Preference Share shall entitle a Preference Shareholder to receive notice of, attend and vote at any meeting of Preference Shareholders only in respect of the following matters:

(i) any resolution proposing to vary the rights attached to the Restricted-Voting Preference Shares;

(ii) any resolution pertaining to the implementation or not of a Decision; and

each Restricted-Voting Preference Share shall carry one (1) vote on all resolutions at a meeting of Preference Shareholders at which a poll is demanded.

(b) *As regards income:* Subject to the Act, a Restricted Preference Shareholder shall be entitled to dividends authorised by the Board in priority to the right of the Ordinary Shareholders in accordance with the Dividend Policy. The dividend payable in respect of the Restricted-Voting Preference Shares shall not be cumulative.

(c) *As regards redemption:* The Restricted-Voting Preference Shares shall be redeemable.

(d) *As regards capital and surplus:* In a liquidation, dissolution or winding up of the Company, the right of the Preference Shareholders to repayment of their capital and to a share in the distribution of the surplus assets of the Company in accordance with paragraph 6.

### 3. Restricted voting rights of the Preference Shareholders

3.1 No resolution of the Board or the Ordinary Shareholders giving effect to the decisions set out below (each a 'Decision') shall be implemented if (i) the Class A Preference Shareholders and the Class B Preference Shareholders shall have been given the opportunity to consider the Decision; and (ii) the Class A Preference Shareholders and the Class B Preference Shareholders, shall have decided that the Company must not give effect to the Decision:

(a) any amendment or revocation of the Constitution and the adoption of a new constitution by the Company;

(b) a change in the dividend policy of the Group;

(c) a change of control (as such term is defined in section 5 of the Act) of the Company;

(d) except for the capitalisation of the Outstanding BHI Loan as may be permitted from time to time and the issue of any additional Restricted-Voting Preference Shares for the unsubscribed portion of the Preference Share Issue up to the Maximum Aggregate

Capital Commitment within two (2) years from the Issue Date, any issue of new shares in the share capital of the Company following the Issue Date;

- (e) the acquisition or disposal of assets by a company within the Group with a value exceeding 20% of the total asset value of the Group;
  - (f) the acquisition of assets by a company within the Group which are not Yielding Assets;
  - (g) the acquisition of interests by a company within the Group in an entity owning assets that are not Yielding Assets;
  - (h) the acquisition of interests in an entity that owns Yielding Assets but that has a dividend policy that is less favourable than that of the Company;
  - (i) the entering into of a new lease agreement that would have the effect of decreasing the Average Rental Yield of the Company;
  - (j) incurring any capital expenditure representing more than 20% of the total asset value of the Group;
  - (k) effecting any change in any agreement witnessing transactions or arrangements with parties affiliated or related to the Company, including but not limited to the payment of management or similar fees by the Company to NMH or agreeing to any rental deferment, unless such proposed change shall have been disclosed prior to the date of the Prospectus; and
  - (l) incurring any indebtedness in the form of new shareholder loans that would rank in priority to the Restricted-Voting Preference Shares or change the rank of any indebtedness owed to any company of the Group that would result in such indebtedness ranking in priority to the Restricted-Voting Preference Shares.
- 3.2 Upon the Board or the Ordinary Shareholders having taken any Decision, the Board shall suspend the implementation of the Decision and the Chairman of the Board shall give at least seven (7) days' written notice to the Preference Shareholders of the Decision.
- 3.3 The Relevant Shareholders shall have the right, within seven (7) days of receipt of the notice given by the Board, to request the Chairman of the Board to call a meeting of the Preference Shareholders to consider and, if thought fit, determine that the Company should not give effect to the Decision.
- 3.4 If a request is made by the Relevant Preference Shareholders, the Chairman of the Board shall give at least twenty-one (21) days' written notice of the meeting to the Preference Shareholders. The meeting may be called with a shorter notice if all Preference Shareholders entitled to attend and vote at the meeting agree to such shorter notice period.
- 3.5 The quorum for the meeting of Preference Shareholders shall be Preference Shareholders holding Restricted-Voting Preference Shares carrying together not less than fifty (50) per cent of the EUR Equivalent of the capital contributed in respect of the Restricted-Voting Preference Shares in issue at the time of the meeting.
- 3.6 If a quorum is not present within thirty (30) minutes after the time appointed for the meeting of the Preference Shareholders, the meeting shall be adjourned to another date and time,

such date being no earlier than seven (7) days following but excluding the date for which the meeting of the Preference Shareholders was first convened, by the Chairman of the Board giving notice in writing to the Preference Shareholders and at such adjourned meeting of the Preference Shareholders, the quorum shall be Preference Shareholders carrying together not less than fifteen (15) per cent of the EUR Equivalent of the capital contributed in respect of the Restricted-Voting Preference Shares in issue at the time of the meeting.

- 3.7 The EUR Equivalent of the capital contributed by the Preference Shareholders in respect of their Restricted-Voting Preference Shares in issue at the time of the relevant meeting shall, for quorum purposes, be determined using the FX Reference Rate on the Issue Date.
- 3.8 Any Preference Shareholder may appoint a proxy for the purposes of attending and voting at a meeting of the Preference Shareholders provided that the instrument appointing such proxy is delivered at the registered office of the Company at least twenty-four (24) hours prior to the meeting failing which the appointment shall not be effective.
- 3.9 Postal votes on the Restricted-Voting Preference Shares shall not be allowed.
- 3.10 Unless the Preference Shareholders present at the meeting at which a quorum is established resolve by Ordinary Resolution that the Company should not give effect to the Decision, the Company shall be entitled to implement the Decision.
- 3.11 The Company shall issue a statement in its annual report confirming that it has not implemented a Decision in breach of this paragraph 3.

#### 4. Dividend Policy

- 4.1 Subject to the Act, the Company intends to declare a dividend:
- (a) on each Interim Dividend Declaration Date in respect of each Interim Dividend Period (the 'Interim Dividend Amount'); and
  - (b) on each Final Dividend Declaration Date in respect of each Final Dividend Period (the 'Final Dividend Amount').

##### Interim Dividend Amount

- 4.2 In respect of each Interim Dividend Period and subject to the applicable laws, the Issuer intends to declare for that period a dividend corresponding to the difference between (a) a minimum of 90% of its Distributable Earnings and (b) all loan repayments made during that Interim Dividend Period and in accordance with the Subordination Agreement, subject to a maximum determined in accordance with the distribution waterfall in paragraph 4.3 (the 'Interim Dividend Distribution Waterfall').
- 4.3 On each Interim Dividend Payment Date, the Preference Shareholders and Ordinary Shareholders in the Register at the close of the corresponding Dividend Record Date shall be entitled to the following dividends in the following order:
- (i) firstly, and *pari passu* with each other:
    - (a) the Class A Preference Shareholders, *pro-rata* the number of Restricted-Voting

Class A Preference Shares held by them, shall be entitled to the lower of:

- (1) the Class A Preference Shares Interim Threshold Amount; and
- (2) an amount calculated in accordance with the following formula:  $\{[A / (A+B)] \times D\}$ , where:

'A' is equal to the EUR Equivalent (determined on the corresponding Interim Dividend Declaration Date) of the MUR amount of the capital contributed on the Restricted-Voting Class A Preference Shares in issue at that time;

'B' is equal to the EUR capital amount contributed in respect of the Restricted-Voting Class B Preference Shares in issue at that time; and

'D' is equal to the Interim Dividend Amount; and

- (b) the Class B Preference Shareholders, *pro-rata* the number of Restricted-Voting Class B Preference Shares held by them, shall be entitled to the lower of:

- (1) the Class B Preference Shares Interim Threshold Amount; and
- (2) an amount calculated in accordance with the following formula:  $\{[B / (A+B)] \times D\}$ , where:

'A' has the meaning set out above;

'B' has the meaning set out above; and

'D' has the meaning set out above; and

- (ii) secondly, the Ordinary Shareholders, *pro-rata* the number of Ordinary Shares held by them, shall be entitled to the lower of:

- (a) the Ordinary Shares Interim Threshold Amount; and
- (b) the balance of the Interim Dividend Amount after payment of the Preference Shares Interim Threshold Amount.

4.4 The Company shall pay the Interim Dividend Amount to the Preference Shareholders and the Ordinary Shareholders (as the case may be) on each Interim Dividend Payment Date.

4.5 The dividend in respect of the Restricted-Voting Class A Preference Shares shall be paid in MUR using the FX Reference Rate on the corresponding Interim Dividend Declaration Date.

4.6 The resolutions relating to the Interim Dividend Amount (and the payment thereof) shall be subject to paragraph 5.

#### Final Dividend Amount

4.7 In respect of each Final Dividend Period, the Company intends to declare for that period a dividend corresponding to the difference between: (i) a minimum of 90% of its Distributable

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Earnings and (b) the aggregate of (i) all loan repayments made during the second six (6) months of that Final Dividend Period and in accordance with the Subordination Agreement; and (ii) the amounts referred to in paragraphs (i) and (ii) of the Interim Dividend Distribution Waterfall in respect of the Interim Dividend Declaration Date immediately preceding that Final Dividend Declaration Date, determined in accordance with the distribution waterfall in paragraph 4.8 (the 'Final Dividend Distribution Waterfall').

4.8 On each Final Dividend Payment Date, the Preference Shareholders and Ordinary Shareholders in the Register at the close of the corresponding Dividend Record Date shall be entitled to the following dividends in the following order:

(i) firstly, and *pari passu* with each other:

(a) the Class A Preference Shareholders, *pro-rata* the number of Restricted-Voting Class A Preference Shares held by them, shall be entitled to the lower of:

(1) the difference between: (x) the Class A Preference Shares Final Threshold Amount; and (y) the amount referred to in sub-paragraph (i)(a) of the Interim Dividend Distribution Waterfall in respect of the Interim Dividend Declaration Date immediately preceding that Final Dividend Declaration Date; and

(2) an amount calculated in accordance with the following formula:  $\{[A / (A+B)] \times D\}$ , where:

'A' is equal to the EUR Equivalent (determined on the corresponding Final Dividend Declaration Date) of the MUR amount of the capital contributed on the Restricted-Voting Class A Preference Shares in issue at that time;

'B' is equal to the EUR capital amount contributed in respect of the Restricted-Voting Class B Preference Shares in issue at that time; and

'D' is equal to the Final Dividend Amount; and

(b) the Class B Preference Shareholders, *pro-rata* the number of Restricted-Voting Class B Preference Shares held by them, shall be entitled to the lower of:

(1) the difference between: (x) the Class B Preference Shares Final Threshold Amount; and (y) the amount referred to in sub-paragraph (i)(b) of the Interim Dividend Distribution Waterfall in respect of the Interim Dividend Declaration Date immediately preceding the corresponding Final Dividend Declaration Date; and

(2) An amount calculated in accordance with the following formula:  $\{[B / (A+B)] \times D\}$ , where:



'A' has the meaning set out above;

'B' has the meaning set out above; and

'D' has the meaning set out above;

(ii) secondly, the Ordinary Shareholders, *pro-rata* the number of Ordinary Shares held by them, shall be entitled to the lower of:

(a) the difference between: (x) the Ordinary Shares Final Threshold Amount; and (y) the amount referred to in sub-paragraph (ii) of the Interim Dividend Distribution Waterfall in respect of the Interim Dividend Declaration Date immediately preceding the corresponding Final Dividend Declaration Date; and

(b) the balance of the Final Dividend Amount after payment to the Preference Shareholders pursuant to sub-paragraphs (i)(a)(1) and (i)(b)(1) above; and

(iii) thirdly, if there is any surplus Final Dividend Amount, the surplus Final Dividend Amount shall be distributed as follows:

(a) the Class A Preference Shareholders, *pro-rata* the number of Restricted-Voting Class A Preference Shares held by them, shall be entitled to an amount calculated in accordance with the following formula:  $\{[A / (A+B+C)] \times E\}$ , where:

'A' has the meaning set out above;

'B' has the meaning set out above; and

'C' has the meaning set out above;

'E' is equal to the difference between: (x) the Final Dividend Amount; and (y) the aggregate of (I) the amount referred to in sub-paragraph (ii)(a) above, (II) the amount referred to in sub-paragraph (i)(a)(1) above, and (III) the amount referred to in paragraph (i)(b)(1) above on the corresponding Final Dividend Declaration Date;

(b) the Class B Preference Shareholders, *pro-rata* the number of Restricted-Voting Class B Preference Shares held by them, shall be entitled to an amount calculated in accordance with the following formula:  $\{[B / (A+B+C)] \times E\}$ , where:

'A' has the meaning set out above;

'B' has the meaning set out above;

'C' has the meaning set out above; and

'E' has the meaning set out above;

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- (c) the Ordinary Shareholders, *pro-rata* the number of Ordinary Shares held by them, an amount calculated in accordance with the following formula:  $\{[C / (A+B+C)] \times E\}$ , where:

'A' has the meaning set out above;

'B' has the meaning set out above;

'C' has the meaning set out above; and

'E' has the meaning set out above.

4.9 The Company shall pay the Final Dividend Amount to the Preference Shareholders and the Ordinary Shareholders (as the case may be) on each Final Dividend Payment Date.

4.10 The dividend in respect of the Restricted-Voting Class A Preference Shares shall be paid in MUR using the FX Reference Rate on the corresponding Final Dividend Declaration Date.

#### 5. Clawback

If a Clawback Event occurs, the Board resolutions approving a portion of the Interim Dividend Amount that is equal to the Clawback Amount (and the payment of the Clawback Amount) shall be automatically and *de plein droit* (without any judicial or extra-judicial formality) rescinded and the Ordinary Shareholder shall, *pro-rata* the number of Ordinary Shares held by them, immediately pay the Clawback Amount to the Company.

#### 6. Repayment of capital and surplus

6.1 In a liquidation, dissolution or winding up of the Company, the Preference Shareholders shall be entitled to the repayment of their Capital Contribution and an amount representing the surplus paid to the Preference Shareholders over the Capital Contribution (the 'Preference Shares Surplus Amount') which is calculated in accordance with the following formula:  $(P \div (P + O + L)) \times S$ , where:

$P$  is equal to  $a + b$  where  $a$  is the EUR Equivalent of the MUR capital amount contributed in respect of the Restricted-Voting Class A Preference Shares in issue on the day when the surplus is calculated and  $b$  is the EUR capital amount contributed in respect of the Restricted-Voting Class B Preference Shares in issue at that time,

$O$  is the EUR capital amount contributed by the Ordinary Shareholders,

$L$  is the amount of the Outstanding BHI Loans immediately preceding the liquidation, dissolution or winding up of the Company, and

$S$  is the amount of surplus assets.

6.2 Any Preference Shares Surplus Amount shall be paid *pari passu* with each other;

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- (i) to the Class A Preference Shareholders *pro-rata* the number of Restricted-Voting Class A Preference Shares held by them: an amount calculated in accordance with the following formula:  $(A \div x) \times Ps$ , where:

$A$  is equal the EUR Equivalent of the MUR capital amount contributed in respect of the Restricted-Voting Class A Preference Shares in issue on the day when the surplus is calculated,

$x$  is equal to  $a + b$  where  $a$  is the EUR Equivalent of the MUR capital amount contributed in respect of the Restricted-Voting Class A Preference Shares in issue on the day when the surplus is calculated, and  $b$  is the EUR capital amount contributed in respect of the Restricted-Voting Class B Preference Shares in issue at that time,

$Ps$  is the Preference Shares Surplus Amount; and

- (ii) to the Class B Preference Shareholders *pro-rata* the number of Restricted-Voting Class B Preference Shares held by them: an amount calculated in accordance with the following formula:  $(B \div x) \times Ps$ , where:

$B$  is the EUR capital amount contributed in respect of the Restricted-Voting Class B Preference Shares in issue at that time,

$x$  is equal to  $a + b$  where  $a$  is the EUR Equivalent of the MUR capital amount contributed in respect of the Restricted-Voting Class A Preference Shares in issue on the day when the surplus is calculated, and  $b$  is the EUR capital amount contributed in respect of the Restricted-Voting Class B Preference Shares in issue at that time,

$Ps$  is the Preference Shares Surplus Amount.

- 6.3 The surplus in respect of the Restricted-Voting Class A Preference Shares shall be paid in MUR using the FX Reference Rate on the date on which the Preference Shares Surplus Amount is paid.

## 7. Redemption of the Restricted-Voting Preference Shares by the Company

- 7.1 Subject to the Act, the Company may, by serving a Redemption Notice, redeem on a Redemption Date, all or part of the Restricted-Voting Preference Shares of either class *pro-rata* the number of Restricted-Voting Preference Shares in issue in that class.
- 7.2 The Redemption Proceeds payable to each Class A Preference Shareholder shall be the Redemption Price multiplied by the number of Restricted-Voting Class A Preference Shares of that Class A Preference Shareholder that are redeemed.
- 7.3 The Redemption Proceeds payable to each Class B Preference Shareholder shall be the Redemption Price multiplied by the number of Restricted-Voting Class B Preference Shares of that Class B Preference Shareholder that are redeemed.
- 7.4 The Redemption Price shall be calculated by the Company and shall be verified by the auditor of the Company. The auditor shall issue a certificate to the Company confirming the Redemption Price. In the absence of manifest error, the certificate of the auditor shall be final and binding on the Company and the Preference Shareholders.

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7.5 Payment of the Redemption Proceeds shall be made in accordance with the instructions specified in the CDS account of the Preference Shareholder on the Redemption Proceeds Payment Date.

## Part 2 - Undertakings of the Company

### 8. Undertakings of the Company

8.1 The Company undertakes, for so long as any Restricted-Voting Preference Share is in issue, that:

- (i) on each Ratio Test Date, the Group LTV shall not exceed: (a) 0.45, for the period starting on the Issue Date and expiring on 30 June 2024; and (b) 0.40, after 30 June 2024;
- (ii) on each Ratio Test Date, the Group DSCR shall be above: (a) 1.5 times, for the period starting on the Issue Date and expiring on 30 June 2025; and (b) 2.25 times, thereafter;
- (iii) the capital expenditure of the Group shall be financed using only: (a) Accumulated Cash Reserves not distributed as dividends, and/or (b) external sources of funds; and
- (iv) it shall comply with its Dividend Policy.

8.2 The Company shall determine the Group LTV and the Group DSCR on the basis of its audited consolidated financial statements as of the relevant balance sheet date.

8.3 Except in the case of a Force Majeure Event, if the Company breaches any of the undertakings referred to in paragraph 8.1, the Company must cure such breach within the Cure Period and issue a statement in its annual report that the undertaking has been cured within the Cure Period. In addition to the above, the Company shall comply with any disclosure obligations under the applicable laws.

This document is a true & correct copy of  
Constitution  
dated 12-05-23 and filed on  
regarding the company Bracknaber  
Hospitality Investments Ltd  
Date 25-05-23  
Duty Rs 500 for Registrar of Companies  
CB No.

