MOORING AREAS AND WATERWAYS

CONDUCT RULES (Draft)

CONDUCT RULES

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1. **INTRODUCTION**

1.1 In these CONDUCT RULES, words and expressions defined in the CONSTITUTION shall have the same meaning.

1.2 The BOARD, may in terms of the CONSTITUTION, make rules, and amend or modify those rules, relating to, *inter alia*, the management and use of the MOORING AREAS and the WATERWAYS.

1.3 The BOARD has adopted these CONDUCT RULES set out in this document relating to the use of the MOORING AREAS and WATERWAYS.

1.4 These CONDUCT RULES shall apply to all BERTH HOLDERS and USERS of the MOORING AREAS and the WATERWAYS, and any of the facilities relating thereto.

2. **DEFINITIONS AND INTERPRETATION**

2.1 In these CONDUCT RULES the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them –

2.1.1 "ASSOCIATION" means the Eden Island Village Management Association registered under the Registration of Association Act (Cap 201 of the Laws of Seychelles);

2.1.2 "BERTH HOLDER" means any person who has entered into a BERTH LEASE in respect of any BERTH;

2.1.3 "BERTHING RIGHTS" means the sole and exclusive right of a BERTH HOLDER to the use and enjoyment of a designated BERTH in terms of the relevant BERTH LEASE and in accordance with these CONDUCT RULES;

2.1.4 "CONDUCT RULES" means the rules relating to the use of the MOORING AREAS and WATERWAYS set out in this document, as amended from time to time;

2.1.5 "CONSTITUTION" means the constitution of the ASSOCIATION, as amended and shall be deemed to include all rules and regulations made thereunder and or issued in terms thereof from time to time;

2.1.6 "MANAGER" means any person or body appointed or employed by the ASSOCIATION for purposes of managing the MOORING AREAS (or any part thereof) in order to ensure compliance with these CONDUCT RULES, the BERTH LEASES and/or all rules and regulations imposed by any relevant authority (if applicable);

2.1.7 "MANAGEMENT CORPORATION" means the body corporate constituted for in accordance with section 13(1) Condominium Property Act (Cap 41A of the Laws of Seychelles) as represented by its council constituted under section 16 of the aforementioned Act;

2.1.8 "MANAGEMENT CORPORATION RULES" means any and all rules and regulations passed by a MANAGEMENT CORPORATION;

2.1.9 "SERVICES" means the facilities provided by the ASSOCIATION in respect of each BERTH including, without limitation, facilities relating to the supply of water and metered power, connections for television and telephone, communal area lighting, removal of sewerage and solid refuse, fire fighting and fuel docking;

2.1.10 "USER" means any BERTH HOLDER, any member of the BERTH HOLDER'S household, any employee, crew member, contractor or other invitee of the BERTH HOLDER, and any other person using a BERTH for any purpose whatsoever;

2.1.11 "VESSEL" means a waterborne vessel of any size, type or description;

2.1.12 any reference to the singular includes the plural and *vice versa*;

2.1.13 any reference to natural persons includes artificial persons and *vice versa*;

2.1.14 any reference to a gender includes the other genders (including neuter);

2.1.15 any reference to months or years shall be construed as calendar months or years.

2.2 Where applicable, the provisions of 2.1 shall impose substantive rights and obligations on the parties as provided in the provision concerned.

2.3 The clause headings in these CONDUCT RULES have been inserted for convenience only and shall not be taken into account in their interpretation.

2.4 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

2.5 No provision of these CONDUCT RULES shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party having or being deemed to have structured or drafted such provision.

2.6 The *eiusdem generis* rule shall not apply and whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.

2.7 When these CONDUCT RULES prescribe any number of days, such days must be reckoned exclusively of the first and inclusively of the last day. If the last day falls on a day that is not a business day, it will be deemed to fall on the next business day.

2.8 These CONDUCT RULES shall be governed by and construed and interpreted in accordance with the laws of the Republic of Seychelles, and the ASSOCIATION and every BERTH HOLDER consents to the jurisdiction of the Courts of the Seychelles for purposes of any proceeding instituted in connection with these CONDUCT RULES.

2.9 Where the laws of the Republic of Seychelles do not know or recognise any legal term or phrase contained in these CONDUCT RULES, or any legal principle to which any of the provisions, terms, phrases or words contained in these CONDUCT RULES relate, the legal term or phrase, or legal principle, shall be construed and interpreted in accordance with the laws of the Republic of South Africa, and shall be implemented accordingly.

3. RIGHTS OF BERTH HOLDERS

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

3.1 access to and egress from his BERTH (whether by way of roads situated within the DEVELOPMENT or otherwise);

3.2 moor his VESSEL at his BERTH and navigate his VESSEL to and from his BERTH; and

3.3 use the SERVICES through the conduits and connection points nearest to his BERTH in accordance with the provisions of 6.

4. OBLIGATIONS OF BERTH HOLDERS

4.1 safety

4.1.1 Every BERTH HOLDER shall –

4.1.1.1 comply with all instructions of the LESSOR, the ASSOCIATION, the MANAGER and/or any relevant authority (or their respective duly authorised representatives) regarding the safe and efficient operation of the MOORING AREAS and the WATERWAYS;

4.1.1.2 ensure that his VESSEL is, at all times, seaworthy and in a fit and proper condition;

4.1.1.3 take all necessary and reasonable precautions against the outbreak of fire in or upon his VESSEL, and ensure that there is at least one suitable, operational fire extinguisher for every 5 metres of VESSEL, on his VESSEL at all times;

4.1.1.4 whenever he intends to use his VESSEL outside the WATERWAYS or otherwise absent his VESSEL from the MOORING AREAS for any reason whatsoever, notify the MANAGER, or his duly authorised representative, of the time and date of departure of his VESSEL from the WATERWAYS, and the anticipated time and date of return of his VESSEL to the WATERWAYS;

4.1.1.5 report any incident or accident of a serious nature which occurs aboard his VESSEL to the ASSOCIATION and the MANAGER and/or their respective duly authorised representatives;

4.1.1.6 secure his VESSEL with such bow, stern and spring lines as may be appropriate to provide a safe and secure connection to the BERTH in all weather conditions;

4.1.1.7 ensure that his VESSEL is properly and safely secured and attached to his BERTH at all times;

4.1.1.8 ensure that halyards, lines, flags and other items attached to his VESSEL are secured so as not to cause any nuisance, annoyance or inconvenience to any USER, other BERTH HOLDER or person residing in the vicinity of the MOORING AREAS;

4.1.1.9 provide all necessary warps and fenders for both sides of his VESSEL;

4.1.1.10 ensure that his VESSEL'S lines are maintained in good condition and are of a size and design suitable for his VESSEL and, where necessary, provide chafing gear or other line protection, for his VESSEL;

4.1.1.11 navigate and control his VESSEL in a safe and seamanlike manner so as not to cause danger, damage or inconvenience to any other USER or VESSEL;

4.1.1.12 ensure that his VESSEL proceeds at a speed which is safe in relation to prevailing weather and sea conditions and, at all times, comply with the existing speed restriction of 3 knots within the WATERWAYS;

4.1.1.13 ensure that his VESSEL is, at all times, able to proceed under its own power;

4.1.1.14 ensure that children are accompanied by a responsible adult whilst in or around the MOORING AREAS or WATERWAYS;

4.1.1.15 ensure that children and non-swimmers wear personal flotation devices aboard his VESSEL and in or around the WATERWAYS; and

4.1.1.16 ensure that he, his employees, crew, contractors and/or other invitees take the necessary care in observing these CONDUCT RULES and general safety standards applicable to the use of the MOORING AREAS and the WATERWAYS.

4.1.2 In addition, every BERTH HOLDER acknowledges and agrees that –

4.1.2.1 the International Rules for the Prevention of Collisions at Sea shall apply to the MOORING AREAS and the WATERWAYS and its approaches;

4.1.2.2 all VESSELS entering, departing or moving within the MOORING AREAS or the WATERWAYS are to do so only under mechanical means;

4.1.2.3 all VESSELS leaving their BERTHS, or entering the MOORING AREAS or the WATERWAYS from a seaward direction, at night or during adverse weather conditions, are first to sound the sound signal of 3 blasts on the VESSEL'S horn, namely one short blast followed by one long blast followed by one short blast (the Morse letter "R"). On hearing this signal –

4.1.2.3.1 every VESSEL underway is to answer with the same sound signal;

4.1.2.3.2 VESSELS underway and departing the WATERWAYS shall have right of way over VESSELS entering so that there is only ever 1 VESSEL within the WATERWAYS' entrance area at any given time; and

4.1.2.3.3 VESSELS not yet underway are to remain at their respective BERTHS for at least 3 minutes after hearing the sound signal in order to allow the signalling VESSEL to complete its manoeuvres.

4.2 **VESSEL**

4.2.1 Every BERTH HOLDER shall provide written details of his VESSEL to the MANAGER and the ASSOCIATION, as may be required by them from time to time.

4.2.2 No BERTH HOLDER shall use, or permit the use of his BERTH for any purpose other than mooring the VESSEL, details of which he has provided in terms of 4.2.1, without the prior written consent of the LESSOR and the ASSOCIATION.

4.2.3 Should a BERTH HOLDER dispose of his VESSEL and wish to use his BERTH for the purposes of mooring another VESSEL, that BERTH HOLDER, shall provide details of the new VESSEL within 5 days of having acquired that new VESSEL.

4.2.4 The length and beam of the hull of any VESSEL moored at any BERTH may not exceed the length and width of that BERTH.

4.3 **mooring lines**

Every BERTH HOLDER shall ensure that –

4.3.1 no mooring lines or cables are laid across the MOORING AREAS walkways;

4.3.2 the bitter ends of all lines are kept short and close to any cleats or tie-off fixtures; and

4.3.3 permanent mooring lines or cables left behind when putting to sea are left coiled on a pole support or around a cleat.

4.4 **environment**

No BERTH HOLDER shall –

4.4.1 bring into the MOORING AREAS in the WATERWAYS, nor store on his VESSEL, any dangerous, inflammable, poisonous or noxious substances other than in properly secured containers specifically designed to contain such substances against leakage;

4.4.2 discard or discharge any refuse or waste materials such as oil, petrol, tar, paint, detergent, sewerage or other debris into the WATERWAYS waters or elsewhere in the MOORING AREAS; and

4.4.3 refuel his VESSEL within the MOORING AREAS in the WATERWAYS, other than in the area expressly reserved for and indicated as the refuelling area in the WATERWAYS.

4.5 **prevention of nuisance**

No BERTH HOLDER shall –

4.5.1 operate, or permit to be operated, in or around the MOORING AREAS or in the WATERWAYS, any engine generator, other machinery, radio, television or any apparatus, so as to cause any nuisance, annoyance or inconvenience to any USER or occupier of any property in the vicinity of the MOORING AREAS in the WATERWAYS;

4.5.2 use his VESSEL or the MOORING AREAS and/or the WATERWAYS in any way which may cause nuisance, annoyance or inconvenience to any USER or occupier of property in the vicinity of the WATERWAYS; and

4.5.3 do anything, or permit anything to be done, in or around the WATERWAYS which, in the opinion of the ASSOCIATION, the MANAGER and/or their respective authorised representatives, is noisome, unsightly, injurious, objectionable or detrimental, or a public or private nuisance, or a source of damage or disturbance to any USER or occupier of any property in the vicinity of the MOORING AREAS in the WATERWAYS.

4.6 **recreational activities**

No BERTH HOLDER shall –

4.6.1 fish, or permit fishing, in or around the MOORING AREAS in the WATERWAYS;

4.6.2 allow any scaling, gutting, clearing or processing of raw fish aboard his VESSEL or in or around the MOORING AREAS in the WATERWAYS, nor throw any part of any fish, fish offal or bait overboard into the MOORING AREAS or in the WATERWAYS waters; and

4.6.3 permit any swimming, diving, water-skiing, hydroplaning or use of jet skis, surfboards or windsurfing boards in the MOORING AREAS or the WATERWAYS' waters.

4.7 **dinghies and tenders**

Every BERTH HOLDER shall ensure that –

4.7.1 all dinghies or tenders attributable to his VESSEL are stowed aboard his VESSEL;

4.7.2 any dinghy or tender placed in the MOORING AREAS waters is so placed only in order to test the lowering and raising gear, or to facilitate washing topsides of the BERTH HOLDER'S VESSEL; and

4.7.3 all dinghies or tenders are clearly marked with the name of the VESSEL on which they are stowed.

4.8 **compliance**

Every BERTH HOLDER shall be obliged to comply with –

4.8.1 all laws, statutes, regulations and by-laws applicable to the MOORING AREAS and the WATERWAYS;

4.8.2 these CONDUCT RULES and all rules and regulations made in terms of these CONDUCT RULES;

4.8.3 the BERTH LEASE applicable in respect of his BERTH;

4.8.4 the CONSTITUTION;

4.8.5 any agreement lawfully concluded by the ASSOCIATION in relation to the MOORING AREAS and/or WATERWAYS insofar as such agreement may, directly or indirectly, impose obligations on a BERTH HOLDER; and

4.8.6 any directive given by the ASSOCIATION, the MANAGER and/or their respective duly authorised representatives in enforcing the provisions of these CONDUCT RULES and/or any rules or regulations made in terms of these CONDUCT RULES.

4.9 **maintenance and use**

Every BERTH HOLDER shall –

4.9.1 maintain his VESSEL in a neat and tidy condition and in a state of good repair;

4.9.2 afford the ASSOCIATION, the MANAGER and/or their respective duly authorised representatives full access to do all things reasonably necessary to maintain the MOORING AREAS and WATERWAYS (or any part thereof);

4.9.3 not use, or permit the use of, his BERTH for any purpose other than the mooring of his VESSEL;

4.9.4 in the absence of the express prior written consent of the ASSOCIATION, moor his VESSEL in its allocated BERTH, and not elsewhere in the MOORING AREAS and/or the WATERWAYS; and

4.9.5 use his VESSEL for private purposes only and not charter his VESSEL to any third party, or otherwise cause the VESSEL to be used commercially, without the prior written consent of the LESSOR and the ASSOCIATION, which may be withheld for any reason.

4.10 **insurance**

4.10.1 Every BERTH HOLDER shall, for the duration of the BERTH LEASE applicable to his BERTH, comprehensively insure, with a reputable insurer, the following –

4.10.1.1 his VESSEL, against loss by fire;

4.10.1.2 his VESSEL, against damage to the hull (ie so-called "hull insurance");

4.10.1.3 the use of his VESSEL, against loss or damage to the MOORING AREAS and/or the WATERWAYS or any other VESSEL; and

4.10.1.4 the use of his VESSEL, against legal liability for damage to property or personal injury to any USER or other third party.

4.10.2 The BERTH HOLDER shall further –

4.10.2.1 punctually pay all insurance premiums which will from time to time fall due for payment in terms of such insurance policy and shall comply with all of the other terms of the policy; and

4.10.2.2 on request of the ASSOCIATION or the LESSOR (as the case may be), deliver to the ASSOCIATION or the LESSOR (as the case may be) proof of insurance cover together with receipts or other proof of payment of the insurance premiums in respect thereof.

4.10.3 If a BERTH HOLDER defaults in any of his obligations to insure in terms of this clause, the LESSOR and the ASSOCIATION shall be entitled, without prejudice to any other rights it may have, to effect the requisite insurance cover and recover the reasonable cost thereof from the BERTH HOLDER concerned, on demand.

4.10.4 In the event of the MOORING AREAS and/or the WATERWAYS being damaged or destroyed by fire, or any other cause whatsoever, as a result of any act, omission or other default on the part of the BERTH HOLDER, and in the further event of any insurance cover applicable in respect of such damage or destruction being insufficient to reinstate the MOORING AREAS and/or the WATERWAYS, the BERTH HOLDER concerned shall be responsible for the payment of the difference, if any, between the cost of such reinstatement and the amount recovered from the insurer in respect of such damage or destruction.

4.11 **access to and egress from BERTHS**

4.11.1 In no circumstances shall any vehicle be parked so as to obstruct any USER'S access to and egress from any BERTH, roadway, slipway, or any other working area within the MOORING AREAS.

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

4.12 **security**

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

4.13 **own risk**

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

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

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

4.14 **subletting**

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

4.15 **advertising**

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

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

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

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

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

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

5.3.1 the VESSEL concerned;

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

5.3.3 any USER;

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

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

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

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

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

6. **PROVISION OF SERVICES**

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

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

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

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

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

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

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

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

7. **MAINTENANCE OF MOORING AREAS AND WATERWAYS**

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

8. **INDEMNITY**

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

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

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

9. **AMENDMENT OF CONDUCT RULES**

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

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