

# **MEMORANDUM OF UNDERSTANDING**

## **THE MEMBERS [SHAREHOLDERS] OF CHIBA RING (PTY) LIMITED**

**[AS LISTED IN ANNEXURE A TO THIS AGREEMENT]**

## PREAMBLE

### Whereas,

A Company (CHIBA RING) was incorporated as a private and limited liability company in the Republic for the sole purpose of establishing a community-based investment, and an enhanced lifestyle, on property acquired in the Ifafa Beach area in KwaZulu Natal, South Africa;

The shareholders (members) of CHIBA RING came together to develop a community on the property owned by CHIBA RING;

Although the shareholders (members) elected a limited company as the vehicle through which they intend to achieve their objectives, they seek to conduct their affairs in a democratic and transparent manner, seeking at all times to make decisions in accordance with the CHIBA RING Articles of Association, the terms of this Memorandum of Understanding and on the basis of consultation with as many members as possible;

The shareholders (members) envisage that each will build their own residential dwelling (some to live in immediately, others to use as a holiday home and others to rent out until they are ready to use it themselves) and portions of the property not utilised for residential dwellings will be developed for common use in a manner agreed upon by a majority of the shareholders (members) in keeping with the overall vision;

The members envisage a community that:

- encourages mutual sharing and support while allowing for the independence of each residential dwelling,takes joint responsibility for the conservation and up keep of common use and environmentally sensitive portions of the property,
- works towards a culture of synthesis, not sameness, through which a sense of community is projected without sacrificing individuality and creativity,
- embarks on developments on its property mindful of its location within an already existing community and of any visions and plans for that broader community,
- actively contributes to the overall development of that broader community,
- brings its skills, expertise and contacts to bear in its relationships with that broader community in a way that will be of lasting mutual benefit,
- establishes itself on the property in a way that is sensitive to the ecology of the area and contributes towards a sustainable living environment,
- is respectful of the ownership and other rights of individual members,
- operates in a democratic and transparent manner, and
- encourages compliance with commonly agreed-upon living together principles and practices without being unnecessarily prescriptive or punitive; and

The shareholders (members) aim to realise the potential of their investment through financially-sound and environmentally-appropriate property development and community-based initiatives.

**The shareholders (members) therefore agree, and record their common understanding and agreement as follows:**

## **1 THE COMPANY**

- 1.1 The CHIBA RING company is registered as CHIBA RING DEVELOPMENTS (PTY) LTD, company registration number: 2004/004122/07.
- 1.2 The CHIBA RING Articles of Association are with the auditors and a copy of the same attached as Annexures.
  - 1.2.1 Matters dealt with, and regulated, in terms of the Articles of Association (CHIBA RING) documentation is deemed part and parcel of this Memorandum of Understanding and is not necessarily repeated in this Memorandum of Understanding.

## **2 PRINCIPLES OF DEVELOPMENT**

- 2.1 All development activity to be undertaken and engaged in by CHIBA RING on the property owned by CHIBA RING in Ifafa Beach will be based on, and approached in, the context of the following principles:
  - 2.1.1 Environmental sustainability;
  - 2.1.2 Protection, as far as possible, of the prevalent ecosystem;
  - 2.1.3 Energy efficiency;
  - 2.1.4 Compliance with relevant legislation;
  - 2.1.5 The use, where possible and appropriate, of SMMEs and local businesses, and adherence to all relevant legislation when employing labour;
  - 2.1.6 Adherence, to the extent that it is practicable, to findings and recommendations of an Environmental Impact Assessment undertaken in respect of the property;
  - 2.1.7 Exploration of all possible practical alternatives for the provision of bulk infrastructure, including energy provision, disposal of sewerage and grey water, waste disposal and roads. Solutions will be tested against criteria for environmental soundness, practicality, functionality and financial viability;
  - 2.1.8 Taking into account development that is underway or planned for Ifafa Beach, and the neighbouring and regionally-relevant, area;
  - 2.1.9 To guarantee the greatest good for as many people as possible, both in terms of the individual residential dwellings and common use portions of the property without impeding on the joint responsibility of any member towards the upkeep and maintenance of common-use portions;
  - 2.1.10 Orientation of the CHIBA RING community outwards and inclusive rather than inwards and exclusive;

- 2.1.11 Taking into account security concerns without creating an exclusive or 'gated' community with a fortress mentality;
  - 2.1.12 Emphasising affordability, while acknowledging and accepting the capacity of some shareholders (members) to pay more for their own residential dwelling development than others;
  - 2.1.13 Development of common infrastructure will be undertaken in an affordable a way as possible with due regard to future affordability and a bias towards initial financial commitment;
  - 2.1.14 Layout rather than walls affords privacy to individual residential units and portions;
  - 2.1.15 Exploring the possibility for the zoning of communal land – and individual land to a more limited extent – for business purposes; and
  - 2.1.16 Provision for the mobility of people with disabilities.
- 2.2 All development and planning decisions will be made after a consultative process in order to ensure that the democratic culture of CHIBA RING and its shareholders (members) are respected. However for purposes of ensuring that the development of the project is expedited and not unduly delayed, all decisions may be made by a simple majority of shareholders (members) in a General Meeting duly convened. Such decisions in general, and in particular with regard to financing options and consequences as well as cluster specific development timetables, will be binding
- 2.3 Notwithstanding the Principles of Development the objective of all development will be twofold and with a view to create both residential and common-use areas on the property owned by CHIBA RING.

### **3 PROPERTY DEVELOPMENT**

- 3.1 For the purposes of practicality and equality, as well as the possibility of raising finance for development activities, the property owned by CHIBA RING in Ifafa Beach will be developed in three distinct phases, parts of some phases which could run in parallel.
- 3.2 The CHIBA RING Development Project will consist of the following three (3) components which may run in parallel:
- 3.2.1 Phase 1
    - 3.2.1.1 All processes, planning and approvals for the acquisition of the property, preparations and initial planning towards rezoning the property for residential, common purpose and other use, as well as soliciting the necessary planning and change in land use approvals in this regard will be referred to as Phase 1 Development.
    - 3.2.1.2 Costs to CHIBA RING in relation to all activities and work to be undertaken in Phase 1 will be known as Phase 1 Development Costs.
    - 3.2.1.3 Finance for Phase 1 Development Costs will be raised through Shareholder (member) Loans to CHIBA RING;

### 3.2.2 Phase 2

3.2.2.1 All processes, planning and activities to develop shared infrastructure and the installation of bulk services in accordance with planning processes, taking into account the future utilisation of the property for both residential and common-use will be referred to as Phase 2 Development.

3.2.2.2 Costs to CHIBA RING in relation to all activities and work to be undertaken in Phase 2, including the possible subcontracting of capacity to manage and execute Phase 2 processes, planning and activities, will be known as Phase 2 Development Costs.

3.2.2.3 Finance for Phase 2 Development Costs will be raised after agreement by Special Resolution at a meeting of the Shareholders (members). Financing options for Phase 2 Development Costs could include further Shareholder (member) Loans to CHIBA RING and / or raising finance in terms of Article 61 of the Articles of Association and or disposal of or long lease of selected portions of the CHIBA RING property.

### 3.2.3 Phase 3

3.2.3.1 All activities and processes towards the development and construction of an individual residential dwelling for each Shareholder (member) on the property owned by CHIBA RING, in terms of a Sectional Title Scheme to be agreed upon, will be known as Phase 3 Development.

3.2.3.2 Costs related to Phase 3 Development will be known as Phase 3 Development Costs.

3.2.3.3 Phase 3 Development Costs will not be financed by CHIBA RING and the CHIBA RING Sectional Title Scheme, to be agreed upon. Each Shareholder (member) will finance, or raise finance, for the development and construction of a residential dwelling.

## **4 RESIDENTIAL DWELLINGS**

4.1 Each shareholder (member) will be entitled to own and build a residential dwelling on the property owned by CHIBA RING as envisaged in Phase 3 Development.

4.2 Portions of the property owned by CHIBA RING to be utilised for the construction of shareholders' (members') residential dwellings will be allocated on a basis of one (1) residential dwelling for each hundred (100) block of shares held in CHIBA RING.

4.3 CHIBA RING will facilitate the ownership of individual residential dwellings on the property owned by CHIBA RING through the adoption and registration of a duly agreed to Sectional Title Scheme. The rules and code of conduct of the Sectional Title Scheme will be agreed to at a CHIBA RING General Meeting.

4.4 The allocation of one (1) residential dwelling for each hundred (100) block of shares held in CHIBA RING will be maintained notwithstanding the final urban and cluster designs.

- 4.5 For the purposes of residential dwelling allocations each hundred (100) block of shares would be considered indivisible and all succession and inheritance related matters which may flow from this will be dealt with through South African laws of succession and deceased estates.
- 4.6 Residential dwellings will be designed, constructed and maintained in accordance with the vision and principles set out in this Memorandum of Understanding in general and the building code (as envisaged in 4.7 below) in particular.
- 4.7 The size, location, design and construction of each shareholder's (member's) residential dwelling will be in accordance with the decisions, rules, principles and building code agreed to at a General Meeting of CHIBA RING.
- 4.8 Notwithstanding the location, or any other differentiation and or geographical peculiarity, of any individual residential dwelling portion allocated to a shareholder (member) by agreement at a CHIBA RING General Meeting, all shareholders (members) will have an equal responsibility and obligation with regard to the activities, processes, development and costs in relation to Phase 1 and 2 Development.

## **5 COMMON-USE PORTIONS**

- 5.1 Shareholders (members) will have an equal responsibility and obligation for the maintenance, conservation and utilisation of the common-use portions of the property owned by CHIBA RING.
- 5.2 No activities and processes towards, and in relation to, the construction and maintenance of an individual residential dwelling in terms of Phase 3 Development, at the cost of the individual shareholder (member), will in any way diminish the shareholder's (member's) responsibility for, and obligation to, maintaining and conserving common-use portions of the CHIBA RING property.
- 5.3 All decisions with regard to the planning and utilisation of common-use portions of the CHIBA RING property, including for recreation, profit and or development, as well as the principles according to which such decisions will be made, will be taken at duly constituted General Meetings of CHIBA RING through a Special Resolution.

## **6 SHAREHOLDERS' (MEMBERS') LOANS**

- 6.1 CHIBA RING may from time to time and through a resolution at a General Meeting of Shareholders raise finance for activities and processes related to Phase 1 and 2 Development of the Project through borrowing from Shareholders (members). Such loans to CHIBA RING for the activities, processes or development related Phase 1 and 2 of development will be known as "investment capital" or a "development levy".
- 6.2 In this regard the CHIBA RING will keep and maintain separate loan accounts for each Shareholder as per the Register of Members of CHIBA RING.

- 6.3 CHIBA RING will take all necessary steps to ensure that each shareholder's (member's) obligation with regard to shareholder's (member's) loans to CHIBA RING is equal to any other.
- 6.4 If a Shareholder (member) chooses to dispose of, sell or transfer his / her block of hundred (100) shares in terms of the procedure in Article 12 – 24 of the Articles of Association or in any other way withdraw from CHIBA RING during Development Phase 1 and 2 and up to the conclusion of Development Phase 2, CHIBA RING will refund the "investment capital" or "development levy" invested by such a shareholder (member). Such refunds will not be interest bearing and will be subject to the deduction of an administrative fee.
- 6.5 In exceptional circumstances where a Shareholder chooses to dispose of, sell or transfer his / her block of hundred (100) shares in terms of the procedure in Article 12 – 24 of the Articles of Association, or in any other way withdraw from CHIBA RING, before the completion of Phase 2 but after the change of land use has successfully been completed, and so registered, a General Meeting of Shareholders may decide to calculate the refund of the "investment capital" or "development levy" due to such a Shareholder based on the value of the share block, where the value exceeds the value of the "investment capital" or "development levy". Such refunds will not be interest bearing and will be subject to the deduction of an administrative fee.
- 6.6 Any moneys or refunds due to a former Shareholder (member) in terms of "investment capital" or "development levies" will only be made once a new shareholder (member) effects payment for their share block in CHIBA RING to replace an outgoing shareholder (member) and once all the necessary documents have been signed and the share certificate returned.
- 6.7 In exceptional circumstances and if there is undue delay in a new shareholder (member) effecting payment for a share block, repayment could be made prior to receipt of such payment from a new shareholder (member), if this does not negatively impact on the cash flow of CHIBA RING and if this is approved by the Board.

## **7 COMPANY OPERATIONAL COSTS**

- 7.1 The Company may require shareholders (members) to, by agreement in a General Meeting of Shareholders (members), pay an annual levy to fund Company Operational costs as budgeted.
- 7.2 Company Operational Costs, amongst others, may include costs and expenditure related to the operations of the company, ongoing land management and house expenses. Company Operational costs may not include any cost referred to as Development Costs (Section 3 above).
- 7.3 Any Shareholder (member) contributions as agreed to for Company Operational costs will not accrue to a Shareholder's Loan account and or investment capital, nor would such operational cost levies be refundable on withdrawal from CHIBA RING.

## **8 ANNUAL BUSINESS PLAN AND BUDGET**

- 8.1 The Board shall prepare an annual budget and business plan for activities related to both the Development Project as well as the Company operational expenses and submit the same for approval to a General Meeting of Shareholders (Members) at least 1 month before the start of the financial year (with an indication of the relevant financing requirements and options).
- 8.2 The Board shall take all reasonable action and steps to ensure that the business plan is executed, as approved and within the approved budget, on an annual basis.

## **9 RELATIONSHIP OF THE SHAREHOLDERS**

- 9.1 The relationship of the shareholders (members) between themselves shall be governed by this Memorandum of Understanding and none of the shareholders shall:
- 9.1.1 be entitled or empowered to represent or hold out to any third party that the relationship between them is that of a partnership, joint venture or the like; or
- 9.1.2 by reason of the actions of any of them incur any personal liability as co-shareholders (co-members) to any third party or be entitled to bind the credit of any other shareholder (member)
- 9.2 The Shareholders register their commitment to engage in Board initiated discussions and or processes where these may be necessary to facilitate mediation and or clarification of personal differences and misunderstanding between (individual) Shareholders.

## **10 CONFLICTING ARTICLES**

- 10.1 Should the Articles of Association of CHIBA RING at any time be in conflict with the provisions of this Memorandum of Understanding, then
- 10.1.1 the provisions of the Articles of Association of CHIBA RING in terms of the relevant legislation shall prevail; and
- 10.1.2 any of the shareholders (members) shall be entitled, by notice in writing to the other, shareholders (members), to require the other shareholders (members), who shall be obliged to do all such things, sign all such documents and resolutions as may be necessary to amend this Memorandum of Understanding so as to conform with the provisions of the CHIBA RING Articles of Association.

## **11 COOPERATION AND GOOD FAITH**

- 11.1 Each of the parties undertakes to exhibit the utmost good faith to the others in giving effect to the terms of this Memorandum of Understanding and hereby undertakes to:



- 11.1.1 do, and to obtain the doing by other persons of all acts to give effect to this agreement.
- 11.1.2 To refrain and encourage that other persons will refrain from doing, all acts that undermine this agreement; and
- 11.1.3 pass, and to encourage the passing of all such resolutions and/or the appointment of directors or shareholders (members) of CHIBA RING, to the extent that this may be required to give effect to the import or intent of this agreement

THUS DONE AND SIGNED BY THE CHIBA RING SHAREHOLDERS ON THE DATES AND AT THE PLACES SET OUT  
HEREUNDER:

**SHAREHOLDERS (MEMBERS)**

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**SHAREHOLDER [NAME]**

**WITNESS**

**DATE**

**PLACE**