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THE KISUMU COUNTY LAKEFRONT DEVELOPMENT CORPORATION BILL, 2021

A Bill for

AN ACT of the County Assembly of Kisumu to make provision for the establishment of Kisumu Lakefront Development Corporation as a Special Purpose Vehicle (SPV), to develop and manage economic and social activities of the lakefront, mobilise resources and for connected purposes.

ENACTED by the County Assembly of Kisumu as follows—

PART I—PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Kisumu County Lakefront Development Corporation Act, 2021 and shall come into operation upon Publication in the *Kenya Gazette*.

Interpretation

2. In this Act, unless otherwise requires —

"agreement" means the Kisumu Lakefront Development Corporation Agreement negotiated and binding arrangement between member institutions to form and become a member of the Kisumu Lakefront Development Corporation and shall be as set out in the first Schedule;

"board of directors" means a group of persons elected by the shareholders of Kisumu Lakefront Development Corporation to govern and manage its affairs;

"county" has the meaning assigned to it in Article 176 of the Constitution;

"development" means the process of converting land to a new purpose by constructing buildings or making use of its resources;

"member institutions" means County Government of Kisumu (CGK),Lake Basin Development Authority(LBDA), Kenya National Chambers of Commerce and Industry (KNNCI)Kisumu Chapter, Kenya Railways Corporation (KRC),Kenya Ports Authority (KPA), and Nyanza Club Trustees;

"Kisumu Lakefront Development Corporation (KLDC)" means a special purpose vehicle for the County Government of Kisumu to oversee the Lakefront Development Projects;

"lakefront" means the area or land at the edge of the lake;

"resource" means any factor of production or economy needed for profitable activity or with the capability of supplying necessary commodities and shall include natural resources, labour resources, economic resources and capital resources;

"special purpose vehicle" means the investment partnership corporation to be jointly promoted by the Parties hereto in accordance with and as indicated in this Agreement.

Objects

3. The objects of the Kisumu Lakefront Development shall be carried out in consultation with the County Government of Kisumu and the City Board to—

(a) create a master plan for lakefront development;

(b) develop policy framework for investment and cooperation along the lakefront;

(c) obilise for funds for the development and maintenance of the lakefront facilities; and

(d) approve land allocation(s) and development plans at the lakefront.

Guiding Principles

4. All persons under this Act shall, in the performance of their functions, be guided by the following principles in addition to the National Values and Principles set out under Articles 10 and 174 of the Constitution—

(a) the promotion of the social and economic development of all persons residing within and along the lakefront in order to ensure the realization of their economic and social rights under the Constitution;

(b) equity and the need to ensure that persons residing along the lakefront areas can access facilities and services that are available;

(c) the principles of public finance set out under Article 201 of the Constitution;

(d) the promotion of good governance and accountability in the lakefront development and exploitation of resources within the counties;

(e) coordinated public participation in the formulation, implementation and monitoring of plans and projects to be implemented on the lakefront;

(f) the need to promote sustainable development in the exploitation of resources on or within the lakefront;

(g) transparency and accountability in the implementation of programmes and activities required to be undertaken pursuant to this Act, and

(h) availability and access to both services, and timely, reliable information with respect to the development and exploitation of resources and projects and programmes undertaken pursuant to this Act and the outcomes of such projects and programmes.

Obligation of the County Government of Kisumu on lakefront development

5. The county government shall in realizing the objectives of this Act—

(a) carry out an assessment of all resources within the lakefront and the infrastructural requirements that would be necessary to ensure the effective exploitation and development of resources at the lakefront;

(b) implement the objectives, policies and strategies to achieve autonomous management of the resources at the lakefront;

(c) identify any actual or potential effects of the lakefront exploitation, development which are of economic significance;

(d) preserve or enhance the state of the whole or any part of the environment at the lakefront; and

(e) empower the KLDC to carry out lakefront activities.

PART II – ESTABLISHMENT OF THE KISUMU LAKEFRONT DEVELOPMENT CORPORATION

Establishment of the Kisumu Lakefront Development Corporation

6. There is established an entity to be known as the Kisumu lakefront Development Corporation as a Special Purpose Vehicle (SPV) to undertake Kisumu lakefront development on behalf of the County Government of Kisumu and the City.

7. The entity shall be a body corporate with perpetual succession, a common seal and shall in its corporate name be capable of-

a) suing and being sued;

b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

c) making investments;

d) entering into contracts; and

e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

8. The management of the Corporation vests in the Board of Directors which consists of—

(a) a chairperson;

(b) The Non- Executive Board of Directors of SPV (hereinafter referred to as "Board") shall consist of Six (6) Members, of whom County Government of Kisumu will nominate four and the Shareholders will nominate three from amongst themselves. Existing Board Members have the right to reject nominees who do not meet the minimum qualifications agreed.

(c) The Managing Director who shall be an ex – officio member and shall act as Secretary to the Board

Appointment of Chairperson

(2) The inaugural chairperson shall be appointed by the Governor of the County Government of Kisumu and all subsequent chairperson shall be selected from amongst the Directors nominated by the shareholders.

Qualification for appointment

(3) A person is qualified for appointment as chairperson or if the person—

(a) is a citizen of Kenya;

(b) holds a bachelor's degree from a recognized university;

(c) has knowledge and experience of at least five years in governance;

(d) meets the requirements of Chapter Six of the Constitution; and

(e) has had a distinguished career in the field.

(4) A person is qualified for appointment as a member under sub section (1) (b) if the person—

(a) is a citizen of Kenya;

(b) holds a degree from a recognized university;

(c) has experience of at least three years; and

(d) meets the requirements of Chapter Six of the Constitution.

(5)The term of office for the chairperson, or a member appointed under sub section (1) (c) is five years which may be renewed for one further term after which the person is to retire from the Board. All Board members must seek extension of appointment after five years and none can serve for more than two terms without AGM approval.

(6)Notwithstanding subsection (5), the members of the Board are to retire on rotation in a manner that ensures that not more than two thirds of the members retire at the same time.

Functions of the Board

9. The functions of the Board are to—

(a) ensure proper and efficient exercise of the powers and performance of the functions of the Corporation;

(b) advise the management of the Corporation generally on the exercise of the powers and the performance of the functions of the corporation;

(c) approve the estimates of the revenue and expenditure of the Corporation; and

(d) perform such other functions as are provided for under this Act or any other written law.

Conduct of Business

(d) (1) The conduct and regulation of the business and affairs of the Board is as set out in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

Remuneration of the Board

10. The remuneration of the members of the Board is determined by the Shareholders in consultation with the Salaries and Remuneration Commission.

Managing Director

11. (1) There is a Managing Director of the Corporation who is the accounting and chief executive officer of the Corporation.

(2)The Managing Director is appointed by the Board of Directors and recruited through a competitive process.

(3) To qualify for appointment as a Managing Director, a person must—

(a) possess a degree from a recognized university; and

(b) have had experience in management for a period of not less than five years.

(4)The Managing Director holds office for a period of three years, on such terms and conditions as the Board may in consultation with the Salaries and Remuneration Commission determine, and may be eligible for re-appointment for a further and final term of three years.

(5) The Managing Director is an ex-officio member of the Board and has no right to vote at any meeting of the Board.

(6) The Managing Director—

(a) is subject to the direction of the Board, responsible for day to day management of the affairs of the Corporation;

(b) is in consultation with the Board, responsible for the direction of the affairs and transactions of the Corporation, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the Corporation; and

(c) may carry out any other function as may from time to time be assigned by the Board.

(7) The Managing Director may—

(a) at any time resign from office by issuing notice in writing to the chairperson of the Board;

(b) be removed from office by the executive member on recommendation of the Board, for—

(i) serious violation of the Constitution or any other written law;

(ii) gross misconduct, whether in the performance of the functions of the office or otherwise;

(iii) physical or mental incapacity to perform the functions of office;

(iv) incompetence; or

(v) bankruptcy.

Staff of the Corporation

12. (1) The Corporation may appoint such staff as are necessary for proper discharge of its functions under this Act, upon such terms and conditions of service as it may in consultation with the Salaries and Remuneration Commission determine.

(2)The Corporation must—

(a) recruit staff through a competitive process; and

(b) ensure that there are sufficient number of staff qualified in matters related to finance, investment analysis and management and project management.

The Common Seal of the Corporation

13. (1) The common seal of the Corporation, when affixed to a document and duly authenticated, is to be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Board under this section is presumed to have been duly given.

(2) The common seal of the Corporation is authenticated by the signature of the chairperson of the Board and the Managing Director.

(3) The vice-chairperson may, in the absence of either the chairperson or the Managing Director, in any particular matter, authenticate the seal of the Corporation on behalf of either the chairperson or the Managing Director.

(4) The common seal of the Corporation is kept in the custody of the Managing Director or of such other person as the Board may direct, and must not be used except upon the order of the Board.

Protection from personal liability

14. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Corporation is, if the matter or thing is done bona fide for executing the functions, powers or duties of the Corporation under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) Any expenses incurred by any person in any suit or prosecution brought against the person in any court, in respect of any act which is done or purported to be done by the person under the direction of the Board, must, if the court holds that such act was done bona tide be paid out of the funds of the Corporation, unless such expenses are recovered by the person in such suit or prosecution.

Liability for damages

15. The provisions of section 13 must not relieve the Corporation of the liability to pay compensation or damages to any person for any injury to the person, their property or any of the person's interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Corporate governance

16. The Corporation must establish a framework for and implement corporate governance principles and practices applicable to similar entities.

Annual report

17. (1) The Corporation must, within three months after the end of each financial year, prepare and submit to the County Executive Committee Member a report of the operations of the Corporation for the immediately preceding year.

(2) The annual report must provide information regarding the activities and plans of the Corporation during the year to which it relates sufficient to impart an accurate understanding of the nature and scope of its activities and its plans and priorities and, without limitation, must include—

(a) details of the performance of the Corporation against its key performance indicators;

(b) report on the overall status of the investment portfolio and profitability of each investment venture including the Corporation's projections for the following year;

(c) such information and other material as the Corporation may be required by this Act or regulations made thereunder to include in the annual report;

(d) measures taken to implement corporate governance principles and practices;

(e) the financial statements prepared under section 21;

(f) report of the auditor-general prepared under section 21; and

(g) such additional information or other material as the executive member may request in writing.

(3) The County Executive Committee Member must, within fourteen days of receiving the annual report submit it to the county executive committee who thereafter must within twenty one days transmit

the report to the clerk for tabling before the county assembly for consideration.

(4) The county assembly may after considering the report make recommendations to the County Executive Committee Member on appropriate ways of effectively implementing the Act.

Financial provisions

PART III—GENERAL PROVISIONS

18. (1) There shall be charged on and paid out of the County Treasury Fund all payments required to be made from time to time by the County Government of Kisumu under the terms of the Agreement.

(2 The County Government shall consider the Kisumu Lakefront Development Corporation budget in its annual budgetary estimates as guided by the Public Finance Management Act, 2012.

(3) The County Government shall upon (2) above disburse funds to KLDC in installments within the financial year.

(4) All the expenditures of KLDC shall be utilized to finance activities of KLDC as shall be approved by the Board.

(5) The financial year of KLDC shall run from 1st July to 30th June.

(6) The accounts of the KLDC shall be audited by the Auditor General.

(7) Other resources of the KLDC shall include extra budgetary resources such as;

(i) grants, donations, funds for projects and programmes and technical assistance; and

(ii) income earned and or fees charged from activities undertaken by the KLDC

Amendment of the Agreement

19. If the Agreement is amended or modified, the County Assembly shall cause a notice of the amendment or modification and of the date when the amendment or modification comes or is deemed to have come into operation, to be published in the Gazette.

Regulations

20. The Kisumu Lakefront Development Corporation may make regulations for carrying into effect the provisions of the Agreement.

Consequential legislation

21. The County Assembly shall enact any legislation required by this Act to be enacted to govern a particular matter.

SCHEDULES

FIRST SCHEDULE

KISUMU LAKEFRONT DEVELOPMENT CORPORATION AGREEMENT

WHEREAS, the **CONTRACTING PARTIES** agree to strengthen their economic, industrial, social, technological and other ties for their fast, balanced and sustainable development by the establishment of the **KISUMU LAKEFRONT DEVELOPMENT CORPORATION**;

WHEREAS the **PARTIES** seek to develop a viable Lakefront Development Project that takes a multi-faceted approach in contributing towards improving the quality of life of their residents through development of the intalacustine region, accessibility to water, improved infrastructure, partnerships, access to roads, maritime services and water development;

WHEREAS the **PARTIES** have agreed to form a joint public private partnership and have jointly initiated the lakefront development project to contribute towards improving the quality of life of their residents through accessibility to water, improved infrastructure, access to lakefront, improved waterfront, establishment of public beach and coordinated maritime services.

WHEREAS the **PARTIES** have the financial, human and technical resources needed for the achievement of the objectives of this Agreement;

NOW, THEREFORE, COUNTY GOVERNMENT OF KISUMU, KENYA PORTS AUTHORITY, KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY KISUMU COUNTY, KENYA RAILWAYS CORPORATION, LAKE BASIN DEVELOPMENT AUTHORITY AND NYANZA CLUB TRUSTEES wish to form, enter into Joint Venture Agreement to jointly promote, invest, and spur development within the Lakefront;

The **PARTIES** have had discussions to finalize the manner in which the Joint Venture will conduct its business and its day to day management and operations and wish to record in writing the said terms and conditions mutually agreed upon by and among them matters incidental and ancillary thereto;

NOW THEREFORE, in consideration of the mutual covenants contained herein, **COUNTY GOVERNMENT OF KISUMU, KENYA PORTS AUTHORITY, KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY KISUMU COUNTY, KENYA**

RAILWAYS CORPORATION, LAKE BASIN DEVELOPMENT AUTHORITY AND NYANZA CLUB TRUSTEES hereby agree to establish a joint venture corporation being a Special Purpose Vehicle incorporated association under the name of **KISUMU LAKEFRONT DEVELOPMENT LIMITED** or such other name as the **PARTIES** shall unanimously agree from time to time (hereinafter called the "Special Purpose Vehicle") for the purposes of:

(a) Strengthening the economic, industrial, social, technological and other ties for fast, balanced and sustainable development of the Lakefront;

(b) Fostering and accelerating economic and social development of the Lakefront in order to improve the living standards of their people;

(c) Investing in commercial enterprises and engaging in economic activities that will alleviate unemployment within Kisumu County;

(d) Establish, develop and expand hotels and recreational facilities within the Lakefront;

(e) Enhance accessibility to Water;

(f) Improve develop and expand Maritime services;

(g) Shipyard development at the Lakefront;

(h) Develop water spots at the Lakefront;

(i) Infrastructural development;

(j) Expansion of the golf course to international standards;

(k) Ensuring water quality;

(l) Preserving and Conserving the ecosystem;

(m) Restore the natural environment and culture;

(n) Strengthen diverse mobility choices;

(o) Joint Capacity building; and

(p) Performing all the activities to be undertaken by the **PARTIES** by the Joint Venture.

ARTICLE 1. DEFINITIONS

1. The terms stated below have the following respective meanings within this Agreement, unless the context results in a different meaning.

(a) "AFFILIATE" with respect to PARTIES, shall mean any entity (other than the SPV) which controls or is controlled by or is under the common control of the PARTIES respectively. An entity controls, directly or indirectly, more than fifty one percent (51%) of the voting securities or voting interests of the said other entity or when it controls the composition of the board of directors of the said other entity.

(b) "BOARD" or "BOARD OF DIRECTORS" shall mean the Board of Directors of the SPV.

(c) "MEMORANDUM AND ARTICLES OF ASSOCIATION" refers to the document agreed among the PARTIES to this Agreement which stipulates the objective, the organizational principles and the methods of internal management, shareholding and administration for the Special Purpose Vehicle (SPV) in accordance with the principles laid down in this Agreement.

(d) "PERMITTED NOMINEE" means any "AFFILIATE" of a Party who has been permitted by that Party to acquire share in the SPV.

(e) "PARTY" and "PARTIES" shall mean COUNTY GOVERNMENT OF KISUMU and SHAREHOLDERS individually and collectively as the context may require.

(f)"JVA" shall mean Joint Venture Agreement" or "THIS AGREEMENT" shall mean this present Agreement and shall include any subsequent written, addendums and amendments thereto.

(g) "Internal Corporate Restructuring": any sale, merger, dissolution, spin- off and more in general, any legal act or fact leading to the transfer of any shares, assets or liabilities of Kisumu Lakefront Development Corporation and affiliates.

(h) "SPV" means the investment partnership corporation to be jointly promoted by the PARTIES hereto in accordance with and as indicated in this Agreement.

ARTICLE 2. FORMATION OF THE KISUMU LAKEFRONT DEVELOPMENT CORPORATION

2.1 The Corporation shall be a Special Purpose Vehicle incorporated under the name and style of **KISUMU LAKEFRONT DEVELOPMENT CORPORATION** or such other name as may be mutually agreed by the PARTIES and approved by the Registrar of Companies in accordance with the Company Laws of Kenya.

2.2 The Corporation will be an investment partnership between County Government of Kisumu and Shareholders with limited liability by share in accordance with the Laws of Kenya. The liability of the shareholder in the SPV will be limited to their respective investments on issued and paid-up capital.

2.3 The MEMORANDUM and ARTICLES OF ASSOCIATION of the SPV shall reflect the terms of this Agreement and be in such form as may be agreed among PARTIES. In the event of any inconsistency between this Agreement and the MEMORANDUM and ARTICLES OF ASSOCIATION of the SPV, the PARTIES agree and confirm that the provisions of the MEMORANDUM and ARTICLES OF ASSOCIATION would prevail.

ARTICLE 3. OBJECTIVE OF SPV

(a) To have a sustainable lakefront economic, industrial, social and technological development.

(b) To carry out infrastructural development along the Lakefront.

(c) To improve, develop and expand Maritime services.

(d) To carry out Environment conservation.

(e) To carry out trade and investment.

(f)To promote Partnerships.

(g) To promote cooperation.

(h) To enhance peaceful coexistence.

(i)To promote peaceful settlement of disputes.

(j)To enhance intergenerational equity.

(k) To support and promote the growth of Industries and Development in Kisumu County and the Country at large.

(l)To set-up firms inclusive all relevant development programs, sustainability elements, technological advancements not limited but inclusive of all investments.

(m) To create and manage investments for effective business and industries.

(n) To create avenues for investors' access to capital to enable them build their businesses.

(o) To create and manage project development.

(p) To perform all the activities incidental thereto for the purposes of achieving the objectives of the PARTIES in the Joint Venture.

ARTICLE 4. SHARE CAPITAL

4.1 SPV will initially have an authorized share capital of Kshs. 100,000/= divided into One Thousand Ordinary Shares 1000(Kshs.) each which authorized share capital will be in stages increased to such other amount as may be agreed among the PARTIES. Parties agree that an increase of share capital will only be exploited after the SPV has first increased its debt funding and in the event that debt funding has failed or is not feasible, subsequent exploit a shareholder loan. The SPV will have a maximum of 3:1debt to equity ratio.

4.2 The initial issued, subscribed and paid-up share capital of the SPV will be 100,000/= divided into one thousand Ordinary Shares of 100/= (Kshs.) each. Such issued, subscribed and paid-up capital shall be subscribed for cash at par and paid-up and held by the PARTIES hereto as follows;

The **PARTIES** will contribute to the authorized share capital of the SPV in the ration of;

90(ninety) shares for County Government of Kisumu,

1(one) share for Africities,

1(one) share for Kenya Ports Authority,

1 (one) share for Kenya National Chamber of Commerce and Industry Kisumu County,

1 (one) share for Kenya Railways Corporation,

1(one) share for Lake Basin Development Authority,

2(two) shares for Nyanza Club Trustees,

1(one) share for Business Community and

1(one) share for Professionals.

The PARTIES are at liberty to make a one-off payment of their respective percentage share of contribution of the authorized capital into the SPV.

4.3 The capital will always exceed the cash requirement of the SPV as projected in the approved budget estimates for the respective financial year of the SPV as long as the percentage of contribution to the issued and paid up share capital will remain as agreed between PARTIES respectively.

4.4 The issued, subscribed and paid-up equity may by mutual agreement be increased. Such further issue of shares be made to the PARTIES in the proportion referred to in Clause 4.2 unless otherwise agreed in writing by the PARTIES. In the event a PARTY does not wish to subscribe to such further issue of share of SPV offered to it and required to finance the ongoing operation of the SPV's business, then the remaining PARTY shall have the right to take up such of the shares refused to be taken up by the first PARTY and the first PARTY shall have its holding in the equity share capital of SPV diluted accordingly.

4.5 All contributions by each PARTY will be made by way of money transfer into an account to be opened jointly by the PARTIES.

4.6 In the event of failure to meet capital calls by the PARTIES of the SPV, either PARTY will provide a loan at 1% per day and then after 30 Days the loan will become convertible at a discount share price of 90%, after 60 days at a discounted share price of 75% and after 90 days at a discounted share price of 50%.

4.7 In the event of PARTIES' mutual agreement to change the pattern of holding of the equity share capital of SPV to enable SPV to offer shares to public or any other strategic investor, the respective shareholding of the PARTIES shall be changed in such proportion as the PARTIES may decide and mutually agree in writing.

4.8 Each PARTY will provide proof of availability of funds as per the budget estimates for each financial year.

ARTICLE 5. TRANSFER OF SHARES TO THIRD PARTIES-RIGHT OF FIRST OFFER, RIGHT OF FIRST REFUSAL, TAG-ALONG, DRAG-ALONG RIGHTS

5.1 Any PARTY or PARTIES /PERMITTED NOMINEES (Selling Shareholder) shall not be entitled to transfer/ sell any of the shares held by it/them in SPV except in accordance with the provision of this clause;

a) If any PARTY or its respective PERMITTED NOMINEES (hereinafter referred to as "Offeror") desire to transfer any or all of its/ their shares in SPV to any person or equity, it shall offer such shares in writing in the first instance to other PARTIES hereto (hereinafter referred to as "Offeree"). The Offeree shall be entitled to purchase the shares so offered or nominate any person or entity of its choice to accept the shares offered. The other PARTIES shall approve such Nominee hereto, provided that such approval shall not be unreasonably withheld. Sale and purchase of such shares shall be at a Fair Price as defined hereinafter.

The offeree shall be entitled to accept or reject such offer within a period of 90 (ninety) days from the date of receipt of the offer or within a period of 30 (thirty) days from the date of fixation of Fair Price, whichever is later. If the Offeree or its nominees do not convey its/ their acceptance in writing to the Offeror within such period, the offer shall be deemed to have been rejected by the Offeree.

Only if such offer is first rejected or is deemed to have been rejected by the Offeree, the Offeror shall be entitled to sell the shares to any third party or equity at the Fair Price or at a price higher than the Fair Price (hereinafter referred to as the "Opportunity Price"), provided, however, that once the Offeror identifies such third party the Offeror shall forthwith disclose to the other party the name of the third party and the opportunity price at which the shares are proposed to be transferred.

Upon such notification by the Offeror, the Offeree once again shall have the option to either purchase the said shares from the Offeror at the Opportunity Price or allow the Offeror to sell the said shares to the said third party at the Opportunity Price; the Offeree shall exercise such option within 10(ten) days of such notification.

Such right of the Offeror to sell the shares to any third party shall be exercised within a period of 60(sixty) days from the date when such offer is deemed to have been rejected.

The Offeree/its nominees shall have a right of first refusal as aforesaid only if it and /or its nominee agree to purchase all the shares offered by the Offeror.

b) Notwithstanding anything herein contained where a PARTY exercise its right to sell the shares to any third-party consequent to the other PARTIES rejecting the second offer being deemed to have been rejected as outlined in Clause (a) above, the exercise of such right will be subject to;

i) The third party being acceptable to the other PARTIES. In the event of none acceptance of the third party by the Party who has been offered the right of first refusal, the Party selling the shares shall proceed and sell them to any third party without further reference.

ii) Such third party agreeing in writing as a condition precedent to the transfer of share to it to be bound by the terms and conditions of this Agreement as though it was a signatory to this Agreement.

c) Notwithstanding anything herein contained, should any PARTY/ its PERMITTED NOMINEES accept the offer to purchase of the other PARTIES/its PERMITTED NOMINEE shares but be prevented from acquiring such shares by virtue of any Government restrictions or refusal

of approval, the first PARTY/its PERMITTED NOMINEES shall have a right to nominate any party who is free to acquire such shares, and agree to abide by this Agreement, provided however that the other PARTIES to this Agreement has been consulted in this regard.

d) Notwithstanding any transfer, acquisition of shares as contemplated in clauses (a) above, the PARTIES shall at all times be responsible and liable to perform all their obligations to SPV and to each other so long as they are the shareholders in SPV.

e) Nothing contained in clause (a) above shall apply to transfer of shares by the PARTIES (hereinafter referred to as "Transferor") to its PERMITTED NOMINEES (hereinafter referred to as "Transferee"), provided that such nominee agrees in writing as a condition precedent to the transfer to be bound by the terms and conditions of this Agreement as though it was a signatory to this Agreement and undertakes to re-transfer the shares to the Transferor in the event that the Transferee ceases to be the PERMITTED NOMINEE of the Transferor. Each of the PERMITTED NOMINEES holding shares of SPV pursuant to this clause shall be deemed to be a PARTY to this Agreement as if originally named herein.

5.2 Tag Along-In the event a PARTY sells and/or transfers its shares, PARTIES will have a right to tag along the sale or make any variation thereof on a pro-rata basis.

5.3 Drag along-in the event that PARTY(S) sells and/or transfers its shares to a third party at the agreed fair price. The following provisions shall apply in exercising this clause:

5.3.1 The offer may also need to match or exceed a fair price time period before the drag along right can be triggered.

5.3.2 The price may only be in cash, payable in full at a completion (precluding, for example, any non- cash consideration (such as shares or loan notes), deferred consideration or an earn-out).

5.3.3 There should be an undertaking by PARTIES to cooperate and deal with the legal formalities of transfer and holding the purchase price in a proper and timely manner.

5.3.4 The provision 5.3.2 and 5.3.3 are not applicable in the event of a (i) transfer by a PARTY to a PERMITTED NOMINEE, and (ii) in the event of an internal corporate structure of Lakefront Development Corporation or one of its successors, i.e. the transfer of any shares/ assets/ liabilities of PARTIES.

5.4 "Fair Price" means the price to be determined by mutual agreement of the PARTIES within a period of 15(fifteen) days from the date of the offer being communicated to the other PARTIES. In the event

of an agreement not being reached, the PARTIES shall within a maximum period of 5 Days (five) appoint their auditors/ chartered accountants (of their choice) to value the shares independently and require such valuation to be made within a maximum period of 30(thirty) days from the date of appointment. In the event of there being a difference in the two valuations less than 10 % (ten percent) of the higher value than the Fair Price shall be the average of both the valuations. If the difference in each valuation is more than 10% ten percent of the higher value than in that event the aforesaid auditors/ chartered accountants of the PARTIES shall within a period of 10 days of the later valuation mutually appointed in independent reputed firm of chartered accountants to be the final valuers of the shares. Such valuers shall determine the Fair Price as an independent valuer within the period of 30 days of the appointment and such valuation shall be final and binding upon the PARTIES.

The auditors/chartered accountants shall act as valuers. The valuation shall be made on the basis of SPV being a going concern and taking into account the historic results of a representative period and reasonable projections of the future.

5.4 In principle, the PARTIES agree that there will be no transfer of shares until 5 (five) years effective from the date of incorporation of the SPV.

ARTICLE 6. BOARD OF DIRECTORS AND MANAGEMENT OF THE SPV

6.1

a) The Non- Executive Board of Directors of SPV (hereinafter referred to as "Board") shall consist of Seven (7) Members, of whom County Government of Kisumu will nominate four and the Shareholders will nominate three from amongst themselves. Existing Board Members have the right to reject nominees who do not meet the minimum qualifications agreed. All Board members must seek re-election after five years and none can serve for more than two terms without AGM approval. COUNTY GOVERNMENT OF KISUMU shall appoint the first Chairperson

b) The Board of Management will be composed of the Chief Executive Officer (CEO) appointed by the Governor of County Government of Kisumu. The Chief Executive Officer shall report to the Board of Directors for the KISUMU LAKEFRONT DEVELOPMENT CORPORATION. The rest of the management team shall report to CEO.

c) Persons to be considered for any appointment shall have the requisite skills and competencies required for the proper management of

the Board of the KISUMU LAKEFRONT DEVELOPMENT CORPORATION.

d) The appointment to the Board shall observe one third gender rule/requirement. In avoidance of doubt, at no time shall one gender exceed two thirds of the membership.

e) A Party shall enjoy rights of representation on the Board as long as it holds equity shares in the capital of KISUMU LAKEFRONT DEVELOPMENT LIMITED.

6.2 For purpose of implementing this Agreement, the PARTIES here agree and undertake that they shall, at all times, exercise their respective voting rights as shareholders in the SPV in such manner and shall ensure that their respective representatives on the Board of the SPV shall so vote at the Board and shall so act so as to ensure the proper implementation and observance of the terms and provisions contained in and in the spirit of this Agreement.

6.3 Directors unable to attend Board Meetings shall have the right to give their voting proxy to an existing Board member. Such proxy should be presented to the Chairperson prior to the start of the meeting. A Board Member holding a proxy shall hold full voting rights for that proxy.

6.4 In principle, only the Board and management shall jointly bind the SPV and the Board shall stipulate Regulation which will provide for delegation of powers and representations for specific tasks and activities.

6.5 Any decision made by the Board or the Executive Board of management either in a formal setting email/fax/via video provided that such decisions are made with due observance of the relevant voting procedures as set out in this agreement shall be constructed to be properly made, valid and binding decision of the board or the Executive Board of Management, and shall be confirmed in the first next (physical) meeting.

6.6 A vacancy on the Board shall be filled in as follows;

a. In the case of a director who was nominated/ designated for appointment by PARTIES vacating his office as a director, the person to be appointed to fill the vacancy shall be one nominated/ designated by PARTIES.

6.7 In the event of appointment of additional directors any Party shall have the right to nominate such directors, subject to provisions of Clause 6.1.

6.8 The Governor of COUNTY GOVERNMENT OF KISUMU shall have the right to appoint a CEO of SPV. The CEO shall be in charge

of the day-to- day operations and management of SPV. The Board shall vest the CEO with substantial powers of management, which he shall exercise subject to the overall superintendence, control and direction of the Board. The CEO shall serve for a term of 5 (five) years renewable once.

6.9 The CEO shall have full responsibility and authority to manage the affairs of SPV within the framework of the approved business plan, and subject to the power required to be exercised by the Board. The CEO shall submit monthly reports of the operations of the SPV to the Board.

6.10 The representation of the PARTIES on any committee or subcommittee of the Board shall be on the same proportion and be computed in the same manner as their representation on the Board.

6.11 The following decisions when before the Board of SPV require unanimous approval;

(a) To issue and allot new shares, debentures or any detachable warrants or coupons or other instruments which enables the holder to obtain share in the SPV, transfer of shares and such other securities (which includes transfer of shares and such other securities amongst the PERMITTED NOMINEES and AFFILIATES as defined in Clause 1 of this Agreement);

(b) To engage in any activities other than those envisaged in the Agreement;

(c) To join any other company or to invest in any other company;

(d) To grant loans and/or credits other than those provided for in the business plan or approved in the annual budget, to assume any liabilities,, guarantees or commitments to third parties other than those approved in the business plan and in the annual budget;

(e) To change the total number of directors in the Board;

(f) To issue debt instruments and borrowings in excess of 30% of the paid up share capital;

(g) To dispose of assets other than those covered by the approved annual budget except in the event of disposal of an asset of value not exceeding Kshs.1M.

(h) To propose to the AGM dividends and appropriation of profits;

(i) To delegate authorities to any committee of directors, or CEO.

(j) To appoint and remove CEO.

(k) To approve the annual budgets including capital expenditures, strategic plans, investment plans, business development plans,

financial statements and balance sheet or any deviation therefrom and to undertake expenditure beyond approved budget;

(l) To offer guarantees to financial institutions/banks.

6.13 whenever legally necessary, exercise of the powers of the Board shall be subject to the approval of the general meeting of the shareholders by special resolution as per the law in force on the date of signing of this Agreement but might not require in future such special resolution as a result of change in law, then such business shall also be deemed to have been included in Clause

ARTICLE 7. BOARD MEETING AND SHAREHOLDERS' MEETING

7.1 the quorum for a meeting of the Board shall be not less than 50% of the total strength of the Board for the time being or three directors whichever is higher so long as there is representation of the PARTIES at the meeting.

7.2 The Board will meet as notified but not less than once in every three months.

7.3

(a) At least 15 clear days' notice in writing along with agenda mentioning the matters to be discussed and proposed to be decided at the Board Meeting shall be given to all the directors, such notices shall be sent to the business address of each such director. All notices given shall be given to all the directors with a copy to the PARTIES hereto by mails, fax or other electronic communication and confirmed in writing sent by similar means used.

(b) No decision at the Board Meeting on any item shall be taken which is not mentioned in the agenda of the Board Meeting unless all the directors or their alternate agree in writing or otherwise.

(c) Board Meetings may be convened at the shorter notice if all the directors of the SPV agree in writing or any other form of communication that will be agreed on by the Board and stipulated in the regulations of SPV.

7.4 The quorum for the Annual general meeting of the shareholders shall be two persons present in person so long as the PARTIES are entitled to nominate/designate directors, the quorum for the general meeting of the shareholders shall not be validly constituted unless

at least one representative of each of the PARTIES is present at least at such meeting, unless such requirement is waived in writing by the PARTIES, as the case may be, for the specific general meeting of the shareholders.

7.5 Where at an Annual General Meeting of the shareholders any business requires approval of the shareholder by way of a special resolution (including business which as per the law in force on the date of signing this Agreement requires approval by way of special resolution but might not require in future such special resolution as a result of change in law), such approval in order to be valid and binding on the SPV would have to be by way of unanimous consent of all the shareholders.

7.6 Procedure for conducting Annual General Meeting

7.6.1 Upon the convening of an Annual General Meeting, voting shall occur and the resolutions of the meeting shall be passed, in accordance with the SPV's Memorandum and Articles of association.

7.6.2 Each Shareholder of the SPV shall have the right to cast one vote in the Meeting.

7.6.3 Resolutions shall be made during an Annual General Meeting at which all Shareholders of the SPV are represented.

7.6.4 In so far as no greater majority is prescribed by law, in the Articles of Association, or in this Agreement, all resolutions are adopted by simple majority of the votes cast.

7.6.5 In principle, the Shareholder of the SPV agree that the provisions of the Memorandum and Articles of Association of the SPV shall prevail and guide in the procedure of Board of Directors meetings and the Annual General Meetings.

ARTICLE 8.STRATEGIC PLANS AND BUDGETS.

8.1 The CEO shall in consultation with the Board prepare a strategic plan for 5 years term and present to the Board.

8.2 The CEO shall within the framework of the strategic plan (as approved by the Board) submit annually at least 1 month before the beginning of each financial year. Such annual budget shall be required to be approved by the Board.

ARTICLE 9.DIVIDENDS

9.1 Subject to the provisions of the Act, the MEMORANDUM AND ARTICLES OF THE ASSOCIATION of the SPV and having regard to the future business requirements of SPV and commercial prudence the SPV for each financial year where overall equity is positive has the right

to declare dividend. Subject to the limits aforesaid, the Board may declare by way of interim dividend and / or recommend to the annual general meeting of the shareholders of SPV dividend payment as the Board may feel expedient/may decide to have the dividends injected into the SPV.

9.2 Profits will be reinvested into the SPV at an agreed ratio.

ARTICLE 10.FINANCIAL YEAR, AUDITORS AND AUDIT

10.1 Financial Year

The PARTIES agree that the financial year of SPV will run from beginning of June to end of June the succeeding year.

10.2 Auditors

Accounts of the company shall be prepared and audited by the Auditor General.

10.3 Annual Audit

An annual audit of the books of accounts, records and affairs of SPV at SPV's expense shall be made each year immediately following the close of the financial year by SPV auditors. A signed copy of the report of the annual audit shall be submitted to each member of the Board within 3 months after close of the financial year.

ARTICLE 11. ACCOUNTS, RECORDS, REPORTS AND INSPECTION

11.1 Maintenance of Records

SPV will maintain separate, independent, accurate, complete, clear and satisfactory financial accounts for its business operations and shall keep records confirming to sound practice in accordance with Kenyan Laws requirements, which accounts shall be audited at the expense of SPV by its Auditors.

11.2 Monthly Financial Statements

The PARTIES shall ensure and cause SPV to deliver to the PARTIES monthly financial statements which shall include a profit and loss statement and a balance sheet not later than fifteen (15) working days after the end of each month.

11.3 Inspection of Records.

The PARTIES shall ensure that all the books and records of SPV including contracts, undertakings and all other documents executed by SPV, its directors or officers shall be open to inspection by the PARTIES and their authorized representatives' at all reasonable times.

11.4 Special Audit

The PARTIES will have the right at any time to have special audit made of the books of accounts, records and affairs of SPV but any special audit shall be at the expenses of the requesting Party, and if material discrepancies in any of SPV's accounts, records or affairs are discovered as a result of such audit, the expenses for such audit shall be paid by SPV.

11.5 Access

Each Party through its nominated directors or representative shall at its own expense be entitled to have:

11.5.1 Reasonable access at all reasonable times to inspect and obtain copies of books, records and documents under the control of SPV.

11.5.2 Reasonable access at all reasonable times to observe and inspect operations of SPV as would be allowed under applicable laws stated in Clause 18.1

ARTICLE 12. CONFIDENTIALITY AND INTELLECTUAL PROPERTIES

12.1 Confidentiality of the information

During the subsistence of this Agreement, each PARTY and/or its Affiliate(s) shall receive and maintain all Confidential Information (as defined hereafter, however disclosed) in the strictest confidence.

12.2 Limit to disclose

Each PARTY and/or its Affiliate(s) shall limit disclosure of any Confidential Information to those of its employees, agents and representatives on a need-to-know basis. Either PARTY prior to making disclosure of any Confidential Information shall exert best efforts to cause the receiving entity(ies) to execute papers and documents to effect substantial compliance with the provisions of this Clause.

12.3 Legal Obligation to Disclose

In case a PARTY and/or its Affiliate(s) or any of their employees, agents or representatives, becomes legally compelled to disclose any Confidential Information, such PARTY shall give sufficient notice to other PARTY so as to permit such other PARTY to seek timely protective order or other appropriate relief. If such order or order relief cannot be obtained, the PARTY being compelled to make disclosure shall only make disclosure of that which is legally required and no more.

12.4 Information in public domain

The obligation of confidentiality in respect of Confidential Information shall not apply to Confidential Information which is now in,

or hereafter comes into, the public domain otherwise than by breach of this Agreement.

12.5 Copies

Each PARTY and/or its Affiliate(s) shall make only such notes, sketches, drawings, photocopies or other written or photographic record relating to all Confidential Information as are absolutely necessary. All such materials shall belong to the PARTY and/or its Affiliate(s) to which the Confidential Information relates and, together with all other tangible expression of Confidential Information held by any party and/or its Affiliate(s) shall be returned to the owner forthwith upon termination of this Agreement.

12.6 Confidential Information

For the purpose of this clause Confidential Information shall mean;

12.6.1 With respect to SPV, all information (verbal or documented) relating to the business or operations of SPV, which is specifically identified by SPV at the time of disclosure as being confidential or proprietary;

12.6.2 With respect to any PARTY, all information (verbal or documented) relating to the business or operations of such PARTY or any of its Affiliates which is specifically identified by such PARTY at the time of the disclosure as being confidential or proprietary.

12.6.3 The shareholders of the SPV agree and acknowledge that the shareholders knowledge of each shareholder and its AFFILIATES shall continue to be owned by such shareholder and its AFFILIATES. Nothing herein shall constitute a transfer or license to use shareholders knowledge except if otherwise agreed in writing.

The term "Confidential Information" shall specifically include any tangible expression of such information, including without limitation, photographs, plans, drawings, renderings, journals, notebooks, computer programs, samples, models, prototypes, intellectual property rights and mock ups relating thereto, and shall further include any confidential or proprietary information owned by any other person or entity pursuant to maintain the same in confidence.

"Intellectual property rights" means all industrial and intellectual property rights and shall including registered trademarks, service markets, patents, utility models, registered designs, neighboring rights, trade secrets, knowhow, applications for, and the right to apply for any such rights, inventions, unregistered trademarks, unregistered trade and business names, databases and the rights in data bases and all other similar

proprietary rights which may subsist in any part of the world together with any renewals, extensions and revivals thereof.

"Shareholders knowledge" means any confidential information including any and all Intellectual property rights owned by or licensed to a shareholder of the SPV, acquired or developed prior to the date hereof or after the date hereof independently from this agreement and the SPV.

12.7 Exceptions

Notwithstanding anything contained in this Agreement to the contrary, the restrictions covered under this Agreement for the use or disclosure of Confidential Information shall not apply to any information;

12.7.1 Which is independently developed by receiving PARTY or any her Affiliate or lawfully received free restriction from another source having the right to so furnish such information; or

12.7.2 After it is generally available to the public without breach of this Agreement by the receiving PARTY or any Affiliate; or

12.7.3 Which at the time of disclosure to the receiving PARTY was known to such PARTY or Affiliate free of restriction so long as such prior knowledge is promptly disclosed in writing following disclosure of information ;or

12.7.4 Which the disclosing PARTY agrees in writing is free of such restrictions.

12.8 Inurement

Notwithstanding anything contained in this Agreement, the provisions of Clause on Confidentiality of the information shall continue to be applicable to and bind the PARTIES, without limit in point in time except and until such information enters public domain or is covered under Clause 12.7

12.9 Continued Use

Notwithstanding anything to the contrary contained in this Clause 12 in the event of termination of this Agreement by reason of any breach by a PARTY, the other PARTY shall be entitled to continue to use Confidential Information for the purpose of the activities of the SPV and such use of Confidential Information shall not be deemed to be a breach of the confidentiality obligation contained in this Article 12.

ARTICLE 13. TERMINATION

13.(1) Notwithstanding anything contained in this Agreement, either PARTY shall be entitled to terminate this Agreement in any of the following events;

(a) Any PARTY shall have the right to terminate this Agreement by giving a 6 months' written notice to the other PARTIES if that other PARTY or PARTIES voluntarily or otherwise commits a material breach of any of the terms and conditions of this Agreement, provided that if the breach is remediable, the right aforesaid shall be exercisable only if the breach is not remedied within 45 (forty-five) days of a written notice requiring to remedy the same;

(b) Any PARTY shall be entitled to terminate this Agreement forthwith by giving a written notice to the other PARTIES in the event of other Party or Parties being ordered to be wound up or entering into a compromise or arrangement with its creditors as a result of its bankruptcy or if a distress execution or other process shall be effected upon or if an encumbrance shall take possession of or a receiver shall be appointed of substantial part of the assets or property of the other PARTY or PARTIES.

(c) Upon one PARTY giving notice to the other PARTY or PARTIES consequent upon the other PARTY or PARTIES or its PERMITTED NOMINEES ceasing to be the shareholders in the SPV.

(d) Upon one PARTY giving notice to the other PARTY or PARTIES consequent upon the ownership or control of the other PARTY or PARTIES; Change of ownership or control in so far as a PARTY is concerned shall be deemed to have occurred if there is change in the ownership of shares of the PARTY which has the result of operative control being directly or indirectly exercised by any other entity other than that which presently controls the said PARTY.

(e) If the SPV's activities are seriously impeded as a result of force majeure for a period of more than 6 months as mentioned in Article 17 herein below.

(f)If any one or more of the conditions precedent set forth in Article 31 have not been fully met within four weeks from the date of this Agreement or such other extended date as may be mutually decided by the PARTIES.

(g) Either PARTY may voluntarily terminate this SPV by giving notice of not less than 1 year.

(2) During the period that the notice of termination is given by any PARTY until the time the issue is resolved or termination becomes effective, the members of the Board shall function as trustees for the smooth and continued operations and functions of the SPV.

ARTICLE 14. DEADLOCK

14. In the situation that the Shareholders in respect of a specific matter cannot come to an agreement during a General Meeting, at the request of one or more Shareholders, a second General Meeting shall be convened within a period of fourteen (14) Business Days after such a request has been made. In case during the second General Meeting, the Shareholders cannot reach agreement on the subject matter, either Shareholder shall be entitled to initiate a mediation process by written notice to the other Shareholder with an aim of reaching agreement on the subject matter. The provisions and procedure for arbitration shall apply to mediation as far as the appointment of a mediator and mediation venue is concerned.

ARTICLE 15. CONSEQUENCE OF TERMINATION

15.(1) It is expressly agreed by and among the PARTIES that in case of termination of this Agreement by any PARTY under Clause 13.1, they shall have the right to require PARTIES including its PERMITTED NOMINEES to sell their entire Shareholding in the SPV to any PARTY and PARTIES shall be obliged to sell their shares to at the price mutually agreed between the PARTIES failing which at the fair price determined in accordance with Clause 5.3.

(2) In case a PARTY has notified in writing that they or their PERMITTED NOMINEES do not wish to purchase the entire Shareholding including its PERMITTED NOMINEES, in that event, PARTIES shall be entitled to sell all the shares held by it/its PERMITTED NOMINEES to a Third Party at a price not less than the fair price referred to in Clause 14.1, provided that such a Third Party is acceptable to PARTIES and agrees in writing at a condition precedent to the transfer of shares to it to be bound by the terms and conditions of this Agreement as though it was a signatory to this Agreement.

(3) No waiver of antecedent breach and no grant of time and indulgence shall prejudice any subsequent right to terminate this Agreement.

(4) The termination shall not prejudice the right of any rights of any PARTY that may have accrued prior to the date of termination or expiration of this agreement.

(5) On the termination of this Agreement the PARTIES hereto shall refrain from any acts, indication, publicity or advertisements which may mislead any Third Party into belief that the PARTIES hereto still maintain business relationships with one another with reference to the SPV and neither PARTY hereto shall commit any act detrimental to the business or reputation of the other PARTIES; also the PARTIES shall ensure that the

SPV shall not use the name of the outgoing shareholder in any manner either in publicity material or otherwise.

ARTICLE 16. DAMAGES

16.(1) In the event of breach of any obligations stipulated in this Agreement or the failure to duly fulfill an obligation in accordance with the provisions of this Agreement on the part of one of the PARTIES, the defaulting PARTY shall be obliged to compensate the non-defaulting PARTIES for the resultant damages incurred. Compensation for damages is to be paid in the currency of the Kenya Shillings.

(2) The assertion of a claim for damages shall not affect the right to terminate this Agreement in accordance with Clause 13.1.

ARTICLE 17. FORCE MAJEURE

17. (1) Either PARTY shall be excused from any delay or failure in performance required hereunder if caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, insurrection, strikes, lockouts or other serious labour disputes, riots, earthquakes, floods, explosions or other acts of nature.

(2) The obligations and rights of the PARTY so excused shall be extended on a day to day basis for the time period equal of such excusable interruption. When such events have abated, the PARTIES respective obligations hereunder shall resume.

(3) In the event the interruption of the excused Party's obligations continues for a period in excess of six (6) months, either PARTY shall have the right to terminate this Agreement upon thirty (30) calendar days prior written notice to the other Party.

(4) Upon secession of the stated circumstances, the PARTY concerned shall promptly provide the other PARTIES with a written notification to this effect. This notification must specify a period within which the PARTY expects to fulfill its obligation under this Agreement affected by such Force Majeure.

Should the PARTY concerned culpably fail to send the necessary notification, or fail to inform them in good time, it shall be obliged to compensate the other Parties for the losses which are incurred as a result of the failure to send the notification or the delayed forwarding of the notifications.

(5) In case of the event of force majeure occurring, fulfillment of the obligation of the PARTY concerned under this Agreement shall be postponed by the duration of these circumstances and there consequences.

The Party shall, however, endeavor to expeditiously fulfill its obligations which were affected by such force majeure.

(6) Should the circumstances of force majeure and their consequences continue for longer than 6 (six) months, thereby seriously impeding the SPV's activities, each PARTY shall be entitled to terminate this Agreement. In this case, neither of the PARTIES shall be entitled to claim compensation from the other PARTIES for any damage which may be incurred due to the force majeure.

ARTICLE 18. APPLICABLE LAW, INTERPRETATION, AMENDMENTS AND SUPPLEMENTATION OF THE AGREEMENT

18.(1) This Agreement shall in all respects be governed by and constructed in accordance with the Laws of Kenya.

(2) In the event that any one or more of the provisions contained in this Agreement shall be invalid, illegal, unenforceable or incomplete in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(3) Any amendments or supplements to this Agreement shall be effective and binding only when agreed among the PARTIES in writing.

ARTICLE19. SETTLEMENTS OF DISPUTES

19.(1) The PARTIES shall endeavor to resolve by negotiation any difference of opinion and disputes which may arise from or in connection with this Agreement or with regard to the validity of this Agreement itself, in the course of operation of the SPV.

(2) If it proves impossible to settle disputes within 30 (thirty) days and legal proceedings appear unavoidable, such disputes are to be decided by a court of competent jurisdiction or arbitration.

The arbitration shall consist of three arbitrators. Each PARTY appoints one arbitrator and one who shall be the Chairperson of the court of arbitration shall be appointed by the two arbitrators. In the event that the arbitrators or Chairman of the arbitration court shall cannot be appointed due to any reason, the appointment of the two arbitrators and the Chairman shall be done by the court of arbitration.

(3) The arbitration proceedings shall be conducted in accordance with the Arbitration Act, 2015.

(4) The cost of arbitration shall be decided by the Arbitration Act, 2015 and the interpretation of this Agreement shall be in accordance with the Laws of Kenya.

ARTICLE 20. COMMUNICATION TO THE PARTIES

Irrespective of whether this is expressly specified in each individual case, all communications which are necessary or permitted with regards to this Agreement and the SPV are to be effected in writing, or through official Email that will be developed by the SPV.

For: COUNTY GOVERNMENT OF KISUMU,

P. O. Box 2738-40100, KISUMU, KENYA.

For: KENYA NATIONAL CHAMBERS OF COMMERCE AND INDUSTRY, KISUMU COUNTY,

P.O. Box 771-40100 KISUMU, KENYA.

For: KENYA RAILWAYS

P.O. Box 30121-00100, NAIROBI, KENYA**.**

For: KENYA PORTS AUTHORITY

P.O. Box 959009-80104, MOMBASA, KENYA.

For: LAKE BASIN DEVELOPMENT AUTHORITY

P.O. Box 1516-40100, KISUMU, KENYA

For: NYANZA CLUB TRUSTEES P.O. BOX 29 KISUMU, KENYA.

Any change in the above addresses shall be communicated to other Parties in writing.

ARTICLE 21. MISCELLANEOUS

21.(1) The official language of this agreement is English.

(2) All documents and other papers of importance which relate to the JVA shall be drawn up in English language and shall be binding upon the PARTIES. Correspondence among SPV and the PARTIES in the course of daily business shall be conducted in the English language.

(3) Each PARTY shall bear its own costs incurred in the Establishment, registration and organization of the SPV, including consultation fees. The SPV shall bear those costs which are directly related to its registration and organization and any consultation costs which directly concern the SPV.

ARTICLE 22. ASSIGNMENT

The rights and obligations under this Agreement are personal and shall not be assignable by any PARTY without the prior written consent of the other PARTIES which consent will not be unreasonably withheld. Notwithstanding anything to the contrary in this Agreement, any PARTY

shall have the right to refuse permission to the other PARTIES or PARTY to assign this Agreement to a third party, where the assignee is competitor or is likely to be a competitor of a PARTY or its AFFILIATES.

ARTICLE 23. HEADINGS

The headings of the sections of this Agreement have been inserted only to facilitate reference and shall not be taken as being of any significance whatsoever in the construction and interpretation thereof.

ARTICLE 24. MODIFICATIONS

This Agreement shall not be altered, modified or supplemented except with the prior written approval of the PARTIES hereto.

ARTICLE 25. WAIVER

The failure, with or without intent, of any PARTY to insist upon the performance (in strict conformity with the literal requirements) by the other PARTIES of any term or stipulation of this Agreement, shall not be treated or deemed to constitute a modification of any terms or stipulations of this Agreement.

Nor shall such failure or election be deemed to constitute a waiver of the right of the other PARTIES at any time whatsoever thereafter to insist upon performance by the other PARTIES strictly in accordance with any term or provisions hereof.

All terms, conditions and obligations under this Agreement shall remain in full force and effect at all times during the substances of this Agreement except where otherwise amended or modified by mutual written Agreement.

ARTICLE 26. INDEPENDENT PARTIES

The PARTIES shall act in all matter pertaining to this Agreement as independent PARTIES and nothing contained herein shall constitute either as the agent or as the partner to the other PARTIES and does not give any PARTY the power to represent the other PARTIES hereto.

ARTICLE 27. REPRESENTATIONS AND AUTHORITY

27 (a) Each PARTY represents and warrants that it is permitted by its respective corporate charter and incorporating documents to enter into this Agreement, and is not restrained, prevented or inhibited by any contract or arrangement to which it is a PARTY from entering into this Agreement or undertaking the obligations herein contained.

(b) Each signatory to this Agreement represents and warrants that he is duly authorized by the PARTY for and on whose behalf he

is signing this Agreement to execute the same on a manner binding upon the said PARTY and that all corporate approvals and procedures necessary for vesting such authority in him have been duly obtained and compiled with.

ARTICLE 28. COUNTERPARTS

This Agreement shall be executed simultaneously in two counterparts each of which shall be deemed to be an original but both together shall constitute one instrument.

ARTICLE 29. ADDITIONAL DOCUMENTS

Each PARTY hereto shall promptly execute and deliver such additional documents as are reasonably required by the other PARTY or PARTIES hereto for the purpose of implementing this Agreement, provided that such document shall be consistent with the provisions hereof.

ARTICLE 30. ENTIRE AGREEMENT

This Agreement sets forth the entire Agreement and understanding among the PARTIES as to the subject matter hereof and supersedes all communications, negotiations, commitments and writings prior to the date hereof pertaining to the subject matter of this Agreement with the exception of the Memorandum and Articles of Association.

ARTICLE 31. CONDITIONS PRECEDENT

This Agreement shall take effect only after all the following precedent conditions have been fully certified;

This Agreement has been executed by the PARTIES and the following approvals have been obtained;

(i) Approvals required for effecting investments by the PARTIES in the capital of SPV. Such approvals include local licenses, permits, building plan approvals of which PARTIES shall facilitate their obtainers.

(ii) Approvals required enabling SPV to undertake activities contemplated by the Agreement.

(iii) The entering into force of this Agreement has been approved by the authorized and relevant governing bodies of each of the PARTIES.

MEMORANDUM OF OBJECTS AND REASONS

THE Kisumu Lakefront development Corporation is a special purpose vehicle for County Government of Kisumu to oversee the lakefront development projects.

Kisumu as foreseen to be a great port and resort city can be described as a potential under achiever that has not fully exploited the opportunities presented by the Lakefront and thus the City's economic growth is limited without the influence of the lakefront Structure.

According to the UN Habitat report on the Kisumu lakefront, it recommended that;

(i) There is need to connect the existing patterns and Central Business District.

(ii) There is need to create a plot layout at the lakefront.

(iii) Need to optimize land value and land use.

(iv) Need to create investment opportunities.

(v) Need to establish incremental growth opportunities.

(vi) Need to enhance public transport services and

(vii) Need to link the City and the Lake (opening up lakefront to the public to access)

The purpose of the Bill therefore is to provide a legal framework to operationalize the Kisumu Lakefront Development Corporation.

Part 1 provides for the short title, commencement and interpretation of terms. Additionally it provides for the guiding principles as well as the obligations of the county government under the Act.

Part II provides for the establishment of the Kisumu Lakefront Development Corporation as a Special Purpose Vehicle (SPV) to undertake Kisumu lakefront development on behalf of the County Government of Kisumu and the City. The corporation so established shall be a body corporate with perpetual succession performing all acts which may lawfully be done or performed by a body corporate.

Part III outlines the general provisions of the Act. It outlines the financial provisions governing the act, procedure for amending agreements under the act in addition to providing for regulations for the better carrying out of the Act

Schedule One provides for joint venture agreement between the County Government of Kisumu and various parties and sets out there obligations therein.

Dated the 24th February, 2021.

PAUL OKIRI,

Chairperson Cooperatives, Finance, Trade and Enterprise Development.