

APPENDIX D

A SCHEME OF ARRANGEMENT BETWEEN THE ZAMBEZI RELATED PUBLIC AND PRIVATE COMPANY RECORDED IN APPENDIX ARR1 TO THIS ARRANGEMENT DOCUMENT AND THEIR CREDITORS AND SHAREHOLDERS IN TERMS OF THE PROVISIONS OF SECTION 311 OF THE COMPANIES ACT, NO 61 OF 1973, AS AMENDED, PROPOSED BY THE ZAMBEZI COMPANIES

INTRODUCTION

The scheme is divided into five chapters

CHAPTER 1

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1 CHAPTER 1 – BACKGROUND TO AND SYNOPSIS OF THE PROPOSALS CONTAINED IN THE SCHEME

1.1 For purposes of this scheme of arrangement, words and phrases defined in the Interpretation and Definition of Terms Chapter forming part of this scheme, shall have the meanings attributed to such words and phrases in such Interpretation and Definition of Terms Chapter.

1.2.1 This document sets out the terms and conditions of a scheme of arrangement in terms of Section 311 of the Companies Act, 1973, which, if agreed to by the requisite majorities of scheme creditors and scheme shareholders, will become effective upon sanction of the scheme by the High Court and registration of the sanction Order by the Registrar of Companies.

1.2.2 **The facts provided and the views expressed in this scheme and the proposals made in terms of the scheme, are so provided, expressed and made by the board, referred to in 1.3.1 below, and do not represent facts, views or proposals provided, expressed or made by the South African Reserve Bank, the Registrar of Banks, or the Statutory Managers, referred to hereinafter.**

- 1.2.3 **The South African Reserve Bank and the Registrar of Banks (in his capacity as such in terms of Section 4 of the Banks Act, 94 of 1990 (“the Banks Act”)) (“SARB”) and the Statutory Managers (appointed in terms of Section 84 of the Banks Act) are aware of this scheme and do not object to it being proposed to the creditors and shareholders for their consideration. The Registrar has indicated that he will continue to act in terms of the provisions of the Banks Act including Sections 83 and 84 in the event of the scheme not being sanctioned.**
- 1.3 Subject to the scheme being sanctioned by the Court and the fulfilment of the other conditions precedent to the scheme and therefore effective after the effective date of the scheme subject to the arrival of the final date –
- 1.3.1 the boards of directors of the Zambezi Companies (“**the board**”) will have established two new companies, namely a Public company, Nova Property Group Holdings Limited (“**Public Newco**”) and a private company, Nova Property Group Investments (Pty) Ltd (“**Private Newco**”), as a wholly owned subsidiary of Public Newco, for the purposes recorded below;
- 1.3.2 the shareholding and loan account structures in, between and in regard to the Public company (“**Public company**”) and the Private company (“**Private company**”) constituting the Zambezi Companies, as defined in clauses 2.36 and 2.70, 2.31 and 2.72, respectively of the scheme, will have been restructured through the scheme. Zambezi Retail and Zambezi Holdings are referred to as “the Zambezi Companies”.
- 1.3.3 all shareholders of the Zambezi Companies (through their historical shareholding in the Public company forming part of the Zambezi Companies) will in respect of their shares and linked claims forming part of and relating to their shareholder interests in the Public company, become holders/owners of exchangeable debentures in and against Private Newco, as referred to in 1.3.4 below, save should shareholders elect to become shareholders in Public Newco, as envisaged in 1.3.9 and 1.3.10 below;
- 1.3.4 scheme shareholders (historical investors) will be deemed to have sold their shares and shareholder interests in the Public company forming part of the Zambezi Companies (as defined in clauses 2.53 and 2.54 of the scheme) to Public Newco at a consideration of R NIL (Nil Rand), and simultaneously cancelled and substituted their shareholder linked financial interests in the Public company forming part of the Zambezi Companies (as defined in clause 2.55 of the scheme) in consideration for the acquiring by scheme shareholders of newly constituted exchangeable debentures (“**debentures**”) in favour of scheme shareholders in and against Private Newco, encompassed in and forming part of the scheme shareholders’ scheme consideration (as defined in clause 2.51 of the scheme), which debentures will –
- 1.3.4.1 reflect and regulate the pro-rata nature, extent and quantum of the duly secured (see 1.3.5 below) new debentures of scheme shareholders (“**debenture holders**”) in and against Private Newco, the terms and conditions applicable to such debentures being recorded in a formal list recording such new debentures in Private Newco, such list forming part of the scheme and this Circular (**Appendix “ARR5”** to the scheme document);

- 1.3.4.2 reflect and regulate the pro-rata nature, extent and quantum of the duly secured (see 3.5 below) payment to debenture holders (scheme shareholders) of projected investment returns on their secured restructured future investments (the debentures) in Private Newco, the Private company and the Zambezi properties. The exact quantum and calculation of such quantum of the projected investment returns are dealt with in clause 4.3 of the scheme and in **Appendix “ARR6”** to the scheme document, following the provisions of clause 4.3.5.2.1 of the scheme. In summary, the quantum of the projected investment returns due to be paid to debenture holders, will consist of amounts equal to the net pro-rata monthly income attributable to debenture holders, net of expenses (and net of provisions), before taxation, depreciation and amortisation, derived from the Zambezi properties, whether wholly or partially owned by the Private company in which relevant scheme shareholders historically had investments through their shareholder interests in the Public company of which the Private company was a wholly owned subsidiary, such Private company to be owned by Private Newco after sanctioning of the scheme;
- 1.3.4.3 reflect and regulate the pro-rata nature, extent and quantum of duly secured (see 1.3.5 below) projected repayment to debenture holders (scheme shareholders) of historical investments made by them in the Public company, and therefore effectively, through the Private company in the Zambezi properties, by way and through the structure and terms and conditions of the debentures. The projected repayment of investments, and the terms and conditions applicable thereto, as well as the quantum thereof, are similarly dealt with in clause 4.3 of the scheme and in **Appendix “ARR7”** to the scheme document. In summary, the quantum of the projected investment repayments due to be paid to debenture holders, will be equal to the pro-rata portion attributable to debenture holders, of the fair market value (as defined in clause 2.21 of the scheme), to be calculated as agreed to between the Zambezi Companies and scheme shareholders following the provisions of clause 4.3.5.2.2 of the scheme, of the portion of the Zambezi properties owned at any relevant time by the Private company, in which relevant scheme shareholders historically had investments through their shareholder interests in the Public company of which the Private company was a wholly owned subsidiary, (such Private company to be owned by Private Newco after sanctioning of the scheme), subject to a maximum aggregate amount of R756,000,000 (Seven Hundred and Fifty Six Million Rand) being payable to debenture holders as projected investment repayments, over periods ranging from 1 (one) to 10 (ten) years after the sanctioning of the scheme, in accordance with the information recorded in **Appendix “ARR7”** to the scheme document attached to this Circular;
- 1.3.4.4 reflect and regulate the projected investment returns and the projected investment repayments referred to in 1.3.4.2 and 1.3.4.3 above, which will be paid by Private Newco to debenture holders;
- 1.3.4.5 incorporate and include, the monetary amount for which the shares and shareholder interests (as referred to in 1.3.4 above), and the Private Company shares (as referred to in 1.3.6.1 below) and were disposed of, directly or indirectly, by any relevant scheme shareholder and the Public company as the case may be and the aggregate monetary amount shall be deemed to have been received by such relevant scheme shareholder, as incorporated in the consideration accrued to such relevant scheme shareholder for the cancellation, directly or indirectly, of the shareholder linked financial interests referred to in 1.3.4 above, being the debentures due to be issued to scheme shareholders as envisaged in 1.3.4 above;

- 1.3.4.6 be issued by Private Newco, under the supervision of the receivers and in term of the Trust Deed pertaining to the debentures, to scheme shareholders, after the effective date, but within the 90 (ninety) day period referred to in 1.3.10.1 below;
- 1.3.5 the security provided to debenture holders (scheme shareholders) in respect of their future, restructured, expected projected investment returns and projected investment repayments (as recorded in 1.3.4.2 and 1.3.4.3 above) will consist of covering mortgage bonds in favour of debenture holders to be registered forthwith after the effective date and contemporaneously with the issue of the debentures as envisaged in 1.3.4.6 above over the Zambezi properties in a maximum aggregate amount of R756,000,000 (Seven Hundred and Fifty Six Million Rand), bearing in mind the maximum aggregate amount which may become due to be payable to debenture holders as projected maximum investment repayments as envisaged in 3.4.3 above;
- 1.3.6 Private Newco will, following professional advice as to cost saving in respect of transfer costs and taxation (see paragraph 13 on page 58 and **Appendix “B6”** to Explanatory Statement hereunder, being the Opinion and Advice of BDO Corporate Finance (Pty) Limited), have acquired from the Public company –
- 1.3.6.1 the entire issued share capital of the Private company as owned by the Public company (“**Private company shares**”) at a consideration of R NIL (nil Rand), and;
- 1.3.6.2 all claims, on loan account or otherwise, of the Public company against the Private company (“**Public company claims**”), in consideration for the cancellation of the shareholder linked financial interests as envisaged in 1.3.4.5 above and the issue of the debentures by Private Newco to debenture holders as envisaged in 1.3.4 above,
- after the sanctioning of the scheme, for purpose of the implementation of the scheme;
- 1.3.7 the Public companies will no longer be the holders and owners of the Private company shares and the Public company claims and Private Newco will have become the owner of the Private company shares, the Public company claims, the Zambezi properties and their income producing activities (indirectly through the ownership by Private Newco of the Private company shares);
- 1.3.8 the claims of all creditors of and against the Zambezi Companies, including -
- 1.3.8.1 all claims of the Public company forming part of the Zambezi Companies structure against the Private company; and
- 1.3.8.2 all claims of third party creditors against the Zambezi Companies,

are dealt with in clause 4.2 of the scheme, as to order of preference as to payment and otherwise. Attention is drawn to the position pertaining to “**excluded creditors**” as defined in clause 2.19 of the scheme and further dealt with in clause 4.2.5 of the scheme. All claims will have been restructured or paid in full, as the case may be, to the extent that the Zambezi Companies, will have creditors, only, in respect of the claims of bondholders

as at the effective date over certain Zambezi properties and the historical indebtedness, prior to the effective date, of the Private company to the Public company (the Public company claims referred to in 1.3.6.2 above), such Public company claims after the effective date, having been acquired by and owed to Private Newco, but, such Public company claims being subordinated in favour of any relevant claims of bondholders, debenture holders and **new creditors** as referred to hereunder, the sole creditors of Public Newco and Private Newco and the Zambezi Companies in future, being, only, such bondholder creditors and Private Newco (in respect of the Public company claims), and **new creditors**, including the claims of scheme shareholders in respect of the debentures as referred to in 1.3.3, 1.3.4 and 1.3.5 above, becoming **new creditors** after sanctioning of the scheme in the ordinary course of business, after the withdrawal of the SARB Directives;

- 1.3.9 all shareholders of the Zambezi Companies will, in respect of their ownership of their ordinary shares (other than their linked claims as referred to in 1.3.3 above) in the Public company forming part of the Zambezi Companies structure, become entitled to become owners of new ordinary shares in Public Newco, only, if they so elect, as referred to in 1.3.10 below;
- 1.3.10.1 scheme shareholders have the right to elect ("**electing shareholder/s**"), within 90 (ninety) days after the effective date, to become shareholders in Public Newco as opposed to receiving relevant projected investment returns on and projected repayment of their historical investments through the mechanism of the debentures, as referred to in 1.3.4 above, by completing the relevant form of election, **blue form of election**, forming **Appendix "H"** to this Circular, in accordance with the instructions contained in such form of election;
- 1.3.10.2 should scheme shareholders so elect to become shareholders in Public Newco, then, the debentures of electing shareholders will be deemed to have been exchanged for shareholding in Public Newco with effect from the effective date, such exchanged debentures to be ceded to Public Newco ("**the ceded debentures**") and after such exchange, electing shareholders will no longer be entitled to receive projected investment returns and projected investment repayments, as envisaged in 1.3.4.2 and 1.3.4.3 above;
- 1.3.10.3 electing shareholders shall receive shares in Public Newco, the number of such shares to be calculated by Public Newco under the supervision of the receivers with reference to the fair market value, at the time, of all the assets of Private Newco in relation to the pro-rata value of the shares, the shareholder interests and the shareholder linked financial interests of electing shareholders, in accordance with the formula recorded in **Appendix "ARR8"** to the scheme document as provided for in clause 4.3.5.4.1 of the scheme;
- 1.3.10.4 the aggregate amount of R756,000,000 (Seven Hundred and Fifty Six Million Rand) referred to in 1.3.4.3 above shall for all relevant purposes of the scheme, be reduced by the aggregate quantum of the debentures in respect of which elections have been made in terms of this paragraph 1.3.10, as provided for in clause 4.3.6 of the scheme;

- 1.3.10.5 with effect from the day after the issue of shares in Public Newco to electing shareholders, Public Newco shall be deemed to have agreed with Private Newco that all ceded debentures will be cancelled and be of no further force or effect, as provided for in clause 4.3.7 of the scheme; and
- 1.3.10.6 shareholders who consider exercising the right to make an election as provided for in this paragraph 1.3.10 should acquaint themselves with the circumstances pertaining to the Income Plan, Villa and Growth Plan projects referred to in paragraph 1.3.1 and further, in the Explanatory Statement forming part of the Circular;
- 1.3.11. the historical shareholding in and all linked claims, shareholder interests, and shareholder linked financial interests of whatsoever nature and howsoever arising, of the historical shareholders of the Public company will have been restructured, to the effect that all rights, title and interest of shareholders and debenture holders in Public Newco and Private Newco, and as a consequence, the Zambezi Companies and properties, into the future, will not possibly contravene any of the provisions or Regulations of the Banks Act, and will constitute fully enforceable rights, title and interests in respect of shareholding in and all future claims of debenture holders against Public Newco and Private Newco, as the case may be, and as a consequence, the Zambezi properties;
- 1.3.12. all shareholders of the Public company (the scheme shareholders), will be deemed to have approved the scheme in regard to scheme creditors, upon the sanctioning of the scheme, in addition to having approved the scheme in regard to them as scheme shareholders, insofar as they had claims, of whatsoever nature, and howsoever arising, against the Zambezi Companies prior to the effective date, and therefore, to the extent to which scheme shareholders were capable of being regarded as scheme creditors or scheme shareholders for purposes of the scheme;
- 1.3.13. the Zambezi properties will be controlled or owned, as the case may be, and managed by and at the instance of Public Newco and Private Newco;
- 1.3.14. none of the Zambezi Companies will have been liquidated as a result of –
- 1.3.14.1. the effective cessation of business activities of the Zambezi Companies following the events referred to in paragraphs 1.11 and 1.21.4 of the Explanatory Statement and the Directives; and
- 1.3.14.2. the consequential difficulty of the Zambezi Companies to raise funding required by the Zambezi Companies to –
- 1.3.14.2.1. procure the service of interest payments to shareholders in the Public company; and
- 1.3.14.2.2. enable the Private company to complete the construction of the Zambezi Mall property and facilities relating to and forming part of the Zambezi Mall property, and in particular, the access roads to and tenant installation facilities required to effectively procure the final construction and completion of the Zambezi Mall property to the extent envisaged during the planning phase of the development and construction of the Zambezi Mall property, in order to enhance the net rental income returns to investors (scheme shareholders) and create capital growth;

- 1.3.15. the business affairs of the Zambezi Companies and the Zambezi properties, as owned or controlled by Public Newco and Private Newco (as the case may be), will be able to continue to operate, in the normal course, under circumstances where –
- 1.3.15.1. no provisions or Regulations of the Banks Act may possibly be contravened, in any manner, by such continued business activities;
- 1.3.15.2. the review proceedings against the Directives will have been withdrawn;
- 1.3.15.3. the Directives having being issued by the SARB, in respect of the Zambezi Companies, will have been withdrawn by the SARB;
- 1.3.15.4. the Zambezi Companies will only have the creditors, as recorded in 1.3.8 above, with their claims as restructured and as provided for in 1.3.8 above, and furthermore in respect of obligations to financiers, and possible mortgage bonds which may be registered over certain of the Zambezi properties in order to fund upgrading processes referred to in 1.3.14.2.2 above;
- 1.3.15.5. Public Newco and Private Newco will have sufficient working capital for its ongoing business, including the construction and tenant installation costs relating to the Zambezi properties as referred to above;
- 1.3.15.6. projected investment returns and projected investment repayments due to scheme shareholders as recorded in 1.3.4.2 and 1.3.4.3 above will be indivisibly linked to the Zambezi Companies, and the fair market value of subject matter Zambezi properties referred to in 1.3.4.3 above, following the obtaining of such rights by and in favour of scheme shareholders as same form part of the debentures; and
- 1.3.15.7. in the event of scheme shareholders having elected to become shareholders of Public Newco, as referred to in 1.3.10 above, instead of receiving projected investment returns and projected investment repayments such electing shareholders will have become and remain shareholders in Public Newco, participating in growth in the value of the shares in Public Newco and the underlying values of the assets of Public Newco, including, the Zambezi properties, and become entitled, from time to time, to receive dividends, in the ordinary course of the business affairs of Public Newco, on their shareholding in Public Newco. Cognisance should, however, be taken by electing shareholders of the fact that Private Newco, the wholly owned subsidiary of Public Newco, will have the obligation to repay the fair market value referred to in 1.3.4.3 above, subject to the possible maximum amount of R756,000,000 (Seven Hundred and Fifty Six Million Rand) referred to in 1.3.4.3 above, due in terms of the debentures over an extended period of time (see 1.3.4.3 above), and it is envisaged that only after such period, dividends may be expected to become available to electing shareholders.
- 1.3.16 The receivers for scheme creditors and scheme shareholders will be appointed to administer the implementation of the scheme, in consultation with the board.

- 1.3.17 Public Newco will have the right to cancel the shares and the shareholder interests acquired by Public Newco and furthermore procure that the Public company forming part of the Zambezi Companies, be deregistered, within the envisaged post sanctioning of the scheme group restructuring plan to be implemented by the board of Public Newco in order to simplify the group structure eventuating from the sanctioning of the scheme.
- 1.4 The attention of scheme creditors and scheme shareholders (historical investors in the Public company in terms of the historical prospectuses) is specifically drawn to the fact that, in view of the board –
- 1.4.1 the proposing of the scheme and the voting by scheme creditors and scheme shareholders in favour of or against the scheme;
- 1.4.2 the sanctioning of the scheme;
- 1.4.3 the restructuring of the rights and interests of scheme creditors and scheme shareholders by virtue of the sanctioned scheme as explained in the Salient Features to the Circular of which the Explanatory Statement forms and as detailed in the scheme; and
- 1.4.4 the obtaining of debentures in Private Newco or shares in Public Newco, as the case may be, by scheme shareholders, as envisaged in 1.3.3, 1.3.4 and 1.3.10 above,

do not remove, cancel or affect the rights of scheme creditors or scheme shareholders to institute and/or pursue claims for damages alleged to have been suffered and/or pursue legal action or claims against any person or entity who was, or may have been involved in the creation and issuing of the historical prospectuses and/or the promotion of the investment structure/s pursuant to which scheme creditors obtained claims against or scheme shareholders (historical investors) invested funds in the Zambezi Companies (through the Public company forming part of the Zambezi Companies).

- 1.5 Scheme shareholders are cautioned, especially in regard to what is stated in 1.4 above, in regard to possible incorrect views or “advice” disseminated to the contrary regarding the content of 1.4 above, and scheme shareholders are advised to take independent advice in this regard, notwithstanding what is stated in 1.4 above.

2 CHAPTER 2 – INTERPRETATION AND DEFINITION OF TERMS

Unless inconsistent with or otherwise indicated by the context –

- 2.1 “**Act**” or “**Companies Act**” means the Companies Act, No 61 of 1973, as amended;
- 2.2 “**arrangement**” or “**scheme**” means the scheme of arrangement contained herein in terms of Section 311 of the Act, between the Zambezi Companies and the scheme creditors and scheme shareholders and, for the purposes of

interpretation, includes the Background to and Synopsis of the proposals contained in the scheme as envisaged in 1 above;

- 2.3 “**assumed Capicol contractor claims**” means the claims of the Capicol contractor creditors, assumed, for payment, by Zambezi Retail in terms of the Zambezi Amendment Agreement, however, to the extent and in the amounts, and aggregate maximum amount, as envisaged in the definition of Capicol contractor creditors referred to in and furthermore subject to the provisions of clauses 2.7 and 2.19 and 4.2.5 below as to the position of “**excluded creditors**” for purposes of the scheme;
- 2.4 “**Banks Act**” means the Banks Act, 94 of 1990, as amended;
- 2.5 “**bondholder/s**” means the holders, including banks and other financial institutions, of legally enforceable mortgage bonds over any of the Zambezi properties as at the effective date;
- 2.6 “**chairman**” means Mervyn Taback, of Attorneys Taback and Associates, 13 Eton Road, Parktown, Johannesburg, 2193, South Africa;
- 2.7 “**claims**” means secured and/or preferent and/or concurrent claims of any scheme creditor and/or any scheme shareholder against the Zambezi Companies or any one of them, (excluding however, specifically, all or any claims of whatsoever nature and howsoever arising of the excluded creditors as defined in 2.13 below, which claims, if any, are specifically to be dealt with in terms of clause 4.2.5 below), the cause of action in respect of which arose prior to or on the effective date, of whatsoever nature and from whatsoever cause arising, including, without limitation, claims arising in respect of damages claims against the Zambezi Companies as a result of any contract or contracts between the Zambezi Companies and third parties being or have been cancelled or repudiated prior to or on the effective date, and other claims arising from contract or delict, actual and contingent, prospective, conditional and unconditional, liquidated and unliquidated, assessed and unassessed and whether or not due for payment or performance, specific or otherwise, and all claims arising out of any agreement entered into by the Zambezi Companies on or prior to the effective date, all such claims to be determined, calculated and admitted as secured and/or preferent and/or concurrent in accordance with the same ranking, as envisaged in the Insolvency Act, that would have accrued to them upon the issue of a winding up order against any relevant one of the Zambezi Companies prior to or on the effective date, excluding however, specifically, the claims of bondholders and the claims of scheme shareholders in respect of their shares, shareholder interests and shareholder linked financial interests, the claims, position, rights and interests of bondholders and scheme shareholders being dealt with in 4.9 (in respect of bondholders) and 4.3 (in respect of scheme shareholders);
- 2.8 “**Capicol**” means Capicol (Pty) Ltd (Registration No: 2007/010860/07), a private company, duly incorporated in accordance with the Laws of the Republic of South Africa;
- 2.9 “**Capicol contractor creditors**” means all claims of all or any third party contractors having had, or having claims against Capicol or Fine Asset prior to or as at the effective date, flowing from agreements between such third party contractors and Capicol and/or Fine Asset, in respect of any construction related works having been conducted by such thirds party contractors or any products, goods or services having being sold and provided to Capicol and/or Fine Asset by such third party contractors, in regard to the overall development of the Zambezi Mall, and related infrastructure and facilities, including any relevant roadworks envisaged in the definition of “**uncompleted works**”

as defined in 2.65 prior to the effective date, subject, however, to the aggregate amount of all such claims of third party contractors not exceeding the amount, outstanding, as at the effective date, in respect of, in law, the aggregate possible valid and enforceable claims of any Capicol Contractor Creditors against the Zambezi Companies, or any of them, in terms of the Zambezi Amendment Agreement;

- 2.10 **“Capicol Group”** means Capicol, Fine Asset, Capicol 1 (Pty) Ltd (Registration No. 2007/014113/07), Capicol REM (Pty) Ltd (Registration No 2007/010678/07) Mr. Paul Kyriacou (Identity No. 770604 5176 083) and all directors and shareholders of either Capicol and/or Fine Asset and/or Capicol 1 (Pty) Ltd, and/or Capicol REM (Pty) Ltd referred to in this clause 2.10;
- 2.11 **“concurrent creditors”** means creditors in respect of their concurrent claims against the Zambezi Companies as at the effective date, including secured creditors and preferent creditors in respect of the concurrent portion of their claims against the Zambezi Companies as at the effective date, as the case may be;
- 2.12 **“Court”** means the North Gauteng High Court, Pretoria;
- 2.13 **“creditors”** means, collectively or individually, all legal entities and natural persons, having claims, whether preferent and/or concurrent and/or secured, including scheme shareholders in respect of their claims, (excluding however, specifically, all or any excluded creditors and all or any claims of whatsoever nature and howsoever arising of excluded creditors to any extent to which they may allege or contend to be creditors for purposes of this scheme or any other purposes) the claims of bondholders and the claims of scheme shareholders in respect of their shares, shareholder interests and shareholder linked financial interests, being dealt with in 4.9 (in respect of bondholders) and 4.3 (in respect of scheme shareholders);
- 2.14 **“construction/tenant installation works”** means the construction and upgrading works and activities required to be undertaken at the instance of the Zambezi Company, and completed, in order to procure the final construction of the access roads forming part of or leading to the Zambezi Mall property and the procuring of tenant installation activities, to the best benefit of the businesses of the relevant Zambezi properties, with the specific aim of enhancing the rental income and capital growth to be derived from the business activities of the Zambezi properties, following such construction/tenant installation works, it being furthermore recorded that the funding required to pay for the construction/tenant installation works will form part of the restructuring funding, and shall not exceed the amount of R30,000,000 (Thirty Million Rand), save to the extent to which the board of directors of Zambezi Retail, in writing, determine differently;
- 2.15 **“day/s”** means calendar days, and accordingly includes Saturdays, Sundays and public holidays;
- 2.16 **“debentures”** means the exchangeable debentures to be issued by Private Newco to scheme shareholders as envisaged in 4.3 and, in particular 4.3.3 below and which form part of the scheme shareholders scheme consideration and are governed by the trust deed, the salient features of which are recorded in **Appendix “ARR10”** to this scheme;
- 2.17 **“Directives”** means the Directives, in terms of Section 83 of the Banks Act, issued by the SARB in respect of the Sharemax Investments, the Sharemax Syndication Companies and any other person or entity having been included to have been affected by such Directives, dated 16 September 2010;

- 2.18 “**effective date**” means date of sanction;
- 2.19 “**excluded creditors**” means the Capicol contractor creditors and the Capicol Group and/or any entity forming part of the Capicol Group and the N Energy Applicants insofar as the N Energy Applicants may allege to be creditors as opposed to shareholders (in respect of shares, shareholder interests and/or shareholder linked financial interests) of the Zambezi Companies, and/or any legal entity forming part of the Capicol contractor creditors and the Capicol Group and/or the N Energy Applicants, in respect of all and any claims of any of such excluded creditors, of whatsoever nature and howsoever arising, against the Zambezi Companies or any of their number including but not limited to any such claims as same may relate to or emanate from any agreement between any such excluded creditors and the Zambezi Companies or any of their number, including any bond and the cause of action underlying any bond held by any of the Capicol contractor creditors and/or the Capicol Group in respect of any Zambezi property and including any alleged claim as creditor as may be contained in or emanate from the Application of the N Energy Applicants referred to in 2.28 below, which claims, if any, as creditors, of the Capicol contractor creditors and/or the Capicol Group and/or the N Energy Applicants and such legal entities as excluded creditors, to the extent to which they may be successful in proving any claims as creditors against the Zambezi Companies or any of their number, are specifically to be dealt with in terms of clause 4.2.5 below, as and when their claims may be proved to become due, payable by and binding on the Zambezi Companies or any of their number;
- 2.20 “**Explanatory Statement**” means the Explanatory Statement, required by Section 312 of the Act, to be dispatched to scheme creditors and scheme shareholders, following the implementation of the Order of Court convening the meetings of scheme creditor or scheme shareholders and scheme shareholders;
- 2.21 “**fair market value**” means the value, from time to time, placed on any relevant Zambezi property or all the assets of Private Newco limited (taking into account any liabilities pertaining to any relevant property from time to time), however, for all purposes of this scheme, to the maximum amount of R756,000,000 (Seven Hundred and Fifty Six Million Rand) in aggregate, and as to any relevant Zambezi property, the aggregate amount invested by shareholders, in aggregate, in the Public company owning the relevant Zambezi property, through the relevant Private company, as circumstances may require from time to time for purposes of this scheme, by the board of directors of Public Newco in consultation with the receivers, for any purpose relevant to this scheme, and on the basis and assumption, specifically, that any relevant Zambezi property is fully constructed and/or developed and fully and optimally tenanted and producing rental returns at a capitalisation rate acceptable to the board of directors of Public Newco according to industry standards applicable at any relevant time when any relevant valuation takes place, and in particular, for purposes of determining the pro-rata value attributed to any relevant debenture holder for purposes of making payment to such debenture holder of his projected investment repayment;
- 2.22 “**Fine Asset**” means Fine Asset Investments 119 (Pty) Ltd, (Registration No. 2007/024856/07), a private company duly incorporated in accordance with the Laws of the Republic of South Africa;
- 2.23 “**final date**” means the date on which the Order is registered by the Registrar of Company, in terms of the Act;
- 2.24 “**the group**” means the Sharemax Syndication Companies and Sharemax Investments;

- 2.25 “**Insolvency Act**” means the Insolvency Act, No. 24 of 1936, as amended;
- 2.26 “**meetings**” means the meetings (or any adjourned meetings) of scheme creditors and scheme shareholders to be convened by an Order of the Court for the purpose of considering the arrangement;
- 2.27 “**month**” means a period of 30 (thirty) days;
- 2.28 “**N Energy Applicants**” means the Applicants under case number 74583/2010 in the North Gauteng High Court, Pretoria, and any other person or legal entity who may form or become part of such Application as an Applicant, or any other person or legal entity who may institute court proceedings against the Income Plan Companies or any of their number for relief similar to the relief sought in such Application, prior to the effective date;
- 2.29 “**Order**” means the Order of the Court sanctioning the arrangement;
- 2.30 “**preferent creditors**” means creditors in respect of their preferent claims against the Zambezi Companies as at the effective date or the preferent portion of their claims against the Zambezi Companies as at the effective date, as the case may be;
- 2.31 “**Private company**” or “**Zambezi Retail**” means the private company listed in **Appendix ARR2.1** to this scheme document, duly incorporated in accordance with the laws of the Republic of South Africa;
- 2.32 “**Private company shares**” means the entire issued share capital of the Private company as held and owned by the Public company as at the effective date;
- 2.33 “**Private Newco**” means a private company established by the boards of directors of the Zambezi Companies prior to the effective date, for purposes of this scheme, and as referred to in 1.3.1 and 4.3.2;
- 2.34 “**projected investment repayments**” means the projected investment repayments envisaged in 4.3.5;
- 2.35 “**projected investment returns**” means the projected investment returns envisaged in 4.3.5 to the extent to which any such returns may be achieved at any relevant time;
- 2.36 “**Public company**” means the public company listed in **Appendix ARR2.1** to this scheme document, being the holder/owner of the Private company shares and the Public company claims;
- 2.37 “**Public company claims**” means all claims, on loan account or otherwise, of the Public company against the Private company as at the effective date;
- 2.38 “**Public Newco**” means a public company established by the boards of directors of the Zambezi Companies prior to the effective date, for purposes of this scheme, and as referred to in 1.3.1 and 4.3.2;
- 2.39 “**proposer**” means the Zambezi Companies or any nominee of the Zambezi Companies;
- 2.40 “**prospectuses**” means the various prospectuses having been procured to be issued at the instance of Sharemax Investments, registered by the Registrar of Company in terms of Section 155 of the Act;

- 2.41 **“receivers” or “receiver”** means and Johannes Frederick Klopper and Cornelius Fourie Myburgh, or any person/s who will be appointed by the Court to act as receivers for scheme creditors and scheme shareholders under the scheme, acting jointly;
- 2.42 **“Registrar”** means the Registrar of Banks appointed as such in terms of the Banks Act;
- 2.43 **“restructuring funding”** means the funding envisaged by the boards of directors of the Zambezi Companies to be raised by the Zambezi Companies, in their sole discretion, as may be required, to make payment in terms of the scheme of -
- 2.43.1 the scheme creditors’ scheme consideration in respect of the claims of scheme creditors, excluding, the claims of bondholders and scheme shareholders insofar as they may qualify as scheme creditors, the claims of bondholders and scheme shareholders being specifically dealt with and/or restructured in terms of the provisions of 4.9 and 4.3 below respectively, to the exclusion of the terms and conditions and effects of the scheme on the claims of scheme creditors as provided for in 4.2 below;
- 2.43.2 the procuring of the construction/tenant installation works and/or the uncompleted works; and
- 2.43.3 the working capital funding;
- 2.44 **“review”** means an application to Court in which the applicant scheme creditor or scheme shareholder seeks to prove his rejected or partially rejected claim or ownership of shares, shareholder interests and/or shareholder financial interests, as the case may be, or any preference or security, as a fact, whereupon the Court may order the receivers to act in accordance with such proved facts;
- 2.45 **“SARB”** means the South African Reserve Bank established in terms of the South African Reserve Bank Act, No. 90 of 1989 (which for the purposes of this scheme includes the Registrar in his representative capacity as authorised in such capacity);
- 2.46 **“sanction”** means sanction of the arrangement by the Court in terms of Section 311 of the Act;
- 2.47 **“scheme” or “arrangement”** means the arrangement contained herein in terms of Section 311 of the Act, between Zambezi Companies and the scheme creditors and scheme shareholders and, for the purposes of interpretation, includes the Background to and Synopsis of the proposals contained in the scheme as envisaged in 1 above;
- 2.48 **“scheme creditors”** means creditors and shareholders in respect of and to the extent to which they have claims as defined in 2.7 above excluding however, specifically, all or any claims of whatsoever nature or howsoever arising of the excluded creditors;
- 2.49 **“scheme creditors’ scheme consideration”** means the aggregate amount, forming part of the restructuring funding, required to make payment in full, of the claims of the scheme creditors, subject to a maximum amount of R5,000,000 (Five Million Rand) being payable in this regard;
- 2.50 **“scheme shareholders”** means all shareholders;

- 2.51 **“scheme shareholders’ scheme consideration”** means the rights of shareholders in and to their shareholding in and restructured claims against Public Newco, Private Newco, the Zambezi Companies and the Zambezi properties, as provided for in 4.3 below, being the rights of shareholders to be obtained in respect of the repayment of their claims, against the Zambezi Companies, prior to the effective date, in terms of this scheme, due to be received by scheme shareholders in consideration for disposal and cancellation, as the case may be, of their shares and shareholder interests and their shareholder linked financial interests, and in particular, their right to receive projected investment returns and projected investment repayments, through the mechanism of the debentures subject to the maximum amount of R756,000,000 (Seven Hundred and Fifty Six Million Rand) as referred to in 2.16 above, and further rights to be obtained by shareholders in terms of 4.3 below, and otherwise in terms of this scheme as part of the implementation of this scheme;
- 2.52 **“secured creditors”** means creditors in respect of their secured claims against the Zambezi Companies as at the effective date or the secured portion of their claims against the Zambezi Companies as at the effective date, as the case may be, excluding the claims of the bondholders whose claims are dealt with in 4.9 below;
- 2.53 **“share/shares”** or **“scheme shares”** means all right, title and interest of shareholders as at the effective date and in an to any shares, acquired by shareholders, in the issued share capital of the Public company, following the implementation of any prospectuses, and in particular, as such shares were “linked” to any shareholder linked financial interests as defined in 2.55 below, but specifically excluding any shareholder linked financial interests;
- 2.54 **“shareholder interests”** means all right, title and interest of shareholders in and to any shares of whatsoever nature and howsoever arising, as at the effective date as such right, title and interest are described in and attributable to the definition of “shares” as defined in 2.53 above, or otherwise, prior to or as at the effective date excluding, and other than shareholder linked financial interests as defined in 2.55 below;
- 2.55 **“shareholder linked financial interests”** means all right, title and interest of shareholders, as at the effective date, in and to any financial investment made by any shareholder, whether “linked to” or otherwise, simultaneously with the investment of any shareholder in the share or shares purchased by any shareholder following the implementation of any prospectus, in addition to and other than the payment, by such shareholder, of the par value of any share or shares acquired by any shareholder in the process of making any payments to the Public company and/or Sharemax Investments, following the implementation of any prospectus, such linked financial interests, to be regarded as, separate and distinct from the shares and shareholder interests of shareholders as defined in clauses 2.53 and 2.54 above for purposes of this scheme;
- 2.56 **“shareholders”** means all holders and owners of any shares in the issued share capital of the Public company (as registered in the share register of the Public company as sole proof of the holding and owning of such shares) as at the effective date, and who have, as a result, invested funds in the Zambezi Companies prior to the effective date, but, specifically, in terms of and following upon the implementation of any of the prospectuses, and irrespective of whatever associated funding structure, be it in the form of **“claims”**, **“loans”**, **“debentures”**, **“units”** or otherwise as defined in any of the prospectuses, prior to the effective date;
- 2.57 **“Sharemax Investments”** means Sharemax Investments (Pty) Ltd (Registration No. 1998/019038/07), a private company, duly incorporated in accordance with the Laws of the Republic of South Africa;

- 2.58 **“Sharemax Investments parties claims”** means the claims of the Sharemax Investment parties in respect of the payment of the balance of the amounts of R15,000,000 (Fifteen Million Rand) and R25,000,000 (Twenty Five Million Rand) in terms of the Sharemax Investments parties settlement agreement by, respectively, the Income Plan Companies and the Growth Plan Companies;
- 2.59 **“the Sharemax Investments parties settlement agreement”** means the settlement agreement entered into, between, *inter alia*, Sharemax Investments and Up-To-It Trading 14 (Proprietary) Limited during March 2011 forming part of the Significant Contracts;
- 2.60 **“Sharemax Syndication Companies”** means the company being under the Directives, as listed in **Appendix “ARR1”** to this scheme document;
- 2.61 **“Significant Contracts”** means the significant contracts pertaining to or regulating relevant assets, liabilities, affairs of and relationships between the Zambezi Companies, the Sharemax Syndication Companies, Sharemax Investments and therefore the group, following the sanctioning of the scheme being available for inspection at the offices of the Company Secretarial Services Provider, and as, specifically, dealt with in paragraph 16 and 17 of the Explanatory Statement, and clause 4.10 below, **Appendix “ARR4”** to this scheme document contains a list of the Significant Contracts
- 2.62 **“the Trust”** means 148 Leeuwpoot Street Property Investment Trust listed in **Appendix ARR1**, 56.49% (fifty six point forty nine percentum) of the shares, shareholder interest and shareholder linked financial interests in the Trust, being held by Up-To-It, the remaining 43.51% (forty three point fifty one percentum) being held by shareholders (other than Up-To-It);
- 2.63 **“third party contractors”** means the parties having contracted with Capicol in regard to the construction and/or supply of goods and services relating to the development of the Zambezi Mall, by or at the instance of Capicol, as envisaged in the definition of “Capicol contractor creditors”, referred to in clause 2.9 above such parties to include, specifically, the sub-contractors of Capicol, WF Kroon (Pty) Ltd (“Kroon”) and/or any subcontractors of Kroon, having provided services in respect of the Zambezi property insofar, contractually and to the extent and quantum, as may be proved, as the case may be, by any such parties having so contracted and/or such sub-contractors, and/or Kroon to be due and owing to such sub-contractors and/or Kroon by Capicol, as the case may be;
- 2.64 **“trust deed”** means the Debenture Trust Deed governing the debentured, the full text of which is available for inspection as provided for in paragraph 16 of the Explanatory Statement and which forms part of the Significant Contracts, the salient features of which is attached to this scheme document as **Appendix “ARR10”** to this scheme document;
- 2.65 **“uncompleted works”** means the construction works required to be undertaken and completed, in order to procure the final construction of the Zambezi Mall, to the effect that the Zambezi Mall will have been completed in accordance with the original planning in regard thereto prior to the effective date, including, specifically, the completion of the construction of the relevant roadworks due to be pertaining to and forming part of the completion of the final construction of the Zambezi Mall to the extent envisaged in this clause 2.65, it being furthermore

recorded that the uncompleted works funding forms part of the restructuring funding as defined in clause 2.43 above and which uncompleted works include the construction/tenant installation works as defined in 2.14 above;

- 2.66 “**working capital funding**” means the funding required by Zambezi Retail, in respect of its working capital, and the funding of working capital for a period of 3 (three) years after the effective date envisaged to be an aggregate amount of R30,000,000, it being further recorded, that the working capital funding forms part of the restructuring funding as defined in clause 2.43 above;
- 2.67 “**Zambezi Amendment Agreement**” means the Sale of Business Amendment Agreement entered into between, *inter alia*, Zambezi Retail and Capicol, on 5 July 2011;
- 2.68 “**Zambezi Companies**” means the Zambezi Holdings and the Zambezi Retail as listed in **Appendix ARR2.1** herein represented by Mr Rudolf Badenhorst, as a duly authorised director and representative of the Zambezi Companies by virtue of a resolution of the boards of directors of the Zambezi Companies attached hereto as **Appendix “ARR3”** to this scheme document;
- 2.69 “**Zambezi Mall**” or “**Zambezi Mall property**” means the shopping mall having been constructed on and forming part of the Zambezi properties;
- 2.70 “**Zambezi Holdings**” means Sharemax Zambezi Retail Park Holdings Limited, (Registration No. **2006/028220/06**), a public company, duly incorporated in accordance with the Laws of the Republic of South Africa, being the holding company of Zambezi Retail;
- 2.71 “**Zambezi properties**” or “**Zambezi property**” means the various properties owned by the Private company (Zambezi Retail) as at the effective date, and specifically, the Zambezi Mall property as listed in **Appendix “ARR2.2”**;
- 2.72 “**Zambezi Retail**” means Sharemax Zambezi Retail Park Investments (Pty) Ltd (formerly Brookfield Investments 256 (Pty) Ltd), (Registration No. **2006/009236/07**), a private company, duly incorporated in accordance with the Laws of the Republic of South Africa, being a wholly owned subsidiary of Zambezi Holdings;
- 2.73 “**Zambezi Retail secured claim**” means the claim of Zambezi Retail, secured by a first covering mortgage bond, over the Zambezi property, as at the effective date;
- 2.74 references to any gender shall include the other gender;
- 2.75 any reference to the singular shall include the plural and vice versa;
- 2.76 any reference to a natural person shall include a legal persona and vice versa.

3 CHAPTER 3 – ASSUMPTIONS UNDERLYING AND CONDITIONS PRECEDENT TO THE SCHEME

- 3.1 This scheme and the becoming effective of the scheme with effect from the effective date, is subject to the fulfilment of the following conditions precedent that, prior to 20 December 2011 or such extended date as the proposer, in its discretion may determine, in writing –

- 3.1.1 Mervyn Taback or, failing him, his nominee, is appointed by the Court as chairman, and Johannes Frederick Klopper and Cornelius Fourie Myburgh are appointed by the Court jointly, as receivers;
- 3.1.2 the arrangement is accepted by the requisite majorities of all classes of scheme creditors and scheme shareholders at the meetings;
- 3.1.3 the scheme is sanctioned by an Order of the Court;
- 3.1.4 the composition of the boards of directors of the Zambezi Companies, as constituted as at the date upon which the application for leave to convene the meetings was filed with the Court, is ratified and approved, at the meetings, such ratification and approval, in any event, being deemed to have taken place and this condition 3.1.4 therefore having been fulfilled, upon the sanctioning of the scheme by the Court, or, alternatively, and only in the event that should, in the sole discretion of the boards of directors of the Zambezi Companies, such ratification and approval be sought at the meetings, in such format as the boards of directors of the Zambezi Companies, may, at the time determine;
- 3.1.5 none of the Zambezi Companies are placed under provisional or final winding up or provisional or final judicial management or under business rescue procedures (unless the boards of directors of the Zambezi Companies resolve to procure and commence such business rescue proceedings at the volition of such boards) prior to or on the date of sanction;
- 3.1.6 the Order is registered by the Registrar of Company in terms of Section 311(6) of the Act;
- 3.1.7 the review proceedings, to the Banks Review Board, having been instituted during October 2010 by the Sharemax Syndication Companies, Sharemax Investments and certain individuals, in respect of the Directives, be withdrawn;
- 3.1.8 the receipt of written confirmation prior to the effective date, from the Registrar of Banks, in terms of the Banks Act and its Regulations, that the Directives are to be withdrawn and cancelled, forthwith upon the arrival of the final date;
- 3.1.9 that the Directives be withdrawn, fully and effectively, as envisaged in clause 3.1.8 above;
- 3.1.10 the proposer obtains, prior to the date of sanction, all and any consents and registrations which may be required by the proposer, in its sole and absolute discretion and in terms of any law to allow for –
 - 3.1.10.1 any amendment to the memorandum and articles of association of the Zambezi Companies, to the extent and in the manner required by the proposer in order to effect the implementation of all or any aspect, provisions or intentions of this scheme;
 - 3.1.10.2 the restructuring of the authorised and/or issued share capital of the Public company, in order to place the Public company in a position where it will, forthwith after the sanctioning of the arrangement, be able to, lawfully and effectively, give effect to this scheme;

- 3.1.10.3 in favour of and to the benefit of the Zambezi Companies, the restructuring funding, envisaged in this scheme in a manner to the extent and according to timing, is obtained in the discretion of the boards of directors of the Zambezi Companies; and
- 3.1.10.4 the adopting and, if necessary, the registration of any Ordinary or Special Resolutions of any of the Zambezi Companies prior to the sanction of the scheme, in the discretion of the boards of directors of the Zambezi Companies;
- 3.1.11 Schemes of Arrangement are structured and proposed and sanctioned or not, in regard to all or such number of the Sharemax Syndication Companies as the undermentioned boards of directors of the Sharemax Syndication Companies (“**the boards**”) in their sole discretion may determine, on terms and conditions solely within the discretion of the boards and, in particular, as such boards were constituted as at 31 March 2011, and the procuring of the due sanctioning of all or any number of such Schemes of Arrangement as the boards may, in their sole discretion, elect to have so sanctioned, by and the instance of such boards, in accordance with the relevant provisions of the Act, or the Companies Act, 2008 (“**new Act**”), and the relevant provisions of such new Act.
- 3.2 It is specifically recorded that the conditions set forth in clauses 3.1.4, 3.1.5, 3.1.7, 3.1.8, 3.1.9, 3.1.10 and 3.1.11 above –
- 3.2.1 are imposed for the benefit of the proposer alone;
- 3.2.2 shall, at the option of the proposer, be separate, divisible and distinct from one another;
- 3.2.3 must all be fully complied with unless waived in full, or partially, in the sole discretion of the board in terms of 3.2.4 below; and
- 3.2.4 may at any time be waived or abandoned in whole or in part by the proposer on written notice to that effect addressed to the chairman or to the receivers.
- 3.3 Prior to the date of sanctioning of the scheme, the board of directors of the Zambezi Companies shall have procured the establishment of Public Newco and Private Newco and, for purposes of Public Newco and Private Newco exercising the rights and assuming and fulfilling their obligations as recorded in this scheme and as agreed to by Public Newco and Private Newco in terms of 4.11 below.

4 CHAPTER 4 - SUBSTANCE OF ARRANGEMENT

4.1 Payment of scheme creditors’ scheme consideration and restructuring funding

- 4.1.1 After the final date, Private Newco shall procure the payment of the scheme creditors’ scheme consideration and the restructuring funding to the receivers on behalf of the Zambezi Companies for distribution thereof to

scheme creditors and other parties due to receive payment from such funds in terms of the provisions of any relevant agreement regulating such payment and further in terms of this scheme,

4.1.2 Public Newco and Private Newco participate, specifically, in the provisions of this clause 4.1 following the provisions of 3.3 and 4.11 below.

4.1.3 If the scheme creditors' scheme consideration and the restructuring funding or any part thereof, is paid to the receivers at any date prior to the date of payment to scheme creditors and other parties referred to in 4.1.1 above of any amounts in terms of this arrangement, such amounts shall be invested in an interest-bearing account with a bank in the name of the receivers, and all interest accruing thereon shall accrue to the receivers in their capacity as agents for the Zambezi Companies.

4.1.4 The receivers shall procure the payment and distribution of the scheme creditors' scheme consideration and the restructuring funding in accordance with the provisions of this scheme.

4.1.5 All amounts payable to the scheme creditors and other parties referred to in 4.1.1 above, the extent of payment and the method of distribution, as the case may be, are provided for in this clause 4 as read with the remainder of the scheme.

4.1.6 If after paying all scheme creditors and other parties referred to in 4.1.1 above in terms of this scheme, the receivers have further funds available to them from the funds paid to the receivers in terms of this scheme or pursuant to any interest accrued on such amounts, the receivers shall forthwith pay such amounts to Private Newco.

4.2 **Proposed scheme between the Zambezi Companies and scheme creditors, and provisions relating to excluded creditors**

4.2.1 The Zambezi Companies make the proposals contained in this clause 4.2 to scheme creditors in respect of their claims, such proposals to become effective on the date of sanctioning of the scheme, but subject to the arrival of the final date and the fulfilment of the conditions contained in 3.1 above.

4.2.2 Public Newco and Private Newco participate, specifically, in this clause 4.2, following the provisions of 3.3 and 4.11 below.

4.2.3 In consideration for the right of scheme creditors to participate in this scheme and to receive the amounts envisaged in this clause 4.2, and with effect from the effective date, but subject to the arrival of the final date and the fulfilment of the conditions contained in 3.1 above—

4.2.3.1 the claims of all scheme creditors (excluding the claims of shareholders in respect of their shareholder linked financial interests and bondholders in respect of their claims (“**the claims**”) against the Zambezi Companies as at the day immediately preceding the effective date (“**the ceded claims**”) shall be deemed to have been

purchased by and ceded to Private Newco or a nominee of Private Newco, with effect from the effective date, subject to the provisions of 4.2.3.6 below;

- 4.2.3.2 claims of scheme creditors will attract interest prior to and/or after the effective date if applicable in terms of any agreement concluded between such scheme creditors and the Zambezi Companies which provides for such interest, but save for the foregoing prior to the effective date, the claims of all scheme creditors against the Zambezi Companies shall not attract interest for any period prior to or after the effective date;
- 4.2.3.3 scheme creditors shall be entitled to receive payment of their claims out of the scheme creditors' scheme consideration, pro rata to their claims;
- 4.2.3.4 the rights of all scheme creditors shall be confined to the rights envisaged in this clause 4.2 as read with the remainder of this scheme and no scheme creditor shall have any other claim or right against the Zambezi Companies after the effective date;
- 4.2.3.5 the distribution of the scheme creditors' scheme consideration shall be in the manner and order as set out in 4.2.4 below;
- 4.2.3.6 with effect from the effective date, the ceded claims will be deemed to have been subordinated by Private Newco or the said nominee of Private Newco in favour of all other creditors of Private Newco from time to time, until such time as, in the opinion of the auditors of Private Newco, for the time being, the assets of Private Newco, fairly valued, exceed the liabilities of Private Newco and Private Newco agrees to such subordination. The terms and conditions of such subordination shall be recorded in the books of account of Private Newco by the auditors for the time being of Private Newco, the manner in which such subordination shall be recorded, being within the discretion of the said auditors in order to comply with the provisions of this clause 4.2.3.6; and
- 4.2.3.7 the provisions of 5.5 below shall apply to late creditors as defined in such clause.
- 4.2.4 Subject to the terms of this scheme and in particular to the provisions of 4.1.1 above, the receivers shall procure the distribution of the scheme creditors' scheme consideration to the following persons and in the following manner and order of preference –
 - 4.2.4.1 to secured scheme creditors (excluding shareholders and bondholders), against release and/or waiver in favour of Private Newco of any security which they may hold in respect of their claims against the Zambezi Companies, amounts equal to the amounts which would have been required to make payment in full to secured scheme creditors in terms of the Insolvency Act, of the secured portion of their claims against the Zambezi Companies as at the effective date, to the extent and in the order of preference in accordance with the provisions of the Insolvency Act, any balance remaining after payment of such amounts constituting concurrent claims for purposes of clause 4.2.4.3 below thereafter

- 4.2.4.2 to preferent scheme creditors, amounts equal to the amounts which would have been required to make payment in full to preferent scheme creditors in terms of the Insolvency Act, of the preferent portion of their claims against the Zambezi Companies as at the effective date, to the extent and in the order of preference in accordance with the provisions of the Insolvency Act, any balance remaining after payment of such amounts constituting concurrent claims for purposes of clause 4.2.4.3 below, and thereafter
- 4.2.4.3 to concurrent scheme creditors (including secured and preferent scheme creditors in respect of the concurrent portions of their claims), payment in full of the concurrent portions of their claims.
- 4.2.5 The excluded creditors and all or any alleged or possible claims, of whatsoever nature and howsoever arising, against the Zambezi Companies, or any one of them, are specifically excluded from this scheme and its effects in regard to scheme creditors and/or any other matters, as referred or dealt with in this scheme including the matters referred to in 4.12 or otherwise, excluded creditors to be dealt with, after the final date, to the specific exclusion of any other terms or effect of this scheme, in the manner as envisaged in this clause 4.2.5 and in clause 2.19 above, the text of 2.19 above to be read and regarded as forming part of this scheme, and in particular, this clause 4.2.5.

4.3 **Proposed scheme of arrangement between the Zambezi Companies and scheme shareholders**

- 4.3.1 The Zambezi Companies make the proposals contained in this clause 4.3 to scheme shareholders, in respect of their shares, their shareholder interests and their shareholder linked financial interests, such proposals to become effective on the date of sanctioning of the scheme, but subject to the arrival of the final date and the fulfilment of the conditions contained in 3.1 above.
- 4.3.2 Public Newco and Private Newco participate, specifically, in this clause 4.3, following the provisions of 3.3 and 4.11 below.
- 4.3.3 With effect from the effective date but subject to the arrival of the final date, and in consideration for the right of scheme shareholders to participate in this scheme, and to acquire the rights furthermore provided for in this clause 4.3, and in particular 4.3.4 below –
- 4.3.3.1 scheme shareholders shall be deemed to have disposed of -
- 4.3.3.1.1 their shares; and
- 4.3.3.1.2 their right, title and interest, in and to their related shareholder interests (other than and as opposed to shareholder linked financial interests),
- to Public Newco, at a consideration of R NIL (Nil Rand) (payable as provided for in 4.3.3.3 below), it being recorded, for purposes of clarity, that all such right, title and interest in and to any shares and/or shareholder interests, shall, specifically, exclude any right, title and interest of scheme shareholders in and to shareholder linked financial interests, which latter mentioned interests, are, specifically, dealt with in clause 4.3.5 below; and

- 4.3.3.2 simultaneously, the rights and claims of all scheme shareholders against the Zambezi Companies in respect of their shareholder linked financial interests, together with all their rights in respect of arrear interest payments due to them in terms of the prospectuses as at the effective date, shall be deemed to have been cancelled and substituted for the rights and claims recorded in clauses 4.3.3, 4.3.4 and 4.3.5, and furthermore, subject to the remaining provisions of this clause 4.3; and
- 4.3.3.3 the monetary value of the shares and any monetary value attaching to relevant shareholder interests of scheme shareholders, and the monetary value of the Private company shares, as envisaged in 4.3.3.1.1, 4.3.3.1.2 above and 4.3.4 below respectively, will be deemed to have been paid, in full, as part of and in the process of the issue to scheme shareholders of their relevant exchangeable debentures as provided for in 4.3.4 and 4.3.5 below.
- 4.3.4 With effect from the effective date, but subject to the arrival of the final date, and simultaneously with the disposal and cancellation of, respectively, the shares and the shareholder interests and the shareholder linked financial interests as envisaged in 4.3.3.1 and 4.3.3.2 above, the Public company shall be deemed to have disposed to Private Newco and Private Newco shall be deemed to have acquired from the Public company, the Private company shares at a consideration of R NIL (Nil Rand), and the Public company claims in consideration for the cancellation of the shareholder linked financial interest as envisaged in 4.3.3.2 above and the issuing to scheme shareholders of exchangeable debentures (“**debentures**”) in and against Private Newco as per the formal list being appended to this scheme document as **Appendix “ARR5”**, being newly structured financial instruments (in the nature of the debentures), encompassing the rights of scheme shareholders to receive projected investment returns and projected investment repayments of the nature and extent as recorded in 4.3.5.1 and 4.3.5.2 below, respectively, and the rights to receive security and the rights to elect to become shareholders in Public Newco as recorded in 4.3.5.3 and 4.3.5.4 below, respectively. In addition to what is provided for in this scheme pertaining to the debentures, the debentures will be governed by the trust deed, the salient features of which are recorded in **Appendix “ARR10”** to this scheme.
- 4.3.5.1 In consideration for agreeing to the disposal and cancellation, respectively, of their rights and claims in the manner and on the terms and conditions recorded in 4.3.3.1, up to and including 4.3.3.3, and the disposals of the Public company shares and the Public company claims as envisaged in 4.3.4 above scheme shareholders shall be issued exchangeable debentures in Private Newco as envisaged in 4.3.4 above, to such extent, and in such quantum and to such values and on such terms and conditions as will be pro-rata to the number and value of shares, shareholder interests and shareholder linked financial interests held by scheme shareholders in the Public companies in which scheme shareholders held shares, shareholder interests and shareholder linked financial interests as at the effective date, in accordance with a formal list of entitlement to exchangeable debentures in Private Newco, (recording and reflecting such new debentures of scheme shareholders in Private Newco), such formal list being appended to this scheme document as **Appendix “ARR5”**. Appendices “**ARR6**” and “**ARR7**” hereto contain and reflect, respectively, the projected investment returns and projected investment repayments envisaged in 4.3.5.2.1 and 4.3.5.2.2 below and the extent, quantum, values and terms and conditions applicable to debentures, providing for projected investment returns and projected investment repayments and subject to the rights of scheme shareholders as recorded in 4.3.5.3 below (as to security) and 4.3.5.4 below (as to the right to become shareholders in

Public Newco). The debentures shall be dispatched to scheme shareholders by and under the supervision and control of the receivers, and in terms of the trust deed, within 90 (ninety) days after the effective date after the sanctioning and becoming effective of the scheme.

4.3.5.2 Simultaneously with the disposal and cancellation, respectively, of the rights and claims as envisaged in 4.3.3.1 and 4.3.3.2 above, and effective from the effective date, all scheme shareholders shall be deemed to have agreed with Public Newco, Private Newco and the Zambezi Companies, the methodology of calculation at the fair market value as defined in 2.21, and will further be deemed to have, as incorporated in and encompassing the terms and conditions of the debentures –

4.3.5.2.1 acquired the right to receive projected investment returns, consisting of amounts equal to the net pro-rata monthly rental income attributable to the shareholder linked financial interests of scheme shareholders (debenture holders) as at the effective date, net of expenses, (and net of provisions) before taxation, depreciation, and amortisation, derived from the Zambezi properties, whether wholly or partially owned by Zambezi Retail in which scheme shareholders had investments through their shareholder interests in Zambezi Holdings of which Zambezi Retail was a wholly owned subsidiary as at the effective date. The rights of scheme shareholders as recorded in this clause 4.3.5.2.1, shall be, specifically recorded, in newly structured financial instruments, in the form of the debentures, which Private Newco shall issue to relevant scheme shareholders as envisaged in 4.3.5.1, and dispatch to scheme shareholders within 90 (ninety) days after the effective date following the sanctioning and becoming effective of the scheme, such debentures to reflect the projected investment returns envisaged in this clause 4.3.5.2.1 as recorded in **Appendix “ARR6”** to this scheme document, as reflected in 4.3.5.1 above. The relevant financial instruments, (exchangeable debentures), shall include the pro-rata rights of scheme shareholders to receive projected investment repayments as envisaged in 4.3.5.2.2 below;

4.3.5.2.2 acquired the right to receive repayment of historical investments made, consisting of amounts equal to the pro-rata portion attributable to debenture holders (scheme shareholders), of the fair market value (as defined in 2.21 above) of the assets of the Zambezi properties owned by the Private company in which relevant scheme shareholders historically had investments through their shareholder interests in the Public company of which the Private company was a wholly owned subsidiary, such Private company to be owned by Private Newco after sanctioning of the scheme. The fair market value of relevant assets are to be calculated as agreed to between Public Newco and the Zambezi Companies and scheme shareholders following the provisions of clause 4.3.5.2 above for purposes of determining the pro-rata quantum (values) attributed to any relevant debenture holder for purposes of making payment to such debenture holder of his projected investment repayments. Such projected investment repayments shall be made by the Private companies and Private Newco, from the quantum of and according to the timing relating to the projected investment repayments pertaining to relevant scheme shareholders, to be derived from the realisation of the portion of the Zambezi properties owned at any relevant time by the Private company in which relevant scheme shareholders had investments through their shareholder interests in the Public company of which the Private company was a wholly owned subsidiary as at the effective date, and through the mechanism of the debentures. The rights of scheme shareholders as recorded in this clause 4.3.5.2.2, shall be, specifically recorded, in newly structured financial instruments,

in the form of the debentures, which Private Newco shall issue to relevant scheme shareholders as envisaged in 4.3.5.1 above, and dispatch to scheme shareholders following the sanctioning of the scheme, such debentures to reflect the projected investment repayments envisaged in this clause 4.3.5.2.2 and as recorded in **Appendix "ARR7"** to this scheme document, as referred to in 4.3.5.1 above. In summary, scheme shareholders will be deemed to have acquired the right in aggregate (but pro-rata to the respective, relevant, quantum of their shareholder linked financial interests) to receive projected investment repayments of the aggregate maximum amount of R756,000,000 (Seven Hundred and Fifty Six Million Rand) ("**the capital amount**") from Private Newco, in accordance with the proposed repayment schedule appended to this scheme document as **Appendix "ARR7"**, reflecting repayment of historical investments of scheme shareholders over periods ranging from 1 (one) to 10 (ten) years after the effective date (sanctioning of the scheme) in accordance with the relevant information recorded in **Appendix "ARR7"**.

- 4.3.5.3 In addition to the provisions of 4.3.5.1 and 4.3.5.2 above, scheme shareholders shall receive security in respect of their future, restructured, expected rights to receive their projected investment returns and projected investment repayments (of the capital amount), as envisaged in 4.3.5.2.1 and 4.3.5.2.2 in the form of a covering mortgage bond/s over the Zambezi properties during the period from the day after the effective date (the sanctioning of the scheme) up to the repayment of any relevant scheme shareholder's pro-rata portion of the capital amount, in a maximum aggregate amount of R756,000,000 (Seven Hundred and Fifty Six Million Rand).
- 4.3.5.4 Further in addition, but as an alternative to the rights of scheme shareholders as recorded in 4.3.5.1, 4.3.5.2 and 4.3.5.3 above, scheme shareholders shall, within 90 (ninety) days after the effective date (date of sanctioning of the scheme), have the right to elect ("**electing shareholders**"), by written notice to Public Newco and Private Newco, **not to receive** their pro-rata projected investment returns and projected investment repayments (by means of the debentures) as and when such projected investment returns and projected investment repayments become due for payment or repayment as per the schedules being **Appendices "ARR6"** and **"ARR7"** to this scheme document, in which event electing shareholders will be deemed to have exchanged their right, title and interests in and to their debentures for such shareholding in Public Newco and abandoned and lost their rights to receive their pro-rata projected investment returns and projected investment repayments (with Public Newco taking cession of the right, title and interest in and to the debenture/s) of such electing shareholder and becoming the holder/owner of the relevant exchangeable debenture/s ("**the ceded debentures**"), and electing shareholders will obtain and be issued ordinary shares in Public Newco, by utilising the **blue** form of election attached to the Circular (as **Appendix "H"**) as per the instructions contained in such **blue** form of election. Scheme shareholders having made elections as envisaged in this clause 4.3.5.4, shall –
- 4.3.5.4.1 receive shares in Public Newco, the number of such shares to be calculated by Public Newco, and issued to electing shareholders, under the supervision of the receivers, with reference to the fair market value, at the time, of all the assets of Private Newco and the pro-rata value of the shares, the shareholder interests and the shareholder linked financial interests of electing shareholders, in

accordance with the formula recorded in **Appendix "ARR8"**, and furthermore in terms of the scheme; and

- 4.3.5.4.2 be deemed to have exchanged and ceded to Public Newco and exchanged all their right, title and interest in and to their debentures issued to or due to be issued to such electing shareholders, with effect from the day after the final date, in consideration for the issue to such electing shareholders of the shares in Public Newco issued to or due to be issued to such electing shareholders following their election as envisaged in this clause 4.3.5.4.
- 4.3.6 The aggregate amount of R756,000,000 (Seven Hundred and Fifty Six Million Rand) referred to in 4.3.5.2.2 above shall for all relevant purposes of the scheme, be reduced by the aggregate quantum of the debentures in respect of which elections have been made in terms of 4.3.5.4 above;
- 4.3.7 With effect from the day after the issue of shares in Public Newco to electing shareholders, Public Newco shall be deemed to have agreed with Private Newco that all ceded debentures will be cancelled and be of no further force or effect.
- 4.3.8 Notwithstanding any provisions to the contrary contained in this scheme, each scheme shareholder shall, with effect from the effective date, be deemed to have agreed to having their right, title and interest, as at the effective date, in and to their shares, their shareholder interests and their shareholder linked financial interests, restructured, as provided for in 4.3.3, 4.3.4 and 4.3.5 above and their sub-clauses and subject to the arrival of the final date, the rights of all scheme shareholders against the Zambezi Companies, Public Newco and Private Newco shall be confined to the rights envisaged in this clause 4.3 as read with the remainder of this scheme.
- 4.3.9 Upon sanctioning of the scheme, such sanction shall be deemed to constitute approval in terms of section 43(6) of the Companies Act, 71 of 2008, pertaining to the trust deed.
- 4.4 In the event of scheme shareholders failing to make an election as envisaged in 4.3.5.4, and, therefore, electing to receive their pro-rata projected investment returns and projected investment repayments as and when such projected investment returns and projected investment repayments fall due as per the schedule appended to this scheme document as **Appendix "ARR6"** and **"ARR7"**, then, upon receipt by scheme shareholders of the full amount of their projected investment repayments, scheme shareholders having so received their projected investment repayments, shall be deemed to have cancelled and abandoned, in favour of Private Newco, the rights of scheme shareholders to receive their projected investment returns and projected investment repayments and Private Newco will have no further obligations to relevant shareholders.
- 4.5 As soon as practicably possible within the envisaged post sanctioning of the scheme group restructuring plan to be implemented by Public Newco and Private Newco in order to simplify the group structure eventuating from the sanctioning of the scheme -

- 4.5.1 all or any debt write down will be effected in the books of account of any relevant lender and borrower (Private Newco and relevant Private companies) or any other company/ies in the restructured group, as the case may be, in the discretion and at a time and date, decided upon by Public Newco; and
- 4.5.2 Public Newco will have the right to cancel the shares and the shareholder interests as acquired by Public Newco as provided for in 4.3.3.1.1 and 4.3.3.1.2 above, in the discretion and at a time and date, decided upon by Public Newco; and
- 4.5.3 the Public company forming part of the Zambezi Companies, as legal entities, will be deregistered by or at the instance of Public Newco and Private Newco.
- 4.6 Scheme shareholders are specifically urged to consider the content of clause 4.3 and its sub-clauses, carefully, as same specifically restructures and regulates the future right, title and interest of scheme shareholders in and to the Zambezi Companies, the Zambezi properties, Public Newco and Private Newco, to the exclusion of any and all other right, title and interest of scheme shareholders against the Zambezi Companies and/or the Zambezi properties and/or Public Newco and/or Private Newco, prior to and after the effective date, and consequently, prior to and after the proposed sanctioning of this arrangement, in respect of their shares, shareholder interests and shareholder linked financial interests.
- 4.7 The attention of scheme shareholders is drawn to the fact and content of the Directives, and the possibility that the property syndication related business having been promoted by Sharemax Investments and the Sharemax Syndication Company may, as a result of the Directives, be deemed illegal, following which, scheme shareholders may well be deemed to have participated in such illegality, and by virtue of which scheme shareholders may be required to repay portions of investment returns received by them prior to the effective date, should such property syndication business indeed be found by any relevant Court or other Authority to have been illegal.
- 4.8 **Payments associated to scheme creditors' scheme consideration**
- 4.8.1 The portions of funding, remaining, out of the aggregate amount of the restructuring funding, after the payment to scheme creditors of the scheme creditors' scheme consideration, shall be utilised by and distributed by the receivers, in consultation with the board of directors of Public Newco and Private Newco, to make payment of the following aggregate amounts, to the parties entitled to receive such payments, and, specifically as follows-
- 4.8.1.1 the procuring and payment for the upgrading works; and
- 4.8.1.2 the working capital funding.
- 4.9 **Bondholder payments**

The claims of the bondholders shall be serviced and repaid, as the case may be, at the instance of Private Newco and the relevant Private company being indebted to any relevant bondholder, from time to time in accordance with

the relevant terms and conditions of the relevant loan/facility agreements and/or bonds, pertaining to the indebtedness secured by any relevant bond.

4.10 **Significant Contracts**

4.10.1 The attention of scheme creditors and scheme shareholders is specifically drawn to the content of the Significant Contracts, as defined in clause 2.61 of this scheme document, and **Appendix “C”** to the Circular being a list of the Significant Contracts.

4.10.2 It is a specific term and condition of this scheme and its sanctioning, that, to the extent necessary in law or otherwise, that, upon the sanctioning of the scheme, scheme creditors and scheme shareholders will be deemed to have approved of, and ratified all significant contracts.

4.11 **Participation of Public Newco and Private Newco**

Public Newco and Private Newco agree, by signing this scheme document in the space provided to the terms and conditions of this scheme, and furthermore to fully and effectively exercise their rights and fulfil their obligations in terms of this scheme.

4.12 **Matters ancillary to the scheme**

4.12.1 Following the implementation of the scheme, the following events will take place pertaining to the assets and interests acquired by Up-To-It in terms of the Sharemax Investments parties settlement agreement, referred to in 2.58 above, as provided for in this clause 4.12. Words and expressions defined in the Sharemax Investments parties settlement agreement will bear, for purposes of this clause 4.12, the meanings attributed to such words and expressions as defined in such agreement –

4.12.1.1 the Sharemax Investments loan accounts have been written off in the books of account of, both Sharemax Investments and the relevant Sharemax Syndication Companies against which the Sharemax Investments loan accounts existed, to the extent necessary, as per the relevant agreement relating to the acquisition and repayment of such loan accounts, and in particular, the Sharemax Investments parties settlement agreement;

4.12.1.2 the Sharemax Investments private company shareholders, to the extent to which any such shareholding had not already, prior to the effective date of the Sharemax Investments parties settlement agreement, been transferred to the relevant Public company which were entitled to receive transfer of such shareholdings, and which may, as at the date of the entering into of the Sharemax Investments parties settlement agreement have not yet been transferred to the relevant Public company;

4.12.1.3 the Frontier shares have been disposed of to the management of Frontier;

- 4.12.1.4 the consideration paid to Up-To-It for the acquisition of the Frontier shares will be ceded and transferred to Private Newco, the new Private company having been established as a wholly owned subsidiary of Public Newco and as defined in, respectively, clauses 2.33 and 2.38 of the scheme;
- 4.12.1.5 the CentroProp shares are owned by Frontier;
- 4.12.1.6 the Growth and Development interests will have been disposed of by Up-To-It to Private Newco in terms of an agreement in this regard, in consideration for the assumption by the Growth Plan Companies of the obligation to pay to the Sharemax Investments parties the amount of R25,000,000 (Twenty Five Million Rand) referred to in 2.58 above, such agreement forming part of the Significant Contracts referred to in 4.10 above;
- 4.12.1.7 the Leeuwpoort Trust interests will have been disposed of by Up-To-It to Private Newco in the process of the implementation of the scheme;
- 4.12.1.8 save for the rights and obligations of Up-To-It as recorded in 4.12.1.9 below, Up-To-It will have ceded all or any rights which it may acquire in terms of any of the aforesaid arrangements and/or the scheme, to Private Newco in terms of a cession agreement forming part of the Significant Contracts referred to in 2.61 above; and
- 4.12.1.9 Up-To-It will, as owner of the entire issued share capital of and all claims on loan account against Sharemax Premium (Pty) Limited, reg nr. 2005/034090/07, continue to manage and exercise all right, title and interest of clients of Sharemax Premium (Pty) Limited in accordance with the Client Mandates pertaining to the business affairs of Sharemax Premium (Pty) Limited.
- 4.12.1 As a specific term of the scheme and its sanctioning, scheme creditors and scheme shareholders will be deemed to have, specifically, and without derogating from the other terms, conditions and provisions of the scheme, approved of and ratified all the matters envisaged in 4.12.1 up to and including 4.12.1.9 above, as provided for in this clause 4.12.2.

4.13 **Costs of the scheme and the restructuring processes**

- 4.13.1 The costs of the scheme, and the costs of the overall restructuring process of the Zambezi Companies, is dealt with in **Appendix “ARR9”** to the scheme document.
- 4.13.2 Similar provisions as those contained in 4.13.1 above, appear in and apply in the instances of the Income Plan, Villa and Growth Plan Scheme of Arrangement documentation and processes, in respect of the costs of the relevant schemes and the costs of the overall restructuring process of the Income Plan, Villa and Growth Plan Companies.
- 4.13.3 The attention of scheme creditors and scheme shareholders is specifically drawn to **Appendix “ARR9”** which reflect –

- 4.13.3.1 the transfer duty and transfer and bond cancellation and bond registration fees, costs, and the like, having been paid in regard to the procuring of the transfer of the 50% (fifty per centum) undivided share in the Zambezi property;
- 4.13.3.2 the transfer duty and transfer and bond cancellation and bond registration fees, costs, and the like, having been paid in regard to the procuring of the transfer of the 30% (thirty per centum) undivided share in the Villa property;
- 4.13.3.3 the “Section 311 costs”, being the costs and expenses expended and budgeted to be expended by the board in respect of the structuring and the procuring of the sanctioning of the scheme in the overall restructuring process;
- 4.13.3.4 the “non Section 311 costs”, being the costs and expenses expended and budgeted to be expended by the board in respect of matters ancillary to the scheme required to have been and which may be required to be expended in the overall restructuring process; and
- 4.13.3.5 the costs and expenses of the boards of directors of the Sharemax Syndication Companies incurred since the advent of the Directives, including those in respect of the Zambezi Companies,

all of which forms part of the costs referred to in 4.13.1 above, such costs having been funded via loans, referred to in 4.13.4 below from companies in the Sharemax Syndication Companies group, having funds available for the payment of such costs.

- 4.13.4 The underlying loan agreements regulating the borrowing and utilisation of funding required to procure the payment of the costs referred to in 4.13.3 above and furthermore, in general, the costs of the scheme and the costs of the overall restructuring process of the Zambezi Companies, the Villa Companies and the Growth Plan Companies, form part of the Significant Contracts as defined in 2.60 above and the nature and extent of such costs are, all, recorded and fully dealt with in **Appendix “ARR9”** to the scheme document.
- 4.13.5 Adequate arrangements are contained in the relevant loan agreements referred to in 4.13.4 above, for the due repayment of all such loans.
- 4.13.6 It is the considered opinion of the new boards that the restructuring processes and costs and expenses incurred and to be incurred in regard thereto, are justifiable, necessary, reasonable, legal and in the best interests of the shareholders/investors of the Sharemax Syndication Companies and in order to effectively and efficiently restructure the affairs of the Sharemax Syndication Companies, ultimately in order to achieve the aims envisaged in clauses 1.3.11 up to and including 3.15 and its sub-clauses of this scheme and clauses 2.13 up to and including 2.17 of the Explanatory Statement.

4.13.7 As a specific form of the scheme and its sanctioning, scheme creditors and scheme shareholders will be deemed to have, specifically, and without derogating from the generality of the other terms, conditions and provisions of the scheme, approval and ratified all the matters envisaged in 4.13.1 up to and including 4.13.5 above.

4.14 **Costs of Chairman, Receivers and Statutory Managers**

4.14.1 All costs of the chairman and all costs of the receivers, are to be paid for outside the ambit of the arrangement, and accordingly no amounts whatsoever are deductible from the scheme creditors' scheme consideration for this purpose.

4.14.2 The attention of scheme creditors and scheme shareholders is drawn to the fact that the fees and costs of the Statutory Managers are not paid by the Sharemax Syndication Companies, but by the South African Reserve Bank.

5 **CHAPTER 5 - ADMINISTRATIVE PROVISIONS**

5.1 **Proof of claims for purposes of participating in the distribution under the scheme**

All claims of scheme creditors and scheme shareholders (but in respect of their shares, shareholder interests and shareholder linked financial interests) falling to be dealt with in this scheme shall, be proved (if necessary, having regard to the provisions of 5.1) considered and adjudicated upon by the receivers for purposes of participating in this scheme, as if claims against the insolvent estates of any one of the relevant Zambezi Companies as at the effective date, in accordance with the provisions of the Insolvency Act and the Act, and consequently, without derogating from the generality of the aforementioned, the nature and the monetary value of claims as being preferent, secured, concurrent or otherwise, and the priority and preference in which claims rank with one another for purposes of participating in this scheme and the value of security held by scheme creditors, shall be determined in terms of and as if such claims are claims against the Zambezi Companies in liquidation in terms of the provisions of the Insolvency Act and the Act, as at the date of the provisional liquidation of the Zambezi Companies, and the receivers shall *mutatis mutandis* have the same powers for the purposes of this scheme as a Presiding Officer at meetings of creditors under the provisions of the aforesaid Acts.

5.2 **Scheme creditors or scheme shareholders reflected in the books of account of the Zambezi Companies.**

Scheme creditors or scheme shareholders who are reflected in the books of account of the Zambezi Companies as scheme creditors or scheme shareholders shall be regarded by the receivers as scheme creditors or scheme shareholders for claims or shareholder interests for which they so appear to be creditors (and, as the case may be, as secured or preferent creditors to the extent that such security or preference is reflected in the books of account and records of the Zambezi Companies or shareholders, unless the receivers in writing, by registered mail, advise any particular scheme creditor or scheme shareholder, that they reject their claims (or security or preference as the case may be), or shareholder interests, in which event that scheme creditor or scheme shareholder shall be

required to prove his claims or shareholder interests in terms of the provisions of 5.3 below within a period of 60 (sixty) days after receipt of such written advice.

5.3 Scheme creditors or scheme shareholders with claims or shareholder interests rejected or not reflected at all or not adequately reflected in the books of account and records of the Zambezi Companies

5.3.1 Scheme creditors or scheme shareholders whose claims or shareholder interests are rejected in whole or in part shall be required to prove their claims or shareholder interests within a period of 60 (sixty) days after receipt of a written notice as envisaged in 5.2 below.

5.3.2 Scheme creditors or scheme shareholders who are not reflected at all or not correctly reflected in the books of account and records of the Zambezi Companies or who allege that they are scheme creditors or scheme shareholders for claims or shareholder interests which differ from the records of the Zambezi Companies must lodge details of their claims or shareholder interests for proof with the receivers at c/o **Frontier Asset Management and Investments (Pty) Limited ("Company Secretarial Services Provider")**, 105 Club Avenue, Waterkloof Heights, 0186, Private Bag 27067, Monument Park, 0105, or fax same to 086 689 9014, or email same to 311@frontieram.co.za, within a period of 60 (sixty) days after the final date.

5.3.3 Claims of scheme creditors and scheme shareholders shall be proved to the satisfaction of the receivers as if they were the officers presiding at a meeting for the proof of claims within the meaning of Section 44 of the Insolvency Act, as read with Section 366 of the Act, supported by affidavits which are to contain such information and are to be accompanied by such supporting documents as are required for proving claims in accordance with the foregoing statutory provisions.

5.3.4 The receivers' decisions shall be subject to review by the Court upon the application of any party affected thereby, provided that any such review proceedings shall be brought within 30 (thirty) days of receipt of advice of that decision in writing from the receivers, acting in that capacity. Should the affected party fail to make such an application, the party shall be deemed to have waived its right to dispute such decision and the party shall be bound by the said decision and thereafter be debarred from bringing any such review proceedings.

5.4 Secured creditors with claims or security rejected or not reflected in the books of account and records of the Zambezi Companies

5.4.1 Each secured creditor, if obliged to prove his secured claim in terms of 5.2 and 5.3 above, is obliged, when proving his claim, to place a value on his security, and the receivers shall (subject to his rights in terms of 5.2 and 5.3) admit as the secured portion of the claim of such creditor, the lesser of the amount of that claim and an amount equal to the value placed on such security by the creditor, or in the event that such value is unacceptable to the receivers, a value agreed upon in writing between the receivers and the proposer on the one hand, and the secured creditor on the other hand, provided that if there is a dispute in regard to the value to be placed on the security, such dispute shall be referred to an independent person agreed to between the receivers, the proposer and the secured creditor within 7 (seven) days or, failing agreement, one nominated by

the President for the time being of the Law Society of the Gauteng. This person shall determine the dispute and assess the value, summarily, as an expert and his decision shall be final.

5.4.2 The receivers shall, in admitting the secured portion of the claim in terms of 5.3.1 to 5.4, make provision in their determination thereof for the continued accrual of interest in favour of the relevant secured creditor until the date upon which payment is made to such secured creditor or any guarantee for such payment becomes payable, whichever is the earlier, provided that the secured portion of the claim, including such interest, shall not exceed the value of the security as determined in 5.3.1 to 5.4. The applicable rate of the interest shall be in accordance with the agreement in terms of which security was provided and in the absence of any such agreement, shall be at the statutory rate applicable at the time of calculation of mora interest.

5.5 **Conditional claims**

5.5.1 Any conditional claims of scheme creditors shall be dealt with by the receivers in accordance with the terms and conditions of the Insolvency Act and the Act, as if the receivers were liquidators of the Zambezi Companies.

5.5.2 A scheme creditor may prove a conditional claim in terms of 5.2 and 5.3 above. If the condition to which any claim is subject has been fulfilled before the final distribution under the arrangement, the receivers shall admit the claim as if it had been unconditional.

5.5.3 If a payment falls due to be made on a conditional claim, the receivers shall deposit the amount of that payment in a special account with a registered bank and shall pay over the payment, together with interest thereon to the scheme creditor when the condition has been fulfilled. If the condition is not fulfilled, then the payment plus the interest thereon shall be available to be distributed amongst the other concurrent scheme creditors on a *pro rata* basis subject at all times to clause 5.4.1 above unless the arrangement provides for a specified payment to creditors and such payment has been paid to them. If, in the opinion of the receivers, the costs of making the payments will be in excess of the value of the portions which scheme creditors will receive, then the receivers shall refund to Private Newco the dividend, plus accrued interest.

5.6 **Late proof of claims or shareholder interests**

5.6.1 Scheme creditors or scheme shareholders whose claims or shareholder interests are not recorded in the books of account of the Zambezi Companies as envisaged in clause 5.1 above, and scheme creditors or scheme shareholders otherwise obliged to prove their claims or shareholder interests as provided for in clause 5.2 and 5.3 above, and who have received proper notice of the –

5.6.1.1 submission of the arrangement; and

5.6.1.2 terms of the arrangement; and

5.6.1.3 meetings; and

5.6.1.4 sanction of the arrangement by the Court,

and who have been furnished, together with notification of the sanction, with a copy of the text of clauses 5.1 to 5.3 above and who fail to submit their claims within the periods stipulated in 5.2 and 5.3 above as the case may be shall be deemed to have abandoned their claims, free of consideration, in favour of the proposer.

5.6.2 A scheme creditor or scheme shareholder, other than a scheme creditor or scheme shareholder as envisaged in 5.6.1 (“**the late creditor**” or “**the late shareholder**”), not having been given proper notice of the –

5.6.2.1 submission of the arrangement; or

5.6.2.2 terms of the arrangement; or

5.6.2.3 meetings; or

5.6.2.4 sanction of the arrangement by the Court,

and not having had his attention specifically directed to the contents of clauses 5.1 to 5.3 above shall be entitled to prove his claim or shareholder interests in the manner stipulated in 5.2 and 5.3 within 60 (sixty) days after receiving proper notice of the matters referred to in 5.6.2.1 to 5.6.2.4 inclusive, failing which he shall be deemed to have been abandoned his claim or shareholder interests, free of consideration, in favour of the proposer.

5.6.3 If the claim or shareholder interests of a late creditor or late shareholder is proved after the distribution all of the funds available for payment in terms of the arrangement to that late creditor’s applicable class of creditor or that late shareholder, or if the funds the receivers have available on hand for distribution to that particular class of creditor or the debentures unavailable to a late shareholder, are not sufficient to pay the late creditor or provide debentures to the late shareholder, Private Newco shall pay to such late creditor or issue relevant debentures to such late shareholder the payment, if any, which he would have received, had he proved a claim or shareholder interests timeously, bearing in mind the class of scheme creditor to which such late creditor forms part of.

5.6.4 Private Newco shall have the right to recover from any scheme creditor or scheme shareholder (“**the overpaid creditor**” or “**the overpaid shareholder**”) who has received any payment under the arrangement prior to receipt of the claim or shareholder interests of the late creditor or the late shareholder, the amount by which the payment to the overpaid creditor or the overpaid shareholder exceeds the amount which would have been paid to him had the claim of the late creditor or late shareholder been proved timeously.

5.6.5 A certificate under the hand of the receivers as to the amount so refundable by any overpaid creditor or overpaid shareholder shall be *prima facie* proof thereof in any proceedings instituted against any overpaid creditor for recovery thereof.

6 DUTIES AND POWERS OF THE RECEIVERS

6.1 The receivers shall, after the final date –

6.1.1 forthwith notify –

6.1.1.1 all known scheme creditors and scheme shareholders that the arrangement has been sanctioned, and in particular draw their attention to the provisions of 5 of the scheme and their rights and obligations thereunder;

6.1.1.2 all scheme creditors and scheme shareholders reflected in the books of account of the Zambezi Companies that they are regarded by them as being creditors or shareholders for purposes of participating in the , and for the amounts and number of shares for which they so appear to be creditors or shareholders in the books of account of the Zambezi Companies, stating such amount and number of shares; and

6.1.1.3 all scheme creditors and scheme shareholders envisaged in 6.1.1.2 that their claims and shareholder interests for purposes of participating in the distribution in terms of the arrangement will be deemed to be as advised to them in terms of 6.1.1.2, unless creditors or shareholders establish some other claim or a claim for some other amounts or shareholder interests, in the manner envisaged in 5.2 above;

6.1.2 provided they are satisfied that the claim or interest of any particular scheme creditor or scheme shareholder, as it appears in the books of account of the Zambezi Companies, is incorrect or for any reason rejectable by them, advise such scheme creditor or scheme shareholder in writing of the fact that they reject such claim or interest, and that such scheme creditor or scheme shareholder thereupon is obliged to prove its claim or interest in terms of the provisions of 5.1 and 5.2 above;

6.1.3 have the right to –

6.1.3.1 take all steps necessary to enforce due compliance by the Zambezi Companies and Public Newco and Private Newco and/or the proposer of any obligations imposed upon or assumed by the Zambezi Companies and/or proposer in terms of the scheme;

6.1.3.2 institute any proceedings against any person which may be required to give effect to this scheme;

6.1.3.3 defend any proceedings brought against the receivers or the Zambezi Companies or the proposer arising out of this scheme;

6.1.4 if the scheme is accepted by the requisite majority of scheme creditors and scheme shareholders, as provided for in Section 311 of the Act, and sanctioned by the Court consequent thereupon, as soon as practicably possible after sanction cause a copy of the Order to be published once in an English and once in an Afrikaans newspaper circulating throughout South Africa or such other newspaper as directed by the Court;

- 6.1.5 be entitled to dispute any claim, or the validity of any preference or security claim or shareholder interest of any scheme creditor or scheme shareholder or the valuation placed by any secured creditor on any security;
- 6.1.6 be entitled in their discretion to compromise and/or otherwise determine by agreement the amount of any claim or shareholder interest proved or to be proved in terms of 5 above;
- 6.1.7 be entitled to engage the services of legal and other professional advisors in connection with any matter concerning their functions and duties, to dispense with taxation of and to agree the amount of the reasonable fees and charges of such legal and other professional advisors and to pay the remuneration and disbursements of the person/s so engaged;
- 6.1.8 have the right and option, in addition to any rights available to them in terms hereof or in law, upon the written instructions in this regard of the proposer, to take over any security as provided for in clause 5.3 *mutatis mutandis*;
- 6.1.9 at all times have access to all books, records, documentation and trading figures of the Zambezi Companies as they may reasonably and properly require for the execution of their duties as receivers in terms of the scheme;
- 6.1.10 in their discretion, be entitled to settle any disputes with the proposer with regard to any aspect of the implementation of the scheme;
- 6.1.11 be entitled to pay a claim or issue debentures and/or shares in respectively Private Newco and Public Newco make a payment in respect of any shareholder interest, or any portion thereof, in accordance with this scheme, at such earlier date as and when they deem fit, notwithstanding that all claims and/or shareholder interests against and/or in respect of the Zambezi Companies have not yet been proved or that the liquidation and distribution accounts referred to in clause 7 have not yet been finalised;
- 6.1.12 be obliged to, notwithstanding anything to the contrary contained in this scheme, to recognise the claims of any third party to whom any scheme creditor or scheme shareholder has ceded or pledged any of its claims or shareholder interests which are subject to this scheme if the Zambezi Companies are in law obliged to recognise such third parties as its creditor or shareholder in respect of such claims.
- 6.2 The Zambezi Companies agree to co-operate fully with and to assist the receivers in all respects in order to achieve the successful implementation of the scheme in accordance with its terms.
- 6.3 If there is any disagreement between the persons comprising the receivers as to any matter which they are obliged to determine in terms and for the purposes of this scheme, such disagreement shall be determined by a person of suitable experience appointed by the chairman. Such person shall act as an expert and not an arbitrator and his decision shall be final and binding on the persons comprising the receivers who shall implement any decision made by such third party.

7 LIQUIDATION AND DISTRIBUTION ACCOUNT

- 7.1 As soon as reasonably possible after final determination of the claims and shareholder interests of scheme creditors and scheme shareholders, the receivers shall draw liquidation and distribution account/s (“**the accounts/s**”) as if (in the case of scheme creditors) they were liquidators under a winding-up order.
- 7.2 The account/s shall, inter alia, reflect the name of each and every scheme creditor and scheme shareholder whose claim and shareholder interests have been duly proved or admitted, the amount of the claim, the nature and extent of the shareholder interests and the amount of the payment to be awarded to such creditor and shareholder under the account/s.
- 7.3 Notice by registered post shall be given by the receivers to the proposer, and to all known scheme creditors and scheme shareholders of the Zambezi Companies, that the account/s is/are lying for inspection for a period of not less than 14 (fourteen) days calculated from the third business day succeeding that upon which the notice is despatched, but the failure of the receivers to give such notice shall in no way entitle any person to initiate a late objection nor shall such failure invalidate such accounts or any distribution made pursuant thereto.
- 7.4 Any person objecting to the account/s shall be obliged to lodge notice of his objection (stating the full grounds thereof) with the receivers before the expiry of the said period of 14 (fourteen) days referred to in 7.3, failing which the account/s shall be deemed to be accepted by all interested parties. The receivers shall rule on any objection so lodged and shall give the scheme creditor or scheme shareholder written notice of his ruling, which notice shall be delivered by registered post.
- 7.5 Any objector referred to in 7.4, or any other person, aggrieved by any ruling of the receivers, shall be entitled to institute review proceedings in Court within 14 (fourteen) days of the receipt by the scheme creditor or scheme shareholder concerned of the notice referred to in 7.4. Failing institution of review proceedings as aforesaid the right of objection shall lapse and the objector shall be deemed to have accepted the account/s.
- 7.6 Notwithstanding any provision to the contrary contained in 7.1 to 7.5 inclusive above, the receivers shall prepare the accounts within a reasonable time of being so requested in respect of payments in terms of the arrangement to secured and preferent creditors, despite finality not yet having been reached regarding the nature and extent of the claims of concurrent creditors or the identity of all concurrent creditors, or the nature or extent of the shareholder interests of all shareholders, subject to the receivers having made proper provision for the payment of any amounts due to any scheme creditor or scheme shareholder whose claim or shareholder interests have not yet been admitted.

8 DOMICILIUM AND NOTICES

- 8.1 Each scheme creditor or scheme shareholder is hereby deemed to have chosen domicilium citandi et executandi for all purposes arising out of or in connection with the arrangement at the address stated by that scheme creditor or scheme shareholder in his proof of claim form or shareholder interests documentation, or, in the event of any scheme creditor or scheme shareholder not having lodged a proof of claim form or shareholder interests documentation, then at the address as reflected in the books of account and records of the Zambezi Companies from time to time.

8.2 Notices despatched by the chairman or the receivers in accordance with the scheme shall –

8.2.1 be deemed to have been received by the addressee reflected on such notices on the seventh business day after despatch thereof by prepaid registered post to the addressee's domicilium citandi;

8.2.2 be deemed to have been received by the addressee reflected on such notices on the seventh business day after despatch thereof by prepaid registered post to the addressee's last recorded address with the Zambezi Companies.

SIGNED AT **PRETORIA** ON 11 NOVEMBER 2011
AS WITNESS: N VAN ZYL

RP BADENHORST
FOR: **THE PUBLIC COMPANIES**
Duly authorised

SIGNED AT **PRETORIA** ON 11 NOVEMBER 2011
AS WITNESS: N VAN ZYL

RP BADENHORST
FOR: **THE PRIVATE COMPANIES**
Duly authorised

SIGNED AT **PRETORIA** ON 11 NOVEMBER 2011
AS WITNESS: N VAN ZYL

D HAESE
FOR: **PUBLIC NEWCO**
Duly authorised

SIGNED AT **PRETORIA** ON 11 NOVEMBER 2011
AS WITNESS: N VAN ZYL

DR KOEKEMOER
FOR: **PRIVATE NEWCO**
Duly authorised

SIGNED AT **STELLENBOSCH** ON 11 NOVEMBER 2011
AS WITNESS: N VAN ZYL

JF KLOPPER
Receiver

SIGNED AT **PRETORIA** ON 11 NOVEMBER 2011
AS WITNESS: N VAN ZYL

CF MYBURGH
Receiver