MEMORANDUM OF INCORPORATION

of

Penzance Estate Special Rating Area NPC
A Non-Profit Company with Voting Members
(Registration number: 2016/366791/08)

(the "*Company*")

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1. DEFINITIONS

In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and similar expressions bear corresponding meanings –

(i) "**Act**" means the Companies Act, 71 of 2008;

(ii) "**additional rate**" means the additional rate contemplated in section 22(1)(b) of the Local Government: Municipal Property Rates Act, 6 of 2004) (the "*MPRA*"), and in sections 22 of the City of Cape Town: City Improvement District By-law 2023 (the "*By-law*");

(iii) "**additional rate payer**" or "**ARP**", in relation to the City Improvement District means the owner of the rateable property located in the district who is liable to pay the additional rate;

(iv) "**alternate board observer**" means any councillor designated by the Executive Mayor in terms of section 21 of the By-law to attend meetings of the board of the management body as an observer in substitution for the principal board observer;

(v) "**alternate Director**" means the person elected or appointed to serve, as the situation may require, as a member of the Board in substitution for a particular elected Director of the Company and may not be the board observer or alternate board observer;

(vi) "**auditor**" means an individual or firm registered as an auditor with the Independent Regulatory Board of Auditors (IRBA);

(vii) "**Board**" means the Board of Directors of the management company contemplated in section 66 of the Companies Act, 71 of 2008;

(viii) "**board observer**", unless the context indicates otherwise, means any councillor designated by the Executive Mayor to attend meetings of the board of the management body as an observer as contemplated in section 21 of the By-law;

(ix) "**business day**" means the number of days provided for between the happening of one event and another by excluding the day on which the first event occurs; including the day on or by which the second event is to occur; and excluding any public holidays, Saturdays or Sundays that fall on or between the events;

(x) "**business plan**" means the composite document, consisting of a motivation report, implementation plan and term budget provided for in section 5(9)(b)(i) of the By-law, the minimum required contents of which are listed in Schedule 1 to the By-law;

(xi) "**By-law**" means the City of Cape Town: City Improvement District By-Law, *2023*, published in *Provincial Gazette* No 8743 dated 13 April 2023;

(xii) "**City**" means the City of Cape Town, a municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 117 of 1998, or any structure or employee of the City acting in terms of delegated authority;

(xiii) "**City Improvement District**" or "**CID**" means the contiguous geographic area, designated by the Council for the levying of an additional rate on rateable properties within its boundaries to finance improvements and upgrades of the public spaces within the district operated by a management body, as contemplated in section 22 of the Municipal Property Rates Act (MPRA), and which may be further categorised as a Residential Improvement District, Mixed-Use Improvement District or Business Improvement District;

(xiv) "**CID term**" means the five-year period for which the CID is established under section 4(1)(a)(iii) of the By-law, or any further five-year period by which Council has extended this term under section 27 of the By-law;

(xv) "**Commissioner**" means the Commissioner of the South African Revenue Services;

(xvi) "**Common control**" in relation to two or more juristic bodies who are eligible for membership of the management body of a CID, means control by a person who-

(a) beneficially owns more than half of the issued share capital of each body;

(b) is entitled to vote a majority of the votes that may be cast at a general meeting of each body, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;

(c) is able to appoint or to veto the appointment of a majority of the directors of each body;

(d) is a holding company and each body is a subsidiary of that company;

(e) in the case of a body which is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;

(f) in the case of a close corporation, owns the majority of the members' interest or controls directly or has the right to control the majority of the members' votes in the close corporation; or

(g) has the ability to materially influence the policy of the bodies in a manner comparable to a person who, in the ordinary commercial practice, can exercise an element of control referred to in para (a) to (f) of this definition;

(xvii) "**Common ownership**" in relation to two or more juristic bodies who are eligible for membership of a management body of a CID, means greater than 50% ownership of each such body by any person;

(xviii) "**Companies and Intellectual Property Commission**" ("*CIPC*") means the body tasked *inter alia* with registering companies and maintaining accurate information concerning companies, established under s. 185 of the Act;

(xix) "**Companies Regulations**" or "**Regulations**" means the regulations published in terms of the Act;

(xx) "**Company**" means the non-profit company incorporated in accordance with the provisions of the Act, as contemplated in section 8 of the By-Law, for purposes of implementing the provisions of the business plan of the CID;

(xxi) "**connected person**" has the meaning assigned to it in section 1 of the Income Tax Act, 58 of 1962;

(xxii) "**Constitution**" means the Constitution of the Republic of South Africa, 1996;

(xxiii) "**Council**" means the Municipal Council of the City;

(xxiv) "**days**" means calendar days, save that it excludes public holidays and the day on which the first event occurs and includes the day of the second event;

(xxv) "**Director**" means a member of the Board as contemplated in section 66 of the Act, or an Alternate Director, and includes any person occupying the position of Director or Alternate Director, by whatever name designated;

(xxvi) "**district**" means the special rating area approved by Council under section 22 of the MPRA;

(xxvii) "**electronic address**" means such address appointed by a Director and/or a Member for purposes of conducting electronic communication;

(xxviii) "**electronic communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, 25 of 2002;

(xxix) "**Executive Director**" means the official responsible for CIDs appointed in terms of section 57 of the Local Government: Municipal Systems Act, 32 of 2000, or a delegate appointed in terms of section 29 of the By-law;

(xxx) "**exercise**'', when used in relation to voting rights, includes voting by proxy, nominee, trustee or other person in a similar capacity;

(xxxi) "**file**", when used as a verb, means to deliver a document to the CIPC in the prescribed manner and form, if applicable;

(xxxii) "**Finance Agreement**" means the finance agreement concluded between the Company and the City pursuant to section 23(7) of the By-law;

(xxxiii) "**Income Tax Act**" means the Income Tax Act, 58 of 1962, as amended;

(xxxiv) "**local community**" in relation to a CID means the body of persons comprising individuals falling under one or more of the following categories:

(a) property owners in the district, irrespective of whether or not they will be liable for paying the additional rate;

(b) residents of the district;

(c) tenants and body corporates in the district;

(d) any civic organisations and non-governmental, private sector or labour organisations or bodies which are involved in local affairs in the district affected by the proposed improvement or upgrading of the district.

(xxxv) "**member**" means any natural or juristic person (including the duly authorised representative) admitted as a member of the Company in terms of the provisions of this MOI;

(xxxvi) "**MFMA**" means the Local Government: Municipal Finance Management Act, 56 of 2003;

(xxxvii) "**MOI**" means this Memorandum of Incorporation;

(xxxviii) "**MPRA**" means the Local Government: Municipal Property Rates Act, 6 of 2004;

(xxxix) "**municipal services**" has the meaning assigned to it in section 1 of the Systems Act;

(xl) "**ordinary resolution**" means a resolution adopted with the support of more than 50% (fifty percent) of the voting rights exercised on the resolution at a members' meeting or by members acting other than at a meeting as envisaged in article 15.12.1 of this MOI;

(xli) "**person**" includes natural and juristic persons;

(xlii) "**Policy**" means the Policy for the determination of CIDs, or any other policy adopted by the Council in relation to CIDs, as in force from time to time;

(xliii) "**principal board observer**" means the councillor tasked with the primary obligation of attending meetings of the board of a management body as an observer by the Executive Mayor in terms of section 21 of the By-law;

(xliv) "**property**" bears the meaning assigned to it in section 1 of the MPRA ;

(xlv) "**principal objective**" means the principal objectives of the Company as set out in article 6.1;

(xlvi) "**public benefit activities**" means a public benefit activity as contemplated in section 30(1) of the Income Tax Act, 58 of 1962, read with Part 1 of the Ninth Schedule thereto, or any such activities determined by the Minister of Finance by notice in the Government Gazette which are benevolent in nature, having regard to the needs, interests and well-being of the general public;

(xlvii) "**Public Benefit Organisation**" **or** "**PBO**" means a public benefit organisation as contemplated in section 30 of the Income Tax Act, 58 of 1962;

(xlviii) “**public space**” bears the meaning assigned to it in the By-law;

(xlix) “**Rates Policy**” means the City’s Policy formulated in terms of section 3 of the MPRA on the levying of rates on rateable property within its jurisdiction;

(l) “**related persons**” has the meaning assigned to in section 2 of the Companies Act, 71 of 2008);

(li) “**Republic**” means the Republic of South Africa;

(lii) “**special resolution**” means a resolution adopted with the support of at least 75% (seventy-five percent) of the voting rights exercised on the resolution at a members' meeting or by the members acting other than at a members' meeting, as envisaged in article 15.12.2 of this MOI;

(liii) “**Sub-council**” means a Sub-council of the Council of the City, as constituted from time to time;

(liv) “**Systems Act**” means the Local Government: Municipal Systems Act, 32 of 2000;

(lv) “**term budget**” means the term budget of the Company, as defined in the By-law;

(lvi) “**Value-Added Tax Act**” means the Value-Added Tax Act, 89 of 1991, as amended or replaced;

(lvii) “**writing or written**” includes physically inscribed, printing, typewriting or any other mechanical process, as well as any electronic communication.

(lviii) “**written notice**” means a notice in writing, including but not limited to, e-mail, hand delivery, social media, advertisements, website or sent by post.

2. INTERPRETATION

2.1. Unless expressly stated otherwise, all terms and phrases used in this MOI bear the same meaning assigned to them in terms of the MPRA and the By-law.

2.2. A reference to a section by number refers to that section of the Act.

2.3. Any reference to a By-law or Policy of the City shall be interpreted as a reference to such instrument as may be in force at the relevant time.

2.4. Words importing the masculine include the feminine and neuter genders and *vice versa*; the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*.

3. ADOPTION OF MOI

3.1. The Company has adopted this unique form of MOI; the prescribed form of MOI for non-profit companies with members as contained in the Regulations shall not apply to the Company.

3.2. This unique MOI as per article 3.1 was amended through a special resolution by the members of the company in accordance with section 16(1)(c) of the Act. This special resolution is attached as Annexure A.

4. CONFLICTS BETWEEN THE MOI AND THE ACT

4.1. Precedence

In the event of a conflict between a provision of this MOI and –

4.1.1. an alterable, optional, discretionary or elective provision of the Act, the provisions of this MOI shall prevail;

4.1.2. an unalterable or mandatory provision of the Act, the provisions of the Act shall prevail to the extent of the conflict, except where the

MOI imposes upon the Company a higher standard, greater restriction, longer time period, or any otherwise more onerous or restrictive requirement than would otherwise apply under the Act, in which case the relevant provision of this MOI shall prevail.

4.2. **MOI Provisions in Violation of the Act, the By-law or Policy**

In the event that any provision of the MOI violates or is inconsistent with an unalterable or mandatory provision of the Act, or any provision of the By-law or Policy, or such violation arises from an amendment of the Act or regulations thereunder, the By-law or the Policy, the Board must within a reasonable time-

4.2.1. Obtain independent legal advice, and, if necessary;

4.2.2. Propose amendments to the MOI by way of a special resolution such as to render the MOI fully compliant.

5. INCORPORATION OF THE COMPANY

5.1. The Company is incorporated as a Non-Profit Company with voting members.

5.2. The Company is incorporated in accordance with, and governed by -

5.2.1. the unalterable and mandatory provisions of the Act;

5.2.2. the alterable provisions of the Act, subject to the restrictions, limitations, qualifications, extensions or other variations provided for in this MOI; and

5.2.3. the other provisions of this MOI.

5.3. Each person bound by this MOI (including the Directors of the Company), shall familiarise themselves with the relevant provisions of the Act and the provisions of this MOI.

6. OBJECTIVES OF THE COMPANY

6.1. The sole objectives of the company are to manage the collective interests common to all its members, which includes expenditure applicable to the public space within the CID boundary funded by additional rates levied on all liable property owners within the CID boundary. This management includes, but is not limited to:

6.1.1. improving and upgrading the CID through the provision of improved or expanded municipal services within its geographical area, which may include the management of municipal capital assets located within such area, with a view to:

6.1.1.1. improving public safety;

6.1.1.2. maintaining and cleaning public spaces;

6.1.1.3. environmental development including, but not limited to, greening, landscaping and upgrading of public spaces; and

6.1.1.4. promoting social and economic development in an environmentally sustainable manner;

6.1.2. encouraging private investment in the CID;

6.1.3. facilitating a co-operative approach between the City and the private sector in the provision of municipal services;

6.1.4. promoting urban renewal, in particular in distressed areas within the CID; and

6.1.5. promoting economic growth and sustainable development in the CID, with a view to assisting the Council in fulfilling its objectives and developmental duties as set out in its Integrated Development Plan contemplated in the Systems Act and the MFMA; and

6.2. communicating with all members and local community within the CID.

7. POWERS OF THE COMPANY

7.1. Subject to section 19(1)(b)(i) of the Act, the Company has the legal powers and capacity of a juristic person. Such powers and capacity are not subject to any restrictions, limitations or qualifications as contemplated in section 19(1)(b)(ii) of the Act.

7.2. This MOI imposes no restrictive conditions as contemplated in section 15(2)(b) or (c) of the Act.

7.3. In order to give effect to the Company's stated objectives, the Company may engage in the following activities:

7.3.1. supplementary cleaning and sanitation services, including but not limited to cleaning sidewalks and public roads; emptying public litter bins; removing graffiti, posters and collecting municipal waste;

7.3.2. public safety services within the public spaces of the CID (excluding coercive policing interventions as contemplated in the Policy), including but not limited to:

7.3.2.1. conducting foot and vehicle patrols of public spaces within the CID in order to identify, monitor and report violations of City by-laws to the relevant City Departments, as well as to report crime and summon the South African Police Service ("*SAPS*"), to incidents of serious crime;

7.3.2.2. establishing effective communication networks with the City's Safety and Security Directorate; the SAPS, the local Community Policing Forum and any neighbourhood watch organisation and independent security service provider operating in the area;

7.3.2.3. installing and monitoring CCTV cameras, which may utilise licence plate recognition technology, subject to compliance with the City's Regulation of External and Privately Owned CCTV Cameras on City Property Policy;

7.3.2.4. implementing crime deterrent activities such as installing and/or upgrading lighting in public spaces, fencing or any other action which may deter criminal activity;

7.3.2.5. reporting hazardous street and pavement conditions to the relevant City Departments;

7.3.2.6. monitoring street vendors to ensure public safety and reporting of violations of relevant City by-laws to the relevant City Department; and

7.3.2.7. conducting public education and awareness campaigns in the CID in relation to crime prevention strategies; and

7.3.2.8 contracting City Law Enforcement Officers as contemplated in the City's External Law Enforcement and Traffic Services Policy.

7.3.3. improving and maintaining municipal capital assets and infrastructure with City approval, including but not limited to installing and upgrading street lighting; illuminating street signs; installing street furniture (such as public benches); and creating public open spaces;

7.3.4. environmental development, including but not limited to greening, landscaping, installing sidewalk planters, maintaining street verges, upgrading of public spaces, recycling initiatives; installation of energy efficient and alternative energy infrastructure, and water saving initiatives;

7.3.5. undertaking community development and anti-poverty initiatives;

7.3.6. marketing and promoting the CID;

7.3.7. other public benefit activities, provided they are authorised by the Company's principal objectives set out in article 6 above.

7.4. All activities of the CID must be conducted:

7.4.1. without a view to the accrual of profit;

7.4.2. with a philanthropic intent, and in the public interest;

7.4.3. without any direct or indirect benefit accruing to any of its directors, employees, officers or agents, otherwise than permitted in this MOI;

7.4.4. without any direct benefit accruing to any privately-owned property located within the CID as contemplated in section 3(3)(d) of the By-law; and

7.4.5. for the primary benefit of the local community within the CID.

7.5. The Company will act as the CID's management body and be responsible for performing planning, contracting, financial control and administrative functions, including, amongst other things:

7.5.1. determining the annual funding required for the CID's activities and making recommendations to Council for consideration during its budgeting process;

7.5.2. appointing independent contractors or employees to provide the improved or upgraded services contemplated in articles 6.1 and 7.3 above and compensating them for their services; and

7.5.3. receiving the additional rate charged to ARPs for the benefit of the CID, as contemplated in sections 19(1)(d) and 22(1)(b) of the Rates Act.

7.6. The Company may not-

7.6.1. amalgamate or merge with, or convert to, a for-profit company; or

7.6.2. dispose of any part of its assets, undertaking or business to a for-profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.

8. GOVERNANCE AND COMPLIANCE REQUIREMENTS IN TERMS OF THE INCOME TAX ACT

8.1. No Directors shall be connected persons in relation to one another.

8.2. No single person shall, directly or indirectly, control the decision-making powers of the Company.

8.3. The income and property of the Company, however derived, shall be applied solely towards the promotion of its principal objectives. No portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, salary, compensation or otherwise to any person who was or is an incorporator of the Company, or any officer, director or member of the Company. This prohibition does not preclude good faith payment of such person in respect of-

8.3.1. reasonable remuneration for goods delivered or services rendered to the Company;

8.3.2. reasonable expenses incurred to advance a principal objective of the Company (including reimbursements); and

8.3.3. amounts due and payable by the Company in terms of a *bona fide* agreement between the Company and another person;

8.3.4. any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated objective of the Company; and

8.3.5. any legal obligation binding on the Company.

8.4. The Company shall not economically benefit any person in a manner which is not consistent with its principal objectives.

8.5. The Company shall not knowingly be a party to or knowingly permit itself to be associated with any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner.

8.6. The Company shall not accept any donation that may be recalled by the donor, except where the recipient fails to abide by the conditions of such donation, save where the donor is an approved PBO or a tax-exempt entity which itself carries on public benefit activity. The Company may not impose conditions which could enable such donor, or any connected person in relation to such donor, to derive some direct or indirect benefit from the application of such donation.

8.7. The company is not permitted to distribute its funds to any person other than to an approved PBO or similar tax-exempt entity which itself carries on public benefit activities as per article 21.2.3.

8.8. The Company shall comply with any reporting requirements as determined by the applicable authorities from time to time, which include the Executive Director and/or the Council under the By-Law; the Commissioner under the Income Tax Act, or the Minister of Finance or other functionaries under the Act.

8.9. The Company shall not use its resources directly or indirectly to advance, support or oppose any political party.

9. LIMITATION OF LIABILITY

9.1. No person shall, solely by virtue of being an incorporator, Director of the Company, or member, be liable for any liabilities or obligations of the Company.

10. AMENDMENT OF MOI

10.1. Subject to article 10.2, this MOI may be altered or amended only in accordance with sections 16 or 17 of the Act, as is:

10.1.1. necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by:

10.1.1.1. publishing a notice of the alteration, by displaying the notice on the Company's website and informing members of the notice at the next Members' Meeting; and

10.1.1.2. filing a notice of the alteration with the CIPC within 10 business days after publication on the Company's website contemplated in article 10.1.1.1 above;

10.1.2. in compliance with a court order, effected by a resolution of the Board;

10.1.3. pursuant to a special resolution:

10.1.3.1. as proposed by the Executive Director in consultation with the Board and adopted at a meeting of members or in accordance with section 60 of the Act, or

10.1.3.2. as proposed by the Board or members holding at least 10% of the voting rights, and adopted at a meeting of members or by way of a resolution as contemplated in article 15.12 below.

10.2. No amendments may be effected to this MOI without the approval of the Executive Director.

10.3. If the MOI is amended as contemplated in articles 10.1.2 – 10.1.3, the Board must file a Notice of Amendment as required under section 16(7) of the Act. The amendment will take effect on the date on which the CIPC accepts the filing of the Notice of Amendment or such later date as is specified in the notice of amendment.

10.4. A copy of all amendments to this MOI must be submitted to the Commissioner within 10 business days of effecting such amendment.

11. COMPANY RULES

11.1. The Board is not authorised to make any rules relating to the governance of the Company as contemplated in section 15(3) of the Act. To the extent that the Company wishes to make, amend or repeal any such necessary or incidental rules in respect of matters that are not provided for in the MOI, the Company shall amend the MOI in the manner prescribed under article 10 above.

12. MEMBERSHIP

12.1. As contemplated in item 4(1) of Schedule 1 to the Act, the Company has members, who are all in a single class, being voting members.

12.2. The following persons shall be entitled to Membership of the Company:

12.2.1. Property owners who are liable for paying the additional rate; and

12.2.2. The City of Cape Town.

12.3. Persons who qualify under article 12.2 and apply for membership must do so in writing to the Company using the application form (if any) prescribed by the Board from time to time.

12.4. Members shall be admitted by a resolution of the Board. The Board has no authority to deny membership to any person who qualifies for membership under article 12.2 and has duly applied for membership in accordance with article 12.3.

12.5. The date upon which the membership application is decided (whether at a meeting or by way of a round-robin resolution), shall be the effective date.

12.6. Within 14 days of considering an application for membership (whether at a meeting or by way of round-robin resolution), the Board must inform the applicant in writing of the outcome. In the event membership is approved, membership shall commence on the date of the decision.

12.7. The Company must announce or otherwise publicise at its Annual General Meeting ("AGM") the names of the persons who were admitted as members of the Company, as well as those whose memberships were amended or terminated under article 13, in the immediately preceding financial year.

12.8. The members of the Company shall agree to be bound by this MOI and such other persons as from time to time are admitted to membership.

12.9. Membership shall be personal to the member concerned and may not be assigned or transferred by him/her to any other person, company or concern.

12.10. The Company shall maintain at its registered office a register of members of the Company as required under section 24(4) of the Act. As contemplated in Regulation 32(6), the Company shall keep a member's unique identifying number and electronic address (where the member has elected to make his/her electronic address available to the Company), recorded in the members' register confidential, unless the member has consented in writing to such information being made available pursuant to a request for access to the members' register under the Act or PAIA.

12.11. The Company will publish an annual list of its members on its website, provided that such list may not contain any personal information of a member such as his/her unique identifying number; residential address; contact telephone number(s) or electronic address, unless the member has consented in writing to such information being included in the aforesaid list.

13. TERMINATION OF MEMBERSHIP

13.1. A member shall *ipso facto* cease to be a member of the Company:

13.1.1. if, being a natural person, he/she dies or his/her estate is finally sequestrated, or he/she is placed under curatorship or he/she is no longer capable of managing his/her affairs;

13.1.2. if, being a juristic person, it is finally wound up or finally liquidated, whether by an order of court or by a resolution of its members;

13.1.3. if he/she ceases to be the registered owner of property situated in the CID;

13.1.4. subject to article 13.2, if he/she ceases to be liable for paying the additional rate by virtue of an exemption under the City's Rates Policy;

13.1.5. when a member has not attended a members` meeting by person or by proxy for two consecutive years starting from the last members` meeting the member was present

and

13.1.6. if he/she resigns as a member upon 1 month's written notice to the Company.

13.2. The termination of a person's membership of the Company as contemplated in article 13.1.4 above during the course of a CID term shall be from the date of exemption. Should the property owner become liable for the additional rate in future he or she can re-apply for membership.

13.3. A member whose membership was terminated as per article 13.1.5 above can immediately re-apply for membership.

14. RIGHTS OF MEMBERS

14.1. Members' authority to act

If, at any time, every member of the Company is also a Director of the Company, as contemplated in section 57(4) of the Act, the authority of the members to act without notice or compliance with any other internal formalities, as set out in that section, is not limited or restricted by this MOI.

14.2. Members' Right to Information

A member's right to access information of the Company is governed by section 26 of the Act, subject to the limitations provided for under article 12.10 - 12.11 above, as well as any relevant provisions of PAIA.

14.3. **Representation by Proxy**

14.3.1. A member may appoint any individual, including an individual who is not a member of the Company, as a proxy to:

14.3.1.1. participate in, speak and vote at a members' meeting on their behalf; or

14.3.1.2. give or withhold written consent on their behalf to a decision contemplated in section 60 of the Act.

14.3.2. Such proxy will fall away should the member attend the members' meeting.

14.3.3. A member can elect to appoint a proxy as aforesaid:

14.3.3.1. with or without any direction as to how the proxy must exercise any voting right of the member; and

14.3.3.2. for a particular meeting, or for a specific period which may not exceed the CID term operative at the time of the granting of the proxy;

14.3.4. A proxy appointment must be in writing, dated and signed by the member.

14.3.5. Any restricted proxy appointment must indicate:

14.3.5.1. the meeting and/or resolution in respect of which it is given; and

14.3.5.2. any directions as to the manner in which the proxy holder should exercise their vote.

14.3.6. Any unrestricted proxy appointment must be subject to the maximum term contemplated in article 14.3.3.2 and indicate the period for which the appointment is valid.

14.3.7. A member shall not be permitted to appoint more than one proxy at a time to act on their behalf and exercise their vote(s) at a meeting or in respect of a resolution contemplated in section 60 of the Act.

14.4. **Authority of Proxy to Delegate**

A member's proxy may not delegate the powers to another person.

14.5. **Requirement to Deliver Proxy Instrument to Company**

A proxy must be delivered to the office of the Company or transmitted electronically to penzanceestate@gmail.com before the proxy exercises any voting rights on behalf of a member and in any event at least 24 hours before the time of any members' meeting.

14.6. **Deliberative Authority of Proxy**

14.6.1. A proxy must exercise his/her authority to act on behalf of a member strictly in accordance with any restrictions stipulated in the proxy instrument, save as provided for in article 14.6.2 below.

14.6.2. A proxy is entitled to decide in their discretion whether to exercise or abstain from exercising any voting right of the member in circumstances where members are called to vote on a matter in respect of which the members did not receive prior or advance notice or the proxy instrument does not provide any direction to the proxy.

14.6.3. In the event that there is a conflict between the instructions given by a member in the proxy instrument and this MOI, the latter shall prevail.

14.7. **Record Date for exercising of Members' Rights**

14.7.1. In the event that there is a conflict between the instructions given by a member in the proxy instrument and this MOI, the latter shall prevail.

14.7.2. If, at any time, the Board fails to set a record date for determining a member's rights as contemplated in section 59 of the Act, the record date for the relevant matter shall be as follows:

14.7.2.1. where notices are to be delivered by post, at least 7 days prior to the date for the giving of notices of the meeting; or

14.7.2.2. in the case of notices to be delivered by other means, 1 business day prior to the latest date for the giving of notices as prescribed by the Act or the MOI.

15. MEMBERS' MEETINGS

15.1. **Requirement to hold Meetings**

15.1.1. Subject to the provisions of section 60 of the Act and article 15.7 below governing the passing of resolutions of members otherwise than at a meeting of members, the Company must hold a members' meeting:

15.1.1.1. At any time that the Board is required by the Act or this MOI to refer a matter to the members for decision;

15.1.1.2. whenever required in terms of section 70(3) of the Act to fill a vacancy on the Board;

15.1.1.3. if one or more written and signed demands calling for such meeting are delivered to the Company, and –

(a) each such demand describes the specific purpose for which the meeting is proposed; and

(b) in aggregate, demands for substantially the same purpose are made and signed by the holders, at the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

15.1.2. Notwithstanding article 15.1.1.3, the Company or any member may apply to a court for an order setting aside such a demand on the grounds that the demand is frivolous, calls for a meeting for no other purpose than to reconsider a matter that has already been decided by the members, or is otherwise vexatious.

15.1.3. At any time before the start of a members' meeting called pursuant to article 15.1.1.3, a member who submitted a demand for that meeting may withdraw that demand; and the Company must cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining members continuing to demand the meeting, in aggregate, fall below the minimum percentage requirement, as set out in article 15.1.1.3 of voting rights required to call a meeting.

15.1.4. Notwithstanding the above, the Board may call a members' meeting at any time. If there is no Board, or the Board is

incapacitated for any reason whatsoever, the Executive Director shall have the power to call a members' meeting at any time.

15.1.5. In the event that there is no Board or the Board is incapacitated for any reason whatsoever, the Executive Director shall have the power to receive the written and signed demands contemplated in article 15.1.1.3 above and must convene a members' meeting.

15.1.6. All members' meetings, including the annual general meeting contemplated in article 15.2 below, must be open to members of the local community, who must be permitted a reasonable opportunity to participate in the business of the meeting, including participating in deliberations, but not vote, on any proposed resolution.

15.2. **Annual General Meeting ("AGM")**

15.2.1. In addition to the meetings specifically required by the Act and this MOI, the Company must convene an AGM of its members:

15.2.1.1. Initially, no more than 6 months after the date of incorporation, as contemplated in section 10(1) of the By-law; and

15.2.1.2. thereafter, once in every calendar year before 31 December.

15.2.2. The AGM shall conduct at least the following business:

15.2.2.1. election of Directors;

15.2.2.2. noting the retirement or removal of Directors;

15.2.2.3. noting the acceptance of new members and the retirement or removal of members;

15.2.2.4. appointment of registered auditor for the following financial year;

15.2.2.5. presentation of the audited financial statements of the Company for the immediately preceding financial year (save for the first AGM convened in the CID's initial 5-year term);

15.2.2.6. consideration of the annual report on the Company's progress in carrying out the provisions of the business plan in the preceding year to improve and upgrade the CID;

15.2.2.7. approval of the implementation plan and budget for the following financial year; and

15.2.2.8. any matters raised by the members, save that a matter shall not be considered where it is undesirable given the interests of the Company or the good order of the meeting.

15.3. **City Representative Attending Members' Meetings**

The board observer(s) designated by the Executive Mayor of the City in accordance with section 21 of the By-law, may attend and participate in, but not vote at, members' meetings, subject to the same limitations as those contained in section 21(3)(b) and (c) of the By-law (with the changes required by the context).

15.4. **Location of Meeting**

Members’ meetings shall be held at a venue decided by the Board, provided that such venue must be located within the boundaries of the CID, except where the Board has obtained the prior written consent of the Executive Director to convene a members' meeting elsewhere in the City or when the Members’ meeting is conducted by electronic communication.

15.5. **Notice of Members’ Meetings**

15.5.1. The Company shall deliver notice of each members' meeting to all members of the company, as well as the board observers and members of the local community, in the manner and form contemplated in article 15.5.2 below at least:

15.5.1.1. 15 business days before an AGM or a meeting convened to pass a special resolution; and

15.5.1.2. 15 business days before any other members' meeting.

15.5.2. The notice shall be in writing and shall include the items set out in section 62(3) of the Act and in a form as near as practically possible to Form CoR 36.2.

15.5.3. If the Company’s notice of the meeting was materially defective in manner or form, the meeting may proceed only if every member who is entitled to exercise voting rights in respect of any item on the meeting agenda-

15.5.3.1. is present at the meeting; and

15.5.3.2. waives notice of the meeting or, in the case of a material defect, votes to approve the ratification of the defective notice.

15.5.4. The aforesaid notice may be delivered as follows:

15.5.4.1. To members of the company and board observers in any manner contemplated in section 6(10) or (11) of the Act, or Regulation 7; and

15.5.4.2. To members of the local community by-

15.5.4.2.1. Publishing a notice of the meeting on the company's website;

15.5.4.2.2. Giving notice by electronic communication to all members of the local community who have registered details which are kept by the company for this purpose.

15.5.5. The Company shall further publish a notice of the members' meetings, in the form required under article 15.5.2, addressed to all members, ARPs and the local community in-

15.5.5.1. one English and one Afrikaans daily newspaper; and

15.5.5.2. a community newspaper, in a language other than Afrikaans or English, in the event that the local community includes a substantial population of non-Afrikaans and non-English speakers.

15.5.6. The board of directors must publish the agenda, minutes and any written resolutions of all members' meetings on the company's website.

15.6. **Electronic Participation in Members' Meetings**

Members' meetings may be conducted by electronic communication and members or proxies and representatives of the local community may participate in a members' meeting by way of electronic communication as contemplated in section 63(2) and 63(3) of the Act with prior approval from the Executive Director. Only members may vote on resolutions.

15.7. ***Quorum* for Members' Meetings**

15.7.1. The quorum for members' meetings shall be 10% of the members, who must be present in person or by proxy and entitled to vote.

15.7.2. After a *quorum* has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least one member with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.

15.8. **Chairperson of Members' Meetings**

The chairperson of the Board, if any, shall preside as chairperson at every members' meeting. If there is no such chairperson, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting, or is unable to act as chairperson, the Directors present shall elect one of the other directors to be chairperson. If no Director is willing to act as chairperson, or if no director is present at the time stipulated above, the Members present shall choose one of their own to be chairperson of the meeting.

15.9. **Verification of Right to attend Meetings**

15.9.1. A person wishing to attend or participate in members' meetings (whether as a proxy or member), must, if so required by the chairperson, present reasonably satisfactory identification to the chairperson at least 20 minutes before the time scheduled for the start of the meeting. The chairperson must be reasonably satisfied that the right of the person to attend and vote has been reasonably verified.

15.9.2. For the aforesaid purpose, the following forms of identification shall be adequate: a valid identity document, driver's license or passport (or a certified copy of any of these documents), accompanied by a power of attorney, letter of authority or other instrument appointing the proxy or person to attend the meeting on behalf of a member.

15.9.3. In the event that the identification process is not completed by the time that the meeting is scheduled to begin, the commencement of the meeting shall be delayed until the identification process is complete.

15.10. **Postponement and Adjournment of Members' Meetings**

15.10.1. If within 1 hour of the appointed time for a meeting to begin, the *quorum* requirements:

15.10.1.1. for a meeting to begin are not satisfied, the meeting shall automatically be postponed without motion, vote or notice to a date determined by the chairperson, which may be no less than one week hence (or if that day is not a business day, the next business day) at the same time and place, or to such other time and place as the chairperson of the meeting may appoint.

15.10.1.2. for consideration of a particular matter are not satisfied:

(a) if there is other business on the agenda, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or

(b) if there is no other business on the agenda of the meeting, the meetings shall be adjourned in the manner contemplated in article 15.10.1.1 above.

15.10.2. The Company shall not be required to give further notice of a meeting or consideration of a matter that has been postponed under article 15.10.1 above, unless the venue of the meeting is different from:

15.10.2.1. the venue of the postponed or adjourned meeting; or

15.10.2.2. the venue announced at the time of the adjournment of the meeting.

15.10.3. The 1-hour time limit specified in article 15.10.1 may be extended by the chairperson as contemplated in section 64(5) of the Act on the grounds that:

15.10.3.1. exceptional circumstances affecting weather, transportation or electronic communications have generally impeded or are generally impeding the ability of members to be present at the meeting; or

15.10.3.2. one or more particular members, having been delayed, have communicated an intention to attend the meeting, and those members, together with others in

attendance, would satisfy the quorum requirements contemplated in article 15.7.1.

15.10.4. A members' meeting (or consideration of a particular matter on the agenda) may be adjourned without further notice to a fixed time and place (but will require a notice if it is adjourned "until further notice"), by a vote in favour thereof by a majority of those members present or represented by proxy at the meeting and entitled to exercise their voting rights on at least one matter remaining on the agenda of the meeting or, on the matter under debate, as the case may be.

15.10.5. No business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting which was adjourned.

15.10.6. A meeting may not be adjourned to a date that is later than 60 days after the original meeting was adjourned or 120 days after the record date determined in accordance with section 59 of the Act, whichever is earlier.

15.10.7. Pursuant to section 64(8) of the Act, if within 30 minutes of the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, the members present or represented at the meeting, will be deemed to constitute a quorum

15.11. **Votes of Members**

15.11.1. Every member (other than the City), shall have one vote for every R10,000,000.00 (ten million rand), per the municipal valuation (or portion thereof), of each of their rateable properties within the CID to a maximum of 10 votes per property, provided that the total number of votes assigned to one single member or to any number

of members under common ownership or control shall not exceed thirty-three and one-third (33-1/3) percent of the total number of votes which may be cast.

15.11.2. Where individual members or members under common ownership or control own multiple properties within the CID, their vote allocation shall be subject to the limitation contemplated in article 15.11.1 and calculated as follows:

15.11.2.1. In respect of any individual property with a municipal valuation equal to or in excess of R5,000,000.00 (five million rand), one vote per R10,000.000.00 (ten million rand) (or portion thereof), of the municipal valuation thereof, capped at ten votes per article 15.11.1; and

15.11.2.2. In respect of any individual property with a municipal valuation under R5,000,000.00 (five million rand), one vote per R10,000.000.00 (ten million rand) (or portion thereof), of the combined municipal valuation of all such properties.

15.11.3. Members shall inform the Company Secretary in writing in the prescribed form if they are at the time of accession, or subsequently come to fall, under common ownership or control, as contemplated in article 15.11.1. In the case of a member subsequently falling under common ownership or control, the aforementioned written notice shall be provided within 10 days.

15.11.4. The City is assigned one vote only.

15.11.5. Any members who are in arrears with payment of the additional rate for more than 60 days, shall not be entitled to vote at a members' meeting or taken account of when determining whether a members’ meeting is quorate, for so long as they are so in

arrears, unless they can prove that they have declared a formal dispute with the City or have entered into an appropriate payment arrangement with the City.

15.11.6. The City will furnish the Company with an arrears statement prior to every members' meeting reflecting which of the members are in arrears with payment of the additional rate for more than 60 days.

15.11.7. Save as is otherwise expressly provided by the Act or by this MOI, all questions, matters and resolutions arising at or submitted to any members' meeting shall be decided by a majority of votes cast (i.e. more than 50%).

15.11.8. At a meeting of members, voting shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll is demanded by-

15.11.8.1. the chairperson;

15.11.8.2. by at least five persons having the right to vote on that matter as a member or a member’s proxy; or

15.11.8.3. a person who is, or persons who together are, entitled (as a member or a member’s proxy), to exercise at least 10% of the voting rights entitled to be voted on that matter.

15.11.9. Subject to the provisions of the Act, unless a poll is demanded, a declaration by the chairperson that a resolution has been carried, or carried by a particular majority, or lost, or not carried by a particular majority, shall be final and an entry to that effect in the minute book of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

15.11.10. If a poll is demanded as aforesaid, it shall be taken in such manner and at such place and time as the chairperson of the meeting directs, either immediately or after an interval or adjournment. The demand for a poll may be withdrawn. Scrutineers shall be appointed by the chairperson to count the votes and to declare the result of the poll, and their declaration, which shall be announced by the chairperson, shall be deemed to be the resolution of the meeting at which the poll was demanded. Where it is impractical for the result of the poll to be announced at the meeting, the Company will announce the result to the members within three business days from the date of the meeting. In case of any dispute as to the admission or rejection of a vote, the chairperson of the meeting shall determine the dispute and the determination of the chairperson made in good faith shall be final and conclusive.

15.11.11. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

15.11.12. In the case of an equality of votes, the chairperson shall not be entitled to a second or casting vote in addition to his deliberative vote as a member.

15.12. **Members' Resolutions**

15.12.1. For an ordinary resolution to be adopted at a members' meeting, it must be supported by more than 50% of the members who voted on the resolution, as provided in section 65(7) of the Act

15.12.2. For a special resolution to be adopted at a members' meeting, it must be supported by at least 75% of the members who voted on the resolution, as provided in section 65(7) of the Act.

15.12.3. Except for those matters listed in section 65(11) of the Act, a special resolution adopted at a members' meeting is not required for a matter to be determined by the Company.

15.13. **Members Acting other than at Members' Meetings**

15.13.1. Subject to article 15.13.3, a resolution will have been adopted if it is signed by members who exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted members' meeting, provided that the resolution:

15.13.1.1. Was submitted to all members entitled to exercise voting rights in relation thereto;

15.13.1.2. Was voted on in writing by members as aforesaid within 20 business days after submission to them; and

15.13.1.3. If consisting of more than one page, was signed by the aforesaid members on each page thereof.

15.13.2. A resolution voted on as aforesaid shall be deemed to have been adopted on the date upon which the last member affixed his/her signature.

15.13.3. No business that is required to be conducted at the Company's AGM by article 15.2.2 or the Act may be dealt with in the manner provided for under article 15.13.1.

16. DIRECTORS

16.1. Composition of Board of Directors

16.1.1. The Incorporators of the Company will be its first Directors in terms of item 3(b) of Schedule 1 of the Act, and will serve until such time as Directors are elected at the Company's first members meeting.

16.1.2. The Board must comprise at least three Directors.

16.1.3. Persons eligible to serve as Directors:

16.1.3.1. shall be members of the Company unless co-opted by the board of directors as contemplated in article 16.1.10 below;

16.1.3.2. may not be an employee

16.1.3.3. must be in good standing with the City;

16.1.4. Directors shall be elected and appointed at a duly convened AGM of the Company.

16.1.5. At its first meeting of Directors after an AGM, the Directors must elect a Chairperson, Deputy Chairperson and Treasurer from its members to serve until the following AGM.

16.1.6. In the event that a vacancy arises under article 16.5.1 in respect of any office provided for under article 16.1.5, the board shall elect a replacement from its members to serve until the following AGM.

16.1.7. No official of the City may serve as a Director as representative of the City. This does not preclude a City official from being elected as Director in their personal capacity as an ARP.

16.1.8. In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act, no members of the Board may be a related or connected person in relation to each other, as defined in article 1 above.

16.1.9. As required by item 5(1)(b) of Schedule 1 to the Act, at least one third of the longest serving Directors shall retire from office at every AGM. Retiring Directors shall retain office until the close or adjournment of the AGM. A retiring Director shall, however, be eligible for re-election.

16.1.10. The Board shall have the power to co-opt additional Directors and to remove and replace such Directors by a resolution of the Board. Employees of the Company may not be co-opted as Directors. An additional Director shall only remain in office until the end of the AGM following his/her appointment, after which the additional Director may be co-opted for a further period ending at the next AGM.

16.1.11. The Chairperson, or in his/her absence the Deputy Chairperson, shall preside at meetings of the Board. If neither of them is present or willing to act within 10 minutes of the time appointed for the commencement of such meeting, the Directors present shall choose one of their number to be Chairperson of such meeting.

16.2. **Alternate Directors**

16.2.1. Each Director shall have the power to appoint another person to act as Alternate Director in their place during their absence or inability to act as such. Upon such appointment, the Alternate Director shall, in all respects, be subject to the terms, qualifications and conditions existing with reference to the other Directors of the Company.

16.2.2. A person may not be appointed as Alternate Director to more than one Director.

16.2.3. Any alternate Director, whilst acting in the stead of the Director who appointed him/her, shall exercise and discharge all the powers, duties and functions of the Director he/she represents.

16.2.4. The appointment of Alternate Director shall be revoked, and he/she shall cease to hold office, whenever:

16.2.4.1. The Director who appointed the Alternate Director ceases to be a Director;

16.2.4.2. The Director who appointed the Alternate Director gives written notice to the Chairperson that such Alternate Director no longer represents the Director concerned; and/or

16.2.4.3. The Alternate Director becomes ineligible or disqualified from serving as Director in terms of the Act or this MOI.

16.3. **Authority of the Board of Directors**

The business of the Company shall be managed by the Board in accordance with the Company's principal objectives. As contemplated in section 66(1) of the Act, the Board may exercise all powers of the Company which are not excluded by law or this MOI. The Board must, at all times, act solely in the interests of the Company when exercising its managerial powers and the powers of the Company.

16.4. **Vacation of Office**

16.4.1. The office of a Director shall *ipso facto* be deemed vacant if such Director:

16.4.1.1. Dies;

16.4.1.2. Resigns, by giving no less than one month's written notice;

16.4.1.3. Becomes incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time;

16.4.1.4. Is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company;

16.4.1.5. Becomes ineligible or disqualified in terms of section 69 of the Act;

16.4.1.6. Is absent from three consecutive meetings of the Board without the consent of the chairperson (which may not be unreasonably withheld);

16.4.1.7. Is removed in terms of article 16.5 below; or

16.4.1.8. Is no longer a member.

16.4.2. Directors may act notwithstanding any vacancy on the Board, provided that for so long as their number is reduced below the number fixed in article 16.1.2 as the minimum number of Directors, the remaining Directors may only act for the purpose of

increasing the number of Directors to that number, but for no other purpose.

16.5. **Removal from Office**

16.5.1. The Company may in accordance with section 71 of the Act remove any Director before expiration of their period of office, and may by ordinary resolution appoint another member in their stead.

16.5.2. A Director may further be removed from office by order of the court as contemplated in section 71(5) or (6) of the Act.

16.6. **Board meetings**

16.6.1. The conduct of meetings shall generally be governed in terms of section 73 of the Act. Notwithstanding the aforementioned, the Board may regulate their meetings as they think fit, subject to any limitations or restrictions set out in this MOI.

16.6.2. The chairperson of the Board-

16.6.2.1. may call a Board meeting at any time; and

16.6.2.2. shall call a Board meeting if requested to do so by at least 25% of the Directors, in the case of a Board that has at least 12 members, or 2 Directors in any other case.

16.6.3. Notwithstanding article 16.6.2, the Board shall meet at least once every 3 months.

16.6.4. Notice of a Board meeting must be given to each Director in writing, whether by post or electronic communication, not less than 14 days prior to the meeting.

16.6.5. Where the chairperson has failed to give the required notice of the Board meeting, or there was a defect in the giving of the notice, such meeting may proceed, provided that all of the Directors:

16.6.5.1. acknowledge actual receipt of the notice;

16.6.5.2. are present at the meeting; or

16.6.5.3. waive notice of the meeting and condone the defective notice.

16.6.6. Subject to article 16.6.7, board meetings shall be closed to attendance by all members and the local community. Any member of the NPC or local community may attend a board meeting subject to a written application stating the item and intended outcome at least 1 week prior to the board meeting.

16.6.7. In respect of attendance by person(s) contemplated in article 16.6.6, the chairperson may permit such persons to address the board on their specific item(s).

16.6.8. Dates of all the board meetings to be held must appear on the website.

16.6.9. Subject to article 16.6.7, a meeting of the Board must, unless otherwise agreed by the Directors, take place at the Company's premises.

16.6.10. The Board has the power to conduct a meeting entirely by electronic communication (conference call, digital remote conferencing, internet meeting, or any other format agreed upon by the Directors), or to provide for participation in a meeting by electronic communication, as set out in section 73(3) of the Act, provided that the Electronic Communication facility employed

enables all persons participating in the meeting to communicate concurrently with each other and without an intermediary and to participate reasonably effectively in the meeting. Persons attending remotely shall be deemed to be present.

16.6.11. A majority of the Directors (i.e. more than 50%) in office must be present in order to constitute a quorum for a Board meeting.

16.6.12. Each Director shall be entitled to one vote in regard to all business brought before the Board.

16.6.13. Unless otherwise provided in this MOI, a majority (i.e. more than 50%), of the votes cast on a resolution is sufficient to approve that resolution.

16.6.14. A decision that could be voted on at a Board meeting may instead be adopted by written consent of the majority of the Directors (i.e. more than 50%, provided that all Directors have received notice of the matter to be decided.) A decision made in this manner is of the same effect as if it had been approved by voting at a meeting.

16.6.15. A Director who is in arrears with payment of their additional rate or a *pro rata* share thereof, as the case may be, for more than 60 days, or the Director's Alternate, may not vote at a Board meeting for so long as the Director is so in arrears, except if the Director can prove that he/she has declared a dispute or has entered into an appropriate payment arrangement with the City.

16.6.16. No Director may vote on a matter in respect of which he/she has a personal interest, the provisions of section 75 of the Act being applicable.

16.6.17. In the event of a tied vote, the Chairperson may cast a deciding vote if he/she did not initially have or cast a vote (except if his/her

personal interest has been recorded per article 16.6.16), in the absence of which the matter being voted on fails.

16.6.18. Resolutions adopted by the Board-

16.6.18.1. must be dated and sequentially numbered; and

16.6.18.2. are effective as of the date of the resolution, unless the resolution states otherwise.

16.6.19. The Company shall keep minutes of all Board meetings, and any of its committees, and include in the minutes:

16.6.19.1. any declaration of personal financial interest given by notice or made by a Director as required by section 75 of the Act; and

16.6.19.2. every resolution adopted by the Board.

16.6.20. Any minutes of a Board meeting, or a resolution, signed by the Chairperson of the meeting, or by the Chairperson of the next Board meeting, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

16.6.21. Any round robin resolution as contemplated in article 16.6.14 shall be recorded in the minutes of the subsequent board meeting.

16.7. **Indemnification**

16.7.1 Subject to a resolution of the Directors, the Company may-

16.7.1.1 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and

16.7.1.2 directly or indirectly indemnify a Director for expenses contemplated in article 16.8, irrespective of whether it has advanced those expenses, if the proceedings are abandoned or exculpate the Director, or arise in respect of any liability for which the Company may indemnify the Director as provided in terms of sections 78(5) and (6) of the Act.

16.7.1.3 Indemnify a Director in respect of any other liability arising from the conduct of the Director, except in respect of:

(a) A liability arising in terms of section 77(3)(a), (b) or (c) of the Act; being any liability arising as a direct or indirect consequence of the Director having:

i. acted in the name of the Company, signed anything on behalf of the Company, or purported to bind the Company or authorise the taking of any action by or on behalf of the Company, despite knowing that the Director lacked the authority to do so; or

ii. agreed in the carrying on of the Company's business despite knowing that it was being conducted in a manner which is reckless, grossly negligent, intending to defraud any person or for any fraudulent purpose; or

iii. been a party to an act or omission by the Company despite knowing that the act or omission was calculated to defraud a

creditor or employee, or had another fraudulent purpose, or

(b) A liability arising from wilful misconduct or wilful breach of trust on the part of the Director; or

(c) Any fine that may be imposed on a Director of the Company, or on a Director of a related company, as a consequence of that Director having been convicted of an offence, unless the conviction was based on strict liability.

16.7.2 The Company may purchase insurance to protect:

16.7.2.1 a Director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with articles 16.7.1.2 and 16.7.1.3; or

16.7.2.2 the Company against any contingency including, but not limited to:

(a) Any expenses that the Company is permitted to advance in accordance with articles 16.7.1.1; and

(b) Any liability for which the Company is permitted to indemnify a Director in accordance with articles 16.7.1.2 and 16.7.1.3.

16.7.3 The Company is entitled to claim restitution from a Director of the Company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with article 16.8.

16.8. **Reimbursement**

The Directors shall be entitled to reimbursement of all authorised and approved travelling, subsistence, and other expenses properly incurred by them in the execution of their duties in or about the business of the Company.

16.9. **Officers and Committees**

16.9.1. The Board may appoint any officers it considers necessary to better achieve the stated objectives of the Company.

16.9.2. Subject to article 16.9.3, the Board may appoint any number of committees and delegate to any such committees any of the authority of the Board.

16.9.3. The Board shall at all times retain the final decision-making power in respect of a matter referred to a committee. Committees shall be empowered only to make recommendations to the Board in respect of a matter referred to it.

16.9.4. Any committee appointed by the Board:

16.9.4.1. May include persons who are not Directors, provided that:

(a) any such person must not be ineligible or disqualified to be a Director in terms of section 69 of the Act; and

(b) no such person has a vote on a matter to be decided by the committee;

16.9.4.2. Must seek the approval of the Board should it wish to consult with or receive advice from any external advisor; and

16.9.4.3. Has the authority of the Board delegated to it, subject to article 16.9.3 and any restrictions or limitations imposed by the Board, in respect of a matter referred to it.

16.9.5. The Board may at any time revoke any authority delegated to a committee.

16.9.6. The meetings and proceedings of committees shall *mutatis mutandis* be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

17. APPOINTMENT OF COMPANY SECRETARY

17.1. The Board must appoint the company secretary from time to time, who shall have the requisite knowledge of, or experience in respect of, relevant laws and be a permanent resident of the Republic.

17.2. The Board must fill any vacancy in the office of company secretary within 60 (sixty) business days after such vacancy arises by a person whom the Directors consider to have the requisite knowledge and experience.

18. COUNCILLORS APPOINTED AS BOARD OBSERVERS

18.1. In terms of section 21 of the By-Law, the Executive Mayor shall designate one or two councillors, and one alternate councillor for each councillor thus designated, to attend meetings of the board and its committees as observers.

18.2. Having signed the Board Observer Agreement as required under section 21(3)(d) of the By-law, the board observer(s) shall be entitled to:

18.2.1. receive all notices, minutes, reports and other documents, financial or otherwise which the Company provides to the board and its committees at the same time and in the same manner that such notice and materials are provided to members of the board;

18.2.2. attend meetings of the board and its committees, provided that an alternate board observer shall only be entitled to do so if the principal board observer is unable to attend;

18.2.3. offer information to the board and its committees, if requested to do so, in relation to the City's position on any matter pertaining to the By-law, this MOI, the Policy, or the finance agreement, but shall not participate in deliberations on a motion.

18.3. A board observer shall be prohibited from:

18.3.1. proposing a motion, participating in deliberations or voting on a motion;

18.3.2. chairing a meeting of the board or any of its committees;

18.3.3. directly or indirectly managing the business and affairs of the Company;

18.3.4. accepting appointment as a proxy of another member of the board or its committees or as an alternate director; and

18.3.5. receiving any remuneration or reimbursement of expenses incurred by the board observer from the Company.

18.4. A board observer shall not be taken into account when establishing a quorum at any meeting;

18.5. Before attending any meetings and receiving Company documents and materials as contemplated in article 18.2 above, a board observer shall enter into a board observer agreement with the Company.

18.6. In the absence of a board observer agreement, the board may deny the board observer access to any material or meeting or a portion thereof if the Board determines in good faith that such action is reasonably necessary to protect confidential information of the Company or a third party.

18.7. If a board observer is deemed to have vacated their position or if their appointment is terminated by the Executive Mayor, as contemplated in section 21(3)(h) and section 21(5) of the By-law, respectively, he/she shall be replaced in accordance with section 21(2) thereof.

18.8. If a board observer fails to perform his/her oversight functions, acts in contravention of section 21(3)(b) of the By-law, or commits a material breach of the board observer agreement, the board may lodge a written request to the Executive Mayor for the termination of the board observer's appointment.

19. FINANCIAL AFFAIRS

19.1. Registered Office

The registered office of the Company shall be at such location within the Metropolitan Area of Cape Town as the Board may determine from time to time.

19.2. Company and Accounting Records

All company records contemplated by section 24 of the Act, and all accounting records contemplated by section 28 of the Act read with regulation 25, shall be kept and maintained at, and shall be accessible at or from, the registered office of the Company, or in the case of all or any of the company records at or from such other location or locations within the

Metropolitan area of Cape Town as the Board may determine from time to time.

19.3. **Financial Year**

19.3.1. The Company's financial year shall at all times coincide with the City's financial year, viz. 1 July to 30 June.

19.3.2. To the extent that the City changes its financial year, the Company shall amend its financial year accordingly

19.4. **Annual Financial Statements**

19.4.1. Each year the Company must prepare annual financial statements within two months after the end of its financial year.

19.4.2. The annual financial statements must be audited and be consistent with section 29 of the Act.

19.4.3. In accordance with the By-law, the Company's audited annual financial statements for the immediately preceding year must be submitted to the Executive Director within two months of the end of each financial year.

19.4.4. The annual financial statements must:

19.4.4.1. include an auditor's report;

19.4.4.2. include a report by the Directors with respect to the state of affairs, the business and surplus or deficit of the Company, including:

(a) any material matter relating to the Company’s state of affairs; and

(b) any prescribed information;

19.4.4.3 be approved by the Board and signed by an authorised Director; and

19.4.4.4 be presented to the first meeting of members after the statements have been approved by the Board.

19.5. **Annual Report**

In accordance with section 18 of the By-law, within three months of the AGM, the Company must provide the Executive Director and the relevant sub-council(s) with an annual report on its progress in implementing its business plan during the previous financial year together with the audited annual financial statements and auditors report as adopted at the AGM.

19.6. **Additional Rate**

The collection and payment of the additional rate is regulated by the Finance Agreement. No monies shall be transferred from the City to the Company in a manner not provided for in the Finance Agreement.

19.7. **Annual Tax Returns**

19.7.1. Each year the Company must file an annual tax return in the prescribed form, signed by the Chair or Treasurer and containing, inter alia, the following:

19.7.1.1. The Company's name;

19.7.1.2. The Company's Income Tax Reference number;

19.7.1.3. The year of assessment;

19.7.1.4. The date of completion; and

19.7.1.5. All income and expenses, notwithstanding the Company's exempt status.

19.7.2. In the event the Company has no income to declare in any financial year, it shall submit an income tax return that contains a zero in the applicable fields.

19.7.3. If the Company becomes dormant, an income tax return shall be submitted indicating that the Company has become dormant.

19.8. **Annual Budget**

19.8.1. The Company shall approve its annual budget for the next financial year at its AGM and furnish it to the Executive Director by no later than 31 January, as required by the Policy and the Finance Agreement.

19.8.2. The Company shall submit an adjustment budget for the third and fourth quarter of each financial year, as approved at a board meeting, to the Executive Director by the end of March of the relevant year.

19.9. **Enhanced Accountability and Transparency**

19.9.1. The Company elects in terms of section 34(2) of the Act to comply voluntarily with the provisions of Chapter 3 except Part D of the Act.

19.9.2. The Company shall, therefore, be required to appoint a company secretary and an auditor in the manner and for the purposes described in Parts B and C of Chapter 3, but not be required to appoint an audit committee as provided for in Part D.

19.10. **Business Plan**

19.10.1. The Company shall begin carrying out the provisions of the business plan within 2 months after receiving the first payment of

the additional rate, unless otherwise approved by the Executive Director.

19.10.2. Any amendment of the business plan shall be subject to the mandatory procedures set forth in sections 25, 26 and 27 of the By-law.

20. TERM EXTENSION

20.1. The Company may apply for the renewal of its current CID term in accordance with the procedures prescribed under section 27 of the By-law.

21. WINDING-UP OR DISSOLUTION OF COMPANY

21.1. The Company may be wound up voluntarily by the members by passing a special resolution to such effect. Any such voluntary winding up shall be effected in accordance with section 80 of the Act.

21.2. Upon the dissolution of the Company, its entire net value, including its net assets, must be distributed in accordance with item 1(4)(b) of Schedule 1 to the Act, as follows:

21.2.1. no past or present member or Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company, including its net assets, after its obligations and liabilities have been satisfied;

21.2.2. The entire net value of the Company, including its net assets, must be distributed to a non-profit company managing another CID within the area of jurisdiction of the City of Cape Town and which ideally will be the CID situated closest to the CID in question, and having objectives similar to the Company as stated in article 6 of this MOI. The non-profit company to which the Company's entire net value, including its net assets, must be

distributed will be identified by Council at or immediately before the time of the Company's dissolution; and

21.2.3. The Company's entire net value, including its net assets, will be distributed upon dissolution to the closest CID which is exempt in terms of the Income Tax Act, and use the Company's net assets solely for purposes of carrying on one or more public benefit activities in the CID that was managed by the Company prior to its dissolution.