

**REPUBLIC OF SOUTH AFRICA**

**COMPANIES ACT, 2008**

**MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY**

Name of company: **DURBAN POINT WATERFRONT MANAGEMENT ASSOCIATION NPC (RF)**

Registration No.: **1998/001781/08**

(“The Association”)

## **ADOPTION OF MEMORANDUM OF INCORPORATION**

This Memorandum of Incorporation was adopted by the Association on 18<sup>th</sup> September 2014. The former Memorandum of Incorporation of the Association (being its “Memorandum of Association” and “Articles of Association” which were adopted in terms of the Companies Act 61 of 1973) was repealed in its entirety and simultaneously replaced by this Memorandum of Incorporation in accordance with the Companies Act 71 of 2008 by special resolution of the members of the Association and the prior written consent of the Developer.

## **DEFINITIONS AND INTERPRETATION**

1. In this Memorandum of Incorporation, unless the context otherwise requires:
  - 1.1 “the Act” means the Companies Act 71 of 2008, as it may be amended from time to time. If the Act is replaced by any other legislation, reference to the Act shall be construed as a reference to the legislation from time to time in force relating to companies;
  - 1.2 “Arbitration Act” means the Arbitration Act 42 of 1965 as amended and any regulations in force thereunder from time to time;
  - 1.3 “the Association” means Durban Point Waterfront Management Association NPC (RF) (Registration No. 1998/001781/08), the company which has adopted this Memorandum of Incorporation;
  - 1.4 “Board” means the board of directors of the Association for the time being;
  - 1.5 “Body Corporate” means a body corporate as defined in Section 1 of the Sectional Titles Act;
  - 1.6 “Bulk” means, in respect of land owned by any Member, including the Developer, the floor area of building that an Owner is permitted to erect on his land in terms of the Scheme or in terms of his contract with the Developer (if applicable), whichever is the lesser;
  - 1.7 “CIPC” means the Companies and Intellectual Property Commission established by the Act;

- 1.8 “Design Review Committee” means a committee appointed in accordance with article 139 below;
- 1.9 “Developer” means Durban Point Development Company (Proprietary) Limited (Registration No. 2001/020065/07), including its successors and assigns;
- 1.10 “Development Manual” means the Durban Point Development Manual which deals with various architectural guidelines, layout issues, building requirements and restrictions and similar matters, as amended from time to time, it being recorded that it is a policy of the Developer to provide each of the original purchasers of land (within the Point Precinct) with a copy of the then current Development Manual and to keep the latest copy of the Development Manual in the Association’s offices on the basis that such shall be made available for inspection by the Members when reasonably required;
- 1.11 “Development Period” means the period commencing 1 January 2003 until the date upon which the Developer ceases to own any land within the Point Precinct or the date upon which the Developer gives written notice (as more fully provided for in article 23 below) to the Association of the termination of the Development Period, as the case may be, provided that no such notice shall be given until such time as at least seventy five per cent (75%) of the permissible Bulk in respect of the Point Precinct as a whole has been sold by the Developer to third parties;
- 1.12 “Directors” means the directors of the Association for the time being;
- 1.13 “Finance Committee” shall mean a committee appointed in accordance with article **Error! Reference source not found.** below;
- 1.14 “Governance Rules” means any necessary or incidental rules for the governance of the Association in respect of matters not addressed in the Act or in this Memorandum of Incorporation or in the Point Precinct Rules referred to in article 109 below, as contemplated in section 15 of the Act;
- 1.15 “individual ownership” means ownership by a natural or juristic person or persons;
- 1.16 “land” means any land in the Point Precinct, including any subdivision capable of individual ownership and including also “leasehold land” (which for the purposes hereof means land in the Point Precinct which is occupied pursuant to a lease in excess of fifty (50) years

duration), whether such land is improved or not, or a sectional title unit under the provisions of the Sectional Titles Act, where a sectional title scheme has been established on any such land, it being contemplated that the boundaries of the Point Precinct might in the future be extended to incorporate as part of the Point Precinct land which is reclaimed and which is the subject of a long lease with the State;

- 1.17 “Local Authority” means the eThekweni Municipality or its successor in title, as the case may be;
- 1.18 “Manager” means the person, corporation or association appointed by the Association, from time to time, to undertake the management of the Point Precinct;
- 1.19 “Member” means an Owner;
- 1.20 “office” means the registered office of the Association for the time being;
- 1.21 “open spaces” means canals, parks, common areas, public roads, sidewalks and other similar spaces in the Point Precinct;
- 1.22 “Owner” means any person who is the registered owner of land or an undivided share in land or the lessee of leasehold land pursuant to a long lease as contemplated in article 1.16 above;
- 1.23 “Point Precinct” means:
  - 1.23.1 subject to possible addition and reduction as provided for below, the land depicted on the diagram attached hereto marked “A”;
  - 1.23.2 if applicable, any additional land that may be acquired by the Developer where such land constitutes a rational extension, from time to time, of what was regarded immediately prior to such acquisition as the Point Precinct and which the Developer, by written notice to the Association, elects to include as part of the Point Precinct;
  - 1.23.3 if applicable, any land of a third party which was not acquired from the Developer which, pursuant to an application by the third party, is accepted by the Association as part of the Point Precinct provided always, however, that during the Development Period, no such “third party land” shall be incorporated as part of the Point Precinct without the prior written consent of the Developer;

- 1.23.4 any reclaimed land which is the subject of a long lease with the State (see article 1.16 above) which constitutes a rational extension of the Point Precinct and which the Developer, during the Development Period, elects to include as part of the Point Precinct or which, after the Development Period, the Association agrees to include as part of the Point Precinct including, if applicable, the small craft harbour contemplated in the Development Manual;
- 1.24 “Point Precinct Rules” mean the Rules made by the Directors in accordance with the provisions of article 109 below or in terms of their powers prior to the adoption of this Memorandum of Incorporation;
- 1.25 “Property Time Share Control Act” means the Property Time Share Control Act 75 of 1983 as amended and any regulations in force thereunder from time to time;
- 1.26 “Scheme” means the Durban Town Planning Scheme in the course of preparation or any successor thereto;
- 1.27 “Sectional Titles Act” means the Sectional Titles Act 95 of 1986 as amended and any regulations in force thereunder from time to time;
- 1.28 “services” means water, sewerage, refuse removal, electricity, telecommunications, television aerials, television cables, security, maintenance of common property, landscape maintenance and such other utilities or services as may be provided by the Association and/or any other supplier of services to the Point Precinct, from time to time;
- 1.29 “Share Block Company” means a share block company as defined in Section 1 of the Share Blocks Control Act;
- 1.30 “Share Blocks Control Act” means the Share Blocks Control Act 59 of 1980 as amended and any regulations in force thereunder from time to time;
- 1.31 “Total Bulk” means the sum total of all Bulk owned by all Members, excluding any Bulk owned by the Developer;
- 1.32 “Town Planning Ordinance” means the Town Planning Ordinance (Natal) 27/1949 as amended (or any legislation enacted to replace such Ordinance);

- 1.33 “written” or “in writing” includes words printed, auto-graphed, represented or produced in any mode in a visible form and further includes a data message being information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic mail;
- 1.34 words and expressions used and not otherwise defined in this Memorandum of Incorporation shall have the meaning assigned to them by the Act;
- 1.35 words importing the singular shall include the plural; words importing the masculine, feminine and neuter shall include the others of such genders; and words importing persons shall include bodies corporate, and *vice versa* in each instance;
- 1.36 the heading above any of the articles is intended for reference purposes only and shall not influence the interpretation of this Memorandum of Incorporation.

## **INCORPORATION AND NATURE OF THE ASSOCIATION**

### **Incorporation**

2. The Association is a non-profit company with members.
3. The Association is incorporated in accordance with and governed by:
  - 3.1 the unalterable provisions of the Act that are applicable to non-profit companies or any higher standard, greater restriction, longer period of time or similarly more onerous requirement set out in this Memorandum of Incorporation;
  - 3.2 the alterable provisions of the Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum of Incorporation; and
  - 3.3 the provisions of this Memorandum of Incorporation.

## Object and Powers of the Association

4. The object of the Association is to act as the vehicle through which the Point Precinct development and management objectives of the Developer, in its capacity as developer of the Point Precinct, can be implemented in a manner binding upon various “property owners” within the Point Precinct in their capacities as members of the Association.
5. Subject to articles 6, 7, 8, 9 and 10 below, the Association shall have all the powers and capacity of an individual that are capable of being exercised or possessed by a juristic person.
6. The Association shall apply all of its assets and income, however derived, to advance its object.
7. Subject to article 6 above, the Association may:
  - 7.1 acquire and hold securities issued by a profit company; or
  - 7.2 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its object.
8. The Association shall not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or was an incorporator of the Association, or who is a Member or Director, or person appointing a Director, of the Association except:
  - 8.1 as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Association;
  - 8.2 as reasonable payment of, or reimbursement for, expenses incurred to advance the object of the Association;
  - 8.3 as a payment of an amount due and payable by the Association in terms of a *bona fide* agreement between the Association and that person or another;
  - 8.4 as a payment in respect of any rights of that person, to the extent that such rights are administered by the Association in order to advance the object of the Association; or

- 8.5 in respect of any legal obligation binding on the Association.
9. The Association shall not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Association or of a related or inter-related company, or to a person related to any such Director; unless such transaction:
- 9.1 is in the ordinary course of the Association's business and for fair value;
- 9.2 constitutes an accountable advance to meet legal expenses in relation to a matter concerning the Association or anticipated expenses to be incurred by the person on behalf of the Association;
- 9.3 is to defray the person's expenses for removal at the Association's request; or
- 9.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.
10. The Association shall not:
- 10.1 amalgamate or merge with, or convert to, a profit company; or
- 10.2 dispose of any part of its assets, undertaking or business to a 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 Association.

### **Variation of Memorandum of Incorporation**

11. This Memorandum of Incorporation may be amended by special resolution of the Members of the Association and the filing of a notice of the amendment with CIPC; provided that, during the Development Period, this Memorandum of Incorporation shall not be amended without the prior written consent of the Developer.
12. It is recorded that this Memorandum of Incorporation has been prepared with the object of facilitating the implementation of the Developer's Development Plan for the Point Precinct. It is accordingly, by virtue of such objective, "Developer orientated". Upon the termination or expiry of the Development Period, it is intended that the Board will propose such



amendments to this Memorandum of Incorporation as may be appropriate in order to make the objects of the Association and the provisions of this Memorandum of Incorporation more "Member orientated".

13. The Board shall have the power to alter this Memorandum of Incorporation to the extent necessary to correct patent errors in spelling, punctuation, reference, grammar or similar defects. The Association must publish a notice of any such alteration by sending a notice thereof to each Member in accordance with article 33 below and filing a notice thereof with CIPC.

### **Governance Rules**

14. The Board shall have the authority to make, amend or repeal Governance Rules.
15. The Board must publish a copy of any Governance Rule made, amended or repealed by sending a notice thereof to each Member in accordance with article 33 below and filing a notice thereof with CIPC.
16. Any Governance Rule will take effect ten (10) business days after the filing of that Governance Rule with CIPC or on a later date specified in such Governance Rule.
17. Any Governance Rule that takes effect as contemplated above will be binding on an interim basis until put to vote at the next general meeting of the Association and will become permanently binding if ratified by an ordinary resolution of Members.

## **MEMBERS OF THE ASSOCIATION**

### **Membership of the Association**

18. It is recorded that, on the date on which this Memorandum of Incorporation was adopted, all Owners were members of the Association.
19. No Owner shall transfer land unless it is a condition of such transfer that the transferee, in a manner acceptable to the Association, agrees to become a Member and is admitted as a Member in terms of article 24 below. Any owner who sells his land (see article 1.16 above) must give timeous written notice thereof to the Association together with details of the transferee and a copy of the agreement containing the abovementioned condition. A

transferee shall qualify to be a member of the Association by virtue of his ownership of land in the Point Precinct, including the “acquisition of leasehold title” (pursuant to a long lease as contemplated in article 1.16 above). The Association shall, as soon as reasonably practicable, enter the details of the transferee into its register of Members and notify the transferee of his said membership.

20. In order to procure compliance with the provisions of this Memorandum of Incorporation, it shall be registered as a Condition of Ownership of land that no land shall be alienated without the written consent of the Association first being had and obtained, which consent shall be given if the proposed transferee is or will be admitted as a member of the Association and the transferor has complied with all his obligations to the Association (including but not limited to the payment of any monies due to the Association by such transferor).

For the purposes of this article, “alienate” means to alienate any land or part thereof, and in no way detracting from the generality of the aforesaid, includes by way of sale, exchange, donation, deed, intestacy, will, cession, mortgage, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or involuntary, and further irrespective as to whether such alienation is subject to a suspensive or resolutive condition.

21. In the event of any land being owned in undivided shares by more than one Owner such co-owners shall nominate one of them to be the Member for the purposes of this Memorandum of Incorporation provided that all joint Owners shall be bound by this Memorandum of Incorporation as if they were Members. Such nomination shall be made in writing to the Association within seven (7) days of such co-owners becoming Members of the Association in terms of this Memorandum of Incorporation.
22. Save as provided for in article 23 below, a Member may not tender resignation of his membership of the Association
23. Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, the Developer shall be entitled to terminate the Development Period by giving written notice to that effect (specifying the effective date of termination) to the Association provided that no such notice shall be given until such time as at least seventy five per cent (75%) of the permissible Bulk in respect of the Point Precinct as a whole has been sold by the Developer to third parties and provided further that at least three (3) months’ notice of termination shall be given by the Developer to the Association and such termination may only take effect as from the end of a financial year of the Association. In the event of the Developer giving written notice of the termination of the Development Period as provided for above, any land

(within the Point Precinct) which it continues to hold shall thereupon cease to constitute part of the Point Precinct (unless otherwise agreed in writing between the Developer and the Association) until the said land is sold to a third party (in which event the sale shall contain a condition to the same effect as that provided for in article 19 above and the land being sold shall be dealt with as though it were land within the Point Precinct so that the third party will, upon fulfilment of the condition and upon receiving transfer of the property, be deemed to be an Owner and shall be a member of the Association) or, if applicable, until the relevant property is developed by the Developer, in which event it shall, upon completion of the development thereof (or the initial development thereof, as the case may be) be deemed to be re-incorporated into the Point Precinct so that the Developer shall, in respect of such property, again become an Owner (but without the special rights that the Developer has during the Development Period). Similarly, if any such land, owned by the Developer, remains part of the Point Precinct through agreement between the Developer and the Association, the Developer shall, in regard to such land, be dealt with as an ordinary member of the Association and shall not enjoy any of the special rights or be subject to any of the special obligations of the Developer that were applicable during the Development Period.

### **Admission of Members**

24. The initial Members of the Association were the persons subscribing to the “Memorandum and Articles of Association” of the Association. Thereafter the Members of the Association shall be the Developer, while it is an Owner (but subject to article 23 above), and those persons who, from time to time, pursuant to the acquisition of land in the Point Precinct, become Members in accordance with the provisions of this Memorandum of Incorporation. The initial Members resigned as Members as soon as there were sufficient substitute Members in terms of the provisions of the Companies Act No. 61 of 1973, which required the Company to have a minimum of 7 (seven) members.

### **Rights and Duties of Members**

25. Membership of the Association shall confer upon a Member, unless otherwise stipulated, the following rights:
- 25.1 the right to inspect and/or receive copies of the annual financial statements of the Association;

- 25.2 the right to vote, either personally or by proxy, at all general meetings of the Association in accordance with the provisions of this Memorandum of Incorporation;
  - 25.3 the right to receive notices of, attend and speak at, all general meetings of the Association in accordance with the provisions of this Memorandum of Incorporation;
  - 25.4 should Members holding between them, in aggregate, not less than twenty five per cent (25%) of the voting rights in the Association, collectively so decide, the right to convene a general meeting.
26. No Member shall, by reason of membership of the Association, be entitled to share in, or receive any profit of, the Association.

### **Register of Members**

27. The Association shall maintain at its office or another location or locations within the Republic of South Africa a register of Members as provided in section 24(2)(a) of, as read with item 1.(9) of Schedule 1 to, the Act. The register of Members shall may be inspected and copied as provided in section 26(1)(e) of the Act.

### **Cessation of Membership**

28. Membership of the Association shall cease :
- 28.1 upon a Member ceasing to be an Owner (subject to the Developer's rights in terms of article 23 above);
  - 28.2 upon the issue of a final order of sequestration or liquidation of the Member or upon the death of a Member, or upon a Member being declared insane or incapable of managing his affairs, whereupon the legal representative of such Member shall, for all purposes, be recognised and be bound as the Member under this Memorandum of Incorporation.

### **Record Date for Determining Member Rights**

29. The Board may set a record date for the purpose of determining which Members are entitled to receive notice of a general meeting, to participate in and vote at a general meeting, to

decide any matter other than at a meeting as contemplated in article 71 below or to exercise other rights.

30. A record date determined by the Board may not be earlier than the date on which the record date is determined or more than ten (10) business days before the date on which the event or action, for which the record date is being set, is scheduled to occur; and must be published to the Members in a manner that satisfies any prescribed requirements.

31. If, at any time, the Board fails to determine a record date for any action or event, the record date shall be:

31.1 in the case of a meeting, the latest date by which the Association is required to give Members notice of that meeting;

31.2 in any other case, the date of the relevant action or event.

### **Notices to Members**

32. Each Member must notify the Company in writing of an electronic mail address, a fax number, and a physical or postal address; and if he has not notified the Association of at least one of the above, then it shall be sufficient for the Association to serve notice at the address of the land owned by the Member.

33. A notice may be given by the Association to any Member:

33.1 personally;

33.2 by sending it by post by prepaid letter addressed to such Member;

33.3 by advertisement;

33.4 in such other manner, if any, as may be prescribed by the Association in general meeting;  
or

33.5 in any other manner permitted by the Act including, but not limited to, by electronic mail or by fax.

34. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted. In proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
35. Any notice which may be given by advertisement shall be inserted in such newspaper as the Directors may from time to time determine. Any notice by advertisement shall be deemed to have been given on the day upon which the advertisement was published in the newspaper.

## **MEETINGS OF MEMBERS**

### **Convening General Meetings**

36. The Board or any other person specified in the Governance Rules may convene a general meeting of the Association at any time.
37. The Board or any other person specified in the Governance Rules shall call a general meeting of the Association upon receipt of one or more written and signed demands for such a meeting, each which demand describes the specific purpose for which the meeting is proposed and, in aggregate, demands for substantially the same purpose are made and signed by Members, as of the earliest time specified in any of those demands, representing not less than twenty five per cent (25%) of the total voting rights of all the Members of the Association. No other matter or subject shall be considered at such meeting.

### **Annual General Meeting**

38. The Association shall hold a general meeting in every calendar year as its annual general meeting on such date and at such time and place as may be determined by the Board, and shall specify the meeting as such in the notice calling it, provided, however, that not more than fifteen (15) months shall elapse after the holding of the last preceding annual general meeting.

### **Location of General Meetings**

39. The Board may determine the time and place of any general meeting of the Association, which may be held in the Republic of South Africa or in any foreign country.

### **Business at General Meetings**

40. The annual general meeting shall deal with, and dispose of, the consideration of the audited annual financial statements; a decision on the number of Directors; the election of Directors when such decision is required in accordance with the provisions of this Memorandum of Incorporation; the appointment of an auditor; and any other business of which due notice has been given. All business laid before any other general meeting shall be considered special business.

### **Notice of General Meeting**

41. Notice of every general meeting shall be given to every Member of the Association. No other person shall be entitled to receive notice of general meetings.
42. A general meeting of the Association shall be called by not less than fifteen (15) business days' notice in writing; provided that a meeting of the Association shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by all the Members having a right to attend the meeting.
43. Subject to the provisions of the Act, if there was a material defect in the giving of the notice of a general meeting, the meeting may proceed only if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda is present at the meeting and votes to approve the ratification of the defective notice. An immaterial defect in the form or manner of giving notice of a general meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Member, to whom it was addressed, does not invalidate any action taken at the meeting.

### **Electronic Communication at General Meetings**

44. A general meeting may be conducted entirely by electronic communication, or one or more Members may participate by electronic communication in all or part of any general meeting that is being held in person, so long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting.
45. A notice of any general meeting at which it will be possible for Members to participate by way of electronic communication shall inform Members of the ability to so participate and shall

provide any necessary information to enable Members to access the available medium or means of electronic communication, provided that such access shall be at the expense of the Member concerned.

### **Chairman at General Meetings**

46. The chairman, if any, and failing him, the deputy chairman, if any, of the Board shall preside as chairman at every general meeting of the Association. If there is no such chairman or deputy chairman, or if at any meeting he is not present within fifteen (15) minutes after the time appointed for the meeting to begin or is unwilling to act as chairman, the Members shall elect one of their members to be Chairman. Notwithstanding the foregoing, during the Development Period, the chairman and deputy chairman shall be appointed by the Developer.

### **Quorum at General Meetings**

47. The quorum requirement for a general meeting to begin is sufficient persons to exercise, in aggregate, more than twenty five per cent (25%) of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; provided that if, at any time, the Association has more than two (2) Members, a quorum shall not be established unless there are at least three (3) Members present at the meeting; and provided further that one such Member present must be the Developer (which will be represented by an individual authorised thereto by the Developer).
48. A particular matter to be decided at a general meeting may not begin to be considered unless there are sufficient persons present to exercise, in aggregate, more than twenty five per cent (25%) of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda; provided that if, at any time, the Association has more than two (2) Members, the matter may not begin to be considered unless there are at least three (3) Members present at such time; and provided further that one such Member present must be the Developer.
49. If within half an hour after the appointed time for a meeting to begin, the quorum requirements for that meeting to begin have not been satisfied, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case the meeting shall be postponed to a date not earlier than seven (7) days and not later than twenty one (21) days after the date of the meeting; provided that the person intended to chair the meeting may extend the half hour limit for a reasonable period on the grounds that exceptional circumstances affecting



weather, transportation or electronic communication have generally impeded or are generally impeding the ability of Members to be present at the meeting, or that 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 constitute a quorum.

50. If within half an hour after the appointed time for a meeting to begin, the requirements for consideration of a particular matter to begin have not been satisfied, then, if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote. If there is no other business on the agenda of the meeting, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case the meeting shall be adjourned to a date not earlier than seven (7) days and not later than twenty one (21) days after the date of the meeting.
  
51. Where a meeting has been postponed in terms of article 49 above, or adjourned in terms of article 50 above, the Association shall, upon a date not later than three (3) days after the postponement or adjournment, as the case may be, send written notice to each Member of the Association, stating:
  - 51.1 the date, time and place to which the meeting has been postponed or adjourned, as the case may be;
  - 51.2 if the meeting was adjourned, the matter before the meeting when it was adjourned; and
  - 51.3 the grounds for the postponement or adjournment, as the case may be.
  
52. If at the time appointed for a meeting postponed in terms of article 49 above to begin, or for a meeting adjourned in terms of article 50 above to resume, the minimum quorum requirements for the commencement of a meeting or consideration of a matter have not been satisfied, the Members present in person or by proxy will be deemed to constitute a quorum.
  
53. 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, as the case may be, is present at the meeting.

### **Adjournment of General Meetings**

54. The chairman of a general meeting may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of articles 50 and 51 above shall *mutatis mutandis* apply to such adjournment.

### **Representatives at General Meetings**

55. In the event of a Member being a juristic person, such as a close corporation, company or trust, such Member shall lodge at the offices of the Association, a resolution authorising a particular natural person to represent the Member generally and to exercise the Member's vote on its behalf. Such resolution shall be lodged at the offices of the Association at least forty eight (48) hours before the time for the holding of any meeting at which a Member wishes to be represented and/or vote.

### **Proxies at General Meetings**

56. Any Member may, at any time, appoint any individual, including a individual who is not a Member of the Association, as a proxy to:
- 56.1 participate in, and speak and vote at, a general meeting on behalf of that Member; or
- 56.2 give or withhold written consent on behalf of that Member to a decision adopted otherwise than at a meeting as contemplated in article 71 below.
57. A Member may appoint two (2) or more individuals concurrently as proxies.
58. The instrument appointing a proxy shall be in writing, under the hand of the appointer, and (if applicable) shall be in such form as the Directors stipulate or approve from time to time. Each proxy shall specify the title deed description of the Member's land to the reasonable satisfaction of the Board failing which the Board shall be entitled to treat the proxy as invalid.
59. Subject to article 60 below, a proxy instrument remains valid for one year after the date on which it was signed or any longer or shorter period expressly set out in the appointment,

unless it is revoked in writing or substituted by a later inconsistent appointment and a copy of the revocation instrument is delivered to the Association.

60. If the Association has issued an invitation to Members to appoint one or more persons named by the Association as a proxy, or has supplied a form or instrument for appointing a proxy (other than a generally available standard form supplied on a Member's request), the invitation must be sent to every Member of the Association and must contain adequate blank space immediately preceding the name of any person named in it to enable the Member to write in the name of the proxy and, if so desired, an alternative name, as well as adequate space for the Member to indicate whether the appointed proxy is to vote in favour of or against any resolution at the meeting or is to abstain from voting. Notwithstanding article 59 above, a proxy appointment initiated in this manner shall be valid only until the end of the meeting at which it was intended to be used.
61. The instrument appointing a proxy shall be deposited at the office of the Association not less than forty eight (48) hours before the commencement of the meeting at which the person named in such instrument purports to attend or vote pursuant thereto or in respect thereof. In default of compliance herewith the instrument shall be treated as invalid for the purpose of attending or voting at that meeting or any adjournment thereof.
62. A proxy is entitled to exercise, or abstain from exercising, any voting right of the Member without direction, except to the extent that the instrument appointing the proxy provides otherwise.
63. A proxy may delegate the proxy's authority to act on behalf of the Member to another individual, subject to any restriction set out in the instrument appointing the proxy.
64. The appointment of proxy is suspended at any time, and to the extent that, the Member chooses to act directly and in person in the exercise of any rights as a member.
65. A vote in accordance with an instrument of proxy or power of attorney shall be valid notwithstanding the previous death of the principal, or revocation of the proxy or power, provided that no intimation in writing of the death or revocation is received by the office or by the chairman of the meeting before the vote is given.

### **Voting at General Meetings**

66. Subject to the provisions of article 68 below, at any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (at any time before or on the declaration of the result of the show of hands) demanded by the chairman of the meeting or by any one or more Members holding between them at least ten per cent (10%) of the voting rights in the Association or by at least five (5) Members, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried (by a particular majority) or defeated, and an entry to that effect in a book containing the minutes of the proceedings of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against such resolution. A demand for a poll may be withdrawn. If a poll is duly demanded, it shall be taken in such a manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting in which the poll was demanded. Scrutineers shall be elected to determine the result of the poll. In the case of equality of votes, whether on a show of hands or on a poll, the chairman of a meeting at which a show of hands took place, or at which a poll is demanded, shall be entitled to a second or casting vote, subject to the provisions of articles 67 and 68 below.

### **Votes of Members at General Meetings**

67. Subject to the provisions of article 68 below, on a show of hands, each Member present at a meeting of the Association, in person or by proxy, shall be entitled to one vote. On a poll, which may be called as provided for in article 66 above, the value of the Member's vote shall be calculated by reference to the Bulk attaching to the land owned by a Member represented as a percentage of the aggregate of the Total Bulk and the Developer's Bulk at that time. Notwithstanding the foregoing, where a Member owns a Sectional Title Unit, that Member's vote shall be calculated by dividing the Bulk attaching to the land on which the Sectional Title Scheme is situated by the aggregate of the Total Bulk and the Developer's Bulk at that time multiplied by that Member's participation quota.
68. Notwithstanding article 67 above:
- 68.1 during the Development Period, no resolution shall be carried unless the representative of the Developer, present in person or by proxy, votes in favour of such resolution;

- 68.2 the Board shall be entitled to suspend the right of any Member to vote at any meeting if the Member is in arrears in respect of any debt owing by the Member to the Association and has failed to pay such arrears despite having received a notice from the Association calling upon the Member to do so.

### **Resolutions of Members**

69. For an ordinary resolution to be adopted at a general meeting, it must be supported by the holders of more than fifty per cent (50%) of the voting rights exercised on the resolution.
70. For a special resolution to be adopted at a general meeting, it must be supported by the holders of at least seventy five per cent (75%) of the voting rights exercised on the resolution.

### **Decisions Adopted Other than at a Meeting**

71. A resolution that could be voted on at a general meeting may instead be submitted by the Board to the Members of the Association for their consideration and voted on in writing by such Members within a period of twenty (20) business days after the resolution was submitted to them. Such a resolution will have been adopted if it is supported by Members entitled to 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 general meeting; and, if adopted, will have the same effect as if it had been approved by voting at a meeting.
72. Within ten (10) business days after adopting a written resolution in terms of article 71 above, the Association must deliver a statement describing the results of the vote to every Member of the Association.

### **Copies of Minutes of General Meetings**

73. The Association shall keep copies of the minutes of every general meeting in accordance with section 24(3)(d) of the Act. The minutes may be inspected and copied as provided in section 26(1)(d) of the Act.

## **BOARD OF DIRECTORS**

### **Powers of the Board**

74. The Board shall manage and direct the business and affairs of the Association and has the authority to exercise all the powers and perform any of the functions of the Association except to the extent that the Act or this Memorandum of Incorporation provides otherwise.
75. After the termination of the Development Period, the Association in general meeting, shall have the right to limit and restrict the powers of the Directors, provided that no resolution of the Association shall invalidate any prior act of the Directors which would otherwise have been valid.

### **Directors (Terms of Office)**

76. The number of Directors and the election thereof shall be determined from time to time by the Members in general meeting, subject to the following:
  - 76.1 during the Development Period, there shall be a maximum of six (6) Directors and a minimum of three (3) Directors, all of whom shall be appointed by the Developer save for one, who shall be appointed by the Owner of the Durban Marine Theme Park property and one who shall be appointed by the Point Watersports Club;
  - 76.2 after the expiry of the Development Period, there shall be a maximum of ten (10) Directors and a minimum of three (3) Directors, of whom one shall be appointed by the Owner of the Durban Marine Theme Park property and one by the Point Watersports Club, it being recorded that the Directors appointed by the Developer during the Development Period shall cease to hold office as from the annual general meeting following the expiry or termination, as the case may be, of the Development Period;
  - 76.3 a retiring Director shall be eligible for re-election;
  - 76.4 subject to article 76.2 above, a Director appointed by the Developer or by the Owner of the Durban Marine Theme Park property or by the Point Watersports Club shall, in each case, be a Director for so long as the Developer or the Owner of the Durban Marine Theme Park property, or the Point Watersports Club (as the case may be) does not revoke his appointment.

77. Save as is set out in articles 78 and 85 below, and save for the Directors appointed by the Developer or by the Owner of the Durban Marine Theme Park property or by the Point Watersports Club in terms of article 76 above, each Director shall continue to hold such office from the date of his commencement of office until the annual general meeting next following the said appointment, at which meeting each Director shall be deemed to have retired from office as such but will be eligible for re-election to the Board at such meeting.
78. If, as a result of retirement, resignation or otherwise, the total number of Directors falls below the prescribed number, the Board shall act promptly to bring the number of Directors up to the level as specified in this Memorandum of Incorporation. If the Director so retiring or resigning was appointed by the Developer then, during the Development Period, his successor shall be appointed by the Developer. If the Director so retiring or resigning was appointed by the Owner of the Durban Marine Theme Park property or by the Point Watersports Club, his successor shall be appointed by the Owner of the Durban Marine Theme Park property or by the Point Watersports Club, as the case may be. The validity of any resolutions taken or acts performed by the Directors during a period when the number falls short of that provided in article 76 above shall not be prejudiced by such shortfall.
79. The appointment by the Board of any Director to fill any vacancy for whatever reason shall be made within one hundred and twenty (120) days of the date upon which such vacancy occurs.
80. The Directors shall have the power to co-opt persons onto the Board for the purposes of assisting the Directors in carrying out any of their functions. Any person so co-opted onto the Board shall not be entitled to vote on any matter which comes up for consideration by the Board.
81. The chairman and deputy chairman of the Board shall be elected by the Directors at their first meeting in the financial year, provided that for the Development Period, the chairman and the deputy chairman of the Board shall be Directors appointed by the Developer.

### **Alternate Directors**

82. Any Director appointed by the Developer or by the Owner of the Durban Marine Theme Park property or by the Point Watersports Club in terms of article 76 above may for any reason, and at or for any time, appoint an alternate Director, and at his discretion, shall be entitled to

remove such alternate Director and appoint another in his place, provided that the appointment of any such alternate Director shall be approved of by the Board, and on such appointment being made and approved, the alternate Director shall in all respects be subject to the terms and conditions existing with reference to the other Directors of the Association. An alternate Director whilst acting in the place of the Director appointing him, shall exercise and discharge all the duties and functions of the Director he represents as if he were a Director and not as agent of the Director appointing him. The appointment of an alternate Director shall be cancelled, and the alternate shall cease to hold office, whenever the Director who appointed him shall cease to be a Director or shall give notice in writing to the Association that the alternate Director representing him shall have ceased to do so. If a Director retires at a general meeting of the Association and is re-elected at the same meeting, he shall not, for the purpose of this article, be deemed to have ceased to be a Director and accordingly, to the extent that such Director had an existing alternate Director, there shall be no need to reappoint the alternate Director given the re-election of the Director to whom he is an alternate.

83. Any other Director may obtain leave of absence by a resolution of the majority of the Directors, and the Board may thereupon appoint an alternate to act for him during his absence with all powers and privileges enjoyed by him. The appointment of such alternate shall not, however, be valid unless confirmed by a resolution of the majority of Directors present at the meeting.

#### **Basis on which Directors are to be Chosen**

84. When choosing the individuals to elect or appoint as Directors of the Association, the Developer, the Owner of the Durban Marine Theme Park property, the Point Watersports Club, the Members or the Board, as the case may be, shall base their decision on the collective knowledge, skills and experience which are required for conducting the business of the Board, good governance and values in line with the ethos of the Association.

#### **Ineligibility, Disqualification or Resignation of Directors**

85. The office of Director shall be vacated if the Director:

- 85.1 ceases to be a Director by effluxion of the period of appointment, or becomes prohibited from being a Director by virtue of any provision of the Act or this Memorandum of Incorporation; or



- 85.2 resigns his office by notice in writing to the Association and CIPC; or
- 85.3 is declared insolvent or assigns his estate for the benefit of, or compounds with, his creditors; or
- 85.4 is found to be a lunatic or of unsound mind; or
- 85.5 is absent for three (3) consecutive regular meetings of the Directors without obtaining prior leave of absence;
- 85.6 in the case of a Director appointed by the Developer or by the Owner of the Durban Marine Theme Park property, on the Developer or the Owner of the Durban Marine Theme Park property (as the case may be) revoking his appointment;
- 85.7 in the case of a Director appointed by the Point Watersports Club, upon the revocation of his appointment as a Director by the Point Watersports Club.

#### **Remuneration of Directors**

- 86. A Director shall not directly or indirectly receive any remuneration for his services as a director of the Association, provided that nothing in this Memorandum of Incorporation shall prohibit him from reimbursement of any travelling, subsistence and other expenses properly incurred by him in the execution of his duties in or about the business of the Association and which is authorised or approved by the Board.
- 87. If any Director commits a breach of article 86 above, he may forthwith be removed as a Director by resolution of the Board or the Members and shall not be eligible for re-election.
- 88. Any Director may act by himself or for his firm in a professional or other business capacity for the Association and he or his firm shall be entitled to remuneration for services rendered to the Association as if he were not a Director, provided that nothing herein contained shall authorise a Director or his firm to act as auditor of the Association.

#### **Personal Financial Interests**

- 89. For the purposes of articles 89 to 92 hereof:

- 89.1 “Interested Director” means a Director, an alternate director or a prescribed officer of the Association, or a person who is a member of a committee of the Board irrespective of whether the person is also a member of the Board; and
- 89.2 “related person” when used in reference to an Interested Director, has the meaning set out in section 2 of the Act, but also includes a second company of which the Interested Director or a related person is also a director, or a close corporation of which the Interested Director or a related person is a member.
90. Subject to section 75 of the Act, if an Interested Director has a personal financial interest in respect of a matter to be considered at a meeting of the Board, or knows that a related person has a personal financial interest in the matter, the Interested Director:
- 90.1 must disclose the interest and its general nature before the matter is considered at the meeting;
- 90.2 must disclose to the meeting any material information relating to the matter, and known to the Interested Director;
- 90.3 may disclose any observations or pertinent insights relating to the matter if requested to do so by the Directors;
- 90.4 if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in articles 90.2 or 90.3 above;
- 90.5 must not take part in the consideration of the matter, except to the extent contemplated in articles 90.2 and 90.3 above;
- 90.6 while absent from the meeting in terms of this article, is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute the meeting; and is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
- 90.7 must not execute any document on behalf of the Association in relation to the matter unless specifically requested or directed to do so by the Board.

91. Subject to section 75 of the Act, if an Interested Director acquires a personal financial interest in an agreement or other matter in which the Association has a material interest, or knows that a related person has acquired a personal financial interest in the matter, after the agreement or other matter has been approved by the Association, the Interested Director must promptly disclose to the Board the nature and extent of that interest, and the material circumstances relating to the Interested Director or related person's acquisition of that interest.
92. Subject to section 75 of the Act, a decision by the Board, or a transaction or agreement approved by the Board, is valid despite any personal financial interest of an Interested Director or person related to the Interested Director, only if:
  - 92.1 it was approved following disclosure of that interest in the manner contemplated in articles 89 to 92 hereof; or
  - 92.2 despite having been approved without disclosure of that interest, it has subsequently been ratified by an ordinary resolution of the Members following disclosure of that interest; or has been declared to be valid by a court.

### **Limited Liability of Directors**

93. Subject to the Act, no Director shall be liable for any loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his office or in relation thereto unless the same occurs as a result of his own dishonesty, gross negligence or default, breach of duty or breach of trust.

### **Board Meetings**

94. The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit but shall meet at least four (4) times during a financial year.
95. A Director may, on seven (7) days written notice to all other Directors, at any time summon a meeting of the Directors.
96. If all of the Directors acknowledge actual receipt of a notice, are present at the meeting or waive notice of the meeting, the meeting may proceed even if the Association failed to give the required notice of that meeting, or there was a defect in the giving of the notice.

97. The quorum necessary for the transaction of the business of the Directors shall be at least fifty per cent (50%) of the total number of Directors.
98. If at a meeting neither the chairman, nor the deputy chairman, of the Board is present within ten (10) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman for that meeting; provided that, during the Development Period, the chairman of any Board meeting shall be a Director appointed by the Developer.
99. Questions arising at any meeting of the Directors shall be decided by a majority of votes of the Directors, present in person or by an alternate. Each Director shall be entitled to exercise one vote. In the event of an equality of votes the chairman shall have a second or casting vote. Where a person is an alternate Director to more than one Director, or where an alternate Director is also a Director in his personal capacity, he shall have a separate vote on behalf of each of the Directors he is representing.
100. All acts done in terms of any resolution passed at any meeting of the Directors or a committee of Directors or by any person acting as a Director, notwithstanding that it be afterwards discovered that there was some defect in their acting as aforesaid or that they or any of them were disqualified so to act, shall be as valid as if any such person acting as Director in a meeting of Directors or a committee of Directors had been duly appointed and had qualified to be a Director.
101. The Board has the authority to conduct a meeting entirely by electronic communication, or one or more Directors may participate in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
102. A decision that could be voted on at a meeting of the Board may instead be adopted by written consent of a majority of the Directors, given in person, or by electronic communication, provided that each Director has 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.

## **Minutes**

103. The Directors shall in terms of the Act cause minutes to be kept of:
- 103.1 all appointments of Directors;
  - 103.2 the names of Directors present at every meeting of the Association and at every meeting of the Directors; and
  - 103.3 all proceedings at all meetings of the Association and/or the Directors.
104. Such Minutes once they are approved as a true record of proceedings, shall be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the following meeting.

## **Board Committees**

105. The Board has the authority to appoint any number of committees of Directors and to delegate to any such committee any authority of the Board. Such a committee may include individuals, who are not Directors of the Association, but any such person must not be ineligible or disqualified to be a Director and no such person has a vote on a matter to be decided by the committee.
106. Any Board committee so formed shall be in an advisory capacity to the Board and shall report, and be responsible, to the Board; and in the exercise of the powers so delegated, shall conform to the rules that may be imposed on it by the Directors.
107. The Directors shall appoint the chairman of each Board committee. Should the Directors not appoint the chairman of a committee, the members of that committee shall elect a Chairman of its meetings. If, at any meeting, the chairman is not present within ten (10) minutes after the time appointed for holding the same, the committee members present may elect one of their members to be Chairman for that meeting.

108. A Board committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the committee members present and, in the event of an equality of votes, the chairman shall have a second or casting vote.

## **POINT PRECINCT RULES**

### **Making of Point Precinct Rules**

109. The Directors shall have the power to make Point Precinct Rules from time to time as well as the power to substitute, add to, amend, repeal, qualify and enforce same, for the management, control, administration, use and enjoyment of the Point Precinct or any part thereof, for the purposes of giving proper effect to the provisions of this Memorandum of Incorporation and for any other purpose which powers shall include the right to impose reasonable financial penalties to be paid by those Members who fail to comply with the provisions of this Memorandum of Incorporation or the Point Precinct Rules.

110. In no way detracting from the generality of article 109 above, the Directors may from time to time make Point Precinct Rules, applicable within the Point Precinct or any part thereof, specifically in regard to:

110.1 the use, maintenance, servicing and preservation of public areas including the canals;

110.2 access to and egress from public areas;

110.3 the placing of movable objects upon or outside the buildings included in the Point Precinct, including the power to remove any such objects;

110.4 the storing of flammable and other harmful substances;

110.5 the conduct of any persons within the Point Precinct, the prevention of nuisance of any nature to any Owner of immovable property in the Point Precinct and the security of and within the Point Precinct;

110.6 the use of land within the Point Precinct (having regard to the intended retail, commercial and mixed use of the Point Precinct);

- 110.7 the use of lighting having regard, *inter alia*, to the requirements of the competent authorities in respect of the Port of Durban;
- 110.8 the imposition of fines and other penalties to be paid by Members of the Association;
- 110.9 the management, administration, control and servicing of the common areas and open spaces;
- 110.10 the Design Guidelines for the erection of all buildings and other structures, including service connections to buildings;
- 110.11 the Design Guidelines for the establishment, installation and maintenance of gardens, both public and private;
- 110.12 the use by Owners or their tenants of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings;
- 110.13 the use of adjoining sidewalks, road frontages and parking areas;
- 110.14 any special arrangements as it deems appropriate in order to facilitate land reclamation where such land to be reclaimed is in the immediate vicinity of the Point Precinct or is intended to become part of the Point Precinct;
- 110.15 any other matter as may in the opinion of the Directors require to be regulated; and
- 110.16 generally, in regard to any other matter which the Directors from time to time consider appropriate.

### **Enforcement of Point Precinct Rules**

- 111. The Directors may take or cause to be taken such steps as they may consider necessary to remedy the breach of any Point Precinct Rules of which a Member may be guilty and debit the costs of so doing to the Member concerned which amount shall be deemed to be a debt owing by the Member to the Association. In addition, the Directors may impose a system of fines or other penalties. The amounts of such fines and/or penalties shall be determined by the Board from time to time.

112. In the event of any breach of the Point Precinct Rules by any tenant or occupier of any land owned by a Member, such breach shall be deemed to have been committed by the Member and the Directors shall be entitled to take such action as they deem fit against the responsible Member.
113. Notwithstanding articles 111 and 112 above, the Directors may, in the name of the Association, enforce the provisions of any Point Precinct Rules by an application in a court of competent jurisdiction and, for this purpose, may appoint such attorneys or counsel they may deem fit.
114. The Point Precinct Rules made by the Directors from time to time in terms of the powers granted to them shall be binding on all Members provided always, however, that the Directors shall, in their discretion, be entitled to relax any Point Precinct Rule in circumstances where they consider same to be justified. The Directors shall use their reasonable endeavours to ensure that the Point Precinct Rules are disclosed to the Members and shall, in this regard, keep a copy of the Point Precinct Rules at the Association's office on the basis that such shall be available for inspection by the Members during office hours.
115. In no way detracting from the generality of any other provision of this Memorandum of Incorporation, in the event of the Association incurring any legal costs as a result of any breach of this Memorandum of Incorporation by any Member, the Association shall be entitled to recover all such legal costs from such Member on an attorney and own client scale in full whether or not legal action is actually instituted.

#### **DELEGATION OF POWERS OF THE BOARD**

116. The Board may from time to time entrust to and confer upon the Manager, or any other designated official of the Association or consultant or any other person or firm, for the time being, such of the powers and authorities vested in it as it may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and subject to such terms and conditions and restrictions as it may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the Directors and may from time to time revoke or vary all or any of such powers and authorities.



## **ASSIGNMENT OF POWERS AND FUNCTIONS**

117. The Association shall be entitled to carry out all the functions and assume all powers as provided for in the Sectional Titles Act (and in particular Sections 37 and 38 thereof) as the Association may require to be delegated to it by the relevant Body Corporate and those functions imposed in terms of the Share Blocks Control Act (and in particular Sections 13, 15 and 19 thereof), as the Association may require to be delegated to it by a Share Block Company, in relation to any Sectional Title or Share Block Scheme in the Point Precinct. In addition to the foregoing, any controlling body of any Share Block Scheme or Sectional Title Scheme, shall assign such powers and functions to the Association as may be required of it by the Association. It is recorded that the above constitutes a right granted to the Association to require the delegation to it of any function and power as contemplated above and, to the extent that the Association requires from time to time to exercise the right granted to it in terms hereof, it shall give written notice thereof to the relevant Body Corporate or Share Block Company, as the case may be, which notice shall specify the relevant function and/or power which is to be delegated to the Association and, if applicable, the duration of such delegation. In the absence of any such notice, no such delegation shall come into effect nor shall this article 117 be construed as obliging the Association to assume any function or power of any such Body Corporate or Share Block Company.

## **FINANCES OF THE ASSOCIATION**

### **Finance Committee**

118. The Board shall establish and maintain a levy fund sufficient in its opinion for the repair, upkeep, control, management and administration of the Association and of the Point Precinct including the provision of security and other services for the Point Precinct, landscape maintenance services, insurance premiums, the payment of rates and taxes and other charges on the Point Precinct levied by the local or any other authority, any charges for the supply of electric current, gas, water, fuel and sewage disposal, refuse collection and any other services to the Point Precinct including any matter arising from the provisions of article 117 above, and any services required by the Association to enable it to carry out its object or any business, trade or undertaking consistent with or ancillary to its object, for the covering of any losses suffered by the Association, for the payment of any premiums of insurance and of all other expenses incurred or to be incurred in relation to the Point Precinct and for the discharge of any other obligation of the Association (provided that nothing in this Memorandum of Incorporation shall be construed as obliging the Association to pay service

charges due by Owners to the relevant authority). To the extent that the Association itself provides services or contracts third parties to provide services in respect of the Point Precinct, the levy fund should be established at a level sufficient to cover also the costs associated with the provision or procurement of such services.

119. The Board shall determine when levies are to be paid by the Members and the due date for payment shall be relevant for the purpose of determining whether interest is payable in accordance with the provisions of article 125 below.
120. Notwithstanding anything contained herein or elsewhere, during the Development Period, the Developer alone in his sole and absolute discretion, shall determine what portion of the total expenditure of the Association, if any, is to be paid by the Developer.
121. Subject to the provisions of article 120 above, the Board shall determine the proportions in which Members shall contribute towards the levy fund in accordance with the following principles, having regard to all circumstances prevailing at the time and to equity:
  - 121.1 they shall assign those costs arising directly out of or pertaining to any specific land, to the Member(s) owning such land;
  - 121.2 they shall assign those costs relating to the Point Precinct generally, including all open spaces, to a Member in the ratio of Bulk attaching to that Member's land represented as a percentage of the Total Bulk at that point in time (after the deduction of the Developer's contribution referred to in article 120 above);
  - 121.3 they may draw a distinction between the services rendered by the Association to a particular Body Corporate or Share Block Company for a particular type of scheme, again taking into account the nature and the extent of the services rendered to that Body Corporate or Share Block Company and the Owners of that Body Corporate or Share Block Company; provided however that the Board may in any case where they consider it equitable to do so, assign to any Owner any greater or lesser share of the costs as may be reasonable in the circumstances; and provided further that any replacement or other reserves shall be determined by the Board;
  - 121.4 without derogating from the provisions of article 121.3 above, they may provide the Owner of the Durban Marine Theme Park property with a special discount in respect of the levy

which it has to pay having regard to the extent of the Bulk utilised in respect of the said property as opposed to the maximum permissible Bulk in respect thereof;

- 121.5 they may provide for a phasing in of levies and/or for a postponement of the date when the levies become payable.
122. All contributions received from Members and the Developer shall forthwith be deposited in a separate account which the Association shall open and keep with a financial institution.
123. The monies in the levy fund shall be utilised to defray the expenses referred to in article 118 above.
124. Notwithstanding any person ceasing to be a Member, all levies attributable to any period whilst such person was a Member shall continue to be of full force and effect and recoverable from such person.
125. Any amount due by a Member whether in respect of a levy or any other amount falling due for payment under this Memorandum of Incorporation, which remains unpaid after the same has fallen due, shall bear interest as from the due date for payment to the date of payment at a rate of interest equal to that charged by the Standard Bank of South Africa Limited at its prime overdraft rate plus three (3) percentage points. Such interest shall be calculated and compounded monthly.
126. Subject to the provisions of article 120 above, the Directors shall on the recommendation of the Board have the power to impose additional special levies on Members in respect of any unforeseen expenditure and shall determine how such levies are to be paid in accordance with the principles set out in article 121 above.
127. A Member shall not be entitled to demand repayment of any amount standing to the credit of his levy account.
128. All contributions levied under the provisions of this Memorandum of Incorporation shall be due and payable by Members on the passing of a resolution to that effect by the Directors and may be recovered by the Association by action in any court (including any Magistrates' Court) of competent jurisdiction from the persons who were Members at the time when such contributions became due.

129. Should a member be in arrears with the payment of any levies due in terms of this Memorandum of Incorporation or any other amount of any nature whatsoever due to the association by such member (including but not limited to any fine that may be imposed by the Association on any such member) and remain in arrears notwithstanding demand for payment by the Association, the Board shall have the right to suspend the member's participation in any meeting of the members in accordance with the provisions of article 68.2 above. A letter addressed to the chairman of any such meeting by the chairman of the Board dated not more than fourteen (14) days prior to any such meeting shall constitute proof of non-payment of any arrear levies by such Member and shall entitle the chairman of such meeting of the Members of the Association to prevent such Member or his proxy speaking or voting at such meeting (even if payment is made by such Member before such meeting but subsequent to the aforesaid letter having been signed by the chairman of the Board).
130. In the event of there being a dispute as to the amount of any levy due by the Member, such dispute shall be referred to the Association's auditors for a decision, whose decision shall be final and binding on the parties.
131. The Association shall not be entitled to borrow money, save in accordance with a special resolution of Members.
132. Should the Board consider it appropriate, it shall establish, under article 105 above, a Finance Committee which shall consist of not less than two (2) or more than four (4) individuals from time to time; provided that, during the Development Period, at least one (1) member of the Finance Committee shall be a nominee of the Developer. The Finance Committee shall report to the Board and the composition of the Finance Committee shall be subject to change at the instance of the Board as it deems fit. The Finance Committee may be assigned any of the duties of the Board relating to the finances of the Association.
133. Subject to articles 106, 107 and 108 above, should any matter before the Finance Committee be required to be settled by way of a vote, such vote shall be taken on a show of hands with each member of the Finance Committee present at any meeting being entitled to one vote; provided that, during the Development Period, no resolution of the Finance Committee shall be carried unless the nominee of the Developer vote in favour of such resolution.

### **Accounting Records**

134. The Directors shall cause such accounting records as are prescribed by the Act to be kept. Accounting records shall be deemed to be proper if they represent fairly the state of affairs and business of the Association and explain the transactions and financial position of the trade or business of the Association.
135. The accounting records shall be kept at, or be accessible from, the office of the Association.

### **Annual Financial Statements**

136. The Association elects to comply voluntarily with the requirement to have its annual financial statements audited.
137. A copy of any annual financial statements which are to be laid before the Association in annual general meeting, or a summarised form thereof and directions for obtaining a copy of the complete annual financial statements for the preceding financial year, shall, not less than fifteen (15) business days before the date of the meeting, be sent to every Member of the Association; provided that this article shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.

### **Auditor**

138. The Association voluntarily elects to be subject to the provisions of the Act governing the appointment of a registered auditor, auditor resignation, rotation of auditors and the rights and restricted functions of auditors.

## **DESIGN, REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE POINT PRECINCT**

### **Design Review Committee**

139. There shall be established in terms of article 105 above a Design Review Committee (which may also be known a "Design Review Panel") which shall, as far as reasonably practicable, consist of at least three (3) members who shall be appointed by the Board on the following basis:

- 139.1 one (1) person, who the Board considers suitably qualified, shall be appointed as chairman;
- 139.2 one (1) who shall be a practicing architect or town planner;
- 139.3 one (1) person nominated by the Local Authority;
- 139.4 any additional members shall be appointed by the Board as it deems fit having regard to the needs of the Association in respect of the functions of the Design Review Committee (which functions are dealt with below and also in the Development Manual).
140. The Design Review Committee will act as, *inter alia*, an aesthetics committee with a view to ensuring any development within the Point Precinct is in accordance with the Development Manual, the Scheme and architectural guidelines which will enhance the attraction of the Point Precinct as a whole.
141. The Board shall ensure that the Design Review Committee carries out all the functions and duties entrusted to it so as to give proper effect to the provisions of the Development Manual.
142. Subject to articles 106, 107 and 108 above, the Board shall determine, from time to time, the basis upon which the Design Review Committee shall operate, when it shall meet, how meetings shall be conducted and the like.

### **Buildings and Improvements**

143. In order to procure compliance with the nature and amenity of the Point Precinct nothing shall be placed on or attached to a building or any other structure, visible from outside of the building or such other structure without the consent of the Design Review Committee and no building, extension or alteration to an existing building or other structure shall be built or erected on any land within the Point Precinct, other than in accordance with the Scheme, the Development Manual and plans approved by the Design Review Committee which approval shall be in writing and signed by a duly authorised representative of the Design Review Committee. Before giving such approval, the Committee may require that there be lodged with them such description and/or drawing and/or plan as may be necessary, in the opinion of the Committee, to enable them to consider the matter. Any approval as contemplated herein may be subject to such conditions as the Design Review Committee may deem fit. In the event of any building or other structure being erected on land, save in accordance with the

plans approved of by the Design Review Committee as set out in this article, then in that event, the Association shall, without prejudice to any of its other rights in law, be entitled to make such amendments to such building or other structure in order to procure compliance with building plans approved of by the Design Review Committee and recover the costs of such alterations from the relevant Owner of the land in question which amount shall be deemed to be over and above and in addition to the levy due by the Owner to the Association. The such additional amount shall, however, be treated, in all other respects, as though it were a levy and any failure to effect timeous payment thereof shall attract interest on the basis provided for in article 125 above. Notwithstanding the foregoing, the provisions of this article shall not be binding on the Developer during the Development Period. This article shall in no way alter or supersede any requirements of or obligations to the relevant Local Authority.

144. Members shall ensure that their land is kept in a neat and tidy state at all times. In no way detracting from the generality of the aforesaid, Members shall ensure that, while their land is undeveloped, that it is kept neat and dust free to the satisfaction of the Board. Should any Member fail to comply with his obligations in terms hereof and fail to remedy his breach within a reasonable time after receipt of written notice from the Association calling upon him to do so, the Association shall be entitled, without prejudice to any of its other rights in law, to procure that the said breach is remedied by employing a contractor to do so and shall be entitled to recover the costs thereof from the defaulting Member together with interest thereon on the same basis, *mutatis mutandis*, as provided in article 125 above.

### **Landscaping**

145. Save as may otherwise be agreed by the Directors, any landscaping on land to be undertaken by a Member shall be undertaken in accordance with a landscape plan approved by the Design Review Committee and no Member shall commence landscaping of any land until such time as such landscape plan has been approved in writing.
146. Notwithstanding anything to the contrary herein or elsewhere contained, no Member shall have the right to landscape any part of the Point Precinct or attempt to erect any fence or wall or any other structure or remove same on any land without the prior written consent of the Design Review Committee. Notwithstanding the foregoing, the provisions of this article shall not be binding on the Developer during the Development Period.

### **Provision of Services**

147. The Association may, from time to time, contract with suppliers of services to provide services to the Point Precinct and may itself provide services in respect of the Point Precinct.

### **Open Spaces and Rights of Access**

148. Owners, their employees and invitees shall be entitled to use all open spaces owned or managed by the Association, in the Point Precinct, subject to the rules and restrictions as the Board may lay down from time to time provided that at all times Owners shall have vehicular and pedestrian ingress and egress from their land to a public road, subject to security measures as the Board may implement from time to time.
149. No resolution for the winding up of the Association shall be passed prior to the rights of vehicular and pedestrian ingress and egress above referred to being secured by way of servitudes registered against the title of the Point Precinct or the transfer of such accesses to a Local Authority, as public roads.

### **Maintenance of Buildings**

150. Save where such work is carried out by the Association, the exterior of every building shall be maintained and kept in a clean, tidy and neat condition by the Owner and no Owner shall be entitled to apply paint or any similar material to any exterior part of his building without the prior written consent of the Design Review Committee which consent shall not unreasonably be withheld. An Owner shall, on receipt of a notice given by the Design Review Committee, undertake such work as may be specified in such notice relative to such Owner's building. Should an Owner fail to carry out any work as required by the Design Review Committee, after the Design Review Committee has given the Owner notice, which the Design Review Committee deems reasonable in the circumstances, so to comply, the Board shall be entitled to carry out such work and to recover the reasonable cost thereof from the Owner concerned which amount shall be over and above and in addition to the levy due by the Owner to the Association but shall, for all other purposes, be dealt with as though it were part of the levy.

### **Occupation of Buildings**

151. Occupation and use of a building shall, at all times, be in compliance with the Scheme and this Memorandum of Incorporation. No Member shall use any building on any land or allow



any other person to use such building for purposes not permitted by the Scheme or this Memorandum of Incorporation or the Point Precinct Rules.

### **Services**

152. Inasmuch as the provision, establishment, maintenance and repair of services may be required to take place in the Point Precinct, Members shall be obliged to accept the laying out and installation of such services across their land, in such places as the Design Review Committee determines, from time to time. The Design Review Committee or persons authorised by it, shall be entitled to enter upon such land for the purpose of providing, establishing, maintaining and/or repairing the services, provided that such work shall be carried out with as little inconvenience to the affected party as reasonably possible.

### **Security of Point Precinct**

153. The Association may, in addition to any security provided by the South African Police and/or the Metropolitan Police, provide such security in the Point Precinct as it deems appropriate, from time to time.

### **Maintenance of Open spaces, Private Roads and Municipal Services**

154. The Association may be responsible (and might assume responsibility) for the maintenance, upkeep and repair of open spaces, canals, roads (if any) and other common landscaped areas within the Point Precinct. Further, in the event of the Local Authority, or any other service provider, not having the means, or being unwilling, to maintain or provide the services normally provided by a local authority or, in the event of the Local Authority or any other service provider not maintaining the services normally provided by a local authority to a standard acceptable to the Association, then in that event, the Association shall itself be entitled to provide and maintain such services and/or procure the provision of such services from a service provider. Conversely, when the Association is providing a service in respect of the Point Precinct which has been outsourced by the Local Authority, the Association shall be entitled to contract with the Local Authority to take over the provision of such service.
155. It is recorded that the Association will be the holder of a number of servitudinal rights over various immovable properties within the Point Precinct (including, but not limited to, sidewalk servitudes, parking servitudes, landscaping servitudes and non-user servitudes). Although the Association may from time to time, in its sole discretion and as it deems fit, pass on the

benefit of these various servitudinal rights to individual Members or service providers, it shall be under no obligation to do so, and shall exercise these rights reasonably as it, in its sole discretion, deems it to be in the best interests of the Association and its Members as a whole.

156. It is further recorded that the Association might be in a position, either itself or by outsourcing the function to a service provider, to provide a transport service utilising the canals within the Point Precinct with the object of facilitating the conveyance of persons in the Point Precinct and/or the provision of a tourism related service.
157. To the extent that the Association is able to “commercialise” opportunities in respect of any property vesting in it or any property which it manages on behalf of the eThekweni Municipality or of any trust created at the instance of eThekweni Municipality for the holding of land that is earmarked as “public open space” (or the like), any income or other benefit from such commercialisation which may accrue to the Association shall be utilised by the Association for the benefit of the Owners and, generally, for the improvement, maintenance and upkeep of the Point Precinct.

#### **ENFORCEMENT OF OBLIGATIONS OF OWNERS**

158. Should any Owner or any lessee of an Owner fail to perform any obligation incumbent upon him, if applicable, within the period of any notice given for compliance, the Association shall be entitled, but not obliged, to do such things and incur such expenditure as is, in the opinion of the Association, necessary and/or requisite to procure compliance. The costs thereby incurred by the Association shall be a debt due by the Owner concerned, which shall be payable on demand. The Owner shall be obliged to bring to the attention of any tenant of his land, the rules and regulations of the Association. In addition, an Owner shall utilise its best endeavours to ensure that any invitee of the Owner who goes upon the Point Precinct complies with the Association’s rules and regulations.

#### **DETERMINATION OF DISPUTES**

159. In the event of any dispute or difference arising between the Members *inter se* or between a Member and the Association as to the construction, meaning, interpretation or effect of any of the provisions or as to the rights, obligations or liabilities of the Association or any Member in terms of this Memorandum of Incorporation, the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of sixty (60) days,

then such dispute or difference shall be submitted to arbitration in accordance with the provisions of the Arbitration Act.

### **DEVELOPER'S RIGHTS REGARDING THE POINT PRECINCT**

160. The Developer shall, during the Development Period, be entitled to develop any land within the Point Precinct of which it is the Owner in conformity with the Scheme, without the approval of the Association.

### **INCORPORATION OF ADDITIONAL LAND**

161. The Developer may, on notice in writing to the Association, have any land contiguous to the Point Precinct (as currently defined in this Memorandum of Incorporation) incorporated into the Point Precinct. The date of such incorporation of any aforesaid additional land shall be the date on which notice is given by the Developer to the Association.
162. In addition, the Developer may, with the prior written consent of the Board, incorporate any additional land into the Point Precinct which is not contiguous to the Point Precinct (as currently defined in this Memorandum of Incorporation).

### **EXCLUSION OF LAND**

163. The Developer may, on notice in writing to the Association, have any land owned by the Developer, excluded from the Point Precinct. The date of such exclusion of any aforesaid land shall be the date on which notice is given by the Developer to the Association.

### **DISCLAIMER OF RESPONSIBILITY**

164. The Association shall not be liable for any injury to any person, damage to or loss of any property, to whomsoever it may belong, occurring or suffered, upon the Point Precinct regardless of the cause thereof (including in consequence of negligence) nor shall the Association be responsible for any theft of property occurring within the Point Precinct. Members shall not, under any circumstances, have any claim or right of action whatsoever against the Association for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

165. The Association and/or its agents shall not be liable to any Member or any of the Member's lessees, or their respective employees, agents, servants, invitees or customers or any Member of the public dealing with the Member or any lessee for any injury or loss or damage of any description which the Member or any such other person aforesaid may suffer or sustain whether directly or indirectly in or about the Point Precinct, regardless of the cause thereof.
166. Members shall indemnify the Association and its employees, servants and agents and lawful invitees and hold them harmless against all claims by any person arising from any injury or loss or damage as contemplated in articles 164, 165 and/or 166 hereof.

### **WINDING UP**

167. Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Association:
- 167.1 no past or present Member or Director of the Association, or person appointing a Director of the Association, is entitled to any part of the net value of the Association after its obligations and liabilities have been satisfied; and
- 167.2 the entire net value of the Association shall be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic of South Africa, voluntary associations or non-profit trusts having objects similar to the object of the Association and as determined by the Members of the Association, if any, at or immediately before the time of its dissolution or, if the Members fail to make such a determination, as determined by the Directors of the Association or, if the Directors fail to make such determination, as determined by a court.

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## DIAGRAM OF THE POINT PRECINCT