

CONSTITUTION OF THE STAKEHOLDERS OF URBAN IMPROVEMENTS PRECINCTS ASSOCIATION

INTRODUCTION

1. As a consequence of the introduction of the Companies Act No. 71 of 2008 the Company Urban Improvements Precincts (RF) NPC (the Company) has adopted a Memorandum of Incorporation without members.
2. The Stakeholders were previously shareholders in the Company and the Stakeholders have agreed to regulate their rights and obligations, as Stakeholders in the Company and to record these in writing in the form of this Constitution.

DEFINITIONS

The following words or phrases shall, unless the context clearly indicates to the contrary, have the following meanings:

- 1.1 Words imputing the feminine gender shall include within the scope of their meanings the equivalent words imputing the masculine gender and vice versa and, where applicable the singular shall include the plural.
- 1.2 “The Board” shall mean those persons elected by the Stakeholders in terms of this Constitution to hold office to manage and administer the affairs of the Company in conjunction with the Directors.
- 1.3 “The Company” shall mean Urban Improvements Precincts (RF) NPC, registration Number 2000/026018/08.

- 1.4 “Directors” shall mean those persons appointed by the Board to hold office as Directors of the Company.
- 1.5 “The Register of Stakeholders” shall mean a list kept either as a written document or as a computerized data base, of names, postal addresses and electronic mail addresses of the Stakeholders.
- 1.6 “Stakeholder” shall mean those persons who were either previously shareholders in the Company prior to the adoption of its Memorandum of Incorporation; or those persons who would otherwise have been eligible to be shareholders in the Company in terms of the Companies Act of 1973.
- 1.7 “The Act” shall mean the Companies Act No. 71 of 2008 as amended from time to time.
- 1.8 “Days” shall mean business days unless prescribed by the Act, to the contrary.
- 1.9 “Business Day” shall mean any day other than a Saturday, Sunday or public holiday in terms of the laws of the Republic of South Africa.

2. **THE COMPANY**

- 2.1 The Company is Urban Improvements Precincts (RF) NPC a non profit company which was incorporated and registered in 2000 for the purpose of and for the ongoing purpose of providing a cleaner and more attractive urban environment and continuing the business of the Company.
- 2.2 All companies incorporated under Section 21 of Act 63 of 1973 were automatically converted to non profit companies on the 01 May 2011 with a Memorandum of Incorporation, and as a NPC this Company is

not required to have any members and can opt out of certain statutory requirements, in terms of the new Companies Act, Act 71 of 2008.

2.3 Accordingly,

2.3.1 the former members of the Company shall now be referred to as the Stakeholders and their rights and obligations shall be governed by this Constitution; and

2.3.2 the Company shall have a Memorandum of Incorporation to govern its affairs; and

2.3.3 to provide for the interests of the Stakeholders the Memorandum of Incorporation of the Company shall in terms of Section 69 (6)(a) provide for 2 (TWO) persons to be eligible as Directors of the Company, they shall be Stakeholders and elected by Stakeholders as Directors.

3. **THE BOARD**

3.1 The Board shall be:

3.1.1 2 (TWO) Stakeholders elected by the Stakeholders; and

3.1.2 not more than 5 (FIVE) persons who are not necessarily Stakeholders and who could previously have been Directors of the Company prior to its conversion to a RF / NPC Company; and

3.1.3 any person or persons co-opted to serve on the Board.

3.2 The Board shall itself elect a chairman who shall hold office until he resigns or is removed by a majority vote of the Board.

- 3.3 The Board shall be the entity vested with the powers and duties of management of the business of the Association generally, which powers and duties shall be those prescribed by this Constitution, without derogating from the statutory duties of the Directors of the Company.
- 3.4 The office of a board member shall be vacated by any board member who:
- 3.4.1 resigns from office;
 - 3.4.2 becomes prohibited from being a board member by virtue of any provision in the Companies Act which would prevent that person from holding office as director of a company;
 - 3.4.3 absents himself, without good cause and without the permission of the chairman from 4 (FOUR) meetings of the Board in any year between successive annual general meetings;
 - 3.4.4 is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof prior to the conclusion of such contract;
 - 3.4.5 conducts, or has conducted, himself in a manner which renders the continuing tenure of his office prejudicial to the Company or not in the best interest of the Company, as determined by the majority of the Board;

4. **DIRECTORS OF THE COMPANY**

- 4.1 The Directors of the Company shall be:
- 4.1.1 5 (FIVE) persons elected by the Board in terms of clause 8.2; and

- 4.2 The office of a director shall be vacated by any director who:
- 4.2.1 resigns from office;
 - 4.2.2 becomes prohibited from being a director by virtue of any provision in the Companies Act;
 - 4.2.3 is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature of thereof and the manner required by the Act;
 - 4.2.4 conducts, or has conducted, himself in a manner which renders the continuing tenure of his office prejudicial to the Company or not in the best interest of the Company, as determined by the majority of the Board;

5. **POWERS AND DUTIES OF THE BOARD**

- 5.1 The principal objects of the Board shall be to:
- 5.1.1 manage the affairs of the Company ethically, in the best interests of the Stakeholders in accordance with the aims and objects of the Company;
 - 5.1.2 to ensure that there is proper and appropriate planning for the future development and funding of the Company;
 - 5.1.3 ensure that there is adequate funding, efficient accounting, effective marketing and public relation systems in operation to maintain the financial viability and goodwill of the Company.

6. **MEETINGS OF STAKEHOLDERS**

- 6.1 Annual General Meeting

- 6.1.1 A general meeting of Stakeholders, to be known as the annual general meeting, shall be held on a date to be determined by the Directors each year.
- 6.1.2 The annual general meeting shall be held at Florence Mkhize Building, Anton Lembede Street, Durban save, that the Board, may in its discretion appoint a different venue, being within the greater Durban area within the Ethekwini Municipality, in the notice calling the annual general meeting.
- 6.1.3 The annual general meeting shall deal with and dispose of the following matters:
- 6.1.3.1 the consideration of the Chairman's report of the operation and the financial affairs of the Company;
- 6.1.3.2 the announcement of the results of the election of members to the Board for the ensuing year;
- 6.1.3.3 any other business listed in the agenda published in the notice calling the meeting or defined in a requisition referred to below;
- 6.1.3.4 the agenda for business to be dealt with at an annual general meeting shall be incorporated in the notice calling the meeting;
- 6.1.3.5 in the event of not less than 5 (FIVE) Stakeholders submitting to the Directors, at least 5 (FIVE) business days prior to the date of the annual general meeting, a written requisition requiring any matter, in addition to the matters listed in the agenda, to be laid before the meeting, then the general manager shall amend the agenda by the inclusion of such matter/s;

- 6.1.3.6 a quorum for the annual general meeting shall be 10 (TEN) Stakeholders. No business shall be transacted at any annual general meeting unless a quorum of Stakeholders is present at the time when the meeting proceeds to business;
- 6.1.3.7 a person appointed by the chairman, shall count and record the number of Stakeholders present for purposes of determining and recording the quorum;
- 6.1.3.8 the chairman, if any, of the Board shall preside as the chairman at the annual general meeting. If there is no such chairman, or if he is unwilling or unable to attend the meeting, or to act as chairman thereof, or if he is not present within 15 (FIFTEEN) minutes of the time appointing for the holding of the meeting, the Stakeholders present shall elect one of their number to act as chairman of the meeting;
- 6.1.3.9 at any annual general meeting a resolution put to the vote shall be decided on a show of hands and, where applicable, the counting and inclusion of proxy votes, save that the chairman may, in his sole discretion and on application of not less than 5 (FIVE) Stakeholders present at the meeting, direct that any particular resolution shall be decided by secret ballot;
- 6.1.3.10 Stakeholders shall be entitled to participate at any annual general meeting both in person, and as the duly appointed proxy of another Stakeholder. Such proxies shall be valid only for the purpose of which the instrument of appointment specifically refers. The appointed proxy must be a Stakeholder of the Company, and the instrument of appointment shall be in writing, and signed by the appointed Stakeholder and deposited with the general manager not less than 24 (TWENTY FOUR) hours before the time for the holding of the meeting;
- 6.1.3.11 any motion before an annual general meeting shall be carried by a simple majority of votes.

6.2 General Meetings

6.2.1 General meetings may be held at any time on 14 (FOURTEEN) days notice to the Stakeholders and the provision of clauses 6.1.2 and 6.1.3.9 to 6.1.3.14 shall also be applicable to the holding of general meetings.

6.3 Special General Meetings

6.3.1 Special general meetings may be held at any time and shall be called on not less than 21 (TWENTY ONE) days clear notice. The notice shall specify the day and hour and venue of the meeting and address of such venue.

6.3.2 A special general meeting may be called at any time by the Board, or by the written requisition of any 2 (TWO) members of the Board or, by the written requisition of not less than 15 (FIFTEEN) Stakeholders.

6.3.3 The notice calling for a special general meeting shall set out the special resolution(s) to be debated and voted upon at the meeting.

6.3.4 Resolutions passed at a special general meeting shall only be valid if 51% (FIFTY ONE PERCENTUM) of the Stakeholders vote in favour of that resolution.

6.3.5 The provisions of clauses 6.1.3.11 and 6.1.3.13 shall apply to the holding of special general meetings.

6.4 Notice of Meetings

6.4.1 Notice of any general meeting of the Stakeholders shall be given by:

6.4.1.1 displaying a notice on the Company's internet web page;

- 6.4.1.2 by posting by ordinary mail or by sending electronic mail a copy of the notice to each Stakeholder to the address as given by those Stakeholders to the Association;
- 6.4.1.3 an annual general meeting shall be called on not less than 21 (TWENTY ONE) days clear notice and the notice shall specify the day, hour and venue of the meeting and the address of such venue;
- 6.4.1.4 general meetings shall be called on notice as set out in clause 6.2.1 and special general meetings on notice set out in clause 6.3.1;
- 6.4.1.5 if within 30 (THIRTY) minutes after the time appointed for the meeting, a quorum is not present, the meeting shall stand adjourned to a day not earlier than 7 (SEVEN) days and not more than 21 (TWENTY ONE) days after the date of the adjourned meeting. Notice of the date, time and venue to which the meeting has been adjourned shall be published and circulated to the Stakeholders in a manner prescribed in clauses 6.4.1.1 and 6.4.1.2 above within 2 (TWO) business days after the date of the adjourned meeting;
- 6.4.1.6 if on the date to which the meeting has been adjourned, a quorum is not present within 30 (THIRTY) minutes of the time appointed for the meeting, the Stakeholders present in person or by proxy shall constitute a quorum;
- 6.4.1.7 a person appointed by the chairman, shall count and record the number of Stakeholders present for purposes of determining and recording the quorum.

7. MEETINGS OF THE BOARD OF DIRECTORS OF THE COMPANY

- 7.1 The Board of Directors shall determine in their discretion subject to the provisions of the Memorandum of Incorporation and the Act, when it shall meet.
- 7.2 There shall be at least 4 (FOUR) meetings of the Board of Directors each year with 1 (ONE) meeting in each quarter of the year.
- 7.3 The proceedings at meetings of the Board of Directors shall be in accordance with the procedure set out in the Memorandum of Incorporation of the Company.
- 7.4 All proceedings at meetings of Board of Directors shall be minuted and the minutes shall lie open for inspection by any Stakeholder of the Association in the office of the general manager.

8. ELECTION OF BOARD MEMBERS AND THE CO-OPTING MEMBERS OF THE BOARD BY THE BOARD

- 8.1 Stakeholders shall be elected to the Board as follows:
- 8.1.1 Provided there is a quorum as stipulated in clause 6.1.3.8 at the annual general meeting then,
- 8.1.2 the Stakeholders present at the meeting shall propose not less than 2 (TWO) Stakeholders to be elected to the Board;
- 8.1.3 the Stakeholders present at the meeting shall vote and the candidates receiving the largest number of votes shall be duly elected to the Board;
- 8.1.4 at the request of at least 2 (TWO) Stakeholders present, the vote may be conducted by secret ballot. A ballot paper which does not signify

clearly for which candidate a Stakeholder has voted shall not be included in the count of votes;

- 8.1.5 an instrument of proxy by a Stakeholder authorizing another Stakeholder to vote on his behalf shall be in writing, and bear the name of the Stakeholder giving the proxy, the full names of the Stakeholder appointed as proxy, and shall be dated and signed by the Stakeholder giving the proxy and witnessed by another Stakeholder;
- 8.1.6 a Stakeholder holding an instrument or instruments of proxy shall lodge such proxy/ies with the general manager prior to the meeting and shall on request be furnished with a ballot sheet for each such instrument;
- 8.1.7 where the ballot is by a show of hands the votes shall be counted by the general manager and the chairman of the meeting and similarly where the vote is by secret ballot, the votes shall be counted by the general manager and the chairman of the meeting;
- 8.1.8 the results of the election shall be announced by the chairman at the next annual general meeting;
- 8.1.9 in the event of there being an equality of votes, there shall be a further ballot at the next annual general meeting and those stakeholders present and entitled to vote at the annual general meeting (including proxies) shall determine who shall be elected as a board member.

Appointment of Board Members who are not Stakeholders

- 8.2 The Board shall appoint not more than 5 (FIVE) persons who are not necessarily Stakeholders and are people who possess special skill and/or ability which can be of assistance of the Company. The Board shall determine their term of office in its direction.

- 8.2.1 Members of the Board shall propose a person for election as a board member not less than 14 (FOURTEEN) days prior to the meeting of the Board at which the election is to take place, and shall deliver to each member of the Board a brief CV of the proposed candidate and a motivation for his consideration for election.
- 8.2.2 At the meeting at which the election takes place, the proposer shall deliver a motivation for the candidates appointment.
- 8.2.3 The proposed candidate/s shall be elected by resolution passed by at least two thirds majority at the meeting of the Board.

Co-opting of persons to the Board

- 8.3 Members of the Board may, by resolution adopt persons who are not Stakeholders, who possess special skills and/or ability and with commitment to the Company, serve on the Board.
- 8.3.1 There shall not be more than 3 (THREE) co-opted members of the Board at any time.
- 8.3.2 The term of office a co-opted member of the Board shall be from the meeting of the Board at which it was resolved to co-opt him until the meeting of the Board following the next annual general meeting, or such other period as may be determined by the Board. The Board may co-opt the person for a further period/s.