

MEMORANDUM OF INCORPORATION

GAUTENG PRECINCT MANAGEMENT ASSOCIATION NPC

A Non-profit Company with members established in terms of the
Companies Act, Number 71 of 2008

1. The name of the Company is **GAUTENG PRECINCT MANAGEMENT ASSOCIATION NPC**, hereinafter referred to as “the Company”.
2. The Company is a non-profit company with members.
3. In this Memorandum of Incorporation –
 - a) a reference to a section by the number refers to the corresponding section of the Companies Act, 2008;
 - b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in the Act; and
 - c) the following words shall bear the following meanings:
 - i) “**Act**” means the Companies Act 71 of 2008 as amended from time to time;
 - ii) “**Annual General Meeting**” is the annual general meeting of the Company called and constituted each year in terms of this Memorandum;
 - iii) “**Board**” means the board of directors of the Company;
 - iv) “**Business day(s)**” means any day except a Saturday, Sunday and a South African public holiday;
 - v) “**Managed precinct**” is a defined area which serves a constituency and has a structured management regimen governed by either a constitution, a memorandum of incorporation or a memorandum of agreement with a municipality.
 - vi) “**Members**” are subscribers to the Company who shall have the right to exercise a vote as Members in accordance with the provisions of the Act, but subject to the limitations set out in this Memorandum;
 - vii) “**Memorandum**” means this Memorandum of Incorporation;

- viii) **“Ordinary Resolution”** means a resolution adopted with the support of a majority (50% +1) of eligible voters in attendance at a meeting or by proxy;
- ix) **“Placemaking”** is “a multi-faceted approach to the planning, design and management of public spaces which capitalizes on a local community's assets, inspiration, and potential, with the intention of creating safe public spaces that promote people's health, happiness, and well-being”;
- x) **“Precinct”** is a demarcated urban or peri-urban area;
- xi) **“Special General Meeting”** means a meeting of members convened for a particular purpose, the details of which must be set out clearly in the notice of meeting;
- xii) **“Special Resolution”** means a resolution adopted with the assent of at least sixty-seven percent (67%) of voters, or their proxies, present at a meeting.

ARTICLE 1: INCORPORATION AND NATURE OF THE COMPANY

1.1 Incorporation

1.1.1 The Company is incorporated as a non-profit company with members.

1.1.2 The Company is incorporated in accordance with and governed by –

- a) the unalterable provisions of the Act that are applicable to non-profit companies;
- b) 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;
- c) the provisions of this Memorandum.

1.2 Objects and Powers of the Company

1.2.1 The principal object of the Company is to support and promote the improvement of urban and peri-urban environments through the application of integrated precinct management and placemaking.

1.2.2 The related objects are to: -

- a) represent the interests of managed precincts;
- b) promote and develop placemaking as a facilitator of economic growth;
- c) propagate placemaking as beneficial to all people who own property, reside, work, conduct business or visit in managed precincts;
- d) promote inclusivity in all urban and peri-urban areas;

- e) propagate socio-economic solutions for marginalised urban dwellers;
- f) improve, and cause to be used, all public spaces;
- g) investigate sundry models by which placemaking may be implemented to meet local needs;
- h) identify and share best practices in precinct management and placemaking;
- i) promote a 'community of practice' in integrated precinct management and placemaking which also offers career paths for young people;
- j) establish and maintain sound and cooperative relationships with municipalities and municipal departments and officials with a view to the development of constructive partnerships in precinct management and placemaking;
- k) establish and maintain sound and cooperative relationships with private sector stakeholders, including Organised Business entities, Property Owners, Tenants, Residents, and all the users of public spaces within precincts;
- l) engage in any other activity approved by the Company which advances the cause of better precinct management and placemaking practices;
- m) remain independent from, and free of, any party political interest.

1.2.3 The following ancillary powers are also held by the Company:

- a) to conclude consulting contracts with any natural or juristic person with the approval of the Board;
- b) to raise funds;
- c) to undertake projects and activities which are approved by the Board and which are intended to seek solutions to contemporary precinct management problems;
- d) to compensate any third party, members or directors for specific work that they may have performed to pursue the objects of the company, provided that this is done in terms of a predetermined hourly or project rate approved by the Board and upon the submission of a verifiable statement;
- e) to reimburse any third party, member or director for expenses that they may have incurred in the pursuance of the Company's objectives;
- f) to appoint and pay a reasonable salary to any employee to manage the Company's strategic, administrative and financial affairs;
- g) to make donations to any third party save for the directors of the Company.

1.2.4 The Company will apply all of its assets and income, however derived, to advance its stated object, as set out in 1.2.1 above.

1.2.5 The Company will not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was or is derived, to any person who is or was an incorporator of the Company, or who is a member or director, or a member of the company, except –

a) as reasonable –

- i) remuneration for goods delivered or services rendered to the Company; or
- ii) payment of, or reimbursement for, expenses incurred to advance the Company's objective;

b) as a payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another.

1.3 Company Rules and Policies

1.3.1 The Company's Board may make rules or policies, amend such rules or policies, or repeal any rule or policy relating to the governance of the Company in respect of matters that are not specifically addressed in this Memorandum, provided that

- a) they are not inconsistent with the Act or this Memorandum;
- b) they are emailed to any serving director within 5 days;
- c) all Members are informed that they may be inspected at the Company's principal place of business.

1.3.2 A Rule or Policy shall take effect on the date specified in the Rule or Policy.

1.3.3 Such Rules or Policies shall be binding until the next General Members' Meeting and permanently thereafter once ratified by an Ordinary Resolution of members.

1.3.4 The provisions of section 15 of the Act shall apply to any proposed rule or policy.

1.4 Proposed amendments to the Memorandum of Incorporation

This Memorandum may be amended by way of Special Resolution if it is

- a) proposed by the Board;
- b) proposed by members entitled to exercise at least ten percent (10%) of the voting rights of members.

1.5 Dissolution of the Company

1.5.1 The Company may be dissolved by Special Resolution.

- a) Upon dissolution of the Company, its net assets must be transferred, at the discretion of the Members, to one or more Non-profit companies in the province of GAUTENG which, in the opinion of the Board, has similar objectives.
- b) Should a majority of Members at a meeting convened for the purpose of dissolution fail to make a determination as set out in 1.5.1 above, the determination shall be made by a court.

1.6 Members of the Company

1.6.1 All natural or juristic persons who qualify in terms of one or other of the member categories set out below are eligible for membership.

1.6.2 Each member must apply for membership and shall be admitted or rejected by the Board, provided that no rejection of an application for membership amounts to unfair discrimination in terms of section 9 of the South African constitution.

1.6.3 The Board shall maintain a register of members available at any time to the scrutiny of any member of the Company.

1.6.4 Categories of Membership

- a) **Full membership**, with the right to vote, including
 - i) managed precincts within GAUTENG municipalities;
 - ii) formally constituted institutional or partnership structures which serve larger areas by way of integrated aspects of precinct management;
 - iii) registered companies or non-profit companies which provide over-arching management services to managed precincts, as opposed to individual, contracted, operational services;
 - iv) registered non-profit companies, associations or other entities which are considered stakeholders in the precinct management sector;
 - v) individuals, including academics, who demonstrate an interest in the precinct management sector and are able to make a recognizable contribution to its development.
- b. **Associate membership**, without the right to vote, including
 - i) students engaged in studies which have direct, or indirect, relevance to the development of a community of practice within the precinct management

sector;

- ii) a representative of an initiative which has the objective of achieving the status of a managed precinct;
- iv) any other person who is able to motivate successfully to the Executive Committee why he/she should be admitted to the membership.

1.6.5 Automatic Termination of Membership

Membership automatically terminates

- i) upon the receipt by the Association of a notification of the death of a natural member or the dissolution, liquidation or sequestration of a juristic member;
- ii) upon receipt of a written resignation from a member;
- iii) if a member fails to pay any subscription fee due to the Association within a period of 12 months of the due date for payment.

1.6.6 Termination by the Association

In the event of the Board identifying a reason or reasons why a particular member's continued membership should be terminated, the Board shall

- a) inform the member in writing of the reason/s and provide the opportunity for the member to make a written representation as to why the membership should not be terminated;
- b) apply its mind to the representation received;
- c) at the next General Meeting of the Company, table the relevant information in order for the members in attendance to vote as to whether the termination should be affected or not.

ARTICLE 2: RIGHTS OF MEMBERS

2.1 Voting rights

2.1.1 Each FULL member has ONE vote to be exercised by the owner him/herself if a natural person, an authorized representative or a proxy.

2.1.2 Voting rights are reserved for members in good standing.

2.1.3 A member shall be in good standing if his membership fee is paid within THREE months of the Annual General Meeting at which the fee is determined.

2.2 Right to Information

2.2.1 Members have the right to inspect the following, all of which must be accessible and up-to-date:

- a) the Company's Memorandum, amendments to it and Rules and Policies made by the Company;
- b) Directors' resolutions;
- c) The Company's financial statements;
- d) Minutes of General Meetings;
- e) A list of the Company's members and/or directors.

2.2.2 The Company shall institute and maintain communication strategies which provide information regularly to members.

2.3 Authorized Representatives and Proxies

2.3.1 Any member who is a juristic person must appoint a representative to give effect to its membership and to exercise its voting right.

2.3.2 The responsibility of ensuring that the appointment of the authorized representative remains current lies with the juristic person who is a member.

2.3.3 If an individual member, or an authorized representative, is unable to attend a members' meeting, a proxy may be appointed in writing for the purpose of either voting and/or speaking on behalf of the member at the meeting.

- a) No person may hold more than three proxies at any one time.
- b) Should the meeting include the proposal of a Special or Ordinary Resolution, notice of which has been given in advance, the proxy must clearly indicate the resolution for which it is given and the manner in which the person holding the proxy should his exercise his/her vote.
- b) In this event, the proxy may be given to the Chairperson or any other member of the Board, or any other person present at the meeting.
- c) A proxy, and any change of authorized representative, must be delivered, by hand or email, to the Company at least 24 (twenty-four) hours prior to the commencement time of a members' meeting.

ARTICLE 3: MEMBERS' MEETINGS

3.1 Notice of Meetings

- 3.1.1 Notification of any Members' Meeting must be given to all Members no fewer than 15 (fifteen) business days before the scheduled date.
- 3.1.2 Notification shall be given –
- a) by way of a written notice to a member, either by post or email; or
 - b) by another means of electronic communication.
- 3.1.3 Should the notice not include the proposed agenda for the meeting, this must be provided to all members at least 5 (five) business days prior to the date of the meeting.
- a) For a Special General Meeting, however, the purpose of the meeting must be clearly stated and the agenda must be sent together with the notice at least 15 (fifteen) business days prior to the date of the meeting.
- 3.1.4 The Board may, in its discretion and having given notice of at least 5 (five) business days, defer a meeting to a later date, but may not hold the meeting earlier.

3.2 Requirement to hold meetings

- 3.2.1 The Company is required to hold an Annual General Meeting in each calendar year within no more than SIX months of the end of the previous financial year.
- 3.2.2 The Annual General Meeting shall deal with and dispose of all matters prescribed by the Act, including –
- a) the consideration of the annual financial statements;
 - b) the election of directors;
 - c) the appointment of an auditor or a person qualified to perform an independent review;
 - d) the consideration and adoption of the budget for the ensuing financial year;
 - e) the membership fees for the ensuing year;
 - f) any other business laid before it.

3.2.3 At the discretion of the Board, and at least once in each quarter of the year, General Meetings of Members shall be convened.

a) With the agreement of the Chairperson, other interested persons who are not members of the Company may attend, and participate in, General Meetings.

3.2.4 Members who hold at least 30% (thirty percent) of the voting rights of the Company, may, on requisition to the Board, demand that a Special General Meeting for a specific purpose, which must be presented in writing, be convened.

3.3 Quorum for Members' Meetings

3.3.1 The quorum requirement for a Members' Meeting to begin shall be 25% (twenty-five percent) of members entitled to vote, or their proxies, present at, or within 30 (thirty) minutes of, the commencement time of the meeting.

a) If, within 30 (thirty) minutes after the appointed time for a meeting to begin, a minimum quorum is not present,

i) the meeting shall be rescheduled one week hence, or

ii) with the permission of the majority of members present, the meeting may resume and discuss pertinent matters but may not adopt any resolutions for which a vote is required.

3.4 Members' Resolutions

3.4.1 For an Ordinary Resolution to be adopted at a Members' Meeting, it must be supported by a majority of the members or their proxies present at the meeting.

3.4.2 For a Special Resolution to be adopted at a Members' Meeting, it must be supported by at least 67% (sixty-seven percent) of the members or their proxies present at the meeting.

3.4.3 A Special Resolution adopted at a Members' Meeting is required to –

a) Amend the Company's Memorandum of Incorporation;

b) Approve the dissolution of the Company;

c) Change the principal objects of the Company;

d) Change the name of the Company.

3.4.4 In the event of a Special Resolution to dissolve the Company having been adopted, the distribution of assets to another non-profit company as covered in 1.5.1, may be determined by Ordinary Resolution.

ARTICLE 4: DIRECTORS AND OFFICERS

4.1 Composition of the Board

4.1.1 The Board shall comprise a minimum of 3 (three) directors but may not exceed 7 (seven) directors.

4.1.2 Directors shall serve in an honorary capacity and no directors' fees shall be payable.

4.1.3 Members, or their authorized representatives, are eligible for election as directors.

4.1.4 At the discretion of the Board, the nomination and election of a person who is not a member of the Company, may be permitted provided that at any one time the maximum number of such directors shall be TWO.

4.1.5 The Company elects to be directed by section 69 of the Act as it relates to the eligibility and disqualification of directors.

4.1.6 The Incorporators shall be the first directors of the Company and the only ones until a Members' Meeting is held at which directors are elected.

4.1.7 The term of office of a director shall be subject to the following -

- a. the term of office of the 2 (two) shortest serving directors expires at the end of the Annual General Meeting of the second year after their election;
- b. should the term of office of directors be of equal duration, the Board of Directors shall determine which 2 (two) directors' term of office expires as envisaged in Clause (a) above,
- c. all other directors shall retire at the next Annual General Meeting, but they shall be eligible for re-election;
- d. if, as a result of retirement, resignation or otherwise, the total number of Directors falls below the prescribed number, the Directors shall act promptly to bring the number of Directors up to the required number as specified in this MOI.

4.1.8 There is no provision for alternate or ex officio directors.

4.1.9 The Board may invite other members, or people who are not members, to attend Board meetings provided that such invitees have no right to vote.

4.1.10 The Board shall comprise a minimum of 3 (three) directors but may not exceed 7 (seven) directors, of which 2 (two) should be reserved for members situated in Gauteng municipalities other than Johannesburg.

4.1.11 The election of directors at an Annual General Meeting must be preceded by a nomination process –

- a) Only FULL members are entitled to submit nominations.
- b) Nominations do not need to be seconded, but no person may nominate him/herself.
- c) Nominations must be submitted in terms of a process communicated to all members at least 15 (fifteen) business days prior to the scheduled date of the Annual General Meeting.
- d) Should the number of nominations exceed the number of vacancies and an election be required, it shall be conducted by secret ballot at the meeting.

4.1.12 Vacancies on the Board that may occur for any reason, may be filled by the Board at its discretion, provided that the number of directors shall not fall below 4 (four) at any time.

- a) Directors appointed to fill vacancies shall serve for the remainder of the terms of the persons who are being replaced unless this exceeds one year when the vacancy will be filled at the next Annual General Meeting and the rotation described in 4.1.7 adjusted accordingly.

4.2 Officers

4.2.1 The Chairperson of the Board shall be elected annually following the Annual General Meeting by a simple majority of directors.

4.2.2 In similar fashion, a Treasurer and any other office-bearer at the discretion of the Board, shall be elected.

4.2.3 The Board, at its discretion, may appoint any other officers, assign particular responsibilities to its members or form committees of the Board with appropriate written terms of reference, which may also include non-members of the Company.

4.3 Meetings of the Board

- 4.3.1 The Board shall meet at least once each quarter.
- 4.3.2 The Board may conduct meetings entirely by electronic communication or provide for participation in a meeting by electronic communication.
- 4.3.3 Written notice of a meeting of the Board shall be given at least 10 (ten) business days prior to the date of the meeting.
- a) Should an agenda for the meeting and documentation requiring the attention of directors not be available at the time of the notice, they must be provided at last 5 (five) business days prior to the meeting.
 - b) Should there be any failure or defect in giving notice, the Board may formally resolve to accept such defect provided that at least 50% (fifty percent) of Directors are present.
- 4.3.4 The quorum requirement for the Board to proceed with a meeting at which resolutions are adopted is 50% (fifty percent) of directors.
- 4.3.5 A director who fails to attend 3 (three) consecutive meetings of the Board in a year will be suspended automatically and removed from the office by resolution of the Board unless he/she has applied to the Board for, and been granted, leave of absence for justifiable circumstances.
- 4.3.6 Minutes of every Board meeting must be recorded and retained.
- 4.3.7 At each meeting of the Board, directors will be required to declare any circumstances which may occasion a conflict of interest.
- 4.3.8 In the absence of the Chairperson of the Board, the chair will be taken by another director with the agreement of his/her colleagues.

ARTICLE 5: FINANCES

- 5.1 The financial year of the Company shall be from 1 March until 28 February each year.
- 5.2 A record of all financial transactions shall be maintained by the treasurer or, with his/her oversight, by a suitable service provider appointed by the Board.

5.3 With the exception of the ancillary powers set out in 1.2.3 above, any excess of revenue over expenditure shall be used by the Company to further its objectives and no person shall be entitled to derive any financial benefit from his/her participation in the company.

5.4 The Company will not –

5.4.1 Amalgamate or merge with, or convert to, a profit company; or

5.4.2 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 Company.

5.4.3 Provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to a director of the Company or of a related or inter-related company, or to a person related to any such director, except if the transaction –

a) is in the ordinary course of the Company's business and for fair value;

b) constitutes an accountable advance to meet –

(i) legal expenses in relation to a matter concerning the Company; or

(ii) anticipated expenses to be incurred by the person on behalf of the Company;

c) is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

5.4.4 The Company elects not to comply voluntarily with the provisions of Chapter 3 of the Act regarding enhanced accountability and transparency.

a) At the Board's discretion, therefore, the Company's annual accounts may be subjected to independent review and not professional audit.

5.4.5 Membership Fees

a) Membership fees, which shall be payable annually as a lump sum, shall be determined at the Annual General Meeting.

- b) Membership fees may be variable amounts as determined by the majority of members provided that such variations shall be substantially fair.

5.4.6 Bank Account

The Board shall open a bank account for the Company and monitor all transactions which shall be subject to mandates, including the signatories to the account, approved by the Board.

ARTICLE 6: INDEMNITY

- 6.1** Subject to the provisions of any relevant law, members, office-bearers or appointed delegates of the Company shall be indemnified by the Company for all acts done by them in good faith on its behalf.

- 6.2** Subject to the provisions of any relevant law, no member of the Company or appointed delegates shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by the Company, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.