

**Memorandum of Incorporation of
ST FRANCIS PROPERTY OWNERS NPC
REGISTRATION NUMBER: 2016/098430/08**

This is a Non Profit Company with at least three members, with the following object, and is referred to in the rest of this Memorandum of Incorporation as the "Company".

The Main Objects of the Company are:

- To manage and promote the interests of the St Francis Property Owners NPC;
- To enhance and supplement the municipal services provided by the local authority,
- To facilitate investment, economic growth and sustainable development in the St Francis Bay municipal area;
- To halt the degeneration and facilitating the upliftment of distressed areas in the St Francis Bay municipal area;
- To do all things that may fall within the scope of any of the above objects or which may be deemed necessary for the advancement of the Company or the Community it is designed to serve.

Adoption of Memorandum of Incorporation

This Memorandum of Incorporation was adopted by the Incorporators of the Company, in accordance with section 13(1),

In this Memorandum of Incorporation –

- ◆ a reference to a section by number refers to the corresponding section of the Companies Act, Act 71 of 2008;
- ◆ words that are defined in the Companies Act, Act 71 of 2008 bear the same meaning in the Memorandum of Incorporation as in that Act.

1. ARTICLE 1 – INCORPORATION AND NATURE OF THE COMPANY

1.1 Incorporation

1.1.1 The Company is incorporated as a Non Profit Company, as defined in section 1 of the Companies Act as being a Company incorporated for a public benefit object or any other object as per Schedule 1(1) and whose income may not be distributed to any of its Incorporators, Members, Directors and Officers as set out in this Memorandum of Incorporation.

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

1.1.2.1 the unalterable provisions of the Companies Act, 2008; and

1.1.2.2 the alterable provisions of the Companies Act, 2008/ subject to the limitations/ extensions, variations or substitutions set out in this Memorandum of Incorporation; and

1.1.2.3 the provisions of this Memorandum of Incorporation.

1.2 Objects and Powers of the Company

1.2.1 The Objects of the Company are as set out on the Cover Sheet and Schedule A and except to the extent necessarily implied by the stated objects, the purpose and power of the company is not subject to any restrictions/ limitations or qualifications, as contemplated in section 19(1)(b)(ii), and as such the Company has all of the legal powers and capacity of an individual to the extent that a juristic person is capable of exercising such powers;

1.2.2 The Company is not subject to any provisions contemplated in section 15 (2)(b) or (c), there being no specific provisions prohibiting the amendment of this Memorandum of Incorporation nor any restrictive conditions applicable to the Company other than those contained in this Memorandum of Incorporation.

1.2.3 Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with:

1.2.3.1 Item 1(4)(b) of Schedule 1 of the Act being the following:

1.2.3.1.1 No past or present member or director of that company, or person appointing a director of that company, is entitled to any part of the net value of the company after its obligations and liabilities have been satisfied; and

1.2.3.1.2 The entire net value of the company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts:

- (i) Having objects similar to the main object of the company; and
- (ii) as determined by this Memorandum of Incorporation or the Members or directors or failing that by the court.

1.3 Memorandum of Incorporation and Company rules

1.3.1 This Memorandum of Incorporation of the Company may only be altered or amended:

1.3.1.1 In compliance with a court order, effected by a resolution of the Board of Directors of the Company, as provided for in section 16(1)(a); or

1.3.1.2 Pursuant to a Special Resolution proposed by either the Board of Directors or 10% of the Members, and which is subsequently adopted at a Members Meeting or adopted as a written resolution in terms of section 60, as is provided for in section 16(1)(c); or

1.3.1.3 In terms of section 17(1) by the Board of Directors of the Company, or an individual authorised by the Board, to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by publishing a notice of the alteration in terms of this Memorandum of Incorporation or the Rules of the Company, and filing such a notice of alteration.

1.3.1.4 In terms of section 152(6)(b) by an appointed Business Rescue Practitioner as a result of a Business Rescue Plan being approved by the Members of the Company.

1.3.2 The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1) and pursuant to correcting a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by delivering a copy of those Rules to each Member by ordinary or electronic mail.

1.3.3 The authority of the Company's Board of Directors to make, amend or repeal any necessary or incidental Rules relating to the governance of the Company, as contemplated in section 15 (3) to (5) and on matters not addressed in the Act or this Memorandum of Incorporation, is not limited or restricted in any manner by this Memorandum of incorporation.

1.3.4 The Board must publish any Rules made in terms of section 15 (3) to (5) by delivering a copy of those Rules to each Member by ordinary or electronic mail.

1.3.5 The Rules are binding as between the Company and each Member, between or among the Members of the Company and between the Company and every Director,

Prescribed Officer or member of any committee of the Company in the exercise of their respective functions within the Company.

1.4 Application of optional provisions of Companies Act, 2008

1.4.1 The Company does not elect, in terms of section 34 (2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008 and therefore elects as follows:

1.4.1.1 not to submit to the enhanced accountability and transparency provisions prescribed by the Act unless required to do so by Regulation 28(2)(a) or (c)

1.4.1.2 not to have any of its annual financial statements audited unless:

1.4.1.2.1 it held assets in a fiduciary capacity for persons unrelated to the Company and the aggregate value of such assets held at any time during the financial year exceeds R5 million; or

1.4.1.2.2 if the Company's public interest score in terms of Regulation 26(2) in any financial year is 350 or more; or

1.4.1.2.3 if the Company's public interest score in terms of Regulation 26(2) in any financial year is 100 or more, and such statements have been internally compiled.

1.4.1.3 not to appoint a Company Secretary; and

1.4.1.4 not to appoint an Audit Committee; unless otherwise so required by the Act or Regulations.

1.5 Members of the Company

1.5.1 As contemplated in Section 4(1) of Schedule 1 of the Act, the company has members who are all in a single class, being voting members, each of whom has one vote in matters to be decided by the Members of the Company.

1.5.2 This Memorandum of Incorporation of the company:

1.5.2.1 Does not restrict or regulate the membership of the company in any manner which amounts to unfair discrimination in terms of Section 9 of the Constitution;

1.5.2.2 A Juristic person, including a profit company, may be a member of this company;

1.5.2.3 The terms and conditions of membership are as set out in Schedule B of this Memorandum of Incorporation.

2. ARTICLE 2 - RIGHTS OF MEMBERS

2.1 Members' Right to Information

Any person who is a member of the Company has the right to inspect and copy, without any charge for such inspection, contained in the following records of the company:

2.1.1 The Memorandum of Incorporation and any amendments to it, and any rules made by the Company;

2.1.2 The records in respect to the Companies Directors as required to be kept by the Act;

2.1.3 The notices and minutes of any meeting of Members or communication to members as set out in Section 24(3)(d) and (e);

2.1.4 The register of members of the Company;

2.2 Representation by concurrent proxies

The right of the Members of the Company to appoint two or more persons concurrently as proxies, as set out in section 58 (3)(a), is not limited, restricted or varied by this Memorandum of Incorporation.

2.3 Authority of proxy to delegate

The Member's proxy does not have authority to delegate the proxy's powers to another person, as contemplated by section 58 (3)(b), unless the proxy instrument specifically allows for it, and subject to such delegation of the proxy's powers to another person being reduced to writing and subject further to such delegation being delivered to the Company on the same terms as required by 2.5 below.

2.4 Requirement to deliver proxy Instrument to the Company

A copy of the instrument appointing a proxy must be delivered to the Company, or to any other person on behalf of the Company, at least one hour prior to the commencement of the Members Meeting at which the proxy is entitled, in terms of such proxy, to exercise any rights of the Member.

2.5 Deliberate authority of proxy

A proxy is entitled to exercise, or abstain from exercising, any voting right of the Shareholder without direction, except to the extent that the instrument appointing the proxy, provides otherwise.

2.6 Record date for exercise of member rights

2.6.1 The Board may set a Record Date for the purpose of determining which Members are entitled to:

2.6.1.1 receive notice of a Members Meeting;

2.6.1.2 participate in and vote at such a meeting;

2.6.1.3 decide any matter by written consent or electronic communication;

2.6.1.4 be allotted or exercise any other rights.

2.6.2 A Record Date so determined by the Board may not be earlier than the date on which the Record Date is determined or more than 10 (ten) Business Days before the date on which the event or the action for which the Record Date is being set, is scheduled to occur, and must be published to the Members.

2.6.3 If, at any time, the Company's Board of Directors fails to determine the Record Date for determining member's rights, as contemplated in section 59, the Record Date for the relevant matter is as determined in accordance with section 59 (3):

2.6.3.1 in the case of a meeting, the latest date by which the Company is required to give notice of that meeting; or

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

3. ARTICLE 3 -MEMBERS MEETINGS

3.1 Requirement to hold meetings

3.1.1 The Company is not required to hold any meetings other than those specifically required by the Act or set out in this Memorandum of Incorporation.

3.1.2 The Board has the authority to call a Members Meeting at any time in the manner and on the terms prescribed below by this Memorandum of Incorporation.

3.2 Member's right to requisition a meeting

The right of Members to requisition a meeting, as set out in section 61 (3), may be exercised by at least 20 (twenty) members of the company, subject to the demands from Members to call a meeting being a signed written demand describing the specific purpose for which the meeting is proposed.

3.3 Location of members meetings

The Company's Board of Directors has the authority to determine the location of any Members Meeting, whether in the Republic or in any foreign country.

3.4 Notice of members meetings

3.4.1 The minimum number of days for the Company to deliver a notice of a members meeting to the members is 15 (fifteen) Business Days before the meeting is to begin, as provided for in section 62 (1).

3.4.2 The Company may call a Members Meeting with less notice than required by 3.4.1 above if every person entitled to vote in respect of any item on the agenda of the meeting is present at the meeting and votes to waive the required minimum notice of the meeting.

3.4.3 The notice of a Members Meeting must be in writing, clearly stating the date, time, place, record date and purpose of/matters to be considered at the meeting.

3.4.4 In addition to 3.4.3 above such a notice must also include a copy of any proposed resolution to be considered at the meeting and contain a reasonably prominent statement of the Members' rights with regards to appointing proxies.

3.4.5 An immaterial defect in the notice of a Members Meeting does not invalidate any action taken at the meeting.

3.4.6 A material defect in the giving of the notice of a Members Meeting will prevent the meeting from proceeding, unless every Member 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.

3.5 Electronic participation in members meetings

The authority of the Company to conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 63, is not limited or restricted by this Memorandum of Incorporation, subject to the notice of that meeting informing Members of the availability of that form of participation, and providing any necessary information to enable Members or their proxies to access the available medium or means of Electronic Communication.

3.6 Quorum for members meetings

3.6.1 The quorum requirement is at least 20 (twenty) members being present:

3.6.2 If within 15 minutes after the appointed time for a meeting to begin the requirements for a quorum as stipulated in 3.6.1 above are not met for the purposes of holding a meeting, the meeting is postponed without motion, vote or further notice, for one week (7 days).

3.6.3 If, at such reconvened meeting there still is no quorum present, the members then present shall form the quorum.

3.7 Adjournment of members meetings

A meeting may not be adjourned beyond the earlier of the date that is 120 (one hundred and twenty) days after the record date determined for the meeting in terms of section 59, or the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.

3.8 Members resolutions

3.8.1 For an Ordinary Resolution to be adopted at a Members Meeting, it must be supported by the holders of **more than 50 %** of the voting rights exercised on the resolution, as provided in section 65 (7).

3.8.2 For a Special Resolution to be adopted at a Members Meeting, it must be supported by the holders of **at least 75 %** of the voting rights exercised on the resolution, as provided in section 65 (9).

3.8.3 In addition to anything further prescribed by the Act as amended, a Special Resolution is required to:

3.8.3.1 Amend the company's Memorandum of Incorporation in general;

3.8.3.2 Ratify a consolidated revision of a company's Memorandum of Incorporation as contemplated in section 18(1)(b);

3.8.3.3 Ratify actions by the Company or Directors in excess of their authority, as contemplated in section 20(2);

3.8.3.4 Authorise the Board of Directors to grant financial assistance to a Director in terms of section 45(3)(a)(ii);

3.8.3.5 Approve the voluntary winding up of the Company, as contemplated in section 80(1);

3.8.3.6 Approve the winding up of the Company by the Court, as contemplated in section 81(1);

3.8.3.7 Approve an application to transfer the registration of the Company to a foreign jurisdiction, as contemplated in section 82(5);

3.8.3.8 Approve any proposed fundamental transaction, such as disposing of all or the greater part of assets or undertaking, amalgamations and mergers, to the extent required by Part A of Chapter 5; or

3.8.3.9 Revoke a resolution to enter into fundamental transaction, as mentioned in 3.8.3.8 above.

3.9 Annual General Meeting

3.9.1 The Company must have an Annual General Meeting once a year, not being more than fifteen (15) months after the previous Annual General Meeting of the Company.

3.9.2 Notice for the Annual General Meeting has to be given either in written or electronic format not less than 15 (Fifteen) business days before such meeting is to be held.

3.9.3 The notice of the Annual General Meeting should state the following information:

3.9.3.1 The Date of the meeting

3.9.3.2 The venue where the meeting will be held;

3.9.3.3 The time of the meeting

3.9.3.4 Any specific purpose not included in the matters normally considered at an Annual General Meeting;

3.9.4 The accidental omission to give notice of a meeting or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of the members at such meeting notice

3.9.5 The Annual General Meeting shall deal with the following matters as prescribed in Act:

3.9.5.1 The consideration and approval of the Annual Financial Statements

3.9.5.2 The election of directors or any officers of the Company

3.9.5.3 The appointment of the Auditor for the next year if the Company must be audited

3.9.5.4 Any other matters or business laid before the meeting

3.9.6 No business shall be transacted at the Annual General Meeting without a quorum being present. A quorum for the Annual General Meeting shall be at least 20 (Twenty) members present in person.

4 ARTICLE 4 -DIRECTORS AND OFFICERS

4.1 Composition of the Board of Directors

4.1.1 The Board of Directors of the Company comprises of a minimum of 4 (Four) and a maximum of 9 (Nine) Directors, to be elected at the Annual General Meeting of the Company.

4.1.2 At the first Board Meeting after the Annual General Meeting, the Directors will elect one of their number as Chairman of the Board.

4.1.2 In addition to the elected Directors there are no appointed or ex officio Directors of the Company, as contemplated in section 66(4).

4.1.3 Any Member elected to the Council of the Kouga Municipality will not be eligible to act as Directors of the Company and any Director shall resign if appointed to the Council. Such Council members may however attend the meetings of the Board, by invitation.

4.1.4 Apart from the exclusion as set out in 4.1.3 *above* and satisfying the qualifications and eligibility requirements set out in section 69, to become or remain a Director or a Prescribed Officer of the Company, a person need not satisfy any further eligibility requirements or qualifications. To avoid confusion, the following persons will be ineligible or disqualified from serving as a Director or Prescribed Officer of the Company:

4.1.4.1 A Juristic Person;

4.1.4.2 An unemancipated minor;

4.1.4.3 A person prohibited by a court from serving as such, or having been declared to be delinquent in terms of the Act;

4.1.4.4 An unrehabilitated insolvent;

4.1.4.5 A person prohibited by public regulation from being a Director;

4.1.4.6 A person convicted of a crime and imprisoned without the option of a fine or fined more than the prescribed amount, for any offence involving theft, fraud, dishonesty, forgery, perjury, or in connection with the formation and management of a company, or in terms of the *Insolvency Act, 1936*, the *Close Corporations Act, 1984*, the *Competition Act*, the *Financial Intelligence Centre Act, 2001*, the *Security*

Services Act, 2004 or the Prevention and Combating of Corruption Activities Act, 2004.

4.1.5 Each elected Director of the Company serves for a period of two years following which he will retire, although retiring members shall be eligible for re-election.

4.1.6 Any vacancy occurring on the Board of Directors shall be filled by the Directors and confirmed at the following Annual General Meeting.

4.2 Authority of the Board of Directors

The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66 (1) is not limited or restricted by this Memorandum of Incorporation. As a result the Company's Board of Directors has the authority to exercise all of the powers and perform any of the functions of the Company in pursuing its interests and performing its activities.

4.3 Directors' Meetings

4.3.1 A decision that could be voted on at a meeting of the Board of Directors of the Company 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.

4.3.2 The right of the Company's Directors to requisition a meeting of the Board, as set out in section 73 (1), may be exercised by at least 2 (Two) Directors, or by special request by at least 6 (Six) Members of the Company.

4.3.3 The authority of the Company's Board of Directors to conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3) is not limited or restricted by this Memorandum of Incorporation, as 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.

4.3.4 The Company's Board of Directors has the authority to determine the manner and form of providing notice of its meeting, as set out in section 73 (4), subject to no meeting being convened without notice to all of the Directors.

4.3.5 The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5) is not limited or restricted by this Memorandum of Incorporation, and such a meeting may proceed if all of the Directors of the Company acknowledge actual receipt of the notice, or are present at the meeting, or waive the required notice of the meeting.

4.3.6 The quorum requirement for a Directors meeting to begin will be 4 (Four) Directors being present.

4.3.7 The voting rights at a Directors meeting will be one vote to each Director.

4.3.8 The requirements for approval of a resolution at a Directors meeting will be on a majority of the votes. In the case of a tied vote the chairman may cast a deciding vote.

4.4 Indemnification of Directors

4.4.1 The Company may advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company, and may further directly or indirectly indemnify a Director for such expenses if the proceedings are abandoned or exculpate the Director, or if they arise in respect of any liability for which the Company is authorised to indemnify a Director in terms of 4.4.2 below.

4.4.2 The Company may indemnify a Director in respect of liability arising out of performance of his duties and actions taken as Director except to the extent that such liability arise from wilful misconduct or wilful breach of trust, or in the case of the Director having:

4.4.2.1 Acted in the name of the Company, or performed any action on behalf of the Company, despite knowing that he or she lacked any and all authority to do so;

4.4.2.2 Acted with gross negligence in such a manner that the Company is viewed to have conducted its business recklessly, with intent to defraud any person or for any fraudulent purpose; or

4.4.2.3 Been party to any act or omission by the Company despite knowing that the act or omission was calculated to defraud a creditor, employee or Member of the Company, or had another fraudulent purpose.

4.4.3 The Company is authorised to purchase insurance to protect

4.4.3.1 A Director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with 4.4.2 above; or

4.4.3.2 The Company against any contingency including, but not limited to, any expenses or liability indemnification the Company is authorised to award to the Directors.

4.5 Committees of the Board

4.5.1 The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.

4.5.2 The Company's Board of Directors is authorised to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board as set out in section 72 (1), and to include in any such committee persons who are not Directors, as set out in section 7 (2)(a), as long as such Committee Members are not ineligible or disqualified from being Directors in terms of the Act or of this Memorandum of Incorporation.

4.5.3 A Committee appointed by the Company's Board of Directors has the full authority if the Board in respect of a matter referred to it, and may consult with or receive advice from any person.

4.6 Reporting duties of the Board

4.6.1 The Board of Directors have to prepare quarterly reports which should be distributed to members via normal or electronic mail with particular regard to:

4.6.1.1 Current Projects

4.6.1.2 Financial Report for the period

4.6.1.3 Confirmation of bank balances by the auditors

SCHEDULE A - OBJECT AND NATURE OF THE COMPANY

1 Object and Policies of the Company

1.1 The Main Object of the company, as stated on the cover sheet, complies with the requirements as set out in Section I(a) of Schedule 1 of the Act being:

1.1.1 a public benefit object; or

1.1.2 an object relating to one or more cultural or social activity, or communal or group interest; and

1.1.3 is consistent with the principles set out in this Schedule and the Memorandum of Incorporation.

1.2 The company applies all of its assets and income, however derived, to advance the main object/ as stated, and may:

1.2.1 acquire and hold securities issued by a profit company; or

1.2.2 directly or indirectly/ alone or with any other person, carry on any business, trade of undertaking consistent with or ancillary to its stated object.

1.3 The company may not, directly or indirectly, pay any portion of its income or transfer any assets, regardless of how the income or asset was derived, to any incorporator, member, director or person appointing a director of the company, except in the following situations:

1.3.1 As reasonable remuneration for goods delivered or services rendered to, or at the direction of the company; or

1.3.2 Reasonable payment of, or reimbursement for, the expenses incurred to advance the stated object of the company;

1.3.3 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;

1.3.4 As a payment in respect of any rights of that person, to the extent that such rights are administered by the company in order to advance the stated object of the company;

1.3.5 In respect of any legal obligation binding on the company;

SCHEDULE B - MEMBERSHIP

1 Terms and conditions of membership.

Membership of the Company shall be limited to persons who are owners of properties which fall within the St Francis Bay Special Rating Area (SRA). Where a property is owned by more than one person or by a Company, a Close Corporation or a Trust, the co-owners, the Company, Close Corporation or Trust shall be entitled to be represented by one person, a director, member or trustee, nominated by Resolution by the entity (if necessary in law) to represent the co-owners or that entity and to exercise the rights of the co-owners or the entity as a member. Only one person shall be admitted to represent the aforementioned different types of owners. Persons owning more than one property in the SRA shall be entitled to a vote in respect of each such property owned.

1.2 In the event of a property within the SRA being sold, the seller shall forthwith cease to be a member of the Company and in his/her place, the purchaser shall immediately become a member of the Company.

1.3 The following rights and obligations apply to all members of the Company:

1.3.1 All members are entitled to one vote at any members' meeting which is equal to the vote of any other member of the Company;

1.3.2. Every member of the Company should be committed to the objectives of the Company and act to promote such objectives as set out in this Memorandum of Incorporation.

1.4 A member's membership will be suspended or lost in the following circumstances:

1.4.1 If the member does not act in good faith or in the Company's best interest;

1.4.2 If the member awards any payment or asset to himself in conflict with the requirements as set out in the Memorandum of Incorporation.