




## MEMORANDUM OF INCORPORATION

Nature's Valley SRA NPC, registration number [2023]11353168, which is a non-profit company with at least 3 members and is referred to in the rest of this Memorandum of Incorporation as the "Company".

### Adoption of Memorandum of Incorporation

This Memorandum of Incorporation is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Act, and was adopted by the incorporators of the Company in accordance with section 13(1) of the Act, as evidenced by the signatures of each of the incorporators hereunder:

NAME AND ADDRESS	ID / REGISTRATION NUMBER	SIGNATURE	DATE
ROBERT MLLAR SILLIA 432 ST ANDREWS AVE NATURES VALLEY PLETTENBERG BAY	5712255133089		13 April 2023
JAMES FULTON MARTIN 36 LAGOON DRIVE NATURES VALLEY	5705035087180		12 April 2023
Allan Paul Richards 31 St Michaels Ave Nature's Valley	5404255096085		13/4/2023

## 1. INTERPRETATION AND DEFINITIONS

In this Memorandum of Incorporation –

- 1.1. a reference to a section by number refers to the corresponding section of the Act;
- 1.2. a reference to a regulation by number refers to the corresponding Regulation made under the Act, as amended from time to time;
- 1.3. the words and phrases used in this Memorandum of Incorporation that are not defined in this Article 1 shall bear the same meaning as the corresponding words and phrases used and defined in the Act, unless otherwise defined herein or unless the context of this Memorandum requires a different interpretation;
- 1.4. unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
  - 1.4.1. “**Act**” means the Companies Act 71 of 2008, as amended or replaced from time to time;
  - 1.4.2. “**Board**” means the board of directors for the time being of the Company;
  - 1.4.3. “**Business Plan**” means the business plan as defined in the By-Law;
  - 1.4.4. “**By-Law**” means the Bitou Municipality Special Rating Areas By-Law, published in Provincial Gazette Extraordinary number 8734, dated 24 March 2023, as amended or replaced;
  - 1.4.5. “**CIPC**” means the Companies and Intellectual Property Commission of South Africa;
  - 1.4.6. “**Constitution**” means the Constitution of the Republic of South Africa, 1996, as amended or varied;
  - 1.4.7. “**Council**” means the council of the Municipality;
  - 1.4.8. “**MPRA**” means the Local Government: Municipal Property Rates Act 6 of 2004, as amended or replaced from time to time
  - 1.4.9. “**Municipality**” means the Bitou Municipality, a municipality established in terms of the Local Government: Municipal Structures Act 117 of 1998, as amended or replaced from time to time;
  - 1.4.10. “**Owner**” has the meaning assigned to it in section 1 of the MPRA;
  - 1.4.11. “**SRA**” means the special rating area determined by the Council in terms of section 22 of the MPRA, the boundaries of which are delineated in schedule 1 of this Memorandum of Incorporation, and which shall be managed by the Company

## 2. INCORPORATION

- 2.1. The Company is hereby incorporated as a non-profit company, with members, as defined in section 1 of the Act.

- 2.2. The Company is incorporated in accordance with, and governed by:
  - 2.2.1. the unalterable provisions of the Act that apply to non-profit companies;
  - 2.2.2. the alterable provisions of the Act that apply to non-profit companies, subject to any limitation extensions, variation, or substitution as set out in this Memorandum of Incorporation;
  - 2.2.3. the provisions of the By-Law; and
  - 2.2.4. the provisions of this Memorandum of Incorporation.

### **3. OBJECTS AND POWERS OF THE COMPANY**

- 3.1. The main objects of the Company are to –
  - 3.1.1. manage and promote the interests of the Company;
  - 3.1.2. enhance and supplement the municipal services provided by the Municipality within the public areas of the SRA, ensuring a safe, healthy, and clean environment for residents, visitors and their property;
  - 3.1.3. facilitate and promote investment, economic growth, and sustainable development in the SRA in accordance with the Business Plan and in doing so, assist the Council in fulfilling its objects and developmental duties as set out in the Municipality's Integrated Development Plan (in place from time to time);
  - 3.1.4. halt the degeneration and facilitate the upliftment of distressed areas within the SRA;
  - 3.1.5. facilitate a co-operative approach between the Municipality and the private sector in the provision of supplementary municipal services;
  - 3.1.6. subject to the provisions of this Memorandum of Incorporation, raise its own funds through commercial activities, donations, or any other lawful means;
  - 3.1.7. 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 SRA it is designated to serve; and
  - 3.1.8. to act as a management body in respect of the SRA and be responsible for performing, planning, contracting, financial control and administrative functions, including (but not limited to) –
    - 3.1.8.1. determining the funding required each year for purposes of the SRA and making a recommendation to the Council in this regard for consideration during its budgeting processes;
    - 3.1.8.2. appointing contractors and/or staff to provide the required levels of safety and to effect the required improvements, upgrades, and maintenance in the SRA, and attend to urban management in identifying and reporting problem areas; and

- 3.1.8.3. receiving the additional rate charged to registered owners of property situated in the SRA for the benefit of the SRA, as contemplated in sections 19(1)(d) and 22(1)(b) of the MPRA.
- 3.2. The Company shall not use its resources, whether directly or indirectly, to advance, support, or oppose any political party whatsoever.
- 3.3. Except to the extent necessarily implied by the objects stated in Article 3.1, the purpose and powers of the Company are not subject to any restrictions, limitations, or qualifications as contemplated in section 19(1)(b)(ii) of the Act.
- 3.4. The Company is not subject to any provisions contemplated in section 15 (2)(b) or (c).

#### **4. MEMORANDUM OF INCORPORATION AND COMPANY RULES**

- 4.1. This Memorandum of Incorporation of the Company may be altered or amended only in the manner set out section 16, 17 or 152 (6) (b).
- 4.2. 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.
- 4.3. The authority of the Company's Board 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.
- 4.4. 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.
- 4.5. 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.

#### **5. APPLICATION OF OPTIONAL PROVISIONS OF THE ACT**

The Company does not elect, in terms of section 34(2), to comply voluntarily with the applicable provisions of Chapter 3 of the Act.

#### **6. MEMBERS OF THE COMPANY**

- 6.1. As contemplated in item 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.

- 6.2. This Memorandum of Incorporation 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.
- 6.3. A juristic person, including a profit company, may be a member of the Company.
- 6.4. The terms and conditions of membership of the Company are as set out in Schedule "A" of this Memorandum of Incorporation.

## **7. MEMBERS' RIGHTS**

- 7.1. In addition to the rights of members as set out in this Article 7, the members shall also have the specific rights and obligations as set out in Schedule "A" hereto.

### **7.2. Right to information**

Every person who is a member of the Company has the right to information as set out in terms of section 26(1).

### **7.3. Members' authority to act**

- 7.3.1. If, at any time, there is only one member of the Company, the authority of that member to act without notice, or compliance with any other internal formalities, as set out in section 57(2), is not limited, or restricted by this Memorandum of Incorporation.
- 7.3.2. If, at any time, every member of the Company is also a director of the Company, as contemplated in section 57(4), the authority of the members to act without notice, or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.

### **7.4. 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 limited to the extent that a member shall be entitled to appoint only one person as a proxy.

### **7.5. Authority of proxy to delegate**

A proxy may not delegate his authority to act on behalf of a member to another person.

### **7.6. Requirement to deliver proxy instrument to the Company**

The requirement that a member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the member's rights at a members meeting, as set out in section 58(3)(c) is varied to the extent that such member must deliver a copy of the instrument appointing a proxy on or before 17h00 on the business day immediately preceding the date on which such members meeting is scheduled to take place.

### 7.7. **Deliberative authority of proxy**

The authority of a member's proxy to decide without direction from the member whether to exercise or abstain from exercising any voting right of the member, as set out in section 58(7) is not limited or restricted by this Memorandum of Incorporation.

### 7.8. **Record date for exercise of member rights**

7.8.1. The Board may set a record date for the purpose of determining which members are entitled to:

7.8.1.1. receive notice of a members meeting;

7.8.1.2. participate in and vote at such a meeting;

7.8.1.3. decide any matter by written consent or electronic communication; and

7.8.1.4. be allotted or exercise any other rights.

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

7.8.3. If, at any time, the Board fails to determine the record date for determining members' rights, as contemplated in section 59, the record date for the relevant matter is as determined in accordance with section 59(3):

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

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

## **8. MEMBERS' MEETINGS**

### 8.1. **Requirement to hold meetings**

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

8.1.2. The Board has the authority to call a members meeting at any time in the manner and on the terms prescribed below in this Memorandum of Incorporation.

### 8.2. **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 10% (ten percent) of the members of the company, as provided for in that section. For the avoidance of doubt, in the event that 10% (ten percent) of the total members of the Company results in a non-integer number, such number shall be rounded up to the next integer number which shall be deemed to be the minimum number of members required to requisition a meeting in terms of section 61(3).

**8.3. Location of members meetings**

The authority of the Board to determine the location of any members meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61 (9) of the Act is not limited or restricted by this Memorandum of Incorporation.

**8.4. Notice of members meetings**

8.4.1. The minimum number of days for the Company to deliver a notice of a members meeting to the members is 15 (fifteen), as required by section 62 of the Act is as provided for in section 62 (1) of the Act.

8.4.2. The Company may call a members' meeting on shorter notice than required by Article 8.4.1 if every person entitled to vote in respect of any item on the agenda of a meeting is present at that meeting and votes to waive the required minimum notice of the meeting.

8.4.3. 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.

8.4.4. In addition to Article 8.4.3, such 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.

8.4.5. An immaterial defect in the notice of a members meeting does not invalidate any action taken at the meeting.

8.4.6. 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.

**8.5. Electronic participation in members meetings**

The authority of the Company to conduct any meetings entirely by electronic communication or to provide for participation in a meeting by electronic communication, as set out in section 63 of the Act is not limited or restricted by this Memorandum of Incorporation.

**8.6. Quorum for members meetings**

8.6.1. The quorum requirement for a meeting of the members to begin, or for a matter to be considered as set out in section 64 (1) is subject to a minimum of 10% (ten percent) in substitution for the 25% (twenty five percent) as required by that section. For the avoidance of doubt, in the event that 10% (ten percent) of the total members of the Company results in a non-integer number, such number shall be rounded up to the next integer number which shall be deemed to be the minimum number of members required for a meeting of the members to begin, or for a matter to be considered.

8.6.2. The time periods allowed in section 64 (4) and (5) apply to the Company without variation.

8.6.3. The authority of a meeting to continue to consider a matter, as set out in section 64 (9) is not limited or restricted by this Memorandum of Incorporation.

**8.7. Adjournment of members meetings**

The maximum period allowable for an adjournment of a members meeting is 120 (one hundred and twenty) as set out in section 64 (12), without variation.

**8.8. Members resolutions**

8.8.1. In addition to the provisions of this Article 8.8, the maximum number of votes that each member shall be entitled to exercise shall be determined in accordance with paragraph 4.1 of Schedule "A" hereto (as read with Article 6.1).

8.8.2. For an ordinary resolution to be adopted at a members meeting, it must be supported by the holders of more than 50% (fifty percent) of the voting rights exercised on the resolution, as provided in section 65(7).

8.8.3. For a special resolution to be adopted at a members meeting, it must be supported by the holders of at least 75% (seventy-five percent) of the voting rights exercised on the resolution, as provided in section 65 (9).

8.8.4. A special resolution adopted at a members meeting is not required for a matter to be determined by the Company, except those matters set out in section 65 (11) or elsewhere in the Act.

8.8.5. A written resolution (which may consist of one or more documents in like form) signed and passed by members holding the requisite number of votes, and inserted in the minute book, shall be valid and effective in accordance with its terms as if passed at a members' meeting, provided that proper notice of the written resolution was duly given to each of the members in terms of this Memorandum of Incorporation.

8.8.6. Unless the contrary is stated herein, any such resolution shall be deemed to have passed on the latest date on which it was signed by all members required to pass such a resolution.

8.8.7. An emailed copy of a member's signed resolution shall be acceptable evidence that such resolution has been signed by the member; provided that its signature (or that of its representative to the extent that same is stated on the face thereof to be duly authorised to sign on behalf of such member) appears on the copy of the document so emailed.

8.8.8. It is recorded that, provided that proper notice of the written resolution was duly given to each member, any failure by any member to sign any written resolution within the period stipulated in the notice to the member shall not affect the validity of such written resolution; provided further that such written resolution is passed by the members holding the requisite number of votes.



## **8.9. Annual General Meeting**

- 8.9.1. The Company shall have an annual general meeting (“**AGM**”) within 12 (twelve) months after the expiration of the financial year of the Company but shall in all instances take place on or before 31 December of the year in which the Company’s financial year end falls.
- 8.9.2. The AGM will be held at such a time and place as the Board appoints, irrespective of whether the location is within the Republic or elsewhere.
- 8.9.3. Notice for the AGM shall be given either in written or electronic format not less than 15 (Fifteen) business days before the AGM is to be held.
- 8.9.4. The notice of the AGM should state the following information:
  - 8.9.4.1. the date of the AGM
  - 8.9.4.2. the venue where the AGM will be held;
  - 8.9.4.3. the time of the AGM; and
  - 8.9.4.4. any specific purpose not included in the matters normally considered at an AGM;
- 8.9.5. The accidental omission to give notice of the AGM or the non-receipt of the notice of the AGM by any person entitled to receive such notice shall not invalidate the proceedings of the members at such AGM.
- 8.9.6. The AGM shall deal with the following matters as prescribed in Act and the By-Law and/or the Municipality’s SRA policy document in place from time to time:
  - 8.9.6.1. the consideration and approval of the annual financial statements;
  - 8.9.6.2. the election of directors or any prescribed officers of the Company;
  - 8.9.6.3. the annual budget for the new financial year;
  - 8.9.6.4. the appointment of the auditor for the next year if the Company is to be audited; and
  - 8.9.6.5. any other matters or business laid before the AGM.
- 8.9.7. No business shall be transacted at the AGM without a quorum being present, such quorum being that as specified in Article 8.6.1.

## **9. DIRECTORS AND OFFICERS**

### **9.1. Composition of the Board**

- 9.1.1. The Board comprises of a minimum of 3 (three) and a maximum of 11 (eleven) directors, to be elected at the first members’ meeting.
- 9.1.2. At the first Board meeting after their election, the directors will elect one of their number as chairperson of the Board.

- 9.1.3. In addition to the elected directors and subject to the By-Law, the executive mayor of the Municipality may be entitled to appoint councillors, as elected to the Council, as directors and/or alternate directors of the Company, as contemplated in section 66(4).
- 9.1.4. As envisaged in the By-Law, any director or alternate director appointed to the Board by the executive mayor of the Municipality as envisaged by Article 9.1.3 above, shall be entitled to attend and participate in, but not vote at Board meetings. Such directors will not have the powers and duties of directors as set out in the Act or in terms of this Memorandum of Incorporation.
- 9.1.5. Apart from 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.
- 9.1.6. A director shall be obliged to resign as a director when:
- 9.1.6.1. he/she is disqualified in terms of this Memorandum of Incorporation;
- 9.1.6.2. he/she is disqualified in terms of the Act; or
- 9.1.6.3. he/she has served as a director for a fixed term of 2 (two) years following his/her appointment. Each elected director shall serve as a member of the Board for a fixed term of 2 (two) years. Upon the expiry of his/her term of office, such director shall automatically cease to be a member of the Board.
- 9.1.7. Notwithstanding Article 9.1.6.3, nothing shall preclude a director who has served their full term from making him/herself available and being re-elected by the members of the Company for a further fixed term of 2 (two) years, and there shall be no limit on the number of terms a director may be permitted to serve on the Board.
- 9.1.8. The Company's Board shall be authorised to fill any vacancy on the Board on a temporary basis, provided such person filling the vacancy meets the requirements referred to in this Memorandum of Incorporation.

**9.2. 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.

**9.3. Directors' Meetings**

- 9.3.1. The authority of the Company's board of directors to consider a matter other than at a meeting, as set out in section 74 is not limited or restricted by this Memorandum of Incorporation.

- 9.3.2. The right of the Company's directors to requisition a meeting of the board shall be as set out in section 73 (1). For the avoidance of doubt, no director appointed by the executive mayor of the Municipality in terms of Article 9.1.3 shall be entitled to requisition a meeting of the board in terms of this Article 9.3.2.
- 9.3.3. 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.
- 9.3.4. The authority of the Company's board of directors to determine the manner and form of providing notice of its meetings, as set out in section 73 (4) is not limited or restricted by this Memorandum of Incorporation.
- 9.3.5. 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.
- 9.3.6. The quorum requirement for a meeting of the directors to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are as set out in section 73 (5), without variation. For the avoidance of doubt, the quorum requirement as provided for in this Article 9.3.6 shall not extend to any directors appointed by the executive mayor of the Municipality in terms of Article 9.1.3.

**9.4. Postponement of directors' meetings**

- 9.4.1. If within 30 (thirty) minutes after the appointed time for a directors' meeting to begin, a quorum is not present, the directors' meeting shall be postponed without motion or vote for a period of 7 (seven) days, or if such day is not a business day, the following business day.
- 9.4.2. The Company is not required to give further notice of a directors' meeting that is postponed, unless the location of or the manner in which the director' meeting is to be conducted is different from the location of the postponed directors' meeting.
- 9.4.3. At a postponed directors' meeting:
- 9.4.3.1. the directors present shall be deemed to constitute a quorum; and
- 9.4.3.2. the directors may not contemplate any business other than the business which was on the agenda for the initial directors' meeting.
- 9.4.4. The chairperson of a directors' meeting may extend the period of 30 (thirty) minutes referred to in article 9.4.1 for a reasonable period on the grounds that:
- 9.4.4.1. exceptional circumstances affecting weather or transportation have generally impeded or are generally impeding the ability of the directors to be present at the directors' meeting; or

9.4.4.2. one or more particular director(s), having been delayed, have communicated an intention to attend the directors' meeting, and those directors together with others in attendance, would satisfy the quorum requirements set out in article 9.3.6.

9.4.5. The voting rights at a board a meeting, and the requirements for approval of a resolution at such a meeting, are as set out in section 73(5) and apply without variation.

#### 9.5. **Indemnification of Directors**

9.5.1. The authority of the Company to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78 (4) is not limited, restricted, or extended by this Memorandum of Incorporation.

9.5.2. The authority of the Company to indemnify a director in respect of liability, as set out in section 78 (5) is not limited or restricted by this Memorandum of Incorporation.

9.5.3. The authority of the Company to purchase insurance to protect the Company, or a director, as set out in section 78 (7) is not limited, restricted, or extended by this Memorandum of Incorporation.

#### 9.6. **Committees of the board**

9.6.1. The authority of the Company's board of directors 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 73 (2)(a) is not limited or restricted by this Memorandum of Incorporation.

9.6.2. The authority of a committee appointed by the Company's board of directors, as set out in section 72 (2) (b) and (c) is not limited or restricted by this Memorandum of Incorporation.

### **10. GENERAL PROVISIONS**

#### 10.1. **Company records**

The Company shall –

10.1.1. keep accurate books and records reflecting all transactions entered into by the Company and all amounts owing and owed by the Company; and

10.1.2. prepare and submit to the board and a duly authorised representative of each member:

10.1.2.1. the annual budget;

10.1.2.2. medium term financial forecasts which are revised on an annual basis;

10.1.2.3. the monthly management accounts;

10.1.2.4. the monthly management reports;

10.1.2.5. independently reviewed financial statements of the Company (as may be required by the Act or in terms of this Memorandum of Incorporation); and

- 10.1.2.6. minutes and agendas of the meetings of the board of directors and shareholders of the Company.

## 10.2. **Company obligations**

The Company shall, subject to this Memorandum and the Act, –

- 10.2.1. comply with all statutory obligations applicable to the Company, including the filing of an annual return in terms of section 33, and for the avoidance of doubt, in the event that the Company fails to file an annual return in terms of section 33, any one of the directors or any member (acting as attorney and agent for and on behalf of the Company, which appointment is hereby made by the Company) shall be entitled to file such annual return with the CIPC for and on behalf of the Company;
- 10.2.2. voluntarily have its financial statements independently reviewed every year;
- 10.2.3. implement and comply with such financial systems as the board may from time to time instruct;
- 10.2.4. take out such insurance as may be recommended by the board from time to time;
- 10.2.5. implement adequate internal controls for the protection of the Company's assets and its shareholders;
- 10.2.6. maintain adequate records and reconciliation statements; and
- 10.2.7. use its best endeavours to maintain adequate cash flows on a monthly basis by way of efficient recovery of debtors.

## 10.3. **Notices**

- 10.3.1. A notice shall be served by the Company to all members (including the joint owners of properties located in the SRA) either –
  - 10.3.1.1. personally; or
  - 10.3.1.2. by electronic communication to such address as the member may advise the Company in writing from time to time. For the purposes of this article 10.3, such "address", in relation to electronic communication, includes any number or email address used for the purposes of such electronic communication.
- 10.3.2. All notices with respect to any properties located within the SRA to which persons are joint owners may be given to whichever of such persons is recognised by the Company as having any title to such properties in terms of this Memorandum, as the case may be, and notice so given shall be sufficient notice to all the owners of such properties.

- 10.3.3. The notice may be given by the Company to the persons entitled to a property located in the SRA in consequence of the death or insolvency of a member, or by sending it through the post in a prepaid envelope addressed to them by name, or by the title of representatives of the deceased, or trustees of the insolvent or by any like description, at the address (if any, including an address specified by such person for the purposes of electronic communication) supplied for the purpose by the persons claiming to be so entitled, or (until such address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.
- 10.3.4. Proof that a notice contained in an electronic communication was sent in accordance with the provisions of the Electronic Communications and Transaction Act 25 of 2002 shall be conclusive evidence that the notice was given.
- 10.3.5. A notice given to any member shall be binding on all persons claiming on his death or on any transmission of his interests.
- 10.3.6. The signature to any notice given by the Company may be written or printed, or partly written and partly printed.

#### 10.4. **Dissolution of the Company**

Upon the dissolution of the Company, its net assets shall be distributed in the manner determined in accordance with item 1(4) of Schedule 1 of the Act.

#### 10.5. **Company Bank Account**

- 10.5.1. All amounts received by or on behalf of the Company shall be paid into a bank account as determined by the directors and all payments, excluding payments of a petty cash nature shall be made from this account unless the board decides otherwise.
- 10.5.2. Any electronic transfer must be authorised by at least 1 (ONE) director, unless the members decide otherwise by means of a special resolution, which decision may include the determination of a maximum threshold amount from time to time under which the signature or authorisation of payments of only 1 (ONE) director is required.

#### 10.6. **Deadlock**

- 10.6.1. If the required majority for the passing of a directors' resolution cannot be obtained due to an equality of votes, such particular resolution only shall cease *ipso facto* to be within the directors' domain and shall be put to the members.
- 10.6.2. If in terms of the foregoing provisions, the required majority for the passing of a members' resolution cannot be obtained, a dispute shall be deemed to exist between the members which shall be dealt with as contemplated in article 10.6.3.

10.6.3. If there is a dispute or deemed dispute in terms of article 10.6.2 between the members such dispute shall, at the request of any member, be submitted by the Company for arbitration before an arbitrator appointed by and in accordance with such rules and procedures of arbitration as may be determined by and in accordance with the Arbitration Foundation of South Africa ("**the Arbitration Foundation**"), provided that the arbitrator appointed by the Arbitration Foundation must be permanently residing in the **George, Western Cape Province**.

10.6.4. Notwithstanding anything to the contrary or stipulated by the Arbitration Foundation, the arbitration will be held in **George** with a view to achieving an expeditious result and the arbitration will be conducted in camera, the parties and the participants in the arbitration being obliged to maintain the utmost confidentiality with regard to all matters relating thereto or arising therefrom, save as otherwise expressly and peremptorily required by law.

#### 10.7. **Remuneration**

10.7.1. The Company may not (directly or indirectly) pay any portion of its income or transfer any of its assets, regardless of how such income or asset was derived, to any person who is or was an incorporator, member, prescribed officer, or director, or any person appointing a director of the Company except –

10.7.1.1. as is reasonable;

10.7.1.2. in respect of goods delivered or services rendered to, or at the direction of the Company;

10.7.1.3. the payment of, or reimbursement for, expenses incurred to advance a stated object of the Company as contained in Article 3;

10.7.1.4. the payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and such person to whom payment is made, provided such agreement is entered into to advance a stated object of the Company as contained in Article 3; or

10.7.1.5. in respect of any legal obligation binding on the Company.

10.7.2. The Company shall not provide any remuneration to any person who is or was an incorporator, member, prescribed officer, or director, or any person appointing a director of the Company in respect of travelling expenses incurred by such person, whether or not such travelling expenses were incurred to advance a stated object of the Company.

#### 10.8. **Fundamental transactions**

The Company may not:

10.8.1. amalgamate or merge with, or convert to, a profit company; or

- 10.8.2. dispose of any part of its assets or undertaking to a profit company, other than for fair value, except to the extent that such a disposition shall occur only in the ordinary course of the activities of the Company and advance a stated object of the Company as contained in Article 3.



### **SCHEDULE A: TERMS AND CONDITIONS OF MEMBERSHIP**

1. Membership of the Company shall be limited to those persons who are owners of properties which fall within the Nature's Valley Special Rating Area (SRA).
2. Where a property is owned by more than one person or by a company, a close corporation or a trust (such company, close corporation, or trust referred to as an "entity"), such co-owners or entity (as the case may be) shall be entitled to be represented by one person, director, member, or trustee (as the case may be) nominated by a resolution of such entity (where required and always to the satisfaction of the Company) to represent those 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 types of owners.
3. 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 of such property shall immediately and automatically become a member of the Company.
4. The following rights and obligations apply to all members of the Company:
  - 4.1. all members are entitled to 1 (one) vote (in respect of each property owned by such members within the SRA) at any members' meeting which is equal to the vote of any other member of the Company;
  - 4.2. every member of the Company shall be committed to the objectives of the Company and shall act to promote the objectives as set out in this Memorandum of Incorporation.
5. A member's membership will be suspended or lost in the following circumstances:
  - 5.1. if the member does not act in good faith or in the Company's best interests;
  - 5.2. if the member awards any payment or asset to himself in conflict with this Memorandum of Incorporation.