



PARKMORE COMMUNITY ASSOCIATION

“THE COMPANY”

MEMORANDUM OF INCORPORATION
“MOI”

REVISION 1

14th June 2016

CURRENT REVISION

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SIGNATORIES

NAME	TITLE	SIGNATURE
Ismail Hendricks	Chairman	
Kate Wardle	Deputy Chairman	
Mohammed Nassuirio	Director	
Stuart McKechnie	Director	

Dated: 14 June 2016

1. Objects of the Company

- 1.1 The Company is a Non-Profit Company incorporated for a public benefit object serving community group interests in terms of the Companies Act, 71 of 2008.
- 1.2 The main business and object which the Company is to carry on is the promotion, development, safety and short- and long-term sustainability of the residential nature of Parkmore including the retail and business node specific areas.

2. Interpretation and Definitions

- 2.1 In this Memorandum of Incorporation:
 - 2.1.1 a reference to a section by number refers to the corresponding section of the Companies Act, 2008; and
 - 2.1.2 words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act.
- 2.2 Clause headings are for convenience only and are not to be used in its interpretation and an expression which denotes:
 - 2.2.1 any gender includes the other gender;
 - 2.2.2 a natural person includes a juristic person and *vice versa*;
 - 2.2.3 the singular includes the plural and *vice versa*.
- 2.3 In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the

meanings assigned to them and cognate expressions bear corresponding meanings:

2.3.1 “**AGM**” and “**SGM**” mean Annual General Meeting and Special General Meeting respectively;

2.3.2 “**Board**” means the Board of Directors of the non-profit company. In terms of the Companies Act the Non-Profit Company shall have a minimum 3 (three) directors either volunteered, appointed and/or elected by the members of the Company, as defined by the Companies Act No. 71 of 2008;

2.3.3 “**Chairperson**” means the Chairperson of the Board of the Company”;

2.3.4 “**Commission**” means the Companies and Intellectual Property Commission established in terms of section 185 of the Companies Act;

2.3.5 “**Community**” means all the persons residing or conducting business within the area referred to as Parkmore;

2.3.6 “**Companies Act**” shall mean the Companies Act 71 of 2008, as amended from time to time;

2.3.7 “**Director**” means a Director of the Company;

2.3.8 “**Effective Date**” means the date on which this Memorandum of Incorporation is filed with the Commission;

2.3.9 “**Parkmore**” means the residential and business area called “Parkmore” defined as the area bounded by the west side of Grayston Drive in the east, the north side of Sandton Drive in the south, the east side of Nicol Highway along Louise Avenue in the

west; parts of Fifteenth Street in the north (i.e. those parts which are not impinged upon by other suburbs such as River Club); and including the suburbs known as New Brighton, Parkmore Ext 1 and the portion of Glenadrienne on the Parkmore side of William Nicol Highway, and the open spaces known as The Field and Study Centre. The area excludes Sandhurst Extension 4, Hurlpark and Dalecross which may be included in the future;

2.3.10 “**Member**” means the property owners and/or tenants as community residents of Parkmore who have applied for, been admitted to and contribute fees to membership of the Company and which includes, but is not limited to townhouse complexes, schools and businesses;

2.3.11 “**Special Resolution**” means a resolution adopted with the support of at least 66.7% of the members present at a meeting in which a special resolution is required to be taken.

3 Adoption of Memorandum of the Company

3.1 This Memorandum of Incorporation is in a form unique to the Company as contemplated in section 13(1)(a)(ii) of the Companies Act.

3.2 This Memorandum of Incorporation was proposed by the Board and adopted by a Special Resolution of the Members.

4 Incorporation and Nature of the Company

4.1 Incorporation

4.1.1 The Company is incorporated as a Non-Profit Company, with members as defined in the Companies Act, 2008 with registration number 1999/025688/08.

4.1.2 The Company is incorporated in accordance with, and governed by:

4.1.2.1 the unalterable provisions of the Companies Act, 2008 that are applicable to Non-Profit Companies;

4.1.2.2 The alterable provision of the Companies Act, 2008 that are applicable to Non-Profit Companies subject to any limitation, extension, variation or substitution set out in this Memorandum of Incorporation; and

4.1.2.3 The provisions of this Memorandum of Incorporation.

4.2 Objects and Powers of the Company

4.2.1 The objects of the Company are as set out in clause 1 of this Memorandum of Incorporation, except to the extent necessarily implied in the stated objects, the purposes and powers of the Company are not subject to any restriction, limitation of qualification as contemplated in section 19(1)(b)(ii).

4.2.2 The Company is not subject to any provision contemplated in section 15(2)(b) or (c).

4.2.3 Upon dissolution of the Company, its net assets must be distributed in the manner determined by the Board of Directors.

4.3 Company Rules

4.3.1 The authority of the Board of Directors to make rules for the Company as contemplated in clause 15(3) to (5) is not limited or restricted in any manner by this Memorandum of Incorporation.

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

4.3.4 The Company must publish a notice of any alteration of the rules made in terms of section 17(1) by delivering a copy of those rules to each director by electronic or ordinary mail.

4.4 Optional Provisions of the Companies Act, 2008 do not apply:

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

5. **Members of the Company**

5.1 As contemplated in Item 4(1) of Schedule 1 of the Act, the Company shall have members who are all in a single class, being voting members, each of whom has an equal vote in any matter to be decided by the members of the Company.

5.2 The Members of the Company shall be such persons as from time to time are admitted to membership, as hereinafter provided.

5.3 Membership shall be personal to a Member concerned and may not be assigned or transferred by them to any other person, company or

concern and no Member shall have, either directly or indirectly, any personal or private interest in the Company.

5.4 Admission:

5.4.1 All persons, businesses and corporate bodies whether registered owners of property or tenants of property, and all non-resident registered owners of property, shall be eligible for membership of the Company upon completion of a membership application submitted to the Board.

5.4.2 The Board shall determine procedures for the admission of members.

5.4.3 Upon acceptance of the application for membership by the Board, the candidate shall become a Member of the Company upon receipt by the Company of the applicable subscription fees.

5.4.4 Every member as defined in clause 5.4.1, shall pay a subscription fee to the funds of the Company as determined from time to time by the Board. Such subscription fees are payable on request via debit order bank mechanisms in respect of each new subscription period. This subscription must be paid before the member is entitled to any of the privileges of the Company.

5.5 Termination of Membership

5.5.1 A Member's membership of the Company shall terminate if:

5.5.1.1 At a meeting of the Board, the Member having been given 21 days' notice and an opportunity of being heard, the Board, in its sole discretion, resolves that the Member is guilty of conduct inimical to the interests and/or objects of the Company or it is

inimical to the interests and/or objects of the Company that the Member continues as a Member of the Board;

5.5.1.2 the Member dies;

5.5.1.3 the Member has failed to respect and observe the approved Precinct Plan for Parkmore, building regulations pertaining to submitting and obtaining construction plans, obtaining approval for any relaxation of building lines and any specific clauses in the respective Title Deeds;

5.5.1.4 the Member has committed a breach of a provision of this Memorandum of Incorporation;

5.5.1.5 the Member is no longer a part of the Parkmore area.

5.5.2 Members may terminate their membership by submitting a written termination/resignation letter to the Board of Directors on the understanding that any payment of subscription fees must be with one full month's notice.

5.5.3 A member whose membership has been terminated shall remain liable for all sums that may be due at the date of termination of membership to the Company and shall not have any claim against the Company or its officers, its property or funds.

5.5.4 No Member shall be entitled to the return of any membership fees or contributions paid to the Company upon termination of membership.

6. Rights of Members

6.1 Member's authority to act

If, at any time, every Member 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.

6.2 Members' right to information

In addition to the rights to access information set out in section 26(1), a member of the Company has the further rights to information, if any, as set out in this Memorandum of Incorporation.

6.3 Representation by concurrent proxies

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

6.4 Authority of proxy to delegate

The authority of a member's proxy to delegate the proxy's powers to another person, as set out in section 58(3)(b) is not limited or restricted by the Memorandum of Incorporation.

6.5 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 not varied by this Memorandum of Incorporation.

6.6 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 a member as set out in section 58(7) is not limited or restricted by this Memorandum of Incorporation.

6. Members Meetings

6.1 Right to call a meeting and requirement to hold meetings

6.1.1 The Board may call a Members' meeting at any time.

6.1.2 A Special General Meeting shall be called by the Board in the following instances:

6.1.2.1 when adopting any Special Resolution;

6.1.2.2 whenever required in terms of section 70(3) to fill a vacancy on the Board;

6.1.2.3 upon receipt of a requisition signed by not less than 5% of current membership numbers of the Company,

and at such Special General Meeting only such business as is stated in the notice of meeting and/or on the requisition shall be dealt with.

6.1.3 Notwithstanding anything to the contrary in this Memorandum of Incorporation, the Company shall in each year hold an AGM of the

Members not later than 5 (five) months pursuant to the audited financial statements being made available.

6.1.4 The AGM shall deal with and dispose of all matters prescribed by the Companies Act, including the consideration of the annual financial statements, the election of directors and the appointment of an auditor, and may deal with any other business laid before it.

6.1.6 Nominations to fill vacancies on the Board should be received by the current Board by no later than forty-eight (48) hours before the commencement of the AGM. Nominations may be accepted at the AGM at the Chairman's discretion. All nominations must be in writing and duly proposed and seconded, and must include the acceptance by the nominee in writing.

6.1.7 The Agenda for AGMs will be as follows:

- (i) Approval of the minutes of the previous AGM;
- (ii) Presentation for adoption of the Annual Accounts;
- (iii) Presentation of the Chairman's Report on the activities of the Board;
- (iv) Questions arising out of the previous items on the Agenda;
- (v) Calling for Volunteers as Board Directors;
- (vi) Special matters, notice of which must have been given to the Board no later than seven (7) days before the holding of the AGM.

6.1.8 Notice of any meeting in terms of this clause 6 must be given to Members in writing by printed letter or by email not less than twenty

one (21) days prior to the holding of such meeting, be it a Members meeting, AGM or SGM.

6.1.9 The Board may determine the location of members' meetings.

6.2 Quorum

6.2.1 No business shall be transacted at any meeting unless a quorum of Members is present at the time when the meeting proceeds to business. The quorums shall be as follows:

Members Meetings:

Special General Meeting: 5% of current membership numbers

Annual General Meeting: 5% of current membership numbers

6.2.2 After a quorum has been established for a meeting (or in respect of a specific matter on the agenda), the meeting may continue (or the matter may be considered) provided the meeting is quorate for the full duration of the meeting.

6.3 Postponement and adjournment of members' meetings

If no quorum is present at an any meeting within 30 minutes of the appointed time, the meeting shall, without any further action or formalities being required, stand adjourned to the same time and venue 7 (seven) days later, and those present at the adjourned meeting shall constitute a quorum.

6.4 Voting

6.4.1 At all meetings, each Member shall have one vote and voting shall be by secret ballot on voting forms prepared for the purpose.

6.4.2 The Board of Directors alternatively, any person appointed for this purpose, will be responsible for the count and in the event of a dispute the Chairperson will have the casting vote, which vote shall be final.

6.4.3 The following matters shall require the adoption of a special resolution:

6.4.3.1 the amendment of this Memorandum of Incorporation;

6.4.3.2 the incurring of long-term debts;

6.4.3.3 the discontinuance of the material activities of the Company

6.4.3.4 the sale or other disposal of any material asset, other than in the ordinary course of business;

6.4.3.5 the establishment or implementation of or any changes in the Company's financial policy;

6.4.3.6 the winding up of the Company or any application for business rescue;

6.4.3.7 the appointment, dismissal and/or determination of the remuneration of the managerial level of the employees of the Company;

6.4.3.8 the year end of the Company.

6.4.4 Resolutions, except those matters requiring a special resolution as described in clause 6.4.3, will be passed by a simple majority.

6.4.5 If in the opinion of the Chairperson it is deemed expedient, he may declare that voting be by show of hands, and subject to the Memorandum of Incorporation, he may direct the manner and determine all the rules and details in which such ballot shall be held.

6.4.6 A vote of “No Confidence” in either the Chairperson or the Board or any sitting Board member, may be proposed at any properly constituted AGM or SGM and such vote shall be carried by a two-thirds majority indicated by a show of hands verified by the Chairman.

6.4.7 In the event that the Board decides that the security service provider or any other service provider appointed in terms of this Memorandum of Incorporation, has not met the community’s expectations in terms of the relevant Service Level Agreement, and terminates such relationship, and upon a two-thirds majority vote referred to the Membership shall terminate all contractual arrangements with such service provider as per the notice period with such service provider.

7. Directors and Officers

7.1 Composition of the Board of Directors

7.1.1 The Board of Directors of the Company comprises of a minimum of 3 (three) directors each of whom is to be elected by the Members at an Annual General Meeting.

7.1.2 In addition to the appointed directors, there are no appointed or *ex officio* directors of the company as contemplated in section 66(4).

7.1.3 In addition to satisfying the qualification and eligibility requirements in section 69, to become or remain a director of the Company, a person must satisfy the additional requirement of being a member of the Company.

7.1.4 Each appointed director of the Company serves for an indefinite term, until substituted by the person or entity that made the appointment.

7.2 Authority of the Board of Directors

The authority of the Board of Directors to manage and direct the business and affairs of the Company as set out in section 66(1) is limited or restricted to the extent set out below:

7.2.1 To purchase, take on lease, exchange, hire, or in any other way acquire movable or immovable property or rights in the name of the Company;

7.2.2 To invest and deal with any monies of the Company in the ordinary course of the activities of the Company upon such securities and in such manner as may from time to time be

determined, and to realise, vary, reinvest or otherwise deal with such securities;

- 7.2.3 To borrow, raise, secure the payment of money, or issue guarantees, either with or without security, in such manner and for such purposes and objects as the Board may deem fit;
- 7.2.4 To enter into any arrangements, contracts or agreements with any government authorities, municipal, local or otherwise, or any other legal entity, that may seem convenient to the interests of the PCA and to obtain from such government or local authority or legal entity any leases, contracts, rights, privileges and concessions which the Board may deem desirable to obtain and carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- 7.2.5 To sell, cede, traffic or deal in, lease, mortgage, pledge, dispose of, give in exchange, work, develop, build, improve, turn to account, make gifts for any charitable or useful purpose, alienate or otherwise deal with all or any part of the movable or immovable property and rights of the Company and to the extent that same is within the ordinary course of the activities of the Company;
- 7.2.6 To draw, make, accept, endorse, discount, execute, negotiate, deal in and issue cheques, bills of exchange, promissory notes or any other negotiable or transferable instruments;
- 7.2.7 To nominate and support a candidate to contest local City Council elections.

7.3 Board of Directors Meetings

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- 7.3.1 The authority of the Company's Board of Directors to consider a matter other than at a meeting set out in section 74 is not limited or restricted by this Memorandum of Incorporation.
- 7.3.2 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 25% of the directors as provided in that section.
- 7.3.3 The Board shall meet as often as is necessary to conduct the business of the Company and at such a time and place as may be determined, but not fewer than 4 (four) meetings must be held each year.
- 7.3.3 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.
- 7.3.4 The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meeting, as set out in section 73(4) is not limited or restricted by the Memorandum of Incorporation.
- 7.3.5 The authority of the 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.
- 7.3.6 Board meetings shall require three (3) members for a quorum.

7.3.7 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).

7.3.8 In the event of a Director failing to attend three consecutive meetings of the Board without leave he shall automatically cease to be a member of the Board, subject to the right of the Board to waive this clauses.

7.4 Duties of the Board of Directors

The Board shall:

7.4.1 keep proper Minutes of proceedings at all normal meetings;

7.4.2 keep accounts and to table annual accounts at the Annual General Meeting

7.4.3 deposit, withdraw and payment of purchasers of the Company funds in a bank;

7.4.4 be responsible for the maintenance and safe-keeping of all records of the Company, including the minutes of all meetings of the Company, the Board and any of its committees.

7.4.5 be responsible for the regular communication to its members of all matters pertinent to the objectives of the Company.

7.4.6 carry out any other duty required for the successful operation of the Company and/or the welfare of its Members and/or the community as a whole.

7.4.7 maintain and continually updating the membership database records with particular attention to members' addresses, including email addresses.

7.4.8 In the event that the services of the security service provider are terminated in terms of the relevant Agreements signed, the Board shall ensure that members are not left unprotected and that an alternative service provider is timeously contracted to replace the former.

Officers and Committees

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

7.5.2 The Board of Directors shall elect a Chairperson as the responsible person to authorize any decisions and financial interactions implemented by any such officer appointed in terms of clause 7.5.1 above.

7.5.3 The Chairperson of the Board shall be a director in terms of the Companies Act No. 71 of 2008, and shall not hold that office for more than three (3) consecutive years.

7.5.4 During tenure of office, the Chairperson shall not retire by rotation. Following his term of office, (or following his early resignation from the Chair) he may remain a member of the Board but may not return to the office of Chairperson for at least two years unless re-elected in terms of the foregoing criteria.

7.5.5 In the event of a deadlock, the Chairperson shall have a casting vote when necessary.

7.7.6 The Chairperson shall be chair all meetings called in terms of clause 6 of this Memorandum of Incorporation.

7.5.6 The Board of Directors, with the assistance of any other Officer that may be appointed in terms of clause 7.5.1, establish Board Committees to deal with matters in respect of, but not limited to:

7.5.6.1 building control, land use as defined by the approved Parkmore Precinct Plan, business, by-law enforcement, city services and their maintenance requirements, communications with and to members, utilising all modern techniques such as website, emailing, etc., environment & health, fun events, gardens, open space maintenance and design including pavements, improvement districts, public relations, road closures, security and safety, special projects; town planning, traffic, youth affairs and schools.

7.5.7 Members may volunteer at any time and be elected at the AGM. As respective Committees comprise volunteers from the community, and members of the Company the issue tenure shall be discussed and decisions made within the Committee itself rather than prescribed fixed eligibility terms.

7.5.8 The Board may call and/or co-opt volunteers and persons with expert knowledge to achieve the purpose and object of the respective Board Committees

7.5.9 The Company shall have the right to co-opt an authority/s and/or seek community members to any of its Board committees with such voting rights or duties as may be determined in each case by the Board.

7.6 Indemnification of Directors

7.6.1 The authority of the Company's Board of Directors to advance expenses to a director or indemnify a director in respect of the defence of legal proceedings, as set out in section 78(3) is not limited or restricted by this Memorandum of Incorporation.

8 Amendment of the Memorandum of Incorporation

8.1 This Memorandum of Incorporation may be altered or amended only in the manner set out in section 16 or 17 of the Companies Act being:

8.1.1 in any manner necessary to correct a patent error in spelling, punctuation, reference, garner or similar defect on the face of the document by:

8.1.1.1 publishing a notice of the alteration in any manner required or permitted by the Memorandum of Incorporation or the Rules of the Company; and

8.1.1.2 filing a notice of the alteration, or

8.1.2 in compliance with any court order, effected by a resolution of the Board;

8.1.3 at any other time if a Special Resolution to amend the Memorandum of Incorporation is proposed and adopted by the Members.

8.2 The Company must publish a notice of any alteration of this Memorandum of Incorporation by delivering a copy of the amendment to each Director and Member by email.

9 Confidentiality

9.1 Any Member of the Company, including its Directors, Board Committees members and Administrator(s), who is party to any information during the course of membership and/or business with the Company, shall treat as confidential any information concerning the Company, its finances or members and its business methods and shall not disclose such confidential information to any person without the other's prior written consent, with the following exceptions:

- (i) confidential information, which is freely available to the public,
- (ii) confidential information which any party is obliged to provide to any government or other authority or any court,
- (iii) The Board determines that the information shall not be confidential and is therefore available for full disclosure but this shall not include Members' private information without the latter's written consent.

10 Finances

10.1 The Board shall keep accounts and table audited annual accounts at the AGM.

10.2 The Board shall deposit funds of the Company in a bank. The Board shall provide authorization for any internet transfers.

10.3 Accounts must be audited annually and the Auditor's statement posted on the www.parkmore.org.za website immediately upon the audited financials having been provided.

10.4 Preliminary Accounts for the past year must be tabled at the AGM each year.