

**MEMORANDUM OF INCORPORATION**

**of**

**HOUT BAY YACHT CLUB (NPC)**

(Registration number: 2021/546021/08)

being a non-profit company with members

("the Company")

The Company has adopted this unique form of Memorandum of Incorporation and, accordingly, the prescribed standard form of Memorandum of Incorporation for non-profit companies, which is contained in the Companies Regulations shall not apply to the Company.

This Memorandum of Incorporation has been adopted by Special Resolution of the Members of the Company at a general meeting held at Hout Bay Yacht Club, Chart Room on 23 March 2023.

## PART A - THE MOI AND RULES

### 1. INTERPRETATION

In this MOI, clause headings are used for convenience only and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention, -

- 1.1 a word or an expression that denotes –
  - 1.1.1 any gender, includes the other genders;
  - 1.1.2 a natural person, includes an artificial or juristic person and *vice versa*;
  - 1.1.3 the singular, includes the plural and *vice versa*;
- 1.2 the following word and expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings, unless the context otherwise indicates –
  - 1.2.1 "**Act**" - the Companies Act 71 of 2008, for the time being in force and as amended or re-enacted, including any regulations promulgated thereunder and for the time being in force;
  - 1.2.2 "**Auditors**" - the auditors of the Company from time to time;
  - 1.2.3 "**Board**" – the persons appointed as directors of the Company as contemplated in article 27. The board will comprise of no less than 3 (three) and no more than 5 (five) serving members, who shall also be club members. All board members will serve on the Club Committee.
  - 1.2.4 "**Chairperson**" – the member of the board of directors appointed by the board of directors, and who generally also serves as Managing Director;
  - 1.2.5 "**Managing Director**" – the member of the board of directors elected by the members into the portfolio of Club Commodore
  - 1.2.6 "**Club**" - the company defined as such on the front page of this MOI
  - 1.2.7 "**Committee**" – the management committee of the Club nominated and elected



into the posts of Commodore, Treasurer and various Vice Commodore positions. Not all Club Committee members are required to be board members;

- 1.2.8 "**Company**" - the company defined as such on the front page of this MOI;
- 1.2.9 "**Dispose**" - cede, donate, dispose of, Distribute, exchange, give, make over, sell, transfer, unbundle or otherwise Alienate, or any agreement, arrangement or obligation to do any of the foregoing, and "Disposal" shall be construed accordingly;
- 1.2.10 "**Legal Representative**" - any Person who has submitted proof (which is satisfactory to the Board) of his appointment (and, to the extent required by the Board, the continuation of that appointment) as [ o ];
- 1.2.11 "**Member**" means a member of the Company, duly admitted in terms of the Rules;
- 1.2.12 "**Memorandum of Incorporation**" or "**MOI**" - the memorandum of incorporation of the Company, being this document (and including any Schedules hereto), as amended or replaced from time to time;
- 1.2.13 "**Regulations**" - the Companies Regulations of 2011 for so long as they remain of force and effect and any other regulations made under the Act.
- 1.3 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Person, then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this MOI;
- 1.4 All provisions of this clause MOI are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this MOI that is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this MOI shall remain of full force and effect.
- 1.5 the use of the words "**including**", "**includes**" and "**include**", followed by a specific example/s, shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of that general wording or those specific example/s;



- 1.6 where any term is defined within a particular clause other than this clause 1, that term shall bear the meaning assigned to it in that clause wherever it is used in this MOI;
- 1.7 any capitalised word or expression that is defined in the Act and that is not otherwise defined in this MOI shall have the meaning assigned to it in the Act. For the avoidance of doubt, it is recorded that any reference to "Present at such Meeting" or "Present at the Meeting" shall be construed in accordance with the definition of "Present at a Meeting" in the Act;
- 1.8 a reference to a "**section**" refers to the corresponding section of the Act;

## **2. CONFLICTS WITH THE MOI**

In accordance with the Act, in any instance where there is a conflict between a provision (be it express or tacit) of this MOI and -

- 2.1 an alterable or elective provision of the Act, the provision of this MOI shall prevail to the extent of the conflict, provided that such alterable or elective provision of the Act expressly allows for the Company to adopt the conflicting provision; or
- 2.2 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict.

## **3. AMENDMENT OF THE MOI**

- 3.1 This MOI may only be altered or amended -
- 3.1.1 in compliance with a court order on the basis set out in section 16(1)(a) of the Act and any other applicable provisions of the Act;
- 3.1.2 by way of a Special Resolution of the Members passed in accordance with section 16(1)(c) of the Act, read in conjunction with the remaining provisions of the Act and this MOI; or
- 3.1.3 as contemplated in section 17 and 152(6)(b) of the Act.
- 3.2 Save as specifically provided for in clause 3.1, this MOI is not capable of amendment by



any other method. Accordingly, the provision of section 16(1)(b) of the Act shall not apply, nor shall any other alterable provisions of the Act that allow for a method for the alteration or amendment of the MOI other than those methods contemplated in clause 3.1 apply.

- 3.3 The Company must publish a notice of any alteration made to this MOI in order to correct this MOI in accordance with section 17(1) of the Act by delivering notice thereof to the Members in accordance with clause 35.

#### **4. RULES**

- 4.1 The Board may, subject to section 15(4) of the Act, make, amend or repeal any necessary or incidental Rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this MOI, and the authority of the Board in this regard is not limited or restricted in any manner by this MOI.
- 4.2 The Company shall publish a copy of those Rules and a notice of any alteration to those Rules in accordance with section 17(1) of the Act by delivering a copy thereof to each Member in accordance with clause 35 or in such other manner as may be required by those Rules.

### **PART B – STATUS AND POWERS OF THE COMPANY**

#### **5. STATUS AS NON PROFIT COMPANY**

- 5.1 The Company is incorporated as a non-profit company, as defined in the Act.
- 5.2 The Company is incorporated in accordance with, and governed by :-
- 5.2.1 the unalterable provisions of the Act that are applicable to Non-Profit Companies;
  - 5.2.2 the alterable provisions of the Act that are applicable to Non Profit Companies, subject to any limitation, extension, variation or substitution set out in the MOI; and
  - 5.2.3 the provisions of this MOI.

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

- 6.1 The main object of the Company is to carry on a community based business development

project involving the establishment of a local yacht club and which is a public benefit activity as defined in section 30(1) of the Income Tax Act, Act 58 of 1962 ("ITA"), in a non-profit manner with an altruistic or philanthropic intent.

6.2 The Company has, subject to section 19(1)(b)(i) of the Act and the provisions of this MOI, all of the legal powers and capacity of an individual, and the legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications contemplated in section 19(1)(b)(ii) of the Act.

6.3 The assets and income of the Company, however derived, must be applied toward the advancement of its objects contemplated in 6.1 above and no portion thereof shall be paid or transferred, directly or indirectly, regardless of how the asset or income was derived, to any person who is or was an incorporator of the Company, or who is a Member or director or person appointing a director of the Company, except:

6.3.1 as reasonable –

6.3.1.1 remuneration for goods delivered or services rendered to, or at the direction of, the Company; or

6.3.1.2 payment of, or reimbursement for, expenses incurred to advance the stated object of the Company;

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

6.3.3 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 a stated object of the Company; or

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

The above provisions of this MOI constitutes a restrictive condition as contemplated in section 15(2)(b) of the Act.

6.4 The Company may not have a share or other interest in any business profession or occupation or occupation which is carried on by its Members.

6.5 The Company does not knowingly and will not knowingly become a party to, and does not

knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Income Tax Act, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act.

## **7. LIMITATION OF LIABILITY**

No Person shall, solely by reason of being an Incorporator, Member or Director of the Company, be liable for any liabilities or obligations of the Company.

## **8. ELECTIONS IN RESPECT OF OPTIONAL PROVISIONS OF THE ACT**

- 8.1 The Company elects, as contemplated in section 30(2)(b)(ii)(aa) of the Act, to voluntarily require an audit of its annual Financial Statements.
- 8.2 The Company shall, in compliance with the provisions of section 90(1A), appoint an auditor and shall comply with the applicable provisions of Part C of Chapter 3 of the Act.
- 8.3 The Company does not elect, as contemplated in section 34(2) of the Act, to comply voluntarily with the provisions of Parts B and D of Chapter 3 of the Act.
- 8.4 The Company does not elect, as contemplated in section 118(1)(c)(ii) of the Act, to submit itself voluntarily to the provisions of Parts B and C of Chapter 5 of the Act and to the Takeover Regulations.

## **9. PAYMENTS BY THE COMPANY**

The Company may not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Member or Director, of the Company: except:

- 9.1 as reasonable:
- 9.1.1 remuneration for goods delivered or services rendered to, or at the direction of the Company; or
  - 9.1.2 payment of, or reimbursement for, expenses incurred to advance a stated object of the Company; or
- 9.2 as a payment of an amount due and payable by the Company in terms of a *bona fide*

agreement between the Company and that person or another; or

9.3 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 a stated object of the Company; or

9.4 in respect of any legal obligation binding on the Company;

## **10. FUNDING**

A substantial part of the Company's funding shall be derived from its Members or from such alternative sources as the Board resolves from time to time.

## **11. AMENDMENT OF THE MOI**

11.1 This MOI may be altered or amended only in the manner set out in section 16 or 17, being:

11.1.1 in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the fact of the document by:

11.1.1.1 publishing a notice of the alteration, in any manner required or permitted by this MOI or the Rules of the Company; and

11.1.1.2 filing a notice of the alteration, or;

11.1.2 in compliance with a court order, effected by a resolution of the Board; or

11.1.3 at any other time if a Special Resolution to amend the MOI is proposed and adopted by the Full Members.

11.2 Any amendment of the Memorandum, save for an amendment contemplated in paragraph 11.1.1, may only be effected by a Special Resolution of the Members.

11.3 The Company must publish a notice of any alteration of this MOI by delivering a copy of the amendment to each Member by email or ordinary mail.

11.4 A copy of all amendments to this MOI must be submitted to the SARS commissioner within 30 days of its amendment.



## **PART C – MEMBERSHIP**

### **12. MEMBERSHIP**

- 12.1 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 shall be entitled to vote on any matter to be decided by the Members of the Company as more fully contemplated in clause 24 below.
- 12.2 Membership to the Company shall be open to all qualified and interested parties who shall be individuals with professional or other interests in the operational areas of the Company.
- 12.3 No Member may directly or indirectly have any personal or private interest in the Company.
- 12.4 All mooring rights owners must be members of the company
- 12.5 All members of the Hout Bay Yacht Club prior to registration as an NPC will automatically become members of the Hout Bay Yacht Club NPC and the total period of membership tenure of the Hout Bay Yacht Club NPC shall include the period of tenure as a member of the Hout Bay Yacht Club prior to registration as an NPC.

### **13. APPLICATION FOR MEMBERSHIP OF THE COMPANY**

Application for Membership shall be made in writing, directed to the Management Committee of the Company. Each application for membership may be accompanied by an entrance fee as is determined by the Board from time to time. In the event of the application for membership being refused, the entrance fee shall be refunded to the applicant.

### **14. TERMINATION OF MEMBERSHIP**

Any Member desiring to withdraw from membership may do so by giving written notice of such withdrawal. If a Member has withdrawn or ceased to be a Member they can be reinstated provided all their obligations to the Company have been met. No Member who has been expelled, shall be readmitted without prior approval of the Committee.

### **15. SUBSCRIPTION/MEMBERSHIP FEE**

The annual subscriptions payable to the Company shall be for such amounts as the Board may from

time to time decide. In addition a special levy to meet any special, unusual or other expenses may be imposed from time to time by a general meeting on the recommendation of the Board.  
**[Drafting Note: Suggest the Board, this risk for a limited risk of directors can become too great]**

## **PART D – MEMBERS RIGHTS AND PROCEEDINGS**

### **16. PROXY REPRESENTATION**

16.1 A Member may, at any time by written proxy appointment, appoint any individual, including an individual who is not a Member of the Company, as a proxy to -

16.1.1 participate in, and speak and vote at, a Members Meeting on behalf of the Member; or

16.1.2 give or withhold written consent on behalf of the Member to a decision contemplated in clause 25,

and any such proxy appointment (and any invitation by the Company to appoint a proxy and any form supplied by the Company for the appointment of a proxy) shall be governed by section 58 of the Act and this clause 16.

16.2 The Board may determine a standard form of proxy appointment and make it available to Members on receipt of a written request.

16.3 A Member may not appoint more than one person concurrently as proxy, and may not appoint more than one proxy to exercise Voting Rights.

16.4 A proxy may not delegate the proxy's authority to act on behalf of the Member to another Person, unless the right to delegate is specifically contained in the proxy appointment and the delegation occurs by way of a further proxy appointment, which itself complies with the requirements of the Act and this MOI for a proxy appointment.

16.5 A proxy shall not be entitled to exercise any rights of the Member who appointed that proxy -

16.5.1 until the expiry of two Business Days after the date on which the instrument containing; or

16.5.2 after midnight on the day on which the instrument revoking,

the appointment of that proxy was delivered to the Registered Office of the Company (marked urgent and for the attention of the Company Secretary of the Company and accompanied by such proof of the identity and authority of the signatory as may reasonably be required by the Board or the chairperson of any Members Meeting referred to in the proviso to this clause 16.5) or to any other Person entitled to accept the proxy appointment or revocation on behalf of the Company, provided that the Board, or the chairperson of any Members Meeting at which the proxy wishes to exercise any rights of the Member, may agree to allow any such proxy appointment or revocation to become effective prior to the time when it would otherwise have become effective in terms of this clause 16.

16.6 A proxy shall, as contemplated in section 58(7) of the Act, be entitled, in the proxy's own discretion, to exercise, or abstain from exercising, any Voting Right of the Member that appointed him, provided that, if the instrument appointing the proxy specifically provides otherwise, then the specific provisions of the proxy appointment shall prevail.

## **17. RECORD DATES**

The Board may, in accordance with section 59 of the Act and the Regulations, determine and publish a Record Date for the purposes of determining which Members are entitled to -

17.1 receive a notice of a Members Meeting;

17.2 participate in and vote at a Members Meeting;

17.3 decide any matter by written consent or by Electronic Communication;

17.4 exercise any other rights,

provided that, if the Board does not determine a Record Date for any action or event, as contemplated in this clause 17, the Record Date shall be as determined in accordance with section 59(3) of the Act.

## **18. MEMBERS MEETINGS**

18.1 The Company shall hold a Members Meeting in the circumstances contemplated in section 61(2) of the Act.

- 18.2 The Company shall not be required to hold any meetings of Members other than those required by the Act.
- 18.3 The Company shall be obliged to hold an Annual General Meeting each year.
- 18.4 The Board, or the Managing Director, (who shall be the Commodore in office from time to time, if any) shall convene a Members Meeting if requested to do so by Members holding at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting.
- 18.5 All meetings of whatsoever nature of the Company shall take place at such place as shall be determined by the Board from time to time provided that the Company may only hold any such meeting in the Republic, accordingly, the authority of the Board, as contemplated in section 61(9) of the Act, is limited or restricted by this MOI.

## **19. NOTICE OF MEMBERS MEETINGS**

- 19.1 A meeting called for the passing of a Special Resolution shall be called by not less than 15 (fifteen) business days notice in writing and any other general meeting shall be called by not less than 14 (fourteen) clear days' notice in writing. The notice shall be exclusive of the days on which it is served or deemed to be served and of the day for which it is given. It shall specify the place, the day and the hour of the meeting and the general nature of the business and shall be given in a manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company at a Members Meeting. It shall be given to such persons as are so, under this MOI, entitled to receive such notices from the Company; Provided that a meeting of the Company shall, notwithstanding the fact that it is called by shorter notice than that specified in this MOI, be deemed to have been duly called if every person who is entitled to exercise Voting Rights in respect of any item on the meeting agenda is present at the meeting and votes to waive the required minimum notice of the meeting.
- 19.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification to any Member, or present any document required to be given or sent in terms of these articles, or in terms of the Act, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.
- 19.3 The notice of a Members Meeting shall be in writing and shall include the items set out in section 62(3) of the Act.

19.4 The notice of a Members Meeting must be delivered in accordance with the provisions of clause 35.

## **20. CONDUCT OF MEETINGS**

The Company may, as contemplated in section 63 of the Act, provide for a Members Meeting to be conducted in whole or in part by Electronic Communication.

## **21. MEMBERS MEETING QUORUM AND ADJOURNMENT**

21.1 No matters will be discussed at a Members Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. The quorum requirements for Members Meetings shall, subject to clause 21.5, be that -

21.1.1 such a Meeting shall not begin until 10% (Ten percent) of Members eligible to vote are present at such meeting (as contemplated in the definition of "Present at a Meeting" in the Act); and

21.1.2 the consideration of a matter to be decided at the Meeting shall not begin unless until 10% (Ten percent) of Members eligible to vote are present at such meeting (as contemplated in the definition of "Present at a Meeting" in the Act).

21.2 Notwithstanding the provisions of section 64(4) of the Act and clause 21.1 if, within thirty minutes after the appointed time for a Members Meeting, -

21.2.1 the quorum requirements for a Meeting to begin have not been satisfied, the Meeting shall automatically be postponed without motion or vote to the same day (or if that day is not a Business Day, the next Business Day) in the next week;

21.2.2 the quorum requirements for consideration of a particular matter to begin have not been satisfied, then, -

21.2.2.1 if there is other business on the agenda of the Meeting, consideration of that matter may be postponed to a later time in the Meeting without motion or vote; or

21.2.2.2 if there is no other business on the agenda of the Meeting, the meeting is adjourned, without motion or vote, to the same day (or if

that day is not a Business Day, the next Business Day) in the next week.

Subject to the provisions of clause 21.9 below, written notice of the adjournment shall not be required to be given to Members.

- 21.3 The adjourned or postponed Members Meeting may only deal with the matters that were on the agenda of the Meeting that was adjourned or postponed.
- 21.4 The chairperson of the Members Meeting shall be entitled to extend the thirty minute limit referred to in clause 21.2 in the circumstances contemplated in section 64(5) of the Act.
- 21.5 If, at the time appointed in terms of this clause 21 for an adjourned Members Meeting to resume, or for a postponed Members Meeting to begin, the quorum requirements have not been satisfied, the Members present in person or by proxy will be deemed to constitute a quorum.
- 21.6 After a quorum has been established for a Members Meeting, or for a matter to be considered at a Members Meeting, the Meeting may continue, or the matter may be considered, so long as at least one Member with Voting Rights entitled to be exercised at the Meeting, or on that matter, is Present at the Meeting.
- 21.7 A Members Meeting, or the consideration of any matter being debated at a Members Meeting, may be adjourned as contemplated in sections 64(10), 64(11) and 64(12) of the Act, it being recorded that the periods of adjournment set out in section 64(12) shall apply without variation.
- 21.8 The Board may, at any time after notice of a Members Meeting (other than a Members Meeting required to be held in terms of clause 18.4) has been given, but prior to the commencement of that Meeting, postpone that Meeting to such later date as may be determined by the Board at the time of determining to postpone the Meeting, or may be postponed to an unspecified date to be decided by the Board at a later stage, provided that the Board may not so postpone the date of any such Meeting beyond that date (if any) by which that Meeting is required by the Act or this MOI to be held.
- 21.9** The chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place.



Save where a meeting is adjourned for 30 days or more, notice of the adjourned meeting need not be given to Members. Save as aforesaid or as required by section 64 (7) or (11) of the Act, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

## **22. CHAIRPERSON OF MEMBERS MEETINGS**

The Chairman of the Board will be the Chairman at all Members Meetings of the Company. If the Chairman of the Board of Directors cannot be present or if 15 (fifteen) minutes have lapsed since the time that had been set for the commencement of the meeting and has not arrived, one of the other Directors shall preside at the meeting. In the absence of any of the members of the Board, the meeting shall elect a member from its ranks to preside over the meeting. Notwithstanding anything herein contained to the contrary, only the person presiding over the meeting at the time shall be empowered to exercise a casting vote in the event of equality voting.

## **23. MEMBER RESOLUTIONS**

23.1 At any Members Meeting, any Person who is present at the Meeting, whether as a Member or as a proxy for a Member, shall be entitled to exercise the Voting Rights, which Voting Rights shall be determined in accordance clause 24 below.

23.2 In order for -

23.2.1 an Ordinary Resolution to be approved, it must be supported by a majority of the Voting Rights exercised on the Ordinary Resolution, as contemplated in section 65(7); or

23.2.2 a Special Resolution to be approved, it must be supported by at least 75% of the Voting Rights exercised on the Special Resolution, as provided in section 65(9),

at a quorate Members Meeting, which is quorate in relation to that resolution, provided that this clause 23.2 shall not detract from the Members' ability to adopt resolutions by written vote as referred to in clause 25.

23.3 If any Member abstains from voting in respect of any resolution, that Member will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect of that resolution.

23.4 Except for those matters that require the approval or authority of a Special Resolution in

terms of section 65(11) of the Act, any other section of the Act or any provision of the Regulations or this MOI, no other matters that the Company may undertake will require the approval or authority of a Special Resolution of the Members.

## **24. VOTING**

- 24.1 Only members above 18 years of age will be eligible to vote at Members meetings.
- 24.2 Temporary members and non-voting honorary members will not be eligible to vote at Members meetings.
- 24.3 At any Members Meeting a resolution put to the vote of the meeting shall be decided on by the show of hands. On a show of hands, every member present in person or by proxy shall have one vote. On a poll, every member present in person or by proxy shall have one vote. All questions at a meeting shall be decided by a majority of votes and in case of equality of votes the presiding Chairman of the meeting shall have a second or casting vote.
- 24.4 Unless a poll be demanded, a declaration by the chairman that a resolution has on a show of hands been carried shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour or against such resolution. A demand for a poll may be withdrawn.
- 24.5 A poll, if demanded, shall be taken in such manner as the chairman thinks fit, and the result of the poll shall be deemed to be the resolution of the meeting at which such poll was demanded.

## **25. WRITTEN RESOLUTIONS BY MEMBERS**

- 25.1 A resolution that could be voted on at a Members Meeting may instead be adopted by written vote of the Members, as contemplated in section 60 of the Act if it is supported by Persons entitled to exercise sufficient Voting Rights for it to have been adopted as an Ordinary Resolution or Special Resolution, as the case may be, at a properly constituted Members Meeting.
- 25.2 Unless the contrary is stated in the resolution, any such resolution will be deemed to have been adopted on the date on which the Company received the written vote of the Member or the proxy of the Member whose vote resulted in the resolution being supported by sufficient votes for its adoption.



## **PART E - DIRECTORS POWERS AND PROCEEDINGS**

### **26. FUNCTIONS AND POWERS OF THE DIRECTORS**

- 26.1 The business and affairs of the Company shall be managed by or under the direction of the Board, which shall have the authority to exercise all of the powers and perform all of the functions of the Company, except to the extent that the Act or this MOI provides otherwise.
- 26.2 The Board may delegate to any one or more Persons all such powers and delegate to any one or more Persons the doing of all such acts (including the right to sub-delegate).
- 26.3 If any resolution of the Company is proposed that the Company institute any legal proceedings against, or exercise any right under this MOI, or any other agreement in relation to, any Director or Member of the Company, that resolution will be deemed to be within the Members' domain and not within the Directors' domain; and the powers of the Directors shall be limited accordingly. If any Member vetoes such resolution and, as a result, the requisite majority to pass the resolution cannot be obtained, then, provided that the remaining Members furnish an indemnity to the Company against all costs, losses or damages of whatsoever nature, which the Company may sustain in bringing any such legal proceedings, or exercising any such right, such vetoing Members will be deemed to have voted in favour of the resolution.

### **27. APPOINTMENT OF DIRECTORS**

- 27.1 The Board shall comprise of a minimum of three directors as set out in S66(2)(b) of the Act
- 27.2 All of the Directors shall be elected by an Ordinary Resolution of the Members. There shall be no *ex officio* Directors, as contemplated in section 66(4)(a)(i) of the Act, and no Person shall have the right to effect the direct appointment or removal of one or more Directors as contemplated in section 66(4)(a)(ii) of the Act.
- 27.3 The provisions of section 68(2) of the Act shall apply to the election of Directors, provided that a Director may be elected by written vote in accordance with clause 25.
- 27.4 The Board may appoint a Person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Company on a temporary basis, and during that period any Person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other Director of the Company. The authority of the Board in this regard shall not be limited or restricted by this MOI.

- 27.5 The Company may not permit a Person to serve as Director if that Person is ineligible or disqualified in terms of the Act or this clause 27.5. The office of a Director shall be vacated if the Director :
- 27.5.1 Ceases to be a Director or becomes prohibited from being a Director by virtue of the provisions of the Act; or
  - 27.5.2 Resigns his office by notice in writing to the Company; or
  - 27.5.3 for more than 6 (six) months is absent without permission of the Board from meetings held during that period; or
  - 27.5.4 is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof in the manner required by the Act.
- 27.6 The Directors shall hold office until such time as they become disqualified in terms of the Act or clause 27.5 above, and otherwise for a period of 2 (two years) whereupon they may stand for re-election by the Members.
- 27.7 Notwithstanding the provisions of any contract for the time being existing, the Company may by resolution remove any Directors from office. The provisions of section 71 of the Act, shall be complied with in connection with the removal of any Directors.
- 27.8 This MOI does not impose any minimum shareholding to be met by the Directors of the Company in addition to the ineligibility and disqualification provisions of the Act.
- 27.9 A majority of directors at any point in time shall be Mooring right owners in good standing
- 27.10 The managing director must have been a member of the company for a minimum of 3 years prior to election. All other directors must have been a member of the company for a minimum of 2 years prior to election
- 27.11 Section 70 of the Act shall apply to any vacancy on the Board that may arise from time to time.

**28. ALTERNATE DIRECTOR**

- 28.1 Each Director may, by notice in writing to the Company at any time, -
  - 28.1.1 nominate any one or more than one Person in the alternative (including any of his co-Directors) to be his Alternate Director;
  - 28.1.2 terminate any such appointment.
- 28.2 The appointment of an Alternate Director shall terminate when the Director to whom he is an Alternate Director -
  - 28.2.1 ceases to be a Director; or
  - 28.2.2 terminates his appointment.
- 28.3 An Alternate Director shall, subject to the provisions of this MOI, -
  - 28.3.1 act as a Director and generally exercise all the rights of the Director to whom he is an Alternate Director, but only in the absence or during the incapacity of that Director; and
  - 28.3.2 in all respects be subject to the terms and conditions existing with reference to the appointment, rights and duties and the holding of office of the Director to whom he is an Alternate Director, but shall not have any claim of any nature whatsoever against the Company for any remuneration of any nature whatsoever.
- 28.4 Notwithstanding the foregoing provisions of this clause 28 at least 50% of the Alternate Directors shall be elected by an Ordinary Resolution of the Members.

**29. CHAIRPERSON OF BOARD MEETINGS**

- 29.1** The Directors shall appoint amongst themselves, a chairman and vice-chairman and such *office* bearers shall hold their respective offices for a period of one year following the date of their appointment provided that any such *office* shall ipso facto be vacated by the Director holding such office upon his ceasing to be a Director for any reason. In the event of any vacancy occurring in any of the aforesaid offices at any time the Board shall immediately meet to appoint one of their number as a replacement for such *office*.



**29.2** Save as otherwise provided in MOI, the chairman shall preside at all meetings of the Board and all general meetings of Members and shall perform all duties incidental to the office of chairman and such other duties as may be prescribed by the Board or of Members, and to allow or refuse to permit invitees to speak at any such meetings provided however that any such invitees shall not be entitled to vote at any such meetings.

29.3 The vice-chairman shall assume the powers and duties of the chairman in the absence of the chairman, or his inability or refusal to act as chairman, and shall perform such other duties as may from time to time be assigned to him by the chairman or the Board.

29.4 The chairperson shall, subject to the Act and this MOI and any decision of the Board, determine the procedure to be followed at all meetings of the Board and of the Members.

### **30. DIRECTORS MEETINGS**

30.1 The Board may -

30.1.1 meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit subject to the provisions of this MOI, provided that, in accordance with section 73(2) of the Act, any Director shall be entitled to convene, or direct the Person so authorised by the Board to convene, a meeting of the Board at any time by giving not less than seven days (or such lesser period as may be reasonable in the circumstances) written notice of such meeting to the other Directors and the Company. Each notice of a meeting of Directors shall include the proposed agenda of that meeting, provided that any such agenda may be amended on reasonable notice to the Directors. Any appointed Alternate Director shall be entitled to receive notice of every meeting of Directors as if he was an actual Director;

30.1.2 determine the form and time of the notice that shall be given of its meetings and the means of giving that notice, as contemplated in section 73(4) of the Act, provided that -

30.1.2.1 no meeting may be convened without notice to all of the Directors; and

30.1.2.2 any such prior determination may be varied, depending on the circumstances and reasons for the Board meeting in question,

and the authority of the Board in this regard is not limited or restricted by this MOI.

30.2 If all of the Directors of the Company -

30.2.1 acknowledge actual receipt of the notice and agree that the meeting should proceed;

30.2.2 are present at a meeting; or

30.2.3 waive notice of the meeting,

the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.

30.3 The Board -

30.3.1 may, in the case of matters requiring urgent resolution or, if for any reason it is impractical for the Directors to meet or to pass a resolution as contemplated in clause 31 below, provide for a meeting of the Board to be conducted in whole or in part by Electronic Communication, provided that the required quorum is met; and

30.3.2 must always make provision for any Director to participate by Electronic Communication in every Board Meeting that is held in person at any place other than the Registered Office of the Company,

and any Electronic Communication facility so employed must ordinarily enable all Persons participating in that meeting to at least speak and hear each other at approximately the same time, and to participate reasonably effectively in the meeting, with or without an intermediary. The authority of the Board in this regard is not limited or restricted by this MOI.

30.4 The quorum of Directors necessary for the transaction of business may be fixed from time to time by the Directors and unless so fixed shall, when the number of Directors exceeds three, be three and when the number of Directors does not exceed three, shall be two. A Director who is not in the Republic of South Africa shall not, during such time as he is absent therefrom, be entitled to notice of any meeting.

30.5 If a quorum is not present within thirty minutes after the time appointed for the

commencement of any meeting of the Board, that meeting shall automatically be postponed without motion or vote to the same day in the following week (or, if that day is not a Business Day, the next Business Day), at the same time and place. The postponed meeting may only deal with the matters that were on the agenda of the meeting that was postponed. If at any such postponed meeting a quorum is not present within thirty minutes after the time appointed for the commencement of that meeting, then, notwithstanding the provisions of section 73(5)(b) of the Act, the Directors present will be deemed to constitute a quorum and will be sufficient to vote on any resolution which is tabled at that meeting.

30.6 At any meeting of the Board, -

30.6.1 an Alternate Director shall not be entitled to attend, speak or vote unless the Director to whom he is an Alternate Director is absent from that meeting;

30.6.2 each Director nominated for appointment to the Board shall be entitled, in respect of each matter to be voted on by the Board, to cast one vote;

30.6.3 no Director, other than the chairperson, shall be entitled to exercise a second or additional or casting vote in respect of any matter to be voted on by the Board; and

30.6.4 questions arising at any meeting of the Directors shall be decided by a majority of votes and in case of an equality of votes the chairman shall have a second or casting vote. This clause 30.6.4 shall not detract from the Board's ability to adopt resolutions as set out in clause 31;

30.6.5 the chairman shall preside as such at all meetings of the Board, provided that should at any meeting of the Board the chairman not be present within 5 minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within 5 minutes of the time appointed for the holding of such meeting, those present of the Directors shall vote to appoint a chairman for the meeting, who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.

30.7 The Company shall keep minutes of the meetings of the Board, and any of its committees, and include in those minutes -

- 30.7.1 any declaration given by notice or made by a Director, as required by section 75 of the Act; and
- 30.7.2 every resolution adopted by the Board.
- 30.8 Resolutions adopted by the Board -
- 30.8.1 must be dated and sequentially numbered; and
- 30.8.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- 30.9 A Director or any person appointed by the Board for this purpose shall take minutes of every Directors' meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the chairman of the meeting. All minutes of Directors' meetings shall after certification as aforesaid be placed in a minute book which shall be open for inspection at all reasonable times by the Directors
- 30.10 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
- 30.11** All resolutions recorded in the minutes of any Directors' meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Directors shall be of any force or effect, or shall be binding upon the Members or any of the Directors unless such resolution is competent within the powers of the Directors.
- 30.12** Save as otherwise provided in this MOI, the proceedings at any Board meeting shall be conducted in such reasonable manner and form as the chairman of the meeting shall decide.

## **31. WRITTEN RESOLUTIONS BY DIRECTORS**

- 31.1 A resolution in writing, including through the medium of telefax, signed by all the Directors for the time being present in the Republic and being not less than are sufficient to form a quorum shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted provided where a Director is not present in the Republic, but



has an alternate who is, the resolution must be signed by the alternate. The resolution may consist of several documents, each signed by one or more directors or their alternates in terms of this clause.

31.2 Unless the contrary is stated in the resolution, any such resolution will be deemed to have been passed on the date on which it was signed by or on behalf of the Director (or Alternate Director) whose vote is necessary to ensure that the resolution is supported by at least that number of votes that is required for it to be passed and who signed it last.

31.3 An Alternate Director shall only be entitled to sign such a written resolution if the Director to whom he is an Alternate Director is, at the time of the Alternate Director's signature, absent from the Republic, or is incapacitated.

## **32. MANAGING DIRECTOR**

The person elected by the Members as Club Commodore, must be a member of the Board and will be appointed by the Board of directors as Managing Director. This role does not attract remuneration. The Directors may from time to time entrust to or confer upon a managing director, for the time being, such of the powers and authorities vested in them as they may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the Directors and may from time to time revoke or vary all or any of such powers and authorities.

## **33. INDEMNIFICATION AND INSURANCE FOR DIRECTORS**

33.1 For the purposes of this clause 33, a Director includes -

33.1.1 a former Director and an Alternate Director;

33.1.2 a Prescribed Officer; and

33.1.3 a Person who is a Member of a committee of the Board,

irrespective of whether or not that Person is also a Member of the Board.

33.2 The Board may, on behalf of the Company, as contemplated in sections 78(4), 78(5) and 78(7) of the Act, -



- 33.2.1 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
- 33.2.2 directly or indirectly indemnify a Director for expenses contemplated in clause 30.2.1, irrespective of whether or not it has advanced those expenses, if the proceedings -
  - 33.2.2.1 are abandoned or exculpate that Director; or
  - 33.2.2.2 arise in respect of any liability for which the Company may indemnify the Director, in terms of clause 30.2.3;
- 33.2.3 indemnify a Director against any liability arising from the conduct of that Director, other than a liability set out in section 78(6) of the Act;
- 33.2.4 purchase insurance to protect -
  - 33.2.4.1 a Director against any liability or expense for which the Company is permitted to indemnify the Director in accordance with clauses 30.2.2 and/or 30.2.3;
  - 33.2.4.2 the Company against any contingency, including -
    - 33.2.4.2.1 any expenses -
      - 33.2.4.2.1.1 that the Company is permitted to advance in accordance with clause 30.2.1; or
      - 33.2.4.2.1.2 for which the Company is permitted to indemnify a Director in accordance with clause 30.2.2; or
    - 33.2.4.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with clause 30.2.3,

and the authority of the Board in this regard is not limited or restricted by this MOI.

33.3 The Company shall, and is hereby obliged to, indemnify each Director against (and pay to each Director, on demand by that Director, the amount of) any costs (including all legal costs reasonably incurred by the Director in dealing with or defending any claim), damages, expenses, liabilities or losses ("Loss"), which that Director may incur, suffer or sustain as a result of any act or omission of that Director in his capacity as a Director, provided that -

33.3.1 this indemnity shall not extend to any Loss -

33.3.1.1 against which the Company is not permitted to indemnify a Director by section 78(6) of the Act; or

33.3.1.2 any Loss arising from any gross negligence or recklessness on the part of that Director; or

33.3.1.3 any loss of or damage to reputation;

33.3.1.4 in the event and to the extent that the Director has recovered or is entitled and able to recover the amount of that Loss in terms of any insurance policy (whether taken out or paid for by the Company or otherwise),

and Directors shall not be entitled to recover the Losses referred to in this clause 30.3.1 from the Company. All losses other than those referred to in this clause 30.3.1 are referred to herein as "Indemnified Losses".

33.4 Each Director's right to be indemnified by the Company in terms of this indemnity shall exist automatically upon his becoming a Director and shall endure even after he ceases to be a Director, until he can no longer suffer or incur any Indemnified Loss.

33.5 If any claim is made against a Director in respect of any Indemnified Loss, the Director shall not admit any liability in respect thereof and the Director shall notify the Company of any such claim within a reasonable time after the Director becomes aware of such claim, in order to enable the Company to contest such claim. Notwithstanding the foregoing provisions of this clause 30.5, the Company's liability in terms of this indemnity shall not be affected by any failure of the Director to comply with this clause 30.5, save in the event and to the extent that the Company proves that such failure has resulted in the Indemnified Loss being greater than it would have been had the Director complied with this clause 30.5.

33.6 The Company shall, at its own expense and with the assistance of its own legal advisers, be

entitled to contest any such claim in the name of the Director until finally determined by the highest court to which appeal may be made (or which may review any decision or judgment made or given in relation thereto) or to settle any such claim and shall be entitled to control the proceedings in regard thereto, provided that -

- 33.6.1 the Director shall (at the expense of the Company and, if the Director so requires, with the involvement of the Director's own legal advisers) render to the Company such assistance as the Company may reasonably require of the Director in order to contest such claim;
- 33.6.2 the Company shall regularly, and in any event on demand by the Director, inform the Director fully of the status of the contested claim and furnish the Director with all documents and information relating to the claim, which may reasonably be requested by the Director;
- 33.6.3 the Company shall consult with the Director prior to taking any major steps in relation to or settling that contested claim and, in particular, before making or agreeing to any announcement or other publicity in relation to such claim.
- 33.7 To the extent that any Loss consists of or arises from a claim or potential claim that the Company might otherwise have had against the Director, then the effect of this indemnity shall be to prevent the Company from making such claim against the Director, who shall be immune to such claim, and such claim will therefore be deemed not to have arisen.
- 33.8 If this clause 30 is amended at any time, no such amendment shall detract from the rights of the Directors in terms of this clause in respect of any period prior to the date on which the resolution effecting that amendment is adopted by the Members.
- 33.9 All provisions of this clause 30 are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this clause 30 that is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this MOI shall remain of full force and effect.
- 33.10 This indemnity shall not detract from any separate indemnity that the Company may sign in favour of any Director.



## **PART F - GENERAL PROVISIONS**

### **34. FINANCIAL STATEMENTS AND ACCESS TO COMPANY INFORMATION**

- 34.1 The Company in general meeting or the Board may from time to time make reasonable condition as and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Company, or any of them, and subject to such conditions and regulations, the accounts and books of the Company shall be open to the inspection of Members at all reasonable times during normal business hours.
- 34.2 Except as set out in this clause 31, no information rights are established by this MOI in favour of a Member in addition to those rights created by section 26 of the Act.

### **35. DIVISIONAL FINANCES**

- 35.1 The Finances of the divisions of the company (for example Club and Marina) will be managed in a manner that enables each division to break-even in its own right and fund its own expenses over time from revenue earned. This will ensure members contributing to company income of a particular division receive full value for that contribution.
- 35.2 Any exception to this principle to be approved by the members at the annual general meeting or at a special general meeting convened for this purpose. An example of this would be utilisation of one division's reserves to fund expenses related to another division's assets or ability to generate revenue
- 35.3 Any temporary inter-divisional loans will bear interest at the prime rate

### **36. NOTICES**

- 36.1 Any notice that is required to be given to Members or Directors may be given in any manner prescribed in section 7 of the Regulations and that notice shall be deemed to have been delivered as provided for in the Regulations as a result of the relevant method of delivery.
- 36.2 Each Member and Director shall -
- 36.2.1 notify the Company in writing of a postal address, which address shall be his registered address for the purposes of receiving written notices from the Company by post and, if he has not named such an address, he shall be deemed to have waived his right to be so served with notices; and

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36.2.2 Unless otherwise agreed with the Company, notify in writing to the Company an e-mail address, which address shall be his address for the purposes of receiving notices by way of e-mail, respectively.

36.2.3 Unless otherwise agreed with the Company, notify in writing to the Company a mobile telephone number, which number shall be his number for the purposes of receiving notices by way of text message, respectively.

### **37. WINDING UP**

37.1 Despite any provision in any law or agreement to the contrary, on a winding-up, deregistration or dissolution of the Company:

37.1.1 no past or present Member or Director of the Company or Person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and

37.1.2 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-

37.1.2.1 having objects similar to its main object; and

37.1.2.2 as determined-

37.1.2.2.1 in terms of this MOI;

37.1.2.2.2 by its members or its Directors, at or immediately before the time of its dissolution; or

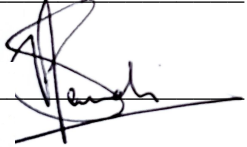
37.1.2.2.3 by the court, if this MOI, or the Members or Directors fail to make such a determination.

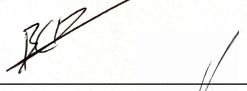
### **HOUT BAY YACHT CLUB NPC**

(A non-profit company incorporated in terms of the Companies Act 71 of 2008)

This MOI was approved on 23 March 2023 at a Special General Meeting held in the Chart Room, Hout Bay Yacht Club, Hout Bay Harbour, Cape Town. As signed by the Directors:

Krzysztof Jarzembowski  \_\_\_\_\_ Dated: \_20 April 2023

Giselle Deuchar  \_\_\_\_\_ Dated: \_20 April 2023

Bradley Brown  \_\_\_\_\_ Dated: \_20 April 2023

Mark Preen  \_\_\_\_\_ Dated: \_20 April 2023

