

BUSINESS CLUSTER CONSTITUTION

GQEERHA

Tel: 041 506 3700 / Docex 16 Gqeberha
4 Cape Road, Gqeberha, 6001 / PO Box 12328, Centrahill, Gqeberha, 6006

EAST LONDON

Tel: 043 050 4205 / Docex 21 East London
123 Western Avenue, Vincent, East London, 5217 / PO Box 19220, Tecoma, 5214

**BBBEE level 1 Contributor
(as per amended code)**

Bowes Loon & Connellan Inc
(Reg. No. 1992/007434/21)
VAT Reg. No. 4310169448
Practice No. 5235

www.blcattorneys.co.za

[Handwritten signatures and initials]

TABLE OF CONTENTS

- 1. ESTABLISHMENT AND NAME OF THE ASSOCIATION 3
- 2. OBJECTIVES 3
- 3. LEGAL STATUS 4
- 4. INCOME AND PROPERTY OF THE ASSOCIATION 4
- 5. TAXATION OF ASSOCIATION 4
- 6. POWERS OF ASSOCIATION 4
- 7. MANCO MANAGEMENT COMMITTEE ("MANCO") 5
- 8. MEMBERSHIP 8
- 9. MEETINGS OF MEMBERSHIP 9
- 10. NOTICES OF MEETINGS 11
- 11. FINANCES AND REPORTS 11
- 12. AMENDMENTS AND DISSOLUTION 12
- 13. INDEMNITY 13

m
R J Co H *gp*

Initial Here	<i>[Signature]</i>
-----------------	--------------------

[Signature]

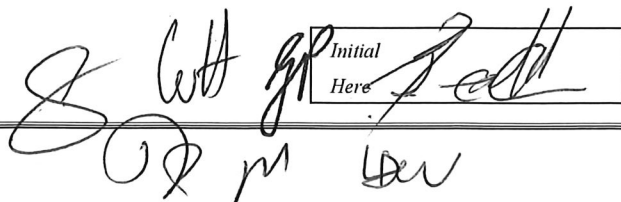
1. ESTABLISHMENT AND NAME OF THE ASSOCIATION

The parties whose signatures appear in Schedule A, ("the First Members") hereby establish a voluntary association, ("the Association") which is governed by the terms of this Constitution (which includes Schedule A and Schedule B hereto). The name of the Association, Effective Date and Area are as set out in Schedule A hereto.

2. OBJECTIVES

The Association is a non-profit organization established by the First Members, being certain businesses situated in and around the area demarcated in RED on the map (hereinafter referred to as "the Area"), for the purpose of fostering co-operation and collaborating with one another in order to collectively address challenges facing them in the Area and for the following public benefit objectives:

- 2.1 Prevent degeneration of the Area and facilitate upliftment of the Area;
- 2.2 Promote cleanliness, safety and security in the Area;
- 2.3 Minimize the common challenges relating to infrastructure such as electricity supply, water shortages, environmental safety, security, illegal dumping and road maintenance to the extent that such challenges exist;
- 2.4 Promote protection of the natural environment and heritage in the Area;
- 2.5 Lobby local, provincial, national or international bodies or authorities for appropriate funding to achieve the objectives of the Association;
- 2.6 Lobby local, provincial or national authorities for appropriate provision of services and infrastructure in the Area;
- 2.7 Sustain, retain and promote business and investment in the Area and support job security in Nelson Mandela Bay;
- 2.8 Co-operate with bodies having similar objectives;



 Initial Here

2.9 Advocate for national, provincial and local government to be accountable and to fulfill its respective responsibilities, perform relevant statutory functions and meet statutory obligations.

3. **LEGAL STATUS**

The Association is a voluntary association with its own legal identity which is separate from its office-bearers and members. The Association will continue to exist even if the members change. No member shall be liable for the debts or obligations of the Association solely by reason of such membership.

4. **INCOME AND PROPERTY OF THE ASSOCIATION**

4.1 Members and office-bearers have no rights to the property or other assets of the Association solely by virtue of them being members or office-bearers.

4.2 The income and property of the Association shall be used solely for the promotion of its stated objectives and shall not be paid or distributed directly or indirectly to any person, or to any member of the Association or office-bearers, except as reasonable compensation for services actually rendered to the Association or reimbursement of actual costs or expenses reasonably incurred on behalf of the Association.

5. **TAXATION OF ASSOCIATION**

The Association may apply to the Commissioner for the South African Revenue Service for approval as a Public Benefit Organisation in terms of section 30 of the Income Tax Act. Upon approval the provisions set out in Schedule B shall bind the Association.

6. **POWERS OF ASSOCIATION**

The Association shall have the same powers as that of a company under the Companies Act, as amended. Such Powers include:

6.1 To institute or defend any legal or other proceedings and to settle any claims;

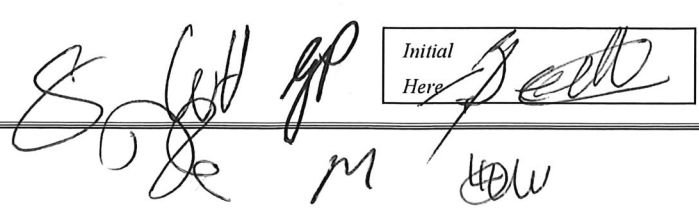

6.2 To prudently invest funds of the Association;

Handwritten signatures and initials. A box contains the text "Initial Here" with a signature. Below it are the initials "O & M" and "you".

- 6.3 To buy, attain, maintain, manage, lease, sell or in any way deal with property and assets of the Association;
- 6.4 To donate and transfer the property and assets of the Association to public benefit organisations with similar objectives;
- 6.5 To receive donations, monetary or otherwise, as well as equipment to fund the objectives of the Association;
- 6.6 To exercise all the management and executive powers ordinarily vested in the Board of Directors of a Company, and
- 6.7 To carry out all the powers and authority of the Association in South Africa and in any other part of the world.

7. **MANCO MANAGEMENT COMMITTEE (“MANCO”)**

- 7.1 **Powers:** MANCO shall manage the affairs of the Association.
- 7.2 **Number and Portfolios:** A minimum of FIVE (5) members shall serve on MANCO bearing the following portfolios: the Chairperson, the Vice-Chairperson, the Treasurer and two others, one of whom shall be an official nominated by the Nelson Mandela Bay Business Chamber as its representative.
- 7.3 **Election:** All members of MANCO shall be members of the Association and the Nelson Mandela Bay Business Chamber. MANCO shall be elected by the First Members of the Association and thereafter at the Annual General Meeting of the Members.
- 7.4 **Vacancies:** MANCO must, as soon as reasonable possible, appoint someone to fill any vacancy that reduces the number of the board members to less than FIVE (5). The next General Meeting must confirm the office of any MANCO member so appointed otherwise it will lapse. If the General Meeting fails to confirm the appointment made by MANCO then the General Meeting must elect a new MANCO member to fill the vacancy and return the number of MANCO members to a minimum of FIVE (5).
- 7.5 **Co-option:** MANCO may co-opt additional non-voting members as it may consider appropriate. The next General Meeting must confirm the office of any MANCO member

 Initial Here 
M HAW

so co-opted otherwise it will lapse. Once a MANCO member is confirmed by a General Meeting of members it shall become a voting MANCO member.

7.6 Resignation, Disqualification and Removal: A MANCO member may resign from office in writing. A MANCO member shall be disqualified from office upon termination of membership to the Association or becoming incapable by reason of mental illness. A member can be removed from office (for any reason) through a two-thirds resolution of the remaining MANCO members, consisting of not less than four.

7.7 Delegation of Powers: MANCO may delegate any of its powers or functions to a Member or a committee of Member(s) of the Association provided that: such delegation and conditions are reflected in the minutes for that meeting, at least one MANCO member to serve on the committee, and that MANCO in advance approves all expenditure incurred by the committee or member. MANCO may revoke the delegation or amend the conditions.

7.8 Procedures at Meetings: MANCO may regulate its meetings and proceedings as it finds fit, subject to the following:

- a. The Chairperson shall chair all meetings of MANCO or shall arrange for the Vice-chairperson or failing the Vice-chairperson another MANCO member to chair the meeting if he/she is unable to preside.
- b. Meetings of MANCO may be conducted face-to-face or electronically which would allow MANCO members to be present and participate through electronic means.
- c. If the Chairperson is not present within fifteen minutes of the appointed time of the meeting, the Vice-Chairperson shall chair such meeting. In both their absence, the Board members present at the meeting shall elect a chairperson for that meeting.
- d. The Chairperson shall regularly convene a meeting of MANCO or at the written request of any two members of MANCO.

[Handwritten signatures and initials]

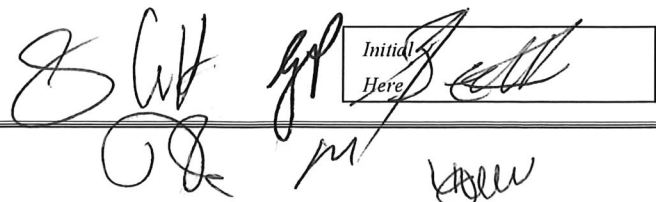
Initials Here

[Handwritten initials: Yew m]

- e. The quorum for a meeting of MANCO shall be THREE (3) out of FIVE (5) of the serving MANCO members or, if MANCO is larger than FIVE (5) members, then FIFTY PERCENT (50%) plus 1 of the number of MANCO members.
- f. If no quorum is present, MANCO may make no decision, except to preserve the assets of the Association and to call a meeting of the general members.
- g. Each MANCO member present or represented through written proxy shall have one (1) vote.
- h. Questions arising shall be decided by a majority of votes. Should there be an equality of votes the NELSON MANDELA BAY BUSINESS CHAMBER shall have a casting or second vote.
- i. Proper minutes and attendance records must be kept of all meetings of MANCO. The chairperson for the meeting shall sign the minutes, which shall be available at all times for inspection or copying by any member of the Association, on two days' notice to the MANCO.
- j. A resolution signed by all members of MANCO shall be as valid as if passed at a duly convened meeting of MANCO.
- k. MANCO may appoint employees upon such lawful terms and conditions as it may deem necessary.

7.9 **Conflicting Interests:** Any actual, potential or perceived conflict of interest on the part of any member of MANCO, on a matter pertaining to the Association, must be disclosed in writing to MANCO which shall record such conflict of interest in the minutes of MANCO meeting. Such member may be requested by MANCO to state his/her position in the matter or to respond to pertinent questions but shall not vote or use his/her influence on the matter and shall not be counted for purposes of determining a quorum for the meeting where the voting takes place.

7.10 **Confidentiality:** All matters pertaining to litigation, security measures, contractual negotiations, employment matters and any other matters deemed confidential by



 Initials Here

MANCO, must be treated as confidential and only the actual decisions may be disclosed to the Members.

8. MEMBERSHIP

8.1 **First and Subsequent Members:** The First Members are the persons or entities (excluding any government agencies, departments or affiliated bodies and state owned companies or enterprises) conducting lawful businesses in the Area that come together to form the Association by affixing their signatures to this Constitution on Schedule A hereto. After the establishment of the Association by the First Members, Subsequent Members may apply to join the Association and must fulfill the conditions and criteria for membership.

8.2 **Conditions and Criteria for Membership:** Any natural person over the age of eighteen (18) or any legal entity (excluding any government agencies, departments or affiliated bodies and state owned companies or enterprises) conducting lawful businesses in the Area shall be entitled to apply for membership of the Association "the Applicant". The Applicant will become a member if it:

8.2.1 applies in writing to the Association to become a member by fully and accurately completing and signing the application form prescribed by MANCO from time to time and

8.2.2 warrants that it will abide by the constitution of The Association and any rules of conduct that MANCO may prescribed from time to time – including but limited to the Code of Ethics for Business Clusters as determined by the Nelson Mandela Bay Business Chamber from time to time and

8.2.3 simultaneously with the application, pays any application fee payable to the Association in respect of new members and the Annual and/or other membership fee imposed by the Association on its members.

8.3 **Transfer of Membership:** Membership is not transferrable.

8.4 **Register of Members:** MANCO must keep a register with the names and addresses of all the members.

Handwritten signatures and initials. A box contains the text "Initial Here" with handwritten initials "J" and "M". Below the box are several other handwritten signatures and initials, including "OR", "M", and "Gaw".

8.5 **Automatic Termination of Membership:** Membership automatically terminates upon the death of a natural member or dissolution of an organizational member, or receipt by the Association of the written resignation of a Member.

8.6 **Termination by MANCO:** Membership terminates if a member is removed by a resolution of MANCO. Provided that the member has been given an opportunity to make written or verbal representations at a meeting of MANCO pertaining to the proposed termination, and MANCO’s decision to terminate membership was confirmed by resolution of two-thirds of the members present at the next General Meeting. If not so confirmed, the termination of membership will lapse and the Member will be reinstated subject to its fulfillment of the conditions and criteria set out in 8.2.2 above.

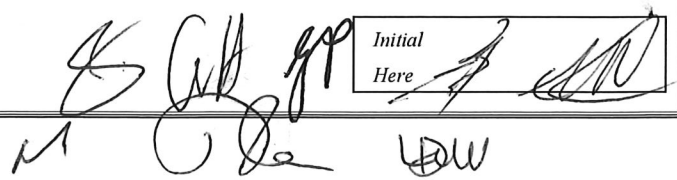
8.7 **Honorary Membership:** The Nelson Mandela Bay Business Chamber ("NMBBC") shall be an honorary member of the Association, without the need to pay any membership fees but with the right to vote.

9. **MEETINGS OF MEMBERSHIP**

9.1 **Annual General Meetings:** All Annual General Meetings (AGMs) must be held in the month of August. At least twenty-one days’ written notice must be given to all members stating the date, time, place and business of the AGM, which business must include:

- (a) The Chairperson’s report;
- (b) The presentation of the Association’s Annual Financial Statements;
- (c) The election of MANCO members; and
- (d) The appointment of the independent accounting officers and
- (e) Other appropriate matters.

9.2 **Special General Meetings:** MANCO or not less than one-third of the members may call a Special General Meeting of the Association. At least fourteen (14) days’ written notice must be given to all other members of MANCO stating the date, time, place and business of the Special General Meeting.



 Initial Here

9.3 **Procedures at General Meetings:** The Members may regulate their meetings and proceedings as it finds fit, subject to the following:

- (a) The Chairperson shall chair all General Meetings, unless the Chair has arranged for the Vice-chairperson (or failing the Vice-chairperson another member of MANCO) to do so.
- (b) General Meetings of the Association may be conducted face-to-face or electronically which would allow members to be present and participate through electronic means.
- (c) If the Chairperson is not present within fifteen minutes of the appointed time of the meeting, the Vice-Chairperson shall chair such meeting. In both their absence, the members present at the General Meeting shall elect a chairperson for that meeting.
- (d) The quorum for General Meetings of the Association shall be one quarter of the members of the Association.
- (e) If a quorum is not present within fifteen minutes of the appointed time of the meeting, the meeting must be adjourned to another date, within fourteen days thereafter. Notice, as provided for under the Constitution, must be given to all members of the Association of such adjournment.
- (f) If no quorum is present at the reconvened meeting within fifteen minutes of the appointed time, the members present, or represented by proxy, shall deem to constitute a quorum for that meeting.
- (g) A resolution put to the vote shall be decided by means of a show of hands or by ballot. A vote by ballot can be demanded by not less than one third the members present or represented by proxy.
- (h) Each member present or represented by proxy shall be entitled to one (1) vote.

[Handwritten signatures and initials]

Initial	<i>[Handwritten Initials]</i>
Here	<i>[Handwritten Signature]</i>

[Additional handwritten initials and signatures below the table]

- (i) Except where this constitution requires a higher threshold, questions arising shall be decided by a majority of votes. Should there be an equality of votes the Nelson Mandela Bay Business Chamber shall have a casting or second vote.
- (j) Proper minutes and attendance records must be kept of all General Meetings. The chairperson must sign the minutes which shall be available at all times for inspection or copying by any member of the Association on two days' notice to the representative of the Nelson Mandela Bay Business Chamber on MANCO.

10. **NOTICES OF MEETINGS**

- 10.1 All notices in terms of this constitution must be given to members in writing (personally, post or electronic communication) to the address provided by the members.
- 10.2 The accidental omission to address notices to any member shall not nullify the proceedings of any meeting.
- 10.3 A member present in person at any meeting shall be deemed to have received notice of such meeting.
- 10.4 If posted, notices shall be deemed to have been received seven days after posting.

11. **FINANCES AND REPORTS**

- 11.1 **Bank Account:** MANCO must open a bank account in the name of the Association with a registered commercial Bank.
- 11.2 **Signing:** EFT payments and other documents requiring signature on behalf of the Association shall be signed-off by at least two (2) persons authorized by MANCO.
- 11.3 **Financial year-end:** The financial year end of the Association shall be end of February.
- 11.4 **Financial Reporting:** MANCO must ensure that proper records and books of account are kept in accordance with generally accepted accounting principles, and which fairly reflect the affairs of the Association.

Initial Here [Handwritten signatures and initials]

11.5 **Independent Accounting Officers:** Immediately after the election of the first MANCO by the First Members, the first MANCO will appoint an independent accounting officer for the Association who will be appointed for the period from the Effective Date until the first Annual General Meeting of members. Thereafter the Annual General Meeting of members will appoint an independent accounting officer annually. The independent accounting officer must:

11.5.1 be registered with either the South African Institute of Chartered Accountants (SAICA) or the South Africa Institute of Professional Accountants (SAIPA) and

11.5.2 prepare the annual financial statements of the Association

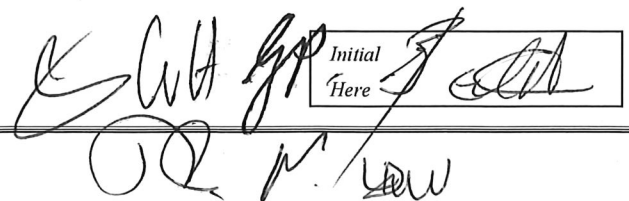
12. **AMENDMENTS AND DISSOLUTION**

12.1 This Constitution may be amended, the name of the Association may be changed and the Association may be dissolved by resolution of two-thirds of the members present at a General Meeting.

12.2 At least twenty-one days' notice of the Meeting stating the nature of the resolution to be proposed must be given to all the members of the Association.

12.3 Upon the dissolution of the Association, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst members, but shall be transferred by donation to one of the following chosen by MANCO (and failing it the members in a General Meeting):


- i. Any similar public benefit organization which has been approved in terms of Section 30 of the Income Tax Act or;
- ii. Any institution, board or body which is exempt from tax under the provisions of Section 10(1)(cA)(i) of the Income Tax Act, which has its sole or principal object the carrying on of any public benefit activity or;
- iii. Any department of state or administration in the national or provincial or local sphere of government of the Republic.

 Initial Here

13. **INDEMNITY**

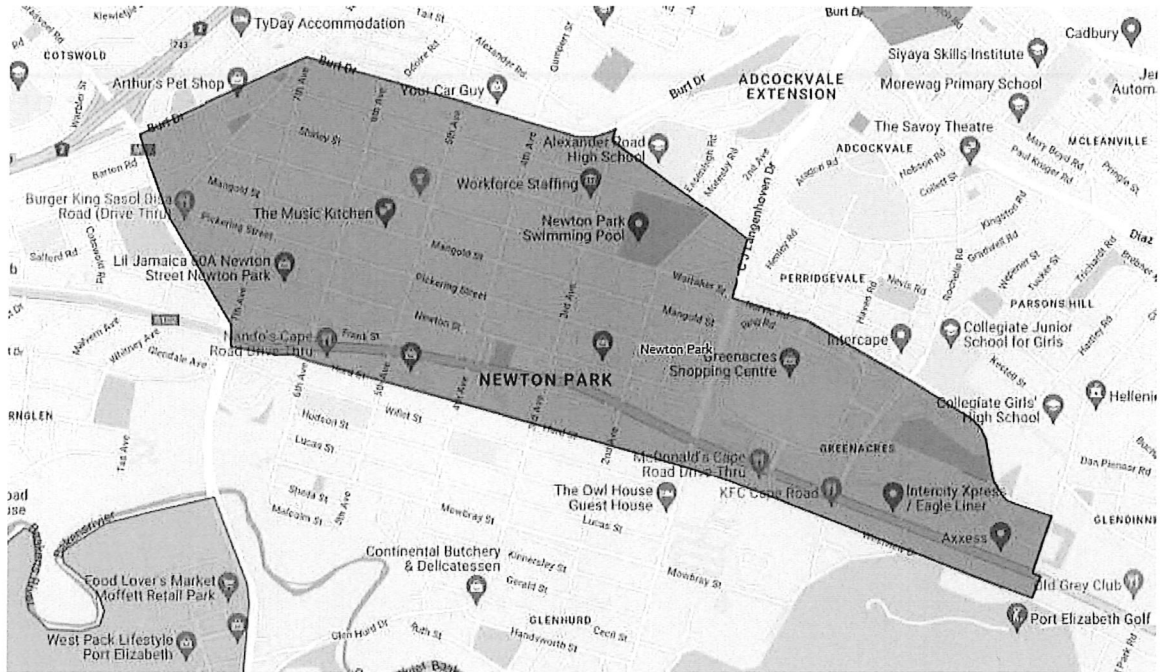
13.1 Subject to the provisions of any relevant law, members, office-bearers or appointed delegates of the Association shall be indemnified by the Association for all acts done by them in good faith on its behalf.

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

SCA GP
OE
Initial Here 
Handwritten signature




SCHEDULE A

Name of Entity	Newton Park Business Cluster
Effective Date	30 April 2024
Area	As per the map below.



	First Member	Representative duly authorised	Date	Signature
1	GERT SWINHOUS	RAND MECHANIC BANK	2/09	[Signature]
2	Cassandra Lascelles	Amrobia Communications (Pty) Ltd	02/108 2024	[Signature]
3	GIDEON VANZYL	PKF(P/E) Inc.	2/8/2024	[Signature]
4	Chantel van Heerden	The Bellboy Group	2/8/2024	[Signature]

in [Signature] [Signature] [Signature] Here [Signature]

5	Leigh-Anne Dewitz	Standard Bank	218	YBW
6	Hendré Schoeman	Bluekey Properties	218/24	
7	Dick Erasmus	Online Innovations	218/24	
8	Danië van Hyssteen	Nelson Mandela Bay Business Chamber	02/05/24	
9				
10				

  Initial Here 

607

SCHEDULE B

REQUIREMENTS FOR APPROVAL AS PUBLIC BENEFIT ORGANISATIONS

As provided for in Clause 5 of this Constitution, the Association intends to apply to the Commissioner for SARS or approval as a Public Benefit Organisation in terms of Section 30 of the Income Tax Act.

Upon approval the Association shall:

1. Be required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the organization.
2. Ensure that no single person directly or indirectly controls the decision-making powers relating to the Association.
3. Is prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilize its funds solely for the object for which it has been established.
4. Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to confirm to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of Section 18A; provided that a donor may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
5. Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.
6. Submit to the Commissioner a copy of any amendment to this constitution.
7. Not pay any remuneration to any employee, office bearer, member or other person, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.

8. Comply with such reporting requirements as may be determined by the Commissioner.
9. Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule of the Act are utilized for the purpose for which they are provided.
10. Has not and will not use its resources directly or indirectly to support, advance or oppose any political party.

MOR *JCH* *JH*

Initial	<i>J. [unclear]</i>
Here	<i>[unclear]</i>

[unclear]