

C O N S T I T U T I O N

of the Voluntary Association

known as

**CAPE PENINSULA ORGANISATION
FOR THE AGED
(Abbreviated Name: CPOA)**

PBO Registration Number :

93/00/04/096

NPO Registration Number:

003-044

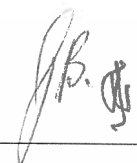
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A. BACKGROUND

- (i) THE CAPE PENINSULA ORGANISATION FOR THE AGED ("CPOA") is a non-profit Voluntary Association, originally established under the name "Cape Peninsula Welfare Organisation for the Aged" in terms of a Constitution adopted by its founding members at an inaugural meeting held in Cape Town on the 26th day of June 1953.
- (ii) During the ensuing period of more than a half-century, CPOA has considerably extended the range of its activities and services, which now involve the provision of community-based care for thousands of older persons in the Western Cape, with particular concern for those who are poor and needy.
- (iii) As a registered Non-Profit Organisation (NPO No. 003-044) duly constituted for a public benefit purpose, CPOA has been approved by the Commissioner for the South African Revenue Service in terms of Section 30 of the Income Tax Act (PBO No. 93/00/04/096) as a Public Benefit Organisation; and it has also been approved by the Commissioner for purposes of Section 18A.
- (iv) CPOA is committed to ensuring due compliance with all prescribed statutory requirements relevant to the conduct of its activities, including such as are prescribed in terms of the Older Persons Act, NO. 13 of 2006, and the Housing Development Schemes for Retired Persons Act, No. 65 of 1988, as amended, and accordingly due provision is made for the requisite participation of residents in decision-making, in particular through the composition and mandate of its various committees and substructures.
- (v) In consequence of changes enacted to relevant legislation, and the increasing complexity of CPOA's governance requirements, and in order to facilitate rationalization and greater efficiency in the governance of its operations, it has been decided to effect certain changes to CPOA's prior Constitution, whilst re-affirming its continuing commitment to the founding mission, purpose, and values.

B. DEFINITIONS



Unless the context clearly otherwise indicates, the undermentioned words and phrases shall bear the meanings assigned to them as follows, viz:

- B.1 **"The Association"** means the Voluntary Association known as the Cape Peninsula Organisation for the Aged (CPOA), which is to be henceforth governed in terms of this Constitution.
- B.2 **"Business Days"** means such number of days as may elapse between the happening of one event and another, on a basis that:-
1. Excludes the day on which the first such event occurs;
 2. Includes the day on or by which the second event is to occur; and
 3. Excludes any Public Holiday, Saturday or Sunday that falls on or between the days contemplated in the preceding sub-paragraphs.
- B.3 **"Board of Governors"** means the institutional structure, comprising the membership of the Association, which is to be constituted from time to time in accordance with the provisions of Clause 5, et seq.
- B.4 **"The Council"** means the institutional substructure, constituting the supervisory and governing body of the Association, which is to be constituted from time to time in accordance with the provisions of Clause 10, et seq.
- B.5 **"Councillors"** means the persons appointed to serve as members of the Council from time to time, including any co-opted or *ex officio* members, as contemplated by Clause 10.
- B.6 **"Constitution"** means the Constitution of the Association, as represented by this document.
- B.7 **"Friends of the Aged"** means the informal body of persons constituted in terms of Clause 23, to support the broad mission and purpose of the Association.
- B.8 **"Governors"** means the persons appointed from time to time to serve as the members of the Association, described collectively as the Board of Governors, in accordance with the provisions of clause 5, et seq.
- B.9 **"Housing Development Schemes for Retired Persons Act"** means the Housing Development Scheme for Retired Persons Act No. 65 of 1988, as amended, including the Regulations prescribed thereunder.

- B.10 **"Income Tax Act"** means the Income Tax Act No. 58 of 1962, as amended, including the Schedules and Regulations prescribed thereunder.
- B.11 **"Non Profit Organisations Act"** means the Non Profit Organisations Act No. 71 of 1997, as amended, including the Regulations prescribed thereunder.
- B.12 **"Month"** means a calendar month.
- B.13 **"Office"** means the Registered Office of the Association.
- B.14 **"Older Persons Act"** means the Older Persons Act No. 13 of 2006, as amended, including the Regulations prescribed thereunder.
- B.15 **"Prescribed Fiscal Provisions"** means the statutory provisions, which are prescribed in respect of Public Benefit Organisations approved in terms of Sections 30 and 18A of the Income Tax Act, as referred to in attachment "B" to this Constitution.
- B.16 **"Prescribed NPO Provisions"** means the statutory provisions, which are prescribed in respect of Non-Profit Organisations registered in terms of Section 13 of the Non Profit Organisations Act No. 71 of 1997, as amended, as referred to in Attachment "C" to this Constitution.
- B.17 **"Prescribed Statutory Provisions"** means all provisions prescribed by Statute from time to time which are relevant and binding upon the Association, including in particular, the Older Persons Act and the Housing Development Schemes for Retired Persons Act, and both the Prescribed Fiscal Provisions and the Prescribed NPO Provisions.
- B.18 **"Public Benefit Activities"** means the activities defined and listed as such from time to time in terms of the Ninth Schedule to the Income Tax Act.
- B.19 **"Republic"** means the Republic of South Africa.
- B.20 **"Transition Date"** means the 31st October 2013.

C. INTERPRETATION



This Constitution shall be interpreted with due regard to the following provisions, unless the context clearly otherwise indicates, viz:-

- C.1 Expressions with reference to Notices in writing shall be deemed to include reference to such Notices as may be delivered personally or otherwise communicated in written form by Registered Mail, Facsimile or E-Mail.
- C.2 References to any legislation, including the regulations prescribed thereunder shall be deemed to denote not only such legislation or regulations, as originally enacted or prescribed, but also as subsequently amended from time to time, including any re-enactment or substitution thereof.
- C.3 Words importing the singular shall include the plural; words importing the masculine, feminine, or neuter, shall include the others of such genders; and words importing persons shall include juristic persons; and vice versa in each instance.

D. TRANSITIONAL PROVISIONS

It is recorded that this Constitution came into effect on 31 October 2013 ("The Transition Date") pursuant to a Resolution passed by the Members of CPOA, at a duly-convened and quorate General Meeting, held at Cape Town on the 31st October 2013.

In order to ensure an orderly transition to the new governance dispensation contemplated by this Constitution, and to secure the benefits of both continuity and the retention of institutional knowledge and experience, the following transitional provisions were also adopted in terms of the aforementioned Resolution, viz:-

The persons who held office as members of the Council at the Transition Date, are deemed to have been appointed:

- D.1 *As the initial Councillors in terms of this Constitution, in which capacity they shall serve until the first-occurring Annual General Meeting following the Transition Date, whereupon the sequential retirement provisions of Clause 10 of this Constitution shall come into effect.*
- D.2 *As the initial Governors in terms of this Constitution, provided that at the first (1st) Annual General Meeting following the Transition Date, the Governors shall be required to procure the appointment of at least such number of additional Governors as may then be needed to satisfy the minimum number of Governors (but not exceeding the maximum number) as stipulated in terms of Clause 5 of this Constitution.*

1. CONTINUATION OF THE ASSOCIATION



The Organisation described as

CAPE PENINSULA ORGANISATION FOR THE AGED
(Abbreviated Name: CPOA)

shall be and remain a Voluntary Association, which shall henceforth be governed in terms of the provisions of this Constitution.

2. SOLE OR PRINCIPAL OBJECT

As an approved Public Benefit Organization, the Association is committed to a Sole or Principal Object which is to be carried into effect through the provision of facilities for the residential care of retired persons, and through ancillary activities which serve to promote the interests and wellbeing of the elderly persons in its care.

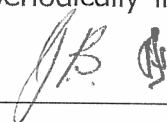
In compliance with its statutory obligations as an approved Public Benefit Organisation, the Association ensures that:

- 2.1 more than 90 per cent of the persons to whom such residential care is provided by the Association are over the age of 60 years;
- 2.2 nursing services and allied health services are provided by the Association; and
- 2.3 residential care for retired persons who are poor and needy is actively provided by the Association, without full recovery of cost.

As originally conceived by its Founders, the Association is a voluntary organisation constituted on a non-profit basis, which is reliant upon both governmental and public support. It aspires to be a responsible steward of its resources, in order that it may continue to provide sustainable quality care for the elderly, with particular concern for those who are poor and needy.

3. POWERS AND LIMITATION OF POWERS

- 3.1 As a Voluntary Association established and governed in terms of this Constitution, the Association is a juristic person, separate and distinct from its members, having all the legal powers and capacities of an individual, except insofar as a juristic person may be incapable of exercising any of such powers or having any of such capacities; subject however to the limitations set forth in clause 3.2 of this Constitution. As a *universitas personarum* the Association shall continue to exist notwithstanding changes that may occur periodically in



the identity of its members and the persons who serve from time to time on its Council and its Board of Governors.

3.2 The Association's aforesaid powers and capacities shall be restricted and qualified to the extent necessary to ensure due compliance with all Prescribed Statutory Provisions, including:-

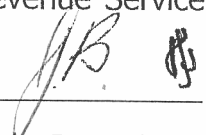
3.2.1 The Prescribed Fiscal Provisions, insofar as they may be or become applicable to the Association as an Approved Public Benefit Organisation; and as presently contemplated by Attachment "B" hereto;

3.2.2 The Prescribed NPO Provisions, insofar as they may be or become applicable to the Association by reason of its Registration in terms of the Non-Profit Organisations, as presently contemplated by Attachment "C" hereto; and

3.2.3 The further statutory provisions which are prescribed in terms of the Housing Development Schemes for Retired Persons Act, and the Older Persons Act, respectively.

3.3 The income and property of the Association whencesoever derived shall be applied solely towards the promotion of its Sole or Principal Object, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to any members of the Association; Provided that nothing herein contained shall prevent the Association from giving financial or other assistance to other approved Public Benefit Organisations, in support of their Public Benefit Activities, to the extent that such assistance may serve to promote the Sole or Principal Object of the Association; nor shall the foregoing prevent the payment in good faith by the Association of reasonable remuneration (commensurate with services actually rendered) to any officer or servant of the Association, including a Councillor or Governor, subject to due compliance with the constraints envisaged by the Prescribed Statutory Provisions.

3.4 In the event of the dissolution and winding up of the Association, the assets remaining after the satisfaction of all liabilities shall be given or transferred to one or more other approved Public Benefit Organisations having the same or similar objects as those of the Association, as may be determined by the Board of Governors in accordance with the provisions of Clause 21.4, subject to the approval of the Commissioner for the South African Revenue Service



(SARS); and subject further to compliance with all other Prescribed Statutory Provisions as may then be applicable.

4. GOVERNANCE STRUCTURE

4.1 The Association shall be constituted and administered through two interdependent and complementary substructures, viz:

4.1.1 THE BOARD OF GOVERNORS, as described in clause 5, which constitutes the body of members of the Association, responsible *inter alia* for the appointment of members of THE COUNCIL, and the exercise of such other powers and prerogatives as are hereinafter contemplated; and

4.1.2 THE COUNCIL, as described in clause 10, which constitutes the governing body of the Association, responsible *inter alia* for the appointment of the Chief Executive Officer, and for the exercise of fiduciary oversight in respect of the executive management of the Association.

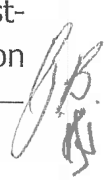
4.2 Without derogating from the distinct roles and responsibilities of the Board of Governors and the Council, respectively, the Chief Executive Officer may at his/her discretion establish from time to time such management or other special purpose committees and sub-structures as the Chief Executive Officer may deem necessary and appropriate, in order to ensure good governance, statutory compliance, and best practice in the conduct of the affairs of the Association.

In the exercise of their designated roles and functions, each special purpose committee or sub-structure may determine its own rules and procedures; save to the extent that it must conform to any directions or procedural rules that may be stipulated from time to time by the Chief Executive Officer.

5. BOARD OF GOVERNORS – COMPOSITION AND TERMS OF OFFICE

The Board of Governors shall constitute the body of individual persons (described as "Governors") who assume the role of members of the Association, with effect as from the Transition Date. Save as otherwise provided in clause 5.1 in respect of the initial period commencing from the Transition Date and terminating at the date of the first-occurring Annual General Meeting thereafter, there shall at all times be a minimum of Twenty-Five (25) and a maximum of Thirty-Five (35) individual persons, appointed as Governors, in accordance with the succeeding provisions, viz:

- 5.1 Notwithstanding the foregoing, during the period between the Transition Date and the first-occurring Annual General Meeting, the Board of Governors shall comprise those persons who held office as members of the Council of the Association as at the Transition Date, pending the appointment of further Governors in terms of the succeeding provisions.
- 5.2 At such first-occurring Annual General Meeting following the Transition Date, the persons who then constitute the initial Governors in terms of clause 5.1, shall be required to appoint at least such further number of Governors as may be necessary to satisfy the minimum number of Governors, subject to the maximum hereinbefore stated.
- 5.3 In effecting such additional appointments, and on the occasion of the subsequent appointment of Governors made from time to time, the Board of Governors shall have regard to the recommendations of the Nominations Committee to be established in terms of clause 15, although the Board of Governors shall not be bound to conform to such recommendations.
- 5.4 Without implying any enforceable or justiciable principle, the intention is recorded that the Board of Governors should be constituted from time to time with due regard to the broad principles of promoting proportionality and representivity, and procuring the appointment of persons with relevant knowledge, experience, and skills. Consideration may also be given to including within the members of the Board of Governors, persons with particular knowledge of the needs and concerns of special interest groups amongst the various beneficiaries of the Association - such as, Life Right Holders; Economic Tenants and Sub-Economic Tenants.
- 5.5 Persons elected from time to time as members of the Board of Governors, whether initially or subsequently, shall serve for Five (5) year terms, commencing and terminating at an Annual General Meeting. However, if in consequence of this provision, or for any other reason, more than One-Fifth (1/5) of the Governors at the date of an Annual General Meeting are due for retirement, no more than One-Fifth (1/5th) of their number shall be obliged to retire at that Meeting, being such as may be mutually agreed between them; but failing agreement, those who are required to retire shall be determined by the drawing of lots between them. For the avoidance of doubt, Governors who are required to retire in consequence of the completion of their terms of appointment shall remain eligible for re-election, if available.
- 5.6 Accordingly, at each Annual General Meeting, commencing with the first-occurring Annual General Meeting following the Transition Date, an election



shall take place in order to procure the appointment and/or re-appointment as Governors of such number of individual persons as may be needed at the relevant time to satisfy at least the minimum number, but not exceeding the maximum number, of Governors, as stipulated above.

5.7 Appointment to the office of Governor shall terminate on the occurrence of any of the following events, viz:

5.7.1 upon retirement, after completion of a Five (5) year term of appointment, in the absence of reappointment for a further term; or

5.7.2 upon delivery to the Association of a written notice of resignation; or

5.7.3 upon the passing of an ordinary Resolution to this effect by the Board of Governors adopted at a quorate General Meeting, duly convened in accordance with the requirements of this Constitution; or

5.7.4 upon the occurrence of any other fact or circumstance, as are referred to in clause 11 in the case of Councillors, which would render such person ineligible to continue to serve in that capacity.

6. BOARD OF GOVERNORS – ROLE AND RESPONSIBILITIES

In its capacity as representative of the membership of the Association, the Board of Governors shall meet from time to time in General Meeting as circumstances may require, in order to undertake its role and responsibilities which shall involve the following powers and functions, viz:-

6.1 To conduct from year to year the business of an Annual General Meeting;

6.2 To procure the appointment and election of such number of members of the Board of Governors, and of the Council, respectively, as may then be required;

6.3 To consider and determine issues of high-level policy, ethos, and strategic direction, but without impinging upon the oversight role and executive prerogatives of the Council, and the Chief Executive Officer, respectively;

6.4 To consider and advise with reference to any particular matters which may be referred to it by the Council;

6.5 To consider, and if deemed necessary, to adopt amendments to this Constitution; including any proposal to dissolve and/or reconstitute the



Association in the form of another legal structure, as contemplated by clause 21.

7. BOARD OF GOVERNORS – GENERAL MEETINGS

7.1 The powers and prerogatives of the Board of Governors shall be exercised at General Meetings which are to be convened from time to time, as circumstances may require, in accordance with the following provisions, viz:

7.2 Annual General Meetings

An Annual General Meeting of the Association shall be held within a period of Six (6) months after the end of each financial year;

The business of an Annual General Meeting shall include, *inter alia*:

- 7.2.1 The presentation and adoption of the Council's Annual Report;
- 7.2.2 The consideration of audited Annual Financial Statements;
- 7.2.3 The election of persons to serve, respectively, as Governors and as Councillors, including the election of the Association's Chairperson, and Deputy-Chairperson (if applicable) as contemplated by clause 14;
- 7.2.4 The appointment of an independent Auditor; and
- 7.2.5 Such other matters as it may consider necessary and appropriate.

7.3 Other General Meetings

Other General Meetings may be convened from time to time upon the requisition of:

- 7.3.1 The Council;
- 7.3.2 the Chairperson, or the Deputy-Chairperson, if any; or
- 7.3.3 any Five (5) Governors.

7.4 Notices of General Meetings



In respect of Annual General Meetings, not less than Fourteen (14) Business Days' prior written notice shall be given to all Governors, Councillors, and to the Auditor of the Association. In respect of any General Meeting which is convened in order to consider a proposed amendment to this Constitution, or a proposal to dissolve and/or reconstitute the Association, not less than Twenty-One (21) Business Days' prior written notice shall be given. Notices of General Meetings shall state in broad terms the business to be transacted at the Meeting. The accidental omission to give Notice to any particular person shall not invalidate any Resolution subsequently passed at the ensuing meeting, provided such meeting was Quorate.

7.5 Resolutions and Voting

7.5.1 At all General Meetings of the Board of Governors, a resolution put to the vote shall be decided by a show of hands, or alternatively by a poll, if the person chairing the Meeting shall so determine. In the event of a poll, it shall be taken in the manner directed by the person chairing the Meeting, and the result of the poll shall constitute the resolution of the Meeting.

7.5.2 Each Governor present or represented at a General Meeting shall be entitled to exercise One (1) vote; and all matters arising shall be determined by a simple majority of votes, save as otherwise stipulated in terms of clause 21. In the event of an equality of votes, the person chairing the Meeting shall be entitled to a second or casting vote, subject to any requirement for a special majority as contemplated by clause 21. For the avoidance of doubt, it is reiterated that only Governors shall have the right to attend, speak, and vote at General Meetings of the Board of Governors; and that any other persons attending the meeting may not vote, and may speak or otherwise participate in the business of the meeting, only by invitation.

7.6. Quorum

No business shall be transacted at a General Meeting unless a Quorum of Governors is present at the time when the Meeting proceeds to business. Subject to the terms of clause 7.7 in relation to adjourned meetings, a Quorum in respect of a General Meeting of the Board of Governors shall require the presence or other effective participation of at least the undermentioned minimum number of Governors (including their duly authorised Proxies), viz:

7.6.1 In respect of Annual General Meetings and other ordinary General Meetings – at least One-Third (1/3) of the appointed Governors at the relevant time shall

constitute the required Quorum;

7.6.2 In respect of any General Meeting specially convened to consider a proposed amendment to this Constitution (including a possible name change) – at least One-Half (1/2) of the appointed Governors at the relevant time shall constitute the required Quorum; and

7.6.3 In respect of any special General Meeting convened to consider a proposal that the Association be dissolved – at least Three Quarters (3/4) of the appointed Governors at the relevant time shall constitute the required Quorum.

7.7 Adjournment

In the event that the required Quorum is not present at any duly convened General Meeting, the meeting may stand adjourned to another date, to be determined by the person chairing the Meeting, which shall be not less than Seven (7) and not more than Twenty-One (21) Business Days thereafter. Written notice reflecting such adjournment shall be given to all persons entitled to receive notice of such Meeting. At the reconvened General Meeting, the Governors then actually present or deemed to be present, and including such as may be represented by Proxy shall be deemed to constitute a Quorum.

7.8 Chairperson of the Meeting

The Chairperson of the Association, or in his/her absence the Deputy-Chairperson, if any, shall preside as chairperson at every General Meeting of the Board of Governors, unless at a particular meeting the Board of Governors may itself otherwise determine. If there is no Chairperson or Deputy-Chairperson appointed at the relevant time, or if at any such meeting neither of them is present within Forty-Five (45) minutes after the time appointed for the commencement of the meeting, or if neither of them is willing to act as chairperson of the meeting, or if the Governors then present shall so decide, then those Governors who are present shall elect another of their number to act as chairperson for purposes of that meeting.

8. MINUTES AND MINUTE BOOK

8.1 Written Minutes shall be kept of all Meetings of the Board of Governors, and of the Council, respectively, which shall include:-

8.1.1 The names of the persons present or represented at the Meeting; and

8.1.2 A record of the proceedings and of the decisions and resolutions adopted.

8.2 The Minutes shall be signed by the person chairing the Meeting, or in his/her absence, by the person chairing the next succeeding Meeting.

8.3 Once approved, the Minutes may be inspected and copies shall be made available to each person present or entitled to be present at the Meeting, or their duly authorised representative.

9. **PROXIES**

9.1 A Governor who is unable to be present at a General Meeting shall be entitled to be represented at the meeting by another Governor duly appointed as the authorised proxy. The instrument appointing a proxy shall be in writing under the hand of the appointing Governor, or her/his agent, duly authorised in writing.

9.2 Although the Chairperson of a General Meeting of the Board of Governors may condone any non-compliance with these formalities, the Association shall be obliged to give effect to the appointment of a proxy if the signed instrument appointing the proxy shall have been duly delivered, faxed or e-mailed to the Association at least Forty-Eight (48) hours prior to the time for the commencement of the Meeting, or any adjournment thereof.

9.3 The instrument appointing a proxy shall be in the following form, or in such other substantially equivalent form as may be acceptable to the Chairperson of the Meeting:.

FORM OF PROXY

I the undersigned

_____[Name of Governor]

being a Member of the Board of Governors of the Association known as

CAPE PENINSULA ORGANISATION FOR THE AGED

do hereby appoint:

_____ of _____

whom failing _____ of _____

as my Proxy, to attend, vote and speak on my behalf at a General Meeting of the Organisation to be held at _____ on the _____ day of _____ 20 ; and at any adjournment thereof, as follows, viz:

	<u>In favour of</u>	<u>Against</u>	<u>Abstain from voting</u>
Resolution to			
Resolution to			
Resolution to			

(Indicate instruction to proxy by way of a cross in space provided above)

Unless so instructed, my proxy may vote as s/he thinks fit.

Signed this _____ day of _____ 20 .

(Note: A Governor entitled to be present at a General Meeting, shall be entitled to appoint any other Governor as Proxy to attend and speak, and on a poll to vote, in her/his stead.)

10. THE COUNCIL – COMPOSITION AND TERMS OF OFFICE

The Council shall comprise a minimum of Seven (7) and a maximum of Eleven (11) Governors elected to this office by the Board of Governors from amongst its members; and shall include any such persons as may be co-opted or appointed *ex officio* by the Council itself in accordance with the succeeding provisions, viz-

10.1 In accordance with the Transitional Provisions, the persons who were duly appointed as members of the Council as at the Transition Date shall be deemed to have been duly appointed as the initial Councillors in terms of this Constitution; and unless they should for any other reason cease to be Councillors, their terms of appointment shall be extended until the first-occurring Annual General Meeting following the Transition Date. At such first-occurring Annual General Meeting, the initial Councillors who are deemed to have been appointed as aforesaid, shall be required to retire, and an election shall then take place for the appointment of a new Council by the Board of Governors, which shall having due regard to the recommendations of the Nominations Committee appointed in terms of Clause 11.

10.2 At the second and at each subsequent Annual General Meeting thereafter, One

Third (1/3) of the Councillors then appointed shall be required to retire, being such of them as shall have completed their Three (3) year terms of office at the date of such meeting; provided that if less than One-Third (1/3) or more than One-Third (1/3) of the Councillors then appointed shall be due for retirement those who are required to retire, shall be such as may be mutually agreed, but failing such agreement, as may be determined by the drawing of lots.

- 10.3 For the avoidance of doubt, Councillors who cease to hold office by reason of these provisions, shall remain eligible for re-election for one or more further terms of Three (3) years each, unless disqualified or ineligible for any other reason; provided that no person shall be eligible for re-appointment after having served continuously as a Councillor for Three (3) successive terms of Three (3) years each, unless an intervening period of at least One (1) year shall have elapsed.
- 10.4 Accordingly, in order to give effect to these provisions, an election shall take place at each Annual General Meeting for the appointment by the Board of Governors of such number of Councillors as may then be required or deemed appropriate in the circumstances. In considering the candidacy of any person the Board of Governors shall have regard to, but shall not be bound by, the recommendations of the Nominations Committee; and the Board of Governors shall be entitled to elect such of its members to serve as additional Councillors, as it may deem appropriate.
- 10.5 Anything to the contrary hereinbefore contained notwithstanding, the Council shall itself also have the right to co-opt at its sole discretion not more than Three (3) persons to serve as additional members of the Council, provided it does not exceed in aggregate the maximum number of Councillors stipulated above. Any such persons as are co-opted by the Council shall serve until the next-occurring Annual General Meeting following their date of co-option, but if available and otherwise eligible, they may be elected or again co-opted thereafter.
- 10.6 The Chief Executive Officer (CEO) shall be deemed to be a member of the Council *ex officio*; and the Council shall have a discretion to appoint one or more other senior officers of the Association as *ex officio* members of the Council, subject to the maximum number of Councillors hereinbefore stated. Any such *ex officio* appointments shall be coterminous with the duration of the qualifying office; provided that the Council, shall have an overriding discretion at any time to suspend or terminate any such *ex officio* appointment should it

deem this appropriate, in which event it shall be under no obligation, express or implied, to provide reasons for its decision.

- 10.7 For the avoidance of doubt, it is hereby confirmed that no person shall be entitled to exercise a vote in respect of a Resolution of The Council or of the Board of Governors, which concerns that person's own appointment, suspension, or removal; and the person concerned shall be required to recuse themselves from the Meeting during the consideration of any such proposal.

11. TERMINATION OF APPOINTMENT AS COUNCILLORS

Anything to the contrary hereinbefore contained notwithstanding, the appointment of persons to serve as members of the Council shall terminate in any of the following circumstances – that is, if the person concerned:

- 11.1 dies or tenders their resignation in writing; or
- 11.2 completes the term of office for which such person was appointed, without subsequent re-election or co-option; or
- 11.3 becomes of unsound mind, or otherwise unfit or incapable of acting in this capacity; or
- 11.4 becomes disqualified in terms of either the Trust Property Control Act, or the Companies Act, or any legislation substituted therefor, from acting as a Trustee, Director, or in any other fiduciary capacity; or
- 11.5 is removed from office, in terms of a Resolution passed at a duly convened meeting of the Board of Governors; or
- 11.6 ceases to hold the position by virtue of which such person was appointed as an *ex officio* Councillor, or is otherwise removed from office by resolution of the Board of Governors or the Council, as the case may be; or
- 11.7 is removed from office as a Co-opted Councillor by resolution of the Board of Governors, or of the Council; or
- 11.8 is directly or indirectly interested in any contract or proposed contract with the

Association, and fails to declare a conflict of interest in the manner required by clause 18; or

- 11.9 fails to attend meetings of the Council, without leave of absence, for a consecutive period of Three (3) months, or on more than Three (3) occasions during any Twelve (12) month period.

12. THE COUNCIL – ITS' ROLE AND RESPONSIBILITIES

- 12.1 It shall be the fiduciary responsibility of the Council to appoint a Chief Executive Officer, and to exercise general oversight in respect of the executive management of the Association, in carrying out its Sole or Principal Object.
- 12.2 Persons appointed from time to time as Councillors must act at all times in the best interests of the Association and its intended beneficiaries as a whole; and conduct their fiduciary oversight responsibilities with due regard to the Required Standards of Board Conduct envisaged by clause 17.
- 12.3 In the exercise of its oversight powers and responsibilities the Council shall be vested with all such powers and discretions as it may deem necessary, including, but without limitation, the general Management, Investment and Administrative Powers set forth in Attachment "A".

13. PROCEEDINGS OF THE COUNCIL

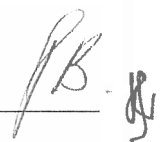
- 13.1 The Council shall meet monthly, or at such other intervals as it may find convenient; and it may adjourn and otherwise regulate its Meetings as it deems fit in order to deal with matters requiring its attention, and in order to discharge its fiduciary oversight responsibilities.
- 13.2 At all Meetings of The Council, the quorum necessary for the transaction of its business shall be a majority of the Councillors then appointed, comprising not less than the minimum number stated in clause 10, but subject to the continuing authority conferred by clause 13.9.
- 13.3 The Chairperson or Deputy-Chairperson may at their discretion convene a meeting of the Council at any time; but shall be obliged to convene a meeting if so requested at any time by at least Two (2) members of the Council.

- 13.4 Each member of the Council present at a Meeting shall be entitled to exercise One (1) vote.
- 13.5 A member of the Council must act personally, and shall not be entitled to appoint an alternate or proxy to act in his/her absence, or inability to act for any reason.
- 13.6 Questions arising at Meetings of the Council shall be decided by a majority of votes, provided that in the case of an equality of votes the Chairperson, or in her/his absence the Deputy Chairperson, shall be entitled to a second and casting vote.
- 13.7 If exceptional circumstances should so require, a "round robin" resolution shall be as valid as if passed at a duly convened meeting of the Council, provided such resolution is supported in writing by not less than 75% of all the Members of the Council then serving, who must number not less than the minimum number stated in clause 10 above. Unless stated to the contrary in the resolution itself, a round robin resolution shall be deemed to have been passed as at the date of the last signature thereto. A round robin resolution may be recorded in a single document or in several documents, as may be found convenient. A vote may be recorded not merely by signature, but also by such other secure means of communication, including intranet, internet, email, fax, e-mail, as the Chairperson, or in his/her absence the Deputy Chairperson may regard as acceptable.
- 13.8 The Council may delegate any of its powers and duties to an Executive Committee; a Remuneration Committee; or to any other Special-Purpose Committee, or to one or more Councillors, as it may deem appropriate from time to time. Any such Committee or Councillor(s) to which such delegation is made shall be required to conform to any directions or procedures that may be stipulated by the Council from time to time; and the Council shall not be divested of its powers and duties by reason of such delegation. In effecting a delegation, the Council may at its discretion, *inter alia* :
- 13.8.1 appoint, remove, and substitute the persons to whom such delegation has been made, or any one or more of them; and include appointees who are not themselves members of the Council;
- 13.8.2 nominate the person who shall serve as its Chairperson (and, if deemed appropriate, as Deputy-Chairperson) of any such Committee; and

- 13.8.3 stipulate the period of notice; the quorum; the voting; and other procedural formalities affecting meetings and decisions of such Committee.
- 13.9 Notwithstanding any temporary vacancy in the number of Councillors, the Council shall be deemed to be duly mandated and authorised to act and exercise its powers and prerogatives, provided such vacancy does not extend beyond a period of Six (6) months. However, if and for so long as the number of Councillors is reduced below the minimum number hereinbefore stated, the Council may act only, for the time being:
- 13.9.1 in order to preserve, secure and ensure the continuity of the activities and operations of the Association; and
- 13.9.2 in order to initiate a process, which may include the summoning of a meeting of the Board of Governors and/or the Council to cause necessary vacancies to be filled, and the number of Council Members to be increased at least to the required minimum.
- 13.10 All acts done by a meeting of the Council, or by any Committee duly constituted by the Council, or by any person/s acting under delegated authority from the Council, shall be valid and of full force and effect, notwithstanding that it may afterwards be discovered that there was some defect in the appointment of any person so acting in good faith, or that any such person was in fact disqualified to act in that capacity.
- 13.11 Meetings of the Council may be held at any time or times, and at any place or places, subject to due notice having been given; and such meetings may be held simultaneously in more than one place, provided the parties concerned are linked by telephone, video, tele-conference or other communication facility, in a manner which enables them to speak, hear, and participate effectively in the business of the meeting, without reliance upon an intermediary, as if actually present at the same time and place.

14. CHAIRPERSON – DEPUTY CHAIRPERSON

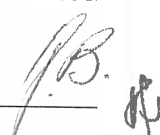
- 14.1 It shall be incumbent upon the Board of Governors to designate one of the elected members of the Council to the office of Chairperson of the Association. The person so appointed, shall preside, if available, not only as Chairperson of the Board of Governors, but also as Chairperson of the Council, unless otherwise determined by Resolution duly passed at the relevant meeting.



- 14.2 Should the Board of Governors deem this appropriate, it may also appoint another elected member of the Council as Deputy-Chairperson. Any such Deputy-Chairperson shall be available to chair meetings of the Council and of the Board of Governors, in the absence, or at the request, of the Chairperson.
- 14.3 If at any time no Chairperson or a Deputy-Chairperson shall have been appointed, or if neither of them is present or willing to act within Thirty (30) minutes of the time appointed for the commencement of the Meeting, the persons then present shall choose another of their number to preside *pro tem* as Chairperson of that meeting.
- 14.4 For the avoidance of doubt, the appointment of a Chairperson and/or Deputy Chairperson, may at any time be rescinded by a General Meeting of the Board of Governors at its sole and entire discretion should it deem this appropriate and in the best interests of the Association.
- 14.5 The Nominations Committee constituted in terms of clause 15 may also be requested to consider and make recommendations to the Board of Governors with regard to the selection of the person(s) to be appointed as Chairperson or Deputy Chairperson, as the case may be.
- 14.6 The appointment of a Chairperson (and Deputy Chairperson, if applicable) shall be for such period as the Board of Governors in its sole and entire discretion may determine; but shall not exceed a period of Five (5) years; provided that the initial Five (5) year term of a Chairperson may be extended at the discretion of the Board of Governors for such further period, not exceeding Five (5) years, as the Board of Governors in its sole discretion may consider to be in the best interests of the Association.

15. NOMINATIONS COMMITTEE

- 15.1 In order to assist the Board of Governors to identify and appoint suitably qualified and eligible persons as members of The Council, and as members of the Board of Governors, as the case may be, a Nominations Committee shall be constituted, whose responsibility shall be to consider and make recommendations to the Board of Governors and/or to the Council with regard to the eligibility and suitability of persons who may be considered for election or co-option.
- 15.2 The Nominations Committee shall comprise Five (5) persons to be appointed as follows, viz:-



- 15.2.1 The Chairperson duly appointed in terms of clause 14, (or in the absence, or at the request, of the Chairperson, then the Deputy Chairperson), shall serve *ex officio* as a member of the Nominations Committee, and shall act as its Chairperson.
- 15.2.2 The Chief Executive Officer shall likewise serve *ex officio* as a member of the Nominations Committee.
- 15.2.3 The remaining Three (3) Members of the Nominations Committee shall be persons appointed by the Board of Governors at its sole and absolute discretion, and may include not more than Two (2) persons who are themselves neither Governors nor Councillors.
- 15.3 Save for persons who serve on the Nominations Committee *ex officio*, the remaining Members of the Committee shall hold office for periods to be determined by the Board of Governors at its discretion, but not to exceed Three (3) years from date of appointment, though retiring Members shall be eligible for reappointment for one or more additional terms of Three (3) years each.
- 15.4 The required quorum for the conduct of the proceedings of the Nominations Committee shall be all Five (5) of its Members, duly appointed as aforesaid. The Nominations Committee shall seek to reach consensus with regard to its decisions and recommendations; but should this prove unattainable, its decisions and recommendations may be adopted by a simple majority.
- 15.5 In order to undertake its mandated responsibilities, the Nominations Committee shall, on an annual basis, or from time to time as may be required, address an invitation in writing to all Governors and members of the Council, inviting them to propose persons who they may consider suitable for appointment. The Committee may also at its discretion address similar invitations to other persons and institutions who are involved with or otherwise concerned with the objectives and activities of the Association.
- 15.6 For the avoidance of doubt it is confirmed that the Nominations Committee shall also be entitled of its own initiative to consider the availability and suitability of persons other than those who may have been specifically nominated or suggested, as aforesaid.

- 15.7 Having given due consideration of the eligibility and merit of each person so nominated, or deemed to have been nominated as aforesaid, the Nominations Committee shall prepare and deliver to both the Council and to the Board of Governors, a confidential written report concerning its recommendations with regard to the persons it considers most suitable for appointment. The Nominations Committee shall be entitled, but not obliged, to provide reasons or motivation for its recommendations.

16. REMUNERATION AND REIMBURSEMENT

- 16.1 In accordance with the founding principle of the Association with respect to volunteer service, all persons appointed from time to time as Governors or Councillors shall serve in an honorary capacity; provided that, should circumstances so require persons serving as Councillors may be granted an honorarium, in recognition of a significant commitment of time, and of substantive responsibilities assumed, but subject in each instance to the prior approval of the Board of Governors.
- 16.2 Notwithstanding the foregoing, Governors and Councillors may, at the discretion of the Council or the Board of Governors, be granted reimbursement of actual travelling, subsistence, and other expenses necessarily and reasonably incurred by them in addressing their duties and responsibilities on behalf of the Association.
- 16.3 Should it deem this appropriate, the required authorisation may differentiate between the amount of the honorarium, and/or the basis for reimbursement awarded to particular appointees; and it may also stipulate conditions, including that any honorarium or reimbursement shall be conditional upon actual attendance at a meeting throughout its duration; and/or upon such other pre-requisites as may be deemed appropriate in the circumstances.
- 16.4 In conformity with what is commonly regarded as "best practice", the Annual Financial Statements of the Association shall include particulars showing, on an individual basis, the amount of any such honorarium or reimbursement that may be awarded to a Councillor or Governor, excluding ordinary remuneration paid to any person in the fulltime employment of the Association, who serves as a Councillor in an *ex officio* capacity.



17. REQUIRED STANDARDS OF CONDUCT

Persons who serve from time to time as members of the Council shall be required to exercise their fiduciary and oversight responsibilities with reference to the affairs of the Association in a manner that satisfies their common law and statutory obligations, and without derogating from the generality thereof, which would satisfy the standards of conduct prescribed by statute with respect to Directors of a Non-Profit Company. Accordingly this Constitution includes, for information purposes, by means of Attachment "D", an extract from the Companies Act No. 71 of 2008, as amended (Section 76), which has reference to the standards of conduct required of a Director, on the basis that any reference therein to a Director shall be construed as referring to a Councilor, and any reference to a Company shall be construed as referring to this Association.

18. CONFLICTS OF INTEREST

No transaction involving the Association shall be void or voidable merely by reason of the existence of a conflict of interest between the Association and one or more of its Governors or Councillors, as the case may be, provided that:

- 18.1 Any person having a conflict of interest must promptly declare the existence of such interest prior to any decision or resolution being taken in respect of an affected transaction;
- 18.2 The person concerned must make full disclosure in good faith of all relevant facts and circumstances affecting such interest;
- 18.3 Following such disclosure, the person concerned must be recused from any further part in the discussion or consideration of the affected transaction;
- 18.4 Approval of the transaction shall require a Resolution to be passed unanimously by all other Governors or Councillors present at the relevant meeting, who must represent at least sufficient to constitute a quorum;
- 18.5 All material details of the transaction, and of the discussions leading up to the vote, must be minuted and recorded.

19. ANNUAL FINANCIAL YEAR, BOOKS OF ACCOUNT, AND ANNUAL FINANCIAL STATEMENTS.

- 19.1 The Annual Financial Year of the Association shall be as from 1 April in each year to 31 March in the succeeding year.
- 19.2 The Council shall require assurance through its Chief Executive Officer that the Association maintains proper books of account, and accounting records. Financial Statements (including Capital and Revenue accounts) shall be prepared at least once a year, in accordance with generally accepted accounting practice in South Africa, in order to clearly reflect the financial affairs of the Association. The books of account and financial records of the Association, and its Annual Financial Statements shall be audited and certified by an independent practising Chartered Accountant, as contemplated by the Auditing Professions Act, No 26 of 2005, as amended, who is to be appointed by the Board of Governors from time to time at the Annual General Meeting.
- 19.3 A copy of the Annual Financial Statements shall be made available to each Councillor and to each Governor as soon as possible after the close of each financial year.
- 19.4 The Accounting Records shall be kept at The Office, or at such other place or places as the Council may approve, and shall be open to inspection on request by any member of the Council at reasonable times.

20. BANKING ACCOUNTS AND SIGNATURES

- 20.1 One or more banking accounts, as may be deemed necessary by the Council, shall be established from time to time in the name of the Association with duly registered banking institutions; and all payments received shall be promptly deposited to the credit of such banking account/s, through which the Association's financial transactions must be conducted.
- 20.2 All cheques, promissory notes, and other banking instruments requiring signature or authorisation on behalf of the Association, shall be signed or authorised for payment, as the case may be, in such manner and by such persons as the Council may so authorise and depute for this purpose from time to time.

21. AMENDMENTS TO CONSTITUTION AND DISSOLUTION

21.1 By Resolution duly adopted by the Board of Governors at a General Meeting specially convened for this purpose at which sufficient Governors are present or represented by proxy to constitute the required Quorum in terms of clause 7.6:-

- 21.1.1 the terms of this Constitution may be amended; and/or
- 21.1.2 the name of the Association may be changed; and/or
- 21.1.3 the Association may ultimately be dissolved;

Provided that written notice of any such proposed Resolution is duly given to all Governors at least Twenty-One (21) Business Days prior to the date of the Meeting at which it is to be considered; and provided further that such notice must clearly state the nature of the Resolution to be proposed.

Any such Resolution shall be deemed to have been duly adopted if it is supported by no less than Two-Thirds ($\frac{2}{3}$) of the Governors present at a duly convened and quorate General Meeting of the Board of Governors.

- 21.2 Notwithstanding anything to the contrary hereinbefore contained, a Resolution signed by all Members of the Board of Governors, shall be as valid as if passed at a duly convened General Meeting.
- 21.3 A copy of any Amending Deed, or Resolution, as the case may be, shall be submitted forthwith upon its adoption, to the Commissioner, and if applicable, also to the Director appointed in terms of the Nonprofit Organisations Act.
- 21.4 In the event of the dissolution of the Association, any net residue of funds or assets remaining after due provision for all liabilities and expenses, shall be given or transferred to one or more other Approved Public Benefit Organisations, as may be determined by the Board of Governors at its discretion; provided that any such portion of the net residue as may arise in consequence of donations made by taxpayers to whom receipts have been issued in terms of section 18A of the Income Tax Act, may only be given or transferred to one or more other eligible beneficiary institutions as may be approved by the Commissioner for purposes of Section 18A of the Income Tax Act.

22. INDEMNITY

- 22.1 Subject to any limitations imposed by law, members of the Council and of the Board of Governors, and other office-bearers of the Association, shall be absolved from liability in respect of acts done and decisions taken by them in good faith on the Association's behalf.
- 22.2 No member of the Council, the Board of Governors, or other office-bearer of the Association shall be held liable for the acts, receipts, neglects or defaults of any other Councillor, Governor, or office-bearer, or for having joined in any receipt or other act for conformity, or for any loss or expense suffered by the Association through the insufficiency or deficiency of title to any property acquired by the Association; or for the insufficiency or deficiency of any security in or on which the monies of the Association may be invested; or for any loss or damage arising from the bankruptcy, insolvency or delictual act of any person with whom any monies, securities or effects are deposited or for any loss or damage caused in any other way, which occurs in the execution of their roles and responsibilities, unless it arises in consequence of that person's dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

23. FRIENDS OF THE AGED

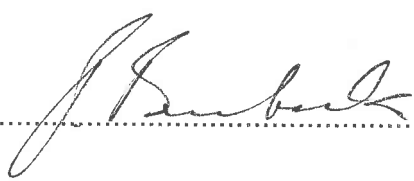
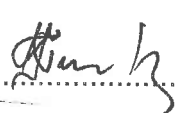
In order to establish a support structure for the Association, and an opportunity for the Association to communicate with members of the general public whom it seeks to serve, there shall be constituted an informal body to be described as "Friends of the Aged", or such other name as may be deemed appropriate by the Board of Governors, whose role shall be of a consultative and advisory nature only, with a view to enabling the Association to benefit from the advice and support of members of the public who seek to support the aims and objectives of the Association.

24. HONORARY PATRONS

The Board of Governors may at its discretion, from time to time, appoint one or more persons as Honorary Patrons to the Association, in recognition of a special contribution, and to acknowledge the importance of a special relationship which that person may have with the Association.

25. ADOPTION OF CONSTITUTION

This Constitution and annexure attached hereto was approved and accepted by Members of the Organisation at a Special General meeting held on 31st October 2013.

Chairperson:.......... Vice Chairperson:..........

First Registered under the Fundraising Act: 5th February 1987

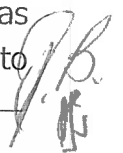
Registered under the Non-Profit Organisations Act: November 1999

ATTACHMENT "A"

MANAGEMENT, INVESTMENT AND ADMINISTRATIVE POWERS

Subject to any applicable limitations set forth in the **Prescribed Fiscal Conditions** (Attachment "B"), in administering the affairs of the Association, the Council shall have the following Powers, in addition to any other powers and discretions which are referred to or implied by the attached Constitution, viz:

1. To receive and administer grants, subsidies, donations and bequests for purposes of the ASSOCIATION; and to enter into contracts or tenders with National, Provincial and Local tiers of Government, or any other, in furtherance of the Objects of the ASSOCIATION.
2. To acquire assets, and to invest and reinvest the funds of the ASSOCIATION in a manner permitted by law, as may be deemed appropriate, in the sole and entire discretion of the Council.
3. To retain, or take over assets and investments made available to the ASSOCIATION; and to retain them in the form in which they are received, or to realise and re-invest the proceeds thereof.
4. To realise or vary any investments from time to time forming part of the funds of the ASSOCIATION, and re-invest the proceeds thereof in any authorised investments.
5. To allow funds and investments forming part of the assets of the ASSOCIATION to remain uninvested, or in their original state of investment upon acquisition by the ASSOCIATION.
6. To lend money, with or without security, and with or without provision for interest, as may be deemed appropriate in the furtherance of the Objects of the ASSOCIATION.
7. To borrow on such terms and conditions as may be considered appropriate for purposes of the ASSOCIATION, including to enable the repayment of liabilities; the making of loans in furtherance of its Objects; the acquisition or development of real estate; the preserving or acquisition of assets or investments; the subscription of shares, with powers from time to time to consent to alterations or variations in the terms applicable thereto; and as security for any moneys so borrowed, the Association shall be entitled to



mortgage, pledge, either generally or specifically, or otherwise encumber, all or any portion of the assets of the ASSOCIATION, in such manner and upon such terms and conditions as it may deem fit, with the right also to replace any such borrowings or security.

8. To guarantee (either gratuitously, or for a consideration) the performance of contracts or obligations of any third party, in order to promote the Objects of the ASSOCIATION, upon such conditions, and with or without security, as The Council in its sole and absolute discretion may deem fit; provided such transaction is entered into in pursuance of the Object of the ASSOCIATION.
9. To exercise the voting powers attached to any shares forming part of the assets of the ASSOCIATION, as may be considered appropriate and in the best interests of the ASSOCIATION; and to enter into arrangements as may be considered necessary for the purpose of causing the liquidation, reconstruction, or amalgamation of any Company, Trust, or other entity.
10. To deal with, and turn to account, any of the assets of the ASSOCIATION, by development, exchange, sale, lease or otherwise and in exercising any powers of sale, to cause such sale to be effected by public auction, tender, or private treaty as may be considered appropriate.
11. To purchase or otherwise acquire movable and immovable property for the advancement of the purposes and activities of the ASSOCIATION in pursuance of its Objects.
12. In respect of any immovable property donated to, or forming part of the assets of the ASSOCIATION, at any time:
 - 12.1 to develop, maintain, exchange, sell, lease or otherwise deal with any such immovable property or any portion thereof, and to grant rights or options in respect thereof; including Leasehold; Life Rights and other rights of use and occupation; to register mortgage bonds; and to procure the maintenance, repair, improvement, demolition or reconstruction of any buildings situated thereon;
 - 12.2 to execute any act or deed relating to alienation, partition, exchange, transfer, mortgage, hypothecation, or otherwise, in any Deeds Registry, Mining Titles or other public office; to deal with servitudes, usufructs, limited interests or otherwise; and to make any applications, grant any consents and agree to any amendments, variations, cancellations, cessions, releases, reductions



substitutions or otherwise generally relating to any deed, bond or document; and to obtain copies of deeds, bonds or documents for any purposes, and generally to do or cause to be done any act whatsoever in any such Registry or office.

13. To transfer shares, property rights, or other assets into the name of a Nominee Company or other fiduciary, to hold such assets on behalf and for the benefit of the ASSOCIATION.
14. To cause any Company, Trust, or other entity to be formed, and to appoint its Directors, Trustees or other office bearers; or otherwise exercise control over its activities and affairs, directly or indirectly, for the purpose of holding specific assets or undertaking specified activities which serve to promote the Objects of the ASSOCIATION.
15. To sue for, recover and receive all debts or sums of money, goods, effects and other things whatsoever, which may become due, owing, payable or vested in the ASSOCIATION; and bring sequestration, liquidation or judicial management proceedings against any person.
16. To defend, oppose, adjust, settle, compromise or submit to arbitration all accounts, debts, claims, demands, disputes, legal proceedings and matters which may subsist or arise between the ASSOCIATION and any person and, for the purposes aforesaid, to do and execute all necessary acts or documents.
17. To attend meetings of creditors indebted to the ASSOCIATION whether in insolvency, liquidation, judicial management or otherwise, and vote for the election of a Trustee, liquidator or judicial manager, and also vote on all questions submitted to any such meeting of creditors, and generally exercise the rights of a creditor.
18. To exercise the voting powers attaching to any share, stock, debenture, or unit, in such manner as the ASSOCIATION may deem fit, for the purpose of amalgamation, merger or compromise.
19. To exercise and take up or sell and realise any rights of conversion or subscription attaching, accruing or appertaining to any share, debenture, or unit forming part of the assets of the ASSOCIATION.



20. To appoint a Chief Executive Officer and such other personnel as may be considered appropriate, from time to time, whether in a part-time or full-time capacity; and to determine their remuneration, and terms of employment, and delegate to the Chief Executive Officer or any other designated person, such powers and authorities with respect thereto as may be deemed appropriate.
21. To establish employee benefit schemes, pension and retirement funds, and to make such other provision for the wellbeing of employees as may be considered appropriate and desirable.
22. To give receipts, releases or other effectual discharges for any sums of money or things recovered.
23. To treat as income any periodic receipts, though received from wasting assets; and to make provision for the amortisation thereof, if deemed necessary and appropriate.
24. To determine what receipts shall be treated as income and what receipts shall be treated as capital, in respect of any liquidation dividend, or return of capital, or capitalisation of profits, in the case of companies whose shares are being held as portion of the assets of the ASSOCIATION; and generally to decide any question which may arise as to what constitutes capital and what constitutes income, by effecting an apportionment in such manner as The ASSOCIATION may consider fit.
25. To employ accountants, attorneys, agents, brokers, or other professional advisers to transact any business or furnish any service of whatever nature required to be done in furtherance of the Sole or Principal Object of the ASSOCIATION; and to pay all such charges and expenses so incurred as a first charge, and not to be responsible for the default of any such appointees, or for any loss occasioned by their employment.
26. To cause the ASSOCIATION to be merged with any other approved Public Benefit Organisations having the same or similar purposes; and/or to incorporate the ASSOCIATION as a Non-Profit Company, and to transfer all or any of its assets in favour of such other entity, subject to the approval of the Commissioner, and due compliance with all relevant prescribed and contractual obligations.
27. Generally, to deal with assets or investments in such manner as may be considered to be in the interests of the ASSOCIATION and for the advancement of its Sole or Principal Object.

ATTACHMENT "B"

PRESCRIBED FISCAL CONDITIONS

**[In terms of Sections 18A and 30 of the Income Tax Act No. 58 of 1962,
as amended] ("The Act")**

Pursuant to the Association (hereinafter referred to in this Schedule as "the Organisation") having been approved by the Commissioner as a "Public Benefit Organisation" in terms of Section 30, and also for purposes of Section 18A of The Act, the Council shall be bound by, and shall at all times conform to, the Conditions prescribed from time to time in terms of the relevant legislation, including any amendments thereto which may from time to time be enacted or prescribed. Such Conditions as are presently applicable to the Association at the date of adoption of this Constitution are repeated hereunder for information purposes, but remain subject to any amendments or additions thereto which may at any time be enacted or prescribed.

1. As the Organisation has been approved by the Commissioner for purposes of Section 18(A)(1) of the Act, the Organisation shall:-

- 1.1 Ensure that any eligible donations actually paid or transferred to the Organisation, are applied solely to undertake, or to enable other Eligible Beneficiaries to undertake Public Benefit Activities as listed from time to time in Part II of the Ninth Schedule; including the provision of funds or assets to assist other Eligible Beneficiaries to conduct such Activities, including such as may be determined by the Minister from time to time for purposes of section 18A of the Act. The term "Eligible Beneficiaries" shall include any agency referred to in section 18A(1)(bA) of the Income Tax Act; and any department of government of the Republic in the national, provincial or local sphere, as contemplated in section 10(1)(a) of the Act.
- 1.2 Ensure that within 12 months of the end of any year of assessment during which a qualifying donation is received, the Organisation distributes or incurs the obligation to distribute at least Seventy-Five Percent (75%) of the funds so received in respect of which a tax receipt was issued by the Organisation, enabling a deduction thereof to be effected by a taxpaying donor in terms of section 18A of the Income Tax Act; unless the Commissioner upon good cause shown agrees to waive, defer or reduce such obligation to distribute, as contemplated by the proviso to section 18A(2A)(b)(i) of the Act, and in that event, subject to any such conditions as the Commissioner may determine.

- 1.3 Comply with, and have regard to, any such additional requirements as may be prescribed by the Minister from time to time in terms of section 18A(1), or as may be otherwise imposed by the Commissioner in terms of the Act, including any additional requirements prescribed by the Minister as binding upon Eligible Beneficiaries carrying on any specified activity before donations shall be allowed as a deduction for purposes of section 18A.
- 1.4 Ensure that an audit certificate is obtained and retained by the Organisation, confirming that all donations received or accrued by the Organisation in that year, in respect of which section 18A receipts were issued by the Organisation, were utilised in the manner contemplated in subsection 2(A) of the Act.
- 2. As the Organisation has been approved by the Commissioner as a "Public Benefit Organisation" in terms of Section 30 of the Act, the Organisation shall:-**
- 2.1 Carry on the public benefit activities of the Organisation in a non-profit manner, and with an altruistic or philanthropic intent.
- 2.2 Ensure that no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the Organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.
- 2.3 Ensure that each such activity is carried on by the Organisation for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).
- 2.4 Comply with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of the Organisation are directed in the furtherance of its object.
- 2.5 Submit to the Commissioner a copy of the document, under which it is established and constituted.
- 2.6 Be required in terms of such constituting document, to have at least three persons, who are not "connected persons" in relation to each other, to accept the fiduciary responsibility of the organisation; and that no single person directly or indirectly controls the decision-making powers of the Organisation.

- 2.7 Be prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity), and be required to utilise its funds solely for the object for which it has been established.
- 2.8 Be required on dissolution to transfer its assets to :
- 2.8.1 any public benefit organisation which has been approved in terms of the relevant provision of the Income Tax Act; or
- 2.8.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of that Act, which has as its sole or principal object the carrying on of any public benefit activity; or
- 2.8.3 the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a) of the Act, which is required to use those assets solely for purposes of carrying on one or more public benefit activities.
- 2.9 Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform 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 (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) 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.
- 2.10 Be required to submit to the Commissioner a copy of any amendment to the documentation under which it is established and constituted.
- 2.11 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.

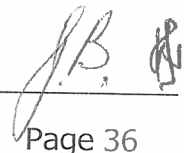
- 2.12 Not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered; and has not and will not economically benefit any person in a manner which is not consistent with its objects.
- 2.13 Comply with such reporting requirements as may be determined by the Commissioner.
- 2.14 Take reasonable steps to ensure that any funds, which it may provide to an association of persons as contemplated in paragraph 10 (iii) of Part 1 of the Ninth Schedule, have been utilised for the purpose for which they have been provided.
- 2.15 Not use its resources directly or indirectly to support, advance, or oppose any political party.
- 2.16 Ensure that any books of account, records or other documents relating to its affairs are :
- 2.16.1 where kept in book form, retained and carefully preserved by any person in control of the organisation, for a period of four years after the date of the last entry in any such book; or
- 2.16.2 where not kept in book form, are retained and carefully preserved by any person in control of the organisation, for a period of four years after the completion of the transactions, acts or operations to which they relate.

ATTACHMENT "C"

PRESCRIBED NPO PROVISIONS CONCERNING REGISTERED NON-PROFIT ORGANISATIONS (NPO'S) REGISTERED IN TERMS OF THE NON-PROFIT ORGANISATIONS ACT, NO. 71 OF 1997, AS AMENDED.

By reason of the ASSOCIATION having been registered in terms of the Nonprofit Organisations Act, No 71 of 1997, as amended, this Constitution makes due provision for the eligibility requirements prescribed in terms of Section 12(2) of that Act, as follows:-

1. The ORGANISATION'S name is stated in clause 1 of this Constitution.
2. The ORGANISATION'S main and ancillary objectives are stated in clause 2 of this Constitution.
3. The ORGANISATION'S income and property shall not be distributable to its members, or to its Directors or other office-bearers, except as reasonable compensation for services rendered, as stated in clause 3.3 of this Constitution.
4. The ORGANISATION is a body corporate, and shall have an identity and existence distinct from its Members, Directors, and other office-bearers, as stated in clause 3.1 of this Constitution.
5. The ORGANISATION shall continue to exist notwithstanding periodic changes that may occur in the composition of its membership and office-bearers, as stated in clause 3.1 of this Constitution.
6. The members of the ORGANISATION and its office-bearers shall have no rights in the property or other assets of the ORGANISATION by virtue of their being members, or other office-bearers, as stated in clause 3.3 of this Constitution.
7. The powers of the ORGANISATION are referred to in Clauses 6 and 12, as read with Attachment "A" to this Constitution.
8. The structures and mechanisms for governance of the ASSOCIATION are set forth in clause 4 *et seq* of this Constitution.



9. The rules for convening and conducting meetings, including quorums required for, and the minutes to be kept at those meetings, shall be as stated in clauses, 7, 8 and 13 of this Constitution.
10. The manner in which decisions are to be made shall be as stated in clauses 7 and 13 of this Constitution.
11. The ORGANISATION'S financial transactions must be conducted by means of a banking account, as stated in clause 20 of this Constitution.
12. The date for the end of the ORGANISATION'S financial year shall be as stated in clause 19.1 of this Constitution.
13. The procedure for changing the provisions of this Constitution shall be as stated in clause 21 of this Constitution.
14. The procedure by which the ORGANISATION may be wound up or dissolved shall be as stated in clause 21 of this Constitution.
15. If the ORGANISATION is wound up or dissolved, any asset remaining after all liabilities have been met, must be transferred to another eligible non-profit Organisation, as stated in clause 21.4 of this Constitution.

ATTACHMENT "D"

PRESCRIBED NPC PROVISIONS

REPRESENTING SECTION 76 OF THE COMPANIES ACT, NO. 71 OF 2008, AS AMENDED, WHICH IS INCORPORATED IN THIS CONSTITUTION, FOR INFORMATION PURPOSES, ON THE BASIS THAT IT REPRESENTS THE REQUIRED STANDARD OF BOARD CONDUCT, AS CONTEMPLATED BY CLAUSE 17 OF THIS CONSTITUTION.

- (1) In this section, "**Director**" includes an alternate Director, and -
- (a) a prescribed officer; or
 - (b) a person who is a member of a Committee of a Board of a Company, or of the Audit Committee of a Company, irrespective of whether or not the person is also a member of the Company's Board.
- (2) A Director of a company must:-
- (a) not use the position of Director, or any information obtained while acting in the capacity of a Director—
 - (i) to gain an advantage for the Director, or for another person other than the Company or a wholly-owned subsidiary of the Company; or
 - (ii) to knowingly cause harm to the Company or a subsidiary of the Company; and
 - (b) communicate to the Board at the earliest practicable opportunity any information that comes to the Director's attention, unless the Director—
 - (i) reasonably believes that the information is—
 - (aa) immaterial to the Company; or
 - (bb) generally available to the public, or known to the other Directors; or
 - (ii) is bound not to disclose that information by a legal or ethical obligation of confidentiality.
- (3) Subject to subsections (4) and (5), a Director of a Company, when acting in that capacity, must exercise the powers and perform the functions of Director—
- (a) in good faith and for a proper purpose;
 - (b) in the best interests of the Company; and
 - (c) with the degree of care, skill and diligence that may reasonably be expected of a person—
 - (i) carrying out the same functions in relation to the Company as those carried out by that Director; and
 - (ii) having the general knowledge, skill and experience of that Director.

- (4) In respect of any particular matter arising in the exercise of the powers or the performance of the functions of Director, a particular director of a Company—
- (a) will have satisfied the obligations of subsection (3)(b) and (c) if—
 - (i) the Director has taken reasonably diligent steps to become informed about the matter;
 - (ii) either—
 - (aa) the Director had no material personal financial interest in the subject matter of the decision, and had no reasonable basis to know that any related person had a personal financial interest in the matter; or
 - (bb) the Director complied with the requirements of Section 75 with respect to any interest contemplated in subparagraph (aa); and
 - (iii) the Director made a decision, or supported the decision of a Committee or the Board, with regard to that matter, and the Director had a rational basis for believing, and did believe, that the decision was in the best interests of the Company; and
 - (b) is entitled to rely on—
 - (i) the performance by any of the persons—
 - (aa) referred to in subsection (5); or
 - (bb) to whom the Board may reasonably have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the Board's functions that are delegable under applicable law; and
 - (ii) any information, opinions, recommendations, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (5).
- (5) To the extent contemplated in subsection (4)(b), a director is entitled to rely on—
- (a) one or more employees of the Company whom the Director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;
 - (b) legal counsel, accountants, or other professional persons retained by the Company, the Board or a Committee as to matters involving skills or expertise that the Director reasonably believes are matters—
 - (i) within the particular person's professional or expert competence; or
 - (ii) as to which the particular person merits confidence; or
 - (c) a committee of the Board of which the Director is not a member, unless the Director has reason to believe that the actions of the Committee do not merit confidence.