

..... **HOUSING**
PRIMARY CO-OPERATIVE LIMITED

NAME

- 1. (a) The name of the Co-operative is
..... **HOUSING PRIMARY CO-OPERATIVE LIMITED.**
- (b) The abbreviated name is **(CO-OP.) LTD.** (if applicable)
- (c) The Co-operative may trade as (if applicable)

FORM OF CO-OPERATIVE

- 2. This is the Constitution of an undertaking formed as a **Primary Housing** co-operative with limited liability in terms of the provisions of the Co-operatives Act, 2005 (Act No. 14 of 2005).

INTERPRETATION

- 3. In this Constitution, words shall have the same meaning as in the Co-operatives Act, 2005 (Act No. 14 of 2005) and

"application" means an application for membership papers in the form approved by the board of the housing management co-operative;

"board" means the board of directors referred to in clause 40;

"building and financing proposal" means a proposal prepared by the housing management co-operative with details of the project as contemplated in clause 8(2);

"common spaces" means spaces which can be used by any person ;

"membership papers" means the documents setting out a member's rights in respect of the share and a member's contribution in respect of the house which are all tied together;

"housing co-operative" means
..... **HOUSING**
PRIMARY CO-OPERATIVE LIMITED which is incorporated in terms of

the Act, or any person or entity acting on its behalf;

- "house rules" means the house rules with which members of the housing co-operative must comply and which may be amended by the board;
- "house" means a house constructed or to be constructed on a personal space;
- "member's contribution" means an amount paid by a member to the housing co-operative which amount shall only be repayable to the member to the extent that a new incoming member identified by the housing co-operative and approved by the board, in accordance with the savings principle, shall be prepared to buy the membership papers for an amount not less than the aggregate of the share amount and such payment;
- "personal space" means the serviced erf, in respect of which the member has the rights of use, occupation, enjoyment and such other rights as set out herein;
- "project" means the project for which the housing co-operative has been established;
- "savings principle" means the principle in terms of which members have to make savings with a savings and credit co-operative associated with the housing co-operative according to agreed targets in accordance with rules adopted by special resolution by the housing management co-operative and which decides the member's place in the queue to qualify for a house;
- "the Act" means the Co-operatives Act, 2005 (Act No. 14 of 2005) or any substituting Act;
- "user charges" means charges which a member must pay to the housing co-operative on a monthly basis as set out in clause 24(1) below,

a reference to one gender includes the others; the singular includes the plural, and the other way round and headings are not taken into account in the interpretation and should the Act be repealed, any reference to a section shall be interpreted to the corresponding new section.

PLACE OF BUSINESS

4. The main place of business of the housing co-operative is situated at **(place)** **(province)**.
5. The housing co-operative may not have any branches.

OBJECTS

6. (1) The object of the housing co-operative is to provide housing for its members, develop, hold and maintain immovable property and to make such houses available for use by its members or to sell such houses to its members in accordance with the co-operative principles.
- (2) Without in any way detaching from the provisions of the Act, the following co-operative principles shall serve as guidance in the activities of the housing co-operative:
- (a) the principle of open and voluntary membership;
 - (b) the principle of democratic control by members of the housing co-operative;
 - (c) the principle of fair economic participation by members;
 - (d) the principle of a commitment to serve the housing needs of members;
 - (e) the principle of autonomy and independence;
 - (f) the principle that co-operatives should educate and train members and provide information to members to enable them to meet their obligations;
 - (g) the principle of co-operation amongst co-operatives; and
 - (h) the principle of the acknowledgement of a wider community and a responsibility towards future generations.

POWERS

7. (1) The board must, subject to the Act and this Constitution, for and on behalf of the housing co-operative, exercise the following powers:
- (a) acquire and make houses owned by the housing co-operative available for use by members;
 - (b) open accounts with financial institutions registered under the Banks Act, 1990;
 - (c) raise loans or overdraw a banking account if a special resolution of members has been obtained in terms of clause 76 of this Constitution;
 - (d) invest money not immediately required in financial institutions registered in terms of the Banks Act, 1990;
 - (e) become a member of another co-operative, or of any association or organisation which promotes any matter in which the housing co-operative has an interest; and
 - (f) provide associated services to its members as are customary for a social housing institution, subject, however, to subclause (3) below.
- (2) Apart from the powers mentioned in sub-clause (1), but subject to the Act and the provisions of this Constitution, the housing co-operative must have all such powers as may be necessary to carry out its objects.
- (3) If the houses owned by the housing co-operative has received government housing subsidies, it must comply with the rules of these subsidies and may not carry on business activities except:-
- (a) dealing with houses in accordance with the rules applying to the institutional subsidies granted under the housing subsidy scheme; and

- (b) letting any non-residential component contained in its immovable property in any manner in which it deems fit.
- (4) The housing co-operative may not sell any house without a decision of its members, as contemplated in clause 70.¹
- (5) The housing co-operative must not issue any surety, indemnity or other security, except if a special resolution has been adopted.

HOUSING SPECIFIC ISSUES

- 8. (1) The housing co-operative is established after a building and financing proposal by the housing management co-operative has been made.
- (2) The building and financing proposal sets out details of the project, the various issues, relating to the construction or upgrading of immovable property comprising houses and the financing thereof, the relevant time frames and funding commitments, any member's contribution required to finance the project, the proposed monthly charges or installments pertaining to the houses, drawings, descriptions and specifications of the houses, cost estimates, and an operating budget from which the housing co-operative shall not be able to change their plans substantially without the consent of the members of the housing co-operative.
- (3) The housing co-operative must also be a member of the secondary housing co-operative and the members of the primary co-operative must comply with the obligations imposed by the Constitution of the secondary housing co-operative.
- (4) The housing co-operative once registered must enter into a management contract with the secondary housing co-operative regarding the financial and administrative management of the housing co-operative which may only be terminated by special resolution in terms of clause 74(c).
- (5) If the housing co-operative is established prior to the completion of construction or upgrading in respect of the project has been completed, the secondary housing co-operative must -
 - (a) inform members regularly of progress in the project;
 - (b) not require the payment of any member's contribution before written confirmation by the auditors that the financing commitments set out in the building and financing plan are in place, unless held in trust with an attorney or auditor.²
- (6) The member who has paid a membership contribution is entitled to a certificate to that effect.

1 Note this for purposes of installment sales.

2 Compliance difficult but essential

- (7) Where building work has not started within one (1) year of payment of the member's contribution to the housing co-operative, the member may cancel its application.
- (8) If changes are made to the building and financing proposal, not required for technical or financial reasons or ordered by public authority, which has the effect that any member's contribution needs to be increased by more than ten percent (10%) or if the standard of the house is significantly lowered, a member who has not approved the change may cancel or withdraw the application. If changes are made that have those results and a member who was not informed in advance, can cancel the agreement irrespective of whether the change was necessary or ordered. A member's right to cancel or withdraw the application according to this clause falls away if he or she has not exercised such right within three (3) months of learning of the circumstances.
- (9) If an application is cancelled as contemplated in sub-clause 8, the housing co-operative must repay any member's contribution, and redeem the share against payment of an amount calculated in accordance with clause 32.
- (10) A member may, while he or she is unable to occupy the house, sub-let the house to the housing co-operative, which may sub-let the house for an agreed period. The house may only be leased to other persons with consent of the board on such terms and conditions as may be decided by the board.

MEMBERSHIP

- 9. (1) The member of the housing co-operative is a person who has a share in the housing co-operative.
- (2) Any person who is over the age of eighteen (18) years may apply for membership documents if houses are available and if he or she complies with these Constitutions and clause 10 (2) specifically.
- (3) The number of members and shares shall be limited to the number of houses owned by the housing co-operative.
- (4) Only human beings may be members of the housing co-operative.
- (5) A member may only have one (1) share .
- (6) A member must also pay a entrance fee as contemplated in clause 10(1) and an annual subscription fee payable on or before the _____ day of _____ each year.

APPLICATION FOR MEMBERSHIP

- 10. (1) Application for membership papers must be made on the form provided for and approved by the board of the housing management co-operative for that purpose and must be

accompanied by the share amount in the amount of R.....
(..... Rand) and the member's contribution. The Applicant shall pay a non-refundable membership fee in an amount decided by the board of the housing co-operative from time to time.

- (2) The board must consider every application for membership and has the right to accept an application or reject an application on the basis that -
 - (a) somebody else has a better right to be allocated a house because of the savings principle;
 - (b) where the proposed member is not qualifying for a housing subsidy and it is a subsidized project;
 - (c) the proposed member is not able to pay the price decided by the board in respect of membership papers as set out in clause 24(1) or cannot pay the required monthly charges; or
 - (d) the proposed member is not a member of the housing management co-operative or the affiliated savings and credit co-operative.
- (3) The board must, within one (1) month after receipt of an application for membership papers, notify the applicant of its decision and where an application for membership must be refunded to him or her and written reasons must be given if the application is declined.
- (4) The initial members of the housing co-operative must be decided by the housing management co-operative, subject to the Act.

COMMENCEMENT OF MEMBERSHIP

11. A person becomes a member of the housing co-operative when his or her application for membership has been accepted by the board.

ISSUE OF SHARES AND MINIMUM SHAREHOLDING

12. (1) The shares issued by the Co-operative must all be of the same class, ranking and nominal value.
- (2) When the co-operative is founded each member must have a minimum of (number of) shares.
- (3) From the time that the co-operative is three years in operation, every member shall be bound to hold a minimum number of shares in the co-operative prescribed by a scale which shall be approved by members in general meeting on the recommendation of the board: Provided that the scale must relate to business done by members with the co-operative. Whenever it appears that a member does not hold the number of shares prescribed by the applicable scale, the

board may issue to him without application therefore such number of shares as will make up the insufficiency and% of the nominal value of such shares shall immediately become payable upon such issue, the balance becoming payable in accordance with the provisions of clauses 14 and 15 of this Constitution: Provided that before such issue of shares is made to any member, he shall be afforded an opportunity, of at least 30 (thirty) days, to acquire the requisite number of additional shares from any other member holding shares in excess of the above scale. The amounts that are already paid up can be utilized to pay up all the shares to the same extent.

13. The nominal value of each share must be **R.....** (..... Rand) of which% (..... percent) shall be payable in money on application and the balance, subject to the provisions of clause 14 in such instalments, on such dates and at such times and places as may be determined by the Board.
14. No call on shares must exceed **25%** (twenty five percent) of the nominal value per share or be payable within **30** (thirty) days after the date on which the last preceding call was payable.
15. At least **14** (fourteen) days prior to the date on which a call is payable written notice thereof must be given.
16. Calls on shares must be numbered consecutively from one upwards and each call must apply to all unpaid up shares issued or held at the time such call is made as well as to all such shares issued after such call has been made.
17. Every new member who is responsible for calls made before he became a member and which are payable in terms of clause 16, shall be allowed to pay such calls over the same period as would have been allowed him had he been a member at the time such call was or such calls were made: Provided that if more than one call was made the periods within which the calls were payable must run consecutively and not concurrently and that the period meant in this clause extends from the time a call was made to the time such call became payable.
18. The Board may receive from any member willing to pay the same, all or any part of the nominal value of the share or shares held by him, and such payment shall constitute a reduction, to the extent of the payment so made, of the liability of the member in respect of the payment of the nominal value of the share or shares subscribed for by him, notwithstanding that no call be due and payable.
19. In the event of a member being in default in the payment of a call referred to in clause 13 on the specified date, interest on such overdue amount shall be payable at a rate to be determined by the Board from time to time as from the date of default.

CERTIFICATES OF SHARES AND LOANS

20. Share certificates and Loan Certificates shall be issued in such form, as the Board shall determine. These certificates shall state the name of the Co-operative, that the Co-operative is subject to the Act, the name of the person to whom it is issued and that the certificate represents membership shares in, or member loans to, the Co-operative and the number of the membership shares or the amount of the

member loans.

RIGHTS AND OBLIGATIONS OF HOUSING CO-OPERATIVE AND MEMBERS

21. The housing co-operative and a member must, both in respect of a house have the rights and obligations set out in clauses 22 to 34 to the extent that they apply to the housing co-operative or the member, as the case may be.

Use of Personal Spaces

22. The member may use, occupy and enjoy his or her personal space and the member may, together with other members jointly use and enjoy the common spaces.

Building of Houses

23. (1) The housing co-operative will have services installed to the personal space.
- (2) The members will construct homes on the personal spaces in accordance with plans prepared by consultants and members of the housing co-operative and approved by the housing co-operative and the municipality or if the members so decided, a contractor may be appointed.
- (3) The construction of the homes will be undertaken with materials acquired by the housing co-operative for the member and with the assistance and guidance of the housing co-operative in its capacity as a support organisation.³
- (4) Where a contractor is not appointed, the members undertake to abide by the general instructions of the technical advisors and/or supervisors of the housing co-operative in the construction of the home.
- (5) Any housing construction activity using "the peoples housing process" is not subject to the protection of the National Home Builders Registration Council or the Housing Consumers Protection Measures Act, 1998, and both the member and Housing Co-operative therefore undertake to take due care in the building of the home to avoid structural defects.

User Charges

24. (1) Members will have to pay user charges as required in terms of the use agreement which charges will be payable in advance on or before the first day of every month.
- (2) The board may from time to time increase the user charges where the costs to the housing co-operative increase for whatever reason.
- (3) The housing co-operative must give the member thirty (30) days written notice of any

3 We need to distinguish here between this co-operative and future projects

proposed increase and the reasons for the increase.

- (4) The housing co-operative must furnish the member with receipts for any payments under this clause.

Municipal Services

25. Members must conclude an agreement with the municipality to provide water and electricity and members must pay for this directly to the municipality. The housing co-operative may, at any time, if it so chooses, make payment to the municipality and to recover the costs from the member, in which case such cost will be added to the amounts in 24(1).

General Duties of the Housing Co-operative as Support Organisation⁴

26. The housing co-operative, as is required in terms of the peoples housing process, will –
 - (1) employ planning and engineering consultants to assist Members to plan services in their personal spaces and homes;
 - (2) consider and where satisfied approve plans for homes and services;
 - (3) ensure that the completion of different construction phases (pipes, roads, foundations, walls and roof) are checked by an independent technical certifier before handover;
 - (4) negotiate and pay material suppliers;
 - (5) employ a supervisor and/or technical advisor to check the building process;
 - (6) advise the members on how to manage small contractor(s) and/or mutual help building;
 - (7) open a special account to receive and administer subsidies;
 - (8) pay-out funds from the account according to the approved budget; and
 - (9) generally perform the duties of the support organisation in terms of the people's housing process.

Maintenance

27.
 - (1) The housing co-operative must maintain common spaces. Each personal space must be maintained by the members.
 - (2) The housing co-operative must repair major structural defects contemplated by the Housing Consumer Protection Measures Act, 1998) that may arise within twelve (12) months as from the date of the member moving in.
 - (3) The housing co-operative is not responsible for any damage to homes caused by the

4 Keep in for future projects

members and his/her dependants, visitors or invites, which damage must be repaired by the member.

- (4) The housing co-operative may adopt rules, policies, and/or procedures for the maintenance of the personal and common spaces with which members must comply.

Personal Occupation

28. (1) The member must personally reside in the home (with his/her dependants) or such other persons approved by the housing co-operative and may not allow any other person to occupy the home instead of the members.
- (2) The member may not rent-out the house, or any part thereof, without the permission of the housing co-operative.

Inspection

29. The representatives of the housing co-operative may at all reasonable times enter and inspect the personal space and the house. Where possible, such inspection must be arranged with the member beforehand.

Upgrading/Structural Alterations

30. (1) The member may not make any structural alterations, and/or additions to a home constructed on the personal space or the common space without first getting approval from the housing co-operative, and the housing co-operative may not refuse approval in respect of the personal space unreasonably.
- (2) Any alterations or additions made must –
 - (a) be carried out from the member's own pocket;
 - (b) be in accordance with any other reasonable conditions of the board of the housing co-operative;
 - (c) be approved subject to the applicable policies of the board.
- (3) In the event of a transfer of shares in terms of in clause 38, the new member will in addition to the amount calculated in terms of clause 38(2) also pay an amount equal to the cost of the improvements approved by the board of the housing co-operative minus the amount of any damages to the unit as decided by the housing co-operative in their sole discretion.

Injury

31. The housing co-operative will not be responsible for any damage or injury to the member, unless willful.

No Set-Off

32. The member may not refuse to pay any money or part of any money which it owes to the housing co-

operative as set-off against any money which the housing co-operative may owe to the member or, if the housing co-operative breaches any terms of this agreement or of any other reason.

House Rules, Policies and Procedures

33. (1) The member will comply with the house rules at all times.
- (2) The house rules are for the convenience, comfort, and general well being of the members and to promote the appearance and management of the affairs of the housing co-operative.
- (3) The board of the housing co-operative, may make such policies and procedures as may be necessary to regulate the affairs of the co-operative, maintenance and the collection of user charges as contemplated in clause 24.

Notices

34. If any party needs to give notice to the other party, such notice must be in writing and must be delivered, to the member, by hand, at the personal space and to the housing co-operative, by hand, at the registered office of the housing co-operative respectively, in which case delivery shall be deemed to have happened when the notice was so delivered.

LIABILITY OF MEMBERS

35. (1) The liability of a member due to his or her membership against creditors of the housing co-operative must be limited to the payment of any amount owing by him or her to the housing co-operative in terms hereof.
- (2) The liability of an interim member due to his or her membership must be limited to an amount equal to the nominal value of the shares in the housing co-operative held by him or her in so far as that amount has not been paid up.

TRANSFER OF MEMBERSHIP

36. (1) Membership may be transferred only with -
- (a) the transfer of a share and member's contribution, if any, in respect of the specific house which shall all be tied together;
- (b) the approval of the board which must be satisfied satisfy that the person to whom it will be transferred is qualified to be a member of the housing co-operative, as contemplated in clauses 9 and 10.
- (2) The board may at any time refuse to approve and register a proposed transfer.

- (3) A transfer may be opposed -
- (a) because the transfer does not comply with clause 10(2);
 - (b) for any other reason as long as it is reasonable, including previous unacceptable or unsocial behaviour.
- (4) The board may order the transfer of a share to a specific person if -
- (a) the transferee qualifies in terms of clause 10(2);
 - (b) payment of the amount contemplated in clause 38(2) is made.
- (5) An order contemplated in clause 36(4) must be in writing and must set out -
- (a) the reason for the order;
 - (b) the fact that if such transfer is not effected within a period set out in the notice, a court order ordering such transfer shall be obtained out of the members own pocket;
 - (c) that the member's membership must come to an end when he or she stops being owner of the share.
- (6) The transfer of any membership must be in writing in such form and signed in such manner as the board from time to time may decide.
- (7) When such transfer has taken place the board must issue to the transferee a membership card, if the membership cards were issued to other people.

CANCELLATION OF MEMBERSHIP

37. (1) The membership of a member who has died may in terms of clause 36 be transferred to a member of that deceased member's family residing in the house and who regards the house as its primary home or another person appointed by the executor of the deceased member's estate subject to the approval by the board of the proposed transferee and that person being able to pay for membership papers to comply with clause 10(2)(c). In the event of such transfer not taking place, the membership of the deceased member must be cancelled by resolution of the board.
- (2) Membership may not be cancelled just because the member wishes so.

Transfer of shares

38. (1) A member wishing to end his or her membership of the housing co-operative must apply to the board by completing the standard form approved by the board or the board of the secondary housing co-operative for that purpose. Membership will be transferred to a new

incoming member decided by the board in terms of the principles set out in clause 10(2), after paying the share amount and the member's contribution whereupon the share amount and the member's contribution, shall be paid to the outgoing member, as well as an amount decided in terms of clause 30(3).

- (2) To the extent that there has been damages to the house an amount may be decided by the board and deducted from the amount paid to the outgoing member as contemplated in clause 30(3).
- (3) A member upon ending his membership has a claim against the co-operative for any alterations or additions made and approved by the board under clause 30(2)(b).

Expulsion

39. (1) A member who repeatedly breaches a provision of this Constitution or the house rules, or any duty imposed on him or her by the housing co-operative under the Act or in terms of this Constitution, may be expelled from the housing co-operative by special resolution.
- (2) The expulsion of a member may be revoked by resolution of the board at any time.
- (3) A member must not be expelled from the housing co-operative unless he or she has been given prior written notice of the intention to expel him or her or to recommend to members that he or she be expelled.
- (4) The notice to such member must contain the following particulars -
 - (a) the reasons for the intended expulsion with reference to the non-compliance with a specific provision of this Constitution or the house rules; and
 - (b) a time when, and place where the member may appear in person, with or without witnesses, before the meeting or to which he or she may send a written statement signed by him or herself setting out his or her objections to the intended expulsion.
- (5) Upon a court of law making an order for the eviction of a member because of non-compliance with the provisions of this Constitution the member's membership is terminated automatically.
- (6) Termination of membership does not terminate any liability under this Constitution.
- (7) In the event of termination of membership, the share must -
 - (a) be cancelled and its value must be applied towards any indebtedness of the member; or
 - (b) be transferred to a person approved by the board in accordance with the criteria set out in clause 10(2).
- (8) Notwithstanding the provisions of clause 38(1), where a member is in default with payments in terms of clause 24(1), and the member has failed to pay or to make acceptable

arrangements regarding payment with the housing co-operative after having received a final demand to effect payment, the member's right of occupation and use may be terminated by notice to the member.

- (9) Where member's membership has been terminated a member, or the member's occupational right is terminated the member must leave the house on a date notified by the housing co-operative and the member must on such date hand over the keys to the housing co-operative.

BOARD OF DIRECTORS

Management of housing co-operative

40. (1) The affairs of the housing co-operative is managed and controlled by a board consisting of at least and not more than of directors. The directors must, subject to the Act and this Constitution, exercise the powers and duties of the housing co-operative.
- (2) The board must, subject to the approval of the members at the next general meeting, decide the number of directors from time to time. If, however, the members do not approve the decision of the board and a vacancy arises, such vacancy must be regarded as a casual vacancy to be filled in terms of clause 48.
- (3) Representatives may be appointed to attend board meetings and to provide expertise to the board, as stipulated in clause 42. The total number of representatives must not be more than the number of directors. Representatives shall not have voting rights at meetings of the board.
41. Without limiting clause 48 and 50 of this Constitution, directors must be elected at the annual general meeting. Retiring directors may be re-elected.
42. (1) If houses owned by the housing co-operative were funded from government housing subsidies, the Provincial Housing Development Board, or anybody that may take its place, shall be entitled to appoint a representative to attend meetings of the board.
- (2) The housing co-operative must also be entitled to appoint a representative to attend the meetings of the board as long as a management agreement exists between the housing management co-operative and the housing co-operative.

Persons not competent to be Director

43. No person shall hold the office of Director if -
- [a] A person is of unsound mind;
- [b] A person is an unrehabilitated insolvent;
- [c] A person who has at any time been convicted (whether in the Republic or elsewhere) of theft,

fraud, forgery, perjury, or any offence involving dishonesty in connection with the formation or management of a Co-operative or other corporate entity.

Term of office

44. (1) The term of office of the directors of the housing co-operative is be **two years**.
- (2) The directors to retire each year must be those who have been longest in office since their last election at the annual general meeting. Members who became directors on the same day, if they cannot agree who must step down among themselves, the members who must step down must be decided by paper vote.

Nomination of directors

45. (1) Candidates for the position of director must be nominated openly at the annual general meeting held for the purpose of electing one or more directors.
- (2) Without limiting clauses 50 and 51, a member including a retiring director, qualifies for election as director only if he is nominated in terms of sub-clause (1).
- (3) (a) If the number of candidates nominated is not more than the number of vacancies on the board to be filled, such candidate or candidates shall be declared elected at the annual general meeting.
- (b) If the number of candidates nominated is more than the number of vacancies on the board, as many directors as there are vacancies shall be elected from the nominees at the annual general meeting.
- (c) If not enough or no candidates are nominated to fill the vacancies on the board or the nominated candidates are not enough, such vacancies shall be regarded as casual vacancies to be filled in accordance with clause 48.

Voting of members

46. (1) At the election of directors a member must vote for as many candidates as there are vacancies to be filled on the board, and those candidates receiving the highest number of votes must be declared elected.
- (2) Subject to this Constitution and the Act, the method to be followed in electing directors is decided by the chairperson of the meeting.

Register of directors

47. A register of directors must be kept at the registered office of the housing co-operative in which the following particulars in respect of each director is entered -
- (a) his or her full name and address;
- (b) the date of his or her election;

- (c) the term of office; and
- (d) the name and address of each co-operative or company of which he or she is a director.

Casual vacancy on the board

48. Any casual vacancy occurring on the board during the year must be filled until the next annual general meeting by a member appointed, by the directors, subject to clause 43. At the said annual general meeting a member must, subject to this Constitution, be elected to fill the casual vacancy. Any director elected at such annual general meeting must not hold office for a period longer than the unexpired portion of the period of office of the director whose office became vacant.

Vacation of office

49. A director must vacate his or her office -
- (a) if he or she becomes disqualified in terms of clause 43 to hold the office of director; or
 - (b) if he or she is absent from more than three ordinary meetings of the board in a row without its leave (and such leave shall not be granted for a period covering more than six ordinary meetings in a row, unless the absence be on the business of the housing co-operative); or
 - (c) upon the expiry of thirty (30) days, or such shorter period as may be allowed by the board, after he or she has resigned as a director of the housing co-operative; or
 - (d) if he or she is relieved of his or her office in terms of clause 50; or
 - (e) if he or she is more than one (1) month in arrears in respect of any amount owing in terms of clause 24.

Director may be relieved of office

50. A director may, after due notice, be relieved of his or her office by resolution of a general meeting before the end of his or her term of office and another member may be elected in his place at that meeting. Nominations for the election of such a director must be made at the meeting. If that meeting does not fill the vacancy it must be regarded as a casual vacancy. A director so elected must not hold office for a period longer than the unexpired portion of the term of office of the vacating director.

Chairperson and vice-chairperson of board

51. (1) At the first meeting of the board held after the formation meeting and thereafter at the first meeting of the board held after every annual general meeting of members or it is necessary, the directors must elect from among themselves a chairperson and vice-chairperson.
- (2) The vice-chairperson must act as chairperson whenever the chairperson is absent or unable to act as chairperson, and if both the chairperson and vice-chairperson are absent or unable to carry out the functions of the chairperson, the board must elect another director to act as

chairperson during such absence or incapacity.

Vacation of office by chairperson and vice-chairperson

52. (1) The chairperson of the board of the co-operative must no longer act as chairperson if he or she -
- (a) stops to be a director of the housing co-operative; or
 - (b) resigns as chairperson; or
 - (c) is relieved of the office of chairperson by the board; or
 - (d) is no longer a member of the housing co-operative.
- (2) Sub-clause (1) similarly applies, to the vice-chairperson of the board.

Board meeting

53. (1) A meeting of the board must be called by the board or the chairperson of the board or any two directors of the housing co-operative.
- (2) A majority of the directors constitutes a quorum of a meeting of the board.
- (3) Questions arising at a meeting of the board must be decided by a majority of the directors present at the meeting and in the case of an equality of votes, the chairperson of the board or the person acting as chairperson has a casting vote in addition to his or her normal vote.

Interests in contracts

54. A director of a housing co-operative who has a personal interest in a proposed contract which the housing co-operative considers entering into, or who after the contract has been entered into by the housing co-operative, has such a personal interest, must disclose to the housing co-operative the full particulars relating to the nature and extent of his or her interest in accordance with section 37 of the Act, and may not vote in respect of such contract or proposed contract with the housing co-operative or any matter resulting therefrom, and if he or she does so vote, his or her vote must not be counted.

Minutes of meetings

55. (1) The board must, subject to section 35 of the Act, keep minutes of all proceedings of meetings of the board or a committee thereof and, within two (2) months of the date of such meeting cause the said minutes to be entered in one or more books kept for that purpose at the registered office of the housing co-operative. Minutes must be available at the registered office during normal office hours for members who want to look at it.
- (2) Minutes of a meeting of the board drawn up in accordance with sub-clause (1) must be submitted at a board meeting as soon as possible, but not later than at the first board meeting held after the expiry of two months, reckoned from the date on which the meeting

to which the minutes refer was held.

Remuneration

56. All necessary and actual out-of-pocket expenses incurred by directors by reason of their attending meetings of the board or being engaged on the business of the housing co-operative may be refunded to them.

By-laws and house rules

57. Subject to clause 61 of this Constitution, the members may make by-laws or house rules or amend same provided they are not contrary to this Constitution.

Delegation of powers

58. (1) The board may delegate one or more of its powers to a manager or to a committee, the members of which are directors of the housing co-operative, or authorise such a manager or committee to perform a duty of the housing co-operative or to act as its representative or agent.
- (2) Any director or committee of directors so appointed must, follow the rules or instructions as given by the board in performing the powers.
- (3) Clause 55 similarly applies to a committee.

Insurance

59. Unless otherwise resolved by special resolution of the members, the board must provide for insurance of the houses and may obtain insurance for any cash or other assets, against the loss or damage thereof, and in respect of liability of the housing co-operative in regard to ordinary business risks. The member undertakes not to do anything, which will increase the risk to the insurer. The cost of the insurance of each member's house will be recovered from the member and will be payable as set out in clause 24 (1).

MEETINGS OF MEMBERS

60. (1) A Co-operative must hold:
- (a) Its first annual general meeting within **18** months of registration of the Co-operative;
- (b) Subsequently annual general meetings within **6** months after the end of the preceding financial year.
- (2) The annual general meeting must:
- (a) Appoint an auditor;

- (b) Approve a report of the Board on the affairs of the Co-operative for the previous financial year;
 - (c) Approve the financial statements and auditor's report where applicable for the previous financial year;
 - (d) Elect Directors; and
 - (e) Decide on the future business of the Co-operative.
61. The housing co-operative may from time to time, also, hold extraordinary general meetings of its members to deal with any matter relating to its affairs specifically set out in the notice calling the meeting.
62. Without limiting clause 61, the meeting of members may order any investigation the meeting may consider necessary in relation to the business of the housing co-operative and appoint an investigator who must report back to the meeting.
63. (1) An annual general meeting must be called by the board.
- (2) An extraordinary general meeting must be called -
- (a) by the board; or
 - (b) by at least two (2) directors of the housing co-operative; or
 - (c) by five (5) or more members of the housing co-operative constituting in number at least twenty percent (20%) of all the members of the housing co-operative: Such members are not entitled to convene an extraordinary general meeting unless they have beforehand in writing petitioned the directors to call such a meeting and the meeting is not called within twenty one (21) days calculated from the date the petition was handed over, or unless for any reason there are no directors to whom such a petition can be addressed.
- (3) Any meeting called in terms of sub-clause (2)(c) by members must, as far as possible, be called and held in the same manner as is for meetings called and held by the board incurred by the members.

Notice of general meeting

64. (1) A general meeting must be called by at least fourteen (14) days notice in writing to each member of the housing co-operative. The fourteen (14) days must exclude the day on which the notice is served or deemed to be served and of the day for which it is given.
- (2) The notice calling the meeting must over and above the time and place of the meeting state the purpose for which it is called.
- (3) A notice must be delivered personally to the member at its house and if the member is not there it can be left at the house.

- (4) Non-receipt by a member of a notice of a general meeting of the housing co-operative does not render such meeting invalid.

Quorums

65. A quorum for a general meeting shall be constituted -
- (a) by at least five members, if the number of members of the Co-operative is not more than fifty;
 - (b) by at least one tenth of the members of the Co-operative, if the number of members of the Co-operative is more than fifty but not more than two hundred;
 - (c) by twenty members plus at least one percent of the members of the Co-operative in excess of two hundred, if the number of members of the Co-operative is more than two hundred.
66. No item of business shall be transacted at any general meeting unless a quorum of members is present during the time when the meeting is considering that item.
67. (1) If within one hour from the time appointed for the meeting a quorum is not present, the meeting -
- (a) if convened by members or in consequence of a petition of members, must be cancelled;
 - (b) if otherwise convened, must be adjourned to the same day in the next week at the same time and place, or if that day is a public holiday, to the next day following which is not a public holiday.
- (2) If the same hall or building is not available for an adjourned meeting it may be held at another venue within convenient distance if members are advised of the change of venue either by notice posted at the original venue or by some other means.
- (3) If a quorum is not present within one hour after the time fixed for an adjourned meeting, the members present, provided they are not less than five in number, shall be deemed to constitute a quorum: Provided that a special resolution may not be passed by such a meeting.

Chairperson of general meetings

68. (1) The chairperson of the board, or in his or her absence the vice-chairperson, or in absence of both, another director elected by the meeting, must act as chairperson of the annual general meeting or an extraordinary general meeting with the exception of a meeting convened in terms of sub-clause (2) hereof.
- (2) A person elected by the meeting must act as the chairperson of an extraordinary general meeting called by petition of members.

Voting by members

69. At all meetings of the co-operative, each member must have one (1) vote.
70. (1) Any matter for decision by a general meeting must be decided by means of a vote on a show of hands or by ballot.
- (2) A vote by ballot shall not be held unless it is demanded by at least five members present at the meeting and entitled to vote in a vote by ballot.
- (3) A vote by ballot shall be held in such manner as the chairman decides. Scrutineers must be nominated to decide the result of the paper vote, which must be declared by the chairperson of the meeting as the resolution of the meeting at which the vote was demanded.
- (4) A declaration by the chairperson that a resolution has, on a show of hands or by ballot vote been carried, or carried unanimously or by a particular majority, or lost, and an entry to that effect in the minutes of the proceedings of the meeting, shall be conclusive proof thereof, without evidence as to the number or proportion of votes recorded for or against such resolution.
71. If no objection is raised in terms of this Constitution against the validity of any vote, every vote cast at a meeting which has not been disallowed shall for all purposes whatsoever be deemed to be valid.
72. In the case of an equality of votes, the chairperson of the meeting shall have a casting vote in addition to his or her normal vote.
73. Every matter submitted to a general meeting for decision, except for a matter requiring a special resolution, in terms of this Constitution and/or the Act shall be decided by a majority of votes recorded at the meeting.

Special resolution

74. A resolution by a general meeting of the Co-operative shall, constitute a special resolution if -
- (a) the notice by which the general meeting was convened specified particulars of the proposed resolution and stated the intention to propose same as a special resolution; and
- (b) the resolution has been passed by not less than two thirds of the members present, both in a vote on the show of hands and a vote by ballot.
- (c) the resolution related to the winding-up of the Co-operative and was passed by at least 75 percent of the votes of all the members of the Co-operative, both in a vote on the show of hands and a vote by ballot.

Minutes of general meetings

75. The housing co-operative must keep minutes of the proceedings at general meetings and must enter same within two (2) months after the meeting in one (1) or more books kept for that purpose at the

registered office of the housing co-operative. Minutes must be available at the registered office of the housing co-operative for inspection by all members during normal office hours.

BORROWING POWERS

76. The housing co-operative must not borrow or raise money or overdraw a banking account unless authorised by way of a special resolution. The housing co-operative may borrow or raise money or overdraw a banking account without such authority up to an amount not exceeding one half of the aggregate of its share capital and general reserve.

BANKING ACCOUNT

77. (1) The housing co-operative must open a banking account in the name of the housing co-operative in which all moneys received shall be invested as soon as possible after receipt thereof.
- (2) Cheques drawn on the banking account must be signed by two of the directors or a director and the manager or another senior officer of the housing co-operative authorised thereto by the board and must be countersigned by the secretary or other senior officer authorised thereto by the board. A cheque must not be signed and countersigned by the same person.
- (3) The board may by resolution authorise the housing management co-operative to sign cheques on behalf of the housing co-operative, subject to such conditions and requirements as may be decided by the board.

FINANCIAL YEAR

78. The financial year of the housing co-operative shall end on the last day of **February** of each year.

FINANCIAL RECORDS

79. (1) The housing co-operative must keep such accounting records as are necessary fairly to reflect the state of affairs and business of the housing co-operative and to explain the transactions and financial position of the business of the housing co-operative.
- (2) The accounting records must be kept at the registered office of the housing co-operative and must be available at all times for examination by the directors, or members. This right must be exercised so that it does not disturb the normal running of the business of the housing co-operative.

Annual financial statements

80. (1) An audit of the affairs of the co-operative must be conducted annually in respect of each financial year in order to –
- (a) ensure that financial statements are drawn up in conformity with generally accepted accounting practices;
 - (b) verify that the co-operative has maintained adequate records in accordance with the requirements of this constitution and the Act;
 - (c) report generally as to whether the assets and facilities of the co-operative are being properly managed and the operations of the co-operative are being conducted in accordance with co-operative principles; and
 - (d) report on any other matter the auditors are required to report on in terms the constitution.
- (2) The provisions of clause 79(1) are applicable to the annual financial statements of the Co-operative and its company subsidiaries.

AUDIT

81. The members must appoint an auditor at each annual general meeting, to hold office until the close of the next annual general meeting. The duties of the auditor are outlined in clause 80.

SURPLUS

82. The surplus resulting from the operations of the Co-operative during any financial year shall be applied by resolution of the annual general meeting for that year: Provided that –
- (a) at least **5%** (five percent) is set aside as a reserve in the Indivisible Reserve Fund and is not divisible amongst the members;
 - (b) the amount which is set aside as a General Reserve Fund shall not be less than the amount determined by the Board.
 - (c) the amount which is available out of the surplus for distribution to members shall be applied in one or more of the following ways only, viz. –
 - [i] to pay interest at a rate not exceeding 15% (fifteen percent) to members on the amounts paid up by them on their shares as at the last day of the financial year;
 - [ii] to pay bonuses to members in accordance with the provisions of clause 83.

PAYMENT OF BONUS

83. [1] The amount mentioned in clause 82[c][iii] must, be allocated to members according to the patronage proportion and the amount allocated to a member must by resolution of members at the annual general meeting, be applied in one or more of the following ways -
- [a] by paying it out either wholly or partly in cash;
 - [b] by utilizing it for buying of fully paid-up members shares:
 - [i] provided that an amount accruing to a member which is insufficient to fully pay up a share may be applied, by resolution of the board, in accordance with the provisions of paragraphs [a] or [c] of this clause;
 - [ii] provided that notice will be given to each member of the number of shares purchased for the member;
 - [iii] provided that such shares will be either issued or transferred in terms of clauses 13, by resolution of the board; and
 - [iv] provided that share certificates will be issued and forwarded to members.
- [2] Interest on share capital or bonus declared payable to members, does not earn interest from the Co-operative.
- [3] Any interest on share capital or any bonus remaining unclaimed for a period of 3 (three) years from the date on which such interest or bonus was declared payable may, by resolution of the Board, be declared forfeit and added to the general reserve of the Co-operative.

BUSINESS

84. The business of the housing co-operative must be the carrying out of all or any of the objects mentioned in clause 6 of this Constitution on such terms and conditions as may from time to time be decided on by the board.

AMENDMENT OF CONSTITUTION

85. This Constitution of the housing co-operative may only be amended by special resolution.

COPY OF CERTIFICATE OF INCORPORATION AND OF CONSTITUTION

86. The certificate of incorporation and a true copy of this Constitution must be kept at the registered office of the housing co-operative.

GENERAL

87. The housing co-operative must sue and be sued in the name of the housing co-operative and all powers of attorney and documents in connection therewith must be signed by the chairperson of the board, or any director lawfully acting in that capacity.

LIQUIDATION

88. In case of liquidation the patronage proportion must be determined for either five years, which preceded the commencement of the winding-up of the Co-operative, or the period for which the Co-operative has existed, whichever period is the shorter.

NOTE: This page must be signed by ALL Founder Members and a witness.

<u>FULL NAMES AND SURNAMES OF APPLICANTS FOR MEMBERSHIP</u>	<u>SIGNATURES OF APPLICANTS</u>	<u>SIGNATURE OF WITNESS(ES)</u>
1.	1.	1.
2.	2.	2.
3.	3.	3.
4.	4.	4.
5.	5.	5.
6.	6.	6.
7.	7.	7.
8.	8.	8.
9.	9.	9.
10.	10.	10.
11.	11.	11.
12.	12.	12.