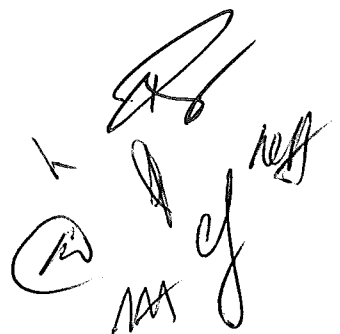


**MARITZBURG COLLEGE AND OLD BOYS'
MEMORIAL TRUST**

MASTER'S REF. IT 572/1965/PMB

AMENDING DEED OF TRUST



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AMENDING DEED OF TRUST

entered into between

The Headmaster of Maritzburg College

and

The President of the Maritzburg College Old Boys' Association

("the donors")

and

Martin Christoph Hellberg

Peter Guy Rodseth

Keith Harold Guise-Brown

Christopher John Luman

Murray Craig Mackenzie

Jacques Bruce Lesur

and

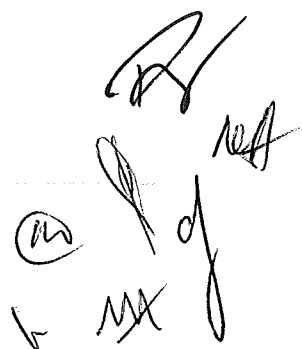
David James Leisegang

("the trustees")

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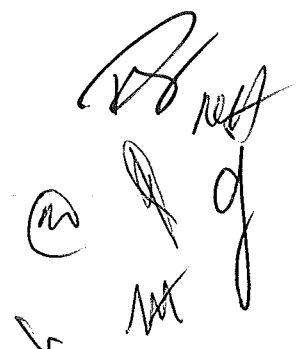
1 **Preamble**

1.1 An original deed of trust was entered into on the 14th May 1964 between the donors and the original trustees.

1.2 In terms of clause 11A of the original deed of trust, the trust deed may be amended by resolution of the trustees at a properly constituted meeting of the trustees. Further, copies of all amendments to the trust deed must be submitted to the Commissioner for the South African Revenue Service.

1.3 It is agreed by the trustees that these amendments are necessary and desirable.

1.4 The trustees have resolved that it would be impractical to make further particular amendments to specific clauses of the original deed dated 14th May 1964, and have accordingly agreed to substitute the entire deed with the provisions that follow. Nevertheless this amending deed shall not be construed as a novation of the original trust but rather as a modification of its terms and conditions.

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WHEREBY IT IS AGREED AS FOLLOWS:

2 **Name**

The name of the trust is **The Maritzburg College and Old Boys' Memorial Trust.**

3 **Interpretation**

In this deed –

3.1 unless it appears otherwise from the context, words importing any one gender shall include the other and words importing the singular shall include the plural and *vice versa*;

3.2 the headings are used for reference and convenience only and shall in no way be used to explain, amplify or modify or aid in the interpretation of this deed;

3.3 "**net income**" bears the meaning ascribed thereto in clause 10.3;

3.4 the "**trust capital**" means the capital of the trust, consisting of the trust fund and including any part of the net income which is not distributed and is accumulated to the capital but after deducting the aggregate of –

3.4.1 the liabilities of the trust, both actual and contingent; and

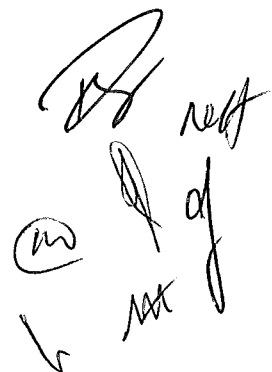
3.4.2 the sum of all provisions for depreciation, renewals or diminution in value of assets or for liabilities (actual or contingent) the amount of which cannot be determined with substantial accuracy;

3.5 the "**trust fund**" shall mean the assets or funds held and administered by the trustees from time to time;

3.6 "**the trustees**" means not only the first trustees but also any persons assumed by or succeeding them as trustees or appointed in terms of clause 5;

3.7 "**the College**" means Maritzburg College;

3.8 "**the Association**" means the Maritzburg College Old Boys' Association.

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4 **Trust obligation and objects**

4.1 The principal objects of the trust were and are:-

4.1.1 to provide funds for the College, an educational institution of a public character within the Republic of South Africa, which is itself exempt from the payment of income tax;

4.1.2 to provide educational or training facilities for the benefit of the pupils, students or trainees of the school; and generally to promote the interests of the school, including the provision of bursaries to assist pupils as selected by the trustees in their sole discretion;

4.2 These objects of the trust shall be carried out in a non-profit manner, and with an altruistic or philanthropic intent.

4.3 The trustees may accept donations from any person or body whether resident in the Republic of South Africa or elsewhere, but shall 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; provided that a donor may not impose conditions which could enable such donor (or any connected person of such donor, as defined in the Income Tax Act 58 of 1962 ("the Act")) to derive some benefit from making that donation.

5 **Appointment of and loss of office by trustees**

5.1 The trustees shall consist of:

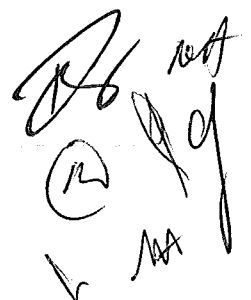
5.1.1 the Headmaster of the College [*ex officio*]; and

5.1.2 the President of the Association [*ex officio*]; and

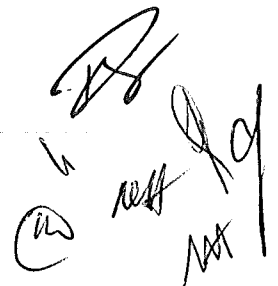
5.1.3 the senior Vice-Principal of the College [*ex officio*]; and

5.1.4 two members of the Association elected from time to time by the members of the Association (at a general meeting), to hold office for a period of three (3) years; provided however that any such trustee shall vacate office on his ceasing to be a member of the Association;

5.1.5 the Chairman of the Maritzburg College Governing Body [*ex officio*];

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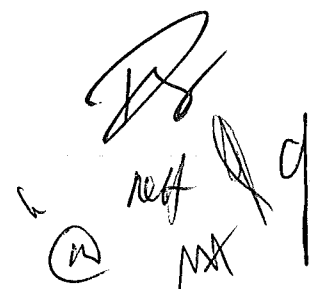
- 5.1.6 one other person appointed from time to time as required by the unanimous selection of the six aforementioned trustees (for which purpose they, although only six in number, shall have the power to act), to hold office for a period of three (3) years.
- 5.2 There shall at all times be not less than 7 trustees provided that at least 5 of the trustees shall be persons who are not connected persons (as defined in the Act). No single person shall directly or indirectly control the decision-making powers of the trust. If at any time the number of trustees falls below 7, the remaining trustees shall, as soon as is practical, assume some other person approved by the Executive Committee of the Association to act with them so as to bring the number up to 7 and if they fail to do so within 60 days, the Chairman of the Maritzburg College Governing Body shall make the necessary appointment. Save as aforesaid, until any such assumption is made, the remaining trustees shall be entitled to continue to act in all matters affecting the trust.
- 5.3 The trustees shall have all powers that are required or allowed in law and, in particular, the powers of assumption and co-option.
- 5.4 Any assumption of a trustee shall be effected by means of a written document under the hand of the person entitled to make it; provided that no person who has not been approved of by resolution of the Executive Committee of the Association may be so assumed or appointed.
- 5.5 The following persons shall be disqualified from acting as trustees –
- 5.5.1 any person who would be disqualified from acting as a director of a company in terms of section 69(8) of the Companies Act 71 of 2008, as amended or any corresponding statutory provision;
- 5.5.2 a person whose estate has been sequestrated and has not been rehabilitated;
- 5.5.3 a person who has been found to be of unsound mind or has been declared incapable of managing his affairs;
- 5.5.4 a person who has been convicted of any crime involving dishonesty and is sentenced therefor to serve a term of imprisonment without the option of a fine or a fine exceeding R500.

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- 5.6 The office of a trustee shall be vacated if –
- 5.6.1 he becomes disqualified in terms of clause 5.5;
 - 5.6.2 he files an application for the surrender of his estate or an application for an administration order or if he commits an act of insolvency as defined in the insolvency law for the time being in force or if he makes any arrangement or composition with his creditors generally;
 - 5.6.3 he resigns his office by not less than 60 days' written notice to the remaining trustees or trustee;
 - 5.6.4 he is required to resign by a majority resolution of the remaining trustees.

6 **Proceedings of trustees**

- 6.1 The decision of a majority of trustees shall be deemed to be the decision of them all. Any deadlock which may arise between the trustees shall be submitted to the Association. The provisions of the Arbitration Act, 1965 or any statute which replaces it shall not apply. The decision of the Association shall be final and binding on the trustees and no trustee shall make such decision the subject of any legal proceedings.
- 6.2 Meetings:
- 6.2.1 The trustees shall meet quarterly;
 - 6.2.2 Reasonable notice shall be given of meetings of the trustees;
 - 6.2.3 the trustees shall meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit;
 - 6.2.4 the trustees may from time to time elect a chairman and a secretary-treasurer to hold office for such period or periods as they may determine;
 - 6.2.5 at meetings of the trustees a majority of the trustees shall constitute a quorum;
 - 6.2.6 a trustee may, subject to clause 12, at any time summon a meeting of trustees.

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- 6.3 A resolution in writing signed by all the trustees shall be as valid and effectual as if it had been passed at a meeting of the trustees duly called and constituted.
- 6.4 The trustees shall have the power to delegate any of their powers to committees consisting of one or more trustees.
- 6.5 The trustees shall keep minutes of their meetings in writing and all resolutions passed by the trustees shall be duly minuted.

7 **Accounting matters, audit, and banking accounts**

- 7.1 Proper books of account of the trust shall be kept and such books, together with all other papers and documents connected with or relating to the trust, shall be kept at such place as may be agreed upon by the trustees and the same shall at all times be accessible to each of the trustees. The trustees may engage such secretarial or accounting assistance as may be required for the purposes of the trust.
- 7.2 The trustees, at any time after the coming into operation of this trust deed, may, without any obligation to do so, appoint an auditor or auditors who shall hold office for such time and subject to such conditions as may be determined by the trustees and who may from time to time be replaced by the trustees. Every auditor of the trust shall have the right of access at all times to the books of account, vouchers and records of the trust, and shall be entitled to require from the trustees and employees of the trust such information and explanations as may be necessary for the performance of the duties of the auditors.
- 7.3 The trust shall comply with such reporting requirements as may be determined by the Commissioner for the South African Revenue Service from time to time under Section 30(3)(e) of the Act.
- 7.4 The trustees shall prepare a set of financial statements of the trust in respect of each financial year, which statement shall be reported on by the trustees and, if an auditor is appointed, also by the auditors.
- 7.5 All monies received on behalf of the trust shall be deposited in one or more banking accounts to be maintained by the trustees with such branch or branches of such bank or banks as they deem fit. Any two trustees are specifically authorised :

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- 7.5.1 to instruct such bank or banks to carry out electronic transactions such as the transfer of funds and electronic payments to third parties;
- 7.5.2 to appoint an electronic administrator of such account/s, who is authorised to set up payments and transfers, but is not to authorise any transactions.
- 7.6 The trust's financial year end shall be the last day of December in each year.

8 Exemptions

- 8.1 The trustees (including any person assumed or appointed in the place of any trustee) shall be exempt from any obligation to furnish security in connection with their appointment and/or for the due administration of the trust to the Master of the High Court or any other person, body or authority, as provided for in any law now in force or to come into force relating to trusts and the protection of trust monies, and the Master and any such other person, body or authority are hereby directed to dispense with such security.
- 8.2 No trustee shall be disqualified by his office from contracting with the trust or any company in which the trust is interested nor shall any contract entered into by the trust or any such company in which any trustee may be interested be invalidated or voided by reason of such interest, nor shall any trustee so contracting or being so interested or acquiring any benefit under any contract entered into with the trust or any such company be liable to account to the trust for any profits or benefits realised by or under such contract by reason only of his holding that office: **provided** that he shall have disclosed to the remaining trustee or trustees the nature of his interest before the making of the contract if it shall not already have been known to him or them.
- 8.3 A trustee or any firm of which he is a member or partner may be employed to act in any matter relating to the trust and the administration thereof and shall be entitled to charge and be paid for any services rendered by him or his firm in a professional capacity, including acts which any trustee could have done personally.
- 8.4 No trustee shall be liable to make good to the trust or any beneficiary any loss occasioned or sustained by any cause, howsoever arising, except such loss as



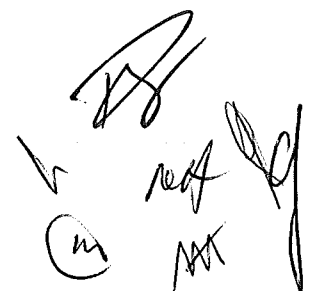
may arise from or be occasioned by his own personal dishonesty or other wilful misconduct or gross negligence; provided always that in the performance of his duties and the exercise of his powers he has acted with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another.

- 8.5 No trustee shall be liable for any act of dishonesty or other misconduct committed by any other trustee unless he knowingly allowed it or was an accessory thereto. The trustees shall be indemnified out of the trust fund against all claims and demands of whatsoever nature that may be made upon them arising out of the exercise or purported exercise of any of the powers hereby conferred upon them.
- 8.6 If the trustees *bona fide* make any payment to any person whom they assume to be entitled thereto under the terms of this deed and it be subsequently found that some other person or persons is or are entitled thereto hereunder, the trustees shall nevertheless not be responsible for the monies so paid.
- 8.7 If the trust fund includes any shares or interests in a company which confer the right or power to control that company and/or any of its subsidiaries, the trustees shall be under no obligation or duty to appoint any representative to the board of the company or any of its subsidiaries and shall have no responsibility to enquire into, oversee or take part in the management, affairs or business of the company or any of its subsidiaries.

9 **Trustees' powers**


The trustees shall, in addition to all powers enjoyed by them under the common law or by statute, have the power to do whatever may be effected by a natural person who is *sui juris* in relation to his own affairs and, without derogating from the generality of the foregoing, the following specific powers –

- 9.1 save as otherwise expressly provided for herein, to deal from time to time with the trust fund as they in their sole and absolute discretion may deem to be in the best interests of the trust and to exercise all powers relative thereto as if they were the absolute owners of such fund, generally to perform all acts to the same extent and with the same effect as the founder might have done if this deed had not been executed, and the trustees' decisions and actions, whether actually

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made or taken in writing or implied from their acts, shall be conclusive and binding on all beneficiaries;

- 9.2 to lease any property (whether movable or immovable, corporeal or incorporeal) which is donated or bequeathed to or otherwise acquired by them in the form in which they receive it for such period as they in their absolute discretion deem fit, or to turn any of the said assets to account from time to time by way of exchange, sale, lease or otherwise and, in exercising any powers of sale, whether conferred in this subparagraph or otherwise, to cause such sale to be effected by public auction, public tender or private treaty, as they may consider fit, with power to invest the proceeds of any realisation and any other amount from time to time in their hands in such manner and in such place as they in their absolute discretion deem fit and to realise and vary any such investments from time to time;
- 9.3 to let or grant the right of use or occupation of property forming part of the trust fund, to grant servitudes, rights to prospect and other rights over property of the trust on such terms and conditions as they may consider fit, to improve and develop immovable property by erecting buildings thereon or otherwise, to expend the capital or income of the trust upon the preservation, maintenance and upkeep of such property or buildings, to demolish such buildings or effect such improvements thereto as they may consider fit;
- 9.4 to accept and acquire for the purpose of the trust any gifts, bequests or payments from any person, firm, company or association that may be given, bequeathed or paid to them as an addition or with the intention to add to the funds hereby donated to them, and any additions so accepted and acquired shall be irrevocable and deemed to form part of the trust fund to be administered and dealt with subject to the terms of this deed;
- 9.5 to borrow from time to time such sums of money on such terms and conditions as they consider fit, with power from time to time to consent to any variations or alterations of the terms of any such borrowing and to secure such borrowing or any other obligations of the trust by the mortgage or pledge, either generally or specially, of any asset constituting portion of the trust fund and, if considered fit, to borrow afresh on security or otherwise for the purpose of repaying any such mortgage or pledge;

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- 9.6 to open and operate (either themselves or by a person or persons authorised by them) upon accounts in banking institutions and other financial institutions;
- 9.7 to employ people and appoint agents and consultants to carry out the objects of the trust and pay their fees, remuneration, commissions and other charges out of trust funds, provided that the trust will not pay any remuneration, as defined in the Fourth Schedule of the Act, to any employee, trustee, office bearer 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 will not economically benefit any person in a manner which is not consistent with its objects;
- 9.8 to reimburse themselves from the trust fund for all expenses which may be incurred by them in or about the execution of the trusts and powers conferred upon them, and, without detracting from the foregoing, to employ agents and other people to carry out the objects of the trust and to pay their fees, commissions, remuneration and other charges out of the trust fund and to confer upon any agents so appointed the right to exercise any discretion which may be vested in the trustees;
- 9.9 to call in, recover, collect and sue for all monies owing to them, to foreclose bonds, to buy in securities, to institute or defend legal proceedings and to sign all deeds, powers of attorney and other documents that may be necessary for those purposes;
- 9.10 to sign and execute transfers and cessions of property, bonds, consents to cancellations of bonds, leases, servitudes and other deeds and powers of attorney relating thereto, and generally all documents of any nature whatsoever as may be necessary from time to time in connection with the acquisition, realisation, disposal or encumbrance of assets of or for the trust and the carrying out of the terms of this deed;
- 9.11 to allow time for the payment of any debts due to them and to grant credit in respect of the whole or any part of the purchase price arising on the sale of any assets constituting portion of the trust fund, in either case with or without security and with or without interest, as they may think fit;
- 9.12 for the purpose of allocating or distributing funds and generally of the performance of their duties hereunder to determine, as they in their absolute

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discretion shall consider fit, to what extent receipts shall be treated as income and to what extent they shall be treated as capital and generally to decide, by apportioning in such manner as they see fit, any difficulty which may arise as to what constitutes capital and what constitutes income, to treat any periodic receipts as income (although received from wasting assets) without being required to make provision for the amortization thereof and any determination made by the trustees in terms of this sub-clause shall be final and binding and not open to challenge by anyone;

- 9.13 to acquire (whether from a trustee or a shareholder or director of a company or otherwise) immovable and movable property, both corporeal and incorporeal, of any nature whatsoever including property which does not produce income and shares and other investments which the trustees deem sound and prudent;
- 9.14 to exercise the voting power attached to any shares in any such manner as they may consider in the best interests of the trust and, either solely or in conjunction with any other person or persons, to enter into such arrangements as they may consider fit for the purpose of causing the liquidation, reconstruction or amalgamation of any of the companies of whose capital the said shares shall form portion, and to enter into and carry out any such agreement or agreements as they may consider appropriate in regard thereto;
- 9.15 to exercise all the voting powers attaching to any debentures or other securities at any time held by them;
- 9.16 to exercise any rights of conversion or subscription appertaining to any shares at any time held in the capital of any company which are portion of the trust fund or, at their discretion, to sell or realise any such rights, but whenever investments shall be made by the exercise of conversion or subscription rights the shares or other rights received shall be deemed to form portion of the trust capital;
- 9.17 to transfer into the name of the trust or into their own names or into the name or names of any one or more of them or into the name of a nominee for the trust any shares forming part of the trust fund;
- 9.18 to agree to any alteration or conversion of the capital of any company shares which form part of the trust fund;

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- 9.19 to deposit with and to allow to remain in the possession of a bank, a trust company or other depository, as the trustees may think fit, all securities and other assets at any time held by the trustees;
- 9.20 to compromise, compound, submit to arbitration or settle upon such terms and conditions as they may deem advisable all claims made by or against them or matters arising in relation to the trust and all compromises and settlements effected by them shall be final and binding;
- 9.21 to take out or in any other manner (whether for a consideration or otherwise) acquire policies on the life of any person, including any employee of the school, to pay the premiums from time to time due under and to keep alive any such policy and to surrender, redeem, dispose of, encumber and borrow against any such policy, with the right generally to deal with any such policy in such way as a natural person who owned the policy would be entitled to do;
- 9.22 to make available any assets of the trust as security for any loans due by the College, on such terms and conditions as the trustees consider fit.

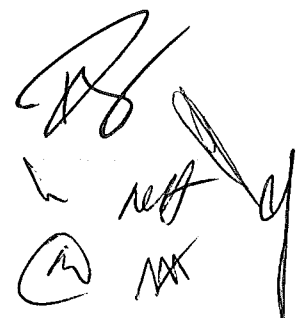
10 **Payment of costs**

- 10.1 All costs and expenses lawfully incurred by the trustees in connection with the administration of the trust fund (including their remuneration and any income tax that may become payable by them in their representative capacity in respect of the income of the trust) shall be paid by the trustees out of the income of the trust fund.
- 10.2 To the extent that the income of the trust fund is inadequate for the purposes set out in clause 10.1 the trustees may use the trust capital for those purposes.
- 10.3 The balance of the income remaining after the provisions of clause 10.1 have been given effect to (hereinafter referred to as "**the net income**") shall be dealt with in accordance with the provisions of clause 11 of this trust deed.

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11 **Utilisation of the trust fund**

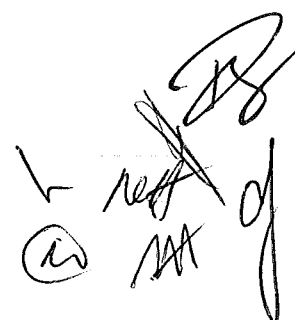
- 11.1 The income and property of the trust, from whatever source, shall be applied solely towards the promotion of its main object, and no funds will be distributed to any person other than in the course of undertaking any 'public benefit activity' (as defined in the Act), and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus or any other means, to the trustees or employees, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer, servant or employee of the trust in return for services actually rendered to the trust and provided further that a trustee remunerated for his/her services shall during the period of remuneration, not be entitled to vote in respect of any contract which concerns them personally or any matter concerning such remuneration, No activity of the trust will directly or indirectly promote the economic self-interest of any trustee or employee, otherwise than by way or reasonable remuneration.
- 11.2 If the trust is approved under Section 18A(1)(b) of the Act, the trustees shall be obliged to utilise at least 75% of the funds received by the trust which qualify for deductions under this section, within a period of 12 months from the end of the financial year in which the funds are received, provided that this shall not apply if the Commissioner for the South African Revenue Service waives, defers, or reduces the obligation to distribute in terms of the *proviso* to Section 18A(1)(b)(ii).
- 11.3 The trust shall be prohibited from using its resources directly or indirectly to support, advance or oppose any political party.
- 11.4 All scholarships, bursaries or awards granted by the trust will be *bona fide* and be granted to an individual on grounds of objective merit or need.
- 11.5 No scholarship, bursary or award granted will be:
- 11.5.1 revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of the scholarship, bursary or award;
- 11.5.2 subject to conditions which would enable the donor of the funds of the scholarship, bursary or award or any connected person in relation to the donor, to derive some direct benefit from the application of the scholarship, bursary or award; or



- 11.5.3 granted to any person who is or will become an employee of the donor of the funds of the scholarship, bursary or award or the trust (or any associated institution in relation to the donor or trust) or any relative of the person, unless circumstances indicate that the scholarship, bursary or award would have been granted to the person or his or her relative, even if that person had not been an employee of the donor, the trust or associated institution.
- 11.6 All decisions regarding the identification of beneficiaries of any scholarships, bursaries and awards will be made by the Headmaster and his nominees who shall be employees of the school, none of whom shall be persons who are connected persons in relation to the donors or the person to whom the scholarship, bursary or award is granted.
- 11.7 All scholarships, bursaries and awards granted in respect of overseas study, research or teaching will be subject to an undertaking by the person to whom the scholarship, bursary or award is granted –
- 11.7.1 to apply the knowledge obtained from the study, research or teaching immediately after completion thereof, at the College or, failing an appropriate position being available at the College, in the Republic for a period of at least the period that the study, research or training was funded by the organisation; or
- 11.7.2 to refund the full amount of the scholarship, bursary or award should he or she decide not to apply the knowledge as contemplated in 11.7.1.

12 **Dissolution of the trust**

- 12.1 The trust may be dissolved by resolution of at least two-thirds of the trustees present and voting at a meeting of the trustees convened for the purpose of considering such dissolution. Not less than 21 days' notice shall be given of such meeting and the notice shall clearly state that the dissolution of the trust and the disposal of its assets will be considered. If there is no quorum at such meeting, the meeting shall stand adjourned for not less than one week and the trustees attending such adjourned meeting shall constitute a quorum.
- 12.2 If upon dissolution of the trust there remain any assets after the satisfaction of all its debts and liabilities, such assets shall not be paid to or distributed among the trustees, but shall be given to an educational institution/s in the Republic of South

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Africa determined by the trustees having as its/their principal object an object similar to that of the trust and which, if the trust is exempt from income tax, donations tax and estate duty under the relevant laws of the country, is/are any similar public benefit organisation which has been approved in terms of section 30 of the Act and, if the trust is registered as a Non-Profit Organisation, are themselves registered as Non-Profit Organisations.

13 **Amendment of trust**

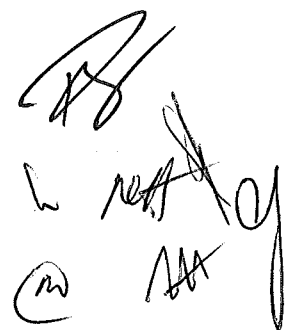
13.1 The provisions of this deed may be varied in writing by the trustees, provided that any proposed amendment to the trust deed:

13.1.1 shall, if the trust is exempt from payment of normal tax or authorised to issue receipts under Section 18A of the Act, be sent for record purposes to the Commissioner of the South African Revenue Services or his authorised representative;

13.1.2 shall, if the trust is registered as a non-profit organisation, be sent to the Directorate of Non-Profit Organisations.

14 **Indemnity against tax liability**

Should the donors become liable for any form of tax on, or in respect of, any of the trust income or assets or should any trustee become liable for any form of tax on, or in respect of, any of the trust income or assets not accruing to, vesting in or enjoyed by them (the persons so liable being hereinafter called "**the taxpayer**") the trustees shall be entitled to refund to the taxpayer out of the trust assets the amount of the tax for which the taxpayer becomes so liable on the basis that the rate of tax payable by the taxpayer on, or in respect of, such income or assets is the highest rate at which the taxpayer pays tax and with the intent of affording the taxpayer a full indemnity against the additional tax for which the taxpayer becomes liable.



15 **Acceptance of trust**

The trustees hereby undertake (jointly and severally) to carry out the terms and conditions and stipulations contained in this deed.

Signed at Pietermaritzburg on 2016.

.....
The Donors

Signed at Pietermaritzburg on the following dates respectively:

Date:

Signature:

..... 24-11-2016

.....
M C Herberg

..... 24/11/2016

.....
P G Rodseth

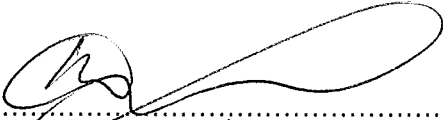
..... 24-11-2016

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K G Binneman

..... 24 \ 11 \ 2016

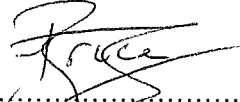
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C J du Toit

24 / 11 / 2016



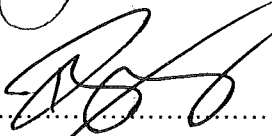
De Marezie

24-11-2016



Jac B Lesur

24 \ 11 \ 2016



DJ Leisegang.

The Trustees