

Constitution  
of the  
**Nooitgedacht Village**  
Master Property Owners' Association

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

**1. ESTABLISHMENT OF THE ASSOCIATION AND PRECINCT ASSOCIATIONS**

- 1.1 The Koelpark Property Owners Association was constituted as a body corporate in terms of section 29 of LUPO in accordance with the conditions imposed by the Local Authority when approving in terms of sections 25(1) and 42 of LUPO the subdivision of the Land. The Association was established with effect from the date of registration of the first transfer of an Erf arising from the subdivision to the purchaser thereof.
- 1.2 The name of the Association has been changed to the Nooitgedacht Village Master Property Owners' Association ('the Master Association').
- 1.3 This Constitution replaces the Constitution of the Koelpark Property Owners Association and shall take effect on the date of approval thereof by the Local Authority.
- 1.4 Nooitgedacht Village shall consist of various Precincts and Precinct Developments, to be managed and administered by the Precinct Associations as may be constituted by the Developer.
- 1.5 Each Precinct shall be represented on the Trustee Committee of the Master Association by one (1) Precinct Trustee appointed by the Precinct Trustees of the Precinct Association/s constituted in respect of each Precinct.
- 1.6 Each Precinct Association shall be represented at general meetings of the Master Association by one (1) Precinct Trustee as the Precinct Association Representative, who shall exercise the votes of the Precinct Association Members on their behalf.

**2. DEFINITIONS**

In this Constitution and unless inconsistent with the context, the following words and expressions shall have the meanings hereby assigned to them:

- 2.1 'Alienate' means to divest of ownership of an Erf or Unit, or the bare dominium of an Erf or Unit, or a share in an Erf or Unit, by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency, liquidation, prescription, or expropriation, and irrespective of whether such Alienation is subject to a suspensive or resolutive condition and 'Alienation' shall have a corresponding meaning.
- 2.2 'Architect/s' means the architect/s appointed by the Developer, during the Development Period, or after the Development Period, by the Trustees.
- 2.3 'Auditors' means the auditors of the Master Association, who shall also be the auditors of the Precinct Associations.
- 2.4 'Body Corporate' means the body corporate as defined in the Sectional Titles Act of a Scheme in Nooitgedacht Village.
- 2.5 'Body Corporate Rules' means the management rules and conduct rules of a Body Corporate as contemplated in the Sectional Titles Act.

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Signed: \_\_\_\_\_

- 2.6 'Budget' means the estimate of income and expenditure of the Master Association in respect of a financial year.
- 2.7 'Business Day' means a weekday other than a Saturday, Sunday or a Public Holiday officially recognised in the Republic of South Africa.
- 2.8 'Chairperson' means the chairperson of the Trustees.
- 2.9 'Common Property' means the common property of a Scheme as defined in the Sectional Titles Act.
- 2.10 'Communal Property' means the servitude areas (in respect of which servitudes are registered in favour of the Master Association), private roads, public roads, private open space, public open space and areas, erven, parts of erven, which are designated by the Developer or the Trustees as communal property of the Master Association and the related or associated services and facilities.
- 2.11 'Community' means collectively the Owners, Tenants and Occupiers.
- 2.12 'Community Unit' means an Erf, Section, land or building in Nooitgedacht Village or part thereof, which the Developer may in its sole discretion establish and designate as a community unit, including but not restricted to, for example a school, crèche, church, frail care facilities, service facilities provided that the Developer shall not be obliged to provide any of the foregoing.
- 2.13 'Conduct Rules' means the conduct rules of the Master Association as referred to in clause 10 of this Constitution and as may be amended from time to time.
- 2.14 'Constitution' means this Constitution of the Master Association, including the annexures thereto, as may be amended from time to time.
- 2.15 'Contractor' means a building contractor approved by the Developer or the Trustees and employed by an Owner for the construction of Improvements.
- 2.16 'Developer' means Koelpark Development Proprietary Limited, registration number 1996/014289/07, or its successors in title or assigns.
- 2.17 'Development Period' means the period from the date of registration of transfer of the first Erf in Nooitgedacht Village from the Developer to the purchaser thereof, until the date of registration of transfer from the Developer to another person of the last Erf or Unit in Nooitgedacht Village, or until the Developer notifies the Master Association in writing of the termination of the Development Period, whichever shall first occur.
- 2.18 'Developer Trustees' means the Trustees appointed by the Developer during the Development Period to represent the Developer on the Trustee Committee of the Master Association.

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Signed: \_\_\_\_\_

- 2.19 'Electronic communication' has the meaning set out in section 1 of the Electronic Communications and Transactions Act.
- 2.20 'Electronic Communications and Transactions Act' means the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002).
- 2.21 'Erven' means the erven in Nooitgedacht Village and 'Erf' means any one of them, but excluding any erven which comprises Common Property, Communal Property or Precinct Common Areas.
- 2.22 'Estate Manager' means a person or juristic person appointed by the Trustees to manage the affairs of the Master Association and the Precinct Associations.
- 2.23 'Exit levy' means the contribution or levy payable by a Member or the transferor of the Erf or Unit, to the Master Association upon Alienating an Erf or Unit.
- 2.24 'Fair market value', in respect of an Erf or Unit, is the amount at which a willing seller would sell and a willing buyer would buy it, which amount shall be determined by the Trustees, and in determining the amount the Trustees may in their sole discretion accept the purchase price (if any) as the fair market value or rely upon the valuation/s of a third party or parties, whether such party/ies is/are a sworn appraiser/s or not: Provided that if the Member or transferor objects to the amount determined, the Trustees shall appoint a sworn appraiser to determine the fair market value, which determination shall be binding upon the Member or transferor and the Master Association.
- 2.25 'Guidelines' means the architectural and landscaping guidelines of the Master Association as referred to in clause 11 of this Constitution and as may be amended from time to time'.
- 2.26 'Home Owners' Association' means a home owners' association in Nooitgedacht Village constituted in terms of LUPO.
- 2.27 'Improvements' means any existing buildings and/or structures as constructed on Erven or on the Common Property or Precinct Association Property; and any new buildings and/or structures to be constructed on Erven, Common Property or Precinct Association Property, including any alterations, additions or attachments to any existing buildings and/or structures in Nooitgedacht Village, including changes to external finishes, material and/or the colour scheme.
- 2.28 'In writing' means written, printed or lithographed or partly one and partly the other, and other modes of representing or producing words in visible form, including electronic communication.
- 2.29 'Land' means Remainder Erf 1 Koelpark, Erf 178 Koelpark and Erf 179 Koelpark, situate in the Municipality and Division of Stellenbosch, Western Cape Province.
- 2.30 'Levies' means the contributions payable by the Members to the Master Association in terms of clause 17 of this Constitution, including annual levies (ordinary levies), special levies and exit levies.

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- 2.31 'Local Authority' means the Municipality of Stellenbosch and its successors in title.
- 2.32 'LUPO' means the Land Use Planning Ordinance, No. 15 of 1985 (as amended) and includes any substituted legislation.
- 2.33 'Management Association' means the management association of a Retirement Scheme as may be constituted by the Developer in its discretion in terms of the Retired Persons Act.
- 2.34 'Managing Agent' means any person or body appointed by the Master Association as an independent contractor to undertake specific functions of the Master Association and the Precinct Associations.
- 2.35 'Master Association' means the Nooitgedacht Village Master Property Owners' Association.
- 2.36 'Member' means every registered owner of an Erf or Unit.
- 2.37 'Member Trustees' means the Trustees appointed from the Precinct Trustees to represent the Members on the Trustee Committee of the Master Association, each Precinct being represented by 1 (one) Precinct Trustee as a Member Trustee.
- 2.38 'Nooitgedacht Farm' means the farm owned by the Nooitgedacht Farm Owner.
- 2.39 'Nooitgedacht Farm Owner' means the Fritz Wirth Family Trust.
- 2.40 'Nooitgedacht Village' means the township known as Nooitgedacht resulting from the subdivision of the Land as reflected on General Plan Nos. 2527/2001, 2528/2001 and 4314/2010 in accordance with approvals obtained from the Local Authority, and generally in accordance with the Site Development Plan and includes all/any further subdivisions of the Land and all/any extension(s) and amendments of the township approved by the Local Authority from time to time.
- 2.41 'Occupier' means the occupier of an Erf or Section.
- 2.42 'Owner' means the registered owner of an Erf or Unit.
- 2.43 'Precincts' means the precincts as defined on the Site Development Plan, established or to be established in respect of portions of Nooitgedacht Village, namely:
- 2.43.1 The Village Walk Precinct;
- 2.43.2 The Village Close Precinct;
- 2.43.3 The Nooitgedacht Manor Precinct;
- 2.43.4 The Simonsberg Manor Precinct;
- 2.43.5 The Village Square Precinct;

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- 2.43.6 The Village Retreat Precinct;
- 2.43.7 The Village Workshops Precinct; and
- 2.43.8 The Village Offices Precinct,
- but subject to any amendment thereof by the Developer.
- 2.44 'Precinct Association' means a Home Owners' Association, Body Corporate or Management Association as may be constituted by the Developer in respect of a Precinct, in its discretion, provided that the Developer may constitute more than one Precinct Association in respect of a Precinct.
- 2.45 'Precinct Association Members' means the members of a Precinct Association.
- 2.46 'Precinct Association Representative' means a natural person being a Trustee of the Precinct Association, appointed by the Precinct Trustees to represent the Precinct Association and Precinct Association Members at general meetings of the Master Association, and there to exercise the voting powers of the Precinct Association Members.
- 2.47 'Precinct Common Areas' means with reference to a Precinct, the servitude areas (in respect of which servitudes are registered in favour of the Precinct Association), private roads, public roads, private open spaces, public open spaces and areas, erven, parts of erven, and facilities, which are designated by the Developer or the Precinct Trustees as common areas of a Precinct Association and the related or associated services.
- 2.48 'Precinct Constitution' means the Constitution and rules of a Home Owners' Association or a Management Association, or the Body Corporate Rules of a Body Corporate.
- 2.49 'Precinct Development' means a Precinct or part of a Precinct in respect of which a Precinct Association has been constituted.
- 2.50 'Precinct Trustees' means the trustees or trustee committee of a Precinct Association and Precinct Trustee means any one of them.
- 2.51 'Property' means an Erf, including the Improvements thereon, or a Section, generically referred to in respect of an Owner.
- 2.52 'Prime Rate' means the prime bank overdraft rate of interest charged by the Master Association's bank from time to time and more commonly known as its prime rate (in the case of a dispute, the rate may be certified by any manager or assistant manager of any branch of the said bank whose certificate shall be final and binding on the Members).
- 2.53 'Resolution' means a resolution passed at a general meeting of the Master Association, whether on a show of hands or on a poll, by an ordinary majority of the total votes represented at such meeting by the Precinct Association Representatives, present in person or by proxy.

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Signed: \_\_\_\_\_

- 2.54 'Retired Persons Act' means the Housing Development Schemes for Retired Persons Act, No. 65 of 1988 as amended from time to time and any regulations made and in force thereunder.
- 2.55 'Retirement Scheme' means a housing development scheme for retired persons established in terms of the Retired Persons Act.
- 2.56 'Section' means a section in a Scheme as defined in the Sectional Titles Act.
- 2.57 'Sectional Titles Act' means the Sectional Titles Act, No. 95 of 1986, as amended from time to time and any regulations made and in force thereunder and includes any substituted legislation.
- 2.58 'Scheme' means a scheme as defined in the Sectional Titles Act in Nooitgedacht Village.
- 2.59 'Security Service Provider' means a person or body appointed by the Master Association for the provision of security services to Nooitgedacht Village and its Precincts.
- 2.60 'Services' means the main service infrastructure in respect of Nooitgedacht Village as required by the Local Authority, and as provided by ESKOM, which shall include, but not limited to, the main roads, the main sewer system, the main water reticulation, the main storm water system, the main electrical infrastructure, the main security perimeter wall and security infrastructure, the fibre optics network and other services to be rendered to the Master Association, including refuse collection.
- 2.61 'Site Development Plan' means the plan attached hereto marked 'Annexure A', indicating the various Precincts in Nooitgedacht Village, which plan may be amended from time to time by the Developer for the duration of the Development Period.
- 2.62 'Tenant' means the lessee of an Erf or Section.
- 2.63 'Trustees' means the Trustees of the Master Association collectively from time to time and 'Trustee Committee' shall have a corresponding meaning.
- 2.64 'Unit' means a unit in a Scheme as defined in the Sectional Titles Act, but excluding a unit comprising a garage, storeroom or other utility area.
- 2.65 'Village Cellar' means an underground maturation cellar, and four private cellar areas for private functions.
- 2.66 'Village Clubhouse' means a clubhouse with facilities which the Developer will own and may make available to the Master Association by agreement and against payment of the costs as may be agreed upon.
- 2.67 'Village Equestrian' means a livery and arena for horses, and bridal paths on the Nooitgedacht Farm and where applicable on surrounding farms.

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Signed: \_\_\_\_\_



- 2.68 'Village Facilities' means the Village Cellar, the Village Clubhouse, the Village Equestrian, the Village Fishing, the Village Mountain Biking Track, the Village Park, the Village River Picnic, the Village Shops, and related facilities and services, as may be provided by the Developer and, where applicable, by the Nooitgedacht Farm Owner and which may be made available to the Master Association by agreement and against payment of the costs as may be agreed upon.
- 2.69 'Village Fishing' means fishing spots at the Nooitgedacht Farm dam.
- 2.70 'Village Mountain Biking track' means a mountain biking track on the Nooitgedacht Farm.
- 2.71 'Village Park' means a 2.4 hectare central park, which includes a system of cascades and dams.
- 2.72 'Village River Picnic' means access to the Klippies River and Picnic spots next to the river on the Nooitgedacht Farm.
- 2.73 'Village Shops' means especially selected boutique retail shops, and shops focussing on fresh products.
- 2.74 'Village Wine Collection' means the wine collection which may be provided by the Nooitgedacht Farm Owner to the Master Association by agreement.

### **3. INTERPRETATION**

- 3.1 In the interpretation of this Constitution, unless the context otherwise indicates:
- 3.1.1 the clause headings are for convenience of reference and shall be disregarded in construing this Constitution;
- 3.1.2 words importing the singular number shall include the plural and the converse shall also apply;
- 3.1.3 a reference to any one gender shall include the other genders;
- 3.1.4 a reference to natural persons shall include legal persons and the converse shall also apply;
- 3.1.5 words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part of, and in subsequent clauses, bear the meaning assigned to such words and expressions in such sub-clause; and
- 3.1.6 when any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

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- 3.2 If any provision of this Constitution is in conflict or inconsistent with any law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.
- 3.3 If any provision in a definition in this Constitution is a substantive provision conferring rights, or imposing obligations, on any of the Members then, notwithstanding that it is only in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision in the body of this Constitution.
- 3.4 If any provision in the Guidelines or the Conduct Rules is in conflict with any provision of this Constitution, the relevant provision of this Constitution shall prevail.
- 3.5 If any provision in a Precinct Association Constitution is in conflict with any provision of this Constitution, the Guidelines or the Conduct Rules, the relevant provision of this Constitution, the Guidelines or the Conduct Rules shall prevail.
- 3.6 The annexures to this Constitution are deemed to be incorporated in and form part of this Constitution.

#### **4. STATUS**

- 4.1 The Master Association shall, subject to the provisions of this Constitution, be responsible for the control, administration and management of Nooitgedacht Village for the benefit of the Members, the Community, the Master Association and the Precinct Associations.
- 4.2 The Master Association shall have perpetual succession and shall be capable of suing and being sued in its own name.
- 4.3 It is recorded that the Master Association has been established as a non-profit making institution for the purposes and objects set out in this Constitution. The Master Association shall not be for profit, but for the collective benefit and interest of its Members.
- 4.4 No part of the income of the Master Association may be paid or refunded to any Member, except to settle any debt to such Member that the Master Association may have.
- 4.5 No Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Master Association which shall vest in and be controlled by the Trustees on behalf of the Members according to the objects of the Master Association.
- 4.6 The Master Association has the right to acquire, hold, lease and alienate property, both movable and immovable.
- 4.7 The sole object of the Master Association is to manage the collective interests common to all its Members, which includes expenditure applicable to the Communal Property of Nooitgedacht Village and the collection of levies for which such Members are liable.
- 4.8 The Master Association is not permitted to distribute its funds to any person other than to a similar association of persons.

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- 4.9 On dissolution the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act.
- 4.10 Funds available for investment may only be invested or re-invested with registered financial institutions as defined in section 1 of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001.
- 4.11 The Master Association is not or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted 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 Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Services.
- 4.12 The Master Association shall submit annual returns of income tax together with financial statements to the South African Revenue Services or similar relevant government departments as required.
- 4.13 Any amendments to clause 4 of the Constitution must be submitted to the Commissioner for the South African Revenue Services.

## **5. OBJECTS**

The objects of the Master Association are to:

- 5.1 manage, control and administer Nooitgedacht Village for the benefit of the Members, the Community and the Precinct Associations;
- 5.2 manage, repair, maintain, and improve and, where applicable, to insure and to take transfer of, the Communal Property and all property and facilities belonging to the Master Association or falling under its control;
- 5.3 manage, repair, maintain, including renewal or upgrading where necessary, the Services serving Nooitgedacht Village and the provision and installation of further services to Nooitgedacht Village as may be necessary;
- 5.4 control all improvements, amenities, services, landscaping and irrigation on the Communal Property;
- 5.5 control and maintain the main security perimeter wall bordering the Land and adjacent land, excluding the painting of the portions of the wall facing private Properties, and excluding any fence on the perimeter of a Precinct which only benefits the Precinct;
- 5.6 generally provide a secure environment for the Community by implementing, controlling and enhancing security systems in respect of Nooitgedacht Village and for this purpose to employ a Security Service Provider;
- 5.6 ensure the preservation of the Community Units;

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Signed: \_\_\_\_\_

- 5.7 monitor and control the construction of Improvements in Nooitgedacht Village;
- 5.8 promote, enforce and maintain acceptable design criteria and building- and aesthetic standards in respect of the Improvements;
- 5.9 monitor and control landscaping within Nooitgedacht Village;
- 5.10 ensure compliance with the requirements of the Local Authority, including the conditions of approval, zoning, and scheme regulations applicable to Nooitgedacht Village;
- 5.11 administer and enforce compliance with the Constitution, the Guidelines and the Conduct Rules;
- 5.12 enter into agreements as may be necessary to provide the Village Facilities and Services for the benefit of the Community and to enter into any agreements in pursuance of the objects of the Master Association;
- 5.13 control the use and enjoyment of the Communal Property;
- 5.14 ensure good conduct standards of Members, Tenants and Occupiers in respect of Nooitgedacht Village;
- 5.15 establish a fund for expenses of the Master Association, including provision for future expenses and contingencies and to determine and collect levies for the purpose of the said fund from the Members;
- 5.16 control the transfer of Erven and Units in Nooitgedacht Village;
- 5.17 form or accept the formation of Precinct Associations, and to serve as a Master Association for the Members and the Precinct Associations, and to manage, administer and control all aspects of common interest to the Members and the Precinct Associations;
- 5.18 perform powers and functions on behalf of the Precinct Associations as may be assigned to it in terms of this Constitution and/or the Precinct Constitutions;
- 5.19 delegate any of its powers and functions to Precinct Associations and at any time to revoke such delegation;
- 5.20 take action as deemed necessary by the Trustees, in relation to the non-compliance by any Member, Tenant, Occupier or Precinct Association with any provisions of this Constitution, the Guidelines or the Conduct Rules;
- 5.21 promote, advance and protect the interest of the Community generally in regard to Nooitgedacht Village; and
- 5.22 generally do all such things as may be necessary or requisite to give effect to and implement the objects of the Master Association and to do all such things ancillary or incidental to the objects;

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and the Master Association, through the Trustees, shall have all the powers that are necessary to accomplish the fulfilment of the foregoing objects.

**6. FUNCTIONS AND POWERS OF THE MASTER ASSOCIATION**

6.1 The Master Association shall exercise the powers and perform the functions as set out in this Constitution, the Guidelines and the Conduct Rules, and such ancillary functions, as may be necessary in pursuit of its objects.

6.2 The functions of the Master Association shall include:

6.2.1 To establish a levy fund of the Master Association sufficient in the opinion of the Master Association to meet the expenditure of the Master Association.

6.2.2 To raise and determine the levies payable by the Members as contributions to the levy fund.

6.2.3 To open and operate an account or accounts with registered South African commercial bank/s and financial institution/s.

6.2.4 To insure the buildings, improvements, facilities and services in respect of the Communal Property against such risks as the Master Association may determine and to take up public liability insurance in respect of the Communal Property, and to procure a fidelity guarantee.

6.2.5 To insure the payment of levies due by the Members to the Master Association.

6.2.6 To pay the premiums on any policy of insurance effected by it.

6.2.7 To properly maintain the Communal Property and all buildings, improvements, facilities and services in respect of the Communal Property in a state of good and serviceable repair.

6.2.8 To comply with any notice or order by any competent authority requiring any repairs to or works in respect of the Communal Property and/or Services.

6.2.9 To ensure compliance with any law relating to the Communal Property and/or Services.

6.3 The Master Association shall exercise the powers conferred upon it by under this Constitution, the Guidelines and the Conduct Rules, and such powers shall include the power:

6.3.1 To purchase or otherwise acquire, take transfer of, mortgage, sell, give transfer of, or hire or let, immovable property, including land, erven and/or units, and to register servitudes and/or rights of use and occupation in respect thereof, and to make improvements to immovable property, and to remove improvements.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

- 6.3.2 To purchase, hire, or otherwise acquire movable property and to insure, sell, let, or otherwise dispose of movable property.
- 6.3.3 To control and maintain the Communal Property and to establish on the Communal Property such improvements, facilities, services, lawns or gardens as may be required and to register servitudes.
- 6.3.4 To apply for licenses and other rights enabling the Master Association to deal with its property in any lawful manner.
- 6.3.5 To add to, amend, repeal or substitute the provisions of the Constitution, the Guidelines and the Conduct Rules from time to time.
- 6.3.6 To borrow moneys required by it in the performance of its functions or the exercise of its powers.
- 6.3.7 To secure the repayment of moneys borrowed by it and the payment of interest thereon, in any manner, including but not limited to the mortgaging and pledging of property or cession of levy debt, and to agree to the terms of such transactions.
- 6.3.8 To sell and cede any obligation due to the Master Association, including but not limited to claims for levies, contributions, charges, penalties and fees, and to agree to the terms of such transactions.
- 6.3.9 To lend or donate moneys.
- 6.3.10 To invest surplus moneys of the levy fund.
- 6.3.11 To make, draw, issue, accept, endorse and discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments.
- 6.3.12 To enter into or issue indemnities, guarantees and suretyships and to secure payments thereunder in any way.
- 6.3.13 To enter into and implement agreements for any of the purposes or objects of the Master Association.
- 6.3.14 To employ, dismiss and remunerate employees and professional advisors and to establish and contribute to pension-, provident-, medical aid and other similar funds for the benefit of its employees.
- 6.3.15 To appoint such agents or contractors as it deems fit.
- 6.3.16 To sue and be sued in the name of the Master Association and to appoint attorneys, agents and advocates for the aforementioned purpose.
- 6.3.17 To enter into agreements for the supply of services, equipment or property to Nooitgedacht Village, and in general any agreement necessary to achieve the objects of the Master Association or to further the interest of the Master Association.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

- 6.3.18 To enter into agreements with the Developer, Members, Tenants or Occupiers for the provision of services and/or in respect of the use of Village Facilities.
- 6.3.19 To enter into agreements with the Nooitgedacht Farm Owner to regulate use by the Community of the Village Facilities forming part of the Nooitgedacht Farm and for the purchase of wine produce.
- 6.3.20 To enter into agreements with the Developer to regulate use by the Community of the Village Facilities.
- 6.3.21 To recover by legal process any levies or moneys due by Members or former Members to the Master Association.
- 6.3.22 To impose, upon Members, a system of penalties for contraventions by Members, Tenants or Occupiers of any provisions contained in this Constitution, the Guidelines or the Conduct Rules and to recover such penalties from its Members or former Members by legal process.
- 6.3.23 To do all things necessary or required to attain the objects of the Master Association, and to further and promote the interests of Members and to implement and enforce the powers conferred on the Master Association in terms of this Constitution, the Guidelines and the Conduct Rules.
- 6.4 The Master Association shall be responsible for the enforcement of this Constitution, the Guidelines and the Conduct Rules and for the control, administration and management of Nooitgedacht Village and the Communal Property.
- 6.5 The Master Association may institute, conduct, defend, compound or abandon any legal proceedings by or against the Master Association or its officers or otherwise concerning the affairs of the Master Association and agree to time and terms for payment or satisfaction of any debts due or of any claims or demands made by or against the Master Association.

## **7. MEMBERSHIP OF THE MASTER ASSOCIATION**

- 7.1 The Master Association shall have as its Members:
  - 7.1.1 the Developer for as long as the Developer remains the registered owner of an Erf or a Unit in Nooitgedacht Village;

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

Signed: \_\_\_\_\_

- 7.1.2 every registered owner of an Erf or Unit in Nooitgedacht Village; and
- 7.1.3 every Precinct Association in Nooitgedacht Village, which membership shall be automatic and compulsory and shall commence simultaneously with the establishment of the Precinct Association.
- 7.2 Membership of the Master Association shall be automatic and compulsory for every registered owner of an Erf or Unit. Such membership shall commence simultaneously with registration of transfer of such Erf or Unit into the name of the transferee in the Deeds Office.
- 7.3 When a Member ceases to be the registered owner of an Erf or Unit, he shall automatically cease to be a Member of the Master Association.
- 7.4 Where any Owner is more than one person, all the Owners of the Erf or Unit shall be deemed jointly and severally to be one Member of the Master Association.
- 7.5 Where any person is the registered owner of more than one Erf or Unit, such person shall be regarded as a Member, and shall have the rights and obligations of a Member, in respect of each Erf or Unit registered in such person's name.

**8. OBLIGATIONS OF MEMBERS**

- 8.1 Every Member is obliged to comply with:
  - 8.1.1 the provisions of this Constitution, the Guidelines and the Conduct Rules;
  - 8.1.2 any agreement concluded by the Master Association insofar as such agreement may directly or indirectly impose obligations on a Member; and
  - 8.1.3 any regulation passed by the Master Association or the Trustees in enforcing the provisions of this Constitution, the Guidelines or the Conduct Rules.
- 8.2 The rights and obligations of a Member are not transferable and every Member shall to the best of his ability, further the objects and interests of the Master Association.
- 8.3 A Member may not resign from the Master Association.
- 8.4 The Members shall be jointly liable for expenditure incurred in connection with the Master Association according to the provisions of this Constitution.
- 8.5 Except in the case of the Developer, no Member shall apply to the Local Authority for the rezoning, consent, use, departure or any other relaxation in terms of the approved zoning scheme of his Property with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Property for any purpose other than the permitted use applicable upon establishment of Nooitgedacht

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- Village without the prior written consent of the Trustees and subject to compliance with the conditions imposed by the Trustees.
- 8.6 Except in the case of the Developer, no Member shall consolidate two or more Erven into one Erf or consolidate two or more Sections into one Section without the prior written consent of the Trustees and subject to compliance with the conditions imposed by the Trustees, provided that upon registration of the consolidation, the Member shall be liable to the Master Association for levies, calculated according to the number of Erven or Sections comprised in the consolidated Erf or Section, as the case may be, and in effect the Member shall therefore be liable for the same amount in levies which would have been payable had the Erven or Sections, as the case may be, not been consolidated, but subject to any adjustments in terms of clause 18.
- 8.7 Except in the case of the Developer, no Member shall subdivide an Erf into two or more Erven or subdivide a Section into two or more Sections, without the written consent of the Trustees and subject to compliance with the conditions imposed by the Trustees, provided that levies shall be payable to the Master Association in respect of every Erf or Section, as the case may be, arising from the subdivision, but subject to any adjustments in terms of clause 18.
- 8.8 No Member shall let or otherwise part with the occupation of its Property, whether temporarily or otherwise, unless the proposed Tenant or Occupier has agreed to be bound by this Constitution, the Guidelines and the Conduct Rules. No Member shall let or otherwise part of the occupation of its Property for a term shorter than three (3) months without the written consent of the Trustees. This will exclude the planned hotel in the Village Square and any lease agreements concluded in respect of the Village Office node, where short term use will be permitted, and the written consent of the Trustees need not be obtained. The restriction will furthermore also not apply in respect of any frail care facility or similar facility, if provided in Nooitgedacht Village.
- 8.9 This Constitution, the Guidelines and the Conduct Rules, and the duties of an Owner in relation to the use, occupation and enjoyment of his Property and the use and enjoyment of the Communal Property and of the Village Facilities shall be binding on all Owners, Tenants and Occupiers. It shall be the duty of an Owner to ensure compliance with this Constitution, the Guidelines and the Conduct Rules by the Tenants or Occupiers of his Property including by the family members, employees, servants, workers, contractors, agents, visitors, guests, clients, customers or invitees of the Owner, Tenant or Occupier.
- 8.10 Each Owner is vicariously liable for the acts or omissions on the part of his Tenants or Occupiers or his or their family members, employees, servants, workers, contractors, agents, visitors, guests, clients, customers or invitees within Nooitgedacht Village. In the event of any breach or contravention of any provision of this Constitution, the Guidelines or the Conduct Rules by a Tenant or Occupier or by the family members, employees, servants, workers, contractors, agents, visitors, guests, clients, customers or invitees of the Owner, the Tenant or Occupier, such breach or contravention shall be deemed to have been committed by the Owner. Without prejudice to the foregoing,

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the Trustees shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the relevant Owner.

8.11 Should any damage be caused to the Communal Property by a Tenant or Occupier or the family members, employees, servants, workers, contractors, agents, visitors, guests, clients, customers or invitees of the Owner, the Tenant or Occupier, the relevant Owner shall be liable to the Master Association for the costs to repair such damage, and the costs may be added to the Owner's levy statement. Without prejudice to the a foregoing, the Trustees shall be entitled to take or cause to be taken such steps against the person who actually caused the damage as they may in their discretion deem fit, with or without proceedings against the relevant Owner.

8.12 A Member shall maintain his Property and Improvements in a state of good repair and in a clean and neat condition. If a Member fails to repair or maintain his Property and Improvements and any such failure persists for a period of thirty (30) days after the giving of written notice to repair or maintain given by the Trustees, the Trustees shall be entitled to remedy the Member's failure and to recover the reasonable cost of doing so from such Member. The costs incurred by the Trustees, shall be due and payable by the Member upon demand, and failing which, the costs may be added to the Member's levy statement and the costs may be recovered from the Member in the same manner as applies to arrear levies, together with interest at the rate applicable to levies.

8.13 Each Member shall:

8.13.1 retain the existing colour scheme in respect of his house and any change thereof must be approved in terms of clause 12 of this Constitution;

8.13.2 where applicable, be responsible to regularly paint the part of the main security perimeter wall as constructed on or facing his Property, subject to compliance with the prescribed colour scheme, the Guidelines and the conditions that may be imposed by the Trustees;

8.13.3 not do or suffer to be done on or in any Property anything which, in the opinion of the Trustees, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any Member, Tenant or Occupier;

8.13.4 adequately insure the Improvements on his Erf and, if requested by the Trustees, shall furnish proof of such insurance to them and, in the event of the total- or partial destruction thereof, the Member must, within a reasonable time period, reinstate the Improvements in accordance with the Guidelines and building plans to be approved by the Trustees;

8.13.5 adhere strictly to the terms of servitudes in respect of his Property;

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Signed: \_\_\_\_\_

- 8.13.6 permit access to irrigation pipelines, water metres, fibre optic network and other services by persons authorised in writing by the Master Association;
  - 8.13.7 permit access to the main security perimeter by persons authorised in writing by the Master Association; and
  - 8.13.8 not erect any structure over the sewer systems.
- 8.14 No estate agency boards or 'for sale' signs may be placed on any Property in Nooitgedacht Village or on the Communal Property, Common Property or on any Precinct Common Areas. No Member shall place or erect any other sign, notice, billboard, or advertisement of any kind whatsoever on any part of his Property, the Communal Property, the Common Area or the Common Property without the prior written consent of the Trustees.

## **9. RESTRICTION ON ALIENATION**

- 9.1 A Member shall not be entitled to Alienate or transfer his Erf or Unit without the written consent of the Master Association.
- 9.2 The Master Association shall not grant its written consent to the Alienation or transfer of an Erf or Unit:
  - 9.2.1 unless the proposed transferee has acknowledged that upon the registration of the Property into his name, he shall automatically become a Member of the Master Association and be bound by provisions of the Constitution, the Guidelines and the Conduct Rules;
  - 9.2.2 unless the Member has paid the levies and other amounts due to the Master Association in respect of the Erf or Unit, or has secured payment of such amounts to the satisfaction of the Trustees; and
  - 9.2.3 if the Member is substantially in breach of the provisions of the Constitution, the Guidelines or the Conduct Rules, to an extent reasonably to justify withholding such consent.
- 9.3 All sales of Erven and Units, excluding the sales of Erven in the Village Walk, shall be subject in perpetuity to the payment of an amount equal to 0.5% of the sales price of each Erf or Unit to the Nooitgedacht Community Trust Fund.
- 9.4 The Master Association shall be entitled to fix a reasonable fee to be charged for the issuing of its written consent to Alienation.
- 9.5 The foregoing provisions shall not apply to sales and transfers by the Developer, and the Developer or its nominee/s shall be entitled on behalf of the Master Association to sign all such documents as may be necessary to enable the Developer to give transfer of Erven or Units sold by the Developer to the purchaser thereof.

## **10. CONDUCT RULES**

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

Signed: \_\_\_\_\_

10.1 The Developer may formulate and issue Conduct Rules for the Master Association and may for the duration of the Development Period amend the Conduct Rules from time to time. Subsequent to the Development Period, the Trustees may formulate and issue and amend the Conduct Rules from time to time, subject to the directions given or restrictions imposed on the Trustees at a general meeting of the Master Association.

10.2 The Conduct Rules may include provisions governing:

10.2.1 the use and enjoyment of Properties, and restrictions on the use and enjoyment thereof;

10.2.2 the occupation of Properties and restrictions on the number of occupants;

10.2.3 the use and enjoyment of the Communal Property, and restrictions on the use and enjoyment thereof;

10.2.4 the use and enjoyment of the Village Facilities and restrictions on the use and enjoyment thereof;

10.2.5 refuse disposal and prohibiting littering;

10.2.6 the conduct of persons generally within Nooitgedacht Village and on the Nooitgedacht Farm, and to prevent a nuisance to other Owners, Tenants and Occupiers or to the Nooitgedacht Farm Owner;

10.2.7 the appearance of Properties and Improvements, the maintenance Properties and Improvements, and provisions as regards to landscaping in Nooitgedacht Village;

10.2.8 the keeping and controlling of pets, and any restrictions relating thereto;

10.2.9 the security measures applicable to Nooitgedacht Village;

10.2.10 the control of traffic and parking within Nooitgedacht Village;

10.2.11 selling and letting in Nooitgedacht Village;

10.2.12 the accreditation of estate agents;

and generally any other provisions in furtherance and promotion of the objects of the Master Association or which would be to the benefit of the Master Association, the Members and/or the Community.

## **11. GUIDELINES**

11.1 The Developer may formulate and issue Guidelines in respect of Nooitgedacht Village and may for the duration of the Development Period amend the Guidelines from time to time. Subsequent to the Development Period, the Trustees may amend the Guidelines from time to time, subject to the directions given or restrictions imposed on the Trustees at a general meeting of the Master Association.

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Signed: \_\_\_\_\_

- 11.2 The Guidelines may include provisions governing:
  - 11.2.1 the architectural design and standard of, Improvements, and aesthetic requirements, and the material to be used, in respect of Improvements;
  - 11.2.2 the maintenance of Improvements;
  - 11.2.3 building activities in Nooitgedacht Village; and
  - 11.2.4 requirements for landscaping in Nooitgedacht Village;
- 11.3 Having regard to the contents of the Guidelines, the Trustees shall have the power to:
  - 11.3.1 enforce the Guidelines;
  - 1.3.2 perform such acts as are necessary to accomplish the purposes expressed or implied in this Constitution, the Guidelines and the Conduct Rules, including but not limited to:
    - 11.3.2.1 the examination and approval of building plans for the construction of Improvements; and
    - 13.3.2.2 the evaluation of landscaping proposals;
  - 11.3.3 appoint an Architect/s and such advisors as may be necessary with such powers and duties as may be delegated by the Trustees;
  - 11.3.4 impose a scrutiny fee and such other further charges as may be necessary on the Members to scrutinise the building plans and to consult with professionals;
  - 11.3.5 require a building deposit from the Members; and
  - 11.3.6 perform such powers and functions as may be delegated by the Precinct Trustees.
- 11.4 All landscaping and Improvements shall be of approved design and sound construction and shall comply with the provisions of the Guidelines.

## **12. IMPROVEMENTS BY MEMBERS**

- 12.1 Except in respect of the Developer's activities and the activities of building contractors appointed by the Developer, no Member may commence with the construction of an Improvement to his Property or the Common Property or of any other item included in the Guidelines, without the written approval of the Trustees and their Precinct Trustees and their approval of the building plans, where applicable.
- 12.2 The Trustees will only approve the building plans, if they are satisfied that the proposed Improvements comply with the Guidelines for the purposes of which the Trustees shall be the sole arbiter and their

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Signed: \_\_\_\_\_

decision shall be final and binding on the Member. If deemed necessary, the Trustees shall submit the building plans to the Architect for scrutiny and approval.

12.3 To obtain the written approval of the Trustees in terms of clause 12.1 above a Member shall:

12.3.1 apply to the Trustees in writing;

12.3.2 where applicable, submit building plans, and such additional documents as may be required, to the Trustees for examination and approval;

12.3.3 pay the scrutiny fee and any further charges imposed by the Trustees, and any other costs incurred by the Trustees; and

12.3.4 pay the building deposit as required by the Trustees.

12.4 Once the Trustees and the relevant Precinct Trustees have approved the building plans, the Member shall submit the building plans to the Local Authority for approval. No Member shall submit any building plans to the Local Authority, without prior approval of the building plans by the Trustees and the relevant Precinct Trustees.

12.5 Having obtained the approval of the Local Authority, the Owner shall comply with all terms, conditions and changes required by the Trustees and the conditions and standards imposed by the Local Authority insofar as these may be additional to the requirements of the Guidelines read with the building plans.

12.6 Any dispute relating to the Guidelines and/or proposed Improvements may be referred to an independent architect agreed to by the parties to the dispute. The architect shall act as an expert and not as an arbitrator and his determination shall be final and binding on the parties to the dispute.

### **13. BUILDING DEPOSIT FOR DAMAGE**

13.1 Each Member, but excluding the Developer, shall, when applying to the Trustees for their approval in terms of clause 12.3.1 above, pay a building deposit to the Master Association, in the amount determined by the Trustees, which amount shall be retained by the Association until completion of construction to the satisfaction of the Trustees.

13.2 Upon completion of construction, the Trustees shall, if they are satisfied that no damage has been caused by the Member or his contractors to the Communal Property, the Common Property or to Precinct Common Areas, and that the Improvements were constructed in accordance with the approved building plans, release the building deposit to the Member, excluding any interest thereon which will accrue to the Master Association.

13.3 In the event of Improvements not complying with the building plans and/or damages having been caused to the Communal Property, the Common Property, or to the Precinct Common Areas, the Trustees shall by written notice inform the Member that the building deposit shall be

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Signed: \_\_\_\_\_

retained until the Improvements have been rectified and/or the damages have been repaired to their satisfaction and/or that the building deposit will be utilised by the Association to repair the damages.

**14. COMMUNAL PROPERTY, PRECINCT COMMON AREAS, COMMON PROPERTY AND COMMUNITY UNITS**

14.1 For the duration of the Development Period, the Developer may, and subsequent to the Development Period, the Trustees may, designate areas, erven, parts of erven and facilities as Communal Property of the Master Association.

14.2 The Developer shall transfer the parts of the Communal Property which are registrable to the Master Association.

14.3 The Owners of Erven 459, 460, 471 and 447 Koelpark in the Village Walk Precinct shall each have the right to use a part of the open space adjacent to their Erven as reflected on the attached plans, marked 'Annexure B', which space shall be used as garden areas. The right of use shall be subject to the payment of a nominal rental by each Owner to the Master Association and each Owner shall comply with the reasonable conditions imposed from time to time by the Trustees relating to the use of the private open space.

14.4 The Trustees shall control all services, common landscaping, irrigation and amenities in respect of the Communal Property and shall properly maintain the Communal Property in a state of good and serviceable repair.

14.5 Except as stipulated in clause 14.3 above, neither the whole nor any portion of the Communal Property shall be sold, let on a long term lease for a period of ten (10) years or longer, alienated or otherwise disposed of, subdivided, mortgaged, or subjected to any servitudes or other rights to be registered in the Deeds Registry, save as specified in the conditions of establishment, and save for such rights as are enjoyed by the Developer in terms hereof, without the sanction of a resolution passed at a general meeting by at least eighty percent (80%) of the total number of votes.

14.6 The Trustees may subject to the directions given or restrictions imposed on the Trustees at a general meeting of the Master Association:

14.6.1 let parts of the Communal Property for periods of less than ten (10) years;

14.6.2 construct improvements on the Communal Property, or remove improvements;

14.6.3 repair, maintain, upgrade and provide services in respect of the Communal Property;

14.6.4 enter into agreements with the Nooitgedacht Farm Owner and the Developer; and

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

Signed: \_\_\_\_\_

- 14.6.5 enter into agreements with service providers or other persons in respect of the Communal Property.
- 14.7 The Trustees shall control the access to and use of the Communal Property and facilities of the Master Association. The Owners, Tenants and Occupiers shall comply with the Conduct Rules and the reasonable conditions imposed from time to time by the Trustees relating to the use of the Communal Property and the facilities and services of the Master Association.
- 14.8 The Master Association shall ensure that each Precinct Association repairs and maintain its Precinct Common Areas or Common Property, as the case may be, in a state of good and serviceable repair.
- 14.9 The Trustees shall ensure that the Community Units are properly governed, preserved and maintained by the Owner thereof or where applicable by the Master Association.

## **15. INSURANCE**

- 15.1 The Trustees shall insure the buildings, improvements, facilities and services in respect of the Communal Property to the full replacement value of such items, subject to negotiation of such excess, premiums and insurance rates as in the opinion of the Trustees are most beneficial to the Members, against such risks determined by the Trustees or as may be directed by the Precinct Association Representatives by a Resolution.
- 15.2 The Trustees shall procure, at its cost, general public indemnity liability insurance in such amounts and on such terms as the Trustees may from time to time agree or as may be directed by the Members in general meeting.
- 15.3 The Trustees may procure to the extent, if any, as determined by the Members of the Master Association in a general meeting, a fidelity guarantee in terms of which shall be refunded any loss of money belonging to the Master Association or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any insured person being any person in the service of the Master Association and/or Trustees and any person or persons acting in their capacity as Managing Agent of the Master Association.
- 15.4 The Trustees may insure against the risk of the non-payment by Members of Levies due to the Master Association.
- 15.5 The Precinct Association Representatives may by a Resolution direct the Trustees to insure against such other risks as they may determine.

## **16. THE VILLAGE FACILITIES AND THE VILLAGE WINE COLLECTION**

- 16.1 Subject to clause 16.2 below, the Developer and the Master Association shall enter into agreement/s from time to time as regards to the use, and terms of use of the Village Facilities, and the costs payable by the Master Association and, where applicable, by the users of the facilities. The estimate costs payable by the Master Association shall be included in the Budget of the Master Association.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.



- 16.2 The Developer, the Master Association and the Nooitgedacht Farm Owner shall enter into agreement/s from time to time as regard to the use and the terms of use of such of the Village Facilities that are situated on the Nooitgedacht Farm, and the costs payable by the Master Association to the Nooitgedacht Farm Owner, and, where applicable, by the users of the facilities. The estimate costs payable by the Master Association shall be included in the Budget of the Master Association.
- 16.3 Subject to the agreement to be concluded by the Master Association and the Nooitgedacht Farm Owner, the Master Association shall pay an amount to the Nooitgedacht Farm Owner each year, which will entitle the Master Association to the Village Wine Collection, to be distributed to the Members of the Master Association.

## **17. THE BUDGET AND LEVIES**

- 17.1 The Trustees shall establish and maintain a levy fund for the purpose of meeting all expenses of the Master Association for the control, management, administration and maintenance of Nooitgedacht Village, the Communal Property, the Village Facilities and charges for the supply of the Village Wine Collection and the Services and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Master Association and its affairs.
- 17.2 The Trustees shall estimate the amount which will be required by the Master Association to meet its expenses during each financial year, together with such estimated deficiency, if any, as shall result from the preceding financial year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. The Trustees must, at least one (1) month before the end of each financial year, prepare and finalise the Budget of the Master Association for the ensuing financial year.
- 17.3 The Trustees shall determine the annual levies due by the Members by apportioning the Budget to Members as annual levies equally in respect of every Erf and Unit in Nooitgedacht Village, subject to any adjustments in terms of clause 18. The Trustees shall, by making a resolution to such effect, determine the annual levies due by the Members.
- 17.4 The annual levies so determined in terms of clause 17.3 shall become effective or due from the date of passing of the Trustees' resolution. The annual levies shall be paid in equal monthly instalments over a period of twelve (12) months, monthly in advance, on or before the 1st (first) day of every succeeding month of the financial year. If any Member defaults in the payment of any monthly instalment, the balance of the annual levy due by the Member in respect of the financial year shall become immediately payable.
- 17.5 The Budget and the levies payable by the Members shall be tabled at the annual general meeting for the consideration of the Members.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

Signed: \_\_\_\_\_

- 17.6 The Trustees may, from time to time, make special levies upon Members in respect of all expenses, which have not been included in the Budget. Special levies shall become due from the date of passing of the Trustees' resolution and shall be apportioned to Members in accordance with clause 17.3 above. Special levies shall be payable in one sum or in such instalments and at such time or times as the Trustees shall think fit.
- 17.7 Upon taking transfer of an Erf or Unit, the new Member becomes liable to the Master Association for the payment of the levies in respect of the Erf or Unit. No Member shall be entitled to transfer his Erf or Unit until the Trustees have certified that the Member has, at the date of transfer, paid all amounts owing by him to the Master Association, or has made provision for such payment to the satisfaction of the Trustees.
- 17.8 Where any Erf or Unit is owned by more than one person, all the registered owners of that Erf or Unit shall be jointly and severally liable for the due performance of any obligation to the Master Association.
- 17.9 The Developer shall not be liable for levies to the Master Association for the duration of the Development Period in respect of unimproved and/or unoccupied Erven or unoccupied Sections owned by it.
- 17.10 Liability for the payment of levies to the Master Association shall vest in the individual Members, but may be recovered from the Precinct Associations on behalf of their members.
- 17.11 If a Member fails to pay his levies in full to the Master Association on due date, the Master Association may institute an action for the recovery thereof in any competent court.
- 17.12 Members shall be liable for payment of interest on arrear levies and outstanding amounts at the Prime Rate plus 2%. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment, both days inclusive.
- 17.13 A Member shall be liable for and shall pay all costs, including all legal costs on the scale as between attorney and own client together with collection commission, advocates' fees, administrative costs and all other expenses and charges, incurred by the Master Association in obtaining recovery of arrear levies, penalties, damage or other amounts due to the Master Association, or in enforcing compliance with the provisions of this Constitution, the Guidelines and/or the Conduct Rules. Such costs and expenses may be added to the Owner's levy account and recovered in the same manner as applies to arrear levies, together with interest at the rate applicable to levies.
- 17.14 All moneys received from a Member towards his levy account, shall be apportioned firstly towards interest, then towards legal- and other administrative costs, and then towards levies or other service charges.
- 17.15 Notwithstanding the general principles applicable to the apportionment of the levies as mentioned in clause 17.3, the Trustees shall be entitled to determine, in accordance with the criteria hereinafter referred to, a differentiated and/or weighted levy with respect to any Erven or Units.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

- 17.16 Where payment of any debt due by a Member is made by way of cheque or debit order, and such cheque is referred to drawer for any reason whatsoever, and/or if such debit order is unpaid for any reason whatsoever, the Trustees shall be entitled, in their sole discretion, to levy an administration charge in respect of each such occurrence in an amount to be determined by the Trustees from time to time.
- 17.17 Upon Alienating an Erf or Unit, the Member or transferor of the Erf or Unit shall pay an Exit Levy to the Master Association, calculated at 0.5% of the Fair Market Value of the Erf or Unit at the date of Alienation.
- 17.18 Clause 17.17 shall apply *mutatis mutandis* in respect of the Alienation of a share in an Erf or Unit, or the *bare dominium* in respect of an Erf or Unit or the reservation, registration or cancellation of a right of *usus*, *usufruct*, *habitation* or a long term lease in respect of an Erf or Unit.
- 17.19 The purpose of the Exit Levies is to stabilise the levy fund of the Master Association and the Exit Levies shall only be used in furtherance of the objects of the Master Association, including to defray expenses for which the Master Association is liable. The Exit Levies may not be distributed to the Members of the Master Association.
- 17.20 The Trustees may resolve to recover the levies due by the Members from their respective Precinct Associations. The Trustees may for this purpose resolve to delegate the function to collect levies from the Members to the respective Precinct Associations. Each Precinct Association will then be responsible to collect the levies due by its Members to the Master Association and to pay the total amount collected in respect of the Master Association's levies, to the Master Association.

## **18. DIFFERENTIATED AND WEIGHTED LEVIES**

- 18.1 Having regard to the nature, extent of occupation, type of Erf or Unit, use of the Erf or Unit (residential and/or business and/or recreational), the size, and/or the composition of the Erf or Unit and further taking into account such other relevant criteria as the Trustees shall in their sole discretion determine, the Trustees are entitled to differentiate with regard to the levy responsibility attaching to any Erf or Unit and/or to weight the levies payable in respect of any Erf or Unit.
- 18.2 In effecting a determination, the Trustees shall take into account and apply, to the extent deemed relevant, the following principles:
- 18.2.1 the allocation of costs directly attributable to an Erf or Unit, to the Member (as the Owner of such Erf or Unit) and which directly attributable costs shall include, but not be limited to any local authority service charges, other expenses or other service charges and which such directly attributable expenditure shall be payable by the affected Member in addition to the levies;
- 18.2.2 assign a proportion of the costs relating to Nooitgedacht Village generally to all Erven and Units equitably;

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- 18.2.3 take into account and effect a weighting and/or differentiation where a residence is occupied by Tenants and/or by more than one household/family and/or where any business is conducted on or from the Erf or Section;
  - 18.2.4 take into account and effect a weighting and/or differentiation, as the case may be, where prepayments, cash payments, cheque payments, card payments, electronic payments and/or payments by debit order are made in respect of levies;
  - 18.2.5 take into account and effect a weighting and/or differentiation, as the case may be, where one or more Erven have been consolidated or where one or more Sections have been consolidated;
  - 18.2.6 take into account and effect a weighting and/or differentiation, as the case may be, where an Erf or Section, has been subdivided into two or more Erven or Sections, as the case may be;
  - 18.2.7 take into account and effect a weighting and/or differentiation, as the case may be, where an Erf or Section comprises a Community Unit.
- 18.3 The Trustees shall exercise their discretions reasonably, taking into account the provisions as herein above set out, and such other relevant criteria as the Trustees consider necessary.
- 18.4 A Member shall be entitled to deliver an objection in writing to the Trustees within thirty (30) days' after delivery of the statement of the levies payable by such Member and the following further provisions shall apply in respect thereof:
- 18.4.1 the Trustees shall not entertain any objection which is not received within the aforementioned prescribed period;
  - 18.4.2 the Trustees shall review the determination with respect to the affected levy and take into account the objection received;
  - 18.4.3 the complainant Member shall be entitled to be provided with the calculation and determination as effected by the Trustees;
  - 18.4.4 the Trustees shall convene, as soon as reasonably possible, a meeting with the complainant Member (and should there be more than one complainant, those complainants collectively who may all attend such meeting) and the Trustees shall hear such further representations as the complainant Member(s) may wish to make;
  - 18.4.5 the Trustees shall, in consequence of such processes, either reject the complaint (and confirm the determination of the effected levies) or review the determination and deliver amended statements to the complainants within a reasonable period; and
  - 18.4.6 in all instances, the determination of the Trustees (whether confirming the (original) determination or revising same), shall

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be final and binding upon the Master Association and the affected complainant Member(s).

## **19. THE TRUSTEES**

- 19.1 The Trustees of the Master Association shall initially comprise of the Excom members appointed in terms of the Constitution of the Koelpark Property Owners Association, who shall serve as such until the first annual general meeting of the Master Association held after the approval of this Constitution by the Local Authority.
- 19.2 From the aforesaid first annual general meeting and for the duration of the Development Period, the Trustees shall comprise of:
- 19.2.1 three (3) Trustees appointed by the Developer (the Developer Trustees); and
- 19.2.2 one (1) Trustee in respect of each Precinct in Nooitgedacht Village appointed by the Precinct Trustees in respect of each Precinct from their number (the Member Trustees).
- 19.3 Subsequent to the Development Period, the Trustees (Member Trustees) shall be equal to the number of Precincts in Nooitgedacht Village, and each Precinct shall be represented on the Trustee Committee by one (1) Precinct Trustee.
- 19.4 The Precinct Trustees in respect of every Precinct shall each appoint one (1) Precinct Trustee to represent their Precinct.
- 19.5 A Trustee shall be an individual but need not himself be a Member, provided that the majority of Member Trustees shall be Members.
- 19.6 A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.
- 19.7 Subject to the provisions of clause 20, each Member Trustee shall continue to hold office until the next annual general meeting of the Master Association following his appointment, at which meeting each Member Trustee shall be deemed to have retired from office as such but will be eligible for re-election by their respective Precinct Trustees, provided that at least two (2) of the previous Member Trustees shall be re-elected as Trustees, if possible to ensure continuity in such office.
- 19.8 The Developer shall at any time be entitled to remove any Developer Trustee and to appoint a new Developer Trustee.

## **20. REMOVAL AND ROTATION OF TRUSTEES**

- 20.1 A Trustee shall be deemed to have vacated his office as such upon:
- 20.1.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
- 20.1.2 his making any arrangement or composition with his creditors;
- 20.1.3 his conviction for any offence involving dishonesty;

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

- 20.1.4 his becoming of unsound mind and being found lunatic;
  - 20.1.5 his resigning from such office in writing;
  - 20.1.6 his death;
  - 20.1.7 his being removed from office by a resolution of the Precinct Trustees in respect of his Precinct, provided he is a Member Trustee;
  - 20.1.8 his being removed from office by a resolution of the members of the applicable Precinct Association/s in respect of his Precinct, provided he is a Member Trustee; or
  - 20.1.9 his being in arrears with his levies or any other amounts due to the Master Association for two (2) months, or more, provided he is a Member Trustee.
- 20.2 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 20.1, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the minute book of the Trustees.
- 20.3 Should the office of a Developer Trustee fall vacant prior to an annual general meeting of the Master Association, the vacancy in question may be filled by the Developer.
- 20.4 Should the office of a Member Trustee fall vacant prior to an annual general meeting, the vacancy in question may be filled by the remaining Member Trustees, from the Precinct Trustees or the Owners in respect of the relevant Precinct. The person so appointed shall hold office until the next annual general meeting following his appointment.

## **21. CHAIRPERSON**

- 21.1 The first Chairperson of the Trustee Committee shall be appointed by the Excom members referred to in clause 19.1 above.
- 21.2 Within fourteen (14) days of the holding of each annual general meeting, the Trustees shall meet and shall elect from their own number the Chairperson who shall hold office until the annual general meeting held next after his appointment, provided that the office of Chairperson shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. In the event of any vacancy occurring in the office of Chairperson, the Trustees shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.
- 21.3 Save as otherwise provided in this Constitution, the Chairperson shall preside at all Trustees' meetings and all general meetings of the Master Association and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by the Trustees or by the Members. The Chairperson may allow or refuse to allow guests to speak at any Trustees' meetings and general meetings of the Master Association.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

21.4 If the Chairperson vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Trustees present at such Trustees' meeting or the Precinct Association Representatives present at such general meeting, as the case may be, shall choose another Chairperson for such meeting.

## **22. FUNCTIONS, POWERS AND DUTIES OF TRUSTEES**

22.1 The functions, powers and duties of the Master Association shall, subject to the provisions of this Constitution, the Guidelines and the Conduct Rules and to any direction given or restriction imposed on the Trustees at a general meeting of the Master Association, be performed and exercised by the Trustees.

22.2 Without detracting from the scope of the additional duties specified in this Constitution, the Guidelines and the Conduct Rules, the Trustees shall perform the functions referred to in clause 6.2 of this Constitution.

22.3 The Trustees shall do all things reasonable necessary for the control, management and administration of Nooitgedacht Village, in terms of the powers conferred upon the Master Association by clause 6.3 of this Constitution.

22.4 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.

22.5 The Trustees shall do all things reasonably necessary for the enforcement of this Constitution, the Guidelines and the Conduct Rules. The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member, Tenant or Occupier of this Constitution in such reasonable manner as they shall decide from time to time.

22.6 The Trustees may make regulations:

22.6.1 as to the resolution of disputes generally;

22.6.2 for the furtherance and promotion of any of the objects of the Master Association;

22.6.3 for the better management of the affairs of the Master Association;

22.6.4 for the advancement of the interests of Members; and

22.6.5 for the conduct of Trustees at Trustees' meetings and general meetings of the Master Association;

and the Members shall be bound by such regulations.

22.7 Without in any way limiting the powers granted, the powers of the Trustees shall include the following:

22.7.1 To appoint for and behalf of the Master Association, such agents and employees as they deem fit in connection with the control, management and administration of Nooitgedacht

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

Signed: \_\_\_\_\_

Village and Communal Property and the exercise and performance of any or all of the powers and duties of the Master Association.

- 22.7.2 To enter into agreements on behalf of the Master Association.
  - 22.7.3 To regulate relations between Members themselves, between Members and the Master Association and between the Master Association and the Precinct Associations;
  - 22.7.4 To determine what constitutes appropriate standards for residential living, maintenance, repairs, additions to and Improvements of all Erven in Nooitgedacht Village in strict accordance with the provisions of the Guidelines, which shall be additional to the powers of the Developer for as long as the Developer is a Member.
  - 22.7.5 To require any Member, who shall be obliged, to repaint or renovate his Property and Improvements if in the reasonable opinion of the Trustees such Property and Improvements require essential repairs or have become dilapidated.
  - 22.7.6 To require any Precinct Association, who shall be obliged, to repaint or renovate its Precinct Common Areas or Common Property if in the reasonable opinion of the Trustees such property require essential repairs or have become dilapidated.
  - 22.7.7 To delegate to one or more Trustees such of their powers and duties as they deem fit and at any time to revoke such delegation.
  - 22.7.8 To form sub-committees for the performance of designated tasks.
  - 22.7.9 To institute, conduct, defend, compound or abandon any legal proceedings by or against the Master Association or its officers or otherwise concerning the affairs of the Master Association and agree to time and terms for payment or satisfaction of any debts due or of any claims or demands made by or against the Master Association.
  - 22.7.10 To impose, upon Members, a system of penalties for contraventions by Members, Tenants or Occupiers of any provisions contained in this Constitution, the Guidelines or the Conduct Rules and to recover by legal action or otherwise, such penalties from its Members or former Members.
  - 22.7.11 To do all acts and deeds as might be required necessary, conducive, ancillary or incidental to the attainment or furtherance of the objects and powers of the Master Association.
- 22.8 Each Trustee shall stand in a fiduciary relationship to the Master Association. A Trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or

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Signed: \_\_\_\_\_



any dispute, with the Master Association, by virtue of any interest he may have therein.

- 22.9 Trustees shall be entitled to be repaid all reasonable expenses incurred by them in or about the performance of their duties as Trustees in good faith. Unless otherwise determined by a Resolution of the Precinct Association Representatives, Trustees shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- 22.11 Except for the agreements as may be concluded by the Developer on behalf of the Master Association, no agreement concluded on behalf of the Master Association shall be valid and binding unless it is signed by a Trustee, specifically appointed as authorised signatory in terms of a Trustees' resolution.
- 22.12 Any written consent given on behalf of the Master Association may be signed by a Trustee, duly authorised thereto, or by the Managing Agent, duly authorised thereto.

### **23. PROCEEDINGS OF THE TRUSTEES**

- 23.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this Constitution.
- 23.2 Trustees' meetings shall be held at least once every two (2) months.
- 23.3 The Chairperson may at any time convene a Trustees' meeting by giving to the other Trustees not less than fourteen (14) days' written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 23.4 A Trustee may, provided he has the support in writing of two (2) other Trustees, at any time convene a Trustees' meeting by giving to the other Trustees not less than fourteen (14) days' written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 23.5 It is sufficient if the notice is transmitted electronically directly to the trustee in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.
- 23.6 The quorum necessary for the holding of any Trustees' meeting shall be fifty percent (50%) of the Trustees provided that for the duration of the Development Period, at least one (1) Developer Trustee shall be present.
- 23.7 If no quorum is present within fifteen (15) minutes after the time for commencement of the Trustees' meeting then it shall stand adjourned for the same time and place on the following Business Day and, if at such adjourned Trustees' meeting, a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the Trustees

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Signed: \_\_\_\_\_

- then present shall be a quorum, provided that for the duration of the Development Period, at least one (1) Developer Trustee shall be present.
- 23.8 Any Trustees' resolution shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the Chairperson shall have a second casting vote, provided that the Developer Trustees shall have a veto right in terms of clause 46.2 for the duration of the Development Period.
- 23.9 A resolution signed by all the Trustees present for the time being in the Republic of South Africa shall be valid in all respects as if it had been duly passed at a Trustees' meeting duly convened.
- 23.10 The Chairperson shall preside as such at all Trustees' meetings provided that, should at any Trustees' meeting the Chairperson not be present within fifteen (15) minutes after the time appointed for the holding thereof, those present of the Trustees shall vote to appoint a Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 23.11 A Trustee may be represented at a Trustees' meeting by a proxy, provided that, if the Trustee is a Member Trustee, such proxy shall be a Precinct Trustee.
- 23.12 The instrument appointing a proxy shall be in writing and signed by the Trustee concerned but need not be in any particular form. The proxy shall be submitted to the Chairperson at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.
- 23.13 The Trustees shall:
- 23.13.1 ensure that minutes are taken of every Trustees' meeting, although not necessarily word for word, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall after being approved by the Trustees be certified as correct by the Chairperson of the meeting;
  - 23.13.2 keep the minutes of Trustees' meetings in perpetuity; and
  - 23.13.3 on the written application of any Member or Precinct Association and against payment of the reasonable fees or costs required by the Master Association, make minutes of their proceedings available for inspection by or on behalf of the applicant, during reasonable hours on Business Days and/or furnish them with the copies as may be required.
- 23.14 All resolutions recorded in the minutes of any Trustees' meeting shall be valid and of full force and effect as therein recorded with effect from the passing of such resolutions and until varied or rescinded, but no resolution or purported Trustees' resolution shall be of any force or effect or shall be binding upon the Members or any of the Trustees, unless such resolution is competent within the powers of the Trustees.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

23.15 Save as otherwise provided in this Constitution, the proceedings at any Trustees' meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

**24. MANAGING AGENT AND ESTATE MANAGER**

24.1 The Trustees shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Managing Agent to control, manage and administer Nooitgedacht Village and its Precincts and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies due to the Master Association and Precinct Associations, provided that a Managing Agent shall be appointed for a year at a time, and unless the Trustees notify the Managing Agent to the contrary, such appointment will be automatically renewed from year to year. The Managing Agent shall also be the Managing Agent of the Precinct Associations.

24.2 The Trustees shall ensure that there is included in the contract of appointment of a Managing Agent a provision to the effect that if the Managing Agent is in breach of any of the provisions of his contract, or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Trustees may, without notice, cancel such contract of employment and the Managing Agent shall have no claim whatsoever against the Trustees and/or the Master Association and/or the Precinct Associations as a result of such cancellation.

24.3 The Trustees shall be entitled to appoint an Estate Manager to manage the business and affairs of the Master Association and the Precinct Associations and to exercise such powers and duties in respect of Nooitgedacht Village and its Precincts as may be entrusted to the Estate Manager in the terms of his appointment. The Precinct Associations shall contribute towards the costs relating to the appointment. The Estate Manager shall also be the Estate Manager of the Precinct Associations.

**25. GENERAL MEETINGS**

25.1 Annual general meetings of the Master Association shall be held within 4 (four) months of each financial year end of the Master Association. The annual general meetings of the Precinct Associations shall be arranged to precede the annual general meetings of the Master Association. An annual general meeting shall be held on such date and at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time.

25.2 All general meetings other than annual general meetings shall be called special general meetings.

25.3 The Trustees may, whenever they deem fit, convene a special general meeting.

25.4 A special general meeting shall also be convened on a request made by the Precinct Associations representing not less than thirty percent (30%) of the votes. Should the Trustees fail to convene a special

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Signed: \_\_\_\_\_

general meeting within thirty (30) days of such request, the Precinct Trustees may convene the general meeting themselves with at least fourteen (14) days' written notice to all Members and Precinct Associations in terms of clause 26 of this Constitution.

- 25.5 At general meetings, every Precinct Association and its Precinct Association Members shall be represented by a Precinct Association Representative, present in person or by proxy. A Precinct Association Representative shall be a Precinct Trustee, appointed by the Precinct Trustees by a Trustees' resolution.
- 25.6 The Precinct Trustees of a Precinct Association may at any time prior to a general meeting, by Trustees' resolution appoint a Precinct Trustee to act as their Precinct Association Representative at the general meeting or the adjournment thereof and may at any time revoke such appointment.
- 25.7 Members of the Master Association shall be entitled to attend general meetings of the Master Association, but their Precinct Association Representatives shall exercise their votes.

## **26. NOTICE OF GENERAL MEETINGS**

- 26.1 A general meeting of the Master Association shall be called by not less than fourteen (14) days' written notice to all Members and Precinct Associations. The notice shall specify the place, day, hour and business of the meeting.
- 26.2 A general meeting of the Master Association shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is agreed to by the Precinct Association Representatives holding not less than 60% (sixty percent) of the votes.
- 26.3 The accidental omission to give notice of any meeting or any Resolution or to present any document required to be given or sent in terms of this Constitution, shall not invalidate the proceedings at, or any Resolution passed at, any meeting.
- 26.4 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings at, or any Resolution passed at, any meeting.

## **27. PROXIES**

- 27.1 A Precinct Association Representative may be represented at a general meeting by a proxy, who shall also be a Precinct Trustee.
- 27.2 The instrument appointing a proxy shall be in writing signed by the Precinct Association Representative or by his appointed agent, duly authorised in writing, but need not be in any particular form.
- 27.3 The original instrument appointing a proxy and the power of attorney, authorising resolution, or other authority under which it is signed, or copies thereof, shall be submitted to the Chairperson at any time

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- before the time appointed for the commencement of the general meeting.
- 27.4 The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof. Notwithstanding the foregoing, the Chairperson of the meeting may agree to accept a proxy tendered at any time during the general meeting.
- 27.5 Notwithstanding the foregoing the Precinct Trustees may at any time prior to a general meeting revoke the appointment of a Precinct Association Representative and appoint a new Precinct Association Representative by a resolution of the Precinct Trustees.

## **28. QUORUM AT GENERAL MEETINGS**

- 28.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business and when any Resolution is to be passed. The quorum necessary for the holding of any meeting shall be the number of Precinct Representatives holding at least seventy percent (70%) of the total number of votes of the Members.
- 28.2 If, within thirty (30) minutes after the time appointed for the commencement of the general meeting, a quorum is not present, the meeting, if convened on the requisition of the Precinct Associations, shall be dissolved. In all other cases, the general meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the Precinct Association Representatives present shall constitute a quorum.

## **29. AGENDA AT ANNUAL GENERAL MEETINGS**

The following matters shall be dealt with at every annual general meeting:

- 29.1 the approval of the minutes of the previous annual general meeting of the Master Association;
- 29.2 the consideration of the Chairperson's report;
- 29.3 the announcement of the Member Trustees by the Precinct Association Representatives and the announcement by the Developer of the Developer Trustees;
- 29.4 the consideration of the financial statements of the Master Association for the preceding financial year;
- 29.5 the consideration of the Budget, approved by the Trustees and the annual levies or ordinary levies payable, as determined by the Trustees;
- 29.6 the appointment of the Auditors, who shall also function as the Auditors of the Precinct Associations;
- 29.7 the consideration of any Resolutions proposed for adoption by a Precinct Association Representative, a Precinct Trustee or by a Member, and the voting upon any such Resolutions, provided that prior notice shall be given of the Resolutions in as far as may be possible;

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

Signed: \_\_\_\_\_

- 29.8 the giving of directions to or the imposing of restrictions on the Trustees; and
- 29.9 any other business pertinent to such meeting.

**30. PROCEDURE AT GENERAL MEETINGS**

- 30.1 The Chairperson shall preside as such at all general meetings provided that should he not be present within fifteen (15) minutes after the time appointed for the holding thereof, then the Precinct Association Representatives present at such meetings shall vote to appoint a Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 30.2 The Chairperson may, with the consent of any meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business that might have been transacted at the meeting from which the adjournment took place. No notice need to be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for thirty (30) days or more, in which event notice is to be given in the same manner as the original meeting.
- 30.3 Save as otherwise provided in this Constitution, the proceedings at any general meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

**31. VOTING AT GENERAL MEETINGS**

- 31.1 Subject to clause 31.7 below, at every general meeting, every Member shall have:

- 31.1.1 one (1) vote per Erf registered in his name;

- 31.1.2 one (1) vote per Unit registered in his name;

Provided that the votes of the Members shall be exercised by their Precinct Association Representatives, present in person or by proxy, and each Precinct Association Representative shall have the number of votes equal to the number of Erven or Units in the Precinct Development which he or she represents.

- 31.2 At every general meeting, a Resolution put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll shall be demanded by any Precinct Association Representative. If a poll is duly demanded it shall be taken in such manner as the Chairperson directs and the result of the poll shall be deemed to be the Resolution of the meeting at which the poll was demanded.
- 31.3 At every general meeting a Resolution put to the vote at the meeting shall be decided on an ordinary majority of votes in accordance with the value of votes recorded in clause 31.1 above, provided that the

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

Signed: \_\_\_\_\_

Developer shall have a veto right in terms of clause 46.1 for the duration of the Development Period.

- 31.4 Voting on any question of adjournment shall be decided by a Resolution.
- 31.5 Every Resolution and every amendment of a Resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 31.6 Unless any Precinct Association Representative or his proxy shall, before closure of the meeting, have objected to any declaration made by the Chairperson as to the result of any voting at the meeting, or as to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted. An entry in the minutes of the Master Association to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the Resolution so recorded, if such entry conforms to the declaration made by the Chairperson as to the result of any voting at the meeting.
- 31.7 A Precinct Association Representative shall not be entitled to exercise the vote of a Member who is in arrears with his levies or any other amounts due to the Master Association for more than two (2) months and such Member shall not be entitled to be appointed as a Member Trustee.

## **32. MINUTES OF GENERAL MEETINGS**

- 32.1 The Trustees shall ensure that minutes are taken of every general meeting of the Master Association, although not necessarily word for word, which minutes shall be reduced to writing without undue delay after the general meeting has closed and shall after being approved by the Members at the following general meeting, be as certified correct by the Chairperson of the meeting;
- 32.2 The Trustees shall keep all minutes of general meetings of the Master Association in perpetuity.
- 32.3 On the written application of any Member or Precinct Association and against payment of the reasonable fees or costs, the Trustees shall make the minutes of general meetings of the Master Association available for inspection by such applicant, during reasonable hours on Business Days and/or furnish them with the copies as may be required.
- 32.4 All Resolutions recorded in the minutes of general meetings of the Master Association shall be valid and of full force and effect as therein recorded, with effect from the passing of such Resolutions, and until varied or rescinded, but no Resolution or purported Resolution of the Master Association shall be of any force or effect, or shall be binding upon the Members or any of the Trustees, unless such Resolution is competent within the powers of the Master Association.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

Signed: \_\_\_\_\_

### **33. FINANCIAL YEAR**

Unless otherwise decided at a general meeting or by the Trustees, the financial year of the Master Association shall run from the first day of July in each year to the last day of June of the following year.

### **34. BOOKS OF ACCOUNT AND FINANCIAL STATEMENTS**

- 34.1 The Trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Master Association.
- 34.2 At each annual general meeting the Trustees shall lay before the Master Association, financial statements for the immediately preceding financial year of the Master Association. The financial statements shall be drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees. Copies of the financial statements and reports shall be attached to the notice convening each annual general meeting.
- 34.3 The Trustees shall cause all books of account and records to be retained for a period of seven (7) years after completion of the transactions, acts or operations to which they relate.
- 34.4 On the written application of a Member or Precinct Association and against payment of the reasonable fees or costs, the Trustees shall make all or any of the financial statements, books of account and records available for inspection by such applicant during reasonable hours on Business Days and/or furnish them with the copies as may be required.

### **35. DEPOSIT AND INVESTMENT OF FUNDS**

- 35.1 The Trustees shall cause all moneys received by the Master Association to be deposited to the credit of an account or accounts with a registered South African commercial bank in the name of the Master Association and, subject to any direction given or restriction imposed at a general meeting of the Master Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Master Association or for investment purposes.
- 35.2 The Trustees may authorise a Managing Agent to administer and operate the accounts referred to in clause 35.1 above, subject to such conditions and restrictions as they may impose.
- 35.3 Any funds not immediately required for disbursements may be invested in a savings account, money market account or similar account with any registered South African commercial bank approved by the trustees from time to time, and/or may also be invested with any financial institution approved by the Trustees from time to time.
- 35.4 The Master Association shall use interest on moneys invested for any lawful purpose in the interest of the Master Association.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.



**36. AUDIT**

- 36.1 Once at least in respect of every financial year, the accounts of the Master Association shall be examined and the correctness of the financial statements be ascertained by the Auditors.
- 36.2 The duties of the Auditors shall be regulated in accordance with general practise and applicable professional standards in terms of the Auditing Profession Act, No. 26 of 2005.

**37. INDEMNITY**

- 37.1 All the Trustees are indemnified by the Master Association against any liabilities incurred by them in good faith, in their capacities as such, and in the case of the Chairperson in his capacity as Chairperson, as well as for all costs, losses and expenses (including travelling expenses) which they may incur or become liable for, by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.
- 37.2 A Trustee shall not be liable for the acts, or omissions, of the Auditors or of any of the other Trustees whether in their capacities as Trustees or as Chairperson, or for any loss or expense sustained or incurred by the Master Association through the insufficiency or deficiency of any security in or upon which moneys of the Master Association are invested, or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited, or for any loss or damage occasioned by any error of judgement or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto, unless occurring as a result of lack of good faith, breach of duty, or breach of trust.

**38. DEFAMATION PRIVILEGE**

Every Member of the Master Association and every Trustee shall be deemed by virtue of his membership or, as the case may be, his holding office as a Trustee, to have waived as against every other Member, the Chairperson, every other Trustee, the Auditors, and everybody else engaged to perform the function or duty on behalf of or for the benefit of the Master Association, or the Trustees, or any sub-committee, all claims and rights of action which such Member or Trustee might otherwise have had in law arising as a result of any statement, report, complaint, or notice of, or concerning such Member or Trustee, or any reference to such Member or Trustee, made at any Trustees' meeting or general meeting, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, the Guidelines or the Conduct Rules, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee, whether such statement be true or false.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

Signed: \_\_\_\_\_

**39. EXCLUSION OF LIABILITY**

- 39.1 Any Member or other person present in Nooitgedacht Village or on the Communal Property or using any of the Village Facilities, or any facilities or services of the Master Association does so entirely at their own risk. No Member or other person shall have any claim against the Master Association, the Trustees, the Managing Agent, or any of the Master Association's agents, employees or contractors, of whatsoever nature arising from such use. Any claim of a Member or any other person shall be limited to the amount actually recovered by the Master Association from the receipt of proceeds of any general public indemnity liability insurance, if any. If and to the extent that the Master Association does not have any such public indemnity liability insurance, no such person shall have any claim against the Master Association.
- 39.2 The Master Association, the Trustees, the Managing Agent or any of the Master Association's agents, employees or contractors shall not be liable for any loss (including consequential loss), injury, loss of life or damage to person or property of any nature whatsoever which any Member or other person whosoever may sustain:
- 39.2.1 by reason of any defect in or state of disrepair of Nooitgedacht Village or the Communal Property, or any communal facility or any Property, or any part thereof, or any fittings, fixtures, equipment or appurtenances of whatsoever nature therein, notwithstanding that such effect or state of disrepair may be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Master Association, the Trustees, the Managing Agent, or any of the Master Association's agents, employees or contractors; or
- 39.2.2 directly or indirectly, in or about Nooitgedacht Village (including, without limiting the generality of the foregoing, the Communal Property and any Property, whether such injury, loss or damage be due to theft, the action of rain, wind, hail, lightning, explosion, spontaneous combustion, gas, fire water leakage, seepage, cessation or interruption of or defect in any electric, gas, fuel, water, sanitary, telephone, air conditioning or other Services to Nooitgedacht Village (irrespective of the cause thereof), or be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Master Association, the Trustees, the Managing Agent, or any of the Master Association's agent's, employees or contractors, or be due to riots, strikes, civil commotion or any other cause whatsoever.
- 39.3 The Members undertake in favour of the Master Association, as soon as practical, to notify their Tenants and other Occupiers of their Properties, and their family members, employees, servants, workers, contractors, agents, visitors, guests, clients, customers and invitees, of the provisions of this clause 39, and to take all such steps required and/or necessary to ensure that such persons agree hereto in writing in such form as the Trustees may from time to time determine so as to enable the Master Association to accept the benefits hereof at any time without notice to such person.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

- 39.4 Every Member individually hereby fully and completely indemnifies and holds harmless the Master Association against all claims of whatsoever nature and howsoever arising which may be brought against the Master Association by that Member or the Tenant or Occupier of his Property or any family member, employee, servant, worker, contractor, agent, visitor, guest or invitee of the Member, Tenant or Occupier, or any other person within Nooitgedacht Village at the invitation of or under the control of the Member concerned, notwithstanding the nature of such claim.
- 39.5 The Master Association shall not be liable for any costs of suite in any legal proceedings instituted against it in any court or arbitration forum or other tribunal by any Member. The exclusion herein contained will not apply if the proceedings in question are founded on any conduct of the Master Association or its representatives or employees which is alleged by the claimant, and found by the court, arbitrator or tribunal, as the case may be to be mala fide or wilfully wrongful.
- 39.6 The Master Association and Precinct Associations shall not be liable for any damage suffered by a Member, Tenant or Occupier or any other person present in Nooitgedacht Village or its Precincts by reason of power surges.

#### **40. BREACH**

- 40.1 The Trustees may on behalf of and in the name of the Master Association institute legal proceedings against Members who are in breach of any of the provisions of this Constitution, the Guidelines or the Conduct Rules.
- 40.2 If a Member commits a breach of any provision of this Constitution, the Guidelines or the Conduct Rules by failing to pay on due date any levies, penalties or any other amounts payable by him to the Master Association and remains in default for more than thirty (30) days, the Trustees may, on behalf of the Master Association, institute legal proceedings against such Member in any court of competent jurisdiction for payment of such overdue levies, penalties or other amounts.
- 40.3 If a Member commits any other breach of a provision of this Constitution, the Guidelines or the Conduct Rules and fails to commence to remedy that breach within a period of seven (7) days' after the receipt of written notice to that effect by the Trustees, and to complete the remedying of such breach within a reasonable time or as may be specified in the notice, then the Trustees shall be entitled on behalf of the Master Association, without prejudice to any other rights or remedies which the Trustees, or the Master Association, or any other Member, may have in terms of this Constitution, the Guidelines or the Conduct Rules, or in law, including the right to claim damages, to:
- 40.3.1 enter upon the Property to take such action as may be reasonably required to remedy the breach and the Member concerned shall be liable to the Master Association for all costs so incurred, which costs shall be due and payable upon demand, and/or

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- 40.3.2 institute legal proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary, and/or
- 40.3.3 institute proceedings with a competent Ombud for such relief as the Trustees may consider necessary.
- 40.4 When the Trustees institutes proceedings against a Member in terms of the foregoing provisions, the Trustees shall be entitled to recover from such Member all legal costs incurred by the them, including attorney and own client charges, tracing fees and collection commission.

**41. ARBITRATION**

41.1 Should any dispute, question or difference arise between Members or between a Member and Trustees out of or in regard to:

41.1.1 the interpretation of;

41.1.2 the effect of;

41.1.3 their respective rights or obligations under;

41.1.4 a breach of (save for non-payment of levies or any other amount due by a Member in terms of this Constitution, the Guidelines and/or the Conduct Rules),

this Constitution, the Guidelines and/or the Conduct Rules, such dispute shall be decided by arbitration in the manner set out in this clause 41.

41.2 The arbitration referred to in clause 41.1 shall:

41.2.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and

41.2.2 commence as soon as reasonably possible after it is demanded and with a view to it being concluded within thirty (30) days after it is demanded; and

41.2.3 be held under the provisions of the Arbitration Act, No. 42 of 1965 (as amended from time to time) except insofar as the provisions of this arbitration clause shall apply.

41.3 The arbitrator shall be a practising senior advocate or attorney of not less than ten (10) years standing appointed by agreement between the parties to the arbitration within seven (7) Business Days of being called upon to make such appointment and failing such agreement within the period, be appointed by the President of the Cape Bar Council, or the President of the Cape Law Society, as the case may be.

41.4 The arbitrator shall in giving his award have regard to the principles contained in this Constitution, the Guidelines and the Conduct Rules and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore,

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Signed: \_\_\_\_\_

the strict rules of Law need not be observed or be taken into account by him in arriving at his decision. The arbitrator's decision shall be presented within ten (10) Business Days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the Master Association as he in his sole discretion may deem fit.

41.5 The decision of the arbitrator made at such arbitration proceedings:

41.5.1 shall be final and binding on the parties to the arbitration;

41.5.2 shall be carried into effect immediately; and

41.5.3 may be made an order of any Court that has jurisdiction over the parties or property, upon application by a party or by the Master Association.

41.6 The above remedies subsist without prejudice to the right of any party to institute an action or launch an application in a court of competent jurisdiction or to institute proceedings in terms of the Community Schemes Ombud Service Act, No. 9 of 2011, when such service becomes operative.

41.7 The above remedies subsist without prejudice to the right of any party to refer any matter in dispute to the Members in general meeting for their decision.

41.8 The above remedies subsist without prejudice to the right of the parties to refer a dispute relating to the Guidelines and/or proposed Improvements to an independent architect who shall act as an expert and not as an arbitrator and whose determination shall be final and binding on the parties.

## **42. IMPOSITION OF PENALTIES**

42.1 If the conduct of a Member, Tenant or Occupier or his family members, employees, servants, workers, contractors, agents, visitors, guests, clients, customers or invitees constitute/s a nuisance in the opinion of the Trustees, or a contravention of a provision of this Constitution, the Guidelines or the Conduct Rules, the Trustees shall by written notice inform the Member of the nuisance or contravention and warn the Member that if he, or his Tenant or Occupier fails to remedy the contravention, or persist in such conduct or contravention, or if such conduct or contravention is repeated, a penalty will be imposed on the Member.

42.2 If, notwithstanding the written notice in terms of clause 42.1 above, the Member, Tenant or Occupier fails to remedy the contravention or persists in the conduct or contravention, or if such conduct or contravention is repeated, the Trustees may by written notice, impose a penalty on the Member.

42.3 The penalty imposed under clause 42.2 above, shall become due on the date of the written notice and must be paid within thirty (30) days of the date of the written notice. Should the penalty remain unpaid, it shall be added to the Member's levy statement and shall be recovered

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Signed: \_\_\_\_\_

from the Member in the same manner as applies to arrear levies, together with interest at the rate applicable to arrear levies.

- 42.4 The Trustees shall from time to time determine the amounts of penalties in respect of the various contraventions and in respect of first and successive contraventions, subject to the directions given or restrictions imposed on the Trustees at a general meeting of the Master Association.
- 42.5 A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, the Member shall be deemed to be guilty of a separate contravention for every 24 hours or part thereof during which such contravention continues and shall be liable for a penalty in respect of each such separate contravention.
- 42.6 A Member may within thirty (30) days of the date of the written notice in terms of clause 42.2, submit an objection, with a motivation against the penalty imposed, to the Trustees.
- 42.7 Upon receipt of the objection, the Trustees may:
- 42.7.1 withdraw or reduce the penalty; or
  - 42.7.2 schedule a Trustees' meeting (hearing) for the purpose of considering the objection and invite the Member to attend.
- 42.8 At the Trustees' meeting (hearing) referred to in clause 42.7.2 above, the Member shall have the right to:
- 42.8.1 present his case;
  - 42.8.2 present any evidence, including the calling of witnesses to substantiate his case;
  - 42.8.3 cross-examine any person called as a witness in support of the charge;
  - 42.8.4 have access to documents produced in evidence; and
  - 42.8.5 produce mitigating factors.
- 42.9 The failure of the Member charged to attend the Trustees' meeting referred to in clause 42.7.2 shall not render the proceedings at the meeting void. Should the Member or his representative not attend the Trustees' meeting without providing a reasonable request for postponement, the Trustees may, in their sole discretion, continue with the Trustees' meeting and consider the objection in the absence of the Member.
- 42.10 Upon the conclusion of the Trustees' meeting, the Trustees shall deliberate the evidence and if so resolved, they may:
- 42.10.1 uphold the penalty; or
  - 42.10.2 withdraw or reduce the penalty.

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Signed: \_\_\_\_\_

**43. DOMICILIUM OF THE MASTER ASSOCIATION AND OF THE MEMBERS**

43.1 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Master Association, subject to the following:

43.1.1 such address shall be the office address of the Estate Manager, or the address of the Chairperson or of a resident Trustee nominated by the Trustees or the address of any duly appointed Managing Agent;

43.1.2 the Trustees shall give notice to all Members of any change of such address.

43.2 The *domicilium citandi et executandi* of each Member shall be the street address of the Member's Erf or Unit. A Member may by notice in writing to the Trustees alter his *domicilium*, provided that such new address may not be a post office box or *post restante* and provided that such address shall be situated within the Republic of South Africa and shall not be effective until fourteen (14) days after receipt of such notice by the Trustees.

**44. DELIVERY AND ELECTRONIC TRANSMISSION OF NOTICES**

44.1 A notice by the Master Association to any Member or Precinct Association in terms of this Constitution, the Guidelines or the Conduct Rules shall be in writing and shall be delivered to the Member or Precinct Association, either by hand or by prepaid post properly addressed to the Member or Precinct Association at his *domicilium citandi et executandi*. It shall be competent to transmit the notice to a Member or Precinct Association by telefax or electronic communication (e-mail) where the telefax number or e-mail address of the Member or Precinct Association is recorded with the Master Association.

45.2 Any notice to a Member or Precinct Association:

45.2.1 if delivered by prepaid post in a correctly addressed envelope to his *domicilium citandi et executandi*, shall be deemed to have been received on the 5th day after the date when the notice was posted; or

45.2.2 if delivered by hand to the Member or Precinct Association, or to a responsible person at the *domicilium citandi et executandi* of the Member or Precinct Association, shall be deemed to have been received on the day of delivery; or

45.2.3 if successfully transmitted by telefax to the telefax number of the Member or Precinct Association, shall be deemed to have been received on the 1st day after the date of transmittal; or

45.2.4 sent by e-mail to the e-mail address of the Member or Precinct Association, shall be deemed to have been received on the 1st day after the date of transmittal.

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Signed: \_\_\_\_\_

44.3 Notwithstanding anything to the contrary herein contained, a written notice received by a Member or Precinct Association shall be adequate written notice to such Member or Precinct Association notwithstanding that it was not delivered in accordance with clause 44.1 above.

**45. PHASED DEVELOPMENT AND THE ESTABLISHMENT OF PRECINCTS AND PRECINCT ASSOCIATIONS**

45.1 The Developer intends to develop and market Nooitgedacht Village in phases as the Developer deems fit and, for the duration of the Development Period, the Developer shall enjoy unrestricted rights with regard to the marketing of Nooitgedacht Village and, in particular, the right to erect signage within Nooitgedacht Village, and to perform all activities normally associated with development and building operations.

45.2 The Developer shall develop the Land in terms of the use zoning as approved from time to time. The Developer shall for this purpose divide Nooitgedacht Village into Precincts and shall establish Precinct Associations in respect of the various Precincts as deemed necessary in its discretion. The Developer may in its discretion also provide Community Units in Nooitgedacht Village.

45.3 The Developer shall, in its absolute discretion, be entitled to include further land in Nooitgedacht Village and to apply for, and subject to, approval by the relevant authority, amend the Site Development Plan, and vary the Precincts in Nooitgedacht Village, establish a Precinct Association or Precinct Associations in respect of every Precinct, vary the layout and/or zoning and/or size and/or boundaries of Erven and/or the extent and position of the roads comprising Nooitgedacht Village, and subdivide or consolidate Erven or Sections, and the Members shall be bound thereby and shall have no claim of whatever nature against the Developer arising therefrom. Insofar as the consent of a Member is required for any of the foregoing, the Developer is irrevocably granted a power of attorney to grant any/all such consents on behalf of the Members, as may be required.

45.4 The Developer may procure the registration of servitudes on behalf of the Master Association, the Precinct Associations, the Local Authority and/or other authorities in respect of Nooitgedacht Village, as may be necessary.

**46. STATUS OF DEVELOPER**

During the Development Period, the following provisions shall apply in addition to the provisions of, and notwithstanding anything to the contrary contained in, this Constitution:

46.1 at every general meeting of the Master Association, the Developer shall be entitled to the number of votes equal to the number of Erven and Units in Nooitgedacht Village from time to time plus one (1) vote;

46.2 at every Trustees' meeting, the Developer Trustees shall be entitled to the number of votes equal to the number of Trustees from time to time plus one (1) vote;

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

Signed: \_\_\_\_\_



- 46.3 the Developer shall not be obliged to pay levies in respect of any unimproved or vacant Erf or vacant Section owned by the Developer until expiry of the Development Period.
- 46.4 neither the Trustees nor any Member of the Master Association shall prevent or hinder in any way the Developer from:
- 46.4.1 gaining access to and egress from Nooitgedacht Village;
  - 46.4.2 continuing any building operations on the Land;
  - 46.4.3 marketing and selling any Erf or Unit, including the advertisement of the sale of such Erf or Unit on the Communal Property; and
  - 46.4.4 gaining access to and from a Property, with prior written notice to a Member;
- 46.5 upon the expiry of the Development Period, the rights of the Developer in terms of this clause 46 shall immediately terminate *ipso facto* and no longer be of any force and effect.
- 46.6 The Developer or its nominee shall have the right to conduct an estate agency business in Nooitgedacht Village.

#### **47. SERVICES**

- 47.1 The Master Association shall ensure the maintenance, upkeep, upgrading and installation where required of the Services in respect of Nooitgedacht Village.
- 47.2 The Master Association shall repair and maintain the main water reticulation, the main storm water system and the main sewer system in respect of Nooitgedacht Village, subject to the conditions imposed by the Local Authority. The Master Association shall repair and maintain the main electrical infrastructure in respect of Nooitgedacht Village, subject to conditions imposed by ESKOM.
- 47.3 The Master Association shall repair and maintain the main security perimeter wall in respect of Nooitgedacht Village, excluding the painting of the portions of the wall facing private Properties, which shall be the responsibility of the Owners of the relevant Properties to paint, subject to compliance with the prescribed colour scheme, the Guidelines and the conditions that may be imposed by the Trustees.
- 47.4 The Master Association may appoint a Security Service Provider to manage the security of Nooitgedacht Village and its Precincts and to provide such security services as may be agreed upon and upon such terms and conditions as the Master Trustees deem fit, provided that the costs in respect of such services may be apportioned to the Precinct Associations.
- 47.5 A management fee shall be payable by the Master Association in respect of Erf 382 Koelpark, owned by the Developer, which comprises the Nooitgedacht Village office and a control room.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

Signed: \_\_\_\_\_

47.6 The optical fibre infrastructure as provided and retained by the Developer in respect of Nooitgedacht Village shall be repaired and maintained at the expense of the Master Association, excluding the expenses which pertain exclusively to the Precincts, which shall be recovered by the Master Association from the respective Precinct Associations, where applicable. The optical fibre infrastructure is an open access network allowing outside internet providers to service each Owner.

**48. CORPORATE MEMBERSHIP OF THE DEVONVALE GOLF CLUB**

48.1 In terms of an agreement, concluded by the Developer, the Master Association has corporate membership of the Devonvale Golf Club, to enable 10 (ten) persons at a time, to use the Golf Course, subject to booking and payment of the prescribed green fees. Members, Tenants and/or Occupiers may advance book and collect membership cards from the Estate Manager to be handed back within two (2) hours of concluding a golf round.

48.2 The Trustees may, subject to the directions given or restrictions imposed on the Trustees at a general meeting of the Master Association, conclude agreement/s with the Devonvale Golf Club pertaining to corporate membership of the Club.

**49. CONSTRUCTION OF ADDITIONAL UNITS ON THE NOOITGEDACHT FARM**

49.1 In terms of the zoning scheme regulations there is consent use for the Nooitgedacht Farm Owner to construct additional units on the Nooitgedacht Farm. The Nooitgedacht Farm Owner shall in its discretion be entitled to apply for the approval of the relevant authority to construct additional units on the Nooitgedacht Farm. The Master Association and its Members hereby acknowledge and agree to the construction of additional units on the Nooitgedacht Farm by the Nooitgedacht Farm Owner in its discretion.

49.2 The Master Association and the Members hereby acknowledge and agree that farming and agricultural activities in respect of the Nooitgedacht Farm shall continue in the ordinary course of its business, and the Master Association and the Members shall not interfere with these activities, or have any claims arising from such activities.

**50. AMENDMENT OF THIS CONSTITUTION**

50.1 The provisions of this Constitution may be added to, amended, substituted, or repealed from time to time by a Resolution passed at a general meeting. The notice of such meeting or the annexure to such notice shall specify the proposed addition, amendment, or substitution of a provision of the Constitution, or the provision of the Constitution to be repealed.

50.2 The Developer may for the duration of the Development Period from time to time add to, amend, substitute or repeal any provisions of this Constitution, provided that the Developer shall notify the Members in writing of the proposed addition, amendment, or substitution of a provision of the Constitution or the provision of the Constitution to be

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repealed. The Members shall be granted a period of thirty (30) days from the date of the written notice to provide their comments to the Developer. After the said thirty (30) day-period has expired, the Developer shall be entitled to proceed with the proposed addition, amendment, substitution or repeal of a provision of the Constitution in its original form or in an amended form, provided that the Developer shall notify the Members of their decision.

50.3 Any amendments to this Constitution and the Guidelines shall be submitted to the Local Authority.

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Signed by the Chairman of the Nooitgedacht Village Master Property Owners' Association, duly authorised and approved at a General Meeting held on the 1<sup>st</sup> of September 2014, by the members of the HOA.

Signed: \_\_\_\_\_