

Constitution of the Simonsberg Manor Home Owners' Association

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1. ESTABLISHMENT OF THE ASSOCIATION

- 1.1 The Simonsberg Manor Home Owners' Association shall be constituted as an owners' association in terms of section 29(1) of the Stellenbosch Planning By-Law in accordance with the conditions imposed by Stellenbosch Municipality when approving the application for the subdivision of the Land. The Association shall be established with effect from the date of registration of the first transfer of an Erf arising from the subdivision from the Developer to the first purchaser thereof.
- 1.2 This Constitution of the Association as approved by Stellenbosch Municipality takes effect on the registration of the first Erf.
- 1.3 The Association shall have as its Members all the owners of Erven originating from the subdivision and their successors in title, who shall be jointly liable for the expenditure incurred in connection with the Association.
- 1.4 The Association shall, subject to the provisions of this Constitution and the Master Constitution, be responsible for the control, administration and management of the Simonsberg Manor for the benefit of the Members.

2. NOOITGEDACHT VILLAGE

- 2.1 Simonsberg Manor shall be a Precinct within the greater Nooitgedacht Village, which is controlled, administered and managed by the Nooitgedacht Village Master Property Owners' Association ('the Master Association').
- 2.2 The functions and powers of the Association shall at all times be subject to the functions and powers of the Master Association. The Association shall assign such of their functions and powers to the Master Association as may be required by the Master Association. The Association shall perform such powers and functions on behalf of the Master Association as may be assigned or delegated to it by the Master Association.
- 2.3 The Association shall be represented on the Master Trustees by one of the Trustees of the Association (a Precinct Trustee). In the event of dispute between the Association and the Master Association or the Trustees and the Master Trustees, the resolutions of the Master Association and the Master Trustees shall prevail.
- 2.4 Every Member of the Association shall also be a member of the Master Association and shall be bound by the provisions of the Master Constitution. Every Member of the Association shall be liable for levies to the Master Association, as determined by the Master Trustees in terms of the Master Constitution. For administrative purposes, the Master Association may delegate the function to collect levies which are due by the Members of the Association to the Master Association, to the Association.
- 2.5 The general meetings of the Association shall be arranged to precede or to coincide with the general meetings of the Master Association. The Members of the Association shall be represented at general meetings of the Master Association by a Trustee of the Association as their Precinct Association Representative, who shall exercise the votes of the Members of the Association, on their behalf.

3. DEFINITIONS

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

- 3.1 'Alienate' shall mean to divest of ownership of an Erf, or part thereof, or share therein, or the bare dominium thereof, by way of a sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency, liquidation, prescription, expropriation, or otherwise and 'alienation' shall have a corresponding meaning, and should the Member be:
- 3.1.1 a company, the alienation by a shareholder of any of the shares in the company, including the beneficial ownership thereof, shall be deemed to be an alienation; or
- 3.1.2 a close corporation, the alienation by a member of any percentage of the member's interest in the close corporation, shall be deemed to be an alienation; or
- 3.1.3 a trust, the alienation by a beneficiary of any of the beneficial interest in the trust, shall be deemed to be an alienation.
- 3.2 'Annexures' shall mean the annexures to the Constitution, as may be prepared and amended from time to time, including:
- 3.2.1 the site development plan to be contained in Annexure A to the Constitution; and
- 3.2.2 the general plan to be included in Annexure B to the Constitution.
- 3.3 'Architect/s' shall mean the architect/s as may be appointed from time to time by the Master Association from time to time.
- 3.4 'Association' shall mean the Simonsberg Manor Home Owners' Association.
- 3.5 'Auditors' shall mean the auditors as may be appointed from time to time by the Master Association.
- 3.6 'Budget' shall mean the estimate of income and expenditure of the Association in respect of a financial year.
- 3.7 'Business day' shall mean a weekday other than a Saturday, Sunday or a Public Holiday officially recognised in the Republic of South Africa.
- 3.8 'Chairperson' shall mean the chairperson of the Association and of the Trustees, from time to time.
- 3.9 'Common Areas' shall mean Erven 644, 650, 653, 656, 659 and 662 Koelpark comprising the private roads, and any private open spaces, and any land required for services provided by the Association, and any servitude areas (in respect of which servitudes are registered in favour of the Association), and any areas, erven, parts of erven, which are designated by the Developer as Common Areas of the Association and the related or services and amenities.
- 3.10 'Community Schemes Ombud Service Act' shall mean the Community Schemes Ombud Service Act, 2011 (Act No. 9 of 2011), as amended from time to time, and any regulations promulgated thereunder and in force.
- 3.11 'Conduct Rules' shall mean the conduct rules of the Association as referred to in clause 11 of this Constitution and as may be amended from time to time.
- 3.12 'Constitution' shall mean this Constitution of the Association, including the Annexures thereto, as may be amended from time to time.

- 3.13 'Design Guidelines' shall mean the architectural and landscaping guidelines for Simonsberg Manor, initially prepared by Dennis Moss Partnership on behalf of the Developer, referred to in clause 12 of this Constitution, and as may be amended from time to time.
- 3.14 'Developer' shall mean Koelpark Development Proprietary Limited, registration number 1996/014289/07 or its successors in title or assigns.
- 3.15 'Developer Trustees' shall mean the Trustees appointed by the Developer during the Development Period to represent the Developer on the Trustee Committee of the Association.
- 3.16 'Development Period' shall mean the period from the date of registration of transfer of the first Erf in Simonsberg Manor from the Developer to the purchaser thereof, until the date of registration of transfer from the Developer to another person of the last Erf in Nooitgedacht Village, or until the Developer notifies the Association in writing of the termination of the Development Period, whichever shall first occur.
- 3.17 'Electronic communication' has the meaning set out in section 1 of the Electronic Communications and Transactions Act.
- 3.18 'Electronic Communications and Transactions Act' shall mean the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).
- 3.19 'Erven' shall mean the erven in Simonsberg Manor and 'Erf' shall mean any one of them, but excluding any erven which comprises Common Areas or public roads or public open space.
- 3.20 'Estate Manager' shall mean the Estate Manager as may be appointed from time to time by the Master Association.
- 3.21 'Financial institution' shall mean a registered financial institution as defined in section 1 of the Financial Institutions (Protection of Funds) Act.
- 3.22 'Financial Institutions (Protection of Funds) Act' shall mean the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 as amended from time to time and any regulations made and in force thereunder and includes any substituted legislation.
- 3.23 'General plan' shall mean the general plan of subdivision of the Land.
- 3.24 'Home Owners' Association' shall mean an owners' association or home owners' association constituted in terms of LUPO or an owners' association constituted by virtue of a condition imposed by Stellenbosch Municipality in accordance with LUPA and in terms of the Stellenbosch Planning By-Law.
- 3.25 'Improvements' shall mean any buildings and/or structures constructed or to be constructed on an Erf or on the Common Areas, including any alterations, additions or attachments to any existing buildings and/or structures in Simonsberg Manor, and changes to external finishes, material and/or the colour scheme: provided that the foregoing shall not give rise to any right or expectation to erect any building or structure that is not in accordance with the requirements of the approvals and/or the Design Guidelines and/or that is not in accordance with plans that have been duly approved in accordance with the requirements of this Constitution.
- 3.26 'Income Tax Act' shall mean the Income Tax Act, 1962 (Act No. 58 of 1962) as amended from time to time and any regulations made and in force thereunder and includes any substituted legislation.

- 3.27 'Internal Engineering Service' shall mean the system for the provision of water, electricity, gas, roads or storm water drainage, or collection and removal of solid waste or sewerage, within Simonsberg Manor which are private in nature and shall be operated by the Association and the Association will be responsible for the maintenance and sub-metering of such services, but excluding internal engineering services which may be the responsibility of the Master Association or of the Stellenbosch Municipality.
- 3.28 'Invitees' shall mean the family members, visitors, guests, employees, servants, workers, contractors, agents, service providers or other invitees of Members or Occupiers present within Simonsberg Manor.
- 3.29 'In writing' shall mean 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.
- 3.30 'Juristic person' shall mean a company, close corporation, trust or other legal person.
- 3.31 'Land' shall mean Erf 525 Koelpark, situated in the Municipality and Division of Stellenbosch, Western Cape Province.
- 3.32 'Levies' shall mean the contributions payable by the Members to the Association in terms of clause 17 of this Constitution, including Annual Levies (Ordinary Levies), and any service fees and charges and administration charges levied by the Association and Special Levies.
- 3.33 'LUPA' shall mean the Western Cape Land Use Planning Act, 2014.
- 3.34 'LUPO' shall mean the Land Use Planning Ordinance, No. 15 of 1985 (as amended) and includes any substituted legislation.
- 3.35 'Managing Agent' shall mean the person or juristic person as may from time to time be contracted the Master Association.
- 3.36 'Master Association' shall mean the Nootgedacht Village Master Property Owners' Association, the Home Owners' Association constituted by the Developer in respect of the Nootgedacht Village in terms of LUPO.
- 3.37 'Master Constitution' shall mean the Constitution, including the Guidelines and the Conduct Rules of the Master Association.
- 3.38 'Master Trustees' shall mean the trustees or the trustee committee of the Master Association.
- 3.39 'Member' shall mean every registered owner of an Erf and 'membership' shall be construed accordingly.
- 3.40 'Member Trustees' shall mean the Trustees appointed by the Members on the Trustee Committee of the Association and 'Member Trustee' shall mean any one of them.
- 3.41 'Nootgedacht Village' shall mean the township known as Nootgedacht Village, comprising the subdivisions of Remainder Erf 1 Koelpark, Erf 178 Koelpark and Erf 179 Koelpark and including all/any subdivisions, extension(s) and amendments of the township approved by Stellenbosch Municipality from time to time.
- 3.42 'Occupier' shall mean the lessee or other occupant of an Erf.

- 3.43 'Ordinary Resolution' shall mean a resolution passed at a general meeting of the 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 Members present in person or by proxy.
- 3.44 'Owner' shall mean the registered owner of an Erf.
- 3.45 'Prime rate' shall mean the prime bank overdraft rate of interest charged by the 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).
- 3.46 'Regulations' shall mean the regulations the Trustees may make from time to time referred to in clause 21.9 of this Constitution.
- 3.47 'Security Service Provider' shall mean the Security Service Provider as may be appointed from time to time by the Master Association.
- 3.48 'Service address' shall mean the domicilium citandi et executandi or the address at which a person elects to receive all legal notices or documents or notices in terms of this Constitution, the Simonsberg Design Guidelines or the Conduct Rules.
- 3.49 'Services' shall mean the internal engineering service infrastructure in respect of Simonsberg Manor, the street lights and the security perimeter of Simonsberg Manor and such other utilities or services as may be rendered in respect of Simonsberg Manor.
- 3.50 'Simonsberg Manor' shall mean the development known as Simonsberg Manor constituted in respect of the subdivisions of the Land to comprise Erven 638 to 663 Koelpark as reflected on the General Plan to be contained in Annexure B to the Constitution, including all/any further consolidations and/or subdivisions in respect of the erven and all/any extension(s) and amendments of the development approved by Stellenbosch Municipality from time to time and being a Precinct within the Nooitgedacht Village.
- 3.51 'Site development plan' shall mean a plan drawn to scale that indicates details of the proposed land development, including the site layout, positioning of buildings and structures, property access, building designs and landscaping;
- 3.52 'Stellenbosch Municipality' shall mean the municipality of Stellenbosch as defined in the Stellenbosch Planning By-Law and its successors in title;
- 3.53 'Stellenbosch Planning By-Law' shall mean the Stellenbosch Municipality Land Use Planning By-Law, 2015 as may be amended from time to time.
- 3.54 'Trustees' shall mean the Trustees of the Association collectively from time to time and includes alternate and co-opted Trustees, and 'Trustee Committee' shall have a corresponding meaning and 'Trustee' shall mean one of them.

4. INTERPRETATION

- 4.1 In the interpretation of this Constitution, unless the context otherwise indicates:
- 4.1.1 the clause headings are for convenience of reference and shall be disregarded in construing this Constitution;
- 4.1.2 words importing the singular number shall include the plural, and the converse shall also apply;

- 4.1.3 a reference to any one gender shall include the other genders;
 - 4.1.4 a reference to natural persons or 'person' shall include juristic persons and the converse shall also apply;
 - 4.1.5 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;
 - 4.1.6 words and expressions to which a meaning has been assigned in the Master Constitution shall bear the meaning so assigned to them; and
 - 4.1.7 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.
- 4.2 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.
- 4.3 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.
- 4.4 If any provision in the Design Guidelines or the Conduct Rules is in conflict with any provision of this Constitution, the relevant provision of this Constitution shall prevail.
- 4.5 If any provision in the Master Constitution is in conflict with any provision of this Constitution, the Design Guidelines or the Conduct Rules, the relevant provision of the Master Constitution shall prevail.
- 4.6 The annexures to this Constitution are deemed to be incorporated in and form part of this Constitution.

5. STATUS OF THE ASSOCIATION

- 5.1 The Association is a juristic person, must have a constitution and has perpetual succession and is capable of suing and being sued in its own name.
- 5.2 It is recorded that the Association is established as a non-profit making institution for the purposes and objectives set out in this Constitution. The Association shall not be for profit, but for the collective benefit and interest of its Members.
- 5.3 No part of the income of the Association may be paid or refunded to any Member, except to settle any debt to such Member that the Association may have.
- 5.4 No Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees on behalf of the Members according to the objectives of the Association.
- 5.5 The Association has the right to acquire, hold, lease and alienate property, both movable and immovable.

- 5.6 The sole object of the Association is to manage the collective interests common to all its Members, which includes expenditure applicable to the Common Areas of Simonsberg Manor and the collection of Levies for which such Members are liable.
- 5.7 The Association is not permitted to distribute its funds to any person other than to a similar association of persons.
- 5.8 On dissolution the remaining assets shall 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.
- 5.9 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.
- 5.10 The 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.
- 5.11 The 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.
- 5.12 Any amendments to the Constitution must be submitted to the Commissioner for the South African Revenue Services.

6. OBJECTIVES OF THE ASSOCIATION

The objectives of the Association are:

- 6.1 to formally represent the collective mutual interests of the area, suburb, or neighbourhood, comprising Simonsberg Manor as set out in this Constitution, the Design Guidelines and the Conduct Rules and in accordance with the conditions of approval of Stellenbosch Municipality;
- 6.2 to control, administer, manage and maintain the Common Areas, the buildings erected thereon, and the Services and the amenities in respect of Simonsberg Manor for the benefit of all the Members;
- 6.3 to control the buildings, improvements, landscaping and irrigation in respect of the Common Areas;
- 6.4 to take ownership of the Common Areas, where possible;
- 6.5 the control over the Design Guidelines of the buildings and Erven arising from the subdivision;
- 6.6 to monitor and enforce compliance with the Design Guidelines in respect of Improvements and landscaping of Erven and Common Areas;
- 6.7 to monitor and control the construction of Improvements within Simonsberg Manor and in this regard:
 - 6.7.1 to uphold aesthetic standards that will enhance the attractiveness of Simonsberg Manor as a whole;

- 6.7.2 to regulate the aesthetic appearance generally of all Improvements; and
- 6.7.3 to regulate the environment, landscaping and irrigation within Simonsberg Manor;
- 6.8 to monitor and enforce compliance with the conditions of subdivision approval, the management plans, and the Municipal By-laws, zoning and scheme regulations that may be applicable to Simonsberg Manor from time to time;
- 6.9 to provide services in respect of Simonsberg Manor as may be necessary, including to paint the security perimeter wall;
- 6.10 to conclude service agreements with Stellenbosch Municipality and other service providers, for the benefit of the Members;
- 6.11 to co-operate with Stellenbosch Municipality and all other appropriate authorities for the benefit of the Association and the Members;
- 6.12 to regulate the conduct of persons within Simonsberg Manor to prevent any nuisance to a Member or an Occupier and to administer and enforce Conduct Rules to ensure a good standard of conduct for persons within Simonsberg Manor;
- 6.13 to establish a levy fund for expenses of the Association, including provision for future expenses and contingencies and to determine and collect Levies for the purpose of the said fund from the Members;
- 6.14 the regulation of at least one annual meeting of its Members;
- 6.15 to control the alienation, transfer, letting and use of Erven within Simonsberg Manor;
- 6.16 to provide for the procedures to obtain the consent of the Members of the Association to the transfer of an erf in the event that the Association ceases to function;
- 6.17 to implement, administer and enforce compliance with the provisions of this Constitution, the Architectural Guidelines and the Conduct Rules;
- 6.18 to take action as deemed necessary by the Trustees in relation to the non-compliance by any Member or Occupier with any provisions of this Constitution, the Design Guidelines or the Conduct Rules and to impose penalties upon Members in respect of contraventions;
- 6.19 to ensure compliance with the Master Constitution, the resolutions of the Master Association and the resolutions of the Master Trustees;
- 6.20 to perform such powers and functions on behalf of the Master Association as may be delegated by the Master Association and/or to delegate such powers and functions to the Master Association as the Trustees deem necessary and at any time to revoke such delegation;
- 6.21 to enable the Master Association to provide a secure environment for the Members and Occupiers by allowing the Master Association to implement, control and enhance security systems in respect of Simonsberg Manor, and in this regard the Security Service Provider employed by the Master Association shall also provide security services to Simonsberg Manor;
- 6.22 to provide for procedures to obtain the consent of the Members of the Association to transfer an Erf in the event that the Association ceases to function;

- 6.23 to promote, advance and protect the interest of the Members generally in regard to Simonsberg Manor and to represent the interest of Members and to provide a united voice by which such interests may be expressed; and
- 6.24 generally to do all such things as may be necessary or requisite to give effect to and implement and enforce the objectives of the Association and to do all such things ancillary or incidental to the objectives;

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

7. FUNCTIONS AND POWERS OF THE ASSOCIATION

- 7.1 The Association shall exercise the powers and perform the functions as set out in this Constitution, the Design Guidelines and the Conduct Rules, and such ancillary functions, as may be necessary in pursuit of its objectives.
- 7.2 The functions of the Association shall include:
 - 7.2.1 to establish a levy fund of the Association sufficient in the opinion of the Association to meet the expenditure of the Association;
 - 7.2.2 to raise and determine Levies payable by the Members as contributions to the levy fund;
 - 7.2.3 to open and operate an account or accounts with registered South African commercial bank/s and financial institution/s;
 - 7.2.4 to take up insurance for the Association as may be required, including but not limited:
 - 7.2.4.1 to insure the buildings, Improvements, amenities and Services in respect of the Common Areas and in respect of the Erven against such risks as the Association may determine;
 - 7.2.4.2 to take up public liability insurance in respect of the Common Areas and Services;
 - 7.2.4.3 to take up fidelity insurance; and
 - 7.2.4.4 to insure the payment of Levies due by the Members to the Association;
 - 7.2.5 to pay the premiums on any policy of insurance effected by it;
 - 7.2.6 to repair and maintain the Common Areas and all buildings, improvements, amenities and Services of the Association in a state of good and serviceable repair; and
 - 7.2.7 to ensure compliance with any law relating to the Common Areas and/or Services and to comply with any notice or order by any competent authority requiring any repair to, or work in respect of the Common Areas and/or Services.
- 7.3 The powers of the Association shall include the power:
 - 7.3.1 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, to insure

- immovable property, and to make improvements to immovable property, and to remove improvements;
- 7.3.2 to purchase, hire, or otherwise acquire movable property and to insure, sell, let, or otherwise dispose of movable property;
- 7.3.3 to control and maintain the Common Areas and to establish on the Common Areas such services, improvements, amenities, lawns or gardens as may be required and to register servitudes;
- 7.3.4 to apply for licenses and other rights enabling the Association to deal with its property in any lawful manner;
- 7.3.5 to add to, amend, repeal or substitute the provisions of the Constitution, the Design Guidelines and the Conduct Rules from time to time;
- 7.3.6 to borrow moneys required by it in the performance of its functions or the exercise of its powers;
- 7.3.7 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;
- 7.3.8 to sell and cede any obligation due to the Association, including but not limited to claims for Levies, contributions, charges, penalties and fees, and to agree to the terms of such transactions;
- 7.3.9 to lend or donate moneys;
- 7.3.10 to invest surplus moneys of the levy fund;
- 7.3.11 to make, draw, issue, accept, endorse and discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments;
- 7.3.12 to enter into or issue indemnities, guarantees and suretyships and to secure payments thereunder in any way;
- 7.3.13 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;
- 7.3.14 to appoint such agents or contractors as it deems fit;
- 7.3.15 to sue and be sued in the name of the Association and to appoint attorneys, agents and advocates for the aforementioned purpose;
- 7.3.16 to enter into agreements for the supply of services, equipment or property to Simonsberg Manor and/or to Owners and/or Occupiers;
- 7.3.17 to enter into any agreement necessary to achieve the objectives of the Association or to further the interest of the Association;
- 7.3.18 to recover by legal process any Levies or moneys due by Members or former Members to the Association;
- 7.3.19 to impose financial penalties on Members in respect of contraventions of provisions of the Constitution, the Design Guidelines and/or the Conduct Rules, by the

Members or their Invitees, or the Occupiers of their Erven and their Invitees and to recover such penalties from the Members or former Members by legal process; and

7.3.20 to do all things necessary or required to attain the objectives of the Association, and to further and promote the interests of Members and to implement and enforce the powers conferred on the Association in terms of this Constitution, the Design Guidelines and the Conduct Rules.

7.4 The Association shall be responsible for the enforcement of this Constitution, the Design Guidelines and the Conduct Rules and for the control, administration and management of Simonsberg Manor and the Common Areas.

7.5 The Association may institute, conduct, defend, compound or abandon any legal proceedings by or against the Association or its Trustees or otherwise concerning the affairs of the Association and agree to the time and terms for payment or satisfaction of any debts due or of any claims or demands made by or against the Association.

8. MEMBERSHIP OF THE ASSOCIATION

8.1 The Association shall have as its Members:

8.1.1 the Developer for as long as the Developer remains the registered owner of an Erf in Simonsberg Manor; and

8.1.2 every registered owner of an Erf in Simonsberg Manor.

8.2 Membership of the Association shall be automatic and compulsory for every registered owner of an Erf. Such membership shall commence simultaneously with the registration of transfer of such Erf into the name of the transferee in the Deeds Office. When a Member ceases to be the registered owner of an Erf, he shall automatically cease to be a Member of the Association.

8.3 Where an Erf is registered in the name of more than one person, all the Owners of the Erf shall be deemed jointly and severally to be one Member of the Association.

8.4 Where any person is the registered owner of more than one Erf, such person shall be regarded as a Member, and shall have the rights and obligations of a Member, in respect of each Erf registered in such person's name.

9. OBLIGATIONS OF MEMBERS OF THE ASSOCIATION

9.1 Every Member is obliged to comply with:

9.1.1 the provisions of this Constitution, the Design Guidelines and the Conduct Rules;

9.1.2 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on the Member; and

9.1.3 any regulation passed by the Association or the Trustees in enforcing the provisions of this Constitution, the Design Guidelines or the Conduct Rules.

9.2 The rights and obligations of a Member are not transferable and every Member shall to the best of his ability, further the objectives and interests of the Association.

9.3 A Member may not resign from the Association.

- 9.4 The Members shall be jointly liable for expenditure incurred in connection with the Association according to the provisions of this Constitution. The Association shall recover expenditure incurred in connection with the Association from its Members in accordance with the provisions of this Constitution.
- 9.5 Except for the Developer, no Member shall apply to Stellenbosch Municipality for the rezoning, consent, use, departure or any other relaxation in terms of the approved zoning scheme of his Erf with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Erf for any purpose other than the permitted use applicable upon establishment of the Association without the prior written consent of the Trustees and subject to the conditions imposed by the Trustees.
- 9.6 Except for the Developer, no Member shall consolidate two or more Erven into one Erf without the prior written consent of the Trustees and subject to the conditions imposed by the Trustees, provided that upon registration of the consolidation, the Member shall be liable to the Association for Levies, calculated according to the number of erven comprised in the consolidated Erf, and in effect the Member shall therefore be liable for the same amount in Levies which would have been payable had the Erven not been consolidated.
- 9.7 Except for the Developer, no Member shall subdivide an Erf into two or more Erven, without the written consent of the Trustees and subject to the conditions imposed by the Trustees, provided that Levies shall be payable to the Association in respect of every Erf arising from the subdivision.
- 9.8 The provisions of this Constitution, the Design Guidelines and the Conduct Rules shall be *mutatis mutandis* applicable to the lessees and other occupiers of Erven.
- 9.9 All lessees and other occupiers shall be obliged to comply with the provisions of the Constitution, the Design Guidelines and the Conduct Rules notwithstanding any provision to the contrary contained in, or the absence of provisions, in any lease or any grant of rights of occupancy.
- 9.10 A Member shall ensure that his lease agreement or other agreement of occupancy shall include provisions to the effect that:
- 9.10.1 the lessee or other occupier shall be obliged to comply with the provisions of the Constitution, the Design Guidelines and the Conduct Rules of the Association; and
- 9.10.2 a contravention of a provision of the Constitution, the Design Guidelines or the Conduct Rules by the lessee or other occupier or the Invitees of the lessee or other occupier shall constitute a breach of the lease agreement and shall entitle the Owner or lessor to terminate the lease agreement by giving written notice to that effect to the lessee or other occupier.
- 9.11 This Constitution, the Design Guidelines and the Conduct Rules, and the duties of a Member in relation to the use, occupation and enjoyment of his Erf and the use and enjoyment of the Common Areas shall be binding on all Members and Occupiers. A Member must take all reasonable steps to ensure compliance with this Constitution, the Design Guidelines and the Conduct Rules by his Invitees and by the Occupiers of his Erf and their Invitees.
- 9.12 Each Member shall be vicariously liable for the acts or omissions within Simonsberg Manor by his Invitees or by the Occupiers of his Erf, including the Invitees of his Occupiers.
- 9.13 In the event of any breach or contravention of any provision of this Constitution, the Design Guidelines or the Conduct Rules by the Invitees of a Member or by the Occupiers of his Erf or their Invitees, such breach or contravention shall be deemed to have been committed

- by the Member concerned. Without prejudice to the foregoing, 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 Member concerned.
- 9.14 In the event of damage caused to the Common Areas or Services by the Invitees of a Member or by the Occupiers of his Erf or their Invitees, the Member concerned shall be liable to the Association for the costs to repair such damage, and the costs may be added to the Member's levy statement. Without prejudice to the 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 Member concerned.
- 9.15 A Member shall maintain his Erf and Improvements in a state of good repair and in a clean and neat condition. If a Member fails to repair or maintain his Erf 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.
- 9.16 Each Member shall:
- 9.16.1 retain the existing colour scheme in respect of his house and any change thereof must be approved in terms of clause 13 of this Constitution;
 - 9.16.2 not do or suffer to be done on or in any Erf 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 Owner or Occupier;
 - 9.16.3 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 Design Guidelines and building plans to be approved by the Trustees;
 - 9.16.4 adhere strictly to the terms of servitudes registered in respect of his Erf;
 - 9.16.5 permit access to irrigation pipelines, water metres, fibre optic network and other services by persons authorised in writing by the Association;
 - 9.16.6 permit access to the security perimeter by persons authorised in writing by the Association, and
 - 9.16.7 not erect any structure over the sewer systems.
- 9.17 Members shall adhere to such restrictions as may be imposed by Stellenbosch Municipality in respect of the rezoning and/or subdivision of the Land, including restrictions having regard to height, coverage or set back, as may be applicable to their Erven.
- 9.18 No estate agency boards or 'for sale' signs may be placed on any Erf in Simonsberg Manor or on the Common Areas. No Member shall place or erect any other sign, notice, billboard, or advertisement of any kind whatsoever on any part of his Erf or the Common Areas without the prior written consent of the Trustees.
- 9.19 All Erven shall be subject to such servitudes as may be registered by the Developer in favour of the Association or other service provider.

10. RESTRICTION ON ALIENATION AND TRANSFER OF ERVEN

- 10.1 A Member shall not be entitled to alienate or apply to the Registrar of Deeds for the registration of transfer of his Erf, without the prior written consent of the Association having been obtained, which consent may, subject to the conditions contained in clause 10.2, not unreasonably be withheld.
- 10.2 The Association may refuse such written consent if:
- 10.2.1 the Levies and other amounts due to the Association in respect of the Erf, have not been paid or payment thereof have not been secured to the satisfaction of the Trustees, and/or
 - 10.2.2 the Member is substantially in breach of the provisions of the Constitution, the Design Guidelines and/or the Conduct Rules, to an extent reasonable to justify withholding such consent, and/or
 - 10.2.3 the Member has constructed a building which is not in compliance with the development management scheme.
- 10.3 The written consent may be signed by the Chairperson or by a Trustee or by the Managing Agent duly authorised thereto. The Trustees may determine a reasonable fee to be charged for the issuing of the written consent.
- 10.4 The foregoing provisions shall not apply to sales and transfers by the Developer during the Development Period, and the Developer or its nominee/s shall be entitled on behalf of the Association to sign all such consents as may be necessary to enable the Developer to give transfer of Erven sold by the Developer to the purchasers thereof.

11. CONDUCT RULES

- 11.1 The Developer may formulate and issue Conduct Rules for the Association and may for the duration of the Development Period in its sole discretion amend the Conduct Rules from time to time. After 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 by the Members on the Trustees at a general meeting of the Association.
- 11.2 The Conduct Rules may include provisions governing:
- 11.2.1 the use, occupation and enjoyment of Erven, and restrictions on the use and enjoyment thereof;
 - 11.2.2 the use and enjoyment of the Common Areas and amenities, and restrictions on the use and enjoyment thereof;
 - 11.2.3 the appearance of Erven, Improvements and landscaping in respect of Erven;
 - 11.2.4 the storage of flammable and other harmful substances;
 - 11.2.5 the preservation of the natural environment including vegetation and flora and fauna on the Land;
 - 11.2.6 the keeping and controlling of pets, and any restrictions relating thereto;
 - 11.2.7 the control of traffic within Simonsberg Manor and the introduction of traffic calming measures;

- 11.2.8 the control of parking within Simonsberg Manor and the allocation and use of private parking areas on the Common Areas by Owners, Occupiers and their Invitees;
- 11.2.9 the introduction of security measures and facilities;
- 11.2.10 refuse disposal and prohibiting littering;
- 11.2.11 the conduct of persons generally within Simonsberg Manor and the prevention of a nuisance to other Owners and/or Occupiers;
- 11.2.12 penalties payable by Members in respect of contraventions of the Conduct Rules;
- 11.2.13 selling and letting of Erven and the accreditation of estate agents;

and generally any other provisions in furtherance and promotion of the objectives of the Association or which would be to the benefit of the Association and the Members.

12. DESIGN GUIDELINES

- 12.1 The Design Guidelines formulated by the Developer for Simonsberg Manor shall be binding upon the Members. The Developer may for the duration of the Development Period amend the Design Guidelines from time to time. After the Development Period, the Trustees may amend the Design Guidelines from time to time, subject to the directions given or restrictions imposed by the Members on the Trustees by an Ordinary Resolution passed at a general meeting of the Association, provided that:
 - 12.1.1 the Design Guidelines may introduce more restrictive development rules or land uses than provided in the development management scheme;
 - 12.1.2 in the event of the provisions of the Design Guidelines being amended or added to and such amendment or addition materially affects any further development of Erven, the Trustees shall by written notice inform all Members of the amendment to the Design Guidelines; and
 - 12.1.3 the amended Design Guidelines shall be submitted to the Stellenbosch Municipality.
- 12.2 The Design Guidelines may include provisions governing:
 - 12.2.1 the architectural design and standard of Improvements, and aesthetic requirements, and the material to be used, in respect of Improvements;
 - 12.2.2 the relationship of Improvements to adjacent Common Areas and other Erven and developments;
 - 12.2.3 the maintenance of Improvements;
 - 12.2.4 building activities within Simonsberg Manor; and
 - 12.2.5 landscaping within Simonsberg Manor.
- 12.3 Having regard to the contents of the Design Guidelines, the Trustees shall have the power:
 - 12.3.1 to administer the Design Guidelines;

- 12.3.2 to perform such acts as are necessary to accomplish the purposes expressed or implied in this Constitution, the Design Guidelines and/or the Conduct Rules, which acts shall include, inter alia, including but not limited to:
 - 12.3.2.1 the examination and approval of building plans for the construction of Improvements; and
 - 12.3.2.2 the evaluation of landscaping proposals.
- 12.3.3 to engage the Architect/s and such advisors as may be necessary with such powers and duties as may be delegated by the Trustees
- 12.3.4 to 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;
- 12.3.5 to require a building deposit from the Members; and/or
- 12.3.6 to delegate the powers and functions of the Trustees in terms of clauses 12, 13 and 14 to the Master Trustees;
- 12.4 All landscaping and Improvements shall be of approved design and sound construction and must comply with the provisions of the Design Guidelines.

13. IMPROVEMENTS AND LANDSCAPING BY MEMBERS

- 13.1 Except in respect of the Developer's activities in respect of the infrastructure and in respect of its Erven and the activities of building contractors appointed by the Developer, no Member may commence with the construction of an Improvement to his Erf or of any other item included in the Design Guidelines, without the written approval of the Trustees and the Master Trustees in terms of the Master Constitution, and subject to the approval of the building plans by the Trustees, the Master Trustees and by Stellenbosch Municipality.
- 13.2 The Trustees will only approve the building plans, if they are satisfied that the proposed Improvements comply with the provisions of the Design Guidelines for the purpose of which the Trustees shall be the sole arbitrator and their decision shall be final and binding on the Member. If considered necessary by the Trustees, they must submit the building plans to the Architect for his scrutiny and approval.
- 13.3 to obtain the written approval of the Trustees in terms of clause 13.1 above a Member must:
 - 13.3.1 apply to the Trustees in writing;
 - 13.3.2 where applicable, submit building plans, and such additional documents as may be required, to the Trustees for examination and approval;
 - 13.3.3 pay to the Association the scrutiny fee and any further charges imposed by the Trustees from time to time, and any other costs incurred by the Trustees; and
 - 13.3.4 pay the building deposit as required by the Trustees.
- 13.4 Once the Trustees and the Master Trustees have approved the building plans, the Member must submit the building plans to Stellenbosch Municipality for approval. No Member must submit any building plans to Stellenbosch Municipality without prior approval of the building plans by the Trustees and the Master Trustees.

- 13.5 Having obtained the approval of Stellenbosch Municipality, the Member must comply with all terms, conditions and changes required by the Trustees and the Master Trustees and the conditions and standards imposed by Stellenbosch Municipality insofar as these may be additional to the requirements of the Design Guidelines read with the building plans.
- 13.6 Any dispute relating to the Design 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 his determination shall be final and binding on the parties to the dispute.
- 13.7 Except in respect of the Developer's activities and notwithstanding anything to the contrary contained herein, in the event of any Improvements being erected, in contravention of the building plans or the Design Guidelines, the Trustees shall be entitled to make such amendments to such Improvements in order to procure compliance with building plans approved of by the Trustees and with the Design Guidelines and to recover the costs of such alterations from the Member concerned which amount shall be deemed to be part of the Levies due by the Member to the Association.
- 13.8 Save as may otherwise be agreed by the Trustees, any landscaping to be undertaken by a Member in respect of an Erf, must be undertaken in accordance with a landscape plan approved by the Trustees and no Member must commence landscaping of any Erf until such time as such landscape plan has been approved in writing.
- 13.9 A Member must not erect any fence or wall or any other structure or remove same without the prior written consent of the Trustees.
- 13.10 All landscaping and Improvements shall be of approved design and sound construction and must comply with the provisions of the Design Guidelines.
- 13.11 Notwithstanding the foregoing, the provisions of this clause 13 shall not be binding on the Developer during the Development Period.

14. BUILDING DEPOSIT FOR DAMAGE

- 14.1 Each Member, but excluding the Developer, must, when applying to the Trustees for their approval in terms of clause 13.3.1 above, pay a building deposit to the Association, in the amount determined from time to time by the Trustees, which amount shall be retained by the Association until completion of construction to the satisfaction of the Trustees.
- 14.2 Upon completion of construction, the Trustees must, if they are satisfied that no damage has been caused by the Member or his contractors to the 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 Association.
- 14.3 In the event of Improvements not complying with the building plans and/or damages having been caused to the Common Areas, the Trustees must by written notice inform the Member that the building deposit shall be 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.

15. COMMON AREAS

- 15.1 For the duration of the Development Period, the Developer may, and after the Development Period, the Trustees may, designate areas, servitude areas, erven, parts of

erven and amenities as Common Areas of the Association. The Developer must transfer the parts of the Common Areas which are registrable to the Association.

- 15.2 The Erven shall be subject to such servitudes as may be registered by the Developer in favour of the Association or other service providers.
- 15.3 The Trustees shall control all services, common landscaping, irrigation and amenities in respect of the Common Areas. The Trustees shall repair and maintain the Common Areas in a state of good and serviceable repair.
- 15.4 The Trustees shall control access to and use of the Common Areas and amenities of the Association. Members and Occupiers must comply with the provisions of the Conduct Rules and the reasonable conditions imposed from time to time by the Trustees relating to the use of the Common Areas and the amenities and services of the Association.
- 15.6 Except as stipulated in clause 15.7 below, neither the whole nor any portion of the Common Areas must 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.
- 15.7 The Trustees may, subject to the directions given or restrictions imposed by the Members on the Trustees by an Ordinary Resolution passed at a general meeting of the Association:
 - 15.7.1 let parts of the Common Areas and conclude other agreements with reference to the use thereof for periods shorter than ten (10) years;
 - 15.7.2 construct improvements on the Common Areas, or remove improvements, provided that Master Trustees must first have approved the proposed Improvements or the removal thereof;
 - 15.7.3 repair, maintain, upgrade and provide services in respect of the Common Areas; and
 - 15.7.4 enter into agreements with service providers and/or other persons in respect of the Common Areas.

16. SERVICES

- 16.1 The Association must from time to time repair, maintain, upgrade and/or install Services in respect of Simonsberg Manor, subject to the conditions imposed by Stellenbosch Municipality from time to time.
- 16.2 The Association must repair and maintain the water reticulation, the storm water system and the sewer system in respect of Simonsberg Manor, subject to the conditions imposed by Stellenbosch Municipality. In addition where the sewer system is shared between two Erven, the Association must be responsible for any repairs necessary due to blockages or obstructions.
- 16.3 The Association must repair and maintain the electrical infrastructure in respect of Simonsberg Manor, subject to conditions imposed by ESKOM. Where the electrical infrastructure and services are shared between two adjacent Erven, the costs of the repair and maintenance of the electrical infrastructure must be shared between the Owners of the respective Erven.

- 16.4 The Association must control and maintain the security perimeter of Simonsberg Manor and paint the security perimeter wall, but excluding the security perimeter wall in respect of Nooitgedacht Village which will be the responsibility of the Master Association to control and maintain.
- 16.5 The Security Service Provider appointed by the Master Association must also serve as the Security Service Provider of the Association, provided that the Association must also contribute towards the costs of such services.
- 16.6 The Association may, from time to time, contract with suppliers of services to provide Services to Simonsberg Manor.
- 16.7 The Trustees or their authorised representatives, must be entitled to enter upon an Erf or upon the Common Areas for the purpose of providing, establishing, maintaining and/or repairing Services, provided that such work must be carried out with as little inconvenience to the affected party as reasonably possible.

17. THE BUDGET AND LEVIES

- 17.1 The Trustees must establish and maintain a levy fund for the purpose of meeting all expenses of the Association for the control, management, administration and maintenance of the Common Areas, the amenities and the Services in respect of Simonsberg Manor and/or for the payment of all expenses necessary or reasonably incurred in connection with the management of the Association and its affairs
- 17.2 The Trustees must estimate the amount which will be required by the 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 the Budget of the Association for the ensuing financial year.
- 17.3 The Trustees must determine the Annual Levies due by the Members by apportioning the Budget to the Members as Annual Levies equally in respect of every Erf in Simonsberg Manor. The Trustees must, 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 must 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 Levies 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 must be tabled at the annual general meeting for the consideration of the Members.
- 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 must be apportioned to Members in accordance with clause 17.3 above. Special Levies shall be payable in one payment or in such instalments and at such time or times as the Trustees shall think fit.
- 17.7 Upon taking transfer of an Erf, the new Member becomes liable to the Association for the payment of the Levies in respect of the Erf. No Member shall be entitled to transfer his Erf

until the Trustees have certified that the Member has, at the date of transfer, paid all amounts owing by him to the Association, or has made provision for such payment to the satisfaction of the Trustees.

- 17.8 Where any Erf is owned by more than one person, all the registered owners of that Erf shall be jointly and severally liable for the due performance of any obligation to the Association.
- 17.9 The Developer shall not be liable for Levies to the Association for the duration of the Development Period in respect of the unimproved and/or unoccupied erven owned by it.
- 17.10 If a Member fails to pay on due date the Levies or any other amounts payable by the Member to the Association in terms of this Constitution, the Design Guidelines or the Conduct Rules, the Trustees may, on behalf of the Association, institute legal proceedings against such Member in any court of competent jurisdiction for payment of such arrear Levies and/or other arrear amounts.
- 17.11 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.
- 17.12 All moneys received from a Member towards his levy account, shall be apportioned firstly towards interest, then towards legal and other administrative costs and charges, and then towards Levies or other service charges.
- 17.13 Where payment of Levies or any other amount 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.
- 17.14 The Members shall be liable for Levies to the Master Association, but the Master Trustees may resolve to recover the Levies due by the Members from their Precinct Associations. The Master Trustees may for this purpose resolve to delegate the function to collect Levies from the members of the Master Association to the Precinct Associations. Upon the delegation of this function to the Association, the Association will be responsible to collect the Levies due by its Members to the Master Association, from the Members and to pay the total amount collected to the Master Association. The Association may for this purpose include the Levies due to the Master Association in the levy statements issued to the Members
- 17.15 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 Association in obtaining recovery of arrear Levies, penalties, damage or other amounts due to the Association, or in enforcing compliance with the provisions of this Constitution, the Design Guidelines and/or the Conduct Rules. Such costs and expenses may be added to the Member's levy account and recovered in the same manner as applies to arrear Levies, together with interest at the rate applicable to Levies.

18. OFFICE OF THE TRUSTEES

- 18.1 The Trustees of the Association shall initially comprise of two Trustees appointed by the Developer (the Developer Trustees), who shall serve as such until the first annual general meeting of the Association.

- 18.2 From the aforesaid first annual general meeting and for the duration of the Development Period, the Trustees shall comprise of:
- 18.2.1 Two (2) Trustees appointed by the Developer (the Developer Trustees);
- 18.2.2. Three (3) Trustees appointed by the Members (the Member Trustees).
- 18.3 The appointment of the Developer Trustees shall cease at the end of the Development Period. After the Development Period, the Trustees of the Association (Member Trustees) shall consist of not less than three (3) and not more than seven (7) Trustees.
- 18.4 A Trustee shall be an individual but need not himself be a Member, provided that the majority of Member Trustees shall be an Owner or the spouse of an Owner, or the duly authorised representative of a juristic person who is an Owner.
- 18.5 A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.
- 18.6 Subject to the provisions of clause 19, Member Trustee shall continue to hold office until the next annual general meeting of the 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 to the Trustees at such meeting, provided that at least one (1) Member Trustee shall be re-elected as Trustee at the general meeting if available, to ensure continuity in such office.
- 18.7 The Developer shall at any time be entitled to remove any Developer Trustee and to appoint a new Developer Trustee.

19. REMOVAL AND ROTATION OF THE TRUSTEES

- 19.1 A Trustee shall be deemed to have vacated his office as such upon:
- 19.1.1 his estate being sequestered, whether provisionally or finally, or upon his surrendering his estate;
- 19.1.2 his making any arrangement or compromise with his creditors;
- 19.1.3 his conviction for any offence involving dishonesty;
- 19.1.4 his becoming of unsound mind or being found mentally handicapped;
- 19.1.5 his resigning from such office in writing;
- 19.1.6 his death;
- 19.1.7 his being removed from office as a Member Trustee by an Ordinary Resolution of the Members; or
- 19.1.8 his being in arrears with his Levies or other amounts due to the Association for two (2) months or more, provided he is a Member Trustee.
- 19.2 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 19.1, 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 minutes of a Trustees' meeting or general meeting of the Association.
- 19.3 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 Trustees or by the Members. The person

so appointed shall hold office until the next annual general meeting following his appointment. Should the office of a Developer Trustee fall vacant prior to an annual general meeting of the Association, the vacancy in question may be filled by the Developer.

20. CHAIRPERSON OF THE TRUSTEES

- 20.1 The first Chairperson of the Trustee Committee shall be appointed by the Developer Trustees referred to in clause 18.1 above, who shall hold office until the first Trustee's meeting held after the first annual general meeting.
- 20.2 Within fourteen (14) days of the holding of the first annual general meeting and each subsequent 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 automatically 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.
- 20.3 Save as otherwise provided in this Constitution, the Chairperson shall preside at all Trustees' meetings and at all general meetings of the Association and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by a resolution of the Trustees or by an Ordinary Resolution of the Members. The Chairperson may allow or refuse to allow guests to speak at any Trustees' meetings and at any general meetings of the Association.
- 20.4 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 Trustees' meeting, the Trustees present at such Trustees' meeting or the Members present in person or by proxy, at such general meeting, shall choose another Chairperson for such meeting.

21. FUNCTIONS, POWERS AND DUTIES OF THE TRUSTEES

- 21.1 The functions, powers and duties of the Association shall, subject to the provisions of this Constitution, the Design Guidelines and the Conduct Rules and to any directions given or restrictions imposed by the Members on the Trustees by an Ordinary Resolution passed at a general meeting of the Association, be performed and exercised by the Trustees.
- 21.2 Without detracting from the scope of the additional duties specified in this Constitution, the Design Guidelines and the Conduct Rules, the Trustees shall perform the functions referred to in clause 7.2 of this Constitution.
- 21.3 The Trustees shall do all things reasonable necessary for the control, management and administration of Simonsberg Manor, in terms of the powers conferred upon the Association by clause 7.3 of this Constitution.
- 21.4 The Trustees shall perform such functions and powers as may be assigned to it by the Master Association.
- 21.5 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 21.6 The Trustees shall have the right to co-opt onto the Trustees any person or persons chosen by them. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of a Trustee and shall only serve until the next annual general meeting following his appointment.

- 21.7 The Trustees shall do all things reasonably necessary for the enforcement of this Constitution, the Design Guidelines and the Conduct Rules. The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Occupier or his Invitee of this Constitution, the Design Guidelines and the Conduct Rules in such reasonable manner as they shall decide from time to time.
- 21.8 Without in any way limiting the powers granted, the powers of the Trustees shall include the following:
- 21.8.1 Subject to the provisions of the Master Constitution to appoint for and on behalf of the Association, such agents and employees as they deem fit in connection with the control, management and administration of Simonsberg Manor and the Common Areas and the exercise and performance of any of the powers and duties of the Association.
 - 21.8.2 to enter into agreements on behalf of the Association.
 - 21.8.3 to regulate relations between Members themselves, between Members and the Association and between the Association and the Master Association.
 - 21.8.4 To determine what constitutes appropriate standards for Improvements and landscaping in compliance with the Design Guidelines, which shall be additional to the powers of the Developer for as long as the Developer is a Member.
 - 21.8.5 to determine what constitutes appropriate standards for residential living in compliance with the Conduct Rules.
 - 21.8.6 to require any Member, who shall be obliged, to repaint or renovate the Improvements in respect of his Erf, if in the reasonable opinion of the Trustees such Improvements require essential repairs or have become dilapidated.
 - 21.8.7 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.
 - 21.8.8 to form sub-committees for the performance of designated tasks on behalf of the Trustees.
 - 21.8.9 to institute, conduct, defend, compound or abandon any legal proceedings by or against the Association or Trustees or otherwise concerning the affairs of the 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 Association.
 - 21.8.10 To impose penalties on Members in respect of their contraventions and the contraventions of their Invitees, and/or the Occupiers of their Erven and the Invitees of their Occupiers of provisions of this Constitution, the Design Guidelines or the Conduct Rules and to recover by legal action or otherwise, such penalties from its Members or former Members.
 - 21.8.11 to do all acts and deeds as might be required necessary, conducive, ancillary or incidental to the attainment or furtherance of the objectives and powers of the Association.

21.9 The Trustees may formulate and issue and amend Regulations from time to time for the following purposes, subject to the directions given or restrictions imposed by the Members on the Trustees by an Ordinary Resolution passed at a general meeting of the Association:

21.9.1 as to the resolution of disputes generally;

21.9.2 for the furtherance and promotion of any of the objectives of the Association;

21.9.3 for the better management of the affairs of the Association;

21.9.4 for the advancement of the interests of Members;

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

21.9.6 for the management of the development in Simonsberg Manor;

and the Members shall be bound by such Regulations.

21.10 Each Trustee shall stand in a fiduciary relationship to the Association. A Trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute, with the Association, by virtue of any interest he may have therein.

21.11 Trustees shall be entitled to be repaid all reasonable expenses incurred by them in good faith in or about the performance of their duties as Trustees in good faith. Unless otherwise determined by an Ordinary Resolution of the Members, Trustees shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.

21.12 Except for the agreements concluded by the Developer on behalf of the Association, no agreement concluded on behalf of the Association shall be valid and binding unless it is signed by a Trustee, specifically appointed as authorised signatory in terms of a Trustees' resolution.

21.13 Any written consent given on behalf of the Association may be signed by a Trustee, duly authorised thereto, or by the Managing Agent, duly authorised thereto.

21.14 The Trustees must ensure compliance with the Community Schemes Ombud Service Act and must:

21.14.1 register Simonsberg Manor with the Community Schemes Ombud Service and amend the details from time to time;

21.14.2 pay a levy to the Community Schemes Ombud Service, in an amount determined in the manner as may be prescribed from time to time;

21.14.3 for the purpose of paying the levy to the Community Schemes Ombud Service, recover the levy from the Members of the Association, in accordance with the apportionment as may be prescribed as far as possible in;

21.14.4 file with the Ombud Service an annual return in the prescribed format; and

21.14.5 file with the Ombud Service a copy of its annual financial statements and any other prescribed documents or information.

21.14.6 comply with the additional fiduciary duties as set out in the Community Schemes Ombud Service Act from time to time.

22. PROCEEDINGS OF THE TRUSTEES

- 22.1 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.
- 22.2 Trustees' meetings shall be held at least once every two (2) months.
- 22.3 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.
- 22.4 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.
- 22.5 It is sufficient if the notice is transmitted electronically directly to the Trustees 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.
- 22.6 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. A Member Trustee may not be represented at a Trustees' meeting by a proxy.
- 22.7 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 then present shall be a quorum, provided that for the duration of the Development Period, at least one (1) Developer Trustee shall be present.
- 22.8 Any Trustees' resolution shall be carried by a simple majority of all votes cast, each Trustee present having one vote. 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 46.3 for the duration of the Development Period.
- 22.9 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.
- 22.10 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.
- 22.11 The Trustees shall by Trustees' resolution appoint a Precinct Trustee to represent Simonsberg Manor as a Member Trustee on the Master Trustees.

22.12 The Trustees shall by Trustees' resolution appoint a Precinct Trustee to represent the Association and its members as the Precinct Association Representative at a general meeting of the Master Association.

22.13 The Trustees shall:

22.13.1 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;

22.13.2 keep the minutes of Trustees' meetings in perpetuity;

22.13.3 on the written application of any Member or the Master Association and against payment of the reasonable fees or costs required by the 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.

22.14 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.

22.15 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.

23. MANAGING AGENT AND ESTATE MANAGER

23.1 Managing Agent appointed by the Master Association shall also function as the Managing Agent of the Association, provided that the Association shall also contribute towards the management fees.

23.2 The Estate Manager appointed by the Master Association shall also function as the Estate Manager of the Association, provided that the Association shall also contribute towards the costs.

24. GENERAL MEETINGS OF THE ASSOCIATION

24.1 The Developer Trustees shall convene the first annual general meeting of the Association. Annual general meetings of the Association shall be held within four (4) months of each financial year end of the Association.

24.2 The annual general meetings of the Association 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.

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

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

- 24.5 A special general meeting shall also be convened on a written request made by not less than thirty percent (30%) of the Members. Should the Trustees fail to convene a special general meeting within thirty (30) days of such request, the said Members may convene the general meeting themselves with at least fourteen (14) days' written notice to all Members and to the Master Association in terms of clause 25 of this Constitution.
- 24.6 The Association and the Members shall be represented at general meetings of the Master Association by a representative appointed by the Trustees as the Precinct Association Representative.

25. NOTICE OF GENERAL MEETINGS

- 25.1 A general meeting of the Association shall be called by not less than fourteen (14) days' written notice to all Members and to the Master Association. The notice shall specify the place, day, hour and business of the meeting.
- 25.2 A general meeting of the 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 not less than sixty percent (60%) of the Members having a right to attend and vote at the meeting.
- 25.3 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.
- 25.4 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.

26. PROXIES AT GENERAL MEETINGS

- 26.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association.
- 26.2 The instrument appointing a proxy shall be in writing signed by the Member concerned or his appointed agent, duly authorised in writing, but need not be in any particular form, provided that:
- 26.2.1 where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf;
- 26.2.2 where a Member is a company, the instrument appointing the proxy may be signed by a director of the company;
- 26.2.3 where a Member is a close corporation, the instrument appointing the proxy may be signed by a member of the close corporation;
- 26.2.4 where a Member is a Trust, the instrument appointing a proxy may be signed by a trustee of the trust; and
- 26.2.5 where a Member is an association of persons or a club, the instrument appointing a proxy may be signed by the secretary or committee member of the association or club.
- 26.3 The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.
- 26.4 The instrument appointing a proxy and the power of attorney, authorising resolution, or other authority under which it is signed, or copies thereof, shall be deposited at the service

address of the Association, either by hand, post, facsimile or by electronic mail at least twenty four (24) hours before the time appointed for the commencement of the meeting or shall be handed to the Chairperson at any time before the time appointed for the commencement of the general meeting or adjourned meeting. Notwithstanding the foregoing, the Chairperson of the meeting may agree to accept a proxy tendered at any time during the general meeting.

- 26.5 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustees at least one (1) hour before the time fixed for the holding of the meeting.

27. QUORUM AT GENERAL MEETINGS

- 27.1 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 five percent (5%) of the total number of Members, entitled to attend and vote thereat.
- 27.2 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 Members, 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 present shall constitute a quorum.

28. AGENDA AT ANNUAL GENERAL MEETINGS

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

- 28.1 the approval of the minutes of the previous annual general meeting of the Association;
- 28.2 the consideration of the Chairperson's report;
- 28.3 the election of the Member Trustees and the announcement by the Developer of the Developer Trustees;
- 28.4 the consideration of the financial statements of the Association for the preceding financial year;
- 28.5 the consideration of the Budget, approved by the Trustees and the Annual Levies payable by the Members;
- 28.6 the appointment of the Auditors, provided that the Auditors shall be the Auditors as appointed by the Master Association;
- 28.7 the consideration of any resolutions proposed for adoption by the Trustees 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;
- 28.8 the giving of directions to or the imposing of restrictions on the Trustees; and
- 28.9 any other business pertinent to such meeting.

29. PROCEDURE AT GENERAL MEETINGS

- 29.1 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 Trustees 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.
- 29.2 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.
- 29.3 Save as otherwise provided in the Constitution, the proceedings at any general meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

30. VOTING AT GENERAL MEETINGS

- 30.1 Subject to clause 30.8 below, at every general meeting, every Member present in person or by proxy and entitled to vote shall have one (1) vote for each Erf owned, provided that if an Erf is registered in more than one person's name, then they shall jointly have one (1) vote.
- 30.2 At every general meeting, an Ordinary 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 is demanded by any Member.
- 30.3 At every general meeting, an Ordinary Resolution put to the vote at the meeting shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereon, present in person or by proxy in accordance with the value of votes recorded in clause 30.1 above, provided that the Developer shall have a veto right in terms of clause 46.2 for the duration of the Development Period.
- 30.4 Notwithstanding the provisions of clause 30.3 above, voting on the election of a Chairperson of a general meeting (if necessary), or on any question of adjournment, shall be decided on a show of hands by an Ordinary Resolution.
- 30.5 Every Ordinary Resolution put to the vote of the meeting shall be decided on an ordinary majority of the votes in accordance with the value of votes recorded in clause 30.1 above.
- 30.6 When a poll is demanded, it shall be taken in such manner as the Chairperson directs and the result of the poll shall be deemed to be the Ordinary Resolution of the meeting at which the poll was demanded.
- 30.7 Unless any Member 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 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.

- 30.8 No vote may be exercised in respect of an Erf where the Member is in arrears with his Levies or other amounts due to the Association for more than two (2) months and the Member concerned or the duly authorised representative of the Member who is a juristic person shall not be entitled to be appointed as a Member Trustee.

31. MINUTES OF GENERAL MEETINGS

- 31.1 The Trustees shall ensure that minutes are taken of every general meeting of the 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 as correct by the Chairperson of the meeting.
- 31.2 The Trustees shall keep all minutes of general meetings of the Association in perpetuity.
- 31.3 On the written application of any Member or the Master Association, the Trustees shall make the minutes of general meetings of the Association available for inspection by such applicant, during reasonable hours on business days and/or furnish them with the copies as may be required against payment of the requisite charges.
- 31.4 All resolutions recorded in the minutes of general meetings of the 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 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 Association.

32. FINANCIAL YEAR OF THE ASSOCIATION

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

33. BOOKS OF ACCOUNT AND FINANCIAL STATEMENTS

- 33.1 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 Association. On the written application of a Member, the Trustees shall make all or any of the books of account and records available for inspection by such Member during reasonable hours on business days.
- 33.2 At each annual general meeting the Trustees shall lay before the Association, financial statements for the immediately preceding financial year of the Association or, in the case of the first period since the date of establishment of the Association, financial statements made up for that period.
- 33.3 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 sent to the Members convening each annual general meeting.
- 33.4 The Trustees shall cause all books of account and records to be retained for a period of six (6) years after completion of the transactions, acts or operations to which they relate.

- 33.5 On the written application of a Member or the Master 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 thereof as may be required against payment of the requisite charges.

34. DEPOSIT AND INVESTMENT OF FUNDS

- 34.1 The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered South African commercial bank in the name of the Association and, subject to any direction given or restriction imposed by the Members on the Trustees, by an Ordinary Resolution passed at a general meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or for the purpose of investment.
- 34.2 The Trustees may authorise a Managing Agent to administer and operate the accounts referred to in clause 34.1 above, subject to such conditions and restrictions as they may impose.
- 34.3 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 or with any financial institution approved by the Trustees from time to time.
- 34.4 The Association shall use interest on moneys invested for any lawful purpose in the interest of the Association.

35. AUDIT

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

36. INDEMNITY OF THE TRUSTEES

- 36.1 All the Trustees shall be indemnified out of the funds of the 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, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.
- 36.2 Every Trustee and employee of the Association shall be indemnified by the Association for all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for, by reason of any authorised contract entered into, or any authorised act or deed done or letter written, by such person or persons in the discharge of his or their respective duties, as such, including in the case of the Chairperson, his duties as Chairperson, provided that such contract was entered into, or such act or deed was done or such letter was written in good faith.
- 36.3 A Trustee shall not be liable for the acts, receipts or omissions, of the Auditors or, the managing agent, 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 Association through the insufficiency or deficiency of any security in or upon which moneys of the 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 judgment 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.

36.3 The indemnity referred to in this clause 36 shall not apply in favour of the Managing Agent.

37. DEFAMATION PRIVILEGE

Every Member of the 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 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 Design 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, unless made in bad faith or in gross negligence.

38. INSURANCE

38.1 The Trustees shall insure the buildings, improvements, amenities and services in respect of the Common Areas 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 Members by an Ordinary Resolution passed at a general meeting.

38.2 The Trustees must procure, at the costs of the Association, general public indemnity liability insurance in respect of the Common Areas and Services in such amounts and on such terms as the Trustees may from time to time determine or as may be directed by the Members by an Ordinary Resolution passed at a general meeting.

38.3 The Trustees must maintain such fidelity insurance as may be required from time to time in terms of the Community Schemes Ombud Service Act.

38.4 The Trustees may insure against the risk of the non-payment by Members of Levies due to the Association.

38.5 The Members may by an Ordinary Resolution passed at a general meeting direct the Trustees to insure against such other risks as they may determine.

39. EXCLUSION OF LIABILITY

39.1 Any Member or other person present in the Development or on the Common Areas or using any amenities or services of the Association does so entirely at his own risk. No Member or other person shall have any claim (of whatsoever nature) against the Association, the Trustees, the Managing Agent, or any of the 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 Association from the receipt of proceeds of any general public indemnity liability insurance, if any. If and to the extent that the Association does not have any such public indemnity liability insurance, no such person shall have any claim against the Association.

- 39.2 Subject to clause 39.1, the Association, the Trustees, the Managing Agent or any of the 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 Occupier or other person whosoever may sustain:
- 39.2.1 by reason of any defect in or state of disrepair of Simonsberg Manor or of the Common Areas, or any communal facility or any Erf, 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 Association, the Trustees, the Managing Agent, or any of the Association's agents, employees or contractors; or
- 39.2.2 directly or indirectly, in or about Simonsberg Manor (including, without limiting the generality of the foregoing, the Common Areas and any Erf, 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 Simonsberg Manor (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 Association, the Trustees, the Managing Agent, or any of the Association's agent's, employees or contractors, or be due to riots, strikes, civil commotion or any other cause whatsoever.
- 39.3 Subject to clause 39.1, the Members undertake in favour of the Association, as soon as practical, to notify their Invitees and/or where applicable, the Occupiers of their Erven and to require Occupiers to notify their 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 Association to accept the benefits hereof at any time without notice to such person.
- 39.4 Every Member individually hereby fully and completely indemnifies and holds harmless the Association against all claims of whatsoever nature and howsoever arising which may be brought against the Association by that Member, or by his Invitees or by the Occupiers of his Erf or their Invitees, or any other person within Simonsberg Manor at the invitation of or under the control of the Member concerned, notwithstanding the nature of such claim.

39.5 The 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 even if such legal proceedings are successfully concluded against the Association. The exclusion herein contained will not apply if the proceedings in question are founded on any conduct of the 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 Association shall not be liable for any damage suffered by a Member or Occupier or any other person present in Simonsberg Manor by reason of power surges.

40. BREACH OF THE CONSTITUTION, THE DESIGN GUIDELINES OR THE CONDUCT RULES

40.1 The Trustees may on behalf of and in the name of the Association institute legal proceedings against Members who are in breach of any of the provisions of this Constitution, the Design Guidelines or the Conduct Rules in accordance with the provisions of this clause.

40.2 If a Member fails to pay on due date the Levies or any other amounts payable by the Member to the Association in terms of this Constitution, the Design Guidelines or the Conduct Rules, the Trustees may, on behalf of the Association, institute legal proceedings against such Member in any court of competent jurisdiction for payment of such arrear Levies and/or other arrear amounts.

40.3 Save for clause 40.2 above, if a Member commits any other breach of a provision of this Constitution, the Design 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 Association, without prejudice to any other rights or remedies which the Trustees, or the Association, or any other Member, may have in terms of this Constitution, the Design Guidelines or the Conduct Rules, or in law, including the right to claim damages, to:

40.3.1 enter upon the Erf to take such action as may be reasonably required to remedy the breach and the Member concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand, and/or

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 in the event of a dispute, to refer the matter for dispute resolution in accordance with clause 41; and/or

40.3.3 apply to the appropriate Ombud for an appropriate order under the Community Schemes Ombud Service Act.

40.4 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 Association in obtaining recovery of arrear Levies, penalties, damage or other amounts due to the Association, or in enforcing compliance with the provisions of this Constitution, the Design Guidelines and/or the Conduct Rules. Such costs and expenses may be added to the Member's levy account and recovered in the same manner as applies to arrear Levies, together with interest at the rate applicable to Levies.

- 40.5 Aforesaid provisions may, where applicable, also be applied mutatis mutandis to Occupiers.

41. DISPUTE RESOLUTION

- 41.1 Should any dispute (other than a dispute in respect of which urgent relief may be obtained from a court of competent jurisdiction) arise between a Member or Members and/or between a Member and an Occupier and/or between a Member and/or Occupier and the Trustees in connection with–

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 the Constitution),

this Constitution, the Design Guidelines and/or the Conduct Rules such dispute may, be referred to and be resolved by mediation or arbitration in terms of this clause 41, or by application to the competent Ombud in terms of the Community Schemes Ombud Service Act, provided that a party to the dispute has demanded the dispute resolution by written notice to the other parties (to the dispute) and provided further that the party desiring such dispute resolution has first resorted to the internal dispute resolution mechanism in terms of clause 41.2, before either proceeding with mediation and arbitration procedures in terms of the ensuing provisions of clause 41 or before applying to the competent Ombud for dispute resolution, as the case may be.

- 41.2 In the event of any dispute arising, the parties to the dispute must first engage each other, and where applicable, the Trustees, in good faith with a view to resolving the dispute within a period seven (7) business days after the date on which a party has engaged with the other parties. The parties may as an internal dispute resolution mechanism engages each other telephonically and/or in writing and/or convene a joint meeting of the parties, which meeting must be recorded in writing. If applicable the Committee must record their resolution in writing with reference to any internal dispute resolution meeting held with the other parties to the dispute.

- 41.3 Only if the dispute is not resolved as provided for in clause 41.2 above, may:

41.3.1 the dispute be referred to a mediator and/or arbitrator as contemplated in the further provisions of clause 41 and/or

41.3.2 a party to the dispute apply to the competent Ombud under the Community Schemes Ombud Service Act.

- 41.4 Prior to any dispute as aforesaid being determined by arbitration, immediately upon any party (to the dispute) requesting such arbitration, the dispute will be referred forthwith to a mediator for attempted resolution by such mediator, on the following basis:

41.4.1 the mediation will be conducted by a mediator selected by agreement between the parties (to the dispute) and failing such agreement within seven (7) business days after a written request by the aggrieved party (to the dispute) to the others for such mediation, nominated on the application of either person by the chairperson for the time being of the Cape Law Society, or its lawful successor;

- 41.4.2 the parties (to the dispute) will not be entitled to be represented at any hearing before or at any meeting or in any discussion with the mediator except personally if an individual, or by an authorised representative of a Member, in the instance where a Member is a juristic person or by a Trustee in the instance of the Association;
- 41.4.3 the mediator will, as he deems fit, follow formal and/or informal proceedings and receive evidence on submission, orally or in writing, sworn or unsworn, at joint meetings, with the parties (to the dispute) or separately as from any person whom he considers can assist in the formulation of his opinion, provided that:
 - 41.4.3.1 each party (to the dispute) will be given reasonable opportunity of presenting evidence and submissions and of responding to evidence and submissions of any other party (to the dispute); and
 - 41.4.3.2 each party (to the dispute) will be given full details of any evidence on submission received by the mediator from any other party (to the dispute) or any other person otherwise than at a meeting where all the parties (to the dispute) are present;
- 41.4.4 the mediator will have the power to propose to the parties (to the dispute) compromise settlements or agreements for the whole or portion of the dispute;
- 41.4.5 the mediator will as soon as is reasonably practicable give to each of the parties (to the dispute) his written opinion on the dispute, recording the details of any agreement reached between the parties (to the dispute) during the mediation;
- 41.4.6 the mediator's opinion will become binding on the parties (to the dispute) only to the extent correctly recorded as being agreed by the parties in the mediator's written opinion or otherwise as recorded in writing by the parties (to the dispute) subsequent to the receipt of the mediator's opinion;
- 41.5 where the disputes on any matter has not been resolved after the application of the foregoing provisions, it must be resolved by arbitration as set out below;
 - 41.5.1 save for reference to any portion of the mediator's opinion which has become binding in terms of clause 41.4.6 no reference will be made by or on behalf of any party (to the dispute) in any proceedings subsequent to mediation, to the mediator's opinion, or to the fact that any particular evidence was given, and to any submission, statement or admission made in the course of the mediation; and/or
 - 41.5.2 in respect of the nature of the mediator's opinion, each of the parties will pay his own costs arising from this mediation and the parties (to the dispute) will pay in equal shares the fees and disbursements of the mediation based upon a scale of fees as agreed between the mediator and the parties (to the dispute) before the commencement of the mediation, and failing which agreement as determined by a nominee of the chairperson for the time being of the Cape Law Society, or its lawful successor, as being fair and reasonable regard being had to the work done by the mediator.
- 41.6 Any person who is subject to the provisions of this Constitution may demand that a dispute be determined by arbitration by written notice given to any other person who is subject to this Constitution.

- 41.7 This clause 41 will not preclude any party (subject to the provisions of this Constitution) from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 41.8 The arbitration will be held –
- 41.8.1 at a mutually acceptable place or venue in Cape Town or Stellenbosch;
 - 41.8.2 with only the legal and other representatives of the persons to the dispute present thereat;
 - 41.8.3 mutatis mutandis in accordance with the provisions of the High Court Act, as amended, the rules promulgated in terms of that Act and the practice of the Western Cape Division of the High Court of South Africa or otherwise in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), as amended;
- it being the intention that the arbitration will be held and completed within twenty one (21) business days after it was demanded.
- 41.9 The arbitrator, who will be a single arbitrator, will be, if the matter in dispute is principally-
- 41.9.1 a legal matter, a practising advocate or attorney of at least ten (10) years' standing;
 - 41.9.2 an accounting matter, a practising chartered accountant or a registered auditor of at least ten (10) years' standing;
 - 41.9.3 any other matter, any independent person agreed upon between the parties to the dispute.
- 41.10 Should the persons to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within seven (7) business days after the arbitration was demanded, the matter will be deemed to be a legal matter.
- 41.11 Should the parties to the dispute fail to agree on an arbitrator within seven (7) business days after the expiry of the period referred to in clause 41.10, the arbitrator will be appointed at the request of any person to the dispute by the chairperson for the time being of the Cape Law Society or its lawful successor.
- 41.12 The decision of the arbitrator will be final and binding on the parties to the dispute and may be made an order of the Western Cape Division of the High Court of South Africa at the instance of any of the parties to the dispute.
- 41.13 The parties to the dispute are deemed to have consented to the jurisdiction of the Western Cape Division of the High Court of South Africa in respect of any proceedings referred to in clause 41.12 of the Constitution.
- 41.14 The parties to the dispute must and will keep the arbitration, including the subject matter of the arbitration and the evidence heard during the arbitration, confidential and not disclose it to anyone except for purposes of an order to be made in terms of clause 41.12.

41.15 The provisions of this clause 41 -

41.15.1 constitute an irrevocable consent by the parties to any proceedings in terms of this Constitution, the Design Guidelines and/or the Conduct Rules and no person (subject to this Constitution) will be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and

41.15.2 are severable from the rest of this Constitution and will remain in effect despite the termination of or invalidity for any reason of this Constitution.

41.16 In respect of any claim arising from the non-payment of Levies or other amounts due by a Member to the Association under this Constitution, the Design Guidelines or the Conduct Rules, the Association and the Trustees will retain the common law remedies and the Association shall not be obliged to proceed with dispute resolution proceedings, and the Association shall not be precluded from instituting proceedings in a competent court with jurisdiction.

41.17 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 apply to the competent Ombud in terms of the Community Schemes Ombud Service Act.

42. IMPOSITION OF PENALTIES

42.1 If the conduct of a Member or Occupier or the invitees of a Member or Occupier constitute/s a nuisance in the opinion of the Trustees, or a contravention of a provision of the Constitution, the Design Guidelines or the Conduct Rules, the Trustees must by written notice inform the Member concerned of the nuisance or contravention and warn the Member that if he, or the Occupiers of his Erf fails to remedy the contravention, or persist in such conduct or contravention, a penalty will be imposed on the Member.

42.2 If, notwithstanding the written notice in terms of clause 42.1 above, the Member or Occupier fails to remedy the contravention or persists in the conduct or contravention, or repeats such conduct or contravention, the Trustees may by written notice, impose a penalty on the Member. The written notice must stipulate the reason for the penalty and that if the Member objects to the imposition of the penalty the member must submit an objection with a motivation against the penalty imposed to the trustees within thirty (30) days of the written notice.

42.3 The penalty imposed under clause 42.1 above will be effective 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 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 the penalties in respect of the various contraventions and in respect of first and successive contraventions, subject to any directions given or restrictions imposed by the Members at a general meeting of the 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 twenty four (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 at every step of the process as defined in this clause submit an objection to the Association by written notice to the Trustees, which notice must specify the reasons for his objections. 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 for the purpose of considering the objection and invite the Member to attend.
- 42.8 At the Trustees' meeting referred to in clause 42.7.2 above, the Member or his representative 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 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.
- 42.11 If the Member does not agree with the resolution of the Trustees in terms of this clause, the Member may without prejudice to the other rights or remedies that may be available in law:
- 42.11.1 request the Trustees to refer the matter to a general meeting of the Members for their instructions; and/or
- 42.11.2 institute proceedings in a court or tribunal for the judicial review of the resolutions of the Trustees.
- 42.12 The aforementioned provisions shall, where appropriate, also be applied mutatis mutandis to Occupiers
- 42.13 For the duration of the Development Period the Developer shall be exempt from penalties.

43. SERVICE ADDRESS OF THE ASSOCIATION AND OF THE MEMBERS

- 43.1 The Trustees shall from time to time determine the address constituting the service address of the 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 service address of each Member shall be the street address of the Member's Erf. A Member may by notice in writing to the Trustees alter his service address, 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.
- 43.3 The service address for any legal process or delivery of any other document in terms of the Constitution, the Design Guidelines or the Conduct Rules to an Occupier of an Erf shall be the street address of that Erf.

44. DELIVERY AND TRANSMISSION OF NOTICES

- 44.1 A notice by the Association to any Member in terms of this Constitution, the Design Guidelines or the Conduct Rules shall be in writing and shall be delivered to the Member, either by hand or by prepaid post properly addressed to the Member at his service address. It shall be competent to transmit the notice to a Member by telefax or electronic communication (e-mail) where the telefax number or e-mail address of the Member is recorded with the Association. A notice to the Master Association shall be delivered to the domicilium citandi et executandi of the Master Association as defined in the Master Constitution either by hand or by prepaid post or where required by the Master Association by written notice to the Association, the notice may be sent by electronic communication or by telefax to the e-mail address or fax number of the Master Association.
- 44.2 Any notice to a Member:
- 44.2.1 if delivered by prepaid post in a correctly addressed envelope to his service address, shall be deemed to have been received on the 5th day after the date when the notice was posted; or
- 44.2.2 if delivered by hand to the Member or to a responsible person at the service address of the Member, shall be deemed to have been received on the day of delivery; or
- 44.2.3 if successfully transmitted by telefax to the recorded telefax number of the Member, shall be deemed to have been received on the 1st day after the date of transmission; or
- 44.2.4 sent by e-mail to the recorded e-mail address of the Member, shall be deemed to have been received on the 1st day after the date of transmission.
- 44.3 Notwithstanding anything to the contrary herein contained, a written notice actually received by a Member shall be adequate written notice to such Member notwithstanding that it was not sent or delivered in accordance with clause 44.1 above.
- 44.4 Any notice to an Occupier under this Constitution, the Design Guidelines or the Conduct Rules, must be in writing and shall be deemed to have been duly given and delivered, if it was:

44.4.1 delivered by hand to the Occupier at the service address of the Occupier; or

44.4.2 delivered by prepaid registered post to the service address of the Occupier.

44.5 In all cases where a notice is given to an Occupier in terms of this Constitution, the Design Guidelines or the Conduct Rules, it must also be delivered to the applicable Member.

45. DEVELOPMENT OF THE SIMONSBURG MANOR

45.1 The Developer shall, for the duration of the Development Period, enjoy the rights specified in this clause 45 of the Constitution, in addition to any other right specified in this Constitution and notwithstanding anything to the contrary contained in this Constitution. Upon expiry of the Development Period, the rights of the Developer in terms of this clause 45 shall immediately and automatically terminate and no longer be of any force and effect.

45.2 The Developer shall have unrestricted rights with regard to the marketing of the Erven in Simonsberg Manor and, in particular, the right to erect signage within Simonsberg Manor and to perform all activities normally associated with development and building operations.

45.3 The Developer shall, in its absolute discretion, be entitled to include further land in Simonsberg Manor and to apply for, and subject to, approval by the relevant authority, vary the layout and/or zoning and/or size and/or boundaries of Erven and/or the extent and position of the roads comprising Simonsberg Manor, and subdivide or consolidate Erven, 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 shall be entitled to register such servitudes across the Erven and Common Areas as may be necessary for the purposes of the installation of services, including, but not limited to, gas, electricity, telephone, television, sewerage, storm water drainage, solid waste removal and water supply. The Developer may procure the registration of servitudes in favour of the Association, the Master Association, Stellenbosch Municipality and/or other authorities in respect of Simonsberg Manor, as may be necessary. The Developer may agree to minor building encroachments on servitude areas.

45.5 Inasmuch as the provision, establishment, maintenance and repair of Services may be required to take place in Simonsberg Manor, the Members shall be obliged to accept the laying out and installation of such services across their Erven, or the Common Areas, as the case may be, in such places as the Developer may from time to time determine and on the services servitude areas.

45.6 The Developer or their authorised representatives, shall be entitled to enter upon an Erf or upon the Common Areas for the purpose of providing, establishing, maintaining and/or repairing Services, provided that such work shall be carried out with as little inconvenience to the affected party as reasonably possible.

46. STATUS OF DEVELOPER

- 46.1 The Developer shall, for the duration of the Development Period, enjoy the rights specified in this clause 46 of the Constitution, in addition to any other right specified in this Constitution and notwithstanding anything to the contrary contained in this Constitution. Upon expiry of the Development Period, the rights of the Developer in terms of this clause 46 shall immediately and automatically terminate and no longer be of any force and effect.
- 46.2 At every general meeting of the Association, the Developer shall be entitled to the number of votes equal to the number of Erven in the Simonsberg Manor from time to time plus 1 (one) vote.
- 46.3 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 1 (one) vote.
- 46.4 The Developer shall not be obliged to pay Levies in respect of any unimproved or vacant Erf owned by the Developer until expiry of the Development Period.
- 46.5 Neither the Trustees nor any Member of the Association shall prevent or hinder in any way the Developer from:
- 46.5.1 gaining access to and egress from Simonsberg Manor;
 - 46.5.2 continuing any building operations on the Land;
 - 46.5.3 marketing and selling any Erf, including the advertisement of the sale of such Erf on the Common Areas; and
 - 46.5.4 gaining access to and from an Erf, with prior written notice to a Member.

47. AMENDMENT OF THIS CONSTITUTION

- 47.1 The provisions of this Constitution may be added to, amended, substituted, or repealed from time to time by an Ordinary Resolution of the Members 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.
- 47.2 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 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.
- 47.3 Any amendments to this Constitution and the Design Guidelines shall be submitted to Stellenbosch Municipality.
- 47.4 If an amendment of the Constitution affects Stellenbosch Municipality or a provision referred to in section 29(3) of the Stellenbosch Planning By-Law, the amendment must also be approved by Stellenbosch Municipality.

48. ASSOCIATION CEASES TO FUNCTION

- 48.1 If the Association ceases to function or to carry out its obligations, Stellenbosch Municipality or any affected person, including a Member of the Association may apply:
- 48.1.1 in terms of section 15(2)(q) of the Stellenbosch Planning By-Law to disestablish the Association, subject to:
 - 48.1.1.1 the amendment of the conditions of approval to remove the obligation to establish an owners' association; and
 - 48.1.1.2 the amendment of title conditions pertaining to the Association, to remove any obligation in respect of the Association;
 - 48.1.2 in terms of section 15(2)(r) of the Stellenbosch Planning By-Law for appropriate action by Stellenbosch Municipality to rectify a failure of the Association to meet any of its obligations in respect of the control over or maintenance of services contemplated in section 29(3)(b) of the Stellenbosch Planning By-Law; or
 - 48.1.3 to the High Court to appoint an administrator who must exercise the powers of the Association to the exclusion of the Association.
- 48.2 In considering an application contemplated in clause 48.1.1.1 or section 30(1)(a)(i) of the Stellenbosch Planning By-Law, Stellenbosch Municipality must have regard to:
- 48.2.1 the purpose of the Association;
 - 48.2.2 who will take over the control over and maintenance of services for which the Association is responsible; and
 - 48.2.3 the impact of the disestablishment of the Association on the Members of the Association and the community concerned.
- 48.3 Stellenbosch Municipality or the affected person may recover from the Members of the Association the amount of any expenditure incurred by Stellenbosch Municipality or that affected person, as the case may be, in respect of any action taken in terms of clause 48.1 above or section 30(1) of the Stellenbosch Planning By-Law.
- 48.4 The amount of any expenditure so recovered is, for the purposes of section 29(7)(a) of the Stellenbosch Planning By-Law, considered to be expenditure incurred in connection with the Association.

49. WINDING UP OF ASSOCIATION

- 49.1 The Association may be wound up by an order of the Western Cape High Court or by a resolution passed at a general meeting by the Members together holding not less than ninety five percent (95%) of the total votes of all the Members and provided that:
- 49.1.1 the aforesaid resolution shall include arrangements for the transfer of Erven and Common Areas, in the event that the Association ceases to function; and
 - 49.1.2 Stellenbosch Municipality consents thereto in writing.
- 49.2 In the event of such winding up, it shall be the duty of the Trustees to comply with the conditions imposed in terms of the resolution, and/or by Stellenbosch Municipality and/or in terms of the order of the Western Cape High Court, as the case may be.