



**CITY OF CAPE TOWN
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STAD KAAPSTAD**

**PLANNING AND BUILDING DEVELOPMENT
MANAGEMENT**

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6/09/2016

Case ID	70292631
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REGISTERED MAIL

Schonenberg Home Owners Association
Old Main Road
Somerset West
7129

Attention: Mr. Gregory Peck

Dear Sir

APPROVAL OF THE HOME OWNERS ASSOCIATION CONSTITUTION: ERF 15925, OLD MAIN ROAD, SOMERSET WEST

Your application submitted on 13/04/2016, refers.

You are advised that the constitution of the Schonenberg Home Owners' Association has been certified in terms of Section 61 of the Municipal Planning By-Law, 2015. A copy of the constitution which bears Council's stamp dated *6 September 2016* is attached.

Yours faithfully



for **DIRECTOR : PLANNING & BUILDING DEVELOPMENT MANAGEMENT**

SOMERSET WEST ADMINISTRATIVE BUILDING,
CNR ANDRIES PRETORIUS AND VICTORIA STREETS, SOMERSET WEST, 7130

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SCHONENBERG HOME OWNERS' ASSOCIATION

CONSTITUTION

2016

Revision 16 October 2015.1
Revision 12 August 2016 (City)

CITY OF CAPE TOWN PLANNING & BUILDING DEVELOPMENT MANAGEMENT	
Application no	70292631
This constitution of the <u>Schonenberg</u> Home / Property Owners' Association has been approved in terms of Section 20(2)(b)(iii) ^{29(2)(b)(iii)} of Ordinance 15 of 1985 as per decision letter dated file reference	
attached hereto, insofar as it addresses the requirements in Section 20(2)(b)(i), (ii) and (c) ^{29(2)(b)(i), (ii) and (c)} of said ordinance and any related condition of approval.	
Delegatee	Date

the By-law,
2015
(a) of the
6 September 2016

CHAPTER 1 - INTRODUCTION	4
1. DEFINITIONS	4
2. HEADINGS	6
CHAPTER 2 - HOMEOWNERS' ASSOCIATION	6
3. ESTABLISHMENT OF ASSOCIATION	6
4. OBJECTIVE OF ASSOCIATION	6
5. MEMBERSHIP OF ASSOCIATION	7
6. STATUS OF ASSOCIATION	7
7. POWERS OF ASSOCIATION	8
CHAPTER 3 - TRUSTEE COMMITTEE	9
CHAPTER 3.1 - TRUSTEE COMMITTEE MEMBERS	9
8. APPOINTMENT, FUNCTIONS AND FIDUCIARY RELATIONSHIP	9
9. CONTRACTS	10
10. LEGAL PROCEEDINGS	10
11. DELEGATION OF POWERS, DUTIES AND OBLIGATIONS	10
12. NUMBER, ELECTION AND QUALIFICATIONS OF TRUSTEES	10
13. NOMINATIONS	11
14. FILLING OF VACANCIES AND APPOINTMENT OF ALTERNATES	11
15. REMUNERATION	11
16. VALIDITY OF ACTS	11
17. INDEMNITY	11
18. DISQUALIFICATION AND/OR VACATION OF OFFICE	12
CHAPTER 3.2 - TRUSTEE COMMITTEE MEETINGS	12
19. CONVENING OF MEETINGS	12
20. QUORUM	12
21. VOTING	13
22. CHAIRPERSON	13
23. ATTENDANCE OF TRUSTEE COMMITTEE MEETINGS BY OTHER PERSONS	13
24. RESOLUTION SIGNED BY TRUSTEES	13
25. MINUTES OF PROCEEDINGS	13
26. REPORT ON AFFAIRS OF ASSOCIATION	14
27. APPOINTMENT AND DUTIES OF ARCHITECT AND DESIGN REVIEW COMMITTEE	14
28. APPOINTMENT OF MANAGING AGENT	14
CHAPTER 4 - COMMON PROPERTY	15
29. MANAGEMENT	15
30. IMPROVEMENTS	15

31.	TRAFFIC CONTROL MEASURES	15
32.	ALIENATION OF COMMON PROPERTY	15
33.	LETTING OF COMMON PROPERTY	16
34.	INSURANCE OF COMMON PROPERTY	16
	CHAPTER 5 - FINANCIAL MATTERS	16
35.	FINANCIAL YEAR	16
36.	FINANCIAL STATEMENTS, BOOKS OF ACCOUNT AND ACCOUNTING RECORDS	16
37.	ANNUAL ESTIMATE OF ANTICIPATED INCOME AND EXPENDITURE	17
38.	DEPOSIT AND INVESTMENT OF FUNDS	17
	CHAPTER 6 - LEVIES PAYABLE BY MEMBERS	18
39.	MONEYS TO DEFRAY EXPENSES	18
40.	DETERMINATION OF ANNUAL LEVY	18
41.	SPECIAL LEVIES	18
42.	OTHER AMOUNTS PAYABLE	18
43.	LEVIES IN RESPECT OF APARTMENTS	19
44.	PAYMENT OF LEVIES	19
	CHAPTER 7 - GENERAL MEETINGS OF MEMBERS	20
	CHAPTER 7.1 - CALLING OF GENERAL MEETINGS	20
45.	ANNUAL GENERAL MEETINGS	20
46.	BUSINESS TRANSACTED AT ANNUAL GENERAL MEETING	20
47.	SPECIAL GENERAL MEETINGS	20
48.	NOTICE OF AND MINUTES OF GENERAL MEETINGS	21
	CHAPTER 7.2 - PROCEEDINGS AT GENERAL MEETINGS	21
49.	QUORUM	21
50.	CHAIRPERSON	21
51.	VOTING PROCEDURE	22
52.	MAJORITY REQUIRED	22
53.	VOTE ENTITLEMENT	22
54.	RIGHT TO VOTE	23
55.	PROXY	23
56.	SUBMISSION OF PROXIES	23
57.	INCAPACITY	23
	CHAPTER 8 - CONSTITUTION AND ANNEXURES	24
58.	ANNEXURES TO CONSTITUTION	24
59.	PENALTIES DETERMINED BY TRUSTEE COMMITTEE	24
60.	AMENDMENT OF CONSTITUTION, ARCHITECTURAL DESIGN GUIDELINES AND CONDUCT RULES	26

61. SOUTH AFRICAN REVENUE SERVICES	26
62. NOTIFICATION OF INTERESTED PARTIES	27
63. RECORD OF CONSTITUTION AND CONDUCT RULES	27
64. BINDING NATURE OF CONSTITUTION AND ANNEXURES	27
CHAPTER 9 - MISCELLANEOUS PROVISIONS	28
65. SIGNING OF INSTRUMENTS	28
66. RESTRICTION ON ALIENATION	28
67. LOANS	28
68. FAILURE TO ERECT, COMPLETE AND MAINTAIN A DWELLING	28
69. DISPUTES, MEDIATION AND ARBITRATION	29
70. WINDING UP	30
71. ZONING CONDITIONS	30
72. SUBMISSION OF PLANS	31
73. BODY CORPORATE OF THE SCHONENBERG RETIREMENT VILLAGE SECTIONAL TITLE SCHEME	31
CHAPTER 10 - DOMICILIUM AND NOTICES	31
74. DOMICILIUM CITANDI ET EXECUTANDI	31
75. TRANSITIONAL MEASURES FOR THE TRUSTEE COMMITTEE	32
76. ANNEXURES	32
77. EXCLUSION OF LIABILITY	32

CONSTITUTION

in terms of Section 61 of the the City of Cape Town Municipal Planning By-law, 2015

CHAPTER 1 - INTRODUCTION

1. Definitions

In the interpretation of this Constitution, unless the context otherwise indicates:

- 1.1 "Annexures" shall mean the Conduct Rules, Architectural Design Guidelines, the Construction Environmental Management Plan, the Operational Environmental Management Plan and the Code of Conduct for Builders referred to in Clause 78 and as may be amended from time to time, as well as the conditions of subdivision;
- 1.2 "Apartment" shall mean a section in an Apartment Block of the Schonenberg Retirement Village Sectional Title Scheme for the purposes of Clause 43;
- 1.3 "Architectural Design Guidelines" shall mean the architectural design guidelines referred to in Clause 58.3 of this Constitution and as may be amended from time to time in terms of Clause 60 of this Constitution;
- 1.4 "Association" shall mean the Schonenberg Homeowners' Association as established in terms of Clause 3;
- 1.5 "Body Corporate" shall mean a body corporate established in terms of the Sectional Titles Act within the Estate, namely the body corporate of the Schonenberg Retirement village sectional title scheme, No. SS 658/2008;
- 1.6 "CEMP" shall mean the Construction Environmental Management Plan;
- 1.7 'City' shall mean the Municipality of the City of Cape Town as defined in the City's Planning By-law and its successors in title;
- 1.8 'City's Planning By-law ' shall mean the City of Cape Town Municipal Planning By-law, 2015 as may be amended from time to time;
- 1.9 "Code of Conduct for Builders" shall mean the Code of Conduct for Builders;
- 1.10 "Common Property" shall mean:
 - 1.10.1 the gateways, buildings, security fences, boundary walls, roads, private streets and common parking areas;
 - 1.10.2 the park areas and private open spaces;
 - 1.10.3 the other improvements from time to time erected above and below ground in the open spaces in the Estate; but excluding any residential Erven, the subdivided erven within the group sites, sections in the Schonenberg Retirement Village and any commercial enterprise on the Estate; and
 - 1.10.4 the roads, the major infrastructure and the internal engineering services in the Estate, as well as the Schonenberg Retirement Village Sectional Title Scheme but excluding all other common property in the Schonenberg Retirement Village Sectional Title Scheme;
- 1.11 "Constitution" shall mean this Constitution, including the Annexures thereto as may be amended from time to time;

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- 1.12 "Conduct Rules" shall mean all rules and regulations made and issued, in terms of Clause 58.1 and 58.2 of this Constitution, as may from time to time be amended in terms of Clause 60, being an Annexure to this Constitution;
- 1.13 "Days" shall mean all calendar days;
- 1.14 "Design Review Committee" shall mean the Design Review Committee appointed by the Association from time to time;
- 1.15 "*domicilium*" shall mean the *domicilium citandi et executandi* of the Association or of a Member, as the case may be, as contemplated in Clause 74;
- 1.16 "Erf" or "Erven" shall mean a portion or portions of land owned by a Member or the Home Owners Association within the Estate, which shall have been allocated a cadastral number by the Surveyor General (upon the approval of the General Plan);
- 1.17 "Estate" shall mean the Estate currently known in its entirety as Schonenberg which comprises the Erven described on General Plan No. 5988/2005 and Units comprised in the Schonenberg Retirement Village Sectional Title Scheme;
- 1.18 "General Plan" shall mean the General Plan relating to the land referred to in clause 1.17 above as approved by the Surveyor General;
- 1.19 "Group Housing" is a medium density form of residential development, where attention is given to aesthetics, architectural form and the inter-relationship between different components of the development;
- 1.20 "Invitee" shall mean the family member, guest, visitor, employee, contractor, service provider or other nominee of a Member or Occupier;
- 1.21 "Levy" shall mean the monthly levy determined under Clause 40, or the special levy contemplated in Clause 41, as the case may be;
- 1.22 "Member" shall mean a Member of the Association as defined in Clause 5;
- 1.23 "Occupant or Occupier" shall mean any person lawfully occupying an Erf and/or a Section by virtue of an agreement concluded with a Member;
- 1.24 "OEMP" shall mean the Operational Environmental Management Plan;
- 1.25 "person" with regard to Membership of the Association, shall include a company, partnership, trustees of a trust, or other association of persons entitled in law to hold title to immovable property;
- 1.26 "Scheme" shall mean the sectional title scheme established in terms of the Sectional Titles Act within the Estate, being the Schonenberg Retirement Village Sectional Title Scheme No SS 658/2008;
- 1.27 "Section" shall mean a section in the Scheme as defined in the Sectional Titles Act;
- 1.28 "Sectional Titles Act" shall mean the Sectional Titles Act No 95 of 1986 as amended or any substitution thereof;
- 1.30 "Spouse" shall mean a person legally married to another person including customary marriages, partners in long-term monogamous relationships and cohabiting partners of the same gender;
- 1.31 "Trustee Committee" and "Trustees" shall mean the Trustee Committee of the Association contemplated in Clause 8 and "Trustee" shall mean one of them;
- 1.32 "Unit" or "Units" in relation to a Schonenberg Retirement Village Sectional Title Scheme shall mean a Section together with its undivided share in the Common Property apportioned to that Section in accordance with the participation quota of such Section;
- 1.30 words and expressions to which a meaning has been assigned in this Constitution shall bear the meaning so assigned to them; and
- 1.31 words importing:
- 1.31.1 the singular number shall include the plural number, and the converse shall also apply; and

1.31.2 the masculine and feminine genders shall include the neuter gender, and the converse shall also apply.

2. Headings

The headings to the respective Clauses are provided for convenience of reference only and shall not be taken into account in the interpretation of the provisions of this Constitution.

CHAPTER 2 - HOMEOWNERS' ASSOCIATION

3. Establishment of Association

- 3.1 the Association was established in terms of section 29 of the Land Use Planning Ordinance, No. 15 of 1985 (as amended), in accordance with the conditions imposed by the City of Cape Town when approving the subdivision of Erf 15925 Somerset West, situated in the City of Cape Town, Division Stellenbosch, Province of the Western Cape in terms of section 25 (1) and 42 of the said Ordinance. The Association was established with effect from the date of registration of the first transfer of an erf arising from the subdivision to the purchaser thereof. The Association was established for the benefit of all owners of land units and sectional title units arising from the subdivision concerned.
- 3.2 The Body Corporate of the Schonenberg Retirement Village Sectional Title Scheme, No. SS658/2008 was established in respect of Erf 17012 Somerset West, situated in the City of Cape Town, Division Stellenbosch, Province of the Western Cape situated in the Estate. Certain of the functions and powers of the Body Corporate shall be assigned to the Association in terms of this Constitution and the Management Rules of the Body Corporate and all the members of the Body Corporate shall be Members of the Association. The date of assignment of functions and powers of the Body Corporate shall be the date of filing of the additional Management Rule of the Body Corporate at the Cape Town Deeds registry.
- 3.3 This Constitution replaces the previous Constitution of the Association. This Constitution must be lodged with the City and the latest copy duly lodged with the City, and which the City has certified in terms of section 62(2) or (4) of the City's Planning By-law, is presumed to contain the operative provisions of the Constitution.
- 3.4 There shall be only one overall Association for the Estate, which Association shall be governed by this Constitution, and shall be known as the Schonenberg Homeowners' Association.
- 3.5 The Association shall be structured as a common law association not for profit.

4. Objective of Association

The objective of the Association is to promote the collective interests of all its Members by performing the functions entrusted to it by or under this Constitution, which functions shall include, but not be limited to, the following:

- 4.1 to determine and maintain standards for community-living in the Estate in such a way that its Members may derive the maximum collective benefit there from;
- 4.2 to determine and preserve the basic aesthetic standards, including the basic architectural style, in the Estate;

- 4.3 to control, administer and manage the Common Property and other services and amenities arising from the subdivision and the buildings in respect of the Estate for the benefit of all Members;
- 4.4 to maintain the Common Property in the Estate for the mutual benefit of its Members;
- 4.5 to implement, monitor and enforce compliance with the provisions of this Constitution, the Architectural Design Guidelines and the Conduct Rules;
- 4.5 to obtain ownership of the Common Property;
- 4.6 to enforce the conditions of approval and management plans as imposed by the City (a copy of which forms part of the Annexures hereto);
- 4.7 to take ownership of the common property as described in clause 1.10 herein and as arising out of the subdivision; and
- 4.8 to enforce the conditions of approval and management plans as imposed by the City for any further development which must form part of the association and to determine the procedures for incorporating the development into the Estate.

5. Membership of Association

- 5.1 Upon registration of ownership of an Erf or Unit in the Estate, the owner of such Erf or Unit shall automatically become a Member of the Association and shall be obliged to comply with the provisions of this Constitution, the Architectural Design Guidelines and the Conduct Rules.
- 5.2 Ownership of an Erf or Unit, and thus Membership of the Association, shall be evidenced by registered ownership in the Deeds Registry in Cape Town of one or more Erven or Units in the Estate.
- 5.3 No person shall cease to be a Member while remaining the registered owner of an Erf or Unit in the Estate.
- 5.4 Membership shall, subject to the provisions of Clause 66, be transferred by registration of a Deed of Transfer in the Deeds Registry at Cape Town, passing transfer of one or more Erven or Units in the Estate to a new Member.

6. Status of Association

- 6.1 The Association shall be an association as contemplated in sections 61-63 of the City of Cape Town Municipal Planning By-law, 2015 enacted in terms of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014).
- 6.2 The Association shall have legal personality, perpetual succession, and be capable of suing and being sued in its own name.
- 6.3 The Association shall not be for profit, but for the benefit of its Members.
- 6.4 The Members of the Association, the registered owners of Erven and Units in the Estate, shall be jointly liable for the expenditure incurred in connection with the Association.
- 6.5 The Association shall recover expenditure incurred in connection with the Association from its Members.
- 6.6 The provisions of the Companies Act, No 71 of 2008, as amended, shall not apply in respect of the Association.
- 6.7 None of the Members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association.

7. Powers of Association

- 7.1 The Association may exercise the powers conferred upon it by or under this Constitution, and such powers shall include, but not be limited to, the powers:
- 7.1.1 to establish a fund sufficient in the opinion of Members for the repair, upkeep, control, management and administration of the Common Property (including provision for maintenance of all roads), for the payment of rates and taxes and other charges by any competent authority and for any premiums of insurance, and for the discharge of any duty or the fulfilment of any other obligation of the Association;
 - 7.1.2 to make and enforce such Conduct Rules and make, issue and enforce other rules, regulations, policies and guidelines as may be required such as but not limited to access and egress control, Architectural Design Guidelines and a code of conduct for builders as it may from time to time deem necessary to achieve its objective and to perform its functions;
 - 7.1.3 to engage an estate manager and such agents, employees, and other persons, professionals, contractors and service providers as it may deem necessary to assist the Association to achieve its objective and to perform its functions;
 - 7.1.4 to acquire movable property required to facilitate its functions;
 - 7.1.5 when essential for the proper fulfilment of its functions, subject to approval by the Members in general meeting, acquire, sell, or mortgage immovable property;
 - 7.1.6 to borrow money required for the proper performance of its functions, subject to approval by the Members in general meeting: Provided that in the case of a complete electricity-, water- and/or sewerage breakdown or when the operational efficiency of the Estate is under threat the Trustee Committee can by resolution borrow money without the approval by the Members in general meeting;
 - 7.1.7 to secure repayment of moneys borrowed and interest by hypothecation of Levies or by mortgaging property held by it;
 - 7.1.8 to invest funds held by it with any registered financial service provider, in the discretion of the Trustees;
 - 7.1.9 to procure all necessary goods and services at a cost and in a manner which is fair, equitable, transparent, competitive and cost effective;
 - 7.1.10 to ensure compliance with any law relating to the Common Property;
 - 7.1.11 to procure, if required, suitable insurance cover against non-payment of Levies;
 - 7.1.12 to do all other things reasonably necessary for:
 - 7.1.12.1 the control, management and administration of the affairs of the Association, including the maintenance of the Common Property; and
 - 7.1.12.2 the implementation and enforcement of the provisions of this Constitution and the Conduct Rules made thereunder;
 - 7.1.13 to incur reasonable expenses in the discharge of any duty or fulfilment of any obligation of the Association, from time to time to determine the amounts required to defray such expenses, and to raise these amounts by collecting Levies from Members;
 - 7.1.14 to construct, control, repair, replace and maintain all services and facilities;
 - 7.1.15 to perform such functions and powers as may be mutually agreed to between the Body Corporate and Schonenberg Home Owners Association.

CHAPTER 3 - TRUSTEE COMMITTEE

CHAPTER 3.1 - TRUSTEE COMMITTEE MEMBERS

8. Appointment, functions and fiduciary relationship

- 8.1 The Members shall annually elect persons to constitute a Trustee Committee for the Association.
- 8.2 Subject to any restrictions imposed or directives given by Members in general meeting, the control, management and administration of the affairs of the Association shall vest in the Trustee Committee, who may, on behalf of the Association, exercise all such powers of the Association and do all such acts in the discharge of their duties or the fulfilment of their obligations as may be exercised and done by the Association itself or required to be done by the Association in general meeting.
- 8.3 Each Trustee of the Association shall stand in a fiduciary relationship to the Association.
- 8.4 Without prejudice from the generality of the expression "fiduciary relationship", the provision of Clause 8.3 implies that a Trustee:
- 8.4.1 shall in relation to the Association act honestly and in good faith, and in particular:
- 8.4.1.1 shall exercise his or her powers in terms of this constitution in the interest and for the benefit of the Association; and
- 8.4.1.2 shall not act without or exceed those powers aforesaid; and
- 8.4.2 shall avoid any material conflict between his or her own interests and those of the Association, and in particular:
- 8.4.2.1 shall not derive any personal economic benefit, to which he or she is not entitled by reason of his or her office as a Trustee of the Association, from the Association or from any other person in circumstances in which that benefit is obtained in conflict with the interests of the Association; and
- 8.4.2.2 shall notify every other Trustee, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which he or she may have in any contract of the Association.
- 8.4.3 Where a Trustee fails to comply with the provisions of clause 8.4.2.2 and it becomes known to the Association that the Trustee has an interest referred to in that clause in any contract of the Association, a Court may on application by any interested person, if the Court is of the opinion that in the circumstances it is fair to order that such contract should not be binding on the parties, give an order to that effect, and may make any further order in respect thereof which it may deem fit.
- 8.5 A Trustee of the Association whose mala fide or grossly negligent act or omission has breached any duty arising from his or her fiduciary relationship, shall be liable to the Association for:
- 8.5.1 any loss suffered as a result thereof by the Association; or
- 8.5.2 any economic benefit derived by the Trustee by reason thereof.
- 8.6 Except as regards his or her duty referred to in Clause 8.4.1.1, any particular conduct of a Trustee shall not constitute a breach of a duty arising from his or her fiduciary

relationship to the Association if such conduct was preceded or followed by the authorising resolution of the Members of the Association where such Members were or are cognisant of all the material facts.

9. Contracts

The Trustee Committee shall have the power to make, enter into and carry out contracts or agreements on behalf of the Association in pursuance of the objective of the Association.

10. Legal proceedings

Notwithstanding anything to the contrary contained in Clause 69 the Trustee Committee shall at its sole option be entitled to institute in any court (including a magistrate's court) of competent jurisdiction, proceedings in the name of the Association for any relief to which it is entitled under the provisions of this Constitution, to defend actions in the name of the Association and to appoint legal representation for this purpose.

11. Delegation of powers, duties and obligations

The Trustee Committee may delegate to one or more of the Trustees or to any person or service provider engaged by it, powers, duties and obligations as it may deem fit, and may at any time revoke such delegation.

12. Number, election and qualifications of Trustees

- 12.1 The Trustee Committee shall consist of at least six (6), but not exceeding eight (8) Members.
- 12.2 Save for the provisions of Clause 12.3, and subject to the provisions of Clause 18, a Trustee shall hold office until the second succeeding annual general meeting after the one at which she or he was elected, and shall be eligible for re-election, if so nominated: Provided that she or he may not serve for more than four (4) consecutive years.
- 12.3 At the annual general meeting held in the year of adoption of this Constitution, Members shall elect half the prescribed number of Trustees to serve until the annual general meeting held in the next year and the other half to serve until the annual general meeting held in the year following.
- 12.4 At every annual general meeting held after the year of adoption of this Constitution, the Members:
 - 12.4.1 shall elect persons to replace those Trustees whose term of office has expired; and
 - 12.4.2 may elect a person to fill each vacancy in the Trustee Committee's number: Provided that a Trustee so elected shall remain in office only for the remainder of the term of office of the Trustee whose seat became vacant but is eligible for election as a Trustee at the annual general meeting.
- 12.5 A person shall be required to be a Member or spouse of a Member to qualify for office as an elected or appointed Trustee.

- 12.6 A person may not be elected or appointed as a Trustee if she or he is indebted to the Association in any way in respect of Levies or other amounts which the Association may in terms of this Constitution be entitled to levy on, or claim from, her or him and for the payment for which provision, has not been made to the satisfaction of the Trustee Committee.

13. Nominations

Nominations for the election of Trustees shall be given in writing including a biographical resume of the nominated person, accompanied by the written consent of the person nominated, so as to be received at the *domicilium* of the Association not later than ten (10) calendar days before the meeting for circulation amongst Members: Provided that nominations may, with the consent of the nominee, also be accepted at the general meeting itself.

14. Filling of vacancies and appointment of alternates

- 14.1 The Trustee Committee may appoint a person:
- 14.1.1 to fill any vacancy in its number; or
 - 14.1.2 to act as an alternate during the absence or inability to act of a Trustee;
- 14.2 A Trustee appointed to fill a vacancy shall hold office until the expiration of the term of office of the Trustee whose seat became vacant;
- 14.3 A Trustee appointed to act as an alternate shall cease to hold office if the Trustee in whose place she or he acts, ceases to be a Trustee, or if the alternate's appointment is revoked by the Trustee Committee;
- 14.4 A Trustee appointed in terms of this Clause shall have the powers, duties and obligations of a Trustee elected by Members at an annual general meeting and shall be eligible for election as a Trustee, if so nominated.

15. Remuneration

Unless otherwise determined by a resolution of the Members in general meeting, Trustees shall not be entitled to any remuneration in respect of their services: Provided that the Association may reimburse to Trustees such disbursements and expenses actually and reasonably incurred by them in the exercising of their powers, the discharge of their duties or the fulfilment of their obligations.

16. Validity of acts

Any act performed by the Trustee Committee shall be valid, notwithstanding that it is discovered after the performance of the act, that there was some defect in the election, appointment or continuance in office of any Trustee.

17. Indemnity

- 17.1 Subject to the provisions of Clause 17.3, every Trustee and person or service provider engaged by it in terms of Clause 7.1.3 shall be indemnified by the Association against all

costs, losses, expenses and claims which she or he may incur or become liable to by reason of any act done by her or him in the exercising of her or his powers, the discharge of her or his duties or the fulfilment of her or his obligations, unless such costs, losses, expenses or claims are caused by the *male fide* or grossly negligent act or omission of such person.

- 17.2 The Trustee Committee shall pay such indemnity out of the funds of the Association.
17.3 The indemnity referred to in Clause 17.1 shall not apply in favour of any managing agent.

18. Disqualification and/or Vacation of office

A Trustee shall cease to hold office as such if she or he:

- 18.1 by notice in writing resigns from office;
18.2 becomes of unsound mind or being found mentally handicapped;
18.3 surrenders her or his estate as insolvent, or her or his estate is sequestrated or she or he makes an arrangement or compromise with his or her creditors;
18.4 is convicted of an offence which involves dishonesty;
18.5 absents herself or himself from three (3) consecutive meetings of the Trustee Committee without special leave of absence from the Trustee Committee;
18.6 is removed from office by resolution of Members in general meeting: Provided that the intention to decide upon such removal from office has been specified in the notice convening the meeting;
18.7 is for a period of three (3) months in arrears with the payment of her or his Levies or other amounts which the Association may in terms of this Constitution be entitled to levy on, or claim from, her or him;
18.8 ceases to be a Member of the Schonenberg Home Owners Association;
18.9 dies.

CHAPTER 3.2 - TRUSTEE COMMITTEE MEETINGS

19. Convening of meetings

- 19.1 The Trustee Committee may after notice to its Members meet for the dispatch of business, adjourn and otherwise regulate its meetings as it may deem fit.
19.2 A Trustee may at any time convene a meeting by giving to the other Trustees no less than ten (10) days written notice of a meeting proposed by her or him, which notice shall specify the reason for calling such a meeting: Provided that in case of urgency such shorter notice as is reasonable in the circumstances may be given.
19.3 It shall not be necessary to give notice of a meeting to any Trustee being absent from the Republic of South Africa.

20. Quorum

- 20.1 Four (4) Trustees shall form a quorum.
20.2 If at any meeting a quorum is not present within thirty (30) minutes of the appointed time of the meeting, such meeting shall stand adjourned to the same day in the next

week at the same time and place, and Trustees then present, who shall not be less than two (2), shall form a quorum.

- 20.3 If the number of Trustees falls below four (4), the remaining Trustees or Member may continue to act, but only for the purpose of convening a general meeting of Members.

21. Voting

- 21.1 All matters at any Trustee Committee meeting shall be determined by a majority of those Trustees present and voting.
- 21.2 A Trustee who has any interest in any contract or proposed contract, or any litigation or proposed litigation, with the Association, must declare such interest and shall by virtue of such interest be disqualified from voting or discussion in respect thereof.
- 21.3 The chairperson shall have a casting vote as well as a deliberative vote save where there are only two (2) Trustees present.

22. Chairperson

- 22.1 At the commencement of the first meeting of the Trustee Committee seven (7) days after an annual general meeting, the Trustees shall elect a chairperson from among their number, who shall hold office as such until the end of the next annual general meeting of the Members of the Association.
- 22.2 If the chairperson resigns from office or ceases to be a Member of the Trustee Committee as contemplated in Clause 18, the Trustees shall elect another chairperson from among their number, who shall hold office for the remaining term of office.
- 22.3 If the chairperson vacates the chair during the course of a meeting or is not present or is for any other reason unable to preside at any meeting, the Trustees present shall choose another Trustee to act as chairperson for such meeting.

23. Attendance of Trustee Committee meetings by other persons

The Trustee Committee may in its sole discretion allow any person to attend a Trustee Committee meeting and to address it at such meeting.

24. Resolution signed by Trustees

A resolution in writing signed by all Trustees for the time being present in the Republic of South Africa and being not less than four (4), shall be as valid and effective as if it had been passed at a meeting of the Trustee Committee duly convened and held.

25. Minutes of proceedings

- 25.1 The Trustee Committee shall:
- 25.1.1 keep adopted and signed minutes of its proceedings;
 - 25.1.2 cause adopted and signed minutes to be kept of all meetings of the Association and

- 25.1.3 keep a record of every resolution of the Trustee Committee or of the Association, as the case may be.
- 25.2 The Trustee Committee may, on written application without impinging on the rights of Members, make all minutes of its proceedings and all minutes of the proceedings of meetings of the Association available.
- 25.3 The Trustee Committee shall keep minutes of its meetings and of general meetings of the Association for so long as the Association remains in existence.

26. Report on affairs of Association

The Trustee Committee shall annually prepare a report on the affairs of the Association, which report shall be:

- 26.1 laid before Members at the first annual general meeting following on the period to which the report relates; and
- 26.2 available for inspection at the *domicilium* of the Association, and such other address as may be determined by the Trustee Committee, at least ten calendar (10) days prior to the annual general meeting concerned.

CHAPTER 3.3 - ASSISTANCE FOR TRUSTEE COMMITTEE

27. Appointment and duties of Architect and Design Review Committee

- 27.1 The Trustee Committee may from time to time appoint a suitably qualified and experienced registered architect and appoint a Design Review Committee.
- 27.2 The Design Review Committee shall be responsible for the management and control of building activities within the Estate.

28. Appointment of managing agent

- 28.1 The Trustee Committee may from time to time subject to the provisions of Clause 7.1.9. appoint in terms of a written contract a managing agent to discharge such duties or fulfil such obligations as may be entrusted to the managing agent: Provided that a managing agent shall be appointed for a year at a time and unless the Association notifies the managing agent to the contrary, such appointment will be automatically renewed from year to year: Further provided that if the agreement has not been reduced to writing within thirty (30) days of its conclusion, it shall be voidable at the instance of either party.
- 28.2 The Trustee Committee shall ensure that there is included in the contract of appointment of a managing agent a provision to the effect that if she or he is in breach of any of the provisions of her or his contract, or if she or he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Trustee Committee may, without notice, cancel such contract of appointment, and that the managing agent shall have no claim whatsoever against the Association or any of its Members as a result of such cancellation.

- 28.3 The contract shall further provide for the appointment to be revoked, and such managing agent shall cease to hold office, if:
- 28.3.1 where the managing agent is a juristic person, an order is made for its provisional or final liquidation or, where the managing agent is a natural person, she or he applies for the surrender of her or his Estate as insolvent or her or his Estate is sequestrated either provisionally or finally or, where the managing agent is a company, it is placed under judicial management; or
 - 28.3.2 the managing agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the managing agent is a company or a close corporation, any of its directors or Members is convicted of an offence involving an element of fraud or an element of dishonesty; or
 - 28.3.3 a resolution by Members is passed to that effect: Provided that in such event the managing agent shall not be deprived of any right she or he may have to claim compensation or damages for breach of contract.
- 28.4 The managing agent shall keep full records of her or his administration and shall report to the Trustee Committee on her or his activities with regard to such administration.

CHAPTER 4 - COMMON PROPERTY

29. Management

The control and management of the Association's Common Property shall vest in the Trustee Committee, who shall do all things reasonably necessary for the maintenance of such Common Property and to keep it in a state of good and serviceable repair.

30. Improvements

- 30.1 The Trustee Committee may affect any improvements to the Common Property provided that such improvements are provided for in the annual capital expenditure and approved at the annual general meeting.

31. Traffic control measures

- 31.1 The Trustee Committee may in its discretion from time to time effect, implement or carry out such traffic control measures, including, but not limited to, the erection of traffic signs and speed humps, the implementation of speed limits and measures regarding the parking of vehicles, and the carrying out of speed checks, as it may deem necessary.
- 31.2 Where feasible, the Trustee Committee shall prior to effecting, implementing or carrying out an intended measure, consult with the owners in the immediate vicinity of the area where such measure will be affected, implemented or carried out.

32. Alienation of Common Property

- 32.1 Neither the whole nor any portion of the Common Property may be sold, alienated, subdivided, transferred or mortgaged or leased on terms of 10 years or longer: Provided

that the Members may by resolution passed at a general meeting by a two-thirds (2/3rds) majority of Members, a quorum of not less than fifty percent (50) of all Members being present in person or by proxy, entitled to vote, and in respect of which at least (20) twenty percent must be present in person, direct the Trustee Committee on their behalf to alienate the Common Property of the Association or any part thereof, and thereupon the Trustee Committee shall, subject to compliance with any law relating to the subdivision of land or to the re-zoning of land, have power to deal with such Common Property or such part thereof in accordance with such directive, and to execute any deed required for that purpose.

- 32.2 The Trustee Committee shall keep a register of all alienated Common Property, which shall be available for inspection at the *domicilium* of the Association.

33. Letting of Common Property

- 33.1 The Trustee Committee may on behalf of the Association let Common Property or any part thereof under a written lease on the terms and conditions it may deem appropriate for periods shorter than 10 years.
- 33.2 The Trustee Committee shall keep a register of all Common Property so let, which shall be available for inspection at the *domicilium* of the Association.

34. Insurance of Common Property

- 34.1 The Trustee Committee shall cause to be prepared, and shall lay before every annual general meeting for the consideration of Members, schedules reflecting its estimate of the replacement values of the Common Property.
- 34.2 The Trustee Committee shall annually take steps to insure the Common Property to the extent and against such risks, perils or dangers as may be directed by Members at the meeting concerned.

CHAPTER 5 - FINANCIAL MATTERS

35. Financial year

The financial year of the Association ends on the last day of February of each year.

36. Financial statements, books of account and accounting records

- 36.1 The Trustee Committee shall cause to be prepared, and shall lay before every annual general meeting for the consideration of Members:
- 36.1.1 financial statements in conformity with generally accepted accounting practice, which statements shall fairly present the state of affairs of the Association and its finances and transactions as at the end of the financial year concerned, including a report thereon prepared by an auditor qualified to act as such under

the *Auditing Profession Act, 2005 (No 26 of 2005)* or as amended from time to time

- 36.1.2 a record of the assets and liabilities of the Association;
 - 36.1.3 a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occurred; and
 - 36.1.4 a register of Members that are entitled to vote.
- 36.2 The Trustee Committee shall keep such books of account and records at the *domicilium* of the Association and shall cause them to be retained for a period of seven (7) years after completion of the transactions, acts or operations to which they relate.
- 36.3 The Trustee Committee may, on written application without impinging on the rights of Members, make all books of account available for inspection by such Member at the *domicilium* of the Association.

37. Annual estimate of anticipated income and expenditure

- 37.1 At least two (2) months prior to the commencement of every financial year of the Association, the Trustee Committee shall cause to be prepared an itemised estimate of the anticipated income and expenditure of the Association for the ensuing financial year, which estimate shall be laid before the annual general meeting at such a time and place as may be determined by the Trustee Committee, for consideration and the approval thereof with or without amendment.
- 37.2 Such estimate shall include a reasonable provision for future capital expenditure, maintenance and contingencies
- 37.3 The Trustee Committee shall annually in consultation with the Trustees of the Schonenberg Retirement Village Sectional Title Scheme determine the contribution to be made towards the maintenance of irrigation and landscaping within the Schonenberg Retirement Village Sectional Title Scheme.

38. Deposit and investment of funds

- 38.1 The Trustee Committee shall cause all moneys received by the Association to be deposited to the credit of an account or accounts at a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed by Members at a general meeting, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association: Provided that Trustee Committee may:
- 38.1.1 invest and re-invest such moneys not immediately required in the manner it may from time to time determine, subject to Clause 38.2;
 - 38.1.2 use interest earned on such moneys for any purpose of the Association.
- 38.2 The moneys of the Association may be deposited, invested or re-invested only with registered financial institutions as defined in section 1 of the *Financial Institutions (Protection of Funds) Act, 2001 (No 28 of 2001)* as amended from time to time.

CHAPTER 6 - LEVIES PAYABLE BY MEMBERS

39. Moneys to defray expenses

- 39.1 The Trustee Committee, on behalf of the Association, shall be entitled to collect contributions from Members in the form of Levies to defray all the expenses which the Association has incurred, or which the Trustee Committee anticipates the Association will incur, in the attainment of its objective or the exercising of its powers, the discharge of its duties or the fulfilment of its obligations. Such Levies may be collected in advance.
- 39.2 Subject to the provisions of Clause 44, every Member shall pay Levies in respect of each Erf or Unit registered in her or his name.
- 39.3 A Member shall not be entitled to a refund of Levies lawfully levied upon her or him and duly paid by her or him.

40. Determination of annual Levy

- 40.1 The amount of the annual levy shall be determined and approved by the Trustee Committee using the approved estimate of anticipated income and expenditure of the Association for the year to which it relates and the total number of Erven and Units in the Estate as basis for such calculation and shall within fourteen days of each annual general meeting advise each owner of the levy payable by him or her.
- 40.2 The contribution shall be the same for each Erf or Unit provided that for Apartments it shall be twenty five per cent of the contribution.
- 40.3 The Trustee Committee shall determine the manner in which the levy is payable by instalments.
- 40.4 The Trustee Committee may, in anticipation of the approval of the annual Levy for a financial year by Members as contemplated in Clause 40.1 determine an interim monthly Levy based on its estimate of the anticipated income and expenditure of the Association as contemplated in Clause 37.1 and may collect such interim monthly Levies with effect from the first day of that financial year until such time as the annual Levy for that year has been determined as contemplated in Clause 40.1

41. Special Levies

The Trustee Committee may in the case of major electricity-, water- and/or sewerage breakdown or when the operational efficiency of the Estate is under threat, by resolution impose a special levy without the approval by the Members in a general meeting.

42 Other Amounts Payable

- 42.1 Any amount payable by a Member for the provision of utilities or other services as may be determined by the Trustee Committee shall be due on the first day of each calendar month.
- 42.2 The Trustee Committee may authorise the estate manager to limit the provision of utilities or any other services while a Member is in arrears with the payment thereof.

43. Levies in respect of Apartments

- 43.1 The Levies payable in terms of Clause 40 by a Member owning an Apartment shall be twenty five per cent of the levy and where applicable 25% of the special levy, as may be imposed from time to time.
- 43.2 The fact that a reduced levy is in terms of Clause 43.1 payable in respect of a particular Apartment shall not in any way derogate from the status of such Apartment as being part of the Estate, and this Constitution, subject to the provisions of Clause 53.1.2, apply to it and its registered owner as they apply to an Erf or Unit and its registered owner in respect of which full Levies are payable.

44. Payment of Levies

- 44.1 Any Levies or other amounts that may be collected in terms of this Constitution and / or the credit policy of the Association may be recovered from the persons who were owners of Erven or Units at the time when such Levies were imposed.
- 44.2 Monthly Levies shall be due on the first day of each calendar month.
- 44.3 Special Levies shall be made payable in one sum or by such instalments and at such time or times as the Trustee Committee may deem fit.
- 44.4 If any Levies payable in terms of this Constitution are not paid within seven (7) days of the due date same shall bear interest compounded monthly in arrears, duly authorised by the estate manager, from the date of delinquency at a percentage as determined by the Trustee Committee from time to time.
- 44.5 A Member who is in arrears with the payment of Levies or any other amounts due by such Member, shall be liable for all costs and expenses incurred by the Trustee Committee in the recovery of such Levies and the interest thereon, which expense shall be added to the Levies payable by that Member and claimed as if it were part of such Levies.
- 44.6 Legal costs recoverable from a delinquent Member in terms of the foregoing provision shall be determined on an attorney and own client scale.
- 44.7 The Trustee Committee may institute legal proceedings as contemplated in Clause 10 against a Member for the recovery of arrear Levies, the interest thereon and the legal costs incurred by the Association in the recovery thereof.
- 44.8 In the event of a levy or other amount being in arrears for a period of three (3) months the balance of the annual levy may be recovered from the Member.
- 44.9 An invoice for a levy and any interest thereon is not an account tendered for goods or services provided and thus do not fall within the ambit of the National Credit Act.
- 44.10 In the event that future densification of the Estate result in the addition of erven and/or units and/or apartments, additional levies will be payable.
- 44.11 Upon taking transfer of an Erf or Unit, the new Member becomes liable to the Association for the payment of the levies in respect of the Erf or Unit. No Member shall be entitled to transfer his Erf or Unit until the Association has certified that the Member has, at the date of transfer, paid all amounts owing by her or him to the Association, or has made provision for such payment to the satisfaction of the Trustees.

CHAPTER 7 - GENERAL MEETINGS OF MEMBERS

CHAPTER 7.1 - CALLING OF GENERAL MEETINGS

45. Annual general meetings

- 45.1 The applicant for approval of subdivision must call the first meeting of the Home Owners' association within 60 days of the transfer of 60% of the erven arising from the subdivision or within 2 (two years) of the transfer of the first erf, whichever is the earlier. Within 60 days of the first meeting, the applicant for approval of subdivision shall notify the City that the meeting has taken place and provide the City with a copy of the minutes of the meeting.
- 45.2 Annual general meetings shall be held once in every year at such a time and place as may be determined by the Trustee Committee: Provided that it shall be held within three (3) months after the end of each financial year.
- 45.3 Non-compliance with the above shall entitle a Member substantially prejudiced thereby to apply to the High Court to have the meeting set aside, but shall not ipso facto invalidate the meeting or the business conducted thereat.

46. Business transacted at annual general meeting

The business that shall be transacted at an annual general meeting shall include:

- 46.1 approval of the minutes of general and special meetings;
- 46.2 consideration of the report referred to in Clause 26;
- 46.3 consideration of the financial statements referred to in Clause 36;
- 46.4 approval with or without amendment of the estimate of income and expenditure referred to in Clause 40.1
- 46.5 approval with or without amendment of the schedules of replacement values referred to in Clause 34;
- 46.6 election of Trustees for the next year as contemplated in Clause 12;
- 46.7 the appointment of an auditor;
- 46.8 the giving of directives or imposing of restrictions referred to in Clause 8.2
- 46.9 consideration of any draft Resolution concerning the affairs of the Association of which due notice has been given; and
- 46.10 any other business of which notice has been received at the *domicilium* of the Association at least fourteen (14) days prior to the date set for the meeting;

47. Special general meetings

- 47.1 All general meetings other than the annual general meetings referred to in Clause 45 shall be called special general meetings.
- 47.2 The Trustee Committee may convene a special general meeting whenever it deems fit and shall convene such a meeting upon the written request of not less than twenty (20) Members, directed to the chairperson of the Trustee Committee.

48. Notice of and minutes of general meetings

- 48.1 The Trustee Committee shall convene an annual general meeting by giving at least twenty-one (21) days' notice thereof: Provided that the Trustee Committee shall cause copies of the documentation relating to the business to be transacted at the meeting as contemplated in Clause 46 to be delivered to each Member at least fourteen (14) days before the date of the meeting concerned.
- 48.2 A special general meeting shall be convened by giving at least fourteen (14) days' notice thereof: Provided that the Trustee Committee shall cause copies of the documentation relating to the business to be transacted at the meeting to be delivered to each Member together with the notice convening the meeting.
- 48.3 The notice convening a meeting shall be inclusive of the day on which it is given and shall be in writing and shall specify the place, the day and the hour of the meeting and the general nature of the business to be transacted at the meeting.
- 48.4 Inadvertent omission to give notice of a general meeting to, or the non-receipt of such notice by, any person entitled to such notice, shall not invalidate any proceedings at any such meeting.
- 48.5 Draft minutes of the meeting to be circulated 21 days after the meeting for comments to be submitted within 21 days thereafter.

CHAPTER 7.2 - PROCEEDINGS AT GENERAL MEETINGS

49. Quorum

- 49.1 No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business.
- 49.2 For all purposes, other than provided for in this constitution, the quorum shall be not less than twenty per cent (20) of all Members entitled to vote to be present in person or by proxy: Provided that at least twenty per cent [20] are present in person.
- 49.3 If at any general meeting a quorum is not present within thirty (30) minutes of the appointed time of the meeting, the meeting, if convened at the request of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place and if at such adjourned meeting a quorum is not present within thirty (30) minutes of the appointed time for the meeting, the Members present in person or by proxy shall be a quorum: Provided that all Members shall be given notice of such adjourned meeting.

50. Chairperson

- 50.1 The chairperson of the Trustee Committee shall preside at a general meeting.
- 50.2 If there is no such chairperson or if the chairperson is not present within fifteen (15) minutes after the appointed time of the meeting, or if she or he is unwilling or unable to preside, the Members present shall elect from among the Trustees present or, if no such Trustees are present, one of their number present to be chairperson of the meeting.

51. Voting procedure

- 51.1 At any general meeting a resolution put to the vote shall be decided on a show of hands, unless the chairperson, in her or his discretion, directs that a ballot be taken, or, either prior to or on the declaration by the chairperson of the result of the show of hands, a ballot is demanded by any person entitled to vote.
- 51.2 A declaration by the chairperson that a resolution has on the show of hands been carried shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour of or against such resolution.
- 51.3 A directive or demand for a ballot may be withdrawn by the person concerned.
- 51.4 A ballot shall be taken in such manner as the chairperson may deem fit and the result of the ballot shall be deemed to be a resolution of the meeting at which such ballot was taken.
- 51.5 Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by ballot, or 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, and an entry in the minutes 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 vote so recorded if such entry conforms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting.

52. Majority required

All resolutions shall be by simple majority or by any other majority specifically required in a particular case by this Constitution of those Members who are entitled to vote and are present in person or by proxy and voting.

53. Vote entitlement

- 53.1 Subject to Clauses 53.2 and 53.3, each Member shall be entitled to one (1) vote for each Erf or Unit in the Estate registered in her or his name: Provided that:
- 53.1.1 ownership of an Erf or Unit in undivided shares shall constitute only one Membership; and
- 53.1.2 an owner of an Apartment shall be entitled to a one quarter (1/4) vote.
- 53.2 When two or more persons are joint registered owners of an Erf or Unit, the vote to which they are entitled shall be exercised only by a person (who may or may not be one of them) jointly appointed by them as their proxy, provided that any one of them may demand a vote.
- 53.3 If an Erf or Unit is jointly owned by a natural person and a company, the vote to which they are entitled shall be exercised only by a person (who may or may not be such natural person or a director of the company) jointly appointed by such natural person and the directors of the company as their proxy: Provided that such natural person and any one of the directors may demand a vote.

54. Right to vote

Each Member entitled to vote shall have the right, either in person or by proxy, to exercise a vote in respect of any matter to be voted on by Members in general meeting: Provided that a Member may not exercise a vote to which she or he would otherwise be entitled:

- 54.1 if any Levies or other amounts payable by her or him in terms of this Constitution, together with any interest and costs in connection therewith, equal to or more than one and a half times the monthly levy contribution, have not been duly paid 72 hours prior to a general meeting: Provided that the notice convening a general meeting notifies Members to remedy any such non-payment; or
- 54.2 she or he persisted in breach of any provision of this Constitution or any Conduct Rule after written notice requiring her or him to remedy such breach; or
- 54.3 in respect of any contract or proposed contract, or any litigation or proposed litigation with the Association, in which she or he has any interest.

55. Proxy

- 55.1 A Member may be represented in person or by proxy at a general meeting: Provided that a person may not act as a proxy for more than fifteen (15) Members.
- 55.2 The instrument appointing a proxy shall be in writing in the common form, or any form approved by the Trustee Committee, under the hand of the appointer, or of her or his attorney or agent, duly authorised. 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, and where a Member is a company, the same may be signed by a the chairman of the board of directors of the company or by its secretary, and where a Member is a close corporation, the instrument appointing a proxy may be signed by a Member of the close corporate, and where a Member is a trust, the instrument appointing a proxy may be signed by a trustee of the trust, and where a Member is an association of persons, the instrument appointing a proxy may be signed by the secretary thereof.
- 55.3 A proxy need not be a Member, but shall not be a person or service provider engaged by the Association in terms of Clause 7.1.3 or a managing agent (or any of her or his employees) appointed in terms of Clause 28.

56. Submission of proxies

The person named as proxy shall be entitled to vote in respect thereof only if the instrument appointing a proxy, together with the power of attorney (if any) under which it is signed or a copy thereof, is deposited at the *domicilium* of the Association either by hand or post or shall be sent by facsimile or electronic mail at least twenty four (24) hours before the time appointed for the meeting, or adjourned meeting, or is handed to the chairperson prior to the commencement of the meeting, at which the person named in such instrument proposes to vote.

57. Incapacity

Should any Member be declared incapable of managing her or his own affairs, or a prodigal or insolvent, or in the case of a company, placed under judicial management or into liquidation, such Member shall be represented by her or his *curator bonis*, trustee, judicial manager or

liquidator, as the case may be, who shall be entitled to vote on her or his behalf, either personally or by proxy.

CHAPTER 8 - CONSTITUTION AND ANNEXURES

58. Annexures to Constitution

- 58.1 The Association may make such Conduct Rules as it may deem necessary for the promotion of safe and harmonious community-living in the Estate and for the control, management, administration, use and enjoyment of the Common Property of the Association.
- 58.2 The Conduct Rules made by the Association, and any addition thereto, or substitution, amendment or repeal thereof, may not be in conflict or irreconcilable with any provision of the Constitution. In the event of any such conflict or irreconcilability, the provisions of the Constitution shall prevail.
- 58.3 The Association may issue such Architectural Design Guidelines as it may deem necessary to prescribe the architectural style and the materials to be used in respect of any buildings to be erected, and any renovations, alterations or additions to be carried out to existing buildings, and in particular to control the exterior design of such buildings and renovations, alterations or additions and the materials and colours used, so as to ensure an aesthetically pleasing character to the buildings in the Estate: Provided that such guidelines shall also apply to other site works on a Member's property, including, but not limited to, fences, pergolas, boundary walls and paving as well as to landscaping. The Architectural Design Guidelines may not introduce more restrictive development rules or land uses than provided in the development management scheme. The Trustees shall control, administer and manage the Architectural Design Guidelines.
- 58.4 The Construction Environmental Management Plan (CEMP) sets out the requirements for service providers performing building construction and related activities to ensure the protection of the environment;
- 58.5 The Operational Environmental Management Plan (OEMP) sets out the requirements for Members and/or visitors to the Estate pertaining to the protection of the environment; and
- 58.6 The Code of Conduct for Builders sets out the requirements for service providers performing building construction and related activities to ensure appropriate behaviour on the Estate.

59. Penalties determined by Trustee Committee

- 59.1 If the conduct of a Member or an Occupier of an Erf or a Section, or the Invitees of a Member or Occupier constitute a nuisance in the opinion of the Trustees, or a contravention of a provision of this Constitution, the Trustee Committee may by written notice:
- 59.1.1 inform the Member of the nuisance or contravention and warn the Member that if he or she or the Occupier of his or her Erf or Section fails to remedy the contravention or persists in such conduct or contravention or repeats the conduct or contravention, a penalty will be imposed on him or her;

- 59.1.2 If the owner or Occupier of the Erf or Section or his or her Invitees repeats or persists in the conduct, nuisance or contravention despite the written warning or fails to remedy the contravention, the Trustee Committee may by written notice impose a penalty on the Member, which written notice shall state the reasons for the imposition of the penalty, or
- 59.2 The penalty imposed under Clause 59.1.2 becomes due on the date of the written notice and must be paid within 30 (thirty) days from 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 and attorney and client costs.
- 59.3 The Trustee Committee may from time to time determine the categories of contraventions and the amounts of the penalties in respect of first and subsequent contraventions, subject to any directives given or restrictions imposed by the Members at a general meeting.
- 59.4 A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, the Member shall be deemed to be guilty of a separate contravention for every 24 hours or part thereof during which such contravention continues and shall be liable in respect of each such separate contravention.
- 59.5 A Member may within (30) thirty days of the date of the written notice referred to in Clause 59.1.2, lodge an objection against the penalty imposed with the Trustee Committee. Upon receipt of such objection, the Trustee Committee may:
- 59.5.1 withdraw or reduce the penalty; or
- 59.5.2 schedule a meeting of the Trustee Committee for the purpose of considering the objection and invite the Member to attend.
- 59.6 At the meeting referred to in Clause 59.5.2, the Member shall have the right to:
- 59.6.1 present his or her case;
- 59.6.2 present any evidence, including the calling of witnesses, to substantiate his or her case;
- 59.6.3 cross-examine any person called as witness in support of the charge;
- 59.6.4 have access to documents produced in evidence; or
- 59.6.5 produce mitigating factors or evidence.
- 59.7 The failure of the Member charged to attend the meeting referred to in Clause 59.5.2 shall not render the proceedings at the meeting void. Should the Member not attend the meeting without providing a reasonable request for postponement, the Trustee Committee may, in their sole discretion, continue with the meeting and consider the objection in the absence of the Member.
- 59.8 Upon the conclusion of the meeting, the Trustee Committee shall deliberate the evidence and if so resolved, they may:
- 59.8.1 uphold the penalty; or
- 59.8.2 withdraw or reduce the penalty.
- 59.9 Any notice to a Member in terms of these rules, will be regarded as having been properly given if such notice is:
- 59.9.1 delivered to the Member by hand, in which event it shall be regarded as having been received on delivery;
- 59.9.2 delivered by registered post to the Member to his or her domicilium citandi et executandi or known postal address, in which event it shall be regarded as having been received on the 4th day after the date of postage;

- 59.9.3 delivered to the Member by fax or e-mail to the fax number or e-mail address of such Member, in which event it shall be regarded as having been received on the date of transmission.
- 59.10 Notices in terms of this rule may in the discretion of the Trustee Committee also be delivered to the Occupier of the Erf or Section.

60. Amendment of Constitution, Architectural Design Guidelines and Conduct Rules

- 60.1 The Trustee Committee or any Member may propose an addition to, or substitution, amendment or repeal of, a provision of the Constitution, Architectural Design Guidelines or the Conduct Rules by submitting a written motivated proposal to that effect to the Trustee Committee.
- 60.2 If the Trustee Committee is of the view that the matter should be proceeded with, it shall submit the proposal to the Members for consideration at the next general meeting.
- 60.3 If the Trustee Committee is of the view that the matter should not be proceeded with, it shall inform the Member accordingly in writing: Provided that the Trustee Committee shall upon the written request of not less than twenty (20) Members place the matter on the agenda of the next general meeting.
- 60.4 Any proposed addition to, or substitution, amendment or repeal of, a provision of the Constitution may be effected only by a resolution passed at a meeting by a two-thirds (2/3rds) majority of Members, a quorum of not less than fifty per cent (50%) of all Members entitled to vote being present in person or by proxy of which at least twenty percent (20) must be present in person and provided that due notice had been given to Members of the proposed addition, substitution, amendment or repeal.
- 60.5 Any proposed addition to, or substitution, amendment or repeal of, a provision of the Architectural Design Guidelines, the Conduct Rules and the Code of Conduct for Builders may be effected only by a resolution passed at a meeting by an ordinary majority of Members, a normal quorum of all Members entitled to vote being present in person or by proxy and voting, and provided that due notice had been given to Members of the proposed addition, substitution, amendment or repeal.
- 60.6 The amended Constitution must be lodged with the City and the latest copy duly lodged with the City, and which the City has certified in terms of section 62(2) or (4) of the City's Planning By-law, is presumed to contain the operative provisions of the Constitution.
- 60.7 The Constitution may be amended in accordance with the provisions herein provided that an amendment concerning a matter in Section 62 (1)(a) of the By-Law becomes effective only when certified by the City.
- 60.8 The City is exempt from liability for any damage which may be caused by its certification of a Constitution or an amendment thereof or by the loss of a constitution lodged with the City.

61. South African Revenue Services

The following provisions have been inserted in this Constitution specifically for the South African Revenue Services

- 61.1 The sole objective of the Association must be to manage the collective interest to all its Members, which includes expenditure applicable to the Common Property of such Members and the collection of Levies for which such Members are liable.
- 61.2 The Association is not permitted to distribute its funds to any person other than a similar association of persons.
- 61.3 On dissolution, the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act.
- 61.4 Any amendments of the Constitution must be submitted to the Commissioner for the South African Revenue Services and to the extent necessary and applicable, to the relevant local authority professing jurisdiction in respect of this Constitution, for its approval.
- 61.5 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, 2001 (No 28 of 2001)* as may be amended from time to time.
- 61.6 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.
- 61.7 Annual returns for income tax together with financial statements shall be submitted to the Tax Exemption Unit.

62. Notification of interested parties

- 62.1 The Trustee Committee shall, within twenty-one (21) days of its approval in writing inform all Members, the Commissioner for the South African Revenue Service and the City of any addition to, or substitution, amendment or repeal of, a provision of the Constitution.
- 62.2 The Trustee Committee shall at least fourteen (14) days before its implementation in writing inform all Members of any addition to, or substitution, amendment or repeal of, a provision of the Conduct Rules and of any penalties determined under Clause 59.

63. Record of Constitution and Conduct Rules

The Trustee Committee shall keep a complete record of the Constitution and of all Conduct Rules and penalties in force from time to time, which shall be available for inspection at the *domicilium* of the Association.

64. Binding nature of Constitution and Annexures

- 64.1 The provisions of this Constitution and Annexures, shall be binding on all Members and also on all other persons who for whatever purpose enter the Estate.
- 64.2 It shall be the duty of a Member to ensure compliance with the provisions of this Constitution, the Architectural Design Guidelines, and the Conduct Rules by the Occupant and or Invitees of her or his dwelling, Erf or Section.

- 64.3 Each Member shall be vicariously liable for acts or omissions on the part of the Occupiers of his Erf or Section, including the Invitees of the Member or of his Occupier, whether or not such conduct was prohibited by any understanding, undertaking or contract between the Member and such person; provided that nothing herein contained shall prejudice the right of the Association to take or cause to be taken steps against the person actually committing the breach, as the Trustees may in their sole discretion deem fit.

CHAPTER 9 - MISCELLANEOUS PROVISIONS

65. Signing of instruments

No document signed on behalf of the Association shall be valid and binding unless it is signed by such person(s) duly authorised thereto by resolution of the Trustee Committee.

66. Restriction on alienation

- 66.1 No Member shall transfer her or his Erf or Unit until the Trustee Committee has issued a certificate consenting to such transfer. Such certificate shall not be withheld unless:
- 66.1.1 such Member is indebted to the Association in any way in respect of Levies or other amounts which the Association may in terms of this Constitution be entitled to claim from her or him and provision has not been made to the satisfaction of the Trustee Committee for the payment thereof;
- 66.1.2 such Member remains in breach of any of the provisions of this Constitution after written notice requiring her or him to remedy such breach and provision has not been made to the satisfaction of the Trustee Committee for the remedying thereof.
- 66.2 The Trustee Committee shall be entitled to charge a fee for issuing the certificate, which fee may be determined by Trustee Committee from time to time.
- 66.3 The Trustee Committee may formally delegate one or more of its Members or the estate manager, on its behalf, to implement the provisions of this Clause.

67. Loans

The Trustees may not make loans on behalf of the Association to Members or themselves.

68. Failure to erect, complete and maintain a dwelling

- 68.1 Should a Member fail to commence the building of a dwelling on her or his Erf within 3 (three) years of the date of registration of transfer from the Developer to the original purchaser or Member of that Erf, then such Member or her or his successor-in-title shall pay the Association a monthly penalty equal to the monthly contributions and charges levied by the Association (from time to time) from the commencement of the fourth year until the date of completion of the dwelling for the purpose of but not limited to the repairing of damage to roads and the cost of hiring additional security personnel.

- 68.2 Should a Member fail to complete the building of a dwelling on her or his Erf but fails to complete it within (12) twelve months then such Member or her or his successor-in-title shall pay the Association a monthly penalty equal to five times the monthly contributions and charges levied by the Association from time to time from the commencement of the (13) thirteenth month until the date of completion of the dwelling for the purpose of but not limited to the repairing of damage to roads and the cost of hiring additional security personnel.
- 68.3 In order to preserve a desirable living environment, it is of the utmost importance that dwellings and gardens are well maintained and reflect the overall appearance in the Estate. Where a Member fails to maintain her or his dwelling and gardens in a state of good repair, the Trustees may give written notice to such Member to attend to the required work. In the event of the Member failing to commence the required work, and such failure persists for a period of sixty (60) days after the giving of a written notice to repair or maintain, then such Member or her or his successor-in-title shall pay the Association a monthly penalty equal to the monthly contributions and charges levied by the Association from time to time. Such penalty levy shall be payable from the end of the notice period until completion of the required work

69. Disputes, Mediation and Arbitration

- 69.1 Should any dispute whatsoever arise at any time between the Association and a Member or Members in respect of the interpretation or application of this Constitution or the effects as to the rights, duties, obligations and/or liabilities of the parties in terms thereof, or as to any other matter in any way connected with this Constitution, then a party may declare a dispute by delivering a notice containing the details of the dispute to the other parties.
- 69.2 Should any dispute which has arisen at any time between the parties not be resolved within (21) twenty one days of receipt of the notice of dispute, any party may refer the matter to mediation. In the event that the dispute remains unresolved upon conclusion of the mediation proceedings, any party may refer the matter to arbitration under the auspices of the Arbitration Foundation of South Africa, subject to the following conditions:
- 69.2.1 the choice of mediator and/or arbitrator will be mutually agreed between the parties;
- 69.2.2 the appointed mediator and/or arbitrator should be an admitted attorney or advocate with the required experience agreed to by the parties within 7 (seven) Days and failing agreement appointed by the President for the time being of the Cape Law Society or its successor-in-title; and
- 69.2.3 the parties will enter into a mediation or arbitration agreement, as the case may be, to regulate all aspects of the mediation or arbitration; and
- 69.2.4 unless the parties agree otherwise, the costs of the arbitration will be shared equally between the parties; and
- 69.2.5 save for either party's right to have the decision of the arbitrator reviewed by a court of law, the decision of the arbitration will be final and binding on the parties.
- 69.3 The above remedies subsist without prejudice to a right of any party to:
- 69.3.1 institute an action or launch an application in a court of competent jurisdiction;
or

- 69.3.2 institute proceedings in terms of the Community Schemes Ombud Service Act, No 9 of 2011, when such service becomes operative.
- 69.3.3 avail herself or himself of the other remedies available in terms of this Constitution.

70. Winding up

- 70.1 The Association may be wound up by an order of court or by a resolution of Members provided:
- 70.1.1 that two-thirds (2/3rds) majority of Members, a quorum of not less than fifty per cent (50) of all Members in person or by proxy, entitled to vote, of which at least (20) twenty percent must be present in person;
- 70.1.2 that the resolution in 70.1.1 include arrangements for the transfer of erven in the event that the Association ceases to function; and
- 70.1.3 that the City consents thereto.
- 70.2 In the event of such winding up, it shall be the duty of the Trustee Committee, or a suitably qualified person appointed by it, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the rest to a similar association of persons succeeding the Association and which is also exempt from income tax in terms of section 10(1)(e)(iii) of the *Income Tax Act, 1962 (No 58 of 1962) as amended from time to time* If the Association is not succeeded by such an association, the remaining money shall then be paid to such fund as may be required by law.
- 70.3 If the Association is dissolved, the Members must jointly pay the costs of –
- (a) the transfer to the City of the Association's property which contains the internal engineering services and private open space;
 - (b) the upgrading of the internal engineering services to the standards of the City.

71. Zoning conditions

- 71.1 The conditions pertaining to the municipal zoning scheme regulations applicable to the development of the Estate shall at all time be observed by the owner or owners of an Erf or Unit.
- 71.2 Any application to the City for permission to deviate from the zoning scheme regulations pertaining to an Erf or Unit shall be accompanied by the written consent of the Trustee Committee.
- 71.3 No Member shall be entitled to subdivide or rezone her or his Erf other than as prescribed by the local authority in terms of the approved zoning scheme.
- 71.4 No more than one dwelling, together with such outbuildings as are ordinarily required, shall be erected on any Erf subject to the conditions prescribed in terms of the approved zoning scheme.
- 71.5 To the extent a Member consolidates 2 (two) or more Erven or Units, such Member shall be responsible to pay an equivalent number of contributions and/or other charges levied by the Association.
- 71.6 To the extent that no Home Owners Associations for Group Sites have been established the zoning and nature of such erven as provided for in the 2005 constitution are nevertheless acknowledged

72. Submission of plans

- 72.1 A Member shall be obliged to submit any building plan, prepared by a registered architect or architectural draftsman, whether such plan is for new constructions or for renovations, alterations or additions affecting the exterior appearance of an existing structure, to the Design Review Committee at the *domicilium* of the Association for examination and approval prior to the submission of such plan to the City for approval.
- 72.2 Should the Design Review Committee not approve of a plan submitted in terms of Clause 72.1, it shall refer the matter to the Trustee Committee for final adjudication. The Trustee Committee if it concurs with the Design Review Committee shall furnish the Member concerned with its reasons in writing and any disputes arising shall be dealt with in terms of the dispute resolution procedure provided for in Clause 69.

73. Body Corporate of the Schonenberg Retirement Village Sectional Title Scheme

- 73.1 All decisions taken by the Body Corporate shall apply solely for and to the Members of such Scheme.
- 73.2 The administration of the Body Corporate shall be conducted according to its own rules.
- 73.3 The following function and power of the Body Corporate shall be assigned to the Association, namely to control, repair and maintain the roads, the major infrastructure, engineering services of the Body Corporate. The date of assignment of functions and powers of the Body Corporate shall be the date of filing of this rule at the Cape Town Deeds Registry.
- 73.4 Notwithstanding any other provision, to the extent there is a conflict between the provisions of the Body Corporate founding and/or governing document or rules and this Constitution, the Trustee Committee of the Body Corporate and the Trustee Committee of the Association shall be required to first resolve that conflict in the best interests of all Members before resorting to arbitration.

CHAPTER 10 - DOMICILIUM AND NOTICES

74. Domicilium citandi et executandi

- 74.1. The *domicilium citandi et executandi* of the Association shall be the administrative office of the Association, or such address as may be determined by the Trustees from time to time. The Trustees shall give notice to all Members of any change of such address.
- 74.2. The *domicilium citandi et executandi* of each Member shall be the street address of the Member's Erf or Section, provided that if such Erf is a vacant erf the *domicilium citandi et executandi* of that Member shall be the known physical address of such Member.
- 74.3. The Association or a Member may at any time by written notice change its or her or his *domicilium* to some other address, which new address shall be in the Republic of South Africa and may not be a Post Office box or *poste restante*. Such change of address shall become effective on the 4th day after posting or sending.

- 74.4. Notwithstanding anything to the contrary herein contained, shall the Association be entitled to deliver and receive documents and notices (other than legal process) to and from a Member by electronic mail. A Member who has furnished an electronic address to the Association authorises it to use electronic communication to give notices, documents, records or statements.
- 74.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Member shall be adequate written notice or communication to such Member notwithstanding that it was not sent to or delivered at his *domicilium citandi et executandi*.
- 74.6. Any notice to a Member:
- 74.6.1. sent to him by prepaid registered post in a correctly addressed envelope at his *domicilium et executandi* shall be deemed to have been received on the 4th day after posting (unless the contrary is proved); or
- 74.6.2. delivered by hand to a responsible person at his *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
- 74.6.3. sent to him by telefax to his chosen telefax number or by electronic mail shall be deemed to have been received on the date and at the time recorded by the telefax machine or computer used by the Association, unless there is conclusive evidence that it was delivered on a different date or at a different time.

75. Transitional Measures for the Trustee Committee

The members of the current Trustee Committee shall be deemed to be members of the Trustee Committee constituted in terms of this Constitution and shall hold office until the Annual General Meeting, immediately following the certification of this Constitution by the City, at which meeting each such Trustee shall be deemed to have retired but shall be available for re-election.

76. Annexures

Annexures attached to the 2005 Schonenberg Home Owners Constitution namely:-

- 76.1. Annexure A: Conduct Rules;
- 76.2. Annexure B: Architectural Design Guidelines;
- 76.3. Annexure C: The Construction Environmental Management Plan;
- 76.4. Annexure D: The Operational Environmental Management Plan; and
- 76.5. Annexure E: The Code of Conduct for Builders
- 76.6. Annexure F: Conditions of subdivision

shall remain in force until substituted, amended or withdrawn in terms of the requirements of this Constitution. Appropriate documentation control procedures are applied.

77. Exclusion of liability

- 77.1 Any Member or other person present in the Estate or on the Common Property or using any of the facilities or services of the Association does so entirely at their own risk. 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, save in the case of bad faith or gross negligence.

- 77.2 Subject to clause 79.1, 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 other person whosoever may sustain:
- 77.2.1 by reason of any defect in or state of disrepair of the Estate or the Common Property, or any facility, service or property, or any part thereof, or any fittings, fixtures, equipment or appurtenances of whatsoever nature therein, notwithstanding that such effect or state of disrepair may be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Trustees, the managing agent, or any of the Association's agents, employees or contractors; or
- 77.2.2 directly or indirectly, in or about the Estate (including, without limiting the generality of the foregoing, the Common Property and any property, whether such injury, loss or damage be due to theft, the action of rain, wind, hail, lightning, explosion, spontaneous combustion, gas, fire water leakage, seepage, cessation or interruption of or defect in any electric, gas, fuel, water, sanitary, telephone, air conditioning or other services to the Estate (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.
- 77.3 The Members undertake in favour of the Association, as soon as practical, to notify the Occupiers of their properties, and their Invitees, of the provisions of this clause 79, 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.
- 77.4 Subject to clause 79.1, 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 the Occupiers of her or his property or by his Invitees or the Invitees of the Occupiers of her or his property, or any other person within the Estate at the invitation of or under the control of the Member or Occupier concerned, notwithstanding the nature of such claim.
- 77.5 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. 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.
- 77.6 The Association shall not be liable for any damage suffered by a Member or Occupier or any other person present in the Estate by reason of power surges.