



**STELLENBOSCH**

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

Application Number: LU/14671

Our File Reference Number: Erf 2861, Franschhoek

Your Reference Number:

Enquiries: Ulrich von Molendorff

Contact No: 021 – 808 8682

Email address: [Ulrich.Vonmolendorff@stellenbosch.gov.za](mailto:Ulrich.Vonmolendorff@stellenbosch.gov.za)

**PER E-MAIL:** [REDACTED]

Sir / Madam

**APPLICATION FOR THE AMENDMENT OF A CONDITION OF APPROVAL IN ORDER TO AMEND THE L'AVENUE DE FRANSCHHOEK HOMEOWNERS ASSOCIATION CONSTITUTION: ERF 2861, FRANSCHHOEK**

1. The above application refers.
2. The duly authorised decision maker has decided on the above application as follows:
  - 2.1 That the application in terms of Section 15(2)(h) of the Stellenbosch Municipal Land Use Planning Bylaw, promulgated by notice number 354/2015, dated 20 October 2015 on Erf 2861, Franschhoek for the amendment of conditions (a) in APPENDIX A of the approval letter dated 09/05/2012, in order to replace the approved L'Avenue de Franschhoek Constitution dated May 2011 (See **APPENDIX 3**) with an amended Constitution dated 22 January 2022 (See **APPENDIX 5**).

**BE APPROVED** in terms of Section 60 of the said Bylaw and subject to the following conditions of approval in terms of Section 66 of the said Bylaw.
3. The approval is subject to the following conditions imposed in terms of Section 66 of the said Bylaw:
  - 3.1 The approval only applies to the proposed amendment of a condition of approval in order to replace the approved L'Avenue de Franschhoek constitution (Dated May 2011 – See **APPENDIX 3**) with and amended constitution (dated 22 January 2022 – See **APPENDIX 5**) under consideration, as indicated in the subject appendices and shall not be



construed as authority to depart from any other legal prescriptions or requirements from Council or other legislation or Bylaws or Regulations that may be applicable.

4. **The reasons for the above decision are as follows:**
  - 4.1 The proposed amendments to the subject constitution do not place any liabilities on the municipality with regards to specifically the administration of the common property, internal roads and services.
  - 4.2 The amended constitution still recognizes the final decision-making authority of the municipality in relation to building development within the estate and the approval of building plans.
  - 4.3 The proposed constitutional amendments do not affect the estates approved architectural guidelines and will subsequently not have a negative impact on the aesthetic appearance of the estate.
5. You are hereby informed in terms of section 79(2) of the Stellenbosch Municipal Land Use Planning Bylaw, 2015, of your right to appeal the above decision to the Appeal Authority within 21 days from the date of notification of the above decision. Please note that no late appeals or an extension of time for the submission of appeals are permitted in terms of Section 80(1)(a) of the said By-Law.
6. Appeals must be submitted with the prescribed information to satisfy the requirements of Section 80(2) of the said By-law, failing which the appeal will be invalid in terms of Section 81(1)(b) of the said By-Law. The following prescribed information is accordingly required:
  - (a) The personal particulars of the Appellant, including:
    - (I) First names and surname;
    - (II) ID number;
    - (III) Company of Legal person's name (if applicable)
    - (IV) Physical Address;
    - (V) Contact details, including a Cell number and E-Mail address;
  - (b) Reference to this correspondence and the relevant property details on which the appeal is submitted.
  - (c) The grounds of the appeal which may include the following grounds:



- (i) that the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);
  - (ii) grounds relating to the merits of the land development or land use application on which the appellant believes the authorised decision maker erred in coming to the conclusion it did.
- (d) whether the appeal is lodged against the whole decision or a part of the decision;
  - (e) if the appeal is lodged against a part of the decision, a description of the part;
  - (f) if the appeal is lodged against a condition of approval, a description of the condition;
  - (g) the factual or legal findings that the appellant relies on;
  - (h) the relief sought by the appellant; and
  - (i) any issue that the appellant wishes the Appeal Authority to consider in making its decision;
  - (j) That the appeal includes the following declaration by the Appellant:
    - (i) The Appellant confirms that the information contained in the subject appeal and accompanied information and documentation is complete and correct
    - (ii) That the Appellant is aware that it is an offence in terms of Section 86(1)(d) of the said By-Law to supply particulars, information or answers in an appeal against a decision on an application, or in any documentation or representation related to an appeal, knowing it to be false, incorrect or misleading or not believing them to be correct.

7. Appeals must be addressed to the Municipal Manager and submitted to his/ her designated official by means of E-mail at the following address: [landuse.appeals@ Stellenbosch.gov.za](mailto:landuse.appeals@ Stellenbosch.gov.za)
8. Any party (applicant or other) who lodges an appeal must pay the applicable appeal fee in terms of the approved municipal tariffs and submit the proof of payment together with the appeal. The **LU** Reference number on this correspondence, or the applicable Erf/ Farm Number must be used as the reference for the payment of the appeal fee.
9. The approved tariff structure may be accessed and viewed on the municipal website (<https://www.stellenbosch.gov.za/documents/finance/rates-and-tariffs>) and the banking details for the General Account can also be accessed on the municipal website



<https://www.stellenbosch.gov.za/documents/general/8314-stellenbosch-municipality-banking-details-1/file>).

10. An applicant who lodge an appeal must also adhere to the following requirements stipulated in terms of section 80(3) to (7) of the said By-law:
  - (a) Simultaneously serve the appeal on any person who commented on the application concerned and any other person as the municipality may determine.
  - (b) The notice by the applicant must invite persons to comment on the appeal within 21 days from date of notification of the appeal.
  - (c) The notice must be served in accordance with section 35 of the said legislation and in accordance with the prescripts or such additional requirements as may be determined by the Municipality.
  - (d) Proof of serving the notification must be submitted to the Municipality at the above E-mail address within 14 days of serving the notification.
11. Kindly note that no appeal right exists in terms of Section 62 of the Local Government Municipal Systems Act, No 32 of 2000.
12. Kindly note the above decision is suspended, and in the case of any approval, may therefore not be acted on, until such time as the period for lodging appeals has lapsed, any appeal has been finalised and you've been advised accordingly.

Yours faithfully

  
\_\_\_\_\_  
**FOR: DIRECTOR PLANNING AND ECONOMIC DEVELOPMENT**

23/11/2022

DATE:





## **APPENDIX 3**

Previous approvals and  
Approved L'Avenue de  
Franschhoek Constitution dated  
May 2011.



Your ref: F3127/F3149  
Our ref: FH 1696

(Marlene Koegelenberg 808 8377)

3 December 2003

**REGISTERED MAIL**

Dennis Moss Partnership  
17 Market Street  
STELLENBOSCH  
7599

Sir

**APPLICATION FOR THE REZONING AND SUBDIVISION OF ERF 1696,  
BLOEKOMBOS, FRANSCHHOEK**

With reference to your application dated 2003-02-10, the Director: Planning and Economic Development, under delegated powers, resolved on 28 October 2003:

- (i) That, in terms of Section 16 of the Land Use Planning Ordinance, 1985 (no 15 of 1985), the rezoning of erf 1696 to subdivisinal area with the zonings single residential and private open space be approved;
- (ii) That, in terms of section 25 of the Land Use Planning Ordinance, 1985 (no 15 of 1985), the subdivision of erf 1696 into two (2) portions to be subdivided into 10 single residential units on portion A and that the amount of erven on portion B be determined by the building line on the R 191, be approved;
- (iii) That the approval in (i) is subject to the following conditions:
  - (a) a new subdivisinal plan must be submitted for approval and should be clarified with the Franschoek Interact Group before the the subdivisinal plan is submitted to Council;
  - (b) the conditions of the deed of sale and memorandum of understanding must be adhered to;
  - (c) the conditions of the Department of Environment Affairs and Development Planning must be complied with;
  - (d) the conditions of the Provincial Roads Engineer must be complied with;
  - (e) the final building guidelines must be submitted with the subdivisinal plan, special attention should be given to the coverage, height (the buildings may not encroach 6,5 m) and positioning of every erf and these guidelines should be submitted to the Franschoek Aesthetics Committee for consideration;

Pend 3/1/04  
MK AD

10/01



- (f) the building line on the R 191 must be in line with the northern façade of the existing church and must be parallel with the road;
- (g) a Home Owners Association should be established in terms of section 29 of the Land Use Planning Ordinance, 1985 (no 15 of 1985);
- (h) the standard conditions for rezoning apply;
- (i) the entrance to the property will be from Bagatelle street;
- (j) if the need for traffic calming arises the developer must pay for such installations at the above crossings (Bagatelle, Nerina and Lambrechts streets);
- (k) the developer shall provide and pay for the installation of traffic lights if traffic is expected to generate at the intersections as mentioned above;
- (l) main civil and electrical services contributions (pro rata) are payable;
- (m) existing waterpipe in the existing servitude must stay as it is;
- (n) no new infrastructure may be brought into the pipeline servitude;
- (o) the civil engineering services must be done by a consulting engineer in consultation with the Director: Engineering and Technical Services;
- (p) a traffic impact study must be done to determine the impact of the development on the intersection with Main Road 191;
- (q) a service agreement must be entered into with the Council;
- (r) the developer must appoint a consulting electrical engineer to do the electrical design and must on his behalf negotiate with the Council in matters concerning the electricity;
- (s) a development contribution is payable;
- (t) the landscaping of erf 1696 must make use of a wide variety of indigenous plants to form a habitat for a large variety of birds; and
- (u) the landscaping of the road reserve must be clarified with the Provincial Road Engineer.

With reference to your further application dated 2003-11-06, the Director: Planning and Economic Development, under delegated powers, resolved on 27 November 2003:



Stadsdeel Middelburg  
 Boland Distriktsmunisipaliteit  
 Boland District Municipality

Hierdie onderverdeling is deur die Raad  
 This subdivision has been approved by  
 the Council in terms of Artikel 25 van  
 the Ordinance No. 15 van 1985 onderworpe  
 aan die voorwaarde volgens aangegeve.  
 Conditions as per annexure.

11/07  
 M. ...  
 Municipal Manager

**NOTES**

**PROPOSED SUBDIVISION**

**PHASE 1:**  
 Subdivision of erf 1696 into two portions:  
 (1) Portion A: f.g,h,k,l,m,n,o,p,q,r,s,z,t,u,v,w  
 (2) Portion B: a,b,c,d,e,f,g,h,i,j,k,l,m,n

**PHASE 2:**  
 Subdivision of Portion A into 11 portions and  
 Portion B into 8 portions as per subdivision  
 table

PROJECT: INFRAMAX

FRANSCHHOEK AVENUE ESTATE RESIDENTIAL DEVELOPMENT

Revised Proposed Subdivision Erf 1696 Franschhoek

DATE: 6 June 2003

PROJECT NO: F3127

DATE: 11/1500

PROJECT NO: F3127/P001

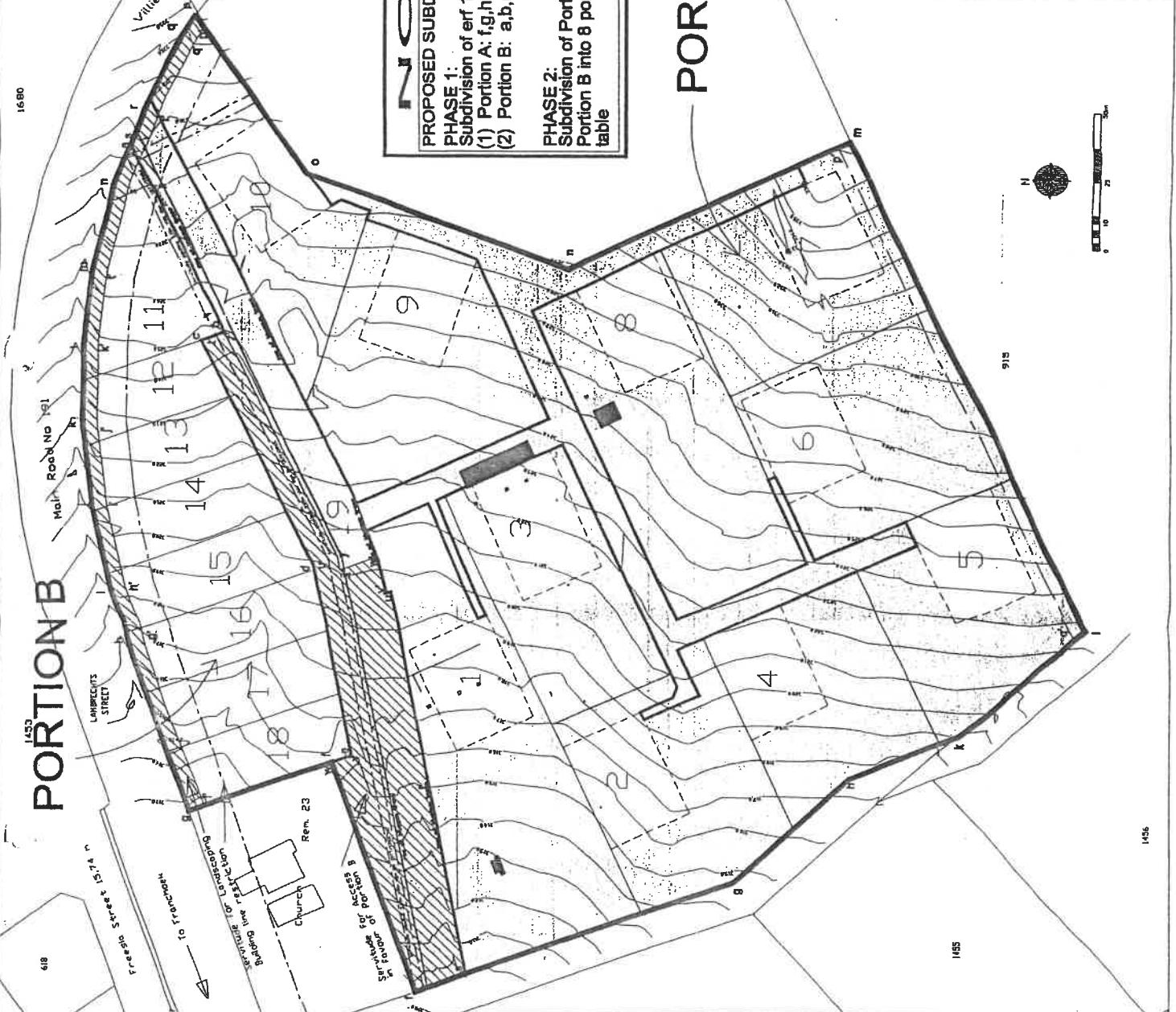
DATE: 6 June 2003

PROJECT NO: F3127/P001

DATE: 6 June 2003

PROJECT NO: F3127/P001

DATE: 6 June 2003



**PORTION A**

Portion	Total Area	ZONINGS	
		Single Residential	Private Open Space (Agriculture Servitude)
1	7357 sqm	1200 sqm	6157 sqm
2	4498 sqm	1200 sqm	3298 sqm
3	4108 sqm	1200 sqm	2908 sqm
4	4150 sqm	1200 sqm	2950 sqm
5	4139 sqm	1200 sqm	2939 sqm
6	4631 sqm	1200 sqm	3731 sqm
7	4598 sqm	1200 sqm	3398 sqm
8	5080 sqm	1200 sqm	4880 sqm
9	5211 sqm	1200 sqm	4084 sqm
10	4124 sqm	1200 sqm	2985 sqm
19	12062 sqm		
Total (1-10)	61254 sqm		

**PORTION B**

Portion	Area	Zoning
11	2130 sqm	Single Residential
12	1090 sqm	Single Residential
13	1265 sqm	Single Residential
14	1430 sqm	Single Residential
15	1598 sqm	Single Residential
16	1530 sqm	Single Residential
17	1455 sqm	Single Residential
18	1380 sqm	Single Residential
Subtotal	11946 sqm	

**Servitudes/General**

Landscaping Servitude (a,q,r,s,m,n,l,k,j,h,g,f,i,r,t,k,p,r,s,t,q,p)	
Road Servitude (f, s, t, u, v, w, x, y, z, l, u, v, w)	
Stormwater Servitude of 5m (g, l, m, p)	
Existing Houses (To be demolished)	

**Summary**

Portion A	61254 sqm	84 %
Portion B	11946 sqm	16 %
Total	73100 sqm	100 %





PORTION A		
Portion	ZONINGS	
	Single Residential	Private Open Space (Agriculture Servitude)
Total Area	Area	Area
1	7357 sqm	1200 sqm
2	4486 sqm	1200 sqm
3	4108 sqm	1200 sqm
4	4158 sqm	1200 sqm
5	4139 sqm	1200 sqm
6	4831 sqm	1200 sqm
7	4598 sqm	1200 sqm
8	6060 sqm	1200 sqm
9	5271 sqm	1200 sqm
10	4124 sqm	1200 sqm
		Private Open Space (Street/Landscaping)
19	12062 sqm	
Total (1-10)	61254 sqm	

PORTION B		
Portion	Area	Zoning
11	2138 sqm	Single Residential
12	1050 sqm	Single Residential
13	1285 sqm	Single Residential
14	1430 sqm	Single Residential
15	1538 sqm	Single Residential
16	1530 sqm	Single Residential
17	1455 sqm	Single Residential
18	1360 sqm	Single Residential
Subtotal	11846 sqm	

Servitudes/General	
Landscaping Servitude (p,q,r,s,m,n,k,l,h,g,f,g,h,r,j,k,r,r,r,r,p)	
Road Servitude (f, s, f, v, v, w, x, y, z, l, u, v, w)	
Stormwater Servitude of 5m (q, l, m, p)	
Existing Houses (To be demolished)	

Summary	
Portion A	61254 sqm
Portion B	11846 sqm
Total	73100 sqm
	84 %
	16 %
	100 %

**NOTES**

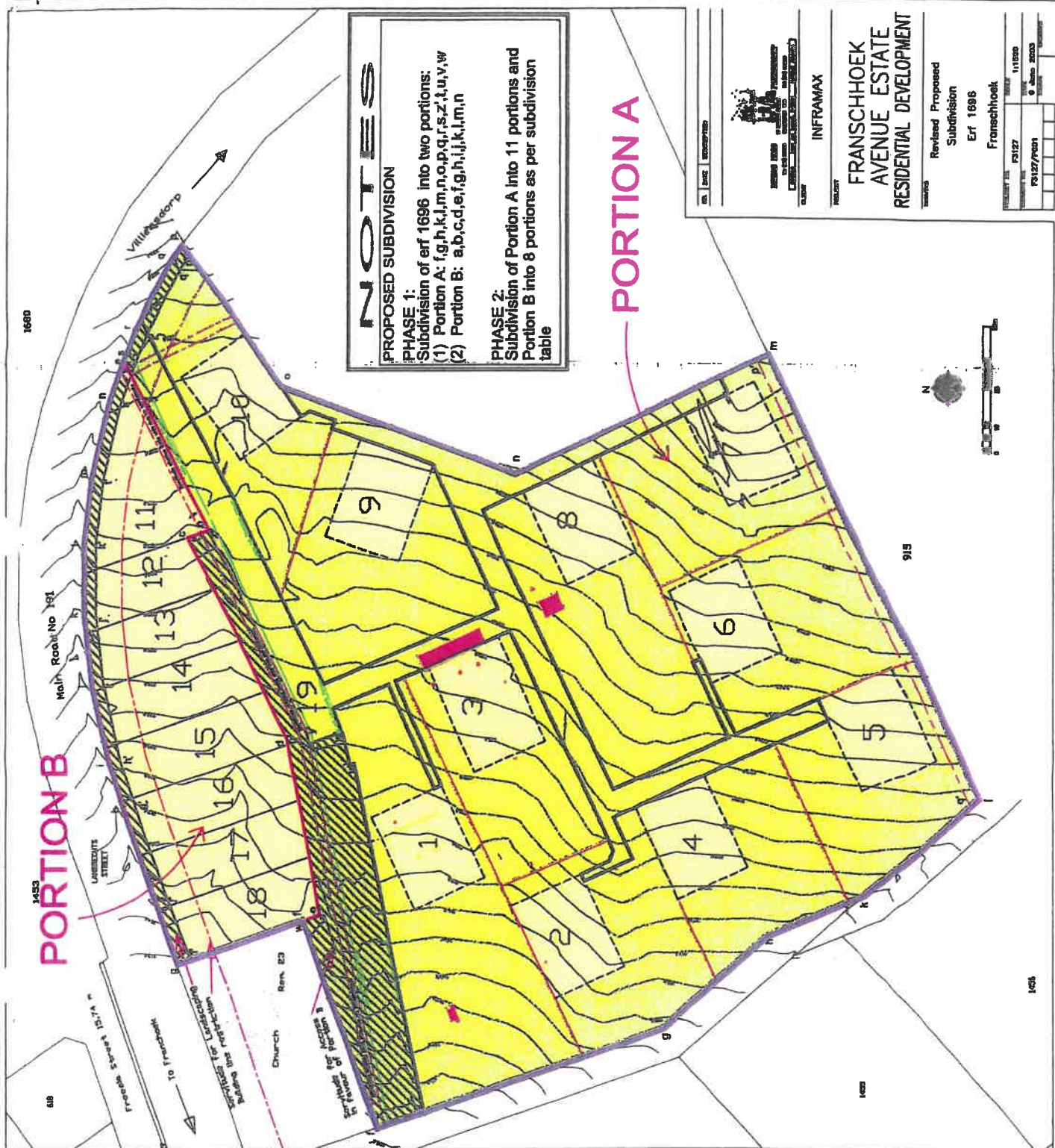
**PROPOSED SUBDIVISION**

**PHASE 1:**  
Subdivision of erf 1696 into two portions:  
(1) Portion A: f,g,h,k,l,m,n,o,p,q,r,s,z,l,u,v,w  
(2) Portion B: a,b,c,d,e,f,g,h,i,j,k,l,m,n

**PHASE 2:**  
Subdivision of Portion A into 11 portions and Portion B into 8 portions as per subdivision table

**PORTION A**

**PORTION B**



INFRAMAX

FRANSCHHOEK AVENUE ESTATE RESIDENTIAL DEVELOPMENT

Revised Proposed Subdivision Erf 1696 Franschhoek

PROJECT: 111000

DATE: 11/2000

BY: [Signature]

FOR: [Signature]





6

Navrae / Enquiries  
U verwysing / Your ref.  
Ons verwysing / Our Ref  
Aansoek / Application No  
Datum / Date  
Telefoon / Telephone  
Faks / Fax

P April / S Newman  
-  
Erf 2861, Franschhoek  
LU/1000  
2010-07-29  
021-808 8683 / 8659  
021-808 8651

## REGISTERED POST

JPS Trust  
P.O.Box 3075  
MATIELAND  
7602

Sir / Madam

### APPLICATION FOR APPROVAL OF THE CONSTITUTION (ARTICLES OF ASSOCIATION) FOR THE L'AVENUE DE FRANSCHHOEK HOME OWNERS ASSOCIATION AND THE ARCHITECTURAL DESIGN GUIDELINES FOR THE DEVELOPMENT: ERF 2861, FRANSCHHOEK

The current application in the above regard and my letter dated 2010-06-18, refers.

Kindly note, you are now entitled to appeal against such decision in terms of the Land Use Planning Ordinance, No 15 of 1985. In terms of Section 44(1)(a) of the Ordinance, an applicant aggrieved by a decision of Council in respect of an application in terms of the Ordinance, or a person who objected to such an application, may appeal against such decision to the Department of Environmental Affairs & Development Planning at the Western Cape Provincial Government.

Any such appeal must be properly motivated and served on the Director : Integrated Environmental Management, Department of Environmental Affairs & Development Planning, Western Cape Provincial Government, Private Bag X9086, Cape Town, 8000 or if hand delivered to the Utilitas Building, 1 Dorp Street, Cape Town within 21 days of the date of registration at the Post office of this notification letter (with such registration day not included in the appeal period), provided where the last day for lodging an appeal falls either on a weekend or public holiday, it shall be deemed to be the next working day thereafter. A copy of the appeal must also be lodged with, hand delivered or faxed to the Council planning office directed to The Director : Planning & Environment, Stellenbosch Municipality, P O Box 17, Stellenbosch, 7599, or if hand delivered, to Town Planning, ground floor, municipal building, Plein Street, Stellenbosch, or faxed to fax number 021 808 8651 within the same time period stated above.

Kindly ensure any appeal clearly indicates that it is made in terms of Section 44(1)(a) of the Land Use Planning Ordinance, No 15 of 1985, the erf number of the subject property concerned, the reasons for such appeal. Also note, Council's previous decision remains suspended and may therefore not be acted on until such time as the period for lodging appeals has lapsed, any appeal has been finalised and you've been advised accordingly.

Yours faithfully

  
P DIRECTOR : PLANNING AND DEVELOPMENT SERVICES  
/sn

P298-2010



Navrae / Enquiries  
U verwysing / Your ref.  
Ons verwysing / Our Ref .  
Aansoek/Application no:  
Datum / Date  
Telefoon / Telephone  
Faks / Fax

P April / S Matthee  
-  
Erf 2861, Franschhoek  
LU/1000  
2010-06-18  
021-808 8683 / 8665  
021-808 8651

## REGISTERED POST

J P S Trust  
P O Box 3075  
**MATIELAND**  
7602

Sir/Madam

### **APPLICATION FOR APPROVAL OF THE CONSTITUTION (ARTICLES OF ASSOCIATION) FOR THE L'AVENUE DE FRANSCHHOEK HOME OWNERS ASSOCIATION AND THE ARCHITECTURAL DESIGN GUIDELINES FOR THE DEVELOPMENT : ERF 2861, FRANSCHHOEK**

Your application in the abovementioned regard, refers.

The Acting Director Planning and Development Services at a recent meeting resolved as follows:

1. That the constitution for L'Avenue De Franschhoek Home Owners Association (Appendix 4) in terms of Section 29(2)(b)(iii) of the Land Use Planning Ordinance No 15 of 1985 and the Architectural Design Guidelines for the development (Erf 2861, Franschhoek – See Appendix 5), **be approved**, subject to the conditions as per attached Appendix 1.

In terms of Section 62 of the Local Government Municipal Systems Act, No 32 of 2000, you may appeal to the Municipal Manager against the above Council decision (including any conditions imposed in case of approval) by giving written notice of such appeal, in which case you may upon request be given the opportunity to appear in person before the Appeal authority to state your case. A detailed motivated appeal with reasons therefore (and not only the intention to appeal), clearly stating in terms of which legislation it is made, as well as payment of the appeal fee to the amount of R29100, should be directed to and received by the Municipal Manager, Stellenbosch Municipality, P O Box 17, Stellenbosch, 7599, or if hand delivered, to Town Planning, ground floor, municipal building, Plein Street, Stellenbosch, within 21 days of the date of registration at the Post office of this notification letter (with such registration day not included in the appeal period), provided where the last day for lodging an appeal falls either on a Sunday or public holiday, it shall be deemed to be the next working day thereafter.

Please note, appellants are not permitted to canvass the Municipal Manager or members of Council's Appeals Committee before or after the matter is heard. Should no appeal be received within such appeal period, or upon conclusion of this appeal process, you (as well

P 23/7/10





as any objectors, if any) will be advised of a further right of appeal in terms of Section 44 of Land Use Planning Ordinance, No 15 of 1985 in due course.

Kindly note the above Council decision is suspended and may therefore not be acted on until such time as the period for lodging appeals has lapsed, any appeal has been finalised and you've been advised accordingly.

Yours faithfully

A handwritten signature in black ink, appearing to be 'M. Smith', written over the typed name.

**P. SMITH ACTING DIRECTOR : PLANNING AND DEVELOPMENT SERVICES**

/sm







**APPENDIX 1**

**FILE NO: ERF 2861, FRANSCHHOEK**

In this approval document:

"Council" means the Franschhoek Municipality

"the owner" means the registered owner of the property.

"the site" means ERF 2861, FRANSCHHOEK.

"scheme regulation" has the meaning assigned thereto by the Land Use Planning Ordinance (15 of 1985).

**EXTENT OF APPROVAL:** Constitution for L' Avenue De Franschhoek Home Owners Association (**APPENDIX 4**) in terms of Section 29(2)(b)(iii) of the Land Use Planning Ordinance No. 15 of 1985 and the Architectural Design Guidelines for the development (Erf 2861, Franschhoek - See **APPENDIX 5**),

**VALIDITY OF APPROVAL:** None

**CONDITIONS IMPOSED IN TERMS OF SECTION 42(1) OF THE LAND USE PLANNING ORDINANCE NO 15 OF 1985:**

1. That the approval applies only to the adoption of the aforementioned constitution and architectural guidelines in question and shall not be construed as authority to depart from any other legal prescriptions or requirements from Council.
2. That all previous conditions of approval for the L' Avenue De Franschhoek Estate remain applicable.
3. That all building plans must be submitted to this municipality for approval, prior to any building work commencing on-site.
4. That this Council reserves the right to impose further conditions if needed.

**RECOMMENDED BY:**

N. Duze

**ASSITANT DIRECTOR: LAND USE MANAGEMENT**

20/05/10  
Date

**THE ACTING DIRECTOR: PLANNING AND DEVELOPMENT HEREBY APPROVES THE ABOVE RECOMMENDATION UNDER DELEGATED AUTHORITY:**

B. De La Bat

**ACTING DIRECTOR: PLANNING AND DEVELOPMENT**

4/06/2010  
Date



10

Enquiries	P April / S Newman
Your ref	
Our ref	Erf 2861, Franschhoek
Aansoek/Appl No	LU/1000
Date	2010-09-06
Telephone	021 808 8683 / 8659
Fax	021 808 8651

JPS Trust  
P.O Box 3075  
MATIELAND  
7602

**FINAL NOTIFICATION LETTER**

Dear Sir / Madam

**APPLICATION FOR APPROVAL OF THE CONSTITUTION (ARTICLES OF ASSOCIATION) FOR THE L'AVENUE DE FRANSCHHOEK HOME OWNERS ASSOCIATION AND THE ARCHITECTURAL DESIGN GUIDELINES FOR THE DEVELOPMENT ERF 2861, FRANSCHHOEK**

My previous correspondence dated 18 June 2010 and 29 July 2010 refer.

I wish to advise that the appeal process has now been concluded and that the decision as per Council's previous letter of approval is therefore now considered final. Accordingly, you may now act on the decision, subject to compliance with the conditions detailed in my letter dated 18 June 2010.

Yours faithfully



for DIRECTOR : PLANNING & DEVELOPMENT SERVICES

File



16

Enquiries	C Alexander / S Newman
Your ref	-
Our ref	Erf 2861, Franschoek
Aansoek/Appl No	LU/2124
Date	2012-05-09
Telephone	021 808 8645 / 8659
Fax	021 808 8651

L'Avenue de Franschoek  
P.O Box 3075  
**MATIELAND**  
7602

**FINAL NOTIFICATION LETTER**

Dear Sir / Madam

**APPLICATION FOR THE AMENDMENT OF THE CONTITUTION OF THE HOME OWNERS ASSOCIATION OF LAVENUE DE FRANSCHHOEK ON ERF 2861, FRANSCHHOEK**

My previous correspondence dated 09 February 2012 & 23 March 2012 refer.

I wish to advise that the appeal process has now been concluded and that the decision as per Council's previous letter of approval is therefore now considered final. Accordingly, you may now act on the decision, subject to compliance with the conditions detailed in my letter dated 09 February 2012.

Yours faithfully



for DIRECTOR : PLANNING & DEVELOPMENT SERVICES

File.





Navrae / Enquiries  
U verwysing / Your ref.  
Ons verwysing / Our Ref  
Aansoek / Application No  
Datum / Date  
Telefoon / Telephone  
Faks / Fax

C Alexander / S Newman  
-  
Erf 2861, Franschhoek  
LU/2124  
2012-03-23  
021-808 8645 / 8659  
021-808 8651

**REGISTERED POST**

L'Avenue de Franschhoek  
P.O Box 3075  
**MATIELAND**  
7602

Sir / Madam

**APPLICATION FOR THE AMENDMENT OF THE CONTITUTION OF THE HOME OWNERS ASSOCIATION OF L'AVENUE DE FRANSCHHOEK ON ERF 2861, FRANSCHHOEK**

The current application in the above regard and my letter dated 2012-02-09 refers.

You are also advised that the process for applicants exercising their right of appeal in terms of Section 62 of the Local Government Municipal Systems Act, No 32 of 2000 has been concluded and that no applicant appeals were received.

Kindly note, you are now entitled to appeal against such decision in terms of the Land Use Planning Ordinance, No 15 of 1985. In terms of Section 44(1)(a) of the Ordinance, an applicant aggrieved by a decision of Council in respect of an application in terms of the Ordinance, or a person who objected to such an application, may appeal against such decision to the Department of Environmental Affairs & Development Planning at the Western Cape Provincial Government.

Any such appeal must be properly motivated and served on the Director : Integrated Environmental Management, Department of Environmental Affairs & Development Planning, Western Cape Provincial Government, Private Bag X9086, Cape Town, 8000 or if hand delivered to the Utilitas Building, 1 Dorp Street, Cape Town within 21 days of the date of registration at the Post office of this notification letter (with such registration day not included in the appeal period), provided where the last day for lodging an appeal falls either on a weekend or public holiday, it shall be deemed to be the next working day thereafter. A copy of the appeal must also be lodged with, hand delivered or faxed to the Council planning office directed to The Director: Planning & Environment, Stellenbosch Municipality, P O Box 17, Stellenbosch, 7599, or if

Pg:5:2012





hand delivered, to Town Planning, ground floor, municipal building, Plein Street, Stellenbosch, or faxed to fax number 021 808 8651 within the same time period stated above. It is important to note that no appeal will be accepted via email.

Kindly ensure any appeal clearly indicates that it is made in terms of Section 44(1)(a) of the Land Use Planning Ordinance, No 15 of 1985, the erf number of the subject property concerned, the reasons for such appeal. Also note, Council's previous decision remains suspended and may therefore not be acted on until such time as the period for lodging appeals has lapsed, any appeal has been finalised and you've been advised accordingly.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D. Lawrence', is written over a horizontal line.

**p DIRECTOR : PLANNING AND DEVELOPMENT SERVICES**  
/sn



Navrae / Enquiries  
U verwysing / Your ref.  
Application Number  
Ons verwysing / Our Ref .  
Datum / Date  
Telefoon / Telephone  
Faks / Fax

C Alexander / S Newman  
-  
LU/2124  
Erf 2861, Franschhoek  
2012-02-09  
021-808 8645 / 8659  
021-808 8651

**REGISTERED POST**

L'Avenue de Franschhoek  
P.O Box 3075  
**MATIELAND**  
7602

Sir/Madam

**APPLICATION FOR THE AMENDMENT OF THE CONSTITUTION OF THE HOME OWNERS ASSOCIATION OF L'AVENUE DE FRANSCHHOEK ON ERF 2861, FRANSCHHOEK**

Your application in the abovementioned regard, refers.

The Director: Planning and Development Services recommended as follows:

1. That **approval be granted** in terms of Section 29 of the Land Use Planning Ordinance, 1985 (Ordinance No 15 of 1985) for the amendment of the Constitution of the Home Owners Association of L'Avenue de Franschhoek, attached as **Appendix C**, subject to the conditions set out in **Appendix A**.

In terms of Section 62 of the Local Government Municipal Systems Act, No 32 of 2000, you may appeal to the Municipal Manager against the above Council decision (including any conditions imposed in case of approval) by giving written notice of such appeal, in which case you may upon request be given the opportunity to appear in person before the Appeal authority to state your case. A detailed motivated appeal with reasons therefore (and not only the intention to appeal), clearly stating in terms of which legislation it is made, as well as payment of the appeal fee to the amount of R620,00, should be directed to and received by the Municipal Manager, Stellenbosch Municipality, P O Box 17, Stellenbosch, 7599, or if hand delivered, to Town Planning, ground floor, municipal building, Plein Street, Stellenbosch, within 21 days of the date of registration at the Post office of this notification letter (with such registration day not included in the appeal period), provided where the last day for lodging an appeal falls either on a Sunday or public holiday, it shall be deemed to be the next working day thereafter.

Please note, appellants are not permitted to canvass the Municipal Manager or members of Council's Appeals Committee before or after the matter is heard. Should no appeal be received within such appeal period, or upon conclusion of this appeal process, you (as well

P20.3.2012



as any objectors, if any) will be advised of a further right of appeal in terms of Section 44 of Land Use Planning Ordinance, No 15 of 1985 in due course.

Kindly note the above Council decision is suspended and may therefore not be acted on until such time as the period for lodging appeals has lapsed, any appeal has been finalised and you've been advised accordingly.

Yours faithfully

A handwritten signature in black ink, appearing to be 'D. J. ...', written over a horizontal line.

**p DIRECTOR: PLANNING AND DEVELOPMENT SERVICES**





**STELLENBOSCH**  
STELLENBOSCH • PNIEL • FRANSCHHOEK  
MUNICIPALITY • UMASIPALA • MUNISIPALITEIT  
Department: Planning and Development  
Department: Beplanning en Ontwikkeling

**APPENDIX A**  
**FILE NO: FH2861**

In this approval document:

"Council" means the Stellenbosch Municipality

"the owner" means the registered owner of the property.

"the site" means ERF NO. 2861 FRANSCHHOEK

"scheme regulation" in this instance means the Section 8 Zoning Scheme Regulations and has the meaning assigned thereto by Ordinance 15 of 1985.

**EXTENT OF APPROVAL:** Approval of amendment of the Constitution of the Home owners Association of L'Avenue De Franschhoek, attached as **Appendix C**.

**CONDITIONS IMPOSED:** Conditions

**THAT THE FOLLOWING CONDITIONS ARE APPLICABLE IN TERMS OF SECTION 42 OF THE ORDINANCE, 15 OF 1985:**

- a) That this approval applies only to the Constitution of the Home owners Association of L'Avenue De Franschhoek, attached as **Appendix C**, and shall not be construed as authority to depart from any legal prescriptions or requirements;
- b) That Council reserves the right to impose any further conditions if needed.

**Compiled & Recommended for Approval By:**

  
Craig Alexander  
Senior Town Planner

05/01/2011  
Date

**Recommendation Accepted By:**

  
N. Duze  
Manager: Land Use Management

11/01/2011  
Date

**Approved by:**

  
Basil Davidson  
Director: Planning and Development

30/01/2011  
Date





# CONSTITUTION

OF THE

L' AVENUE DE  
FRANSCHHOEK

HOME OWNERS ASSOCIATION

AS AMENDED AGM – MAY 2011





## 1. NAME AND AMENDMENT

- 1.1. The Association shall be called the L' Avenue de Franschhoek Home Owners Association.
- 1.2. No amendments, additions, or retractions shall be made to any of the conditions of this Constitution without the written approval from the Stellenbosch Municipality or its successor in title.

## 2. INTERPRETATION

In this Deed

- 2.1 "The Act" means Companies Act, 1973, as amended from time to time or any Act which replaces it;
- 2.2 "This Deed" means this Constitution, the rules with regard to building contractor activities and the conduct rules referred to in the clauses of the Constitution;
- 2.3 "The Association" Means L'Avenue de Franschhoek Home Owners Association.
- 2.4 "Erf 2759" means proposed erven 1 to 10 and the Home Owners Association erf 19 being subdivisions of Erf 1696 Franschhoek, which comprise Phase 1 (the erf descriptions of aforesaid may change upon subdivision approval);
- 2.5 "Erf 2760" means proposed erven 11 to 18 being subdivisions of Erf 1696 Franschhoek, which comprise Phase 2 (the erf descriptions of aforesaid may change upon subdivision approval);
- 2.6 "Home Owners Association erf" means portion 19 (a portion of Erf 2759) Franschhoek which erf may change in descriptions but which will be transferred to the Home Owners Association to enable it to achieve its objects;
- 2.7 "Home Owners Association servitudes" means agricultural servitudes over Erf 2759 Franschhoek, which servitudes will be registered in favour of the Home Owners Association to enable it to achieve its objects;
- 2.8 "Erf" means an erf on the property excluding the Home Owners Association erf;



- 2.9 "Erven" means all the erven on the property excluding the Home Owners Association erf;
- 2.10 "Initial Period" means until such time as transfer of ownership of all erven from the name of the developer into the name of the new owners have been registered (save for the Home Owners Association erf);
- 2.11 "Management Committee" means the Management Committee of the Association also known as the Trustees of the Association.
- 2.12 "Chairperson" means the Chair person of the Management Committee.
- 2.13 "Member" of "Members" means a member of the Association
- 2.14 "Local Authority" means the Stellenbosch Municipality;
- 2.15 "Profits" includes revenue and capital profits;
- 2.16 "Property" means Erf 1696 Franschhoek, comprising Erf 2759 and Erf 2760;
- 2.17 "Register" means the register of members kept in terms of the Constitution;
- 2.18 "The Republic" means the Republic of South Africa;
- 2.19 "The Rules" means the rules made by the Trustees in terms of the Constitution as they apply from time to time;
- 2.20 "Developer" means Rapirop 88 (Pty) Limited;

### 3. OBJECTIVES

L' Avenue de Franschhoek is to be developed in two phases, Phase 1 being 10 erven on Erf 2759 Franschhoek and Phase 2 being 8 erven on Erf 2760 Franschhoek. Erf 2861 Franschhoek is defined for the provision of access roads and services to both Phase 1 and Phase 2 erven landscaping and the erection of a gatehouse controlling entry to the Estate. Fencing and walling and electronic security will be erected to the perimeter of the development, in phases or the full Estate, as appropriate. Agricultural servitudes over portions of Erf 2759 Franschhoek are intended for the development of a vineyard. The developer will enter into a lease with a qualified enterprise for the development of the vineyard and it's farming, and cede and assign the lease to the Home Owners Association.

The primary object of the Association is the control over and maintenance of buildings, services, and amenities arising from the subdivision of Erf 1696



Franschhoek. The Association will promote and enforce an acceptable aesthetic environment and architectural styles, and a high standard of development in order to achieve harmonious development and a congenial atmosphere in the community, in such a way that members may derive the maximum collective benefit there from.

#### **4. PRELIMINARY**

- 4.1. References to members represented by proxy shall include members represented by an agent appointed under a general or special power of attorney and references to members present or acting in person shall include corporation represented or acting in the manner prescribed in the Constitution.
- 4.2. Words in the singular number shall include the plural and words in the plural number shall include the singular (unless the context of definition indicates otherwise),
- 4.3. Words importing the masculine gender shall include females, and words importing persons shall include both bodies.

#### **5. OWNERSHIP OF HOME OWNERS ASSOCIATION ERF AND TRAVERSING RIGHTS**

- 5.1 The Home Owners Association erf will be transferred to the Home Owners Association for a consideration of R1.00 excluding VAT.
- 5.2 The Home Owners Association erf will be the internal roads on or about the property.
- 5.3 All the members shall have traversing rights over the Home Owners Association erf.

#### **6. MEMBERS**

- 6.1 Any person who is the registered owner of an erf shall be a member of the Home Owners Association.
- 6.2 No person other than a person referred to in Article 4.1 shall be entitled to be a member of the Home Owners Association.







- 6.3 Where two or more persons are registered as the owners of the same erf, all the registered owners of that erf shall be deemed to be one member of the Home Owners Association.
- 6.4 When a member ceases to be the registered owner of an erf he shall *ipso facto* cease to be a member of the Home Owners Association.
- 6.5 A member may not resign as a member of the Home Owners Association.
- 6.6 The Home Owners Association shall keep a register of members.
- 6.7 On the death, insanity or insolvency or liquidation of any member, then as from the date of death or issue of a certificate by a medical practitioner certifying the insanity of such member or the grant of a provisional order of sequestration or liquidation, such member shall be represented by his executor, curator or trustee as the case may be.
- 6.8 Each member shall have one vote for each erf in respect of which it is registered as an owner.

## 7. LEVIES

- 7.1 The Trustees shall, as soon as possible after the imposition of the levy in terms of Article 5.4, advise each member in writing of the amount payable by him. Such amount shall be payable in equal monthly installments due in advance on the first day of each calendar month.
- 7.2 Members shall be liable in respect of any levy made in terms of Article 5.4 from time to time.
- 7.3 The levy shall be ascertained as follows:-

$$\frac{\text{total expenses}}{\text{total Quota per m2 of erven}} = \text{levy per erf}$$

*Handwritten signatures and initials*



Where total expenses is the estimate referred to in Article 5.4.

- 7.4 The Trustees shall, prior to the end of each financial year, prepare an itemized estimate of the anticipated income and expenditure (which may include a reasonable provisions for contingencies) of the Home Owners Association during the ensuing financial year, and there from calculate the amount required to be levied upon the members during such ensuing financial year and impose a levy upon the members in such estimated amount.
- 7.5 The Trustees may from time to time impose special levies upon the members who are liable in terms of Article 5.2 or call upon them to make special contributions in respect of all such expenses as are mentioned in Article 5.1 (which are not included in any estimate made in terms of Article 5.4) and such levies and contributions may be made payable in one sum or by such installments with or without interest and if with interest at such rate as may be determined by the Trustees, and at such time or times as the Trustees shall think fit.
- 7.7 Interest shall be payable on arrear levies at such rate as may from time to time be determined by the Trustees.
- 7.8 Any amount due by a member by way of a levy or interest shall be a debt due by him to the Home Owners Association.
- 7.9 The obligation of a member to pay levies shall cease upon his ceasing to be a member, without prejudice to the Home Owners Associations right to recover arrear levies and interest thereon.
- 7.10 No levies or interest paid by a member shall under any circumstances be repayable by the Home Owners Association upon his ceasing to be a member.
- 7.11 A member's successor-in-title to an erf shall be liable, with effect from the date upon which he becomes a member pursuant to the transfer of that



erf, to pay any levies in arrears on such date and any levies raised after such date until termination of his membership.

7.12 A member shall be liable for and pay all legal costs, including costs as between attorney and own client, and collection commission, expenses and charges incurred by the Home Owners Association in obtaining the recovery of arrear levies or any other arrear amounts due and owing by such member to the Home Owners Association.

7.13 No member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and interest thereon, and any other sum, if any, which may be due and payable by that member of the Home Owners Association, from whatsoever cause arising.

7.14 The Home Owners Association may in addition to the interest payable on arrear levies impose, in their discretion, an administrative fee of R500.00 (five hundred rand) plus VAT, to be adjusted from time to time by the Trustees, to offset costs in recovering late payments.

## 8. RULES

8.1 Subject to any restriction imposed or direction given at a general meeting of the Home Owners Association, the Trustees may from time to time make and amend or add to, rules governing the Common Property and any facilities which may exist on the property, which are intended for the general use, enjoyment and amenity of the members of their invitees, the use of the Common Property and of such facilities and the security and safety of the property and all persons therein.

8.2 For the enforcement of any of the rules made by the Trustees in terms hereof, the Trustees may:-

8.2.1 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the member may be guilty, and debit the cost of so doing to the member



concerned, which amount shall then be deemed to be a debt owing by the member concerned to the Home Owners Association;

- 8.2.2 Take such other action, including court proceedings, as they may deem fit.
- 8.3 In the event of any breach of the rules by guests or lessees of a member, or his agents or employees, such breach shall be deemed to have been committed by the member himself, but, without prejudice to the a foregoing, the Trustees may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
- 8.4 In the event of any member disputing the fact that he has committed a breach of any of the rules aforesaid, a committee of two Trustees, appointed by the Trustees of the Home Owners Association, shall adjudicate upon the issue at such time and in such manner and according to such procedure as the Trustees may direct.
- 8.5 Notwithstanding the a foregoing, the Trustees may in the name of the Home Owners Association enforce the provisions of any rules by proceedings in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
- 8.6 It shall be the duty of the Chairman, or such other person or body as may be empowered by the Trustees, to ensure compliance by the members with the rules, and to this end to issue such notice or do such things as may be necessary or requisite.
- 8.7 Each member undertakes to the Home Owners Association that he shall comply with any rules made in terms of this Article 6.

**9. MAINTENANCE OF HOME OWNERS ASSOCIATION ERF, LANDSCAPING, CLEANING AND SECURITY**





The Trustees shall have the power, without prejudice to any other rights of the Home Owners Association:-

- 9.1 to repair and maintain the Home Owners Associations erf as roads, to carry out any landscaping and to clean any part of the property, at the cost of the Home Owners Association, without prejudice to the Home Owners Association right to claim the reasonable cost thereof from a member or members who may have caused or contributed to such circumstances requiring repair and maintenance;
- 9.2 to landscape and clean the Home Owners Association erf or any other areas on the Common property and thereafter maintain these areas in a clean and tidy condition at the cost of the Home Owners Association, without prejudice to the Home Owners Associations right to claim the reasonable cost thereof from a member or members who may have caused or contributed to such circumstances;
- 9.3 to implement the estate security and take such measures or such measures as they in their discretion deem necessary to ensure control of access to the property and/or persons herein;
- 9.4 to cause any gatehouse at any access point to the property to be manned by security personnel, and to institute appropriate security procedure as they deem fit;
- 9.5 To maintain and replace where necessary the property perimeter fencing/walling and electronic security systems;
- 9.6 to manage the lease for the farming of the agricultural servitudes registered on Erf 2759 for the benefit of the Home Owners Association;
- 9.7 to provide the Erf 2759 members from time to time with wine produced on the agricultural servitudes referred to in Article 7.6.





## 10. CHAIRMAN

- 10.1 The developer shall be appointed as the Chairman, for the initial period, to manage and to administer the Home Owners Association and to exercise such power and duties as may be entrusted to the Chairman, including the power to collect contributions levied.
- 10.2 Notwithstanding the provisions of Article 8.1, the Trustees shall be entitled to terminate the appointment of the developer as Chairman on one month's written notice. The Home Owners Association and the developer shall not have any claims against the other as a consequence of such termination.
- 10.3 The Chairman shall keep full records of its administration and shall report to the Home Owners Association on all matters, which in its opinion detrimentally affect the value or amenity of the property.
- 10.4 The Trustees shall give reasonable prior notice to the Chairman of all meetings of the Trustees and the Chairman shall be entitled to be present thereat.
- 10.5 Should there be no Chairman in office at any time, then all references in these Articles to the Chairman shall be deemed to be a reference to the Trustees.

## 11. RESTRICTION ON TRANSFER OF LAND AND BUILDING CRITERIA

- 11.1 No member shall alienate or transfer an erf of which it is a registered owner unless:-
- 11.1.1 the person to whom such erf is to be sold or otherwise to be alienated ("the transferee") has bound himself to the satisfaction of the Home Owners Association, as a contract for the benefit of the Home Owners Association, to become a member of the Home Owners Association upon transfer of such erf to him;



11.1.2 The registration of transfer of such erf to the transferee shall *ipso facto* constitute the transferee as a member;

11.1.3 the Home Owners Association, under the hand of the Chairman or a Trustee has certified in writing that the member has fulfilled all his financial obligations to the Home Owners Association in respect of the period up to and including the date specified in such notice; and

11.1.4 the transfer takes place prior to or on that specified date;

11.1.5 The proposed transferee has agreed in writing to become a member and such written agreement has been lodged with the Home Owners Association.

11.2 The Home Owners Association may claim from any member of his estate any arrears of levy or interest or other amount due by him to the Home Owners Association at the time of his ceasing to be a member.

11.3 The developer has set down building criteria for improvements to be made on the property. No improvements on the property shall be erected without the consent and the approval in writing of the Home Owners Association, which consent will only be given once the developer's criteria have been met.

## 12. MEETING OF MEMBERS

12.1 The Home Owners Association, shall at such times as prescribed in the Constitution, hold general meetings of members to be known and described in the notices calling such meetings, as annual general meetings.

12.2 The Trustees may, whenever they think fit, convene a general meeting, and a general meeting shall also be convened on a requisition of



members representing not less than one-quarter of the total voting rights of all the members having at the date of the lodgment of the requisition a right to vote at general meetings of the Home Owners Association or, in default, may be convened by the requisitionists as provided by and subject to the provisions of Constitution. If at any time there shall be within the Republic sufficient members capable of acting to form a quorum, any Trustees and any two members of the Home Owners Association may convene a general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Trustees.

12.3 Every meeting of members shall, unless otherwise resolved by the Trustees, be held in the city or town in which the Home Owners Association registered office is for the time being situated.

12.4 Subject to the provisions of the Constitution relating to meetings of which special notice is required to be given, an annual general meeting calling for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the Home Owners Association other than an annual general meeting or a meeting for the passing of a special resolution, shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the date of the meeting for which it is given and shall specify the place, the day and the hour of meeting and, in the case of special business, the general nature of the business, and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Home Owners Association at a meeting of members, to such persons as are under this constitution entitled to receive such notices from the Home Owners Association; provided that a meeting of the Home Owners Association shall, notwithstanding that is called by shorter notice than that specified in this Article, shall be deemed to have been duly called by shorter notice than that specified in this Article, shall be deemed to have been duly called if it is so agreed by at least 90% of the members having a right to attend and vote at the meetings. The accidental omission to give notice of a meeting





to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

### 13. PROCEEDINGS AT MEETING OF MEMBERS

- 13.1 All business that is transacted at a general meeting, and all that is transacted at the annual general meeting, with the exception of the consideration of the audited financial statement, the election of auditors and the fixing of the remuneration of the auditors shall be deemed to be special business.
- 13.2 Business may be transacted at any meeting of members only while a quorum is present.
- 13.3 Save as herein otherwise provided, the quorum at a meeting of members shall be three members, personally present and entitled to vote, provided that they are members as envisaged in Article 4.1, but save where there are less than three members in the Home Owners Association at any time, a quorum shall be all the members in the Home Owners Association.
- 13.4 If within thirty minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition 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, or if that day be a public holiday, and if at such adjourned meeting's quorum is not present within thirty minutes from the time appointed for the meeting, then subject to the Constitution, the members or member present shall be a quorum.
- 13.5 The Chairman, shall preside as chairman at ever meeting of members of the Home Owners Association. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some Trustee or, if no Trustees be present, or, if all





the Trustees present decline to take the chair, they shall choose some member present to be chairman of the meeting.

- 13.6 The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned as a result of a direction given in terms of an applicable provision in the constitution, notice of the adjourned meeting shall be given in the manner prescribed by such provision but, save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 13.7 At any meeting of members a resolution put to the vote of the meeting shall be decided on a show of hand, unless for or on the declaration of the result of the show of hands a poll shall be demanded by any person entitled to vote at the meeting and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Home Owners Association shall be conclusive evidence of the fact, without proof of the number of votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to may be given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.
- 13.8 If a poll is duly demanded it shall be taken in such manner as the chairman, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Scrutinizers shall be elected to declare the result of the poll and their decision, which shall be given by the chairman of the meeting, shall be deemed to be the resolution of the meeting at which the poll is demanded.



13.9 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.

13.10 All business transacted at the meeting is to be decided by a majority vote of those members present.

#### 14. VOTES OF MEMBERS

At any meeting of the Home Owners Association:-

14.1 each member of the Home Owners Association, present in person or by proxy or, if a member is a body corporate, duly represented at any meeting of the Home Owners Association shall have one vote for each erf in respect of which it is the registered owner;

14.2 The developer shall during the initial period have an equal number of votes as there are the number of other members in the Home Owners Association in addition to the vote conferred upon the developer in terms of Article 12.1;

14.3 A proxy need not be a member of the Home Owners Association;

14.4 The form appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing or, if the appointer is a corporate body, under the hand of an officer or agent authorised by that body. The holder of a general or special power of attorney given by a member shall be entitled to vote, if duly authorised under that power to attend and take part in the meetings and proceedings of the Home Owners Association or generally, whether or not he be himself a member of the Home Owners Association;

14.5 The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be deposited at the registered office of the Home



Owners Association not more than twenty-four hours (or such lesser period as the trustees may unanimously determine in relation to any particular meeting) at which the person named in the form proposes to vote, and in default the form of proxy shall not be treated as valid. No form appointing a proxy shall be valid after the expiration of six months from the date when it was signed, except at an adjourned meeting unless otherwise specifically stated in the proxy itself;

14.6 A form appointing a proxy may be in any usual or common form.

## 15. Trustees

Until otherwise determined by a meeting of members, the number of Trustees shall not be less than two nor more than three.

15.1 For the initial period, the developer shall be entitled to appoint 2 (two) Trustees on written notice to the Home Owners Association and, on similar written notice, to remove and replace those Trustees.

15.2 The Home Owners Association may from time to time at any meeting of members increase or reduce the number of Trustees.

15.3 A Trustee need not be a member of the Home Owners Association.

15.4 Unless otherwise decided by a meeting of members upon any casual vacancy occurring the board of Trustees may be filled by the trustee.

15.5 The Home Owners Association at a meeting of members or the Trustees shall have power at any time, and from time to time, to appoint any person as a Trustee but the total number of Trustees shall not at any time exceed the maximum number fixed by or in terms of this constitution.

## 16. REMUNERATION OF TRUSTEES





The Trustees shall not be entitled to any remuneration.

**17. ALTERNATE TRUSTEES**

17.1 Any Trustee shall have the power to nominate any person to act as alternate Trustee in his place during his absence or inability to act as such Trustee, and on such appointment being made, the alternate Trustee shall, in all respects, be subject to the terms and conditions existing with reference to the other Trustees of the Home Owners Association. A person may be appointed as alternate to more than one Trustee. Where a person is alternate to more than one Trustee or where an alternate Trustee is a Trustee, he shall have a separate vote on behalf of each Trustee he is representing in addition to his own vote, if any.

17.2 The alternate Trustee, whilst acting in the place of the Trustees who appointed them, shall exercise and discharge all the duties and functions of the Trustees they represent. The appointment of an alternate Trustee shall cease on the happening of any event which if he were a Trustee, would cause him to cease to hold office in terms of the Constitution or if the Trustee who appointed him ceases to be a Trustee, or give notice to the secretary of the Home Owners Association that the alternate Trustee representing him shall have ceased to do so.

**18. GENERAL POWERS AND DUTIES OF TRUSTEES**

18.1 The Home Owners Association shall have the power to nominate any person to act as alternate Trustee in his place during his absence or inability to act as such Trustee, and on such appointment being made, the alternate Trustee shall, in all respects, be subject to the terms and conditions existing with reference to the other Trustees of the Home Owners Association. A person may be appointed as alternate to more than one Trustee. Where a person is alternate to more than one Trustee or where an alternate Trustee is a Trustee, he shall have a separate vote on behalf of each Trustee he is representing in addition to his own vote, if any.

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- 20.3 Unless otherwise resolved by the Trustees, all their meetings shall be held in the city or town where the Home Owners Association registered office is for the time being situated.
- 20.4 Questions arising at any meeting of Trustees shall be decided by a majority of votes.
- 20.5 The Chairman, if any, shall not have a second or casting vote in the case of an equality of votes.
- 20.6 The Trustees may determine what period of notice shall be given of meetings of Trustees and may determine the means of giving such notice. It shall not be necessary to give notice of a meeting of Trustees to any Trustee for the time being absent from the Republic, but notice of any such meeting shall be given to his alternative, if he has appointed one, provided that such alternative is in the Republic.
- 20.7 A quorum shall consist of two Trustees provided that during the initial period, a representative nominated by the developer shall be required to be present in order to constitute a quorum, unless the developer has given written notice of its intention not to exercise such right. For the purpose hereof, a Trustee who has authorised another Trustee to vote for him at a meeting in terms of Article 15.1, shall, if the Trustee so authorised is present at the meeting be deemed to be present himself and each Trustee whose alternate is present at a meeting (even if the latter is alternate to more than one Trustee) shall be deemed to be so present.
- 20.8 The continuing Trustees (or sole continuing Trustee) may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as a quorum, the continuing Trustees or Trustee may act only for the purpose of summoning a general meeting of the Home Owners Association. If there are no Trustees or Trustee able and willing to act, and no specific provision is made in this Constitution for the appointment of Trustees, then any two members may summon a general meeting for the purpose of appointing Trustees.



- 20.9 Subject to the Constitution, a resolution in writing signed by the sole Trustee or by all the Trustees for the time being present in the Republic and being not less than are sufficient to form a quorum shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly called and constituted; provided that where a Trustee is not present in the Republic, but has an alternate who is, the resolution must be signed by that alternate. The resolution may consist of several documents, each signed by one or more Trustees or their alternates in terms of this Constitution.
- 20.10 A Trustee is unable to attend a Trustees meeting may authorize any other Trustee to vote for him at that meeting, and in that event the Trustee so authorised in addition to his own vote. If both the Trustee by whom he is so authorised and an alternate of the Trustee who granted the authority are present at the meeting, the alternate shall not be entitled to vote on behalf of the absent Trustee. Authority in terms of this Constitution must be in writing (which may take the form of a telefax, telegram, cable or telex) and must be handed to the person presiding at the meeting at which it is to be used.
- 20.11 The Trustees may elect a Chairman of their meetings and determine the period for which he is to hold office; but if no such Chairman is elected, or at any meeting the Chairman is not present within fifteen minutes after the time appointed for holding it, the Trustees present may choose one of their number to be chairman of the meeting.

## 21. VALIDITY OF ACTS OF TRUSTEES AND COMMITTEES

As regards all persons dealing in good faith with the Home Owners Association, all acts done by any meeting of the Trustees or of a committee of Trustees, or by any person acting as a Trustee, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment or continuance in office of any such Trustees or persons acting as aforesaid, or that they or any of them were disqualified or has ceased to hold office or were not entitled to vote,



be as valid as if every such person had been duly appointed or was qualified or had continued to be a Trustee or was entitled to vote, as the case may be.

## 22. RESERVES

The Trustee may set aside out of the profits of the Home Owners Association and carry to reserve such sums as they think proper. All sums standing to the credit of revenue and general reserves shall at the discretion of the Trustees be applicable for meeting contingencies, for the gradual liquidation of any debt or liability of the Home Owners Association, for repairing, improving or maintaining any property of the Home Owners Association, for meeting losses on realization of or writing down investments either individually or in the aggregate, or for any other purpose to which profits of the Home Owners Association may appropriately be applied. Pending such application such sums may either be employed in the business of the Home Owners Association (without being kept separate from the other assets of the Home Owners Association) or be invested. The Trustees may divide the reserve into such special reserves as they think fit and re-allocate the amount of such reserves either in whole or in part of other special or general reserves and may consolidate into one reserve any special reserves or any parts of any special reserves into which the reserve may have been divided. The Trustees may also carry forward any profits without placing them into reserve.

## 23. NOTICES

23.1 A notice by the Home Owners Association to any member shall be regarded as valid given if it is either delivered personally to the member or sent prepaid registered post to him at his registered address.

23.2 A member shall be bound by every notice given in terms of Article 21.1. The Home Owners Association shall not be bound to enter any person in the register of members until that person give the Home Owners Association an address for entry on the register.





23.3 Any notice, if given by post, shall be deemed to have been served on the fourth consecutive day following that on which the letter or envelope containing such notice is posted.

23.4 When a given number of days' notice or notice extending over any period is required to be given, the day of service shall not be counted in such number of day or period.

#### 24. INDEMNITY

Every Trustee, Chairman and Member of the Home Owners Association and ever person (whether a Member of the Home Owners Association or not) employed by the Home Owners Association as auditor shall be indemnified out of the funds of the Home Owners Association against all legal costs reasonably incurred by him as such Trustee, Chairman, officer of auditor in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, in which relief is granted to him by the court.

#### 25 APPROVAL OF BUILDING PLANS

25.1 Prior to the commencement of any building work on an erf, all plans and specifications of all improvements on the erf shall, before being submitted by the member to the Local Authority, be subject to the written approval of the designated Architect of the Home Owners Association. Such plans may only be drawn and presented by a registered architect. The Home Owners Association Architect shall have absolute discretion in deciding whether to approve or refuse to approve such plans and specifications.

25.2 The Home Owners Association has formulated architectural guidelines for improvements to the property and these guidelines shall operate as the guidelines of the Home Owners Association's Architect unless and until altered by the Home Owners Association, and the attention of the member is drawn to these guidelines. No plans shall be accepted for consideration from the member's Architect unless the member's Architect has certified thereupon that he has thoroughly familiarised himself with





the aforesaid guidelines and that in this professional opinion the plans being submitted by him, confirm thereto.

25.3 The member may select a building contractor approved by the Home Owners Association, to erect a dwelling on the erf. The member shall ensure that the builder signs the builder's code of conduct agreement with the Home Owners Association to regulate the building activities on the erf and no building work shall be commenced with or carried out, until such time as the code of conduct agreement aforesaid has been signed to the satisfaction of the Home Owners Association and the relevant deposit there under paid.

26. OBLIGATION TO BUILD

The member undertakes to erect a dwelling house on the erf, In this regard the member shall be obliged to complete building work within 48 (forty eight) months after the date of first registration of transfer of the erf into the name of a person other than the developer. The weather and availability of building materials and labour permitting, the building process shall be a continuous process. Should the member stop building, and fail to continue building after 14 (fourteen) days written notice, the member shall be liable to pay such market related penalty per day as the Trustees may determine and shall further not be entitled in any way to donate, sell, exchange or in any way alienate the property without the prior written consent of the Home Owners Association until such time as a dwelling house has been erected on the erf as envisaged herein.

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L'Avenue de Franschoek Constitution as Approved by the Annual General Meeting  
Held on 10 May 2011.

Members Present in person or by proxy

Aslo Holdings  
Mr Cannon  
Mr Du Preez  
Hermarisan Prop  
Die de Klerk Trust  
Mr & Mrs Midgley  
Mr Hammond  
Mr Brisley  
Mr de Necker  
Timuri Trust  
Mrs Overklift  
La Booy Investments

*Handwritten signature*  
*Handwritten initials*



## **APPENDIX 5**

L'Avenue de Franschhoek  
amended Constitution dated 22  
January 2022.



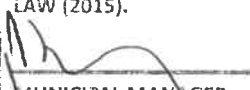


  
*L' Avenue de Franschhoek*  
**HOMEOWNERS' ASSOCIATION**  
**CONSTITUTION**

AS AMENDED AND APPROVED 22 JANAUARY 2022

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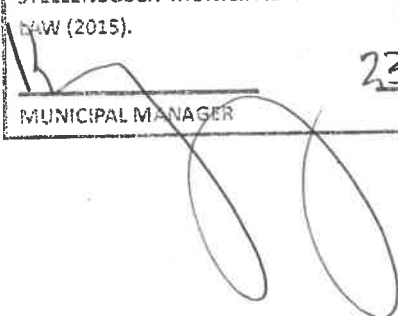
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## 1. NAME AND ESTABLISHMENT

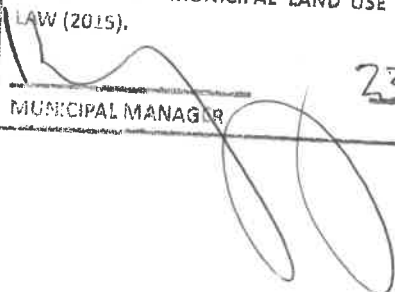
The name of the Association is L' AVENUE DE FRANSCHHOEK HOMEOWNERS' ASSOCIATION and is constituted in terms of section 29 of the Stellenbosch Municipality Land Use Planning By-Law, 2015, in accordance with the conditions imposed by the Stellenbosch Municipality when approving the subdivision of Erf 1696, Franschhoek.

## 2. DEFINITIONS

- 2.1 The headings to the paragraphs in this Constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.2 Words in the singular shall include the plural and vice versa.
- 2.3 Words in the masculine shall include words in the feminine and vice versa.
- 2.4 In this Constitution the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:
- 2.4.1 "Admin Levy" means the levy or provisional levy pursuant to clause 7.4 below, approved by way of an Ordinary Resolution at a duly constituted general meeting of Members, which levy is intended to fund the common operation, expenditure and reserves of the HOA, as reflected in the operating budget of the HOA for the ensuing period and as presented to said meeting and which levy will be payable by all members of the HOA in the same amount, regardless of the size of any erf, unless one or more erven have been consolidated into one; .
- 2.4.2 "Board of Trustees" or "Trustees" means the body elected annually by the Members to manage and control the business and the affairs of the HOA. Each member shall rank equally and have equal voting rights;
- 2.4.3 "Chairperson" means the Chairperson of the Board of Trustees;
- 2.4.4 "Common Areas" means all parts of the Estate excluding privately owned Erven, including all roads, communal facilities and services;
- 2.4.5 "Common Costs" means all costs that are attributed to all the erven including but not limited to security costs, management agent fees, fence maintenance, auditors, entrance gate expenses, maintenance of blue gum trees, water feature area, roads, entrance garden, common borehole and domestic water system, domestic refuse removal and general clean up, but excluding the Vineyard Costs.
- 2.4.6 "CSOS" means the Community Schemes Ombud Service established in terms of the Community Schemes Ombud Service Act, No. 9 of 2011;
- 2.4.7 "Electronic Communication" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;
- 2.4.8 "Erven" means all the erven on the Estate excluding the Common Areas,

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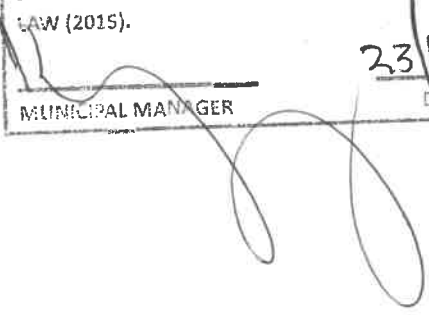
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- namely Erven FH2851 to FH2860 inclusive and FH2862 to FH2869 inclusive;
- 2.4.9 **"Estate"** means collectively Erven FH2851 to FH2869 inclusive;
- 2.4.10 **"Financial Year"** means 1 November to 31 October each year unless amended by an Ordinary Resolution of Members;
- 2.4.11 **"HOA"** means L 'Avenue de Franschoek Homeowners' Association;
- 2.4.12 **"Levies"** means the Admin Levy, Vineyard Levy or Special Levy, or any one of them, as the case may be;
- 2.4.13 **"Local Authority"** means the Stellenbosch Municipality or its successor in title;
- 2.4.14 **"Managing Agent"** means the professional property management company appointed from time to time by the Board of Trustees to carry out secretarial, administrative and accountancy functions on behalf of the HOA;
- 2.4.15 **"Member"** or **"Members"** means a natural person registered as owner of one of the Erven or the legally authorized representative of an owner who is not a natural person;
- 2.4.16 **"Non-Vineyard Erven"** means Erven FH2862 to FH2869 inclusive.
- 2.4.17 **"Ordinary Resolution"** means a resolution passed by a simple majority of the votes cast at a general meeting by Members, entitled to vote, present in person or by proxy, or a resolution agreed to in writing (including by way of e-mail) by a majority of the Members of the HOA entitled to vote;;
- 2.4.18 **"Quorum"**, for purposes of a general meeting, means a minimum of 10 Members that must be present, either in person or by way of proxy which must be registered with the Managing Agent no later than 2 business days before any of its meetings, to make the proceedings of that meeting valid unless restricted pursuant to clause 13.2 below;
- 2.4.19 **"Rules & Regulations"** means all the rules and regulations of the HOA as set out in this Constitution and as additionally determined by the Board of Trustees from time to time, including but not limited to Estate building guidelines, architectural guidelines and building plan submission / approval procedures;
- 2.4.20 **"Special Levy"** means an additional contribution imposed by the Trustees in respect of an expense which has not been included in the budget;
- 2.4.21 **"Special Resolution"** means a resolution passed at a properly constituted meeting of Members by a majority of seventy five percent (75%) of the Members or their nominated proxies entitled to vote, or a resolution agreed to in writing (including by way of e-mail) by at least seventy five percent (75%) of the Members entitled to vote;
- 2.4.22 **"The By-Law"** means the Stellenbosch Municipality Land Use Planning By-Law, 2015, as amended from time to time;
- 2.4.23 **"Vineyard Erven"** means Erven FH2851 to FH2860 inclusive, being Erven who have vines and olive trees on them.
- 2.4.24 **"Vineyard Levy"** means the levy or provisional levy pursuant to clause 7.5



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below, approved by way of an Ordinary Resolution at a duly constituted general meeting of Members, which Levy is intended to fund the Vineyard Costs and reserves of the HOA, as reflected in the vineyard operating budget of the HOA for the ensuing period and as presented to said meeting; The Vineyard levy will be payable solely by the owners of the Vineyard Erven, which levy contribution (as well as any revenue distribution in respect of the vineyards and olive groves) will be calculated with reference to the size of the said erven calculated as a percentage of all of the Vineyard Erven size; and

- 2.4.25 "Vineyard Costs" includes the costs in connection with or which relate to the vineyard and olive grove plantations, maintenance, labour, harvesting, irrigation system, dam area, dam with borehole and pump station, vineyards refuse removal and gardens maintenance on the vineyard side.

### 3. STATUS

#### 3.1 The HOA shall:

3.1.1 have legal personality separate from its Members and be capable of suing or being sued in its own name; and

3.1.2 not operate for profit but for the benefit of the Members.

#### 3.2 No Member in his personal capacity shall have any right, title or interests to or in the funds or assets of the HOA, which shall vest in and be controlled by the Trustees.

### 4. OBJECTIVES

#### 4.1 The main business of the HOA is to promote, advance and protect the interests of its Members in the Estate.

#### 4.2 The primary objects of the HOA are:

4.2.1 The promotion and enforcement of standards in keeping with the character of the Estate in such a way that the Members derive the maximum collective benefit;

4.2.2 The control over, maintenance and protection of the Common Areas, regarded as common to all Members. The control over, maintenance, watering, fertilization, care, harvest and the sale of grapes and olives.

4.2.3 The provision and maintenance of the Common Areas including all amenities, water bore holes, fire hydrants and hoses, security perimeter fencing, insurances and common services (including but not limited to the provision of 24 hour gate security) ;

4.2.4 The promotion and enforcement of acceptable aesthetic, environmental and architectural styles and design criteria for the Estate in order to achieve harmonious development thereof and to enhance the values of Erven;

4.2.5 To enforce certain conditions of subdivision approval and/or management

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- plans listed in such conditions of subdivision imposed by the Local Authority;
- 4.2.6 To act in accordance with the collective mutual interests of its Members;
  - 4.2.7 To establish a fund for expenses of the HOA, including provision for future expenses and contingencies;
  - 4.2.8 To collect from the Members by way of levies for the purposes of the said fund;
  - 4.2.9 To adopt and enforce such Rules and Regulations as the HOA may find necessary to harmonise the different needs and aspirations of all Members;
- and the HOA shall have all such powers necessary to enable it to achieve such purposes and objects.

## **5. VINEYARDS AND OLIVE GROVES**

- 5.1 The estate comprises of Vineyard Erven and erven without vineyards and olive groves. The vineyards and olive groves are owned by the various respective owners of the Vineyard Erven on which such grape vines and olives are planted . As such, ownership includes the responsibility for proper maintenance of the vineyards , olive groves and the supporting infrastructure.
- 5.2 The Vineyard Erven owners have as a group (and not individually), the right to make decisions regarding all aspects concerning and relating to the vineyards and olive groves . All decisions made by the Vineyard Erven owners shall be by way of majority.
- 5.3 Where any Vineyard Owner wishes make changes to an existing plantation, such change will require a majority vote of Vineyard Erven owners, and can only be made in the condition that the character of the Estate is preserved and the privacy of all homeowners is not compromised.
- 5.4 The Vineyard Erven owners have in terms of this constitution delegated their responsibility for the maintenance of the vineyards and olive groves to the HOA. This arrangement can be terminated by either party giving the other party 6 (six) months' written notice .
- 5.5 The Vineyard Erven owners will at every Annual General Meeting elect a representative that will coordinate decisions within their group, and to work constructively with the trustees relative to all vineyard and olive grove matters. This representative may or may not be a trustee as elected by all homeowners. The HOA trustees maintain the responsibility of assuring proper maintenance, security, cost management and legal representation of the entire estate.
- 5.6 All costs and all revenues for the vineyards, as detailed in paragraph 7.4 accrue to each vVineyard Erven owner on a land size basis. All wine and olive oil revenue accrue to the Vineyard Erven Owners.

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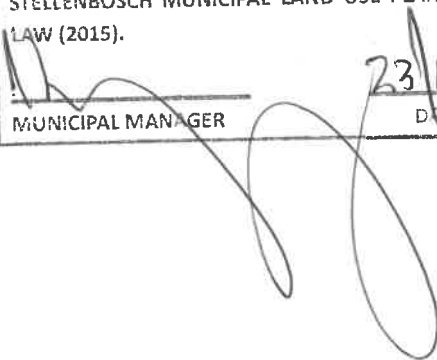
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**6. MEMBERS**

- 6.1 Membership of the HOA shall be limited to every person reflected in the records of the Cape Town Deeds Registry as the registered owner of an Erf in the Estate. Membership of the HOA shall be automatic and compulsory for every registered owner of an Erf. Such membership shall commence simultaneously with the registration of transfer of the Erf into the name of the transferee.
- 6.2 Where two or more persons are registered as the owners of the same Erf, all the registered owners of that Erf shall be deemed jointly and severally to be one Member of the HOA.
- 6.3 When a Member ceases to be the registered owner of an Erf he shall ipso facto cease to be a member of the HOA. A Member may not resign as a Member of the HOA.
- 6.4 The HOA shall keep a register of Members.
- 6.5 On the death, insanity or insolvency or liquidation of any Member, then as from the date of death or issue of a certificate by two medical practitioners certifying the insanity of such Member or the grant of a provisional court order of sequestration or liquidation, such Member shall be represented by his executor, curator or trustee as the case may be.
- 6.6 Each Member shall have one vote for each Erf in respect of which he is registered as an owner.
- 6.7 No Member shall be entitled to subdivide or re-zone his Erf.
- 6.8 The rights and obligations of a Member are not transferrable and every Member shall to the best of his ability to further the aims and objects of the HOA and shall observe and be bound by this Constitution and all the Rules and Regulations
- 6.9 Nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to any mortgagee of the Member's Erf.
- 6.10 Each Member shall be jointly liable for any expenditure in connection with the Objectives set out in clause 4 and for anything done by the HOA with the intention of benefiting its Members. The HOA shall charge Annual Levies and Special Levies to cover all expenses which are incurred or anticipated, and which shall be borne by each Member per clause 6 below.
- 6.11 A Member shall not be entitled to alienate or transfer an Erf without the written consent of the Trustees, which consent shall not be unreasonably withheld, provided:
- 6.11.1 that all Levies, Special Levies or other amounts due in respect of such Erf have been paid in full; and
- 6.11.2 there has been compliance with the provisions of this Constitution, the Rules and Regulations; and
- 6.11.3 that a suitable clause be inserted in the Deed of Sale in terms whereof the purchaser acknowledges that he becomes a Member of the HOA upon transfer into his name;
- 6.11.4 All structures and improvements on the property sought to be transferred, not

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approved by the Trustees or HOA as contemplated herein, have been removed to the satisfaction of the HOA, or the approval of the Trustees has been given in respect of such structures or improvements, as contemplated herein.

provided that this clause shall not prejudice the rights of the HOA to recover any arrears and/or interest thereon.

- 6.12 The Trustees may charge the departing Member reasonable administrative and legal fees to cover the costs of effecting such transfer to the incoming Member.
- 6.13 Every Member shall be obliged to maintain in good order and repair and in a clean and tidy condition (up to the high standard of the Estate), the exterior of all buildings on his Erf and all private gardens and patios and all visible exterior portions of his Erf.

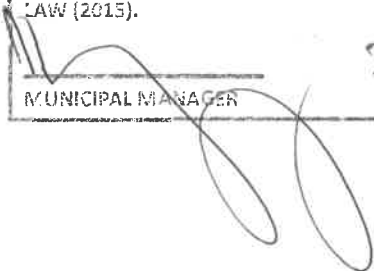
## 7. LEVIES

- 7.1 The Trustees shall, prior to the end of each financial year, prepare itemized estimate of the anticipated income and expenditure (which may include a reasonable provision for contingencies) of the HOA during the ensuing financial year, and thereby calculate the amount required to be Levied upon the Members during such ensuing financial year and impose an Admin Levy and Vineyard Levy upon the members in such estimated amount.
- 7.2 The Admin Levy and Vineyard Levy's calculation is based on the principle of 'ringfencing' resulting in all of the expenses in the Estate being grouped into two categories namely, Common Costs and Vineyard Costs. The budget and accounting system reflects that principle.
- 7.3 All expenses are assigned to these two categories on the basis of data, such as invoices, electricity and water meter readings. Salaries for estate employees will be allocated on employee effort records. Garden maintenance invoices that are for all gardens will be allocated on the basis of common gardens as a percentage of the total garden area.
- 7.4 The Admin Levy payable by each Member shall be ascertained as follows:  
The budgeted Common Costs less recoveries from homeowners for their electricity and water usages divided by the number of erven (eighteen).
- 7.5 The Vineyard Levy payable by each Vineyard Erven Owner shall be ascertained as follows:  
The budgeted Vineyard Costs divided by the total vineyard area, multiplied with the individual area of each Vineyard Erf.
- 7.6 The Trustees shall, as soon as possible after the imposition of an Admin Levy, Vineyard Levy or Special Levy, advise each Member in writing of the amount payable by him. Such amount shall be payable in equal monthly instalments due in advance on the first day of each calendar month.
- 7.7 Members shall be liable in respect of any Levy made in terms of clauses 7.1, 7.2 and 7.3 above, which Levy/ies shall be paid without deduction or set off, and free of bank



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charges..

- 7.8 The Trustees may from time to time and when necessary, impose Special Levies upon the Members in respect of all expenses which have not been included in the budget and such contributions may be made payable in one instalment, or in such instalments as the Trustees may determine in their own discretion. Such levies become due and payable on the date of the relevant Trustees' resolution.

Any Special Levy shall be calculated as follows: Each member shall be liable for the total sum of the Special Levy divided by 18 (the total number of Members), if relating to a Common Costs. Should the levy pertain to Vineyard Costs, the Vineyard Erven will be liable for the total sum of the levy calculated divided by the number of Vineyard Erven.

- 7.9 Interest shall be payable on Levies or other amounts in arrears for more than 60 days at the South African Reserve Bank's prime rate +5%.
- 7.10 The obligation of a Member to pay Levies and Special Levies (if applicable) shall cease upon his ceasing to be a Member.
- 7.11 No Levies, Special Levies or interest paid by a Member shall under any circumstances be repayable by the HOA upon his ceasing to be a Member.
- 7.12 A Member shall be liable for all legal costs, including attorney and own client costs, collection commission, expenses, and other charges, administrative or otherwise, incurred by the HOA in obtaining the recovery of arrear levies or any other arrear amounts due to it, or in enforcing compliance with this Constitution, the Rules or Regulations.
- 7.13 No Member shall be entitled to any of the privileges of Membership (including but not limited to voting and granting of a proxy) or shall serve on the Board of Trustees if his account is more than 2 months in arrears. Such deprivation of privilege shall in no way prejudice the obligations set out in 7.12 above.
- 7.14 The Trustees may grant extension of payment of Levies on application by a Member but may only grant an extension of such payment of levies for a period of more than 120 days with the consent of a majority of Members (which may be by written resolution circulated, received and voted on by electronic mail). The Trustees are empowered to agree with arrangements proposed by collection attorneys agreed with overdue debtors which they believe are advantageous to the HOA.
- 7.15 The Trustees may set aside out of the profits of the HOA and carry to reserve such sums as they think proper. All sums standing to the credit of revenue and general reserves shall at the discretion of the Trustees be applicable for meeting contingencies, for the gradual liquidation of any debt or liability (actual or potential) of the HOA, for repairing, improving or maintaining any property of the HOA, for meeting losses on realization of or writing down investments either individually or in the aggregate, or for any other purpose to which profits of the HOA may appropriately be applied. Pending such application, such sums may either be employed in the business of the HOA (without being kept separate from the other assets of the HOA) or be invested. The Trustees may divide the reserve into such special reserves as they think fit and re-allocate the amount of such reserves either in whole or in part of other special or

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general reserves and may consolidate into one reserve any special reserves or any parts of any special reserves into which the reserve may have been divided. The Trustees may also carry forward any profits without placing them into reserve.

- 7.16 After the end of any financial year and until the new Levies have been raised, Members shall remain liable for the payment of interim Levies at the rate applicable before the end of such financial year, as if new Levies have been determined. The Trustees may resolve to increase or decrease such interim Levies up to ten per cent (10%), in anticipation of any expected increase or decrease in the budgeted expenses for the new financial year.

## **8. RULES**

- 8.1 Subject to any restriction imposed or direction given at a General Meeting of the HOA, the Trustees may from time to time make and amend or add to, rules governing the Estate and any facilities which may exist on the property, which are intended for the general use, for the enjoyment and amenity of the Members or their invitees, and the security and safety of the property and all persons therein. Any proposed changes to the Rules appended hereto must be circulated to all members immediately following the Trustees' meeting making such change and must be ratified (or otherwise) at the next meeting of Members. In the event of no changes to the Rules and Regulations, the current Rules and Regulations will be circulated to all Members annually.
- 8.2 Subject to any restriction imposed or direction given at a General Meeting of the HOA, the Trustees may from time to time make and amend or add to, rules governing the conduct of owners and occupiers, Approval of Building Plans, Architectural Guidelines, Obligation to Build and rental of Member's properties so long as such rules comply with South African Law and the rules and regulations set out by the Local Authority from time to time.
- 8.3 For the enforcement of any of the rules made by the Trustees in terms hereof, the Trustees may:
- 8.3.1 take, or cause to be taken, such steps as they may consider necessary to remedy the breach of the rule of which the Member may be guilty, and debit the cost of so doing to the Member concerned, which amount shall then be deemed to be a debt owing by the Member concerned to the HOA;
  - 8.3.2 to impose fines in respect of Members not complying with this Constitution or any rules imposed by the HOA or the Trustees;
  - 8.3.3 Take such other action, including (but not limited to) court or CSOS proceedings, as they may deem fit.
- 8.4 In the event of any breach of the rules by guests or lessees of a Member, or his agents or employees, such breach shall be deemed to have been committed by the Member himself, but, without prejudice to the foregoing, the Trustees may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
- 8.5 In the event of any Member disputing the fact that he has committed a breach of any

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of the provisions or rules aforesaid, a committee of three Trustees, appointed by the Trustees of the HOA, shall adjudicate upon the issue at such time and in such manner and according to such procedure as the Trustees may direct.

- 8.6 Notwithstanding the foregoing, the Trustees may in the name of the HOA enforce the provisions of any Rules and Regulations (as appended hereto) by proceedings in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
- 8.7 It shall be the duty of the Chairperson, or such other person or body as may be empowered by the Trustees, to ensure compliance by the Members with the Constitution, Rules and Regulations, and to this end to issue such notice or do such things as may be necessary or requisite.
- 8.8 Each member undertakes to the HOA that he shall comply with any rules made in terms of this clause 7.

## 9. POWER OF THE TRUSTEES

- 9.1 Subject to the express provisions of this Constitution, the Trustees shall manage and control the business and affairs of the HOA, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all such powers of the HOA, and perform all actions on behalf of the HOA as may be exercised and done by the HOA. The authority hereby granted shall exclude actions that this Constitution requires to be exercised or done by the HOA in general meeting. All actions taken by Trustees shall nevertheless be subject to any regulations made or directives given by the HOA in general meeting from time to time, provided that no regulation made or directive given by the HOA in general meeting shall invalidate any prior act of the Trustees which would have been valid if such regulation had not been made.
- 9.2 Notwithstanding the generality of the above, the Trustees shall have the power, without prejudice to any other rights of the HOA:
- 9.2.1 to engage on behalf of the HOA, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, Land Surveyors, and any other professional person or firm and/or any other employee/s whatsoever, for any reasons deemed necessary by the Board of Trustees and on such terms as the Board of Trustees shall decide. For individual or ongoing contracts in excess of R100,000 the Trustees shall, wherever practical, obtain at least two competitive quotations for review and approval by the Trustees. Said sum is to be adjusted annually by the Government issued CPI inflation index;
- 9.2.2 to appoint a managing agent or firm of managing agents to administer the finances of the Estate including, inter alia, the issue of levy clearance certificates and the reading of electricity and water meters etc., and to carry out any secretarial duties for the HOA such as the managing of meetings and the keeping of minutes etc.

The Managing Agent, if required by the Members, shall be appointed at each

  
*L. Avenue de Formosidade*

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annual general meeting for the ensuring year upon such terms and conditions as the Board of Trustees may decide, subject to any direction given by the Members at the annual general meeting.

9.2.3 to purchase / arrange insurances on behalf of the HOA, including but not limited to property, liability cover and indemnity cover for the Trustees;

9.2.4 to provide an electricity supply and a water supply to each Erf for household use and each Member shall be obliged to pay the HOA for such electricity and water consumed. It is recorded that the HOA is billed directly by the Local Authority for Municipal electricity and water and that the HOA will install sub-meter(s) at the cost of each Member, who shall pay the HOA monthly in arrears for the electricity and water consumed. The HOA will use its best efforts to minimize the amount of Municipal water used over and above the Estate boreholes.

All electricity and water consumed in respect of the Common Areas shall be paid for by the HOA, out of its funds or levies collected.

9.2.5 to repair and maintain the Common Areas, to carry out any landscaping and to clean any part of the Common Areas, at the cost of the HOA, without prejudice to the HOA's right to claim the reasonable cost thereof from a Member or Members who may have caused or contributed to such circumstances requiring repair and maintenance;

9.2.6 to landscape and clean the Common Areas and thereafter maintain these areas in a clean and tidy condition at the cost of the HOA, without prejudice to the HOA's right to claim the reasonable cost thereof from a Member or Members who may have caused or contributed to such circumstances;

9.2.7 to implement the Estate security and take such measures as they in their discretion deem necessary to ensure control of access to the property and/or persons herein;

9.2.8 to cause any gatehouse at any access point to the property to be manned by security personnel, and to institute appropriate security procedures as they deem fit;

9.2.9 to maintain and replace where necessary the property lights, perimeter fencing / walling and electronic, CCTV and any and all other security systems;

9.2.10 to manage the vineyards and olives, the harvest thereof and subsequent sale thereof;

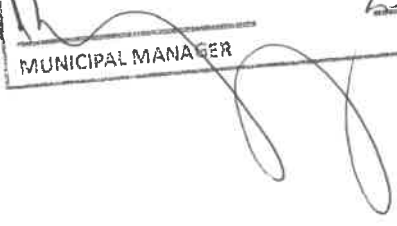
9.2.11 to provide the Members of Erven 2851 to 2860 from time to time with any wine or olive oil produced on erven 2851 to 2860 or to sell the grapes and/or olives produced at a current open market price to: Firstly the owner of the Erf on which the grapes are grown or if he declines, any other Member, or if any or all of them decline, to a third party upon the clear understanding that no Member is under any obligation whatsoever to purchase any of the grapes or olives.

9.3 Trustees shall, on behalf of the HOA, enforce the provisions of this Constitution,



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the Rules and Regulations.

**10. CHAIRPERSON**

- 10.1 The Chairperson shall be elected by the Trustees, themselves elected at the annual general meeting of the HOA, to manage and to administer the HOA and to exercise such powers and duties as may be entrusted to the Chairperson, including the power to collect contributions levied.
- 10.2 Should there be no Chairperson in office at any time, then all references in this Constitution to the Chairperson shall be deemed to be a reference to the Trustees.

**11. MEETING OF MEMBERS**

- 11.1 The HOA shall within 4 (four) months of the end of every financial year hold an annual general meeting to approve the accounts for the preceding accounting period, to approve a budget for the forthcoming accounting period, to elect the auditors and Board of Trustees.
- 11.2 All general meetings other than annual general meetings shall be called special general meetings.
- 11.3 Every general meeting of Members shall be held in Franschhoek or Stellenbosch.
- 11.4 The Trustees may, whenever they deem it necessary, convene a special general meeting, and/or must convene a meeting upon the requisition in writing of at least 50% (fifty per centum) of the Members of the HOA, entitled to vote. The requisition shall state the purpose of the meeting and shall be signed by the requisitioning Members. The Trustees shall within 14 (fourteen) days of receipt of the requisition from the Members, issue a notice convening a special general meeting. If the Trustees fail to call a special general meeting within 14 (fourteen) days of receipt of the requisition, the Members concerned shall be entitled themselves to call the meeting.


**12. GENERAL MEETINGS BY ELECTRONIC COMMUNICATION**

- 12.1 The HOA may conduct a meeting of Members entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication, and the power of the HOA to do so is not limited or restricted by this Constitution. Accordingly:

- 12.1.1 any meeting of Members may be conducted entirely by Electronic Communication; or

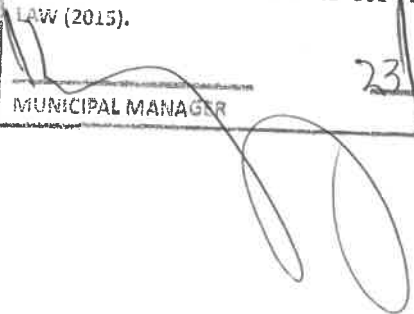
- 12.1.2 one or more Members, or proxies for Members, may participate by Electronic Communication in all or part of any meeting of Members that is being held in person;

so long as the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

  
*L. Avenue de Franschhoek*

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12.2 Any notice of any general meeting at which it will be possible for Members to participate by way of Electronic Communication shall inform Members of the ability to so participate and shall provide any necessary information to enable Members or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Member or proxy concerned.

12.3 A person who attends a meeting as provided under clause 11.1 is considered present in person at the meeting.

### **13. NOTICE OF MEETINGS**

13.1 A general meeting shall be called by not less than 14 (fourteen) days' notice to all Members. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the time of the meeting. In the case of special business, the general nature of that business, the reasons and the proposed resolution(s) for it shall be given. All relevant documentation should be sent to the HOA no later than one week before the general meeting.

13.2 Notwithstanding clause 12.1, a general meeting may be called with such shorter notice than specified if so approved by ninety per cent (90%) of the Members having a right to attend and vote at the meeting.

13.3 Notice of general meetings shall be given by posting thereof to each Member at his *domicillium*, provided that it shall be competent to give any notice to a Member by e-mail, where he has advised the Trustees in writing of his e-mail address.

13.4 The accidental omission to give notice of a general meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this Constitution, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive same, shall not invalidate the proceedings, or any resolution passed, at any meeting.

### **14. PROCEEDINGS AT MEETING OF MEMBERS**

14.1 Business may be transacted at any meeting of Members only while a Quorum is present.

14.2 If within thirty minutes from the time appointed for the meeting a Quorum is not present, the meeting, if convened upon the requisition 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, or if that day be a public holiday, the next business day thereafter. In the event that any subsequent meeting pursuant to this clause is held and a Quorum is not present then in the Chairperson's absolute discretion he may hold the meeting with those present. Such a meeting will be deemed to have a quorum.

14.3 The Chairperson shall preside as chairperson at every meeting of Members of the HOA. If the Chairperson is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as Chairperson, the Members present shall choose one Trustee or, if no Trustees be present, or, if all the Trustees present decline to take the chair, they shall choose one Member present to be Chairperson of the

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meeting.

- 14.4 The Chairperson may, with the consent of any meeting at which a Quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned as a result of a direction given in terms of an applicable provision in this Constitution, notice of the adjourned meeting shall be given in the manner prescribed by such provision but, save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 14.5 At any meeting of Members a resolution put to the vote of the meeting shall be decided on a show of hand, unless for or on the declaration of the result of the show of hands a poll shall be demanded by any person entitled to vote at the meeting and, unless a poll is so demanded, a declaration by the Chairperson that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the HOA shall be conclusive evidence of the fact, without proof of the number of votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to may be given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.
- 14.6 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a casting vote, and any such resolution shall fail.
- 14.7 The Chairperson or his nominee shall take the minutes of the meeting and shall circulate the same as soon as reasonably possible following the conclusion of the meeting, but in any event with 30 days thereof.

## **15. VOTES OF MEMBERS**

- 15.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Erf owned by him, provided that if an Erf is registered in more than one person's name, then they shall jointly have one vote.
- 15.2 A proxy need not be a member of the HOA.
- 15.3 The form appointing a proxy shall be in writing under the hand of the appointer Member or, if the appointer Member is not a natural person, under the hand of an officer of that body. The holder of a general or special power of attorney given by a Member shall be entitled to vote, if duly authorised under that power to attend and take part in the meetings and proceedings of the HOA or generally, whether or not he be himself a Member of the HOA;
- 15.4 The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be

  
*L. Aronow de Franschbach*

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deposited at the Domicilium of the HOA no later than two business days (or such lesser period as the Trustees may unanimously determine in relation to any particular meeting) at which the person named in the form proposes to vote, and in default the form of proxy shall not be treated as valid. No form appointing a proxy shall be valid after the expiration of six months from the date when it was signed, except at an adjourned meeting, unless otherwise specifically stated in the proxy itself;

- 15.5 A form appointing a proxy may be in any usual or common form.

## 16. TRUSTEES

- 16.1 Trustees have a fiduciary responsibility to ensure that the objectives of the HOA, as provided for in clause 4, will be achieved. They act on behalf of the HOA, balance potentially conflicting interests of homeowners, keep homeowners well informed and strive to act unanimously.

- 16.2 Until otherwise determined by a meeting of Members the number of Trustees shall not be less than three nor more than five, including the Chairperson. The Trustees and Chairperson shall be elected at each annual general meeting of Members and shall hold office until the subsequent annual general meeting of Members, at which time they shall be deemed to have resigned and if so desired, offer themselves up for re-election.

- 16.3 Subject to the express provisions of this Constitution, the Trustees shall manage and control the business and affairs of the HOA, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all such powers of the HOA, and perform all actions on behalf of the HOA as may be exercised and done by the HOA. Any urgent decision taken by any individual Trustee shall be promptly circulated to the other Trustees and formally ratified forthwith after the event. The

authority hereby granted shall exclude actions that this Constitution requires to be exercised or done by the HOA in general meeting. All actions taken by Trustees shall nevertheless be subject to any regulations made or directives given by the HOA in general meeting from time to time, provided that no regulation made or directive given by the HOA in general meeting shall be illegal or invalidate any prior act of the Trustees which would have been valid if such regulation had not been made.

- 16.4 The Trustees shall be selected to represent both the Vineyard Erven and the non-vineyard Erven and on the basis of complementing skills, time availability and commitment.

- 16.5 A Trustee need not be a member of the HOA but the majority of the Board of Trustees must be Members.

- 16.6 The Trustees shall not be entitled to undertake on behalf of the HOA any works of a capital nature exceeding R 100,000, except in the case of an emergency, without the sanction of an Ordinary Resolution of the HOA. In case of such emergency which shall include emergency repairs to the borehole(s), water supply, electricity supply and physical security provisions for the Estate, the trustees shall immediately notify all the Members of the cause of the problem, the proposed solution and the estimated cost.



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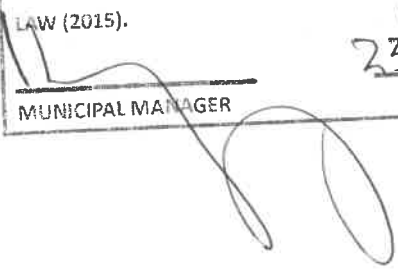
- 16.7 The Trustees undertake to act on the principle of 'utmost good faith', undertake not to have any financial interest in parties contracting with the Estate.
- 16.8 Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as Trustees, but aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.
- 16.9 A Trustee may resign his office at any time by giving 30 days written notice to the HOA.
- 16.10 A Trustee shall cease to hold office and shall be deemed to have resigned if:
- 16.10.1 He is removed by an ordinary resolution of the HOA in accordance with this Constitution;
- 16.10.2 He or the Member he represents ceases to be a Member pursuant to clause 5.3 above;
- 16.10.3 His privileges of membership are suspended in terms of clause 6.10 above.
- 16.10.4 His Levy, Special Levy or any other amount due, payable in respect of the Erf that forms the basis for such Trustee's Membership of the HOA, falling into arrears for a period of 3 (three) consecutive months.
- 16.11 Upon any vacancy occurring on the Trustees prior to the next annual general meeting, the vacancy in question may be filled by a person nominated by those remaining for the time being of the Trustees.

## 17. PROCEEDINGS OF THE TRUSTEES

- 17.1 The Trustees may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 17.2 Any Trustee may at any time convene a meeting of the Trustees by giving to the other Trustees no less than seven (7) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting, provided that in case of urgency shorter notice may be given.
- 17.3 The quorum necessary for the holding of any meeting of the Trustees shall be 50% (fifty per centum) of the total number of Trustees in office, present personally. If no quorum is present within 10 (ten) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following business day and, if at such adjourned meeting, a quorum is not present within 10 (ten) minutes after the time appointed for the meeting, the Trustees present, provided that there shall not be less than 2 (two), shall be a quorum.
- 17.4 If the number of Trustees falls below three (3), the remaining Trustee(s) may constitute a quorum, but only for purposes of convening a general meeting of Members or to co-opt new Trustees.
- 17.5 Any Trustee may, subject to approval by the Trustees, which may not be unreasonably withheld, appoint another person to act as an alternate Trustee during his absence or inability to act as a Trustee. An alternate Trustee shall have the powers and be subject

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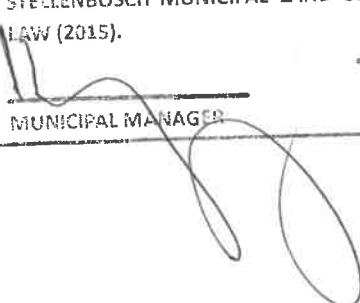
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to the duties of a Trustee and shall cease to hold office if the Trustee whom he or she replaces, ceases to be a Trustee, or if the alternate's appointment is revoked, by the Trustee whom he replaced, or by the Trustees.

- 17.6 Any resolution of the Trustees shall be carried by a simple majority of all votes cast, each Trustee present having one equal ranking vote. In the event of an equality of votes, the Chairperson of the meeting shall have a casting as well as a deliberative vote.
- 17.7 A Trustee is disqualified from voting in respect of:
- 17.7.1 any proposed or existing contract or dispute with the HOA to which the Trustee is a party; and
- 17.7.2 any other matter in which the Trustee has any direct or indirect personal interest;
- and such Trustee shall furthermore not be present at or play any part in the consideration of, or voting on, the matter concerned.
- 17.8 The Chairperson shall preside as such at all meetings of the Trustees, provided that should at any meeting of the Trustees the Chairperson not be present within 10 (ten) minutes after the time appointed for the holding thereof, then 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.
- 17.9 A Trustee, or such other person appointed by them, shall take minutes of every Trustees' meeting, although not necessarily *verbatim*, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairperson of the meeting.
- 17.10 All competent resolutions recorded in the Trustees' minute book 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 Trustees 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.
- 17.11 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.
- 17.12 A resolution signed, or approved in writing (including by e-mail), by the majority of the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustees duly convened.
- 17.13 Any act performed by the Trustees shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any Trustee, be as valid as if such Trustee had been duly appointed or had duly continued in office.
- 17.14 For the purpose of transacting its business as provided herein, the Trustees shall be entitled to open and operate a bank account in the name of the HOA at a registered

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banking institution.

**18. TRUSTEES' MEETINGS BY ELECTRONIC COMMUNICATION**

18.1 The Trustees may conduct a meeting of Trustees entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication, and the power of the Trustees to do so is not limited or restricted by this Constitution. Accordingly:

18.1.1 any meeting of Trustees may be conducted entirely by Electronic Communication; or

18.1.2 one or more Trustees may participate by Electronic Communication in all or part of any meeting of the Trustees that is being held in person;

so long as the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

18.2 A person who attends a meeting as provided under clause 17.1 is considered present in person at the meeting.


**19. INDEMNITY**

19.1 All Members of the Board of Trustees and the Auditors shall be indemnified out of the funds of the HOA against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee member, 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.

Every member of the Board of Trustees, every servant, agent and employee of the HOA, and the Auditors shall be indemnified by the HOA against (and it shall be the duty of the Board of Trustees out of the funds of the HOA to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may

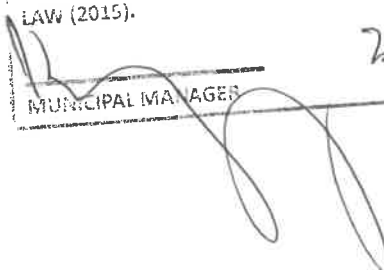
incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including the case of a Trustee member, his duties as Chairperson. Without prejudice to the generality of the above, the HOA shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

19.2 A Trustee shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustees, whether in their capacities as Trustee or as Chairperson, or for any loss or expense sustained or incurred by the HOA through the insufficiency or deficiency of title to any property acquired by the Board of Trustees for or on behalf of the HOA, or for the insufficiency or deficiency of any security in or upon which any of the monies of the HOA shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects

  
*L. Aronson et al. Trustees*

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shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or gross negligence or breach of duty or breach of trust.

## **20. PRIVILEGE IN RESPECT OF DEFAMATION**

Every Member of the HOA and every Trustee member 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 Trustee, the Board of Trustees or any sub-committee, or the Chairperson, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the HOA, all claims and rights of action which such Member or Trustee member might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee member, or any reference to such Member or Trustee member, made at any Board of 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, 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 member, whether such statement be true or false.

## **21. COMMON AREAS**

21.1 Neither the whole nor any portion of the Common Areas shall be:

21.1.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or

21.1.2 mortgaged; or

21.1.3 subject to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitude, (save those enjoyed by the Members of the HOA in terms hereof);

21.1.4 built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities,

without the sanction of a Special Resolution and the consent of the Local Authority.

21.2 The maintenance and repairs to the Common Areas shall be the sole responsibility of the HOA, including the maintenance and repair of the boundary wall and fence on the perimeter of the Estate.

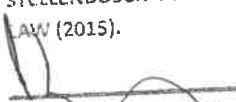
21.3 Members and occupiers shall comply with the Rules, Regulations and the reasonable conditions imposed, from time to time, by the Trustees relating to the use of the Common Areas and facilities and amenities of the HOA.

21.4 Any person present on the Estate or using any of the services, land, facilities or amenities of the HOA does so entirely at his own risk. No person shall have any claim against the HOA of whatsoever nature arising from such use, nor for anything which may befall any person during the course of such use, whether caused by human or



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animal agency, natural phenomena or otherwise. The HOA shall not be liable for any injury, loss or damage of any description that any person may sustain, physically or to his property, directly or indirectly, in or about the Estate nor for any act done or for any neglect on the part of the HOA or any of the HOA's employees, agents or contractors.

- 21.5 The HOA has ownership of the Common Areas, private streets and internal engineering services arising out of the subdivision of the Estate.
- 21.6 Members shall, at their expense, maintain the road verges adjoining their Erven and keep them in a clean and neat condition notwithstanding the fact that such road verges form parts of the Common Areas.

## **22. ACCOUNTS**

- 22.1 The Trustees shall cause proper books of account and records to be kept so as to fairly explain the transactions and financial position of the HOA.
- 22.2 At each annual general meeting the Trustees shall lay before the HOA, financial statements for the immediately preceding financial year of the HOA. The financial statements shall be drawn up in accordance with generally accepted accounting practise and shall be accompanied by such additional reports as deemed necessary by the Trustees. Copies of the financial statements and reports shall be attached to the notice sent to the Members convening each annual general meeting.
- 22.3 The accounts and books of the HOA shall be open to the inspection of Members at all reasonable times during normal business hours, subject to such reasonable conditions that may be imposed by the Trustees from time to time.
- 22.4 The Trustees shall cause all books of account and records to be retained for a period of 5 (five) years after completion of the transactions, acts or operations to which they relate.

## **23. AUDIT**

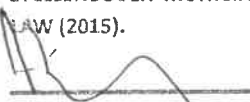
- 23.1 At every annual general meeting, the HOA shall appoint a qualified Auditor to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.
- 23.2 The financial statements of the HOA shall be examined and the correctness thereof ascertained by the Auditor at least once a financial year and the Auditor must sign the financial statements. The duties of the Auditor shall otherwise be regulated in accordance with general practise and applicable standards.

## **24. DOMICILIUM AND NOTICES**

- 24.1 The *domicilium citandi et executandi* of each Member at which all documents and all notices may be delivered, shall be the address of the Member's Erf in the Estate, provided that such Member shall be entitled, from time to time, to change the said domicilium but that any new domicilium selected shall be a physical address situate in

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the Republic, and that the change shall only be effective on receipt of written notice thereof by the HOA at its domicilium.

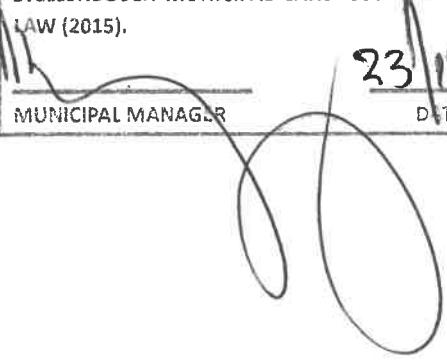
- 24.2 It shall be competent to give any notice to Members by telefax or e-mail where he has advised the Trustees in writing of his telefax number or e-mail address.
- 24.3 A notice shall be deemed to have been properly served on the date, 5 (five) days after posting to the Member's domicilium address, or if faxed, e-mailed or delivered, on the day of faxing, e-mailing or delivery thereof to the Member's elected telefax number, e-mail address or domicilium address respectively.
- 24.4 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the HOA, subject to the following:
- 24.4.1 such address shall be the address of the Chairperson, or of a Trustee nominated by the Trustees, or the address of any duly appointed Managing Agent; and
- 24.4.2 the Trustees shall give notice to all Members and CSOS of any change of such address.

**25. OBLIGATION TO BUILD, RENOVATIONS / EXTENSIONS & APPROVAL OF PLANS**

- 25.1 Each Member undertakes to erect a dwelling house when one has not already been built on the Erf. In this regard the Member shall be obliged to complete building work within 21 months after the date of first registration of transfer of the Erf into his name. The Member undertakes to complete the plan approval process (both with the HOA and the Local Authority) within 6 months from the date of purchase and to commence building works within 3 months thereafter. Should the Member not complete the approval process within 6 months of registration or not commence building within 3 months after approval was obtained, double levies will apply until completion of the dwelling. The weather and availability of building materials and labour permitting, the building process shall be a continuous process. After 9 months from the date of first registration of transfer of the Erf into his name, should the Member stop building, and fail to continue building after 14 (fourteen) days written notice, the Member shall be liable to pay double levies by way of penalty for each day that building has stopped until completion of the dwelling. The Member shall further not be entitled in any way to donate, sell, exchange or in any way alienate the property without the prior written consent of the HOA until such time as a dwelling house has been erected on the Erf as envisaged herein.
- 25.2 Should building work not be completed (as determined exclusively by the Trustees upon advice from the HOA Architect and Local Authority) by the end of the aforementioned 21 month period, then double levies shall be applied to the Member's Erf until such time as it is completed. For clarity a flow diagram is appended hereto.
- 25.3 The Trustees, may in their absolute discretion, modify these restrictions and charges in the event of extenuating circumstances. Any such modification shall be reported to the Members at the AGM.

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- 25.4 Prior to the commencement of any building work on an Erf, all plans and specifications of all improvements on the Erf shall, before being submitted by the Member to the Local Authority, be subject to the written approval of the Trustees pursuant to recommendations in writing from the designated Architect of the HOA. Such plans may only be drawn and presented by a registered architect. The HOA Architect shall have absolute discretion in deciding whether to recommend the Trustees to approve or refuse to approve such plans and specifications.
- 25.5 The HOA has formulated architectural guidelines for improvements to the property and these guidelines shall operate as the guidelines of the HOA's Architect unless and until altered by the HOA, and the attention of all Members is drawn to these guidelines. No plans shall be accepted for consideration from the Member's architect unless the Member's architect has certified thereupon that he has thoroughly familiarised himself with the aforesaid guidelines and that in this professional opinion the plans being submitted by him, confirm thereto.
- 25.6 Any subsequent modifications or extensions to an existing building which is subject to the approval of the Local Authority, shall be strictly in accordance with the HOA architectural guidelines and subject to the pre-approval process set out in this clause 24.
- 25.7 The Member may select a building contractor subject to approval by the Trustees (such approval shall not be unreasonably withheld), to erect, a dwelling or to improve or modify external façade of an existing building on the Erf. The Member shall procure that the builder signs the builder's code of conduct agreement with the HOA to regulate the building activities on the Erf and provides a copy of the builder's liability insurance certificate. No building work shall be commenced with or carried out, until such time as the code of conduct agreement aforesaid has been signed to the satisfaction of the Trustees and any deposit thereunder paid.

## **26. DISPUTE RESOLUTION**

- 26.1 In the event of any dispute arising in respect of this Constitution and/or the Rules or Regulations, the HOA and the Member(s)/occupiers in dispute shall refer the matter to CSOS, provided that it falls within the scope of the provisions of section 39 of the Community Schemes Ombud Service Act, No. 9 of 2011,.
- 26.2 The Trustees shall file copies of this Constitution and its Rules as amended from time to time as and when required by the CSOS rules and regulations.
- 26.3 Notwithstanding anything to the contrary contained in this clause, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Constitution, the Rules or Regulations, or for any order of an urgent nature.

  
*L. Avenue de F. van der Merwe*

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**27. AMENDMENTS TO CONSTITUTION**

- 27.1 The Constitution shall not be altered or amended in any way save by way of a Special Resolution adopted by the Members.
- 27.2 In addition to the requirements set out in clause 26.1 above, no amendment or alteration to the Constitution shall be binding and effective which:
- 27.2.1 concerns a matter as provided for in section 29 of the By-Law; or
- 27.2.2 has the effect of dissolving the HOA;
- without the prior certification in writing by the Local Authority.
- 27.3 Notwithstanding the aforesaid, the Trustees, or any individual authorised by them, may alter this Constitution in any manner necessary to correct a patent error in spelling, punctuation, reference (including incorrect or outdated legislation), grammar or similar defect on the face of the document by sending a notice of any alteration made by delivering a copy of such amendments to each Member by ordinary mail or e-mail.
- 27.4 Any amendment of this Constitution contemplated in terms of clause 26.2 above must be lodged with the Local Authority which shall certify it in terms of section 29(6) of the By-Law.
- 27.5 It is hereby recorded that the Local Authority is exempt from liability for any damage which may be caused by its certification of this Constitution, or any amendment thereof, or by the loss of this Constitution or amendment thereof.

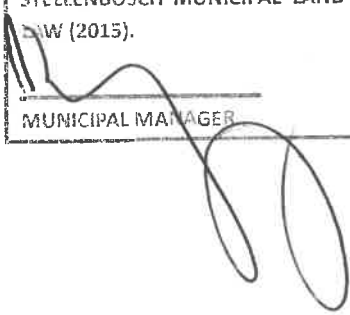
**28. HOA FAILING TO MEET AN OBLIGATION OR CEASING TO FUNCTION**

- 28.1 If the HOA ceases to function or carry out its obligations, the Local Authority or any affected person, including a Member of the HOA, may apply:
- 28.1.1 in terms of section 15(2)(q) of the By-Law to disestablish the HOA, subject to:
- 28.1.1.1 the amendment of the conditions of approval to remove the obligation to establish an owners' association; and
- 28.1.1.2 the amendment of title conditions pertaining to the owners' association, to remove any obligation in respect of an owners' association;
- 28.1.2 in terms of section 15(2)(r) of the By-Law for appropriate action by the Local Authority to rectify a failure of the HOA to meet any of its obligations in respect of the control over or maintenance of services contemplated in sub-section 29(3)(b) of the By-Law; or
- 28.1.3 to the High Court to appoint an administrator who must exercise the powers of the HOA to the exclusion of the HOA.
- 28.2 In considering an application contemplated in sub-clause 27.1.1.1, the Local Authority must have regard to:
- 28.2.1 the purpose of the HOA;



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- 28.2.2 who will take over the control over and maintenance of services for which the HOA is responsible; and
- 28.2.3 the impact of the disestablishment of the HOA on the Members of the HOA and the community concerned.
- 28.3 The Local Authority or the affected person may recover from the Members of the HOA the amount of any expenditure incurred by the Local Authority or that affected person, as the case may be, in respect of any action taken in terms of sub-section 27.1.
- 28.4 The amount of any expenditure so recovered is, for the purposes of section 29(7)(a) of the By-Law, considered to be expenditure incurred in connection with the HOA.

## **29. WINDING UP**

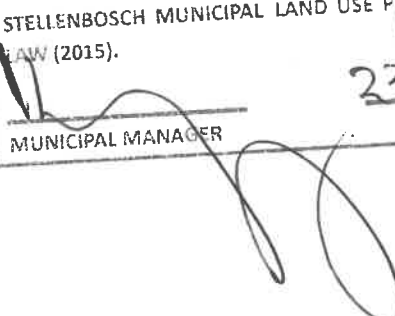
- 29.1 The HOA may be wound up by resolution of the Members in general meeting provided that:
  - 29.1.1 75% (seventy five per centum) of all Members in the Estate vote in favour thereof; and
  - 29.1.2 the Local Authority consents thereto in writing.
- 29.2 In the event of such winding up, it shall be the duty of the Trustees, or a Trustee appointed by them, to convert the assets of the HOA into cash, pay all liabilities of the HOA and thereafter distribute the nett residue (if any) to all the Members in proportion to the Levies paid at that time.

## **30. TAX EXEMPTION**

- 30.1 In order to qualify for exemption in respect of the levy income in terms of section 10(1)(e)(i)(cc) of the Income Tax Act, the following provisions shall apply:
  - 30.1.1 the main objective of the HOA is to manage the collective interest common 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;
  - 30.1.2 the HOA is not permitted to distribute its funds to any person other than to a similar association of persons;
  - 30.1.3 on dissolution, the remaining assets of the HOA, must be distributed to a similar association of persons, which is also exempt from Income Tax in terms of section 10(1)(e)(i)(cc) of the Income Tax Act;
  - 30.1.4 any amendments to this Constitution shall be submitted to the Commissioner for the South African Revenue Service;
  - 30.1.5 funds available for investment shall only be invested with a supervised entity as defined in section 1 of the Financial Sector Regulations Act, 2017, as amended from time to time and includes any substituted legislation;

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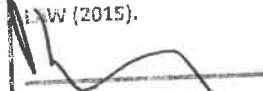
- 30.1.6 the HOA is or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Service;
- 30.1.7 annual returns of income tax together with financial statements shall be submitted to the Tax Exemption Unit.

**31. GOVERNING LAW**

This Constitution shall be governed by the laws of the Republic of South Africa

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CITY COUNCIL

