



# STELLENBOSCH

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Application Number: LU/13593

Our File Reference Number: Farm1646/1-20, Paarl

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 PERMISSION REQUIRED IN TERMS OF CONDITION OF APPROVAL: FARM 1646/1-20, PAARL DIVISION**

1. The above application refers.
2. The duly authorised decision maker has decided on the above application as follows:
  - 2.1 That the application for a Permission required in terms of a condition of approval for the Two Rivers Development on FARM 1646/1-20 in terms of Section 15(2)(l) of the Stellenbosch Municipal Land Use Planning Bylaw 2015 in order to:
    - 2.1.1 Approve the Constitution of the Two Rivers Property Owners Association, dated: November 2021 (Attached as **Annexure B**)

**BE APPROVED** in terms of Section 60 of the said Bylaw and subject to conditions of approval.

### **The approval is subject to the following conditions imposed in terms of Section 66 of said Bylaw:**

- 2.1.2 The approval only applies to the application under consideration 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.
- 2.1.3 The approval granted shall not exempt the applicant from complying with any other legal prescriptions or requirements that might have a bearing on the proposed use.



- 3 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.
  
- 4 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



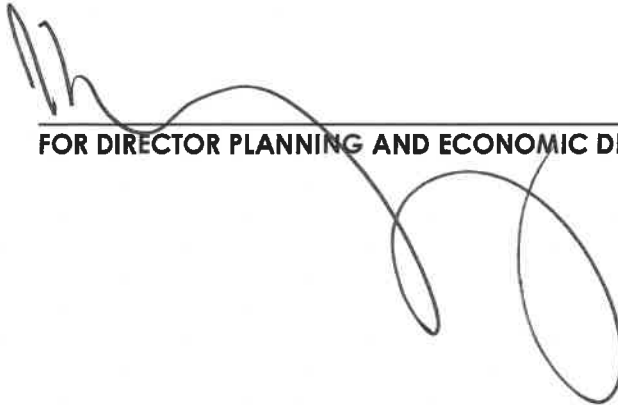
- (i) any issue that the appellant wishes the Appeal Authority to consider in making its decision;
- (j) That the appeal includes the following declaration by the Appellant:
  - (i) The Appellant confirms that the information contained in the subject appeal and accompanied information and documentation 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.

- 5 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)
- 6 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.
- 7 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>).
- 8 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.



- 9 Kindly note that no appeal right exists in terms of Section 62 of the Local Government Municipal Systems Act, No 32 of 2000.
- 10 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

22/3/2022  
DATE:







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## **ANNEXURE B**

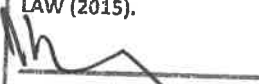


*Execution copy – 26 Nov 2021*

# CONSTITUTION

## THE TWO RIVERS PROPERTY OWNERS ASSOCIATION

**AMENDED November 2021**

STELLENBOSCH MUNICIPALITY	
THE OWNERS ASSOCIATION CONSTITUTION IS HEREBY APPROVED IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015).	
 MUNICIPAL MANAGER	22/3/2022 DATE





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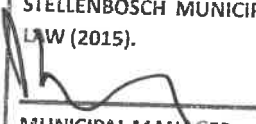
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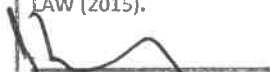
**CONSTITUTION****THE TWO RIVERS PROPERTY OWNERS ASSOCIATION****PREAMBLE:**

- A. This constitution of the TWO RIVERS PROPERTY OWNERS ASSOCIATION was adopted by a Special Resolution passed by its Members on the date recorded herein. This constitution will replace all previous Constitutions and will become binding on Members on its approval by the Stellenbosch Municipality as required in terms of the conditions of rezoning and subdivision issued by the Winelands District Council on 19 November 2000 in terms of the Land Use Planning Ordinance 15/1985 (Western Cape) when approving, amongst other, the subdivision and separate registration of each of the properties described in paragraph B below.
- B. This Constitution is in respect of the following properties being thirteen Portions of the consolidated Farm No. 1646, Division of Paarl namely Portion 1, Portion 2, Portions 4 to 13 both inclusive and Portion 20 (which comprises a consolidation of the previously registered Portions 3 and 19), as well as any further subdivisions of any of the aforementioned Portions which may be approved by the Association and the competent authorities in future.
- C. Two Rivers Farm comprises a group of independent farms set in a rural farming environment within the magisterial jurisdiction of Stellenbosch Municipality. All of the Members of the Association, who all hold compulsory membership of the Association by reason of the ownership of the Portions constituting Two Rivers Farm, share assets which include:
- 2 (two) main entrances and gates linked by a single road traversing two bridges over two rivers (defined below as "the Main Servitude Road");
  - 2 (two) pump stations on the Bergriver for the supply of irrigation water;
  - a single bulk potable water supply;
  - fire hydrants and other equipment.
- D. Each Member shall be entitled to live and conduct his/her/its farming operations in an agricultural/rural environment within the laws of the Republic of South Africa, governing municipal laws and by-laws and the rules and regulations of the Association.



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E. All Members shall abide by the terms and conditions of this Constitution, the Architectural and Landscaping Design Manual and Code of Conduct, as hereinafter defined. All Members shall procure that their families, employees, contractors and guests maintain, uphold and comply with the aforesaid, thereby promoting that all Members shall enjoy full benefit, use and enjoyment of their Portions and, generally, enjoy a peaceful and harmonious lifestyle within Two Rivers Farm.

1. **NAME**

The name of the Association is:

**THE TWO RIVERS PROPERTY OWNERS ASSOCIATION**

2. **DEFINITIONS**

In this Constitution, unless the context indicates the contrary

- 2.1 **"Architectural and Landscaping Design Manual"** means the approved architectural and landscaping design manual dated June 2009 and any further changes and amendments adopted in respect thereof from time to time and any reference to the "Architectural Landscaping Design Manual" shall accordingly be a reference to the most recently adopted version of such manual, which changes shall be of effect upon adoption thereof by the Association;
- 2.2 **"Association"** means the Two Rivers Property Owners Association established for Two Rivers Farm at the insistence of the Winelands District Council in terms of Section 29(1) of the Land Use Planning Ordinance No. 15/1985 (Western Cape) in approving of the subdivision of the Portions from the consolidated Farm Number 1646, Division Paarl, in terms of Section 25(1), read with Section 42(1) of the said Ordinance;
- 2.3 **"Code of Conduct"** means any code of conduct proposed by Excom and adopted by the Members from time to time by way of an Ordinary Resolution, which shall record conduct rules to apply to all Members;
- 2.4 **"Constitution"** means the constitution of the Association as set out in this document;
- 2.5 **"delinquent"** means, in relation to any Member, a member who breaches any of the provisions of this Constitution and remains in such breach, notwithstanding having been given reasonable written notice, which shall be not fewer than 7

Handwritten signatures in black ink, appearing to be initials or names, located in the bottom right corner of the page.

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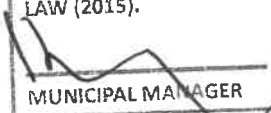
(seven) days, to remedy such breach;

- 2.6 "Excom" means the Executive Committee constituted in terms of Clause 7 hereof;
- 2.7 "Excom Members" means the persons forming part of the Excom from time to time;
- 2.8 "levies" means the annual general levies and/or special levies and/or commercial levies provided for in Clauses 23 and 27 and "levy" shall be the singular thereof having a similar meaning;
- 2.9 "Main Servitude Road" means the Main Servitude Road traversing from the R45 Eastern gate over the Wemmershoek river, within Two Rivers Farm through to and over the Bergriver and to the R45 Western gate, it being recorded that the Western gate and part of the road leading to that gate is situated on and traverses land which is not part of Two Rivers Farm;
- 2.10 "Member" means the registered owner of a Portion (where two or more persons are the registered owners of a Portion they shall jointly be deemed to be one Member but shall be jointly and severally liable for the due fulfilment of all obligations arising from such Membership). Should the registered owner be in the name of a company, trust or close corporation then the designated representative of such entity shall be jointly and severally liable for the due fulfilment of all obligations arising from such Membership;
- 2.11 "Municipality" means the Stellenbosch Municipality and its successors;
- 2.12 "Ombud" means the ombud established in terms of the Community Schemes Ombud Service Act 9 of 2011 ("CSOS");
- 2.13 "Ordinary Resolution" means a resolution adopted at a quorate annual or special general meeting, with the support of more than 50% (fifty percent) of the total votes, held by the Members present or represented by proxy at such meeting;
- 2.14 "Portion" means any one of Portions numbered 1, 2, 4 to 13 inclusive and 20 of the Consolidated Farm 1646, Division of Paarl, which collectively comprise Two Rivers Farm;
- 2.15 "Portions" means certain or all of the properties comprising a Portion;
- 2.16 "Special Resolution" means a resolution adopted at a quorate annual or special



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general meeting of the Association, with the support of at least 75% (seventy five percent) of the total votes held by the Members present or represented by proxy at such a meeting;

- 2.17 "Two Rivers Farm" means, collectively, Portions 1, 2, 4 to 13 and 20 of Consolidated Farm 1646 Division of Paarl;
- 2.18 "Unanimous Resolution" means a resolution adopted unanimously by all Members at an annual or special general meeting of Members, at which meeting not fewer than 80% (eighty percent) of all of the Members are present in person or represented by proxy;
- 2.19 Words importing the singular number shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and neuter genders and the neuter gender shall include the masculine and feminine genders.

### 3. HEADNOTES

The headnotes to the clauses in this Constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

### 4. THE STATUS OF THE ASSOCIATION

The Association is an association:

- 4.1 with separate legal personality, capable of suing and being sued in its own name, and
- 4.2 none of whose Members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in the Association and be controlled by Excom in terms of, and subject to the provisions of this Constitution, and
- 4.3 not for profit, but for the benefit of the Members.

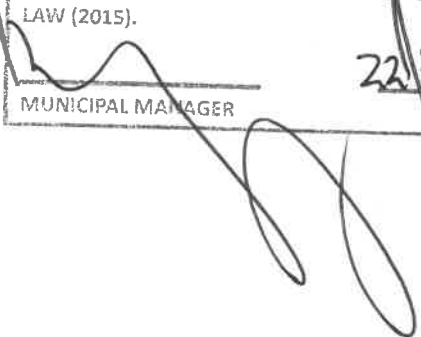
### 5. OBJECTS AND POWERS OF THE ASSOCIATION

The objects and powers of the Association are to manage the common assets of the Association and to promote the common interests of the Members, which shall include:

- 5.1 to control the design and specifications as set out in the Architectural and Landscaping Design Manual in respect of the buildings erected and to be erected

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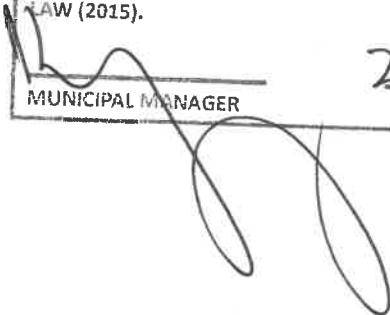
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on the Portions with a view to promoting a high standard of development with acceptable aesthetic, environmental and architectural styles and design criteria in order to achieve a harmonious development for the benefit of the Members;

- 5.2 to ensure compliance by Members of the conditions of the architectural style and character, design criteria, specifications and land usage control in accordance with the Architectural and Landscaping Design Manual, with particular reference to conditions dealing with aesthetic and building restrictions and requirements, and where necessary to ensure that the relevant authority enforces such conditions of establishment;
- 5.3 to amend, by an Ordinary Resolution, the Architectural and Landscaping Design Manual from time to time as it may become necessary;
- 5.4 to control, manage, improve, preserve, repair and maintain the Main Servitude Road, including bridges, traversing Two Rivers Farm;
- 5.5 to administer and manage general security arrangements on Two Rivers Farm with particular reference to vehicular and pedestrian access control of the public at the two access control points on the Main Servitude Road traversing Two Rivers Farm, including the nature and type of security to be provided at those access points from time to time;
- 5.6 to maintain the reticulation system for the potable water applicable to all Portions so as to ensure each Member receives sufficient water as contemplated in Schedule 1 to the National Water Act 36 of 1998 and to act as a water services intermediary or water services provider in so far as the Water Services Act No. 108/1997 may be applicable to the Excom fulfilling its obligations in terms of this Constitution;
- 5.7 to promote and enforce environmental standards for community living on Two Rivers Farm in order to enhance and preserve the nature of Two Rivers Farm in such a way that Members may derive the maximum collective benefit therefrom;
- 5.8 to ensure that all Members maintain their Portions in a clean and tidy condition free from any alien vegetation and litter and adhere to the specifications imposed by any government department or consultant appointed by the Association from time to time;
- 5.9 to promote all facets of nature conservation, to encourage the reintroduction of

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indigenous flora and fauna on Two Rivers Farm;

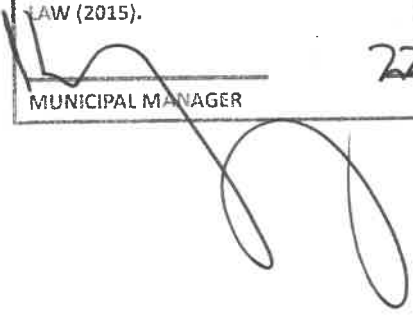
- 5.10 to appoint any professional or committee of professionals to furnish advice with regard to the carrying out of the Association's objects;
- 5.11 to employ any agent to carry out the Association's objects;
- 5.12 to adopt a Code of Conduct necessary to ensure the orderly compliance by Members of any of the objects of the Association, and to amend and to repeal any Code of Conduct so adopted, which Code of Conduct so made:
  - 5.12.1 shall be binding upon all Members by virtue of their Membership of the Association;
  - 5.12.2 shall not be in conflict with any act or regulation; and
  - 5.12.3 shall be reasonable and shall apply equally to all Members;
- 5.13 to impose on and enforce payment by any delinquent Member of any reasonable penalty for failing to comply with this Constitution or any Code of Conduct, the Architectural and Landscaping Design Manual or any amendments thereof adopted by the Association from time to time;
- 5.14 to insure, insofar as it may be possible to do so, all of the assets from time to time owned or managed by the Association.

**6. MEMBERS**

- 6.1 Membership of the Association shall be compulsory and automatic upon the registration of any Portion in the name of the Member. Members shall be obliged to comply with the provisions of this Constitution, the Architectural and Landscaping Design Manual and any Code of Conduct as may be adopted by the Association from time to time. The compulsory Membership of any owner of a Portion shall be registered as a condition of title in the title deed of each Portion.
- 6.2 No Member shall be entitled to cease to be a Member of the Association while remaining the registered owner of a Portion nor shall any Member be entitled to resign from Membership of the Association.
- 6.3 When a Member ceases to be a registered owner of a Portion, the Member shall ipso facto cease to be a Member of the Association.

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- 6.4 Membership shall be transferred by the passing of transfer of any Portion from the previous Member to the new Member. A Member's successor-in-title to a Portion shall be liable, as from the date upon which Membership is obtained pursuant to the transfer of that Portion, to pay the levies attributable to that Portion.
- 6.5 A Member shall not be entitled to sell or transfer any Portion unless it is a condition of the deed of sale that the new owner becomes a Member of the Association.
- 6.6 Any Portion sold may not be transferred without the written consent of the Association, which consent shall not be unreasonably withheld, which restriction on transfer of ownership shall be contained in the Title Deed to each Portion.
- 6.7 No Member shall be entitled or permitted to transfer the Member's Portion until Excom has certified in writing that the Member has at the date of transfer paid all amounts owing by the Member to the Association and is not in breach, insofar as the Members' Portion(s) is or are concerned, of any of the provisions of this Constitution.
- 6.8 In the event of a change of beneficial ownership of a company, close corporation or trust by the transfer of the shares, Member's interest or beneficial interest, then the written consent of the Association shall be required prior to the transfer of the aforesaid rights, which consent shall not be unreasonably withheld.
- 6.9 A Member shall ensure that family members, tenants, invitees/guests and employees of the Member adhere to the provisions of this Constitution and any rules or regulations made in terms hereof, failing which the Member shall be held responsible for such breach and shall be answerable to the Association.

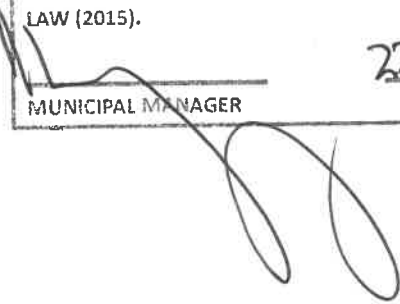
## **7 EXECUTIVE COMMITTEE**

- 7.1 Excom will be constituted at each annual general meeting of the Association. Excom shall consist of a minimum of three (3) and a maximum of 5 (five) persons who shall be Members or the spouses or life partners of Members. In the event of any Member being a trust, company or close corporation, any one of the trustees, directors and/or members of such entity may be elected to Excom.
- 7.2 Nominations of persons to serve on Excom shall be made in writing by a Member or Members and shall be submitted at the commencement of each annual general meeting of the Association. Nominations so to be submitted shall be co-signed by the nominee in confirmation of his/her acceptance of his/her nomination. Excom



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Members shall be voted in by Ordinary Resolution, the voting upon which shall be taken by poll, in a sequence of votes on each nominated person until all Excom Members are elected. The order in which voting shall take place on nominated persons shall be determined by a lot, to be drawn by the chairman of Excom serving for the year terminating at the specific annual general meeting.

7.3 Any serving Excom Member shall be eligible for re-election at each annual general meeting.

7.4 Each Excom Member shall hold office until such time as he or she vacates office as contemplated in Clause 8.

7.5 Excom shall have the right to co-opt a Member or a Member's representative onto Excom as an extra Excom Member for a period of time or for a specific task, should such a Member or Member's representative have a specific skill or area of expertise or experience in a particular matter. Co-opted Excom Members shall not have any voting rights in respect of any matters serving before and to be decided upon by Excom.

## 8 VACATION OF OFFICE

An Excom Member shall cease to hold office as such if:

8.1 by notice in writing to Excom, he or she resigns;

8.2 he or she is or becomes of unsound mind;

8.3 he or she surrenders his or her estate as insolvent or his or her estate is sequestrated;

8.4 he or she is convicted of an offence which involves dishonesty;

8.5 he or she absents himself or herself from three consecutive meetings of Excom without special leave of absence from Excom;

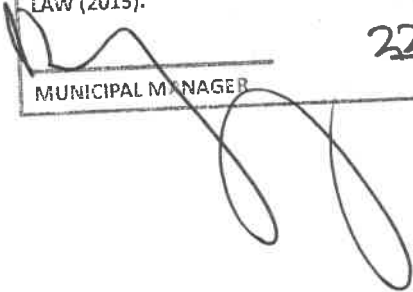
8.6 he or she is removed from his or her office by an Ordinary Resolution taken at a general meeting of the Association;

8.7 he or she or the legal entity he or she represents ceases to be a registered owner of a Portion;

8.8 he or she, as Member, becomes delinquent or the Member for whom he or she

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acts as representative as contemplated in clause 2.10 hereof, becomes delinquent;

8.9 he or she dies.

## **9 ROLES OF EXCOM MEMBERS**

9.1 Within 7 (seven) days after the annual general meeting at which Excom Members are elected, the Excom Members shall meet and at such meeting shall define objectives and allocate responsibilities for the ensuing year.

9.2 Subject to clause 8, all Excom Members shall remain in office for a period of one year or until the election of a new Excom, whichever period may be the longer.

## **10 EXCOM MEETINGS AND PROCEDURES THEREAT**

10.1 Excom shall meet at such time and place as shall be decided by Excom from time to time but in any event not less than quarterly. Meetings may take place in person or virtually, by conference facilities.

10.2 Two Excom Members may at any time convene a meeting of Excom by giving to the other Excom Members no less than 10 days written notice of the proposed meeting, which notice shall specify the reason for calling such a meeting; provided that, in cases of emergency, such shorter notice as is reasonable in the circumstances may be given.

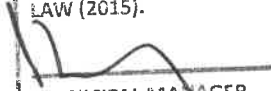
10.3 Three or one half of the serving Excom Members, whichever number shall be the greater, shall form a quorum at any meeting of Excom. Should the Chairman not be part of the quorum, the Excom Members present at the relevant meeting shall appoint a temporary chairman to act as Chairman for the specific meeting.

10.4 All matters serving at any meeting of Excom shall be determined by a majority of those present and voting. Each Excom Member shall have one vote irrespective of the number of Portions within Two Rivers Farm which may be owned by an Excom Member. In the event of an equality of votes between Excom Members on any matter serving at an Excom meeting, the matter concerned shall no longer serve before Excom and shall be referred to the Members for consideration and determination in a general meeting.

10.5 Excom, as far as reasonably practical, shall notify Members in advance of each Excom meeting to be held and, with such notification, provide the Members with a

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copy of the agenda for the meeting. Any Members wishing to provide input on the agenda items may do so by way of e-mail or other communications addressed to the Chairman of Excom.

- 10.6 Excom shall keep minutes of all its meetings, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after each meeting and shall then be certified as correct by all Excom Members who were in attendance at each meeting. All minutes of Excom shall be available for inspection by any Member of the Association on request. Excom shall maintain a complete record of all minutes in a manner and in a format which will ensure that all such minutes remain open for consideration and, if requested, copying by all Members. This may include the storage of minutes on a member accessible electronic data base such as "DropBox". Minutes of each Excom meeting shall be circulated by Excom to all Members within 14 (fourteen) days after the confirmation of such minutes by all Excom Members.
- 10.7 All competent resolutions recorded in the minutes of any Excom meeting shall be valid and of full force and effect as therein recorded, with effect from the date of the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of Excom shall be of any force or effect, or shall be binding unless such resolution is competent within the powers of Excom.
- 10.8 Any written resolution signed by all Excom Members shall be valid in all respects as if it had been duly passed at a meeting of Excom, duly convened. For purposes of this clause 10.8, any confirmatory e-mail transmitted by any Excom Member shall qualify as a signature of the Excom Member concerned of the specific resolution.

## 11 POWERS

Save for such matters which are in terms of this Constitution specifically reserved for consideration and determination by the Members, the management and administration of the Association shall vest in Excom which may exercise all such powers of the Association and do, on behalf of the Association, all such acts as may be exercised and done by the Association itself. Without in any way limiting the generality of the foregoing, such powers shall include but not be limited to the following:

- 11.1 the performance of such acts as are necessary to accomplish the objects expressed or implied herein;

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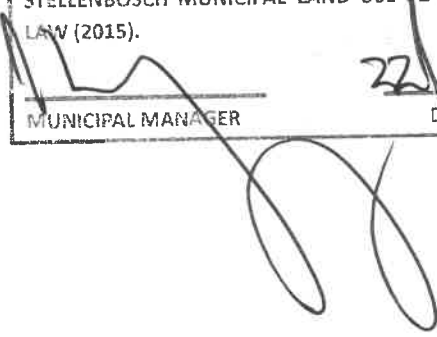
- 11.2 the investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;
- 11.3 the operation of a banking account with all powers required by such operations;
- 11.4 the making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association;
- 11.5 the employment and payment of agents, servants and any other parties;
- 11.6 the proposal, for adoption by the Members by Ordinary Resolution, of any Code of Conduct, including any amendments or repeal thereof, which Code of Conduct, upon the adoption thereof by the Members, shall be binding upon Members as if such Code of Conduct forms part of this Constitution;
- 11.7 the right to sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose;
- 11.8 the proposal of annual general and/or special levies and/or commercial levies to become payable by Members as provided in Clause 23 hereof;
- 11.9 the preservation of the architectural theme of Two Rivers Farm and the adjudication upon any proposed extension, addition and/or alterations to any improvements or erections situate on any Portion in accordance with the Architectural and Landscaping Design Manual;
- 11.10 the management of general complaints and building objections as may be raised, from time to time, by Members;
- 11.11 the imposition of commercial levies as provided for in clause 0 hereof;
- 11.12 the imposition of scrutiny fees as provided for in clause 27 hereof; and
- 11.13 the imposition, within its discretion, of reasonable penalties on delinquent Members as provided for in clause 5.13 above, including the terms of payment of any such penalties.

## 12 VALIDITY OF ACTS OF EXCOM MEMBERS

Any act performed by Excom Members 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 Excom Member, be as valid as if such Excom Member has

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been duly appointed in office.

### **13 REMUNERATION**

Excom Members shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them in connection with and incidental to the performance of their duties as Excom Members but save as aforesaid, shall not be entitled to any other remuneration, fees or salary, in respect of the performance of such duties.

### **14 INDEMNITY**

No Excom Members shall be liable to the Association or to any Member thereof, or to any other person whomsoever for any act or omission by himself, by the Association or by its servants or agents. An Excom Member shall be indemnified by the Association against any loss or damage suffered by him in consequence of any purported liability, provided that such Member has, upon the basis of information known to him, or which should reasonably have been known to him, acted in good faith and without gross negligence.

### **15 GENERAL MEETINGS OF THE ASSOCIATION**

- 15.1 The Association shall before 15 May in each year, hold a general meeting as its annual general meeting, in addition to any other general meetings during that year, and shall specify the meeting as such in the notices, calling the Meeting.
- 15.2 Such Annual General Meeting shall be held at such time and place as Excom shall decide from time to time.
- 15.3 All general meetings other than annual general meetings shall be called special general meetings.
- 15.4 Excom may, whenever they think fit, convene a special general meeting.
- 15.5 Minutes shall be kept of all general meetings of the Association, although not necessarily verbatim. The minutes shall be reduced to writing within 7 (seven) days after the completion of each general meeting and shall thereafter be circulated in draft to all Members and/or proxies who were present at the meeting for comment or approval. The Chairman shall consider comments, if any, on the draft minutes which may be received from such Members within 10 (ten) days after the date of circulation of the draft minutes and shall then settle and certify the minutes. Once certified by the Chairman, the minutes shall be circulated to all



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Members of the Association. The certified minutes shall be stored and held available to Members in the manner as contemplated in clause 10.6 above.

- 15.6 In respect of matters which served before a general meeting which require urgent attention or action, the Chairman shall have the discretion to prepare and certify an extract of the minutes of the specific meeting which records the decision taken or resolution passed in respect of such matter(s) at the specific meeting.

## 16 NOTICE OF MEETINGS

- 16.1 The annual general meeting shall be convened by the Chairman of Excom on not less than twenty-one (21) days' notice in writing. The notice shall be inclusive of the day on which it is given and shall specify the place, the day and the hour of the meeting and the general nature of the matters to be discussed, provided that any meeting shall, notwithstanding that it is called by shorter notice than that specified, be deemed to have been correctly called if it is so resolved by a Special Resolution passed by the Members present or represented by proxy at any meeting so convened.
- 16.2 The Chairman of Excom or any three Members, by written notice to the Chairman of Excom, may convene a special general meeting of Members by giving to all Members not less than 10 (ten) days written notice of the proposed meeting, which notice shall specify the reason for calling such meeting and shall comply, other than for the longer notice period specifically applicable to notices to be given in terms of clause 16.1, with the notice requirements stipulated in clause 16.1.

## 17 VALIDITY OF MEETING

The accidental omission of giving notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, shall not invalidate the proceedings of that meeting.

## 18 QUORUM; POSTPONEMENT AND ADJOURNMENT

- 18.1 No matters shall be discussed at any meeting unless a quorum is present when the meeting commences. A quorum for all meetings of Members shall be Members present in person or by proxy holding not less than 50% (fifty per cent) of the total number of votes available to be cast by all Members from time to time.
- 18.2 Should a quorum not be present at any properly convened annual or special general meeting within 30 (thirty) minutes after the time scheduled for the meeting



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to commence, the meeting shall be postponed, without any motion, vote or further notice, for one week.

18.3 The Association shall not be required to give further notice of a meeting which has been so postponed or adjourned unless the location for the postponed or adjourned meeting is different from the location of the postponed or adjourned meeting or the location for an adjourned meeting is announced at the time of its adjournment, in the case of an adjourned meeting.

18.4 If at the time appointed for a postponed meeting to begin or for an adjourned meeting to resume, the quorum requirements of clause 18.1 have not been satisfied, the Members present in person or proxy at such meeting will be deemed to constitute a quorum.

## 19 CHAIRMAN

19.1 The Members of the Association shall at each annual general meeting of the Association elect a Member to serve as Chairman of both the Association and Excom.

19.2 The Chairman shall call and preside at every general meeting of Members and Excom meetings.

19.3 The Chairman elected shall hold office for a 1 (one) year term or until a new Chairman is elected after the following annual general meeting, whichever period shall be longer.

19.4 The election of the Chairman to serve for each ensuing year to take place at each annual general meeting shall be conducted after the Members of Excom have been elected at such meeting. The election of the Chairman shall take place on a single poll. All candidates proposed as Chairman, who shall be required to confirm their availability to serve as Chairman at such meeting, shall be listed on a single ballot paper. The candidate who should receive the highest number of votes at the meeting shall be the elected chairman.

## 20 VOTES

20.1 At all general meetings resolutions put to the vote, shall be voted on by a show of hands unless by majority vote the meeting decides that voting shall be by ballot, in which event the ballot shall take place immediately as a secret ballot.

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**20.2** Voting, whether by show of hands or by ballot, shall take place in accordance with the following provisions:-

**20.2.1** each Member present in person shall have one vote for every Portion registered in the Member's name;

**20.2.2** each person present as proxy for a Member shall have one vote for every Portion registered in the name of the Member for whom the person is proxy;

**20.2.3** each Member and person present as proxy for a Member shall indicate clearly how he or she casts each vote to which he or she is entitled as aforesaid;

**20.2.4** all resolutions, except as otherwise provided herein, shall be adopted as Ordinary Resolutions;

**20.2.5** the Chairman of the meeting shall count the votes cast for and against the resolution and shall declare it carried or lost as the case may be;

**20.2.6** in the event of an equality of votes, the Chairman of any meeting shall have a casting as well as a deliberate vote;

**20.2.7** only a Member who shall have paid every levy due and any other amount(s) (if any) which is or are due and payable to the Association in respect of or arising out of the Member's membership at the date of any meeting, shall be entitled to vote on any question, either personally or by proxy, at such general meeting of the Association.

**20.3** Any resolution and every amendment of such resolution proposed by a Member for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.

## **21 AGENDA**

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

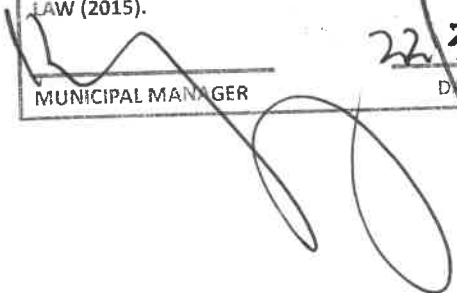
**21.1** the consideration of the Chairman's report;

**21.2** the review of the previous year's financial statements, the consideration of the report of the Auditors and the fixing of the remuneration of the Auditors;

**21.3** the review of the previous year's actions and transactions undertaken by Excom;

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- 21.4 the approval of the annual budget proposed by Excom;
- 21.5 the approval of the general levies and any special levies determined by Excom for the year which will take the proposed budget into account, for the Association's operational expenses and, if necessary, any additional capital expenses;
- 21.6 the determination of the upper limit of expenditure that Excom may incur without the sanction of a Special Resolution of the Members for unforeseen expenditure(s);
- 21.7 the election of Excom;
- 21.8 the election of the Chairman of the Association and Excom for the period until the next annual general meeting;
- 21.9 the specific action items and/or mandates to be pursued by Excom during the ensuing year;
- 21.10 the consideration of any other matters placed on the agenda at the request of any Member or raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions.

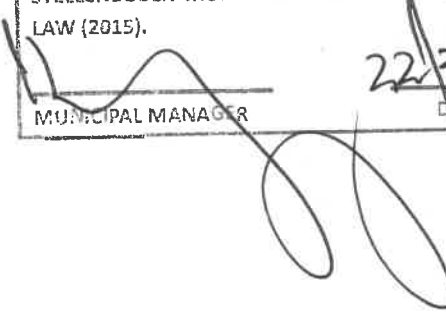
## **22 PROXY**

- 22.1 Votes may be cast in person or in terms of a valid written proxy as set out in Clauses 22.2 and 22.3 below.
- 22.2 The instrument appointing a proxy shall be in writing in the common form, or any form approved by Excom under the hand of the appointer, or of his attorney duly authorised in writing, or if such appointer is a company, under the hand of an officer duly authorised in that behalf.
- 22.3 The instrument of appointing a proxy, together with the power of attorney (if any) under which it is signed or a notarially certified copy thereof shall be deposited at the domicilium citandi of the Association or be transmitted to the Association's e-mail address of record at least 1 (one) hour before the time appointed for holding the meeting, or adjourned meeting, at which the person named in such instrument proposes to vote; otherwise the person so named shall not be entitled to vote in respect thereof.



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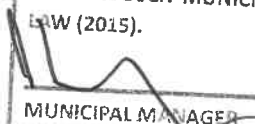
**23 ANNUAL GENERAL LEVIES, SPECIAL LEVIES AND COMMERCIAL LEVIES**

- 23.1 Excom shall propose reasonable annual general levies on each Member, in respect of each Portion owned by a Member for the purpose of meeting all expenses which the Association has and shall incur or to which Excom reasonably anticipates the Association will be put to defray the costs of managing and administering the Association to achieve its objects set out in Clause 5. Such levies may be fixed and calculated annually in advance and collected bi-annually in advance or as decided by Excom.
- 23.2 The annual general levies shall be approved by the Members by Ordinary Resolution at the annual general meeting and before 15 May each year and shall become due and payable on the first day of each payment period.
- 23.3 Excom may propose, for approval by the Members, by Ordinary Resolution a reasonable interim increase to the annual general levies from time to time should the need for such increased levies arise or circumstances so dictate.
- 23.4 Excom may, from time to time, determine and propose reasonable special levies to be paid by Members in addition to the annual general levies, should the need for such additional special levies arise or circumstances so dictate. Any special levies so proposed shall be subject to the approval by Members by a Special Resolution.
- 23.5 If any levies payable by a Member in terms of this Constitution are not paid within thirty days (30 days) of due date, then the Member failing to pay such levies shall become and be considered delinquent. For purposes of this clause 23.5, "due date" shall mean the date upon which the Association notifies the Members of the imposition of any such levies, which notification may be in the form of a levy invoice or statement submitted by the Association to the Members.
- 23.6 A Member whose levies are not paid up and has become delinquent for any period shall not, for as long as the Member remains delinquent, be entitled to nominate Members for election to Excom; serve on Excom; or vote at a general or special meeting of the Association or enjoy any other benefits otherwise available to Members generally but shall remain entitled to attend all general meetings of the Association and have access to all minutes of Excom and of general meetings of the Members.



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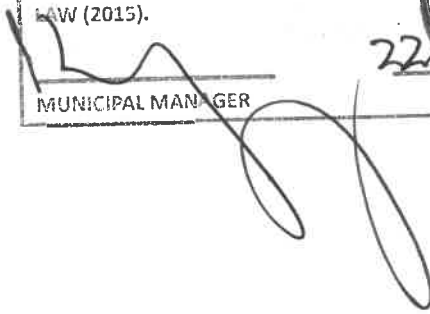


terms of this Constitution or any regulations made hereunder and remain in default for more than 7 (seven) days after being notified in writing to do so by Excom, Excom shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Association or any other Members may have in law, including the right to claim damages, to institute legal proceedings on behalf and in the name of the Association against such Member for the payment of such overdue amount.

- 23.11 Interest shall accrue on all arrear levies or other amounts owing by a Member to the Association at a rate equal to the published prime overdraft lending rate of the Association's commercial bankers, from time to time, plus 3% (three percent).
- 23.12 Members are entitled to propose and administer their own specific regional or other infrastructure or services independently or outside of general use, which will not be used by all Members, and only those who use or benefit from the specific infrastructure shall split the costs associated therewith equally between them, provided that the specific Members unanimously agree to share such costs.
- 23.13 In the event that any Member should dispute liability for any annual general levy, special levy, commercial levy or part of any such levies, the Member shall be obliged to pay the Association the levy or levies so placed in dispute and may do so under protest and on the basis that the Member's dispute shall be determined in terms of clause 34 as swiftly as possible, should the Member refer the dispute to arbitration.
- 23.14 Should Excom, of own accord or at the request of any Member or Members, propose any improvements or works to be carried out within Two Rivers Farm which may constitute improvements or works of a luxurious nature (i.e. being desirable but not necessary), no such improvements or works shall be undertaken by the Association unless the works or improvements and the manner in which the costs associated thereof will be financed, are first approved by a Unanimous Resolution adopted by the Members.
- 23.15 Should any Member conduct any activity on its Portion, including but not limited to farming, hospitality, guest houses, and building work, Excom may assess that the relevant activity has additional impact on the infrastructure and/or services serving Two Rivers Farm, and accordingly Excom may propose that such activity be taken into account in assessing differential levies. Alternatively, if it considers it appropriate, for example if the activity is of temporary nature such as building, Excom may impose a reasonable levy to be paid by such Member/s to the Association, either outright, or as a

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deposit against damages. Any such temporary levy, including the amount and the intervals within which it is to be paid, shall be subject to the prior approval by the Members, by way of a Special Resolution.

**24 FINANCIAL YEAREND; ACCOUNTS**

- 24.1 The financial yearend of the Association is the end of February of each year.
- 24.2 Excom shall cause proper books of accounts of the administration and finance of the Association to be kept at the domicilium of the Association or such other place or places as it may think fit.
- 24.3 Excom shall cause to be laid before the Association at the annual general meeting, books of account, balance sheets and reports of the Association.
- 24.4 At least once a year the accounts of the Association shall be examined and the correctness of the Income and Expenditure Account and the balance sheets ascertained by the Auditors.

**25 AMENDMENTS TO THE CONSTITUTION**

Any amendment or addition to the Constitution must be —

- 25.1 approved by a Special Resolution adopted by the Members; and
- 25.2 confirmed by the Municipality in writing.

**26 NON-LIABILITY OF MEMBER**

No Member of the Association shall incur any personal liability in respect of acts done or liabilities incurred by, or on behalf of, the Association.

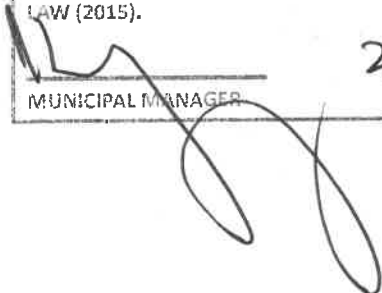
**27 SUBMISSION OF PLANS; CONSTRUCTION ACTIVITIES**

- 27.1 No Member shall submit any plans to the Municipality or commence the erection of, or alteration or addition to any building or other structure on any Portion or permit the same unless the plans thereof have first been submitted to and have been approved by Excom. Excom will forward all plans submitted to it to all Members for consideration, who will have 10 (ten) days from receipt of the plans to approve, comment or lodge any objections to such plans. Should no communication be received from any Member or Members during the said 10 (ten) day period, Excom shall proceed on the basis that all or any of the Members who do not submit any comments or objections during the said 10 (ten) day period have



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no comments or objections to such plans.

27.2 Approval of a Member's building plans will be subject to payment of a reasonable scrutiny fee by a Member, as determined by Excom from time to time. For avoidance of doubt, it is noted that the discretion and authority to approve all or any plans submitted by a Member to the Association shall vest in Excom who may or may not give heed to objections or comments relayed to it by Members.

27.3 All or any complaints or objections from any Member(s) with regard to plans submitted by another Member and/or building works carried out by another Member shall be considered and dealt with by Excom. Any Member who may have an objection or complaint about any building works or proposed building works to be carried out by another Member shall submit such complaint or objection in writing to the Chairman of Excom. The Chairman of Excom shall circulate, for comment, any such objection(s) or complaint(s) to the Members of Excom and all Members of the Association. The matter shall be considered at the first Excom meeting following the lodgement of the complaint or objection.

27.4 Should Excom uphold and support any objection or complaint received from a Member in respect of building works or proposed building works to be carried out by another Member, Excom shall engage the Member against whom the objection or complaint is raised. This may include Excom requiring such Member to provide Excom with all plan approvals or consents required by the Member for the specific building works. Should Excom and the Member(s) concerned not be able to resolve the issue or issues which gave rise to the complaint or objection submitted to Excom, Excom shall convene a general meeting of Members at which meeting the matter will be tabled for consideration by all Members. The decision taken by the Members at such meeting, by an Ordinary Resolution, shall be binding on all parties concerned.

## 28 NO SUBDIVISION OR REZONING

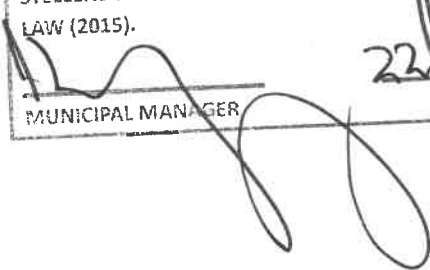
28.1 No Portion may be subdivided and/or rezoned without the prior written consent of all competent authorities and all Members entitled to vote at a annual general or special general meeting.

28.2 In the event of a subdivision of a Portion, the owners of the subdivided Portions shall all become separate Members of the Association.

28.3 No Portions may be consolidated without the prior written consent of the majority

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of the Members of the Association. Should any consolidation of Portions be approved, the Member who is the owner of the consolidated land shall remain liable to pay levies and special levies in respect of such consolidated land unit as if it still comprised of the individual Portions so consolidated and shall similarly be entitled to a number of votes equal to the number of Portions so consolidated.

## **29 ADDITIONAL DWELLINGS**

No Member shall be entitled to construct more than one main dwelling and one manager's dwelling on a Portion, one cottage per 10 (ten) hectares of extent of a Portion as well as general farm buildings such as sheds and barns. For purposes of this restriction, any existing main dwelling(s), manager's dwelling(s) or farm cottage(s) which may already have been constructed on a Member's Portion at the time of the establishment of the Association in excess of this restriction shall not be regarded as being in contravention of this restriction. The relevant Member(s) shall be entitled to continue utilising such existing buildings and structures notwithstanding that they may exceed this restriction.

## **30 MAIN SERVITUDE ROAD, BRIDGES AND INTERNAL PRIVATE ROADS**

- 30.1 The internal Main Servitude Road consists of a tarred and/or natural gravel laterite road generally with a width of between 4 and 5 metres and is available for use by all Members.
- 30.2 Entrance to Two Rivers Farm is via two access points; the R45 Eastern gate (Portion 1) and the R45 Western gate (Portions 14 and 15 of Farm No. 1646, Division of Paarl).
- 30.3 The Main Servitude Road and the two entrance gates will be maintained by the Association.
- 30.4 Access control of the two entrance gates will be managed by the Association.
- 30.5 The two single lane bridges on Two Rivers Farm, namely the Wemmershoek bridge and the Bergriver bridge will be maintained by the Association.
- 30.6 All Members, their families, guests, workers and contractors shall adhere to the speed limitations imposed on the Main Servitude Road as well as the weight limitations imposed on the respective bridges.
- 30.7 It is a fundamental design principle of Two Rivers Farm that the land usage of all

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Portions, the Main Servitude Road as well as each individual Portion's own individual network of roads must be in harmony with the rural character of Two Rivers Farm.

### 31 DAMAGES

In the event of a Member, his/her family, guests, tenants, employees, contractors or agents causing damage to any of the Association's property or assets, the responsible Member will be held accountable for all costs associated with replacement and/or repair of such assets.

### 32 BERGRIVER PIPELINE

It is noted that the Upper Bergriver Irrigation Scheme pipeline traverses Two Rivers Farm within registered servitude areas. All Members will comply and adhere to access requirements of the Upper Bergriver Irrigation Scheme for purposes of the maintenance and upkeep of the pipeline.

### 33 DOMICILIUM

- 33.1 For all purposes arising out of this Constitution including the giving of notices and the serving of legal process, the Association and each Member chooses *domicilium citandi et executandi* as follows:
- 33.1.1 The Association at its physical address nominated from time to time by Excom
- 33.1.2 Each Member - at the Portion registered in his name or at such other physical address in South Africa as may be notified by the Member to the Association from time to time in terms of clause 33.4.
- 33.2 Each Member shall place on record with the Association an e-mail address to which the Association may dispatch notices or other correspondence addressed to the Member.
- 33.3 Any notice which may be required to be given in terms of this Constitution may be given by the dispatch of such notice in writing by pre-paid post, by courier or by e-mail. In the event of a dispatch of a notice by prepaid post, such notice shall be deemed to have been received 10 (ten) days after the posting thereof from any Post Office within the Republic of South Africa. Any notice dispatched by courier shall be deemed to have been received 2 (two) days after the dispatch thereof.

STELLENBOSCH MUNICIPALITY

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Any notice transmitted by e-mail shall be deemed to have been received on the date of transmission thereof.

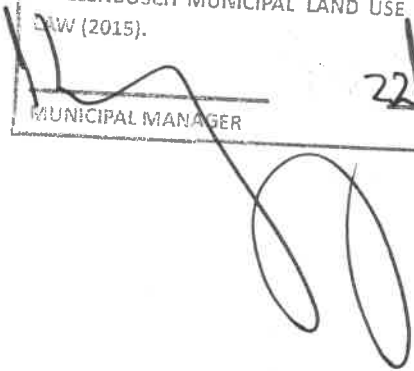
- 33.4 Any Member shall be entitled to change his or her aforesaid domicilium and/or recorded e-mail address by giving Excom written notice by registered post or by e-mail to this effect.

#### **34 DISPUTE RESOLUTION**

- 34.1 Should any dispute arise between any Members or between any Members and the Association as to the interpretation or meaning of this Constitution or of any rules and regulations passed by Excom or any rights and obligations of any Member or Members or Excom, Excom may, within its discretion, appoint a mediator to mediate the dispute.
- 34.2 Should Excom elect to appoint a mediator to mediate between the parties to the dispute, the parties concerned shall participate in any such mediation proceedings in a bona fide manner and shall strive to achieve a mediated resolve to the dispute.
- 34.3 Should the parties not be able to resolve any dispute referred to mediation through the mediation process or should Excom elect not to refer a specific dispute to mediation, any Member of the Association or Excom may refer such dispute to:
- 34.3.1 the Ombud for Community Schemes, as contemplated in terms of the Community Schemes Ombud Service Act 9 of 2011 ("CSOS"), if the dispute falls within the ambit of CSOS; or
- 34.3.2 arbitration in terms of clause 34.6 below.
- 34.4 Any dispute which is referred to the Ombud shall be adjudicated in terms of CSOS and the regulations promulgated thereunder unless the Ombud or an adjudicator appointed by the Ombud rules that the dispute cannot be dealt with in terms of CSOS.
- 34.5 Should:
- 34.5.1 the Ombud or an adjudicator appointed by the Ombud determine that a dispute referred to the Ombud in terms of CSOS cannot be dealt with in terms of CSOS; or
- 34.5.2 the Ombud or an adjudicator appointed by the Ombud fails to deal with the

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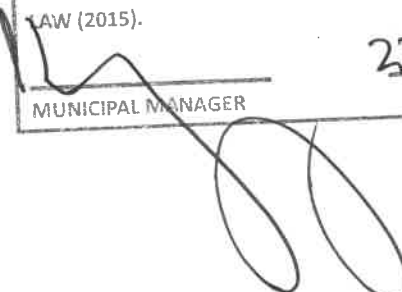
dispute within 30 (thirty) days of its referral;

the dispute shall then be referred to arbitration, which arbitration shall proceed in the manner contemplated hereunder.

- 34.6 The arbitration shall be held in Cape Town and conducted informally, it being intended that, to the extent possible, it shall be held and concluded within 21 (twenty one) Business Days and without incurring unnecessary costs.
- 34.7 Save as otherwise specifically provided herein, the arbitrator shall be, if the question in dispute is primarily:
- 34.7.1 an accounting issue, an independent accountant;
- 34.7.2 a legal issue, a practising counsel or attorney of not less than 10 (ten) years standing;
- 34.7.3 an architectural or design related matter, an independent architect;
- 34.7.4 any other matter, a suitably qualified person appointed by the Association's accountants or auditors.
- 34.8 If agreement cannot be reached between the parties to the dispute on the nature of the dispute or arbitrator to be appointed within 7 (seven) days after a dispute has been declared, the President of the Law Society of the Cape (or its successors-in-title) shall finally determine the primary nature of the dispute and/or the appointment of the arbitrator.
- 34.9 The arbitrator shall use his or her best endeavours to complete the arbitration and make his or her award by no later than 21 (twenty one) days after the completion of the arbitration. The arbitrator may determine whether the costs of the arbitration are to be paid either by one or other of the disputing parties or by the Association or are to be shared by certain or all of the aforementioned parties as he or she may deem fit.
- 34.10 The decision of the arbitrator shall be final and binding and may be made an order of court upon the application of any party to the arbitration.
- 34.11 Notwithstanding anything to the contrary contained herein, no party shall be precluded from instituting any urgent interdictory proceedings for the purposes of restraining or interdicting breaches of any of these provisions.

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**35 MINORITY PROTECTION AND GENERAL PROCEDURAL ISSUES**

- 35.1 Each Member is entitled to administrative actions on the part of the Association and Excom which is lawful, reasonable and procedurally fair.
- 35.2 Whenever a Member requires a consent or approval in terms of this Constitution, such consent or approval may not be unreasonably withheld by Excom or Members, individually or in general meeting, as the case may be.
- 35.3 In the conduct of the affairs of the Association and the furtherance of the aims of the Constitution of the Association, its office bearers, employees and its consultants must at all times conduct such affairs in a reasonable manner which respects the privacy, dignity and integrity of Members and the real rights of ownership of Members held in respect of their Portions.
- 35.4 Excom, in exercising its discretion on all matters before it and the Members, in exercising their voting rights on all matters placed before them, shall at all times act reasonably, in good faith and with the goal of achieving a reasonable and balanced outcome and dispensation for all Members. Neither Excom nor the Members may abuse any majority votes in any manner which may conflict with the aforesaid principles


**36 ADOPTION**

This Constitution was adopted by a Special Resolution passed by the Members of the Association at a general meeting held on 17 November 2021.

Chairman: \_\_\_\_\_

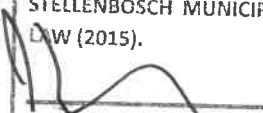
  
Coen Swart

Witness: \_\_\_\_\_

  
Malcolm Buchanan

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