APPENDIX 20

STELLENBOSCH MUNICIPALITY

POLICY ON DEVELOPMENT CONTRIBUTIONS FOR BULK ENGINEERING INFRASTRUCTURE

2013/2014

INDEX

1. Preamble

1.1 The progressive realization of fundamental constitutional rights *inter alia* requires township development. Township development in turn requires the provision of engineering services.

1.2 Local government must ensure the provision of engineering services to communities and promote social and economic development in a sustainable manner. As a general principle local government should within budgetary constraints accept responsibility for the installation and financing of external engineering services.

1.3 As a general principle township developers should accept responsibility for the installation and financing of internal engineering services.

1.4 Local government has the discretionary power when granting development approvals to impose conditions in relation to the provision of engineering services and the payment of money which is directly related to requirements resulting from those approvals in respect of the provision of the necessary services to the land to be developed.

1.5 Local government must act in accordance with the law when exercising those powers.

2. Purpose of Policy

2.1 The adoption of policy guidelines by state organs to assist decision-makers in the exercise of their discretionary powers has long been accepted as legally permissible and eminently sensible.

2.2 The purpose of this policy document is first to assist and guide municipal decision-makers in:

- the exercise of their discretionary powers when considering appropriate conditions of approval to be imposed under the Land Use Planning Ordinance;

- their negotiations with developers relating to the payment of development contributions and the division of engineering services costs between the Municipality and Applicants; and

- the application of the calculation methods for Development Contributions as outlined in the Reports defined below.

2.3 The purpose of this policy document is also to:

- inform interested and affected parties regarding the principles and calculation methods of development contributions and the process to be followed in reaching and recording agreements in respect thereof; and

- ensure the provision of adequate engineering services and/ or payment of development contributions in respect of new developments.

3. Definitions

In this policy document, unless inconsistent with the context:

ñApplicantò means a person who has applied for approval under the Ordinance and includes the person or entity implementing such an approval;

ñBrownfields type Developmentò means development of land where all bulk services are available to serve the proposed development;

ñCombined type Developmentò means development of land where use can be made of spare capacity in existing bulk services, and where additional bulk services are also required.

ñDevelopment Contributionsò means financial contributions calculated in accordance with this policy document, which an Applicant is required to make in terms of conditions of approval imposed by the Municipality when granting approvals under the Ordinance and which relate to requirements resulting from those approvals in respect of the provision of the necessary engineering services to the land to be developed;

"Engineering Services" means services installed in the process of developing land for the provision of water, sewerage and electricity, handling of solid waste, and the building of streets, roads and stormwater drainage systems, including all related services and equipment;

ñGreenfields type Developmentò means development of land where no bulk services are available to serve the proposed development, and completely new bulk services are required.

ñMunicipal Areaò means the area as reflected in the map appearing in Provincial Notice 478/2000 published in Provincial Gazette Extraordinary No 5587 of 19 September 2000;

ñMunicipalityò means the Stellenbosch Municipality (WCO24) established in terms of Provincial Notice 489 of 22 September 2000 in terms of the Local Government: Municipal Structures Act, 117 of 1998, and includes all political structures or office bearers and municipal staff members to whom authority has been delegated to take decisions under the Ordinance or to give effect to conditions of approval imposed under the Ordinance;

ñOrdinanceò means the Land Use Planning Ordinance, 15 of 1985 (Western Cape);

ñReportsò means the so-called ñStellenbosch Development Contributions Reportò, the so-called ñKlapmuts Development Contributions Reportò and the so-called ñStellenbosch: Levies for Bulk Electrical Services Reportò as approved by the Municipality.

"Services agreement" means a written agreement concluded between an Applicant and the Municipality, and in terms of which *inter alia* the respective responsibilities of the two parties for the planning, design, provision, installation, financing and maintenance of internal and external engineering services and the standard of such services are determined.

4. Legislative Framework

4.1 The principle of legality enshrined in the Constitution, dictates that every one has the fundamental right to administrative action that is lawful, reasonable and procedurally fair.

4.2 Planning and development must take place within a dense legislative environment. Suffice it to say that included amongst the pieces of legislation that find application in this field are the Constitution of the Republic of South Africa Act, the Ordinance, the Local Government: Municipal Systems Act 32 of 2000 (MSA) and the Local Government: Municipal Finance Management Act 56 of 2003 (MFMA).

4.3 In terms of the Ordinance the Municipality is empowered to impose conditions requiring the payment of Development Contributions, when granting development approvals under the Ordinance. In terms of section 42(2) of the Ordinance the Municipality is required to have regard *inter alia* to public expenditure incurred in the past or which may arise from such approvals which facilitates or will facilitate such developments, when requiring Development Contributions.

4.4 Section 42(2) of the Ordinance must be understood against the backdrop of the following principle enunciated in the second Report of the Venter Parliamentary Commission of Inquiry into Housing and Related Matters, 1983:

"*It is important that any formula recommended in respect of the cost of the provision of services should ensure equal treatment and that the residents of the old town should not subsidise the new township and that neither should the old town derive any benefit from the new township, unless a deliberate decision to the contrary is taken*."

4.5 In terms of the MSA, development within the Municipality and its expenditure on engineering services infrastructure must be guided by an approved Integrated Development Plan. The Municipality is enjoined to give priority to providing basic services and improving the quality of life for all within its financial means. Therefore if an Applicant intends to develop land before the necessary bulk engineering services have been installed or where existing bulk services are inadequate to serve the proposed development, and the Municipality is not in a position to provide such at that time, the Applicant will be required as a condition of approval to fund the bulk services. In those circumstances appropriate provisions need to be incorporated in a Services Agreement relating to control over the costs of such external services and relating to the refund of reasonable costs to which the Applicant may be entitled.

5. Application of policy

5.1 This policy applies from date of its adoption by the Municipality to all applications for approval made in terms of the Ordinance relating to development within the Municipal Area.

5.2 It is trite law that where discretion has been conferred upon a public body by a statutory provision (such as section 42 of the Ordinance), such a body may lay down a general principle for its general guidance, but it may not treat this principle as a hard and fast rule to be applied invariably in every case. At most it can be only a guiding principle, in no way decisive. Every case that is presented to the public body for its decision must be considered on its merits. It follows that there may be circumstances in which it will not be appropriate to require the payment of Development Contributions whilst in other instances it may be necessary to increase or decrease the amounts payable as Development Contributions.

6. Policy approaches to development contributions

6.1 In terms of the so-called ñBrownfields approachò, the point of departure is that the bulk services that will serve the proposed development have been funded by existing ratepayers and the Applicant should make a contribution towards those costs on a pro rata basis, based on the unit rate of usage. The value of

Development Contributions must reflect the burden to date on the existing ratepayers for providing those services and not the future burden, as ratepayers in the proposed new development will share this burden and will benefit from contributions from future developments. For this reason outstanding loans in respect of the particular services are to be subtracted from the replacement value of those services when determining the amount of Development Contributions payable.

6.2 In terms of the so-called ñGreenfields approachò the Applicant is responsible to finance the provision of all bulk engineering services, as these are specifically required for the proposed development, and the intention is that the new development should not place any financial burden on existing ratepayers. However this scenario is only fully applicable if the development is self-contained, if the development does not make use of other existing services, and other existing or future developments will not make use of these services.

6.3 In most cases it is necessary to partially apply a Brownfields approach and to partially apply a Greenfields Approach to a particular development application, depending on the availability and adequacy of available bulk engineering services. This can be described as a ñCombined approachò. In an ideal situation, if it was practically possible, the actual engineering services required should be determined for each development, and charged to the Applicant concerned. However because this is not practically possible, use is required to be made of calculation methods derived and outlined in the Reports referred to in this policy.

6.4 In appropriate circumstances the Municipality may further require that an Applicant provides engineering services to a higher capacity than warranted by the development proposed, to accommodate future developments. In those circumstances and when Applicants are required to fund the provision of bulk engineering services suitable arrangements need to be incorporated in a Services Agreement relating to control over the costs of such external services and the refund (where appropriate) of costs in excess of the costs which the Applicant would have incurred if normal capacity standards were applied. Such arrangements may include the application of set-off of Development Contributions against such costs.

6.5 In all circumstances, where lawful development exists on the site to be redeveloped, Development Contributions should be required only to the extent that the redevelopment for which approvals are required under the Ordinance, place an additional burden on the existing bulk services infrastructure.

7. Imposition of appropriate conditions of approval

7.1 When the Municipality receives an application under the Ordinance, it must determine whether adequate bulk engineering services are available to serve the proposed development, whether the upgrading of such services will be required and/ or what new bulk services will have to be installed to serve the proposed development.

7.2 The Municipality must, when it approves an application under the Ordinance, impose appropriate conditions relating to the provision and/ or upgrading of bulk engineering services to serve the proposed development and/ or the payment of Development Contributions.

7.3 Such conditions may *inter alia* require the Applicant:

- in lieu of payment of Development Contributions (partially of in full), to install bulk engineering services to serve the proposed development or the area concerned to the standard as required by the Municipality; and

- to enter into a Services Agreement with the Municipality.

7.4 Before submitting an application under the Ordinance to the competent municipal decision-maker, the Municipality must inform the Applicant which conditions relating to the provision of bulk engineering services and the payment of money (stating the amounts that will become due and payable) it regards as appropriate, afford the Applicant the opportunity to make representations in respect thereof and, where required, enter into negotiations with the Applicant in an attempt to avoid unnecessary appeals.

7.5 In the event that the Municipality and the Applicant fail to reach agreement on the amounts payable as Development Contributions, the bulk services to be provided by the Applicant or in respect of matters relating thereto, and the Municipality imposes its interpretation as a condition of approval, the Applicant shall, in addition to his right of appeal under Section 62 of the Local Government: Municipal System Act, have a right of appeal under section 44(1) of the Ordinance to the competent provincial authority.

7.6 The Municipality should, when imposing conditions of approval under the Ordinance, clearly stipulate when Development Contributions shall become payable (e.g. before a rates clearance certificate as contemplated in section 31(1) of the Ordinance may be issued, before approval of a site development plan or building plan, or before a certificate for occupancy is issued in terms of the building regulations).

8. Calculation of Development Contributions

8.1 Brownfields Developments.

(i) In this scenario, sufficient existing bulk services are available and the construction of new bulk services is not required. The Applicant must, however, make a Development Contribution for his portion of the capacity of the existing services. Because it would be complicated, impractical and time-consuming to calculate this exactly for each development on a case-by-case basis, the Stellenbosch Development Contribution Report calculation method can be used, as it covers this scenario on an average basis across all the areas covered by that report, unless it would be more appropriate to adopt a different method of calculation in any particular instance.

(ii) The calculation method employed in the Stellenbosch Development Contributions Report has *inter alia* taken into consideration the principles of the Venter Commission Report, the empowering provisions of the Ordinance, past and future infrastructure costs in terms of existing master planning, replacement value costs, existing loans and existing and future potential grants and subsidies.

8.2 Greenfields Developments.

(i) In this scenario no bulk services are available and all bulk services still need to be constructed. The Applicant must make a Development Contribution for his portion of the capacity of the bulk services to be installed. If the development is self-contained and all bulk services are only for that development, then the actual costs thereof can be calculated, and charged to the Developer.

(ii) Development in the Klapmuts area can be regarded as a Greenfields scenario. Therefore for that area, the method of calculation in the Klapmuts Development Contributions Report should be used, unless it would be more appropriate to adopt a different method of calculation in any particular instance.

8.3 Combined approach.

(i) In this scenario use can be made of spare capacity in some bulk services, but additional bulk services also need to be constructed. The Applicant must make Development Contributions for his use of the existing services and his portion of the new services.

(ii) Because it would be complicated, impractical and time-consuming to calculate this exactly for each development on a case-by-case basis, the Stellenbosch Development Contributions Report calculation method can be used in the areas covered by that report, as it covers this scenario on an average basis across all those areas.

9. Services Agreements

Services Agreements concluded in compliance with Municipal conditions of approval imposed under the Ordinance must stipulate and record at least the following:

- The amount of Development Contributions payable;
- How escalation will be calculated on Development Contributions payable;
- Exactly when Development Contributions will become due and payable;
- What bulk engineering services the Applicant is required to construct and/ or upgrade the standard with which such services should comply and the agreement reached relating to set-off and/ or refund of costs to be incurred by the Applicant in respect thereof.

10. Ensuring compliance

10.1 The Municipality may use various checkpoints /milestones to ensure that an Applicant complies with the conditions of approval with regard to the payment of Development Contributions or the provision of engineering services. The conditions of approval imposed should stipulate clearly which further approvals or clearances as may be required by the Applicant in a given set of facts, should be used to ensure compliance.

10.2 Only once the Applicant has complied with such conditions of approval, whether it is in terms of an agreed phasing or the entire development, should the further approvals or clearances as may be required be given by the municipal decision-makers concerned.

11. Review

This policy document, as well as the Reports and calculation methods, will need to be reviewed periodically to ensure that they are suitably adapted to meet any new statutory and integrated planning requirements and provide for the recovery of cost increases relating to the provision of engineering services.

12. Annexures

- Pro forma Services Agreement

SERVICES AGREEMENT

To: The Developer

The compilation of a Services Agreement is required in the instance where bulk municipal services is to be designed and or constructed in lieu of development contributions. Before commencement of any design and or construction work, the Services Agreement needs to be signed by all relevant parties.

A generic Services Agreement is compiled by the Municipality but the Annexures needs to be provided by the Developer and or his Consulting engineer.

The Services Agreement will consist of the following documentation:

- **GENERIC SERVICES AGREEMENT**

- **ANNEXURE A –** *"Development Rights"* means copies of the approved development rights also reflecting the final LUPO ï and NEMA approvals as well as any further Development agreements and correspondence stipulating development contributions payable, how escalation will be calculated and when development contributions will be payable.

- **ANNEXURE B –** *"Municipal Services"* means Engineering Report by responsible engineer reflecting the municipal bulk infrastructure services which the developer must construct in lieu of development contributions in accordance with this Agreement. A cost summary, design drawings and if available at this stage, a tender report is to be included. The tender report must reflect that a transparent tender process was followed and at least three contractors were evaluated. If a tender report is not available at this stage of the contract, the Agreement must reflect an undertaking by the Developer to follow a transparent tender process to the satisfaction of the Director: Engineering Services, which will entail that at least three contractors will be evaluated.

- **ANNEXURE C –** *"Programme for completion of the Municipal Services"* means the obligation of the Developer to have undertaken and completed the construction of the *"Municipal Services"* in accordance with the dates and times as fully set out in annexure ñCò to this Agreement.

- **ANNEXURE D –** Authority of developerôs representative to sign documents is to be included in the form of a proxy or a formal decision by the Directors.

SERVICES AGREEMENT

Made and entered into between

STELLENBOSCH MUNICIPALITY
(hereinafter referred to as the **"MUNICIPALITY"**)

and

é .
(hereinafter referred to as the **"DEVELOPER"**)

1 DEFINITIONS

In this Agreement the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

(a) *"Agreement"* means this form of Agreement together with any Annexures or appendices.

(b) *"Municipality"* means the STELLENBOSCH MUNICIPALITY a Local Authority, duly established in terms of Section 9 of the Local Government Municipal Structures act, Act 117 of 1998 and Provincial Notice (489/200) establishment of the Stellenbosch Municipality (WC024) promulgated in the Provincial Gazette no. 5590 of 22 September 2000, as amended by Provincial Notice 675/2000 promulgated in Provincial Gazette

(c) *"Developer"* means a developer in WC024 that has obtained certain development rights, subject to the payment of certain development contributions to the city.

(d) *"Development Rights"* means the development rights as fully described in annexure ñAò to this Agreement.

(e) *"Municipal Services"* means the municipal bulk infrastructure services which the developer must construct in accordance with this Agreement and are fully described in annexure ñBò

(f) *"Programme for completion of the Municipal Services"* means the obligation of the Developer to have undertaken and completed the construction of the *"Municipal Services"* in accordance with the dates and times as fully set out in annexure ñCò to this Agreement.

(g) *"The Parties"* means collectively the ñMunicipalityò and the ñDeveloperò.

(h) *"The Effective Date"* means the date the Services Agreement is signed by all relevant parties.

(i) *"Engineer"* means an Engineer employed by the ñMunicipalityò or any person appointed by the ñMunicipalityò from time to time and notified as such in writing to the ñDeveloperò to perform the duties envisaged in terms of this Agreement

(j) *"Consultant"* means a suitably qualified and experienced Professional Engineer, appointed by the Developer to accept the full responsibility for the design and construction of the works in terms of his/her profession, this agreement and relevant standards.

2 INTERPRETATION

2.1 Unless there is something in the subject matter or the context which is inconsistent therewith, any reference in this Agreement to a statute, statutory instrument, regulation, by-law or order, shall be construed as a reference to such statute, statutory instrument, regulation or order, as amended or re-enacted, from time to time and to all instruments, order or regulations, then in force and made under, or deriving from the relevant statute.

2.2 Any reference, in this Agreement, save where the context otherwise requires, to the masculine, shall include the feminine and any reference to the singular shall include the plural and words denoting natural persons shall include companies, corporations, municipal councils and any other legal entities and vice versa, in each case.

2.3 The table of contents and the headings of the Clauses, Sub-Clauses and Annexures of this Agreement are inserted for ease of reference only and shall be ignored in the construction and interpretation of this Agreement.

2.4 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or a public holiday.

2.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, whether or not a party, then not withstanding that such provision appears only in the definition clause, effect shall be given thereto as if it were a substantive provision contained in the body of this Agreement.

3 DURATION OF THE AGREEMENT

This Agreement shall commence on the *"Effective Date"* and shall terminate no later than the date stipulated by the *"Municipality"* for the completion of the *"Municipal Services"* as provided for in the *"Programme for the completion of the Municipal Services"*. The

duration of this Agreement may be extended by mutual agreement subject to such terms and conditions as the parties may agree.

4 DEVELOPMENT RIGHTS

The *"Developer"* hereby acknowledges that he / she has acquired *"Development Rights"*. Furthermore the *"Developer"* acknowledges that in order to develop the property in accordance with his / her proposal for development, the *"Municipal Services"* are required.

5 WORK TO BE TO THE SATISFACTION OF THE ENGINEER

The *"Developer"* agrees to construct the *"Municipal Services"* strictly in accordance with the terms and conditions of this Agreement and to the satisfaction of the Engineer. Furthermore, the *"Developer"* shall comply with and adhere strictly to the Engineer's instructions and directions on any matter pertaining to this Agreement (whether mentioned in this Agreement or not). The *"Developer"* shall take instructions and directions only from the Engineer.

All *"Municipal Services"* provided under this Agreement shall be subject to a one year defect liability period and free of patent and latent defects. The developer must ensure that sufficient contractual measures are in place to meet this condition as part of this obligation.

6 ACKNOWLEDGEMENT OF DEVELOPMENT CONTRIBUTIONS PAYABLE

6.1 The *"Developer"* acknowledges that he / she has prior to the conclusion of this Agreement accepted the development condition stipulating the development contributions payable in respect of this development relating to the cost of providing the *"Municipal Services"*.

6.2 The *"Municipality"* hereby undertakes to reduce the amount of the Development Contributions in accordance with the provisions of Clause 6.3 below.

6.3 Upon the *"Developer"* having complied with all the terms and conditions of this Agreement the *"Municipality"* undertakes to value the total cost of *"Municipal Services"*. The outstanding amount of development contributions payable as concluded with the *"Developer"* will be reduced by the value of such *"Municipal Services"* as provided in terms of this Agreement.

6.4 In the event of a dispute arising between *"The Parties"* as to the value of the *"Municipal Services"* it shall be resolved in accordance with the Resolution of Disputes Clause.

7. FAILURE TO CONSTRUCT MUNICIPAL SERVICES

In the event of the Developer for whatsoever reason failing to complete the construction of the *"Municipal Services"* the *"Municipality"* shall be entitled to complete the provision of *"Municipal Services"* and thereafter reclaim the cost thereof from the *"Developer"*.

8. COST OF MUNICIPAL SERVICES

8.1 The *"Municipal Services"* must be provided at a competitive price obtained through an approved tender process.

8.2 The total cost will include the design cost paid to the Developerøs Consultant as per the agreed upon Gazetted fees for the relevant professions.

8.3 The total cost will also include the onsite supervision as per the gazetted fees, normally based on an hourly rate.

9. ASSIGNMENT

The *"Developer"* shall not cede or assign this Agreement or any part thereof for any benefit, obligation or interest therein or thereunder without the prior written consent of the *"Municipality"*.

10. BREACH

10.1 Should either party hereto breach or fail to comply with any term or condition of this Agreement, and then the party aggrieved thereby shall give the defaulting party written notice to rectify such a breach.

10.2 In the event of the defaulting party failing to rectify such a breach within thirty (30) days of the dispatch of such notice, the aggrieved party shall be entitled to give written notice of termination of this Agreement to the other party. Such termination shall take effect upon dispatch of such notice to the other party.

10.3 Should either party repeatedly breach any of the terms and conditions of this Agreement in such a manner as to justify the aggrieved party in holding that the defaulting partyøs conduct is inconsistent with the defaulting partyøs intention to carry out the terms and conditions of this Agreement, then and in such event the aggrieved party shall without prejudice to its legal rights and remedies, be entitled to terminate this Agreement.

10.4 On terminating this Agreement, the aggrieved party will be entitled to claim and recover such damages as the aggrieved party may be able to prove that it has sustained.

11 TERMINATION

This Agreement shall terminate with immediate effect upon the happening of any of the following events:

11.1 if either fails to rectify a breach of this Agreement as provided for in terms of Clause 10 ;

11.2 if either party commits an act of insolvency ;

11.3 that the *"Developer"* passes a resolution for voluntary winding up or having an application for winding up brought against it ;

11.4 if either party fails to satisfy within thirty days any judgment for the payment of any monies of which execution has been stayed.

12 RESOLUTION OF DISPUTES

12.1 Any dispute arising out of this Agreement must in all instances be referred by *"The Parties"* without legal representation to a Mediator.

12.2 The dispute shall be heard by the Mediator at a place and time to be determined by him in consultation with *"The Parties"*.

12.3 The Mediator shall be selected by agreement between *"The Parties"*.

12.4 If Agreement cannot be reached upon a particular Mediator within three (3) days after the mediation has been demanded, then the President for the time being of the Law Society of the Cape of Good Hope shall nominate the Mediator within seven (7) days after *"The Parties"* have failed to agree.

12.5 The Mediator shall at his sole discretion determine whether the reference to him shall be made in the form of written or verbal representations. Provided that in making this determination he shall consult with *"The Parties"* and may be guided by their common reasonable desire of the form in which the said representations are to be made.

12.6 *"The Parties"* shall have seven (7) days within which to finalize their representation. The Mediator shall within seven (7) days of the receipt of the representations express in writing an opinion on the matter and furnish the *"Municipality"* and the *"Developer"* each with a copy thereof by hand or by registered post.

12.7 The opinion so expressed by the Mediator shall be final and binding upon the *"Developer"* and the *"Municipality"* unless either the *"Developer"* or the *"Municipality"* is unwilling to accept the opinion expressed by the Mediator. In this later event, the aggrieved party must deal with the dispute in terms of the Arbitration clause.

12.8 The cost of the Mediator shall be borne equally by both Parties, and shall be due and payable to the Mediator on presentation of his written account.

12.9 The expressed opinion of the Mediator shall not prejudice the rights of *"The Parties"* in any manner whatsoever in the event of their proceeding to Arbitration.

13 ARBITRATION

13.1 Subject to the provisions of clause 11, any dispute which may arise out of or in regard to:

(a) Any matters arising out of this Agreement ;

(b) The interpretation of this Agreement

Shall be submitted to and decided by arbitration on notice given by any party to the other.

13.2 Arbitration shall be held in Cape Town informally and otherwise in accordance with the terms of the provisions of the Arbitrations Act No 42 of 1965 (as amended from time to time) it being intended that if possible it shall be held and concluded within ten (10) days after it has been demanded.

13.3 Save as otherwise specifically provided herein, the Arbitrator shall be if the question in dispute is:

(a) primarily a legal matter ï a practicing Senior Advocate of the Cape Bar Society of not less than five (5) years standing ;

(b) any other matter ï an independent and suitably qualified person as may be agreed upon between the Parties to the dispute.

13.4 If Agreement cannot be reached on whether the question in dispute falls under 13.3 (a) or 13.3 (b) and or upon a particular Arbitrator within three (3) days after the arbitration has been demanded, then the President for the time being of the Law Society of the Cape of Good Hope shall:

(a) determine whether the question in dispute falls under 13.3 (a) or 13.3 (b) and/or ;

(b) nominate the Arbitrator within seven (7) days after the Parties have failed to agree

13.5 The Arbitrator shall give his decision within five (5) days after the completion of the arbitration, and shall in arriving at his decision, have regard to these presents. The Arbitrator may determine that the costs

of the arbitration are to be paid either by one or other of the disputing Parties.

13.6 The decision of the Arbitrator shall be final and binding and may be made an order of the Cape Provincial Division of the High Court of South Africa upon the application of any party to the arbitration.

13.7 This Clause shall not preclude either party from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the Arbitration.

14 GENERAL CONDITIONS

14.1 No alteration, cancellation, variation of or addition to this Agreement shall be of any force or effect unless reduced to writing and signed by the *"Municipality"* and the *"Developer"* or their duly authorized representatives.

14.2 This Agreement constitutes the entire Agreement between *"The Parties"* hereto and neither of the parties shall be bound by any undertakings, representations, warranties promises or the like not recorded herein.

14.3 No extension of time or other indulgence granted by either party to the other in respect of either the parties obligations will constitute a waiver of either of the partyôs right to enforce compliance with the terms of this Agreement. Neither shall it constitute a novation of this Agreement.

14.4 This Agreement shall be binding on and enforceable by the successors-in-title of the *"Municipality"*. Accordingly any reference to the *"Municipality"* in terms of this Agreement shall be deemed to include any successor-in-title of the *"Municipality"*.

15 LAW TO APPLY

This Agreement shall in all respects be construed in accordance with the law of the Republic of South Africa.

16 DOMICILIA

16.1 Each of the parties chooses *domicilium citandi et executandi* for the purposes of the giving of any notice, the serving of any process and for any purposes arising from this Agreement at their respective addresses set forth hereunder:

THE MUNICIPALITY: Stellenbosch Municipality
Plein Street, Stellenbosch
7599, REPUBLIC OF SOUTH AFRICA

THE DEVELOPER: .....é é é é é é é é ..

.....é é é é é é é é ..

é é é é é é é é .....

16.2 Any notice to any party shall be addressed to it at its *domicilium* aforesaid and be sent either by pre-paid registered post or delivered by hand. In the case of any notice:

16.2.1 Sent by pre-paid registered post, it shall be deemed to have been received, unless the contrary is proved, on the seventh (7) day after posting ; and

16.2.2 Delivered by hand, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a business day or otherwise on the next following business day.

16.2.3 Any party shall be entitled by notice in writing to the other, to change its *domicilium* to any other address within the Republic of South Africa, provided that the change shall become effective only fourteen (14) days after the service of the notice in question.

16.2.4 Any notice addressed to the *"Municipality"* shall be required to be addressed to the Municipal Manager to be deemed to have been effectively delivered or served.

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AS WITNESSES:

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STELLENBOSCH MUNICIPALITY

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DEVELOPER

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ANNEXURE A

"Development Rights" means copies of the approved development rights also reflecting the final LUPO ï and NEMA approvals as well as any further Development agreements and correspondence stipulating development contributions payable, how escalation will be calculated and when development contributions will be payable.

ANNEXURE B

"Municipal Services" means Engineering Report by responsible engineer reflecting the municipal bulk infrastructure services which the developer must construct in lieu of development contributions in accordance with this Agreement. A cost summary, design drawings and if available at this stage, a tender report is to be included. The tender report must reflect that a transparent tender process was followed and at least three contractors were evaluated. If a tender report is not available at this stage of the contract, the Agreement must reflect an undertaking by the Developer to follow a transparent tender process to the satisfaction of the Director: Engineering Services, which will entail that at least three contractors will be evaluated.

ANNEXURE C

"Programme for completion of the Municipal Services" means the obligation of the Developer to have undertaken and completed the construction of the *"Municipal Services"* in accordance with the dates and times as fully set out in annexure ñCò to this Agreement.

ANNEXURE D

Authority of developerôs representative to sign documents is to be included in the form of an original proxy or a formal decision by the Directors.