



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

Application Number: LU/9898

Our File Reference Number: Farm no 1646, Paarl Division

Enquiries: Lenacia Kamineth / Robert Fooy

Contact No: 021 – 808 8697

E-mail address: Landuse.Appeals@stellenbosch.gov.za / Robert.Fooy@stellenbosch.gov.za

PER E-MAIL: [REDACTED]

Dear Mr Melck

APPEAL LODGED IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015): APPLICATION FOR THE AMENDMENT OF THE TWO RIVERS PROPERTY ASSOCIATION CONSTITUTION: FARM 1646, PAARL DIVISION

1. This Municipality's decision letter dated 07 July 2020, refers. The appeal process has now been concluded.
2. The Appeal Authority resolved on 20 September 2022 that the appeal submitted against the approval of the subject application by the Authorised Decision Maker on 07 July 2020, **BE DISMISSED** and that the subject decision **BE CONFIRMED** in terms of Section 81(7)(b) of the Stellenbosch Municipal Land Use Planning By-law, 2015.
3. The application is approved as follows:
 - 3.1. Approval be granted in order to amend the Two Rivers Property Owners Association on Farm 1646, Paarl Division in terms of Section 29 of the Stellenbosch Municipality Land Use Planning By-Law, 2015 attached as **Appendix 1** (Amended Constitution 2019).
4. That such approval be subject to the following conditions in terms of Section 66 of the said Bylaw:
 - 4.1. That the approval applies only to the amendment of the constitution, as indicated on **Appendix 1** and shall not be construed as authority to depart from any other

legal prescriptions or requirements nor further amendments to the attached constitution prior to Council's approval.

4.2. Any future changes made to the constitution must be approved by Council.

5. The above decision was made for the following **reason(s)** in terms of Section 81(7)(c) of the said By-law:

5.1. The proposal has no impact on existing development parameters and will therefore not have any impact on the aesthetic quality of surrounding properties.

5.2. The Municipality does not have the authority to decide on internal matters on the POA, including financial contributions and the way it is structured.

5.3. The Community Schemes Ombud Services (CSOS) Adjudication Order (ref.nr CSOS480/WC/19) (**Appendix 2**) is noted, however, the opinion is held that the Municipality does not have the authority to enforce such judgement and that it can only be enforced by a court of law.

6. Accordingly, the decision detailed in this letter may be implemented, subject to compliance with the conditions of approval.

Yours faithfully



FOR DIRECTOR PLANNING AND ECONOMIC DEVELOPMENT

DATE: 29.09.2022

Copy to:

Mr Schrire

[REDACTED]

[REDACTED]

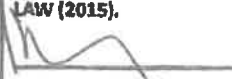

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E-mail: [REDACTED]

Execution copy - 19/06/2019

CONSTITUTION

THE TWO RIVERS PROPERTY OWNERS ASSOCIATION AMENDED 2019

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	DATE

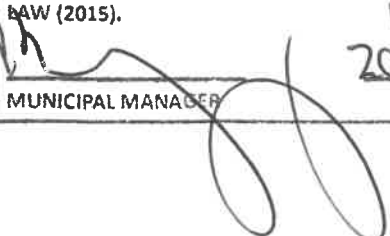
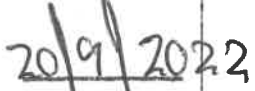
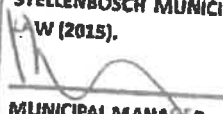
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MUNICIPAL MANAGER	DATE

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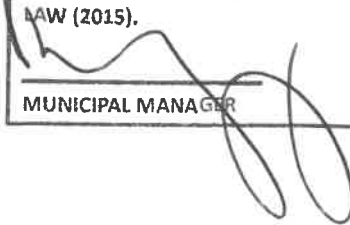
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 2/7/20
MUNICIPAL MANAGER DATE

STELLENBOSCH MUNICIPALITY

THE OWNERS ASSOCIATION CONSTITUTION IS HEREBY APPROVED IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015).

 20/9/2022
MUNICIPAL MANAGER DATE

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.

- 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

(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 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 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 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.
- 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 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 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 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;
- 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 23.15 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 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.

16 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 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 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.
- 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;
- 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.

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.
- 23.7** Subject to clause 23.16, in proposing levies (annual general and special) to be payable by each Member, Excom shall as far as possible, and in any such proposal:
- 23.7.1** assign those costs and expenses arising directly out of or directly attributable to a Portion, to the owner thereof;
- 23.7.2** assign those costs and expenses arising directly out of or directly attributable to more than one Portion but not all Portions, to the owners of those Portions; and
- 23.7.3** subject to 23.7.1 and 23.7.2, assign those costs and expenses relating to Two Rivers Farm which cannot be attributed to any specific Portion or Portions, generally to the owners of all Portions equally, or if consolidated then as if the consolidation had not taken place, provided, however, that Excom may in any case where it considers it equitable to do so, in its proposal, assign to any owner or owners of a Portion or certain Portions, a greater or lesser share of any costs as Excom consider may be reasonable in the circumstances, having regard of all relevant factors such as, but not limited to, usage, benefit, need, proximity or any other factors which may impact on a reasonable and fair allocation of specific costs and expenses.

Any proposed assignment of costs and expenses as contemplated in this clause 23.7 shall be subject to the approval by Members in general meeting by an Ordinary Resolution.

- 23.8 Notwithstanding anything to the contrary contained above, the aggregate annual general levy imposed on Members in any year shall not increase by more than 15% (fifteen percent) of the previous year's annual general levy without the sanction of a Special Resolution adopted by the Members of the Association. No Member shall be entitled to unreasonably vote against a Special Resolution proposing an increase. The aforesaid limit shall not apply if it shall have the effect of the Association being unable to fulfil its object in respect of the expenditure for the upkeep and maintenance of the Association's assets.
- 23.9 Any levy amount due by a Member shall be a debt due by the Member to the Association.
- 23.10 Should any Member fail to pay on due date any amount due by that Member in 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 commercial activity on its Portion which does not qualify as bona fide farming activities or any other activity permitted in terms of primary agriculture farm zoning rights and Excom, within its reasonable discretion, may assess that the relevant activity has additional impact on the infrastructure and/or services serving Two Rivers Farm, Excom may propose that a reasonable commercial levy is to be paid by such Member to the Association. Any levy so to be proposed by Excom, 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.

23.16 Notwithstanding any contrary provision contained in this clause 23, and having regard of:

23.16.1 the original conditions of subdivision issued for Two Rivers Farm;

23.16.2 the rights of use of all Members of the hereinafter mentioned infrastructure;

23.16.3 the impracticality of the possible apportionment of costs based on usage;
and

23.16.4 the necessity to provide for future costs of maintenance and capital reserves of and for the hereinafter mentioned infrastructure on Two Rivers Farm;

all costs and expenses incurred in connection with the maintenance, upkeep and/or replacement of the road network comprising the Main Servitude Road, including the two bridges traversed by such roads, the two entrance gates (East

and West) to Two Rivers Farm, the potable water pipeline and related infrastructure, as well as all provisions for future maintenance thereof, shall at all times be shared equally between all Members, subject thereto that all such costs may only be incurred within strict limitations as may be set by the Members from time to time, acting by Special Resolution. All of such costs and provisions shall be provided for in annual general levies and/or recovered by special levies imposed upon Members.

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 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 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. 1648, 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 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. 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 domicillium 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 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.

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 April 2019.

Chairman: _____ Witness: _____

B

CONSTITUTION

THE TWO RIVERS PROPERTY OWNERS ASSOCIATION

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

- a. "The Association" shall mean the Two Rivers Property Owners Association; established for the Development at the instance of the Winelands District Council in terms of Section 29(1) of the Land Use Planning Ordinance 15/1985 (Western Cape) when approving of the subdivision in terms of Section 25(1) read with Section 42(1) of the said ordinance as evidenced by this constitution.
- b. "council" shall mean the Winelands District Council / Boland District Municipality.
- c. "Development Guidelines" means the development guidelines prepared by the Architects Smuts & Boyes dated December 2000 Version 1 for the development.
- d. "Development Plan" means the Development Plan prepared by Friedlander, Burger & Volkman, reference number PA1176 dated 25/10/2000, copy of which is annexed hereto.
- e. "the Development" shall mean the subdivision to be established on portions 1 - 13 of Consolidated Farm 1646 Division of Paarl by virtue of the development plan as ultimately defined by the subdivisional / consolidated diagrams approved by the Surveyor-General.

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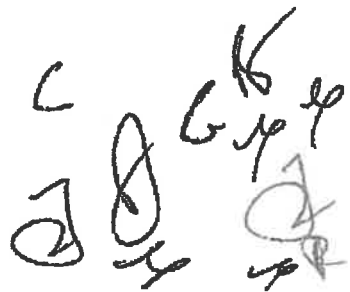
- f. "the Developer" shall mean **ANGLO AMERICAN FARMS LIMITED** or their successors in title.
- g. "Excom" means the Executive Committee constituted in terms of Clause 7 hereof.
- h. "member" shall mean any registered owner of portions 1 - 13 in the Development including the Developer in its capacity as the registered owner of any of the aforesaid portions and where more than one person 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 fulfillment of all obligations arising from such membership.
- i. "portion" means any of the portions numbered 1 - 13 of the development.
- j. "Private roads" means the private servitude roads as depicted on the annexed Development Plan.

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 shall be an association:

- a. with separate legal personality, capable of suing and being sued in its own name, and
- b. 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 and be controlled by Excom in terms of, and subject to the provisions of this Constitution, and
- c. not for profit, but for the benefit of the owners and occupants of immovable property situated in the Development.

5.

OBJECTS AND POWERS OF THE ASSOCIATION

The objects and powers of the Association are:

- a. to control the nature of the buildings to be erected on the land units reflected on the Development Plan 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 so that members may derive the maximum collective benefit therefrom;
- b. to control, manage, improve, preserve, repair and maintain the private servitude roads including bridges traversing the development and to take formal transfer thereof from the Developer.
- c. to administer and manage general security arrangements on the Development with particular reference to access control of the Public at the two access control points to be established on the servitude road traversing the development and the nature and type

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of security to be provided at those access points from time to time.

- d. to ensure compliance by members of the conditions of establishment of any subdivision of the Development, 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.
- e. To manage and control the water reticulation system applicable to all land units so as to ensure each member receives sufficient water for domestic purposes as contemplated in Schedule 1 to the National Water Act 86 of 1996 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 Executive Committee fulfilling its obligations in terms of this constitution.
- f. to ensure compliance of the architectural style and character, design criteria, specifications and land usage control in accordance with the Development Guidelines.
- g. to ensure and implement compliance by members of a co-ordinated landscaping plan for the Development as contained in the Development Guidelines.
- h. to object to any subsequent proposed subdivision of any of the land units in the Development.
- i. to appoint any professional or committee of professionals to furnish advice with regard to the carrying out of the Association's objects.
- j. to employ any agent to carry out the Association's objects.

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- k. to act as a liaison between the members and the Council regarding the landscaping and aesthetic usage of the property and the buildings erected or to be erected on the land units.
- l. to implement and control the basic concepts of the development relating to security, landscaping, parking and exterior finishes at all times, as detailed in the Development Guidelines.
- m. to ensure that all members maintain their portions in a clean and tidy condition free from any alien vegetation and adhere to the specifications imposed by any Consultant appointed by the Developer from time to time.
- n. to enact any rule or regulation necessary to ensure the orderly compliance by land unit owners of any of the objects of the Association, and to amend and to repeal any rules or regulations so made, which rules and regulations so made, shall be binding upon all members by virtue of their membership.
- o. to impose on and enforce payment by any recalcitrant member of any penalty for failing to comply with this Constitution or any rule or regulation referred to in Clause 5 (n) above.
- p. to promote and enforce environmental standards for community living in the Development Area in order to enhance and preserve the nature of the development in such a way that members may derive the maximum collective benefit therefrom;
- q. to promote all facets of nature conservation, to control the growth of alien vegetation and to encourage the reintroduction of indigenous flora and fauna in the Development.
- r. to amend the Development Guidelines from time to time as it may

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become necessary.

- s. In the event of the Minister of Water Affairs and Forestry declining to establish a water users association for the Development in terms of section 92 of the National Water Act, to undertake water related activities for its members' mutual benefit in so far as may be necessary, to exercise general supervision over water resources which the members may be entitled to and the Association shall have the powers to do such acts as are necessary to accomplish these objects.

6. MEMBERS

- a. Membership of the Association shall be compulsory and automatic upon the registration of any of the portions numbered 1 - 13 of the Development in the name of the member and members shall be obliged to comply with the provisions of this Constitution and any rules or regulations made in terms hereof.
- ~~b. No person shall be entitled to cease to be a member of the Association while remaining the registered owner of an erf in the Development or be entitled to resign therefrom.~~
- c. When a member ceases to be a registered owner of an erf in the Development he shall ipso facto cease to be a member of the Association.
- d. Membership shall be transferred by the passing of transfer of any portion in the Development from the previous member to the new member.

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- e. A member shall not be entitled to sell or transfer any portion or undivided share in the Development unless it is a condition of the Deed of Sale that the new purchaser becomes a member of the Association. Any portion sold may not be transferred without the written consent of the Two Rivers Property Owners Association which consent shall not be unreasonably withheld.

7. EXECUTIVE COMMITTEE

- a. Excom shall consist of five (5) persons who shall be members or the spouses of members. Any Excom member shall be eligible for re-election.
- b. For the period commencing from the date of incorporation of the Association to the date of the First Annual General Meeting of the Association, the duties of Excom shall be carried out by the Developer.
- c. The Developer shall be entitled to nominate and appoint all five (5) initial members of Excom at the First Annual General Meeting of the Association.

8. VACATION OF OFFICE

An Excom member shall cease to hold office as such if

- a. by notice in writing to Excom, he resigns his office;
- b. he is or becomes of unsound mind;
- c. he surrenders his estate as insolvent or his estate is sequestrated;

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- d. he is convicted of an offence which involves dishonesty;
- e. he absents himself from three consecutive meetings of Excom without special leave of absence from Excom;
- f. by resolution of a general meeting of the Association he is removed from his office;
- g. he ceases to be a registered owner of a portion or his subscription becomes delinquent in terms of Clause 21(e).

9. **EXCOM MEETINGS AND PROCEDURES THEREAT**

- a. Excom shall meet at such time and place as shall be decided by Excom from time to time.
- b. Three 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.
- c. Four members shall form a quorum at any meeting of Excom.
- d. Within seven (7) days of the First Annual meeting Excom shall meet and elect from its members a Chairman. The Chairman elected shall hold office as such until a new Chairman is elected.
- e. All matters at any meeting of Excom shall be determined by a majority of those present and voting. In the event of an equality of votes, the Chairman of any meeting shall have a casting as well as a deliberate vote.

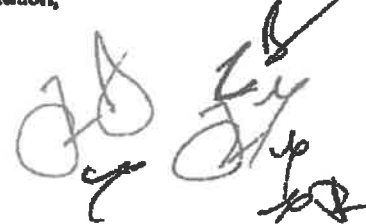
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- f. Excom may from time to time appoint a Secretary and a Treasurer, or a Secretary/Treasurer.
- g. Excom shall keep minutes of all its meetings, which shall be available for inspection by any member on request.

10. POWERS

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:

- a. the performance of such acts as are necessary to accomplish the objects expressed or implied herein;
- b. the investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;
- c. the operation of a banking account with all powers required by such operations;
- d. the making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association;
- e. the employment and payment of agents, servants and any other parties;
- f. the making, amendment and repeal of rules which shall be binding upon members as if they form part of this Constitution;

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- g. the right to sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose;
- h. the levying of a subscription and/or levies payable by members as provided in Clause 21 hereof.
- i. The preservation of the architectural theme of the Development and the adjudication upon any proposed extension, addition and/or alterations to the property or erections situate thereon within the Development in accordance with the design manual annexed hereto.

11. 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 been duly appointed in office.

12. 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.~~

13. 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.

14. GENERAL MEETINGS OF THE ASSOCIATION

a. The Association shall before 15 March 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.

b. At the First Annual General Meeting the Developer shall be entitled to nominate the initial Excom referred to in Clause 7(c).

c. Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as Excom shall decide from time to time.

d. All general meetings other than Annual General Meetings shall be called special general meetings.

~~e. Excom may, whenever they think fit, convene a special general meeting.~~

15. NOTICE OF MEETINGS

a. A General Meeting shall be convened 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 matter 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 agreed by eighty per cent of the members present.

b. **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.

16. **QUORUM**

No matters shall be discussed at any meeting unless a quorum is present when the meeting commences. Save for the purposes of a Resolution required in terms of Clauses 21(f), 24 or 26 hereof a Quorum for all other purposes shall be members present in person or by proxy and holding not less than 60% of the total number of votes available to be cast by members at the time that the meeting commences.

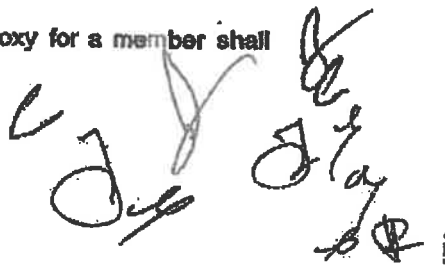
17. **CHAIRMAN**

The Chairman of Excom shall preside at every General Meeting.

18. **VOTES**

At all general meetings resolutions put to the vote, shall take place by show of hands unless by majority vote the meeting decides that voting shall be by ballot, in which even the ballot shall take place immediately. Voting, whether by show of hands or by ballot, shall take place in accordance with the following provisions:-

- a. each member present in person shall have one vote for every portion registered in his name.
- b. each person present as proxy for a member shall have one vote for every portion registered in the name of the member for whom he is proxy.
- c. each member and person present as proxy for a member shall



indicate clearly how he casts each vote to which he is entitled as aforesaid.

- d. the Developer or its duly authorised representative shall have one vote for each untransferred portion depicted on the Development Plan still registered in its name.
- e. all resolutions shall, except as otherwise provided herein, be by simple majority of those members present in person or proxy at the meeting and voting.
- f. 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.

19. AGENDA

In addition, to any other matters required to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- a. the consideration of the Chairman's report.
- b. the election of Excom.
- c. the consideration of the report of the Auditors and fixing of their remuneration.
- d. the confirmation of any budget proposed by Excom.
- e. the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions.

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- f. the confirmation of the annual subscription and any special levy determined by Excom for the year.

20. PROXY

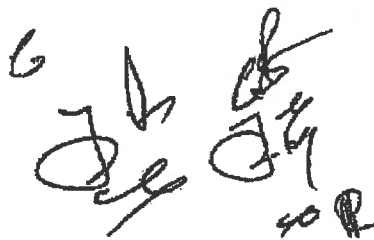
Votes may be given either personally or by proxy.

- a. 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.
- b. 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 at least three days 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.

21. SUBSCRIPTIONS

a. The Association, through Excom, shall be entitled to levy an annual subscription for the purpose of meeting all expenses, which the Association has incurred or to which Excom reasonably anticipates the Association will be put and to defray the costs of managing and administering the Association to achieve its objects set out in Clause 5. Such subscription may be fixed and calculated annually in advance and collected annually OR monthly in advance.

- b. Excom shall be entitled at its discretion to increase the annual subscription from time to time.

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c. The annual subscription shall commence on a date to be determined by Excom. The first subscription shall become due and payable on the day fixed for commencement. The subscription for any year after the first year shall become due and payable on the first day of January of the said year if annual, and on the first day of each and every month if monthly.

d. Excom may from time to time determine and collect special levies from members in addition to the annual subscriptions should the need for such additional levies arise or circumstances so dictate.

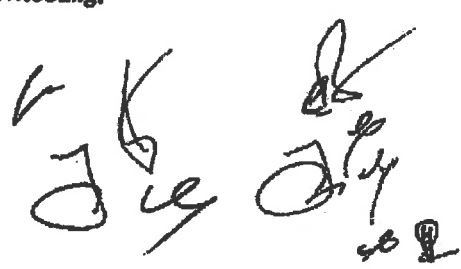
e. If the annual subscription or levies determined in terms of 21(d) hereof are not paid within ninety days of due date, or should a member be in arrear for three months if the subscriptions are paid monthly, then such subscription and/or levy shall become delinquent, and the Association may institute legal proceedings against the member for the recovery thereof and the costs of such proceedings shall be added to the subscription due by the delinquent member. A member whose subscription is delinquent for the current year shall not be entitled to:

~~nominate candidates for election to Excom.~~

ii. Serve on Excom.

iii. Vote at a general or special meeting.

f. Notwithstanding the foregoing, the aggregate subscription in any year shall not exceed the sum of Rx without being confirmed by a resolution of not less than 75% (seventy five per cent) of members present and entitled to vote at a general meeting.

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22. ACCOUNTS

- a. Excom shall cause proper books of accounts of the administration and finance of the Association to be kept at the domicile of the Association or such other place or places as it may think fit.
- b. Excom shall cause to be laid before the Association in Annual General Meeting, books of account, balance sheets and reports of the Association.
- c. 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.

23. DOMICILIUM

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:

- a. the Association at
- b. each member - at the portion registered in his name;
- c. Any notice which may be required to be given in terms of this Constitution may be given by the despatch of such notice in writing by pre-paid post, in which event, such notice shall be deemed to have been received ten days after the posting thereof from any Post Office within the Republic of South Africa.
- d. Any member shall be entitled to change his aforesaid domicilium by giving Excom written notice by registered post to this effect.

24. AMENDMENTS TO THE CONSTITUTION

Any amendment or addition to the Constitution must be

- a. passed by a resolution of not less than 75% (SEVENTY FIVE PER CENT) of members present, and entitled to vote, at a general meeting and
- b. confirmed by the Winefands District Council or any subsequent local authority replacing such Council and the Developer in writing.

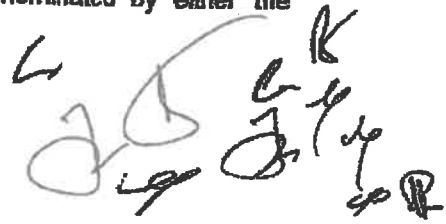
25. NON-LIABILITY OF MEMBER

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:

26. INTERPRETATION/ARBITRATION

a. Should any dispute or doubt arise as to the interpretation or meaning of this Constitution or any Rules and Regulations of the Association, Excom shall be the final arbiter and its decision shall be binding upon the members.

~~b. Apart from questions of interpretation, any other dispute whatsoever which may arise shall in the first instance be referred to Excom to~~
decide whether the dispute in fact relates to any legal question or constitutes a dispute relating to physical design or landscaping. Thereafter the dispute, if legal, shall be referred for decision to a practising senior advocate of the Cape Bar of not less than five years standing or if relating to physical design or landscaping to a qualified Architect of not less than 10 years' standing, agreed upon by the parties to the dispute, who shall then determine the dispute. In the event of the parties being unable to agree upon a senior advocate or architect who should be appointed to determine the dispute, then the Arbitrator shall be nominated by either the



President of the Cape Bar Council or the President-in-Chief of the Institute of South African Architects, as the case may be.

c. The Arbitrator shall not be bound to follow strict principles of Law, but may decide the matter submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or taken into account by him in arriving at his decision. The parties desire that such decision be arrived at as expeditiously and as informally as possible without any pleadings or discovery of documents, and without if being necessary to observe the strict rules of evidence, or the usual strict formalities or procedures. In the absence of agreement between the parties, the procedure to be followed shall be laid down by the Arbitrator.

d. Without in any way limiting, or derogating from the generality of his powers, the Arbitrator shall, in addition, be entitled to make such order as to the payment of legal costs and other expenses incurred by the parties to the arbitration as he deems just and equitable in all the circumstances.

e. ~~The parties irrevocably agree that the decision of the Arbitrator on~~ any matter in dispute shall be final and binding upon all of them, whether they were parties to the dispute or not, and may be made an order of any competent Court. Notwithstanding the reference in this Clause to "an Arbitrator", any such Arbitrator shall act as an expert and shall not therefore be bound by the provisions of any arbitration laws for the time being in force.

27. SUBMISSION OF PLANS

No Member shall submit any plans to the Council 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 approved in accordance with the procedures set forth in the Design Guidelines. Approval of a member's building plans will be subject to a flat scrutiny fee of R. _____ payable to the architects, Smuts & Boyes.

28. **SUBDIVISION**

No Member shall be entitled to subdivide any portion in the Development registered in their name.

29. **CONSTRUCTION OF DWELLINGS**

No unit owner shall be entitled to construct more than one main dwelling, one manager's dwelling and two farm cottages on each land unit. For the purposes of this restriction any existing main dwelling/s, manager's dwelling/s or farm cottages which may already have been constructed on the member's land unit in excess of the aforesaid restriction prior to such time as the member shall have acquired such land unit shall be disregarded and not be deemed to be in contravention of the aforesaid restriction and the respective unit owner/s shall be entitled to continue utilising such existing erections in excess of the aforesaid restriction, provided however, that such existing main dwelling/s, manager's dwelling/s or farm cottage/s shall be taken into account thereafter for the purposes of determining any additional number of housing units the land unit owner shall thereafter be permitted or entitled to erect on each land unit in terms of this constitution.

30. **ANIMAL RESTRICTIONS**

On account of the ecological sensitivity of the area and nature of the development, and in addition to the Title Deed prohibition to be registered against each portion that the property may not be utilised for the purpose of carrying on any piggery or dairy business the Developer considers it

necessary to impose a limitation on members on what animal species may be kept on the development. No member may be entitled to or permit any party to keep more than five cows, sheep, pigs or goats on the development.

31. ALIEN VEGETATION

All members shall be obliged to be conscious of the potential threat of alien vegetation and to assist in the control and eradication thereof as a matter of priority.

32. SERVIDE ROADS

It is a fundamental design principle of the Development that the intended land usage and supporting servitude road structure must be in harmony with the rural spirit of the Development and to this end it is the intention to retain the existing nature of the farm graded servitude roads and not to permit any tarring thereof.

~~TWO RIVERS PROPERTY OWNERS ASSOCIATION CONSTITUTION~~

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**ADJUDICATION ORDER IN TERMS OF SECTION 54
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

Ref: CSOS480/WC/19

IN THE MATTER BETWEEN

THE RIVER FARM TRUST

Applicant

(Represented by Jonathan Schrire in his capacity as trustee of the trust)

and

THE TWO RIVER PROPERTY HOME OWNERS ASSOCIATION **Respondent**

(Represented by Coen Swarts in his capacity as the chairperson of the POA)

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for in terms of the CSOS Act: Section 39(1)(c)- in respect of financial issues – for an order declaring that a contribution levied on owners or occupiers or the way it is to be paid is unreasonable and requesting an order for an adjustment of such contribution to correct amount.
- Date Adjudication conducted: 10 November 2020
- Name of the Adjudicator: Zama Matayi
- Order:

1. *The Application to declare the contribution (the special levy) levied on the Applicant or the way it is to be paid, incorrectly determined or unreasonable is granted.*

2. *The Two Rivers Farm Property Owners Association is ordered to refund within twenty-one (21) days from date of this order, the Applicant the amount of R161 893.00(special levy) plus interests from the 10 July 2017, charged at the rate charged by the Association on arrear levies.*

3. *The application to compel the Two Rivers Farm Property Owners Association to reinstate and or to reverse or refund an amount of R33 077.00 (Applicant's one thirteenth share) into the Association's bank account is refused.*

- 4 *No order as to costs is made*

- Circulate: No
- Authority:
- Legislative Provisions: CSOS Act no. 8 of 2011
Land Use and Planning Ordinance of 1985
- Quality Assured by & date:
- Date issued: 18th November 2020
- Date sent to parties: 18th November 2020

INTRODUCTION

1. The Applicant is the River Farm Trust, owner of portion 20 of erf 1646, Paarl (Franschhoek). represented by Jonathan Schrire in his capacity as a representative of the trust, the mandate or authority to represented the respondent is on file.

2. The Respondent is Two Rivers Property Owners Association, a Home Owners Association established in terms of section 29 of the Land Use and Planning Ordinance (LUPO)
3. The community scheme is The Two Rivers Property Owners Association which is duly constituted in terms of s 29 of the Land Use and Planning Ordinance (LUPO) for a community scheme known as Two Rivers Property Home Owners Association located at Paarl, Cape Town.
4. This is an application for dispute resolution in terms of section 38 of the Community Schemes Ombud Service Act 9 of 2011 ("the CSOS Act"). The application was made in the prescribed form and lodged with the Community Schemes Ombud Service (CSOS) by way of email.
5. The application seeking relief in terms of section 39 of the CSOS Act, is in respect of-

s39(6)(b): In respect of financial issue

ie. an order declaring that a contribution levied on owners or occupiers or the way it is to be paid is incorrectly determined or unreasonable, and requiring an adjustment of the contribution.

6. This matter is adjudicated in terms of the CSOS Act and Practice Directive on Dispute Resolution, 2019 as amended and more specifically the amended Practice Directive dated 23 June 2020 which provides under paragraph 8.2:- "Adjudications will be conducted on the papers filed by the parties and any further written submissions, documents and information as requested by the appointed Adjudicator. The parties were requested to make written submissions. The adjudication was conducted on 10 November 2020 and an order is now determined.

PRELIMINARY ISSUES

7. No preliminary issues were raised / (legal representation, points in *limine*)

RELEVANT STATUTORY PROVISIONS

8. Section 1 of the CSOS Act defines-

- **"community scheme" as "any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings, including but not limited to a sectional titles development scheme, a share block company, a home or property owner's association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing cooperative and "scheme" has the same meaning"**
- **"dispute" as "a dispute in regard to the administration of a community scheme between persons who have a material interest in that scheme, of which one of the parties is the association, occupier or owner, acting individually or jointly"**

9. Section 38 of the CSOS Act provides-

"Any person may make an application if such person is a party to or affected materially by a dispute".

10. Section 45(1) provides-

"The Ombud has a discretion to grant or deny permission to amend the application or to grant permission subject to specified conditions at any time before the Ombud refers the application to an adjudicator"

11. Section 47 provides-

On acceptance of an application and after receipt of any submissions from affected persons or responses from the applicant, if the Ombud considers that there is a reasonable prospect of a negotiated settlement of the disputes set out in the application, the Ombud must refer the matter to conciliation.

12. Section 48 (1) provides-

If the conciliation contemplated in section 47 fails, the Ombud must refer the application together with any submissions and responses thereto to an adjudicator.

13. In terms of Section 50-

"The adjudicator must investigate an application to decide whether it would be appropriate to make an order."

14. Section 51 provides for the investigative powers of the Adjudicator:

(1) When considering the application, the adjudicator may-

(a) require the applicant, managing agent or relevant person-

- (i) to give to the adjudicator further information or documentation;
- (ii) to give information in the form of an affidavit or statement; or
- (iii) subject to reasonable notice being given of the time and place, to come to the office of the adjudicator for an interview;

(b) invite persons, whom the adjudicator considers able to assist in the resolution of issues raised in the application, to make written submissions to the adjudicator within a specified time; and

(c) enter and inspect-

- (i) an association asset, record or other document;
- (ii) any private area; and
- (iii) any common area, including a common area subject to an exclusive use arrangement.

15. If the dispute has not been resolved through conciliation, the matter may be referred to an adjudicator. Accordingly, a certificate of Non- Resolution was issued in terms of Section 48(1) of the CSOS Act. In terms of the certificate of non-resolution the Applicant seeks an order to compel the Respondent to carry out specified repairs or to have specified repairs made.

SUMMARY OF RELEVANT EVIDENCE

Applicant's Submissions

16. This is an application to declare a contribution levied on the Applicant unreasonable and requiring an order for the adjustment of the of the contribution. The Applicant is the owner of portion 20 Of erf 1646 Paarl and represented by Jonathan Schrire. The Applicant purchased his property in 2002 directly from Anglo American when the Two Rivers Farm was subdivided by Anglo and sold in portions. Applicant signed the Anglo American Constitution and became a member of the Association. The prerequisite of membership to Property Owners Association if part of his tile

deed as in the case of all other owners. The property Owners Association comprises (The POA) of 13 farms, of 20 to 50 hectares each, spreading over 5 km near Franschoek. There are two access roads on the estate.

- a. A 5 km road which has two access gates off the R45, which crosses bridges over two rivers and gives access to 12 of the farms.
- b. A separate entrance gate and access road of 700 meters that gives access to only one farm, the Applicant, portion 20(formerly portion 3).

17. The Applicant submitted that the levy policy was changed drastically in mid-2017, so that the Applicant, portion 20 who has an entirely separate registered servitude access to his farm, for which he is obliged to pay all the costs on his own, is also forced to share in the costs of roads and bridges on the common access road, none of which provides access to his farm. So effectively the Property Owners Association is not paying for portion 20 access road but expect the Applicant to contribute towards the costs of maintaining the roads and bridges on common access roads.

18. The Applicant submitted that governance documents of the scheme are subject to the common law principle in that they must be fair and reasonable; He further submitted that as it stands the constitution and the rules are not fair in that Applicant is expected to contribute toward the costs of the two access roads when others are not contributing to his. Applicant submitted that there is no reciprocal benefit from this arrangement as the roads and bridges has nothing to do with his farm as they are kilometers away on the other side of Wemmershoek river. The Property Owners Association, unlike traditional Home Owners Associations or Body Corporates, has no common areas at all. The main access road consists entirely of servitudes that pass over private farms. Members are levied to share the costs relating to private, not common property.

19. The special levy which is the subject matter of this application consists of two parts.

- R112 549.00 being costs associated with the access road through the estate which consists of a series of servitudes over privately held farms (farms 7 through to 13). The Applicant submitted that not one meter of this land is common property.
- R49 344.00 being a one fifteenth share of the road costs over the two neighboring properties which are not even part of the POA (portions 14 and 15).

The Applicant therefore submitted that the POA demands that he contributes towards privately owned land that is subject to servitudes. The Applicant made reference the 2013 when the Eastern part of the common road was tarred and only paid for by 7 of the 13 farms based on which road they use for access. The POA Special General Meeting held on the 25 November 2013 held that *"costs for the tarring of the road will be paid in proportion to the usage of and benefit received by each farm"*. The November 2013 SGM resolved that farms 1 through to 7 would be responsible for the road from portion 1 entrance to the entrance to portion 6 as well as for the Wemmershoek river bridge. The Applicant therefore submitted that the other 6 "Western" farms, 8 to 13 were not asked to pay anything since it was envisaged that they would eventually share in the costs of resurfacing the road on their Western side of the estate. The Applicant also made reference to the situation where the other 6 farms were asked to share in the costs of the Eastern road because the Western route over the berg river was block by floods. Therefore the only reason why all farms were asked to pay for the first Eastern road was because they all used it, not because of any general principle that all farms had to share equally in all roads.

20. Applicant submitted that the principle of differential levies was well established and applied. Farms only shared in the costs of roads and bridges that they used to access their farms. There was no principle that had to share equally in all roads. The principle that farms had to share equally was only introduced in the POA constitution in 2016. Clause 22.7 of the Constitution provides as follows:

22.7. In calculating the levies payable by each member, Excom shall as far as reasonably possible -

22.7.1 Assign those costs and expenses arising directly out of or directly attributable to a portion to the owner thereof;

22.7.2 Assign those costs and expenses arising directly out of all directly attributable to more than one portion to the owners of those portions, and

22.7.3 subject to 22.7.1 and 22.7.2 assign those costs relating to two Rivers Farm generally to the owners of all portions equally, or if consolidated then as if the consolidation had not taken place, provided however that excom may in any case where it considers equitable to do so, assign to any owner a greater or lesser share of the costs as excom considers may be reasonable in the circumstances.

21. At a POA Special General Meeting held on 17 March 2017 members with the exception of the Applicant agreed that all major common infrastructure should be paid equally by all farms, irrespective of whether they use it or not. As a result of this all farms were required to share in the R3.3 million costs of the new road irrespective of whether they use it for access to their farms or not. The Applicant's objection was overruled as a result he was obliged to pay a special levy of R161 893.00 which amount was paid on the 10 July 2017. A further R33 077.00 of Applicant's funds were used, being Applicant farms one tenth share of the R430 000.00 common funds in the POA account which were allocated to the Western Road. In May 2017 the Applicant submitted an application to the POA to exit the Association due to the unique qualities of portion 20. The application was considered by Excom and conditions of approval drafted and given to the Applicant for consideration and acceptance. It seems like the conditions were not accepted hence the Applicant is still a member of the POA.

Relief sought by the Applicant:

22. Applicant seeks an order declaring that a contribution levied on owners or occupiers or the way it is to be paid is unreasonable and requesting an order for an adjustment of such contribution to correct amount and further seeks a order to compel the POA to refund both the special levy he paid and to refund his portion of the ordinary levies that were allocated solely to the Western Road.

Respondent's Submissions

23. The Respondent submitted that Membership of the Association is obligatory for all owners of the thirteen comprising portions of the Two Rivers Farm Estate and is as such enshrined in the individual Title Deeds of each portion. It follows that each individual member portion subscribes to the overall interest of the greater collective, with the letter and spirit of the currently valid constitution (2002 version) as guide. It was submitted that section 29.(7)(a) of the Stellenbosch Municipality Land Use Planning Bylaw of 2015 determines that the members of an Association such as the TRPOA are "...*jointly liable for expenditure incurred in connection with the association*". The Applicant submitted that "benefit to" and/or "use by" an individual portion must by implication be subservient to the overall interest and good of the estate in its broader definition.

24. Applicant (portion 20), since becoming a member of the TFPOA in 2002 when the portion was acquired from the then owner, Anglo American farms Ltd - and up until late in 2018, has been successfully using the same "central servitude road / common access road" - which all other members have been using - to get access to portion 20. It was only in 2018 - some 16 years after acquiring the portion - that Applicant elected to construct a road on his servitude route over portion 1. Applicant submitted that the "*pay only for what you use*" principle has been the subject of exhaustive discussion and deliberation in the TRPOA and the eventual majority decision (11 out of a possible 13 votes, with Applicant not being able to vote due to his non-payment of levies and one other member abstaining) has confirmed that all members should share equally in all financial costs pertaining to infrastructure over the whole of the Two Rivers Farm Estate. Respondent

submitted that there is no legal basis whatsoever for portion 20 to be exempted from his financial obligations as a member of the TRPOA. Portion 20's farming activities make extensive use of the common infrastructure.

25. The Respondent argued that should the argument of Applicant carry the day, it would create a chaotic situation and probably signals the end of the TRPOA, and of many other Estates as well, for that matter. Portions 10 and 11, situated at the Western entrance, can then equally argue that they should be exempt from paying for any part of the central road beyond their immediate area. Portion 4, on which there are no inhabitants or farming activity, can argue that it should be refunded all levies since no "benefit" has been derived and it does not "use" the road at all. The Respondent argued that the Clause 23.16 of the 2019 Constitution should apply. This clause states that all costs and expenses incurred in connection with the maintenance, upkeep and or replacement of the road network comprising the main servitude road including the two bridges shall at all times be shared equally between all members.

Relief sought by the Respondent

26. Respondent seeks an order dismissing or refusing the Application.

EVALUATION & FINDING

27. In proving his case the Applicant relied on previous policy decisions and practice that property owners only paid for the roads they use for access and that that his farm was not expected to contribute toward the Western road. In this regard the Applicant referred to the minutes of the November 2013 Special General Meeting. The Applicant further relied on the May 2016 SGM which confirmed this position in which 6 farms had to pay 2 years later because they using the Western road. The Applicant further relied on the various Constitutions of the Association.

a. The 2002 Constitution which he signed. Applicant submitted that this is the only constitution that has been registered with the Local Municipality

and according to the Adjudication Order under case reference number CSOS290/WC/19 the only one that is valid.

- b. The 2016 Constitution was adopted by the POA but never filed and approved by the Local Authority. This Constitution contain the provision carried forward from previous constitutions, that the other 12 farms will not pay anything towards the access road to Applicant's farm.
- c. The 2019 Constitution which was drawn up in response to the adjudication order that ordered the POA to draft a reasonable way of sharing costs.

28. It is common cause that portion 20 has unique attributes and is one of the portions of the Association with a separate road servitude enabling separate access as well as a separate water allocation. It is further common cause that costs in the estate were paid in proportion to the usage and benefit received. It is common cause that this principle was recognised in the Constitution of the scheme in that where there were issues of equal and common interests to all 13 portions they were addressed and paid for equally. Things changed at the 17 March 2017 Special General Meeting where it was decided that every property owner would pay a special levy equally toward road maintenance regardless of the use and benefit.

2002 Constitution

29. The 2002 Anglo Constitution seems to be the only version that was approved by the Municipality. This Constitution states that an amendment or addition to the Constitution must be

- a. Passed by a resolution of not less than 75% of members present and entitled to vote, at a general meeting and
- b. Confirmed by the Winelands District Council or subsequent local authority replacing such Council and the Developer in writing.

It is common cause between the parties that the 2002 Constitution is the valid constitution as conceded by the Respondent in their final written submission.

2016 Constitution

30. The 2016 Constitution attempted to amend the original 2002 Constitution but did not succeed because this Constitution was never filed and approved by the Local Municipality. The 2016 Constitution contain the provision carried forward from previous constitution, that the other 12 farms will not pay anything towards the access road to Applicant's farm.

31. Assuming that the 2016 Constitution was approved by the local Municipality and therefore enforceable. The calculation of the Applicant's special levy would in any event have been incorrectly determined because clause 22.7 states that in calculating the levies payable by each member, Excom shall as far as reasonably possible –

22.7.1 Assign those costs and expenses arising directly out of or directly attributable to a portion to the owner thereof;

22.7.2 Assign those costs and expenses are rising directly out of all directly attributable to more than one portion to the owners of those portions,

This did not unfold at the SGM held on the 17 March 2017, instead Excom and or members of the Association decided to invoke Clause 22.7.3 without subjecting that decision to Clause 22.7.1 and 22.7.2 as required, and simply assigned those costs relating to Two Rivers Farm generally to the owners of all portions equally. This I find to have been contrary to the Constitution which determines the calculation of levies and special levies payable. On this version alone the Respondent's version would not stand the test of time.

32. In the CSOS adjudication with reference number CSOS290/WC/19 the Applicant in that matter among other things sought an order declaring the imposition of special levies for the upgrade of the service road (Western Side) equally on all members to be unreasonable. The applicant being portion 1 whose farm contributed to the Eastern road in 2014 refused to pay the new Western Road levy of R161 893.00. The prayer was granted and the POA

was ordered to convene a Special General Meeting of its members to deal with the issue of costs and expenses on a reasonable basis in the new Constitution.

33. The CSOS adjudication order found the decision taken to impose special levies for the upgrade of service roads on all members in equal shares based on the 2016 Constitution invalid until a new Constitution is accepted. This then led to the birth of the 2019 Constitution which was recently approved by the Municipality. This Constitution is valid from the date of approval by the Municipality unless specifically mentioned. It was alluded that the Applicant lodged an appeal against the approval of the 2019 Constitution. The details and status of this appeal is unknown at this stage.

2019 Constitution

34. The CSOS adjudication order gave birth to the 2019 Constitution which was adopted at the Special General Meeting held on the 17 April 2019. This Constitution although adopted at the meeting, at the time this application was lodged, the Constitution was not approved by the Local Authority or CSOS as yet therefore not effective as yet. In the final written submissions it was mentioned that this Constitution has now been approved by the Municipality I was not requested to deal with the provisions of this Constitution and I shall therefore not pronounce on the validity and of this Constitution. This Constitution is effective from the date of approval by the municipality unless specifically mentioned. Its application cannot be retrospective unless specifically mentioned. The 2019 approved Constitution can only regulate the scheme conduct going forward it cannot apply retrospectively unless specifically mentioned. As far as contributions are concerned the 2019 Constitution does not have any application to the previous contributions made prior to its approval unless retrospectivity was addressed in the Constitution.

Reasonableness

35. Considering the reasonableness of the Excom decision to make every owner pay equally regardless of use and proportion, one needs to look at the scheme. It is common cause that this is not an ordinary Home Owners Association where there is shared responsibility and use by all members. The roads seems to be one of infrastructure commonly shared by some or all members of the Association. The roads in question are not owned by the Association and therefore not common property as one would understand the concept of shared use and responsibility in the communal living setup. The roads in question are subject to servitudes and are owned outside of the Association. Portion 20 has unique attributes and is the portion of the Association with a separate road servitude enabling separate access as well as a separate water allocation. The Applicant's access road is about 700m compared to the 5km road to which he obliged to contribute to. It was also mentioned that there was reluctance to contribute towards upgrade of the Applicant's access road by some members because there was no point of contributing when in fact, they were not using the road.
36. Considering the nature of competing interests; and the impact of the decision. Even if one can accept that all members are to contribute equally towards upgrade and maintenance of the roads. Applicant's contribution toward a 5km road will be much greater than the contribution of others towards a 700meters access road to his farm. One must accept that this is not the normal or ordinary Home Owners Association with common facilities and infrastructure. The uniqueness or the extra ordinary nature of the scheme that requires extra ordinary measures in place. The Association recognised the unique attributes of the scheme, in particular of portion 20 by considering an exit strategy from the Association by portion 20. The exit of portion 20 was approved by Excom on certain conditions which I assume were not adhered to by the owner of portion 20. This to me is an indication of a recognition of the uniqueness of the scheme and the attributes of portion 20. The Association withdrew its approval to exit and Applicant is still a member of the Association.
37. The decision taken on 17 March 2017 that all member will contribute equally towards maintenance and upgrade of the roads was not in line with the general practice of the "use" principle. If members of the association do not contribute

to the maintenance or upgrade of Applicant's servitude private access road then it cannot be reasonable to expect the Applicant to contribute.

COSTS

38. As far as costs are concerned parties to a dispute are generally required to meet their own costs. This includes the application fee, the fee for inspecting and obtaining copies of any submission or reply, any personal costs incurred to attend the adjudication and any legal costs incurred in making and responding to an application.

ADJUDICATION ORDER

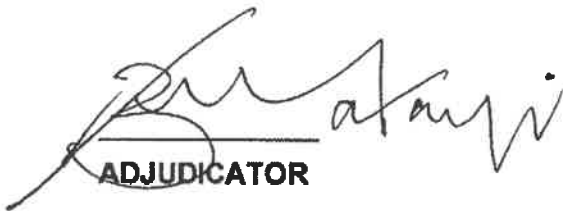
39. In the circumstances and for the reasons stated above, the following order is made in terms of section 54(1)(a) read with section 39(1)(c) of the Community Scheme Ombud Service Act No. 9 of 2011,

- 39.1 The Application to declare the contribution (the special levy) levied on the Applicant or the way it is to be paid, incorrectly determined or unreasonable is granted.
- 39.2 The Two Rivers Farm Property Owners Association is ordered to refund within twenty-one (21) days from date of this order, the Applicant the amount of R161 893.00 (special levy) plus interests from the 10 July 2017, charged at the rate charged by the Association on arrear levies.
- 39.3 The application to compel the Two Rivers Farm Property Owners Association to reinstate and or to reverse or refund an amount of R33 077.00 (Applicant's one thirteenth share) into the Association's bank account is refused.
- 39.4 No order as to costs is made

RIGHT OF APPEAL

35. Section 57 of the CSOS Act, provides for the right of appeal-
- (1) An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to the High Court, but only on a question of law.
 - (2) An appeal against an order must be lodged within 30 days after the date of delivery of the order of the adjudicator.
 - (3) A person who appeals against an order, may also apply to the High Court to stay the operation of the order appealed against to secure the effectiveness of the appeal.

DATED AT Cape Town ON 18th November 2020


ADJUDICATOR


ADJUDICATION ORDER
DATE: 18.11.2020
Community Schemes Ombud Service
T: +27 (010) 593 0583 | F: +27 (010) 590 6154
Website: www.csos.org.za
Fraud Hotline: 0800 701 701