



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

Application Number: LU/15467

Our File Reference Number: Farm 373/7 Stellenbosch Farms

Your Reference Number:

Enquiries: Ulrich von Molendorff

Contact No: 021 – 808 8682

Email address: Ulrich.Vonmolendorff@stellenbosch.gov.za

PER E-MAIL: [REDACTED]

Sir / Madam

APPLICATION FOR PERMISSION REQUIRED IN TERMS OF A CONDITION OF APPROVAL IN ORDER TO SUBMIT THE WRITTEN AGREEMENT AND AMENDED L'HERMITAGE RESIDENTIAL ESTATE HOMEOWNERS ASSOCIATION CONSTITUTION ON FARM 373/7 STELLENBOSCH FARMS.

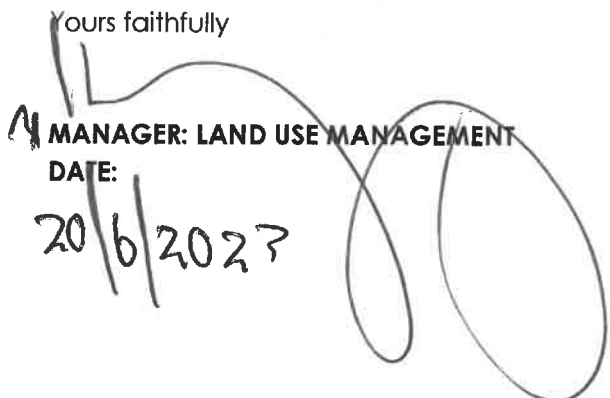
1. The above application refers.
 2. The duly authorised decision maker hereby decides on the above application as follows.
 3. That the following application(s) in terms of Section 15(2) of the Stellenbosch Municipal Land Use Planning Bylaw, promulgated by notice number 354/2015, dated 20 October 2015 on Farm 373/7 Stellenbosch Farms, namely;
 - 3.1. **Permission required for a condition of approval** in terms of Section 15 (2)(i) of the said by-law in order to submit the written agreement and amended L'Hermitage Residential Estate Homeowners Association Constitution.
- BE APPROVED** in terms of Section 60 of the said Bylaw and subject to conditions of approval.
4. The approval is subject to the following conditions imposed in terms of Section 66 of the said Bylaw:
 - 4.1 The approval applies only to the proposed application under consideration and shall not be construed as authority to depart from any other legal prescriptions or requirements from Council.
 - 4.2 The approval granted shall not exempt the applicant from complying with any other legal prescriptions or requirements that might have a bearing on the proposed use.
 - 4.3 The development be managed subject to the L'hermitage residential estate Homeowners Association constitution and written agreement attached as **Annexure A**.
 5. The reasons for the above decision are as follows:
 - 5.1 The submission of the written agreement and amendments to the constitution are required for the implementation of the approved development and will not have an impact on the original development approved by Council or impact on the broader community.

5.2 The application is compliant with provisions made in Section 29 of the Stellenbosch Municipality Land Use Planning By-law 2015 relating to the establishment of owners associations.

6. You are hereby informed in terms of section 79(2) of the Stellenbosch Municipal Land Use Planning Bylaw, 2015, of your right to appeal the above decision to the Appeal Authority within 21 days from the date of notification of the above decision. Please note that no late appeals or an extension of time for the submission of appeals are permitted in terms of Section 80(1)(a) of the said By-Law.
7. Appeals must be submitted with the prescribed information to satisfy the requirements of Section 80(2) of the said By-law, failing which the appeal will be invalid in terms of Section 81(1)(b) of the said By-Law. The following prescribed information is accordingly required:
 - (a) The personal particulars of the Appellant, including:
 - i. First names and surname
 - ii. ID number
 - iii. Company of Legal person's name (if applicable)
 - iv. Physical Address
 - v. Contact details, including a Cell number and E-Mail address
 - (b) Reference to this correspondence and the relevant property details on which the appeal is submitted.
 - (c) The grounds of the appeal which may include the following grounds:
 - i. that the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)
 - ii. grounds relating to the merits of the land development or land use application on which the appellant believes the authorised decision maker erred in coming to the conclusion it did.
 - (d) Whether the appeal is lodged against the whole decision or a part of the decision.
 - (e) If the appeal is lodged against a part of the decision, a description of the part.
 - (f) If the appeal is lodged against a condition of approval, a description of the condition.
 - (g) The factual or legal findings that the appellant relies on.
 - (h) The relief sought by the appellant.
 - (i) Any issue that the appellant wishes the Appeal Authority to consider in making its decision.
 - (j) That the appeal includes the following declaration by the Appellant:
 - i. The Appellant confirms that the information contained in the subject appeal and accompanied information and documentation is complete and correct
 - ii. That the Appellant is aware that it is an offence in terms of Section 86(1)(d) of the said By-Law to supply particulars, information or answers in an appeal against a decision on an application, or in any documentation or representation related to an appeal, knowing it to be false, incorrect or misleading or not believing them to be correct.
8. Appeals must be addressed to the Municipal Manager and submitted to his/ her designated official by means of e-mail at the following address: landuse.appeals@stellenbosch.gov.za.
9. Any party (applicant or other) who lodges an appeal must pay the applicable appeal fee in terms of the approved municipal tariffs and submit the proof of payment together with the appeal. The **LU** Reference number on this correspondence, or the applicable Erf/ Farm Number must be used as the reference for the payment of the appeal fee.

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

Yours faithfully

A large, stylized handwritten signature in black ink, consisting of a series of loops and curves, is written over the typed name and date.
MANAGER: LAND USE MANAGEMENT

DATE:

20/6/2023

hm

MEMORANDUM OF AGREEMENT

ENTERED INTO BY AND BETWEEN

L' HERMITAGE HOME OWNERS ASSOCIATION

Address: JPS Trust (Room 210)

Valerida Centre, Piet Retief Street

Stellenbosch 7600

Email: karel.frank@gmail.com

(herein represented by Karel Frank (new Chairman) and duly authorised thereto)

(hereinafter referred to as "the HOA")

and

WEBSTRUTHER TRUST

(REGISTRATION NUMBER: 2785/96)

Address: Unit 1091, Helderberg Village

63 Bekkerskloof Road

Somerset West, 7130

Email: brian@spotte.net

(herein represented by Brian Hugh Spottelwood and duly authorised thereto)

(hereinafter referred to as "the Developer")

WHEREAS the Developer obtained approval from the Stellenbosch Municipality on 15 April 2021 (hereinafter referred to as "the Approval Letter") to develop a further 11 (eleven) erven in L'Hermitage Phase 2 (hereinafter referred to as "Phase 2") adjacent to L'Hermitage Phase 1.

AND WHEREAS condition 3.6 of the Approval determines that Phase 2 can be incorporated into the HOA, for which purpose a written agreement has to be concluded with the HOA and submitted to the Stellenbosch Municipality together with the amended Constitution of the HOA confirming the incorporation of Phase 2 into the HOA.

AND WHEREAS the parties have, after negotiations, in principle agreed on the terms of the aforementioned agreement for the incorporation of Phase 2 into the HOA, which is hereby recorded in writing.

[Handwritten signatures and initials]

hmm

NOW THEREFORE THE PARTIES AGREE TO THE FOLLOWING:

PHASE 2 DEVELOPMENT

1. Phase 2 will be developed in accordance with the Approval Letter, unless otherwise agreed herein (which agreement is further subject to Municipal approval where applicable).
2. As a gesture of goodwill, the Developer shall contribute towards the cost of the reasonable upgrade of the entrance gate infrastructure including surrounds, the surface treatment of the roads, upgrade of the perimeter security wiring & cameras along the S-W and N-W boundaries between the Phase 2 perimeter security and the entrance gate, relevant landscaping and any other improvements agreed upon between the Developer and the HOA (hereinafter referred to as "the Upgrade") of L'Hermitage Estate. All Upgrade projects shall be approved by the Developer and be managed and supervised by the HOA. The HOA shall accordingly enter into agreements with the various contractors, as approved in terms of clause 9, who will conduct the Upgrade projects. The HOA shall ensure that the Upgrade projects commence as soon as reasonably possible after the suspensive conditions in this agreement have been fulfilled and be concluded no longer than 18 (eighteen) months after such date.
3. The Developer shall pay the amount of R1 100 000.00 (One Million One Hundred Thousand Rand) (excluding VAT) (hereinafter referred to as "the Developer's Contribution") into the HOA's nominated attorneys' ("HOA Attorneys") trust account within 10 (ten) business days after it has received written confirmation that the Upgrade has been approved by the Stellenbosch Municipality. Any additional costs and expenses in respect of the Upgrade in excess of the Developer's Contribution (hereinafter referred to as "the Additional Funds"), will be split 80/40 between the parties (80% of the costs will be for Phase 1's residents/owners' account in respect of the HOA and 40% of the costs will be for the Developer's account).
4. The HOA Attorneys are hereby authorized to invest the Developer's Contribution (as well as any funds that the Developer may have to pay in respect of the Additional Funds) in an interest-bearing account in terms of Section 86(4) of the Legal Practice Act No 28 of 2014, as amended, and interest thereon shall accrue to the Developer. 5% (five percent) of all interest earned on amounts paid over to the HOA Attorneys prior to the Upgrade (if any) shall accrue in favour of the Legal Practitioners' Fidelity Fund of South Africa (the "Fund Portion") and the balance shall accrue in favour of Developer in accordance with the provisions of section 86(5) of the Legal Practice Act, subject to fees chargeable by the HOA Attorneys.
6. It is envisaged that the Upgrade projects will not necessarily take place simultaneously and that payment of the cost for the Upgrade projects will therefore be required at different times. The Developer irrevocably and unconditionally instruct the HOA Attorneys to pay the required amount from the Developer's Contribution to the HOA when payment is required in respect of a certain project of the Upgrade. The HOA Attorneys will keep the remainder of the Developer's Contribution (as well as any funds that the Developer may pay in respect of the

P.H.S. 2 P
10/11/18
P.A.S. RL

hm

Additional Funds) invested in an interest-bearing trust account for the Developer's benefit, as stipulated in clause 4, until such times as payment in respect of further Upgrade projects are required.

6. Should the Upgrade's costs and/or expenses exceed the Developer's Contribution, the parties shall contribute towards these costs and/or expenses in accordance with the 60/40 split, as stated above. The Developer shall, within 72 (seventy two) hours of receipt of a written quotation and/or contractor's invoice from the HOA, pay its 40% of the Additional Funds to the HOA in order for the HOA to pay this amount together with its 60% of the Additional Funds to the contractor.
7. Upon the finalisation of the Upgrade, which will be confirmed in writing by both the HOA and the Developer ("the *Written Confirmation Date*"), the following payments shall be made by the HOA:
 - 7.1. the balance of the Developer's Contribution (if any) will be paid to the Developer as soon as possible after the *Written Confirmation Date*; and
 - 7.2. the balance of any Additional Funds (if any) will be paid to the HOA and the Developer in accordance with the 60/40 split as indicated above (60% to the HOA and 40% to the Developer) as soon as possible after the *Written Confirmation Date*.
8. The Upgrade is the property of the HOA.
9. The HOA shall, where possible, obtain 3 (three) quotations in respect of the Upgrade projects. The Developer will consider these quotations within 72 (seventy-two) hours after delivery thereof to it and advise the HOA within this time frame which of the quotations is accepted. All quotations and invoices must be approved by the HOA and the Developer prior to the commencement of any construction work of an Upgrade project.
10. The Developer shall impose a condition in the agreements of sale with purchasers of erven in Phase 2 that, insofar as it is allowed by the Municipality, all construction-related access to Phase 2 must be from the tennis court road via the separate security-controlled gate which has been constructed in the Phase 2 boundary wall. Notwithstanding the aforementioned, the HOA acknowledges that the Developer cannot guarantee that the Municipality will indefinitely allow the aforementioned access. If this gate can no longer be used for construction-related access, the HOA shall allow the owners of erven in Phase 2 and their contractors access to their properties via Phase 1, subject to any reasonable conditions the HOA may impose on these owners at such time.
11. Reasonable access will be allowed to estate agents, prospective Phase 2 erven purchasers and related parties as approved by the HOA prior to the aforesaid parties gaining access through Phase 1, which approval shall not be withheld unreasonably.

B.K.P.
12/4 3 4
P.A.S. #1 RL

nm

12. The Developer will, at its own cost, install an automatic sliding gate at the existing closed gate on the South-Eastern side for ease of access to Phase 2.
13. The Developer shall advise purchasers of erven in Phase 2 of the following:
 - 13.1. That the current borehole in Phase 1 will not provide water to the residents of Phase 2 properties.
 - 13.2. That the HOA shall ensure that the owners of Phase 1 properties will not object to the sinking of borehole(s) in Phase 2, subject to formal approval from Stellenbosch Municipality.
 - 13.3. Should borehole(s) in Phase 2 be proved to have an impact on the water supply of Phase 1's borehole, that Phase 1 owners will be allowed reasonable use of the water from borehole(s) in Phase 2.
14. The Developer shall impose the following conditions in the agreements of sale with purchasers of erven in Phase 2 (hereinafter referred to as "the Purchasers") regarding the construction of dwellings on the erven in Phase 2 (hereinafter referred to as "Dwelling(s)"):
 - 14.1. Construction of the Dwellings must commence in accordance with the updated architectural guidelines of the HOA (hereinafter referred to as "the Architectural Guidelines") within 3 (years) from the date of registration of transfer of an erf into the name of the first purchaser thereof. The date upon which construction of a Dwelling on a specific erf in Phase 2 must commence is therefore determined by the aforementioned date and shall not be relevant for the other erven in Phase 2.
 - 14.2. Construction of the Dwellings shall be completed the within 2 (two) years from the commencement of construction thereof.
 - 14.3. Should any of the Purchasers fail to commence with the construction and completion of the Dwellings within the abovementioned time periods, then a penalty shall become payable to the HOA in an amount equal to 3 (three) times the basic monthly levy applicable from time to time for each completed month of non-compliance with these provisions.
 - 14.4. The above provisions shall also be binding on the successors in title of the Purchasers.
15. In the event that some of the erven in Phase 2 are not sold and transferred to a purchaser within 7 (seven) years after the date of transfer of the first transfer of a Phase 2 erf to a Purchaser, a penalty shall become payable by the Developer to the HOA in an amount equal to 2 (two) times the basic monthly levy applicable from time to time for each completed month of non-compliance with the provisions in clause 14. This provision shall also be binding on the successors in title of the Developer.
16. Phase 2 (which includes the new erven and the Purchasers) shall be incorporated into the existing L'Hermitage HOA, as indicated in the first part of paragraph 3.6 of the Approval, when

P.A.S. R
P.A.S. #1
R

mm

the Stellenbosch Municipality has given clearance that all the conditions of subdivision in the Approval have been complied with in order for transfer of erven in Phase 2 to take place. Phase 2 will then become subject to the HOA's constitution, conduct rules, regulations, Architectural Guidelines, etc. The Developer further undertakes to then do all such things and sign all such documents which may be reasonably required for Phase 2 to be incorporated into the existing L'Hermitage HOA, without any delay. The Developer herewith waives its option to establish a new home owners association by virtue of Section 29(1) Stellenbosch Municipality Land Use Planning By-law.

17. As soon as a purchaser becomes an owner of an erf in the Phase 2 development (then being part of the HOA), such owner shall be liable to pay monthly levies (as determined from time to time by the HOA) and special levies (currently it's a once-off special levy of R10 000.00 (ten thousand rand) per owner), immediately payable to the HOA from registration of transfer of an erf into a purchaser's name. The Developer herewith warrants and undertakes that the aforementioned levies shall be incorporated in the deeds of sale with the respective Purchasers. The Developer shall not be liable for the payment of any levies in respect of Phase 2 erven registered in its name.
18. The coming into effect of this Agreement, except for clauses 18 to 43, which all come into effect on the Signature Date ("the surviving clauses"), is subject to the fulfilment or waiver as the case may be of the following suspensive conditions:
 - 18.1. The approval of the required changes to the Constitution, Building Rules and Conduct Rules of the HOA, as attached hereto and marked as Annexures A, B and C, by the HOA's members within 30 (thirty) calendar days after the Signature Date; and
 - 18.2. The approval of the amended/modernised architectural guidelines of the HOA, as attached hereto and marked as Annexure D, by the HOA's members within 30 (thirty) calendar days after the Signature Date.
19. If the suspensive conditions as contained in clauses 18.1 and 18.2 are not fulfilled before the expiration of the 30 (thirty) calendar days period after the Signature Date, then:
 - 19.1. this Agreement will never become of any force or effect; and
 - 19.2. neither party shall have any claim against the other in terms of this Agreement, except in respect of a breach of this Agreement by any party hereto.
20. The time periods as contained in clause 18 may be extended by written agreement between the HOA and the Developer prior to the expiration of the aforesaid time periods, respectively.

SUPPORT AND GOOD FAITH

21. The parties undertake at all times to do all such things, perform all such actions and take all

5
R
P.T.S. #1 RQ

hm

such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.

NOTICES

22. The Parties select as their respective *domicilia citandi et executandi* the physical addresses as set out on the front page of this Agreement, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the e-mail addresses as stipulated on the commencement of this Agreement, provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or e-mail address by written notice to the other Party to that effect. Such change of address will be effective five business days after receipt of the notice of the change.
23. All notices to be given in terms of this Agreement will be given in writing and will –
- 23.1. be delivered by hand or sent by e-mail;
- 23.2. if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and
- 23.3. if sent by e-mail during business hours, be presumed to have been received on the date of successful transmission of the e-mail. Any e-mail sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.
- 23.4. Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.

WARRANTIES

24. Each Party warrants and represents that, as at the date of this Agreement:
- 24.1. it has full capacity and authority to enter into and perform its obligations under this Agreement;
- 24.2. this Agreement is executed by a duly authorised representative of that party; and
- 24.3. there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement.

CONFIDENTIALITY

25. From time to time during the period of this Agreement confidential information may be given

3.1. 5
P.A.S. #1
RE

hm

by one party to this Agreement ("the Disclosing Party") to the other party ("the receiving party").

26. The Receiving Party will treat and keep all confidential information as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose (whether in writing or orally or in any other media format) confidential information to any other person other than in accordance with the terms of this Agreement.
27. The Receiving Party will only use the confidential information for the sole purpose of complying with its obligations under this Agreement and for the purpose that it was provided.
28. The contents and the existence and the scope of this Agreement are confidential information.

COSTS

29. HOA will bear the cost of Rufus Dercksen Inc. for the drafting of the first draft Agreement, whereafter each party will bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement, notwithstanding the aforementioned.

CO-OPERATION

30. Each of the parties hereby undertakes to:
- 30.1. sign and/or execute all such documents;
- 30.2. do and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts; and
- 30.3. pass, and to procure the passing of all resolutions of any company and/or close corporation; to the extent that the same may lie within such party's power and may be required to give effect to the import or intent of this agreement, or any contract concluded pursuant to the provisions of this agreement.

BREACH

31. If either of the parties to this Agreement fails to fulfil any term or condition hereof the party not in default ("the innocent party") shall be entitled, after having given the party in default ("the defaulting party") seven day's written notice, either:
- 31.1.1. to cancel this Agreement by written notice to that effect sent by registered post to the defaulting party's address set out above; or
- 31.1.2. to require the defaulting party immediately to fulfil all its obligations in terms of this Agreement.

Any cancellation in terms of clause 31.1.2 shall be without prejudice to any claim that the innocent party may have for damages or otherwise.

P. K. S. 11 &
127
P. H. S. RO

hm

32. **Whole Agreement:** This Agreement, together with all annexures thereto constitute the whole agreement between the parties in relation to the subject matter thereof and no party shall accordingly be bound by any undertaking, representation or warranty not recorded herein.
33. **Amendments:** No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or Agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any Agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
34. **Severability:** Each of the provisions of this Agreement shall be considered as separate terms and conditions and in the event that this Agreement is affected by any legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions hereof shall remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part hereof.
35. **Further assurance:** Each Party undertakes, at the request and cost and expense of the other Party, to sign all documents and to do all other acts, which may be necessary to give full effect to this Agreement.
36. **Cession:** None of the Parties shall be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other Party or person without the prior written consent of all the other Party.
37. **Neutral construction:** Exclusion of the *contra proferentem* Rule: The Parties hereby acknowledge that this Agreement was negotiated fairly between them at arm's length and that the final terms thereof are the product of the Parties' negotiations and accordingly the provisions of this Agreement shall not be construed against a Party on the grounds that such Party drafted or was responsible for drafting any or the majority of the provisions.
38. **Law:** This Agreement shall in all respects be governed by and be construed in accordance with the law of the Republic of South Africa, and all disputes, actions and other matters in connection therewith shall be determined in accordance with such law.
39. **Jurisdiction:** Each of the Parties hereby consents and submits to the non-exclusive

B.K.
12
P.A.S.
8
R
RQ

hm

jurisdiction of the High Court for the purposes of all or any legal proceedings arising from or concerning this Agreement. No remedy granted in this Agreement shall exclude any other remedy available at law. The Parties irrevocably waive any objective they may now or hereafter have that such action or proceeding has been brought in an inconvenient forum.

40. **Information:** The parties warrant that to the best of their knowledge all information contained in this Agreement is true and correct.
41. **Schedules / Annexures:** Schedules or annexures to this Agreement shall be deemed to be incorporated in and form part of this Agreement.
42. **Independent Advice:** Each of the Parties hereto acknowledges that it has been free to secure independent legal and/or other advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent legal and/or other advice or dispensed with the necessity of doing so.
43. **Binding on successors in title:** This Agreement shall be binding on the administrators, executors, heirs, business rescue practitioners, judicial managers and other successors-in-title of the Parties (including a sale to a third party where appropriate), who shall not be entitled to terminate this Agreement merely by reason of the death, winding up, dissolution, liquidation, etc. of a Party. Every Party indemnifies the others against any loss or damage of any nature whatsoever which the others may sustain if this Agreement is not binding for any reason on the former's administrators, executors, heirs, judicial managers and/or other successors-in-title.

P.A.S. H. 11
12

SIGNATURE PAGE TO FOLLOW

R
Re

mm

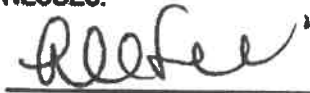
SIGNED AT Midstream Estate ON 22 March 2023.
For and on behalf of L'Hermitage Home Owners Association:

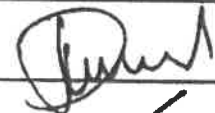


Full Names: Karel Frank

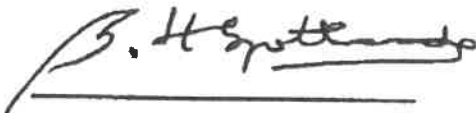
Capacity: Chairman, who warrants his authority to do so.

AS WITNESSES:

1. 

2. 

SIGNED AT Somerset West ON 14 March 2023.
For and on behalf of Westruther Trust:



Full Names: Brian Hugh Spottiswoode

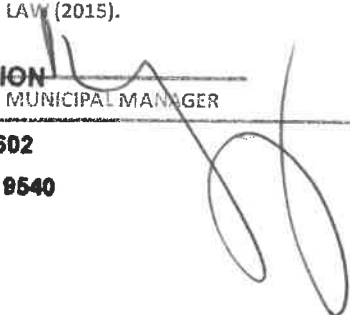
Capacity: Assignee of the Westruther Trust, who warrants his authority to do so.

AS WITNESSES:

1. 

2. 

L'HERMITAGE ESTATE
HOME OWNERS ASSOCIATION
PO BOX 3076, MATIELAND, 7602
TEL: 021 887 2486 FAX: 021 883 9540

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	20/6/23 DATE

CONSTITUTION

(In terms of Section 29 of the Land Use Planning Ordinance No. 15 of 1985 and amended and approved in terms of Section 29(6) of the Stellenbosch Municipal Land Use Planning By-Law, 2015)

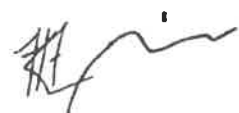
1. NAME

The name of the Association is: THE L'HERMITAGE ESTATE HOME OWNERS ASSOCIATION.

2. DEFINITIONS

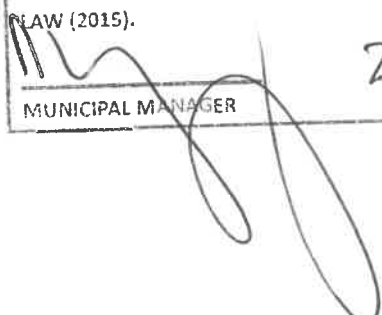
In the interpretation of this Constitution, unless the context indicates the contrary:

- 2.1. "Architectural Guidelines" means the architectural and design guidelines relating to the design and construction requirements prepared for and applicable to the Estate;
- 2.2. "Agreement of Sale" means an agreement under which an Erf or the bare dominion or share therein or a right in respect thereof is sold or purchased;
- 2.3. "Association" means the L'Hermitage Estate Home Owners Association, an association not for gain, constituted in terms hereof;
- 2.4. "Auditors" means the Auditors of the Association appointed by the Excom from time to time;
- 2.5. "Budget" means an itemized estimate of the anticipated income and expenses of the Association during the ensuing financial year;
- 2.6. "Building Rules" means the Building Rules to govern, amplify and/or implement the provisions of this Constitution, to be drafted, approved and implemented by the Association;
- 2.7. "Common Property" means the private open spaces in the Estate and owned and managed by the Association from time to time for the benefit of, inter alia, the Association, its Members and the Owners, specifically including the following:
 - 2.7.1. gateways, entrance buildings, security fences, boundary walls, roadways and common parking areas;



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

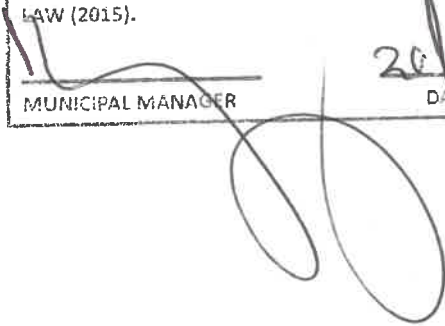
20/6/23
DATE

- 2.7.2. park areas and water features;
- 2.7.3. other improvements from time to time erected on the private open spaces in the Estate;
- 2.8. "Conduct Rules" means the Conduct Rules to govern, amplify and/or implement the provisions of this Constitution, to be drafted, approved and implemented by the Association;
- 2.9. "Constitution" means the Constitution of the Association and as set out in this document, and as amended from time to time in terms of this provisions hereof;
- 2.10. "Control Measures" means all control measures issued or implemented by Excom under this Constitution;
- 2.11. "Developer" means Westruther Trust, registration number 2785/95 (which includes all successors-in-title of the Developer);
- 2.12. "Estate" means L'Hermitage Estate, comprising Erf 13438 Stellenbosch (in respect of which General Plan No. 5983/1997 was approved) as well as Erf 17720 Stellenbosch (in respect of which General Plan No. 662/2022 was approved);
- 2.13. "Erf / Erven" means any subdivided portion of the Parent Properties registered or capable of being registered as a separate erf in the Cape Town Deeds Registry and suitable for occupation by natural persons;
- 2.14. "Excom" means the executive committee of the Association contemplated in the Constitution;
- 2.15. "Financial Year" means the Financial Year of the Association which ends on 30 June of each year;
- 2.16. "Levy/Levies" means any contribution which Excom, on behalf of the Association, may under this Constitution, collect from Members to defray the incurred or anticipated expenses of the Association;
- 2.17. "Local Authority" means the Local Authority having jurisdiction over the Estate, being Stellenbosch Municipality;
- 2.18. "LUPO" means the Land Use Planning Ordinance 15 of 1985, Western Cape, as amended, and includes and subsequent Planning Legislation;
- 2.19. "Management Company" means any person or entity appointed by Excom as an independent contractor to undertake any or all of the management functions of the Association, subject to and in terms of the provisions of this Constitution;
- 2.20. "Member" means a Member of the Association as provided for in clause 4.2 of this Constitution, which excludes the Developer;



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

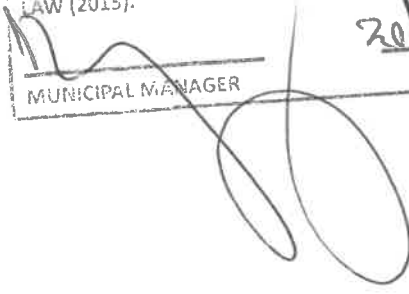
20/6/23
DATE

- 2.21. "Occupant" means any person/s occupying an Erf or any improvements or structures thereon, nominated in writing by the Owner and approved, in writing, by the Excom;
- 2.22. "Owner" means the registered Owner of an Erf and as such a Member of the Association;
- 2.23. "Parent Properties" means Erven 13438 and 17720 Stellenbosch;
- 2.24. "Penalty" means any penalty from time to time determined by the Excom, on behalf of the Association, may under this Constitution (clause "Penalties determined by Excom") collect from Members to defray the incurred or anticipated expenses of the Association;
- 2.25. "Person" with regard to membership of the Association, includes a company, club, partnership, trustees for the time being of a trust, or other association of persons entitled in law to hold title to immovable property;
- 2.26. "Planning Legislation" means collectively the Western Cape Land Use Planning Act, Act Number 3 of 2014, the Western Cape Land Use Regulations, 2015, and the Spatial Planning and Land Use Management Act, Act Number 16 of 2013, as amended from time to time;
- 2.27. "Purchaser" means any person or entity that enters into an Agreement of Sale in respect of an Erf;
- 2.28. "Registration Date" means the date that the Owner became the registered Owner of an Erf;
- 2.29. "Special Levy" means any Special Levy/Levies imposed by the Excom over and above the Levies.
- 2.30. Words importing the singular shall include the plural and the converse shall also apply; the masculine gender shall include feminine and neuter genders and the neuter gender shall include the masculine and feminine genders.
- 2.31. When any number of days is prescribed in this Constitution, the same means calendar days which must be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday, in which event the last day will be the next succeeding day which is not a Saturday, Sunday or proclaimed public holiday.
- 2.32. No provision of this Constitution or any related document shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party having or being deemed to have structured or drafted such provision.
- 2.33. This Constitution shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa and the Association and every Member consent to the jurisdiction of any competent court of the Republic of South Africa, for the purposes of any proceedings instituted in connection with this Constitution.



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

20/6/23
DATE

3. HEADINGS

The headings to the clauses in this Constitution are inserted for convenience of reference only and shall not affect the interpretation of any of the provisions to which it relate.

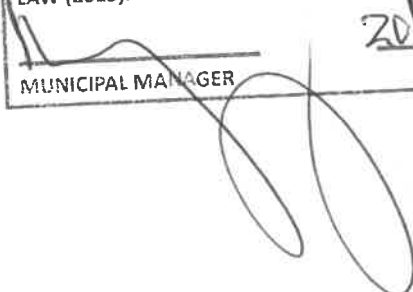
4. HOME OWNERS' ASSOCIATION

4.1. **Object of the Association**

- 4.1.1. The Association is organised without capital.
- 4.1.2. The object of the Association is to promote the collective interests of all its Members by performing the functions entrusted to it by or under this Constitution, which functions included, but are not limited:
 - 4.1.2.1. to promote, enforce, develop and maintain standards for community living in the Estate in such a way that its Members may derive the maximum collective benefit therefrom;
 - 4.1.2.2. to determine and preserve the basic standards in the Estate;
 - 4.1.2.3. to maintain and manage the Common Property in the Estate for the mutual benefit of its Members and the reciprocal rights and duties of Members and Owners in respect thereof;
 - 4.1.2.4. to ensure that all building plans and specifications in respect of proposed improvements as well as the actual improvements are in accordance with and comply with the Architectural Guidelines as applicable to the Estate;
 - 4.1.2.5. to control the nature and position of buildings, structures, installations and equipment relating to the Erfen and to ensure compliance with the Architectural Guidelines, Building Rules and other Control Measures in respect of the Estate required by law or document;
 - 4.1.2.6. to institute, control and pay for measures relating to the security of the Members and Owners of the Estate;
 - 4.1.2.7. to take action including the imposition of fines, or the institution of proceedings in a Court of Law, as may be deemed fit by Excom, in relation to the non-compliance by any Member, Owner or Occupant of any of the requirements of this Constitution, Conduct Rules, the Building Rules and/or the Architectural Guidelines.
- 4.2. **Membership of the Association**
 - 4.2.1. On the Registration Date of ownership of an Erf in the Estate, the Owner of such Erf automatically becomes a Member of the Association and Members shall be obliged to comply with the provisions of this Constitution, the Conduct Rules, the Building Rules, the Architectural Guidelines and any other Control Measures issued or implemented, under this Constitution.

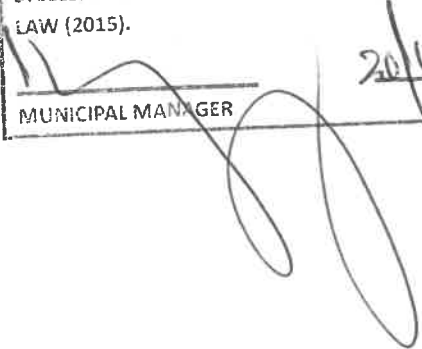
STELLENBOSCH MUNICIPALITY

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


MUNICIPAL MANAGER

20/6/23
DATE

- 4.2.2. Ownership of an Erf, and therefore membership of the Association, shall be evidenced by the registered ownership in the Deeds Registry in Cape Town of one or more Erven in the Estate.
- 4.2.3. No person is entitled to cease to be a Member while remaining the registered Owner of an Erf in the Estate.
- 4.2.4. All Erven is subject to the following condition imposed by Local Authority in terms of Section 42 of LUPO:
- "The Property may not be transferred without the written consent of the Association, of which the transferee or his successors in title shall become a member."*
- 4.2.5. Membership shall be transferred by the registration of a Deed of Transfer in the Deeds Registry at Cape Town, passing transfer of one or more Erven in the Estate to the new Member.
- 4.3. **Status of the Association**
- 4.3.1. The Association is an association as contemplated in section 29 of the *Land Use Planning Ordinance, No 15 of 1985*.
- 4.3.2. The Association has legal personality, capable of suing and being sued in its own name.
- 4.3.3. The Association is not for profit, but for the benefit of its Members.
- 4.3.4. The Association does not pursue any pecuniary gain for itself or any of its Members and will not be permitted to distribute any of its funds other than in accordance with the provisions of this Constitution
- 4.3.5. None of the Members in their personal capacities has any right, title or interest to or in the property, funds or assets of the Association.
- 4.4. **Powers of the Association**
- 4.4.1. The Association may exercise the powers conferred upon it by or under this Constitution, and such powers include, but are not limited to, the power -
- 4.4.1.1. to establish for administrative expenses a fund sufficient in the opinion of Members for the repair, upkeep, control, management and administration of the Common Property (including reasonable provision for future maintenance and repairs), for the payment of rates and taxes and other charges by any competent authority and of any premiums of insurance, and for the discharge of any duty or the fulfilment of any other obligation of the Association;
- 4.4.1.2. to make and/or enforce such Conduct Rules, Building Rules and Architectural Guidelines, and to collect such fees and deposits in connection therewith, as it from time to time deems

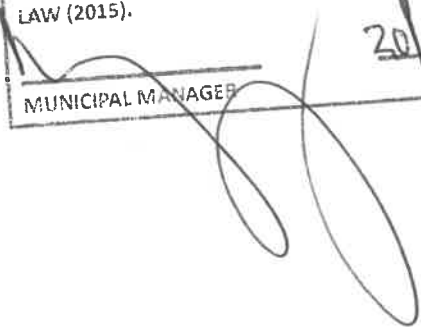
STELLENBOSCH MUNICIPALITY	
THE OWNERS ASSOCIATION CONSTITUTION IS HEREBY APPROVED IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY- LAW (2015).	
 MUNICIPAL MANAGER	20/6/23 DATE

necessary to achieve its object and to perform its functions;

- 4.4.1.3 to engage such persons and service providers as it deems necessary to assist the Association to achieve its object and to perform its functions;
- 4.4.1.4 to ensure compliance with any law relating to the common property;
- 4.4.1.5 to do all other things reasonably necessary –
 - 4.4.1.5.1. for the control, management and administration of the affairs of the Association, including the maintenance of the Common Property;
 - 4.4.1.5.2. for the implementation and enforcement of the provisions of this Constitution, the Conduct Rules, the Building Rules, and Control Measures issued, hereunder; and
 - 4.4.1.5.3. to incur reasonable expenses in the discharge of any duty or fulfilment of any other obligation of the Association, from time to time to determine the amounts required to defray such expenses, and to raise these amounts by collecting levies and contributions from members and in such other manner as members in general meeting may approve.
- 4.5. **General rights and obligations of Members/Owners**
 - 4.5.1. Every Member/Owner/Occupant shall comply with the following:
 - 4.5.1.1. at all times be bound by and will strictly adhere to the terms, conditions, stipulations, guidelines and obligations contained in the Constitution, the Conduct Rules, the Building Rules and the Architectural Guidelines;
 - 4.5.1.2. all conditions imposed by the Local Authority or any other statutory body relating to an Erf and shall be solely responsible for non-compliance with such conditions;
 - 4.5.1.3. any agreement concluded by the Association and/or Excom insofar as such agreement may directly or indirectly impose rights or obligations on a Member, Owner and/or Occupant;
 - 4.5.1.4. any directive issued by the Association or the Local Authority, as the case may be, LUPO and/or the Planning Legislation;
 - 4.5.1.5. any directive given by the Association, Excom, or the Management Company in the enforcement of the provisions of this Constitution;
 - 4.5.2. Save as may be provided for herein, the rights and obligations of a Member and an Owner are not transferable, and every Member and Owner shall:
 - 4.5.2.1. to the best of his ability further the objectives and interests of the Association;
 - 4.5.2.2. observe all directives made or given pursuant to the provisions of the Constitution;
 - 4.5.2.3. be jointly liable with the other Members and/or Owners for expenditure incurred in

STELLENBOSCH MUNICIPALITY

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


MUNICIPAL MANAGER

20/6/23

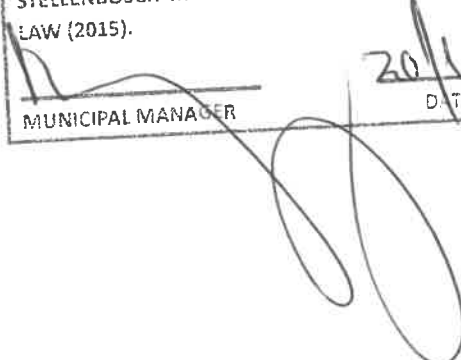
DATE

connection with the business and objectives of the Association;

- 4.5.2.4. not use any building or other structure constructed within the Estate, or allow any other person to use such building or other structure, for purposes not permitted by this Constitution, the Conduct Rules, Building Rules or any rules and/or regulations made in terms of this Constitution;
- 4.5.2.5. not apply for the consolidation, subdivision or rezoning of its Erf with a view to procuring a variation, amendment or substitution of the Architectural Guidelines provided that selected departures or consent uses may be allowed, upon approval thereof by the Excom and the Local Authority;
- 4.5.2.6. not conduct, or permit to be conducted or change the nature of, any business on an Erf, or use, or permit the use of, such Erf for purposes other than residential use, excluding the Common Property unless the Excom has in writing approved the use to which the Erf is to be put, and the Local Authority has, to the extent that it may be necessary, granted approval authorizing such use in terms of the Planning Legislation and other applicable laws and regulations.
- 4.5.3. Membership of the Association shall confer upon a Member, inter alia, the following rights, subject to the provisions of this Constitution —
 - 4.5.3.1. the right to inspect and/or receive copies of the annual financial statements of the Association;
 - 4.5.3.2. the right to vote at all general meetings in accordance with the provisions of this Constitution, the right to receive notices of, attend and speak at all general meetings in accordance with the provisions of this Constitution;
 - 4.5.3.3. the right to convene a general meeting of Members (other than an annual general meeting), provided that the Members holding between them, in aggregate, not less than one third of the voting rights of the Association collectively, convene such a meeting;
- 4.5.4. Each Member will be entitled to 1 (One) vote at any meeting or general meeting of the Association, irrespective whether voting is conducted by means of show of hands or by means of a poll.
- 4.5.5. Construction of a dwelling on an Erf must commence in accordance with the Architectural Guidelines of the Association within 3 (years) from the date of registration of transfer of such Erf into the name of the first Purchaser thereof. The date upon which construction of such dwelling on a specific Erf must commence is therefore determined by the aforementioned Registration Date and shall not be relevant for the other Erven in the Estate. Construction of a dwelling on an Erf shall be completed the within 2 (two) years from the commencement of construction thereof.

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

20/6/23
DATE

5. **EXECUTIVE COMMITTEE OF ASSOCIATION (EXCOM) – EXCOM MEMBERS**

5.1 **Constitution and Function of Excom**

5.1.1. The Members in general meeting must elect persons every 2 (two) years to constitute an executive committee of the Association (Excom).

5.1.2. Subject to any restriction imposed or direction given by Members in general meeting, the control, management and administration of the affairs of the Association vests in Excom, who may, on behalf of the Association, exercise all such powers of the Association and do all such acts in the discharge of their duties or the fulfilment of their obligations as may be exercised and done by the Association itself and as are not by this Constitution required to be done by Members in general meeting.

5.1.3. Excom may designate one or more of its Members to attend meetings of creditors of a Member who is indebted to the Association irrespective of whether the meeting is in connection with insolvency, liquidation or business rescue proceedings, to vote on any matter regarding the meeting and generally to exercise all the rights a creditor would have in similar circumstances.

5.2. **Powers of the Excom members**

5.2.1. The management and administration of the Association shall vest in the Excom members who may exercise all such powers of the Association and also, on behalf of the Association, all such acts as may be exercised by the Association itself and which are not, by its Constitution, required to be exercised or executed by the Association in a general meeting. Without in any way limiting the generality of the foregoing, such powers shall include but not be limited to the following:

5.2.1.1. the determination of what constitutes an appropriate standard for community living and the development and maintenance of properties in the Estate and assuring house rules if need be;

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

5.2.1.3. the investment and re-investment of monies of the Association which are not immediately required, in such a manner as may be determined from time to time;

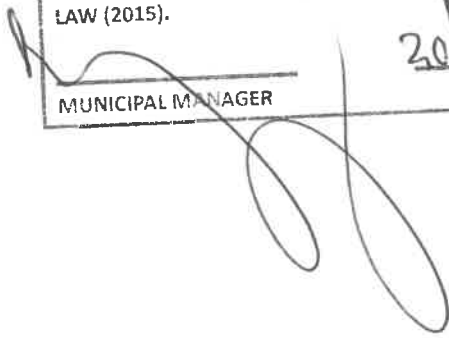
5.2.1.4. the operation of a banking account with all relevant powers;

5.2.1.5. Excom may for and on behalf of the Association make, enter into and carry out contracts for the purposes of the Association.

5.2.1.6. the employment and payment of agents, staff and any other parties;

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

20/6/23
DATE

- 5.2.1.7. to institute proceedings in the name of the Association, to defend actions in the name of the Association and to appoint legal representatives for this purpose;
- 5.2.1.8. the determination of Levies payable by the Members from time to time and as frequently as they may, at their sole and absolute discretion, consider necessary or expedient, of the amount of the Levy to be paid to the Association by its Members.
- 5.2.1.9. scrutinise all building plans and specifications of proposed improvements in the Estate so as to ensure that the Architectural Guidelines are adhered to.
- 5.3. **Legal Proceedings**
 - 5.3.1. Notwithstanding anything to the contrary contained in the 'dispute' clause, Excom may at its sole option institute in any court of competent jurisdiction proceedings in the name of the Association for any relief to which it is entitled under the provisions of this Constitution and/or the Conduct Rules, the Building Rules, and/or the Control Measures, to defend actions in the name of the Association and to appoint legal representation for this purpose.
 - 5.3.2. Any costs incurred as a result of such proceedings must be determined on the scale as between attorney and client.
- 5.4. **Delegation of Powers, Duties and Obligations**
 - 5.4.1. Excom may delegate to one or more of its members or to any person or service provider engaged by it under this Constitution (clause "Assistance for Excom") such powers, duties and obligations as it deems fit, and may at any time revoke such delegation.
 - 5.4.2. A delegation contemplated in this clause must be recorded in the minutes of proceedings of Excom or in the appointment agreement of the person or service provider concerned and must clearly set out the scope of the delegation.
- 5.5. **Number, Election and Qualifications of Excom Members**
 - 5.5.1. Excom consists of not less than 3 (three) not more than 5 (five) Members of which being elected every 2 (two) years by rotation.
 - 5.5.2. Subject to the provisions of the clause "Ineligibility or Disqualification to serve on Excom" of this Constitution, an Excom member holds office for 2 (two) subsequent annual general meetings and at the fourth annual general meeting, he or she is eligible for re-election, if so nominated.
 - 5.5.3. Excom will only consist of Members of the Association.
 - 5.5.4. The Members of the Association being up for election for Excom, will be the remaining Members of the 29 (twenty-nine) Members of the Association, after the first elected Excom Members completed their 2 (two) year term, respectively. This election process will continue

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

20/11/23
DATE

until all of the 29 (twenty-nine) Members served on Excom and thereafter this process will repeat itself, subject to the reasonably acceptable reason/s in the event that a Member of the Association is unable to serve as an Excom member.

5.6. Nominations for Election

Excom can be elected by giving a written nomination, together with the written consent of the nominee, and duly delivered to the address determined by Excom not later than forty-eight (48) hours before the meeting. Nominations may, with the consent of the nominee, also be accepted at the meeting itself.

5.7. Appointment to Fill Vacancy and Appointment of Alternates

- 5.7.1. Excom may appoint a person to fill any vacancy in its number, or to act as an alternate during the absence or inability to act as an Excom member.
- 5.7.2. An Excom member appointed to fill a vacancy holds office until the expiration of the term of office of the Excom member whose seat became vacant.
- 5.7.3. An Excom member appointed to act as an alternate ceases to hold office if the Excom member in whose place he/she acts, ceases to be an Excom member, or if the alternate's appointment is revoked by Excom.
- 5.7.4. An Excom member appointed under this clause has the powers, duties and obligations of an Excom member elected by members at an annual general meeting and is eligible for election as an Excom member, if so nominated.
- 5.7.5. Excom must at the next annual general meeting submit a list of all Excom members appointed by it under this clause since the previous meeting.

5.8. Remuneration

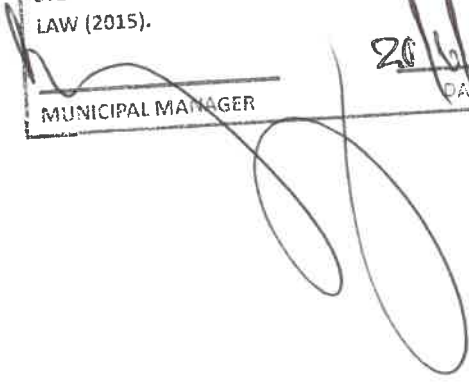
Excom members shall be entitled to be reimbursed by the Association all reasonable, *bona fide* and actual expenses and disbursements incurred by them in connection with and incidental to the performance of their duties and exercising of their powers as Excom members, but they shall not be entitled to any other remuneration, fees or salary in respect of the performance of their duties, unless otherwise determined by a resolution of members in the general meetings.

5.9. Validity of Acts

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 election, appointment or continuance in office of any Excom member, be as valid as if such Excom member has been duly elected, appointed or has duly continued in office in terms of this Constitution.

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

20/6/23

DATE

5.10. Ineligibility or Disqualification to serve on Excom

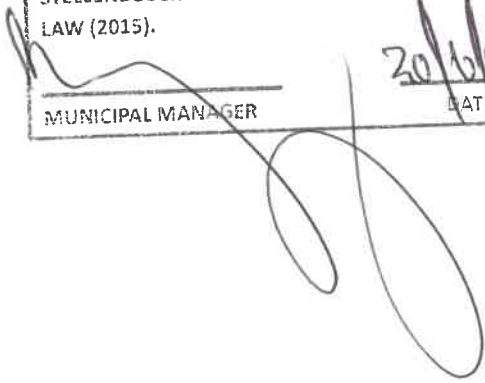
A person is ineligible or disqualified to be elected or appointed, or to continue to serve, as a member of Excom if he/she -

- 5.10.1. was prohibited by court to be a director, or declared him/her to be delinquent in terms of section 162 of the Companies Act, Act No. 71 of 2008, or in terms of section 47 of the Close Corporations Act, Act No. 69 of 1984;
- 5.10.2. is or becomes of unsound mind;
- 5.10.3. surrenders his/her estate as insolvent;
- 5.10.4. is a rehabilitated insolvent;
- 5.10.5. is prohibited in terms of any public regulation to be a director of a company or a member of a close corporation;
- 5.10.6. has been removed from an office of trust, on the grounds of misconduct involving dishonesty;
- 5.10.7. is for a period of three (3) months in arrears with the payment of his/her levies, contributions or other amounts which the Association may under this Constitution, the conduct rules or the control measures collect or claim from him/her and provision has not been made to the satisfaction of Excom for the payment thereof;
- 5.10.8. absents himself/herself from three (3) consecutive meetings of Excom without special leave of absence from Excom; or
- 5.10.9. is removed from office by resolution of members in general meeting: Provided that the intention to decide upon such removal from office has been specified in the notice convening the meeting;
- 5.10.10. has been convicted, in the Republic of South Africa or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence –
 - 5.10.10.1. involving fraud, misrepresentation or dishonesty;
 - 5.10.10.2. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69(2) or (5) of the Companies Act, 2008; or
 - 5.10.10.3. under the Companies Act, 71 of 2008, the Insolvency Act, 1936, the Close Corporation Act, 1984, The Competition Act, the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012, or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004.



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

30/6/23
DATE

5.11. **Resignation from Excom**

An Excom member may at any time by notice in writing resign from Excom.

6. **EXCOM MEETINGS**

6.1. **Convening of Meetings**

6.1.1. Excom may after notice to its Members meet for the dispatch of business and may regulate its meetings as it thinks fit.

6.1.2. An Excom member may at any time convene a meeting of Excom by giving to the other Excom members not less than 10 (ten) days written notice of the meeting proposed by him/her, which notice must specify the reason for convening the meeting, provided that in case of urgency such shorter notice, which is reasonable in the circumstances, may be given.

6.2. **Quorum**

6.2.1. Three (3) Excom members shall form a quorum.

6.2.2. If at any meeting a quorum is not present within thirty (30) minutes of the time set for the meeting, such meeting shall stand adjourned to the next business day at the same time and place, and Excom members then present, who may not be fewer than two (2), will form a quorum: Provided that the chairman may upon the request of at least two (2) Excom members determine such other day for the resumption of business as he/she deems fit.

6.2.3. If the number of Excom members falls below four (4), the remaining Excom members, who may not be fewer than two (2), may continue to act, but only for the purpose of filling a vacancy, appointing an alternate or convening a general meeting of members.

6.3. **Voting**

6.3.1. All matters at any Excom meeting shall be determined by a majority of those Excom members present and voting: Provided that the chairman has a deliberative as well as a casting vote.

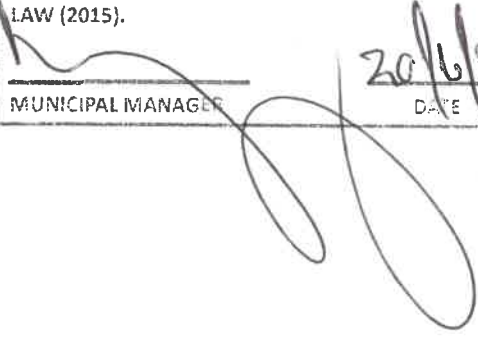
6.3.2. An Excom member who has any interest in any contract or proposed contract, or any litigation or proposed litigation, with the Association, must declare such interest and is by virtue of such interest disqualified from voting in respect thereof.

6.4. **Chairman**

6.4.1. At the commencement of the first meeting of Excom members after an annual general meeting, Excom members shall elect a chairman from among their number, who shall hold office as such until the end of the next annual general meeting of the members of the Association.

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

20/6/23
DATE

6.4.2. If the chairman resigns from the office of chairman or ceases to be a member of Excom, the Excom members must elect another chairman from among their number, who shall hold office for the remaining term of office of, and he/she shall have the same voting rights as the first-mentioned chairman.

6.4.3. If the chairman vacates the chair during the course of a meeting or is not present or is for any other reason unable to preside at any meeting, or is disqualified from voting, Excom members present must elect another Excom member to act as chairman for such meeting or such voting, as the case may be, who shall have the same voting rights as the first-mentioned chairman.

6.5. Attendance of Excom Meetings by Other Persons

Excom may in its sole discretion allow any person to attend an Excom meeting and to address it at such meeting.

6.6. Resolution signed by Excom Members

A resolution in writing signed by all Excom members for the time being present in the Republic of South Africa and being not fewer than three (3), will be as valid and effective as if it had been passed at a meeting of Excom duly convened and held.

6.7. Minutes of Proceedings

6.7.1. Excom must -

6.7.1.1. keep minutes of its proceedings in a minute book;

6.7.1.2. cause minutes to be kept of all meetings of the Association in a minute book; and

6.7.1.3. include in the minute book concerned a record of every resolution of Excom or of the Association, as the case may be.

6.7.2. Excom must, on the written application of a Member, make all minutes of its proceedings and all minutes of the proceedings of meetings of the Association available for inspection by such Member at the address determined by Excom.

6.7.3. Excom must keep all minute books for so long as the Association remains registered.

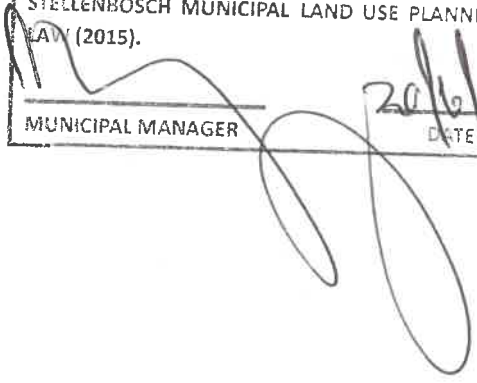
6.7.4. Excom members may from time to time appoint a person to fulfil the normal functions of a secretary and, *inter alia*, to attend all meetings and keep minutes thereof.

6.8. Report on affairs of the Association

Excom must yearly prepare a report on the affairs of the Association, which report must be submitted at the first annual general meeting following on the period to which the report relates, and be available for inspection at the address determined by Excom at least seven (7) days prior to the annual general

STELLENBOSCH MUNICIPALITY

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


MUNICIPAL MANAGER

20/6/23
DATE

meeting concerned.

7. ASSISTANCE FOR EXCOM

7.1. Engagement of Persons and Service Providers

7.1.1. Excom may for and on behalf of the Association:

7.1.1.1. engage and compensate such persons and service providers as it deems necessary to assist it in connection with the execution of its powers, duties and obligations under this Constitution, the conduct rules and the control measures, and to provide the services required by the Association; and

7.1.1.2. provide key performance indicators for all service providers of the estate.

7.2. Appointment, Powers and Duties of Managing Agent

7.2.1. Excom may from time to time appoint in terms of a written contract a managing agent to control, manage and administer the common property and to exercise such powers, discharge such duties and fulfil such obligations as may be entrusted to the managing agent, including the power to collect Levies, contributions and other amounts owing to the Association.

7.2.2. A Managing Company may be appointed for a maximum period of three (3) years at a time; but at the written request of Excom, the appointment may continue after its duration, for a maximum period of three (3) months on the conditions determined by mutual agreement between the parties.

7.2.3. Excom must ensure that a provision is included in the contract that if the Managing Company is in breach of any of the contract's provisions, or if he/she is guilty of conduct which at common law would justify the termination of a contract between master and staff, Excom may, without notice, cancel such contract, and that the managing agent will have no claim whatsoever against the Association or any of its members as a result of such cancellation.

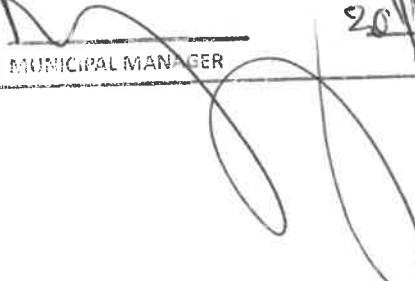
7.2.4. The contract must further provide for the appointment to be revoked, and that such Managing Company will cease to hold office, if –

7.2.4.1. where the Managing Company is a juristic person, an order is made for its provisional or final liquidation or, where the Managing Company is a natural person, he/she applies for the surrender of his/her estate as insolvent or his/her estate is sequestered either provisionally or finally; or

7.2.4.2. the Managing Company is convicted of an offence involving an element of fraud or of dishonesty or, where the managing agent is a juristic person, any of its directors or members is convicted of an offence involving an element of fraud or of dishonesty; or

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

20/10/23
DATE

- 7.2.4.3 a resolution to that effect is passed by Members at a general meeting; provided that in such event the Managing Company will not be deprived of any right he/she may have to claim compensation or damages for breach of contract.
- 7.2.4.4. the contract must further stipulate that the Managing Company must furnish indemnity in favour of the Association against all costs, losses, expenses and claims which it may incur or become liable to by reason of any act done by the Managing Company or any of his/her employees in the exercising of his/her powers, the discharge of his/her duties or the fulfilment of his/her obligations under his/her contract.
- 7.2.4.5. the Managing Company must retain full records of his/her administration and must report to Excom on his/her activities with regard to such administration.

8. COMMON PROPERTY

8.1. Control, Management and Maintenance

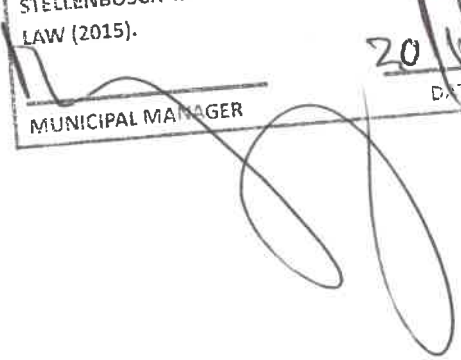
The control and management of the Association's common property vests in Excom, who must do all things reasonably necessary for the maintenance of such common property and to keep it in a good condition and serviceable repair.

8.2. Improvements

- 8.2.1. The Association acknowledges that the Association shall be solely responsible for, the care, repair, maintenance, cleaning, upkeep, improvements and proper control of the Common Property and any structure or thing erected or contained therein or thereon, including private parking, electricity, telecommunications and any other private services, if applicable.
- 8.2.2. Members may by resolution passed at a general meeting by a two-thirds (2/3rds) majority of Members present in person or by proxy and voting, direct Excom to effect improvements to the Common Property.
- 8.2.3. If Excom intends to effect any improvement to the Common Property, it must first give written notice of its intention to all Members, and such notice must -
 - 8.2.3.1. indicate Excom's intention to proceed with the improvement upon the expiry of a period of not less than thirty (30) days calculated from the date of posting such notice; and
 - 8.2.3.2. provide details of the improvement as to: the costs thereof; the manner in which it is to be financed and the effect upon levies payable by Members; and the need, desirability and effect thereof.
- 8.2.4. Excom must upon the written request of not less than 51% (fifty one percent) of all the Members convene a special general meeting to deliberate upon the proposals contained in the notice, at which meeting Members may veto, amend or adopt such proposal.

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

20/6/23
DATE

- 8.2.5. In the event of such a special general meeting being convened, Excom may not proceed with its proposals until the holding of such meeting, whereupon it will be bound by any resolution passed at the meeting by a two-thirds (2/3rds) majority of Members present in person or by proxy and voting.

8.3. **Alienation of Common Property**

- 8.3.1. Members may by unanimous resolution passed at a general meeting, direct Excom on their behalf to alienate the Common Property of the Association or any part thereof, and thereupon Excom will, subject to compliance with any law relating to the subdivision of land or to the re-zoning of land, have power to deal with such Common Property or such part thereof in accordance with such directive, and to execute any deed required for that purpose.

- 8.3.2. Excom must keep a register of all alienated Common Property, which must be available for inspection at the address determined by Excom.

8.4. **Letting of Common Property**

- 8.4.1. Excom may on behalf of the Association let Common Property or any part thereof under a written lease on the terms and conditions it deems fit.

- 8.4.2. Excom must keep a register of all common property so let, which must be available for inspection at the address determined by Excom.

8.5. **Insurance of Common Property**

- 8.5.1. Excom must cause to be prepared, and must present at every annual general meeting, schedules reflecting its estimate of the replacement values of the Common Property.

- 8.5.2. Excom must take steps yearly to insure the common property to the extent and against such risks, perils or dangers as may be directed by members at the meeting concerned.

9. **FINANCIAL MATTERS**

9.1. **Financial Year**

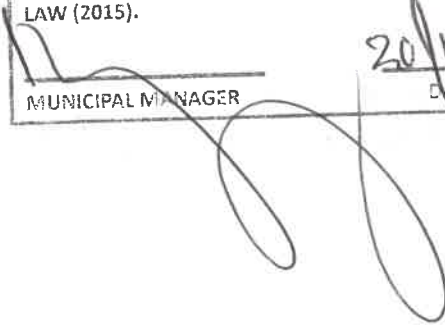
The Financial Year of the Association ends on 30 June of each year.

9.2. **Books of Account and Records**

- 9.2.1. Excom must cause to be prepared, and must submit at every annual general meeting:
- 9.2.1.1. a financial statement in conformity with generally accepted accounting practice, which statement must fairly present the state of affairs of the Association and its finances and transactions as at the end of the Financial Year concerned, including a report thereon prepared by the Auditor qualified to act as such;

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

20/6/23
DATE

of its powers, the discharge of its duties or the fulfilment of its obligations. Such Levies may be collected annually in advance.

10.1.2. Each member must pay a Levy in respect of each Erf registered in his/her name, including such Special Levy as Excom determines from time to time.

10.1.3. A person is not entitled to a refund of Levies lawfully levied upon him/her and duly paid by him/her.

10.2. Determination of Levy

10.2.1. The amount of a Levy is determined yearly by using the approved Budget for the year to which it relates and the number existing residential Erven as basis for such calculation.

10.2.2. Each member will be responsible for the costs and expenses for the managing and administration of the Association as determined yearly by using the approved Budget for the year to which it relates.

10.3. Special levy

Members may by resolution passed at a general meeting by a two-thirds (2/3rds) majority of members present in person or by proxy and voting, direct Excom to impose special levies upon Members and will call upon them to make special contributions in respect of all expenses expected to be incurred or actually incurred by Excom in the exercising of its powers, the discharge of its duties or the fulfilment of its obligations and which are not included in any estimates of anticipated income and expenditure prepared, or to satisfy a judgment debt against the Association.

10.4. Payment of Levies and Contributions

10.4.1. Any levy that may be collected may be recovered from the persons who were owners of erven at the time when such levy was imposed or such contribution became payable.

10.4.2. The annual levy shall commence on the date fixed by Excom. The first annual levy shall be made for the balance of the year and shall become due and payable by the day fixed for commencement. The levy for any year after the first year shall become due and payable within three (3) months from the date of the annual general meeting.

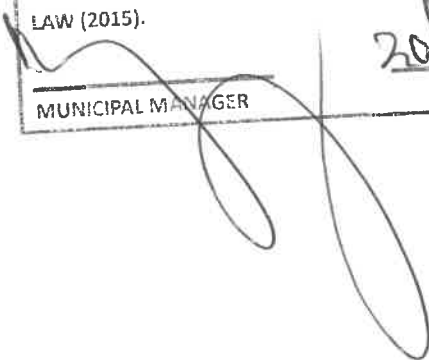
10.4.3. A special levy is payable in one sum within thirty (30) days from the date of the approval of the special levy by a two-thirds (2/3rds) majority of members present in person or by proxy and voting.

10.4.4. If the annual levy is not paid within ten (10) days of the due date, same shall bear interest from the date of delinquency at a rate per annum equivalent to the prime overdraft rate charged from time to time by the Association's Bankers plus one percent (1%).

10.4.5. A person who is in default with the payment of the annual levy will be liable for all expense

STELLENBOSCH MUNICIPALITY

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


MUNICIPAL MANAGER

20/6/23
DATE

incurred by Excom in the recovery of such levy and the interest thereon, which expense shall be added to the levy payable by that person and claimed as if it were part of such levy.

- 10.4.6. Excom may institute legal proceedings against a person for the recovery of the arrear levies, the interest thereon and the expense incurred by Excom in the recovery thereof, including legal fees on an attorney and own client scale.

10.5. **Penalty Levies**

- 10.5.1. Should a Member fail to commence with the construction of a dwelling on an Erf within 3 (years) from the date of registration of transfer of such Erf into the name of the first Purchaser thereof, and/or should a Member fail to complete the construction of its/his/her dwelling on its/his/her Erf within 2 (two) years from the commencement of construction thereof, then a penalty shall become payable by such Member to the Association in an amount equal to 3 (three) times the basic monthly levy applicable from time to time for each completed month of non-compliance with these provisions.

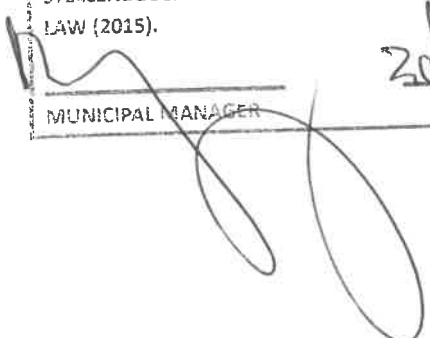
11. **GENERAL MEETINGS OF MEMBERS – CONVENING OF GENERAL MEETINGS**

11.1. **Annual General Meetings**

Annual General Meetings shall be held once every year at such time and place as may be determined by Excom, but so that no more than fifteen (15) months shall be allowed to elapse between any two (2) such successive meetings.

11.2. **Business Included at Annual General Meetings**

- 11.2.1. The business at the Annual General Meeting shall include inter alia:
- 11.2.1.1. the consideration of the report on the affairs of the Association;
 - 11.2.1.2. the consideration of any draft resolutions concerning the affairs of the Association of which due notice has been given;
 - 11.2.1.3. the consideration of the books of account and records;
 - 11.2.1.4. the election of Excom members to replace those Excom members whose term of being an Excom member has expired;
 - 11.2.1.5. the approval of the schedules reflecting its estimate of the replacement values of the common property or any amendment thereof;
 - 11.2.1.6. the approval of the annual estimate of anticipated income and expenditure or any amendment thereof;
 - 11.2.1.7. any other business of which due notice has been given prior to the date set for the meeting.

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	<u>20/6/23</u> DATE

11.3. Special General Meeting

11.3.1. All general meetings other than the annual general meetings referred to above are called special general meetings.

11.3.2. Excom may convene a special general meeting whenever it thinks fit. Special general meetings shall also be called upon the written request of not less than five (5) members, directed to the chairman of Excom.

11.4. Notice of General Meetings

11.4.1. An annual general meeting shall be convened by a minimum of twenty one (21) days' written notice, provided that Excom must furnish each member with copies of the documentation in respect of the business to be discussed at the meeting at least fourteen (14) days before the date of the meeting.

11.4.2. A special general meeting shall be convened by a minimum of fourteen (14) days' written notice, provided that Excom must furnish each member with copies of the documentation in respect of the business to be discussed at the meeting together with the notice convening the meeting.

11.4.3. The written notice convening a meeting shall specify the place, the day and the time of the meeting and the general nature of the business to be discussed at the meeting, 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 agreed by ninety percent (90%) of the members present.

11.4.4. 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. The provisions of this clause shall not apply to Excom meetings.

11.5. Adjournment of General Meetings

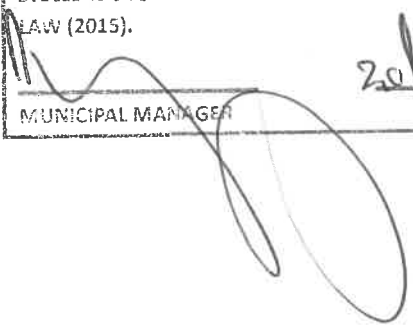
11.5.1. If within half an hour from the time set for the meeting, a quorum is not present, the meeting, if convened on the request of members, shall be dissolved. It shall stand adjourned to the same day in the next week at the same time and place.

11.5.2. If a quorum is not present at the adjourned meeting within half an hour from the time set for the meeting, the members present in person or by proxy shall constitute a quorum. All members of the Association shall be given notice of such an adjourned meeting.

11.5.3. The chairman may with the consent of any general meeting at which a quorum is present, and if so directed by the meeting, adjourn a meeting from time to time and from place to place, but no business may be discussed at any adjourned meeting other than the business which could be discussed at the meeting from which the adjournment took place. The

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

20/6/23

DATE

members are not entitled to any notice of adjournment under this clause, or of the business to be discussed at an adjourned meeting. But in the event that a meeting is adjourned for ten (10) or more days, notice of the adjourned meeting must be given to the members in the same manner as of an original meeting.

11.6. Quorum

11.6.1. No business shall be discussed at any general meeting unless a quorum is present when the meeting commences.

11.6.2. For annual general meetings and special general meetings, the quorum shall be not less than 51% (fifty one percent) of all the Members, and consisting of Members present in person or represented by proxy.

11.7. Motions presented for Acceptance

11.7.1. Every motion and amendment thereto presented for acceptance must be seconded at the meeting and if it is not seconded, will be deemed not to have been presented.

11.7.2. General accepted practice shall apply to general meetings, unless where this Constitution provides otherwise.

11.8. Chairman

The chairman of Excom presides at every general meeting, but if there is no such chairman, or the chairman is still absent from the general meeting within fifteen (15) minutes after the time set for the meeting, or if he/she is not willing or able to preside, the Members present shall choose a chairman from the Excom members, but if the Excom member is not willing or able to preside, or if all of the Excom members are absent from the meeting, then the remaining present Members shall choose one of their Members to be chairman of the meeting.

11.9. Voting

11.9.1. At all general meetings the questioned motion or amendment thereto, put to the vote, is decided on a show of hands unless the chairman, in his/her discretion, directs that a ballot be taken, or a ballot is requested by a Member entitled to vote.

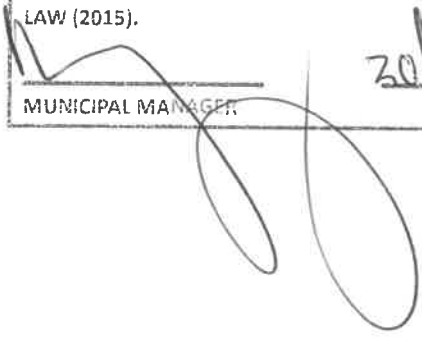
11.9.2. Each Member present in person shall have one (1) vote for every Erf registered in his/her name.

11.9.3. Each person present as proxy for a Member shall have one (1) vote for every Erf registered in the name of the Member for whom he/she is proxy.

11.9.4. Each Member present in person or by proxy, and is entitled to vote, shall verbally announce how he/she casts each vote to which he/she is entitled if he/she is entitled to more than one vote, when a question is to be decided on a show of hands.

STELLENBOSCH MUNICIPALITY

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

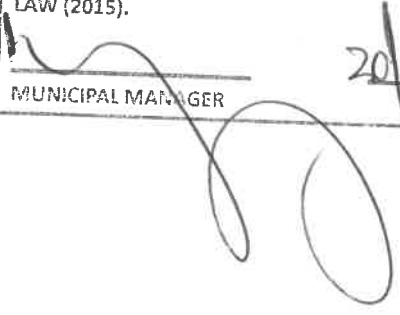

MUNICIPAL MANAGER

20/6/23
DATE

- 11.9.5. A declaration by the chairman that the question has on the show of hands been carried or lost shall be sufficient without any proof of the number of votes recorded in favour of or against such question.
- 11.9.6. A request for a ballot may be withdrawn by the person concerned.
- 11.9.7. The result of a poll is deemed to be a resolution of the meeting at which such poll was taken, and an entry in the minutes to effect that a question has been carried or lost, with or without a record of number of votes recorded in favour of or against such question, will be sufficient evidence of the result of the poll if such entry corresponds with the declaration made by the chairman at the meeting concerned.
- 11.9.8. Notwithstanding any provision to the contrary in this clause, a poll on the election of a chairperson or on any question of adjournment, will be decided on a show of hands.
- 11.9.9. All questions and day to day business at the annual general meeting shall be decided by simple majority of those Members who are entitled to vote and are present in person or by proxy at the meeting and voting.
- 11.9.10. Any financial business including the approval of the annual Budget or any amendment thereof, which will be decided on a two-thirds (2/3rds) majority of Members present in person or by proxy and voting.
- 11.9.11. Each Member, entitled to vote, has the right, either in person or by proxy, to vote in respect of any matter to be voted on by members in general meeting, but a Member may not exercise a vote to which he/she would in any other case be entitled to if –
- 11.9.11.1. any Levies payable by him/her in terms of this Constitution, together with interest and costs in connection therewith, have not been duly paid and an arrangement has not been made to the satisfaction of Excom for the payment thereof; or
- 11.9.11.2. he/she continue to breach any of the provisions of this Constitution or any Conduct Rule, Building Rule, Architectural Guideline or Control Measure after written notice demanding him/her to remedy such breach, and an arrangement has not been made to the satisfaction of Excom for the remedying thereof; or
- 11.9.11.3. the Member is involved in any contract or proposed contract, or any litigation or proposed litigation with the Association in which he/she has any interest.
- 11.9.12. For the avoidance of any possible doubt, it is herewith confirmed that the Developer has no voting right.
- 11.10. Co-ownership
- 11.10.1. In the event that two (2) or more persons are joint registered Owners of an Erf, then in voting

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

20/6/23
DATE

upon any question which they are entitled to, may be exercised only by a person (who may or may not be one of them) jointly elected by them as their proxy, but any one of them may request a poll.

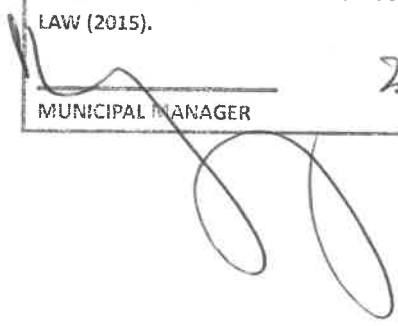
- 11.10.2. In the event of an erf being jointly owned by a natural person and a Company, then in voting upon any question which they are entitled to, may be exercised only by a person (who may or may not be such natural person or a director of the company) jointly elected by such natural person and the directors of the company as their proxy, but such natural person and any one of the directors of the company may request a poll.

11.11. Proxy

- 11.11.1. A Member may be represented at a general meeting by a proxy, who may be someone other than a member of the Association, but may not be a person or service provider, or the employee of a service provider, involved with the Association under this Constitution, or a managing agent, or the employee of a Managing Company, appointed under this Constitution.
- 11.11.2. The instrument appointing a proxy shall be in writing in the common form and signed by the Member concerned or his/her Attorney or agent, duly authorised in writing.
- 11.11.3. In the event that the Member of the Association is –
- 11.11.3.1. more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf;
- 11.11.3.2. a company, the proxy may be signed by the chairman or managing director of the board of directors of the company or by its secretary;
- 11.11.3.3. a close corporation, the proxy may be signed by any of its members;
- 11.11.3.4. a trust, the proxy must be signed by all of its trustees; and
- 11.11.3.5. an association of persons, the proxy must be signed by the chairman or secretary of its managing committee.
- 11.11.4. 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 address determined by Excom or given to the chairman of the meeting at least twenty four (24) hours before the time set for the meeting, or adjourned meeting, at which the person named in such instrument proposes to represent his/her appointer.
- 11.11.5. No instrument appointing a proxy will be valid after the expiration of one (1) year from the date of its execution.
- 11.11.6. A vote cast in good faith in terms of the instrument of proxy will be valid notwithstanding the

STELLENBOSCH MUNICIPALITY

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


MUNICIPAL MANAGER

20/6/23
DATE

previous death of the appointer or revocation of the appointment, provided that no intimation of the death or revocation has been received by Excom or the chairman of the meeting at least one (1) hour before the time set for the meeting.

11.12. Incapacity

Should any member be declared incapable of managing his/her own affairs, or a prodigal or insolvent, or in the case of a juristic person, placed under temporary supervision for the purposes of a business rescue, or into liquidation, such member may be represented by his/her appointed curator, trustee, business rescue practitioner, executor or liquidator, as the case may be, who will be entitled to vote on his/her behalf, either personally or by proxy.

11.13. Companies / Trusts

Any of the above owners which is a member of the Association may, through resolutions of its Directors, Trustees, Members or other governing body, authorises such person as it deems fit to act as its representative at any meeting of the Association and the person so authorised shall be entitled to exercise the same power on behalf of the Company which such person, as a representative of that Company, could exercise as if it were an individual member of the Association. The foregoing provisions shall apply *mutatis mutandis* in the case of a Trust or a Close Corporation.

12. CONSTITUTION, CONDUCT RULES, BUILDING RULES ARCHITECTURAL GUIDELINES & CONTROL MEASURES

12.1. Conduct Rules, Building Rules

12.1.1. The Association may make and/or accept such Conduct Rules, Building Rules and Architectural Guidelines as it deems fit for the advancement of safe and harmonious community living in the Estate and for the control, management, administration, use and enjoyment of the Estate.

12.1.2. The Conduct Rules, Building Rules and Architectural Guidelines made and/or accepted by the Association, and any addition thereto, or substitution, amendment or repeal thereof, may not be in conflict with this Constitution. In the event of any such conflict, the Constitution shall prevail.

12.2. Control Measures

12.2.1. Excom may issue or implement Control Measures from time to time to regulate –

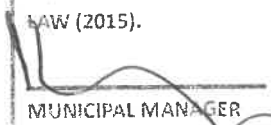
12.2.1.1. access and exit control at the entrance to the Estate;

12.2.1.2. traffic in the Estate, including construction of traffic signs and speed bumps, the implementation of speed limits and the execution of speed checks in the Estate;

12.2.1.3. the parking of vehicles in the Estate;

STELLENBOSCH MUNICIPALITY

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

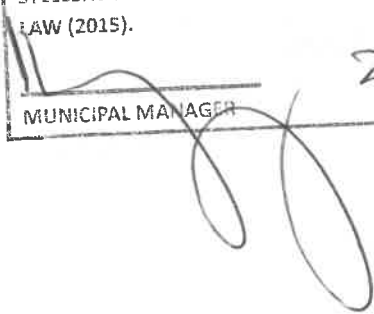

MUNICIPAL MANAGER

20/6/23
DATE

- 12.2.1.4. the preparation and processing of building plans;
- 12.2.1.5. the conduct of persons who perform work in the Estate.
- 12.2.2. A control measure may not be in conflict with this Constitution or any Conduct Rule, Building Rule or Architectural Guideline, as applicable from time to time.
- 12.2.3. Excom may from time to time determine and collect such fees in connection with such control measures as it deems fit.
- 12.2.4. Where feasible, Excom must prior to issuing or implementing a planned control measure, consult with Members in the immediate environment where such measure will be implemented.
- 12.2.5. Excom must in writing inform all Members at least fourteen (14) days before the implementation of any new control measure and any addition to, or substitution, amendment or repeal of, a provision of an existing control measure and of any penalty determined under this Constitution in respect thereof.
- 12.2.6. Excom must at the next annual general meeting submit a report on any new control measure and any addition to, or substitution, amendment or repeal of, a provision of an existing control measure issued since the previous meeting.
- 12.3. **Penalties determined by Excom**
- 12.3.1. Excom may from time to time determine the penalties to be imposed for the breach of any of this Constitution's provisions, a conduct rule, a building rule, an architectural guideline or a control measure.
- 12.3.2. If a member fails to pay any fine imposed, or cost of the remedying of a breach of this Constitution's provisions, a conduct rule, a building rule, an architectural guideline or a control measure, within fourteen (14) days after notification thereof, it will be added to the levy payable by that member.
- 12.3.3. If a non-member (not being a member of the Association) fails to pay any fine imposed, or cost of the remedying of a breach of this Constitution's provisions, a conduct rule, a building rule, an architectural guideline or a control measure, within fourteen (14) days after notification thereof, legal proceedings will be instituted against him/her.
- 12.3.4. Interest at a rate per annum equivalent to the prime overdraft rate charged from time to time by the Association's Bankers plus one percent (1%) shall be added to the fine or cost referred to in this clause if it is not paid within fourteen (14) days.

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

20/6/23
DATE

12.4. Amendment of Constitution and Conduct rules, Building Rules and Architectural Guidelines

12.4.1. Any member may propose an addition to, substitution, amendment or repeal of a provision of this Constitution or of the Conduct Rules, Building Rules or Architectural Guidelines by submitting a written motivated proposal to Excom.

12.4.2. If Excom agrees with the proposal to be submitted, it must submit the proposal to the members for consideration at the next annual general meeting.

12.4.3. If Excom decides that the proposal should not be submitted, it must inform the Member thereof, but Excom has to submit the proposal to the agenda of the next annual general meeting if the written request was from at least 50% (fifty percent) of all the Members.

12.4.4. Any proposed addition to, or substitution, amendment or repeal of this Constitution or of the Conduct Rules, Building Rules or Architectural Guidelines may be effected only by a resolution passed at a meeting by a two-thirds (2/3rds) majority of Members present in person or by proxy and voting.

12.5. Notification of Interested parties

12.5.1. Excom must in writing, within twenty one (21) days from the date of its adoption, inform all Members, the Commissioner of the South African Revenue Service and the Stellenbosch Municipality of any addition to, or substitution, amendment or repeal of, a provision of this Constitution.

12.5.2. Excom must in writing, within fourteen (14) days from the date of its implementation inform all Members of any addition to, or substitution, amendment or repeal of, a provision of the Conduct Rules, Building Rules or Architectural Guidelines or any Control Measure, and of any penalty determined under this Constitution.

12.6. Record of Constitution, Conduct Rules and Control Measures

Excom must keep a complete record of this Constitution and of all Conduct Rules, Building Rules and Architectural Guidelines and Control Measures, and penalties in force from time to time, which must be available for inspection by Members at the address determined by Excom.

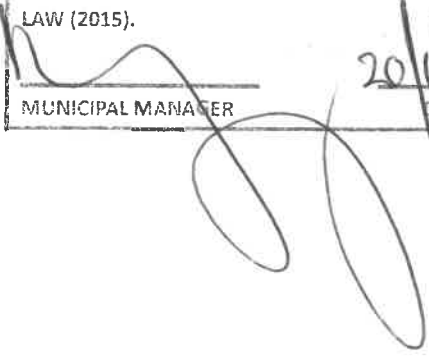
12.7. Binding nature of the Constitution, Conduct Rules and Control Measures

12.7.1. The provisions of this Constitution and of the Conduct Rules, Building Rules or Architectural Guidelines and Control Measures are binding on all Members and also on all other persons who reside in, or for whatever purpose enter the Estate.

12.7.2. It is the duty of the Member concerned to ensure compliance with the provisions of this Constitution and of the Conduct Rules, Building Rules or Architectural Guidelines and

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

20/6/23
DATE

Control Measures by –

- 12.7.2.1. any of his/her family members who resides in his/her dwelling, and his/her visitor, guest, worker, employee, agent, service provider or contractor; and
- 12.7.2.2. any person who had the right to reside, or be present, in his/her dwelling in terms of an arrangement granting rights of occupancy, whether for consideration or not, and the family member of such person who resides in that dwelling, and such person's visitor, guest, worker, employee, agent, service provider or contractor.

13. **MISCELLANEOUS PROVISIONS**13.1. **Indemnity**

- 13.1.1. The Association indemnifies an Excom member, if Excom so determines in writing in a particular instance, a person or service provider engaged by Excom, against all costs, losses, expenses and claims which he/she may incur or become liable to by reason of any act done by him/her in the exercising of his/her powers, the discharge of his/her duties or the fulfilment of his/her obligations, unless such costs, losses, expenses or claims are caused by *mala fide* or grossly negligent act or omission of such person or service provider.
- 13.1.2. Any person using any of the services or any other facilities or amenities of the Association within the Estate, does so entirely at his/her own risk.
- 13.1.3. The right of admission to the Estate is reserved in favour of the Association.
- 13.1.4. Such indemnity must be paid out of the funds of the Association by Excom.

13.2. **Signing of Instruments**

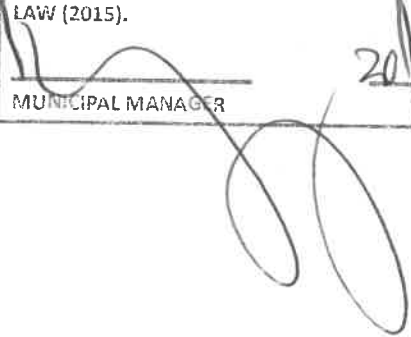
Any instrument must be signed on behalf of the Association by two (2) Excom members or by an Excom member and the Managing Company or, in the case of a certificate issued under this Constitution, by an Excom member or by the Managing Company, to be valid and binding.

13.3. **Consent to Transfer an Erf**

- 13.3.1. No member may transfer his/her Erf until Excom has issued a certificate of consenting to such transfer. Such certificate may not be withheld unless –
 - 13.3.1.1. such member owes levies, contributions or any other amounts to the Association, which the Association may according to this Constitution, the Conduct Rules, Building Rules or Architectural Guidelines, or the Control Measures collect or claim from him/her and an arrangement has not been made to the satisfaction of Excom for the payment thereof;
 - 13.3.1.2. the proposed transferee had not agreed to become a Member of the Association;
 - 13.3.1.3. such Member remains in breach of any of the provisions of this Constitution, Conduct Rules,

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

20/6/23
DATE

Building Rules or Architectural Guidelines or the Control Measures after notifying him/her in writing, requiring him/her to remedy such breach and an arrangement has not been made to the satisfaction of Excom for the remedying thereof.

- 13.3.2. A reasonable fee may be charged by Excom for issuing the certificate, which fee may be determined from time to time by Excom.

13.4. Loans

No Member is allowed to make loans on behalf of the Association to themselves.

13.5. Winding up

- 13.5.1. The Association may be wound up by a resolution of the Members provided that:
- 13.5.1.1. at least two-thirds (2/3rds) of the Members present in person or by proxy and voting in favour thereof; and
- 13.5.1.2. the Local Authority (Stellenbosch Municipality) consents thereto.
- 13.5.2. In the event of such winding up, it shall be the duty of Excom, or a suitable qualified person appointed by it, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the rest to a similar association of persons succeeding the Association and which is also exempt from income tax under section 10(1)(e)(iii) of the Income Tax Act, 1962. If the Association is not succeeded by such an association, the remaining money must then be paid to such fund as may be required by law.

13.6. Zoning Conditions

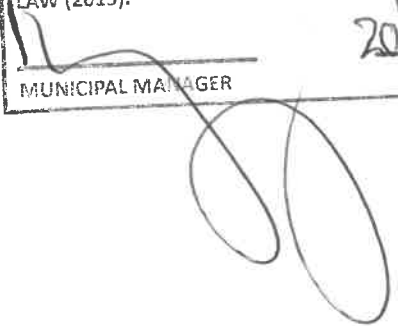
- 13.6.1. The conditions pertaining to the municipal zoning scheme regulations applicable to a development phase of the Estate must at all times be observed by the Owner or Owners of the Erf in the phase concerned.
- 13.6.2. Any application to the Stellenbosch Municipality for permission to deviate from the zoning scheme regulations pertaining to an Erf must be accompanied by the written consent of Excom, and the Stellenbosch Municipality may not approve such application if Excom opposes it.

13.7. Submission of Building Plans

- 13.7.1. A Member must submit building plans for work on his/her Erf to Excom at the address determined by Excom for investigation and approval prior to the submission of such plans to the Stellenbosch Municipality.
- 13.7.2. For the purposes of this clause, "building plans" shall mean any design drawings and specifications for the construction of a new dwelling or for additions to, or the alteration or

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

20/6/23
DATE

renovation affecting the exterior aesthetic appearance of an existing dwelling, or for the erection of a pergola, fence, boundary wall, retaining wall, or the laying of paving.

13.7.3. In the event that Excom does not approve a plan submitted in terms of this clause, Excom must provide reasons in writing to the Member concerned.

13.7.4. Any disagreements or disputes arising must be dealt with in terms of the dispute resolution procedure provided herein.

13.8. Servitude for Maintenance of Services by Stellenbosch Municipality

A servitude for the maintenance of services by the Stellenbosch Municipality is registered over all existing and future road reserves, the water supply system, storm water pipes, sewerage system and electrical network where applicable.

13.9. Use and Occupational Requirements

13.9.1. One (1) dwelling, with detached or semi-detached garage (single or double), may be erected per erf, according to the official Local Authority approved subdivision plan.

13.9.2. The erf shall be used by the Members for residential purposes only and for no other purpose whatsoever, unless at least two thirds (2/3) of the Members of Excom and the Stellenbosch Municipality approved the alternative purpose applied for by the Member concerned.

13.9.3. All Members shall ensure that their respective activities on and uses of the Estate shall be carried out with reasonable and diligent care and with due and proper consideration for the other Members. This shall likewise apply to guests and staff of Members while they are on the Estate.

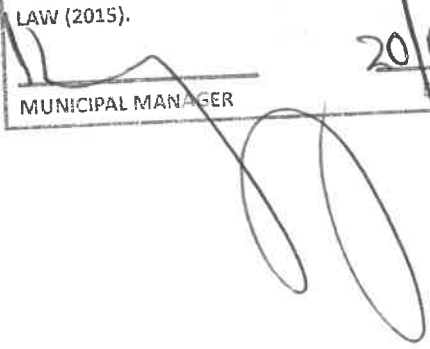
13.9.4. No Member shall cause or permit such conduct either on his own Erf or elsewhere on the Estate as shall cause a nuisance or disturbance to other Members in the quiet enjoyment of their own erven or which is likely to or in any way may tend to affect detrimentally the benefit, enjoyment, rights of occupation and interest of any other Member. Such conduct will include but will not be limited to the uses of radio, television and hi-fi sets, recording equipment and the like or the playing of musical instruments to the extent that it will be audible beyond the boundaries of the Erf of the Member concerned.

13.9.5. No caravans, tents, boats or structures of a temporary nature shall be allowed to be parked or erected in view of any dwelling on the Erf, save with the prior approval of Excom and the adjoining neighbours.

13.9.6. No Member shall be entitled to dump materials or goods on the internal roads or on any Erf not registered in the name of the Member and shall be liable for payment of the cost of rectifying the damage or removal of the material or goods.

STELLENBOSCH MUNICIPALITY

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


MUNICIPAL MANAGER

20/6/23

DATE

13.10. Fire hazard

- 13.10.1. Members may not commit or permit any act which would increase the hazard of fire.
- 13.10.2. Members will not be permitted to make fires other than in their own private braai areas or indoor fire places.

14. INTERPRETATION / DISPUTES

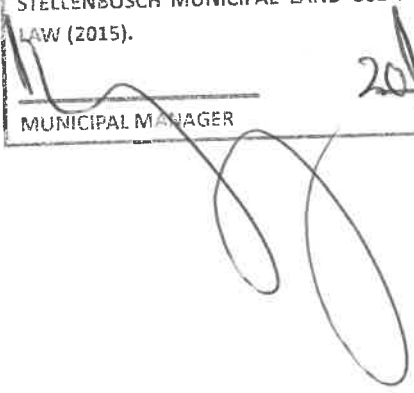
- 14.1. Should any dispute, disagreement or claim ("dispute") whatsoever between a Member and the Association concerning the interpretation of this Constitution and / or the Conduct Rules, Building Rules or Architectural Guidelines and / or the Control Measures arise, the aggrieved party must notify the other interested party in writing, and copies of such notification must be served as contemplated in the "notices" clauses herein.
- 14.2. On receipt of the notification by the other party, the parties must try to resolve the dispute by negotiation, which entails that the one party invites the other party in writing to a meeting where they must attempt to resolve the dispute within ten (10) days from the date of the invitation.
- 14.3. If the dispute is not resolved through such negotiation, the parties must submit the dispute to mediation under auspices of the Arbitration Foundation of Southern Africa ("AFSA"), upon the terms set by the AFSA secretariat.
- 14.4. If the dispute is not resolved through mediation, it will be finally resolved in accordance with the Expedited AFSA Rules by an arbitrator appointed by AFSA.
- 14.5. Notwithstanding the foregoing, the parties may, before mediation or after failed mediation, in writing agree under the auspices of AFSA to refer the dispute to a referee.

15. NOTICES, DOCUMENTS & LEGAL PROCESSES

- 15.1. Notices, delivery and service by the Association**
- 15.1.1. Each member must provide Excom with an address within the Republic of South Africa and an e-mail address and/or facsimile for the purpose of giving notices, delivering documentation and serving of legal processes.
- 15.1.2. The abovementioned notices, documentation and legal processes must be in writing when delivering it to/serving it on the Member, either personally or by registered mail properly addressed to the member concerned at his/her chosen address (physically address, e-mail and/or facsimile)/erf in the Estate, by the Association arising out of this Constitution, the Conduct Rules, Building Rules or Architectural Guidelines or the Control Measures.

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

20/6/23
DATE

15.2. Notices, delivery and service by a Member

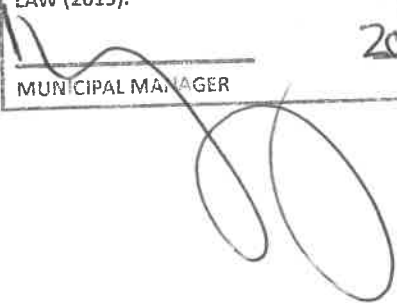
- 15.2.1. A member of the Association may give notices, deliver documentation and serve legal process on the Association, arising out of this Constitution, the conduct rules or the control measures.
- 15.2.2. The abovementioned notices, documentation and legal processes must be in writing when delivering it to/serving it on the Association, either personally or by registered mail properly addressed to the Association at the address appointed by Excom from time to time, or to the Association's e-mail address or facsimile.

15.3. Receipt

- 15.3.1. Any notice, document or legal process sent by registered mail will be deemed to have been received by the addressee five (5) days after transmission.
- 15.3.2. To prove the transmission of a notice, document or legal process by registered mail, it will be sufficient to prove that the notice, document or legal process was properly addressed and posted.
- 15.3.3. Any notice, document or legal process transmitted to an e-mail address or facsimile number shall be deemed to have been received by the addressee on the date on which it is transmitted.
-

STELLENBOSCH MUNICIPALITY

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


MUNICIPAL MANAGER

20/6/23

DATE