Application Number: LU/10385
Our File Reference Number: Erf 15686, Stellenbosch
Your Reference Number: SM/Lydia/Weltevreden Hills
Enquiries: Ulrich von Molendorff
Contact No: 021 – 808 8682
Email address: Ulrich.Vonmolendorff@stellenbosch.gov.za

PER E-MAIL: sandre@lawsni.co.za

Madam

APPLICATION FOR AMENDMENT OF THE CONSTITUTION OF THE WELTEVRE DEN HILLS HOME OWNERS ASSOCIATION: ERF 15686, STELENBOSCH

1. The above application refers.

2. The duly authorised decision maker has decided on the above application as follows:

2.1 That the application for the amendment of the Constitution of Weltevreden Hills Home Owners Association in terms of Section 29(6) of the Stellenbosch Municipal Land Use Planning Bylaw, 2015 on Erf 15686, Stellenbosch BE APPROVED for the following reason/s:

- The proposed amendments to the constitution are internal arrangements and will not have an impact on the original development approved by Council or impact on the broader community.

3. You are hereby informed in terms of section 79(2) of the Stellenbosch Municipal Land Use Planning Bylaw, 2015, of your right to appeal the above decision to the Appeal Authority within 21 days from the date of notification of the above decision. Please note that no late appeals or an extension of time for the submission of appeals are permitted in terms of Section 80(1)(a) of the said By-Law.

4. Appeals must be submitted with the prescribed information to satisfy the requirements of Section 80(2) of the said By-law, failing which the appeal will be invalid in terms of Section 81(1)(b) of the said By-Law. The following prescribed information is accordingly required:
(a) The personal particulars of the Appellant, including:

(I) First names and surname;
(II) ID number;
(III) Company of Legal person’s name (if applicable)
(IV) Physical Address;
(V) Contact details, including a Cell number and E-Mail address;

(b) Reference to this correspondence and the relevant property details on which the appeal is submitted.

(c) The grounds of the appeal which may include the following grounds:

(i) that the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);

(ii) grounds relating to the merits of the land development or land use application on which the appellant believes the authorised decision maker erred in coming to the conclusion it did.

(d) whether the appeal is lodged against the whole decision or a part of the decision;

(e) if the appeal is lodged against a part of the decision, a description of the part;

(f) if the appeal is lodged against a condition of approval, a description of the condition;

(g) the factual or legal findings that the appellant relies on;

(h) the relief sought by the appellant; and

(i) any issue that the appellant wishes the Appeal Authority to consider in making its decision;

(j) That the appeal includes the following declaration by the Appellant:

(i) The Appellant confirms that the information contained in the subject appeal and accompanied information and documentation is complete and correct
(ii) That the Appellant is aware that it is an offence in terms of Section 86(1)(d) of the said By-Law to supply particulars, information or answers in an appeal against a decision on an application, or in any documentation or representation related to an appeal, knowing it to be false, incorrect or misleading or not believing them to be correct.

5. Appeals must be addressed to the Municipal Manager and submitted to his/her designated official by means of E-mail at the following address: Lenacia.Kamineth@stellenbosch.gov.za.

6. An applicant 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.


8. An applicant who lodge an appeal must also adhere to the following requirements stipulated in terms of section 80(3) to (7) of the said By-law:

(a) Simultaneously serve the appeal on any person who commented on the application concerned and any other person as the municipality may determine.

(b) The notice by the applicant must invite persons to comment on the appeal within 21 days from date of notification of the appeal.

(c) The notice must be served in accordance with section 35 of the said legislation and in accordance with the prescripts or such additional requirements as may be determined by the Municipality.

(d) Proof of serving the notification must be submitted to the Municipality at the above E-mail address within 14 days of serving the notification.

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

Yours faithfully

FOR ACTING DIRECTOR PLANNING AND ECONOMIC DEVELOPMENT

DATE: 29/05/20
ANNEXURE B

AMENDMENT OF THE CONSTITUTION OF THE WELTEVREDEN HILLS HOME OWNERS ASSOCIATION: ERF 15686, STELLENBOSCH SITE DEVELOPMENT PLAN

REVISED CONSTITUTION
# CONSTITUTION OF THE WELTEVREDEN HILLS HOME OWNERS' ASSOCIATION

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July 2014 - August 2019
PART 1: DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In the Constitution and unless inconsistent with the context, the following words and expressions shall have the meanings hereby assigned to them:

1.1. “Agricultural Erven” shall mean Erven 16566, 16576 and 16577 Stellenbosch in the Development, which are zoned for agricultural use and are to be managed in the long-term in accordance with a title condition and “Agricultural Erv” shall mean one of the Agricultural Erven.

1.32. “Allocate” shall mean to divest of ownership of an Erv, or part thereof, or share therein, by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency, liquidation, prescription, expropriation or otherwise, and “allocation” shall have a corresponding meaning, and should the Member be:

1.32.1 a company, the alienation by a shareholder of any of the shares in the company, including the beneficial ownership thereof, shall be deemed to be an alienation; or

1.32.2 a close corporation, the alienation by a member of any percentage of the member’s interest in the close corporation, shall be deemed to be an alienation; or

1.32.3 a trust, the alienation by a beneficiary of any of the beneficial interest in the trust, shall be deemed to be an alienation.

1.43. “Annexures” shall mean the annexures to the Constitution, as may be prepared and amended from time to time, including the:

1.43.1 Conduct Rules contained in Annexure A;

1.43.2 Design Guidelines contained in Annexure B;

1.43.3 Environmental Management Plan to-be-contained in Annexure C;

1.43.4 Regulations to be contained in Annexure D;

1.43.5 Site Development Plan to-be-contained in Annexure E;

1.43.6 Rezoning and subdivision plan to-be-contained in Annexure F; and

1.43.7 General Plan of subdivision to-be-contained in Annexure G; and

1.43.8 Agricultural House Plan to-be-contained in Annexure H.
Constitution of Weltevreden Hills Home Owners' Association

1.64 'Association' shall mean the Weltevreden Hills Home Owners' Association which is bound by the provisions of this Constitution.

1.65 'Auditors' shall mean the auditors of the Association from time to time, provided that for the duration of the Development Period the Developer may decide upon the auditors.

1.76 'Budget' shall mean the estimate of income and expenditure of the Association in respect of a financial year.

1.87 'Business day' shall mean a weekday other than a Saturday, Sunday or a Public Holiday officially recognised in the Republic of South Africa.

1.98 'Chairperson' shall mean the chairperson of the Association and of the Trustees from time to time, provided that for the duration of the Development Period the chairperson shall be a Developer Trustee decided upon by the Developer.

1.109 'Common Property' shall mean the common areas within the Development, including private roads, private open space, road verges, and areas, erven or parts of erven designated by the Developer as common property of the Association and the related services and amenities.

1.10 'Community Schemes Ombud Service' means the service established in terms of the Community Schemes Ombud Service Act.

1.11 'Community Schemes Ombud Service Act' means the Community Schemes Ombud Service Act, No. 9 of 2011 as amended from time to time, and any regulations promulgated thereunder and in force.

1.112 'Conditions of Approval' shall mean the conditions of subdivision approval imposed by Stellenbosch Municipality when approving the subdivision of the Land.

1.1213 'Conduct Rules' shall mean the conduct rules of the Association referred to in clause 43 of the Constitution and contained in Annexure A hereto, and as may be amended from time to time.

1.1214 'Constitution' shall mean this Constitution of the Association, including the Annexures thereto, as may be amended from time to time.

1.1215 'Controlling Architect/s' shall mean the architect/s of the Association from time to time, provided that for the duration of the Development Period the Developer may decide upon the control architect/s.

1.1216 'Deeds Registry' means a deeds registry, defined in the Deeds Registries Act No. 37 of 1947, with jurisdiction to register deeds and documents against the title deeds of the Land in accordance with the provisions of that Act.
Constitution of Weltevreden Hills Home Owners' Association

1.4.17 'Design Guidelines' shall mean the architectural and landscape architectural design framework and guidelines of the Association referred to in clause 37 of the Constitution and contained in Annexure B hereto, and as may be amended from time to time.

1.4.18 'Developer' shall mean ERF 28288 TABLE VIEW PROPRIETARY LIMITED, Registration Number 2001/002938/07.

1.4.19 'Developer Trustees' shall mean those of the Trustees appointed by the Developer during the Development Period.

1.4.20 'Development' shall mean the residential and agricultural development known as Weltevreden Hills to be developed on the Land, substantially in accordance with and as indicated on the Site Development Plan, the Rezoning and Subdivision Plan and the Master Plan and Design Guidelines which Land shall be subdivided into Erven 16540 to 16597 Stellenbosch in accordance with the General Plan, and comprising of the Residential Erven, Agricultural Erven, and the Private Open Space.

1.4.21 'Development Management Scheme' shall mean the Development Management Scheme as contemplated in the Stellenbosch Planning By-law from time to time.

1.4.22 'Development Period' shall mean the period from the date of registration of transfer to a purchaser of the first Erf arising from the subdivision of Land until the date of Alienation by the Developer to another person of 50% of the Erven in the Development, or until the Developer notifies the Association in writing of the termination of the Development Period, whichever shall first occur.

1.4.23 'Distressed Sale' shall mean –

1.4.23.1 a distressed sale or a sale in execution where a bank or financial institution as mortgage bond holder in respect of the Property legally attaches and sells the Property due to failure of the Purchaser, as registered owner thereof, to fulfil its obligations towards such mortgage bond holder;

1.4.23.2 a sale where a bank or financial institution as mortgage bond holder in respect of the Property assists the Purchaser, as registered owner of the Property, with the sale of the Property in accordance with the requirements of the relevant mortgage bond holder's formal programmes to assist distressed customers to sell their immovable properties in instances of failure of the Purchaser as registered owner of the Property to fulfil its obligations towards the relevant mortgage bond holder; and/or

1.4.23.3 where a bank or financial institution as mortgage bond holder in respect of the Property legally attached the Property due to failure of the Purchaser as registered owner of the Property to fulfil its obligations towards the said mortgage bond holder and took transfer of the Property and thereafter sold the Property.
1.2324 'Electronic Communication' shall have the meaning set out in section 1 of the Electronic Communications and Transactions Act.


1.2526 'Environmental Management Plan' shall mean the plan referred to in clause 42 of the Constitution and to be contained in Annexure EC hereto, and as may be amended from time to time.

1.2627 'Erf' shall mean any piece of land within the Land registered as an erf, lot, plot or stand in the Deeds Registry, but excluding any erf comprising Common Property and 'Erf' shall have a corresponding meaning.

1.2728 'Financial institution' shall mean a registered financial institution as defined in section 1 of the Financial Institutions (Protection of Funds) Act.

1.2829 'Financial Institutions (Protection of Funds) Act' shall mean the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 as amended from time to time and any regulations made and in force thereunder and includes any substituted legislation.

1.2930 'General Plan' shall mean the General Plan of subdivision of the Land No. 1387/2016.

1.3031 'House' shall have the dwelling or house to be constructed on an Erf in compliance with the Design Guidelines.

1.3132 'Improvements' shall mean any House, buildings or structures constructed or to be constructed on an Erf, including any alterations, additions or attachments to any existing buildings and/or structures, and changes to external finishes, material and/or the colour scheme; provided that the foregoing shall not give rise to any right or expectation to erect any building or structure that is not in accordance with the requirements of the approvals and/or the Design Guidelines and/or that is not in accordance with plans that have been duly approved in accordance with the requirements of the Constitution.

1.3233 'Income Tax Act, shall mean the Income Tax Act, No. 58 of 1962 as amended from time to time and any regulations made and in force thereunder and includes any substituted legislation.

1.3334 'Invitees' shall mean the employees, servants, workers, contractors, agents, service providers, customers, clients, visitors, guests, or other invitees of Members or Lessees, present in the Development.

1.3435 'In writing' shall mean written, printed or lithographed or partly one and partly the other, and other modes of representing or producing words in visible form, including Electronic Communication.

1.3536 'Jurist person' shall mean a company, close corporation, trust or other legal person.
Constitution of Weltevreden Hills Home Owners' Association

1.3637 "Land" shall mean Erf 16389 Stellenbosch, situated in the Stellenbosch Municipality, Division Stellenbosch, Western Cape;

1.3738 "Lessee" shall mean the lessee and/or other occupant in respect of an Erf in the Development.

1.3839 "Levies" shall mean the contributions payable by the Members to the Association in terms of clause 27 of the Constitution, including Annual Levies (ordinary levies), including any service fees and charges and administration charges levied by the Association, and Special Levies.

1.3940 "Managing Agent" shall mean the person or juristic person as may from time to time be contracted by the Association as its managing agent, provided that for the duration of the Development Period the Developer may decide upon the managing agent.

1.4040 "Master Plan" shall mean the Plan indicating the type of units allowed to be constructed on Erven, to be included in the Design Guidelines.

1.4141 "Member" shall mean a member of the Association and "membership" shall be construed accordingly.

1.4242 "Member Trustees" shall mean the Trustees appointed by the Members and "Member Trustee" shall mean any one of them.

1.4343 "Municipal Services" shall mean the services provided by Stellenbosch Municipality and includes services in respect of the provision of water, sewerage, electricity, storm water and any related infrastructure and systems and processes related to the services.

1.4444 "Ordinary Resolution" shall mean a resolution passed at a general meeting of the Association, whether on a show of hands or on a poll, by an ordinary majority of the total votes represented at such meeting by the Members present in person or by proxy, as the case may be, and for the duration of the Development Period by the Developer Trustee and the Members present in person or by proxy, as the case may be, and provided further that during the Development Period no resolution at a general meeting shall be of any force or effect unless a Developer Trustee votes in favour thereof.

1.4545 "Owner" shall mean the registered owner of an Erf.

1.4646 "Prime rate" shall mean the prime bank overdraft rate of interest charged by the Association's bank from time to time and more commonly known as its prime rate (in the case of a dispute, the rate may be certified by any manager or assistant manager of any branch of the said bank whose certificate shall be final and binding on the Members).
Constitution of Weltevrede Hills Home Owners' Association

1.47 'Private Open Space' shall mean Erven 16554, 16571, 16584 and 16590 Stellenbosch zoned as private open space and for use as open space as part of the Common Property and Erf 16597 Stellenbosch in the Development, which are zoned as private open space for the use as a private road as part of the Services.

1.48 'Regulations' shall mean the Regulations the Trustees may make from time to time referred to in clause 44 of the Constitution and to be contained in Annexure GD hereeto, and as may be amended from time to time.

1.49 'Residential Erven' shall mean Erven 16540 to 16553, 16555 to 16565, 16567 to 16570, 16572 to 16575, 16578 to 16585, 16585 to 16589, 16591 to 16596 Stellenbosch in the Development, which are zoned as group housing erven for residential use and 'Residential Erf' shall mean one of the residential erven.

1.50 'Services' shall mean service provided by the Association or a service provider on behalf of the Association and includes the private roads, paved road surfaces, the pavements, the street light network, including all street furniture, street light control kiosk and underground street light cables, the security perimeter, services in respect of refuse removal, and such other utilities or services and any related infrastructure and systems and processes related to the services, but excluding the Municipal Services.

1.51 'Site development plan' shall mean a plan that shows the Land, the site layout, positioning of buildings and structures, property access, building designs and landscaping in respect of the Development as referred to in clause 44-45.5 of the Constitution and contained in Annexure AE hereto, and as may be amended from time to time.

1.52 'Stellenbosch Municipality' shall mean the Municipality of the Stellenbosch as defined in the Stellenbosch Planning By-law and its successors in title.

1.53 'Stellenbosch Planning By-law' shall mean Stellenbosch Municipality Land Use Planning By-Law, 2015 as may be amended from time to time.

1.54 'Trustees' shall mean the trustees of the Association collectively from time to time and 'Trustee' shall mean one of them.

1.55 'Weltevrede Estate' means the historical Weltevrede Estate situated on erf 13834 Stellenbosch.

1.56 'Weltevrede Estate Owner' means the Seascapes Guesthouses Pty Ltd. Registration Number 2000/001788/07 and its successors in title or assigns.

1.557 'Weltevrede Hills Treasury Trust' shall mean the trust established by the Developer as a public benefit organisation trust with the sole aim of supporting education in the vicinity of the Stellenbosch Municipal area. Such support could be in the form of educational bursaries for scholars/students, or funding of in-service vocational training of permanent staff employed in the Development.

July 2016 August 2019
2. INTERPRETATION

2.1 In the interpretation of the Constitution, unless the context otherwise indicates:

2.1.1 the clause headings are for convenience of reference and shall be disregarded in construing the Constitution;

2.1.2 words importing the singular number shall include the plural and the converse shall also apply;

2.1.3 a reference to any one gender shall include the other genders;

2.1.4 a reference to natural persons or ‘person’ shall include juristic persons and the converse shall also apply; and

2.1.5 words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part of, and in subsequent clauses, bear the meaning assigned to such words and expressions in such sub-clause;

2.1.6 when any number of days is prescribed in the Constitution, the same shall 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 the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

2.1.7 the Annexures to the Constitution shall be deemed to be incorporated in and form part of the Constitution.

2.2 If any provision of the Constitution is in conflict or inconsistent with any law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of the Constitution.

2.3 If any provision in a definition in the Constitution is a substantive provision conferring rights or imposing obligations on any of the Members then, notwithstanding that it is only in the definition clause of the Constitution, effect shall be given to it as if it were a substantive provision in the body of the Constitution.

2.4 If any provision in an Annexure to the Constitution is in conflict with any provision of the Constitution, the relevant provision of the Constitution shall prevail.

PART 2: ESTABLISHMENT, STATUS AND DOMICILIUM OF THE ASSOCIATION

3. ESTABLISHMENT OF THE ASSOCIATION

3.1 The Stellenbosch Homeowners’ Association, subsequently known as the Weltevrede Hills Home Owners’ Association was constituted as a body corporate in terms of section 29 of the Land Use Planning Ordinance, No. 15 of 1985 in accordance with...
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3.3 This Constitution of the Weltevreden Hills Home Owners' Association has been approved by the members of the Stellenvista Homeowners' Association in terms of clause 15.2 of the Constitution of Stellenvista Homeowners' Association, and replaces the existing Constitution of the Stellenvista Homeowners' Association as filed with Stellenbosch Municipality. This Constitution shall take effect on the date of approval thereof by Stellenbosch Municipality.

3.31 The Weltevreden Hills Home Owners' Association shall be has been constituted as an owners' association in terms of section 1822(1) of the Stellenbosch Planning By-law in accordance with the conditions imposed by Stellenbosch Municipality when approving the subdivision of the Land.

3.42 The Association shall be automatically constituted upon registration in the Deeds Registry of the first Erf arising from the subdivision from the Developer to a purchaser thereof.

3.53 The Association is a juristic person and must have a constitution which must be approved by Stellenbosch Municipality before the transfer of the first Erf.

3.64 The Constitution of the Association may have other objects as set by the Association but may not contain provisions that are in conflict with any law.

4. STATUS OF THE ASSOCIATION

4.1 The Association is a juristic person, has perpetual succession and is capable of suing and being sued.

4.2 The Association is established as a non-profit making institution for the purposes and objects set out in the Constitution. The Association shall not be for profit, but for the collective benefit and interest of its Members.

4.3 No part of the income of the Association may be paid or refunded to any Member, except to settle any debt to such Member that the Association may have. No Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees on behalf of the Members according to the objects of the Association.

4.4 The Association has the right to acquire, hold, lease and alienate property, both moveable and immovable.

4.5 The sole object of the Association is to manage the collective interests common to all its Members, which includes expenditure applicable to the Common Property of the Development and the collection of Levies for which such Members are liable.

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4.6 The Association is not permitted to distribute its funds to any person other than to a similar association of persons.

4.7 On dissolution the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(a)(iii) of the Income Tax Act.

4.8 Funds available for investment may only be invested or re-invested with registered financial institutions as defined in section 1 of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001.

4.9 The Association is not or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Services.

4.10 The Association shall submit annual returns of income tax together with financial statements to the South African Revenue Services or similar relevant government departments as required.

4.11 Any amendments to clause 4 of the Constitution must be submitted to the Commissioner for the South African Revenue Services.

5. DOMICILIUM OF THE ASSOCIATION

The domicilium citandi et executandi of the Association shall for the duration of the Development Period be the domicilium address of the Developer referred to in clause 45.1 of the Constitution. Upon termination of the Development Period, the Trustees shall from time to time determine the address constituting the domicilium citandi et executandi of the Association, subject to the following:

5.1 such address shall be the office address of the Managing Agent, or shall be the address of the Chairperson, or the address of a Trustee nominated by the Trustees;

5.2 the Trustees shall give notice to all Members of any change of such address.

PART 3: OBJECTS, FUNCTIONS AND POWERS OF ASSOCIATION

6. OBJECTS OF THE ASSOCIATION

The objects of the Association are:
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6.1 to formally represent the collective mutual interests of the area, suburb or
neighbourhood set out in the Constitution in accordance with the conditions of
approval;

6.2 the control over and maintenance of buildings, services or amenities arising from the
subdivision;

6.3 the regulation of at least one yearly meeting with its Members;

6.4 the control over the Design Guidelines of the buildings and Erven arising from the
subdivision;

6.5 to take ownership of the Common Property, the private open spaces, private roads
and other services arising out of the subdivision;

6.6 the enforcement of conditions of approval or management plans;

6.7 the procedures to obtain the consent of the Members of the Association to transfer an
Erf in the event that the Association ceases to function;

6.8 the implementation and enforcement by the Association of the provisions of the
Constitution;

6.9 to control, administer and manage the Common Property, Services and amenities in
respect of the Development and the buildings on land under the Association's control
for the benefit of all the Members;

6.10 to monitor and ensure compliance with certain conditions of subdivision approval or
management plans listed in the Conditions of Approval, more specifically the
Environmental Management Plan and the Design Guidelines, to control aesthetics
and to control the use of an Erf;

6.11 to co-operate with the Stellenbosch Municipality, the provincial government and all
other appropriate authorities for the benefit of the Association and the Members;

6.12 to conclude service agreements with the Stellenbosch Municipality and other service
providers for the benefit of the Members;

6.13 to administer and enforce compliance with the provisions of the Constitution;

6.14 to establish a levy fund for expenses of the Association, including provision for future
expenses and contingencies, and to determine and collect Levies for the purpose of
the said fund from the Members;

6.15 to control, administer and manage Design Guidelines for improvements and
landscaping within the Development;
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6.16 to control and co-ordinate construction of improvements within the Development in this regard to:

6.16.1 uphold aesthetic standards that will enhance the attractiveness of the Development as a whole;

6.16.2 regulate the aesthetic appearance generally of all improvements; and

6.16.3 regulate the environment and landscaping within the Development;

6.17 to ensure that high environmental, building and social standards are maintained within the Development to comply with the provisions of the Environmental Management Plan in respect of the Development;

6.18 to control the Alienation, transfer, letting and use of Erven within the Development;

6.19 to regulate the conduct of persons within the Development to prevent any nuisance to a Member or Lessee, and to administer and enforce Conduct Rules to ensure a good standard of conduct for persons within the Development;

6.20 to take action as deemed necessary by the Trustees in relation to the non-compliance by any Member or Lessee with any provisions of the Constitution and to impose penalties upon Members in respect of contraventions;

6.21 to promote, advance and protect the interest of Members generally in regard to the Development and to represent the interest of Members and to provide a united voice by which such interests may be expressed; and

6.22 generally to do all such things as may be necessary or requisite to give effect to and implement and enforce the objects of the Association and to do all such things ancillary or incidental to the objects,

and the Association, through the Trustees, shall have all the powers that are necessary to accomplish the fulfilment of the foregoing objects.

7. FUNCTIONS AND POWERS OF THE MASTER-ASSOCIATION

7.1 The Association shall exercise the powers and perform the functions as set out in the Constitution and such ancillary functions as may be necessary in pursuit of its objects.

7.2 The functions of the Association shall include to:

7.2.1 establish a levy fund of the Association sufficient in the opinion of the Association to meet the expenditure of the Association;

7.2.2 raise and determine Levies payable by the Members as contributions to the levy fund;

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7.2.3 open and operate an account or accounts with registered South African commercial banks and financial institutions;

7.2.4 take up insurance for the Association as may be required including, but not limited to:

7.2.4.1 insure the buildings, improvements, amenities and services in respect of the Common Property against such risks as the Association may determine;

7.2.4.2 take up public liability insurance in respect of the Common Property and Services;

7.2.4.3 procure a fidelity guarantee insurance; and

7.2.4.4 insure the payment of Levies due by the Members to the Association, if required;

7.2.5 pay the premiums on any policy of insurance effected by it;

7.2.6 repair and maintain the Common Property and Services;

7.2.7 ensure compliance with any law relating to the Common Property and/or Services and to comply with any notice or order by any competent authority requiring any repair to, or work in respect of, the Common Property and/or Services;

7.2.8 comply with the duties specified from time to time in the Community Schemes Ombud Service Act.

7.3 The powers of the Association shall include the power to:

7.3.1 purchase or otherwise acquire, take transfer of, mortgage, sell, alienate, give transfer of, or hire or let immovable property, including land, buildings, and/or erven and to register servitudes and/or rights of use in respect thereof and to make improvements to immovable property or to remove improvements;

7.3.2 purchase, hire, or otherwise acquire movable property and to insure, sell, let, or otherwise dispose of movable property;

7.3.3 control and maintain the Common Property and to establish on the Common Property such services, improvements, amenities, lawns or gardens as may be required and to register servitudes;

7.3.4 provide security in respect of the Land;
7.3.5 apply for licenses and other rights enabling the Association to deal with its property in any lawful manner;

7.3.6 add to, amend, repeal or substitute the provisions of the Constitution and the Annexures thereto from time to time, in accordance with the provisions of the Constitution;

7.3.7 borrow moneys required by it in the performance of its functions or the exercise of its powers;

7.3.8 secure the repayment of moneys borrowed by it and the payment of interest thereon in any manner, including but not limited to the mortgaging and pledging of property or cession of levy debt, and to agree to the terms of such transactions;

7.3.9 sell and cede any obligation due to the Association, including but not limited to claims for Levies, contributions, charges, penalties and fees, and to agree to the terms of such transactions;

7.3.10 lend or donate moneys;

7.3.11 invest surplus moneys of the levy fund;

7.3.12 make, draw, issue, accept, endorse and discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments;

7.3.13 enter into or issue indemnities, guarantees and suretyships and to secure payments thereunder in any way;

7.3.14 employ, dismiss and remunerate employees and professional advisors and to establish and contribute to pension-, provident-, medical aid and other similar funds for the benefit of its employees;

7.3.15 appoint such agents or contractors as it deems fit;

7.3.16 sue and be sued in the name of the Association and to appoint attorneys, agents and advocates for the aforementioned purpose;

7.3.17 enter into agreements for the supply of services, equipment or property to the Development;

7.3.18 enter into any agreement necessary to achieve the objects of the Association or to further the interest of the Association;

7.3.19 recover by legal process any Levies or moneys due by Members or former Members to the Association;
7.3.20 impose upon Members penalties in respect of contraventions of the provisions of the Constitution and to recover such penalties from its Members or former Members by legal process; and

7.3.21 do all things necessary or required to attain the objects of the Association, and to further and promote the interests of Members and to implement and enforce the powers conferred on the Association in terms of the Constitution.

PART 4: MEMBERSHIP OF THE ASSOCIATION

8. MEMBERS OF THE ASSOCIATION

8.1 The Association shall have as its Members every registered owner of an Erf.

8.2 Where an Erf is registered in the name of more than one person, all the registered owners of the Erf shall be deemed jointly and severally to be one Member of the Association.

8.3 Where any person is the registered owner of more than one Erf, such person shall be regarded as a Member, and shall have the rights and obligations of a Member, in respect of each Erf registered in such person's name.

9. OBLIGATIONS OF MEMBERS OF THE ASSOCIATION

9.1 Every Member is obliged to comply with the provisions of the Constitution and any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on the Member.

9.2 The rights and obligations of a Member shall not be transferable and every Member shall to the best of his ability further the objects and interests of the Association.

9.3 A Member may not resign from the Association.

9.4 Members shall be jointly liable for expenditure incurred in connection with the Association according to the provisions of the Constitution. The Association shall recover expenditure incurred in connection with the Association from its Members in accordance with the provisions of the Constitution.

9.5 A Member shall develop his Erf within a period of forty-eight (48) to sixty (60) months from the date of registration of transfer of the Erf from the Developer to the first purchaser thereof in the Deeds Registry, by the construction and completion of a House and outbuildings on the Erf, in accordance with the requirements of Design Guidelines and the building plans and specifications approved by the Trustees. A Member shall complete the construction of a House and outbuildings and all building works in respect of his Erf within a period of twelve (12) months after the commencement of construction.
9.6 If a Member fails to comply with the provisions of clause 9.5 above, by failing to
timeously complete construction within the aforementioned periods, whichever may
be applicable, the Association shall be entitled, without prejudice to any other rights
which it may have in terms of this Constitution and/or at law, to impose a penalty levy
equal to, and in addition to, the Annual Levy payable by the Member in terms of
clause 27.1 of this Constitution in respect of his Erf, which penalty levy shall be payable
in monthly instalments, monthly in advance until completion of construction of the
House and outbuildings in respect of his Erf.

9.7 In the case of a Distressed Sale such penalty levies payable by the Member as a result
of failure by the Member to timeously complete construction of a House and
outbuilding in respect of his Erf will be waived by the Association.

9.8 If the Purchaser fail to comply with the provisions of clause 9.6, the Developer shall be
entitled, without prejudice to any other rights which it may have and/or at law and at
its election to—

9.8.1 repurchase the Erf from the Owner for an amount equal to the original
purchase price paid by the Owner in terms of his agreement of sale; or

9.8.2 sell the Erf to any third party for an amount of not less than the original
purchase price (inclusive of VAT) paid by the Owner in terms of his agreement of
sale. The aforesaid provisions shall not apply in the event of a Distressed
Sale.

9.9 Clause 9.7 is reasonable and necessary in order to ensure that building work in respect
of the Development is finished within a reasonable time. A Member must advise of
any purchaser or other transferee of his Erf of the aforesaid obligation to timeously
build.

9.10 Except for the Developer, no Member shall consolidate two or more Erven into one Erf
without the prior written approval of the Trustees and subject to compliance with the
conditions imposed by the Trustees.

9.11 Except for the Developer, no Member shall subdivide an Erf into two or more Erven
without the prior written approval of the Trustees and subject to compliance with the
conditions imposed by the Trustees.

9.12 A Member shall maintain his Erf and improvements in a state of good repair and in a
clean and neat condition. If a Member fails to repair or maintain his Erf and
Improvements and any such failure persists for a period of thirty (30) days after the
giving of written notice to repair or maintain given by the Trustees, the Trustees shall be
entitled to remedy the Member's failure and to recover the reasonable cost of doing
so from such Member. The costs incurred by the Trustees shall be due and payable by
the Member upon demand and, failing which, the costs may be added to the
Member's levy statement and the costs may be recovered from the Member in the
same manner as applies to arrear Levies, together with interest at the rate applicable
to Levies.
9.13 A Member shall procure adequate insurance in respect of the House and outbuildings to his Erf, and, if requested by the Trustees, shall furnish proof of such insurance to them. In the event of the total or partial destruction of the Improvements, the Member must, within a reasonable time period, reinstate the Improvements in accordance with the Design Guidelines and in accordance with building plans to be approved by the Trustees.

9.14 Occupation and use of a House within the Development shall, at all times, be in compliance with the Development Management Scheme. Where a Member proposes to use his Residential Erf for other purposes than conventional residential use, which requires Municipal approval, the Member shall first apply for the written consent of the Trustees before submitting an application to Stellenbosch Municipality. No Member or Lessee shall use any building within the Development or allow any other person to use such building for any purpose not permitted by the Development Management Scheme or occupy any building not approved of by the Trustees as being complete and compliant with the Design Guidelines and other requirements.

9.15 The Constitution and the duties of a Member in relation to the use and enjoyment of his Erf and the Common Property and Services and amenities of the Development shall be binding on all Members and Lessees. It shall be the duty of a Member to ensure compliance with the Constitution by his Invitees and the Lessees of his Erf and by the Invitees of his Lessees.

9.16 No Member shall Alienate, let or otherwise part with occupation of his Erf, whether temporarily or otherwise, unless the proposed Lessee has been provided with a copy of the Constitution.

9.17 Each Member shall be vicariously liable for the acts or omissions within the Development by his Invitees or the Lessees of his Erf, including the Invitees of his Lessees. In the event of any breach of any provision of the Constitution by the Invitees or Lessees of the Member or by the Invitees of the Lessees, such breach shall be deemed to have been committed by the Member concerned. In the event of damage caused to any Common Property or Services by the Invitees or Lessees of the Member or by the Invitees of the Lessees, the Member concerned shall be liable to the Association for the costs to repair such damage, and the costs may be added to the Member’s levy statement. Without prejudice to the foregoing, the Trustees shall be entitled to take or cause to be taken such steps against the person who actually caused the damage as they may in their discretion deem fit, with or without proceedings against the Member concerned.

9.18 A Member shall not do or suffer to be done on any Erf, in any building, or on the Common Property anything which, in the opinion of the Trustees, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any other Member or Lessee.
9.19 A Member shall permit access by a person authorised in writing by the Association to his Erf if required for any reasonable purpose by the Association. In this regard the security company contracted from time to time by the Association shall specifically have access to all Erven situated along the boundaries of the Development, for the purpose of patrolling the security perimeter and repairing and maintaining the security perimeter from time to time.

10. **RESTRICTION ON ALIENATION**

10.1 A Member shall not be entitled to Alienate his Erf or apply to the Registrar of Deeds for the registration of transfer of his Erf, without the prior written consent of the Association having been obtained, which consent may, subject to the conditions contained in clause 10.2, not unreasonably be withheld. The afore-going provision shall not apply to Alienation by the Developer during the Development Period, and the Developer or its nominee/s shall be entitled on behalf of the Association to sign all such consents as may be necessary to enable the Developer to give transfer of Erven sold by the Developer to the purchasers thereof.

10.2 The Association may refuse such consent if:

10.2.1 the Levies and other amounts due to the Association in respect of the Erf have not been paid or payment thereof has not been secured to the satisfaction of the Trustees, and/or

10.2.2 an amount equal to 0.5% of the sales price in respect of the Erf has not been paid to the Weltevrede Hills Treasury Trust or payment thereof has not been secured to the satisfaction of the Trustees, and/or

10.2.3 the Member is substantially in breach of a provisions of the Constitution, to an extent reasonable to justify withholding such consent, and/or

10.2.4 the Member has constructed a building which is not in compliance with the Development Management Scheme.

10.3 The written consent may be signed by the Chairperson or by a Trustee or by the Managing Agent duly authorised thereto. The Trustees may determine a reasonable fee to be charged for the issuing of the written consent.

10.4 The provisions of the Constitution shall be mutatis mutandis applicable to the Lessees of Erven within the Development. All Lessees shall be obliged to comply with the provisions of the Constitution, notwithstanding any provision to the contrary contained in, or the absence of provisions, in any lease or any grant of rights of occupancy.

10.5 Members shall ensure that their lease agreements incorporate a provision to the effect that a Lessee shall be obliged to comply with the provisions of the Constitution.
PART 5: THE TRUSTEES OF THE ASSOCIATION

11. OFFICE OF THE TRUSTEES

11.1 The Trustees shall initially comprise of the Executive Committee of the Stellenbosch Homeowners’ Association, who shall serve as such until the approval of the Constitution. Once the Constitution is approved the Trustees shall comprise of the Developer Trustees appointed by the Developer, who shall serve as such until the first annual general meeting of the Association.

11.2 From the aforesaid first annual general meeting and for the duration of the Development Period, the Trustees shall comprise of:

11.2.1 two (2) Developer Trustees appointed by the Developer;

11.2.2 three (3) Member Trustees appointed by the Members of the Association

11.3 After the Development Period, the Trustees shall comprise of a minimum of three (3) or more Members Member Trustees appointed by the Members of the Association.

11.4 A Trustee shall be an individual but need not himself be a Member, provided that, except for the Developer Trustees, the majority of Trustees shall be Members of the Association or the duly authorised representative of a juristic person that is a Member of the Association.

11.5 A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of the Constitution.

11.6 Subject to the provisions of clause 11.7 and clause 12, each Trustee shall continue to hold office until the next annual general meeting of the Association following his appointment, at which meeting each Trustee shall be deemed to have retired from office as such but will be eligible for re-election by the Members.

11.7 The Developer Trustees shall continue to hold office for the duration of the Development Period, provided that the Developer shall at any time be entitled to remove any Developer Trustee and to appoint a new Developer Trustee.

12. REMOVAL AND ROTATION OF THE TRUSTEES

12.1 A Trustee shall be deemed to have vacated his office as such upon:

12.1.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;

12.1.2 his making any arrangement or compromise with his creditors;

12.1.3 his conviction for any offence involving dishonesty;

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12.1.4 his becoming of unsound mind or being found mentally handicapped;

12.1.5 his resigning from such office in writing;

12.1.6 his death;

12.1.7 his being removed from office as a Member Trustee by an Ordinary Resolution; or

12.1.8 his being in arrears with his Levies or any other amounts due to the Association for two (2) months, or more, provided he is a Member Trustee.

12.2 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 12.1, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the minutes of the meeting of the Trustees.

12.3 Should the office of a Trustee fall vacant prior to an annual general meeting, the vacancy in question may be filled by the remaining Trustees. The person so appointed shall hold office until the next annual general meeting following his appointment. Should the office of a Developer Trustee fall vacant prior to an annual general meeting of the Association, the vacancy in question may be filled by the Developer.

13. **CHAIRPERSON OF THE TRUSTEES**

13.1 The Chairperson shall initially be the chairperson of the Executive Committee of the Steenberg Homeowners’ Association. The first Chairperson of the Trustees after approval of the Constitution shall be appointed by the Developer, who shall hold office for duration of the Development Period. If the Chairperson 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, the Developer Trustee present at such meeting of the Trustees or present at such general meeting, as the case may be, shall choose another Chairperson for such meeting.

13.2 After the Development Period and within fourteen (14) days of the holding of each annual general meeting, the Trustees shall meet and shall elect from their own number the Chairperson who shall hold office until the annual general meeting held next after his appointment, provided that the office of Chairperson shall automatically be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. In the event of any vacancy occurring in the office of Chairperson, the Trustees shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.

13.3 Save as otherwise provided in the Constitution, the Chairperson shall preside at all meetings of the Trustees and at all general meetings of the Association and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by a resolution of the Trustees or by an Ordinary Resolution.
Chairperson may allow or refuse to allow guests to speak at any meetings of the Trustees and at any general meetings of the Association.

13.4 If after the Development Period, the Chairperson 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, the Trustees present at such meeting of the Trustees or the Members present in person or by proxy, at such general meeting, shall choose another Chairperson for such meeting.

14. FUNCTIONS, POWERS AND DUTIES OF THE TRUSTEES

14.1 The functions, powers and duties of the Association shall, subject to the provisions of the Constitution and to any directions given or restrictions imposed by Ordinary Resolution at a general meeting, be performed and exercised by the Trustees.

14.2 Without detracting from the scope of the additional duties specified in the Constitution, the Trustees shall perform the functions referred to in clause 7.2 of the Constitution.

14.3 The Trustees shall do all things reasonable necessary for the control, management and administration of the Development in terms of the powers conferred upon the Association by clause 7.3 of the Constitution.

14.5 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.

14.6 The Trustees shall do all things reasonably necessary for the enforcement of the Constitution. The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Lessee of the Constitution in such reasonable manner as they shall decide from time to time.

14.7 Without in any way limiting the powers granted the powers of the Trustees shall include to:

14.7.1 appoint for and on behalf of the Association, such agents and employees as they deem fit in connection with the control, management and administration of the Development and Common Property and the exercise and performance of any of the powers and duties of the Association;

14.7.2 enter into agreements on behalf of the Association;

14.7.3 regulate relations between Members themselves, and between Members and the Association;

14.7.4 determine what constitutes appropriate standards for Improvements and landscaping in compliance with the Design Guidelines;
14.7.5 require any Member, who shall be obliged, to repaint or renovate the
improvements in respect of his Erf if in the reasonable opinion of the Trustees
such improvements require essential repairs or have become dilapidated;

14.7.6 delegate to one or more Trustees such of their powers and duties as they
deem fit and at any time to revoke such delegation;

14.7.7 form committees for the performance of designated tasks on behalf of the
Trustees;

14.7.8 institute, conduct, defend, compound or abandon any legal proceedings by
or against the Association or otherwise concerning the affairs of the
Association and agree to time and terms for payment or satisfaction of any
debts due or of any claims or demands made by or against the Association;

14.7.9 impose, upon Members, penalties for contraventions by Members or their
invites or Lessees or the invites of their Lessees of any provision contained in
the Constitution and to recover, by legal action or otherwise, such penalties
from its Members or former Members;

and generally to do all acts and deeds as might be required necessary, conducive,
ancillary or incidental to the attainment or furtherance of the objects and powers of
the Association.

14.8 Each Trustee shall stand in a fiduciary relationship to the Association. A Trustee shall be
disqualified from voting in respect of any contract or proposed contract or any
litigation or proposed litigation or any dispute with the Association by virtue of any
interest he may have therein.

14.9 Trustees shall be entitled to be repaid all reasonable expenses incurred by them in or
about the performance of their duties as Trustees in good faith. Unless otherwise
determined by an Ordinary Resolution, Trustees shall not be entitled to any other
remuneration, fees or salary in respect of the performance of such duties.

14.10 No agreement concluded on behalf of the Association shall be valid and binding
unless it is signed by a Trustee specifically appointed as authorised signatory in terms
of a resolution of the Trustees.

14.11 The Developer shall for the duration of the Development Period be entitled to appoint
a Managing Agent in respect of the Development. After the Development Period, the
Trustees shall, in addition to the powers contained herein, have the power from time
to time, if deemed necessary, to appoint in terms of a written contract, a Managing
Agent to control, manage and administer the Development and to exercise such
powers and duties as may be entrusted to the Managing Agent, including the power
to collect Levies due to the Association.

14.12 The Trustees shall ensure that there is included in the contract of appointment of a
Managing Agent a provision to the effect that if the Managing Agent is in breach of
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any of the provisions of his contract, or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Trustees may, without notice, cancel such contract of employment and the Managing Agent shall have no claim whatsoever against the Trustees and/or the Association as a result of such cancellation.

14.13 The Trustees must ensure compliance with the obligations of the Association from time to time under the Community Schemes Ombud Service Act and must:

14.13.1 register the Association with the Community Schemes Ombud Service and amend the details from time to time;

14.13.2 pay a levy to the Community Schemes Ombud Service in an amount determined in the manner as may be prescribed from time to time;

14.13.3 for the purpose of paying the levy to the Community Schemes Ombud Service; recover the levy from the Members of the Association, as far as possible in accordance with the apportionment as may be prescribed from time to time;

14.13.4 file with the Community Schemes Ombud Service an annual return in the prescribed format;

14.13.5 file with the Community Schemes Ombud Service a copy of its annual financial statements and any other prescribed documents or information; and

14.13.6 comply with the additional fiduciary duties as set out in the Community Schemes Ombud Service Act from time to time.

15. PROCEEDINGS OF THE TRUSTEES

15.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of the Constitution.

15.2 Meetings of the Trustees shall be held at least once every three (3) months.

15.3 The Chairperson may at any time convene a meeting of the Trustees by giving to the other Trustees not less than fourteen (14) days’ written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.

15.4 A Trustee may, provided he has the support in writing of one (1) other Trustee, at any time convene a meeting of the Trustees by giving to the other Trustees not less than fourteen (14) days’ written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.

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15.5 It is sufficient if the notice of a meeting of the Trustees is transmitted electronically directly to the Trustees in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.

15.6 The quorum necessary for the holding of any meeting of the Trustees shall be fifty percent (50%) of the Trustees, provided that for the duration of the Development Period no meeting of the Trustees shall proceed unless a Developer Trustee is present in person or by proxy.

15.7 If no quorum is present within fifteen (15) minutes after the time for commencement of the meeting of the Trustees then it shall stand adjourned for the same time and place on the following Business Day and, if at such adjourned meeting of the Trustees, a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the Trustees then present shall be a quorum, provided that for the duration of the Development Period no meeting of the Trustees shall proceed unless a Developer Trustee is present in person or by proxy.

15.8 Any resolution of the Trustees shall be carried by a simple majority of all votes cast and each Trustee shall have one (1) vote. In the case of an equality of votes for and against a resolution, the Chairperson shall have a second casting vote. For the duration of the Development Period, the Developer Trustee shall be entitled to the number of votes equal to the number of Member Trustees from time to time plus one (1) vote.

15.9 A resolution signed by all the Trustees present for the time being in the Republic of South Africa shall be valid in all respects as if it had been duly passed at a meeting of the Trustees duly convened, provided that during the Development Period, no resolution of the Trustees in writing shall be of any force or effect unless a Developer Trustee agrees thereto in writing.

15.10 The Chairperson shall preside as such at all meetings of the Trustees provided that, should at any meeting of the Trustees the Chairperson not be present within fifteen (15) minutes after the time appointed for the holding thereof, those present of the Trustees shall vote to appoint a Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting. For the duration of the Development Period the Chairperson shall be a Developer Trustee.

15.11 A Trustee may be represented at a meeting of the Trustees by a proxy. The instrument appointing a proxy shall be in writing and signed by the Trustee concerned but need not be in any particular form. The proxy shall be submitted to the Chairperson at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.

15.12 Save as otherwise provided in the Constitution, the proceedings at any meeting of the Trustees shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

15.13 The Trustees shall:

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15.13.1 ensure that minutes are taken of every meeting of the Trustees, although not necessarily word for word, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall after being approved by the Trustees be certified as correct by the Chairperson of the meeting;

15.13.2 keep the minutes of meetings of the Trustees in perpetuity; and

15.13.3 on the written application of a Member, the Trustees shall make minutes of their proceedings available for inspection by or on behalf of the applicant, during reasonable hours on Business Days and/or furnish them with the copies thereof, as may be required, against payment of the requisite charges.

15.14 All resolutions recorded in the minutes of any meeting of the Trustees shall be valid and of full force and effect as therein recorded with effect from the passing of such resolutions and until varied or rescinded, but no resolution or purported resolution of the Trustees shall be of any force or effect or shall be binding upon the Members or any of the Trustees, unless such resolution is competent within the powers of the Trustees.

16. INDEMNITY OF THE TRUSTEES

16.1 All the Trustees shall be indemnified out of the funds of the Association against any liabilities incurred by them in good faith in their capacities as such and, in the case of the Chairperson, in his capacity as Chairperson, as well as for all costs, losses and expenses (including travelling expenses) which they may incur or become liable for by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.

16.2 A Trustee shall not be liable for the acts, omissions, of the Auditors or of any of the other Trustees whether in their capacities as Trustees or as Chairperson or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which moneys of the Association are invested, or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto, unless occurring as a result of lack of good faith, breach of duty or breach of trust.

16.3 The indemnity referred to in this clause 16 shall not apply in favour of the Managing Agent.

PART 6: GENERAL MEETINGS OF THE ASSOCIATION
17. FIRST GENERAL MEETING OF THE ASSOCIATION

17.1 The Developer shall call the first general meeting of the Association within sixty (60) days of the Alienation of sixty percent (60%) of the Erf arising from the subdivision or within two years of the Alienation of the first Erf, whichever is the earlier.

17.2 The Trustees shall be elected at the first general meeting of the Association, provided that the Developer Trustees announced by the Developer and the Member Trustees elected by the Members, present in person or by proxy shall be deemed to be the duly elected Trustees.

17.3 The Developer must within sixty (60) days of the first meeting notify Stellenbosch municipality that the meeting has taken place and provide Stellenbosch municipality with a copy of the minutes of the meeting.

18. ANNUAL AND SPECIAL GENERAL MEETINGS OF THE ASSOCIATION

18.1 Annual general meetings of the Association shall be held within 4 (four) months of each financial year end of the Association. An annual general meeting shall be held on such date and at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time.

18.2 All general meetings other than annual general meetings shall be called special general meetings.

18.3 The Trustees may, whenever they deem fit, convene a special general meeting.

18.4 The Trustees shall convene a special general meeting on a request made by the Members representing not less than thirty percent (30%) of the votes. Should the Trustees fail to convene a special general meeting within thirty (30) days of such request, the Members may convene the general meeting themselves with at least fourteen (14) days' written notice to all Members in terms of clause 19 of the Constitution.

19. NOTICE OF GENERAL MEETINGS

19.1 A general meeting of the Association shall be called by not less than fourteen (14) days' written notice to all Members and Trustees. The notice shall specify the place, day, hour and business of the meeting.

19.2 A general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in the Constitution, be deemed to have been duly called if it is agreed to at the general meeting by not less than 60% (sixty percent) of the votes and subject to the approval of the Developer Trustee during the Development Period.

19.3 The accidental omission to give notice of any meeting or any resolution or to present any document required to be given or sent in terms of the Constitution, shall not invalidate the proceedings at, or any resolution passed at, any meeting, provided...
that the Developer Trustee shall have received the notice, resolution or document, as the case may be.

19.4 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings at, or any resolution passed at, any meeting, provided that the Developer Trustee shall have received the notice.

20. **PROXIES AT GENERAL MEETINGS**

20.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association.

20.2 The instrument appointing a proxy shall be in writing signed by the Member concerned or his appointed agent, duly authorised in writing, but need not be in any particular form, provided that:

20.2.1 where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member’s behalf;

20.2.2 where a Member is a company, the instrument appointing the proxy may be signed by a director of the company;

20.2.3 where a Member is a close corporation, the instrument appointing the proxy may be signed by a member of the close corporation;

20.2.4 where a Member is a Trust, the instrument appointing a proxy may be signed by a trustee of the trust; and

20.2.5 where a Member is an association of persons or a club, the instrument appointing a proxy may be signed by the secretary or committee member of the association or club.

20.3 The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.

20.4 The instrument appointing a proxy and the power of attorney, authorising resolution, or other authority under which it is signed, or copies thereof, shall be shall be deposited at the domicilium address of the Association, either by hand, post, facsimile or by electronic mail at least twenty four (24) hours before the time appointed for the commencement of the general meeting or shall be handed to the Chairperson at any time before the time appointed for the commencement of the general meeting or adjourned meeting. Notwithstanding the foregoing, the Chairperson of the meeting may agree to accept a proxy tendered at any time during the general meeting.

20.5 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been
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received by the Trustees at least one (1) hour before the time fixed for the holding of the meeting.

21. QUORUM AT GENERAL MEETINGS

21.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business and when any resolution is to be passed. The quorum necessary for the holding of any general meeting shall be the number of Members, present in person or by proxy, as the case may be, holding at least fifty percent (50%) of the total number of votes of the Members, provided that for the duration of the Development Period no general meeting of the Association shall proceed unless a Developer Trustee is present in person or by proxy.

21.2 If, within thirty (30) minutes after the time appointed for the commencement of the general meeting, a quorum is not present, the meeting, if convened on the request of the Members in terms of clause 18.4, shall be dissolved. In all other cases, the general meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the Members present in person or by proxy, as the case may be, shall constitute a quorum, provided that for the duration of the Development Period no general meeting of the Association shall proceed unless a Developer Trustee is present in person or by proxy.

22. AGENDA AT ANNUAL GENERAL MEETINGS

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

22.1 the approval of the minutes of the previous annual general meeting of the Association;

22.2 the consideration of the Chairperson's report;

22.3 the election of the Trustees (Member Trustees) representing the Members, and, for the duration of the Development Period, the announcement of the Developer Trustees as appointed from time to time by the Developer;

22.4 the consideration of the financial statements of the Association for the preceding financial year;

22.5 the consideration of the Budget, approved by the Trustees and the Annual Levies or ordinary levies payable, determined by the Trustees;

22.6 the appointment of the Auditors, after the Development Period;

22.7 the giving of directions to, or the imposing of restrictions, on the Trustees;

22.8 the consideration of any resolutions proposed for adoption by the Trustees or by a Member, and the voting upon any such resolutions, provided that prior notice shall be given of the resolutions in as far as may be possible; and
22.9 any other business pertinent to such meeting.

23. PROCEDURE AT GENERAL MEETINGS

23.1 The Chairperson shall preside as such at all general meetings provided that should he not be present within fifteen (15) minutes after the time appointed for the holding thereof, then the Members present at such general meetings shall vote to appoint a Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such general meeting, subject to the provisions of clause 13.1 for the duration of the Development Period.

23.2 The Chairperson may, with the consent of any general meeting at which a quorum is present (and if so directed by the general meeting), adjourn a general meeting from time to time and from place to place, but no business shall be transacted at any adjourned general meeting other than the business that might have been transacted at the general meeting from which the adjournment took place. No notice need to be given of the adjourned general meeting save for an announcement at the general meeting of the date, time and venue of the adjourned general meeting unless the meeting is to be adjourned for thirty (30) days or more, in which event notice is to be given in the same manner as the original general meeting.

23.3 Save as otherwise provided in the Constitution, the proceedings at any general meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

24. VOTING AT GENERAL MEETINGS

24.1 Subject to clause 24.7 and clause 24.8 below, at every general meeting:

24.1.1 every Member present in person or by proxy and entitled to vote shall on a show of hands and on a poll have one (1) vote for each Erf owned, provided that if an Erf is registered in more than one person's name, then they shall jointly have one (1) vote.

24.1.2 for the duration of the Development Period, the Developer Trustee shall on a show of hands and on a poll be entitled to the number of votes equal to the number of Erven in the Development from time to time to time plus one (1) vote.

24.2 At every general meeting an Ordinary Resolution put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll shall be demanded by any Member, or for the duration of the Development Period, by a Developer Trustee.

24.3 Notwithstanding the provisions of clause 24.2 aforesaid, voting on any question of adjournment, shall be decided on a show of hands by an Ordinary Resolution.
24.4 At every general meeting an Ordinary Resolution put to the vote at the meeting shall be decided on an ordinary majority of votes in accordance with the value of votes recorded in clause 24.1 above.

24.5 When a poll is duly demanded it shall be taken in such manner as the Chairperson directs and the result of the poll shall be deemed to be the Ordinary Resolution of the meeting at which the poll was demanded.

24.6 Unless any Member or during the Development Period, a Developer Trustee or his proxy shall, before closure of the general meeting, have objected to any declaration made by the Chairperson as to the result of any voting at the general meeting, or as to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting and the general meeting shall in all respects be deemed to have been properly and validly constituted and conducted. An entry in the minutes of the Association to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the Ordinary Resolution so recorded, if such entry conforms to the declaration made by the Chairperson as to the result of any voting at the meeting.

24.7 No vote may be exercised in respect of an Erf where the Member is in arrears with his Levies or other amounts due to the Association for more than two (2) months and the Member concerned or the duly authorised representative of the Member who is a juristic person shall not be entitled to be appointed as a Trustee.

24.8 Notwithstanding anything to the contrary contained herein, during the Development Period, no resolution passed at a general meeting shall be of any force or effect unless the Developer Trustee votes in favour thereof.

25. MINUTES OF GENERAL MEETINGS

25.1 The Trustees shall ensure that minutes are taken of every general meeting of the Association, although not necessarily word for word, which minutes shall be reduced to writing without undue delay after the general meeting has closed and shall after being approved by the Members at the following general meeting, be certified as correct by the Chairperson of the meeting. The Trustees shall keep all minutes of general meetings of the Association in perpetuity.

25.2 On the written application of a Member, the Trustees shall make the minutes of general meetings available for inspection by or on behalf of the applicant during reasonable hours on Business Days and/or furnish them with the copies as may be required against payment of the requisite charges.

25.3 All resolutions recorded in the minutes of general meetings of the Association shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions and until varied or rescinded, but no resolution or purported resolution of the Association shall be of any force or effect, or shall be binding upon the
Members or any of the Trustees, unless such resolution is competent within the powers of the Association.

PART 7: FINANCIAL FRAMEWORK

26. LEVY FUND AND BUDGET OF THE ASSOCIATION

26.1 The Trustees shall establish and maintain a levy fund for the purpose of meeting all expenses of the Association for the control, management and administration of the Common Property and the Services and amenities in respect of the Development and for the payment of all expenses necessary or reasonably incurred in connection with the management of the Association and its affairs.

26.2 The Trustees shall estimate the amount which will be required by the Association to meet its expenses during each financial year, together with such estimated deficiency, if any, as shall result from the preceding financial year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.

26.3 The Trustees shall at least one (1) month before the end of each financial year, prepare and finalise the Budget of the Association for the ensuing financial year. The budget and the levy apportionment schedule shall be tabled at the annual general meeting for the consideration of the Members.

27. DETERMINATION OF LEVIES

27.1 Before the end of each financial year, the Trustees shall determine the Annual Levies due by the Members for the ensuing financial year by apportioning the budget to Members as Annual Levies equally in respect of every Erf in the Development provided that for the purpose of apportionment the three (3) Agricultural Erv’s shall be deemed to comprise of one (1) Erf, and subject to any adjustments that may be made by the Trustees in terms of clause 28. The Trustees shall, by making a resolution to such effect, determine the Annual Levies due by the Members.

27.2 The Annual Levies so determined in terms of clause 27.1 shall become effective or due from the date of passing of the resolution by the Trustees. The Annual Levies shall be paid in equal monthly instalments over a period of twelve (12) months, monthly in advance, on or before the 1st (first) day of every succeeding month of the financial year, provided that if any Member defaults in the payment of any monthly instalment, the balance of the Annual Levy due by the Member in respect of the financial year shall become payable immediately.

27.3 The Budget and the Levies payable by the Members shall be tabled at the annual general meeting for the consideration of the Members.
27.4 The Trustees may, from time to time, make Special Levies upon Members in respect of all expenses which have not been included in the Budget. Special levies shall become due from the date of passing of the resolution by the Trustees and shall be apportioned to Members in accordance with clause 27.1 above. Special Levies shall be payable in one payment or in such instalments and at such time or times as the Trustees may think fit.

27.5 Upon taking transfer of an Erf on date of registration in the Deeds Registry, the new Member shall become liable to the Association for the payment of the Levies due in respect of the Erf. No Member shall be entitled to Alienate his Erf until the Trustees have certified that the Member has, at the date of transfer, paid all amounts owing by him to the Association, or has made provision for such payment to the satisfaction of the Trustees.

27.6 Where any Erf is owned by more than one person, all the registered owners of that Erf shall be jointly and severally liable for the due performance of any obligation to the Association.

27.7 If a Member fails to pay his Levies in full to the Association on due date, the Association may institute an action for the recovery thereof in any competent court.

27.8 Members shall be liable for payment of interest on arrear Levies and outstanding amounts at the prime rate plus 2%. Interest calculated at the determined rate shall be recoverable from the date on which the amount is due and payable to the date of payment, both days inclusive.

27.9 A Member shall be liable for and shall pay all costs, including all legal costs on the scale as between attorney and own client together with collection commission, advocates’ fees, administrative costs and all other expenses and charges, incurred by the Association in obtaining recovery of arrear Levies, penalties, damage or other amounts due to the Association, or in enforcing compliance with the provisions of the Constitution. Such costs and expenses may be added to the Member’s levy account and recovered in the same manner as applies to arrear Levies together with interest at the rate applicable to Levies.

27.10 All moneys received from a Member towards his levy account shall be apportioned firstly towards interest, then towards legal- and other administrative costs and then towards Levies or other service charges.

27.11 Where payment of any debt due by a Member is made by way of cheque or debit order, and such cheque is referred to drawer for any reason whatsoever, and/or if such debit order is unpaid for any reason whatsoever, the Trustees shall be entitled, in their sole discretion, to levy an administration charge in respect of each such occurrence in an amount to be determined by the Trustees from time to time.
28. DIFFERENTIATED AND WEIGHTED LEVIES

28.1 Notwithstanding the general principles applicable to the apportionment of the Levies as mentioned in clause 27.1, the Trustees shall be entitled to determine, in accordance with the criteria hereinafter referred to, a differentiated and/or weighted levy in respect of Erven.

28.2 Having regard to the nature, extent of occupation, the use of the Erf, the size, and/or the composition of the Erf, and further taking into account such other relevant criteria as the Trustees may in their sole discretion determine, the Trustees are entitled to differentiate with regard to the levy responsibility attaching to any Erf and/or to weight the Levies payable in respect of any Erf.

28.3 In effecting a determination, the Trustees shall take into account and apply, to the extent deemed relevant, the following principles:

28.3.1 the allocation of costs directly attributable to an Erf, to the Member, including any service charge imposed by Stellenbosch Municipality or other service provider in respect of the Erf;

28.3.2 take into account and effect a weighting and/or differentiation, as the case may be, where an Erf is improved, or not improved, occupied or not occupied;

28.3.3 take into account and effect a weighting and/or differentiation, as the case may be, where prepayments, cash payments, cheque payments, card payments, electronic payments and/or payments by debit order are made in respect of Levies;

28.3.4 take into account and effect a weighting and/or differentiation, as the case may be, where one or more Erven have been consolidated; and

28.3.5 take into account and effect a weighting and/or differentiation, as the case may be, where an Erf, has been subdivided into two or more Erven.

28.4 The Trustees shall exercise their discretions reasonably, taking into account the provisions as herein above set out, and such other relevant criteria as the Trustees consider necessary.

28.5 A Member shall be entitled to deliver an objection in writing to the Trustees within thirty (30) days after delivery of the statement of the Levies payable by such Member, in which event the following further provisions shall apply in respect thereof:

28.5.1 the Trustees shall not consider any objection which is not received within the aforementioned prescribed period;

28.5.2 the Trustees shall review the determination with respect to the affected levy and take into account the objection received;
28.5.3 the complainant Member shall be entitled to be provided with the calculation and determination as effected by the Trustees:

28.5.4 the Trustees shall, as soon as is reasonably possible, convene a meeting with the complainant Member (and should there be more than one complainant, those complainants collectively who may all attend such meeting) and the Trustees shall hear such further representations as the complainant Member(s) may wish to make;

28.5.5 the Trustees shall, in consequence of such processes, either reject the complaint (and confirm the determination of the effected Levies) or review the determination and deliver amended statements to the complainants within a reasonable period; and

28.5.6 in all instances, the determination of the Trustees (whether confirming the (original) determination or revising same), shall be final and binding upon the Association and the affected complainant Member(s).

29. CONTRIBUTION TO THE WELTEVREDEN HILLS TREASURY TRUST

29.1 At the end of each financial year, the Association shall pay an amount equal to five percent (5%) of the Annual Levies payable by the Members to the Association in respect of the financial year to the Weltevreden Hills Treasury Trust.

29.2 Except for the Developer, every Member shall upon the sale of his Erf pay an amount equal to 0.5% of the sales price of his Erf to the Weltevreden Hills Treasury Trust.

30. FINANCIAL YEAR OF THE ASSOCIATION

Unless otherwise decided at a general meeting or by the Trustees, the financial year of the Association shall run from the first day of July in each year to the last day of June of the following year.

31. BOOKS OF ACCOUNT AND FINANCIAL STATEMENTS

31.1 The Trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association including:

31.1.1 a record of the assets and liabilities of the Association;

31.1.2 a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;

31.1.3 a register of Members showing in each case their addresses;

31.1.4 individual ledger accounts in respect of each Member.
31.2 At each annual general meeting the Trustees shall lay before the Association, financial statements for the immediately preceding financial year of the Association or, in the case of the first period since the date of commencement of the Association, made up for that period. Such financial statements shall be drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees.

31.3 The Trustees shall cause all books of account and records to be retained for a period of seven (7) years after completion of the transactions, acts or operations to which they relate.

31.4 On the written application of a Member, the Trustees shall make all or any of the financial statements, books of account and records available for inspection by or on behalf of the applicant during reasonable hours on Business Days and/or furnish them with the copies thereof as may be required against payment of the requisite charges.

32. DEPOSIT AND INVESTMENT OF FUNDS

32.1 The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered South African commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.

32.2 The Trustees may authorise a Managing Agent to administer and operate the accounts referred to in clause 32.1 above, subject to such conditions and restrictions as they may impose.

32.3 Any funds not immediately required for disbursements may be invested in a savings account, money market account or similar account with any registered South African commercial bank or with a financial institution approved by the Trustees from time to time.

32.4 The Association shall use interest on moneys invested for any lawful purpose in the interest of the Association.
33. AUDIT

33.1 The Developer shall for the duration of the Development Period be entitled to appoint the Auditors. After the Development Period, the Auditors shall be appointed by an Ordinary Resolution, passed at the annual general meeting. Once at least in respect of every financial year, the accounts of the Association shall be examined and the correctness of the financial statements be ascertained by the Auditors.

33.2 The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards in terms of the Auditing Profession Act, No. 26 of 2005.

PART 8: COMMON PROPERTY AND SERVICES

34. COMMON PROPERTY

34.1 For the duration of the Development Period, the Developer may designate areas, erven, and parts of erven as Common Property of the Association. The Developer shall transfer the parts of the Common Property which are registrable to the Association.

34.2 The Trustees may, subject to the directions given or restrictions imposed by Ordinary Resolution passed at a general meeting of the Association:

34.2.1 let parts of the Common Property on terms shorter than ten [10] years;

34.2.2 construct improvements on the Common Property or remove improvements;

34.2.3 repair, maintain, upgrade and provide services in respect of the Common Property;

34.2.4 enter into agreements with service providers and/or other persons in respect of the Common Property.

34.3 Except as stipulated in clause 34.2 above, neither the whole nor any portion of the Common Property shall be sold, let on a long term lease for a period of ten [10] years or longer, alienated or otherwise disposed of, subdivided, mortgaged, or subjected to any servitudes or other rights to be registered in the Deeds Registry, save as specified in the conditions of approval, and save for such further rights as are enjoyed by the Developer in terms hereof, without the sanction of a resolution passed at a general meeting by at least eighty percent (80%) of the total number of votes.

34.4 The Trustees shall control all services, landscaping, irrigation and amenities in respect of the Common Property and shall also control access to and use of the Common Property, amenities and Services.

34.5 The Association shall repair and maintain the Common Property and Services in a state of good and serviceable repair.
34.6 Members and Lessees shall comply with the provisions of the Conduct Rules relating to the use of the Common Property and the amenities and services of the Association.

35. SERVICES AND MUNICIPAL SERVICES

35.1 Inasmuch as the provision, establishment, maintenance and repair of Services and Municipal Services may be required to take place in the Development, Members shall be obliged to accept the laying out and installation of such services across their Erens and the Common Property, in such places as the Developer may from time to time determine, provided that it shall not unreasonably detract from the development potential of the Erf concerned.

35.2 The Developer or their authorised representatives shall be entitled to enter upon an Erf and upon the Common Property for the purpose of providing, establishing, maintaining and/or repairing Services, provided that such work shall be carried out with as little inconvenience to the affected party as is reasonably possible.

35.3 The Association will be responsible for the operation and maintenance of the total street light network including all street furniture, street light control kiosk and underground streetlight cables and other Services, subject to the conditions imposed by Stellenbosch Municipality. The Association will be responsible for the maintenance of all paved road surfaces and pavements.

35.4 The Association may, from time to time, contract with suppliers of Services to provide services to the Development.

35.5 The Trustees or their authorised representatives, shall be entitled to enter upon an Erf for the purpose of providing, establishing, maintaining and/or repairing Services, provided that such work shall be carried out with as little inconvenience to the affected party as is reasonably possible.

35.6 Stellenbosch Municipality will repair and maintain Municipal Services in respect of the Development, but excluding the paved roads, and such other services.

36. INSURANCE

36.1 The Trustees shall insure the buildings, improvements, amenities and services in respect of the Common Property to the full replacement value of such items, subject to negotiation of such excess, premiums and insurance rates as in the opinion of the Trustees are most beneficial to the Members, against such risks determined by the Trustees or as may be directed by an Ordinary Resolution.

36.2 The Trustees shall procure, at the cost of the Association, general public indemnity liability insurance in respect of the Common Property and Services in such amounts and on such terms as the Trustees may from time to time determine or as may be directed by an Ordinary Resolution passed at a general meeting.
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36.3 The Trustees may procure, at the cost of the Association, and shall procure if so directed by an Ordinary Resolution, a fidelity guarantee in terms of which shall be refunded any loss of money belonging to the Association or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any insured person being any person in the employ of the Association and any person or persons acting in their capacity as Managing Agent of the Association.

The Trustees must procure at the cost of the Association such fidelity insurance as may be required from time to time in terms of the Community Schemes Ombud Service Act and as may be deemed necessary by the Trustees and/or as may be directed by the Members by Ordinary Resolution.

36.4 The Trustees may insure against the risk of the non-payment by Members of Levies due to the Association.

36.5 The Members present in person or by proxy may by an Ordinary Resolution direct the Trustees to insure against such other risks as they may determine.

PART 9: DESIGN GUIDELINES AND CODES

37. DESIGN GUIDELINES AND CODES

37.1 The Design Guidelines have initially been approved by the Stellenvista Homeowners' Association. The overarching objective and premise for the Design Guidelines and Codes of the Association is to help create an urban environment of high quality that unlocks the economic value of the Site, and which creates a cultural environment that responds to the unique characteristics of the Development Site and the broader Cape Winelands sense of place.

37.2 The Design Guidelines and Codes collectively refer and describe the desired designs and built forms applicable to Houses numbered 1 to 50. The Design Guidelines and Codes are a condition of approval that the draft house designs for the Houses numbered 1 to 50 must be adopted as the desired designs and built forms. This municipal condition of approval specifically relates to the aesthetic qualities and the form of the Houses. The Design Guidelines may be interpreted and applied innovatively by the and allows the Owner and his appointed architect on condition that they comply with and give effect to the general intent and objectives of the Development. The Building Codes are to be applied as stipulated and do not allow for discretionary applications. The freedom to undertake detail planning and design in context of the above objectives of the Design Guidelines.

37.3 The Design Guidelines and Codes may include provisions governing:

37.3.1 the architectural design and standard of Improvements, and aesthetic requirements, and the material to be used, in respect of Improvements;

37.3.2 the relationship of Improvements to adjacent Common Property and other Erven and developments;
37.3.3 the maintenance of Improvements;

37.3.4 building activities within the Development; and

37.3.5 landscaping within the Development.

37.4 The Developer shall formulate and issue Design Guidelines and Codes in respect of the Development and may for the duration of the Development Period amend the Design Guidelines from time to time in its sole discretion. After the Development Period, the Trustees may amend the Design Guidelines from time to time subject to the directions given or restrictions imposed by an Ordinary Resolution, passed at a general meeting of the Association.

37.5 Subject to the directions given or restrictions imposed by the Members at general meetings, the Design Guidelines and Codes may, subject to the conditions of clause 37.1, be added to, amended, substituted, or repealed from time to time by a resolution of the Trustees, provided that:

37.5.1 the Design Guidelines may introduce more restrictive development rules on land uses than provided in the Development Management Scheme;

37.5.2 in the event of the provisions of the Design Guidelines being amended or added to and such amendment or addition materially affects any further development of Erven, the Trustees shall by written notice inform all Members of the amendment to the Design Guidelines; and

37.5.3 the amended Design Guidelines shall be lodged with the Stellenbosch Municipality.

38. POWERS OF TRUSTEES IN RESPECT OF DESIGN GUIDELINES AND CODES

38.1 Having regard to the contents of the Design Guidelines and Codes, the Trustees shall, subject to the conditions of Clause 37.3, have the power to:

38.1.1 administer the Design Guidelines and Codes;

38.1.2 perform such acts as are necessary to accomplish the purposes expressed or implied in the Constitution, including but not limited to:

38.1.2.1 the examination and approval of building plans for the construction of Improvements; and

38.1.2.2 the evaluation of landscaping proposals;

38.1.3 appoint the Controlling Architect/s and such advisors as may be necessary with such powers and duties as may be delegated by the Trustees, provided that for the duration of the Development Period the Controlling Architect/s may be appointed by the Developer in its sole discretion;
38.1.4 impose a scrutiny fee and such other further charges as may be necessary on the Members to scrutinise the building plans and to consult with professionals;

38.1.5 require a building deposit from the Members.

PART 10: DEVELOPMENT OR ERVEN, IMPROVEMENTS AND LANDSCAPING

39. IMPROVEMENTS AND LANDSCAPING BY MEMBERS

39.1 Except in respect of the Developer’s activities in respect of the infrastructure and in respect of its Erven, no Member may commence with the construction of an Improvement on or to his Erv or of any other item included in the Design Guidelines, without the written approval of the Trustees and subject to the approval of the building plans by the Trustees and Stellenbosch Municipality.

39.2 The Trustees will only approve the building plans if the Controlling Architect is satisfied that the proposed Improvements comply with the Design Guidelines for the purpose of which the Trustees shall be the sole arbitrator and their decision shall be final and binding on the Member.

39.3 To obtain the written approval of the Trustees in terms of Clause 39.1 above a Member shall:

39.3.1 apply to the Trustees in writing;

39.3.2 where applicable, submit building plans, and such additional documents as may be required, to the Controlling Architect for examination and approval; and

39.3.3 pay the scrutiny fee and any further charges imposed by the Controlling Architect from time to time and any other costs incurred by the Controlling Architect and/or by the Trustees.

39.4 Once the Trustees have approved the building plans, the Member shall submit the building plans to Stellenbosch Municipality for approval. No Member shall submit any building plans to Stellenbosch Municipality without prior approval of the building plans by the Trustees.

39.5 Having obtained the approval of Stellenbosch Municipality, the Member shall:

39.5.1 pay the building deposit as required by the Trustees from time to time; and

39.5.2 comply with all terms, conditions and changes required by the Controlling Architect and/or the Trustees and the conditions and standards imposed by Stellenbosch Municipality insofar as these may be additional to the requirements of the Design Guidelines read with the building plans.
39.6 Except in respect of the Developer's activities and notwithstanding anything to the contrary contained herein, in the event of any Improvements being erected in contravention of the building plans or the Design Guidelines, the Trustees shall be entitled to make such amendments to such Improvements in order to procure compliance with building plans approved of by the Trustees and/or with the Design Guidelines and to recover the costs of such alterations from the Member concerned which amount shall be deemed to be part of the levy due by the Member to the Association.

39.7 Save as may otherwise be agreed by the Trustees, any landscaping to be undertaken by a Member or Lessee in respect of an Erf, shall be undertaken in accordance with a landscape plan approved by the Trustees and no Member shall commence landscaping of any Erf until such time as such landscape plan has been approved in writing.

39.8 All landscaping and improvements shall be of approved design and sound construction and shall comply with the provisions of the Design Guidelines.

39.9 No Member or Lessee shall erect any fence or wall or any other structure on an Erf or remove same without the prior written consent of the Trustees.

39.10 Notwithstanding the foregoing, the provisions of this clause 39 shall not be binding on the Developer during the Development Period.

40. BUILDING DEPOSIT FOR DAMAGE

40.1 Each Member, but excluding the Developer, shall, when applying to the Trustees for their approval in terms of clause 39.1 above, pay a building deposit to the Association, in the amount determined by the Trustees from time to time, which amount shall be retained by the Association until completion of construction to the satisfaction of the Trustees.

40.2 Upon completion of construction, the Trustees shall, if they are satisfied that no damage has been caused by the Member or his contractors to the Common Property, and that the Improvements were constructed in accordance with the approved building plans, release the building deposit to the Member, excluding any interest thereon which will accrue to the Association.

40.3 In the event of Improvements not complying with the building plans and/or damages having been caused to the Common Property, the Trustees shall by written notice inform the Member that the building deposit shall be retained until the Improvements have been rectified and/or the damages have been repaired to their satisfaction and/or that the building deposit will be utilised by the Association to repair the damages.

41. DEVELOPMENT AND ACTIVITIES ON AGRICULTURAL ERVEN
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The Agricultural Erven were a key factor in obtaining approval for the Development. They have been retained in compliance with the stipulations of Heritage Western Cape, the Department of Environmental Affairs and Development Planning, and ultimately Stellenbosch Municipality, to entrench the agrarian sense of place that currently (i.e. in January 2015) characterises the Landsite and part of its surroundings. The key function of the Agricultural Erven is to serve as an appropriately landscaped setting for the Development. In order to enhance the long-term viability of the Agricultural Erven it is imperative that their economic value be enhanced to the extent possible within the parameters of their zoning and the conditions of approval for the Development. Accordingly the following conditions apply:

41.1 The long-term use of the subject erven is to be entrenched by means of a title deed condition, which specifies that no development may take place on the subject erven other than those related to the in situ agricultural activities.

41.2 Any construction pertaining to such agricultural activities shall be confined to those required to facilitate the agricultural activity on the subject property. (Small Store, Shed). The planning and design of each building-construction will be subject to the standard approval procedures of the Association and Heritage Western Cape. No building or infrastructure may be constructed in respect of an Agricultural Erv without the approval of the Trustees, which approval shall not be unreasonably withheld.

41.3 No activities may take place in the Agricultural Erven other than those provided for in terms of their agricultural zoning and then strictly subject to the following conditions:

41.3.1 The agricultural activities in respect of the Agricultural Erven shall be limited to those that do not require the cultivation of crops under any form of cover or enclosure (for example hydroponic tunnels).

41.3.2 The crops must be cultivated and the consequent land cover must retain the historic cultural landscape and sense of place as in January 2015.

41.3.3 The Owners must manage their Agricultural Erven in accordance with dedicated Agricultural Management Procedures appended to the Environmental Management Plan.

41.4 The services in respect of the Agricultural Erven, excluding refuse removal, shall be provided separately from the services provided to the Residential Erven in the Development.

41.5 Members and Lessees in the Development may periodically be exposed to the effects of standard agricultural activities on the Agricultural Erven and the neighbouring farm, which may result in a temporary inconvenience. The mitigation of such effects is addressed in the Agricultural Management Procedures appended to the Environmental Management Plan.

41.6 The Agricultural Erven are the private property of the Owners thereof and other Members and Lessees and their Invitees shall not access such Erven, except upon
invitation of the Owners or Lessees of the Agricultural Erven or as may be allowed in terms of a registered servitude. The Trustees and employees and/or contractors appointed by the Association and/or the security personnel of the security company contracted from time to time by the Association, shall have access to the Agricultural Erven for any purpose reasonably required in terms of the Constitution, including for the purpose of patrolling the security perimeter and repairing and maintaining the security perimeter from time to time.

41.78 The Association, its Members and the Owners of the Agricultural Erven shall comply with the terms of any registered servitudes, including specifically regard to the usage of water via water pipelines to and from the water tanks.

41.8 The Owners of the Agricultural Erven shall annually in January present to the Association an Annual Plan of Operations complete with a Method Statement of all activities that may affect the aesthetic quality of the site and the general well-being of the Residents. In addition, the Owners of the Agricultural Erven shall on an ad hoc basis notify, by means of the electronic media, the residents of potentially-detrimental activities such as chemical spraying, or activities that may create excessive dust or noise.

PART 11: ENVIRONMENTAL MANAGEMENT PLAN, CONDUCT RULES AND REGULATIONS

42. ENVIRONMENTAL MANAGEMENT PLAN

The Association and the Members shall comply with the Environmental Management Plan relating to all construction, landscaping and operational activities and landscaping in respect of the Erven and Common Property and in regard to any maintenance undertaken in respect of Erven and the Common Property.

43. CONDUCT RULES

43.1 The Conduct Rules have initially been approved by the Stellenwijk Homeowners' Association. The Developer may formulate and issue Conduct Rules for the Association and may for the duration of the Development Period in its sole discretion amend the Conduct Rules from time to time. After the Development Period, the Trustees may formulate and issue and amend the Conduct Rules from time to time, subject to the directions given or restrictions imposed by the Members at general meetings of the Association.

43.2 The Conduct Rules may include provisions governing the:

43.2.1 use and enjoyment of Erven, and restrictions on the use and enjoyment thereof;

43.2.2 use and enjoyment of the Common Property and facilities of the Development, and restrictions on the use and enjoyment thereof;
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43.2.3 conduct of any person and the prevention of nuisance of any nature to other Members or Lessees;

43.2.4 appearance of improvements and landscaping;

43.2.5 conservation of the natural environment including vegetation and flora and fauna on the Land;

43.2.6 maintenance and upkeep of the Agricultural Erven;

43.2.7 compliance with the Design Guidelines and Environmental Management Plan;

43.2.8 Alienation-alienation of Erven and letting of Houses;

43.2.9 security measures applicable to the Development;

43.2.10 introduction of traffic calming measures;

43.2.11 use and allocation of private parking areas on the private open spaces by Members, Lessees and their Invitees;

43.2.12 storage of flammable and other harmful substances;

43.2.13 refuse disposal and prohibition of littering;

43.2.14 the imposing of fines and other penalties that may be payable by and enforced against Members;

and generally any other provisions in furtherance and promotion of the objects of the Association or which would be to the benefit of the Association and the Members.

44. REGULATIONS

44.1 The Developer may formulate and issue Regulations and may for the duration of the Development Period in its sole discretion amend Regulations from time to time for the purposes specified in clause 44.2 below. After the Development Period, the Trustees may formulate and issue and amend the Regulations from time to time, subject to the directions given or restrictions imposed by the Members at general meetings of the Association.

44.2 Regulations may be formulated, issued and amended from time to time for the following purposes:

44.2.1 as to the resolution of disputes generally;

44.2.2 for the furtherance and promotion of the objects of the Association;

44.2.3 for the better management of the affairs of the Association;
44.2.4 for the advancement of the interests of Members; and

44.2.5 for the conduct of Trustees at meetings of the Trustees and general meetings of the Association; and

44.2.6 for the management of the—development—construction activities in the Development.

44.3 The Members shall be bound by the Regulations.
PART 12: DOMICILUM AND NOTICES

45. DOMICILUM OF THE MEMBERS

45.1 The domicilium citandi et executandi of the Developer shall for the duration of the Development Period be the following address: c/o Exceed [Reference: Dirk Koegelenberg] Parc du Links Building, 7 Niblick Way, Somerset West, 7130.

45.2 The Developer may by written notice to the Association alter its domicilium, provided that such new address may not be a post office box or post restante and provided that such address shall be situated within the Republic of South Africa and shall not be effective until fourteen (14) days after receipt of such notice by the Association.

45.3 The domicilium citandi et executandi of a Member shall be the street address of the Member's Erf.

45.4 A Member may by written notice to the Association alter his domicilium, provided that such new address may not be a post office box or post restante and provided that such address shall be situated within the Republic of South Africa and shall not be effective until fourteen (14) days after receipt of such notice by the Association.

46. DELIVERY AND ELECTRONIC TRANSMISSION OF NOTICES

46.1 A notice by the Association to any Member in terms of the Constitution shall be in writing and shall be delivered to the Member, either by hand or by prepaid post properly addressed to the Member at his domicilium citandi et executandi. It shall be competent to transmit the notice to a Member by telefax or electronic communication (e-mail) where the telefax number or e-mail address of the Member is recorded with the Association.

46.2 Any notice to a Member:

46.2.1 if delivered by prepaid post in a correctly addressed envelope to his domicilium citandi et executandi, shall be deemed to have been received on the 5th day after the date when the notice was posted; or

46.2.2 if delivered by hand to the Member, or to a responsible person at the domicilium citandi et executandi of the Member, shall be deemed to have been received on the day of delivery; or

46.2.3 if successfully transmitted by telefax to the recorded telefax number of the Member, shall be deemed to have been received on the 1st day after the date of transmission; or

46.2.4 sent by e-mail to the recorded e-mail address of the Member, shall be deemed to have been received on the 1st day after the date of transmission.
46.3 Notwithstanding anything to the contrary herein contained, a written notice actually received by a Member shall be adequate written notice to such Member notwithstanding that it was not delivered in accordance with clause 46.1 above.

PART 13: ENFORCEMENT OF THE CONSTITUTION AND ANNEXURES

47. BREACH OF THE CONSTITUTION

47.1 The Trustees may on behalf of and in the name of the Association institute legal proceedings against Members who are in breach of any of the provisions of the Constitution in accordance with the provisions of this clause.

47.2 If a Member commits a breach of any provision of the Constitution by failing to pay on due date any Levies, penalties or any other amounts payable by him to the Association in terms of the Constitution and a Member remains in default for more than thirty (30) days, the Trustees may, on behalf of the Association, institute legal proceedings against such Member in any court of competent jurisdiction for payment of such overdue Levies, penalties and/or other amounts.

47.3 Save for clause 47.2 above, if a Member commits any other breach of any provision of the Constitution and fails to commence to remedy that breach within a period of seven (7) days after the receipt of written notice to that effect by the Trustees, and to complete the remeading of such breach within a reasonable time or as may be specified in the notice, then the Trustees shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Trustees, or the Association, or any other Member, may have in terms of the Constitution, or in law, including the right to claim damages, to:

47.3.1 enter upon the Erf to take such action as may be reasonably required to remedy the breach and the Member concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand, and/or

47.3.2 institute legal proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary, and/or

47.3.3 in the event of a dispute, to refer the dispute for dispute resolution in terms of clause 48 of the Constitution and/or,

47.3.4 apply to the Community Schemes Ombud Service for an appropriate order in terms of the Community Schemes Ombud Service Act.

47.4 In the event that the Trustees institute proceedings against a Member in terms of the foregoing provisions, the Trustees shall be entitled to recover from such Member all legal costs incurred by the them, including attorney and own client charges, advocate's fees, tracing fees and collection commission and all other expenses and charges incurred by the Association in obtaining recovery of the arrear amounts due to the Association or in enforcing compliance with the provisions of the Constitution.
47.5 Aforesaid provisions may, where applicable, also be applied mutatis mutandis (with the necessary changes having been made) to Lessees and Invitees.

47.6 Nothing in this clause shall be construed as prohibiting or preventing the Trustees, if considered necessary by them, from applying to court for an interdict or other urgent relief against any Member in breach of the Constitution, or in the event of a threatened or impending or ongoing breach by such Member of the Constitution.

48. DISPUTE RESOLUTION

48.1 Should any deadlock or dispute (other than a dispute in respect of which urgent relief may be obtained from a court of competent jurisdiction) arise or a deadlock exist in relation to any matter which requires consensus between a Member and/or between a Member and a Lessee and/or between a Member and/or Lessee and/or a Member and/or Members and/or the Trustees and/or the Association (the parties) in the widest sense (hereinafter collectively referred to as a “dispute”) in connection with—

48.1.1 the interpretation of;

48.1.2 the effect of;

48.1.3 their respective rights or obligations under;

48.1.4 a breach of (save for non-payment of Levies or any other amount due by a Member in terms of the Constitution),

the Constitution, such dispute may be referred to and be resolved by application to the Community Schemes Ombud Service in terms of the Community Schemes Ombud Service Act or may be referred for mediation and/or arbitration in terms of the further provisions of this clause 48 or, unless resolved amongst the parties to the dispute, or by an internal dispute resolution mechanism, be referred to and be determined by mediation or arbitration in terms of this clause 48 or by application to the competent Ombud in terms of the Community Schemes Ombud Service Act, 2011 when it becomes operative provided that a person to the dispute has demanded the dispute resolution by written notice to the other persons (to the dispute) and provided further that the person desiring such dispute resolution has first resorted to the internal dispute resolution mechanism in terms of clause 48.2, before either proceeding with mediation or arbitration procedures in terms of the ensuing provisions of clause 48 or applying to the competent Ombud for relief.

48.2 In the event of any dispute arising, the parties to the dispute must in the first instance engage each other in good faith with a view to resolving the dispute within a period seven (7) Business Days. For the purpose of engaging and/or an internal dispute resolution mechanism the parties to the dispute may engage telephonically, and/or in writing and/or schedule a joint meeting and/or refer the dispute to the Trustees for consideration of internal dispute resolution meeting to be held with the Trustees, which meeting is must be recorded in writing.
In the event of any dispute arising, a party to the dispute must notify the other parties (to the dispute) by written notice of the dispute and the parties must attempt to resolve the dispute. The parties to the dispute must first engage each other, and where applicable, the Trustees, in good faith with a view to resolving the dispute within a period of seven (7) Business Days after the date on which a party has first notified the other parties of the dispute. The parties may, as an internal dispute resolution mechanism, engage with each other telephonically and/or in writing and/or convene a joint meeting, which meeting must be recorded in writing. A dispute may also be referred to the Trustees for consideration at a Trustees' meeting, which meeting must be recorded in writing.

48.3 Only in the event of the dispute not being resolved by the internal dispute resolution mechanism as contemplated in clause 48.2 will the dispute be referred to a mediator and/or arbitrator as contemplated in the ensuing provisions of clause 48 and/or may a party to the dispute apply to the competent Ombud in terms of the Community Schemes Ombud Service Act, 2011, for relief.

48.3.1 if the dispute is not resolved as provided for in clause 48.2 above, a party to the dispute may, without prejudice of any other rights or remedies:

48.3.1.1 apply to the Community Schemes Ombud Service in terms of the Community Schemes Ombud Service Act for an appropriate order; or

48.3.2 refer the dispute to a mediator and/or arbitrator as contemplated in the further provisions of clause 48.

48.4 Prior to any dispute as aforesaid being determined by arbitration, immediately upon any person (to the dispute) requesting such arbitration, the dispute will be referred forthwith to a mediator for attempted resolution by such mediator, on the following basis:

48.4.1 the mediation will be conducted by a mediator selected by agreement between the persons (to the dispute) and failing such agreement within seven (7) Business Days after a written request by the aggrieved person (to the dispute) to the others for such mediation, nominated on the application of either person by the chairperson for the time being of the Western Cape Provincial Council, Local Practice Council, Cape Law Society, or its lawful successor;

48.4.2 the persons (to the dispute) will not be entitled to be represented at any hearing before or at any meeting or in any discussion with the mediator except personally by an individual Member or by an authorised representative of a Member, in the instance where a Member is a juristic person or by a Trustee in the instance of the Association;

48.4.3 the mediator will, as he deems fit, follow formal and/or informal proceedings and receive evidence on submission, orally or in writing, sworn or unsworn, at joint meetings, with the persons (to the dispute) or separately as from any...
person whom he considers can assist in the formulation of his opinion, provided that:

48.4.3.1 each person (to the dispute) will be given reasonable opportunity of presenting evidence and submissions and of responding to evidence and submissions of any other person (to the dispute); and

48.4.3.2 each person (to the dispute) will be given full details of any evidence on submission received by the mediator from any other person (to the dispute) or any other person otherwise than at a meeting where all the persons (to the dispute) are present;

48.4.4 the mediator will have the power to propose to the persons (to the dispute) compromise settlements or agreements for the whole or portion of the dispute;

48.4.5 the mediator will as soon as is reasonably practicable give to each of the persons (to the dispute) his written opinion on the dispute, recording the details of any agreement reached between the persons (to the dispute) during the mediation;

48.4.6 the mediator’s opinion will become binding on the persons (to the dispute) only to the extent correctly recorded as being agreed by the persons in the mediator’s written opinion or otherwise as recorded in writing to the persons (to the dispute) subsequent to the receipt of the mediator’s opinion;

48.5 The dispute/s on any matter still unresolved after the application of the foregoing provisions will be resolved by arbitration as set out below:

48.5.1 save for reference to any portion of the mediator’s opinion which has become binding in terms of clause 48.4.6 no reference will be made by or on behalf of any person (to the dispute) in any proceedings subsequent to mediation, to the mediator’s opinion, or to the fact that any particular evidence was given, and to any submission statement or admission made in the course of the mediation; and/or

48.5.2 in respect of the nature of the mediator’s opinion, each of the persons will pay his own costs arising from this mediation and the persons (to the dispute) will pay in equal shares the fees and disbursements of the mediation based upon a scale of fees as agreed between the mediator and the persons (to the dispute) before the commencement of the mediation, and failing which agreement as determined by a nominee of the chairperson for the time being of the Western Cape Provincial Council (Legal Practice Council), Cape Law Society, or its lawful successor, as being fair and reasonable regard being had to the work done by the mediator.

48.6 Any person subject to the provisions of this Constitution may demand that a dispute be determined by arbitration by written notice given to any other person subject to this Constitution.
48.7 This clause 48 will not preclude any party (subject to the provisions of this Constitution) from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

48.8 The arbitration will be held—

48.8.1 at a mutually acceptable place or venue in Stellenbosch or Cape Town Pretoria;

48.8.2 with only the parties to the dispute and their authorised representatives and legal representatives and other representatives of the persons to the dispute present thereat;

48.8.3 mutatis mutandis in accordance with the provisions of the High Court Act, as amended, the rules promulgated in terms of that Act and the practice of the Western High Court otherwise in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), as amended;

it being the intention that the arbitration will be held and completed within twenty-one (21) Business Days after it was demanded.

48.9 The arbitrator, who will be a single arbitrator, will be, if the matter in dispute is principally—

48.9.1 a legal matter, a practising advocate or attorney of at least ten (10) years’ standing;

48.9.2 an accounting matter, a practising chartered accountant and registered auditor of at least ten (10) years’ standing;

48.9.3 any other matter, any independent person;

agreed upon between the persons to the dispute.

48.10 Should the persons to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within seven (7) Business Days after the arbitration was demanded, the matter will be deemed to be a legal matter.

48.11 Should the persons to the dispute fail to agree on an arbitrator within seven (7) Business Days after the expiry of the period referred to in clause 48.10, the arbitrator will be appointed at the request of any person to the dispute by a director of the Western Cape Provincial Council (Legal Practice Council) by the chairperson for the time being of the Cape Law Society or its lawful successor.

48.12 The decision of the arbitrator will be final and binding on the persons to the dispute and may be made an order of the Western Cape Division of the High Court of South Africa at the instance of any of the persons to the dispute.
48.13 The persons to the dispute are deemed to have consented to the jurisdiction of the Western Cape Division of the High Court of South Africa in respect of any proceedings referred to in clause 48.11.2 of the Constitution.

48.14 The persons to the dispute must and will keep the arbitration, including the subject matter of the arbitration and the evidence heard during the arbitration, confidential and not disclose it to anyone except for purposes of an order to be made in terms of clause 48.11.2.

48.15 The provisions of this clause 48 -

48.15.1 constitute an irrevocable consent by the persons to any proceedings in terms of this Constitution and no person [subject to this Constitution] will be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and

48.15.2 are severable from the rest of this Constitution and will remain in effect despite the termination of or invalidity for any reason of this Constitution.

48.16 The above remedies subsist without prejudice to the right of any party to institute an action or launch an application in a court of competent jurisdiction or to apply to the Community Schemes Ombud Service in terms of the Community Schemes Ombud Service Act for appropriate relief, upon the failure of the internal dispute resolution mechanism referred to in clause 48.2, institute proceedings in terms of the Community Schemes Ombud Service Act, No. 12 of 2011, when such service becomes operative.

48.17 In respect of any claim arising from the non-payment of Levies or other amounts due by a Member to the Association under the Constitution, the Association and the Trustees will retain the common law remedies and the Association shall not be obliged to proceed with dispute resolution proceedings and the Association shall not be precluded from instituting proceedings in a competent court with jurisdiction.

49. IMPOSITION OF PENALTIES

49.1 If the conduct of a Member or Lessee or the Invitees of a Member or of a Lessee constitute/s a nuisance in the opinion of the Trustees or a contravention of a provision of the Constitution, the Trustees shall by written notice inform the Member of the nuisance or contravention and warn the Member that if he, or the Lessee of his Erf or the Invitees of the Member or Lessee fails to remedy the contravention, or persist in, or repeats such conduct or contravention, a penalty will be imposed on the Member concerned.

49.2 If, notwithstanding the written notice in terms of clause 49.1 above, the Member or Lessee or offender fails to remedy the contravention or persist in or repeats such conduct or contravention, the Trustees or their nominee may, by written notice impose a penalty on the Member. A written notice must be addressed to the
Constitution, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee, whether such statement be true or false, unless made in bad faith or in gross negligence.

51. EXCLUSION OF LIABILITY

51.1 Any Member or other person present in the Development or on the Common Property or using any of the amenities or services of the Association does so entirely at their own risk. No Member or other person shall have any claim against the Association, the Trustees, the Managing Agent or any agents, employees or contractors of the Association, of whatsoever nature arising from such use. Any claim of a Member or any other person shall be limited to the amount actually recovered by the Association from the receipt of proceeds of any general public indemnity liability insurance, if any. If, and to the extent that the Association does not have any such public indemnity liability insurance, no such person shall have any claim against the Association.

51.2 The Association, the Trustees, the Managing Agent or any of the agents, employees or contractors of the Association shall not be liable for any loss (including consequential loss), injury, loss of life or damage to person or property of any nature whatsoever which any Member or other person however may sustain:

51.2.1 by reason of any defect in or state of disrepair of the Common Property or any amenities, facilities, services or property of the Association or any part thereof, or any fittings, fixtures, equipment or appurtenances of whatsoever nature therein, notwithstanding that such defect or state of disrepair may be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Trustees, the Managing Agent, or any of the agents, employees or contractors of the Association or

51.2.2 directly or indirectly, in or about the Development (including without limiting the generality of the foregoing) the Common Property and any property of the Association, whether such injury, loss or damage be due to theft, the action of rain, wind, hail, lightning, explosion, spontaneous combustion, gas, fire, water, leakage, seepage, cessation or interruption of or defect in any electric, gas, fuel, water, sanitary, telephone, air conditioning or other services to the Development, irrespective of the cause thereof, or be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Trustees, the Managing Agent, or any of the Association's agents, employees or contractors, or be due to riots, strikes, civil commotion or any other cause whatsoever.

51.3 The Members undertake in favour of the Association, as soon as practical, to notify their lessees and the invitees, of the provisions of this clause 51, and to take all such steps required and/or necessary to ensure that such persons agree hereto in writing in such form as the Trustees may from time to time determine so as to enable the Association to accept the benefits hereof at any time without notice to such person.
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51.4 Every Member individually hereby fully and completely indemnifies and holds harmless the Association against all claims of whatsoever nature and however arising which may be brought against the Association by the Member, the Lessee of his property or any invitee of the Member or Lessee, or any other person present within the Development, at the invitation of or under the control of the Member concerned, notwithstanding the nature of such claim.

51.5 The Association shall not be liable for any costs of suit in any legal proceedings instituted against it in any court or arbitration forum or other tribunal by any Member. The exclusion herein contained will not apply if the proceedings in question are founded on any conduct of the Association or its representatives or employees which is alleged by the claimant, and found by the court, arbitrator or tribunal, to be malafide or wilfully wrongful.

51.1 A Member or Lessee or Invitee or any other person present on the Common Property or using the facilities or services of the Association does so entirely at their own risk and none of them shall have any claim against the Association or the Trustees of whatsoever nature arising from such use.

51.2 No Member, Lessee or Invitee or other person shall have a claim against the Association, the Trustees, the managing agent or any of the agents, employees or contractors of the Association of whatsoever nature arising from the use of the common property or the facilities or services of the Association nor for anything which may befall any person during the course of such use, whether caused by human or animal agency, natural phenomena or otherwise. No Member, Lessee or invitee or other person shall have any claim against the Association as a result of fire or any substance, liquid or gas escaping from the Common Property or from an ER and causing damage to any person or property of any person.

51.3 The Association, the Trustees, the managing agent and the agents, employees or contractors of the Association shall not be liable for any injury to any person (including a loss of life) or loss or damage of any property, which a person may suffer or sustain whether directly or indirectly in or about the Common Property, regardless of the cause thereof. The Association shall not be responsible for any theft of property occurring within the scheme.

51.4 Any claims shall be limited to the amount actually recovered by the Association from the receipt of proceeds of the public liability insurance of the Association, if any, to the extent that the Association does not have any such public indemnity liability insurance, no such person shall have any claim against the Association.

51.5 The Association shall not be liable for any damage suffered by a Member or Lessee or any other person present in the Development by reason of power surges.

52. FAILURE OF ASSOCIATION TO MEET ITS OBLIGATIONS OR WINDING UP OF THE ASSOCIATION
Constitution of Weltevreden Hills Home Owners' Association

52.1 If the Association ceases to function or carry out its obligations, Stellenbosch Municipality or any affected person, including a Member, may apply:

52.1.1 in terms of section 15(2)(a) of the Stellenbosch Planning By-law to disestablish the Association subject to:

52.1.1.1 the amendment of the conditions of approval to remove the obligation to establish an owners' association; and

52.1.1.2 the amendment of title conditions pertaining to the Association, to remove any obligation in respect of an owners' association; or

52.1.2 in terms of section 15(2)(f) of Stellenbosch Planning By-law for appropriate action by Stellenbosch Municipality to rectify a failure of the Association to meet any of its obligations in respect of the control over or maintenance of services contemplated in subsection 29(3)(b) of the By-law; or

52.1.3 to the High Court to appoint an administrator who must exercise the powers of the Association to the exclusion of the Association.

52.2 In considering an application contemplated in clause 52.1.1.1 or subsection 29(2)(a)(i) of the Stellenbosch Planning By-law, Stellenbosch Municipality must have regard to:

52.2.1 the purpose of the Association;

52.2.2 who will take over the control over and maintenance of services for which the Association is responsible; and

52.2.3 the impact of the disestablishment of the Association on the Members of the Association and the community concerned.

52.3 Stellenbosch Municipality or the affected person may recover from the Members of the Association the amount of any expenditure incurred by Stellenbosch Municipality or that affected person, as the case may be, in respect of any action taken in terms of subsection 30(1) of the Stellenbosch Planning By-law and clause 52.1 above.

52.4 The amount of any expenditure so recovered is, for the purposes of section 29(7)(a) of the Stellenbosch Planning By-law, considered to be expenditure incurred in connection with the Association.

52.5 The Association may be wound up by an order of the Western Cape High Court or by a resolution passed at a general meeting by the Members together holding not less than ninety five percent (95%) of the total votes of all the Members and provided that:

52.5.1 the aforesaid resolution shall include arrangements for the transfer of Erven and Common Property, in the event that the Association ceases to function; and
52.5.2 the Stellenbosch Municipality consents thereto in writing.

52.7 In the event of such winding up, it shall be the duty of the Trustees to comply with the conditions imposed in terms of the resolution, and/or by the Stellenbosch Municipality and/or the Western Cape High Court, as the case may be.

52.8 If the Association is dissolved, the Members must jointly pay the costs of:

52.8.1 the transfer to the Stellenbosch Municipality of the Association's property, including the Common Property and Municipal Services;

52.8.2 the upgrading of the Municipal Services to the standards of the Stellenbosch Municipality.

PART 15: AMENDMENT OF THE CONSTITUTION AND ANNEXURES

53. AMENDMENT OF THE CONSTITUTION

53.1 The provisions of the Constitution may be added to, amended, substituted, or repealed from time to time by an Ordinary Resolution passed at a general meeting of the Association, provided that an amendment affects Stellenbosch Municipality or a provision referred to in subsection 29(3) of the Stellenbosch Planning By-law, the amendment must also be approved by Stellenbosch Municipality. The notice of the meeting shall specify the proposed addition, amendment, or substitution or the provision to be repealed.

53.2 Any amendments to the Constitution shall be submitted to and any amendment thereof must be lodged with Stellenbosch Municipality, if and the latest copy duly lodged with Stellenbosch Municipality shall be presumed to contain the operative provisions of the Constitution. An amendment to the Constitution affects Stellenbosch Municipality or a provision referred to in section 29(3) of the Stellenbosch Planning By-law, the amendment must also be approved by Stellenbosch Municipality.

53.3 The Developer may, for the duration of the Development Period in its sole discretion from time to time add to, amend, substitute or repeal any provisions of the Constitution, provided that the Developer shall notify the Members in writing of the proposed addition, amendment, or substitution or provision to be repealed. The Members shall be granted a period of thirty (30) days from the date of the written notice to provide their comments to the Developer. After the said thirty (30) day-period has expired, the Developer shall be entitled to proceed with the proposed addition, amendment, substitution or repeal of a provision of the Constitution in its original form or in an amended form, provided that the Developer shall notify the Members of its decision.

54. AMENDMENT OF ANNEXURES TO CONSTITUTION
54.1 The Conduct Rules may be compiled, added to, amended, substituted or repealed from time to time by the Developer in its sole discretion for the duration of the Development Period and thereafter by a resolution of the Trustees.

54.2 The Design Guidelines may be compiled, added to, amended, substituted or repealed from time to time by the Developer in its sole discretion for the duration of the Development Period and thereafter by a resolution of the Trustees, subject to the provisions of clause 37 hereof. Any amendments to the Design Guidelines shall be lodged with Stellenbosch Municipality.

54.3 The Environmental Management Plan may be compiled and amended from time to time by Developer for the duration of the Development Period in its sole discretion and thereafter by a resolution of the Trustees, subject to the approval of the Stellenbosch Municipality.

54.4 The Regulations may be compiled, added to, amended, substituted or repealed from time to time by the Developer in its sole discretion for the duration of the Development Period and thereafter by a resolution of the Trustees.

54.5 The Site Development Plan may be compiled and amended from time to time by the Developer in its sole discretion for the duration of the Development Period.

54.6 Rezoning and subdivision plan may be compiled and amended from time to time by the Developer in its sole discretion for the duration of the Development Period.

54.7 General Plan of subdivision may be compiled and amended from time to time by the Developer in its sole discretion for the duration of the Development Period.

54.8 Agricultural House Plan may be compiled and amended from time to time by the Developer in its sole discretion for the duration of the Development Period.

PART 16: RIGHTS AND POWERS OF THE DEVELOPER

55. RIGHTS OF THE DEVELOPER IN RESPECT OF THE DEVELOPMENT

55.1 The Developer has a continuing and permanent interest in ensuring that certain provisions are entrenched for purpose of ensuring the success of the Development of the Land. Accordingly, notwithstanding anything to the contrary herein contained, no provision of the Constitution may be deleted, amended or varied in any way during the Development Period without the prior written consent of the Developer.

55.2 The Developer shall develop and market the Development in phases (as the Developer deems fit). Members and Lessees may accordingly be exposed to such associated activities which may result in an amount of inconvenience and Members shall not interfere with or obstruct the Developer from proceeding with the Development in phases or to lodge an objection with any competent authority in respect of any such phased development;
55.3 The Developer shall be entitled to apply for, and subject to the necessary approval being granted by the Stellenbosch Municipality, vary the layout and/or zoning and/or size and/or boundaries of the Enven and/or the extent and position of streets comprising the Development, provided that the Developer shall do so in consultation with the Member if any such variation shall materially adversely affect the rights of the Member and shall be bound thereby and shall have no claim of whatsoever nature against the Developer arising therefrom.

55.4 The Developer shall be entitled to register servitudes across the Enven, the Common Property and the Development as indicated on the draft General Plan and such servitudes as further may be necessary for the purposes of the installation and maintenance of all engineering services, including, inter alia, roads, gas, electricity, telephone, television, sewerage, storm water drainage, solid waste removal and water supply and for the purpose of joint shared access with the adjacent Weltevreden Estate.

55.5 The Developer shall for the duration of the Development Period enjoy unrestricted rights to gain access and egress from the Land and to continue with building operations.

55.6 The Developer shall for the duration of the Development Period enjoy unrestricted rights with regard to the marketing of the Development and, in particular, the right to erect signage within the Land and to perform all activities normally associated with development and building operations in a reasonable manner.

55.7 The Developer shall be entitled to utilise any one or more of its unsold buildings on the Development until all the Enven in the Development have been sold as a sales office and/or show house and/or temporary functional clubhouse.

55.8 The Developer shall be entitled at any time to erect such signage, flagpoles, messages or any other form of notices or advertising on the Development for the purposes of selling and/or letting of properties in the Development. A Member shall not be entitled to display any "For Sale" and/or "To Let" signs on his Enven or in the Development. CLC Development (Pty) Ltd, the purchaser of Enven 16540, 16541, 16542, 16543, 16544, 16545, 16550, 16551, 16552, 16553, 16589, 16588, 16587, 16586, 16585, 16584, 16568, 16569, 16570, 16572, 16573, 16574 and 16575 Stellenbosch from the Developer shall be entitled for a period of two years from the date of registration of transfer of ownership of the aforesaid Enven to it, also be entitled to erect advertising on the Development for the purpose of selling and letting its aforesaid properties, subject to the reasonable conditions imposed from time to time by the trustees.

55.9 In the event of a conflict between the provisions contained in clauses 55, 56 or 57 of the Constitution and any other provisions of the Constitution, the provisions of clause 55, 56 and 57, as the case may be, shall prevail.

55.10 Upon the expiry of the Development Period, the rights of the Developer in terms of this clause 55 shall immediately automatically and no longer be of any force and effect.
56. RIGHTS IN RESPECT OF THE ASSOCIATION

56.1 The Developer shall, as from date the date that the Constitution comes into force until
the first annual general meeting of the Association, be empowered to perform and
have all the powers, functions and duties of the Association and the Trustees in terms
of the Constitution.

56.2 The Developer is hereby authorised to open a banking account with a registered
financial institution of the Developer’s choice in the name of the Association.

56.3 The Developer is empowered to amend the Constitution from time to time and to
formulate and amend the Annexures to the Constitution from time to time.

56.4 The Developer shall, where applicable and free of consideration cause ownership
of the Common Property to be transferred to the Association. Upon registration of such
transfer the risk in and of the Common Property shall pass to the Association and the
Association shall become responsible for the maintenance and upkeep thereof as
well as for the rates and taxes and all charges attaching thereto.

56.5 The Developer shall appoint the Developer Trustees without delay.

56.6 The Developer Trustee shall preside at the first annual general meeting of the
Association until such time as a chairperson has been elected to perform said
function. The Developer Trustees shall represent the Developer’s interests during the
Development Period on the Trustees and at general meetings of the Association. No
decision of the Trustees or resolution of the Members shall be of any force or effect
unless the Developer Trustees vote in favour thereof.

56.7 For the duration of the Development Period no meeting of the Trustees and/or no
general meeting of the Association shall proceed unless a Developer Trustee is present
in person or by proxy.

56.8 For the duration of the Development Period, the Developer Trustee shall be entitled to
the number of votes equal to the number of Member Trustees from time to time plus
one (1) vote.

56.9 During the Development Period, no Ordinary Resolution at a general meeting shall be
of any force or effect unless the Developer Trustee votes in favour thereof and for this
purpose the Developer Trustee shall be entitled to the number of votes equal to the
number of Erven in the Development from time to time plus one (1) vote.

56.10 For the duration of the Development Period, the Developer shall not be obliged to pay
Levies to the Association in respect of unimproved and/or unoccupied Erven owned
by it until occupation certificates have been issued by the Stellenbosch Municipality.
56.11 In the event of a conflict between the provisions contained in clauses 55, 56 or 57 of the Constitution and any other provisions of the Constitution, the provisions of clause 55, 56 and 57, as the case may be, shall prevail.

56.12 Upon expiry of the Development Period, the rights of the Developer in terms of this clause 56 shall immediately and automatically lapse and no longer be of any force and effect.

57. RIGHTS OF THE DEVELOPER IN RESPECT OF MEMBERS

57.1 For the duration of the Development Period, a Member or shall obtain the prior written consent of the Developer to:

57.1.1 construct an improvement in respect of his Erf;

57.1.2 submit an application for any rezoning, subdivision, departure, consent use, or amendment of any other condition of approval relating to any Erf in terms of any law governing development rights to the relevant competent authority;

57.1.3 consolidate two or more erven into one Erf or to subdivide an Erf into two or more erven.

57.2 In the event of a conflict between the provisions contained in clauses 55, 56 or 57 of the Constitution and any other provisions of the Constitution, the provisions of clause 55, 56 and 57, as the case may be, shall prevail.

57.3 Until a Member has complied with all of its obligations in terms of his sale agreement with the Developer and building agreement, the Member shall not be entitled to sell the Erf to any third party, without the prior written consent of the Developer.

57.4 Upon the expiry of the Development Period, the rights of the Developer in terms of this clause 57 shall immediately automatically and no longer be of any force and effect.

58. RELATIONSHIP WITH WELTEVREDEN ESTATE

58.1 A servitude right of way and access over Erf 16597 Stellenbosch (comprising Weltevreden road) is to be registered in favour of the adjacent Weltevreden Estate to make provision for a joint security access facility to be shared by the Weltevreden Estate and the Weltevreden Hills Estate.

58.2 The Developer and the Weltevreden Estate Owner shall agree as to the improvements to be constructed on the servitude area to comprise the joint security access facility to the Development.

58.3 The costs of maintenance of the servitude area and of the security services employed are to be shared between the Association and the Weltevreden Estate Owner.
58.4 The Trustees and the Weltevreiden Owner shall enter into agreements from time to time regarding the appointment of security service providers, contractors and other service providers, which serve the mutual interest of the two parties subject to the terms and provisions of the servitude.

58.5 The Association and the Members hereby acknowledge and agree that the commercial activities of Weltevreiden Estate (including such as conferences, functions, wine tasting and activities relating to the restaurant and carnival area) and the farming and agricultural activities in respect of the Weltevreiden Estate shall continue in their ordinary course of business, and the Association and the Members shall not interfere with these activities or have any claims arising from such activities on condition.

58.6 The Association and the Members hereby acknowledge and agree that the commercial farming activities undertaken on the Agricultural Farm on Weltevreiden Hills shall continue in their ordinary course of business, and the Association and the Members shall not interfere with these activities or have any claims arising from such activities on condition that these activities comply with the general intent and vision for the Development, and with the guidelines to be presented in the Agricultural Management Procedures appended to the Environmental Management Plan.