



CONSTITUTION

OF

LA ROCHE HOME OWNERS' ASSOCIATION

Established

in terms of Section 29 of the Stellenbosch Municipality Land Use Planning By-law,
as promulgated in the Provincial Gazette Extraordinary No. 7512 dated 20 October 2015.

INDEX

	Page No
1 ESTABLISHED IN TERMS OF STELLENBOSCH MUNICIPALITY LAND USE PLANNING BY-LAW & STATUS OF THE ASSOCIATION	3
2 INTERPRETATION	3
3 LEGAL PERSONALITY OF THE ASSOCIATION.....	5
4 OBJECTS OF THE ASSOCIATION	5
5 MEMBERSHIP OF THE ASSOCIATION	7
6 DUTIES OF MEMBERS.....	8
7 PROCEDURES WHEN THE ASSOCIATION CEASES TO FUNCTION	8
8 RESTRICTIONS ON THE USE OF ERVEN.....	8
9 ANNUAL, MONTHLY AND SPECIAL LEVIES	9
10 PAYMENT OF LEVIES	10
11 SALES LEVIES	10
12 CONSENT TO THE TRANSFER OF ERVEN.....	11
13 PERIMETER SECURITY.....	11
14 BUILDING DEPOSIT	12
15 AMENDMENT OF BUILDING MANUAL.....	12
16 BREACH BY MEMBERS	12
17 NO CLAIMS AFTER CESSATION OF MEMBERSHIP	13
18 ELECTION OF TRUSTEE COMMITTEE.....	13
19 PERIOD OF OFFICE OF TRUSTEES	13
20 CONSTITUTION OF THIS TRUSTEE COMMITTEE	14
21 FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE	14
22 PROCEEDINGS OF THE TRUSTEE COMMITTEE	16
23 MEETINGS OF MEMBERS	17
24 NOTICE OF MEMBERS' MEETINGS	17
25 QUORUM.....	17
26 COMPILING OF AGENDAS FOR MEMBERS' MEETINGS	18
27 AGENDA AT MEETINGS	18

28	PROCEDURE AT GENERAL MEETINGS	18
29	PROXIES	19
30	VOTING	19
31	OUTSIDE CONSULTANTS AND SERVICE PROVIDERS	20
32	ACCOUNTS	20
33	AUDIT	21
34	SERVICE OF NOTICES	21
35	REIMBURSEMENT OF EXPENSES AND INDEMNITY	21
36	DISPUTE RESOLUTION.....	22
37	ERF 16739 STELLENBOSCH	22
38	EFFECTIVE DATE.....	22
39	AMENDMENTS TO CONSTITUTION	22

1 ESTABLISHED IN TERMS OF STELLENBOSCH MUNICIPALITY LAND USE PLANNING BY-LAW & STATUS OF THE ASSOCIATION

- 1.1 The La Roche Home Owners' Association is constituted in compliance with Section 29 of the Stellenbosch Municipality Land Use Planning By-Law, as promulgated in the Provincial Gazette Extraordinary No. 7512 dated 20 October 2015, in accordance with the conditions imposed by the Stellenbosch Municipality when approving the subdivision of Erf 16422 Stellenbosch, situated in the Municipality and Division of Stellenbosch, Western Cape Province.
- 1.2 There shall be only one overall association for La Roche, which association shall be governed by this Constitution, and shall be known as the La Roche Home Owners' Association.
- 1.3 The Association shall be structured as a common-law association not for profit and without capital, but for the benefit of its members.
- 1.4 The Association shall have legal personality, perpetual succession, and be capable of suing and being sued in its own name.
- 1.5 The provisions of the Companies Act, No. 71 of 2008, as amended, shall not apply in respect of the Association.
- 1.6 None of the members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association.

2 INTERPRETATION

In this Constitution:

- 2.1 the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:
- | | |
|--------------------------|---|
| "the Association" | means the La Roche Home Owners' Association, as hereby constituted; |
| "building manual" | means the Architectural and Landscape Design Framework, as compiled by Dennis Moss Partnership for the development, which is subject to change from time to time and which is available to member upon request; |
| "conditions of approval" | means the conditions imposed by the Stellenbosch Municipality when approving the subdivision of Erf 16422 Stellenbosch; |
| "the Constitution" | means this Constitution; |
| "control architect" | means Dennis Moss Partnership or such other architect that may be appointed by the trustee committee; |
| "development" | means the residential development on Erf 16422 Stellenbosch (in extent 13,1825 hectares); |

- “development period” means the period commencing on the date of establishment of the Association and terminating on the date upon which the developer has sold and transferred to a third party the last of the erven within the development owned by the developer;
- “developer” means the Trustees for the time being of La Roche Trust [Registration number IT1427/2016(C)] or any third party to whom the Trustees for the time being of La Roche Trust may in future cede the rights conferred upon it in this constitution;
- “erf/erven” means an individual erf or all erven, as required by the context of the Constitution, excluding Erf 16739 Stellenbosch, and erven zoned for “private roads” and “private open spaces”, contained in the development;
- “managing agent” means any person or body appointed by the trustee committee as an independent contractor to undertake certain functions on behalf of the Association/trustee committee;
- “member” means a member of the Association under the provisions of clause 5 hereunder;
- “private open spaces” means the private open spaces, as indicated on the General Plan for the development, as approved by the Office of the Surveyor-General;
- “regulations” means all regulations made by the trustee committee in terms of clause 21.5 hereunder which may be in force from time to time;
- “Stellenbosch Municipality By-Law” means the Stellenbosch Municipality Land Use Planning By-Law, as promulgated in the Provincial Gazette Extraordinary No. 7512 dated 20 October 2015;
- “the trustee committee/trustees” means the board of trustees of the Association, and includes alternate and co-opted trustees;
- “in writing” means written, printed, lithographed or transmitted in electronic format or partly one and partly another; and
- 2.2 Unless the context otherwise requires, any words importing the singular number only shall include the plural number and vice versa and words importing any one gender only shall include the other two genders.
- 2.3 If any provision of this 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 this Constitution.

3 LEGAL PERSONALITY OF THE ASSOCIATION

3.1 The Association:

- 3.1.1 exists as an entity with rights and duties independent from its members' rights and duties;
- 3.1.2 can own property independent from its members;
- 3.1.3 has perpetual succession;
- 3.1.4 does not primarily operate for the acquisition of profit for itself or its members, but for the benefit of its members; and
- 3.1.5 has separate legal personality.

3.2 No member in his personal capacity shall have any right, title or interest in or to the assets of the Association, which shall vest in the Association.

4 OBJECTS OF THE ASSOCIATION

The objects of the Association are:

4.1 To manage and maintain:

- 4.1.1 all communal roads, buildings and civil infrastructure services within the development;
- 4.1.2 all private open spaces within the development, which includes landscaping and irrigation (for avoidance of doubt, retaining walls located on erven shall be maintained by the member who is the owner of that erf);
- 4.1.3 all communal sidewalks (for avoidance of doubt, sidewalks located on erven shall be maintained by the member who is the owner of that erf);
- 4.1.4 the booster pump station;
- 4.1.5 the security fencing & walling enclosing the development as well as any security controls and/or structures which may be erected;
- 4.1.6 the retentions ponds;
- 4.1.7 the street lighting and low voltage reticulation; and
- 4.1.8 all recreational facilities established within the development, including the mountain bike trail network;

4.2 To manage the process of refuse removal in the development, as required by the Stellenbosch Municipality (the "Municipality"), as follows:

- 4.2.1 The developer and the Association will enter into a service agreement with a service provider approved by the Municipality, for such removal. A copy of the final agreement with this service provider will be submitted to the Municipality.

4.2.2 Notwithstanding clause 4.2.1, should the Association require the Municipality to remove refuse from the development, it will be responsible to provide the Municipality with the relevant infrastructure to perform such removal. This infrastructure will include the following:

4.2.2.1 A single, centralised, refuse storage area which is accessible for collection from a public road;

4.2.2.2 The refuse storage area shall be large enough to store all receptacles needed for refuse disposal on the premises, including all material intended for recycling. No waste is allowed to be disposed/ stored without a proper 240l wheelie bin;

4.2.2.3 The size of the refuse storage area depends on the rate of refuse generation and the frequency of the collection of refuse. For design purposes, sufficient space should be available to store two weeks' refuse;

4.2.2.4 Building specifications for refuse storage area:

Floor

The floor shall be concrete, screened to a smooth surface and rounded to a height of 75 mm around the perimeter. The floor shall be graded and drained to a floor trap (See: Water Supply and Drainage).

Walls and Roof

The Refuse Storage Area room shall be roofed to prevent any rainwater from entering. The walls shall be constructed of brick, concrete or similar and painted with light colour high gloss enamel. The height of the room to the ceiling shall not be less than 2.21 metres.

Ventilation and Lighting

The refuse storage area shall be adequately lit and ventilated. The room shall be provided with a lockable door which shall be fitted with an efficient self-closing device. The door and ventilated area shall be at least 3 metres from any door or window of a habitable room. Adequate artificial lighting is required in the storage area.

Water Supply and Drainage

A tap shall be provided in the refuse storage area for washing containers and cleaning spillage. The floor should be drained towards a 100 mm floor trap linked to a drainage pipe which discharges to a sewer gully outside of the building. In some cases a grease gully may be required.

4.2.2.5 Refuse storage areas should be provided at the street entrance to the premises and have access to the street. In exceptional cases where this is not possible, the refuse storage areas may be located to somewhere else, but not exceeding 10 metres from the street entrance to the premises, used by the Council's refuse collection employees;

4.2.2.6 Should the refuse storage area be located at a level different from the level of the street entrance to the property, access ramps are to be

provided as stairs are not allowed. The maximum permissible gradient of these ramps is 1:7;

- 4.2.2.7 A refuse bay with dimensions of 15 metres in length x 2,5 metres in width plus 45 degrees splay entrance, on a public street, must be provided where either traffic flows or traffic sight lines are affected. The refuse bays must be positioned such that the rear of the parked refuse vehicle is closest to the refuse collection area;
- 4.2.2.8 All refuse storage areas shall be approved by the Directorate: Engineering Services, to ensure that the Council is able to service all installations, irrespective of whether these are currently serviced by the Council or other companies.
- 4.3 To formally represent, promote, advance and protect the collective mutual interests of the area, suburb or neighbourhood where the development is situated in accordance with the conditions of approval;
- 4.4 To implement and enforce the provisions of this Constitution and regulations/rules made in terms hereof;
- 4.5 To introduce traffic calming measures, if required;
- 4.6 To enforce the conditions of approval;
- 4.7 To administer and enforce the building manual;
- 4.8 To take transfer of, maintain and insure, where necessary, the roads and private open spaces in the development, excluding Erf 16739 Stellenbosch, and to control the use thereof and of the facilities belonging to the Association or falling under its control; and
- 4.9 To make regulations/rules in order to achieve or promote the abovementioned objects.

5 MEMBERSHIP OF THE ASSOCIATION

- 5.1 Membership of the Association is automatic for every registered owner of an erf. Such membership shall commence upon transfer of the erf into the name of the transferee.
- 5.2 Ownership of an erf, and consequently Membership of the Association, shall be evidenced by registered ownership in the Deeds Registry in Cape Town of one or more erven.
- 5.3 Membership of the Association is limited to the registered owners of the erven, provided that where any such owner is more than one person, all the registered owners of that erf shall jointly and severally be one member.
- 5.4 When a person ceases to be the registered owner of an erf, he shall *ipso facto* cease to be a member.
- 5.5 The registered owner of an erf may not resign as a member.

- 5.6 The rights and obligations of a member shall not be transferable, except to his executor, liquidator, trustee or curator.
- 5.7 The trustee committee may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the trustee committee.

6 DUTIES OF MEMBERS

Every member shall -

- 6.1 to the best of his ability further the objects and interests of the Association;
- 6.2 comply with the provisions of this Constitution and observe all regulations (including conduct rules) made by the trustee committee;
- 6.3 comply with any agreement, referred to in clause 21.4, concluded by the Association insofar as such agreement may directly or indirectly impose duties on a member;
- 6.4 observe all directives made or given by the Association and/or trustees; and
- 6.5 comply with the building manual.

7 PROCEDURES WHEN THE ASSOCIATION CEASES TO FUNCTION

- 7.1 In the event that the Association ceases to function or carry out its obligations, Section 30 of the Stellenbosch Municipality By-Law will apply.
- 7.2 Should a member wish to transfer his erf to a third party during a period when the Association has ceased to function or carry out its obligations, such a member shall obtain the consent to transfer his erf from the trustees in office at that point in time. If there are no trustees in office at that point in time, consent to transfer his erf must be obtained from at least 50% (fifty percent) of the members.

8 RESTRICTIONS ON THE USE OF ERVEN

A member shall not be entitled to:

- 8.1 use his erf or any improvements thereon or permit the use thereof in such manner or for such purposes as in the discretion of the trustee committee shall be injurious to the ambience of the development;
- 8.2 operate a guest house, Airbnb or similar enterprise from his erf, nor shall any business or profession be conducted from his erf without the prior written consent of the trustee committee;
- 8.3 transfer his erf without the written consent of the trustee committee, which consent shall be given:
 - 8.3.1 if the transferee of such erf has undertaken in writing to abide by the Constitution and has acknowledged that registration of the erf into his name shall automatically make him a member of the Association;

- 8.3.2 if there are no outstanding obligations of the member towards the Association or amounts owed to the Association by the member, which shall be evidenced by a clearance issued by the Association to that effect;
- 8.4 consolidate an erf with one or more erven without the written consent of both the Association and the developer, for as long as it remains a member; and
- 8.5 erect any buildings and/or structures of any nature whatsoever, nor to make any alterations, modifications or renovations to such buildings and/or structures on his erf without the written approval of the Association, which approval shall be sought in accordance with the procedure set forth in the building manual.

9 ANNUAL, MONTHLY AND SPECIAL LEVIES

- 9.1 The trustee committee shall from time to time impose levies upon the members for the purpose of meeting the expenses which the Association has incurred, or which the trustee committee reasonably anticipates the Association will incur for achieving its objects. In calculating levies, the trustee committee shall take into account income earned, if any, and expenses incurred by the Association, and the number of erven.
- 9.2 The trustee committee shall estimate the amount required by the Association to meet the expenses during each year, together with any estimated deficiency from the preceding year, and shall impose a levy upon the members in accordance with clause 9.6 hereunder. The trustee committee may include in such levy an amount to be held in reserve to meet any anticipated future expenditure.
- 9.3 The developer shall not be obliged to pay levies in respect of any erf forming part of the development for as long as it remains owner thereof. The developer may however, in its sole discretion, make such additional payments in this regard to the Association as it may deem necessary.
- 9.4 The trustee committee may from time to time impose special levies upon the members in respect of expenses mentioned in clause 9.1 which are not included in any estimate made in terms of clause 9.2, and such special levies may be made payable in the sum and by such instalments and at such time or times as the trustee committee shall think fit.
- 9.5 Any amount due by a member by way of a levy shall be a debt due by him to the Association. The obligation of a member to pay levies relating to periods beyond the transfer date of the erf shall cease on the transfer date, without prejudice to the Association's right to recover arrear levies. No levies paid by a member shall under any circumstances be repayable by the Association upon his ceasing to be a member. A member's successor in title to an erf shall be liable as from the date upon which he becomes a member pursuant to the transfer of that erf, to pay the levy attributable to that erf.
- 9.6 The total amount(s) payable by all the members pursuant to the provisions of clause 9.2 shall be equally apportioned between the members and shall be payable by the members as monthly levies. Such levies shall be payable by members monthly in advance.
- 9.7 Any special levies imposed by the trustees in terms of clause 9.4 shall be apportioned between the members by the trustees in a manner which the trustees may regard as reasonable, regard being had to the direct benefits which the member(s) may derive from the proposed expenditure for which the special levies are imposed.

- 9.8 The trustees committee may, in anticipation of the determination of the annual levy for a financial year by members at an annual general meeting as contemplated in clause 9.2, determine interim monthly levies for that financial year based on its estimate of the anticipated income and expenditure of the Association for that financial year, and may collect such interim monthly levies with effect from the first day of that financial year until such time as the annual levy for that year is determined as contemplated in clause 9.2.
- 9.9 No member shall be entitled to any of the privileges of membership (including the right to vote) unless and until he shall have paid all levies and other sums (if any) which shall be due and payable to the Association in respect of his membership.

10 PAYMENT OF LEVIES

- 10.1 Any levies or any other amounts that may be collected in terms of this Constitution may be recovered from the persons who were owners of the erven, to which such levies apply, at the time such levies became payable.
- 10.2 Monthly levies shall be due and payable on the first day of each calendar month, failing which the provisions of clauses 16.1.1 and 16.3 shall apply.
- 10.3 Special levies shall be made payable in one sum or by such instalments and at such time or times as the trustee committee may deem fit.

11 SALES LEVIES

- 11.1 Every –
- 11.1.1 registered owner of an erf (which shall include, but not be limited to a natural person, trust, company of close corporation), or where the erf is owned by more than one registered owner, all the registered owners of the erf jointly and severally;
- 11.1.2 shareholder of a company owning an erf;
- 11.1.3 member of a close corporation owning an erf; or
- 11.1.4 beneficiary of a trust owning an erf,
- who has sold or otherwise alienated the erf, his shareholder's interest, his member's interest or his beneficial interest in the trust, as the case may be, shall pay a sales levy equal to 1% (one percent) of the value of the erf or shareholder's interest or member's interest or beneficial interest, as the case may be ("the sales levy") to the Association.
- 11.2 For purposes of clause 11.1 "value" means –
- 11.2.1 in cases where transfer duty is payable on the transaction, the amount on which the transfer duty is payable;
- 11.2.2 in cases where the transaction is subject to value added tax, the amount on which such tax is payable; and

- 11.2.3 in all other cases, the market value of the erf or of the interest which has been sold or otherwise alienated.
- 11.3 Unless otherwise agreed between the party concerned and the Association, the "value" of the erf or the interest for purposes of clause 11.2 shall –
- 11.3.1 in the case of an arm's length transaction, be the amount of the consideration payable in respect of the transaction; or
- 11.3.2 in any other case, be the market value of the erf or the interest as determined by a professional valuer or a professional associate valuer registered in terms of the Property Valuers Profession Act, No. 47 of 2000, appointed by the trustee committee.
- 11.4 Notwithstanding the provisions of clause 11.1, no sales levy shall be payable in respect of the transfer of a property in the name of a person who can show that the acquisition is exempt from transfer duty as contemplated in section 9(1)(i) or section 9(1)(k) of the Transfer Duty Act, No. 40 of 1949, as amended.
- 11.5 The sales levy shall:
- 11.5.1 be imposed upon the members for purposes of accumulating a capital reserve fund for the Association which will primarily be used to meet the capital expenditure requirements (including necessary expenditure in relation to the maintenance of capital infrastructure); and
- 11.5.2 be payable to the Association against registration of transfer.
- 11.6 The obligation to pay the sales levy shall accrue prior to transfer and accordingly transfer shall be without prejudice to the Association's right to recover such sales levy (and interest thereon) after transfer.
- 11.7 No sales levy shall be payable by the developer in respect of erven transferred by the developer to third parties.

12 CONSENT TO THE TRANSFER OF ERVEN

The Association shall be entitled to withhold its consent to the transfer of an erf if any levy due in respect of the erf has not been guaranteed or paid to its satisfaction or if the transferor has not fulfilled any of its obligations in terms of this Constitution.

13 PERIMETER SECURITY

- 13.1 The Association shall be responsible for the maintenance and upkeep of the perimeter security fence and walling enclosing the development.
- 13.2 Members who own erven which borders upon the security fence and wall shall permit the Association and/or its contractors, reasonable access over their erven for purposes of the carrying out of maintenance and/or replacement of the security fence and walling.

14 BUILDING DEPOSIT

- 14.1 Every member shall, when submitting to the trustees for approval the sketch drawings for the construction of new improvements or alterations to existing improvements on his erf in terms of clause 8 pay to the trustee committee a building deposit as determined by the trustee committee from time to time, which amount shall be retained by the trustee committee in trust.
- 14.2 Upon completion of the improvements on the erf (including the landscaping, with irrigation, of the sidewalks), the trustee committee shall, if they are satisfied that no damage has been effected by the member or any of his contractors to any of the common areas within the development and that the improvements have been properly constructed in accordance with duly approved plans and the provisions of the building manual, release the building deposit to the member. In the event of any common areas as aforesaid having been damaged due to the building activities, the member shall, within 15 (fifteen) days of having been requested to do so in writing by the trustee committee, have the damage repaired to the satisfaction of the trustee committee, failing which the trustee committee shall be entitled to appoint an independent contractor to repair the damage. The deposit paid to the trustee committee in terms of clause 14.1 above shall then be utilised to defray the charges of the independent contractor. It is, however, recorded that should the damage caused by the member be such that the deposit is not sufficient to cover the costs of the repairs thereof, the claim of the trustee committee against the member shall not be limited to the amount of the said deposit.

15 AMENDMENT OF BUILDING MANUAL

- 15.1 The trustee committee may, in liaison with the control architect and with the consent of the Stellenbosch Municipality (if legally required) amend, amplify, clarify or add to the provisions of the building manual.
- 15.2 In the event of the provisions of the building manual being amended or added to and if such amendment or addition will materially affect any further development of any erf, the trustee committee shall by written notice inform all members of the amendment or addition to the building manual.

16 BREACH BY MEMBERS

- 16.1 Should any member:
- 16.1.1 fail to pay on due date any amount due by that member in terms of the Constitution or any regulation and remain in default for more than 7 (seven) days after being notified in writing to do so by the trustee committee; or
- 16.1.2 commit any other breach of any of the provisions of the Constitution or any regulation and fail to commence remedying that breach within a period of 7 (seven) days after being notified in writing to do so by the trustee committee or fail to complete the remedying of such breach within a reasonable time;

then and in any such event, the trustee committee shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the trustee committee or the Association or any other member may have in law (including the right to claim damages), to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of his outstanding obligations in terms of the Constitution or any regulation, as the

case may be; or in the case of a breach of clause 16.1.2, to remedy such breach and immediately recover the total cost incurred by the trustee committee or the Association in so doing from such member.

- 16.2 Should the trustee committee institute any legal proceedings against any member pursuant to a breach by that member of this Constitution or any regulation, then without prejudice to any other rights which the trustee committee or the Association or any other member may have in law, the trustee committee shall be entitled to recover from such member all legal costs incurred by the trustee committee, including attorney and client charges, tracing fees and collection commission.
- 16.3 Without prejudice to any other rights of the Association, should a member fail to pay any amount due by that member on due date, then such member shall pay interest thereon at the publicly quoted prime rate of interest charged by the Association's bankers from time to time plus 3% (three percent), calculated from the due date for payment until the actual date of payment of such amount.

17 NO CLAIMS AFTER CESSATION OF MEMBERSHIP

No erstwhile member nor his executors, curators, trustees or liquidators shall have any claim upon or interest in the funds or other property of the Association. This clause shall be without prejudice to the rights of the Association to claim from such member or his estate payment of any arrear levies or other sums or performance of any obligations due by him to the Association at the time of cessation of his membership.

18 ELECTION OF TRUSTEE COMMITTEE

- 18.1 There shall be a board of the trustees for the Association which shall consist of not less than 3 (three) and not more than 6 (six) trustees.
- 18.2 The first trustees shall be appointed by the developer and shall hold office until the first annual general meeting of the Association.
- 18.3 The board of trustees shall be elected by the members at every annual general meeting of the Association.
- 18.4 Upon any vacancy occurring on the trustee committee prior to the next annual general meeting, the vacancy will be filled by a person nominated by the remaining trustees if the relevant trustee was appointed by the members. If the trustee was appointed by the developer, the developer shall be entitled to appoint a substitute trustee to fill the vacancy.
- 18.5 The trustee committee may co-opt onto the committee any member or members chosen by it, subject thereto that the total number of trustees shall not be more than six. A co-opted trustee shall enjoy all the rights and be subject to all the obligations of the trustees.

19 PERIOD OF OFFICE OF TRUSTEES

- 19.1 Save as set forth in clause 19.2 below, each trustee shall continue to hold office until the annual general meeting next following upon his appointment. Every trustee retires from office at the end of such meeting, but shall be eligible for re-election to the trustee committee.

- 19.2 A trustee shall cease to be a trustee upon:
- 19.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
 - 19.2.2 his conviction by a Court of Law for any offense involving dishonesty;
 - 19.2.3 his becoming of unsound mind;
 - 19.2.4 his resignation as a trustee, delivered in writing to the chairman or vice-chairman of the trustee committee; or
 - 19.2.5 his being removed from office by a resolution of members; at a members' meeting with a three-quarter majority of the votes actually cast.
- 19.3 Any resolution taken by the trustee committee at a meeting shall be valid notwithstanding the participation in good faith of an erstwhile trustee who has at the time of the meeting ceased to be a trustee.

20 CONSTITUTION OF THIS TRUSTEE COMMITTEE

- 20.1 Within 7 (seven) days of the holding of every annual general meeting, the trustee committee will meet and will elect from its own number a chairman and a vice-chairman, who will hold their respective offices until the annual general meeting held next after their said appointment, provided that the office of the chairman or vice-chairman will *ipso facto* 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 any of the aforesaid offices at any time, the trustee committee will immediately meet to appoint one of their number as a replacement in such office.
- 20.2 The first chairman and vice-chairman will be appointed by the developer and will hold office until the first annual general meeting following the date of their appointment. His office will *ipso facto* be vacated by his ceasing to be a trustee for any reason.
- 20.3 Save as set forth in clause 35 below, the trustees will not be entitled to any remuneration, fees or salary in respect of the performance of their duties.

21 FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 21.1 Subject to the provisions of this Constitution, the trustee committee shall manage and control the business and affairs of the Association, and shall have full powers in the management and direction of its business and affairs. Save as otherwise provided in this Constitution, it may exercise all powers of the Association and perform all acts on behalf of the Association which are under this Constitution required to be exercised or done by the Association in a members' meeting. The functions and powers of the trustee committee shall include, but not be limited to the following:
- 21.1.1 To attend to the upkeep, upgrading and installation, where required, of common services serving the development, such as, but not limited to, the sewerage, water reticulation, storm water systems, security fences and roads;

- 21.1.2 To manage and maintain the borehole, irrigation, retention dams, electrical reticulation, and the pathways and environs along the river banks within the development;
- 21.1.3 To regulate the conduct of any person so as to prevent nuisance of any nature within the development;
- 21.1.4 To introduce traffic calming measures;
- 21.1.5 To impose fines and other penalties on members and to enforce payment of fines and penalties that may be payable by members;
- 21.1.6 to open and operate bank accounts (which shall include accounts with any recognised financial institution) for the Association, draw cheques on such accounts or deposit moneys in them, to issue bills and guarantees in favour of third parties against the account and to hand to the bank, bills for collection in favour of the Association;
- 21.1.7 to invest moneys on such terms and conditions as the trustee committee may determine;
- 21.1.8 to make and receive loans with or without security;
- 21.1.9 to institute or defend legal proceedings by or against the Association;
- 21.1.10 to attend meetings of creditors of a member who is a debtor of the Association irrespective of whether the meeting is in connection with insolvency, liquidation or judicial management; to vote on any matter regarding the meeting and generally, to exercise all the rights a creditor would have in similar circumstances;
- 21.1.11 to issue receipts, discharges or indemnities in respect of any repayment or discharge of obligations;
- 21.1.12 to make use of the services of professional advisers and contractors for the affairs of the Association and to pay for such services out of the Association's funds;
- 21.1.13 to appoint employees at such wages and subject to such conditions of service as the trustee committee shall determine;
- 21.1.14 to accept donations or bequests on behalf of the Association from anybody subject to the terms and conditions of this trust deed and subject to the terms and conditions attached to such donation and/or bequest;
- 21.1.15 to sign all documents and take all steps considered necessary for the meaningful exercise of its powers;
- 21.1.16 to exercise all the powers which directors of a private company have in terms of the Companies Act No. 71 of 2008; and
- 21.1.17 to exercise any of its powers and functions within or outside the development.
- 21.2 The trustee committee has the right to vary, cancel or modify any of its decisions and resolutions from time to time.

- 21.3 The trustee committee may investigate any suspected or alleged breach by any member or trustee of this Constitution and any regulations made in terms thereof, in such reasonable manner as it shall decide from time to time.
- 21.4 The trustee committee may enter into agreement(s) with local authorities and outside service providers for the performance of its functions and duties.
- 21.5 The trustee committee may make regulations, not inconsistent with the Constitution:
- 21.5.1 as to the resolution of disputes between members generally;
 - 21.5.2 for the furtherance and promotion of any of the objects of the Association;
 - 21.5.3 for the management of the affairs of the Association;
 - 21.5.4 for the conduct of members within the development;
 - 21.5.5 for the conduct of trustee committee meetings and general meetings;
 - 21.5.6 establishing conduct rules applicable within the development;
 - 21.5.7 to facilitate its administration and to govern its activities generally;
 - 21.5.8 as to security control measures for the development;
 - 21.5.9 governing building work and services;
 - 21.5.10 as to landscaping and maintenance of roads, sidewalks and open space areas within the development; and
 - 21.5.11 for the provision and utilisation of recreational areas within the development.
- 21.6 The trustee committee shall be entitled to cancel, vary or modify any regulation from time to time;

22 PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 22.1 The trustee committee may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to the provisions of the Constitution and all relevant regulations.
- 22.2 Meetings of the trustee committee shall be held at least once every quarter, provided that if all the trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the trustee committee need be held for that quarter.
- 22.3 The quorum necessary for the holding of any meeting of the trustee committee shall be 50% (fifty percent) or more of the number of trustees in office.
- 22.4 The chairman shall preside at all meetings of the trustee committee, provided that should at any meeting of the trustee committee the chairman not be present within 5 (five) minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within 5 (five) minutes of the time appointed

for the holding of such meeting, those present of the trustees shall vote to appoint a chairman for the meeting, who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.

- 22.5 Minutes shall be taken of every trustee committee meeting, although not necessarily verbatim. The minutes shall be reduced to writing without undue delay and shall be certified correct by the chairman of the meeting. All minutes of trustee committee meetings after certification as aforesaid must be placed in a trustee committee minute book. The trustee committee minute book shall be open for inspection at all reasonable times by a trustee, the auditors, the members and the municipality.
- 22.6 Save as otherwise provided in the Constitution and the regulations, the proceedings at any trustee committee meeting shall be conducted in a reasonable manner and form as the chairman of the meeting may decide.
- 22.7 A resolution signed by all the trustees shall be valid in all respects as if it had been duly passed at a meeting of the trustee committee duly convened.

23 MEETINGS OF MEMBERS

- 23.1 The Association shall within 4 (four) months after each financial year end of the Association hold a general meeting of members, as its annual members' meeting. In addition, other general meetings of members may be held during any financial year.
- 23.2 General meetings of members shall be held at such time and place as the trustee committee may decide from time to time.
- 23.3 The trustee committee may, whenever they think fit, convene a members' meeting.
- 23.4 The trustee committee must convene a members' meeting at the written request of at least 20 members.

24 NOTICE OF MEMBERS' MEETINGS

- 24.1 Members' meetings shall be called by not less than 21 (twenty one) days' notice in writing. The notice shall specify the place, the day and the time of the meeting and shall be accompanied by an agenda, as specified in 26 below. Notwithstanding the above, a members' meeting called by shorter notice shall be deemed to have been duly called if it is so agreed by three-quarters of the members entitled to attend and vote thereat.
- 24.2 The accidental omission to give notice of a meeting or the non-receipt of any notice correctly addressed to any member or other person entitled to receive the same shall not invalidate the proceedings at, or any resolution passed at, any members' meeting.

25 QUORUM

- 25.1 No business shall be transacted at any members' meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any members' meeting shall be such of the members present in person

or any proxy who together represents one-quarter of the total votes of all members entitled to vote.

- 25.2 If within half an hour from the time appointed for the holding of a members' meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the chairman of the meeting shall determine. If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall constitute a quorum.

26 COMPILING OF AGENDAS FOR MEMBERS' MEETINGS

- 26.1 Any member may place an item on the agenda of a forthcoming members' meeting by giving written notice of the agenda item to the trustee committee at least 7 (seven) days before the date of the meeting. The trustee committee must as soon as possible give written notice to all members of any agenda items so submitted.
- 26.2 Only items properly on the agenda of a members' meeting may be raised at the meeting.

27 AGENDA AT MEETINGS

In addition to any other agenda items, the following matters shall be on the agenda and be dealt with at every annual members' meeting:

- 27.1 the election of the trustee committee;
- 27.2 the consideration of the financial statements of the Association for the financial year of the Association preceding the date of such meeting;
- 27.3 the consideration of the report of the auditors;
- 27.4 the appointment of the auditors of the Association; and
- 27.5 the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the meeting.

28 PROCEDURE AT GENERAL MEETINGS

- 28.1 The chairman shall preside as such at all general meetings. Should the chairman not be present within five minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting. Should the vice-chairman also not be present within five minutes of the time appointed for the holding of such meeting, then the members present at such meeting entitled to vote, shall elect a chairman for the meeting, who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 28.2 The chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in

the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

- 28.3 Except as otherwise set forth in this Constitution or in any regulations, all general meetings shall be conducted in accordance with generally accepted practice.

29 PROXIES

- 29.1 A member may be represented at a members' meeting by a proxy, who need not be a member of the Association. The instrument appointing a proxy shall be in writing and signed by the member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that 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. Where a member is:
- 29.1.1 a company, the proxy may be signed by the chairman or managing director of the board of directors of the company or by its secretary;
 - 29.1.2 a close corporation, the proxy may be signed by any of its members;
 - 29.1.3 a Trust, the proxy must be signed by all of its trustees; and
 - 29.1.4 an association of persons, the proxy must be signed by the chairman or secretary of the managing committee.
- 29.2 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited at the office of the Association or given to the chairman of the meeting at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument proposes to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution.
- 29.3 A vote cast in good faith 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 of the death or revocation shall have been received by the trustee committee at least one hour before the time fixed for the holding of the meeting.

30 VOTING

- 30.1 At every members' meeting every member present in person or by proxy and entitled to vote shall have one vote for each erf registered in his name, provided that if an erf is registered in more than one person's name, then they shall jointly have one vote for that erf.
- 30.2 Save as provided for in this Constitution and the regulations, no person other than a member who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising from his membership, shall be entitled to vote on any question, either personally or by proxy, at any members' meeting.
- 30.3 A resolution put to the vote at a members' meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairman of the result of

- the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 30.4 Notwithstanding the provisions of clause 30.3, voting on the election of a chairman of a members' meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy and entitled to vote.
- 30.5 Every resolution and every amendment of a resolution proposed for adoption by a members' meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 30.6 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the members' meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 30.7 Unless any member present in person or by proxy at a members' meeting shall before closure of the meeting have objected to any declaration made by the chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted. An entry in the minutes 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 vote so recorded if such entry conforms with the declaration made by the chairman of the meeting as to the result of any voting at the meeting.

31 OUTSIDE CONSULTANTS AND SERVICE PROVIDERS

Save as otherwise provided in this Constitution, the trustee committee shall at all times be entitled to engage on behalf of the Association the services of accountants, auditors, attorneys, advocates, architects, engineers and any other professional person or firm and any other service providers, contractors and employees on such terms as the trustee committee shall decide.

32 ACCOUNTS

- 32.1 At each annual members' meeting the trustee committee shall lay before the Association an audited income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with an audited balance sheet made up as at the last financial year end of the Association. Such financial statements shall be accompanied by comprehensive reports by the trustee committee and the auditors. There shall be attached to the notice sent to members convening each annual general meeting, as set forth in clause 23 above, copies of such financial statement and reports.
- 32.2 The financial year end of the Association is the end of February of each year.
- 32.3 The trustee committee may from time to time make regulations as to the time and manner of the inspection by the members of the accounts and books of the Association. Subject to such regulations, the accounts and books of the Association shall be open to the inspection thereof by members at all reasonable times during normal business hours.

33 AUDIT

- 33.1 The annual financial statements of the Association must be audited by a registered accountant in terms of the Public Accountants' and Auditors' Act, No.80 of 1991.
- 33.2 The members in general meeting must appoint the chartered accountant and determine his remuneration.

34 SERVICE OF NOTICES

- 34.1 Every notice by the Association to a member shall be in writing and shall be given or served by the Association upon the member, either personally or by post in a prepaid registered letter, properly addressed to the member at the address of the erf owned by him or to any other address indicated by the member in writing, or by electronic transmission or facsimile.
- 34.2 Every member must provide the Association with his electronic mail address and/or facsimile number. If a member's erf is not improved by a completed dwelling, notice to such member shall be given or served by the Association upon such member, either personally or by post in a prepaid registered letter, properly addressed to the member at an address indicated by the member in writing, or by electronic transmission or facsimile.
- 34.3 No member shall be entitled to have a notice served on him at any address not within the Republic of South Africa. Every member will provide the Association with an address within the Republic of South Africa which shall be his address for the purpose of the service of notices.
- 34.4 Any notice sent by prepaid registered post shall be deemed to have been received 7 (seven) days after transmission. In proving the transmission of a notice by registered post, it shall be sufficient to prove that the notice was properly addressed and posted. Any notice transmitted by facsimile or electronic mail shall be deemed to have been received by the addressee on the date upon which it is transmitted.

35 REIMBURSEMENT OF EXPENSES AND INDEMNITY

- 35.1 Subject to this Constitution and all applicable regulations every trustee of the trustee committee, member, servant, agent and employee of the Association and the auditors shall be reimbursed by the Association for all costs and expenses (including travelling expenses) which such person may incur or become liable for by reason of any act or deed done by such in the discharge of any of his duties.
- 35.2 A trustee shall not be liable for the acts, neglects or defaults of the auditors or of any of the other trustees, whether in their capacities as trustees or as chairman or vice-chairman, nor for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the trustee committee for or on behalf of the Association, nor for the insufficiency of any security in or upon which any of the monies of the Association shall be invested, nor for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects have been deposited, nor for any loss or damage occasioned by an error of judgment or oversight or his part, nor for any other loss, damage or misfortune which may occur in the execution of any of his duties, unless (in all the above instances) the loss, damage, expense or misfortune has occurred through lack of *bona fides* or a breach of duty or a breach of trust.

36 DISPUTE RESOLUTION

- 36.1 The members and the Association may agree to arbitration as a method to resolve any dispute, question or difference arising at any time between any members reciprocally or between any members and the trustee committee. The arbitration shall be on such terms and conditions as may be agreed to between the parties.
- 36.2 Any dispute between members regarding a breach of any rules of conduct contained in the regulations must be referred to mediation before any legal proceedings may be instituted, unless the Court in which the proceeding have been instituted, directs otherwise. The trustee committee shall appoint the mediator. The proceedings before the mediator shall be privileged, and may not be introduced in evidence in any Court, unless such Court directs otherwise.

37 ERF 16739 STELLENBOSCH

The developer shall be entitled to rezone Erf 16739 Stellenbosch (situated outside of the boundary fence of the development), which is indicated as a private open space on the General Plan, for residential purposes in due course and to transfer this property. The members irrevocably undertake not to oppose this rezoning.

38 EFFECTIVE DATE

The provisions of the Constitution shall come into effect when the first erf is transferred from the developer to the transferee thereof.

39 AMENDMENTS TO CONSTITUTION

- 39.1 No provision of the Constitution shall be added to, amended, substituted or repealed without the prior consent in writing of the Stellenbosch Municipality.
- 39.2 Subject to the provisions of clause 39.1 above, the Constitution or any part thereof may only be amended by a resolution taken at a meeting of members and passed by a majority of three-quarters of the votes cast at the meeting in respect of the resolution.
- 39.3 No amendment of the Constitution may be inconsistent with or in contravention of any current legislation.