OAKHILLS

STELLENBOSCH

CONSTITUTION

OF

OAKHILLS ESTATE

BODY CORPORATE

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RECORDAL

1. It is recorded herewith that the OAKHILLS ESTATE BODY CORPORATE is constituted as a statutory body in terms of Section 29 of the of the Stellenbosch Municipality: By-law on Municipal Land Use Planning, 2015, as amended, in accordance with the conditions imposed by the Stellenbosch Municipality, when approving the rezoning, subdivision and regulation departures of Portion 20 of Farm Weltevrede no. 82, Stellenbosch and held by Deed of Transfer no. T41873/2008

2. The Developer will develop a security estate as a Sectional Title Scheme to be known as OAKHILLS ESTATE, in order to sell Sections to prospective purchasers. These purchasers will become members of the Body Corporate and will remain a member until the Section is sold.

3. The Members agree to be bound by the provisions of this Constitution.

NOW THEREFORE the Constitution of the Body Corporate shall be as follows:

1. **INTRODUCTION AND NAME**

1.1 This document comprises the constitution of the Body Corporate for the housing development OAKHILLS ESTATE. All owners, residents and office-bearers within the Development are bound by the provisions hereof and whatever is legitimately done, performed or resolved in terms hereof.

1.2 OAKHILLS ESTATE shall be under the management, administration and control of a body corporate to be known as the OAKHILLS ESTATE BODY CORPORATE ("the Body Corporate").

2. **OBJECTS**

Subject to the rights, functions and powers reserved by the Developer for the Development Period in terms of this Constitution, the objects of the Body Corporate shall be as follows:

2.1 To serve as the Body Corporate for all Members and Residents within the Development, to manage, administer and control all aspects of common interest to Members, to manage the Development, its facilities and the usage thereof in terms of the provisions of this Constitution.

2.2 To establish a fund for expenses of the Body Corporate, including provision for future expenses and contingencies.

2.3 To determine and collect Levies for the purposes of the said fund from the Members.

2.4 To ensure compliance with the legal requirements of any local or competent authority as may be applicable.

2.5 To maintain all common land, services, facilities, installations and other common assets of the Development, and where necessary, to repair and replace such services, facilities, installations and other assets.

2.6 In general:

2.6.1 to ensure the maintenance and promotion of harmony in the physical and social environment of the Development.

2.6.2 to protect and promote the interests of the Body Corporate and its Members.

2.6.3 to maintain and insure, where necessary, the common facilities of the Development and to control the use thereof subject to the provisions of this Constitution.

2.6.4 to create, amend from time to time and enforce Management and Conduct Rules or other rules for the management of the Development, as the Trustees may deem necessary.

2.6.5 ensure that adequate security measures be put in place for access and egress purposes for Members and visitors alike.

2.6.6 the Body Corporate shall have the powers to perform such acts as are necessary and reasonably required to accomplish the fulfilment of aforegoing objects including, but not restricted, to powers specifically contained in this Constitution.

3. DEFINITIONS

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

3.1 "**Architect**" means such architect or architects or their successors, as may be appointed by the Developer and subsequently by the Trustees from time to time;

3.2 "**Auditors**" means the auditors of the Body Corporate as may be appointed from time to time by the Trustees;

3.3 **"Body Corporate"** means the OAKHILLS ESTATE BODY CORPORATE;

3.4 "**Chairman**" means a permanent employee of the Developer, who shall also be the chairman of the Trustees and shall serve as chairman at all general meetings of the Body Corporate, subject to his/her availability;

3.5 "**Common Property**" shall have the meaning as assigned to it in terms of the STA and/or STSMA, in relation to the Development;

3.6 "**Conduct Rules**" means the conduct rules applicable to the Development and attached hereto;

3.7 "**Constitution**" means this document with the annexures thereto;

3.8 "**Design Guidelines**" means the architectural guidelines prepared by the Architect at the instance of the Developer and includes all/any amendments made thereto from time to time;

3.9 "**Developer**" means the developer of the Development OAKHILLS ESTATE namely: EVENING SHADE PROPERTIES 109 (PTY) LTD Registration Number 2007/027280/07, and/or its successors in title and assigns;

3.10 "**Developer Trustee**" means the trustee appointed from time to time by the Developer during the Development Period in terms of this Constitution;

3.11 "**Levy" and "Levies**" means the levy/levies or contribution/s due to the Body Corporate by the Members in terms of clause 11 of this Constitution.

3.12 "**Managing Agent**" means any person or entity appointed by the Developer and thereafter by the Trustees from time to time, to undertake the management and administrative functions of the Body Corporate (if any);

3.13 "**Management Agreement**" means the management agreement entered into between the Developer/Trustees and the Managing Agent;

3.14 "**Members**" means collectively the Developer (until the expiry of the Development Period) and the registered owner of a Section;

3.15 "**Ordinary Resolution**" means a resolution passed by more than 50 (Fifty) percent of the Members present at a General Meeting and entitled to vote;

3.16 "**Owner**" means the registered owner of a Section;

3.17 "**Owner Trustees**" means the trustees appointed in terms of this Constitution from time to time by the Owner;

3.18 "**STA**" means the Sectional Titles Act no. 95/1986;

3.19 "**STSMA**" means the Sectional Titles Schemes Management Act no. 8/2011;

3.20 "**Trustees**" means the trustees appointed in terms of clause 12 of this Constitution and includes alternate and co-opted trustees;

4. INTERPRETATION

4.1 The clause headings are for convenience and shall be disregarded in construing this constitution.

4.2 Unless the context clearly indicates a contrary intention:

4.2.1 the singular shall include the plural and *vice versa*; and

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

4.2.3 a reference to natural persons includes legal persons and *vice versa*.

4.3 When any number of days is prescribed in this 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.

4.4 Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.

4.5 Annexures to this Constitution are deemed to be incorporated in, and form part of, this Constitution.

ESTABLISHMENT, STATUS, MEMBERSHIP, AND FUNCTIONS

5. ESTABLISHMENT

5.1 It is recorded that the Body Corporate shall be deemed to be established on the date of transfer and registration of the Section in the Development and this Constitution, as may be amended from time to time, shall then become and remain binding upon the Members.

6. STATUS

6.1 The Body Corporate shall, subject to the provisions of this Constitution, be responsible for the control, administration and management of the Development for the benefit of all Members, and this Constitution shall be binding upon all Members.

6.2 The Body Corporate shall have perpetual succession and shall be capable of suing and being sued in its own name in respect of:

6.2.1 any contract made by it;

6.2.2 any damage to the Development;

6.2.3 any matter in connection with the Development for which the Body Corporate is liable or in terms of which the rights of the Body Corporate or its Members need to be enforced or protected;

6.2.4 any matter arising out of the exercise or purported exercise of its powers or the performance of its duties.

6.3 No part of the income of the Body Corporate may be paid or refunded to any Member, except to settle any debt to such Member that the Body Corporate may have.

6.4 No Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Body Corporate, which shall vest in the Body Corporare and be controlled by the Trustees, according to the objects of the Body Corporate and the provisions of this Constitution.

7. MEMBERSHIP

7.1 The Members of the Body Corporate shall consist of the Developer and all registered owners of Sections in the Sectional Title Scheme.

7.2 Membership shall be automatic and compulsory. No Member may resign or cede or assign his membership to another party.

8. FUNCTIONS AND POWERS OF THE BODY CORPORATE

8.1 Subject to any restriction imposed or direction given at a General Meeting of Members, it shall be the function and duty of the Body Corporate—

8.1.1 to insure the building or buildings relating to the Development and keep such insured to its replacement value against fire;

8.1.2 to insure against such other risks as the Members may by Ordinary Resolution determine;

8.1.3 to comply with any notice or order by any competent authority requiring any repairs to, or work in respect of, the Land and/or buildings comprising the Development;

8.1.4 to ensure compliance with all laws relating to the Development or to any improvements on the Land;

8.1.5 control, manage and administer the Development for the benefit of all Members;

8.1.6 keep in a state of good and serviceable repair and properly maintain the plant, machinery, fixtures and fittings, including elevators (where applicable), used in connection with the Development;

8.1.7 subject to the rights of the local authority, to maintain and repair, including renewal where reasonably necessary, pipes, wires, cables and ducts existing on the Land;

8.1.8 on the written request of any Member, to produce to such Member, or any person authorised in writing by such Member the policy or policies of insurance effected by the Body Corporate and the receipt or receipts for the last premium or premiums in respect thereof;

8.1.9 to keep a register of Members in such manner as the Body Corporate shall decide.

8.1.10 The Body Corporate shall for the purpose of effecting any insurance under clause 8.1.1, be deemed to have an insurable interest in the replacement value of the Development and shall, for the purpose of effecting any other insurance under that clause, be deemed to have an insurable interest in the subject matter of such insurance.

8.2 Subject to any restriction imposed or direction given at a general meeting of Members, the Body Corporate shall have the power—

8.2.1 to establish for administrative expenses a levy fund sufficient in the opinion of the Body Corporate for the repair, upkeep, control, management and administration of the Development and the Land, including a reasonable provision for future maintenance and repairs, for the payment of rates and taxes, for the supply of electric current, gas, water, fuel and sanitary, refuse and other services to the Common Property relating to the Development and to the Land and any premiums of insurance, and for the discharge of any obligation of the Body Corporate;

8.2.2 to require from the Members and Lessees whenever necessary, to pay a Levy for the purposes of satisfying any claims against the Body Corporate;

8.2.3 to determine from time to time the amounts to be raised for the purposes aforesaid;

8.2.4 to raise the amounts so determined by requiring the Members to pay the Levy in terms of clause 11 below;

8.2.5 to open and operate a current account and a savings account with a banking institution;

8.2.6 to appoint employees as it may deem fit;

8.2.7 to purchase, hire or otherwise acquire movable property for purposes of the operation of the Development;

8.2.8 to expand the facilities and services offered to Members;

8.2.9 to borrow money required by it in the performance of its duties or the exercise of its powers;

8.2.10 to secure the repayment of money borrowed in any manner permitted in law, including the cession of any unpaid Levies whether due and payable or not, or by suretyship or by encumbering any property vested in the Body Corporate;

8.2.11 to invest any money of the fund referred to in clause 8.2.1 of this Constitution;

8.2.12 to enter into an agreement with the local authority or any person or body for the supply to the Development and the Land of electric current, gas, water, fuel and sanitary and other services if necessary;

8.2.13 to do all things reasonably necessary for the enforcement of the Management and Conduct Rules and the control, management and administration of the Development;

8.2.14 to make, amend from time to time and enforce the Management and Conduct Rules for Members, which shall be reasonable, and shall apply equally to all Members of the same class of Members.

8.3 The Body Corporate shall allocate parking spaces to the owners of Sections and designate visitor parking as necessary, in accordance with a parking schedule. No Member shall be permitted to sell, lease, or otherwise transfer any allocated parking space, nor shall Members be allowed to exchange parking spaces with one another, without prior written consent from the Trustees.

9. **ADDRESS OF THE BODY CORPORATE**

The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* (being the address for the service of all notices and legal proceedings) of the Body Corporate, subject to the following:

9.1 during the Development Period, such address shall be the address of the Developer Trustee nominated by the Developer;

9.2 after the Development Period, such address shall be the address of the Chairman or of such other Trustee nominated by the Trustees from time to time, provided that where there is a duly appointed Managing Agent the address shall be care of such Managing Agent. The Trustees shall give notice to all Members of any change of such address.

MEMBERS' CONTRIBUTIONS

10. **THE BUDGET**

10.1 The Trustees shall, as soon as possible after the end of each financial year, prepare a budget of the income and expenditure for the next financial year of the Body Corporate in respect of the expenses relating to the maintenance, administration, management and control of the Development.

10.2 Provision should be made for at least the following:

10.2.1 expenses in respect of security;

10.2.2 maintenance expenses;

10.2.3 insurance premiums;

10.2.4 landscaping expenses;

10.2.5 statutory rates, taxes and other municipal charges;

10.2.6 administrative expenses, including the cost of a managing agent;

10.2.7 banking and auditing expenses;

10.2.8 provision for future maintenance and repairs, contingencies and future capital expenditure;

10.2.9 such further items as the Developer, or subsequent to the development period, the Trustees, may add to the above items.

10.3 The budget shall be approved, with or without amendments, by the Owner and Members by Ordinary Resolution at each Annual General Meeting.

11. LEVIES AND LEVY INDEMNITY

11.1 The total budget referred to in clause 10 above shall be apportioned as between all the Dwellings in the Development in proportion to the respective floor area expressed as a percentage to four decimal places of the entire floor area of all the Dwellings comprising the Development.

11.2 No Member shall enjoy the privileges of usage of the private open spaces or facilities or be entitled to cast any vote at any General Meeting unless he has paid every Levy, or other sum (if any), which may be due and payable by such Member to the Body Corporate in terms of this Constitution.

11.3 All Levies shall be paid, in advance, on the first day of each month and every Member shall arrange for payment to the Body Corporate by a method acceptable to the Trustees.

11.4 If any Member fails to pay in full his/her Levies or such other amount payable to the Body Corporate on due date, the Body Corporate may institute an action for the recovery thereof in any competent court.

11.5 A Member shall be liable for all legal costs, including attorney and own client costs, collection commission, expenses, and other charges, administrative or otherwise, incurred by the Body Corporate in obtaining the recovery of arrear Levies and/or any other arrear amounts due to it, and/or in enforcing compliance with this Constitution, any annexure thereto, and/or the Management and Conduct Rules.

11.6 The Body Corporate, at the discretion of the Trustees, shall be entitled to charge interest nominal annual compounded monthly (NACM) on any arrear amounts at the Prime Rate or such higher rate as the Trustees may from time to time determine. Interest aforesaid is recoverable from date on which the amount is due and payable to the date of payment.

11.7 The Developer shall be liable for the cleaning and general maintenance of empty stands earmarked for future development which the Developer can at its discretion outsource to the Body Corporate or any other party as appointed by the Developer. The Developer shall however not be liable for any levies on any empty land. The Developer shall not be liable to pay levies on units not occupied by a tenant.

THE TRUSTEES AND MANAGEMENT

12. OFFICE AND APPOINTMENT

The Trustees of the Body Corporate shall comprise as follows:

12.1 During the Development Period, there shall be 1 (One) Chairman and a maximum of 5 (Five) Trustees; 3 (three) Trustees to be nominated by the Developer in order to ensure

that the Developer's interest in the Development is secure, and 2 (two) Trustees to be nominated by the Body Corporate.

12.2 After the expiry of the Development Period, there shall be a maximum of 5 (Five) Trustees, being the Trustees as set out in clause 12.1 above, save that there shall be no Developer Trustee.

12.3 No Member may hold office or act as a Trustee, appoint an alternate or appoint any third party to act as Trustee while in arrears with his/her Levies or who has any outstanding amounts owing to the Body Corporate.

12.4 Not later than 7 (Seven) days before the date on which the Annual General Meeting is to take place, Members shall nominate their proposed Trustees in writing and deliver to the existing Trustees (or Managing Agent) such written nomination and acceptance by the nominee/s. The persons nominated as Trustees shall be regarded as the elected Trustees and such appointment shall be confirmed at the AGM. In the event that there are more nominations for Trusteeship than are allocated to any particular class of Members, then the appointment of the Trustees for such class of Members shall be voted on by such class of Members at the AGM.

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

12.6 Subject to the provisions of Clause 12.7 below, each Trustee shall continue to hold office until the Annual General Meeting of the Body Corporate 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 at such meeting.

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

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

12.6.3 his making any arrangement or composition with his creditors;

12.6.4 his conviction for any offence involving dishonesty;

12.6.5 his becoming of unsound mind and/or being found to lack mental capacity;

12.6.6 within 14 (Fourteen) days of receipt of written notice of resignation given to other Trustees by the relevant Trustee;

12.6.7 his death;

12.6.8 his being removed from office by an Ordinary Resolution of the Members at a General Meeting of the Members of the Body Corporate.

12.7 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 12.6 of this Constitution, 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 minute book of the Trustees. Should the office of a Trustee fall vacant prior to the next Annual General Meeting of the Body Corporate, the remaining Trustees shall be entitled to co-opt a replacement to hold office as Trustee until

the next Annual General Meeting, provided such appointment is in accordance with the provisions of this Constitution.

12.8 Prior to the first General Meeting and at the first General Meeting, the Chairman shall be appointed by the Developer and shall remain so appointed until he/she vacates his/her position, to be taken over by another employee of the Developer as Chairman.

12.9 Within 7 (seven) days of the holding of the inaugural Annual General Meeting of the Body Corporate and within 7 (seven) days after each subsequent Annual General Meeting of the Body Corporate, the Trustees shall meet and shall elect a Chairman who shall hold office until the Annual General Meeting held next after his appointment, provided that the office of chairman shall *ipso facto* be vacated upon his ceasing to be a Trustee for any reason.

12.10 Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustees and at all General Meetings of the Body Corporate and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustees or by the Members and in General Meeting. The Chairman shall be vested with the power and discretion to decide whether or not guests or invitees of any Member should be permitted to speak at any meeting of the Trustees or at any General Meeting of the Members of the Body Corporate and shall act reasonably in this regard.

12.11 If the Chairman vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Trustees shall elect a replacement Chairman for such meeting from amongst their number.

12.12 If the Chairman vacates his office as Chairman or no longer continues in office for any reason, the Trustees shall elect a replacement Chairman who shall hold office as such for the remainder of the period of office of the first mentioned Chairman.

12.13 No contract concluded by the Trustees whereby the Trustees bind the Body Corporate shall be valid and binding unless it is signed by the Chairman and one Trustee, the latter having been specifically appointed as authorised signatory in terms of a resolution of Trustees.

12.14 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Trustees and/or as Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties, unless such remuneration has been approved by the Members in General Meeting.

12.15 Trustees shall not make loans on behalf of the Body Corporate to Members or to themselves.

13. FUNCTIONS, POWERS AND DUTIES OF TRUSTEES

13.1 Subject to the express provisions of this Constitution, the Trustees shall manage and control the business and affairs of the Body Corporate, shall have full powers in the management and direction of such business and affairs, and may exercise all such powers of the Body Corporate and do all such acts on behalf of the Body Corporate as may be exercised and done by the Body Corporate.

13.2 Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Body Corporate the services of accountants, advocates, attorneys, auditors, managing agents, or any other professional firm or person or other employees or contractors whatsoever for any reason deemed necessary by the Trustees on such terms as the Trustees shall decide.

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

13.4 The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee of this Constitution in such reasonable manner as they shall decide from time to time, and to take appropriate steps to remedy such breach.

13.5 The Trustees may make rules not inconsistent with this Constitution or any other rules prescribed by the Body Corporate in General Meeting:

13.5.1 as to the resolution of disputes generally;

13.5.2 for the furtherance and promotion of any of the objects of the Body Corporate;

13.5.3 for the better management of the affairs of the Body Corproate;

13.5.4 for the advancement of the interests of Members; and

13.5.5 for the conduct at meetings.

13.6 Subject always to the provisions of this Constitution, the Trustees shall have all powers which may be required:

13.6.1 to levy and collect contributions from Members in accordance with this Constitution;

13.6.2 to levy and recover from Members moneys which are necessary to defray the necessary expenses of the local authority in the event of the local authority imposing any levies and imposts against the Body Corporate;

13.6.3 to assist them in administering and governing the Development generally.

13.7 Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include:

13.7.1 the determination of what constitutes appropriate standards for the operation of the Development and conduct of those residing within the Development, maintenance, repairs, additions to and improvements of all common amenities of the Development and the Common Property of the Development.

13.7.2 the making of, entering into and carrying out of agreements with third parties on behalf of the Body Corporate for any purposes of the Body Corporate;

13.7.3 the employment on behalf of the Body Corporate of agents, employees and any other party and the payment of such persons;

13.7.4 the taking of steps in all matters of common interest in respect of the Body Corporate and, without detracting from the generality thereof, such as sewage, electricity supply, landscaping, maintenance of private roads, refuse facilities, removal of refuse, where applicable;

13.7.5 the institution or defence of actions in the name of the Body Corporate and the settlement of such and the appointment of legal representatives to act in behalf of the Body Corporate;

13.7.6 the power to call a General Meeting of the Members of the Body Corporate of their own volition or upon a written request therefor by the Members holding not less than 25 (Twenty Five) percent of the total number of votes allocated to Members.

14. FINANCIAL YEAR-END

The financial year-end of the Body Corporate is the last day of February of each year, or such other date as may be determined by the Trustees from time to time.

15. BOOKS OF ACCOUNT

15.1 The Trustees shall cause proper books of account and records to be kept so as to record and fairly to explain the transactions and financial position of the Body Corporate including:

15.1.1 a record of the assets and liabilities of the Body Corporate;

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

15.1.3 a register of all Members, reflecting their addresses and contact details.

15.2 The Trustees shall cause all books of account and records to be retained for a period of 3 (Three) years after completion of the transactions, acts or operations to which they relate.

15.3 The Trustees may from time to time make reasonable rules as to the time and manner of the inspection by Members of the accounts and books of the Body Corporate, or any of them, and subject to such conditions and regulations, the accounts and books of the Body Corporate shall be open to the inspection by Members at all reasonable times during normal business hours.

15.4 At each Annual General Meeting the Trustees shall lay before the Body Corporate financial statements for the immediately preceding financial year of the Body Corporate. 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.

16. **DEPOSIT AND INVESTMENT OF FUNDS**

16.1 The Trustees shall cause all moneys received by the Body Corporate to be deposited to the credit of an account or accounts with a registered commercial bank, subject to any directions given or restrictions imposed at a General Meeting of the Body Corporate, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Body Corporate or for investment of such funds.

16.2 Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any registered bank approved of by the Trustees from time to time.

16.3 Interest on moneys invested shall be used by the Body Corporate for any lawful purpose in the interests of the Body Corporate, as determined by the Trustees.

17. **AUDIT**

17.1 Once at least in every year, the accounts of the Body Corporate shall be examined, and the correctness of the income and expenditure account and balance sheets ascertained by the auditors.

17.2 The duties of the auditors shall be regulated in accordance with general practice and the applicable professional standards.

18. **MANAGING AGENT**

18.1 The Trustees shall, in addition to the powers contained herein, have the power from time to time, to appoint in terms of a written contract, the Managing Agent to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Managing Agent by the Trustees, including the power to collect levies.

18.2 With effect from date of establishment of the Corporate or as soon as required and practically possible thereafter, the Developer Trustee shall appoint the Managing Agent; provided that such Managing Agent complies with the NAMA Code of Conduct and the Management Agreement.

MEETINGS

19. **TRUSTEES' MEETINGS AND RESOLUTIONS**

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

19.2 Meetings of the Trustees shall be held at least once every 3 (Three) months, unless waived by means of a round robin resolution of the Trustees.

19.3 The Chairman shall have the right to convene meetings of the Trustees, in a manner as may be decided by the Trustees from time to time.

19.4 A resolution in writing signed by all the Trustees shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and constituted.

19.5 No resolution or purported resolution of the Trustees shall be of any force or effect or shall be binding upon the Member or Trustees unless such resolution is competent within the powers of the Trustees.

19.6 The quorum necessary for the holding of any meeting of Trustees shall be 5 (Five) Trustees.

19.7 Any resolution of the Trustees shall be carried by a simple majority of all votes cast, each Trustee having one vote.

19.8 There shall be no casting vote for the Chairman of the Trustees.

20. GENERAL MEETINGS

20.1 The Body Corporate shall, at a date, place and time determined by the Developer, hold its first General Meeting, which shall be the Inaugural Annual General Meeting. Thereafter, within 3 (Three) months of each financial year-end of the Body Corporate, it shall hold subsequent Annual General Meetings.

20.2 General Meetings may be held at such time and place, subject to the aforegoing provisions, as the Trustees shall decide from time to time.

20.3 Every Member shall be notified of all General Meetings, and shall be entitled to attend, speak and vote at any General Meeting, unless precluded or disqualified by the provisions of this Constitution.

21. NOTICE OF GENERAL MEETINGS

21.1 An Annual General Meeting shall be called on not less than 21 (Twenty-One) days' notice to all Trustees and all Members, and a General Meeting by not less than 14 (Fourteen) days' notice to all Trustees and all Members. The notice shall specify the place, the day and the hour of the meeting and, in the case of special business in addition to any other requirements contained in this Constitution, the general nature of that business and the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the Trustees, to such persons as are, under this Constitution, entitled to receive such notices from the Body Corporate.

21.2 Notice of the Annual General Meeting shall be given to Members in the manner specified in clause 27 below, and delivery of additional copies to the Developer and to each Trustee personally, where practical.

21.3 The non-receipt of notice of a meeting by any person entitled to receive such notice, other than to the Developer / Owner, shall not invalidate the proceedings of that meeting.

22. **QUORUM FOR GENERAL MEETINGS**

22.1 The quorum necessary for the holding of any General Meeting shall be not less than 25 (Twenty-Five) percent of the total number of votes allocated to all the Members.

22.2 If, within 30 (Thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the 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 or represented by proxy shall constitute a quorum.

23. **AGENDA AT ANNUAL GENERAL MEETINGS**

In addition to any other matters required by legislation or by this Constitution to be dealt with at any Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

23.1 consideration of the Chairman's report;

23.2 the confirmation of the appointment (or the election thereof as the case may be), of the Trustees and the conduct of any voting in terms of this Constitution which may be required to fill the categories of Trustees.

23.3 consideration of the financial statements of the Body Corporate for the last financial year of the Body Corporate preceding the date of such meeting;

23.4 the consideration and confirmation of the budget as presented by the Trustees;

23.5 the appointment of the auditors of the Body Corporate;

23.6 confirmation of the appointment of the Managing Agent by the Trustees;

23.7 any other business pertinent to such meeting, including any resolutions proposed for adoption by such meeting and the voting upon any such resolutions.

24. **PROCEDURE AT GENERAL MEETINGS**

24.1 The Owner Members shall elect a Chairman to preside at the General Meeting;

24.2 The Chairman shall preside as such at all General Meetings provided that should he not be present within 15 (Fifteen) minutes after the time appointed for the holding thereof, then the Trustees present at such meeting shall vote to appoint a replacement Chairman for such General Meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such General Meeting.

24.3 Save as otherwise provided in this Constitution, the proceedings at any General Meeting shall be conducted in such reasonable manner and form as the Chairman of such meeting shall decide.

24.4 The Chairman may adjourn any General Meeting from time to time and from place to place. No notice need to be given of the adjourned meeting save for an announcement at the relevant meeting of the date, time and venue of the adjourned meeting unless the

meeting is to be adjourned for 30 (Thirty) days or more, in which event notice is to be given in the same manner as for the original General Meeting. No business shall be transacted at any adjourned meeting other than the business that might have been transacted at the meeting from which the adjournment took place.

24.5 Unless any representative present 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, or as 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 aspects be deemed to have been properly and validly constituted and conducted. An entry in the minutes of the Body Corproate to the effect that any resolution has been adopted or rejected, 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.

24.6 Voting shall be on a show of hands for each category of Members as called for by the Chairman; provided however that the Chairman or the Members in General Meeting may call for a secret ballot in which event the voting shall be so conducted and counted by the Trustees or by the Managing Agent.

25. **VOTING AT GENERAL MEETINGS**

25.1 At every General Meeting, the Owner Member shall have one 1 (One) vote for each Dwelling owned.

25.2 There shall be no casting vote for the Chairman of any General Meeting.

25.3 Votes at a general meeting may be cast either personally or by proxy, on a show of hands.

25.4 A proxy shall be appointed in writing under the hand of the appointer, or his agent duly appointed in writing, and shall be handed to the Chairman 24 (Twenty-Four) hours prior to the commencement of the General Meeting.

MEMBERS AND OWNERS' RIGHTS AND OBLIGATIONS

26. **GENERAL**

26.1 Every Member and the Developer shall be obliged to comply with:

26.1.1 the provisions of this Constitution, its annexures, and all rules or regulations passed by the Body Corporate or by the Trustees;

26.1.2 the provisions of the Management and Conduct Rules;

26.1.3 any agreement concluded by the Body Corporate insofar as such agreement may directly or indirectly impose obligations on a Member;

26.1.4 any reasonable directive given by the Body Corporate and/or by the Trustees in enforcing the provisions of this Constitution.

26.2 Every Member shall to the best of his ability, further the objectives and interests of the Body Corporate.

27. DOMICILIUM OF OWNER

27.1 The *domicilium citandi et executandi* of each Member at which all documents and notices may be delivered or legal process served, shall be the street address of the Member's Dwelling in the Development.

27.2 It shall be competent to give any notice to a Member by email where the Member has advised the Trustees in writing of the email address.

27.3 Notice shall be deemed to have been properly served on the date, 5 (Five) days after the posting of the notice to the member's *domicilium* address, or if emailed or delivered by hand then on the day of emailing or delivery thereof to the Member's elected email address or *domicilium* address respectively.

28. CONDUCT AND OBLIGATIONS OF MEMBERS

28.1 Each Member shall be obliged to adhere to the Management and Conduct Rules annexed to this Constitution and as amended from time to time by the Trustees, and in addition shall:

28.1.1 comply with all security procedures and directives implemented and issued from time to time by the Trustees;

28.1.2 ensure that he/she and his/her invitees comply at all times with the said Management and Conduct Rules and do not damage or destroy trees, vegetation and landscaping on open areas of the Development;

28.1.3 make use of the communal television aerial(s), satellite dishes and services that may be arranged by the Trustees from time to time and may not affix anything to the exterior of the Dwelling, without the prior written consent of the Trustees.

29. BREACH

29.1 The Trustees may on behalf of and in the name of the Body Corporate, institute legal proceedings against Members who are in breach of any of the provisions of this Constitution and the Management and Conduct Rules

29.2 The Trustees may on behalf of and in the name of the Body Corporate serve notice on such Member in breach, calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance:

29.2.1 call upon such Member in writing to remove or alter within a specified period any portion of the improvements or any addition erected contrary to the provisions of this Constitution and/or the Management and Conduct Rules

and/or

29.2.2 institute proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary and such Member shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief. Such costs and expenses may be added to the account of the relevant Member in the same way as applies to arrear Levies, together with interest at the rate applicable to Levies.

and/or

29.2.3 implement procedures to impose penalties or fines in terms of the provisions of this Constitution.

29.3 Where a Member, and/or other occupants of his/her Dwelling, and/or his/her visitors, invitees or guests, continually fail to observe the Management and Conduct Rules and/or other rules and regulations in operation from time to time, to the extent that the Trustees of the Body Corporate are of the opinion that such conduct is a disruption or disturbance or danger to other Members, or where such ongoing conduct is such that it is inconsistent with an intention on the part of a Member to comply with the provisions of this Constitution and/or the Management and Conduct Rules, then the Trustees may take legal action against such persons.

29.4 In the event of any breach of this Constitution and/or the Management and Conduct Rules by a Member or by the members of any Member's household or by his invitees, guest/s or by occupiers of his/her Dwelling, such breach shall be deemed to have been committed by the Member himself himself/herself and, without prejudice to the aforegoing, the Trustees shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the relevant Member.

INCLUSIONARY HOUSING UNITS

30. **DEFINITIONS**

30.1 For the purpose of clauses 30 and 31 the term ‘’**Inclusionary Housing Unit**’’ shall, as a minimum requirement of the Stellenbosch Municipality, have the meanings ascribed as follows -

30.1.1 a unit that will be marketed at a selling price of no more than R1 200 000.00 (including VAT) per unit by the Developer, which selling price shall escalate from the first day of May 2024 to the date of marketing of such unit by the Developer ("the Marketing Date") by the greater of CPI and BCI;

30.1.2 a unit that may for a period of 8 (eight) years after the First Transfer Date not be sold for a price that escalates with more than the greater of BCI and CPI per annum from the First Transfer Date on the initial purchase price;

30.1.3 a rental unit which will be leased by the Developer to a private person or persons whose monthly income does not exceed R27 200.00 (2022) which amount will be amended yearly in terms of the CPI.

30.2 For the purpose of clauses 30 and 31 the following words shall have the meaning ascribed as follows -

30.2.1 "**BCI**" means BER Building Cost Index as published by the South African Bureau for Economic Research from time to time or, if such index ceases to be published, any similar index;

30.2.2 "**CPI**" means the weighted annual average consumer price index (all items) as published by Statistics South Africa from time to time or, if such index ceases to be published, any similar index;

30.2.3 "**First Transfer Date**" means the date on which Transfer of the relevant Inclusionary Housing Unit from the Developer to a third party purchaser is registered;

30.2.4 ''**Transfer**'' means the registration by the Registrar of Deeds in the relevant Deeds Office, of the transfer of an Inclusionary Housing Unit from the Developer into the name of a purchaser thereof.

31. **GENERAL**

31.1 The inclusionary housing units shall include the following:

31.1.1 Block B: Units 2-101, 2-102, 2-103, 2-201, 2-202, 2-203, 2-301, 2-302, 2-303, 2-401, 2-402 and 2-403

31.1.2 Block C: Units 3-101, 3-102, 3-103, 3-201, 3-202, 3-203, 3-301, 3-302, 3-303, 3-401, 3-402 and 3-403

31.1.2 Block D: Units 4-101, 4-102, 4-103, 4-104, 4-105, 4-201, 4-202, 4-203, 4-301, 4-302, 4-303, 4-401, 4-402 and 4-403

31.1.3 Block L: Units 12-101, 12-102, 12-103, 12-201, 12-202, 12-203, 12-301, 12-302, 12-303, 12-401, 12-402 and 12-403.

31.2 No Inclusionary Housing Unit may, for a period of 8 (eight) years after the First Transfer Date, be sold at a price that escalates with more than the higher of CPI and BCI per annum from the First Transfer Date. Such units cannot be sold, by the registered owner thereof for a period of 8 (eight) years after the First Transfer Date unless such unit is sold

as an Inclusionary Housing Unit. This condition will be included as a condition of title in the title deed of each Inclusionary Housing Unit.

31.3 The Body Corporate shall provide annual reports to the Local Authority to assist the Local Authority with its role in respect of monitoring of the Inclusionary Housing Units and information so furnished shall be as required by the Local Authority's Inclusionary Housing policy.

GENERAL

32. CONSTRUCTION PERIOD

32.1 The development will be constructed in phases by the Developer during the development period.

32.2 The Developer shall enjoy unrestricted rights with regard to the marketing of the Development and, in particular, the right to erect signage within the Development and to perform all activities normally associated with the development of the Development and building operations.

33. INDEMNITY OF TRUSTEES

33.1 All the Trustees are indemnified by the Body Corporate against any liabilities *bona fide* incurred by them in their capacities as such and in the case of the Chairman in his capacity as Chairman, 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.

33.2 A Trustee shall not be liable for the acts, or omission of the auditors or of any of the other Trustees whether in their capacities as Trustees or as Chairman or for any loss or expense sustained or incurred by the Body Corporate through the insufficiency or deficiency of any security in or upon which monies of the Body Corporate are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any monies, 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 *mala fides*, or breach of trust or gross dereliction of duty.

34. RISK

Any person using any of the services, Land, buildings, structures or facilities of the Development does so entirely at his own risk and shall have no claim against the Body Corporate or the Trustees for whatsoever cause arising.

35. AMENDMENT OF THE CONSTITUTION

Any amendment, substitution, or repeal of a provision of this Constitution shall require the approval of at least 75 (Seventy Five) percent of the total number of votes of all Members. Notwithstanding the aforegoing, the creation and amendment of the Management and Conduct Rules or House Rules shall be carried by a simple majority of the Trustees, each Trustee having one vote.

36. **IMPOSITION OF PENALTIES**

36.1 If the conduct of a Member, or of an occupier or of a Member's visitors, invitees, guests or employees, constitutes a nuisance in the opinion of the Trustees, or if any of the aforegoing contravenes, breaches, disobeys or disregards this Constitution or any rules in respect this Constitution, the Trustees may furnish the Member and occupier (if applicable) with a written notice which may in the discretion of the Trustees be delivered by hand or by email. In the notice the particular conduct, which constitutes a nuisance, shall be adequately described or the clause or rule that has allegedly been contravened shall be clearly indicated, and the Member shall be warned that if such conduct or breach persists, the Trustees shall take action against such Member in breach, in accordance with the provisions of this Constitution, which may or may not include the imposition of a fine or fines upon such Member.

36.2. A written notice by which the Member is informed of the holding of a Trustees meeting, the purpose of the meeting and an invitation to attend, shall be sent to the Member and occupier (if applicable) at least 7 (Seven) days before the Trustees meeting is held. At the Trustees meeting the Member and occupier (if applicable) shall be given the opportunity to present his/her/their case, orally or by way of a submission in writing, and except in so far as may be permitted by the chairperson, he/they may not participate in the affairs and/or voting at the Trustees meeting.

36.3. After the Member or occupier (if applicable) has been given the opportunity to present his/her/their case, the Trustees may, impose upon the Member, an initial penalty for the first offence and a subsequent penalty for every similar offence thereafter. In the event that the relevant Member and/or occupier (if applicable), fails to attend the Trustees meeting, this shall not invalidate any penalty imposed by the Trustees. Should the relevant Member wish to avail himself/herself of the provisions relating to dispute resolution as set out in clause 37 below, he/she shall lodge a written request therefore at such Trustees meeting, failing which such Member shall be deemed not to be in dispute of such penalty imposed.

36.4. Any fine imposed in terms of 36.3, may if it is not paid within 14 (Fourteen) days after the Member has been notified of the imposition of the fine, be added to the Member's account with the Body Corporate, and claimed and recovered by the Body Corporate, subject to interest at the rate applicable to Levies, and subject to the recovery of attorney and own client costs and expenses, as in the case of Levies.

36.5. The Trustees may, from time to time, determine the amount of the initial and subsequent penalties.

37. **DISPUTE RESOLUTION**

37.1 In the first instance any dispute between Members or between Members and the Body Corporate and/or Trustees, shall be referred to the Community Developments Ombud Service in terms of the Community Developments Ombud Service Act, No. 9 of 2011.

37.2 Should any dispute or difference arise between Members or between a Member and the Body Corporate and/or the Trustees, in regard to:

37.2.1 the interpretation or effect of this Constitution or their respective rights or obligations thereunder;

37.2.2 a breach of the Management Conduct Rules;

37.2.3 a breach of (save for non-payment of Levies or any other amount due by a Member in terms of this Constitution), this Constitution or any of its ancillary documents, and such dispute falls outside the jurisdiction of the Community Developments Ombud Service, then such dispute shall be decided by arbitration in the manner set out in this clause.

37.3 In respect of any claim arising from non-payment of Levies or any other amount due by a Member to the Body Corproate in terms of this Constitution, the Body Corporate and Trustees shall continue to enjoy common law rights and shall not be precluded from instituting proceedings in any court of competent jurisdiction.

37.4 The arbitration referred to in clause 37.2 shall:

37.4.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and

37.4.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (Thirty) days after it is demanded; and

37.4.3 be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.

37.5 The arbitrator shall be a practicing junior counsel or attorney of not less than 10 (Ten) years standing appointed by agreement between the parties to the arbitration within 7 (Seven) days of being called upon to make such appointment and failing such agreement within the 7 (Seven) day period, appointed by the President of the Legal Practice Council, Western Cape.

37.6 The arbitrator shall in giving his award have regard to the principles contained in this Constitution and the Management and Conduct Rules, and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of law need not be observed or be taken into account by him in arriving at his decision.

37.7 The arbitrator's decision shall be presented within 10 (Ten) days after the completion of the arbitration hearing in a written document and he shall state the reasons for his decision therein. The unsuccessful party shall pay the costs of the arbitration unless

otherwise determined by the arbitrator who shall require good reason to depart from this principle.

37.8 Each of the parties to the arbitration irrevocably agrees that the decision of the arbitrator made at such arbitration proceedings:

37.8.1 shall be final and binding on each of them; and

37.8.2 shall be carried into effect immediately; and

37.8.3 may be made an order of the High Court.

37.9 Notwithstanding anything to the contrary contained in this clause, the Trustees shall be entitled to institute legal proceedings on behalf of the Body Corporate by way of application, action or otherwise in any Court having jurisdiction for the purpose of restraining or interdicting breaches of any of the provisions of this Constitution, including the Management and Conduct Rules for any order of an urgent nature.

38. CLUB HOUSE

38.1 It is recorded that a Club House shall be erected as part of the Development for the beneficial use and enjoyment of the Members and their guests.

38.2 It is recorded that the Club House shall consist of:

38.2.1 Deli for use and enjoyment of the Members and their guests;

38.2.2 Co-working space for use and enjoyment of the Residents and their guests, however, prior written approval must be obtained for guests to utilise this space; and

38.2.3 Gym for use and enjoyment of the Residents only.

39. PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013 (“POPIA”)

39.1 The Body Corporate is obligated to ensure that it complies with the POPIA.

39.2 Primarily the POPIA requires the Body Corporate to ensure that eight conditions are complied with when the Body Corporate processes personal information. This is in terms of Chapter 3 of POPIA.

39.3 The Body Corporate is accountable for the personal information it processes and stays accountable and responsible for that personal information.

39.4 Personal information can only be processed by the Body Corporate if done so lawfully. The Body Corporate processes personal information for the purposes of the administration and management of the scheme.

39.5 The further processing of personal information by the Body Corproate can only be performed if compatible with the original purpose that the personal information was collected for.

39.6 The Body Corporate must take reasonable and practicable steps to ensure that personal information records are complete, accurate, not misleading, and updated where necessary.

39.7 The Body Corporate undertakes to be transparent about why they need a Member's personal information and how they intend using and processing it.

39.8 The Body Corporate undertakes to take appropriate, reasonable, technical and organisational measures to secure the integrity and confidentiality of the personal information it processes and to prevent loss, damage, unauthorised destruction and unlawful processing of the personal information.

39.9 Members have the right to ask whether the Body Corporate holds certain personal information about them, to request copies of their personal information records and the details of all third parties who have or had access to that information.

39.10 Personal information is primarily information of a Member such as their ID number, email address, physical address, telephone number, biometric information and private correspondence sent by that person.

39.11 The Body Corporate must at all times maintain an updated POPIA manual, compliant with the POPIA and any amendments thereto.

39.12 The POPIA Manual and its contents are binding upon the Members of the Body

Corporate.

39.13 The Body Corporate must appoint an Information Officer to ensure compliance with the POPIA.

39.14 Failure by a Member to comply with the contents of the POPIA manual may result in a complaint being lodged by the Trustees with the Information Regulator.

39.15 The Body Corporate can only collect personal information for a specific, explicitly defined and lawful purpose. The Body Corporate processes personal information for the purposes of the administration and management of the scheme.

39.16 The approved POPIA manual for the Body Corporate must set out the above eight conditions, the obligations of the Body Corporate in respect of the POPIA and the rights of Members in regard to the POPIA.

39.17 The Information Officer, in his/her discretion, taking into consideration the provisions of the POPIA, must determine which record/s and/or document/s are confidential, and may not be distributed without the prior written consent of the person/s to which it relates.

39.18 Members have the right to submit a complaint to the Information Regulator appointed in terms of the POPIA when there has been interference with the protection of their personal information.

39.19 Civil proceedings may also be instituted against the Body Corporate by Members when there has been interference with the contents of the Member's personal information.

40. PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 ("PAIA")

40.1 The Body Corporate is obligated to ensure that it complies with the PAIA.

40.2 The Body Corporate must at all times maintain an updated PAIA manual, compliant with the POPIA and any amendments thereto, describing the types of records the Body Corporate holds and procedures in place when access to information is requested.

40.3 The PAIA Manual and its contents are binding upon the Members of the Body Corporate.

40.4 The Information Officer of the Body Corporate, in his/her discretion, taking into consideration the provisions of the POPIA, must determine which record/s and/or document/s are confidential, and may not be distributed without the prior written consent of the Member/s or person/s to which it relates.

40.5 When receiving a request for access to the records and documents of the Body Corporate for the purpose of inspection and copy/ies, the Information Officer must ensure that such request is in compliance with the POPIA, in that no such request will be permitted if the reason for such request is not provided by the party requesting such access for inspection and copy/ies, and further if the reason/s provided are not deemed reasonable in regard to the administration and management of the Body Corporate, or any legitimate purpose applicable in terms of its governing documentation.

40.6 When a requesting party is in receipt of any record/s and/or document/s of the Body Corporate, such person is responsible to ensure compliance with the POPIA in their intended use of the record/s and/or document/s so obtained.

40.7 Primarily the PAIA requires the Body Corporate to ensure and promote an individual's constitutional right of access to information of the Body Corporate. The main objective is to promote openness, accountability and effective governance by the Body Corporate.

40.8 Upon receipt of a request for access to the records and documents of the Body Corporate for the purpose of inspection and copy/ies, the Information Officer must ensure that such request is made by a registered member/s or a person duly authorised in writing by the registered member/s or its duly authorised representative.

41. OWNERS' ASSOCIATIONS THAT CEASE TO FUNCTION – SECTION 30 of the STELLENBOSCH MUNICIPALITY: BY-LAW ON MUNICIPAL LAND USE PLANNING 2023

41.1 If the Body Corporate ceases to function or carry out its obligations, any affected person, including a member of the Body Corporate, may apply—

41.1.1 in terms of Section 15(2)(p) to disestablish the Body Corporate subject to:

(a) the amendment of the conditions of approval to remove the obligation to establish a Body Corporate; and

(b) the amendment of title conditions pertaining to the Body Corporate, to remove any obligation in respect of a Body Corporate;

41.1.2 in terms of Section 15(2)(q) for appropriate action by the Municipality to rectify a failure of the Body Corporate to meet any of its obligations in respect of the control over or maintenance of services contemplated in Subsection 29(3)(b); or

41.1.3 to the High Court to appoint an administrator who must exercise the powers of the Body Corporate to the exclusion of the Body Corporate.

41.2 In considering an application contemplated in Subsection (1)(a), the Municipality must have regard to:

(a) the purpose of the Body Corporate;

(b) who will take over the control over and maintenance of services for which the Body Corporate is responsible; and

(c) the impact of the disestablishment of the Body Corporate on the members of the Body Corporate and the community concerned.

41.3 The Municipality or the affected person may recover from the members of the Body Corporate the amount of any expenditure incurred by the Municipality or that affected person, as the case may be, in respect of any action taken in terms of Subsection (1).

41.4 The amount of any expenditure so recovered is, for the purposes of Section 29(7)(a), considered to be expenditure incurred in connection with the Body Corporate.