



# STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Ref no.3/4/1/5

2019-11-08

## NOTICE OF A URGENT MEETING OF THE COUNCIL OF STELLENBOSCH MUNICIPALITY MONDAY, 2019-11-11 AT 10:00

<b>TO</b>	The Speaker, Cllr WC Petersen (Ms) [Chairperson] The Executive Mayor, Ald G Van Deventer (Ms) The Deputy Executive Mayor, Cllr N Jindela	
<b>COUNCILLORS</b>	F Adams FJ Badenhorst FT Bangani-Menziwa (Ms) Ald PW Biscoombe G Cele (Ms) PR Crawley (Ms) A Crombie (Ms) Z Dalling (Ms) R Du Toit (Ms) J Fasser A Florence AR Frazenburg E Fredericks (Ms) T Gosa E Groenewald (Ms) JG Hamilton AJ Hanekom DA Hendrickse JK Hendriks LK Horsband (Ms)	MC Johnson DD Joubert N Mananga-Gugushe (Ms) C Manuel NE Mcombring (Ms) XL Mdemka (Ms) C Moses (Ms) RS Nalumango (Ms) N Olayi MD Oliphant SA Peters MM Pietersen WF Pietersen SR Schäfer Ald JP Serdyn (Ms) N Sinkinya (Ms) P Sitshoti (Ms) Q Smit LL Stander E Vermeulen (Ms)

Notice is hereby given in terms of Section 29, read with Section 18(2) of the *Local Government: Municipal Structures Act, 117 of 1998*, as amended, that a **URGENT MEETING** of the **COUNCIL** of **STELLENBOSCH MUNICIPALITY** will be held in the **COUNCIL CHAMBER, TOWN HOUSE, PLEIN STREET, STELLENBOSCH** on **MONDAY, 2019-11-11 at 10:00.**

**SPEAKER**  
**WC PETERSEN (MS)**

**A G E N D A**

**URGENT MEETING OF THE COUNCIL**

**OF STELLENBOSCH MUNICIPALITY**

**2019-11-11**

**TABLE OF CONTENTS**

<b>ITEM</b>	<b>SUBJECT</b>	<b>PAGE</b>
<b>1.</b>	<b>OPENING AND WELCOME</b>	
<b>2.</b>	<b>APPLICATION FOR LEAVE OF ABSENCE</b>	
<b>3.</b>	<b>DISCLOSURE OF INTEREST</b>	
<b>4.</b>	<b>URGENT MATTERS SUBMITTED BY THE MUNICIPAL MANAGER</b>	
4.1	CONFIRMATION OF THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK IN RESPONSE TO THE COUNCIL DECISION OF 2 AUGUST 2019	3
4.2	PROPOSED SETTLEMENT AGREEMENT LA CONCORDE SOUTH AFRICA(PTY) LTD ("LA CONCORDE") VS STELLENBOSCH MUNICIPALITY IN REGARD TO FARM 369P AND FARM 370 STELLENBOSCH	10
4.3	ACQUISITION OF ERF 1852, STELLENBOSCH <b>(IN-COMMITTEE ITEM) ITEM TO BE DISTRIBUTED UNDER SEPARATE COVER IN DUE COURSE</b>	



4.	MATTERS SUBMITTED BY THE MUNICIPAL MANAGER
4.1	CONFIRMATION OF THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK IN RESPONSE TO THE COUNCIL DECISION OF 2 AUGUST 2019

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Urgent Council: 11 November 2019

1. **SUBJECT: CONFIRMATION OF THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK IN RESPONSE TO THE COUNCIL DECISION OF 2 AUGUST 2019**

2. **PURPOSE**

To obtain Council's confirmation of the maps contained in the *mSDF* after the final approval of the *mSDF* on 2 August 2019.

3. **DELEGATED AUTHORITY**

Council.

4. **EXECUTIVE SUMMARY**

After submission of the *mSDF* to the province, we received a letter dated 4 November 2019 (see **ANNEXURE 1**) requesting Council to confirm the urban edge maps, in particular figure 28 (see page 70 of the *mSDF*) in line with the Council resolution w.r.t. the *mSDF* adoption dated 2 August 2019. This is due to Council's request to exclude erf 1049/3, i.e. Brandwacht, from the urban edge. On the basis of the Council resolution taken on 2 August 2019, it is required that Council confirm the maps, in particular figure 28 in line with the Council decision.

The letter from the provincial government also indicated an error with the urban edge in the northern extension regarding the farm 81/33 which should be included within the urban edge.

Once Council has had an opportunity to confirm the 2019 *mSDF* with the urban edges, the *mSDF* together with the related IDP Amendment which takes the new *mSDF* into account, will be submitted to Minister Anton Bredell (Minister of Local Government, Environmental Affairs and Development Planning) in accordance with section 14 of the Western Cape Land Use Planning Act, 2014 (LUPA).

5. **RECOMMENDATIONS**

- (a) that the corrected maps aligned with the approved IDP Amendment as contained in the *mSDF* attached as **ANNEXURE 2** be approved and confirmed as the final maps outlining the urban edge, as per Council decision of 2 August 2019; and
- (b) that the approved *mSDF* and IDP Amendment be submitted within 10 working days to the Minister of Local Government, Environmental Affairs and

Development Planning, as required in accordance with section 14 of the Western Cape Land Use Planning Act, 2014 (LUPA).

## **6. LEGAL CONTEXT**

*In terms of section 6(4) of the Stellenbosch Municipal Land Use Planning By-law, 2015 read together with Section 20(3) of the Spatial Planning and Land Use Planning Act, No. 16 of 2013 (SPLUMA) Council must give permission for the draft Municipal Spatial Development Framework to be advertised for public input.*

*According to section 14 of the Western Cape Land Use Planning Act of 2014, a Municipal Manager must, "within the period contemplated in section 32(1) of the Municipal Systems Act, submit the following to the Provincial Minister:*

*(a) a written notice of the decision to adopt or amend a municipal spatial development framework, together with the reasons for the decision;*

*(b) the adopted or amended municipal spatial development framework; and*

*(c) a report setting out the response of the municipality to the comments submitted in terms of section 12(4) or 13(2).*

## **7. DISCUSSION / CONTENTS**

### **7.1 BACKGROUND**

In terms of the Stellenbosch Municipality Planning By-law the municipality must advertise the draft *mSDF* for public comment before making a final decision. The first Draft *mSDF* was advertised early in March 2019 for public comment. Based on the comments received and further work done, the draft *mSDF* was amended and re-advertised in May 2019 for a second time. Thereafter the report was amended. Due to material changes effected to the report it was decided, on advice from the Department of Environmental Affairs & Development Planning (DEA&DP), to re-advertise the report again during June 2019 where after the *mSDF* was submitted and approved by Council on 2 August 2019.

### **7.2 DISCUSSION**

Council resolved at the meeting of 2 August to exclude approximately 2 ha of the farm Brandwacht from the urban edge and requested that the Municipal Manager investigate why this portion of the farm was included in the first place. A separate report will be submitted to Council in this regard at a later stage to provide feedback w.r.t. the investigation.

On submission of the *mSDF* to the MEC, it was pointed out that the exclusion of the farm 81/33 previously included in the urban edge and advertised as such during the final round of public participation did not align with the maps in the IDP Amendment and should be corrected to align. This misalignment has specific reference to the Northern Extension.

The updated *mSDF* maps, together with the approved IDP Amendment must, once confirmed by Council, be submitted to the Minister of Local Government, Environmental Affairs and Development Planning, as required in accordance with section 14 of the Western Cape Land Use Planning Act, 2014 (LUPA).

This process was discussed and agreed on with the MEC as indicated in his letter dated 4 November 2019 addressed to the Municipal Manager and attached as **ANNEXURE 1** to the report.

### **7.3 FINANCIAL IMPLICATIONS**

The report has no direct financial implications.

### **7.4 LEGAL IMPLICATIONS**

The development, process and alignment of the *mSDF* is prescribed by various pieces of legislation, including the Municipal Systems Act, the Spatial Land Use and Management Act, the WC Land Use and Planning Act and the municipal planning by-law.

The *mSDF* is compliant with the prescribed laws and regulations listed.

### **7.5 STAFF IMPLICATIONS**

None.

### **7.6 PREVIOUS RELEVANT COUNCIL RESOLUTIONS**

At an urgent Council meeting: 2019-08-02: ITEM 4.1 it was resolved as follows:

- a. that Council notes input and comments received on the Draft Municipal Spatial Development Framework attached as ANNEXURE 1 of the agenda;
- b. that Council approves the final draft *mSDF* as attached as ANNEXURE 1 to the agenda item; with the exclusion of Erf 1049/3 from the urban edge, as this is currently zoned agriculture;
- c. that the final draft Municipal Spatial Development Framework be included in the 2019/20 Integrated Development Plan (IDP); and
- d. that the Municipal Manager be mandated to investigate the approvals of Brandwacht Hotel outside the urban edge and how this proposal was now included in the Brandwacht urban edge.

### **7.7 RISK IMPLICATIONS**

The *mSDF* was approved as part of the IDP Amendment during August 2019. However, the matter of a slight misalignment between the *mSDF* and IDP Amendment was pointed out and has to be addressed in order to reduce the risk for Council.

### **7.8 COMMENTS FROM SENIOR MANAGEMENT**

The planning process was undertaken with the knowledge and participation of senior management. The draft concept underpinning the *mSDF* was presented to management and received their full support.

## **ANNEXURES**

**Annexure 1: Letter from DEA&DP with regard to the adoption of the *mSDF***

**Annexure 2: Stellenbosch Spatial Development Framework (will be distributed under separate cover)**

**FOR FURTHER DETAILS CONTACT:**

<b><i>NAME</i></b>	Bernabe de la Bat
<b><i>POSITION</i></b>	Manager Spatial Planning
<b><i>DIRECTORATE</i></b>	Planning and Economic Development
<b><i>CONTACT NUMBERS</i></b>	021 – 808 8653
<b><i>E-MAIL ADDRESS</i></b>	Bernabe.delabat@ Stellenbosch.gov.za
<b><i>REPORT DATE</i></b>	7 November 2019

# **ANNEXURE 1**



Department of Environmental Affairs and Development Planning

**Pieter van Zyl**

Head of Department

[Pieter.vanZyl@westerncape.gov.za](mailto:Pieter.vanZyl@westerncape.gov.za) | Tel: 021 483 8315

Ms Geraldine Mettler  
Municipal Manager  
Stellenbosch Municipality  
Plein Street  
STELLENBOSCH  
7600

Dear Colleague

**STELLENBOSCH MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK (MSDF) 2019 AND REVIEW OF STELLENBOSCH MUNICIPALITY'S INTEGRATED DEVELOPMENT PLAN (IDP) 2017-2022**

Our various discussions regarding the above matter refer.

We have noted that your Council, during its meeting on 2 August 2019, amended the MSDF's urban edge to exclude Farm Cloetesdal No 81/33 and Erf 1049/3 from the urban edge. Consequently, there is a discrepancy between Figure 28 in the MSDF and the other maps within the MSDF reflecting the urban edge for Stellenbosch town, and also between Figure 28 in the MSDF and the map presented in the IDP's MSDF chapter. Accordingly, for sake of accuracy, completeness and compliance, it is important that the necessary amended maps be resubmitted to your Council for confirmation.

To bring finality to this matter, it is therefore recommended that you undertake the following:

1. That you make the necessary final changes to the MSDF 2019, as a follow-up to Council's resolution taken on 2 August 2019 and that you re-submit the final MSDF 2019 for Council's confirmation of the urban edge amendments.
2. After obtaining this Council approval, you will need to submit the final MSDF 2019 document, together with the First Amendment of the 2<sup>nd</sup> Review of the Municipality's Fourth Generation IDP 2017-2022, adopted by your Council on 28 August 2019, to Minister Anton Bredell, Minister of Local Government, Environmental Affairs and Development Planning, as required in accordance with section 14 of the Western Cape Land Use Planning Act, 2014 (LUPA).

Based on complying with the abovementioned two steps, we believe the Municipality will have met the legal requirements for adoption of its 2019 amended IDP and MSDP documents.

Should you have any follow-up enquiries in this regard, please let us know so that we can further assist you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Piet van Zyl', with a horizontal line drawn underneath the signature.

**PIET VAN ZYL**  
**HEAD OF DEPARTMENT**  
**ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

**DATE:** 4 November 2019

## AGENDA

URGENT MEETING OF THE COUNCIL  
OF STELLENBOSCH MUNICIPALITY

2019-11-11

4.2	<b>PROPOSED SETTLEMENT AGREEMENT IN THE MATTER BETWEEN LA CONCORDE SOUTH AFRICA (PTY) LTD ("LA CONCORDE") VS STELLENBOSCH MUNICIPALITY IN REGARD TO FARM 369P AND FARM 370 STELLENBOSCH</b>
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Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

Urgent Council: 11 November 2019

- 1. SUBJECT: PROPOSED SETTLEMENT AGREEMENT IN THE MATTER BETWEEN LA CONCORDE SOUTH AFRICA (PTY) LTD ("LA CONCORDE") VS STELLENBOSCH MUNICIPALITY IN REGARD TO FARM 369P AND FARM 370 STELLENBOSCH**

**2 PURPOSE**

To get Council approval for the proposed settlement agreement in the legal proceedings between La Concorde and Stellenbosch Municipality.

**3. DELEGATED AUTHORITY FOR DECISION BY COUNCIL**

As the proposed settlement agreement the lease of land Council must approve the agreement.

**4. EXECUTIVE SUMMARY**

Stellenbosch Municipality entered into a long term lease agreement with KWV in terms of which Farm 369P and Farm 370 Stellenbosch (also known as "Grondves") was leased to KWV, copies of which is annexed as **ANNEXURE "A"**. KWV was converted to a company called KWV (Pty) Ltd on 2 December 1997 and further changed to KWV South Africa (Pty) LTD on 7 August 1999. There was a further name change on 5 January 2017 to La Concorde South Africa (Pty) LTD (page 3 **ANNEXURE B**). There was never a request to cede the agreement to La Concorde.

A private developer approached the Municipality to construct a road over Grondves Farm in light of the Provincial Department of Transport and the Engineering Department of the Municipality supporting the developer's development on condition that the road should be constructed over Grondves Farm. In light of the aforesaid, the Manager: Property Management informed La Concorde of the request that a portion of the lease area be utilized for purposes of a road and gave notice that a portion of 1.66ha will be excluded from the lease property. This decision was taken by the Manager Property Development under delegated authority in terms of Delegation 541 (of the 2015 delegations) read with clause 20 of the lease agreement. The decision of the Manager: Property Management was taken on appeal in terms of section 62 of the Municipal Systems Act. The appeal authority (municipal Manager) upheld the decision of the Manager: Property Management pursuant to considering all the relevant facts of the matter. La Concorde brought a High Court application challenging the decision taken by the Manager: Property Management as confirmed on appeal to have a portion of lease property excluded from the lease property for purposes of a road as well as the validity of the exemption certificate issued by the Director: Planning and Economic Development. The application further challenges the constitutionality of section 24(1)(e) of the By-law and section 61(2)(c) of LUPA, a copy of the application is attached hereto as **ANNEXURE "B"**.



The Municipality obtained verbal advice from senior advocate that the decision of the Municipality to exclude a portion of 1.66ha from the lease area does not amount to administrative action but is a decision based on a contract. In light of the aforesaid and in an attempt to settle the ongoing dispute with La Concorde, the Municipality made a settlement offer to settle the matter.

La Concorde made a counter settlement proposal which consists of the following:

“The matter is settled on the following terms:

- a. that an addendum to the lease agreement be entered into on the basis that the land comprising the extension of Schuilplaats Road and the portion of land between Schuilplaats Road and the R44 be excluded from the current lease agreement.
  - b. That the lease agreement be ceded by La Concorde to KWV.
  - c. Each party to pay its own costs.
2. Alternatively, the matter is settled on the following terms:
- a. That an addendum to the lease agreement be entered into on the basis that the land comprising the extension of Schuilplaats Road and the portion of land between Schuilplaats Road and the R44 be excluded from the lease agreement.
  - b. Your client agrees to amend the lease agreement.
    - i. to allow our client to sublet the leased property to KWV, alternatively a lessee of our client’s choosing.
    - ii. Our client has the right to cancel the lease agreement if it so chooses during the remaining term of the lease agreement.
    - iii. Each party to pay its own costs.”

A copy of the letter is annexed hereto as **ANNEXURE “C”**:

## 5. RECOMMENDATIONS

- (a) that Council consider the settlement offer made by La Concorde;
- (b) that should agreement be reached it is in full and final settlement of the entire High Court Application launched under case number 22807/2018; and
- (c) that Each party to pay its own costs.

## 6. DISCUSSION / CONTENTS

### 6.1. Background

Stellenbosch Municipality entered into a long term lease agreement with KWV in terms of which Farm 369P and Farm 370 Stellenbosch (also known as “Grondves”) was leased to KWV, copies of which is annexed as **ANNEXURE “A”**. KWV was converted to a company called KWV (Pty) Ltd on 2 December 1997 and further changed to KWV South Africa (Pty) LTD on 7 August 1999. There was a further name change on 5 January 2017 to La Concorde South Africa (Pty) LTD (page 3 **ANNEXURE B**). There was never a request to cede the agreement to La Concorde.

A private developer approached the Municipality to construct a road over Grondves Farm in light of the Provincial Department of Transport and the Engineering Department of the Municipality supporting the developer’s development on condition that the road should be constructed over Grondves Farm. In light of the aforesaid,

the Manager: Property Management informed La Concorde of the request that a portion of the lease area be utilized for purposes of a road and gave notice that a portion of 1.66ha will be excluded from the lease property. This decision was taken by the Manager Property Development under delegated authority in terms of Delegation 541 (of the 2015 delegations) read with clause 20 of the lease agreement. The decision of the Manager: Property Management was taken on appeal in terms of section 62 of the Municipal Systems Act. The appeal authority (municipal Manager) upheld the decision of the Manager: Property Management pursuant to considering all the relevant facts of the matter.

## 6.2 Discussion

La Concorde instituted legal action against the Municipality and applied that the following relief be granted in its favor:

1. An order reviewing and setting aside, in terms of the provisions of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA"), the decision taken by Stellenbosch Municipality by way of the Manager: Property Management on 2 June 2017 and the Municipal Manager on 22 November 2017, in relation to the exclusion of a portion of the immovable property known as Farm 369P, Stellenbosch, from the lease agreement concluded between the Municipality and La Concorde on 12 May 1992 for purposes of building a road thereon.
2. An order reviewing and setting aside the decision by the Municipality (by way of the Director: Planning & Economic Development) to issue an exemption certificate on 10 October 2017 in terms of section 24(1)(e) of the Stellenbosch Municipal Planning By-law, 2015 read with section 61(2)(c) of the Western Cape Land Use Planning Act, 3 of 2014;
3. An order, insofar as it may be necessary, exempting La Concorde in terms of section 7(2)(c) of PAJA from the obligation to exhaust any internal remedy that might have been available in relation to the decision to issue the certificate.
4. In the alternative, and in the event of the Court finding that the issue of the exemption certificate did not constitute administrative action, an order declaring that the certificate was not lawfully issued under the relevant legislation, and that it should be set aside.
5. In the alternative, an order declaring that section 24(1)(e) of the By-law and section 61(2)(c) of LUPA are unconstitutional and invalid.
6. An order that La Concorde's costs be paid by the Municipality, alternatively, and in the event of any of the other respondents opposing the relief sought, by the Municipality and such other respondents jointly and severally, the one paying, the other to be absolved.

The Municipality obtained verbal advice from senior advocate that the decision of the Municipality to exclude a portion of 1.66ha from the lease area does not amount to administrative action but is a decision based on a contract. In light of the aforesaid and in an attempt to settle the ongoing dispute with La Concorde, the Municipality made a settlement offer to settle the matter (**ANNEXURE D**).

The Municipality has been advised by external consulting engineers that the extension of Schuilplaats Road is a current need that exists from a roads capacity and safety perspective. Furthermore, the Western Cape Department of Transport and Public Works has insisted on the extension of Schuilplaats Road before any further development in the Paradyskloof area can be undertaken. It is for this reason that recent development approvals granted by the municipality in the Paradyskloof area were made subject to the condition that Schuilplaats Road is extended.

La Concorde made a counter settlement proposal which consists of the following:

"The matter is settled on the following terms:

that an addendum to the lease agreement be entered into on the basis that the land comprising the extension of Schuilplaats Road and the portion of land between Schuilplaats Road and the R44 be excluded from the current lease agreement.  
That the lease agreement be ceded to La Concorde.  
Each party to pay its own costs.

Alternatively, the matter is settled on the following terms:

That an addendum to the lease agreement be entered into on the basis that the land comprising the extension of Schuilplaats Road and the portion of land between Schuilplaats Road and the R44 be excluded from the lease agreement.  
Your client agrees to amend the lease agreement.  
to allow our client to sublet the leased property to KWV, alternatively a lessee of our client's choosing.

Our client has the right to cancel the lease agreement if it so chooses during the remaining term of the lease agreement.

Each party to pay its own costs."

A copy of the letter is annexed hereto as **ANNEXURE "C"**

### **6.3. Financial Implications**

Each party will pay our own costs. If the matter is not settled now the question of costs will only be known at the end of the court matter and even if the court decision is in favour additional costs for the Municipality. By settling the matter the Municipality can manage the cost implications. There are also costs attached to delays in processes depending on the finalisation of this high court application.

### **6.4 Legal Implications**

If the matter is not settled the High Court needs to decide on the outcome of the matter. This could lead to appeals being instituted against the High Court order which will further delay the implementation of the planning approvals applicable to this matter and will lead to further legal costs.

### **6.5 Staff Implications**

This report has no additional staff implications to the Municipality.

### **6.6 Previous / Relevant Council Resolutions:**

Not applicable.

### **6.7 Risk Implications**

The Municipality as the Municipality would have no control over the outcome of the matter, if a court decides on the merits thereof and it will lead to further legal cost which could have been prevented if the matter was settled. This could lead to appeals being instituted against the High Court order which will further delay the implementation of the planning approvals applicable to this matter and will lead to further legal costs.

**6.8 Comments from Senior Management:****6.8.1 Chief Financial Officer:**

Supports the recommendations

**6.8.2 Municipal Manager:**

Supports the recommendations

**6.8.3 Senior Management:**

Supports the recommendations

**ANNEXURES****Annexure A:** Long term lease agreement.**Annexure B:** Notice of Motion instituted by La Concorde against the Municipality.**Annexure C:** Counter settlement proposal made by La Concorde.**Annexure D:** Settlement proposal from Municipality**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	<b>GARALDINE METTLER</b>
<b>POSITION</b>	<b>MUNICIPAL MANAGER</b>
<b>DIRECTORATE</b>	<b>MUNICIPAL MANAGER</b>
<b>CONTACT NUMBERS</b>	<b>021 808 8025</b>
<b>E-MAIL ADDRESS</b>	<b>MUNICIPAL.MANAGER@STELLENBOSCH.ORG.ZA</b>
<b>REPORT DATE</b>	<b>8 NOVEMBER 2019</b>

# **ANNEXURE A**

MEMORANDUM VAN HUUROOREENKOMS

Aangegaan deur en tussen

**DIE MUNISIPALITEIT STELLENBOSCH**

hierin verteenwoordig deur

**GERHARDUS MATTHYS STRYDOM EN ERASMUS PETRUS SMITH TALJAARD**

in hul onderskeie hoedanighede as Uitvoerende Hoof/Stadsklerk en/of Burgemeester van  
gemelde Munisipaliteit

("die VERHUURDER")

en **KO-OPERATIEWE WIJNBOUERS VERENIGING VAN ZUID AFRIKA  
BEPERKT**

hierin verteenwoordig deur **SCHALK WILLEM JOUBERT** IN SY HOEDANIGHEID  
AS SEKRETARIS VAN KWV

as synde die gevolmagdigde verteenwoordiger ingevolge 'n besluit van die

22 APRIL 1980  
gedateer waarvan 'n afskrif as Bylae A aangeheg is.

("die HUURDER")

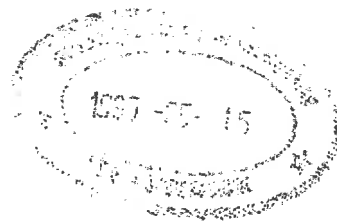
**NADEMAAL** die VERHUURDER die eienaar is van die eiendom bekend as

**PLAAS NO 369 P**

**GROOT 62,70 HEKTAAR**

soos aangedui op die aangehegte kaart

("die EIENDOM")



Handwritten signatures and initials, including a circled 'E.P.S.' and a signature with 'CR' next to it.

Handwritten signature.

EN NADEMAAL die VERHUURDER begerig is om die EIENDOM aan die HUURDER te verhuur en om 'n gedeelte van die verhuurde eiendom te laat inlys ooreenkomstig die bepalinge van die Besproeiingsraad ("die BESPROEINGSRAAD") vir daardie distrik geproklameer by die Theewaterkloof Staatswaterskema ("die SKEMA") kragtens die bepalinge van die Waterwet, Nr 54 van 1956 ("die WET")

EN NADEMAAL die HUURDER begerig is om die EIENDOM te huur en om die waterregte wat as gevolg van sodanige inlysting ten opsigte van die verhuurde eiendom verkry word, op die verhuurde eiendom aan te wend

EN NADEMAAL die verhuring van die EIENDOM aan die HUURDER sowel as die inlystingsvoorwaardes op 'n vergadering van die Stadsraad gehou op 1990-05-15 (item 3.1.B) goedgekeur is.

#### NOU DERHALWE KOM DIE PARTYE ONDERLING SOOS VOLG OOREEN

##### 1 TERMYN VAN VERHURING

Die VERHUURDER verhuur hiermee aan die HUURDER die EIENDOM wat deur die HUURDER in huur aangeneem word vir 'n tydperk wat begin op die eerste (1) dag van April 1991 en afsluit op die 31ste dag van Maart 2041 dog is steeds onderworpe aan die bepalinge van subklousules 4.4 (laat betaling), 13.1 (sessie), klousule 20 (opsegging) en die bepalinge van Bylae B hiervan.

- 2 Die VERHUURDER onderneem om alles te doen, of te laat doen, om 25,0 hektaar van die EIENDOM, of sodanige kleinere gedeelte wat goedgekeur mag word, soos uitgewys tussen die partye, kragtens die bepalinge van die Wet by die SKEMA te laat inlys vir die verkryging van besproeiingswater soos deur die Besproeiingsraad per hektaar toegesê.

*[Handwritten signature]*


*[Handwritten signature]*

*[Handwritten signature]*

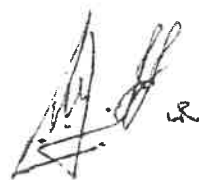
- 3 Die **HURDER** sal geregtig wees om gedurende die huurtermyn in klousule 1 bepaal die waterregte wat as gevolg van sodanige inlysting verkry word ten opsigte van die verhuurde eiendom, op die verhuurde eiendom aan te wend op sodanige wyse soos goedgekeur deur die **VERHUURDER** en onderhewig aan alle terme en voorwaardes kragtens die bepalings van die Wet, of andersins bepaal, welke terme en voorwaardes aan die **HURDER** bekend is.

#### 4 **HURGELD, MUNISIPALE BELASTING EN INLYSTINGSKOSTE**

- 4.1 Die **HURDER** betaal eenmalig voor of op die 30ste dag van April 1992 by die kantoor van die Stadstesourier die bedrag van R31 577,93 (welke bedrag bereken is vir die tydperk vanaf die datum waarop die ooreenkoms 'n aanvang neem tot die 31ste dag van Maart 1993. Die **HURDER** betaal daarna jaarliks voor of op die 31ste dag van Maart van elke daaropvolgende jaar die basiese huurgeld plus verhoging plus addisionele huurpremie soos bereken volgens die voorwaardes wat as Bylae B hierby aangeheg is;
- 4.2 Die **HURDER** sal verder aanspreeklik wees om op aanvraag deur die **VERHUURDER** die volgende bedrae ("Inlystingsgeld") aan die **VERHUURDER**, of sy genomineerde, te betaal, naamlik:
- 4.2.1 enige en alle belastinge, heffings en vorderings van welke aard en omvang ookal gehê te word deur die Besproeiingsraad vir die gebied wat jurisdiksie het oor die verhuurde eiendom, die Departement van Waterwese en Bosbou of enige ander owerheidsliggaam, vir of ten opsigte van, maar nie uitsluitend nie -
- 4.2.2.1 bedryfs- en onderhoudskoste van die watervoorsieningskema;
- 4.2.2.2 administratiewe koste;
- 4.2.2.3 verpligte bydraes ten opsigte van 'n reserwefonds;
- 4.2.2.4 verpligte bydraes tot die Watervorsingsraad;
- 4.2.2.5 die aankoopprys van water uit die **SKEMA**;

  
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- 4.2.2.6 voorlopige uitgawes en tussentydse heffings wat deur die Besproeiingsraad en/of die Departement van Waterwese en Bosbou, opgelê word; en
- 4.2.2.7 die VERHUURDER beskou die voorlegging van 'n rekening van die Besproeiingsraad en/of die Departement van Waterwese en Bosbou as afdoende stawende bewys van die bedrag wat deur die HUURDER verskuldig is, opvallende foute en weglatings uitgesluit
- 4.3 Die VERHUURDER kan, indien nodig, vereis dat die HUURDER 'n bankwaarborg of ander garansie verskaf wat vir die VERHUURDER aanneemlik is ten opsigte van die huurgeld en inlystingsgelde wat betaalbaar is, en in die geval van 'n HUURDER wat 'n maatskappy, beslote korporasie of trust is, sal die direkteure, lede of trustees daarvan skriftelik, gesamentlik en afsonderlik, as borge en mede-hoofskuldenare aanspreeklik wees vir die huurgeld en inlystingsgelde wat betaalbaar is.
- 4.4 Enige huurgeld of inlystingsgelde wat na die vervaldatum in subklousule 4.1 en 4.2 vermeld deur die HUURDER aangebied word, indien die VERHUURDER dit aanvaar, is onderworpe aan 'n rente wat maandeliks vooruit bereken sal word teen die standaardrentekoers soos artikel 214 van die Munisipale Ordonnansie, Ordonnansie nr 20 van 1974, soos gewysig of *enige ander toepaslike ordonnansie van tyd tot tyd bepaal* ten opsigte van elke maand of gedeelte daarvan.
- 4.5 Dit is 'n spesiale voorwaarde van hierdie ooreenkoms dat die VERHUURDER die reg voorbehou om hierdie ooreenkoms summier te kanselleer, sonder enige voorafgaande skriftelike kennisgewing, indien die HUURDER sou versuim om enige verskuldigde huur- of inlystingsgeld binne sewe dae vanaf die vervaldatum te vereffen, en so 'n kansellering affekteer generwyse die reg van die VERHUURDER om enige bedrag wat die HUURDER skuld of verskuldig mag word van hom te vorder nie.

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- 4.6 Die **HURDER** sal aanspreeklik wees om die belasting deur die Stadsraad op die **EIENDOM** gehê te betaal, onderworpe aan die voorwaardes en vereistes soos bepaal mag word in terme van die Munisipale Ordonnansie, Ordonnansie nr 20 van 1974, soos gewysig of enige ander vervangende of toepaslike ordonnansie.

5 **STREEKSDIENSTERAADHEFFING**


Die **HURDER** onderneem om alle heffings wat deur die Streeksdiensteraad op die **EIENDOM** gehê word, regstreeks aan daardie owerheid te betaal.

6 **MYN- EN ANDER REGTE**


Die **VERHUURDER** behou voor alle regte op metale, minerale, steenkool, klip van alle soorte, klei en gruis, met inbegrip van die reg van toegang tot die eiendom te alle tye om sodanige metale, minerale of steenkool te myn of om klei, gruis en klip te verwyder, onderworpe aan 'n vermindering van die huurgeld in verhouding tot die oppervlakte wat deur die **VERHUURDER** vir sodanige mynwerk of verwydering teruggeneem word.

7 **BESKERMING VAN BOME**

- 7.1 Alle bome, wingerde of dergelike verbeteringe op die verhuurde perseel bly die eiendom van die **VERHUURDER** en mag nie deur die **HURDER** beskadig of verwyder word nie.
- 7.2 Die **HURDER** moet die geskrewe toestemming van die **VERHUURDER** vooraf verkry vir die verwydering van enige bome, wingerde en dergelike verbeteringe op 'n terrein wat hy vir verbouing nodig het, en as sodanige toestemming verleen word, behou die **VERHUURDER** die reg voor om oor die hout vir sy eie voordeel te beskik.

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- 7.3 Die VERHUURDER behou die reg voor om deur sy amptenare periodieke inspeksies van bome, wingerde en dergelike verbeteringe op die eiendom uit te voer en om sodanige stappe ter beskerming daarvan te neem as wat hy nodig mag ag.
- 7.4 Die VERHUURDER behou die reg voor om self enige bome op die eiendom wat nie deur die HUURDER aangeplant is nie, te kap en te verwyder, en hiervoor het hy vrye toegang tot die eiendom.
- 7.5 Die HUURDER onderneem om geen mak wingerdstokke op die eiendom te plant nie, en enige wynkwota wat deur die Ko-operatiewe Wijnbouwers Vereniging van Zuid-Afrika Beperkt, aan die EIENDOM toegeken is, mag onder geen omstandighede met enige ander kwota gekonsolideer word nie, tensy die VERHUURDER dit vooraf goedkeur, met of sonder bepaalde voorwaardes.
- 8 WATERBRONNE
- 8.1 Die VERHUURDER waarborg geen voorraad van oppervlakte- of ondergrondse water nie.
- 8.2 Die HUURDER onderneem om nie met fontein of met die natuurlike vloei van oppervlakte afloopwater in te meng nie deur kanale, vore of damme te bou of om enige ander werke uit te voer sonder die voorafverkreë skriftelike toestemming van die VERHUURDER nie, en vir die toepassing van hierdie subklousule is 'n opinie van die betrokke Staatsdepartemente en/of onderafdelings daarvan bindend en finaal.
- 8.3 Die VERHUURDER behou die reg voor om water op die EIENDOM op te gaar of om die gebruik van water uit fontein of strome te beperk, indien sodanige opgaring of beperking na sy mening noodsaaklik is ter beskerming van die regte van derde partye.
- 8.4 Die HUURDER onderneem om alle strome, fontein of opgaardamme teen besoedeling te beskerm, en om sodanige instruksies uit te voer as wat die VERHUURDER periodiek te dien einde mag uitreik.



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9 GRONDBEWARING

- 9.1 Die HUURDER onderneem om die EIENDOM te gebruik deur die verbouing van die grond op 'n versigtige en sorgsame wyse, en ook om verswakking van die natuurlike vrugbaarheid en kwaliteit teen te werk.
- 9.2 Die HUURDER onderneem om gronderosie teen te werk en om stiptelik uitvoering te gee aan die bepalings van enige grondbewaringskema wat volgens wet op die EIENDOM van toepassing mag wees, en te dien einde behou die VERHUURDER die reg voor om periodieke instruksies uit te reik.
- 9.3 Die VERHUURDER behou die reg voor om sodanige werke uit te voer as wat hy nodig mag ag vir die bestryding van gronderosie, en wel op die koste van die HUURDER as laasgenoemde versuim om dit op die VERHUURDER se versoek te doen.
- 9.4 Die HUURDER onderneem om geen sand, grond of gruis vanaf die EIENDOM vir verkoping of gebruik elders te verwyder nie.
- 9.5 Die HUURDER onderneem om toe te sien dat geen vullis, rommel of afval op die EIENDOM gestort word nie.

10 SKADELIKE GEWASSE

- 10.1 Die HUURDER onderneem om die EIENDOM van skadelike gewasse skoon te hou.
- 10.2 Die VERHUURDER behou die reg voor om sodanige stappe as wat hy dienlik mag ag, te doen ter verwydering van dergelike geproklameerde onkruid, en wel op die koste van die HUURDER ingeval laasgenoemde versuim om dit op die VERHUURDER se versoek te doen.

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# 11 BRANDBESTRYDING

- 11.1 Die HURDER onderneem om die utterste sorg uit te oefen ter beskerming van die EIENDOM teen veldbrande, en die VERHUURDER kan vereis dat die HURDER op sy eie koste sodanige brandpaaie bou as wat die VERHUURDER nodig mag ag.
- 11.2 Die HURDER is aanspreeklik vir vergoeding aan die VERHUURDER vir enige uitgawe aangegaan om brande te voorkom of te blus. Brandskade aan bome of ander plante op die EIENDOM wat aan die VERHUURDER behoort, word deur 'n taksateur wat deur die VERHUURDER aangestel en wie se bevinding bindend is, bepaal, en aan die VERHUURDER deur die HURDER vergoed.

# 12 OMHEINING

- 12.1 Die HURDER is verantwoordelik vir die oprigting en koste van enige omheining wat hy vir die beskerming van sy oeste of diere op die EIENDOM nodig mag ag. ✓
- 12.2 Omheining wat deur die HURDER opgerig word, kan binne een maand na die afloop van die huurooreenkoms verwyder word, maar die VERHUURDER kan uitstel vir sodanige verwydering verleen totdat die EIENDOM weer verhuur is om onderhandelinge met die opvolger vir die verkoping of oordrag daarvan moontlik te maak, met dien verstande dat die VERHUURDER eienaar van sodanige omheining word indien geen finale reëlings binne sestig dae vanaf die datum van herverhuring deur die HURDER getref is nie, en in so 'n geval is die HURDER nie geregtig tot enige vergoeding vir die omheining wat aldus deur hom verbeur is nie.

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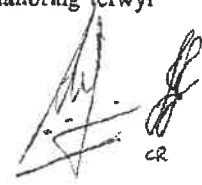
### 13 ONDERVERHURINGS, SESSIES OF OORDRAGTE, ENS

- 13.1 Die **HURDER** sal nie hierdie huurooreenkoms seeder of oordra nie, en onderverhuur nie die **EIENDOM** of enige deel daarvan sonder die voorafverkreë skriftelike toestemming van die **VERHUURDER** nie.
- 13.2 Die **VERHUURDER** kan 'n sertifikaat as bewys vereis dat 'n maatskappy, beslote korporasie of trust wat 'n **HURDER** is, wel as sodanig geregistreer is.
- 13.3 Dit word op rekord geplaas dat die **VERHUURDER** toestemming verleen vir die sessie en delegasie van hierdie huurkontrak aan en ten gunste van 'n erfgenaam of erfgename van die **HURDER** as sodanig deur die **HURDER** benoem.
- 13.4 By verandering van die beherende aandeelhouding of beherende belange in 'n maatskappy of beslote korporasie wat 'n **HURDER** is, of by verandering van direkteure of by likwidasie van die maatskappy of beslote korporasie of ingeval die maatskappy of beslote korporasie onder geregtelike bestuur geplaas word, bly die oorspronklike borge ten behoeve van die maatskappy of beslote korporasie gesamentlik en afsonderlik en as mede-hoofskuldenaars teenoor die **VERHUURDER** aanspreeklik, tensy die **VERHUURDER** op skriftelike aansoek van die **HURDER** toestem tot vervanging van sodanige borge.
- 13.5 Verandering van die beherende aandeelhouding of beherende ledebelang, direkteure of trustees van 'n maatskappy, beslote korporasie of 'n trust wat 'n **HURDER** is, word geag 'n onderverhuring te wees.

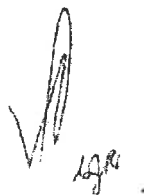
### 14 GEBOU EN STRUKTURELE VERBETERINGE


- 14.1 Enige gebou of strukturele verbeteringe wat op die **EIENDOM** by die aanvang van die huurooreenkoms bestaan, of mettertyd gedurende die huurtermyn opgerig mag word, sal deur die **HURDER** op sy eie koste hetsy binne of buite in 'n goeie toestand gehou word en wel tot die bevrediging van die **VERHUURDER** en indien die **HURDER** versuim om dit te doen kan die **VERHUURDER** sodanige reparasies as wat hy nodig mag ag, laat aanbring terwyl die **HURDER** vir die uitgawe aanspreeklik bly.





- 14.2 Geen nuwe gebou, struktuur of ander permanente verbetering sal op die EIENDOM aangebring, opgerig of uitgevoer word sonder die voorafverkreë skriftelike toestemming van die VERHUURDER nie, en sonder dat bouplanne ten opsigte van sodanige verbeteringe vooraf deur die VERHUURDER goedgekeur is nie en laasgenoemde kan gelas dat sodanige gebou, struktuur of verbetering wat inderdaad sonder sy skriftelike goedkeuring en toestemming opgerig, aangebring of gebou is deur die HUURDER op sy eie koste verwyder word.
- 14.3 Goedgekeurde verbeteringe van 'n permanente aard sal deur die HUURDER op sy eie risiko aangebring of opgerig word.
- 14.4 Die VERHUURDER sal enige geboue of ander verbeteringe wat by die aanvang van die huurtermyn op die EIENDOM is in sy uitsluitlike diskresie teen skade verseker en sodanige versekering instand hou, met dien verstande dat die HUURDER verantwoordelik sal wees vir die volle kostes en premies verbonde aan sodanige versekering, en die VERHUURDER sal derhalwe die kostes en premies direk van die HUURDER vorder.
- 14.5 Indien die VERHUURDER kontant van 'n versekeringsmaatskappy sou ontvang ter vergoeding van 'n eis ten opsigte van skade aan enige verbetering op die EIENDOM soos in subklousule 14.4 van hierdie ooreenkoms genoem, kan hy die verbetering herstel of die kontant hou, na gelang hy dit dienlik ag.
- 14.6 Behuising kan, met behoud van die bepalings van subklousules 14.1, 14.2, 14.3 en 14.4 van hierdie ooreenkoms aan werkers wat die HUURDER op die EIENDOM in diens het, met inbegrip van hul onmiddellike afhanklikes, op die EIENDOM voorsien word, onderworpe aan die voorafverkreë skriftelike toestemming van die VERHUURDER, en die stiptelike nakoming van die bepalings en vereistes van die toepaslike wetgewing met betrekking tot behuising.
- Enige plakkery op die EIENDOM is ten strengste verbode.
- 14.7 Die HUURDER sal geen reg of aanspraak hê of vergoeding kan eis ten opsigte van verbeteringe, met inbegrip van landboukundige verbeteringe wat tydens die huurtermyn op die EIENDOM aangebring is nie, en die VERHUURDER behou die reg voor om, by beëindiging van hierdie ooreenkoms ingevolge die





bepalings van klousule 3, subklousules 4.4, 20.1.1, 20.1.2 en 20.2 of andersins volgens sy eie diskresie en goeëdunke te besluit of die **VERHUURDER** bereid is om die **HUURDER** enigsins te vergoed vir sodanige verbeteringe. Voorts kan die **VERHUURDER** in die alternatief toestem tot die verwydering van enige verbetering binne 'n tydperk soos deur die **VERHUURDER** voorgeskryf, by gebreke waarvan die **HUURDER** enige reg op verwydering van sodanige verbeteringe of enige verdere aanspraak van watter aard ookal sal verbeur, ten gevolge waarvan die betrokke verbeteringe sonder enige aard van vergoeding die **EIENDOM** van die **VERHUURDER** word.

## 15 BAKENS

- 15.1 Deur die huurooreenkoms te onderteken erken die **HUURDER** dat hy bewus is van die werklike ligging van alle bakens wat die **EIENDOM** se grense bepaal en enige onkunde of misverstand aan sy kant in hierdie verband raak nie die geldigheid van die huurooreenkoms of maak hom nie geregtig tot 'n vermindering van die huurgeld of tot kompensasie in enige vorm nie.
- 15.2 Indien enige bakens wat die grense van die **EIENDOM** bepaal na ondertekening van hierdie ooreenkoms nie gevind kan word nie, is die **HUURDER** aanspreeklik vir alle opmerings- en ander kostes verbonde aan die herplasing van sodanige bakens.

## 16 PAAIE

Die **HUURDER** onderneem om alle bestaande paaie op die **EIENDOM** in 'n goeie toestand te hou, en voorts om geen verdere paaie te bou of oop te maak sonder die voorafverkreë skriftelike toestemming van die **VERHUURDER** nie.







17 **INSPEKSIES**

Die gemagtigde amptenare van die VERHUURDER kan te eniger tyd die EIENDOM betree om sodanige inspeksies as wat hulle nodig mag ag, uit te voor en om vas te stel of die voorwaardes en bepalings van die huurooreenkoms stiptelik nagekom word.

18 **ADVERTENSIE TEKENS**

Die HUURDER sal geen advertensietekens hoegenaamd op die EIENDOM oprig nie, en sal ook nie toelaat dat sulke tekens opgerig word sonder die voorafverkreë skriftelike toestemming van die VERHUURDER nie.

19 **ERFDIENSBAARHEID EN VERJARING**

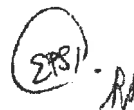
19.1 Die huur is onderworpe aan enige erfdiensbaarheid wat aan die EIENDOM kleef, en as dit te eniger tyd sou blyk dat die VERHUURDER nie daartoe geregtig was om die EIENDOM of enige deel daarvan te verhuur nie, het die HUURDER geen eis vir skadevergoeding behalwe dat die huurgeld *pro rata* verminder word ten opsigte van daardie deel van die EIENDOM wat nie vir okkupasie of gebruik deur die HUURDER beskikbaar is nie.

19.2 Die HUURDER erken hiermee dat hy geen aanspraak op eiendomsreg by wyse van verjaring ten opsigte van die EIENDOM wat verhuur word sal verkry nie.

20 **OPSEGGING EN BEÏNDIGING VAN HUUROOREENKOMS**

20.1 Die VERHUURDER kan, sonder om afbreuk te doen aan enige bepaling of vereistes van hierdie ooreenkoms, met spesifieke verwysing na die bepalings van klousule 4 hiervan, en nadat 'n skriftelike kennisgewing op die HUURDER beteken is, hierdie ooreenkoms beëindig -

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- 20.1.1 indien die **HURDER** versuim om enige voorwaarde of bepaling ten opsigte van hierdie ooreenkoms na te kom; of
- 20.1.2 indien die **VERHUURDER** daarvan oortuig is dat die **HURDER** die grond op onbehoorlike of onverantwoordelike wyse benut; of
- 20.1.3 indien die **VERHUURDER** daarvan oortuig is dat die **HURDER** deur sy handeling op die **EIENDOM** 'n oorlas vir ander uitmaak; of
- 20.1.4 indien die **HURDER** teenstrydig met enige bepaling van die soneringskema van die Munisipaliteit van Stellenbosch afgekondig by PK 73 van 1979-07-20, soos vervang of gewysig, optree; of
- 20.1.5 indien die **EIENDOM** in sy geheel of gedeeltelik vir *bona fide* munisipale doeleindes, waarby dorpstigting ingesluit is, benodig word

met dien verstande dat 'n grasiëperiode van hoogstens een (1) jaar in die gevalle soos in subklousules 20.1.1; 20.1.2; 20.1.3; 20.1.4 en 20.1.5 genoem aan die **HURDER** verleen word, ten einde die **HURDER** in staat te stel om die oeste wat op daardie stadium uitstaande mag wees te in, op voorwaarde dat die **HURDER** gedurende die grasiëperiode aan al die bepalings en vereistes van hierdie ooreenkoms, of ander voorwaardes wat die **VERHUURDER** in hierdie verband mag stel moet voldoen, by gebreke waarvan die toegestane grasiëperiode sonder verdere kennisgewing deur die **VERHUURDER**, in sy uitsluitlike diskresie, in heroorweging geneem sal word.

- 20.2 die **HURDER** kan, sonder om afbreuk te doen aan enige bepaling of vereiste van hierdie ooreenkoms, met spesifieke verwysing na subklousules 4.1, 4.2, 4.3 en klousule 24, hiervan, en nadat 'n skriftelike kennisgewing van ses (6) maande

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deur die **HURDER** aan die **VERHUURDER** gegee is, hierdie ooreenkoms beëindig.

## 21 SKADELOOSSTELLING

Die **HURDER** onderneem hierby om die **VERHUURDER** te vrywaar en gevrywaar te hou teen alle gedinge, stappe, eise, vorderings, koste, skadevergoeding en uitgawes wat hef, gebring of gemaak mag word teen die **VERHUURDER** of wat die **VERHUURDER** mag betaal, opdoen of aangaan as gevolg van enige handeling of versuim aan die kant van die **HURDER**, sy werknemers of persone wat onder sy beheer handel.

## 22 KOSTE VAN OOREENKOMS

22.1 Alle kostes wat deur die **VERHUURDER** aangegaan is vir die voorbereiding en opstel van hierdie ooreenkoms, plus die koste van die verhuringsadvertensie, opmetingskoste en ander toevallige uitgawes sal deur die **HURDER** gedra word, en die **HURDER** kan nie die korrektheid van die bedrag wat deur die **VERHUURDER** in hierdie verband geëis word, betwis nie.

22.2 Die huurooreenkoms sal slegs op die uitdruklike versoek van die **HURDER** en op sy koste notarieël verly en in die akteskantoor geregistreer word. Die **HURDER** moet in sodanige geval 'n deposito betaal soos deur die **VERHUURDER** bepaal ten opsigte van die kostes hierbo vermeld.

## 23 ARBITRASIE

23.1 Enige geskil wat te eniger tyd tussen die partye mag ontstaan in verband met enige aangeleentheid voorspruitende uit hierdie ooreenkoms, sal onderwerp word aan en besleg word deur arbitrasie.

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- 23.2 Iedere sodanige arbitrasie moet plaasvind -
- 23.2.1 te Stellenbosch;
- 23.2.2 op 'n informele summiere wyse sonder enige pleitstukke of blootlegging van dokumente en sonder die noodsaaklikheid om aan die strenge reëls van die bewysreg te voldoen;
- 23.2.3 onverwyld, met die oog daarop om dit af te handel binne drie (3) maande vanaf die datum waarop die geskil na arbitrasie verwys is;
- 23.2.4 onderworpe aan die bepalings van die Wet op Arbitrasie, no 42 van 1986, of sodanige ander Arbitrasiewette as wat van tyd tot tyd mag geld, behalwe waar die bepalings van hierdie klousule anders voorskryf.
- 23.3 Die arbiter moet 'n persoon wees op wie deur die partye onderling ooreengekom is en, by onstentenis van 'n ooreenkoms, een aangestel deur die diensdoenende President van die Wetsgenootskap van die Kaap die Goeie Hoop.
- 23.4 Die partye kom hiermee onherroeplik ooreen dat die beslissing van die arbiter in sodanige arbitrasieverrigtinge finaal en bindend op hulle sal wees.

## 24 INVORDERINGSKOSTE

Indien die VERHUURDER opdrag aan sy prokureurs sou gee om enige gelde wat kragtens hierdie ooreenkoms betaalbaar is, op die HUURDER te verhaal, is die HUURDER aanspreeklik vir die betaling van alle koste deur die VERHUURDER in hierdie verband aangegaan, bereken op 'n prokureur/kliënt-basis.

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25 DOMICILIUM CITANDI ET EXECUTANDI

Die domicilium citandi et executandi van die HURDER vir die toepassing van hierdie ooreenkoms is:

*La Concorde, Hoofstraat 57, Suider-Paarl 7646.  
(Postbus 528, Suider-Paarl 7624).*

en die van die VERHURDER

*Stadhuiskompleks, Pleinstraat, Stellenbosch*

*[Handwritten signature]*

GETEKEN TE STELLENBOSCH HIERDIE  
AS GETUIES

12 DAG VAN Mei 1992

1 *B. Lippert*

*[Signature]*  
BURGEMEESTER

2 *log Robinson*

*[Signature]*  
UITVOERENDE  
HOOF/STADSKLERK

*[Handwritten signature]*

*PAARL*  
GETEKEN TE ~~STELLENBOSCH~~ HIERDIE  
AS GETUIES

24ste DAG VAN Maart 1992

Geregistreer kragtens die Koöperasiewet, 1981

Ko-operatiewe Wijnbouwers Vereniging van  
Zuid-Afrika Beperkt.

1 *[Signature]*

2 *Bossonu*

*[Signature]*  
HUURDER  
*[Signature]*  
SEKRETARIS

(SPROEI/KONTRAK/II)

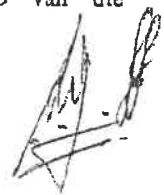
BYLAE B

## BELEID EN TOEPASSING VAN DIE HUURGELDBEREKENING

- 1 (a) Vir die doeleindes van hierdie ooreenkoms word die huurgeld gebaseer op die onverbeterde waarde van die Landbougrond in welke geval die volgende woordbepaling van toepassing sal wees:
- "Onverbeterde grond"* - beteken grond soos in sy natuurlike staat, met of sonder natuurlike plantegroei, waarop geen spesifieke struik of gewasse voorkom en verbou word met die doel om dit te oes nie;
- 1 (b) die waarde van die onverbeterde Landbougrond sal deur die KWV bepaal word; en
- 1 (c) vir die jaar 1989 word die waarde van die grond vasgestel op R7 200,00 per hektaar waarop die Stadsraad 'n opbrengs van 5 % verwag.
- 2 **Huurgeld betaalbaar in eerste termyn van vyf (5) jaar**
- (a) Die jaarlikse basiese huurgeld ingevolge klousule 4.1 van die huurooreenkoms betaalbaar, is die som van R360,00 per hektaar per jaar;
- (b) die basiese huurgeld sal jaarliks met 70 % van die styging van die amptelike verbruikersprysindeks soos op 31 Desember van die vorige jaar eskaleer, welke eskalاسie vanaf 1990-04-01 opgeskort word vir vyf (5) jaar of totdat die water beskikbaar is, watter gebeurte ookal eerste plaasvind.
- 3 **Aangepaste huurgeld na vyf (5) jaar**
- Die basis van die huurgeld sowel as die persentasie aanpassing soos beskryf in paragrawe 1 en 2 sal elke vyf (5) jaar herbepaal word ooreenkomstig die basis beskryf in par. 1 of op 'n ander basis waarop onderling ooreengekom word. Indien die partye nie konsensus kan bereik oor die huurgeld nie, sal sodanige kwessie verwys word vir arbitrasie ingevolge klousule 23 van die hoofooreenkoms.


  
 6/8/89


  
 RJ


  
 &

#### 4.1 Addisionele Huurpremie

Die HUURDER sal vir dertig (30) jaar 'n vaste addisionele huur per hektaar per jaar betaal ter bestryding van die rente en delgingsbedrae, bereken teen 15 % per jaar, ten opsigte van die kapitale verpligting aangegaan ter vestiging van die waterreg op die EIENDOM. Die HUURDER kan te eniger tyd met die VERHUURDER onderhandel om die kapitale verpligting af te los voor die verstryking van 30 (DERTIG) jaar.

#### 4.2 Vergoeding by huuropsegging ten opsigte van bona fide munisipale behoeftes

Wanneer subklousule 20.1.5 in werking tree sal die volgende van toepassing wees:

- 4.2.1 indien die kapitale verpligting (*par 4.1 hierbo*) reeds ten volle deur die HUURDER afgelos is, sal die kapitaalgedeelte daarvan op 'n streng pro rata-basis vergoed word in die verhouding waarin die onverstreke termyn ten opsigte van die kapitale verpligting tot die volle termyn van 30 (DERTIG) jaar (*par 4.1 hierbo*) staan; of
- 4.2.2 indien die kapitale verpligting nog nie ten volle deur die HUURDER afgelos is nie, sal hy vanaf datum van kansellasië van hierdie ooreenkoms, van die betaling van verdere addisionele huurpremies kwytgeskeld word, met dien verstande dat sodanige kwytskelding slegs betrekking sal hê op bedrae wat nog in die toekoms verskuldig en betaalbaar sou word; en
- 4.2.3 die HUURDER sal geregtig wees om vergoeding vir die direkte koste wat hy gehad het ten opsigte van die noodsaaklike infrastruktuur, beperkend tot pypleidings, kleppe, krane en meters en die koste van die vestiging, koppeling en installering daarvan, wat as 'n direkte gevolg en gepaardgaande met die vestiging van die waterreg, op die verhuurde eiendom aangebring is. Die vergoeding sal soos volg bereken word:

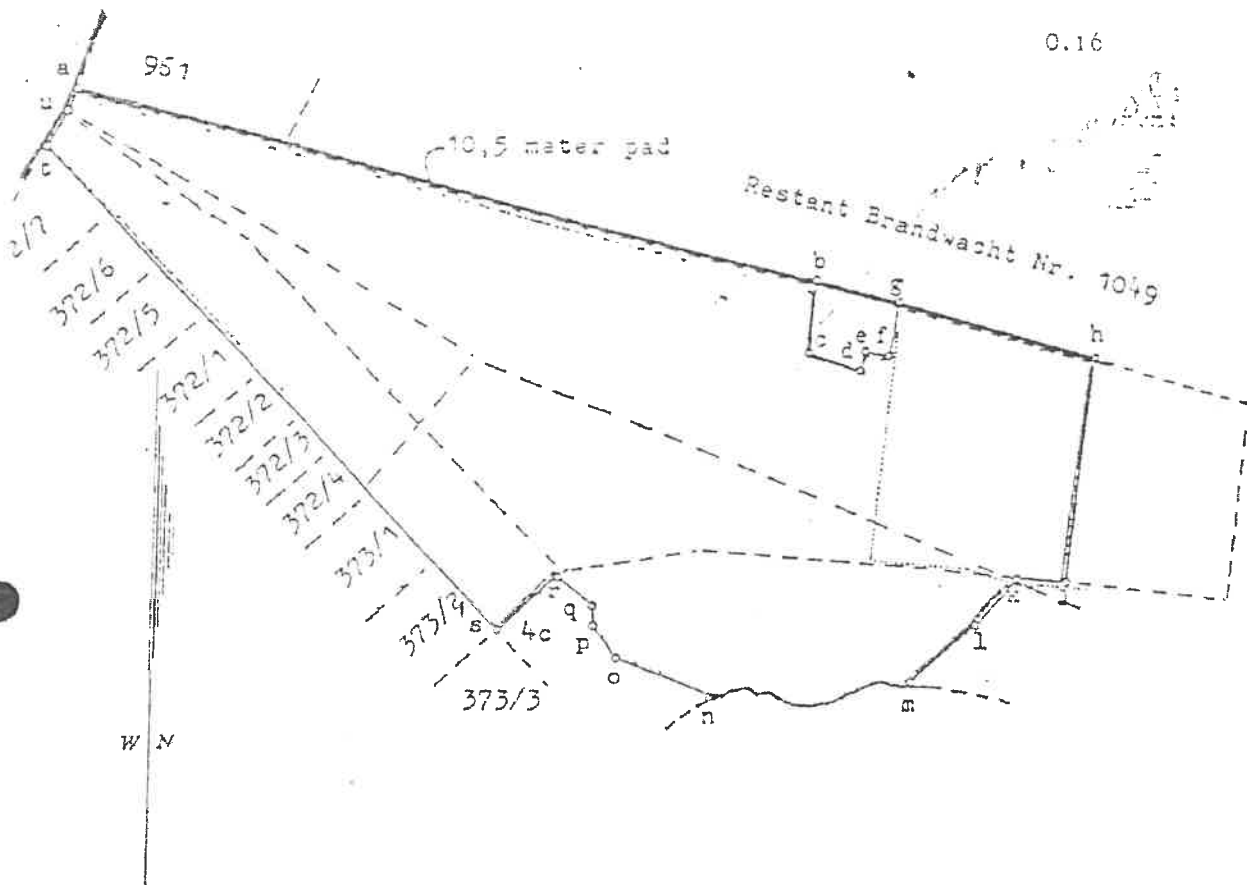
die gemiddelde waardasie van 2 (TWEE) onafhanklike buitelanders van die historiese koste van die noodsaaklike infrastruktuur (soos hierbo beskryf) minus waardevermindering, bereken in gelyke paaiemente oor 'n periode van 20 (TWINTIG) jaar.

(#SPROEI/KONTRAK/1)

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*



Nota:

Hierdie kaart bevat 'n gedeelte van perseel 369 A en perseel 369 B.

Skaal: 7/ 10 OCO


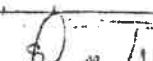
Die figuur abcdefghijklmnopqrstu stel voor 62,7 Ha (benaderd tot die naaste half Ha) (die 10,5m pad uitgesluit) grond synde

Munisipale Huurgrond Perseel 369 P

geleë in die Munisipaliteit en Afdeling Stellenbosch  
Provinsie Kaap die Goeie Hoop.

Opgestel deur my  
Julie 1982

Ko-operatieve Wijnbouwers Vereniging  
Zuid-Afrika Bepoort.

Oorspronklike Kaart Nr. _____ TIA Stel F 5.35 011 0000	 Burgemeester Stadsklerk D. Sippel Gelote 1. _____ 2. G. Robinson	 Huisheer Gelote 1. _____
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12/7/13/59

Vorm 25/1

UITTREKSEL VAN DIE NOTULE VAN 'N GESAMENTLIKE VERGADERING VAN DIE  
STADSRAAD EN DIE BESTUURSKOMITEE GEHOU OP 9-6-92

AFDELING : BOSBOU, LANDE, PARKE EN REKREASIE

2.3.A LANGTERMYN HUURKONTRAKTE : MON VILLA (EDMS) BEPERK EN  
KWV

~~7/2/1/2/32~~  
7/2/1/2/32)

Mon Villa (Edms) Beperk waarvan die Universiteit van Stellenbosch die enigste aandeelhouer is, huur plase 502 AA, 502 AB, 502 BH en gedeelte 13 ('n gedeelte van gedeelte 1 van gekonsolideerde Plaas 491) van die Stadsraad. Langtermynhuurkontrakte vir 50 jaar is alreeds deur hulle onderteken. Klousule 4.3 van die kontrak lees soos volg:

*"4.3 Die VERHUURDER kan, indien nodig, vereis dat die HUURDER 'n bankwaarborg of ander garansie verskaf wat vir die VERHUURDER aanneemlik is ten opsigte van die huurgeld en inlystingsgelde wat betaalbaar is, en in die geval van 'n HUURDER wat 'n maatskappy, beslote korporasie of trust is, sal die direkteur, lede of trustees daarvan skriftelik, gesamentlik en afsonderlik, as borge en medehoofskuldenare aanspreeklik wees vir die huurgeld en inlystingsgelde wat betaalbaar is."*

Die kontrakte bevat die nodige borgstellings maar is nie deur die Universiteit onderteken nie. Hulle deel mee dat as algemene beleid die Universiteit nie borgstellings teken nie.

Die identiese posisie word ondervind in die geval van die KWV wat Plaas 369 P (Grondves) van die Stadsraad huur.

Die risiko verbonde aan die huurtransaksies is baie laag en die KWV en Universiteit is kapitaalkragtige instellings. In hierdie gevalle hoef die vereiste van die daargestelling van 'n bankwaarborg of ander garansie dus nie neergelê te word nie.

**AANBEVEEL**

dat die Universiteit en KWV nie gebonde gehou word aan die vereistes van klousule 4.3 van die 50 jaar huurkontrakte sover dit die teken van borgstellings aangaan nie.

(Artikel 171 van die Munisipale Ordonnansie, 1974)

2.3.A **BESLUIT** (nem con)

dat die aanbeveling aangeneem word.

(HAB(S)/ST/BBB)

Vorm 25/1

UITTREKSEL UIT DIE NOTULE VAN DIE RAADSVERGADERING GEDAG 14/8/90

AFDELING : LANDE BOSBOU EN PARKE EN ONTSPANNING

6.1.A HUIJPOORENKOMS KVV : PLAAS 369P : GRONDVES (17/2/1/2/12)

In uitvoering van die Raadsbesluit van 1990-06-12 item 4.3.E om samesprekings met KVV ten opsigte van bogenoemde te voer, is daar op 1990-08-02 vergader.

Die notule van die samesprekings word as BYLAE H aangeheg.

AANBEVEEL

dat die aanbeveling van die subkomitee aanvaar word.

(Artikel 50 van die Munisipale Ordonnansie, 1974)

6.1.A **BESLUIT** (nem con)

(a) dat die notule in terme van artikel 6 van die Standaard-verordeninge insake Prosedure en Handhawing van Orde op Vergaderings as 'n juiste weergawe aanvaar word;

(b) dat die Hoof: Beplanning en Ontwikkeling aandag verleen aan die wysiging van die Gidsplan ten einde die betrokke eiendom se gebruik te verander na landboudoeleindes. (14/1/12)

(HAB/S/H:BC/PETISTRASCE)

10/12

# **ANNEXURE B**



Case number: 22807 /2018

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

In the matter between:

**LA CONCORDE SOUTH AFRICA (PTY) LTD**

**Applicant**

and

**THE STELLENBOSCH MUNICIPALITY**

**First Respondent**

**THE MANAGER: PROPERTY MANAGEMENT,  
STELLENBOSCH MUNICIPALITY**

**Second Respondent**

**THE MUNICIPAL MANAGER, STELLENBOSCH  
MUNICIPALITY**

**Third Respondent**

**THE DIRECTOR: PLANNING & ECONOMIC  
DEVELOPMENT, STELLENBOSCH MUNICIPALITY**

**Fourth Respondent**

**PROVINCIAL MINISTER OF LOCAL GOVERNMENT,  
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT  
PLANNING, WESTERN CAPE**

**Fifth Respondent**

**PREMIER OF THE WESTERN CAPE**

**Sixth Respondent**

**NOTICE OF MOTION**

Municipality - Munisipaliteit  
Stellenbosch

12 DEC 2018

Office of the Municipal Manager  
Kantoor van die Munisipale Bestuurder

**TAKE NOTICE** that the Applicant hereby calls upon the Respondents to show cause to this Court why the following relief should not be granted:

1. An order reviewing and setting aside, in terms of the provisions of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"), the decisions taken by the First Respondent, by way of, respectively, the Second Respondent on 2 June 2017 and the Third Respondent on 22 November 2017, in relation to the exclusion of a portion of the immovable property known as Farm 369P, Stellenbosch, from the lease agreement concluded between the First Respondent and the Applicant on 12 May 1992 for the purposes of building a road thereon.
2. An order reviewing and setting aside the decision by the First Respondent (by way of the Fourth Respondent) to issue an exemption certificate ("the certificate") on 10 October 2017 in terms of section 24(1)(e) of the Stellenbosch Municipal Planning By-law, 2015 ("the By-law"), read with section 61(2)(c) of the Western Cape Land Use Planning Act 3 of 2014 ("LUPA").
3. An order, insofar as it may be necessary, exempting the Applicant in terms of section 7(2)(c) of PAJA from the obligation to exhaust any internal remedy that might have been available in relation to the decision to issue the certificate.
4. In the alternative, and in the event of the Court finding that the issue of the exemption certificate did not constitute administrative action, an order declaring that the

certificate was not lawfully issued under the relevant legislation, and that it should be set aside.

5. In the further alternative, an order declaring that section 24(1)(e) of the By-law and section 61(2)(c) of LUPA are unconstitutional and invalid.
6. An order that the Applicant's costs be paid by the First Respondent, alternatively, and in the event of any of the other respondents opposing the relief sought, by the First Respondent and such other respondents jointly and severally, the one paying, the other to be absolved.
7. An order granting such further or alternative relief to the Applicant as this Court may deem fit.

**TAKE NOTICE FURTHER** that the affidavits, with annexures, of **YUNIS SHAIK**, **ANDRE VAN DER VEEN** and **CORLIE SMART** will be used in support of this application.

**TAKE NOTICE FURTHER** that the First Respondent is called upon to deliver, within **15 (FIFTEEN)** days of service of this notice of motion, to the Registrar of the High Court the record of proceedings relating to the decisions sought to be reviewed and set aside (including all documents, letters, memoranda, reports, minutes and other materials that were before the First Respondent when its decisions were taken), together with such reasons as the First

Respondent is by law required or desires to give or make, and to notify the Applicant that it has done so.

**TAKE NOTICE FURTHER** that, if the Respondents intend opposing this application, they are required to:

- (a) notify the Applicant's attorney in writing of such intention within **15 (FIFTEEN)** days of service of this notice of motion (or any amendment) upon the Respondents, and appoint in such notification an address referred to in Rule 6(5)(d) at which the Respondents will accept notice and service of all documents in these proceedings; and
- (b) within **30 (THIRTY)** days after the expiry of the time period referred to in Uniform Rule 53(4), deliver answering affidavits, if any.

**TAKE NOTICE FURTHER** that the Applicant has appointed the offices of its attorney, as set out below, as the address at which it will accept notice and service of all process in these proceedings.


**TAKE NOTICE FURTHER** that, if no such notice of intention to oppose is given, this application will be set down for hearing in the Third Division on **TUESDAY, 29 JANUARY 2019** at 10:00 or as soon thereafter as counsel may be heard.

**DATED AT STELLENBOSCH ON THIS 10th DAY OF DECEMBER 2018.**

**SMART ATTORNEYS**

Applicant's attorneys

Per:

A handwritten signature in black ink, appearing to be 'C. Smart', written over a horizontal line.

**C. SMART**

111 Dorp Street

STELLENBOSCH

c/o **SHEPSTONE & WYLIE**

18<sup>th</sup> Floor, 2 Long Street

CAPE TOWN

Ref Anneke Whelan

**TO: THE REGISTRAR**

High Court

Keerom Street

CAPE TOWN

**AND TO: THE STELLENBOSCH MUNICIPALITY**

First respondent

Care of the Municipal Manager

Municipal Building



Plein Street

STELLENBOSCH

**AND TO: MANAGER: PROPERTY MANAGEMENT, STELLENBOSCH  
MUNICIPALITY**

Second Respondent

Municipal Building

Plein Street

STELLENBOSCH

**AND TO: MUNICIPAL MANAGER OF THE STELLENBOSCH  
MUNICIPALITY**

Third Respondent

Municipal Building

Plein Street

STELLENBOSCH

**AND TO: DIRECTOR: PLANNING & ECONOMIC DEVELOPMENT,  
STELLENBOSCH MUNICIPALITY**

Fourth Respondent

Municipal Building

Plein Street

STELLENBOSCH

AND TO: **PROVINCIAL MINISTER OF LOCAL GOVERNMENT,  
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING,  
WESTERN CAPE**

Fifth Respondent

Care of the office of the State Attorney

4<sup>th</sup> Floor, Liberty Life Centre

22 Long Street

CAPE TOWN

AND TO: **PREMIER OF THE PROVINCIAL GOVERNMENT OF THE  
WESTERN CAPE**

Sixth Respondent

Care of the office of the State Attorney

4<sup>th</sup> Floor, Liberty Life Centre

22 Long Street

CAPE TOWN

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

In the matter between:

**LA CONCORDE SOUTH AFRICA (PTY) LTD**

Applicant

and

**THE STELLENBOSCH MUNICIPALITY**

First Respondent

**THE MANAGER: PROPERTY MANAGEMENT,  
STELLENBOSCH MUNICIPALITY**

Second Respondent

**THE MUNICIPAL MANAGER, STELLENBOSCH  
MUNICIPALITY**

Third Respondent

**THE DIRECTOR: PLANNING & ECONOMIC  
DEVELOPMENT, STELLENBOSCH MUNICIPALITY**

Fourth Respondent

**PROVINCIAL MINISTER OF LOCAL GOVERNMENT,  
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT  
PLANNING, WESTERN CAPE**

Fifth Respondent

**PREMIER OF THE WESTERN CAPE**

Sixth Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**YUNIS SHAIK,**

do hereby state under oath as follows:

1. I am an adult businessman residing at 22 Aloe Road, Vredehoek, Cape Town.
2. The facts to which I depose are within my own knowledge, save where otherwise indicated, and are, to the best of my belief, true and correct. The legal submissions made in this affidavit are made on the advice of my legal representatives. I believe such advice to be correct. Where I rely on information procured from or conveyed to me by other persons, I believe such information to be true. Confirmatory affidavits will be delivered in due course.
3. I am a director of the Applicant, and am duly authorised to depose this affidavit. I attach, marked "FA1", an extract of the resolution by the directors of the Applicant to institute this application and to authorise me to sign this affidavit.
4. This is an application for the judicial review under the Promotion of Administrative Justice Act 3 of 2000 ("PAJA") of decisions taken by the First Respondent, as well as for declaratory and ancillary relief in relation to the issue of a certificate in terms of certain sections of the Stellenbosch Municipal Planning By-law, 2015 ("the By-law"), and the Western Cape Land Use Planning Act 3 of

2014 (“LUPA”), and the constitutionality of those sections.

5. I set out the relevant details and the reasons for the launch of the application in the discussion below.
6. As this application raises a constitutional issue, the Applicant will ensure that the required notice in terms of Rule 16A of the Uniform Rules of Court is duly delivered simultaneously with the institution of the application.

### The parties

#### The applicant

7. The Applicant is **LA CONCORDE SOUTH AFRICA (PTY) LTD**, registration number 1997/020814/07, a private company with limited liability duly incorporated in accordance with the company laws of the Republic of South Africa. The registered office of the Applicant is at 57 Hoofstraat, La Concorde, Paarl. I attach, marked “FA2”, an extract from the records of the Companies and Intellectual Property Commission (“CIPC”) reflecting the Applicant’s current particulars.
8. The Applicant was originally known as the Koöperatiewe Wijnbouersvereniging van Suid-Afrika Beperk. (“KWV”). KWV was converted from a co-operative to

a company called KWV (Pty) Ltd on 2 December 1997, as appears from the certificate attached hereto as “FA3”. That name changed to KWV South Africa (Pty) Ltd on 17 August 1999 (this appears from “FA4” hereto). The name was again changed on 5 January 2017 to La Concorde South Africa (Pty) Ltd. The extract from the records of the CIPC in this regard is attached hereto as “FA5”.

#### The respondents

9. The First Respondent is the **STELLENBOSCH MUNICIPALITY**, a Category B local municipality established in terms of Chapter 2 of the Local Government: Municipal Structures Act 117 of 1998 (“the Structures Act”), care of the executive mayor of the Stellenbosch Municipality, Plein Street, Stellenbosch (“the Municipality”).
10. The Second Respondent is the **MANAGER: PROPERTY MANAGEMENT, STELLENBOSCH MUNICIPALITY**, employed at the Stellenbosch Municipal Building, Plein Street, Stellenbosch.
11. As will be set out in detail below, the Second Respondent was the decision-maker of first instance on behalf of the Municipality in relation to the exclusion of land from a lease agreement currently in existence between the Municipality and the Applicant. Whilst his decision was subsequently replaced by a decision of the Third Respondent as the internal appeal authority, I seek to set aside the Second



Respondent's decision to avoid any possibility that it may later be argued that, in relation to the decision taken on internal appeal, the setting aside of the Third Respondent's decision would result in the Second Respondent's decision remaining or reviving.

12. The Third Respondent is the **MUNICIPAL MANAGER OF THE STELLENBOSCH MUNICIPALITY**, employed at the Stellenbosch Municipal Building, Plein Street, Stellenbosch.
13. The Third Respondent is, in terms of section 62 of the Local Government: Municipal Systems Act 32 of 2000 ("the Systems Act"), the appeal authority in relation to the decision taken by the Second Respondent and, in this capacity, she dismissed the applicant's appeal against such decision on 22 November 2017. As I shall elaborate upon below, the outcome of the appeal was only conveyed to my legal representatives on 31 May 2018.
14. The Fourth Respondent is the **DIRECTOR: PLANNING & ECONOMIC DEVELOPMENT, STELLENBOSCH MUNICIPALITY**, employed at the Stellenbosch Municipal Building, Plein Street, Stellenbosch.
15. The Fourth Respondent was the decision-maker on behalf of the Municipality who issued an exemption certificate in terms of section 24 of the By-law (read with section 61 of LUPA). The Applicant applies for the setting aside of such certificate



either on review or, in the event of the Court finding that the issue of the certificate did not constitute administrative action, for a declaration that the certificate was not lawfully issued under the relevant legislation, and that it thus be set aside. The Applicant also, as an alternative, raises a constitutional issue in relation to section 24(1)(e) of the By-law and section 61(2)(c) of LUPA.

16. The Fifth Respondent is the **PROVINCIAL MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, WESTERN CAPE** ("the Minister"), duly appointed as such in terms of section 42 of the Constitution of the Western Cape, 1998, care of the office of the State Attorney, 4<sup>th</sup> Floor, Liberty Life Centre, 22 Long Street, Cape Town.
17. The Sixth Respondent is the **PREMIER OF THE PROVINCIAL GOVERNMENT OF THE WESTERN CAPE** ("the Premier"), cited in her capacity as the representative of the provincial government of the Western Cape, care of the office of the State Attorney, 4<sup>th</sup> Floor, Liberty Life Centre, 22 Long Street, Cape Town.
18. No relief is sought against the Fifth and Sixth Respondents save for costs orders in the event of their opposition to the relief sought by the Applicant. They are joined because of their interest in relation to the declaratory relief sought on the constitutional aspect involving LUPA, elaborated upon below.





**Locus standi and jurisdiction, and relevant aspects of the lease agreement**

Locus standi

19. The Applicant is the lessee of two portions of immovable property known as farm 370 Stellenbosch, and a portion of the remainder of farm 369 Stellenbosch. The leased portions are collectively known and described in the relevant lease agreement as Farm 369P ("the property"). I say more about the lease agreement below.
20. The Municipality is the owner of the immovable properties and the lessor of the property. The impugned decisions relate to the property, and therefore have a direct (and, it is submitted, adverse) effect on the Applicant. As such, the Applicant has the necessary *locus standi* to bring this application in terms of the PAJA.

Jurisdiction

21. The property is situated in Stellenbosch, within the geographical jurisdiction of this Court, and the Municipality's decisions were taken within such jurisdiction. Moreover, the Applicant's registered office is in Paarl. This Court thus has the necessary jurisdiction to determine this application both in terms of the common law and in terms of the PAJA.

The lease agreement

22. As far as the lease agreement is concerned, the following is relevant.
23. The Applicant, then known as KWV, entered into a lease agreement, attached as Annexure "FA6", with the Municipality on 12 May 1992 in terms of which the Municipality leased the property to the Applicant. The lease period is from 1 April 1991 until 31 March 2041.
24. The clauses of the lease agreement relevant to this application are:
- 24.1. Clause 4.5: *"Dit is 'n spesiale voorwaarde van hierdie ooreenkoms dat die Verhuurder die reg voorbehou om hierdie ooreenkoms summier te kanselleer, sonder enige voorafgaande skriftelike kennisgewing, indien die Huurder sou versuim om enige verskuldigde huur- of inlystingsgeld binne sewe dae vanaf die vervaldatum te vereffen, en so 'n kansellering affekteer op geen wyse die reg van die Verhuurder om enige bedrag wat die Huurder skuld of verskuldig mag word van hom te vorder nie."*
- 24.2. Clause 20.1, read with clause 20.1.5: *"Die Verhuurder kan, sonder om afbreuk te doen aan enige bepalinge of vereistes van hierdie ooreenkoms, met spesifieke verwysing na die bepalinge van klousule 4 hiervan, en nadat*

*'n skriftelike kennisgewing op die Huurder beteken is, hierdie ooreenkoms beëindig- ... indien die eiendom in sy geheel of gedeeltelik vir bona fide munisipale doeleindes, waarby dorpsstigting ingesluit is, benodig word ... met dien verstande dat 'n grasiëperiode van hoogstens een jaar in gevalle van subklousule 20.1.1, 20.1.2; 20.1.3; 20.1.4 en 20.1.5 genoem aan die Huurder verleen word, ten einde die huurder in staat te stel om die oeste wat op daardie stadium uitstaande mag wees te in ..."*

25. In short, the Municipality may, after written notice to the Applicant, cancel the agreement, should the Municipality need a portion or the whole of the property for *bona fide* municipal purposes, which would include the township establishment.

26. Thus, in order for the Municipality to cancel the agreement in terms of clause 20:

26.1. The entire or a portion of the property should be needed for *bona fide* municipal purposes, which would include (but not be limited to) the establishment of a township.

26.2. The "need" must be that of the Municipality.

26.3. The agreement in its entirety must be cancelled - partial cancellation is not provided for.

- 26.4. Written notice of the cancellation of the entire agreement must be given to the Applicant prior to such cancellation.
27. The property (Farm 369P), as mentioned above, consists of farm 370 and a portion of the remainder of farm 369. The area of the property was determined by the council of the Municipality and is indicated on the map attached to the lease agreement. The map was drawn up during July 1982 to identify and indicate the extent of "*munisipale huurgrond perseel 369P*" and was signed by the Municipality's mayor at the time. The property is also commonly referred to as "*Grondves Plaas*".
28. The extent of "*municipal lease properties*" is still determined by the Municipality's council. This, according to the information available to the Applicant, is the exclusive mandate of the Council, and this power has not been delegated to the Municipality's officials. This appears from the extract of the delegations and minutes attached hereto as "FA7".
29. I understand, further, that it is only either Council or Mayco that may cancel lease agreements. This appears, at least partly, from the extract of a report written by Council's legal advisor on 14 March 2018, a copy of which is annexed, marked "FA8". In any event, the relevant extracts from the applicable legislation will no doubt be included in the Rule 53 record, and I shall then be able to supplement these papers in this regard if necessary.

30. The relevance of these aspects will appear from the discussion below.

**The relief sought in this application**

31. This is an application:

31.1. For an order reviewing and setting aside the decisions taken by the Municipality, respectively by the Second Respondent on 2 June 2017 and the Third Respondent on 22 November 2017, in relation to the exclusion a portion of the property from the lease agreement for the purposes of building a road over the property.

31.2. For an order reviewing and setting aside the decision by the Municipality, taken by the Fourth Respondent, to issue an exemption certificate on 10 October 2017 in terms of section 24 of the By-law.

31.3. For an order, insofar as it may be necessary, exempting the Applicant in terms of section 7(2)(c) of PAJA from the obligation to exhaust any internal remedy that might have been available in relation to the decision to issue an exemption certificate.

31.4. In the alternative, and in the event of the Court finding that the issue of the

exemption certificate did not constitute administrative action, then the Applicant seeks an order declaring that the certificate was not lawfully issued under the relevant legislation, and that it should be set aside.

31.5. In the further alternative, the Applicant seeks an order declaring that section 24(1)(e) of the By-law and section 61(2)(c) of LUPA are unconstitutional and invalid.

32. As far as the Municipality's decision – both by the Second Respondent and by the Third Respondent as internal appeal authority - in relation to the exclusion of a portion of the property from the lease agreement is concerned I conclude, for reasons that are discussed below, that such decision is, *inter alia*, defective upon the following bases:

32.1. Neither the Second Respondent nor the Third Respondent was authorised, under the empowering provision (as contemplated in section 6(2)(a) of the PAJA), to decide that the road in question was intended for *bona fide* municipal purposes and thus that the lease agreement could be "*partially*" cancelled. Neither had the delegated powers to cancel the lease agreement. Only Council is authorised to cancel the agreement. Moreover, the Second Respondent could not have taken a decision that the road was for municipal purposes – that was the prerogative of other departments within the Municipality. In any event, in terms of the



Municipal Spatial Development Framework ("MSDF") or structure plan the road must be indicated on a masterplan. The road proposed by the Municipality does not appear on a masterplan. In fact, the current municipal road masterplan does not indicate that a road will be constructed over Grondvies farm. The road masterplan forms part of the MSDF. I have been advised that the Municipality has not adopted their new MSDF and is also still in the process of drafting their new road masterplan. As far as I am aware, roads must be indicated on the masterplan. The logic behind includes the fact that owners can look at the masterplan and decide whether they buy a property or not should there be a possible new road planned close to the property – an argument similar to that relating to zoning schemes that would inform a buyer.

- 32.2. The Second and Third Respondents made a material mistake in law in taking the decision (section 6(2)(d) of the PAJA), in that the lease agreement does not provide for the partial cancellation thereof.
- 32.3. The decisions are not rationally connected, in terms of section 6(2)(f)(ii) of the PAJA, to one of the following: the purpose for which they were taken; the purpose of the empowering provision; the information before the Municipality; or the reasons given for those decisions by the Municipality.
- 32.4. In taking the decisions, the Municipality took irrelevant considerations into



account, or failed to consider relevant considerations, in terms of section 6(2)(e)(iii) of the PAJA.

32.5. A mandatory and material procedure or condition prescribed by the empowering legislation was not complied with (section 6(2)(b)) and the decisions were taken in circumstances that were procedurally unfair (section 6(2)(c)).

32.6. The decisions are so unreasonable that a reasonable administrator would not have taken them (section 6(2)(h)).

33. As regards the decision to issue an exemption certificate, and in the context of the PAJA, I contend that such approval falls to be set aside mainly on the bases that relevant considerations were not considered in the taking of the decision (section 6(2)(e)(iii)) of PAJA), a mandatory and material procedure or condition prescribed by an empowering provision required for such approval have not been complied with (section 6(2)(b) of PAJA), and the approval was unlawful (section 6(2)(i) of PAJA). In the circumstances of this matter, further, the provisions of sections 6(2)(e)(vi) and 6(2)(h) are also applicable to the decision. The decision is unconstitutional or unlawful (section 6(2)(i)).

34. I have been advised that Rule 53 of the Uniform Rules of Court makes provision, following the institution of proceedings for judicial review, for the supplementing or



amendment of the grounds upon which an applicant intends to seek to have the relevant decisions reviewed and set aside. I shall in due course, and following delivery of the full record of the Municipality's decisions, avail myself of that opportunity to the extent that it may be necessary. At this stage, however, I intend to rely on sections 6(2)(a), 6(2)(b), 6(2)(c), 6(2)(d), 6(2)(e)(iii), 6(2)(e)(vi), 6(2)(f)(ii), 6(2)(h) and 6(2)(i) of PAJA.

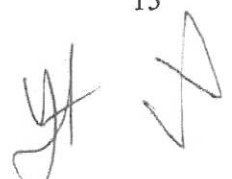
35. In what follows, I address the following:

35.1. A chronological background to the impugned decisions taken by the Second and Third Respondents, and the processes followed in reaching those decisions.

35.2. A chronological background to the events after the decisions to exclude the portion of land from the lease agreement and the appeal decision, as well as the events prior to and after the decision to issue the exemption certificate that led to this application.

35.3. Key aspects of the subject property and the implications of the exclusion of the portion of land from the lease agreement.

35.4. The Third Respondent's decision to issue an exemption certificate and the process followed in reaching that decision.

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35.5. The substantive grounds for review, including the Municipality's non-compliance with the legal framework within which such decisions must be taken.

35.6. The bases for the constitutional issue raised.

**Background to the impugned decisions taken by the Second and Third Respondents**

**The second respondent's decision**

36. The Second Respondent, Mr Piet Smit, sent an email to Mr Dirk Visser, an employee of the Applicant's (who is not authorised to make decisions on behalf of the Applicant) on 19 January 2017. A copy of this email, with its attachments, is annexed, marked "FA9".

37. Mr Smit referred to email correspondence, attached to his email, from TV3 Architects and Town Planners ("TV3") who had indicated that they were proposing the building of a public road over the Grondves farm. They had requested Mr Smit to obtain approval for the public road or the amendment of the lease agreement from the Applicant.

38. Mr Smit indicated in his email to Mr Visser that there was a possibility of the use

of a portion of Grondves for the purposes of a road. He indicated that he was of the opinion "*dat ons die hele area uitsny uit die kontrak, en nie net die pad nie*", and he requested the Applicant's comment on the proposal. He also indicated that, should the Applicant be in agreement, he would arrange for the formal amendment of the lease agreement.

39. There was no further correspondence between the Municipality and the Applicant in his regard until April 2017.

40. The Applicant's then Chief Executive Officer, Mr Andre van der Veen, was made aware of the proposal during January 2017, and instructed Applicant's attorney, Ms Smart, to provide an opinion on the matter and to engage with the Municipality and Mr Smit, which she did.

41. On 18 April 2017, Ms Smart confirmed a telephonic conversation she had had with Mr Smit on 13 April 2017. Her email to Mr Smit is attached as "FA10".

42. According to Ms Smart, Mr Smit informed her that the proposed road over Grondves farm had not been planned or initiated by the municipality and that the road was required by a developer. The reason for the necessity of the road was that the provincial department of transport, as well as the engineering department of the Municipality, supported the developer's development on the condition that a road was constructed over Grondves farm. Mr Smit had indicated that he had in

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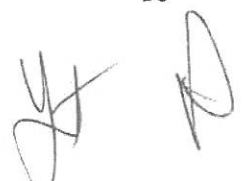
fact sent a formal notice to the Applicant regarding the decision to build the road over Grondves farm and the possible amendment of the lease agreement, and Ms Smart requested a copy thereof.

43. Mr Smit only responded to Ms Smart's email on 9 June 2017 and indicated that the formal notice with its attachments were attached to his email as requested. A copy of his email is attached, marked "FA11". In his email to Ms Smart, Mr Smit omitted the attachments referred to in the notice. Ms Smart informed Mr Smit on 10 June 2017 that the annexures were not attached and that the appeal period (in terms of section 62 of the Systems Act) could only commence once the annexures to his notice had been provided to the Applicant. Ms Smart's email is attached as annexure "FA12".

44. Mr Smit provided the annexures to Ms Smart on the 15<sup>th</sup> of June 2017, and confirmed that the appeal period would only commence on the date the Applicant received the formal notice sent via registered mail. Mr Smit's email is attached as "FA13". Mr Smit also addressed the following in his email:

44.1. He confirmed that TV3 was not acting on behalf of the Municipality, or appointed as the Municipality's consultants.

44.2. TV3 was acting on behalf of a private developer of a property in the vicinity of Grondves farm.



44.3. He consulted with TV3, who indicated that the Provincial Roads Engineer had indicated that the latter would only consider the development application if an alternative access to the development could be built over Grondves farm.

44.4. TV3 had approached him to establish what the possibilities were for the construction of the road over the Municipality's property, being Grondves farm.

44.5. TV3 had requested him to start the process to make the property available for the construction of the road over Grondves farm so that the development could proceed.

44.6. He also indicated that sufficient reasons for his decision to exclude the portion of land from the lease agreement was contained in the formal notice of his decision.

45. The Applicant received the formal notice, attached hereto "FA14", of Mr Smit's decision to exclude the portion of land from the lease agreement via registered mail on 26 June 2017.

46. As appears from the discussion in relation to the internal appeal below, the

Applicant is not sure whether Mr Smit's decision in fact entailed more than one decision rolled into one. This will have to be reconsidered upon receipt of the Rule 53 record.

The Applicant's appeal

47. Ms Smart lodged an appeal on the Applicant's behalf in terms of section 62 of the Systems Act, against Mr Smit's decision (or decisions) on 17 July 2017. The letter of appeal, with reasons for the appeal, is attached as "FA15".

48. Mr Smit's formal notice did not clearly indicate the extent of his decision (or decisions) and his subsequent correspondence also did not indicate which decision he considered to be the subject of a right to an appeal.

49. The Applicant appealed against all the decisions that it could deduct had been taken by Mr Smit, namely:

49.1. The decision to approve of a new road over Grondves farm;

49.2. The decision that the proposed access road is considered to be for *bona fide* municipal purposes; and

49.3. The decision to exclude a portion of the farm from the lease agreement,

and thus to “cancel” a portion of the lease agreement.

50. The reasons for the appeal, in summary, are as follows (the Applicant relies on all of these reasons for the purposes of this application, too).

The decision to approve the building of the road:

51. The new road over Grondves farm will effectively subdivide the leased area and, as a result, the portion of the farm to the west of the road would not be viable for the purposes for which the Applicant is entitled to utilise the lease farm.
52. Both the farms that form part of Grondves lease farm are zoned for agricultural use. As such, they cannot be subdivided without the requisite Ministerial consent under the Subdivision of Agricultural Land Act, 1970.
53. The farms fall outside of the urban edge of the Municipality.
54. Due process pertaining to other applicable legislation (such as the Subdivision of Agricultural Land Act, 1970, National Environmental Management Act, 1998, and National Heritage Resources Act, 1999) should have been followed prior to the approval of the road over the leased agricultural land. This was not done.
55. A public participation process should have been followed due to the potentially

adverse impact of such decision on interested and affected parties, as well as the public in general.

56. Notice of a land use application that might impact on the Applicant's rights had not been given to the Applicant.

The decision to consider the road to be for *bona fide* municipal purposes:

57. The annexure to the formal notice did not specifically refer to a development, but seemed to imply a development proposed on the remainder of farm 961. The Applicant was not informed of the content of such land use application, and was not given notice thereof.
58. The land use application that would require the construction of the road was initiated by the owner of that development. It was not initiated by the Municipality. The road over Grondves farm is thus not required for current municipal development on Grondves farm or any other development of municipal land.
59. The road could only be deemed to be for *bona fide* municipal use should the road be required for development of municipal land. The necessity of the road over Grondves farm is for the sole purposes of the approval of a private developer's scheme.



60. Mr Smit also confirmed in his report to the Municipality's council dated the 29<sup>th</sup> of September 2017, 'FA8' referred to above that the Director: Planning and Economic Development that "*future use of the property for urban development purposes has not yet been approved by Council*".

The decision partially to cancel the lease agreement:

61. In terms of the lease agreement itself, it can only be cancelled should the Municipality require it for municipal purposes, and only if the Municipality requires it for *bona fide* municipal use.
62. Given what has been set out above, the Second Respondent erred in his decision to deem the road to be for *bona fide* municipal purposes.
63. Furthermore, in terms of the lease agreement the entire lease agreement would be cancelled should the Municipality be entitled to cancel. The decision partially to cancel the lease agreement is thus flawed.
64. These were thus the reasons for the lodging of the internal appeal.

The Third Respondent's request for more information

65. The Third Respondent, being the appeals authority, requested further information

from the Applicant on 19 June 2017 and provided the documents referred to in her correspondence on 2 October 2017. The Third Respondent's request for further information is attached as "FA16", and the documents referred to in it as "FA17".

66. In summary, the Third Respondent indicated that:

66.1. Before applying her mind, she requested Mr Smit to provide her with his version of the events that led up to the appeal.

66.2. Mr Smit's report recommended that the appeal be dismissed, alternatively, that the Applicant be requested to provide reasons / motivation why it is of the opinion that the portion of land is of significant importance to the Applicant from an agricultural development point of view, where after the Third Respondent could make a final decision.

66.3. After considering Mr Smit's recommendation, she decided not to make a final decision at that stage, until such time as the Applicant has motivated why the portion of land is of significant importance.

66.4. She would make her final ruling after she had received the Applicant's response. She required the response to the above from the Applicant directly, and did not want a legal motivation to be included in the response.

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67. Mr Smit's report, in turn, indicated the following:

67.1. That TV3 was acting on behalf of a developer who planned to do a private residential development in Paradyskloof, and that the Provincial Roads Engineer would only support the application if the developer constructed a new public road over Grondves farm.

67.2. That he had undertaken to discuss the above with the Applicant.

67.3. That he had a conversation with a representative of the Applicant who had indicated that the exclusion of the portion of land would not be a problem.

67.4. That he had sent a formal notice to the Applicant on the 2<sup>nd</sup> of June 2017 that indicated that he would like to exclude the portion of land as the Municipality '*might*' need the land for municipal purposes.

67.5. That, since the road would effectively cut off the area to the west of the road from the rest of the Grondves farm, he decided to exclude the area from the lease area.

68. His reasons for the decision(s) were that:

68.1. The road would sub-divide the lease area.

68.2. The area has not been utilised for the past 20 years.

68.3. The area between the new road and the R44 could probably be developed, although outside of the urban edge.

69. Mr Smit quoted a clause from the lease agreement, but inserted words which were not included in the clause he quoted. He did not indicate that it was his insertion. The words Mr Smit inserted were "*of gedeelte daarvan*" in the clause that indicates that the lease agreement could be cancelled. This would have been misleading to the Third Respondent, as it created the impression that the lease agreement provided for partial cancellation.

70. He indicated that he had the delegated authority to serve a notice on a lessee, but did not indicate whether he had the delegated authority to cancel a lease or amend a lease agreement.

71. He referred to item 541 of the Municipality's approved system of delegations, which indicates that he may exercise all the rights and obligation of the Municipality as lessor or principal in respect of leases, servitudes and other legal instruments related to his area of jurisdiction.

72. He submitted to the Third Respondent that he did not make a decision to approve

that road, and that that decision had not been taken at the date of his report.

73. Mr Smit agreed that the prior to the approval of an application for the road would have had to follow due process, and that the decision would be taken by the planning department. He also indicated that the decision to consider the road to be for *bona fide* municipal purposes was not a decision, but that he merely indicated that it is deemed to be required for a *bona fide* municipal use.
74. He referred to Schedule 5B of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), which indicates that municipal roads is a municipal competency and, as a result, the road can merely for that reason be considered to be a "*bona fide municipal use / purpose*". (I have been advised, however, that a road over a farm is not a municipal road – an issue which I address later.)
75. He stated that the fact that the road will be constructed by the developer is irrelevant, as it will become a public road not only for the proposed development, but to improve the traffic situation in general.
76. He further indicated that, should the road be approved and constructed, it would effectively subdivide the farm and the portion so excluded would not be viable as an agricultural unit. That portion of land is not needed or planned for any specific purpose at the moment.



77. He was of the opinion that excluding the portion of land does not require the cancellation of the entire lease agreement. He therefore did not take a decision to cancel the lease agreement, but merely to exclude a portion of the lease area. He submitted further that the notice of the decision to exclude the portion of land from the lease agreement was actually a notice of his intent to take the decision, and that the 21-day appeal period was also deemed to be a period in which the Applicant could respond to his notice.
78. Mr Smit was of the view that the reasons he provided in the formal notice were adequate reasons for his decision to exclude the portion of land, and that the Applicant was appealing simply for the sake of appealing. The Applicant should have indicated if it had other plans for the specific area.
79. The Applicant, via Ms Smart, responded to the Third Respondent's request for further information on 23 October 2017. A copy of the response is attached as "FA18". Mr van der Veen, the Applicant's chief executive officer at the time, responded by setting out various facts and considerations (again, the issues raised are relevant for the purposes of determining this application).
80. He pointed out that the Applicant had proactively engaged with the Municipality in relation to the use and development of the property. The applicant had been awaiting, for some time, updated information on the discussions, after meetings with various employees of the Municipality. The Municipality's Director:



Planning and Economic Development at the time, Mr Lombaard, had indicated that he would be attending to the precinct of the Municipality wherein the leased property fell.

81. Mr van der Veen stated that Mr Smit's original request to the Applicant to consent to the road over Grondves farm contained a drawing indicating the proposed road, as well as a Site Development Plan for the remainder of farm 961, being the old Medi-clinic head office situated on the corner of the R44 and Trumali Road. It appeared from the drawing that the proposal related to a commercial development of the old Medi-clinic head office site.
82. Mr van der Veen had met with Mr Smit on previous occasions, where it clear that he knew that Mr van der Veen was the only authorised person to make decisions regarding the Applicant's leased property. Mr van der Veen confirmed that he did not have a telephone conversation with Mr Smit regarding the exclusion of the portion of Grondves farm during December 2016 or January 2017.
83. In previous matters relating to the property, Mr Smit and the Municipality's consultants liaised with Mr van der Veen directly. Therefore, for Mr Smit to indicate in his report to the Third Respondent that he was under the impression that he spoke to an authorised representative of the Applicant was untruthful.
84. In order for the Applicant to decide whether it should expand the vineyards on the

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farm or consider alternative agricultural activities and development, the Applicant had to clarify with the Municipality what the future development plans were for the farm in general and, specifically, the portion of the farm that was not yet used to cultivate grapes. Establishment of a vineyard or other expanded agricultural facilities require substantial expenditure and the information requested regarding the Municipality's future plans for the farm was necessary to enable the applicant to make a decision regarding the development of that portion of the farm.

85. Mr Smit had attended a meeting with Mr van der Veen on 23 July 2015 to discuss the Municipality's future plans. He did not, however, provide the Applicant with enough information to make a decision, although he did indicate that the Municipality had expressed a strong desire to return to the purely agricultural nature of the property.

86. Mr van der Veen had arranged and attended a meeting with Mr Lombaard on 20 October 2016 in order to again discuss the Municipality's plans for the precinct. Mr Lombaard provided Mr van der Veen with the planning framework and proposal for the Paradyskloof Special Development Area Spatial development Plan for the area in which Grondves farm is situated. Mr Lombaard also invited Mr van der Veen to a meeting where the Municipality's mayor presented and discussed the development and business partnership philosophy she has for the Municipality.

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87. Mr van der Veen indicated that the Applicant was interested in developing the land in partnership with the Municipality, and would wait for a reasonable time for the Municipality to finalise its development plan for the area in order to consider its options, and in order to co-ordinate the Applicant's development plans with that of the Municipality in so as to maximise the utilisation and value of the farm. Mr Lombaard then indicated that the process would be finalised within twelve months.
88. The Applicant had, at the time of Mr van der Veen's response (and has to date) not had an update from the Municipality as to its plans regarding Grondves farm or the area in general. Mr van der Veen thus indicated that the Applicant intended to proceed with the development of Grondves farm for agricultural and related purposes.
89. He confirmed that Mr Smit indicated to Ms Smart that he would have no objection should the Applicant wish to develop the land to include agricultural related uses, such as a wine tasting centre or a cellar on the portion of land that Mr Smit had now decided to exclude from the lease agreement. The discussion between Ms Smart and Mr Smit regarding the above was after the latter had sent the formal notice to the Applicant and shortly before Ms Smart lodge the appeal against the decision to exclude the portion of the farm from the lease agreement.
90. Due to the pending appeal, the Applicant had been unable to take further steps and to proceed with the development of the portion of the farm for agricultural and

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related purposes.

91. Those were, essentially, the issues raised by Mr van der Veen.
92. As I have pointed out earlier, the Third Respondent had informed Ms Smart that she would not be allowed to submit legal arguments in the response and that the response had to be made by the Applicant as to the importance of the land to it. Ms Smart, however, informed the Third respondent that Mr Smit's report did not deal with all the information that was at that stage known to the Applicant, and some of his statements to the Third Respondent were incorrect and did not correlate with the information that Mr Smit had previously provided to her and the Applicant.
93. In her covering letter (which is part of "FA18") to the Third Respondent, Ms Smart indicated that, to ensure that the relevant and correct information was before the Third Respondent, the following needed to be placed on record:
- 93.1. Mr Smit's report incorrectly indicated that the developers wants to "*do a residential development*".
- 93.2. The information provided by Mr Smit indicated the development of the old Medi Clinic Head Office.



93.3. Mr Smit incorrectly quoted an extract from the lease agreement by inserting words to create the impression that the lease agreement could be partially cancelled.

93.4. Mr Smit contradicted himself in his report. He indicated that the Municipality "*might need the land for municipal purposes*", yet elsewhere he indicated that he deems the road to be for "*bona fide municipal use*".

94. Ms Smart also pointed out that, prior to lodging the appeal, Mr Smit informed her that the reasons for his decision were contained in the formal notice to the Applicant; however, he provided further reasons to the Third Respondent in his report to her, notwithstanding the request to furnish reasons for his decision.

95. She also pointed out that Mr Smit neglected to inform the Third Respondent that he had attended meeting with Mr van der Veen regarding the future development of the farm and area. Mr Smit also neglected to inform the Third Respondent that he had indicated to Ms Smart that the development of the portion of the farm for agricultural related purposes would be acceptable to him.

#### The outcome of the appeal

96. The Third Respondent did not communicate with the Applicant regarding the outcome of the appeal until Ms Smart sent an email to her requesting an update as

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to when the Applicant could expect her appeal decision, on 23 May 2018, seven months since the Applicant's response to the request to provide further information.

97. Mr Smit sent an email on 31 May 2018 to which the Third Respondent's appeal decision was attached. He alleged that he had sent the appeal decision to Mr van der Veen on 22 November 2017. Mr Smit's email, with the attached appeal decision, is attached hereto as "FA19".
98. The Third Respondent's letter containing the appeal decision was addressed to the Applicant's chief executive officer, and indicated that, after she had considered the Applicants "*inputs / motivation as to why I should reconsider*" Mr Smit's decision and after applying her mind, she decided to dismiss the appeal.
99. She attached an Addendum Agreement which the Applicant had to sign to give effect to the decision insofar as the exclusion of the portion of land from the lease agreement was concerned.
100. The Third Respondent did not provide any reasons for her decision, neither did she indicate that the Applicant had a right to request reasons for her decision. Ms Smart requested the Third Respondent to provide reasons for her decision on the 20<sup>th</sup> of June 2018, by way of "FA20".

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101. Ms Smart indicated to the Third Respondent that her decision had not been communicated to the Applicant. The Third Respondent could thus not refuse to provide reasons for the decision due to the time lapse since the decision was made in November 2017, because:

101.1. The outcome of the appeal had been directed to the incorrect email address;

101.2. It had not been communicated via registered mail;

101.3. The postal address indicated on the correspondence informing the Applicant of the decision was also the incorrect postal address; and

101.4. Mr Smit had confirmed in an email to Ms Smart that the email communicating the outcome of the appeal had not been sent to the correct email address and accepted that the Applicant did not receive the correspondence.

101.5. In any event, Ms Smart had been on record for the Applicant since April 2017 regarding the lease agreement, the subsequent decision by Mr Smit and the lodging of the appeal on behalf of the Applicant; yet, the outcome of the appeal was also not communicated to her notwithstanding the above.

102. The Third Respondent communicated her reasons for her decision to dismiss the appeal on the 18<sup>th</sup> of July 2018. The reasons are attached as “FA21”, and were as follows.

102.1. The Second Respondent had made the correct decision, as the new road would effectively subdivide the leased property.

102.2. The small area would not be viable for agricultural purposes.

102.3. She had been informed that the Applicant had not used the portion of land for the past 15 years.

102.4. She was not convinced by the Applicant’s motivation as to why the land is of importance from an agricultural and / or development point of view.

102.5. The Applicant did not submit a specific proposal on what it planned to do with the land or why it is of importance from an agricultural / development point of view.

**The approval of the road over the leased farm: the exemption certificate**

103. In the meantime, prior to receipt of the reasons for the Third Respondent’s decision, Ms Smart requested Mr Smit to provide her with the contact details of

the authorised employee who would be making the decision whether to approve the proposed road over the Grondves farm in order to inform the authorised employee that the Applicant was considering taking the Third Respondent's decision on review.

104. Mr Smit, in an email dated 31 May 2018, indicated that it was his understanding that "*all approvals for the construction of the road is in place*". He referred Ms Smart to the Municipality's planning department. His email is attached as "FA19" referred to above.
105. Ms Smart sent an email ("FA22" hereto) to Mr de La Bat of the Municipality's planning department on 7 June 2018, requesting that department to indicate whether the road over the portion of Grondves farm had been approved, and if so, when it had been done. Mr de la Bat responded that he was no longer the acting Director of Planning and Economic Development and that Mr Tabiso Mfeya had been appointed as such. Ms Smart thus requested Mr Mfeya to provide the information requested.
106. In response to Ms Smart's request, Mr Smit provided Ms Smart with an "*Exemption Certificate*" on 27 June 2018. A copy of Mr Smit's correspondence and the certificate is attached as "FA23". This was the first indication that the Applicant had of the road having been approved.



107. The exemption certificate had been issued by Mr Dupre Lombaard, the Director: Planning and Economic Development at the time, in terms of section 24(1) of the By-Law. It was dated 10 October 2017 – prior to the Third Respondent's decision on the Applicant's internal appeal. Mr Lombaard has since left the employ of the Municipality.
108. I have been advised that the exemption certificate, issued in terms of section 24 of the By-law, exempts an owner of land from the requirements of bringing an application for the subdivision of land in terms of section 15, read with sections 20 to 23, of the By-law.
109. The exemption certificate was issued to and addressed to TV3 Architects and Planners. It indicated that the subdivision of the remainder of Farm 369 and farm 370, to create a public road as illustrated on TV3's Drawing 3362-P dated the 24<sup>th</sup> of April 2017, was exempt from a formal land use planning application and approval of the subdivision in terms of section 15 of the By-law, which would normally be required for applications to sub-divide land. The drawing referred to had been endorsed by Mr Lombaard on the 11<sup>th</sup> of October 2017.
110. The exemption certificate did not identify or indicate in terms of which subsection of section 24(1) the subdivision was deemed to have qualified for exemption from a land use application.

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111. I have been advised that, in terms of sections 15(1) and 20(1) of the By-law, owners of land must make formal application for the approval of the rezoning of land as well as the subdivision of land should the subdivision not be exempt in terms of section 24 of the By-law. In terms of section 24(1), certain categories of subdivisions and consolidations of land do not require the approval of the municipality. The subsection that appears to be applicable in the present matter and in terms whereof the exception certificate might have been issued is section 24(1)(e): *"the construction or alteration of a public or proclaimed street"*. I have been advised, however, that the road in question is not a street, as it does not fall within an urban edge and is situated on land zoned for agricultural use. It is also not a proclaimed street, and does not appear on the Municipality's road masterplan.
112. Section 24(2) requires the owner of land to obtain a certificate that certifies in writing that the subdivision is exempted from the application of section 15 and section 20 (1) of the By-law.
113. Section 24(3) requires the Municipality to indicate on the relevant subdivision plan that the subdivision is exempt from obtaining approval.
114. As mentioned above, the exemption certificate was addressed to TV3. Email correspondence dated 30 October 2017 ("FA24" hereto) between TV3 and Mr Smit regarding the exemption certificate indicates that Mr Smit was made aware already on 30 October 2017 of the fact that the exemption certificate had been

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issued. This was after his report to the Third Respondent, but before the date of her decision on appeal.

115. TV3 (as appears from the chain of email correspondence attached as "FA24") informed Mr Smit that he could now appoint a land surveyor to prepare a subdivision diagram for the section of the road for submission and approval by the Surveyor General.

116. Mr Janse van Rensburg, of TV3, expressed his view that the By-law does not require that neighbours and interested and affected parties should be notified that the exemption certificate was to be issued. He was of the opinion too that, as a result, interested and affected parties would not have a right to an appeal.

117. Mr Janse van Rensburg was further of the view that the "*approval*" (that is, the exemption certificate) was by implication an approval of a land use change from agriculture to public road. It will be argued on the Applicant's behalf that these views are wrong.

118. As far as the requirements for rezoning and subdivision are concerned, I have been advised that, if the construction of the new road was not exempt, the subdivision would have been considered *inter alia* in terms of section 20 and section 20(2) of the By-law, which requires that no application for a subdivision involving the change of zoning may be considered unless the land concerned is zoned as a

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subdivisional area. The land in question is zoned agriculture, and the subdivision thus requires rezoning from agriculture to subdivisional area to transport zone II (for primary use as public road in terms of section 3.25 of the section 8 zoning scheme regulations (issued under the Land Use Planning Ordinance 15 of 1985) that would apply in the present matter. The relevant extract from the zoning scheme regulations is attached as “FA25”.

119. Ms Smart was not provided with Mr Smit’s response to TV3.
120. In order to clarify whether the Applicant had a right to appeal the decision to issue the exemption certificate, Ms Smart discussed it and directed an email to Ms Hedre Dednam, the Manager: Planning and Economic Development. The email dated 25 July 2018, to which is annexed correspondence setting out Ms Smart’s understanding of the availability of an appeal, is attached as “FA26”.
121. Ms Smart pointed out that, according to section 79(2) of the By-Law, an appeal is available to a person whose rights are affected by ‘a decision’. The question arises whether the issuing of an exemption certificate could be considered a “*decision*” as referred to in section 79(2) of the By-Law.
122. Section 15(1) of the By-Law indicates that an application for a land development excludes a subdivision listed in section 24. Section 20(1) deals specifically with the subdivision of land, and indicates that, should a subdivision be exempted in

terms of section 24, the Municipality's approval under section 15(2) is not required.

123. In terms of section 24(1), the subdivision of land does not require the approval of the Municipality in the event that such subdivision falls under the categories listed in the section. The exemption certificate in question did not indicate which subsection of 24(1) was considered to be applicable; however, it refers to "*to create a portion of public road*", which alludes to section 24(1)(e).

124. It therefore seemed to Ms Smart at the time that the request to issue an exemption could not be deemed to be an "*application*", since sections 15(2) and 20(1) of the By-law indicate that applications for subdivision of land are not required if they fall under the categories mentioned in section 24(1). Sections 68(a) and 69(2) of the By-law (in relation to decision-making by the Municipality) only relate to decisions that are taken by the authorised party if it is a decision in terms of an "*application*".

125. As a result, Ms Smart was of the opinion that an exemption certificate is issued in terms of the By-Law and an appeal can only be available if the By-law makes provision for such an appeal – which it does not.

126. Ms Smart also questioned the Municipality to indicate whether an appeal in terms section 62 of the Systems Act would be available. Ms Smart was of the opinion

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that the issuing of the exemption certificate could not be deemed a decision in terms of section 62 which would bestow a right to an appeal to an affected party.

127. Ms Smart thus requested Ms Dednam to clarify the following:

127.1. Whether the issuing of the exemption certificate is deemed to be the approval of the subdivision of the two farms.

127.2. Whether the issuing of the exemption certificate is also deemed to be an approval for a change in land use (that is, a rezoning from agriculture to whatever the applicable zoning would be in terms of the proposed road).

127.3. That, should rezoning be required, what the new zoning of the subdivided land would be in order to allow for the construction / land use of a public road.

127.4. She also requested her to indicate whether the exemption certificate had indeed been issued under section 24(1)(e).

127.5. She requested Ms Dednam to indicate whether any appeals were available to interested and affected parties such as the Applicant in terms of the By-Law and/or the Systems Act.

128. Subsequent to the above correspondence, Ms Smart, twice requested via email Ms Dednam to respond to the correspondence, but to date no response has been received. I submit that, in the circumstances, should this Court find that an internal appeal was in fact available to the Applicant in relation to the issue of the exemption certificate, it would be in the interests of justice for the Court to exempt the Applicant from the duty to have exhausted such internal remedy prior to the launch of this application.

**The decisions fall to be reviewed and set aside**

129. I have referred, towards the beginning of this affidavit, to the various grounds upon which the decisions or administrative action dealt with above fall to be reviewed and set aside. The issues will be elaborated upon in a supplementary affidavit upon receipt of the Rule 53 record, and the legal issues arising will be dealt with in argument. For the moment, I summarise certain pertinent aspects relevant to the determination of this application.

130. In relation to the Second and Third Respondents' decisions:

- 130.1. The road will effectively subdivide the Grondves farm area and as a result, the section to the west of the road will not be viable for the purposes that the Applicant is entitled to utilize it.

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- 130.2. The Grondves farm falls outside of the urban edge and is zoned for the purposes of agriculture. Other applicable legislation processes should be followed prior to the approval of such access road over the leased agricultural land.
- 130.3. Due public participation should also have been followed prior to such decision as owners of properties in Paradyskloof will be affected by such approval. The Applicant was unaware of such processes (at the time of its appeal) that might have been followed and believed that the decision would be flawed as a result thereof. The Applicant did not receive notice of any land use application that might impact on it and its use of the leased property.
- 130.4. According to Annexure A to Mr Smit's notice of the relevant decisions, the proposed road forms part of a land use application in terms of the By-Law. The purpose of the land use application was for the approval of the development of the remainder of farm 961. The Applicant had not been informed of the content of the application or given notice thereof.
- 130.5. The land use application was initiated by the owner of the remainder of farm 961 and not by the Municipality. An access road over Grondves is not required for the current municipal development on the Grondves or any other municipal land. All the properties surrounding Grondves area are owned by

third parties. The construction of the road could thus not be considered to be for *bona fide* municipal purposes.

130.6. In the present case, the development by a private owner that necessitates new roads or the upgrade of such roads would solely be for the purposes of the approval of such development. The requirements by the local and provincial authorities for the construction access road did not obligate the Municipality to provide such road over municipal land.

130.7. The Municipality thus erred in taking the decision to exclude the land from the leased property, as the decision can only be made if the proposed access road was for *bona fide* municipal purposes.

130.8. The Municipality further erred in making the decision as the portion of the farm to be excluded forms part of the Lease Farm 369P and the area of the leased property cannot be altered unless the lease agreement between the parties had been cancelled in its entirety and a new lease agreement was entered into or if the parties agreed to an addendum to the lease agreement.

130.9. It follows that a decision to partially cancel the lease agreement is also flawed.



130.10. In any event, Mr Smit's submission that he has the delegated authority to exclude the area from the leasehold is incorrect. The reasons are:

130.10.1. The agreement cannot be "partially cancelled" as he alleged.

130.10.2. He relies on item 541 of the approved System of Delegations in terms whereof the '*Manager: Property Management*' has the delegated authority '*to exercise all the rights and obligations of the Municipality as lessor in respect of agreements of lease, related to the incumbent's area of jurisdiction*'.

130.10.3. Exercising "*all the rights and obligations in terms of a lease agreement*" does not, however, authorise him to make decisions regarding the addition or exclusion of an area of land from a Council approved leasehold property.

130.10.4. There is no delegation in place dealing with the early termination of long-term leases where the lessee is not at fault and by the absence of such delegation the decision making power is with Council itself. This was recently confirmed by the Mayoral Committee at a meeting dated the 14<sup>th</sup> of March 2018. The report, to which I have referred earlier in this affidavit, by Mr Smit and supported by the internal advisor to Council regarding the matter,

also indicated that Council will first have to prove that they need the land for *bona fide* municipal purposes before the process of early termination can be considered.

130.10.5. On Mr Smit's own version the proposed road was not approved at the date of his decision.

130.11. The cancellation of the agreement will lead to a substantial financial loss for the Applicant. The decision therefore directly impacts on the Applicant's rights in terms of the lease agreement between the parties. The Applicant had spent money planting and maintaining vineyards, and had built water infrastructure. It would not be compensated for these improvements under the lease agreement. I have explained earlier that the Applicant had planned to do an agricultural-related development, on the land, possibly in partnership with the Municipality.

131. As to the issue of the exemption certificate:

131.1. Section 24 of the By-law requires that the owner of land must obtain the certificate to exempt the subdivision from the formal application process. It also requires the Municipality to indicate on a subdivision plan that such subdivision is exempt for the application process.

- 131.2. However, the proposed road over the lease farm is not a public street nor a proclaimed street. It is not indicated (as it should have been) on Municipality's road masterplan that forms part of their MSDF as required by the National Land Transport Act, 2009 ("the NLTA"). Reference will be made in argument to the relevant sections of the NLTA, but I have been advised that sections 31, 32, 36 and 38 thereof are of particular significance, and should be read with, *inter alia*, sections 10 and 12 of LUPA.
- 131.3. For this reason, even if the Court is of the view that the issue of the exemption certificate does not constitute administrative action, the Applicant contends that the certificate could not validly have been issued under section 24 of the By-law.
- 131.4. A street cannot be built over agricultural land – which is outside of the urban edge - and would require the rezoning of the land from agriculture to Transport Zone II in terms of the applicable zoning scheme regulations.
- 131.5. The approval for the subdivision of agricultural land must be obtained from the relevant authorities. Comments from at least Heritage Western Cape, Cape Nature and the Department of Environmental Affairs should have been obtained in order to comply with national legislation as required.

- 131.6. The subdivision was not only for the purposes of the road but also for the possible future development of the portion of land excluded from the lease farm – this was suggested by Mr Smit in his correspondence.
- 131.7. The subdivision diagram attached to the exemption certificate cannot be deemed to be a “*subdivision plan*”. A subdivision plan is defined in LUPA and is a plan that indicates the location of the units, public places and land needed for public purposes. The plan must indicate the proposed zoning of each proposed unit of the land. TV3’s subdivision diagram does not indicate public places or land needed for public purposes. The definition in LUPA of “*public places*” include a “*street or road*”. It must however be shown on a general plan or diagram that is for use by the general public. The general plan that is referred to is defined in the Land Survey Act, 1997: a general plan is “... *a plan ... of two or more pieces of land and signed by a land surveyor or approved or certified as a general plan by the Surveyor-General*”.
- 131.8. TV3’s diagram also does not indicate the proposed zoning of each land unit, which in this instance, would be Transport Zone II for the portion that the proposed road will be constructed on, agricultural for the remainder of the lease farm and either agricultural or a form of business zoning for the portion of land which has been excluded from the leased area.

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131.9. As I have mentioned, in terms of the By-Law the owner of land must apply for the rezoning of land. An exemption certificate cannot be issued for such a rezoning. Section 24 of the By-law only makes provision for the issuing of the certificate to the owner of the property. The certificate was issued to TV3 and not the owner, being the Municipality. Mr Smit previously confirmed that TV3 is not acting on behalf of the Municipality, but on behalf of a private developer.

131.10. TV3 indicated that they see the issuing of the exemption certificate for the subdivision of the land as also an approval of the road, which is incorrect. A rezoning approval must be obtained before the road can be deemed to be approved. That would entail the rezoning of the land from agriculture to subdivisional area first, and thereafter to Transport Zone II and business related zoning for the excluded portion of land.

131.11. A rezoning application must comply with the requirements of the By-Law relating to public participation and obtaining the approval of National and Provincial Departments in terms of other relevant legislation.

131.12. The remainder of Farm 369 (which forms part of the lease farm) has been graded as a heritage resource and forms part of the cultural landscape. A section 38 process in terms of the National Heritage Resources Act, 1999 must be followed prior to approval of the rezoning of the portion of land.

131.13. When the Municipality on its own initiative intends to subdivide its own property, the decision must be made by the Municipal Planning Tribunal in terms of section 15(6) of the By-Law. Mr Lombaard therefore could not have had the delegated authority to issue the exemption certificate to either TV3 or to the Municipality.

**The constitutional issue raised in the alternative: section 24(1)(e) of the By-law, read with section 61(2)(c) of LUPA**

132. If the Court disagrees with the Applicant's arguments in relation to the issue of the exemption certificate, the applicant contends that section 24(1)(e) of the By-law and section 61(2)(c) of LUPA inconsistent with the provisions of the Constitution, and invalid.

133. The Applicant has been advised that several functions allocated to municipalities are described, in the Constitution, by the adjective "*municipal*", and distinguished from similar functions of the provincial governments. The Applicant has further been advised that our Courts have dealt with the division of functions between the national and provincial spheres of government on many occasions. It has been held that the functional areas must be purposively interpreted in a manner which will enable the national Parliament and provincial legislatures to exercise their powers fully and effectively. The same purposive approach must be adopted in distinguishing the

functions of municipalities and provinces.

134. In this regard, the objects of local government set out in section 152(1) of the Constitution are focused on people as members of their local communities, especially their development and the quality of their daily lives. The developmental duties of municipalities are set out in section 153 of the Constitution. Section 153(a) states that a municipality must structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community.
135. The Constitution provides that a municipality has executive authority in respect of and the right to administer the local government matters listed in Part B of Schedule 4 and part B of Schedule 5 to the Constitution, as well as other matters assigned by national or provincial legislation. Municipal planning is listed in Part B of Schedule 4. It is thus a local authority competence. National and provincial legislation (such as LUPA) falls to be construed and applied in such a manner as to render it constitutionally consistent, in other words, as not to interfere with or undermine the municipal planning function and for the municipal planning by-laws not to interfere with or undermine the planning function of National and Provincial Government Departments.
136. When these provincial and national government matters are considered together with the objects of local government and the developmental duties of municipalities, what



emerges is that municipalities are not authorized and required to perform functions and take decisions that are influenced by numerous provincial and national government considerations. Allowing another sphere of government to usurp these functions, will result in the existence of parallel authority in the hands of two separate bodies, with the potential for the two bodies to speak with different voices on the same subject matter and the disruption of orderly planning and development within a Provincial area. While national and provincial government may legislate in respect of the functional areas in Schedule 4 to the Constitution, including those in Part B of that schedule, the executive authority over, and administration of, those functional areas is constitutionally reserved for Provincial and National government.

137. In the present matter, if regard is had to the decisions of the Municipality, and the bases upon which those decisions were taken, it is clear that they addressed quintessentially provincial and national planning, environmental, heritage and agricultural issues, and that the first respondent has, in fact, in purportedly exercising his powers under section 24 of the By-Law abrogated to himself provincial and national planning powers as well as environmental, heritage and agricultural powers. The extent of the intrusion into the Province and National Government's sphere of competence is illustrated by the lack of consultation with provincial and national government departments in the decision to issue an exemption certificate regarding the subdivision of the farm. If that is what section 24(1)(e) of the By-law and section 61(2)(c) of LUPA entitle municipalities to do, then those section are constitutionally invalid.



138. The Municipality's decisions also fail to take into consideration the consultation process and approvals to be obtained in relation to the subdivision of agricultural land situated outside the municipal urban edge. In fact, section 24(1)(e) of the By-law and section 61(2)(c) of LUPA assigns the owner of land with the right effectively to subdivide the land without any further consultation with any other departments, even though all other planning applications must include such consultations.
139. In terms of section 45(2) of the Spatial Planning and Land Use Management Act 16 of 2013 ("SPLUMA") an interested person may petition to intervene in an existing application before a tribunal or appeal authority and if granted may participate in manner prescribed. Section 61 of LUPA does not afford such a person the opportunity to intervene.
140. Moreover, in terms of section 52(1) of SPLUMA, a land development application must be referred to the Minister with regard to applications affecting national interest. However, the issuing of an exemption certificate does not require a land use application and as such the minister of national governmental departments will not have the opportunity to assess and intervene should the development fall within the exclusive functional area of national sphere in terms of the Constitution.
141. In terms of Schedule I of SPLUMA, provincial legislation may provide for procedures relevant to the approval of applications for, for example, the subdivision



of land, including land use for agricultural purposes or farming land. In this regard, LUPA, in section 36, indicates that the subdivision of land requires approval by the Municipality unless the subdivision is exempt from a land use application under section 61.

142. Section 61(1) indicates that a subdivision of land is exempt from complying with section 36 and 38 and the owner does not need to apply for approval if certain circumstances exist. Section 61(2) provides the Municipality with the regulative authority to promulgate sections 15(1) and 24 of the By-Law. Section 61 however indicates that the public notice process as contained in section 43 of LUPA must be followed. The regulation of exemptions contemplated in section 61 must thus be published as prescribed by section 43, which includes the subdivision of land larger than 5 hectares inside the urban edge as well as the subdivision of land larger than 1 hectare outside the urban edge.
143. Any other subdivisions that has been exempt from the application of relevant sections dealing with subdivision of land does not need to be published as mentioned in section 43 of LUPA. Section 24 of the By-Law sets out the categories of subdivisions that are exempt from the application process prescribed in section 15.
144. Both the By-Law and LUPA set out strict criteria for an application for the subdivision of land. The criteria include the requirement for public participation, the consultation with internal municipal department, the consultation with Provincial and



National Departments, and also set out principles and criteria for decision making.

145. However, because section 24 exempts an owner from applying for a subdivision in the circumstances listed therein, any reference in both the By-Law and LUPA to “application” or “approval” cannot apply to the request to the Municipality to issue an exemption certificate, and the issuing of the exemption certificate is not an “approval” or a “decision” for the purposes of the By-Law and LUPA.
146. This leads to the situation that an exemption certificate must be issued by the Municipality:
  - 146.1. without the requirement to consult their own engineering department or the Provincial Departments, which includes departments responsible for Roads, Agriculture, Environment and Provincial Heritage;
  - 146.2. without the requirement to consult National Departments which includes Mining, Environment or, if applicable, National Heritage; and
  - 146.3. without the public consultation process which is required for any other subdivision application and which is also required by the Constitution and PAJA.
147. The practical implication is that, without obtaining comments from Provincial and

National Departments, a subdivision is effectively approved by the Municipality without taking into account the impact on the environment, heritage, mining and agriculture.

148. The requirements for cooperative governance in terms of SPLUMA and LUPA are not adhered to when section 24 applies to a subdivision of land and the same applies to the requirements of PAJA regarding public participation.
149. Section 24 indicates that a municipality has no discretionary power when requested to issue an exemption certificate if the subdivision falls under the categories listed in it. The Municipality must issue the certificate, which creates a scenario where the requirements of PAJA cannot be invoked by the Municipality to require an owner to follow a public participation process.
150. There is no right to an appeal available to interested and affected parties in terms of the By-Law and the Systems Act. The only recourse for such a party is to take the decision on review.
151. PAJA requires that administrative action must be procedurally fair if it materially and adversely affects the rights of a person. Administrative action is defined by PAJA as *"any decision performed by an organ of state"*. A *"decision"* is further defined as *"any decision of an administrative nature made.... under an empowering provision"* and includes *"giving a certificate"*.

152. The issuing of the exemption certificate in terms of section 24 is, therefore, an administrative action which should comply with the requirements of a fair administrative action.
153. However, the Municipality making a decision in terms of the By-Law can only act in terms of the empowering legislation, which is the By-Law itself. It appears from section 24 that the Municipality does not have a discretion whether to issue the relevant exemption certificate. Section 24 also does not provide the Municipality with the authority to require a public participation process in terms of the By-Law, as the sections dealing with public participation only applies when an "*application*" is made in terms thereof.
154. These aspects render section 24(1)(e) of the By-law, read with section 612(2)(c) of LUPA, unconstitutional and invalid.
155. The Applicant has been advised that these aspects will be discussed in detail in the course of argument at the hearing of this application.

### **Conclusion**

156. The Applicant shall inspect the Rule 53 record upon receipt thereof, and supplement these papers where necessary. If the record indicates who TV3's client

is and that such client has a direct and substantial interest in this application, the Applicant shall take the necessary steps formally to effect the joinder of such client.

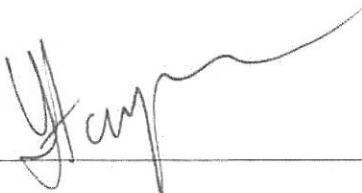
157. The relevant legal principles relating to the relief sought in the context of the facts of this matter will be dealt with in argument.

158. Having regard to what is set out above, I respectfully submit that a proper case has been made for the relief sought, and I request that this Court grant the relief sought in the notice of motion.



**YUNIS SHAIK**

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn before me on this the 10<sup>th</sup> day of **DECEMBER 2018**, and that the provisions of the regulations contained in Government Notice R1258 of 21 July 1971, as amended, have been complied with. The deponent confirmed that he has no objection to taking the prescribed oath and that he considers it to be binding on his conscience. I confirm that I have administered the oath in the prescribed manner.



**COMMISSIONER OF OATHS**

**Yaseen Havenga**  
CA (SA)  
Commissioner of Oaths (RSA)  
76 Regent Road, Suite 801  
Sea Point, Cape Town



Full names:

Physical address:

Occupation:

**Yaseen Havenga**

CA (SA)

Commissioner of Oaths (RSA)

76 Regent Road, Suite 801

Sea Point, Cape Town



6

**LA CONCORDE SOUTH AFRICA (PTY) LTD**  
(REGISTRATION NUMBER:1997/020814/07)

57 HOOFSRAAT, LA CONCORDE, PAARL


**RESOLUTION OF THE DIRECTORS OF LA CONCORDE (PTY) LTD**

**("The Company")**

The following resolutions of the board of directors of the Company ("the Directors"), are passed as written resolutions in accordance with the provisions of section 74 of the Companies Act, 71 of 2008, as amended and shall be of the same force and effect as if they had been approved by way of voting at a meeting of the Directors of the Company duly convened, constituted and held.

**IT IS RESOLVED THAT:**

1. The Company will institute legal proceedings to *inter alia* obtain an order:
  - 1.2 To review and set aside the decision of the Stellenbosch Municipality's Manager: Property Management to exclude a portion of land from the lease agreement between the Company and the Stellenbosch Municipality, the decision to deem the proposed road over the leased property to be for bona fide municipal use and to partially cancel the lease agreement;
  - 1.3 To review and set aside the decision of the Stellenbosch Municipal Manager to dismiss the appeal against the decision by the Stellenbosch Municipality's Manager: Property Management mentioned above;
  - 1.4 To review and set aside the decision of the Stellenbosch Municipality's Director: Planning & Economic Development to issue an Exemption Certificate in terms of section 24 of the Stellenbosch Municipal Planning By-Laws, the decision to approve the subdivision of the leased property, the decision to approve the rezoning of the subdivide





portions of the leased property and the decision to approve the construction of road over the leased property;

1.5 And if required, to obtain an order declaring Section 24 of the Stellenbosch Municipal Planning By-Laws and / or Section 61 of the Land Use Planning Act inconsistent with the Promotion of Administrative Justice Act and the Constitution of South Africa;

1.6 To obtain alternative relief.

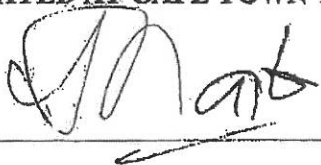
2 The Company authorises Yunis Shaik (ID: 571209 5216 086 ) (Director) to act on its behalf in instituting legal proceedings, to do or cause all things to be done, to sign all necessary documents and to depose to any /all affidavits for the application as may be necessary to give effect to and implement this resolution.

3 The Company appoints Smart Attorneys, 111 Dorp Street Stellenbosch and c/o Shepstone & Wylie Attorneys, 18<sup>th</sup> Floor, 2 Long Street, Cape Town as its attorneys of record to give effect to paragraph 1 above.

4 Any actions which have thus far been taken in relation to giving effect to this written resolution be and are hereby retrospectively approved and ratified in their entirety

5 This resolution shall constitute a resolution in writing for the purposes of the Companies Act.

DATED AT CAPE TOWN THIS 7<sup>th</sup> DAY OF DECEMBER 2018.

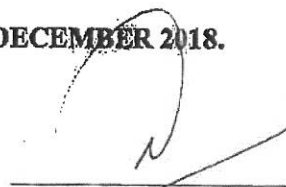


SIGNATURE OF DIRECTOR

Y SHAIK

DATE: 7/12/18

PLACE: CAPE TOWN



SIGNATURE OF DIRECTOR

A F PEREIRA

DATE: 7/12/18

PLACE: CAPE TOWN



Certificate issued by the Commissioner of Companies & Intellectual Property Commission on Tuesday, December 4, 2018 at 10:00

**Disclosure Certificate: Companies and Close Corporations**

Registration Number: 1997 / 020814 / 07  
Enterprise Name: LA CONCORDE SOUTH AFRICA

Companies and Intellectual Property Commission  
a member of the dti group

**ENTERPRISE INFORMATION**

Registration Number: 1997 / 020814 / 07  
Enterprise Name: LA CONCORDE SOUTH AFRICA (PTY) LTD  
Registration Date: 12/02/1997  
Business Start Date: 12/02/1997  
Enterprise Type: Private Company  
Enterprise Status: In Business  
Compliance Status: Compliant  
Financial Year End: March  
TAX Number: 9046007051

Addresses	<u>POSTAL ADDRESS</u>	<u>ADDRESS OF REGISTERED OFFICE</u>
	POSBUS 528 SUIDER-PAARL SUIDER PAARL Western Cape 7624	HOOFSTRAAT 57 LA CONCORDE PAARL Western Cape 7646

**ACTIVE MEMBERS / DIRECTORS**

Surname and First Names	Type	ID Number / Date of Birth	Contrib. (R)	Interest (%)	Appoint. Date	Address
HCI MANAGERIAL SERVICES,	Secretary (Companies and CC's)	1955-08-14	0.00	0.00	17/11/2018	Postal: POSBUS 528, SUIDER-PAARL, SUIDER-PAARL, WESTERN CAPE, 7624 Residential:
SHAIK, YUNIS	Director	5712095218088	0.00	0.00	01/08/2018	Postal: P O BOX 5251, CAPE TOWN, CAPE TOWN, WESTERN CAPE, 8000 Residential: 22 ALOE ROAD, VREDEHOEK, CAPE TOWN, WESTERN CAPE, 8001
PEREIRA, ANTONIO FRANCISCO	Director	8210315053089	0.00	0.00	01/08/2018	Postal: P O BOX 5251, CAPE TOWN, CAPE TOWN, WESTERN CAPE, 8000 Residential: 16AGAPANTHUS ROAD, VREDEHOEK, CAPE TOWN, WESTERN CAPE, 8001

**AUDITOR DETAILS**

Auditor Name	Type	Status	Appointment Date	Resignation Date	Email Address
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Profession Number:



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REPUBLIEK VAN SUID-AFRIKA  
(MAATSKAPPYWET, 1973  
Atikel 64)

REGISTRASIENOMMER VAN MAATSKAPPY:

97 20814

107

SERTIFIKAAT VAN INLYWING

VAN 'N MAATSKAPPY MET 'N AANDELEKAPITAAL

HIERBY WORD GESERTIFISEER DAT

KWV (EIENDOMS) BEPERK

VANDAG INGELYF IS KRAGTENS DIE MAATSKAPPYWET, 1973 (WET 61 VAN 1973) en dat die Maatskappy 'n Maatskappy is met 'n aandelekapitaal.

GETEKEN en geseël te PRETORIA op hierdie 2 dag van Desember  
Een en Duisend Negehoenderd Sewe-en-Negentig (1997)  
Omskep van Koöperatief: Koöperatiewe Wynbouersvereniging van Suid-Afrika Beperk

  
REGISTRATEUR VAN MAATSKAPPYE

Seël van die Registrasiekantoor vir Maatskappye

Hierdie sertifikaat is nie geldig nie, tensy geseël deur die seël van die Registrasiekantoor vir Maatskappye -



REPUBLIEK VAN SUID-AFRIKA  
REPUBLIC OF SOUTH AFRICAMAATSKAPPYWET, 1973  
COMPANIES ACT, 1973SERTIFIKAAT OM MET BESIGHEID TE BEGIN  
CERTIFICATE TO COMMENCE BUSINESS

(Artikel 172)

(Section 172)

Registrasienommer van Maatskappy  
Registration No. of Company

97 20814

97

KVV (EIENDOMS) BEPERK

Ek sertifiseer hierby dat  
I hereby certify thatwat ingelyf is op die  
which was incorporated on the

2

dag van  
day of

Desember

Eenduisend Negenhonderd  
One Thousand Nine Hundred and

Sewe-en-Negentig

voldoen het aan die vereistes van artikel 172 van die Wet, en met ingang van vandag geregtig is om met besigheid te begin.  
has complied with the requirements of Section 172 of the Act and is with effect from this day entitled to commence business.Geteken en geseël te PRETORIA op hede die  
Signed and sealed at PRETORIA this

2

dag van  
day of

Desember

Eenduisend Negenhonderd  
One Thousand Nine Hundred and

Sewe-en-Negentig

Seël van Registrasiekantoor vir Maatskappye  
Seal of Companies Registration OfficeRegistrateur van Maatskappye  
Registrar of CompaniesHierdie sertifikaat is nie geldig nie, tensy geseël deur die Seël van die Registrasiekantoor vir Maatskappye  
This certificate is not valid unless sealed by the Seal of the Companies Registration OfficeBOEKJAAR EINDIG ELKE JAAR OP  
EACH YEAR FINANCIAL YEAR ENDS ON

Desember

Registration No. of company/Registrasienommer van Maatskappij

97/20814/07

Certificate of change  
of name of company

Sertifikaat van verandering  
van naam van maatskappij

This is to certify that/Hierby word gesertifiseer dat

KWV (EIENDOMS) BEPERK

has changed its name by SPECIAL RESOLUTION and is now called  
sy naam verander het by SPESIALE BESLUIT en nou genoem word

KWV SUID-AFRIKA (EIENDOMS) BEPERK

and that the new name has this day been entered in the Register of Companies.  
en dat die nuwe naam op hierdie dag in die Register van Maatskappye aangeteken is.

Signed and sealed at Pretoria, this/Geteken en geseël te Pretoria op hede die

day of/dag van

One Thousand Nine Hundred and/Eenduisend Negehonderd

Registrar of Companies/Registrateur van Maatskappye

Seal of Companies Registration Office  
Seël van Registrateur van Maatskappye

CoR 14.3



Companies and Intellectual  
Property Commission  
a member of the S.A. Group

Date: 05/01/2017

Our Reference: 111476618  
Box: 193413  
Sequence: 26

ENID KLOPPER  
P O BOX 528  
SUIDER PAARL  
7624

**RE: Amendment to Company Information****Company Number: 1997/020814/07****Company Name: LA CONCORDE SOUTH AFRICA (PTY) LTD**

We have received a COR15.2 (Amendment of Memorandum of Incorporation) from you dated 08/11/2016.

The Amendment of Memorandum of Incorporation (1) was accepted and placed on file.

The Change of Name (2) was accepted and placed on file.

The name was changed from  
KWV SOUTH AFRICA  
to LA CONCORDE SOUTH AFRICA.

Yours truly

**Commissioner: CIPC**

OME OME

**Please Note:**The attached certificate can be validated on the CIPC web site at [www.cipc.co.za](http://www.cipc.co.za).

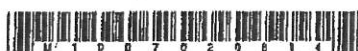
The contents of the attached certificate was electronically transmitted to the South African Revenue Services.



The Companies and Intellectual Property Commission

of South Africa

P.O. BOX 429, PRETORIA 0001, Republic of South Africa, Ex 266, PRETORIA

Call Centre Tel 086 100 2472, Website [www.cipc.co.za](http://www.cipc.co.za)

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CoR 14.3

**Certificate issued by the Companies and Intellectual Property  
Commission on Thursday, January 05, 2017 09:18  
Certificate of Confirmation**



Companies and Intellectual  
Property Commission

A Division of the Department of Trade and Industry

Registration number	1997 / 020814 / 07
Enterprise Name	LA CONCORDE SOUTH AFRICA (PTY) LTD
Enterprise Shortened Name	KWV SA
Enterprise Translated Name	KWV SOUTH AFRICA
Registration Date	12/02/1997
Business Start Date	12/02/1997
Enterprise Type	Private Company
Enterprise Status	In Business
Financial year end	March
Main Business/Main Object	
Postal address	POSBUS 528 SUIDER-PAARL SUIDER PAARL Western Cape 7624
Address of registered office	HOOFSTRAAT 57 LA CONCORDE PAARL Western Cape 7646



The Companies and Intellectual Property Commission  
of South Africa

P.O. BOX 429, PRETORIA, 0031, Republic of South Africa, Docx 260, PRETORIA

Call Centre Tel 086 103 2472, Website www.cipc.co.za



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# MEMORANDUM VAN HUUROOREENKOMS

Aangegaan deur en tussen

**DIE MUNISIPALITEIT STELLENBOSCH**

hierin verteenwoordig deur

**GERHARDUS MATTHYS STRYDOM EN ERASMUS PETRUS SMITH TALJAARD**

in hul onderskeie hoedanighede as Uitvoerende Hoof/Stadsklerk en/of Burgemeester van  
gemeelde Munisipaliteit

("die VERHUURDER")

**en KO-OPERATIEWE WIJNBOUERS VERENIGING VAN ZUID AFRIKA  
BEPERKT**

hierin verteenwoordig deur **SCHALK WILLEM JOUBERT** IN SY HOEDANIGHEID  
AS SEKRETARIS VAN KWV

as synde die gevolmagdigde verteenwoordiger ingevolge 'n besluit van die

22 APRIL 1980  
gedateer waarvan 'n afskrif as Bylae A aangeheg is.

("die HUURDER")

**NADEMAAL** die VERHUURDER die eienaar is van die eiendom bekend as

**PLAAS NO 369 P**

**GROOT 62,70 HEKTAAR**

soos aangedui op die aangehegte kaart

("die EIENDOM")

(E.P.)  
RJ

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EN NADEMAAL die VERHUURDER begerig is om die EIENDOM aan die HUURDER te verhuur en om 'n gedeelte van die verhuurde eiendom te laat inlys ooreenkomstig die bepalings van die Besproeiingsraad ("die BESPROEIINGSRAAD") vir daardie distrik geproklameer by die Theewaterkloof Staatswaterskema ("die SKEMA") kragtens die bepalings van die Waterwet, Nr 54 van 1956 ("die WET")

EN NADEMAAL die HUURDER begerig is om die EIENDOM te huur en om die waterregte wat as gevolg van sodanige inlysting ten opsigte van die verhuurde eiendom verkry word, op die verhuurde eiendom aan te wend

EN NADEMAAL die verhuring van die EIENDOM aan die HUURDER sowel as die inlystingsvoorwaardes op 'n vergadering van die Stadsraad gehou op 1990-05-15 (item 3.1.B) goedgekeur is.

#### NOU DERHALWE KOM DIE PARTYE ONDERLING SOOS VOLG OOREEN

##### 1 TERMYN VAN VERHURING

Die VERHUURDER verhuur hiermee aan die HUURDER die EIENDOM wat deur die HUURDER in huur aangeneem word vir 'n tydperk wat begin op die eerste (1) dag van April 1991 en afsluit op die 31ste dag van Maart 2041 dog is steeds onderworpe aan die bepalings van subklousules 4.4 (laat betaling), 13.1 (sessie), klousule 20 (opsegging) en die bepalings van Bylae B hiervan.

- 2 Die VERHUURDER onderneem om alles te doen, of te laat doen, om 25,0 hektaar van die EIENDOM, of sodanige kleinere gedeelte wat goedgekeur mag word, soos uitgewys tussen die partye, kragtens die bepalings van die Wet by die SKEMA te laat inlys vir die verkryging van besproeiingswater soos deur die Besproeiingsraad per hektaar toegesê.

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LGR

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R/S

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R

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JH

- 3 Die **HURDER** sal geregtig wees om gedurende die huurtermyn in klousule 1 bepaal die waterregte wat as gevolg van sodanige inlysting verkry word ten opsigte van die verhuurde eiendom, op die verhuurde eiendom aan te wend op sodanige wyse soos goedgekeur deur die **VERHUURDER** en onderhewig aan alle terme en voorwaardes kragtens die bepalings van die Wet, of andersins bepaal, welke terme en voorwaardes aan die **HURDER** bekend is.

#### 4 **HURGELD, MUNISIPALE BELASTING EN INLYSTINGSKOSTE**

- 4.1 Die **HURDER** betaal eenmalig voor of op die 30ste dag van April 1992 by die kantoor van die Stadstesourier die bedrag van R31 577,93 (welke bedrag bereken is vir die tydperk vanaf die datum waarop die ooreenkoms 'n aanvang neem tot die 31ste dag van Maart 1993. Die **HURDER** betaal daarna jaarliks voor of op die 31ste dag van Maart van elke daaropvolgende jaar die basiese huurgeld plus verhoging plus addisionele huurpremie soos bereken volgens die voorwaardes wat as Bylae B hierby aangeheg is;
- 4.2 Die **HURDER** sal verder aanspreeklik wees om op aanvraag deur die **VERHUURDER** die volgende bedrae ("Inlystingsgeld") aan die **VERHUURDER**, of sy genomineerde, te betaal, naamlik:
- 4.2.1 enige en alle belasting, heffings en vorderings van welke aard en omvang ookal gehef te word deur die Besproefingsraad vir die gebied wat jurisdiksie het oor die verhuurde eiendom, die Departement van Waterwese en Bosbou of enige ander owerheidsliggaam, vir of ten opsigte van, maar nie uitsluitend nie -
- 4.2.2.1 bedryfs- en onderhoudskoste van die watervoorsieningskema;
- 4.2.2.2 administratiewe koste;
- 4.2.2.3 verpligte bydraes ten opsigte van 'n reserwefonds;
- 4.2.2.4 verpligte bydraes tot die Waternavorsingsraad;
- 4.2.2.5 die aankoopprys van water uit die **SKEMA**;

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4.2.2.6 voorlopige uitgawes en tussentydse heffings wat deur die Besproeiingsraad en/of die Departement van Waterwese en Bosbou, opgelê word; en

4.2.2.7 die VERHUURDER beskou die voorlegging van 'n rekening van die Besproeiingsraad en/of die Departement van Waterwese en Bosbou as afdoende stawende bewys van die bedrag wat deur die HUURDER verskuldig is, opvallende foute en weglatings uitgesluit

4.3 Die VERHUURDER kan, indien nodig, vereis dat die HUURDER 'n bankwaarborg of ander garansie verskaf wat vir die VERHUURDER aanneemlik is ten opsigte van die huurgeld en inlystingsgelde wat betaalbaar is, en in die geval van 'n HUURDER wat 'n maatskappy, beslote korporasie of trust is, sal die direkteure, lede of trustees daarvan skriftelik, gesamentlik en afsonderlik, as borge en mede-hoofskuldenare aanspreeklik wees vir die huurgeld en inlystingsgelde wat betaalbaar is.

4.4 Enige huurgeld of inlystingsgelde wat na die vervaldatum in subklousule 4.1 en 4.2 vermeld deur die HUURDER aangebied word, indien die VERHUURDER dit aanvaar, is onderworpe aan 'n rente wat maandeliks vooruit bereken sal word teen die standaardrentekoers soos artikel 214 van die Munisipale Ordonnansie, Ordonnansie nr 20 van 1974, soos gewysig of *enige ander toepaslike ordonnansie van tyd tot tyd bepaal* ten opsigte van elke maand of gedeelte daarvan.

4.5 Dit is 'n spesiale voorwaarde van hierdie ooreenkoms dat die VERHUURDER die reg voorbehou om hierdie ooreenkoms summier te kanselleer, sonder enige voorafgaande skriftelike kennisgewing, indien die HUURDER sou versuim om enige verskuldigde huur- of inlystingsgeld binne sewe dae vanaf die vervaldatum te vereffen, en so 'n kansellering affekteer generwyse die reg van die VERHUURDER om enige bedrag wat die HUURDER skuld of verskuldig mag word van hom te vorder nie.

EPS/AN

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*[Handwritten initials]*

- 4.6 Die **HURDER** sal aanspreeklik wees om die belastings deur die Stadsraad op die **EIENDOM** gehef te betaal, onderworpe aan die voorwaardes en vereistes soos bepaal mag word in terme van die Munisipale Ordonnansie, Ordonnansie nr 20 van 1974, soos gewysig of enige ander vervangende of toepaslike ordonnansie.

5 **STREEKSDIENSTERAADHEFFING**

Die **HURDER** onderneem om alle heffings wat deur die Streeksdiensteraad op die **EIENDOM** gehef word, regstreeks aan daardie owerheid te betaal.

6 **MYN- EN ANDER REGTE**

Die **VERHUURDER** behou voor alle regte op metale, minerale, steenkool, klip van alle soorte, klei en gruis, met inbegrip van die reg van toegang tot die eiendom te alle tye om sodanige metale, minerale of steenkool te myn of om klei, gruis en klip te verwyder, onderworpe aan 'n vermindering van die huurgeld in verhouding tot die oppervlakte wat deur die **VERHUURDER** vir sodanige mynwerk of verwydering teruggeneem word.

7 **BESKERMING VAN BOME**

- 7.1 Alle bome, wingerde of dergelike verbeteringe op die verhuurde perseel bly die eiendom van die **VERHUURDER** en mag nie deur die **HURDER** beskadig of verwyder word nie.

- 7.2 Die **HURDER** moet die geskrewe toestemming van die **VERHUURDER** vooraf verkry vir die verwydering van enige bome, wingerde en dergelike verbeteringe op 'n terrein wat hy vir verbouing nodig het, en as sodanige toestemming verleen word, behou die **VERHUURDER** die reg voor om oor die hout vir sy eie voordeel te beskik.

ETS

CR

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- 7.3 Die VERHUURDER behou die reg voor om deur sy amptenare periodieke inspeksies van bome, wingerde en dergelike verbeteringe op die eiendom uit te voer en om sodanige stappe ter beskerming daarvan te neem as wat hy nodig mag ag.
- 7.4 Die VERHUURDER behou die reg voor om self enige bome op die eiendom wat nie deur die HUURDER aangeplant is nie, te kap en te verwyder, en hiervoor het hy vrye toegang tot die eiendom.
- 7.5 Die HUURDER onderneem om geen mak wingerdstokke op die eiendom te plant nie, en enige wynkwota wat deur die Ko-operatiewe Wijnbouwers Vereniging van Zuid-Afrika Beperkt, aan die EIENDOM toegeken is, mag onder geen omstandighede met enige ander kwota gekonsolideer word nie, tensy die VERHUURDER dit vooraf goedkeur, met of sonder bepaalde voorwaardes.
- 8 WATERBRONNE
- 8.1 Die VERHUURDER waarborg geen voorraad van oppervlakte- of ondergrondse water nie.
- 8.2 Die HUURDER onderneem om nie met fontein of met die natuurlike vloei van oppervlakte afloopwater in te meng nie deur kanale, vore of damme te bou of om enige ander werke uit te voer sonder die voorafverkreë skriftelike toestemming van die VERHUURDER nie, en vir die toepassing van hierdie subklousule is 'n opinie van die betrokke Staatsdepartemente en/of onderafdelings daarvan bindend en finaal.
- 8.3 Die VERHUURDER behou die reg voor om water op die EIENDOM op te gaar of om die gebruik van water uit fontein of strome te beperk, indien sodanige opgaring of beperking na sy mening noodsaaklik is ter beskerming van die regte van derde partye.
- 8.4 Die HUURDER onderneem om alle strome, fontein of opgaardamme teen besoedeling te beskerm, en om sodanige instruksies uit te voer as wat die VERHUURDER periodiek te dien einde mag uitreik.

ETSP.  
RS

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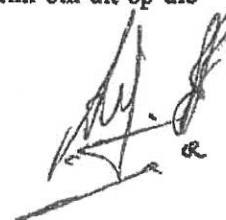
YF

## 9 GRONDBEWARING

- 9.1 Die **HURDER** onderneem om die **EIENDOM** te gebruik deur die verbouing van die grond op 'n versigtige en sorgsame wyse, en ook om verswakking van die natuurlike vrugbaarheid en kwaliteit teen te werk.
- 9.2 Die **HURDER** onderneem om gronderosie teen te werk en om stiptelik uitvoering te gee aan die bepalings van enige grondbewaringskema wat volgens wet op die **EIENDOM** van toepassing mag wees, en te dien einde behou die **VERHUURDER** die reg voor om periodieke instruksies uit te reik.
- 9.3 Die **VERHUURDER** behou die reg voor om sodanige werke uit te voer as wat hy nodig mag ag vir die bestryding van gronderosie, en wel op die koste van die **HURDER** as laasgenoemde versuim om dit op die **VERHUURDER** se versoek te doen.
- 9.4 Die **HURDER** onderneem om geen sand, grond of gruis vanaf die **EIENDOM** vir verkoping of gebruik elders te verwyder nie.
- 9.5 Die **HURDER** onderneem om toe te sien dat geen vullis, rommel of afval op die **EIENDOM** gestort word nie.

## 10 SKADELIKE GEWASSE

- 10.1 Die **HURDER** onderneem om die **EIENDOM** van skadelike gewasse skoon te hou.
- 10.2 Die **VERHUURDER** behou die reg voor om sodanige stappe as wat hy dienlik mag ag, te doen ter verwydering van dergelike geproklameerde onkruid, en wel op die koste van die **HURDER** ingeval laasgenoemde versuim om dit op die **VERHUURDER** se versoek te doen.



## 11 **BRANDBESTRYDING**

- 11.1 Die **HURDER** onderneem om die uiterste sorg uit te oefen ter beskerming van die **EIENDOM** teen veldbrande, en die **VERHUURDER** kan vereis dat die **HURDER** op sy eie koste sodanige brandpaaie bou as wat die **VERHUURDER** nodig mag ag.
- 11.2 Die **HURDER** is aanspreeklik vir vergoeding aan die **VERHUURDER** vir enige uitgawe aangegaan om brande te voorkom of te blus. Brandskade aan bome of ander plante op die **EIENDOM** wat aan die **VERHUURDER** behoort, word deur 'n taksateur wat deur die **VERHUURDER** aangestel en wie se bevinding bindend is, bepaal, en aan die **VERHUURDER** deur die **HURDER** vergoed.

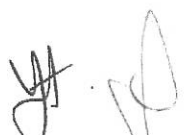
## 12 **OMHEINING**

- 12.1 Die **HURDER** is verantwoordelik vir die oprigting en koste van enige omheining wat hy vir die beskerming van sy oeste of diere op die **EIENDOM** nodig mag ag.
- 12.2 Omheining wat deur die **HURDER** opgerig word, kan binne een maand na die afloop van die huurooreenkoms verwyder word, maar die **VERHUURDER** kan uitstel vir sodanige verwydering verleen totdat die **EIENDOM** weer verhuur is om onderhandelinge met die opvolger vir die verkoping of oordrag daarvan moontlik te maak, met dien verstande dat die **VERHUURDER** eienaar van sodanige omheining word indien geen finale reëlings binne sestig dae vanaf die datum van herverhuring deur die **HURDER** getref is nie, en in so 'n geval is die **HURDER** nie geregtig tot enige vergoeding vir die omheining wat aldus deur hom verbeur is nie.

  
16/12

  
R.S.

  
R.



### 13 ONDERVERHURINGS, SESSIES OF OORDRAGTE, ENS

- 13.1 Die **HURDER** sal nie hierdie huurooreenkoms seeder of oordra nie, en onderverhuur nie die **EIENDOM** of enige deel daarvan sonder die voorafverkreë skriftelike toestemming van die **VERHUURDER** nie.
- 13.2 Die **VERHUURDER** kan 'n sertifikaat as bewys vereis dat 'n maatskappy, beslote korporasie of trust wat 'n **HURDER** is, wel as sodanig geregistreer is.
- 13.3 Dit word op rekord geplaas dat die **VERHUURDER** toestemming verleen vir die sessie en delegasie van hierdie huurkontrak aan en ten gunste van 'n erfgenaam of erfgename van die **HURDER** as sodanig deur die **HURDER** benoem.
- 13.4 By verandering van die beherende aandeelhouding of beherende belange in 'n maatskappy of beslote korporasie wat 'n **HURDER** is, of by verandering van direkteure of by likwidasie van die maatskappy of beslote korporasie of ingeval die maatskappy of beslote korporasie onder geregtelike bestuur geplaas word, bly die oorspronklike borge ten behoeve van die maatskappy of beslote korporasie gesamentlik en afsonderlik en as mede-hoofskuldenaars teenoor die **VERHUURDER** aanspreeklik, tensy die **VERHUURDER** op skriftelike aansoek van die **HURDER** toestem tot vervanging van sodanige borge.
- 13.5 Verandering van die beherende aandeelhouding of beherende ledebelang, direkteure of trustees van 'n maatskappy, beslote korporasie of 'n trust wat 'n **HURDER** is, word geag 'n onderverhuring te wees.

### 14 GEBOUE EN STRUKTURELE VERBETERINGE

- 14.1 Enige gebou of strukturele verbeteringe wat op die **EIENDOM** by die aanvang van die huurooreenkoms bestaan, of mettertyd gedurende die huurtermyn opgerig mag word, sal deur die **HURDER** op sy eie koste hetsy binne of buite in 'n goeie toestand gehou word en wel tot die bevrediging van die **VERHUURDER** en indien die **HURDER** versuim om dit te doen kan die **VERHUURDER** sodanige reparasies as wat hy nodig mag ag, laat aanbring terwyl die **HURDER** vir die uitgawe aanspreeklik bly.

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- 14.2 Geen nuwe gebou, struktuur of ander permanente verbetering sal op die EIENDOM aangebring, opgerig of uitgevoer word sonder die voorafverkreë skriftelike toestemming van die VERHUURDER nie, en sonder dat bouplanne ten opsigte van sodanige verbeteringe vooraf deur die VERHUURDER goedgekeur is nie en laasgenoemde kan gelas dat sodanige gebou, struktuur of verbetering wat inderdaad sonder sy skriftelike goedkeuring en toestemming opgerig, aangebring of gebou is deur die HUURDER op sy eie koste verwyder word.
- 14.3 Goedgekeurde verbeteringe van 'n permanente aard sal deur die HUURDER op sy eie risiko aangebring of opgerig word.
- 14.4 Die VERHUURDER sal enige geboue of ander verbeteringe wat by die aanvang van die huurtermyn op die EIENDOM is in sy uitsluitlike diskresie teen skade verseker en sodanige versekering instand hou, met dien verstande dat die HUURDER verantwoordelik sal wees vir die volle kostes en premies verbonde aan sodanige versekering, en die VERHUURDER sal derhalwe die kostes en premies direk van die HUURDER vorder.
- 14.5 Indien die VERHUURDER kontant van 'n versekeringsmaatskappy sou ontvang ter vergoeding van 'n eis ten opsigte van skade aan enige verbetering op die EIENDOM soos in subklousule 14.4 van hierdie ooreenkoms genoem, kan hy die verbetering herstel of die kontant hou, na gelang hy dit dienlik ag.
- 14.6 Behuising kan, met behoud van die bepalinge van subklousules 14.1, 14.2, 14.3 en 14.4 van hierdie ooreenkoms aan werkers wat die HUURDER op die EIENDOM in diens het, met inbegrip van hul onmiddellike afhanklikes, op die EIENDOM voorsien word, onderworpe aan die voorafverkreë skriftelike toestemming van die VERHUURDER, en die stiptelike nakoming van die bepalinge en vereistes van die toepaslike wetgewing met betrekking tot behuising.
- Enige plakkery op die EIENDOM is ten strengste verbode.
- 14.7 Die HUURDER sal geen reg of aanspraak hê of vergoeding kan eis ten opsigte van verbeteringe, met inbegrip van landboukundige verbeteringe wat tydens die huurtermyn op die EIENDOM aangebring is nie, en die VERHUURDER behou die reg voor om, by beëindiging van hierdie ooreenkoms ingevolge die

bepalings van klousule 3, subklousules 4.4, 20.1.1, 20.1.2 en 20.2 of andersins volgens sy eie diskresie en goeddunke te besluit of die VERHUURDER bereid is om die HUURDER enigsins te vergoed vir sodanige verbeteringe. Voorts kan die VERHUURDER in die alternatief toestem tot die verwydering van enige verbetering binne 'n tydperk soos deur die VERHUURDER voorgeskryf, by gebreke waarvan die HUURDER enige reg op verwydering van sodanige verbeteringe of enige verdere aanspraak van watter aard ookal sal verbeur, ten gevolge waarvan die betrokke verbeteringe sonder enige aard van vergoeding die EIENDOM van die VERHUURDER word.

## 15 BAKENS


- 15.1 Deur die huurooreenkoms te onderteken erken die HUURDER dat hy bewus is van die werklike ligging van alle bakens wat die EIENDOM se grense bepaal en enige onkunde of misverstand aan sy kant in hierdie verband raak nie die geldigheid van die huurooreenkoms of maak hom nie geregtig tot 'n vermindering van die huurgeld of tot kompensasie in enige vorm nie.
- 15.2 Indien enige bakens wat die grense van die EIENDOM bepaal na ondertekening van hierdie ooreenkoms nie gevind kan word nie, is die HUURDER aanspreeklik vir alle opmetings- en ander kostes verbonde aan die herplasing van sodanige bakens.

## 16 PAAIE

Die HUURDER onderneem om alle bestaande paaie op die EIENDOM in 'n goeie toestand te hou, en voorts om geen verdere paaie te bou of oop te maak sonder die voorafverkreë skriftelike toestemming van die VERHUURDER nie.

  
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EPSP - RJ

  
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17 **INSPEKSIES**

Die gemagtigde amptenare van die **VERHUURDER** kan te eniger tyd die **EIENDOM** betree om sodanige inspeksies as wat hulle nodig mag ag, uit te voor en om vas te stel of die voorwaardes en bepalinge van die huurooreenkoms stiptelik nagekom word.

18 **ADVERTENSIE TEKENS**

Die **HURDER** sal geen advertensietekens hoegenaamd op die **EIENDOM** oprig nie, en sal ook nie toelaat dat sulke tekens opgerig word sonder die voorafverkreë skriftelike toestemming van die **VERHUURDER** nie.

19 **ERFDIENSBAARHEID EN VERJARING**

19.1 Die huur is onderworpe aan enige erfdiensbaarheid wat aan die **EIENDOM** kleef, en as dit te eniger tyd sou blyk dat die **VERHUURDER** nie daartoe geregtig was om die **EIENDOM** of enige deel daarvan te verhuur nie, het die **HURDER** geen eis vir skadevergoeding behalwe dat die huurgeld *pro rata* verminder word ten opsigte van daardie deel van die **EIENDOM** wat nie vir okkupasie of gebruik deur die **HURDER** beskikbaar is nie.

19.2 Die **HURDER** erken hiermee dat hy geen aanspraak op eiendomsreg by wyse van verjaring ten opsigte van die **EIENDOM** wat verhuur word sal verkry nie.

20 **OPSEGGING EN BEÏNDIGING VAN HUUROOREENKOMS**

20.1 Die **VERHUURDER** kan, sonder om afbreuk te doen aan enige bepaling of vereistes van hierdie ooreenkoms, met spesifieke verwysing na die bepalinge van klousule 4 hiervan, en nadat 'n skriftelike kennisgewing op die **HURDER** beteken is, hierdie ooreenkoms beëindig -






- 20.1.1 indien die **HURDER** versuim om enige voorwaarde of bepaling ten opsigte van hierdie ooreenkoms na te kom; of
- 20.1.2 indien die **VERHUURDER** daarvan oortuig is dat die **HURDER** die grond op onbehoorlike of onverantwoordelike wyse benut; of
- 20.1.3 indien die **VERHUURDER** daarvan oortuig is dat die **HURDER** deur sy handelinge op die **EIENDOM** 'n oorlas vir ander uitmaak; of
- 20.1.4 indien die **HURDER** teenstrydig met enige bepaling van die soneringskema van die Munisipaliteit van Stellenbosch afgekondig by PK 73 van 1979-07-20, soos vervang of gewysig, optree; of
- 20.1.5 indien die **EIENDOM** in sy geheel of gedeeltelik vir *bona fide* munisipale doeleindes, waarby dorpsstigting ingesluit is, benodig word

met dien verstande dat 'n grasieperiode van hoogstens een (1) jaar in die gevalle soos in subklousules 20.1.1; 20.1.2; 20.1.3; 20.1.4 en 20.1.5 genoem aan die **HURDER** verleen word, ten einde die **HURDER** in staat te stel om die oeste wat op daardie stadium uitstaande mag wees te in, op voorwaarde dat die **HURDER** gedurende die grasieperiode aan al die bepalings en vereistes van hierdie ooreenkoms, of ander voorwaardes wat die **VERHUURDER** in hierdie verband mag stel moet voldoen, by gebreke waarvan die toegestane grasieperiode sonder verdere kennisgewing deur die **VERHUURDER**, in sy uitsluitlike diskresie, in heroorweging geneem sal word.

- 20.2 die **HURDER** kan, sonder om afbreuk te doen aan enige bepaling of vereiste van hierdie ooreenkoms, met spesifieke verwysing na subklousules 4.1, 4.2, 4.3 en klousule 24, hiervan, en nadat 'n skriftelike kennisgewing van ses (6) maande

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deur die **HURDER** aan die **VERHUURDER** gegee is, hierdie ooreenkoms beëindig.

## 21 SKADELOOSSTELLING

Die **HURDER** onderneem hierby om die **VERHUURDER** te vrywaar en gevrywaar te hou teen alle gedinge, stappe, eise, vorderings, koste, skadevergoeding en uitgawes wat gehêf, gebring of gemaak mag word teen die **VERHUURDER** of wat die **VERHUURDER** mag betaal, opdoen of aangaan as gevolg van enige handeling of versuim aan die kant van die **HURDER**, sy werknemers of persone wat onder sy beheer handel.

## 22 KOSTE VAN OOREENKOMS

22.1 Alle kostes wat deur die **VERHUURDER** aangegaan is vir die voorbereiding en opstel van hierdie ooreenkoms, plus die koste van die verhuringsadvertensie, opmetingskoste en ander toevallige uitgawes sal deur die **HURDER** gedra word, en die **HURDER** kan nie die korrektheid van die bedrag wat deur die **VERHUURDER** in hierdie verband geëis word, betwis nie.

22.2 Die huurooreenkoms sal slegs op die uitdruklike versoek van die **HURDER** en op sy koste notarieël verly en in die akteskantoor geregistreer word. Die **HURDER** moet in sodanige geval 'n deposito betaal soos deur die **VERHUURDER** bepaal ten opsigte van die kostes hierbo vermeld.

## 23 ARBITRASIE

23.1 Enige geskil wat te eniger tyd tussen die partye mag ontstaan in verband met enige aangeleentheid voorspruitende uit hierdie ooreenkoms, sal onderwerp word aan en besleg word deur arbitrasie.

23.2 Iedere sodanige arbitrasie moet plaasvind -

23.2.1 te Stellenbosch;

23.2.2 op 'n informele summiere wyse sonder enige pleitstukke of blootlegging van dokumente en sonder die noodsaaklikheid om aan die strenge reëls van die bewysreg te voldoen;

23.2.3 onverwyld, met die oog daarop om dit af te handel binne drie (3) maande vanaf die datum waarop die geskil na arbitrasie verwys is;

23.2.4 onderworpe aan die bepalings van die Wet op Arbitrasie, no 42 van 1986, of sodanige ander Arbitrasiewette as wat van tyd tot tyd mag geld, behalwe waar die bepalings van hierdie klousule anders voorskryf.

23.3 Die arbiter moet 'n persoon wees op wie deur die partye onderling ooreengekom is en, by onstentenis van 'n ooreenkoms, een aangestel deur die diensdoenende President van die Wetsgenootskap van die Kaap die Goeie Hoop.

23.4 Die partye kom hiermee onherroeplik ooreen dat die beslissing van die arbiter in sodanige arbitrasieverrigtinge finaal en bindend op hulle sal wees.

## 24 INVORDERINGSKOSTE

Indien die VERHUURDER opdrag aan sy prokureurs sou gee om enige gelde wat kragtens hierdie ooreenkoms betaalbaar is, op die HUURDER te verhaal, is die HUURDER aanspreeklik vir die betaling van alle koste deur die VERHUURDER in hierdie verband aangegaan, bereken op 'n prokureur/kliënt-basis.

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bgr

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Ad

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## DOMICILIUM CITANDI ET EXECUTANDI

Die domicilium citandi et executandi van die **HURDER** vir die toepassing van hierdie ooreenkoms is:

*La Concorde, Hoofstraat - 57, Suider-Paarl 7646.  
(Postbus 528, Suider-Paarl 7624)*

en die van die **VERHUURDER**

*Stadhuiskompleks, Pleinstraat, Stellenbosch*

*[Signature]*  
a

GETEKEN TE STELLENBOSCH HIERDIE  
AS GETUIES

12 DAG VAN Mei 1992

1 *B. Lippel*

*[Signature]*

BURGEMEESTER

2 *Gj Robinson*

*[Signature]*

UITVOERENDE

HOOF/STADSKLERK

*[Signature]*  
a

GETEKEN TE <sup>PAARL</sup> ~~STELLENBOSCH~~ HIERDIE  
AS GETUIES

24ste DAG VAN Maart 1992

1 *[Signature]*

Geregistreer kantens die Kaapstad 31

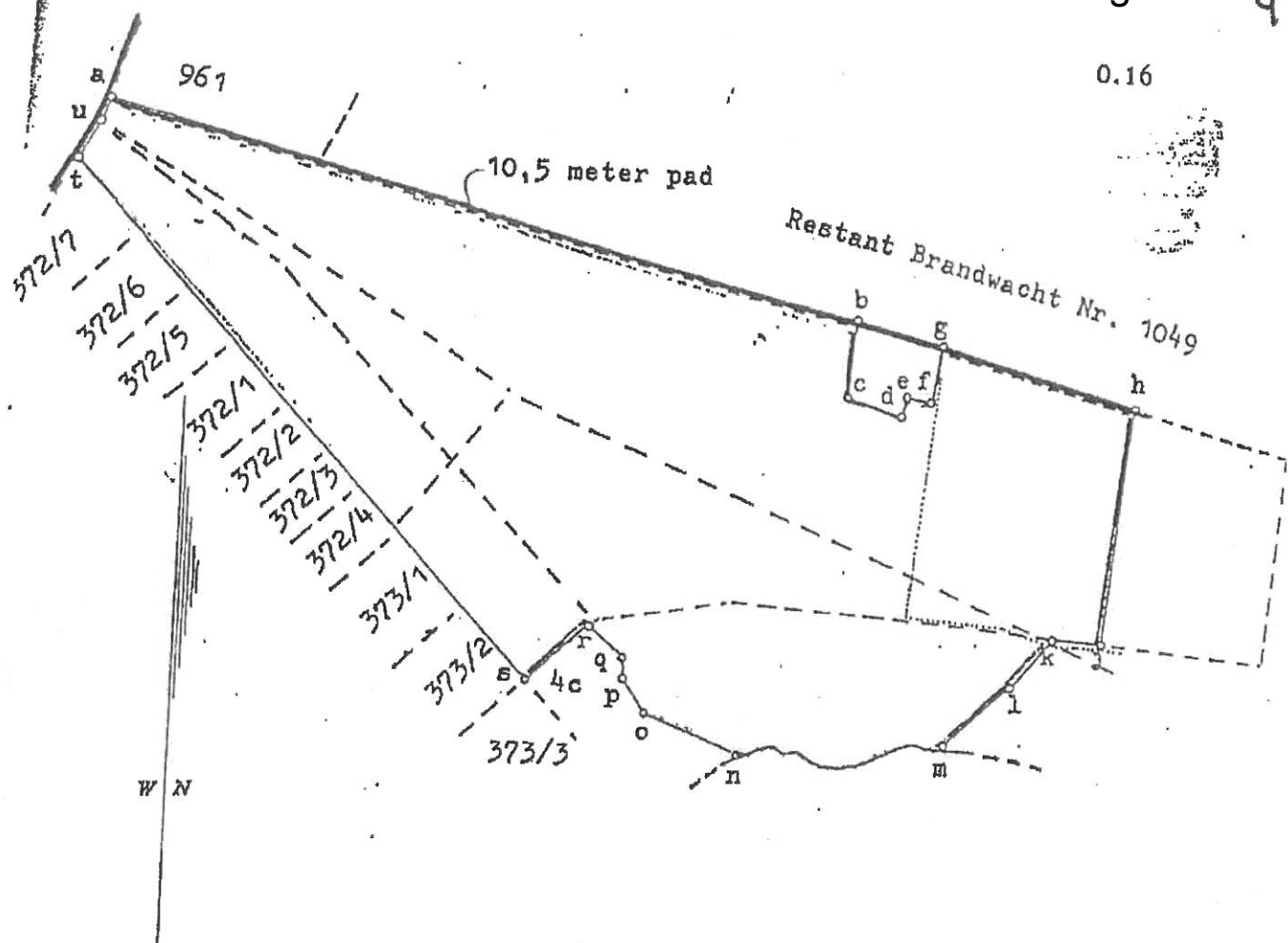
Ko-operatiewe Wijnbouwers Vereniging van  
Zuid-Afrika Beperkt.

2 *[Signature]*

*[Signature]* - SEKRETARIS  
HUURDER

(#SPROEI/KONTRAK/II)

*[Signature]* RD



Nota:

Hierdie kaart bevat 'n gedeelte van perseel 369 A en perseel 369 B.

Skaal: 1/10 000

Die figuur, abcdefghijklmnopqrstu stel voor 62,7 Ha (benaderd tot die naaste half Ha) (die 10,5m pad uitgesluit) grond synde

Munisipale Huurgrond Perseel 369 P

geleë in die Munisipaliteit en Afdeling Stellenbosch Provinsie Kaap die Goeie Hoop.

Opgesiel deur my  
Julie 1982

Ko-öperatiewe Wijnbouers Vereniging  
Zuid-Afrika Beperk.

Oorspronklike Kaart

Nr. ....

TJA Stel F.5.35

BH-PDCB

<p>Burgemeester</p> <p>Stadsheer</p> <p>Geluid 1. <i>B. Sippel</i></p>		<p>Geluid 1. ....</p>
--	--	-----------------------

*Handwritten signatures and initials.*



BYLAE A



KWW

POSBUS/PO BOX 528 BUIDER-PAARL 7624

(02211) 73911

# I UITTREKSEL UIT DIE STATUUT VAN DIE KOÖPERATIEWE WIJNBOUWERS VERENIGING VAN ZUID-AFRIKA, BEPERKT

## "Regulasie 87

- 1 Die Raad kan van tyd tot tyd 'n Uitvoerende Hoofbestuurder aanstel .....

Sodanige Uitvoerende Hoofbestuurder het volle bevoegdheid om met alle aangeleenthede wat deur die Raad aan hom toevertrou of gedelegeer is, te handel.

- 2 Sodanige uitvoerende hoofbestuurder kan enige bevoegdheid aan hom toevertrou aan enige amptenaar in diens van KWW of sy filiale opdra"

# II UITTREKSEL UIT DIE NOTULE VAN 'N VERGADERING VAN DIE RAAD VAN DIREKTEURE VAN DIE KOÖPERATIEWE WIJNBOUWERS VERENIGING VAN ZUID-AFRIKA, BEPERKT GEHOU TE PAARL OP 22 APRIL 1980

## "153 Delegering van Bevoegdheid

Met verwysing na regulasie 87(1) van die Vereniging se Statuut soos gewysig op 27 November 1979 in verband met die delegasie van bevoëghede aan die Uitvoerende Hoofbestuurder en aan amptenare van die Vereniging word Besluit dat:

- 1 die Uitvoerende Hoofbestuurder gemagtig word om alle regshandelinge te verrig, om alle stappe te doen en middele te gebruik soos wat nodig mag wees om die besluite en die beleid van die direksie tot uitvoering te bring in belang van die Koöperatiewe Wijnbouwers Vereniging van Zuid-Afrika, Beperk

KO-OPERATIEWE WIJNBOUWERS  
VERENIGING VAN ZUID-AFRIKA BEPERKT  
TELEGRAFIESE ADRES  
WYNSTOK SUIDER-PAARL  
REPUBLIEK VAN ZUID-AFRIKA  
TELEFAX 73000  
TELEKS 5-27107 KWW

CO-OPERATIVE WINEGROWERS  
ASSOCIATION OF SOUTH AFRICA LTD  
TELEGRAPHIC ADDRESS  
WYNSTOK SUIDER-PAARL  
REPUBLIC OF SOUTH AFRICA  
TELEFAX 73000  
TELEX 5-27107 KWW

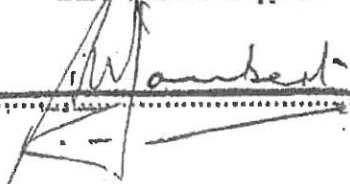
### III BEVESTIGING VAN GEDELEGEERDE BEVOEGDHEID

Ek Schalk Willem Joubert bevestig dat ek as Sekretaris van die Koöperatiewe Wijnbouwers Vereniging van Zuid-Afrika, Beperkt kragtens regulasie 87 saamgelees met notule 153.1 deur die gesegde Uitvoerende Hoofbestuurder gemagtig is om die langtermyn huurkontrak tussen die Munisipaliteit Stellenbosch ("die Verhuurder") en Koöperatiewe Wijnbouwers Vereniging van Zuid-Afrika, Beperkt ("die Huurder") ten opsigte van Plaas No 369 P groot 62,70 ha, Stellenbosch namens die Huurder te onderteken.

Geteken te Paarl hierdie 16de dag van September 1992

Geregistreer kragtens die Kommerselewet, 1981

**Koöperatiewe Wijnbouwers Vereniging van  
Zuid-Afrika Beperkt.**

  
SEKRETARIS

WA 80

BYLAEB

**BELEID EN TOEPASSING VAN DIE HUURGELDBEREKENING**

- 1 (a) Vir die doeleindes van hierdie ooreenkoms word die huurgeld gebaseer op die onverbeterde waarde van die Landbougrond in welke geval die volgende woordbepaling van toepassing sal wees:

*"Onverbeterde grond"* - beteken grond soos in sy natuurlike staat, met of sonder natuurlike plantegroei, waarop geen spesifieke struik of gewasse voorkom en verbou word met die doel om dit te oes nie;

- 1 (b) die waarde van die onverbeterde Landbougrond sal deur die KWV bepaal word; en

- 1 (c) vir die jaar 1989 word die waarde van die grond vasgestel op R7 200,00 per hektaar waarop die Stadsraad 'n opbrengs van 5 % verwag.

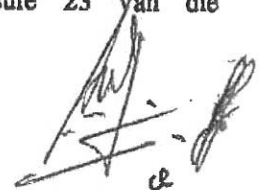
2 **Huurgeld betaalbaar in eerste termyn van vyf (5) jaar**

- (a) Die jaarlikse basiese huurgeld ingevolge klousule 4.1 van die huurooreenkoms betaalbaar, is die som van R360,00 per hektaar per jaar;
- (b) die basiese huurgeld sal jaarliks met 70 % van die styging van die amptelike verbruikersprysindeks soos op 31 Desember van die vorige jaar eskaleer, welke eskalasie vanaf 1990-04-01 opgeskort word vir vyf (5) jaar of totdat die water beskikbaar is, watter gebeure ookal eerste plaasvind.

3 **Aangepaste huurgeld na vyf (5) jaar**

Die basis van die huurgeld sowel as die persentasie aanpassing soos beskryf in paragrawe 1 en 2 sal elke vyf (5) jaar herbepaal word ooreenkomstig die basis beskryf in par. 1 of op 'n ander basis waarop onderling ooreengekom word. Indien die partye nie konsensus kan bereik oor die huurgeld nie, sal sodanige kwessie verwys word vir arbitrasie ingevolge klousule 23 van die hoofooreenkoms.






#### 4.1 Addisionele Huurpremie

Die **HUURDER** sal vir dertig (30) jaar 'n vaste addisionele huur per hektaar per jaar betaal ter bestryding van die rente en delgingsbedrae, bereken teen 15 % per jaar, ten opsigte van die kapitale verpligting aangegaan ter vestiging van die waterreg op die **EIENDOM**. Die **HUURDER** kan te eniger tyd met die **VERHUURDER** onderhandel om die kapitale verpligting af te los voor die verstryking van 30 (**DETTIG**) jaar.

#### 4.2 Vergoeding by huuropsegging ten opsigte van bona fide munisipale behoeftes

Wanneer subklousule 20.1.5 in werking tree sal die volgende van toepassing wees:

- 4.2.1 indien die kapitale verpligting (*par 4.1 hierbo*) reeds ten volle deur die **HUURDER** afgelos is, sal die kapitaalgedeelte daarvan op 'n streng pro rata-basis vergoed word in die verhouding waarin die onverstreke termyn ten opsigte van die kapitale verpligting tot die volle termyn van 30 (**DETTIG**) jaar (*par 4.1 hierbo*) staan; of
- 4.2.2 indien die kapitale verpligting nog nie ten volle deur die **HUURDER** afgelos is nie, sal hy vanaf datum van kansellasië van hierdie ooreenkoms, van die betaling van verdere addisionele huurpremies kwytgskeld word, met dien verstande dat sodanige kwytgskelding slegs betrekking sal hê op bedrae wat nog in die toekoms verskuldig en betaalbaar sou word; en
- 4.2.3 die **HUURDER** sal geregtig wees om vergoeding vir die direkte koste wat hy gehad het ten opsigte van die noodsaaklike infrastruktuur, beperkend tot pypleidinge, kleppe, krane en meters en die koste van die vestiging, koppeling en installering daarvan, wat as 'n direkte gevolg en gepaardgaande met die vestiging van die waterreg, op die verhuurde eiendom aangebring is. Die vergoeding sal soos volg bereken word:

die gemiddelde waardasie van 2 (**TWEE**) onafhanklike buitelanders van die historiese koste van die noodsaaklike infrastruktuur (soos hierbo beskryf) minus waardevermindering, bereken in gelyke paalemente oor 'n periode van 20 (**TWINTIG**) jaar.

(#SPROEI/KONTRAK/II)

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537.		To consider applications for the cession, assignment or sub-letting of leases					EM - Exceeding 10 years <u>in consultation</u> with MAYCO MM - Not exceeding 10 years DIR-HIS&PM not exceeding 36 months NOTE: If the lease of immovable property is longer than 10 years, it must be notarial executed	L
538.		To approve the renewal of lease agreements, where the agreement provides for such renewal					EM - Exceeding 10 years MM - Not exceeding 10 years DIR-HIS&PM not exceeding 36 months NOTE: This delegation may only be exercised on condition that new market related rental be approved by the CFO in terms of the approved tariff structure. NOTE: If the lease of immovable property is longer than 10 years, it must be notarial executed	L
539.		Issuing of Special Power of Attorney to 3 <sup>rd</sup> parties to obtain rights in Council-owned property, i.e. land use rights, building plans, EIA, Heritage, ect.					MGR - MPM <u>After consultation</u> with relevant Director	L
540.		Consider applications for the placement of posters and banners on municipal property in terms of Council's policy					MGR - MPM <u>in consultation</u> with MGR-MTR&S	L
541.		To exercise all the rights and obligations of the Municipality as lessor or principal in respect of agreements of lease, servitudes and other legal instruments related to the incumbent's area of jurisdiction.					MGR - MPM	L
542.		To appoint valuers on such terms and conditions as he/she may deem fit, in the event of it being considered necessary and in the interest of the Council to obtain independent valuations advice regarding the acquisition or disposal of Council land or rights in such land					MGR - MPM subject to budget requirements and Supply Management.	L
543.	S 31 of the Deeds Registries Act	To authorise the refunding of the pro-rata share of the rates paid in respect of the land acquired by way of expropriation as from the date of transfer to or occupation by the Council whichever be the earlier					MGR - MTO and may be sub-delegated to Head: Revenue	L
544.	S 140(1) Municipal Ordinance	Give notice to owners of private property of Council's intention to construct or do maintenance work on municipal services on, over or under their property					MGR - MPM (at the request of the DES)	L

## MINUTES

11<sup>TH</sup> COUNCIL MEETING OF THE COUNCIL  
OF STELLENBOSCH MUNICIPALITY

2017-08-30

10.5	<b>MOTION BY COUNCILLOR DA HENDRICKSE: CANCELLATION OF LEASE AGREEMENT WITH KWV ON PORTION OF ERF 369</b>
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**11<sup>TH</sup> COUNCIL MEETING: 2017-08-30: ITEM 10.5**

The Speaker allowed Cllr DA Hendrickse to put his Motion, duly seconded. After the Motion was motivated, the Speaker allowed debate on the matter.

During debate on the matter, the Executive Mayor, Ald G van Deventer (Ms) raised a Point of Order in terms of Rule 18.7 of the Rules of Order By-law, to the effect that this matter be referred to the Human Settlements Portfolio Committee.

The Speaker **RULED**

that this Motion be referred to the Human Settlements Portfolio Committee.

*Councillor DA Hendrickse requested that it be minuted that, in his view, the power to rule or resolve on this matter vests with Council and not with a Section 80 Committee nor with the Mayoral Committee.*

Meeting:	11 <sup>th</sup> Council: 2017-08-30	Submitted by Directorate:	Office of the Municipal Manager
Ref No:	3/4/1/4	Author:	MM: (Ms G Mettler)
Collab:	535716	Referred from:	

5.5.3	<b>NOTICE OF MOTION: EARLY TERMINATION OF LEASE AGREEMENT: KWV (PTY) LTD: LEASE FARM 369P, STELLENBOSCH</b>
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Collaborator No:

571382

IDP KPA Ref No:

Meeting Date:

14 March 2018

**1. SUBJECT:**

**NOTICE OF MOTION: EARLY TERMINATION OF LEASE AGREEMENT: KWV (PTY) LTD: LEASE FARM 369P, STELLENBOSCH**

**2 PURPOSE**

The purpose of this item is to consider a Notice of Motion submitted by Cllr D.A Hendrickse.

**3. DELEGATED AUTHORITY**

There is no specific delegation in place dealing with the early termination of long term lease agreements, where the Lessee is not at fault. By default the decision making power is therefor with the Municipal Council.

**4. EXECUTIVE SUMMARY**

Cllr Hendrickse submitted a Notice of Motion at the Council meeting held on 30 August 2017, recommending that the Municipal Manager be instructed to cancel the lease agreement with KWV, as they are a foreign-owned company.

As KWV is not in default, Council will have to prove that they need the land for *bona fide* municipal purposes, in which case a process of early termination can be considered.

**5. RECOMMENDATION**

That, until such time as the land in question has been earmarked for urban development, the existing contract not be terminated.

**6. DISCUSSION / CONTENTS****6.1. Background****6.1.1 Lease Agreement**

On 1991-04-01 Stellenbosch Municipality and KWV (Pty) Ltd concluded a Long Term Lease Agreement in relation to lease farm 369P a copy of which is attached as **APPENDIX 1**.

**6.1.2 Motion by Councillor Hendrickse**

At the Council meeting held on 2017-08-30 Councillor Hendrickse submitted a Notice of Motion a copy of which is attached as **APPENDIX 2**.

Having considered the motion, and after a point of order was raised by the Executive Mayor, the Speaker ruled that the motion be referred to the Human Settlements Portfolio Committee.



## 6.2 Discussion

### 6.2.1 Lease Agreement

On 1991-04-01 Stellenbosch Municipality and KWV (Pty) Ltd, now doing business as La Concorde S.A (Pty) Ltd, concluded a Long term Lease Agreement in relation to Lease Farm 369P, measuring 60.5ha in extent.

The contract is for a period of 50 years, and will expire on 31 March 2041.

In terms of clause 20.1.5 of the Lease Agreement the Municipality can, after following due process, terminate the Lease Agreement, should the Municipality need the land for *bona fide* municipal purposes, which includes township establishment; on condition that a 12 month written notice be served on the Lessee.

### 6.2.2 Legislation prohibiting the leasing of municipal land to foreign-owned companies

In the motion Cllr Hendrickse indicates that *"current legislation prohibits the Stellenbosch Municipality from leasing or selling municipal owned properties to foreign-owned companies and individuals"*.

This department is not aware of any such legislation.

### 6.2.3 Location and context: Urban Edge

Lease Farm 369P is situated to the north of Paradyskloof and south of Brandwacht, as shown on Fig 1 and 2 respectively.



Fig 1: Location and context: Lease Farm 369





Fig 2: Lease Farm 369P

As can be seen from Fig 3, the area is currently outside the urban edge, i.e. it has (to date) not been identified for township establishment/urban development.

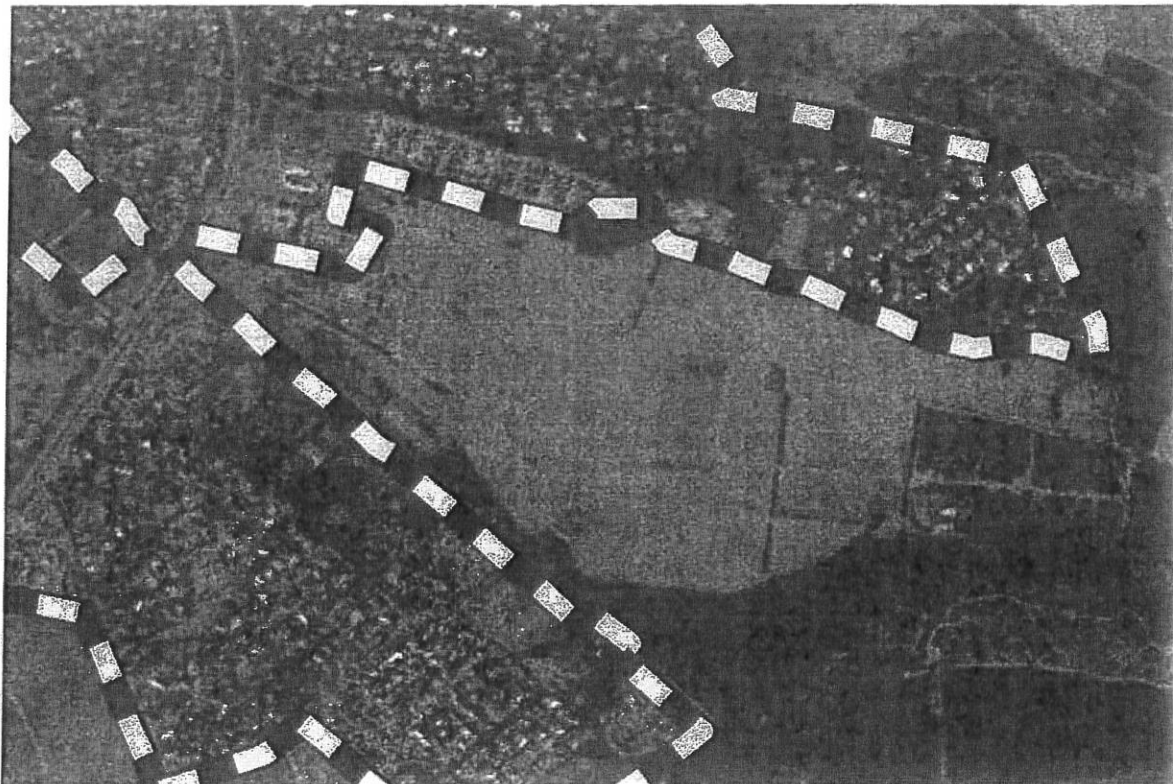


Fig 3: Urban edge

**6.3. Financial Implications**

There is no financial implications should the recommendations as set out in the report be accepted. Should Council, however, decide to terminate the Lease Agreement, the annual financial lost (based on current lease amounts) will be approximately R 126 720.17 (R 111 158.04 + R 15 562.13 VAT) per annum.

**6.4 Legal Implications**

The recommendations in this report comply with Council's policies and all applicable legislation.

It is also in line with the contractual situation.

**6.5 Staff Implications**

This report has no staff implications to the Municipality.

**6.6 Previous / Relevant Council Resolutions:**

As has been indicated above, the Notice of Motion was considered by Council. No decision on the content, however, has been taken. The Speaker has ruled that the matter be referred to the Human Settlements Portfolio Committee.

The Portfolio Committee however, has no delegated authority to decide on the matter. Only the Municipal Council can decide on whether to amend the urban edge and, by implication, to terminate the lease agreement for the purpose of *bona fide* municipal purposes (which includes township establishment).

**6.7 Risk Implications**

This report has no risk implications for the Municipality.

**6.8 Comments from Senior Management:****6.8.1 Director: Infrastructure Services**

Agree with the recommendations.

**6.8.2 Director: Planning and Economic Development**

This directorate supports the recommendations and agrees that there is no immediate need for cancellation of the lease, in view of the effective use of the property in keeping with the purpose of the lease and the fact that the future use of the property for urban development purposes has not yet been approved by Council. A minor portion of the property will be required for road access and development purposes in order to reduce congestion on intersections leading to Paradyskloof, but these do not affect the lease.

**6.8.3 Legal Services:**

The item and recommendation is supported.



**ANNEXURES**

- A: Lease Agreement**
- B: Notice of motion**
- C: Council resolution**

**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	<b>Piet Smit</b>
<b>POSITION</b>	<b>Manager: Property Management</b>
<b>DIRECTORATE</b>	<b>Human Settlement &amp; Property Management</b>
<b>CONTACT NUMBERS</b>	<b>021-8088189</b>
<b>E-MAIL ADDRESS</b>	<b><u>Piet.smit@ Stellenbosch.gov.za</u></b>
<b>REPORT DATE</b>	<b>2017-09-29</b>

**DIRECTOR: HUMAN SETTLEMENT & PROPERTY MANAGEMENT**

The contents of this report have been discussed with the Portfolio Committee Chairperson and the Councillor agrees with the recommendations.

YA RD

Zimbra

smartest@mweb.co.za

FW: Plaas Grondves

**From :** Nico Spreeth <Spreeth@Vittitec.com>  
**Subject :** FW: Plaas Grondves  
**To :** Chris Jones <JonesC@niveus.co.za>

Mon, Jan 23, 2017 10:55 AM  
 5 attachments

**From:** Dirk Visser  
**Sent:** Thursday, January 19, 2017 3:42 PM  
**To:** Nico Spreeth <Spreeth@Vittitec.com>  
**Subject:** FW: Plaas Grondves

**From:** Piet Smit [mailto:Piet.Smit@stellenbosch.gov.za]  
**Sent:** Thursday, January 19, 2017 2:26 PM  
**To:** Dirk Visser <Visserd@Vittitec.com>  
**Cc:** 'Clifford Heys' <Clifford@tv3.co.za>; Pedro April <Pedro.April@stellenbosch.gov.za>  
**Subject:** FW: Plaas Grondves

Dirk,

Sien onderstaande e-pos wisseling rakende die moontlike gebruik van n gedeelte van die plaas grondves vir pad doeleindes.

Ek is van oordeel dat ons die hele area uitsny uit die kontrak, in plaas van net die pad. Dit sal beteken dat julle huurgeld proporsioneel verminder sal word.

Ek ontvang graag julle insette/kommentaar in die verband.

Sou julle in ooreenstemming wees, sal ek reel vir die formele wysiging van die kontrak.

Piet

**From:** Clifford Heys [mailto:Clifford@tv3.co.za]  
**Sent:** Thursday, January 19, 2017 10:01 AM  
**To:** Piet Smit  
**Subject:** [EX] FW: Plaas Grondves

Hi Piet

Insake my e-pos hieronder.

Kon jy al die voorstel om 'n publieke pad oor Grondves te bou met KVV bespreek?

Groete

Clifford

**From:** Clifford Heys  
**Sent:** 09 December 2016 09:11 AM  
**To:** 'Piet Smit'  
**Cc:** Jan van Rensburg  
**Subject:** Plaas Grondves

Hi Piet

Ek verwys na ons vergadering vroeër vandag.

Soos met jou bespreek:

1. Vind aangeheg die voorgestelde publieke pad oor Grondves. Sal jy dit asb. met KVV bespreek en hul sanksie daarvoor kry / huurooreenkoms wysig.
2. Ook aangeheg is die Algemene Plan en Noteerfel vir die Skoolplaats ontwikkeling. Daarvolgens is 'n gedeelte van Skoolplaatsstraat voor Erf 9472 gesluit (dit is egter nie onderverdeel nie). Sal jy asb. kyk of julle hiervoor 'n huurooreenkoms met die eienaar van Erf 9472 het.

Groete

**Clifford Heys**  
 Pr Pln (TRP SA), B Econ, M (T&RP), MSAP  
 ASSOCIATE TOWN PLANNING

447 109

Cell: +27 (0)83 309 9770



ARCHITECTS AND TOWN PLANNERS  
ARGITEKTE EN STADSBEPLANNERS

DIRECTORS: JH van Rensburg - Swanepoel JG Brink - RJ Smit - IR Heunes - MIA Walters  
ASSOCIATES: J Breuninger - WD Fourie - CR Heys - A Prinsloo - H Hugo

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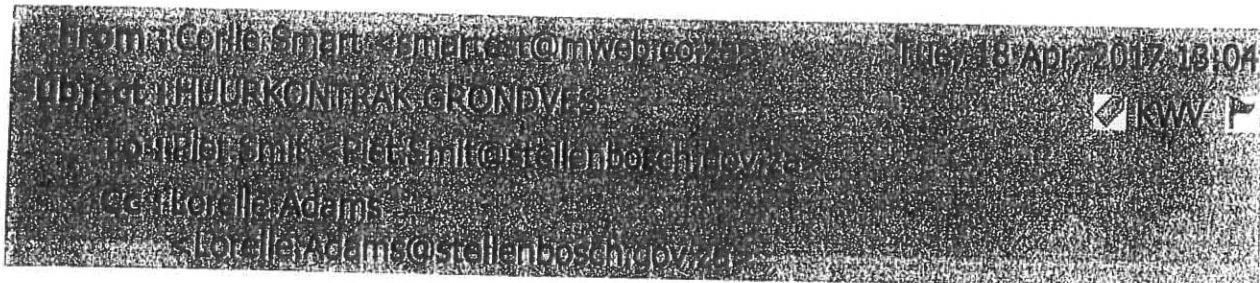
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**HUURKONTRAK GRONDVES**

Beste Mnr Smit

Met verwysing na ons telefoniese gesprek Donderdag bevestig ek dat u my meegedeel het dat u die formele skrywe aan KWV gestuur het aangaande die voorgestelde pad en die wysiging van die huurkontrak oor die Grondves plaas. Dat die pad nie deur die munisipaliteit beplan is nie en dat dit voorgestel is deur die ontwikkelaar vir die doeleindes van hul ontwikkeling aangesien daar vereiste gestel is deur die vervoerdepartemente van provinsie en die munisipaliteit.

Ek ontvang graag so spoedig moontlik die formele skrywe wat u aan KWV gestuur het sodat ek kan seker maak dat hul wel die skrywer ontvang het.

Regards

Corlie Smart

B.Proc // LLM

**Smart Attorneys**

Heritage and Planning Law

083 325 6138

021 882 8927

Handwritten initials 'VH' and a signature.

Zimbra

smartest@mweb.co.za

**RE: HUURKONTRAK GRONDVES**

**From :** Piet Smit <Piet.Smit@stellenbosch.gov.za>  
**Subject :** RE: HUURKONTRAK GRONDVES  
**To :** 'smartest@mweb.co.za' <smartest@mweb.co.za>

Fri, 09 Jun, 2017 09:42

KVV

1 attachment

**From:** Piet Smit  
**Sent:** 24 April 2017 09:18 AM  
**To:** Lorelle Adams  
**Subject:** FW: HUURKONTRAK GRONDVES

Sal jy asb brief van KVV ook vir Corlie aanstuur?

**From:** Corlie Smart [mailto:smartest@mweb.co.za]  
**Sent:** Tuesday, April 18, 2017 1:05 PM  
**To:** Piet Smit  
**Cc:** Lorelle Adams  
**Subject:** [EX] HUURKONTRAK GRONDVES

Beste Mnr Smit

Met verwysing na ons telefoniese gesprek Donderdag bevestig ek dat u my meegedeel het dat u die formele skrywe aan KVV gestuur het aangaande die voorgestelde pad en die wysiging van die huurkontrak oor die Grondves plaas. Dat die pad nie deur die munisipaliteit beplan is nie en dat dit voorgestel is deur die ontwikkelaar vir die doeleindes van hul ontwikkeling aangesien daar vereiste gestel is deur die vervoerdepartement van provinsie en die munisipaliteit.

112



Zimbra

smartest@mweb.co.za 113

**Re: HUURKONTRAK GRONDVES**

From: Corlie Smart <smartest@mweb.co.za> Sat, 10 Jun, 2017, 12:32  
Subject: Re: HUURKONTRAK GRONDVES KVV  
To: Piet Smit <Piet.Smit@ Stellenbosch.gov.za>

Beste Mnr Smit

Ons verwys na u onderstaande epos van die 9de Junie 2017 asook u skrywe van die 2de Junie 2017 soos aangeheg by u epos.

Ons merk dat die aanhangsels nie aangeheg is by die skrywe nie. Ons ontvang graag dringend die aanhangsels en plaas op rekord dat die appel periode ( indien die appel proses wel van toepassing is) eers aanvang kan neem nadat ons die volledige skrywe ontvang het.

Ons merk dat 'n afskrif van u skrywe ook aangestuur is na TV3. Soos ons van u verstaan het tree TV3 nie namens die Stellenbosch Munisipaliteit op in hierdie aangeleentheid nie. Ons is van mening dat aangesien u skrywe handel oor n ooreenkoms tussen ons klient en Stellenbosch Munisipaliteit dit nie gepas sal wees om korrespondensie tussen ons klient en die munisipaliteit aan derde partye, tewete TV3, te stuur nie. Indien TV3 wel as konsultante in opdrag van die Munisipaliteit aangestel is mag ons klient dalk nie beswaar daarteen hê indien u wel afskrifte aan TV3 stuur nie. In die lig van laasgenoemde versoek ons u om aan ons te bevestig of TV3 wel namens die Munisipaliteit optree sodat ons ook instruksies van ons klient kan kry daarvoor.

Aangesien ons nog nie geleentheid gehad om met ons klient te konsulteer nie sal ons eers instruksies moet neem rakende die inhoud van u skrywe alvorens ons op die skrywe kan reageer.

Intussen ontvang ons graag die kontak besonderhede van die relevante persoon aan wie n versoek vir redes van die besluit gerig kan word.

Geliewe te bevestig dat die 21 dae periode eers in aanvang sal tree nadat ons die aanhangsels soos verwys na in u skrywe ontvang het.

Geliewe ook ontvangs hiervan te erken.

Ons verneem graag dringend van u.

Regards  
**Corlie Smart**  
Smart Attorneys





Zimbra

smartest@mweb.co.za

**RE: [EX] Re: HUURKONTRAK GRONDVES**

**From :** Piet Smit <Piet.Smit@stellenbosch.gov.za> **Thu, 15 Jun, 2017 11:36**  
**Subject :** RE: [EX] Re: HUURKONTRAK GRONDVES **KWV**  
**To :** 'Corlie Smart' <smartest@mweb.co.za> **6 attachments**  
**Cc :** Mervin Williams  
 <Mervin.Williams@stellenbosch.gov.za>

Beste Corlie,

Vind asb. hierby aangeheg Aanhangsels 1 en 2 waarna ek in my skrywe verwys; jammer vir die oorsig in die verband.

My skrywe van 2 Junie 2017, mét die nodige aanhangsels, is aan KWV gestuur per geregistreerde pos. Die afskrif wat ek aan jou gestuur het was bloot **ter inligting**. Die appél tydperk is 21 dae vanaf datum waarop KWV my skrywe ontvang het. Jy is egter welkom om namens jou klient (sou hulle so versoek) aansoek te doen vir 'n verlenging van tyd, sou hulle meer tyd nodig hê.\*

\*Ek merk op dat jy nog nie met KWV (jou klient) in gesprek was nie. Neem asb. kennis dat ek reeds einde 2016 met hulle in gesprek was oor die moontlike inkorting van hul grond. Die mondelingse terugvoer wat ek gekry het was dat dit nie 'n probleem is nie, aangesien hulle in elk geval nie die betrokke gedeelte grond benut nie. Hoe dit ook al sy, dit klink vir my jy voorsien 'n ander benadering.

TV3 is nie as konsultante deur Stellenbosch Munisipaliteit aangestel nie, maar wel deur 'n Ontwikkelaar van naby-geleë grond. Tydens gespreksvoering met TV3 het hulle aan my verduidelik dat die Provinsiale Padingenieur aangedui het dat hulle slegs die aansoek sal oorweeg indien die alternatiewe toegang gebou word. Om dié rede het hulle my genader om vas te stel wat die moontlikheid is dat die pad oor ons grond gebou kan word. Nadat ek die proses aan hulle verduidelik het, het hulle my versoek om die proses aan die gang te sit om die grond beskikbaar te kry vir die bou van die pad. Binne hierdie konteks het ek dit billik geag om hulle op hoogte te hou met verwikkelinge. Ek vind dit vreemd dat jy (voordat jy die saak met jou klient bespreek het) beswaar maak teen die feit dat ek hulle ingelig het. Hoe dit ook al sy, ek onderneem om toekomstige korrespondensie met jou klient nie aan TV3 beskikbaar te maak nie.

Die relevante persoon aan wie 'n versoek vir redes van die besluit gerig kan word is myself. Weereens vind ek dit vreemd dat jy so 'n versoek rig, aangesien my skrywe van 2 Junie 2017 (volgens my) voldoende agtergrond/redes vir besluit vervat.

Die 21 dae appel periode, soos reeds hierbo genoem, het in aanvang geneem op die datum wat jou klient my skrywe ontvang het, tensy ek 'n versoek vir uitstel van tyd ontvang.

YH

Vriendelike groete,

Piet



Management

Management

Settlements & Property Management

[ch.gov.za](http://ch.gov.za)

Piet Smit

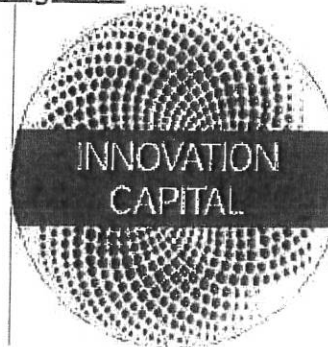
Manager: Property

Department: Property

Directorate: Human

Management

[Piet.smit@stellenbosch.gov.za](mailto:Piet.smit@stellenbosch.gov.za)



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3rd Floor, Absa Building, Plein Street, Stellenbosch, 7600

PO Box 17, Stellenbosch, 7599

**From:** Corlie Smart [mailto:smartest@mweb.co.za]

**Sent:** Saturday, June 10, 2017 12:32 PM

**To:** Piet Smit

**Subject:** [EX] Re: HUURKONTRAK GRONDVES

Beste Mnr Smit

Ons verwys na u onderstaande epos van die 9de Junie 2017 asook u skrywe van die 2de Junie 2017 soos aangeheg by u epos.

Ons merk dat die aanhangsels nie aangeheg is by die skrywe nie.

Ons ontvang graag dringend die aanhangsels en plaas op rekord dat die appel periode ( indien die appel proses wel van toepassing is) eers aanvang kan neem nadat ons die volledige skrywe ontvang het.

Ons merk dat 'n afskrif van u skrywe ook aangestuur is na TV3. Soos ons van u verstaan het tree TV3 nie namens die Stellenbosch Munisipaliteit op in hierdie aangeleentheid nie. Ons is van mening dat aangesien u skrywe handel oor n ooreenkoms tussen ons klient en Stellenbosch Munisipaliteit dit nie gepas sal wees om korrespondensie tussen ons klient en die munisipaliteit aan derde partye, tewete TV3, te stuur nie. Indien TV3 wel as konsultante in opdrag van die Munisipaliteit aangestel is mag ons klient dalk nie beswaar

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2017-05-31

Die Bestuurder  
KWV  
Posbus 528  
Paarl  
7624

## KENNISGEWING: UITSLUITING VAN GEDEELTE VAN PLAAS 369P

Gedurende 1991 is 'n langtermyn huurkontrak gesluit tussen Stellenbosch Munisipaliteit en KWV (Edms)Bpk t.o.v die huur van Huurplaas 369P grootte 62.7ha, vir 'n termyn van 50 jaar, d.l. vanaf 1 April 1991 tot 31 Maart 2041.

Ons is onlangs ingelig dat daar beplan word om 'n nuwe verbindingspad te bou soos aangedui op **AANHANGSEL 1**.

Een opsie sou wees om die pad gedeelte (voorgestelde area van  $\pm 2600\text{m}^2$ ) uit te sluit van die huurkontrak, maar na oorweging is besluit om die voorgestelde pad-area, sowel as die gedeelte wes van die voorgestelde pad, uit te sluit van die ooreenkoms, soos aangedui op **AANHANGSEL 2**.

In totaal beloop die area  $\pm 1.66\text{ha}$ .

In terme van klousule 20 van die Huurooreenkoms kan die **VERHUURDER**, sonder om afbreuk te doen aan enige bepalings of vereistes in die ooreenkoms, en nadat skriftelike kennisgewing op die **HUURDER** beteken is, die ooreenkoms (of 'n gedeelte daarvan) beeindig, indien die eiendom in sy geheel of gedeeltelike vir *bona fide* munisipale doeleindes benodig word, met dien verstande dat 'n gracie periode van hoogstens een(1) jaar verleen word, ten einde die **HUURDER** in staat te stel om die oeste wat op daardie stadium uitstaande mag wees, te in.

\*Volgens my rekords word die betrokke gedeelte grond huidige nie vir enige landbou doeleindes benut nie, en is ek van oordeel dat 'n maand kennisgewing voldoende kennis is.

U word dus hiermee kennis gegee dat die munisipaliteit 'n gedeelte van huurplaas 369P, grootte ongeveer

JA 20



STELLENBOSCH  
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

1.66ha , benodig vir *bone fide* munisipale doeleindes, soos aangedui op **AANHANGSEL 2**.

Gevolgtik word u kennis gegee dat gemelde gedeelte met ingang van 1 Julie 2017 uitgesluit sal word van die Huurkontrak.

Indien u tevrede is met die reëlins, sal ek reël dat 'n Addendum opgetrek word om effek hieraan te gee.

Sou u egter nie my besluit aanvaar nie, is u welkom om in terme van Art. 62 van die Munisipale Stelsels, Wet No. 32/2000, appél aan te teken teen my besluit, welke appél die Munisipale Bestuurder moet bereik binne 21 dae vanaf datum waarop u hierdie skrywe ontvang het. Sou u besluit om inderdaad appél aan te teken teen my besluit, moet u 'n volledige motivering voorsien hoekom u nie tevrede is met die besluit nie.

Ek verneem graag dringend van u.

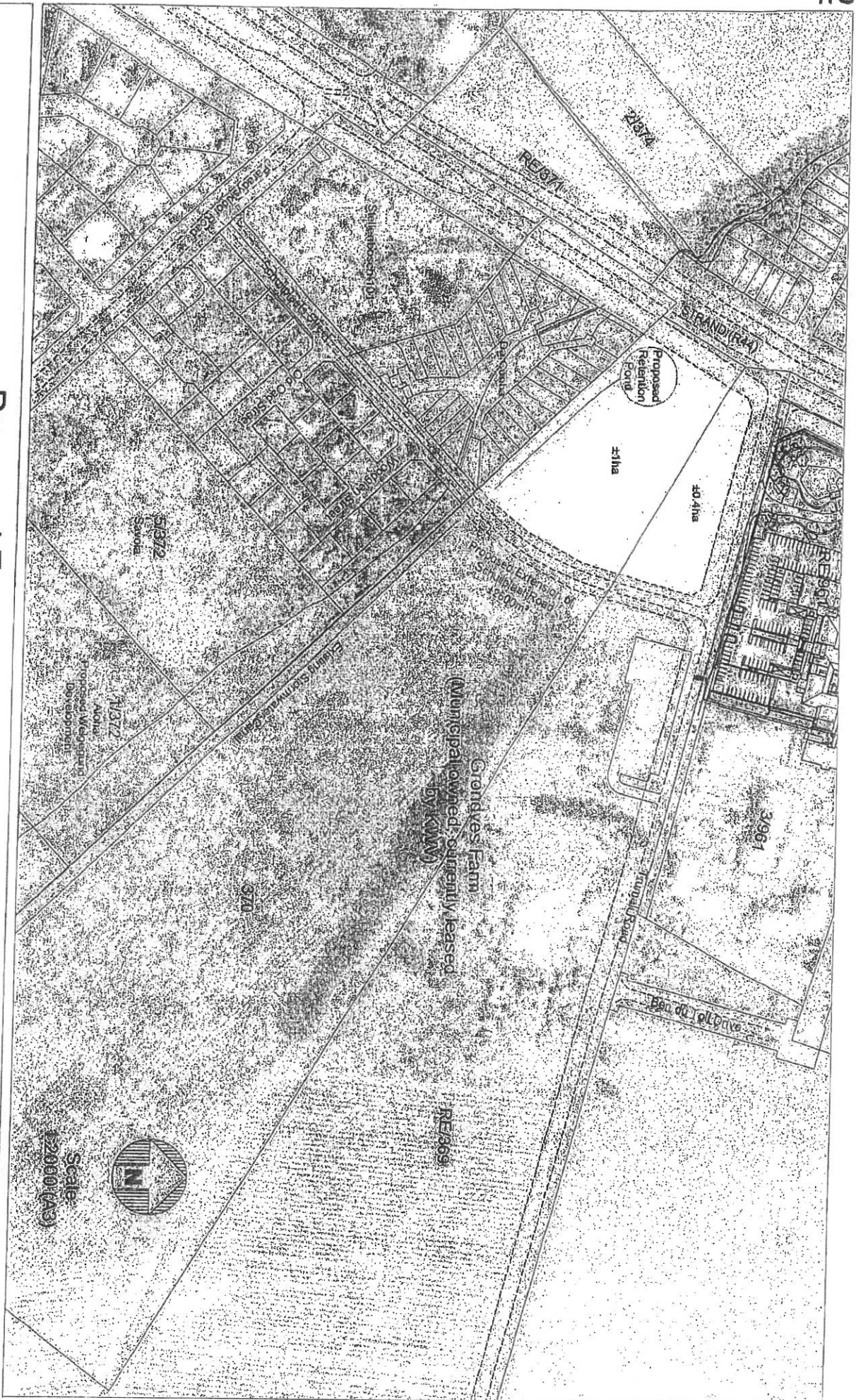
Die uwe

PIET SMIT  
BESTUURDER: EIENDOMSBESTUUR

cc: TV3  
Pieter Wagenaar  
Andre Treunich  
Leatitia Walters



# Proposed Extension of Schulplaat Road, Stellenbosch



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ALL INFORMATION CONTAINED  
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UCBAW/BJA

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TIME	12:00 PM

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(STELLENBOSCH TOEKENINGSGEBIED)  
ALGEMENE PLAN NO. 12241

geheim in die Munitionskammer  
an die Adressierten durch Stellenbesuch  
Provinzialverwaltung der Gasse 1000

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0893-3200/97/\$12.00  
DOI: 10.1037/0893-3200.11.1.120

6. *Anterior*

SCALE : 500

Donnerstag, 7. April 2011

2. U.S. Bureau of Census, "Labor Relations in the U.S. - 1950," U.S. Government Printing Office, Washington, D.C., 1951, p. 10.

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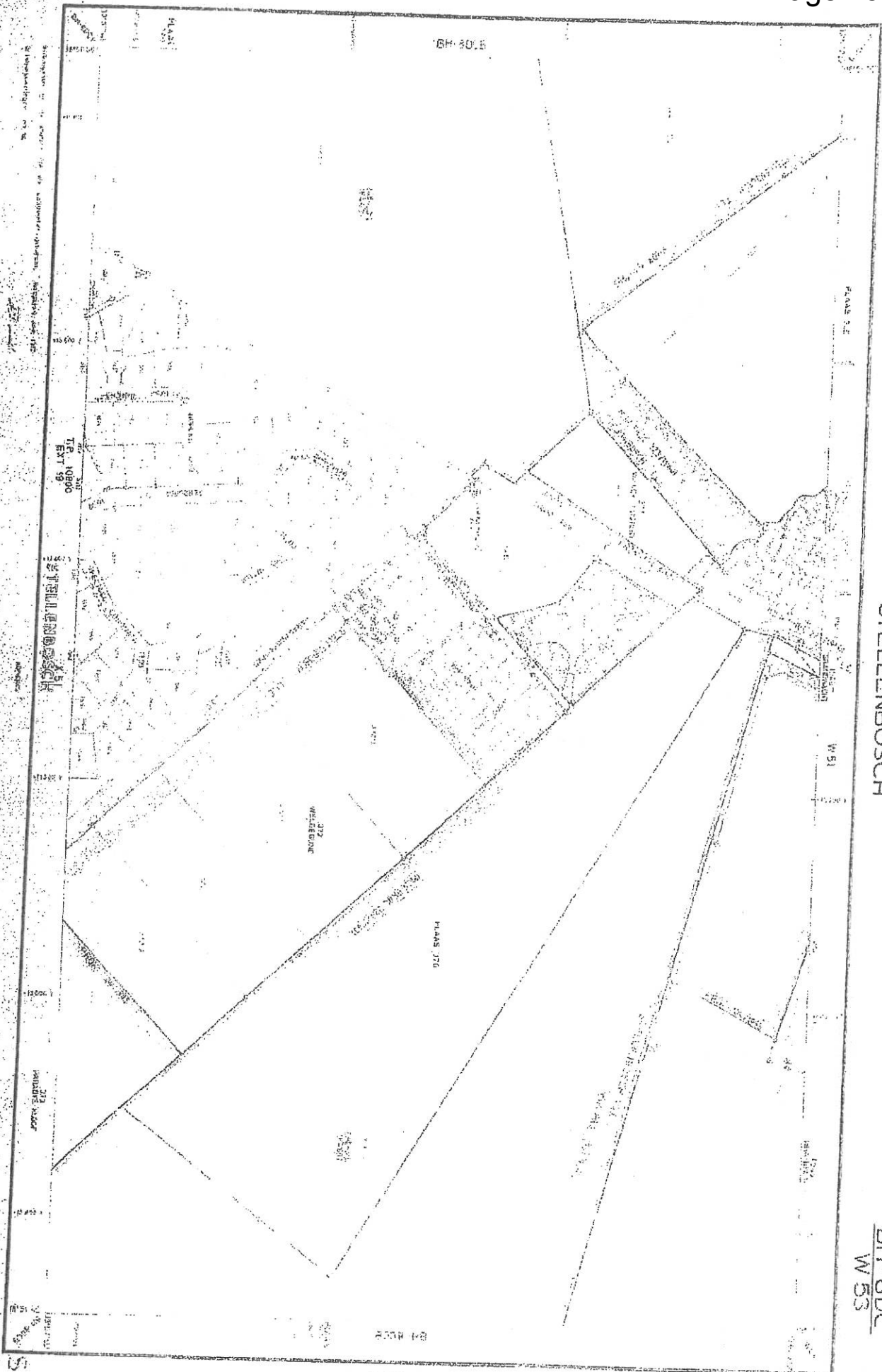
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STELLENBOSCH

BH-8DC  
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BH-8DC  
W53

1508

# Smart Attorneys



OUR REF: Ms Smart

YOUR REF: MUNICIPAL MANAGER

DATE: 17 JULY 2017

**THE MUNICIPAL MANAGER  
STELLENBOSCH MUNICIPALITY**

**FAX: 021 8866749**

Dear Sir / Madam

**RE: APPEAL ITO SECTION 62 OF THE MUNICIPAL SYSTEMS ACT**

We act on behalf of La Concorde South Africa (Pty) Ltd previously known as KWV Ltd and prior to that Koöperatiewe Wijnbouwers Vereniging van Zuid – Africa Beperkt (KWV).

We hold instructions to direct this correspondence setting out our client's notice of appeal and reasons for the appeal. The appeal is against the decisions by the authorized authorities as set out below.

The relevant background can be summarized as:

The appellant and Stellenbosch Municipality entered into a long terms lease agreement on 12<sup>th</sup> of Mei 1992 and in terms thereof the Appellant leases portions of properties known as Lease Farm 369P from the 1<sup>st</sup> of April 1991 to the 31<sup>st</sup> of March 2041. In terms of the agreement any disputes in terms of the agreement is subject to arbitration.

The decisions mentioned below, if taken correctly, might have an influence on the findings of an Arbiter should the need arise for such arbitration.

The appellant is of the opinion that the subject matter is largely of a contractual nature and should be dealt with as such, however some of the decisions set out below will impact on the contractual relationship between the parties.

The notice of the decision did not clearly indicate which decision the decisionmaker considered to be the subject of the right of an appeal and as a result the Appellant must appeal against all the decisions that it could deduct to have been taken.

SMART ATTORNEYS  
117 DORP STREET  
STELLENBOSCH

C H SMART  
B.PROC. LLM  
083 325 6138

tel - 021 882 8927  
smartest@mweb.co.za  
fax - 086 689 2749

Handwritten initials or signature.



# Smart Attorneys

## APPEAL ITO SECTION 62 OF THE MUNICIPAL SYSTEMS ACT:

**DECISION BY THE MANAGER – PROPERTY MANAGEMENT DATED THE 31<sup>ST</sup> OF MAY 2017 RECEIVED BY APPELLANT ON THE 26<sup>TH</sup> OF JUNE 2017 AND DECISION BY THE DELEGATED AUTHORITY / DEPARTMENT WITH REGARDS TO APPROVAL OF ROAD:**

### The decisions appeal:

1. The approval of an new access road over the Lease Farm 369P, leased by the appellant in terms of a long term lease agreement. (Access road also indicated as 'Extension of Schuilplaats Road')
2. The decision that the proposed access road is considered to be for bona fide municipal use/ purposes.
3. The decision to exclude a portion of the farm to the west of the proposed road (1.66ha) from Lease Farm 369P.
4. The decision to cancel the lease agreement between the Stellenbosch Municipality and the Appellant.

### REASONS FOR THE APPEAL:

The notice of the decision by the Manager - Property Management indicates that he became aware that the access road was planned. It is not entirely clear whether the planned road has been approved or not and as a result the Appeal against the approval of the access road only applies if the access road has been approved.

### APPROVAL OF NEW ACCESS ROAD:

The new access road over Lease Farm 369P will impact on the rights of the Appellant as set out in the lease agreement between Stellenbosch Municipality and Appellant. The access road will effectively subdivide the Lease Farm area and as a result the section to the west of the access road will not be viable for the purposes that the Appellant is entitled to utilise the Lease Farm.

Lease Farm 369P consists of Farm 370 and a portion of Farm 369 Stellenbosch. Both the farms are zoned for the purposes of agriculture and fall outside the urban edge.

Due process relating to other applicable legislation should be followed prior to approval of such access road over the leased agricultural land. Due public participation should also be followed prior to such decision as owners of properties in Paradyskloof will be affect by such approval.

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# Smart Attorneys

The Appellant is unaware of such processes that might have been followed and believe that the decision would be flawed as a result thereof. Notice of any Land Use Application that might be impact on the Appellant have not been received.

## DECISION THAT THE ACCESS ROAD IS CONSIDERED TO BE FOR BONA FIDE MUNICIPAL PURPOSES:

According to Annexures A to the notice of the relevant decisions as well as the correspondence between the relevant parties the proposed road forms part of a land use application in terms of the Land Use By-Laws. The purpose of the land use application is for approval of the development of the remainder of farm 961. The Appellant has not been informed of the content of the application or given notice thereof

The land use application has been initiated by the owner of the remainder of farm 961 and has not been initiated by the Stellenbosch Municipality. Mr Smit of the municipality confirmed last-mentioned.

The Appellant has not been privy to the contents of the above land use application and the exact contents thereof and the merit of such development cannot be addressed herein, nor would it be the appropriate forum.

An access road over the Lease Farm is not required for current municipal development on the Lease Farm or any other municipal land. All the properties surrounding the Lease Farm area are owned by third parties.

Should access roads be required for development of Municipal Land such access roads could be considered to be for bona fide municipal purposes.

Development by owners that necessitates new road or the upgrade of such roads would solely be for the purposes of the approval of such development.

The requirements by decision making authorities for the mentioned access road prior to approval thereof do no obligate the Stellenbosch Municipality to provide such roads over municipal land.

The access road would have to be constructed at the cost of the developer. Should the road be for the purposes of bona fide municipal purposes the developer would not be liable for the cost of construction. The appellant does not have sufficient information as to the future financial liability relating to the construction costs but the above would be an indication whether the proposed road can be considered to be for bona fide purposes of the Stellenbosch Municipality.

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The Appellant submits that for the above reasons the decision maker erred in the decision to consider the proposed access road to be for bona fide municipal purposes.

## THE DECISION TO EXCLUDE A PORTION OF THE FARM LEASE PROPERTY:

The decision maker erred in making the above decision as the decision can only be made if the proposed access road is for purposes of bona fide municipal purposes. As mentioned in the reasons above the Appellant submits that the road is not for bona fide municipal purposes.

The decision maker further erred in making the decision as the portion of the farm to be excluded forms part of the Lease Farm and the area of the leased property cannot be altered unless the lease agreement between the parties has been cancelled and a new lease agreement is entered into or if the parties agree to an addendum to the lease agreement.

No such agreements have been entered into.

The extent of the leased property can therefore not be altered by a unilateral administrative decision but only in terms of the legal principles applicable to the law of contract.

## DECISION TO CANCEL THE LEASE AGREEMENT:

The lease agreement stipulates that the contract can be cancelled should the lease property be required for municipal purposes but only if such municipal purposes are bona fide municipal purposes.

As submitted above the decision maker erred in his decision to deem the proposed road to be for bona fide municipal purposes. It follows that a decision to cancel the lease agreement would also be flawed.

In terms of the agreement the entire lease agreement will be cancelled should the Stellenbosch Municipality be entitled to cancel the agreement. The decision to partially cancel the agreement is flawed and the decision maker erred by making the decision.

The cancellation of the agreement will lead to substantial financial loss for the Appellant. The decision therefor directly impacts on the Appellant's rights in terms of the lease agreement between the parties.

## UNFAIR ADMINISTRATIVE ACTION ITO PAJA:

All the above decisions do not conform to the requirements of the Promotion of Administrative Justice as:

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- The Appellant was not given adequate notice of the nature and purpose of the administrative actions.
- The Appellant was not given a reasonable opportunity to make representations.
- The Appellant was not provided with a clear statement of the administrative action.
- The notice of an internal appeal was not adequate.
- The Appellant was not adequately informed of the right to request reasons.
- The Appellant was informed that the reasons for the decision was provided in the notice of the decision. The reasons provided by the administrator were not adequate or substantiated.
- The decisionmaker was not authorised in terms of the applicable legislation to make some or all of the decisions mentioned above.
- The decision was not rationally connected to the information before the administrator and the reasons given for the decision.
- The decision was materially influence by an error in law.

We submit for the reasons set out above the Appeals Authority submits that the appeal should be upheld.

The Applicant requests the opportunity to make oral representation when the appeal is heard and considered by the Appeals Authority.

Yours Faithfully



C H Smart

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MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

2017-09-15

Smart Attorneys  
117 Dorp Street  
STELLENBOSCH  
7600

Dear Sir/Madam

## SECTION 62 APPEAL AGAINST DECISION TAKEN BY THE MANAGER: PROPERTY MANAGEMENT IN RELATION TO LEASE FARM 369P

Your letter of appeal dated 17 July 2017 refers.

Before applying my mind to this, I have requested Mr Smit (Manager: Property Management) to provide me with his version of the events leading to your appeal. Please find hereto attached a copy of a report received from him, recommending that:

- "a) that the appeal be dismissed; alternatively
- b) that the Appellant be requested to provide reasons/motivation why they are of the opinion that the portion of land (1.7ha) is of significant importance to them, from an agricultural/development point of view, whereafter a final decision could be made".

Having considered your appeal, as well as the inputs from Mr Smit, I have decided not to make a final ruling at this stage, until such time as you have provide me with reasons/motivation on why your client are of the opinion that the portion of land (1.7ha) is of significant importance to them from an agricultural/development point of view.

As soon as I have received their motivation\*, I will make a final ruling in this regard.

\*Please note that I do not want your legal reaction/motivation as to why the area should not be excluded from the Lease Agreement; I want a letter/motivation from La Concorde S.A (Pty) Ltd indicating why the land is of importance to them, i.e. why we should not exclude it from the lease agreement.

WJ NJ



# STELLENBOSCH

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If I do not receive such letter/motivation within 21 days from date of my letter, I will assume that you (your client) does not want to make further inputs, in which case I will make a final ruling on the matter.

I urgently await your client's letter/motivation.

Yours faithfully

GERALDINE METTLER  
MUNICIPAL MANAGER





# STELLENBOSCH

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Kantoor van die Munisipale Bestuurder

Office of the Municipal Manager

I ofisi yomphathi Maspala

## DOCUMENT ROUTE FORM

Including "For noting" Reports

### DOCUMENT TYPE

ITEM	DEVIATION (EXCLUDING COUNCILLORS)	CONTRACT (EXCLUDING COUNCILLORS)	REPORT (COUNCILLORS INPUT)	OTHER	X
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SUBJECT:

**SECTION 62 APPEAL AGAINST DECISION TAKEN BY THE MANAGER: PROPERTY  
MANAGEMENT IN RELATION TO LEASE FARM 369P**

REQUESTED SIGNATORY	SUPPORTED/ NOT SUPPORTED/ APPROVED	SIGNATURE/COMMENTS	DATE
MANAGER	Supported		2017.08.28.
DIRECTOR			29/08/2017
MUNICIPAL MANAGER			
COMMENTS:	A	 Cooper option B.	4/9/2017



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## PROPERTY MANAGEMENT

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**TO / AAN** : The Municipal Manager  
**FROM / VAN** : Manager: Property Management  
**DATE / DATUM** : 2017-07-26  
**RE / INSAKE** : SECTION 62 APPEAL AGAINST DECISION TO EXCLUDE A  
PORTION OF LAND FROM LONG-TERM LEASE AGREEMENT:  
LEASE FARM 369P: KWV (NOW DOING BUSINESS AS LA  
CONCORDE SA (PTY) LTD

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### 1. PURPOSE

The purpose of this memo is to comment/advise on the Section 62 appeal received from Smart Attorneys, on behalf of La Concorde S.A (Pty) Ltd. (Hereinafter referred to as the Lessee)

### 2. BACKGROUND

#### 2.1 Correspondence from TV3 Town planners

During December 2016 I met with Clifford Heys from TV3 Architects and Town Planners.

According to him, they were acting on behalf of a Developer who want to do a residential development in the Paradyskloof area. During initial discussions with the Provincial Roads Engineer, he has indicated that they would only support the application should the Developer (at his cost) construct a new public road over a portion of the Grondves Farm (Lease Farm 369P), which is currently leased to KWV (now doing business as La Concorde S.A (Pty) Ltd.

I undertook to discuss the matter with KWV to find out whether they would have a problem, should we exclude the road area from the Lease Agreement.

During a telephone conversation with a representative of KWV, the person indicated that it would not be a problem, as they are not using that portion of the land anyhow.

Hereto attached as **APPENDIX 1** an e-mail received from Clifford Heys, requesting me to liaise with KWV.

YH 14



## 2.2 Notice to the Lessee

Following further enquiries from Clifford Heys, and seeing that we have not received any formal feedback from the Lessee, a formal notice was sent to them on 02 June 2017, informing them that we would like to exclude a portion of Lease Farm 369P from the Main Agreement, as we might need the land for municipal purposes, i.e a public road. Seeing that the proposed road would effectively cut off the area to the west of the proposed road from the farm, I decided to also exclude the area between the proposed road and the R44. The reason for this decision was three-fold:-

- a) As indicated above, the road would effectively sub-divide the Lease Area;
- b) The area in question has not been utilised for the past ±20 years; and
- c) Should the proposed road be build, the area between the new road and the R44 could probably be developed, although outside the urban edge at this stage.

A copy of the notice (which was sent by registered mail) is attached as **APPENDIX 2**.

## 2.3 Correspondence with Smart Attorneys

On 09 June 2017, Corlie Smart of Smart Attorneys requested that a copy of the notice also be sent to her, as she was representing the Lessee.

On 10 June 2017 we received an e-mail from Smart Attorneys, indicating that she must first liaise with her client, and requested an extension of time, which request was approved. Copies of the various e-mails is attached as **APPENDIX 3**.

## 2.4 Section 62 Appeal

On 17 July a formal Section 62 Appeal was received at the office of the Municipal Manager, a copy of which is attached as **APPENDIX 4**.

## 3. DISCUSSION

### 3.1 Lease Agreement

During 1991 a long-term Lease Agreement was concluded between Stellenbosch Municipality and KWV (Pty) Ltd (now doing business as La Concorde S.A (Pty) Ltd regarding Lease Farm 369P, measuring 62.7ha in size, for a period of 50 years, terminating on 31 March 2041.

5/11/17

In terms of clause 20 of the Agreement the Municipality may *"sonder om afbreuk te doen aan enige bepalinge of vereistes in die ooreenkoms, en nadat skriftelike kennisgewing op die HUURDER beteken is, die ooreenkoms (of 'n gedeelte daarvan) beeindig, indien die eiendom in sy geheel of gedeeltelike vir bona fide munisipale doeleindes benodig word, met dien verstande dat 'n grasië periode van hoogstens een (1) jaar verleen word, ten einde die HUURDER in staat te stel om die oeste wat op daardie stadium uitstaande mag wees, te in"*.

### 3.2 Delegated Authority

In terms of item 541 of the approved System of Delegations the Manager: Property Manager has the delegated authority *"To exercise all the rights and obligations of the Municipality as lesser or principle in respect of agreements of lease, servitudes and other legal instruments related to the incumbent's area of jurisdiction"*.

The decision to serve the notice of the Lessee was therefor taken under delegated authority.

### 3.3 Right of appeal

In the notice that was send to the Lessee, informing them of the exclusion of a portion of the lease area, they were informed of their right of appeal in terms of Section 62 of the System Act should they not be happy with any decision.

In terms thereof *"A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision."*

*(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).*

*(3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.*

*(4) When the appeal is against a decision taken by—*

*(a) a staff member other than the municipal manager, the municipal manager is the appeal authority;*

*(b) the municipal manager, the executive committee or executive mayor is the appeal authority, or, if the municipality does not have an executive committee or executive mayor, the council of the municipality is the appeal authority; or*

(c) a political structure or political office bearer, or a councillor—

(i) the municipal council is the appeal authority where the council comprises less than 15 councillors; or

(ii) a committee of councillors who were not involved in the decision and appointed by the municipal council for this purpose is the appeal authority where the council comprises more than 14 councillors.

(5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

(6) The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law".

### 3.4 Dealing with issues raised in appeal

Please allow me to deal with the various issues raised in the appeal:

#### 3.4.1 Approval of a new access road over Lease Farm 369P

The decision to approved a new access road over Lease Farm 369P was not taken by me; as a matter of fact no such decision has been taken to date. For this reason there cannot be an appeal against the approval on a new access road at this stage. This is a town planning issue and will be dealt with by the Planning & Economic Development Department in due course, should a Record of Decision be issued. I therefor agree that due process relating to other legislation should be followed prior to approval of such access road over Farm 369P.

#### 3.4.2 Decision that the proposed access road is considered to be a *bona fide* municipal use

This was not a decision *per se*, it was merely indicated that it is indeed deemed to be a *bona fide* municipal use.

In terms of Schedule 5B of the Constitution of the Republic of S.A municipal roads is a municipal competency and thereof would be considered as a *bona fide* municipal use/purpose.

The fact is that the road is to be constructed by a Developer is immaterial; it will become a public road, not only for the proposed development but to improve the traffic situation in general.

#### 3.4.3 Decision to exclude a portion of the farm to the west of the proposed road from lease area

Although this portion of land is currently not needed/planned for any specific purpose, it was decided to include it in the notice, as the proposed road (should it be approved and constructed) would effectively subdivide the Lease Farm area and as a result the area in question will not be

viable as an agricultural unit. It should also be noted, as mentioned earlier in this memo, that the specific portion of land has not been optimally used for agricultural purposes for the past 20 years. I do not agree with the argument that the area cannot be excluded from the agreement, and that the agreement should be cancelled as a whole. The Appellant concede to the fact that the (proposed) road would effectively subdivide the lease farm area.

#### 3.4.4 Decision to cancel the lease agreement

The decision was not to cancel the Lease Agreement, but merely to **exclude a portion** of the lease area, measuring approximately 1.7ha (out of the total of 62.7ha).

I cannot agree with the Lessee on their understanding of the contractual position, i.e. that the entire agreement needs to be cancelled. Surely this cannot be a reasonable application of the contract.

#### 3.4.5 Unfair administrative action in terms of PAJA

The notice that was send to the Lessee was done in terms of the contract, and not in terms of PAJA.

I do not agree with the following statements:

- a) That the Lessee was not given adequate notice of the nature and purpose of the administrative action: The Lessee were given 21 days (which was subsequently extended with a further 7 days) to react to my notice;
- b) That the reasons provided by the administration were not adequate or substantiated: More than enough reasons were provided in the notice;
- c) The decision was not rationally connected to the information before the administrator and the reasons given for the decision: The Lessee conceded in their letter of appeal that the (proposed) access road *"will effectively subdivide the Lease Farm area and as a result the section to the west of the access road will not be viable for the purposes that the Appellant is entitled to utilise the Lease Farm"*. It is for this exact reason, and the fact that the Lessee have not used the specific area for the past 20 years, that I decided to exclude the entire 1.7ha from the Lease Area of 62.9ha.

**4. CONCLUSION**

In my view Smart Attorneys (on behalf of the Lessee) is not dealing with the real issue at hand i.e the need of the Lessee to retain the (very small and insignificant portion of land, from an agricultural point of view) land in question. I get the impression that they are appealing the matter for the sake of appealing.

Should the Lessee indeed be of the view that the small portion of land and the proposed road would be to their detriment from a financial and farming point of view, they should indicate as such. Even if they have other plans for the specific area, they should have indicated it as such. Their appeal, however, is silent on these important issues; they only deal with the legal technicalities.

In light of the above, it is

**RECOMMENDED:**

- a) that the appeal be dismissed; alternatively
- b) that the Appellant be requested to provide reasons/motivation why they are of the opinion that the portion of land (1.7ha) is of significant importance to them, from an agricultural/development point of view, whereafter a final decision could be made.

Yours faithfully



PIET SMIT

MANAGER: PROPERTY MANAGEMENT



# Smart Attorneys



OUR REF: Ms Smart

YOUR REF: MS G METTLER

DATE: 23 OCTOBER 2017

**THE MUNICIPAL MANAGER  
STELLENBOSCH MUNICIPALITY  
PLEIN STREET  
STELLENBOSCH**

Dear Sir / Madam

**RE: SECTION 62 APPEAL AGAINST THE DECISION TAKEN BY THE MANAGER:  
PROPERTY MANAGEMENT IN RELATION TO LEASE FARM 369P**

We refer to the above matter and your correspondence dated the 15<sup>th</sup> of September 2017 which received from ms Adams via email.

The correspondence referred to a report from Mr Smit (Manager: Property Management) attached to the correspondence. However, the report was not attached to your correspondence.

We requested Ms Adams ( with Ms Lategan also copied into the email) to provide us with Mr Smit's report which was omitted from the email, to which we had no reply.

We again requested Mr Smit's report on the 2<sup>nd</sup> of October 2017 and requested confirmation that the 21 day period within we were to respond to your correspondence would only commence once we are in receipt of Mr Smit's report. We also requested that you be made aware of the requests.

We received Mr Smit's report from Ms Adams on the 2<sup>nd</sup> of October 2017 and again requested Ms Admas (with Ms Latergan copied into the email) to confirm that the 21 day time period would only commence after receipt of the report.

With reference to your correspondence dated the 15<sup>th</sup> of September 2017:

1. As requested, attached hereto find correspondence from our client, La Concorde South Africa (Pty) Ltd (previously known as KWV Ltd) indicating the reasons / motivation why they are of the opinion that the portion of

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land is of significant importance to them for an agricultural / development point of view.

2. We are of the opinion that Mr Smit's report does not deal with all the information and some of the statements and information therein are incorrect and some do not correlate with information provided to us by him.
3. In order to ensure that all the relevant and correct information is before you we wish to place the following on record in response to Mr Smit's report:

- 3.1 Mr Smit incorrectly indicated in Paragraph 2.1 of his report that the developer wants 'to do a residential development in the Paradyskloof area.

The development proposal forwarded to our client indicated a development on the remainder of Farm 961 where the Mediclinic's head office was previously located. We attach hereto the drawing indicating the commercial development and proposed road.

- 3.2 Mr Smit incorrectly indicated that the lease agreement was entered into during 1991. The lease agreement was signed during March and May 1992.

- 3.3 Mr Smit incorrectly quoted an extract from the lease agreement. Mr Smit quoted the lease agreement to read:

"sonder om afbreuk te doe naan enige bepalings of vereistes in die ooreenkoms, en nadat skriftelike kennisgewing op die huurder beteken is, die ooreenkoms (of 'n gedeelte daarvan) beëindig, indien die eiendom in sy geheel of gedeeltelik vir bona fide munisipale doeleindes benodig word....."

The correct quote is:

"20.1 Die verhuurder kan, sonder om afreuk te doe naan enige bepalings van hierdie ooreenkom, met spesifieke verwysing na die bepalings van kousule 4 hiervan, en nadat skriftelike kennis op die Huurder beteken is, hierdie ooreenkoms beëindig -

- 20.1.5 Indien die eiendom in sy geheel of gedeeltelik vir bona fide munisipale doeleindes, waarby dorpsdigting ingesluit is, benodig word. "

The lease agreement makes no provision for the 'gedeeltelike bedindiging' and the lease agreement in

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total must be cancelled if the farm (or portion thereof) is required for bona fide municipal use.

- 3.4 In paragraph 2.2 of Mr Smit's report he mentions that he informed my client that "we might need the land for municipal purposes". However in paragraph 3.4.2 he indicates that he deems the road to be 'bona fide municipal use'
- 3.5 We requested Mr Smit to provide us for reasons for his decision but he indicated that the reasons are contained in the notice sent to our client. However Mr Smit provides further reasons in his report that was not given as such notwithstanding the request to furnish reasons.
4. The letter from our client indicates that Mr Smit attended at least one meeting with our client where our client enquired about the municipality's future plans regarding the farm and the area. Mr Smit also neglected to inform you of the telephone conversation between us regarding the development for agricultural related purposes. The last-mentioned is contained in our client's correspondence attached hereto.
5. Kindly also note that no extension of time was needed to file the appeal and as the email correspondence Mr Smit refers to was not attached to the report that Ms Adams provided us, we request that you disregard reference thereto.

We trust that the above will provide you with information that we believe should be before you to enable you to make a decision on whether to dismiss or uphold the appeal.

Yours Faithfully



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# LA CONCORDE

24 October 2017

The Municipal Manager  
Stellenbosch Municipality  
Plein Street  
STELLENBOSCH  
7600

Dear Sir / Madam

**RE: SECTION 62 APPEAL AGAINST THE DECISION TAKEN BY THE MANAGER: PROPERTY MANAGEMENT IN RELATION TO LEASE FARM 369P**

I am the Chief Executive Officer of La Concorde SA (Pty) Ltd (previously KWV South Africa (Pty) Ltd) and as such authorized to direct this correspondence to you.

You indicated in your correspondence to our attorney that you required a letter from La Concorde SA (Pty) Ltd indicating the reasons/motivation why we are of the opinion that the portion of land, being lease Farm 369P, is of significant importance to us from an agricultural/development point of view prior to making a decision regarding the above appeal.

From the outset, I have to indicate my disappointment at the way the municipality in the person of Mr Smit has conducted itself. As you will see in our letter, we have proactively engaged the municipality to develop the property and we are, for some time, awaiting updated information from the municipality. At the last meeting with Mr Lombaard, he indicated that the northern part of Stellenbosch is priority in the planning process, but they will attend to planning of the southern Stellenbosch precinct of the municipality wherein the leased property resides.

**BACKGROUND**

Mr Smit (Manager: Property Management) addressed an email to Dirk Visser of Vinpro on the 19<sup>th</sup> of January 2017, informing the lessee of the development proposal by TV3 Architects and Town Planners and requesting us to agree to the exclude a portion of the lease farm. The email correspondence was forwarded to me on the 23<sup>rd</sup> of January 2017.

Mr Smit's email contained a drawing indicating the proposed extension of Schuilplaats Road as well as the Site Development Plan of the Remainder of farm 961, being the Medi Clinic head office situated on the corner of the R44 and Trumali Road. From the drawing, it appears that the proposal relates to the commercial development of the Medi Clinic Head Office site.

LA CONCORDE SOUTH AFRICA (PTY) LTD

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Directors A van der Veen (Chief Executive Officer) . Ms MM Loftie-Eaton . DP Smit  
HCI Managerial Services (Company Secretary)

La Concorde South Africa (Pty) Ltd. Reg. No. 1997/020814/07

Handwritten initials: *JA* and *an*

Mr Smit refers in his report to a telephone conversation he had with "a representative of KWV". I wish to place on record that I did not have a telephone conversation with Mr Smit regarding the exclusion of a portion of the farm during December 2016 nor January 2017. In previous matters relating to KWV / La Concorde property, Mr Smit or the municipality's consultants liaised with me (as was the case where the municipality requested the relief from La Concorde for a footpath in Klapmuts). I have also met Mr Smit on previous occasions where it was clear that he knew that I was the only authorised person to make decisions on property in the group. For Mr Smit to indicate that he was under the impression that he spoke to an authorised representative of KWV is disingenuous. As the CEO of the company, I would be the only person that could make a decision pertaining to this matter and to enter into such an agreement to amend the lease agreement.

Shortly after I became aware of the above I instructed our attorney, Ms Smart, to act on our behalf and to manage the process between ourselves and the municipality. The only communication regarding this matter took place between Mr Smit and Ms Smart.

#### REASONS / MOTIVATION RE IMPORTANCE – AGRICULTURAL / DEVELOPMENT

In order to decide whether we should expand the vineyards on the farm or consider alternative agricultural activities and development, we had to clarify with the Stellenbosch Municipality what the future plans were for the development of the farm in general and specifically the portion of the farm that was not yet used for the cultivation of grapes. Establishing a vineyard or other agricultural facilities would require a substantial capital expenditure and the information was necessary to enable us to make a decision regarding the above. Our development options also existed, but would require consent from the municipality.

At our request, I attended a meeting with officials of the Stellenbosch Municipality on the 23<sup>rd</sup> of July 2015, which Mr Smit also attended, to discuss what the municipality's future plans were.

Mr Smit didn't provide us with enough information to enable us to make a decision regarding the development of the farm as mentioned above. Mr Smit did indicate that the municipality had expressed a strong desire to return the agricultural nature of the property in the past.

I then arranged a meeting with Mr Dupré Lombaard which took place on the 20<sup>th</sup> of October 2016 in order to again discuss the municipality's plans for the precinct. Mr Lombaard informed me of the possibility that the Business School of the Stellenbosch University would relocate to an area adjacent to Grondvies and that the municipality was in the process of evaluating various possible developments for the area.

He also indicated that the planning framework was already in the process and forwarded the Proposals for Paradyskloof Special Development Area/SDP/IDP of the development area. Mr Lombaard also arranged that I attend a presentation that the mayor held in Devon Valley where the mayor discussed the development and business partnership philosophy that she has for Stellenbosch. I also requested Mr Lombaard to include me in future meetings regarding the development of the farm and the surrounding area. I indicated that we would be interested to develop the land in partnership with the municipality and that we would wait a reasonable time for the municipality to finalize their development plans in order to coordinate our development plans with the municipality to maximise the utilization and value of the farm. Mr Lombaard indicated that this would take about 12 months.

We have to date not had an update as to the municipality's plans regarding the development of the farm/area and we intend to proceed with the development of the farm for agricultural and related purposes.

I also wish to point out that Mr Smit Indicated to Ms Smart that he would have no objection should we wish to develop the land to include agricultural related uses, such as a wine tasting centre or a cellar on the portion of the farm in question. The discussion between Mr Smit and Ms Smart took place after he sent the notice to us and shortly before Ms Smart lodged the appeal against his decision to exclude the portion of the farm from the lease agreement.

Due to the pending appeal, we have been unable to take further steps and proceed with the development of the portion of the farm for agricultural and related purposes.

We have indicated our desire to productively use the property, potentially in partnership with the municipality. Currently we await the outcome of the municipality's studies and planning for the area, in order to consider our options.

In the light of the above, I trust that you will agree that our appeal against Mr Smit's decision should be upheld.

Yours sincerely



**André van der Veen**  
**CHIEF EXECUTIVE OFFICER**

**RE: SECTION 62 APPEAL RE DECISION - LEASE AGREEMENT GRONDVES FARM**

From: Piet Smit <Piet.Smit@stellenbosch.gov.za> Thu, 31 May, 2018 09:34  
Subject: RE: SECTION 62 APPEAL RE DECISION - LEASE AGREEMENT GRONDVES FARM KVV  
To: Corrie Smart <smartest@mweb.co.za> 4 attachments  
Cc: Geraldine Mettler  
<Geraldine.Mettler@stellenbosch.gov.za>  
Lorelle Adams  
<Lorelle.Adams@stellenbosch.gov.za>  
Rozanne Pieterse  
<Rozanne.Pieterse@stellenbosch.gov.za>  
mm  
<MunicipalManager@stellenbosch.gov.za>

Dear Mrs Smart

I am not going to deal with all the issues raised in your e-mail, as it would be a futile exercise to prove that your client has indeed received our letter, which was sent by e-mail in good faith.

For this reason I will accept your claim that your client has not received our mail. Please find hereto attached a self-explanatory letter, informing your client of the outcome of the appeal, as well as an Addendum Agreement, to be signed by your client to effect the amendment to the lease area.

I am confused about your request to provide you with the contact details of the authorised employee "responsible for making decisions regarding the approvabf the proposed extension of the Schuilplaats Road over the lease property" as this is an **unrelated** issue to your clients intention to take the amendment of the Lease Areas on review (Dismissal of Section 62 appeal). My understanding is that all approvals for the construction of the road are in place. Should you wish to take that decision(s) an review, you should contact our Planning Department.

Should your client indeed wish to proceed with a review application to the High Court in order to review and set aside the Municipal Manager's decision to dismiss your client's appeal, you should inform the Municipal Manager. Her contact details are as follows:

Name: Geraldine Mettler  
Postal address: Stellenbosch Municipality  
PO Box 17  
Stellenbosch  
7599  
e-mail: [Geraldine.mettler@stellenbosch.gov.za](mailto:Geraldine.mettler@stellenbosch.gov.za)  
Tel: 021-8088025

141

Should you require any further information, please contact me.

Kind regards,

Piet Smit

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**From:** Corlie Smart [mailto:smartest@mweb.co.za]  
**Sent:** 25 May 2018 02:00 PM  
**To:** Piet Smit  
**Cc:** Hannelle Lategan; Geraldine Mettler; Lorelle Adams; Rozanne Pietersen  
**Subject:** [EX] Re: SECTION 62 APPEAL RE DECISION - LEASE AGREEMENT GRONDVES FARM  
**Importance:** High

Dear Mr Smit

I refer to your email below indicating that my client was purportedly informed of the outcome of the appeal on the 22nd of November 2017.

I wish to point out that, as you are aware, I have been on record on this matter since April 2017. You are also aware that my firm drafted and lodged the appeal in section 62 of the MSA with the Municipality

You were aware of the fact that I acted on behalf of my client during the appeals process as you drafted a report to the MM commenting on the appeal and reasons for the appeal which was on my letterhead.

All the correspondence between us regarding the matter and especially the appeal has to date taken place via email and there was no direct correspondence between you and my client since I came on record.

In fact, the MM also communicated directly with me via email during the appeal process when she requested reasons why the portion of the property should not be excluded from the leasehold.

I want to confirm that my client has not corresponded directly with either you or the MM regarding the appeal. The only correspondence from my client and directed to the MM was a letter written by Mr van der Veen which formed part of my reply to the MM's request for the reasons. This letter was an attachment to my response and was not sent directly the MM by my client.

Furthermore, the notice dated the 31st of May 2017 informing my client of your decision to exclude a portion of land from the leasehold was sent via registered mail to my client's domicilium address indicated in the lease agreement, being PO Box 528, Paarl.

In your email below you did not indicate whether the notice was also sent via registered mail to my client. Should the notice have been sent via registered mail, the letter is incorrectly addressed to PO Box 6185, Paarl. As mentioned this address is not the address indicated as the domicilium address in the

44 51



lease agreement. It is therefore not clear why the notice was not addressed to the correct postal address especially in light of the fact that you were aware that my client received the notice of your initial decision which was addressed to my client's domicilium address (being PO Box 528).

You informed me that the notice of the appeal decision was emailed to Mr van der Veen at "[info@laconcordeholdings.co.za](mailto:info@laconcordeholdings.co.za)".

This email address is not Mr van der Veen's email address. Neither Mr van der Veen nor my client's other employees have ever utilised this email address to communicate with you, the MM or the municipality in general.

The email address "[info@laconcordeholdings.co.za](mailto:info@laconcordeholdings.co.za)" is a general email address used by the public for the purposes of requesting information from La Concorde Holdings (Pty) Ltd.

I would like to place on record that the notice of the appeal decision should have been sent to me as I have been on record (and lodged the appeal on behalf of my client) since April 2017. Even if you had no obligation, which is denied, to provide me with the notice of the appeal decision, the notice was not sent via registered mail to my client's domicilium address or Mr van der Veen's email address.

Ms Loftie-Eaton was appointed as my client's new CEO on the 1st of November 2017. She informed me that you addressed correspondence regarding my client's shareholders to Mr van der Veen on the 15th of May 2018. I also confirm that the last-mentioned correspondence did not contain any information or reference to the outcome of the appeal. This correspondence was sent via email to Mr van der Veen and Ms Loftie-Eaton's PA, Tania Bene. It is unclear why the notice of the appeal decision was not sent to Ms Bene's email address during November 2017 as was done on the 15th of May 2018.

From the above, it is clear that my client did not become aware of the outcome of the decision until the earlier this week.

I wish to place on record that for the purposes of a review application to the High Court, in terms of PAJA, the time-period of 180 days can only commence on the date on which my client became aware of the MM's decision to dismiss the appeal.

My client has instructed me to proceed with an application to the High Court in order to review and set aside the MM's decision to dismiss the appeal.

In order to inform the relevant authorized employee of our intention to proceed with the review application kindly provide me with the contact details of the authored employee responsible for making decisions regarding the approval of the proposed extension of the Skuilplaats Road over the Leasehold property.

I look forward to receiving the requested information as a matter of urgency.

YA



2017-11-22

The Chief Executive Officer  
La Concorde South Africa (Pty) Ltd  
PO Box 6185  
Paarl  
7620

Dear Mr van der Veen

**SECTION 62 APPEAL AGAINST THE DECISION TAKEN BY THE MANAGER: PROPERTY MANAGEMENT IN  
RELATION TO LEASE FARM 369P**

My letter dated 2017-09-15, addressed to your attorneys, as well as your inputs/motivation dated 23 October 2017, refers.

After having considered your inputs/motivation as to why I should reconsider the decision taken by the Manager: Property Management, i.e. to exclude a portion of Lease Farm 369P, measuring approximately 1.7ha from your Lease Agreement, and after having applied my mind, I have decided to dismiss your appeal.

This means that the decision taken by the Manager: Property Management will stand and will be of force and effect.

For this purpose I attached an Addendum Agreement.\* Please sign the Addendum Agreement and return it to me for implementation.

\*Please note that the Addendum Agreement also provides for the (formal) cession/assignment of the Lease Agreement to La Concorde S.A (Pty) Ltd, as this has not been attended to formally.

Yours faithfully

GERALDINE METTLER  
MUNICIPAL MANAGER

cc: CFO  
Director: P&ED

# Smart Attorneys



OUR REF: Ms Smart

YOUR REF: Ms G Mettler

DATE: 20 JUNE 2018

**The Municipal Manager  
Stellenbosch Municipality  
via email**

Dear Ms Mettler

**RE: REQUEST FOR REASON – SECTION 62 APPEAL TAKEN BY THE APPEALS  
AUTHORITY ( MUNICIPAL MANAGER ) IN RELATION TO THE LEASE FARM 369P.**

We refer to the above appeal and your decision to dismiss our client's Appeal taken on the 22<sup>nd</sup> of November 2017.

The abovementioned decision only became known to us on the 31<sup>st</sup> of May 2018.

The correspondence regarding the outcome of the Appeal was directed incorrect email address and also not communicated via registered post to our client. The postal address indicated on the correspondence informing our client was also addressed to the incorrect postal address.

Mr Smit in an email dated the 31<sup>st</sup> of May 2018 confirmed that the email communicating the outcome of the Appeal was not sent to the correct email address and accepted that our client did not receive the correspondence. We have been on record since April 2017 regarding the lease agreement, subsequent decisions by Mr Smit and also lodged the appeal on our client's behalf.

Since we came on record all correspondence regarding the lease agreement has been via email between Stellenbosch Municipality and writer hereof. The outcome of the appeal was also not communicated to us and only done so when we enquired as to the outcome of the appeal on the 23<sup>rd</sup> of May 2018.

SMART ATTORNEYS  
111 DORP STREET  
STELLENBOSCH

C H SMART  
B.PROC. LLM  
083 325 6138

tel - 021 882 8927  
smartest@mweb.co.za  
fax - 086 689 2749

VA RA



# Smart Attorneys

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We hereby request you to furnish us with the reasons for your decision, dated the 22<sup>nd</sup> of November 2017, to dismiss our client's Appeal in terms of section 5(1) of PAJA.

Kindly provide us with the reasons as soon as possible.

We look forward to hearing from you.

Yours Faithfully



---

C H Smart

Smart Attorneys

SMART ATTORNEYS  
111 DORP STREET  
STELLENBOSCH

C H SMART  
B.PROC. LLM  
**083 325 6138**

tel - 021 882 8927  
smartest@mweb.co.za  
fax - 086 689 2749

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# STELLENBOSCH

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Page 180

11A21

147

2018-07-13

Smart Attorneys  
111 Dorpsstreet  
Stellenbosch  
7600

Attention: Ms Smart

Dear Sir/Madam

**REQUEST FOR REASONS: SECTION 62 APPEAL IN RELATION TO LEASE FARM 369P**

Your letter dated 20/06/2018 refers.

The reasons for my decision are as follows:

1. I am of the view that the Manager: Property made the correct decision by excluding the portion of land between the (to be constructed) road and the R44, as the new road would effectively sub-divide the Lease Area, leaving the small portion of land not viable for agricultural purposes. I was further informed that KWV/La Concord has not used the said portion of land for the past  $\pm 15$  years.
2. I was further not convinced by your client's motivation (after being afforded then the opportunity to do so), set out in their letter for why the land in question is of importance to the, from an agricultural and/or development point of view. No specific proposal was put on the table on what they plan to do with the land in question (the portion that was excluded), or why it is of importance to them from an agricultural/development point of view.

Yours faithfully

  
GERALDINE METTLER  
MUNICIPAL MANAGER

147

**RE: APPROVAL OF EXTENSION OF SKUILPLAATS ROAD OVER GRONDVES FARM**

**From :** Bernabe De La Bat <Bernabe.DeLaBat@stellenbosch.gov.za>  
**Subject :** RE: APPROVAL OF EXTENSION OF SKUILPLAATS ROAD OVER GRONDVES FARM  
**To :** Corlie Smart <smartest@mweb.co.za>  
Thu, 07 Jun, 2018, 11:04  
KVV  
3 attachments

Dear Corlie

Unfortunately I am not the Acting Director for the Planning Department any more. The correct person is Mr Tabiso Mfeya and can be contacted at [Tabiso.Mfeya@stellenbosch.gov.za](mailto:Tabiso.Mfeya@stellenbosch.gov.za).

Should you require any information please apply at our information officer, Mrs Ilze Couvaris ([Ilze.Couvaras@stellenbosch.gov.za](mailto:Ilze.Couvaras@stellenbosch.gov.za))



Kind regards  
Bernabé de la Bat (Pr.Prin)  
A/696/1992  
Manager: Spatial Planning, Heritage and Environment

T: +27 21 808 8652  
Plein Street, Stellenbosch, 7600  
[www.stellenbosch.gov.za](http://www.stellenbosch.gov.za)



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[http://www.stellenbosch.gov.za/main\\_pages/disclaimerpage.htm](http://www.stellenbosch.gov.za/main_pages/disclaimerpage.htm)

**From:** Corlie Smart [<mailto:smartest@mweb.co.za>]

**Sent:** 07 June 2018 10:39 AM

**To:** Bernabe De La Bat; Jeanne Basson

**Subject:** [EX] APPROVAL OF EXTENSION OF SKUILPLAATS ROAD OVER GRONDVES FARM

**Importance:** High

Dear Mr De La Bat.

I act on behalf of La Concorde (Pty) Ltd (previously known as KVV).

HA CP

Le Concorde leases Grondves (Lease farm 396P) farm from the Stellenbosch Municipality. The lease agreement is for a period of 50 years and terminates in 2041.

Leasehold Farm 369P consists of Farm 370 as well as the remainder of Farm 369.

A decision by Mr Smit to cancel the lease agreement between my client and the municipality has been the subject of an Appeal to the MSA and we were only notified of the outcome of the appeal on the 31st of May 2018. Mr Smit's decision mentioned above was to provide for a road over Leasehold 369P connecting Skuilplaats Road in Paradyskloof with Trumali Street.

Mr Piet Smit informed us on the 31st of May 2018 that according to his knowledge the extension of Skuilplaats Road over the leasehold farm 369P has already been approved by the Stellenbosch Municipality Planning Department. (as reflected in Mr Smit's email below)

Mr Smit did not indicate when the decision for the approval of the road over the leasehold was taken.

My client has no record of being informed or consulted prior to the decision to approve the abovementioned road over the leasehold farms. My client is an interested/affected party whose rights have been affected by a decision to approve a road over the leasehold farm.

As I understand, you are the Acting Director of Planning and Economic Development, and that your department has the delegated authority to make the decision we refer to above.

Kindly advise whether the road over the leasehold area has been approved and if so, the date of the decision to approve the road and which authorised employee made the decision.

I look forward to hearing from you as a matter of urgency.

Kindly acknowledge receipt hereof.

Regards

Corlie Smart

B.Proc // LLM

Smart Attorneys

4 2

**FW: APPROVAL OF EXTENSION OF SCHUILPLAATS ROAD OVER GRONDVES FARM**

From: Piet Smit <Piet.Smit@ Stellenbosch.gov.za>  
Subject: FW: APPROVAL OF EXTENSION OF SCHUILPLAATS ROAD OVER GRONDVES FARM  
To: smartest@mweb.co.za <smartest@mweb.co.za>

Dear Corli,

Please find hereto attached a self-explanatory exemption certificate, as requested.

Piet

From: Hedre Dednam  
Sent: 26 June 2018 10:25 AM  
To: Piet Smit; Tabiso Mfeya  
Cc: Lorelle Adams; Zikhona Lukani; Nomle Tshefu  
Subject: RE: APPROVAL OF EXTENSION OF SCHUILPLAATS ROAD OVER GRONDVES FARM

Dear Piet

Will you kindly send to Ms Smart, seeing that Tabiso is out of the office.



Kind regards,  
Hedre Dednam  
(Pr. Pln. A/846/1995)  
Manager: Land Use Management  
Planning & Economic Development

T: +27 21 808 8674 | Fax: +27 21 886 6899

43 Andringa Str, Eikestad Mall, 3<sup>rd</sup> Floor,  
Stellenbosch, 7600  
[www.stellenbosch.gov.za](http://www.stellenbosch.gov.za)



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[http://www.stellenbosch.gov.za/main\\_pages/disclosurepage.htm](http://www.stellenbosch.gov.za/main_pages/disclosurepage.htm)

From: Piet Smit  
Sent: 26 June 2018 07:58 AM  
To: Tabiso Mfeya; Hedre Dednam  
Cc: Lorelle Adams; Zikhona Lukani; Nomle Tshefu  
Subject: RE: APPROVAL OF EXTENSION OF SCHUILPLAATS ROAD OVER GRONDVES FARM

See attached

From: Tabiso Mfeya  
Sent: 25 June 2018 06:28 PM  
To: Hedre Dednam; Piet Smit  
Cc: Lorelle Adams; Zikhona Lukani; Nomle Tshefu  
Subject: FW: APPROVAL OF EXTENSION OF SCHUILPLAATS ROAD OVER GRONDVES FARM  
Importance: High

Hi Hedre and Piet

Do you know anything about the matter below. If so will you please enlighten me on the issue and draft feedback to the people making the inquiry.

Regards,

Tabiso

From: Corlie Smart [mailto:[smartest@mweb.co.za](mailto:smartest@mweb.co.za)]  
Sent: Monday, 25 June 2018 12:44  
To: Tabiso Mfeya

183 150

**STELLENBOSCH**

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MUNISIPALITEIT • UMASIPALA • MUNICIPALITY



Application Number: LU/ 6197  
Our Reference Number: Erf 369  
Your Reference Number: Erf 369  
Enquiries: TV3 Architects & Planners

Date: 10 October 2017

**REGISTERED MAIL**

TV3 Architects & Planners  
LA GRATITUDE OFFICES  
97 DORP STREET  
STELLENBOSCH  
7600

Dear Sir

**EXEMPTION CERTIFICATE IN TERMS OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW****Details of the proposal:**

The subdivision of Farm Re/369 & 370, Stellenbosch to create a portion of public road, as indicated on Plan Drawn by TV3 Architects & Planners, Dwg: 3362-P, Dated 24/04/2017, as indicated in **Annexure A**, attached to this approval.

It is herewith certified that the above subdivision is exempted from the application of Sections 15, and sections 20 to 23 for the subdivision of a property contemplated in terms of Section 24 (1) of the Stellenbosch Municipal Land Use Planning By-Law (2015) as illustrated on the TV3 Architects & Planners, Dwg: 3362-P, Dated 24/04/2017, attached as **Annexure A** of this letter and which bears Council's stamp dated 11/10/2017

Attached please find the relevant plans duly endorsed.

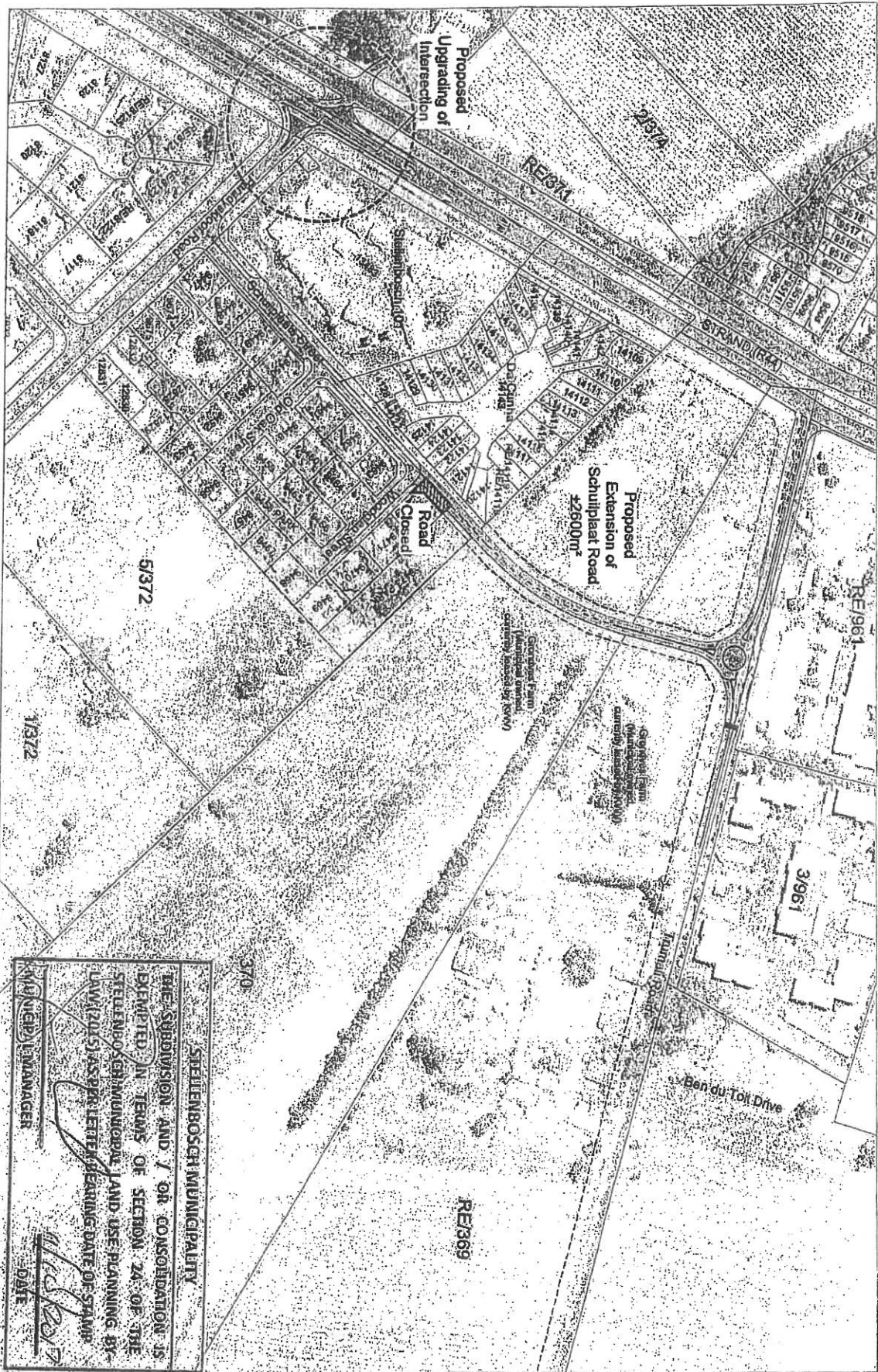
Yours faithfully

**FOR DIRECTOR PLANNING & ECONOMIC DEVELOPMENT**

Page 1 of 1



APPENDIX A



STELLENBOSCH MUNICIPALITY  
THE SUBDIVISION AND / OR CONSOLIDATION IS  
EXEMPTED IN TERMS OF SECTION 24 OF THE  
STELLENBOSCH MUNICIPAL LAND-USE PLANNING BY-  
LAW (2015) AS PER LETTER HEARING DATE OF STAMP

*[Signature]*  
MUNICIPAL MANAGER  
DATE

**TV3**  
First Floor • La Gradiende Office Building  
97 Dorp Street • Stellenbosch 7600  
tel (021) 861 3600  
fax (021) 862 8025  
e-mail: sta@tv3.co.za  
web: www.tv3.co.za

ARCHITECTS AND TOWN PLANNERS

Proposed Extension of Schulplaat Road,  
Stellenbosch

Drawn:	Checked:	Date:	Scale:
WH	CH	24/04/2017	1:2000 (1:3)
Project No.:	Revision No.:		
3562 - P	1		
Drawing:	Plan No.:		
Proposed Public Road	2		

This drawing is the property of  
TV3 Architects (Pty) Ltd and  
copyright is reserved



**FW: Schuilplaats Road Exemption Certificate (10 October 2017)**

From: Piet Smit <Piet.Smit@ Stellenbosch.gov.za>  
 Subject: FW: Schuilplaats Road Exemption Certificate (10 October 2017)  
 To: Piet Smit <Piet.Smit@ Stellenbosch.gov.za>

Tue, 26 Ju

From: Jan van Rensburg [mailto:Jan@tv3.co.za]  
 Sent: 30 October 2017 04:16 PM  
 To: Piet Smit  
 Cc: Clifford Heys  
 Subject: [EX] FW: Schuilplaats Road Exemption Certificate (10 October 2017)

Hi Piet

One can still expect good news on a Monday!

Please find attached the Exemption Certificate for the road reserve of the Schuilplaats Extension as applied for and issued by you Planning & Economic Development. This is fairly new ground for all of us, but as I have it you can now appoint a land surveyor to subdivision diagram for this section of road to be submitted and approved by the SG.

There is no reference in the relevant by-law re notice of this municipal decision to neighbours/I&AP's and hence no appeal right. approval by implication as approval of the land use (Public Road) as well.

Can you please revert with a response whether you are in agreement with this view and if so also your view on remaining process line.

Regards.

JH (Jan) Janse van Rensburg  
 Pr Pln (TRP SA), B Sc, M (T&RP), MSAPI  
 Cell: +27 (0)83 441 7002



DIRECTORS: JH van Rensburg - A Swanevool - IG Brink - NJ Smit - LR Heunis - MM Wolmarans  
 ASSOCIATES: J Breuninger - WD Fourie - CR Heys - A Prinsloo - H Hugo

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ADDRESS: La Gratitude Offices 97 Dorp Street Stellenbosch 7600 TEL: +27 (21) 861 2800 www.tv3.co.za



DIRECTORS: JH van Rensburg - A Swanevool - IG Brink - NJ Smit - LR Heunis - MM Wolmarans  
 ASSOCIATES: J Breuninger - WD Fourie - CR Heys - A Prinsloo - H Hugo

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ADDRESS: La Gratitude Offices 97 Dorp Street Stellenbosch 7600 TEL: +27 (21) 861 2800 www.tv3.co.za

VH U



**3.25 TRANSPORT ZONE II**

**3.25.1** *Colour notation:* light brown.

**0** *Primary use:* public road.

**0** *Consent uses:* none.

**3.25.2** No structure shall be erected or use practised except such as is compatible with "public road", as defined.

**3.26 TRANSPORT ZONE III**

**3.26.1** *Colour notation:* light brown with black hatching.

*Primary use:* public parking.

*Consent uses:* none.

**3.26.2** No structure shall be erected or use practised except such as is compatible with "public parking", as defined.

**3.27 AUTHORITY ZONE**

**3.27.1** *Colour notation:* red

*Primary use:* authority usage

*Consent uses:* none

**3.27.2** The land use restrictions and additional provisions applicable to this zone shall apply to every site for use or use of building approved by the Administrator or, if authorised thereto by the Administrator, the Council.

**3.28 SPECIAL ZONE**

**3.28.1** *Colour notation:* blue-green.

*Primary use:* special usage.

*Consent uses:* conservation usage.

**3.28.2** If special factors justify the creation of a new zone on the zoning map for a site or sites without justifying the creation of a new zone in the scheme regulations, such site shall be zoned as a special zone on the zoning map. Every such portion of land which has been zoned as such and in respect of which the land use restrictions differ from those of other land which has been zoned as such shall be given a separate number on the zoning map. A special zone may consist of different portions of land, provided the land use restrictions are the same. Each special zone in respect of which the land use restrictions differ from those of other special zones shall be given

44

**Professional usage** means such type of use as is normally and reasonably associated with professional people such as doctors, dentists, architects, engineers and town planners, where the rendering of a service, as against the carrying on of a business, is one of the distinguishing factors.

**Public authority** means a State department, local authority or semi-state agency or the Provincial Administration, the South African Transport Services or the Department of Posts and Telecommunications.

**Public garage** means a business or concern where motor vehicles are provided with fuel for payment or reward and includes trading in motor vehicles, oil, tyres or motor spares, the repair or overhauling of motor vehicles, a restaurant or café, spraypainting, panel beating, blacksmithery or body work.

**Public housing** means dwelling units which are erected with funds voted by a State department or the Provincial Administration or a council.

**Public open space** means land which is under or will be under the ownership of a local authority, which is not leased nor will it be leased on a long-term basis, and which is utilised or will be utilised as an open space or a park, garden, picnic area, playground or square and includes a public place.

**Public parking** means land or a building or part thereof that is accessible to the general public for parking purposes.

**Public place** has the meaning assigned thereto in the Ordinance.

~~**Public road** means any road or area for public use or any land intended for such purpose.~~

~~**Public street** has the meaning assigned thereto in the Ordinance.~~

**Publish in the press** has the meaning assigned thereto in the Ordinance.

**R. Register** has the meaning assigned thereto in the Ordinance.


**Residential building** means a building (other than a dwelling-house, group house, town house or flats) for human habitation, together with such outbuildings as are normally used therewith, and includes a boarding-house, residential rooms, a licensed hotel (excluding an off-sales facility), an old age home, a children's home and a hostel, but does not include buildings mentioned, whether by means of inclusion or exclusion, in the definitions of "place of instruction" or "institution".

**Resort shop** means a shop which does not exceed 100 m<sup>2</sup> in floor space, including storage space.

**Retirement village** means group housing (if permitted in residential zone II) or town housing (if permitted in residential zone III) that conforms to the following additional conditions:

- (a) Each dwelling unit shall only be occupied by an elderly person or by a family of which at least one member is an elderly person;

**Re: EXEMPTION CERTIFICATE - AVAILABILITY OF APPEAL ITO OF BY-LAWS AND MSA**

From: Corlie Smart <smartest@mweb.co.za> Mon, 29 Oct 2018 11:02  
Subject: RE: EXEMPTION CERTIFICATE - AVAILABILITY OF APPEAL ITO OF BY-LAWS AND MSA   
To: Hedre Dednam <hedre.dednam@stellenbosch.gov.za>  
Mervin Williams <mervin.williams@stellenbosch.gov.za>

Dear Ms Dednam:

I refer to my email dated the 25th of July 2018 to which I have had no response.

Kindly revert to me as a matter of urgency.

Regards

Corlie Smart

B.Proc // LLM

Smart Attorneys

Heritage and Planning Law

083 325 6138

021 882 8927

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**From:** "Corlie Smart" <smartest@mweb.co.za>  
**To:** "Hedre Dednam" <hedre.dednam@stellenbosch.gov.za>, "Mervin Williams" <mervin.williams@stellenbosch.gov.za>  
**Sent:** Wednesday, 25 July, 2018 10:28:37  
**Subject:** EXEMPTION CERTIFICATE - AVAILABILITY OF APPEAL ITO OF BY-LAWS AND MSA

Dear Ms Dednam

I refer to our brief discussion on the 20th of July 2018 regarding the question whether the issuing of an Exemption Certificate ito Sections 15, 24 and 20 to



Page 190 157  
23 of the Planning By-Laws is subject to an Appeal ito of Section 79 of the By-Laws. Alternatively, whether an Appeal ito Section 62 of the MSA is available.

Attached hereto correspondence regarding the above.

As discussed I set out my understanding of the question with reference to all the applicable Sections of both the By-Laws and the MSA.

I need to advise my client regarding the above and must be able to inform them whether an appeal is available. As you know all internal remedies must be exhausted before a review in terms of PAJA can be brought.

I don't have instructions to take the matter further at the moment, but I believe the costs involved with a court application would be relevant to my client in determining whether to take any further steps regarding this matter.

We, therefore, need to get clarification regarding the above as a matter of urgency.

I look forward to hearing from you.

Regards

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YH 14

# Smart Attorneys



OUR REF: Ms Smart / K039

YOUR REF: LU/6197

DATE: 24 July 2018

## STELLENBOSCH MUNICIPALITY

Via email

Dear Ms Dednam

### RE: EXEMPTION CERTIFICATE – FARM REMAINDER 369 AND 370 SUBDIVISION

1. I have received the Exemption Certificate in terms of the Stellenbosch Planning By-laws from Mr Smit which relates to the subdivision of Farm Re/369 and 370 to create a portion of a public road. The Exemption Certificate is dated the 10<sup>th</sup> of October 2017 and directed to TV3 Architects & Planners.
2. The Exemption Certificate indicates that the subdivision in question is exempted from the application of Sections 15, and Sections 20 to 23 for the subdivision of a property contemplated in terms of Section 24(1) of the By-Laws.
3. The drawing illustrating the subdivision is date stamped the 11<sup>th</sup> of October 2017.
4. Mr Smit also attached an email from TV3 dated the 30<sup>th</sup> of October 2017 in which Mr van Rensburg indicated that he was of the opinion that the by-laws do not refer to a requirement to notify neighbours / I & AP's of the decision to issue the Exemption Certificate and therefore no right of an appeal are available to other parties. He also indicated that : " I see this approval by implication as approval of the land use (Public Road) as well".
5. It seems that Mr van Rensburg sees the issuing of the Exemption Certificate as approval of the subdivision of the farms and also approval of the land use from the current Agriculture land use to Public Road land use. I might be incorrect in my understanding of the last-mentioned.
6. I studied the By-Laws to ascertain whether an appeal is available to interested and affected parties and I am uncertain whether such an appeal is indeed available to interested and affected parties. I also studied the MSA to ascertain whether an appeal is available to interested and affected parties in terms thereof.

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## With regards to the By-Laws:

### 7. Section 79 of the By-Laws deals with Appeals.

#### 7.1 Section 79 (1) refers to:

The who the relevant Appeals Authority is in respect of decisions of the Tribunal or an authorised employee contemplated in Section 68 (a) or (b).

#### 7.2 [Section 68 (a) is the relevant section that deals with the authorised employee as referred to above. It indicates that Applications are decided by an authorised employee as contemplated in section 69(1). Section 69(1) refers to the Municipality's power to categorise applications for decision making by an authorised employee and that such powers must be delegated to him / her.]

#### 7.3 Section 79(2) indicates that a person whose rights are affected by a decision contemplated in Section 79 (1) may appeal within 21 days of notification of the decision.

#### 7.4 The question arises whether the issuing of an exemption certificate could be considered a "decision" as referred to by Section 79 (1) with reference to section 68 (a) and Section 69 (1) of the By – Laws.

#### 7.5 Both section 68(a) and 69(1) refers to a decision in terms of "Applications".

#### 7.6 In order to assess whether the issuing of the certificate should be considered an "Application" and if so a considered a "decision" as referred to in Section 79(2), the applicable Section dealing with land development which require approval by the municipality, should be looked at.

### 8. Section 15 under the heading "Land development requiring approval" deals with the question in hand.

#### 8.1 Section 15(1) indicates that an applications for a land development is required but that excludes the subdivision of land referred to in section 24.

#### 8.2 Furthermore, Section 20 (1) deals specifically with the subdivision of land. It indicates that should a subdivision be exempted in terms of section 24 the approval in terms of Section 15 (2) is not required.

### 9. In terms of Section 24 (1) the subdivision of land does not require the approval of the Municipality in the event that such subdivision falls under the categories listed in Section 24 (1)(a) to (g).

### 10. The Exemption Certificate did not indicate which subsection of Section 24 (1) was considered to be applicable, however the Exemption Certificate refers to

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the subdivision of the farms "to create a portion of public road". It would follow that Section 24(1)(e) was the applicable section. Section 24(1)(e) reads: "the construction or alteration of a public or proclaimed street".

11. The Exemption Certificate is dealt with in section 24(2) of the By- Laws. It indicates that the certificate must be obtained from the Municipality and that it must certify that the subdivision is exempted from the application of Section 15 and Sections 20 to 23.
12. From the above sections it seems that the request to issue an Exemption Certificate cannot be deemed to be an application. Section 15(2) and Section 20(1) indicates that "applications" for the subdivision of land is not required if it falls under the categories mentioned in section 24 (1).
13. Sections 68(a) and 69(1) only relates to decisions that are taken by the relevant authorised party it is a decision in terms of Applications.
14. It seems from the above that if the request to issue the Exemption Certificate cannot be considered an 'application' as contemplated in sections 15(2) and 20(1) the 'decision' to issue the certificate cannot be deemed a "decision" which would be the subject of an appeal.
15. As mentioned above, Section 79(2) is the relevant section that bestows a right of an appeal to a party who's right may have affected by a decision, as such an appeal is only available if a decision was taken by an authorised employee that made a decision based on an application.
16. I believe that the issuing of the exemption certificate is done in terms of the Stellenbosch Municipality Land Use Planning By- Laws and as a result thereof an appeal can only be available should the by-laws make provision for such Appeal.
17. Applicability of Municipal Systems Act:
  - 17.1 I also looked at Section 62 of the MSA to ascertain whether a right to an appeal against the issuing of the exemption certificated would be available ito of the MSA.
  - 17.2 Section 62(1) refers to a right of an appeal if a person's whose rights are affected by a decision made by various categories of decision making authorities. If my understanding of the abovementioned sections of the By-Law is correct, the issuing of the certificate cannot be deemed to be a 'decision' as required by Section 62 of the MSA. The MSA, therefore, also does not afford a third party a right of Appeal.
18. In order to be in a position to advise my client I request that you clarify the following:

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- 18.1 Is the issuing of the Exemption Certificate also deemed to be the approval of the subdivision of the two farms?
- 18.2 Is my understanding correct that the issuing of the Exemption Certificate is also deemed to be an approval for a change in land use (rezoning from Agriculture to the applicable zoning that allows for the construction/ land use of a public road)?
- 18.3 I'm uncertain whether such rezoning is required and if so required what the 'new zoning' of the subdivided land would be in order to allow for the construction / land use of a public road. Can you please indicate whether a rezoning would be required and if so what the 'new zoning' should be?
- 18.4 Can you please indicate whether the Exemption Certificate was issued under Section 24(1)(e)?
- 18.5 Is there an appeal available to Interested and / or Affected Parties ito of the By-Laws and / or the MSA?

I trust that you will find my lengthy explanation of my understanding of the relevant sections of the By-Laws and the MSA helpful in relation to the reasons I am requesting clarification on the above 5 items.

I look forward to your response hereto.

Yours Faithfully



C H Smart

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# **ANNEXURE C**

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## C SMART ATTORNEYS

**Your Ref:**

**Our Ref:** /Andre/M29640

**Date:** 02 October 2019

### WITHOUT PREJUDICE

Dear Corli,

### RE: HIGH COURT APPLICATION: LA CONCORDE AND STELLENBOSCH MUNICIPALITY AND OTHERS

1. I refer to the abovementioned matter, our meeting on 18 July 2019, as well as our telephonic discussion yesterday.
2. As discussed at our said meeting, the current litigation not only frustrates the Municipality's constitutional competency as far as municipal roads are concerned, but also renders development approvals granted by the Municipality in the Paradyskloof area impossible to implement.
3. Our Client has been advised by Senior Counsel that in the circumstances of this matter, it cannot be conscientiously submitted that the land comprising the extension of the Schuilplaats Road and associated infrastructure is not required for municipal roads purposes and this is an issue which we will deal with comprehensively in our answering affidavit.
4. The proposed extension of the Schuilplaats Road and associated infrastructure covers a negligible extent of the property, which is currently vacant and has for all practical purposes not been used by your Client since the commencement of the lease agreement. The exclusion of the land comprising the extension of Schuilplaats Road and associated infrastructure will not, in our Client's view, prejudice your Client.

#### Attorneys Notaries & Conveyancers

**Directors:** Jonathan Steytler (Managing) | Stoffel Ackermann | Martin Bey | Jacques Bignaut | Steven Borwick | Maryna Botha | Darren Brander | Michael Bromley | Luthfeya Cassim | Tim Chase | Annetjie Coetsee | Melanie Coetzee | Thabisile Dlamini | Refqah Fataar Ho-Yee | Hanlie Ferreira | Niel Grundlingh | Bev l'Ons-Raeburn | Van Wyk Jooste | Belinda Lewis | Robert Matlhare | Corlene Mostert | Hennie Mouton | Nikhail Munsamy | Martine Newman | James Phillipson | Cris Riego de Dios | Martin Sheard | Roshana Solomon | Nicole Stevens | Philip Steyn | Lauren Sullivan | Marlieze Swart | June Theron | Andreas Tsangarakis | Annemarie van Vuuren | Shereen Volks | Allan White

**Senior Associates:** G Barends | D Du Plessis | H Dyssel | D Els | J Foxcroft | J Greyling | J Hamers | L Mace | N Mentoer | B Mostert | H Nauschutz | K Richards | D Thompson | A Wiese | M Williams

**Associates:** R Bornman | L Daniels | C Dippenaar | S Fish | W Graham | S Grobler | S Groenewald | M Hennig | S Hougaard | J Isaacs | T Jaffar | D Lebotschy | P Mlotshwa | S Nordin | S Purcocks | C Robberts | L Solomon | C Symington | L Thorpe

**Executive Consultants:** Peter Arnot | Gerhard Kotze | Lizelle Kilbourn | Graham Liebenberg | Andy McPherson | Christoff Pauw | Kristo Scholtz | Pieter Smith | Andre Swart | Colin Traub | Richard Volks

**Financial Manager:** Cullen Penny

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Registration No: 1992/003316/21  
VAT Reg No: 4670133877

5. Considering the above, a rational basis on which to settle this matter will be the following:
  - 5.1 That an addendum to the lease agreement be entered into on the basis that the land comprising the extension of Schuilplaats Road and associated infrastructure be excluded from the lease agreement.
  - 5.2 The lease agreement will therefore continue to be in force on identical terms in respect of the remainder of the property.
6. If the matter cannot be settled on the abovementioned basis, our Client is of intent to consider the cancellation of the whole lease agreement. In its founding papers your Client submitted that should our Client require any portion of the property for municipal purposes, that it was constrained to cancel the whole agreement and not only exclude a portion of the leased land from the agreement.
7. We are instructed that our Client will not consider settling this matter on the basis that any form of joint development of the land between the proposed Schuilplaats Road extension and the R44 might be undertaken with your Client.
8. I would like to remark that our Client has been advised by external consulting engineers that the extension of Schuilplaats Road is a current need that exists from a roads capacity and safety perspective. Furthermore, the Western Cape Department of Transport and Public Works has insisted on the extension of Schuilplaats Road before any further development in the Paradyskloof area can be undertaken. It is for this reason that recent development approvals granted by our Client in the Paradyskloof area were made subject to the condition that Schuilplaats Road is extended.

Will you kindly revert to us by return email with your final instructions.

Kind regards

**STBB | SMITH TABATA BUCHANAN BOYES**

**A SWART**

# **ANNEXURE D**

Heritage and Planning Law

OUR REF: Ms Smart/K039

YOUR REF: ANDRE/M29640

DATE: 4 November 2019

**SMITH TABATA BUCHANAN BOYES**

**WITHOUT PREJUDICE**

Dear Mr Swart

**RE: LA CONCORDE SA (PTY) LTD V STELLENBOSCH MUNICIPALITY & OTHERS**

The above matter and your correspondence of 1 November 2019 refers.

**Our client's settlement proposals are:**

1. The matter is settled on the following terms:
  - 1.1. That an addendum to the lease agreement be entered into on the basis that the land comprising the extension of Schuilplaats Road and the portion of land between Schuilplaats Road and the R44 be excluded from the lease agreement.
  - 1.2. Our client is allowed to cede the lease agreement to KWV.
  - 1.3. Each party to pay its own costs.
2. Alternatively, the matter is settled on the following terms:
  - 2.1. That an addendum to the lease agreement be entered into on the basis that the land comprising the extension of Schuilplaats Road and the portion of land between Schuilplaats Road and the R44 be excluded from the lease agreement.
  - 2.2. Your client agrees to amend the lease agreement:
    - 2.2.1 to allow our client to sublet the leased property to KWV, alternatively a lessee of our client's choosing;
    - 2.2.2 our client has the right to cancel the lease agreement if it so chooses during the remaining term of the lease agreement.
  - 2.3. Each party to pay its own costs.

3. The term set out in paragraph 2.2.2 is proposed to avoid a scenario where, in future, your client requires portions of the leased property for bona fide municipal use. Last-mentioned may result in the land not being financially viable for agricultural purposes.
4. However, should the Municipal Council not agree to the above settlement proposals and your client proceed with a process to cancel the lease agreement, our client reserves its right to proceed with seeking a cost order against your client in the review application.
5. Should your client be amenable to the settlement proposals, the parties can discuss a settlement agreement in more detail.

Kindly revert to us regarding our client's settlement proposals.

Yours Truly

A handwritten signature in black ink, appearing to read 'C H Smart', with a stylized, cursive script.

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C H Smart

Smart Attorneys