

**THE CONSTITUTION**

**OF THE**

**WINELANDS ESTATE FARMING ASSOCIATION**

## 1. DEFINITIONS

- 1.1 In this Constitution, unless the context indicates the contrary;
- 1.1.1 "**Adjacent Farm**" means Portion 35 (a portion of Portion 29) of the Farm Simonsvlei No. 791, Drakenstein Municipality, Division of Paarl, of the Western Cape;
- 1.1.2 "**Agricultural Land**" has the meaning ascribed thereto in clause 2.1 below;
- 1.1.3 "**Auditors**" mean the auditors of the Homeowners Association;
- 1.1.4 "**Common Areas**" means the private roads, open spaces, pump station, "Gate House" and all other property registered in the name of the Homeowners Association;
- 1.1.5 "**Constitution**" means this document and any annexures thereto, as may be amended from time to time;
- 1.1.6 "**Developer**" means Turnaround Trading 16 (Pty) Ltd (Registration No. 2003/005897/07);
- 1.1.7 "**Estate**" means Winelands Estate to be established on the Land, and comprising of the Common Areas, the Residential Erven and Non-Residential Erven;
- 1.1.8 "**Estate Manager**" means any person(s) or body(ies) appointed in accordance with the provisions of this Constitution, either as an employee or as an independent contractor, to undertake the management of the Estate and the affairs of the Farming Association and as more fully set out in clause 23 below;
- 1.1.9 "**Farming Association**" means the Winelands Farming Association established for the purposes of undertaking, contracting and managing all agricultural activities on the Estate and Residential Erven, for and on behalf of its Members;
- 1.1.10 "**Homeowners Association**" means the homeowners association of the Estate, namely the Winelands Estate Homeowners Association;
- 1.1.11 "**Land**" means Portion 7 of Farm 789, Portion 23 of Farm 1234, as well as the Adjacent Farm, all of which are situated in the Drakenstein Municipality, Division of Paarl, and Province of the Western Cape;
- 1.1.12 "**Local Authority**" means the Drakenstein Municipality, or its successors;
- 1.1.13 "**Members**" means all members of the Homeowners Association, being each Registered Owner and with each such Registered Owner automatically being a member of the Farming Association;

- 1.1.14 “**Non-Residential Erven**” means erven other than Residential Erven and which are not allocated for residential purposes;
- 1.1.15 “**Ombud Service Act**” means the Community Schemes Ombud Service Act, No. 9 of 2011;
- 1.1.16 “**Ombud Service**” means the Community Schemes Ombud Service established in terms of the Ombud Service Act;
- 1.1.17 “**Ordinary Resolution**” means at least 51% of the votes of all Members who are present or represented at a meeting;
- 1.1.18 “**Registered Owner**” means the registered owner of any of the Residential Erven;
- 1.1.19 “**the Residential Erven**” means the agricultural land units comprising the Land, other than Non-Residential Erven and Common Areas and which erven are numbered 10 to 16 of Farm 789, Portions 3 to 22 of Farm 1234, Portions 1 to 6 of Farm 1765 and the Adjacent Farm;
- 1.1.20 “**Special Resolution**” means at least 75% (seventy five percent) of the votes of all Members who are present or represented at a meeting;
- 1.1.21 “**a Trustee**” means one of the Trustee Committee;
- 1.1.22 “**the Trustee Committee**” or “**Trustees**” means the Board of Trustees of the Farming Association as contemplated in clause 9.1 below;
- 1.1.23 “**in writing**” means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
- 1.1.24 “**year**” means a calendar year.
- 1.2 Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and words importing any one gender only shall include the other genders.

## 2. INTRODUCTION

- 2.1 In view of the fact that a portion of each Residential Erf acquired by the Registered Owners comprises of land which shall be utilized for agricultural purposes (“**Agricultural Land**”), the conditions of sub-division and zoning pertaining to the Land requires that each Registered Owner becomes a member of a farming association.
- 2.2 Accordingly, in terms of the Deed of Sale concluded as between each Registered Owner and the Developer, the Registered Owner acquired mandatory membership of the said farming association.
- 2.3 As such, the Farming Association has been established for the purposes of performing the farming activities and exercising control over the

performance, management and administration of such activities.

3. STATUS OF THE FARMING ASSOCIATION

3.1 The Farming Association shall:

3.1.1 have legal personality and be capable of suing and being sued in its own name; and

3.1.2 not operate for profit, but for the benefit of the Members.

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

4. MAIN OBJECT

4.1 The main object of the Farming Association shall be the performance of the farming activities and/or exercising control over the performance, management and administration of such activities in respect of the Land and the Homeowners Association and to the benefit of its Members.

4.2 The Farming Association shall also have as its ancillary objects:

4.2.1 the promotion, advancement and protection of the interests of its Members generally in all matters affecting the Farming Association, the conclusion of agreements with any party for the purposes of outsourcing the performance any of the farming activities as may be required so as to achieve the objectives of the Farming Association;

4.2.2 to enter into service agreements with the Local Authority or any other authority or supplier of services;

4.2.3 to appoint an Estate Manager to manage the affairs of the Farming Association;

4.2.4 to allow neighbouring properties to become Members of the Farming Association;

4.2.5 to determine budgets for the operation of the Farming Association;

4.2.6 to determine and raise levies;

4.2.7 to open and operate bank accounts;

4.2.8 invest monies;

4.2.9 pay for services and goods; and

4.2.10 generally act in such a manner so as to give effect to the provisions of this Constitution.

## 5. FINANCIAL YEAR END

The financial year end of the Farming Association is the end of **February** of each year.

## 6. FUNCTIONS AND POWERS OF THE FARMING ASSOCIATION

6.1 In line with the objectives of the Farming Association, it shall attend to each and every aspect of all agricultural activities conducted on the Agricultural Land on behalf of its Members which shall include but not be limited to:

6.1.1 the preparation of the soil to be utilized for agricultural purposes;

6.1.2 the establishment of vineyards and olive trees or such other crops as may be identified by the Farming Association from time to time;

6.1.3 soil maintenance, pest and/or plague control;

6.1.4 cultivation and pruning;

6.1.5 harvesting of crops;

6.1.6 any other matter which is incidental to the farming activities to be conducted by the Farming Association.

6.2 The Farming Association shall be entitled to outsource any of its activities or functions and shall further be entitled to conclude agreements with appropriate parties and/or contractors for the purposes of fulfilling its functions as herein recorded.

6.3 The Farming Association shall determine the total costs pertaining to the farming of grapes and olives respectively. The contribution payable by each Member, in addition to the annual membership fees and levies referred to in clause 6.7, shall be determined by dividing the extent of each Members' land planted with vines and/or olives by the total extent of Agricultural Land planted with either grapes or olives in relation to the total costs for the farming of the Agricultural Land. By way of illustration:

<u>Whereas:</u>	A	=	total extent of Agricultural Land planted with vineyards
	B	=	total extent of land of Member planted

with vineyards

C = total cost of Farming of Agricultural Land

D = contribution payable by Member

As such, the contribution of each Member will be determined as to:

$$\frac{\mathbf{B}}{\mathbf{A}} \times \frac{\mathbf{C}}{1} = \mathbf{D}$$

- 6.4 The Farming Association shall determine the net income pertaining to grapes and olives respectively, and after all expenses of the Farming Association have been deducted, the net income shall be distributed to the Members to be calculated *pro rata* in accordance with the planted area in respect of vines and/or olives for each member respectively. The said income shall be distributed by the Farming Association as soon as possible after its financial year end.
- 6.5 The Trustee Committee shall prepare an annual budget which shall be submitted for consideration and approval at the annual general meeting of the Farming Association, which meeting the Trustees shall endeavour to call on the same date as the annual general meeting as the Homeowners Association.
- 6.6 It is specifically recorded that the Farming Association will not have a profit motive and will seek to recover from its Members the actual costs incurred or to be incurred in connection with the performance of its functions herein.
- 6.7 The Farming Association shall be entitled to pre-determine the anticipated costs of its activities and may thereupon call upon its Members to pay their respective contributions by means of levies so as to cover such costs, payable monthly in advance. Once the final costs incurred by the Farming Association are determined, the necessary adjustments will be made *vis-à-vis* members' contributions. In addition thereto, Members shall pay an annual membership fee as determined by the Farming Association.
- 6.8 Over and above the aforementioned costs, the Farming Association shall be entitled to propose levies (special or otherwise) payable by its Members for the purposes of covering administrative and management costs, such as the payment of audit and/or other professional fees and other administrative charges, which levies shall be determined as a flat rate per Member and not in accordance with the formula referred to in clause 6.3 above.
- 6.9 The Farming Association shall be entitled to market and/or sell all

produce on behalf of its Members and in so doing will act as their authorised agent.

- 6.10 The Farming Association may grant its Members the right of first refusal to purchase agricultural produce from it upon the same terms as offered by third party buyers.

## 7. MEMBERSHIP AND OBLIGATIONS

- 7.1 Membership of the Farming Association shall be compulsory for all Registered Owners.
- 7.2 Membership in terms of clause 7.1 shall commence simultaneously with the transfer of the Residential Erf into the name of the Registered Owner.
- 7.3 When a Member ceases to be the Registered Owner he shall *ipso facto* cease to be a Member of the Farming Association.
- 7.4 A Registered Owner may not resign as a Member of the Farming Association.
- 7.5 The rights and obligations of a Member shall not be transferable and every Member shall observe all regulations made by the Farming Association from time to time.
- 7.6 The Members acknowledge that the Farming Association is entrusted with the sole responsibility of attending to all the agricultural activities to be conducted on the Agricultural Land and as such, Members shall not be entitled to undertake any farming activity himself, nor shall he in any manner interfere with the farming activities as conducted by the Farming Association, its Manager or Employees.
- 7.7 Where a Registered Owner wishes to alienate or transfer his Residential Erf or in the event that the said Residential Erf is owned by a company or close corporation or Trust, should the shareholder/s or member/s or Trustees / Beneficiaries wish to alienate all of their shares or membership interest in such entity (hereinafter referred to as a "**resale**") he shall not be entitled to do so unless:
- 7.7.1 the transferee becomes a Member of the Farming Association and upon the registration of transfer of the Residential Erf into the name of the transferee, he shall *ipso facto* become a Member of the Farming Association;
- 7.7.2 the transferee of such Residential Erf agrees in writing to accept and abide by the Constitution of the Farming Association;

7.7.3 all amounts owing by the Registered Owner to the Farming Association have been paid or secured to the satisfaction of the said Farming Association;

7.7.4 all obligations of the Registered Owner in terms of this Constitution have been complied with in full.

## 8. TERMINATION OF MEMBERSHIP

8.1 When a Registered Owner ceases to own a Residential Erf he shall *ipso facto* cease to be a member of the Farming Association.

8.2 No Member ceasing to be a Member of the Farming Association for any reason shall, (nor shall any such Member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds, reserves or other property of the Farming Association. This clause shall be without prejudice to the rights of the Farming Association to claim from such Member or his estate any arrears of levies or other sums due from him to the Farming Association at the time of his so ceasing to be a Member.

## 9. TRUSTEES AND MANAGEMENT

9.1 The affairs of the Farming Association shall be managed and controlled by the Trustee Committee of the Homeowners Association and as such, the Trustees of the Homeowners Association shall constitute the Trustee Committee of the Farming Association and the Chairman of the Homeowners Association shall be the Chairman of the Farming Association and the same processes and procedures set out in clause 18, clause 19 and clause 20 of the constitution of the Homeowners Association shall *mutatis mutandis* apply to the Trustee Committee of the Farming Association.

9.2 The Trustee Committee shall be entitled to appoint an Estate Manager or managers (individuals or corporations) to manage the affairs of the Farming Association as more fully contemplated in clause 23 below.

9.3 Subject to this Constitution and the terms of his appointment, the Estate Manager shall have the full power to manage and control the business and affairs of the Farming Association, and may exercise all such powers of the Farming Association and do all acts on behalf of the Farming Association as may be exercised by the Trustees of the Farming Association itself.

## 10. PROCEEDINGS OF THE TRUSTEE COMMITTEE

10.1 The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit (including by means of electronic communication), subject to any provisions hereof.

10.2 Meetings of the Trustee Committee shall be held at least once every quarter.



- 10.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be 3 (three) Trustees, present in person or through electronic communication.
- 10.4 The Chairperson shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairperson not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairperson shall act as Chairperson at such meeting, provided further that should the Vice-Chairperson also not be present within 15 (fifteen) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairperson for the meeting.
- 10.5 A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily *verbatim*, which minutes shall be reduced to writing without undue delay after the meeting and shall then be certified correct by the Chairperson of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee Minute Book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Members and Local Authority.
- 10.6 All resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.
- 10.7 Save as otherwise provided herein, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 10.8 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.
- 10.9 Resolutions put to the vote at meetings of the Trustee Committee shall be carried by a simple majority.
- 10.10 In the case of an equality of votes, the Chairperson of the Trustee Committee shall have a casting vote.

## 11. GENERAL MEETINGS OF THE FARMING ASSOCIATION

- 11.1 The Trustee Committee shall endeavour to call the annual general meeting of the Farming Association on the same day, time and place as the annual general meeting of the Homeowners Association.
- 11.2 An annual general meeting, in addition to any other general meetings

during that year, as soon as possible after the end of each financial year, it being the intention that each annual general meeting shall take place not later than 3 (three) months after each financial year. Notwithstanding the foregoing, the first annual general meeting of the Farming Association is only required to take place by no later than the end of the financial year following which the Farming Association comes into existence.

- 11.3 General meetings shall be held at such time and place (upon or in the proximity of the Estate), subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.
- 11.4 Any meeting of the Farming Association, whether an annual general meeting or a special general meeting, may be conducted entirely by electronic communication, or provide for participation in a meeting by electronic communication, in a manner and form and in accordance with a procedure approved by the Trustees from time to time, provided only that the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.
- 11.5 All general meetings other than annual general meetings shall be called special general meetings.
- 11.6 Subject to clause 11.7, the Trustee Committee, may, whenever they think fit, convene a special general meeting.
- 11.7 Where the Members who hold at least 51% (fifty one percent) of the total votes resolve to call a special meeting, the Trustee Committee shall be obliged to call such meeting.

## 12. NOTICE OF MEETINGS

- 12.1 An annual general meeting and a meeting called for the passing of a Special Resolution, shall be called by no less than 21 (twenty one) days' notice in writing, and a special general meeting, other than one called for the passing of a Special Resolution, shall be called by no less than 14 (fourteen) days' notice in writing. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting. In the case of a Special Resolution, the said Notice shall specify the terms, the effect of the resolution and the reasons for it.
- 12.2 A general meeting of the Farming Association shall, notwithstanding that it is called by shorter notice than that specified as aforesaid, be deemed to have been duly called if it is so agreed:
  - 12.2.1 in the case of a meeting called as the annual general meeting or special general meeting called for the passing of a Special Resolution by all of the Members present and who are entitled to attend and vote thereat; and

12.2.2 in the case of a special general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 75% (seventy five percent) of the total number of votes.

12.3 Notwithstanding the provisions of clauses 12.1 and 12.2, the Trustees may from time to time elect to call an electronic general meeting with a notice period of 2 (two) weeks followed by a voting period of at least 7 (seven) days.

### 13. VENUE OF MEETINGS

Save for in the instance of an electronic meeting, all meetings of the Farming Association shall take place at or near the Estate as determined by the Trustee Committee from time to time.

### 14. QUORUM

14.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as together for the time being, represent at least one-half plus one of the total votes of all Members entitled to vote.

14.2 If within 30 (thirty) minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairperson of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum.

### 15. AGENDA AT MEETINGS

In addition to any other matter that may be required to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:

15.1 the Chairperson's report;

15.2 the consideration and approval of the balance sheet and income statement of the Farming Association for the last financial year of the Farming Association preceding the date of such meeting;

15.3 the consideration and approval of the Auditors report;

15.4 the consideration and approval of the proposed budget for the new

financial year; and

15.5 the cost contribution and levy payable by each Member.

## 16. PROCEDURE AT GENERAL MEETINGS

16.1 The Chairperson shall preside as such at all general meetings, provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairperson, shall act as Chairperson at such meeting, provided further that should the Vice-Chairperson also not be present within 15 (fifteen) minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.

16.2 The Chairperson may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

16.3 Except as otherwise set forth herein, all general meetings shall be conducted in accordance with generally accepted practice.

## 17. PROXIES

17.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Farming Association. The Proxy shall be entitled to vote at a general meeting on behalf of that Member. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form.

17.2 However, if a Residential Erf is registered in more than 1 (one) person's name, or in the event that the Erf is registered in the name of an entity, then and in such event the Owner/s shall be obliged to appoint a representative by way of a Proxy to vote on their/its behalf.

17.3 The said proxy shall be deposited at the office of the Homeowners Association Secretary at least 24 (twenty four) hours prior to the time appointed for the commencement of the meeting.

17.4 No instrument appointing a proxy shall be valid after the expiration of 12

(twelve) months calculated from the date of its execution.

## 18. VOTING

- 18.1 At every general meeting, the following provisions shall apply in regard to voting:
- 18.1.1 Every other Member in person or by proxy and entitled to vote shall have the number of votes for each Residential Erf registered in his name, as set out below, provided that if a Residential Erf is registered in more than one person's name, or in the event that the Erf is registered in the name of an entity, then and in such event the Owner/s shall be obliged to appoint a representative by way of a Proxy to vote on their/its behalf;
- 18.1.2 In the event of two or more Residential Erven being consolidated, then the Member in question shall continue to have the same number of votes he held prior to consolidation, as if such consolidation had not taken place.
- 18.2 Save as expressly provided for herein, no person other than a Member duly registered, and who shall have paid every amount due to the Homeowners Association and the Farming Association, and who is not under suspension from either the Homeowners or Farming Associations shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 18.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, , by paper ballots or electronic voting at the discretion of the Trustees provided that the system allows full traceability and an audit trail. The Trustees may from time to time use online voting to get input or feedback from Registered Owners without calling a formal meeting therefor. The electronic feedback period will be open for feedback for at least 2 (two) weeks and all alternative views and comments must be published and/or made available to all Members. special general meetings where changes to the Constitution are proposed or an annual general meetings may be conducted via electronic meetings in a manner and form and in accordance with a procedure approved by the Trustees from time to time, and electronic voting can be employed to facilitate the voting process at any such meeting (whether held in person or electronically as determined by the Trustees). The Trustees may elect to call other general meetings electronically by way of round robin via electronic voting or in accordance with another procedure approved by the Trustees from time to time.
- 18.4 Voting on the election of a Chairperson of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy or electronic voting (as the case may be).

- 18.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 18.6 An ordinary resolution (that is a resolution other than a Special Resolution) shall be carried on a simple majority of all the votes cast thereon, i.e. 51% (fifty one percent) of the Members present or represented and who are entitled to vote. A Special Resolution shall be carried by a majority of no less than 75% (seventy five percent) of the total votes of Members who are present in person or represented and who are entitled to vote. An abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, the Chairperson of the general meeting shall be entitled to a casting vote in addition to its deliberative vote.
- 18.7 Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting.

## 19. ACCOUNTS

- 19.1 The Farming Association in a general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Farming Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Farming Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 19.2 At each annual general meeting the Trustee Committee shall lay before the Farming Association a proper income and expenditure account for the preceding financial year of the Farming Association, or in the case of the first account, for the period since the incorporation of the Farming Association, together with a proper balance sheet made up as at the last financial year end of the Farming Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Auditors, and there shall be attached to the notice sent to Members convening each annual general meeting, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

## 20. AUDIT

At least once a year, the accounts of the Farming Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

## 21. SERVICE OF NOTICES

21.1 A notice shall be in writing and shall be given or served by the Farming Association upon any Member, by hand or by post in a prepaid registered letter, properly addressed to the Member at the address of the Residential Erf owned by him.

21.2 No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require the Farming Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices. The notice by the Member to change his address shall be in writing and addressed to the Farming Association by way of pre-paid registered mail.

21.3 Any notice given by post shall be deemed to have been received within 5 (five) days from the date on which the letter was posted whereas a letter delivered by hand shall be deemed to have been received on the same date that it was delivered.

21.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice, shall not invalidate the proceedings of that meeting.

## 22. INDEMNITY

22.1 All Trustee Members shall be indemnified out of the funds of the Farming Association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a Trustee Member, in his capacity as Chairperson, Vice-Chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.

22.2 Every Trustee Member, every servant, agent and employee of the Farming Association, shall be indemnified by the Farming Association against (and it shall be the duty of the Trustee Committee out of the funds of the Farming Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties,

including in the case of a Trustee Member, his duties as Chairperson or Vice-Chairperson. Without prejudice to the generality of the above, the Farming Association shall specifically indemnify every such person/s against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

22.3 A Trustee Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors, Consultants, Service Providers or of any of the other Trustee Members, whether in their capacities as Trustee Members or as Chairperson or Vice-Chairperson, or for any loss or expense sustained or incurred by the Farming Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of the Farming Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Farming Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

22.4 However, in each case where a claim is made against any of the Trustees or other persons referred to hereinbefore, then and in such event the Trustee Committee shall be entitled, as against the aforesaid indemnity, to take cession of any claim and thereupon defend any action that may be instituted, contest and/or settle any claim.

## 23. ESTATE MANAGER

23.1 The Trustee Committee shall be entitled to appoint an Estate Manager or Managers (individuals or corporations) to control, manage and administer the Estate and the affairs of the Farming Association, and to exercise such powers and duties as may be entrusted to the Estate Manager, including the power to collect levies.

23.2 Subject to this Constitution and the terms of his appointment, the Estate Manager shall have the full power to manage and control the business and affairs of the Farming Association, and may exercise all such powers of the Farming Association and do all acts on behalf of the Farming Association as may be exercised by the Farming Association itself.

23.3 All instructions issued to the Estate Manager by the Trustee Committee shall be in writing and shall only be issued by a Trustee duly authorised by the Trustee Committee.



- 23.4 The Farming Association shall take out fidelity insurance to the satisfaction of the Trustees for all monies held by the Estate Manager on behalf of the Farming Association from time to time.
- 23.5 The Trustees shall ensure that there is included in the contract of appointment of an Estate Manager a provision to the effect that if the Estate Manager is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Trustees may, without notice, cancel such contract of employment and the Estate Manager shall have no claim whatsoever against the Trustees and/or the Farming Association as a result of such cancellation.
- 23.6 Notwithstanding anything contained in this Constitution it is recorded that no person appointed as Estate Manager shall be entitled to receive any funds from Members in any bank account other than that of the Farming Association, whether as levies or otherwise, unless such Manager has duly complied with all requirements in that regard as contained the Ombud Service Act and the Regulations thereunder, also read with the regulations of the Estate Agents Affairs Board.

#### 24. BREACH

##### 24.1 Should any Member:

24.1.1 fail to pay on due date any amount due by that Member in terms of this Constitution or any regulation made there under and remain in default for more than 7 (seven) days after being notified in writing of such default by the Trustee Committee; or

24.1.2 commit any other breach of the provisions of this Constitution or any regulation made there under and fail to commence remedying that breach within a period of 7 (seven) days after the receipt of written notice to that effect by the Trustee Committee and complete the remedying of such breach within a reasonable time;

then and in either such event, the Trustee Committee shall be entitled on behalf of the Farming Association, without prejudice to any other rights or remedies which the Trustee Committee or the Farming Association or any other Member may have in law, including the right to claim damages:

24.1.3 to institute legal proceedings on behalf of the Farming Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any regulation made there under, as the case may be (including an application in terms of the Ombud Service Act); or

24.1.4 in the case of clause 24.1.2, to remedy such breach and immediately recover the total costs incurred by the Trustees or the Farming

Association in so doing from such Member.

- 24.2 Should the Trustee Committee institute any legal proceedings (including instituting proceedings with the Ombud Service) against any Member pursuant to a breach by that Member of this Constitution or any regulation made there under, then without prejudice to any other rights which the Trustee Committee or the Farming Association or any other Member may have in law, the Trustee Committee / Farming Association / Member (as the case may be) shall be entitled to recover from such Defaulting Member all legal costs incurred by it, including attorney and own client charges calculated on the non-litigious tariff recommended by the Legal Practice Council, Western Cape office (or its successor body in the Western Cape), tracing fees and collection commission.
- 24.3 Without prejudice to all or any of the rights granted to the Trustee Committee of the Farming Association under this Constitution, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest thereon calculated at 2% (two percent) above the publicly quoted prime rate of interest charged by the Farming Association's bankers from time to time calculated from the due date of payment until the actual date of payment of such amount. A certificate issued by the Farming Association's bankers as to the prime rate applicable shall constitute *prima facie* proof thereof.
- 24.4 Members who are in breach of this Constitution or its rules (if any) shall, in addition to any other penalty or sanctions prescribed by this Constitution, Conduct or other rules (if any), be liable to pay an administration fee in an amount as determined by the Trustees from time to time.
- 24.5 Nothing in the foregoing shall derogate from or in any way diminish the right of the Farming Association to institute proceedings with the Ombud Service or in any court of competent jurisdiction for recovery of any money due by any Member arising from any cause of action whatsoever or for any other relief.

## 25. ARBITRATION

- 25.1 Any dispute, question or difference arising at any time between Members or between Members and Trustees out of or in regard to:
- 25.1.1 any matters arising out of this Constitution; or
- 25.1.2 the rights and duties of any of the parties mentioned in this Constitution; or
- 25.1.3 the interpretation of this Constitution;
- 25.1.4 a breach of (save for non-payment of levies or any other amount due by a Member in terms of this Constitution), this Constitution, such dispute shall, subject to the rights of the affected parties to seek relief in terms of Chapter 3 of the Ombud Services Act,

shall be submitted to and decided by arbitration, in the manner as set out in this clause 25, on notice given by any party to the other parties who are interested in the matter in question.

- 25.2 Notwithstanding clause 25.1, a party declaring a dispute in respect of payment of levies, is not obliged to refer the dispute to arbitration and may institute court proceedings.
- 25.3 Arbitration shall be held in Cape Town informally and otherwise in terms of the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 (twenty one) Business Days after it has been demanded.
- 25.4 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 25.4.1 primarily an accounting matter - an independent accountant of not less than 10 (ten) years' standing;
- 25.4.2 primarily a legal matter - a practicing counsel or attorney of not less than 10 (ten) years' standing;
- 25.4.3 any other matter - an independent and suitably qualified person appointed by the Auditors;
- As may be agreed upon between the parties to the dispute.
- 25.5 If agreement cannot be reached on whether the question in dispute falls under sub-clauses 25.4.1, 25.4.2, 25.4.3, or upon a particular arbitrator in terms of sub-clause 25.4, within 3 (three) Business Days after the arbitration has been demanded, then:
- 25.5.1 the Chairperson for the time being of the Legal Practice Council, Western Cape office (or its successor body in the Western Cape) shall determine whether the question in dispute falls under sub-clauses 25.4.1, 25.4.2, 25.4.3; and/or
- 25.5.2 the Chairperson for the time being of the Legal Practice Council, Western Cape office (or its successor body in the Western Cape) shall nominate the arbitrator in within 7 (seven) Business Days after the parties have failed to agree, so that the arbitration can be held and concluded as soon as possible within the 21 (twenty one) Business Days referred to in clause 25.3.
- 25.6 The Arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Farming Association as he in his sole discretion may deem

fit.

- 25.7 The decision of the arbitrator shall be final and binding and may be made an order of the Western Cape High Court of South Africa (or its successors) upon the application of any party to the arbitration.
- 25.8 Notwithstanding anything to the contrary contained herein, the Trustees shall be entitled to institute legal proceedings on behalf of the Farming Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions.

## 26. AMENDMENTS TO CONSTITUTION

This constitution, or any part thereof, as contained herein shall not be repealed or amended, and no new clauses shall be made, save by a Special Resolution adopted at a General Meeting of the Members.

## 27. PROVISIONS RELATING TO TAX

- 27.1 As the main object of the Farming Association is the management of the collective interest common to all of its Members, its functions shall include the payment of all expenditure applicable to the common property and facilities which are available to the Members, as well as the collection of levies for which such Members are liable.
- 27.2 Save for the expenses and liabilities which the Farming Association is liable to pay, it shall not distribute its funds to any person other than to a similar association of persons.
- 27.3 On dissolution of the Farming Association, the remaining assets shall be distributed to a similar association of persons, which is also exempt from income tax, in terms of Section 10(1)(e)(iii) of the Income Tax Act No. 58 of 1962.
- 27.4 Any amendments to this clause 27 shall be submitted to the Commissioner for the South African Revenue Service for approval.
- 27.5 Funds available for investment shall only be invested with a financial institution as defined in Section 1 of the Financial Services Board Act No. 97 of 1990, and in securities listed on a stock exchange as defined in section 1 of the Stock Exchange Control Act No. 1 of 1985.
- 27.6 The Farming Association will not knowingly be a party to, nor will it knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction,

operation or scheme, would be or would have become payable by any person under the Income Tax Act No. 58 of 1962 or any other Act administered by the Commissioner for the South African Revenue Service.

27.7 The Farming Association shall submit annual tax returns of income tax together with financial statements to the Tax Exemption Unit.

28. GENERAL

28.1 In the recovery of a debt owed by a Member to the Farming Association, it shall be justifiable for a court to order execution of a judgment or order in respect of such debt against a member's Residential Erf on the Estate if there is not found sufficient movable property to satisfy such judgment or order.

28.2 A sale in execution of a member's Residential Erf pursuant to such an order shall not constitute an infringement of that member's right to adequate housing or any breach of any of the member's rights in terms of the Constitution of the Republic of South Africa, given the socio- economic status of the Member enabling him to become a Member.

28.3 In the event of any conflict between this Constitution of the Farming Association and the constitution of the Homeowners Association, the provisions of the constitution of the Homeowners Association shall prevail.

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