



**LA BELLA VITA WINE ESTATE
HOMEOWNERS ASSOCIATION
CONSTITUTION**





CONSTITUTION

1. ESTABLISHMENT IN TERMS OF STATUTE

The LA BELLA VITA WINE ESTATE Property Owner's Association is constituted as a body corporate in terms of Section 29 of the Land Use Planning Ordinance No. 15 of 1985, and shall come into existence simultaneously with the registration of transfer of the first deducted portion at LA BELLA VITA WINE ESTATE.

2. INTERPRETATION

2.1. The following words shall, unless the context otherwise requires, have the following meanings:

"these presents" means this Constitution, regulations and by-laws of the Association from time to time in force.

"the Association" means LA BELLA VITA WINE ESTATE Property Owners Association.

"month" means calendar month.

"year" means calendar year.

"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.

"the Unit Erven" means the residential erven resulting from the subdivision of PORTION 39 of the Farm Simonsvlei 791 situated in the PAARL DIVISION, Western Cape Province, known collectively as LA BELLA VITA WINE ESTATE.

"the Registered Owner" means the individual or business whose name is recorded on the title deed as the owner of the property.

"the Member" means a member of the Association.

"the Trustee Committee" means the Board of Trustees of the Association.

"a Trustee" means one of the Trustee Committee.



“**Chairman**” means the Chairman of the Trustee Committee.

“**Vice-Chairman**” means the Auditors of the Association.

“**Auditors**” means the Auditors of the Association.

“**the Council**” means WINELANDS DISTRICT COUNCIL or its SUCCESSORS IN TITLE.

“**Business Day**” means weekdays other than Saturdays, Sundays and Public Holidays.

“**LA BELLA VITA WINE ESTATE**” means the group housing development constructed on PORTION 39 of the Farm SIMONSVLEI 791 situated in the PAARL DIVISION, Western Cape Province.

“**Special Resolution**” means a resolution passed at a special general meeting of which not less than 21 clear days’ notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reason for its, and passed, on a show of hands, by not less than three-fourths of the total number of members present at the meeting who, at a minimum, for a quorum for a general meeting.

“**Ordinary Resolution**” means a resolution passed at a general meeting of the Association.

2.2. Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and words importing any one gender only shall include the other two genders.

3. **PURPOSE DESCRIBING THE MAIN BUSINESS**

The main business of the association is to carry on the promotion, advancement and protection of the owners of the Unit Erven.

4. **MAIN OBJECT**

The main object of the Association is:

4.1. The control over –

4.1.1. All buildings, and/or structures erected or to be erected on the Unit Erven as well as the maintenance thereof; and



4.1.2. The care, maintenance, upkeep of the Private Open spaces.

4.2. The promotion, advancement and protection of the communal and group interests of the members generally.

5. **FINANCIAL YEAR END**

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

6. **MEMBERSHIP**

6.1. Membership of the Association shall be compulsory for every Registered Owner of a Unit Erf.

6.2. Such Membership shall commence simultaneously with the transfer of the unit Erven Provided that:

6.2.1. A person who is entitled to obtain a certificate of registered title to any such Unit Erf shall be deemed to be the registered owner thereof.

6.2.1.1. Where any such owner is more than one person, all the registered owners of that erf shall be deemed jointly and severally to be one Member of the Association.

6.2.1.2. Where any person is the Registered Owner of more than one Unit Erf such person shall be regarded to be a members and shall have the rights and obligations of a Member in respect of each of the Unit Erven registered in the person's name, it being recorded that the provisions of this clause shall also be applicable to the Developer while it is the Registered Owner of the Unit Erf or Unit Erven.

6.3. When a member ceases to be the registered owner of the Unit Erf, he/she shall ipso facto cease to be a member of the Association.

6.4. A Member shall not be entitled to:

6.4.1. Sell or transfer a unit Erf unless it is a condition of the sale and transfer that:

6.4.1.1. The transferee becomes a Member of the Association.



- 6.4.1.2. The registration of transfer of that Unit Erf into the name of that transferee shall ipso facto constitute the transferee as a Member of the Association.
- 6.4.1.3. He first obtains the written consent of the Association which consent shall be given provided the purchaser of such Unit Erf agrees in writing to abide by the rules of the Constitution of the Association.
- 6.5. Erect any additional buildings and/or structures of any nature whatsoever, nor to make any alterations, modifications or renovations to such buildings and/or structures (“the proposed work”) on his Unit Erf without the written approval of the Trustees, which approval shall only be given –
- 6.5.1. After detailed plans of the proposed work has been submitted to the Trustees, or any person nominated by the Trustees (who may be an Architect, registered with the South African Council of Architects or the Institute of South African Architects) and
- 6.5.2. The Trustees or their nominee are satisfied that the proposed work is in accordance with the character and style of LA BELLA VITA WINE ESTATE.
- 6.5.3. The Member has made payment of any costs which may be incurred in obtaining this approval, including costs of the Trustees of their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature.
- 6.6. The Registered Owner of a Unit Erf may not resign as a member of the association.
- 6.7. The Trustee Committee may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.
- 6.8. The rights and obligations of a Member shall not be transferable, and every Member shall:
- 6.8.1. To the best of his ability further the object and interests of the Association.
- 6.8.2. Observe all by-laws and regulations made by the Association or Trustee Committee.



6.8.3. Be jointly liable with all the members for all expenditure incurred in connection with the Association insofar as third parties are concerned.

Provided that nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this constitution as security to the Mortgagee of the Member's Unit Erf.

7. **LEVIES**

- 7.1. The Trustee Committee shall from time to time, make levies upon the members for the purpose of meeting all the expenses which the Association has incurred, or to which the Trustee Committee reasonably anticipates the Association will be put by way of payment of all expenses necessary or reasonably incurred in connection with the management of the Association and the Association's affairs in general. In calculating levies, the Trustee Committee shall take into account income, if any, earned by the Association.
- 7.2. The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the Member's equal as nearly as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly instalments due to advance on the first day of each and every succeeding month of such year.
- 7.3. The Trustee Committee, may from time to time, make special levies upon the members in respect of all such expenses as are mentioned in 7.2. (which are not included in any estimate made in terms of 7.2.), and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall think fit.
- 7.4. Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a member shall under any circumstances be repayable to the Association upon his ceasing to be a member. A Member's successor in title to a Unit Erf shall be liable as from the date upon which he becomes a member pursuant to the transfer of the erf, to pay the levy attributable to that erf. No Member shall transfer his Unit Erf until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association.



7.5. The total levy payable by the Members shall be borne in equal shares by each Member.

7.6. No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.

8. **CONTRACTS AND REGULATIONS**

8.1. The Trustee Committee may from time to time:

8.1.1. Make regulations governing inter alia:

8.1.1.1. The erection of any buildings and/or structures of any nature, whatsoever, and the alteration, modification and renovation to such buildings and/or structures on Unit Erven, (which regulations may be incorporated in a development manual).

8.1.1.2. The Member's right of use, occupation and enjoyment of the Private Open Spaces.

8.1.1.3. The external appearances of and the maintenance of the Private Open Space and any buildings or other improvements erected thereon.

8.2. Enter into agreement(s) with the Council on any other incidental matters.

8.3. Each Member undertakes to the Association that he shall comply with:

8.3.1. The provisions of this Constitution.

8.3.2. Any regulations made in terms of 8.1.1.

8.3.3. Any agreements referred to in 8.2. insofar as those agreements may directly or indirectly impose obligations on him.

8.4. Should any Member:

8.4.1. Fail to pay on the due date any amount by that Member in terms of this constitution or any regulation made thereunder and remain in default for more than 7 days after being notified in writing to do so by the Trustees: or



8.4.2. Commit any other breach of any of the provisions of this Constitution or any regulation made thereunder and fail to commence remedying that breach within a period of 7 days after the receipt of written notice to that effect by the Trustees and complete the remedying of such breach within a reasonable time.

Then and in either such event, the Trustees shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Trustees or the Association or any other member may have in law, including the right to claim damages:

8.4.3. To institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligation in terms of the Constitution or any regulation made thereunder, as the case may be; or

8.4.4. In the case of clause 8.4.2. to remedy such breach immediately, recover the total cost incurred by the Trustees or the Association in so doing from such Member;

8.4.5. Should the Trustees institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any regulation made thereunder, then without prejudice to any other rights which the Trustee or the Association or any other member may have in law, the Trustee shall be entitled to recover from such member all legal costs incurred by the Trustee or the Association including attorney/client charges, tracing fees and collection commission;

8.4.6. Without prejudice to all or any of the rights the Trustees or the Association granted under the Constitution should any Member fail to pay any amount due by the Member on the due date, then such member shall pay interest thereon at the publicly quoted prime rate of interest charged by the Association's bankers from time to time calculated from the due date for payment until actual date of payment of such amount.

9. **CESSATION OF MEMBERSHIP**

No Member ceasing to be a Member of the 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 or other property of the Association, but this clause shall be without prejudice to the right of the Association to claim from such Member or his estate any arrears of subscriptions or other sums due from him to the Association at the time of his so ceasing to be a Member.



10. **TRUSTEE COMMITTEE**

There shall be a Board of the Trustees of Association which shall consist of not less than three (3) and not more than six (6) Members.

10.1. Every Trustee must be a Member of the Association.

11. **REMOVAL AND ROTATION OF TRUSTEE MEMBERS**

11.1. Save as set forth in 12.1. below, each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment at which meeting each Trustee shall be deemed to have retired from office as such, but shall be eligible for re-election to the Trustee Committee at such meeting.

11.2. A Trustee shall be deemed to have vacated his office upon:

11.2.1. His estate being sequestrated, whether provisionally or final, or his surrendering his estate.

11.2.2. His making any arrangement or compromise with his creditors.

11.2.3. His conviction for any offence involving dishonesty.

11.2.4. His becoming of unsound mind or being found lunatic.

11.2.5. His resignation from such office in writing delivered to the Secretary.

11.2.6. His death.

11.2.7. His being removed from office by a Special Resolution of the Members.

Provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be Trustee, shall be valid until the fact that his is no longer a Trustee has been recorded in the Minute Book of the Trustee Committee.

11.3. Upon any vacancy occurring on the Trustee Committee prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee.



12. OFFICE OF TRUSTEES

- 12.1. The Trustees shall appoint from among themselves, a Chairman and Vice-Chairman.
- 12.2. The first Chairman shall be appointed by the Registered Owner, and such office bearers shall hold their respective office until the first Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.
- 12.3. Within seven (7) days of the holding of such Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting has next after their said appointment provided that the office of the Chairman and Vice-Chairman shall ipso facto be vacated by the Trustee holding such an office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint any of their number as replacement in such office.
- 12.4. Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Trustee Committee, and all general meetings of the Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee Committee or of Members, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 12.5. The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman and shall perform such other duties as may from time to time be assigned to him by the Chairman of the Trustee Chairman.
- 12.6. Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, Vice-Chairman, as the case may be but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performances of such duties.



13. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

13.1. Subject to the express provisions of these presents, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and directions of such business and affairs and, save as any be expressly provided in these presents, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and one by the Association in General Meeting, subject nevertheless to such regulations as may be prescribed by the Association in General Meeting from time to time, provided that no regulation made by the Association in General Meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had been made.

13.2. The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

13.3. The Trustee Committee shall have the right to co-opt onto the Trustee Committee any Member or Members chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.

13.4. The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member of the Trustee of these presents, in such reasonable manner as it shall decided from time to time.

13.5. The Trustee Committee may make any regulations and by-laws, not inconsistent with this constitution, or any regulations or by-laws prescribed in the Association in General Meetings:

13.5.1. As to disputes generally

13.5.2. For the furtherance and promotion of any of the objects of the Association

13.5.3. For the better management of the affairs of the Association

13.5.4. For the advancement of the interests of the Members

13.5.5. For the conduct of Trustee Committee Meetings and General Meetings; and



13.5.6. To assist it in administering and governing its activities generally.

And shall be entitled to cancel, vary or modify and of the same from time to time.

13.5.7. The Trustee Committee may from time to time make house rules for the control, use, safety and cleanliness of the common property, which house rules shall:

13.5.7.1. Not conflict with any act or with this constitution.

13.5.7.2. Be reasonable

13.5.7.3. Apply equally to all owners.

14. PROCEEDINGS OF THE TRUSTEE COMMITTEE

14.1. The Trustee Committee may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.

14.2. Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Committee need be held for that quarter.

14.3. The quorum necessary for holding any meeting of the Trustee Committee shall be three (3) Trustees.

14.4. The Chairman shall preside at all such meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairman not be present within five (5) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.



14.5.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 will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of the Trustee Committee Meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance mutatis mutandis, with the provisions of the law in relation to keeping of minutes of meetings of directors of companies. The Trustee Committee Meeting Book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Association and Members and Local Authority.

14.6.All competent 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 Members or any of the Trustees unless such Resolution is competent within the powers of the Trustee Committee.

14.7.Save as otherwise provided in these presents, the proceedings at any Trustee Meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

14.8.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.

15. **GENERAL MEETING OF THE ASSOCIATION**

15.1.The Association shall before 31 May in each calendar year, hold a General Meeting as its Annual General Meeting, in addition to any other General Meetings, during the year, and shall specify the meeting as such in the notices, in terms of 16.1.3 below calling it:

15.1.1. Such Annual General Meeting shall be held at such times and place, subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.

15.1.2.All General Meetings other than Annual General Meetings shall be called Special General Meetings.

15.1.3.The Trustee Committee, may, whenever they think fit, convene a Special General Meeting.



16. NOTICE OF MEETINGS

16.1. An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called by twenty-one (21) days' notice in writing at the least, and Special General Meeting other than the one called for passing of a Special Resolution, shall be called by fourteen (14) days' notice in writing at the least. In each case, the notice shall be exclusive of the day of which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these presents, the general nature of that business, and in the case of a Special Resolution, the terms and effect of the Resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons as are under these presents entitled to receive such notices from the Association; provided that a General Meeting of the Association shall, notwithstanding that it is called by the shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed:

16.1.1. In the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat; and

16.1.2. In the case of 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 seventy-five percent (75%) of the total voting rights of all Members.

17. VENUE OF MEETINGS

General Meetings of the Association shall take place at such place(s) as shall be determined by the Trustee Committee from time to time.

18. QUORUM

18.1. 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 one half of the total votes of all Members of the Association entitled to vote, for the time being save that not less than three (3) Members must be personally present.



18.2.If within half and hour 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 Chairman of the meeting shall appoint, and of at such adjourned meeting a quorum is not present within half and hour from the time appointed for holding the meeting, the Members present shall be quorum.

19. AGENDA AT MEETINGS

19.1.In addition to any other matters required by these present to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

19.2.The election of the Trustee Committee.

19.3.The consideration of any other matters raised at the meeting including any resolutions proposed for the adoption by such meeting, and the voting upon any such resolutions.

19.4.The consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting.

19.5.The consideration of the report of the Auditors.

19.6.The consideration of the total levy (as referred to in 7) for the calendar year during which such Annual General Meeting takes place; and

19.7.The consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.



20. PROCEDURE AT GENERAL MEETINGS

20.1. The Chairman shall preside as such at all General Meetings, provided that should he not be present within five (5) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five (5) 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 Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

20.2. The Chairman may, with the consent of any General Meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time and 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 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.

20.3. Except as otherwise set forth in these presents, all General Meetings shall be conducted in accordance with generally accepted practice.

21. PROXIES

21.1. A Member may be represented at a General Meeting by a proxy, who need not be a Member of the Association. 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, provided that where a member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a Company, the same may be signed by the Chairman of the Board of Directors of the Company or by its Secretary, and where an association of persons, by the Secretary thereof.

21.2. The instrument appointing the proxy and the Power of Attorney or other authority (if any) under it is signed, or notarially certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date of its execution.



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

21.4. Should a Member be absent for a continuous period in excess of three (3) weeks, a proxy must be appointed by such Member prior to his absence in accordance with 21.1. and 21.2., failing which a Member shall not be entitled to vote, at any Special General Meeting, called during such Member's absence.

22. **VOTING**

22.1. At every General Meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Unit Erf registered in his name provided that a Unit Erf is registered in more than one person's name, then they shall jointly have one vote.

22.2. Save as expressly provided for in these presents, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or by proxy, at a General Meeting.

22.3. At any General Meeting a Resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the results of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

22.4. Notwithstanding the provisions of 22.3. aforesaid, voting on the election of the Chairman 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, and entitled to vote.

22.5. 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.

22.6. An ordinary Resolution (that is a Resolution other than a Special Resolution) or the amendment of an Ordinary Resolution, shall be carried on a simple



22.7. 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 Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety of validity for the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, 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 votes so recorded in such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

23. **OTHER PROFESSIONAL OFFICES**

Save specifically provided in this Constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other profession person or firm and/or any other employee's whatsoever, for any reason though necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide, subject to any of the provisions of these presents, provided that any expenditure incurred in respect of the above, shall not exceed five percent (5%) of the total annual levy for the year in question unless authorised by a Special Resolution.

24. **ACCOUNTS**

24.1. The Association in General Meeting of 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 Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

24.2. At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with the proper balance sheet made up as the last financial year end of the 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, as set forth in 16 above, copies of such accounts,



balance sheet and reports and of any other documents required by law to accompany the same.

25. **AUDIT**

Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

26. **SERVICE OF NOTICES**

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

26.2. No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa which shall be deemed to be his address for the purpose of the service notices.

26.3. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

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

27. **INDEMNITY**

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

27.2. Every Trustee Member, every servant, agent and employee of the Association, and the Auditors shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses



and expenses (including travelling expenses) which such person(s) may incur or become liable for by reason of any contract entered into or any act of deed done, by such person(s) in the discharge of any of his/their respective duties, including in the case of a Trustee Member, his duties as Chairman or Vice-Chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bone fide act, deed or letter done or written by him jointly and 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.

27.3.A Trustee Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any other Trustee Members, whether in their capacities as Trustee Members or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency of title to any property acquired by the Trustee Committee for or on behalf of the Association, or for the insufficiency of deficiency of any security in or upon which any of the monies of the 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 an error of judgement 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 bone fides or breach of duty of breach of trust.

28. PRIVILEGE IN REPECT OF DEFAMATION

Every Member of the Association and every Trustee Member shall be deemed by virtue of his membership or, as the case may be, his holding office as a Trustee Member, to have waived as against every other Member, the Trustee Committee, the Chairman or Vice-Chairman, every other Trustee Member, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Trustee Committee, or any sub-member might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee Member, made at any Trustee Committee Meeting, or otherwise in the performance or exercise of any right, function, duty power of trust, within the ambit of these presents, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee Member, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee Member, whether such statement be true or false.



29. ARBITRATION

29.1. Any dispute, question or difference arising at any time between a member or between Members and Trustees out of or in regard to:

29.1.1. Any matters arising out of this constitution; or

29.1.2. The rights and duties of any of the parties mentioned in this Constitution; or

29.1.3. The interpretation of this Constitution.

Shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.

29.2. Arbitration shall be held in Cape Town informally and otherwise upon the provisions of the Arbitration Act No. 42 of 1965 (as amended or replaced from time to time) is being intended that, if possible, it shall be held and concluded within twenty-one (21) business days after it has been demanded.

29.3. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:

29.3.1. Primarily an accounting matter – an independent accountant.

29.3.2. Primarily a legal matter – a practising council or attorney of not less than ten (10) years standing.

29.3.3. Any other matter – an independent and suitably qualified person appointed by the Auditors.

As may be agreed upon between the parties to the dispute.

29.4. If the agreement cannot be reached on whether the question in dispute falls under 29.3.1., 29.3.2. or 29.3.3. or upon a particular arbitrator in terms of 26.3.3., within three (3) business days after arbitration has been demanded, then

29.4.1. The President for the time being of the Law Society of the Cape of Good Hope shall determine whether the question in dispute fall under 29.3.1, 29.3.2. or 29.3.3; or



29.4.2. The President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of 29.3. within seven (7) business days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within 21 business day period referred to in 29.2.

29.5. The Arbitrator shall make his aware within seven (7) days after completion of the Arbitration and shall in giving his aware, have regard to the principles laid down in terms of the 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 Association as he in his sole discretion may deem fit.

29.6. The decision of the Arbitrator shall be final and binding and may be an Order of the Cape Provincial Division of the High Court of South Africa upon the application of any party to the Arbitration.

29.7. Notwithstanding anything to the contrary contained in 29.1. to 29.6. inclusive, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction of the purposes of restraining or interdicting breaches of any of these provisions.

30. **EFFECTIVE DATE**

Notwithstanding any of the provisions hereof, the Registered Owner shall, until such time as the number of Unit Erven sold and transferred equals 90% of the total number of Unit Erven, be entitled at any General Meeting to:

30.1. A number of votes equal to the total number of votes of all the other Members of the Association.

30.2. Appoint a sufficient number of Trustees to ensure that the Registered Owner has majority of such Trustees at all times.

31. **ESTATE RULES**

31.1. Subject to this Constitution, to any restriction imposed or direction given at a General Meeting of the Association and subject to any condition imposed by the local authority, in approving the rezoning and subdivision of the land, the Trustee Committee may from time to time make rules and vary or modify these rules, in regard to *inter alia*:



- 31.1.1. The standards guidelines for the architectural design of all buildings and out-buildings, structures of any nature, swimming pools, tennis courts, and all additions or alterations of any such buildings, out-buildings or structures erected or to be erected on the land, and in particular to control the design and colour of the exterior of such buildings, out-buildings or structures and the materials to be used on such exteriors to ensure an attractive and aesthetically pleasing character to all buildings on the estate;
- 31.1.2. The sitting of all buildings, out-buildings, structures of any nature, swimming pools, tennis courts and all additions or alterations to any thereof and the erection of statues and works of art;
- 31.1.3. The preservation of the natural environment vegetation and fauna and flora on the estate including the right to control, and if necessary, order the removal of vegetation, and the right to prohibit and/or control the erection of fences and walls whether upon or within the boundaries of any Erfen;
- 31.1.4. The right to prohibit, restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
- 31.1.5. The conduct of any persons within the property for the prevention of nuisance of any nature to any Member;
- 31.1.6. The use of services or recreation areas, amenities and facilities including the right to charge a reasonable fee or the use thereof;
- 31.1.7. The furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interest of the Members and/or Residents of the estate;
- 31.1.8. The maintenance of all buildings, out-buildings, structures, improvements of any nature and landscaping on the estate;
- 31.1.9. The control of the number of occupiers permitted on any one Erf;
- 31.1.10. The purchase of the Association or the developer of any Erf should the registered owner thereof fail to commence construction of improvements thereto or fail to complete the same within the time limits prescribed by the Association for these purposes, and generally for the determination of the price and conditions upon which such purchase may be made;



- 31.1.11. The admission of any person to the estate, and the eviction of any person not entitled to be thereon.
- 31.2. The rules shall not be in conflict with any condition imposed by the developer upon any Member or purchaser of any Erf in terms of the deed of sale whereby the Member acquires an Erf.
- 31.3. For the enforcement of any of the rules made by the Trustee Committee in terms of this clause, or of any of the provisions of this Constitution generally, the Trustee Committee may:
- 31.3.1. Give notice to the Member concerned requiring him to remedy such breach within such period as the Trustee Committee may determine; and/or
- 31.3.2. Take or cause to be taken such steps, as they may consider necessary to remedy the breach of the rule or provision of which the Member may be guilty, and debit the cost of so doing to the Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Association; and/or
- 31.3.3. Take such action including the imposition of a fine, or proceedings in court, as they may deem fit.
- 31.4. Should the Trustee Committee institute any legal proceedings against any Member or resident on the estate for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the member or resident concerned, calculated as between attorney and client, including tracing fees and collection commission.
- 31.5. In the event of any breach of the rules by the Members of any Member's household or his guests or lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Trustee committing the breach as they may in their discretion deem fit.
- 31.6. If any member disputes the fact that he has committed a breach of any of the rules, an Appeal Committee made up of three members drawn by lot from a panel of ten Members willing to fulfil this function, appointed by the Trustee Committee shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as such Appeal



Committee may direct. The decision of the Appeal Committee shall be final and binding.

31.7. Notwithstanding anything to the contrary herein contained, the Trustee Committee may in the name of the Association enforce the provisions of any rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel, as they may deem fit.

31.8. The Association may in General Meeting itself make any rules in regard to the matter and may also vary or modify any rule made by it or by the Trustee Committee from time to time.

31.9. All rules must be reasonable and must apply equally to all Owners of Erven put to substantially the same use.

32. CONSENT BY COUNCIL OF THE WINELANDS DISTRICT COUNCIL

This Constitution shall not be added to, amended or repealed in any way without the consent in writing of the Winelands District Council.