

# **Constitution of the Amoskuil Lifestyle Estate**

## **PORTION 3 OF THE FARM AMOSKUIL NR 997 MALMESBURY**

### **1. DEFINITIONS**

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

- 1.1 ASSOCIATION means THE HOME OWNERS' ASSOCIATION OF PORTION 3 Of THE FARM AMOSKUIL NR 997 Division Malmesbury, Province Western Cape, which is bound by the provisions of this Constitution.
- 1.2 MEMBERS means every registered owner of a portion of portion 3 of the farm Amoskuil nr 997, Division Malmesbury, Province Western Cape and their successors in title.
- 1.3 CHAIRMAN means the person appointed to head THE ASSOCIATION by THE COMMITTEE
- 1.4 COMMITTEE MEMBERS means all MEMBERS.
- 1.5 THE COMMITTEE means the controlling body of THE ASSOCIATION consisting of all four members.
- 1.6 THE PROPERTY means all 23 portions of portion 3 of the farm Amoskuil nr 997 zoned as Agricultural zone 3: Smallholdings
- 1.7 UNIT means one of the 23 portions subdivided.

1.8 ROAD means the communal road as indicated in Annexure "A", together with the verge thereof.

1.9 ACCESS GATE means the gate as indicated on Annexure "A", including the pedestrian gate, the cell phone controlled automation system or any replacement thereof together with the fencing on the sides of the gate.

## **2. RECORDAL**

2.1 It is hereby recorded that the developer who initially holds all memberships in the property, has decided to form an unincorporated ASSOCIATION with the sole purpose of managing certain aspects of ownership of a portion, and to create co-operation among members.

2.2 The ASSOCIATION shall have separate legal personality, be capable of suing and being sued in its own name and shall have perpetual succession.

## **3. COMMENCEMENT DATE**

The ASSOCIATION shall come into existence when this Constitution is ratified and accepted by the MEMBERS of the ASSOCIATION at the first General Meeting.

## **4. OBJECTS AND DUTIES OF THE ASSOCIATION**

The main objects of the ASSOCIATION are, without detracting from the generality of anything else contained herein:

- 4.1 To oversee, maintain and manage the security / electrified fence surrounding the 23 portions, the communal road as indicated on Annexure "A" together with an automated access gate at the entrance.
- 4.2 To co-ordinate and manage such activities, amenities, repairs and maintenance to the fence, the access gate and road as are common to the interests and benefit of the ASSOCIATION and its MEMBERS;
- 4.3 To protect the value of the properties by:
  - maintaining the rural nature of the property
  - Overseeing the land use parameters as described herein.
- 4.4 Ensuring that all development of the property shall enhance the overall value of the property together with the individual value of the independent portions or units.
- 4.5 Ensuring that all owners conduct their business in such a way as not to expose any other owner to any direct or indirect risk of any nature and to all times contribute to the overall physical security of the property as a whole.
- 4.6 Ensuring that all the conditions for subdivision of the property are adhered to by the members.
- 4.7 Ensuring that all members adhere to the use agreement as set out here under.
- 4.8 Generally to promote, advance and protect the ASSOCIATION and its MEMBERS.

## 5. USE AGREEMENT

### 5.1 Primary use

Agriculture

### 5.2 Consent uses:

Security and safety of the The Estate and its inhabitants are of the utmost importance and traffic in and out of The Estate will therefore be limited without exception.

Agricultural activities and research into fields of production, water exploration, pest and alien vegetation control etc. are encouraged.

Additional dwelling unit, outbuildings, businesses:

The following businesses /operations, amongst others, **will not** be allowed in the Estate, in addition to the above: Wedding venue; Butchery / slaughterhouse; Shebeen / liquor store; AirB& B / B & B / Guesthouse; Scrapyard or similar activities; Tourist attractions; any store / shop or business that attracts shoppers continuously.

### 5.3 The road:

5.3.1 The road shall be used for vehicular access and pedestrian access to the subdivided portions only by members and their invitees;

5.3.2 Members shall not park or permit the parking of any vehicles in the road, nor in any way obstruct or allow an obstruction in the road or at the access gate and shall not do anything which would damage the road or access gate.

5.3.3 Members shall maintain a speed of not more than 30 km/hour on the road;

5.3.4 The road is not a playing area and all children, animals and/or pets shall be kept off the road.

5.3.5 Access gates and boundary fences of portions 9-12 and portions 1, 2 and 21 may not obstruct free movements of vehicles turning at the bottom of the road.

5.3.6 Members will restore and/or repair the road after construction phase/s at their respective portions.

#### 5.4 Scrap:

No member shall permit unused motor vehicles and/or wrecks or scrap to remain on his subdivided section which are or may become visible from the road or neighboring property.

#### 5.5 Nuisance/Noise:

No member shall permit anything which constitutes a nuisance or an invasion of the rights, privacy and comfort of the other members or occupiers of other portions or cause any inconvenience to such members or occupants and no type of business other than what is permitted under 5.2 and 5.3. Shall be conducted if such other businesses creates a noise, nuisance or invasion of privacy for neighboring members.

## 5.6 Dumping

No member shall permit his portion or part thereof to become a dumping ground for any kind of rubble or other material and/or equipment and all members shall ensure that any dumping be kept out of sight of the road and neighboring properties.

## 5.7 Garbage:

Under no circumstances may refuse or waste that is visible to the neighboring members remain in his portion or elsewhere on the property. Each owner shall ensure that his premises and surrounds are kept in a clean and tidy condition at all times.

## 5.8 Pets and Animals:

Where pets and other animals are kept, proper retaining fences must be erected before such animals are acquired or before they are brought onto the section. It is an essential principle of fencing that each owner/member shall erect proper fencing which will keep animals in their own portion and members shall ensure that no dogs wonder around unsupervised.

5.9 The number of non-domesticated animals or agricultural animals are limited to prevent nuisance, trampling and rehabilitation / deterioration of the land. Each erf, per hectare, is limited to keep a maximum of amount of animals equal to 10 units. The animals corresponding unit value is as follows:

- Horse = 2.5 units
- Cow = 5 units
- Sheep = 1 units

- 5.9.1 A 2-hectare erf is entitled to keep 20 units, i.e. 8 horses only or 4 cows only or 20 sheep. The units may not exceed 20 units on a 2-hectare erf. Members will be limited to keep 30 free-range chickens with 1 rooster.

#### 5.10 Pigs:

Because of the high risk of contaminating well-points, wells and other underground water sources, it is agreed that NO PIG FARMING will be allowed.

#### 5.11 Boundary fences:

Each member is required to ensure that his section is appropriately, securely and sufficiently fenced. Fences must be built from Veldspan, Bonnox, Betafence, Topfence or similar.

Built walls are permissible between neighbors, at the roadside boundary or where security is required.

This type of wall is limited to a maximum of 50% of the total boundary/perimeter in order to retain the open feel of the Estate as much as possible.

#### 5.12 WATER TANKS / NURSERIES OR TUNNELS

Tunnels / greenhouses must be neat at all times.

5.12.1 The shade netting colours must blend in with existing colour schemes, namely green, black, white, rust brown and grey.

5.12.2 Tunnels and/or Greenhouses may not cover more than 20% of the Erf's surfacearea.

5.12.3 JoJo tanks and zinc reservoirs are allowed on the Erfs and there is no particular colour restriction. The only requirement is that the tanks do not detract from the value / appearance of the area.

## **6 LABOURERS**

6.1 No worker's quarter or dwellings are permitted on the Estate.

6.2 Labourers will be collected at the main gate and dropped at the main gate after the day's work.

6.3 It is a further condition that the labourers will not stay in on the property.



## 7 CONSTRUCTION

7.1 All members shall strictly adhere to every legal limitations regulating the building of any structures whether by municipal laws, rules and regulations or by this constitution.

### 7.2 Architectural Guidelines

Architectural guidelines will be provided by the architect appointed by the developer. There will be no specific conforming styles other than the banning of unconventional building materials.

7.2.1 No construction shall be closer than 20 meters from any boundary fence.

7.2.2 The general provisions relating to earth walls, retaining structures, support structures and similar constructions shall apply.

7.3 No tent, shed, shack, trailer, caravan, or other structure of a temporary nature, may be utilized as accommodation or shall be placed upon the property other than during the construction phase of a building.

- 7.3.1 Such temporary structure shall only be erected after any building plans have been approved;
- 7.3.2 Such structure/s is/are actually used by contractors while building and shall be removed as soon as the building work is completed or on expiry of six months, whichever comes first.
- 7.3.3 Such structure/s will be equipped with proper private hygienic toilet and shower facilities, sufficient to accommodate all workers;
- 7.3.4 The structure may be a caravan or proper and neat wooden structure and shall be limited to accommodation for a maximum of six people.

## **8 SUB-DIVISION**

- 8.1 Sub-division can only take place with the consent of all the members, which consent will not be withheld unreasonably.
- 8.2 The following requirements will prevail:
- 8.2.1 There will be no new portions created other than the 23 originally planned.
- 8.2.2 If an existing portion is subdivided, the minimum size of any unit will be no less than 1 ha in extent.

## **9 SIGNAGE**

All MEMBERS shall be allowed only one professionally made A3 signboard at the entrance gate, all to be similar and another sign board at his gate, limited to 1(one) square meter.

## **10 MEMBERSHIP**

The ASSOCIATION shall have as its MEMBERS:

- 10.1 Every natural person who is the registered owner of a portion of portion 3 of the farm Amoskuil nr 997, Division Malmesbury, Province Western Cape and their successors in title.
- 10.2 Every natural person who is a member or shareholder of a legal entity that is the registered owner of a portion of portion 3 of the farm Amoskuil nr 997 (but shall constitute one MEMBER for the purposes of this constitution and such legal entity shall be considered to have one membership);
- 10.3 Pending registration of the individual portions into the name of purchasers, it is considered that all portions are registered separately in the name of Desert Star Trading 281 (Pty) Ltd and the company shall have one vote for every portion.
- 10.4 When a MEMBER ceases to be a registered owner of a portion, he/she shall ipso facto cease to be a MEMBER of the ASSOCIATION.

## **11 MEMBER'S OBLIGATIONS**

Every MEMBER is obliged to comply with:

- 11.1 the provisions of the use agreement and this Constitution;
- 11.2 any agreement concluded by the ASSOCIATION insofar as such agreement may directly or indirectly impose obligations on a MEMBER;
- 11.3 Any directive given by the ASSOCIATION in enforcing the provisions of this Constitution.
- 11.4 The rights and obligations of a MEMBER shall not be transferable and every MEMBER shall:
  - 11.4.1 to the best of his ability further the objects and interests of the ASSOCIATION;
  - 11.4.2 Observe all directives made or given by THE COMMITTEE.

## **12 BREACH**

- 12.1 A member shall be in breach in any instance in which he does not adhere to the terms and conditions herein provided
- 12.2 THE COMMITTEE shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which he may have, to institute legal proceedings against any member who is in breach.
- 12.3 Should the Committee institute any legal action against any member pursuant to a

Breach by the member, then the Committee shall be entitled to recover from such member all costs, inclusive of legal costs on an attorney and client scale, tracing fees and collection commission should any amount have to be collected, together with interest at 10% p.a.

### **13 EXPENDITURE**

The MEMBERS shall be jointly liable for expenditure incurred in connection with the ASSOCIATION as more fully referred to herein.

### **14 TRANSFER**

A MEMBER shall not be entitled to sell or transfer his portion unless it is a condition of the sale and transfer that:

- 14.1 The transferee becomes a MEMBER of the ASSOCIATION upon registration of such transfer;
- 14.2 He obtains the prior written consent of the Committee which consent shall not be withheld provided the transferee agrees in writing to comply with this Constitution;
- 14.3 All levies (if any) or any other money due are fully paid and a requisite clearance certificate is obtained from the CHAIRMAN or such person duly authorized thereto prior to any such transfer.

## 15 PROCEEDINGS OF MEETINGS OF THE COMMITTEE

- 15.1 Meetings shall be convened on 7 (seven) days written notice, and it is recorded that any written notice given to any member in terms of this constitution may be given by Email, or registered mail.
- 15.2 Such written notice convening a meeting of THE COMMITTEE shall contain an agenda and details of any motion/resolution to be proposed.
- 15.3 Meetings of THE COMMITTEE shall be held as determined by THE COMMITTEE from time to time, save that the CHAIRMAN always has the right to convene meetings.
- 15.4 A COMMITTEE MEMBER may, provided he has support in writing of one other COMMITTEE MEMBER, at any time convene a meeting of THE COMMITTEE by giving to the other COMMITTEE MEMBERS not less than seven days' written notice as aforementioned of a meeting proposed by him which notice shall specify the reason for calling such a meeting.
- 15.5 At a meeting of THE COMMITTEE, not less than two COMMITTEE MEMBERS shall constitute a quorum provided that one such committee member is the Chairman. If not, no less than three shall constitute a quorum.
- 15.6 If within half a hour from the time appointed for the holding of a meeting, a quorum is not present, the meeting shall stand adjourned to the same time and place on the following day provided such day is not a Saturday, Sunday or proclaimed public holiday in which event the meeting shall proceed on the immediately following day, and if at such adjourned meeting the prescribed quorum is not present, the

COMMITTEE MEMBERS present shall constitute a quorum.

- 15.7 No motions/resolutions of THE COMMITTEE shall be valid unless by the unanimous vote of the COMMITTEE MEMBERS present and voting at a duly constituted meeting of THE COMMITTEE of which meeting due notice has been given; or with the written consent of all COMMITTEE MEMBERS.

## **16 OFFICE OF COMMITTEE MEMBERS**

- 16.1 The COMMITTEE MEMBERS shall elect a CHAIRMAN from among themselves, who shall preside at all meetings of THE COMMITTEE, save as otherwise provided in this Constitution, and who shall hold office as such until the next general meeting; provided that the office of the CHAIRMAN shall ipso facto be vacated by the COMMITTEE MEMBER holding such office upon his ceasing to be a COMMITTEE MEMBER for any reason, and in such event the remaining COMMITTEE MEMBERS shall elect another CHAIRMAN.

- 16.2 If the CHAIRMAN vacates the chair during the course of a meeting or is not present or is for any other reason unable to preside at any meeting, the COMMITTEE MEMBERS present at such meeting shall choose another CHAIRMAN for such meeting.

- 16.3 If any CHAIRMAN elected in terms hereof vacates his office as CHAIRMAN or no longer continues in office for any reason, the COMMITTEE MEMBERS shall elect another CHAIRMAN who shall hold office as such for the remainder of the

period of office of the first-mentioned CHAIRMAN.

- 16.4 A COMMITTEE MEMBER shall be disqualified from voting in respect of any contract or proposed contract, or any litigation or proposed litigation, with the ASSOCIATION, by virtue of any interest he may have therein.
- 16.5 No contract concluded on behalf of THE COMMITTEE shall be valid and binding unless it is signed by the CHAIRMAN and 1 (One) COMMITTEE MEMBER.
- 16.6 COMMITTEE MEMBERS shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as COMMITTEE MEMBERS and/or CHAIRMAN, as the case may be, but shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.

## **17 FUNCTIONS, POWERS AND DUTIES OF THE COMMITTEE**

- 17.1 Subject to the express provisions of this Constitution and the limits set by MEMBERS (at meetings), THE COMMITTEE shall manage and control the business and affairs of the ASSOCIATION, shall have full powers in management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all powers on behalf of the ASSOCIATION, and do all acts for and on behalf of the ASSOCIATION.
- 17.2 THE COMMITTEE shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.



## 18 LEVIES

- 18.1 THE COMMITTEE shall be entitled to establish and maintain for administrative expenses a fund for the purpose of meeting all expenses of the ASSOCIATION or to which THE COMMITTEE reasonably anticipates for maintenance, repair, improvement and management of the road. A bank account shall be opened in the name of the ASSOCIATION for this purpose, alternatively all levies shall be paid into a Trust Account of a firm of attorneys who shall make all payments on behalf of the Committee, alternatively the Committee may decide to utilize any of the members own bank accounts to save unnecessary bank charges.
- 18.2 THE COMMITTEE shall require MEMBERS, as below, to make contributions to such fund for the purposes of satisfying the expenses.
- 18.3 Every MEMBER shall pay a monthly levy as determined by THE COMMITTEE, alternatively THE COMMITTEE shall cover all expenses by declaring a special levy from time to time to cover the expenses. Initially there will be a monthly levy of R 380, 00 (three hundred and eighty rand) to be paid on the first day of each month into the account of which the particulars will be provided.
- 18.4 Any MEMBER who runs a business from his property with consent, other than farming, which results in additional traffic on the road, may be charged increased levies as determined by THE COMMITTEE.

## 19 BREACH

19.1 The ASSOCIATION has full legal capacity to require and enforce due and timeous payment of all levies unpaid in terms hereof. THE COMMITTEE may on behalf of and in the name of the ASSOCIATION institute legal proceedings for the recovery of all unpaid levies and the defaulter shall be liable for and pay all legal costs including costs as between attorney and own client, collection commission, expenses and charges incurred by the ASSOCIATION in obtaining the recovery of the levies in arrears under full disclosure to all members.

19.2 If any MEMBER fails in the observance of any of the provisions of this Constitution or fails to comply with any decisions made in terms hereof, THE COMMITTEE may on behalf and in the name of the ASSOCIATION:

19.2.1 serve notice on such MEMBER calling upon him to remedy such breach within five days of dispatch of such notice and failing timeous compliance.

19.2.2 institute proceedings in any Court of competent jurisdiction including any Magistrate's Court for such relief as THE COMMITTEE may consider necessary.

19.2.3 And such MEMBER shall be liable for and shall pay all legal costs on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief.

19.2.4 THE COMMITTEE may charge an administration fee which is recoverable from a MEMBER, to cover the cost of serving a notice to a MEMBER who is in arrears with their levy payment without having made prior arrangements with THE COMMITTEE.

19.2.5 Nothing in the a foregoing shall derogate from or in any way diminish the right of the ASSOCIATION to institute proceedings in any Court of competent jurisdiction including any Magistrate's Court for recovery of any money due by any MEMBER arising from any cause of action whatsoever.

## **20. CESSATION OF MEMBERSHIP**

A former MEMBER shall have no claim upon or interest in the funds or other property of the ASSOCIATION, excluding any advanced payments of any levies or other expenses that was

made by him. This clause shall be without prejudice to the rights of the ASSOCIATION to claim any arrears or subscriptions or other sums due by such former MEMBER to the

ASSOCIATION at the time of his ceasing to be a MEMBER, or in respect of any other obligations due by him to the ASSOCIATION.

## **21. OTHER PROFESSIONAL OFFICERS**

Save as specifically otherwise provided in this Constitution, THE COMMITTEE shall at all times have the right to engage, on behalf of the ASSOCIATION, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers and/or any other persons, whatsoever, whether a member of a profession or not, for any reason considered necessary by THE COMMITTEE in its discretion and on such terms as THE COMMITTEE may decide, subject to the discussion and approval by AGM or other general meeting.

## **22. FINANCIAL YEAR END**

The financial year end of the ASSOCIATION is the last day of February of each year.

**23. ACCOUNTS**

THE COMMITTEE shall maintain financial records if operations and/or fixed levies come into effect, to be kept so as fairly to explain and record the transactions and financial position of the ASSOCIATION.

**24. DOMICILIUM CITANDI ET EXECUTANDI**

THE COMMITTEE shall from time to time determine the address constituting the domicilium citandi et executandi of the ASSOCIATION, which, for the time being, shall be the following address:

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**25. VOTING**

- 25.1 Each Member shall have 1 (one) vote per portion / unit owned by him at any meeting of the Association;
- 25.2 Voting shall be by show of hands, unless a poll is requested;
- 25.3 In the case of an equality of votes, the chairperson shall be entitled to a casting vote in addition to their deliberate vote;
- 25.4 A member will not be entitled to a vote if any contributions due are not duly paid before the meeting.

## **26. PROXIES**

A proxies to vote at any meeting shall be allowed and shall be in writing and it is specifically recorded that a proxy may also be given via fax or e-mail.

## **27. AMENDMENTS TO THE CONSTITUTION**

This Constitution may only be amended by a special resolution of MEMBERS, being 75% of MEMBERS, at a general meeting of MEMBERS at which 75% of MEMBERS are present in person or by proxy.

## **28. INDEMNITY**

THE MEMBERS and any guest(s) / visitor(s) associated with him / her shall indemnify and hold harmless the ASSOCIATION and the CHAIRPERSON against any loss, theft, injury or death occurring in or around Portion 58 of the farm DRIEFONTEIN, and neither the ASSOCIATION nor the CHAIRPERSON shall be responsible, to any degree, for any damage caused to any motor-vehicle on the ROAD(s) in or around portion 58 of the farm DRIEFONTEIN, whether the ROAD(s) has / Have been

Properly maintained or not

**ACCEPTANCE OF THE CONSTITUTION BY PURCHASER**

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

\_\_\_\_\_  
PURCHASER

Chosen E-mail address at which all notices in terms hereof will be accepted: \_\_\_\_\_