

**DE ZALZE WINELANDS GOLF ESTATE SPECIAL MANAGEMENT AREA**

**TRUST DEED**

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**Hofmeyr**

**Hofmeyr Herbststein & Gihwala Inc**

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# DE ZALZE WINELANDS GOLF ESTATE SPECIAL MANAGEMENT AREA TRUST DEED

## 1 INTERPRETATION

- 1.1 In this trust deed, unless inconsistent with or otherwise indicated by the context –
- 1.1.1 “**the Act**” means the Income Tax Act, No. 58 of 1962 as amended from time to time and includes any replacement legislation;
- 1.1.2 “**the Association**” means De Zalze Winelands Golf Estate Home Owners Association (Association incorporated under Section 21);
- 1.1.3 “**the auditors**” means the auditors of the trust from time to time;
- 1.1.4 “**the assets**” means all assets and investments at any time hereafter ceded or transferred to and accepted by the trustees by way of addition to the initial contribution, whether by the donor or by the other person and either *inter vivos* or by last will and testament;
- 1.1.5 “**the biosphere**” means the proposed Boland biosphere reserve incorporating most of the Hottentots Holland and Drakenstein Mountains and the surrounding environs;
- 1.1.6 “**the Commissioner**” means the Commissioner for the South African Revenue Services as provided for in the Act;
- 1.1.7 “**connected person in relation to a person**” means any relative of that person and “relative” in relation to any person means the spouse of such person or anybody related to him or his spouse within the third degree of consanguinity, or any spouse of anybody so related;

- 1.1.8            **“De Zalze Development”** means De Zalze Development (Proprietary) Limited, registration number 1997/005538/07, a private company duly incorporated in accordance with the laws of the Republic of South Africa, represented herein by Kobus Basson, he having been duly authorised thereto;
- 1.1.9            **“the donor”** means De Zalze Development;
- 1.1.10          **“EMS”** means the environmental management system for the De Zalze Golf and Agricultural Estate prepared during April 2002 that is based on ISO14001 standards and which has been approved by the local authority;
- 1.1.11          **“the estate”** means the golf and residential estate known as De Zalze Winelands Golf Estate established by De Zalze Development, which falls within the biosphere;
- 1.1.12          **“the initial contribution”** means the amount of R100.00 (one hundred rand) to be contributed by the donor and to be applied by the trustees in accordance with the provisions of this trust deed;
- 1.1.13          **“local authority”** means the local authority having jurisdiction over the estate, meaning a municipality or any other statutory local authority;
- 1.1.14          **“the trust”** means the De Zalze Winelands Golf Estate Special Management Area Trust established in terms of this trust deed;
- 1.1.15          **“the/this trust deed”** means the trust deed recorded in this document and includes all appendices, if any;
- 1.1.16          **“trust fund”** means the aggregate of all the assets from time to time administered by the trustees in terms of the provisions of this trust deed, including, but not limited to, the initial contribution and all income from time to time earned by the trustees on assets forming part of the trust fund;

- 1.1.17 “**the trustees**” means the trustees appointed in terms of this trust deed and includes the following initial trustees –
- 1.1.17.1 Richard Roderick Jeremy Wakeford;
- 1.1.17.2 Jakobus Wilhelm Basson; and
- 1.1.17.3 Petrus Gideon Carstens;
- 1.1.18 “**the Trust Property Control Act**” means the Trust Property Control Act, No. 57 of 1988 as amended from time to time;
- 1.1.19 any reference to the singular includes the plural and *vice versa*;
- 1.1.20 any reference to natural persons includes legal persons and *vice versa*;
- 1.1.21 any reference to gender includes the other genders.
- 1.2 The clause headings in this trust deed have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.3 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the trust deed, notwithstanding that it is only contained in the interpretation clause.
- 1.5 If any period is referred to in this trust deed by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the day shall be the next succeeding business day.

- 1.6 This trust deed shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

## 2 RECORDAL

- 2.1 The donor is desirous of establishing a trust for the purposes and subject to the conditions set out in this trust deed.
- 2.2 The initial trustees have agreed to accept office as such.

## 3 CONSTITUTION OF THE TRUST AND FURTHER DONATION

- 3.1 The donor hereby irrevocably donates to the trust the initial contribution, which donation is accepted by the trustees for purposes of the formation of the trust for the purposes recorded in this trust deed.
- 3.2 Subject to the trust obtaining exemption from tax in terms of section 10(1)(cN) of the Act, the donor hereby irrevocably donates to the trust an erf or erven within the estate but at the discretion of the donor (**“the immovable property”**) to the value of R 1 000 000.00 (one million rand).
- 3.3 The auditors shall determine the value of the immovable property on the date on which the donation takes effect, which is the date of fulfilment of the condition set out in 3.2.
- 3.4 The immovable property will be transferred by the donor to the trust after fulfilment of the condition set out in 3.2 and as soon as practically possible after such erf or erven is/are capable of separate title in the Deeds Office.
- 3.5 If the condition set out in 3.2 above is not fulfilled within a period of 3 (three) years from the date of signature of this trust deed, or such further period as the trustees and the local authority may agree to, the donor undertakes to donate to the trust, in the discretion of the donor either:
- 3.5.1 a cash amount of R1 000 000.00 (one million rand); or

- 3.5.2 the immovable property; or
- 3.5.3 any other property or right with a market value of R1 000 000.00 (one million rand), to be determined by the auditors on the date of this donation becoming unconditional.
- 3.6 As security for the conditional obligations of the donor as contemplated in 3.2 and 3.5, the donor undertakes to register a covering mortgage bond in favour of the trust over an erf or erven within the estate, subject to the following provisions –
- 3.6.1 the particular erf or erven shall be at the discretion of the donor provided that its or their market value shall not be less than R1 000 000.00 (one million rand);
- 3.6.2 the covering mortgage bond shall be registered at the cost of the donor as soon as practically possible after such erf or erven is or are capable of separate title in the Deeds Office;
- 3.6.3 the donor shall be entitled, with the prior written consent of the local authority, to substitute the security contemplated herein by simultaneously cancelling the covering mortgage bond over a certain erf and registering a new covering mortgage bond over another erf, provided that the market value of such erf is not less than the outstanding obligation to the trust at the time.
- 3.7 The initial contribution shall be capable of being added to and increased from time to time by the donor and any person, trust, company or close corporation in the form of further donations or bequests.
- 3.8 It is recorded that the Association shall annually pay to the trust an amount equal to 5% (five percent) of the total levies collected by the Association for the preceding year.
- 3.9 Upon the donor ceding or transferring any assets, investments or other property to the trust, it shall be excluded from any right, title and interest

herein and the control thereof and all right, title and interest therein shall vest in the trustees in their fiduciary capacities.

3.10 The trust shall open and operate a bank account in its own name and all amounts so donated in terms of 3.1 and 3.2 or 3.5 above, shall be deposited therein.

3.11 The trust shall be a public benefit organisation as defined in the Act and have the capacity and be entitled –

3.11.1 to sue and be sued and perform all legal acts in its own name;

3.11.2 to hold and, to the extent permitted by law, to register all its assets in its own name.

3.12 The trust fund shall be used exclusively in the furtherance of the trust's objects as contemplated in 5.

#### **4 NAME OF THE TRUST**

4.1 The name of the trust shall be **“The De Zalze Winelands Golf Estate Special Management Area Trust”**.

4.2 The trustees may at any time change the name of the trust to such other name as the trustees may consider appropriate.

#### **5 OBJECTS OF THE TRUST**

5.1 The primary object of the trust is the management of the conservation, rehabilitation and protection of the natural environment, including flora and fauna, within the estate by means of the establishment of a special management area (“**SMA**”) on the estate and to manage the SMA in accordance with the EMS.

5.2 In pursuance of its primary object, the trust shall have the following secondary objects, namely –



- 5.2.1 the rehabilitation of the Blaauwklippen River;
- 5.2.2 the rehabilitation of ecological corridors or areas, particularly the wetlands on the estate;
- 5.2.3 the systematic removal of alien vegetation in accordance with the provisions of the EMS;
- 5.2.4 the planting of rare endemic species that had previously occurred on the estate;
- 5.2.5 ensuring the implementation of the social development programmes contained in the EMS;
- 5.2.6 ensuring compliance with the EMS by all residents, home owners and visitors to the estate.

## **6 APPOINTMENT OF TRUSTEES**

- 6.1 The initial trustees, as listed in 1.1.17.1, 1.1.17.2 and 1.1.17.3, hereby accept their appointment as the first trustees of the trust and undertake to administer the trust upon the terms, conditions and stipulations of this trust deed.
- 6.2 The power of appointing new trustees shall vest in the trustees under a written instrument -
  - 6.2.1 to appoint any person as trustee to take the place of any trustee who dies, resigns or vacates his office for any reason;
  - 6.2.2 to assume such additional trustee or trustees as they may deem necessary or desirable;
  - 6.2.3 to change or vary any appointment or assumption so made before effect is given thereto;

provided that the local authority shall at all times have a right to appoint one of the trustees of the trust.

- 6.3 There shall at all times be not less than 3 (three) but not more than 4 (four) trustees, of which at least 3 (three) are not connected persons in relation to each other, to accept the fiduciary responsibility of the trust and no single person shall directly or indirectly control the decision making powers relating to the trust.
- 6.4 Should less than 3 (three) trustees remain due to the resignation or death of any trustees, the remaining trustees shall be authorised to exercise all such powers for the conservation and administration of the assets until such time as further trustees are appointed.
- 6.5 In the event of there being less than 3 (three) trustees in office, such trustees shall appoint such number of further trustees within 90 (ninety) days after the resignation or death of the other trustees as to constitute no less than 3 (three) trustees in total, failing of which the auditors may in their discretion act as trustee and appoint trustees of their choice; provided that in the event of the office of a trustee appointed by the local authority becoming vacant, the local authority shall be entitled to replace such trustee with a trustee of its choice.

## **7 POWERS OF THE TRUSTEES**

- 7.1 All the affairs of the trust shall be managed and controlled by the trustees, who shall have full power to carry out the objects of the trust and who shall hold the assets upon trust for the application of the income and/or capital thereof for the promotion of such objects.
- 7.2 In addition to the powers vested in them by law the trustees shall, subject to the provisions of 8, have the widest powers and without prejudice to the generality of the foregoing they may exercise the following powers in order to attain the objects for which the trust is established –

- 7.2.1 to receive from the donor the initial contribution and any further donations it may make and to solicit to receive donations, contributions and bequests from any source including trade and professional associations, companies, partnerships and individuals and to apply and use all such monies for the purposes set out in this trust deed;
- 7.2.2 to receive the annual contribution from the Association as contemplated in 3.8;
- 7.2.3 to retain and allow the assets or any part or parts thereof to remain in the present state of investment thereof for so long as they may think fit;
- 7.2.4 to invest or reinvest the proceeds of any assets or any monies of the trust in their hands from time to time;
- 7.2.5 to vary any investment made in terms of sub-clause 7.2.4 for other investments of a like nature;
- 7.2.6 to hold the whole or any part of the assets in the name of the trust or in the names of any other persons nominated by them for that purpose;
- 7.2.7 to exchange, sell, alienate, lease or otherwise deal with the assets, whether movable or immovable, whether corporeal or incorporeal and of whatsoever nature and wheresoever situate, as they in their sole and absolute discretion may deem fit, and in exercising any powers of sale, whether conferred in this sub-clause or otherwise, they shall be entitled to cause such sale to be effected by public auction or by private treaty and in such manner and on such terms and conditions as they in their sole and absolute discretion may deem fit and, in exercising any powers of lease, they shall be entitled to cause any property to be let at such rental, for such period and on such terms and conditions as they, in their sole and absolute discretion may deem fit with the proviso only if such

property is donated or bequeathed to the trust and is rent producing, that the property be let without jeopardising the exempt status of the trust;

- 7.2.8 to pay out the capital or, at their discretion, out of the income of the assets for any repairs, improvements or other works of whatsoever nature executed on any land included in the assets or on any buildings or other structures situated thereon;
- 7.2.9 to exercise all the voting powers attaching to any shares, debentures or other securities at any time forming part of the assets;
- 7.2.10 to compromise and settle for such consideration and upon such terms and conditions as they may deem advisable all matters arising in relation to the trust;
- 7.2.11 to consent to any reorganisation, arrangement or reconstruction of any company the securities of which form, from time to time, the whole or any part of the assets and to consent to any reduction of capital or other dealings with such securities as they may consider advantageous or desirable;
- 7.2.12 to surrender and deliver up any shares forming part of the assets for such consideration and upon such terms and conditions as they may approve to any company reducing its capital and to receive such consideration in the form of cash, securities or other assets as may be agreed upon between them and such company;
- 7.2.13 in their sole and absolute discretion, to borrow money for the purposes hereof at such time or times, at such rate of interest or other consideration for any such loan and upon such terms and conditions as they may deem desirable. Such borrowings may be made from any suitable person or persons and, should they consider it advisable so to do, the trustees may secure the payment of any such loan by pledging or mortgaging the assets or any part

thereof or by any other security device. Any such loan or loans may be extended, renewed or repaid from time to time as the trustees may deem to be in the best interests of the trust;

- 7.2.14 to pay out of the income or, at their discretion, out of the capital of the assets all rates, taxes, estate duties and other impositions lawfully levied or imposed on the assets or income of the assets or any part thereof or which may be imposed on trustees in respect of matters arising out of the trust;
- 7.2.15 to determine whether any sums received or disbursed are on account of capital or income, or partly on account of one and partly on account of the other, and in what proportions;
- 7.2.16 to employ accountants, attorneys, agents, brokers, or such professional or other assistants as they may consider necessary to transact all or any business of whatsoever nature required to be done pursuant to this trust deed and to pay all such fees, charges and expenses so incurred as a first charge, and they shall not be responsible for the default of such accountants, attorneys, agents, brokers, professional or other assistants or for any loss occasioned by such employment;
- 7.2.17 to determine all questions and matters of doubt which may arise in the course of their management, administration, realisation, liquidation, partition or winding up of the assets;
- 7.2.18 to open and operate a banking account for the trust;
- 7.2.19 to reimburse themselves and pay and discharge out of any income accruing from the assets, all expenses which may be incurred by them in or about the execution of the trust and the powers conferred upon them by this trust deed;
- 7.2.20 to have any secretarial services which they consider necessary for the administration of the trust carried out at the expense of the trust;

- 7.2.21 to pay out of the capital or income of the assets all expenses (including legal fees) incurred in the formation of the trust;
- 7.2.22 to enter into indemnities, guarantees or suretyships of every description (either gratuitously or for a consideration) which they in their sole and absolute discretion may deem fit;
- 7.2.23 to institute or defend legal proceedings;
- 7.2.24 with regard to any immovable property or mortgage bond at any time forming part of the assets, to execute any act or deed relating to alienation, partition, exchange, transfer, mortgage, hypothecation or otherwise, in any deed registry, mining titles office or other public office dealing with servitudes, usufructs, limited interests or otherwise, and to make any applications, grant any consents, and agree to any amendments, variations, cancellations, cessions, releases, reductions, substitutions or otherwise generally relating to any deed, bond or document for any purpose and generally to do or cause to be done any act whatsoever in any such office;
- 7.2.25 generally, to perform all acts of alienation, hypothecation and other acts of ownership over the assets to the same extent and with the same effect as the donor might have done if this trust had not been created;
- 7.2.26 to make secured or unsecured loans to further the objects of the trust;
- 7.2.27 to generally do all such other things as may be expedient to further the objects of the trust, or which are incidental or conducive to the attainment of the objects.

## **8 SPECIAL PROVISIONS**

- 8.1 It is envisaged that the trustees shall apply for exemption from Income Tax and related taxes in terms of the Act and classification in terms of

Section 18A of the said Act or such other exemption or classification as the Commissioner may allow. In order to qualify for tax exemption the trustees shall, notwithstanding any provision to the contrary in this trust deed, at all times comply with the provisions of this 8.

8.2 The income and property of the trust howsoever derived shall be applied solely towards the promotion of its main object or be invested and no portion thereof shall be paid or transferred, directly or indirectly, to any person (otherwise than in the course of undertaking its public benefit activities as set out in clause 5), provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any trustee or employee of the trust in return of any services actually rendered to the trust.

8.3 Funds available for investment may only be invested –

8.3.1 with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No.97 of 1990);

8.3.2 in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985); or

8.3.3 in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations,

provided that the provisions of this clause shall not prohibit the trustees from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance.

8.4 The trust shall not carry on any business undertaking or trading activity otherwise than to the extent that–

- 8.4.1 the gross income derived from such business undertaking or trading activity does not exceed the greater of –
  - 8.4.1.1 15% (fifteen percent) of the gross receipts of the trust; or
  - 8.4.1.2 R25 000.00 (twenty five thousand rand)  
per year of assessment;
- 8.4.2 the undertaking or activity is –
  - 8.4.2.1 integral and directly related to the sole object of the trust; and
  - 8.4.2.2 carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost and which would not result in unfair competition in relation to taxable entities;
- 8.4.3 the undertaking or activity, if not integral and directly related to the sole object of the trust, is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or
- 8.4.4 the undertaking or activity is for purposes of income tax exemption approved by the Minister of Finance by notice in the Government Gazette.
- 8.5 The trustees are prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Act, provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in



relation to such donor to derive some direct or indirect benefit from the application of such donation.

- 8.6 The trustees shall submit copies of any amendments to its trust deed to the Commissioner and to the Director: Non-profit Organisations.
- 8.7 The trust shall not knowingly be a party to or permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other act administered by the Commissioner.
- 8.8 The trustees will not pay any remuneration, as defined in the Fourth Schedule of the Act, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and will not economically benefit any person in a manner which is not consistent with the trust's objects.
- 8.9 The trust shall comply with such reporting requirements as may be determined by the Commissioner.
- 8.10 The trust shall register in terms of section 13(5) of the Non-profit Organizations Act, 1997 (Act No. 71 of 1997), and comply with any other requirements imposed in terms of that Act.
- 8.11 The trust will not use its resources directly or indirectly to support, advance or oppose any political party.
- 8.12 All financial transactions of the trust shall be conducted by means of a banking account.
- 8.13 Any books of account, records or other documents relating to the trust must, regardless of whether such documents are kept in book form or

not, be retained and carefully preserved by the trustees for a period of five years after the date of the last entry in any book or document.

## **9 OBLIGATIONS OF THE TRUSTEES**

- 9.1 The trustees shall –
- 9.1.1 ensure that the assets are at all times identified as the property of the trust and kept separate from any of the trustees' own assets whether of a similar nature or not;
  - 9.1.2 maintain proper accounting and other records of all transactions concluded by them in their capacities as such;
  - 9.1.3 procure that the books and records of the trust shall be written up regularly and that annual financial statements be drawn annually in accordance with generally accepted accounting practice by the auditors;
  - 9.1.4 annually submit a copy of the trust's annual financial statements to the local authority;
  - 9.1.5 from time to time determine the date on which the financial year end of the trust will end. Until otherwise determined, the financial year end of the trust will end on the last day of February each year;
  - 9.1.6 from time to time furnish the Master of the High Court with such information regarding the affairs of the trust as the Master of the High Court may legally require;
  - 9.1.7 instruct the auditors to disclose such information regarding the affairs of the trust to the Master of the High Court as the Master may from time to time legally require;
  - 9.1.8 from time to time furnish the Director of Non-profit Organisations with such information regarding the affairs of the trust as the Director of Non-profit Organisations may legally require;

- 9.1.9 maintain proper minutes of all meetings of the trustees and all decisions from time to time taken by the trustees;
- 9.1.10 keep all books of account and financial records of the trust at such place as may be agreed upon by the trustees and ensure that same shall at all times be accessible to each of the trustees;
- 9.1.11 forthwith deposit all monies received on behalf of the trust in one or more banking accounts to be maintained by the trustees with such branch or branches of such bank or banks as they in their discretion may deem fit, and all payments to be made on behalf of the trust shall, if the trust has any such account, and, insofar as it is practical, be made by cheque drawn on such banking account or on one of such banking accounts. Any person may make deposits on behalf of the trust whilst at least 2 (two) duly authorised trustees must sign cheques and enter into agreements on behalf of the trust.

## **10 CESSATION OF OFFICE**

- 10.1 A trustee shall cease to be a trustee if –
  - 10.1.1 an application, if he is a natural person, for the sequestration of his estate is made, and if it is a company or close corporation an application for its liquidation is made, and a provisional or final order is obtained;
  - 10.1.2 he files an application for the surrender of his estate as insolvent;
  - 10.1.3 he enters into a general compromise with his creditors;
  - 10.1.4 he is placed under curatorship or is declared by a court of competent jurisdiction to be incapable of managing his own affairs;
  - 10.1.5 if the trustee who was appointed by the local authority ceases to be an employee, official or representative of the local authority;
  - 10.1.6 he resigns as a trustee, in the manner envisaged in 10.2 below.

- 10.2 Any trustee shall be entitled to resign from his office by giving of 1 (one) month's written notice to the remaining trustee(s), if any.

## **11 SECURITY**

No trustee appointed in terms of the provisions of this trust deed shall be required to furnish security to the Master of the High Court of South Africa or any other official in terms of the Trust Property Control Act or any other legislation which may now be or which may hereafter become of force and effect, the intent and purpose being that no person who shall at any time be a trustee under this deed shall be required to give any security whatsoever in connection with or arising out of his appointment as such.

## **12 REMUNERATION**

- 12.1 Any remuneration paid to the trustees shall be reasonable and commensurate with services rendered.
- 12.2 Any attorney, accountant or broker acting as a trustee under this trust deed shall be entitled for his own benefit, or for the benefit of any firm or company of which he may be a member, to charge normal fees for professional services rendered to the trust or in connection therewith in addition to his normal remuneration.
- 12.3 No donor, trustee and/or any of their relatives will receive any direct benefit from the assets or the income of the trust.

## **13 PROCEDURES**

Subject to the terms of this trust deed, the trustees shall, in administering the assets, adopt such procedures and take such administrative steps as they may from time to time consider necessary.

## 14 MEETINGS AND RESOLUTIONS

- 14.1 The trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit.
- 14.2 Any 2 (two) trustees shall be entitled at any time to summon a meeting of the trustees, provided that reasonable notice of such meeting is given to the trustees.
- 14.3 Any trustee shall, in writing, be entitled to appoint any other trustee to act and vote on his behalf at all or any specified meetings of the trustees.
- 14.4 The trustees shall hold meetings for purposes of achieving the objects of the trust and for conducting the business of the trust as they see fit, provided that the trustees shall be required to hold an annual general meeting by no later than 8 (eight) months after the trust's financial year end, at which meeting the annual financial statements of the trust shall be approved.
- 14.5 The trustees shall be entitled to select a venue from time to time where meetings are to be held.
- 14.6 A quorum for a meeting of the trustees shall be 51% (fifty one percent) of the trustees present in person or represented by proxy in terms of 14.3.
- 14.7 No proceedings at a meeting may take place unless a quorum is present at the commencement thereof and throughout the duration of the meeting.
- 14.8 Should a quorum not be present within 10 (ten) minutes after the time appointed for a meeting, or at any time during the course of the meeting, then –
- 14.8.1 the meeting shall be adjourned to a date to be determined by the chairman which shall be not earlier than 10 (ten) days and not later than 30 (thirty) days after the date of the meeting;

- 14.8.2 the trustees present in person or represented by proxy at that adjourned meeting shall constitute a quorum, and they shall be entitled to perform all such acts as may be performed at the adjourned meeting.
- 14.9 Notice of the adjourned meeting in terms of 14.8 shall be sent to every trustee and shall state that if a quorum is not present at the adjourned meeting, the trustees then present shall constitute a quorum.
- 14.10 In the event of any disagreement between the trustees at any time, the decision of the majority of those present or represented by proxy shall prevail and shall be of the same force and effect as if it were a unanimous decision of the trustees. In the event of an equality of votes, the chairman shall have a casting vote.
- 14.11 Minutes of the meetings of the trustees shall be kept in a minute book specifically provided for this purpose, and copies of all minutes shall be forwarded to the trustees.
- 14.12 The person appointed by the trustees for that purpose shall act as a chairman at every meeting, provided that if no such person is appointed, or if the chairman is absent or if the chairman fails to act as chairman, within 10 (ten) minutes after the time appointed for the meeting, the trustees may appoint another chairman for the meeting.

## **15 NOTICES AND DOMICILIA**

- 15.1 The trustees choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this trust deed at which addresses all processes and notices arising out of or in connection with this trust deed, may validly be served upon or delivered to the trustees.
- 15.2 For purposes of this trust deed the trustees' respective addresses shall be -

15.2.1 Richard Roderick Jeremy Wakeford at De Zalze Winelands Golf Estate, Stellenbosch;

facsimile Number : (021) 880-2709

15.2.2 Jakobus Wilhelm Basson at c/o The Farm Kleine Zalze, Strand Road (R44) Stellenbosch;

facsimile number (021) 880-0716;

15.2.3 Petrus Gideon Carstens at Stellenbosch Municipality, Town Hall, Plein Street, Stellenbosch;

facsimile number (021) 808-8651;

15.2.4 De Zalze Development at c/o The Farm Kleine Zalze, Strand Road (R44) Stellenbosch;

facsimile number (021) 880-0716,

or at such other address in the Republic of South Africa of which the trustee concerned may notify the others in writing provided that no street address mentioned in this sub-clause shall be changed to a post office box or *poste restante*.

15.3 Any notice given in terms of this trust deed shall be in writing and shall -

15.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

15.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8<sup>th</sup> (eighth) day following the date of such posting;

15.3.3 if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of dispatch,

unless the contrary is proved.

- 15.4 Notwithstanding anything to the contrary contained or implied in this trust deed, a written notice or communication actually received by one of the trustees from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

## 16 INDEMNITY

- 16.1 No trustee shall be answerable for or liable to make good any loss sustained by the trust save and except for such loss as may arise from or be caused by his own dishonesty. In particular, the trustees shall not be answerable for or liable to make good any loss sustained by the trust by reason of their advancing monies on loan without security or with inadequate security where such money has been loaned upon a businesslike basis. Furthermore, the trustees shall be indemnified by the trust against any loss or damages or claim of whatsoever nature which might arise against them or any of them out of the *bona fide* administration by them of the trust.
- 16.2 The trustees shall be indemnified out of the assets against all claims of whatsoever nature that may be made upon them arising out of the exercise or purported exercise of any of the powers hereby conferred upon them subject to the provisions of section 9 of the Trust Property Control Act.

## 17 PAYMENTS

- 17.1 Payments under this trust deed may be made by the trustees either by delivery of assets of the trust or in cash as they in their sole and absolute discretion shall determine.
- 17.2 The trustees shall determine the valuation of such assets delivered or to be delivered or transferred in pursuance of the objects of the trust.



## 18 DUTY TO DISCLOSE

No trustee shall be disqualified by his office from contracting with the trust nor shall any contract entered into by or on behalf of the trust in which any trustee shall be interested be declared null and void, nor shall any trustees so contracting be liable to account to the trust for any profit realised by any such contract by reason only of such trustee holding that office, provided that he shall have disclosed the nature of his interest on or before entering into the contract or provided such interest shall already have been known to his co-trustees.

## 19 AMENDMENTS OF TRUST DEED

The trustees may amend or revise this trust deed should they deem it necessary for whatever reason provided that 75% (seventy five percent) of the trustees shall agree in writing to the amendment of the trust's main objective. The indemnity referred to hereinbefore shall also be applicable *mutatis mutandis* in respect of any damages suffered as a result of the said revision or amendment. Any amendments to the trust deed as aforesaid will be submitted to the Commissioner and the Director: Non-profit Organisations for approval. Furthermore, any amendments to the trust deed affecting the local authority's original conditions of approval for the estate must be submitted to the local authority for approval.

## 20 TERMINATION OF TRUST

20.1 This trust may be terminated if –

20.1.1 the trustees are of the opinion that the object of the trust shall be better secured by the transfer of the assets to another organisation contemplated in 20.2, or if the trust is unable to meet its objectives; and

20.1.2 75% (seventy five percent) of the trustees agree thereto in writing,

provided that the trust shall not be terminated without the prior written approval of the local authority.

20.2 Upon its termination the assets of the trust remaining after the satisfaction of all its liabilities, shall be given or transferred to some other association or institution or associations or institutions having objects similar to the trust's main object, to be determined by the trustees at or before the time of its dissolution or, failing such determination, by the court, provided that such other association or institution shall be approved by the Commissioner as a public benefit organisation in terms of section 30 of the Act and therefore be exempt from income tax in terms of section 10(1)(cN) of the Act.

20.3 The trustees shall –

20.3.1 ensure that all the liabilities of the trust are settled forthwith;

20.3.2 publish notices in compliance with the requirements of section 34 of the Insolvency Act, No. 24 of 1936, as amended, or any replacement legislation; and

20.3.3 transfer the remaining assets of the trust to such other public benefit organisation contemplated in 20.2.

## 21 SIGNATURE

This trust deed is signed by the donor and the trustees on the dates and at the places indicated opposite their respective names.

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**De Zalze Development  
(Proprietary) Limited**  
(Duly authorised)

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Date:

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Place:

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**Richard Roderick Jeremy  
Wakeford**

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Date:

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Place:

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**Jakobus Wilhelm Basson**

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Date:

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Place:

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**Petrus Gideon Carstens**

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Date:

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Place: