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Contact number: 021 807 4832  
Reference: 15/4/1 (12264)W  
Date: 06 July 2021

Pam Golding Property Management Services  
PO Box 2398,  
Cape Town,  
8000

Email: [mrp@pamgolding.co.za](mailto:mrp@pamgolding.co.za)

Dear Mr. Morey,

**AMENDMENT OF THE DIEMERSFONTEIN HOMEOWNERS' ASSOCIATION CONSTITUTION  
(ESTABLISHED ON SUBDIVIDED ERVEN 11460, 12264, 13501 AND 13170 WELLINGTON)**

You are hereby informed that, approval from a local government perspective, was granted in terms of Section 60(2) of the Drakenstein By-Law on Municipal Land Use Planning, 2018, for the amendment of the Diemersfontein Home Owners Association Constitution, dated 4 November 2020 and attached as Annexure A.

Notification of the decision will be placed on the municipal website and any person, whose rights are affected by the decisions above, may appeal in writing in terms of Section 62(3) of the Municipal Systems Act, to the Appeal Authority as stipulated in terms of Section 79(2) of the Drakenstein By-law on Municipal Land Use Planning, 2018.

Regards,



**SENIOR MANAGER: PLANNING SERVICES**

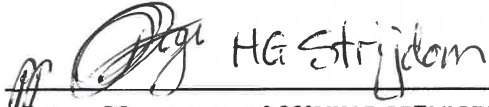
**DRAKENSTEIN MUNICIPALITY**

HOA Constitution – 04 November 2020

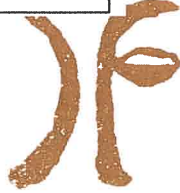
Approved in terms of Section 60 of the Drakenstein  
Municipal Land Use Planning By-Law, 2018.

Date: 06 July 2021

Ref: 15/4/1 (1542) W

 HG Strijdom

SENIOR MANAGER: PLANNING SERVICES



**DIEMERSFONTEIN**

**CONSTITUTION**

**DIEMERSFONTEIN WINE AND COUNTRY ESTATE**

**HOME OWNERS ASSOCIATION**

a body corporate established

in terms of Section 29 of the Land Use

Planning Ordinance, No 15 of 1985

Erf: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



## INTERPRETATION

1. In the interpretation of this constitution unless the context otherwise indicates:
  - 1.1 the following words and expressions shall have the following meanings:
    - 1.1.1 “the Association” means Diemersfontein Wine and Country Estate Home Owners Association;
    - 1.1.2 “chairman” means the chairman for the time being of the board of trustees appointed in terms of clause 42 below;
    - 1.1.3 “cluster development” means a cluster housing scheme or group housing development in the development area having a shared or common area for amenities;
    - 1.1.4 “common property” means a part of the development area belonging to the Association which is not subject to an exclusive right of use by a member;
    - 1.1.5 “comprehensive agreement” is the agreement between:

Diemersfontein Wine and Country Estate Home Owners Association; Diemersfontein Properties Proprietary Limited (Registration No. 1995/007143/07 ); Diemersfontein Village Proprietary Limited (Registration No. 2003/015169/07); Diemersfontein Development Trust (Registration No. IT 4061/2004); Diemersfontein Farm Proprietary Limited (Registration No. 1999/026232/07); Diemersfontein Wines Proprietary Limited (Registration No. 2002/000262 /07); Diemersfontein Country House Proprietary Limited (Registration No. 2002/ 008524 /07); Thokozani Winelands Investments Proprietary Limited (Registration No. 2005/026699/07) and Thokozani Winelands Properties (Registration Number: 2006/030946/07).
    - 1.1.6 "the consents" means the various consents and/or approvals given by relevant authorities relating to the rezoning and/or subdivision and/or layout of the estate as given by the Local Authorities from time to time relating to the rezoning and subdivision of the estate.



It is recorded that the documentation referred to above includes the following:

- 8.1 Estate Rules;
  - 8.2 Environmental Agreement and EMP for Housing Construction;
  - 8.3 Landscape Character and Design Controls;
  - 8.4 Architectural and Design Controls.
  - 8.5 Comprehensive Agreement
9. When a member ceases to be the registered owner of an erf or a unit, he shall *ipso facto* cease to be a member of the Association, save for the developer, who shall remain a member of the Association during the development period.
10. The registered owner of an erf or a unit shall not be entitled to resign as a member of the Association.
11. No member shall be entitled to sell or transfer an erf or a unit unless:
- 11.1 the transferee becomes a member of the Association;
  - 11.2 such member obtains the written consent of the Association which consent shall be given provided that:
    - 11.2.1 such member has paid to the Association all levies and any other amounts of whatsoever nature or howsoever arising, owing by such member to the Association;
    - 11.2.2 the member has complied, generally, with all of the obligations imposed by this constitution and, specifically, has complied with the provisions of clauses 98 and 99 of this constitution; and
    - 11.2.3 the transferee agrees in writing to be bound by the Constitution and Estate Rules of the Association, including, specifically the entrenched provisions contained in clause 28, and shall also be bound to comply with the provisions and requirements of all of the documentation referred to in 8 above.
  - 11.3 Such member pays to the Association against transfer of his erf or unit an amount equivalent to 1% of the sale price of the unit, excluding VAT. In the

case of a Trust owning the erf, a change in a Trustee shall not constitute a transfer unless it simultaneously transfers the benefit of the property to another, and the 1% levy shall be levied. If however, the beneficial interest in the Trust passes to another person or legal entity, other than by inheritance, it shall be regarded as a transfer.

- 11.4 The Association shall use all money collected pursuant to the provisions of clause 11.3 for the purpose of capital improvements to be brought about on the Estate and shall not use such monies to subsidise running expenses.

### **LEVIES**

12. The trustees may from time to time, impose levies upon the members for the purpose of meeting all the expenses in relation to the common property, facilities and services and for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and its affairs. In calculating the amount of the levies, the trustees shall take into account income (if any) earned by the Association.
13. The trustee committee shall estimate the amount which shall be required by the Association to meet the expenses during each financial year, together with such estimated deficiency (if any) as shall result from the preceding financial year, and shall impose a levy upon the members equal as near 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 payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such financial year.
14. The trustees shall not less than thirty (30) days prior to the end of each financial year give every member at the address chosen by him a written notice of the contribution payable by that member to such expenses and reserve fund.
15. In the event of the trustees for any reason whatsoever failing to prepare and timeously give notice of the estimate referred to clause 13 above, every member shall until served with such estimate, continue to pay the levy previously imposed and shall after such notice pay such levy as may be specified in the notice, in the manner specified in the notice referred to in clause 13 above, together with any arrear levies.



16. The trustees may from time to time impose special levies upon the members in respect of all such expenses as are mentioned in clause 12 above (which are not included in any estimate made in terms of clause 13) and such levies may be imposed in the sum or by such instalments and at such time or times as the trustees shall think fit.
17. In calculating the levy payable by each member, the trustees shall as far as reasonably practical:
  - 17.1 assign those expenses attributable to a particular erf or unit itself, to the registered owner thereof;
  - 17.2 assign those expenses attributable to a particular sectional title development to the registered owners of units in such development pro rata to their participation quota in terms of the particular sectional title scheme;
  - 17.3 assign those expenses attributable to a particular cluster development or group housing development to the registered owners of erven in such development equally;
  - 17.4 assign those expenses attributable to any other development node (including a single residential development node) to the registered owners of all erven in such development node equally;
  - 17.5 assign those expenses relating to the development area generally and/or any other expenses not assigned in accordance with clauses 17.1, 17.2, 17.3 or 17.4 above, to the owners of all erven or units equally provided only that the developer shall not be liable to pay in respect of unsold undeveloped erven more than twenty-five percent of a standard levy (but the whole of any special levies), provided, further, however, that the trustees may in any case where the trustees consider equitable to do so, assign to any member any greater or lesser share of such expenses as may be reasonable in the circumstances.
  - 17.6 If a special levy is proposed by the trustees, the Developer shall be liable to pay 100% of such levy for each unsold erf, with payment due on registration of transfer of each respective erf, unless that levy involves a leasing arrangement, in which case payments are due immediately.
  - 17.7 In the case of a special levy that requires CAPEX contributions, and where the DF Businesses do not immediately have such funds available, then the DF Businesses may defer their contributions for a maximum period of 6



months or until the Developer has sold sufficient erven to cover those contributions, whichever is the sooner.

- 17.8 The Trustees will determine the need for any CAPEX expenditure. However, unless agreed by the DF Businesses, they cannot commit the latter to any new expenditure greater than R100,000 in any one financial year based on values at the end of 2018, whether by special levy or CAPEX.
18. Any amount due by a member by way of a levy shall be a debt due by that member to the Association. The obligation of a member to pay a levy shall cease upon that member 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 by the Association upon that member ceasing to be a member. A member's successor in title to an erf or a unit shall be liable as from the date upon which he becomes a member pursuant to the transfer of that erf or unit into his name, to pay the levy attributable to that erf or unit.
19. Other than the right to use and occupy a member's erf or unit, no member shall be entitled to any of the privileges of membership of the Association unless and until he shall have paid every levy, subscription or other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
20. The trustees shall be empowered to impose fines in respect of non compliance with the provisions of this constitution and/or to charge interest on any arrear levies and to determine the rate of interest from time to time chargeable upon such arrear levies, which shall be in addition to such other rights as the Association may have in law against the members, provided that such interest shall not exceed the rate laid down in terms of the Usury Act, No 73 of 1968 or any statutory modification or re-enactment thereof.
21. The trustees may enter into an agreement or agreements with the developer for the provision of a capital sum and/or the transfer of land and/or equipment to the Association in lieu of levies.
22. Notwithstanding the provisions of clauses 109 to 119 of this constitution, should any dispute arise at any time between the members and the trustees in regard to the determination or calculation of the levies, the decision of the auditors for the time being of the Association (acting as experts and not as arbitrators) in regard to such dispute shall be final and binding on the members and the trustees.



23. In the event of any dispute arising in regard to the determination or calculation of any levy, every member shall until the determination of such dispute, pay the levies determined by the trustees.

### **RESPONSIBILITIES OF THE ASSOCIATION**

24. The Association shall:
- 24.1 Administer, supervise and manage land and/or communal facilities owned by it and shall co-ordinate the provision of services to such land and/or buildings;
  - 24.2 implement the Constitution and/or all of the documentation referred to in clauses 8 and 11.2.3 above;
  - 24.3 do all such other things as may be conducive to the attainment of the above objects;
  - 24.4 define an acceptable Code of Conduct in which community relations may be based and, if necessary, monitored and/or controlled;
  - 24.5 shall at all times promote environmental awareness and responsibility within the development area.
25. Management and maintenance of all facilities and private open space areas, owned by the Association, shall vest in the Association and the Council shall have no responsibility in this regard.
26. Portions of land which fall within the development area, but are not being developed or are not being sold or transferred in the then current development phase, shall remain the property of the developer. .
27. The Association shall be responsible to the Council in respect of the various facilities and private open spaces forming part of the development area should provisions of the approval of the development area not be complied with at any stage after such facilities and private open spaces have been transferred to the Association.





### ENTRENCHED PROVISIONS

28. The developer has a continuing and permanent interest to ensure that certain basic provisions are entrenched in perpetuity to ensure the success of the development of the development area. Accordingly none of the following provisions of clauses 28.1 to 28.9 (both inclusive) may be deleted or varied in any way in terms of clause 29, 120 or 122, without the prior written consent of the developer:
- 28.1 all members of the Association shall automatically be owner members in accordance with the provisions of this constitution from time to time;
- 28.2 the Association may register, where necessary, various service servitudes across the development area in favour of the local authority, the developer and/or the Association, whether in respect of any separate erven or the common property;
- 28.3 the developer has the right at any time to extend or alter the area or composition of the development area by requiring the Association to incorporate into the development area any part of the development area and/or any land adjacent to the estate from time to time which the developer shall be entitled to develop as it may deem fit or by requiring the Association to transfer to the developer any part of the development area which is not part of an erf or unit or on which no facilities or amenities are located.
- 28.4 Should any part of the estate be incorporated into the development area, the developer shall be entitled to require that the first and all subsequent owners thereof become members of the Association in respect of those parts from such date as the developer may determine, and on the same terms and conditions as are applicable to the other members of the Association. The members shall be bound by any such requirement of the developer;
- 28.5 no member shall be entitled to object to the subdivision and/or development of any part of the estate or in terms of later development of phases in the development area, provided such subdivision and/or development takes place in terms of the consents or any extension or modification thereof, and the developer shall be entitled to revive any lapsed consents or to proceed to develop at densities lower than that contemplated in the consents;



- 28.6 no erf or unit shall be subdivided or rezoned during the development period without the prior written consent of the developer or without the prior written consent of the Association after the termination of the development period;
- 28.6.1 Consolidation of erven owned by a member is not allowed. Levies have to be paid for each erf as purchased.
- 28.7 ownership of an erf or unit does not confer any right, including that of access, in respect of property owned by the developer, including any right or way or access across such property other than contained in the consents or regulated by a registered servitude;
- 28.8 the members acknowledge and agree that the developer, its successor/s in title and its employees have certain rights, including:
- 28.8.1 rights of access across property owned by members of the Association;
- 28.8.2 the right to develop other areas in the development area, and of the estate generally, in the future, and also the right to share various services with the Association and to connect any parts of any future development to the services in the development area.
- 28.9 The Developer shall, in addition to the rights afforded above, have the following rights when developing any part of the development area:
- 28.9.1 Rights of access of the developer, their servants, agents or contractors to all parts of the development area;
- 28.9.2 Rights to lay pipelines, make roads, erect buildings and generally to carry on all of the works associated with the completion of the proposed developments;
- 28.9.3 The right of the developer and/or their servants or agents to have access to all portions of the common property of the development for the purpose of showing the development and the erven as well as any dwellings erected thereon to prospective purchasers, of show houses on any part of the development area;

All members acknowledge that should the developer wish to develop a part of the development area that such development may entail noise and/or



other nuisance; the developer shall not be responsible for any loss, damage or inconvenience or nuisance which may be caused while the developer's building works are carried on.

### **ESTATE RULES**

29. 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, the trustees may from time to time make management and conduct rules, and vary or modify these rules, in regard to:
- 29.1 the standards and guidelines for the architectural design of all buildings and outbuildings, structures of any nature, swimming pools, tennis courts and all additions and alterations of any such buildings, outbuildings or structures erected or to be erected on a subdivided erf or unit owned by a member and situate within the development area, and in particular to control the design and colour of the exterior of such buildings, outbuildings or structures and the materials to be used on such exteriors to ensure an attractive and aesthetically pleasing character to all buildings within the development area;
  - 29.2 the siting of all such buildings, outbuildings, structures of any nature, swimming pools, tennis courts, and all additions and alterations to any thereof;
  - 29.3 the code of conduct applicable to all builders, contractors (including sub-contractors) and suppliers within the development area or any building, construction or any other work carried on within the development area;
  - 29.4 the various controls referred to in clause 8;
  - 29.5 the preservation of agricultural improvements including vineyards and other plantings, the natural environment vegetation and fauna within the development area 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 erven;
  - 29.6 the right to prohibit, restrict or control the keeping of any animal which they regard as dangerous or a nuisance or as inimical to the agricultural nature of the development area;



- 29.7 the conduct of any persons within the development area for the prevention of nuisance of any nature to any member;
  - 29.8 the use of services and recreation areas, amenities and facilities, including the right to charge a reasonable fee for the use thereof;
  - 29.9 the maintenance of all buildings, out buildings, structures, improvements of any nature and landscaping within the development area;
  - 29.10 the control of the number of occupiers or residents permitted on or in any one erf or unit;
  - 29.11 the admission of any person within the development area, and the eviction of any person not entitled to be thereon;
  - 29.12 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 interests of the members and/or the residents within the development area.
30. For the enforcement of any of the rules made by the trustees in terms of clause 29, or of any of the provisions of this constitution generally, the trustees may:
- 30.1 give notice to the member concerned requiring him to remedy such breach within such period as the trustees may determine; and/or
  - 30.2 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
  - 30.3 take such action including the imposition of a fine, or proceedings in court, as they may deem fit.
31. Should the trustees institute any legal proceedings against any member 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.



32. In the event of any breach of the rules by the members or any member's household or his guests or lessees, such breach shall be deemed to have been committed by the member, but without prejudice to the foregoing, the trustees may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
33. If any member disputes the fact that he has committed a breach of any of the provisions of the rules made by the trustees in terms of clause 29 or any provisions of this constitution, a committee of three (3) trustees appointed by the chairman 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 the chairman may direct.
- 34.
- 34.1 Notwithstanding anything to the contrary herein contained, the trustees 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.
- 34.2 In the event that a member persistently fails to comply with any and/or all of the provisions of any and/or all of the documentation referred to in 8 above in such a manner as to create a nuisance or in such a manner as to interfere with the remaining members' rights to peacefully use their properties and/or other facilities situate on the Estate, then The Trustees shall discuss such behaviour at a Trustees Meeting and, if they deem that the member's conduct constitutes a persistent offence, then the Trustees shall convene a General Meeting of Members. If at the called General Meeting 71% of those members present in person or represented by proxy resolve that the offending member's conduct constitutes a persistent offence the members may direct that the Trustees institute legal proceedings in the High Court, which proceedings shall be aimed at obtaining an Order authorising the Sheriff of the High Court to sell the offending member's erf or erven situate on the Estate by auction, on terms and conditions as may be directed by the Court; the net proceeds of the sale shall be paid to the offending member. The Trustees shall be able to seek such ancillary relief as may be required to give effect to implementation of this paragraph 34.2 and shall be entitled to seek punitive costs orders against the offending member.
35. The Association may in general meeting itself make any rules in regard to any matter and may also vary or modify any rule made by it or by the trustees from time to time



36. All rules shall be reasonable and shall apply equally to all owners of erven or units put to substantially the same use.

## **TRUSTEES**

37. The trustees of the Association shall be elected by the members, to carry out the affairs of the Association in the best interests of the members.
38. There shall be a minimum of five (5) trustees, and a maximum of seven (7).
39. In addition to that number, the owner of the Central Werf (erf 13182) shall be entitled, but not obliged to appoint a single trustee.
40. The first trustees shall on registration of the Association, and after due consultation with the members in regard to the appointment of the member trustees, be appointed in writing by the majority of the subscribers to this constitution.
41. A trustee shall be a natural person and shall not necessarily be a member of the Association. A trustee, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this constitution.
42. The elected trustees shall appoint one of their number to act as chairman and one to act as treasurer for such term as they think fit, but not for longer than such person's tenure as a trustee.

## **REMOVAL AND ROTATION OF TRUSTEES**

43. Save as set out in clause 44 below, each trustee shall continue to hold office as such from the date of appointment to office until the next annual general meeting.
44. A trustee shall be deemed to have vacated his office as such upon:
- 44.1 his estate being sequestrated, whether provisionally or finally;
  - 44.2 the commission by him of any act of insolvency;
  - 44.3 his conviction for any offence involving dishonesty or any other serious criminal offence;
  - 44.4 his becoming of unsound mind or being found lunatic;



- 44.5 his resigning from such office in writing;
- 44.6 not being present at three consecutive meetings without prior approved leave or absence;
- 44.7 A vote of no confidence in any trustee or any decision made by the trustees may be called by the members at any time upon presentation to the trustees of a petition signed by the owners of ten (10) separate erven. Such votes must be heard and voted upon at the next general meeting. If the vote is carried by the members such trustee must stand down and be replaced. In the case of a vote of no confidence in a trustees' decision, that decision will be deemed to have been overturned;

provided that anything done in the capacity of a trustee in good faith by a person who ceases to be a trustee, shall be valid until the fact that he is no longer a trustee has been recorded in the minute book of the Association.

- 45. Upon any vacancy occurring in the trustees 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 trustees.
- 46. The owner of the Central Werf may remove and replace the trustee that he appointed at any time upon written notice being given to the remaining trustees.

#### **TRUSTEES EXPENSES**

- 47. 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 as may be approved by the board of trustees.

#### **POWERS OF TRUSTEES**

- 48. Subject to the express provisions of this constitution, the trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of any managing agent, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by this constitution required to be exercised or done by the Association in general meeting.



49. The management and control of the business and affairs of the Association shall, further, be subject to such rules as have been made by the Association in general meeting or by the trustees.
50. Save as specifically provided in this constitution, the trustees shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, architects, engineers, town planners, managing agents or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the trustees on such terms as the trustees shall decide.
51. The trustees shall further have the power:
  - 51.1 to require that any construction of any nature on land owned by the Association shall be supervised to ensure that the provisions of this constitution and the rules are complied with and that all such construction is performed in a proper and workmanlike manner;
  - 51.2 to issue an architectural and environmental design control and maintenance manual or instruction in respect of the development area, and to ensure that such manual is complied with at all times.
52. The trustees shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
53. The trustees shall be entitled to appoint committees consisting of such number of their members and such outsiders, including a managing agent, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the trustees may from time to time deem necessary.
54. All plans for buildings, outbuildings, structures, additions and alterations situate on land owned by the Association or on erven or units owned by members of the Association shall be submitted for approval by the trustees, or any person designated by them for the purpose.

### **PROCEEDINGS OF TRUSTEES**

55. The trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this constitution.





56. The quorum necessary for the holding of all meetings of the trustees shall be (4) trustees present personally or remotely. If no quorum is present within fifteen (15) minutes of after the time for commencement of the meeting then it shall stand adjourned for seven (7) days, or if that is not a business day, then to the next business day thereafter, and those trustees present at the adjourned meeting shall constitute a quorum.
57. At any meeting of the trustees, each trustee shall have one (1) vote
58. Any resolution of the trustees that is not financial in nature shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against such a resolution, the chairman of the trustees shall have a second or casting vote. Resolutions that are financial in nature require a seventy percent (70%) majority of the trustees voting to pass or deny such a resolution. If no decision can be reached in this manner, or if the financial commitment exceeds R50,000, then the trustees shall call a general meeting of the members to decide the issue.
59. The trustees shall cause minutes to be kept of every trustees' meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and after confirmation at the next meeting of trustees, be certified correct by the chairman. All minutes of trustees' meetings shall, after certification, be placed in a trustee's minute book to be kept in accordance with the provisions of the laws relating to the keeping of minutes of meetings of directors of companies. The trustees' minute book shall be open for inspection at all reasonable times by any trustee, the auditors, the members and the managing agent.
60. 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 trustees.

#### **GENERAL MEETINGS OF THE ASSOCIATION**

61. The Association shall within three (3) months after the end of the financial year hold a general meeting as its annual general meeting in addition to any other general meetings during that year. In exceptional circumstances the AGM can be delayed by a maximum of 7 days after that 3-month period.
62. Such annual general meeting shall be held at such time and place, which includes remote attendance, as the trustees shall decide from time to time.



63. All meetings of the members other than annual general meetings shall be called general meetings.
64. The trustees may, whenever they think fit, convene a general meeting.
  - 64.1 A general meeting may be called by the members at any time upon presentation to the trustees of a petition signed by the owners of ten (10) separate erven.

#### **NOTICES OF MEETINGS**

65. An annual general meeting and any other general meeting of members shall be called by not less than twenty-one (21) clear days' notice in writing which notice shall comply with the provisions of clause 90. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, which includes remote attendance, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such persons as are, under this constitution, entitled to receive such notices from the Association: provided that a meeting of the Association shall notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by not less than fifty one percent (51%) of the members having a right to attend and vote at the meeting.
66. The annual general meeting shall deal with and dispose of all matters, the consideration of the annual financial statements, the election of trustees, the noting of the levy for the financial year during which such annual general meeting takes place, the appointment of an auditor and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business.

#### **PROXIES**

67. A member may be represented at a general meeting by a proxy, who need not be a member of the Association nor a director, member, partner or trustee of that member, provided only that where a proxy is granted by members who are not natural persons, the authority of the grantor of the proxy shall be proved by resolution or other means acceptable to the chairman of the general meeting with the issue of acceptability or otherwise being in the sole and unfettered discretion of the chairman.



To be effective at a meeting or adjourned meeting, a proxy together with the original or a notarially certified copy of any power of attorney or other authority under which it is signed must be lodged with the Association at least twenty four (24) hours before the commencement of the meeting or adjourned meeting concerned.

- 68. A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only to be valid for a shorter period.
- 69. The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

**‘DIEMERSFONTEIN WINE AND COUNTRY ESTATE HOME OWNERS ASSOCIATION’**

I, .....  
of .....  
being a member of Diemersfontein Wine and Country Estate Home Owners Association,  
hereby appoint:

..... of ..... or failing him  
..... of ..... or failing him  
..... of .....  
as my proxy to vote for me and on my behalf at the annual general meeting (or otherwise as the case may be) of the Association to be held on the ..... day of .....  
..... and at any adjournment thereof as follows:

	in favour of	Against	abstained
Resolution to			
Resolution to			
Resolution to			

(Indicate instruction to proxy by way of a cross in space provided above.)

Unless otherwise instructed, my proxy may vote as he thinks fit.

Signed this                      day of

\_\_\_\_\_  
Signature

(Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy need not be a member of the Association or a director, member, trustee or partner of a member).”

A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.



### QUORUM

70. No business shall be transacted at a general meeting unless a quorum is present both when the meeting proceeds to business and when any resolution is to be passed. Save as herein otherwise provided, twenty percent (20%) of the members present in person, alternatively in remote attendance, or by proxy shall constitute a quorum, provided that at least ten (10) members are present in person or in attendance remotely at such meeting. To the extent necessary to give legal effect to electronic voting, a member that votes electronically is deemed to have appointed one of the Trustees as his/her/its proxy for the applicable resolution(s) at the relevant meeting.
71. If within fifteen (15) minutes after the time appointed for the commencement of a general meeting or within such extended period as the chairman of the board or, in his absence, the deputy chairman, may allow, a quorum is not present, the meeting shall be dissolved if it was convened on requisition. In all other cases the meeting shall stand adjourned to the same place at the same time on the same day of the next week (or if that day is not a business day, the first business day following that non-business day) or to such other place, time and day as the board may determine. If a quorum is not present at such adjourned meeting, the members present shall constitute a quorum.

### ADJOURNMENT BY CHAIRMAN WITH CONSENT OF MEETING

72. The chairman of a general meeting may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by majority vote. In the event of such an adjournment:
- 72.1 no notice need be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting (unless the meeting is to be adjourned for thirty (30) days or more in which event notice is to be given in the same manner as for the original meeting);
- 72.2 only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

### VOTING RIGHTS OF MEMBERS

73. Members shall be entitled to vote only on the matters raised at every general meeting.
74. At every general meeting:



- 74.1 each member, present in person or by proxy and entitled to vote, shall have one vote for each erf or unit registered in his name;
  - 74.2 if an erf or unit is registered in the name of more than one (1) person, then all such co-owners shall jointly have only one vote, provided that the representative of the co-owners, or the proxy, shall be obliged to deliver to the chairman proof of an authority to vote, which proof of authority shall be subject, mutatis mutandis, to the provisions of clause 67.
75. Save as expressly provided for in this constitution, no person other than a member 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 arising out of his membership and who is not suspended, shall be entitled to be present or to vote on a question, either personally, remotely, or by proxy, at any general meeting.
76. Voting at general meetings shall take place by way of a show of hands unless on or before the declaration of the result of the show of hands a poll is demanded according to law. Provided that members may vote electronically on proposed resolutions by such means as the Trustees may determine from time to time.
77. Resolutions shall be passed by simple majority vote, save with respect to amendments of this constitution, as provided for in clause 124 hereof.
78. If a poll is duly demanded it shall be taken in such manner as the chairman of the meeting may direct either at once or after an interval or adjournment.
79. If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter such difficulty or dispute is to be determined by the chairman whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.
80. A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:
- 80.1 written notice of the revocation is received by the Association prior to the meeting concerned; or
  - 80.2 the chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.



81. No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive. In the event that the Trustees reasonably believe that a malfunction, fraud or human error occurred in the voting process, it may cancel the vote and commission a re-vote.
82. A declaration made in good faith by the chairman of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed, as the case may be. The Trustees may delegate the count of the electronic votes to the managing agent whose determination, after acceptance by the Trustees, shall be deemed to be the official vote count.
83. Any resolution which could be passed at a general meeting (other than a special resolution or a resolution to remove a trustee or auditor) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the members entitled to vote.

#### **ACCOUNTING RECORDS**

84. The trustees shall cause proper accounting records to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the activities of the Association.
85. The accounting records shall be kept at the registered office of the Association or at such other place or places as the trustees think fit, and shall always be open during normal business hours to inspection by the trustees.
86. The trustees shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association or any of them shall be open to inspection by members not being trustees, and no member (not being a trustee) shall have any right of inspecting any accounting records or documents of the Association except as authorised by the trustees.



87. The trustees shall from time to time, cause to be prepared and laid before the Association in general meeting such financial statements as are referred to in those sections.
88. A copy of the annual financial statements which are to be laid before the Association in annual general meeting shall accompany the notice of annual general meeting referred to in clause 65.
89. Auditors shall be appointed to the Association at each annual general meeting.

### **SERVICE OF NOTICES**

90. Notices may be given by the Association to any member either personally, or by delivering them by either:
  - 90.1 a prepaid letter addressed to such member at the address within the Republic of South Africa supplied by the member to the Association for the giving of notices to the member; or
  - 90.2 a telefax address within the Republic of South Africa supplied by the member to the Association; or
  - 90.3 with effect from the time that the giving of notice by e-mail is regarded as lawful notice, by an e-mail to an e-mail address supplied by the member to the Association for the giving of notices to the member.
91. For the purposes of clause 90:
  - 91.1 notices by pre-paid letter shall be deemed to have been received by the addressee no later than five days after posting; or
  - 91.2 notices by telefax or e-mail shall be deemed to have been received within four hours after transmission.
92. Notice of every general meeting shall be given:
  - 92.1 to every member of the Association;
  - 92.2 to the auditors for the time being of the Association;provided that no other person shall be entitled to receive a notice of general meetings.



93. 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, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
94. The signature to any notice given by the Association may be written or printed, or partly written and partly printed.

#### **INDEMNITY**

95. All trustees and the auditors shall be indemnified against any liabilities *bona fide* incurred by them in their respective capacities, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any person/s by a court.
96. Every trustee, 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 trustees out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties.

#### **GENERAL**

97. Whenever they consider that the appearance of any land or building vested in a member is such as to be unsightly or injurious to the amenities of the surrounding area or the property generally, the trustees may serve notice on such member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the member fail within a reasonable time, to be specified in such notice, to comply therewith, the trustees may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the member concerned, which costs shall be deemed to be a debt owing to the Association.

The trustees shall be obliged in giving such notice to act reasonably. In the event of any dispute, the member shall bear the onus of establishing that the trustees acted unreasonably.

98. The registered owner of an erf zoned for residential purposes shall:





- 98.1 commence construction of a dwelling house no later than thirty months after the date of first transfer of the erf from the developer; and
  - 98.2 complete the construction of a dwelling house no later than forty-two months after the date of first transfer of the erf from the developer.
  - 98.3 in the event that he acquired his erf not from the developer, but from the developer's successor in title, then such owner shall commence with construction of a dwelling house on the erf acquired by him no later than 18 months after the date of transfer of the erf from the developer's successor in title, and complete the construction of a dwelling house no later than 30 months after the date of transfer of the erf from the developer's successor in title.
99. Should the registered owner of an erf fail to comply with the provisions of clause 98, then the developer shall be entitled to give written notice to the owner to commence construction of a dwelling house or to complete the construction of a partly completed dwelling house within six months of giving such notice and if the owner fails to comply with such notice:
- 99.1 the developer shall be entitled (but not obliged) to repurchase such erf for an amount equal to the aggregate of the purchase price paid by the first transferee of the erf and one-half of the value of any incomplete dwelling, and the registered owner shall be obliged to sign all such documents and do all such things as may be necessary for the registration of transfer of the erf to the developer and shall pay all fees and disbursements incidental to such transfer. For the purposes of this sub-clause, a certificate from a quantity surveyor, appointed by the developer and acting as an expert shall be binding upon the said registered owner, the developer and the Association; and
  - 99.2 the owner shall during the period commencing on the date of the notice and terminating on the date of, as the case may be, commencement of construction or completion of construction of the dwelling house, be obliged to pay to the Association a double standard levy (that is two times the standard levy ordinarily payable in respect of the erf). For the purposes of this sub-clause, a certificate by a quantity surveyor appointed by the developer, acting as an expert, as to, as the case may be, the date when construction of a dwelling house is commenced and/or completed, shall be



final and binding upon the said registered owner, the developer and the Association. The owner shall be liable for all transfer costs and any VAT.

100. No member shall be entitled, to sell or transfer any erf unless the provisions of clause 98 have been complied with and the Association shall not furnish the consent referred to in clause 11.2. In the event that a member is a company, close corporation or trust, the expression “sell or transfer” shall include any change in the voting control of the member.
101. In the event that the developer elects not to exercise the acquisition right contemplated in clause 99.1, the Association, after adoption of a resolution by the trustees, shall be entitled to impose upon the defaulting member such penalties in such amount and for such period as the trustees in their sole discretion may deem appropriate.
102. No member shall be entitled to subdivide or rezone any erf during the development period without prior written consent of the developer and thereafter without the prior written consent of the trustees
103. No member or other person shall be entitled to sink or use any boreholes within the development area during the development period without the prior written consent of the developer and thereafter without the prior written consent of the trustees.
104. The Association may enter into agreements with any third party for the provision of facilities and services to or for the members and may levy charges in respect of the provision thereof, or may pass on such costs direct to the members.
105. The provisions of this constitution shall be binding upon all members and, insofar as they may be applicable to all persons occupying any erf or unit by, through or under any member, whatever the nature of such occupation.
106. No member ceasing to be a member of the Association for any reason shall (nor shall such member's, executors, curators, trustees or liquidators) have any claim upon or interest in or right to the funds or any property or assets of the Association.
107. The Association may claim from any member or his estate any arrear levies and interest or other sums due from him to the Association at the time of his ceasing to be a member.



108. Any person using any of the services, land or facilities of the Association does so entirely at his own risk.

### DISPUTES

109. Other than may be provided for in this constitution, any dispute arising out of or in connection with this constitution must be determined in terms of clauses 110 to 119 (both inclusive), except when an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
110. On a dispute arising, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within fourteen (14) days of such notice, either of the parties may refer the dispute to determination in terms of clauses 109 to 119 (both inclusive).
111. If a party exercises his right in terms of clause 110 to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of ten (10) years experience in their field:
- 111.1 if the dispute is primarily an accounting matter, a practising chartered accountant;
  - 111.2 if the dispute is primarily a legal matter, a practising attorney or advocate;
  - 111.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising quantity surveyor;
  - 111.4 if the dispute is primarily a matter relating to any defect in any building construction, a practising engineer;
  - 111.5 if the dispute relates to any other matter, such other independent and suitably qualified person.
112. If the parties are unable to agree either on the person referred to in clause 111 or on the classification of the dispute within a period of seven (7) days of either party having given notice to the other, proposing an appointee or alternative appointees, then the person in question shall be nominated by the President for the time being of the Law Society of the Cape of Good Hope or its successor.



113. Any person agreed upon and nominated as aforesaid (“the expert”), shall in all respects act as an expert and not as an arbitrator.
114. The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
115. The parties shall use their best endeavours to procure that the decision of the expert shall be given within twenty one (21) days or so soon thereafter as possible, after it has been demanded.
116. The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
117. The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between party and party or as between attorney and client.
118. The provisions of clauses 109 to 119 (both inclusive) constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that it is not bound by such provisions.
119. The provisions of clause 109 to this clause 119 (both inclusive) shall be deemed to be severable from the rest of this constitution and shall remain binding and effective as between the parties notwithstanding that this constitution may otherwise be cancelled or declared of no force and effect for any reason.
120. The provisions of clauses 109 to 119 inclusive shall not apply as regards the implementation of clause 34.2. In the event that the Trustees determine that the member's conduct is a persistent offence, then the provisions of the said clause 34.2 shall be implemented forthwith; it shall not be necessary for that dispute to be referred or determined as per the provisions of clauses 109 to 119, inclusive.

**RE-SALE – PRE-EMPTIVE RIGHT**



121. The members acknowledge that it would be in their mutual interests for erven or units to be marketed in a well planned and cohesive manner. Accordingly, any member wishing to dispose of his erf/unit or wishing to dispose of his shares or interest in the legal entity owning his erf/unit shall:
  - 121.1 Notify the developer or the developer's appointed estate agent of his intention to sell; and
  - 121.2 If the said member has identified a potential third party purchaser, then annexed to his notification to sell the member shall annex a copy of the proposed Deed of Sale which he intends to conclude with the third party purchaser before he signs same.
  
122. The developer shall have a right of pre-emption as follows:
  - 122.1 Each member undertakes that he shall not sell his erf or unit, as the case may be, to any third party without first offering to sell the erf/unit to the developer on the same terms and conditions as are being offered to the third party. The member shall notify the developer in writing of his intention to sell the erf/unit and shall furnish the developer with a copy of the proposed Deed of Sale whereunder the member wishes to sell to the third party. The developer shall have two business days reckoned as from the date of receipt of the said documentation within which to advise the member of its decision to acquire the erf/unit from the member or not. Should the developer decide not to purchaser the erf/unit from the member, then in such event the member shall be free to sell to the third party. This Clause 122 shall *mutatis mutandis* apply in the event that the erf/unit is owned by a Company, Close Corporation, Trust or other legal entity. The shares, interest or beneficial interest therein shall not be transferred to the third party unless the provisions of clauses 121 and 122 are complied with so as to enable the developer to acquire the erf/unit if the right of pre-emption is exercised.
  - 122.2 In the event that a member wishes to sell and has not yet identified a third party purchaser, then he shall notify the developer or his appointed estate agent that he does intend to sell in which event the developer or his appointed estate agent shall have a sole mandate to sell for sixty days. During the said sixty day period the agent shall present all offers to the selling member, including any offer to purchase which may be presented by the developer, within the developer's discretion. The selling member shall



then be entitled, within his discretion, to consider all and to accept or reject any offer.

- 122.3 If it transpires that at the end of the said sixty day period the member's erf/unit has not been sold, then the selling member shall be entitled to market his property himself or through his own estate agent.

### **GENERAL**

- 123.1 Each member undertakes that insofar as may be practical, this Constitution shall be binding on the members' tenants and/or guests.
- 123.2 No member shall be entitled to use his erf/unit for guest house facilities without the prior written approval of the Trustees.
- 123.3 No member shall be entitled to run any business of any nature whatsoever from his erf/unit without the prior written approval of the Trustees.
- 123.4 No member shall be entitled to lease, sub-let or give rights of use or occupation to any other party without first having obtained the prior written approval of the Trustees.

### **AMENDMENT OF CONSTITUTION**

124. The provisions of this constitution and the comprehensive agreement may only be amended by a resolution approved by at least sixty seven percent (67%) of the total number of votes of members of the Association, given at a general meeting called specifically for such purpose.
125. The notice of such meeting shall set out in specific terms the proposed amendment of this constitution.

-ooOoo-

