

DRAFT

Constitution of



GREEN ECO LIVING

MASTER PROPERTY OWNER'S ASSOCIATION

(Erf 4401 Darling)

14 December 2018

An association established by the Developer at the instance of the Local Authority, in terms of section 39 of the Swartland Municipality: Land Use Planning By-Law (PG 7741 of 3 March 2017)

Preface

All owners of property in the @ Darling Green Estate are required as a condition of sale (and therefore as a condition of title) to be members of the Association. The owner of such property automatically becomes a member on registration of transfer. If the property is owned by a trust or a company, then that entity becomes the member and an individual nominated by that corporate entity represents the owner.

The constitution is established as condition of sub-division and its main function is to manage @ Darling Green Estate which is a private estate. In essence this means controlling the architecture and security, owning, maintaining and regulating the common areas and -services and creating codes of conduct for the facilities and controlling building plans and -operations.

Utilities for @ Darling Green Estate will be provided by a Private Utility Company, which company shall own, maintain and regulate the utility infrastructure within @ Darling Green Estate. Utilities include; electricity, data, gas, non-potable water and waste management. The Private Utility Company will provide sustainable and efficient utility services to the estate and a portion of the profits generated by the company will be invested in the estate for the purpose of subsidising the Associations costs and expenses.

The Association has to ensure that conditions of sub division are complied with including those relating to the environmental integrity of @ Darling Green Estate.

The Association has the right to charge monthly levies in advance from members (excluding the developer who subsidises any financial shortfall) and they are required to complete monthly debit orders in favour of the Association. The levies are used to cover the operating costs of @ Darling Green Estate. The levies are set at a reasonable and realistic level to cover actual costs, and they should not escalate beyond normal inflationary increases.

The architectural design manual sets out the architectural guidelines for @ Darling Green Estate. Swartland Municipality will not approve any building plans unless the Association (which enforces these controls) has approved the plans first.

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1. PREAMBLE

It is recorded that the @ Darling Green Estate Master Property Owners' Association is constituted as a statutory body in terms of section 39 of the Swartland Municipality: Land Use Planning By-Law (PG 7741 of 3 March 2017), in accordance with the condition imposed by Swartland Municipality, when approving the sub-division and rezoning of the land, with its jurisdiction limited to the estate.

2. STATUS OF THE ASSOCIATION

2.1 The Association will:

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

2.1.2 not operate for profit, but for the benefit of its members.

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

3. MAIN OBJECT OF THE ASSOCIATION

The main object of the Association is the matters referred to in section 39 of the Swartland Municipality: Land Use Planning By-Law (PG 7741 of 3 March 2017), and more specifically:

3.1 to control the design and construction of and any alterations to all buildings, and/or structures erected or to be erected on the estate in accordance with the approved architectural design manual, which manual will *inter alia* include the following:

3.1.1 the architectural designs;

3.1.2 building or construction guidelines;

3.1.3 specifications and/or finishes of buildings and structures;

3.1.4 which building materials are allowed and which not;

3.1.5 restrictions on the height and size of structures;

3.1.6 which paint colours are allowed;

3.1.7 all outdoor lighting must be minimized (preferable down-lighting) so as not to impact the natural ambience of the adjacent areas;

3.1.8 only low-flow shower heads and dual flush toilets to encourage water savings, will be permissible;

3.1.9 only energy saving light bulbs to encourage energy saving, will be permissible;

3.1.10 all electricity, telephone and other cables must be laid under ground;

3.1.11 all rock spoil and building rubble must be removed from the estate and disposed of at a licensed landfill site, as dumping is not permitted on the estate;

- 3.2 to comply with, and ensure compliance by its members with the conditions imposed by all the authorities, including but not limited to Swartland Municipality pursuant to its approval for subdivision and rezoning of the land and in particular the environmental issues, including but also not limited to:
- 3.2.1 that no surface or ground water may be polluted due to any activity on the properties in the estate and that the relevant requirements of the National Water Act (Act No 36 of 1998) be complied with at all times;
- 3.2.2 that an integrated waste management approach be used that is based on waste minimization and should incorporate reduction, recycling, re-use and disposal where appropriate. Any solid waste must be disposed of at a landfill licensed in terms of section 20 of the Environment Conservation Act, Act 73 of 1989;
- 3.2.3 the prevention of litter and removal of alien invasive vegetation; and
- 3.2.4 that no Kikuyu lawns are permitted on the estate, but only indigenous grass species such as Kweek and Buffalo grass must be used;
- 3.3 the promotion of environmental sensitivity and awareness amongst members;
- 3.4 the promotion of sensitivity and awareness amongst members to save water;
- 3.5 to take the transfer of the common areas and improvements thereon from the developer at no consideration;
- 3.6 to control and maintain the structures, services and amenities (if any) situate on the common areas;
- 3.7 to promote, advance and protect the communal and group interest of the members generally;
- 3.8 to enter into service agreements with Swartland Municipality or any other authority or supplier of services where necessary, including, but not limited to gardening-, security-, maintenance services;
- 3.9 to implement and maintain security measures and systems for controlled access to the estate;
- 3.10 to prescribe measures for the landscaping and development on erven on the estate, and for architectural design and building or improvements to properties on the estate so as to ensure a harmonious and aesthetic development of the estate, and to prescribe measures for the maintenance of such standards of development;
- 3.11 to register, where necessary, service servitudes over common areas in the estate in favour of the Private Utility Company and or the Swartland Municipality and to register servitudes in favour of the erven in the estate over other land owned by the Association as are from time to time required;
- 3.12 to acquire by way of ownership or otherwise, erven in the estate constituting common areas for the purposes of road access to the estate and to register transfer of ownership thereof in the name of the Association; to acquire and provide the Private Utility Company with servitudes in the Private Utility Company's favour for access to the estate and also for the supply of services, including communication, surveillance, electricity and water to the estate;

- 3.13 to formulate, enforce, modify, amend, add and delete the estate and/or conduct rules and regulations;
- 3.14 to appoint a manager to manage the affairs of the Association and as such, delegate the management of the Association's affairs to an outside agency;
- 3.15 to include the title deeds of the common areas to be transferred to the Association, that all such common areas, (subject to the rights of the Private Utility Company), shall not be sold, alienated, otherwise disposed of or transferred to any other party, nor mortgaged;
- 3.16 the accredit architects and builders to be utilised by registered owners in respect of any design and construction work to be conducted on properties, in accordance with such criteria as the Association may stipulate from time to time;
- 3.17 to accredit estate agents appointed by registered owners in respect of the resale of their properties, in accordance with such criteria as the Association may stipulate from time to time;
- 3.18 that, with regard to electrical installations:
 - 3.18.1 only prepaid electricity meters which are pre-approved and owned by the Private Utility Company, will be allowed on the estate;
 - 3.18.2 with regard to geysers, it makes provision for the accommodation for load control relay;
 - 3.18.3 it will comply to all regulations of the Private Utility Company;
- 3.19 that, with regard to water connections, only water meters which are pre-approved by the Private Utility Company, will be allowed on the estate;
- 3.20 that, with regard to refuse removal, the Private Utility Company may, from time to time in its sole discretion:
 - 3.20.1 specify the colour, size and quantities of refuse bags;
 - 3.20.2 dictates the separation of classes of refuse;
 - 3.20.3 determine the placing of refuse bags; and
 - 3.20.4 charge an applicable tariff;
- 3.21 the conditions of approval of sub-division and rezoning of the land, site development plan, any applicable landscape management plan and any other plan, manual, guidelines, policy, contract and the like of any authority and to which the development of the land may be subject or which may hereafter be imposed, and the requirements of Swartland Municipality or other authority.

4. **MEMBERSHIP AND OBLIGATIONS**

- 4.1 For the duration of the development period or for so long as the Developer owns any property (whichever is the later of the two), the Developer shall be a member of the Association.

- 4.2 Membership of the Association shall be limited to and compulsory for all the registered owners within the estate provided that:
- 4.2.1 a person who is entitled to obtain a certificate of registered title to any such property shall be deemed to be the registered owner thereof;
- 4.2.2 where any such registered owner is more than one person, all the registered owners of that property shall be deemed jointly and severally to be one member and as such their liability shall be joint and several.
- 4.3 Membership in terms of clause 4.2 shall commence simultaneously with the transfer of the property into the name of the registered owner.
- 4.4 When a member ceases to be the registered owner he shall *ipso facto* cease to be a member of the Association.
- 4.5 A registered owner may not resign as a member of the Association.
- 4.6 The rights and obligations of a member shall not be transferable and every member shall:
- 4.6.1 to the best of his ability further the objects and interests of the Association;
- 4.6.2 observe all regulations made by the Association or the trustee committee.
- 4.7 No member shall let or otherwise part with the occupation of his property without obtaining the prior written agreement of the proposed occupier that he will be bound by the provisions of this Constitution.
- 4.8 The member shall be liable for the acts or omissions of all persons occupying his property, whether lawfully or unlawfully, including but not limited to lessees, guests, employees, invitees, contractors and agents.
- 4.9 Save in those instances where the developer passes first transfer to a registered owner, in all other instances where a registered owner wishes to alienate or transfer his property (hereinafter referred to as a 'resale') he shall not be entitled to do so unless:
- 4.9.1 the transferee becomes a member of the Association and upon the registration of transfer of the property into the name of the transferee, he shall *ipso facto* become a member of the Association;
- 4.9.2 he obtains a clearance certificate from the Association which shall be given provided:
- 4.9.2.1 the transferee of such property agrees in writing to accept and abide by the constitution of the Association;
- 4.9.2.2 all amounts owing by the registered owner to the Association have been paid or satisfactorily secured;
- 4.9.2.3 all obligations of the registered owner in terms of this constitution have been complied with in full.

- 4.9.3 the estate agent appointed by the registered owner for the purposes of securing a purchaser in respect of his property has been accredited by the Association;
- 4.9.4 the registered owner utilises the standard deed of sale document as may be prescribed by the Association from time to time.
- 4.10 In the event that the building or structure of a registered owner being destroyed by whatsoever reason and fail to commence or complete construction within a reasonable period after the said destruction, the Association shall be entitled to enforce the undermentioned provisions without prejudice to any other rights which the Association may have, the Association shall be entitled to have the property landscaped at the cost of the registered owner in the event that the registered owner should fail to commence construction within a reasonable period or in the event of non-completion of the construction within a reasonable period until the completion of the construction.

5. **FINANCIAL YEAR END**

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

6. **APPROVAL FOR PROPOSED WORK / APPLICATION FOR REZONING & SUBDIVISION**

- 6.1 A registered owner shall not without the prior written approval of the Association:
- 6.1.1 erect any building and/or structures of any whatsoever on his property;
- 6.1.2 make any changes, additions or alterations to existing buildings and/or structures on his property, including changes to external colour scheme;
- 6.1.3 install or fix burglar bars to any external windows or doors of the buildings on his property;
- 6.1.4 erect or construct any pergolas, patio awnings, shade ports, car ports, washing lines, satellite dish, television, radio or any other type of antennae, Wendy houses, walls or any other structures which may affect the external appearance of the improvements on his property; and
- 6.1.5 apply for the rezoning or subdivision of his property
- which consent shall not be unreasonably be withheld.
- 6.2 The consent of the Association as contemplated in clause 6.1 shall only be given:
- 6.2.1 after detailed plans of the proposed work as prepared by an architect registered with the South African Council for the Architectural Profession and who has been accredited by the Association, have been submitted to the Association;
- 6.2.2 if the proposed work complies with the documents and requirements set out in clause 3.1 above;
- 6.2.3 if the member has made payment of all costs which may be incurred in obtaining this approval, including any scrutiny fees as determined by the trustees from time to time;
- 6.2.4 if the builder or contractor appointed by the member has been accredited by the Association.

- 6.3 The Trustee Committee shall be entitled to determine a scrutiny fee from the time to time, which shall be payable by the member in respect of the scrutiny and approval of plans by the Association of the proposed work, payable in full to the Association upon first lodgement of any plans relating to the proposed work to the Association.
- 6.4 The Trustee Committee shall be entitled to determine a sidewalk deposit and a builder's management fee, payable by the registered owner so as to provide for the repairs of damage caused by the registered owner's builder as well as from the management and control of the building process on his property, which deposit and fee shall be payable by the registered owner concerned in such amount and on such terms and conditions as may be determined by the trustee committee from time to time.
- 6.5 After obtaining the written approval of the Trustee Committee for the proposed work, the member shall submit the building and landscaping plans (if applicable) to Swartland Municipality for approval, with the approval of the Trustee Committee evidenced by an endorsement of the relevant plans as well as the payment of any fees to Swartland Municipality for scrutiny and approval of the plans by Swartland Municipality.
- 6.6 After obtaining the approval of Swartland Municipality for the proposed word, the member shall comply with all conditions, standards and requirements imposed by Swartland Municipality and the Association.
- 6.7 After obtaining the written approval of the Trustee Committee for the application for rezoning and/or subdivision of his property, the member shall submit the application to Swartland Municipality to proceed, with the approval of the Trustee Committee evidenced by an endorsement of the relevant application as well as the payment of any fees to Swartland Municipality.

7. LEVIES

- 7.1 The members shall be jointly liable for expenditure incurred by the Association.
- 7.2 The Trustee Committee shall from time to time, determine the total amount of levies payable by all members, as well as the amount of levies payable by each individual member for the purpose of meeting all the expenses which the Association has incurred, or which the trustee committee reasonably anticipates the Association will require in respect of:
- 7.2.1 facilities and services in connection with the estate;
- 7.2.2 the payment of all expenses necessarily or reasonably incurred or to be incurred in connection with the management of the Association and its affairs; and
- 7.2.3 any reserves which the Trustee Committee may deem necessary.
- 7.3 In calculating levies the Trustee Committee shall take into account income, if any, earned by the Association.
- 7.4 A member shall be liable to pay levies with effect from the first month following the month in which the member takes transfer of the property in his name. The registered owner who is the transferor of the property shall accordingly be liable for the payment of levies calculated up to the last day of the month during which the transfer take place on the transferee and accordingly shall not be entitled to

a refund of any levies calculated from the date of transfer to the end of the month in which the transfer took place.

- 7.5 The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall determine a levy payable by the members equal to or 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 nor 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 year and shall be paid by way of a debit order in favour of the Association or by any other method as determined by the Trustee Committee from time to time.
- 7.6 The Trustee Committee, may from time to time, make special levies upon the members in respect of all such expenses as are mentioned in clause 7.2, and such levies may be made in the sum or by instalments and at such time or times as the Trustee Committee shall think fit.
- 7.7 Any amount due by a member by way of a levy shall be debt due by him to the Association. The obligation of a member to pay a levy shall, subject to the provisions of clause 7.4 above, cease upon his ceasing to be 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 his ceasing to be a member. A member's successors in title to a property shall subject to the provisions of clause 7.4 be liable as from the date upon which he becomes a member pursuant to the transfer of that property, to pay the levy attributable to that property.
- 7.8 Subject to clause 7.9 and save in respect of a special levy, the total levy payable shall be borne jointly by the members in equal shares.
- 7.9 For as long as the developer is the registered owner of the land or any portion thereof or the remainder thereof, the developer shall not be required to pay levies as contemplated in clause 7.8 above unless it becomes the registered owner of a property as a result of it having taken transfer thereof from a subsequent owner. The developer shall, however, for the duration of the development period pay the difference between the actual expenses incurred by the Association (as referred to in clause 7.2 above) but excluding any provisions for a reserve fund, and the aggregate of the levies payable jointly by the members who are registered owners of residential erven each month from the time to time. For the avoidance of any doubt it is recorded that in determining the aggregate or individual levies payable by members who are registered owners from time to time for the purposes of this clause 7.9, the aggregate shall include all levies payable by such members, irrespective of whether or not such levies have actually been paid by those members. In the event that there is a dispute as to the actual costs incurred by the Association and/or the difference payable by the developer, then the dispute shall be referred to the developer's auditor for determination who, acting as an expert and not as an arbitrator, shall make a determination which shall be final and binding on the parties. The costs of the said auditor shall be borne by the Association.
- 7.10 No member shall be entitled to any of the privileges of membership unless and until he shall have paid all levies and any other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.

7.11 The levies payable by registered owners shall be determined by the size and use of the property and whether or not it is improved or the extent of any improvements.

8. DEALING WITH THE COMMON AREAS

8.1 Subject to the requirements of the Private Utility Company, once transferred to the Association, neither the whole nor any portion of the common areas or any improvements thereon shall be:

8.1.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or

8.1.2 mortgaged; or

8.1.3 subjected to any rights other than those contained in the present existing title deed of the land, or to be imposed in the title deed(s) of the common area as require by any relevant authority or as contained in this Constitution, whether registered in a Deeds Registry or not, of use, occupation or servitude.

8.2 The Association is hereby empowered to take transfer and shall take title to the common areas at no consideration and as soon as is legally possible subject to the condition however that the developer will only be obliged to tender transfer of the common areas to the Association or the Private Utility Company once all improvements thereon (if any) have been completed.

8.3 The Association acknowledged that Swartland Municipality shall not be responsible for, and the Association shall be solely responsible for the construction, care, repair, maintenance, cleaning, upkeep, improvements and proper control of the common areas, all services therein (other than services provided and/or maintained by the Private Utility Company and or the Swartland Municipality, if any) and all amenities and improvements located or to be located on or within the common areas.

8.4 Swartland Municipality shall at no time in the future assume ownership of the common areas.

9. SERVICES

9.1 With effect from the date upon which the Association is created, the obligation to maintain and repair services, save to the extent that:

9.1.1 the Private Utility Company and or the Swartland Municipality has agreed to assume the obligation to maintain and repair any of such services; and

9.1.2 the obligations of the developer to provide certificates according to the conditions laid by Swartland Municipality when approving the subdivision and rezoning of the land

shall pass from the developer to the Association.

9.2 The Private Utility Company and or the Swartland Municipality may, at its discretion, elect to assume the obligation to repair and maintain water, sewage and electricity services ('the Private Utility Company and or the Swartland Municipality's services') on the estate, provided that a written agreement is concluded between the Private Utility Company and or the Swartland Municipality and the Association which agreement shall include the following provisions:

- 9.2.1 the Private Utility Company and or the Swartland Municipality will be provided to each member on an individually metered basis;
- 9.2.2 the Association shall allow the Private Utility Company and or the Swartland Municipality's staff 24 (twenty-four) hour access to all elements of the system on the estate in respect of the Private Utility Company and or the Swartland Municipality's services;
- 9.2.3 all elements of the system in respect of the Private Utility Company and or the Swartland Municipality's services must comply fully with the Private Utility Company and or the Swartland Municipality's specifications and requirements;
- 9.2.4 the Association indemnifies the Private Utility Company and or the Swartland Municipality (or its duly appointed agent) against any responsibility for payment for repairs of any damage to roads, walls, fences, verges and the like which may be caused by the Private Utility Company and or the Swartland Municipality's vehicles or staff on the estate;
- 9.2.5 full rights of way will be granted by the Association to the staff of the Private Utility Company and or the Swartland Municipality and their vehicles, along roads, pipelines and cables routed for the purposes of inspection, maintenance and repair of the Private Utility Company and or the Swartland Municipality's services;
- 9.2.6 the common area shall be metered and the Association shall be liable for the payment of all costs relating to the Private Utility Company and or the Swartland Municipality's services; and
- 9.2.7 the Private Utility Company and or the Swartland Municipality shall be responsible for internal collection of refuse on the estate which shall be removed from the estate by the Private Utility Company and or the Swartland Municipality from certain collection points.
- 9.2.8 Services include the right for the Private Utility Company to provide electricity, data, gas, non-potable water and waste management.

10. **MANAGER**

- 10.1 During the development period, the developer shall in its sole and absolute discretion be entitled to appoint a manager (an individual or corporation) to manage the affairs of the Association. It shall be within the absolute discretion of the developer to determine the terms and conditions of the appointment of such a manager, including the fees and/or remuneration payable.
- 10.2 Any fees and/or remuneration payable to the manager shall be paid by the Association and not by the developer.
- 10.3 The appointment of the manager may extend beyond the development period, provided that the developer shall endeavour to procure, when making such appointment, that the appointment may, if so required by the Association at a general meeting, and subject to the requirements of the law, be terminated on reasonable notice after the end of the development period.
- 10.4 After the development period, the Association shall be responsible for the appointment of any successive managers, it being contemplated that the affairs of the Association shall at all times be

entrusted to a professional manager with appropriate executive powers so as to conform to the requirements of good corporate governance.

- 10.5 Subject to this constitution and the terms of his appointment, the manager shall have the full power to manage and control the business and affairs of the Association, and may exercise all such powers of the Association and do all acts on behalf of the Association as may be exercised by the Association itself.

11. **CONTRACTS AND REGULATIONS**

- 11.1 Without limiting the powers referred to in clause 35 hereof, the Trustee Committee may from time to time:

- 11.1.1 make regulations governing, *inter alia*:

11.1.1.1 the member's rights of use, occupation and enjoyment of the common areas;

11.1.1.2 the external appearance of and the maintenance of the common areas and the buildings or other improvements erected thereon (if any):

11.1.1.3 the construction of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on properties, subject always to the approved architectural design manual and the requirements of Swartland Municipality;

11.1.1.4 the conduct of members generally;

11.1.2 subject to the rights reserved to the Private Utility Company, enter into agreement(s) with Swartland Municipality governing the matters set out in sub-clause 9 and any other incidental matters;

11.1.3 subject to the rights reserved to the Private Utility Company, enter into agreement(s) with the Private Utility Company and or the Swartland Municipality and other parties for the provision of services on the estate;

11.1.4 impose penalties which it considers appropriate in its sole discretion against members who are in default of any of their obligations in terms of this constitution, including the terms of payment of such penalties.

- 11.2 Each member undertakes to the Association that he shall comply with:

11.2.1 the provisions of this constitution;

11.2.2 any regulations made in terms of sub-clause 11.1.1;

11.2.3 any agreements referred to in sub-clause 11.1.2 insofar as those agreements either directly or indirectly impose obligations on him.

12. BREACH

12.1 Should any member:

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

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

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

12.1.3 to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of his obligations in terms of this constitution or any regulation made thereunder, as the case may be; or

12.1.4 in the case of clause 12.1.2, to remedy such breach and immediately recover the total costs incurred by the Trustee Committee on behalf of the Association in so doing from such member.

12.2 Should the Trustee Committee institute any legal proceedings against any member pursuant to a breach by that member of this constitution or any regulation made thereunder, then without prejudice to any other rights which the Trustee Committee on behalf of the Association or any other member may have in law, the Trustee Committee on behalf of the Association or member (as the case may be) shall be entitled to recover from such defaulting member all legal cost incurred by it, including attorney and own client charges calculated on the non-litigious tariff recommended by the Cape Law Society (or its successors), tracing fees and collection commission.

12.3 Without prejudice to all or any of the rights granted to the Trustee Committee on behalf of the Association under this constitution, should any member fail to pay any amount due by that member in due date, then such member shall be pay interest thereon calculated at 2% (two percent) above the publicity quoted prime rate of interest charged by the Association's bankers from time to time calculated from the due date of payment until the actual date of payment of such amount. A certificate issued by the Association's bankers as to the prime rate applicable shall constitute *prima facie* proof thereof.

13. CESSATION OF MEMBERSHIP

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

MEMBERS

14. MEMBERS

- 14.1 The members of the Association shall hold at least one annual meeting as soon as possible after the end of each financial year, it being the intention that each annual meeting shall take place within 5 (five) months after each financial year. Notwithstanding the foregoing, the first annual meeting of the Association is only required to take place by no later than the end of the financial year following which the Association comes into existence. The Association shall specify the meeting as such in the notices, in terms of clause 15 below calling it.
- 14.2 Such annual meeting shall be held on the estate or other places and at times the members decide from the time to time.
- 14.3 All annual meetings shall be called annual general meetings and all other meetings shall be called special meetings.
- 14.4 Subject to clause 14.5 the Trustee Committee, may, whenever they think fit, convene a special meeting.
- 14.5 Where the members who hold at least 30% (thirty percent) of the total votes resolve to call a special meeting, the Trustee Committee shall be obliged to call such meeting.

15. NOTICES

- 15.1 Annual general meetings and meetings called for the passing of a special resolution, shall be called by no less than 21 (twenty-one) day's written notice and special meetings, other than one called for the passing of a special resolution, shall be called by no less than 14 (fourteen) days written notice. In the case of a special resolution, the said notice shall specify the terms, the effect of the resolution and the reasons for it.
- 15.2 Any meeting shall, notwithstanding that it is called by shorter notice than that specified as aforesaid, be deemed to have been duly called if it is so agreed:
- 15.2.1 at an annual general meeting and meetings called for the passing of a special resolution, by the developer for the duration of the development period and after the development period, by all the members present, who are entitled to attend and vote thereat; and
- 15.2.2 at any other meeting, also by the developer for the duration of the development period, and after the development period, by a majority of the members, who are entitled to attend and vote thereat
- 15.3 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

16. VENUE

Meetings of Association shall take place in Darling, unless all the members agree to an other address.

17. QUORUM

- 17.1 No business shall be transacted at any meeting unless a *quorum* is present when the meeting proceeds to business.
- 17.2 During the development period the *quorum* necessary for the holding of any meeting shall be the developer and any number of members attending the meeting. After the development period, the *quorum* necessary for the holding of any meeting shall be such of the members entitled to vote, as together for the time being, represent at least 50% (fifty percent) or one-half of the total votes of all members of the Association entitled to vote.
- 17.3 If within half an hour from the time appointed for the holding of a meeting a *quorum* is not present, the meeting shall stand adjourned to the same day in the next week, at the same place and time and if at such adjourned meeting a *quorum* is also not present within half an hour from the time of the adjourned meeting, the members present shall be a *quorum*, provided that, for the development period, the developer is present.

18. AGENDA

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

- 18.1 the chairperson's report;
- 18.2 after the development period, the election of the Trustee Committee;
- 18.3 the consideration and fixing of the remuneration of the accountants for the financial year of the Association preceding the annual general meeting;
- 18.4 the consideration of the balance sheet and income statement of the Association for the last financial year of the Association preceding the date of such meeting;
- 18.5 the consideration and approval of the report of the accountant's; and
- 18.6 the consideration and approval of the levy, for the calendar year during which such annual general meeting takes place, the total Levy being the sum of all the levies to be collected from members.

19. PROCEDURES

- 19.1 For the duration of the development period, the chairperson of all the meetings of the Association shall be the developer or any person duly appointed by it.
- 19.2 After the development period, the chairperson of the Trustee Committee or any person duly appointed by him, shall chair all the meetings of the Association.
- 19.3 Should the chairperson not be present within 15 (fifteen) minutes after the time appointed for the holding the meeting, then the members present at such meeting entitled to vote, shall vote to appoint

a chairperson for the meeting, who shall thereupon exercise all the powers and duties of the chairperson in relation to such meeting.

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

19.5 All meetings shall be conducted in accordance with generally accepted practice.

20. PROXIES

20.1 A member may be represented at a meeting by a proxy, who need not be a member of the Association. The proxy shall be entitled to vote at a meeting on behalf of that member.

20.2 The instrument appointing a proxy shall be in writing signed by the member concerned or his duly authorised agent, but need not be in any particular form.

20.3 Where a member is more than 1 (one) person, any 1 (one) of those persons may sign the instrument appointing a proxy on such member's behalf.

20.4 Where a member is a company, the same may be signed by any director of the company or by its secretary, where an association of persons, by the secretary thereof, where a close corporation, by any member and where a trust, by any trustee.

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

20.6 No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months calculated from the date of its execution.

21. VOTING

21.1 The following provisions shall apply in regard to voting:

21.1.1 the developer shall, during the development period, have the number of votes equal to the number of the properties on the estate and shall in addition have 1 (one) vote for each property, not as yet transferred by the developer to a purchaser or any other party;

21.1.2 subject to the provisions of clause **Error! Reference source not found.**, every other member in person or by proxy and entitled to vote shall have 1 (one) vote for each property registered in his name, provided that if a property is registered in more than one person's name, then they shall jointly have one vote;

21.2 Save as expressly provided for herein, no person other than a member duly registered, and who is not in arrears with any of his levies and/or 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 under suspension, shall be entitled to be present and to vote, either personally or by proxy, at any meeting.

- 21.3 Voting shall take place by raise of hands, unless any member present requests that voting should take place by way of secret ballot paper.
- 21.4 Every resolution and every amendment of a resolution proposed for adoption by a meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 21.5 Members may attend meetings or participate in a meeting by means of electronic communication as defined in section 1 of the Electronic Communications and Transactions Act, Act 25 of 2002, provided that all parties must be able to communicate simultaneously with each other.
- 21.6 The secretary of the Trustee Committee shall keep proper minutes of all resolutions adopted at a meeting, the minutes of which shall be distributed to all trustees as soon as possible.
- 21.7 Unless any member present in person or by proxy at a meeting shall before closure of the meeting have objected to any declaration made by the chairperson of the meeting as to the result of any voting at the meeting, or the propriety or validity of the procedure at such meeting, such declaration by the chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the chairperson of the meeting as to the result of any voting at the meeting.

22. RESOLUTIONS

- 22.1 For an **ordinary resolution** to be adopted at a properly constituted member's meeting, it must be supported by at least 51% (fifty-one percent) of the present members.
- 22.2 For a **special resolution** to be adopted at a properly constituted trustee meeting, it must be supported by at least 75% (seventy-five percent) of the present members.
- 22.3 A **special resolution** is required in the following matters:
- 22.3.1 amendment of clauses 3, 4, 6, 8, 41 and 42 of the constitution;
- 22.3.2 the acquisition and/or alienation of any immovable property, except these properties as part of the land from the developer;
- 22.3.3 the registration of any servitudes over the common property;
- 22.3.4 it is recorded that the developer shall be entitled to alienate or grant rights over the common property to the Private Utility Company .
- and an ordinary resolution for all other matters.
- 22.4 A written resolution (which may consist of one or more documents in like form) signed by all the members, whether for an ordinary- or special resolution, as the case may be, shall be valid and

effective in accordance with its terms as if passed at a properly constituted member's meeting. A fax or electronic transmission of a properly signed member's resolution (which may consist of one or more documents in like form) shall be acceptable evidence that such written resolution has been passed.

TRUSTEE COMMITTEE

23. BUSINESS AND AFFAIRS

The business and affairs of the Association must be managed by or under the direction of its Trustee Committee, which has the authority to exercise all of the powers and perform any of the functions of the Association, except to the extent that this constitution or any act provides otherwise.

24. APPOINTMENT

24.1 During the development period, the Trustee Committee shall be appointed by the developer, who shall continue in office until terminated by the developer.

24.2 After the development period or if the developer is in default of its obligation set out clause 24.1, the Trustee Committee shall be appointed by the members at the Association's annual general meeting or special meeting, as the case may be, contemplated in clause 18, who shall continue in office until the next annual general meeting.

24.3 A trustee shall also cease to hold office:

24.3.1 by written notice to the Trustee Committee if he resigns his office;

24.3.2 if he absents himself from 2 (two) consecutive meetings without leave of absence;

24.3.3 upon his estate being sequestrated, whether provisionally or finally;

24.3.4 upon the commission by him of any act of insolvency; or

24.3.5 upon his conviction of any offence involving dishonesty.

24.4 Vacancies on the Trustee Committee may temporary be filled by co-option.

25. OFFICES

25.1 The Trustee Committee shall consist of at least 3 (three) natural persons.

25.2 A trustee need not be a registered owner.

25.3 The Trustee Committee shall consist of a chairperson, a secretary and a treasurer and shall from their ranks elect a chairperson.

25.4 Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in connection with the performance of their duties as trustees and/or chairperson and secretary and/or treasurer, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

25.5 No trustee shall be liable to the Association or any member thereof or to any other person whomsoever, for any act or omission by himself, the Association or its servants or agents. Every trustee is indemnified by the Association against any loss suffered by him in consequence of any purported liability provided that such trustee has, upon the basis of information known to him, acted in good faith, without intent and without gross negligence and/or without dishonesty.

25.6 Proper books of account of the administration and finances of the Association shall be kept and financial accounts shall not be audited annually, unless the members vote to the contrary.

25.7 Save as otherwise provided herein, the chairperson shall preside at all meetings of the Trustee Committee, and all meetings of members, and shall perform all duties incidental to the office of the chairperson and such other duties as may be prescribed by the Trustee Committee or of members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.

26. **MEETINGS**

26.1 The Trustee Committee may regulate their meetings as they think fit.

26.2 Because there are only 3 (three) trustees and as they deal with practical day-to-day management issues, they may conduct their meetings far more informally than meetings of the Association.

27. **NOTICES**

There are no notices requirements

28. **VENUE**

Meetings shall be held in Darling or other places and at times they decide from the time to time.

29. **QUORUM**

All the trustees have to be present.

30. **AGENDA**

The secretary shall prepare an agenda for each meeting.

31. **PROCEDURES**

31.1 All meetings shall be conducted in accordance with generally accepted practice.

31.2 Save as otherwise provided herein, the proceedings at any Trustee Committee meeting shall be conducted in such reasonable manner and form as the chairperson shall decide.

32. **PROXIES**

A trustee cannot be represented at a meeting by a proxy or any other agent.

33. VOTING

- 33.1 Each trustee shall have 1 (one) vote.
- 33.2 Voting shall take place by raise of hands.
- 33.3 Trustees may attend meetings or participate in a meeting by means of electronic communication as defined in section 1 of the Electronic Communications and Transactions Act, Act 25 of 2002, provided that all parties must be able to communicate simultaneously with each other.
- 33.4 The secretary shall keep proper minutes of all resolutions adopted at a meeting, including meetings of the members.
- 33.5 The secretary shall take minutes of every meeting, being Trustee Committee's and member's meetings, although not necessarily *verbatim*, which minutes shall be reduced to writing without undue delay after the meeting and shall then be certified correct by the chairperson of the meeting. All minutes of meetings shall, after certification as aforesaid, be placed in a minute book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of directors of companies, one for the Trustee Committee and one for members. The said minute books shall be open for inspection at all reasonable times by a trustee, the accountants, the members and Swartland Municipality.

34. RESOLUTIONS

- 34.1 All votes shall be conducted by a unanimous decision.
- 34.2 A written resolution (which may consist of one or more documents in like form) signed by all the trustees, shall be valid and effective in accordance with its terms as if passed at a trustee meeting. A fax or electronic transmission of a properly signed trustee's resolution (which may consist of one or more documents in like form) shall be acceptable evidence that such written resolution has been passed.
- 34.3 All resolutions recorded in the minutes of any trustee committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the members or any or the trustees unless such resolution was competent within the powers of the Trustee Committee.

35. FUNCTIONS AND POWERS

- 35.1 Subject to the express provisions of this constitution, the Trustee Committee 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 and, save as may be expressly provided herein, may exercise all such powers of the Association, as are required to be exercised or done by the Association in general or special meetings, subject nevertheless to such regulation as may be prescribed by the Association in meeting from time to time, provided that no regulation made by the Association in meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.

- 35.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 35.3 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any member in such reasonable manner as it shall decide from time to time.
- 35.4 The Trustee Committee may make regulations not inconsistent with this constitution, or any regulations prescribed in the Association in general meeting:
- 35.4.1 as to disputes generally;
 - 35.4.2 for the furtherance and promotion of any of the objects of the Association;
 - 35.4.3 for the better management of the affairs of the Association;
 - 35.4.4 for the advancement of the interests of members;
 - 35.4.5 for the conduct of Trustee Committee meetings and member's meetings;
 - 35.4.6 to assist it in administering and governing the Association's activities generally;
- and shall be entitled to cancel, vary or modify any of the same from time to time.
- 35.5 Save as otherwise provided in this constitution, the trustees shall at all time have the right to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, architects, engineers, town planners, managing agents, environmental consultants, and any other person or firm and/or other employee/s whatsoever, for any reasons thought necessary by the trustees and on such terms as the trustee shall decide.
- 35.6 The trustees shall further have the power:
- 35.6.1 to require that any construction of any sort on the estate shall be supervised to ensure that the provisions of this constitution and the estate rules are complied with and that all such construction is performed in a proper and workmanlike manner;
 - 35.6.2 to issue architectural and landscape design manuals, environmental management plans and contracts or instructions in respect of the estate, and to ensure that these documents and instructions are complied with at all times.
- 35.7 The trustee may appoint an architectural review committee to exercise the powers set out above. Members of the architectural review committee shall not be required to be members of the Association.
- 35.8 Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the developer on non-residential properties, all plans for buildings, out-buildings, structures, additions and alterations shall be approved by the Trustee Committee or architectural review committee (if so appointed), or any person designated by them for the purpose.
- 35.9 The Trustees shall have the power to determine the criteria for the accreditation of architects, builders and estate agents employed by registered owners.

- 35.10 The Trustees shall further have the power to make estate and/or conduct rules in regard to *inter alia*:
- 35.10.1 the siting of all buildings and improvements on the erven, the use of motor vehicles and the parking of vehicles, including trucks, caravans, trailers and boats and the use of the roads;
 - 35.10.2 the use of common areas and the restrictions for the use and enjoyment thereof;
 - 35.10.3 the right to prohibit, restricts or controls the keeping of any animals which they regard as dangerous or a nuisance;
 - 35.10.4 the conduct of any persons within the estate for the prevention of nuisance of any nature to any member;
 - 35.10.5 the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association for the advancement of the interest of the members and/or the residents of the estate;
 - 35.10.6 the maintenance of all buildings, out buildings, structures, improvements of any nature and landscaping of erven on the estate;
 - 35.10.7 the control of the number of occupiers permitted on any one property;
 - 35.10.8 the admission of any person to the estate, and the eviction of any person not entitled to be thereon;
 - 35.10.9 maintenance of common areas;
 - 35.10.10 refuse disposal;
 - 35.10.11 use of pathways and amenities relating thereto;
 - 35.10.12 installation of air conditioning units and televisions and radio antennae and/or satellite dishes;
 - 35.10.13 littering;
 - 35.10.14 responsibility of the members for the activities of domestic employees and their guests and access is such persons to the estate;
 - 35.10.15 security;
 - 35.10.16 letting and re-selling of erven;
 - 35.10.17 the imposition of fines and other penalties;
 - 35.10.18 the accreditation of estate agents for re-sale of residential erven;
 - 35.10.19 the accreditation of architects in respect of the submission of plans for any works to be conducted on residential erven; and
 - 35.10.20 the accreditation of builders contracted to conduct construction work on residential erven.

- 35.11 For the enforcement of any of the rules made by the trustees in terms of this clause, or of any or the provisions of this constitution generally, the Trustee Committee may:
- 35.11.1 give notice to the member concerned requiring him to remedy such breach within such period as the trustees may determine; and/or
- 35.11.2 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
- 35.11.3 take such action including the imposition of a fine, or proceedings in court, as they may deem fit.
- 35.12 Should the Trustee Committee institute any legal proceedings against any member or resident on the estate for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs to incurred from the member or resident concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 35.13 In the event of any breach of the rules by the member's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, who shall be jointly and severally liable with such wrongdoer to and in favour of the Association. However, without prejudice for the foregoing, the Trustee Committee may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 35.14 Notwithstanding anything to the contrary herein contained, the Trustee Committee may in the name of the Association enforce the provisions of any rules by criminal action or civil application or action in a court of competent jurisdiction and for his purpose may appoint attorneys and counsel, as they may deem fit.
- 35.15 The Association may during any member's meeting itself make any rules in regard to any matter and may also vary or modify any rule made by it or by the Trustee Committee from time to time.

36. ACCOUNTS

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

37. AUDIT

The accounts of the Association shall not be subject to any audit, unless the Association during any member's meeting or the Trustee Committee decides otherwise.

38. COMMUNICATION

38.1 For all purposes, which may include court process documents, notices or any other document or communications of whatsoever nature, the members shall file their address with the Trustee Committee for where notices can be received.

38.2 Any notice or communication that is required or permitted, will only be valid if in writing, but notice by way of telefax and email will be regarded as due notice.

38.3 Any notice to a party:

38.3.1 that is delivered by hand in a correctly addressed envelope to a responsible person during normal business hours at the chosen address will be regarded as having been received on the date of delivery; and

38.3.2 that is sent by telefax to his telefax number or by e-mail to his e-mail address, will be regarded as having been received on the date of sending thereof where it was sent during normal business hours, or on the first business day after it was sent where it was sent outside of business hours, unless the opposite can be proven.

38.4 Any party may change his *address for all notices* by way of notice to the Trustee Committee.

38.5 Notices must preferably be sent by e-mail.

39. INDEMNITY

39.1 The Trustee Committee shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their said capacities and in the case of a trustee member, in his capacity as chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.

39.2 Every trustee member, every servant, agent and employee of the Association, and the accountants shall be indemnified by the Association against (and it shall be the duty of the trustee committee out of the funds of the Association to pay) all costs, losses and expenses (including traveling expenses) which such person or persons may incur or become liable for by reason of any contact entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a trustee member and his duties as chairperson. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bone fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

39.3 The Trustee Committee shall not be liable for the acts, receipts, neglects or defaults of the accountants or of any of the other trustee members, whether in their capacities as trustee members or as

chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss of damage occasioned by any error of judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same happen through lack of *bona fides* or breach of duty or breach of trust.

40. **DISPUTE RESOLUTION**

Mediation

40.1 In the event that a dispute arises between the Trustee Committee and any member in regards to the interpretation or application of the provisions of this constitution or any other resolution or the validity of any document provided by the Trustee Committee in compliance with the provisions of this constitution, the Trustee Committee or member, before he may refer a dispute arising from this constitution for arbitration or institute a legal action, shall be obliged to refer such dispute for mediation. Regardless of the dispute the parties will agree on the mediator. The mediator will determine the procedure and terms of the mediation process. If the parties:

40.1.1 fail to agree on a mediator within a reasonable time; or

40.1.2 fail to resolve the dispute within a reasonable time by way of the mediation process; or

40.1.3 the mediation process is unreasonably delayed

the Trustee Committee or member shall then be entitled to institute a legal action or refer the dispute for arbitration as provided for in clauses 40.2 to 40.6

Arbitration

40.2 Any dispute that cannot be resolved in terms of clause 40.1, can if so required by any party by giving written notice to that effect to the others, be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ('AFSA') by an arbitrator or arbitrators appointed by AFSA. There shall be a right of appeal as provided for in article 22 of the aforesaid rules.

40.3 The Trustee Committee and each member:

40.3.1 expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and

40.3.2 irrevocably authorises the other to apply, on behalf of all parties to such dispute, in writing, to the secretariat of AFSA in terms of article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent basis.

40.4 If AFSA no longer exists then the arbitrator shall be appointed by the President for the time being of the Cape Law Society of South Africa and the arbitration shall be conducted in accordance with the Arbitration Act, Act 42 of 1965.

40.5 Notwithstanding anything to the contrary contained in this clause 40, any party shall be entitled to apply for an interdict from any competent court with jurisdiction.

40.6 For the purposes of clauses 40.2 to 40.5 and for the purposes of having any award made by the arbitrator being made an order of court, each of the parties hereby submits itself to the non-exclusive jurisdiction of the Western Cape High Court.

41. **AMENDMENTS TO CONSTITUTION**

41.1 This constitution, or any part thereof, as contained herein shall not be repealed or amended, and no new clauses shall be made, save by a special resolution adopted at a special meeting of the members.

41.2 Further to clause 41.1 above, any amendment or alteration during the development period, shall be subject to the prior written consent of the developer and in respect of any amendment or alteration to clauses 3, 4, 6, 8, 41 and 42 of the constitution shall always be subject to the prior written consent of Swartland Municipality.

41.3 A copy of this constitution and every amendment must be submitted to Swartland Municipality for approval and to be countersigned.

42. **DISSOLUTION**

This Association may only be dissolved by a special resolution adopted at a special meeting of the members and the with the prior written consent of Swartland Municipality and the developer, during the development period.

43. **INTERPRETATION**

The headings of the clauses in this constitution are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this constitution nor any clause hereof. In this constitution, unless a contrary intention clearly appears:

43.1 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;

43.2 where the day on or by which anything is to be done is not a business day, it shall be done on or by the 1st (first) business day thereafter, which is not a Saturday, Sunday or Public Holiday;

43.3 when any number of days is prescribed in this constitution, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday, which last day shall be the 1st (first) business day thereafter, which is not a Saturday, Sunday or Public Holiday;

- 43.4 where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail; and
- 43.5 in this constitution, unless a contrary intention clearly appears, words importing the singular shall include a reference to the plural and *vice versa*; words importing the masculine shall include a reference to the feminine and *vice versa*; words importing natural persons shall include a reference to legal personae and trusts;
- 43.6 the following expressions shall have the following meanings, namely:
- 43.6.1 **approved architectural design manual** means the architectural and landscape design manual for the development or improvements on the erven;
- 43.6.2 **Association** means @ Darling Green Estate Master Property Owners Association;
- 43.6.3 **Auditors** means the auditors of the Association;
- 43.6.4 **Business Day** means weekdays other than Saturdays, Sundays and public holidays;
- 43.6.5 **Chairperson** means the chairperson of the Trustee Committee and the member's meetings;
- 43.6.6 **Common Areas** means the private roads, private road reserves, private open spaces, Lifestyle Erf and refuse removal areas on the estate, together with any other area(s) and/or facilities which the developer or the Trustee Committee may designate as common areas from time to time;
- 43.6.7 **Council** means Swartland Municipality or its successors;
- 43.6.8 **Developer** means @ Darling Green Estate Proprietary Limited (registration number: 2006/031215/07) in person or represented by written proxy or any cessionary in terms of a cession of its rights by the developer, or its successor in title as owner of the land or the remainder thereof from time to time;
- 43.6.9 **Development Period** means the period commencing on the creation of this Association and terminating on the date that all the properties have been transferred from the developer to third parties or on such earlier date as the developer, in its sole discretion, notifies the Association in writing that the development period has ceased, whichever shall occur first;
- 43.6.10 **Erf or Erven** means any erf or erven located on the Estate, including commercial, residential and common areas;
- 43.6.11 **Estate** means @ Darling Green Estate to be established on the land;
- 43.6.12 **Land** means Erf 4401 Darling, situated in the Swartland Municipality, Division of Malmesbury, Province of Western Cape;
- 43.6.13 **levy** means the levy referred to in clause 7;
- 43.6.14 Lifestyle Erf means the Erf substantially reflected as such on the Site Development Plan of the Estate on which the members pool and braai areas will be erected;
- 43.6.15 **member(s)** means a member or members of the Association;

- 43.6.16 **month** means a calendar month;
- 43.6.17 **office** means the registered office of the Association;
- 43.6.18 **Private Utility Company** means the utility company to be established to provide utility services for the estate;
- 43.6.19 **registered owner** means the registered owner of any of the residential properties on the land;
- 43.6.20 **Swartland Municipality** means the local authority;
- 43.6.21 **trustee** means one of the Trustee Committee;
- 43.6.22 **Trustee Committee** means the board of trustees of the Association;
- 43.6.23 **in writing** means written, printed or lithographed or partly one and partly another and other modes or representing or producing words in a visible form; and
- 43.6.24 **year** means a calendar year.

**CERTIFICATE OF ACCEPTANCE
DEVELOPER**

I, the undersigned, Klaus Gustav Göbel, duly authorised hereto by a resolution of the directors of

@ DARLING GREEN ESTATE PROPRIETARY LIMITED

Registration number: 2006/031215/07

as developer of the land herewith consent to the terms and conditions of the constitution of the **@ Darling Green Estate Owners Association**.

Signed at _____ this _____ day of _____ 20____

KG Göbel

**CERTIFICATE OF APPROVAL
SWARTLAND MUNICIPALITY**

I, the undersigned, Madelaine Sophia Terblanche, in her capacity as Director: Corporate Services and duly authorised thereto by a resolution dated 31 May 2011 by:

SWARTLAND MUNICIPALITY

as the Local Authority, hereby certify that the constitution of **@ Darling Green Estate Owners Association** was this day approved as is required in terms of section 39 of the Swartland Municipality: Land Use Planning By-Law (PG 7741 of 3 March 2017).

Signed at MALMESBURY this _____ day of _____ 20____

MS Terblanche