



XANADU NATURE ESTATE

HOMEOWNERS' ASSOCIATION

CONSTITUTION



	Business Management System Xanadu Homeowners' Association Constitution	Doc No	XHOA/RUL/001
		Effective Date	03/09/2022
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Date	3 September 2022	3 September 2022

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1 DEFINITIONS AND INTERPRETATIONS

In this constitution the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them.

- 1.1 Unless the context indicates otherwise words purporting the singular shall include the plural and vice versa, words importing any one gender shall include the other genders and any reference to a person shall include natural or juristic persons amongst others a company incorporated or registered as such under any law, any body of persons corporate or unincorporated and any trust whether testamentary or inter vivos.
- 1.2 The headings to the clauses in this constitution are for reference purposes only and shall not be considered in the interpretation of those clauses.
- 1.3 The Act” means the Companies Act No 71 of 2008 as amended and the Community Services Ombud Act of 2011.
- 1.4 “Abandon” shall mean no substantial building activities undertaken for a period of 45 days after commencement.
- 1.5 “Address” shall mean the address at which the offices of the Homeowners’ Association are located; this being Kubla Khan Drive, Xanadu Nature Estate, R511 Hartbeespoort, Northwest Province.
- 1.6 “Alienate” means to do away with any erf or part thereof whether by way of sale, exchange, donation, deed, intestacy, will cession, assignment, court order or insolvency, change in shareholding of a company or Membership in a close corporation irrespective of whether such alienation is subject to a suspensive or resolute condition, and alienation shall have a corresponding meaning.
- 1.7 “Architect” means the architect appointed by the Association to scrutinize all plans on behalf of the Association.
- 1.8 “Association” means the Xanadu Nature Estate Homeowners’ Association, an Association not for gain, constituted in terms of this constitution, or any amendments thereto.
- 1.9 “Auditors” means the auditors of the Association.
- 1.10 “The Board” means the Trustees as elected by the Members from time to time and any appointee assembled as a Board at which a quorum is present for the purpose of a Board meeting.
- 1.11 Building & Aesthetic rules means the rules issues by the XHOA in respect of Building & Aesthetic rules & guidelines as issued by the XHOA from time to time.
- 1.12 Code of Conduct means the rules and guidelines issued by the XHOA which shall govern the behaviour of the Members and Residents with the Estate.
- 1.13 The Constitution means the content of this document read in conjunction with the Code of Conduct and the Building & Aesthetic Rules of the XHOA.
- 1.14 “Common Property” means any part of the estate which is not privately owned and is maintained by the Association in terms of the General and Environmental Management plans, as well as any erf or portion of an erf, specifically acquired and registered in the name of the Association.

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- 1.15 "CSOS" means the Community Schemes Ombud Service as established in terms of the Community Schemes Ombud Service Act, 2011 (Act No 9 of 2011).
- 1.16 "Developer" means Xanadu Eco Park (Pty) Limited, or their respective successors-in-title or assigns.
- 1.17 "Estate" means the 13 private townships proclaimed as Xanadu extensions and any other townships as may be phased or subdivided from time to time and any other land added to this area and joined by common land situated on the Remaining extent of Portion 43 of the farm Rietfontein 485JQ. Together the erven and common property forms the Xanadu Nature Estate.
- 1.18 "Erf" means any full title erf irrespective of its zoning, as well as any unit in a sectional title scheme but excludes a unit or room in a cluster scheme.
- 1.19 Residential erf includes any units in a Sectional Title or Cluster Scheme resulting from the sub-division of land in the estate including consolidated erven.
- 1.20 "Levy" means the levies as raised by the Board in terms of the provisions of this Constitution and includes any special levy as may be determined from time to time.
- 1.21 "Local Authority" means the local authority having jurisdiction over the estate.
- 1.22 "Estate General Manager" means any natural or juristic person appointed by the Board of Trustees to manage the affairs of the Estate.
- 1.23 "Member" means an owner of an erf.
- 1.24 "Name of the Association" shall henceforth be the Xanadu Nature Estate Homeowners' Association, the abbreviation thereof shall be XHOA; "Xanadu Nature Estate" shall mean the Estate and "Xanadu Eco Park" shall have a similar meaning.
- 1.25 "Non-paying Member" means a Member of the Association who agrees to be bound by this Constitution, but who will not be required to pay levies.
- 1.26 "Owner" means a registered owner, as per the Deeds office, of an erf (as defined).
- 1.27 "Pavement" means the area outside of an erf which is deemed common property, and which shall be maintained by the Member onto whose erf such area abuts.
- 1.28 "Personal Information" shall have the meaning ascribed to it in Chapter 1 of POPI and includes, but is not limited to a name, address, email address, telephone or fax number, fingerprints, criminal history and education or other personal credentials provided, or which is collected from the candidate or other third parties, before and / or during the background screening process and / or thereafter.
- 1.29 "POPI shall mean the Protection of Personal Information Act, no 4 of 2013, as amended from time to time, including any regulations made under the Act.
- 1.30 "Privacy and Data Protection Conditions" refers to the 8 (eight) statutory prescribed conditions for the lawful Processing of Personal Information.
- 1.31 "Responsible Parties" refers to the HOA and any service providers who may perform some of the HOA's administrative functions together, and "Responsible Party" any one-off them.

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- 1.32 "Trustees" means the individuals elected by the Members to be in control of the Board of Trustees of the Association.
- 1.33 "Unit" shall mean a unit in a sectional title scheme or in a cluster development but excluding a room.
- 1.34 An erf includes but is not limited to a residential full title erf (either for residential, business or other purposes), developed or undeveloped, with or without a dwelling thereon as well as a unit in a sectional title scheme but excludes a room.
- 1.35 "Room" shall mean, depending on the circumstances, a room set out for residential purposes situated in the assisted living facility where one or more individuals are accommodated (cluster living).
- 1.36 "Verification Information Suppliers" shall mean third parties, including, but not limited to, criminal record bureaus, credit bureaus, governmental bodies, and any educational, training, and fraud prevention organisations.
- 1.37 All resolutions passed by the Members or Board of Trustees in terms of any previous Constitutions, shall be deemed valid and enforceable and the onus to prove that same is invalid shall lie on the party making such an allegation. Moreover, and subject to the aforesaid, such resolutions will be valid if made in accordance with the principles of the Constitution applicable at the time of the resolution.
- 1.38 Henceforth, in as far as this Constitution contradicts or in any manner conflicts with the terms and conditions of any previous Constitution or the terms and conditions of any agreement previously concluded between the Board of Trustees or the Homeowners' Association and the Developer, the terms and conditions of this Constitution shall prevail.

2 INCORPORATION OF THE ASSOCIATION

- 2.1 The Association was created on the date of proclamation of the respective thirteen townships and was known as the Xanadu Eco Park Homeowners' Association. The Association has subsequently changed its name and shall in terms of this Constitution be known as the Xanadu Nature Estate Homeowners' Association (XHOA), which still operates as a voluntary Association not for gain, created in terms of the Constitution and regulated as a separate legal entity by such Constitution.
- 2.2 The Association, as an entity, is separate and distinct from its Members, with the capacity to acquire rights or incur obligations in its own name and to own property separate and independently of its Members.

3 OBJECTIVES OF THE ASSOCIATION


- 3.1 To do all things as may be deemed necessary, in the discretion of the Board of Trustees for purposes of enhancing the Estate and / or communal living within the Estate, including the acquisition of land, the expansion of boundaries, the setting of rules and the enforcement thereof, for which purposes the association shall act similar in protecting of its interests as if it was a natural person protecting its own property.
- 3.2 To oversee, regulate and control the harmonious living in the estate as well as the harmonious development of the estate and to ensure and promote the general high standard of living within the Estate in accordance with the published Code of Conduct as will be set by the Board of Trustees from time to time.

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- 3.3 To institute, control and pay for measures relating to security.
- 3.4 To own, control, improve and maintain the common property and advance the communal interests of owners and residence in respect to common property by either purchasing other land or exchanging the common property or any other portion thereof for an erf or erven within the Xanadu Eco Estate for which purposes the association shall be obliged to raise funds as to enable the Board of Trustees to comply with its obligations in terms of this constitution and for which purpose the Chairperson of the Board of Trustees shall be authorised to take all such measures as may be necessary for purposes of giving effect to the aforesaid including the signing of all relevant documentation.
- 3.5 To acquire and grant servitudes.
- 3.6 To regulate the nature and position of buildings, structures, installations and equipment relating to the erven.
- 3.7 To control the nature of garden areas relating to the erven in accordance with the rules.
- 3.8 To control and maintain any roads, infrastructure and services.
- 3.9 To take action including but not limited to the imposition of penalty levies, implementation of the dispute resolution process, or the institution of proceedings in a court of law, as may be deemed fit by the Board of Trustees, in relation to the non-compliance by any Member of any of the requirements of this constitution or the estate rules.
- 3.10 To enter into and to implement any contract relating to the Environmental Impact Assessment, the Environment Management Plan and the Conditions of Establishment of a Township(s) within the Estate, and to incur any costs in this regard, it being recorded that the Association will be bound by any contracts concluded by the developer and/or Estate General Manager in this respect.
- 3.11 To foster a greater understanding of the society in which it operates as well as to contribute to sustainable development. The Trustees are thus empowered from time to time to allocate a portion of the levy at its discretion in areas that the XHOA deems of importance or that the XHOA deems worthy of its support and will include, but not be limited, to, community upliftment, educational support, crime prevention and environmental awareness.
- 3.12 To institute legal action alternatively defend any legal action pursuant to the protection and / or defence of the objectives of the association as alluded to aforesaid alternatively to enforce compliance therewith.
- 3.13 To comply in all respects to legislation including but not limited to the Act as defined, which pertains to the collection of monies in respect thereof as part of the levy and to establish therefrom a residue fund for the maintenance of the services and / or communal areas within the Estate to the extent as may be determined by the Trustees from time to time in their sole discretion but not less than that as may be determined by law.

4 RIGHTS OF MEMBERS OF THE ASSOCIATION

- 4.1 Every owner of an erf shall ipso facto be and becomes a Member of the Association upon registration of transfer of the erf into his name and shall remain a Member until he ceases to own such erf.
- 4.2 Where an erf is owned by more than one person, all the owners shall together be deemed to be one Member and shall have the rights and obligations of one Member, provided that all such co-owners shall jointly have only one vote at all meetings of Members of the Association.

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- 4.3 If a Member consists of more than one person, they shall be jointly and severally liable in solidum for all of such Member's obligations in terms of this constitution and such a Member will nominate one person to vote at a meeting of Members.
- 4.4 In the event that the owner of an erf is a legal entity or trust, it shall nominate one individual who will attend meetings on its behalf and shall be entitled to vote on its behalf.
- 4.5 When a Member ceases to be an owner he shall ipso facto cease to be a Member.
- 4.6 An owner may not at any time resign as a Member.
- 4.7 The provisions of this constitution shall be binding upon all Members and, insofar as they may be applicable to all persons occupying any erf by, through or under any Member, whatsoever the nature of such occupation.
- 4.8 Every Member shall comply with:
- 4.8.1 The provisions of this constitution, the Estate rules, the Code of Conduct and Building and Aesthetic Rules and all other rules or regulations made or promulgated by the Association or the Board of Trustees.
- 4.8.2 Any agreement concluded by the Association or the Board of Trustees or the developer insofar as such agreement may directly or indirectly impose rights or obligations on a Member.
- 4.8.3 The provisions of any Environmental Management Plan and conditions of establishment of any township(s) within the Estate and any directive issued by the Association in this regard; and
- 4.8.4 Municipal bylaws, town-planning scheme or Madibeng land-use scheme, whichever is applicable.
- 4.8.5 Any directive given by the Association, in the enforcement of the provisions of this constitution.
- 4.9 In as far as any of the aforesaid contradicts one another, the provision that imposes the most responsibility shall prevail.
- 4.10 The rights and obligations of Members are not transferable, and every Member shall:
- 4.10.1 To the best of his ability further the objectives and interests of the Association.
- 4.10.2 Observe all the directives made or given pursuant to the provisions of the Constitution; and
- 4.10.3 Be jointly liable with the other Members for expenditure incurred in connection with the Association.
- 4.11 No Members shall let or otherwise part with the occupation of his erf, whether temporarily or otherwise, unless such a Member concluded a lease agreement for a period in excess of 3 months in terms whereof the proposed occupier has agreed to be bound by all the provisions of this constitution. The Member shall at all times remain bound by this constitution, subject to the provisions hereof, and will be required to ensure and procure compliance therewith by such occupier. The Member shall be liable for the acts or omissions of all persons occupying his erf whether lawfully or unlawfully including without limitation guests, employees, invitees, contractors, sub-contractors or agents.
- 4.12 The owner of an erf within the Estate alternatively the owner of a unit within the Estate, is respectively responsible for the upkeep, maintenance and insurance in respect of such an erf or unit and all improvements thereon including the pavement and common area in front of the erf.

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- 4.13 Each aforesaid owner is responsible for and carries the risk of damage in respect of such erf or unit and all improvements thereon.
- 4.14 The aforesaid in no way diminishes any other legal obligation that may exist to regulate the upkeep, maintenance and insurance obligations that may exist between Members internally and Members towards the Estate.
- 4.15 Should a sale of a vacant stand have occurred from a developer, owners are granted a thirty-month period from date of transfer to commence with the building. Once the construction of a house commences, the house must be completed within a period of ten months. Should owners not have commenced the building within the stipulated period the owner or his successor in title, will be liable to the Homeowners Association for an additional levy over and above the normal levy, which will be imposed by the Trustees from time to time.
- 4.16 Should a sale of a vacant stand have occurred from a seller other than the developer owners are granted a six-month period from date of transfer to commence with the building. Once construction of a house commences, the house must be completed with a period of ten months or such further period as agreed to by the Trustees, failing which the Association will impose an additional levy over and above the normal levy, which will be imposed by the Trustees from time to time.
- 4.17 Should no substantial building activity be undertaken for a period of forty-five days after commencement such non activity shall be deemed to be subject to a penalty.
- 4.18 Non-levy paying Members are not entitled to the benefits of the estate nor are they entitled to use any facilities within the Estate in exchange for which they do not pay levies but are subject to the Estate Rules (Code of Conduct) as well as aesthetical rules and the association's authority to impose and protect such. Non-levy paying Members are however obliged to pay the regulatory levy payable in terms of the Act as defined.

5 TERMINATION OF MEMBERSHIP

5.1 Membership of the Association shall cease:

5.1.1 When a Member ceases to be an owner of an erf.


5.1.2 Upon the issue of a final order of sequestration or liquidation of a Member concerned.

5.1.3 Upon the death of a Member, or upon the Member being declared insane or incapable or managing his affairs.

5.1.4 If a Member ceases to be a Member in terms of the provisions to aforesaid, other than him ceasing to be an owner of the property concerned, such Member's Trustee, Liquidator or other legal representative, as the case may be, shall for all purposes be recognised and be bound as a Member under this Constitution.

5.1.5 No Member ceasing to be a Member of the Association for any reason, nor such Member's executors, curators, Trustees or liquidators, shall have any claim upon or interest in or right to the funds or any land or other asset of the Association.

5.2 The Association may claim from any Member or his estate all arrear levies and interest or other sums due by him to the Association at the time of his ceasing to be a Member for any reason.


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6 ALIENATION

- 6.1 A Member shall not in any manner alienate or transfer an erf unless:
- 6.1.1 The proposed transferee has irrevocably bound himself to become a Member of the Association and to observe this constitution for the duration of his ownership of the erf.
 - 6.1.2 The Estate General Manager has given his prior written consent thereto and has issued a clearance that all amounts owing to the Association by such Member have been paid and that the Member is not in breach of this constitution; and
 - 6.1.3 The proposed transferee acknowledges in writing that upon the registration of transfer of the erf into his name he shall ipso facto become a Member, subject always to the provisions of this constitution.
- 6.2 The provisions of 6.1 shall apply mutatis mutandis to any alienation or transfer of an undivided share in an erf.
- 6.3 Restrictions will be registered against the title deeds of all the erven in order to give effect to the terms of this clause if such are not already contained in the title deed, which shall be registered at the cost of the Member.
- 6.4 Each Member shall comply with all conditions imposed by the local authority or any other statutory body relating to an erf and shall be solely responsible for non-compliance with such conditions.

7 CONDITIONS

- 7.1 Where Conditions imposed by local and other statutory authorities:
- 7.1.1 This Constitution may be amended, without the need of approval of the Association in a General Meeting, but only so as to comply with the requirements from time to time of the Local Authority in relation to the conditions of establishment of Xanadu Eco Park (Pty) Limited and Xanadu Nature Estate, or any subdivisions thereof, or any other land which may be added to the Estate.
- 7.2 Conditions of establishment of township:
- 7.2.1 The Association and all Members of the Association shall furthermore strictly comply with all the conditions imposed by the Local Authority to the Conditions of Establishment of township/s comprising the Estate and shall be solely responsible for any non-compliance of such conditions.
 - 7.2.2 No Member shall be entitled to take water from a borehole or well and no Member shall be entitled to dig or drill a borehole or well on its erf without approval from the relevant authorities and the XHOA.
- 7.3 Common property:
- 7.3.1 The Association was entitled to take title of the common property simultaneously with the first separate registration of an erf.
 - 7.3.2 The Association acknowledges that the local authority shall not be responsible for the care, repair, maintenance, cleaning upkeep, improvement and proper control of the common property and any structure or thing erected or contained therein or thereon.

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7.4 Services:


- 7.4.1 The responsibility for the provision of services, namely facilities, utilities, services and amenities, of whatsoever nature as alluded to herein and as may be provided by or on behalf of the Association of owners or residents of erven within the Estate, shall, notwithstanding any other term or condition contained in this constitution, exclude such facilities, utilities, services and amenities as are situated within the boundaries of an erf.
- 7.4.2 All facilities, utilities, services and amenities within the boundary of an erf are the responsibility of the owner.
- 7.4.3 The Association is, responsible for the management, maintenance, upkeep and repair of services relating to water and sewerage up to the boundary of an erf insofar as such reticulation is within the boundary of Xanadu but excluding street lighting and electricity within the Estate.
- 7.4.4 The Association may delegate the delivery, management, maintenance, upkeep and repair, of any of these services to a service provider.
- 7.4.5 Electricity and telecoms are provided respectively by the Local Authority and telecommunications service providers who shall be responsible for those services, inclusive of its maintenance, upkeep and repair and Members shall make their own arrangements with the aforesaid entities.
- 7.4.6 All accounts rendered by the Association or its chosen service provider in respect of these services delivered, is payable on delivery and it is the Members responsibility to obtain the account.
- 7.4.7 The Association or its service provider may suspend the delivery of any services to a Member, if such a Member is in arrears with payment of any service account or levy, including CSOS subscriptions. Members hereby irrevocably consent to such suspension of service/s if any such account is in arrears.

7.5 Private property

- 7.5.1 The Board of Trustees and Estate General Manager will from time to time bring forth rules and / or regulations indicating exactly the manner, method and standard in terms whereof such maintenance and upkeep is to be done.
- 7.5.2 No subdivision, consolidation or rezoning of an erf or any part thereof, including the establishment of a sectional title scheme, shall be permitted without the express prior written consent of both the Board of Trustees and the local authority, which consent the Board of Trustees are allowed to refuse or grant on such terms as the Board of Trustees in their sole discretion deems fit.
- 7.5.3 The Estate General Manager and his nominated personnel as well as all security officials will at all times have access to the erf, situated on the private property of the Member, as to enable them to exercise their duties in terms of the Constitution, read with the Code of Conduct and the Architectural and Building Rules which includes access to any dwelling.

7.6 Compliance with legislation

- 7.6.1 It is the responsibility of each and every Member to ensure that itself, its employees, guests, servants, agents, service providers and builders, when gaining entry to the Estate, complies with all applicable legislation including, but not limited, to the Labour Relations Act (Act 66 of 1995), Basic Conditions of Employment Act (Act 75 of 1997), Occupational Health and Safety Act (Act 85 of 1993) and the National Environmental Management Act (Act 107 of 1998);

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7.6.2 In addition, each Member shall ensure that either itself or its Agent, Service Provider or Builder carries sufficient public liability and other insurance, all of which will remain in force and duly paid for since initially accessing the estate until finalisation of the specific job and exiting the estate, as to ensure that it covers all occupational injuries and diseases and makes adequate provision for any loss and / or claim arising from any of the aforesaid.

7.6.3 Members shall ensure that their guests, family Members, children and agents and contractors at all relevant stages complies with this Constitution as well as the Code of Conduct issued in pursuance thereof and Members shall be liable for the conduct and / or negligent actions of their family Members, guests, children, contractors or agents.

7.7 Conditions in respect of Title Deed

7.7.1 The Seller shall be obliged to procure that in addition to all other conditions of title, the following conditions of title be inserted in the Deed of Transfer in terms of which the Purchaser takes title of the property, being.

7.7.1.1 "Every owner of an erf, or any subdivision thereof or any interest therein or any unit thereon, as defined, shall become and shall remain a Member of the Homeowners' Association and be subject to its Constitution, Code of Conduct, rules and regulations until he ceases to be an owner as aforesaid. Neither the erf nor any subdivisions thereof nor any interest therein nor any unit thereon shall be transferred to any person who has not bound himself to the satisfaction of such Association to become a Member of the Xanadu Eco Park Homeowners' Association; (now renamed the Xanadu Nature Estate Homeowners' Association)."

7.7.1.2 "The owner of the erf, or any subdivision thereof or any interest therein of any unit thereon, as defined, shall not be entitled to transfer the erf or any subdivision thereof or any interest therein or any unit thereon without a clearance certificate from the Homeowners' Association or an agreement that the Constitution has been complied with."


7.7.1.3 "The term "Homeowners' Association" in the aforesaid conditions of the title shall mean the Xanadu Nature Estate Homeowners' Association (Association not for gain, or alternatively, an Association in terms of a Constitution, or alternatively, a Common Law Association)." Henceforth known in abbreviated form as the XHOA.

8 LEVIES


8.1 The Board of Trustees shall from time to time impose levies upon the Members of the Association for the purpose of meeting all the expenses which the Association has incurred, or to which the Board of Trustees reasonably anticipate the Association will incur in the attainment of their objectives or the pursuit of the business. In calculating the amount of the levies, the Trustees shall take into account income from other sources, if any, earned by the Association.

8.2 In calculating the levy payable by each Member, and subject to 8.3, 8.4, 8.5 and 8.10 in respect of non-levy paying Members, the Trustees shall as far as be reasonably practical, and in their sole discretion.

8.2.1 Assign those costs arising directly out of or directly attributable to an erf or erven to the owner/s thereof.

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- 8.2.2 Assign those costs relating to the estate generally to the owners of all erven equally.
- 8.2.3 Provided however that the Trustees may in any case where they consider it equitable so to do, assign to any owner a greater or lesser share of the costs as the Trustees consider may be reasonable in the circumstances.
- 8.2.4 It is expressly understood that a Sectional Title or Cluster Unit Scheme shall pay one levy per unit. Similarly, should a purchaser consolidate two or more stands, the Association shall debit the number of levies as per the original stands despite the consolidation having taken place. In a Sectional Title or Cluster development, levies are payable on each unit completed, irrespective of whether the unit has been occupied, transferred or a Body Corporate formed in a Sectional Title development.
- 8.3 Levies shall be deemed to be payable annually in advance effective 1 March each year. The Association may provide for the payment of such levies in twelve instalments for the period ended February each year. In the event that any Member fails to pay such instalments on due date, the total outstanding levy for the remainder of that year shall immediately become due and payable. Such remaining portion payable shall attract interest at the prime rate as per ABSA Bank and shall be compounded monthly in advance.
- 8.4 From the date of adoption of this Constitution, Members acquiring property within the estate will be required to pay their standard levies by means of a debit order.
- 8.5 The Trustees may, from time to time, in addition to normal levies, impose special levies upon the Members. In addition to other levies, in respect of all or portion of such expenses as are mentioned and the amount of such levies and the manner of payment thereof by Members shall be at the discretion of the Board of Trustees.
- 8.6 Any amount due by a Member by way of a levy, special levy, penalty levy or any other sum shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member's successor-in-title to an erf shall be liable, as from the date upon which he becomes a Member pursuant to the transfer of that erf, to pay the levies attributable to that erf. No Member shall be entitled or permitted to transfer his erf until the Association has certified that the Member has at the date of transfer paid all amounts owing by him to the Association.
- 8.7 No Member shall be entitled to the privileges of Membership unless and until he shall have paid every levy and other sum, if any, which may be due and payable to the Association in respect of his Membership.
- 8.8 Penalty levies may be imposed in terms of the transgression of the Constitution Building and Aesthetic Rules and the Code of Conduct of the Association.
- 8.9 The Association shall collect any statutory levies from Members and shall pay such levies to the applicable body. The Association shall, however, not be held liable for any arrears in respect of such levies owed by a Member.
- 8.10 Non-levy paying Members shall not pay normal levies but shall be liable to pay regulatory levies due as determined in terms of the Community Schemes Ombud Services Act, 2011, as well as any penalties and / or fines as may be issued from time to time by the Association for which the body corporate shall be jointly and severally liable with the Member concerned.


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9 COSTS

- 9.1 A Member shall be liable for and shall pay all legal costs as between attorney and own client, collection commission, tracing agents fee, administration costs, interest at the ruling prime interest rate as per ABSA Bank, expenses and charges incurred by the Association in recovering any arrear levy, special levy or other amounts due and owing to the Association, and also the costs incurred in respect of penalty levies imposed in the process of the enforcement of any of the estate rules or other rules or regulations issued or made by or on behalf of the Association from time to time.

10 ESTATE RULES

- 10.1 Subject to the provisions of this constitution and to any directions given by the Association in General Meeting and to any conditions imposed by the local authority or any other statutory body, the Board of Trustees may make rules and codes of conduct and may vary or modify the same from time to time, in connection with:
- 10.1.1 Any aspect as provided for in terms of this Constitution or as may be anticipated in terms of the Act as defined.
 - 10.1.2 The nature, architectural design and positions of buildings, structures, swimming pools, installations and equipment relating to any erf.
 - 10.1.3 The nature, content and design of the gardens relating to any erf including the establishment and maintenance of landscaping in these areas.
 - 10.1.4 The nature of cluster and sectional title schemes, consolidations and town planning policies.
 - 10.1.5 The installation, operation and maintenance of irrigation in the common area adjacent to any erf by the Member concerned.
 - 10.1.6 The determination or control of security measures.
 - 10.1.7 The control of the building operations and the conduct of builders and contractors.
 - 10.1.8 The control of the number of residents permitted on any one erf within the erected building as per the approved site plans by the Association. The Association shall be entitled to control of the number of residents per erf whereby such shall be restricted to two persons per legitimate bedroom of a dwelling.
 - 10.1.9 The control and conduct of persons for the prevention of nuisance of any nature to any resident.
 - 10.1.10 The control and conduct of persons using the common areas.
 - 10.1.11 The keeping of animals including the right to prohibit, limit, restrict and control the keeping of animals.
 - 10.1.12 The use of roads infrastructure, services amenities and facilities in the common areas including the right to charge a reasonable fee for the use of the amenities and facilities.
 - 10.1.13 The furtherance and promotion of any of the objects of the Association and for the better management of the affairs of the Association and for the advancement and protection of the interests of the Members and residents.

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10.2 Enforcement of Rules:

- 10.2.1 For the enforcement of any rules or any of the provisions of this constitution generally the Trustees or the Estate General Manager may.
- 10.2.2 Give notice to the Member concerned to remedy any breach within such period as they may determine.
- 10.2.3 Take or cause to be taken such action as they deem fit to remedy the breach of which the Member concerned may be guilty and debit the cost thereof, impose a penalty levy on the Member which shall be a debt due to the Association, to his levy account, and which shall be payable as part of his levy on the first day of the following month; and
- 10.2.4 Should the Trustees or Estate General Manager institute legal proceedings against any Member or resident 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 concerned, calculated as between attorney and client, including tracing fees and collection commission.
- 10.2.5 In the event of any breach of the rules or of any of the provisions of this Constitution by any person residing on a Members' erf or his guests, employees, contractors, and sub-contractors or agents, such breach shall be deemed to have been committed by the Member himself; but without prejudice to the foregoing, the Trustees or Estate General Manager may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, in addition to any action which might be taken against the Member concerned;

11 TRUSTEES

11.1 Election of Trustees:

- 11.1.1 The Trustees shall be elected by the Members at the Annual General Meeting.
- 11.1.2 The election of Trustees shall, subject to the terms and conditions of this Constitution, be for a non-interrupted period of two consecutive years.
- 11.1.3 The Board of Trustees will be constituted from date of acceptance of this Constitution as follows.
- 11.1.4 Upon adoption of this Constitution, the Board will consist of a maximum of 7 (seven) Trustees who will be appointed by the Members. Thereafter Trustees will be elected and/or appointed as provided for in terms of this constitution at an Annual General Meeting.
- 11.1.5 Trustees are to be appointed by the Members on a rotational basis, to appoint top 4 Trustees in terms of most votes for 3 years and the rest for 2 years only. Such rotational appointment shall be effective as of the Annual General Meeting held on 16th October 2021.
- 11.1.6 Subject to a Trustee resigning or termination of such a Trustee's appointment and disqualification of a Trustee, each Trustee shall hold office as such from the date of his appointment for a period of two years, (also refer clause 11.1.5) until the second Annual General Meeting following his appointment, at which Annual General Meeting Four Trustees in rotation, shall be deemed to have retired from office, but shall be eligible for re-election as a Trustee.

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11.2 Duties of appointed Trustees:


- 11.2.1 The Trustees shall elect one among them to act as Chairperson for such term as they deem fit, but not for longer than such person's tenure as a Trustee.
- 11.2.2 The Chairperson of the Trustees shall act as the Chairperson of the Annual General Meeting and other General Meetings of the Association. Should he not be able to do so for any reason, the Trustees shall select any other person to act as Chairperson of the relevant meeting.

11.3 Competency of Trustees:

- 11.3.1 A competent and qualified Trustee shall be an individual who shall not necessarily be a Member. A Trustee, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this Constitution. Competence will be measured according to experience, knowledge, skills, attitudes and values. Every director to exercise reasonable care, diligence and skill in discharging their duties. Trustees shall be deemed to be acquainted with their responsibilities in accordance with the fiduciary requirements of the Companies Act 71 of 2008 and the King IV report on Corporate Governance.
- 11.3.2 Furthermore, all Trustees shall upon their appointment, be required to undergo training in respect of the Fiduciary responsibilities, Governance, relevant Legislation and other issues facing Trustees.

11.4 The Trustees shall have the powers as set out hereinafter.

- 11.4.1 Perform the functions of office in good faith, honesty and in a transparent manner, and
- 11.4.2 At all times act in the best interests of the Association, and in such a way that the credibility and integrity of the Association is not compromised in any way.
- 11.4.3 Unless the Chairperson accepts the apology for not attending a Trustee meeting, Trustees will be obliged to attend all Trustee meetings. Any Trustee who does not attend at least 50% of Board of Trustees meetings in a period of twelve (12) months, even with apology, may be requested by the Board of Trustees to resign from the Board.
- 11.4.4 In general, a Trustee shall do all such things and take all such actions or cause for all such things to be done or actions to be taken as is necessary to effectively administer and manage the affairs of the estate in accordance with the powers granted to the Trustees in accordance with the constitution.
- 11.4.5 A Trustee must at any time declare in writing to the Board any financial interest he or his immediate family or business associates may have in respect of any contract, deliberations or other transactions with the Association.
- 11.4.6 If a Trustee's erf or any improvements thereon do not comply with the Estate rules or other rules or regulations made or promulgated by the Association, that Trustee must, declare in writing to the Board the nature of such non-compliance.
- 11.4.7 Each Trustee must declare in writing to the Board any gifts which he or his immediate family received or was offered from any business and/or person involved or endeavouring to become involved in any contract with financial gain with the Association.

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11.4.8 A Trustee may not, without the permission of the Board, disclose any privileged or confidential information of the Board to any person not authorised or entitled to receive same. In addition, all Trustees are required to sign the required non-disclosure agreement on appointment to the Board.

11.4.9 A Trustee may not, except through the Chairperson of the Trustees and/or the Board and or with the prior written consent of the Board:

11.4.9.1 Give or purport to give any instruction to any employee other than the Estate General Manager.

11.4.9.2 Obstruct or attempt to obstruct the Estate General Manager or any of the Estate staff in the implementation of any decision or resolution of the Board, or

11.4.9.3 Encourage or participate in any conduct which would cause or contribute to maladministration by the Board.

11.4.9.4 Sign any agreement or contract, approved by the Trustees by way of round robin or at a Board meeting

11.5 It is recorded that the Board was mandated (AGM 2018) and have concluded the process of taking transfer of erf 634, Xanadu ext. 13 as well as the remaining extensions of portion 43 Rietfontein.

11.6 In respect of changing any of the intended use or re-zoning of common land, such shall be approved by the Members at an AGM or SGM.

11.7 To take such actions and sign such documentation as is necessary to give effect to expanding the common property as envisaged in the objectives of the Estate and which is stated above.

11.8 Removal of Trustees

11.8.1 A Trustee shall be deemed to have vacated his office:

11.8.1.1 When he becomes disqualified to act as a director of a company in terms of the Act.

11.8.1.2 If he is a Member of the Association, when he became disentitled to exercise a vote in terms of the following:

11.8.1.3 When his estate is sequestrated whether provisionally or finally.

11.8.1.4 When he is convicted of any offence involving dishonesty.


11.8.1.5 When he commits any act of insolvency.

11.8.1.6 When he becomes of unsound mind or is found to be a lunatic.

11.8.1.7 When he resigns from office in writing.

11.8.1.8 When he is dismissed or removed by the Members of the Association at an Annual General Meeting or Special General Meeting.

11.8.1.9 When he contravenes the confidentiality policy.

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11.8.2 If any vacancy occurs in the Trustees prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by the remaining Trustees.

11.8.3 The Trustees appointed by other Trustees or co-opted shall remain a Trustee until the next general meeting where he is to step down but may make himself or herself available for re-election and nothing in terms of this Constitution precludes the Board of Trustees from co-opting him or her in future.

11.8.4 Should a Member or a Trustee allege that a Trustee of the Association:

11.8.4.1 Had become ineligible or disqualified to act as Trustee, or

11.8.4.2 Had become incapacitated to the extent that he is unable to perform the functions of a Trustee and is unlikely to regain that capacity within a reasonable time, or

11.8.4.3 Has neglected or been derelict in the performance of the functions of Trustee, or

11.8.4.4 Has committed a breach of his duties or made himself guilty of misconduct, the Board, other than the Trustee concerned, must determine the matter by resolution, and may remove such Trustee whom it has determined to be ineligible or disqualified, incapacitated or negligent or derelict, as the case may be.

11.8.5 The procedure, manner and effect of such removal-process shall be determined by the Board.

11.8.6 The Board may at any time and from time to time investigate and make a finding in respect of any alleged breach by a Trustee of any of the provisions of this Constitution, or of the Estate rules or any other rules or regulations made or promulgated by the Association or the Board or establish a special committee to investigate and make appropriate recommendations to the Board in this respect.

11.8.7 Should the Board find that a Trustee has breached any provision of this Constitution or any of the rules or regulations aforesaid, the Board may.

11.8.7.1 Issue a formal warning to the Trustee concerned.

11.8.7.2 Reprimand the Trustee.

11.8.7.3 Suspend the Trustee.

11.8.7.4 Request the Trustee to resign.


11.8.7.5 In the event of the circumstances prevailing in terms of above, dismiss or remove the Trustee by majority vote.

11.8.7.6 Request the Members of the Association to remove the Trustee from the Board.

11.9 Expenses and remuneration


11.9.1 The Trustees shall not be entitled to remuneration in respect of the performance of their duties.

11.9.2 The Trustees shall, however, be entitled to be repaid all reasonable bona fide expenses incurred by them in the performance of their duties as Trustees. (Subject to the approved remuneration policy)

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11.10 Powers of Trustees

- 11.10.1 Subject to the provisions of this Constitution and subject to any limitations which may be imposed by the Association in General Meeting, the Trustees shall have full powers to perform the function allocated to them in this Constitution and may exercise all such powers of the Association and do all acts on behalf of the Association as may be exercised and done by the Association itself with regard thereto.
- 11.10.2 The Board of Trustees shall in consultation with the Estate General Manager formulate a budget and a strategic plan and any amendments thereto for each financial year of the Association.
- 11.10.3 The Board of Trustees are empowered to sign, execute and to enter into on behalf of the Association all and any contracts as may be required to give effect to the provisions of this Constitution.
- 11.10.4 The Board of Trustees are empowered to appoint an Estate General Manager and are empowered to delegate the management of the affairs and the business of the Association whether in whole or in part to such Estate General Manager.
- 11.10.5 The Board of Trustees shall at all times have the power and right to engage on behalf of the Association the services of accountants, auditors, attorneys, architects, engineers, town planners, or any other professional firm or person or other employees whatsoever, for any reason deemed necessary by the Trustees, on such terms as the Trustees may decide.
- 11.10.6 The Board of Trustees shall further have the power:
- 11.10.6.1 To set levies and collect same, make rules and enforce same, institute legal action on behalf of the Association and administer the financial affairs of the Association.
- 11.10.6.2 To require that any construction of any sort in the Estate shall be supervised so as to ensure that the provisions of this Constitution, the Code of Conduct and the Architectural Building Rules, or any other rules or regulations, are complied with, and that all such construction is performed in a proper and workmanlike manner.
- 11.10.6.3 To issue aesthetic rules in respect of the Estate and to ensure that same are complied with at all times, and
- 11.10.6.4 To issue instructions in accordance with the operational Environmental Management Plan, if any, and to ensure that such plan is at all times complied with.
- 11.10.7 The Trustees shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 11.10.8 Whenever the Board considers that the appearance of any land, wall or building/s owned by a Member is such that it is in the sole discretion of the Board, unsightly or injurious to the amenities of the surrounding area or the Estate in general, the Trustees or the Estate General Manager 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, as specified in such notice, to comply therewith, the Trustees or Estate General Manager or their employees, agents or contractors may enter upon the land or buildings concerned and take such steps as may be necessary to rectify the matter and recover the costs thereof from the Member concerned, which costs shall be deemed to be a debt owing by that Member to the Association.

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The Trustees or the Estate General Manager 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 or the Estate General Manager acted unreasonably. The Trustees or the Estate General Manager may impose a penalty in the event of non-compliance with such notice.

11.10.9 The Association may enter into agreement with any third party for the provision of facilities or 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. Furthermore, it is recorded that the Members are bound by all contracts for the leasing or purchasing of all equipment or infrastructural assets, or for the provision of security for the Estate, or for the provision of any other service or supplies for the Estate which the XHOA may consider necessary in its discretion, even where such contracts or commitments include the payment of costs or disbursements on an on-going basis.

11.10.10 The Trustees or the Estate General Manager or their employees, agents or contractors shall be entitled and shall have the right to enter any erf for the purpose of repairing, maintaining or installing any facilities, services, equipment or structures relating to the provision of security or any other service to the Estate generally.

11.10.11 Without detracting from the aforesaid, the Trustees shall specifically have the powers to:

11.10.11.1 Take all such actions or measures as may be necessary to give effect to their duties as provided for in terms of the Constitution, and/or.

11.10.11.2 Take all such actions or measures as may be necessary to give effect to the provisions of this Constitution, including the Homeowners' Association's Rules, Architectural and Building Rules as well as the Code of Conduct.

11.10.11.3 In general, undertake all duties necessary as to enable the Estate General Manager to efficiently and professionally manage and control the day-to-day operations of the Homeowners' Association.

11.10.11.4 Constitute committees or sub-committees for each of the portfolios as may be required from time to time and act as Chairpersons of that committee.


11.11 Proceedings of Board of Trustees

11.11.1 The Board of 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. Such meetings shall include both face-to-face and attendance at electronic or virtual meetings.

11.11.2 The quorum necessary for the holding of all meetings of the Trustees shall be four Trustees present personally, and no meeting shall be held unless such quorum is present at the commencement of and for the duration of the meeting.

11.11.3 At any Board of Trustees meeting, Trustees shall vote by way of a show of hands and every Trustee shall have one vote. Resolutions shall be carried by way of a simple majority, and no one shall, notwithstanding any other term or condition, previous or current agreement, have any veto rights.

11.11.4 Proxies will not be accepted for any proceedings at Board of Trustee meetings.

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11.11.5 The Trustees shall cause minutes to be kept of every Trustee meeting, which minutes shall after the meeting has closed and without undue delay be reduced to writing and certified as correct by the Chairperson at the next Board of Trustee meeting. After being certified, all minutes of Trustee meetings shall be placed in a Trustees minute book.

11.11.6 Any resolution signed by all the Trustees shall be valid in all respects as if it has been duly passed at a meeting of the Trustees. Resolutions passed by the Board of Trustees outside of a duly constituted meeting will require the signature of all Trustees. However, resolutions passed at duly convened meetings shall be carried by the necessary majority and not all Trustees. Should a Trustee not agree with a resolution they may note such disagreement on the resolution and sign accordingly.

12 APPROVAL OF PLANS

12.1 As part of the function of the Board of Trustees, they shall from time-to-time issue aesthetic rules which shall apply in respect to all structures, dwellings, erven, units, rooms and common area within the Estate and all Members, their guests, family Members and children shall be obliged to adhere thereto at all relevant stages.

12.2 The Board of Trustees shall from time to time be entitled to revise, amend, alter, retract and / or issue new or further aesthetical rules and from date of the acceptance thereof by the Board of Trustees shall be binding on the Members from that date onwards.

12.3 In particular and without detracting from the aforesaid, the aesthetical rules applicable upon date of acceptance of this Constitution inter alia provides that:

12.3.1 The Building Rules as set by the Board of Trustees from time to time shall regulate and implement the Rules applicable in respect to structures erected upon an erf / stand / unit / room together with the landscaping guidelines applicable in respect to the stand / erf / unit / room and shall include but not be limited to inter alia:

12.3.1.1 No construction or erection of any new improvements, construction of swimming pools, additions or alterations to any existing structures on an erf / unit / stand / room may commence before the approval of the plans for such improvements and in this regard:


12.3.1.2 A full set of the proposed building plans indicating both construction and design details shall be submitted to the Estate General Manager for consideration.

12.3.1.3 The Member concerned shall submit the building plans to the local authority for approval.

12.3.1.4 The Estate General Manager and appointed architect shall certify that the building plans comply with the development plan, the building and landscaping guidelines and all other relevant conditions.

12.3.1.5 Having obtained the approval of the local authority, the Member concerned shall comply with all conditions and standards imposed by the local authority or other statutory body insofar as these may be additional to the requirements of the Association, and

12.3.1.6 The Association may impose a deposit, which if imposed will be paid by the Member concerned, as well as any scrutiny for plans amended plans submitted.

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12.4 It is specifically recorded that as at date of approval of this constitution the aesthetic rules specifically provide that:


- 12.4.1 An owner may not subdivide a house either temporarily or otherwise for any reason whatsoever.
- 12.4.2 No more than one family may occupy a home or a single residential stand. A family is regarded as the immediate family of the owner or tenant if a house is rented, which includes the owner/tenant, the spouse or partner, the children and / or parents and parents in law of the owner/tenant. The consent of the association must be obtained in writing should any other person reside with the family for more than one month at any given time. No communes are allowed on the Xanadu Nature Estate. Despite an occupational certificate being issued by the Madibeng Town Council to an owner, no owners may take occupation of their completed homes, before the Association has issued their occupational certificate, in respect of the house.
- 12.4.3 Should an owner take occupation without the necessary occupational certificate being issued by the Association, and the owner refuses or fails to vacate the Estate until the certificate is issued, the Association reserves the right to impose a penalty on the owner, a monthly amount which may be determined from time to time by the Board of Trustees. In terms of the constitution of the Association, this penalty is due and payable as part of the levy, on the first day of the month, following the date that such penalty is imposed.

13 ESTATE GENERAL MANAGER

- 13.1 Estate General Manager shall be appointed by the Board of Trustees subject to the provisions of this Constitution and the terms of his appointment the Estate General Manager shall have full power to manage and control the business and affairs of the Association or such portion thereof as may be determined by the Board of Trustees, and may exercise all such powers of the Association and do all acts on behalf of the Association itself as may have been delegated to the manager, and which may at any time be revoked.
- 13.2 Facilitate the process of election of Trustees at the Annual General Meeting and the election process for Portfolio holders at the Trustees Board Meeting.
- 13.3 Instructions from the Board will from time to time be provided in writing and by e-mail. If provided for by e-mail all Trustees will be copied and in the event of conflict between the Trustees pertaining to the meaning extent or interpretation of the written instruction, the determination made by the Chairperson in respect to the aforesaid will be full and final and binding on all parties.

14 GENERAL MEETING OF THE ASSOCIATION

- 14.1 The Association shall within 6 (six) months after the end of its financial year hold a General Meeting as its Annual General Meeting in addition to any other General Meetings during that year and shall specify the meeting as such in the notices of meeting.
- 14.2 General Meetings shall be held at such time and place as the Trustees shall declare from time to time.
- 14.3 All meetings including Annual General Meetings shall be called "General Meetings".
- 14.4 The Trustees may, whenever they deem fit, convene a General Meeting. A General Meeting may also be convened by the Trustees on a requisition made by the Members in terms of the Act or should the Trustees not do so, may be convened by the requisitions as provided for and subject to the provisions of the Act.


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14.5 Notices of Meetings

- 14.5.1 A General Meeting or a special general meeting shall be called by not less than 15 working days' notice in writing. The notice of an Annual General Meeting shall be accompanied by a copy of the Audited Annual Financial Statements and shall be given to all Members and 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, the day and the hour of the meeting. A meeting called by shorter notice shall be deemed to have been duly called if it so agreed by a simple majority of the Members having the right to attend and to vote at the meeting.
- 14.5.2 Notice and supporting documents of any meeting called by Association maybe transmitted electronically.
- 14.5.3 The accidental omission to give notice of any resolution or to transmit any document required to be given or sent in terms of this constitution, shall not invalidate the proceedings of any meeting or any resolution passed at any meeting. Furthermore, the non-receipt of notice of a meeting by any person entitled to receive such notice shall not invalidate the proceedings at that meeting.
- 14.5.4 The Annual General Meeting shall deal with the consideration of the annual report, the consideration of the Audited Annual Financial Statements, the election of Trustees, if applicable, the appointment of an auditor and may deal with any other business included in the notice of meeting.
- 14.5.5 Notices may be given by the Association to any Member either at the address of any erf owned by him, or by sending it electronically to such Member at the address (if any) within the Republic of South Africa supplied by him to the Association for the giving of notices to him.
- 14.5.6 Notice of every General Meeting shall be given:
- 14.5.6.1 to every Member of the Association.
 - 14.5.6.2 to the accountant for the time being of the Association.
 - 14.5.6.3 to any Trustee not a Member of the Association.
 - 14.5.6.4 no other person shall be entitled to receive a notice of General Meetings.
- 14.5.7 Any notice shall be deemed to have been served at the time when it was posted or emailed and in proving the giving of the notice, it shall be sufficient to prove that the notice was properly transmitted to the last known address of the Member.
- 14.5.8 The signature to any notice given by the Association may be written or printed, or partly written and partly printed.
- 14.5.9 When a given number of days' notice or notice extending over any other period is required to be given, the day on which it is served or deemed to be served and the day for which it is given shall not be counted in such number of days or period.

15 PROXIES

- 15.1 A Member may be represented at a General or Special Meeting by a proxy, who must himself be a Member of the Association in good standing.

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- 15.2 To be effective at a General or Special Meeting or adjourned General Meeting, a duly signed proxy must be lodged with the Association at least 24 hours before the commencement of the General or Special Meetings in order to facilitate the validation of such proxies
- 15.2.1 are to be lodged at a particular place.
- 15.2.2 may be lodged at any time before or during the meeting. Notwithstanding the foregoing, the Chairperson of the meeting may agree to accept a proxy tendered at any time before or during the meeting.
- 15.3 A proxy will be valid for an indefinite period in relation to the meeting for which it is given, unless it is stated on the proxy that it is only to be valid for a shorter period.
- 15.4 The instrument appointing a proxy shall be in such form that it is acceptable to the Chairperson of the meeting or adjourned meetings in respect of which it is tendered and the decision of the Chairperson as to what is or is not acceptable will be binding on all the Members.
- 15.5 A proxy shall be valid for any adjournment of the meeting to which it relates unless otherwise indicated on the proxy.

16 QUORUM

- 16.1 No business shall be transacted at a General Meeting unless a quorum is present both when the General Meeting proceeds to business and when any resolution is to be passed. Save as otherwise provided in this constitution 5% of the Members present in person, or by proxy, shall constitute a quorum provided that at least ten Members are present in person at the commencement of and for the duration of such General Meeting.
- 16.2 If within fifteen minutes after the time appointed for the commencement of a General or Special Meeting or within such extended period as the Chairperson may allow, a quorum is not present, the General or Special Meeting shall be dissolved if it was convened on requisition. In all other cases the General Meeting shall stand adjourned to the same place at the same time on the same day of the next week or to such other place, time and day as the Chairperson may determine. If a quorum is not present at such adjourned General or Special Meeting, the Members present shall constitute a quorum.


17 ADJOURNMENT BY CHAIRPERSON WITH CONSENT OF MEETING

- 17.1 The Chairperson of a General or Special Meeting may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by simple majority of all votes cast at the meeting. In the event of such an adjournment:
- 17.2 No notice need be given of the adjourned meeting save for an announcement at the original meeting of the date, time and venue of the adjourned meeting, unless the meeting is to be adjourned for thirty days or more in which event notice is to be given in the same manner as for the original meeting.
- 17.3 Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

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18 VOTING RIGHTS OF MEMBERS

- 18.1 Only Members shall be entitled to a vote at General Meetings.
- 18.2 At every General Meeting:
- 18.2.1 each Member, present in person or by proxy and entitled to vote, shall have one vote for each erf registered in his name.
- 18.2.2 if an erf is registered in the name of more than one person, then all such co-owners shall jointly have only one vote, and
- 18.3 Save as provided in this constitution no person other than a Member duly registered and who shall have paid every levy and other amount, if any, which may 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 matter, either personally or by proxy at any General Meeting.
- 18.4 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 by 15% of the Members attending such meeting. If a poll is demanded, it shall be taken in such a manner as the Chairperson may direct.
- 18.5 Subject to the provision of this constitution, all resolutions shall be passed by simple majority vote.
- 18.6 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 Chairperson whether or not scrutineers might have been appointed to count the votes, and his decision shall be final and conclusive.
- 18.7 A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:
- 18.7.1 written notice of the revocation is received by the Association prior to the meeting concerned, or
- 18.7.2 the Chairperson agrees to accept written or oral notice of such revocation at the meeting.
- 18.8 No objection shall be raised to the admissibility of any vote except at the meeting or adjournment meeting at which the vote objected is to 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 Chairperson of the meeting whose decision shall be final and conclusive.
- 18.9 A declaration made in good faith by the Chairperson of a meeting to the effect that, either on a show of hands or on a poll, a resolution has or has not been passed shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed.
- 18.10 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 General Meeting being held if one or more copies of the resolution are signed by or on behalf of a simple majority of all the Members entitled to vote at a General Meeting.
- 18.11 Non-paying levy Members will have no voting rights at any meeting but will be represented through their appointed representative (body corporate) who will vote at the AGM in their stead.


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19 ACCOUNTING RECORDS

- 19.1 The Board of Trustees shall cause such accounting records to be kept 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 trade or business of the Association.
- 19.2 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 be open to inspection by the Trustees at all reasonable times during business hours.
- 19.3 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 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 may be authorized by the Trustees.
- 19.4 At each General Meeting the Trustees shall lay before the Association Annual Financial Statements for the immediately preceding financial year of the Association or, in the case of the first period after the date of commencement of the Association, made up for that period. Such Financial Statements shall be drawn in accordance with generally accepted accounting practices and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees.
- 19.5 A copy of the Annual Financial Statements which are to be laid before the Association at an Annual General Meeting shall, not less than 15 working days before the date of the meeting, be sent to every Member of the Association, provided that this clause shall not require that a copy of those documents be sent to any person of whose address the Association is unaware.
- 19.6 An auditor shall be appointed to the Association by the Trustees, and such appointment shall be subject to review on an annual basis at each Annual General Meeting of the Association.

20 INDEMNITY


- 20.1 The Trustees, the auditors and each Estate General Manager , servant, agent or employee of the Association shall be and they are hereby indemnified by the Association against any liabilities bona fide incurred by them in their respective capacities in the proper discharge of any of their duties including, without limitation, the costs of defending any proceedings, civil, criminal or otherwise arising out of the due execution by them of their duties, and including all costs, losses and expenses, including travelling expenses, which they or any of them may incur or become liable for by reason for any contract entered into, or any act or deed done, by them in the due discharge of any of their respective duties.
- 20.2 A Trustee shall not be liable for the act or omission of the Estate General Manager , auditors or of any of the other Trustees whether in their capacity as such or as Chairperson, or third party service providers or for any loss or expense sustained or incurred by the Association through the insufficiency of deficiency of any security in or upon which monies of the Association are invested, or for loss or damage arising from the insolvency or wrongful act of any person with whom any monies, securities or effects are deposited, or for any loss or damage occasioned by any bona fide error of judgment or oversight on his part, for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties in relation thereto, unless same shall have occurred as a result of mala fides, breach of duty or breach of trust.

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- 20.3 Members agree that each and every person that enters the Estate through the Member and / or as a result of the Member, including the Member himself / herself, shall do so at his or her own risk and no one that enters the Estate will have any claim against the Estate, Its Trustees, Manager or personnel due to any action or inaction by either the Board of Trustees, the Estate Manager or the personnel which may result into damage to himself or herself or his or her property or the person or property of his or her guest, howsoever arising or howsoever caused.
- 20.4 The Member acknowledges that any Personal Information supplied to the HOA is provided voluntarily and that the HOA may not be able to comply with its obligations if the correct Personal Information is not supplied to the HOA. The Member understands that privacy is important to the Responsible Parties and the Responsible Parties will use reasonable efforts in order to ensure that any Personal Information in their possession or processed on their behalf is kept confidential, stored in a secure manner and processed in terms of South African law. The Member warrants that all information, including Personal Information, supplied to the HOA is accurate and current and agrees to correct and update such information when necessary. By submitting any Personal Information to the HOA in any form the Member acknowledges that such conduct constitutes an indefinite unconditional, specific and voluntary consent to the processing of such Personal Information in the following manner by the HOA and/or third parties: Personal Information may be shared by the HOA with service providers and may be further shared by the service providers with the Verification Information Suppliers for verification or other legitimate purposes.
- 20.5 Personal Information may be shared by the Verification Information Suppliers with the service providers and be further shared by the service providers with the HOA; Personal Information may be stored indefinitely by the HOA, the service provider and/or the Verification Information Suppliers, and Personal Information may be transferred cross-border to countries, which do not necessarily have data-protection laws similar to South Africa, for verification or storage purposes. The Member takes note that if the Responsible Party has utilised the Personal Information contrary to the Privacy and Data Protection Conditions, the Member shall first resolve any concerns with that Responsible Party. If the Member is not satisfied with such process, the Member has the right to lodge a complaint with the Information Regulator. The Member acknowledges that he/she/it may withdraw any consent provided in terms of this Agreement and if so, Personal Information will only be processed if permitted under the Privacy and Data Protection Conditions
- 20.6 A copy of Personal Information kept by the Responsible Parties will be furnished to the Member upon request in terms of the provisions of POPI. The Member unconditionally agree to indemnify the Responsible Parties and/or the Verification Information Suppliers against any liability that may result from the processing of Personal Information. This includes unintentional disclosures of such Personal Information to - or access by - unauthorized persons, and/or any reliance which may inadvertently be placed on inaccurate Personal Information provided to the HOA by the Member and/or any third parties

21 DISPUTE RESOLUTION

- 21.1 Dispute resolution is defined as any method of resolving disputes outside the courts. The purpose of this process is to afford the association and the Member the opportunity to present their version with respect to a dispute arising from the breach of a rule but excluding disputes pertaining to the payment of outstanding levies.
- 21.2 All disputes shall be determined through the dispute resolution policy, as determined from time to time by the board, and that such shall be binding on the parties thereto and the Association.

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21.3 In the event of a dispute arising at any time between the Members, or between the Members and the Association, then either party:

21.3.1 May declare a dispute within 14 days from date of becoming aware of the rules or decision that gives arise to the dispute by delivering in writing thereof the details of the dispute to the Association and if a Third Party is involved to both the Association and such a Third Party.

21.3.2 The Estate General Manger shall convene the dispute committee hearing within 21 days of the dispute being received by the Association.

21.3.3 In the event that the association has to institute legal action against any Member, such shall be liable to pay the costs on an attorney and client scale and that for purposes of institution of such action the Members choose their stand as their given address for the service of court papers (domicilium citandi et executandi)

22 ARBITRATION

22.1 All disputes between the parties shall be resolved through the dispute resolution committee and, if not resolved to the satisfaction of any of the parties thereto, through arbitration as provided for in terms of the dispute resolution policy as determined by the Board from time to time

23 AMENDMENT OF THE CONSTITUTION

23.1 No provision of this constitution shall be added to, amended, substituted or repealed without the prior written consent of:

23.1.1 the local authority, where such amendment, substitution or repeal relates to all or any of the conditions of the Local Authority or Environmental Management Plan.

23.2 Subject to the provisions of 16.1 any such addition, amendment, substitution or repeal shall require the approval of at least 51% of the total number of votes of Members of the association given at a General Meeting specifically called for such purpose, and the notice of such meeting shall, in addition to complying with the other requirements of this constitution, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.

23.3 Any reference herein to this constitution shall; mean and include a reference to this constitution as may from time to time be amended in accordance with the provision of this clause.

23.4 Amendment history

Version	Date	Amended by	Details of amendment
1.0	16/05/2019	Denise Sharp	Drafting documentation
2.0	28/05/2021	Carla Durand	Amendments from Board Members
3.0	03/09/2022	Carla Durand	Final Aments as approved in General Meeting

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