



# **XANADU ECO PARK**

## **HOMEOWNERS ASSOCIATION**

### **CONSTITUTION**

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**1. Definitions and Interpretation**

- 1.1. In this constitution the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them;
- 1.1.1. “the Act” means the Companies Act No 61 of 1973;
- 1.1.2. “alienate” means alienate 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 resolutive condition, and alienation shall have a corresponding meaning;
- 1.1.3. “Architect” means an architect appointed by the Association or the developer, or the manager to scrutinize all plans on behalf of the Association;
- 1.1.4. “Association” means the Xanadu Eco Park Homeowners’ Association, **an Association not for gain**, constituted in terms thereof;
- 1.1.5. “auditors” means the auditors of the Association;
- 1.1.6. “the board” means the trustees assembled as a board at which a quorum is present;
- 1.1.7. “common property” means any part of the estate which is not an erf, including the eco park etc;
- 1.1.8. “developer” means Xanadu Eco Park (Pty) Limited, or their respective successors-in-title or assigns;
- 1.1.9. “development period” means the period from the date of establishment of the Association until all the erven have been transferred from the developer and improved by the erection of a dwelling house; or until the developer notifies the Association in writing that the development period has ceased, whichever shall first occur;
- 1.1.10. “Eco Park” means common property set aside and maintained by the Association in terms of the approved Environmental Management Plan;
- 1.1.11. [Replaced by Special Resolution No.1 passed at the Annual General Meeting held on 30<sup>th</sup> November 2009] “erf” means any residential erf and includes any units in a Sectional Title or Cluster Scheme resulting from the sub-division of land in the estate including consolidated erven;

- 1.1.12. “estate” means the townships of Xanadu Eco Park, as may be phased or subdivided from time to time and any other land added to this area by the developer;
- 1.1.13. “financial year” means the financial year of the Association which shall run from the date of establishment of the Association until the last day of February next and thereafter from the first day of March in each year until the last day of February in the subsequent year;
- 1.1.14. “levy” means the levies referred to in 7;
- 1.1.15. “local authority” means the local authority having jurisdiction over the estate;
- 1.1.16. “manager” means any natural or juristic person appointed by the Association or the developer to undertake all or any of the functions of the Association;
- 1.1.17. “member” means a member of the Association;
- 1.1.18. “owner” means a registered owner of an erf as registered in the relevant Deeds office;
- 1.1.19. [Additional Clause inserted in accordance with Special Resolution No.1 passed at the Annual General Meeting held on 30<sup>th</sup> November 2009] “unit” includes a unit in a Sectional Title or Cluster Scheme constructed on the Estate and further includes units in the Xanadu Lifestyle Village and/or units to be built in the Assisted Living Sectional Title Scheme of the Retirement Village;
- 1.2. Unless the context otherwise indicates, words importing 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 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*.
- 1.3. The headings to the clauses in this constitution are for reference purposes only and shall not be taken into account in the interpretation of those clauses.
- 1.4. 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.

## **2. Incorporation of Association**

The Association is hereby established as a voluntary association not for gain with effect from the date of proclamation of the township Xanadu Eco Park, upon and subject to the provisions of this constitution, and as an entity separate and distinct from its members, with the capacity to acquire rights or incur obligations in its own name and to own property separately and independently of its members.

### **3. Objects**

The objects of the Association are as follows:

- 3.1. To oversee, regulate and control the harmonious development of the estate and to ensure and promote the general high standard of the development.
- 3.2. To own, control, improve and maintain the common property including the environmental management of the eco park.
- 3.3. To own, control, improve and maintain and to insure where necessary the building, structures, installations and equipment relating to the common property.
- 3.4. To institute, control and pay for measures relating to security.
- 3.5. To promote, advance and control the communal interests of owners and residents.
- 3.6. To acquire and grant servitudes.
- 3.7. To control the nature and position of buildings, structures, installations and equipment relating to the erven.
- 3.8. To control the nature of garden areas relating to the erven.
- 3.9. To own, control maintain and pay for any roads, infrastructure and services required to serve the estate if necessary.
- 3.10. To take action including the imposition of fines, or the institution of proceedings in a court of law, as may be deemed fit by the trustees, in relation to the non-compliance by any member of any of the requirements of this constitution or the estate rules.
- 3.11. 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 for the Association and/or manager in this respect.

### **4. Membership**

- 4.1. Membership of the Association shall be limited to the developer in its capacity as such (represented by one or more nominees) and to all other persons who are owners from time to time.
- 4.2. Every owner of an erf shall *ipso facto* be and become 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. The developer shall be a member in respect of each erf held by it until it ceases to own such erf.

- 4.3. 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.
- 4.4. When a member ceases to be an owner he shall *ipso facto* cease to be a member.
- 4.5. An owner may not at any time resign as a member.
- 4.6. The developer may at any time in writing, cede and assign all or any of its rights or obligations in terms of this constitution to any transferee of its choice and such transferee shall be entitled to take transfer of all such rights and obligations.
- 4.7. The developer may, at any time in writing, abandon in whole or in part, any of its rights.
- 4.8. The developer shall cease to be a member at the end of the development period.
- 4.9. Every member shall comply with:
  - 4.9.1. The provisions of this constitution, the estate rules and all other rules or regulations made or promulgated by the Association or the trustees;
  - 4.9.2. Any agreement concluded by the Association or the trustees or the developer insofar as such agreement may directly or indirectly impose rights or obligations on a member;
  - 4.9.3. 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
  - 4.9.4. Any directive given by the Association, the trustees, the developer or the manager in the enforcement of the provisions of this constitution.
- 4.10. The rights and obligations of a member are not transferable, and every member shall:
  - 4.10.1. To the best of his ability further the objects and interests of the Association;
  - 4.10.2. Observe all 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 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.

## **5. Alienation**

- 5.1. A member shall not in any manner alienate or transfer an erf unless:
  - 5.1.1. The proposed transferee, new shareholder of a company or new members of a close corporation 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;
  - 5.1.2. The 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
  - 5.1.3. 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.
- 5.2. The provisions of 5.1 shall apply mutatis mutandis to any alienation or transfer of an undivided share in an erf.
- 5.3. Restrictions will be registered against the title deeds of all the erven in order to give effect to the terms of this clause 5. The members shall be bound by this clause whether or not such restrictions are registered.
- 5.4. 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.

## **6. Common Property and Conditions of Establishment of Township**

- 6.1. The Association shall take title to the common property simultaneously with the first separate registration of an erf.
- 6.2. The Association acknowledges that neither the local authority nor the developer shall be responsible for, and the Association shall be solely responsible for, the care, repair, maintenance, cleaning, upkeep, improvements and proper control of the common property and any structure or thing erected or contained therein or thereon, including private roads, electricity, telecommunications and any other private services, if applicable and parking.
- 6.3. The Association shall furthermore comply with all the conditions imposed by the local authority relating to the conditions of establishment of the township(s) comprising the estate, and shall be solely responsible for any non-compliance with such conditions.

## 7. Levies

- 7.1. The trustees shall from time to time impose levies upon the members for the purpose of meeting all the expenses in relation to the facilities and service for or in connection with the estate, and for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and its affairs, including the Eco Park. In calculating the amount of the levies the trustees shall take into account income from other sources, if any, earned by the Association.
- 7.2. All levies shall be paid monthly in advance by bank debit order on the first day of each and every month to the bank account of the Xanadu Eco Park Homeowners Association or by any other method as determined by the manager from time to time.
- 7.3. Levies shall be allocated pro rata amongst the members, the amount of which shall be calculated with reference to the actual or anticipated, as the case may be, number of erven established or to be established within the estate.
- 7.4. 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.
- 7.5. *[Clause deleted by Special Resolution No.3 passed at the General Meeting held on 10<sup>th</sup> February 2010 and replaced as follows.]* Both during and after the Development Period the Developer shall have no liability or obligation to pay or contribute to any levies or special levies. This clause shall be entrenched and will not be capable of further amendment before, or after the Development Period.
- 7.6. Except as provided in 7.5 above, during and after the development period the developer shall have no liability or obligation to pay or to contribute to any levies or special levies.
- 7.7. The trustees may, from time to time, impose special levies upon the members. In addition to other levies, in respect of all or portion of such expenses as are mentioned in 7.1 and the amount of such levies and the manner of payment thereof by members shall be at the discretion of the trustees.
- 7.8. Any amount due by a member by way of a levy or special levy 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.

- 7.9. Save for 7.4 above, in calculating the levy payable by each member, the trustees shall as far as is reasonably practical, and in their sole discretion;
- 7.9.1. Assign those costs arising directly out of or directly attributable to an erf to the owner thereof;
- 7.9.2. Assign those costs arising directly out of or directly attributable to more than one erf to the owners of those erven, and
- 7.9.3. Subject to 7.9.1 and 7.9.2 assign those costs relating to the estate generally to the owners of all erven equally, or if consolidated then as if the consolidation had not taken place;

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.

- 7.10. 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 members. Access cards may be invalidated until all arrears have been paid, at the discretion of the manager.
- 7.11. *[Additional Clause inserted in accordance with Special Resolution No.1 passed at the Annual General Meeting held on 30<sup>th</sup> November 2009]* 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. **Costs**

A member shall be liable for and shall pay all legal costs, including costs, as between attorney and own client, collection commission, tracing agents fee, interest at prime plus 5%, expenses and charges incurred by the Association in recovering any arrear levy or other amounts due and owing to the Association, as also the costs incurred in 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.

## 9. **Responsibility for the provision of Services**

- 9.1. The responsibility for the provision of services, namely facilities, utilities, services and amenities of whatever nature as may be provided by or on behalf of the Association for owners or residents of erven within the estate, excluding such facilities, utilities, services and amenities such are situated within the boundaries of an erf, shall pass from the developer to the Association on the date of the first registration of transfer of an erf from the developer to an owner.



9.2. The responsibility in respect of the management, maintenance, upkeep and repair of all services related to water and sewerage, but excluding street lighting and electricity within the estate, shall respectively be taken over by the local authority and *City of Tshwane* after the services have been provided by the developer and/or the Association to the satisfaction of the local authority, and a written agreement concluded between the local authority and *Tshwane* and the developer and/or the Association. Should either councils or Telkom not take over services, the services not taken over shall be maintained by and at the cost of the Association.

9.3. The responsibility in respect of the management, maintenance, upkeep and repair of services and the compliance with all laws and regulations applicable thereto, other than those services taken over by the local authority or *Western Services Council*, shall pass from the developer to the Association on the date of first registration or transfer of an erf from the developer to an owner.

## 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 the developer or any other statutory body, the trustees may make rules, codes of conduct and may vary or modify the same from time to time, in connection with:

10.1.1. The nature, architectural design and positions of buildings, structures, swimming pools, installations and equipment relating to any erf;

10.1.2. The nature, content and design of the gardens relating to any erf including the establishment and maintenance of landscaping in these areas;

10.1.3. The nature of cluster and sectional title schemes, consolidations and town planning policies;

10.1.4. The installation, operation and maintenance of irrigation in the common area adjacent to any erf by the member concerned;

10.1.5. The determination or control of security measures;

10.1.6. The control of the building operations and the conduct of builders and contractors;

10.1.7. The control of the number of residents permitted on any one erf;

10.1.8. The control and conduct of persons for the prevention of nuisance of any nature to any resident;

10.1.9. The control and conduct of persons using the common areas;

10.1.10. The keeping of animals including the right to prohibit, limit, restrict and control the keeping of animals;

- 10.1.11. 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;
- 10.1.12. 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;
- 10.2. For the enforcement of any rules or any of the provisions of this constitution generally the trustees or the manager may:
  - 10.2.1. Give notice to the member concerned to remedy any breach within such period as they may determine;
  - 10.2.2. 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, 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
  - 10.2.3. Impose a fine on the member concerned which amount shall be a debt due to the Association, shall be debited to his levy account and shall be payable as part of his levy on the first day of the following month.
- 10.3. Should the trustees or 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.
- 10.4. 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 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. **Approval of Plans**

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

- 11.1. A full set of the proposed building plans indicating both construction and design details shall be submitted to the manager for consideration;
- 11.2. The member concerned shall submit the building plans to the local authority for approval;

- 11.3. The manager shall certify that the building plans comply with the development plan, the building and landscaping guidelines and all other relevant conditions;
- 11.4. 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
- 11.5. The Association may impose a security fee, which if imposed will be paid by the member concerned, as well as any additional scrutiny fees should any amended or further plans be required or submitted.

## 12. Trustees

- 12.1. *[The entire Clause, together with previous amendments was replaced by Special Resolution No.2 passed at a General Meeting held on 10<sup>th</sup> February 2010. The Clause now reads as follows:]*  
The Board of Trustees will be constituted as follows:  
*[Replaced by Special Resolution No.1 passed at the Annual General Meeting held on 19<sup>th</sup> November 2008 There shall be a maximum of seven Trustees of the Association, provided that];*

- 12.1.1. *[The entire Clause, together with previous amendments was replaced by Special Resolution No.2 passed at a General Meeting held on 10<sup>th</sup> February 2010. The Clause now reads as follows:]*

During the period from the 2008 Annual General Meeting until 10<sup>th</sup> February 2010, the Board will consist of a maximum of 7 (seven) Trustees of which 4 (four) Trustees will be appointed replaced and removed as the case may be, by the Developer, 3 (three) Trustees will be elected by the members;

*[Replaced by Special Resolution No.1 passed at the Annual General Meeting held on 19<sup>th</sup> November 2008]* During the development period there shall be 7 (seven) Trustees, 4 (four) appointed by the Developer and 3 (three) appointed by the Members at an Annual General Meeting from time to time, and

- 12.1.2. *[New Clause inserted by Special Resolution No.2 passed at the General Meeting held on 10<sup>th</sup> February 2010]*

From the 10<sup>th</sup> February 2010 and until the end of the Development Period, the Board will consist of a maximum of 7 (seven) Trustees of which 2 (two) will be appointed, replaced and removed as the case may be by the Developer, 5 (five) Trustees will be elected by the members.

- 12.1.2.1 *[New Clause inserted by Special Resolution No.2 passed at the General Meeting of 10<sup>th</sup> February 2010]*

During the Development Period the two Developer Trustees will have veto powers as set out in Clause 3.4 of the Memorandum of Understanding;

- 12.1.2.2 *[New Clause inserted by Special Resolution No.2 passed at the General Meeting of 10<sup>th</sup> February 2010]*

After the Development Period the Board of Trustees shall be selected by the members;

- 12.2. A 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.
- 12.3. The trustees shall appoint one of their number to act as chairman for such term as they deem fit, but not for longer than such person's tenure as a trustee.
- 12.4. The chairman of the trustees shall act as the chairman 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 appoint any other person who is a member to act as chairman of the meeting concerned.
- 12.5. A trustee is required to;
- 12.5.1. Perform the functions of office in good faith, honesty and in a transparent manner, and
- 12.5.2. 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.
- 12.6. When elected, a trustee shall within 60 days after election, 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.
- 12.7. Each trustee will also declare in writing to the board those respects in which, from time to time, his erf or any improvements thereon do not comply with the estate rules and all other rules or regulations made or promulgated by the Association or the board.
- 12.8. Each trustee must declare to the board any gifts which he or his immediate family might be offered or receive, from any business and/or person involved or endeavouring to become involved, in any contract with financial gain with the Association.
- 12.9. A trustee may not without the permission of the board, disclose any privileged or confidential information of the board to any person not authorized or entitled to receive the same.
- 12.10. A trustee may not, except through the chairman of the trustees and/or the board:
- 12.10.1. Interfere in the management or administration of the estate, unless mandated by the board;
- 12.10.2. Give or purport to give any instruction to any employee other than the manager;
- 12.10.3. Obstruct or attempt to obstruct the manager or any of the estate office staff in the implementation of any decision or resolution of the board, or

- 12.10.4. Encourage or participate in any conduct which would cause or contribute to maladministration by the board.
- 12.11. 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(s) 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 established a special committee to investigate and make appropriate recommendations to the board in this respect.
- 12.12. 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;
- 12.12.1. Issue a formal warning to the trustee concerned;
- 12.12.2. Reprimand the trustee;
- 12.12.3. Suspend the trustee;
- 12.12.4. Request the trustee to resign, or
- 12.12.5. Request the Association to remove the trustee from the board.
- 13. Removal and Rotation of Trustees**
- 13.1. Save as set out in 13.2, each trustee shall hold office as such from the date of his appointment until the next annual general meeting following his appointment, or, at his discretion, until the second annual general meeting following his appointment at which annual general meeting each trustee shall be deemed to have retired from office, but shall be eligible for re-election as a trustee.
- 13.2. A trustee shall be deemed to have vacated his office as such:
- 13.2.1. Should he become disqualified to act as a director of a company in terms of the Act;
- 13.2.2. Should he be removed from office by a resolution of the trustees;
- 13.2.3. In the event of his being a member of the Association, should he become disentitled to exercise a vote in terms of 7.10;
- 13.2.4. Should his estate be sequestrated whether provisionally or finally
- 13.2.5. On his conviction of any offence involving dishonesty;
- 13.2.6. On the commission by him of any act of insolvency;
- 13.2.7. Should he become of unsound mind or being found to be a lunatic
- 13.2.8. On his resigning from such office in writing.
- 13.3. Upon any vacancy occurring in the trustees prior to the next annual general meeting, the vacancy in question shall be filled by a person

nominated by those trustees remaining, or by another trustee nominated by the developer if such shall occur during the development period.

- 13.4. The trustees shall be entitled to co-opt any person chosen by them to act as a trustee, subject always to the exclusive right of appointment and removal by the developer during the development period.

14. **Trustees Expenses and Remuneration**

- 14.1. The trustees shall be entitled to be repaid all reasonable bona fide expenses incurred by them in or about the performance of their duties as trustees.

- 14.2. The trustees shall be entitled to remuneration in respect of the performance of their duties as determined by the Association in general meeting.

15. **Powers of Trustees**

- 15.1. 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.

- 15.2. The trustees shall in consultation with the manager formulate a budget and a strategic plan and any amendments thereto for each financial year of the Association.

- 15.3. The 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, including subject always to the provisions of 17.2, the appointment of a 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 manager. Furthermore, the 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.

- 15.4. The trustees shall further have the power;

- 15.4.1. To require that any construction of any sort in the estate shall be supervised so as to ensure that the provisions of this constitution and the estate rules, or any other rules or regulations, are complied with, and that all such construction is performed in a proper and workmanlike manner;

- 15.4.2. To issue building and landscaping guidelines in respect of the estate and to ensure that same are complied with at all times, and

15.4.3. 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.

15.5. The trustees shall have the right to vary, cancel or modify their decisions and resolutions from time to time.

## 16. **Proceedings of Trustees**

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

16.2. The quorum necessary for the holding of all meetings of the trustees shall be two 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.

16.3. Any resolution of the trustees shall be carried by a simple majority of all votes cast. In the case of an equality of votes for or against a resolution, the chairman of the trustees shall have a second casting vote.

16.4. The trustees shall cause minutes to be kept of every trustees meeting, which minutes shall without undue delay after the meeting has closed, be reduced to writing and certified correct by the chairman. All minutes of trustees meetings shall, after certification, be placed in a trustees minute book.

16.5. 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.

## 17. **Manager**

17.1. During the development period a manager shall be appointed by the developer and the developer shall, at its absolute discretion, determine the fees or remuneration to be paid by the Association to the manager and the other terms and conditions of his appointment. This appointment may extend beyond the development period provided that the developer shall endeavour to procure in making such appointment that it may, if so required by the Association in general meeting, and subject to the requirements of law, be terminated on reasonable notice after the end of the development period.

17.2. After the development period in the event that an existing manager's appointment is terminated in terms of 17.1, successor managers shall from time to time be appointed by the Association in general meeting and the members shall determine the fees or remuneration to be paid by the Association to such managers and all the other terms and conditions of their appointment, it being contemplated that at all times the affairs of the Association will be entrusted in whole or part to a professional manager with appropriate executive powers so as to conform to the requirements of good corporate governance.

18. **Powers of the Manager**

Subject to the provisions of this constitution and the terms of his appointment the 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 Association in general meeting, and may exercise all such powers of the Association and do all acts on behalf of the Association itself.

19. **General Meeting of the Association**

19.1. 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.

19.2. General meetings shall be held at such time and place as the trustees shall declare from time to time.

19.3. All meetings including annual general meetings shall be called "general meetings".

19.4. 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.

20. **Notices of Meetings**

20.1. An annual general meeting shall be called by not less than [*Amended by Special Resolution No.2 passed at the Annual General Meeting held on 30<sup>th</sup> November 2009*] 14 clear days' notice in writing and any other general meeting shall be called by not less than 14 clear days' notice in writing. The notice of an annual general meeting shall be accompanied by a copy of the financial statements as referred to in 25.4 and 25.5 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.

20.2. 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.

20.3. The annual general meeting shall deal with the consideration of the manager's report, the consideration of the 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.



21. **Proxies**

- 21.1. A member may be represented at a general meeting by a proxy, who must himself be a member of the Association.
- 21.2. To be effective at a general meeting or adjourned general meeting, a proxy together with the original or a notarially certified copy of a power of attorney or other authority under which it is signed must be lodged with the Association at least 24 hours before the commencement of the general meeting or adjourned general meeting concerned but the trustees may from time to time determine that such documents:
- 21.2.1. are to be lodged at a particular place;
- 21.2.2. are to be lodged a certain number of hours, not exceeding 48 in all, before the meeting, or
- 21.2.3. may be lodged at any time before or during the meeting. Notwithstanding the foregoing the chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting.
- 21.3. 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.
- 21.4. The instrument appointing a proxy shall be in such form that it is acceptable to the chairman of the meeting or adjourned meeting in respect of which it is tendered and the decision of the chairman as to what is or is not acceptable will be binding on all the members.
- 21.5. A proxy shall be valid for any adjournment of the meeting to which it relates unless otherwise indicated on the proxy.

22. **Quorum**

- 22.1. 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 other than the developer present in person, or by proxy, shall constitute a quorum provided that at least three members are present in person at the commencement of and for the duration of such general meeting.
- 22.2. If within fifteen minutes after the time appointed for the commencement of a general meeting or within such extended period as the chairman may allow, a quorum is not present, the general 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 chairman may determine. If a quorum is not present at such adjourned general meeting, the members present shall constitute a quorum.

23. **Adjournment by Chairman with Consent of Meeting**

The chairman of a general meeting may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by simple majority of all votes cast at the meeting. In the event of such an adjournment:

23.1. 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;

23.2. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

#### **24. Voting Rights of Members**

24.1. Only members shall be entitled to vote on matters raised at general meetings.

24.2. At every general meeting:

24.2.1. each member, present in person or by proxy and entitled to vote, shall have one vote for each erf registered in his name;

24.2.2. 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

24.2.3. during the development period the developer shall be entitled to 700 votes in addition to one vote for each erf registered in its name.

24.3. 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.

24.4. 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 the chairman. If a poll is demanded it shall be taken in such a manner as the chairman may direct.

24.5. Subject to the provision of this constitution, all resolutions shall be passed by simple majority vote.

24.6. 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 chairman whether or not scrutineers might have been appointed to count the votes, and his decision shall be final and conclusive.

24.7. A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:

24.7.1. written notice of the revocation is received by the Association prior to the meeting concerned, or

- 24.7.2. the chairman agrees to accept written or oral notice of such revocation at the meeting.
- 24.8. No objection shall be raised to the admissibility of any vote except at the meeting or adjournment meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive.
- 24.9. A declaration made in good faith by the chairman 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.
- 24.10. 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.
25. **Accounting Records**
- 25.1. The 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.
- 25.2. 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.
- 25.3. 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.
- 25.4. At each general meeting the trustees shall lay before the Association 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.
- 25.5. A copy of the financial statements which are to be laid before the Association in an annual general meeting shall, not less than [*Amended by Special Resolution No.2 passed at the Annual General Meeting held on 30<sup>th</sup> November 2009*] 14 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.

25.6. 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.

26. **Service of Notices**

26.1. Notices may be given by the Association to any member either at the address of any erf owned by him, or by sending it by post in a prepaid letter addressed 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.

26.2. Notice of every general meeting shall be given:

26.2.1. to every member of the Association;

26.2.2. to the accounting officer for the time being of the Association;

26.2.3. to any trustee not a member of the Association;

26.2.4. no other person shall be entitled to receive a notice of general meetings.

26.3. Any notice by post shall be deemed to have been served at the time when it was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the notice was properly addressed and posted to the last known address of the member.

26.4. The signature to any notice given by the Association may be written or printed, or partly written and partly printed.

26.5. 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.

27. **Indemnity**

27.1. The trustees, the auditors and each manager, servant, agent or employee of the Association shall be and they are hereby indemnified by the Association against any liabilities bona fida 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.

27.2. A trustee shall not be liable for the act or omission of the manager, auditors or of any of the other trustees whether in their capacity as such or as chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or 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 fida 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.

28. **Conditions imposed by Local Authority**

This constitution shall from time to time be amended, without the need to requirement of the approval of the Association in general meeting, so as to comply with the requirements from time to time of the local authority in relation to the conditions of establishment for Xanadu Eco Park (Pty) Limited, or any subdivisions thereof, or any other land which may be added to the estate by the developer.

29. **General**

29.1. Whenever they consider that the appearance of any land or buildings owned by a member is such as to be unsightly or injurious to the amenities of the surrounding area or the development generally, the trustees or the 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 manager or their employees agents or contractors may enter upon the land or buildings concerned and take such steps as may be necessary and recover the costs thereof from the member concerned, which costs shall be deemed to be a debt owing by that member to the Association. The trustees or the 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 manager acted unreasonably.

29.2. 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 will be bound by all contracts concluded by the developer for the leasing or purchase 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 developer may consider necessary in its discretion, even where such contracts or commitments include the payment of costs or outgoings on an ongoing basis. It is recorded, without limitation, that the developer intends to conclude contracts for the hire or supply of electronic surveillance, monitoring and detection equipment for security purposes relating to the perimeter of the estate.

29.3. The trustees or the 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.

- 29.4. 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.
- 29.5. No member ceasing to be a member of the Association for any reason, and neither shall such members' 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.
- 29.6. The Association may claim from any member or his estate all arrear levies and interest or other sums due from him to the Association at the time of his ceasing to be a member for any reason.
- 29.7. Any person using any of the services, land or facilities of the Association within the estate does so entirely at his own risk.
30. **Disputes**
- 30.1. Any disputes arising out of or in connection with this constitution must be determined in accordance with this clause 30, except where an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 30.2. On a dispute arising (not moneys or a debt to the Association), the parties who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 days after such notice, either of the parties to the dispute may refer the same to arbitration in terms of the following provision of this clause 30.
- 30.3. If a party exercises his right in terms of 30.2 to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of 10 years experience in their field:
- 30.3.1. if the dispute is primarily an accounting or financial matter, a practicing chartered accountant;
- 30.3.2. if the dispute is primarily a legal matter or a matter relating to the behaviour and/or conduct of a member, a practicing attorney or advocate;
- 30.3.3. if the dispute primarily relates to the nature of buildings, structures, installations or equipment, a practicing architect;
- 30.3.4. if the dispute primarily relates to the size or form of the land or the position, height or size of buildings, structures, installations or equipment, a practicing land surveyor.
- 30.4. If the parties are unable to agree on the appointee as provided for in clause 30.3 within 3 days of being requested to do so, then the person shall be nominated by the President for the time being of the Law Society of Gauteng.
- 30.5. The person appointed as provided for in clause 30.3 shall in all respects act as an expert and not as an arbitrator.

- 30.6. The proceedings shall be on an informal basis, it is being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 30.7. The parties shall use their best endeavours to procure that the decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 30.8. The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 30.9. The costs of an incidental to any such proceedings, including the fees of the expert, shall be at the discretion of the expert who shall be entitled to direct the allocation of the costs and whether they shall be taxed as between "party and party" or as between "attorney and client".
- 30.10. The provisions of this clause 30 constitutes the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that they are not bound by such provisions.
- 30.11. The provisions of this clause 30 shall be deemed to be severable from the remainder of the constitution and shall remain binding and effective as between the parties notwithstanding that this constitution may otherwise be cancelled, amended or declared of no force and effect for any reason.
- 30.12. Notwithstanding anything to the contrary contained in this constitution the trustees shall be entitled to institute legal proceedings of whatsoever nature on behalf of the Association by way of application, action or otherwise in any court having jurisdiction for any purpose whatsoever relating to any matter in respect of any of the provisions of this constitution and any of its Annexures, including any amendments or additions thereto.
31. **Amendment of Constitution**
- 31.1. No provision of this constitution shall be added to, amended, substituted or repealed without the prior written consent of:
- 31.1.1. 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.
- 31.1.2. the developer for so long as the developer is a member.
- 31.2. Subject to the provisions of 31.1 above, 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.

- 31.3. 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 31.