



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

**DEVELOPMENT MANAGEMENT**

**L VANBLERK1**  
SENIOR PROFESSIONAL OFFICER

T: 021 444 1062 F: 021 444 1062  
E: LLEWELLYN.VANBLERK@CAPETOWN.GOV.ZA  
Case ID: 70554594

BLUM016

23 JUNE 2021

**LYDIA VAN ZYL**  
16 EDWARD STRAAT  
KRAAIFONTEIN  
7569

Dear Sir / Madam

**APPROVAL OF SAN MICHELE PROPERTY OWNERS ASSOCIATION: ERF 491, BUHREIN**

Your application in the above regard refers.

You are hereby informed that the constitution is herewith approved in terms of Section 98(b) of the City of Cape Town Municipal Planning By-Law 2015 insofar it addresses the requirements of the said By-Law. Reasons for the recommended decision may be summarised as follows:

- The Owners' Association Constitution complies with City's requirements in terms of the conditions of approval and the City of Cape Town Municipal Planning By-Law, 2015.

It is the responsibility of the Association to provide all current and future owners with copies of the approved constitution as attached hereto.

Yours faithfully,

  
L van Blerk  
for **DIRECTOR : DEVELOPMENT MANAGEMENT**



# San Michele

**CONSTITUTION**

**OF**

**THE SAN MICHELE PROPERTY OWNERS' ASSOCIATION**

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1. ESTABLISHMENT IN TERMS OF STATUTE

The Association is constituted as a body corporate in accordance with the conditions imposed by the Developer of the Land.

2. DEFINITIONS AND INTERPRETATION

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

- 2.1.1. "Association" means the **San Michele Property Owners Association**, an Association not for gain, constituted in terms hereof;
- 2.1.2. "Auditors" means the Auditors of the Association being, such Auditors as may be appointed by the Developer during the Development Period and thereafter by the BMPOA, from time to time;
- 2.1.3. "BMPOA" means the Buhrein Master Property Owners Association established in respect of the Parent Property, by the Developer, in terms of Section 29 of LUPO;
- 2.1.4. "The Board" means the Trustees of the BMPOA assembled as a board at which a quorum is present;
- 2.1.5. "Chairperson" means the Chairperson of the Trustees, from time to time;
- 2.1.6. "CHC" means the constitution of the Association as set out in this document;
- 2.1.7. "Clear Days" means in a computation of days, the exclusion of the first and last day of the period to be calculated;
- 2.1.8. "Common Property" means the Common Property as defined in the Constitution;
- 2.1.9. "Constitution" means the Constitution of the BMPOA;
- 2.1.10. "Conduct Rules" means the Conduct Rules adopted in terms of the Constitution;
- 2.1.11. "Developer" means Buhrein Property Developments (Pty) Ltd, Registration Number: 2009/005119/07, its successors-in-title or assigns;
- 2.1.12. "Development" means the singleresidential erven comprising the land;
- 2.1.13. "Development Period" means the period from the date of establishment of the BMPOA until all the Land Units situated on the Land have been transferred from the Developer and/or improved, or, until the Developer notifies the BMPOA in writing that the Development Period has ceased, whichever shall occur first;
- 2.1.14. "Dwelling:" means the construction of a Building on an Erf, suitable for occupation and use by natural persons;
- 2.1.15. "Erf" means a single residential erf situated on the Land and as such being part of the Development, which Erf must be suitable for the construction of a dwelling thereon;
- 2.1.16. "Estate" means the Buhrein Estate, being the township to be established on the Parent Property;
- 2.1.17. "Financial Year" means the Financial Year of the BMPOA;

2.1.18.	"Land"	means Erf 491 Buhrein, City of Cape Town, Western Cape Province upon which the Development is to be executed by the Developer;
2.1.19.	"Levy"	means the levies referred to in Clause 9;
2.1.20.	"Local Authority"	means the Local Authority having jurisdiction over the Estate, being the City of Cape Town;
2.1.21.	"Land Unit(s)"	means any portion of Parent Property, or a Section as defined in the Sectional Titles Act, situated on the Land, registered or capable of being registered in the Cape Town deeds registry, and includes but is not limited to an "erf (howsoever zoned) or "sectional title Unit";
2.1.22.	"LUPO"	means the Land Use Planning Ordinance 15 of 1985, Western Cape, as amended;
2.1.23.	"Management Company"	means such Management Company appointed in terms of the Constitution;
2.1.24.	"Office"	means the registered Office of the BMPOA, being the physical address of the Management Company, from time to time;
2.1.25.	"Member"	means a Member of the Association as set out in Clause 5;
2.1.26.	"Occupant"	means any person/s occupying an Erf or any improvement or structure thereon;
2.1.27.	"Owner"	means the registered Owner of an Erf and as such a Member of the Association;
2.1.28.	"Parent Property"	means the Land approved for development by the City of Cape Town, being Erf 1 Buhrein, in the City of Cape Town, Division Paarl, Western Cape Province upon which the Estate is to be developed by the Developer;
2.1.29.	"Private Open Spaces"	means all the Private Open Spaces, indicated as such on the SOP, attached to this Constitution, which Private Open Spaces, will be registered in the name of the Association in the Cape Town Deeds Registry and which Private Open Spaces will, as such, become the responsibility of the Association;
2.1.30.	"Private Roads"	means the Private Roads, indicated as such on Annexure "A", that will be transferred in favour of the Association, in the Cape Town Deeds Registry, and will, as such, become the responsibility of the relevant Association;
2.1.31.	"Purchaser"	means any person or entity that enters into an Agreement of Sale with the Developer in respect of an Erf;
2.1.32.	"SOP"	means the Site Development Plan approved by the Local Authority;
2.1.33.	"Special Resolution"	means a resolution passed at a special general meeting of which not less than 21 Clear Days' notice has been given specifying the intention to propose the resolution as a Special Resolution, the terms and effect of the resolution and the reasons for it, and passed, on a show of hands, by not less than three-fourths of the total number of Members present at the meeting who, at minimum, form a quorum for a general meeting;
2.1.34.	"Trustees "	mean the Trustees from time to time of the Association.

- 2.2. any reference to natural persons includes artificial persons and vice versa;
- 2.3. any reference to a gender includes the other genders (including neuter);
- 2.4. any reference to the singular includes the plural and vice versa;
- 2.5. The Clause heading in this Constitution have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.6. Words and expressions defined in any sub-Clause shall, for the purpose of the Clause of which that sub- Clause forms part, bear the meaning assigned to such words and expressions in such sub-Clause
- 2.7. No provision of this Constitution or any related document shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party having or being deemed to have structured or drafted such provision.
- 2.8. This Constitution shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa and the Association and every Member consent to the jurisdiction of any competent court of the Republic of South Africa, for the purposes of any proceedings instituted in connection with this Constitution.

### **3. PURPOSE DESCRIBING THE MAIN BUSINESS**

- 3.1. The main business of the Association is to carry on the promotion, advancement and protection of the Members as well as to manage, control and regulate the development.
- 3.2. In order to qualify for exemption in respect of the Levy income in terms of Section 10(1)(e)(iii) of the Income Tax Act, the following conditions shall apply:-
  - 3.2.1. the main object of the Association is to manage the collective interest common to all its Members, which includes expenditure applicable to the Common Property of such Member and the collection of Levies for which such Member/Owner is liable;
  - 3.2.2. the Association is not permitted to distribute its funds to any person other than to a similar Association of persons;
  - 3.2.3. on dissolution, the remaining assets of the Association, must be distributed to a similar Association of persons, which is also exempt from Income Tax in terms of section 10(1)(e)(iii) of the Income Tax Act;
  - 3.2.4. any amendments to the Constitution must be submitted to the Local Authority and the Commissioner for the South African Revenue Service;
  - 3.2.5. funds available for investment may only be invested with registered financial institutions as defined in Section 1 of the Financial Institutions (Investment of Funds) Act, 1984, and in securities listed on a stock exchange as defined in Section 1 of the Stock Exchanges Control Act, 1985, (Act No. 1 of 1985);
  - 3.2.6. the Association is or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or Levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under this Act or any other law administered by the Commissioner;
  - 3.2.7. annual returns of income together with financial statements be submitted to the South African Revenue Services, Cape Town.

### **4. MAIN OBJECTS OF THE ASSOCIATION**

- 4.1. The objects of the Association are as follows:
  - 4.1.1. to oversee, regulate and control the harmonious development of the Development and to ensure and promote the general high standard of the Development;
  - 4.1.2. to own, control, improve and maintain the Common Property and enforce the EMP that may be implemented;

- 4.1.3. to own, control, improve and maintain and to insure where necessary the building, structures, installations and equipment relating to the Common Property;
- 4.1.4. to institute, control and pay for measures relating to security;
- 4.1.5. to promote, advance, and control the communal interests of Owners, Members and residents;
- 4.1.6. to acquire and grant servitudes;
- 4.1.7. to control the nature and position of buildings, structures, installations and equipment relating to the Land Units and to ensure compliance with the approved Architectural Guidelines and control measures in respect of the Development;
- 4.1.8. to control and ensure compliance with the approved Landscaping Plan including Landscaping on common green spaces, public open spaces and around verges and entrances;
- 4.1.9. 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 Board, in relation to the non-compliance by any Member/Owner of any of the requirements of the CHC or the Conduct Rules;
- 4.1.10. to enter into and to implement any contract relating to the environmental impact assessment, the EMP and the conditions of establishment of the township within the Development, 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 Management Company in this respect;
- 4.1.11. to control the aesthetic appearance of the Land Units;
- 4.1.12. The control over the compliance and enforcement of the Architectural Guidelines;
- 4.1.13. The promotion of environmental awareness and responsibility amongst Members.
- 4.1.14. to enter into any agreement and other appropriate arrangement with any supplier, contractor or other third party, in relation to the administration, management and/or control of the Development
- 4.1.15. to maintain the Private Roads and Gardens, at the costs of the respective Associations.
- 4.2. The Association shall be deemed to have come into existence on the earlier of the following dates:-
  - 4.2.1. the date of the first registration of transfer of a Land Unit from the Developer to an Owner, or
  - 4.2.2. the date on which the Developer establishes the Association, as and when it may deem fit.
- 4.3. The Association is a legal persona and as such –
  - 4.3.1. its assets, liabilities, rights and obligations shall vest in it independently of its Members;
  - 4.3.2. it shall have perpetual succession;
  - 4.3.3. all legal proceedings shall be brought by or against the Association, in the name of the Association, and The Board may authorise any person/s to act on behalf of the Association and to sign all such documents and take all such steps as may be necessary in connection with any such legal proceedings; and
  - 4.3.4. its Members shall not, by reason of their Membership, be liable for the liabilities and obligations of the Association.

## **5. MEMBERSHIP OF THE ASSOCIATION**

- 5.1. Membership of the Association shall be compulsory for the following:
  - 5.1.1. the Developer during the Development Period;
  - 5.1.2. the Purchaser of a Land Unit, from the date of registration of transfer of the Land Unit in the deeds Office until such time as an Association has been established in respect of a Development situated on the Land Unit; and

- 5.1.3. each of the Associations established in respect of a Development situated on any portion of the Land, represented by its Chairman or Vice Chairman.
- 5.2. The Associations shall ipso facto be and become Members of the Association upon establishment of the Association concerned and be represented at meetings of the Association by the Chairperson.
- 5.3. The Developer shall be a Member and the Chairperson of the Association during the Development Period.
- 5.4. It is specifically recorded that each Member and Owner will be subject to the terms and conditions and rules provided for in the CHC.

**6. RIGHTS AND OBLIGATIONS OF MEMBERS/OWNERS**

- 6.1. Every Member/Owner shall comply with:
  - 6.1.1. the provisions of this Constitution, the Conduct Rules and all other rules or regulations made or promulgated by the Association or the Trustees:
  - 6.1.2. 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;
  - 6.1.3. 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
  - 6.1.4. any directive given by the Association, the Trustees, the Developer or the Management Company in the enforcement of the provisions of the CHC.
- 6.2. Save as may be provided for herein, the rights and obligations of a Member are not transferable, and every Member shall:
  - 6.2.1. to the best of his ability further the objects and interests of the Association;
  - 6.2.2. observe all directives made or given pursuant to the provisions of the CHC, and
  - 6.2.3. be jointly liable with the other Members/Owners for expenditure incurred in connection with the Association.
- 6.3. The Member shall ensure that none of its Members/Owners shall let or otherwise part with the occupation of his Land Unit, whether temporarily or otherwise, unless the proposed occupier has agreed to be bound by all the provisions of the Association, the Conduct Rules and all other rules or regulations made or promulgated by the Association. Its Members shall at all times remain bound by the provisions of the Association and will be required to ensure and procure compliance therewith by such occupier. Its Members shall be liable for the acts or omissions of all persons occupying his Land Unit whether lawfully or unlawfully including without limitation guests, employees, invitees, contractors, sub-contractors or agents.
- 6.4. The Member/Owner, excluding the Owner of the Shoprite Erven, shall not be entitled to exhibit any signboards, notices, advertising boards, neon signs and nameplates on the interior or exterior of buildings situated on a Land Unit or anywhere within the Development on Common Property without the prior written approval of the Association.
- 6.5. The Member/Owner shall keep and maintain any signs approved of by the Association in a good and clean condition, and if such signs are electronic, electric or mechanical, in proper working order and condition
- 6.6. The Member/Owner hereby indemnifies the Association against all claims of whatsoever nature which may be made against the Association, as a result of the installation, erection or operation of any signs or advertisements placed by the Member, whether installed with or without the written approval of the Association, or any defect in any such signs, or in any such installation or erection, or as a result of any failure on the part of the Member/Owner or any of the Member's/Owner's employees, agents, customers or invitees to keep and maintain any such signs in good order and condition, or properly installed or erected.
- 6.7. In addition, each Owner of a Land Unit shall –
  - 6.7.1. ensure the maintenance of its Land Unit in a neat and tidy condition and in a state of good repair

- 6.7.2. not park, or permit the parking of, any commercial vehicle, boat, caravan, trailer or any vehicle not in good working order on any road, pavement, parking area within the Development or other Common Area, and if such vehicle/boat/caravan/trailer is to be parked on that Owner's Land Unit, it shall not be visible from any street;
- 6.7.3. not do or cause to be done on any Land Unit anything which, in the opinion of the Developer, for the duration of the Development Period, and thereafter The Board, is noisome, unsightly, injurious, objectionable or detrimental, or a public or private nuisance, or a source of damage or disturbance to any Owner, tenant or occupier of any other Land Unit;
- 6.7.4. not erect or permit the erection of any advertising Boards on any Land Unit or on any Common Property, without the written approval of the Developer for the duration of the Development Period, and thereafter, The Board;
- 6.7.5. not permit the number of Occupants of its Dwelling (as the case may be) to exceed two persons per bedroom;
- 6.7.6. comply with all security procedures and controls imposed by the Association and/or The Board, from time to time;
- 6.7.7. ensure that it and its invitees do not damage or destroy trees, vegetation and Landscaping on the Common Property, and that planting on its Land Unit does not interfere with pedestrian traffic or obscure the vision of motorists;
- 6.7.8. afford employees, agents and representatives of the Developer and the Association full access at all times to do all things reasonably necessary to construct and/or stabilize and/or maintain all Common Property, edges and, if applicable;
- 6.7.9. not use any building or other structure constructed within the Development, or allow any other person to use such building or other structure, for purposes not permitted by the GHC or all rules and/or regulations made in terms of the CHC;
- 6.7.10. not let or otherwise part with occupation of its Land Unit (or any parts thereof), whether temporarily or otherwise, unless that Owner ensures that the proposed occupier agrees to be bound by the relevant provisions of the CHG and all rules and/or regulations made in terms of the CHG;
- 6.7.11. not consolidate a Land Unit with one or more other Land Units, without the prior written consent of the Developer, for the duration of the Development Period, and thereafter, The Board;
- 6.7.12. not apply for the subdivision or rezoning of its Land Unit with a view to procuring a variation, amendment or substitution of use rights;
- 6.7.13. not conduct, or permit to be conducted or change the nature of, any business on a Land Unit, or use, or permit the use of, such Land Unit for purposes other than residential use, unless the Developer, for the duration of the Development Period, or thereafter, The Board has in writing approved the use to which the Land Unit is to be put, and any Local Authority has, to the extent that it may be necessary, granted approval authorizing such use in terms of applicable laws and regulations;
- 6.7.14. Notify and supply the Managing Agent with the personal information and copies of the Identity Documents of any Occupants of its Land Unit;
- 6.7.15. Notify and supply the Managing Agent with the personal information and copy of Identity Document and proof of address of any domestic worker, garden worker or gardening service employed by the Owner.
- 6.8. Membership of the Association shall confer upon a Member, inter alia, the following rights, subject to the provisions of the CHC –
  - 6.8.1. the right to inspect and/or receive copies of the annual financial statements of the Association;
  - 6.8.2. the right to vote at all general meetings of Members in accordance with the provisions of this Constitution;
  - 6.8.3. the right to receive notices of, attend and speak at all General Meetings of Members in accordance with the provisions of this Constitution;

- 6.8.4. the right to convene a general meeting of Members (other than an annual general meeting), provided that the Members holding between them, in aggregate, not less than one third of the voting rights of the Association collectively so decide;
- 6.8.5. each member, referring to the Development Groups as contemplated in Clause 2.1.46 of the Constitution, will be entitled to 1 (one) vote at any meeting of the Association, irrespective whether voting is conducted by means of show of hands or by means of a poll.

## **7. ALIENATION**

- 7.1. The Member shall ensure that none of its Members shall in any manner Alienate or transfer a Land Unit unless:
  - 7.1.1. 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 the Constitution, the CHC as well as any Management and/or Conduct Rules applicable, as the case may be, for the duration of his Ownership of any Land Unit;
  - 7.1.2. the Management Company has given its prior written consent thereto and has issued a clearance certificate that all amounts owing to the Association, as the case may be, by such Owner have been paid and that the Owner is not in breach of the Constitution, the CHC and/or any of the Management and/or Conduct Rules, as the case may be;
  - 7.1.3. the Association has given its prior written consent thereto and has issued a clearance certificate which will only be issued if a clearance fee is paid by the Owner concerned to the Association and all other amounts owing by the Owner have been paid in full to the Developer and/or the Association, as the case may be;
  - 7.1.4. the proposed transferee acknowledges in writing that upon the registration of transfer of the Land Units into his name he shall ipso facto become a Member of the Association, subject always to the provisions of the Constitution and the CHC, Management Rules and Conduct Rules.
  - 7.1.5. The provisions of Clause 7.1 shall apply mutatis mutandis to any alienation or transfer of an undivided share in any Land Unit.
- 7.2. Restrictions will be registered against the title deeds of all Land Units in order to give effect to the terms of this Clause 7. The Members shall however be bound by this Clause whether or not such restrictions are registered.
- 7.3. Each Member shall comply with all conditions imposed by the Local Authority or any other statutory body relating to Land Units and shall be solely responsible for non-compliance with such conditions.
- 7.4. It is recorded that a written consent to transfer or clearance certificate is required by any Member of the Association prior to transfer of any Land Unit. Before a written consent to transfer is issued by the Association, an inspection and clearance fee, as determined by the Trustees from time to time, will be payable by the Owner of the Land Unit to the Association upon demand by the Association or the Management Company, prior to transfer of any such Land Unit by the Owner. A written consent to transfer may be refused if any amount is owing by a Member to the Association or the Developer from any cause whatsoever.
- 7.5. It is recorded that only the Association will be entitled to charge any fees or costs in respect of the issuing of the clearance certificate and that no costs or fees may be charged by any other Association or Body Corporate. For the avoidance of doubt it is recorded that the Developer will not be liable for the payment of any such costs or fees in respect of each and every transfer of a Land Unit to be registered for the first time from the Developer to an Owner/Purchaser or third party Purchaser.
- 7.6. The Association will only be entitled to charge one fee in respect of the issuing of the clearance certificate, irrespective of the number of Land Units indicated on such consent.

## **8. COMMON PROPERTY**

- 8.1. The Association will take title to the Common Property and Private Open Spaces, indicated on the SOP, which Private Open Spaces will be transferred to the Association free of charge.
- 8.2. It will be the Association's responsibility to maintain, repair and insure any structural buildings, roads, and the Private Roads, lights, etc, that is transferred in favour of the Association. Registration of the transfer of the Private Open Spaces and Private Roads will be effected by the Attorneys appointed by

the Developer once such Private Open Spaces and Private Roads have been fully completed by the Developer.

- 8.3. 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, private parking, electricity, telecommunication and any other private services, if applicable,
- 8.4. 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.
- 8.5. The Developer, during the Development Period the Association or Body Corporate and all service providers as approved by The Board or the Developer during the Development Period. . will at all times have free and unencumbered access to all registered servitudes on the Land or any Land Unit.
- 8.6. The Private Open Spaces and Private Roads thus held by the Association shall not be disposed of, alienated or transferred to any other party, nor mortgaged, which condition shall be carried forward into the Title Deeds of the Private Open Spaces and Private Roads.

## **9. LEVIES**

- 9.1. 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 services 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. In calculating the amount of the levies the Trustees shall take into account income from other sources if any, earned by the Association. It is recorded that each and every Owner of a land Unit in the Development will be liable for the payment of levies, as and may be imposed by the Association or the Body Corporate and/or the Trustees in terms of the CHG, excluding the Developer.
- 9.2. It is recorded that an Owner will be liable, upon the first payment of a 100% of the Levy payable in respect of such Land Unit, for the payment of a double Levy which will be equal to 2 (Two) months levies, being payable on the day that such Levy became due and payable. 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 Association or by any other method as determined by the Management Company, from time to time.
- 9.3. Levies shall be calculated pro rata amongst the Members, the amount of which shall be allocated with reference to the actual or anticipated, as the case may be, number of erven or sectional title Units established or to be established by a Member on a specific Land Unit within the Estate. It is recorded that the Levies will be calculated on the following formulas:
  - 9.3.1. All single residential properties, group housing properties, commercial and institutional properties will be calculated upon the square meterage of the improvements on such a Land Unit, and
  - 9.3.2. All Sectional Title Units will be internally levied by the Body Corporate and the Body Corporate will be liable for payments of Levies towards the Association at a fixed rate to be determined by The Board, from time to time.
- 9.4. Should a Purchaser consolidate two or more Land Units, the Association shall debit the amount of the Levies as per the original Land Units, despite the consolidation having taken place.
- 9.5. During the Development Period the Developer and the Owner of the Shoprite Erven, shall not be obliged to pay the shortfall between the income derived from Levies paid by Members in terms of Clause 9.3 and the actual expenditure of the Association in each Financial Year, but shall not otherwise be liable to pay or contribute to any Levies or special Levies.
- 9.6. Except as provided in Clause 9.5 above, during and after the Development Period the Developer and the Owner of the Shoprite Erven, shall have no liability or obligation to pay or to contribute to any Levies or special Levies.
- 9.7. An Owner of a Land Unit that has been transferred by the Developer to such Owner, will be liable for payment of 50% of the Levies as from date of registration of transfer of such Land Unit in favour of the Owner until date of occupation of such Land Unit by an Owner or any Occupant, in which instant such Owner will become liable for the payment of 100% of the levies payable by the Owner. The Developer,

will however, not be liable for the payment of any Levies in this regard, save for the Levies payable by the Developer as referred to in Clause 9.5 of this Constitution or, in the instance of occupation of any Land Unit registered in the name of the Developer, from which date the Developer will be liable for the payment of 100% of the Levies due and payable to the Association in respect of such a Land Unit.

- 9.8. 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 Clause 9.1 and the amount of such levies and the manner of payment thereof by Members shall be at the discretion of the Trustees.
- 9.9. 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 or the Body Corporate, 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 shall be liable, as from the date upon which he becomes a Member to pay the Levies attributable. No Member shall be entitled or permitted to consent to the transfer of a Land Unit until the applicable Association has certified that the Member has at the date of transfer paid all amounts owing by him to the Association and the Developer as contemplated in Clause 9.
- 9.10. Save as may be provided for herein, in calculating the Levy payable by each Member, the Trustees shall as far as is reasonably practical, and in their sole discretion:
  - 9.10.1. assign those costs arising directly out of or directly attributable to Land Units in a specific Development to the Member concerned;
  - 9.10.2. assign those costs arising directly out of or directly attributable to Land Unit/s in more than one Development to the Member/s concerned; and
  - 9.10.3. subject to Clauses 9.10.1 and 9.10.2 assign those costs relating to the Estate generally to all the Members; provided however that the Trustees may in any case where they consider it equitable so to do, assign to any Member a greater or lesser share of the costs as the Trustees consider may be reasonable in the circumstances.
- 9.11. 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. Access cards may be invalidated until all arrears have been paid, at the discretion of the Management Company.
- 9.12. The Association may hand-over any debt due to the Association to the Association's Attorneys for collection if the debt is outstanding for more than 30 (Thirty) days and the debts due to the Association may be published in the Association's newsletter.
- 9.13. Monthly Levy statements will be circulated to the Members of the Association via email. A Member will still be liable to effect monthly payments of the Levies irrespective whether the statement was actually received and/or circulated by the Association to such Member.
- 9.14. 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 25% (Twenty Five percent) per annum, 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 Conduct Rules or other rules or regulations issued or made by or on behalf of the Association from time to time.
- 9.15. It is recorded that all improvements and structures in respect of any commercial or institutional erven, excluding the Shoprite Erven, indicated on the SOP, must be completed by the Developer or Owner thereof on or before the 1st January 2017, failing to do so the following penalties will be charged as from the abovementioned date:
  - 9.15.1. Three times the monthly Levy for the first 6 (Six) months and,
  - 9.15.2. Six times the monthly Levy for the next 6 (Six) months and,
  - 9.15.3. Nine times the monthly Levy for any period exceeding the abovementioned 12 (Twelve) month period.

## **10. RESPONSIBILITY FOR THE PROVISION OF SERVICES**

- 10.1. 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 Members, Owners or residents within the Estate, excluding such facilities, utilities, services and amenities as are situated within the boundaries of a Association, shall pass from the Developer to the Association on the date of the first registration of transfer of an Land Units from the Developer to an Owner.
- 10.2. It is recorded that the Association shall be responsible for the provision of the management, maintenance, upkeep and repair of the Common Property and storm water.
- 10.3. The Trustees is responsible to ensure that the Association employed sufficient employees to fulfill all the obligations of the Association as provided for in the CHC and to comply with the full responsibility as provided for in the CHC by the Association towards the Members and/or the Local Authority.
- 10.4. The Association may only utilize treated effluent water (gray water) in connection with the irrigation of any of the Private Open Spaces and/or road verges, and/or any Private Roads, under the control and management of a Sub-Association.

## **11. RULES AND CODES OF CONDUCT MADE BY THE ASSOCIATION**

- 11.1. Subject to the provisions of the CHC 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:
  - 11.1.1. the installation, operation and maintenance of irrigation in the Common Property adjacent to any Land Units by the Member concerned;
  - 11.1.2. the determination or control of security measures;
  - 11.1.3. the control of the building operations and the conduct of builders and contractors;
  - 11.1.4. the control and conduct of persons for the prevention of nuisance of any nature to any resident;
  - 11.1.5. the control and conduct of persons using the Common Property;
  - 11.1.6. the use of roads, infrastructure, services amenities and facilities in the Common Property including the right to charge a reasonable fee for the use of the amenities and facilities;
  - 11.1.7. 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.
- 11.2. For the enforcement of any rules or any of the provisions of this Constitution generally the Trustees or the Management Company may:
  - 11.2.1. give notice to the Member concerned to remedy any breach within such period as they may determine;
  - 11.2.2. 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
  - 11.2.3. 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.
- 11.3. Should the Trustees or Management Company 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 own client, including tracing fees and collection commission
- 11.4. In the event of any breach of the rules or of any of the provisions of the CHC by any person residing on a Land Unit of a Member of an Association 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 Management Company 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.

- 11.5. Subject to any restrictions imposed or directions given at a General Meeting of Members, The Board may [but shall not be obliged to] from time to time, make rules, and amend or modify those rules, in relation to, *inter alia*, the following –
- 11.5.1. the management and control of the Development;
  - 11.5.2. the furtherance and promotion of any of the objects of the Association including the promotion of better management of the affairs of the Association and the advancement of the interests of the Members;
  - 11.5.3. the use, occupation and enjoyment of the Common Property (or any parts thereof);
  - 11.5.4. the preservation of the natural environment within the Development;
  - 11.5.5. the pedestrian and vehicular traffic including parking within the Development;
  - 11.5.6. the carrying out of any business within the Development;
  - 11.5.7. the conduct of any Owner, tenant, resident or visitor of the Development;
  - 11.5.8. the nature, content and design of garden and Landscaped areas within the Development;
  - 11.5.9. the admission of any person within the Development, including the conditions upon which persons may enter the Development, and the eviction of any person who is not entitled to be present within the Development;
  - 11.5.10. the storage of flammable and other harmful substances;
  - 11.5.11. the enforcement of any rules made in terms of the CHC and the adjudication of disputes relating to the application and/or interpretation of any rules;
  - 11.5.12. the introduction of fines and other penalties that may be payable by any Member/Owner, tenant, resident or visitor for contravening or failing to comply with any of the provisions of the CHC or any rules and regulations made thereunder.
  - 11.5.13. Any rules made in terms of this Clause 11 shall be binding upon-
    - 11.5.13.1. every Member/Owner;
    - 11.5.13.2. every resident within the Development, *mutatis mutandis*, and every Member/Owner shall procure that all its representatives, tenants, Members of the household, visitors, invitees and other persons related to that Member comply with any rules made in terms of the CHC and every Owner acknowledges and agrees that it will be liable for any breach or non-compliance by any of its representatives, tenants, family Members, visitors, invitees and other persons related to that Member

## **12. APPROVAL OF PLANS FOR BUILDINGS AND STRUCTURES**

- 12.1. During the Development Period, no construction or erection of any new improvements which falls outside of those improvements already approved in terms of the initial SOP including any additions or alterations to any existing structures on a Land Unit may commence before the approval of the plans for such improvements by the Architectural Review Committee to be established and appointed by the Developer:
  - 12.1.1. A full set of the proposed building plans, supporting plans and information as required in terms of the Design Guidelines, indicating both construction and design details shall be submitted to the Architectural Review Committee for consideration and approval;
  - 12.1.2. the Member/Owner concerned shall submit the building plans to the Local Authority for approval after it was approved by the Architectural Review Committee. The Local Authority will have the sole responsibility to approve or refuse approval of such plan.
  - 12.1.3. The Architectural Review Committee shall certify that the building plans comply with the SOP, the building and Landscaping Guidelines and all other relevant conditions.
  - 12.1.4. Having obtained the approval of the Architectural Review Committee, the Member/Owner 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

- 12.1.5. The Association may impose a scrutiny fee, which if imposed will be paid by the Member/Owner concerned, as well as any additional scrutiny fees should any amended or further plans be required or submitted.
- 12.2. After the Development Period Associations shall ensure that their Members comply with the approved Urban Design Guidelines and other controls for the Estate.
- 12.3. Whenever they consider that the appearance of any Land Unit or buildings owned by a Member/Owner or a Member of an Association is such as to be unsightly or injurious to the amenities of the surrounding area or the Development generally, the Trustees or the Management Company may serve notice on such Member/Owner to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the Member/Owner or a Member of an Association fail within a reasonable time, as specified in such notice, to comply therewith, the Trustees or Management Company or their employees, agents or contractors may enter upon the Land Unit or buildings concerned and take such steps as may be necessary and recover the costs thereof from the Member/Owner or a Member of an Association concerned, which costs shall be deemed to be a debt owing by that Member or a Member/Owner of an Association to the Association. The Trustees or the Management Company shall be obliged in giving such notice to act reasonably the event of any dispute, the Member/Owner shall bear the onus of establishing that the Trustees or the Management Company acted unreasonably.
- 12.4. For the purposes of maintaining the high standard of the appearance and design of the Development and of ensuring an attractive and harmonious appearance of the Development, the Developer may make Architectural Guidelines as well as Landscaping Guidelines relating to the appearance, design and construction requirements applicable to the Development. The Architectural Guidelines shall constitute an integral part of this Constitution and may be amended from time to time by the Developer, for the duration of the Development Period, and thereafter, by The Board.
- 12.5. All Improvements on the Developed Land shall comply with the provisions of the Architectural Guidelines.
- 12.6. No construction, erection or alteration of, or addition to, any Improvements on the Developed Land ("Works") may commence or be carried out without the prior written approval of the plans and specifications in respect of the Works by the Developer, for the duration of the Development Period, and thereafter, by The Board. In this regard, a full set of proposed plans and specifications in respect of the Works prepared in accordance with the Architectural Guidelines shall, for the duration of the Development Period, be submitted to the Developer, and thereafter, to The Board.
- 12.7. For the duration of the Development Period, the Developer shall, in its sole and absolute discretion, determine whether the plans and specifications in respect of the Works comply with the Architectural Guidelines, and its determination in this regard shall be final and binding upon the Member concerned. On expiration of the Development Period, such determination shall be made by The Board, in its sole and absolute discretion.
- 12.8. The Developer, for the duration of the Development Period, and thereafter, The Board, shall be entitled to withhold any approval contemplated by this Clause 12, subject to compliance with such modifications or amendments to the plans and specifications in respect of the Works and/or such other conditions as the Developer or The Board (as the case may be) may request or impose in their sole discretion.
- 12.9. Any approval granted by the Developer or The Board (as the case may be) shall be in writing and be signed by the Developer or The Board (as the case may be). Before giving such approval, the Developer or The Board (as the case may be) may require the following to be lodged with them –
- 12.9.1. such descriptions, drawings and/or plans as may be necessary to enable them to consider the matter;
- 12.9.2. details of construction materials to be used; and
- 12.9.3. any other documentation as they may require.
- 12.9.4. No approval shall be granted unless all contractors being appointed to carry out the Works (or any parts thereof) have waived their respective lien in respect of the Works or the relevant Land Unit (or any part thereof) or in respect of the Common Property (if applicable), in writing, in a form acceptable to the Developer, for the duration of the Development Period, and thereafter, The Board, in their sole and absolute discretion.

- 12.9.5. Each Owner shall, when submitting the plans and specifications in respect of the Works to the Developer or The Board (as the case may be) in terms of Clause 12.3, pay to the Association a deposit in an amount to be determined from time to time by the Developer or The Board [as the case may be], which amount shall be retained by the Association in trust.
- 12.9.6. Upon completion of the Works, the Association shall if the Developer, for the duration of the Development Period, and thereafter The Board, are satisfied, in their sole and absolute discretion, that the Common Property (or any part thereof) have not sustained any damage resulting from or incidental to the Works and that the Works have been carried out in accordance with the duly approved plans and specifications, release the deposit to the Member.
- 12.9.6.1. Should-
- 12.9.6.1.1. the Common Property (or any part thereof) have sustained any damage of whatsoever nature resulting from or incidental to the Works; or
- 12.9.6.1.2. the Works not have been carried out in accordance with the duly approved plans and specifications;
- 12.9.6.1.3. the Owner shall, within 21 days of having been requested to do so in writing –
- 12.9.6.1.3.1. repair the damage; and/or
- 12.9.6.1.3.2. make such alterations to the improvements in order to procure compliance with the duly approved plans and specifications; to the satisfaction of the Developer, for the duration of the Development Period, and thereafter, The Board, failing which, the Developer or The Board (as the case may be) shall be entitled, notwithstanding any rights which the Developer, The Board, or the Association may have as a result of such failure. to appoint an independent contractor or contractors to repair the damage or make such alterations, and to apply the deposit to all costs of such repair and/or alteration.
- 12.9.6.1.3.3. If the amount paid to the Association as a deposit is not sufficient to cover the costs of such repair or alteration (as the case may be) by the independent contractor or contractors appointed by the Developer, or The Board, the Association shall be entitled to recover the shortfall from the Owner. Any shortfall so due by a Owner shall be paid with, and in addition to, the Levies due by that Owner to the Association.
- 12.9.6.1.3.4. Once approved by the Developer or The Board (as the case may be), the plans and specifications shall be submitted to all relevant authorities for approval, and having obtained the approval of any relevant authorities, the Member concerned shall comply with all conditions and standards imposed by any relevant authority insofar as these may be additional to the requirements of the Architectural Guidelines read together with the approved plans and specifications.
- 12.9.6.1.3.5. Any plans, notwithstanding approval by all relevant authorities, which have not been prepared and/or submitted and/or approved in compliance with the provisions of this Clause 12, shall be invalid.
- 12.9.6.1.3.6. The Owner shall be liable for all costs in respect of the scrutiny and consideration of plans submitted by the Owner to the Developer or The Board (as the case may be).
- 12.9.6.1.3.7. If an Owner fails to comply with any obligation contained in this Clause 12, the Developer, for the duration of the Development Period, and thereafter, The Board, shall be entitled, but not obliged, In addition to any other rights which they may have or remedies which may be available to them in terms of this Constitution or otherwise in law, to –
- 12.9.6.1.3.8. impose a daily financial penalty, the amount of which shall be determined from time to time by the Developer or The Board (as the case may be), on notice to the Owner, should the Owner fail to comply with any obligations contained in this Clause 12; and
- 12.9.6.1.3.9. enter upon any Land Unit in order to inspect that Land Unit and any improvements constructed thereon.
- 12.10. The Developer will, during the Development Period, be entitled to apply and obtain approval for the amendment of the rezoning or subdivision approval of the Land or any Land Unit without the consent of the Association, any Sub-Association or any Body Corporate.
- 12.11. Building Plans must be submitted for consideration and formal approval in respect of all structures, structural changes or change in use that was performed or executed without the approval of the Local Authority.

12.12. No structures may be demolished without the prior written approval of the Local Authority.

### **13. TRUSTEES**

13.1. There shall be a minimum of 3 (three) and a maximum of 5 (five) trustees of the Association, provided that:

13.1.1. during the Development Period all the Trustees shall be appointed or removed and replaced as the case may be, by the Developer, subject to the condition that the Developer will not be obliged to appoint any Trustees during the Development Period provided that the Developer or its nominated representatives, will act as Trustees during the Development Period, and

13.1.2. after the Development Period all the Trustees shall be appointed by the Members.

13.2. A Trustee shall be an individual who represents the Association, as such being a Member, except in the case of the Chairperson of the Association, who may not be an Owner of a Land Unit in the Development. A Trustee, by accepting his appointment to Office, shall be deemed to have agreed to be bound by all the provisions of the Constitution and CHC.

13.3. The Developer shall appoint the Chairperson of the Trustees during the Development Period and thereafter The Board shall appoint such a Chairperson subject to the condition that the Chairperson may never be an Owner. The Chairperson must be compensated by The Board in respect of the functions of the Chairperson in the amount of R7.00 (Seven Rand) per Land Unit sold and transferred, which amount will escalate at the rate of 10% (Ten) per annum.

13.4. The Chairperson of The Board 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 appoint the Vice Chairman to act as Chairperson of the meeting concerned.

13.5. A Trustee is required to:

13.5.1. perform the functions of Office in good faith, honesty and in a transparent manner, and

13.5.2. 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.

13.6. When elected, a Trustee shall within 60 (Sixty) 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.

13.7. Each Trustee will also declare in writing to The Board those respects in which, from time to time, his Land Units 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.

13.8. 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.

13.9. 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 the same.

13.10. A Trustee may not, except through the Chairperson of the Trustees and or The Board:

13.10.1. interfere In the management or administration of the Estate, unless mandated by The Board;

13.10.2. give or purport to give any instruction to any employee other than the Management Company;

13.10.3. obstruct or attempt to obstruct the Management Company or any of the Estate Office staff in the Implementation of any decision or resolution of The Board, or

13.10.4. encourage or participate in any conduct which would cause or contribute to maladministration by The Board.

13.11. 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 the CHC, or of the Conduct 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.

- 13.12. Should The Board find that a Trustee has breached any provision of the CHC or any of the rules or regulations aforesaid, The Board may:
  - 13.12.1. issue a formal warning to the Trustee concerned;
  - 13.12.2. reprimand the Trustee;
  - 13.12.3. suspend the Trustee;
  - 13.12.4. request the Trustee to resign, or
  - 13.12.5. request the Association to remove the Trustee from The Board.
- 13.13. the Developer will, during the Development Period, communicate minutes of all the meetings held by it and/or decisions taken by the Developer, in its capacity as Trustees of the Association, to each Sub-Association and/or Body Corporate, as the case may be.
- 13.14. **CHAIRPERSON**
  - 13.14.1. The Board shall within 14 days of each Annual General Meeting of the Association, appoint a Chairperson who shall hold Office. until the next Annual General Meeting, provided that the Office of Chairperson shall ipso facto be vacated by an Officer holding such Office upon his ceasing to be an Officer for any reason in which event The Board shall immediately appoint an alternative Chairperson.
  - 13.14.2. Except as otherwise provided in this Constitution, the Chairperson shall preside of all meetings of The Board and at all General Meetings of Members (including the Annual General Meeting) and, in the event of the Chairperson not being present within 15 minutes of the scheduled meeting time, or in the event of his inability or unwillingness to act, the Vice Chairperson appointed shall preside in his stead. Should the Chairperson at any stage be absent at two consecutive meetings, The Board and/or the Management Company may terminate the services of the Chairperson with immediate effect.
  - 13.14.3. For the duration of the Development Period, the Chairperson shall be appointed by the Developer subject to the condition that the Chairperson must always be a Community Leader.

#### **14. REMOVAL AND ROTATION OF TRUSTEES**

- 14.1. Save as set out in Clause 14.2, 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.
- 14.2. A Trustee shall be deemed to have vacated his Office as such:
  - 14.2.1. should he become disqualified to act as a director of a company in terms of the Act;
  - 14.2.2. should he be removed from Office by a resolution of the Trustees;
  - 14.2.3. in the event of his being a Member of any Sub-Association, or representing any Member, should he become disentitled to exercise a vote in terms of Clause 6.8;
  - 14.2.4. should his Estate be sequestrated whether provisionally or finally;
  - 14.2.5. on his conviction of any offence involving dishonesty;
  - 14.2.6. on the commission by him of any act of insolvency;
  - 14.2.7. should he become of unsound mind or being found to be a lunatic;
  - 14.2.8. on his resigning from such Office in writing.
- 14.3. Upon any vacancy occurring in the Trustees prior to the next annual general meeting, a person shall fill the vacancy in question nominated by those Trustees remaining, or by another Trustee nominated by the Developer if such shall occur during the Development Period.

14.4. 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.

## **15. TRUSTEES EXPENSES AND REMUNERATION**

15.1. 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.

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

## **16. POWERS OF THE BOARD**

16.1. Subject to the provisions of the Constitution and the CHC, and subject to any limitations which may be imposed by the Association in general meeting, The Board shall have full powers to perform the functions allocated to them in the Constitution and the CHC, 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.

16.2. The Board shall in consultation with the Management Company formulate a budget and a strategic plan and any amendments thereto for each Financial Year of the Association.

16.3. The Board 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 the Constitution, including subject always to the provisions of Clause 16.2, the appointment of a Management Company, and are empowered to delegate the management of the affairs and the business of the Association whether in whole or in part to such Management Company.

16.4. Furthermore, The Board 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.

16.5. The Board shall further have the power:

16.5.1. to require that any construction of any sort in the Estate shall be supervised so as to ensure that the provisions of the CHC and the Conduct Rules, or any other rules or regulations, are complied with, and that all such construction is performed in a proper and workmanlike manner;

16.5.2. to issue building and Landscaping Guidelines in respect of the Estate and to ensure that same are complied with at all times, and

16.5.3. 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.

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

## **17. PROCEEDINGS OF TRUSTEES**

17.1. 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 the CHC.

17.2. The quorum necessary for the holding of all meetings of the Trustees, after the Development Period, shall be 50% (Fifty) of the 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.

17.3. 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 Chairperson of the Trustees shall have a second casting vote.

17.4. 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 Chairperson. All minutes of Trustees meetings shall, after certification, be placed in a Trustees' minute book.

- 17.5. 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.

## **18. MANAGEMENT COMPANY**

- 18.1. The Developer shall be entitled (but not obliged, and at their own discretion) to manage or to appoint a Management Company for the Development during the Development Period, which appointment shall be valid and binding on the Association during the Development Period and for a period of 5 (Five) years after the termination of the Development Period. For the avoidance of doubt, it is recorded that only one Management Company may be appointed for the whole of the Development irrespective of whether such appointment is made during the Development Period, or their after.
- 18.2. The Members hereby grant the Developer the irrevocable power and authority to appoint the Management Company of the Development during the aforesaid period and to determine the terms and conditions of such appointment.
- 18.3. Subject to the provisions of the Constitution and the terms of its appointment, the Management Company 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.
- 18.4. During the Development Period, the Developer will determine the fees or remuneration to be paid by the Association to the Management Company and the other terms and conditions of its appointment.
- 18.5. This appointment may extend beyond the Development Period provided that the Developer shall endeavour to procure in making such appointment, 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.
- 18.5.1. After the Development Period in the event that an existing Management Company's appointment is terminated, a successor Management Company 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 Management Company 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 Management Company with appropriate executive powers so as to conform to the requirements of good corporate governance.
- 18.5.2. The BMPOA 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 intend 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.

## **19. GENERAL MEETING OF THE ASSOCIATION**

- 19.1. Subject to any directions given by the Developer during the Development Period, the first general meeting of the Association will be held within 6 (Six) months after the termination of the Development Period or within 12 (twelve) months from the date of approval of the CHG by council, whichever occurs first.
- 19.2. 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.
- 19.3. General meetings shall be held at such time and place as the Trustees shall declare from time to time.
- 19.4. All meetings including annual general meetings shall be called general meetings
- 19.5. 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 or should the Trustees not do so, may be convened by the requisitions.

## **20. NOTICES OF MEETINGS**

- 20.1. An annual general meeting shall be called by not less than 21(Twenty One) Clear Days' notice in writing and any other general meeting shall be called by not less than 14 (Fourteen) 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 Clauses 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 the CHC, 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 Management Company'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 notorially certified copy of a power of attorney or other authority under which it is signed must be lodged with the Association at least 48 (Fourty Eight) 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 (Fourty Eight) in all, before the meeting
- 21.2.3. 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.
- 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 is acceptable to the Chairperson of the meeting or adjourned meeting 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.
- 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 the CHC 20% (Twenty) 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 15 (Fifteen) minutes after the time appointed for the commencement of a general meeting or within such extended period as the Chairperson 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 Chairperson may determine. If a quorum is not present as such adjourned general meeting. the Members present shall constitute a quorum.

## **23. ADJOURNMENT BY CHAIRPERSON**

- 23.1. The Chairperson 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:
- 23.2. 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;
- 23.3. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

#### **24. VOTING RIGHTS OF MEMBERS**

- 24.1. Notwithstanding anything to the contrary herein contained, during the Development Period the Developer may without the approval of the Members of the Association, amend, substitute and repeal any provision of the CHC with the approval of the Local Authority.
- 24.2. Only Members shall be entitled to vote on matters raised at general meetings.
- 24.3. At every general meeting:
  - 24.3.1. each Member, present in person or by proxy and entitled to vote, shall have 1 (One) vote;
  - 24.3.2. during the Development Period the Developer shall as Member be entitled to 150 (One Hundred and Fifty) additional votes in addition to its one vote.
- 24.4. Save as provided in the CHC 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.
- 24.5. 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 Chairperson. If a poll is demanded it shall be taken in such a manner as the Chairperson may direct
- 24.6. Subject to the provision of the CHC, all resolutions shall be passed by simple majority vote.
- 24.7. 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.
- 24.8. A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:
  - 24.8.1. written notice of the revocation is received by the Association prior to the meeting concerned, or
  - 24.8.2. the Chairperson agrees to accept written or oral notice of such revocation at the meeting
- 24.9. 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 Chairperson of the meeting whose decision shall be final and conclusive.
- 24.10. 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.
- 24.11. 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 authorised 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 Members in annual general meeting shall, not less than 21 (twenty one) 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
- 25.7. The Members shall, by way of Ordinary Resolution passed at a General Meeting of Members, nominate the Auditors of the Association and the secretary of the Association from time to time, provided that for the duration of the Development Period, the Developer may nominate the Auditors and the secretary of the Association.
- 25.8. The Financial Year end of the Association shall be the last day of December of each year.

**26. SERVICE OF NOTICE**

- 26.1. Notices may be given by the Association to any Member either at the address indicated 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;
- 26.3. No other person shall be entitled to receive a notice of general meetings.
- 26.4. 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.
- 26.5. The signature to any notice given by the Association may be written or printed, or partly written and partly printed.
- 26.6. 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. ACCOUNTS**

- 27.1. The Board shall cause proper books of account and records to be kept so as to fairly explain the transactions and financial position of the Association, which books of account and records shall include –
  - 27.1.1. a record of the assets and liabilities of the Association;

- 27.1.2. a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occurred;
- 27.1.3. a register of Members showing, in each case, their addresses; and
- 27.1.4. individual ledger accounts in respect of each Member.
- 27.1.5. The Board shall cause all books of account and records to be retained for a period of 6 years after completion of the transactions, acts or operations to which they relate.

## **28. AUDIT**

- 28.1. Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by the Auditors.
- 28.2. The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards applicable in the Republic of South Africa.

## **29. INDEMNITY**

- 29.1. The Trustees, the Auditors and each Management Company, servant, agent or employee of the Association shall be and they are hereby indemnified by the BMPOA and 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 traveling expenses which they or any of them may incur or becomes liable for by reason of any contract entered into, or any act or deed done, by them in the due discharge of any of their respective duties.
- 29.2. A Trustee shall not be liable for the act or omission of the Management Company, Auditors or of any of the other Trustees whether in their capacity as such or as Chairperson, or for any loss or expense sustained or incurred by the BMPOA and the Association through the insufficiency or deficiency of any security in or upon which monies of the BMPOA and 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 judgement or oversight on his part, or 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
- 29.3. The Developer is hereby irrevocably indemnified against any loss or any possible damages or claim for damages that the BMPOA and the Association, any Sub-Association, Body Corporate, Member, Owner, excluding the Owner of the Shoprite Erven or Occupant of any Land Unit may suffer as a result of any installation of any service or facility on the Estate or any act or conduct by the Developer in the exercising of the Development Rights, whether that such damage was caused by any willful or negligent act of the Developer.

## **30. CONDITIONS IMPOSED BY LOCAL AUTHORITY**

During the Development Period, the CHC may from time to time be amended, without the need to be approved by 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 the Estate or any subdivisions thereof, or any other Land which may be added to the Estate by the Developer, in his sole discretion.

## **31. DETERMINATION OF DISPUTES**

- 31.1. Any disputes arising out of or in connection with the CHC must be determined in accordance with this Clause 31, except where an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 31.2. 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 (Fourteen) days after such notice, either of the parties to the dispute may refer the same to determination in terms of the following provisions of this Clause 31.

- 31.3. If a party exercises his right in terms of Clause 31.2 to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of 10 (ten) years experience in their field:
- 31.3.1. If the dispute is primarily an accounting or financial matter, a practising chartered accountant with at least 10 (Ten) years standing;
- 31.3.2. if the dispute is primarily a legal matter or a matter relating to the behavior and or conduct of a Member, a practicing attorney or advocate with at least 10 (Ten) years standing;
- 31.3.3. if the dispute primarily relates to the nature of buildings, structures, installations or equipment, a practising Architect with at least 10 (Ten) years standing;
- 31.3.4. if the dispute primarily relates to the size of form of the Land or the position, height or size of buildings, structures, installations or equipment. a practising Land surveyor with at least 10 (Ten) years standing.
- 31.4. If the parties are unable to agree on the appointee as provided for in Clause 31.3 within 3 (Three) 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 the Cape of Good Hope.
- 31.5. The person appointed as provided for in Clause 31.3 shall in all respects act as an expert and not as an arbitrator.
- 31.6. The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 31.7. The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (Twenty One) days or so soon thereafter as possible.
- 31.8. 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.
- 31.9. The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between "party and party" or as between "attorney and client".
- 31.10. The provisions of this Clause 31 constitutes the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw there from or claim in any such proceedings that they are not bound by such provisions.
- 31.11. The provisions of this Clause 31 shall be deemed to be severable from the remainder of the Constitution and shall remain binding and effective as between the parties notwithstanding that the CHG may otherwise be cancelled, amended or declared of no force and effect for any reason.
- 31.12. Notwithstanding anything to the contrary contained in the CHG, 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 the GHC and any of its annexure, including any amendments of additions thereto.

## **32. AMENDMENT OF CONSTITUTION**

- 32.1. During the Development Period the Developer may without the approval of the Members of the Association, amend, substitute and repeal any provision of the CHC with the approval of the Local Authority. Any such amendments as contemplated herein will only be communicated by the Developer to the management company and the Developer will therefore not be obliged to communicate these changes to the Members.
- 32.2. No provision of the CHC shall be added to, amended, substituted or repealed without the prior written consent of the Developer for the duration of the Development Period.
- 32.3. Subject to the provisions of Clauses 32.1 and 32.2 above, any such addition, amendment, substitution or repeal shall require the approval of at least 51% (Fifty One) 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 the CHC, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.

32.4. Any reference herein to this CHC shall mean and include a reference to this Constitution as may from time to time be amended in accordance with the provisions of this Clause 32.

### **33. GENERAL**

33.1. The Trustees or the Management Company or their employees, agents or contractors shall be entitled and shall have the right to enter any Land Units 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.

33.2. The provisions of this CHC shall be binding upon all Members and, insofar as they may be applicable to all persons occupying any Land Unit through or under any Member, whatsoever the nature of such occupation.

33.3. No Member ceasing to be a Member of the Association for any reason, and neither shall 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.

33.4. The Association may claim from any Member or his Estate all arrear Levies and interest or other sums due from his to the Association at the time of his ceasing to be a Member for any reason.

33.5. Any person using any of the services, Land or facilities of the Association within the Estate does so entirely at his own risk.

33.6. The Developer may at any time in writing, cede and assign all or any of its rights or obligations in terms of this CHC to any transferee of its choice and such transferee shall be entitled to take transfer of all such rights and obligations.

33.7. The Developer may, at any time in writing, abandon in whole or in part, any of its rights.

33.8. The Developer, during the Development Period, and thereafter, The Board, may appoint only 1 (One) service provider for the provision of any kind of service or product to the Development, the Members, any Sub-Association, Body Corporate, Owner or Occupant. The Members, Sub-Associations, Bodies Corporate, Owners and/or Occupants will be bound by such appointment being made. This condition will be binding and of full force and effect on all appointments to be made or agreements to be concluded with such service provider, as may be provided for in the Constitution, or in the discretion of the Developer during the Development Period, and the Board, after the Development Period. This provision is not applicable on the Owner of the Shoprite Erven.

33.9. If there is any discrepancy between the Constitution, this CHC and the Agreement of Sale concluded between the Developer and Shoprite Checkers (Pty) Ltd, Registration Number: 1929/001817/07 (the "Agreement of Sale"), the conditions of the Agreement of Sale shall prevail.

33.10. The Developer or the Association may not include any other commercial erven, (other than the Shoprite Erven), in the Estate that can be developed:

33.10.1. with a shopping centre thereon with a total footprint in excess of 1 500 square metres (One Thousand Five Hundred) and shops therein with a gross lettable area in excess of 400 square metres (Four Hundred), or

33.10.2. with standalone or cluster shops with individual gross lettable areas in excess of 400 square metres (Four Hundred).

33.11. Notwithstanding Clause 33.10, the Developer may place a "drive through" facility on Portion 83, Buhrein (also known as Erf 226, Buhrein, City of Cape Town), which facility may not exceed a gross lettable area of 500 square metres (Five Hundred).

33.12. The Owner of the Shoprite Erven may utilize the "Buhrein" name within the context of the commercial development on the Shoprite Erven, whether utilized by ii in relation to the building itself or anyone or all of the commercial enterprises to be conducted therein. This right will endure in perpetuity.

33.13. All the Land Units are subject to the servitudes as mentioned in the Title Deed of the Land, the approved general Plan in respect of each phase of the Estate and all servitudes as may imposed by the Local Authority and or during the Development Period, by the Developer. All of the above servitudes includes the unrestricted right of access over any Land Unit in favour of the holder of any servitude.

#### **34. MANAGEMENT OF THE CLUB HOUSE**

- 34.1. The Club House (identified as Erf 153 Buhrein and indicated as such on the SDP) will be registered in favour of the BMPOA.
- 34.2. The usage of the Club House will, however, during the Development Period, be under the control and at the sole discretion of the Developer. The management of the Club House will be handed by the Developer to the BMPOA on a date to be determined by the Developer subject to the condition that such date may not be a date after the completion and opening of the private school facility, as such being a part of the Development.
- 34.3. The BMPOA will be liable for all additional costs pertaining to the improvements and operation of the Club House, incurred by the Developer, which must be repaid by the BMPOA to the Developer upon terms and conditions to be agreed between the Developer and the BMPOA and which amount will be shown as a Loan Account in the Financial Statements of the BMPOA, until the full payment thereof
- 34.4. It is specifically recorded that construction of the Club House will commence and be completed on dates to be determined by the Developer, in its sole discretion.
- 34.5. The fees for the usage of the Club House by the Owners, will be determined by The Board of the BMPOA, from time to time.
- 34.6. The Developer or its nominated entity may at any time during the Development Period apply for a Liquor License in respect of the Club House. The liquor license will vest in the Buhrein Sports Club, will be for the exclusive use of the Club which Club will at all times adhere to the terms and conditions of the liquor license and all relevant legislation
- 34.7. The Members of the Club House will form a club, which club will be known as the Buhrein Sports Club and will be managed in terms of its own Constitution and club rules, but will always be subject to the terms and conditions of the Constitution and or any ruling or decision of the Developer, during the Development Period, and thereafter of The Board.

#### **35. RE-SALE OF LAND UNIT**

- 35.1. An Owner, excluding the Owner of the Shoprite Erven, may not sell or Alienate its Land Unit or any component thereof during the Development Period and/or the Restriction Date, whichever occurs last, to a Third Party Purchaser, without the prior written consent of the Developer. It is recorded that such Owner will be liable for the payment of a consent fee to the Developer and the Owner is furthermore obliged to utilize the draft Agreement of Sale prescribed by the Developer during the Development Period and to appoint the Attorney's appointed by the Developer to effect registration of transfer.
- 35.2. This condition will be registered by the Developer against the title deed of any Land Unit, excluding the title deed of the Shoprite Erven.

#### **36. ESTATE MANAGER**

- 36.1. The Developer will effect registration of transfer in the Cape Town Deeds Registry of Erf 127, Buhrein, indicated on the SOP, to the Association, free of counter value, subject to condition that such Land Unit may only be utilized by the BMPOA for the storage of equipment by The Board or any employee of the BMPOA, including the Estate Manager.
- 36.2. The BMPOA will be responsible and liable for the construction of the improvements on the abovementioned Land Unit, at its own costs and must be completed by the BMPOA during the Development Period.

#### **37. SPORT FIELDS AND FACILITIES**

- 37.1. Sport fields and facilities, indicated as Erf number 154, Buhrein Estate, on the SDP, will be transferred by the Developer to the BMPOA, free of counter value.
- 37.2. It is recorded that the sport fields and facilities will be for the usage of the Private School during school operating hours, as a preference right, and thereafter for the usage of the Members or Owners.
- 37.3. The maintenance of the sport fields will be the responsibility of the BMPOA. The Private School will make a pro rata contribution to any costs or expenses in this regard.

#### **38. SECURITY COMPANY**

- 38.1. It is recorded that the Developer will be entitled to appoint a security company during the Development Period on terms and conditions to be determined by the Developer, in its sole discretion.
- 38.2. The Association, Sub-Association and/or Bodies Corporate, as the case may be, may only utilize the services of 1 (One) security company for the whole of the Development.
- 38.3. The services of the appointed security company, may be utilized by the Managing Agent, and any of the commercial or institutional Land Owners.
- 38.4. It is recorded that the security company may utilize camera equipment on all the Public Roads as well as Private Open Space, subject to the condition that the privacy of each of any Owner of a Land Unit, must at all times be respected and honored. All security cameras stationed on all the Public Roads will be regularized by the BMPOA, Association and/or the Developer. The Association will ensure that all security cameras on all Public Roads within this Development was approved by council in terms of Council's Policy relating to the Regulation of External and privately owned cctv/security cameras on City Property Policy (Policy No. 21207).
- 38.5. It is recorded that all Sub-Associations and/or Bodies Corporate may connect and utilize the services of the central camera system, at its own cost
- 38.6. As far as the appointment of the security company is concerned, it is recorded that security services must at all times be rendered by such security company at market related prices.
- 38.7. It is furthermore recorded that the BMPOA, Association and the Developer will not accept any responsibility or liability in respect of any damages caused by the security company and/or any of its employees or vehicles utilized.
- 38.8. It is recorded that each Owner of a Land Unit must at all times allow access to the service provider in respect of all optic fiber cables as indicated on the camera plan, which plan is available from the Developer, at no cost. It is furthermore recorded that the polls indicated on the camera plan, may never be removed without the consent of the service provider, Association, Sub-Association or Body Corporate.

**39. ELECTRICAL SUBSTATIONS**

It is recorded that Erven 54 and 130 Buhrein, indicated on the SOP will be transferred by the Developer to the City of Cape Town for the purposes of electrical substations.

**40. RAILWAY STATION**

- 40.1. It is recorded that Erven 330 and 332, Buhrein , indicated on the SOP, will be transferred by the Developer to Transnet, or its nominated entity, for the purposes of a Railway Line and -Station.
- 40.2. It is recorded that these Erven will not be liable for payment of any Levies towards the Association, nor any Sub- Association.
- 40.3. The maintenance of the Erven will be for the account of Transnet, or its nominated entity.
- 40.4. The relevant Owners of such Land Units will at all times be subject to the Rules of the Association.
- 40.5. It is furthermore recorded that transfer of the Land Units to Transnet, or its nominated entity, will be at a price to be agreed between the Developer and Transnet. which amount will be for the benefit of the Developer.

**41. DEVELOPMENT OF ERF 57**

- 41.1. It is recorded that Erf 57, Buhrein, indicated on the SOP, is zoned for commercial purposes. This Land Unit may, however, only be developed by the Owner once the bridge over the Land Unit has been constructed, build and completed, by the Developer of the abovementioned Land Unit.
- 41.2. It is specifically recorded that the Owner of the abovementioned Land Unit, will not be liable for the payment of any penalties on Levies prior to the construction and completion of the required bridge.

**42. GAS INSTALLION - CERTIFICATE OF CONFORMITY**

**43.** In the event of their being a gas installation on any Land Unit, the Owner shall at his costs be obliged to obtain a certificate of conformity in respect of such installation as is required by the Occupational Health and Safety Act, No 85 of 1993. Regulation 17(3) of the Pressure Equipment Regulations of 2009. The Association and/or its agents will have reasonable access to any Land Unit for the purposes of inspection of such gas installation. Should any repairs be required by the Association or its agent to the gas installation, such repairs will be for the costs of the Owner. It is recorded that the Owner must supply The Board with the required Certificate of Conformity, once every year. No gas installation in excess of 7 (seven) kilograms may be installed on any Land Unit without the prior written consent of The Board.

**44. CONSTRUCTION OF CARPORTS**

It is recorded that, should the Developer or the Association, at any time, decide to construct carports in respect of any Land Unit, such carports must be uniformed and must all be constructed simultaneously.

**45. AGREEMENTS CONCLUDED ON BEHALF OF THE ASSOCIATION**

It is recorded that the Developer will be allowed to enter into agreements and appoint any service provider on behalf of the Association for a period, to be in a discretion of the Developer, which agreements and/or appointments will be effective on the Association and its Members before or after the Development Period, provided that such service provider fulfill all its obligations and all the other terms and conditions of the agreement thus concluded.

**46. PENALTIES**

46.1. Any Owner or Occupant contravening any of the terms and conditions of this CHC, may receive a written warning from the Trustees of the Association or its agent, as well as a penalty, the amount to be determined by the chairman of the Trustees from time to time, for each infringement. Should the trespasser be a guest of an inhabitant, the Trustees reserve the right to act in terms of this rule against such inhabitant, who shall be liable for the behavior of his guest. This reservation does not impinge on any other rights of the Trustees or any others rights which the Trustees may have against any such trespasser or inhabitant

46.2. Each penalty may be levied against the Owners Levy account for each infringement and each Owner will be liable to pay such amount promptly.

**47. TELECOMMUNICATION SERVICES**

47.1. It is recorded that the Developer will be entitled to appoint a service provider in respect of all telephone or telecommunication services, including but not limited to, optic fiber cables, VOiP systems, any wireless systems, etc. The appointment by the Developer in this regard and the mandatory fee payable to the service provider, will be binding upon the Association and its Members.

47.2. The initial agreement will be concluded between the Developer and the service provider at a compulsory fee of R99.00 (Ninety Nine Rand) per month, payable by each Owner and included in the monthly Levy account, plus a yearly market related escalation.

47.3. Ownership of the equipment of the service provider will vest in BMPOA after expiry of the initial period to be agreed between the Developer and the service provider.

47.4. The Developer will conclude a further service level agreement pertaining to the maintenance of the telecommunication services.

47.5. The mandatory fee will be included by the Association in the monthly Levy account and will be collected and paid by the Management Company to the service provider. The mandatory monthly fee may not, during the initial period, be excluded from the Levies.

47.6. After the initial period, The Board must extend the agreement and appointment with the service provider for a minimum period of at least 5 (Five) years with the further option of renewal for a further 5 (Five) year period in favour of the service provider, subject to no mandatory fee being payable during such period of extension.

47.7. The mandatory fee will only become payable by the Owner as from the date of registration of transfer of a Land Unit in the name of the Owner or on the date of occupation of a Land Unit, whichever event occurs first.

- 47.8. The service provider will be liable for the payment of administration fees to the Management Company for the management of the administration process.
- 47.9. The Developer will, for as long as the Developer is the Owner of a Land Unit, not be liable for the mandatory fee until the date of occupation or transfer of such Land Unit in favour of a Third Party Purchaser (excluding any affiliated entity of the Developer), whichever event occurs first.
- 47.10. No Owner or Occupant may be in possession of or operate or use any illegal trans-receiving devices and or radio equipment in addition to any other legal equipment which may interfere with the provision of the telecommunication services. The decision of the Developer, during the Development Period and thereafter of The Board, will be final and binding on any Member, Owner or Occupant.
- 47.11. The Developer and/or the Association and/or the designated service provider of the telecommunication services may not be held liable by any Owner/Occupant for any interruption or malfunction of the telecommunication system or services.

#### **48. RENTALSTOCK**

- 48.1. The Developer, or its nominated entity, intends to develop certain Land Units for the purpose of renting all the sections/portions of any such Land Unit/s.
- 48.2. In this instance, the Developer or its nominated entity:
  - 48.2.1. will not be subject to the management and control of those Land Units by the Management Company,
  - 48.2.2. will be entitled to manage those Land Units, Bodies Corporate or Sub-Associations free from any obligations towards the Management Company,
  - 48.2.3. will not be obliged to use any contractor, consultant or service provider appointed by the Board or the Management Company,
  - 48.2.4. will only be obliged to pay Levies, as provided for in the Constitution and this CHC, in respect of those services supplied by the BMPOA and the Association and utilized by the Developer or its nominated entity.

#### **49. LETTING OF LAND UNITS**

- 49.1. The letting of Land Units will be allowed, however, all Owners and Occupants shall be obliged to adhere to the Conduct Rules approved by the Board, relating to the letting of Land Units.
- 49.2. MSP Developments (Pty) Ltd, or its nominated entity, is appointed as the sole letting agent for the duration of the Development Period. All other Letting Agents must be accredited by MSP Developments (Pty) Ltd prior to such Agency being mandated by any Owner. This appointment will be automatically extended if no objection thereto is received by the Board after the Development Period.
- 49.3. The appointment of any Letting Agent (the "Agent") by the Board, will be subject to the following criteria:
  - 49.3.1. The Agent must deliver written proof to the Board of Public Liability Insurance to the value of at least R5 000 000.00 (Five Million Rand) per year.
  - 49.3.2. The Agent shall provide written proof to the Board of the registration with a statutory or mandatory authority, thus being able and allowed to Act as a Letting Agent under any applicable legislation.
  - 49.3.3. The Agent and the Owner of the respective Land Unit shall enter into a written agreement in terms whereof the Owner will appoint the Agent to let the Unit and to bind the Agent / Agency to the Conduct Rules of the Association.
  - 49.3.4. The Agent must inform all the tenants of this Constitution and the Management and Conduct Rules applicable on the Land Unit and any short term occupation agreement must specifically provide that the tenants are bound by and shall abide by the above.
  - 49.3.5. The Agent must obtain all contact details of a tenant, such as, but not limited to, telephone numbers (in South Africa and in their country of residence), physical and postal addresses as well as copies of official identification documents or passport, which documentation must be obtained and delivered to the Managing Agent prior to the occupancy of the Land Unit by the tenant.

- 49.3.6. Where an Agent employs any staff, the Agent must ensure that the staff is at all times neatly dressed in a uniform and clearly identified as an employee of the Agent.
- 49.4. The Board shall be entitled to request any Owner to deliver proof that the requirements as set out in this Rule, has been complied with.
- 49.5. "To Let" signs may only be erected by Owners in the windows of Land Units and not any other place on a Land Unit or on the Common Property.

**50. SELLING OF LAND UNITS BY ESTATE AGENTS**

- 50.1. Owners shall only be entitled to utilise the services of a registered Estate Agent, in terms of all applicable legislation, to market its Land Unit.
- 50.2. MSP Development (Ply) Ltd or its nominated entity is appointed as the sole Selling Agents for the duration of the Development Period. All other external Estate Agents must be accredited by MSP Developments prior to them being mandated by any Owner. This appointment will be automatically extended if no objection thereto is received by the Board after the Development Period.
- 50.3. Any appointment by an Owner of an Estate Agency is subject to the following criteria:
  - 50.3.1. The Estate Agent shall provide the Board with written proof of registration with the Estate Agency Affairs Board and provide a certified copy of a valid Fidelity Fund Certificate.
  - 50.3.2. The Estate Agent must obtain a written mandate of the Owner and provide a copy of such mandate, to the Managing Agent.
  - 50.3.3. The Estate Agent shall comply at all times with all laws, by-laws or any regulation applicable to Estate Agents.
  - 50.3.4. Land Units may only be showed on Saturdays and Sundays from 14:00 until 17:30.
  - 50.3.5. "For Sale" and "Sold" boards will only be allowed to be erected in the windows of a Land Unit and not at any other place in or outside the Land Unit or on the Common Property.
  - 50.3.6. Estate Agents shall at all times accompany a prospective Purchaser and both the Estate Agent and the prospective Purchaser shall comply with all security rules and regulations.
  - 50.3.7. The Board is allowed to pass such rules and amendment to these rules and regulation, as they deem necessary.

**51. RESTRICTION ON ALIENATION**

- 51.1. Notwithstanding any provision of this Constitution, no Owner will be entitled to sell or Alienate his Land Unit or any component thereof for a period of 5 (Five) years calculated from the date of registration of transfer of such Land Unit in favor of the first Owner, having purchased the land Unit from the Developer.
- 51.2. This condition will be registered by the Developer against the Tide Deed of each and every Land Unit in the Development, on the transfer date of such a Land Unit in favour of the first Owner.

**Approved in terms of Section 29(2) of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) under authority of the Director: Town Planning**