

MEMORANDUM OF INCORPORATION

OF THE

**EYE OF AFRICA
HOMEOWNERS ASSOCIATION NPC**

which is a non-profit company with members,
registered under Registration No. 2007/030516/08

(hereinafter referred to as “the Company”)

TABLE OF CONTENTS

1.	PRELIMINARY	4
2.	DEFINITIONS AND INTERPRETATION	4
3.	INTRODUCTION	7
4.	MoI AND RULES	8
5.	OBJECTS	8
	5.1. Main Objects	8
	5.2. Ancillary Objects	8
6.	MEMBERSHIP	9
7.	COMMON PROPERTY	12
8.	PHASED DEVELOPMENT	12
9.	GOLF CLUB	13
10.	MAINTENANCE OF THE GOLF COURSE	13
11.	HIKING, GAME CONTROL AND NATURE RESERVE	13
12.	LEVIES	13
13.	ESTATE RULES, ARCHITECTURAL GUIDELINES, LANDSCAPING AND GARDENING GUIDELINES AND OTHER REGULATIONS	16
14.	DIRECTORS	19
15.	CHAIRMAN	21
16.	DIRECTOR'S EXPENSES AND REMUNERATION	21
17.	POWERS OF DIRECTORS	21
18.	PROCEEDINGS OF DIRECTORS	23
19.	STATUS OF THE DEVELOPER	24
20.	BORROWING POWERS	25
21.	ANNUAL GENERAL MEETINGS	25
22.	NOTICE OF MEETINGS	27
23.	PROCEEDINGS AT GENERAL MEETINGS	27
24.	QUORUM	28
25.	VOTING	28
26.	RESOLUTION IN WRITING BY MEMBERS	29
27.	SPECIAL RESOLUTIONS	30
28.	MINUTES AND INSPECTION	30
29.	PROXIES	30
30.	FINANCIAL YEAR END	32
31.	ACCOUNTS	32
32.	AUDITED FINANCIAL STATEMENTS	32
33.	AUDIT	33
34.	SERVICE OF NOTICES	33

35.	AMENDMENT	34
36.	MANAGING AGENT	34
37.	THE MUNICIPALITY	34
38.	BUILDING ACTIVITIES	34
39.	SIGNAGE AND MOBILE / CELLULAR TELEPHONE ANTENNA / TOWERS	35
40.	INDEMNITY	35
41.	GENERAL	36
42.	DIVIDENDS	37
43.	BREACH	37
44.	RESOLUTION OF DISPUTES	38
45.	DOMICILIUM	40
46.	LIQUIDATION OR DEREGISTRATION	40

This Mol was adopted by special resolution passed on 28 September 2015, a copy of which was filed, together with the notice of amendment, in substitution for the Company's existing Memorandum and Articles of Association. This Mol takes effect (in terms of Section 16 (9) (b) (i) of the Act) on the date of registration hereof, together with the notice of amendment.

1. PRELIMINARY

- 1.1. If the provisions of this Mol are in any way inconsistent with the provisions of the Act, then the provisions of the Act shall prevail, and this Mol shall be read in all respects subject to the Act.
- 1.2. Notwithstanding the omission from this Mol of any provision to that effect, the Company may do anything which the Act empowers a non-profit company to do if so authorised by its Mol.

2. DEFINITIONS AND INTERPRETATION

- 2.1. The following words, unless the context otherwise requires, have the meanings hereinafter assigned to them:
 - 2.1.1. "**Act**" means the Companies Act 71, of 2008 (as amended) or any Act which replaces it;
 - 2.1.2. "**Alienate**" means alienate any Erf or part thereof whether by way of sale, exchange, donation, deed, intestacy, will cession, assignment, court order or insolvency, change in shareholding of a company or membership in a close corporation irrespective of whether such alienation is subject to a suspensive or resolute condition, and "**Alienation**" shall have a corresponding meaning;
 - 2.1.3. "**Architectural Guidelines**" means the architectural and design guidelines determined by the Company from time to time;
 - 2.1.4. "**Architectural Review Committee**" means the committee appointed by the Board from time to time to ensure that the plans submitted to the Company comply with the Architectural Guidelines;
 - 2.1.5. "**Auditors**" means the auditors of the Company, appointed from time to time in accordance with clause 33;
 - 2.1.6. "**Board**" means the Board of Directors of the Company from time to time;
 - 2.1.7. "**Building**" means any building on the Estate;
 - 2.1.8. "**Chairman**" means the chairman of the Board, elected in accordance with this Mol or if that expression is used with reference to a General Meeting or meeting of the Directors at which that person is not present or does not act as Chairman, the person acting as Chairman in accordance with the provisions of this Mol;

- 2.1.9. **“the Club”** means the Eye of Africa Golf Club which is a separate legal entity initially owned by the Developer consisting of the golf course and the golf facilities;
- 2.1.10. **“Company”** means Eye of Africa Homeowners Association NPC (Registration Number: 2007/030516/08);
- 2.1.11. **“Common Property”** means; collectively, any land, roads, parks, open spaces and other areas in the Estate whether owned or held or controlled by the Company (by way of usufruct or servitude or in any other manner whatsoever), or held or vesting in the Municipality or any other authority but not being properly or adequately maintained by that authority and, including without any limitation, road reserves, bridges, traffic islands, traffic circles, traffic lights, road markings, signage, lamp posts, all other lighting, street furniture, landscaping, verges, pavements, embankments, flood plains, dams, water bodies and water courses, grey water reticulation and management systems, buildings, fences, walls, gate and guard houses or other security facilities and security equipment;
- 2.1.12. **“Deeds Office”** means the office of the Registrar of Deeds of Pretoria or such other Registrar of Deeds having jurisdiction in respect of the Erven;
- 2.1.13. **“Deliver”** means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with the Act, and shall, where permitted by the Act, include delivery of an abridged document together with instructions as to how the recipient may obtain an unabridged version of such document;
- 2.1.14. **“Developer”** means Eye of Africa Developments (Pty) Ltd (Registration Number: 2005/021292/07) and its successor-in-title;
- 2.1.15. **“Development Period”** means the period from the date of the incorporation of the Company until the date that the Developer notifies the Company that it has ceased the development of the Estate;
- 2.1.16. **“Directors”** mean the directors for the time being of the Company as referred to in clause 14;
- 2.1.17. **“Erf”** means any erf in the Estate and **“Erven”** means more than one Erf as the context may indicate and includes a Unit or Units;
- 2.1.18. **“Estate”** means the residential and golf estate situate on Eye of Africa Township Extension 1, comprising of residential erven, streets, open spaces, Golf Course and other specific use erven, as depicted on the General Plan S.G No 5452/2007 of the township, a copy of which is available on request;

- 2.1.19. **“Estate Rules”** means regulations governing the conduct upon and affairs at Estate;
- 2.1.20. **“General Meeting”** means the annual general meeting of the Members or any other general meeting of the Members as the case may be;
- 2.1.21. **“Golf Course”** means the Eye of Africa Golf Course which is owned by the Club;
- 2.1.22. **“Ineligible or Disqualified”** means ineligible or disqualified as contemplated in section 69 of the Act which shall apply not only to Directors and alternate Directors, but also to members of the Board and statutory committees and prescribed officers and the secretary of the Company;
- 2.1.23. **“Landscape and Gardening Guidelines”** means the Landscape and Gardening Guidelines promulgated by the Company from time to time;
- 2.1.24. **“Landscaping and Gardening Review Committee”** means the committee appointed from time to time by the Board to ensure that the landscaping and gardening within the Estate complies with the landscape and gardening guidelines as promulgated by the Company from time to time;
- 2.1.25. **“Levy”** means the monthly Membership fee payable by each Member in terms of this Mol and levied by the Board to defray the costs of managing and administrating the Company and the Common Property;
- 2.1.26. **“Managing Agent”** means any person or body appointed by the Company as an independent contractor to undertake any of the functions of the Company;
- 2.1.27. **“Member”** means a person who is a member of the Company as contemplated in clause 6, and **“Members”** and **“Membership”** shall be construed accordingly;
- 2.1.28. **“Mol”** means this memorandum of incorporation;
- 2.1.29. **“Municipality”** means the Midvaal Local Municipality or such other relevant municipality which governs the area in which in which the Estate is situated;
- 2.1.30. **“Objects”** means the Main Objects and Ancillary Objects of the Company as set out in clause 5;
- 2.1.31. **“Portion”** means a subdivided part of an Erf registered or capable of being registered in the name of any person or any portion arising out of a subdivision and consolidation of Portions;

- 2.1.32. **"Regulations"** means the Estate Rules and / or Architectural Guideline and / or Landscaping Guidelines and / or any other regulation and / or bylaws of the Company;
- 2.1.33. **"Unit"** means a sectional title unit in a sectional title scheme in terms of the Sectional Titles Act 95 of 1986; established in the Estate, and **"Units"** means more than one Unit as the context may indicate, and
- 2.1.34. **"Vice-Chairman"** means the vice-chairman of the Company from time to time.
- 2.2. Words in the singular number shall include the plural and words in the plural number shall include the singular, words importing the masculine gender shall include the other two genders, and words importing persons shall include created entities (corporate or not).
- 2.3. The headings of this Mol are for reference purposes only and shall not be taken into account in the interpretation of this Mol.
- 2.4. References to Members represented by proxy shall include Members represented by an agent appointed under a general or special power of attorney and reference to Members present or acting in person shall include juristic persons represented or acting in the manner prescribed in the Act.
- 2.5. If any term is defined within the context of any particular clause in the Mol, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Mol, notwithstanding that that term has not been defined in this interpretation provision.
- 2.6. The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this Mol.
- 2.7. Words that are defined in the Act, but not defined in this Mol, will bear the same meaning in this Mol as in the Act.

3. INTRODUCTION

- 3.1. The Company is a Pre-Existing Company as defined in the Act and, as such, continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Act, as contemplated in item 2 of the Fifth Schedule to the Act, and this Mol replaces and supersedes the Memorandum and Articles of Association of the Company applicable immediately prior to the filing hereof.
- 3.2. The Company is governed by:
 - 3.2.1. The unalterable provisions of the Act; and
 - 3.2.2. The alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Mol; and
 - 3.2.3. The provisions of this Mol.

- 3.3. Save to the extent necessarily implied by the stated objects in clause 5, the purposes and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the Act.
- 3.4. The Company is not subject to any restrictive conditions contemplated in section 15(2)(b) or (c) of the Act

4. **Mol AND RULES**

This Mol may be altered or amended only in the manner set out in section 16, 17 or 152(6)(b) of the Act.

5. **OBJECTS**

The Company has been incorporated for the purposes of controlling, managing, and maintaining the Common Property and the Estate, for the benefit of the Members, to incur and discharge any expenditure in relation thereto and to collect Levies from the Members to cover such expenditure.

5.1. **Main Objects**

- 5.1.1. to ensure that the Erven are developed according to uniform standards;
- 5.1.2. the care, upkeep and control of the Common Property including all services construed within the Common Property and to ensure that applicable Municipal Services are supplied to the Estate;
- 5.1.3. the formulation and enforcement of rules and Regulations at the Estate;
- 5.1.4. the formulation and enforcement of aesthetic and environmental standards and Landscaping and Gardening Guidelines and Architectural Guidelines at the Estate;
- 5.1.5. to institute control and security measures;
- 5.1.6. to own the Common Property and any improvements erected thereon;
- 5.1.7. ensure that Members satisfactorily maintain their Erven in the Estate; and
- 5.1.8. in general do everything necessary to promote the well being of all residents of the Estate.

5.2. **Ancillary Objects**

The ancillary objects of the Company shall be:

- 5.2.1. to own or hold or control (by way of usufruct or servitude or any other manner whatsoever) land, roads, improvements, landscaped area, infrastructure and facilities on the Estate;

- 5.2.2. to control any Common Property, to implement security measures relating to Common Property and to manage and maintain the Common Property;
- 5.2.3. to incur and discharge expenditure in relation to the control, implementation, management and maintenance of Common Property;
- 5.2.4. to impose and collect Levies for the purposes of discharging such expenditure;
- 5.2.5. to promote, support or oppose legislation or other official or unofficial measures affecting the Estate as a whole, and if necessary, represent the Members in dealings with government departments, other authorities and the public generally in regard to any matter which may be in the interest of the Members;
- 5.2.6. in the event of any Member failing to adhere to the specifications and/or rules and/or Regulations, the Managing Agent shall be entitled but not obliged, to perform the necessary acts and services and recover from the Member the cost thereof; and
- 5.2.7. to undertake the maintenance of road verges and common areas.

6. **MEMBERSHIP**

- 6.1. The Company has one class of Members who are voting Members.
- 6.2. Membership of the Company is limited to –
 - 6.2.1. the Developer in its capacity as such, its authorised nominees for as long as the Developer owns a Erf or Portion of the Estate including the Club; and
 - 6.2.2. any other person who, in terms of the Deeds Registries Act No. 47 of 1937, is reflected in the records of the Deeds Office concerned as being the registered owner of any Erf in the Estate.
- 6.3. Membership of the Company is compulsory for every registered owner of an Erf and the transferee of an Erf shall become a Member of the Company as contemplated in 6.5 and, subject to all the obligations of Membership, forthwith upon registration of transfer of an Erf in to his name.
- 6.4. Where any Erf is owned by more than one person, all the registered owners of that Erf shall together be deemed to be one Member of the Company, provided, however, that all the co-owners of any Erven shall be jointly and severally liable for the due performance of any obligation of the Company.
- 6.5. A person signing an agreement for the purchase of an Erf, will by signing such an agreement of sale to become a Member and when that person is reflected in the records of the Deeds Office concerned as being the registered owner of an Erf,

such an application will be confirmed and the registered owner of such Erf will as from that date also be a Member of the Company. When a Member ceases to be the registered owner of an Erf as reflected in the records of the Deeds Office, such Member shall *ipso facto*, cease to be a Member of the Company; provided that the former Member shall remain liable for all liabilities incurred during his Membership of the Company.

- 6.6. In the event of a sectional title development being established on any Erf, the opening of the sectional title register shall be deemed to be the application for the membership by each member of the body corporate of the sectional title scheme in question and membership shall be confirmed on the establishment of the body corporate, and the developer of such sectional title scheme shall be a Member of the Company pending the transfer of the Units in such a scheme to the individual member of the body corporate concerned.
- 6.7. No Member shall let or otherwise part with occupation of an Erf, whether temporarily or otherwise, unless he has agreed with the proposed occupier of such Erf as *stipulation alteri* in favour of the Company that such occupier shall be bound by all the terms and conditions of this Mol, and such written agreement is lodged with the Company prior to such occupier taking occupation of the Erf in question.
- 6.8. The Company shall maintain at its registered office a register of Members as provided in Section 24 (4) of the Act. The Members shall at the Company's request provide the Company with the information which it requires for the purpose of establishing and maintaining the register of Members. The register of Members shall be open to inspection, as provided in Section 26 of the Act.
- 6.9. The registered owner of an Erf may not resign as a Member of the Company.
- 6.10. The rights and obligations of a Member shall not be transferable and every Member shall:
 - 6.10.1. observe the Estate Rules, Landscaping and Gardening Guidelines, Architectural Guidelines and all other Rules of the Company; and
 - 6.10.2. be obliged to submit any building plan, whether such plan is for new construction, renovation, alteration and / or addition, to the Board for examination and approval prior to the submission of such plan to the Municipality or other local authority for approval; and
 - 6.10.3. sign all documents and do all things necessary in order to implement the spirit and intent of the Mol and the objects of the Company; and
 - 6.10.4. Every Member shall comply with:
 - 6.10.4.1. the provisions of this Mol, the Estate Rules, Landscaping and Gardening Guidelines, Architectural Guidelines and all other Rules or regulations made or promulgated by the Company or the Board;

- 6.10.4.2. any agreement concluded by the Company or the Board or the Developer insofar as such agreement may directly or indirectly impose rights or obligations on a Member;
 - 6.10.4.3. the provisions of any environmental management plan and conditions of establishment of any township(s) within the Estate and any directive issued by the Company in this regard;
 - 6.10.4.4. any directive given by the Company, the Board, the Developer or the Managing Agent in the enforcement of the provisions of this Mol;
 - 6.10.4.5. be obliged to ensure that each Erf owned by him shall have been developed by no later than the date stipulated in the deed of sale entered into between the Developer and the first person purchasing such Erf from the Developer;
 - 6.10.4.6. comply with and timeously pay the Levy as it falls due for payment in terms of clause 12; and
 - 6.10.4.7. be obliged to submit any building plan, whether such plan is for new construction, renovation, alteration and / or addition, to the Board of Directors for examination and approval prior to the submission of such plan to the Municipality or other local authority for approval.
- 6.11. A Member shall not in any manner Alienate or transfer an Erf unless:
- 6.11.1. The proposed transferee, new shareholder of a company or new members of a close corporation has irrevocably bound himself to become a Member and to observe this Mol for the duration of his ownership of the Erf;
 - 6.11.2. The Managing Agent or the Board under the hand of one of the Directors has given written consent thereto and has issued a clearance certificate that all amounts owing to the Company by such Member have been paid and that the Member is not in breach of this Mol; and
 - 6.11.3. The proposed transferee acknowledges in writing that upon the registration of transfer of the Erf into his name he shall *ipso facto* become a Member, subject always to the provisions of this Mol.
- 6.12. The provisions of clauses 6.10.4 and 6.11 shall apply *mutatis mutandis* to any alienation or transfer of an undivided share in an Erf.
- 6.13. Restrictions will be registered against the title deeds of the Erven in order to give effect to the terms of this clause 6. The Members shall be bound by this clause 6 whether or not such restrictions are registered.

- 6.14. Each Member shall comply with the conditions imposed by the Municipality or any other statutory body relating to an Erf and shall be solely responsible for non-compliance with such conditions.
- 6.15. Every Member shall observe all laws, ordinances, by-laws, regulations and rules imposed by any statutory or other relevant authority and, without detracting from the generality of this clause, shall observe and comply with the provisions of any relevant road traffic legislation as fully and effectually as though the Estate private roads were public roads as defined in the legislation.
- 6.16. Nothing contained in this Mol shall prevent a Member from ceding his rights in terms of this Mol as security to the mortgagee of the Member's Erf.

7. COMMON PROPERTY

- 7.1. Members will permit the Common Property to be used by the Company and the Members and the owners of an Erf.
- 7.2. The Common Property or any portion thereof shall not without the sanction of a special resolution of the Company be:
 - 7.2.1. sold, let on a long term basis, alienated or otherwise disposed of or transferred from the Company; or
 - 7.2.2. mortgaged; or
 - 7.2.3. subjected to any rights in favour of any person for a period exceeding 12 (twelve) months, whether such rights are registered in a Deeds Office or not, of use, occupation or servitude, other than the servitudes in favour of the Municipality, Eskom or any government organization and those enjoyed by the Members in terms hereof or in terms of the title deed of any Erf.

8. PHASED DEVELOPMENT

It is recorded that the Developer is developing and marketing the Estate in phases. During the Development Period the Developer:

- 8.1. shall enjoy unrestricted rights with regards to the marketing of the Estate in particular to erect signage within the Estate; and
- 8.2. is entitled in its absolute discretion to sub-divide the Erven which form part of the Estate and insofar as the consent of the Members are required for such subdivision, each Member hereby irrevocably grants a power of attorney to apply for such subdivision on behalf of the Members to the Developer.

9. **GOLF CLUB**

9.1. It is recorded that the Golf Course Club is registered in the name of the Developer and that the owner of the Club is a Member, but that the owner of the Club is not liable for Levies. The owner of the Club shall have no votes in the matters of the Company except insofar as the same affect the provisions relating to the conduct and access to the Golf Course and Club facilities.

9.2. The Club shall remain autonomous and the Company shall have no direct representation on the Management Committee or controlling body of the Club.

10. **MAINTENANCE OF THE GOLF COURSE**

The owner of the Club is responsible for the cost of the maintenance of the Golf Course and the facilities. The Golf Course shall be maintained in strict compliance with the guidelines to be supplied by the Golf Course designer, and shall be in accordance with the general accepted standards for a golf course of the nature of the Golf Course constructed.

11. **HIKING, GAME CONTROL AND NATURE RESERVE**

11.1. All Common Property will be transferred to the Company.

11.2. The Company is responsible for the cost of the maintenance of the Common Property, hiking trails and the costs of caring for the game should such game be introduced into the Estate by the Developer or the Company.

12. **LEVIES**

12.1. The Board shall establish and maintain a Levy fund for the purposes of meeting the expenditure which the Company has properly incurred or which they reasonably anticipate the Company will necessarily or reasonably incur for the control, management, maintenance and administration of the Estate, and the attainment by the Company of its objects or the pursuit of its business, which includes but are not limited to:

12.1.1. security;

12.1.2. rates and taxes, as well as other municipal charges and Levies on assets of the Company;

12.1.3. maintenance and upkeep of assets, including security systems, guard houses and the perimeter wall;

12.1.4. transportation;

12.1.5. payments to be made to the maintenance company which will be formed for the purposes of maintaining the Estate;

- 12.1.6. payment of a monthly social membership levy to the Club which levy shall be an amount equal to 20% of the monthly Levy payable per Levy paying Member.
 - 12.1.7. fees and levies payable to the body controlling the hiking, game control and nature reserve and which form part of the greater Estate;
 - 12.1.8. administration fees;
 - 12.1.9. electricity and water consumed in the Common Property;
 - 12.1.10. security fences, walls and entrances;
 - 12.1.11. employment of security personnel;
 - 12.1.12. such other purposes as this Mol may prescribe; and
 - 12.1.13. other amenities utilized by Members which may or may not include items such as tennis courts and a swimming pool.
- 12.2. The Levies charged for each Erf shall be the same notwithstanding the size and / or value such Erf.
 - 12.3. The directors may however give an administrative discount on the levy of Units based on the number of bedrooms in each Unit.
 - 12.4. The Directors shall not less than 30 (thirty) days prior to the end of each financial year, or so soon thereafter as is reasonably possible, prepare an itemised estimate of the anticipated income and expenditure (which may include a reasonable provision for contingencies and to meet anticipated expenditure not of an annual nature) of the Company during the ensuing financial year and therefrom calculate the amount required to be levied upon the Members.
 - 12.5. The Directors shall, as soon as possible after the imposition of the Levy in terms of clause 12.4, advise each Member in writing of the amount payable by it. Such amount shall be payable annually in advance, provided that it may be paid in instalments on term and conditions determined by the Directors.
 - 12.6. In the event of the Directors for any reason whatsoever failing to prepare and serve the estimate referred to in clause 12.4 timeously, every Member shall until service of such estimate as aforesaid, continue to pay the Levy previously imposed, and shall after such service pay such Levy as may be specified in the notice referred to in clause 12.4.
 - 12.7. The Directors may from time to time impose special Levies upon the Members, excluding the Club and the Developer in his capacity as such, who are liable in terms of clause 12.1 or call upon them to make special contributions in respect of all such expenses as are mentioned in clause 12.1 (which are not included in any estimate made in terms of clause 12.4) and such Levies and contributions may

be made payable in one sum or by such instalments with or without interest and if with interest at such rate as may be determined by the Directors, and at such time or times as the Directors shall think fit.

- 12.8. Any amount due by a Member to the Company by way of Levy or otherwise and interest shall be a debt due by that Member to the Company. The obligation of a Member to pay the Levy and other amount due and interest shall cease upon such Member ceasing to be a Member without prejudice to the Company's right to recover arrear Levy amounts and interest. No Levy amount or interest paid by a previous Member of the Company shall under any circumstances be repayable by the Company upon such Member ceasing to be a Member. A Member's successor in title to a Erf is liable as from the date upon which such Member becomes a Member pursuant to the transfer of that Erf, to pay the Levy amount and interest thereon attributable to that Erf.
- 12.9. Interest shall be payable on arrear Levies and the Directors shall be empowered in addition to such other rights as the Company may have in law against its Members, to determine the rate of interest from time to time chargeable upon arrear Levies, provided that such rate of interest shall not exceed the rate laid down in terms of the National Credit Act, No. 34 of 2005, as amended. Interest shall be compounded in arrears on all outstanding amounts, inclusive of legal costs as per clause 12.11.
- 12.10. Any amount due by a Member by way of Levy and interest shall be a debt due by him to the Company. Notwithstanding that a Member ceases to be such, the Company shall have the right to recover arrear Levies and interest from him. No Levies or interest paid by a Member shall under any circumstances be repayable by the Company upon his ceasing to be a Member. Further, a Member on ceasing to be such, shall have no claims whatsoever on any other monies held by the Company, whether obtained by way of a sale of the Company assets or otherwise. A Member's successor in title to an Erf shall be liable as from the date upon which he becomes a Member pursuant to the registration transfer of that Erf, to pay the Levy and interest thereon attributable to that Erf.
- 12.11. A Member shall be liable for and pay all legal costs, including costs as between attorney and own client, costs of counsel as per counsel's brief, collection commission, tracing agents fee, expenses and other charges incurred by the Company in obtaining the recovery of arrear Levies or any other arrear amounts due and owing by such Member to the Company, as well as any and all costs incurred in the enforcement of any of the Rules or other regulations issued or made by or on behalf of the Company or the Directors from time to time, together with interest thereon at the rate referred to in clause 12.9.
- 12.12. Should the Company elect to commence legal proceedings against a Member, and notwithstanding that the relief sought against the Member or the amount claimed from the Member falls within the jurisdiction of the appropriate Magistrates Court, the Company has the sole discretion to institute such proceedings in the appropriate division of the High Court of South Africa, in which event the Member shall be liable for legal costs and disbursements incurred on the High Court Scale, as between attorney and his own client, as well as costs consequent to the employment of counsel.

- 12.13. No Member is entitled to any of the privileges of Membership unless and until such Member shall have paid every Levy and interest thereon, and any other sum, if any, which may be due and payable by such Member to the Company, from whatsoever cause arising.
- 12.14. All Members agree to sign debit orders in favour of the Company for payment of Levies and other amounts due to the Company.
- 12.15. The Company is entitled to appropriate any payments made by a Member against any amounts owing by a Member to the Company, in its sole discretion, irrespective of when the amount fell or became due.
- 12.16. Each Member except the Developer shall pay to the Home Owner's Association an administrative levy of 0.25% of the selling price of the Member's Erf or Sectional Title Unit when such Erf or Sectional Title Unit is sold which amount shall be paid on date of transfer of the Unit or Erf and shall be secured by an attorney's letter of undertaking or guarantee prior to the Homeowner's Certificate being issued.

13. **ESTATE RULES, ARCHITECTURAL GUIDELINES, LANDSCAPING AND GARDENING GUIDELINES AND OTHER REGULATIONS**

- 13.1. The Directors may make rules for the Company, as contemplated in section 15(3) – (5) of the Act ("**Rules**"), subject to any restriction imposed or direction given at a General Meeting.
- 13.2. The Company may in a General Meeting itself make any Rules which the Directors may make in terms of clause 13.1 and may in a general meeting vary or modify any Rules made by it or by the Directors from time to time.
- 13.3. The Board must publish the Rules by delivering a copy of those Rules to each Member by ordinary mail, email or by hand or which Rules will be made available to the Members and will be available at the office of the Company at all times. The Rules must be ratified by the Members at the General Meeting following the delivery of the Rules to the Members in terms of this clause 13.3.
- 13.4. The Company shall have Estate Rules, Architectural Guidelines, Landscaping and Gardening Guidelines and other regulations from time to time, all of which is binding on the Members.
- 13.5. The Directors shall make the Estate Rules, Architectural Guidelines, Landscaping and Gardening Guidelines and other regulations of the Company from time to time.
- 13.6. For the enforcement of any of the Estate Rules, Architectural Guidelines, Landscaping and Gardening Guidelines and other regulations, the Directors and/or Managing Agent may:

- 13.6.1. deliver notice to the Member concerned requiring it to remedy such breach within such reasonable period as the Directors / Managing Agent may determine; and
 - 13.6.2. take or cause to be taken such steps as they may consider necessary to remedy the breach of the Estate Rules, Architectural Guidelines, Landscaping and Gardening Guidelines and other regulations of which the Member may be guilty, and debit the cost of so doing to the Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Company; and
 - 13.6.3. impose a system of fines or other penalties. The amounts of such fines shall be reviewed and confirmed at each annual General Meeting of the Company; and
 - 13.6.4. take such other action including proceedings in court, as they may deem fit.
- 13.7. If the Directors institutes legal proceedings against a Member for the enforcement of the rights of the Company in terms hereof, then the Company is entitled to recover legal costs so incurred from the Member concerned, calculated on the scale as between attorney and own client, as well as collection commission, interest as applicable, and counsel's costs as per counsel's brief.
- 13.8. In the event of any breach of the Estate Rules, Architectural Guidelines, Landscaping and Gardening Guidelines and other regulations by a Member or its staff members, invitees, guests or lessees, such breach shall be deemed to have been committed by the Member itself. In addition to the foregoing, the Directors may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
- 13.9. In the event of any Member disputing the fact that it or its staff members, invitees, guests or lessees have committed a breach of any of the Estate Rules, Architectural Guidelines, Landscaping and Gardening Guidelines and other regulations, a committee of 3 (three) Directors appointed by the Chairman for the purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice should be observed) as the Chairman may direct.
- 13.10. Any fine imposed upon any Member shall be deemed to be a debt due by the Member to the Company and shall be recoverable by ordinary civil process.
- 13.11. Notwithstanding anything to the contrary herein contained, the Directors may in the name of the Company enforce the provisions of any Estate Rules, Architectural Guidelines, Landscaping and Gardening Guidelines and other regulations by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.

13.12. Members, their guests and their tenants and any person entering the Estate, shall be subject to this Mol, the Estate Rules, Architectural Guidelines, Landscaping and Gardening Guidelines and other regulations made from time to time.

13.13. Regulations shall govern, inter alia:

- 13.13.1. the Member's rights of use, access to, occupation and enjoyment of the Common Property;
- 13.13.2. the control of pets and other animals at the Estate;
- 13.13.3. the external appearance of and the maintenance and use of the Common Property and the buildings and other improvements erected thereon;
- 13.13.4. the external appearance and maintenance of buildings and other improvements and structures erected at the Estate, architectural and aesthetic style and design criteria, the type of plants and the maintenance of gardens;
- 13.13.5. the execution of building work within the Estate;
- 13.13.6. the rules governing builders, contractors and owners wishing to execute building work within the Estate;
- 13.13.7. the conditions of access to and egress from the Estate;
- 13.13.8. security within the Estate;
- 13.13.9. disputes and disciplinary measures relating to Members and others having access to the Estate in relation to matters affecting the Estate including the determination and imposition of fines, which shall become a debt owing to the Company;
- 13.13.10. the furtherance and promotion of the affairs of the Company;
- 13.13.11. the management of the affairs of the Company;
- 13.13.12. the conduct of the Board;
- 13.13.13. the conduct at the Estate of Members and any person resident on or entering the estate; and
- 13.13.14. any matter that may assist the Company and its representative organs in administering and governing the activities of the Company generally.

13.14. The Company may by ordinary resolution in General Meeting:

- 13.14.1. make any Rule or regulation, or
 - 13.14.2. cancel or modify any Rule or regulation.
- 13.15. Members are obliged to inform the members of their households, their guests, employees, invitees and tenants of the Regulations and Rules then in force and the Company is entitled, but not obliged, in its discretion, to act against such guests, employees, invitees and tenants, in addition to the Member, for any breach. The Members are responsible and liable for the acts and omissions of their guests, employees, invitees and tenants and each Member indemnifies the Company accordingly.
- 13.16. The Architectural Review Committee shall during the Development Period be appointed by the Developer and thereafter shall be appointed by the Directors and shall consist of at least one Director, a qualified architect and such other suitably qualified persons as the Directors from time to time decide. Until such stage as the Architectural Review Committee has been appointed, the Developer shall act as the Architectural Review Committee.
- 13.17. The Landscaping and Gardening Review Committee shall during the Development Period be appointed by the Developer and thereafter shall be appointed by the Directors and shall consist of at least one Director and such other suitably qualified persons as the Directors from time to time decide. Until such stage as the Landscaping and Gardening Review Committee has been appointed, the developer shall act as the Landscaping and Gardening Review Committee.
- 13.18. During the Development Period, the Estate Rules, Architectural Guidelines and Landscaping and Gardening Guidelines may not be altered, substituted, added to or repealed unless the Developer agrees to the same.

14. **DIRECTORS**

14.1. **Composition of Board**

- 14.1.1. Until otherwise determined by the Members by way of an ordinary resolution, the Board, shall consist of 5 (five) Directors.
- 14.1.2. During the Development Period the Developer is entitled to appoint and remove 3 (three) persons as Directors by giving written notice to that effect. The remaining Directors shall be elected by the Members in General Meeting by way of ordinary resolution and may be removed by the Members by way of ordinary resolution at any time, the Developer being entitled in voting on the election of such Directors, to exercise the voting rights conferred upon it in terms of the provisions of 25.1.
- 14.1.3. After the Development Period the Members will elect 5 (five) Directors by way of ordinary resolution save that the Company in a General

Meeting held after the Development Period is entitled to increase or decrease the number of Directors.

- 14.1.4. Every Director other than any Director appointed by the Developer must be a Member or a person permanently residing at the Estate, provided that the spouse of a Member may be a Director and provided further that in the event that the Member is a company, close corporation or trust, a duly nominated shareholder, director, member or trustee, as the case may be, may be a Director. Notwithstanding the provisions of this clause, not more than 1 (one) person may be appointed as a Director in respect of any one Erf.
- 14.1.5. In the event that a Director or, as the case may be, the spouse, company, close corporation or trust represented by him, ceases to be a Member of the Company during his period of office or, if he was appointed based upon the fact that he permanently resides at the Estate and ceases to do so during his period of office, he shall be entitled to remain a Director until the next General Meeting of the Company, provided that the Board is entitled by ordinary majority of the Directors, to require a Director as envisaged in this clause to resign.

14.2. Removal and Rotation of Directors

- 14.2.1. The Directors will be appointed as Directors from the date of their appointment until the next annual General Meeting following such date of appointment and will be eligible for re-election to the Board at such meeting.
- 14.2.2. The Board shall call for nominations of Members to fill vacancies on the Board by no later than 21 (twenty one) days before the annual General Meeting.
- 14.2.3. Written nominations for Directors shall be lodged at the *domicilium* address of the Company not later than 7 (seven) days before each annual General Meeting and shall be proposed and seconded by Members and accepted by the nominee.
- 14.2.4. A Director shall be deemed to have vacated his office upon:
- 14.2.4.1. his having become Ineligible or Disqualified to act as a Director in terms of the provisions of the Act;
 - 14.2.4.2. his being removed from office by an ordinary resolution of the as provided for in the Act;
 - 14.2.4.3. in the event of him being a Member, his being disentitled to exercise a vote;

- 14.2.4.4. his estate being sequestered or liquidated whether provisionally or finally or upon the surrendering of his estate;
 - 14.2.4.5. him resigning as a Director or any other event envisaged in section 70 of the Act takes place;
 - 14.2.4.6. him being removed from office by resolution of the Directors; and
 - 14.2.4.7. him being absent from 3 (three) consecutive meetings of the Board without having a valid reason for such absence.
- 14.2.5. Upon any vacancy occurring in the Board prior to the next annual general meeting, the vacancy in question shall be filled by the person nominated by those remaining Directors for the time being on the Board, provided, however, that, if the Director who vacates office as aforesaid was a nominee of the Developer, the Developer is entitled to nominate a Director in the stead of the vacating Director.

15. CHAIRMAN

- 15.1. The Directors shall at the first Directors meeting after each annual General Meeting appoint from their number a Chairman and Vice-Chairman, who shall hold their respective offices until the next annual General Meeting after the said appointments, provided that the office of the Chairman shall *ipso facto* be vacated by a Director holding such office upon him ceasing to be a Director for any reason. In the event of any vacancy occurring in either of the aforesaid offices at any time, the Board shall immediately appoint one of their number as a replacement in such office.
- 15.2. Except as otherwise herein provided, the Chairman shall preside at all meetings of the Board and all General Meetings of the Members, and in the event of his not being present within 10 (ten) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice-Chairman, or in the event of his inability or unwillingness to act, a chairman appointed at the meeting shall act in his stead.

16. DIRECTOR'S EXPENSES AND REMUNERATION

The Directors are entitled to be repaid all reasonable and qualified expenses incurred by them respectively, in or about the performance of their duties as Directors, provided the Directors are not entitled to any remuneration for performance of their duties in terms hereof.

17. POWERS OF DIRECTORS

- 17.1. The Directors shall manage and control the business affairs of the Company, shall have full powers in the management and direction of such business and

affairs (where such management and direction does not vest in the Managing Agent), and may exercise all such powers of the Company and do all such acts on behalf of the Company and as are not by the Act or by this MoI required to be exercised or done by the Company in General Meeting, subject however to such Rules as may be made by the Company in General Meeting or the Directors pursuant to clause 13.1 from time to time.

- 17.2. Save as is provided herein, the Board has the right to engage on behalf of the Company the services of accountants, Auditors, attorneys, advocates, architects, engineers, a Managing Agent, or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Directors as on such terms as the Directors may decide, and the Directors may delegate any or all of their powers to the said Managing Agent as they may determine, subject to any restrictions imposed or direction given at any General Meeting of the Company.
- 17.3. The Board has the right to co-opt onto the Board any person or persons chosen by it which persons need not be Members.
- 17.4. The Directors shall further have power:
 - 17.4.1. to require the submission for approval of such plans, drawings, and other information as they may deem necessary to ensure compliance by Members with this MoI and the Rules made in terms hereof;
 - 17.4.2. to require that any works being constructed within the Estate shall be supervised to ensure that the provisions of this MoI and the rules are complied with and that all work is performed in a proper and workmanlike manner;
 - 17.4.2.1. to make Estate Rules, Architectural Guidelines, Landscaping and Gardening Guidelines and other regulations as provided for in clause 13;
 - 17.4.2.2. to fill a vacancy on the Board by co-opting any person who qualifies to be a Director;
 - 17.4.2.3. to appoint the Architectural Review Committee and the Landscaping and Gardening Review Committee; and
 - 17.4.2.4. to impose fines.
- 17.5. The Directors may delegate any of their powers to committees, with the further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary, which may include persons who are not Directors of the Company including the Managing Agent, as they deem fit, provided that any such person must not be Ineligible or Disqualified to be a director and no such person shall have a vote on any matter to be decided by the committee. The meetings and proceedings of a Board committee consisting of

more than one member shall be governed by the provisions of this Mol regulating the meetings and proceedings of Directors, read with the necessary changes.

18. PROCEEDINGS OF DIRECTORS

- 18.1. The Directors shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Mol.
- 18.2. The quorum necessary for the holding of any meetings of the Directors shall be 3 (three) present personally of which at least one Director must be a Developer appointed Director in terms of clause 14.1.2, in order to form a quorum.
- 18.3. If within 30 (thirty) minutes of the time approved for a meeting, a quorum is not established, the meeting shall stand adjourned to the same time and day the following week, or such other time and place as the Chairman may direct, and the persons present at the adjourned meeting shall constitute a quorum for that meeting.
- 18.4. Each Director has one vote on a matter before the Board and any resolution of the Board shall be decided by a simple majority of all votes cast except that during the Development Period, no resolution may be passed unless supported by a Director appointed by the Developer in terms of clause 14.1.2,. The Chairman shall not have a second or casting vote.
- 18.5. The Directors shall cause minutes to be kept of every Directors meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and sent to all Directors certified correct with or without amendments by the Chairman at the next meeting. All minutes of Directors meetings shall be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of Directors of companies.
- 18.6. Save as provided in this Mol, the proceedings of any Directors meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 18.7. A meeting of the Board may be conducted by electronic communication or one or more of the Directors may participate in a meeting by electronic communication, provided that the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 18.8. A decision that could be voted on at a meeting of the Board may instead be adopted by written consent of the majority of the Directors given in person or by electronic communication provided each of the Directors has received notice of the matter to be decided. A decision made in this manner is of the same effect as if it had been approved by voting at a Board meeting. Each such resolution shall be deemed (unless the contrary is stated therein) to have been passed on the date upon which it was signed by the last Director required to sign it and where it states a date as being the date of its signature by any Director that document shall be prima facie evidence that it was signed by that Director on that date.

19. STATUS OF THE DEVELOPER

- 19.1. During the Development Period, no Member, nor any Member of the Company, shall prevent or hinder in any way the Developer from:
 - 19.1.1. gaining access to and egress from the Estate;
 - 19.1.2. continuing its building and / or construction operations at the Estate; and
 - 19.1.3. marketing and selling any Erven or Units.
- 19.2. Generally carrying on its business operations, provided that the provisions of clause 19.1 shall not be interpreted as allowing the Developer access onto any of the Erven already transferred to a Member unless 48 (fourty eight) hours prior written notice has been given to the Member concerned, unless such access is required to conduct its normal building operations or to inspect work in progress. The Developer shall make good any subsequent damage to plants, property or improvements thereon. No Member is entitled to refuse the Developer immediate access if the required notice has been given.
- 19.3. The Developer has the sole right of appointment and dismissal of the Managing Agent during the Development Period.
- 19.4. The Developer has the right and is entitled to build and establish on the Estate any amenities and facilities as it in its sole discretion deems fit. The Developer has the right to subdivide from the Estate the sites for such aforesaid amenities and facilities as separate Erven and is entitled to dispose of and / or operate the aforementioned amenities and facilities for its own benefit, separate and independent from the remainder of the Estate.
- 19.5. The Developer has the right in its sole discretion, to establish and locate the amenities and facilities referred to in clause 19.4 on any portion of the Estate, save on such Erven that have already been sold to owners other than the Developer, with the approval of the Municipality.
- 19.6. The Company is not entitled to change, amend or impact on the rights of the Developer or its successors in title in respect of the amenities and facilities referred to in clause 19.4, without obtaining the written consent of the Developer or its successors in title beforehand.
- 19.7. The Developer is entitled, in the Developer's sole discretion, as and when the Developer chooses to do so, to rezone to residential and/or commercial and/or hotel and / or business and / or special or any other zoning that the Developer chooses, those Erven which have not been sold by the Developer as at the relevant time and that portion of land marked on the site development plan as future development property and/or sub-divide in whichever manner the

Developer chooses any of the same, to change the land use on the layout plans relating to such Erven and land and to register on such land and Erven whatever servitudes are certified as being necessary or desirable by the townplanner appointed by the Developer in such positions as such townplanner certifies as being appropriate.

- 19.8. The Members irrevocably consent to the provisions of 19.7 and irrevocably grant a power of attorney to the Developer to enable the Developer to attend to the same whenever the Developer deems it necessary to do so.
- 19.9. In addition the Developer is entitled to amend the boundaries of the Common Property provided that such amendment does not increase or decrease the Common Property by more than 10% (ten percent).
- 19.10. In addition the Developer is entitled in its sole discretion to permit the owner/s of Erven situated near a *cul de sac* to fence off the road portion around such *cul de sac* and to utilize such road portion for the private use of the owner/s of such Erven.
- 19.11. The Developer is entitled to add new Erven to the Estate and to add new phases onto the Estate by the addition of land which does not at present form part of the Estate and/or to constitute such land as extensions of the township on which the Estate is formed. The Member acknowledges that such extensions may be connected to the Estate through internal road connections and that certain services and security arrangements may be shared with these extensions including but not limited to the right of usage of and access to the Estate amenities and Golf Course. In the event that such extensions have their own homeowners associations, the Developer shall be entitled to conclude agreements between such homeowners associations and the Company regarding the relationship between such homeowners associations and the Company and the contributions to be paid to the Company by such homeowners association on terms to be decided by the Developer. The Members hereby irrevocably consent to all of the foregoing and hereby irrevocably grant the Developer a power of attorney to enable the Developer to attend to the same and to sign any documentation on behalf of the Members to give effect to the provisions of this clause.

20. **BORROWING POWERS**

The Company and the Directors shall not have the power to mortgage or bind the Company's property or any part thereof. In addition the Company and the Directors shall not have the power to borrow money other than in the ordinary course of conducting its business and as approved in General Meeting.

21. **ANNUAL GENERAL MEETINGS**

- 21.1. The Company shall hold its first annual General Meeting within 18 (eighteen) months after the date of its incorporation, and shall thereafter in each year hold an annual General Meeting; provided that not more than 15 (fifteen) months shall

lapse between the date of one annual General Meeting and that of the next, and that an annual General Meeting shall be held within 9 (nine) months after the expiration of the financial year of the Company.

- 21.2. Such annual General Meetings shall be held at such time and place as the Directors may decide from time to time.
- 21.3. General Meetings of the Company other than the annual General Meeting may be held at any time.
- 21.4. All annual General Meetings and General Meetings shall be convened in accordance with Section 61 of the Act.
- 21.5. In addition to any other matters required in this MoI to be dealt with at an annual General Meeting, the following matters shall be dealt with at every annual General Meeting:
 - 21.5.1. the consideration of the Chairman's report;
 - 21.5.2. the consideration of the financial statements of the Company for the financial year of the Company preceding the date of such meeting;
 - 21.5.3. the consideration of the report of the auditors;
 - 21.5.4. the consideration of a budget and the total Levy payable pursuant thereto for the relevant calendar year;
 - 21.5.5. The consideration and fixing of the remuneration of the auditors for the financial year of the Company preceding the annual General Meeting and the appointment of auditors for the ensuing financial year;
 - 21.5.6. The election of the Board;
 - 21.5.7. The consideration of any resolutions of which due notice has been given and the voting upon any such resolutions; and
 - 21.5.8. The consideration of any resolution regarding procedural matters proposed for adoption by such meeting and the voting upon such resolution.
- 21.6. Special General Meetings
 - 21.6.1. All General Meetings other than the annual General Meeting shall be called Special General Meetings.
 - 21.6.2. The Directors may whenever they deem fit convene a Special General Meeting of the Company and shall be obliged to do so when written signed demand is made by not less than 30% (thirty per cent) of the Members.

22. NOTICE OF MEETINGS

- 22.1. All notices for the calling of General Meetings (annual General Meetings and Special General Meetings) shall be delivered in terms of the Act.
- 22.2. The Company may call a General Meeting with less notice than is required in terms of the Act, but such a General Meeting may only proceed if every person entitled to exercise voting rights in respect of any item on the meeting agenda:
- 22.2.1. is present at the meeting; and
- 22.2.2. votes to waive the minimum notice of the General Meeting.
- 22.3. Subject to the provisions of the Act, if there is a material defect in the giving of the notice for a General Meeting, the meeting may proceed only if every person entitled to exercise voting rights on any item on the meeting agenda is present at the meeting and votes to approve the ratification of defective notice.
- 22.4. Notices of meetings may be delivered by email, or such other electronic means as the Directors may decide from time to time, and in the case other than email, having Delivered notice of such decision to all Members.

23. PROCEEDINGS AT GENERAL MEETINGS

- 23.1. The annual General Meeting shall deal with and dispose all the matters prescribed by the Act, including the consideration of the annual financial statements, the election of Directors, as required by clause 21 and the appointment of an auditor, and may deal with any other business laid before it.
- 23.2. No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. Save as herein otherwise provided, a quorum shall be that as set out in clause 24.1.
- 23.3. If within half an hour after the time appointed for the meeting a quorum is not present, the meeting, shall stand adjourned to a day not earlier than 7 (seven) days and not later than 21 (twenty one) days after the date of the meeting, and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the Members present in person or represented by proxy shall be a quorum.
- 23.4. The Company may conduct a General Meeting entirely by electronic communication or it may provide for one or more Members, or proxies or other representatives of Members, to participate by electronic communication in all or a part of the General Meeting as long as the electronic communication employed ordinarily enables all persons participating in that General Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in that General Meeting.

- 23.5. In the case of an equality of votes, the Chairman of the meeting is not entitled to a second or casting vote.
- 23.6. The Chairman shall preside at all General Meetings of the Members and in the event of his not being present within 10 (ten) minutes of the scheduled time for the start of the General Meeting or in the event of his inability or unwillingness to act, the Vice-Chairman shall act in his stead, or failing the Vice-Chairman, a Chairman appointed by the General Meeting.

24. **QUORUM**

- 24.1. No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of a General Meeting shall be as set out in the Act.
- 24.2. In a meeting of the Board a quorum shall be 3 (three) Directors provided further that for so long as the Developer is the owner of any Erf within the Estate one such Director shall be a nominee of the Developer.
- 24.3. The Chairman of a General Meeting at which a quorum is present may (and shall if so directed by the meeting) adjourn the meeting from time to time and place to place but no business shall be transacted at any adjourned meeting other than business left unfinished at the meeting at which the adjournment took place. Subject to the Act, when a meeting is adjourned it shall not be necessary to Deliver notice thereof.
- 24.4. No resolution at a General Meeting shall require a seconder during the Development Period.

25. **VOTING**

- 25.1. Unless otherwise provided, at every General Meeting every Member in person or by proxy and entitled to vote shall have one vote for each Erf or Unit registered in his name provided that if an Erf or a Unit is registered in more than one name, they shall jointly have one vote and provided further that the Developer shall during the Development Period, in addition have one vote for each Erf and Unit which has been transferred into the name of third parties and one vote for each Erf and Unit which has not been transferred into the name of third parties.
- 25.2. A Member whose Levies are in arrears or who is under suspension for any reason whatsoever is not entitled to vote at any General or Special General Meeting.
- 25.3. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or immediately on the declaration by the Chairperson of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

- 25.4. The Chairman shall call for persons holding more than one proxy to declare the number of proxies held and their votes shall be counted separately. The documentation of proxies shall be open to the meeting for inspection. When declaring the result of the vote, the Chairman shall specify if requested to do so by any person entitled to vote at such meeting, the number of votes cast by Members present at the meeting and the number of proxy votes.
- 25.5. Save during the Development Period, every resolution and every amendment of a resolution proposed for adoption by a General Meeting shall be seconded at the meeting and, if not seconded shall be deemed not to have been proposed.
- 25.6. For every resolution other than a special resolution or the amendment of a special resolution to be approved it must be supported by more than 50% (fifty per cent) of the voting rights exercised on the resolution, and an abstention shall not be counted as a vote for or against the resolution in question.
- 25.7. For a special resolution of the Members to be approved, it must be supported by at least 75% (seventy five percent) of the voting rights exercised on the resolution.
- 25.8. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the General Meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 25.9. The election of Directors shall be decided on a poll unless otherwise resolved at that meeting and the Board shall prepare suitable ballot papers prior to the meeting to facilitate the voting. In the case of an equality of votes, the outcome shall be decided by lot.
- 25.10. Unless any Member in person or by proxy at a General Meeting shall before closure of the meeting have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, a declaration by the Chairperson that the vote was properly and validly constituted and conducted and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded.

26. **RESOLUTION IN WRITING BY MEMBERS**

Subject to the provisions of the Act, a resolution in writing signed by all the Members entitled to receive notice and to attend and vote at the General Meeting and inserted in the minute book kept in terms of clause 28 shall be as valid and effective as if it had been passed at a General Meeting duly called and constituted. A resolution in terms of this clause may consist of several documents of the same form, each of which is signed by one or more Members in terms of this clause, and shall be deemed to have passed on the date of signature thereof by the last Member entitled to sign the same.

27. SPECIAL RESOLUTIONS

Should less than 50% (fifty percent) of the total votes of all the Members be present or represented at a meeting called for the passing of a special resolution, the meeting shall stand adjourned to a day not earlier than 7 (seven) days and not later than 21 (twenty one) days after the date of the meeting. At the adjourned meeting, notwithstanding that there may be less than 50% (fifty percent) of the total votes represented, the resolution may nevertheless be passed as a special resolution provided that the remaining requirements of a special resolution are met.

28. MINUTES AND INSPECTION

- 28.1. Directors shall cause a record to be made of all resolutions of the Members in General Meeting in a book provided for that purpose.
- 28.2. Subject to the provisions of the Act, the minutes kept in terms of clause 28.1 (or any extract therefrom) which purport to be signed by the Chairman or by the secretary shall be *prima facie* evidence of the matters therein stated.
- 28.3. The minute book shall be open for inspection and may be copied as provided in the Act.

29. PROXIES

- 29.1. A Member entitled to vote at a General Meeting is entitled to appoint one person or more than one person in the alternative to each other as his proxy(ies) to attend, speak and vote at a General Meeting on his behalf.
- 29.2. A proxy need not be a Member of the Company.
- 29.3. The instrument appointing a proxy shall be in writing under the hand of the appointer or his agent duly authorized in writing or, if the appointer is a body corporate, under the hand of the authorized representative. A proxy appointment need not be witnessed. Whether he himself a Member or not, the holder of a general or special power of attorney given by a Member shall, if duly authorized under that power to attend and take part in meetings and proceedings of the Company generally, be entitled to attend General Meetings and vote thereat.
- 29.4. A form of proxy may be issued at the Company's expense only if it is sent to all Members who are entitled to attend and vote at the General Meeting to which the proxy form relates.
- 29.5. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, (or a notarially certified copy of such power of authority) shall be deposited at the registered office of the Company (or at such other place as the Directors may determine in relation to any particular meeting) at any time before the time for the holding of a meeting at which the person named in the instrument proposes to speak or vote. A form of power of attorney or proxy shall be invalid if this clause is not complied with.

- 29.6. Except insofar as the form appointing a proxy indicates otherwise, the appointment of a proxy is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specially directed to vote for or against or to abstain from voting on any proposal or resolution), the power generally to act for the Member giving that proxy at the General Meeting in question as the proxy may think fit. Unless the contrary is stated thereon, the form appointing a proxy shall be valid for each adjournment of the General Meeting to which it relates.
- 29.7. No instrument appointing a proxy shall be valid after expiration of 6 (six) months to the date on which it were signed unless specifically stated to the contrary in the instrument of proxy itself.
- 29.8. The instrument appointing a proxy may be in any usual or common form approved by the Directors but shall be worded that the holder thereof may vote for or against or abstain from voting on any one or more of the resolutions proposed at the General Meeting at which the proxy is to be used.
- 29.9. The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

I, _____ of _____
 being a Member of the _____ hereby appoint
 _____ of _____
 or failing him: _____
 of: _____
 or failing him: _____
 of: _____

as my proxy to vote for me and on my behalf at the annual General Meeting (as the case may be) of the Company to be held on the _____ day of _____ and at any adjournment thereof as follows:

In favour of:	Against:	Abstain:
---------------	----------	----------

Resolution to: _____
 Resolution to: _____
 Resolution to: _____

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

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

SIGNED at _____ on this the _____ day of _____.

SIGNATURE

(NOTE: A Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy need not also be a Member of the Company)

30. FINANCIAL YEAR END

The financial year end of the Company shall be the last day of February of each year, and may be changed only by ordinary resolution of the Members.

31. ACCOUNTS

31.1. The Directors shall cause to be kept such accounting records as are prescribed by the Act and in particular such accounting records as are necessary fairly to present the state of affairs and business of the Company and to explain the transactions and financial position of the trade of the business of the Company.

31.2. The Company's accounting records shall be kept at its registered office and shall at all times be open to inspection by the Directors and by past Directors, but in the case of the latter, only in respect of the period during which they held office as Directors.

31.3. The Directors shall from time to time determine at what times and places and under what conditions or regulations, subject to the Act and the regulations thereto, the accounting records and any other documents of the Company as contemplated in Section 26 of the Act, or any of them, may be open for inspection by Members not being Directors and no Member (not being a Director) shall have any right to inspect any accounting record or documents of the Company except as conferred by the Act or except as authorized by the Directors or by the Members in General Meeting.

31.4. Apart from the Members, no other person is entitled to inspect any of the documents of the Company (other than the register of Members and the register of Directors) unless expressly authorised by the Directors or by the Members in General Meeting.

32. AUDITED FINANCIAL STATEMENTS

32.1. The Directors shall from time to time and in accordance with the provisions of the Act, cause audited financial statements to be prepared and laid out before the Members in General Meeting.

32.2. A copy of the annual financial statements which are to be laid before the Members at the annual General Meeting shall not less than 15 (fifteen) business days before the date of the meeting, be sent to every Member and, where required by the Act, also to the Companies and Intellectual Property Commission. The provisions of this clause shall not require a copy of the said documents to be sent to any person who has not furnished an address to the Company.

32.3. The Company shall notify the Members of the publication of any annual financial statements of the Company, setting out the steps required to obtain a copy of those annual financial statements. If a Member demands a copy of the annual financial statements, the Company shall make same available to such Member free of charge.

33. **AUDIT**

33.1. The Company elects to have its annual financial statements audited, as contemplated in section 30(2)(b)(ii)(aa) of the Act.

33.2. The Company does not elect to comply voluntarily with the enhanced accountability requirements of Chapter 3 of the Act in respect of an audit committee and company secretary but will comply with the requirements of section 90, Part C of Chapter 3 of the Act to the extent applicable in respect of the appointment of an auditor.

34. **SERVICE OF NOTICES**

34.1. A notice may be given by the Company to any Member, in the manner set out in clause 34.2 at the address or email address furnished by him to the Company for such purpose.

34.2. Notice of every General Meeting shall be given in writing and shall be Delivered by hand or sent by post or email:

34.2.1. to every Member;

34.2.2. to the auditors;

34.2.3. to every Director whether a Member or not;

and no other person shall be entitled to receive notice of any General Meetings.

34.3. A notice delivered by registered post shall be deemed to have been received and brought to the notice of the addressee on the 7th (seventh) day following the day on which the same was posted and, in proving the delivery of the notice by registered post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

34.4. Any notice by the Company shall be signed by a Director or by someone authorised by a Director.

34.5. The Company is not responsible for the loss in the transmission of documents sent through the post to the address furnished by any Member to the Company for the Delivery of notices to him, whether or not it was so sent at his request.

35. **AMENDMENT**

The Company may by any special resolution do anything which in terms of the Act may be done only if authorised by its Mol; and

36. **MANAGING AGENT**

The Managing Agent will be appointed by the Board in terms of a managing agent agreement.

37. **THE MUNICIPALITY**

If and when necessary the employees of the Municipality and their agents, contractors and nominees shall, subject to clearance with the security of Estate be entitled to access to the Estate.

38. **BUILDING ACTIVITIES**

38.1. Each Member shall pay a deposit before the commencement of building operations in an amount as determined by the Directors from time to time as cover for any damage that may be caused to the Common Property of the Company by such Member, his family, employees, contractors, visitors, agents or any other person whatsoever. The deposit shall be refunded to the Member upon completion of building operations to the satisfaction of the Company, on condition that all his obligations towards the Company have been discharged in full.

38.2. Each Member shall within a period of 24 (twenty four) months after the date of the first transfer of the Erf from the Developer, commence building the dwelling on the Erf and shall complete such dwelling within a period of 36 (thirty six) months after the date of the first transfer of the Erf from the Developer. This will be the date from which such periods will be calculated irrespective of whether the Erf has been transferred subsequently. If the Member fails to comply with these provisions the Developer is entitled, without prejudice to any other rights which it may have and/or at law and at its election to:

38.2.1. repurchase the Erf from the Member for an amount equal to the original purchase price paid by the Member in terms of the Deed of Sale (inclusive of VAT); or

38.2.2. sell the Erf to any third party for an amount of not less than the original purchase price paid by the Member in terms of the Deed of Sale.

The Member hereby irrevocably and *in rem suam* appoints the Developer as his duly authorised agent for purposes of such sale, provided that all costs of transfer shall be for the account of the Member in either case.

- 38.3. Notwithstanding the provisions of clause 38.2 the Member shall pay to the Company an amount equal to double the normal Levy per month for each month which elapses between the date 3 (three) years from the date of the first transfer of the Erf to the date of compliance with clause 38.2 by the Member. This will increase to three times the normal Levy after one year of non-compliance and thereafter the multiplying factor will increase with one for every completed year of non-compliance. (i.e. after two years of non-compliance, the Member or his successors in title shall pay 4 (four) times the Levy, after three years 5 (five) times etc.)
- 38.4. Each Member shall conform to the prescription of the Architectural Guidelines in connection with the erection of a builder's board.
- 38.5. Each Member shall pay the fees as set out in the Architectural Guidelines, before the commencement of any building operations on his Erf. These fees can be amended by the Company from time to time.

39. **SIGNAGE AND MOBILE / CELLULAR TELEPHONE ANTENNA / TOWERS**

Without the prior written consent of the Developer and the Board, neither the Company nor any of the Members is entitled to erect on any Erf owned or held or controlled by the Company (or on any Improvements or structures on any such land):

- 39.1. any signage of any kind whatsoever; and / or
- 39.2. any mobile / cellular telephone antenna, tower or sub-station or other telecommunication or technological device.

40. **INDEMNITY**

- 40.1. Every Director, alternate Director, manager, secretary and other officer of the Company and any person employed by the Company as its auditor shall be indemnified out of the Company's funds against all liability incurred by him in that capacity by reason of any contract entered into or act or deed done by him in that capacity or in any way in the discharge of such Directors duties, provided that no such person shall be indemnified in respect of:
- 40.1.1. liability arising in terms of section 77(3)(a) of the Act which relates to the taking of actions without authority to do so;
- 40.1.2. liability arising in terms of section 77(3)(b) of the Act which relates to acquiescing to the carrying on of the Company's business in a manner which is reckless, grossly negligent or fraudulent;
- 40.1.3. liability arising in terms of section 77(3)(c) of the Act which relates to being a party to an act or omission of the Company which had a fraudulent purpose;

- 40.1.4. wilful misconduct or wilful breach of trust on the part of the director; or
 - 40.1.5. a fine imposed as a consequence of the conviction of an offence, unless the offence was based on strict liability.
- 40.2. The Company may take out insurance in respect of the permitted indemnities contemplated above.

41. GENERAL

- 41.1. If the Company elects to provide a security service and/or other services for Members, then the Members are obliged to:
- 41.1.1. permit the installation of any equipment on an Erf or in the buildings on an Erf for the purpose of such services as may be determined by the Company from time to time;
 - 41.1.2. make payment of the charges raised by the Company in respect of such services; and
 - 41.1.3. abide by such terms and conditions as may be laid down by the Company from time to time in respect of such equipment and services.
- 41.2. Whenever the Board consider that the appearance of any Erf or buildings owned by a Member is such as to be unsightly or injurious to the amenities of the surrounding area or the Erf generally, the Board or the Managing Agent may serve notice on such Member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the Member fail within a reasonable time, as specified in such notice, to comply therewith, the Board or Managing Agent or their employees, agents or contractors may enter upon the Erf or buildings concerned and take such steps as may be necessary and recover the costs thereof from the Member concerned, which costs shall be deemed to be a debt owing by that Member to the Company. The Board or the Managing Agent is obliged in giving such notice to act reasonably. In the event of any dispute, the Member shall bear the onus of establishing that the Board or the Managing Agent acted unreasonably.
- 41.3. The Company 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 Common Property, or for the provision of any other service or supplies for the Common Property which the Developer may consider necessary in its discretion, even where such contracts or commitments include the payment of costs or outgoings on an ongoing basis. It is recorded, without limitation that the Developer intends to conclude contracts for the hire or supply of electronic surveillance, monitoring and detection equipment for security purposes relating to the perimeter of the Common Property.

- 41.4. The Board or the Managing Agent or their employees, agents or contractors is entitled and has the right to enter any Erf for the purpose of repairing, maintaining or installing any facilities, services, equipment or structures relating to the provision of security or any other service to the Common Property generally.
- 41.5. The provisions of this Mol is binding upon the Members and, insofar as they may be applicable to all persons occupying any Erf by, through or under any Member, whatsoever the nature of such occupation.
- 41.6. No Member ceasing to be a Member of the Company shall for any reason, and neither shall such Members' executors, curators, trustees or liquidators, have any claim upon or interest in or right to the funds or any land or other asset of the Company.
- 41.7. The Company may claim from any Member or his estate all arrear Levies and interest or other sums due from him to the Company at the time of his ceasing to be a Member for any reason.
- 41.8. Any person using any of the services, land or facilities of the Company within the Common Property does so entirely at his own risk.

42. **DIVIDENDS**

- 42.1. The Company is a non-profit company as defined in terms of the Act and, save as is otherwise provided for in the Act, is precluded by law from paying directly or indirectly, any portion of its income or transfer any of its assets to any person who is or was an incorporator of the Company, or who is a Member or Director, or person entitled to appoint a Director.
- 42.2. The Company may, however, pay reasonable expenses to its office bearers and employees for expenses incurred by them.

43. **BREACH**

- 43.1. The Board may, in its discretion, investigate any suspected or alleged breach by any Member or Director of this Mol or Regulations, in such reasonable manner as it shall decide from time to time.
- 43.2. Should any Member fail to pay on the due date any amount payable to the Company or breach any other provision of this Mol or the Regulations and fail to remedy the same within a period of 10 (ten) days after the posting by pre-paid registered mail of a written notice calling upon him to remedy such breach, the Directors on behalf of the Company is entitled (in addition to any other rights which they have in terms of this Mol or the Regulations or in law or otherwise):
 - 43.2.1. to institute action in a court of law to recover such monies or to force the Member the remedy such breach;

- 43.2.2. to take such steps that they may consider necessary to remedy the breach of this Mol or Regulations and to debit the costs of remedying such breach to such Member which amount shall be deemed to be a debt payable by the Member to the Company;
- 43.2.3. deny the Member concerned the benefits of Membership of the Company and suspend his right to vote. In such event the Member shall nonetheless remain bound to perform his obligations in terms of this Mol and the Regulations;
- 43.2.4. all amounts due by any Member shall attract interest at the prime overdraft rate as charged by First National Bank Roodepoort Branch plus 4% (four percent) calculated from the due date to date of payment; and
- 43.2.5. notwithstanding anything to the contrary herein contained, the Company is at the sole discretion of the Board, entitled to institute legal proceedings in any court having jurisdiction for any relief to which it is entitled under the provisions of the this Mol including but not limited to the recovery of arrear Levies.
- 43.2.6. In addition to the other rights of the Company referred to in this Mol the Directors may impose a system of fines or other penalties to be paid by any person breaching the provisions of this Mol or the Regulations.

44. RESOLUTION OF DISPUTES

- 44.1. Any disputes arising out of or in connection with this Mol must be determined in accordance with this clause 44, except where an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction, or in respect of moneys or a debt owing to the Company.
- 44.2. On a dispute arising (not moneys or a debt to the Company), 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 expert determination in terms of the following provision of this clause 44.
- 44.3. If a party exercises his right in terms of clause 44.2 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:
 - 44.3.1. if the dispute is primarily an accounting or financial matter, a practicing chartered accountant; or
 - 44.3.2. if the dispute is primarily a legal matter or a matter relating to the behaviour and / or conduct of a Member, a practicing attorney or advocate; or

- 44.3.3. if the dispute primarily relates to the nature of buildings, structures, installations or equipment, a practicing architect; or
- 44.3.4. if the dispute primarily relates to the size or form of the land or the position, height or size of buildings, structures, installations or equipment, a practicing land surveyor; or
- 44.3.5. If the parties are unable to agree on the appointee as provided for in clause 44.3 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 Northern Provinces.
- 44.4. The person appointed as provided for in clause 44.3 shall in all respects act as an expert and not as an arbitrator.
- 44.5. The proceedings shall be on an informal basis, it is being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 44.6. The parties shall use their best endeavours to procure that the decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 44.7. 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.
- 44.8. The costs of an incidental to any such proceedings, including the fees of the expert and / or counsel, if so employed, shall be at the discretion of the expert who shall be entitled to direct the allocation of the costs and whether they shall be taxed as between "party and party" or as between "attorney and client".
- 44.9. The provisions of this clause 44 constitutes the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that they are not bound by such provisions.
- 44.10. The provisions of this clause 44 shall be deemed to be severable from the remainder of the Mol and shall remain binding and effective as between the parties notwithstanding that this Mol may otherwise be cancelled, amended or declared of no force and effect for any reason.
- 44.11. Notwithstanding anything to the contrary contained in this Mol the Board is entitled to institute legal proceedings of whatsoever nature on behalf of the Company by way of application, action or otherwise in any court having jurisdiction for any purpose whatsoever relating to any matter in respect of any of the provisions of this Mol and any of its Annexures, including any amendments or additions thereto.

45. DOMICILIUM

- 45.1. Unless a Member shall have nominated an alternative *domicilium*, being a physical address in the Republic of South Africa, by written notice delivered to the Company, a Member's *domicilium citandi et executandi* for all purposes in terms hereof and the serving of any legal process shall be at any Erf owned by the Member.
- 45.2. The Directors shall from time to time determine the *domicilium citandi et executandi* of the Company.
- 45.3. Any notice, acceptance, demand or other communication properly addressed by the Company to the Member's *domicilium* in terms hereof for the time being and sent by pre-paid registered post shall be deemed to be received by the latter on the 4th (fourth) day after the day following the date of posting thereof. The provision shall not be construed as precluding the utilization of other means and methods for the transmission or delivery of notices, acceptances, demands and other communications, but no presumption shall arise if such other means or method is used.
- 45.4. A Member is not entitled to have notices served upon him at any address outside the Republic of South Africa.
- 45.5. It shall be competent to give notice by telefax where the Member's telefax number is recorded with the Directors.

46. LIQUIDATION OR DEREGISTRATION

- 46.1. In the event of the Company ceasing to exist, being liquidated or deregistered, the Members at the time of such liquidation or deregistration, shall be responsible and liable themselves for the obligations of the former Company.
- 46.2. Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company, after making provision for the costs of dissolving the Company, the liquidator shall distribute the entire net value of the Company to any similar non-profit entity which has been approved by the Commissioner of the South African Revenue Service in terms of Section 30 B of the Income Tax Act, 58 of 1962 or any institution, board, voluntary association or body which is exempt from tax under the provisions of Section 10 (1) (cA) (i) of the aforementioned Act, which has as its sole object the carrying on of any common interest activity and which has similar objects to those of the Company.
- 46.3. The receiver of the Company's net assets in the event of liquidation shall be determined by the Members immediately before the dissolution of the Company or, failing such determination, by court order.