

**REPUBLIC OF SOUTH AFRICA  
COMPANIES ACT, 1973**

**ARTICLES OF ASSOCIATION  
OF A COMPANY NOT HAVING A SHARE CAPITAL  
(Section 60(1); Regulation 18)**

**Company Registration No. 2008/006842/08**

**THE RETREAT AT HAZELDEAN OWNERS ASSOCIATION  
(Association incorporated under Section 21)**

**Financial year-end: last day of June**

**A** The Articles of Table "A" contained in Schedule 1 to the Companies Act shall not apply to the Company.

**B** The Articles of Association of the Company are as follows:

## **1. DEFINITIONS**

1.1 In the interpretation of these Articles, unless inconsistent or other wise indicated by the context:

<b>"Act"</b>	means the Companies Act, 1973;
<b>"articles"</b>	means the Articles of Association of the Company;
<b>"auditor"</b>	means the auditor of the Company;
<b>"board of directors"</b>	means the board of directors of the Company constituted as contemplated article 7;
<b>"body corporate"</b>	means a body corporate of a sectional title scheme comprising the development, the functions, duties and powers of whereof shall be assigned to the Company in terms of the provisions of section 30(2)(b) of the Sectional Titles Act;
<b>"company"</b>	means The Retreat at Hazeldean Owners Association (Association incorporated under section 21 of the Act);
<b>"communal facilities"</b>	means the communal facilities to be established on Tijger Vallei Extension 24 Township or such other designated property, comprising, but not necessarily limited to, a clubhouse and related facilities and a frail care facility, and the "owner of the communal facilities" shall have a corresponding meaning, whether such owner is the developer or its successors in title;
<b>"chairman"</b>	means the chairman of the board of directors;
<b>"developer"</b>	means Hazeldean Retreat (Proprietary) Limited, No. 2003/027268/07, The Hariva Trust, No IT 3443/2007 and The Intercare Infinity Property Trust, No IT 3603/2007;
<b>"development period"</b>	means the period from the establishment of the Company until all land and portions thereof in the development have been fully developed and transferred by the developer to members of the Company;
<b>"development"</b>	means the retirement property development known as The Retreat at Hazeldean, which development is to be laid out on sub-divisions of Portion 152 (A Portion of Portion 19) of the Farm Zwartkoppies No 364, JR, and on which properties certain extensions of the townships named Tijger Vallei are to be established and which development shall comprise the respective sectional title schemes and the communal facilities;

<b>“directors”</b>	means the directors for the time being of the Company;
<b>"in writing"</b>	means written, printed or lithographed or partly one or partly another, and other modes of representing and producing words in a visible form;
<b>"land"</b>	means the land comprising the development and shall include a sectional title unit and rights conferred in terms of the Housing Development Schemes for Retired Persons Act, No 65 of 1988, and "registered owner" shall have a corresponding meaning;
<b>"local authority"</b>	means the Kungwini Local Municipality;
<b>"managing agent"</b>	means any person or body appointed by the Company as an independent contractor to undertake any of the functions of the Company;
<b>"member"</b>	means a member of the Company as contemplated in Article 2;
<b>“memorandum”</b>	means the Memorandum of Association of the Company;
<b>"Retired Persons Act"</b>	means the Housing Development Schemes for Retired Persons Act, No 65 of 1988 and the Regulations thereto;
<b>"Sectional Titles Act"</b>	means the Sectional Titles Act No 95 of 1986 and the Regulations thereto;
<b>"Sectional Title Scheme"</b>	means a sectional title scheme in the development, established in terms of the Sectional Titles Act;

1.2 Unless the context otherwise requires, any words importing the singular number shall also include the plural number, and vice versa and words importing any one gender shall include the other two genders.

1.3 Subject as aforesaid, any words or expressions defined in the Act or in any statutory modification of such Act in force at the date of incorporation of the Company shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

## **2. MEMBERSHIP**

2.1 Subject to Article 2.2, membership of the Company shall be limited to the developer in his capacity as such or its authorised nominees, and to any other person who is in terms of the Deeds Registries Act, 1937, reflected in the records of the Deeds Office concerned as the registered owner of any land (which shall include a sectional title unit) in the development, and further to any other person in the development to whom a housing interest is alienated in terms of the Retired Persons Act.

2.2 The subscribers to these Articles of Association shall be the first members of the Company but they shall cease to be members automatically when the first seven transferees contemplated in Article 2.1 are reflected as the registered owners of land in the development.

- 2.3 Subject to the rights of the developer, where any land in the development is owned by more than one person, all the registered owners of that land shall together be deemed to be one member of the Company and have the rights and obligations of one member of the Company; *provided that* all co-owners of any land shall be jointly and severally liable for the due performance of any obligation to the Company.
- 2.4 When a person becomes the registered owner (which shall expressly include a person to whom a housing interest is alienated in terms of the Housing Development Schemes for Retired Persons Act, No 65 of 1988) of any land in the development, he shall *ipso facto* become a member of the Company, and when he ceases to be the owner of any such land, he shall *ipso facto* cease to be a member of the Company.

### 3. RIGHTS AND OBLIGATIONS OF MEMBERS

- 3.1 No member shall let or otherwise part with occupation of any land in the development, whether temporarily or otherwise, unless he has agreed in writing with the proposed occupier of such land, as a *stipulatio alteri* in favour of the Company, that such occupier shall be bound by all the terms and conditions of the Memorandum and Articles of Association of the Company, and such written agreement is lodged with the Company prior to the proposed occupier taking occupation of the land in question.
- 3.2 A registered owner of any land in the development may not resign as a member of the Company.
- 3.3 The rights and obligations of a member shall not be transferable.
- 3.4 Subject to the obligations of membership prescribed by these Articles, every member shall:
- 3.4.1 further, to the best of his ability, the objects and interests of the Company;
- 3.4.2 observe all rules made by the Company in general meeting or by the directors;
- 3.4.3 subject to the provisions of Article 4.10 below, pay all levies due by the member to the Company in terms of Article 4 below;
- 3.4.4 sign all documents and do all things necessary to enable whatever servitudes may be required for services to be registered whether over or in favour of the access portion(s) or any other portion relating to the development or any other land or portion in the development, including the provision of security facilities.
- 3.5 Subject to the rights of membership prescribed by the Act and by these Articles, membership shall confer upon each individual member the following rights, subject to the provisions of Article 17.4 below:
- 3.5.1 the right to nominate and elect the directors of the Company;
- 3.5.2 the right to receive copies of the annual financial statements of the Company;
- 3.5.3 the right to receive notice of, attend, speak and vote at general meetings of the Company.
- 3.6 Nothing contained in these Articles shall prevent a member from ceding his rights in terms of these Articles as security to the mortgagee of that member's land in the development.

#### **4. LEVIES**

- 4.1 The directors, subject to the provisions of Article 30, may from time to time determine the levies payable by the members for the purpose of meeting all the expenses which the Company has incurred, or to which the directors reasonably anticipate the Company will be put in the attainment of its objects or the pursuit of its business. These expenses shall include (but not be limited to) the cost of maintaining roads and pavements, the internal and external gardens on the common property, water features, pavements, boundary walls and security systems as well as the costs of manning the guard house.
- 4.2 The directors shall, not less than thirty days prior to the end of each financial year, or so soon thereafter as is reasonably possible, but before every annual general meeting, cause to be prepared and served upon every member at the address chosen by him an estimate in reasonable detail of the amount which shall be required by the Company to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The directors may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.
- 4.3 Each notice to each member shall specify the contribution payable by that member to such expenses and reserve fund. Unless otherwise determined by special resolution, the levy payable by each member shall, subject to Article 4.10, be substantially in accordance with the participation quotas attaching to the respective sections in relation to a sectional title scheme comprising the development and in relation to the development as a whole. The directors or the managing agent as the case may be, shall at all times use such manner of calculation as is fair, just and equitable.
- 4.4 Unless otherwise directed by the directors, every levy shall be payable in equal monthly instalments, due in advance on the seventh day of each and every month of each financial year.
- 4.5 In the event of the directors for any reason whatsoever failing to prepare and timeously serve the estimate referred to in article 4.2 above, every member shall, until served with such estimate, continue to pay the levy previously imposed and shall after such service pay such levy as may be specified in the notice, in the manner specified in the notice referred to in article 4.2.
- 4.6 The directors may from time to time impose special levies upon the members in respect of all expenses as are mentioned in article 4.1, which are not included in any estimate made in terms of article 4.2, and may in imposing such levies further determine the terms of payment thereof.
- 4.7 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 prescribed by relevant legislation from time to time.
- 4.8 Any amount due by a member by way of levy and interest shall be a debt due by him to the Company. The obligation of a member to pay a levy and interest shall cease upon his ceasing to be a member without prejudice to the Company's right to recover arrear levies and interest. No levies or interest paid by a member shall under any circumstances be repayable by the Company upon his ceasing to be a member. A member's successor in title to any land shall be liable as from the date upon which he becomes a member pursuant to the transfer of that land, to pay the levy and interest attributable to that land.
- 4.9 No land in the development, or any interest in such land, shall be capable of being transferred without a Certificate first being obtained from the Company confirming that all levies and interest have been paid up to and including date of registration of transfer of such land.

- 4.10 Notwithstanding anything to the contrary contained in these Articles, the developer shall not be obliged to pay any levy in respect of unsold erven or sectional title units in the development of which it is the registered owner. The levy obligation of the members shall at all times be determined without reference to the land in the development held by the developer.

## **5. ACCESS AND PARKS**

- 5.1 In terms of the conditions of establishment of the respective townships in the development imposed by the Local Authority, access to and from the erven in the development shall be over certain designated access erven (hereinafter collectively referred to as "the access erf") and/or certain right of way servitude areas over erven in the townships in the development (hereinafter referred to as "the road servitudes"). The access erf and, where applicable, any designated park erven (hereinafter collectively referred to as "park portions") and, where applicable, the rights in and to the designated road servitudes shall be registered in the name of the Company and shall not be sold or in any way disposed of without prior written consent of the Local Authority.
- 5.2 The Local Authority shall not be liable for the malfunction of the surfacing of the access erven, or the road servitudes, or the stormwater drainage system or any essential services within the access erf, park portions or road servitudes with the exception of the sewerage system.
- 5.3 Access to and from all land in the development shall be over the access erf and/or road servitudes to afford access to the public road.
- 5.4. Each and every member of the Company shall have free access over the access erf and road servitudes to afford them access to the public road and each and every member of the Company shall have free access to the park portions.
- 5.5 The Local Authority shall have unrestricted access to the access erf, park portions and road servitudes at all times;
- 5.6 The Company shall be responsible for the maintenance of all of the essential services not taken over by the Local Authority. The Company shall have full legal power to levy from each and every member the costs incurred in fulfilling its function and shall have legal recourse to recover such fees in the event of default in payment by any member.
- 5.7 The Company guarantees the Local Authority's engineering services departments and its emergency services 24 hour access to the access erf, the road servitudes and park portions to maintain the Local Authority's installations and provide services to the residents of the development.
- 5.8 The Company shall be obliged to maintain the access erf, road servitudes and park portions in good order and repair at its sole cost and expense.

## **6. RULES**

- 6.1 Subject to the provisions of Article 30 and any restriction imposed or direction given at a general meeting of the Company, the directors may from time to time make rules which may include rules in regard to:-

- 6.1.1 rules to provide for the control, management, administration, use and enjoyment of the sections and the common property of the sectional title schemes comprising the development as contemplated in Section 35(2) of the Sectional Titles Act, No 95 of 1986;
- 6.1.2 the use, maintenance, repair and replacement of any roadway which vests, or the rights in and to whereof vests, in the Company and of any services, connections and equipment under or over such roadway;
- 6.1.3 the access to and egress from any land or portion in the development;
- 6.1.4 the right to determine and control all security measures in the development;
- 6.1.5 the furtherance and promotion of any of the objects of the Company and/or for the better management of the affairs of the Company and/or for the advancement of the interests of members and /or residents in the development.

*provided that*, with the exception of the rules contemplated in Article 6.1.3, 6.1.4 above, any rules made by the directors shall as be made with the view to attain the aims set out in Article 30.

- 6.2 For the enforcement of any of the rules made by the directors in terms hereof and for the payment of any debt due to the Company, the directors may:
  - 6.2.1 give notice to the member or resident concerned requiring him to remedy a breach thereof or make payment within such reasonable period as the directors may determine;
  - 6.2.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the member or resident may be guilty or recover the debt, and debit the cost of so doing to the member or resident concerned, which amount shall be deemed to be debt owing by the member or resident concerned to the Company;
  - 6.2.3 impose a system of fines or other penalties; *provided that* the amounts of such fines shall be reviewed and confirmed annually at a meeting of the directors;
  - 6.2.4 take such other action, including proceedings in Court, as they may deem fit.
- 6.3 In the event of the directors instituting any legal proceedings against any member or resident within the development for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover, on demand, all legal costs so incurred from the member or resident concerned, calculated as between attorney and own client.
- 6.4 In the event of any breach of the rules by the members of any member's or resident's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice 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.
- 6.5 In the event of any dispute between the Company, a body corporate or a member arising out of or in connection with these Articles or applicable legislation or the rules, save where an interdict or other form of urgent relief is sought from a Court having jurisdiction, a committee of 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 the rules of natural justice shall be observed) as the chairman may direct.

- 6.6 Any fine imposed upon any member or resident shall be deemed to be a debt by the member or resident to the Company and shall be recoverable by ordinary civil process.
- 6.7 Notwithstanding anything to the contrary herein contained, the directors may in the name of the Company enforce the provisions of any rules 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.
- 6.8 The Company may in general meeting itself make any rules which the directors may make and may in general meeting vary or modify any rules made by it or by the directors from time to time, (subject to Article 29) which rules and variation or modification thereof, shall at all times be subject to and not be in conflict with the rules of the Hazeldean Owners Association of which the Company will be and remain a member.

## **7. DIRECTORS**

- 7.1 Subject to the provisions of the Act and the provisions of Article 30, the trustees from every body corporate of a scheme in the development shall nominate and appoint 2 (two) trustees from their number, one of whom shall be the developer during the development period, to serve as directors; *provided that* there shall be not less than two directors at any time; *provided further that* during the development period the developer shall be entitled to appoint not less than 50% of the number of directors of the Company, which 50% shall in any event not be less than two directors.
- 7.2 A director need not himself be a member of the Company. A director, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of the Memorandum and Articles of Association of the Company;
- 7.3 During the development period, the developer shall have the right to appoint the number of directors contemplated in article 7.1. On the expiry of the development period the director(s) so appointed by the developer shall be a director(s) as if elected at an annual general meeting and shall be subject to the provisions of Article 8. Any other director to be appointed to office shall be elected by the members in general meeting.

## **8. REMOVAL AND ROTATION OF DIRECTORS**

- 8.1 Save as set out in article 8.3, and subject to article 7.1, each director shall continue to hold office from the date of his appointment until the annual general meeting next following his appointment, at which meeting each director shall be deemed to have retired from office but will be eligible for re-election to the board of directors at such meeting.
- 8.2 A director shall be deemed to have vacated his office upon:
- 8.2.1 his having become disqualified to act as a director in terms of the provisions of the Act;
- 8.2.2 his being removed from office as provided in section 220 of the Act;
- 8.2.3 in the event of him being a member of the Company, him being disentitled to exercise a vote in terms of Article 17.4 below.
- 8.3 Upon any vacancy occurring in the board of directors prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by the remaining directors for the time being in office.

## **9. CHAIRMAN AND VICE CHAIRMAN**

- 9.1 Subject to article 9.3 hereunder, the directors shall within 14 (fourteen) days after each annual general meeting appoint from their number a chairman and vice chairman; *provided that* the office of chairman or vice-chairman shall *ipso facto* be vacated by a director holding such office upon his ceasing to be a director for any reason. No one director shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in either of the aforesaid offices at any time, the board of directors shall immediately appoint one of their number as a replacement in such office.
- 9.2 Except as otherwise herein provided, the chairman shall preside at all meetings of the board of directors and, in the event of his not being present within 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 shall act in his stead, or failing the vice-chairman, a chairman appointed by the meeting.
- 9.3 During the development period, the chairman shall be appointed by the developer.

## **10. DIRECTORS' EXPENSES**

The directors shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as directors. Save as aforesaid, the directors shall not be entitled to any remuneration for the performance of their duties in terms hereof.

## **11. POWERS OF DIRECTORS**

- 11.1 The directors shall perform the powers, functions and duties of the trustees of the bodies corporate of the sectional title schemes comprising the development, as contemplated in Regulation 30(2) of the Sectional Titles Act and which powers, functions and duties shall include, but not be limited to, the functions contemplated in section 36 to 39 of the Sectional Titles Act, with the necessary amendments, and the functions, powers and duties more fully described in the Management Rules of the respective bodies corporate.
- 11.2 Subject to the provisions hereof, and particularly the provisions of Article 30, the directors shall manage and control the business and affairs of the Company, shall have full powers in the management and direction of such business and affairs including the right of appointment of the managing agent, auditor, insurers and other service providers and employees, may exercise all such powers of the Company and do all such acts on behalf of the Company as may be exercised and done by the Company and as are not by the Act or by the Memorandum and Articles of Association of the Company required to be exercised or done by the Company in general meeting, subject however to such rules as may have been made by the Company in general meeting or as may be made by the directors from time to time.
- 11.3 Save as specifically provided herein, the directors shall at all times have 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 and on such terms as the directors shall decide, and the directors may delegate any or all of their powers to the said managing agent as they may determine, subject to any restriction imposed or direction given at any general meeting of the Company; *provided that* during the development period and one year thereafter the auditor and the managing agent shall be appointed by the developer.

- 11.4 The directors shall further have power to require that any works being constructed within the development shall be supervised to ensure that the provisions of the Memorandum and Articles of Association of the Company and the rules are complied with and that all work is performed in a proper and workmanlike manner;
- 11.5 The directors shall have the right to co-opt onto the board any person or persons, which persons need not be members of the Company.
- 11.6 Subject to article 11.3 above, the board of directors shall be entitled to appoint committees consisting of such number of directors and such outsiders, including the managing agent, as the board may deem fit and to delegate to such committees such of their functions, powers and duties as the board may deem fit, together with the further power to vary or revoke such appointments and delegations as the directors may from time to time deem necessary.

## **12. PROCEEDINGS OF DIRECTORS**

- 12.1 The directors may, subject to the provisions of these Articles, meet together to attend to their business, adjourn and otherwise regulate their meetings as they think fit.
- 12.2 Subject to the provisions of the Act, the quorum for the holding of any meeting of the directors shall be one-half of the total number of directors then in office (reduced, if the total number of directors then in office is an uneven number, to the nearest whole number) plus one director; *provided that* during the development period, not less than 51% (fifty one percent) of the quorum shall comprise of the developer or its nominees. Any resolution passed by the board of directors shall be carried on a simple majority of all votes cast. Should there be an equality of votes for and against any resolution the resolution shall be deemed to have been defeated.
- 12.3 The directors shall cause the minutes of each meeting to be kept in accordance with Section 204 of the Act, which minutes shall be reduced to writing and certified as correct by the Chairman as soon as is reasonably possible after such meeting. All minutes of meetings of the board of directors shall, after certification, be placed in a Minute Book which shall be kept in accordance with the applicable provisions of the act. The directors' Minute Book shall be open for inspection at all reasonable times by any director, the auditors, the members and the managing agents.
- 12.4 Subject to the provisions of these articles, the proceedings of any meeting of the board of directors shall be conducted in such reasonable manner and form, as the Chairman of the meeting shall direct.
- 12.5 A resolution signed by all the directors shall be valid in all respects as if it had been duly passed at a meeting of the Board of directors duly called and constituted.

## **13. GENERAL MEETINGS**

- 13.1 The Company shall hold its first annual general meeting within 24 (twenty four) months after the date of its incorporation and shall thereafter hold an annual general meeting not later than 6 (six) months after the end of each financial year of the Company.
- 13.2 The directors may, whenever they think fit, convene a general meeting and the secretary shall convene a general meeting if a general meeting is requisitioned in terms of the Act. If at any time there are, within the Republic, insufficient directors capable of acting to form a quorum, any director or member of the Company may convene a general meeting in the same manner, as

nearly as possible, as that in which meetings may be convened by the directors.

13.3 Subject to the provisions of the Act, general meetings shall be held at such time and place as the directors shall determine.

13.4 Pursuant to the provisions of article 30, the general meetings of the Company shall serve as the general meeting of the bodies corporate of the sectional title schemes in the development.

#### **14. NOTICE OF GENERAL MEETING**

14.1 Subject to the provisions of the Act, an annual general meeting and a meeting called for the passing of a special resolution shall be called on not less than twenty-one days' notice in writing and any other general meeting shall be called on not less than 14 (Fourteen) days notice in writing. Notice in terms of this Article shall be exclusive of the date on which it is served or deemed to be served and exclusive of the date for which it is given.

14.2 The notice of a meeting of the Company shall specify -

14.2.1 the place;

14.2.2 the date and the hour of the meeting; and

14.2.3 in the case of special business, the general nature of such business;

and shall be given in the manner hereinafter provided or in such other manner as may be prescribed by the Company in general meeting and to such persons as are, under these articles, entitled to receive such notices from the Company.

14.3 Notwithstanding the provisions of these articles, but subject always to the Act:-

14.3.1 a general meeting shall, notwithstanding that it is called by shorter notice than that specified in these articles, be deemed to have been duly called if it is so agreed by a majority in number of the members having a right to attend and vote at the meeting, who hold not less than ninety five percentum of the total voting rights of all the members;

14.3.2 a general meeting shall be entitled to deal with special business, the general nature of which has not been notified, if it is so agreed by a majority in number of the members having a right to attend and vote at the meeting, who between them hold not less than fifty percentum of the total voting rights of the members.

#### **15. PROCEEDINGS AT GENERAL MEETINGS**

15.1 In addition to any other matters required by the Act or in terms of these articles to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

15.1.1 the consideration of the Chairman's report;

15.1.2 the election of directors and election of trustees of the bodies corporate to be appointed as directors;

15.1.3 the consideration of the accounts of the Company for the preceding financial year;

- 15.1.4 the consideration of the report of the auditors and the fixing of remuneration for the auditors;
- 15.1.5 the approval with or without amendment of-
- (i) the schedules of replacement values of units in a sectional title scheme for the purpose of insuring the buildings and common property pertaining to such scheme as provided for in the Sectional Titles Act; and
  - (ii) the estimate of income and expenditure for the ensuing year for the purpose of determining the levies payable by members as contemplated in article 4;
- 15.1.6 any other business laid before it and of which notice has been duly given in terms of these Articles or in respect of which notice has been waived in terms of Article 14.3.2 above.
- 15.1.7 the consideration of any other matters raised at the meeting, including any resolutions proposed for adoption by such meeting and the voting upon any such resolutions;
- 15.2 Where a company or other legal person is a member of the Company it may, in the appropriate manner, nominate any person it deems fit to act as its authorised representative at any general meeting and such authorised representative shall be entitled to exercise the same rights and powers which that company would have had at that meeting if it were a natural person and present in person or by proxy.
- 15.3 Business may be transacted at a general meeting only while a quorum of members is present.

## 16. QUORUM

- 16.1 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:
- 16.1.1 during the development period, all the votes of the developer plus 10% (ten percent) of the total number of votes of the other members of the Company entitled to vote for the time being; or
  - 16.1.2 after the development period, 20% (twenty percent) of the total number of votes of all members of the Company entitled to vote for the time being;
- provided that* at no stage shall a quorum of less than 3 (three) members be personally present.
- 16.2 If within half an hour after the time appointed for the general meeting a quorum is not present, the general meeting, if convened upon requisition of the members, shall be dissolved. In any other case the general meeting shall stand adjourned to the same day in the next week at the same time and place, or if that day is not a business day to the next succeeding business day, and if at such adjourned general 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 constitute a quorum.
- 16.3 The chairman of the board of directors shall preside at all general meetings of the Company and, in the event of his not being present within 15 (fifteen) 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 shall act in his stead or, failing the Vice-chairman, a Chairman appointed by the members present at the

meeting.

- 16.4 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 from 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 give notice thereof.
- 16.5 No resolution at a general meeting will require a seconder.

## 17. VOTING

17.1 At every general meeting:

- 17.1.1 during the development period the developer shall have 1 000 (one thousand) votes in addition to votes conferred upon it in terms of Article 17.1.2 below;
- 17.1.2 on a show of hands, every member, including the developer, present in person or represented by proxy, shall have 1 (one) vote only and on poll every member present in person or by proxy shall be entitled to 1 (one) vote for each portion of land in the development registered in his name.
- 17.2 If land or a portion of land in the development is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote.
- 17.3 Every member, including the developer, holding undeveloped land in the development shall have 1 (one) vote for each separate piece of land registered in his or its name.
- 17.4 Subject to the provisions of these Articles, no person other than a duly registered member who has paid every levy and other sum, if any, which is due and payable to the Company in respect of or arising out of his membership and who is not under suspension, shall be entitled to be present or vote on any question, either personally or by proxy, at any general meeting.
- 17.5 At any general meeting a resolution put to the vote shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by any person entitled to vote at the meeting. No poll shall, however, be demanded on the election of the Chairman of the meeting or on any question of adjournment. Unless a poll is demanded, a declaration by the Chairman of the meeting that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority, or defeated, an entry to that effect in the minute book contemplated in Article 19.1 below shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour of or against such resolution.
- 17.6 If a poll is demanded:
- 17.6.1 the poll shall be taken in such manner and at such time as the Chairman of the meeting shall direct;
- 17.6.2 the Chairman of the meeting shall be entitled to appoint scrutineers;
- 17.6.3 no notice of a poll other than an announcement at the meeting at which it is demanded shall be required;

- 17.6.4 the demand for a poll shall not prevent the continuation of the meeting for the transaction of any business other than the question on which the poll has been demanded;
- 17.6.5 a demand for a poll may be withdrawn;
- 17.6.6 the result of a poll shall be deemed to be the resolution of the meeting on any question on which the poll is taken.
- 17.7 In the case of an equality of votes, whether on a show of hands or a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is taken shall not be entitled to a second or casting vote.
- 17.8 Any objection to the admissibility of a vote on a show of hands or on a poll shall be raised at the general meeting at which that show of hands or poll is to take place or takes place. That objection shall be determined by the Chairman of that general meeting and his decision thereon shall be final and binding. Accordingly, any vote not disallowed at that meeting shall be valid for all purposes.
- 17.9 A resolution shall not be invalid because a vote which should not have been included has been taken into account unless, in the opinion of the Chairman of that meeting (whose decisions thereon shall be final and binding), the exclusion of that vote would have altered the result of the voting on that resolution. Conversely a resolution shall not be invalid because a vote which should have been included has not been taken into account unless, in the opinion of the Chairman of that meeting (whose decisions thereon shall be final and binding), in the inclusion of that vote would have altered the result of the voting on that resolution.

## **18. 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 attend and vote at the general meeting and inserted in the minute book kept in terms of Article 19.1 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 Article may consist of several documents of the same form, each of which is signed by one or more members in terms of this article, and shall be deemed to have been passed on the date of signature thereof by the last member entitled to sign the same.

## **19. MINUTES AND INSPECTION**

- 19.1 The directors shall cause a record to be made of all resolutions of the Company in general meeting in a book provided for that purpose.
- 19.2 The minutes kept in terms of Article 19.1 (or any extract therefrom) which purport to be signed by the chairman of the board of directors or by any director or the secretary shall be *prima facie* evidence of the matters therein stated.
- 19.3 The minute book shall be open for inspection and may be copied as provided in the Act.

## **20. PROXIES**

- 20.1 A member entitled to vote at a general meeting shall be 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.

- 20.2 A proxy need not be a member of the Company.
- 20.3 The instrument appointing a proxy shall be in writing under the hand of the appointor or his agent duly authorised in writing or, if the appointor is a body corporate, under the hand of the authorised representative. A proxy need not be witnessed. Whether he is himself a member or not, the holder of a general or special power of attorney given by a member shall, if duly authorised under that power to attend and take part in meetings and proceedings of the Company or companies generally, be entitled to attend general meetings and to vote thereat.
- 20.4 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.
- 20.5 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 or authority) shall be deposited at the office not less than forty-eight hours (or at such other place and such lesser period as the directors may determine in relation to any particular meeting) before the time for the holding of the meeting which the person named in the instrument proposes to speak and vote. A form of power of attorney or proxy shall be invalid if this Article is not complied with.
- 20.6 Except insofar as the form appointing a proxy indicates otherwise, the appointment of a proxy shall be 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.
- 20.7 No instrument appointing a proxy shall be valid after the expiration of 6 (six) months from the date on which it was signed unless specifically stated to the contrary in the instrument of proxy itself.
- 20.8 The instrument appointing a proxy may be in any usual or common form approved by the directors but shall be so 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.

## **21. ACCOUNTING RECORDS**

- 21.1 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 or business of the Company.
- 21.2 The Company's records shall be kept at the office or such other place or places as the directors think fit and shall at all reasonable 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.
- 21.3 The directors shall from time to time determine whether, to what extent and at what times and places and under what conditions or regulations the accounting records of the Company 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 document of the Company except as conferred by the Act or authorised by the directors or by the Company in general

meeting.

## **22. AUDITOR AND AUDITED FINANCIAL STATEMENTS**

- 22.1 Subject to article 30, an auditor shall be appointed in accordance with the provisions of the Act.
- 22.2 The directors shall from time to time and in accordance with the provisions of the Act, cause the annual financial statements to be prepared and laid before the members in general meeting.
- 22.3 A copy of any annual financial statements which are to be laid before the members at the annual general meeting shall not less than 21 (Twenty one) days before the date of that meeting, be sent to every member and every holder of debentures of the Company and, where required by the Act, also to the Registrar. The provisions of this Article shall not require a copy of those documents to be sent to any person who has not furnished an address to the Company.

## **23. DISPUTES**

- 23.1 Any disputes arising out of or in connection with the Memorandum and Articles of Association, or the Management Rules or the Conduct Rules of a Sectional Title Scheme must be determined in accordance with article 6.5 above read with this article 23, except where an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 23.2 On a dispute arising (except for money or a debt owing to the Association), the parties who wishes to have the dispute determined must notify the other party thereof in writing. Unless the dispute is resolved amongst the parties within 14 (fourteen) days after such notice, either of the parties to the dispute may refer the same for determination to the Chairman of the Association, who shall appoint a committee consisting of three directors as contemplated in article 6.5 within 7 (seven) days of receipt of notification of the dispute in writing. The committee so appointed shall determine the dispute within 14 (fourteen) days of its constitution in accordance with the rules of natural justice and on consideration of such evidence adduced to it, or received by it on its request, in such form and manner acceptable in its discretion.
- 23.3 Notwithstanding the provisions of article 23.4, the committee shall be entitled to refer the dispute for determination to an independent party agreed to between the committee and the disputing members, in which event such dispute shall be referred to the following who shall in each case have a minimum of ten years experience in their field:
- 23.3.1 if the dispute is primarily an accounting or financial matter, a practicing chartered accountant;
- 23.3.2 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;
- 23.3.3 if the dispute primarily relates to the nature of buildings, structures, installations or equipment, a practicing architect;
- 23.3.4 if the dispute primarily relates to the size of form of the land or the position, height or size of buildings, structures, installations or equipment, a practicing land surveyor.
- 23.4 If the parties are unable to agree on the appointee as provided for in article 23.3 within 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.

- 23.5 The person appointed as provided for in article 23.3 shall in all respects act as an expert and not as an arbitrator.
- 23.6 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of natural justice.
- 23.7 The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (twenty one) days or so soon thereafter as possible.
- 23.8 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 23.9 The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether it shall be taxed as between "party and party" or as between "attorney and client".
- 23.10 The provisions of this article 23 shall be deemed to be severable from the remainder of the Memorandum and Articles of Association of the Company and of the Management Rules and Conduct Rules of a Sectional Title Scheme and shall remain binding and effective as between the parties notwithstanding that it may otherwise be cancelled, amended or declared of no force and effect for any reason.
- 23.11 Notwithstanding anything to the contrary contained in these Articles, the directors shall be 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 the Memorandum and Articles of Association or the Management Rules and Conduct Rules of a Sectional Title Scheme, including any amendments or additions thereto.

## **24. NOTICES**

- 24.1 A notice may be given by the Company to any member, in the manner set out in Article 24.2 below, at the address if any within the Republic furnished by him to the Company for such purpose.
- 24.2 Notice of every general meeting shall be given in writing and shall be delivered either by hand, or sent by post, or sent by facsimile, or sent by email -
- 24.2.1 to every member except those persons who have not supplied an address contemplated in Article 24.1 above;
- 24.2.2 to the auditor for the time being of the Company;
- 24.2.3 to every director of the Company, whether a member or not,
- and no other person shall be entitled to receive notice of any general meetings.
- 24.3 A notice served by post shall irrefutably be deemed to have been received and brought to the notice of the addressee at the time when the letter containing the same was posted and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

- 24.4 Any notice by the Company shall be signed by a director or by someone authorised by the director.
- 24.5 The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.
- 24.6 The Company shall not be responsible for the loss in transmission of documents sent through the post to the address furnished by any member to the Company for the giving of notices to him, whether or not it was so sent at his request.

## **25. GENERAL**

- 25.1 The directors may serve notice on any member to the effect that the directors consider the conduct of the member in contravention of the Memorandum, or Articles of Association or Rules of the Company. Should the member or members fail to comply therewith, within a reasonable time as specified in such notice, the directors may take such steps as they deem necessary to rectify the member's conduct and recover the cost thereof from the member or members concerned, which cost shall be deemed to be a debt due and owing to the Company.
- 25.2 The Company may require any member to maintain a sidewalk adjacent to his land in the development and in the event of such member failing to maintain such sidewalk to the satisfaction of the Company, the Company shall be entitled to take such action as may be necessary for the maintenance of such sidewalk and to charge such member concerned.
- 25.3 The Company may enter into agreements with members for the provision of amenities and services to the members and to levy a reasonable charge in respect of the provision thereof.
- 25.4 Should the Company provide security services and/or other services for members in the development, all members shall be obliged to:
- 25.4.1 permit the installation of any such equipment for the purposes of such services as may be determined by the Company from time to time;
- 25.4.2 make payment of charges raised by the Company in respect of such services;
- 25.4.3 abide by such terms and conditions of the provisions of such services as may be laid down by the Company from time to time.
- 25.5 Where the boundary of a member's land in the development also constitutes the boundary of the development, such member shall be obliged to permit the Company to erect upon such land immediately adjacent to such boundary, such walling, fencing, barbed wire, or other equipment as the developer and/or the Company may determine. Such member shall not be entitled to interfere in any manner whatsoever with such walling, fencing, barbed wire or equipment to effect such repairs as may be necessary from time to time. Should any such member wishing to erect his own walling, fencing, barbed wire or equipment, he shall be obliged to erect same within the walling or fencing referred to above and subject to such conditions as the Company may lay down and to permit the Company access to the boundary walling, fencing, barbed wire or equipment concerned.

## **26. INDEMNITY**

Every director, manager and officer of the Company and every other person (whether an officer of the Company or not) employed by the Company, and the auditor, shall be indemnified out of the

funds of the Company against all liability incurred by him as such director, manager, officer or auditor in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in connection with any application under Section 248 in which relief is granted to him by the Court.

## **27. AMENDMENT**

The Company may by special resolution do anything which in terms of the Act may be done only if authorised by its Articles or only if authorised by its Memorandum and Articles and, in particular and without limiting the generality of the foregoing, alter its Articles and Memorandum of Association in any way permitted by law subject only to any restriction in that regard contained in the Memorandum.

## **28. RESTRICTIONS IMPOSED IN FAVOUR THE LOCAL AUTHORITY**

- 28.1 The Company shall not be deregistered without the prior written consent of the Local Authority;
- 28.2 The Memorandum and Articles of Association of the Company shall not be amended without the consent of the Local Authority.
- 28.3 The access erf, park portions and interests in the road servitudes shall not be alienated or transferred without the consent of the Local Authority first having been obtained.
- 28.4. The access erf and park portions shall not be rezoned without the consent of the Local Authority first having been obtained.

## **29. RESTRICTIONS IMPOSED IN FAVOUR OF THE HAZELDEAN OWNERS ASSOCIATION**

- 29.1 As the development forms part of the greater residential, commercial and retail development to be known as Hazeldean, the Company shall become and remain a member of the Hazeldean Owners Association (Association incorporated in terms of Section 21).
- 29.2 The Company shall not adopt any article or rule, or amend any article of this constitution, which shall be in conflict with or in contradiction of any article or rule imposed by the Hazeldean Owners Association or its objects. In the event of a contradiction, the articles and rules of the Hazeldean Owners Association shall prevail.
- 29.3 The members of the Hazeldean Owners Association shall have the right to make use of the access erf and road servitudes registered in the name of the Company.

## **30. MANAGEMENT OF THE DEVELOPMENT**

- 30.1 The development shall comprise various sectional title schemes, together with the communal facilities.

30.2 The members of the Company, as such owners or occupiers of units in the respective sectional title schemes, shall share the communal facilities and enjoy traversing rights over each others' property, rendering the individual management, administration and control of the respective sectional title schemes expensive and impractical.

30.3 Therefore, notwithstanding any article contained herein before and in order to:

30.3.1 save on administration costs, management fees and expenses; and

30.3.2 where necessary comply with various Acts and legislation that may be or may become applicable to the development; and

30.3.3 overcome any practical restrictions and conflicts in the applicable legislation and in order to effectively manage, control and administrate the affairs of the members and the respective bodies corporate through a single body,

the duties, functions and powers of the respective bodies corporate shall be assigned to the Company as contemplated in regulation 30(2)(b) of the Sectional Titles Act.

30.4.1 The trustees shall nominate and appoint from their number, two trustees to serve on the Board of Directors as contemplated in article 7.1 above.

30.4.2 To the extent that the minimum required number of trustees can not be appointed in respect of any particular sectional title scheme, additional trustees may in that event be nominated and elected, at any general meeting, from the ranks of the members of any of the other sectional title schemes.

30.5 The Board of Directors shall exercise such duties and rights as are required of them by the Sectional Titles Act and the Management Rules of the respective sectional title schemes, as well as any other applicable legislation, and in doing so shall *inter alia*:

30.5.1 manage, control and administer the sectional title schemes in the development, as well as the communal facilities, as one scheme;

30.5.2 be entitled to appoint such committees or sub-committees from their ranks and to delegate certain tasks to such committees or sub-committees as they deem fit and appropriate;

30.5.3 prepare one budget and to apply as far as possible the participation quotas, applicable to every member with regard to any contributions or special levies due by members in respect of the development as a whole or a particular sectional title scheme, with regard to the budgeted expenses as contemplated in article 4.2 above;

30.5.4 regard the common property of the individual schemes, and any property owned by the Company, for purposes of the management of the development, as common property of a single sectional title scheme;

30.5.5 appoint one Managing Agent for the development; *provided that* during the development period and one year thereafter, the Managing Agent shall be appointed by the developer;

30.5.6 appoint one Auditor; *provided that* during the development period and one year thereafter, the auditor shall be appointed by the developer;

- 30.5.7 appoint such employees for the Company and the bodies corporate (where applicable) as they deem fit and appropriate and allow the Managing Agent to appoint such employees and service providers as the Managing Agent may deem necessary in the proper execution of its duties;
- 30.5.8 operate one bank account, as far as possible;
- 30.5.9 insure all buildings, common property and communal facilities, as required by the Sectional Titles Act and Regulations, under one Insurance Policy; *provided that* any exclusions applicable to a specific sectional title scheme or communal facilities or any claims not covered adequately or at all in terms of the Insurance Policy in respect of a specific sectional title scheme or communal facilities, shall be the liability of the members or owner of that specific scheme or facility only.
- 30.5.10 convene a single annual general meeting in respect of the members of the respective bodies corporate and the Company (excluding a general meeting contemplated in section 36(7)(a) of the Sectional Titles Act), which general meeting shall be held in accordance with the provisions of Articles of Association of the Company;
- 30.6 The rights derived from and the obligations conferred upon any sectional title scheme in terms hereof shall entitle such scheme irrevocably to sue or to be sued or to take any action for the enforcement of the provisions of the Sectional Titles Act and the rules pertaining to such scheme in its own name, without reference or formal cession from the Company or any of the other schemes; *provided that* the Board of Directors approves and oversees the institution or defense of such action and subject to any directions that may be given by the Company in general meeting.
- 30.7.1 Insofar as any administrative, procedural and management aspects may require amendment in order to attain the objects of this article 30, the Board of Directors may constitute a Rules Committee to supplement and/or amend and/or repeal any of the Management and Conduct Rules applicable to any sectional title scheme as they deem appropriate and in a manner they deem fit and proper; *provided that* these rights do not confer upon the directors the right to impose any restrictive conditions on the proprietary rights of any of the members without their knowledge or consent thereto.
- 30.7.2 For purposes of any quorum requirement and for approval of a special or unanimous resolution, the members of all the sectional title schemes shall participate jointly and shall be reckoned for purposes of each resolution, as one scheme comprising of all the units of the individual schemes, subject to the rights of the developer; *provided that* where any resolution or amendment of any of the rules affects a particular sectional title scheme only, the members of that specific scheme may resolve to adopt the required resolution or amendment; *provided further that* such resolution or amendment shall stipulate clearly that it is applicable to and enforceable by the members of that particular scheme only.
- 30.7.3 No amendment to the rules as contemplated for the purpose of this article 30 shall be adopted unless the corresponding rule(s) of all the other sectional title schemes in the development and the corresponding provisions the Memorandum and Articles of Association of the Company are similarly amended and *vice versa*.
- 30.8 In attaining the objectives of this article 30, the directors shall not do, or cause do be done, anything, whether expressly, tacitly or implied, in contravention of the Act, the Sectional Titles act or the principles of good corporate governance and shall at all times exercise their functions in the utmost good faith.

30.9 In the event of any contradicting provisions in these Articles of Association and the Management Rules of any Sectional Title Scheme, the provisions of the Articles of Association shall prevail.