



JACKALBERRY ESTATE

THE CONSTITUTION OF THE JACKALBERRY ESTATE HOME OWNERS ASSOCIATION

1. **NAME**

The name of the Association is THE JACKALBERRY ESTATE HOME OWNERS ASSOCIATION with its domicilium citandi et executandi at **JACKALBERRY ESTATE COUNTRY CLUB, THE CLUBHOUSE, MANDENI**

2. **DEFINITIONS**

In this Constitution, unless the context indicates to the contrary:

- 2.1 “The Seller” shall mean Sappi Manufacturing (Pty) Ltd, Registration No. 1951/03180/07;
- 2.2 “The Association” shall mean The Jackalberry Estate Home Owners Association;
- 2.3 “The Estate” shall mean the township to be developed by the Developer on its property in Mandeni Transitional Local Council, KWAZULU NATAL;
- 2.4 “The Local Authority” shall mean the Mandeni Transitional Local Authority or any other local authority having jurisdiction over the Estate;
- 2.5 “The Common Property” shall mean proposed Portions 1, 134, 324, 325, 7/53, 54, 327 /public place/erven and public roads as show on the annexed plan.
- 2.6
- 2.7 “Erf” shall mean any one of the erven within the Estate, owned by a member including any one unit in any Sectional Title complex on the estate owned by a member;
- 2.8 “Owner”, when used in relation to an Erf, shall mean and include the registered owner thereof;
- 2.9 “Founder Members” shall mean the promoters of the Association;
- 2.10 “Member” shall mean a member of the Association, and which expression shall, until they cease to be members of the Association, include the Founder Members, and
- 2.11 “Month” shall mean a calendar month;
- 2.12 “Year” shall mean a calendar year;
- 2.13 “in writing” or “written” means and includes words printed, lithographed or partly one and partly another and represented or produced in any mode in a visible form.

Unless the context otherwise requires, any words importing the singular number only shall include the plural number and vice versa, and words importing any one gender shall include the other two genders, and words importing persons shall include bodies corporate and firms.

- 2.14 “Law” shall mean the Laws applicable from time to time in the Republic of South Africa including but not limited to the National Road Traffic Act (Act No. 93 of 1996) and/or any

other Act, the enforcement of which is for the benefit of and in the interest of the Association, its Owners and Occupiers.

- 2.15 "The Environmental Principles" means the environmental framework for the Initial Site Assessment, Design, Rehabilitation and Landscaping Requirements and all other relevant information approved by the Department of the Environment, adopted by the Developer and the Jackalberry Estate Home Owners Association.
- 2.16 "Committee" shall mean the Committee of the Association elected in terms of the Constitution.

3. **STATUS**

The Association shall be an association:

- 3.1 with perpetual succession and with legal personality capable of owing and being sued in its own name, and
- 3.2 none of whose members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by the Committee in terms hereof, and
- 3.3 not for profit, but for the benefit of the Owners and occupants of immovable property situate in the Estate.
- 3.4 The liability of the individual members for the debt and engagements of the Association shall be limited to the amount, if any, owing by the Member concerned in respect of levies, contributions or fees due to the Association.

4. **OBJECTS**

The objects of the Association will be:

- 4.1 to promote the maintenance of the Common Property and all Erven within the Estate and to ensure that all such Erven are maintained in such a way as to derive maximum benefit therefrom for the whole community of the Estate;
- 4.2 to prescribe standards, conditions and guidelines for the maintenance of any buildings and outbuildings and external fixtures and fittings thereto, including aerials and satellite dishes of any description to be erected in the Estate and thereby to exercise control over the external appearance of all such buildings, structures, erections, land and garden areas in the Estate;
- 4.3 to promote, advance and protect the interest of the Members generally and to co-operate with the Local Authority, the Kwazulu-Natal Provincial Government and all other appropriate authorities for the benefit of the Association and its Members;
- 4.4 to represent interest of the Members and to provide a united voice by which such interests may be expressed;
- 4.5 to collect levies and contributions towards funds of the Association for the attainment of the objects of the Association or any of them, for the improvement of the Estate, and the due fulfilment of the powers of the Association or any of them;
- 4.6 to organise and provide social services and activities for the benefit of the Association and its Members.

4.7 to impose fines and penalties.

5. **POWERS**

The Association shall have full power and authority to manage its affairs, activities and property in addition to these general powers and without in any way limiting such powers and authorities, the Association shall have the following special powers and authority:

- 5.1 To maintain and control the property of the Association and to render all services and acts necessary to ensure efficient protection and satisfactory maintenance and control of such property.
- 5.2 To enforce compliance by Owners of the Environmental Principles including the Environmental Management Plan as far as these may apply.
- 5.3 To promote the Environmental Principles as far as these may apply to the Association.
- 5.4 To do all things necessary or required to attain any of the objects of the Association set out above and to further and promote the interest of Members and to implement and enforce the powers conferred on the Association in terms hereof, to adopt and prescribe and from time to time amend, repeal or add to any rules and regulations necessary or required for the due enforcement, implementation and fulfilment of such rules and regulations and to impose fines and penalties.
- 5.5 To raise levies, contributions and fees from Members in the manner and for the purposes as hereafter specified.
- 5.6 To open and operate banking accounts and building society accounts of any description.
- 5.7 To make, enter into and carry out contracts or agreements for any of the purposes or objects of the Association.
- 5.8 To employ and remunerate agents, servants, employees and other persons.
- 5.9 To act as principals, agents, contractors or trustees.
- 5.10 To pay gratuities and pensions and establish pension schemes.
- 5.11 To sue and be sued in its own name and to appoint attorneys, agents and counsel for the aforementioned purpose.
- 5.12 To amend or repeal this Constitution or any portion hereof.
- 5.13 To enforce the Rules and Architectural and Building Code of the Association as annexed hereto.
- 5.14 To make, amend and repeal rules which shall be binding upon the Members as if they formed part of this Constitution and the formation of sub-committees and the delegation of such powers of those sub-committees as the Committee may deem necessary. The powers conferred on the Association in terms of any clauses contained in this Constitution shall, in the absence of a resolution by the Association to the contrary, vest in the Committee.
- 5.15 No rule, regulation or by-law passed pursuant to these provisions shall, unless passed pursuant to sub-clause 5.11 above, conflict with any of the provisions of the Constitution.

6. **MEMBERS**

- 6.1 Membership of the Association shall be limited to the Owners and the Founder Members provided that where any such Owner is more than one person all the owners of that Erf shall be deemed jointly and severally to be one Member of the Association.
- 6.2 The interests and rights and corresponding obligations of all future Owners of Erven insofar as it concerns their membership of the Association and who as at the date on which the Constitution is adopted are not Owners, shall be represented by the Founder Members who shall be subject to all the terms and conditions of this Constitution. Upon not less than 3 (THREE) Owners becoming Members of the Association in terms of this Constitution, the membership of the Founder Members as such shall automatically terminate and be at an end.
- 6.3 When a Member, other than a Founder Member, ceases to be the Owner of an Erf, he shall ipso facto cease to be a Member of the Association, but without prejudice to the right of the Association to recover from such person any amounts owing and due but unpaid as at the date of cessation of such membership.

7. **MEMBERSHIP**

- 7.1 The Owner of an Erf in the Estate shall be deemed to be and shall become a Member of the Association and shall comply with the Constitution of the Association and all its rules and regulations legally enacted by the Association, or its duly appointed representative and shall remain a Member whilst he is an Owner of an Erf, and shall not be entitled to resign or cease to be a Member of the Association until he ceases to be the Owner of an Erf.
- 7.2 An Owner shall be deemed to cease being an Owner of any particular Erf for all purposes under this Constitution:
- 7.2.1 upon the sale or other disposal by him of such Erf with the consent of the Association and further, if such sale or other disposal is subject to any suspensive condition, upon the fulfilment of any such condition; and
- 7.2.2 upon the acquirer/transferee concluding an agreement with the Association to become a Member of the Association,
- or in any case other than the acquisition by contract of the Erf;
- 7.2.3 upon the registration of transfer of that Erf into the name of the transferee provided always that if prior to transfer of the Erf the agreement under which the acquirer or proposed transferee has acquired the Erf, fails or is terminated for any reason, the seller or disposer of the Erf shall automatically be re-vested with membership of the Association in respect of the Erf in question, retrospectively to the date upon which he first ceased to be a Member in respect of that Erf.

8. **CONDITION OF SALE**

- 8.1 A Member shall not alienate or transfer an Erf unless it is a condition of the alienation or transfer that:
- 8.1.1 the acquirer/transferee binds himself, as a contract for the benefit of the Association, to become a Member of the Association;
- 8.1.2 the conclusion, with the consent of the Association, of an agreement to acquire an Erf and, if such agreement is subject to any suspensive condition, upon the fulfilment of any such

condition, or in any case other than the acquisition by contract of an Erf, the registration of transfer of that Erf into the name of the transferee, shall ipso facto constitute the acquirer/transferee as a Member of the Association.

- 8.2 Whenever the consent of the Association is required by the terms of any condition of title of an Erf or contract for the sale of such Erf, for the alienation or transfer of such Erf, such consent shall not be withheld, provided the intending acquirer/transferee shall have bound himself to the Association to become a Member of the Association.

9. **MEMBERSHIP CERTIFICATE**

The Committee elected in terms of clause 24 may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form and subject to such conditions as may be prescribed by the Committee.

10. **TRANSFER OF MEMBERS RIGHTS AND OBLIGATIONS**

- 10.1 The rights and obligations of a Member shall not be transferable and every Member shall:

10.1.1 to the best of his ability, further the objects and interest of the Association;

10.1.2 observe all by-laws and regulations made by the Association or the Committee;

provided that nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the Mortgagee of that Member's Erf.

11. **PRIVILEGES OF MEMBERSHIP**

No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and subscriptions and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.

12. **USE OF FACILITIES**

The Committee of the Association shall be entitled upon the written application of an Owner of an Erf and upon such terms and conditions as may be prescribed by the Committee from time to time to permit:

12.1 the lessee of an Erf, or

12.2 any other person occupying an Erf through or at the instance of the Owner thereof, the use and enjoyment of the facilities and amenities of the Association, provided:

12.2.1 such permission is evidenced by a certificate issued under the hand of the Committee;

12.2.2 such permission will automatically lapse and be deemed to be withdrawn upon the grantee's rights to occupation of the Erf being terminated or expiring for any reason whatever or upon the Owner ceasing to be a Member;

12.2.3 the Owner is and remains fully paid-up in respect of all his obligations to the Association;

12.2.4 such permission shall not release the Owner from his obligations to the Association in respect of his membership relating to such Erf at all times;

- 12.2.5 the said conditions prescribed by the Committee in respect of the class of persons referred to in clause 12.2 above shall be no more onerous than those applying to the Owner himself.

13. **LEVIES AND CONTRIBUTIONS**

The Association, through its Committee, shall from time to time be entitled to make levies upon the Members for the purpose of meeting all the expenses which the Association itself or through its Committee has incurred or to which the Committee reasonably anticipates the Association will be put by way of the implementation and attainment of any of its objects and the carrying out of any of its functions, and for the maintenance, repair, improvement and keeping in order and condition of its property, the Common Property and/or for payment of any rates and other charges payable by the Association in respect of its property and/or for the services rendered to it, and/or payment of the salaries and/or wages of the employees of the Association, and generally for the payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the property and the Association's affairs. In calculating levies the Committee shall take into account other income, if any, earned by the Association from any other source.

14. **ESTIMATE OF EXPENSES**

The Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the Members equal as nearly as is reasonably practical to such estimated amount. The Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.

15. **SPECIAL LEVIES**

The Committee may, from time to time, make special levies upon the Members in respect of all such expenses as are mentioned in clause 13 (which are not included in any estimate made in terms of clause 14), and such levies may be made in the sum or by such instalments and at such time or times as the Committee shall think fit.

16. **RECOVERABLE DEBT**

- 16.1 Notwithstanding the nature or cause of indebtedness, any amount due by a Member by way of a levy, special levy or other charge due to the Association, shall be a debt due by him and recoverable by the Association. The obligation of a Member to pay levies shall cease upon him ceasing to be a Member of the Association, without prejudice however to the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Association upon him ceasing to be a Member. A Member's successor to an Erf shall be liable as from the date upon which he becomes a Member, to pay the levy attributable to that Erf. No member shall sell or transfer his Erf until the Association has certified that the Member has at the date of sale or transfer fulfilled all his financial obligations to the Association.
- 16.2 Any sums of money due to the Association by a Member which have not been paid by the date on which they are due and payable, shall bear interest from the date the amount is due to the date of payment, at the maximum rate permissible under the Usury Act (Act No. 73 of 1968) as amended from time to time.

All legal costs as between attorney and client, charges, disbursements including fees incurred by the Association in successfully enforcing or defending its claim shall be for the account of the Member and be payable on demand.

A certificate signed by the Chairman of the Association, or his duly authorised representative, as to any indebtedness of a Member, or as to any other fact, shall be prima facia evidence of the Member's indebtedness to the Association or of such other fact for the purpose of any application or action, judgement or order or for any other purpose whatsoever.

17. **LEVY CHARGE**

17.1 Levies made in terms of these provisions shall be charged in equal proportions on all Erven in the Estate and shall be paid and borne by Members in the same proportion to the total levies imposed on Members pursuant hereto as the number of Erven owned by the Member bears to the total number of Erven in the Estate.

17.2 Notwithstanding anything to the contrary contained herein, the levies charged on an erf shall only accrue as from the registration of each erf from the developer to the purchaser thereof, the developer shall under no circumstances be responsible for payment of any levy, special levies whilst it is an owner of any erf.

18. **DEALING WITH THE COMMON PROPERTY**

The Common Property shall not be alienated without the consent of the Minister of Local Government and Housing and then only as he may direct.

19. **MEETINGS OF THE ASSOCIATION**

19.1 Annual general meetings shall be held once in every year at such time and place as may be determined by the Committee, but so that no more than 15 (FIFTEEN) months shall be allowed to elapse between any two successive meetings.

19.2 The Committee may call an extraordinary general meeting whenever it thinks fit. Extraordinary general meetings shall also be called upon the written request of 2 (TWO) Owners.

19.3 An annual general meeting and a meeting called for the passing of a special resolution, shall be called by 21 (TWENTY ONE) days' notice in writing at the least, and an extraordinary general meeting shall be called by 14 (FOURTEEN) days' notice in writing at the least. In each case the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this constitution, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it or in such other manner, if any, as may be prescribed by the Committee to such persons as are under this Constitution entitled to receive such notices from the Association.

19.4 The accidental omission to give notice of a meeting or of any other resolution, or to give any other notification, or present any document required to be given or sent in terms of this Constitution, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceeding at, or any resolution passed at any meeting.

19.5 General meetings of the Association shall take place at such place/s as shall be determined by the Committee from time to time.

19.6 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 any general meeting shall be 4 (FOUR) Members.

- 19.7 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved but shall be reconvened half an hour thereafter with the Members present being a quorum; in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum.
- 19.8 The following matters shall be dealt with at every annual general meeting:
- 19.8.1 the consideration of the Chairman's report to the Committee;
- 19.8.2 the election of the Committee;
- 19.8.3 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;
- 19.8.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
- 19.8.5 the consideration of the report of the auditors;
- 19.8.6 the consideration of the total levy and any special levy (as referred to in clauses 13 and 15 aforesaid) for the year during which such annual general meeting takes place;
- 19.8.7 the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the annual general meeting.

20. **PROCEDURE AT GENERAL MEETING**

The Chairman of the Committee shall preside as such at all general meetings, provided that should he not be present within 5 (FIVE) minutes after the time appointed for the holding thereof, then the Vice-Chairman of the Committee shall act as Chairman at such meeting; provided further that should the Vice-Chairman also not be present within 5 (FIVE) minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

21. **ADJOURNMENT OF MEETING**

The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which adjournment took place. Whenever a meeting is adjourned for 10 (TEN) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment or of the business to be transacted at an adjourned meeting.

22. **PROXIES**

- 22.1 A Member may be represented at a general meeting by a proxy, who need not be a member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than 1 (ONE) person, any of those persons may sign the instrument appointing a proxy on such Member's behalf; where a Member is a company, the same may be signed by the Chairman or by its secretary; and where an

association of persons, by the secretary thereof.

22.2 The instrument appointing a proxy and the Power of Attorney or other authority (of any) under which it is signed, or a notarially certified copy thereof, shall be deposited at the office of the Association at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument appointing a proxy shall be valid after expiration of 12 (TWELVE) months from the date of execution.

22.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no imitation in writing of the death or revocation shall have been received by the Committee at least 1 (ONE) hour before the time fixed for the holding of the meeting.

23. **VOTING**

23.1 At every general meeting every Member in person or by proxy and entitled to vote shall have 1 (ONE) vote for each Erf owned by him, provided that if an Erf is registered in more than 1 (ONE) person's name, then they shall jointly have one vote.

23.2 Save as expressly provided for in this Constitution, persons other than a Member duly registered as such with the Association and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at a general meeting.

23.3 Unless the Chairman of the meeting otherwise directs, all voting shall be in writing by way of a secret poll, which shall be taken during the course of the meeting in such manner as the Chairman of the meeting shall direct.

23.4 All resolutions shall be passed by a simple majority of those Members present in person or by proxy at the meeting, other than special resolutions which shall be carried by the votes of not less than 4 (FOUR) Members.

23.5 A declaration by the Chairman of the result of any voting and an entry thereof in the Minute Book of the Association shall be conclusive evidence of that fact.

24. **COMMITTEE**

There shall be a Committee of the Association which shall consist of not less than 2 (TWO) Members. The initial Members of the Committee shall be appointed by the Developer, who shall be entitled to appoint the majority of the Committee members for as long as it is a member of the Association.

25. **HOLDING OFFICE**

Subject to clause 24, and save in respect of the Developer's representatives on the Committee, each Committee member shall continue to hold office as such from the date of his appointment to office until the conclusion of the annual general meeting next following his said appointment, at which meeting the Committee member shall be deemed to have retired from office as such but will be eligible for re-election to the Committee at such meeting, such Committee member shall retain office for a period of 3 (THREE) months after such annual general meeting or until a successor has been elected by the Association at an extraordinary general meeting called for the purpose.

26. **VACATION OF OFFICE**

A Committee member shall be deemed to have vacated his office as such upon:

- 26.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
- 26.2 his making any arrangement or composition with his creditors;
- 26.3 his conviction for any offence involving dishonesty;
- 26.4 his becoming of unsound mind or being found lunatic;
- 26.5 his resigning from such office in writing delivered to the Secretary;
- 26.6 his death;
- 26.7 his being removed from office by the Association in general meeting;
- 26.8 him absenting himself from 3 (THREE) consecutive meetings of the Committee without special leave of absence from the Chairman of the Committee.

27. **VACANCY**

Upon any vacancy occurring on the Committee prior to the next annual general meeting, the vacancy in question shall be filled, subject to clause 24.1, by a person nominated by those remaining for the time being of the Committee.

28. **OFFICERS**

- 28.1 The first Chairman and Vice Chairman of the Committee shall be appointed by the Developer, who shall be entitled to continue making such appointments for as long as it is a Member of the Association, and such office bearers shall hold their respective offices until the first annual general meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the Committee member holding such office upon his ceasing to be a Committee Member for any reason.
- 28.2 Subject to clause 28.1, within 7 (SEVEN) days of the holding of each such annual general meeting, the Committee shall meet and shall elect from its own number, the Chairman and the Vice-Chairman, who shall hold their respective offices until the annual general meeting held next after their said appointments, provided that the office of the Chairman or Vice-Chairman shall ipso facto be vacated by the Member holding such office upon his ceasing to be a Committee member for any reason.
- 28.3 Committee members 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 Committee members and/or Chairman and/or Vice-Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.

29. **FUNCTIONS AND POWERS OF THE COMMITTEE**

- 29.1 Subject to the express provisions of this Constitution, the Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by this Constitution required to be exercised or done by the Association in general meeting, subject nevertheless to any regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting

shall invalidate any prior act of the Committee which would have been valid if such regulation had been made.

- 29.2 The Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 29.3 The Committee shall have the right to co-opt onto the Committee any person or persons chosen by it. A co-opted Committee member need not necessarily be a Member of the Association, and shall enjoy all the rights and be subject to all the obligations of elected Committee members.
- 29.4 The Committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed in the Association in general meeting, as to disputes and arbitrations generally for the furtherance and promotion of any of the objects of the Association, for the better management of affairs of the Association, for the advancement of the interests of Members, for the conduct of committee meetings and general meetings, and to assist it in administering and governing its activities generally, and shall be entitled to cancel, vary or modify any of the same from time to time.
- 29.5 Save as specifically provided otherwise in this Constitution, the Committee shall at all times have the right to engage on behalf of the Association the service of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Committee and on such terms as the Committee shall decide, subject to any of the provisions of this Constitution.

30. **PROCEEDINGS OF THE COMMITTEE**

- 30.1 The Committee may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 30.2 The quorum necessary for the holding or any meeting of the Committee shall be 2 (TWO) Committee members present personally, where the Committee comprises 4 (FOUR) or less members, and shall be 3 (THREE) members where the Committee comprises 5 (FIVE) or 6 (SIX) members, and 4 (FOUR) Committee members in any other case.

31. **CHAIRMAN**

The Chairman, duly elected by the Committee at its first meeting held after the AGM, shall preside as such at all meetings of the Committee, provided that should at any meeting of the Committee the Chairman not be present within 5 (FIVE) minutes after the same time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting; provided further that should the Vice-Chairman also not be present within 5 (FIVE) minutes of the time appointed for the holding of such meeting, those present of the Committee members shall vote thereupon and exercise all the powers and duties of the Chairman in relation to such meeting.

32. **PROCEEDINGS**

Save as otherwise provided in this Constitution, the proceedings at any meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

33. **RESOLUTION**

A resolution signed by all the Committee members shall be valid in all respects as if it had

been fully passed at a meeting of the Committee duly convened.

34. **ALTERNATE COMMITTEE MEMBER**

Each Committee member shall have the power at any time to appoint in writing in his hand any other person to act as alternate Committee member in his place during his absence or inability to act as Committee member and on such appointment being made, the alternate Committee member shall in all respects exercise all the powers, rights, duties and authorities as the Committee member appointing him.

35. **ACCOUNTS**

35.1 The Committee shall cause proper books of account of the administration and finance of the Association to be kept at the office of the Association or such other place or places as the Committee shall think fit, and such books of account shall always be open to the inspection of Members during normal business hours.

35.2 The Committee shall from time to time cause to be prepared and laid before the Association in general meeting, books of account, balance sheets and reports of the Committee containing such information as the Association shall prescribe from time to time.

35.3 The Committee shall arrange for the audit of the books of account at least once during each and every year and shall have the power to appoint auditors to effect this purpose.

36. **CESSATION OF MEMBERSHIP**

No Member ceasing to be a member of the Association for any reason shall (nor shall any such member's executors, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrears of subscriptions or other sums due from him to the Association at the time of his so ceasing to be a Member.

37. **THE DEVELOPER**

37.1 Notwithstanding anything to the contrary contained in the Constitution or any regulation made or passed pursuant hereto, no rules or regulations prescribed either by the Association or by any Committee or Sub-Committee of the Association pursuant to the carrying out of objects shall be binding on the Developer.

37.2 The Developer shall have the right to veto, without ascribing any reason therefor, any proposed expenditure either of the Association or the Committee, delivering through its representative a written or verbal notice to that effect to the Chairman for the time being of the Association; and

37.3 The Developer maintains the right to complete the Development of the estate in its discretion and however it so chooses.

38. **RECREATIONAL CLUB FACILITIES**

By virtue of his membership to the Home Owners Association the owner shall become a member of the Jackalberry Country Club.

39. **NOTICES**

39.1 A notice may be served by the Association upon any Member, either personally or by sending it through the post in prepaid letter, addressed to such Member at the address of the Erf owned by him or such other addresses as he may notify the Association, provided that copies of all notices sent to Members shall be sent to the Mortgagee (if any) of that Member's Erf.

Any notice, if served by post, shall be deemed to have been served on the day following that on which the letter containing the same is put into the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the Post Office as a prepaid letter.

40. **INDEMNITY**

40.1 All Committee members shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities, and in the case of a Committee member, in his capacity as Chairman or Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any person/s by the Court.

40.2 Every Committee member, every servant, agent and employee of the Association shall be indemnified by the Association against all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including, in the case of a Committee member, his duties as Chairman or Vice-Chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

40.3 A Committee member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Committee members, whether in their capacities as Committee members or as Chairman or Vice-Chairman, for any loss or expenses sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of this office/s or in relation thereto, unless the same shall have happened through lack of bona fides or breach of duty or breach of trust.

41. **ARBITRATION**

In the event of a dispute between any of the Members as such or between a Member and the Committee, that dispute shall be resolved initially by the Committee, and in the event of such decision being disputed shall then be resolved by arbitration. The arbitrator shall be an

independent person agreed upon between the parties and failing agreement, nominated by the Chairman for the time being of the Law Society of the Northern Province. The arbitrator shall be entitled to resolve the dispute according to what he regards as being just and equitable and in accordance with the spirit and the objects of the Association.

42. **ALTERATIONS TO CONSTITUTION**

42.1 Any alteration or addition to this Constitution may be effected only by a special resolution passed by 4 (FOUR) Members at a general meeting after written notice thereof has been given by the Committee in the notice calling the meeting.

42.2 Save as prescribed in Clause 37 above, and notwithstanding anything else to the contrary herein contained, for as long as the Developer is a member of the Association, this Constitution shall not be altered or added to without the prior written consent of the Developer.

43. **WINDING-UP OF THE ASSOCIATION**

The Association may be wound up by a special resolution provided that:

43.1 90% (NINETY PERCENT) of Members present or represented at a general meeting, duly convened, vote in favour thereof, and

43.2 it is consented thereto by the Developer while Clause 37 is of application.

In the event of such winding-up, it shall be the duty of the Committee or a Receiver to be appointed by them to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the residue to all the Members in accordance with the number of Erven registered in the name of each Member. If within a period of 4 (FOUR) months from such distribution the Committee or Receiver are unable to find, locate or trace any Member, such Member's share shall then be paid to the Guardians Fund.

32 CERTIFIED AS THE ORIGINAL CONSTITUTION OF THE JACKALBERRY ESTATE HOME OWNERS ASSOCIATION ADOPTED AT THE INAUGURAL MEETING OF THE MEMBERS OF THE ASSOCIATION ON THE _____ DAY OF _____

(FOUNDER MEMBER)

(FOUNDER MEMBER)