

CONSTITUTION

THE FARM

HOMEOWNERS' ASSOCIATION

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Appendix 1: Proxy Form

Appendix 2: Nomination Form

1 NAME AND ESTABLISHMENT

- 1.1 The name of the Association is **THE FARM HOMEOWNERS' ASSOCIATION.**
- 1.2 The Association is constituted and has been established by the members as a body corporate.

2 INTERPRETATION

In these presents:

- 2.1 The following words and phrases shall, unless the context otherwise requires, have meanings hereinafter assigned to them:

“Architectural Guidelines”	means Regulations formulated by the Trustee Committee or by the Members by Ordinary Resolution in general meeting to govern the structure and appearance of buildings and gardens at “THE FARM”.
"Architectural Review Committee"	means the committee appointed by the Trustee Committee in terms of Clause 3.6.7
“Association”	means The Farm Homeowners' Association;
“Auditors”	means the Auditors of the Association, appointed in terms of these presents;
“Chairperson”	means the Chairperson of the Trustee Committee;
“Common Area”	means the following erven, portions or remainders of the Land owned by the Association and includes all services (whether Municipal or otherwise) constructed or rendered within the Common Area, namely: Portions 10 (of 1), 22 (of 2), 15 (of 4), 28 (of 5), 30 (of 5), 35 (of 7), and 36 (of 7) of Erf 1380 Shelly Beach; Portion 20 (of 15) of Erf 504, Shelly Beach; Erven 1433, 1434, 1452, 1453, 1482, 1483, 1484, 1550, 1551, 1552, 1553 and the Remainder of Erf 1380 Shelly Beach.
“Developer”	means Shelley Bay Villas CC; (Registration No. 1992/029455/23)

“THE FARM”	means the Township Area, and the Common Area;
“General Meeting”	means a General Meeting of Members and shall include reference to an Annual General Meeting or a Special General Meeting;
“House Rules”	means Regulations governing the conduct of the affairs at “THE FARM”;
“Land”	means Portions 1 to 9 of Erf 1380 Shelly Beach, the remainder of Erf 1380 and Portion 15 of Erf 504 Shelly Beach and all further subdivisions thereof;
“Member”	means a member of the Association;
“Municipality”	means the Hibiscus Coast Municipality or such local authority as may succeed it from time to time;
“ Ordinary Resolution ”	means a Resolution passed at duly constituted general meeting of Members by a simple majority of Members entitled to vote at that meeting who are present in person or by proxy;
“Person”	means, as the context requires, a natural or a juristic person or an inter vivos or testamentary trust;
“these Presents”	means this Constitution and any Regulation, as amended from time to time;
“Regulation”	means any House Rule and/or Architectural Guideline, and/or any other regulation and/or by-law of the Association;
“ Special Resolution ”	means a Resolution passed at a duly constituted general meeting of Members by not less than three-fourths of Members entitled to vote at that meeting who are present in person or by proxy;
"Township Area"	means those portions of the Land owned by Members;

“Trustee Committee”	means the current committee of Trustees or any committee of Trustees of the Association subsequently appointed in terms of these presents as described in clause 4.1;
“Trustee Member”	means a person appointed or co-opted to the Trustee Committee;
“Unit Erf”	means the Land and any erven resulting from the subdivision of the Land and includes any section in terms of the Sectional Titles Act, 1986 established on the Land;
"Unit Erven"	means the plural of Unit Erf;
“Vice Chairperson”	means the Vice Chairperson of the Trustee Committee;

- 2.2 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 only shall include the other gender as well as juristic persons.

3 THE ASSOCIATION

3.1 MAIN BUSINESS

The main business of the Association is the promotion, advancement and protection of the interests of the Members, in their capacity as such, at “THE FARM”.

3.2 STATUS OF THE ASSOCIATION

3.2.1 The Association shall be an Association:

- 3.2.1.1 with legal personality, capable of suing and being sued in its own name;
- 3.2.1.2 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 the Association and be controlled by the Trustee Committee in terms hereof;
- 3.2.1.3 not for profit, but for the benefit of the Members;
- 3.2.1.4 with the right to acquire, hold, lease and alienate property, both movable and immovable;
- 3.2.1.5 whose Members shall not be liable personally for the debts and liabilities of the Association.

3.3 MAIN OBJECTS

3.3.1 The main objects of the Association shall be to promote the communal interests of the Members and shall include but not be limited to;

- 3.3.1.1 The care, maintenance, upkeep and control of the Common Area, including all services constructed or rendered within the Common Area and to ensure that applicable Municipal and other services are supplied to "THE FARM";
- 3.3.1.2 The formulation and enforcement of Regulations at "THE FARM" including the imposition of fines and /or penalties;
- 3.3.1.3 The formulation and enforcement of aesthetic and environmental standards and Architectural Guidelines at "THE FARM";
- 3.3.1.4 The provision and maintenance of access and egress control and security measures at "THE FARM".
- 3.3.1.5 To own the Common Area and any improvements erected thereon;
- 3.3.1.6 The preservation of the low density residential nature of "THE FARM";
- 3.3.1.7 The management of the flow of storm water on the Common Area in strict adherence to the storm water management plan approved by the Development Tribunal: KwaZulu-Natal in terms of the Development Facilitation Act on 30 January 2006, a copy of which is annexed hereto as Appendix 2 and which is incorporated in this Constitution.
- 3.3.1.8 The promotion of the construction of a dwelling on each Unit Erf by no later than 31 DECEMBER 2012, to which end the Trustee Committee shall be entitled to impose upon and recover from a Member upon whose Unit Erf a dwelling had not been erected by 1 JANUARY 2013, a penalty consisting of payment of such monthly sum as shall be equivalent to three times the monthly levy payable at the time in terms of Clause 5 of this Constitution which penalty shall be recoverable from 1 JANUARY 2013 but which penalty may be suspended by the Trustee Committee in its sole discretion for a period of 7 (seven) months after commencement in the sole opinion of the Trustee Committee of the construction of a dwelling on such Unit Erf, Whereafter it shall be re-imposed if construction of a dwelling on such Unit Erf has by then not been completed and which penalty shall in any event lapse on upon the completion in the sole opinion of the Trustee Committee of the construction of a dwelling on such Unit Erf.

At the annual general meeting held on 29 July 2014 it was resolved by the members to defer all penalties for NON construction on Unit Erven to 31 December 2016

3.3.2 Without limiting the generality of the powers specifically referred to below, the Association shall, subject to this Constitution, have the power to do such acts as may be necessary to accomplish the objects referred to herein.

3.4 SUBDIVISION AND THE COMMON AREA

3.4.1 The Land shall not be further subdivided.

3.4.2 The Common Area or any portion thereof shall not be;

3.4.2.1 sold, let on a long term basis, alienated, otherwise disposed of or transferred from the Association; or

3.4.2.2 mortgaged;

3.5 MEMBERSHIP

3.5.1 Membership of the Association shall be compulsory for every registered owner of a Unit Erf, and the transferee of a Unit Erf shall be deemed to have become a Member of the Association, subject to all the obligations of membership, forthwith upon registration of transfer of a Unit Erf into his name;

3.5.2 Membership of the Association shall be limited to the owners of the Unit Erven provided that;

3.5.2.1 a person who is entitled to obtain a certificate of registered title to any such Unit Erf shall be deemed to be the registered owner thereof;

3.5.2.2 where any such owner is more that one person, all registered owners of that erf shall be deemed jointly and severally to be one Member.

3.5.3 When a Member has ceased to be the registered owner of the last Unit Erf registered in his name, he shall *ipso facto* cease to be a Member.

3.5.4 A Member shall be obliged to give the Association notice in writing forthwith, upon the sale of any Unit Erf owned by him and upon the transfer of the Unit Erf into the name of a purchaser or other transferee thereof.

3.5.5 The registered owner of a Unit Erf may not resign as a Member of the Association or cease to be a Member of the Association.

3.5.6 The rights and obligations of a Member shall not be transferable and every Member shall;

3.5.6.1 to the best of his ability further the objects and interests of the Association;

3.5.6.2 observe all Regulations;

- 3.5.6.3 be jointly liable to the Association with all the Members for all expenditure properly incurred by the Association;
 - 3.5.6.4 not be entitled, without the prior written approval of the Trustee Committee, to make any alterations to any building or Unit Erf or to do anything that will affect the architectural style or aesthetic appearance of the buildings within "THE FARM";
 - 3.5.6.5 be obliged to submit any building plan, whether such plan is for a new construction, renovation, alteration and/or addition, to the Architectural Review Committee for examination and approval prior to the submission of such plan to the Municipality or other authority for approval;
- 3.5.7 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 Unit Erf.

3.6 HOUSE RULES, ARCHITECTURAL GUIDELINES AND OTHER REGULATIONS

- 3.6.1 Members, their guests and their tenants and any person entering the Farm, shall be subject to the Regulations. The Regulations shall remain in force and effect until such time as they are varied in the manner detailed in 3.6.2 and 3.6.3 below.
- 3.6.2 Regulations in force at the date of the adoption of this Constitution shall be binding on the Members until revoked or altered as provided hereunder.
- 3.6.3 Any Regulations may be made, altered or revoked by the Trustee Committee provided, it announces such changes to Members in writing, giving the reasons and effective date.
- 3.6.4 Regulations govern, *inter alia*:
 - 3.6.4.1 the Members' rights of use, access to, occupation and enjoyment of the Common Area;
 - 3.6.4.2 the control of pets and other animals;
 - 3.6.4.3 the external appearance, the maintenance and use of the Common Area and the buildings or other improvements erected thereon;
 - 3.6.4.4 the external appearance and maintenance of buildings or other improvements or structures erected at "THE FARM" and Unit Erven, architectural and aesthetic style and design criteria, and the type of plants and maintenance of gardens;
 - 3.6.4.5 the execution of building work within "THE FARM";

- 3.6.4.6 the code of conduct at “THE FARM” required of builders, other contractors and Members wishing to execute work within “THE FARM”;
 - 3.6.4.7 the conditions of access to and egress from “THE FARM”;
 - 3.6.4.8 security within “THE FARM”;
 - 3.6.4.9 disputes and disciplinary measures relating to Members and others having access to “THE FARM” in relation to matters affecting “THE FARM”.
 - 3.6.4.10 the furtherance and promotion of the affairs of the Association;
 - 3.6.4.11 the management of the affairs of the Association;
 - 3.6.4.12 the conduct of the Trustee Committee;
 - 3.6.4.13 the conduct at “THE FARM” of Members and any person resident on or entering the estate;
 - 3.6.4.14 any matter that may assist the Association and its representative organs in administering and governing the activities of the Association generally;
 - 3.6.4.15 the utilisation of Erven and dwellings at “THE FARM”;
 - 3.6.4.16 the determination and imposition of fines and penalties which shall become a debt owing to the Association.
- 3.6.5 Notwithstanding 3.6.3 above, the Members, by Ordinary Resolution in general meeting, may
- 3.6.5.1 make any Regulation; or
 - 3.6.5.2 revoke or alter any Regulation.
- 3.6.6 Members shall be obliged to inform the members of their households, their guests, employees, invitees and/or tenants of the Regulations then in force and the Association shall be entitled, but not obliged, in its discretion, to act against such guests, employees, invitees and/or tenants, in addition to the Member, for any breach. The Members shall be responsible and liable for the acts and omissions of their guests, employees, invitees and/or tenants and indemnify the Association accordingly;
- 3.6.7 The Trustee Committee shall each year appoint an Architectural Review Committee consisting of at least one Trustee Member, one of whom shall be the Chairperson, and such other suitably qualified

persons, who need not be Members, as it may from time to time decide;

3.6.8 The Architectural Review Committee

3.6.8.1 shall, in any deliberations be bound by the Architectural Guidelines and other relevant Regulations in force at the time, and

3.6.8.2 may recommend changes to the Architectural Guidelines for consideration by the Trustee Committee and/or the Association in general meeting.

3.6.9 Submissions of plans referred to in 3.5.6.4 and 3.5.6.5 shall be dealt with timeously and any rejection or deferral shall be accompanied by the reasons therefor.

3.6.10 Dwellings on "THE FARM" shall be for single family occupation, whether by Members, their guests or tenants. Exceptions to this clause shall be subject to the prior written approval of the Trustee Committee.

3.7 MEMBERS' OBLIGATIONS

3.7.1 Each Member undertakes to the Association that he shall comply with;

3.7.1.1 the provision of this Constitution;

3.7.1.2 any Regulation;

3.7.1.3 any agreements entered into by the Association, which impose obligations on the Member;

3.7.2 Each Member shall observe all laws, ordinances, by-laws, regulations or rules imposed by any statutory or other relevant authority and, without detracting from the generality of this clause, shall observe and comply with the provisions of any relevant road traffic legislation as fully and effectually as though "THE FARM" private roads were public roads as defined in the legislation.

3.7.3 Each Member shall insure his dwelling at building replacement value annually, as determined by the Association in General Meeting.

3.7.4 Each Member shall punctually pay all assessment rates and other rates and charges imposed upon him by the Municipality and by the Ugu District Municipality.

4. TRUSTEE COMMITTEE

4.1 COMPOSITION OF THE TRUSTEE COMMITTEE

4.1.1 The affairs of the Association shall be managed and controlled by a Committee of Trustees (the Trustee Committee) which shall consist of not less than 5 (five) and not more than 7 (seven) members, these numbers including both Members elected by a General Meeting and Members co-opted in terms of sub-clause 4.3.1.5 of this Constitution.

4.1.2 Every Trustee Member must be a Member or a person permanently residing at "THE FARM", provided that the spouse of a Member may be a Trustee Member and provided further that in the event that the Member is a company, close corporation or trust, a duly nominated shareholder, director, member or trustee, as the case may be, may be a Trustee Member. Notwithstanding the provisions of this clause, not more than 1 (one) person may be appointed as a Trustee Member in respect of a Unit Erf.

4.1.3 In the event of a Trustee Member or, as the case may be, the spouse, company, close corporation or trust represented by him, ceasing to be a Member during his period of office or, if he was appointed based upon the fact that he permanently resides at "THE FARM" and ceases to do so during his period of office, he shall be entitled to remain a Trustee Member until the next Annual General Meeting of the Association, provided that the Trustee Committee shall be entitled, by ordinary majority of the Trustee Members, to require a Trustee Member as envisaged in this clause to resign.

4.2 NOMINATIONS FOR MEMBERS OF THE TRUSTEE COMMITTEE

4.2.1 The Trustee Committee shall call for the nomination of Members to fill vacancies on the Trustee Committee simultaneously with the notice of the Annual General Meeting referred to in 6.6

4.2.2 Written nominations for Trustee Members shall be lodged not later than 48 hours before each Annual General Meeting and shall be proposed and seconded by Members and accepted by the nominee; provided that in the event of insufficient nominations, nominations may also be made at the Annual General Meeting itself;

4.2.3 A list of nominees for vacant positions on the Trustee Committee shall be distributed to all Members not less than 28 (twenty eight) days before each Annual General Meeting. Each nominee may submit a brief curriculum vitae, which shall be distributed with the list of nominees.

4.3 FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

4.3.1 Subject to the express provisions of these presents to the contrary the Trustee Committee shall have full powers in the management and business affairs of the Association which powers shall, without limiting the generality of the aforementioned include the powers and right:

4.3.1.1 to do all that is necessary and appropriate to ensure that the objects of the Association are performed and fulfilled;

4.3.1.2 to exercise all powers of the Association and do such acts on behalf of the Association as may be exercised and done by the Association, save those that are required to be done by the Association in General or Special Meeting, and subject to any Regulation and/or restrictions as may be prescribed by the Association in General Meeting from time to time;

- 4.3.1.3 subject to the provisions of 3.6.3 and 3.6.5., to make, revoke or alter any Regulation, excluding Regulations relating to the preservation of the low-density residential nature of "THE FARM".
 - 4.3.1.4 to vary, revoke or alter any prior decisions and resolutions of the Trustee Committee from time to time;
 - 4.3.1.5 to fill a vacancy on the Trustee Committee by co-opting any person who qualifies to be a Trustee Member as defined in sub-clause 4.1.2 above. The co-option shall be effected by a majority vote of the Trustee Committee. A co-opted Trustee Member shall enjoy all the rights and be subject to all the obligations of a Trustee Member duly elected by Members. The Trustee Committee shall cause to have recorded the reasons for any co-option in the minutes of the relevant meeting.
 - 4.3.1.6 to be repaid all reasonable and *bona fide* expenses incurred by a Trustee Member in or about the performances of their duties as Trustee Member and/or as Chairperson, Vice Chairperson, 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. Any such expenses shall be disclosed as a separate item in the income statement of the Association.
 - 4.3.1.7 in the absence of any occupant of a Unit Erf where there is an imminent and serious threat to property and/or persons arising from that Unit Erf, to obtain entry, whether forcible or not, to such Unit Erf including any buildings thereon and to take whatever action is deemed necessary to rectify or remove such threat. Any reasonable expenditure incurred in this endeavour shall be for the account of the Member concerned and be a debt owing to the Association. The Member shall have no claim against the Association in this regard unless the Trustee Committee has acted with lack of *bona fides*, in breach of duty, in breach of trust or with gross negligence.
 - 4.3.1.8 to restrict, approve and control any commercial activity at "THE FARM".
- 4.3.2 The Trustee Committee shall appoint the Architectural Review Committee.
- 4.3.3 A Trustee Member and/or members of any sub-committees appointed by the Trustee Committee shall before:
- 4.3.3.1 the meeting of the committee concerned or;

- 4.3.3.2 entering into a contract on behalf of the Association in which the Member is directly or indirectly materially interested;

declare his full interest, if any, in respect of the subject matter of the proposed resolution or the proposed contract, in writing, to the committee concerned and shall not enter into such contract until such time as a resolution has been passed by the Trustee Committee or the sub-committee, as the case may be, approving thereof.

4.4 OTHER PROFESSIONAL OFFICERS

- 4.4.1 Save as specifically provided otherwise in this Constitution, the Trustee Committee shall at all times have the right to engage on behalf of the Association, and for its benefit, the services of accountants, auditors, attorneys, advocates, architects, engineers and any other professional person/s or firm and/or any other employee/s whatsoever, including a managing agent for any reasons thought necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide, subject to the provisions of these presents.

4.5 OFFICE BEARERS

- 4.5.1 After the holding of any Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number a Chairperson, Vice Chairperson, Treasurer and Secretary.
- 4.5.2 The office of the Chairperson, Vice Chairperson, Treasurer and Secretary shall *ipso facto* be vacated by the Trustee Member holding such office upon his ceasing to be a Trustee Member for any reason. No one Trustee Member shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall meet to appoint one of their number as a replacement for such office.
- 4.5.3 Save as otherwise provided in these presents, the Chairperson shall preside at all meetings of the Trustee Committee, and at all General Meetings, and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by the Trustee Committee or the Members, and permit or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 4.5.4 The Vice Chairperson shall assume the powers and duties of the Chairperson in the absence of the Chairperson, or his inability or refusal to act as Chairperson and shall perform such other duties as may from time to time be assigned to him by the Chairperson or the Trustee Committee.
- 4.5.5 The Trustee Committee may delegate some or all of the duties of the Treasurer or Secretary to a managing agent appointed by the Trustee Committee in terms of Clause 4.4.

4.6 DISQUALIFICATION AND ROTATION OF TRUSTEE COMMITTEE MEMBERS

4.6.1 Any of the following persons shall be disqualified from being appointed or acting as a Trustee Member;

4.6.1.1 a juristic person;

4.6.1.2 a minor or any other person under legal disability;

4.6.1.3 any person disqualified from being a director of company as envisaged in the Companies Act No. 61 of 1973;

4.6.1.4 an unrehabilitated insolvent;

4.6.1.5 being more than 3 (three) months in arrears with any debt due and payable to the Association.

4.6.2 A Trustee Member shall be deemed to have vacated his office upon his:

4.6.2.1 resignation from such office, in writing, being delivered to the offices of the Association;

4.6.2.2 death;

4.6.2.3 insolvency or the insolvency of the company, close corporation or trust represented by the said person;

4.6.2.4 being removed from office by resolution of the Members;

4.6.2.5 absence from three consecutive meetings of the Trustee Committee without leave of absence;

4.6.2.6 being disqualified on any basis envisaged in 4.6.1 above.

4.6.3 To encourage continuity, a limited number of Trustee Members shall be required to retire each year.

4.6.3.1 The Trustee Members, whether appointed at an Annual General Meeting or co-opted by the Trustee Committee, shall retire by rotation. At every Annual General Meeting at least 3 (three) of such Trustee Members shall retire from office if there are 5 (five) Trustee Members in office and at least 4 (four) Trustee Members shall retire if there are 6 (six) or 7 (seven) Trustee Members in office.

4.6.3.2 The Trustee Members to retire as aforesaid in each year shall be those who have been longest in office since their election or co-option, but as between persons who became Trustee Members on the same day as those to retire, unless they otherwise agree amongst themselves, shall be determined by lot.

4.6.3.3 A retiring Trustee Member shall be eligible for re-election.

4.6.4 Anything done by a person in the capacity of a Trustee Member and in good faith, prior to the recording of the fact that he is no longer a Trustee Member in the minute book of the Trustee Committee, shall be valid, notwithstanding the fact that he ceased to be a Trustee Member prior to the recording referred to.

4.6.5 A Trustee Member may be removed from office by an Ordinary Resolution of the Members.

4.7 INDEMNITY

4.7.1 All Trustee 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 Trustee Member, in his capacity as Chairperson or Vice Chairperson, whether defending any proceedings, civil, criminal or otherwise, notwithstanding the fact that such liability may have been incurred or action instituted pursuant to a failure to follow the procedures provided for in these presents alternatively based upon a misinterpretation of these presents.

4.7.2 Every Trustee Member, every servant, agent and employee of the Association, shall be indemnified by the Association against all claims, and it shall be the duty of the Trustee Committee out of the funds of the Association to pay all costs, losses and expenses, including travelling expenses, which such person or persons may incur or become liable for by any 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 Trustee Member, his duties as chairperson or Vice Chairperson. 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.

4.7.3 A Trustee Member in his capacity as such shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustee Members, whether in their capacities as Trust Members or as Chairperson or Vice Chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee 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 for any loss or damage occasioned by any error of judgement or oversight on the part of the Trustee Member concerned, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of the office/s of the Trustee Member concerned or in relation thereto, unless the same should happen through lack of *bona fides*, breach of duty or breach of trust or gross negligence of the Trustee Member concerned.

- 4.7.4 Notwithstanding the foregoing, the Association shall not be liable to compensate a Trustee member for any personal injury sustained by a trustee member during the course and scope of his duties as Trustee member.

5. FINANCIAL AFFAIRS

5.1 FINANCIAL YEAR END

- 5.1.1 The financial year-end of the Association shall be the last day of February, and may be changed only by Ordinary Resolution.

5.2 LEVIES

- 5.2.1 Levies shall be made on Members for the purpose of meeting all the expenditure which the Association has properly incurred, or to which it may be reasonably anticipated that the Association will necessarily or reasonably be put by way of:

5.2.1.1 maintenance, repair, improvement and keeping in order and good condition of the Common Area and perimeter wall surrounding "The Farm".

5.2.1.2 purchases of fixed or movable property;

5.2.1.3 erection of or alterations to buildings;

5.2.1.4 payment of all rates, insurance and other charges payable by the Association in respect of the Common Area;

5.2.1.5 payment for all services rendered to the Association;

5.2.1.6 payment for security services;

5.2.1.7 the provision of refuse removal services and sewerage disposal services;

5.2.1.8 insurance of the property of the Association;

5.2.1.9 payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, the Common Area and the Association's affairs and the execution of its objects.

- 5.2.2 In calculating levies, account shall be taken of income, if any, earned by the Association.

- 5.2.3 The Trustee Committee shall prepare a budget for the ensuing year and estimate the total levy required to cover the budget. The Trustee Committee may include in such levy an amount to be held in reserve to meet necessary and/or reasonably anticipated future expenditure not of an annual nature and any deficiency from the preceding year.

- 5.2.4 The total levy payable by all the Members shall be divided by 179 and borne in equal shares by the owner/s of the respective Unit Erven (including sectional title units), save in those instances where agreement has been concluded with the owner of a Unit Erf to pay a higher levy and provided further that the aforesaid number of 179 shall be increased by one (1) in respect of each additional dwelling in excess of two (2) erected on Portion 5 of Erf 1380 Shelly Beach or any subdivision thereof. Notwithstanding the foregoing, a Member shall in addition, pay a basic sanitation charge per Unit Erf as determined from time to time by the Trustee Committee in respect of the provision by the Association of sewerage disposal services, until the commencement of construction on a Unit Erf and the payment of a verge deposit to the Association in respect of construction on a Unit Erf, whichever shall be the earlier, whereafter such Member shall pay the full sanitation charge in respect of such Unit Erf as determined from time to time in the budget. Should a Member consolidate a Unit Erf with one or more other Unit Erven, such Member shall be obliged to continue to pay a levy in respect of each Unit Erf as it originally existed before consolidation.
- 5.2.5 The members shall approve the budget and the levies payable by members at the Annual General Meeting.
- 5.2.6 The levies referred to in 5.2.5 shall be payable by the Members annually or monthly in advance, provided that they may be paid in instalments on terms and conditions determined by the Trustee Committee.
- 5.2.7 The Trustee Committee may make special levies upon the Members for unbudgeted expenses, provided that:
- 5.2.7.1 The Trustee Committee shall announce the imposition of the levy and the reasons therefor as soon as the Trustee Committee has resolved to impose the same;
- 5.2.7.2 Where feasible, the Trustee Committee shall not commit itself to expenditure for which they intend to raise a special levy until 14 (fourteen) days after the announcement of the levy, calculated from the date of posting the notice. If, before this period has expired, a Special General Meeting is called by the Members in terms of clause 6.4.2 to discuss the levy, then the Trustee Committee shall not commit itself to the expenditure until it has been approved at the Special General Meeting, unless the situation is of such an urgent nature that no delay can be countenanced and immediate action is required;
- 5.2.7.3 Such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall think fit;
- 5.2.8 Any amount due by a Member by way of a levy shall be a debt due and payable by him to the Association.

- 5.2.9 The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member, without prejudice to the Association's right to recover arrear levies and any other amount due by a Member to the Association.
- 5.2.10 Levies paid by a Member shall not be repayable by the Association upon his ceasing to be a Member. Notwithstanding the provisions of this clause, the outgoing Member shall be entitled to cede to his successor in title the benefit in and to prepaid levies.
- 5.2.11 A Member's successor in title to a Unit Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Unit Erf, to pay the levy attributable to that Unit Erf. No Member shall transfer his Unit Erf unless the Member has at the date of transfer fulfilled all his financial obligations to the Association.
- 5.2.12 The levies due by a Member shall be paid without deduction or set-off, free of exchange at the offices of the Association or such other place as it may specify in writing from time to time.
- 5.2.13 A Member shall not be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum, if any, which shall be due and payable to the Association in respect of his membership thereof and the Association shall be entitled to discontinue rendering services supplied by the Association to any applicable Unit Erf 28 (twenty eight) days after posting by registered mail of written notice requiring payment, in the event that the payment required is not received within the period of 28 (twenty eight) days.

5.3 ACCOUNTS

- 5.3.1 The Association in a General Meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and/or books of the Association, and subject to such conditions and regulations, the accounts and/or books of the Association shall be open to inspection of Members during normal business hours.
- 5.3.2 At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income statement and, where appropriate, a statement of source and application of funds for the immediately preceding financial year of the Association together with a proper balance sheet made up as at the last financial year end of the Association. The financial statements referred to shall be accompanied by full and proper reports of the Trustee Committee and the Auditors, together with a budget for income and expenditure for the next financial year, and there shall be attached to the notice sent to Member convening each Annual General Meeting, as set forth in clause 6.2 below, copies of such accounts, balance sheet, reports and budget and/or any other documents required by law to accompany same.

5.4 AUDIT

- 5.4.1 Once at least every year, the financial statements of the Association shall be audited by the Auditors.

5.5 CESSATION OF MEMBERSHIP

- 5.5.1 A Member ceasing to be a Member for any reason shall not, nor shall any such Member's executor, curator, trustee or liquidator, have any claim upon or interest in the funds or other assets of the Association. The provisions of this clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrears of levies or other sums due from him to the Association at the time of his ceasing to be a Member.

6 MEETINGS

6.1 PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 6.1.1 Subject to any provisions of these presents, the Trustee Committee shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 6.1.2 Notwithstanding clause 6.1.1 meetings of the Trustee Committee shall be held at least once every quarter.
- 6.1.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be 3 (three) Trustee Members if the Trustee Committee consists of 5 (five) persons and 4 (four) persons if the Trustee Committee consists of 6 (six) or 7 (seven) persons.
- 6.1.4 The Chairperson shall preside as such at all meetings of the Trustee Committee, provided that, should at any meeting of the Trustee Committee the Chairperson not be present within 10 (ten) minutes after the time appointed for the holding thereof, then the Vice Chairperson shall act as Chairperson at such meeting, provided further that should the Vice Chairperson also not be present within 10 (ten) minutes of the time appointed for the holding of such meeting, those present of the Trustee Committee shall vote to appoint a chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 6.1.5 The Trustee Members shall cause minutes of all decisions taken at every Trustee Committee meeting to be prepared, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Trustee Members at the next monthly or quarterly meeting, as the case may be, of the Trustee Committee and thereafter signed by the chairperson. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance *mutates mutandis*, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee Minute Book shall be open for inspection at all reasonable times by a Trustee Member, the Auditors, the Members and the Municipality.
- 6.1.6 All competent resolutions recorded in the minutes of any Trustee

Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect or shall be binding upon the Members or any of the Trustee Committee unless such resolution is within the powers of the Trustee Committee.

- 6.1.7 Save as otherwise provided in these presents, the proceedings at any Trustee Committee Meeting shall be conducted in such reasonable manner and form, as the chairperson of the meeting shall decide.
- 6.1.8 A resolution signed by all the members of the Trustee Committee shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.
- 6.1.9 In the case of an equality of votes, the chairperson of that meeting shall have a casting vote in addition to his deliberative vote as Trustee Member.

6.2 ANNUAL GENERAL MEETING

- 6.2.1 The Association shall, within 4 (four) calendar months of the end of its financial year, hold a general meeting as its Annual General Meeting, in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices to be given in terms of clause 6.6 below.

6.3 AGENDA AT ANNUAL GENERAL MEETINGS

- 6.3.1 In addition to any other matters required by these presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:
 - 6.3.1.1 The consideration of the Chairperson's report;
 - 6.3.1.2 The consideration of the financial statements of the Association for the financial year of the Association preceding the date of such meeting;
 - 6.3.1.3 The consideration of the report of the Auditors.
 - 6.3.1.4 The consideration of a budget and the total levy payable pursuant thereto (as referred to in 5.2) for the calendar year during which such Annual General Meeting takes place, alternatively for the period up to the next Annual General Meeting;
 - 6.3.1.5 The consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting and the appointment of Auditors for the ensuing financial year;
 - 6.3.1.6 The election of the Trustee Committee;

6.3.1.7 The consideration of any resolutions of which due notice has been given and the voting upon any such resolutions;

6.3.1.8 The consideration of any resolution regarding procedural matters proposed for adoption by such meeting and the voting upon such resolution.

6.4 SPECIAL GENERAL MEETINGS

6.4.1 All General Meetings other than the Annual General Meeting shall be called Special General Meetings.

6.4.2 The Trustee Committee may, whenever it thinks fit, convene a Special General Meeting or Homeowners' Information Meeting as envisaged in 6.12 and shall be obliged to convene a Special General Meeting if called upon to do so by written request from Members owning not less than 30 (thirty) Unit Erven.

6.5 VENUE OF MEETINGS

6.5.1 General Meetings of the Association shall take place at such place/s as shall be determined by the Trustee Committee from time to time, provided that the venue shall be not more than 25km from "THE FARM".

6.6 NOTICE OF MEETINGS

6.6.1 An Annual General Meeting and a Special General Meeting called for the passing of a Special or Ordinary Resolution, shall be called on not less than 28 (twenty eight) days' notice in writing after the date of posting thereof. Members residing outside the borders of the Republic of South Africa for any portion of the year may elect to receive the notices of meetings, excluding draft resolutions and any other supporting documentation, by tele-facsimile or by e-mail. In each case, the notice shall be exclusive of the day on which it was posted or transmitted by tele-facsimile or by e-mail, and shall specify the resolution/s, the place, the date and the time of the meeting. In the case of a Special Resolution, the terms and effect of the resolution and the reasons for it shall be given, in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee, to such persons as are under these presents entitled to receive such notices from the Association.

6.6.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification or present any document required to be given or sent in terms of these presents, or the non-receipt of any such notice, notification or document shall not invalidate the proceedings at or any resolution passed at any meeting, provided that not more than 10% (ten per centum) of the persons entitled to receive the same are affected.

6.7 PROCEDURE AT GENERAL MEETINGS

- 6.7.1 The Chairperson shall preside as such at all General Meetings, provided that should he not be present within 10 (ten) minutes after the time appointed for the holding thereof, then the Vice Chairperson shall act as Chairperson at such meeting, provided further that should the Vice Chairperson also not be present within 10 (ten) 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 Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 6.7.2 The Chairperson 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 the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is in adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. If the adjournment is for less than 10 (ten) days, the Members shall not be entitled to any notice of adjournment or any notice of the business to be transacted.
- 6.7.3 Except as otherwise set forth in these presents, all General Meetings shall be conducted in accordance with generally accepted practice.

6.8 QUORUM

- 6.8.1 No business shall be transacted at any General Meeting unless a quorum is present when the meeting commences. The quorum necessary for the holding of any General Meeting shall be the presence, in person or by proxy such of the Members entitled to vote, as represents 25% (twenty five per centum) of the total votes of all Members of the Association entitled to vote, except where the purpose of the meeting is the passing of a Special Resolution, in which case the quorum shall be the presence, in person or by proxy such of the Members entitled to vote, as represent not less than 50% (fifty per centum) of the total votes of all Members of the Association entitled to vote.
- 6.8.2 If within 15 minutes from the time appointed for the holding of a General Meeting a quorum is not present, the meeting shall continue at the same place and Members present shall be a quorum, provided that at least 10% of the total number of Members are present either in person or by proxy, except that, if the meeting has been convened on the requisition of Members and a quorum is not present, the meeting shall be dissolved.

6.9 PROXIES

- 6.9.1 A Member may be represented at a General Meeting by a proxy, who need not be a Member of the Association. A Member may appoint the Secretary of the Association as a proxy, in which case the Member shall give instructions to the Secretary on how to vote. The instrument appointing a proxy shall be substantially in the form given in Appendix 1. Where a Member is a company, the instrument shall be signed by a

director, who shall warrant that he is duly authorised. Where the Member is a close corporation the instrument shall be signed by a member thereof who shall warrant that he is duly authorised and where the Member is a trust the instrument shall be signed by a trustee who shall warrant that he is duly authorised.

- 6.9.2 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 thereof shall be deposited at the office of the Association at any time but not less than 24 (twenty four) week day(Saturday, Sunday and public holidays excluded) hours before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposing to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution, and it may be cancelled at any time by the Member who has appointed the proxy by giving written notice to this effect to the Secretary of the Association.
- 6.9.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Committee at least one hour before the time fixed for the holding of the meeting.

6.10 VOTING

- 6.10.1 Unless otherwise provided, at every General Meeting every Member, in person or by proxy and entitled to vote, shall have one vote for each Unit Erf registered in his name provided that if a Unit Erf is registered in more than one name, they shall jointly have one vote.
- 6.10.2 Save as expressly provided for in these presents, no person other than a Member duly registered, 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 vote on any question, either personally or by proxy, at any General or Special Meeting.
- 6.10.3 At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or immediately on the declaration by the chairperson of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting. The Chairman shall call for persons holding more than one proxy to declare the number of proxies held and their votes shall be counted separately. The documentation of proxies shall be open to the meeting for inspection. When declaring the result of the vote, the Chairman shall specify, if requested to do so by any person entitled to vote at such meeting, the number of votes cast by Members present at the meeting and the number of proxy votes.
- 6.10.4 Notwithstanding the provisions of sub-clause 6.10.3 aforesaid, voting on the election of a chairperson of a General Meeting, if necessary, or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.

- 6.10.5 Every resolution and every amendment of a resolution proposed for adoption by a General Meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 6.10.6 Every resolution other than a Special Resolution or the amendment of a Special Resolution, shall be carried on a simple majority of all votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the General Meeting shall be entitled to a casting vote in addition to his deliberative vote. A Special Resolution shall be carried by not less than three fourths of the Members entitled to vote at the meeting who are present in person or by proxy.
- 6.10.7 Unless any Member present in person or by proxy at a General Meeting shall, before closure of the meeting, object to any declaration made by the chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting such declaration by the chairperson shall be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the chairperson of the meeting as to the result of any voting at the meeting.
- 6.10.8 The election of Trustee Members shall be decided on a poll unless otherwise resolved at that meeting and the Trustee Committee shall prepare suitable ballot papers prior to the meeting to facilitate the voting. In the case of an equality of votes, the outcome shall be decided by lot.

6.11 RESOLUTIONS:ORDINARY AND SPECIAL

- 6.11.1 A Special Resolution shall be required in relation to the matters referred to in 3.4 above and 8.1.2 below. All other matters can be decided by Ordinary Resolution.
- 6.11.2 For the specific quorum requirements for Ordinary and Special Resolutions, refer to clause 6.8.1 above, and for the specific voting requirements for Ordinary and Special Resolutions, refer to clause 6.10.6 above.

6.12 HOMEOWNERS' INFORMATION MEETING

- 6.12.1 The Trustee Committee shall convene a Homeowners' Information Meeting at least once per year approximately six months after the Annual General Meeting, unless otherwise instructed by a General Meeting of the Members provided that, in the event that a Homeowners' Information Meeting has been requisitioned or held at the instance of Members prior to the expiry of 6 (six) months after the Annual General Meeting, the obligation of the Trustee Committee in

terms of this clause to hold another Homeowners' Information Meeting shall fall away.

- 6.12.2 The Trustee Committee shall be obliged to convene a Homeowners' Information Meeting if requisitioned by Members as envisaged in 6.4.2.
- 6.12.3 The Homeowners' Information Meeting shall be for the purpose of an exchange of information amongst Members and the Trustee Committee and to afford Members the opportunity of discussing with the Trustee Members and other Members any matters pertaining to these presents or to the management of "THE FARM" and no binding resolution shall be taken at such a meeting.
- 6.12.4 The Trustee Committee shall give 28 (twenty eight) days notice of the date and venue of the meeting and an agenda, if appropriate, in which the Trustee Committee shall list any agenda item, which any Member wishes to have included. There shall be no other formalities and the meeting shall not require a quorum.
- 6.12.5 The chairperson shall preside over the meeting, or in the absence of the Chairperson the Vice Chairperson, or in the absence of the Vice Chairperson any other Trustee Member appointed by the Trustee Committee to do so.
- 6.12.6 If, within 10 (ten) minutes of the scheduled starting time of the meeting, no member is present at the meeting who is not a Trustee Member, the chairperson may call the meeting closed.

7 DISPUTES

7.1 BREACH

- 7.1.1 The Trustee Committee may, in its discretion, investigate any suspected or alleged breach by any Member or Trustee Member of these presents, in such reasonable manner, as it shall decide from time to time.
- 7.1.2 Should any Member:
- 7.1.2.1 fail to pay on the due date any amount due by that Member in terms of these presents or any regulation made hereunder and remain in default for more than 28 (twenty eight) days after posting by registered mail of written notice requiring payment; or
- 7.1.2.2 commit any other breach of any of the provisions of these presents and fail to commence to remedy that breach within a period of 28 (twenty eight) days after the posting by registered mail of written notice to that effect and complete the remedying of such breach within a reasonable time;

then and in either such event, the Trustee Committee shall be entitled on behalf of the Association, without prejudice to any other rights or

remedies which the Trustee Committee or Association or any other Member may have in law, including the right to claim any damages:

- 7.1.2.3 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of these presents, and;
 - 7.1.2.4 in the case of 7.1.2.2, to remedy the breach complained of and immediately recover all costs and expenses incurred by the Trustee Committee or the Association in so doing from such Member, and;
 - 7.1.2.5 deny the Member concerned the benefits of membership of the Association (including the right to vote), which Member shall nonetheless remain bound to perform his obligations in terms of these presents.
- 7.1.3 Should the Trustee Committee and/or the Association institute any legal proceedings against any Member pursuant to a breach by that Member of these presents or defend any proceedings brought by a Member against the Trustee Committee and/or the Association or any other Member may have in law, the Trustee Committee and/or the Association shall be entitled to claim from such Member all legal costs incurred by the Trustee Committee or the Association, including all attorney/client charges, tracing fees and collection commission. The Member shall be entitled to claim costs from the Association on the same basis when suing the Association or defending himself against a breach alleged by the Association.
- 7.1.4 Without prejudice to all or any of the rights of the Trustee Committee or the Association in terms hereof or otherwise, should any Member fail to pay any amount due by that Member by due date, then such Member shall pay interest thereon at the publicly quoted prime rate of interest charged by the Association's primary bankers from time to time plus 3% (three per centum) calculated from the due date for payment until the actual date of payment of such amount.

7.2 ARBITRATION

- 7.2.1 Subject to the provisions of 7.3 below, any dispute, questions or difference arising at any time between Members or between Members and the Trustee Committee relating to:
- 7.2.1.1 any matters arising out of these presents;
 - 7.2.1.2 the rights and duties of any of the parties mentioned in these presents;
 - 7.2.1.3 the interpretation of these presents;

shall be submitted to and be decided by arbitration on sufficient notice given by any party to the other parties who are interested in the matter in question;

- 7.2.2 Arbitration shall be held at a venue situated within a radius of 15 (fifteen) kilometres from the Magistrates Court, Port Shepstone informally and in the English language unless otherwise agreed between the parties and the arbitrator, and otherwise upon the provisions of the Arbitration Act No. 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 (twenty one) days after it has been demanded.
- 7.2.3 The parties to the dispute shall seek to appoint an arbitrator, who shall be any suitably qualified independent person mutually agreed between them or, if they are unable to reach agreement in 3 (three) days, an arbitrator appointed by the President for the Law Society for Kwa-Zulu Natal, or any body that may replace it from time to time.
- 7.2.4 The arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration shall be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 7.2.5 The decision of the arbitrator shall be final and binding and may be made an order of the Kwa-Zulu Natal Provincial Division of the High Court of South Africa upon the application of any party to the arbitration.

Notwithstanding anything to the contrary contained in 7.2.1 to 7.2.5, the Trustee Committee shall be entitled to institute legal proceedings by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of these presents or to recover levies, and/or other amounts due to the Association, or in relation to any other matter it may deem fit.

7.3 INFORMAL DISPUTE RESOLUTION

- 7.3.1 Any dispute referred to in 7.2 above may, by written agreement between the parties thereto, be submitted to and decided by a peer tribunal in which event the provisions of this sub-clause shall apply.
- 7.3.2 A peer tribunal shall consist of 3 (three) members of the arbitration committee as described in 7.3.3 below, determined by lot. Should any member so determined be unable or unwilling to act or, having accepted such appointment, cease to act for any reason whatsoever then his replacement shall be similarly determined by lot.
- 7.3.3 The arbitration committee shall consist of 10 (ten) persons nominated by the Trustee Committee provided that a member of the arbitration committee shall:
- 7.3.3.1 not be a serving Trustee Member;
 - 7.3.3.2 not be a person who has been disqualified from being appointed or acting as a Trustee Member of the Association;

- 7.3.3.3 be deemed to have vacated his office upon his:
- 7.3.3.3.1 resignation from such office, in writing, to the offices of the Association;
 - 7.3.3.3.2 death;
 - 7.3.3.3.3 insolvency or the insolvency of the company, close corporation or trust represented by the said person;
 - 7.3.3.3.4 being removed from office by resolution of Members;
 - 7.3.3.3.5 being disqualified on any of the bases reflected in 4.6.1 above;

7.3.4 The arbitration committee members shall retire by rotation. At every Annual General Meeting 5 (five) of the members of the arbitration committee shall retire from office.

7.3.5 The members of the arbitration committee to retire as aforesaid in each year shall be those who have been longest in office since their appointment, but as between persons who became members of the arbitration committee on the same day as those to retire, unless they otherwise agree amongst themselves, shall be deterred by lot.

7.3.6 Upon any vacancy occurring in the arbitration committee prior to the next Annual General Meeting, the vacancy in question may be filled by a person nominated by those remaining from time to time being members of the arbitration committee. Save for the aforesaid the appointment of members to the arbitration committee on an annual basis shall be made by resolution of the members of the Trustee Committee. The Trustee Committee shall be entitled to nominate and appoint retired members of the arbitration committee.

7.3.7 Any arbitration of the peer tribunal shall be held:

- 7.3.7.1 at "THE FARM", in the English language unless otherwise mutually agreed upon by the parties to the dispute;
- 7.3.7.2 in a summary manner, which shall not require the peer tribunal to observe:
 - 7.3.7.2.1 the usual formalities and procedures pertaining to legal proceedings;
 - 7.3.7.2.2 rules of evidence.

7.3.8 Any decision of a peer tribunal shall be final and binding upon the parties thereto.

7.4 SERVICE OF NOTICES

- 7.4.1 Unless a Member shall have nominated an alternative domicilium, being a physical address and a postal address in the Republic of South Africa, by written notice delivered to the Association, a Member's *domicilium citandi et executandi* for all purposes in terms hereof shall be at any Unit Erf owned by the Member.
- 7.4.2 Any notice, acceptance, demand or other communication properly addressed by the Association to the Member's domicilium in terms hereof for the time being and sent by pre-paid registered post to the postal address nominated by the Member or delivered by hand to the Unit Erf owned by the Member, shall be deemed to be received by the latter on the fifth day after the day following the date of posting thereof, if sent by prepaid registered post, or on the date of delivery thereof by hand to the Unit Erf owned by the Member, as evidenced by an affidavit of the person so delivering the notice. This provision shall not be construed as precluding the utilisation of other means and methods (including telefaxcsimile or e-mail) for the transmission or delivery of notices, acceptances, demands and other communications, but no presumption shall arise if such other means or method is used.
- 7.4.3 A member shall not be entitled to have notice served upon him at any address outside the Republic of South Africa.

8 GENERAL

8.1 ADOPTION AND AMENDMENT OF THE CONSTITUTION

- 8.1.1 The provisions hereof and of the Regulations shall come into force with the written consent of the first four transferees of the Land, namely Shelley Bay Villas CC, (Reg. No. CK1992/029455/23), Shelley 6 Property Developers CC, (Reg. No. 2003/102025/23), E W Rôhrs Trust, (No. IT 88/85) and Shelley View Properties CC (No. 2003/048338/23).
- 8.1.2 This Constitution, or any part thereof, as contained herein, shall not be repealed or amended, save by a Special Resolution.

We, the undersigned, hereby adopt the above Constitution and the Regulations namely the House Rules and the Architectural Guidelines (also called General Forms and Construction).

DATED at SHELLY BEACH on 30th April 2005.

for: Shelley Bay Villas CC

for: Shelley 6 Property Developers
CC

Appendix 1

“THE FARM” HOMEOWNERS’ ASSOCIATION

PROXY

I, _____ of

_____ of

or failing him/her _____ of

as my proxy to vote for me/us and on my/our behalf at a general meeting of the Association to be held on

the _____ day of _____ which will be held for the purpose of considering, and if deemed fit, passing with or without modification, the resolutions to be proposed thereat and at any adjournment thereof; and to vote for and/or against the resolution and/or abstain from voting in accordance with the following instructions:

	In Favour	Against	Abstain
Resolution No.
Resolution No.
Resolution No.
Resolution No.

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

Take notice that unless otherwise instructed in this instrument my proxy shall be entitled to vote as he wishes and to vote in respect of any modification to any resolution an/or any other resolution, not referred to hereinbefore, proposed at the aforesaid meeting and/or at any adjournment thereof..

Signed this _____ day of _____

Note: A Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his/her stead. Such proxy need not be a Member of the Association.

Rules regarding PROXIES are those as set down in clause 6.9 of the Constitution of the "THE FARM" Homeowners Association.

SIGNATURE