

CONSTITUTION OF THE GREY STONE VILLAGE PROPERTY OWNERS' ASSOCIATION

1. NAME

The name of the Association is

GREY STONE VILLAGE PROPERTY OWNERS' ASSOCIATION

2. DEFINITION

In this Constitution, unless the context indicates the contrary:

- 2.1 "the Association" shall mean the GREY STONE VILLAGE Property Owners' Association;
- 2.2 "the Township Area" shall mean the Township Area situated on a portion of Erf 23582 Kuils River as shown on the diagrams annexed hereto as Annexure "A";
- 2.3 "the Developer" shall mean Amphoria (Pty) Limited (Registration Number: 1968/000595/07) or its successors in title;
- 2.4 "person" shall include a Company, Close Corporation, Club, Partnership, Trustees of a Trust, or other Association of persons entitled in law to hold title to immovable property;
- 2.5 "member" shall mean a member as defined in Clause 5.1 hereof;
- 2.6 "sign" shall include the reproduction of a signature by lithography, printing or any kind of stamp or any other mechanical or electronic process, and "signature" has the corresponding meaning;

- 2.7 "local authority" shall mean the local authority having jurisdiction over the Township Area, which at date of approval of the development thereof was the City of Cape Town;
- 2.8 "building opportunities" shall mean the following allocations per erf , which allocations are used proportionally to determine the amounts of the subscriptions payable by the members of the Association, whether in terms of this Constitution, or the constitution of the Master Property Owners' Association, referred to in clause 22.1, or the constitution of the Kuils River Golf Estate Property Owners' Association, referred to in clause 22.2:
- 2.8.1 an erf which enjoys single residential use rights shall be regarded as a single (one) building opportunity; and
- 2.8.2 an erf upon which a Sectional Titles Scheme has been registered shall be regarded as having as many building opportunities as the number of units (as defined in the Sectional Titles Act, 95 of 1986) comprising the relevant scheme.
- 2.9 Words importing the singular number shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and neuter genders and the neuter gender shall include the masculine and feminine genders;
- 2.10 "days" shall mean all calendar days.

3. **HEADNOTES**

The headnotes to the Clauses in this Constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

4. **OBJECTS OF THE ASSOCIATION AND THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW OF 2015**

- 4.1 The objects of the Association in terms of this, its Constitution, are:
- 4.1.1 through its Executive Committee (EXCOM) who are also referred to as trustees hereinafter to promote and enforce standards for community-living in the Township Area in such a way that members may derive the maximum collective benefit therefrom and to act in the collective mutual interest of its members;
- 4.1.2 to own ,control, administer and manage the private open spaces and private streets and security, engineering and other services and amenities arising from the subdivision and buildings under the Association's control of the Township Area for the

mutual benefit of members, and the Association, through EXCOM shall have the power to do such acts as are necessary and reasonably required to give effect to the provisions of this Constitution, which acts shall include, but not be limited to, the following :

- 4.1.2.1 to provide services such as security to the Township Area;
- 4.1.2.2 to maintain the communal facilities and private open spaces within the Township Area and private roads (namely Weaver Lane, Siskin Crescent and Pipit Street) for the benefit of the members;
- 4.1.2.3 to maintain communal buildings (including the boundary wall around the Township Area) for the benefit of the members;
- 4.1.2.4 to enforce the provisions of the Constitution and to make and enforce rules (and penalties for non-compliance) and provide building design guidelines to promote and enforce standards for community living in the Township Area;
- 4.1.2.5 to maintain basic aesthetic standards in the Township Area;
- 4.1.2.6 to enforce conditions of subdivision approval or management plans listed in the conditions and to enforce compliance by any member with a building plan approved in terms of this Constitution and to comment to the local authority on any non-compliance of building plans by any member;
- 4.1.2.7 to ensure compliance with any environmental impact conditions or other terms and condition imposed by the local authority or other government authority in the process of approving the subdivision and /or rezoning which created the Township Area;
- 4.1.2.8 to the extent not already stated the Association shall be responsible to maintain all internal roads, private open space and internal services including street lighting if installed by the Developer.
- 4.1.3 to the extent not already stated to provide for the control over and maintenance of the Buildings, Internal Roads, Open Spaces, Services and Amenities arising from the approval of the subdivision which created the Township Area.
- 4.1.4 to the extent not already stated to make and impose rules binding on all members of the Association and impose fines on any member who violates the rules of the Association or this Constitution.

- 4.1.5 to maintain all landscaping within the Township Area.
 - 4.1.6 to control the transfer of erven in the Township Area and the conditions imposed by the local authority and conditions imposed in the agreement of sale (if any) concluded with the first owner of an erf, subject to clause 9.4
 - 4.1.7 to prohibit the transfer of erven unless the consent of the Association has been obtained within their sole discretion.
 - 4.1.8 to regulate at least one yearly meeting with it's members.
- 4.2 The terms and conditions of Sections 61, 62 and 63 of the City of Cape Town Municipal Planning By-Law of 2015 are hereby incorporated into this Constitution as if specifically set out. To the extent that there is any conflict between this Constitution and the aforesaid By-Law the aforesaid By-Law shall apply.

5. **MEMBERS**

- 5.1 The Association shall be organised without capital, and membership thereof shall be evidenced by registered ownership in the Deeds Registry in Cape Town of one or more erven in the Township Area. Upon registration of ownership, membership of the Association shall be automatic, and members shall be obliged to comply with the provisions of this Constitution. No person shall be entitled to cease to be a member of the Association while remaining the registered owner of an erf in the Township Area.
- 5.2 Each member shall be entitled to ONE (1) vote for each erf owned in the Township Area. Ownership of an erf in undivided shares shall constitute only one membership, which membership shall be represented by one individual in terms of the provisions of Clause 8.10 hereof and which registered owners shall jointly and severally be liable for the members obligations in terms of this Constitution.
- 5.3 Membership shall be transferred by the registration of a Deed of Transfer in the Deeds Registry at Cape Town, passing transfer of one or more erven in the Township Area to the new member. Membership is accordingly binding on the owner of any erf in the Township Area and such owner's successor in title and this obligation shall be incorporated / included in the Title Deed to each erf in the Township Area. Any Power of Attorney to pass transfer shall (to the extent permitted by Deeds Office practice) include the following words "*The subject property may not be alienated without the prior written consent of the Association of which the Transferee or his successors in title shall become a Member*".

- 5.4 All members are jointly liable for all the expenditure of the Association and every member shall pay a monthly subscription to the Association, the amount of which shall be determined by EXCOM in terms of Clause 10 hereof. The subscription so determined shall be payable in respect of each erf owned by a member. Any fine imposed on a member by the Association shall be deemed to be an additional subscription immediately payable by the member.
- 5.5 If the party taking transfer is not a natural person, it will be obliged prior to transfer to nominate a natural person to represent it and to notify the Association of the full names, street address and postal address of the said representative, failing which the Association may choose the identity of the representative from amongst the directors, members, trustees, partners or similar office bearers of the owner.
- 5.6 The Developer shall be a member of the Association until it no longer owns any stands in the township.

6. **EXERCISE OF POWERS OF THE ASSOCIATION**

The Association shall have the power to deal with all matters forming part of the objects of the Association as set out in clause 4 above and the powers of the Association other than those to be exercised by the members in General Meeting, shall be exercised by the Executive Committee (EXCOM).

7. **EXECUTIVE COMMITTEE**

7.1 **Composition**

- 7.1.1 The number of EXCOM members shall be determined from time to time by the members of the Association in General Meeting, provided that there shall not be less than THREE (3) nor more than SEVEN (7) EXCOM members. Furthermore, the Developer's right to appoint members to EXCOM, as contained in clause 13 hereof, is, however, restricted in that the Developer shall only be entitled to appoint a maximum of FOUR (4) EXCOM members to ensure that there shall at all times after the first Annual General Meeting be THREE (3) vacancies on EXCOM to be filled by members.

- 7.1.2 The first EXCOM members shall be:

ANTON CORNELIUS MULDER

HARRY ELDRED SMITH

who shall hold office until the first Annual General Meeting of the members of the Association when the said EXCOM members shall retire but be eligible for

reappointment by the Developer in terms of Clause 13 hereof and at which first Annual General Meeting the members shall be entitled to elect the first members to EXCOM.

7.2 **Election at Annual General Meeting**

7.2.1 EXCOM members shall be elected annually at the Annual General Meeting and shall, subject to the provisions herein contained, remain in office until the following Annual General Meeting.

7.2.2 Except in the case of the Developer's appointees, only members shall be eligible for election to EXCOM.

7.2.3 Nominations of candidates for election to EXCOM at any meeting shall be in writing, signed by TWO (2) members and accompanied by the written consent of the candidate nominated, and must be received at the domicile of the Association not later than FORTY-EIGHT (48) hours before the meeting.

7.2.4 EXCOM members may fill any vacancy in their number or co-opt any additional member, provided that the number of EXCOM members shall not exceed SEVEN (7) and provided further that a vacancy of an EXCOM member appointed by the Developer may only be filled by a person appointed by the Developer and a vacancy of a member may only be filled by another member. Any EXCOM member so appointed or co-opted shall hold office until the next Annual General Meeting when he shall retire and be eligible for re-election as though he had been elected at the previous Annual General Meeting.

7.2.5 No members may be elected to EXCOM if such member is in default of any obligation to the Association or the Constitution.

7.3 **Vacation of Office**

An EXCOM member shall cease to hold office as such if :

7.3.1 by notice in writing to EXCOM, he resigns his office;

7.3.2 he is or becomes of unsound mind;

7.3.3 he surrenders his estate as insolvent or his estate is sequestrated;

- 7.3.4 he is convicted of an offence which involves dishonesty;
- 7.3.5 he absents himself from THREE (3) consecutive meetings of EXCOM without special leave of absence from EXCOM;
- 7.3.6 by resolution of a General Meeting of the Association, he is removed from his office;
- 7.3.7 he ceases to be a member;
- 7.3.8 he is in arrears with payment of his monthly levies or in violation of the any rule or this Constitution for a period of 3 months.

7.4 **Meetings and Procedures thereat**

- 7.4.1 EXCOM members may give notice convening meetings, meet together for the dispatch of business, adjourn or otherwise regulate their meetings as they think fit. It shall not be necessary to give notice of a meeting to any EXCOM member for the time being absent from the Republic.
- 7.4.2 An EXCOM member may at any time convene a meeting of EXCOM by giving to the other EXCOM members no less than TEN (10) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in case of urgency such shorter notice as is reasonable in the circumstances may be given.
- 7.4.3 TWO (2) EXCOM members shall form a quorum where EXCOM consists of either THREE (3) or FOUR (4) members; THREE (3) EXCOM members shall form a quorum where there are FIVE (5) or SIX (6) members, and where there are SEVEN (7) EXCOM members, FOUR (4) members shall form a quorum, provided that, if there are members on EXCOM at the relevant time, at least ONE (1) such member must be present to form a quorum. No quorum shall exist unless at least one (1) EXCOM member appointed by the Developer is present. If at any meeting a quorum is not present within THIRTY (30) minutes of the appointed time of the meeting, such meeting shall stand adjourned to the third business day thereafter at the same time at which time the EXCOM members present shall be deemed to constitute a quorum.
- 7.4.4 If the number of serving EXCOM members falls below the number necessary to form a quorum, the remaining EXCOM members may continue to act, but only for the purpose of convening a General Meeting of members.

- 7.4.5 At the commencement of the first meeting of EXCOM members after each Annual General Meeting, EXCOM members shall elect a Chairman from their number who shall hold office as such until the end of the next ensuing Annual General Meeting provided that should the Chairman during his term of office resign or cease to be a member of EXCOM, the members of EXCOM shall elect a new "Chairman" and such Chairman shall hold office for the remaining period in respect of which the first mentioned Chairman was elected and he shall have the same rights of voting.
- 7.4.6 All matters at any meeting of EXCOM shall be determined by a majority of those present and voting.
- 7.4.7 EXCOM members may from time to time appoint a person to be Secretary of the Association, to fulfil the normal functions of a Secretary and, inter alia, to attend all meetings and keep Minutes thereof.
- 7.4.8 Alternate EXCOM Members
- 7.4.8.1 Each EXCOM member may by notice to the Association: -
- 7.4.8.1.1 nominate any one or more than one person in the alternative [including his co-EXCOM members] to be his alternate subject to the approval of the other EXCOM members of that alternate, which approval shall not be unreasonably withheld;
- 7.4.8.1.2 at any time terminate any such appointment.
- 7.4.8.2 The appointment of an alternate EXCOM member shall terminate: -
- 7.4.8.2.1 when the EXCOM member to whom he is an alternate member:
- 7.4.8.2.1.1 ceases to be an EXCOM member; or
- 7.4.8.2.1.2 terminates his appointment; or
- 7.4.8.2.2 if the EXCOM members reasonably withdraw their approval to his appointment.
- 7.4.8.3 An alternate EXCOM member shall: -

- 7.4.8.3.1 only be entitled to attend or act or vote at any meeting of EXCOM members if the EXCOM member to whom he is an alternate is not present, provided that: -
 - 7.4.8.3.1.1 he may attend a meeting of EXCOM members at which the EXCOM member to whom he is an alternate is present if the other EXCOM members agree thereto;
 - 7.4.8.3.1.2 any person attending any meeting of EXCOM members as an EXCOM member in his own right and/or as an alternate for one or more EXCOM members shall have one vote in respect of each EXCOM member whom he represents, including himself if he is an EXCOM member;
- 7.4.8.3.2 only be entitled to sign a resolution passed otherwise than at a meeting of EXCOM members in terms of this Constitution if the EXCOM member to whom he is an alternate is then absent from the town in which the domicilium is situate, or if incapacitated;
- 7.4.8.3.3 subject to the foregoing, generally exercise all the rights of the EXCOM member to whom he is an alternate in the absence or incapacity of the EXCOM member;
- 7.4.8.3.4 in all respects to be subject to the terms and conditions existing with reference to the appointment, rights and duties and the holding of office of the EXCOM member to whom he is an alternate but shall not have any claim of any nature whatever against the Association for any remuneration of any nature whatsoever.

7.5 **Powers of EXCOM**

The management and administration of the Association shall vest in EXCOM which may exercise all such powers of the Association and do, on behalf of the Association, all such acts including the making of rules and building design guidelines as may be exercised and done by the Association itself and as are not by its Constitution required to be exercised or done by the Association in General Meeting. Without in any way limiting the generality of the foregoing, such powers shall include, but not be limited to, the following:

- 7.5.1 the determination of what constitutes appropriate standards for community-living and the maintenance of properties in the Township Area;
- 7.5.2 the performance of such acts as are necessary to accomplish the objects expressed or implied herein;

- 7.5.3 the investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;
- 7.5.4 the operation of a banking account with all powers required by such operations;
- 7.5.5 the making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association;
- 7.5.6 the employment and payment of agents, servants, auditors and any other parties;
- 7.5.7 to institute proceedings in the name of the Association, to defend actions in the name of the Association and to appoint legal representation for this purpose; in particular and without derogation from the generality of the foregoing, the power to sue shall include the right to sue members for the payment of arrear monthly subscriptions and/or for the carrying out of their obligations in terms of the Constitution, the rules and building design guidelines;
- 7.5.8 the levying of a monthly subscription payable by members as provided in Clauses 5 and 10 hereof and subject to the said Clauses, the determination from time to time and as frequently as they may consider necessary or expedient, of the amount of the subscription to be paid to the Association by its members and recover expenditure incurred in connection with the Association from its members;
- 7.5.9 to prescribe the architectural style and the materials to be used in respect of any buildings to be erected or in respect of any alterations or additions to be carried out to existing buildings and in particular to control the exterior design of such buildings and the materials and colours used so as to ensure an attractive, aesthetic and pleasing character to the buildings in the Township Area. In this regard EXCOM shall be entitled to provide building design guidelines, as set out in Annexure "B" hereto, which may be amended from time to time as EXCOM may deem fit and to which building design guidelines all members shall be subject to. Should any disputes rise regarding the architectural style and materials to be used, EXCOM shall be entitled to appoint an aesthetic committee to determine the architectural style and materials to be used;
- 7.5.10 the provisions of 7.5.9 shall apply mutatis mutandis to other site works on a member's property, including, but not limited to, fences, pergolas, boundary walls and paving;
- 7.5.11 the provisions of 7.5.9 and 7.5.10 shall be applicable to the Developer.

- 7.5.12 ensure that all members maintain their stands and improvements thereon in a clean and tidy condition and adhere to the specifications imposed by EXCOM;
- 7.5.13 administer general security arrangements on the Township Area with particular reference to access control of the public and the nature and type of security to be provided from time to time, excluding the security arrangements of any particular private building or unit;
- 7.5.14 enact any rule, regulation or guideline necessary to ensure the orderly compliance by owners of any of the objects of the Association, and to amend and to repeal any rules, regulations, guidelines or building design guidelines so made, which rules, regulations, guidelines or building design guidelines so made, shall be binding upon all members by virtue of their membership;
- 7.5.15 promote and enforce standards for community living in the township in order to enhance and preserve the nature of the development in such a way that members may derive the maximum collective benefit therefrom;
- 7.5.16 promote all facets of nature conservation to control the growth of alien vegetation and to encourage the reintroduction of indigenous flora and fauna in the Township Area;
- 7.5.17 act as a liaison between the members and the local authority regarding landscaping and aesthetic usage of the Township Area;
- 7.5.18 cause proper books of accounts of the administration and finance of the company to be kept at the domicillium of the Association or such other place or places as it may think fit;
- 7.5.19 convene Annual General Meeting and submit to the Annual General Meeting books of account, balance sheets and reports of the Association;
- 7.5.20 ensure that once a year the accounts of the Association be examined and the correctness of the income and expenditure account and the balance sheets ascertained by the auditors.

7.6 **Validity of Acts of EXCOM Members**

Any act performed by EXCOM members shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or

continuance in office of any EXCOM member, be as valid as if such EXCOM member has been duly appointed in office.

7.7 **Remuneration**

Neither EXCOM members nor the Developer shall be entitled to any remuneration from the Association other than such remuneration as might be approved or authorised at an Annual General Meeting of the Association.

7.8 **Indemnity**

No EXCOM member shall be liable to the Association or any member thereof, or to any other person whomsoever for any act or omission by himself, by the Association or by its servants or agents. An EXCOM member shall be indemnified by the Association against any loss or damage suffered by him in consequence of any purported liability, provided that such EXCOM member has, upon the basis of information known to him, or which should reasonably have been known to him, acted in good faith and without gross negligence.

8. **MEETINGS**

- 8.1 Annual General Meetings shall be held once in every year at such a time and place as may be determined by EXCOM, but so that no more than FIFTEEN (15) months shall be allowed to elapse between any TWO (2) such successive meetings. The business to be done at the Annual General Meeting shall include:
 - 8.1.1 a report on the affairs of the Association, which report is to be submitted by EXCOM and which report shall be available for inspection at the domicilium citandi et executandi of the Association and such other address as may be determined by EXCOM at least SEVEN (7) days prior to the Annual General Meeting;
 - 8.1.2 the election of members to EXCOM;
 - 8.1.3 the adoption of the Balance Sheet and accounts;
 - 8.1.4 the consideration of any Resolutions concerning the affairs of the Association of which due notice has been given;

8.1.5 any other business.

8.2 **Ordinary General Meeting**

EXCOM may call an Ordinary General Meeting whenever it thinks fit. Ordinary General Meetings shall also be called upon the written request of not less than TEN (10) members, directed to the Chairman of EXCOM.

8.3 **Notice of meetings**

An Annual General Meeting shall be convened by TWENTY-ONE (21) days' notice in writing at the least and the Minutes of the previous Annual General Meeting shall be sent to members together with the notice convening the meeting. An Ordinary General Meeting shall be called by FOURTEEN (14) days' notice in writing at the least. 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 the general nature of the matter to be discussed; provided that any meeting shall, notwithstanding that it is called by shorter notice than that specified, be deemed to have been correctly called if it is so agreed by FIFTY ONE PERCENT (51%) of the members present.

8.4 **Validity of Meeting**

The accidental omission of giving notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, shall not invalidate the proceedings of that meeting. The provisions of this Clause shall not apply to EXCOM meetings.

8.5 **Quorum**

No matter shall be discussed at any Ordinary General Meeting unless a quorum is present when the meeting commences. For all purposes, the quorum shall be not less than TWENTY (20) or half of the total number of members, whichever shall be the lesser, and consisting of members present in person or represented by proxy.

8.6 **Adjournment**

If within a half hour from the time appointed for the holding of a meeting, a quorum is not present, the meeting, if convened on the request of members, shall be dissolved. In any other case it shall stand adjourned to the same day one week later or if that

day is a public holiday, the next business day, at the same time and place 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. All members of the Association shall be given notice of such adjourned meeting. No business shall be transacted at the resumption of any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

8.7 **Chairman**

The Chairman of EXCOM shall preside at every General Meeting, but if there be no such Chairman, the members present shall choose a Chairman from the members of EXCOM, or if no such members are present, they shall choose some member present to be Chairman of the meeting.

8.8 **Votes**

At all General Meetings a Resolution put to the vote of the meeting shall be decided on a poll which shall be taken immediately in accordance with the following provisions, subject, however, to the Developer's rights pertaining to voting at General Meetings, as contained in Clause 13 hereof:

- 8.8.1 each member present in person shall have ONE (1) vote for every erf registered in his name;
- 8.8.2 each person present as proxy for a member shall have ONE (1) vote for every erf registered in the name of the member for whom he is proxy;
- 8.8.3 each member and person present as proxy for a member shall orally announce how he casts each vote to which he is entitled as aforesaid or by the show of hands, whichever the Chairman may decide;
- 8.8.4 all resolutions shall be by simple majority of those members present in person or proxy at the meeting and voting;
- 8.8.5 no person other than a member, duly registered and who shall have paid every levy and other sum due by it to the Association, shall be entitled to be present or to vote at any General Meeting;
- 8.8.6 no objection shall be raised to the advisability of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed

at such meeting shall be valid for all purposes. Any objection made in due time shall be referred to the Chairman of the meeting whose decision shall be final and conclusive;

8.8.7 the Chairman of the meeting shall count the votes cast for and against the Resolution and shall declare it carried or lost as the case may be;

8.8.8 a declaration by the Chairman of the result of the poll and an entry thereof in the Minute Book of the Association shall be conclusive evidence of that fact.

8.9 **Incapacity**

Should any member be declared incapable of managing his own affairs, or a prodigal or insolvent, or in the case of a Company, placed under Judicial Management, or into liquidation, such member shall be represented by his Curator Bonis, Trustee, Judicial Manager or Liquidator as the case may be, who shall be entitled to vote on his behalf, either personally or by proxy.

8.10 **Co-Ownership**

If two or more persons are joint registered owners of an erf, then in voting upon any question, the vote of the senior, who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other registered owners of the erf, and for this purpose, seniority shall be accepted to the exclusion of the votes of the other registered owners of the erf, and for this purpose, seniority shall be determined by the dates of birth of the joint owners as recorded in Deeds Registry, Cape Town. In the event of an erf being jointly owned by a natural person and a Company, then in such event the vote of the natural person, whether in person or by proxy, shall be accepted to the exclusion of the votes of the directors of the Company.

8.11 **Proxy**

8.11.1 Votes may be given either personally or by proxy.

8.11.2 The instrument appointing a proxy shall be in writing by the appointer in any form approved by EXCOM, and failing such determination it shall be in writing, shall effect the full name of the appointer and the full name of the holder of the proxy as well as the property registered in the name of the appointer and shall indicate the resolutions in respect of which the proxy is to vote and whether the proxy is to vote in favour or against the resolution or to abstain. The proxy shall be signed by the appointer and his signature shall be dated and witnessed.

- 8.11.3 The instrument of appointing a proxy, together with the Power of Attorney (if any) under which it is signed or a notarially certified copy thereof shall be deposited at the domicilium citandi of the Association at least TWENTY FOUR (24) hours before the time appointed for holding the meeting, or adjourned meeting, at which the person named in such instrument proposes to vote, otherwise the person so named shall not be entitled to vote in respect thereof. Notwithstanding the aforesaid, EXCOM may determine from time to time that such documents may be lodged at any time before or during the meeting.
- 8.11.4 A proxy form shall: -
- 8.11.4.1 be valid at every resumption of an adjourned meeting to which it related, unless the contrary is stated thereon;
- 8.11.4.2 not be used at the resumption of an adjourned General Meeting if it could not have been used at the General Meeting from which it was adjourned for any reason other than that it was not lodged timeously for the meeting from which the adjournment took place;
- 8.11.4.3 not be valid after the expiry of 2 [TWO] months after the date when it was signed unless it specifically provides otherwise.
- 8.11.5 A vote cast or act done in accordance with the terms of a proxy form shall be deemed to be valid notwithstanding: -
- 8.11.5.1 the previous death, insanity, or any other legal disability of the person appointing the proxy, or
- 8.11.5.2 the transfer of a property in respect of which the proxy was given, unless notice as to any of the abovementioned matters shall have been received by the Association at the domicilium or by the chairman of the meeting at the place of the General Meeting, if not held at the domicilium, was cast.
- 8.11.6 The appointee appointed in terms of a proxy must be a member of the Association.
- 8.12 **Companies/Trusts/Close Corporations**

Any Company which is a member of the Association may, by Resolution of its Directors or other governing body, authorise such person as it thinks fit to act as its

representative at any meeting of the Association and the person so authorised shall be entitled to exercise the same powers on behalf of the Company which he represents as that Company could exercise if it were an individual member of the Association. The foregoing provisions shall apply mutatis mutandis in the case of a Trust or a Close Corporation.

8.13 **Resolutions**

A resolution in writing signed by all members entitled to receive notice of and to attend and vote at a General Meeting shall be as valid and effective as if it had been passed at a General Meeting properly called and held. Any such resolution may consist of several documents, each of which may be signed by one or more members and shall be deemed to have been passed on the date on which it was signed by the last member who signed it, unless a statement to the contrary is made in that resolution.

8.14 **First Meeting**

8.14.1 The Developer shall be required to convene the first General Meeting of the Association in accordance with Section 61(6) of the City of Cape Town Municipal Planning By-Law of 2015.

8.14.2 Members of the Association shall elect the trustees of the Association at the first meeting.

8.15 **Minutes to the Local Authority**

The Association shall be obliged to notify the local authority (City of Cape Town) that the first meeting has taken place and submit copies of the Minutes of the first General Meeting of the Association to the local authority within 60 (sixty) days of the meeting taking place.

9. **THE STATUS OF THE ASSOCIATION**

The Association shall be an Association in terms of The City of Cape Town Municipal Planning Bylaw of 2015 (as amended from time to time) in terms whereof:

9.1 it shall be a juristic person and have legal personality, capable of suing and being sued in its own name;

9.2 none of the 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 EXCOM in terms hereof; and

9.3 it shall be not for profit, but for the benefit of the members of the Association.

9.4 If the Association fails to meet an obligation in section 61(5)(d) or section 62(1)(a)(ii) (of the aforesaid By-Law) and the City believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure.

The City may recover any expenditure in respect of the action contemplated in subsection (1) from the Association or its members, who are jointly liable.

The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association for the purposes of section 61(5)(d).

If Association ceases to function effectively or to carry out its obligations, the City may give the association a binding instruction to hold a meeting and to reconstitute itself; or

dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owner's association and the removal of relevant provisions in the title deed.

In determining whether to act in terms of subsection (4)(a) or (4)(b), the City must have regard to –

- (a) the purpose of the association;
 - (b) who will take over the maintenance of internal engineering services and other which the association is responsible for, if at all;
 - (c) the costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;
 - (d) the impact of the dissolution of the association on its members and the community;
 - (e) any written representations from the association and its members.
- (6) If the association is dissolved, the members must jointly pay the costs of –
- (a) the transfer to the City of the association's property which contains the internal engineering services and private open space;
 - (b) the upgrading of the internal engineering services to the standards of the City.
- (7) In the event that the owners' association has ceased to function and its constitution does not provide for an owner who wishes to transfer a land unit in that event, the owner must obtain the consent of at least 60% of the members of the association, which consent is deemed to be the consent of the owners' association unless the constitution provides for another procedure.

10. **MONTHLY SUBSCRIPTIONS**

- 10.1 The Association, through EXCOM, shall be entitled to levy a monthly subscription to defray the costs of managing and administering the Association, which costs shall include, but not be limited to, the costs of security, garden services to maintain private open spaces; the maintenance of communal buildings and the maintenance of such roads as form part of its responsibility. The monthly subscriptions will be applied to meet all the expenses which the Association has incurred or to which EXCOM reasonably anticipates the Association will be put in the attainment of the Association's objects or the pursuit of the Association's business. Such subscription may be fixed and collected monthly in advance.

Subject to the provisions of clauses 22.1 and 22.2, the amount of the monthly subscription shall be determined annually by EXCOM by using the annual budget of the Association as prepared by EXCOM and the number of building opportunities allocated to each erf as basis for such calculation.

- 10.3 The annual budget of the Association shall be accepted by majority vote of the members of the Association in person or represented by proxy present in General Meeting, and for purposes hereof, the Developer's majority vote as contained in clause 13.1 hereof shall apply.
- 10.4 The monthly subscription shall commence on the date fixed by EXCOM in respect of the transfers from the Developer to the first buyers and upon commencement of membership to the Association in respect of all subsequent transfers. The first monthly subscription shall become due and payable on the day fixed for commencement. The monthly subscription for every subsequent calendar month shall become due and payable on the first day of each such subsequent calendar month.
- 10.5 If the monthly subscription is not paid within TEN (10) days of the due date, same shall bear interest from the date of delinquency at a rate per annum equivalent to the prime overdraft rate charged from time to time by the Association's Bankers plus FIVE PER CENT (5%) and the Association may institute legal proceedings against the member for the recovery thereof and the costs on an attorney and own client scale of such proceedings shall be added to the subscription and interest. A member whose subscription together with any interest and costs is unpaid shall not be entitled to vote at any General Meeting.
- 10.6 Notwithstanding anything to the contrary herein contained, for the purposes of Clause 10 the Developer shall be deemed to be the registered owner of ONE (1) erf only. The Developer may in its sole discretion make such additional payments to the Association as it may deem necessary.

11. **FINANCIAL YEAR AND ACCOUNTS**

- 11.1 The financial year of the Association ends on 30 September of each year.
- 11.2 EXCOM shall cause proper books of accounts of the administration and finance of the Association to be kept at the domicile of the Association and shall produce an annual audited Balance Sheet.
- 11.3 EXCOM shall cause to be laid before the Association in Annual General Meeting, the annual independently audited Balance Sheet.

12. **DOMICILIUM**

- 12.1 For all purposes arising out of this Constitution, including the giving of notices and the serving of legal process, the Association and each member choose domicile citandi et executandi as follows:

- 12.1.1 the Association: c/o Holm Managing Agents, 12 Belfour Office Park, cnr Roger and Edmar Street, Tyger Valley, 7530
- 12.1.2 each member: at the erf registered in his name whether or not such erf is vacant land

provided that the Association or any member may at any time by notice change his domicile citandi et executandi to some other address, which new address shall be in the Republic of South Africa and shall not be a Post Office box or post restante; and provided further that such change shall become effective only FOURTEEN (14) days after receipt of the notice in question.

- 12.2 Any written notice which may be required to be given in terms of this Constitution may be delivered by hand or may be given by the dispatch of such notice in writing by pre-paid registered post, in which event, such notice shall be deemed to have been received FIVE (5) days after the posting thereof from any Post Office within the Republic of South Africa. The exhibition of the certificate of registered item shall be full and complete proof of the date of dispatch of the said notice. Notice may also be given by email to the email address as supplied to the Association by any member and will be deemed to have been received on the day after dispatch.

13. **STATUS OF THE DEVELOPER IN THE ASSOCIATION**

- 13.1 Notwithstanding all or any of the provisions contained in this Constitution, the Developer shall be entitled at any General Meeting to a number of votes equal to the total number of votes of all the other members of the Association, plus ONE (1) vote, so that the Developer shall have the majority of votes in the Association. In addition, the Developer shall be entitled to appoint a sufficient number of EXCOM members to ensure that it has a majority of such members at all times. The provisions of this Clause shall remain until 80% of the building opportunities in the Township Area have been transferred out of the name of the Developer.
- 13.2 Until the first meeting of the Association the Developer assumes all the responsibilities of the Association and shall have the powers of the Association.

14. **WINDING UP**

- 14.1 The Association may be wound up by a Resolution of the members in General Meeting provided that:
- 14.1.1 NINETY PER CENT (90%) of members present or represented at the meeting, duly convened, and, provided Clause 13 is still applicable, the Developer, vote in favour thereof; and
- 14.1.2 the local authority consents thereto;
- 14.2 In the event of such winding up, it shall be the duty of EXCOM, or a Receiver to be appointed by it, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the rest to all the members in accordance with the number of erven registered in the name of each member. If, within a period of TWELVE (12) months from such distribution, EXCOM or the Receiver is unable to find, locate or trace any member, such member's share shall then be paid to the Guardians' Fund or such other fund as may be required by Law.

15. **RULES AND REGULATIONS AND AMENDMENTS TO THE CONSTITUTION**

- 15.1 Any proposed:
- 15.1.1 rule or regulation or any proposed repeal of, or amendment or addition to, any rule or regulation by EXCOM; and

15.1.2 amendment or addition to the Constitution,

shall, while Clause 13.1 hereof is in force, be submitted to the DEVELOPER for approval and shall be of no force or effect whatsoever unless and until same has been approved by the Developer, after complying with the provisions of clause 15.3 in respect of amendments or additions to the Constitution;

15.2 When clause 13.1 hereof is no longer in force, any amendment or addition to the Constitution may be affected only by a Resolution passed by a TWO-THIRDS (2/3rds) majority at a General Meeting, after written notice thereof setting out such amendment or addition in full, has been given in the notice calling the meeting;

15.3 While Clause 13.1 hereof is in force, the Developer shall be entitled if deemed necessary for practical reasons to make amendments or additions to the Constitution. Any proposed amendment or addition shall be furnished to each of the EXCOM members by pre-paid registered post or delivered by hand, after which EXCOM shall be granted a period of 30 days to obtain the members' comments to the proposed amendments or additions and to furnish the Developer therewith. After the said 30 day-period has expired, the Developer shall be entitled to proceed with the proposed amendment or addition in its original form or, regard being had to the comments of the members, in an amended form, by sending a copy of such amendment or addition to each member by pre-paid registered post. Notwithstanding the provisions contained in this Clause, the terms of Clause 10 may, however, only be amended by following the procedures prescribed in Clause 15.2 hereof.

15.4 Notwithstanding the foregoing the Constitution may not be altered or amended in any way without the prior written consent of the local authority.

15.5 The Constitution and any amendment thereof shall be lodged with the local authority (City of Cape Town) and the latest copy duly lodged, which the City of Cape Town has certified in terms of Section 62(2) or 62(4) of the By-Law is presumed to contain the operative provisions of the Constitution.

16. **INTERPRETATION / DISPUTES**

16.1 Any dispute whatsoever declared between members or between the Developer and a member or members concerning the interpretation of this Constitution and/or any rules and regulations of the Association, subject to the provisions of Clauses 16.2 or 16.3, as the case may be, shall be referred for decision to a practicing Senior Advocate of the Cape Bar of not less than FIVE (5) years standing, or in the event of a dispute in the case of Clauses 7.5.9 and 7.5.10, to an Architect of not less than FIVE (5) years standing, agreed upon by the parties to the dispute, who shall then, acting as an expert and not as an Arbitrator, determine the dispute and his decision shall be final and binding upon the parties and capable of being enforced in a Court of Law.

- 16.2 In the event of the parties being unable to agree upon the Senior Advocate who should be appointed to determine the dispute, then he shall be nominated by the President of the Cape Bar Council.
- 16.3 In the event of the parties being unable to agree upon the Architect who should be appointed, he shall be nominated by the President of the Cape Provincial Institute of Architects.
- 16.4 Notwithstanding anything to the contrary herein contained, EXCOM shall at its sole option be entitled to institute proceedings in the Court having jurisdiction for any relief to which it is entitled under the provisions of this Constitution, including the recovery of arrear subscription.
17. **RESTRICTION ON ALIENATION**
- 17.1 No member shall transfer his erf until EXCOM under the hand of a duly authorized EXCOM member has certified that the member has at date of transfer fulfilled all his financial obligations to the Association and that the purchaser of such erf had agreed to be bound by the terms hereof. No erf or any interest therein shall be transferred without the written consent of the Association. Such consent shall not be withheld unless:
- 17.1.1 such member is indebted to the Association in any way in respect of monthly subscriptions or other amounts which the Association may in terms of these presents be entitled to claim from him;
- 17.1.2 the proposed transferee has not agreed to become a member of the Association;
- 17.1.3 such member remains in breach of any of the provisions of these presents or any rules after notice from EXCOM requiring him to remedy such breach.
- 17.1.4 the written consent of Amphoria (Pty) Limited has been had and obtained where the member has not yet commenced and completed the construction of a dwelling approved in terms of this Constitution.
- 17.2 EXCOM in issuing the certificate referred to in Clause 17.1 shall be entitled to charge a reasonable fee therefore to be determined by EXCOM from time to time.

18. **SUBMISSION OF PLANS**

Members other than the Developer shall be obliged to submit any building plan, whether such plan is for new constructions, renovations, alterations or additions, to EXCOM for examination and comment prior to the submission of such plan to the Local Authority for approval. Should EXCOM not be in favour of a plan submitted in terms of this clause, they shall furnish the relevant member with their reasons in writing. The Member shall then have the unrestricted right to submit the building plan to the Local Authority for approval but shall be required to ensure the comments and reasons therefore of EXCOM (if any) are supplied to the Local Authority simultaneously with the plan. Should an owner fail to supply the Local Authority with the comments and reasons of EXCOM then such owner shall not be permitted to carry out any of the works authorised in any such plan.

19. **SPECIAL CONDITIONS**

- 19.1 Every member of the Association would be liable to pay a penalty equal to three times the yearly levy to the Association should construction of the buildings to be erected on their individual erven in the GREY STONE VILLAGE property development, not be commenced within a period of 24 months from date of transfer of the erf from the Developer, Amphoria (Pty) Limited, to the first buyer thereof and completed within 36 months from date of transfer of the erf from the Developer, Amphoria (Pty) Limited, to the first buyer thereof. The penalty shall be payable after 36 months from date of transfer as aforesaid and thereafter every year until the buildings are completed to the satisfaction of the Local Authority and the GREY STONE VILLAGE Property Owners' Association.
- 19.2 Every member of the Association will remain liable for the adherence to the conditions contained in this clause 19 and will ensure that his subsequent purchaser has knowledge of the requirements contained in this clause and that these conditions are contractually transferred to subsequent Purchaser(s).
- 19.3 Every member shall pay a building deposit of R 10 000-00 (Ten Thousand Rand) (or such other amount as may be determined to be of general application by the Association from time to time) to the Association at the time of approval of the building plans by the Association and upon request of the Association. Half of the building deposit (without any interest having accrued) will be refunded to the Purchaser when construction of the building on the erf has been completed. The balance of the deposit will be allocated in the kitty of the Association to be used to repair damage to the communal and other related areas at the end of the development when all the houses in the Township Area have been constructed.
- 19.4 Every member must ensure that his building plans adheres to the Architectural Guidelines applicable to the GREY STONE VILLAGE property development and

lodge a landscaping plan simultaneous with its building plan to EXCOM as set out in clause 18 above.

19.5 No building works on any erf in the GREY STONE VILLAGE property development shall be commenced with prior to the written approval of the plans thereof by the Local Authority and/or any other competent authority, subject further with compliance of the provisions of clause 18 and such buildings shall be erected strictly in accordance with such approved plans. All buildings on the erf shall comply with the requirements of the Local Authority and/or other competent authority, as well as the architectural guidelines and landscaping guidelines applicable to the erf,

19.6 The local authority (City of Cape Town) is exempt from liability for any damage which may be caused by its certification of the Constitution or and amendment thereof or by the loss of the Constitution lodged with the City of Cape Town.

20. **OWNERSHIP OF PROPERTY**

20.1 Ownership of private roads namely Weaver Lane, Siskin Crescent and Pipit Street shown on Annexure "A" shall vest in the Association and the Association shall have the right to require the Developer at the Developer's own cost and expense to transfer the said erven to the Association simultaneously with the first transfer of erven in the Township Area.

20.2 The Association shall not be entitled to dispose of, alienate, mortgage or transfer any immovable property owned by the Association without the prior written consent of the local authority and a special resolution passed by a 2/3 majority of the members at a General Meeting.

21. **COMPLIANCE WITH CONDITIONS OF SUBDIVISION IMPOSED in the process of approving the subdivision which created the Township Area;**

The Association shall be obliged to comply and ensure compliance with all the terms and conditions imposed by the local and other authorities in approving the subdivision which created the Township Area.

22. **SPECIAL TERMS AND CONDITIONS**

22.1 It is recorded that a Master Property Owners' Association (MPOA) has or will be established to regulate affairs on inter alia the entire Haasendal development, situated on erf 23582, Kuils River and that all members of the Association will be obliged to become members of MPOA and pay such levy on a monthly basis or annual basis as that MPOA determines in accordance with the expenses and liabilities which are

common to all the building opportunities in the entire Haasendal development. It is hereby recorded that the Association shall be obliged, if requested by the MPOA, to collect from its Members the levies which are due to the MPOA by the Association's Members and to account to the MPOA for all such funds collected. The Association shall accordingly be entitled to include such levy as part of the levies/subscriptions otherwise raised in terms of this Constitution.

- 22.2 It is recorded that a Kuils River Golf Estate Property Owners' Association (KRGEPOA) has or will be established to regulate affairs between the Township Area and the Kuils River Golf Club and that members of the Association will be obliged to become members of KRGEPOA and pay such levy on a monthly basis or annual basis as that KRGEPOA determines in accordance with the expenses, liabilities and privileges which are common to all the building opportunities within the jurisdiction of KRGEPOA. It is hereby recorded that the Association shall be obliged, if requested by the KRGEPOA, to collect from its Members the levies which are due to the KRGEPOA by the Association's Members and to account to the KRGEPOA for all such funds collected. The Association shall accordingly be entitled to include such levy as part of the levies/subscriptions otherwise raised in terms of this Constitution.

This Constitution adopted by ANTON CORNELIUS MULDER and HARRY ELDRED SMITH
this day of 2018.

ANTON CORNELIUS MULDER

HARRY ELDRED SMITH