

# Avonddans II

Home Owners Association

## CONSTITUTION OF THE AVONDDANS II HOME OWNERS ASSOCIATION

### A. DEFINITIONS AND INTERPRETATIONS:

1. In this Constitution, and unless inconsistent with the context, the following words and expressions shall have the meanings hereby assigned to them:

1.1. **“alienate”** – the alienation of an Erf by whatsoever means or process, irrespective of whether such alienation is subject to a suspensive or resolutive condition;

1.2. **“Erf”** – every Erf in Avonddans II, which in terms of the subdivision of Erf 144 Great Brak River, enjoys residential use rights;

1.3. unless the context clearly indicates a contrary intention, words importing the singular shall include the plural and *vice versa*; and any one gender shall include the other gender;

1.4. words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in consequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause;

1.5. when any number of days is prescribed in this Constitution, such days shall be reckoned excluding the first and including the last day, unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

  
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- 1.6. if any provision of this Constitution ~~is in conflict or~~ inconsistent with any law, the invalidity of any such provisions shall not affect the validity of the remainder of the provisions of this Constitution.
- 1.7. Avonddans II Home Owners Association is also referred to as the "AHOA" or the "Association".
- 1.8. Committee of Trustees is also referred to as "the Trustees".
- 1.9. Erf is also referred to as "Property".

**B. NAME:**

2.

- 2.1. The Association hereby constituted will be called the AVONDDANS II HOME OWNERS ASSOCIATION.
- 2.2. The Association is established in terms of Section 29 of the Land Use Planning Ordinance, 15 of 1985, in accordance with the conditions imposed by the Mossel Bay Municipality in terms of Section 25(1) and 42 of the said Ordinance.

**C. HOME OWNERS ASSOCIATION:**

3.

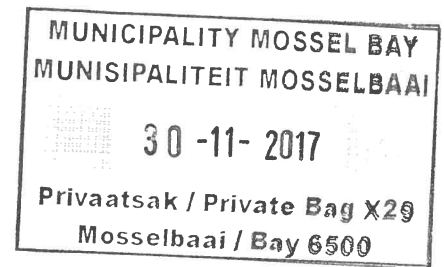
The Association shall:

- 3.1. exist as a Home Owners Association in its own right, separately from its members and where none of its members in their personal capacity shall have any right, title and interest in the property, funds or assets of the Association;
- 3.2. continue to exist even when its membership and office bearers change;
- 3.3. be able to own property and other possessions;
- 3.4. be able to sue and be sued in its own name;
- 3.5. not operate for profit but for the benefit of its members;

  
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3.6. not be allowed to sell or encumber common property.

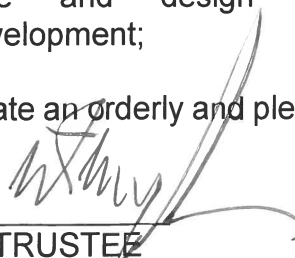
**D. MAIN BUSINESS AND OBJECTIVES OF THE ASSOCIATION:**

4. The main business and objectives of the Association are:

- 4.1. to carry on the promotion, advancement and protection of the common interests of the members of the Association, as well as the Development, maintenance and control of the common areas;
- 4.2. to ensure the general high standard of the Development;
- 4.3. to protect the ambience of the Development by ensuring that the conduct of owners, occupants and all other persons entering the estate comply with this Constitution and the rules attached hereto;
- 4.4. to monitor the transfer of private property in the Development;
- 4.5. to establish the amount of levies due and to collect such levies from members;
- 4.6. to take title to the common areas on behalf of the owners of the Association;
- 4.7. to be responsible for the reservation, maintenance and administration of the common property, in particular but not limited to the natural environment, roads, lighting, landscaping, storm-water, soil erosion, boundary fences, entrance and exit gate, external verges, the access control system, buildings, refuse removal and the general administration of the Development;
- 4.8. to further and maintain:
  - 4.8.1. the standards, and in particular the unique and distinctive character, of the Development;
  - 4.8.2. the aesthetic, environmental and architectural style and design principles of the Development;

in order to create an orderly and pleasing Development in

  
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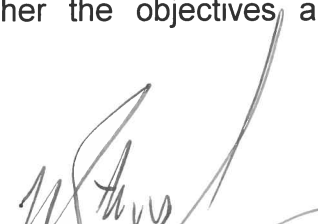
such a way that the owners collectively receive the best possible advantage thereof;

- 4.9. to promote, manage, advance and protect the communal and group interests of the owners;
- 4.10. to enter into service agreements.

**E. MEMBERSHIP OF THE ASSOCIATION:**

- 5. Membership of the Association is compulsory for every registered owner of an Erf and such membership shall commence simultaneously with the transfer of the Erf into the name of the transferee, providing that where any such registered owner of an Erf consists of more than one person:
  - 5.1. all the registered owners are deemed jointly and severally to be one member of the Association;
  - 5.2. the registered owners must nominate one owner to represent them and vote at meetings of the Association.
- 6. When a member ceases to be the registered owner of an Erf, he shall *ipso facto* cease to be a member of the Association.
- 7. A member shall not be entitled to alienate an Erf unless he has first obtained the consent of the Committee of Trustees, which consent shall only be given provided that the member has paid all levies and any other amount due by him to the Association as at date of registration of transfer, has complied with all such members' obligations in terms of the Constitution and the purchaser has agreed in the deed of sale to abide by the provisions of this Constitution, including the Code of Conduct, the Code of Architectural Style and Design and the Code of Conduct for Builders and Service Providers, attached hereto.
- 8. The registered owner of an Erf may not resign as member of the Association.
- 9. The rights and obligations of a member are not transferable.
- 10. Every member must further the objectives and interests of the Association.

  
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**F. OBLIGATIONS OF MEMBERS:**

11. Every member must comply with the provisions of:
- 11.1. any applicable National, Provincial and Local Government legislation;
  - 11.2. this Constitution;
  - 11.3. the code of conduct (attached hereto as Annexure A);
  - 11.4. the code of architectural style and design (attached hereto as Annexure B);
  - 11.5. the code of conduct for builders and service providers (attached hereto as Annexure C);
  - 11.6. resolutions taken by members at a general meeting from time to time;
  - 11.7. resolutions taken by the Committee of Trustees from time to time in accordance with the provisions of this Constitution.

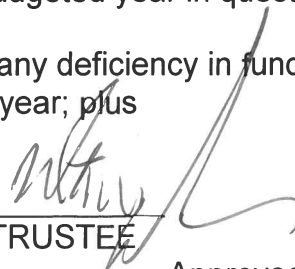
**G. THE STATUS OF ANNEXURES HERETO:**

12. The annexures referred to in paragraphs 11.3, 11.4 and 11.5 form an integral part of this Constitution as if specified fully herein.

**H. LEVIES PAYABLE BY MEMBERS:**

13. The Committee of Trustees shall:
- 13.1. establish and maintain a levy fund for the purpose of meeting all reasonable expenses of the Association for the management and control of the Development;
  - 13.2. estimate the amount which will be required by the Association to meet its expenditure:
    - a) for the budgeted year in question; plus
    - b) to cover any deficiency in funds from the preceding financial year; plus

  
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- c) to be held in reserve to meet future expenditure in respect of major infrastructural repairs and/or maintenance and/or replacements.
14. The Committee of Trustees must prepare an annual budget for presentation and approval by the general meeting of property owners. Such budget must, amongst others, propose a levy per Erf for the budgeted financial year and the general meeting of members must either approve the levy or approve an amended levy amount per Erf. Such approved levy amount shall be binding on all members.
15. A levy is payable by the owner or owners of an Erf and such levy shall be the same as for all other Erven.
16. A member's obligation to pay a levy to the Association terminates when he ceases to be an owner, save for that he shall remain liable for all levies calculated up to the date upon which he ceases to be a member.
17. No levies that were due and paid by members shall be repayable by the Association upon his ceasing to be a member, however, levies paid in advance that are not due and payable upon his ceasing to be a member, will be refunded to such member without interest.
18. The levies are due and payable monthly in advance on the first day of each and every month.
19. Any levy increase to be applied retrospectively from the start of the financial year.
20. Members are held liable for payment of interest on any outstanding amounts at the rate of 4% above the existing prime rate.
- 21.
- 21.1. Erven may not be consolidated.
- 21.2. The owner of more than one Erf must pay a levy for each and every Erf owned.
22. All members who are 30 (thirty) days or longer in arrears with their levies will not be entitled to any of the privileges of membership, including the right to vote, to nominate a trustee, or to vote at any meeting, or to be nominated and elected as a Trustee, unless and until such member shall have paid all the amounts and levies due to the Association.

  
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**I. COMMITTEE OF TRUSTEES:**

23. There shall be a Committee of Trustees of the Association which shall consist of not less than 5 (five) and not more than 7 (seven) members.
24. Every Trustee must be a natural person and a member of the Association or the authorised representative of a member, where the member is not a natural person.
25. The Trustees will be elected annually at an Annual General Meeting of members. Trustees must be nominated in writing by a member at least 3 (three) days prior to the date of the Annual General Meeting.
26. The Trustees elected will choose a chairman, vice-chairman, secretary and treasurer within 5 (five) days of the holding of the Annual General Meeting.
27. Upon any vacancy occurring on the Committee of Trustees, the chairman must decide whether he must call for nominations and a special meeting of members to elect a new Trustee or whether the workload of the retired Trustee will be shared by the remaining Trustees until the next Annual General Meeting.
28. Subject to the provisions of clause 29, each Trustee shall continue to hold office for a period of 3 (three) years following his appointment, at which Annual General Meeting each Trustee shall be deemed to have retired from office as such but will be eligible for re-election at such Annual General Meeting.
29. The Trustee shall be deemed to have vacated his office upon:
- 29.1. his estate being provisionally or finally sequestrated;
  - 29.2. him making any arrangement or compromise with his creditors;
  - 29.3. him being convicted of any offence involving dishonesty;
  - 29.4. him becoming of unsound mind;
  - 29.5. his resignation from such office in writing;
  - 29.6. his death;
  - 29.7. him being removed from office by a resolution of

  
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members;

- 29.8. him ceasing to be an owner;
- 29.9. him being in arrears for 30 (thirty) days or longer with the payment of levies and/or any other amount due to the Association.
30. The chairman shall preside at all meetings of the Committee of Trustees and all general meetings of members. The vice-chairman shall assume the powers and duties of the chairman in the absence of the chairman, or his inability or refusal to act as chairman.
31. The Trustees shall be entitled to be repaid all necessary reasonable and *bona fide* expenses (including compensation for local travelling expenses at the current Automobile Association's cents per kilometre rates) incurred by them respectively in or about the performance of their duties as Trustees, but shall not be entitled to any other remuneration, fees or salary.
32. Every Trustee must be conversant with the provisions of the Community Schemes Ombud Service Act, No. 9 of 2011, and the Regulations promulgated in GG 40335 as number R 1233, on 7 October 2016, as may be amended from time to time, and the Committee of Trustees must see to the implementation of the provisions of the Act and the Regulations.
33. The Committee of Trustees shall meet to manage and control the business and affairs of the Association at least once every 3 (three) months at Great Brak River.
34. Minutes of the meetings of the Committee of Trustees shall be kept by the Managing Agent.
35. The Committee will circulate a newsletter bi-annually.
36. The Committee of Trustees shall prepare an Exception Register after the Annual General Meeting of 23 September 2017 by no later than 31 December 2017 which will be a record of all the stands that shows deviations from the Code of Architectural Style and Design rules as well as non – compliance with the code of conduct for members.

**J. FUNCTIONS, POWERS AND DUTIES OF TRUSTEES:**

37. The Trustees must manage and control the business and affairs of the

  
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Association and, save as may be expressly provided in this Constitution, exercise all such powers of the Association, and do all such acts on behalf of the Association, as may be exercised and done by the Association, and are not by this Constitution required to be exercised or done by the Association in General Meeting, subject nevertheless to such resolutions as may be adopted by the Association in General Meetings from time to time.

38. The Committee of Trustees shall have the right to:
- 38.1. investigate any suspected or alleged breach of this Constitution or any of the codes attached hereto, and to determine its own procedure for such investigation;
  - 38.2. engage on behalf of the Association the services of an accountant, auditor, attorney, advocate, architect, an engineer, land-surveyor, managing agent or any other professional person whatsoever, for any reason deemed necessary by the Committee of Trustees;
  - 38.3. agree on resolutions not consistent with this Constitution, any of its codes, any act or regulation or any resolution taken by members at any General Meeting:
    - 38.3.1. as to the resolution of disputes not provided for in clause 68 generally;
    - 38.3.2. for the furtherance and promotion of any of the objects of the Association;
  - 38.4. to exercise their powers on behalf of the Association and to manage the affairs of the Association:
    - 38.4.1. for the advancement of the interests of members;
    - 38.4.2. for the meaningful conduct of meetings of the Committee of Trustees and General Meetings;
    - 38.4.3. to assist the Association in administering and governing its activities in general.
39. The Committee of Trustees must apply the Association's funds in accordance with budgets approved by members at the General Meeting.

  
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40. Each Trustee stands in a fiduciary relationship to the Association and:
- 40.1. must in relation to the Association act honestly and in good faith and in the interest and for the benefit of the Association;
  - 40.2. must avoid any material conflict between his own interests and those of the Association.

**K. PROCEEDINGS OF THE COMMITTEE OF TRUSTEES:**

41. The Committee of Trustees may meet for the dispatch of business and regulate their meetings, in a manner and form as the chairman may deem fit.
42. The chairman must convene meetings of the Committee of Trustees:
- 42.1. at least once every 3 (three) months; and
  - 42.2. when requested thereto in writing by 3 (three) Trustees.
43. The quorum necessary for the holding of any meeting shall be 3 (three) Trustees and any resolution shall be carried by the majority of the votes cast. The chairman will have a casting vote in the event of an equality of votes.
44. A resolution duly adopted by the Committee of Trustees and signed by the chairman and the secretary shall be *prima facie* proof that it had been passed at a meeting of the Committee of Trustees duly called and constituted.
45. A Trustee may be represented at the meeting of the Committee of Trustees by proxy, duly appointed in writing provided that such party is a Trustee.

**L. INDEMNITY**

46. The Committee Trustees are indemnified by the Avonddans II Home Owners Association against any liabilities *bona fide* incurred by them in their capacities as such and in the case of the chairman in his capacity as chairman, as well as for all costs, losses and expenses (including traveling expenses) which they may incur or become liable for by reason of any authorized contract entered into, or any authorized act or deed done, in the discharge of any of their duties and, without

  
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detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.

47. A Trustee shall not be liable for the acts, or omission of the auditors or of any of the other trustees whether in their capacities as trustees or as chairman or for any loss or expense sustained or incurred by the Avonddans II Home Owners Association through the insufficiency or deficiency of any security in or upon which moneys of the Avonddans II Home Owners Association are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited or for any loss or damage occasioned by any error of judgment or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto unless occurring as a result of mala fides, breach of duty or breach of trust.

**M. MANAGING AGENT:**

48. When a managing agent is appointed by the Committee of Trustees to exercise such powers and duties as may be entrusted to such agent, the appointment shall be in the form of a written contract.
49. The Committee of Trustees shall ensure that there is included in the contract a provision to the effect that should the managing agent be in breach of any of the provisions of such contract, or guilty of conduct which at common law would justify the termination of a contract between master and servant, that the Committee of Trustees may, without notice, cancel such contract and that the managing agent shall have no claim whatsoever as a result of such cancellation.

**N. GENERAL MEETINGS OF THE ASSOCIATION:**

50. A general meeting of members must be held at least once every year, within 4 (four) months after the end of each financial year at such place conveniently located at Great Brak River, and at such a date and time as the Committee of Trustees may decide.
51. Should the Committee of Trustees fail to convene a general meeting as provided for in the preceding paragraph (paragraph 50), then such meeting may be convened on a petition signed by at least 25% (twenty five percent) of members eligible to vote.
52. Any General Meeting of the Association shall be called with not less

  
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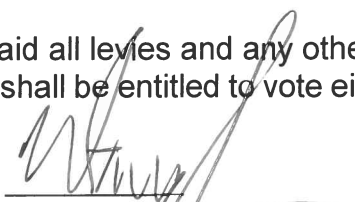
  
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than 21 (twenty one) days' written notice to all members and the managing agent, and such notice of the intended meeting shall contain the agenda as well as all relevant documents and motivations.

53. The non-receipt of notice of a meeting by any member shall not invalidate the proceedings of that meeting that may otherwise be regarded as one complying with the provisions of this Constitution.
54. Notice of a General Meeting must be delivered by e-mail, or to members without any e-mail address, to such member's postal address.
55. The figure for the quorum for any General Meeting is established by the figure of 50% (fifty percent) + 1 (one) of the total number of members of the Avonddans II Home Owners Association that reside permanently on the Estate at the date of the meeting.
56. If, within 30 (thirty) minutes after the scheduled time for the commencement of the meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the members present shall constitute a quorum.
57. Members who may vote at the meeting are those that are:
- 57.1. present or represented;
  - 57.2. represented by proxy; and
58. Any member may be represented in person or by proxy:
- 58.1. the instrument appointing a proxy shall be the specific form supplied by the Committee of Trustees, signed by the member and the proxy;
  - 58.2. the resolution and power of attorney that a corporate member may provide to its representative must be duly signed;
  - 58.3. the proxy instrument, the resolution and power of attorney, must provide for either a blank or a specific mandate.
59. Only members that have paid all levies and any other amount due and payable to the Association shall be entitled to vote either personally, as

  
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represented, or by proxy.

60. At any General Meeting a resolution shall be decided by a simple majority of the members forming a quorum.
61. Every resolution and every amendment to a resolution proposed for adoption shall be seconded, and, if not seconded, be deemed not to have been proposed.
62. The Committee of Trustees shall ensure that minutes are taken and kept of every General Meeting.
63. The proceedings at any General Meeting shall be conducted in such a manner and form as the chairman shall decide, taking into consideration the provisions of this Constitution and the annexures hereto.

**O. FINANCES:**

64. The financial year end of the Association shall be the last day of February of each year.
65. The Committee of Trustees is responsible for making sure that the money of the Association is safe and accounted for.
66. The Committee of Trustees must ensure that proper records and books of account that record the affairs of the Association are kept and that within 4 (four) months of the end of its financial year:
  - 66.1. financial statements; and
  - 66.2. reports stating whether or not the financial statements are consistent with accounting policies and practices;

are compiled by an independent chartered accountant and delivered to the Committee of Trustees.

67. The Committee of Trustees shall cause any monies received by the Association to be deposited to the credit of an account with a registered Commercial Bank in the name of the Association and funds not required for disbursements may be invested in a savings or investment account with such bank.

**P. DISPUTE RESOLUTION:**

  
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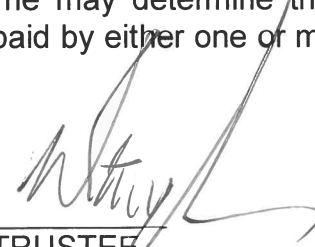


68. Disputes in regard to:
- 68.1. the administration of the Avonddans II Home Owners Association;
  - 68.2. the interpretation or the effect of any of the provisions of this Constitution and its annexures;
  - 68.3. the rights and obligations under this Constitution and its annexures;

between persons who have a material interest in the Association, and of which one of the parties is the Avonddans II Home Owners Association, occupier or owner, acting individually or jointly, and may only be referred to arbitration if the parties to the dispute have earnestly tried to resolve their dispute through a process of mediation, within 30 (thirty) days of the dispute having arisen.

69. Where the dispute has not been resolved through mediation, any party to the dispute may, subject to the provisions of clause 69.5 infra, give notice of arbitration:
- 69.1. the arbitrator shall be a practicing attorney of not less than 10 (ten) years standing, appointed by agreement between the parties within 7 (seven) days of being called upon to make such an appointment, and failing such agreement within the 7 (seven) day period, nominated by the Cape Law Society;
  - 69.2. the arbitrator shall have regard to the provisions contained in this Constitution and of the annexures hereto. He shall decide the matter as submitted to him according to what he may consider to be just and equitable in the circumstances;
  - 69.3. the arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein;
  - 69.4. the arbitrator may make no order as to costs of the arbitration, or he may determine that the costs of the arbitration be paid by either one or more of the disputing parties;

  
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69.5. each of the parties to the arbitration is deemed to have irrevocably agreed that the decision of the arbitrator:

69.5.1. shall be final and binding on each of them;

69.5.2. shall be carried into effect forthwith;

69.5.3. may be made an order of court;

70. Any party to the dispute:

70.1. shall continue to enjoy common law rights and shall not be precluded from instituting proceedings in any court of competent jurisdiction;

70.2. shall be entitled to refer the dispute to the Ombud of the Regional Office as contemplated in the Community Schemes Ombud Services Act, No. 9 of 2011, prior to the arbitration process being initiated, if the dispute is one as defined in Section 1 of that Act.

**Q. CONSENT TO JURISDICTION:**

71. The owner and the Committee of Trustees consent to the jurisdiction of the Magistrate's Court.

**R. DOMICILIUM CITANDI ET EXECUTANDI:**

72. The owner's *domicilium citandi et executandi* for all purposes shall be the property on the Estate of that owner.

**S. AMENDMENT**

73. Any amendment, substitution, or repeal of this constitution shall require the approval of at least 67% (sixty seven per cent) of the total number of members of the Avonddans II Home Owners Association at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to complying with the requirement for the convening of a meeting, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.

**T. APPROVAL OF THIS CONSTITUTION AND ITS ANNEXURES:**

  
CHAIRMAN


  
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Mosselbaai / Bay 6500

74. This Constitution and annexures have been approved at an Annual General Meeting that was held at Great Brak River on this 23th day of September 2017, and replaced all previous Constitutions, all Codes of Conduct Rules for members and tenants, all codes of Architectural Style and Design Rules, all codes of Conduct Rules for builders and service providers with effect from such date of approval.

APPROVED BY THE ANNUAL GENERAL MEETING ON THIS 23th DAY OF SEPTEMBER 2017, AND SIGNED ON BEHALF OF THE AVONDDANS II HOME OWNERS ASSOCIATION.

  
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