

**REGULATIONS TO THE
MEMORANDUM OF INCORPORATION
OF A NON-PROFIT COMPANY**

**WESTBROOK PORT ELIZABETH PROPERTY OWNERS
ASSOCIATION**

Non – Profit Company registered in terms of the Companies Act 71 of
2008

W E S T B R O O K

Port Elizabeth

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1. INTRODUCTION

- 1.1. The Development, is a privately owned, new urban, mixed-use precinct.
- 1.2. The Developer of the Development seeks to deliver and maintain an urban environment which is secure, clean and offers its users diverse amenities, with high standards of maintenance and service. This is achieved through the implementation of a General Development Framework Plan.
- 1.3. The Association will safeguard this vision and ensure quality developments with respect to the urban spaces and deliver efficient management.

2. DEFINITIONS

- 2.1. The following words and definitions shall, unless the context otherwise requires, have the meanings respectively assigned to them as follows and where such words are not defined in these Regulations, it shall have the same meaning as in the Memorandum of Incorporation:

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| 2.1.1. "building" | includes a structure of any nature or description whatsoever, and structural alteration or addition to a building, and, without prejudice to the generality of the foregoing, the reconstruction of the whole or any portion of the facade of a building; |
| 2.1.2. "bulk" | means the floor area as defined in the Port Elizabeth Zoning Scheme Regulations, 1989, passed in terms of the Ordinance, attributed to each erf, regardless of the zoning attributed to that floor area; |
| 2.1.3. "Development" | the Westbrook township development situated on the Property, as depicted in Annexure A to the Memorandum of Incorporation; |
| 2.1.4. "General Development Framework Plan" | means the development plan in respect of the Property available for inspection at the offices of the Association; |
| 2.1.5. "Initial Period" | as defined in clause 1.20 of the Memorandum of Incorporation; |
| 2.1.6. "New Urbanism" | means the town planning philosophy of reintroducing into city design, mixed uses such as residential, retail, office and educational; |

2.1.7. **"Occupier"**

means any person in actual occupation of a building or parts thereof or land and which is habitually present therein or thereon, without regard to the title under which he occupies;

2.1.8. **"Ordinance"**

means the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) and all amendments thereto or re-enactments, together with the Regulations promulgated in terms thereof, including the Port Elizabeth Zoning Scheme Regulations, 1989;

2.1.9. **"Owner"**

means, in relation to any Erf or Unit or Pocket of Land:

- (i) the registered owner; or
- (ii) any tenant under a lease which is legally registered; or
- (iii) the person administering the estate of any person mentioned in (i) or (ii) above, either as executor, trustee, administrator, guardian or in any other capacity; or
- (iv) any person receiving any consideration from any occupier or any person who would receive such consideration if such building or land were let, whether on his own account or as an agent for any person entitled thereto or having an interest therein; or
- (v) a duly authorised agent of an owner;

2.1.10. **"Residential"**

shall mean permitted for residential use in terms of the relevant/applicable town-planning scheme/zoning regulations in relation to the land use and identified as such in Annexure A to the Memorandum of Incorporation;

2.1.11. **"road"**

means any street, road, footpath, or thoroughfare shown on the Plan of the Development, in respect of which the public has acquired a statutory or other right-of-way;

- 2.2. The clause headings in this document have been inserted for convenience purposes only and shall not be used in the interpretation thereof.
- 2.3. When any number of days is prescribed in this document, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.4. When figures are referred to in numerals and in words, and if there is any conflict between the two, the words shall prevail.
- 2.5. Unless the context indicates a contrary intention:
 - 2.5.1. an expression which denotes:
 - 2.5.2. any gender shall include the other genders;
 - 2.5.3. a natural person shall include a juristic person and *vice versa*; and
 - 2.5.4. the singular shall include the plural and *vice versa*.
 - 2.5.5. Words defined in the Memorandum of Incorporation shall have the same meaning in these Regulations.

3. **LEVIES**

- 3.1. The Association is empowered to impose levies as set out in the Memorandum of Incorporation of the Association.
- 3.2. The Association will issue monthly invoices to all Members reflecting the levies due, owing and payable for the forthcoming month, together with any arrears, interest, penalties etc, as specified in the Regulations.

4. **SECURITY**

- 4.1. Security services will be provided by the Association from time to time, in the sole and absolute discretion of the Association.
- 4.2. The entire Development will be fenced and access to the Development will only be allowed through the security entry points identified on the Plan of the Development. Within the Development, it is intended that security walling be kept to a minimum. In this regard, no security fencing and/or structure may be erected within the Development without the written consent of the Board first having been had and obtained.
- 4.3. All Members and Owners (including its tenants, visitors, employees, agents and/or contractors) will be obliged to obey any lawful instruction given by the security personnel, and the prevailing security protocol must be strictly adhered to at all times.

4.4. Ownership of the roads vest with the Developer until such time as this is handed over to the Local Authority. The Owners may not deny the public reasonable access to the roads or to any thoroughfare, pavements, sidewalks or footpaths that may be constructed on their property.

4.5. **Building Security:**

4.5.1. Building specific security is the responsibility of each individual Member or Owner (as the case may be).

4.5.2. The Association must consent in writing to the appointment of any private security services within the Development, and must be furnished with full details of the services to be provided.

4.5.3. Firearms may only be carried and/or stored in a building within the Development strictly in accordance with applicable legislation regulating the use of and/or permission to own firearms. Non-compliance with this Regulation may result in the confiscation of the firearm involved and criminal prosecution.

5. **TENANTS, VISITORS, EMPLOYEES, CONTRACTORS**

5.1. Every Member is responsible for informing the owners of Units within its Scheme of the Regulations to ensure strict compliance therewith at all times.

5.2. Members will be responsible for any breach by its members (including such member's tenants, visitors, employees, agents and/or contractors) of the Regulations and will be fined accordingly, in terms of 16.1 below.

5.3. A Member must ensure that the Owners of Units within its Scheme are bound by the Regulations and any amendments thereto.

5.4. An Owner must:

5.4.1. ensure that its tenant(s) receive a copy of the Regulations and any amendments thereto; and

5.4.2. bind its tenant(s) to the Regulations and any amendments thereto, in any lease agreement.

6. **SUBMISSION OF BUILDING PLANS**

6.1. All buildings to be erected on an Erf in the Development must be:

6.1.1. designed in accordance with the Association's Design Guidelines Manual available for inspection at the offices of the Association, in order to promote and encourage the design innovation incorporating the New Urbanism concept; and

- 6.1.2. be built and erected in a professional and workmanlike manner, utilising the highest building standards.
- 6.2. The Design Guidelines Manual will provide guidelines in respect of the following aspects:
 - 6.2.1. Perimeter Blocks - using building form to define public and private realms;
 - 6.2.2. Strategic Locations - enhancing legibility by introducing the use of noteworthy elements on certain buildings;
 - 6.2.3. Natural Features - enhancing the quality of the urban environment siting trees along the new streets;
 - 6.2.4. Building Design Typologies - the use of build-to, setback, and encroachment lines to reinforce the perimeter block concept;
 - 6.2.5. Sustainability and Robustness - controls that require building design to meet current demands without compromising future potential;
 - 6.2.6. Building Facades - encouraging the use of facade elements that maximise interaction between public and private domains while enhancing the overall cohesiveness of the New Urbanism context.
- 6.3. The Board shall constitute and form a building committee for the purpose of approving all building plans within the Development.
- 6.4. The said building committee may consist of Directors of the Board and the following professionals appointed by the Board in terms of the Memorandum of Incorporation:
 - 6.4.1. a registered architect;
 - 6.4.2. a registered land surveyor; and
 - 6.4.3. a registered town planner.
- 6.5. The building committee shall have complete and unfettered discretion in the exercise of its functions, and in particular in approving building plans submitted to it for approval, subject only to the right of an Owner to make submissions to the said committee in respect thereof.
- 6.6. No buildings or other structures may be erected in the Development without the prior written approval of the Board, in consultation with the building committee, first having been had and obtained.

- 6.7. In addition to the above, all building plans must be approved in writing by the building committee and the Board prior to submission to the Local Authority for approval in terms of the National Building Regulations promulgated under the Building Standards Act 103 of 1977.
- 6.8. The following aspects must be detailed in all building plans:
- 6.8.1. Building elevations;
 - 6.8.2. Finishes (external);
 - 6.8.3. Signage;
 - 6.8.4. Parking provision and access;
 - 6.8.5. Landscaping;
 - 6.8.6. Irrigation;
 - 6.8.7. Stormwater disposal;
 - 6.8.8. Gross floor area, bulk floor area and bulk free floor area;
 - 6.8.9. Servitude access and maintenance (Water piping; chilled water; electricity etc running under building); and
 - 6.8.10. any other aspects as may be required by the Board from time to time.
- 6.9. Television aerials, satellite dishes, and air conditioning plant etc, may not be visible to the public view.
- 6.10. The floor area specified in building plans must comply strictly with the floor area purchased from the Developer.
- 6.11. **Approval Fee:**
- 6.11.1. The Association will levy a Building Plan Approval Fee (the "Approval Fee"), as determined by the Board from time to time.
 - 6.11.2. The Developer shall not be liable for payment of the Approval Fee,
 - 6.11.3. A duly completed and signed Plan Approval Form must be submitted with all plans.
 - 6.11.4. The Developer shall not be required to submit any Plan Approval Form.

6.12. **Building Deposit**

- 6.12.1. Prior to the occupation of a site for the purposes of commencing construction, an Owner may be (at the sole and absolute discretion of the Board) required to secure (by way of a guarantee acceptable to the Association, issued by a financial institution and drawn in favour of the Association or its nominee and expressed to be payable free of exchange against completion of the building) or pay in cash to the Association, a Building Deposit equivalent to 2% (two percent) of the value of the land and building or such lesser amount as the Directors may determine to cover the cost of any sums due to the Association and/or of any remedial work to be undertaken by the Association, in the event of damage being effected during the construction process, to any infrastructure owned by the Association.
- 6.12.2. In the event that the Building Deposit is paid in cash, interest calculated at the daily call deposit rate of interest per annum from time to time on the Building Deposit (as certified in the event of a dispute by any general manager of the First National Bank, whose appointment it shall not be necessary to prove) at which the First National Bank offers call deposits to clients in the Republic of South Africa, shall accrue to the Owner.
- 6.12.3. The aforementioned guarantee or the cash deposit plus interest (as the case may be) shall only be returned/refunded to the Owner upon completion of the building and completion of all repairs to Common Property being effected to the satisfaction of the Board, and provided that the Board is furnished with a certified copy of the certificate of occupancy issued by the Local Authority, together with a copy of the "as built" drawings.
- 6.12.4. The Developer shall not be required to pay any Building Deposit.

6.13. **National Building Regulations**

- 6.13.1. An Member/Owner shall:
- 6.13.1.1. as soon as is reasonably possible, procure the approval and consent from the Local Authority of the building plans in terms of the applicable National Building Regulations (promulgated under the Building Standards Act 103 of 1977);
 - 6.13.1.2. not commence with any building operations in the Development, unless and until the written approval of the building committee referred to in 6.4 and Local Authority, as envisaged in 6.7 and 6.13.1.1 have been first had and obtained; and
 - 6.13.1.3. ensure that all building improvements in the Development accord with the building plans approved by the building committee and Local Authority.

7. **SIGNAGE POLICY**

- 7.1. No advertising signage will be permitted outside the boundaries of the Development, without the written consent of the Board first having been had and obtained.
- 7.2. All signage within the Development must strictly accord with the provisions of the Signage Policy Manual (or at the discretion of the Board, in consultation with the building committee), available for inspection at the offices of the Association.
- 7.3. The building committee may approve any application at their discretion.

8. **IRRIGATION**

- 8.1. Irrigation must be installed in such a manner so as to reasonably ensure that the roads and kerb sides are kept dry at all times.

9. **BUILDING LIGHTING**

- 9.1. The lighting of each building must not cause any interference with the use and enjoyment by the public or other Members/Owners of their properties within the Development.
- 9.2. No unsightly lights will be permitted to be affixed to the exterior of any building within the Development.

10. **CONSTRUCTION REGULATIONS**

- 10.1. The Board shall determine all construction Regulations applicable to constructions to be effected in the Development.
- 10.2. **Hoarding**
 - 10.2.1. Unless otherwise agreed in writing by the Board, prior to the commencement of building works, all building sites (including tips, material storage areas and ablution facilities) shall be enclosed on all sides by a 2m (two meters) high hoarding screen, save that provision shall be made for access to the site.
 - 10.2.2. The hoarding shall consist of a neat pole structure (placed at regular intervals) with stable horizontal members top and bottom, covered with a 70% (seventy percent) minimum density dark green shade cloth. The hoarding shall be maintained and be neat at all times taking cognisance of winds and vandalism. Notwithstanding this, the Board may, given the circumstances, decide in its sole and absolute discretion that shutter boards may be utilised for the entire area to be hoarded, or part thereof.
 - 10.2.3. This temporary screen shall be removed on completion of construction, or when requested thereto by the Board.

10.3. **Site Tidiness**

10.3.1. Building sites shall be kept tidy at all times and building works, whether permanent or temporary, must not encroach over the boundary of any Erf or over the roads.

10.3.2. No building materials or excavated material shall be dumped on an adjacent Erf, or anywhere else within the Development.

10.4. **Parking**

All motor and transport vehicles (including but not limited to trucks, light delivery vehicles, loaders, concrete mixers and earthmoving equipment) shall be parked within the perimeter of the construction site or at such other location agreed to, in writing, by the Board.

10.5. **Workers' Transport**

Owners shall be responsible for ensuring that their building contractors arrange adequate transportation for their employees to gain access to a building site. Employees will not be allowed to walk to the site.

10.6. **Employee's Rest Periods**

It is the responsibility of Owners to ensure that their contractors control employees during rest periods and that workers do not trespass on to adjacent erven and roads.

10.7. **Dust Control**

During the construction period, Owners shall at all times ensure that adequate steps such as the provision of straw bales and watering measures are taken to control windblown dust.

10.8. **Mud/Dirt on Roads**

Owners shall at all times ensure that adequate steps are taken to wash down all trucks and construction vehicles leaving the building site, so as to avoid the build up of mud and dirt on the roads in the Development.

10.9. **Noise Control**

10.9.1. The Board shall determine the hours during which construction shall take place.

10.9.2. Members/Owners shall be responsible for ensuring that building contractors on their respective erven or in their Schemes maintain the construction time tables referred to in 10.9.1 in order to minimise any nuisance during the construction period.

10.10. **Licence of Vehicles**

It is the Owner's responsibility to ensure that all construction vehicles are properly licensed and insured at all times and adhere to the Association's prescribed construction process.

11. **LANDSCAPING OF ERVEN**

11.1. Every Member must landscape their Pocket of Land/Erf/Scheme in keeping with the standards adopted in the Development as reflected and specified in the Landscaping Plan.

11.2. The Association has sole and absolute discretion to provide, at the Member's cost and expense, such services as it deems reasonably necessary to comply with 11.1 above.

11.3. The Association shall be responsible for the maintenance of the Common Property.

12. **ENVIRONMENT MANAGEMENT POLICY**

12.1. No rubble or refuse may be discarded in any area, other than a designated refuse removal area.

12.2. Members shall ensure that their properties are litter-free at all times. In the event that a littering problem has not been rectified by a Member within 24 (twenty-four) hours of being instructed to do so by the Association, the Association shall undertake appropriate action, at the Member's cost and expense, to remedy the situation.

12.3. Picnics and braais are not permitted on any land owned or managed by the Developer or the Association, without the Developer's or Association's (as the case may be) prior written consent having been obtained.

12.4. Pets are not permitted to roam through the Development site and must be contained on private property. Pets must be walked on a leash when on the Common Property and all pet excrement must be removed immediately by its owner. All pets must wear collars with tags indicating the name, address and telephone number of its owner.

12.5. No rodents, poultry, pigeons, aviaries, livestock or wild animals may be kept in the Development.

12.6. The Association reserves the right to instruct Owners and/or Occupiers and/or the Member in whose Scheme the relevant Unit is situate, to remove their pets should they become a nuisance in the Development.

12.7. Pest control must be in keeping with the general standard adopted in the Development and is the responsibility of every Member, Owner and Occupier.

- 12.8. Notwithstanding the above, should, in the sole and absolute discretion of the Association, the vermin infestation on any Erf or part of any Erf or Unit constitute a danger to health and welfare, the Local Authority will be requested to take appropriate action against the offending Member.
- 12.9. The Association has the discretion, at the Member's cost and expense, to provide such services as it deems reasonably necessary to comply with 12.8 above after the Member has failed to comply after receipt of due notice.

13. **NUISANCE ISSUES**

- 13.1. No Occupier, Owner and/or Member is permitted to create any nuisance as defined and/or envisaged in any applicable legislation.
- 13.2. Hawking is not permitted in the Development.
- 13.3. Laundry shall not be visible to the public.

14. **SALE**

- 14.1. A purchaser of a Unit within a Scheme forming part of the Development acknowledges that it is required upon the registration of transfer of the property into its name, to be bound by the terms and conditions of the Memorandum of Incorporation of the Association, together with the Rules and Regulations promulgated by the Association, as amended from time to time.

14.2. **Conditions of Title**

- 14.2.1. Westbrook Residential Property Development (Pty) Ltd (Registration Number 2006/016290/07) or its successors in title, shall be entitled to ensure that in addition to all the conditions of title, conditions of subdivision and servitudes, the following conditions of title be included in any Deed of Transfer in terms of which a purchaser and its successors-in-title obtain transfer of any Pocket of Land in the Development:

*"Every owner of a Pocket of Land and any body corporate, as defined in the Sectional Titles Act (95/1986) and any **home/property owner's association established in terms of the Land Use Planning Ordinance (15/1985)** shall be and remain a member of the Westbrook Port Elizabeth Property Owners Association (a non-profit company in the process of being registered in terms the Companies Act, 2008) and be subject to its Memorandum of Incorporation, until it ceases to be a **body corporate or home/property owners' association** as aforesaid. Neither any erf, nor any sub-division thereof, or any interest therein, or any Unit within a Scheme, shall be transferred to any person who has not bound itself to the satisfaction of such Association, to adhere to the Memorandum of Incorporation of the Westbrook Port Elizabeth Property Owners Association, furthermore, until a clearance certificate from the Westbrook Port Elizabeth Property Owners Association has been had and obtained certifying that the provisions of the Memorandum of Incorporation have been complied with."*

14.3. **Servitudes**

14.3.1. The Association, alternatively those persons in whose favour the said servitudes have been registered, will at all times have the unfettered right of reasonable access to the servitude areas as identified, and furthermore will be entitled to deposit temporarily on land adjoining the servitude, such material as may be excavated by it during the course of the construction, maintenance, repair or removal of services and/or rights protected by the said servitudes, as it in its discretion may deem necessary.

15. **INSURANCE**

15.1. The Members shall be obliged to insure or cause to be insured the improvements on every Pocket of Land, including all Units in all Schemes forming part of the Development, and provide proof of insurance to the Association for approval.

15.2. No Member or Owner may do or permit to be done anything to or on any Pocket of Land, erf or Unit within a Scheme which will increase the risk to the Development.

16. **PENALTIES AND OFFENCES**

16.1. Any contravention of a rule or regulation will result in a fine or penalty being imposed on the Member, as determined by the Association in its sole and absolute discretion. In all instances where a penalty is levied, the amount will be reflected on the monthly Association invoice and be deemed due and payable at the end of the month in which such invoice is submitted, together with the applicable levies due.

16.2. In addition, the Association reserves the right to:

16.2.1. institute whatever legal action it deems appropriate to deal with any contravention against its Members and/or the person/s actually committing the contravention of these regulations ("the offender"); and

16.2.2. without derogating from the Association's right to institute legal action, the Association may take such steps against the offender as it in its discretion may deem fit, including but not limited to the imposition of fines and restricting the access of the offender to the Development.

16.3. In all events referred to in this clause 16, all legal or administrative costs incurred by the Association shall be paid, on demand, by the offender, on the attorney-and-own-client scale.

16.4. Offences relating to the miss-use of Association services will lead to a termination of such services for such a period as the Association in its sole and absolute discretion deems appropriate. Any loss or damage (whether direct, indirect or consequential) shall become the responsibility of the offender.

- 16.5. The Development will at all times be subject to the control of the South African Police Services and Local Authority enforcement officers, who have the authority to prosecute offenders according to applicable legislation.
- 16.6. The Association in its sole and absolute discretion reserves the right to remove from an erf or Unit any guest, invitee, employee, agent, contractor or supplier of a Member or Owner, who breaches these Regulations, and the Association will not be held responsible for any loss or damage (whether direct, indirect or consequential) arising therefrom.
- 16.7. Nothing herein shall derogate from the Association's overall authority to deviate from these rules and in any instance the Association reserves the right to determine the appropriate penalty/action required to rectify a breach of these regulations.

17. GENERAL ISSUES

17.1. Disclaimer/Indemnity

- 17.1.1. While every care will be taken by the Association to perform its functions to the best of its ability and to promote the interests of all Members in the Development, neither the Developer (and its successors-in-title or assigns), its directors, appointees, representatives or agents nor the Association or its management shall be held liable for any loss or damage (whether direct, indirect, consequential or otherwise), injury and/or death, cost, interest and expense which the Association may hereafter be liable for, pay, incur or sustain in connection with any action, proceedings, or claim being instituted against it by any party whomsoever, directly or indirectly arising from or related to the carrying out of the functions of the Association or at the Development.
- 17.1.2. It is expressly agreed that the Association in its sole and absolute discretion may resolve any action, proceedings or claims instituted against it, without consultation with any other party which may be affected.
- 17.1.3. In the event of any Member or Owner (including their guests, family or invitees) ("the offender") failing to adhere to any regulation and such failure leading to any action being instituted against the Association or their employees or agents, then and in that event such offender shall indemnify and hold harmless and keep indemnified the Association against all loss or damage (whether direct, indirect, consequential or otherwise), injury and/or death, cost, interest and expense which the Association may hereafter be liable for, pay, incur or sustain in connection with any action, proceedings, or claim being instituted against it by any party whatsoever, directly or indirectly arising from or related to the transgression of these Regulations by the offender.

17.2. Further Amendments and Updates to the Regulations

- 17.2.1. The Association reserves the right to amend, alter and update these Regulations from time to time on written notification to the Members in the Development, which amendment, alteration and update shall likewise be binding on all Owners and Occupiers in the Development.
- 17.2.2. In the interpretation of these Regulations, the decision of the Association shall be final and binding.

Appendix C1: MANUALS, DOCUMENTS AND PLANS

Referred to in the Regulations.

Available for inspection at the offices of the Association.

1. Association's Design Guidelines Manual
2. Signage Policy Manual
3. Landscaping Plan
4. Plan of the Development
5. Plan indicating security entry points
6. Schedules of servitudes
7. Plan Approval Form
8. List of Services