

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT 71 OF 2008

MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY

**WESTBROOK PORT ELIZABETH PROPERTY
OWNERS ASSOCIATION NPC**

RRGISTRATION NUMBER: 2015/436358/08

(a Non-Profit Company registered in terms of the
Companies Act 71 of 2008)

W E S T B R O O K

Port Elizabeth

TABLE OF CONTENTS

Clause number and description	Page
1. DEFINITIONS.....	4
2. MEMBERSHIP.....	10
3. MANAGEMENT OF THE ASSOCIATION	10
4. MANAGING AGENT	10
5. LEVIES	11
6. DEVELOPER'S LOAN TO THE ASSOCIATION.....	11
7. RULES AND REGULATIONS.....	12
8. COMMON PROPERTY AND SERVICES.....	14
9. RESTRICTION OF TRANSFER, BUILDING CRITERIA AND USE	14
10. GENERAL MEETINGS.....	15
11. NOTICE OF GENERAL MEETINGS	15
12. PROCEEDINGS AT GENERAL MEETINGS	16
13. VOTING AT GENERAL MEETINGS.....	17
14. PROXIES.....	18
15. COMPOSITION OF THE BOARD OF DIRECTORS	19
16. ALTERNATE DIRECTORS.....	20
17. ROTATION OF DIRECTORS.....	20
18. REMOVAL AND DISQUALIFICATION OF DIRECTORS.....	20
19. PROCEEDINGS OF DIRECTORS	21
20. POWERS OF DIRECTORS.....	22
21. REMUNERATION OF DIRECTORS.....	23
22. COMMITTEES	23
23. MINUTES	24
24. VALIDITY OF ACTS OF DIRECTORS AND COMMITTEES.....	24
25. ACCOUNTING RECORDS.....	24
26. AUDITOR	25
27. RESERVES.....	25
28. NOTICES.....	26
29. INDEMNIFICATION OF DIRECTORS	26
30. GENERAL	27
31. DISPUTES.....	27

ANNEXURE A – PLAN OF THE DEVELOPMENT

ANNEXURE B – LEVY CALCULATION FORMULA

ANNEXURE C – REGULATIONS

Adoption of Memorandum of Incorporation

This Memorandum of Incorporation is to be adopted by the Members of the Association at the first annual general meeting to be held in accordance with the procedures as set out hereinafter.

1. DEFINITIONS

In this Memorandum of Incorporation, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

1.1. **“the Act”** the Companies Act No 71 of 2008, as amended or re-enacted from time to time;

1.2. **“the Association”** Westbrook Port Elizabeth Property Owners Association NPC, Registration number 2015/436358/08 (a Non-Profit Company registered in terms of the Companies Act 71 of 2008);

1.3. **“the Auditors”** the auditors of the Association appointed by the Board from time to time;

1.4. **“the Board”** the board of Directors of the Association established in terms of clause 15 hereof;

1.5. **“Building”** as defined in the Port Elizabeth Zoning Scheme Regulations, 1989, means:

“without in any way limiting the ordinary meaning of the word, includes: -

(1) any structure, whether of a permanent or temporary nature, erected or used for the housing or accommodation of human beings or animals, or for the storage, manufacture or sale of goods and materials, or for the destruction or treatment of refuse or other waste material;

(2) a wall, swimming pool, swimming bath, reservoir, water tower, bridge, summerhouse, hothouse or any structure appurtenant thereto.”

- 1.6. **“the Body Corporate”** any body corporate constituted in terms of the Sectional Titles Act 95 of 1986 or a homeowners association constituted in terms of the Land Use Planning Ordinance 15 of 1985 (as the case may be) with regard to any Scheme on the Property;
- 1.7. **“Business Days”** any day other than a Saturday, Sunday and public holiday in the Republic of South Africa;
- 1.8. **“the Chairman”** the chairman of the Board;
- 1.9. **“the Common Property”**
- (i) all property owned by the Association, or to which the Association has acquired rights, whether by servitude or otherwise; and/or
 - (ii) land, other than the Pockets of Land, located within the boundaries of the Property, whether owned by the Association or the Local Authority; and/or
 - (iii) any land which may be designated in any manner or in terms of any law or condition or authority for use in common by the Members and/or the public; and/or
 - (iv) any land designated by the Association for the purpose of common property; and/or
 - (v) all access gates and entry points to and/or on the Property;
- 1.10. **“Coverage”** as defined in the Port Elizabeth Zoning Scheme Regulations, 1989 means the total percentage of site area that may be covered by buildings, measured over the outside walls and covered by a roof or projection provided that: -
- (i) the following are to be included in coverage:-
 - (a) external staircases;
 - (b) fire escapes;
 - (c) electrical substations for the exclusive use of the Development;
 - (d) motor car ramps, the undersides of which are more than 1,5m (one comma five meters) above the ground level of such ramps;

- (e) canopies and permanent awnings projecting more than 1m (one meter) beyond the building;
- (f) canopies over fuels pumps at filling stations/service stations/public garages;
- (ii) the following are to be excluded from coverage:-
 - (a) the area covered by a maximum eaves projection of 1m (one meter);
 - (b) unroofed stoeps, terraces and patios;
 - (c) arcade passageways, i.e. any covered walkway providing public access, with shops along one or both sides which are roofed but not built over;
 - (d) motor car ramps, the undersides of which are 1,5m (one comma five meters) or less above the ground level of such ramps;
 - (e) basements;
 - (f) unroofed entrances, steps and landings;
 - (g) minor decorative projections projecting not more than 0,3m (zero comma three meters) from the wall of such building;
 - (h) canopies for pedestrian protection at the ground floor of shopping centres;
 - (i) driveways covered by canopies, whether cantilevered or not, for public protection from the elements relating to hotels, flats and public buildings and includes a portŠ-cochere;
 - (j) covered refuse bin storage areas;

1.11. **“Curro School”**

Curro Holdings (Pty) Ltd (Registration Number: 1998/025801/07) or its successors in title;

1.12. **“the Developer”**

Westbrook Residential Development (Pty) Ltd (Registration Number: 2006/016290/07) or its successors in title;

- 1.13. **“Director”** a member of the Board;
- 1.14. **“the Developer's Directors”** the Director(s) appointed by the Developer;
- 1.15. **“the Development”** the Westbrook township development situated on the Property, comprising the Pockets of Land and Common Property as depicted in the Plan of the Development;
- 1.16. **“Educational”** in relation to land use, shall mean permitted for use or for the purpose of running or carrying on a school and all activities related thereto in terms of the relevant/applicable town-planning/zoning scheme and identified as such in the Plan of the Development;
- 1.17. **“Erf”** any erf within the Development whether existing or created by the subdivision of the Property or part thereof and “Erven” shall mean more than one Erf;
- 1.18. **“Floor Area”** of a building, as defined in the Port Elizabeth Zoning Scheme Regulations, 1989, includes the terms “Gross Leasable Area”, “Gross Floor Area”, “Gross Building Area”, “Permissible Floor Space” and any other similar term and means the sum total of all floors at all levels measured over the main containing walls of the building (i.e. outer plinth of the building) but shall exclude:-
- (a) vertical ventilation shafts, ducts;
 - (b) lift shafts, staircases;
 - (c) lift motor room and air-conditioning plant rooms;
 - (d) electricity sub-station/transformer rooms;
 - (e) the area covered by the projection of eaves;
 - (f) any floor area used solely for parking or loading/unloading;
 - (g) refuse bin storage areas;
 - (h) unroofed balconies, unroofed terraces;

- (i) malls which allow free public access to shops, other buildings, public transport systems or streets (malls do not include access corridors or foyers);
- (j) public or private toilets, staff change rooms, cleaners; and maintenance staff rooms, sick bays;

- 1.19. **"Floor Space Index"** in accordance with the Port Elizabeth Zoning Scheme Regulations, 1989 is defined as including the terms Bulk, Floor Area Ratio and any other similar term and means the ratio obtained by dividing the floor area by the erf area less any area required for road widening and for public purposes;
- 1.20. **"the Initial Period"** the period of 25 (twenty five) years from the date of registration of the Memorandum of Incorporation or until the Developer is no longer the registered owner of any portion of the Property, whichever is later, provided that the Initial Period may end at any time prior to the said dates by the Developer giving written notice to the Association that the Initial Period has ended;
- 1.21. **"Local Authority"** the Nelson Mandela Bay Municipality, Port Elizabeth;
- 1.22. **"Managing Agent"** any person(s) appointed by the Association as an independent contractor to undertake any of the management functions of the Association, as described in clause 4 below;
- 1.23. **"Members"** a member of the Association as defined in clause 2 below;
- 1.24. **"Memorandum of Incorporation"** this Memorandum of Incorporation of the Association;
- 1.25. **"Owner"** an owner of a Unit within a Scheme;
- 1.26. **"Plan of the Development"** The Plan of the Development annexed hereto as Annexure A;
- 1.27. **"Pockets of Land"** the pockets of land represented by numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 as depicted in the Plan of the Development, including any subdivision thereof;
- 1.28. **"these Presents"** this Memorandum of Incorporation and Regulations of the Association;

- 1.29. **"the Property"** Erf 2657, Parsons Vlei, Port Elizabeth;
- 1.30. **"the Regulations"** the regulations of the Association, referred to in clause 7 below and annexed hereto as Annexure C;
- 1.31. **"the Republic"** the Republic of South Africa;
- 1.32. **"Residential"** in relation to the land use, shall mean permitted for residential use on the Property in terms of the relevant/applicable town-planning/zoning scheme and identified as such in the Plan of the Development;
- 1.33. **"Rules"** this Memorandum of Incorporation, the Regulations and/or any other rules, regulations and/or by-laws applicable from time to time to the Association;
- 1.34. **"Scheme"** a scheme established under the Sectional Titles Act or ahomeowners association established under the Land Use Planning Ordinance (as the case may be);
- 1.35. **"Special Purposes: Mixed Use"** means permitted for special purposes and/or mixed use in terms of the relevant/applicable town-planning/zoning scheme in relation to the land use and identified as such in the Plan of the Development;
- 1.36. **"Subscribers"** J.A. Wilson, J.S. Wilson, C. Bedeker and S. Olivier;
- 1.37. **"Unit"** any sectional title unit (including its exclusive use area), as defined in the Sectional Titles Act or an individual erf (as the case may be) situate within a Scheme on the Property;
- 1.38. words importing any one gender includes the other genders;
- 1.39. words importing natural persons shall include juristic persons and *vice versa*;
- 1.40. words in the singular include the plural and *vice versa*;
- 1.41. when a provision of the Act is referred to, the reference is to such a provision as may be amended by statute from time to time;
- 1.42. references to Members represented by proxy shall include Members represented by an agent appointed under a general or special power of attorney and reference to Members present or acting in person shall include corporations represented or acting in the manner prescribed by the laws of the Republic; and

- 1.43. where any term is defined within the context of any particular clause in this Memorandum of Incorporation, the term so defined, unless it is clear from the clause in question that such term has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of the Memorandum of Incorporation, notwithstanding that that term has not been defined in this clause 1.

2. MEMBERSHIP

- 2.1. The following persons shall be Members of the Association:
- 2.1.1. the Subscribers. As the Members defined in clause 2.1.3 below become Members, the Subscribers shall be replaced by such Members; and
- 2.1.2. the Developer in its capacity as such, whether or not it is the owner of an Pocket of Land and/or Erf, until the expiry of the Initial Period as stated in clause 1.20; and
- 2.1.3. each individual owner of a Pocket of Land or a Body Corporate of a Scheme on the Property.
- 2.2. The Association shall keep at its registered office a Register of Members of the Association. The Register of Members shall be open for inspection by any Director or Member or his duly authorised agent during normal office hours.
- 2.3. Save for the Developer, the rights of a Member shall be personal, shall not be transferable, and shall terminate when a person ceases to be the registered owner of a Pocket of Land or Unit within a Scheme (as the case may be).

3. MANAGEMENT OF THE ASSOCIATION

The business of the Association shall be managed by the Board, who may exercise all the powers of the Association as are not by the Rules required to be exercised by the Association in General Meeting. The Board shall exercise such powers subject to the provisions of this Memorandum of Incorporation.

4. MANAGING AGENT

- 4.1. The Board, in its sole discretion, shall be entitled from time to time to appoint in terms of a written contract a Managing Agent to control, manage and administer the affairs of the Association and the Property and to exercise such powers and duties as may be entrusted by the Board to the Managing Agent, including the power to collect levies. Such written contract shall be on such terms and conditions as the Board may require.
- 4.2. The Managing Agent shall be the secretary of the Board and the Association.

5. LEVIES

- 5.1. The Board shall, from time to time, charge levies to the Members, other than to the Subscribers, Curro School and the Developer (other than in its capacity as an owner) for the purpose of meeting all expenses which the Association has incurred, or which the Board reasonably anticipates the Association will incur, in the fulfilment of its duties and the furtherance of the objects and ancillary objects of the Association. Any shortfall will be funded by the Developer on an interest bearing loan at the prevailing prime lending rate of First National Bank Limited, nominal annual compounded monthly (NACM).
- 5.2. It is specifically recorded that the Association will incur all the general expenses relating to the Common Property, including but not necessarily limited to expenses listed in the Regulations.
- 5.3. The levy payable in respect of the expenses relating to the Common Property will be determined with reference to the formula set out in Annexure B hereto.
- 5.4. Any amount due by a Member in respect of a levy shall be payable by it to the Association in monthly instalments in advance on or before the first day of each month.
- 5.5. The obligation of a Member to pay a levy shall, without prejudice to the Association's right to recover arrear levies, cease upon it ceasing to be a Member. A Member's successor in title shall be liable to pay the applicable levy as from the date upon which it becomes a Member of the Association. No Member or Owner shall be entitled to transfer its Pocket(s) of Land or Erf/Erven or Unit/s (as the case may be) until the Association has certified in writing that the relevant Member has as at the date of transfer fulfilled all its financial obligations to the Association.
- 5.6. In determining the liability of Members for the payment of levies, the Board's decision in calculating, assigning and/or allocating the levy shall, in the absence of a manifest error, be final and binding on all Members of the Association.
- 5.7. Interest shall be payable on arrear levies at such rate as may from time to time be determined by the Board.
- 5.8. A Member shall be liable for and shall (on demand) pay all legal costs, including costs as between attorney and own client, collection commission, expenses and any other charges incurred by the Association in:
 - 5.8.1. obtaining the recovery of arrear levies and/or any other arrear amounts due and owing by such Member to the Association and/or arising from or in connection with the breach of any of the provisions of this Memorandum of Incorporation and/or the Regulations.
 - 5.8.2. taking any legal action against a Member and/or Owner.

6. DEVELOPER'S LOAN TO THE ASSOCIATION

- 6.1. The shortfall in levies to be funded by the Developer (in terms of clause 5.1) shall be recorded as a loan ("Developer's Loan") in the financial statements of the Association which shall be due and payable by the Association to the Developer.

- 6.2. The amount of the Developer's Loan shall not exceed R50,000,000.00 (fifty million rand) and shall attract interest at the prevailing prime interest rate of First National Bank, nominal annual compounded monthly (NACM).
- 6.3. The Developer's Loan (or any portion thereof) shall be repaid from the surplus cash flow generated from the receipt of levies by the Association from its Members provided that all the expenses which the Association has incurred (in terms of clause 5.1 above) have been paid.

7. RULES AND REGULATIONS

- 7.1. The first applicable Regulations of the Association, together with all appendices, plans, manuals and documents referred to therein (the "Documents") will be available at the registered offices of the Association for inspection by Directors or Members and/or their duly authorised agents during normal business hours.
- 7.2. Subject to any restriction imposed or direction given at a general meeting of the Association and subject to any conditions imposed by the Local Authority or the Developer or any other statutory body, the Board may from time to time make, amend and/or add to the Regulations in regard to *inter alia*:
 - 7.2.1. the standards and guidelines for the aesthetic and architectural design of all buildings, out-buildings and structures of any nature ("Buildings"), swimming pools, tennis courts and all other additions and alterations to the Property, including fencing erected or to be erected on the Property ("Improvements"), and in particular to control the design of the exterior of Buildings and the materials used on such exteriors and Improvements to ensure an attractive, aesthetically pleasing and co-ordinated character to all Buildings and Improvements on the Property;
 - 7.2.2. the zoning and/or use of the Property, the Development and/or any Erf to ensure and enforce compliance with any applicable legislation;
 - 7.2.3. the siting of all Buildings and Improvements and all additions and/or alterations to any thereof;
 - 7.2.4. the preservation and maintenance of the Buildings and Improvements, the landscaping, the natural environment and the general environment on the Property;
 - 7.2.5. the conduct of any persons, including the public (which shall be allowed access to the Property, on such conditions as the Board shall regulate), on the Property for the prevention of nuisance of any nature to any Member, Owner or resident on the Property;
 - 7.2.6. the use of services and recreation areas, amenities and facilities, including the right to charge a reasonable fee for the use thereof;
 - 7.2.7. the furtherance and promotion of any of the objects of the Association and/or the better management of the affairs of the Association and/or the advancement of the interests of the Members, Owners and/or residents on the Property.

- 7.3. The Association may in general meeting itself make any Regulations which the Board may make and in general meeting vary and/or modify any Regulation made by it or by the Board from time to time, subject to the provisions of clause 13.7 below.
- 7.4. The Regulations shall be subject to and/or in addition to any applicable town-planning scheme and any conditions imposed by the Developer on any Member and/or Owner.
- 7.5. For the enforcement of any of the Regulations made by the Board in terms hereof, the Board may:
- 7.5.1. give notice to the Member concerned requiring it to remedy such breach within such reasonable period as the Board may decide;
 - 7.5.2. take or cause to be taken such steps as it may consider necessary to remedy the breach of the Rule/Regulation of which the Member is guilty, and debit the cost of doing so (including legal costs on an attorneys and own client scale) to the Member concerned, which amount shall then be deemed to be a debt owing by the Member concerned to the Association;
 - 7.5.3. take such other action, including the imposition of fines or the institution of legal proceedings, as it may deem fit.
- 7.6. In the event of the Board instituting any legal proceedings against any Member and/or resident on the Property, and/or such Member or resident's agents and/or employees in respect of any contravention of the Rules, such contravention shall be deemed to have been committed by the Member and/or resident itself, but, without prejudice to the foregoing, the Board may take or cause to be taken such steps against the person actually committing the contravention as it in its discretion may deem fit, including but not necessarily limited to the imposition of fines and restricting the access of the Member, and/or resident, and/or agent and/or employee to the Property.
- 7.7. In the event of any contravention by any tenant and/or guest of a Member and/or Owner, such contravention shall be deemed to have been committed by the Member itself, but without prejudice to the foregoing, the Board may take such steps against the person actually committing the contravention, as it may in its discretion deem fit.
- 7.8. In the event of any Member disputing the fact that it or any of the aforesaid persons has committed a contravention of the Rules/Regulations, a committee of 3 (three) Directors, appointed by the Board, shall adjudicate upon the issue at such time and in such manner and according to such procedure as the Board may direct.
- 7.9. Notwithstanding the foregoing, the Board may in the name of the Association enforce the provisions of the Rules/Regulations by proceedings in a court or any other legal forum of competent jurisdiction and for this purpose may appoint such attorneys and counsel as it deems fit.
- 7.10. In the event of the Member being a Body Corporate, and should it formulate its own rules relating to its members, in the event that such rules are in conflict with the Rules of this Association, then the Rules of this Association shall prevail.

- 7.11. The Board may empower and appoint the Managing Agent, or such other person or body as may be empowered by the Board, to ensure compliance by the Members with the Rules, and to this end to issue such notices or do such things as may be necessary or requisite.

8. COMMON PROPERTY AND SERVICES

- 8.1. The Association shall be entitled to maintain, repair and keep in good order and repair the Common Property and shall be entitled, notwithstanding the functions of the Local Authority, to maintain the existing services and provide additional necessary services in respect of the Common Property.
- 8.2. For the purposes of clause 8.2 above, the Association shall be entitled to employ the services of any such independent contractor(s) as it may deem fit.

9. RESTRICTION OF TRANSFER, BUILDING CRITERIA AND USE

- 9.1. No Member or Owner shall alienate or transfer a Pocket of Land or Unit (as the case may be) of which it is a registered owner unless:

- 9.1.1. it is a condition of the deed of alienation that:

- 9.1.1.1. the person or entity to whom a Pocket of Land or Unit (as the case may be) is to be transferred (“**the transferee**”) has, in the case of a transferee of a Pocket of Land, bound itself to become a Member of the Association, alternatively, in the case of a transferee of a Unit, bound itself to comply with this Memorandum of Incorporation and all Rules and Regulations issued pursuant thereto (as the case may be), upon transfer of such Pocket of Land or Unit (as the case may be) to it;

- 9.1.1.2. the registration of such Pocket of Land or Unit (as the case may be) to the transferee shall *ipso facto* constitute the transferee, in the case of a transferee of a Pocket of Land, as a Member of the Association, alternatively, in the case of a transferee of a Unit, bind such transferee to comply with this Memorandum of Incorporation and all Rules and Regulations issued pursuant thereto (as the case may be); and

- 9.1.1.3. upon becoming a Member or Owner the transferee shall be bound by the Rules.

- 9.1.2. the Association, under the hand of the Chairman of the Board, has certified in writing that the Member has fulfilled all its financial obligations to the Association in respect of the period up to and including the date specified in such notice;

- 9.1.3. the transfer takes place prior to or on that specified date; and

- 9.1.4. the transferee has agreed in writing to the conditions described in clause 9.1.1 and such written agreement has been lodged with the Association.

- 9.2. The Association may claim from any Member or its estate any arrear levies and/or interest and/or other amount due by it to the Association at the time of its ceasing to be a Member.
- 9.3. No Member or Owner may improve any Erf or Unit without first having its plans approved by the Board, subject to the design guidelines set out in the Regulations.
- 9.4. No Member may use or permit the use of any residential Erf or Unit as part of a rental pool.
- 9.5. No Member or Owner may apply to the Local Authority and/or any other authority with jurisdiction to change the zoning of any Erf or Unit or any portion thereof and/or any part of the Property. All such applications shall be made exclusively by the Board in its sole and absolute discretion, whether out of own volition or pursuant to a written request by a Member.

10. GENERAL MEETINGS

- 10.1. The Board may, whenever it thinks fit, convene a general meeting. A general meeting may further be convened on a requisition by Members in accordance with the provisions of Section 61 of the Act.
- 10.2. The Board shall further cause a general meeting of Members to be convened at least once in each calendar year, to be known as the annual general meeting of the Association.
- 10.3. The annual general meeting shall be held:
 - 10.3.1. at such time and place as the Board shall decide from time to time;
 - 10.3.2. not more than 6 (six) months after the end of every ensuing financial year of the Association; and
 - 10.3.3. within not more than 15 (fifteen) months after the date of the last annual general meeting of the Association.

11. NOTICE OF GENERAL MEETINGS

- 11.1. An annual general meeting and a general meeting calling for the passing of a special resolution by the Members, shall be called on not less than 15 (fifteen) Business Days' notice in writing.
- 11.2. Any other general meeting may be called on 10 (ten) Business Days' notice in writing.
- 11.3. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day on which the meeting is to take place. It shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be required by the Rules.
- 11.4. The notice shall be given to all Members of the Association, provided that a meeting of the Association shall, notwithstanding the fact that it is called by shorter notice than that specified in this clause, be deemed to have been duly called if it is so agreed by a majority in number of the Members having a right to attend and vote at the meeting.

- 11.5. The accidental or inadvertent omission to give notice of any meeting to any particular Member shall not invalidate any resolution validly passed at any such meeting.

12. PROCEEDINGS AT GENERAL MEETINGS

- 12.1. All business that is transacted at a general meeting, and all that is transacted at the annual general meeting, with the exception of the consideration of the audited financial statements, the election of Auditors, approval of the schedule of expected expenses, appointment of Directors and the fixing of the remuneration of the Auditors shall be deemed to be special business.
- 12.2. The Chairman shall preside at every general meeting. In the absence of the Chairman, his powers and duties shall devolve upon the vice-chairman. In the event of both the Chairman and the vice-chairman being absent from the general meeting, the Members present shall elect a presiding officer from among their number. Any reference in this clause 12 and clause 13 below to "Chairman" shall be read in the context of this clause 12.2.
- 12.3. The annual general meeting shall deal with and dispose of all matters relevant to the general affairs of the Association, as well as the noting of the levies and the various categories of levies for the financial year during which such annual general meeting takes place and the consideration of any other matter of which due notice has been given.
- 12.4. A Member who intends to bring a motion before a general meeting shall, not less than 15 (fifteen) Business Days before the day appointed for the said general meeting, serve upon the Association at its registered office a notice in writing signed by himself and one other Member containing the proposed resolution. Upon receipt of such notice, the Managing Agent shall, in any case where the notice is received before the notice of the general meeting is issued, include it in the notice of the general meeting, and shall in any other case issue as quickly as possible to the Members notice that such resolution will be proposed.
- 12.5. The Chairman may, with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 12.6. If within 30 (thirty) minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the meeting, then the Member or Members present shall constitute a quorum.
- 12.7. No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business. Save as herein otherwise provided, the quorum at a meeting of Members shall be:
- 12.7.1. during the Initial Period, 4 (four) Members, at least 2 (two) of whom shall be a nominee of the Developer, personally present and entitled to vote;

12.7.2. after the Initial Period, 4 (four) Members personally present and entitled to vote.

13. VOTING AT GENERAL MEETINGS

13.1. At any meeting of the Association:

13.1.1. each Member of the Association present in person or by proxy and the nominee in writing of the Developer entitled to vote at such meeting, shall have 1 (one) vote;

13.1.2. the Developer shall, during the Initial Period, have a number of votes equal to the votes held by all of the other Members in the Association, in addition to the votes conferred upon it in terms of clause 13.1.1 above.

13.2. At a general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll has (before or on the declaration of the result of the show of hands), been demanded by at least 3 (three) Members entitled to vote and present in person or by proxy. Unless a poll is demanded, a declaration by the Chairman that a resolution has on a show of hands been carried or lost shall, in the absence of manifest error, be conclusive of the outcome of the vote concerned and an entry to that effect in the minute book of the Association shall be conclusive evidence of such fact, without the need for and/or proof of the number of votes recorded in favour of or against such resolution.

13.3. If a poll is duly demanded it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the issue voted on at the general meeting at which the poll was demanded. Scrutineers shall be elected to declare the result of the poll and their decision, which shall be given by the Chairman, shall be deemed to be the resolution of the meeting at which the poll is demanded.

13.4. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman (or the vice-chairman or the presiding officer for the time being, as provided for in clause 12.2 above) shall, except in the case of a vote required in respect of the election of the Chairman of a general meeting, be entitled to a second or casting vote.

13.5. A poll demanded on the issue of the election of the Chairman of a general meeting (see clause 12.2) or on a question of adjournment, shall be taken forthwith. A poll demanded on any other issue should be taken at such time as the Chairman directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the issue upon which the poll has been demanded.

13.6. A poll demanded may be withdrawn at any time before voting has commenced by the Member demanding the Poll.

13.7. All business transacted at a general meeting is to be decided by a simple majority except amendments, alterations, additions, substitutions and/or deletions to the Memorandum of Incorporation or the Regulations, which are to be decided by a majority of not less than 75% (seventy five percent) of the votes of those Members present and entitled to vote.

14. PROXIES

- 14.1. A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association.
- 14.2. To be effective at a meeting or adjourned meeting, a proxy together with the original or a notarially certified copy of any power of attorney or other authority under which it is signed must be lodged with the Managing Agent at least 24 (twenty-four) hours before the commencement of the meeting or adjourned meeting concerned but the Board may from time to time determine that such documents:
- 14.2.1. are to be lodged at a particular place, and/or
- 14.2.2. are to be lodged a certain number of hours, not exceeding 48 (forty-eight) in all, before the meeting, and/or
- 14.2.3. may be lodged at any time before or during the meeting.
- 14.3. A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only valid for a specific period.
- 14.4. The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

PROXY
WESTBROOK PORT ELIZABETH PROPERTY OWNERS ASSOCIATION
 _____ of _____
being a Member of the Association holding _____ votes hereby appoint
 _____ of _____ *or failing him,*
 _____ of _____ *or failing him,*
 _____ of _____ *as my proxy to vote for me on my behalf at*
the annual or general meeting (as the case may be) of the Association to be held on the
 _____ day of _____ *and at any adjournment thereof as follows:*

<i>Resolution No.</i>	<i>IN FAVOUR OF</i>	<i>AGAINST</i>	<i>ABSTAIN</i>

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

Unless otherwise instructed, my proxy may vote as he thinks fit.

Signed _____ day of _____ 20____

(Note: A Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead, and such proxy need not also be a Member of the Association).

- 14.5. A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.

15. COMPOSITION OF THE BOARD OF DIRECTORS

- 15.1. During the Initial Period:

15.1.1. the Board of Directors of the Association shall consist of not less than 3 (three) Directors, and a maximum of 6 (six) Directors.

15.1.2. the Directors during the Initial Period shall be appointed as follows:

15.1.2.1. the Subscribers shall, until such time as they are replaced by other Members, be entitled to appoint 1 (one) Director on written notice to the Association and, on similar written notice, to remove and replace any of such Director;

15.1.2.2. the Developer shall be entitled during the Initial Period to appoint 3 (three) Directors on written notice to the Association and, on similar written notice, to remove and replace any of such Directors; and

15.1.2.3. the other Members shall jointly be entitled to appoint 2 (two) Directors.

- 15.2. After the Initial Period, the Directors appointed per clause 15.1 shall continue to serve as Directors until the next Annual General Meeting, whereafter the Directors elected or re-elected (as the case may be) by the Members shall take office in accordance with the provisions of clause 17 below. With the exception of the Subscribers and the Developer, no Member shall elect and/or appoint as a Director to represent such Member on the Board, any person other than the chairperson of a Body Corporate of a Scheme within the Development.

- 15.3. Should the number of Directors for any reason be reduced below 3 (three), the remaining Directors may act for the purpose only of increasing the number of Directors in terms of clause 15.1 and 15.2 above.

- 15.4. A Director shall hold office until the next following annual general meeting of the Association.

- 15.5. The Directors shall appoint one of their number to act as the Chairman for such term as they think fit, but not for longer than such person's tenure as Director.

- 15.6. During the Initial Period the Chairman will be elected by the Developer.

- 15.7. Save for satisfying the qualification and eligibility requirements as set out in Section 69 of the Act to become and remain a director of a company, a person need not satisfy any further eligibility requirements and/or qualifications.

16. **ALTERNATE DIRECTORS**

- 16.1. Any Director shall have the power to nominate any person to act as alternate director, for a maximum period of 2 (two) weeks, in his place during his absence or inability to act as Director, subject to clause 15.2. On such appointment being made, the alternate director shall, in all respects, be subject to the terms and conditions of the Memorandum of Incorporation and the Rules and Regulations applicable to the other Directors of the Association. A person may be appointed as alternate to more than one Director. Where a person is alternate to more than one Director or where an alternate director is a Director, he shall have a separate vote on behalf of each Director he is representing in addition to his own vote, if any.
- 16.2. An alternate director, whilst acting in the place of the Director who appointed him/her, shall exercise and discharge all the duties and functions of the Director he/she represents. The appointment of an alternate director shall cease on the happening of any event which, if he/she were a Director, would cause him/her to cease to hold office in terms of this Memorandum of Incorporation or if the Director who appointed him/her ceases to be a Director, or gives notice to the Managing Agent that the alternate director so nominated shall cease to do so.

17. **ROTATION OF DIRECTORS**

Each Director shall retire from office at the annual general meeting subsequent to that at which he/she was so appointed, at which meeting each Director, other than the Director(s) appointed by the Developer, shall be deemed to have retired from office as such but will be eligible for re-election to the Board by the Member it represents.

18. **REMOVAL AND DISQUALIFICATION OF DIRECTORS**

- 18.1. A Director shall cease to hold office as such if :
- 18.1.1. he/she resigns office by notice in writing to the Association;
 - 18.1.2. he/she ceases to be a Director by virtue of any of the provisions of the Act or becomes prohibited from being a Director by reason of an order made under the Act;
 - 18.1.3. he/she is absent without the prior or subsequent official leave of the Board from 2 (two) consecutive meetings, notice of which has been given to the Director concerned;
 - 18.1.4. he/she is disqualified and ineligible to act as a Director in terms of Section 69 of the Act;
 - 18.1.5. he/she ceases to be a chairperson of a Scheme within the Development;
 - 18.1.6. his/her estate is sequestrated or he/she files a petition for the surrender of his/her estate or an application for an administration order or a debt rescue order, or if he/she commits an act of insolvency as defined in the insolvency law for the time being in force, or he/she makes any arrangement or composition with his/her creditors generally;
 - 18.1.7. he/she becomes of unsound mind;

- 18.1.8. he/she is directly or indirectly interested in any contract with the Association and fails to declare to the Board the nature of such interest;
- 18.1.9. without the consent of the Board holds an office of profit with the Association;
- 18.1.10. a notice removing him/her from office is signed by Members, having a right to attend and vote at a meeting of the Members, who holds 75% (seventy five percent) of the total voting rights of all the Members who are at that time entitled so to attend and vote and is delivered to the Managing Agent; or
- 18.1.11. he/she is otherwise removed in accordance with any provisions of this Memorandum of Incorporation.

19. PROCEEDINGS OF DIRECTORS

- 19.1. The Board may meet, adjourn and otherwise regulate its meetings as it shall think fit provided that it shall meet at least four times (4x) a year.
- 19.2. A meeting of the Board shall be convened at any reasonable time upon request in writing by a Director and such meeting shall be held within 14 (fourteen) Business Days of the date of request. Notice of a meeting of the Board shall be given in writing to all Directors at least 7 (seven) Business Days prior to such a meeting.
- 19.3. Unless otherwise resolved by the Board, all its meetings shall be held at the offices of the Association.
- 19.4. At the first meeting of the Board and thereafter following each annual general meeting, the Directors shall elect from amongst their number a Chairman (subject to 15.6 above), vice-chairman, and a treasurer. A vacancy in any of such offices before the term of office has expired may be filled by the Board from amongst its numbers and such appointment shall be valid until the following annual general meeting.
- 19.5. In addition to such other powers and duties as may be delegated to him/her by the Board from time to time, the Chairman shall:
 - 19.5.1. preside and maintain order at all meetings of the Board, provided that if, on the date and place appointed for a meeting, the Chairman is not present within 30 (thirty) minutes after the time appointed for the commencement of that meeting, the vice-chairman shall so preside or if he/she is similarly absent, then the Directors present shall elect one of their number to act as chairman for that meeting;
 - 19.5.2. appoint the time and place of each meeting of the Board and, subject to this Memorandum of Incorporation, may convene the Board for the despatch of business, or adjourn or otherwise regulate the meetings of the Board as he/she may deem fit;

- 19.5.3. ensure that each meeting of the Board is duly convened and constituted and that the provisions of this Memorandum of Incorporation and any rules made by the Board for the conduct of its meetings are adhered to and that the proper procedure is duly followed;
 - 19.5.4. convene a meeting of Directors, on not less than 5 (five) Business Days' notice, upon the request of any 3 (three) or more Directors; and
 - 19.5.5. be entitled to delegate any of his/her powers and duties to the vice-chairman as he/she may deem necessary or desirable and may add to, vary and/or revoke any such delegation of powers or duties as he/she may deem fit.
- 19.6. In the event of the Chairman being absent or otherwise unable to perform his/her duties in terms hereof, the vice-chairman and, failing him/her, any other Director appointed by the Board for such purpose, shall exercise the powers and perform the functions of the Chairman for so long as the Chairman remains absent or unable to perform his/her duties and for this purpose such vice-chairman or other Director shall be deemed to have all such powers and functions of the Chairman as the Chairman himself/herself might have.
- 19.7. The quorum for a meeting of the Board shall be 4 (four) Directors, being 3 (three) Directors of the Members as well as the Developer's Director, present and entitled to vote. The Board shall transact no business unless a quorum of Directors is present at the time when the meeting proceeds to business.
- 19.8. Each Director present at a meeting of the Board shall be entitled to vote and shall have the same number of votes as detailed in clause 13.1 above.
- 19.9. Questions arising at a meeting of the Board shall be decided by a simple majority of the votes cast. In the case of an equality of votes the Chairman of the meeting shall have a second (or casting) vote.
- 19.10. A resolution in writing signed by all the Directors for the time being present in the Republic and not being less than are sufficient to form a quorum shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted, provided that where a Director is not present in the Republic, but has an alternate who is, the resolution must be signed by that alternate. The resolution may consist of several counterparts, each signed by one or more Directors or their alternates in terms of this clause 19.10.

20. POWERS OF DIRECTORS

- 20.1. Subject to the express provisions of this Memorandum of Incorporation, the Board shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of Managing Agents, may exercise all powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by this Memorandum of Incorporation required to be exercised or done by the Association in general meeting, subject however to such rules as may have been made by the Association in general meeting or as may be made by the Directors from time to time.

20.2. Save as specifically provided in this Memorandum of Incorporation, the Directors shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, architects, engineers, town planners, managing agents or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Directors on such terms as the Directors shall decide.

20.3. The Directors shall further have the authority:

20.3.1. to require that any construction of any sort on the Property shall be supervised to ensure that the provisions of this Memorandum of Incorporation and the Rules and Regulations are complied with and that all such construction is performed in a proper and workmanlike manner;

20.3.2. to issue and amend a design guideline manual from time to time in respect of the Property, and ensure that such manual is complied with at all times by all Members.

20.4. The Board shall have the right to vary, cancel or modify its decisions and resolutions from time to time.

21. REMUNERATION OF DIRECTORS

21.1. Directors shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them in or about the performance of their duties as Directors.

21.2. Directors shall be entitled to remuneration in respect of the performance of their duties as determined by the Association in a general meeting.

22. COMMITTEES

22.1. The Board shall be entitled to appoint committees consisting of such number of Directors and such outsiders, including the Managing Agent, as it deems fit and to delegate to such committees such of its functions, powers and duties as it deems fit, with further power to vary and/or revoke such appointments and/or delegations as the Board may from time to time deem necessary.

22.2. Subject to the prior written approval of the Board, each such committee shall have the right to co-opt such person(s) as it may think fit to be a member(s) of such committee.

22.3. The Board may resolve that the Association shall pay any Director who serves on any committee or who devotes special attention to the business of the Association, or otherwise performs services which in the opinion of the Board are outside the scope of the ordinary duties of a Director, such remuneration as they may determine.

22.4. The Board shall appoint a building committee which may consist of:

22.4.1. a registered architect;

22.4.2. a registered land surveyor; and

22.4.3. a registered town planner.

22.5. Members of the building committee shall not necessarily be required to be Members of the Association.

22.6. Except for any Buildings, additions or alterations to be erected or effected by the Developer on the Property, all plans for Buildings, additions and/or alterations, with specific reference to the design of the storm water outlets, shall be approved by the Board who shall first submit such plans to the building committee. The Board shall further not approve any such plan unless such plan shall first have been reviewed by the building committee. The building committee shall not act contrary to the provisions which the Developer may stipulate in any agreement of sale between the Developer and the purchaser of an Erf on the Property, regarding the siting, design and construction of a dwelling(s) on such an Erf.

22.7. All cost relating the approval of a plan will be for the account of the applicant.

23. MINUTES

23.1. Minutes shall be kept of all resolutions and proceedings of general meetings of the Association, meetings of the Board and any committees.

23.2. The minutes shall, without undue delay after the meeting has closed, be reduced to writing by the Managing Agent and certified correct by the chairman of that meeting. All minutes of meetings shall, after certification, be placed in an appropriate minute book. The minute books shall be open for inspection at all reasonable times by any Director, the Auditors and the Members or their duly authorised agents.

24. VALIDITY OF ACTS OF DIRECTORS AND COMMITTEES

All acts done in good faith by the Board or of a committee of the Board, or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment or continuance in office of any such Directors or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed or was qualified or had continued to be a Director or was entitled to vote, as the case may be.

25. ACCOUNTING RECORDS

25.1. The financial year of the Association shall be from the first day of March to the last day of February in the following year.

25.2. The Association shall keep such accounting records as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the Association including:

25.2.1. records showing the assets and liabilities of the Association;

25.2.2. a register of fixed assets showing the respective dates of acquisition and cost thereof, depreciation, if any, the respective dates of any disposals and the considerations received in respect thereof; and

25.2.3. records containing entries from day to day in sufficient detail of all cash received and paid out of the matters in respect of which receipts and payments take place.

25.3. The books of account shall be kept at the registered office of the Association or at such other place or places as the Directors think fit, and shall always be open for the inspection of the Directors or their duly authorised agents during normal business hours.

25.4. The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Association or any of them shall be open for the inspection of Members, not being Directors, and no Member (not being a Director) shall have the right to inspect any account and/or document of the Association except as authorised by the Directors or by the Association in general meeting.

25.5. The Directors shall in respect of every financial year of the Association cause to be made out annual financial statements in accordance with Sections 286 and 288 of the Act and shall lay them before the annual general meeting of the Association in respect of that year.

25.6. A copy of the annual financial statements which are to be laid before the Association in an annual general meeting, shall, not less than 21 (twenty one) Business Days before the date of the meeting, be sent to every Member of the Association, provided that this clause shall not require a copy of those documents to be sent to any person, the address of whom the Association is not aware.

26. AUDITOR

An auditor shall be appointed in accordance with the Act.

27. RESERVES

The Directors may, in its sole and absolute discretion, set aside out of the profits of the Association and carry to reserve such sums as they think proper. All sums standing to the credit of revenue and general reserve shall at the discretion of the Directors be applicable for meeting contingencies, for the gradual liquidation of any debt and/or liability of the Association, for repairing and/or improving and/or maintaining any property of the Association, for meeting losses on realisation of and/or writing down investments either individually and/or in the aggregate, or for any other purpose to which profits of the Association may appropriately be applied. Pending such application such sums may either be employed in the business of the Association or be invested. The Directors may divide the reserve into such special reserves as they think fit and re-allocate the amount of such reserves either in whole or in part to other special or general reserves and may consolidate into one reserve any special reserves or any parts of any special reserves into which the reserve may have been divided. The Directors may also carry forward any profits without placing them to reserve.

28. NOTICES

- 28.1. Any notice by the Association to any Member or Owner shall be regarded as validly given if it is either delivered personally to the Member or Owner or sent by prepaid registered post to him/her at his/her registered address or sent to him/her via email or other electronic form by such method approved by the Association in general meeting (other than notices for which the method of giving notice is prescribed by law).
- 28.2. A Member or Owner shall be bound by every notice given in terms of this clause 28.
- 28.3. The Association shall not be bound to enter any person in the register of Members until that person gives the Association an address for entry on the register.
- 28.4. Unless the contrary is proved, any notice given in terms of this Memorandum of Incorporation shall be in writing and shall –
- 28.4.1. if delivered by hand be deemed to have been duly received by the addressee on the date and at the time of delivery;
- 28.4.2. if posted by prepaid registered post be deemed to have been received by the addressee on the 7th (seventh) consecutive day following the date of such posting;
- 28.4.3. if given by email be deemed to have been received within 1 (one) hour of transmission where it is transmitted during normal business hours of the receiving instrument and within 4 (four) hours of the commencement of the following business day if transmitted outside those business hours.
- 28.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Member shall be an adequate written notice or communication notwithstanding that it was sent via email and/or not sent to or delivered at the Member's chosen address.
- 28.6. When a given number of days' notice or notice extending over any period is required to be given, the day of service shall not be counted in such number of days or period.

29. INDEMNIFICATION OF DIRECTORS

- 29.1. The Board of Directors shall be entitled to advance expenses to a Director or indemnify a Director, in respect of the defence of legal proceedings, as they deem fit.
- 29.2. The Board of Directors shall be entitled to indemnify a Director in respect of liability as they deem fit.
- 29.3. The Board of Directors shall be entitled to purchase insurance to protect the Association, or a Director, as they deem fit.

30. GENERAL

- 30.1. Whenever the Directors consider that the appearance of any part of the Property and/or Building vested in a Member is such as to be unsightly or injurious to the amenities of the surrounding area or the Property generally, the Directors may serve notice on such Member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. In the event of the Member failing within a reasonable time, to be specified in such notice, to comply therewith, the Directors may enter upon the relevant part of the Property or Building/s concerned and take such steps as may be necessary, and recover the costs thereof from the Member concerned, which costs shall be deemed to be a debt owing by that Member to the Association.
- 30.2. The Directors shall be obliged in giving such notice to act reasonably. In the event of any dispute, the Member or Owner (as the case may be) shall bear the onus of proving that the Directors acted unreasonably.
- 30.3. The Association may enter into agreements with Members for the provision of amenities and services to the Members and to levy a reasonable charge in respect of the provision thereof.
- 30.4. No Member ceasing to be a Member of the Association [nor such Member's executor(s), curator(s), Director(s), representative(s) or liquidator(s)] shall for any reason have any claim upon or interest in or right to the funds and/or any property of the Association.
- 30.5. The Association may claim from any Member or his estate any arrear levies, and interest and/or such other sums due from him to the Association at the time of his ceasing to be a Member.
- 30.6. Any person using any of the services, property or facilities of the Association does so entirely at his own risk.

31. DISPUTES

- 31.1. Any dispute arising out of or in connection with these Presents, including the cancellation thereof, must be determined in terms of this clause 31, except when an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 31.2. Should any dispute arise between the Association and any Member and/or Owner ("the Parties") in connection with the Parties' respective rights and obligations in terms of or arising out this Memorandum of Incorporation and/or the Regulations or its breach, that dispute shall, unless resolved amongst the parties to the dispute, be referred to and be determined by arbitration in terms of this clause 31.
- 31.3. Any Party to this agreement may demand that a dispute be determined in terms of this clause by written notice given to the other Party/Parties.
- 31.4. The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should either Party by written notice require the arbitration to be held on an urgent basis. In such event the Parties agree to apply jointly to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.

31.5. The arbitration shall be held –

31.5.1. in English;

31.5.2. at Port Elizabeth;

31.5.3. with only the legal and other representatives of the Parties to the dispute present thereat;

31.5.4. *mutatis mutandis* in accordance with the provisions of the Supreme Court Act, the Uniform Rules and the practice directives of the relevant division of the High Court of South Africa; and

31.5.5. otherwise in terms of the Arbitration Act, No 42 of 1965 (“**Arbitration Act**”), unless otherwise provided for herein or agreed between the Parties in writing.

31.6. The arbitrator shall, subject to clause 31.7, be:

31.6.1. if the dispute is primarily an accounting matter, a practising chartered accountant;

31.6.2. if the dispute is primarily a legal matter, a practising attorney or advocate;

31.6.3. if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising quantity surveyor;

31.6.4. if the dispute is primarily a matter relating to any defect in any building construction, a practising engineer,

all of which shall have at least 10 (ten) years’ experience in the relevant field of expertise.

31.7. Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after agreeing to refer the matter to arbitration, the arbitrator shall be appointed by the Chairperson of AFSA, at the request of either Party to the dispute.

31.8. The Parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to herein.

31.9. The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court referred to in clause 31.8 at the instance of any of the Parties to the dispute.

31.10. In the event that a Party to a dispute wishes to appeal the decision of the arbitrator, such Party shall apply to the arbitrator for leave to appeal in accordance with the provisions of the Supreme Court Act, the Uniform Rules and the practice directives of the relevant division of the High Court of South Africa.

31.11. In the event that a Party to the dispute is granted leave to appeal the decision of the arbitrator, such appeal shall be held -

31.11.1. before 3 (three) arbitrators appointed in accordance with 31.6 and subject to 31.7; and

31.11.2. *mutatis mutandis* in accordance with the provisions of the Supreme Court Act, the Uniform Rules and the practice directives of the relevant division of the High Court of South Africa.

- 31.12. The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 31.13. The written demand by a party to the dispute in terms of clause 31.3 that the dispute be referred to arbitration, shall be deemed to be a legal process for the purpose of interrupting extinctive prescription as envisaged in the prescription Act 68/1969.

32. AMENDMENTS AND UPDATES TO THIS MEMORANDUM OF INCORPORATION

- 32.1. The Association reserves the right to amend, alter and update this Memorandum of Incorporation from time to time by way of a Special Resolution of the Members.
- 32.2. Such amendment, alteration and/or update be binding on all Members and shall likewise be binding all Owners and Occupiers in the Development.



LEVY CALCULATION FORMULA

WESTBROOK PORT ELIZABETH PROPERTY OWNERS ASSOCIATION

	PHASE/PRECINCT	LAND USE	SQUARE METERS	PER MONTH RAND	PER ANNUM RAND	NOTES
REVENUE						
Levies recoverable						
1		Mixed use	161 700	161 700	1 940 400	
2		Residential	81 800	81 800	981 600	
3		Residential	46 600	46 600	559 200	
4		Residential	39 800	39 800	477 600	
5		Residential	101 300	101 300	1 215 600	
6		Residential	71 300	71 300	855 600	
7		Residential	76 700	76 700	920 400	
8		Residential	74 300	74 300	891 600	
9		Residential	56 300	56 300	675 600	
10		Residential	131 900	131 900	1 582 800	
			841 700	841 700	10 100 400	1
Levies not recoverable						
11		School	64 300	0	0	
		Public Open Space	300 300	0	0	
		Public Roads	73 600	0	0	
			438 200	0	0	
	Westbrook POA Total Square Meters		1 279 900			
OPERATING EXPENSES						
Municipal charges						
		Rates		0	0	
		Electricity		10 000	120 000	2
		Effluent		15 000	180 000	3
		Water		25 000	300 000	4
		Refuse & recycling		5 000	60 000	5
				55 000	660 000	
Fixed expenses						
		Garden & Landscaping		52 500	630 000	6
		Managing agents		120 000	1 440 000	7
		Office rental		15 000	180 000	8
		Provision for capital expenditure		150 000	1 800 000	9
		Security & Access Control		350 000	4 200 000	10
		Short term insurance		10 000	120 000	11
				697 500	8 370 000	
Variable expenses						
		Audit fee		2 500	30 000	12
		Bank charges		1 000	12 000	13
		Emergency Power		20 000	240 000	14
		Provision for unforeseen expenditure		23 200	278 400	15
		Office overheads		12 500	150 000	16
		Printing & stationery		5 000	60 000	17
		Telephone and communications		10 000	120 000	18
		Vehicle maintenance & petrol		15 000	180 000	19
				89 200	1 070 400	
Total expenditure				841 700	10 100 400	
Operating (loss) / profit for the year				0	0	

Notes to support the budget

- 1 R1.00 per square metre per month
- R12.00 per square metre per annum
- 2 R10,000 per month
- 3 60% of estimated water use
- 4 R50,000 per month, on the assumption you only water 6 months of the year in summer
- 5 R5,000 per month
- 6 Estimate of R52,500 per month
- 7 Estimate of R120,000 per month
- 8 R15,000 per month
- 9 Refer to capex budget below
- 10 Estimate of R350,000 per month
- 11 R10,000 per month includes generator and vehicle insurance
- 12 R2,500 per month
- 13 R1,000 per month
- 14 R20,000 a month for diesel and maintenance of generator
- 15 Unforeseen general expenditure that may arise
- 16 Computers, IT, staff welfare, consumables
- 17 Printing and stationery plus photocopier rental
- 18 R10,000 per month
- 19 R15,000 per month

CAPITAL EXPENDITURE BUDGET

	b	a	(a / b)
Capital provision	Average lifespan	Cost	Average per year
Motor vehicle x 2	5 years	500 000.00	100 000.00
CCTV / security	5 years	5 000 000.00	1 000 000.00
Generator	10 years	1 500 000.00	150 000.00
Electric fencing	10 years	3 000 000.00	300 000.00
Fence	20 years	5 000 000.00	250 000.00
		15 000 000.00	1 800 000.00