



FOURWAYS GARDENS
Residential Estate

(Association incorporated under Section 21)

ACCREDITATION AGREEMENT

for

ESTATE AGENTS

FOR THE PERIOD

28 FEBRUARY 2010 TO FEBRUARY 2011

CONTENTS

| | Page |
|--|------|
| 1 Pre-ambble | 3 |
| 2 Definitions | 4 |
| 3 Interpretation | 5 |
| 4 Legality | 5 |
| 5 Accreditation criteria | 6 |
| 6 Accreditation duration | 6 |
| 7 Conditions of accreditation | 6 |
| 8 Property transaction procedures | 6 |
| 9 Clearance Certificate | 7 |
| 10 Documentation | 7 |
| 11 Essential information to purchaser/tenant | 8 |
| 12 Marketing of properties | 8 |
| 13 Advertising sign boards | 9 |
| 14 Showhouses | 10 |
| 15 Indemnity | 10 |
| 16 Assignment | 10 |
| 17 Breach of Contract | 10 |
| 18 Grievance | 11 |
| 19 Information | 11 |
| 20 Domicilium | 11 |

Annexures

| | |
|---|--|
| A | Estate Agents Accreditation Policy |
| B | Accreditation Application Form |
| C | Purchaser's Certificate |
| D | Clearance Certificate Information Form |
| E | Surety Form |
| F | Access Card Cancellation Form |
| G | Access Card Application Form |
| H | Tenants Certificate |
| I | Clearance Certificate |
| J | Seller/Lessor Authorisation |
| K | Showhouse Information |
| L | Conditions of Lease Agreement |

MEMORANDUM OF AGREEMENT

entered into by and between

FOURWAYS GARDENS HOMEOWNERS ASSOCIATION

(herein represented by Dave Thomas in his capacity as Estate Manager and hereinafter referred to as the "HOA")

AND

(herein represented by _____ and

hereinafter referred to as the "Agency").

WHEREAS

The Homeowners Association needs to ensure that the rights and privacy of its members are protected, whilst the rights of its members to participate in the free market economy in respect of property transactions also needs to be guaranteed;

AND

WHEREAS

Estate Agencies and/or Agents wish to perform property transactions in Fourways Gardens Residential Estate

NOW THEREFORE IT IS AGREED THAT

Pre-amble

In the process of becoming an owner of fixed property in the estate, such legal entity automatically becomes a member of the HOA. The operations of the HOA are embodied in its Articles of Association and Conduct Rules and as a member, such legal entity accepts and acknowledge that it is subject to the Articles of Association and Conduct Rules, notwithstanding any other legislation. The members of the HOA also accept, with the transfer of their property that the concept of the estate imposes certain restrictions on the manner in which estate agencies may operate in the estate.

The HOA however acknowledges that the agents are the first line of interaction with new members and will therefore endeavour to empower all accredited estate agencies to ensure that the correct and all information is conveyed to new members.

In order to formalize these understandings, an accreditation procedure is followed and the conditions of such relationship are embodied in this agreement.

Definitions

| | |
|---------------------------|--|
| “Accredited” | means an approved application for accreditation and signed agreement with the Homeowners Association. |
| “Advertising” | means a signboard with a visual/written message, indicating that a property is for sale/to let/on show. |
| “Agency” | means the estate agency business that applied for accreditation and whose particulars and nominated <i>domicilium citandi et executandi</i> are reflected in annexure “B” hereto. |
| “Agent” | means an agent of or a person in the employment of an owner of an agency and who is registered as such with the Estate Agency Affairs Board. |
| “Agreement” | means this contract. |
| “Application” | means an application to become an accredited estate agent with the Fourways Gardens Homeowners Association. |
| “Articles of Association” | means the Articles of Association of Fourways Gardens Homeowners Association, published in terms of the Companies Act 1973 for the FWG HOA, Registration No. 86/00615/08. |
| “Conduct Rules” | means the Conduct Rules and Architectural Design and Building Regulations of Fourways Gardens Homeowners Association, published in terms of the Fourways Gardens Homeowners Association Articles of Association, a copy of which is annexed hereunto as Annexure “K” . |
| “Estate” | means the area associated with the development known as Fourways Gardens Residential Estate, Phases 1, 2 and 3 and also known as extensions 8, 10 15, 18 and 44 Fourways, Greater Johannesburg as well as certain land falling under the K56 road development, including Bushwillow Road and road reserve. |
| “ HOA” | means Fourways Gardens Homeowners Association a Section 21 Company registered in terms of the Companies Act, 1973, with Registration No. 1986/00615/08 and shall include the Board of Trustees which is authorized, in terms of the Articles of Association, to manage the Estate. |
| “FWG Residential Estate” | means the same as estate. |
| “Member” | means a member of Fourways Gardens Homeowners Association. |
| “Owner” | means the same as member. |
| “Property” | means a stand or erf within the estate with and/or without building structures thereon. |

| | |
|-------------------------|--|
| “Property transactions” | means the marketing, sale, purchase and/or letting a property in the estate. |
| “Resident” | means a person who resides on a permanent basis in the estate, irrespective whether such person is an owner or a tenant. |

Interpretation

- 3.1 The clause headings are for convenience only and shall be disregarded in the interpretation of the agreement.
- 3.2 Unless the context indicates otherwise:
 - 3.2.1 Natural person includes legal persons and vice versa;
 - 3.2.2 The masculine includes the feminine or neuter and vice versa;
 - and
 - 3.2.3 Singular includes plural and vice versa.

Legality

As a Section 21 Company, the HOA is guided and bound by its Articles of Association. The Conduct Rules of the HOA are manifested in the Articles of Association and in terms of the Conduct Rules an Agency can only operate in the estate, once such Agency is accredited with the HOA. This agreement is therefore concluded in terms of the Articles of Association and Conduct Rules of the HOA and should any discrepancy arise from this agreement, the stipulations of the Articles of Association and/or Conduct Rules shall prevail.

The parties also acknowledge that the HOA has adopted a policy in respect of the accreditation of Estate Agents and agree that the stipulations of such policy shall be read in conjunction with this agreement and shall be adhered to. (Attached hereto as **Annexure “A”**).

Accreditation Criteria

The parties do hereby agree that an Agency has to meet the following criteria to qualify for accreditation:

- 5.1 The Agency has to complete an application form for accreditation as per attached **Annexure**.
- 5.2 The HOA has to approve of the application in terms of its accreditation policy.
- 5.3 The Agency and its relevant agents who wish to conclude a property transaction in the estate, needs to provide the HOA with valid certificates, issued by the Estate Agency Affairs Board in respect of (a) Registration of the Agency (b) Fidelity Trust Certificates of the Agency and (c) registration of each individual **Agent** active in the Estate.

- 5.4 A non-refundable accreditation fee of R8 000-00 (Eight Thousand Rand) is payable for the calendar year 20010/11, as determined by the Homeowners Association, within its sole discretion.
- 5.5 The full accreditation fee stated in 5.4 above will become payable irrespective of the date of signing of this agreement or accreditation and **no pro-rata** fee will be accepted.

Accreditation Duration

- 6.1 This agreement will become effective from the date of signature by both parties and will terminate on the last day of February 2011.
- 6.2 Applications for accreditation will be considered within 14 (fourteen) days upon receipt of **completed** applications.

2

Conditions of Accreditation

The Agency and/or agents agree that the following conditions will be adhered to:

- 7.1 The Articles of Association and Conduct Rules of the HOA will be adhered to by each Agency and each individual agent.
- 7.2 The accredited Agency will accept responsibility for the actions of each of its agents and when a contravention occurs, the Agency will accept responsibility for such contravention.
- 7.3 Each Agency and their representative agents will apply in terms of the HOA's Access Control Policy for access to the estate and such agents shall adhere to the conditions of that policy.
- 7.4 On Show House days, each prospective purchaser/tenant visiting FWG will be issued with a visitors permit on entry to the Estate and the Agency accepts responsibility for stamping/sign the said permit on exit from the property being marketed
- 7.5 The Agency will inspect each property prior to the marketing of such property and should any contravention to the Conduct Rules of the HOA be found on such property, be it a fixed feature or otherwise, the Agency shall inform, in writing, both the owner of the property and the HOA.

Property Transaction Procedures

The Agency agrees that the following procedures will be followed in respect of each property transaction:

- 8.1 Once an agreement for purchase has been signed for the sale of a property, the following documentation shall be delivered by hand to the Estate Office and receipt of such documents shall be acknowledged by the HOA per signature:
 - 8.1.1 Purchaser's Certificate: Annexure "C".
 - 8.1.2 Clearance Certificate Information Form: Annexure "D".
 - 8.1.3 Surety Form (if applicable): Annexure "E".

- 8.1.4 Access card application form: Annexure "G".
- 8.1.5 Payment of any monies due.
- 8.2 Once an agreement for the **lease** of a property is concluded, the following documentation shall be delivered by hand to the Estate Office and receipt of such documents shall be acknowledged by the HOA per signature:
 - 8.2.1 Copy of the Lease Agreement.
 - 8.2.2 Tenant's Certificate: Annexure "H".
 - 8.2.3 Access card cancellation form: Annexure "F".
 - 8.2.4 Access card application form: Annexure "G".
 - 8.2.5 Payment of monies due.
- 8.3 The Agency shall ensure that the conditions as stipulated in the attached **Annexure L**, shall be contained in each lease agreement.

Clearance Certificate

- 9.1 The HOA undertakes to take reasonable steps to issue a clearance certificate (as per **Annexure "I"**) in respect of each property sold within a period of 10 (ten) working days, calculated from the day all required documents and payments are on hand.
- 9.2 It is the responsibility of the Agency to inform the transfer attorneys to collect the Clearance Certificate after the specified period in 9.1 above, on Monday to Friday between the hours of 08h00 to 16h30 from the HOA's accounts department.
- 9.3 The Agency shall confirm that the Clearance Certificate is ready for collection as the HOA does not warrant or guarantee that the aforesaid period of 10 (ten) working days can be complied with at all times.

Documentation

The HOA shall provide all documents required by the HOA in hard copy for a property transaction to each accredited Agency. Documents shall not be made available in electronic format.

Essential Information to Purchaser/Tenant

- 11.1 The agency acknowledges that the Deeds of all properties situated in the estate, include a clause to the effect that every person/body owning property in the estate automatically becomes a member of the HOA and can not refuse and/or resign as a member. Further that such member is bound by the Articles of Association and Conduct Rules of the Homeowners Association. Such member also accepts that no property transaction (including a sale of shares or sale of members' interest or a change in beneficiaries of a Company, Close Corporation or Trust which owns property in the Estate) can be executed without a Clearance Certificate and that payment needs to be made to the HOA for obtaining such Clearance Certificate.

- 11.2 The agency hereby agrees that the abovementioned information will be made known to all purchasers, prospective purchasers, tenants and prospective tenants prior to the signing of any agreement to rent or purchase.

It is imperative that prospective purchasers / lessees are made fully aware of the implications of compulsory membership of the HOA and the stipulations of the Articles, Conduct and Architectural Rules of FWG. To ensure this, the Agent is responsible for ensuring that each application for a Clearance Certificate (**Annexure D**) and/or Tenant's Certificate (**Annexure H**) is accompanied by a completed Record of Understanding (**Annexure M**, attached).

Marketing of Properties

The Agency agrees that the following conditions will be adhered to prior to, and throughout, the process of marketing of a property:

- 12.1 Seller's/Lessor's authorisation will be obtained before any marketing commences. (**Annexure "J"**).
- 12.2 With the signing of this agreement, the HOA accepts that the Agency is entitled to embark on campaigns to market properties within Fourways Gardens, using a variety of media (e.g. print, electronic, signboards etc) The HOA also accepts that the agency will manage its marketing campaign in a dignified and responsible manner without any deliberate attempt to mislead or misrepresent prospective purchasers/lessees. However, should the HOA find that the Agency has engaged in any dubious marketing practices, the HOA may insist on the submission of a full marketing/advertising proposal prior to promotion of any properties within the Estate.
- 12.3 The Agency agrees to adhere to all obligations contained in the Estate Agents Code of Conduct, and all directions issued by the Trustees of the HOA, in regard to such advertising.
- 12.4 The Agency agrees not to undertake door-to-door canvassing for property transactions in the estate and agents will only operate on a "by appointment" basis.
- 12.5 The Agency agrees not to distribute and/or allow distribution on its behalf of any advertisement, flyer, signage or publicity material of any nature whatsoever within the estate, be it from door-to-door or otherwise, except with the permission of the Homeowners Association.

Advertising Signboards

The Agency agrees that the following conditions will be adhered to in respect of advertising signboards:

- 13.1 The Agency will adhere to the by-laws/rules of the Greater Johannesburg Metro Council in respect of signboards on public roads, be it within the estate or outside the estate and accepts that the non-compliance of this condition could constitute a breach of contract.

- 13.2 No advertising signboard may be erected anywhere in the estate, except, outside showhouses on the days and, during the hours, on which they are “on show”.
- 13.3 Advertising signs for a showhouse will conform to the following specifications:
- 13.3.1 The maximum size of a board must not exceed 450 mm x 600 mm.
 - 13.3.2 The material from which signs and signboards are manufactured must be approved by the HOA prior to their erection.
 - 13.3.3 The advertising signs will be fixed against the boundary wall of the property or be free standing. Free standing signs must be perpendicular with the road and must be erected on the sidewalk in such a manner that they do not obstruct pedestrian flow.
- 13.4 No “pointer” boards will be allowed in the estate.
- 13.5 The number of boards will be limited to: as follows:
- 13.5.1 Two “For Sale” boards at the property on show.
 - 13.5.2 One “For Sale” board per agency on each vacant stand listed in the showhouse bulletin.
- It must be noted that NO boards will be permitted at the entrance circle or its surrounds.
- 13.6 Advertisement boards may only be erected on Sundays when showhouses are listed and only between the hours of 14h00 and 17h00. The Agent hereby consents to the removal by the HOA of any advertisement board found on the Estate after 17h30 on a show day.

Showhouses

- 14.1 Each Agency will be entitled to offer a house(s) on show once a week on Sundays throughout the entire year.
- 14.2 The HOA will provide a list of houses on show, which list will be made available to prospective purchasers/lessees at the entrances on Sundays together with a map of the estate.
- 14.3 In order to be listed as a showhouse, the Agency must ensure that the HOA is provided with the written information on or before **16h00 each Thursday**. Such information needs to be provided to the HOA (as per Annexure K) together with the Seller’s/Lessor’s authorisation (as per Annexure J). No exception to this requirement will be considered.

- 14.4 The Agency agrees that the maximum hours a showhouse may be on show on a Sunday will not exceed 14h00 to 17h30 and that an agent/representative of the Agency will be present in person on the property throughout the period the property is on show.
- 14.5 The Agency agrees and will ensure that the activities at a showhouse will not interfere with the neighbours.
- 14.6 The HOA will endeavour to provide an accurate list of showhouses but makes no guarantees in this respect. The Agency hereby waives and abandons any and all claims it may have arising from the failure of the HOA to publish a show house list timeously or at all, or to include a particular property, or to properly record the details thereof, or from any other cause whatsoever relating to the list of show houses.
- 14.7 The Agency may not employ the practice of “shuttle” marketing. In other words, on showdays, Agents may only promote houses that they have officially advertised as being on show. They may not direct prospective purchasers / tenants from a published show house to another property within the Estate that is not officially “on show”. Neither shall Agents be permitted to leave unattended any property they may have advertised as being “on show”.

The agent present at a show house shall stamp and sign the Exit Permit (**Annexure “N”**) for all visitors (non-residents) who visited a particular showhouse

Indemnity

- 15.1 The agency hereby waives and abandons any and all claims which may arise against the HOA from any cause whatsoever connected to this agreement, and whether such claim arises as a result of the negligence of the HOA, its Trustees, Management, servants or agents.
- 15.2 The Agency accordingly hereby irrevocably indemnifies and holds the HOA free from liability against any claims, losses, liabilities, demands, damages, costs, charges or expenses which the agency may sustain arising out of this agreement including any consequential losses.

Assignment

The Agency shall not have the right to cede or assign this agreement or any rights or obligations hereunder to any other party. This clause shall also apply in the event of a change in control of the ownership of any accredited agency. In such event the HOA shall be entitled to summarily cancel this agreement.

Breach of Contract

- 17.1 The parties do hereby agree that any ignorance and/or non-compliance with any condition of this agreement shall constitute a breach of contract.

- 17.2 The Agency agrees and accepts that the HOA shall have the right to issue a 24 (twenty four) hour demand for the agency to rectify any breach of any condition of this agreement, any law, by-law, conduct rules or direction of the Trustees. Such demand shall be in writing and either telefaxed to the agency's office fax number or delivered by hand and, in case of emergency, may also be directed telephonically or verbally (in person) to an Agency / agent. Should the Agency fail to comply with the terms of such demand, the HOA shall be entitled, in addition to any other rights available to it in terms of law, to:
- 17.2.1 Investigate the alleged breach which investigation shall include the obtaining of all relevant information / evidence and refer such alleged breach to the Communications Committee, which Committee shall have the right to penalize the Agency, which penalty could prohibit the agency to advertise / participate in show house marketing as stipulated in Clause 14 for any number of days / times, depending on the significance of the breach.
 - 17.2.2 Summarily cancel this agreement; and / or declare that all monies paid to the HOA are forfeited to the HOA; and/or
 - 17.2.3 Declare that this agreement shall not be renewed in the following year; and/or
 - 17.2.4 Institute legal action to recover any and all losses suffered by the HOA or for any other cause available to the HOA at law.
- 17.3 Notwithstanding the above, the Agency hereby agrees that the HOA shall be entitled to summarily *cancel this accreditation* agreement, without giving notice to rectify a breach, in the event of the Agency perpetrating any of the following breaches of this agreement:
- 17.3.1 The distribution of any form of advertising or publicity material from door to door, including cold-canvassing for business, the conduct of surveys or any other similar conduct.
 - 17.3.2 A breach of any of the security protocols of the HOA; and
 - 17.3.3 The failure to pay the accreditation fee (referred to in 5.4 hereof) timeously.

Grievance

- 18.1 The parties agree and accept that the General Manager of the HOA will be responsible for the execution and monitoring of the agreement. The parties further agree that in the event of any dissatisfaction with a decision taken in terms of this agreement, the Agency will have a right to raise its grievance by submitting such grievance in writing via the General Manager to the Communications Committee of the HOA, which will, in turn, consider the issue.
- 18.2 The Agency also accepts that similar agreements will be concluded with various other agencies. In the event that a contravention by another agency is observed, any grievance should to be submitted **in writing** to the HOA.

Information

The parties agree to the following conditions in respect of information:

- 19.1 The Agency acknowledges that the HOA is in a confidential relationship with its members and will therefore not disclose any information relating to a particular owner’s details, (i.e. ownership status, address, telephone numbers etc.) to any Agency and/or agent.
- 19.2 The Agency also acknowledges that the HOA is in possession of certain property related information (i.e. stand number, stand size, building plans etc.) which information can also be obtained elsewhere and therefore the Agency undertakes only to approach the HOA as a last source of information in this regard. The HOA shall be under no obligation to provide such information to the Agency.
- 19.3 The Agency agrees to present to the HOA, on date of signature of this agreement, a list of all agents of the agency who will be active in the estate and to notify the HOA, forthwith, in writing, of any changes thereto.

Domicilium

The parties hereby choose as their *domicilium citandi et executandi* for purposes of correspondence and or servicing of notices the following addresses:

HOA: Estate Office
69 Camdeboo Road
Fourways Gardens

TEL: (011) 465 7731/18
FAX: (011) 467 4543

HOA: Accounts Office
69 Camdeboo Road
Fourways Gardens

TEL: (011) 465 7731/18
FAX: (011) 465 4773

AGENCY: _____

TEL: _____

FAX: _____

Thus done and signed at _____

on this _____ day of _____ 2010.

AS WITNESSES

1. _____

2. _____

AGENCY

Thus done and signed at _____

on this _____ day of _____ 2010.

AS WITNESSES

1. _____

2. _____

**FOURWAYS GARDENS
HOMEOWNERS
ASSOCIATION**