

# Kelderhof Country Village

## ANNEXURE TO AGREEMENT OF SALE REGULATING THE ROLE OF THE HOME OWNERS ASSOCIATION

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Date

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Date

\_\_\_\_\_  
Developer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Home Owners Association

\_\_\_\_\_  
Date

### PROPERTY DESCRIPTION:

Erf number: \_\_\_\_\_

First date of transfer: \_\_\_\_\_

## ANNEXURE TO AGREEMENT OF SALE

### 1. BACKGROUND

- 1.1 The Homeowners' Association of the Kelderhof Country Village Estate wants to ensure that the Development on the land is done in such a way that –
  - 1.1.1 there is compliance with the Architectural Design Guidelines, a copy of which has been attached hereto electronically on a compact disk and
  - 1.1.2 that buildings of a standard acceptable to the Association are erected on the Development.
- 1.2 By attaching and signing this annexure, the Parties agree that –
  - 1.2.1 this Agreement is incorporated as part of the Sale Agreement to which this Agreement is attached; and
  - 1.2.2 if there is any discrepancy between the provisions of the Sale Agreement and the provisions of this Agreement, the provisions of this Agreement shall apply.

### 2. INTERPRETATION

- 2.1 In this Agreement, unless the context otherwise requires –
  - 2.1.1 "**Agent**" means the estate agent identified in the Sale Agreement;
  - 2.1.2 "**the/this Agreement**" means this annexure together with all attachments, including the compact disk attached hereto;
  - 2.1.3 "**Architectural Guidelines**" means –  
the general architectural guidelines for the Development as determined by the Association in accordance with the provisions of the Constitutions, the current version which is attached hereto electronically on a compact disk;
  - 2.1.4 "**Association**" means the Home Owners' Association referred to in clause 8 below;
  - 2.1.5 "**Business day**" means any day which is not a Saturday, Sunday or South African public holiday;
  - 2.1.6 "**Conditions of Subdivision**" means the conditions of subdivision applicable to the land or any subdivision thereof as filed in the Cape Town Deeds Office;
  - 2.1.7 "**Constitution**" means the Constitution of the Home Owners' Association, a copy of which is attached hereto electronically on a compact disk;
  - 2.1.8 "**Date of signature**" means the date of signature of the Sale Agreement by the party signing last in time;

- 2.1.9 **“Developer”** means Empire Earth Investments 17 (Pty) Ltd 2005/011734/07, a company with limited liability duly incorporated in accordance with the laws of the Republic of South Africa of Prescient House, Westlake Business Park, Otto Close, Westlake;
- 2.1.10 **“Development”** means the subdivision of the land into residential and other erven;
- 2.1.11 **“Dispose”** means dispose, alienate, sell, encumber, or let;
- 2.1.12 **“Local authority”** means the local authority having jurisdiction over the Development, including a Municipality or any other statutory local authority;
- 2.1.13 **“Parties”** means the parties to this Agreement listed on the front page hereof;
- 2.1.14 **“Possession date”** means the date of Transfer;
- 2.1.15 **“Property”** means the property, being a freehold erf forming part of the development as appears from the Site diagram and is sold under the Sale Agreement;
- 2.1.16 **“Purchaser”** means the purchaser identified in the Sale Agreement;
- 2.1.17 **“Rules”** means the Association’s existing Code of Conduct together with such rules as the Association may make from time to time in accordance with the provisions of the Constitution which is attached hereto electronically on a compact disc;
- 2.1.18 **“Sale Agreement”** means the agreement to which this Agreement is attached;
- 2.1.19 **“Seller”** means the seller identified in the Sale Agreement;
- 2.1.20 **“Site diagram”** means the plan annexed hereto marked **Annexure A**;
- 2.1.21 **“Suspensive condition”** means the suspensive condition referred to in clause 3; and
- 2.1.22 **“Transfer”** means registration of transfer of the Property into the name of the Purchaser.
- 2.2 Words importing the singular include the plural and vice versa, and words importing the masculine gender include feminine and words importing persons include partnerships, bodies corporate, trusts and close corporation.
- 2.3 If any provision in this clause 2 is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the Agreement.
- 2.4 The headings in this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions.
- 2.5 Any reference to an enactment is to that enactment as at Date of signature and as amended or re-enacted from time to time.
- 2.6 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.7 Schedules or annexures to this Agreement shall be deemed to be incorporated in and form part of this agreement.
- 2.8 If any period is referred to in this Agreement by reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business day, in which case the last day shall be the next succeeding business day.

2.9 This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

### **3. SUSPENSIVE CONDITION**

3.1 Notwithstanding anything to the contrary contained in the Sale Agreement, the Sale Agreement is subject to the fulfilment of the suspensive condition that the Association consent in writing to the transaction contemplated in the Sale Agreement by no later than 21 (twenty one) days after the date of signature.

3.2 If the suspensive condition has not been fulfilled timeously then the Sale Agreement will automatically fail and be of no further force and effect, provided that the parties to the Sale Agreement will use their best endeavours to restore each party's prior position.

3.3 The Parties shall take all steps reasonably necessary to procure the timeous fulfilment of the suspensive condition.

3.4 The Seller or the Purchaser shall submit the Sale Agreement to the Association for written approval forthwith after the date of signature.

3.5 Notwithstanding the provisions of this clause 3, the provisions of clauses 1, 2, 3, 4, 8, and 11 to 16 inclusive shall be of immediate force and effect and shall impose valid and binding obligations on the Parties.

### **4. TITLE CONDITIONS**

The Purchaser agrees that the Property is sold subject to the provisions of the Constitution and the Architectural Guidelines.

### **5. MEMBERSHIP**

The Purchaser will become a member of the Association against Transfer.

### **6. TRANSFER**

6.1 Transfer shall be subject to:

6.1.1 such conditions or servitudes as are mentioned or referred to in the current title deeds to the land or any subdivision thereof;

6.1.2 the conditions of subdivision, to the extent that they are capable of registration.

### **7. SERVITUDES AND RESTRICTIONS**

- 7.1 The Property is sold subject to such restrictions as any local authority may impose in respect of the rezoning and/or subdivision of the Property, including restrictions having regard to height, coverage or set back.
- 7.2 The Developer or Association shall be entitled to register such servitudes across the property as may be necessary for the purposes of the installation of services, including (without any limitation) gas, electricity, telephone, television cable, telecommunication connections, television and sewerage, which servitudes shall to the best of the Developer and/or Association's ability not materially impair the Purchaser's use and enjoyment of the Property.

## **8. HOME OWNERS' ASSOCIATION**

- 8.1 The Association has been established for the benefit of all owners of erven in the Development and to control and maintain roads, services and amenities within the Development.
- 8.2 The Purchaser shall become a member of the Association on Transfer and agrees to remain a member for as long as the Purchaser is the registered owner of the Property.
- 8.3 The Purchaser agrees to be bound by the following:
- 8.3.1 the Constitution; and
  - 8.3.2 the Rules; and
  - 8.3.3 the Architectural Guidelines; and
  - 8.3.4 construction rules as set out in the Kelderhof Builder's Code of Conduct document, which has been attached hereto electronically on compact disc.
- 8.4 The Purchaser agrees that he shall –
- 8.4.1 be responsible for and pay promptly on due date all levies and other charges as may be payable to the Association in accordance with its Constitution; and
  - 8.4.2 comply with (and procure that all other occupants of the Property comply with) the Rules.
- 8.5 The Purchaser agrees that the Association shall be entitled to, from time to time, make rules with regard to the use and enjoyment of facilities forming part of the Development and with regard to the alienation and co-ownership of the Property, provided that such rules are in accordance with the Constitution and the general objectives of the Association.
- 8.6 A title deed condition shall be registered against the Property that the Property shall not be transferred without the written consent of the Association in accordance with the provisions of its Constitution.**
- 8.7 Any contract for the disposal of the Property shall include an annexure substantially in accordance with this Agreement.

## **9. DISPOSAL**

- 9.1 The purchaser undertakes to pay the Association 0.5% of sales price upon alienation of the Property as set out in the Constitution.
- 9.2 In order to sell the Property, the Purchaser shall obtain from the Association a Levy Clearance Certificate which will be issued on the condition that all amounts due to the Association in respect of levies have been paid.
- 9.3 It is further agreed that should the Purchaser be – :
- 9.3.1 a company, the disposal by a shareholder of any of his shares in the Purchaser, including his beneficial ownership thereof;
- 9.3.2 a close corporation, the disposal by a member of any percentage of his member's interest in the Purchaser; or
- 9.3.3 a trust, the disposal by a beneficiary of any of his beneficial interest in the Purchaser, shall be deemed to be a disposal of the Property for purposes of this clause 9.
- 9.5 Disposal of the Property shall at all times be subject to and in accordance with the provisions of the Constitution.

## 10. BUILDING REQUIREMENTS

- 10.1 No building or structure may be erected on the property and/or the external appearance (including the colour) of any existing or future building or structure may not be changed unless the architectural design plans and specifications (including materials) of such building or structure conform to the provisions of the architectural guidelines, as determined and approved by the Association.
- 10.2 All building and structures shall be built in accordance the plans and specifications approved in clause 10.1 above.
- 10.3 The property and all improvements thereon shall be kept and maintained in a neat and tidy condition to the satisfaction of the Association.
- 10.4 **The Purchaser and/or his successors in title shall, within a period of 36 (thirty six) months after the date of the first registration of transfer of the property from the Developer to the first purchaser thereof as determined by the Association (or such later date as the Association may direct in writing), begin building operations in respect of a dwelling house on the property (the plans and specifications of which shall have been approved in terms of clause 10.1 above).** If the Purchaser fails to comply with the provisions of this clause 10.4, the Association may, without prejudice to any other rights which it may have in terms of this Agreement or the documentation referred to in 8.3 and/or at law and at its election, impose a levy upon the Purchaser, up to 2 (two) times the ordinary levy per unit imposed on an owner of an erf.

## 11. VARIATIONS TO DEVELOPMENT

- 11.1 The Developer, or its successors in title shall, in its absolute discretion be entitled to –
- 11.1.1 vary the layout and/or zoning and/or size and/or boundaries of erven and/or the extent and position of streets comprising the Development, subject to the necessary approvals being granted by the requisite authorities; and/or
  - 11.1.2 increase and expand the Development and, if necessary, incorporate further land and other facilities into the Development, and the Purchaser shall be bound thereby and shall have no claim of whatsoever nature against the Association, the Developer or the Seller or their respective successors in title arising therefrom.

## **12. JOINT AND SEVERAL LIABILITY**

If the Purchaser comprises more than 1 (one) person (whether natural or juristic) their liability in terms of the Agreement shall be joint and several.

## **13. SURETYSHIP**

**If the Purchaser is a trustee, close corporation, company or other legal entity other than a natural person, the person signing the Agreement binds himself in his personal capacity, under renunciation of the exceptions of excussion and division, as surety for and co-principal debtor with the Purchaser to the Seller for the due performance by the Purchaser of all of its obligations arising from or in connection with this Agreement.**

## **14. USE OF PROPERTY**

- 14.1 The Property may be used solely for residential purposes. Without limiting the generality of the foregoing, no auction, business or profession may be conducted from the Property without the prior consent of the Association.
- 14.2 No share block scheme as contemplated in the Share Blocks Control Act No. 59 of 1980 an/or time-sharing scheme as contemplated in the Property Timesharing Act No. 75 of 1983 as amended and/or any other similar scheme or arrangement may be conducted on the Property, without the prior consent of the Association.

## **15. DOMICILIUM**

- 15.1 The Parties choose as their residences for all purposes of this Agreement, including the giving of any notice and/or the service of any process, the address provided for in the Sale Agreement.
- 15.2 Any notice or process shall be deemed to have been received, unless the contrary is proved –
- 15.2.1 on the date of delivery thereof if delivered by hand ; or

15.2.2 7 (seven) days after the date of posting thereof if posted by prepaid registered.

## **16. ASSIGNMENT**

The Purchaser agrees that another party may take over the Seller's rights and obligations in terms of the Agreement. The Seller will give the Purchaser 10 (ten) days' written notice if another party intends to take over from it.

## **17. SIGNATURE**

The effective date of the Agreement shall be the Signature Date.

## **18. WHOLE AGREEMENT**

The Agreement makes up the whole agreement between the Purchaser and the Seller. Neither the Purchaser nor the Seller are legally obliged to comply with any express or implied term, condition, undertaking, representation, warranty, or promise not recorded in the Agreement.

## **19. VARIATION**

No amendment, addition or consensual cancellation of this Agreement will be binding unless it is recorded in writing and signed by the Seller and Purchaser.

## **20. RELAXATION**

Neither Party shall lose any of its rights under this Agreement if it does not immediately and in every instance insist on them.

## **21. SEVERABILITY**

The Parties acknowledge that each clause of the Agreement is separate. If any clause of the Agreement is or becomes illegal, invalid or unenforceable for any reason or in any jurisdiction, it will be treated as if it had not been written. This does not make the rest of the Agreement illegal, invalid or unenforceable.

## **22. JURISDICTION**



The Parties consent to all proceedings instituted in connection with this Agreement being instituted in the Magistrate's Court in terms of section 45 of the Magistrate's Court Act of 1944 (as amended).

### **23. COSTS**

If the Seller brings legal proceedings against the Purchaser to enforce payments of amounts owed to it in terms of the Agreement, the Purchaser shall be responsible to pay all costs the Seller incurs in collecting the payment.

### **24. IMPORTANT CLAUSES & UNDERSTANDING THE AGREEMENT**

24.1 The Purchaser understands that the terms in bold have important legal consequences.

24.2 The Purchaser confirms that it has read and understood all the terms and conditions in this Agreement, has raised any questions which require clarification before signing the Agreement, and has received all documents annexed to this Agreement.