



# **INTERIM BUILDING CONTRACT** **PORT ZIMBALI ESTATE**

**Viking Pony Properties 37 (Pty) Ltd**



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## **MEMORANDUM OF AGREEMENT**

Between

**PORT ZIMBALI ESTATE HOME OWNERS' ASSOCIATION (NPC)**

*(Registration Number: 2006/008435/08) (hereinafter referred to as "PZE"),*

of: 217 Emerald Avenue, Lyttelton Manor X3, Centurion.  
P.O. Box 8307, Centurion, 0046  
Fax No.: 086 647 4644  
Tel No.: 012 644 1411  
E-mail: finserv@hoa.co.za

which address we hereby select as our domicilium citandi et executandi for all purposes including notices hereunder

and

**VIKING PONY PROPERTIES 37 (PTY) LTD**

*(Registration Number: 2000/010934/07) (hereinafter referred to as "VIKING"),*

of: 217 Emerald Avenue, Lyttelton Manor X3, Centurion.  
P.O. Box 8307, Centurion, 0046  
Fax No.: 086 647 4644  
Tel No.: 012 644 1411  
E-mail: allan@pze.co.za

which address we hereby select as our domicilium citandi et executandi for all purposes including notices hereunder

and

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(Identity number(s): \_\_\_\_\_)  
*(hereinafter referred to as the PURCHASER, which expression shall include, unless repugnant to the meaning or context thereof, his successors and permitted assigns),*

of: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Fax No: \_\_\_\_\_

Cell No: \_\_\_\_\_ E-mail: \_\_\_\_\_

which address we hereby select as our domicilium citandi et executandi for all purposes including notices hereunder

In respect of Erf \_\_\_\_\_, Port Zimbali, Registration Division FU, Province of KwaZulu-Natal  
*(herein after referred to as the "PROPERTY"), to be transferred to the PURCHASER by*

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*(the SELLER).*



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## **1 INTERPRETATION**

- 1.1 words importing natural persons shall include a reference to bodies corporate and other legal personae and *vice versa*;
- 1.2 words importing the masculine shall include a reference to the feminine and other genders;
- 1.3 words importing the singular shall include a reference to the plural and *vice versa*;
- 1.4 annexes to this agreement shall be deemed to have been incorporated herein and shall form an integral part hereof;
- 1.5 reference to a party in a document includes that party's successors and permitted assigns;
- 1.6 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.7 where the day on or by which anything is to be done is not a business day, it shall be done on or by the first business day thereafter;
- 1.8 when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday;
- 1.9 a reference to a document includes an amendment or supplement to, or replacement or novation of that document;
- 1.10 the captions appearing in this agreement are for reference purposes only and shall not affect the interpretation hereof;
- 1.11 if any provision is a definition (or under this heading "Interpretation" and/or any other heading in this agreement) and is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition (or such other clause) effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 1.12 where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.

## **DEFINITIONS**

- 1.13 In this agreement, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them hereunder:
- 1.13.1 "the/this Agreement" shall mean this agreement;
- 1.13.2 "Building Contract" shall mean VIKING's standard building contract and standard terms and conditions of the standard building contract for Port Zimbali Estate, as amended from time to time;
- 1.13.3 "Deed" shall mean deed of transfer in respect of the PROPERTY;



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- 1.13.4 "Effective Date" shall mean the date of signature of this Agreement;
  - 1.13.5 "Erf" shall mean the PROPERTY;
  - 1.13.6 "MOI" means the Memorandum of Incorporation of PZE, which includes the RULES of PZE;
  - 1.13.7 "Parties" shall mean the PURCHASER, PZE and VIKING, and the term "Party" shall be construed as reference to any of them as the context may require;
  - 1.13.8 "RULES" means the RULES of PZE which form an integral part of the MOI of PZE.

## **2 INTRODUCTION**

- 2.1 The PURCHASER has made an offer to purchase the Erf from the SELLER.
- 2.2 The PURCHASER is desirous of taking transfer of the Erf from SELLER.
- 2.3 The PURCHASER acknowledges that the Deed prescribes the fulfilment of certain conditions by the PURCHASER prior to transfer of the Erf to the PURCHASER.
- 2.4 The PURCHASER is desirous of fulfilling the conditions of the Deed to facilitate transfer of the Erf to the PURCHASER and is thus wilfully entering into this Agreement with PZE and VIKING, including all undertakings and warranties set out herein.

## **3 FULFILMENT OF CONDITIONS**

- 3.1 The PURCHASER acknowledges the condition of the Deed that the PURCHASER must become a member of PZE and hereby undertakes to become a member of PZE and be bound by all the provisions of the MOI, the content, full meaning and effect of which the PURCHASER warrants that he is aware of and considers binding on him, on the Effective Date.
- 3.2 The PURCHASER hereby undertakes to enter into the Building Contract, the content, full meaning and effect of which the PURCHASER warrants that he is aware of and considers binding on him, with VIKING.
- 3.3 From the date of accepting and signing an irrevocable and enforceable Building Contract ("irrevocable and enforceable" means that all suspensive conditions of the subject Building Contract are waived and/or complied with) with VIKING, the PURCHASER acknowledges the provisions of the MOI, the content, full meaning and effect of which the PURCHASER warrants that he is aware of and considers binding on him, in that extra levies will be due and payable to PZE should the PURCHASER not complete the dwelling within the time limits prescribed in the MOI.
- 3.4 The PURCHASER and VIKING understand that certain provisions of the Building Contract such as, amongst others, dwelling design, prime cost items and variation orders are subject to negotiations between VIKING and the PURCHASER.
- 3.5 Subject to the provisions of this Agreement, VIKING undertakes to furnish the PURCHASER with consent to take transfer of the Erf on the Effective Date.



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#### **4 DOMICILIUM CITANDI ET EXECUTANDI**

- 4.1 The Parties choose as their respective *domicilium citandi et executandi* for all purposes under this Agreement, whether in respect of payments, court process, notices or other documents or communications of whatsoever nature the addresses in the Republic of South Africa as described and depicted on page 1 of this Agreement.
- 4.2 Any notice or communication required or permitted to be given in terms of this AGREEMENT shall be valid and effective only if in writing but it shall be competent to give notice by e-mail.
- 4.3 Any party may by notice to any other party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that party to another physical address in the Republic of South Africa or its e-mail address, provided that the change shall become effective *vis-à-vis* that address on the 7<sup>th</sup> business day from the deemed receipt of the notice by the addressee.
- 4.4 Any notice to a Party which is:-
- 4.4.1 delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
- 4.4.2 sent by e-mail to its chosen e-mail address (if any) above, shall be deemed to have been received on the date of transmission (unless the contrary is proved).
- 4.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

#### **5 GENERAL**

- 5.1 The Parties acknowledge and agree that:-
- 5.1.1 this Agreement constitutes the entire agreement between them and no provisions, terms, conditions, stipulations, warranties or representations of whatsoever nature, whether express or implied have been made by any of the Parties or on their behalf except as are recorded herein;
- 5.1.2 no relaxation, extension of time, latitude or indulgence which any Party ("the grantor") may show, grant or allow any of the other ("the grantee") shall in any way constitute a waiver by the grantor of any of the grantor's rights in terms of this Agreement and the grantor shall not thereby be prejudiced or estopped from exercising any of its rights against the grantee which may have then already arisen or which may arise thereafter;
- 5.1.3 no alteration, variation, amendment or purported consensual cancellation of this Agreement or this clause 6 or any deletion there from shall be of any force or effect unless reduced to writing and signed by or on behalf of the Parties;



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- 5.1.4 they have undertaken to each other to do all such things, take all such steps and to procure the doing of all such things and the taking of all such steps as may be necessary, incidental or conducive to the implementation of the provisions, terms, conditions and import of this Agreement;
  - 5.1.5 no Party shall be entitled to cede, assign or otherwise transfer any of its rights, interests or obligations under and in terms of this Agreement without the prior written consent of any other Party;
  - 5.1.5 this Agreement shall be interpreted according to the laws of the Republic of South Africa and the parties have consented to the jurisdiction of the North Gauteng High Court, Pretoria.

**6 SIGNATURES**

Signed by the PURCHASER at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
PURCHASER

\_\_\_\_\_  
PURCHASER

Signed by VIKING at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
VIKING

Signed by PZE at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
PZE

