

# AGREEMENT

## 1 PARTIES

1.1 The parties to this agreement are

1.1.1 **BIZ AFRIKA 1710**  
(Association incorporated under Section 21)  
Registration Number 2002/009587/08

and

1.1.2 **ZELPY 1642 (PROPRIETARY) LIMITED**  
Registration Number 2002/025957/07

1.2 The parties agree as herein set out.

## 2 INTERPRETATION AND PRELIMINARY

The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. In this agreement, unless a contrary intention clearly appears:

2.1 words importing:

2.1.1 any one gender includes the other two genders;

2.1.2 the singular includes the plural and vice versa; and

2.1.3 natural persons include created entities (corporate or non-incorporate) and vice versa;

2.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

2.2.1 "Developer" means the contracting party referred to in clause 1.1.2 above;

2.2.2 "Environment Act" means the Environment Conservation Act No. 73 of 1989, as amended;

2.2.3 "golf course" means the partly constructed golf course established upon erven 151 and 152 in the Township;

2.2.4 "hazardous waste" means waste designated as such in terms of the regulations promulgated under Section 24(c) of the Environment Act;

2.2.5 "HOA" means the contracting party referred to in clause 1.1.1 above;



- 2.2.6 "members" means the members of the HOA, being the owners as from time to time of erven 1 to and including 150 in the Township;
- 2.2.7 "sewer property" means Portion 266 (a portion of portion 38) of the Farm Modderfontein 332, Registration Division JQ, North-West Province;
- 2.2.8 "water care works " means the water care works plant established upon the Sewer Property, servicing the Township;
- 2.2.9 "township" means the Township of Wigwam as depicted on General Plan SG 4568/2004;
- 2.2.10 "toxic waste" means waste designated as such in terms of the regulations promulgated under Section 24(c) of the Environment Act;
- 2.2.11 "water catchment properties" means the Sewer Property as well as
- 2.2.11.1 The remaining extent of Portion 156 of the Farm Modderfontein 332, Registration Division JQ, North-West Province,
- 2.2.11.2 The remaining extent of Portion 176 (a portion of portion 156) of the Farm Modderfontein 332, Registration Division JQ, North-West Province,,
- 2.2.11.3 Portion 271 (a portion of portion 148) of the Farm Modderfontein 332, Registration Division JQ, North-West Province, and
- 2.2.11.4 Portion 270 of the Farm Modderfontein 332, Registration Division JQ, North-West Province on which the Township was established
- 2.3 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;
- 2.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 2.5 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;
- 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 Expressions defined in this agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own definitions.

### 3 BACKGROUND

The parties hereto record the following:

- 3.1 The Developer is the Developer of the Township.

- 3.2 The Township has been duly proclaimed.
- 3.3 The Township consists of 156 erven, being:
- 3.3.1 150 ordinary residential stands;
  - 3.3.2 two stands consisting of private roads, respectively being stands 154 and 155;
  - 3.3.3 stand 153 upon which the entrance gate to the Township is established, adjoining the public road granting access to the Township;
  - 3.3.4 stand 152 upon which a commercial establishment known as the Wigwam Hotel with related amenities, including the Golf Course, is established;
  - 3.3.5 stand 151 on which one hole of the golf course is laid out; and
  - 3.3.6 stand 156, being a private open space.
- 3.4 The HOA has been established to take care of and exercise jurisdiction over the communal interests of all Members.
- 3.5 The HOA and the Developer have certain communal interests that need to be addressed by way of this agreement.

#### 4 TRANSFER

- 4.1 Without undue delay after signing of this agreement, the Developer undertakes to transfer erf 154 to the HOA.
- 4.2 Transfer will be affected at the HOA's costs.
- 4.3 The HOA undertakes to only utilise the aforesaid property for its lawful purpose in terms of the conditions under which the Township was established and in terms of the land usage assigned to the aforesaid property.
- 4.4 It is recorded that Stand 153 will remain the property of the developer, who shall maintain at his own costs this stand and the improvements erected thereon.

#### 5 ACCESS, THOROUGHFARE AND ROADS

- 5.1 The Members of the HOA will always be entitled to access to the amenities established upon erf 152 for *bona fide* purposes and to thoroughfare over erven 152 and 155 for these purposes.
- 5.2 The Members of the HOA will at all times be entitled to access to the Golf Course from erf 154 and the Developer will never obstruct the walkways yielding such access.
- 5.3 The Developer will maintain the road, kerbing and sidewalks on erf 155 in a neat and tidy condition.
- 5.4 The HOA will maintain the road surface, the kerbing and sidewalks on erf 154.

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- 5.5 A right of way servitude in favour of the general public, as well as a servitude for general municipal purposes and servitude in favour of the local authority and the HOA shall be registered over erf 153 at the Developer's cost.

## 6 HOTEL

- 6.1 The Developer commits itself to the running of the Hotel in compliance with all the conditions upon which the Hotel's liquor license had been issued to it, and in particular never to allow or permit the sale of liquor to minors in contravention of the liquor license conditions.
- 6.2 The Hotel will also be run subject to the conditions laid down by SATOUR to maintain the Hotel to at least a 3 star grading.

## 7 SECURITY

- 7.1 By virtue of the fact that only one public entrance to the Township exists from the adjoining public road, being on erf 153 in the Township, which entrance serves all erven in the Township including erf 152, the Developer and the HOA agree that they have a shared and mutual responsibility as far as the maintenance and upkeep of security services and security standards in the Township are concerned.
- 7.2 As soon as possible after signing of this agreement, upon a date to be mutually agreed between the HOA and the Developer, the HOA will assume and take over responsibility for all security services and the general maintenance of security in the Township, save to the extent as further provided in this clause.
- 7.3 The foregoing implies that by mutual agreement the current contract with the security firm rendering security services in the Township, and particularly upon erf 153, will be assigned by the Developer to the HOA.
- 7.4 In general, the HOA will at the HOA's cost ensure that effective access control be exercised to and from the Township, and that the perimeter fence around the Township be regularly inspected and guarded insofar as may be practical and cost-economical, in order to preclude unauthorised entrance to the Township.
- 7.5 Notwithstanding any contrary provision contained in this clause, the HOA will never be deemed to have assumed any liability for the rendering of security services upon the proposed portion 1 of erf 152, being the existing hotel area and the proposed portion 2 of erf 152, being the envisaged golf club area as depicted on the annexed sketch plans and/or erf 155 and the Developer and his successors in title will always take their own precautionary steps in this regard.
- 7.6 The HOA and the Developer will twice a year meet in order to consider and review the security arrangements with regard to the Township.
- 7.7 The Developer will contribute 50% (or such other proportion as may be agreed from time to time) of the monthly cost charged by the security firm rendering security services, for the security services rendered at the entrance gate only as from time to time, which contribution will be paid monthly in arrear to the HOA against submission of an appropriate tax invoice by the HOA to the Developer.

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## 8 SEWERAGE

- 8.1 The HOA and the Developer record that a water care works established on the Sewer Property serves the Township.
- 8.2 The Developer will maintain the water care works and charge the HOA a levy comparable to that of the local city council's rates and or agreed to from time to time, and ensuring its operational upkeep throughout the existence of this agreement.
- 8.3 The Developer will ensure that all sewerage and related effluent originating from erven 1 to and including 150 in the Township is received and treated at the water care works.
- 8.4 The Developer will always ensure that the water care works complies with all applicable legislation and environmental standards.
- 8.5 All obstructions or breakages in sewer pipelines running from erven 1 to and including 150 as well as erf 154 to the water care works will from time to time be repaired by the HOA at the HOA's cost and all other breakages or obstructions will be repaired by the Developer at its cost.

## 9 REFUSE

- 9.1 The Developer will establish a suitable waste disposal site at a suitable location to be identified after consultation with the HOA, with adequate amenities and capacity as contemplated in Section 20 of the Environment Act to be utilised by the HOA and its Members for the disposal and dumping of domestic waste and refuse. The HOA will maintain such waste disposal site.
- 9.2 The Developer will establish and maintain another waste disposal site according to the Developer's sole discretion to be utilised by the Developer only. Such waste disposal site will not be utilised or accessible by the HOA or its Members.
- 9.3 The Developer will establish such waste disposal sites by not later than 31 August 2007.
- 9.4 Until establishment of the waste disposal sites as aforesaid, the Developer will make available a suitable temporary dumping site for domestic refuse.
- 9.5 The HOA will cause its Members to deposit all their domestic refuse upon a regular basis at the temporary dumping site referred to above, and after establishment of the permanent waste disposal site referred to above, then and thereafter at such site.
- 9.6 Whenever the volume of domestic refuse originating from erven 1 to and including 150 should so warrant or so require, the HOA will establish and thereafter maintain a refuse removal service within the Township servicing its Members. All refuse collected will be deposited at the aforesaid facilities.

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9.7 The HOA will from time to time make suitable arrangements for the removal of waste deposited at the waste disposal site referred to in sub-clause 9.1 above to a permanent landfill site within the area of jurisdiction of the Rustenburg Local Municipality and the Developer will be responsible for such removal of waste deposited at the waste disposal site referred to in sub-clause 9.2 above.

9.8 The HOA will make provision for suitable waste reduction and waste minimisation strategies and methods regarding the refuse disposal facilities to be established in terms of sub-clause 9.1 above and will also provide facilities for the sorting of waste according to type, in order to enhance recycling of re-usable waste.

## 10 GOLF COURSE

10.1 It is recorded that the Golf Course has been laid out on erven 151 and 152.

10.2 Insofar as may be necessary, the Developer undertakes to complete construction of the Golf Course upon its costs by not later than 30 September 2007.

10.3 After full construction and completion of the Golf Course, the full and unreserved liability to maintain the Golf Course will vest with the Developer.

10.4 All Members of the HOA will always be entitled to utilise the facilities of the Golf Club to be established by the Developer and to become members of such Golf Club. The Members of the HOA will not be liable to pay the initial joining fees of the Golf Club but will be liable for the payment of the annual membership fees.

10.5 The Developer undertakes to ensure that the constitution and composition as well as method of operation of such golf club complies with the rules of the game of golf and with the requirements of the South African Golfing Association and its rules.

## 11 WATER

11.1 It is recorded that water to the Township, including the Hotel and Golf Course, is currently supplied by a system of existing boreholes, pumps, reservoirs and elevated storage facilities upon the Water Catchment Properties.

11.2 The Developer undertakes to continue supplying water from and through the aforesaid facilities to the Members of the HOA and to the HOA.

11.3 The Developer will always and throughout ensure that such water complies with all applicable minimum health and environmental standards and requirements, and that the water quality will always be suitable for human use and consumption.

11.4 The Developer will regularly measure water consumption by the HOA and its Members and invoice each stand owner individually in accordance with such consumption at a rate as determined and imposed from time to time by the Rustenburg Local Municipality regarding townships within its area of jurisdiction.

11.5 The Developer will always be liable to take all necessary steps to ensure the continued availability and supply of water to the Township from the water sources referred to above.

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- 11.6 The HOA confirms that it is aware of the fact that permission was granted by Rainbow Chicken Farms Ltd to the Wigwam Hotel, to tap into the existing pipeline erected by Rainbow Chicken Farms, from which Rainbow Chicken Farms obtains its water via the Rand Water Board. The HOA is therefore entitled to approach either the Rand Water Board, Rainbow Chicken Farms or the Wigwam Hotel, to tap into the existing water pipeline, should the need therefore arise. All costs will be borne by the HOA.

12 **LIAISON**

The HOA will ensure that a representative nominated by the Developer will always be co-opted as a co-trustee of the HOA in order to facilitate close cooperation between the Developer and the HOA.

13 **DOMICILE AND NOTICES**

- 13.1 For all purposes of this agreement including, but not by way of limitation, the giving of any notice, the making of any communication, the payment of any sum and the serving of any process, the parties respectively choose *domicilium citandi et executandi* ("domicile") as follows:

13.1.1 the HOA

c/o Messrs D E van Straten & Co  
Magaliesberg Office Park  
Heystek Street  
RUSTENBURG  
0299

Fax No:

13.1.2 the Developer

c/o Zietsman Horn Attorneys  
Beyers Naude Drive  
RUSTENBURG  
0299

Fax No:

- 13.2 Each of the parties, by written notice to the others, shall be entitled from time to time to vary their domicile to any address within the Republic of South Africa, provided that such address may not be a post office box or poste restante.

- 13.3 Any notice given and any communication or payment made by any party to any other ("the addressee") which :

- 13.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicile for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;

13.3.2 is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicile for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee on the sixth day after the date of posting;

13.3.3 any notice given by any party to the addressee which is transmitted by telefacsimile from an address within the Republic of South Africa to the addressee's telefacsimile address or any new telefacsimile address which may be notified, in writing, by the relevant party to the other of them, shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the first business day after the date of transmission.

## 14 ARBITRATION

14.1 Should any dispute arise out of or in connection with this agreement, any party shall be entitled to require, by written notice to the other party, that the dispute be submitted to arbitration in terms of this clause.

14.2 Subject to the provisions of this clause, the arbitration shall be held under the provisions of the Arbitration Laws for the time being in force in the Republic of South Africa; provided that:

14.2.1 the arbitrator shall be, if the question in issue is :

14.2.1.1 primarily an accounting matter, an independent practising chartered accountant of not less than 20 (TWENTY) years standing;

14.2.1.2 primarily a legal matter, an independent practising attorney of not less than 20 (TWENTY) years standing;

14.2.1.3 any other matter, a suitably qualified independent person, agreed upon by the parties and failing such agreement within 7 (SEVEN) days after the date upon which the arbitration is demanded, appointed by the committee of the Arbitration Association of South Africa or any similar existing body at the time when the arbitration is demanded (who may appoint one of their number), which may be instructed by either party to make the nomination at any time after the expiry of that 7 (SEVEN) day period.



14.3 The arbitrator shall be entitled:

14.3.1 to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute, and for that purpose shall have the widest powers of investigating all the books and records of either party to the dispute and the right to take copies or make extracts there from and the right to have them produced and/or delivered at any reasonable place required by him for the aforesaid purpose;

14.3.2 to interview and question under oath representatives of either of the parties;

14.3.3 to decide the dispute according to what he considers just and equitable in the circumstances;

14.3.4 to make such award, including an award for specific performance, damages or a penalty or otherwise as he in his discretion may deem fit and appropriate;

14.4 The arbitration shall be held as quickly as possible after it is demanded with a view to its being completed within 30 (THIRTY) days after it is demanded;

14.5 Immediately after the arbitrator has been agreed upon or nominated in terms of this clause, any of the parties to the dispute shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings will be held.

14.6 Any award that may be made by the arbitrator:

14.6.1 shall be final and binding;

14.6.2 will be carried into effect; and

14.6.3 may be made an order of any court to whose jurisdiction the parties to the dispute are subject.

14.7 Notwithstanding the foregoing, any party shall be entitled to seek an interdict in any Court of competent jurisdiction should any party be entitled to such relief in law.

## 15 SUPPORT

The parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions or import of this agreement.

16 GENERAL

16.1 This document contains the entire agreement between the parties and none of them shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

16.2 No alteration, variation or cancellation by agreement of, addition or amendment to, or deletion from this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.

16.3 No indulgence, extension of time, relaxation or latitude which the one party ("the grantor") may show, grant or allow to the other ("the grantee") shall constitute a waiver by the grantor of any of the grantor's rights in terms hereof and the grantor shall not thereby be prejudiced or estopped from exercising any of its rights against the grantee in the future.

16.4 It is recorded that the developer shall for a period of 2(two) years after signing of this agreement, not be liable for payment of any levies to the HOA with regards to unsold stands. The Developer undertakes to maintain all unsold stands during this period at his own cost.

16.5 This agreement will be binding on the Developer or his successor in title.

SIGNED at RUSTENBURG on this 26<sup>th</sup> day of July 2007.

AS WITNESSES:

1. [Signature]

2. [Signature]

[Signature]  
on behalf of HOA

SIGNED at RUSTENBURG on this 26 day of July 2007.

AS WITNESSES:

1. [Signature]

2. [Signature]

[Signature]  
on behalf of DEVELOPER

# RAINBOW

10 July 2002

TO WHOM IT MAY CONCERN •

WATER RIGHTS FOR PORTIONS 151, 156, 31, 176 AND 160 (A PORTION OF PORTION 28) OF THE FARM MODDERFONTEIN NO 332-JQ AS OWNED BY WIGWAM HOTEL

We understand that the Wigwam Hotel who owns Portions 151, 156, 31, 76 and 160 (a Portion of Portion 28) of the farm Modderfontein No 332-JQ requires a back up water supply.

Our existing water pipeline has a servitude on Portion 151 and Portion 160 (a Portion of Portion 28) Modderfontein No 332-JQ, at which time we agreed to 3000 kilolitres per month.

Rainbow Farms (Pty) Ltd is now agreeable to allowing the Wigwam Hotel a connection point onto this pipeline for 5184 kilolitres per month as long as:

- a) the conditions of paragraph 15 of the "General Water Supply Conditions", as laid down by Rand Water, are complied with.
- b) that on approval by Rand Water in terms of paragraph 15 of the "General Water Supply Conditions", the Wigwam Hotel enters into a standard Water Agreement with Rainbow Farms (Pty) Ltd.

Approximate water usage requirements by the Wigwam Hotel are 2 litres per second, 7.2 kilolitres per hour, or 5184 kilolitres per month.

Yours faithfully  
RAINBOW FARMS (PTY) LTD



P L McLaughlin  
Regional Financial Manager

RAINBOW FARMS (PTY) LTD.  
Registration No. 1960/002377/07