

**MEMORANDUM OF AGREEMENT OF LEASE  
FOR DIAMOND SHAREHOLDERS**

**Made and entered into by and between:**

**LIMPOPO LIPADI BOTSWANA INVESTMENTS LIMITED**

A Company incorporated in accordance with the laws of the Republic of Botswana

herein represented by

\_\_\_\_\_  
a director duly authorised  
(hereinafter referred to as “the Lessor”)

**And**

\_\_\_\_\_  
The holder for the time being of a Diamond Share.  
(hereinafter referred to as “the Lessee”)

**Preamble:**

- A. Limpopo-Lipadi Botswana Investments Limited, the Lessor, is the owner of the Owned Properties in the Tuli Block of Botswana;
- B. The Lessee is a Diamond Shareholder of Limpopo-Lipadi Botswana Investments Limited by virtue of owning a Diamond Share;
- C. The Lessee is by virtue of its Diamond Shareholding entitled to enter into a 99-year lease in respect of the Site described in the definitions hereto;
- D. The Parties hereto wish to record the terms and conditions of such Lease Agreement.

**1. DEFINITIONS:**

- 1.1** This Lease Agreement is subject to the provisions as set out in the Company Constitution, Wilderness Agreement and Diamond Shareholders Agreement and as such any and all definitions shall not be repeated in this document. Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings:

**Lease Agreement** means this Agreement;

**Building** shall mean the private residential lodge and ancillary works to be erected on the Site which accords with the Plans and Specifications which may be permitted by the Aesthetics Committee including any extensions or additions thereto, from time to time;

**Code of Conduct for Builders** refers to the rules pertaining to contractors on the Game Reserve available from the Management;

**Company** means Limpopo Lipadi Botswana Investments Limited, a company duly incorporated in accordance with the laws of Botswana with registration number 2004/4109;

**Commencement Date** shall mean the date of last signature of this Lease Agreement;

**Constitution** means the Constitution of Limpopo Lipadi Botswana Investments Limited;

**Expiry Date** shall mean the date on which the Lease Agreement expires by effluxion of time, which shall be the date of the first business day after the Initial Period, or of any period for which this lease is renewed

**Force Majeure** shall mean any occurrence beyond the control of the Lessor (i.e. an act of God or an act of Government or Local Authority, natural disaster, riot, strike or lockout, or civil commotion or an act or omission of a contractor or sub-contractor employed in carrying out the works connected to the erection of the Building or any supplier thereof and thereto);

**Initial Period** shall mean the period of 99 (ninety-nine) years, reckoned from the Commencement Date;

**Occupant** mean any person using the Building, with the Lessee's permission and in accordance with the Wilderness Agreement;

**Option Period** shall mean the period of 50 (fifty) years reckoned from the day following the Expiry Date of the Initial Period;

**Parties** shall mean the Lessee and the Lessor collectively;

**Plans** in respect of the Building as approved by the Aesthetics Committee;

**Rates** means any assessment rates which may become payable in respect of the Site and includes all charges payable to any local or governmental authority;

**Site** means the leased area which has been surveyed and registered under SG No \_\_\_\_\_ and is capable of registration in the Deeds Registry in terms of the laws of Botswana;

**Specifications** in respect of the Building, those approved by the Aesthetics Committee;

**Writing** includes Electronic Communication but only to the extent that the parties hereto have notified each other of an Electronic Address;

- 1.1 Headings are for reference purposes only and shall not affect the interpretation of this Lease Agreement;
- 1.2 words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.3 Any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted digitally/electronically in any manner.

## **2 CONDITIONS PRECEDENT**

The coming into force and effect of this Lease Agreement contemplated herein is subject to:-

- 2.1** Either a legal opinion that the consent from the Minister of Lands and Housing in terms of the Control of Land Act Cap 32:01 for the grant of the lease of 99 years over the Site is not necessary; or
- 2.2** The consent having been obtained by the Company from the Minister of Lands and Housing in terms of the Control of Land Act Cap 32:01;
- 2.3** The Lessee having paid on Commencement Date, all amounts imposed, if any, which were and became due prior to the Commencement Date on shares held by the Lessee in the Company in terms of the Constitution and the Wilderness Agreement.

## **3 LET**

The Lessor hereby lets to the Lessee who rents the Site for the purposes of erecting and occupying a private dwelling on the Site subject to the terms and conditions contained in this Lease Agreement and in the Diamond Shareholders Agreement.

## **4 SUSPENSIVE CONDITIONS**

This Lease Agreement shall be subject to the following suspensive conditions; namely:

- 4.1** that the Lease is capable of registration for a period of not less than 99 years in terms of the laws of Botswana; and
- 4.2** That the surveyed area corresponds with the physical Site as identified by the Parties.

## **5 WARRANTIES BY THE LESSOR**

The Lessor warrants that the environmental and development approvals necessary for the development and use of the property with the Building, as defined in the Lease Agreement, and the occupation and use of that Building as an exclusive private lodge within the Game Reserve, as contemplated in this Lease Agreement have been obtained and are in force and effect.

## **6 BUILDING**

- 6.1** The Lessee shall at its cost cause the Building to be erected on the Site;
- 6.2** The Lessee shall ensure that the Building complies with the Plans and Specifications;
- 6.3** The Lessee shall make payments to the builder timeously on due date so as to ensure continuity of building works until the issuing of the Project Completion Certificate.

## **7 NO ASSIGNMENT OR CESSION**

The Lessee shall not cede, assign, transfer, alienate, or otherwise dispose of any of its rights or obligations in terms of this Lease Agreement unless it sells the Diamond Share subject to the applicable clauses in the Constitution and Diamond Shareholder Agreement.

## **8 RENTAL AND OR OTHER DUES**

**8.1** The amount of the cost of erection of the Building paid by the Lessee which has resulted in an improvement to the Site shall be deemed the rental payable by the Lessee to the Lessor for the Site for the Initial Period;

**8.2** Any other payments due in terms of this Lease Agreement, shall be paid by the Lessee to the Lessor within 21 days of receipt of an invoice from the Lessor;

**8.3** All payments to be made on or before due date for such payment, free of exchange, bank commission, set off or any other deduction;

**8.4** The Lessee shall pay to the Lessor interest at the rate equal to two percent (2%) above the average overdraft rate quoted by any three licensed banks in Botswana, chosen by the Lessor, to corporate customers on any overdue amount which interest shall be calculated monthly on the basis of a 30 day month and compounded, as from the due date of such amount to the date of actual payment, whether before or after judgement.

## **9 VAT**

This Lease Agreement constitutes a supply of land by way of lease for residential accommodation in a dwelling to be erected on the land. In terms of Section 11 read with paragraph 2 of the 2<sup>nd</sup> Schedule to the VAT Act, VAT is not payable on the rental set out in clause 8.

## **10 PERIOD OF LEASE**

**10.1** This Lease Agreement shall endure for the Initial Period;

**10.2** Notwithstanding the foregoing, and provided that the Lessee, during the Lease Agreement duly abides by the terms and conditions hereof and all its obligations arising to it by virtue of its ownership of the Diamond Share, the Constitution, the Diamond Shareholder Agreement and the Wilderness Agreement, and the Building at the time of exercise of the option has been refurbished so as to render it in a good state of repair and in a condition approved by the Aesthetics Committee, the Lessee shall have the option to renew this lease for the Option Period provided that the Lessee exercises the option by informing the Lessor in writing of its intention to exercise the option not later than 12 calendar months prior to the expiry of the Initial

Period, which option shall be deemed to have been exercised on the same terms and conditions of this Lease Agreement.

## **11 OBLIGATIONS OF THE LESSEE**

- 11.1** Have a Building constructed at their own cost on the designated Site having met the conditions required by the Aesthetics Committee regarding Plans and Specifications and any requirements for planning permission and other local authority consents as may be required;
- 11.2** Insure the Building against risks as are normally insured against, including fire for the full replacement value thereof, with an insurer approved by the Lessor, and upon request provide proof of payment of premiums that the insurance is current and valid, and in the case of destruction or damage apply the proceeds in expeditious restoration or replacement thereof;
- 11.3** Keep the whole of the Site including any gardens, swimming pools, yards, pathways, hard standings and other spaces in a neat and tidy condition;
- 11.4** Maintain the exterior and the interior of the Building in a standard acceptable to the Aesthetics Committee including all fixtures and fittings;
- 11.5** Not do or permit to be done upon the Site anything whereby the Lessee's policy of insurance of the Building may become void or voidable or repudiated;
- 11.6** Pay any surveyors or attorney's fees (on an attorney and own client scale) or any other cost(s) incurred by the Lessor in taking any action whatsoever against the Lessee to enforce any of the terms and conditions contained within this Lease Agreement;
- 11.7** Not sublet or part with possession in any way, of either the whole of or any part of the Site, save through the Rental Pool (as defined in the Diamond Shareholders Agreement), without the prior written consent of the Lessor;
- 11.8** Not make any changes or alterations to the Site or Buildings without making prior application and receiving approval from the Aesthetics Committee and the application must be supported by plans showing the full extent of the proposed improvements with any planning approval consents that may be required;
- 11.9** Not cause or create or allow any of its Occupants to cause any nuisance or disturbance upon the Site and ensure that all Occupants comply with any rules or regulations stipulated in the Wilderness Agreement and the Diamond Shareholders Agreement in respect of conduct on the Game Reserve;
- 11.10** Not emit or allow to be emitted from the Site any noxious or inflammable gases, powders, dusts or chemical wastes which may be hazardous to the flora and fauna environment of the Game Reserve;

- 11.11** Conform to all by-laws, regulations and statutory instruments affecting the conduct of the Lessee's occupation of the Site and its Buildings;
- 11.12** Permit the Management access to the Site and Buildings at all reasonable times when the Site is occupied in order to carry out inspections in order to prepare an inspection report, and every inspection report so compiled shall be prima facie evidence of the state of repair of the Site and its Buildings and shall be binding on the Lessee;
- 11.13** Permit the Management access at any time to the Site and Buildings to carry out inspections if the Site is unoccupied;
- 11.14** If the Site is occupied, the Management are required to give notice of their intention to carry out an inspection and to arrange a mutually convenient time to do so.
- 11.15** Pay to the supplier thereof (whether it be the Lessor or a third party) the cost of all:-
- 11.15.1 Water and electricity supplied to and consumed in the Building and on the Site;
  - 11.15.2 Telephone and internet connections and related communications and use thereof;
  - 11.15.3 The maintenance of biodegradable waste and sewerage disposal facilities on the Site;
  - 11.15.4 The removal of waste and refuse;
  - 11.15.5 Servicing, repairing and maintaining the fire alarm and fire extinguishing equipment to meet the required safety standards;
  - 11.15.6 Any Rates if any levied against the Building;
  - 11.15.7 Any other charges of whatever nature due in respect of the Building or the Site arranged in order to keep the building maintained in a clean and well-maintained state.

## **12 ENCUMBERANCE**

The Lessee shall not be permitted to bond or in any manner encumber the Site or improvements thereto; any such encumbrance constituting a material breach of this Lease Agreement.

## **13 MOVABLE ASSETS**

Any movable assets brought onto the Site or placed in the Building shall remain the property of the Lessee, and shall be capable of removal at the termination of this Lease.

## **14 OBLIGATIONS OF THE LESSOR**

The Lessor shall, for as long as the Lessee is the holder of the Diamond Share, and for the duration of this Lease at its expense :-

- 14.1** Provide and maintain an access road to the Site;
- 14.2** Construct and maintain a metered water and electricity supply to or within close proximity to the Site;
- 14.3** Afford the Lessee the right to quiet enjoyment of the premises and must ensure that no-one interferes with the Lessee's right to possession of and lawful use of the Site.

## **15 DESTRUCTION AND DAMAGE**

- 15.1** In the event the Building being wholly or substantially destroyed by flood or by fire, or by being wholly or partially uninhabitable by Force Majeure or any other cause then the Lessee shall not be entitled to a total or partial remission of any rental nor have any claim whatsoever upon the Lessor for any damages in consequence of deprivation of beneficial occupation;
- 15.2** In this eventuality the Lessee shall be obliged to notify the Lessor in writing within 3 (three) months of the date of such happening whether or not it intends to rebuild and restore the Building. Failure to elect to rebuild and restore on the part of the Lessee will entitle the Lessor to regard this Lease Agreement as cancelled and, with the exception of the costs associated with the cleaning of the Site, neither Party shall have any further obligations thereunder to the other;
- 15.3** In the event of the Lessee notifying the Lessor of its intention not to restore the Building, the Lessee loses their right to the Site and their Diamond Share will be redeemed and the Diamond Shareholder will be issued with 5 (five) ordinary shares in the Company .
- 15.4** In the event of the Lessee electing to rebuild they undertake to do so without undue delay.
- 15.5** Notwithstanding any deprivation use of the Site and its Buildings, the Lessee shall still be obliged to pay any amounts due by them for services rendered under the terms of this Lease Agreement.

## **16 BREACH**

- 16.1** In the event that the Lessee:
  - 16.1.1** fails to pay the rental or any other amount payable by it in terms of this Lease Agreement on the due date and persists with such failure for 21 (Twenty- one)



days after written notice from the Lessor requiring it to make such payment;  
or

16.1.2 commits a breach of any of the other terms and conditions of this Lease Agreement, all of which are deemed to be material and fails to remedy any such breach within 30 (thirty) days after receipt of written notice from the Lessor to remedy such breach;

then and in any case of such event the Lessor shall be entitled to apply fines, sanctions or a suspension of the rights of the Lessee as a Diamond Shareholder as per the Constitution or to take such legal action as is required to protect its rights.

## **17 ACKNOWLEDGEMENTS**

The Lessee acknowledges being aware of the fact that the Owned Properties are mortgaged and that in the circumstances, the rights of the Lessee are subordinated and subject to the rights of the Mortgagors.

## **18 WAIVER**

In the event of the Lessor not enforcing immediately the due or full compliance with all or any of the terms and conditions of this Lease Agreement or neglecting to do so, or in the event of extension being granted by the Lessor to the Lessee for due observance of any of the terms and conditions of this Lease Agreement, such failure, neglect or indulgence by the Lessor shall not in any way be taken to be a waiver on the part of the Lessor of its rights or any of them, under and in terms of this Lease Agreement, and notwithstanding any such failure, neglect or indulgence on the part of the Lessor it shall be entitled to call upon the Lessor at all or any time to comply with all or any of the terms and conditions of this Lease Agreement and cancel the same in terms hereof.

## **19 ARBITRATION**

**19.1** Should any dispute arise between the parties in connection with the existence of; implementation of; interpretation or application of the provisions of the Agreement; the parties respective rights and obligations in terms of or arising out of, or the breach or termination of; the validity, enforceability, rectification, termination or cancellation, whether in whole or in part thereof or any documents furnished by the Parties pursuant to any provision(s) of this Agreement, or which relates in any way to any matter affecting the interest of the parties in terms of this Agreement, that dispute shall, unless resolved amongst the parties to the dispute, be referred to and be determined by arbitration as determined in the Constitution of the Company.

**20** **DOMICILIUM**

**20.1** The Parties choose the following addresses as their *domicilium citandi et executandi* for all purposes under this Lease Agreement where all notices and processes pursuant to this Lease Agreement may be effectively served:

The LESSOR at: The Reserve Office, Limpopo Lipadi Game Reserve, Tuli Block, Botswana

The LESSEE at: \_\_\_\_\_

provided that either party shall be entitled to change the abovementioned address to any other address by giving the other written notice to that effect.

**21** **WHOLE AGREEMENT**

21.1 This Lease Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations, or warranties between the Parties other than those set out herein are binding on the Parties and no addition to or variation, or consensual cancellation or novation of this Lease Agreement and no waiver of any right arising from this Lease Agreement or its breach or termination shall be of any force and effect unless reduced to writing and signed by both parties or signed by their duly authorised representatives.

21.2 The Parties agree that if any provision of this Agreement conflicts with any provisions of the law of Botswana or is unenforceable for any other reason whatsoever, such provision shall be regarded as *pro non scripto* and of no force and effect, consequently such provision shall be deemed to be separable and severable from this Agreement without in any way affecting the validity of the remaining provisions of this Agreement

Signed at ..... on this the ..... day of .....20 ...

AS WITNESSES:

1. ....

2. ....

.....

for and on behalf of the Lessee being duly authorised thereto

Signed at ..... on this the ..... day of .....20 ...

AS WITNESSES:

1. ....

2. ....

for and on behalf of the Lessor being duly authorised thereto.