



# **THE RIDGE**

## **ZIMBALI LAKES**

### **OFFER TO PURCHASE**

Entered into by and between

**ZIMBALI RESORT DEVELOPMENTS JOINT VENTURE PARTNERSHIP**

Comprising of the parties set out in paragraph 1 of the Covering Schedule

(The Seller)

and

**THE PURCHASER/S**

The party/ies whose details are set out in paragraph 2 of the Covering Schedule

(the Purchaser)

**The Ridge, Zimbali Lakes – Single Residential Site Sale**

Portion Number: \_\_\_\_\_ of Remainder Erf 1, Zimbali Lakes

## COVERING SCHEDULE

<b>1. PARTIES</b>	
1.1 <b>Seller:</b>	Zimbali Resort Developments Joint Venture Partnership, between Zimbali Land Developments (Pty) Ltd (Reg. No: 1996/016290/07) and Zimbali Hotels & Resorts South Africa (Pty) Ltd (Reg. No: 2003/023856/07)
Address:	Zimbali Northgate Suites, Zimbali Coastal Resort, KwaZulu-Natal, South Africa
1.2 <b>Purchaser:</b>	<i>Insert full name at right</i>
Identity Number / Registration Number	
Physical Address	
Postal Address	
Telephone Number (Home)	
Telephone Number (Business)	
Cellular Telephone Number	
E-Mail Address	
Marital Status (If an individual)	
<b>2. PROPERTY DESCRIPTION</b>	
Portion No. _____ of Remainder Erf 1 Zimbali Lakes, Registration Division FU, Province of Kwa-Zulu Natal, being the portion identified on the proposed plan of subdivision annexed hereto as Annexure B, measuring approximately _____ m <sup>2</sup> in extent	
<b>3. PURCHASE PRICE OF THE PROPERTY</b>	
3.1 Purchase Price (inclusive of VAT)	R
3.2 Deposit of 10% payable within 7 (seven) days after signature by the Purchaser	R
3.3 Balance of Purchase Price:	R
3.4 Amount of mortgage finance required	R
<b>4. ESTIMATED TRANSFER DATE</b>	Expected December 2018, but as soon as reasonably possible
<b>5. POSSESSION DATE</b>	On transfer
<b>6. ANNUAL RATES AND SERVICES</b>	to be levied by the Local Authority
<b>7. CONVEYANCERS</b>	
Name of Attorneys:	Tim du Toit & Co. Inc. Attn: Angela Stevens Tel: +27 (0) 21 529 7710 E-mail: Angela.Stevens@TimduToit.co.za
<b>8. TRUST ACCOUNT DETAILS</b>	
Tim du Toit Attorneys Trust Account   First National Bank   Branch Code: 201 409   Account number: 621 4030 3603 Ref: ZLR No. _____ ( <i>insert erf number of property</i> )	
<b>9. SALES AGENT</b>	
9.1 Agency Name:	EIFA Zimbali (Pty) Ltd t/a Keller Williams Ignite Zimbali Estates (Pty) Ltd
9.2 Agent Name	

# OFFER TO PURCHASE

## 1 INTRODUCTION

- 1.1 The SELLER is the registered owner of the land known as Remainder of Erf 1 Zimbali Lakes ("the land").
- 1.2 The SELLER intends to develop Zimbali Lakes Resort on the land, comprising of single residential sites, planned unit development sites, sectional title units, a retirement village, hotels, clubhouses, sports and leisure facilities, private open spaces, private and public roads.
- 1.3 The PURCHASER has offered to purchase the PROPERTY described in the Covering Schedule subject to the fulfilment of the conditions precedent recorded in this Agreement and the SELLER shall by his signature hereto accept such offer.

## 2 SALE

- 2.1 Subject to and in accordance with the provisions hereof and the CONDITIONS OF SALE annexed hereto as **Annexure A**, the SELLER sells and the PURCHASER purchases the PROPERTY.
- 2.2 The PURCHASER agrees that the precise area, boundaries and final description of the PROPERTY shall be as shown on the general plan as finally determined, approved and numbered by the Surveyor-General and/or the relevant competent authorities and shall be binding upon the parties, provided always that location and the area of the PROPERTY shall be reasonably similar to its depiction on the proposed plan of sub-division attached as **Annexure B**.

## 3 PAYMENT: DEPOSIT AND GUARANTEES

- 3.1 The amount referred to in 3.2 OF THE Covering Schedule shall be paid to the CONVEYANCERS within 7 (seven) days from date of acceptance by the SELLER. Such payment shall be invested by the CONVEYANCERS, all interest to accrue for the benefit of the PURCHASER until the DATE OF TRANSFER whereupon the CONVEYANCERS shall release the capital to the SELLER and all accrued interest, less administration charges, to the PURCHASER. (The PURCHASER acknowledges that the CONVEYANCERS are not able to invest the aforesaid deposit, nor any other amount paid into trust with the CONVEYANCERS, on the PURCHASER'S behalf, until such time as the PURCHASER has complied with all the requirements of the Financial Intelligence Centre Act No 38 of 2001 and has signed the necessary investment mandate and FATCA forms, all of which the PURCHASER undertakes to do as soon as reasonably practical in the circumstances).
- 3.2 The PURCHASER shall secure the due payment of the amount referred to in 3.4 of the Covering Schedule by furnishing the CONVEYANCERS with a guarantee from a registered South African commercial bank, in a form and on terms acceptable to the CONVEYANCERS for such amount. The guarantee will be expressed to be payable on the DATE OF TRANSFER.
- 3.3 The guarantee referred to in 3.2 above shall be furnished by the PURCHASER within 7 (seven) days after request therefor by the CONVEYANCERS.
- 3.4 In the event that the amount of the mortgage finance required in 3.4 of the Covering Schedule is less than the balance of the Purchase Price due in terms of 3.3 of the Covering Schedule (the "shortfall amount"), the PURCHASER shall pay the shortfall amount to the CONVEYANCERS within 7 (seven) days from date of written demand made by the CONVEYANCERS, provided that such demand shall not be made prior to the approval by a registered South African commercial bank of the PURCHASER'S mortgage finance application for the amount reflected in 3.4 of the Covering Schedule. Such shortfall amount shall be invested by the CONVEYANCERS on the same terms and conditions as that provided for in clause 3.1 of this Agreement of Sale.
- 3.5 In the event that the amount of the mortgage finance finally approved by a registered South African commercial bank is less than the amount applied for as envisaged in 3.4 of the Covering Schedule (the "additional shortfall amount"), the PURCHASER shall have the option to either pay the additional shortfall amount to the CONVEYANCERS as anticipated in clause 3.4 of this Agreement of Sale, or allow the Agreement of Sale to lapse as provided for in clause 2.1 of the CONDITIONS OF SALE (**Annexure A**). The PURCHASER shall be obliged to make such election in writing within 7 (seven) days of receipt of a copy of the written approval of such mortgage finance by the aforesaid commercial bank, failing which this Agreement of Sale shall automatically lapse and be of no further force or effect.
- 3.6 It is recorded that the Purchase Price referred to in paragraph 3.1 of the Covering Schedule is inclusive of Value Added Tax at the current rate of 14% (fourteen percent). The parties agree that, should there be any change in the rate of Value Added Tax applicable at the time of supply, as determined in accordance with the Value Added Tax Act No 89 of 1991, that the Purchase Price shall be amended to take into account the adjustment and the Value Added Tax rate.
- 3.7 Unless otherwise provided, all payments hereunder shall be made without set-off, deduction or demand to the SELLER at the offices of the CONVEYANCERS. All bank charges incurred by the CONVEYANCERS in connection with this transaction shall be for the account of the PURCHASER.

## 4 OWNERS ASSOCIATIONS EXPLANATORY

- 4.1 The PROPERTY falls within the jurisdiction of The Ridge, Zimbali Lakes Owners Association ("the Association") to whom a levy is payable as contemplated in the Constitution of the Association.
- 4.2 The PROPERTY and the Association falls under the jurisdiction of the Zimbali Lakes Resort Management Association (i.e. ZLR). The Association shall be obliged to pay to ZLR a monthly levy determined in accordance with the ZLR Constitution. ZLR shall be responsible for and shall maintain various common areas of the Resort such as conservation matters, the water body, all roads, gatehouses, water and electricity infrastructure and the security fence together with any other functions ascribed to it in the ZLR Constitution.
- 4.3 In addition to the above levy the ZLR shall be paid the Lakes Stabilisation Levy as provided for in the ZLR Constitution, excluding any sales by the SELLER, DEVELOPER or its related/associated/subsidiary Companies.
- 4.4 ZLR shall have as its principal members Boulevard, Zimbali Lakes Management Association, Ocean Club Zimbali Owners Association, the Association, Beach Club, Zimbali Lakes Management Association, Water Club, Zimbali Lakes Management Association, The Village, Zimbali Lakes Management Association, the Zimbali Facilities Management Company, Zimbali Lakes Sports Club, the DEVELOPER and such other members as referred to in the ZLR Constitution. Each member of ZLR shall have one (1) representative at general meetings of the ZLR. The DEVELOPER may admit other Members comprising various nodes or facilities created within the ZLR.
- 4.5 The above is intended merely as a general description of the rights and obligations of a member of the ZLR, the details of which are more fully dealt with in the ZLR constitution and the Constitution of the Association, both of which are available to the PURCHASER on the Zimbali Lakes Resort website, and on a mobile storage device if requested. If there is any conflict between the provisions above and the terms of the ZLR Constitution, the latter shall prevail and the PURCHASER shall have no claim against the SELLER arising out of such conflict.

## 5 MEMBERSHIP OF ASSOCIATION / TITLE CONDITIONS

- This sale will be subject to the following conditions, which will be strictly imposed and enforced by the SELLER, during the Development Period, and by the ZLR and the Association thereafter:
- 5.1 From DATE OF TRANSFER and for the duration of the PURCHASER'S ownership of the PROPERTY, the PURCHASER will be a member of the Association and be expressly subject to the provisions of the ZLR Constitution, the Governing Rules issued by the ZLR from time to time, the Resort Guides, the Constitution of the Association and all Conduct Rules, if any, issued by the Association.
- 5.2 A condition will be registered against the title deed to the PROPERTY to the effect that the PROPERTY or any portion thereof or interest therein shall not be alienated, leased or transferred without the written consent of the Association first being had and obtained (it being recorded that the Association shall be entitled, at its absolute discretion, to refuse its written consent in the form of a Levy Clearance Certificate until such time as the provisions of its Constitution and the Conduct Rules, if any, are complied with, which will include, *inter alia*, the payment or securing of any outstanding levies);
- 5.3 A condition will be registered against the title deed to the PROPERTY to the effect that the PROPERTY or any portion thereof or interest therein shall not be alienated, leased or transferred without the written consent of the ZLR first being had and obtained (if being recorded that the ZLR shall be entitled, at its absolute discretion, to refuse its written consent in the form of a Clearance Certificate until such time as the provisions of its Constitution and Governing Rules are complied with, which will include, *inter alia*, the securing of the Lakes Stabilisation Levy);
- 5.4 In order to protect all the DEVELOPER'S rights under this agreement a condition will be registered against the title deed to the PROPERTY to the effect that the PROPERTY or any portion thereof or interest therein shall during the Development Period not be alienated, leased or transferred without the written consent of the DEVELOPER first being had and obtained (it being recorded that the DEVELOPER shall be entitled, at its absolute discretion, to refuse its written consent on reasonable grounds);

5.5 A condition will similarly be registered against the title deed to the PROPERTY to the effect that every Transferee of the PROPERTY shall become at least a silver member of the ZLSC on the DATE OF TRANSFER.

**6 TRANSFER PRIOR TO INSTALLATION OF BULK SERVICES**

- 6.1 The SELLER will be entitled, at its election, to transfer the PROPERTY to the PURCHASER without the prior installation of bulk / reticulation engineering services infrastructure, provided that:
  - 6.1.1 The PROPERTY shall be clearly and finally delineated on a general plan registered by the office of the Surveyor-General at the Pietermaritzburg Deeds Registry; and
  - 6.1.2 The SELLER shall present the PURCHASER with written confirmation from the project engineer, confirming the available bulk;
  - 6.1.3 The SELLER shall remain responsible for the installation of bulk / reticulation engineering services to serve the Property within a reasonable period of time following the DATE OF TRANSFER; and
  - 6.1.3 The transfer of the PROPERTY to the PURCHASER shall not be inconsistent with the development plan approved for the Resort by the Local Authority.
- 6.2 **The PURCHASER by his signature to this CONTRACT OF SALE hereby records his acknowledgement, and understanding of the implications, of the lack of services infrastructure on the PROPERTY as at the Signature Date and proclaims his willingness to accept transfer of the PROPERTY in the temporary absence of such bulk / reticulation engineering services infrastructure.**
- 6.3 The PURCHASER shall not be entitled to object to the transfer to him of the PROPERTY in circumstances where the SELLER has met and adhered to the prescripts and requirement recorded in 6.1.1 to 6.1.4 above.

**7 RIGHT TO CANCELLATION: DIRECT MARKETING**

- 7.1 Pursuant to the provisions of Section 16 of the Consumer Protection Act, should this Agreement be the result of direct marketing efforts by the SELLER or his agents, the PURCHASER has the right, within 5 (Five) business days after concluding this Agreement or 5 (Five) business days after delivery to him of the PROPERTY, as the case might be, to cancel this Agreement without reason or penalty by written notice to the SELLER.
- 7.2 The SELLER is unable to accept the risk of such cancellation without reason or penalty, as it could have sold the PROPERTY to another prospective PURCHASER during the period between the conclusion of the Agreement and the cancellation thereof. In addition, cancellation after delivery of the PROPERTY will result in the SELLER having to carry the holding cost of the PROPERTY for an undetermined period whilst marketing same to new PURCHASERS. This has the potential to result in significant losses for the SELLER.
- 7.3 In the premises, the SELLER is not prepared to enter into any Agreement with any PURCHASER that might have been the result of direct marketing.
- 7.4 **The PURCHASER accordingly warrants that this transaction has not resulted from direct marketing and the SELLER enters into this Agreement relying entirely on such warranty.**
- 7.5 Should the PURCHASER be successful, pursuant to the direct marketing provisions of the Consumer Protection Act, in cancelling this Agreement after delivery of the PROPERTY, the PURCHASER shall be liable for the damages suffered by the SELLER as a result of the breach of such warranty.

**8 CONSUMER PROTECTION ACT**

- After due consideration, and by his signature hereto, the PURCHASER or his representative, as the case might be, hereby acknowledge and record that:-
- 8.1 he has entered into this Agreement freely and of his own accord and that no circumstance exists that would entitle him to allege, now or in future, that he was at a disadvantage or unequal bargaining position to the SELLER in negotiating and concluding the terms and conditions contained in this Agreement;
  - 8.2 he has done his own investigations with respect to whether or not to enter into this Agreement and that he has done so without any undue influence, pressure, duress, harassment or unfair tactics from the SELLER and that he understands the content, significance and import of the terms of this Agreement without undue effort, having regard to the context, comprehensiveness and consistency of the Agreement, the organisation, form and style of the Agreement, the vocabulary, use of language and sentence structure of the Agreement and the use of illustrations, headings, examples or other aids to reading and understanding the Agreement.
  - 8.3 If the PURCHASER is a Juristic Person, it hereby warrants to the SELLER that its asset value or annual turnover at the Date of Signature and the DATE OF TRANSFER shall equal or exceed the threshold determined by the Minister in terms of Section 6 of the CPA (namely, R2,000,000.00 (Two Million Rand)) and, as a consequence, the sale of the PROPERTY to the PURCHASER in terms of this Agreement, is exempt from the provisions of the CPA (save for the provisions of Sections 60 and 61 of the CPA).
  - 8.4 It is recorded that the aforesaid warranty is material to the SELLER in entering into this Agreement.
  - 8.5 The PURCHASER undertakes, within 7 (seven) days of being requested to do so by the SELLER, to furnish the SELLER with its last audited financial accounts or its Auditors written confirmation, and such other financial information in respect to the PURCHASER as the SELLER may reasonably require, in order to confirm the PURCHASER'S asset value and/or turnover is as warranted in paragraph 8.4 above.

**9 IRREVOCABLE NATURE OF OFFER**

- 9.1 **This offer by the PURCHASER shall not be withdrawn and shall be irrevocable until 31 March 2018, during which period the SELLER shall be entitled at any time to accept this offer on the terms and conditions recorded in this AGREEMENT and the CONDITIONS OF SALE (Annexure A hereto), provided that the SELLER will only accept this offer once all competent authorities have approved the subdivision of the land comprising the Resort on conditions acceptable to the SELLER and substantially in accordance with the subdivisions as depicted on the proposed plan of subdivision attached as Annexure "B" hereto.**
- 9.2 This offer to purchase will constitute a binding agreement of sale between the parties upon the SELLER'S acceptance thereof.
- 9.3 Following 31 March 2018, the offer shall not lapse and shall nevertheless remain open for acceptance by the SELLER at any time, but may be withdrawn by the PURCHASER in writing.
- 9.4 On acceptance by the SELLER, and save for the provisions of this clause 9 and those clauses in this AGREEMENT and the CONDITIONS OF SALE (Annexure A hereto) which shall by necessity be of immediate force and effect, this Agreement shall subject to the condition precedent that the SELLER receives sufficient pre-sale offers, the number and value of which is to be determined at the SELLER's sole discretion, before the development can commence.
- 9.5 In the event that the condition precedent recorded in 9.4 is not fulfilled on or before 30 November 2018 or within such extended period as the SELLER in its sole discretion may determine by written notice thereof to the PURCHASER, either party shall be entitled to give written notice to the other party advising that should the outstanding condition precedent not be fulfilled within 7 (seven) days of date of receipt by the addressee of such notice, the party giving such notice will rescind from this Agreement.
- 9.6 Should either party exercise its right to rescind from this Agreement in accordance with the provisions of clause 9.5 of this Agreement, save for the provisions of the clauses referred to in clause 9.4 above, this Agreement shall be cancelled and be of no further force or effect in which event neither party shall have any claim against the other save that the PURCHASER shall be entitled to be refunded the deposit and any other funds paid in anticipation of taking transfer of the PROPERTY, together with interest earned thereon.

**10 SIGNATURE**

Signed by the PURCHASER at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**AS WITNESS:**

<b>Witness signature:</b>	<b>PURCHASER signature:</b>
	<b>PURCHASER:</b> I acknowledge that I am acquainted with the contents of this Agreement and that all the annexes referred to in this Agreement were attached hereto when I signed same.

Witness signature:	Consenting spouse signature:
	<b>CONSENTING SPOUSE</b>

**This portion to be additionally completed and signed by parent / legal guardian / member / director / trustee in the event of the PURCHASER being a minor / close corporation / company / trust.**

I, the undersigned,

Full Name of Representative	
Identity Number	
Physical Address	
Postal Address	
Contact Telephone / Cellular Telephone Number	

hereby consents to the conclusion of this Agreement and guarantees and binds himself as surety for and co-principal debtor in *solidum* with the PURCHASER to the SELLER for the due and punctual fulfilment and discharge of all the conditions and obligations undertaken by the PURCHASER to the SELLER pursuant to this Agreement, under renunciation of the benefits of excussion and division with the meaning and effect of which benefits and the renunciation thereof he acknowledges himself to be acquainted. No variation or amendment or novation of the Agreement shall prejudice the suretyship obligations hereby undertaken by the undersigned guarantor, the object being that the undersigned guarantor will at all times be liable as surety and co-principle debtor, even if the Agreement is varied or amended or novated and even if the PURCHASER is granted an indulgence by the SELLER.

Signed by the Guarantor at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**AS WITNESS:**

Witness signature:	Guarantor signature:
	<b>Guarantor name:</b>

Signed by the Seller at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**AS WITNESS:**

Witness signature:	Seller signature:
	<b>SELLER Zimbali Resort Developments Joint Venture Partnership</b>