

DRAFT

**SUMMARY OF THE PROCEEDINGS
OF THE WORKSHOP ON THE
PRIVATE OWNERSHIP OF BLACK RHINO
HELD AT KOLOBE LODGE,
LAPALALA WILDERNESS,
13 TO 15 NOVEMBER, 1990**

RHINO MANAGEMENT GROUP

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INTRODUCTION

From the inception of the Rhino Management Group (RMG), it was recognised that the private landowner could potentially play a vitally important role in the conservation of the black rhino. Several private properties were identified as good potential habitat in the Rhino Conservation (Management) Plan, but at the stage that the Plan was drafted, little further thought was given to the implications of private acquisition of these animals.

Then in June 1990, the Natal Parks Board took the bold - and to many conservationists, controversial - step of offering a breeding group of five black rhino for sale at a public auction to preselected bidders. These animals realised a price of R2,2 million and went to Lapalala Wilderness Area in the Waterberg of the northern Transvaal.

Not only was there the NPB auction sale, but the Namibian Department of Agriculture and Nature Conservation had recently placed black rhino on private land (where they remained Government property) and the KwaZulu Bureau of Natural Resources was negotiating the possible custodianship of animals with a private individual. It was also known that another private individual had imported a black rhino from an overseas zoo and announced that he was attempting to obtain more. It is well known that Zimbabwe has transferred black rhino to a number of private properties as part of their conservation strategy. The workshop considered all ownership/possession models - lease, full ownership, custodianship, etc. - and these proceedings are relevant to all of these.

The RMG recognised that a number of issues needed to be addressed regarding the privatisation of black rhino as it was believed that there was considerable potential for several undesirable results in this transfer of animals to private hands. A workshop was therefore held at Lapalala Wilderness from 13 to 15 November 1990 with participants being invited from as broad a spectrum of interests as possible viz: the private sector, rhino management experts, the legal and veterinary professions and, of course, the formal conservation agencies.

The purpose of this workshop was to consider the various areas of concern and make recommendations as to how these concerns could be addressed. This was done in the spirit of balancing the conservation of the world's current most-celebrated endangered species with other recognised and legitimate considerations; and in an effort to ensure that animals which find their way to private hands continue to contribute to the goals of the Rhino Conservation Plan.

It will require considerable co-operation and liaison between the various conservation authorities as well as the private sector to ensure that these goals are met.

THE CONCERNS

A great number and variety of legitimate concerns were raised by workshop participants. There was considerable debate on these issues and ultimately it was recognised that the concerns could be grouped as follows :

1. Property selection criteria;
2. In-situ management concerns;
3. Owner's concerns;
4. Disposal of surplus animals (secondary and subsequent movement);
5. Legal concerns.

1. PROPERTY SELECTION CONCERNS

It was strongly believed that to date insufficient time was available to judge various criteria on a potential property. This was deemed of considerable importance to ensure that translocated animals contribute maximally to the goals of the Regional Plan. Appendix A details those criteria felt necessary to assess in some additional detail.

Two further related items must be mentioned here.

- (i) It is recognised that all properties deemed suitable by the Rhino Conservation Plan (minimum founder population of 5, minimum final population of at least 20 animals) will soon be stocked. Considerable pressure is expected to be exerted for the placing of smaller groups on smaller properties. While it is recognised that this may eventually become an important conservation strategy, there are many controls not yet in place which are necessary to ensure the proper contribution to conservation and such translocations are strongly advised against at this stage.
- (ii) There is also a great concern that private ownership may jeopardise the selection of highly suitable public lands in favour of the money that can be generated through private sales. While it is certainly recognised that financial shortages are of considerable concern and not likely to decrease, it is recommended that private and state land should be evaluated and prioritised by the same criteria, that results of the assessment should be made public and, most importantly, a balance must be struck between economic considerations and conservation responsibilities.

2. IN-SITU MANAGEMENT CONCERNS

A. Ability to maximise production

Rationale: The assumption is that releasing animals on private land, the goals of the National Plan (viz. reaching the stated numbers of the various subspecies as quickly as possible) will be expedited. This is essential to maximise the heterogeneity of the populations. Private owners may lack the expertise to do this.

Controls: Keeping the final population density within or below carrying capacity is the best way to achieve this. In some cases, current legislation addresses this to a degree, and except to contractually bind an owner to subscribe to the goals of the Plan, it was not felt feasible to consider further legal (contractual) controls. Extension advice was considered the most appropriate and the seller should be contractually bound to provide this for a prescribed period. Maximising productivity is not negotiable. Fortunately, it is in everyone's interests that it takes place.

Related to this is the suggestion that a black rhino "stud book" should be kept. This could be done by either the RMG or by the relevant conservation authority. This would help assure that maximum advantage - especially for purposes of genetic heterogeneity - can be taken of any movement/translocation of animals. If such a stud book is maintained, consideration should be given to restricting sales/movements to selected areas, especially where small populations are involved. Similarly, three-way exchanges or exchange of individual animals could be used to maximise genetic exchange in suitable circumstances. Again, a stud book is essential.

B. Adequacy of monitoring.

Rationale: To ensure that the owner maintains surveillance over his population for biological and security reasons - this to assess the achievement of the goals of the National Plan. It is felt that monitoring various biological parameters particularly, may be outside the owners' expertise and/or he may not see the importance of a monitoring programme.

Control: Both security and biological monitoring should be included as a condition of any contract. An annual status report through the appropriate agency or directly to the Rhino Management Group should be insisted upon.

The agency who supplies the rhino should be contractually obliged to provide monitoring advice/training for a specified period after transfer of the animals. In addition, they should provide technical manuals to cover monitoring and a number of other relevant topics. None of these control points were seen to be negotiable.

C. Adequacy of protection.

Rationale: Without adequate protection the rhino may either leave the property or poaching may occur.

Controls:

- (i) The property must be fenced to specified standards before animals are introduced and there must be an obligation to maintain this fence.

- (ii) Game scout/guard force must be at a prespecified level of strength and competence, and must be adequately equipped.
- (iii) Advice and training of scout/guard force should be provided by seller or seller must advise as to where this can be obtained.
- (iv) Private game protection services could be employed.
- (v) All the above are not negotiable and should be included in the sale contract and activated before animals are released on a property.

D. Change in owner's circumstances

Rationale: The owner may decide to change his management of the property or financial difficulties may lead to a desire to sell the animals - his best financial arrangement may not be to the best conservation advantage.

Controls: Current legislation, if used properly, can restrict undesirable movements. This should be reinforced by a clause in the contract which restricts subsequent sales to approved buyers only. Consideration will have to be given to just who decides who is an "approved buyer", but it would seem logical that the relevant conservation authority (-ies) make the decision. Through their existing legislation (reinforced where necessary) and a clause in the original sale contract to this effect, controls to meet this concern should be feasible. These controls should be non-negotiable.

E. Access to professional expertise.

Rationale: Knowledge and expertise in rhino management is increasing rapidly. This includes various biological and monitoring details as well as security information. The concern is that the latest information and technology may not be easily available to a private owner, which could be to the detriment of their management.

Controls: The supplier should be obliged to provide free back-up information service for one year after sale. This could be facilitated by a technical manual which could periodically be updated - even by a 'newsletter' technique. Beyond the one year period, the newsletter could be continued, but the onus should be on the private owner to acquire the expertise. It was further believed that private owners might be in a better position than government agencies to sponsor research projects, workshops and symposia; perhaps through the RMG.

A totally co-operative approach must be the bottom line.

F. Post-mortems

Rationale: In view of the conservation status of all three subspecies of black rhino, and the envisaged participation of private landowners in their conservation, establishing the cause of death of any individual is essential considering :

- the number of interested parties concerned;
- possible contractual obligations involved;
- management, security and law-enforcement consequences of the mortality report;
- an analysis of mortality data will assist in achieving the conservation goals.

Control: It must be part of any contract that an owner is obliged to :

- (i) immediately notify the relevant conservation agency of the mortality, and
- (ii) allow the conservation agency to perform the post-mortem.

These controls should not be negotiable.

3. CONCERNS OF OWNERS

While most of the concerns of potential owners are addressed in other sections of this report, one further point was raised by this group.

Guarantees on the rhino by seller

Rationale: An owner would presumably want to obtain a healthy productive group of animals from his purchase.

Control: Apart from a guarantee that the animals are of the sex and age group contained in the offer and to the best of the owner's knowledge are sound and healthy, no further controls are recommended for a variety of technical reasons. For example, an infertile animals would be difficult to detect and an oldish adult may not be distinguishable from a younger one.

The matter of guarantees can be negotiable; it is essentially between buyer and seller. Advice should be sought from experts as to the advisability of any guarantee arrangements.

4. DISPOSAL OF SURPLUS ANIMALS (SECONDARY AND SUBSEQUENT MOVEMENTS) CONCERNS

Some major concerns were identified and addressed in this section. They basically all involve movements between private owners, and although current legislation via movement permits, etc. may be sufficient to prevent undesirable movements, conservation agencies should be sure these provisions cannot be challenged, and reinforce where necessary. In addition it needs to be recognised that it may be both

possible and desirable to reinforce legislation with contractual conditions on the original sale or endorsements of the property deed (see Legal section).

Even with the best of intentions it is in this matter of secondary and subsequent movements that matters may go astray from the goals of the Regional plan. Conservation agencies must exercise maximum co-operation in these issues to ensure the conservation of these animals is not compromised.

A. Mixing of subspecies

Rationale: To maintain pure subspecies is accepted as a goal of the IUCN Species Survival Commission Group for captive breeding of the threatened species. Also the majority of African conservation agencies present at the Rhino Conservation Symposium in Cincinnati in October 1986 accepted this goal. Further, maintenance of diversity is a principle included in the regional Rhino Conservation Plan.

It has a sound commercial basis; if hunting is ever to be reinstated, records are individually kept for the various subspecies.

Further, as there are three deemed subspecies in the region, the risk of mixing is considerably increased.

The various subspecies are best adapted for the environmental conditions of their respective ranges - particularly at the extremes of the range. As private owners may not appreciate the significance of this or as economic goals, particularly as related to limited availability of the correct subspecies, may be a major motivation to the private owner, controls are necessary.

Controls: There are present legislative controls - movement, capture, import and export permits and these must be used. Further, control can and should be reinforced contractually.

The controls are negotiable, however. Certainly at a time of continuous rhino populations, there would have been a gradation from pure subspecies at the extremes of the range, to complete genetic mixtures. A strategy can theoretically be developed to co-ordinate any mixing in appropriate areas. This would involve careful controls - stud book maintenance, permanent marking of individuals, etc. This is currently unnecessary and should only be considered in the future. For *Diceros bicornis michaeli* the prohibition on mixing with either of the other subspecies is completely unacceptable in the region.

B. Placement outside subspecies original range

Rationale: Long term adaptations can be lost due to different selection pressures in different habitats. The habitat may even prove unsuitable and the animals unable to adapt. There is also the risk of accidental mixing from adjacent populations. It is therefore desirable to keep a

deemed subspecies in the historical range.

Control: Control can be implemented using current legislation.

It is recommended that subspecies are only placed in their original range. Where this is not possible, placement outside this range can be considered subject to:

- avoiding placing a different subspecies on land adjacent to an existing population of a different subspecies.
- avoiding the use of prime habitat of an indigenous subspecies for an exotic subspecies.

C. Change in owner's circumstances

Financial problems, death of owner, transfer of assets (including overseas) management of property, donations, etc.

Rationale: All of the above can lead to undesirable management or disposal decisions by the owner (or inheritors) to the detriment of the animals concerned contributing to the goals of the regional plan.

Controls: Controls are necessary and not negotiable. They should be effected through the sale contract and/or endorsement of the title deed of the property. Contract provisions must include both internal and foreign transactions.

D. Application of original criteria to subsequent ownership of the original animals progeny

Rationale: Lack of control could lead to non-viable populations being established in unsuitable habitats and there is therefore a necessity to secure the well-being of the animals to ensure their continued contribution to the goals of the Rhino Conservation Plan.

Controls: Controls can be implemented through conditions in the original and subsequent contracts, the use of existing legislation, and the application of the selection criteria used in placing the original population.

The controls are negotiable to the degree that the original population's criteria were negotiable.

E. Meeting of minimum founder numbers

Rationale: The Rhino Conservation Plan calls for a minimum founder population of five animals. Most populations established on private land will not be in a position to supply five animals for tertiary restocking. Also, to reduce post release mortality, the full founder population should be released simultaneously, complicating things further.

Control: An owner can sell less than five animals if :

- the buyer already has an established population (advice must be sought to ensure a minimum of post-release mortality);
- the buyer, through suspensive sale contracts or by acquiring animals from another source, can establish a minimum founder population of five animals.

Conservation agencies should ensure that these conditions are met before issuing the necessary permits.

If these conditions cannot be met, recognising particularly that circumstances may dictate the necessity of moving animals from the original property for a variety of biological reasons, the private landowner should be able to seek approval to sell less than five animals from the relevant conservation authority through the RMG.

The control on minimum founder numbers is negotiable within the constraints detailed above.

5. LEGAL CONCERNS

From all that has been previously discussed, it will be clear that the majority of concerns can be addressed only through legal means - ideally using current legislation reinforced with specific conditions on a sale contract or, in some cases, an endorsement on the title deed of the property.

While this all may seem rather onerous, the workshop strongly believed that the conservation of the animals should be of primary concern, notwithstanding the financial advantages that can be realised and may be necessary.

The following (Appendix B and C) was prepared gratis for the RMG by one of the workshop participants, Mr Jeremy Ridl of Ridl-Glavovic Lawyers, Westville, Natal. The sample contract attached will obviously have to be adapted to suit a specific circumstance. Consideration should also be given to a similar contract being effected between private buyers before the various permits required are issued for black rhino to be established on a new property.

Several points should be noted.

- (1) Anything that is not illegal can be included in a contract and is legally binding.
- (2) Contract conditions can enhance current legislation, or, in the case of potentially undesirable permissive legislation (permits, etc.) override it.
- (3) A similar contract can be used for various ownership models (lease, full ownership, etc.).
- (4) What follows (Appendix C) is only an example of a possible contract; each case will be different and legal advice should be sought.

- (5) Legal options and conditions must be exercised, including conditions on permits for imported animals.

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Mr Tony Ferrar (for advice on the running of a workshop)
Mr Jeremy Ridl
The various conservation and other authorities who gave their staff time to participate in the workshop.

R A CONANT (WORKSHOP ORGANISER)

for RHINO MANAGEMENT GROUP

RC/lh
91:05:21

LIST OF DELEGATES:

Bophuthatswana National Parks

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Department of Agriculture, Pretoria

Dr Hymie Ebedes

Kangwane Parks Corporation

Mr Peter Hitchins

KwaZulu Bureau of Natural Resources

Mr Peter Conant

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Mr Tony Conway

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Mr Nico Snyman

Mrs Lyn Harrison (Secretary)

National Parks Board

Dr Anthony Hall-Martin

Mr Pierre van Rooyen

Transvaal Department of Nature Conservation

Mr Johan Botha

Mr Brian Reilly

Individuals

Mr Andrew Conroy

Mr Richard Emslie

Mr Jeremy Ridl

PROPERTY ASSESSMENT CRITERIA

The following criteria need to be addressed in some detail before a property is stocked with black rhino.

1. SECURITY RISK
2. HABITAT SUITABILITY
3. FOUNDER AND POTENTIAL POPULATION SIZE
4. MANAGEMENT COMPETENCE
5. CONSERVATION RECORD/ATTITUDE
6. DISEASE RISK
7. GENETICS (ECOLOGICAL ADAPTATION)

1. **SECURITY RISK**

- (a) Proximity to dense human populations; particularly low socio-economic groups.
- (b) Lack of security on international boundaries.
- (c) Legal/protection status of rhino in recipient area.
- (d) Public servitudes through property.
- (e) Comparative security status of region.
- (f) Adequacy of physical boundaries of property (fence).
- (g) Anti-poaching capabilities on property.

2. **HABITAT SUITABILITY**

- (a) Practicality of future population monitoring and manipulation due to various possible terrain constraints.
- (b) Vegetation assessment :
 - (i) variety and proportional assessment of composition of key species;
 - (ii) key spizes (species/size class) and balance of key species;
 - (iii) grass component.
- (c) Performance of other browsers (e.g. kudu).
- (d) Grazer populations.
- (e) Soil nutrient status.

The size of the property together with an assessment of habitat suitability will lead to an estimate of carrying capacity.

Although currently under review, current RMG recommendations are :

- * Estimated carrying capacity should be at least double the initial founder population.
- * Carrying capacity must be at least 20 animals.
- * Founder population must be at least 5 animals.
- * Founder population should not exceed 50% of estimated carrying capacity.

3. FOUNDER AND POTENTIAL POPULATION SIZE

All other factors being equal, those properties having the highest figures here score highest.

4. MANAGEMENT COMPETENCE

While this may be somewhat subjective and difficult to assess, it was felt that if more time was available to assess a property, some valuable observations could be made on relevant factors.

5. CONSERVATION RECORD/ATTITUDE

Again, somewhat subjective, but additional time spent on the property by an assessor should reveal some relevant information. Included here should be the potential owner's attitude to the Rhino Conservation Plan.

6. DISEASE RISK

The veterinary authorities must be contacted regarding the risk of serious disease (e.g. anthrax).

7. GENETIC / ECOLOGICAL ADAPTATION

- (a) Danger of mixing of subspecies (e.g. from adjacent land).
- (b) Is the property in the range/edge of range, etc. of the subspecies proposed for introduction.

The RMG should be contacted in regard to any property selection for assistance.

RHINO MANAGEMENT GROUP WORKSHOP :

SUMMARY OF LEGAL IMPLICATIONS

1. Preliminary considerations

- (a) Is it ethical/moral to consider the sale/disposal of endangered species out of the public domain into private ownership?

If the answer is no, then the concept of disposal should not be pursued under any circumstances.

If the answer is not but nevertheless the money is deemed to be crucial to the survival of the species, then the concept of disposal can be pursued under one of the proposed models.

- (b) Are we (the RMG) truly concerned about conservation?

If not, a disposal without attaching any conditions is the most simple but clearly the group is concerned with conservation and therefore model A should not be used.

2. Res Nullius

Bear in mind the unique character of wild animals and the implications of "possession" and "control" as being essential components of ownership, particularly under the models of lease and custodianship.

3. Contractual Models

MODEL A :

Sell, donate to private individual, no terms imposed other than basic essentials of a contract of sale, ie merx, price, time and method of payment, delivery.

No pros. Many possible cons.

This model should be used only if conservation is not an important criterion, or if:

1. Very strict selection of potential buyers is followed.
2. The buyer can be trusted to follow a conservation ethic.
3. The price is so high that economics will dictate that great care for the conservation of the animals will be taken and the buyer will voluntarily adhere to longer term conservation plans such as minimum number, mixing of sub-species, etc.

MODEL B :

Sale/donation. According to strict conditions of sale incorporated into a detailed agreement setting out conservation priorities and a management plan. Reference can be made to the National Strategy, to the Rhino Management Plan and a technical manual which could be prepared for the benefit of new owners. Those documents can be made binding through the agreement.

Pros:

1. Contractual obligations can be imposed to ensure the conservation goal is attained and the welfare of the animals is safeguarded.
2. Differences between various provincial ordinances can be overcome.
3. Deficiencies in ordinances can be overcome and the strength of the ordinance reinforced.

4. Guards against weakening of controls in the event of political change, or for any other reason.
5. Both parties to the contract know exactly where they stand.
6. Future owners, however they might come along (death, insolvency, etc.) can be bound.

Cons:

1. No contract can guard absolutely against the fraud or dishonesty of a contracting party but at least if the dishonest party is caught out, the remedy of the other party is clear.
2. It has been suggested that long complicated and onerous contracts might put potential buyers off. This is very unlikely however because:
 - (a) There is a lot of money involved and a prospective buyer would *expect* there to be extensive conditions.
 - (b) The buyers *own* interests could be protected (eg "after sales service" etc).
 - (c) The long term management/conservation goal is in *both* parties' interests.
3. Conservation authorities might be reluctant to bind themselves to any long term arrangement.
4. A negative aspect for a buyer *only*, if he has dishonest intentions which he is not disclosing, is that he will not be able to carry them out without penalty.

MODEL C :

1. Lease, subject to conditions, ie specific conditions as to rent, period, etc. *plus* management/conservation

conditions.

2. Custodianship, as for C1, but in lieu of rent, some consideration, eg custodian keeps, maintains, etc. and the progeny shared.

MODEL B vs MODEL C

No real difference except financial :

1. A sale results in the immediate payment of cash whereas a lease or custodianship means cash and over a period of time.
2. Furthermore, there are complications of ownership because of the "possession" and "control" requirements related to wild animals because of their *res nullius* status.

POSSIBLE ALTERNATIVE MODEL

Joint venture via specially incorporated company is possible but has certain disadvantages:

1. Usual risks associated with any "partnership" venture - partners must be compatible and have common goals and ideals.
2. Financial implications.
3. Tax implications if the idea is to make a profit (avoid by having "association not for gain").

STRUCTURE OF THE CONTRACT : Whether sale or lease

- PART ONE: Special conditions relative to the particular deal.
PART TWO: General conditions for the benefit of both parties.
PART THREE: *separate document* containing comprehensive conservation/management/back up/ future plan.

The documents constituting Part Three can be amended and updated from time to time *even after the contract has been concluded*, provided the right is reserved and the amendment is within the bounds of the contemplated amendments (eg based on new scientific evidence such as species mix, etc.)

GENERAL NOTE : It would be advisable to enter any negotiations with a *bottom line* below which there is simply *no deal*. If necessary, start high and negotiate downward to the bottom line which is acceptable to both sides and accommodates both the commercial and conservation goals of the project.

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MEMORANDUM OF AGREEMENT

1. PARTIES :

- 1.1. [THE NATAL PARKS BOARD]
(hereinafter referred to as "the Seller");
- 1.2. [JOHN DOE]
(hereinafter referred to as "the Purchaser").

2. PREAMBLE :

WHEREAS :

- 2.1. The Seller is the owner of certain Black Rhinoceros of the species [Bicornis] by virtue of the provisions of the [Natal] Nature Conservation Ordinance [No.] and/or by virtue of its physical control thereof.
- 2.2. The Seller wishes to sell to the Purchaser [5] animals of the aforementioned species upon the terms and conditions set out herein and in accordance with the provisions of a National Strategy for the management of the aforesaid species more fully set out herein.
- 2.3. The Purchaser wishes to purchase the rhinos aforesaid on the terms and conditions set out herein and agrees to be bound by the provisions of the National Strategy aforesaid and as amended from time to time, as if specifically incorporated herein.

3. DEFINITIONS :

- 3.1. The headings are inserted for ease of reference only and shall not be used for interpretation of this agreement.
- 3.2. Wherever words importing the singular are used they shall include the plural and wherever the male gender is used, it shall include the female and neuter genders, except where the context clearly indicates a specific gender.
- 3.3. In this agreement, unless the context clearly indicates to the contrary, the following words, phrases and expressions shall have the respective meanings assigned to each of them as follows:
- 3.3.1. "Rhino" : Black Rhinoceros of the sub-species [Bicornis];
- 3.3.2. "Other or different sub-species" : Black Rhinoceros of a sub-species different to that referred to in 3.1;
- 3.3.3. "The Board" : The National or Provincial Nature Conservation authority which has jurisdiction over the protection and control of the rhinos;
- 3.3.4. "the Ordinance" : The Provincial Nature Conservation Ordinance having jurisdiction over the area in which the rhinos are situated from time to time together

with any subsequent legislation
which may replace such Ordinance;

- 3.3.5. "control"
(in relation to the
rhinos) : restricting their movement within or
on the property over which the Seller
and/or the Purchaser has legal
possession, occupation or
ownership, or under such a
sufficient degree of physical
restraint or charge to retain
ownership of the class of things
known as a *res nullius*;
- 3.3.6. "RMG" : The Rhino Management Group, an
association of persons
representative of various nature
conservation authorities and
organisations concerned with the
protection and management of the
Rhinoceros species;
- 3.3.7. "the technical
manual" : a document compiled by the RMG
and amended from time to time
setting out guide lines and
recommendations for the
management and care of rhinos;
- 3.3.8. "the national
strategy" : the programme co-ordinated by the
RMG in terms of which the
preservation of rhinos is promoted,
their breeding is encouraged and

their re-introduction to their former habitat range is achieved;

- 3.3.9. "Rhino Management Plan" : the principles for the preservation and management of rhinos established by the RMG from time to time;
- 3.3.10. "breeding herd" : subject to the determination of the RMG, not fewer than 5 rhinos of which at least one half shall be female;
- 3.3.11. "founder population" : at least 5 rhinos, or so many as may be determined by the RMG to be the optimum number of rhinos to constitute a breeding herd;
- 3.3.12. "sale rhinos" : the rhinos constituting the subject matter of this agreement.

4. ROLE OF THE RMG :

- 4.1. As a member of the RMG, the Seller acts as its representative, hereby accepting the rights conferred on it in this agreement.
- 4.2. The parties hereto hereby appoint the RMG to act in the capacity and in accordance with the rights set out in this agreement.

5. THE CONTRACT :

- 5.1. Subject to the terms and conditions set out hereinafter, the Seller hereby sells and the Purchaser hereby purchases [5] rhinos of the sub-species [Bicornis].
- 5.2. The purchase price shall be the sum of [R] and shall be paid in cash on the date of safe delivery of the sale rhinos to the Purchaser.
- 5.3. The purchase price shall be secured by bank guarantee in a form acceptable to the Seller, delivered by the Purchaser to the Seller within seven (7) days of signature hereto, failing which the Seller shall have the right to cancel this agreement without notice and to recover from the Purchaser such damages as it may have suffered.
- 5.4. Within sixty (60) days of the date of delivery by the Purchaser of the guarantee referred to in 5.3., the Seller shall deliver to the Purchaser the sale rhinos at [XYZ Nature Reserve].

6. PROVISIONS OF THE ORDINANCE :

- 6.1. Notwithstanding anything to the contrary in this agreement, the provisions of the Ordinance shall apply to the Purchaser with regard to his acquisition and keeping of the sale rhinos and their future progeny.
- 6.2. The Purchaser shall be required to apply for an obtain a permit, as required by the Ordinance, and the Seller and/or the RMG may request of the Board issuing such permit to endorse, as a condition of the grant of such permit, compliance in every respect with this

agreement, the National Strategy, the Rhino Management Plan and the technical manual.

- 6.3. The Purchaser shall agree to the imposition of such conditions.
- 6.4. The parties record that it is the intention of this agreement to add to the protective measures offered by the Ordinance not to detract therefrom.

7. PLACE OF SAFE RECEIPT :

- 7.1. Prior to the intended delivery date, the Purchaser shall make ready a place of safe receipt for the sale rhinos according to specifications determined by the Seller in conjunction with the RMG.
- 7.2. A representative of the Seller and/or the RMG shall be entitled to inspect the place of safe receipt prepared by the Purchaser and if such place and/or its facilities are not acceptable to such representative, the Seller shall be entitled to delay the delivery of the sale rhinos until such defects therein have been made good.
- 7.3. Should the Purchaser fail to make good such defects within fourteen (14) days of notice to that effect by the representative appointed aforesaid, the Seller shall be entitled, without further notice, to cancel this agreement and to recover such damages and/or expenses it may have suffered as a consequence thereof.
- 7.4. The sale rhinos shall be held in the place of safe receipt for so long as the Seller and/or the RMG may stipulate and shall be cared for and protected in the manner stipulated by the Seller and/or the

RMG and/or the technical manual.

- 7.5. Representatives of the Seller and/or the RMG shall have free access to the sale rhinos at all reasonable times during the confinement in the place of safe receipt and the Purchaser shall respond promptly to any advice or directive given by such representative in the interests of the welfare or safety of the sale rhinos.

8. PLACE OF PERMANENT SAFE KEEPING :

- 8.1. It is recorded that prior to the conclusion of this agreement, the Purchaser has pointed out to representatives of the Seller and/or the RMG, the area in which the sale rhinos are to be permanently kept.

- 8.2. The Seller and the RMG are satisfied that it meets with their requirements, the National Strategy and the Rhino Management Plan in regard to:

- 8.2.1. Habitat and climate suitability;

- 8.2.2. The sub-species range of present or historical occupation;

- 8.2.3. Its distance from other sub-species ranges;

- 8.2.4. The adequacy of the perimeter security systems or barriers surrounding the place of permanent safe keeping.

- 8.3. The Purchaser acknowledges and agrees that the security and

control of the sale rhinos and their progeny is an ongoing obligation of this agreement and it shall maintain its security and control measures to highest standards and in accordance with the requirements of the Seller and the RMG as set out from time to time in the technical manual, or as may be directed by representatives of the Seller and/or the RMG after routine inspections as provided for in the technical manual or contemplated in this agreement.

- 8.4. The Purchaser shall employ a sufficient number of employees to act as game guards who shall regularly patrol the perimeter of the place of safe-keeping so as to ensure that any damage thereto is immediately repaired and to protect the rhinos against poachers or any other person who may threaten their well-being.

9. PROHIBITION ON RE-SALE :

- 9.1. Unless the Purchaser has a herd of rhinos in excess of the number required for a breeding herd, it shall not dispose of any rhino and in the event that it has an excess of rhinos over a breeding herd, then only upon the terms and conditions stipulated herein.
- 9.2. The Purchaser shall be entitled to dispose of, sell or alienate its entire breeding herd to any successor-in-title to the land upon which the rhinos are kept in their place of permanent safe keeping, provided however that such successor-in-title shall be bound by all of the terms and conditions of this agreement, the National Strategy, the Rhino Management Plan and the technical manual.
- 9.3. The Seller may, at its option, and at the expense of the Purchaser,

require that the Title Deeds to the property on which the rhinos are kept are endorsed with the restrictive condition aforesaid.

- 9.4. In any event, and notwithstanding the Seller's failure to cause the endorsement aforesaid, it shall be a continuing duty and obligation upon the Purchaser to disclose to any prospective successor-in-title to the property aforesaid, the nature and content of this agreement and to secure his compliance therewith in a written acknowledgement to that effect.
- 9.5. Should the Purchaser fail to do so, then the Seller and/or the RMG shall be entitled to request of the Board that the permit under which the rhinos are kept in accordance with the Ordinance be revoked and all of the rhinos in the possession of the Purchaser and/or his successor-in-title be forfeited to the Board without compensation.
- 9.6. In the event that the Purchaser has excess progeny over and above the founder herd or breeder herd, it shall be entitled to dispose of such excess subject to the following conditions:
 - 9.6.1. The person to whom any such rhino is sold shall himself already own sufficient rhinos to constitute a breeding herd;
 - 9.6.2. or shall have concluded or shall intend to conclude agreements for the purchase of sufficient number of rhinos to constitute a founder population and/or a breeding herd;
 - 9.6.3. and any sale by the Purchaser to such person shall be subject to and suspensive upon such person successfully concluding agreements aforesaid, giving him the minimum number of rhinos

required aforesaid.

9.7. Upon the recommendation of the RMG, the restrictions aforesaid may be relaxed provided there is consent thereto in writing by the Seller.

9.8. The Purchaser shall not dispose of any rhino to any person who is not approved by the Seller and/or the RMG and/or whose prospective place of safe-keeping for the rhinos does not comply with the conditions set out in this agreement, the National Strategy, the Rhino Management Plan or the technical manual.

9.9. The Purchaser shall not dispose of, sell or alienate any rhino to any person who does not hold a permit required in terms of the Ordinance.

**10. DEATH, INSOLVENCY OR CHANGE IN STATUS
OR CIRCUMSTANCES OF THE PURCHASER :**

10.1. In the event that the Purchaser or his successors-in-title die, become insolvent, are liquidated or placed under a curatorship, then any person, acting in a representative capacity of the Purchaser in the circumstances aforesaid, shall be bound by the terms and conditions of this agreement and shall be subject to any or all of the penalties stipulated herein.

10.2. In particular, the Seller and/or the RMG may, upon a breach of any of the terms and conditions set out herein, cause the permit in terms of which the rhinos are held to be revoked and the rhinos forfeited to the Board without compensation.

10.3. In the event that the Purchaser and/or its successors-in-title are unable for any reason to properly care for, maintain or protect the rhinos under its control, it shall immediately notify the Seller and/or the RMG of its predicament in which event the Seller and/or the RMG shall be entitled to, but not obliged, to assist the Purchaser in maintaining the rhinos and may likewise assist it in disposing thereof to other persons considered acceptable by the Seller and/or the RMG at the best possible price.

10.4. In such event, the proceeds of such sale shall be administered by the RMG and paid to the Purchaser after reimbursement by the Purchaser to the Seller and/or the RMG of any expenses incurred by them in connection therewith.

10.5. In the event that a buyer for the rhinos cannot be found, then they shall revert to the ownership of the Seller or the Board if it is not one and the same entity.

11. MAINTENANCE OF HERD NUMBERS :

11.1. The Purchaser agrees to participate in such genetic exchange programmes as the RMG may implement from time to time.

11.2. The Purchaser shall at all times maintain a sufficient number of rhinos to constitute a founder population and/or a breeding herd and shall, in the event of the loss or death of a rhino, take immediate steps to replace such loss.

11.3. In this regard, the Seller and/or the RMG undertake to give reasonable assistance to the Purchaser in replacing such losses but

shall not be obliged, themselves, to provide such replacement rhinos.

11.4. In the event that the Purchaser is unable to acquire additional rhinos to maintain the minimum number required aforesaid, then the same provisions will apply to the circumstances in which the Purchaser is unable, through a change of circumstances, to maintain his rhino herd.

11.5. In the event that the Purchaser's rhino population exceeds that deemed by the RMG to be optimum for the area in which the rhinos are kept, then the Purchaser shall be obliged to dispose of such excess to buyers who meet with the approval and/or requirements of the RMG or to the Board and such latter disposal shall, unless the Purchaser is able to reach agreement otherwise, be without consideration.

11.6. The Purchaser is obliged do everything possible to promote the increase of his rhino population so as to have founder populations available for the re-introduction into other suitable areas approved by the RMG and within the aims and objectives of the National Strategy and the Rhino Management Plan.

**12. GOALS OF THE NATIONAL STRATEGY AND
RHINO MANAGEMENT PLAN :**

12.1. The Purchaser acknowledges that the primary purpose of this agreement is to achieve a conservation end and is not purely for economic gain.

- 12.2. The Purchaser accordingly agrees that the conservation ethic will override any financial ambitions he may have in relation to the sale rhinos or any of their progeny.
- 12.3. Notwithstanding the provisions of the Ordinance, the Purchaser shall not be entitled himself, or to allow any other person to hunt or kill any rhino under his control.
- 12.4. The Purchaser acknowledges that this agreement is concluded in the furtherance of the aims, objectives and goals of the National Strategy and the Rhino Management Plan.
- 12.5. Without derogating from the generality of the aforesaid, such aims, objectives and goals are :
 - 12.5.1. Increasing, as far as possible, rhino populations;
 - 12.5.2. The preservation of the endangered species of rhino;
 - 12.5.3. Their re-introduction to the areas formerly inhabited by them;
 - 12.5.4. The prevention of the mixing of sub-species of the species;
 - 12.5.5. The maintenance of viable breeding herds;
 - 12.5.6. The proper caring for rhinos.
- 12.6. This agreement and the Purchaser's management and care for the rhinos, shall be subject to the foregoing criteria. The Purchaser undertakes to procure of any person to whom he may dispose, sell or alienate a rhino, that he bind himself and adhere to the

aforegoing aims, objectives and goals.

13. SELLER'S WARRANTY :

- 13.1. The Seller is unable to warrant that the sale rhinos are free of any defects or that they will successfully breed whilst in the possession of the Purchaser.
- 13.2. The Seller does warrant, however, that it is unaware of any defect in the sale rhinos which renders them incapable of breeding or is likely to adversely effect their health.
- 13.3. Save for the foregoing warranty, the sale rhinos are accordingly sold voetstoots and without any guarantee.
- 13.4. The Purchaser acknowledges that whilst risk in and to the rhinos remains with the Seller until such time as they are delivered to him, they may become injured in transit and may arrive at the place of safe receipt in an injured condition.
- 13.5. In the event that any injured rhino does not recover from any visible injury within a reasonable period of time, it shall be replaced free of charge if such injury is deemed to render the rhino unfit for the purpose for which it was sold to the Purchaser.

14. MONITORING AFTER SALE :

- 14.1. The Purchaser agrees that the Seller and/or the RMG shall, for so long as it deems necessary after the delivery of the rhinos to it,

monitor their health by inspecting them from time to time.

14.2. The Purchaser agrees to grant free access by the Seller and/or the RMG at all reasonable times for the purpose aforesaid.

14.3. The purpose of the inspections is twofold:

14.3.1. To ensure that the rhinos are properly cared for and that there is adherence to this agreement, the National Strategy and the Rhino Management Plan;

14.3.2. To assist where possible the Purchaser in his care for and management of the rhino under his control.

14.4. The RMG shall produce a technical manual and update it from time to time setting out rhino management techniques and whilst such a document is primarily to assist the Purchaser, he is obliged to comply as far as is reasonably possible therewith failing which he shall be regarded to be in breach of this agreement.

14.5. In the event that any rhino under the control of the Purchaser dies, notwithstanding anything to the contrary in the Ordinance, the Seller or the RMG may insist upon the conducting of a post-mortem and may have a representative conduct such post-mortem or be present thereat so as to establish the cause of the rhino's death.

14.6. The Seller and/or the RMG shall assist as far as is possible with the training of the Purchaser's staff in the management, control and protection of rhinos.

15. WAIVER :

15.1. The waiver (whether express or implied) by either party of any breach of the terms or conditions of this agreement by the other party shall not prejudice any remedy of the waiving party in respect of any continuing or other breach of the terms and conditions hereof.

15.2. No favour, delay or relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any other power or right under this agreement.

15.3. The expiry or termination of this agreement shall not prejudice the rights of either party in respect of any antecedent breach or non-performance by the other party of any of the terms or conditions hereof.

16. BREACH :

16.1. In the event of either party committing a breach of any of the terms or conditions of this agreement and remaining in default thereof notwithstanding 14 (FOURTEEN) days written notice to remedy such breach, the aggrieved party, without prejudice to such other rights as it may have to claim damages arising from such breach may either :

16.2. claim an order for specific performance; or

16.3. cancel this agreement, provided the breach goes to the root of the contract; and

16.4. recover from the party in breach all such costs and expenses incurred and losses sustained in respect of any action instituted against such party.

17. **WHOLE AGREEMENT :**

This agreement constitutes the whole agreement between the parties in relation to its subject matter and supersedes all prior agreements and no documentation, representation, warranty or agreement not contained herein shall be of any force between the parties.

SIGNED at this day of [1991].

AS WITNESSES :

1.

2.

[NATAL PARKS BOARD]

SIGNED at this day of [1991].

AS WITNESSES :

1.

2.

[JOHN DOE]