

SUNBIRD GOLF AND WILDLIFE ESTATE
AGREEMENT OF SALE

1. **PARTIES**

The parties to this agreement are

BUFFALO HILL PROPERTIES (PTY) LTD
REGISTRATION NUMBER
2006/026279/07

(hereinafter referred to as " the Seller ")

And

(hereinafter referred to as " the Purchaser ")

2. **DEFINITIONS**

2.1 In this agreement, unless inconsistent with the context-

2.1.1 **"Articles of Association"** means the registered Articles of the Association or any amendment thereto.

2.1.2 **"Association"** means the Sunbird Golf and Wildlife Home Owners' Association, an Association established and incorporated by the Seller under Section 21 of the Companies Act, 1973, or any amendment thereto;

- 2.1.3 "**Attorneys**" shall mean the attorneys' firm nominated by the Seller to attend to the Transfer, which will be either Van Rensburg Koen & Baloyi Attorneys (Tel 012 343 4522) or Baartman, Bosman and Van Rensburg Attorneys (Tel 012 656 0300).
(See paragraph 4.3 herein)
- 2.1.4 "**Attorneys' Trust Account**" means the Trust account of either of the Attorneys appointed by the Seller *viz*:
- 2.1.4.1 Van Rensburg Koen & Baloyi Attorneys
Nedbank Limited, Trust Account
Account Number 1631137158
Branch Code 163145; or
- 2.1.4.2 Baartman Bosman & Van Rensburg Attorneys
Absa Bank
Account Number: 404 955 4565
- 2.1.5 "**Conditions of Establishment**" means the conditions imposed by the appropriate authority pertaining to the establishment of the Township, read together with any services agreement to be concluded between the Developer of the Township and the Local Authority, including all amendments, additions and/or variations thereof;
- 2.1.6 "**Deposit**" means the initial deposit and the balance of the deposits described in the Details Schedule;
- 2.1.7 "**Details Schedule**" means **Schedule 1** attached hereto being a schedule containing details which are and form an integral part of this agreement;
- 2.1.8 "**Developer**" means Buffalo Hill Properties (Pty) Limited.
- 2.1.9 "**Effected Interest Rate**" means the prime overdraft rate charged from time to time by Nedbank Limited to its most favoured customers in respect of unsecured overdraft facilities;
- 2.1.10 "**Estate**" means Portion 138 of the Farm Doornhoek 318 KQ to be subdivided and known as Sunbird Golf and Wildlife Estate. **Land** shall have a similar meaning;

- 2.1.11 "**Golf Club**" means the Sunbird Country Club, a Club to be registered and incorporated with the approval of the Gauteng North Golf Union or any amendment thereto.
- 2.1.12 "**Golf Course**" means the proposed Sunbird Golf Course.
- 2.1.13 "**Guarantee Date**" means the date not later than 7 (seven) days from the date of written request by or on behalf of the Seller for a guarantee or guarantees for payment of the balance of the Purchase Price due in terms of paragraph 4.2.3;
- 2.1.14 "**House Rules**" means the rules or any amendment thereto of the Association.
- 2.1.15 "**Local Authority**" shall mean the Thabazimbi Local Municipality;
- 2.1.16 "**Loan Amount**" means the loan amount required by the Purchaser as described in the Details Schedule;
- 2.1.17 "**Purchaser**" means the Purchaser as described in the Details Schedule;
- 2.1.18 "**Purchaser's Address**" means the Purchaser's Address as described in the Details Schedule;
- 2.1.19 "**Purchase Price**" means the Purchase Price of the Property as described in the Details Schedule;
- 2.1.20 "**Registerable**" means capable of being registered as a unit of land in a deeds office;
- 2.1.21 "**Seller**" means the Seller as described in the Details Schedule;
- 2.1.22 "**Seller's Address**" means the Seller's address as described in the Details Schedule;
- 2.1.23 "**Statutes**" means the Memorandum of Agreement and Articles of Association of the Association;
- 2.1.24 "the **Property**" means the stand/erf as described in the Details Schedule;
- 2.1.25 "**Township**" means Thabazimbi Extension 43 (Sunbird Golf and Wildlife Estate) comprising the Estate and situated on Portion 138 of the Farm Doornhoek 318, KQ;

2.1.26 "**Transfer**" means the registration of transfer of the Property into the name of the Purchaser;

2.2 The headings to the paragraphs are for convenience only and do not amplify, clarify or operate as an aid to the interpretation of the paragraphs to which they refer.

2.3 Words importing –

2.3.1 any one gender include the other gender;

2.3.2 the singular include the plural and *vice versa*;

2.3.3 natural persons include created entities (incorporated or unincorporated) and *vice versa*.

2.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it was a substantive paragraph in the body of the agreement, notwithstanding that it is only contained in the interpretation paragraph.

2.5 If any period is referred to in this agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or a public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or a public holiday.

2.6 This agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

3. THE SALE

3.1 The Seller hereby sells the Property to the Purchaser who purchases same.

3.2 The sale of the Property is effected –

3.2.1 "voetstoots" and

3.2.2 subject to all conditions and servitudes mentioned or referred to in the current title deed of the Land and to all such other conditions and servitudes which may exist in regard thereto and/or any other conditions that have been or might be imposed by any competent authority in consequence of the approval of the Township and subdivision of the Land.

4. THE PURCHASE PRICE AND TERMS OF PAYMENT

4.1 The Purchase Price of the Property is as stated in the Details Schedule.

4.2 The Purchase Price shall be payable by the Purchaser to the Seller in the following manner:

4.2.1 an initial holding Deposit as described in the Details Schedule which shall be paid by the Purchaser into the Attorney's Trust Account (see paragraph 2.1.4 for bank details) after signature of this agreement on request by the Attorneys.

4.2.2 a second and/or further Deposit(s) as described in the Details Schedule, or to be described once the Loan Amount required has been approved in principle by a financial institution as contemplated in paragraph 5.1;

4.2.3 the balance of the Purchase Price of the Property shall be paid upon transfer. Such payment shall be secured on or before the Guarantee Date by the delivery to the Seller or its nominee, of a guarantee or guarantees by a registered bank or other financial institution to be approved by the Seller, expressed to be payable, free of exchange upon transfer.

4.3 All amounts payable to the Seller in reduction of the Purchase Price shall be paid to the Attorneys to be held in trust for release to the Seller on transfer. Once this agreement has been signed by the Seller and Purchaser, the Seller will nominate the Attorneys who in turn will request the Purchaser to effect payment of the Deposit/s.

4.4 The Attorneys are hereby authorised and instructed to invest any amounts so held by them in an interest bearing account with a bank or financial institution for the benefit of the Purchaser.

4.5 Should any amount due and payable by the Purchaser in terms hereof not be paid or secured, as the case may be, on or before the due date, then, without prejudice to the Seller's rights in terms of paragraph 15, such amount shall bear interest at a rate equal to the Effective Interest Rate plus 2% (two percent) calculated monthly in advance, compounded and reckoned from the date on which payment or security for payment should have been made or furnished, as the case may be, to the date on which such payment is actually made or such security for payment is furnished, as the case may be, both days inclusive.

5. SUSPENSIVE CONDITIONS

5.1 This agreement shall be subject to the suspensive condition that the Purchaser (or the Seller or its agents on behalf of the Purchaser) is able to obtain a loan for a sum of not less than the Loan Amount at prevailing rates and on the terms of any bank or financial institution.

5.2 Should such loan not be procured within 45 (forty five) days or such extended period as the Seller may at the Seller's discretion declare, from date of signature hereof, this agreement shall become void and of no further force and effect.

5.3 The Purchaser hereby instructs and authorises the Seller to attend to procuring a loan on his behalf, from any of the financial institutions listed in paragraph 7 of the Details Schedule.

5.4 Should the Purchaser wish to make use of any other financial institution, he will be responsible for procuring the loan himself and will also be liable for payment of both transfer and bond registration costs.

6. TRANSFER

6.1 Transfer shall be affected by the Attorneys as soon as possible after –

6.1.1 the Property becomes Registerable;

6.1.2 the Purchaser has complied with all his obligations in terms of this agreement;

- 6.1.3 the Purchaser, subject to paragraph 6.2, has paid all costs of transfer, including VAT thereon at the prescribed rate, as well as any other costs and charges required to be paid which the Purchaser shall be liable to pay to the Attorneys on demand; and
- 6.1.4 the Purchaser has signed all necessary documents and provided all necessary information and copies of such documentation for the purpose of transfer which the Purchaser shall be obliged to do on demand by the Attorneys.
- 6.2 The Seller shall be liable for all transfer and bond costs excluding any bank charges or costs pertaining to the grant of the loan i.e valuation and/or initiation fees subject thereto that the Attorneys also attend to the registration of the bond, if necessary.
- 6.3 The Purchaser hereby irrevocably appoints the Attorneys to register the bond on his behalf.

7. POSSESSION AND OCCUPATION

- 7.1 Possession and occupation of the Property shall be given to the Purchaser and the Purchaser shall be deemed in all respects to have taken possession and occupation of the Property upon date of registration of the Property into his name. The Purchaser shall, as from date of transfer become and remain liable for the payment of all rates and taxes, municipal charges, water and electricity and in particular payment of fees, levies and charges to the Association. All risk profit and loss pertaining to the Property shall pass to the Purchaser on date of transfer.
- 7.2 The Purchaser shall not be permitted to affect any improvements on the Property prior to the registration date and any improvements to the Property affected by him contrary to the terms of this agreement shall be forfeited should this agreement be cancelled.
- 7.3 The Purchaser acknowledges that on taking possession and occupation of the Property, the buildings and facilities on the adjacent or nearby stands comprising the Estate, particularly the private open spaces, the gatehouses and the security fences, may be incomplete and that occupants of the Property may consequently suffer inconvenience from building operations and from noise and dust resulting therefrom and that the Purchaser shall have no claim whatsoever against the Seller by reason of any such inconvenience.

- 7.4 The parties agree that the Seller shall not be liable for any damages caused to the Property due to the installation of the infrastructural services, including but not limited to, damage to roads, curb stones, sewerage works, electricity, water provision, storm water drainage and the Purchaser accepts that the activities during the installation of services will give rise to a certain degree of damage to the land and/or vegetation, even if any infrastructural services are not placed or conducted directly over or under the Property being sold.
- 7.5 As from date of transfer the Purchaser is obliged to keep, at his own cost and expense, the Property neat, free of rubble and free of excessive weeds and/or vegetation or growth and the Seller and/or the Association may enforce this obligation against the Purchaser.

8. TOWNSHIP ESTABLISHMENT AND SUBDIVISION OF LAND

- 8.1 The Purchaser acknowledges that –
- 8.2 Rights to establish the Township has been approved.
- 8.3 The subdivision of the Land has not yet been registered at the deeds office.
- 8.4 It will only be possible for the Seller to give transfer of ownership in the Property to the Purchaser after such subdivision has been registered at the deeds office.
- 8.5 The Seller is obliged to use its best endeavours to have the installation of services completed to the satisfaction of the Local Authority within a reasonable period, but the Seller does not warrant or represent that the said installation will be completed by any specific date and the Purchaser will not at any time be entitled to cancel this agreement or to claim a reduction of the Purchase Price of the Property, or to claim damages by virtue of the fact that the installation of services have not been completed within a reasonable time.
- 8.6 The Seller will not be liable to point out any of the beacons or pegs placed in accordance with the General Plan or be liable for payment of such determination once the pegs have been pointed out to the Purchaser by the estate agent or the Seller. It is the Purchaser's obligation to request the estate agent to point out any pegs before the date of Transfer.

9. ASSOCIATION

9.1 The Seller shall establish the Association in the form of a Section 21 company and the Purchaser shall become a formal member of the Association once the Seller has fully developed, completed and signed off the development, which includes the development of the private open spaces, the Golf Course, the guard house, perimeter wall or electric fence and the entrance restrictions to the Estate, which the Seller shall complete as the Seller's responsibility and without interruption and interference by any party and the Purchaser shall automatically become and remain a member of the Association from such date.

In this regard the Seller shall:

9.1.1 remain and retain membership in the Association in the number of memberships representing the unsold stands in the Estate, effectively holding 1 (one) membership per unsold stand and be exempt from payment of any levies, fees and/or charges to the Association.

9.2 Notwithstanding the aforementioned the Purchaser shall, for purposes of the payment of fees, levies and charges to the Association, be deemed to have become a member of the Association as from date of possession and occupation (as described in paragraph 7).

9.3 The Purchaser shall from date of possession and occupation irrespective whether the member is a formal member or not, be bound and in all respects comply with, conform and act according to the Statutes and House Rules of the Association.

9.4 The Purchaser specifically agrees not to sell the Property to any person unless a provision is incorporated in such agreement of sale that the new Purchaser of the Property acknowledges that he is aware of the Association and that such Purchaser shall be obliged, on receiving transfer of the Property, to become and be a compulsory member of the Association and be subject to all the obligations, House Rules and the Statutes of the Association required from each member;

9.5 The Purchaser hereby irrevocably consents that any conditions contained in the Statutes of the Association, or such amendments thereto as the Registrar of Deeds in Pretoria may require for registration purposes, be incorporated in the title deed of the Property.

10 SERVICES

- 10.1 The Seller shall ensure that a connection for water, electricity and sewerage be supplied at the street boundary of the Property without any cost to the Purchaser. The removal of household refuse shall be arranged in deliberation with the Association.
- 10.2 The Purchaser will be responsible for the installation and for all costs incurred for the supply of the water, electricity and sewer system from the street boundary to the dwelling.

11 GOLF COURSE AND GOLF CLUB

- 11.1 The Seller intends to develop a Golf Course, which shall be partly situated on one or more erven in the Township, in which the Property hereby sold is situated. It shall be the Seller's sole discretion to determine the specifications and/or layout of both the Golf Course and Clubhouse. The Seller is also entitled, from time to time, to change the levels of the Golf Course as well as its layout, including the shape, level and position of tees, greens, bunkers, fairways, water features and the like, from that shown on any model or in any brochure or plan and the Purchaser will not, by virtue thereof, be entitled to cancel this agreement or to claim damages or a reduction in the Purchase Price from the Seller. The Seller will, at its sole discretion, determine when the Golf Course will be developed and completed.
- 11.2 The Purchaser's right (or lack thereof) as an owner of a Property or Properties in the Township, to be present on the Golf Course, shall be strictly determined by the Golf Club as well as the Statutes and House Rules of the Association. The Purchaser is also obliged to ensure that his family, visitors, invitees and other persons under his control, abide strictly by the said rules.
- 11.3 The Seller is entitled to sell, donate, let or otherwise alienate or dispose of the Clubhouse erven to any other party without the Purchaser's and/or Golf Club's consent and no consideration will be due to the Purchaser and/or Golf Club by virtue thereof.

12 DEVELOPMENT OF THE ESTATE

12.1 The Purchaser agrees, acknowledges and records that he is aware of the Seller's intention to:

12.1.1 erect and complete a gatehouse and perimeter electric fence where possible;

12.1.2 complete further facilities on the Estate that may be varied or changed by the Seller for any reason it believe necessary or desirable in its discretion;

12.2 In light of the provisions of paragraph 12.1, it is hereby agreed and recorded that the Purchaser shall not be entitled to interfere with or obstruct the Seller from erecting and completing common facilities on the Estate.

13 RESALE

13.1 The Purchaser shall not be entitled to sell the Property prior to Transfer without the Seller's written approval first having been obtained, which approval shall be at the discretion of the Seller.

13.2 The Seller shall be under no obligation, nor be approached, to enter into any form of tripartite agreement.

14 WARRANTIES AND EXCLUSION OF SELLER'S LIABILITY

14.1 No representations or warranties not stated herein have been made or given by the Seller or its agents expressly or implied and this agreement constitutes the entire agreement between the parties.

14.2 The Seller shall not be liable for any defects, latent or otherwise, in the Property nor for any damage occasioned to or suffered by the Purchaser by reason of such defects.

14.3 Furthermore, the Seller shall not be liable for any deficiency in the extent of the Property, nor shall the Seller benefit by any possible excess in the extent thereof.

14.4 The Seller makes no warranties and shall not be liable in any respect in regard to the existing soil conditions on the Property with which the Purchaser is obliged to satisfy himself.

15 DEFAULT AND CANCELLATION

15.1 If the Purchaser fails to make any payment on due date or commits any other breach of this agreement, the Seller shall be entitled, without prejudice to any other rights which the Seller may have at law, at the Seller's discretion, either-

15.1.1 to claim immediate specific performance of the Purchaser's obligations, including payment of the full Purchase Price; or

15.1.2 to cancel this agreement, resume possession of the Property, and either retain all payments made by the Purchaser as "rouwkoop", whether made by way of Deposit or otherwise, as being the amount which the parties record will be compensation for damages suffered by the Seller as a result of the Purchaser's breach of contract or, alternatively and *in lieu* of such penalty, claim all damages suffered by reason of the Purchaser's breach of contract, with the right to retain any payments made under this agreement, until the amount of the damages have been determined and to apply such payment towards satisfaction of the amount of such damages when it is quantified.

15.2 Before exercising its rights under paragraph 15.1 the Seller shall first give the Purchaser written notice informing him of the failure in question and making demand to the Purchaser to rectify his breach within 7 (seven) days of receipt of such notice.

15.3 Should the Seller institute legal proceedings against the Purchaser as a result of the Purchaser's failure to rectify a breach of this agreement, the Seller shall be entitled to all costs as between attorney and client.

16 DOMICILIUM CITANDI ET EXECUTANDI

16.1 The Seller and the Purchaser hereby record the following as their addresses in the Republic which they select as their respective *domicilii citandi et executandi* for the service of any notice or demand-

16.1.1 the Seller's address as described in the Details Schedule;

16.1.2 the Purchaser's address as described in the Details Schedule.

16.2 Notice of change of address stated in paragraph 16.1 shall be given in writing and shall be delivered or sent by prepaid registered post by one party to the other.

16.3 Any notice delivered or sent by prepaid registered post by any party to the other shall be deemed to have been received at the time of delivery or on the third business day following the date of posting, as the case maybe.

16.4 Notices and advices from the Seller and/or Association to the Purchaser and/or the members of the Association may be served by way of an e-mail message to the e-mail address or faxed to the fax number described in the Details Schedule, and if sent it shall be deemed to have been received by the recipient the day after it was sent.

17 LATITUDE BY THE SELLER

17.1 No relaxation or indulgence which the Seller may show to the Purchaser shall in any way prejudice the Seller's rights hereunder and, in particular, no acceptance by the Seller of any payment after due date (whether on one or more occasion) shall preclude or estop the Seller from exercising any rights enjoyed by it hereunder.

17.2 Unless otherwise stated by the Seller in writing, the receipt by the Seller or its agents of any payment shall in no way whatsoever prejudice or operate as a waiver, withdrawal or abandonment of any cancellation or right to cancellation effected or acquired prior to such receipt.

18 VARIATIONS

No variations, alterations or cancellations of this agreement shall be of any force or effect unless reduced to writing and signed by the parties.

19 CAPACITY OF PURCHASER

19.1 Should the Purchaser be a company or close corporation, the signatory hereto warrants and binds himself in his personal capacity by virtue of his signature hereto –

- 19.1.1 that he is duly authorised to enter into this agreement on behalf of the company or close corporation;
- 19.1.2 that the company or close corporation is lawfully entitled to acquire and take transfer of the Property;
- 19.1.3 that all conditions have been complied with in order to make this agreement binding on the company or close corporation; and
- 19.1.4 that the company or close corporation will duly and punctually comply with all its obligations in terms of this agreement.
- 19.2 Should the signatory for the Purchaser act as trustee for a company or close corporation to be formed, such signatory by his signature hereto –
- 19.2.1 undertakes to procure that the company or close corporation for which he is acting as trustee will be duly incorporated within 14 (fourteen) days from the date of signature hereof and that it will adopt and ratify this agreement in order that it becomes legally binding upon it; and
- 19.2.2 binds himself as surety and co-principal debtor *in solidum* with such company or close corporation for the due and punctual performance by it of all its obligations in terms of this agreement, under express renunciation of the benefits of excussion and division.
- 19.3 In the event that paragraph 19.2.1 is not fulfilled, the signatory hereto shall be deemed to have acted in his personal capacity and shall be deemed to be the Purchaser in terms of this agreement.
- 19.4 Should the Purchaser be a company or close corporation, this agreement shall be further subject to the suspensive condition (which may be waived by the Seller alone), and the Purchaser hereby warrants in favour of the Seller, that all the directors of the company or all the members of the close corporation, as the case may be, will bind themselves jointly and severally as sureties for and co-principal debtors *in solidum* with the Purchaser to the Seller for the due and punctual performance by the Purchaser of all its obligations arising out of or in connection with this agreement, its breach, cancellation and/or termination.

20 BOREHOLES

Neither the Purchaser nor any successor in title to the Property shall be entitled to drill a borehole on the Property or otherwise extract subterranean water. This clause may be registered against the title deed of the Property.

21 AGENT COMMISSION

21.1 Commission shall be paid by the Seller to _____ against Transfer of the Property in the name of the Purchaser and the Attorneys are hereby authorised to effect such payment out of the funds that become available to the Seller out of the purchase consideration.

21.2 The Purchaser hereby records that the agent/agency or any other private person known as _____ introduced him to the Property and is the only effective cause of this agreement and indemnifies the Seller against any possible commission claim by any other agent, agency or any other person

21.3 If this agreement is cancelled as a result of breach of contract committed by the Purchaser, the estate agent shall be entitled to recover such commission from the Purchaser.

22 MONTHLY LEVIES

A monthly levy in the amount of R750.00 (Seven Hundred and Fifty Rand) will be payable to the Association by the Purchaser from date of Transfer of which R250.00 (Two Hundred and Fifty Rand) will go towards the maintenance of the Golf Course and/or Golf Club.

23 COOLING-OFF PERIOD

In the event of Section 29A of the Alienation of Land Act 68 of 1981 applying to this offer, then notwithstanding any other provision of this agreement, the Purchaser has the right to revoke this offer or terminate it by written notice to be delivered to the Seller, or its agent within 5 (five) days after signature by the Purchaser of this document. Such notice will have no effect unless it is signed by the Purchaser or his agent on his written authority.

THUS DONE AND SIGNED aton thisday of2010 in the presence of the undersigned witnesses.

AS WITNESSES:

1.

2.

**SELLER or duly
authorised representative**

THUS DONE AND SIGNED aton thisday of2010 in the presence of the undersigned witnesses.

AS WITNESSES:

1.

2.

**PURCHASER or duly
authorised representative**

IF MARRIED IN COMMUNITY OF PROPERTY / FOREIGN MARRIAGES

I, the undersigned _____ [full names] married in community of property/married according to the laws of _____ to the abovementioned Purchaser hereby consent to the transaction contained herein and bind myself to the Seller as surety and co-principal debtor *in solidum* with my wife/husband for her/his obligations in terms of the Agreement of Sale.

I/we the undersigned _____ [full names] confirm that I/we have perused the documents listed on the website *viz* www.sunbirdgolfestate.co.za, understood the content thereof and confirm that it will become binding on myself/ourselves on date of transfer of the Property in my / our name.