

AGREEMENT OF SALE

Between:

ISLANDVIEW VILLAGE (PROPRIETARY) LIMITED
Registration Number: 2016/305379/07

("the Seller")

and

("the Purchaser")

Sale of:

Erf No:

Site No:

SCHEDULE OF INFORMATION & DEFINITIONS**1. DETAILS OF SELLER**

Islandview Village (Proprietary) Limited

Reg. No. 2016/305379/07

c/o Herbie Oosthuizen & Associates

71 Montagu Street

Mossel Bay

Western Cape

2. DETAILS OF PURCHASER

Purchaser's full name / company name:

Identity Number / Registration Number:

Purchaser's Marital Status (ANC / COP):

Purchaser's business address:
Code:

Purchaser's postal address:
Code:

Purchaser's email address:

Purchaser's Tel. No:

Cell:

Business:	Home:

3. PROPERTY

Erf No:	
In extent:	m ²

4. PURCHASE PRICE

Purchase Price (VAT inclusive)	R
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5. PAYMENT OF PURCHASE PRICE

5.1	Payable on date of signature	R
5.2	Balance of Deposit of 10 % of Purchase Price, within 15 days of date of signature	R
5.3	On Registration of Transfer	R

6. MORTGAGE BOND

If the sale is subject to the Purchaser obtaining a mortgage bond as per clause 18 of the terms and conditions, the amount must be inserted:

Mortgage bond amount	R
Institution	

If not completed, sale is unconditional and clause 18 of the terms and conditions do not apply.

Purchaser specifically acknowledges this clause

7. NAME OF SELLING AGENT

Name of Agent:
Name of Agency:
Cell number:
Commission:
VAT:
TOTAL:

8. DEFINITIONS

8.1 **“Approved Bond”** shall mean the issue of a quotation and Pre Agreement as received from the banking institution as per Section 92 of the National Credit Act No 34 of 2005;

8.2 **“conveyancer”** shall mean
 HERBIE OOSTHUIZEN & Associates
 71 Montagu Street, MOSSEL BAY, 6500
 Tel: 044 – 601 8700
 Fax: 044 – 690 4803
 E-Mail: marina@holaw.co.za
 Standard Bank Mossel Bay Branch
 Trust account Nr: 082 816 034
 Branch code: 05 04 14
 Reference: Purchaser’s Surname

8.4 **“occupation date”** means the date of registration of the property into the name of the Purchaser;

- 8.5 **“property”** shall mean the property, the erf and any improvements thereon, as per the schedule of information, clause 3;
- 8.6 **“purchase price”** shall mean the purchase price as per the schedule of information, clause 4;
- 8.7 **‘schedule of information’** shall mean the schedule of information contained in A, which forms an integral part of this Deed of Sale;
- 8.8 **‘Seller’** shall mean the Seller as per the schedule of information, clause 1;
- 8.9 **‘the Purchaser’** shall mean the Purchaser as per the schedule of information, clause 2;
- 8.10 **‘transfer date’** shall mean the date of registration of transfer of the property into the name of the Purchaser;
- 8.11 **‘VAT’** shall mean value added tax as determined by the Value Added Tax Act, as amended from time to time.

A. TERMS AND CONDITIONS

1. SALE

The Seller hereby sells to the Purchaser who purchases the property at the purchase price inclusive of VAT, subject to the terms and conditions contained in this agreement.

2. PAYMENT OF THE PURCHASE PRICE

2.1 The purchase price shall be paid to the Seller as follows :

2.1.1 The amount stipulated in clause 5.1 of the schedule of information upon date of signature of this agreement by the party signing it last payable to the conveyancer;

2.1.2 The balance of the 10% (ten *per centum*) deposit of the purchase price to the conveyancer within 15 (fifteen) days of the date of signature of the agreement by the party signing it last, which amount shall be held in trust until registration of transfer and shall be invested in an interest bearing trust account with interest to accrue to the Purchaser on transfer;

2.1.3 The Purchaser shall pay the Seller's conveyancer the amount as stipulated in clause 5.3 of the schedule of information against registration of transfer of the property into the name of the Purchaser in the Deeds Office.

2.2 For the payment of the amount due in terms of clause 2.1.3, the Purchaser shall furnish bank guarantees, acceptable to the Seller, within 30 (thirty) days after being requested to do so by the conveyancer. The Purchaser hereby waives the right that the Seller can only call for a guarantee when the transfer is lodged in the Deeds office and hereby agrees that the Seller can request a guarantee at any time.

2.3 The conveyancer shall be entitled and obliged and is hereby authorised by the parties hereto in terms of Section 78(2) of the Attorneys Act, 1979, to invest the

deposit and any other amount paid to them in terms of clause 2 above, in an interest-bearing trust account, interest accruing to the Purchaser. The Purchaser hereby authorises the conveyancer to make payment to the Seller in accordance with clause 2 from any monies held on trust by them on behalf of the Purchaser.

- 2.4 Without derogating from the provisions of clause 3 below, the Purchaser shall not be entitled to take actual occupation of the property before the purchase price has been paid in full, alternatively that guarantees were issued to the satisfaction of the seller of the conveyancer, despite the property being completed and ready for occupation in terms of this Deed of Sale.
- 2.5 All amounts payable by the Purchaser in terms of this agreement shall be paid to the Seller's conveyancer free of exchange or commission at Mossel Bay and without deduction or set off in cash or by means of a bank guaranteed cheque or cheque drawn by a South African registered commercial bank.

3. POSSESSION AND OCCUPATION

- 3.1 The Seller shall give the Purchaser possession and occupation of the property against registration of transfer.
- 3.2 All risk and benefit in the property shall pass to the Purchaser against registration of transfer.
- 3.3 In the event of the Seller giving the Purchaser occupation of the property prior to registration of transfer, all risk in the property shall pass to the Purchaser on date of occupation.
- 3.4 The Purchaser shall be liable for all municipal rates and taxes applicable to the property as well as that portion of the home owners' association levy payable to the Mussel Creek Eco Estate Home Owners' Association from the transfer date.

4. TITLE CONDITIONS

- 4.1 The property is sold subject to all conditions and servitudes contained in the title deeds or prior title deeds of the property and such conditions imposed by any competent authority.
- 4.2 If the property has been erroneously described herein, such mistake or error shall not be binding upon the parties but the correct description as intended by the parties shall apply and they shall effect rectification of this contract accordingly.

Purchaser specifically acknowledges this clause

5. TRANSFER

- 5.1 Transfer shall be effected by the conveyancer as soon as possible after the signing of this agreement and the fulfilment of the suspensive conditions.
- 5.2 The Purchaser must sign the transfer documents and return same to the conveyancer within 7 (seven) days of being called upon to do so.
- 5.3 The Purchaser shall, in addition upon request by the Seller's conveyancer, pay all costs of transfer (including VAT on such costs) Transfer Duty and/or Value Added Tax and stamp duties (if any), costs of all necessary affidavits and all other costs which have to be incurred in order to comply with statutes or other enactments or regulations relating to the passing of transfer of the property.
- 5.4 Notwithstanding anything to the contrary contained in this agreement, this agreement is subject to the Seller taking transfer of the property from Up A Class Steel Designs (Pty) Ltd. Should the Seller for any reason fail to obtain registration of transfer from Up A Class Steel Designs (Pty) Ltd, this agreement shall lapse.

6. VOETSTOOTS, EXTENT AND TITLE CONDITIONS

- 6.1 The Seller renounces all claims to any excess and will not be answerable for any deficiency in the declared extent of the property and no warranties are given in respect of the boundaries of the property.
- 6.2 The property is sold 'voetstoots' and the Seller gives no warranties, express or implied, as to patent or latent defects.
- 6.3 The property is sold subject to all such conditions as are mentioned and/or referred to in the title deed/s relating to the property and to such conditions as are or may hereafter be imposed by any relevant authority, including the conditions imposed in respect of the rezoning and/or subdivision of the land of which the property forms part.
- 6.4 The property is furthermore sold subject to the provisions of the memorandum and articles of association of the home owners' association.
- 6.5 The Purchaser acknowledges and agrees that he/she has satisfied himself/herself as to the condition of the property.

Purchaser specifically acknowledges this clause

7. WARRANTIES

- 7.1 The Purchaser acknowledges that the Seller has made no representations and given no warranties in respect of the property or in respect of anything relating thereto, whether express or implied, not expressly contained herein, and he/she has not been influenced by any representation made by or on behalf of the Seller to enter into this Deed of Sale, save as set out herein.
- 7.2 Subject to clause 7.1, the property is sold voetstoots to the extent as it now lies and the Purchaser shall not have any claim of any nature against the Seller for any loss, damage or injury which the Purchaser, or their family, agents and/or invitees may directly or indirectly suffer by reason of any latent or patent defects in the property or by reason of the property.

Purchaser specifically acknowledges this clause

8. BREACH BY PURCHASER

- 8.1 If the Purchaser commits a breach of this agreement and/or fails to comply with any of the provisions hereof, then the Seller shall be entitled to give the Purchaser not less than 7 (seven) days' notice in writing to remedy such breach and/or failure and if the Purchaser fails to comply with such notice, then the Seller shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which the Seller may have in law, including the right to claim damages:
- 8.1.1 To cancel this agreement (in which event the Purchaser shall forfeit all monies paid to the Seller or its attorneys or agent/s in terms of this agreement and all interest thereon); and/or
 - 8.1.2 To claim immediate performance and/or payment of all the Purchaser's obligations in terms of this agreement; and/or
 - 8.1.3 To recover from the Purchaser all or any brokerage payable or paid by the Seller in respect of this transaction.
- 8.2 Should the Seller take steps against the Purchaser pursuant to a breach of this agreement by the Purchaser, then without prejudice to any other rights which the Seller may have, the Seller shall be entitled to recover from the Purchaser all legal costs incurred by it including attorney/client charges, tracing fees and such collection commission as the Seller is obliged to pay to its attorneys.
- 8.3 Should transfer be delayed by the Purchaser for whatever reason and/or the Purchaser fail to deliver guarantees and/or meet any other financial obligation in this Agreement, then the Purchaser shall pay to the Seller interest on the full purchase price at the prime overdraft rate plus 15% (fifteen *per centum*) charged by the Seller's bankers from time to time calculated from the date that the Seller's attorneys (acting as experts) certify in writing that in their opinion the transfer ought reasonably to have been registered, but for such delay. In the event of non-fulfilment of a financial obligation or failure to deliver a guarantee such penalty interest shall accrue from the due date for delivery of the

guarantee/payment up until the actual date of delivery of the guarantee/payment or the date upon which the Purchaser has complied with all of the Purchaser's obligations relating to transfer (whichever is the later). The penalty interest shall be paid by the Purchaser to the Seller prior to transfer of the property.

Purchaser specifically acknowledges this clause

9. PURCHASE ON BEHALF OF A COMPANY / CLOSE CORPORATION / TRUST / OTHER LEGAL ENTITY

9.1 Should the Purchaser act as representative of a Company or Close Corporation, to be formed, (hereinafter referred to as "the legal entity"), the Purchaser undertakes to register the legal entity within 30 (thirty) days after this agreement has been signed, to inform the Seller of the information of the legal entity and to deliver the notice and ratification and proof thereof to the attorneys, within 40 (forty) days after this agreement has been signed.

9.2 In the event of a legal entity –

9.2.1 not registering in time; or

9.2.2 failing to ratify this transaction; or

9.2.3 failing to honor the obligations and terms of the contract for whichever reasons; or

9.2.4 failing to furnish proof of ratification to the Seller's Attorneys within the set period, the Purchaser agrees that he/she (the signatory hereto as "Purchaser") shall personally be responsible and shall be obliged to honour the obligations in terms of this agreement and to take transfer of the Property in his / her name.

9.3 The person who signs the agreement as the Purchaser binds himself as surety and co-principal debtor to a legal entity that is to be established or has already been established for timeous compliance with all responsibilities in accordance with this agreement and hereby renounces the exception *beneficium ordinis seu excussionis*.

10 HOME OWNERS' ASSOCIATION

- 10.1 It is recorded that a home owners' association is being established for the benefit of all owners of property in the development and to control and maintain roads, services and amenities within the development.
- 10.2 The Purchaser shall become a member of the home owners' association against transfer of the property and agrees to remain a member for as long as the Purchaser is the registered owner thereof.
- 10.3 The Purchaser acknowledges furthermore that he/she is aware of the following provisions and hereby agrees to be bound thereby.
- 10.3.1 In terms of the articles of association of the home owners' association the members of the association are required to pay levies to meet the expenses of the association, including the costs of maintaining the services and other amenities within the township.
- 10.4.2 In terms of the articles of association of the home owner's association the Seller must consent to any resale of the property for a period up to 2 (two) years from the end of the development period.
- 10.4 It is a term of this agreement that a title deed condition shall be registered against the property in terms of which the property shall not be transferred without the written consent of the home owners' association in accordance with the provisions of its articles of association and that all successors in title shall be bound to the constitution of the home owners' association.

11 DOMICILIA AND NOTICES

- 11.1 For the purposes of this agreement, including the giving of notices and the serving of legal process, the parties choose *domicilium citandi et executandi* ('*domicilium*') as follows :

11.1.1 The Seller: as contained in the schedule of information; and

11.1.2 The Purchaser: as contained in the schedule of information.

11.2 A party may at any time change his/her *domicilium* by notice in writing, provided that the new *domicilium* is in the Republic of South Africa and consists of, or includes a physical address at which process can be served or notices given.

11.3 All notices shall be in writing and sent by prepaid registered post, email or delivered by hand or faxed, together with proof thereof, to the *domicilium* chosen by the party concerned and shall, if posted, be deemed to have been duly delivered 7 (seven) days after the day on which such notice was posted.

12 JURISDICTION

For the purposes of the proceedings arising from this agreement, the parties hereby consent to the jurisdiction of the Magistrate's Court having jurisdiction over the person of the defendant in terms of section 28 of the Magistrate's Court Act of 1944, notwithstanding that such proceedings are otherwise beyond its jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the Court pursuant to section 45 of the Magistrate's Court Act of 1944, or any amendment thereof, provided that the Seller shall have the right at its sole option and discretion to institute proceedings in any other competent Court in respect of any claim which, but for the foregoing, would exceed the jurisdiction of the Magistrate's Court.

13 JOINT AND SEVERAL LIABILITY

Should there be more than one Purchaser, the Purchasers shall be liable jointly and severally and *in solidum* for the payment of all monies hereunder and for the carrying out of all the terms of this Deed of Sale.

14 GENERAL

14.1 This agreement constitutes the whole agreement between the parties.

- 14.2 No variation of this agreement will influence the terms of this agreement, unless such variations are put in writing and signed by both parties.
- 14.3 The parties acknowledge that they have not been pursued to sign this agreement by any promises, presentations or guarantees of any sort.
- 14.4 The Purchaser will not be entitled to sell his/her property prior to registration of transfer, without the written consent of the Seller.

15 CONCESSIONS

No extension of time, allowances or concessions allowed and no temporary variation of the terms of this Deed of Sale for any party will be regarded as a waiver of his/her rights hereunder. The Seller may furthermore at any time and without prior notice expect the Purchaser to strictly and timeously comply with each and every term and condition.

16 DEFECTS

16.1 The Seller shall :

16.1.1 Within 60 (sixty) days, remedy any patent defects in the property which manifest themselves within 14 (fourteen) days after the date of registration, provided that the Purchaser notifies the Seller in writing within the said period of 7 (seven) days of any such defects, failing which the Purchaser shall be deemed to have accepted the unit in the condition in which same were at the date of registration; and

16.1.2 Remedy any material latent defect in the property due to faulty workmanship or materials, manifesting itself within 60 (sixty) days of the date of registration, provided that the Purchaser notifies the Seller in writing within the said period of 60 (sixty) days. For the purposes of this sub-clause, the expression 'material defect' means those defects, the existence of which are recorded in writing as requiring to be remedied or repaired by the architect. The architect shall determine whether such defects recorded in writing are 'material defects' and

his/her decision shall be final and binding upon the parties. The architect shall be the final arbitrator as to whether the Seller has complied with his/her obligations in terms of this clause.

Purchaser specifically acknowledges above clause

17. AGENT'S COMMISSION

- 17.1 The parties record that the agent specified in clause 7 of the schedule of information was the effective cause of this transaction.
- 17.2 The Seller shall pay the agents commission.
- 17.3 The Purchaser warrants and undertakes to the Seller that the Purchaser has not been introduced to the Seller, the property or the development by any third party entitled to commission other than the agent specified in clause 7 of the schedule of information and indemnifies the Seller against any claim that may be instituted by any agent claiming that he/she introduced the property and is the effective cause of the sale.

18. MORTGAGE BOND (IF APPLICABLE)

- 18.1 This agreement is subject to the Purchaser obtaining an approved loan from a bank or other recognised financial institution for not less than the amount (if any) stated in clause 6 of the schedule of information, or any lesser amount acceptable to the Purchaser, upon the security of a first mortgage bond to be registered against the property.
- 18.2 The Purchaser shall use its best endeavours to obtain such loan as soon as is reasonably possible after signature of this agreement by the Seller.
- 18.3 In the event of such loan not being approved in principal within 30 (thirty) days after signature of this agreement by the Seller then this agreement shall become of no force or effect in which event the Seller shall refund to the Purchaser the

amounts paid in terms of clause 2 above together with accrued interest thereon, The Seller shall have the right to extend the 30 (thirty) day period for a further reasonable time, in the Sellers sole discretion.

- 18.4 A quotation from a financial institution or the Seller, confirming that the bond is granted in principal, shall suffice for fulfilment of this suspensive condition. Should the Purchaser fail to furnish the Conveyancers with a quotation from a financial institution that the bond was not granted, this suppressive condition shall be deemed to be fulfilled, alternatively the transaction shall be deemed not to be subject to the Purchaser obtaining bond finance.
- 18.5 Should the Purchaser fail to apply for a bond the Seller shall be entitled to appoint a bank or a bond originator for the purposes of granting loan finance to the Purchaser for the purchase of the property in which event the Seller or its agent is hereby irrevocably authorised and empowered to apply to the bank so appointed for the required loan on behalf of the Purchaser. The Purchaser shall be obliged to furnish the information normally requested by banks to the bank so appointed in order to assess the granting of the required loan. If the Purchaser is a company, close corporation, trust or married woman, and the loan is granted subject to the condition that the directors, shareholders, members, trustees and/or spouse as the case may be, shall bind themselves as sureties and co-principal debtors with the Purchaser, the Purchaser undertakes to procure the signatures of such people. Should the Seller so arrange such loan finance, the provisions of clause 18.1 shall be deemed to have been fulfilled and the Purchaser shall be obliged to sign all bond and other documentation to give effect thereto and to pay all costs and charges relating to the registration of a first mortgage bond over the property.

19. ARBITRATION

- 19.1 If any dispute, difference or question arises at any time between the parties out of or in regard to any matters arising out of, or the rights and duties of any of the parties, or the interpretation of, or termination of, or any matter arising out of the termination of, or the rectification of this agreement, or any other matter, such dispute shall be submitted to and decided by arbitration on notice in writing given by either party to the other of them in terms of this clause.

