

ITEM NUMBER: C 28/04/21***RECOMMENDATION FROM THE EXECUTIVE MAYOR: 6 APRIL 2021*****MC 18/04/21 PROPOSED CLOSURE AND TRANSFER OF A PORTION OF PUBLIC STREET BEING A PORTION OF ERF 29480, CAPE TOWN SITUATED OFF MARIVY STREET, CAPE TOWN ABUTTING ERF 29856, CAPE TOWN: MALCOLM SCERRI**

It is **RECOMMENDED** that:

- (a) it be resolved that, in terms of section 14 of the Local Government Municipal Finance Management Act 56 of 2003, the subject property, being a portion of Erf 29480, Cape Town,, situated off Marivy Street, Sybrand Park, in extent 130m² and as shown hatched and lettered ABCDE on Plan STC 3102v1 attached as Annexure A to the report on the agenda, is not needed to provide the minimum level of basic municipal services and that the fair market value of the asset and the economic and community value to be received in exchange for the asset have been considered
- (b) in-principle approval be granted in terms of regulation 5(1)(b)(ii) of the Municipal Asset Transfer Regulations for the transfer of a portion of Erf 29480, Cape Town situated off Marivy Street, Sybrand Park, in extent 130m² and as shown hatched and lettered ABCDE on Plan STC 3102v1 attached as Annexure A to the report on the agenda
- (c) in terms of section 4 of the City of Cape Town Immovable Property By-law, 2015, approval be granted for the closure of a portion of a Public Street, being a Portion of Erf 29480, Cape Town, in extent approximately 130m² and as shown hatched and lettered ABCDE on Plan STC 3102v1 attached as Annexure A to the report on the agenda
- (d) approval be granted for the transfer of a portion of Erf 29480, Cape Town, in extent approximately 130m² and as shown hatched and lettered ABCDE on Plan STC 3102v1 attached as Annexure A to the report on the agenda, to Malcolm Scerri, or his successor(s)-in-title, subject to the following conditions, that:
 - (i) a purchase price of R90 000, excluding VAT, be payable;
 - (ii) the purchase price is to be escalated by 8% per annum compounded annually on a pro-rata basis commencing from 1 August 2019 until 31 March 2020. The escalated sales price will thereafter escalate at 5% per annum until date of registration;

- (iii) the valuation is to be reviewed if not approved by the delegated authority within 24 months from date of valuation, i.e. by 31 August 2022;
- (iv) rates and municipal charges, if applicable, be levied;
- (v) subject to such further conditions to be imposed by the Director: Property Management in terms of her delegated authority, including *inter alia* the following, that:
 - (aa) all further statutory and land use requirements be complied with;
 - (bb) the subject portion of Erf 29840 be consolidated with the purchaser's Erf 29856 and the usage restricted to gardening purposes only;
 - (cc) all costs related and incidental to the transaction be borne by the purchaser.

IPAC 21/07/2020 PROPOSED CLOSURE AND TRANSFER OF A PORTION OF PUBLIC STREET BEING A PORTION OF ERF 29480 CAPE TOWN SITUATED OFF MARIVY STREET, CAPE TOWN ABUTTING ERF 29856 CAPE TOWN: MALCOLM SCERRI

MC 18/04/21

VOORGESTELDE SLUITING EN OORDRAG VAN 'N GEDEELTE VAN OPENBARE STRAAT, NAAMLIK GEDEELTE VAN RESTANT ERF 29480 KAAPSTAD GELEË UIT MARIVYSTRAAT, KAAPSTAD, AANGRENSEND AAN ERF 29856 KAAPSTAD: MALCOLM SCERRI

ISIPHAKAMISO SOKUVALWA NOKUNIKEZELWA KWESIQEPHU SESITALATO SOLUNTU, ESISIQEPHU SENTSALELA YESIZA-29480 ESISEKAPA ESIKWI-MARIVY STREET, EKAPA, ESIMELENE NESIZA-29856 ESISEKAPA: KU-MALCOLM SCERRI

Property Management representative was present to answer any question for clarity

"The lockdown implemented in terms of National Disaster Regulations has resulted in the IPAC committee not being able to meet in a conventional meeting format. The report was distributed to all member for consideration.

*The following member indicated by e-mail that they supported the recommendation:
Richard Wootton
Thembinkosi Siganda
Willem Van Gass*

The nominated representation from Legal Services, Dawid Joubert indicated that he has no legal reservations in respect of the report.

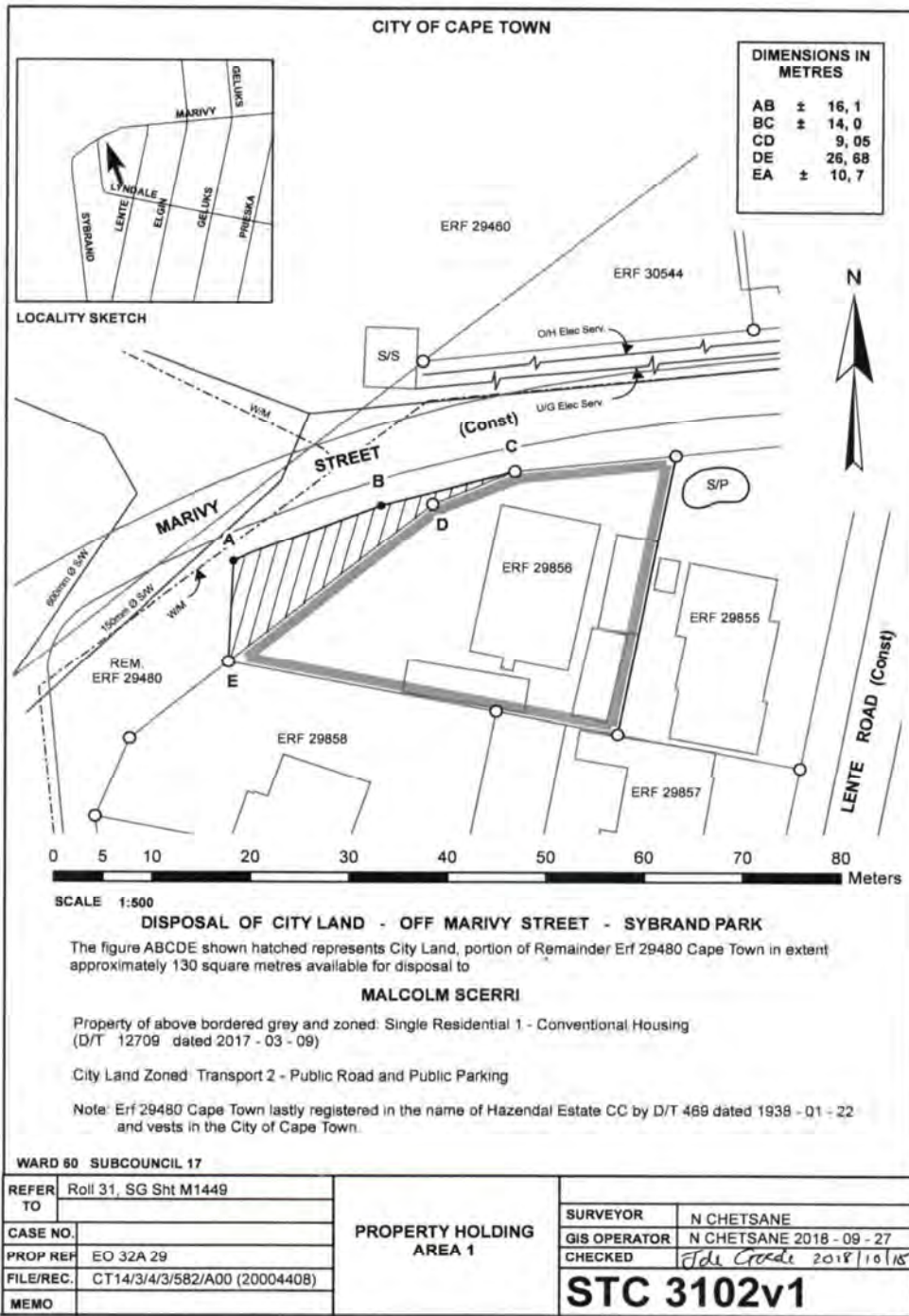
Executive Summary

PURPOSE OF REPORT	To obtain approval for the proposed closure and transfer of a portion of Erf 29480 Cape Town situated off Marivy Street, Sybrand Park to the owner of adjacent Erf 29856 Cape Town: Malcolm Scerri	
Site extent	130m ²	
Submission date	20 April 2017	
Current zoning	Transport 2 – Public Road and Public Parking	
Current usage	Vacant	
Proposed usage	Gardening Purposes	
WARD CLLR	NOTICE DATE	WARD

RW

WARD Cllr Cllr Mark Kleinschmidt	21 February 2020			60
Internal circulation date	11 January 2018			
Internal department comments	Supported subject to conditions.			
Public participation outcome summary	Advertised in the Cape Argus and Die Burger on 21 February 2020. No objections were received.			
Outcome of Subcouncil	A report served at a meeting of Subcouncil 17 held on 15 June 2020 under item 17SUB15/06/2020SM and the recommendation was supported.			
Viable	Yes		No	X
	The subject property is regarded as being non-viable land which only has value to the abutting landowners in light of the fact that it cannot be developed or function as a separate entity. This Property Transaction may be approved without any competitive process having been followed on the basis that no purpose would be served by a competitive process.			
Recommended decision	Approval	X	Refusal	
Factors motivating recommendation:	<ul style="list-style-type: none"> • The transfer of the land will relieve Council of the maintenance burden. • Market related compensation in the amount of R90 000.00, excluding VAT, will accrue to the City. • The transfer will allow for better utilization of the property. 			
Strategic intent	SFA 1 : an OPPORTUNITY City of Cape Town			
	Objective 1.1	Positioning Cape Town as forward looking globally competitive City		
	Programme 1.1(g)	Leveraging the City's assets		

Sketch Plan



RECOMMENDED TO COUNCIL THAT:

RW

- a) Council resolve that, in terms of section 14 of the Local Government Municipal Finance Management Act 56 of 2003, that the subject property, being a portion of Erf 29480 Cape Town, situated off Marivy Street, Sybrand Park, in extent 130m² and as shown hatched and lettered ABCDE on Plan STC 3102v1 (**Annexure "A"**), is not needed to provide the minimum level of basic municipal services and has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset;
- b) Council grants in-principle approval in terms of regulation 5(1)(b)(ii) of the Municipal Asset Transfer Regulations for the transfer of a portion of Erf 29480 Cape Town, situated off Marivy Street, Sybrand Park, in extent 130m² and as shown hatched and lettered ABCDE on Plan STC 3102v1 (**Annexure "A"**);
- c) Council, in terms of section 4 of the City of Cape Town Immovable Property By-law, 2015, approve the closure of a portion of a Public Street, being a Portion of Erf 29480 Cape Town, in extent approximately 130m² and as shown hatched and lettered ABCDE on Plan STC 3102v1 (**Annexure "A"**);
- d) That the transfer of a portion of Erf 29480 Cape Town, in extent approximately 130m² and as shown hatched and lettered ABCDE on Plan STC 3102v1 (**Annexure "A"**) to Malcolm Scerri, or his successor(s) in title, be approved, subject to the following conditions, that:
- i) A purchase price of R90 000, excluding VAT, be payable;
 - ii) The purchase price is to be escalated by 8% per annum compounded annually on a pro-rata basis commencing from 1 August 2019 until 31 March 2020. The escalated sales price will thereafter escalate at 5% per annum until date of registration;
 - iii) The valuation is to be reviewed if not approved by the delegated authority within 24 months from date of valuation, i.e. by 31 August 2022;
 - iv) Rates and municipal charges, if applicable, be levied; and
 - v) Subject to such further conditions to be imposed by the Director: Property Management in terms of her delegated authority, including inter alia the following:
 - aa) That all further statutory and land use requirements be complied with;

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- bb) That the subject portion of Erf 29840 be consolidated with the purchaser's Erf 29856 and the usage restricted to gardening purposes only;
- cc) that all costs related and incidental to the transaction be borne by the purchaser.

AANBEVELING

Daar word aanbeveel dat dat:

- a) Die Raad besluit dat ingevolge artikel 14 van die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, Wet 56 van 2003, die onderhawige eiendom naamlik 'n gedeelte van erf 29480, geleë uit Marivystraat, Sybrand Park, ongeveer 130 m² groot, aangetoon deur arsering en die letters ABCDE op plan STC 3102v1 (bylae A), nie benodig word om die minimum vlak van basiese munisipale dienste te verskaf nie en oorweging geskenk het aan die billike markwaarde van die bate en die ekonomiese en gemeenskapswaarde wat in ruil vir die bate ontvang sal word;
- b) Die Raad beginselgoedkeuring toestaan ingevolge regulasie 5(1)(b)(ii) van die regulasies oor die oordrag van munisipale bates vir die oordrag van 'n gedeelte van 'n gedeelte van erf 29480, geleë uit Marivystraat, Sybrand Park, ongeveer 130 m² groot, aangetoon deur arsering en die letters ABCDE op plan STC 3102v1 (bylae A);
- c) Die Raad die sluiting, kragtens artikel 4 van die Stad Kaapstad: Verordening op Onroerende Eiendom, 2015, van 'n gedeelte van 'n openbare straat, naamlik 'n gedeelte van erf 29480 Kaapstad, ongeveer 130 m² groot, aangetoon deur arsering en die letters ABCDE op plan STC 3102v1 (bylae A), goedkeur;
- d) Die oordrag van 'n gedeelte van erf 29480 Kaapstad, ongeveer 130 m² groot, aangetoon deur arsering en die letters ABCDE op plan STC 3102v1 (bylae A), aan Malcolm Scerri, of sy regsopvolger/s, goedgekeur word, onderworpe aan die volgende voorwaardes, dat:
 - i) 'n Koopprijs van R90 000, BTW uitgesluit, betaalbaar is;
 - ii) Die koopprijs met 8% per jaar styg, jaarliks saamgestel op 'n pro rata-grondslag, vanaf 1 Augustus 2019 tot 31 Maart 2020. Die gestygde verkoopprijs sal daarna met 5% per jaar styg tot die datum van registrasie;

- iii) Hierdie waardasie hersien word as dit nie binne 24 maande ná die waardasiedatum (d.w.s. teen 31 Augustus 2022) deur die gedelegeerde owerheid goedgekeur is nie;
- iv) Eiendomsbelasting en munisipale gelde, indien van toepassing, gehef word; en
- v) Onderworpe aan sodanige verdere voorwaardes opgelê deur die direkteur: eiendomsbestuur ingevolge haar gedelegeerde bevoegdheid, onder andere die volgende:
 - aa) dat daar voldoen word aan alle verdere statutêre en grondgebruikvereistes;
 - bb) dat die onderhawige gedeelte van erf 29840 met die koper se erf 29856 Kaapstad gekonsolideer en die gebruik tot slegs tuinmaakdoeleindes beperk word;
 - cc) alle koste wat met die transaksie verband hou, deur die koper gedek word.

IZINDULULO

Kundululwe ukuba:

IBhunga lithabatha isigqibo sokuba, ngokwecandelo-14 loMthetho ongobuRhulumente boMmandla ongoLawulo lweziMali zikaMasipala ongunomb.56 wango-2003, ipropati echaphazelekayo esisiza-29480 esikwi- Finsbury Street, e-Newlands, esibukhulu obumalunga nama-130m² m², esibonakaliswe ngomzobo nonobumba abakhulu u-ABCD kwiplani engu-STC 3102v1 (isihlomelo-A), asifuneki nganto ukuba sibonelele ngomlinganiselo ongundoqo weenkono zikamasipala; kwakhona liye lathathela ingqalelo ixabiso lobulungisa lasemakethi lempahla nexabiso lezoqoqosho neloluntu eliyakuthi lifumaneke ngokutshintshelwa kwempahla;

b) IBhunga malivumele isiphumezo ngokomthetho-siseko, ngokungqinelana nomgaqo-5(1)(b)(ii) weMigaqo engokuTshintshelwa/engoNikezelo lweMpahla kaMasipala, sokunikezelwa kwesiqephu sesiza-29480, esiseKapa, esikwi-Marivy Street, Sybrand Park, esibukhulu obumalunga ne-130 m² nesibonakaliswe ngomzobo nangoonobumba abakhulu u-ABCDE kwiplani engu-STC 3102v1 (**isihlomelo-A**);

c) IBhunga maliphumeze ukuvalwa ngokwecandelo-4 loMthetho kaMasipala weSixeko saseKapa ongeePropati ezingenakususwa wango-2015, kwesiqephu seSitalato

soLuntu, esisiqephu sesiza-29480, eKapa, esibukhulu obumalunga ne-130 m² nesibonakaliswe ngomzobo nangoonobumba abakhulu u-ABCDE kwiplani engu- STC 3102v1 (**isihlomelo-A**);

- d) Ukuba makuphunyezwe ukunikezelwa kwesiqephu sesiza-29480 esiseKapa, esibukhulu obumalunga ne-130 m² nesibonakaliswe ngomzobo nangoonobumba abakhulu u-ABCDE kwiplani engu- STC 3102v1 (**isihlomelo-A**), ku-Malcolm Scerri, okanye kongena ezihlangwini zakhe ngokwetayitile, ngokuxhomekeke kule miqathango ilandelayo yokuba:
- i) Makuhlawulwe ixabiso lentengiso elingama- R90 000, ngaphandle kweRhafu-ntengo;
 - ii) Ixabiso lentengiso liyakuthi linyuke nge-8% ngonyaka apho liqukaniswe rhoqo ngonyaka ukususela kumhla wo-1 kweyeThupha 2019 kude ibengumhla ngonyaka kude ibengumhla wobhaliso;
 - iii) Ixabiso lentengiso liyakuthi linyuke nge-8% ngonyaka apho liqukaniswe rhoqo ngonyaka ababini ukususela kumhla wo-1 kweyeThupha 2019 kude ibengumhla wama-31 kweyoKwindla 2022. Ixabiso lentengiso liyakuthi emva koko linyuke nge-5% ngonyaka kude ibengumhla wobhaliso; iv) Kufuneka kurhunywe iirhafu neentlawulo zikamasipala, ukuba kufanelekile; kwakhona
 - v) Ngokuxhomekeke kweminye imiqathango eyakuthi inyanzeliswe nguMlawuli woLawulo lwePropati esebenzisa amagunya akhe awagunyazisiweyo, kuquka oku kulandelayo:
 - aa) Yonke imimiselo yomthetho nengokusetyenziswa komhlaba kufuneka ithotyelwe;
 - bb) Isiqephu esichaphazelekayo sentsalela yesiza-29840 esiseKapa masidityaniswe kwisiza somthengi esingu-29856 kwaye usetyenziso luvumeleke kwimibandela yezasegadini kuphela;
 - cc) Zonke iindleko ezimalunga nezinxulumene nonaniselwano ziyakuthi zibeluxanduva lomthengi.

ACTION: R SCHNACKENBERG; R GELDERBLOEM

It is noted that this resolution is in line with Supply Chain Management Policy.

R Wootton

MR RICHARD WOOTTON
EMPLOYEE NO: 10207948
CHAIRPERSON : IMMOVABLE PROPERTY
ADJUDICATION COMMITTEE

DATE: 25 Feb. 21

COMMENT:

Jason Sam Liebenberg
g
Digitally signed
by Jason Sam
Liebenberg
Date: 2021.02.26
14:36:58 +02'00'

LEGAL COMPLIANCE

DATE: _____

COMMENT:

Certified as legally compliant based on the contents of the report



REPORT TO IMMOVABLE PROPERTY ADJUDICATION COMMITTEE

1. ITEM NUMBER :

2. SUBJECT

PROPOSED CLOSURE AND TRANSFER OF A PORTION OF PUBLIC STREET BEING A PORTION OF ERF 29480 CAPE TOWN SITUATED OFF MARIVY STREET, CAPE TOWN ABUTTING ERF 29856 CAPE TOWN: MALCOLM SCERRI

2 ONDERWERP

VOORGESTELDE SLUITING EN OORDRAG VAN 'N GEDEELTE VAN OPENBARE STRAAT, NAAMLIK GEDEELTE VAN RESTANT ERF 29480 KAAPSTAD GELEË UIT MARIVYSTRAAT, KAAPSTAD, AANGRENSEND AAN ERF 29856 KAAPSTAD: MALCOLM SCERRI

2. ISIHLOKO

ISIPHAKAMISO SOKUVALWA NOKUNIKEZELWA KWESIQEPHU SESITALATO SOLUNTU, ESISIQEPHU SENTSALELA YESIZA-29480 ESISEKAPA ESIKWI-MARIVY STREET, EKAPA, ESIMELENE NESIZA-29856 ESISEKAPA: KU-MALCOLM SCERRI

**M0198
130005462
CT14/3/4/3/582/A00
(Category 1)**

3. DELEGATED AUTHORITY

In terms of delegation, this report is not delegated, and for decision by:

- Immovable Property Adjudication Committee
- Executive Mayor together with the Mayoral Committee
- Council
 - An in principle approval of the immovable property in terms of Regulation 5 of the Municipal Asset Transfer Regulations;
 - Approval that the immovable property is not required for the provision of basic municipal services in terms of Section 14 of the Municipal Finance Management Act;

- Approval of the Closure of the Public Street in terms of the Immovable Property By-Law;

In terms of the provisions of the Municipal Finance Management Act (MFMA) and the associated Municipal Asset Transfer Regulations (MATR), the City may only transfer or dispose of property after (a) the Council has made a determination that the asset is not required for the provision of basic municipal purposes and has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset, and (b) has as a consequence of those determinations approved in principle that the capital asset may be transferred or disposed of.

The MATR further stipulates that the City may not commence with the transfer or disposal process of negotiations unless approval in principle has been obtained. For reasons referred to in the report, this transaction relates to a direct deal and not a transfer or disposal via a tender process and the following have therefor already been addressed and further discussed in the body of the report:

- public participation
- valuation determination

Refer to report served at Subcouncil 17 held on 15 June 2020 under item 17SUB15/06/2020. A copy of the minutes is attached as **Annexure D**.

Part 42, 1(1) and 1(2) of the System of Delegations inter alia delegates the following functions to the Immovable Property Adjudication Committee (IPAC):

“1(1) To make recommendations to Council on the exercise of its powers in terms of Section 14 of the MFMA in so far as it relates to Immovable Property.

1(2) To make recommendations to Council on the exercise of its powers in terms of the Municipal Asset Transfer Regulations in so far as it relates to Immovable Property.”

4. EXECUTIVE SUMMARY

PURPOSE OF REPORT	To obtain approval for the proposed closure and transfer of a portion of Erf 29480 Cape Town situated off Marivy Street, Sybrand Park to the owner of adjacent Erf 29856 Cape Town: Malcolm Scerri		
Site extent	130m ²		
Submission date	20 April 2017		
Current zoning	Transport 2 – Public Road and Public Parking		
Current usage	Vacant		
Proposed usage	Gardening Purposes		
WARD CLLR	NOTICE DATE		WARD
WARD Cllr Cllr Mark Kleinschmidt	21 February 2020		60
Internal circulation date	11 January 2018		
Internal department comments	Supported subject to conditions.		
Public participation outcome summary	Advertised in the Cape Argus and Die Burger on 21 February 2020. No objections were received.		
Outcome of Subcouncil	A report served at a meeting of Subcouncil 17 held on 15 June 2020 under item 17SUB15/06/2020SM and the recommendation was supported.		
Viable	Yes		No X
	The subject property is regarded as being non-viable land which only has value to the abutting landowners in light of the fact that it cannot be developed or function as a separate entity. This Property Transaction may be approved without any competitive process having been followed on the basis that no purpose would be served by a competitive process.		
Recommended decision	Approval	X	Refusal
Factors motivating recommendation:	<ul style="list-style-type: none"> • The transfer of the land will relieve Council of the maintenance burden. • Market related compensation in the amount of R90 000.00, excluding VAT, will accrue to the City. • The transfer will allow for better utilization of the property. 		
Strategic intent	SFA 1 : an OPPORTUNITY City of Cape Town		
	Objective 1.1	Positioning Cape Town as forward looking globally competitive City	
	Programme 1.1(g)	Leveraging the City's assets	

5. RECOMMENDATIONS

Not delegated: for decision by Council:

It is recommended that:

- a) Council resolve that, in terms of section 14 of the Local Government Municipal Finance Management Act 56 of 2003, that the subject property, being a portion of Erf 29480 Cape Town, situated off Marivy Street, Sybrand Park, in extent 130m² and as shown hatched and lettered ABCDE on Plan STC 3102v1 (**Annexure "A"**), is not needed to provide the minimum level of basic municipal services and has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset;
- b) Council grants in-principle approval in terms of regulation 5(1)(b)(ii) of the Municipal Asset Transfer Regulations for the transfer of a portion of Erf 29480 Cape Town, situated off Marivy Street, Sybrand Park, in extent 130m² and as shown hatched and lettered ABCDE on Plan STC 3102v1 (**Annexure "A"**);
- c) Council, in terms of section 4 of the City of Cape Town Immovable Property By-law, 2015, approve the closure of a portion of a Public Street, being a Portion of Erf 29480 Cape Town, in extent approximately 130m² and as shown hatched and lettered ABCDE on Plan STC 3102v1 (**Annexure "A"**);
- d) That the transfer of a portion of Erf 29480 Cape Town, in extent approximately 130m² and as shown hatched and lettered ABCDE on Plan STC 3102v1 (**Annexure "A"**) to Malcolm Scerri, or his successor(s) in title, be approved, subject to the following conditions, that:
 - i) A purchase price of R90 000, excluding VAT, be payable;
 - ii) The purchase price is to be escalated by 8% per annum compounded annually on a pro-rata basis commencing from 1 August 2019 until 31 March 2020. The escalated sales price will thereafter escalate at 5% per annum until date of registration;
 - iii) The valuation is to be reviewed if not approved by the delegated authority within 24 months from date of valuation, i.e. by 31 August 2022;
 - iv) Rates and municipal charges, if applicable, be levied; and
 - v) Subject to such further conditions to be imposed by the Director: Property Management in terms of her delegated authority, including inter alia the following:

- aa) That all further statutory and land use requirements be complied with;
- bb) That the subject portion of Erf 29840 be consolidated with the purchaser's Erf 29856 and the usage restricted to gardening purposes only;
- cc) that all costs related and incidental to the transaction be borne by the purchaser.

AANBEVELINGS

Gedelepeer: vir besluitneming deur die beoordelingskomitee oor onroerende eiendom (IPAC). Indien die delegasie nie uitgeoefen word nie, sal die aanbeveling voor die Raad dien:

Daar word aanbeveel dat:

- a) Die Raad besluit dat ingevolge artikel 14 van die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, Wet 56 van 2003, die onderhawige eiendom naamlik 'n gedeelte van erf 29480, geleë uit Marivystraat, Sybrand Park, ongeveer 130 m² groot, aangetoon deur arsering en die letters ABCDE op plan STC 3102v1 (bylae A), nie benodig word om die minimum vlak van basiese munisipale dienste te verskaf nie en oorweging geskenk het aan die billike markwaarde van die bate en die ekonomiese en gemeenskapswaarde wat in ruil vir die bate ontvang sal word;
- b) Die Raad beginselgoedkeuring toestaan ingevolge regulasie 5(1)(b)(ii) van die regulasies oor die oordrag van munisipale bates vir die oordrag van 'n gedeelte van 'n gedeelte van erf 29480, geleë uit Marivystraat, Sybrand Park, ongeveer 130 m² groot, aangetoon deur arsering en die letters ABCDE op plan STC 3102v1 (bylae A);
- c) Die Raad die sluiting, kragtens artikel 4 van die Stad Kaapstad: Verordening op Onroerende Eiendom, 2015, van 'n gedeelte van 'n openbare straat, naamlik 'n gedeelte van erf 29480 Kaapstad, ongeveer 130 m² groot, aangetoon deur arsering en die letters ABCDE op plan STC 3102v1 (bylae A), goedkeur;
- d) Die oordrag van 'n gedeelte van erf 29480 Kaapstad, ongeveer 130 m² groot, aangetoon deur arsering en die letters ABCDE op plan STC 3102v1 (bylae A), aan Malcolm Scerri, of sy regsopvolger/s, goedgekeur word, onderworpe aan die volgende voorwaardes, dat:
 - i) 'n Koopprijs van R90 000, BTW uitgesluit, betaalbaar is;
 - ii) Die koopprijs met 8% per jaar styg, jaarliks saamgestel op 'n pro rata-grondslag, vanaf 1 Augustus 2019 tot 31 Maart 2020. Die gestygde verkoopprijs sal daarna met 5% per jaar styg tot die datum van registrasie;

- iii) Hierdie waardasie hersien word as dit nie binne 24 maande ná die waardasiedatum (d.w.s. teen 31 Augustus 2022) deur die gedelegeerde owerheid goedgekeur is nie;
- iv) Eiendomsbelasting en munisipale gelde, indien van toepassing, gehef word; en
- v) Onderworpe aan sodanige verdere voorwaardes opgelê deur die direkteur: eiendomsbestuur ingevolge haar gedelegeerde bevoegdheid, onder andere die volgende:
 - aa) dat daar voldoen word aan alle verdere statutêre en grondgebruikvereistes;
 - bb) dat die onderhawige gedeelte van erf 29840 met die koper se erf 29856 Kaapstad gekonsolideer en die gebruik tot slegs tuinmaakdoeleindes beperk word;
 - cc) alle koste wat met die transaksie verband hou, deur die koper gedek word.

IZINDULULO

Zigunyazisiwe: isigqibo seseKomiti ejongene noGqatso kwiPropati ezingenakususwa (IPAC) Ukuba luye alwasetyenziswa ugunyaziso, isindululo siyakuthi sinikezelwe kwiBhunga:

Kundululwe ukuba:

- a) IBhunga lithabatha isigqibo sokuba, ngokwecandelo-14 loMthetho ongobuRhulumente boMmandla ongoLawulo lweziMali zikaMasipala ongunomb.56 wango-2003, ipropati echaphazelekayo esisiza-29480 esikwi- Finsbury Street, e-Newlands, esibukhulu obumalunga nama-130m² m², esibonakaliswe ngomzobo nonobumba abakhulu u-ABCD kwiplani engu-STC 3102v1 (isihlomelo-A), asifuneki nganto ukuba sibonelele ngomlinganiselo ongundoqo weenkonzozikamasipala; kwakhona liye lathathela ingqalelo ixabiso lobulungisa lasemakethi lempahla nexabiso lezoqoqosho neleloluntu eliyakuthi lifumaneke ngokutshintshelwa kwempahla;
- b) IBhunga malivumele isiphumezo ngokomthetho-siseko, ngokungqinelana nomgaqo-5(1)(b)(ii) weMigaqo engokuTshintshelwa/engoNikezelo lweMpahla kaMasipala, sokunikezelwa kwesiqephu sesiza-29480, esiseKapa, esikwi-Marivy Street, Sybrand Park, esibukhulu obumalunga ne-130 m² nesibonakaliswe ngomzobo nangoonobumba abakhulu u-ABCDE kwiplani engu-STC 3102v1 (**isihlomelo-A**);
- c) IBhunga maliphumeze ukuvalwa ngokwecandelo-4 loMthetho kaMasipala weSixeko saseKapa ongeePropati ezingenakususwa

wango-2015, kwesiqephu seSitalato soLuntu, esisiqephu sesiza-29480, eKapa, esibukhulu obumalunga ne-130 m² nesibonakaliswe ngomzobo nangoonobumba abakhulu u-ABCDE kwiplani engu- STC 3102v1 (**isihlomelo-A**);

- d) Ukuba makuphunyezwe ukunikezelwa kwesiqephu sesiza-29480 esiseKapa, esibukhulu obumalunga ne-130 m² nesibonakaliswe ngomzobo nangoonobumba abakhulu u-ABCDE kwiplani engu- STC 3102v1 (**isihlomelo-A**), ku- Malcolm Scerri, okanye kongena ezihlangwini zakhe ngokwetayitile, ngokuxhomekeke kule miqathango ilandelayo yokuba:
- i) Makuhlawulwe ixabiso lentengiso elingama- R90 000, ngaphandle kweRhafu-ntengo;
 - ii) Ixabiso lentengiso liyakuthi linyuke nge-8% ngonyaka apho liqukaniswe rhoqo ngonyaka ukususela kumhla wo-31 kweyeThupha 2022 kude ibengumhla ngonyaka kude ibengumhla wobhaliso;
 - iii) Ixabiso lentengiso liyakuthi linyuke nge-8% ngonyaka apho liqukaniswe rhoqo ngonyaka ukususela kumhla wo-1 kweyeThupha 2019 kude ibengumhla wama-31 kweyoKwindla 2020. Ixabiso lentengiso liyakuthi emva koko linyuke nge-5% ngonyaka kude ibengumhla wobhaliso;
 - iv) Kufuneka kurhunywe iirhafu neentlawulo zikamasipala, ukuba kufanelekile; kwakhona
 - v) Ngokuxhomekeke kweminye imiqathango eyakuthi inyanzeliswe nguMlawuli woLawulo lwePropati esebenzisa amagunya akhe awagunyazisiweyo, kuquka oku kulandelayo:
 - aa) Yonke imimiselo yomthetho nengokusetyenziswa komhlaba kufuneka ithotyelwe;
 - bb) Isiqephu esichaphazelekayo sentsalela yesiza-29840 esiseKapa masidityaniswe kwisiza somthengi esingu-29856 kwaye usetyenziso luvumeleke kwimibandela yezasegadini kuphela;
 - cc) Zonke iindleko ezimalunga nezinxulumene nonaniselwano ziyakuthi zibeluxanduva lomthengi.

6. DISCUSSION/ CONTENTS

6.1 BACKGROUND:

- Background
- Subcouncil comments

Background

Mr Malcom Scerri, the owner of Erf 29856 Cape Town, submitted an application to purchase a portion of remainder Erf 29480, Cape Town, situated off Marivy Street, Sybrand Park, Cape Town in extent of approximately 130m².

The applicant has indicated that he wishes to convert the unused public space into an eco-friendly environment to add an additional garden to his current one, thus improving the surrounding suburb.

The subject property is regarded as being non-viable land which only has value to the adjacent landowner in light of the fact that it cannot be developed or function as a separate entity. This property transaction may therefore be approved without competitive process having been followed.

The application to purchase was circulated to all the relevant Branches for comment. No objections were raised by the Branches to the proposed closure and transfer of the subject property.

The proposed closure and transfer of the subject property was duly advertised in terms of the stipulations of the City of Cape Town's Immovable Property By-Law in two local newspapers on 21 February 2020, inviting the public to lodge written comments or objections. A notice in this regard was also served on the relevant Ward Councillor, Subcouncil and abutting land owners on 21 February 2020. No comments or objections were received by the closing date.

Subcouncil comments

It is confirmed that the application was discussed at a meeting of Subcouncil 17 held on 15 June 2020 under item 17SUB15/06/2020, and unanimously supported.

A copy of the Subcouncil Minutes is attached as **Annexure "D"**.

6.2 CONSULTATION WITH INTERNAL BRANCHES:

The application was circulated to the relevant branches of Council. The alienation of the property is supported subject to the following conditions which will be in the Agreement of Sale where applicable.

- Only gardening activities permitted.
- No permanent structures are permitted in the purchase area.
- Only palisade fencing is allowed.
- No altering, adding or removing of material without prior written approval from the City.
- Access must be granted 24/7 to council officials to undertake routine inspections and maintenance to roads and stormwater infrastructure, as and when required.
- No activity may take place in the area without prior written approval from the City.
- Any alterations or deviations to electricity services necessary as a consequence of the proposal, or requested by the applicant, will be carried out at the applicant's cost.

It was further confirmed that the property is not required to provide minimum levels of basic municipal services.

6.3 VALUATION

The City's Professional Valuers on 31 January 2019 assessed the value of the Subject Property at R90 000.00 excluding VAT, escalating at 8% per annum compounded annually on a pro rata basis commencing from 01 August 2019 until 31 March 2020. Thereafter, the escalated purchase price will escalate at 5% per annum until date of registration.

The valuation synopsis is attached to the report as **Annexure "B"**.

NOTE: The escalation rate was reduced to 5% per annum from 1 April 2020 on account of the coronavirus and the resultant economic fallout, which has dampened growth prospects for market values and rentals in the property market

6.4 CONSTITUTIONAL AND POLICY IMPLICATIONS

- 6.4.1 The proposal complies with Section 14 of the Municipal Finance Management Act No.56 of 2003 in that the relevant branches of Council have confirmed that the land is not required for the provision of the minimum level of a basic municipal service.
- 6.4.2 Chapter B of Council's policy entitled the Management of Certain of the City of Cape Town's Immovable Property (approved 26 August 2010), permits the transfer of immovable property.

6.4.3 Council’s Immovable Property By-Law as published on 11 December 2015 (Section 4) allows for the closure of public places and public roads.

6.5 FINANCIAL IMPLICATIONS

All costs involved in this transaction will be for the Applicant’s account.

6.6 TAX COMPLIANCE

In terms of the City’s Supply Chain Management Policy, approved by Council on 30 May 2019 (C18/05/19), paragraph 98.3 stipulates the City may not consider a bid or quote unless the bidder who submitted the bid or quote has submitted a valid tax clearance certificate certifying that the provider’s tax matters are in order.

In terms of the City’s Supply Chain Management Policy, approved by Council on 30 May 2019 (C18/05/19), paragraph 99 stipulates “Irrespective of the procurement process, the City may not make any award above R15 000,00 to a person who’s tax matters have not been declared by the SARS to be in order.”

Paragraphs 372 – 375 of the afore-mentioned policy deal with the sale and letting of City owned immovable property and are silent on the SARS requirement. Property Management adopted the principle as per paragraph 99 above and applicants need to submit a SARS clearance certificate or exemption certificate for the sale of all City owned immovable property. Except for tariff based rentals, which do not exceed R15 000,00 all applicants need to submit a SARS clearance or exemption certificate for the leasing of City owned immovable property.

The applicant has complied and a Tax Clearance Certificate is attached hereto as **Annexure “E”**.

6.7 FINANCIAL DUE DILIGENCE

The applicant’s debt profile has been verified and it is confirmed that they are not in arrears.

6.8 SUSTAINABILITY IMPLICATIONS

Does the activity in this report have any sustainability implications for the City?	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>
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6.9 LEGAL IMPLICATIONS

Regulation 7 of the Municipal Asset Transfer Regulations (MATR)

In terms of the above Regulation, Council must take into account a number of factors (highlighted in bold) when considering any proposed transfer or disposal of non-exempted capital assets:

Factor A: Whether the capital asset may be required for municipality's own use at a later date.

This proposal complies with Section 14 of the Local Government Municipal Finance Management Act No. 56 of 2003 in that the relevant branches of Council have confirmed in writing that the asset is not needed to provide the minimum level of basic municipal services.

Factor B: The expected loss or gain that is expected to result from the transfer or proposed disposal.

The expected gain to result from the proposed transfer is fair market value and future rates and taxes.

Factor C: The extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to municipality.

Council will receive a financial benefit in the form of a market related purchase price as well as rates and taxes, if applicable. The market value of the property has been determined to be R90 000.00 (excluding VAT), escalating at 8% per annum compounded annually on a pro rata basis commencing from 01 August 2019 until 31 March 2020. Thereafter, the escalated purchase price will escalate at 5% per annum until date of registration.

Factor D: The risks and rewards associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the municipality's interests.

No operational or control risk to the City.

Factor E: The effect that the proposed transfer or disposal will have on the credit rating of the municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow.

None.

Factor F: Any limitations and conditions attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions.

The sale agreement will contain terms and conditions as imposed by the Director: Property Management in terms of delegated authority.

Factor G: The estimated cost of the proposed transfer or disposal.

The purchaser will be responsible for the transfer costs.

Factor H: The transfer of liabilities and reserve funds associated with the capital asset.

No liabilities and reserve funds are associated with the capital asset.

Factor I: Any comments or representations on the proposed transfer or disposal received from the local community and other interested persons.

The Director : Property Management, in terms of her delegated powers, approved the public participation process as required, resulting in the proposed transfer being advertised in the Cape Times and Die Burger on 21 February 2020. Closing date for objections was 23 March 2020 (See annexure C). Copies of the advertisement were sent to the abutting land owners on 21 February 2020, Ward Councillor, Chairperson of the relevant Sub-Council. No objections were received.

Factor J: Any written views and recommendations on the proposed transfer or disposal by National Treasury and the relevant Provincial Treasury.

The asset considered for transfer is not a “high value” asset, as defined in the MATR. No objections or comments were received from National and Provincial Treasury.

Factor K: The interests of any affected organ of state, the municipality’s own strategic, legal and economic interests and the interests of the local community.

None of these interests will be compromised as a result of the alienation of the asset; in fact, it will be supported.

Factor L: Compliance with legislative regime applicable to the proposed transfer or disposal.

The proposal complies with Section 13.1 of the Council’s Policy on the Management of Certain of the City of Cape Town’s Immovable Property, approved by Council on 26 August 2010, which allows for the direct sale of non-viable property which can only be utilised by one or more adjacent landowners, without any competitive process having been followed, on the basis that no purpose would be served by a competitive process.

The proposal complies with the provisions of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) and the Municipal Asset Transfer Regulations published in Government Gazette No R. 878 dated 22 August 2008.

Regulation 18 of the MATR determines the following:

- “18. An agreement in terms of which a municipality or municipal entity transfers a non-exempted capital asset in terms of this chapter –*
- (a) must be made available in its entirety to the council of the municipality of the council of the parent municipality of the municipal entity; and*
 - (b) may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)”*

A copy of the draft Agreement of Sale is attached hereto as **Annexure “F”**.

Should the recommendation contained in this report be adopted by Council, the following statutory processes will need to be undertaken:

It will be necessary for the portion of Public Street to be closed and subdivided in order to transfer the portion of land.

After closure, the subject properties must be consolidated with the applicants property to form one single holding.

6.10 STAFF IMPLICATIONS

Does your report impact on staff resources, budget, grading, remuneration, allowances, designation, job description, location or your organisational structure?

No

Yes

ANNEXURES

- Annexure A – Plan STC 3102v1
- Annexure B – Valuation Synopsis
- Annexure C – Advertisement
- Annexure D – Subcouncil Minutes
- Annexure E – Tax Clearance Certificate
- Annexure F – Agreement of Sale

FOR FURTHER DETAILS CONTACT:

NAME	JANICE NIEUWOUDT 
CONTACT NUMBERS	(021) 400-6557
E-MAIL ADDRESS	JANICEMARIA.NIEUWOUDT@CAPETOWN.GOV.ZA
DIRECTORATE	ECONOMIC OPPORTUNITIES AND ASSET MANAGEMENT
FILE REF NO	CT14/3/4/3/582/A00 (130005462)
MANAGER : PROPERTY HOLDING RACHEL SCHNACKENBERG	Rachel Schnackenberg <small>Digitally signed by Rachel Schnackenberg Date: 2020.07.21 17:49:32 +02'00'</small>

 Digitally signed by Ruby Gelderbloem
Date: 2020.07.22 16:57:31 +02'00'

DIRECTOR : PROPERTY MANAGEMENT IN HER CAPACITY AS EXECUTIVE DIRECTOR : ECONOMIC OPPORTUNITIES & ASSET MANAGEMENT NOMINEE

NAME RUBY GELDERBLOEM _____

DATE _____

Comment: _____

Joan-Mari Holt Digitally signed by Joan-Mari Holt
Date: 2020.07.28 11:46:25 +02'00'

LEGAL COMPLIANCE

REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION.

NON-COMPLIANT

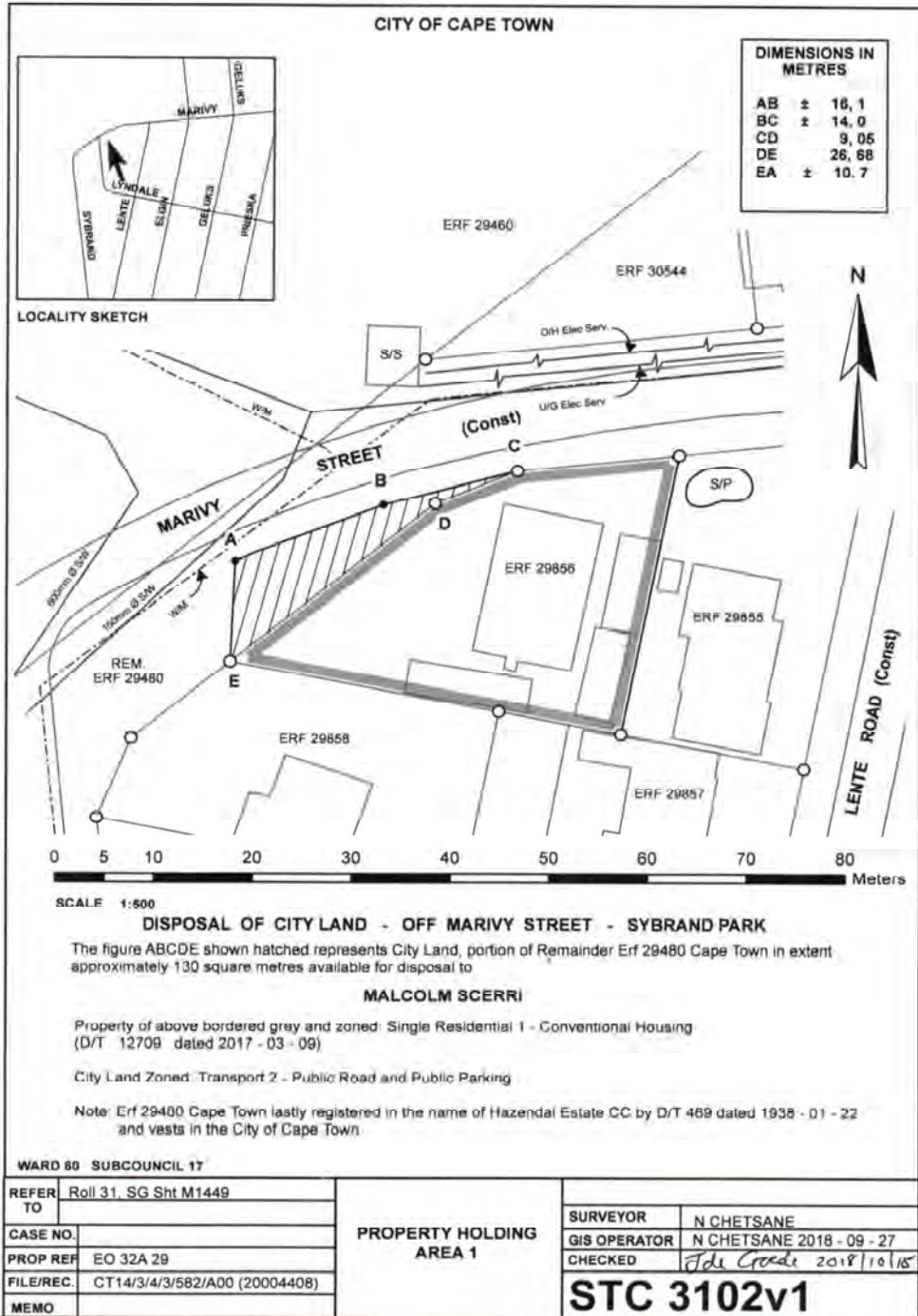
NAME _____

TEL _____

DATE _____

Comment: _____

Certified as legally compliant based on the contents of the report.



MARKET VALUATION OF PORTION OF REMAINDER ERF 29480 CAPE TOWN, MARIVY STREET, SYBRAND PARK: MALCOLM SCERRI

Previous valuation

We previously determined the market value of portion of Remainder Erf 29480 Cape Town, situated off Marivy Street in Sybrand Park, in extent $\pm 130\text{m}^2$, which is earmarked for sale/transfer to the abutting owner of 29856 Cape Town, Malcolm Scerri.

More specifically, our date of valuation was as at 2019-01-31 and it was recommended that the subject property be sold/transferred for R90 000 (excluding VAT) subject to the following conditions:

- (i) The sale's price shall escalate at 8% per annum compounded annually on a *pro rata* basis commencing 6 months after date of valuation (i.e. as from 2019-08-01) until date of registration.
- (ii) The market value is to be reassessed if the transaction is not approved by the relevant decision making authority of Council within 18 months from date of valuation (i.e. by 2020-08-01).
- (iii) The subject property is to be restricted to gardening purposes only.

Purpose of this memorandum

As the previous valuation has lapsed in terms of (ii) above, we have been requested to comment on whether the escalated sale's price is still market related.

Recommendations

After considering the most recent sales evidence and also taking account of trends and the current state of the property market and the prognosis going forward, we conclude that the escalated previous valuation amount is still market related.

Given the aforementioned, we recommend that the subject property be sold/transferred for **R90 000 (excluding VAT)**, subject to the following:

2

- (i) The above transfer price shall escalate at **8% per annum** for the period 2019-08-01 until 2020-03-31; thereafter it will further escalate at **5% per annum** until date of registration.
- (ii) The market value is to be reassessed if the transaction is not approved by the relevant decision making authority of Council within 24 months from the current date of valuation, i.e. it must be approved by 2022-08-31.
- (iii) The subject property is to be restricted to gardening purposes only.



Aneesah Abrahams
Professional Valuer (Reg. no. 7367/1)



Paul Pendlebury
Head: Market Valuations

2020-08-25

Closure

•Portion of Public Street, being Portion of Remainder Erf 29840 situated off Marivy Street Sybrand Park, Cape Town Adjacent Erf 29856 Cape Town: Malcolm Scerri

Notice is hereby given in terms of section 4(2) of the City of Cape Town: Immovable Property By-Law, 2015 of Council's intention to close a portion of remainder Erf 29480 situated off Marivy Street Sybrand Park, Cape Town in extent approximately 130 m2 as shown on plan STC 3102v1.

For further details of the transaction contact Saul Jacobs, tel 021 400 6419, Property Holding, Cape Town Region, Media City Building, weekdays between 08:30-15:00 by appointment. Any comments/objections must be submitted in writing, together with reasons therefore, to Saul Jacobs, 3rd Floor Media City Building, or email saul.jacobs@capetown.gov.za on or before 23 March 2020.

17SUB 15/6/2020 SM PROPOSED CLOSURE AND TRANSFER OF A PORTION OF PUBLIC STREET BEING A PORTION OF ERF 29480 CAPE TOWN SITUATED OFF MARIVY STREET, CAPE TOWN ABUTTING ERF 29856 CAPE TOWN: MALCOLM SCERRI

The Councillors unanimously supported the recommendation of the report.

RESOLVED that:

It is recommended that:

- a) Council resolve that, in terms of section 14 of the Local Government: Municipal Finance Management Act, Act 56 of 2003, the subject property being a portion of City land abutting Erf 29856, situated off Marivy Street Sybrand Park, Cape Town, in extent approximately 30m², shown by the hatches figure lettered ABCDE, on the attached Plan STC 3102v1 (Annexure "A") is not required to provide the minimum level of basic municipal services; and has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset;
- b) Council grants in-principle approval in terms of regulation 5(1)(b)(ii) of the Municipal Asset Transfer Regulations for the transfer of a portion of City land abutting Erf 29856 Cape Town, situated off Marivy Street Sybrand Park, Cape Town, in extent approximately 130m², shown hatched and lettered ABCDE, on the attached Plan STC 3102v1 (Annexure "A");
- c) Council in terms of section 4 of the City of Cape Town Immovable Property By-Law, 2015, approve the closure of the subject property being a portion of City land abutting Erf 29856 Cape Town in extent approximately 130m² as shown hatched and lettered ABCDE on Plan STC 3102v1 (Annexure "A");
- d) The transfer of a portion of City land abutting Erf 29856 Cape Town situated off Marivy Street Sybrand Park, Cape Town, in extent approximately 130m², shown hatched and lettered ABCDE, on the attached Plan STC 3102v1 (Annexure "A"); to Malcolm Scerri, or its successor(s) in title, be approved, subject to the following conditions, that:
 - i) A purchase price of R90 000.00 excluding VAT be payable;
 - ii) The purchase price is to be escalated by 8% per annum compound annually on a pro-rata basis commencing 6 months from date of valuation, 1 August 2019 until date of

registration;

- iii) Rates and municipal charges, if applicable, be levied.
- iv) Subject to such further conditions to be imposed by the Director: Property Management in terms of her delegated authority, inter alia the following:
 - aa) that all further statutory and land use requirements be complied with;
 - bb) that the subject portion of Erf 29840 be consolidated with the purchaser's Erf 29856;
 - cc) that all costs related and incidental to the transaction be borne by the purchaser.



M SCERRI
405 MOUNT CURTIS
307 MAIN ROAD
SEA POINT
CAPE TOWN
8005

TAX COMPLIANCE STATUS

PIN Issued

Enquiries should be addressed to SARS:

Contact Detail

SARS Contact Centre Tel: 0800 00 SARS (7277)
Alberton SARS online: www.sars.gov.za
1528

Details

Taxpayer Reference Number: 2635324144

Always quote this reference number when contacting SARS

Issue Date: 2020/07/03

Dear Taxpayer

TAX COMPLIANCE STATUS PIN ISSUED

The South African Revenue Service (SARS) has issued your tax compliance status (TCS) PIN as indicated below:

TCS Details:	
Taxpayer Name	Malcolm Scerr
Trading Name	Not applicable
Tax Reference Number(s)	IT - 2635324144
Purpose of Request	Good Standing
Request Reference Number	00017425230180307201006561
PIN	086636022N
PIN Expiry Date	09/07/2021

You may authorise a third party to view your TCS by providing them the PIN. The PIN only allows the third party access to your TCS. All other tax information remains secure.

Your TCS displayed is based on your compliance as at the date and time the PIN is used.

You may cancel this PIN at any time before the expiry date reflected above. Once cancelled, a third party will not be able to verify your TCS.

SARS reserves the right to cancel this PIN in the event that it was fraudulently issued or obtained.

Should you have any other queries please call the SARS Contact Centre on 0800 00 SARS (7277). Remember to have your taxpayer reference number at hand when you call to enable us to assist you promptly.

Sincerely

ISSUED ON BEHALF OF THE SOUTH AFRICAN REVENUE SERVICE



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

AGREEMENT OF SALE

concluded between

THE CITY OF CAPE TOWN

(File reference no: CT14/3/4/3/582/A00)

(Case Id: 130005462)

represented by

CHARLENE DAVIS

In her capacity as

REGIONAL HEAD: PROPERTY HOLDING (CAPE TOWN REGION)

Of the City of Cape Town

Being duly authorised thereto in terms of Delegation Part 34, 2(7) dated 22 August 2019

(hereinafter referred to as the "**seller**")

AND

MALCOLM SCERRI

Registration number:

(Hereinafter referred to as the "**purchaser**")

DOMICILIA CITANDI ET EXECUTANDI

SELLER: 12 Hertzog Boulevard, Cape Town, 8001

PURCHASER: 21 Marivy Street Sybrand Park, 7700

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ANNEXURE A – PLAN STC 3102v1

ANNEXURE B – SPECIAL CONDITIONS

1 DEFINITIONS

- 1.1 In this agreement, unless the context indicates a contrary intention, the following words and phrases shall have the meanings ascribed to them hereunder:**

“the Attorneys”	Attorneys appointed by the Seller;
“the Occupation Date”	Occupation shall be given and taken on the Transfer Date;
“the Property”	Portion of Erf 29480 Cape Town (public street) situated off Marivy Street, Sybrand Park, Cape Town, shown hatched and lettered ABCDE on the attached Plan STC 3102v1 (Annexure “A”) in extent of approximately 130m ² ,
“the Purchase Price”	R90 000 (NINETY THOUSAND RAND), excluding VAT

- 1.2 If any provision in the abovementioned definitions is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that such provision is only contained in this clause, effect shall be given thereto as if such provision were a substantive provision in the body of the agreement.**

- 1.3 Words in this agreement importing the singular shall include the plural and vice versa, and words importing the masculine shall include feminine and neuter, and words importing persons shall include partnerships, bodies corporate and juristic persons. The head notes to paragraphs in this agreement are inserted for reference purposes only and shall not affect the interpretation of any provision thereof.

2 SALE

The Seller hereby sells to the Purchaser who purchases the Property on the terms and conditions of this Agreement of Sale ("the Agreement").

3. PURCHASE PRICE

- 3.1 The Purchase Price in respect of the Property is payable by the Purchaser to the Seller.
- 3.2 Where applicable, VAT is payable at the rate applicable from time to time.
- 3.3 The purchase price is to be escalated by 8% per annum compounded annually on a pro-rata basis commencing from 01 August 2019 until 31 March 2020. Thereafter, the escalated purchase price will escalate at 5% per annum until date of registration.

4. METHOD OF PAYMENT OF PURCHASE PRICE

- 4.1 The Purchase Price shall be paid as follows:
 - 4.1.1 A ten per centum (10%) deposit on the date of signature hereof by the Purchaser, to be held in trust by the Attorneys in an interest-bearing account for the benefit of the Purchaser until date of registration of transfer. The parties hereby authorize the Attorneys to invest the deposit in this manner; and
 - 4.1.2 The balance to be paid by the Purchaser in cash against registration of transfer of the Property in the name of the Purchaser.
- 4.2 As security for the balance of the Purchase Price, the Purchaser shall either:
 - 4.2.1 Furnish the Seller with an irrevocable bank guarantee payable on registration of transfer, issued by a financial institution in a form acceptable to the Seller, within 14 days of request by the Attorneys, who request shall not be made until any suspensive conditions contained herein have been fulfilled or waived; or
 - 4.2.2 Deposit the balance of the Purchase Price into the Attorneys' trust account, in which case it shall be added to the investment made in terms of clause 4.1.1.
- 4.3 The Purchaser shall not be entitled to registration of transfer in her favour, or occupation of the Property, until the full purchase price has been paid or secured to the Seller's satisfaction.
- 4.4 All payments will be made in rands, free of bank charges at Cape Town, without deduction or set-off, by means of a cheque drawn on a recognized commercial bank or an EFT.

TAKE NOTE: The following clause 4.5 potentially limits the risk or liability of the Seller. It potentially constitutes an assumption of risk or liability by the Purchaser. It potentially imposes an obligation on the Purchaser to indemnify the Seller or is an acknowledgement of fact by the Purchaser. Please read it carefully and be sure that you understand the consequences.

- 4.5 The Purchase will forfeit the deposit in the event of the Purchaser failing to fulfill any of the terms and/or conditions of this agreement prior to transfer, including any performance required to be undertaken by a due date and remaining in default for a period of 21 (twenty one) days after the Seller has given notice in terms of Clause 15 to the Purchaser calling upon the Purchaser to remedy such default.

TAKE NOTE: My signature indicates that I, the Purchaser, have read the above clause 4.5, confirm that the facts, nature and effect thereof have been explained to me and I understand how it applies to me and that I have had sufficient opportunity to consider the application of the clause and its consequences and I hereby agree to accept and be bound by the clause.

Signature of Purchaser

5. DATE OF SALE

The date of sale shall be the date upon which this agreement is signed on behalf of the Seller.

6. DATE OF OCCUPATION

- 6.1 Vacant occupation of the Property shall be taken against registration of transfer or at an earlier date as agreed between the parties, provided:

- 6.1.1 the Seller is able to give vacant occupation;

TAKE NOTE: The following clause 6.1.2 potentially limits the risk or liability of the Seller. It potentially constitutes an assumption of risk or liability by the Purchaser. It potentially imposes an obligation on the Purchaser to indemnify the Seller or is an acknowledgement of fact by the Purchaser. Please read it carefully and be sure that you understand the consequences.

- 6.1.2 the Purchaser does so at his own risk and shall indemnify the Seller against all claims which may arise out of such earlier occupation;

TAKE NOTE: My signature indicates that I, the Purchaser, have read the above clause 6.1.2, confirm that the facts, nature and effect thereof have been explained to me and I understand how it applies to me and that I have had sufficient opportunity to consider the application of the clause and its consequences and I hereby agree to accept and be bound by the clause.

Making progress possible. Together.

Signature of Purchaser

- 6.1.3 the balance of the purchase price has been paid as provided for in clause 4.2.2.
- 6.1.4 the Purchaser has signed all documentation required in terms of this agreement, including any bond documents, if applicable, and has otherwise complied with all his obligations under this agreement.
- 6.2 In the event of the Purchaser taking occupation of the Property prior to registration of transfer, the Seller may charge the Purchaser occupational interest at the rate of 6% (six per centum) per annum, on the full Purchase Price outstanding, calculated from the day that the Seller deems the Purchaser to have taken occupation to the date of payment of the balance of the purchase price, both dates inclusive. The amount of occupational interest due by the Purchaser to the Seller will be payable by the Purchaser upon demand by the Seller.

7. PASSING OF RISK/BENEFIT

TAKE NOTE: The following clause potentially limits the risk or liability of the Seller. It potentially constitutes an assumption of risk or liability by the Purchaser. It potentially imposes an obligation on the Purchaser to indemnify the Seller or is an acknowledgement of fact by the Purchaser. Please read it carefully and be sure that you understand the consequences.

Any risk in and benefit from the Property shall pass to the Purchaser on the date of transfer or date of occupation.

TAKE NOTE: My signature indicates that I, the Purchaser, have read the above clause, confirm that the fact, nature and effect has been explained to me and I understand how it applies to me and have had a sufficient opportunity to consider the application of the said clauses and its consequences and I hereby agree to accept the said clauses.

Signature of Purchaser

8. RATES AND TAXES

The Purchaser shall pay all rates, taxes and like charges levied in respect of the Property from the Transfer Date or Occupation Date.

9. TRANSFER

- 9.1 Transfer shall be effected by the Attorneys and taken by the Purchaser as soon as possible but not later than six (6) months from date of sale.
- 9.2 The Purchaser undertakes to accept transfer when it is tendered and to sign all documents and to do all things necessary for this purpose. Should the Purchaser after 14 (fourteen) days' written notice from the Seller or the Attorneys, fail or refuse or neglect to sign all documents and to do all things necessary on his part, he shall be deemed to have breached this agreement and the Seller shall be entitled to exercise any of the remedies available to it in terms of this agreement.
- 9.3 Notwithstanding anything contained elsewhere in this agreement, the Seller's obligation to pass transfer in terms hereof will be conditional upon completion by the Seller of all necessary preliminary formalities and all prerequisites necessary to the registration of transfer, including the successful completion of any vesting transfer that may be required. The Seller will not be responsible for any delay in respect of the registration of transfer arising from any cause whatsoever, except if the Seller is indeed the cause of any such delay, as certified by "the Attorneys" acting as experts, nor will any such delay affect the Purchaser's obligation to effect payment of all amounts due in terms of this agreement on the due date for payment thereof. Should it thereafter not be possible for the Seller to pass transfer to the Purchaser for any reasons beyond the control of the Seller within six (6) months, the Seller or Purchaser will be entitled, after having given written notice to the other party, to cancel this agreement in which event:
- 9.3.1 the sale hereby constituted shall be deemed to be cancelled and of no further force and effect, with effect from the date of such notice;
- 9.3.2 no compensation will be paid to or by either party;
- 9.3.3 all amounts, including any amounts in respect of rates paid by the Purchaser to the Seller in anticipation of the transfer, as well as any interest accrued, shall be refunded to the Purchaser;
- 9.3.4 if the Purchaser has taken occupation of the Property, the Purchaser shall forthwith vacate the Property, and such occupation will not be interpreted as creating any tenancy;
- 9.3.5 the Seller may but shall not be obliged to pay to the Purchaser any compensation for any improvements which the Purchaser may have effected thereto, or for any other cause whatsoever.

10. NO TRANSFER UNTIL FULL PAYMENT

The Purchaser shall not be entitled to registration of transfer until the purchase price has been paid in full to the Seller or secured to the satisfaction of the Seller and until he has complied with all his obligations in terms of this agreement of sale.

11. COSTS

The Purchaser shall immediately on request by the Seller or the Attorneys pay all costs of and incidental to the registration of transfer, which without derogating from the generality of the afore-going, shall include transfer duty or VAT and conveyancing fees, survey fees, and if applicable, any penalties or interest imposed due to delays.

TAKE NOTE: The following clause 12 (including 12.1 to 12.5) potentially limits the risk or liability of the Seller. It potentially constitutes an assumption of risk or liability by the Purchaser. It potentially imposes an obligation on the Purchaser to indemnify the Seller or is an acknowledgement of fact by the Purchaser. Please read it carefully and be sure that you understand the consequences.

12. ACKNOWLEDGEMENT AND DISCLOSURE

The Purchaser acknowledges that the Purchaser:

- 12.1 Has been given sufficient time to inspect the Property, to consider all provisions of this agreement and get advice;
- 12.2 Has had sufficient opportunity to appoint professionals for purposes of inspecting the Property and assisting him in any way he requires in relation to the Property;
- 12.3 Is acquainted with the nature, extent and condition of the Property;
- 12.4 The Property is substantially in accordance with what was sold; and
- 12.5 The Property may have certain latent defects of which the Seller is unaware both at the date of signature hereof and the date of transfer. The Seller cannot be held liable for any such defects which appear after transfer.

TAKE NOTE: My signature indicates that I, the Purchaser, have read the above clause 12 (including 12.1 to 12.5), confirm that the facts, nature and effect thereof have been explained to me and I understand how it applies to me and that I have had sufficient opportunity to consider the application of the clause and its consequences and I hereby agree to accept and be bound by the clause.

Signature of Purchaser
Making progress possible. Together.

- 12.6 The Property, including all buildings and other improvements thereon, if any, is sold in accordance with the Seller's title deeds and the diagram or general plan framed or to be framed in respect thereof.
- 12.7 The Seller renounces all claims to any excess in the extent of the Property and will not be answerable for any deficiency in the extent of the Property, and no warranty is given in respect of boundaries.
- 12.8 The Seller shall not be responsible for indicating existing boundaries and beacons.

13. TITLE AND OTHER CONDITIONS

- 13.1 This sale is subject to each and every condition and servitude specified in the original and subsequent title deeds and to all other rights and conditions imposed by any statutory authority and to any approval and/or permit and/or waiver of pre-emptive right in terms of any law as may be necessary. Without detracting from the generality of the afore-going provisions the Property is sold subject to such conditions, or any amendment thereof, imposed by the local authority when approving of the subdivision and/or consolidation and/or re-zoning of the land of which the Property forms part and the conditions of establishment of the aforesaid township, or any amendment thereof. The following provisions, inter alia, are applicable:
 - 13.2 the owner of this Property shall, without compensation be obliged to allow electricity, telephone and television cables and/or wires and main and/or other water-pipes and the sewage and drainage, including storm water of any other erf or erven inside or outside the township to be conveyed across this Property, if deemed necessary by the local or statutory authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the Property at any reasonable time, for the purpose of constructing, altering, removing or inspecting any works connected with the above;
 - 13.3 the owner of the Property shall be obliged, without compensation, to receive such material or permit such excavation on the Property, as may be required to allow use or the full width of the street and provide safe and proper slope to its bank owing to difference between the levels of the street as finally constructed and the Property, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority;
 - 13.4 this Property shall be used only for such purposes as are permitted by the applicable town planning scheme of the local authority and subject to the conditions and restrictions stipulated by the scheme;

14. SPECIAL CONDITIONS

If applicable, the sale of the Property is further subject to the special terms and conditions set out in the Annexure B, which terms and conditions, as applicable, form

part of this agreement as if same were set out in this, the main part, of this agreement.

15. BREACH

15.1 All terms and conditions of the sale of the Property are material.

15.2 Breach by the Purchaser:

15.2.1 In the event of the Purchaser failing to fulfill any of the terms and/or conditions of this agreement, including any performance required to be undertaken by a due date and remaining in default for a period of 21 (twenty one) days after the Seller has given notice in terms of clause 18 to the Purchaser calling upon the Purchaser to remedy such default; or

15.2.2 In the event, prior to the registration of transfer, of application being made for the sequestration of the Purchaser's estate whether provisional or final; or should he commit an act of insolvency; or of the Purchaser assigning or offering to assign his estate for the benefit of his creditors, or if the Purchaser is found to have made a material misstatement of fact in any application form or other document submitted by him to the Seller; then and in any such event the Seller will be entitled without further notice, in addition to and without prejudice to any other rights available at law:

15.2.2.1 to cancel the sale by notice in writing to that effect sent by registered post to the address at which the Purchaser has chosen *domicilium citandi et executandi*, in which event the Seller shall be entitled to retain all monies paid by the Purchaser in trust, pending determination of its damages; or

15.2.2.2 to claim immediate payment of the Purchase Price or balance thereof, as the case may be and to require the fulfillment by the Purchaser of all the other terms and conditions of this agreement; or

15.2.2.3 in the event that the Purchase Price has been paid in full to require the fulfillment by the Purchaser of all the other terms and conditions of this agreement; or

15.2.3 In the event of a breach of this agreement by the Purchaser, the Seller shall in addition to any other remedy it may have, be entitled to claim damages as it may be able to prove.

15.2.4 In the event of the cancellation of this agreement in terms hereof, the Purchaser shall notwithstanding and without prejudice to any rights the Seller under this agreement, if so required by the Seller, remove or cause to be removed within three (3) months from the date that the Seller has notified the Purchaser of such requirement, all or any structures, any constructions, improvements or buildings (collectively referred to as "buildings") which may have been erected on the Property. The removal of buildings and the reinstatement of the Property shall be entirely to the satisfaction of the Seller in its sole discretion. Any buildings not removed by the owner as afore-said, shall thereupon vest in the Seller without payment of compensation therefor, provided that the Purchaser shall be liable to

compensate the Seller for any loss or expense it may sustain by reason of the Purchaser's failure so to remove, and the Seller itself thereafter removing buildings. The Purchaser in this regard undertakes, in addition to any other damages that the Seller may have suffered, to pay the ruling standard Seller charges for demolition, removal and restoration.

- 15.2.5 In the event of the Seller cancelling this agreement and the Purchaser disputing the Seller's right to cancel and remaining in occupation of the Property, the Purchaser shall, pending settlement of such dispute either by negotiation, arbitration or litigation, the Purchaser shall continue to pay all sums of money due under this agreement, including rates and taxes, and the Seller shall be entitled to accept and recover such payments, the acceptance of which shall be without prejudice to and shall not in any way whatsoever affect the Seller's claim for cancellation then in dispute. Should the dispute be determined in favour of the Seller, the payments made and received in terms of this paragraph shall be deemed to be amounts paid by the Purchaser on account of the damages suffered by the Seller, by reasons of the cancellation of this agreement and/or the unlawful holding over by the Purchaser, and shall be taken into account when determining the Seller's damages.
- 15.2.6 The Purchaser shall be liable for all legal costs, including attorney and client costs, collection commission and tracing fees, incurred by the Seller in enforcing any of its rights in terms of this agreement.
- 15.3 Breach by the Seller:
- 15.3.1 In the event of the Seller failing to fulfill any of the terms and/or conditions of this agreement and remaining in default for a period of 21 (twenty one) days after the Purchaser has given notice in terms of clause 18 to the Seller calling upon it to remedy such default, then and in any such event the Purchaser shall be entitled without further notice, in addition to and without prejudice to any other rights available at law:
- 15.3.2 to cancel the sale by notice in writing to that effect sent by registered post to the address at which the Seller has chosen *domicilium citandi et executandi*; or
- 15.3.3 to claim immediate fulfillment by the Seller of its obligations in terms of this agreement.
- 15.3.4 In the event of a breach of this agreement by the Seller, the Purchaser shall in addition to any other remedy it may have, be entitled to claim damages as it may be able to prove.

16. ENTITY TO BE FORMED

If the person (the "Signatory") signing as Purchaser acts or purports to act as agent or trustee for a company or close corporation not yet incorporated:

16.1 The signatory personally undertakes to the Seller that the company or close corporation concerned will be incorporated and that the company or close corporation will have adopted or ratified this agreement without modification within 30 calendar days after signature.

16.2 If the said company or close corporation is not so incorporated within the period mentioned in clause 16.1 or having been incorporated does not adopt or ratify this Agreement within 30 (thirty) calendar days aforesaid, then the Signatory shall in his or her personal capacity be deemed to be the Purchaser in terms of this Agreement. If the said company or close corporation is incorporated and does not adopt or ratify this Agreement as contemplated in clause 16.1, then the Signatory will be bound in favour of the Seller as surety and co-principal debtor *in solidum* under renunciation of the benefits of division, excussion and cession of action, for the due and proper performance by the said company or close corporation of any obligations in terms of or arising in any way out of:

16.2.1 this Agreement; or

16.2.2 any cancellation pursuant to this Agreement; or

16.2.3 section 35 of the Insolvency Act No. 24 of 1936, as amended, pursuant to the abandonment by a liquidator or cancellation by a Court of this Agreement, in the event that the said company or close corporation is wound up.

17. JURISDICTION

The Purchaser hereby consents in terms of Section 45 of Act 32 of 1944 or any amendment thereof, to the Seller taking any legal proceedings for enforcing any of its rights under this agreement, for recovery of moneys claimable under this agreement or otherwise if it so elects, in any magistrate's court having jurisdiction by virtue of Sections 28 and 29 of the aforesaid Act.

18. DOMICILIA CITANDI ET EXECUTANDI

18.1 The parties choose their respective addresses stated on the cover page of this agreement as their *domicilium citandi et executandi* addresses for all purposes arising from this agreement, and as a good and proper address to which any notices or legal process may be sent.

18.2 Any notice to any party shall be addressed to it at its aforesaid address and either be sent by prepaid registered post, by fax or be delivered by hand. In the case of any notice:

18.2.1 sent by prepaid post, it shall be deemed to have been received, unless the contrary is proved, on the 3rd (third) business day after posting;

18.2.2 delivered by hand, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a business day or otherwise on the next following business day;

18.2.3 sent by fax, it shall be deemed to have been received at 10h00 on the next following business day after the date of transmission provided the addressee shall have acknowledged receipt thereof.

18.3 Any party shall be entitled by notice in writing to the others, to change its domicile to any other address, provided that the change shall become effective only fourteen calendar days after service of the notice in question.

18.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at such party's chosen address.

19. GENERAL

- 19.1 The Purchaser hereby records that he had inspected the Property and is satisfied with it in all respects. The Seller or its officers, employees or agents shall not be liable for any representations, whether express or implied, in respect of the Property or the conditions hereof and the Purchaser acknowledges that no representations of whatever nature in respect of the Property or the conditions hereof have induced him to enter into this agreement.
- 19.2 This agreement of sale constitutes the sole contract between the parties and every condition contained herein is of the essence thereof.
- 19.3 No variations or cancellations of this agreement shall affect the terms hereof, unless reduced to writing under the hands of the parties thereto.
- 19.4 No indulgence on the part of any party in exercising any right conferred upon such party in terms of this agreement shall constitute a waiver or novation of any such right, nor shall any single or partial exercise of any right preclude any other or future exercise thereof or the exercise of any other right under this agreement.**
- 19.5 This agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, assigns, liquidations, curators or other legal representatives of the parties as fully and effectually as if they had signed this agreement in the first instance and reference to any party shall be deemed to include such party's estate, heirs, executors, administrators, trustees, assigns, liquidators, curators or other legal representatives as the case may be.**

Dated and signed at this day of 2020.

AS WITNESSES:

- 1.
- 2.

.....
for **PURCHASER**

Dated and signed at this day of 2020.

AS WITNESSES:

- 1.
- 2.

.....
for **SELLER**

SPECIAL CONDITIONS

- Only gardening activities permitted.
- No permanent structures are permitted in the purchase area.
- Only palisade fencing is allowed.
- the portion of Public Street to be closed and subdivided in order to transfer the portion of land.
- After closure, the subject properties must be consolidated with the applicants property to form one single holding.
- No altering, adding or removing of material without prior written approval from the City.
- Access must be granted 24/7 to council officials to undertake routine inspections and maintenance to roads and stormwater infrastructure, as and when required.
- No activity may take place in the area without prior written approval from the City.
- Any alterations or deviations to electricity services necessary as a consequence of the proposal, or requested by the applicant, will be carried out at the applicant's cost.