



REPORT TO COUNCIL

DATE: 11/08/2015
COUNCIL: 2015/08/01

1. **ITEM NUMBER : C 29F/05/16**
2. **ACQUISITION OF THE PROPERTY FROM LIQUIDATED ESTATE OF THE HOUSING ASSOCIATION OF BLAAUBERG (HAB)**

AANKOOP VAN DIE EIENDOM VAN GELIKWIDEERDE BOEDEL VAN DIE BEHUISINGSVERENIGING VAN BLAAUWBERG (HAB)

UKUFUNYANWA KWEPROPATI KUMHLABA OTHENGIWEYO NGENXA YOKUBA NAMATYALA WEQUMRHU LEZINDLU LASE-BLAAUBERG (HAB)

(G4791)

3. **STRATEGIC INTENT**

Strategic Objective 3:2 "Ensure innovative human settlements for increased access to those who need them"

Program 3.2 (d) Integrated Human Settlements Program

- Caring City

4. **PURPOSE**

This report seeks authority to acquire the land holdings, with improvements, from the liquidated estate of the Housing Association of Blaauwberg (HAB). A set of terms and conditions as been agreed to with the Liquidator following a Mayoral decision making a suitable offer to the Liquidator. The report, following extensive discussions with the liquidator, via the Legal Services Department, will be the conclusion of the transaction between Liquidator and City. The financial and administrative implications of acquiring the houses and the land, which includes the current occupants, is also addressed in this report.

5. **FOR DECISION BY**

- This report is for consideration/decision by
- Council

6. EXECUTIVE SUMMARY

The Housing Association of Blaauwberg (HAB) has been placed under liquidation. Council is a minor creditor. This report recommends that council attempt to acquire all the land and property holdings of the liquidated estate, at a purchase price of R51 881 365 (*fifty one million eight hundred and eighty one thousand, three hundred and sixty five rand*). This will allow council to remedy the neglect to property and people which HAB has exercised over the years.

7. RECOMMENDATIONS

Not delegated: for Decision by Council

It is recommended that:

- a. The liquidated estate of the Housing Association of Blaauwberg (HAB) be acquired at a purchase price of R51 881 365 (*fifty one million eight hundred and eighty one thousand, three hundred and sixty five Rand*) inclusive of VAT, be acquired;
- b. VAT on the full purchase price be paid, coming to R6 371 395.70 (*Six Million Three Hundred and Seventy One Thousand Three Hundred and Ninety Five Rand and Seventy Cents*) be paid;
- c. payment of R5 000 000 (*Five Million Rand*) into the liquidated estate of the (HAB) be made;
- d. City pays any transfer and associated transaction costs as may arise, estimated to be no more than R500 000 (excluding VAT); and
- e. that the Executive Director: Human Settlements be authorised to sign the necessary *Sale Agreement* and any other documentation on behalf of the City of Cape Town, as may be required to give effect to the above decision.

7 AANBEVELINGS

Nie gedelegeer nie: vir besluitneming deur die Raad:

Daar word aanbeveel dat:

- a. Die gelikwedeerde boedel van die behuisingsvereniging van Blaauwberg (HAB) aangekoop word teen 'n koopprys van R51 881 365 (*Een-en-vyftig miljoen agt honderd een-en-tagtig duisend drie honderd vyf-en-sestig rand*), BTW ingesluit;
- b. BTW ten bedrae van R6 371 395,70 (*Ses miljoen drie honderd een-en-sewentig duisend drie honderd vyf-en-negentig rand en sewentig sent*) op die volle prys betaal word;
- c. R5 miljoen (*vyf miljoen rand*) aan die gelikwedeerde boedel van die behuisingsvereniging van Blaauwberg (HAB) oorbetaal word;

- d. Die Stad enige oordrag- en verwante transaksiekoste wat mag ontstaan, beraam op hoogstens R500 000 (BTW uitgesluit), betaal, en
- e. Die uitvoerende direkteur: menslike nedersettings gemagtig word om die nodige verkoopsooreenkomste en enige ander dokumentasie wat vereis word om aan bogenoemde besluit uitvoering te gee, namens die Stad Kaapstad te onderteken.

7 IZINDULULO

Azigunyasiswanga: isiqqibo seseBhunga:

Kundululwe ukuba:

- a. Umhlaba othengiweyo ngenxa yamatyala weQumrhu leZindlu laseBlaauwberg (HAB) mawufunyanwe ngexabiso lentengiso elingama- R51 881 365 (*amashumi amahlanu ananye ezigidi amakhulu asibhozo anamashumi asibhozo ananye amawaka, amakhulu amathathu anamashumi amathandathu anesihlanu eeRandi*) ngaphandle kweRhafu-ntengo;
- b. Makuhlawulwe iRhafu-ntengo kwixabiso lentengo elipheleleyo, elifikelela kuma-R6 371 395.70 (*izigidi ezintandathu amakhulu amathathu anamashumi asixhenxe ananye amawaka amakhulu amathathu anamashumi alithoba anesihlanu eeRando namashumi asixhenxe eesenti*);
- c. Makwenziwenziwe intlawulo yezigidi ezi-R5 (izigidi ezintlanu zeerandi) kumhlaba othengiweyo ngenxa yamatyala weQumrhu leZindlu laseBlaauwberg (HAB)
- d. ISixeko masihlawule naziphi na iindleko zokutshintshelwa nezonaniselwano olufanelekileyo xa zinokuthi zibekho, uqikelelo olungadlulanga kuma-R500 000 (ngaphandle kweRhafu-ntengo), kwakhona
- e. Ukuba uMlawuli wesiGqeba sokuHlaliswa kwaBantu makagunyaziswe ukuba atyikitye *isivumelwano sentengo* kwakunye namanye amaxwebhu egameni leSixeko saseKapa asenokuba yimfuneko ukwenzela ukuphumeza esi sigqibo singentla.

8. DISCUSSION/CONTENTS

8.1. Background

- 8.1.1. In 1999 the Housing Association of Blaauwberg (HAB) was established by the former municipal council of *Blaauwberg*, as a not-for-profit company to build a portfolio of rent-to-buy housing opportunities using state housing subsidies.
- 8.1.2. To launch the Company on a positive note the municipality then sold land (16.8ha) in Atlantis at nominal value to HAB, and also supported HAB's application to the Housing Provincial Board for 800 capital subsidies.

- 8.1.3. Approximately 676 houses have since been built. 321 are located on land still in registered ownership of Council. 355 are located on land owned by HAB.
- 8.1.4. Once the houses were occupied, HAB struggled to put in place the necessary administrative system to function as a sound landlord. Billing and service delivery became an issue, and by 2003 there was talk of winding up HAB. But this was halted in the last minute when the NHFC called on HAB for a *turnaround* plan instead. By 2009 this seems to have been exhausted as well, as HAB was in dire financial straits.
- 8.1.5. In 2010 NHFC, as major creditor, filed for Liquidation of HAB. The request was granted by *High Court* on 23 March 2010. The NHFC was the largest creditor, being owed R23m, with the rest of the creditors combined only being owed R8m.
- 8.1.6. Hoping to avoid Liquidation a second time, the NHFC made overtures to the city to find a joint solution. Many meetings of possible roles and responsibilities on both sides were held, with the possibility of transferring the remaining council land (upon which HAB had already built houses plus the still-vacant land) to the NHFC, as equity.
- 8.1.7. In November 2011 NHFC decided to follow through with a Liquidation, and appointed Mr. Trevor Glaum to the task. Here too, no easy solution was at hand, with the tenants suffering all the while. The National Housing Finance Corporation (NHFC) was the principal creditor.
- 8.1.8. In February 2015 the City made the Liquidator a proposal: namely (a) for city to take cession of the NHFC's credit-claim and (b) to receive the NHFC's voting rights in the proceedings, both at a cost of one Rand. The City would then (c) also pay R5m (five million rand) into the estate, and in return would not receive its share of the dividends against outstanding Rates & Services. This offer was sanctioned under a Mayoral decision of 26 February 2015.
- 8.1.9. Upon settlement of the liquidation Council will be in receipt of about 676 houses, with occupants, and about 13 pockets of vacant land upon which new housing opportunities can be built, specifically for those still waiting on HAB's beneficiary list (see annexure B).
- 8.1.10. The offer was referred to the principal shareholder the NHFC, by the Liquidator and eventually agreed to by the NHFC. This report now seeks authority to accept and conclude the proposed settlement accordingly. This report then also outlines, for information, the implications for Council of accepting the settlement.

8.2. Implications for Council

- 8.2.1. As at 29 March 2016 Council was owed R 17 564 918.60 in outstanding rates and services over the subject properties, and as in any liquidation it may not be recovered. As part of the "offer of settlement" any cent in the rand that may have been due to Council will thus not be recovered.

- 8.2.2. Council will not hereby accept any financial obligations or arrangements entered into between the occupant / debtor and HAB. It is known that HAB had an extremely rudimentary administrative system.
- 8.2.3. Council does not currently have any lease or any other agreements with the housing beneficiaries and currently has, as a result, no role in the arrangements previously entered into between the occupant / debtor and HAB. The administrative information held by HAB will very likely result in challenges in terms of the house transfer and administration process, should this purchase be approved.
- 8.2.4. A significant amount of remedial work will have to be undertaken on the development in due course. Without going into all the specifics it includes land subdivisions left incomplete by HAB; registering title deeds over many of the houses, and so on. If expenses on items such as insurance and remediation of municipal infrastructure is considered, and incomes from rentals as may be derived from occupants, a net average per unit cost of R10 000 is a reasonable estimate. The operations and maintenance obligation thus comes to about R7 million, post-liquidation (see Financial Implications below for an exposition).
- 8.2.5. Many of the occupants in the houses regard the houses as their own, some have on-sold their units, while still other pay rent. Tenure will have to be rectified, following a thorough survey.
- 8.2.6. Many of the houses located on council property, would require mending before transfer. Houses on HAB property share municipal service-connections which will have to be remedied.
- 8.2.7. The debtor for rates & services has been HAB. This will have to be corrected with individual users signed up and in some cases rental leases issued.
- 8.2.8. HAB has a list of subsidy beneficiaries, but not all have been allocated a house. Many are still waiting and requests to have such families accommodated in a future housing project have been received and will have to be attended to. Vacant land for the purpose will be available.
- 8.2.9. Abovementioned remedial work will have to be undertaken in the form of a dedicated / devoted project.

8.3. Constitutional and Policy Implications

None

8.4. Sustainability Implications

Does the activity in this report have any sustainability implications for the City?

No Yes

8.5. Financial Implications

Capital Budget Provisions: Please see Financial Footnote at end of report.

On 7 April 2015 a document entitled "*Sale and Cession of Claims and Voting Rights Agreement*" was signed between the City of Cape Town and the National Housing Finance Corporation, as per the mandate of the acting Executive Mayor, by the Chief Finance Officer.

In terms of this Agreement, the City acquired, at a cost of R1,00, inter alia, rights to the National Housing Finance Corporation Loan in the amount of R23 951 632.78 (as at 19 July 2010).

The subsequently proposed full purchase price for this transaction as per negotiations between the Liquidator (Sanek Trust) and Council (i.e. Legal Services and the acting Director: Shared Services, Monitoring and Support) in the amount of R51 881 365.00 (incl VAT) is made up as follows: (refer also to draft Sales Agreement as attached)

Atlantis Property	53	R38 760 000 (incl VAT)
Brooklyn Property		R 1 208 365 (incl VAT)
CA Atlantis Improvements		<u>R11 913 000 (incl VAT)</u>
Purchase Price		R51 881 365 (incl VAT)

VAT amount included in the transaction is R6 371 395.70

The Liquidator is a VAT vendor and, as a consequence, the City may claim the VAT in the amount of R6 371 395.70 on this transaction. The net purchase price is therefore R45 509 969.30

The purchase price in the amount of R51 881 365.00 (incl VAT) will be settled as follows:

Payable to Liquidator	R 5 000 000 00
VAT (14%)	R 6 371 395.70
NHFC Loan	R23 951 632.78
Rates/Services arrears	<u>R16 558 336.52</u>
	R51 881 365.00

The NHFC loan transaction noted above (R23 951 632.78) will be offset against the outstanding loan amount held by the City of Cape Town.

It should also be noted that the Rate & Services amount outstanding will increase based on billings by the Revenue Department each month pending the conclusion of this transaction. Any variation between the amount above (R16 558 336.52) and the final Rate and Services amount outstanding should be offset in a future write off adjustment by the Revenue Department.

The estimated transfer fees are R500 000 (excl VAT) and will be funded as part of this acquisition.

Operating Budget Implications:

The operating income and expenditure related to the 676 rental units which are situated on the land which will be transferred to the City are as follows:

- Insurance is estimated at R 100 per unit.
- Repairs to the units to make it saleable is estimated at R 10 000 per unit. The repairs will be spread over a period of three years.
- The average monthly rental per unit is estimated at R 300.

The income and expenditure as set out above will be addressed in the August 2016/17 Adjustment Budget.

8.6. Legal Implications

None

ZUKISWA NQANQALI
MANAGER: OPERATING
BUDGET 400 1878

[Handwritten signature]
16/5/2016

[Handwritten signature]
16/5/2016

8.7. Risk Implications

Detailed risk implications have been submitted directly to the Chief Risk Officer to be dealt with accordance with the risk management process.

8.8. Staff Implications

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

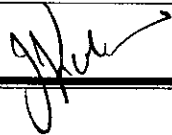
No

Yes

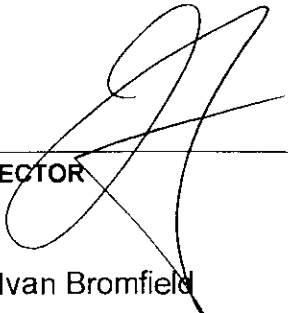
ANNEXURES

- Annexures A - Financial Footnote
- B - Map

FOR FURTHER DETAILS CONTACT:

NAME	Jens Kuhn
CONTACT NUMBERS	021 400 4215
E-MAIL ADDRESS	Jens.kuhn@capetown.gov.za
DIRECTORATE	Human Settlements
FILE REF NO	CTA32/1/5/2/2 Vol 3
SIGNATURE : DIRECTOR	

EXECUTIVE DIRECTOR



NAME

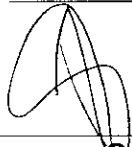
Dr Ivan Bromfield

DATE

17/3/2016

COMMENT:

CHIEF FINANCIAL OFFICER (EXECUTIVE DIRECTOR: FINANCE) K Jacoby



17.05.2016

COMMENT:



P. de Lille.

EXECUTIVE MAYOR

SUPPORTED FOR ONWARD SUBMISSION
TO MAYCO / COUNCIL

APPROVED I.T.O. DELEGATED
AUTHORITY

NOTED

REFUSED

REFERRED BACK

DATE

25 May 2016

COMMENT:

NAME MR KEVIN JACOBY

DATE

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

[Handwritten signature]

LEGAL COMPLIANCE

NON-COMPLIANT

NAME CHARLYNNE ARENOSE

TEL 021 400 1265

DATE 24 MAY 2016

COMMENT:

Certified as legally compliant:

Based on the contents of the report. *[Handwritten initials]*

[Handwritten signature: A.G. Ras]

EXECUTIVE DIRECTOR: CORPORATE SERVICES AND COMPLIANCE (ED: CORC)

SUPPORTED FOR ONWARD SUBMISSION TO MAYOR / MAYCO / COUNCIL

NAME MR GERHARD RAS

DATE 25/5/16

NOT SUPPORTED

REFERRED BACK

COMMENT:

[Handwritten signature]

MAYORAL COMMITTEE MEMBER

COMMENT:

NAME CLLR B VAN MINNEN

DATE 25/5/16

CAPITAL FINANCIAL FOOTNOTE: (PLEASE NOTE: ALL WBS ELEMENTS SHOULD ALREADY BE ON SAP WHEN COMPLETING THIS ANNEXURE)					
1	PROJECT INFORMATION REQUIRED: RECEIVING WBS RECEIVING IM POSITION PROJECT DESCRIPTION RETURNING WBS RETURNING IM POSITION WARD NO. TD WARD NO. FROM	C14.15603-F2 A 1503 Land Acquisition (USDG) 200			
2	FUNDS AVAILABLE 2015/2016: 2016/2017: 2017/2018: FUNDS COMMITTED 2015/2016: FUNDS REQUIRED 2015/2016: 2016/2017: 2017/2018:	R 52 750 000 6 515 568 46 009 970 (this report) 	R	R	R
3	CAPITAL EXPENDITURE AUTHORITY AVAILABLE : EX: REF:	R 52 750 000 NT USDG (grant) Council C31/03/16 31 March and virements approved as per virement policy	R	R	R

The operating impact/s of this project/s was/were considered as part of the MTREF and budget approval process.

Financial Details Checked:

Date: 13/5/2016

Directorate Finance Manager:

Print Name: N. PIETROSE (Automa)

*Ref Vot Section
Ref Vot M&A
29 January 2014
as attached.
16/05/2016*

Capital Budget Checked: 16/05/2016

Corporate Capital Budget Office

Capital budgetary provision is sufficient

Note: I can't express an opinion on the legal matters and off-setting contained in the report. There is also no indication in the



VAT Alert

29 January 2014

58

Special relief period extended to residential property developers

The special relief period provided to residential property developers for temporary letting of residential properties has been extended to 1 January 2018

Relief provided to residential property developers in terms of section 18B of the Value-Added Tax Act 89 of 1991 (VAT Act) has been extended for an additional three year period to 1 January 2018.

The effect of section 18B for residential property developers

Once a property has been developed, the property developer may not be in the position of being able to sell all the units developed due to economic and market fluctuations, and may be required to temporarily let out the units until later sold. This change in activity from selling to letting results in a change of use which would require the property developer to account for VAT on a deemed supply based on the open market value of the property. This gives rise to serious negative cash flow consequences for property developers.

In January 2012 temporary relief was given to developers which was to end on 1 January 2015. In terms of the section, the property



developer was able to let out the residential units for a period of 36 months from the date of entering into the lease agreement, without being required to account for output tax. This allowed property developers to let residential units for a period of 36 months from the date of entering into the lease agreement. Once the special relief period expired after either 36 months or on 1 January 2015, it was assumed that legislation would revert back to section 18 of the VAT Act which requires a change in use adjustment.

The Taxation Laws Amendment Act, 2014, promulgated on 20 January 2015, extends the relief period by three years to 1 January 2018.

Application of section 18B

To qualify, a rental contract must be entered into after 1 January 2012, but before 1 January 2018. The special relief does not apply if a property developer changes intention, and decides to retain the unit to earn rental income for an indefinite period, and no

longer wishes to dispose of the unit. In such case, an output tax adjustment would be required on the market value of the property at the time, and any subsequent

supply of that property will not be a taxable supply and the transaction will be subject to transfer duty.

The VAT consequences arising out of property transactions should always be carefully considered.

For further information, please call your PwC contact in your area.

Region	Contact	Telephone	Email
Eastern Cape	Mornay Schafer	(041) 391 4403	mornay.schafer@za.pwc.com
Free State, North West, Northern Cape	Hettie Koekemoer	(051) 503 4207	hettie.koekemoer@za.pwc.com
Gauteng	Gerard Soverall Bennie Botha	(011) 797 5004 (012) 429 0292	gerard.soverall@za.pwc.com bennie.botha@za.pwc.com
Kwazulu Natal	Mornay Schafer	(041) 391 4403	mornay.schafer@za.pwc.com
Mpumalanga, Limpopo	Bennie Botha	(012) 429 0292	bennie.botha@za.pwc.com
Western Cape	Charles de Wet	(021) 529 2377	charles.de.wet@za.pwc.com

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Execute Indv Yr Bdgt Actual Cmtmt/Rem.Pln/Assgnd: Overview

Number format...

Indv Yr Bdgt Actual Cmtmt/Rem.Pln/Assgnd		2016					Current data (17.05.2016 14:09:19)
Object	Displayed in	Budget 1 ZAR	Actual 1 ZAR	Commitment 1 ZAR	RemOrdPln 1 ZAR	Assigned 1 ZAR	Available 1 ZAR
WBS C14.15603-F2	Land Acquisition (USDG)	2,750,000.00	6,515,567.13			6,515,567.13	46,234,432.87
WBS C14.15603-F2.L1	Capex Farm Property	364,000.00	963,352.60			963,352.60	47.20
WBS C14.15603-F2.L2	Additional Acquisition of Burials	4,720,000.00	4,536,726.83			4,504,726.83	213,273.17
WBS C14.15603-F2.L3	Paardevlei Transfers - Various	1,045,000.00	1,044,887.50			1,044,887.50	112.50
WBS C14.15603-F2.L4	Heideveld - Remainder of FFF 10	1,550,000.00					1,550,000.00
Result		2,750,000.00	6,515,567.13			6,515,567.13	46,234,432.87

SALE AGREEMENT

between

HOUSING ASSOCIATION BLAAUWBERG

(Association Incorporated in terms of Section 21 of the now repealed Act, No. 61 of 1973)

(In Liquidation)

Registration Number : 1999/002976/08

and

CITY OF CAPE TOWN

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ANNEXURE 1	WARRANTIES
ANNEXURE 2	ACQUITANCES
ANNEXURE 3	REPAYMENT UNDERTAKING

[CDH Note: kindly provide the annexures]

PARTIES:

This Agreement is made between:

- (1) HOUSING ASSOCIATION BLAAUWBERG; and
- (2) CITY OF CAPE TOWN.

WHEREAS

- A. The Seller is the owner of the Sale Assets.
- B. The Purchaser intends purchasing the Sale Assets from the Seller.
- C. The Seller has agreed to sell the Sale Assets to the Purchaser on the terms and conditions set out in this Agreement.

IT IS AGREED AS FOLLOWS:**1. DEFINITIONS**

For the purposes of this Agreement and the preamble above, unless the context requires otherwise:

- 1.1. **Acquittances** - means the acquittances to be provided by the Purchaser in favour of the Seller in the form set out in Annexure 2;
- 1.2. **Adjustment Amount** - an amount equal to R40 509 970.78 (Forty Million Five Hundred and Nine Thousand Nine Hundred and Seventy Rand and Seventy Eight Cents) being the aggregate of the NHFC Claim; the Advance and City Services Claim which are to be set off against the Purchase Price in accordance with the provisions of clause 4.3;
- 1.3. **Advance** - means the amount of R1 500 000.00 (One Million Five Hundred Thousand Rand) lent and advanced by NHFC to the Seller which has been ceded by NHFC to the Purchaser;
[CDH Note: kindly could the City confirm the above amount]
- 1.4. **Agreement** - this Sale Agreement and all annexures hereto;
- 1.5. **Atlantis Property** - erven 7698, 7700, 7701, 7702, 7705, 7706, 7709, 7711 to 7713, 7716, 7719, 7720, 7723, 7726 to 7728, 7730 to 7734, 7736, 7737, 7739, 7741, 7744 and 7747 Wesfleur, Cape Division, Western Cape Province, all held by Deed of Transfer No. T008990/2001;

[CDH Note: erf 7705, Wesfleur, is bonded in terms of mortgage bond number B 6829/2001 passed by HAB in favour of the Housing Institutions Development Fund (which Fund assigned its claims to the NHFC) and we assume that this erf must also be sold and transferred to the City]

1.6. **Balance of the Purchase Price** – an amount of R5 000 000,00 (Five Million Rand) being the balance of the Purchase Price payable by the Purchaser to the Seller excluding the VAT on the Purchase Price;

1.7. **Brooklyn Mortgage Bond** – the first covering mortgage bond, mortgage bond number B 98459/2007 registered by the Seller over the Brooklyn Property in favour of Absa Bank Limited for an amount of R 25 000 000,00 (Twenty-Five Million Rand);

[CDH Note: we were advised on 8 December 2015 by the Seller's attorney that the Seller has not drawn down any amounts from the Absa facility of R25 000 000. Kindly confirm that no other amounts are due to Absa which may result in Absa not cancelling its bond, thus preventing transfer to the City of the Brooklyn Property]

1.8. **Brooklyn Property** - erf 20414 at Brooklyn in the City of Cape Town, Cape Division, Western Cape Province, measuring 4390 m2 in extent and held by the Seller under Deed of Transfer TT36808/1979;

1.9. **CA Atlantis Improvements** – the low cost housing units and all other improvements constructed by the Seller on the CA Atlantis Property;

1.10. **CA Atlantis Property** – the immovable property registered in the name of the Purchaser, in respect of which the Seller has no rights, comprising -

Wesfleur 81-7685	Wesfleur 81-7750	Wesfleur 81-7759
Wesfleur 81-7687	Wesfleur 81-7751	Wesfleur 81-7762
Wesfleur 81-7692	Wesfleur 81-7752	Wesfleur 81-7763
Wesfleur 81-7693	Wesfleur 81-7756	Wesfleur 81-7765
Wesfleur 81-7696	Wesfleur 81-7757	Wesfleur 81-7766;

1.11. **City Services Claim** – the amount agreed by the Purchaser as the amount due and owing in respect of outstanding rates, electricity and water charges relating to the Properties, being the agreed amount of R16 035 778.78 (Sixteen Million Thirty Five Thousand Seven Hundred and Seventy Eight Rand and Seventy Eight Cents);

[CDH Note: kindly could the City confirm the above amount]

- 1.12. **Clearance Certificate** - being a clearance certificate to be issued in respect of the Properties in terms of Section 118 of the Local Government: Municipal Systems Act, No. 32 of 2000;
- 1.13. **Compliance Certificate** - a certificate of compliance in respect of the CA Atlantis Improvements and all other buildings situate on the Properties as contemplated in the Electrical Installation Regulations promulgated under the Machinery and Occupational Safety Act, No. 6 of 1983;
- 1.14. **Conveyancers** - Bowman Gilfillan Incorporated, the conveyancers appointed by the Seller to attend to the Transfer;
- [CDH Note: the City and the Conveyancers are to agree a capped fee for the Transfer, as requested telephonically by us on 8 December 2015]
- 1.15. **Corporate Warranties** - the warranties set out in Annexure 1 under the heading "Corporate Warranties" given by each of the Parties to the other in terms of clause 12.2;
- 1.16. **Effective Date** - the date on which the Suspensive Condition is fulfilled or waived, as the case may be;
- 1.17. **Existing Mortgage Bonds** - collectively, the Brooklyn Mortgage Bond and the NHFC Mortgage Bond;
- 1.18. **Governmental Authority** - any Government, Governmental Department, Governmental Body, Commission, Board, Bureau, Agency, Regulatory Authority, Judicial or Administrative Body whether National, State, Provincial or Local, having jurisdiction over the matter or matters in question;
- 1.19. **Law** -
- 1.19.1. the common law; and
- 1.19.2. any present or future constitution, decree, judgment, legislation, measure, requirement, order, ordinance, regulation, statute, treaty, directive or rule having the force of law, issued, passed or promulgated by any Governmental Authority;
- 1.20. **NHFC** - National Housing Finance Corporation Limited, Registration Number 1996/05577/06, a public company duly registered and incorporated in accordance with the Law of South Africa;
- 1.21. **NHFC Claim** - an amount equal to R23,951,632.78 (Twenty-Three Million Nine Hundred Fifty-One Thousand Six Hundred Thirty-Two Point Seven Eight) [plus an amount of

R311,493.58 (Three Hundred Eleven Thousand Four Hundred Ninety-Three Point Five Eight) in respect of legal costs] being the total secured claim including interest and costs owed by the Seller to the NHFC pursuant to the loan facility agreement provided by the Seller and ceded and assigned to the Purchaser on [•];

- 1.22. [CDH Note: kindly could the City confirm the above amount] **NHFC Mortgage Bond** – the first covering mortgage Bond, mortgage bond number B 6829/2001 registered by the Seller over the Atlantis Property in favour of the National Housing Finance Corporation Limited, for an amount of R 19 145 160,00 (Nineteen Million One Hundred and Forty Five Thousand One Hundred and Sixty Rand) plus an additional sum of R 3 829 032,00 (three million eight hundred and twenty-nine thousand and thirty-two Rand);
- 1.23. **Parties** – the Seller and the Purchaser and their respective successors in title or assigns and “**Party**” shall mean either one of them as the context may indicate;
- 1.24. **Prime Rate** - the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (three hundred and sixty five) day year irrespective of whether or not the year is a leap year, from time to time published by FirstRand Bank Limited as being its prime overdraft rate, as certified by any representative of that bank whose appointment and designation it will not be necessary to prove;
- 1.25. **Properties** – collectively the:
- 1.25.1. Atlantis Property; and
- 1.25.2. Brooklyn Property;
- 1.26. **Purchase Price** – being the amount of R51 881 365.00 (Fifty One Million Eight Hundred and Eighty One Thousand Three Hundred and Sixty Five Rand) inclusive of VAT on the Purchase Price;
- 1.27. **Purchaser** – City of Cape Town, a Metropolitan Municipality, established in terms of the Local Government : Municipal Structures Act, No. 117 of 1998, with its principal place of business and administration for property matters at Department of Property Management City of Cape Town, 13th Floor, 5 Bay Side, Civic Centre, 12 Hertzog Boulevard, Cape Town, 8001 and duly authorised hereto;
- 1.28. **Registration Date/s** – the date on which the Transactions are registered in the Cape Town Deeds Registry;

[CDH Note: definition not used]

- 1.29. **Sale** - the sale by the Seller of the Sale Assets to the Purchaser in terms of this Agreement;
- 1.30. **Sale Assets** - collectively, the Properties and the CA Atlantis Improvements;
- 1.31. **Seller** - Housing Association Blaauwberg (Association Incorporated in terms of Section 21 of the now repealed Act, No. 61 of 1973) (in liquidation), registration number: 1999/002976/08, herein represented by its duly appointed liquidator being Trevor Philip Glaum N.O., Stephen Malcolm Gore N.O., and Raphael Grant Brink N.O.;
- 1.32. **Signature Date** - the date of signature of this Agreement by the Party last signing;
- 1.33. **Suspensive Condition** - the suspensive condition set out in clause 3.1 and "Suspensive Condition" shall mean any one of them as the context may indicate;
- 1.34. **Transactions** - the registration of the Transfers in the Cape Town Deeds Registry;
- 1.35.
- 1.36. **Transaction Warranties** - the warranties set out in Annexure 1 under the heading "Transaction Warranties" given by the Seller to the Purchaser in terms of clause 12.1;
- 1.37. **Transfer** - registration of transfer of the Properties into the name of the Purchaser in the Cape Town Deeds Registry;
- 1.38. **VAT** - value-added tax as levied from time to time in terms of the VAT Act;
- 1.39. **VAT Act** - the Value-Added Tax Act, No 89 of 1991; and
- 1.40. **VAT on the Purchase Price** - the VAT payable and included in the Purchase Price in the aggregate amount of R6 371 395.70 (Six Million Three Hundred and Seventy One Thousand Three Hundred and Ninety Five Rand and Seventy Cents).

2. SALE

The Seller sells the Sale Assets to the Purchaser (which purchases the Sale Assets from the Seller), for the Purchase Price inclusive of VAT on the Purchase Price, on the terms and conditions set out in this Agreement.

3. SUSPENSIVE CONDITION

- 3.1. The operation of this Agreement is subject to the fulfilment of the Suspensive Condition that the Purchaser withdraws the action instituted against the Seller, under case number: 2116/2010 in the High Court of South Africa (Western Cape High Court, Cape Town), on or

before the tenth (10th) business day after the Signature Date, on the basis that each Party pays its own costs.

- 3.2. The Suspensive Condition contemplated in clause 3.1 may not be relaxed or waived other than by written agreement between the Parties.
- 3.3. The Parties undertake to use their respective reasonable endeavours to procure the timeous fulfilment of the Suspensive Condition.
- 3.4. The due date for the fulfilment or waiver (as the case may be) of the Suspensive Condition may be extended by the Parties by agreement in writing to such further date or dates as the Parties may determine.
- 3.5. If the Suspensive Condition is not fulfilled by the due date for the fulfilment thereof (or such later date/s as may be agreed to in writing by the Parties), then the provisions of this Agreement shall be of no further force and effect and the Parties shall be restored to the position in which they would have been had this Agreement not been concluded and the Deposit shall be paid to the Purchaser together with the interest accrued thereon. No Party shall have any claim against the other as a result of the failure of the said condition (save for a breach by either Party of its obligations in terms of clause 3.3).
- 3.6. The provisions of this clause and clauses 1, 14, 15 to 17 (inclusive) are separate and severable from the remaining provisions of the Agreement, and are of immediate force and effect and will be given effect to whether or not the Suspensive Condition is fulfilled.

4. PURCHASE PRICE AND THE VAT ON THE PURCHASE PRICE

4.1. The Purchase Price

The aggregate consideration payable by the Purchaser to the Seller for the acquisition of the Sale Assets shall be the Purchase Price which is inclusive of VAT on the Purchase Price.

4.2. Allocation of the Purchase Price

The Purchase Price will be allocated as follows –

- 4.2.1. R34 000 000.00 (Thirty Four Million Rand) plus VAT, being the amount of R38 760 000.00 (Thirty Eight Million Seven Hundred and Sixty Thousand Rand) as to the Atlantis Property;
- 4.2.2. R1 059 969.30 (One Million and Fifty Nine Thousand Nine Hundred and Sixty Nine Rand and Thirty Cents) plus VAT, being the amount of R1 208 365.00 (One Million Two

Hundred and Eight Thousand Three Hundred and Sixty Five Rand) as to the Brooklyn Property; and

- 4.2.3. R10 450 000.00 (Ten Million Four Hundred and Fifty Thousand Rand) plus VAT, being the amount of R11 913 000.00 (Eleven Million Nine Hundred and Thirteen Thousand Rand) as to the CA Atlantis Improvements.

4.3. **Set-Off**

- 4.3.1. The Parties hereby record that as at the Signature Date –

- 4.3.1.1. the Seller is indebted to the Purchaser in respect of the NHFC Claim and the Advance which were ceded to the Purchaser on 7 April 2015;

[CDH Note: the Sale and Cession of Claims and Voting Rights Agreement was last signed on 7 April 2015. Kindly advise when the Advance was ceded and provide a copy of the Cession Agreement or cession document]

- 4.3.1.2. an amount equal to the agreed City Services Claim, due and owing by the Seller to the Purchaser, in full settlement of amounts outstanding for rates, electricity and water relating to the Properties.

- 4.3.2. The Parties hereby acknowledge and agree that –

- 4.3.2.1. the Purchaser has taken cession of the NHFC Claim including the Advance;

- 4.3.2.2. set-off shall be applied as between the Purchase Price and the Adjustment Amount; and

- 4.3.2.3. as a consequence of the set-off applied in this clause 4.3.2, the Purchaser shall only be liable to pay to the Seller the Balance of the Purchase Price calculated as follows –

Purchase Price (including VAT on the Purchase Price)	R51 881 365.00
Less: Adjustment Amount	R40 509 970.78
Balance due by Purchaser (“Cash Amount”)	R11 371 395.08

The Cash Amount comprises of the following –

Balance of the Purchase Price	R 5 000 000.00
Plus: VAT on the Purchase Price	R 6 371 395.70

Cash Amount 70

R11 371 395.08

4.3.3. After the application of the set off (as contemplated in this clause 4.3), the Purchaser will have no further claim(s) against the Seller in respect of the NHFC Claim, the Advance and the City Services Claim.

4.4. Payment of the Balance of the Purchase Price and the VAT on the Purchase Price

4.4.1. The Purchaser shall pay the Cash Amount into the Conveyancer's trust account within 45 (forty five) days of receipt by the Purchaser from the Seller of a VAT invoice (in a format that is to the satisfaction of the Seller and the Purchaser) for the Purchase Price, which Cash Amount shall be held by the Conveyancers in an interest bearing call account (in terms of section 78(2A) of the Attorneys Act, No.53 of 1979) with the interest accruing for the benefit of the Purchaser. The Seller shall not deliver that VAT invoice prior to 50 (fifty) days before the anticipated date of lodgement of the Transfer documents in the Deeds Office.

4.4.2. On the Registration Date, the Balance of the Purchase Price shall be paid to the Seller, the VAT on the Purchase Price shall be paid directly to the South African Revenue Service, and the interest which has accrued on the same until the Registration Date shall be paid to the Purchaser.

4.4.3. On or before the Registration Date, the Purchaser shall deliver the Acquittances, duly signed, to the Seller.

5. VALUE-ADDED TAX

5.1. The Parties record that the Seller is a vendor in terms of the VAT Act and that, to the best of their knowledge and belief, VAT is payable in respect of the Sale. The Purchase Price is expressed inclusive of VAT on the Purchase Price. The VAT on the Purchase Price shall be paid to the South African Revenue Service on the Registration Date.

5.2. The Seller undertakes to provide the Purchaser with a valid VAT invoice in respect of the VAT prior to the Registration Date.

5.3. If for any reason the South African Revenue Service holds that VAT is not payable in respect of the Sale or a part of the Sale, then the Seller shall promptly refund to the Purchaser any amount refunded to the Seller on account of VAT on the Purchase Price.

6. TRANSFER

- 6.1. The Seller shall procure that the Conveyancers attend to the registration of the Transactions as soon as is reasonably possible after the Effective Date and after the Purchaser has complied with all of its obligations in terms of this Agreement.
- 6.2. The Seller shall ensure that the Brooklyn Mortgage Bond is cancelled no later than the date of registration of the Transactions.
- 6.3. All the costs of and incidental to the Transfer, including conveyancing fees (together with the VAT payable on such fees), and any other costs or duties payable of a similar nature, in respect of the Transfer shall be paid by the Purchaser to the Conveyancers as soon as possible after the Signature Date and after having received from the Conveyancers VAT invoices (in a format that is to the satisfaction of the Purchaser) but by no later 60 (sixty) days before anticipated date of Transfer, for all the costs of an incidental to Transfer, which fees, costs and/or duties shall be the amount agreed between the Purchaser and the Conveyancers.
- 6.4. The Purchaser shall pay the costs of Transfer to the Conveyancers within 30 (thirty) days of request after receipt of a VAT invoice from the Conveyancers.
- 6.5. The Parties undertake to sign all Transfer documents without delay and to provide all documents and information and do all things necessary in order to effect Transfer, when called upon to do so by the Conveyancers.
- 6.6. Prior to Transfer the Purchaser undertakes to sign a repayment undertaking in terms of Annexure 3 in respect of the NHFC Claim and the Advance which has been ceded to the Purchaser.

7. CLEARANCE FIGURES

The Purchaser, having taken responsibility for the City Services Claim, shall assist in procuring the issue of the rates clearance certificate.

8. ELECTRICAL COMPLIANCE AND OTHER PROPERTY RELATED CERTIFICATES

- 8.1. The Seller is not obliged to procure the issue of a Compliance Certificates.
- 8.2. The Purchaser acknowledges that no liability regarding the electrical installation shall rest upon the Seller and the Purchaser waives any and all claims whatsoever regarding the electrical installation against the Seller.

- 8.3. The Purchaser accepts that the Seller shall not furnish any certificate by an accredited plumber with the City of Cape Town that the water supply to the Properties conforms with the requirements stipulated in section 14 of the City of Cape Town Water By-law, 2010 and the Purchaser acknowledges that the Seller gives no warranties and the Purchaser waives any and all claims in this regard.
- 8.4. The Seller shall not be obliged to furnish to the Purchaser a certificate of conformity issued by an authorised person as defined in the Pressure Equipment Regulations 2009 made by the Minister of Labour under section 43 of the Occupational Health and Safety Act, No. 85 of 1993, to the effect that the gas installation on the Properties conforms to the required health and safety standard and the Purchaser acknowledges that the Seller gives no warranties and the Purchaser waives any and all claims in this regard.
- 8.5. In the event that any of the aforementioned certificates are required the Purchaser shall be responsible for same and indemnifies the Seller against any costs arising in respect thereof.

9. OWNERSHIP, RISK AND BENEFITS

- 9.1. The Parties hereby record and agree that as at the Signature Date the Purchaser is in occupation of the CA Atlantis Improvements by virtue of the CA Atlantis Improvements having being constructed on the CA Atlantis Property.
- 9.2. With effect from the Registration Date -
- 9.2.1. ownership and all the benefits of ownership of the Sale Assets shall be given by the Seller and taken by the Purchaser;
- 9.2.2. loss or profit in and to the Sale Assets shall pass to the Purchaser;
- 9.2.3. the Purchaser is entitled to every benefit arising from the Sale Assets and liable for all obligations arising from the Sale Assets; and
- 9.2.4. the Purchaser shall be responsible for and shall pay all rates, taxes, municipal charges levied on the Sale Assets and other expenses relating to the Sale Assets.
- 9.3. Within 15 (fifteen) Business Days after the Registration Date, or as soon as reasonably possible thereafter, the Purchaser shall replace all guarantees or deposits given by the Seller to the Relevant Authority relating to the Properties.

- 9.4. The Seller shall, as soon as is reasonably practical after the Registration Date but no later than 20 (twenty) business days after the Registration Date, deliver to the Purchaser all such documents which it may have in its possession and which relate to the Sale Assets.

10. VOETSTOOTS

- 10.1. The Parties agree that in respect of Sale Assets the Seller -
- 10.1.1. shall not be required by the Purchaser to point out the beacons, pegs, boundaries or boundary marks of the Properties to the Purchaser; and
- 10.1.2. shall not be liable to the Purchaser if the extent of the Properties is found to differ from that stated in the title deed.
- 10.2. Save for the Corporate Warranties and the Transaction Warranties, no warranties or representations are given or made, regarding the Properties the improvements or the condition of such Properties, or any other matter whatsoever, whether express, tacit or implied, and the Properties are sold *voetstoots*.

11. TENANCIES

The Purchaser acknowledges that the Properties are occupied and/or have existing tenants and the Purchaser takes over such Properties on this basis and agrees that it has no claims against the Seller in regard thereto.

[CDH Note: the City is required to waive its claims against the Seller in respect of the tenants]

12. WARRANTIES

- 12.1. The Seller provides the Transaction Warranties to and in favour of the Purchaser (subject to the provisions of clause 12.6).
- 12.2. Each of the Parties provides the Corporate Warranties to and in favour of the other.
- 12.3. Each of the Corporate Warranties and the Transaction Warranties:
- 12.3.1. is a separate warranty and is in no way limited or restricted by reference to or inference from the terms of any of the other Corporate Warranties and the Transaction Warranties;
- 12.3.2. shall continue and remain in force notwithstanding registration of Transfer; and
- 12.3.3. is a repeating warranty and representation and is deemed to be made on the Signature Date and on each day from the Signature Date to the Registration Date.

12.4. Each of the Corporate Warranties shall *prima facie* be deemed to be a material warranty and representation inducing the other Party to enter into this Agreement.

12.5. Each of the Transaction Warranties shall be deemed to be a material warranty and representation inducing the Purchaser to enter into this Agreement.

12.6. The existence of any fact or circumstance which:

12.6.1. is disclosed by the Seller to the Purchaser in writing before the date on which the Purchaser signs this Agreement; and/or

12.6.2. is apparent from the terms of this Agreement; and/or

12.6.3. arises as a result of any change in any Law or in its interpretation;

shall, notwithstanding any contrary Transaction Warranty given, not constitute a breach of the Transaction Warranty concerned which shall be deemed not to have been given insofar as it relates to that fact or circumstance.

12.7. Should any payment under or arising from this Agreement fail to be made on the due date thereof then, without prejudice to such other rights as may accrue to the payee consequent upon such failure, such overdue amounts will bear interest at the Prime Rate, from the due date for payment to the date of actual payment, both dates inclusive.

13. **ARBITRATION**

13.1. Save for any dispute resolution in terms of clause 13 any dispute arising out of this agreement or its interpretation, both while in force and after its termination, shall, other than a dispute in respect of which urgent relief is sought in a court of law, be submitted to and determined by arbitration. Such arbitration shall be held in Cape Town unless otherwise agreed to between the parties and shall be held in a summary manner with a view to it being completed as soon as possible.

13.2. There shall be 1 (one) arbitrator who shall be, if the question in issue is:

13.2.1. primarily an accounting matter, an independent chartered accountant with a minimum of 10 (ten) years' experience;

13.2.2. primarily a legal matter, a practising advocate with a minimum of 10 (ten) years' experience; and

13.2.3. any other matter, a suitably qualified person.

- 13.3. The appointment of the arbitrator shall be agreed upon between the Parties, but failing agreement between them within a period of 10 (ten) Business Days after the arbitration has been demanded by any Party by written notice to the other parties, any of the parties shall be entitled to request the chairperson for the time being of the Arbitration Foundation of Southern Africa to make the appointment who, in making his appointment, shall have regard to the nature of the dispute.
- 13.4. Subject to the other provisions of this clause 13 each arbitration shall be held in accordance with the Rules of the Arbitration Foundation of Southern Africa.
- 13.5. Subject to the other provisions of this clause and in particular subject to clause 13.4, each arbitration shall be held in accordance with the provisions of the Arbitration Act, 1965, as amended.
- 13.6. The arbitrator shall be obliged to give in writing the reasons for any decision made by him in the course of the arbitration.
- 13.7. The decision of the arbitrator shall be final and binding on the parties, and may be made an order of any court of competent jurisdiction. Each of the Parties hereby submits itself to the jurisdiction of the High Court in South Africa (Western Cape High Court, Cape Town) should any other Party wish to make such a decision an order of that Court.
- 13.8. The provisions of this clause 13 shall survive any termination of this agreement.
- 13.9. Nothing in this clause 13 shall preclude any Party from seeking an interim relief from any competent court having jurisdiction pending the institution of any arbitration proceedings in terms of this clause and each of the Parties hereby submits itself to the jurisdiction of the High Court in South Africa (Western Cape High Court, Cape Town) for this purpose.

14. **BREACH**

- 14.1. In the event of any of the Parties ("Defaulting Party") committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of 14 (fourteen) Business Days after receipt of a written notice from the other Party ("Aggrieved Party") calling upon the Defaulting Party so to remedy, then the Aggrieved Party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement forthwith and without further notice, and in either case to claim and recover damages from the Defaulting Party.

- 14.2. Notwithstanding anything to the contrary herein contained neither Party shall be entitled to cancel this Agreement by reason of any breach of this Agreement by the other unless such breach is material and goes to the root of this Agreement.
- 14.3. The Parties agree that any costs awarded will be recoverable on an attorney-and-own-client scale unless the Court specifically determines that such scale shall not apply, in which event the costs will be recoverable in accordance with the High Court tariff, determined on an attorney-and-client scale.

15. NOTICES AND DOMICILIA

- 15.1. The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following e-mail addresses:

Seller	3 rd Floor, 5 St George's Mall Cape Town 8000 Tel: 021 418 4010 Facsimile: 021 425 2047 E-mail: Trevor@sanek.co.za Attention: Trevor Glaum
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Purchaser	City of Cape Town 13 th Floor, 4 Bay Side Civic Centre 12 Hertzog Boulevard Cape Town 8001 Tel: 021 400 3584 E-mail: Antoinette.Markram@capetown.gov.za Attention: (1) Dr. Ivan Bromfield in his capacity as the Executive Director: Human Settlements of the City; (2) Ms Antoinette Markram in her capacity as the Principal Legal Advisor of the City,
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provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or e-mail address by written notice to the other Party to that

effect. Such change of address will be effective 5 (five) Business Days after receipt of the notice of the change.

15.2. All notices to be given in terms of this Agreement will be given in writing and will:

15.2.1. be delivered by hand or sent by email;

15.2.2. if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and

15.2.3. if sent by e-mail during business hours, be presumed to have been received on the date of successful transmission of the e-mail. Any e-mail sent after business hours or on a day which is not a Business Day will be presumed to have been received on the following business day.

15.3. Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 15.

16. INTERPRETATION

16.1. Clause and paragraph headings are for purposes of reference only and shall not be used in interpretation.

16.2. Unless the context clearly indicates a contrary intention, any word connoting:

16.2.1. any gender includes the other two genders;

16.2.2. the singular includes the plural and *vice versa*;

16.3. natural persons includes juristic and artificial persons and *vice versa*;

16.4. insolvency includes provisional or final sequestration, liquidation or judicial management.

16.5. When any number of days is prescribed such number shall mean calendar days, unless Business Days are expressly referred to, and shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in South Africa, in which case the last day shall be the next succeeding Business Day.

16.6. A reference to an enactment is a reference to that enactment as at the Signature Date and as amended or re-enacted from time to time.

- 16.7. The rule of interpretation that a written agreement shall be interpreted against the Party responsible for the drafting or preparation of that agreement shall not apply.
- 16.8. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 16.9. The *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.
- 16.10. Where any term is defined within the context of any particular clause in this Agreement, then, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, the term so defined shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in the definition clause.

17. GENERAL AND MISCELLANEOUS

17.1. Whole Agreement

- 17.1.1. This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
- 17.1.2. This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

17.2. Variations to be in Writing

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

17.3. No Indulgences

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this

Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

17.4. No Waiver or Suspension of Rights

No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

17.5. Severability

Each and every provision of this Agreement (excluding only those provisions which are essential at law for a valid and binding Agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of this Agreement. If any of the provisions of this Agreement (excluding only those provisions which are essential at law for a valid and binding Agreement to be constituted) is found by any court of competent jurisdiction to be invalid and/or unenforceable then, notwithstanding such invalidity and/or unenforceability, the remaining provisions of this Agreement shall be and remain of full force and effect.

17.6. Continuing Effectiveness of Certain Provisions

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

17.7. Assignment

Neither of the Parties may assign this Agreement or any of its rights and obligations under it except with the prior written consent of the other, which consent shall not be unreasonably withheld.

17.8. Costs

Each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

17.9. Counterparts

This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this Agreement by signing any such counterpart.

17.10. Successor Bound

This Agreement shall be binding on and shall inure for the benefit of each Party's successors in title and/or permitted assign/s.

17.11. Signature

17.11.1. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

17.11.2. The persons signing this Agreement in a representative capacity warrant their authority to do so.

17.12. Governing Law

This Agreement shall be governed, interpreted and enforced according to the Laws of South Africa.

SIGNED at _____ on this the _____ day of _____ 2015.

For and on behalf of

Trevor Philip Glaum N.O.
Capacity: Trustee
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 2015.

For and on behalf of

Stephen Malcolm Gore N.O.
Capacity: Trustee
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 2015.

For and on behalf of

Raphael Grant Brink N.O.
Capacity: Trustee
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 2015.

For and on behalf of
CITY OF CAPE TOWN

Signatory:
Capacity:
Who warrants his authority hereto

WARRANTIES

1. Corporate Warranties

Each of the Parties warrants to and in favour of the other that:

- 1.1 it has the legal capacity and has taken all necessary corporate action required to conclude this Agreement;
- 1.2 this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
- 1.3 the execution of this Agreement and the performance of its obligations hereunder does not and shall not –
 - 1.3.1 contravene any Law;
 - 1.3.2 contravene any provision of that Party's constitutional documents (if applicable); or
 - 1.3.3 conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it.

2. Transaction Warranties

The Seller warrants to and in favour of the Purchaser that:

- 2.1 the Seller is the owner of the Sale Assets and is entitled and able to give free and unencumbered title to the Sale Assets to the Purchaser on the Registration Date;
- 2.2 no person has any right (including any option or right of first refusal) to acquire any interest in or to the Sale Assets other than the Purchaser in terms of this Agreement;
- 2.3 to the best of the Seller's knowledge and belief, the Properties are not subject to any servitude or condition of title which does not appear from the Seller's title deed to the Properties;
- 2.4 the Seller has not concluded any agreements in terms of which any restrictive conditions, servitudes or other real rights have been granted in respect of the Properties or in terms of which any person is entitled to obtain any real rights in respect of the Properties;

2.5 the Seller has no knowledge of any lodged or pending claim relating to the Properties or any part thereof, in terms of or pursuant to the Restitution of Land Rights Act, No. 22 of 1994.

3. Information

The Seller does not warrant the accuracy of any information and/or documentation furnished to the Purchaser.

ACQUITTANCES

REPAYMENT UNDERTAKING