



STELLENBOSCH
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MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Ref no.3/4/2/5

2023-12-04

SPECIAL MAYORAL COMMITTEE MEETING
WEDNESDAY, 2023-12-06 AT 10:00

TO The Executive Mayor, Ald G Van Deventer
The Deputy Executive Mayor, Cllr J Fasser

COUNCILLORS JC Anthony
R du Toit
P Johnson
J Joon
X Kalipa
L Nkamisa
R Pheiffer
C van Wyk
J Williams

Notice is hereby given that a Special Mayoral Committee Meeting will be held via **MS Teams** on **Wednesday, 2023-12-06 at 10:00** to consider the attached agenda.

EXECUTIVE MAYOR, ALD GM VAN DEVENTER

CHAIRPERSON

AGENDA
SPECIAL MAYORAL COMMITTEE MEETING
2023-12-06
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5.	CONSIDERATION OF ITEMS BY THE EXECUTIVE MAYOR: [ALD G VAN DEVENTER]
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5.1	LEASE AGREEMENT APPLICATION: USE OF COUNCIL-OWNED LAND FOR PARKING PURPOSES: ATTERBURY: PORTION OF LEASE FARM 369P
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Collaborator No: 759383
 IDP KPA Ref No: Good Governance
 Meeting Date: 06 December 2023

1. SUBJECT: LEASE AGREEMENT APPLICATION: USE OF COUNCIL-OWNED LAND FOR PARKING PURPOSES: ATTERBURY: PORTION OF LEASE FARM 369P

2. PURPOSE

To consider the application from Atterbury to lease a portion Farm 369P (also known as Trumali parking) for parking purposes for a period of 9 Years and 11 months.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of the lease agreement of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

When this property (Farm 961/3) was previously owned by Medi Clinic, they had an Encroachment Agreement with Council to use the portion of Farm 369P for parking purposes. This area was excluded from the K.W.V Lease Agreement. This agreement, however, lapsed when they sold the property and relocated their offices to the ex-BAT property in Stellenbosch.

Council on 2020-11-25 considered a request from Attebury to lease Farm 369P (also known as Trumali parking) for parking purposes and inter alia resolved :

- that council in principle approves the lease agreement with Atterbury, to enable them to use a portion of Lease Farm 369P, consisting of 100 parking bays;
- provided that Council's intention to conclude a lease Agreement with Atterbury for a period of 12 months be advertised for public comments/inputs/objections, where after a Council will consider any inputs and then make a final determination in this regard;
- that council lease the land based on the "encroachment" parking tariffs as approved in the latest tariff book; and
- that the applicants be allowed to use the parking bays until council can make a

final determination provided that the tariff set out in the tariff book is paid on a monthly basis”.

The notice was published, and no objections were received.

The matter served again before Mayco in May 2021 **EXECUTIVE MAYORAL COMMITTEE: 2021-05-19: ITEM 7.2.3**

RESOLVED

- (a) that Council takes note of the fact that no comments/inputs or objections were received on the advertisement indicating an intention to lease the property for 12 months;
- (b) that Council approves the lease agreement for 12 months;
- (c) that the Municipal Manager be delegated to determine a market-related rental amount; and
- (d) that the new request of Atterbury follows the normal process after the Task Team completed the process on the assessment of Council properties.

No record can be found that the previous Manager Property Management concluded the agreement with Atterbury for the parking area.

Atterbury when informed about the in-principle council resolution in 2020 however, requested that the term of Lease be for a period of 9 years and 11 months. This request could not be considered at that stage as the public participation process was dealt with based on a 12-month lease agreement. Council also requested the Municipal Manager to follow a process to assess council properties and report back by December 2021.

Atterbury has again applied to lease the already developed parking area consisting of 100 parking bays for additional parking bays for their staff.

The application served before Mayco on 16 November and the item was referred to the Special Mayoral meeting of December 2023.

5. RECOMMENDATION

For consideration:

- (a) that the portion of Lease Farm 369P, consisting of 100 parking bays be identified as land not needed for any basic municipal service;
- (b) that a lease agreement be concluded with Atterbury for the lease of the parking area for a period of three (3) years;
- (c) that the monthly rental payable will be determined by the prescribed tariffs as published on a yearly basis;
- (d) that the escalation be determined as 6% per annum from 1 July 2024; and
- (e) that Atterbury needs to obtain approval from the Municipality before any building work or fencing is done on the property and that building plans need to be submitted and approved before construction commences.

6. DISCUSSION / CONTENT**6.1 Background****6.1.1 Encroachment Agreement with Medi - Clinic to use a portion of Lease Farm 369 for parking purposes**

When Medi-Clinic was the owner of the Portion 3 of Farm 961, Stellenbosch, they applied for an Encroachment permit to allow them to use the area for parking purposes. The agreement was subsequently approved (with the consent of KWV), but has since lapsed, when Medi-Clinic sold the property to Atterbury, following their relocation to the ex-BAT offices in Stellenbosch.

Atterbury subsequently applied to lease the property for 12 months which was considered by council on 25 November 2020 and decided to approve the application in principle subject to the application being advertised for a period of 12 months. The application was advertised and no objections were received. On 19 May 2021 Mayco approved the application for a 12-month lease despite the fact that Attebury requested a longer period. No lease agreement was entered into and Atterbury has now again applied for a lease but for a term of 9 years 11 months.

6.1.2 Application from Atterbury to lease a Portion of Lease Farm 369P for parking purposes

Hereto attached as **APPENDIX 1** an application received from Atterbury to use a portion of Lease Farm 369P, consisting of 100 parking bays, for additional parking purposes for their staff.

6.2 DISCUSSION**6.2.1 Location and context**

The property under discussion is situated off Trumali Street, Brandwacht, as shown on Fig 1 and 2 below. The area has been developed by Medi-Clinic when they were leasing it from Council, at their cost. The area consists of 100 parking bays.

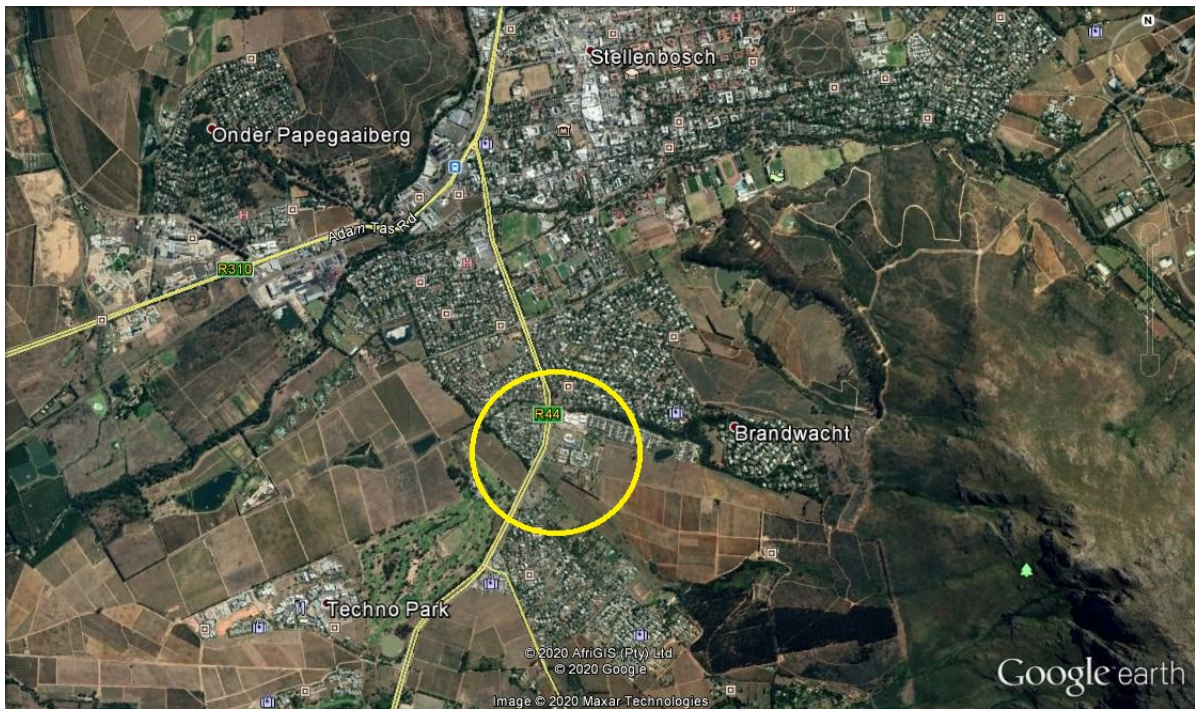


Fig 1: Location and context



Fig 2: Proposed leasing area



Fig 3: Developed parking area

6.3 Financial implication

6.3.1 The tariff for rental of parking bays is approved on an annual basis by council when the budget is approved. The current rate for parking bays outside the Stellenbosch CBD is R221.00 per parking per month. For the 100 parking bays this will be R 22 100.00 per month.

6.4 Legal requirements

6.4.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may **be required for the municipality's own use** during the period for which the right is to be granted;
- b) the extend to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) Compliance with the legislative regime applicable to the proposed granting of the right.

6.4.3 Property Management Policy

In terms of paragraph 9.2.2 of the Policy, the Municipal Council may dispense with the prescribed, competitive process, and may enter into a private treaty agreement through any convenient process, which may include direct negotiations, but only in specific circumstances, and only after having advertised Council's intention so to act. One of the circumstances listed in (h) is where encroachment applications are received from adjoining owners, subject to approved tariff structure.

6.5 STAFF IMPLICATIONS

No additional staff implications

6.6 RISK IMPLICATIONS

The risks are addressed in the content of the item.

6.7 PREVIOUS COUNCIL RESOLUTIONS:

On 25 November 2020 Council considered a request from Atterbury to enter into a Lease Agreement i.r.t a portion Lease Farm 369P, for additional parking purposes. Having considered the application, Council resolved as follows:

“RESOLVED (majority vote)

- *that the portion of Lease Farm 369P, consisting of 100 parking bays be identified as land not needed for any other municipal service;*
- *that council **in principle** approves the lease agreement with Atterbury, to enable them to use a portion of Lease Farm 369P, consisting of 100 parking bays;*
- ***that Council’s intention to conclude a lease Agreement with Atterbury for a period of 12 months without following a supply chain process be advertised for public comments/inputs/objections, whereafter a return item will be submitted to Council to make a final determination in this regard;***
- *that council lease the land based on the “encroachment” parking tariffs as approved in the latest tariff book; and*
- *that the applicants be allowed to use the parking bays until council can make a final determination provided that the tariff set out in the tariff book is paid on a monthly basis”.*

EXECUTIVE MAYORAL COMMITTEE: 2021-05-19: ITEM 7.2.3**RESOLVED**

- (e) that Council takes note of the fact that no comments/inputs or objections were received on the advertisement indicating an intention to lease the property for 12 months;
- (f) that Council approves the lease agreement for 12 months;
- (g) that the Municipal Manager be delegated to determine a market-related rental amount; and
- (h) that the new request of Atterbury follows the normal process after the Task Team completed the process on the assessment of Council properties.

EXECUTIVE MAYORAL COMMITTEE: 2023-11-16: ITEM 7.3.15**RESOLVED**

that this matter be referred to the Special Mayoral meeting of December 2023.

6.8 COMMENTS FROM SENIOR MANAGEMENT**6.8.1 Infrastructure Services**

Infrastructure Services supports a lease period of 12 months. The Municipality is currently reviewing and proposing Parking Strategies and Implementation Plans, a long-term lease may impact on or limit proposals for the Strategy and Implementation Plan.

6.8.2 Municipal Manager:

Supports a shorter-term agreement.

ANNEXURES: **Appendix 1: Application**

FOR FURTHER DETAILS CONTACT:

NAME	<i>Annalene de Beer</i>
POSITION	<i>Director: Corporate Services</i>
DIRECTORATE	<i>Corporate Services</i>
CONTACT NUMBERS	<i>021-8088018</i>
E-MAIL ADDRESS	<i>annalene.debeer@stellenbosch.gov.za</i>
REPORT DATE	<i>2023-11- 30</i>

DIRECTOR: CORPORATE SERVICES

APPENDIX 1



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LEASE AGREEMENT APPLICATION FORM

A: APPLICANT'S DETAILS

Name : Serra Property Holdings (Pty) Ltd

Physical address: C/O Atterbury Management Services
2nd Floor, Die Klubhuis,
Cnr 26 Pinaster Ave & 18th Street
Hazelwood, Pretoria
Postal code: 0081

Mailing address: Atterbury Property, La Craaiude
95 Dorp Street Herehuis
Stellenbosch
Postal code: 7600

E-mail address: ~~_____~~

Telephone: ~~_____~~

Cell phone: ~~_____~~

B: PROPERTY DETAILS OF APPLICANT

(Trumiali Park)

Erf/farm number : Erf 16523

Suburb: Paradyskloof

Town: Stellenbosch

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number :

Suburb:

Town: Stellenbosch

Area of encroachment: ± 3000 m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

- For commercial purposes, other than for parking
- For commercial parking purposes,
- For residential parking purposes
- For non-commercial purposes (such as garden purposes, gates, ect)
- For projecting structures onto street reserves
- For projecting structures onto other council-owned land
- Other: please provide description:

Brief description of application: We are the owners of Erf 16523 (Trumali Park), opposite the proposed lease area. We intend to lease

Motivation: the proposed area from the municipality for 9 yrs and 11 months to accommodate / provide more parking for our existing tenants in Trumali Park. The previous owners of the park also had a lease over this area with the municipality. We commit to tidy up this area and to keep it clean for the lease period as the current condition is not favorable to the area.

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

N/A

Diagram of proposed area of the lease area

Letters of consent (affected neighbours)

N/A

Application fee (non-refundable)

Please confirm

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature:

Date: 14/02/2023

Full name: Gerit Johannes van den Berg

5.2	RENEWAL OF LEASE AGREEMENT APPLICATION: USE OF COUNCIL-OWNED LAND FOR TELECOMMUNICATIONS BASE STATION ON THE REMAINDER OF ERF 2149 STELLENBOSCH
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Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

06 December 2023

1. SUBJECT: RENEWAL OF LEASE AGREEMENT APPLICATION: USE OF COUNCIL-OWNED LAND FOR TELECOMMUNICATIONS BASE STATION ON THE REMAINDER OF ERF 2149 STELLENBOSCH

2. PURPOSE

For Council-to consider the request from Helios Towers (Pty) Ltd for the lease of a portion of Council-owned land for an existing Telecommunications Base Station (previously leased by Eagle Towers).

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated authority to consider applications for Lease agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

4. EXECUTIVE SUMMARY

A lease agreement was entered into between the Municipality and Eagle Towers on 15 June 2018 for a period of 9 years 11 months where the initial period will be 5 years with the option to renew for a further 4 years and 11 months. This lease agreement was ceded over to Helios Towers by Eagle Towers and the lease is up for renewal as from July 2023 for a further period of 4 years and 11 months. The property Management Department was informed about the cession agreement between Eagle Towers and Helios Towers during May 2020. Helios Towers has brought an application for lease of municipal land and they have also provided a lease agreement subject to the approval of Council. It must be noted that their proposal is for 9 years and 11 months and not just for the remainder of the period as per the 2018 agreement and the cession agreement that was signed in 2020. The current agreement does not comply with the Asset transfer regulations as it did not go through a public participation process. Before Council agrees to a renewal for the rest 4 years and 11 months such public participation process must take place.

The department does not support a lease outside the current agreed period in the lease agreement as concluded in 2018. The tower is situated on the same property as the Lapland flats.

5. RECOMMENDATIONS

- (a) that the Remainder of Erf 2149 Stellenbosch where the tower is situated be identified as land not needed to provide basic municipal services;
- (b) that Helios Towers be allowed to in principle to lease the existing Telecommunication base station for the additional period of 4 years 11 months from 1 July 2023 subject to Council advertising the intention for public input and comment;

- (c) that the applicant continues to pay rent for the current structure 'lease on a month -to-month basis until a final decision is taken and a renewal agreement has been signed; and
- (d) that the item be returned to Mayco after the public participation process for a final decision.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Remainder of Erf 2149, Stellenbosch

This is a portion of land on the remainder of Erf 2149, Stellenbosch with a previous lease agreement in place for the existing Telecommunications Base Station. The ownerships of this property vests in the Municipality.

6.1.2 Application from Helios Towers (Pty) Ltd to lease Remainder of Erf 2149, Stellenbosch

Hereto attached as **APPENDIX 1** an application received from Helios Towers to lease the Remainder of Erf 2149, Stellenbosch. Hereto attached as **APPENDIX 2** is the lease agreement provided by Helios Towers for consideration by council. Attached as **APPENDIX 3** the previous lease agreement with Eagle Towers. Attached as **APPENDIX 4** is the letter from Eagle Towers informing the municipality of the cession agreement between themselves and Helios Towers.

6.2 DISCUSSION

6.2.1 Location and context

The tower is on the same erf as the Lapland flats.

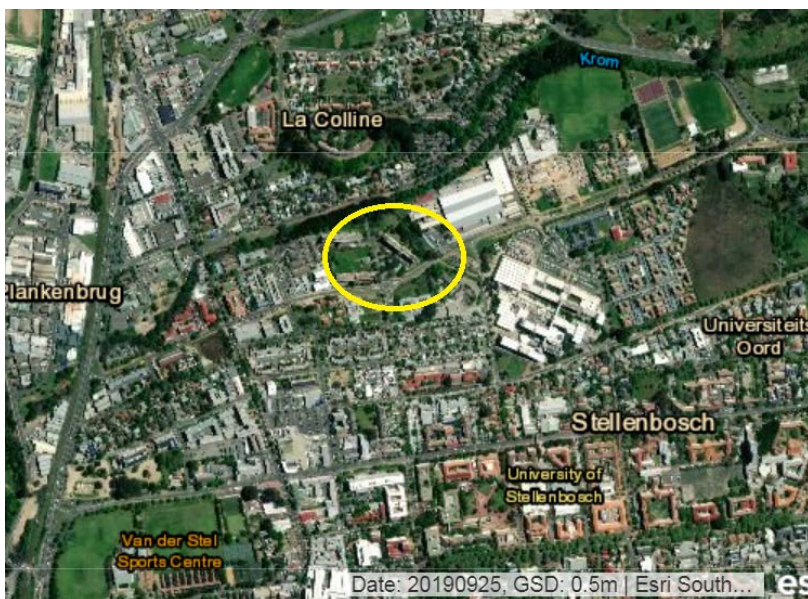


Fig 1: Location and context



Fig 2: The site

6.2 Legal requirements

6.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- f) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- g) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- h) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- i) Any comments received from the local community, and
- j) Compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2 Property Management Policy

In terms of paragraph 9.2.2 of the Policy, the Municipal Council may dispense with the prescribed, competitive process, and may enter into a private treaty agreement through any convenient process, which may include direct negotiations, but only in specific circumstances, and only after having advertised Council's intention so to act. One of the circumstances listed in (h) is where encroachment applications are received from adjoining owners, subject to approved tariff structure.

6.3 Financial implications

Based on the previous agreement, including escalation, the monthly fee payable will be R 8570.00

6.5 Legal Implications

The legal implications are discussed above. The agreement entered into in 2018 did not go through a public participation process and before the renewal is approved such a process should be followed.

6.6 Staff Implications

No additional staff implications.

6.7 Previous / Relevant Council Resolutions

Writer has not been able to allocate any previous Mayoral Committee or Council resolutions and the previous agreements were dealt with by the former Manager: Property Management.

6.8 Risk Implications

The risks are addressed in the item.

6.9 Comments from Senior Management

Comments has not been requested yet.

- ANNEXURES:**
- Appendix 1: Application**
 - Appendix 2: Proposed lease agreement**
 - Appendix 3: Previous lease agreement**
 - Appendix 4: Cession letter**

FOR FURTHER DETAILS CONTACT:

NAME	<i>Annalene de Beer</i>
POSITION	<i>Director: Corporate Services</i>
DIRECTORATE	<i>Corporate Services</i>
CONTACT NUMBERS	<i>021-8088073</i>
E-MAIL ADDRESS	<i>annalene.debeer@stellenbosch.gov.za</i>
REPORT DATE	<i>30.11.23</i>

APPENDIX 1

**LEASE AGREEMENT APPLICATION FORM****A: APPLICANT'S DETAILS**

Name : Helios Towers (Pty) Ltd South Africa

Physical address: 1st Floor Hertford Office Park Block I
90 Bekker Road
Vorna Valley
Midrand
Postal code: 2196

Mailing address: 1st Floor Hertford Office Park Block I
90 Bekker Road
Vorna Valley
Midrand
Postal code: 2196

E-mail address: HTSAProperty@heliostowers.com

Telephone: 010 141 9000

Cell phone: 067 415 8910

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number: Erf 2149 (Remaining Extend) 0

Suburb: Stellenbosch

Town: Stellenbosch

C: PROPERTY DETAILS OF LEASE AREA

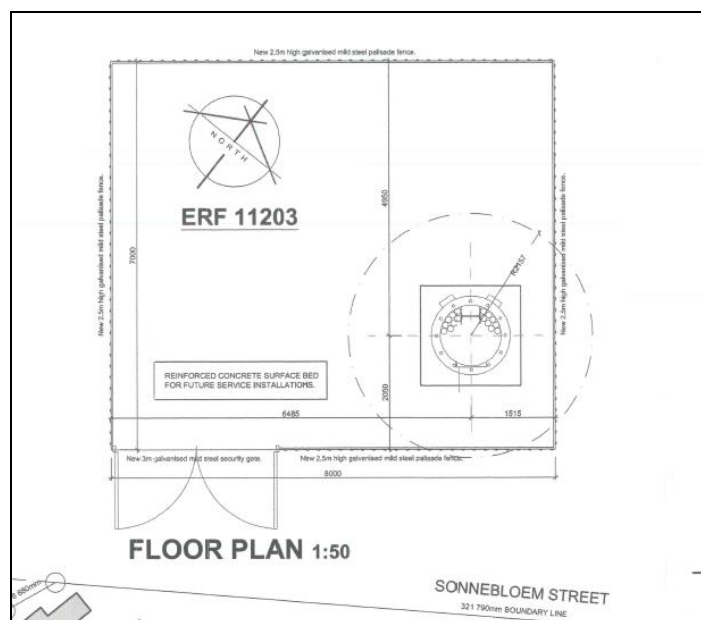
Erf/farm number : Erf 2149 (Remaining Extend) 0

Suburb: Stellenbosch

Town: Stellenbosch

Area of encroachment: 8m x 7m = 56m²

* To be supplemented with a sketch-plan with dimension in m²



D: TYPE OF APPLICATION:

Please mark the appropriate block

- For commercial purposes, other than for parking
- For commercial parking purposes,
- For residential parking purposes
- For non-commercial purposes (such as garden purposes, gates,ect)
- For projecting structures onto street reserves
- For projecting structures onto other council-owned land
- Other: please provide description: Lease renewal for existing Telecommunication Base Station

Brief description of application:

Application to renew the lease agreement for Erf 2149 (Remaining Extend) 0, Stellenbosch, pertaining to the existing telecommunication base station referred to or known as ZAWC0097 Idas Valley Library.

Motivation:

The initial lease agreement between Stellenbosch Municipality and Eagle Towers was ceded over to Helios Towers (Pty) Ltd. The lease is now up for renewal.

Helios Towers (Pty) Ltd would like to commence with the renewal process for this existing site, based on the terms presented in the Helios Towers (Pty) Ltd lease agreement, subject to Stellenbosch Municipality's review and approval.

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box


Special Power of Attorney, where Applicant is not the owner

Diagram of proposed area of the lease area

Letters of consent (affected neighbours)

Application fee (non-refundable)

I hereby certify that the information supplied in this application form is correct and that I am property authorized to make this application.

Applicant's signature:  Date: 2023/02/17

Full name: Marinus Gieselbach

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

	APPROVED
--	-----------------

	NOT APPROVED
--	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

- Encroachment fee paid
- Lease Agreement signed
- Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

APPENDIX 2

HTSA Towers Site Lease Agreement

Site Name: **Idas Valley Library**

Site ID: **ZAWC0097**

Province: **Western_Cape**

Site Coordinates: Latitude **-33.92522** Longitude **18.87841**

Date: **31 January 2023**

1. This agreement between

Stellenbosch Municipality

of

Sonneblom Street, Stellenbosch

with Mobile Number and Email Address: **021 808 8073 & Geraldine.Mettler@stellenbosch.gov.za**

and **HTSA TOWERS (PTY) LTD** with registered number 2018/616561/07 of Hertford Office Park, Block I, 90 Bekker RD, Vorna Valley, Midrand, Gauteng, 2196, South Africa ("Helios") permits Helios to construct, operate and maintain a telecommunications mast (the "Mast") within a fenced compound on a plot of land measuring:

10m x 10m

at

Remainder of Erf 2149, Stellenbosch

2. Notwithstanding the Signature Date, which shall be the effective date of this agreement, Helios shall be permitted to occupy the Site for nine (9) years and eleven (11) months commencing on the date designated by Helios to the Landlord (the "Site Occupation Date") in a written notice from Helios to Landlord for the Site to be made available to Helios (the "Site Occupation Notice"). Helios shall, with effect from the Site Occupation Date, have the unrestricted right to install and maintain equipment on the Site and the Mast as it deems is necessary or desirable. Helios, or any of its customers, also has an unrestricted right to install and maintain equipment such as but not limited to solar panels, generators, fuel tanks and batteries within the fenced compound on the Site.
3. Helios shall, with effect from the Site Occupation Date, be entitled to allow any entity, company, or supplier of telecommunication services to share, occupy or lease space on the Mast and to allow them to install their own equipment on the Mast and the Site without any financial demand from the Landlord, unless Helios uses ground space other than the Site. If Helios uses more ground space, the Landlord may request an increase of the Rental, which is to be mutually agreed between the parties but in no event shall exceed one third of the existing annual Rental.
4. With effect from the Site Occupation Date, Helios and its customers will be allowed unrestricted access to the Site twenty-four (24) hours a day; seven (7) days a week. All access will be strictly controlled by Helios and anyone seeking to enter the fenced area, including the Landlord's representatives must first obtain permission from Helios.
5. With effect from the Signature Date, the Landlord grants Helios the exclusive right to construct a Mast at the Property, which exclusivity shall endure until the termination of this agreement.

6. Helios shall, with effect from the Site Occupation Date, pay a monthly rental of:

8570 ZAR

The parties agree that Helios shall not be liable for any Rental arising prior to the Site Occupation Date. The Rental will be paid annually in advance by Helios to the Landlord by electronic funds transfer into the following bank account:

Bank Name: **First National Bank**

Account Holder Name: **Stellenbosch Municipality**

Account Number: **62869253684**

Account Type: **Cheque Account**

Branch Code: **250655**

7. The parties agree that the Rental shall increase on each one (1) year anniversary of the Site Occupation Date, in accordance with the annual percentage change, aggregated over the immediately preceding twelve (12) months, in the Consumer Price Index (all items – Table 2) as published by Statistics South Africa or its successor from time to time in its Consumer Price Index publication PO141.1, or in any substitute publication which becomes the norm for the measurement of the general rate of inflation in South Africa over that period, **capped at 5%**.
8. If the Site or any portion thereof is damaged or destroyed to the extent that Helios is not able to use the Site for its intended purpose, then Helios may, without limiting or derogating from its further rights under this agreement or at law, and in Helios's sole and absolute discretion, elect to immediately terminate the agreement on written notice to the Landlord. In the event that Helios does not elect to terminate the agreement in accordance with the further provisions of this clause 8, then:
- a. Helios may repair and rebuild those damaged or destroyed portions of the Site, during which time the Rental shall not be payable by Helios to the Landlord; and
 - b. the term of the lease, as contemplated in clause 2 above, shall be extended for a period equivalent to the time taken to restore the damage or destruction contemplated in 8(a) above.
9. Helios is responsible for obtaining, retaining and renewing all permits and licences relating to the construction of the Mast and operation of the Site (collectively, the "Permits"). The Landlord is obliged, with effect from the Signature Date, to provide Helios with any related documentation (such as title or land registration deeds) in order to verify that the Landlord is the true owner of the Site. In addition, the Landlord shall perform all other activities, and procure and provide all approvals and all other resources, personnel, materials, infrastructure and facilities as may be necessary to enable Helios to obtain the Permits, within five (5) days of request by Helios. The Landlord shall at all times co-operate with Helios and comply with the requirements and reasonable instructions of Helios in relation to the Permits. The Landlord agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this agreement and the transactions and activities contemplated by it and, if the Landlord fails to do so after receiving a request from Helios, the Landlord hereby irrevocably authorises and irrevocably grants Helios the authority, right and power of attorney to execute all such deeds, instruments, transfers or other documents for and on behalf of the Landlord
10. The Landlord must allow any reasonably required cables (power or technology) to be run over or under the adjoining property that are needed to connect to the Site. At all times, with effect from the Site Occupation Date, the Landlord must allow Helios or any of its customers access over any adjoining property to the Site that it owns or controls in order to access the Site and must keep such roads in good repair.

11. With effect from the Site Occupation Date, the Landlord grants Helios the exclusive right of passage to install any physical connection (buried or aerial) from the site to any external network (including any optical fibre, electrical or other copper cabling). Non-exercise of such exclusive right by Helios shall not constitute a forfeiture of such right. The Landlord shall ensure that anyone installing such physical connection has received prior written approval from Helios.
12. The Landlord shall at all times collaborate with Helios to ensure the safety of the people and equipment present on the Site against theft, flood, lightning, fire or any other hazard.
13. The parties record that Helios requires a minimum of 60 Ampere 3 phase electricity supply and the electricity supply to the Property may need to be upgraded. Should Helios determine that such an upgrade is required, the parties agree that the costs approved by Helios in relation to the consumption, supply, installation, upgrade and laying of any electricity to the Site, as well as all expenses relating to the metering of such consumption, shall be borne and paid by Helios. The Landlord shall not object to any upgrade to the electricity supply to the Property and the Landlord shall do all things necessary, to ensure the timeous and proper upgrade to ensure satisfactory electricity supply to the Site.
14. The parties agree that, until such time that Helios obtains a direct connection from the appropriate electrical authority, if necessary, the following provisions will apply:
 - a. The Landlord shall permit Helios to take an electricity connection from the Landlord's electricity connection through a separate sub-meter installed solely for Helios's purposes;
 - b. Helios shall provide the Landlord with the sub-meter reading and pay the electricity charges to the Landlord on a pro rata and monthly basis on or before the tenth (10th) day of the next month;
 - c. The Landlord shall provide Helios with the latest municipal account reflecting the rates and taxes payable for the Property every three (3) months.
 - d. Save for the amounts payable for the actual consumption of electricity, Helios shall not be liable to pay any further fees, whether administrative or otherwise, to the Landlord in relation to the electricity.
15. In the event of electricity becoming unavailable, suspended or terminated, Helios shall be entitled to use generators to operate and abridge the time period that electricity is unavailable. In addition, the parties agree that Helios shall not be liable for any amounts pertaining to electricity usage to the extent that such amounts and usage do not relate to the Site.
16. The Landlord represents, warrants and undertakes that at all times it is not:
 - a. listed on the Specially Designated Nationals and Blocked Persons list prepared by the Office of Foreign Assets Control of the US Department of the Treasury, any sanctions or designated persons list maintained by HM Treasury of the United Kingdom, the European Union or United Nations or any such equivalent list of an applicable jurisdiction ("Sanctions List"); or
 - b. directly or indirectly owned or otherwise controlled by any person listed on a Sanctions List.
17. Without limiting or derogating from Helios's further rights under this agreement or at law, Helios shall be entitled, on immediate written notice to Landlord, to terminate this agreement and/or withhold any payments under this agreement if:
 - a. the Landlord is added to a Sanctions List or otherwise becomes a subject of sanctions;
 - b. the Landlord commits a material breach of this agreement that has not been resolved within seven (7) days of the date that written notice of the breach is sent to the Landlord by Helios;

- c. the Landlord commits three or more breaches of this agreement during a calendar year, regardless of whether these breaches are subsequently remedied by the Landlord; or
- d. it becomes unlawful for Helios to perform any of its obligations under this agreement.
18. Upon the termination of this agreement, for any reason, Helios shall remove all of its or a customer's equipment and materials from the Site and rehabilitate the Site to its pre-construction condition, fair wear and tear excepted, within a reasonable time period.
19. A failure or delay by Helios to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
20. Helios has the right to cede its rights and/or delegate its obligations under the agreement to a third party upon written notice to Landlord and without obtaining the Landlord's prior consent.
21. Helios has the right to pledge its interest in the Mast and the Site upon written notice to the Landlord.
22. This agreement will automatically renew on the same terms unless either party serves written notice on the other not less than three (3) months prior to the expiry of the agreement.
23. Helios shall obtain appropriate levels of insurance for the occupation of the Site. Any damage or loss to the Site caused by the Landlord shall be repaired at Landlord's cost.
24. The Landlord confirms that the necessary authorisations have been obtained to enter into this agreement with Helios including obtaining all documentation relating to the ownership of the land and paying all government taxes relating to the land. The Landlord is liable for any costs or expenses incurred by Helios relating to any third-party claims made in relation to any failure or purported failure by the Landlord to have such authorisations for the Site.
25. If there are any disagreements between the parties relating to or in connection with this agreement which cannot be resolved amicably within twenty-one (21) days of a party serving notice on the other that there is a disagreement, the dispute shall be exclusively resolved in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa. The seat of any arbitration shall be Johannesburg, South Africa. The number of arbitrators shall be one and Helios shall nominate the arbitrator. This agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa. Nothing contained in this clause 20 shall prohibit either party from approaching any court of competent jurisdiction for urgent interim relief pending the determination of the dispute by arbitration. In respect of such proceedings, each of the parties specifically consents to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg).
26. A notice or other communication under or in connection with this agreement (a "Notice") shall be in writing, in the English language and delivered either personally, sent by courier or by email to the party due to receive the Notice at the address set out below:

Landlord	Address:	Sonneblom Street, Stellenbosch
	Email:	Geraldine.Mettler@stellenbosch.gov.za
	Attention:	Geraldine Mettler
HTSA Towers (Pty) Ltd.	Address:	Hertford Office Park, Block I, 90 Bekker RD, Vorna Valley, Midrand, Gauteng, 2196, South Africa
	Email:	HTSALegal@helios Towers.com
	Attention:	Legal Manager

If a party wishes to change the notice provisions set out in this agreement it may do so by providing the other party with notice in writing, such notice to have effect five (5) days after it has been deemed given. Unless a Notice is received earlier, a Notice is deemed given:

- a. If delivered personally or sent by courier, when left at the address above;
 - b. If sent by email, in the absence of contrary evidence at the time of successful receipt by the recipient (as may be evidenced by, but not limited to the transmission of an automatic electronic read receipt form, or a manual acknowledgement by, the recipient).
27. If the Landlord (i) wishes to sell, transfer or otherwise dispose the Site; or (ii) receives an offer to purchase, acquire or take transfer of the Site (a "Third Party Offer") ((i) and (ii) each a "Trigger Event"), the Landlord shall promptly notify Helios in writing of its intention to sell, transfer or otherwise dispose the Site (the "Sale Notice") and first grant Helios a right to buy the said Site, prior to such sale, transfer or disposal. The Sale Notice shall set out the intention of the Landlord to sell, transfer or otherwise dispose of the Site and the applicable terms and conditions, including the price and manner of delivery. Where a Trigger Event is a Third-Party Offer, Helios's right of first refusal to purchase the Site shall be at the same cash price and on terms no less favourable than those of the Third-Party Offer. The Sale Notice shall be regarded as an offer by the Landlord to Helios to purchase the Site and shall be irrevocable and open for acceptance by Helios by written notice to the Landlord for a period of thirty (30) days after receipt of the Sale Notice by Helios.
28. If Helios or its customers is prevented from accessing or operating the equipment on the Site because of an Act of God or other circumstances outside of Helios' reasonable control, including but not limited to a lightning strike, fire or flood, or civil disturbance, then Helios will not be liable for the payment of rent until Helios and/or its customer can access the Site or operate the equipment on the Site, as applicable.
29. The parties acknowledge that there may be circumstances during the term of this agreement in which Helios undertakes a rationalisation exercise of its Sites for commercial or technical reasons ("Rationalisation Exercise") and, as a result of such a Rationalisation Exercise, Helios may terminate or relocate certain of its sites. If, as a result of a Rationalisation Exercise, Helios wishes to terminate this agreement, Helios shall give to the Landlord a minimum of thirty (30) days prior written notice of its intention to terminate this agreement. Upon expiry of such notice, this agreement will terminate and Helios shall pay an equivalent of three (3) months' rental as compensation for the early termination of this agreement, unless there is less than three (3) months remaining on the term of this agreement in which case, Helios shall pay the remainder of the Rental due up to the date of expiry. The parties agree that the payment by Helios of the amounts contemplated in this clause will be the sole right available to the Landlord arising from the termination of the agreement by Helios in terms of this clause.
30. This agreement embodies the entire agreement and understanding of the parties and supersedes, novates and invalidates any prior written lease agreements concluded between the parties. In the event of a conflict between this agreement and any other document relating to the lease, the terms of this agreement shall prevail.
31. The Landlord hereby waives any hypothec, lien or right of retention the Landlord may have or acquire in respect of the Mast and equipment, including but not limited to solar panels, generators, fuel tanks and batteries.
32. All equipment including the Mast brought onto or constructed on the Site by Helios is intended to remain on the Site only for so long as this agreement, or any renewal of this agreement, is in existence and shall not accede to the Property. Such equipment and the Mast shall, notwithstanding that it may be fixed upon the Site in a manner which might, had it not been for this clause, be regarded as a permanent fixture, at all times be regarded as movable. Ownership of such equipment and the Mast shall at all times remain vested in Helios.

33. The parties agree that this agreement may at the option of the Helios be registered against the title deed of the property by a notary public appointed by Helios. The Landlord undertakes to do all things necessary as required to achieve registration of this agreement at the cost to Helios.
34. If the Property is registered as an agricultural holding and the local authority having jurisdiction requires the property to be excised from the agricultural holding register and incised into the farm register before it is prepared to approve building plans for the Mast, then the Landlord consents to such excision and incision. The cost of the excision and incision will be borne by Helios.
35. No contract varying, adding to, deleting from or cancelling this agreement, and no waiver of any right under this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.
36. The grant of any indulgence, extension of any time or relaxation of any provision by a Party under this agreement (or under any other agreement or document issued or executed pursuant to this agreement) shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.
37. This agreement may be executed in any number of counterparts, each of which so executed will be an original, but together will constitute one and the same instrument. A party who has executed a counterpart of this agreement may exchange it with another party by faxing, or by emailing (to an address notified by the relevant party for that purpose), a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post to the other party. Failure to make a delivery of a counterpart original of this agreement will not affect the validity of this agreement.

Landlord:

Signed and Delivered for and on behalf of the Landlord before me on (DD/MM/YYYY)

Authorized Representative
Signature

Geraldine Mettler

As the Authorised Representative

Witness Signature

Witness

Name: _____

ID No: _____

Helios Towers:

Signed and Delivered for and on behalf of Helios Towers before me on (DD/MM/YYYY)

Authorized Representative
Signature

Marinus Gieselbach

As the Authorised Representative

Witness Signature

Witness

Name: Nadene van Wyk

ID No: 900515 0070 084



HTSA Towers Confirmation of Contractual Terms

Site Details

Signee Name:	Marinus Gieselbach	Contact Details:	067 415 8910
Site Name:	Idas Valley Library	Site ID:	ZAWC0097
Province:	Western_Cape	Base Station:	10m x 10m
Municipality:	Stellenbosch Local	Site Type:	Greenfield
Site Coordinates:	Latitude: -33.92522	Longitude:	18.87841
Property Address:	Sonneblom Street, Stellenbosch		

Property Description: Remainder of Erf 2149, Stellenbosch

Landlord Details

Landlord Type:

Name: Stellenbosch Municipality

T.B.C.

Authorised Representative

Name & Surname: Geraldine Mettler

Representative ID Number:

Email Address: Geraldine.Mettler@stellenbosch.gov.za

Cellphone Number: **Main:** 21 808 8073 **Alternative:** 021 808 8984

Banking Details

Bank Name: First National Bank

Account Holder Name: Stellenbosch Municipality

Account Number: 62869253684

Account Type: Cheque Account

Branch Code: 250655



Rental Amount			
Annual Rent:	Amount:	R102,840.00	Additional: n/a
Electricity:	Local Authority		
Total:			
Payment Frequency:	Annually on the Anniversary Date		
Method of Payment:	Electronic Transfer		
VAT Number (If Applicable):	4700102181		

Contractual Details	
Commencement Date:	1-Jul-23
Initial Term:	119 months
Renewal Term:	119 months
Escalation Rate Percentage:	CPI
Escalation Rate Frequency:	Annually in advance
Access Hours	24 Hours, 7 Days a Week

Electricity Details	
Supplier/ Local Authority:	Stellenbosch Municipality
Payee Name:	Stellenbosch Municipality
Account Number:	62869253684
Reference Number:	Idas Valley Library - Helios Towers

Confirmed and Signed for and behalf of the Landlord on	(DD/MM/YYYY)
<input type="text" value="Signature"/>	<input type="text" value="Signature"/>
Geraldine Mettler	Witness Name:
As the Authorised Representative	Witness ID:

Clear Form

APPENDIX 3



LEASE AGREEMENT

BETWEEN

STELLENBOSCH MUNICIPALITY

AND

K2015430588 (SOUTH AFRICA)(RF)(PTY) LTD

Trading As:

EAGLE TOWERS

Lessor's lease identification name and/or number	STELLENBOSCH MUNICIPALITY
Lessee's lease identification name	IDAS VALLEY LIBRARY
Lessee's lease identification number	ETSA 0095


 Initials of Lessor, Lessee and witnesses



LEASE AGREEMENT

1. PARTIES

- 1.1. The parties to this Agreement are **STELLENBOSCH MUNICIPALITY** (hereinafter referred to as the “Lessor”, further information in respect of whom is recorded in Annexure 1); and
- 1.2. **K2015430588 (South Africa)(RF)(Pty) Ltd t/a Eagle Towers**, a private company duly registered in South Africa with **Company Registration Number 2015/430588/07** (herein after referred to as the “Lessee”).

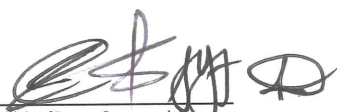
2. PREAMBLE

The Lessee wishes to hire certain premises from the Lessor and the Lessor wishes to let such premises to the Lessee, further to which the parties have agreed the terms and conditions detailed herein.

3. DEFINITIONS AND INTERPRETATION

In this Agreement and all appendices hereto, unless inconsistent with or otherwise indicated by the context

- 3.1. “**Agreement**” means this lease agreement together with all appendices hereto;
- 3.2. “**Equipment**” means any or all, as the context indicates, of the structures, equipment and components provided for in Clauses 9.1 to 9.2;
- 3.3. “**install**” means to install, erect, construct or affix and, “**installed**”, “**installing**” and “**installation**” shall have corresponding meanings;
- 3.4. “**Lease Commencement Date**” means the date upon which the lease of the Premises commences, as recorded in Annexure 1;
- 3.5. “**Lease Termination Date**” means the date upon which the lease of the Premises terminates, as recorded in Annexure 1;
- 3.6. “**Premises**” means the portion of the Property leased by the Lessee in terms of this Agreement, further information in respect of which is recorded in Annexures 1 and 2; and
- 3.7. “**Property**” means the property, being either a portion of land or, a building or other structure, upon or within which the Premises are situated, further information in respect of which is recorded in Annexure 1.
- 3.8. The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in its interpretation.
- 3.9. Unless inconsistent with or otherwise indicated by the context, words used in this Agreement importing any one gender include the other two genders; the singular include the plural and vice versa; and natural persons include created entities (incorporated or unincorporated) and vice versa.


 Initials of Lessor, Lessee and witnesses



- 3.10. Where in this Agreement a reference is made to the Lessee, it shall include, unless the context indicates otherwise, the Lessee's employees, agents, contractors and/or duly authorized representatives;
- 3.11. a reference is made to the Lessor, it shall include, unless the context indicates otherwise, the Lessor's employees, agents, contractors and/or duly authorized representatives;
- 3.12. any number of days is prescribed, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the succeeding day which is not a Saturday, Sunday or public holiday;
- 3.13. any amounts or values are referred to, same shall be exclusive of Value Added Tax; and the consent or approval of either party is required for any purpose, same shall, unless otherwise indicated by the context, refer to the prior written consent of such party, which consent shall not be unreasonably withheld.

4. LEASE OF THE PREMISES

The Lessor herewith lets the Premises to the Lessee, which Premises the Lessee hires from the Lessor.

5. TERM AND RENEWAL OF THE LEASE

- 5.1. The term of this Agreement shall be for the Initial Lease Period as recorded in Annexure 1, commencing on the Lease Commencement Date and terminating on the Lease Termination Date.
- 5.2. The Lessee shall have the option to renew this Agreement on the same terms and conditions for the Option Lease Period as recorded in Annexure 1, which option shall be exercisable by the Lessee by way of written notice to the Lessor given not later than thirty (30) days prior to the expiration of the Initial Lease Period; provided that the Lessee is not at the time of the exercise of the option in breach of any of the terms of this Agreement.

6. USE OF THE PREMISES

- 6.1. The Premises shall, unless otherwise approved by the Lessor, only be used for the installation and operation of electronic communications equipment, as further detailed herein.
- 6.2. Subject to the foregoing limitation on usage of the Premises and to the terms and conditions generally of this Agreement, the Lessee shall, on written notice to the Lessor, be entitled to allow any other communications entity to share the Premises with Eagle Towers and to install and operate their own Equipment. Such allowance by the Lessee shall not establish any rights or obligations between the Lessor and such entity and shall not release the Lessee from any of its obligations in terms of this Agreement. For the avoidance of doubt, this clause is not applicable to and notice shall not be required in instances where the Lessee's Equipment installed on the Premises is being indirectly utilized by another communications entity further to a network roaming relationship existing between the Lessee and such entity.

7. RENTAL, ELECTRICITY AND OTHER PAYMENTS

- 7.1. The Lessee shall pay to the Lessor the rental and other amounts as set out in Annexure 1.
- 7.2. The rental amounts payable to the Lessor shall escalate annually on each anniversary of the Lease Commencement Date at the rate recorded in Annexure 1. If charges in respect of the



consumption of electricity at the Premises are payable to the Lessor in fixed amounts, same shall escalate annually together with the rental amounts; provided that further adjustments may be made if and when the supplier of the electricity increases its rates to the Lessor.

- 7.3. All rental and other amounts payable to the Lessor shall unless otherwise provided for herein or in Annexure 1, be paid on a monthly basis on or before the first (1st) day of the start of each period; provided that, for administrative reasons, the first payment in respect of such amounts shall be made not later than the sixtieth (60th) day of the Lease Commencement Date; and
- 7.4. be paid, free of bank exchange and without deduction or set-off, into the Lessor's or other nominated bank account by way of direct deposits or electronic funds transfers; provided that the Lessee is in receipt of a banking indemnity form, duly completed and signed by the Lessor, and stamped by its bank. The Lessor may at any time amend its banking details by written notification to the Lessee by providing it with a duly completed, signed and stamped banking indemnity form indicating the amended details.
- 7.5. As indicated in Annexure 1, the charges in respect of the consumption of electricity at the Premises shall be payable by the Lessee either directly to the supplier of the electricity or to the Lessor and, if payable to the Lessor, shall be paid in varying monthly amounts based on actual metered consumption, within thirty (30) days from the date of receipt of invoice by the Lessee. Invoices, which shall be based on the readings of metering equipment to be installed, shall be generated and delivered to the Lessee either by a third party contracted by the Lessee to perform such functions or by the Lessor. Where invoices are to be generated and delivered by the Lessor, such shall
- 7.6. specify that the invoice is for the consumption of electricity and, contain the Lessee's identification name and number of the Premises as set out on the cover page of this Agreement as well as in Annexure 1;
- 7.6.1. be accompanied by proof of the meter readings;
- 7.6.2. not be pre-dated or post-dated; and
- 7.6.3. be sent to the Lessee by pre-paid post and/or E-mail to the addresses recorded in Annexure 1.
- 7.7. If the Lessor is obliged to pay Value Added Tax ("VAT") in respect of rental and other amounts received by it in terms of this Agreement, it shall provide the Lessee with a copy of its VAT registration certificate, further to which the Lessee shall pay relevant VAT amounts to the Lessor.
- 7.8. In the event of the early termination of this Agreement through no fault of the Lessee, the Lessee shall be entitled to a pro rata refund of such rental and/or other amounts paid by it in advance.

8. SUITABILITY OF THE PREMISES

The Lessor does not warrant that the Premises or any utility services provided to it are fit and adequate for the purposes of the Lessee or, if fit and adequate at the Lease Commencement Date, that same shall remain so throughout the currency of this Agreement.

9. EQUIPMENT ON THE PREMISES

Permissions and consents to install and operate Equipment



- 9.1. The Lessee shall at its own cost apply for and use its best endeavours to obtain all municipal, environmental and other permissions and consents necessary for the installation and operation of its Equipment on the Premises. Should the Lessor's cooperation or approval be required in support of any such applications, the Lessor undertakes to provide such without delay.
- 9.2. Should any necessary permission or consent not be obtained within a reasonable period after the Lessee has applied therefore, or should any such permission or consent, having been granted, be suspended or revoked by the relevant authority, the Lessee shall be entitled to terminate this Agreement by giving the Lessor not less than thirty (30) days' written notice.

10. INSTALLATION OF EQUIPMENT

- 10.1. The Lessee shall be entitled, at its own cost and expense, and without seeking any specific approvals from the Lessor, to install, as applicable, any or all of the following Equipment on or at the Premises:
- 10.2. a communications mast or tower, the maximum height of which is indicated in Annexure 2;
- 10.3. communications antennas and dishes, as well as all ancillary equipment required for the operation thereof;
- 10.4. an equipment room, being a container, room or other defined space on the Premises, in which parts of the Equipment are to be housed or situated;
- 10.5. foundations, flooring, paving, cabling, piping, wiring, fittings, fixtures and related accessory structures or components as may be necessary to support the installation and/or operation of parts of the Equipment;
- 10.6. perimeter structures, equipment and/or warning signs, as may be necessary for security and safety purposes; and signage identifying the Lessee and/or the communications entity sharing the Premises with it.
- 10.7. The foregoing entitlement shall include the right to, from time to time, change or upgrade the Equipment installed on the Premises and to install additional Equipment; provided that any change, upgrade or addition does not require the Premises to be increased in size or, if applicable, in any way affect internal structural aspects of the building or other structure on which it may be located. Should any change, upgrade or addition require the Premises to be increased in size or potentially have an effect on internal structural aspects of the building or other structure, such change, upgrade or addition shall only be effected with the consent of the Lessor.
- 10.8. Relevant details of the initial Equipment to be installed on the Premises by the Lessee, the position of such Equipment on the Premises and the location of the Premises on the Property, if applicable, are provided for in Annexure 2.
- 10.9. The Lessee shall be allowed to lay such cables, pipes and wires across the Property to the Premises as it may deem necessary for the operation of its Equipment installed on the Premises, subject to the Lessor's directives as to their position and/or route.

11. OWNERSHIP AND REMOVAL OF EQUIPMENT

All the Lessee's Equipment installed on the Premises shall be and remain the property of the Lessee and shall at all times be regarded as movable property. The Lessee shall, at its cost at the termination of this Agreement, for whatever cause, remove all such Equipment and restore the



Premises to the good order and condition in which they were at the Lease Commencement Date, fair wear and tear excepted.

12. RELOCATION OF EQUIPMENT

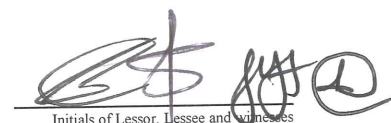
Should the Lessor at any time wish to develop the Property, including alterations or renovations to the building upon or within which the Premises may be situated, and such development, alteration or renovation negatively impact the position or operation of the Lessee's Equipment installed on the Premises, it shall provide the Lessee with at least twelve (12) months' written notice in this regard. Following such notice, the parties shall meet and use their best endeavours to make suitable alternative arrangements to accommodate such Equipment during the development, alteration or renovation, including such arrangements as may be reasonable pertaining to the cost of relocating such Equipment. Failing agreement in this regard, the Lessee shall be entitled to terminate this Agreement by giving the Lessor not less than thirty (30) days' written notice. In light of the high construction costs incurred by the Lessee in installing its Equipment on the Premises, the Lessor warrants that it shall not undertake any development, alteration or renovation that may impact the Equipment as contemplated above, for a period of three (3) years from the Lease Commencement Date.

13. INTERFERENCE WITH EQUIPMENT

In order to avoid electromagnetic or other interference with the Lessee's Equipment installed on the Premises, the Lessor shall not, unless compelled thereto by law, without first advising the Lessee, allow any other communications entity to install and operate any electronic communications equipment at or on the Property.

14. ELECTRICAL AND OTHER POWER SUPPLY TO THE PREMISES

- 14.1. All costs in relation to the supply and consumption of electricity to or on the Premises, including the supply and installation of metering equipment, if required, shall be paid by the Lessee.
- 14.2. The detail pertaining to the provision of electrical power to the Premises, if applicable, shall be determined by Eskom and/or the relevant local or other authority.
- 14.3. As a constant supply of electrical power to the Premises is critical to the operation of the Lessee's Equipment installed on the Premises, the Lessor shall at all times use its best endeavours to ensure that all amounts due and payable by it in respect of the supply of electrical power to the Property and/or the Premises are timeously paid by it to the relevant supplier.
- 14.4. The Lessee shall be entitled, if required and at its cost, to upgrade the electricity supply to the Premises and shall in all events that it alters any electrical installation on the Property or the Premises provide the Lessor with an electrical compliance certificate.
- 14.5. Should the electrical power supply to the Premises for any reason become unavailable, the Lessee shall be entitled to deploy generators at the Premises and to operate same for the period during which the electrical power supply remains unavailable. The deployment of generators shall be subject to the Lessor's consent with respect to the positioning thereof; provided that same shall not be required in emergency situations. The Lessee shall in the deployment and operation of a generator comply with all relevant laws and by-laws, as well as safety and fire regulations, and use its best endeavours to ensure that it does not create an impediment or nuisance to other occupants of the Property.


Initials of Lessor, Lessee and witnesses



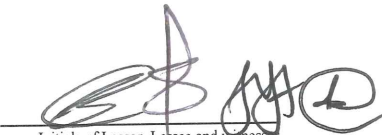
- 14.6. The Lessor shall not, without the consent of the Lessee, attach any electrical or other appliance to the electrical system supplied for the purposes of the operation of the Lessee's Equipment installed on the Premises, or interfere, alter or do any repairs to such electrical system. Should the Lessor for any reason wish to attach any electrical or other appliances to such electrical system or wish to alter or do any repairs to such system, it shall give the Lessee not less than fourteen (14) days written notice of its intention in this regard. Following such notice, the Lessee shall either arrange for the execution of such works as the Lessor wants done or make such other arrangements in connection therewith as may be reasonably acceptable to the Lessor. Should the Lessee fail to act as aforesaid, the Lessor shall be entitled to make its own arrangements in order to have the works executed.

15. ACCESS TO THE PREMISES

- 15.1. The Lessee shall be allowed access to the Premises on a twenty-four (24) hour basis any day of the week and the Lessor shall not for any reason refuse or prevent such access. The Lessee shall use its best endeavours to conduct all maintenance and other activities that are required to be done at the Premises during normal business hours, but equipment failures or other emergency situations may necessitate that work be done outside of such hours.
- 15.2. Should the Lessee be required to gain access to the Premises and/or the Property via a gated or similarly controlled entrance, it shall ensure that such gate or entrance is properly secured whenever it enters or departs from the Premises or the Property.
- 15.3. When accessing the Property, the Lessee shall respect and abide by the Lessor's security arrangements, provided that such do not seek to prevent or refuse access, and the Lessee shall not obstruct or impede any activities on the Property.
- 15.4. Should the Premises only be accessible via an access road across the Property, the Lessee shall
- 15.5. if such access road exists, be entitled to the use of such access road; and
- 15.6. if such access road does not exist or exists but does not extend fully to the Premises, be entitled to construct an access road or part thereof along a route to be agreed with the Lessor. In such instance the Lessee shall be responsible for the maintenance of the access road or part thereof constructed by it.
- 15.7. The Lessor grants to the Lessee, for the duration of this Lease and any renewal thereof, a right of way and servitude from the entrance gate to the premises and which right of way and servitude the Lessee may at its election register at the Deeds Office subject only to the Lessee maintaining that right of way and on termination of the Lease restoring the property to the state which it existed at date of commencement of the Lease.

16. ADDITIONS OR ALTERATIONS TO THE PREMISES BY THE LESSEE

Save as provided for in Clause 9, the Lessee shall not, without the consent of the Lessor, make any additions or alterations whatsoever to the Premises. Should the Lessor grant such consent, all additions or alterations shall be effected by the Lessee at its cost and the Lessee shall, should it or the Lessor so require, at its cost at the termination of this Agreement, remove all additions or alterations and restore the Premises to the good order and condition in which they were at the Lease Commencement Date, fair wear and tear excepted.


Initials of Lessor, Lessee and witnesses




17. DESTRUCTION OF OR DAMAGE TO THE PREMISES

- 17.1. In the event of the Property or the Premises being destroyed or damaged, through any cause
- 17.2. to the extent that the Premises become un-tenantable, this Agreement shall automatically terminate with effect from the date of such occurrence, unless the parties are able to negotiate alternative arrangements, including the temporary suspension of the Agreement, whilst the Lessor rebuilds or repairs the Property or the Premises; and
- 17.3. to the extent that the Premises remain tenantable, this Agreement shall not terminate. If the Lessor in such circumstances decides to rebuild or repair the destroyed or damaged portion of the Property or Premises, it shall do so with reasonable expedition and the Lessee shall be entitled to a reduction of the rental payable by it pro rata to the extent to which it may be deprived of the beneficial occupation of the Premises.
- 17.4. The costs of rebuilding or repair of the Property or the Premises shall be for the Lessor's account, unless the destruction or damage was caused by the wilful or negligent act or omission on the part of the Lessee, in which case such costs shall be for the Lessee's account. The Lessee shall have no claim of any nature against the Lessor as a result of the destruction or damage of the Premises, unless such destruction or damage was due to wilful misconduct or gross negligence on the part of the Lessor.

18. LIABILITY, INDEMNITY, FORCE MAJEURE AND INSURANCE

- 18.1. The Lessor shall not be liable for any loss, damage, injury or cost which may be suffered or incurred by the Lessee, nor shall the Lessee be entitled to withhold any rental payments, as a result of any failure, malfunctioning or interruptions in the supply of electricity, water or any other service or by reason of the Premises or any part of the Property being in a defective condition or falling into disrepair, arising from any cause whatsoever, other than due to wilful misconduct, gross negligence or a breach of a term of this Agreement on the part of the Lessor.
- 18.2. The Lessee herewith indemnifies and holds the Lessor harmless against any loss, damage, injury, cost or liability that may be suffered or incurred by the Lessor arising from any action, proceeding or claim that may be instituted by any person against the Lessor as a result of the Lessee's lease of the Premises, unless such action, proceeding or claim arose from wilful misconduct, gross negligence or a breach of a term of this Agreement on the part of the Lessor.
- 18.3. Any damage that may be caused to the Premises or the Property as a result of any act or omission of the Lessee shall be made good by the Lessee at the Lessee's cost.
- 18.4. Neither party shall be liable to the other for any inability to perform or for delayed performance in terms of this Agreement, should such inability or delay arise from any cause beyond the reasonable control of such party (hereinafter referred to as a "force majeure event"); provided that the existence of such force majeure event has been drawn to the attention of the other party within a reasonable period of time of the occurrence thereof. If the force majeure event continues for more than six (6) months from the date of notification thereof and such event prevents the affected party from performing its obligations in terms of this Agreement, the unaffected party shall be entitled to terminate this Agreement by giving the other party not less than thirty (30) days' written notice.
- 18.5. Notwithstanding anything to the contrary contained in this Agreement, neither party shall, under any circumstances, be liable for any indirect, special and/or consequential damages suffered by the other party.


Initials of Lessor, Lessee and witnesses



- 18.6. The Lessee shall ensure that it is at all relevant times properly insured against all public liability and other risks that may arise from or be associated with the lease of the Premises and shall not do or omit to do anything which may affect any insurances policy which the Lessor may have in place in respect of the Property or premiums payable in respect thereof.

19. EARLY TERMINATION BY THE LESSEE

- 19.1. Should the Lessee or its tenant's
- 19.2. licence to operate a communications network be suspended or terminated for whatever reason;
- 19.3. Equipment installed on the Premises becomes outdated owing to technological development and not be economically replaceable or upgradable;
- 19.4. network be rearranged or any major changes made to it, making for its Equipment installed on the Premises to become redundant; or
- 19.5. Equipment installed on the Premises be measurably interfered with by buildings or other structures erected in close proximity to the Premises, or by electronic communications equipment installed by another communications entity at or on the Property, after the Lease Commencement Date,
- 19.6. the Lessee shall be entitled to terminate this Agreement by giving the Lessor not less than thirty (30) days' written notice.

20. BREACH OF THE AGREEMENT AND HOLDING-OVER BY THE LESSEE

- 20.1. Should the Lessee
- 20.2. fail to pay rental or any other amounts due by it in terms of this Agreement on the due date and thereafter fail to make payment thereof within thirty (30) days after receipt of the Lessor's written notice requiring such payment to be made;
- 20.3. breach any material term of this Agreement and fail to remedy such breach within thirty (30) days after receipt of the Lessor's written notice requiring such breach to be remedied; or
- 20.4. be liquidated or sequestrated (whether provisionally or finally) or placed under judicial management or business rescue, or any steps be taken to accomplish any of the foregoing, the Lessor shall be entitled, without prejudice to any other rights or remedies to which it may be entitled at law or in terms of this Agreement, to forthwith terminate this Agreement.
- 20.5. Should the Lessor breach any material term of this Agreement and fail to remedy such breach within thirty (30) days after receipt of the Lessee's written notice requiring such breach to be remedied, or should the Lessor be liquidated or sequestrated (whether provisionally or finally) or placed under judicial management or business rescue, or any steps be taken to accomplish any of the foregoing, the Lessee shall be entitled, without prejudice to any other rights or remedies to which it may be entitled at law or in terms of this Agreement, to forthwith terminate this Agreement.
- 20.6. Should the Lessor terminate this Agreement and the Lessee dispute the Lessor's right to do so and remain in occupation of the Premises pending the determination of such dispute, the Lessee shall continue to pay all amounts due to the Lessor in terms of this Agreement on the due dates thereof and the Lessor shall be entitled to accept and recover such payments, without prejudice to



the Lessor's claim for cancellation then in dispute. Should the dispute be determined in favour of the Lessor, such payments shall be deemed to be amounts paid by the Lessee on account of damages suffered by the Lessor further to the unlawful holding over of the Premises by the Lessee.

21. GENERAL OBLIGATIONS OF THE LESSEE

- 21.1. The Lessee shall at all times comply with all laws (including the provisions of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), and regulations issued thereunder), by-laws, ordinances, proclamations and regulations relating to the tenancy of the Premises, in particular also those relating to firefighting appliances on the Premises, as well as any specific rules or regulations that the Lessor may reasonably impose.
- 21.2. The Lessee shall not knowingly contravene any conditions of the title deed of the Property. In this regard the Lessor shall notify the Lessee of any specific conditions that the Lessee should be aware of.

22. GENERAL OBLIGATIONS OF THE LESSOR

- 22.1. The Lessor shall notify any prospective purchaser of the Property of the existence of this Agreement and shall, upon the sale of the Property, furnish the Lessee with the full particulars of the purchaser. The obligation of the Lessor shall further be to comply with the provisions set out in 26.2 below.
- 22.2. Should this Agreement be managed by an agent on behalf of the Lessor, the Lessor shall provide the Lessee with details of such agent and shall also update such details in the event of a change of agent.

23. DISPUTE RESOLUTION AND JURISDICTION

- 23.1. Any dispute arising from or in connection with this Agreement shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation. Nothing herein contained shall, however, preclude either of the parties from approaching a court of competent jurisdiction for an interdict or for relief on an urgent basis.
- 23.2. The parties hereby consent in terms of section 45 of the Magistrate's Courts Act, 1944 (Act No. 32 of 1944), (or any similar section of an act replacing such Act) to the jurisdiction of the Magistrate's Court for the purpose of any proceedings in terms of or incidental to this Agreement, notwithstanding that the amount claimed or the value of the matter in dispute may exceed such jurisdiction; provided that either party shall, at its option, have the right to institute proceedings in any division of the High Court having jurisdiction.

24. DOMICILIA AND NOTICES

- 24.1. The parties choose as their domicilia citandi et executandi their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement, at which addresses all processes and notices arising out of or in connection with this Agreement may validly be served or delivered.
- 24.2. For purposes of this Agreement the parties' respective addresses shall be
- 24.2.1. as regards the Lessor, at the address recorded in Annexure 1; and



Initials of Lessor, Lessee and witnesses



- 24.2.2. as regards the Lessee, at Eagle Towers, 31 White Heart Street, Jamestown, Stellenbosch, 7600.
- 24.2.3. or at such other address, not being a post office box or poste restante, of which the party concerned may notify the other in writing.
- 24.3. All notices given in terms of this Agreement shall be in writing and shall be deemed, until the contrary is proved
- 24.3.1. if delivered by hand, to have been received by the addressee on the day of such delivery;
- 24.3.2. if transmitted by facsimile, to have been received by the addressee on the day after such transmission; and
- 24.3.3. if posted by prepaid registered post, to have been received by the addressee on the fourteenth (14th) after such posting.
- 24.4. Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one party from the other shall be adequate written notice or communication to such party.

25. GENERAL

- 25.1. Should either party require the registration of this Agreement against the title deeds of the Property, the parties shall cooperate with one another in good faith to effect such, on the understanding that all costs in relation thereto shall be for the account of the party requesting the registration.
- 25.2. Unless otherwise agreed, no addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by both parties. For purposes hereof "writing" shall exclude any written document that is in the form, either wholly or partially, of a data message as defined in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), and "signed" shall mean a signature executed by hand with a pen without any electronic process or intervention.
- 25.3. If any provision of this Agreement is declared by a competent court to be unenforceable, illegal, void or contrary to public policy, such declaration shall have no effect upon the binding force or effectiveness of any of the remaining provisions of this Agreement, it being the intention and declaration of the parties that had they known of such unenforceability, illegality, invalidity or that the provision was contrary to public policy, they would nevertheless have entered into this Agreement, containing all such remaining provisions.
- 25.4. The parties shall regard the terms of this Agreement, anything done pursuant to it and all information concerning the other which may come to its knowledge as a result of the discussions leading to this Agreement, as confidential information and shall safeguard and prevent the unauthorised use or disclosure of such information using the same standard of care used to safeguard and prevent the unauthorised use or disclosure of its own information of a confidential nature, but in all events at least applying a reasonable standard of care; provided that neither party shall be obliged to safeguard and prevent the use or disclosure of such confidential information where such information has already been disclosed or published to the general public other than as a result of a breach of the terms of this clause. The provisions of this clause shall not apply to the disclosure or publication of such confidential information for the purpose of any legal proceedings or the listing on any stock exchange.



 Initials of Lessor, Lessee and witnesses



- 25.5. Each party shall be responsible for its own legal and other costs incidental to the preparation and execution of this Agreement.
- 25.6. This Agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter, other than those set out herein, shall be binding on them.
- 25.7. Each party warrants to the other that it has the necessary rights and authorities to enter into and perform its obligations in terms of this Agreement. In particular, the Lessor warrants to the Lessee that it is the owner or lawful lessor of the Property and that it is lawfully entitled to enter into this Agreement and grant to the Lessee the rights provided for herein, further to which it indemnifies the Lessee against any claim, damage or cost arising from any legal proceedings that may be instituted against it by any third party proving superior title to the Property.

26. TRANSFER, SUBLEASE, CESSION AND ASSIGNMENT OF AGREEMENT

- 26.1. The Lessee shall be entitled to cede and assign its rights and/or delegate its obligations arising from this Agreement to any third party without the written consent of the Lessor first being obtained and the Lessor agrees to the substitution of a new Lessee in this regard (where applicable).
- 26.2. The Lessor shall have the right to transfer, cede or assign its rights under this Lease in respect of the Premises to a third party, it is a condition to any such transfer, cession or assignment that the Lessor adheres to 26.2.1, 26.2.2 and 26.2.3 below. In addition the Lessor shall have the right to alienate, sell or dispose of the Property on which the premises is located. It is a condition to any such transfer, cession, assignment, alienation, sale or disposition
- 26.2.1. that written prior notice of such transfer being given by the Lessor to the Lessee and
- 26.2.2. that the Lessor discloses to the successor in title or new owner the existence of this Lease and its enforceability on such party
- 26.2.3. that any such successor in title or new owner undertakes in writing to and in favour of the Lessee to comply with the terms of this Lease.




 Initials of Lessor, Lessee and witnesses



27. SUPPORTING DOCUMENTATION

The following documents shall form part of this Agreement and be attached hereto:

- 27.1. In the event that the Lessor is a natural person
- 27.2. a copy of his identity document; and
- 27.3. proof of his tax reference number;
- 27.4. In the event that the Lessor is a corporate entity
- 27.5. a copy of its certificate of incorporation;
- 27.6. a copy of its VAT registration certificate;
- 27.7. a copy of a resolution or other document authorizing the signatory to enter into this Agreement on its behalf; and
- 27.8. In both of the foregoing events
- 27.9. proof of ownership of the Property or of the right to let same; and
- 27.10. a completed, signed and stamped banking indemnity form.

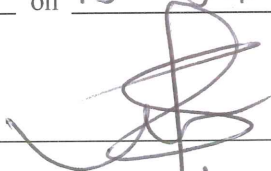

Initials of Lessor, Lessee and witness



FOR AND ON BEHALF OF THE LESSOR

Signed at Stellenbosch on 15 June 2018

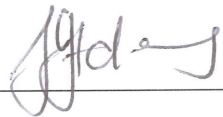
Signature:



Full name in block letters:

Peruta Phosis Sims

Signature of witness:



Full name in block letters:

Lorelle Adams

FOR AND ON BEHALF OF THE LESSEE

Signed at STELLENBOSCH on 15 June 2018

Signature:



Full name in block letters:


AVRIL JAMES VAN DER RHEEDE
(MD EAGLE TOWERS)

Signature of witness:



Full name in block letters:

JEROME GEORGE DAVIDS


Initials of Lessor, Lessee and witnesses



ANNEXURE 1

INFORMATION RELATING TO PROPERTY AND PREMISES

LESSOR'S LEASE IDENTIFICATION NAME, ADDRESS AND/OR NUMBER (IF APPLICABLE)	IDAS VALLEY LIBRARY
	ERF 11203 IDAS VALLEY STELLENBOSCH
LESSEE'S LEASE IDENTIFICATION NAME	IDAS VALLEY LIBRARY
LESSEE'S LEASE IDENTIFICATION NUMBER	ETSA 0095
LESSEE'S RESPONSIBLE REGION	WESTERN CAPE
STREET ADDRESS AND, IF APPLICABLE, DESCRIPTION, OF LEASE PROPERTY	SONNEBLOM STREET
	IDAS VALLEY
ERF NUMBER OF PROPERTY	ERF 11203 IDAS VALLEY STELLENBOSCH
SIZE IN SQUARE METRES AND, IF APPLICABLE, DESCRIPTION, OF PREMISES	AS PER DRAWINGS

INFORMATION RELATING TO LESSOR

FULL NAMES	STELLENBOSCH MUNICIPALITY		
DOMICILIUM ADDRESS	TOWNHOUSE COMPLEX		
	PLEIN STREET		
	STELLENBOSCH, 7600		
POSTAL ADDRESS	PO BOX 17		
	STELLENBOSCH		
	7600		
E-MAIL ADDRESS	piet.smit@stellenbosch.gov.za		
CONTACT NAME	Piet Smit	CONTACT NAME 2	
WORK NUMBER	021 8088189	WORK NUMBER	
FAX NUMBER	—	FAX NUMBER	
CELL NUMBER	084 506 506 5	CELL NUMBER	
RENTAL PAYEE NAME			
POSTAL ADDRESS	PO box 17 Stellenbosch		
BANK NAME	NEDBANK		
BRANCH NAME	STELLENBOSCH		
BRANCH CODE	198 765		
ACCOUNT TYPE	Cheque		
ACCOUNT HOLDER NAME	Stellenbosch Municipality		
ACCOUNT NUMBER	115 22 71 619		
COMPANY REGISTRATION NUMBER	—		
VAT PAYABLE	YES/NO		
VAT REGISTRATION NUMBER	4 700 102 18 1		



ANNEXURE 1 (Continued)

LEASE DETAILS

LEASE COMMENCEMENT DATE	On break of ground
LEASE TERMINATION DATE	9 years, 11 months thereafter
INITIAL LEASE PERIOD	5 years
OPTION LEASE PERIOD	4 years, 11 months

INFORMATION RELATING TO ELECTRICITY SUPPLIER AND CONSUMPTION CHARGES

SUPPLIER OF ELECTRICITY	
ELECTRICITY PAYEE NAME	K2015430588 (Pty) Ltd
POSTAL ADDRESS	Suite 35, Private Bag X4 Die Boord, 7613
BANK NAME	First National Bank
BRANCH NAME	Stellenbosch
BRANCH CODE	200610
ACCOUNT TYPE	Current
ACCOUNT HOLDER NAME	K2015430588 (Pty) Ltd
ACCOUNT NUMBER	62577146642
COMPANY REGISTRATION NUMBER	2015/430588/07
VAT PAYABLE	YES/NO
VAT REGISTRATION NUMBER	4070273943
NAME OF ENTITY OR PERSON RESPONSIBLE FOR GENERATION AND DELIVERY OF IN-VOICES	
LESSEE'S POSTAL AND E-MAIL ADDRESSES FOR DELIVERY OF INVOICES	POST: Suite 35, Private Bag X4, Die Boord, 7613. Eagle Towers, E-MAIL: avril@eagletowerssa.com POST: THE PROPERTY ADMINISTRATOR, Eagle Towers, Suite 35, Private Bag X4, Die Boord, 7613

RENTAL AND OTHER AMOUNTS

	RENTAL	ELECTRICITY CON-SUMPTION	ACCESS	ELECTRICITY ACCESS	SUNDRY
AMOUNT	R 6000.00	METERED	24/7	24/7	N/A
FREQUENCY	Monthly	Monthly	N/A	N/A	N/A
METHOD OF PAYMENT	EFT	EFT	N/A	N/A	N/A

RENTAL ESCALATION RATE	THE RATE OF ESCALATION SHALL BE EQUAL TO THE PERCENTAGE INCREASE TO THE HEADLINE CONSUMER PRICE INDEX (FOR ALL URBAN AREAS) AS PUBLISHED BY STATISTICS SOUTH AFRICA THREE (3) MONTHS PRIOR TO THE DATE OF ESCALATION; PROVIDED THAT THE PERCENTAGE SHALL NOT BE GREATER THAN EIGHT PERCENT (8%)
------------------------	---

RENTAL ESCALATION COMMENCEMENT DATE	ON THE FIRST ANNIVERSARY OF THE LEASE COMMENCEMENT DATE
-------------------------------------	---

NOTES	period of renewal for the option period, the then applicable tariff will be applied
-------	---

(Handwritten signatures and initials)
Initials of Lessor, Lessee and witnesses



ANNEXURE 2

SKETCH PLAN INDICATING RELEVANT DETAILS OF EQUIPMENT TO BE INSTALLED ON THE PREMISES, THE POSITION OF SUCH EQUIPMENT ON THE PREMISES AND THE LOCATION OF THE PREMISES ON THE PROPERTY

Project Name: IDAS VALLEY LIBRARY
 Client: IDAS VALLEY LIBRARY
 Project No: 18/001/2016

Project Name	IDAS VALLEY LIBRARY		
Client	IDAS VALLEY LIBRARY		
Project No	18/001/2016		
Project Location	IDAS VALLEY LIBRARY		
Project Description	INSTALLATION OF EQUIPMENT		
Project Manager	EAGLE TOWERS SA		
Project Engineer	EAGLE TOWERS SA		
Project Date	2016		

IDAS VALLEY LIBRARY

PROPERTY SITE POSITION

© 2016 AVGIS (Pty) Ltd
 Images © 2016 DigitalGlobe
 Imagery Date: 3/23/2016 Lat: -31.075051° Lon: 18.878755° elev: 143 m eye alt: 428 m

(Handwritten signatures and initials)

APPENDIX 4



EAGLE TOWERS SA (RF) (PTY) LTD

Reg No. 2015/430588/07
Vat No. 4070273943

31 WHITEHEART STREET
JAMESTOWN – STELLENBOSCH – 7600

PHONE: +27 21 880 0914 – FAX: +27 867 26 2626

www.eagletowerssa.com

TO: Stellenbosch Municipality

Cabriere Street Franschoek	ETSA 0038
Cloetesville Pool	ETSA 0098
Idas Valley Library	ETSA 0095
Jamestown Cemetery	ETSA 0092
Jamestown Sports	ETSA 0140
Klapmuts Sportsgrounds	ETSA-0034
Lanquedoc Sports	ETSA 0062

(the “Site”)

PER EMAIL: piet.smit@stellenbosch.gov.za

PER REGISTERED POST: Stellenbosch Municipality
Townhall Complex
Plein Street
Stellenbosch
7600

18 May 2020

Dear Sir and/or Madam,

LEASE AGREEMENT: NOTIFICATION OF THE SALE OF THE SITE TO HELIOS TOWERS

We trust that this letter finds you in good health, considering the COVID-19 pandemic currently proliferating in South Africa and other global communities. We wish you, your family and friends protection and safety during this time of great uncertainty.

Background and details of transfer to Helios Towers

1. We refer to the Lease Agreement entered into between Eagle Towers SA (RF) (Pty) Ltd with

Directors: (MD) AJ van der Rheede – MJ van Wyk – MM Edas

registration number: 2015/430588/07 (“**Eagle Towers**”) and yourself in terms of which you tender and make available certain premises known as the Site to Eagle Towers for the installation and operation of electronic communications equipment as further detailed therein (the “**Agreement**”).

2. As you may already know, Eagle Towers has agreed to sell the Site to HTSA Towers (Pty) Ltd with registration number: 2018/616561/07 and trading as Helios Towers South Africa (“**Helios Towers**”).
3. We expect that Eagle Towers will complete the sale of the Site to Helios Towers with effect from 30 April 2020 (the “**Closing Date**”) and will therefore cede its rights and delegate its obligations under the Agreement to Helios Towers with effect from the Closing Date (the “**Assignment**”).
4. Notwithstanding the Agreement providing that we are entitled to, without the consent of or providing notice to the Lessor, cede, assign, delegate and/or transfer our rights and/or obligations arising from the Agreement, I have deemed it prudent and respectful to formally apprise you of the Assignment to Helios Towers. Please take further notice that:
 - a. the Assignment requires no action from you;
 - b. the lessee for the purposes of the Agreement shall thenceforth be Helios Towers; and
 - c. all rights, obligations and conditions contained in the Agreement remains unchanged and enforceable against Helios Towers as the new lessee.

Change of Contact Details

5. With effect from the Closing Date, Helios's *domicilium citandi et executandi*, and the address for the delivery of all notices under the Agreement, shall be:

Address: Helios Towers South Africa, Unit D8, First Floor, Block D, El Ridge Office Park,
100 Elizabeth Road, Bartlett, Boksburg, Gauteng, 1459

Email: HTSALegal@heliostowers.com

Attention of: Head of Legal

Further Information

6. If you have any questions with the content of this letter please contact:

Avril van der Rheede
082 994 0291
avril@eagletowerssa.com

We look forward to your continuous support and co-operation.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Avril van der Rheede', written over a faint circular stamp or watermark.

Avril van der Rheede
Chief Executive Officer
Eagle Towers SA (RF) (Pty) Ltd
Duly authorised and warranting such authority
Date: 18 May 2020

5.3

POSSIBLE DISPOSAL OF A PORTION OF ERF 9190 PROTEA HOTEL

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

06 December 2023

1. SUBJECT: POSSIBLE DISPOSAL OF A PORTION OF ERF 9190 PROTEA HOTEL**2. PURPOSE**

To obtain Council's approval for the disposal of a portions of erf 9190, Technopark, to Protea Hotel.

3. DELEGATED AUTHORITY

For decision by Municipal Council.

4. EXECUTIVE SUMMARY

Protea Hotel constructed a building on their property, encroaching onto erf 9190 (municipal property). Plans were approved and occupation certificates were provided.

They have tried to rectify the situation by proposing a land swap. This application, however, was turned down by the Planning Tribunal, based on planning principles (**APPENDIX 1**).

They suggested that Protea Hotel request the adjustment of the common boundary and purchase the land from the Municipality that they are currently encroaching on. The extent of the municipal land is currently encroaching on is indicated they would need to purchase is 3505m² and is discussed under 6.2.2 below – fig 3. An application has been received from Protea Hotel – **APPENDIX 2 and 3**. The department has appointed a valuer to determine the fair market value and we are waiting for the response.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 3 be identified as land not needed to provide the minimum level of basic municipal services;
- (b) that Council take note that a valuator was appointed to determine the fair market value;
- (c) that should the request to sell the land be approved in principle a public patriation process will have to be followed; and
- (d) that following the public notice period, and following the receipt of the valuation report, the item will be re-submitted to Council to make a final determination.

6. DISCUSSION / CONTENT**6.2 Background****6.2.1 Application for subdivision to land swap**

During 2018 Friedlander, Burger & Volkman, on behalf of Protea Hotel, applied for a subdivision to rectify the encroachment of a structure that was constructed over the boundary of erf 9209 (Protea Hotel) onto Erf 9190 (Council property). A proposal has been submitted to facilitate a land swap with the Municipality to rectify the encroachment.

Due to the fact that erf 9190 is municipal owned land, the application had to be submitted to the Planning Tribunal. The Planning Tribunal rejected this application.

Although the application was basically a boundary adjustment ($\pm 191\text{m}^2$ of Protea Hotel land in exchange for $\pm 191\text{m}^2$ of Council owned land), and although no objections were received, the Planning Tribunal turned down the application and suggested that the common boundary line be realigned to facilitate the incorporation of the unauthorised structure in a manner that will ensure that the new boundary line does not create unusable space and also will not have a negative input on the existing amenities on erf 9209. A copy of the report that served before the Planning Tribunal, setting out the reasons for their decision, is attached as **APPENDIX 1**. It must be noted that the full extent of the current encroachment on municipal land is 3505m^2 .

6.2.2 Application for adjustment of boundary between Remainder erf 9190 (Council owned land) and erf 9209 (Protea Hotel land), Stellenbosch

Following the above decision by the Planning Tribunal, an application was submitted by Friedlander, Burger & Volkman, on behalf of Protea Hotel, requesting the adjustment of the common boundary between Protea Hotel and Stellenbosch Municipality's property (Erf 9190). A copy of their application is attached as **APPENDIX 2**.

Also hereto attached as **APPENDIX 3** and application received from Protea Hotel, the owner of erf 9209, for the purchasing of portion of erf 9190, in order to adjust the common boundary, as to incorporate the unauthorised structure build on erf 9190. The extent of the encroachment is 3505m^2 .

6.2. DISCUSSION**6.2.1 Location and context**

Erf 9209 is located in Techno Road, as shown on Fig 1 and 2 below.

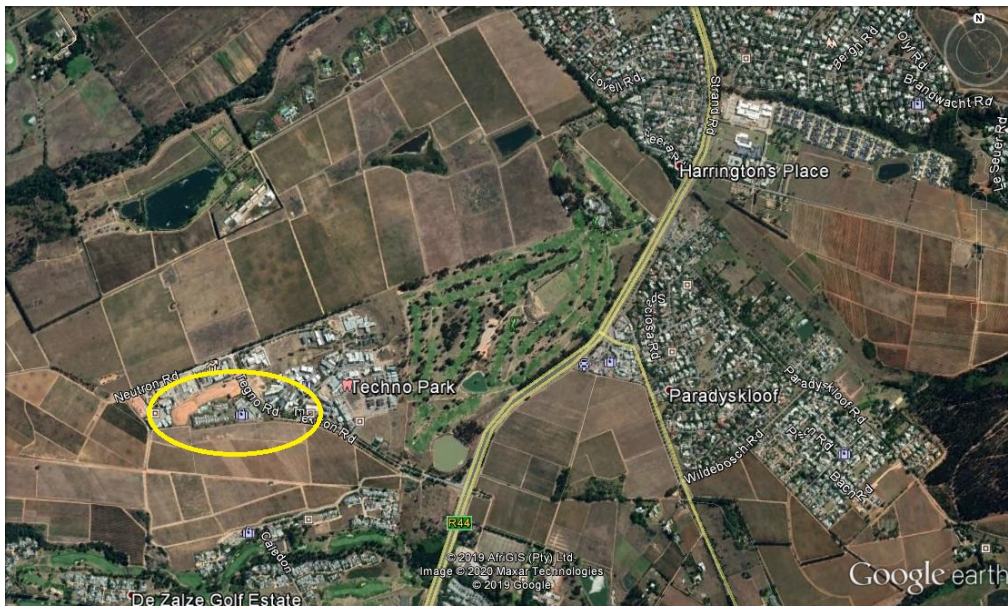


Fig 1: Location and context



Fig 2: Extent of land to be disposed of

6.2.2 Area description

The area(s) under discussion is shown on Fig 3, below.



Fig 3:

The area consists of three (3) portions:

- Erf 17341 : $\pm 1971\text{m}^2$
- Erf 17340 : $\pm 1094\text{m}^2$
- Erf 17339 : $\pm 440\text{m}^2$
- Total : $\pm 3505\text{m}^2$

The erf numbers referred to here does not exist yet, and forms part of the bigger erf 9190.

6.2.3 Ownership

The ownership of Erf 9190 vests with Stellenbosch Municipality by virtue of Title Deed T28901/1988. See copy of Windeed record attached as **APPENDIX 4**.

6.2.4 Application entails two processes

Please note that this application entails two processes;

- a) An application for the boundary adjustment (land-use application) will be submitted to the Planning Department as an exemption application, once Council has made an in-principle decision on the possible disposal.
- b) An application to buy a portion of erf 9190 from Stellenbosch Municipality, to be consolidated with erf 9190. The municipality does not support the proposal of a notarial tie of the properties – once subdivided it needs to be consolidated with erf 9209.

6.2.5 Legal Requirements

6.2.5.1 MFMA

In terms of Section 14 of the MFMA a Municipality may not transfer ownership as a result of a sale or other transaction, or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic services.

Further, in terms of Subsection (2), a municipality may dispose of land not needed to provide the main level of basic municipal services, but only if the Council, in a meeting open to the public, (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

6.2.5.2 Asset Transfer Regulation (ATR)

6.2.5.1 Transfer or disposal of non-exempted capital assets

In terms of Regulation 5(1)(b) a municipal Council may transfer or dispose of a non-exempted capital asset only after-

- a) the accounting officer has in terms of regulation 6 conducted a public participation* process to facilitate the determinations a municipal council must make in terms of Section 14(2)(a) and (b) of the Act; and
- b) the municipal council-
 - i) has made determinations required by section 14(2) (a) and (b)* and
 - ii) has, as a consequence of those determinations approved in principle that the capital asset may be transferred or disposed of.

*Only applicable to high value properties, i.e. in excess of R50M

6.2.5.2.2 Consideration of proposals to transfer or dispose of non-exempted capital assets

In terms of Regulation 7 the municipal council must, when considering any proposed transfer or disposal of a non-exempted capital asset in terms of regulation 5(1)(b)(i) and (ii), take into account—

- (a) whether the capital asset may be required for the municipality's own use at a later date;
- (b) the expected loss or gain that is expected to result from the proposed transfer or disposal;
- (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 the municipality;
- (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;
- (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;
- (f) any limitations or 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;

- (g) the estimated cost of the proposed transfer or disposal;
- (h) the transfer of any liabilities and reserve funds associated with the capital asset;
- (i) any comments or representations on the proposed transfer or disposal received from the local community and other interested persons; (if applicable)
- (j) any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury; (if applicable)
- (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; and
- (l) compliance with the legislative regime applicable to the proposed transfer or disposal.

6.2.5.2.3 Conditional approval of transfer or disposal of non-exempted capital assets

Further, in terms of Regulation 11, an **approval in principle** in terms of regulation 5(1)(b)(ii) or 8(1)(b)(ii) that a non-exempted capital asset may be transferred or disposed of, **may be given subject to any conditions**, including conditions specifying—

- (a) the way in which the capital asset is to be sold or disposed of;
- (b) a floor price or minimum compensation for the capital asset;
- (c) whether the capital asset may be transferred or disposed of for less than its fair market value, in which case the municipal council must first consider the criteria set out in regulation 13(2); and
- (d) a framework within which direct negotiations for the transfer or disposal of the capital asset must be conducted with another person, if transfer or disposal is subject to direct negotiations.

6.2.5.2.4 Transfer or disposal of non-exempted capital assets to be in accordance with disposal management system

In terms of Regulation 12(1); if approval has been given in terms of regulation 5(1)(b)(ii) that a non-exempted capital asset may be transferred or disposed of, the relevant municipality may transfer or dispose of the asset only in accordance with its disposal management system, irrespective of—

- (a) the value of the capital asset; or
- (b) whether the capital asset is to be transferred to a private sector party or an organ of state.

*In the case of Stellenbosch Municipality, the Policy on the Management of Council-owned property is deemed to be the disposal management system.

6.2.5.2.5 Transfer agreements

In terms of Regulation 17, a municipality may transfer assets approved for transfer to a private sector party or organ of state, only by way of a written transfer agreement concluded between the transferring municipality and the receiving private sector party or organ of state.

A transfer agreement must set out the terms and conditions of the transfer, including, as a minimum—

- (a) a sufficient description of the capital asset being transferred in order to identify the asset;
- (b) particulars of any subsidiary assets that are transferred with the capital asset;
- (c) particulars of any liabilities transferred with the asset;
- (d) the amount of compensation payable to the municipality or municipal entity for the transfer of the asset or assets, and the terms and conditions of payment; and
- (e) the effective date from which the risk and accountability for the asset or assets is transferred to the receiving private sector party or organ of state.

6.2.5.6 Policy on the management of Council-owned property

6.2.5.6.1 General principles

In terms of paragraph 7.2.1, unless otherwise provided for in the policy, the disposal of Viable Immovable property shall be effected-

- a) by means of a process of public competition; and
- b) at market value except when the public interest or the plight of the poor demands otherwise.

6.2.5.6.2 Methods of disposal

In terms of paragraph 9 the type of tender may vary, depending on the nature of the transaction. The following options may be considered:

- a) outright tender, eg residential erven;
- b) Call for proposals, e.g social care erven.

6.2.5.6.4 Non-viable immovable property

In terms of par. 9.2.1, in respect of Non-viable Immovable Property which can be utilised by one adjacent land owner, a Property Transaction(s) may be approved

without any competitive process having been followed, including in response to an unsolicited application, on the basis that no purpose would be served by a competitive process but subject to the determination of the fair market value and public notice of the intent to dispose of the property.

6.2.5.4 Fair market value

In terms of par.2 immovable property may be disposed of only at market related prices, except when the plight of the poor or the public intend demands otherwise.

Under the circumstances it is recommended that one (1) valuer be appointed.

6.3 Financial Implications

Should Council approve of the application all the cost associated with the transfers, such as subdivision, rezoning will be account by the applicant. The land should be sold at, at least market related value.

6.4 Legal Implications

See par. 6.2.5 above.

6.5 Staff Implications

No additional staff implications

6.6 Previous / Relevant Council Resolutions

None

6.7 Risk Implications

Risks are addressed through the content of the report.

6.8 Comments from Senior Management

No comments have been requested yet.

- ANNEXURES:**
- Appendix 1: Report that served before the Planning Tribunal**
 - Appendix 2: Application from Friedlander. Burger & Volkmann**
 - Appendix 3: Application from Protea Hotel**
 - Appendix 4: Windeed report**

NAME	Annalene de Beer
POSITION	Director
DIRECTORATE	Corporate Services
CONTACT NUMBERS	021-8088018
E-MAIL ADDRESS	Annalene de Beer
REPORT DATE	2023 – 11-29

APPENDIX 1



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LAND USE PLANNING REPORT TO THE MUNICIPAL PLANNING TRIBUNAL

APPLICATION IS HEREBY MADE IN TERMS OF THE STELLENBOSCH MUNICIPALITY LAND USE PLANNING BY-LAW, 2015 PERTAINING TO THE SUBDIVISION, REZONING AND CONSOLIDATION OF PORTIONS ERVEN 9190 AND 9209, STELLENBOSCH, TO RECTIFY ENCROACHMENTS.

Reference number	LU/6518 Erf file 9190	Application submission date	July 2017	Date report finalized	Nov 2018
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INTRODUCTION

The subject properties form part of the Technopark development. All the properties with the exception of erf 9209 the Protea Hotel are zoned for Special Zone I including the open space areas and roads within the development. The Protea Hotel Stellenbosch was developed on Erf 9209, Technopark, Stellenbosch, which is a portion of erf 9190. The hotel is a sectional title scheme and the portion of this property under consideration forms part of the common property of the sectional title scheme of this property.

The proposal under consideration is to rectify the encroachment of a structure that was constructed over the boundary of Erf 9209 (The Protea Hotel) onto Erf 9190 (Council property). The proposal has been submitted to facilitate a land swap with the Municipality to rectify the encroachment. Due to the fact that Erf 9190 is a municipal owned property the applications under consideration needs to be referred to the Planning Tribunal for consideration and a decision in terms of the Stellenbosch Municipal Land Use Planning By-Law.

PART A: AUTHOR DETAILS

First name(s) and Surname	Robert Fooy
Job title	Senior Town Planner
SACPLAN registration number	N/A
Directorate/Department	Planning and Economic Development / Land Use Management
Contact details	021 808 8680 robert.fooy@stellenbosch.gov.za



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PART B: APPLICANT DETAILS					
First name(s) and Surname	Mark Straughan				
SACPLAN registration number	N/A				
Company name	Friedlaender, Burger and Volkmann	Is the applicant authorized to submit this application?	<u>Y</u>		
Registered owner(s)	The Protea Hotel Body Corporate (The area under discussion forms part of the common area within the sectional title scheme)				
PART C: PROPERTY DETAILS					
Property description (in accordance with Title Deed)	Erven 9190, and 9209, Stellenbosch				
Physical address	Techno Avenue	Town/City	Stellenbosch		
Current zoning	Erf 9190 Special Zone 1: Technology or Science Park & Erf 9209 Specific Business Zone for hotel purposes	Extent (m ² /ha)	Erf 9209 3.0ha 9190 33.28ha	Are there existing buildings on the property?	<u>Y</u>
Applicable Zoning Scheme	Stellenbosch Municipality Zoning Scheme Regulations (1996)				
Current Land Use	Erf 9209 (Hotel purposes) and 9190 (Vacant)	Title Deed number & date	T28901/1988		
Any restrictive title conditions applicable?	<u>N</u>	If Yes, list condition number(s)	N/A		
Any third party conditions applicable?	<u>N</u>	If Yes, specify	N/A		
Any unauthorised land use/building work?	<u>Y</u>	If Yes, explain	A building has been constructed over the common boundary of erf 9190 and erf 9209.		



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PART D: APPLICATION DESCRIPTION

Application is made in terms of the Stellenbosch Municipal Land Use Planning By-Law, promulgated by notice number 354/2015, dated 20 October 2015, for the following on Erf 9190 and Erf 9209, Technopark, Stellenbosch:

- a) The subdivision of Portion A ($\pm 191\text{m}^2$) from Erf 9190 in terms of Section 15(2)(d));
- b) The rezoning of unregistered Portion A ($\pm 191\text{m}^2$) from Special Zone I (Technology or Science Park) to Specific Business for Hotel purposes;
- c) The subdivision of Portion B ($\pm 191\text{m}^2$) from Erf 9209 in terms of Section 15(2)(d));
- d) The rezoning of unregistered Portion B ($\pm 191\text{m}^2$) from Specific Business for Hotel purposes to Special Zone I (Technology or Science Park);
- e) The consolidation of unregistered rezoned Portion A with Erf 9209 in terms of Section 15(2)(e));
- f) The consolidation of unregistered rezoned Portion B with Erf 9191 in terms of Section 15(2)(e)).

PART E: SUMMARY OF APPLICANTS MOTIVATION

The land use planning application has been submitted to formalise the structure that has been constructed over the common boundary line between Erf 9190 and Erf 9209. The proposal underconsider has been advertised as required and no objections or comments have been received on the proposal. The proposal was submitted after discussions with the Manager of the Property Management Department of the Municipality and has been submitted to facilitate a land swap as suggested by the Property Management Department.

PART F: SUMMARY OF PUBLIC PARTICIPATION

Methods of advertising				Date published	Closing date for objections
Press	<u>Y</u>	N	N/A	16 November 2017	15 December 2017
Notices	<u>Y</u>	N	N/A	16 November 2017	15 December 2017
Ward councillor	<u>Y</u>	N	N/A	16 November 2017	15 December 2017
On-site display	<u>Y</u>	N	N/A	16 November 2017	15 December 2017
Community organisation(s)	<u>Y</u>	N	N/A	16 November 2017	15 December 2017
Other	Y	<u>N</u>	If yes, specify		
Was public participation undertaken in accordance with sections 44-49 of the Stellenbosch Land Use Planning By-law, October 2015					Y



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PART G: SUMMARY OF COMMENTS DURING PUBLIC PARTICIPATION (INTERESTED AND AFFECTED PARTIES)					
FARM/ ERF NO.	ISSUES RAISED	APPLICANT'S RESPONSE	DEPARTEMENTAL REPOSENSE		
	No Comments or Objections received on the application.				
PART H: SUMMARY OF COMMENTS FROM INTERNAL DEPARTMENTS AND/OR ORGANS OF STATE AND/OR COMMUNITY ORGANISATIONS AND/OR WARD COUNCILLOR					
NAME OF DEPARTMENT	DATE	SUMMARY OF COMMENTS	RECOMMENDATION		
Department of Environmental Affairs and Development Planning	06 December 2017	Support the application with standard conditions.	Positive	Nega- tive	No Com- ment
Stellenbosch Electrical Department	16 January 2017	Support the application with conditions.	Positive	Nega- tive	No Com- ment
Local Economic Development	21 November 2017	Support the application.	Positive	Nega- tive	No Com- ment
Directorate Infrastructure Services (Traffic Engineer)	08 November 2017	Support the application with conditions.	Positive	Nega- tive	No Com- ment
Manager: Property Management Department	11 November 2017	Support the application.	Positive	Nega- tive	No Com- ment



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Ward Councillor		No formal response was received from the Ward Councillor	Positive	Negative	No Comment
PART I: MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)					
<p><u>Background</u></p> <p>The application area (Erven 9190 and 9209) are located in Techno Avenue, Technopark, Stellenbosch and are surrounded by primarily office buildings, open area or undeveloped portion of land which forms part of Erf 9190 and are used for agricultural and open space purposes.</p> <p>The application under consideration is to facilitate the formalization of the building which has been constructed over the common boundary between Erven 9190 and 9209. The area under consideration on Erf 9209 forms part of the common space of the Protea hotel which has been sectional titled. The proposal has also been submitted to facilitate a land swop between the Municipality (Erf 9190) and the Protea hotel (Erf 9209) as suggested by the Manager: Land Use Management.</p> <p>The areas under consideration are currently being used by the Protea hotel to accommodate the building which is constructed over the common boundary of the two properties and as part of the common open space area within the sectional title scheme. The proposal as submitted will only facilitate a form of boundary adjustment which normally could be dealt with by the Municipality via the existing delegations, but due to the fact that the one property, Erf 9190 is owned by the Municipality the application needs to be referred to the tribunal for a decision in terms of the Stellenbosch Municipal Land Use Planning By-Law, promulgated by notice number 354/2015, dated 20 October 2015.</p>					
<p><u>(In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) and the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)</u></p>					
<p>a) <u>Spatial Justice</u></p> <p>N/A</p> <p>b) <u>Spatial Sustainability</u></p> <p>The proposal will not have a detrimental impact on valuable agricultural land, environmentally sensitive and biodiversity rich areas or scenic and cultural landscapes as the subject property is located within the urban edge of Stellenbosch and the properties are not zoned for agricultural purposes.</p>					



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c) Efficiency

The proposed application will only facilitate the formalization of the existing building which was been constructed over the common property boundary between Erf 9090 and Erf 9209.

d) Spatial Resilience

N/A

e) Good Administration

The application was processed strictly in accordance with the prescribed application procedures as stipulated in the By-law on Municipal Land Use Planning, 2015.

(In)consistency with the IDP/Various levels of SDF's/Applicable policies

The proposal is supported by Spatial Planning, Heritage and Environment Department as it will have no impact on its surroundings.

(In)consistency with guidelines prepared by the Provincial Minister

This section has no bearing on the application as the subject property is located within the urban edge of Stellenbosch town.

Outcomes of investigations/applications i.t.o other laws

The application complies with the relevant legislation applicable to the application.

Existing and proposed zoning comparisons and considerations

The change in zoning proposed will have no impact on the surrounding area as the subject properties are located within the existing urban area and the proposed zonings will only facilitate a form of boundary adjustment to accommodate the existing building which is located over the common boundary line between Erf 9190 and Erf 9209.

The need and desirability of the proposal

The subject properties are located within Techno Avenue, Technopark, Stellenbosch and the surrounding land uses are primarily offices, open space and agricultural purposes. The applications under consideration will only facilitate the movement of the common boundary line to accommodate the existing structure which is currently located over the common boundary line of Erf 9190 and Erf 9209, Technopark and to facilitate a land swap.



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As noted above the proposal is basically a boundary adjustment with the rezoning of the various subdivided portions being required to ensure that they have the applicable zoning prior to being consolidated with the respective erven.

The proposal as submitted will only facilitate the formalization of the unauthorized building work but will also result in unusable portions of land being formed (Portion B). The new boundary line that will be created by the proposal will also result in the fact that the unauthorized structure is now located on the common boundary between Erf 9190 and Erf 9209. As a result should the owners of the Hotel decide to enclose their property with a wall or fence the existing deck / stoep area which will be located on the erf boundary would be negatively affected due to the fact that the deck / stoep area is will be narrow due to the fact that the fence / wall will be located on the edge of the deck / stoep. The new boundary that will be created over erf 9209 has also not taken cognizance of the fact that the area being cut off and consolidated with erf 9190, will result in an unusable portion of land being created between the "Road" and erf 9209.

The two areas being subdivided, rezoned and consolidated have the same area to facilitate a land swap but would create unusable areas as a result of the new erf boundaries that will be created. The proposal as submitted is not supported as the applicant is in effect trying to facilitate the formalization of the unauthorized structure and a land swap without taking into consideration what impact the revised boundary will have on the two erven concerned.

PART J: ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

Financial or other value of the rights affected

The proposal as submitted will create an area of unusable land due to the new shape of the subject properties.

Benefits to the holder of such rights in terms of the restrictive condition

This section is not applicable to the application under consideration.

Personal benefits which will accrue to the applicant

This section is not applicable to the application under consideration.

Social benefit of the restriction remaining in place

This section is not applicable to the application under consideration.

Social benefit of the proposal and whether the application will completely remove all rights enjoyed by the beneficiary or only some of those rights

This section is not applicable to the application under consideration.



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PART-K: SUMMARY OF EVALUATION

The application as submitted is only to facilitate the formalization of the structure that has been constructed over the common boundary line between Erf 9209 and Erf 9190 and to facilitate in effect a land swop. The proposal as submitted will also result in an unusable area being created due to the irregular shape created by the "boundary adjustment" of the two erven and will also have a negative impact on the existing facilities located on erf 9209 such as the garden area with its facilities. The application submitted is purely to ensure or facilitate a land swop at all cost and has not taken cognizance of the impact of the revised boundary line between Erf 9209 and Erf 9190.

The new boundary line that will be created by the proposal will also result in the fact that the unauthorized structure is now located on the common boundary between Erf 9190 and Erf 9209. As a result should the owners of the Hotel decide to enclose their property with a wall or fence the existing deck / stoep area which will now be located on the erf boundary would be negatively impacted on due to the fact that the deck / stoep area will be narrow due to the fact that the fence / wall will be located on the edge of the deck / stoep. The new boundary that will be created over erf 9209 has also not taken cognizance of the fact that the area being cut off from Erf 9209 and consolidated with erf 9190, will result in an unusable portion of land being created between the "Road" and existing erf 9209.

The two areas being subdivided, rezoned and consolidated have the same area to facilitate a land swop but would create unusable areas as a result of the new erf boundaries as noted above. For this reason the proposal as submitted is not supported by the Land Use Planning Department, as the applicant is in effect trying to facilitate the formalization of the unauthorized structure and a land swop without taking into consideration what impact the revised boundary will have on the two erven concerned.

The proposal also only just incorporates the building that is currently located over the common boundary into Erf 9209 without taking cognizance of the fact that the new boundary line will have a negative impact on the existing facilities. As the proposal has not taken note of the fact that by realigning the common boundary as indicated / proposed it will have a negative impact on the facilities located in the common area on Erf 9209.

The Land Use Department is of the opinion that the common boundary line must be realigned to facilitate the incorporation of the unauthorized structure in a manner that will ensure that the new boundary line does not create unusable space and also will not have a negative impact on the existing amenities on Erf 9209.



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PART L: RECOMMENDATION

That **approval not be granted** in terms of Section 60 of the Stellenbosch Municipal Land Use Planning By-Law, promulgated by notice number 354/2015, dated 20 October 2015, for the following applications:

- a) The subdivision of Portion A ($\pm 191\text{m}^2$) from Erf 9190 in terms of Section 15(2)(d));
- b) The rezoning of unregistered Portion A ($\pm 191\text{m}^2$) from Special Zone I (Technology or Science Park) to Specific Business for Hotel purposes;
- c) The subdivision of Portion B ($\pm 191\text{m}^2$) from Erf 9209 in terms of Section 15(2)(d));
- d) The rezoning of unregistered Portion B ($\pm 191\text{m}^2$) from Specific Business for Hotel purposes to Special Zone I (Technology or Science Park);
- e) The consolidation of unregistered rezoned Portion A with Erf 9209 in terms of Section 15(2)(e));
- f) The consolidation of unregistered rezoned Portion B with Erf 9191 in terms of Section 15(2)(e)).

PART M: REASONS FOR RECOMMENDATION

- a) The proposed subdivision, rezoning and consolidation of Portion A ($\pm 191\text{m}^2$) and Portion B ($\pm 191\text{m}^2$) with Erf 9209 and Erf 9190 will result in the creation of irregular shaped property with unusable sections due to the shape created by the subdivision and consolidation of the various portions.
- b) The proposal has not taken into consideration the fact that the approval of the application will have a negative impact on the common area in terms of the sectional title plan on Erf 9209, due to the fact that the existing facilities located on the Hotel property will be negatively impacted on.
- c) The proposals main objective is to facilitate a land swap by incorporating the unauthorized building into Erf 9209 and ensuring that both portions to be subdivided and consolidated are of equal size without taking into account what the negative impact of the proposal will be on both erven 9209 and 9190.

PART N: ANNEXURES

Annexure A	Locality and Zoning map.
Annexure B	Proposed Subdivisions and consolidation plan.
Annexure C	Title deed.
Annexure D	Motivation of Applicant.
Annexure E	Portfolio of Evidence/ Affidavit.



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- Annexure F Copy of Notices sent to Interested and Affected parties/ Organs of state.
- Annexure G Comments received from Internal Departments.
- Annexure H Comments received from External Departments.
- Annexure I Power of Attorney from both property owners.

PART T P: SIGNATURES

REPORT COMPILED AND ASSESSED BY:

RF
ROBERT FOOY
SENIOR TOWN PLANNER

30/11/2018
 DATE

RECOMMENDED BY:

H
H. DEDNAM
MANAGER: LAND USE MANAGEMENT
 (Pr.Pln A/ 846/1995)

03/12/2018.
 DATE

PART U: DECISION IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW, OCTOBER 2015:

APPROVE		APPROVE IN PART		REFUSE	
----------------	--	------------------------	--	---------------	--

Tick the appropriate box:

SIGNATURE: _____

DATE: _____

CHAIRPERSON OF THE MUNICIPAL PLANNING TRIBUNAL
 ADV. MANDLA MDLUDLU

IF REASON/S FOR DECISION:

APPENDIX 2

Our ref: ERF9209F

Friday, 18 October 2019

The Director
 Human Settlements and Property Management
 Town House Complex
 Plein Street
 Stellenbosch
 7600

By email to Piet.Smit@stellenbosch.gov.za

Dear Mr. Smit

**ADJUSTMENT OF BOUNDARY BETWEEN THE REMAINDER OF ERF 9190 AND ERF 9209, STELLENBOSCH
 (THE PROTEA HOTEL, STELLENBOSCH, AT TECHNOPARK)**

I refer to the above matter and our telephone conversation this morning.

Erf 9209 is the property on which the Protea Hotel, Stellenbosch is constructed. The remainder of Erf 9190 is Municipal property and is the parent erf of the Technopark development.

The background to the matter as discussed, is that we applied for subdivision, rezoning and consolidation of the above erven to give effect to a land swap involving each party relinquishing, and gaining 191m² of land. This was undertaken to rectify an encroachment by a building of the hotel over Erf 9190.

The application was made with power of attorney by your office and the Protea Hotel.

The Land Use Planning recommendation to the Municipal Planning Tribunal ("MPT") was that the application is not approved as it did not deal fully with the area of encroachment by the hotel over Municipal land. The subsequent recommendation to us from the Municipal Land Use Planning department

was that the application be withdrawn and resubmitted as a request for exemption to adjust a common boundary. The recommendation was further that the Municipality will rezone the affected land.

We have therefore surveyed the area fenced in and used by the Protea Hotel. As advised by you this area is subject to an encroachment agreement with the Municipality. Please see our plan attached as Annexure A.

We will to commence the application process for the subdivision exemption of the area encroached. It will save time if this is done simultaneously with the process in your office to alienate Municipal land.

Kindly confirm that we may proceed based on the attached plan. Please call us should any matters require clarification. We are happy to meet at your convenience if necessary.

Your sincerely

A handwritten signature in black ink, appearing to be 'M.B. Straughan', written over a horizontal line.

M.B. Straughan

pp. Friedlaender, Burger and Volkmann



Land unit	Figure description	Area	Current Use	Current Zone
Remainder Erf 9190, Stellenbosch	Existing properties	53,0866 ha	Technopark	
Protea Hotel Stellenbosch: Sectional title units and common property of Protea Hotel Stellenbosch	A, B, C, D, E, F, G, H, I, K	3,0000 ha	Protea Hotel	Special Business: Hotel and offices

Land unit	Final layout	Figure description	Area
Protea Hotel Stellenbosch: Notarial tie of erven 17339, 17340 and 17341 with Protea Hotel Stellenbosch	X, L, M, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, PP	A3 3505 ha	
Remainder of erf 9190		A3 7361 ha	

Land unit	Figure description	Area	Current Use	Current Zone	Rezoning
Erf 17339: proposed portion of erf 9190 17339	X, L, M, N, P, Q, R, S, T, D, C, B, A	2440m ² 6449	Protea Hotel	Special Zone 1: Technology or Science Park	To be rezoned to Specific Business: Hotel and offices, transferred to Protea Hotel Stellenbosch Body Corporate and included in common property of Protea Hotel Stellenbosch Sectional Title Scheme
Erf 17340: proposed portion of erf 9190 17340	D, U, V, W, X, Y, Z, AA, BB, LL, H, G, F, E	2109m ² 109	Protea Hotel	Special Zone 2: Technology or Science Park	To be rezoned to Specific Business: Hotel and offices, transferred to Protea Hotel Stellenbosch Body Corporate and included in common property of Protea Hotel Stellenbosch Sectional Title Scheme
Erf 17341: proposed portion of erf 9190 17341	II, JJ, KK, LL, MM, NN, PP, Q	2197m ² 197	Protea Hotel (building encroachment)	Special Zone 1: Technology or Science Park	To be rezoned to Specific Business: Hotel and offices, transferred to Protea Hotel Stellenbosch Body Corporate and included in common property of Protea Hotel Stellenbosch Sectional Title Scheme

Note
Erven 17339, 17340 and 17341 to be subdivided from remainder erf 9190 and included in sectional title scheme Protea Hotel Stellenbosch by notarial tie and not by consolidation.



Caution
1. Any areas and dimensions are provisional and will be finalised at time of subdivision survey.
2. All levels are to be confirmed prior to construction.

Scale 1:1000 Date: 27 Sept 2019 Contours: n/a System: WGS 19

Adjustment of Boundaries and Rezoning
Protea Hotel Stellenbosch

friedlaender, burger & volkmann

Ref: erf9209f Dwg: pr-on-rev3.dwg a3

APPENDIX 3



INITIATIVE SA INVESTMENTS 159 (PTY) LTD
 Company Registration: 2003/009491/07, VAT Registration: 4360217345
 Directors: K. Jankowitz, B. Venter, A. Malan, C. Visagie, D. Pretorius

RODASH 125 (PTY) LTD
 Company Registration: 2009/017174/07, VAT Registration: 4810254518
 Directors: K. Jankowitz, B. Venter, A. Malan, C. Visagie, D. Pretorius

35 Techno Avenue, Techno Park
 Stellenbosch 7600
 South Africa
 P.O. Box 12450, Die Boord
 Stellenbosch 7613
 South Africa

T +27 (0) 21 880 9500
 F +27 (0) 21 880 9505
 E info@phstellenbosch.com
 W marriott.com/cptst

Date: 17 November 2019

For Attention:

**Mr Piet Smit
 Stellenbosch Municipality**

Good day Sir,

Application for the Purchase of certain pieces of land of the Stellenbosch Municipality by the Protea Hotel by Marriott Stellenbosch in Techno Park.

We hereby make application to purchase pieces of land from the Municipal which the Protea Hotel Stellenbosch is using currently.

This means that Erven 17339, 17340 and 17341, all portions of the Remainder of erf 9190, shall have to be subdivided and rezoned as per the attached Plan.

Once subdivided these erven will be included by Notarial Tie in the Common Property of the Protea Hotel Stellenbosch Sectional Title Scheme.

We had previously made Application for a Land Swap of the pieces of land being used by the Hotel coupled with an Encroachment Agreement which Application was not acceptable to the MPT. The MPT suggested that we follow this route to make Application to realign our boundaries.

Please inform us if there is any further information that you need in order to consider our Application.

Kind regards,

A handwritten signature in black ink, appearing to read "Riaan Malan", is written over a faint, light-colored rectangular stamp or watermark.

Riaan Malan

Protea Hotel by Marriott Stellenbosch

APPENDIX 4

WinDeed Database Deeds Office Property

STELLENBOSCH, 9190, 0 (REMAINING EXTENT) (CAPE TOWN)

GENERAL INFORMATION

Date Requested 2019/12/12 10:24
Deeds Office CAPE TOWN
Information Source WINDEED DATABASE
Reference -

**PROPERTY INFORMATION**

Property Type ERF
Erf Number 9190
Portion Number 0 (REMAINING EXTENT)
Township STELLENBOSCH
Local Authority STELLENBOSCH MUN
Registration Division STELLENBOSCH RD
Province WESTERN CAPE
Diagram Deed T28901/1988
Extent 31.9688H
Previous Description PTN OF ST RD 377
LPI Code C0670022000091900000

OWNER INFORMATION**Owner 1 of 2**

Type LOCAL AUTHORITY
Name MUN STELLENBOSCH
ID / Reg. Number -
Title Deed T28901/1988
Registration Date 1988/06/02
Purchase Price (R) UNKNOWN
Purchase Date -
Share 0.00
Microfilm 2007 0556 3308
Multiple Properties NO
Multiple Owners NO

Owner 2 of 2

Type LOCAL AUTHORITY
Name MUN STELLENBOSCH
ID / Reg. Number -
Title Deed T76566/2002
Registration Date -
Purchase Price (R) TRANSFER BY ENDORSEMENT
Purchase Date -
Share 0.00
Microfilm 2002 0736 5098
Multiple Properties NO
Multiple Owners NO

ENDORSEMENTS (6)

#	Document	Institution	Amount (R)	Microfilm
1	K199/1995L	GOLF CLUB-STELLENBOSCH	UNKNOWN	1995 0286 2058
2	K331/1998S	-	UNKNOWN	1998 0272 4942
3	NOW SUBDIVISION	TOWN STELLENBOSCH ,ERF 13168 ,PRTN 0	UNKNOWN	-
4	NOW SUBDIVISION	TOWN STELLENBOSCH ,ERF 13166 ,PRTN 0	UNKNOWN	-
5	NOW SUBDIVISION	TOWN STELLENBOSCH ,ERF 17317 ,PRTN 0	UNKNOWN	-
6	VA3757/2019	MUN STELLENBOSCH	UNKNOWN	-

HISTORIC DOCUMENTS (1)

#	Document	Owner	Amount (R)	Microfilm
1	STF5-34/1883	MUN STELLENBOSCH	0	2006 1881 1465

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