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DEPARTMENT OF HIGHER EDUCATION AND TRAINING

NO. 1221 **20 SEPTEMBER 2019**

MEMORANDUM OF AGREEMENT TO COMMIT TO THE TRANSFER OF LAND TO ENABLE THE RAPID DEVELOPMENT OF DISTRICT SIX AND CAPE PENINSULA UNIVERSITY OF TECHNOLOGY

I, Dr Bonginkosi Emmanuel Nzimande, MP, Minister of Higher Education, Science and Technology, hereby publish the Memorandum of Agreement (MoA) to commit to the transfer of land to enable the rapid development of District Six and the Cape Peninsula University of Technology.

Dr BE Nzimande, MP
Minister of Higher Education, Science and Technology
Date: 10/07/2019

MEMORANDUM OF AGREEMENT

Agreed upon by and between

THE MINISTER OF HIGHER EDUCATION AND TRAINING

Herein represented by **Minister GNM Pandor, MP**

In her capacity as Minister of Higher Education and Training

(Herein referred to as **the MHET**")

and

THE MINISTER OF PUBLIC WORKS

Herein represented by **Minister TW Nxesi, MP**

In his capacity as Minister of Public Works

(Hereinafter referred to as **MPW)**

and

THE MINISTER OF RURAL DEVELOPMENT AND LAND REFORM

Herein represented by **Minister M N Mashabane, MP**

In her capacity as Minister of Rural Development and Land Reform

(Hereinafter referred to as **MRDLR)**

and

THE VICE-CHANCELLOR OF THE CAPE PENINSULA UNIVERSITY OF TECHNOLOGY

Herein represented by **Dr NS Nhlapo**

In his capacity as Vice-Chancellor of the Cape Peninsula University of Technology (CPUT)

(Hereinafter referred to as VCCPUT**)**

TO COMMIT TO THE TRANSFER OF LAND TO ENABLE THE RAPID DEVELOPMENT OF DISTRICT SIX AND THE CAPE PENINSULA UNIVERSITY OF TECHNOLOGY

1. PARTIES

1.1 The Minister of Higher Education and Training

1.2 The Minister of Public Works

1.3 The Minister of Rural Development and Land Reform

1.4 The Vice-Chancellor of the Cape Peninsula University of Technology

2. PREAMBLE

WHEREAS Government is committed to land restitution for the District Six Redevelopment Project

WHEREAS Government is committed to the development of the Cape Peninsula University of Technology (CPUT) in order to improve access to post-school education and training opportunities

WHEREAS CPUT was granted permission to use the West Campus land in 1993, on the basis that a portion of the East Campus be ceded to the District Six Trust (as described in Annexure 1)

WHEREAS the former Minister of Higher Education (Dr BE Nzimande) approved CPUT's decision to dispose of its East Campus to the Department of Rural Development and Land Reform (DRDLR) for restitution purposes in District Six

WHEREAS the said approval for the above disposal was given on the understanding that the Department of Public Works (DPW) would transfer land on the West Campus of CPUT to the University for its developmental needs (see Annexure 4 – Letter from MHET dated 14 May 2014)

WHEREAS the DPW commitment to transfer land to CPUT dates back to the year 2000 (see Annexure 2 – Letter from DPW dated 9 November 2000)

WHEREAS the Minister of Rural Development and Land Affairs has the responsibility for land restitution to the District Six Trust in terms of transfers of land portions from CPUT to the District Six Trust

WHEREAS the City of Cape Town is the custodian of a portion of land (Erf 110475) required for CPUT development and has indicated that the transfer of this property is

at the discretion of the claimant community (see Annexure 3 - letter on behalf of the City of Cape Town, dated 18 October 2017). CPUT will retain ownership and reserve Erf 177645 until such time as agreement is reached on the transfer of Erf 110475 to CPUT

WHEREAS there is an urgent need for DRDLR to progress on the construction and handing over of houses to the District Six beneficiary community

WHEREAS the Parties recognise that the processes of land transfer may take some time to conclude, the transfer of Erven 177643, 177644 and 177646 must be prioritised with urgency and the transfer must commence immediately following the signing of this Memorandum of Agreement (MOA)

AND WHEREAS the process of transfer of the West Campus properties in Annexure 1 Table 2 to CPUT must commence immediately following the signing of this MOA as there is an urgent need to progress on the further development and expansion of CPUT.

NOW THEREFORE THE PARTIES CONFIRM THEIR COMMITMENT TO THE RAPID DEVELOPMENT OF DISTRICT SIX AND CPUT AND TO THE TRANSFER OF THE LAND IDENTIFIED IN ANNEXURE 1 AS FOLLOWS:

3. EFFECTIVE DATE

The commitments expressed in this Memorandum of Agreement shall be sustained until transfer of the relevant land portions to DRDLR and CPUT respectively.

4. LAND TRANSFER

4.1 The portions of land identified in Annexure 1 Table 1 will be transferred by CPUT into the ownership of DRDLR for land restitution and the development of District Six.

4.2 The portions of land identified in Annexure 1 Table 2 will be transferred by DPW into the ownership of CPUT.

4.3 It is recognised that the successful development of the University's West Campus is dependent on a portion of land (Erf 110475) in the custodianship of the City of Cape Town (see Annexure 1 Table 3) and the transfer of this

G.N.M.P. 3 NSN

property is at the discretion of the District Six claimant community (see Annexure 3 - letter on behalf of the City of Cape Town, dated 18 October 2017). CPUT will retain ownership and reserve Erf 177645 until such time as an agreement is reached with the Claimant Community for the release of Erf 110475 to CPUT.

4.4 DPW will retain the properties as shown on Annexure 1 Table 4.

5. OCCUPATION AND DEVELOPMENT RIGHTS

5.1 Until the processes of land agreed for transfer are concluded, DRDLR is authorised to take occupation and to develop the land identified for transfer to it, as if it were the owner.

5.2 Until the processes of land agreed for transfer are concluded, CPUT is authorised to take occupation and to develop the land identified for transfer to it, as if it were the owner.

5.3 The envisaged development activities by DRDLR and CPUT respectively, include, but are not restricted to the following:

5.3.1 Surveys, site investigations, alterations, maintenance and on-site improvements

5.3.2 Applications for zoning, planning approvals, building permits and any other planning processes required for development

5.3.3 Installation of new services and the maintenance of existing services

5.3.4 Construction work.

5.4 As the duly authorised occupier and developer of the land agreed for transfer, DRDLR and CPUT will be respectively accountable, through the Department of Higher Education and Training, to manage the land in full compliance with all laws and regulations governing property owners in general and any specific requirements of the respective title deeds.

5.5 The authorities which have custodianship of the land and act on behalf of the State will actively support and act at all times in the best interest of the District Six community and CPUT when it exercises any right referred to in sub-clauses 5.1, 5.2 and 5.3.

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5.6 In order to give effect to sub-clauses 5.3.1 to 5.3.4 CPUT shall issue DRDLR with a power of attorney to act on its behalf in respect of the land referred to in Annexure 1 Table 1 and DPW shall issue CPUT a power of attorney to act on its behalf in respect of the land referred to in Annexure 1 Table 2.

6. COSTS

6.1 All costs associated with the occupation, implementation and development of the transferred land shall be carried by the entity to whom the land is transferred.

6.2 DRDLR and CPUT respectively, shall bear the transfer costs of the land received.

6.3 Each Party shall be entitled to appoint its own conveyancer to attend to the transfer of its properties to the other party.

7. TRANSFER OF THE PROPERTY

The process to effect transfer of the property will be facilitated and processed by the Cape Peninsula University of Technology, the Department of Rural Development and Land Reform, and the Department of Public Works with the support of the Department Higher Education and Training and will be given a high priority by all parties involved.

8. FUTURE COOPERATION

8.1 CPUT, with the assistance of the Department of Higher Education and Training, will engage with:

8.1.1 DPW on the acquisition of possible properties suitable for university owned student housing; and

8.1.2 The Department of Human Settlements where it may have other development projects suitable for student housing.

8.2 DRDLR will facilitate further engagements with the District Six beneficiary community and DPW for possible opportunities for the identification of suitable space within the District Six redevelopment project.

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8.3 DRDLR will facilitate future engagements with the District Six beneficiary community and CPUT for the possible transfer of Erf 110475 on the West Campus to CPUT in return for Erf 177645.

9. PUBLICATION

The parties wish to communicate this MOA and agree to its publication in the Government Gazette in order to facilitate the co-operation and support of all organs of state, public authorities and the private sector in the implementation of the MoA and the respective development of District Six and the Cape Peninsula University of Technology.

SIGNED at PRETORIA on this 1 day of MAY 2019

Dr. GNM Pandor G.N.M. Pandor

MINISTER OF HIGHER EDUCATION AND TRAINING

AS WITNESSES **(MHET):**

1. _____

2. _____

SIGNED at Pretoria on this 2 day of May 2019

Mr TW Nxesi

MINISTER OF PUBLIC WORKS

AS WITNESSES **(MPW)**

1. _____

2. _____

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SIGNED at PRETORIA on this 09 day of MAY 2019

~~Ms M N Mas~~habane M.E NKOANA-MASHABANE

MINISTER OF RURAL DEVELOPMENT AND LAND REFORM

AS WITNESSES **(MRDLR)**

1. Ms M. Ramoraswi
2. Ms. P. Mabelebele

SIGNED at BELLVILLE on this 16th day of MAY 2019

Dr NS Nhlapo

VICE-CHANCELLOR OF THE CAPE PENINSULA UNIVERSITY OF TECHNOLOGY

AS WITNESSES **VCCPUT**

1.
2.

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ANNEXURE 1 - SCHEDULE OF LAND REFERRED TO IN THIS MEMORANDUM OF AGREEMENT

Figure 1 Property ownership after transfer by DPW and CPUT in terms of this MOA

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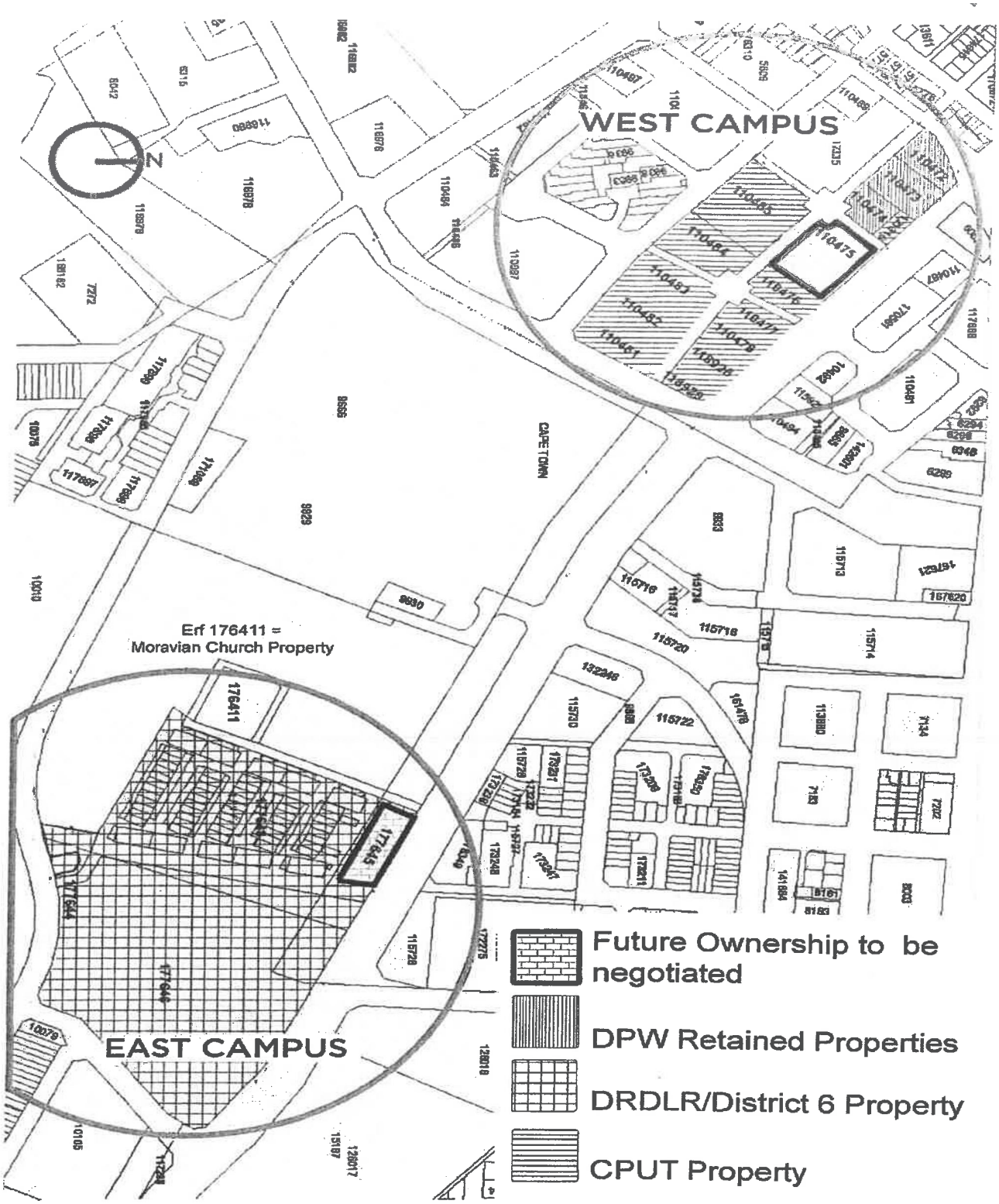

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SCHEDULE OF PROPERTIES TO BE TRANSFERRED

Table 1 - Schedule of Properties to be transferred from CPUT to DRDLR for District Six Redevelopment Project		
Erf Description	**Size M²**	**Title Deed**
Erf 177643 Cape Town	22767	T32186/1989
Erf 177644 Cape Town	278	T32186/1989
Erf 177646 Cape Town	32972	T32186/1989
Total	56 017	

Table 2 - Schedule of Properties to be transferred from DPW to CPUT		
Erf Description	**Size M²**	**Title Deed**
Erf 121316 Cape Town	403	Unknown
Erf 110476 Cape Town	1148	T21715/1986
Erf 110477 Cape Town	1069	T51216/1984
Erf 110478 Cape Town	979	T41860/1990
Erf 118928 Cape Town	1417	T83390/1994
Erf 118927 Cape Town	364	T83390/1994
Erf 110481 Cape Town	1954	T53571/1998
Erf 110482 Cape Town	2168	T83539/1993
Erf 110483 Cape Town	1949	T83539/1993
Erf 110484 Cape Town	2057	T83539/1993
Erf 110485 Cape Town	3781	T83390/1994
Total	17289	

Table 3 - Schedule of Properties to be transferred subject to the agreement of the District Six claimant community		
Erf Description	**Size M**	**Title Deed**
Erf 110475 Cape Town	3036	T72073/1988
Erf 177645 Cape Town[1]	1778	T32186/1989

Table 4 - Schedule of Properties retained by DPW		
Erf Description	**Size M**	**Title Deed**
Erf 110472 Cape Town	1250	T9126/1990
Erf 110473 Cape Town	1625	T9126/1990
Erf 110474 Cape Town	1411	T36695/1986
Total	4286	

[1] Transfer to DRDLR for restitution subject to ERF 110475 being transferred to CPUT

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ANNNEXURE 2 – LETTER FROM DPW (09 November 2000)

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DEPARTMENT OF PUBLIC WORKS
REPUBLIC OF SOUTH AFRICA

Private Bag X9027, Cape Town, 8000
Customs House Heerengracht, Cape Town

From. Regional Office, Cape Town
Tel: (021) 402-2181 Fax: (021) 419-2669 e-mail. noelabrahams@pwdmail.pwv.gov za

Enquiries: Mr NE Abrahams Ref: 6508/7522/2

The Vice Rector Operations
Cape Technicon
P O Box 652
CAPE TOWN
8000
09 November 2000

Attention: Mr van Zyl

SUBJECT: EXCHANGE OF LAND BETWEEN THE STATE AND CAPE TECHNICON

1. The discussion between officials of this Department and personnel of the Technicon on 27 October 2000 pertaining to the above has reference.

2. During August 1989 the then Cabinet has approved that certain privately own properties in the proximity of Zonnebloem (District 6) be expropriated and that these properties together with other properties which belonged to the erstwhile Community Development Board and Housing be allocated to the Cape Technicon in exchange for an equal portion of a property in ownership of the Cape Technicon. It was intended that the property which are to be acquired from the Cape Technicon be donated to the Cape Town Community Trust for the purpose of the redevelopment of low cost housing in District Six.

3 The properties involved are depicted in the table below:

ERF NO	EXTENT	OWNER	IMPROVEMENTS
110472	1250m²	Private	Building 104 Darling street
110473	1625m²	Private	Vacant
110474	1411m²	Private	J&B House
110476	1148m²	Private	Vacant
110477	1069m²	Private	Willrich House
110484	2057m²	Private	Flags restaurant
110483	1949m²	Private	Vacant
110482	2168m²	Private	Vacant
110481	1954m²	Private	Vacant
110478	978m² 998	Private	Community Housing Board
118928	1471m²	Private	Community Housing Board
110485	3781m²	Private	Community Housing Board
118927	364m²	Private	Community Housing Board

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The Executive Committee of Community Board has during 1993 approved that the above properties be transferred to the Republic of South Africa (Department of Public Works) to further pursue to exchange transactions and to effect the transfer of the property which will be acquired from the Technicon i.e. being a portion of Erf 9929 Zonnebloem to the Cape Town Community Trust. Erf 110475 that belonged to the Municipality of Cape Town was included in the exchange agreement in order to equalise the extent of the property that will be acquired from the Cape Technicon.

4. From the Departmental records it can be deduced that there were several factors which contributed to the delay in finalisation of the exchange transactions; inter alia

- Various correspondence entered between the Department and the Attorneys representing the Technicon with regards to the terms and conditions of the exchange agreement;
- The inclusion of the Municipality as party to the agreement; and
- Reluctance on the part of the Municipality to donate their property. In a letter dated 19 June 1996 they requested that alternative land should be allocated to them in exchange for the property that they have lost.

5. Negotiations were in an advance stage when the State Attorney requested that a certificate in terms of Section 239 of the interim Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) be obtained in respect of the State's properties. In a letter dated 16 October 1998 the Department of Land Affairs indicated that due to the political sensitivity surrounding the future of District Six, they did not see its way clear to continue with the exchange agreement. Furthermore it was also indicated that there are restitution claims registered against the State's properties and also to that of the Technicon. The exchange arrangements have subsequently reached a stalemate situation.

6. From the Department's records it was also ascertained that the Technicon has taken occupation of certain properties as set out below:

ERF NO	IMPROVEMENTS	DATE OF OCCUPATION
110477	Willich Hse	13 November 1991
110481	Vacant	1 January 1991
110482	Vacant	1 January 1991
110483	Vacant	1 January 1991
110474	J&B Hse	1 January 1991
[illegible]	Flags restaurant	1 March 1986
[illegible]	Vacant	1 March 1986
110927	Vacant	Undetermined
110478	[illegible]	Undetermined

During a recent on-site visit to the properties it was established that the property situated on Erf 110477 and a portion of Erf 110481 has been developed by the Technicon for the purpose of their Education Department Erven 110482, 110483, 118928 and 118927 have been developed as parking areas The J&B House situated on Erf 110474 is being utilised as accommodation for students while the ground floor is leased to the private sector Erf 110484 (Flag Restaurant) is privately leased

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7 The situation at hand is that the Department is currently paying the rates on the properties of which the Technicon took possession. It is evident that the exchange agreement in its existing format will never materialise and this situation cannot be allowed to continue indefinitely.

The following table reflects the rates that the Department has paid for properties in possession of the Technicon.

ERF NO	93/94	94/95	95/96	96/97	97/98	98/99	99/2000	TOTAL
110477	48888,60	37368,57	45501,42	50956,20	57210,16	63406,46	69022,06	372 355,50
110481	11273,64	4767,77	5605,42	35396,93	39739,71	43714,99	47697,25	188 398,70
110482	12508,32	4511,59	5493,48	6152,29	6907,11	7598,04	8290,19	51 461,02
110483	11244,80	4755,57	5790,57	6485,01	7280,63	8008,94	8738,52	52 304,04
10474	-	-	-	22036,48	24740,11	29767,82	31614,01	108 158,40
110464	-	-	-	17035,97	19126,08	21039,32	22955,93	81 157,30
	83915,36	51403,50	62390,89	131579,90	155003,80	173535,60	188318,00	852 835,00

The account for the payment of rates for 2000/01 on the properties in possession of the Technicon have been held in abeyance and amounts to R199 283,90. It was agreed during the discussion the Department would except the liability to settle the accounts for 2000/01 rates year and the Technicon will reimburse the Department proportionally with effect from January 2001. Confirmation in this regard is still awaited.

8. In order to overcome the impase with regards to the proposed exchange the Department is prepared to conclude the exchange arrangements in respect of the properties that are occupied by the Technicon. For this purpose you are requested to identify which properties are required for the Technicon's needs. The identified properties can be exchanged for the Technicon's vacant Erf i.e. Erf 153779 being a portion of Erf 9929 that the State requires for restitution purposes. The exchange should be based on the basis of a fair market value of the properties that have to be determined by an independent valuer.

9. It should however be mentioned that any agreements reached in this regard between the Department and the Technicon will have to be sanctioned by the Department of Land Affairs, Commissioner on the Restitution of Land Rights and the Steering Committee for District Six. The concurrent approvals of the Minister of Public Works and National Treasury will also have to be obtained for any land swop arrangements.

10. Your comments in the above regard will be appreciated.

Yours faithfully

1 REGIONAL MANAGER
technicon

ANNNEXURE 3 – LETTER ON BEHALF OF THE CITY OF CAPE TOWN (dated 18 October 2017)

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KEMP

ATTORNEYS • NOTARIES • CONVEYANCERS

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Our Reference: ES / W0024178
Your Reference: RCF/NP/MR7751(ew)

18 October 2017
Email: elaine@kemp-law.co.za

WITHOUT PREJUDICE OF RIGHTS

BISSET BOEHMKE McBLAIN
Via e-mail: r.ferrandi@bissets.com

Dear Sir

RE: TRANSFER OF ERF 110475 CAPE TOWN TO CAPE PENINSULA UNIVERSITY OF TECHNOLOGY

The above matter and our letter dated 11 July 2017 have reference.

We confirm that we have been advised by our client, the City of Cape Town, that the Cape Peninsula University of Technology (hereinafter referred to as CPUT) is desirous of acquiring Erf 110475, Cape Town, as part of its "Campus Expansion Programme".

1. **ERF 110475 AND THE FRAMEWORK AGREEMENT**

Erf 110475 is registered in the name of the City of Cape Town. The Erf is subject to a section 42D Framework Agreement (hereinafter referred to as the Framework Agreement) in terms of the Restitution of Land Rights Act No. 22 of 1994 (hereinafter referred to as the Restitution Act).

The Framework Agreement was concluded in or around November 2000 between the Department of Land Affairs (now the Department of Rural Development and Land Reform), the District Six Beneficiary Trust (hereinafter referred to as the Trust) and the City of Cape Town.

The object of the Framework Agreement is, amongst others, to establish a mechanism for the settlement of restitution claims as a result of forced removals – particularly within the District Six area. In terms of the Framework Agreement various erven were identified by the City of Cape Town to provide for the settlement of restitution claims.

2. **LEGAL STATUS OF ERF 110475 AND RELEVANT LEGISLATION**

Erf 110475, through the Framework Agreement, is property which has been acquired by the District Six Beneficiary Trust for the purposes of awarding the land to the claimants of the District Six Community. In terms of the Restitution Act, any land acquired for the purposes of awarding such land to a claimant, vests in the State.

KEMP & GENOTE (Reg. No. 1994/004079/21)
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ASSOCIATES - BB Joos LL.B.
PROFESSIONAL ASSISTANTS - SJ Bossenger LL.B. - JS van Zyl BA, LL.B. - J de Villiers LL.B.
DW Frittelli LL.B.
CANDIDATE ATTORNEYS - MC Blore - M Bester - MW Klaaste - D Herbig
OFFICE MANAGER - JGS Erasmus
IN ASSOCIATION WITH - CC Williams Attorneys - Bellingan Muller - Adele Jordaan Attorneys

3. POSITION OF THE CITY OF CAPE TOWN

In light of the Framework Agreement and the Restitution Act, the City of Cape Town is in no position to do or cause to do any act which would serve to alienate or limit the rights of either the State or the Trust in relation to Erf 110475. As a result thereof, the City of Cape Town is unable to transfer Erf 110475 directly to CPUT.

4. ACQUISITION OF ERF 110475 BY CPUT

Notwithstanding the Framework Agreement and the Restitution Act, CPUT is able to acquire Erf 110475, provided the relevant procedures followed and authorities granted.

In terms of the Framework Agreement, an Inter-Governmental Technical Steering Committee is to represent all the parties to the Framework Agreement. The Framework Agreement may be amended provided such amendment is agreed to between all the parties and reduced to writing. As a result thereof, the Framework Agreement may be amended to provide for the release of Erf 110475 from the operation of the Framework Agreement. This amendment may be brought by way of application to the Inter-Governmental Technical Steering Committee. This application should be brought by the party wishing to acquire Erf 110475 – CPUT.

Upon the amendment of the Framework Agreement as above, two further requirements are necessary. Firstly, the State (as owner of Erf 110475) and CPUT are required to enter into an Agreement of Exchange as originally envisioned between the parties. This Agreement will provide for the exchange of property owned by the State (including Erf 110475) with that of property owned by CPUT. Secondly, the Regional Land Claims Commissioner will be required to consent or endorse the Agreement of Exchange. In terms of the Restitution Act, the Regional Land Claims Commissioner has the jurisdiction to apply to court for an interdict prohibiting the sale, exchange, donation, lease, subdivision, rezoning or development of land which is the subject of a restitution claim, if such sale, donation etc. will defeat the achievement of the objects of the Restitution Act. By implication and by virtue of the fact that the property falls within District Six, the Regional Land Claims Commissioner is required to endorse or consent to the acquisition of Erf 110475 by CPUT.

5. POSITION OF THE CITY OF CAPE TOWN

While it has been established that the City of Cape Town will not be in a position to attend to the transfer of Erf 110475 to CPUT directly, the City of Cape Town is still a party to the Framework Agreement and obligated to provide redress for past discriminatory practices. The City of Cape Town therefore will endorse and support an application by CPUT to acquire Erf 110475 insofar as is permissible.

Should you have any queries and / or additional requests kindly do not hesitate to contact the writer.

We trust the above is in order.

KEMP & ASSOCIATES

per: ELAINE SCHOEMAN

ANNNEXURE 4 – LETTER FROM THE FORMER MINISTER OF HIGHER EDUCATION AND TRAINING TO CPUT (dated 14 May 2014)

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MINISTER
HIGHER EDUCATION AND TRAINING
REPUBLIC OF SOUTH AFRICA

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Dr P Nevhutalu
Vice-Chancellor
Cape Peninsula University of Technology
PO Box 1906
BELLVILLE
7535

By email: nevhutalup@cput.ac.za

Dear Dr Nevhutalu

CAPE PENINSULA UNIVERSITY OF TECHNOLOGY: REQUEST FOR MINISTERIAL APPROVAL IN TERMS OF SECTION 20 (5) OF THE HIGHER EDUCATION ACT, (ACT 101 OF 1997, AS AMENDED) FOR ALIENATION OF LAND TO THE DISTRICT SIX PROJECT AND EXCHANGE OF THE "EAST" AND "WEST CAMPUS PROPERTIES, AS WELL AS THE "HANDING BACK" OF THE MORAVIAN CHURCH, IN DISTRICT SIX IN CAPE TOWN

Your letter dated 7 March 2014, has reference.

I have approved in terms of section 20 (5) of the Higher Education Act, (Act 101 of 1997, as amended) the Cape Peninsula University of Technology's request to alienate land to the District Six Project and the transfer and exchange of the "East" and "West" campus properties, as well as the "handing back" of the Moravian Church, in District Six in Cape Town.

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This approval is based on the understanding that due processes and agreements with all the relevant role payers are followed in finalising the transaction.

Yours sincerely

Dr BE Nzimande, MP
Minister of Higher Education and Training
Date: 14/05/2014