

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
02 March 2022
(Also the agenda for the Mayoral Committee Meeting : 28 March 2022)**

2.

A PORTION OF ERF 4831 HERMANUS: DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A DIRECT LEASE AGREEMENT WITH THE KLEIN RIVER LAGOON PARK BODY CORPORATE

7/2/3/1

A Le Roux

Manager: Property Administration

01 February 2022

(028) 316-5623

1. Executive Summary

To obtain approval from Council for the deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015 (as approved by Council on 25 November 2015) allowing the Municipality to enter into, and take over, a lease agreement directly with The Klein River Lagoon Park Body Corporate (hereinafter referred to as "Klein River") in respect of a portion of Erf 4831 Hermanus, 6279m² (SIX THOUSAND TWO HUNDRED AND SEVENTY-NINE SQUARE METRES) in extent (hereinafter referred to as the "Property") situated in the De Mond Public Resort for a period of 3 (THREE) years commencing from 1 September 2020 until 31 August 2023 for the purpose of a site for mobile park homes, without following a competitive bidding process.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Klein River had a lease agreement with the Municipality in respect of the Property (See the Locality Map attached as Annexure A and the Lease Area Diagram attached as Annexure B). This lease agreement was taken over by Pohl Business Trust (trading as the Pohl Property Development Group) trading as The Crown Grant (Pty) Ltd (hereinafter called the "Pohl Group") when the tender of the De Mond Caravan Park was awarded to the Pohl Group and a lease agreement was entered into between the Municipality and the Pohl Group in March 2018. The area leased by Klein River formed part of the tender.

Klein River then entered into a verbal lease agreement with the Pohl Group in terms whereof they paid rental and services charges to the Pohl Group directly. The rental amount paid by Klein River varied from month to month as they were negotiating the rental (hence no final written agreement was entered into between Klein River and the Pohl Group).

For the last 18 months of their agreement, the rental paid by Klein River to the Pohl Group, which was finally agreed to, amounted to R22,500.00 (TWENTY TWO THOUSAND FIVE HUNDRED RAND) (VAT excluded) per month, with the last rental paid to them in August 2020 (see Annexure C attached). Klein River also had separate meters for electricity and water consumption, which amounts were paid over to the Pohl Group until about September 2019 (see services payments attached as Annexure D). Thereafter Klein River started paying services directly to the Municipality due to the arrear accounts of the Pohl Group and to ensure that their services are not blocked.

On 1 July 2019 the lease agreement entered into between the Municipality and the Pohl Group lapsed due to the non-fulfillment of suspensive conditions by the Pohl Group. This has been confirmed by an arbitration award received on 29 September 2020. This in effect means that any lease agreement Klein River had with the Pohl Group also lapsed, which could have devastating effects on them as they have already developed the Property and have been occupying the Property for years.

A new tender for the development of the De Mond Caravan Park will be advertised within the next two months. Despite this, the Municipality must still, in terms of the Municipal Asset Transfer Regulations and the Administration of Immovable Property Policy, have a written lease agreement with Klein River for the period they have been on the Property since the latest date it was declared that the lease agreement with the Pohl Group has lapsed and until such time the tender is awarded and the De Mond development can commence.

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In the light of the above, and taking into consideration that Klein River has erected semi-permanent structures on the Property that have been there for years, it is recommended that the verbal lease agreement they had with the Pohl Group be taken over as a written temporary lease agreement of 3 years commencing on 1 September 2020, pending the awarding of a new tender for the whole area.

The Accounting Officer (Municipal Manager) approved the lease of the Property to Klein River, subject thereto that the approval of Council is obtained as to the deviation from paragraph 18 of the Administration of Immovable Property Policy as requested in this report. In the interim, for administrative and audit purposes, a written lease agreement was signed that is subject to Council's approval for a deviation from the competitive bidding requirements to allow the Municipality to enter into the agreement directly.

This lease agreement is in writing and include further specific conditions as stipulated by the Administration of Immovable Property Policy Policy and will thus not be on exactly the same terms and conditions as the verbal agreement Klein River had with the Pohl Group. One of the conditions will be that the Municipality can cancel the lease agreement with Klein River on the provision of 6 months written notice. This condition has been accepted by Klein River.

It must be noted that Klein River is not prohibited from negotiating with any new developer of the De Mond Caravan Park.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following paragraphs of the Administration of Immovable Property Policy are applicable:

Paragraph 4: “No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including - but not limited to - legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services

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and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.

In this case the Municipality will be taking over a lease agreement between the Pohl Group and Klein River, thus no application fee is payable.

Paragraph 17: “Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:

- 17.1 a competitive process, which may include a closed or public tender or proposal call, specifically in circumstances listed in paragraph 18 below; or***
- 17.2 a direct lease.”***

Paragraph 18: “A competitive process must at all times be followed in circumstances where:

- 18.1 the lease is for a long term with an income value in excess of R10 million;***
- 18.2 the lease is for a formal business premises with a market related rental;***
- 18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or***
- 18.4 by discretion of the municipality, a competitive process will best serve the interests of the community”.***

In this case the Municipality will be taking over the lease agreement Klein River had with the Pohl Group, but with the condition that it will only be for a period of 3 years with a 6 months cancellation clause. As this is a temporary short term lease for a period of 3 years on a property already developed for holiday purposes by Klein River and as the whole area will be made available for the lease and development for a long term, it will not serve a usefull purpose to follow a competitive process for this specific portion of Erf 4831 for such a short period. The Property will thus be included in the tender for the bigger portion of Erf 4831 Hermanus (see diagram attached marked Annexure E). Klein River will then have the opportunity again to negotiate with any new developer as and when the tender is awarded. Therefore it is recommended that Council approves a deviation from paragraph 18.

**Paragraph 21: “Short term lease of municipal immovable property:
21.1. The Municipality may grant a short term lease of municipal immovable property up to three years without the option of renewal only after the Accounting Officer has approved the lease in principle.**

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21.2 Immovable property let according to paragraph 21.1 above need not be advertised in terms of paragraph 10.1 and 10.2 and need not be subsequently approved by the Executive Mayor, but shall be subject to the following:

- (a) the lessee shall be responsible for all costs regarding the connection of services, service fees and any other costs associated with the lease;**
- (b) the Municipality shall, if it is not prescribed that market related rental must be charged, determine the rental;**
- (c) the lessee shall undertake in writing to compensate the Municipality for damages caused to the immovable property for whatever reason;**
- (d) the lessee shall indemnify the Municipality against any claims; and**
- (e) the Municipality may request proof of financial viability to honour the lease."**

The Accounting Officer (Municipal Manager) approved the short term lease of the Property to Klein River subject thereto that the approval of Council is obtained as to the deviation from paragraph 18 of the Administration of Immovable Property Policy as requested in this report.

Paragraph 24: "The fair market value for the alienation of, the rental amount for the leasing or compensation payable for a servitude over municipal immovable property shall be determined by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing act at the cost of the purchaser (in the case of a direct sale) or lessee (in the case of a direct lease)/servitude holder (in the case of a servitude)."

The rental that Klein River was paying to the Pohl Group (R22,500.00 (TWENTY TWO THOUSAND FIVE HUNDRED RAND) VAT excluded) for the last 18 months of their lease can be seen as market related as it was negotiated between two willing parties in a business transaction. This rental amount will escalate annually on the 1st of July by a percentage equal to the prevailing consumer price index (all items).

Conclusion

Taking the above into consideration, it is recommended that Council approves the deviation from paragraph 18 of the Administration of Immovable Property Policy in order for the Municipality to take over the lease agreement with Klein River from the Pohl Group for a period of 3 (THREE) years from 1 September 2020 until 31 August 2023 without following a competitive process.

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7. Financial Implications

The Municipality stands to gain a rental amount of R22,500.00 (TWENTY-TWO THOUSAND FIVE HUNDRED RAND) (VAT excluded) per month, escalating annually on the 1st of July by a percentage equal to the prevailing consumer price index (all items).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets, Mr J Vorster - (028) 313 8046

“As this is an income generating proposal, with no intention of selling the asset, there is no objection against the application.”

10. Annexures

- Annexure A: Locality Map 1 & 2
- Annexure B: Lease Area Diagram
- Annexure C: Rental paid
- Annexure D: Services paid
- Annexure E: Lease Area for the whole De Mond

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to enter into a direct lease agreement with The Klein River Lagoon Park Body Corporate in respect of a portion of Erf 4831 Hermanus for a period of 3 (THREE) years commencing from 1 September 2020 until 31 August 2023 at a rental amount of R22,500.00 (TWENTY-TWO THOUSAND FIVE HUNDRED RAND) (VAT excluded) per month, escalating annually on the 1st of July by a percentage equal to the prevailing consumer price index (all items) without following a competitive process, **be approved.**

RESPONSIBLE OFFICIAL :	R MARINUS
TARGET DATE FOR IMPLEMENTATION :	06 APRIL 2022
TARGET DATE TO INFORM APPLICANT :	06 APRIL 2022
TARGET DATE TO INFORM OBJECTOR :	N/A

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2.

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7/2/3/1

A Le Roux

Manager: Property Administration

01 February 2022

(028) 316-5623

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 2 MARCH 2022, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to enter into a direct lease agreement with The Klein River Lagoon Park Body Corporate in respect of a portion of Erf 4831 Hermanus for a period of 3 (THREE) years commencing from 1 September 2020 until 31 August 2023 at a rental amount of R22,500.00 (TWENTY-TWO THOUSAND FIVE HUNDRED RAND) (VAT excluded) per month, escalating annually on the 1st of July by a percentage equal to the prevailing consumer price index (all items) without following a competitive process, **be approved.**

RESPONSIBLE OFFICIAL :

R MARINUS

TARGET DATE FOR IMPLEMENTATION :

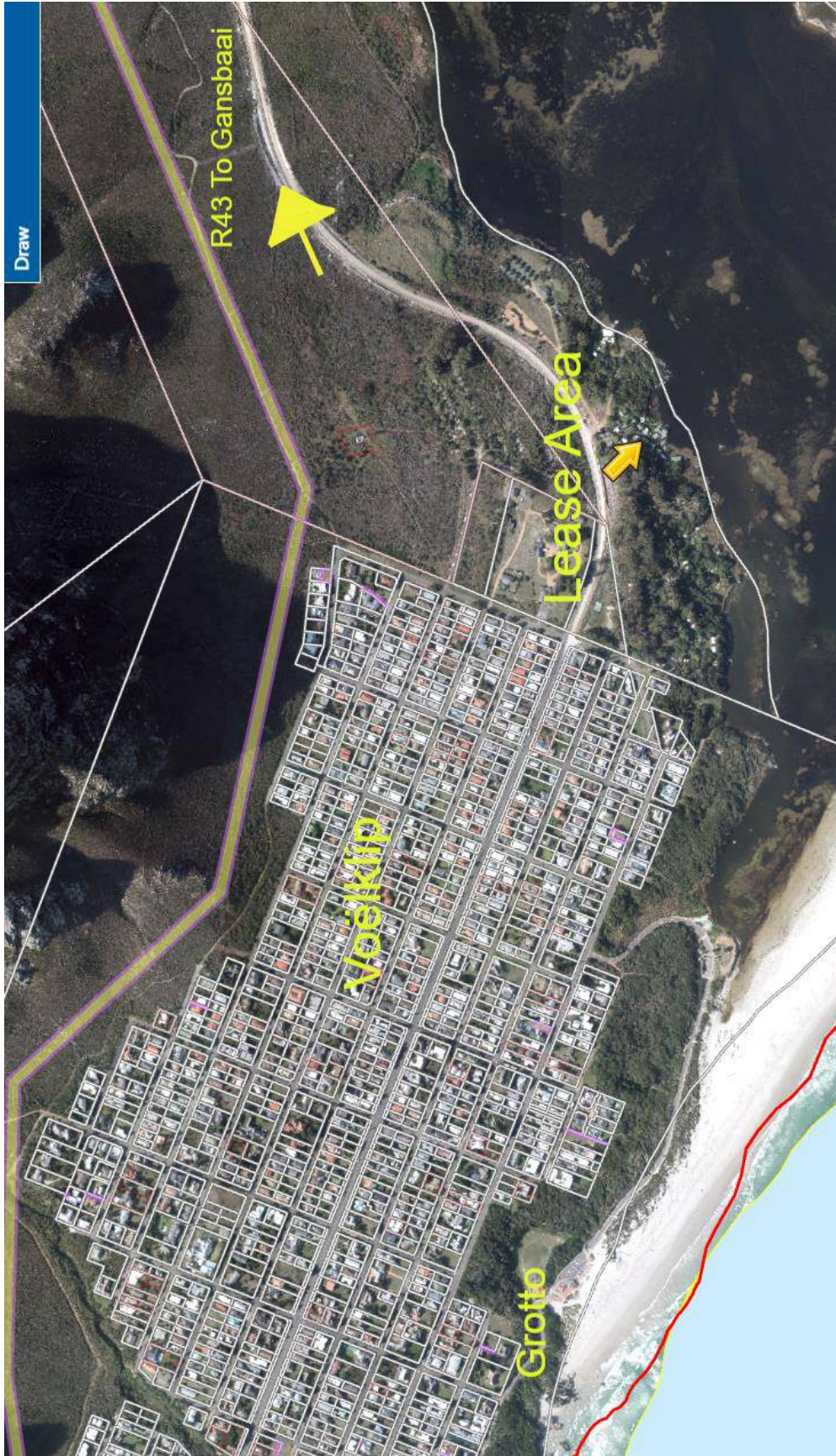
06 APRIL 2022

TARGET DATE TO INFORM APPLICANT :

06 APRIL 2022

TARGET DATE TO INFORM OBJECTOR :

N/A



ANNEXURE A2



ANNEXURE B

Pr Land Surveyor, Cape Town

LEASEHOLD GCM 1

SIDES	Metres	ANGLES OF DIRECTION		CO-ORDINATES		SG No 6011/1997	
				Y	X		
		Constants		+ 0.00	+3800000.00		
AB	36.28	257 45 40	A	- 27927.87	+ 9295.75	Approved <i>[Signature]</i> Pr Surveyor-General Date: 1997-10-06	
BC	89.76	337 54 40	B	- 27963.33	+ 9288.06		
CD	24.43	23 56 40	C	- 27997.08	+ 9371.24		
DE	84.91	59 50 10	D	- 27987.17	+ 9393.56		
EF	33.07	154 37 20	E	- 27913.76	+ 9436.23		
FG	26.80	249 29 20	F	- 27899.58	+ 9406.35		
GH	8.21	239 14 20	G	- 27924.68	+ 9396.96		
HJ	19.71	225 42 20	H	- 27931.74	+ 9392.76		
JK	22.10	200 49 50	J	- 27945.85	+ 9378.99		
KA	67.71	157 34 20	K	- 27953.70	+ 9358.34		
Indicatory data:							
Ee		334 37 20					
		26 G3	⊕	- 27607.91	+ 9242.14		
		27 G3	⊕	- 27262.95	+ 9104.22		

Beacon Descriptions:

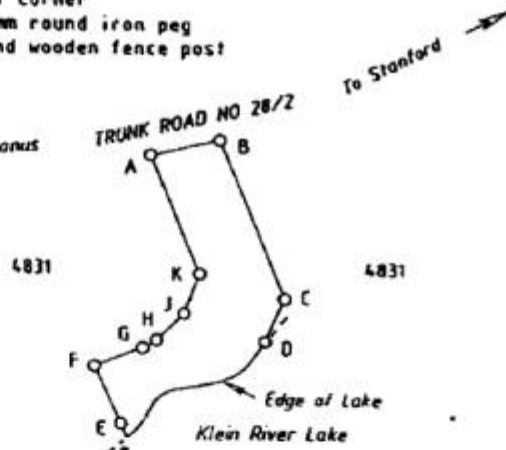
- A, B, C, F, J, K 12 mm round iron peg at wooden corner fence post
- D 20 mm iron pipe
- E Wall corner
- G 12 mm round iron peg
- H Round wooden fence post



RECORDED IN
OF VOL. 17/3/2-K
DATE 1997-07-21



Scale 1/3000



The figure A B C D ^{Edge} ~~High-Water-Mark~~ of Klein River Lake = F G H J K represents 6279 Square Metres of land, being

LEASE AREA NO 2 OVER ERF 4831 HERMANUS

Situate in the Greater Hermanus Transitional Local Council
Administrative District of Caledon Province of the Western Cape
Surveyed in June 1997 by me

U. UYS (PLS 0628) Pr Land Surveyor

This diagram is annexed to <i>Notarial deed of lease</i> No <i>16398L</i> dated <i>16/3/98</i> i.o. Klein River Lagoon Deed No Registrar of Deeds	The original diagram is No B 705/1873 annexed to Deed of Grant No 110/1942	SG File No S 2479/62 SR. No E 2383/1997 Compilation: AI-30A/Y31 (473)
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VP 19 02 196

THIS PORTION IS SUBJECT TO CONSIDERATION REFERRED TO IN SECT. 11 (1) OF ACT 213/1964

ANNEXURE C

KLEINRIVER HUUR AAN CROWN				
Datum	Huur	BTW	R Totaal	Maand
5 April 2018	32 000,00	4 800,00	36 800,00	Maart 2018
8 Mei 2018	32 000,00	4 800,00	36 800,00	April 2018
4 Junie 2018	17 391,30	2 608,70	20 000,00	Mei 2018
26 Junie 2018	22 608,70	3 391,30	26 000,00	Junie 2018
23 Julie 2018	20 000,00	3 000,00	23 000,00	Julie 2018
20 Aug 2018	20 000,00	3 000,00	23 000,00	Augustus 2018
21 Sept 2018	20 000,00	3 000,00	23 000,00	September 2018
19 Okt 2018	20 000,00	3 000,00	23 000,00	Oktober 2018
19 Nov 2018	20 000,00	3 000,00	23 000,00	November 2018
28 Des 2018	20 000,00	3 000,00	23 000,00	Desember 2018
16 Jan 2019	20 000,00	3 000,00	23 000,00	Januarie 2019
22 Feb 2019	20 000,00	3 000,00	23 000,00	Februarie 2019
Februarie 2019	264 000,00	39 600,00	303 600,00	
26 Mrt 2019	22 500,00	3 375,00	25 875,00	Maart 2019
9 Apr 2019	22 500,00	3 375,00	25 875,00	April 2019
2 Mei 2019	22 500,00	3 375,00	25 875,00	Mei 2019
4 Jun 2019	22 500,00	3 375,00	25 875,00	Junie 2019
3 Jul 2019	22 500,00	3 375,00	25 875,00	Julie 2019
7 Aug 2019	22 500,00	3 375,00	25 875,00	Aug 2019
3 Sept 2019	22 500,00	3 375,00	25 875,00	Sept 2019
2 Okt 2019	22 500,00	3 375,00	25 875,00	Okt 2019
5 Nov 2019	22 500,00	3 375,00	25 875,00	Nov 2019
17 Des 2019	22 500,00	3 375,00	25 875,00	Des 2019
4 Feb 2020	22 500,00	3 375,00	25 875,00	Jan 2020
2 Mrt 2020	22 500,00	3 375,00	25 875,00	Feb 2020
Februarie 2020	270 000,00	40 500,00	310 500,00	
6 Apr 2020	22 500,00	3 375,00	25 875,00	Mrt 2020
5 Mei 2020	22 500,00	3 375,00	25 875,00	April 2020
2 Junie 2020	22 500,00	3 375,00	25 875,00	Mei 2020
1 Julie 2020	22 500,00	3 375,00	25 875,00	Junie 2020
30 Julie 2020	22 500,00	3 375,00	25 875,00	Julie 2020
1 Sept 2020	22 500,00	3 375,00	25 875,00	Aug 2020
Februarie 2021	135 000,00	20 250,00	155 250,00	

ANNEXURE D

KLEINRIVIER ELEKTRISITEIT EN WATER AAN CROWN										
MAAND	Elektrisiteit	Admin fooi	Meter reading charge	A Subtotaal	Water	Admin fooi	Meter reading charge	B Subtotaal	A+B Totaal	Datum betaal
Aug en Sept 2018 *	13 225,00	-	-	13 225,00	13 225,00	-	-	13 225,00	26 450,00	19 Okt 2018
Okt 2018	7 070,34	-	-	7 070,34	5 631,38	-	-	5 631,38	12 701,72	15 Nov 2018
Nov 2018	354,49	-	-	354,49	6 445,35	-	-	6 445,35	6 799,84	6 Des 2018
Nov 2018	7 884,96	-	-	7 884,96	-	-	-	-	7 884,96	8 Feb 2019
Des 2018	9 329,88	-	-	9 329,88	7 386,47	1 869,64	1 520,67	10 776,78	20 106,66	25 Jan 2019
Jan 2019	8 554,74	855,47	769,92	10 180,13	8 719,18	871,92	784,73	10 375,83	20 555,96	14 Feb 2019
Feb 2019	7 614,33	761,44	685,30	9 061,07	5 824,22	582,42	524,18	6 930,82	15 991,89	14 Mrt 2019
Maart 2019	-	-	-	-	5 537,01	553,70	498,33	6 589,04	6 589,04	9 Apr 2019
Maart 2019	8 499,97	850,00	-	9 349,97	-	-	-	-	9 349,97	11 Apr 2019
April 2019	7 696,96	769,70	-	8 466,66	6 879,40	687,94	619,15	8 186,49	16 653,15	15 Mei 2019
Mei 2019	-	-	-	-	6 010,20	601,02	-	6 611,22	6 611,22	4 Jun 2019
Mei 2019	7 899,78	789,98	-	8 689,76	-	-	-	-	8 689,76	25 Jun 2019
Junie 2019	7 936,88	793,68	-	8 730,56	4 472,48	447,25	-	4 919,73	13 650,29	8 Jul 2019
Julie 2019	-	-	-	-	4 312,79	431,27	-	4 744,06	4 744,06	7 Aug 2019
Augustus 2019	-	-	-	-	4 430,93	443,10	-	4 874,03	4 874,03	12 Sept 2019
Augustus 2019	9 893,75	989,38	-	10 883,13	-	-	-	-	10 883,13	26 Sept 2019
September 2019	8 996,15	899,61	-	9 895,76	4 770,80	477,08	-	5 247,88	15 143,64	9 Okt 2019
	104 957,23	6 709,26	1 455,22	113 121,71	83 645,21	6 965,34	3 947,06	94 557,61	207 679,32	

