



BIODIVERSITY AGREEMENT

Between

(ID no.: _____)
(“the Landowner”)

And

Mr Khulani Mkhize

In his capacity as the Chief Executive Officer who warrants that he is duly authorized
to act on behalf of

The KwaZulu-Natal Nature Conservation Board
(“the Board”)

PREAMBLE

WHEREAS

- A. The Landowner is the registered owner of *[insert name of property]* measuring *[insert property size (ha)]* held under Deed of Transfer No. *[insert title deed no.]* dated *[insert date]*.
- B. The *[property / portion of the Property]* has been identified as an area with high conservation value in that:
- (a) [List features of property which characterise it as being of high conservation value]*
 - (b) ...*
- C. The Landowner and the Board recognize the value of conserving the biodiversity located on *[the Property / a portion of the Property]*.
- D. The parties wish to formalize the management of *[the Property / a portion of it]* to ensure the conservation of the biodiversity located on it for a period of *[insert number of years]*.
- E. The parties agree that the Biodiversity Agreement area shall be called *[insert name]*.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS

1 DESCRIPTION OF THE PROPERTY

The Property comprises of:

- 1.1 Portion A _____ (See Annexure A): (“the Biodiversity Agreement area”):

2 MANAGEMENT OF BIODIVERSITY AGREEMENT AREA

2.1 Objectives

The parties agree to the following management objectives in relation to the Biodiversity Agreement area:

2.1 *[Insert the 5-6 most fundamental management objectives agreed to by owner and conservation agency after initial discussions / obtain from the management plan]*

2.2 *[Insert what each party must achieve by when]*

2.3 *[Insert what actions each party must undertake by when]*

2.2 Management Plan

2.2.1 The Board, in consultation with the Landowner and any other affected parties that have an interest in the area, shall develop or facilitate the development of a Management Plan to give effect to the management objectives for the Biodiversity Agreement within six months of this agreement coming into force.

2.2.2 The Landowner agrees to manage the Biodiversity Agreement area exclusively for the purpose for which it was contracted and in accordance with the Management Plan and any applicable national and provincial legislation, policies, plans or municipal by-laws.

2.2.3 The Management Plan shall, as a minimum, contain:

2.2.3.1 The objectives stated in clause 2.1 of this agreement;

2.2.3.2 The rights and obligations of the parties in relation to the Biodiversity Agreement area, which are set out in clauses 3 to 6 of this agreement.

2.2.3.3 Such planning measures, controls and performance criteria as may be prescribed;

2.2.3.4 A programme for the implementation of the plan and its costing;

- 2.2.3.5 No conflict with any bioregional plan or biodiversity management plan prepared under the National Environment Management Biodiversity Act (No. 10 of 2004), and management plan prepared under the National Environmental Management: Protected Areas Act (No. 57 of 2003), or any other statutory environmental management plan applicable to the area;
- 2.2.3.6 Contain any regulations, directives or measures as may be stipulated by a statutorily recognised agricultural plan or scheme for the sustainable use of natural resources in that area.

2.3 Monitoring and Review of the Management Plan

- 2.3.1 The Board in consultation with the Landowner shall carry out regular inspections of the Biodiversity Agreement Area.
- 2.3.2 The Board shall convene a meeting with the Landowner on an annual basis, or at such earlier time should either of the parties deem it necessary, to formally review progress toward achieving the management objectives set out in 2.1 and the Management Plan.
- 2.3.3 The Board will present the following information to the Landowner at this meeting:
 - 2.3.3.1 the extent to which the current Management Plan has achieved the stated Objectives of the Agreement;
 - 2.3.3.2 the extent to which the parties have complied with their respective rights and obligations under the current Management Plan;
 - 2.3.3.3 current and future challenges to the conservation, management and status of the Biodiversity Agreement Area; and
 - 2.3.3.4 proposed amendments to the Management Plan.
 - 2.3.3.5 The parties shall, by mutual agreement amend the Management Plan when necessary, which amendments shall be reduced to writing and signed by both parties.

3 RIGHTS OF LANDOWNER IN RESPECT OF BIODIVERSITY AGREEMENT AREA

3.1 Ownership

The Landowner retains all rights of ownership over the Biodiversity Agreement area provided that they are consistent with the provisions of this Agreement.

3.2 Access

The Landowner may access the Biodiversity Agreement area provided that the access is consistent with the provisions of this Agreement.

4 OBLIGATIONS OF LANDOWNER IN RESPECT OF THE BIODIVERSITY AGREEMENT AREA

4.1 Compliance with the Management Plan

The Landowner shall comply with all the terms and conditions set out in the Management Plan and manage the land in such a way that the objectives of the Biodiversity Agreement are achieved. This may exclude activities which negatively affect the achievement of these objectives, including:

- 4.1.1 Any activity that has a negative impact on achieving the purpose and objectives of the Biodiversity Agreement area.
- 4.1.2 Dumping of refuse, rubble or other waste within the Biodiversity Agreement area.
- 4.1.3 Introduction of alien invasive plants within the Biodiversity Agreement area.
- 4.1.4 Introduction of non-indigenous or extra-limital species or genetically distinct sub-populations of species, except where prior written authorisation has been obtained from the Landowner or EKZNW or in compliance with the Management Plan.
- 4.1.5 Removal or destruction of indigenous flora, except for seed collection for restoration projects or where prior authorisation has been obtained from the Landowner and EKZNW or in compliance with the Management Plan.

- 4.1.6 Removal or destruction of any indigenous fauna within the Biodiversity Agreement area, except where this is agreed to by the Landowner and EKZNW or in compliance with the Management Plan.
- 4.1.7 Removal of any wood products from the Biodiversity Agreement area, except where this is agreed to by the Landowner and EKZNW or in compliance with the Management Plan. This excludes alien vegetation.
- 4.1.8 Use of off-road vehicles in the Biodiversity Agreement area, unless their use is consistent with the purpose and objectives of the Biodiversity Agreement area, agreed to by the Landowner and EKZNW or in compliance with the Management Plan.
- 4.1.9 Public access to the Biodiversity Agreement area, unless agreed to by the Landowner and EKZNW or in compliance with the Management Plan.

4.2 Development and Commercial Activity

The Landowner may engage in development activities consistent with the status of the Biodiversity Agreement area. Provided that the Landowner shall not construct, erect or upgrade, or allow the construction, erection or upgrading, of any buildings, roads or structures in the Biodiversity Agreement area, except as expressly provided for in the Management Plan, to further the conservation of biodiversity in the Biodiversity Agreement area or such other consistent objectives provided for in this Agreement, the Management Plan and/or applicable legislation.

The Landowner undertakes where necessary and applicable to seek development rights and any necessary approval, permission or exemption required in order to undertake any development contemplated in the Management Plan from the appropriate authority.

The Landowner further agrees that the following development restrictions shall apply to the Biodiversity Agreement area:

- 4.2.1 No new infrastructure that is incompatible with the Management Plan.

- 4.2.2 No ploughing, cutting, ripping or transformation of any indigenous vegetation, ecosystems or habitats is permitted within the Biodiversity Agreement area.
- 4.2.3 No mining is permitted within the Biodiversity Agreement area, unless required for meeting the purpose and objectives of the Biodiversity Agreement area and in compliance with the Management Plan.
- 4.2.4 No new placement of any transmission lines, telecommunication lines, cellular towers or other public works in the Biodiversity Agreement area outside of areas expressly zoned for such development and in compliance with the Management Plan.
- 4.2.5 No subdivision of the Biodiversity Agreement area is permitted, unless it is consistent with the purpose and objectives of the Biodiversity Agreement area and approved by the Landowner and EKZNW and in compliance with the Management Plan.
- 4.2.6 No operation of, any trade, industry or business in/on the Biodiversity Agreement area, unless in compliance with the Management Plan.
- 4.3 Biodiversity
 - 4.3.1 The Landowner shall not remove or destroy, or permit the destruction or removal of any indigenous species in the Biodiversity Agreement area, save as expressly required or permitted in the Management Plan.
 - 4.3.2 The Landowner shall not plant or permit the planting of any flora other than local non-invasive indigenous flora in the Biodiversity Agreement area, in accordance with the Management Plan.
 - 4.3.3 The Landowner shall not introduce or permit the introduction of any non-indigenous fauna onto the Biodiversity Agreement area, including (but not limited to) any livestock, cat, dog or other domestic animal, unless explicitly catered for or permitted in the Management Plan.
 - 4.3.4 The Landowner shall not do, or permit, any act that may negatively impact upon any indigenous flora and fauna, or their habitats, in the Biodiversity

Agreement area unless explicitly catered for or permitted in the Management Plan.

4.4 Water

4.4.1 The Landowner shall not do, or permit, any act that may adversely affect the natural state, flow, supply, quantity or quality of any water resource located in the Biodiversity Agreement area, subject to the provisions of the National Water Act, 36 of 1998.

4.4.2 Any other person that may have a right to water in a public stream in the Biodiversity Agreement area shall do so on such conditions as may be prescribed by the Minister of Environmental Affairs with the concurrence of the Minister of Water Affairs.¹

4.5 Other Human Activities

4.5.1 The Landowner shall not hunt, or permit hunting, to take place in the Biodiversity Agreement area unless it is necessary for the proper management of the fauna located in the Biodiversity Agreement area, and the proper permits have been obtained and restrictions adhered to.

4.6 Permissible use and activities

Any activity that is compatible with the purpose of the establishment of the Biodiversity Agreement area and in compliance with the Management Plan shall be permitted, including:

4.6.1 Sensitive ecotourism according to the principles set out in, and in compliance with the Management Plan.

4.6.2 Environmental education.

¹ Section 53(2) of the PAA

4.6.3 Sustainable extractive resource use² that is appropriate to the status of the Biodiversity Agreement area, agreed to by the Landowner or EKZNW or in compliance with the Management Plan.

4.7 Any other specific activities required:

4.7.1 ...

5 RIGHTS OF BOARD IN RESPECT OF BIODIVERSITY AGREEMENT AREA³

5.1 Access to fulfil obligations in terms of the Management Plan

The Landowner shall allow the Board, its employees and consultants, except in cases of emergency, pre-arranged, notified and reasonable access to the Biodiversity Agreement area to fulfil their obligations under the Management Plan, which will include access to undertake scientific research, and to ensure proper management and compliance with the terms of this agreement.

5.2 Ownership of wildlife

Ownership of all wildlife and progeny on the Biodiversity Agreement area will be negotiated depending on their source, population status and conservation objectives and captured in the Management Plan. All introductions or removals of wildlife will be catered for in the Management Plan or by agreement with the Landowner.

6 OBLIGATIONS OF BOARD IN RESPECT OF THE BIODIVERSITY AGREEMENT AREA

6.1 Compliance with the Management Plan

The Board shall comply with all the terms and conditions set out in the Management Plan.

² This may include grazing, hunting, fishing, capture and sale of surplus game, controlled harvesting of medicinal plants or any other appropriate form of sustainable use, with the necessary permits.

³ These are usually exercised to ensure the correct management of the Biodiversity Agreement area and are not intended to be a diminution of a Landowner's rights.

6.2 Supervision and Technical Support

The Board shall provide any technical assistance, information and management advice that may be required to ensure the effective conservation of the Biodiversity Agreement area.

6.3 Notification of Access

The Board, its employees and consultants shall, except in cases of emergency and where this would not be possible, notify the Landowner whenever they intend to enter the Biodiversity Agreement area.

6.4 Rates & Taxes

6.4.1 Agreement not to be construed as imposing any responsibility by the Board, which will not be liable for rates due on commercial or other infrastructure, developments or improvements unless by agreement herein.

6.4.2 The Board shall notify the Landowner of the Landowner's eligibility for any rebates or exemptions from any other levies, duties or rates and taxes which may be pursuant to this agreement, and where requested negotiate these with the local authority and/or such other relevant body on the Landowner's behalf.

6.5 Conservation Costs

The **Board / Landowner** shall pay all reasonable costs associated with the establishment of the Biodiversity Agreement area. The costs of the implementation of the Management Plan for the duration of this agreement will be borne by the Landowner, and supplemented by support from EKZNW where appropriate, which costs may include the following, as detailed in the Management Plan:

6.5.1. Clearing alien invasive vegetation;

6.5.2. Fire management;

6.5.3. Scientific, management, nature based and cultural tourism services and advice;

6.5.4. Monitoring;

6.5.5. The Board shall keep an accurate record of all such costs which it shall make available to the Landowner bi-annually or on request.

6.5.6. Such costs shall include direct expenditure on materials, transport, third party expertise (including labour contractors and legal advice), and shall increase with the standard inflation indices. Such costs shall not include reimbursement of the time of the agency's personnel or staff in establishing the Biodiversity Agreement area or in implementing this agreement.

7 RIGHTS OF LANDOWNER IN RESPECT OF THE PRIVATE AREA

The Landowner shall retain the exclusive right to occupy, use, enjoy and develop the Private Area (that area of the property outside the Biodiversity Agreement Area), provided that this occupation, use, enjoyment and/or development are consistent with the provisions of this Agreement.

8 OBLIGATIONS OF LANDOWNER IN RESPECT OF PRIVATE AREA

8.1 Development: The Landowner shall not construct or erect any buildings or other structures in the Private Area unless he/she has obtained the prior written approval from the Board for these buildings or structures, which approval cannot be unreasonably withheld.⁴

8.2 Minimum Impact of Activities: The Landowner shall ensure that any occupation, use, enjoyment, and/or development in/of the Private Area shall take place in a manner that minimizes any potential disturbance to, and adverse impacts on the Biodiversity Agreement area.

9 DELEGATION OF RIGHTS AND RESPONSIBILITIES

The parties to this agreement may not delegate or cede any of their rights or obligations under this agreement unless:

⁴ This does not relieve the Landowner from obtaining the necessary approvals, authorizations or permission from other regulatory authorities. The Conservation Agency is often prejudiced from assisting with obtaining these approvals and should not be requested to do so.

9.1 they have the written consent of the other party to this agreement, which consent shall not be unreasonably withheld; and

9.2 the party to whom the rights and/or obligations have been delegated or ceded, has acknowledged its acceptance of the delegation or cession in writing, to both parties to this agreement.

10 BREACH AND DISPUTE RESOLUTION

10.1 If either party breaches the terms in this Agreement, the other party can notify the offending party in writing and call on the offending party to remedy the breach within a reasonable period.

10.2 If the offending party still fails to remedy the breach, the other party may, declare a dispute.

10.3 The parties agree that they will be bound by the provisions contained in Chapter 4 of the National Environmental Management Act 107 of 1998 and that any disputes of any nature which may arise at any time from this Agreement will be dealt with in accordance with this Chapter.

11 RECOVERY OF EXPENDITURE ON TERMINATION

In the event that this Agreement is terminated at the instance of either party in terms of Clause 11 above, the defaulting party shall reimburse the other for any expenditure reasonably incurred by it in giving effect to the terms of this Agreement.

12. RIGHT OF FIRST REFUSAL

In the event that the Landowner wishes to sell the property, or a portion/s of it, during the duration of this Agreement, the Landowner undertakes to offer the said property, or any portion/s of it, to the Board on the same terms and conditions as offered to/by any third party and shall grant the Board a period of 60 (sixty) days within which to consider the offer and exercise its right of first refusal.

13. DOMICILIA AND NOTICES

The parties choose the addresses set out below as their *domicilia citandi et executandi* for all purposes of this agreement and as their respective addresses for the service of any notice required to be served on them in terms of this agreement.

The Landowner

Physical:

Postal:

The Board

Physical: Queen Elizabeth Park, Peter Brown Drive, Montrose, Pietermaritzburg, 3201.

Postal: P.O. Box 13053, Cascades, 3209

14. VARIATION OF AGREEMENT

No variation, amendment or suspension of any of the terms of this Agreement shall be valid, and no further agreement which may conflict in any way with the terms of this Agreement shall be binding on the parties unless the variation, amendment, suspension or conflicting agreement has been recorded in writing and signed by the parties.

15. COSTS OF AGREEMENT

All costs associated with the preparation or registration of this Agreement shall be borne by the **Board / Landowner**.

16 DURATION

This agreement shall come into effect on the date on which the last party signs it and shall remain in force for a period of **[insert number of years]** years unless:

16.1 Both parties, prior to the expiry of this agreement, elect to extend the duration of this agreement for a further period of **[insert number of years]**.

16.2 The Landowner elects to sell the property prior to the expiry of the Agreement in which case the Agreement shall terminate at the date of transfer of the property to the new owner.

SIGNED AT _____ ON _____

AS WITNESSES:

LANDOWNER

SIGNED AT _____ ON _____ .

AS WITNESSES:

CEO of the KZN Nature Conservation Board
(Duly authorized by the KZN Nature Conservation Board)

ANNEXURE “A”

DIAGRAM OF “BIODIVERSITY AGREEMENT AREA” & “PRIVATE AREA”