



PROTECTED AREA MANAGEMENT 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")

Definitions -

“Board” means the KwaZulu-Natal Nature Conservation Board established as an organ of state in accordance with the constitution;

“Management authority”, in relation to a protected area, means the organ of state or other institution or person in which the authority to manage the protected area is vested;

“Management and Zonation Plan” means the integrated management plan formulated in terms of the Act;

“Nature Reserve” means -

(a) an area declared, or regarded as having been declared, in terms of section 23 as a nature reserve; or

(b) an area which before or after the commencement of this Act was or is declared or designated in terms of provincial legislation for a purpose for which that area could in terms of section 23 (2) be declared as a nature reserve, and includes an area declared in terms of section 23 (1) as part of an area referred to in paragraph (a) or (b) above.

“Protected Area” means -

- Means any area declared or proclaimed as such in terms of section 3 or listed in the Second Schedule to this Act (as per the KwaZulu-Natal Nature Conservation Management Act, No. 9 of 1997).
- Means any of the protected areas referred to in section 9 (of the National Environmental Management: Protected Areas Act, No. 57 of 2003)

Abbreviations -

EKZNW – Ezemvelo KZN Wildlife

MEC - member of the Executive Council in the KwaZulu-Natal province in whose portfolio provincial protected areas in the province fall

NEM: PA Act – National Environmental Management: Protected Areas Act no. 57 of

PREAMBLE

WHEREAS

- A. The MEC has entered into an agreement with the Landowner in terms of which the [Property/a portion thereof] is to be declared a Nature Reserve / Protected Environment and the management of the [Property/a portion of it] has been assigned to the Landowner as Management Authority.
- B. 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].
- C. The parties wish to formalize the management of [the Property / a portion of it] to ensure the conservation of the biodiversity located on it.
- D. The terms of the formal relationship will be laid out in the Management and Zonation Plan.
- E. The parties wish to record the terms of this Agreement against the title deeds of the Property to ensure that they are binding on subsequent owners of the Property and/or any person that may acquire a future right in respect of the Property.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS

1 DESCRIPTION OF THE PROPERTY

The Property comprises:

1.1 ...

(See Annexure “A” indicating the extent of the property and “the Protected Area”)

2 MANAGEMENT OF PROTECTED AREA

2.1 Objectives

The parties agree to the following management objectives in relation to the Protected Area:

2.1.1 *[Insert management objectives]*

2.1.2 ...

2.1.3 ...

2.2 Management Plan

2.2.1 The Landowner shall, within 12 months of its assignment as Management Authority, submit a Management and Zonation Plan for the Protected Area to the MEC for approval, which Management and Zonation Plan is to be prepared in consultation with the Board, municipalities, other organs of state, local communities and other affected parties which have an interest in the area and must take into account any applicable aspects of the integrated development plan of the municipality in which the Protected Area is situated.

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

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

2.2.3.1 The terms and conditions of any applicable biodiversity Management Plan;

- 2.2.3.2 A co-ordinated policy framework;
- 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 budget, with specified roles and responsibilities and the financial implications thereof;
- 2.2.3.5 Procedures for public participation, including participation by any local community, or other interested party;
- 2.2.3.6 A community-based natural resource management plan;
- 2.2.3.7 A zoning of the area indicating what activities may take place in different sections of the area, and the conservation objectives of the sections;
- 2.2.3.8 The objectives stated in clause 2.1 of this Agreement; and
- 2.2.3.9 The rights and obligations of the parties in relation to the Protected Area, which are set out in clauses 3 to 6 of this Agreement.

2.3 Monitoring and Review of the Management and Zonation Plan

- 2.3.1 The Board shall carry out regular inspections of the Protected 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 clause 2.1 and the Management and Zonation 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 and Zonation Plan;
 - 2.3.3.3 current and future challenges to the conservation, management and status of the Protected Area; and
 - 2.3.3.4 proposed amendments to the Management and Zonation Plan.
 - 2.3.3.5 The parties shall, by mutual agreement and with the MEC's consent amend the Management and Zonation Plan when necessary, which amendments shall be reduced to writing and signed by both parties.

3 RIGHTS OF LANDOWNER IN RESPECT OF PROTECTED AREA

3.1 Ownership

The Landowner retains all rights of ownership over the Protected Area provided that they are consistent with the provisions of this Agreement, any regulations made by the MEC under section 87 of the National Environment Management: Protected Areas Act (“NEM:PAA”), municipal by-laws or internal rules made by the Management Authority in terms of section 52 of the NEM:PAA.

3.2 Access

The Landowner may access the Protected Area provided that the access is consistent with the provisions of this Agreement, any regulations made by the MEC under section 87 of the NEM:PAA, municipal by-laws or internal rules made by the Management Authority in terms of section 52 of the NEM:PAA, and provided further that this may be regulated by agreement in the Management and Zonation Plan.

4 OBLIGATIONS OF LANDOWNER IN RESPECT OF PROTECTED AREA

4.1 Compliance with the Management and Zonation Plan

The Landowner shall comply with all the terms and conditions set out in the Management and Zonation Plan and manage the land in such a way that will conserve biodiversity and support natural processes, which generally excludes any activity that may negatively impact on any indigenous fauna and flora or their habitats and the natural state, flow, quantity or quality of any water resource, including:

- 4.1.1 Any activity that has a negative impact on achieving the purpose and objectives of the **Nature Reserve / Protected Environment**.
- 4.1.2 Dumping of refuse, rubble or other waste within the **Nature Reserve / Protected Environment**.
- 4.1.3 Introduction of alien invasive plants within the **Nature Reserve / Protected Environment**.
- 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 management authority or EKZNW or in compliance with the Management and Zonation 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 management authority and EKZNW or in compliance with the Management and Zonation Plan.
- 4.1.6 Removal or destruction of any indigenous fauna within the **Nature Reserve / Protected Environment**, except where this is agreed to by the management authority and EKZNW or in compliance with the Management and Zonation Plan.
- 4.1.7 Removal of any wood products from the **Nature Reserve / Protected Environment**, except where this is agreed to by the management authority and EKZNW or in compliance with the Management and Zonation Plan. This excludes alien vegetation.
- 4.1.8 Use of off-road vehicles in the **Nature Reserve / Protected Environment**, unless their use is consistent with the purpose and objectives of the Nature Reserve, agreed to by the management authority and EKZNW or in compliance with the Management and Zonation Plan.
- 4.1.9 Public access to the **Nature Reserve / Protected Environment**, unless agreed to by the management authority and EKZNW or in compliance with the Management and Zonation Plan.

4.2 Development and Commercial Activity

The landowner may engage in development activities consistent with the protected area status of the **Nature Reserve / Protected Environment**. 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 Protected Area, except as expressly provided for in the Management and Zonation Plan (and subject to any regulations published by the MEC in terms of section 87 of NEM:PAA) to further the conservation of biodiversity in the Protected Area or such other consistent objectives provided for in this Agreement, the Management and Zonation 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 and Zonation Plan from the appropriate authority.

The landowner further agrees that the following development restrictions shall apply to the Protected Area:

- 4.2.1 No new infrastructure that is incompatible with the Management and Zonation Plan.
 - 4.2.2 No ploughing, cutting, ripping or transformation of any indigenous vegetation, ecosystems or habitats is permitted within the **Nature Reserve / Protected Environment**.
 - 4.2.3 No mining is permitted within the **Nature Reserve / Protected Environment**, unless required for meeting the purpose and objectives of the Protected Area and in compliance with the Management and Zonation Plan.
 - 4.2.4 No new placement of any transmission lines, telecommunication lines, cellular towers or other public works in the **Nature Reserve / Protected Environment** outside of areas expressly zoned for such development and in compliance with the Management and Zonation Plan.
 - 4.2.5 No subdivision of the **Nature Reserve / Protected Environment** is permitted, unless it is consistent with the purpose and objectives of the **Nature Reserve / Protected Environment** and approved by the management authority and EKZNW and in compliance with the Management and Zonation Plan.
 - 4.2.6 No operation of, any trade, industry or business in/on the **Nature Reserve / Protected Environment**, unless in compliance with the Management and Zonation 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 Protected Area, save as expressly required or permitted in the Management and Zonation 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 Protected Area.
 - 4.3.3 The Landowner shall not introduce or permit the introduction of any non-indigenous fauna onto the Protected Area, including (but not limited to) any

livestock, cat, dog or other domestic animal, unless explicitly catered for or permitted in the Management and Zonation 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 Protected Area unless explicitly catered for or permitted in the Management and Zonation 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 Protected 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 Protected 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.

4.5 Other Human Activities

The Landowner shall not hunt, or permit hunting, to take place in the **Nature Reserve / Protected Environment** unless it is necessary for the proper management of the fauna located in the Protected Area, and the proper permits have been obtained and restrictions adhered to, and such activity is explicitly catered for or permitted in the Management and Zonation Plan.

4.6 Permissible use and activities

Any activity that is compatible with the purpose of the establishment of the **Nature Reserve / Protected Environment** and in compliance with the Management and Zonation Plan shall be permitted, including:

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

4.6.2 Environmental education.

4.6.3 Sustainable extractive resource use that is appropriate to the Protected Area status of the **Nature Reserve / Protected Environment**, agreed to by the

management authority or EKZNW or in compliance with the Management and Zonation Plan.

5 RIGHTS OF BOARD IN RESPECT OF PROTECTED AREA

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 Protected Area to fulfil their obligations under the Management and Zonation 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 in the Protected Area of the property will be negotiated depending on their source, population status and conservation objectives and captured in the Management and Zonation Plan. All introductions or removals of wildlife will be catered for in the Management and Zonation Plan or by agreement with the Landowner.

6 OBLIGATIONS OF BOARD IN RESPECT OF THE PROTECTED AREA

6.1 Compliance with the Management and Zonation Plan

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

6.2 Supervision and Technical Support

The Board shall provide such technical assistance, information and management advice that may be required to ensure the effective conservation of the Protected Area in line with the Management and Zonation Plan.

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 Protected Area.

6.4 Rates & Taxes

The Board shall notify the Landowner of the Landowner's eligibility for exemption from any levies, duties or rates and taxes which may be applicable 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 Declaration of the Nature Reserve, including the establishment of the contracts, Notarial deed endorsement, public participation and advertising costs. The costs of the implementation of the Management and Zonation Plan for the duration of this agreement will be borne by the Landowner and supplemented by support from the Board as detailed in the Management and Zonation Plan.

7 REGISTRATION OF A NOTARIAL DEED

7.1 The parties agree that the terms of this Agreement will be binding on the Landowner's successors in title and the Landowner agrees to record the terms of this Agreement as well as the terms of the Declaration Agreement in a Notarial Deed to be registered against the title deeds of the Property in order to ensure that this area is conserved in perpetuity.

7.2 The Notarial Deed, as provided for in clause 7.1 above shall be finalised and registered no later than twelve (12) months after signature hereof.

7.3 The Landowner being the Management Authority shall instruct its attorneys, within one (1) month of this agreement coming into effect, to give effect to clause 7.2 above.

7.4 Any costs incurred in giving effect to this clause shall be borne by the **Board / Landowner**.

7.5 The Notarial deed shall be cancelled if for any reason the **Nature Reserve / Protected Environment** is no longer subject to this declaration.

8 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:

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

8.2 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.

9 BREACH AND DISPUTE RESOLUTION

9.1 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.

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

9.3 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.

9.4 The innocent party shall be entitled to recover from the offending party any damages which it, the innocent party, may have suffered as a result of the breach.

10 RECOVERY OF EXPENDITURE ON TERMINATION

In the event that this Agreement is terminated at the instance of either party in terms of Clause 9 above, the defaulting party shall reimburse the other for any expenditure reasonably incurred by it in giving effect to the terms of this Agreement.

11. 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 sixty (60) days within which to consider the offer and exercise its right of first refusal.

12. 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

13. 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.

14. COSTS OF AGREEMENT

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

15. DURATION

This agreement shall come into effect on the date on which the last party signs it and shall remain in force for _____ years unless:

- 15.1 the declaration of the Protected Area as a protected area is for any reason withdrawn prior to the expiry of the Agreement in which case this Agreement shall terminate at the date of withdrawal;
- 15.2 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, and renegotiated with the new landowner.

16. RENEWAL

The landowner and KZN Nature Conservation Board will review the terms of this contract prior to its expiry, and renegotiate a renewal of Management Agreement.

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 Protected Area