



KNYSNA
Municipality Munisipaliteit uMasipala

MEMORANDUM OF UNDERSTANDING

Entered into by and between

KNYSNA MUNICIPALITY

Herein represented by the **Johannes Jacobs** with ID Number
560929 5085 08 1

in his capacity as
Acting Municipal Manager duly authorised thereto

and

LEISURE ISLE RESIDENT'S ASSOCIATION

Herein represented by the **Mary-Anne Beviss-Challinor** with ID/Passport Number
651001 0037 085

in her capacity as
Chairman duly authorised thereto

1. PARTIES and INTRODUCTION

1.1 The parties to this Agreement are as follows:

- 1.1.1 Knysna Municipality of the one part and herein after referred to as "KM"; and
- 1.1.2 Leisure Isle Resident's Association of the next part and herein after referred to as "LIRA".

- 1.2 The parties entered into a written agreement in February 2006 recording the terms and conditions under which they jointly manage the nature park situated on the open public space being of erven 2813 and 2904, Knysna.
- 1.3 The parties have agreed to enter into a new agreement, the terms and conditions whereof are set out herein.

2. PARTIES and INTRODUCTION

2.1. In this agreement, and unless inconsistent with the content or otherwise indicated by content, the following words shall have the following meanings assigned to them:

- 2.1.1. "the/this Agreement" means the Agreement as set out herein as soon as same has been signed by all the parties thereto;
- 2.1.2. "KM" means Knysna Municipality, a Municipal Council duly incorporated as such in accordance with the laws of the Republic of South Africa and herein represented by its Acting Municipal Manager, as duly authorised representative;
- 2.1.3. "LIRA" means the Leisure Isle Resident's Association, an Association in terms of the laws of the Republic of South Africa and herein represented by its current Chairman, as duly authorised representative.
- 2.1.4. "the Project" means the project(s) to be undertaken in terms of this Agreement and including the management of the eco-system of the northern shores of Leisure Isle for the benefit of all the Knysna residents, and its visitors, to ensure the natural heritage of this area is nurtured and protected for the benefit of the current and future generations.
- 2.1.5. "the Mancom" means the new Management Committee to be formed by the parties hereto and consisting of two (2) representatives of LIRA, three of the Municipality and one (1) representative nominated by each of The Friends of Steenbok Nature Reserve Trust and SANParks.
- 2.1.6. "the property" means Erven 2813 and 2904, Knysna, which properties were bequeathed by the late Mr C E Cearn upon certain specific conditions embodied in the Title Deeds of the properties.

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- 2.2. Any reference to the singular shall include the plural and vice versa; and reference to a natural person shall include legal persons and vice versa and any reference to one gender shall include all the genders.
- 2.3. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in the interpretation thereof.
- 2.4. This Agreement shall be governed by the laws of the Republic of South Africa.

3. INTRODUCTION AND STRATEGIC POSITIONING

- 3.1. The parties, as primary objective, wish to manage the eco system of the property on the northern shores of Leisure Isle for the benefit of all the Knysna residents, and its visitors, to ensure the natural heritage of this area is nurtured and protected for the benefit of the current and future generations.
- 3.2. The parties, as secondary objectives, wish to:
 - 3.2.1. Nurture and protect this area of natural beauty and interest on the northern shore of Leisure Isle; and
 - 3.2.2. Create and maintain a place of enjoyment for all whilst recognising the protocols that are applicable in nature conservation areas;
 - 3.2.3. Maintain and establish representative plant communities as found in similar eco-locations along the Garden Route; and
 - 3.2.4. Protect plant life indigenous to Leisure Isle and the salt marsh community.
- 3.3. It is recorded that LIRA has created The Friends of Steenbok Nature Reserve Trust (The Trust) as the repository for amounts payable by KM in terms of Paragraph 4.1.2. hereof and for all other funding procured by LIRA for the benefit of Steenbok Nature Reserve and has assumed responsibility for expenditure on the Project as approved by Mancom.

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4. POSITION OF KNYSNA MUNICIPALITY

4.1. KM shall, as soon as possible after the effective date ensure that:

4.1.1. Its employees perform the following duties, provided that the necessary budgetary provision has been made for the expenditure:

The grass cutting, maintenance of timber pole fencing, alien bush cutting and eradication, gum tree clearing, rubbish removal, supply of water and the supply of general cleaning services; and

4.1.2. Subject to affordability it contributes one half of the actual wages and maintenance costs incurred up to a maximum of R 48 448.00 per annum funded as per the Grant-In- Aid which maximum shall increase by 5% compounded annually;

4.1.3. At least three (3) representatives are nominated by it to serve on Mancom (or whatever name may subsequently be chosen for this Committee) and that these persons attend meetings of Mancom with the limits of their other duties and in interests of the objectives of this joint venture; and

4.1.4. It keeps LIRA advised of all or any matters which may directly or indirectly effect the objectives of this joint venture in regard to the property and further do whatever else is possible in regard to the furtherance of these objectives; and

4.1.5. Erven 2813 and 2904, Knysna are included as "green areas" under the Spatial Development Plan relating to/incorporating the Knysna Municipal area;

4.1.6. The amounts to be contributed by KM in terms of paragraph 4.1.2. hereof shall be determined in November each year with reference to audited annual financial statements of The Trust in respect of the financial year ending on the previous 30 September. The amount so calculated will be paid to the Trust within 30 days of receipt of an invoice issued by The Trust duly supported by the audited annual financial statements of the Trust. As an illustration the parties agree that the first payment in terms of this agreement will be made by KM to The Trust in December 2022 based on audited financial statements of The Trust for the year ended 30 September 2022 and will cover the obligations of KM for the first year of this agreement to 30 June 2023.

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- 4.1.7. The financial obligation of KM in terms of paragraph 4.1.2 hereof may be terminated by KM at any time during the contract term upon the giving of six (6) months written notice to that effect to LIRA which notice may not be given before the expiry of thirty (30) months after the signature hereof.
- 4.1.8. The balance of rights, duties or obligations referred to in this agreement, are not affected by KM's notice to discontinue any financial contribution in terms of paragraph 4.1.2. and such notice will have no effect on the duration of the agreement itself.

5. POSITION OF LIRA

5.1. LIRA shall, as soon as possible after the effective date, ensure that:

- 5.1.1. It keeps the KM advised of all or any matters which may directly or indirectly effect the objectives of this agreement in regard to the property and further do whatever else is possible in regard to the furtherance of these objectives; and
- 5.1.2. The utilisation of the property is done in such a manner that all residents of and visitors to Knysna enjoy the benefits thereof;
- 5.1.3. It prepares an annual plan for the property and ensures, once the plan is approved by Mancom, that this is adhered to as closely as possible, and half yearly audited by Mancom in regards to progress;
- 5.1.4. It attempts to procure funding from its members, the public and possibly via corporate sponsorship, which can be utilised in achieving the objectives of this joint venture in addition to any other funds that may be available or be made available; and
- 5.1.5. To investigate the prospects of declaring the property a formal nature reserve and to make recommendations in this regard to KM via Mancom.

6. DURATION AND NATURE

6.1. This agreement shall continue for a period of 9 years and eleven months from 1 May 2022 and terminates on 30 April 2032.

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7. UNDERTAKINGS AND OBLIGATIONS OF KM AND LIRA

- 7.1. Both parties shall make available to Mancom all the necessary research and ideas that they may have evolved in regard to the Project and will use all their knowledge and experience to further the objectives of the Project.
- 7.2. Both parties shall, in general:
 - 7.2.1. Manage the structuring and starting up process including but not limited to the formation of Mancom; and
 - 7.2.2. Promptly carry out, to the best of their ability and as swiftly as possible, all instructions from Mancom.

8. MANAGEMENT COMMITTEE

- 8.1. The parties shall, for the purpose of this Agreement and to replace any existing committee, establish a Management Committee (Mancom) which shall meet as soon as possible after signature hereof and thereafter meet on regular basis to carry out the business of the Project in terms of this Agreement.
- 8.2. The Mancom shall consist of seven (7) persons with three (3) persons being nominated by KM; two (2) persons being nominated by LIRA and one (1) person being nominated by each of the Friends of Steenbok Nature Reserve Trust and SANParks.
- 8.3. The Mancom meetings may be attended by other representatives of the parties as the Mancom may deem necessary on a purely consultative basis.
- 8.4. Any member of the Mancom may in writing appoint a representative in his/her place to appear and act at meetings in his/her absence from time to time.
- 8.5. The Mancom shall meet as often as required, but at least twice per annum, the first meeting in the last quarter of each year to plan for each forthcoming year and the second meeting in the second quarter of each year to audit progress as against the proposed plans for the year.
- 8.6. LIRA shall keep a Minute of all deliberations and decisions of Mancom and shall submit copies of all minutes/records to members.
- 8.7. The Mancom shall be entitled to delegate any of its powers to any one or more of its members, subject to such terms and conditions as it may deem fit.

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8.8. Each party and member of the Mancom shall:

- 8.8.1. display the highest degree of good faith and goodwill towards others and in respect to all matters relating to the Project;
- 8.8.2. avoid a conflict of interest with its/his/her own interests, which shall at all times be subservient to this agreement and the Project;
- 8.8.3. make a full disclosure of information relating to the affairs of the Project to the parties as soon as practically possible.

8.9. Decision as to protocols to be implemented in terms of clause 3.2.2. shall be taken from time-to-time by Mancom.

9. DISPUTE RESOLUTION

9.1. Should any dispute arise in regard to any aspect of this agreement, such dispute shall be resolved by consultation between the Mancom members and, if they are not able to resolve same, between LIRA and the KM.

9.2. Should such dispute not be able to be resolved by LIRA and the KM as envisaged above, then the said dispute or difference will, if demanded by any party on written notice to the other party, be submitted for resolution to a referee following a hearing in accordance with the provisions as set out below.

9.3. The hearing referred to in Paragraph 9.2. will be held:

9.3.1. At Knysna;

9.3.2. Informally but in accordance with the provisions of the Arbitration Act 42 of 1965, as amended; and

9.3.3. With a view to its being completed within thirty (30) business days after it is demanded, having particular regard to any urgency regarding the matter in issue.

9.4. The referee will be, if the question in issue is:

9.4.1. primarily an accounting matter, a practising independent chartered accountant of not less than fifteen (15) years standing;

9.4.2. primarily a legal matter, a practising senior advocate or attorney of not less than fifteen (15) years standing as such;

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9.4.3. any other matter, an independent person;

and failing agreement between the parties as to such accountant, senior advocate, attorney or independent person within forty-eight (48) hours after a hearing of the dispute has been demanded in terms hereof, such person to be appointed by the President for the time being of the South African Institute of Chartered Accountants or the President for the time being of the Cape Town bar Association or Law Society of the Cape of Good Hope, whichever is relevant according to the above provisions.

9.5. If agreement cannot be reached between the parties within forty-eight (48) hours after a hearing has been demanded as to whether the question in issue falls to be adjudicated by an advocate or a chartered accountant, then a practising Senior Advocate of not less than fifteen (15) years standing, to be appointed by the President for the time being of the Cape Town bar Association or Law Society of the Cape of Good Hope.

9.6. The referee:

9.6.1. will have regard to the desire of the parties to dispose of such dispute expeditiously, economically and confidentially;

9.6.2. will not need to observe or take into account the strict rules of law in arriving at his/her decision, which will be made as an expert and not as an arbitrator.

9.6.3. will determine the party liable for his/her costs and the costs of an expert he/she consults and such party will pay his/her costs;

9.6.4. will be entitled to consult with attorneys, Counsel or any other expert with regard to any matter or issue as he/she may deem fit.

9.7. The parties irrevocably agree that the decision in any proceedings hereunder will be final and binding on all of them and will forthwith be carried into effect and may be made an order of any Court of competent jurisdiction.

9.8. The provisions of this clause will continue to be binding on the parties notwithstanding any termination or cancellation of this agreement.

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10. GENERAL

10.1. This Agreement contains the entire agreement between the parties and no representations or prior discussions or purported agreements shall be of any force or effect unless reduced to writing and signed by the parties hereto.

10.2. No alteration, amendment or purported consensual cancellation hereof shall be of any force or effect unless reduced to writing and signed by the parties hereto.

THUS DONE AND SIGNED AT KNYSNA ON 25 - 05 - 2022 IN THE PRESENCE OF THE UNDERSIGNED WITNESS.



Witnesses:

- 1.  _____
- 2. _____


_____ **KNYSNA MUNICIPALITY**

THUS DONE AND SIGNED AT KNYSNA ON 26 - 05 - 2022 IN THE PRESENCE OF THE UNDERSIGNED WITNESS.

Witnesses:

- 1.  _____
- 2.  _____


_____ **LEISURE ISLE RESIDENT'S ASSOCIATION**