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INGONYAMA TRUST BOARD - LONG -TERM LEASE OF PREMISES

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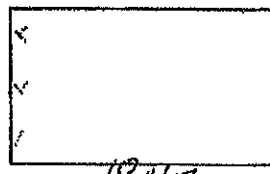
THE SCHEDULE

Item 1	The Lessee	Ms. Mabongi N. Gumede, ID No. 6709080333081, she being duly authorized.
Item 2	The Premises	All the portion 6 of the Farm Reserve No.16 No.15836 HV, in extent 0.503 hectares (more or less) as shown on the attached plan.
Item 3	The Rent	Base rental of R 2900.00 (Two Thousand Nine Hundred rand) per annum.
Item 4	Escalation Percentage (subject to Clause 4.2)	10 % per annum on the base rent only
Item 5	Commencement Date	1 st day of June 2012
Item 6	Termination Date	31 st day of May 2052
Item 7	Applicable Traditional Authority	Ntsinde Traditional Council
Item 8	Use of Premises	Residential development
Item 9	Domicillum citandi et executandi	Recorded under clause 16 of this agreement
Item 10	Contact Information	Lessor: 65 Trelawney Road, Pietermaritzburg 3201 P O Box 601 Pietermaritzburg 3200 Telephone : 033 846 9900 Facsimile : 033 346 2528 Lessee: P.O. Box 197, Jozini, 3969 Telephone: 082 214 3594 Facsimile :

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THE LEASE

1. DEFINITIONS

- 1.1 In this lease, unless the context clearly indicates other wise:
- 1.1.1 use of a word denoting the singular will include the plural and *vice versa*,
- 1.1.2 use of a word denoting one gender will also mean the other genders, and
- 1.1.3 the following words will have the meanings given:
- 1.1.3.1 "Lessor" will mean the Ingonyama Trust, established by section 2(1) of the KwaZulu-Natal Ingonyama Trust Act 3 of 1994 (as amended);
- 1.1.3.2 "Lessee" will mean the person described in Item 1 of the Schedule;
- 1.1.3.3 "premises" will mean the premises described in Item 2 of the Schedule;
- 1.1.3.4 "Schedule" will mean the Schedule at the beginning of this lease; and
- 1.1.3.5 "Improvements" will mean any fixed structure of any kind whatsoever erected on the premises.
- 1.2 The Schedule and Annexures "A" "B" and "C" if applicable, will form an integral part of this lease.

2. THE LEASE

- 2.1 The Lessor hereby lets to the Lessee who hereby leases the premises upon the terms and conditions stated in this lease.

3. THE PERIOD

- 3.1 The primary period of this lease shall, notwithstanding the date of signature hereof, be deemed to commence on the commencement date stated in Item 5 of the Schedule and shall, subject to the provisions of this lease, terminate on the termination date stated in Item 6 of the Schedule subject to termination and renewal rights thereafter as hereinafter set forth.
- 3.2 This lease may, at the option of the Lessee, upon the same terms and conditions as contained herein (but for the provisions of this clause) be renewed for an additional period of ten (ten) years, provided notice is given in writing to the Lessor at least six (6) months before this lease would otherwise expire.
- 3.3 Thereafter, the Lessee may at least 180 days prior to the extended termination date, in writing apply to the Lessor for an extension of this lease for such further period as the Lessee may in such application indicate, either upon the same terms and conditions as stated in such application or upon modified terms and conditions as stated in such application.
- 3.4 The Lessee shall, together with any application referred to in clause 3.2, submit the written consent of the traditional authority referred to in Item 7 of the Schedule, to the extension of this lease as applied for.

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- 3.5 The Lessor shall, prior to the termination date, in writing advise the Lessee of its acceptance or rejection of the application for such extension, or it may notify the Lessee of any terms and conditions differing from those proposed by the Lessee in the application for extension, subject to which it is prepared to extend this lease.
- 3.6 The Lessee shall, prior to the termination date, if the Lessor has submitted terms and conditions differing from those proposed by the Lessee in the application for extension subject to which it is prepared to extend this lease, in writing, notify the Lessor if he accepts or rejects such modified terms and conditions.
- 3.7 In the event of the Lessor accepting the application for an extension of the lease made in terms of clause 3.3, or in the event of the Lessee accepting the modified terms and conditions submitted by the Lessor as contemplated in clause 3.6, then this lease shall be deemed to have been extended in accordance with the terms and conditions so agreed upon and the correspondence exchanged between the parties as contemplated herein shall be deemed to be an integral part of this agreement unless the parties agree to record such extension and the terms and conditions applicable thereto in writing over their signatures.
- 3.8 The Lessor agrees and undertakes to agree to an extension of this lease as applied for in terms of clause 3.3, unless it has a compelling reason not to do so, which, without limiting the generality of the foregoing, may include the failure of the traditional council to consent to such extension, the adverse behaviour of the Lessee during the initial period of the lease and lapses in the timeous payment of rent.
- 3.9 The Lessee shall be entitled at any time to terminate this lease on 12 months written notice to the Lessor.
4. **THE RENTAL**
- 4.1 the Lessee shall pay to the Lessor, as and by way of rent:
- 4.1.1 rental to the Lessor of the amount stated in Item 3 of the Schedule, and
- 4.2 The base rental payable in terms of this lease shall escalate annually on the annual anniversary of the commencement date, or if the commencement date is a date other than the 1st day of a month, on the 1st day of the month immediately following the annual anniversary of the commencement date, by an amount equal to the escalation percentage set out in Item 4 of the Schedule.
- 4.3 Notwithstanding the provisions of Clause 4.2, the Lessor shall be entitled, in its discretion, to require the Lessee to pay a fair market rental in respect of the base rental determined for premises subject to the following:
- 4.3.1 the Lessor may only exercise such entitlement on written notice ("the rental adjustment notice") given no less than 60 days prior to the expiry of each 5 year period of this agreement calculated from the commencement date and such new fair market rental shall take effect on the expiry of such 5 year period;

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- 4.3.2 for the purposes of calculating the fair market rental of the premises it is recorded that the improvements have been effected by the lessee at its own cost and the base rent shall accordingly reflect this;
- 4.3.3 the parties shall endeavour to agree a fair market rental for the premises but failing agreement in writing within 60 days of receipt of the rental adjustment notice then such fair market rental shall be determined by an independent valuer ("the Valuer");
- 4.3.4 the Valuer shall be a suitably qualified valuer based in KwaZulu-Natal agreed on by the parties, but failing written agreement within 7 days of request by either party, shall be a person nominated by the Chairman or his Deputy for the time being of the S A Institute of Valuers, KwaZulu-Natal branch;
- 4.3.5 the Valuer shall act as an expert and not as an arbitrator, his determination of the rental shall be final and binding and his costs and charges shall be borne by the parties in equal shares;
- 4.3.6 thereafter, the Lessor shall be entitled to, and the Lessee may (with the written consent of the Lessor which consent shall not be unreasonably withheld), initiate a review of such fair market rental upon the expiry of each 5 year period of this lease calculated from the date on which the fair market rental in respect of the premises took effect in terms of clause 4.3.1, by giving written notice to the other party no less than 90 days' prior to the expiry of such 5 year period, and the provisions of clauses 4.3.1 to 4.3.5 shall otherwise apply (with the changes required by the context);
- 4.3.7 the Lessee shall be entitled to terminate this lease by giving the Lessor no less than 3 months' written notice within 90 days of the date on which the fair market rental first takes effect in terms of clause 4.3.1 or the date on which any adjustment to the fair market rental takes effect pursuant to clause 4.3.6, as applicable.
- 4.4 The rental shall be paid as follows :
- 4.4.1 An amount equal to the base rental shall be paid monthly in advance.
- 4.4.2 The Lessee shall annually, as provided for in Annexure B, pay the difference between the base rental and the gross rental calculated in accordance with the provisions of Annexure B
- 4.5 The rental shall be paid, without deduction or demand and on due date, to the Lessor either
- 4.5.1 at its office at 65 Trelawney Road, Pietermaritzburg 3200, or
- 4.5.2 by depositing the rental to the Lessor's Banking Account at the First National Bank, Branch Code 257355 Account Number 62004600038 REF: MABONGINGUMEDE002500 .
- 4.6 The Lessee shall be entitled to determine to which place referred to in Clause 4.5 the rental shall be paid, but the onus shall be on the Lessee to ensure that such rental reaches the Lessor in a manner enabling the Lessor to immediately utilize the moneys so received by it for its own use and benefit.

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- 4.7 Notwithstanding the provisions of Clause 4.5, the Lessor may from time to time, in its sole discretion, substitute another address or bank account, as the place for the payment of rental, by giving the Lessee at least one months written notice thereof.
- 4.8 The rental payable in terms of this lease shall be exclusive of value-added tax, and the Lessee shall pay any such tax to the Lessor simultaneously with the payment of rental in terms of this lease.
- 4.9 Should the Lessee fail to pay the rental amount on the due date, the Lessee shall be in breach of the agreement and interest shall accrue at a rate of prime plus 2% on the outstanding amount calculated from the date of upon which the rent is due until date of payment of the outstanding amount, both days inclusive.
- 4.10

5. THE TRADITIONAL COUNCIL CONSENT

- 5.1 It is recorded that the Traditional Authority referred to in Item 7 of the Schedule has granted its consent to the lease of the premises to the Lessee in accordance with the provisions of this lease, which consent is annexed hereto as Annexure C.

5.3.1 .

6. USE OF PREMISES AND IMPROVEMENTS

- 6.1 The Lessee acknowledges that it has inspected the premises and acknowledges them to be in a fair and usable state of repair, save for any defects referred to in Clause 6.2.
- 6.2 The Lessee and the Lessor, represented by a duly appointed agent, shall undertake an inspection of the premises within 21 days of the date of the commencement of this lease, and they shall jointly record any defects which are present in or on the premises, and two copies of such record shall be signed by or on behalf of both parties and a copy retained by each of them.
- 6.3 The Lessee shall maintain the premises, but taking into account the state of the items referred to in Clause 6.2, in a good state of usable repair during the currency of this lease, fair wear and tear excepted, and it shall repair or replace any part thereof which is damaged, destroyed or lost during the currency of this lease.
- 6.4 The Lessee shall use the premises only for the purposes set out in Item 8 of the Schedule and for no other purpose, provided that he may undertake such additional activities which are ordinarily and necessarily ancillary to such main use.
- 6.5 Notwithstanding the provisions of Clause 6.4, the Lessor may, in writing from time to time during the currency of this lease, and with the consent of the Traditional Council described in Item 7 of the Schedule, authorise the Lessee to use the premises for any other purpose specified in such written consent.

6.6 The Lessor;

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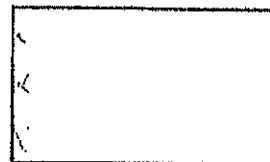
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- 6.6.1 does not warrant that the premises are suitable or fit for the purposes for which the Lessee intends to use them, and the Lessee takes occupation of the premises in terms of this lease as they stand;
- 6.6.2 is not obliged, and shall not at any stage during the currency of this lease, or any extended period thereof, be obliged, to maintain, repair, renovate, rebuild, refurbish, clean or alter any part of any improvements existent or to be erected on the premises.
- 6.6.3 shall not be obliged or be required to make provision for or supply any services to the premises, and all services, including water, electricity, telephone, sewer and septic tank services shall be acquired by the Lessee at its sole cost and expense, both as to the installation and the maintenance thereof and in respect of the supply thereof.
- 6.7 It is recorded that the Lessee intends to undertake the improvements described in Annexure "A" to this lease, and the Lessor has consented thereto.
- 6.8 The Lessee shall comply with all legal requirements applicable to the use and occupation of the premises by the Lessee and to effecting the improvements referred to in Clause 6.7, including, but not limited to:
- 6.8.1 any planning approvals required from any local authority;
- 6.8.2 any zoning of the premises limiting the use of the premises for any specified purpose;
- 6.8.3 any environmental laws or regulations.
- 6.9 The Lessee shall produce proof that he has complied with the provisions of Clause 6.8 if demand is made therefor by or on behalf of the Lessor.
- 6.10 The Lessee shall not commence the construction of any improvements without the written approval of the Lessor to the specific plans and specifications applicable to such improvements being first had and obtained which consent shall not be unreasonably withheld.
- 6.10.1 Prior to the commencement of any improvements as contemplated in Clause 6.7, and after receiving the approvals referred to in Clause 6.8, the Lessee shall submit detailed plans and specifications to the Lessor, for the Lessor's approval, indicating the nature and extent of such improvements and the materials to be used in the construction thereof.
- 6.10.2 The Lessor shall be entitled to require the Lessee to modify or amend any such plans or specifications, but only on good and objective grounds, and it shall not unreasonably withhold its approval to such improvements.
- 6.10.3 In the event of the Lessor not communicating with the Lessee as provided for in Clause 6.10.1.1 within 60 days of the receipt of the plans and specifications referred to in Clause 6.10.1, then the Lessor shall be deemed to have approved of such plans and specifications.
- 6.10.4 In the event of the Lessor and the Lessee being unable to agree upon the nature of the extent of such improvements, then such dispute shall be referred to mediation and arbitration as hereinafter provided.
- 6.11 Unless special written authority is given by the Lessor, the Lessee shall commence any development as contemplated in Clause 6.7 within twelve months of the commencement date and shall complete the development to the satisfaction of the

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Lessor within a period of twenty-four months of the commencement date, and this lease will lapse if the development is not so completed.

- 6.12 Unless the Lessor directs otherwise, the Lessee shall, within twelve months of the date of the Lease, fence the boundaries of the premises and the lessee shall, during the currency of this lease, including any extended period thereof, maintain the fence to the satisfaction of the Lessor.
- 6.13 If the Lessee, at any time during the currency of this lease, wishes to undertake any structural alterations or additions to the premises, he shall comply with the provisions of Clauses 6.8, 6.9 and 6.10 hereof, and the sub-Clauses thereof, and any reference in such Clauses or sub-Clauses to Improvements shall, for the purposes of this Clause, be deemed to be a reference to the structural alterations or additions contemplated herein.

7 STANDARD CONDITIONS

- 7.1 Save with the written authority of the Lessor, no electrical power or telephone pole or line or water, drainage or sewer pipe being upon or passing through, over or under the premises and no replacement thereof, shall be moved or in any way be interfered with and reasonable access thereto shall be preserved to allow for inspection, maintenance, repair, renewal and replacement thereof.
- 7.2 The Lessor shall have the right to grant to a statutory corporation or parastatal organisation, the right freely to exercise or have a public servitude over the premises for the purpose of providing and maintaining public utility services and more particularly for the purpose of erecting telephone or electric power poles, installing electric or telephone wires and cables, laying down drains, sewers or water pipes and maintaining the same, provided that such right shall take into account the interests of the Lessee under this lease.
- 7.3 No act, matter or thing, whatever, shall be done or permitted to be done upon the premises or any part of such premises which may cause or lead to pollution of the environment or result in the creation of any hazard to the health of other persons, or become a nuisance or annoyance to or damage or in any way interfere with the peace and comfort of occupiers of adjoining or other premises in the neighbourhood.
- 7.4 The lease does not extend to or include the rights to precious or base metals, precious stones, minerals, and mineral products on or under the premises.
- 7.4.1 The Lessee shall not be entitled to receive any rents, royalties, or other money or other consideration payable under any concession or in respect of precious or base metals, precious stones, minerals, and mineral products on or under the premises or any other part thereof.

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- 7.5 The Lessee shall be responsible for and shall timeously pay to the local and relevant authorities all rates, taxes and any other similar outgoings which may be levied on the leased premises from the date of commencement of this Lease. It is recorded that such rates, taxes and any other similar outgoings may be levied and imposed at the discretion of the lessor and the levying authority notwithstanding any exemption that may be enjoyed from time to time by the lessor.
- 7.5.1 In the event of the Lessee failing for any reason whatsoever to make such payment, then the Lessor shall be entitled to make such payment and recover the amount so paid from the Lessee on demand.
- 7.6 The Lessee shall permit entry on the premises at any reasonable period of the day by any duly empowered:-
- 7.6.1 officer, employee, servant or agent of the Lessor
- 7.6.2 employee, servant or agent of any statutory corporation or parastatal organization established to provide and maintain public utility services.
- 7.7 The Lessee shall, during the currency of this lease, including any extended period thereof, but subject to prevailing economic circumstances, ensure that the development is occupied and utilised for the purposes intended, and any failure to do so shall constitute a breach of this lease.
- 7.8 The Lessee shall at all times bear the cost of refuse removal from the Premises and the cost of all electricity, gas and water consumed on the Premises, provided however that should the Lessor at any time pay any of these amounts, then the Lessee shall be obliged to refund such amounts to the Lessor on demand.
- 8. MAINTENANCE**
- 8.1 The Lessee shall, at its own expense, during the currency of this lease, including any extended period thereof, maintain all improvements erected or to be erected on the premises, and all fixtures and fittings being part of such improvements, to a standard commensurate with a development of the nature of the improvements now existent or in the future to be erected on the premises under the provisions of this lease, and it shall undertake all repairs and renovations required from time to time without undue delay.
- 8.2 The Lessor shall be entitled to enter upon and inspect the premises and all improvements made thereon at any reasonable time, and it shall be entitled to require the Lessee to comply with the provisions of Clause 8.1, and any failure by the Lessor to comply with such notice shall constitute a breach of this lease.
- 9. INSURANCE**
- 9.1 The Lessee shall at all times be responsible for the insurance of all improvements now existent or in the future to be erected on the premises under the provisions of this lease., and the Lessor shall have no obligation to insure any such item whatsoever.

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- 9.2 The Lessor agrees and undertakes, at the request of the Lessee, to undertake to and on behalf of any financial institutions that advances funds to the Lessee for the purposes of making improvements to the premises against the security of a mortgage bond to be registered over this lease, that it will utilize the proceeds of any insurance claim made on any insurer under any insurance policy referred to in Clause 9.1 solely for the purposes provided for in that Clause.

10 DESTRUCTION OF PREMISES

- 10.1 This lease shall in no way be affected by the partial or total destruction of any improvements erected or to be erected upon the Premises.
- 10.2 In the event of total destruction of any improvements, the Lessee shall be obliged to either clear all rubble and debris from the premises so that it is rendered into the condition the premises were in before the improvements were made, and thereafter the Lessee shall ensure that the premises remains in such condition, or the Lessee shall procure that further improvements of a similar nature to those destroyed are erected.
- 10.2.1 The Lessee shall comply with the provisions of Clause 10.2 within 90 days of the occurrence of the event that caused the destruction of such improvements, or such longer period as the Lessor may in writing allow.
- 10.3 In the event of either the partial or total destruction of buildings upon the Premises, the Lessee shall not be entitled to any remission of rental whatsoever.

11 CESSION AND ASSIGNMENT

- 11.1 The Lessee shall not cede or assign this lease, either in whole or in part, the premises or any portion thereof without the consent of the Lessor first being obtained.
- 11.2 The rights vested in the Lessee under and in terms of this lease shall be personal to the Lessee only and shall not extend to any company, close corporation or other legal entity with which the Lessee is associated with or in which the Lessee may hold shares, a members interest or other interest.
- 11.3 Nothing in this clause shall be construed as to prevent the Lessee from subletting the buildings thereon insofar as it does not derogate from the terms and conditions of this lease and is solely for the purposes as set on in Item 8 of the Schedule.

12. NO CLAIMS

- 12.1 The Lessee shall not have any claim against the Lessor for any loss or damage, which the Lessee may suffer:
- 12.1.1 by reason of the premises or any portion thereof suffering from some defective condition; or
- 12.1.2 arising out of *vis major* or *causus fortuitus* or any other cause either wholly or partially outside of the Lessor's control; or
- 12.1.3 arising outside of the negligence of the Lessor.

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- 12.2 The Lessor shall not be liable for any loss or damage sustained by the Lessee, any sub-lessee, any employee, guest or invitee of the Lessee or of any Sub-Lessee, arising from any cause of action arising from the use and occupation of the premises by any such person or institution, or their presence on the premises, and the Lessee hereby specifically indemnifies the Lessor against any such claim, and promises and undertakes to make good to the Lessor any amount that the Lessor may in law be obliged to pay in respect of any such claim.

13. BREACH AND CONFLICT RESOLUTION

- 13.1 In the event of the Lessee failing to pay any rental payable in terms of this lease on due date without deduction or demand, and failing to remedy such default within thirty (30) days of the receipt of written demand made therefore by or on behalf of the Lessor, then the Lessor may, on twenty four (24) hours written notice to the Lessee declare this lease to be cancelled and it may thereupon retake possession of the premises. Should the Lessor knowingly or negligently breach any material provision of this agreement that is incapable of being remedied, or, should the Lessor breach any provision of this agreement which is capable of being remedied and fail to commence to remedy such breach within 14 days of a written notice from the Lessee requiring it to rectify such breach or to complete remedying such breach within a reasonable time, then in any of those events the Lessee shall be entitled to cancel this lease without prejudice to any of its other rights including its right to claim damages.

Should the Lessor dispute the Lessee's right so to cancel then any such dispute shall be referred to a court of competent jurisdiction.

- 13.2 Should the Lessor cancel this lease in terms of Clause 13.1 and the Lessee dispute the Lessor's right so to cancel this lease and remain in occupation of the premises, then:
- 13.2.1 the Lessee shall, pending the determination of such dispute, continue to pay to the Lessor on the due date thereof, all amounts due under this lease, including rental, and the acceptance thereof by the Lessor shall be without prejudice to the Lessor's rights;
- 13.2.2 should such dispute be determined in favour of the Lessor, then any such payments shall be deemed to be accounts paid by the Lessee on account of damages suffered by the Lessor by reason of the cancellation of this lease, and/or the unlawful holding over by the Lessee.
- 13.3 Any issue or dispute arising from any cause contemplated in Clause 13.1 shall be resolved by a court of competent jurisdiction.
- 13.4 In the event of there being any breach of this lease by either party (other than a dispute contemplated in Clause 13.1), or any dispute or disagreement between them as to interpretation of any provisions of this lease, or in the event of any provision of this lease providing for the resolution of such dispute by mediation or arbitration, then such dispute or disagreement (hereinafter collectively referred to as a "dispute") shall be referred to mediation and arbitration in the manner set out in Clause 13.5, provided that the parties first shall have attempted to resolve such dispute at two consecutive meetings prior to referring such matter accordingly.

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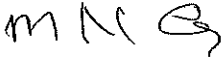
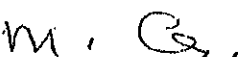
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- 13.5 Any dispute referred to in Clause 13.4 shall:
- 13.5.1 In the first instance, be referred to mediation; and
- 13.5.2 If such mediation does not resolve such dispute within a period of thirty (30) days of being so referred, then the dispute shall be referred to arbitration; and such proceedings shall be conducted in accordance with the provisions hereinafter set out.
- 13.6 Either the Lessor or the Lessee may refer any dispute to the President of the Natal Law Society with a request that he appoint a mediator, and, if necessary, an arbitrator, in accordance with the provisions of this agreement. The parties to this agreement agree to accept any such mediator or arbitrator so appointed by such President.
- 13.7 Arbitrations shall be conducted in accordance with the provisions of the Arbitration Act, No 42 of 1965, subject to the provisions of this agreement.
- 13.8 The issue which the arbitrator shall be asked to decide will be determined by the party referring the dispute to arbitration.
- 13.9 The arbitrator shall have the power to decide on the procedure he/she shall adopt in the conduct of any arbitration proceedings.
- 13.10 The parties to any dispute may elect to have legal representation at any hearing before any arbitrator appointed in terms of this clause.
- 13.11 In respect of any dispute resolving proceedings conducted in terms of this agreement, it is agreed that:
- 13.11.1 the proceedings shall be conducted expeditiously consistent with fair practice;
- 13.11.2 the mediator or arbitrator may consult such advisors as he may deem necessary to assist him on any matter of a technical nature;
- 13.12 It is expressly agreed that:
- 13.12.1 each party shall bear their own costs of any mediation or arbitration proceedings undertaken under the provisions of this agreement, including the costs of legal representation;
- 13.12.2 each party shall bear an equal share of the costs of the mediator and/or arbitrator and any costs associated with such appointment, the party first referring any dispute to mediation or arbitration under the provisions of this Clause being responsible for the collection and payment of such costs, provided that in the event of the arbitrator being of the opinion that any party to the conflict has acted in bad faith, maliciously or frivolously, or in the event of any party liable to contribute towards any costs in terms of this Clause failing or refusing to pay such costs within a reasonable period of demand being made therefore, then such arbitrator may direct that such party shall refund to any other party the reasonable costs of such arbitration or any part thereof, or pay such contribution, and such award shall constitute a liquid debt due by the party against whom it is made in favour of the other parties to this agreement.
- 13.13 An arbitrator shall be entitled, either:
- 13.13.1 to order specific performance to rectify a breach or,

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- 13.13.2 at the request of either party specifically made therefor, to declare the lease cancelled.
- 13.14 In the event of either party failing to comply with an order of specific performance made by an arbitrator, then the other party may approach a Court of competent jurisdiction to enforce such order as though such order were an order of that Court.
- 13.15 Any party that has suffered loss or damage as a result of a breach of this lease by the other party shall be entitled, upon any arbitration proceedings being completed, and based on the findings of the arbitrator, to recover such loss or damage from the other party in any Court of competent jurisdiction.
- 13.16 Any decision of an arbitrator shall be binding on the parties to the dispute and shall, subject to the provisions of Clauses 13.14 or 13.15, not be made the subject of any legal proceedings by any such party.
- 13.17 The parties to this agreement agree and undertake that they shall conduct their relations with each other arising from this agreement in a spirit of good faith.

14. TERMINATION

- 14.1 Upon the termination of this lease for whatever reason, whether as a consequence of the effluxion of time or otherwise, all buildings and other permanent structures on the Premises shall remain the premises of the Lessor, without compensation of any sort to the Lessee.

15. MISCELLANEOUS

- 15.1 The Lessee shall not, without the written consent of the Lessor, permit any person to occupy the premises during the currency of this lease, or any extended period of this lease, under circumstances which shall enable such person to claim a right in law to use and occupy the premises independently of the Lessee's right to the use and occupation of the premises under this lease.
- 15.2 This Lease shall be interpreted and construed in accordance with and any proceedings arising therefrom shall be governed by the laws of the Republic of South Africa.
- 15.3 This agreement constitutes the entire contract between the parties relative to the subject matter hereof and this agreement cancels any prior agreement between the parties with regard to the subject matter hereof unless specified to the contrary. No variation of any of the terms and conditions of this agreement will be binding on the parties unless committed to writing and signed by them respectively.

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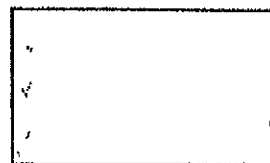
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- 15.4 If any provision in any definition is or contains a substantive provision imposing rights and/or obligations on a party, effect shall be given to such provision as if it were a substantive provision in the body of this agreement.
- 15.5 No indulgence which any party may grant to any other shall prejudice or constitute a waiver of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or might arise in the future.
- 15.6 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 15.7 No representations or warranties of any nature whatsoever, express or implied, have been made by the Lessor or any person purporting to act on the Lessor's behalf to induce this Lease.
- 15.8 This Lease shall be binding on the successors in title of the parties.
- 15.9 Clause headings in this Lease are for convenience only and shall not be taken into account in the interpretation hereof.
- 15.10 When any number of days is prescribed in this agreement, these shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday, or a Public Holiday.
- 16. DOMICILIUM**
- 16.1 The parties choose the following addresses for the purposes of notices in respect of matters arising out of or in connection with this lease and also as addresses for the purposes of *domicilium citandi et executandi*:
- 16.1.1 The Lessor at: 65 Trelawney Road, Pietermaritzburg, 3201.
- 16.1.2 The Lessee at: All the portion 6 of the farm reserve No. 16 No. 15836 HV in extent 0.503 ha
- 16.2 Any notices which are to be given in terms of this lease by either party to the other party shall be presumed, until the contrary is proved, to have been received:
- 16.2.1 if posted by registered post 7(seven) days after the date of posting;
- 16.2.2 if delivered by hand, on the date of delivery;
- 16.2.3 if transmitted by facsimile, on the day of transmission (if transmitted on a business day) or the first business day after transmission.
- 16.3 Either party may by notice in writing from time to time alter its address and facsimile details.



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18. DELEGATION

- 18.1 The Lessor may, in its discretion, and from time to time during the currency of this lease, including any extended period of this lease, delegate the administration of this lease, or any part thereof, to any official in the employ of any department of the national government, or the government of the Province of KwaZulu-Natal, any local authority within whose area the premises fall or the traditional council within whose area the premises fall.
- 18.2 Any written document evidencing such delegation and signed by an authorised member of the Ingonyama Trust Board shall be sufficient proof of such delegation.

19. REGISTRATION OF LEASE

- 19.1 In the event of the Lessee wishing to register this lease against the title deeds of the land of which the premises form a part, then it shall, at its expense:
- 19.1.1 cause the premises to be surveyed so as to produce a diagram of the premises for the purpose of the registration of the lease;
- 19.1.2 obtain the consent of the Traditional Authority referred to in Item 7 of the Schedule to the registration of this lease;
- 19.1.3 proceed to duly cause this lease to be so registered.
- 19.2 The Lessor agrees and undertakes to support and co-operate with the Lessee in and about the registration of this lease as contemplated in Clause 19.1, and its signature to this lease shall constitute its consent to such registration.

Signed by Warren Elbert Robin Raubenheimer in his capacity as a member of the KwaZulu-Natal Ingonyama Trust Board established in terms of section 2A(1) of the KwaZulu-Natal Ingonyama Trust Act 3 of 1994, he being duly authorised thereto by His Majesty the King, King Goodwill Zwelithini KaBhekuzulu on the twenty-fourth day of March 2006 at on day of year

As Witness

1.
LESSOR
2.

Signed by the Lessee at on the day of year

As Witness

1.
LESSEE
2.

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ANNEXURE "A"

The following is a brief description of the proposed masterplan that the Lessee shall effected to the premises.

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ANNEXURE "B"

- B1. As provided in the schedule to the lease and clause 4.1.1 of the lease, the Lessee shall from the date stated in Item 5 of the Schedule pay by way of rent, the base rent applicable at that time or 3% of the Gross rents, whichever is the greater. The "Gross rents" being calculated as "total income" received from every and all business or other commercial activities conducted or to be conducted by the Lessee on the premises at any time during the currency of this lease.
- B2. The Lessee shall, within 60 days of the close of the Lessee's financial year, submit to the Lessor his audited financial statements for each and every business conducted by the Lessee on the premises for such financial year which statements shall reflect the gross rental income earned by each such business.
- B3. The Lessor shall, within 21 days of the receipt of such financial statements, be entitled, in its discretion, to require the Lessee's financial records to be audited by an auditor nominated by it to verify the financial statements referred to in Clause B2.
- B4. Notwithstanding anything to the contrary contained in any financial statements referred to in Clause B2, or disclosed in any supporting documentation on which such financial statements are based if, in the opinion of the Lessor, the income disclosed by the Lessee in such financial statements are based, if, in the opinion of the Lessor, the income disclosed by the Lessee in such financial statements is significantly less than a prudent business would reasonably expect to earn under the circumstances prevailing during the period covered by the financial statements in the locality of the premises, then the Lessor shall be entitled to substitute an amount for such income which would reasonably reflect the income that a prudent business would, under the circumstances described, earn, and the rental payable in terms of Clause B1 shall be calculated on the income so determined by the Lessor, subject to the provisions of Clause 10.
- B5. In the event that there is a discrepancy between the gross income reflected in the financial statements referred to in Clause B2 and the figures calculated by the auditor referred to in Clause B3, or in the event of the Lessor applying the provisions of Clause B4 and the Lessee disputes such substituted income, then the resultant dispute shall be

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resolved by mediation and arbitration as provided for in Clause 13.4 of the body of the lease, provided that the Lessee shall, pending the outcome of such mediation and arbitration, pay the rental contemplated in Clause B1, determined according to the financial statements prepared by the auditors appointed by the Lessor in terms of the provisions of Clause B3, or by the Lessee in terms of Clause B4, by the date mediated in terms of Clause B7.

- B7. In the event that the process of mediation and/or arbitration arriving at an amount less than the amount paid in terms of the proviso to Clause B5, then the Lessor shall refund and excess rental paid by the Lessee to the Lessor within 30 days of the date that the mediation and /or arbitration process is completed, together with interest thereon at the prime rate (charged by the First National Bank) plus 2% calculated from the date upon which the Lessee pays such rent and the date on which the excess is refunded.
- B8. The rental payable in terms of Clause B1 hereof shall be payable within 7 days of the expiry of the period referred to in Clause B2, or if the provisions of Clauses B4 and B5 are invoked, then within 21 days of the receipt by the Lessee of a written notice from the Lessor demanding payment of rental determined in terms of those Clauses.
- B9. The provisions of Clause 4.4 to 4.9 of the main agreement shall apply mutatis mutandis to the payment of rental in terms of this Annexure B.

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[Signature]
[Box]
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Mabongi Nellie Gumede Residential, Jozini



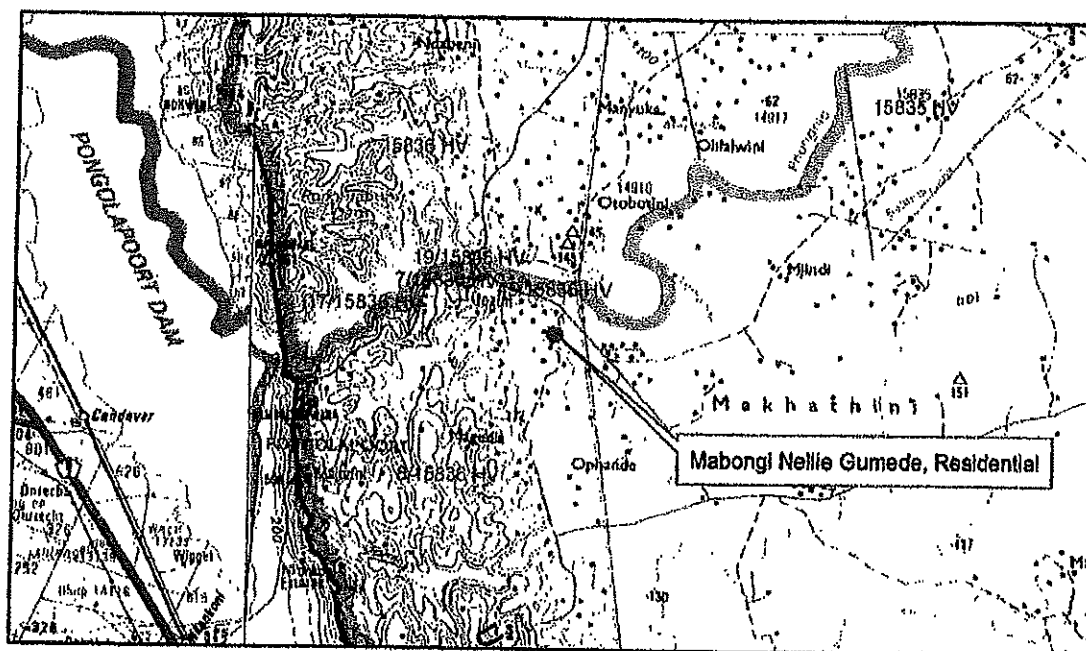
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Legend  Ingonyama Trust Land  Leases  Existing Leases  Development Right Agreements  Land Availability Agreements		1:2 000  Date of Drawing : 19 April 2012 Praveen M  INGONYAMA TRUST BOARD	
		Data Acknowledgements : 1 : 50,000 Topographic Images - CDSM, Dept. Land Affairs 1 : 250,000 Topographic Images - CDSM, Dept. Land Affairs	

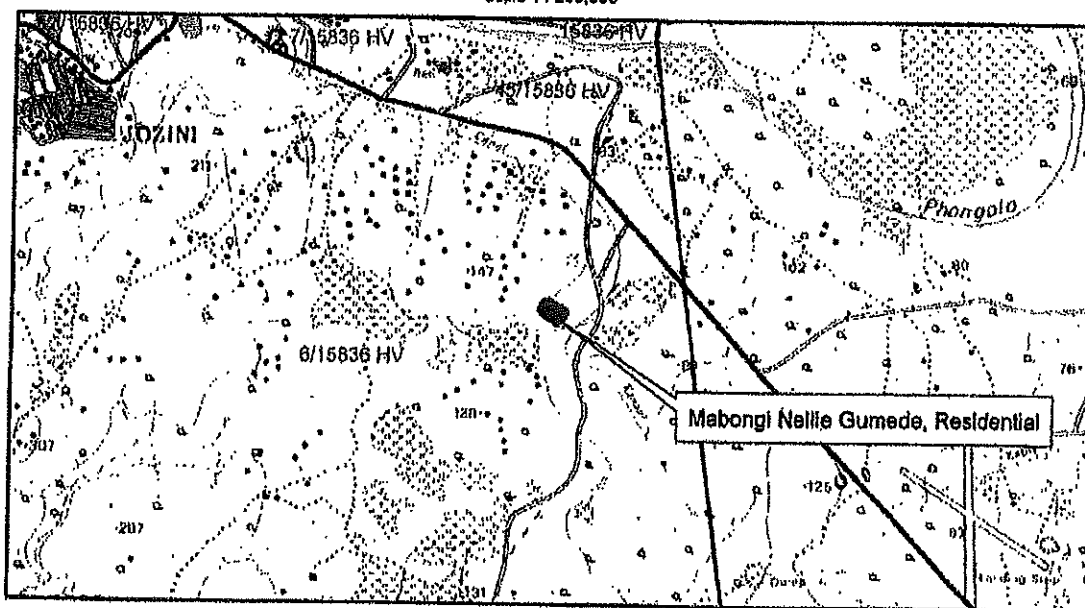
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Locality Map 1

Scale 1 : 250,000



Locality Map 2

Scale 1 : 50,000

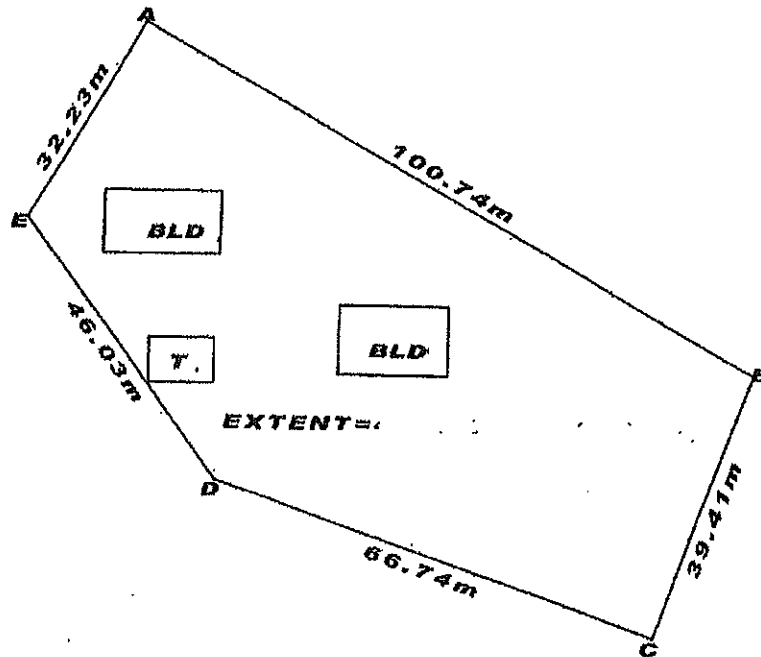
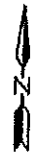
SG No.		Owner Name :	
Area (Ha) :		Deed Number :	
SG Comp No. :		Municipality :	
Centroid - Lat :		Regional Authority :	
- Long :		Map Ref :	

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M. N. G.

LEASE SKETCH PLAN

APPLICANT: Mabongi Nellie Gumede
 TYPE OF LEASE: Residential
 ISIGODI (TRADITIONAL WARD): Maphaya
 TRADITIONAL COUNCIL: Ntsinde
 LOCAL MUNICIPALITY: Jozini
 DISTRICT MUNICIPALITY: UMkhanyakude
 ITB REF:

SCALE: 1:1000



INGONYAMA TRUST BOARD
 65 Trelawney Road

17 OCT 2011

P.O. Box 601
 Pietermaritzburg 3200

APPROXIMATE CO-ORDINATES

SYSTEM: WGS84

NAME	Y	X
A	+89154.537	+3037047.322
B	+89066.296	+3037095.938
C	+89079.760	+3037132.977
D	+89143.083	+3037111.887
E	+89170.814	+3037075.147

NOTE: CO-ORDINATES AND DIMENSIONS ARE ACCURATE TO +/-3m

Surveyed and Prepared:

For: Ingonyama Trust Board
 PIETERMARITZBURG
 By: Dept. Of Local Govt. and Traditional Affairs
 Directorate: Land Use Management
 Traditional Council Administration Support
 Tel: 035-874 7512
 Fax: 035-874 2664
 Date: September 2011

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FORM ITB 2

TRADITIONAL COUNCIL CONSENT

1. Description of site -

RESIDENTIAL

2.

At a meeting held on 09 JULY 2010

the N'BINDE

Traditional Council

Traditional Council Office, the N'BINDE

resolved that it had no objection to the application to acquire rights to land by

Gumede Mabongi Nellie (give full particulars of the applicant)

The form of tenure thereof to be agreed between the applicant and the Ingonyama Trust Board as land owner-in-law in terms of section 3 of the Ingonyama Trust Act, Act 3 of 1994, as amended. This consent is given in terms of section 2 (5) of that Act.

3.

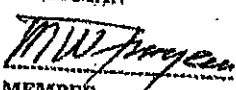
The Traditional Council confirms that all persons occupying or having an interest in the said Land have been consulted and have no objections to the proposals.

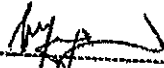
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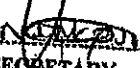
The applicant has been advised and confirms that he/she/it will not do anything or erect any structure on land until an appropriate tenure right has been agreed to and the necessary documents have been signed with the Ingonyama Trust Board.

Signed


CHAIRMAN


MEMBER


MEMBER


SECRETARY

NTSINDE TRADITIONAL
COUNCIL
09 JUL 2010
PRIVATE BAG X12
UBOMBO 3970

Notes:

1. The consent submitted to the Trust must be an original, on Traditional Council headed notepaper and with a Traditional Council date stamp.
2. Please provide a full legal description supported if possible by a site plan and co-ordinates.
3. This consent together with the Ingonyama Trust Board standard application form (ITB1) must be submitted timeously to the Secretariat, Ingonyama Trust Board 188 Hoosen Haffjee Street / Box 601, Pietermaritzburg 3201.


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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL PROVINCIAL DIVISION, PIETERMARITZBURG**

CASE NO:

In the matter between:

COUNCIL FOR THE ADVANCEMENT OF THE

SOUTH AFRICAN CONSTITUTION

RURAL WOMEN'S MOVEMENT

HLETSHELWENI LINA NKOSI

BONGANI ZIKHALI

ZAKHELE MALCOLM NKWANKWA

HLUPHEKILE BHETINA MABUYAKHULU

MABONGI GUMEDE

KN

SM

and

THE INGONYAMA TRUST

THE INGONYAMA TRUST BOARD

**THE MINISTER OF RURAL DEVELOPMENT
AND LAND REFORM**

**THE MEC FOR CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS, KWAZULU-NATAL**

**KWAZULU NATAL PROVINCIAL HOUSE OF
TRADITIONAL LEADERSHIP**

First Applicant

Second Applicant

Third Applicant

Fourth Applicant

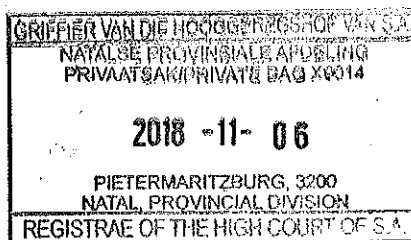
Fifth Applicant

Sixth Applicant

Seventh Applicant

Eighth Applicant

Ninth Applicant



First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

EIGHTH APPLICANT'S SUPPORTING AFFIDAVIT

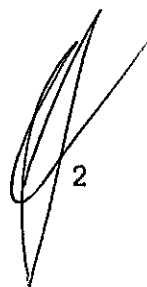
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I, the undersigned,

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do hereby make oath and say:

1. I am an adult male residing in Jozini, KwaZulu-Natal.
2. The facts set out herein are within my personal knowledge, unless the context indicates otherwise, and are, to the best of my knowledge and belief, both true and correct.
3. I confirm that I seek the relief sought in the notice of motion, on the grounds set out in the founding affidavit deposed to by Parmananda Naidoo.
4. I approach this court on the following bases:
 - 4.1. In my own personal interest in terms of section 38(a) of the Constitution, as a person that has had a lease concluded over my land;
 - 4.2. On behalf of the minor children living on this land with me, in terms of section 38(b) of the Constitution; and
 - 4.3. In terms of section 38(c) and (d) of the Constitution, in the interest of similarly placed people living on land administered by the Ingonyama Trust who are concluding lease agreements with the Trust to the detriment of their rights, and in the public interest.

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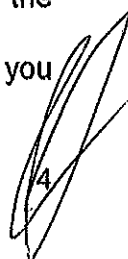
5. I have requested the applicants' attorneys not to reveal my identity. I fear that I will lose my land if it becomes known that I am supporting this application. But I feel that it is important that the court knows what the Trust is doing and how it is affecting people's rights in my community. For that I reason, I wish to participate in this application, while remaining anonymous.
6. I have four children aged between one year and fifteen years old. I live with the mother of my children. Neither of us work, we survive on the informal and sporadic work I am able to secure sometimes, as well as on the child grants that we get for the children. The money that we are able to put together all goes to making sure we are able to live. It is spent on groceries, electricity, toiletries, and other things we need to live.

LEASES

7. During or about 2011, I attended a community meeting that the induna had called. Ingonyama Trust officials were at the meeting as well. It was announced at the meeting that it was now necessary for everyone in the community to have leases over the land they lived on.
8. The induna and those at the meeting said that in order for homes to be legally recognised, we would all need to conclude leases. He said that there was a new law that required that everyone have the same size land and that everyone must reduce the number of their cattle, and then everyone would have their land surveyed. They said if your land was too big it would have to be reduced.

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9. We were told that everyone in the community had to go to the Traditional Council to fill out and sign forms. Community members made their way to the offices of the Traditional Council when they were able to get the money together to go there.
10. When I was able to get to the money together, I made my way to the offices of the Traditional Council. There were many people there waiting to conclude leases. When I got to the front, an official there filled out the form for me. She asked me where my plot was, how big the plot was how many people lived on the plot, and she asked for my ID book. I was instructed to sign the forms – nothing was explained to me about what the forms said and what they meant. I was told the lease would come in the mail in a few weeks. I left the offices with nothing but my ID book.
11. The lease eventually arrived in my post box. The lease is in English, so I had a lot of trouble figuring out what it said. I remember noticing that there was a sum of money that it said I was required to pay every year – it was R3000. I had not been told that there would be rent or how much the rent would be. There is no way I can afford to pay that amount of money. I have attached a copy of the lease (with my name redacted) marked “KN1”.
12. I have not heard anything from the Ingonyama Trust since I got the lease in the mail.
13. I signed the lease because I believed that it would give me secure rights to the land and the land would be seen as mine and my family's. I was told that if you

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do not have a lease, then you are not a person that is part of this community. If you do not sign a lease then you will be exiled from the community. I am very worried about the fact that I have to pay this large amount every year and we have also been told that we have to reduce the number of cattle on our property.

14. What has disturbed me about this process is that I will not be considered a resident without this lease agreement. Also, I could be forced to decrease the size of my land just to avoid paying the high rental. This exorbitant rental in and of itself is something I cannot afford and this puts me in a vulnerable position to potentially lose my land.

15. I have not paid any of the rent, because I do not have the money to pay it.

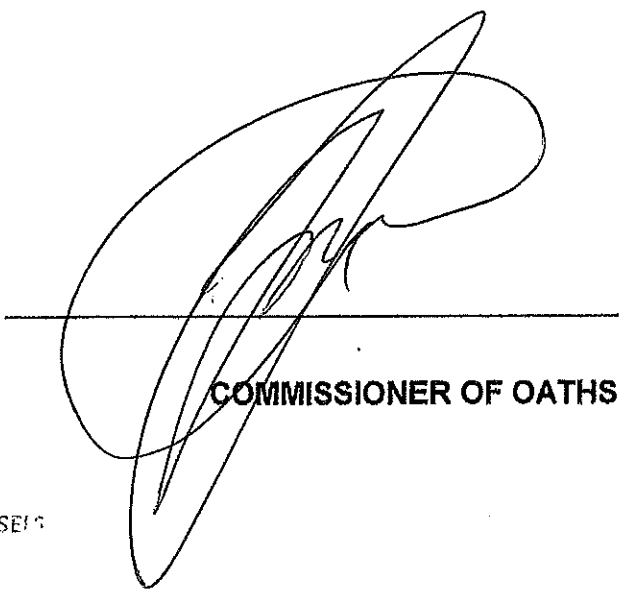
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The Deponent has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to or before me at Jozini on this 22nd day of October 2018 the regulations contained in Government Notice No. R1258 of 21 July 1972, having been complied with.

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THOMAS IGNATIUS HERMANUS WESSELS
COMMISSIONER OF OATHS
PRACTISING ATTORNEY-RLA
166 PIET RETIEF STREET
PONGOLA 3170
TEL: 072 160 4406 FAX: 086 244 7014



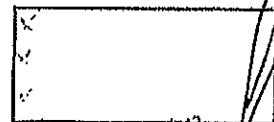
Handwritten signature of Thomas Ignatius Hermanus Wessels, Commissioner of Oaths, written over a horizontal line.

COMMISSIONER OF OATHS

THOMAS IGNATIUS HERMANUS WESSELS
COMMISSIONER OF OATHS
PRACTISING ATTORNEY-RLA
166 PIET RETIEF STREET
PONGOLA 3170
TEL: 072 160 4406 FAX: 086 244 7014

THE SCHEDULE

Item 1	The Lessee	Mr. [REDACTED], ID No. [REDACTED] he being duly authorized.
Item 2	The Premises	All the portion 6 of the Farm Reserve No.16 No.15836 HV, in extent 0.294 hectares (more or less) as shown on the attached plan.
Item 3	The Rent	Base rental of R 2500.00 (Two thousand five hundred) per annum.
Item 4	Escalation Percentage (subject to Clause 4.2)	10 % per annum on the base rent only
Item 5	Commencement Date	1 st day of June 2012
Item 6	Termination Date	31 st day of May 2052
Item 7	Applicable Traditional Authority	Ntsinde Traditional Council
Item 8	Use of Premises	Residential development
Item 9	Domicilium citandi et executandi	Recorded under clause 16 of this agreement
Item 10	Contact Information	Lessor: 65 Trelawney Road, Pietermaritzburg 3201 P O Box 601 Pietermaritzburg 3200 Telephone : 033 846 9900 Facsimile : 033 346 2528 Lessee: P.O. Box 122, Jozini, 3969 Telephone: 073 237 4678 Facsimile :



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THE LEASE

1. DEFINITIONS

- 1.1 In this lease, unless the context clearly indicates other wise:
 - 1.1.1 use of a word denoting the singular will include the plural and *vice versa*,
 - 1.1.2 use of a word denoting one gender will also mean the other genders, and
 - 1.1.3 the following words will have the meanings given:
 - 1.1.3.1 "Lessor" will mean the Ingonyama Trust, established by section 2(1) of the KwaZulu-Natal Ingonyama Trust Act 3 of 1994 (as amended);,
 - 1.1.3.2 "Lessee" will mean the person described in Item 1 of the Schedule;
 - 1.1.3.3 "premises" will mean the premises described in Item 2 of the Schedule;
 - 1.1.3.4 "Schedule" will mean the Schedule at the beginning of this lease; and
 - 1.1.3.5 "improvements" will mean any fixed structure of any kind whatsoever erected on the premises.
- 1.2 The Schedule and Annexures "A" "B" and "C" if applicable, will form an integral part of this lease.

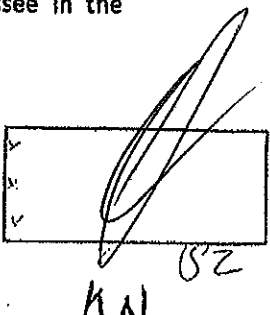
2. THE LEASE

- 2.1 The Lessor hereby lets to the Lessee who hereby leases the premises upon the terms and conditions stated in this lease.

3. THE PERIOD

- 3.1 The primary period of this lease shall, notwithstanding the date of signature hereof, be deemed to commence on the commencement date stated in Item 5 of the Schedule and shall, subject to the provisions of this lease, terminate on the termination date stated in Item 6 of the Schedule subject to termination and renewal rights thereafter as hereinafter set forth.
- 3.2 This lease may, at the option of the Lessee, upon the same terms and conditions as contained herein (but for the provisions of this clause) be renewed for an additional period of ten (ten) years, provided notice is given in writing to the Lessor at least six (6) months before this lease would otherwise expire.
- 3.3 Thereafter, the Lessee may at least 180 days prior to the extended termination date, in writing apply to the Lessor for an extension of this lease for such further period as the Lessee may in such application indicate, either upon the same terms and conditions as stated in such application or upon modified terms and conditions as stated in such application.
- 3.4 The Lessee shall, together with any application referred to in clause 3.2, submit the written consent of the traditional authority referred to in Item 7 of the Schedule, to the extension of this lease as applied for.
- 3.5 The Lessor shall, prior to the termination date, in writing advise the Lessee of its acceptance or rejection of the application for such extension, or it may notify the Lessee of any terms and conditions differing from those proposed by the Lessee in the application for extension, subject to which it is prepared to extend this lease.

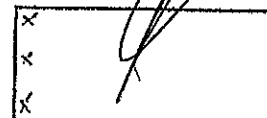
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- 3.6 The Lessee shall, prior to the termination date, if the Lessor has submitted terms and conditions differing from those proposed by the Lessee in the application for extension subject to which it is prepared to extend this lease, in writing, notify the Lessor if he accepts or rejects such modified terms and conditions.
- 3.7 In the event of the Lessor accepting the application for an extension of the lease made in terms of clause 3.3, or in the event of the Lessee accepting the modified terms and conditions submitted by the Lessor as contemplated in clause 3.6, then this lease shall be deemed to have been extended in accordance with the terms and conditions so agreed upon and the correspondence exchanged between the parties as contemplated herein shall be deemed to be an integral part of this agreement unless the parties agree to record such extension and the terms and conditions applicable thereto in writing over their signatures.
- 3.8 The Lessor agrees and undertakes to agree to an extension of this lease as applied for in terms of clause 3.3, unless it has a compelling reason not to do so, which, without limiting the generality of the foregoing, may include the failure of the traditional council to consent to such extension, the adverse behaviour of the Lessee during the initial period of the lease and lapses in the timeous payment of rent.
- 3.9 The Lessee shall be entitled at any time to terminate this lease on 12 months written notice to the Lessor.
4. THE RENTAL
- 4.1 the Lessee shall pay to the Lessor, as and by way of rent:
- 4.1.1 rental to the Lessor of the amount stated in Item 3 of the Schedule, and
- 4.2 The base rental payable in terms of this lease shall escalate annually on the annual anniversary of the commencement date, or if the commencement date is a date other than the 1st day of a month, on the 1st day of the month immediately following the annual anniversary of the commencement date, by an amount equal to the escalation percentage set out in Item 4 of the Schedule.
- 4.3 Notwithstanding the provisions of Clause 4.2, the Lessor shall be entitled, in its discretion, to require the Lessee to pay a fair market rental in respect of the base rental determined for premises subject to the following:
- 4.3.1 the Lessor may only exercise such entitlement on written notice ("the rental adjustment notice") given no less than 60 days prior to the expiry of each 5 year period of this agreement calculated from the commencement date and such new fair market rental shall take effect on the expiry of such 5 year period;
- 4.3.2 for the purposes of calculating the fair market rental of the premises it is recorded that the improvements have been effected by the lessee at its own cost and the base rent shall accordingly reflect this;
- 4.3.3 the parties shall endeavour to agree a fair market rental for the premises but failing agreement in writing within 60 days of receipt of the rental adjustment notice then such fair market rental shall be determined by an independent valuer ("the Valuer");

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- 4.3.4 the Valuer shall be a suitably qualified valuer based in KwaZulu-Natal agreed on by the parties, but failing written agreement within 7 days of request by either party, shall be a person nominated by the Chairman or his Deputy for the time being of the S A Institute of Valuers, KwaZulu-Natal branch;
- 4.3.5 the Valuer shall act as an expert and not as an arbitrator, his determination of the rental shall be final and binding and his costs and charges shall be borne by the parties in equal shares;
- 4.3.6 thereafter, the Lessor shall be entitled to, and the Lessee may (with the written consent of the Lessor which consent shall not be unreasonably withheld), initiate a review of such fair market rental upon the expiry of each 5 year period of this lease calculated from the date on which the fair market rental in respect of the premises took effect in terms of clause 4.3.1, by giving written notice to the other party no less than 90 days' prior to the expiry of such 5 year period, and the provisions of clauses 4.3.1 to 4.3.5 shall otherwise apply (with the changes required by the context);
- 4.3.7 the Lessee shall be entitled to terminate this lease by giving the Lessor no less than 3 months' written notice within 90 days of the date on which the fair market rental first takes effect in terms of clause 4.3.1 or the date on which any adjustment to the fair market rental takes effect pursuant to clause 4.3.6, as applicable.
- 4.4 The rental shall be paid as follows :
- 4.4.1 An amount equal to the base rental shall be paid monthly in advance.
- 4.4.2 The Lessee shall annually, as provided for in Annexure B, pay the difference between the base rental and the gross rental calculated in accordance with the provisions of Annexure B
- 4.5 The rental shall be paid, without deduction or demand and on due date, to the Lessor either
- 4.5.1 at its office at 65 Trelawney Road, Pietermaritzburg 3200, or
- 4.5.2 by depositing the rental to the Lessor's Banking Account at the First National Bank, Branch Code 257355 Account Number 62004600038 REF: [REDACTED]
- 4.6 The Lessee shall be entitled to determine to which place referred to in Clause 4.5 the rental shall be paid, but the onus shall be on the Lessee to ensure that such rental reaches the Lessor in a manner enabling the Lessor to immediately utilize the moneys so received by it for its own use and benefit.
- 4.7 Notwithstanding the provisions of Clause 4.5, the Lessor may from time to time, in its sole discretion, substitute another address or bank account, as the place for the payment of rental, by giving the Lessee at least one months written notice thereof.
- 4.8 The rental payable in terms of this lease shall be exclusive of value-added tax, and the Lessee shall pay any such tax to the Lessor simultaneously with the payment of rental in terms of this lease.
- 4.9 Should the Lessee fail to pay the rental amount on the due date, the Lessee shall be in breach of the agreement and interest shall accrue at a rate of prime plus 2% on the

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outstanding amount calculated from the date of upon which the rent is due until date of payment of the outstanding amount, both days inclusive.

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5. THE TRADITIONAL COUNCIL CONSENT

5.1 It is recorded that the Traditional Authority referred to in Item 7 of the Schedule has granted its consent to the lease of the premises to the Lessee in accordance with the provisions of this lease, which consent is annexed hereto as Annexure C.

5.3.1 .

6. USE OF PREMISES AND IMPROVEMENTS

6.1 The Lessee acknowledges that it has inspected the premises and acknowledges them to be in a fair and usable state of repair, save for any defects referred to in Clause 6.2.

6.2 The Lessee and the Lessor, represented by a duly appointed agent, shall undertake an inspection of the premises within 21 days of the date of the commencement of this lease, and they shall jointly record any defects which are present in or on the premises, and two copies of such record shall be signed by or on behalf of both parties and a copy retained by each of them.

6.3 The Lessee shall maintain the premises, but taking into account the state of the items referred to in Clause 6.2, in a good state of usable repair during the currency of this lease, fair wear and tear excepted, and it shall repair or replace any part thereof which is damaged, destroyed or lost during the currency of this lease.

6.4 The Lessee shall use the premises only for the purposes set out in Item 8 of the Schedule and for no other purpose, provided that he may undertake such additional activities which are ordinarily and necessarily ancillary to such main use.

6.5 Notwithstanding the provisions of Clause 6.4, the Lessor may, in writing from time to time during the currency of this lease, and with the consent of the Traditional Council described in Item 7 of the Schedule, authorise the Lessee to use the premises for any other purpose specified in such written consent.

6.6 The Lessor:

6.6.1 does not warrant that the premises are suitable or fit for the purposes for which the Lessee intends to use them, and the Lessee takes occupation of the premises in terms of this lease as they stand;

6.6.2 is not obliged, and shall not at any stage during the currency of this lease, or any extended period thereof, be obliged, to maintain, repair, renovate, rebuild, refurbish, clean or alter any part of any improvements existent or to be erected on the premises.

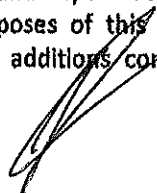
6.6.3 shall not be obliged or be required to make provision for or supply any services to the premises, and all services, including water, electricity, telephone, sewer and septic tank services shall be acquired by the Lessee at its sole cost and expense, both as to the installation and the maintenance thereof and in respect of the supply thereof.

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- 6.7 It is recorded that the Lessee intends to undertake the improvements described in Annexure "A" to this lease, and the Lessor has consented thereto.
- 6.8 The Lessee shall comply with all legal requirements applicable to the use and occupation of the premises by the Lessee and to effecting the improvements referred to in Clause 6.7, including, but not limited to:
- 6.8.1 any planning approvals required from any local authority;
 - 6.8.2 any zoning of the premises limiting the use of the premises for any specified purpose;
 - 6.8.3 any environmental laws or regulations.
- 6.9 The Lessee shall produce proof that he has complied with the provisions of Clause 6.8 if demand is made therefor by or on behalf of the Lessor.
- 6.10 The Lessee shall not commence the construction of any improvements without the written approval of the Lessor to the specific plans and specifications applicable to such improvements being first had and obtained which consent shall not be unreasonably withheld.
- 6.10.1 Prior to the commencement of any improvements as contemplated in Clause 6.7, and after receiving the approvals referred to in Clause 6.8, the Lessee shall submit detailed plans and specifications to the Lessor, for the Lessor's approval, indicating the nature and extent of such improvements and the materials to be used in the construction thereof.
- 6.10.2 The Lessor shall be entitled to require the Lessee to modify or amend any such plans or specifications, but only on good and objective grounds, and it shall not unreasonably withhold its approval to such improvements.
- 6.10.3 In the event of the Lessor not communicating with the Lessee as provided for in Clause 6.10.1.1 within 60 days of the receipt of the plans and specifications referred to in Clause 6.10.1, then the Lessor shall be deemed to have approved of such plans and specifications.
- 6.10.4 In the event of the Lessor and the Lessee being unable to agree upon the nature of the extent of such improvements, then such dispute shall be referred to mediation and arbitration as hereinafter provided.
- 6.11 Unless special written authority is given by the Lessor, the Lessee shall commence any development as contemplated in Clause 6.7 within twelve months of the commencement date and shall complete the development to the satisfaction of the Lessor within a period of twenty-four months of the commencement date, and this lease will lapse if the development is not so completed.
- 6.12 Unless the Lessor directs otherwise, the Lessee shall, within twelve months of the date of the Lease, fence the boundaries of the premises and the Lessee shall, during the currency of this lease, including any extended period thereof, maintain the fence to the satisfaction of the Lessor.
- 6.13 If the Lessee, at any time during the currency of this lease, wishes to undertake any structural alterations or additions to the premises, he shall comply with the provisions of Clauses 6.8, 6.9 and 6.10 hereof, and the sub-Clauses thereof, and any reference in such Clauses or sub-Clauses to improvements shall, for the purposes of this Clause, be deemed to be a reference to the structural alterations or additions contemplated herein.



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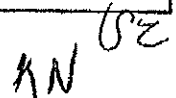
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7 STANDARD CONDITIONS

- 7.1 Save with the written authority of the Lessor, no electrical power or telephone pole or line or water, drainage or sewer pipe being upon or passing through, over or under the premises and no replacement thereof, shall be moved or in any way be interfered with and reasonable access thereto shall be preserved to allow for inspection, maintenance, repair, renewal and replacement thereof.
- 7.2 The Lessor shall have the right to grant to a statutory corporation or parastatal organisation, the right freely to exercise or have a public servitude over the premises for the purpose of providing and maintaining public utility services and more particularly for the purpose of erecting telephone or electric power poles, installing electric or telephone wires and cables, laying down drains, sewers or water pipes and maintaining the same, provided that such right shall take into account the interests of the Lessee under this lease.
- 7.3 No act, matter or thing, whatever, shall be done or permitted to be done upon the premises or any part of such premises which may cause or lead to pollution of the environment or result in the creation of any hazard to the health of other persons, or become a nuisance or annoyance to or damage or in any way interfere with the peace and comfort of occupiers of adjoining or other premises in the neighbourhood.
- 7.4 The lease does not extend to or include the rights to precious or base metals, precious stones, minerals, and mineral products on or under the premises.
- 7.4.1 The Lessee shall not be entitled to receive any rents, royalties, or other money or other consideration payable under any concession or in respect of precious or base metals, precious stones, minerals, and mineral products on or under the premises or any other part thereof.
- 7.5 The Lessee shall be responsible for and shall timeously pay to the local and relevant authorities all rates, taxes and any other similar outgoings which may be levied on the leased premises from the date of commencement of this Lease. It is recorded that such rates, taxes and any other similar outgoings may be levied and imposed at the discretion of the lessor and the levying authority notwithstanding any exemption that may be enjoyed from time to time by the lessor.
- 7.5.1 In the event of the Lessee failing for any reason whatsoever to make such payment, then the Lessor shall be entitled to make such payment and recover the amount so paid from the Lessee on demand.
- 7.6 The Lessee shall permit entry on the premises at any reasonable period of the day by any duly empowered:-
- 7.6.1 officer, employee, servant or agent of the Lessor
- 7.6.2 employee, servant or agent of any statutory corporation or parastatal organization established to provide and maintain public utility services.



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7.7 The Lessee shall, during the currency of this lease, including any extended period thereof, but subject to prevailing economic circumstances, ensure that the development is occupied and utilised for the purposes intended, and any failure to do so shall constitute a breach of this lease.

7.8 The Lessee shall at all times bear the cost of refuse removal from the Premises and the cost of all electricity, gas and water consumed on the Premises, provided however that should the Lessor at any time pay any of these amounts, then the Lessee shall be obliged to refund such amounts to the Lessor on demand.

8. MAINTENANCE

8.1 The Lessee shall, at its own expense, during the currency of this lease, including any extended period thereof, maintain all improvements erected or to be erected on the premises, and all fixtures and fittings being part of such improvements, to a standard commensurate with a development of the nature of the improvements now existent or in the future to be erected on the premises under the provisions of this lease, and it shall undertake all repairs and renovations required from time to time without undue delay.

8.2 The Lessor shall be entitled to enter upon and inspect the premises and all improvements made thereon at any reasonable time, and it shall be entitled to require the Lessee to comply with the provisions of Clause 8.1, and any failure by the Lessor to comply with such notice shall constitute a breach of this lease.

9. INSURANCE

9.1 The Lessee shall at all times be responsible for the insurance of all improvements now existent or in the future to be erected on the premises under the provisions of this lease, and the Lessor shall have no obligation to insure any such item whatsoever.

9.2 The Lessor agrees and undertakes, at the request of the Lessee, to undertake to and on behalf of any financial institutions that advances funds to the Lessee for the purposes of making improvements to the premises against the security of a mortgage bond to be registered over this lease, that it will utilize the proceeds of any insurance claim made on any insurer under any insurance policy referred to in Clause 9.1 solely for the purposes provided for in that Clause.

10 DESTRUCTION OF PREMISES

10.1 This lease shall in no way be affected by the partial or total destruction of any improvements erected or to be erected upon the Premises.

10.2 In the event of total destruction of any improvements, the Lessee shall be obliged to either clear all rubble and debris from the premises so that it is rendered into the condition the premises were in before the improvements were made, and thereafter the Lessee shall ensure that the premises remains in such condition, or the Lessee shall procure that further improvements of a similar nature to those destroyed are erected.

10.2.1 The Lessee shall comply with the provisions of Clause 10.2 within 90 days of the occurrence of the event that caused the destruction of such improvements, or such longer period as the Lessor may in writing allow.

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- 10.3 In the event of either the partial or total destruction of buildings upon the Premises, the Lessee shall not be entitled to any remission of rental whatsoever.

11 CESSION AND ASSIGNMENT

- 11.1 The Lessee shall not cede or assign this lease, either in whole or in part, the premises or any portion thereof without the consent of the Lessor first being obtained.

- 11.2 The rights vested in the Lessee under and in terms of this lease shall be personal to the Lessee only and shall not extend to any company, close corporation or other legal entity with which the Lessee is associated with or in which the Lessee may hold shares, a members interest or other interest.

- 11.3 Nothing in this clause shall be construed as to prevent the Lessee from subletting the buildings thereon insofar as it does not derogate from the terms and conditions of this lease and is solely for the purposes as set on in Item 8 of the Schedule.

12. NO CLAIMS

- 12.1 The Lessee shall not have any claim against the Lessor for any loss or damage, which the Lessee may suffer:

- 12.1.1 by reason of the premises or any portion thereof suffering from some defective condition; or

- 12.1.2 arising out of *vis major* or *causus fortuitus* or any other cause either wholly or partially outside of the Lessor's control; or

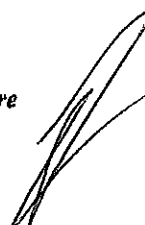
- 12.1.3 arising outside of the negligence of the Lessor.

- 12.2 The Lessor shall not be liable for any loss or damage sustained by the Lessee, any sub-lessee, any employee, guest or invitee of the Lessee or of any Sub-Lessee, arising from any cause of action arising from the use and occupation of the premises by any such person or institution, or their presence on the premises, and the Lessee hereby specifically indemnifies the Lessor against any such claim, and promises and undertakes to make good to the Lessor any amount that the Lessor may in law be obliged to pay in respect of any such claim.

13. BREACH AND CONFLICT RESOLUTION

- 13.1 In the event of the Lessee failing to pay any rental payable in terms of this lease on due date without deduction or demand, and failing to remedy such default within thirty (30) days of the receipt of written demand made therefore by or on behalf of the Lessor, then the Lessor may, on twenty four (24) hours written notice to the Lessee declare this lease to be cancelled and it may thereupon retake possession of the premises. Should the Lessor knowingly or negligently breach any material provision of this agreement that is incapable of being remedied, or, should the Lessor breach any provision of this agreement which is capable of being remedied and fail to commence to remedy such breach within 14 days of a written notice from the Lessee requiring it to rectify such breach or to complete remedying such breach within a reasonable time, then in any of those events the Lessee shall be entitled to cancel this lease without prejudice to any of its other rights including its right to claim damages.

Should the Lessor dispute the Lessee's right so to cancel then any such dispute shall be referred to a court of competent jurisdiction.



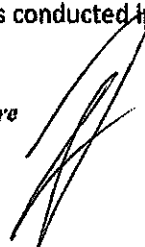
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- 13.2 Should the Lessor cancel this lease in terms of Clause 13.1 and the Lessee dispute the Lessor's right so to cancel this lease and remain in occupation of the premises, then:
- 13.2.1 the Lessee shall, pending the determination of such dispute, continue to pay to the Lessor on the due date thereof, all amounts due under this lease, including rental, and the acceptance thereof by the Lessor shall be without prejudice to the Lessor's rights;
- 13.2.2 should such dispute be determined in favour of the Lessor, then any such payments shall be deemed to be accounts paid by the Lessee on account of damages suffered by the Lessor by reason of the cancellation of this lease, and/or the unlawful holding over by the Lessee.
- 13.3 Any issue or dispute arising from any cause contemplated in Clause 13.1 shall be resolved by a court of competent jurisdiction.
- 13.4 In the event of there being any breach of this lease by either party (other than a dispute contemplated in Clause 13.1), or any dispute or disagreement between them as to interpretation of any provisions of this lease, or in the event of any provision of this lease providing for the resolution of such dispute by mediation or arbitration, then such dispute or disagreement (hereinafter collectively referred to as a "dispute") shall be referred to mediation and arbitration in the manner set out in Clause 13.5, provided that the parties first shall have attempted to resolve such dispute at two consecutive meetings prior to referring such matter accordingly.
- 13.5 Any dispute referred to in Clause 13.4 shall:
- 13.5.1 in the first instance, be referred to mediation; and
- 13.5.2 if such mediation does not resolve such dispute within a period of thirty (30) days of being so referred, then the dispute shall be referred to arbitration; and such proceedings shall be conducted in accordance with the provisions hereinafter set out.
- 13.6 Either the Lessor or the Lessee may refer any dispute to the President of the Natal Law Society with a request that he appoint a mediator, and, if necessary, an arbitrator, in accordance with the provisions of this agreement. The parties to this agreement agree to accept any such mediator or arbitrator so appointed by such President.
- 13.7 Arbitrations shall be conducted in accordance with the provisions of the Arbitration Act, No 42 of 1965, subject to the provisions of this agreement.
- 13.8 The issue which the arbitrator shall be asked to decide will be determined by the party referring the dispute to arbitration.
- 13.9 The arbitrator shall have the power to decide on the procedure he/she shall adopt in the conduct of any arbitration proceedings.
- 13.10 The parties to any dispute may elect to have legal representation at any hearing before any arbitrator appointed in terms of this clause.
- 13.11 In respect of any dispute resolving proceedings conducted in terms of this agreement, it is agreed that:



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- 13.11.1 the proceedings shall be conducted expeditiously consistent with fair practice;
- 13.11.2 the mediator or arbitrator may consult such advisors as he may deem necessary to assist him on any matter of a technical nature;
- 13.12 It is expressly agreed that:
- 13.12.1 each party shall bear their own costs of any mediation or arbitration proceedings undertaken under the provisions of this agreement, including the costs of legal representation;
- 13.12.2 each party shall bear an equal share of the costs of the mediator and/or arbitrator and any costs associated with such appointment, the party first referring any dispute to mediation or arbitration under the provisions of this Clause being responsible for the collection and payment of such costs, provided that in the event of the arbitrator being of the opinion that any party to the conflict has acted in bad faith, maliciously or frivolously, or in the event of any party liable to contribute towards any costs in terms of this Clause failing or refusing to pay such costs within a reasonable period of demand being made therefore, then such arbitrator may direct that such party shall refund to any other party the reasonable costs of such arbitration or any part thereof, or pay such contribution, and such award shall constitute a liquid debt due by the party against whom it is made in favour of the other parties to this agreement.
- 13.13 An arbitrator shall be entitled, either:
- 13.13.1 to order specific performance to rectify a breach or,
- 13.13.2 at the request of either party specifically made therefor, to declare the lease cancelled.
- 13.14 In the event of either party failing to comply with an order of specific performance made by an arbitrator, then the other party may approach a Court of competent jurisdiction to enforce such order as though such order were an order of that Court.
- 13.15 Any party that has suffered loss or damage as a result of a breach of this lease by the other party shall be entitled, upon any arbitration proceedings being completed, and based on the findings of the arbitrator, to recover such loss or damage from the other party in any Court of competent jurisdiction.
- 13.16 Any decision of an arbitrator shall be binding on the parties to the dispute and shall, subject to the provisions of Clauses 13.14 or 13.15, not be made the subject of any legal proceedings by any such party.
- 13.17 The parties to this agreement agree and undertake that they shall conduct their relations with each other arising from this agreement in a spirit of good faith.

14. TERMINATION

- 14.1 Upon the termination of this lease for whatever reason, whether as a consequence of the effluxion of time or otherwise, all buildings and other permanent structures on the Premises shall remain the premises of the Lessor, without compensation of any sort to the Lessee.



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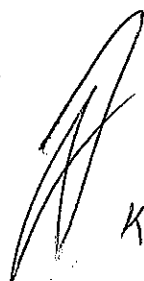


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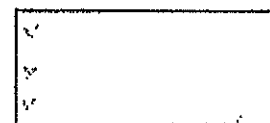
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15. MISCELLANEOUS

- 15.1 The Lessee shall not, without the written consent of the Lessor, permit any person to occupy the premises during the currency of this lease, or any extended period of this lease, under circumstances which shall enable such person to claim a right in law to use and occupy the premises independently of the Lessee's right to the use and occupation of the premises under this lease.
- 15.2 This Lease shall be interpreted and construed in accordance with and any proceedings arising therefrom shall be governed by the laws of the Republic of South Africa.
- 15.3 This agreement constitutes the entire contract between the parties relative to the subject matter hereof and this agreement cancels any prior agreement between the parties with regard to the subject matter hereof unless specified to the contrary. No variation of any of the terms and conditions of this agreement will be binding on the parties unless committed to writing and signed by them respectively.
- 15.4 If any provision in any definition is or contains a substantive provision imposing rights and/or obligations on a party, effect shall be given to such provision as if it were a substantive provision in the body of this agreement.
- 15.5 No indulgence which any party may grant to any other shall prejudice or constitute a waiver of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or might arise in the future.
- 15.6 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 15.7 No representations or warranties of any nature whatsoever, express or implied, have been made by the Lessor or any person purporting to act on the Lessor's behalf to induce this Lease.
- 15.8 This Lease shall be binding on the successors in title of the parties.
- 15.9 Clause headings in this Lease are for convenience only and shall not be taken into account in the interpretation hereof.
- 15.10 When any number of days is prescribed in this agreement, these shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday, or a Public Holiday.
- 16. DOMICILIUM**
- 16.1 The parties choose the following addresses for the purposes of notices in respect of matters arising out of or in connection with this lease and also as addresses for the purposes of *domicillium citandi et executandi*:



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- 16.1.1 The Lessor at: 65 Trelawney Road, Pietermaritzburg, 3201.
 16.1.2 The Lessee at: All the portion 6 of the farm reserve No.16 No.15836 HV
 16.2 Any notices which are to be given in terms of this lease by either party to the other party shall be presumed, until the contrary is proved, to have been received:
 16.2.1 if posted by registered post 7(seven) days after the date of posting;
 16.2.2 if delivered by hand, on the date of delivery;
 16.2.3 if transmitted by facsimile, on the day of transmission (if transmitted on a business day) or the first business day after transmission.
- 16.3 Either party may by notice in writing from time to time alter its address and facsimile details.

18. DELEGATION

- 18.1 The Lessor may, in its discretion, and from time to time during the currency of this lease, including any extended period of this lease, delegate the administration of this lease, or any part thereof, to any official in the employ of any department of the national government, or the government of the Province of KwaZulu-Natal, any local authority within whose area the premises fall or the traditional council within whose area the premises fall.
- 18.2 Any written document evidencing such delegation and signed by an authorised member of the Ingonyama Trust Board shall be sufficient proof of such delegation.

19. REGISTRATION OF LEASE

- 19.1 In the event of the Lessee wishing to register this lease against the title deeds of the land of which the premises form a part, then it shall, at its expense:
 19.1.1 cause the premises to be surveyed so as to produce a diagram of the premises for the purpose of the registration of the lease;
 19.1.2 obtain the consent of the Traditional Authority referred to in Item 7 of the Schedule to the registration of this lease;
 19.1.3 proceed to duly cause this lease to be so registered.
- 19.2 The Lessor agrees and undertakes to support and co-operate with the Lessee in and about the registration of this lease as contemplated in Clause 19.1, and its signature to this lease shall constitute its consent to such registration.

Signed by Warren Elbert Robin Raubenheimer in his capacity as a member of the KwaZulu-Natal Ingonyama Trust Board established in terms of section 2A(1) of the KwaZulu-Natal Ingonyama Trust Act 3 of 1994, he being duly authorised thereto by His Majesty the King, King Goodwill Zwelithini KaBhekuzulu on the twenty-fourth day of March 2006 at on day of year

As Witness

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LESSOR

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Signed by the Lessee aton theday ofyear

As Witness

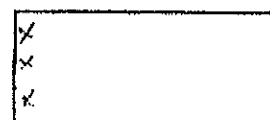
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ANNEXURE "A"

The following is a brief description of the proposed masterplan that the Lessee shall effected to the premises.

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ANNEXURE "B"

- B1. As provided in the schedule to the lease and clause 4.1.1 of the lease, the Lessee shall from the date stated in Item 5 of the Schedule pay by way of rent, the base rent applicable at that time or 3% of the Gross rents, whichever is the greater. The "Gross rents" being calculated as "total income" received from every and all business or other commercial activities conducted or to be conducted by the Lessee on the premises at any time during the currency of this lease.
- B2. The Lessee shall, within 60 days of the close of the Lessee's financial year, submit to the Lessor his audited financial statements for each and every business conducted by the Lessee on the premises for such financial year which statements shall reflect the gross rental income earned by each such business.
- B3. The Lessor shall, within 21 days of the receipt of such financial statements, be entitled, in its discretion, to require the Lessee's financial records to be audited by an auditor nominated by it to verify the financial statements referred to in Clause B2.
- B4. Notwithstanding anything to the contrary contained in any financial statements referred to in Clause B2, or disclosed in any supporting documentation on which such financial statements are based if, in the opinion of the Lessor, the income disclosed by the Lessee in such financial statements are based, if, in the opinion of the Lessor, the income disclosed by the Lessee in such financial statements is significantly less than a prudent business would reasonably expect to earn under the circumstances prevailing during the period covered by the financial statements in the locality of the premises, then the Lessor shall be entitled to substitute an amount for such income which would reasonably reflect the income that a prudent business would, under the circumstances described, earn, and the rental payable in terms of Clause B1 shall be calculated on the income so determined by the Lessor, subject to the provisions of Clause 10.
- B5. In the event that there is a discrepancy between the gross income reflected in the financial statements referred to in Clause B2 and the figures calculated by the auditor referred to in Clause B3, or in the event of the Lessor applying the provisions of Clause B4 and the Lessee disputes such substituted income, then the resultant dispute shall be resolved by mediation and arbitration as provided for in Clause 13.4 of the body of the lease, provided that the Lessee shall, pending the outcome of such mediation and arbitration, pay the rental contemplated in Clause B1, determined according to the



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financial statements prepared by the auditors appointed by the Lessor in terms of the provisions of Clause B3, or by the Lessee in terms of Clause B4, by the date mediated in terms of Clause B7.

- B7. In the event that the process of mediation and/or arbitration arriving at an amount less than the amount paid in terms of the proviso to Clause B5, then the Lessor shall refund and excess rental paid by the Lessee to the Lessor within 30 days of the date that the mediation and /or arbitration process is completed, together with interest thereon at the prime rate (charged by the First National Bank) plus 2% calculated from the date upon which the Lessee pays such rent and the date on which the excess is refunded.
- B8. The rental payable in terms of Clause B1 hereof shall be payable within 7 days of the expiry of the period referred to in Clause B2, or if the provisions of Clauses B4 and B5 are invoked, then within 21 days of the receipt by the Lessee of a written notice from the Lessor demanding payment of rental determined in terms of those Clauses.
- B9. The provisions of Clause 4.4 to 4.9 of the main agreement shall apply mutatis mutandis to the payment of rental in terms of this Annexure B.



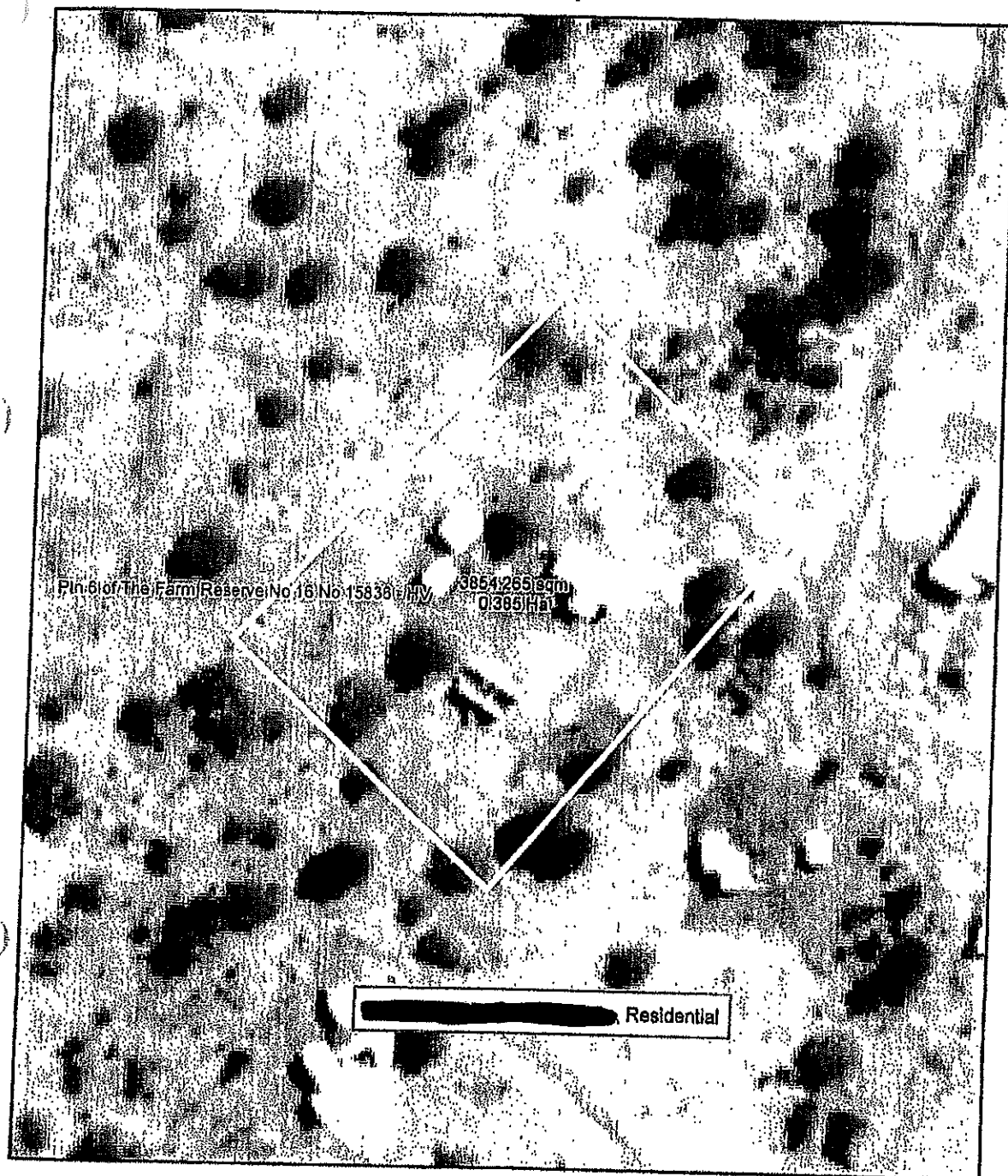
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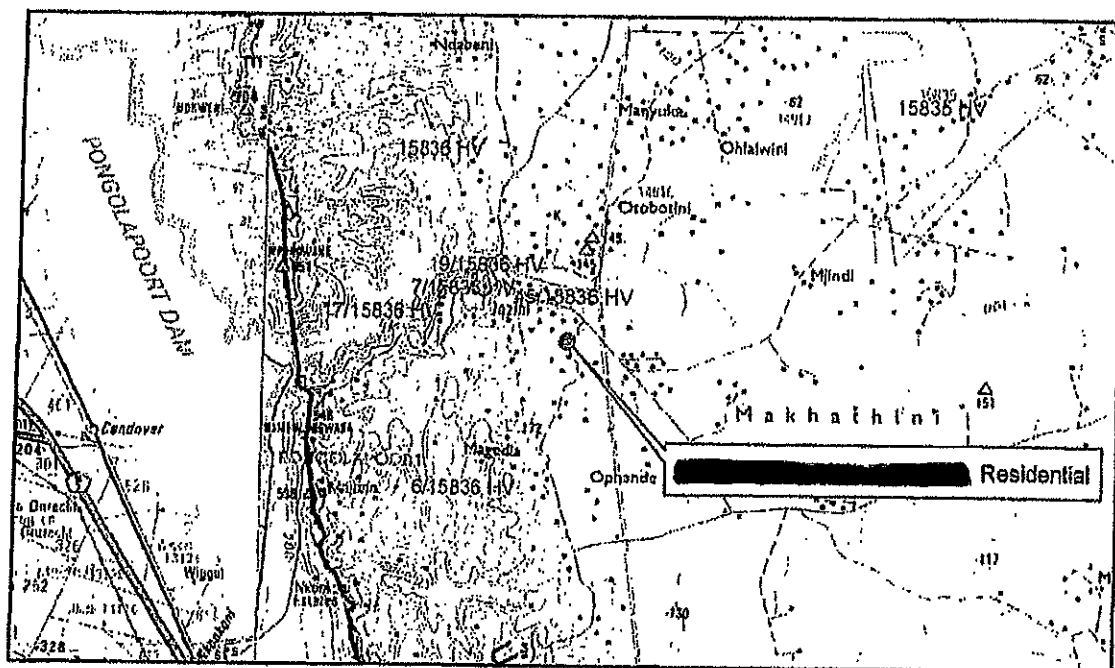
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1:1 000 Ingonyama Trust Land Leases Existing Leases Development Right Agreements Land Availability Agreements		N	Date of Drawing : 18 April 2012 Pravesh M	INGONYAMA TRUST BOARD
Date Acknowledgements : 1 : 60,000 Topographic Images - CDSM, Dept. Land Affairs 1 : 250,000 Topographic Images - CDSM, Dept. Land Affairs				

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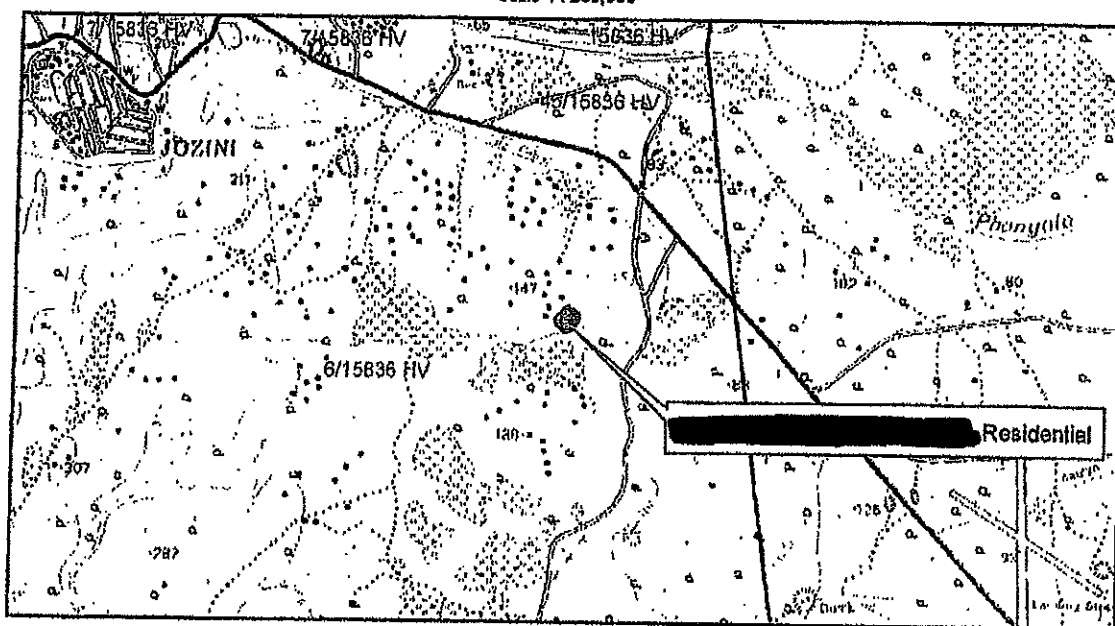
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Locality Map 1

5 000 2 500 0 5 000 Metres

Scale 1 : 250,000



Locality Map 2

2 000 1 000 0 2 000 Metres

Scale 1 : 50,000

SG No.		Owner Name :	
Area (Ha) :		Deed Number :	
SG Comp No. :		Municipality :	
Centroid - Lat :		Regional Authority :	
- Long :		Map Ref :	

X

X

X

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SZ

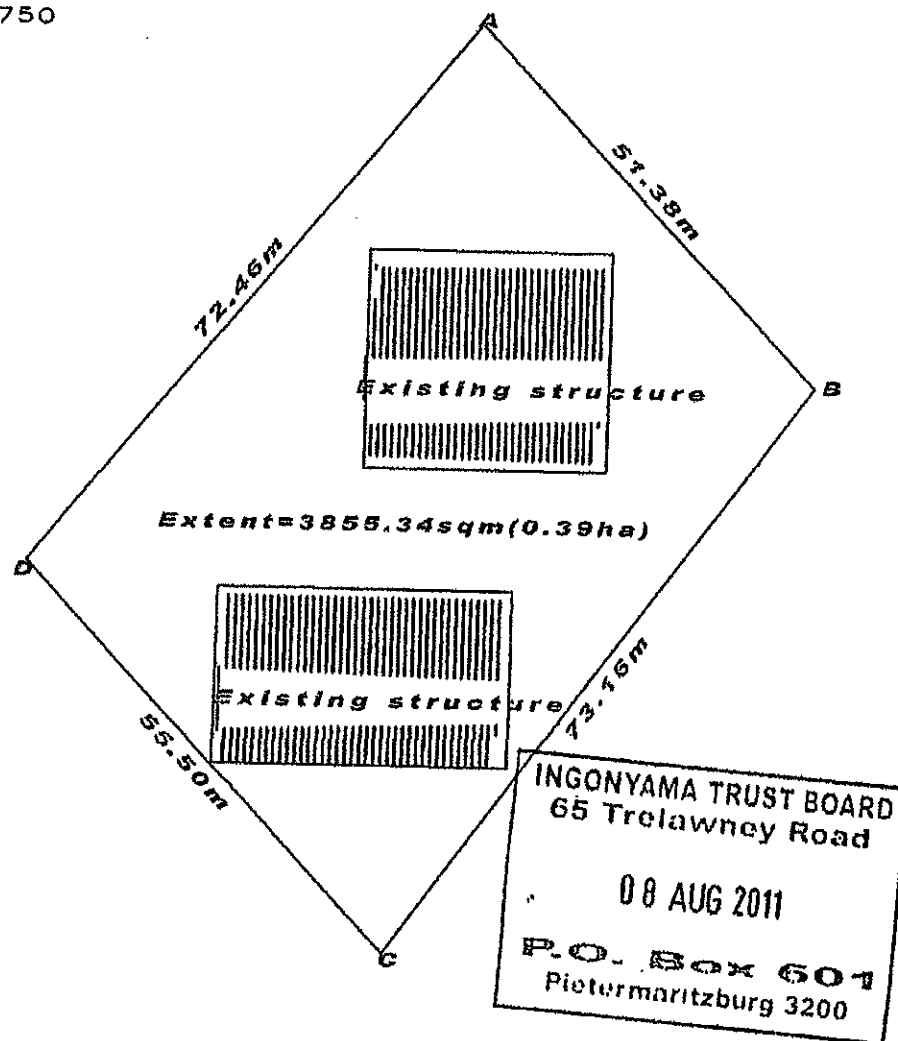
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LEASE SKETCH PLAN

APPLICANT: [REDACTED]
 TYPE OF LEASE: *Residential*
 DISTRICT MUNICIPALITY: *UMkhanyakude*
 LOCAL MUNICIPALITY: *Jozini*
 TRADITIONAL COUNCIL: *Nsinde*
 ISIGODI (TRADITIONAL WARD): *Maphaya*
 ITB REF:

SCALE: 1:750

T N

**APPROXIMATE CO-ORDINATES**

SYSTEM: WGS83

NAME	Y	X
A	+89308.827	+3036980.717
B	+89272.855	+3037017.397
C	+89316.373	+3037076.204
D	+89355.113	+3037036.465

NOTE: CO-ORDINATES AND DIMENSIONS ARE ACCURATE TO +/-3m

Surveyed and Prepared:

For: Ingonyama Trust Board
 PIETERMARITZBURG
 By: Land Administration
 Survey Services
 Northern Implementation Office
 Tel: 035-874 2663
 Fax: 035-874 2664
 Date: August 2010

KN

KN 02

TRADITIONAL COUNCIL CONSENT

1. Description of site -

RESIDENTIAL2. At a meeting held on 09 JULY 2010NESINGWE

Traditional Council

Traditional Council Office, the

NESINGWEresolved that it had no objection to the application to acquire rights to land by
[REDACTED]

(give full particulars of the applicant)

The form of tenure thereof to be agreed between the applicant and the Ingonyama Trust Board as land owner-in-law in terms of section 3 of the Ingonyama Trust Act, Act 3 of 1994, as amended. This consent is given in terms of section 2 (5) of that Act.

3. The Traditional Council confirms that all persons occupying or having an interest in the said Land have been consulted and have no objections to the proposals.

4. The applicant has been advised and confirms that he/she/it will not do anything or erect any structure on land until an appropriate tenure right has been agreed to and the necessary documents have been signed with the Ingonyama Trust Board.

Signed

CHAIRMAN

MEMBER

MEMBER

SECRETARY

TRADITIONAL
COUNCIL

09 JUL 2010

PRIVATE BAG X12
UBOMBEO 3970

Notes:

1. The consent submitted to the Trust must be an original, on Traditional Council headed notepaper and with a Traditional Council date stamp.
2. Please provide a full legal description supported if possible by a site plan and co-ordinates.
3. This consent together with the Ingonyama Trust Board standard application form (ITB1) must be submitted timeously to the Secretariat, Ingonyama Trust Board 188 Hoosen Haffjee Street / Box 601, Pietermaritzburg 3201.


 4N SZ
 KN

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO:

In the matter between:

COUNCIL FOR THE ADVANCEMENT OF THE
Applicant

First

SOUTH AFRICAN CONSTITUTION

NATIONAL MOVEMENT OF RURAL WOMEN

Second Applicant

HLETSELWENI LINA NKOSI

Third Applicant

BONGANI ZIKHALI

Fourth Applicant

ZAKHELE MALCOLM NKWANKWA

Fifth Applicant

HLUPHEKILE BHETINA MABUYAKHULU

Sixth Applicant

MABONGI GUMEDE

Seventh Applicant

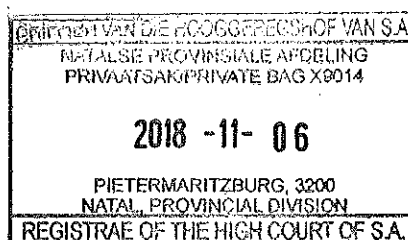
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Eighth Applicant

SM

Ninth Applicant

and



THE INGONYAMA TRUST

First Respondent

THE INGONYAMA TRUST BOARD

Second Respondent

**THE MINISTER OF RURAL DEVELOPMENT
AND LAND REFORM**

Third Respondent

**THE MEC FOR CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS, KWAZULU-NATAL**

Fourth Respondent

**KWAZULU NATAL PROVINCIAL HOUSE OF
TRADITIONAL LEADERSHIP**

Fifth Respondent

SUPPORTING AFFIDAVIT OF PROFESSOR NHLAPO

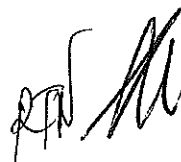
I, the undersigned

RONALD THANDABANTU NHLAPO

hereby make oath and say:-

1. I am a retired Deputy Vice-Chancellor and Professor of Law at the University of Cape Town. I depose to this affidavit in my personal capacity.
2. The facts contained in this affidavit are within my personal knowledge unless I state to the contrary or the context indicates otherwise. They are true and correct.
3. In the course of my career, I have focussed on and developed a particular specialisation and expertise in the field of African customary or indigenous law.¹ This is the area in which I have specialised while teaching law at various universities. When I held a Presidential appointment as full-time member of the South African Law Commission, I specialised in this area. I was the Chairperson of the Commission on Traditional Leadership Disputes

¹ These two terms are sometimes used interchangeably. For the sake of convenience, I use the term customary law in this affidavit.



and Claims, which was established in terms of the Traditional Leadership and Governance Framework Act 41 of 2003.

4. I attach marked 'TN1' a copy of my curriculum vitae, including a list of my publications. It indicates this specialisation and focus.
5. As an expert on African customary law, including African customary law systems of governance, I have knowledge of the nature of customary law land-holding, and decision-making with regard to customary land rights.
6. In the circumstances, I respectfully submit that I am duly qualified to depose to this affidavit. I have been requested to make this affidavit by the Legal Resources Centre, the legal representatives of the applicants.
7. I understand the matter to be about the conversion of customary ownership rights into lease agreements by the Ingonyama Trust in KwaZulu-Natal.
8. I have been made aware of certain statements about the nature of customary land rights by the Chair of the Ingonyama Trust Board, former Judge Ngwenya in the annual reports of the Ingonyama Trust Board as set out in the founding affidavit.

A handwritten signature in black ink, appearing to be 'R. N. M.', located at the bottom right of the page.

9. I agree in broad terms with the statement that *"What is important to emphasise here is that the land which ITB co-administers, is held in trust (Ingonyama Trust) for the specified beneficiaries (the ultimate and true owners) in accordance with customary law"*.
10. I also agree in broad terms with the following statement *"In turn each member of each clan is entitled through the procedures under customary law to have ownership of his/her allotment. The land which Ingonyama Trust owns, is the property envisaged in Section 25(1) of the constitution. Thus while not each and every member of the beneficial clans has a registered title deed in respect of his/her allotment, such ownership is protected by the law."*
11. Similarly I am in broad agreement with the following statement: *"These people [the people occupying the land held by the Trust] while in a legal sense are the beneficial occupiers, in reality are the true owners. They derive their rights of occupation from historical rights of various clans (tribes). Some predate the colonial era..."*
12. I am, however, concerned about a number of statements that equate indigenous land rights with Roman Dutch constructs of law. For example: *"In*



short [landownership] is collectively held while individual rights are as strong as those of Roman Dutch law which are by their nature individualistic."

13. Similarly Mr Ngwenya states that: "*Likewise its beneficiaries are entitled to all the benefits which the landowner as understood under the Roman Dutch law enjoys.*"

Customary law and common law ownership are different from one another

14. There are fundamental differences between customary and common law ownership. The dangers of viewing customary law concepts through the prism of western common law have been highlighted by the Constitutional Court. In the *Bhe* case, Langa DCJ (as he then was) pointed out² that while in the past customary law was seen through the common-law lens, it must now be seen as an integral part of our law. He pointed to the need to avoid the mistakes which were committed in the past and which were partly the result of the failure to interpret customary law in its own setting, but rather attempting to see it through the prism of the common law or other systems of law.
15. Registering customary law ownership as common law ownership or leasehold does not adequately reflect and protect the nuanced and layered

² *Bhe and Others v Khayelitsha Magistrate and Others* 2005 (1) SA 580 (CC) at para 43.



indigenous land rights that exist within customary land tenure systems. As my colleague Professor Tom Bennett has explained:

*"Those who begin an investigation of customary tenure with the assumption that ownership is a universal phenomenon...tend to represent the data as if one person, or body of people, holds a plenary right out of which fractions of rights are given to others. It then follows that lesser rights of use and enjoyment are conditional on grants by the 'owner'. On this understanding, it is often said that 'ownership' of land vests in the tribe, and that traditional rulers grant individuals lesser interest from this plenary right. From such a description, it seems as if the tribe has an 'absolute' title, the traditional leader is trustee and individuals have 'usufructuary' or some similar limited right."*³

16. Bennett's point, with which I agree, is that this model disguises the true nature of indigenous land rights which is in actual fact a 'system of complementary interests held simultaneously'.

The customary law land system

17. I need to emphasize that when I discuss African customary law systems, I refer to the actual practices on the ground – the 'living' customary law –

³ Bennett T.W., *Customary Law in South Africa* (Juta, 2004) at 380-381.



rather than the various documented distortions. For example, customary law tenure systems have come to be associated with 'communal' systems. While this characterisation is in some respects justified, the emphasis on the 'communal' nature of social organisation and property holding among customary communities often obscures the significance of the various levels of land holding and decision-making power within a customary community.

The layered and 'nested' nature of customary land rights and their determination in the community

18. At the heart of the system of customary land rights, is the layered and 'nested' nature of customary land rights systems. I therefore commence with an explanation of this unique feature of customary land holding systems. This feature is of critical importance to the land tenure security of members of customary communities.
19. Customary land relations are created by and mirror the bonds and relations between people. Access to land is a function of membership at different levels of rural society, for example membership of the family, lineage, village or wider community.
20. The land rights of individuals within the family context are relative to those of other members of the family. Similarly, family rights 'nest' within those of the



clan or local user group, which in turn 'nest' or operate relative to those of the wider community. While these rights are strong and secure, they are not absolute, and their content depends on the rights of others.

21. Land holding units thus 'nest' within one another. While rights at each level are relatively independent, a system of relative rights applies between the different levels. Decision-making and control of land are exercised at each of these different levels, and are orientated to preserving the land for members at the different levels, including the needs of future generations.
22. In balancing the entitlement of different members, indigenous control mechanisms tend to prioritise meeting basic survival needs. A feature of indigenous systems of land rights is that they enable the balancing of rights that operate relative to one another and often overlap with one another, because rights of access and use are often function-specific, and some functions may be exercised simultaneously.
23. This system of layered and 'nested' rights is reflected in the different levels at which decisions pertaining to land are taken, for example family meetings, clan meetings, village council meetings and tribal council meetings. There is a system of referral 'upwards' of disputes concerning



land. It is important to appreciate that disputes are referred upwards only when they cannot be resolved at the local level.

24. This structure is reflected in the decision-making process within African customary communities in general and Zulu custom in particular. Power is mediated through decision-making happening at different levels of societal organisation, including the family and the ward and not just at the level of the 'tribe'.
25. Colonial constructs, however, re-conceptualised these levels as points of delegated authority flowing downwards from a sovereign power, and so undermined the strength and relative independence of systems of land rights at the different levels. This was in part the result of viewing customary land holding through the common law lens.
26. Colonial and then apartheid legislators, administrators and courts superimposed a paradigm derived from common law constructs of exclusive ownership and individual rights, on the nuanced customary law systems of relative and overlapping rights and entitlements, without adequately recognising the role of key institutions such as the family or sub-groups in the control of land and the existence and balancing function of layered decision making institutions.



Customary land rights are derived from membership of the community

27. Secure rights to land and natural resources derive largely from recognised and accepted membership of a local group or 'community'. Membership flows from birth in the first instance, but outsiders who apply for land can be accepted into the community through defined procedures (for example, approval of an application and payment of an *ukukhonza* fee)⁴ or through transactions such as purchases of houses (or sometimes even land).
28. Land rights, as in the pre-colonial era, are closely inter-related with social and cultural relationships more generally and the identities associated with these. People often view land rights as underpinning the continuity of social units as well as securing access to the basic conditions of human existence. Tenure security derives in large part from locally legitimate landholding. Generally, tenure of residential land is perpetual, transferable and inherited, unless an individual or family's occupation of the land is determined to be harmful to the community.
29. Different land uses attract varying or layered degrees of decision-making, at different levels of socio-political organization. For example, allocations of

⁴ Alcock R and Hornby D., *Traditional land matters : a look into land administration in tribal areas in KwaZulu-Natal*, Legal Entity Assessment Project, (2004) at 43.

A handwritten signature in black ink, appearing to be 'RTN' with a stylized flourish above it.

arable land are often controlled at the level of the family and the neighbourhood, while grazing and woodland use is the concern of a wider segment of society. Members have the right to participate in decision-making processes at the appropriate level.

30. The vesting of different levels of social organisation is critically important.

Many scholars have pointed out that colonial authorities misunderstood and misrepresented the strength of individual and family rights,⁵ and that the term "communal tenure" is somewhat of a misnomer given the strength of family and individual rights to residential and arable plots.

31. The work of Professor Ben Cousins in Msinga confirms that land allocations of residential and arable land are often highly localized processes within families, or at the level of the local neighbourhood. They indicate that "headmen" and "sub-headmen" (as opposed to chiefs) often play a crucial role in convening meetings of neighbours at which the suitability of new applicants is discussed and the boundaries of the land are agreed and witnessed.

⁵ Chanock, 'Paradigms, policies, and property: a review of customary law of tenure' in Mann & Roberts (eds) *Law in Colonial Africa* Heinemann (1991)]; Colson, 'The impact of the colonial period on the definition of land rights' in Turner (ed) *The Impact of Colonialism*, Cambridge University Press (1971); Gluckman, *The Ideas in Barotse Jurisprudence*, Yale University Press, (1965); Hunter, *Reaction to Conquest*, David Phillip, (1979).

32. Cousins' study of customary land law in Msinga⁶ shows that when an outsider is seeking access to land it is not sufficient for them to merely receive the approval of *Inkosi* or *Induna*. The demarcation of the land must include consultation with *Ibandla* and the potential neighbours of the outsider applying for land. A similar study by the LEAP project⁷ found that the agreement of the potential neighbours is essential for an outsider to be allocated land. *Ibandla* must also be consulted. Customary land law clearly requires consultation with neighbours and *Ibandla*. Such localised involvement in decision-making is critically important for social cohesion, stability and the well-being of the community.
33. A once-off ukukhonza fee is often paid by newcomers seeking to be allocated land. This is often accompanied by a public ceremony during which neighbours are invited to share food and drink provided by the land applicant. This event serves to formalise and mark the transfer of the land in people's memories.⁸
34. The payment of regular rental for land to traditional authorities is not part of Zulu customary law, however. Rental is sometimes paid to individuals or

⁶ Cousins, Ben with Rauri Alcock, Ngididi Dladla, Donna Hornby, Mphethethi Masondo, Gugu Mbatha, Makhosi Mwel and Creina Alcock. 2011, '*Imithetho yomhlaba yaseMsinga: The Living Law of Land in Msinga, KwaZulu-Natal*'. Research Report 43. Cape Town: Institute for Poverty Land and Agrarian Studies, University of the Western Cape.

⁷ Alcock R and Hornby D., *Traditional land matters : a look into land administration in tribal areas in KwaZulu-Natal*, Legal Entity Assessment Project, (2004) at 43.

⁸ Cousins et al 2011 at 38



families who rent land to tenants but this is a bi-lateral arrangement between individuals rather than a feature of customary law. Such private rental arrangements between individuals are not regulated by traditional authority structures.

Common law leasehold undermines customary land rights

35. Leasehold is a common law mechanism consistent with the common law construct of ownership as an exclusive right, based on the premise of a specific legal person owning or leasing a defined area of land. Customary law ownership is, as I have described, inherently an inclusionary as opposed to an exclusionary system, based on a system of complementary interests held simultaneously.
36. In this context, to convert indigenous ownership of homesteads and fields into common law lease agreements both fails to recognise and undermines the indigenous land rights held by individuals on the land in question as they exist according to customary law within a "system of complementary interests held simultaneously".
37. When we attempt to reconcile the customary law system with a common law system of ownership and leasehold, we need to consider the real impact of the law on the ground, rather than merely attempting to reconcile the



concepts in theory. In other words, we need to consider what the impact of the conclusion of leases in the name of one family member will be on both that person's underlying customary ownership, but also on the rights of other family members whose names do not appear on the lease.

38. In the same way, we need to consider what the actual impact of the leases will be on the security of tenure of both the lessee and other family members in the real world: will it strengthen or weaken their security of tenure? Will they be able to assert their customary rights to land? And we need to consider the impact of the common law lease on the decision-making powers and structures (in the family, local community, clan and tribe) in respect of the occupation and use of communal land.

39. This approach is consistent with the Constitutional Court statement in the Alexkor case:

*"The determination of the real character of indigenous title to land therefore 'involves the study of the history of a particular community and its usages.' So does the determination of its content."*⁹

⁹ *Alexkor Ltd and Another v Richtersveld Community and Others*, 2004 (5) SA 460 (CC) at para 57.



40. In his Chairman's statement in the ITB's Annual Report of 2012/13, former Judge Ngwenya recognised the importance of this approach. He stated:

"In a way indigenous layers of rights in the absence of clear recordal are suppressed and hidden The Board must, moving forward, seek to document and clarify the entire content of these communal rights which each holder has on land. Hopefully once this is done a correct description of the nature of the instrument which encapsulates these rights will be properly described or given an appropriate term."

41. It appears that the exercise of documenting "the entire content of communal rights" of those living on Trust-held land has not been done by the Board.
42. Instead, the Board has resorted to requiring occupants to conclude lease agreements enforceable under the common law of contract, that do not encapsulate and protect the layered and nested rights of the beneficial occupiers of the Trust-held land.
43. On the face of it, the lease agreements downgrade the lessee's customary ownership of land to that of a tenant whose continued occupation of the land is conditional on the payment of rent.



- 43.1 As lessees, community members must pay for the right to reside on the land. This is a foreign concept in Zulu customary law, as I have explained.
- 43.2 As lessees, community members are subject to dispossession of the land they live on for failure to pay rental without consideration of their vested customary law interests and entitlements, and without any involvement of the community or traditional authority.¹⁰
- 43.3 Beneficial occupation and use rights are no longer vested perpetually, and transferable and inherited (subject to continued community consent). They are terminated after 40 years, or earlier at the instance of the Trust for material breach of the lease agreement.
- 43.4 The lease agreements also ignore, and thereby trump, the co-existing customary rights of all family members other than the lessee. In this way, they undermine the customary law land rights and security of tenure of the family and other community-members who may occupy the land.

¹⁰ I refer, in particular, to clause 13.1 of the Ingonyama Trust's standard lease agreement, which I have been given by the applicants' attorneys.



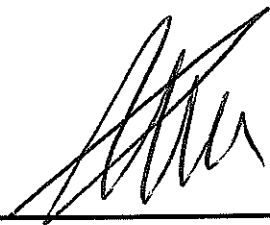
- 43.5 The decision-making power to conclude leases (and to authorise subletting), and thereby to grant land rights, is vested entirely in the Trust and the traditional council. No provision is made for the involvement of the family and local community or neighbourhood (and the local headmen) concerned, as one would expect under a customary law system. The power to control land rights is vested entirely in the Trust and the chiefs. In this way, the lease agreements also deprive families, neighbours and localised communities of their customary law entitlement to participate in decision-making in respect of the occupation and use of tribal land.
- 43.6 Moreover the procedures set out in the lease agreement, including the conflict resolution provisions in clauses 5.2-5.3 and 13.1-13.5 are fundamentally at odds with customary law. But it is hardly worth it to draw attention to specific provisions of the lease as the very nature of the lease agreement is fundamentally at odds with customary law as I have already described.
44. While the conclusion of a lease agreement may have other benefits (which I cannot comment on), it certainly does not provide a greater degree of security of tenure for those living on Trust-held land than customary land rights.

A handwritten signature in black ink, appearing to be 'RTN', located at the bottom right of the page.



THANDABANTU NHLAPO

I HEREBY CERTIFY that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was sworn to and signed before me at **CAPE TOWN** this 25th day of ~~October~~ **2018** in compliance with the regulations contained in Government Notice R.1258, dated 21 July 1972, as amended.



COMMISSIONER OF OATHS

MICHELLE LE ROUX
COMMISSIONER OF OATHS
PRACTISING ATTORNEY R.S.A
UCT LAW CLINIC
KRAMER LAW SCHOOL BUILDING, MIDDLE CAMPUS,
1 STANLEY ROAD
RONDEBOSCH
7701

RONALD THANDABANTU NHLAPO

I. PERSONAL DETAILS

Date of birth: 27 June 1949
Place of birth: Nongoma, KwaZulu-Natal, South Africa
Marital Status: Married to Mathokoza Nhlapo - two children
Citizenship: South African
ID number: 490627 5635 088
Home Address: 7 Blaauwklippen Road
 Kirstenhof 7945
 Cape Town, South Africa
Telephone: + 27 21 701 7544
Cell phone: + 27 82 254 2819
E-mail: thandabantu.nhlapo@uct.ac.za; thandabantu@nhlapo.com
Website: www.nhlapo.com
Languages: English, isiZulu, siSwati (fluent)
 Sesotho, isiXhosa (reasonable)

II. EDUCATION

D.Phil (1984-1985; 1987-1990) Full Time	Oxford University, United Kingdom Subject: Family Laws
LL.B (Hons) (1974-1978) Full Time	University of Glasgow, United Kingdom Majors: Public Law, Politics Degree classification: II(i)
BA (Law) (1967-1971) Full Time	University of Botswana, Lesotho and Swaziland (Roma, Lesotho) Majors: Law, Government Degree classification: II(i)
Cambridge Overseas	St Christopher's Anglican Boys' High School,



School Certificate
(1962-1966)

Swaziland
Grade: **First Class**

III. EMPLOYMENT HISTORY

2004 - 2014 **University of Cape Town, Deputy Vice Chancellor** with portfolio responsibility for internationalisation (including driving the "Afropolitan" vision), Human Resources and Special Projects. (Previous Portfolios: Student Affairs; Properties and Services; Development and Alumni Affairs).

2000 - 2004 **Embassy of South Africa, Washington D.C., Deputy Chief of Mission and Deputy Ambassador**

1996 - 2000 **South African Law Reform Commission**
Full-time member - by Presidential appointment

Reason for leaving: Satisfaction of long-standing desire to serve in Foreign Service

1990 - 1995 **University of Cape Town - Department of Private Law in the Faculty of Law**

Professor (1995-1998 including leave of absence)
Associate Professor (1993-1995)
Senior Lecturer (1990-1993)

Reason for leaving: Presidential appointment to the South African Law Commission

1978 - 1987 **University of Swaziland - Department of Law in the Faculty of Economics and Social Sciences**

Dean, Faculty of Economics and Social Sciences (1986-1987)
Senior Lecturer in Law (1986-1987)
Lecturer in Law (1978-1986)

Reason for leaving: to complete D.Phil studies in Oxford, UK

IV. TEACHING EXPERIENCE

a) **University of Cape Town (1990-1995)**

Main subjects taught

- Law of Persons
- Family Law
- African Customary Law

RTN

b) **University of Swaziland (1978–1987)**

Main subjects taught

- Law of Persons and the Family
- Customary Law
- Law of Evidence
- Roman Law
- Introduction to Law and Legal Method

c) **Other institutions (1991-2003)**

Part-time Lecturer

- *University of the Western Cape*: Family Law 1991, 1993; African Customary Law 1992, 1994, 1995

Guest Lecturer

- *University of Pretoria*: LLM in Human Rights and Constitutional Practice (now Human Rights and Democratisation in Africa): offering course on Gender, Culture and the Constitution, 1995-1999; 2010-present.

Adjunct Professor

- *University of Maryland Law School (Baltimore, USA)*, offering a course on *South Africa: Constitutionalism, Human Rights and Cultural Diversity* (a prerequisite for the South African Externship Program) 2003. Responsible for placement of students in internships in South African academic institutions and NGOs; Faculty of Law, *University of Fort Hare* (2014-2017).
- *Professor extraordinarius* in the Department of Private Law, *University of South Africa* (2002-2008); Centre for Human Rights, *University of Pretoria* (2014-present); Faculty of Law, *North West University* (2015-2017).

d) **Miscellaneous**

Miscellaneous courses, conferences, seminars, workshops and speaking engagements on issues of traditional leadership, gender perspectives on customary law, the compatibility of customary family law with constitutional norms, culture and the equality clauses in the SA constitution, culture and human rights generally, multiculturalism etc.

V. APPOINTMENTS IN TEACHING AND IN HIGHER EDUCATION

- a) Appointed in February 2000 as **Visiting Professor of Law** at **Harvard Law School** for winter term, 2001. Scheduled to offer an examinable elective course on *Constitutionalism, Human Rights and the Problem of Multiculturalism: A Southern African Perspective* within the Law School's Human Rights Program. (Withdrew from arrangement in October 2000 upon announcement of Washington posting).

- b) **Independent Assessor on the Affairs of the University of the North** (2000). Appointed by Minister of Education to investigate breakdown of academic, financial and administrative systems in the University and to make recommendations. Author of Report to the Minister (Gazetted 16 October 2000) in terms of Chapter 4 of the *Higher Education Act No. 101 of 1997*. Main recommendations of the Report have been implemented.
- c) **Occasional referee** (Human Sciences Research Council, South African Journal on Human Rights), **PhD examiner** (Rhodes University 1999, University of Oslo 1998, University of South Africa 2013); **External examiner** (University of Stellenbosch 1993-95; University of Swaziland 2009-2010)
- d) **Panel Member**, Higher Education Quality Committee (HEQC) of the Council for Higher Education (CHE) Audit of the University of Witwatersrand (2006)
- e) **Panel Member**, Higher Education Quality Committee (HEQC) of the Council for Higher Education (CHE) Audit of the University of South Africa (2008)
- f) **Visiting Professor** at the Netherlands School of Human Rights Research, University of Utrecht, Holland (May-June 2015)
- g) **Member of Council**, University of Mpumalanga (Ministerial appointment) - 2015
- h) **Member of Council**, National University of Lesotho (Royal appointment) - 2015

VI. OTHER APPOINTMENTS

- a) **Chairperson, Commission on Traditional Leadership Disputes and Claims** (an independent statutory commission to hear disputes and claims in the traditional leadership sector dating back to 1927 and to render final determinations). Successfully set up the office in Pretoria, finalised staff recruitment and launched the operation and the process of hearing disputes. Resigned in 2007, after the Commission had held 32 hearings countrywide and was two-thirds through the final report on the validity of the 12 kingships in South Africa. The Commission, still known today in the media and in public discourse as the **Nhlapo Commission**, delivered its final report to the President in July 2010, which announced the confirmation of certain kingships and the demotion of others (2004-2007).
- b) **South African Law Commission**, as sole full-time member of the reconstituted organisation. Was appointed Project Leader for **Project 90: Customary Law**, in which role I drove the development of 3 major reports in family law (the *Review of the Marriage Act*, the *Report on the Judicial Powers of Traditional Leaders* and, most notably, the *Report on Customary Marriages*, which was enacted into law as the **Recognition of Customary Marriages Act (Act No 120 of 1998)** on 2 November 1998 (1996-2000).
- c) **Convenor, Technical Committee on Traditional Leaders**, an *ad hoc* committee of technical advisers to all six theme committees of the **Constitutional Assembly** on all issues

relating to traditional leadership and customary law. Committee's work contributed to the final version of Chapter 12 as it appears in the present Constitution. (1995, 1996)

- d) **Member, South African National group of Arbitrators for the Permanent Court of Arbitration (PCA)** - in terms of Article 44 of the *Hague Convention for the Pacific Settlement of International Disputes*. A four-member committee responsible for nominating South African candidates to the International Court of Justice and other international tribunals, under the Chairmanship of the Chief Justice. Have so far participated in the nomination of South Africans to the ICJ (unsuccessful) and to the International Criminal Court (successful). (1999-2005)
- e) **Member, Governing Council, International Institute for the Unification of Private Law (UNIDROIT)** based in Rome, Italy (1999-2003), representing RSA. (Appointed **Chairman**, UNIDROIT/AMERICAN LAW INSTITUTE Study Group on Transnational Rules of Civil Procedure which developed and produced the *UNIDROIT/ALI Principles and Rules of Transnational Civil Procedure* in 2004. (2000-2004)
- f) **Member, Executive Council of the International Society of Family Law (ISFL)** a major global association of academic family lawyers. (1995-2002)
- g) **Chairman, Advisory Committee on the Practice of Ukuthwala:** Project 138 of the South African Law Reform Commission. Advisory Committees are groups of external experts tasked with investigating the area and developing a Report and a Bill for the Commission. In September 2017 a *Report on the Practice of Ukuthwala* (including draft Bill) was submitted to the Commission. (2012-2017)
- h) **Board memberships:** Ubuntu-Botho Investments (Pty) Ltd (2008-present); Emthunzini Community Trust (2010-present); Motsepe Family Foundation (2015-present); African Rainbow Energy and Power (Pty) Ltd (2016-present); Elandsfontein Exploration and Mining (Pty) Ltd (2016-present).

VII. MISCELLANEOUS AWARDS AND ENGAGEMENTS

- a) **Oxford University Junior Common Room Third World Scholarship** to read for D. Phil in Family Laws (Pembroke College, Oxford) 1984-1985; 1987-1990
- b) **Albert Luthuli Scholarship** to read for LL.B (Hons), University of Glasgow (1974-978)
- c) **Member, International Women's Rights Action Watch (IWRAP)** network, based in Minneapolis, USA (monitoring implementation of the Convention on the Elimination of All Forms of Discrimination Against Women worldwide) from 1988-2000 (Member, Advisory Committee 1999-2000).
- d) **Founder Member, Women and Law in Southern Africa Research Project (WLSA)** 1987-1997. A seven-country initiative conducting research into issues of customary law and gender in the region. (Advisory Board from 1991)

- e) **Member, Board of Directors, Gender Education and Training Network (GETNET),** Cape Town 1996-2004 (Elected Vice Chairperson 1999)
- f) **Chairman, Board of Directors, Human Rights Development Initiative (HRDI)** Pretoria. A regional human rights NGO working in the area of HIV/Aids and Law covering ten countries in southern and east Africa and the Great Lakes. (2005-present)
- g) **Chairman, Association of University Legal Aid Institutions (AULAI) Trust.** Responsible for disbursements in support of university-based legal aid clinics, out of R1 million in donor funding. (1998-2001)
- h) **Member of Women's Rights Panel** of the **Peter and Patricia Gruber Foundation** (New York) which recognises individuals or NGOs that most advance the cause of women's rights globally with an annual Women's Rights Prize of \$500 000. Highlight of my tenure was seeing the 2009 Prize jointly awarded to Leymah Gbowee of Liberia and the Women's Legal Centre of Cape Town. (2008-2011)
- i) **Chairman, Governing Board, Cross-cultural Human Rights Centre,** Free University of Amsterdam, Netherlands. (2015-present)
- j) **Honorary Doctor of the University (DUniv),** awarded by the University of Glasgow 2012

VIII. SAMPLE OF MAJOR CONFERENCES

- 1991 May – Opatija, Yugoslavia**
7th World Congress of the International Society on Family Law – on Parenthood: The Legal Significance of Motherhood and Fatherhood in a Changing Society. Paper on *Biological and Social Parenthood in Customary Law in Southern Africa*. (ISFL)
- 1994 July – Cardiff, UK**
8th World Congress of the International Society of Family Law: Families Across Frontiers. Paper on *Cultural Diversity, Human Rights and the Family in Contemporary Africa: Lessons from the South African Constitutional Debate*. Successfully pitched for Durban as venue of 9th Congress. Elected Conference Convenor. (ISFL)
- 1995 September – Beijing, China**
NGO Forum on Women at the Fourth World Conference on Women. Conducted Workshops for **IWRAW** (*Implementing the Women's Convention in a Multicultural Context*); for the Commonwealth Association of Magistrates and Judges (*Domestic Implementation of the Women's Convention: the Test Case Method*); and for the Caritas Leadership Internship Group. Participation sponsored by the **Shaler Adams/Caritas Foundation** (USA) through **IWRAW**.
- 1997 July – Durban, South Africa**

9th World Congress of the International Society of Family Law on "Changing Family Forms: World Themes and African Issues". (**Conference Convenor**). Paper on *African Family Law under an Undecided Constitution: Challenges for Law Reform (ISFL)*

1998 October – Glenburn Lodge, South Africa

Colloquium for Judges on National and International Human Rights Law with Particular Reference to Customary Law and Freedom of Expression. Paper on *The Influence of Modern Human Rights Law on the Content and Development of Customary law*. (Judicial Education Committee of the **Judicial Service Commission/Venice Commission of the Council of Europe**)

2006 March – Gainesville, Florida USA

Monica Wilson Celebration, University of Florida. Paper on *Customary Law, Culture and the South African Constitution: The New Inequality?* (**University of Florida**)

2014

November – New York, USA

Conference on Twenty Years of South African Constitutionalism: Constitutional Rights, Judicial Independence and the Transition to Democracy. Paper on *Customary Law in Post-apartheid South Africa: the Vexed Question of Cultural Diversity, Women's Rights, 'Living Law', and Appropriate Law Reform*. (**New York Law School**)

2015 February – London, UK

Global Law Summit, at the invitation of The British Council. Member of plenary panel discussion on Rule of Law, Access to Justice and Sustainable Development, chaired by Baroness Prashar of Runnymede. Presentation on *Rule of Law and Access to Justice: the African Law Perspective*. (**Ministry of Justice/Ministry of International Development, UK**).

September – Beijing, China

Conference: Towards a Cross-Cultural Human Rights Dialogue. Input on *Living Customary Law as a Source of Human Rights* (**Peking University Research Centre for Human Rights and Humanitarian Law/Netherlands School of Human Rights Research/World Social Sciences and Humanities Network**).

***At a side-meeting of delegates, unanimously elected as Inaugural Chair of the Governing Board of the Cross-cultural Human Rights Centre, currently hosted at the Free University in Amsterdam.**

2016 January – Cape Town, South Africa



Institute for Global Law and Policy (Harvard Law School): African Regional Workshop. Panellist on *The Challenges of Legal Diversity*, co-chaired by Jean and John Comaroff, and Respondent at *Writing Workshop*. (Harvard Law School/ Bowman Gilfillan Africa Group/Old Mutual/Harvard University Centre for African Studies SA Office)

October – Glasgow, Scotland, UK

By invitation of Glasgow University, delivering the annual **Stevenson Citizenship Lecture**. Paper on *Cultural Diversity, belonging and the law in societies in transition*. (University of Glasgow Stevenson Trust).

2017

October – Sydney, Australia

International Bar Association Conference and AGM. Panellist on **Constitutions in Flux: the Role of Lawyers**. Paper on *Constitutions in Flux: Some reflections on the case of South Africa*. (International Bar Association).

December – Qingdao and Beijing, China

Sixth Cross-cultural Human Rights Seminar (Qingdao), Building a Community of Shared Future for Mankind in the Area of Human Rights, at the invitation of the **Centre for Human Rights Study, Shandong University** and the **Cross-cultural Human Rights Centre, Free University in Amsterdam**. Input in the Panel on *Lack of Representativeness and Inclusiveness in the Current Human Rights Systems and Ways to Repair Them*.

South-South Human Rights Forum (Beijing), at the invitation of **State Council Information Office** and **Ministry of Foreign Affairs**. Rapporteur on Panel on *Poverty Alleviation and Safeguarding the Right to Food*.

IX. SELECTED PUBLICATIONS

1. BOOKS:

- **Law and the Other Sex: The Legal Position of Women in Swaziland** (with Alice Armstrong), Websters (Mbabane) - 1986
- **Marriage and Divorce in Swazi Law and Custom**, Websters (Mbabane) - 1992
- **The Changing Family: Family Forms and Family Law** (ed with John Eekelaar) Hart Publishing (Oxford) – 1998
- **African Studies in the Post-Colonial University** (ed with Harry Garuba) University of Cape Town (Cape Town) – 2012
- **African Culture, Human Rights and Modern Constitutions** (ed with Emma Arogundade and Harry Garuba) University of Cape Town (Cape Town) – 2013

- **Things Fall Apart? Reflections on Chinua Achebe** (ed with Emma Arogundade and Harry Garuba) University of Cape Town (Cape Town) – 2014
- **African Customary Law in South Africa: Post-Apartheid and Living Law Perspectives** (ed with Chuma Himonga) Oxford University Press Southern Africa (Cape Town) 2014

2. CHAPTERS IN BOOKS:

- "Proprietary Consequences of Marriage in Swaziland: Law versus Culture and the Effect on Women's Rights" in Armstrong and Ncube, (ed) **Women and Law in Southern Africa** (Zimbabwe Publishing House) Harare - 1987
- "Bigamy and Dual Marriage in Swaziland: No cause for Optimism" in Armstrong and Ncube, (ed) **Women and Law in Southern Africa** (Zimbabwe Publishing House) Harare - 1987
- "Women's Rights and the Family in a Traditional and Customary Law Context" in Bazilli (ed) **Putting Women on the Agenda** (Ravan Press) Johannesburg – 1991
- "Biological and Social Parenthood in African Perspective: The Movement of Children in Swazi Family Law" in Eekelaar and Sarcevic (eds) **Parenthood in Modern Society: Legal and Social Issues for the Twenty-first Century** (Martinus Nijhoff) London – 1993
- "South African Family Law at the Crossroads: From Parliamentary Supremacy to Constitutionalism" in Andrew Bainham (ed) **International Survey of Family Law 1994** (formerly **Annual Survey**) 419-434
- "The Future of Family Law and the Law of Persons in South Africa: is Modernization Compatible with Africanization?" in Van Aswegen (ed) **The Future of the South African Private Law** (University of South Africa) - 1995
- "African Customary Law in the Interim Constitution" in Liebenberg (ed) **The Constitution of South Africa from a Gender Perspective** (CLC/David Philip) - 1995
- "South African Law: Past, Present and Future" in Itala Vivan (ed), **Il Nuovo Sudafrica dalle strettoie dell apartheid alle difficoltà della democrazia** La Nuova Italia, (Firenze). (Published in Italy in Italian, with French and English translations) - 1996
- "Democratisation and Women's Rights in the South African Constitution: the Challenge of African Customary Law" in **World Culture Report 1998: Culture, Creativity and Markets** (UNESCO Publishing) Paris - 1998
- "African Family Law Under an Undecided Constitution: The Challenge for Law Reform in South Africa" in Eekelaar and Nhlapo (ed) **The Changing Family: Family Forms and Family Law** (Hart Publishing) Oxford - 1998

- "The Status of Customary Law in Africa: From the Age of 'Law and Modernisation' to the Era of 'Rights and Constitutionalism'" in Bola Ajibola and Deon van Zyl (ed) **The Role of the Judiciary in a Changing Africa** (Jutas) Cape Town - 1998
- "The African Customary Law of Marriage and the Rights Conundrum" in Mahmood Mamdani (ed) **Beyond Rights Talk and Culture Talk: Comparative Essays on the Politics of Rights and Culture** (David Philip) Cape Town – 2000
- "Marriage" chapter in Himonga C and Nhlapo T (ed) **African Customary Law in South Africa: Post-apartheid and Living Law Perspectives** (Oxford University Press Southern Africa) Cape Town 2014
- "Dissolution of Marriage" chapter in Himonga C and Nhlapo T (ed) **African Customary Law in South Africa: Post-apartheid and Living Law Perspectives** (Oxford University Press Southern Africa) Cape Town 2014

3. ARTICLES:

- "International Protection of Human Rights and the Family: African Variations on a Common Theme" in **International Journal of Law and the Family** (Oxford), 3 Spring 1989, 1-20
- "The Mixture of Civil and Customary Law in Swaziland" in **International Yearbook for Legal Anthropology** (Vienna) Vol. 4 - 1989, 47-57
- "The African Family and Women's Rights: Friends or Foes?" in (1991) **Acta Juridica** 135-146
- "Culture and Women Abuse: Some South African Starting Points" (1992) 13 **Agenda** 5- 14
- "Uncovering Reality: Excavating Women's Rights in African Customary Law" **International Journal of Law and the Family** 7 (1993) 314-369 (co-authored with eight others)
- "Indigenous Law and Gender in South Africa: Taking Human Rights and Cultural Diversity Seriously" (1994-95) **Third World Legal Studies** (Special issue: Women's Rights and Traditional Law: A Conflict), 49-71
- "Cultural Diversity, Human Rights and the Family in Contemporary Africa: Lessons from the South African Constitutional Debate" in **International Journal of Law and the Family** 9 (1995) 226-232, and in Nigel Lowe and Gillian Douglas (eds) **Families Across Frontiers** (Martinus Nijhoff) London (1996) 237-251
- "Towards a Cultural Understanding of the Interplay Between Children's and Women's Rights: An Eastern and Southern African Perspective" **International Journal of Children's Rights** Vol. 3 (1995) 333-368 (co-authored with eight others)

- "The African Charter and Women's Human Rights: What Next?" **Africa Legal Aid Quarterly** (Maastricht), July - September (1996) 10-13
- "Customary Law in Post-apartheid South Africa: Constitutional Confrontations in Culture, Gender and 'Living Law'" (2017) **South African Journal on Human Rights** 33:1, 1-24
- "Homicide in traditional African societies: Customary law and the question of accountability" (2017) 17 **African Human Rights Law Journal**, 1-34

X. UNPUBLISHED D.PHIL THESIS

- **Family Law and Traditional Values: A Study of the Legal Position of Women in Swaziland with Selected References to Developments in Zimbabwe (1990)**

XI. RECENT CONSULTANCIES

- **Case of Myumeleni Jezile v The State (High Court Case No. A 127/2014).** *Expert Opinion Affidavit on the Practice of Ukuthwala*, to assist the court in the appeal of Jezile against a 10-year sentence upon conviction by the Wynberg High Court on charges ranging from rape to human trafficking for his abduction (ostensibly for purposes of marriage) of a 14-year old girl. Opinion was extensively quoted in the judgement of the court (Yekiso, J), which dismissed the appeal and confirmed the sentence (**August 2014**).
- **Centre for Child Law, University of Pretoria.** *Report on Appropriate Rituals*, an opinion submitted to the High Court of South Africa (Gauteng Division) in the high-profile and topical case of children swapped at birth and brought up by their non-biological parents for 4 years before the mistake was discovered (Case No. 32053/2014). The Report explained the customary law rituals of affiliation, in support of the recommendations of the *curator ad litem* that the children should not be removed from their current "families", subject to the performance of certain traditional ceremonies, as requested by both sets of parents. The Report was accepted by the court and by the parties (**March 2015**).
- **Rhodes University, Grahamstown.** *Report of the Independent Investigating Panel*, which had been tasked to investigate the disruption of a Senate meeting and other protest action on campus in August 2015. As Chair of the Panel I was responsible for drafting the report and overseeing its finalisation, prior to its submission to the Vice-Chancellor. The Report and its recommendations were accepted by University management (**October 2015**).
- **Department of Justice and Constitutional Affairs.** *Draft Concept Paper on the Establishment of Traditional Courts: a Critical Assessment*, being an analysis and critique of a concept paper prepared jointly by the Department of Justice and the Department of Cooperative Governance and Traditional Affairs as the first step in developing a new Traditional Courts

Bill. The assessment was accepted by the Ministry and the brief included supporting the Minister and Deputy Minister in national sectoral consultations on the concept paper, which included engagements with the National House of Traditional Leaders and with civil society organisations (October-December 2015).

- **SA Human Rights Commission.** *Expert opinion on the customary law aspects of the case of African Diaspora Forum and 30 Others v. King Goodwill Zwelithini*, the case in which the Zulu monarch had complaints laid against him with the SAHRC for a speech he delivered in Phongolo which was alleged to have given rise to a spate of xenophobic attacks in KZN. The opinion was accepted and sections of it utilized in the Preliminary Report. (February 2016).
- **Parliament of the Republic of South Africa.** *Rapporteur for Working Group 2 on Land Reform, Redistribution, Restitution and Security of Tenure of the Parliamentary High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change.* (Working Group 1 was on *Poverty, Inequality, Unemployment and the Distribution of Wealth*; Working Group 3 on *Social Cohesion and Nation Building*). The Rapporteurs' function was to record and write up all 9 provincial public hearings conducted by the Panel and, in the case of Working Group 2, to record, interpret and write up 8 Expert Roundtables convened by the Panel - all as contributions to the final **Report to the Speaker**. The Report was launched on 11 November 2017. (July 2016-November 2017).
- **Commission on Gender Equality.** *Keynote address at the CGE Plenary, on Individual Rights versus the Collective Ethic in African Culture*, where the argument was advanced that what appears to be a tension between human rights and African customary law (especially in the context of the Constitution) is really a failure to identify the deep values underlying the western and African world views, respectively – and that employing the notion of living customary law may go some way towards finding common ground. (November 2016)
- **National Association of Democratic Lawyers (NADEL).** *Customary Law Training for Lawyers*, a nation-wide training programme for practising lawyers, candidate practitioners, magistrates, academics and students, conducted through workshops in all 9 provinces. Each workshop offers 4 lectures (*Customary Law and the Constitution*; *Customary Marriage*; *Succession in Customary Law*; and *Current Issues in Traditional Leadership*). Commenced in May 2017 with 5 provinces covered to date. (Ongoing 2017/2018)

