

MEMORANDUM OF UNDERSTANDING

Entered into by and between

KOUGA LOCAL MUNICIPALITY
(Local Authority)

Herein Represented by

CHARL DU PLESSIS
(Identity number: 6710155014085)
in his capacity as Municipal Manager and duly authorised hereto
(hereafter referred to as "the Municipality")

And

FRIENDS OF THE ST FRANCIS NATURE AREAS
(Public Benefit Organisation: RG/0070/03/08)

Herein Represented by

Mathias Eberhard Gennrich
(Identity number: 5803245003183)
in his capacity as Chairman and duly authorised hereto
(hereafter referred to as "FOSTER")

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PREAMBLE

WHEREAS the Kouga Local Municipality is the registered owner and responsible local authority of the certain immovable properties, more fully described under clause 2 herein, that comprise a network of formal and *de facto* local authority Nature Reserves situated in the Cape St Francis area.

WHEREAS FOSTER is a constituted Voluntary Association and registered Public Benefit Organisation (PBO Reference Number: RG/0070/03/08) that was established to support the conservation, maintenance and protection of the aforementioned network of formal and *de facto* Nature Reserves in the Cape St Francis area on a voluntary basis, under the guidance of the Municipality, whilst making the biodiversity of the reserves accessible for visitors and promoting active stewardship of the natural environment.

WHEREAS the Municipality and FOSTER agreed to enter into a memorandum of understanding in order to formalise their partnership and to ensure that the aforementioned network of formal and *de facto* Nature Reserves are effectively and efficiently co-managed by the Municipality and FOSTER.

WHEREAS the Municipality and FOSTER both undertake to cooperate and jointly support and work towards their common goals relating to the long-term conservation, maintenance and protection of the aforementioned network of formal and *de facto* Nature Reserves.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this memorandum of understanding are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this memorandum of understanding nor any clause hereof, unless a contrary intention clearly appears.

1.1 Words importing:

1.1.1 any one gender includes the other gender;

1.1.2 the singular includes the plural and vice versa; and



- 1.1.3 natural persons includes created entities (with or without legal personality) and vice versa;
- 1.2 The following terms will have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:
- 1.2.1 "**Parties**" means both the Kouga Local Municipality (hereafter referred to as "the Municipality") and the Friends of St Francis Nature Areas (hereafter referred to as "FOSTER").
- 1.2.2 "**Properties**" means all of the immovable properties listed under clause 2 and shown by the diagram in Annexure 'A' hereto, that form part of the network of formal and *de facto* local authority Nature Reserves in the Cape St Francis area, and to which this memorandum of understanding pertains.
- 1.2.3 "**Nature Reserve**" means an area declared as a Nature Reserve in terms of section 23(1) of the Act, or that is regarded as having been declared as such in terms of section 12 and section 23(5) of the Act.
- 1.2.4 "**Management Plan**" means the plan that will be developed – once the formal declaration of the Properties as a Nature Reserve is concluded – to ensure that the Properties are protected, conserved, managed and maintained in a manner which is consistent with the conservation objectives of the Properties and the provisions of the National Environmental Management: Protected Areas Act (No. 57 of 2003).

2. DESCRIPTION OF THE PROPERTIES

- 2.1 The registered description of the Properties which comprise the network of formal and *de facto* Nature Reserves that are co-managed by the Municipality and FOSTER, in terms of this memorandum of understanding, are listed below and shown by the diagram in Annexure 'A' hereto:
- 2.1.1 Remainder of Erf 832 Kaap St Francis, Kouga Local Municipality, Division Humansdorp, Province Eastern Cape. In extent 53,3297 (Fifty Three comma Three Two Nine Seven) hectares, held by Certificate of Consolidated Title Number T85275/2000CTN.
- 2.1.2 Erf 839 (Portion of Erf 833) Kaap St Francis, Kouga Local Municipality, Division Humansdorp, Province Eastern Cape. In extent 7929 (Seven



- Thousand Nine Hundred and Twenty Nine) square metres, held by Certificate of Registered Title Number T85276/2000CTN.
- 2.1.3 Erf 477 Kaap St Francis (Public Place), Kouga Local Municipality, Division Humansdorp, Province Eastern Cape. In extent 18,4451 (Eighteen comma Four Four Five One) hectares, held by Deed of Transfer Number T1653/2018.
- 2.1.4 Erf 761 Kaap St Francis, Kouga Local Municipality, Division Humansdorp, Province Eastern Cape. In extent 2,5391 (Two comma Five Three Nine One) hectares, held by Deed of Transfer Number T800/2018.
- 2.1.5 Erf 1997 Sea Vista (Public Place), Kouga Local Municipality, Division Humansdorp, Province Eastern Cape. In extent 3,5805 (Three comma Five Eight Zero Five) hectares, held by Deed of Transfer Number T56152/1990CTN.
- 2.1.6 Erf 234 Kaap St Francis (Public Place), Kouga Local Municipality, Division Humansdorp, Province Eastern Cape. In extent 2,9625 (Two comma Nine Six Two Five) hectares, held by Deed of Transfer Number T19682/2021.
- 2.1.7 Erf 187 Kaap St Francis (Public Place), Kouga Local Municipality, Division Humansdorp, Province Eastern Cape. In extent 5292 (Five Thousand Two Hundred and Ninety Two) square metres, held by Deed of Transfer Number T19683/2021.
- 2.1.8 Erf 348 Kaap St Francis (Public Place), Kouga Local Municipality, Division Humansdorp, Province Eastern Cape. In extent 10,3232 (Ten comma Three Two Three Two) hectares, held by Deed of Transfer Number T652/2022.
- 2.1.9 Erf 178 Kaap St Francis (Public Place), Kouga Local Municipality, Division Humansdorp, Province Eastern Cape. In extent 4,8529 (Four comma Eight Five Two Nine) hectares, held by Deed of Transfer Number T22694/2021.
- 2.1.10 Erf 171 Kaap St Francis (Public Place), Kouga Local Municipality, Division Humansdorp, Province Eastern Cape. In extent 5177 (Five Thousand One Hundred and Seventy Seven) square metres, held by Deed of Transfer Number T22695/2021.

("the Properties")

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3. CONSERVATION, PROTECTION AND MANAGEMENT OF THE RESERVE

- 3.1 Both parties to this memorandum of understanding agree that the Properties shall be managed as a Nature Reserve, in accordance with all applicable national, provincial and local legislation, in order to ensure the long-term conservation, protection, management and maintenance of the Properties and its biodiversity.
- 3.2 Both parties to this memorandum of understanding shall act with the utmost good faith and use all reasonable endeavours to ensure that the successful management, conservation and protection of the Properties are achieved.
- 3.3 Both parties to this memorandum of understanding undertake to pursue all reasonable endeavours to jointly support the process to secure the long-term protection and conservation of the Properties through formal declaration as a Nature Reserve in terms of section 23 of the National Environmental Management: Protected Areas Act (No. 57 of 2003).
- 3.4 Notwithstanding clause 3.3, this memorandum of understanding does not in any way commit the Municipality nor FOSTER to the provision of funding to support the declaration of the Properties as a Nature Reserve in terms of section 23 of the National Environmental Management: Protected Areas Act (No. 57 of 2003).

4. RIGHTS AND RESPONSIBILITIES OF THE MUNICIPALITY

- 4.1 Ownership rights and responsibilities
 - 4.1.1 The Municipality retains all of its rights, powers and responsibilities as the local municipal authority and owner of the Properties and remain responsible for all of its usual obligations in terms of any applicable national, provincial and local legislation.
 - 4.1.2 The Municipality warrants that the exercise of such rights shall be consistent with this memorandum of understanding, and the provisions of any applicable national, provincial and local legislation.

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4.2 Management of the Properties

- 4.2.1 The Municipality agrees to co-manage the Properties in partnership with FOSTER and gives permission to FOSTER to support the ongoing management, maintenance, conservation, and protection of the Properties on behalf of the Municipality (but not in the capacity of an agent, employee or representative of the Municipality), which includes the general conservation management (e.g., the removal of alien invasive plants, fire management, erosion control, etc.); the maintenance of basic infrastructure within the boundaries of the Properties (e.g., the network of hiking and cycling trails, signage, etc.); the monitoring of visitors and users of the reserves; the ecological monitoring of flora and fauna; the erection of appropriate educational and informative signage; the enforcement of the reserve's rules; and the restriction of access by non-pedestrian traffic to sectors of the trail system for the purposes of managing inter-user conflict (e.g., hikers vs. cyclists), enhancing visitors' safety, and preventing undesirable environmental impacts on ecologically sensitive areas on the Properties (e.g., coastal dunes, wetlands, coastal habitats, etc.).
- 4.2.2 Notwithstanding the provisions of clause 4.2.1, the Municipality shall, in its capacity as the local municipal authority and owner of the Properties, providing the necessary management oversight to ensure that the Properties are appropriately conserved, protected, managed and maintained.
- 4.2.3 The Municipality and its employees shall provide management oversight and, where necessary and possible, provide advice, information and technical assistance to FOSTER to ensure the effective management, conservation and protection of the Properties.
- 4.2.4 The maintenance of municipal infrastructure (e.g., parking area, fences, walkways, roads, etc.) and the removal of illegal infrastructure outside of the boundaries of the Properties shall remain the responsibility of the municipality.

4.3 General

- 4.3.1 The Municipality shall not hold FOSTER liable for any harm to property or persons as a result of fire, accidents, or crime, unless negligence on the part of FOSTER can be proven.

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- 4.3.2 The Municipality shall use all reasonable endeavours to support the efforts of FOSTER to raise funds to support their management activities and responsibilities in terms of this memorandum of understanding, subject to any and all applicable Policies, By-Laws approved by the Municipal Council of the Municipality from time to time, and applicable Legislation.
- 4.3.3 Notwithstanding clause 4.3.2, any fundraising events that are arranged by FOSTER within the boundaries of the Properties will be subject to approval by the Municipality in accordance with the events policy of the Municipality.
- 4.3.4 The Municipality shall ensure that it has and maintain adequate third-party insurance in respect any patron and or visitor to the Properties listed herein.
- 4.3.5 The Municipality shall take out adequate insurance in respect of any municipal infrastructure situated on the Properties.
- 4.3.6 FOSTER confirms and agrees that any costs directly or indirectly related to the activities conducted, in line with this Agreement in respect of the nature reserves and in relation to the management thereof, shall be for its own cost, and it shall have no claim against the Municipality for any of these costs during the existence of the Agreement or after the expiry of this Agreement.

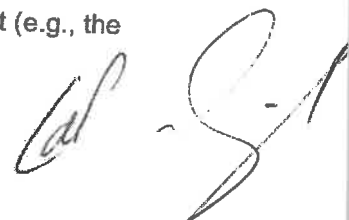
4.4 Indemnity

Foster agrees that it entered into this agreement voluntarily and shall keep the Municipality indemnified at all times against any loss, cost, damage, injury or liability suffered by the Municipality resulting from any action, proceeding or claim made by any person, including themselves, against the Municipality caused directly or indirectly by any willful negligent act or omission in respect of the management of the nature reserves under its care.

5. RIGHTS AND RESPONSIBILITIES OF FOSTER

5.1 Management of the Properties

- 5.1.1 FOSTER agrees to co-manage the Properties in partnership with the Municipality and to help support the ongoing management, maintenance, conservation, and protection of the Properties on behalf of the Municipality (but not in the capacity of an agent, employee or representative of the Municipality), which include the general conservation management (e.g., the

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removal of alien invasive plants, fire management, erosion control, etc.); the maintenance of basic infrastructure within the boundaries of the Properties (e.g., the network of hiking and cycling trails, signage, etc.); the monitoring of visitors and users of the reserves; the ecological monitoring of flora and fauna; the erection of appropriate educational and informative signage; the enforcement of the reserve's rules; and the restriction of access by non-pedestrian traffic to sectors of the trail system for the purposes of managing inter-user conflict (e.g., hikers vs. cyclists), enhancing visitors' safety, and preventing undesirable environmental impacts on ecologically sensitive areas within the Properties (e.g., coastal dunes, wetlands, coastal habitats, etc.).

5.1.2 FOSTER shall at all times recognise the Municipality as the owner and responsible authority of the Properties and adhere to the management oversight and guidance provided by the Municipality.

5.1.3 FOSTER shall at all times manage the properties described herein, in line with the applicable legislation, principles, regulations and guidelines relating to protected areas.

5.1.4 Once the formal declaration of the Properties as a Nature Reserve in terms of section 23 of the National Environmental Management: Protected Areas Act (No. 57 of 2003) is concluded, FOSTER shall take primary responsibility for the development of an appropriate Management Plan for the Properties, and such Management Plan must be developed in consultation and collaboration with the Municipality.

5.1.5 The Management Plan referred to under clause 5.1.3 must be developed in consultation with interested and affected stakeholders and in accordance with any applicable national, provincial and local legislation.

5.2 Annual reporting to the Municipality

5.2.1 FOSTER shall submit an annual report to the Kouga Municipality regarding the implementation of its management activities and responsibilities in terms of this memorandum of understanding.

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5.3 Funding and fundraising

5.3.1 FOSTER will seek to raise funds, on a voluntary basis, to support its management activities and responsibilities in terms of this memorandum of understanding.

5.3.2 Notwithstanding the provisions of clause 5.3.1, although FOSTER undertakes to act with the utmost good faith and use all reasonable endeavours to raise funds, this memorandum of understanding does not in any way commit FOSTER to the provision of funding nor in any way guarantee the availability of funding to undertake its management activities and responsibilities in terms of this memorandum of understanding.

5.3.3 FOSTER will obtain the necessary approvals, in accordance with the events policy of the Municipality, prior to arranging any fundraising events within the boundaries of the Properties.

5.3.4 FOSTER will apply to the municipality on an annual basis for funding to assist with the management of the Properties.

5.4 General

5.4.1 FOSTER shall not hold the Municipality liable for any harm, damage or loss suffered in respect of any property, infrastructure or equipment within the boundaries of the Properties. FOSTER shall ensure that all equipment, instruments, tools and movable property brought onto the property as described in this Agreement, by FOSTER or under its direction or with its approval, are adequately insured.

6. DELEGATION OF RIGHTS AND RESPONSIBILITIES

6.1 A party to this agreement may not delegate, cede or assign any of its rights or responsibilities under this memorandum of understanding unless:

6.1.1 the written consent of the other party to this memorandum of understanding has first being obtained, which consent shall not be unreasonably withheld; and

6.1.2 the third party to whom the rights or responsibilities are delegated, ceded or assigned to, has acknowledged its acceptance of the delegation, cession or assignment in writing to both parties to this agreement.

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7. BREACH OF CONTRACT

- 7.1 In the event either party commits a material breach of any of the conditions hereof, the other party may give written notice to the party in breach requiring such party to remedy such breach within a period of 30 (thirty) days of such notice, and if the party in breach fails to remedy such breach within the said period of 30 (thirty) days, or if such breach is not reasonably capable of being remedied within 30 (thirty) days, then within such longer period as may in the circumstances be reasonable, the party which gave the notice shall be entitled to terminate this memorandum of understanding by giving the other party written notice of termination of this memorandum of understanding.

8. DISPUTE RESOLUTION

- 8.1 Both parties agree to act with the utmost good faith and use all reasonable endeavours to resolve any disputes of any nature which may arise from this memorandum of understanding by open discussion.
- 8.2 Any dispute arising from this memorandum of understanding that cannot be resolved in terms of clause 8.1 shall be mediated between the parties by a mutually agreed upon and suitable skilled mediator. Should the mediator be unsuccessful, and the parties fail to reach an agreement, the dispute may be referred, by the aggrieved party, to arbitration by a single arbitrator, to be agreed upon between the parties, or failing agreement, to be nominated on application of any party, by the President for the time being of the South African Association of Arbitrators. The decision of the single arbitrator shall be final and binding on the parties.

9. DOMICILIA AND NOTICES

- 9.1 The parties choose the addresses set out below as their *domicilia citandi et executandi* for all purposes of this memorandum of understanding and as their

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respective addresses for the service of any notice required to be served on them in terms of this memorandum of understanding.

KOUGA MUNICIPALITY:

Physical Address: 33 Da Gama Road
Jeffreys Bay
6330

Postal Address: P.O. Box 21
Jeffreys Bay
6330

Email Address: jreed@kouga.gov.za (Office of the Municipal Manager).

Contact Person: Nomvelo Siwela
Email: nsiwela@kouga.gov.za | Cell: 067 114 1329

FOSTER:

Physical Address: 9 Panaghia Street
Cape St Francis
6313

Postal Address: P.O. Box 295
St Francis Bay
6312

Email Address: info@foster.org.za

Contact Person: Mathias Gennrich
Email: mattgennrich3@gmail.com | Cell: 082 570 5761

10. COMMENCEMENT, DURATION AND TERMINATION

- 10.1 This memorandum of understanding shall come into effect on the date which the last party signs it and shall remain in force for a period of 5 years, unless both parties, prior to the expiry of this memorandum of understanding, agree in writing to extend the duration of this agreement for a further period, as agreed upon by both parties.
- 10.2 Notwithstanding the provisions of clause 10.1, if both parties agree to replace this memorandum of understanding with a new memorandum of understanding or any other agreement, prior to the expiry of this memorandum of understanding, this



memorandum of understanding will terminate on the date which the last party signs the new memorandum of understanding or new agreement.

- 10.3 Both parties agree to take such steps as may be necessary to complete any outstanding or pending projects jointly undertaken that have not been finalized as at date of termination / expiry of this memorandum of understanding.

11. VARIATION, INDULGENCE, NO CESSION OF AGREEMENT

- 11.1 No variation, amendment or suspension of any of the terms of this memorandum of understanding shall be valid, and no further agreement which may conflict in any way with the terms of this memorandum of understanding shall be binding on the parties unless the variation, amendment, suspension or conflicting agreement has been recorded in writing and signed by both parties.
- 11.2 No relaxation which the Municipality may give in respect of the performance of any of the Foster's responsibilities in terms of this Agreement shall prejudice any of the Municipality's rights hereunder or be regarded as a waiver of such rights or against the enforcement thereof.
- 11.3 Foster shall not be entitled to cede or assign any or all of its rights and obligations under this Agreement, or to sublet or give up possession of the nature reserves, in its whole or in part to any third party, and the Municipality shall be entitled to cede or assign any or all of its obligations of the Municipality under this Agreement without the consent of Foster.

12. ENTIRE AGREEMENT

- 12.1 This Agreement including any annexures hereto, shall constitute the entire Agreement between the Parties and no variation, amendment or addendum shall be of any force and effect between the Parties unless contained in writing, agreed upon and signed by both Parties.
- 12.2 This agreement shall be subject to, interpreted and applied in accordance with the laws applicable in the Republic of South Africa.

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13. SIGNATORIES

The signatories to this Agreement, warrants that they are duly authorized to enter into this Agreement, on behalf of the Parties to this Agreement.

THUS DONE AND SIGNED by or on behalf of the parties, in the presence of the undersigned witnesses, at the places appearing in the appropriate spaces below, on the dates as specified.

Signed at JEFFREYS BAY on this 5th day of JULY 2022

in the presence of the undersigned witnesses.

Witnesses:

- 1. [Signature]
- 2. _____



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KOUGA LOCAL MUNICIPALITY
(Charl du Plessis)

Signed at CAPE ST FRANCIS on this 11th day of JULY 2022

in the presence of the undersigned witnesses.

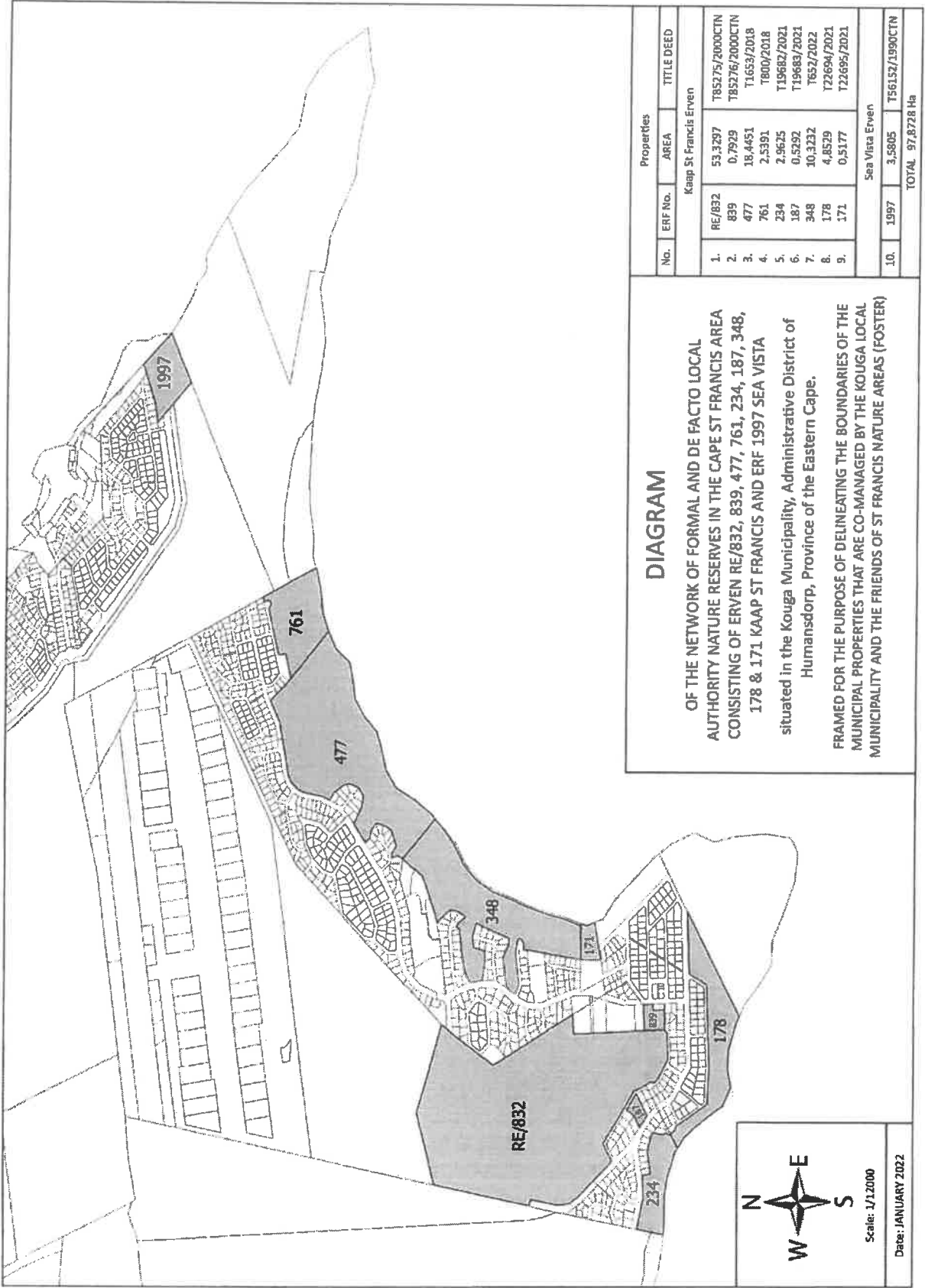
Witnesses:

- 1. [Signature]
- 2. _____



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FOSTER
(Mathias Eberhard Gennrich)

ANNEXURE A – Diagram of the municipal Properties referred to in this memorandum of understanding.



DIAGRAM

OF THE NETWORK OF FORMAL AND DE FACTO LOCAL AUTHORITY NATURE RESERVES IN THE CAPE ST FRANCIS AREA CONSISTING OF ERVEN RE/832, 839, 477, 761, 234, 187, 348, 178 & 171 KAAP ST FRANCIS AND ERF 1997 SEA VISTA situated in the Kouga Municipality, Administrative District of Humansdorp, Province of the Eastern Cape.

FRAMED FOR THE PURPOSE OF DELINEATING THE BOUNDARIES OF THE MUNICIPAL PROPERTIES THAT ARE CO-MANAGED BY THE KOUGA LOCAL MUNICIPALITY AND THE FRIENDS OF ST FRANCIS NATURE AREAS (FOSTER)

Scale: 1:1,2000
 Date: JANUARY 2022

Properties		TITLE DEED
No.	ERF No.	AREA
Kaaop St Francis Erven		
1.	RE/832	53,3297
2.	839	0,7929
3.	477	18,4451
4.	761	2,5391
5.	234	2,9625
6.	187	0,5252
7.	348	10,3232
8.	178	4,8529
9.	171	0,5177
Sea Vista Erven		
10.	1997	3,5805
TOTAL		97,8728 Ha

