

**PREPARED FOR CIRCULATION INVITING PUBLIC
COMMENT**

A HERITAGE AGREEMENT

**MADE IN TERMS OF
SECTION 42 OF THE
NATIONAL HERITAGE RESOURCES ACT
BETWEEN
THE UNIVERSITY OF CAPE TOWN
AND
HERITAGE WESTERN CAPE**

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1. **THE PARTIES**

1.1 **“The University of Cape Town”, known hereinafter as “the University”**, incorporated in terms of the Higher Education Act, 1997, and the Statute of the University of Cape Town, promulgated under Government Notice No. 1199 of 20 September 2002 and as amended by Government Notice 259 of 26 February 2004, Government Notice No. 476 of 20 May 2005, Government Notice No. 748 of 27 August 2010, and Government Notice No.408 of 23 May 2012, herein represented by _____, in his/her capacity as _____, duly authorised thereto in terms of a resolution of the University Council taken at Rondebosch on the _____ day of _____, 2016, of the following address:

Physical address: Bremner Building, Middle Campus, Rondebosch,
Cape Town

Telephone: 021-

Telefacsimile: 021-

Email:

1.2 **“Heritage Western Cape”, the provincial heritage resources authority of the Western Cape, known hereinafter as “HWC”**, established in terms of section 23 of the National Heritage Resources Act (NHRA) and, with respect to this Agreement, acting in terms of section 42 of NHRA, herein represented by _____, in his/her capacity as Chief Executive Officer, duly authorised thereto in terms of a resolution of the HWC Council taken at Cape Town on the _____ day of _____ 2016, of the following address:

Physical address: Protea Assurance Building, Greenmarket
Square, Cape Town, 8001

Telephone: 021- 483

Telefacsimile: 021- 483

Email:

2. DEFINITIONS

2.1 In this Agreement, the following words and expressions, unless the context indicates or requires otherwise, shall bear the meanings assigned to them in this Agreement, as set out hereunder:

2.1.1 AGREEMENT – This Heritage Agreement entered into between the Parties in terms of section 42 of NHRA.

2.1.2 ALTER – means any action affecting the structure, appearance or physical properties of a place or object of the Improvements, including by way of structural or other works, by painting, plastering or other decoration or any other means. Alteration shall have a corresponding meaning.

2.1.3 BUILDING PLANS – Plans submitted to HWC in terms of Clause 5.6 of this Agreement.

2.1.4 CAMPUSES - means the land which is registered in the name of the University (or is effectively occupied by the University) comprising the six campuses listed below and more fully described in Annexure “**A**”:

- The Hiddingh Campus;
- The Rondebosch Upper or Main Campus;
- The Rondebosch Middle and Lower Campus;
- The Rosebank Middle and Lower Campus;
- The Mowbray or Avenue Road Precinct; and

- The Health Sciences Campus in Observatory.

- 2.1.5 CITY OF CAPE TOWN – a metropolitan municipality duly established in terms of the Local Government: Municipal Structures Act 117 of 1998, which has its main administrative offices and primary place of business at Civic Centre, 12 Hertzog Boulevard, Cape Town.
- 2.1.6 CONSERVATION FRAMEWORK – the Conservation Framework prepared by the University, described in Clause 5.2 of this Agreement.
- 2.1.7 DMS – the City of Cape Town Development Management Scheme in Schedule 3 to the Municipal Planning By-law.
- 2.1.8 EXISTING IMPROVEMENTS – any existing improvements of a permanent nature within any of the Campuses including buildings, roadways, paths and trees.
- 2.1.9 GRADE II HERITAGE RESOURCE - all Heritage Resources graded as Grade II Heritage Resources in terms of the Inventory and which are approved as a PHS.
- 2.1.10 GRADE III HERITAGE RESOURCE - all Heritage Resources graded as Grade III Heritage Resources in terms of the Inventory and which are approved to be placed on the Heritage Register.
- 2.1.11 HERITAGE GRADING – a measure of the degree or extent of heritage significance(s) as described in the NHRA.
- 2.1.12 HERITAGE MANAGEMENT PLAN – a management plan dealing with a discrete and detailed building, place or aspect of a proposed Improvement which may be required by HWC as a condition of a Precinct Plan, SDP or Building Plan approval.
- 2.1.13 HERITAGE REGISTER – the provincial heritage register as approved by HWC as required by section 30 of the NHRA.

- 2.1.14 HERITAGE RESOURCE – shall bear the meaning ascribed to it in the NHRA.
- 2.1.15 HERITAGE SIGNIFICANCE – the type of significance as described in the NHRA.
- 2.1.16 HWC – the provincial heritage resources authority of the Western Cape referred to in Clause 1.2.
- 2.1.17 HWC RESOLUTION – the decision of the HWC Council dated xxxxx 2016 including the conditions relating thereto, approving this Heritage Agreement, the Conservation Framework (referred to in Clause 5.2) and the Inventory.
- 2.1.18 HPOZ – Heritage Protection Overlay Zone as described in items 159–164 of Schedule 3 to the Municipal Planning By-law.
- 2.1.19 IMPROVEMENTS – either :
- the erection of a building; or
 - the alteration of Existing Improvements; or
 - the construction of a roadway, path or paved area; or
 - the planting of trees,
- on the Campuses.
- 2.1.20 IDF – The University’s “Integrated Development Framework” of June 2014 which has been compiled according the requirements of the national Department of Higher Education and Training (DoHET) as a “University Master Plan” forming part of the DoHET 5 year Infrastructure Grants in line with the Higher Education Act 101 of 1997. The IDF is equivalent to the over-arching “Development Framework” for the University which is a component of the “Package of Plans”

mechanism created by the Municipal Planning By-Law (Schedule 3, Item 136) and is to be approved as such by the City of Cape Town.

- 2.1.21 INVENTORY – The Inventory described in Clause 5.3 and comprising a report, a grading-map of each of the Campuses indicating the heritage-grading of the buildings, certain trees, landscaping elements and spaces, and the descriptions of individual buildings, landscape elements or spaces in accordance with HWC’s Guideline on Inventories.
- 2.1.22 NHRA – the National Heritage Resources Act (Act No. 25 of 1999) and the Regulations promulgated in terms thereof.
- 2.1.23 MUNICIPAL PLANNING BY-LAW – The City of Cape Town’s primary land use management instrument published in *Provincial Gazette* 7414 on 29 June 2015 in terms of the Western Cape Land Use Planning Act 3 of 2014 (LUPA) and includes Schedules 1, 2 and 3 to the Municipal Planning By-Law.
- 2.1.24 PACKAGE OF PLANS PROCESS – The mechanism established by the Municipal Planning By-Law (Schedule 3, Item 136) in order to “plan and manage the development of large or strategic” urban areas through a “phased process of negotiation, planning and approvals”. The components of this process or mechanism are, in as much as these components are invoked by or referred to in this Agreement, as follows:
- Development Framework (equivalent to the University’s IDF);
 - Precinct Plans;
 - Site Development Plans; and
 - Building Plans.

- 2.1.25 **PRECINCT PLANS** – The Precinct Plans to be prepared by the University for each of the Campuses and approved by HWC pursuant to this Agreement and in accordance with the IDF as a component of the “Package of Plans” mechanism created by the City of Cape Town’s Municipal Planning By-Law (Schedule 3, Item 136).

- 2.1.26 **PROVINCIAL HERITAGE SITE (PHS)** – A Grade II Heritage Resource identified and declared to be a Provincial Heritage Site in terms of Section 27(2) of the NHRA.

- 2.1.27 **SITE DEVELOPMENT PLAN (SDP)** – A detailed urban design or development proposal prepared by the University for Improvements to be approved by HWC in terms of this Agreement and the City of Cape Town as part of the Package of Plans Process.

- 2.1.28 **SPECIALIST** – Any independent person(s) specialising in the field of architecture and/or urban design and/or related field, with particular expertise in contemporary and conservation architecture, landscape architecture, and heritage conservation.

3. PREAMBLE

- 3.1 The University is the registered owner and/or lawful occupant of all of the land units comprising the six Campuses as is shown in Annexure “A”.

- 3.2 The Campuses and the buildings, landscape elements and spaces within them are graded as indicated in the Conservation Framework and in the Inventory. The grading is an indication of the significance of these heritage resources and thus the need for their protection and management.

- 3.3 The Parties wish to enter into a Heritage Agreement in terms of section 42 of NHRA, in order to provide for the cultural heritage conservation, management and maintenance of the Campuses and the Heritage Resources located therein.

- 3.4 HWC endorses the IDF and its overarching goals, objectives and principles as a higher order guide for the more detailed articulation of the Precinct Plans, and the University's long-term development and growth management objectives for the Campuses.
- 3.5 Whereas the NHRA currently regulates development activities on the Campuses through sections 34 and 38 of the NHRA, the purpose of this Agreement is to exempt the University from any approval processes with HWC in terms of either section 34 or section 38 of the NHRA on the basis that the Agreement provides for the protection of all Heritage Resources on the Campuses in terms of either section 27 or section 30 of the NHRA as stipulated herein.

4. **PURPOSE**

The purpose of this Heritage Agreement is:

- 4.1 To enable the Parties to conserve, manage and maintain the Campuses in a manner that is consistent with:
- 4.1.1 the NHRA;
 - 4.1.2 the Municipal Planning By-Law;
 - 4.1.3 the IDF;
 - 4.1.4 the Conservation Framework;
 - 4.1.5 the Precinct Plans, Site Development Plans; and Building Plans, if any.
- 4.2 To provide a high degree of predictability regarding both the outcomes and the time necessary for the approval in terms of the NHRA of any proposed Improvements and to reduce and/or minimise any potential adverse implications for Heritage Resources on the Campuses.

- 4.3 To formally protect all identified Grade II Heritage Resources located on the Campuses, by the declaration thereof as PHS.
- 4.4 To formally protect all Grade IIIA and IIIB Heritage Resources identified in the Inventory by placing these on the Heritage Register.
- 4.5 To record that HWC recognises that all Heritage Resources located within the Campuses have been identified and are adequately regulated in terms of the Agreement.

5. **AGREEMENT**

The Parties agree as follows:

5.1 **Management of Heritage Resources on Campuses**

- 5.1.1 The University is exempted in terms of section 34(3) of the NHRA from any requirement under section 34(1) of the NHRA with respect to the Alteration of any structure (or part of a structure) which is more than sixty years old located on the Campuses.
- 5.1.2 Any PHS and/or Grade II Heritage Resource identified in the Inventory shall be managed exclusively by HWC. The University consents to the declaration by HWC of all Grade II Heritage Resources identified in the Inventory as PHS in terms of section 27 of the NHRA. HWC shall enter all Grade II Heritage Resources or PHS on the Heritage Register.
- 5.1.3 Any Grade III Heritage Resource identified in the Inventory that is not situated within a Grade II Heritage Resource or a PHS shall be managed exclusively by the City of Cape Town in terms of the NHRA and/or the Municipal Planning By-law provided that the proposed Improvements do not impact adversely on a PHS or a Grade II Heritage Resource.
- 5.1.4 Any proposed Improvements on the Campuses situated outside a PHS and that fall within the categories of development contemplated

in section 38(1) of the NHRA shall be exempted from the requirements of section 38 of the NHRA where such proposed Improvements comply with a Precinct Plan for such area approved by HWC in terms of this Agreement, provided that the proposed Improvements do not impact adversely on a PHS or a Grade II Heritage Resource.

5.1.5 HWC shall enter all Grade III Heritage Resources on the Heritage Register and the City of Cape Town shall be responsible for the management of all Grade III Heritage Resources, subject to Clause 6.

5.2 Conservation Framework

5.2.1 The Parties record that the Conservation Framework has been agreed to in the form attached hereto as Annexure “B”.

5.2.2 Notwithstanding the formalisation of this Agreement, in the event that HWC reasonably requires the amendment of the Conservation Framework and provided that HWC does so by giving the University notice thereof, the University shall, after any necessary negotiation and/or consultation, cause such amendment of the said Conservation Framework to be effected.

5.2.3 The Conservation Framework provides for:

5.2.3.1 the objectives, actions, targets and indicators for both :

- the restoration, maintenance and development of the Campuses in order to sustain the Heritage Significances articulated therein and enhance these townscapes as university campuses; and
- the University activities as defined above to be carried out thereon; and

5.2.3.2 the sustained and effective management of :

- growth and development;

- heritage resources; and
- the landscape as university campus

on the Campuses.

5.2.4 The University shall be responsible for complying with the Conservation Framework and achieving the objectives thereof.

5.2.5 Monitoring of both the objectives and actions of the Conservation Framework and compliance therewith shall be undertaken by HWC.

(a) The jurisdictional arrangements, management, rehabilitation, restoration and retention of all heritage resources on the Campuses identified as being conservation-worthy in the Conservation Framework and Inventory;

(b) The control, management, maintenance and enhancement of landscaping elements identified in the Conservation Framework and Inventory as being heritage-worthy.

5.2.6 Without derogating from the generality of the afore-going and on the basis of the University's IDF, the Conservation Framework and the Precinct Plans may provide guidelines for the following:

- Building 'envelopes', existing, altered/amended and future;
- Road surfacing;
- Parking areas;
- Appropriate planting, trees in particular, and landscaping in general;
- Paths, steps, retaining walls and structures;
- Lighting and signage;
- Edge treatments between the campuses and adjacent properties;
- Sports and recreation areas.

5.3 **Inventory**

5.3.1 The Parties record that the Inventory has been approved by HWC in terms of section 30 of the NHRA in the form attached hereto as Annexure “C” (the Report) and Annexure “D” (the individual sheets).

5.3.2 In the event that HWC reasonably requires the amendment of the Inventory and provided that HWC does so by giving the University notice thereof, the University shall, after any necessary negotiation and/or consultation, cause such amendment of the said Inventory to be effected.

5.3.3 The Parties agree that the Inventory contains a comprehensive list of Grade IIIA and IIIB places or buildings which are hereby approved for placement on the Heritage Register by HWC.

5.3.4 The Inventory is comprised of two components:

5.3.4.1 A report (in order to comply with the requirements of applicable HWC guidelines), which includes the following:

- Details of the project team compiling the Inventory;
- A discussion of the values underpinning the assessments made of both the Campuses (as townscapes) and the individual buildings and components of the Campuses;
- An account of the methodology adopted in the survey of Heritage Resources on the Campuses;
- Details of expert and interested party consultation;
- Brief accounts of the growth, development and significances of each of the Campuses; and

- A grading-map of each Campus indicating the grading of the buildings, landscaping elements, spaces and certain trees.

5.3.4.2 An inventory, which comprises a single sheet for every individual building and element on each Campus, each of which includes the following:

- Building/element name and address;
- A locating map;
- A brief history of construction/development/use;
- A brief articulated assessment of significance;
- A grading of the individual building/element.

5.4 **Precinct Plans**

5.4.1 Subject to Clause 5.4.5, the University pursuant to this Agreement:

5.4.1.1 shall draw-up a Precinct Plan for each of the Campuses.

5.4.1.2 shall submit each Precinct Plan prepared in terms of 5.4.1.1 to HWC for written approval prior to any Improvements being undertaken on the Campuses;

5.4.1.3 shall cause the advertising for interested and affected party comment of any draft Precinct Plan required to be approved by HWC in terms of this clause. This requirement shall be satisfied by placing an advertisement in each of a local and regional newspaper on the same day. Such advertisement must provide for an opportunity to provide comment to HWC on the draft Precinct Plan by interested and affected parties within 30 (thirty) days of the date of the publication in the newspapers;

- 5.4.1.4 may respond in writing to HWC regarding any comments received in terms of Clause 5.4.1.3 within 60 (sixty) days of the date of publication in the newspapers;
- 5.4.2 HWC shall consider any draft Precinct Plan submitted to it in terms of Clause 5.4.1.2 as well as the comments and responses received in terms of Clause 5.4.1.3, if any, and shall within 60 (sixty) days of the submission of the University's responses to any comment arising from the advertising process (if any), in writing to the University, either:
- 5.4.2.1 Approve the subject Precinct Plan, without requiring any amendment thereto; or
- 5.4.2.2 Require an amendment, clarification or modification of the subject Precinct Plan.
- 5.4.3 The Precinct Plans approved by HWC in terms of 5.4.2.1 may be amended from time to time, subject to the prior written approval of HWC in terms of this Agreement and the City of Cape Town in terms of the Municipal Planning By-law.
- 5.4.4 The Precinct Plans shall *inter alia* provide guidelines for the following:
- an urban design concept of each Campus which should guide all future growth, development, landscaping
 - the built form or maximum development envelopes of any future proposed building(s);
 - the landscaped environment; and
 - the architectural character of any future Improvements.
- 5.4.5 Any Precinct Plans prepared in terms of this Agreement shall also serve as a Precinct Plan component of the 'Package of Plans' process contemplated in Item 136 of the DMS and vice versa, subject to the

approval thereof by the City of Cape Town in terms of the Municipal Planning By-law.

- 5.4.6 It is expressly recorded that, in the circumstances contemplated in Clause 6, HWC may require a Visual Impact Assessment and/or Heritage Management Plan.

5.5 **Site Development Plans**

- 5.5.1 In the event that the University proposes to undertake Improvements on any part of any of the Campuses:

5.5.1.1 The University shall cause an SDP to be prepared in respect of the area of the Campus to be developed. Such SDP shall address the position, coverage, height, form and materials for the Improvements and/or Existing Improvements, as the case may be.

5.5.1.2 The University shall submit each SDP to HWC for approval prior to undertaking any Improvements on a Campus which impact (or may impact) on a PHS or Grade II Heritage Resource.

5.5.2 HWC shall consider the SDP within 60 (sixty) days of receiving the submitted SDP in terms of this clause and shall, in writing to the University, either:

5.5.2.1 Confirm that the SDP complies with the approved Precinct Plan and approve the SDP, without requiring any amendment thereto; or

5.5.2.2 Require the amendment, clarification or modification of the SDP so as to comply with the approved Precinct Plan.

5.5.3 In the event that HWC holds that an SDP does not comply with the approved Precinct Plan, the University shall submit an amended SDP for approval.

5.5.4 It is expressly recorded that, in the circumstances contemplated in Clause 6, HWC may require a Visual Impact Assessment and/or Heritage Management Plan.

5.6 **Building Plans**

5.6.1 Building Plans shall be submitted to and approved by HWC (in addition to any approval obtained by the City of Cape Town) in accordance with section 27 of the NHRA, as the case may be, for any Improvements on a Campus which is declared as a PHS.

5.6.2 Building Plans shall be submitted to HWC for comment in respect of any Improvements on a Campus where the Campus is not declared a PHS but upon which a portion and/or area of the Campus includes a site and/or building declared a PHS and/or where the Improvements may, in HWC's opinion, directly or indirectly impact on a PHS, provided that this clause shall not apply to proposed Improvements outside of a PHS which only affect Grade III Heritage Resources.

5.6.3 The Building Plans, where required to be submitted to HWC in terms of this clause, shall include site-specific construction and landscaping plans and details regarding all materials to be used for construction and landscaping purposes in respect of Improvements.

5.6.4 Without derogating from the generality of the afore-going, the Building Plans shall:

5.6.4.1 include architectural plans;

5.6.4.2 provide sufficient information, including plans, specifications and a schedule of finishes, to enable HWC to fulfil its obligations in terms of this Agreement and to ensure consistency with the Conservation Framework; and

5.6.4.3 be prepared in terms of and in compliance with:

- (a) the IDF (and any framework plans prepared in terms of the Package of Plans Process);
- (b) the Conservation Framework;
- (c) any discrete Precinct Plan;
- (d) any discrete SDP;
- (e) any discrete Heritage Management Plan;
- (f) any relevant laws or by-laws.

5.6.5 HWC shall consider the Building Plan and shall within 30 (thirty) days of receiving the submitted Building Plan in writing to the University, either:

5.6.5.1 Confirm that the Building Plan complies with the approved SDP and Precinct Plan and approve the Building Plan, without requiring any amendment thereto; or

5.6.5.2 Require the amendment, clarification or modification of the Building Plan so as to comply with the approved SDP and Precinct Plan.

5.7 Approval of Improvements before adoption of Precinct Plan, SDP or Building Plan

5.7.1 Notwithstanding the foregoing, it is expressly recognised that, prior to the approval by HWC of any Precinct Plans, SDP or Building Plans in terms of this Agreement, the University may approach HWC for approval for any proposed Improvements, where such approval is required in terms of sections 27 or 38 of the NHRA, and in such instances (where no such Precinct Plans, SDP or Building Plans have yet been prepared and/or approved) HWC shall not be precluded from considering and approving such Improvements in terms of the NHRA.

6. VISUAL IMPACT ASSESSMENTS/HERITAGE MANAGEMENT PLANS

6.1 HWC reserves the right to require the University, by giving reasonable notice, to appoint a Specialist to undertake a discrete visual impact assessment or heritage management plan at any time in respect of any proposed Improvements on the Campuses, and HWC shall exercise its rights in terms of this clause reasonably with respect to clearly articulated potential impacts.

6.2 The cost of undertaking any visual impact assessment or heritage management plan contemplated in terms of this clause shall be borne by the University.

7. RESTRICTIONS

The University agrees that there shall be no subdivisions or additions by consolidation to the Campuses without the approval or consent of HWC or its successors-in-title.

8. GENERAL

8.1 Notwithstanding the afore-going, the discharge of any obligation imposed on the University in terms of this Agreement shall be subject to the following:

8.1.1 The financial means of the University provided that the obligation results in such costs that are reasonable;

8.1.2 That such costs are reasonable including that they are affordable; and

8.1.3 That such cost may only be incurred after prior written notice is given to the University.

8.2 By its signature hereto the University undertakes to give effect to each and every obligation in terms of this Agreement.

9. INTERPRETATION

9.1 Notices

Any notices for all purposes of this Agreement, including the cancellation thereof, shall:

- 9.1.1 be in writing;
- 9.1.2 be sent by hand; registered post; telefacsimile machine; or electronic mail;
- 9.1.3 be addressed to the respective parties at their chosen domicilium citandi et executandi in terms of this Agreement; and
- 9.1.4 be deemed to have been received by the Party to whom it is addressed:
 - (a) at the time of delivery thereof; or
 - (b) on the 14th (fourteenth) day following the posting thereof, excluding the day upon which it is posted, in the Republic of South Africa; or in the case of a telefacsimile or electronic mail, on date of written acknowledgement thereof from the addressee.
- 9.1.5 A notice received by a Party shall be deemed to be a notice in terms of this clause, notwithstanding that it was not sent in terms of the foregoing provisions.

9.2 Headings/Type Size or Font /Emphasis

- 9.2.1 The headings to the respective clauses are for reference purposes only. They shall not be taken into account in the interpretation of this Agreement.

9.2.2 No provision of this Agreement shall be accorded any significance merely because it is different in any manner from any other provision, including as a result of:

- (a) type size or font; and
- (b) emphasis in any manner including, underlining or “bolding” or highlighting or using capital letters or words in inverted commas.

9.3 Consent or Approval or Satisfaction

If any consent or approval is required for any act by a Party, or any act is to be to the satisfaction of a Party, such consent or approval, or expression of satisfaction shall:

- (a) be in writing and signed by the other Party or his authorised agent;
- (b) not be unreasonably withheld; and
- (c) in the case of a consent or approval, be obtained prior to the Party taking such action.

9.4 Singular/Plural and Male/Female/Neuter Genders

The singular shall include the plural and *vice versa*. The male gender shall include the female and neuter genders and *vice versa*;

9.5 Unenforceable

Should any provision of this Agreement be unenforceable as being contrary to any law, then such provision shall be deemed to be separated and severable. The validity of the remaining provisions of this Agreement shall remain unaffected.

9.6 Successors-In-Title

The rights and obligations of any Party arising from this Agreement shall devolve upon and bind its successors-in-title.

9.7 Incorporation

The documents referred to in this Agreement shall be deemed to be incorporated into this Agreement by reference.

10. DETERMINATION OF DISPUTES

10.1 Unless provided for elsewhere, any dispute arising from or connected with this Agreement, including, but not limited to any dispute arising in connection with the interpretation, application, effect of any of the terms, conditions if any, or restrictions imposed, or any procedure to be followed under this Agreement, except where an interdict is sought or urgent relief or an application on Notice of Motion may be obtained from a Court of competent jurisdiction, must be determined in terms of this clause.

10.2 If a dispute arises, the relevant Party must notify other parties. The Parties shall first be obliged to use their best endeavours acting in good faith to resolve the relevant dispute amongst themselves through negotiation. Should the dispute not be resolved between the parties through negotiation within 14 (fourteen) days of such notice, either of the parties may refer the dispute for determination in terms of 10.3.

10.3 If a Party exercises its rights in terms of 10.2 to refer the dispute for determination, such dispute shall be referred to:

10.3.1 In the event that the dispute relates to any issue relating to heritage with respect to the Campuses, an independent practising heritage consultant who is a Specialist; or

10.3.2 In the event that the dispute relates to any other issue other than heritage, a practising advocate at the Cape Bar of not less than 10 years standing.

10.3.3 In the event that :

- The Parties cannot agree upon the relevant person; or
- The relevant category,

within 14 (fourteen) days, then such person and such category shall be chosen and determined by:

- the Chairperson of the Cape Bar Council; or
- failing him/her, the Chairperson of the Society of Advocates;
or
- failing him/her, the President of the Law Society of South Africa,

in all cases, including their successors-in-title.

10.4 Any person agreed upon or appointed as aforesaid (the “Expert”), shall, subject to 10.5 and 10.6, in terms of either the common or statute law of the Republic of South Africa, in all respects act as an expert and not an arbitrator. The Expert shall be bound to follow the general principles of substantive South African Law.

10.5 The Expert shall be vested with the entire discretion as to the procedure and manner to be followed in arriving at his decision including that the Expert shall not be bound by any of the principles or statutes of South African Law, regarding procedure and evidence save to state that a Party may be represented.

10.6 As soon as possible, after the Expert has been appointed, the parties shall, if requested from the Expert, and in such form as is requested by

the Expert, prepare terms of submission to him/her, setting out, *inter alia*, the nature of the dispute, the issues to be decided by the Expert, and their proposals as to the procedure to:

- The procedure to be followed in connection with the submission of pleadings or the issues to the Expert; and
- the procedure and manner to be followed by the Expert at arriving at his/her decision.

10.7 The Expert shall then make a decision in this regard and notify the parties. This decision shall be binding on the Parties.

10.8 Should the Expert deem it necessary to obtain technical or other advice on any matter relating to the dispute, he/she shall be entitled to obtain such advice, in any manner, from any person.

10.9 The Parties shall endeavour to the best of their ability to procure that the decision of the Expert shall be given as soon as possible after notice in terms of 8.3. The Expert's decision shall be in writing and signed by the Expert, unless the terms of submission as accepted by the Expert provide otherwise.

10.10 The Expert may order specific performance, in any circumstances in terms of which any court of law would have the power to do so.

10.11 Where the Expert's decision carries the payment of a sum of money, including damages such sum shall, unless the decision provides otherwise, carry interest as from the date the money became due or the date of the cause of action which gave rise to the payment of the sum of money, in terms of the Prescribed Rate of Interest Act, 1975.

10.12 The Expert's decision may not order a payment of penalty unless provided for in terms of law. The Expert may correct any clerical mistake or any patent error arising from any omission or commission.

- 10.13 The decision shall not be subject to appeal, and all parties to the dispute shall abide by and comply with the Expert's decision in accordance with the terms thereof, subject to the proviso that if any Party is aggrieved by the decision it may refer such decision to arbitration.
- 10.14 Should a Party wish to refer an Expert's decision on a dispute to arbitration, that party shall provide written notice to that effect to the other Parties.
- 10.15 An arbitrator or members of an arbitration panel, as the case may be, shall be appointed by the Parties by agreement.
- 10.16 If agreement cannot be reached upon a particular arbitrator or arbitration panel within 3 (three) business days after the arbitration has been demanded in writing then the arbitrator or arbitration panel, as the case may be, shall be chosen and determined by:
- 10.16.1 The President of the Cape Law Society; or
 - 10.16.2 failing him/her, the Chairperson of the Cape Bar Council; or
 - 10.16.3 failing him/her, the President of the Law Society of South Africa,
- 10.17 In the event of an arbitration panel being appointed, at least one of the arbitrators comprising the panel shall be either a senior advocate with no less than 20 years' experience, alternatively a retired judge of the High Court, Supreme Court of Appeal or Constitutional Court of South Africa.
- 10.18 Such arbitration shall be held in Cape Town, in accordance with the Arbitration Act (Act No. 42 of 1965, as amended or re-enacted from time to time).
- 10.19 The arbitrator shall have full and free discretion to determine the procedure to be adopted, it being the agreed intention that, if possible, the arbitration shall be held and concluded within 21 (twenty one) business days after it has been demanded.

- 10.20 The Parties agree to the arbitration award being final and binding and that the award be made an order of Court.
- 10.21 Any Party aggrieved by the award of the arbitrator may appeal against such award by delivering a notice of appeal in terms of Clause 10.23.
- 10.22 A Party exercising its right of appeal in terms of Clause 10.21 shall within 10 (ten) days of publication of the arbitration award give written notice to the other Parties, to the arbitrator or panel of arbitrators, as the case may be, and to the Chairperson of the Association of Arbitrators (Southern Africa) of its intention to refer the award to an Appeal Tribunal.
- 10.23 The procedure for and requirements relating to an appeal and the appointment of the Appeal Tribunal shall be those contemplated in Rule 40 of the Rules for the Conduct of Arbitrations (6th edition) published by the Association of Arbitrators (Southern Africa).
- 10.24 Nothing contained herein shall prevent any party to approach a Court of Law for urgent relief.
- 10.25 The provisions of this clause:
- 10.25.1 Constitute the irrevocable consent by the Parties to any proceedings in terms thereof. None of the Parties shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
- 10.25.2 Such provisions are divisible and severable from the rest of this agreement as if these provisions had been agreed to independently of the other provision of this Agreement. They shall remain in effect even if this Agreement is declared invalid, terminated or cancelled for any reason whatsoever.

11. COSTS OF PREPARING THIS AGREEMENT

The costs of preparing this Agreement shall be borne by the University.

12. **DOMICILIUM CITANDI ET EXECUTANDI**

The parties choose the addresses as set out in 1.1 and 1.2 of the Agreement, to serve as their respective *domicilium citandi et executandi* for all purposes of this Agreement. This includes the service of all notices and/or processes arising from this Agreement or the cancellation thereof. A Party may change such address by notifying the other Parties accordingly. The change of address other than for a postal address, shall not be a Post Office box number or *poste restante* address. Any changed address shall be in the Republic.

13. **WARRANTIES**

This Agreement constitutes the entire contract between the parties. There were no prior representations, including notices, announcements, guarantees or warranties, irrespective of whether oral or in writing, which induced this Agreement, save as contained in this Agreement.

14. **VARIATIONS**

14.1 No variation of this Agreement, including an addition, amendment, repeal, conduct at variance with, novation, cancellation or any waiver of any right by a Party arising from this agreement (the variance) shall be binding on the parties hereto, unless:

14.1.1 it is reduced to writing and signed by all of the Parties or their agents authorised in writing and approved by the University and HWC; or

14.1.2 any variance is provided for elsewhere in this Agreement, and is effected in terms of such provisions; and

14.1.3 the consent of the University and HWC is given to such variance.

14.2 A variance includes a variance which:

- has a suspensive effect on the provisions of the Agreement;

- relates to the postponement of any date;
- relates to any renewal or revival of this Agreement; or
- relates to any further Agreement between the parties in respect of the same subject matter as this Agreement.

15. CANCELLATION

The Parties are entitled to cancel this Agreement only with the consent of the other Party in terms of section 42 of the NHRA.

16. OBLIGATIONS/POWERS

16.1 All obligations of the University in terms of this Agreement are to be reasonably construed.

16.2 Any exercise by HWC of their powers in terms of this Agreement shall be reasonable.

17. SOUTH AFRICAN LAW

This Agreement shall in all respects be construed and governed by South African Law.

18. INSPECTION AND ACCESS

HWC shall be entitled to inspect the Campuses at any reasonable time, for any purpose.

THUS DONE AND SIGNED BY THE UNIVERSITY AT _____

on this ____ of _____ 2016

Witness:

Name: _____

Signature: _____

SIGNATURE For and on behalf
of THE UNIVERSITY

[FULL NAMES]

I acknowledge that I am acquainted with and understand the contents of this Agreement. I warrant that I have the capacity to enter into this Agreement.

THUS DONE AND SIGNED BY HWC AT _____

on this ____ of _____ 2016

Witness:

Name: _____

Signature: _____

SIGNATURE For and on behalf
of HWC

[FULL NAMES]

I acknowledge that I am acquainted with and understand the contents of this Agreement. I warrant that I have the capacity to enter into this Agreement.

ANNEXURE "A"**LIST OF ERVEN COMPRISING EACH CAMPUS AND THE YEARS IN WHICH THEY CAME UNDER UCT'S OWNERSHIP**

ERF NAME/NUMBER	ZONING	DATE	OWNER	NOTES
1 Hiddingh Campus, Gardens				
Erf 95147 Cape Town	GR4	1963	UCT	
Erf 95148 Cape Town	GR4	1987	UCT	*Sold for R1.00
Erf 95146 Cape Town	GR4	1905	UCT	
Erf 95145 Cape Town	GR4	1903	UCT	
Erf 95144 Cape Town	GR4	1929	UCT	
Erf 95143 Cape Town	GR4	1903	UCT	
Erf 95139 Cape Town	GR4	1905	UCT	*Proclaimed NM
Erf 95138 Cape Town	GR4	1903	UCT	
Erf 95149 Cape Town	CO1	1905	UCT	
Erf 95142 Cape Town	GR4	1930	Repub. of South Africa	
2 Upper Campus, Rondebosch				
Erf 44201-0-2 Cape Town	CO2	1921	South African College	
3 Middle and Lower Campus, Rondebosch				
Erf 44201-0-2 Cape Town	CO1	1921	South African College	
Erf 46066 Cape Town	CO1	-	-	*No data capture
Erf 108992 Cape Town	CO2	1980	UCT	
Erf 44217-0-2 Cape Town	CO2	1933	UCT	
Erf 103239-RE Cape Town	CO2	2002	UCT	
Erf 46041 Cape Town	CO2	1921	South African College	
4 Rosebank Middle and Lower Campus				
Erf 32100 Cape Town	CO2	1989	UCT	
Erf 30804 Cape Town	CO2	1953	UCT	
Erf 30803 Cape Town	CO2	1953	UCT	*Proclaimed NM
Erf 44217-0-1 Cape Town	CO2	1933	Repub. of South Africa	
Erf 30802 Cape Town	CO1	1899	Repub. of South Africa	
Erf 44230 Cape Town	GR4	2004	UCT	
5 Mowbray/Avenue Road Precinct:				
Erf 28366 Cape Town	CO1		1923	UCT
Erf 28422 Cape Town	CO1	2008	UCT	
Erf 28423 Cape Town	CO1	2008	UCT	
Erf 28425 Cape Town	CO1	2008	UCT	
Erf 28426 Cape Town	CO1	1959	Princess Christian Home	
Erf 28427 Cape Town	CO1	1999	UCT	
Erf 28428 Cape Town	CO1	1999	UCT	

Erf 28429 Cape Town	CO1	1999	UCT
Erf 28430 Cape Town	CO1	1997	UCT
Erf 28433 Cape Town	CO1	1971	UCT
Erf 28434 Cape Town	CO1	1988	UCT
Erf 28432 Cape Town	CO1	1988	UCT
Erf 28431 Cape Town	CO1	1969	UCT
Erf 28419 Cape Town	CO1	1969	UCT
Erf 28420 Cape Town	CO1	1997	UCT
Erf 28421 Cape Town	CO1	1999	UCT

6 Health Sciences Campus, Observatory

Erf 27432 Cape Town	CO2	1923	UCT
Erf 27431-0-1 Cape Town	UT	1923	UCT