

**BIODIVERSITY AGREEMENT**

Between

**THE WESTERN CAPE NATURE CONSERVATION BOARD  
("the Board")**

Established in terms of Section 2 of the Western Cape Nature Conservation Board Act, 1998 (Act No. 15 of 1998), t/a CapeNature

Herein represented by

**THE CHIEF EXECUTIVE OFFICER**  
Duly authorised hereto

And

**THE CITY OF CAPE TOWN**

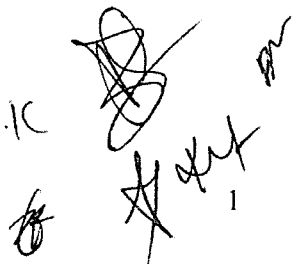
Herein represented by

**Dr. Bongiwe Mali-Swelindawo**

**In her capacity as Regional Head: Property  
Holding (Tygerberg Region)**

Duly authorised hereto

**("the Owner")**

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**PREAMBLE**

**WHEREAS**

A. The Owner is the registered owner of the following immovable Properties namely:

1. Erf 3822 Melkbosch Strand, situated in the City of Cape Town, Division of Cape, Western Cape Province;  
In extent: 29, 7017 (Twenty-nine comma Seven Zero One Seven) Hectares;  
Held by Title Deed No. T82956/1999.
2. Erf 3656 Melkbosch Strand, situated in the City of Cape Town, Division of Cape, Western Cape Province;  
In extent: 22, 6630 (Twenty-two comma Six Six Three Zero ) Hectares;  
Held by Title Deed No. T82956/1999.
3. Erf 3828 Melkbosch Strand, situated in the City of Cape Town, Division of Cape, Western Cape Province;  
In extent: 22, 2375 (Twenty-two comma two three seven five) Hectares;  
Held by Title Deed No T82956/1999

("the Properties")

B. **AND WHEREAS** a portion of the Properties are identified as an area with high conservation value for the following reasons:-

- a) It contains Endangered Cape Flats Dune Strandveld.
- b) A number of Milkwood (*Sideroxylon inerme*) clumps are found in the central dunes, with several individuals of this protected tree species scattered throughout the estate.
- c) The area is contiguous with the Blaauwberg Nature Reserve and acts as a buffer to the reserve.
- d) The area forms a critical faunal link, linking Blaauwberg Nature Reserve with the Dassenberg Coastal Catchment Partnership (DCCP).

C. **AND WHEREAS** the Owner and the Board recognise the conservation value in order to protect the biodiversity on the Property.

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- D. **AND WHEREAS** the Board wishes to assist the Owner or any third party contracted by it in terms of a co-management agreement, to manage the biodiversity on a portion of the Property, in perpetuity.
- E. **AND WHEREAS** the Owner and the Board recognise that this agreement shall form an annexure to the existing 99 year lease agreement between the City of Cape Town and Atlantic Beach Management (Pty) Ltd.
- F. The parties hereby agree that the protected area will be known as **Atlantic Beach Conservation Area** and that the Board will assign this name to the conservation area.

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**1. DESCRIPTION OF THE PROPERTIES**

1.1 The Properties consists of:



1.1.1 Erf 3822 Melkbosch Strand, situated in the City of Cape Town, Division of Cape, Western Cape Province;  
In extent: 29, 7017 (Twenty-nine comma Seven Zero One Seven) Hectares;  
Held by Title Deed No. T82956/1999.

1.1.2 Erf 3656 Melkbosch Strand, situated in the City of Cape Town, Division of Cape, Western Cape Province;  
In extent: 22, 6630 (Twenty-two comma Six Six Three Zero) Hectares;  
Held by Title Deed No. T82956/1999.

1.1.3 Erf 3828 Melkbosch Strand, situated in the City of Cape Town, Division of Cape, Western Cape Province;  
In extent: 22, 2377 (Twenty-two comma Two Three Seven Seven) Hectares;  
Held by Title Deed No T82956/1999.

("the Properties")

1.2 The conservation area refers to the portions of the properties that house the natural vegetation remnants and is more fully described in the map annexed to this Agreement marked Appendix A and measures 20 hectares in extent.

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## 2. MANAGEMENT OF THE CONSERVATION AREA

### 2.1 Objectives

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

2.1.1.1 To promote and improve the environmental sustainability of the conservation area.

2.1.1.2 To set out environmental procedure which aim to improve the condition of the conservation area.

2.1.1.3 To assist with meeting environmental authorization conditions.

2.1.1.4 No encroachment of the golf course will occur in the conservation area.

2.1.1.5 To remove all invasive plants from the conservation area and sustain follow up and maintenance according to the schedule in the Management Plan.

2.1.1.6 To monitor activities in the conservation area in order to ensure sound management and conservation of natural resources

### 2.2 Management Plan

2.2.1 The Board shall, in consultation with the Owner, and any other affected parties that have an interest in the area, prepare a Management Plan to give affect to the management objectives for the Conservation Area within 12 (twelve) months of this Agreement coming into effect.

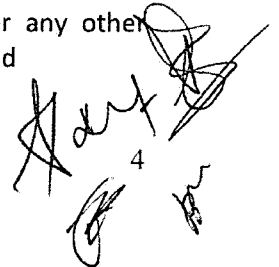
2.2.2 The parties agree to manage the Conservation Area solely for the purpose for which it has been contracted, in accordance with the Management Plan and any other appropriate national and provincial legislation, policy, plans or municipal regulations.

2.2.3 The contents of the Management Plan shall as a minimum:

2.2.3.1 include the Objectives stated in clause 2.1 of this Agreement;

2.2.3.2 include the rights and obligations of the parties in relation to the Conservation Area, which are set out in clauses 3 to 8 below, and

2.2.3.3 not conflict with any Bioregional Plan or Biodiversity Management Plan prepared under the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), any Management Plan prepared under the National Environmental Management Protected Areas Act, 2003 (Act No. 57 of 2003), or any other statutory Environmental Management Plan applicable to the area, and

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2.2.3.4 contain any regulations, directives or measures as may be stipulated by a statutorily recognised agricultural plan or scheme for the sustainable use of natural resources in that area.

### **2.3 Review and Monitoring of the Management Plan**

2.3.1 The Board in conjunction with the Owner shall conduct regular inspections of the Conservation Area.

2.3.2 The Board shall convene a meeting with the Owner on an annual basis, or at such earlier time should either of the parties deem it necessary, to formally review progress towards achieving the Management Objectives as set out in clause 2.1 and the Management Plan.

2.3.3 The Board shall present the following information to the Owner at this annual meeting:

2.3.3.1 the extent to which the current Management Plan has achieved the stated Management Objectives;

2.3.3.2 the extent to which the parties have complied with their respective rights and obligations under the Management Plan;

2.3.3.3 current and future challenges to the conservation, management and status of the Conservation Area, and

2.3.3.4 proposed amendments to the Management Plan.

2.3.4 The parties shall, by mutual Agreement, amend the Management Plan when necessary, which amendments shall be reduced to writing and signed by both parties.

## **3. RIGHTS OF THE OWNER IN RESPECT OF THE CONSERVATION AREA**

### **3.1 Ownership**

3.1.1 The Owner retains all rights of ownership over the Property.

### **3.2 Access**

3.2.1 Access to the Conservation Area will be controlled by the owner in accordance with its Constitution and the Management Plan.

## **4. OBLIGATIONS OF THE OWNER IN RESPECT OF THE CONSERVATION AREA**

### **4.1 Compliance with the Management Plan**

4.1.1 The Owner shall comply with all the terms and conditions contained in the Management Plan.

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4.1.2 The Owner shall, upon request and if prior arrangements have been made, admit the Board, its employees and its consultants to the Conservation Area in order to meet their obligations in terms of the Management Plan, which shall include entry for the purposes of scientific research, and to ensure proper management and compliance with the terms of this Agreement.

#### **4.2 Development**

4.2.1 The Owner shall not construct, erect or upgrade, or allow the construction, erection or upgrading, of any buildings, roads or structures on the Conservation Area, except as expressly provided for in the Management Plan.

4.2.2 The Owner must obtain all necessary prior approval, permission or exemption required in order to undertake any development contemplated in the Management Plan.

#### **4.3 Biodiversity**

4.3.1 The Owner shall not remove or destroy, or permit the destruction or removal of, any indigenous species in the Conservation Area.

4.3.2 The Owner shall not plant, or permit the planting of, any flora other than local non-invasive indigenous flora in the Conservation Area.

4.3.3 The Owner shall not introduce, or permit the introduction of, any non-indigenous fauna onto the Conservation Area, including (but not limited to) any livestock, cat, dog or other domestic animal.

4.3.4 The Owner shall not do, or permit, any act that may adversely affect any indigenous flora and fauna, or their habitats, in the Conservation Area.

#### **4.4 Water**

4.4.1 The Owner shall not do, or permit, any act that may adversely affect the natural state, flow, supply, quantity or quality of any water resource located on the Conservation Area, subject to the provisions of the National Water Act, 1998 (Act No. 36 of 1998).

4.4.2 Any other person that may have a right to water in a public stream on the Conservation Area shall do so on such conditions prescribed by the Minister of Water and Environmental Affairs.

#### **4.5 Commercial Activity**

4.5.1 The Owner shall not permit or consent to any prospecting, exploration, mining or production of gas, petroleum, mineral or other substances on the Conservation Area.

4.5.2 The Owner shall not permit or consent to, unless required by law, the placement of any transmission lines, telecommunication lines, cellular towers or public works on the Conservation Area.

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4.5.3 The Owner shall not subdivide, or permit the subdivision of the Conservation Area.

#### **4.6 Other Human Activities**

4.6.1 The Owner shall not dump, or permit the dumping of, any waste material on the Conservation Area.

4.6.2 The Owner shall not hunt, or permit hunting, to take place on the Conservation Area unless it is necessary for the proper management of the fauna located in the Conservation Area and/or specifically provided for in the Management Plan and the necessary permit/s have been obtained and restrictions adhered to as required by law.

4.6.3 The Owner shall not permit the general public to access the Conservation Area, unless otherwise provided for in the Management Plan.

### **5. RIGHTS OF THE BOARD IN RESPECT OF THE CONSERVATION AREA**

#### **5.1 Access for research**

5.1.1 The Owner shall, upon request and if prior arrangements have been made, admit the Board, its employees and its consultants to the Conservation Area in order to meet their obligations in terms of the Management Plan, which shall include entry for the purposes of scientific research, and to ensure proper management and compliance with the terms of this Agreement.

### **6. RESPONSIBILITIES OF THE BOARD IN RESPECT OF THE CONSERVATION AREA**

#### **6.1 Compliance with the Management Plan**

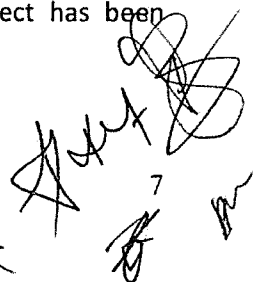
6.1.1 The Board shall comply with all the terms and conditions as set out in the Management Plan.

#### **6.2 Supervision and technical support**

6.2.1 The Board shall extend any technical assistance, information and management advice which may be required to ensure the effective conservation of the Conservation Area.

#### **6.3 Notice of entry**

6.3.1 The Board, its consultants and its employees shall duly inform the Owner whenever they intend to enter the Conservation Area, unless such entry has been determined in another manner in the Management Plan, and agreement to this effect has been reached.

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#### **6.4 Wildlife Management**

6.4.1 Ownership of all wildlife on the Property as well as their offspring shall be negotiated depending on their source, population status and conservation objectives as defined in the Management Plan. The introduction or removal of all wildlife shall be addressed in the Management Plan or in accordance with the Owner.

#### **6.5 Levies and Taxes**

6.5.1 The Board shall inform the Owner whether he/she qualifies for exemption from any other levies, services or taxes in respect of this Agreement.

6.5.2 The Owner shall be responsible for all levies and taxes in respect of the Conservation Area unless otherwise agreed upon in writing by both parties.

#### **6.6 Conservation Costs**

6.6.1 The Board shall only be responsible for costs in respect of the establishment of the Conservation Area, as contained in the Management Plan.

#### **6.7 Property Tax**

6.7.1 The Board shall not be responsible for any taxes payable on any commercial or other infrastructure, developments or improvements, unless it has been agreed upon in this Agreement.

#### **6.8 Monitoring**

6.8.1 The Board/Owner shall keep accurate records of all expenses, and such records shall be made available to the Board/Owner upon request.

### **7. DELEGATION OF RIGHTS AND RESPONSIBILITIES**

7.1 The parties to this Agreement may not delegate or cede their rights or obligations under this Agreement unless:

7.1.1 they have the written consent of the other party to this Agreement, which consent will not be unreasonably withheld, and

7.1.2 the party to whom the rights and/or obligations have been delegated or ceded, has acknowledged its acceptance of the delegation or cession in writing, to both parties to this Agreement.

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**8. BREACH OF CONTRACT**

8.1 If either party breaches the terms in this Agreement, the other party can notify the offending party in writing and call on him/her to remedy the breach within a reasonable period.

8.1.1 If the offending party still fails to remedy the breach, the other party may:

8.1.1.1 take the necessary measures himself to remedy the breach or appoint a third party to do so, and recover his costs in doing so from the offending party, and/or

8.1.1.2 immediately demand due performance of the terms by a registered notice addressed to the offending Party, in addition to damages that such Party is legally entitled to, or

8.1.1.3 Immediately cancel this Agreement by means of a registered notice addressed to the offending party, in addition to damages that such Party is legally entitled to.

**9. RECOVERY OF EXPENDITURE ON TERMINATION OF CONTRACT**

9.1 In the event that this Agreement is terminated at the instance of the Board in terms of clause 10, the Owner will reimburse the Board for the following:

9.1.1 any levies or taxes paid on behalf of the Owner in terms of clause 6.3;

9.1.2 conservation costs incurred in terms of clause 8.6, and

9.1.3 costs of preparing this Agreement in terms of clause 16.

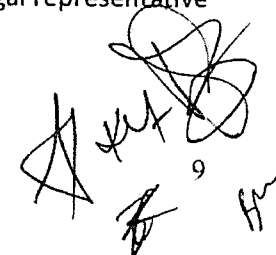
**10. DISPUTE RESOLUTION**

10.1 Should any dispute of any nature arise at any time between the parties to this Agreement, the parties agree to submit the dispute to arbitration in accordance with the following provisions:

10.1.1 The arbitration proceedings will be conducted in accordance with the Arbitration Act, 1965 (Act No. 42 of 1965).

10.1.2 The arbitration proceedings will be held on an informal basis, it being the parties' intention that a decision should be reached as quickly and as inexpensively as possible, subject only to the observance of the principles of due process.

10.1.3 Each party may be represented at the arbitration proceedings by its legal representative and/or other experts or specialists employed by it.

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10.1.4 The Arbitrator will permit each party to present any evidence and argument as the Arbitrator may consider to be relevant to the dispute, and will generally determine in his or her sole discretion, all matters relating to the conduct of the proceedings and the procedures to be adopted in order to give effect to the intent as indicated in paragraph 12.1.2 above.

10.1.5 The Arbitrator will be nominated as follows:

10.1.5.1 If the matter in dispute is primarily a legal matter, the Arbitrator will be a Senior Counsel to be agreed upon between the parties, and failing agreement, to be nominated by the President for the time being of the Law Society of the Cape of Good Hope.

10.1.5.2 If the matter in dispute is primarily an accounting matter, the Arbitrator will be a Chartered Accountant to be agreed upon between the parties and failing agreement, to be nominated by the President for the time being of the South African Institute of Chartered Accountants.




10.1.5.3 If the matter in dispute relates to any matter not being primarily a legal and/or accounting issue, or if the parties are unable to agree on the nature of the matter in dispute, the Arbitrator will be such other person having an appropriate knowledge, as may be agreed upon between the parties, and failing agreement, to be nominated by the President for the time being of the Law Society of the Cape of Good Hope.

10.1.5.4 The Arbitrator will, at the request of any of the parties, be assisted by a person having specialised knowledge of environmental management to be agreed upon between the parties.

10.1.5.5 The decision of the Arbitrator will be final and binding upon both parties and capable of being made an Order of Court on application by either one of the parties.

10.1.5.6 Nothing contained in this clause of the Agreement will prevent either party from applying to Court for a temporary interdict or other relief of an urgent and temporary nature, pending the award of the Arbitrator.

10.1.5.7 The Arbitrator will be entitled to direct that any costs associated with the arbitration proceedings, as determined in the sole discretion of the Arbitrator, will be borne by each of the parties or will be paid by one or more of the parties and will be taxed as between "party and party" or as between "attorney and own client".

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**11. POSSIBLE CONVERSION FROM A BIODIVERSITY AGREEMENT TO A BIODIVERSITY MANAGEMENT AGREEMENT**

11.1 Should the authority to sign a Biodiversity Management Agreement be delegated to the Province of the Western Cape or Western Cape Nature Conservation Board ("the Board"), and if it is applicable to this Property/ies, the Owner must be willing for this Biodiversity Agreement to be changed to a Biodiversity Management Agreement in terms of the National Environmental Management: Biodiversity Act 2004, (Act No. 10 of 2004).

**12. DOMICILIA AND NOTICES**

12.1 The parties choose the addresses set out below as their *domicilia citandi et executandi* for all purposes of this Agreement and as their respective addresses for the service of any notice required to be served on them in terms of this Agreement.

**The Owner: Represented by Dr. Bongiwe Mali-Swelindawo**

Street address: De Grendel Administrative Offices, cnr Voortrekker Rd and De Villiers Str, Goodwood

Postal address: PO Box 100, Goodwood. 7459

**The Board: Represented by DR R OMAR**

Street address: PGWC Shared Services Center, cnr Bosduif & Volstruis Streets, Bridgetown, 7764

Postal address: Private Bag X29, Gatesville, 7766

**15. VARIATION OF AGREEMENT**

15.1 No variation, amendment or suspension of any of the terms of this Agreement will be valid, and no further agreement which may conflict in any way with the terms of this Agreement will be binding on either of the parties unless the variation, amendment, suspension or conflicting agreement has been recorded in writing and signed by both parties.

M.K. [Signature] [Signature]

**16. COSTS OF AGREEMENT**

16.1 All costs associated with the preparation of this Agreement will be borne by the Board.

**17. DURATION**

17.1 This Agreement will come into effect on the date the last party signs it and will remain in force in perpetuity unless:

17.1.1 the Owner elects to sell the Property prior to the expiry of the Agreement, in which case the Agreement will terminate on the date of transfer of the Property to the new Owner.

17.1.2 both parties, prior to the expiry date of this Agreement, elect to terminate this Agreement before the expiry date.

**18. RIGHT OF FIRST REFUSAL**

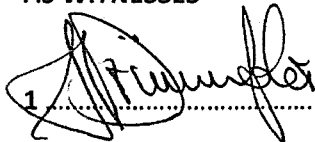
18.1 In the event that the Owner wishes to sell the Property, or a portion/s thereof, during the course of this Agreement, the Owner undertakes to offer the said Property, or any portion/s thereof, to the Board on the same terms and conditions as offered to/by any third party and will grant the Board **60 (sixty)** days within which to consider the offer and exercise its right of first refusal.

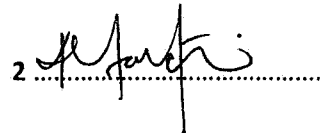
SIGNED AT Goodwood on this 7<sup>th</sup> day of MAY 2018 in the presence of the undersigned witnesses.

Dr. Bongiwe Mali-Swelindawo  
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**OWNER (PRINT NAME)**  
**CITY OF CAPE TOWN**

  
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**SIGNATURE**

**AS WITNESSES**

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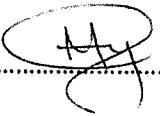
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SIGNED AT BRIDGETOWN on this 29 day of May 2018 in the presence of the undersigned witnesses.

DR. RAZEENA OMAR  
CHIEF EXECUTIVE OFFICER  
(PRINT NAME)  
THE WESTERN CAPE NATURE CONSERVATION BOARD

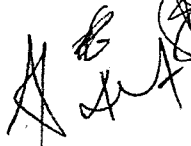

  
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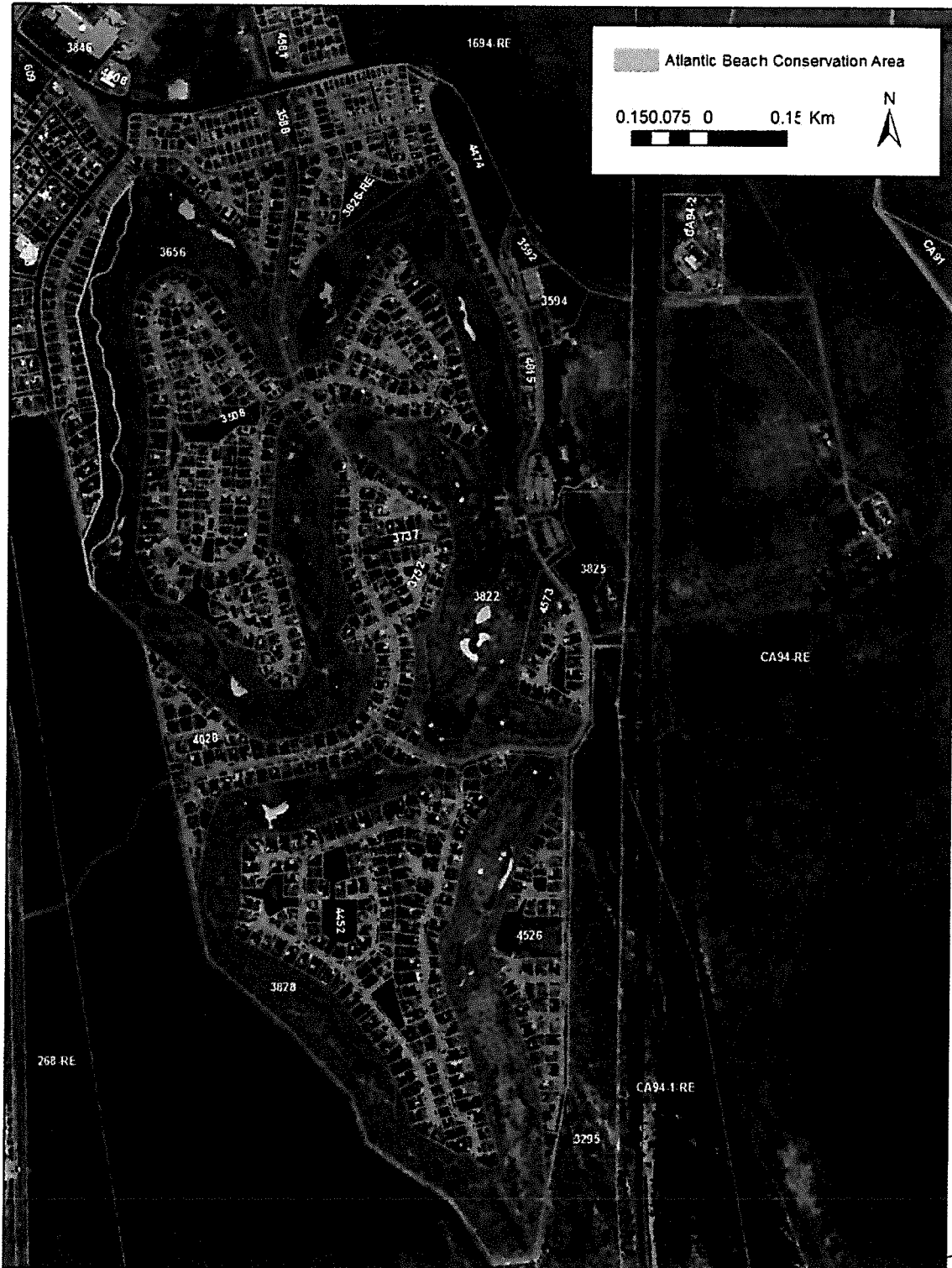
AS WITNESSES

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Appendix A: Map of the Conservation Area

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