IN THE HIGH COURT OF SOUTH AFRICA (WESTERN CAPE DIVISION, CAPE TOWN)

Case No.: 12994 / 2021

In the matter between:

OBSERVATORY CIVIC ASSOCIATION

First Applicant

GORINGHAICONA KHOI KHOIN INDIGENOUS TRADITIONAL COUNCIL

Second Applicant

and

TRUSTEES FOR THE TIME BEING OF LIESBEEK LEISURE PROPERTIES TRUST

First Respondent

HERITAGE WESTERN CAPE

Second Respondent

CITY OF CAPE TOWN

Third Respondent

THE DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 1), LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING, WESTERN CAPE PROVINCIAL GOVERNMENT

Fourth Respondent

THE MINISTER FOR LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS & DEVELOPMENT
PLANNING, WESTERN CAPE PROVINCIAL GOVERNMENT

Fifth Respondent

CHAIRPERSON OF THE MUNICIPAL PLANNING TRIBUNAL OF THE CITY OF CAPE TOWN

Sixth Respondent

EXECUTIVE MAYOR, CITY OF CAPE TOWN

Seventh Respondent

WESTERN CAPE FIRST NATIONS COLLECTIVE

Eight Respondent

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I, the undersigned

GAOB: MARTINUS FREDERICKS

do hereby make oath and say as follows:

- I am an adult male, also known as Gaob: Martinus Fredericks and am the "National Chairperson" of the "Southern Africa Khoi and San Kingdom Council"
- I am the National Chairperson and Trustee of the "Southern Africa Khoi and San Kingdom Council Trust IT235/2020, I have been dually appointed by the Board of Trustees of the "Amaquas Kingdom Council and it sub tribes", "Chochoqua Kingdom Council and its subtribes", Chainouqua Kingdom Council and its subtribes" Inqua Kingdom Council and its subtribes and the San / Bushman Kingdom Council and its subtribes" to hold this position and to speak on behalf of the "Southern Africa Khoi and San Kingdom Council "in South Africa.
- The facts contained in this affidavit are within my personal knowledge, except where the context indicates otherwise, and are to the best of my belief both true and correct.
- 2. I have read the supporting and replying affidavits of Tauriq Jenkins which he deposed to on 30 July 2021 and 17 September 2021 and confirm the contents thereof in so far as they relate to me, and the position I hold in "Southern Africa Khoi and San Kingdom Council"

- 3. As I explain more fully below, both the "Southern Africa Khoi and San Kingdom Council" and I:
 - are deeply concerned about the negative impacts that the development of the River Club site by the First Respondent ("the Development") will have on our intangible cultural heritage;
 - 3.2. are opposed to the Development;
 - were not consulted by Mr Rudewaann Arendse in connection with the preparation of his reported titled "River Club First Nations Report" dated November 2019 ("the AFMAS Report"); and
 - are not members the Western Cape First Nations Collective ("the FNC") which is the Eighth Respondent in this matter, and the FNC is not authorised to speak on our behalf, whether in relation to the Development or any other matters.

Consultations undertaken by Rudewaan Arendse of AFMAS

- 4. I understand that Mr Rudewaan Arendse was commissioned by the Western Cape Provincial Department of Transport and Public Works to prepare a report on:
 - the significance of the Two Rivers Urban Park ("TRUP") to First

 Nations by identifying intangible cultural heritage ("ICH") specific to
 the TRUP, through Khoi and San oral history, as articulated by
 indigenous custodians;

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- the collective First Nations aspirations for celebrating First Nation ICH at the TRUP; and
- 4.3. how the indigenous narrative of the First Nation's ICH can be incorporated into the spatial governance of the TRUP, by developing heritage related design informants (as informed by the indigenous narrative).
- 5. This report culminated in the TRUP First Nations Report ("the TRUP Report") of 25 September 2019. [Mr Rudewaan Arendse did not consult my "Southern Africa Khoi and San Kingdom Council" during the preparation of that report.
- 6. According to his brief in the River Club First Nations Report ("the AFMAS Report"), Mr Rudewaan Arendse was subsequently commissioned by the First Respondent ("the Developer") to:
 - "...engage the First Nations (the Khoi and San)2, interchangeably referred to as Indigenous people, or the Indigene, with regard to their intangible cultural heritage in terms of the River Club project site."

and

"1. Understand the significance of the River Club site to the First Nations by identifying Indigenous intangible cultural heritage specific to the River Club.



- 2. Locate the River Club site within the Indigenous narrative of the broader TRUP cultural landscape.
- 3. Identify First Nations aspirations with regard to Indigenous cultural heritage and the River Club site.
- 4. Implement the recommendation of the TRUP First Nations report that "acknowledging, embracing, protecting and celebrating the Indigenous narrative be a heritage related design informant that informs" planning and development of the River Club site." (Vol: 3, R: 1079)
- 7. I confirm that neither I nor my "Southern African Khoi and San Kingdom Council" were notified by Mr Rudewaan Arendse or engaged with regarding our intangible cultural heritage associated with the River Club site or how the development will affect my intangible cultural heritage associated with the TRUP, and consequently neither myself nor my "Southern Africa Khoi and San Kingdom Council" were consulted by Mr Arendse in relation to the AFMAS Report.
- 1. The Developer and/or Mr Arendse / AFMAS were well aware that both I and 1. IAman Traditional Authority wished our view in relation to the Development and its potential negative impacts on the environment and on our cultural heritage, to be taken into consideration by the authorities responsible for deciding whether or not to authorise the Development. My reasons for saying this appear below.

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- 8.1. I represented the !Aman Traditional Authority as an interested and affected party ("I&AP") during the provisional protection appeal proceedings, under case number 1511 2504 WD 1217E in which the Developer as an appellant and Mr Arendse participated. My name appears from the list of I&APs as is evident in the record.
- 8.2. My group has a contact details which are easily traceable. AFMAS and Mr Arendse should have used this information to communicate with us and arranged for us to participate in the consultation which culminated in his AFMAS Report.
- 9. I confirm that neither I nor the "Southern Africa Khoi and San Kingdom Council" were consulted by Mr Arendse. Nor do we approve of or support the development by the First Respondent, nor are we represented by the Eight Respondent (the Western Cape First Nations Collective also known as the "FNC").

Cultural and heritage significance of the site and TRUP area

- The site at which the River Club development will take place and the larger TRUP, is of significant cultural and heritage significance to my "Southern Africa Khoi and San Kingdom Council". The site and the TRUP area is sacred to us and a significant part of our intangible cultural heritage is associated with the site and the TRUP, for the following reasons:
 - The area is a site of first resistance and Frontier Wars fought in 1659. It is where land was taken by the Dutch colonial authorities in 1657.

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- 10.2. It is a place of sacred significance to both the various San and Khoi Khoi clans across Southern Africa.
- This is a shared precinct of many groupings belonging to both the San and Khoi, including the IXam, peninsular Khoi groups inclusive of the Nama. There are a number of kraals that have an historical footprint in this area.
- 10.4. The confluence of the Black and Liesbeek Rivers and its surrounds is a significant area that demarcates a combined heritage of San and Khoi nations.
- 10.5. This site is part of the National Khoi and San Liberation and Resistance Route.
- 10.6. We believe that this site should be acknowledged as a World Heritage site.
- Burying under concrete a sacred connection to the earth disconnects indigenous people from their environment. This results in tremendous trauma for our people.
- 11. We do not regard any of the conditions to the respective authorisations to be sufficient for purposes of safeguarding our intangible heritage associated with the site. In our view, the aspects of the Development which the Developer claims will give expression to, and celebrate, our intangible cultural heritage (i.e. the proposed indigenous gardens, cultural and media centre, amphitheatre, and "heritage eco-trail") do no such thing.

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Had I or my "Southern Africa Khoi and san Kingdom Council" been meaningfully consulted by Mr Arendse in respect of the River Club development, we would have contributed important information relevant to the decision-making process (including the information in this affidavit) which should have been made available to the decision-makers (whether by inclusion in the AFMAS Report or otherwise).

GAOB: MARTINUS FREDERICKS

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I hereby certify that the deponent has acknowledged that she:

- (a) knows and understands the contents of this affidavit;
- (b) has no objection to taking the oath;
- (c) considers the oath to be binding on her conscience.

Thus signed and sworn to before me, at **ATLANTIS** on 18 MAY **2022**.

COMMISSIONER OF OATHS

NAME: Edm// Soulle CAPACITY: CONSTABLE

ADDRESS: Atlant8

AREA: SAPS



MAGTIGINGSBRIEF LETTERS OF AUTHORITY

Ingevolge Artikel 6(1) van die Wet op Beheer oor Trustgoed, 1988 (Wet 57 van 1988) In terms of Section 6(1) of the Trust Property Control Act, 1988 (Act 57 of 1988)

No: IT 523/2020

Hiermee word gesertifiseer dat /

This is to certify that

MARTINUS FREDERICKS

(Identiteitsnommer / Identity Number: 650306 5229 08 7) Representing AMAQUAS KINGDOM COUNCIL (Reg no:2020/028592/08)

JACOBUS TITUS

(Identiteitsnommer / Identity Number: 640715 5221 08 9) Representing SAN BUSHMAN KINGDOM COUNCIL (Reg no:2020/477609/09

KENNETH CHARLES HOFFMAN

(Identiteitsnommer / Identity Number: 601028 5138 08 0) INQUA KINGDOM COUNCIL (Reg no:2020/459477/08

KENNETH CHARLES HOFFMAN

(Identiteisnomer /Identity number.

601028 5138 08 0) Representing CHAINAQUA KINGDOM COUNCIL)Reg no:2020/459146/08

DAVID JEREMIAS JOHANNES

(Identitieisnomer/identity number: 640816 5050 08 8) Representing CHOCHOQUA KINGDOM COUNCIL (Reg no:2019/428235/08)

gemagtig word om op te tree as trustees van / are hereby authorized to act as trustees of

SOUTHERN AFRICA KHOI AND SAN KINGDOM COUNCIL

GEGEE onder my hand te KAAPSTAD op hede die

dag van

GIVEN under my hand at CAPE TOWN this

- day of Idea 2021

Signature Signature

ASSISTENT MEESTER ASSISTANT MASTER

/template

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

MASTER OF THE WESTERN CAPE HIGH SOURT

CAPE TOWN

2020 -07- 24

KAAPSTAD

MEESTER VAN DIE WES KAAP HOË HOF

SOUTHERN AFRICA KHOI AND SAN KINGDOM COUNCIL TRUST DEED

REG NO: IT 523/2020

(Herein referred to as "The Trust" to be established in terms of this Trust Deed)

1. NAME OF TRUST

The trust created in terms of this deed shall be known as

SOUTHERN AFRICA KHOI AND SAN KINGDOM COUNCIL (SAKSKC)

PREAMBLE TO THE TRUST

MEMORANDUM OF AN AGREEMENT IN RESPECT OF A DONATION IN TRUST MADE AND ENTERED INTO BY AND BETWEEN

AMAQUAS KINGDOM COUNCIL
REG NO: 2020/028592/08

Hereinafter referred to as the FOUNDER

And

FUL NAMES OF TRUSTEE & IDENTITY NO OF TRUSTEE

1.	AMAQUAS KINGDOM COUNCIL	REG NO:	2020/028592/08
2.	CHOCHOQUA KINGDOM COUNCIL	REG NO:	2019/428235/08
3.	CHAINAQUA KINGDOM COUNCIL	REG NO:	2020/459146/08
4.	SAN BUSHMAN KINGDOM COUNCIL	REG NO:	2020/477609/08
5.	INQUA KINGDOM COUNCIL	REG NO:	2020/459477/08

(Herein after called the Trustees)

WHEREAS the FOUNDER wishes to create a trust by way of a donation of R 500.00 (Five Hundred Rand Only) to the first Trustees for the purpose of establishing a TRUST Fund for the beneficiaries (hereinafter jointly referred to as the BENEFICIARIES subject to the terms and conditions of the Trust Deed, laid down by the FOUNDER and contained in the Trust Deed.

2. PRINCIPAL OBJECTS

The object of the trust is to claim the "First Indigenous Nation" status of the first people of the territories of southern Africa, Namibia, Botswana and elsewhere in Diaspora of all the Khoi and San people and their descendants in these regions in line with International instruments like the "United Nation Declaration on the Rights of Indigenous People (UNDRIP), ILO Resolution 169, United National Special Rapporteurs Report and its Recommendations to the South African Government.

- 2.1 To Repeal and replace the mandate of the National Khoisan Council (NKC) with a more inclusive and representative structure called "Southern Africa Khoi and San Kingdom Council" This structure will interact with the Government of South Africa Incorporated and its Agencies on behalf of all the Khoi and San people in Southern Africa and elsewhere in Diaspora.
- 2.2 To Repeal the Ritz Treaty, the Cape Royal Council of Khoekhoe and San Tribal Leaders , the Western Cape legislative Khoisan Council. First Nation South Africa(FINSA) , IRASA and all other Organisations previously mandated to speak on behalf of the Khoi and San People of South Africa and Elsewhere in Diaspora , but still acknowledge their role in Community Development.
- 2.3 To take control of the historical territories of the khoi and San People inclusive of the Land and its Mineral Resources the Sea and its Marine and Mineral Resources and control these territories as per designation of the UNDRIP Statutes of the Rights of Indigenous People to Self Determination, In line with Section 235 of the South African Constitution, Art 1(1) of both the International covenant on Civil and Political Rights 1966(ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1966(ICESCR)
- 2.4 Art 20 African Charter on Human and Peoples Rights 1981(ACHPR)
- 2.5 International court of justice in Namibia Case 1971(ICJ) Reps 16, 31,
- 2.6 monitoring related to local, regional, national and global issues of cultural and sustainable development.
- 2.7 The Khoi and San Leadership, Governance and Political Structures is based on Customary Law as Recorded in the "Report and Proceedings with Appendices of the Government Commission on Natives Laws and Customs" KhoiKhoi Laws are Traditional and there are two kinds of Laws Section 2(a) and (b).

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3. MAIN OBJECT

The main object of the council is the advancement of the interests of the Khoi and San people inclusive but not limited to its direct and indirect descendants of this First People of South Africa, Namibia ,Botswana and elsewhere in Diaspora.

4. BENEFICIARIES

The beneficiaries of the Trust is the Trustees and plus the Khoi and San people from the Amaquas Kingdom Council, the Chochoquas kingdom Council, the Chianaqua Kingdom Council, the San/ Bushman Kingdom Council and the Inquas kingdom Council and their descendants, inclusive of those in Diaspora.

5. DESCRIPTION OF TRUST ASSETS

The assets of the trust shall consist of the following:

- 5.1 The aforementioned amount of R 500 .00 (FIVE HUNDRED RAND)
- 5.2 All the Customary land held by the Government of South Africa and Private Sector under various land tenure systems inclusive but not Limited to Crown Land, Trust land TRANCRAA, Community Property Association (CPA), Nature Reserves, land held under Mission Stations And Reserves
- 5.3 All the rights to Indigenous Knowledge Systems, Natural Resources, Minerals both on land and in Sea, Cultures, Customs, Traditions and Language.
- 5.4 Such further assets or investments as the trustees may acquire for the trust including any income not immediately required for the trust and which may be capitalised by the trustees in terms hereof.

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6. TRUSTEES

The Trust shall be administered and managed by a board of not less then Three (3) trustees and the board shall consist of:

- 6.1 Four (4) trustees representing the Following Customary Structures
 - 1) Amaqua Kingdom Council
 - 2) Chochoqua Kingdom Council,
 - 3) Chainaqua Kingdom Council
 - 4) Inquas Kingdom Council
 - 5) San / Bushman Kingdom Council
- 6.2 the original trustees signing this Deed of Trust and nominated by the Donor;
- 6.3 The Trustees will appoint people with specific skills in various support Positions as may be from time to time be required, these people will not be regarded as Trustees but support to the Trustees.

7. CONDITIONS OF APPOINTMENT

The trustees are hereby appointed subject to the following terms And conditions:

- 7.1 that trustees be remunerated monthly as per Resolution by the full board of trustees and that all out of pocket shall be payable to the trustee.
- 7.2 in the event of the death or resignation of any trustee, the Structures Represent herein, these structures shall be responsible for the Nomination of a suitable Replacement.
- 7.3 the board of trustees shall in its discretion, and subject to the provisions of clause 8.2 hereof, be entitled to dismiss any trustee for such reason as it may deem valid under the circumstances, in which event such trustee shall no longer be regarded as a member of the board. No appeal shall lie from the decision of the board in this regard.

8. TRUSTEES' POWERS

The board of trustees shall have general control of the trust assets and shall strive to attain the objectives for which it was established. The trustees shall have all such powers as may be necessary to enable them to administer the trust and , and without limiting their general powers in any way, they shall also have the following powers.

- 8.1 to engage Local ,National, International Governments Agencies, United Nations , African Union , SADC , ICC and any relevant institutions for restoring the "First Nation" status dignity and historical land ,language , Culture rights of the khoi and San people inclusive but not limited to direct and indirect descendants in both South Africa , Namibia , Botswana and elsewhere in Diaspora.
- 8.2 to engage local, national ,international governments, agencies , the United Nations, African Union , SADC , ICC and institutions responsible for the displacement of the khoi and San people inclusive but not limited to direct and indirect descendants for reparations and restitutions both financially and non-financially in both South Africa, Namibia, Botswana and elsewhere in Diaspora.
- 8.3 to trace original ancestral maps, dairies, logbooks and artefacts that belonged to the khoi and San people inclusive but not limited to direct and indirect descendants both in South Africa, Namibia Botswana and elsewhere in Diaspora.
- 8.4 to acquire land, facilities and restore historical physical structures of cultural value and to develop programs where the indigenous culture and artefacts can be displayed.
- 8.5 to purchase or acquire in any way stock-in-trade, plant, machinery, land, buildings, agencies, shares, debentures and every other kind or description of movable and immovable property within the different jurisdiction.
- 8.6 to manage, insure, sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to account or in any way otherwise deal with its undertaking or all or any part of its property and assets within its jurisdiction with the Consent of the rest of the Board and its Councils.
- 8.7 to apply for, purchase or by any other means acquire, protect, prolong and renew any Indigenous knowledge Systems, patent rights, licenses, trademarks, mining concessions or other inclusive of mining

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but not limited rights and to deal with and alienate them as provided for in clause 5.2;

- 8.8 to borrow money for any of the objects of the Structure;
- 8.9 to secure the payment of monies borrowed in any manner including the mortgaging and pledging of property and, without detracting from the generality thereof, in particular by the issue of any kind of debenture or debenture stock with or without security;
- 8.10 to lend money to any person or company with a view to promoting the object of the "Southern Africa Khoi and San Kingdom Council;
- 8.11 to invest money in any manner;
- 8.12 to open and operate banking accounts and to overdraw on such accounts;
- 8.13 to make, draw, issue, execute, accept, endorse and discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments;
- 8.14 to enter into indemnities, guarantees and suretyships and to secure payment thereunder in any way;
- to form and have an interest in any company or companies having the same or similar objects as the "Southern African Khoi and San Kingdom Council" for the purpose of acquiring the undertaking or all or any of the assets or liabilities of the council or for any other purpose which may seem, directly or indirectly, calculated to benefit the council, and to transfer to any such company or companies the undertaking or all or any of the assets or liabilities of the council;
- 8.16 to amalgamate with other khoi and San Councils having the same or similar objects as the Council;
- 8.17 to take part in the management, supervision and control of the business or operations of any other council or business having the same or similar objects as the council and enter into partnerships having the same or similar objects as the council;
- 8.18 to remunerate any person or persons in cash for services rendered in its formation or in the development of its business.

8.19 to make donations and render financial assistance to persons other than members or directors of the council for the attainment of the objects of the council;

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- 8.20 to undertake and execute any trust;
- 8.21 to act as principal, agents, contractors or trustees;
- 8.22 to pay gratuities and pensions and establish pension schemes in respect of its employees;
- 8.23 to enter into contracts outside the Republic and to execute any contracts, deeds and documents in any foreign country; and
- 8.24 to have a seal and to use such seal for any purposes in the Republic or in any foreign country.

9. MINUTES AND ACCOUNTS

9.1 The board of trustees shall keep minutes of all its meetings and shall also keep a proper set of accounts in respect of its transactions, which accounts shall be audited annually by an auditor to be appointed by the board. Such appointment may in the discretion of the trustees be varied from time to time. The Auditor shall at times have access to such minutes and to all vouchers and records and property of the trust. An Annual balance sheet and statement of revenue expenditure shall be prepared and certified as correct by the trustees and the auditor. Such balance sheet and statement shall be tabled at the annual general meeting of the board.

10. MEETINGS

The board of trustees shall be required to hold an annual general meeting and so many ordinary meetings during the course of the year as may be considered necessary to transact the business of the trust.

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- The annual general meeting of the board shall be held during the month of September in each year for the purpose of appointment of one of the members to be the chairman of the ensuing year, for the appointment of a secretary and treasurer, to consider the balance sheet and financial statement of the affairs of the trust, to elect an auditor and to determine a quorum for all meetings of the board;
- 10.2 ordinary meetings shall be held as often as may be considered Necessary to transact the business of the council in accordance with The objectives for which the trust has been established. A majority decision of the trustees shall be final and binding on the trustees, except in regarding to the dismissal of a trustee in accordance with clause 5.3 hereof, when a two thirds majority is required.

The chairman for the time being shall be entitled to be a deliberative as well

10.3 in the event of the unavoidable absence of any trustee from a meeting of the Board he/she shall be entitled to appoint a proxy from any of the other members of the board, and such proxy will be entitled to vote on behalf of the absent trustee in accordance with such trustees wishes.

11. DURATION OF TRUST

The trust shall endure for an indefinite period.

12. SECURITY

No original or subsequent trustees appointed in terms of the provisions hereinbefore set out shall be required to furnish security in terms of the Trust Property Control Act 1988 or any other legislation which may now be or which may hereafter become of force and effect, the intent and purpose being that no person who shall at any time be a trustee under this deed shall be required to give security whatsoever in connection with or arising out of this appointment as such.

13. INDEMNITY

In the proposed administration of the trust no trustee shall be liable for any loss to the trust which may occur as a result of any improper investment made in good faith, or as a result of the negligence or fraud of any agent or other person employed by the trustees(even though such employment was not strictly necessary) or occasioned by any mistake or omission made in good faith by the trustees, or arising from any other cause, except the wilful and individual fraud or dishonesty of such trustee. No trustee shall be liable for any loss occasioned by the fraud, dishonesty or wrongdoing. This clause is, however subject to the provisions of the Trust Property Control Act 57 of 1988.

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14. ACCEPTANCE

AND the apearer declared that:

- 14.1 The donor shall be irrevocably bound by the terms and conditions set out in this deed;
- 14.2 the trustees hereby accept their appointment as trustees on the terms and conditions set out in this deed.

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	MARTINUS FREDERICKS ID NO: 650306 5229 987 1	Muduchi	
	ON BEHALF OF AMAQUAS KINGDOM COUNCIL	SIGNATURE	
		M. Engel	
		WITNESS	
	DAVID JEREMIAS JOHANNES ID NO: 640816 5050 088 2		
	ON BEHALF OF CHOCHOQUA KINGDOM COUNCIL	SIGNATURE	
		M. Engel	
		WITNESS	
3.	KENNETH CHARLES HOFFMAN ID NO: 601028 5138 080	Addathma	
	ON BEHALF OF CHAINAQUA KINGDOM COUNCIL	SIGNATURE	
		m. Ergel	
		WITNESS	
	JACOBUS TITUS ID: 640715 5221 089	fferen a	
Si	ON BEHALF OF AN / BUSHMAN KINGDOM COUNCIL	SIGNATURE	
		M. Engel	
		WITNESS	
5.	KENNETH CHARLES HOFFMAN ID: 601028 5138 080	Kblettera	
	ON BEHALF OF INQUA KINGDOM COUNCIL	SIGNATURE	
		M. Engel	
		WITNESS	