

MEMORANDUM OF UNDERSTANDING

Entered into between

WALTER SISULU UNIVERSITY

Herein represented by **Professor L. Van Staden**
in his capacity as **Administrator**
(Hereinafter referred to as "WSU" or "Party")

And

SOUTH AFRICAN HERITAGE RESOURCES AGENCY

Herein represented by **Ms. Mmabatho Ramagoshi**
in her capacity as the **Acting Chief Executive Officer**
(Hereinafter referred to as "SAHRA" or "Party")

And

EAST LONDON MUSEUM

Herein represented by **Mr. Sidwell Zweni**
in his capacity as **Chairman** of the East London Museum Board of Trustees
(Hereinafter referred to as "ELM" or "Party")

Handwritten signatures and initials:
- Top right: *St*
- Middle right: *Sh*
- Bottom left: *qf.*
- Bottom center: *MR*
- Bottom center: *m. S*
- Bottom center: *Wend. S*
- Bottom right: *f.*

PREAMBLE

WHEREAS the Walter Sisulu University ("WSU") is a public higher education Institution and a juristic person in terms of the Higher Education Act 101 of 1997 (as amended). The WSU is presently the management authority and custodian repository of the Joan Broster and Lamla collections (WSU Heritage Collections) which aims to preserve the collections for the present community and future generations;

AND WHEREAS the South African Heritage Resources Agency ("SAHRA"), is a statutory institution established in terms of the National Heritage Resources Act 25 of 1999 with its Head Office at 111 Harrington Street, Cape Town, and is the successor to the National Monuments Council which was established by the National Monuments Act 28 of 1969.

AND WHEREAS the East London Museum (ELM) is an organization mandated to collect, document and conserve specimens, undertake research that will contribute to the interpretation of the human and natural history of East London (and the Eastern Cape) , and to communicate this knowledge through education, exhibition and publication.

AND WHEREAS it is acknowledged that the an audit) of the collection has been completed, a second audit would have to be considered in order to separate the three collections. Appropriate storage facilities and the conservation of the collection must be finalized. Once the collection is appropriately stored it would be declared as a Specifically Declared Collection.

THEREFORE it is agreed by the Parties that the purpose of this Memorandum of Understanding is to facilitate and record the agreement reached between the Parties as to the best possible integrated and co-operative management plan (and partnership –for the WSU Heritage Collections.

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WHEREAS THE PARTIES ACCORDINGLY AGREE AS FOLLOWS:**1. INTERPRETATION AND DEFINITIONS**

1.1 Headings to the clauses of this Memorandum of Agreement are for the purposes of convenience and reference only, and shall be used to assist with the interpretation of the terms of this Memorandum of Understanding.

1.2 Words importing:

- 1.2.1 any one gender includes the other gender;
- 1.2.2 the singular includes the plural and vice versa; and
- 1.2.3 natural persons include juristic entities and vice versa;

1.3 The following terms shall have the meanings assigned to them hereunder and expressions shall have corresponding meanings, namely:

1.3.1 "**Commencement date**" means the first date of signing of this Memorandum of Understanding by all three Parties;

1.3.2 "**WSU**" shall refer to the Water Sisulu University, a higher education institution, a juristic person in terms of the Higher Education Act 101 of 1997 (as amended)

1.3.3 "**SAHRA**" shall refer to the South African Heritage Resources Agency as established by section 11 of the National Heritage Resources Act 25 of 1999, a listed public entity listed in terms of the provisions of the Public Finance Management Act 1 of 1999;

1.3.4 "**ELM**" shall refer to the provincial - aided institution, the East London

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Museum which is administered in terms of Museums Ordinance 8 of 1975.

1.3.5 **"The Parties"** shall mean SAHRA, ELM and WSU.

1.3.6 **"the collection"** shall refer to the Broster beadwork Collection; a collection of bead work that has 3 000 pieces made up of beaded ornaments for the head, neck, body, arms, & legs. Many of the arm ornaments are of solid metal, or metal wire with a round foundation, as well as bangles of plastic and rubber seals from the lids of bottles. The rest of the collection comprises of clothing and accessories such as skirts, head-dresses, cloaks, different kinds of cloth and skin bags. All the clothing and accessories are decorated with beadwork and / or pearl buttons.

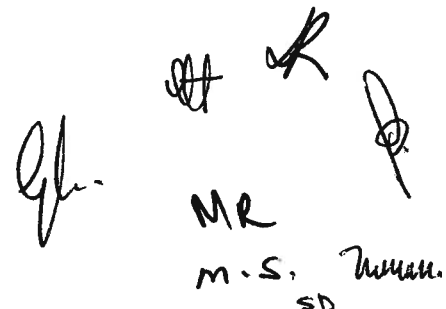
2. PURPOSE OF THIS MEMORANDUM OF UNDERSTANDING

2.1 The purpose of this MOU is to set out the basic principles according to which the Parties wish to conduct their future discussions and partnership in order to enter into a formal Agreement.

2.2 By signing this MOU the parties agree that they will work together in making sure that the goal of this project (conservation and storage of the collection) is realized and agree to negotiate in good faith and will endeavor to finalize the project by 28 February 2014.

3. PRINCIPLES TO BE INCORPORATED IN THE AGREEMENT

3.1 It is envisaged that the objectives of this project will be realized by way of concluding an MOU, which will *inter alia* address the following principals:



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- 3.1.1 To facilitate the co-operation and provide expert advice on the handling and the maintenance of the collection by WSU;
- 3.1.2 To provide advice on the collective protection of intellectual property, copyright, use of associated information of the Collection;
- 3.1.3 To enable conditions for the development and interpretation of the collection within the context of the developing and evolving cultural heritage;
- 3.1.4 To provide co-operation, advice and direction to future processes concerning the short-term and long-term management of the collection;
- 3.1.5 To provide long-term co-operation and advice that would serve to engage other stakeholders, local communities, and legal implications, security, research and insurance issues regarding matters associated with the WSU Collection;
- 3.1.6 To clearly identify respective roles and responsibilities of each of the parties with regard to the conservation and management as well as other issues in this MOU of the integral part of this heritage collection;
- 3.1.7 To provide advice and long-term policy direction on e.g. possible restrictions with regard to the export of original objects, their loan nationally and internationally, including the replication thereof so as to ensure that the WSU collection is adequately protected as per section 32 of the NHRA;
- 3.1.8 To provide advice and put measures in place to ensure that WSU collection comply with national and international legislation, policies

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and guidelines with regard to storage, exhibition, conservation and the like of this collection.

3.1.9 To identify intellectual property rights and obligations of the WSU collection and associated issues in respect of each of the Parties;

3.1.10 To identify any prohibition and harmful activity with regard to the Collection in respect of any of the Parties or any other person or Entity as may be necessary for the protection of the Collection; to agree on an effective management plan for the Collection;

3.1.11 To identify obligations and restrictions imposed by legislation governing each of the Parties so as to avoid any conduct which may conflict with any laws of the Republic of South Africa;

3.1.12 To provide time frames for the commencement and conclusion of the MOU between the parties involved.

3.1.13 To provide solutions in the event of breach by any of the other Parties, including what would constitute breach.

4. RESPONSIBILITIES OF ALL PARTIES:

4.1 The MOU is to ensure that the conservator's short-term, medium-term and long-term recommendations are implemented to avoid any further risk to the Collection. The SAHRA conservator would advise on international best practise as far as the management and conservation of the Beadwork Collection is concerned.

4.2 WSU, East London Museum and SAHRA will form a partnership which for the purpose of soliciting conservation, preservation and declaration of the Collection in the long-term.

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for the purpose of soliciting conservation, preservation and declaration of the Collection in the long-term.

- 4.3 ELM would provide training and support to WSU staff on the conservation methods and provide guidance as informed by SAHRA, where reasonably possible.
- 4.4 WSU would cover the cost incurred by ELM as a result of 3.1.3 above
- 4.5 Negotiations and discussions between the parties shall continue, and WSU will keep all Parties informed on short to long term developments regarding the project.
- 4.6 WSU shall co-ordinate and host meetings to ensure that the SAHRA appointed conservator advises on the construction of the storage space for the collection in the allocated building as the need may arise in order to advise on appropriate conservation standards for the Collection. In addition, there must be regular communication with the appointed conservator concerning envisaged plans.
- 4.7 To ensure that the SAHRA officials meet with the construction team at WSU and all staff responsible for the collection to identify, assess, define and classify the significance of the collection held by WSU.
- 4.8 SAHRA to commission a conservator who will develop Conservation Management Plan (CMP) that will assist in the conservation of the collection for future generation.

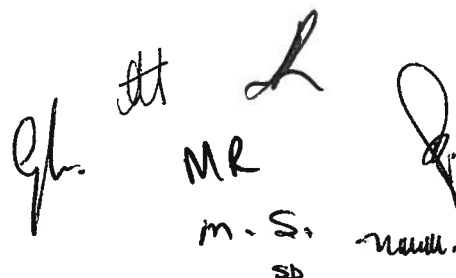
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5. GENERAL

- 5.1 No alteration, variation or cancellation of this Memorandum of Understanding or any of the terms hereof will be of any force or effect, unless put in writing and signed by the Parties.
- 5.2 This Memorandum of Understanding does not constitute any of the Parties as the agent or legal representative of the other for any purposes whatsoever and none of the Parties will be entitled to act on behalf of, or to represent or bind the other unless duly authorised thereto in writing.
- 5.3 The Parties shall, in dealings with each other, display utmost good faith and reasonableness and co-operate in the implementation of the MOU and undertake to do all such things, perform all necessary acts and procure the taking of all necessary steps, and sign all such other documents that may be necessary, incidental or conducive to give effect to the intention and the terms and conditions of this MOU, while at the same time not compromising themselves in respect of applicable legislation.
- 5.4 WSU will bear the costs in relation to the preparation and implementation of this MOU.
- 5.5 The terms of the MOU may be reconsidered or renegotiated at any stage if any of the Parties concerned desire this, provided that this is put into writing after agreement has been reached.

6. NOTICE AND DOMICILIUM CITANDI ET EXECUTANDI

- 6.1 The parties choose as their respective *domicilium citandi et executandi* for the purposes of legal proceedings and for the purpose of giving or


 The block contains several handwritten signatures and initials. On the left is a signature that appears to be 'Gh.'. To its right are the initials 'JH'. Further right is a large, stylized signature 'L'. Below these are the initials 'MR', followed by 'm-s.', and 'sb'. On the far right is another signature that looks like 'v. n. n. n.'.

sending any notice provided for or necessary in terms of this Agreement,
the following addresses:

THE SOUTH AFRICAN HERITAGE RESOURCE AGENCY:

111 Harrington Street
P.O. Box 4637
Cape Town
8000
Telephone: 021 462 4502
Fax: 021 462 4509

THE WALTER SISULU UNIVERSITY

Nelson Mandela site
Mthatha Campus

Telephone: 047-5312-2671/502-2200
Fax: 047-502-2970

THE EAST LONDON MUSEUM

319 Oxford Street
East London
5201
Telephone: 043 - 743 0686
Fax: 043 - 743 3127

6.2 Parties undertake to notify each other, in writing, of any change of its
domicilium or any other address.

6.3 Any notice and any communication or payment made by one party to the
other ("the addressee") shall be deemed to have been properly given, in
the absence of proof to the contrary

(a) if delivered by hand, on the date of delivery;

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- (b) if sent by prepaid registered post, 7 (seven) days after the date on which the notice is posted;
- (c) if sent to the addressee at its telefax number, on the date of transmission where it is transmitted during normal business hours of the receiving instrument, and on the next business day where it is transmitted outside those business hours, in either event provided that it has been confirmed by registered letter posted no later than ?

7. GOVERNING LAW AND DISPUTE RESOLUTION

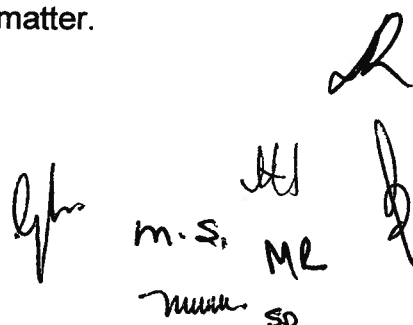
7.1 This Agreement shall be governed by and constructed in accordance with the laws of the Republic of South Africa.

7.2 In the event of a dispute arising from this Agreement, the Parties shall make every effort to settle such dispute amicably.

7.3 If the dispute is not capable of being settled between the Parties amicably, such dispute shall be elevated to the Senior Management / Executive or their duly assigned representatives for mediation purposes.

7.4 Should the dispute – despite such mediation – remain unresolved for a period of 30 (thirty) days after being referred, either party may declare such dispute a formal intergovernmental dispute by notifying the other party of such declaration in writing, in which event the Parties will follow the procedure as outlined in Section 42 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005).

7.5 Should the dispute still remain unresolved, the dispute will be adjudicated by a competent court with jurisdiction to hear the matter.

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Signed at MTHATHA on this the 4th day of MARCH 2014

AS WITNESSES

1. NMMbete Mumbete

2. S. Dhunraj

[Signature]

for and on behalf of Walter Sisulu University

Signed at MTHATHA on this the 4th day of MARCH 2014

AS WITNESSES

1. [Signature]

2. Thally THALLEY

[Signature]

for and on behalf of SAHRA

Signed at Cape Town on this the 06 day of February 2014

AS WITNESSES

1. K Gredwea

2. [Signature]

[Signature]

for and on behalf of East London Museum

Signed at EAST LONDON on this the 10 day of FEBRUARY 2014

[Signature]
m.s

Daily Dispatch (classified)
04/02/2014 p 13

**NOTIFICATION OF THE INTENTION TO DECLARE
THE BROSTER BEADWORK COLLECTION AS A
SPECIFICALLY DECLARED COLLECTION, IN TERMS
OF SECTION 32 OF THE NATIONAL HERITAGE
RESOURCES ACT, NO. 25 OF 1999**

This notice serves as an announcement of the intention of the South African Heritage Resources Agency (SAHRA) to declare the Walter Sisulu University Collection, in terms of Section 32 of the National Heritage Resources Act, No. 25 of 1999 (NHRA), as a specifically declared collection.

STATEMENT OF SIGNIFICANCE

The Joan Broster Beadwork collection at the Walter Sisulu University is a nationally significant beadwork collection, which dates back to 1932, and was collected between 1952 and 1966. Most of the beadwork, are associated with the abaNtshembu and were collected from Qebe in Engcobo, Eastern Cape. The beadwork collection form part of the remaining collection depicting the cultural history of the Qebe community and a beadwork tradition. The collection is made up of about 3 000 objects which were used for ritualistic and symbolic significance and personal adornment.

In terms of section 32 of the NHRA:

- (S13) No person may destroy, damage, disfigure or alter any heritage object; or disperse any collection which is Specifically Declared without a permit issued by SAHRA;
- (S15) It is the responsibility of the owner or custodian of a Specifically Declared Heritage Object/Collection to keep the Heritage Object/Collection in good condition and in a secure place;
- (S16) The owner or custodian of a heritage object/collection that is Specifically Declared must immediately report to SAHRA any loss of or damage to such a heritage object or any part thereof upon discovery of such loss or damage;
- (S17) No person may carry out any work of restoration or repair of a Specifically Declared heritage object, without a permit issued by a duly authorised representative of SAHRA;
- (S18) On application by the owner or custodian of a Specifically Declared Heritage Object/Collection, SAHRA may at its discretion assist in funding any restoration or repair work undertaken by a conservator approved by SAHRA;
- (S19) No person may export or attempt to export from South Africa any Heritage Object without a permit issued by SAHRA;
- (S20) No heritage object may be removed from South Africa other than through a customs port of entry, and the relevant export permit issued under subsection (19) must be produced to a customs officer before removal from South Africa is effected or allowed.

You are hereby given 60 (sixty) calendar days, in terms of Section 32 (5 (ii)(ii)) National Heritage Resources Act (No 25 of 1999), to make written submissions to: The South African Heritage Resources Agency should you wish to comment on the proposed declaration. Please make written submission to the following postal address: SAHRA, PO Box 4637, Cape Town 8001. Alternatively you may submit via email to the following mail addresses: hweldon@sahra.org.za, mgcal@sahra.org.za, or rnsact@sahra.org.za or via fax 021 462 4509.

Should you have any queries regarding the above, please contact Ms Heidi Weldon (Grading and Declarations Unit) at hweldon@sahra.org.za or Regina Isaacs (Heritage Objects Unit) at rnsact@sahra.org.za or Nolutha Ngcal at mgcal@sahra.org.za



South African Heritage Resources Agency