

# THE CONSERVATOR TRUST

**1. NAME**

The name of the Trust is THE CONSERVATOR TRUST

**2. FIRST TRUSTEES**

**3. POWERS OF TRUSTEES**

The Trustees shall have the powers and duties set forth in the Second Schedule annexed hereto.

**4. THE TRUST FUND**

The Settlor hereby gives and donates to the Trust as an irrevocable donation inter vivos and the Trustees hereby accept on behalf of the Trust; upon all the terms and conditions of this Deed, the following:

- (a) The sum of R10.00 (TEN RAND);
- (b) The Settlor reserves the right to transfer further assets to the Trust, either by way of donation or the form of a sale.

**5. BENEFICIARIES**

- (a) The beneficiaries for whom/which this Trust is created are:
  - (i) The owners of certain man-made structures which the Trustees in their entire discretion desire to conserve and restore in the context of their cultural environment.
  - (ii) The further owners of the type of structures as set out in the previous subparagraph, which the Trustees may designate from time to time in the future.
- (b) The rights of the beneficiaries shall be subject to the provisions set out in this Trust Deed and in the Second Schedule attached hereto. The Trustees shall stand possessed of the Trust Fund for the benefit of such beneficiaries.

**6. INCOME OF THE TRUST**

- (a) The Trustees may in their absolute discretion apply (whether by payment, allocation, credit in account or otherwise) all or any of the nett income of the Trust for the benefit of any one or more of the beneficiaries as they shall deem fit.
- (b) "Nett income" shall mean the income earned by the Trust after the trustees have paid or made provision for all costs, charges and taxation properly incurred in relation to the Trust funds and for other payments due by the Trust.
- (c) No profits or gains will be distributed to any person and the funds of the Trust will be utilized solely for investment or the objects for which it was established.

**7. CAPITAL OF THE TRUST**

- (a) The capital of the Trust shall remain vested in the Trustees as provided for in the Second Schedule hereto until such time as the Trust is terminated, as set out in paragraph 8 hereunder. On such termination of the Trust the whole of the Trust capital balance shall be paid by the Trustees in their sole discretion to a company, society or other association of persons (including a Trust) in the Republic of South Africa which itself is exempt from income tax in terms of Section 10(1)(cB)(1)(dd) of the Income Tax Act.
- (b) The Trustees may make any payment of either capital or accrued interest, or both, in cash or in specie, or partly in cash and partly in specie, and in so doing shall be entitled to value such assets distributed.

**8. TERMINATION OF TRUST**

The Trust shall be terminated when the Trustees in their sole and absolute discretion decide unanimously to terminate the Trust.

**9. THE SCHEDULES**

The Schedules attached hereto shall be regarded as being part and parcel of and incorporated in the Trust Deed itself. Wherever the masculine gender is used in this Deed, it shall also connote the feminine and neuter and vice versa and wherever the singular is employed, it shall also connote the plural and vice versa; unless the context clearly connotes otherwise.

**10. ACCOUNTANTS**

Messrs Coopers Theron du Toit are hereby appointed as Accountants to the Trust, subject to the powers of the Trustees set forth in the Second Schedule and shall be entitled to a reasonable remuneration for auditing the books of the Trust and for carrying out their duties under this Deed.

**11. AMENDMENTS**

This Trust Deed may not be amended unless all the then Trustees agree and consent thereto, provided that:

- (i) No benefits shall be conferred by such amendment on the Settlor or the Settlor's estate.
- (ii) Such amendment shall not enable or make it possible for the trustees to confer any benefit on the Settlor or the Settlor's estate.
- (iii) The rights of beneficiaries then existing shall not be prejudiced in any way.
- (iv) Any amendments to the Trust Deed will be submitted to the Commissioner for the South African Revenue Service.

**12. TRUST AREA**

This Trust shall be operative in the geographical region comprising the Municipal areas of Bellville, Brackenfell, Cape Town, Durbanville, Fish Hoek, Goodwood, Kraaifontein, Milnerton, Parow, Pinelands, Simonstown and the regional areas of Hout Bay and Constantia.

### **13. OBJECTIVES**

- 13.1 The sole object of the Trust is to engage in or promote the conservation and restoration of the cultural environment (as stated in the preamble of this Deed), which the Commissioner is satisfied is of a cultural nature as contemplated in Section 10(1)(cB) of the Income Tax Act, 1962 (as amended).
- 13.2 The above-mentioned object shall include, but not be limited to:
  - 13.2.1 The education of the public and creation of public awareness for the needs of conservation and restoration of the cultural environment.
  - 13.2.2 To interest individuals and organisations in the conservation, restoration, study and wise use of South Africa's cultural heritage and to gain their material support.
  - 13.2.3 The acquisition of movable or immovable property worthy of conservation or restoration in the opinion of the Trustees.
  - 13.2.4 To publish a newsletter or newsletters, journal or journals, book or books on such conditions as the Trustees in their discretion may impose.
  - 13.2.5 To grant loans, subsidies or awards for the restoration and/or preservation of property within the Trust area.
  - 13.2.6 To deal with the income in terms of the provisions of the foregoing.
  - 13.2.7 To deal with the Trust capital or assets and income in whichever way they may deem fit to further the object of the Trust as set out and any further objectives to the field of conservation as they may identify from time to time.

### **14. FINANCIAL ARRANGEMENTS**

- (a) The Financial Year End of the Trust shall be the last day of February.
- (b) Any income of the Trust not allocated within 12 months after the end of the financial year within which such income was generated, shall be deemed to form part of the capital of the Trust.
- (c) Any later additions to the Trust Fund, notwithstanding the source thereof, shall, if accepted by the Trustees, form part of the Trust Fund and shall, subject to the conditions attached to the addition, be held and administered by the Trustees.
- (d) During the currency of this Trust, the Trust assets will vest in the Trustees and they are compelled to take and keep all Trust assets, title deeds and documents relating to the Trust Fund in their safe possession and in safe custody and, where applicable, properly insured.
- (e) The Trustees shall be obliged to keep proper books of account of all the transactions of the Trust and such accounts shall be audited annually at the end of each financial year. The auditors of the Trust shall prepare the Balance Sheet of the Trust.
- (f) If the Settlor is taxed in respect of any income accrued to or received by the Trustees, the Trustees shall pay such tax from the income of the Trust, provided that, should the Settlor have paid such tax, he shall have a claim for the reimbursement thereof against the Trustees.

## FIRST SCHEDULE – TRUSTEES

1. The First Trustees shall be:
  - (a) DANIEL JOHANNES VAN DEN HEEVER
  - (b) GEORG HEINRICH HANSMANN
  - (c) PETER CECIL VISSER
  - (d) GABRIEL THERON FAGAN
2. It is the intention that there shall always be at least four Trustees, of which at least three Trustees shall be members of the Branch Committee of the Cape Town Branch of the Simon van der Stel Foundation, or its successors in title.
3. Upon the death or resignation of a Trustee or Trustees, the remaining Trustees shall exercise all rights relating to the offices of Trustee until a further Trustee is appointed to fill the vacancy. They shall be obliged to appoint a new Trustee to fill the vacancy within ten days of the death or resignation of the previous Trustee.

A quorum of Trustees shall be three Trustees.

If, for whatever reason there shall be no remaining Trustees, the auditors of the Trust shall, as required, be obliged to appoint at least four Trustees, wherever possible ensuring that at least two of such Trustees are members of the Branch Committee of the Cape Town Branch of the Simon van der Stel Foundation or its successors in title. The provisions of this paragraph shall apply mutatis mutandis from time to time, should such nominee or any successor to him cease to hold office, for whatever reason.
4.
  - (a) Any Trustee for the time being of the Trust shall be entitled to resign his position as such, provided that he is not acting as sole Trustee and provided further that he gives at least one month's written notice to the remaining Trustee(s) of his intended resignation.
  - (b) The Trustees from time to time holding office in terms of this Trust Deed shall be entitled to appoint, assume or substitute other persons as Joint Trustees and such persons shall have the same powers, rights, duties and obligations as granted to the Trustees appointed in terms of this Trust Deed.
5. A Trustee serving as such, either as a first Trustee, or as an additional or succeeding Trustee, is exempted from furnishing security to the Master of the Supreme Court or any other person or body, in terms of the Trust Property Control Act No 57 of 1988, or in terms of any other statutory provision, for the proper performance of his or her duties as Trustee.

## **SECOND SCHEDULE - POWER OF THE TRUSTEES**

1. The Trust Fund vests in the Trustees who shall not, however, enjoy beneficial ownership thereof but shall take, hold keep and administer the Trust Fund in furtherance of the objects set out in this Deed.
2. The Trustees shall not be held liable for damage suffered by any party to this Deed by reason of anything done or omitted by the Trustees, in and about their duties as Trustees, if such act or omission shall have been done honestly and reasonably and without deliberate bad faith on the part of the Trustees.
3. The Trustees may appoint one or more of them, or an agent, to perform specific acts on behalf of the Trust.
4. The Trustees may by unanimous resolution terminate the office of the Accountants appointed in this Deed and appoint another Accountant or other Accountants, who shall hold office until a further unanimous resolution of the Trustees in turn terminates such appointment and makes a fresh appointment; and wherever the word "Accountants" is employed in this Deed, it shall refer either to the original Accountants appointed in the Deed or to such substituted Accountant(s) holding the appointment to the Trust for the time being, as the case may be.
5. (a) The Trustees shall take an active interest in the affairs of the Trust and refer to each other or hold meetings to take resolutions for the conduct of the affairs of the Trust as often as they deem necessary.  
  
(b) It is stipulated that any decision of the Trustees must be unanimous.
6. Each resolution taken by the Trustees, or by the Trustee alone (if only one should remain), shall be reduced in writing and signed by all the Trustees then holding office who voted in favour of such resolution; and such writing shall be sent to and filed by the Accountants.
7. If a certified copy of any such resolution is required for the purpose of any contract or for the registration of any document or for any other purpose, the Accountants shall be the only proper persons to furnish a certified copy of such resolution.
8. No person other than one of the Trustees shall be entitled to regard any act of the Trustees as invalid because a resolution thereto was not duly taken before that act was done.
9. The Trustees shall always be at liberty to validate an act by resolution properly taken after such act has already been performed.

10. The Trustees may if they deem it necessary appoint a secretary to attend to any secretarial work their duties may involve, who may be one of the Trustees and who shall then be entitled to remuneration.
11. A Trustee's office shall terminate immediately upon his death or insolvency, or if he is placed under curatorship, or found guilty of any criminal offence involving dishonesty.
12. A Trustee's office shall terminate within two weeks of his written resignation being lodged with the Accountants unless such resignation is withdrawn in writing and his co-Trustees assent in writing to such withdrawal within the two weeks.
13. A Trustee may be removed from office by his co-Trustees if in their opinion he is incompetent, or displays no interest in the affairs of the Trust, or is mala fide in any act purported to be done on behalf of the Trust or has interests opposed to those of the Trust, or hinders the smooth working of the Trust, by written resolution arrived at after three weeks' notice to the Trustee in question, and signed by such co-Trustees and lodged with the Accountants.
14. Where a vacancy occurs among the Trustees and until such vacancy is filled in accordance with the provisions of this Deed, the remaining Trustees shall be entitled and obliged so long as they hold or he holds office to act in all matters on behalf of the Trust.
15. The Trustees shall cause proper books of account and records to be kept of all affairs and dealings of the Trust. These books and records shall be submitted to the Accountants to be audited and vouched at the end of each financial year, which shall be regarded as being the last day of February; and may be so submitted from time to time as often as the Trustees deem necessary. A copy of each Audited Balance Sheet shall be submitted to the Cape Town branch of the Simon van der Stel Foundation or its successors in title.
16. The Trustees shall have power to do all things on behalf of the Trust, as fully and effectively as any person free of all legal disability could do. Merely to facilitate proof of some of these powers which more usually have to be proved in connection with acts performed by the Trustees, and without derogating from the generality of the wide powers hereinbefore conferred on the Trustees, it is specially provided that the Trustees shall have power from time to time for and on behalf of the Trust or for and on behalf of any beneficiary in the name of the Trust to do or suffer to be done all or any of the things set forth in the following paragraphs viz:-
  - (1) To purchase, take on lease or in exchange, hire or otherwise acquire, hold, manage, work, develop the resources of, turn to account, alienate, sell, lease, exchange or encumber property of every description whether movable or immovable and rights of every description and whether corporeal or incorporeal.
  - (2) Deleted

- (3) To take any gift of all or any of the aforesaid things, whether subject to any special trust of not, and to deal therewith in every and any manner.
  - (4) To terminate the Trust, or to vary the terms of such Trust by Notarial Deed, which termination or variation shall be determined by the Trustees by unanimous resolution, provided that the variation shall not confer upon the beneficiaries any greater rights than are presently provided in the Deed. In the event of the Trust being terminated, the capital and accumulated income, if any, shall be distributed as provided for in the Trust Deed.
  - (5) Deleted
  - (6) Deleted
  - (7) Deleted
  - (8) To invest and reinvest monies or make deposits in any way and to realise such investments or deposits.
  - (9) To register any investment made by the Trust in the name of any one of the Trustees for the time being, as Nominee for the Trust.
  - (10) To accept donations of whatever nature to be administered by the Trustees subject to the terms and conditions of the Trust of such further or other conditions as may be imposed by the person making the donation.
17. Wherever the word "Trustees" is used in this Deed, unless the context clearly indicates the contrary, it shall refer to both the original Trustees appointed in this Deed or the their lawful successors appointed in terms of the provisions of this Deed from time to time, and equally to two remaining Trustees, or one remaining acting alone where one or more of the Trustees have vacated their office for any reason whatsoever, until such office is again filled in terms of the provisions of this Deed.
18. Deleted in its entirety.

This is the amended version as per Fairbridge Arderne & Lawton Attorneys June 2001