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TRUST DEED

THREE FOUNTAINS TRUST

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1. PREAMBLE

1. Heiveld Co-operative Limited (“the co-operative”) is a registered co-operative whose members are small farmers cultivating rooibos tea in the Nieuwoudtville district;
2. Certain members of the co-operative are disadvantaged in relation to other members, in that they are not able to participate in farming activities to the same extent, or to the extent to which such members would otherwise be capable, because they do not own or have the use of sufficient agricultural land;
3. The co-operative wishes to found a trust to acquire the farm Kranskloof in the Nieuwoudtville district, in order to facilitate the access of its members to land, as well as to conduct certain other operations which are consistent with the objects of the co-operative;
4. Suitable persons have been identified to act as the initial trustees of the trust, including three members of the co-operative, who have been duly nominated by the co-operative act in this capacity.
5. Now therefore it is agreed between the founder (duly represented by in terms of the annexed resolution of the board of directors) and the initial trustees (whose names are recorded in clause 5.1 below) to constitute a trust in accordance with the terms and conditions set out below.

2. ESTABLISHMENT OF TRUST

- 2.1 A trust is hereby established in the name Three Fountains Trust.
- 2.2 The trust shall continue for an indefinite period, which shall be terminable by the trustees in accordance with this trust deed.

3. DEFINITIONS

- 3.1 In this deed, the following words or phrase shall have the meanings assigned to them below:
 - 3.1.1 “Beneficiaries” shall mean the members for the time being of Heiveld Co-operative Limited;
 - 3.1.2 “Community” shall mean the historically disadvantaged section of the community in and around Nieuwoudtville.

3.1.2 "Founder" shall mean Heiveld Co-operative Limited.

3.1.3 "Co-operative" means the Heiveld Co-operative Limited and "members" in relation to the co-operative means those persons who have been admitted to membership in terms of the co-operative's constitution.

4. "This deed" shall mean this trust deed as originally framed and as amended from time to time.

3.1.5 "Trust" shall mean the trust constituted in terms of this deed.

5. "Trust Fund" shall mean the fund constituted by the initial donation in terms of this deed, and such assets as the trust may thereafter acquire or administer.

6. "Trustees" shall mean the trustees for the time being of the trust, appointed in terms of clause ;

3.2 Words importing the singular number shall include the plural number (and vice versa) and words importing one gender only shall include the other two.

4. **INITIAL DONATION AND TRUST FUND**

4.1 The founder hereby undertakes to donate to the trust the sum of R100.

4.2 The donation referred to in 4.1 shall be irrevocable, and shall immediately vest in the trustees and is subject to the terms of this trust deed.

4.3 The trust fund so constituted may be increased by such assets or funds as may from time to time be vested in the trustees, and it shall not be necessary to amend this deed in order to do so.

4A. **OBJECTS OF TRUST**

4A.1 The main object of the trust is to facilitate the access to land by members of the co-operative, particularly by those members who are disadvantaged relative to the other members because they do not own or have the use of agricultural land sufficient for their needs, and having particular regard for the need of women members to obtain access to the land.

2. In furtherance of the main object and the further objects set out below, the trust aims to acquire and hold the farm Kranskloof or any other suitable agricultural land, and to draw up a land use plan, to be approved by the members of the co-operative. In terms of this land use plan, a proportion of the land acquired will be made available for cultivation by the members, a

proportion of the land will be made available for cultivation by the co-operative itself, and/or for land to be made available for potential new members of the co-operative, and a proportion of the land will be conserved or made available for eco-tourism purposes.

3. The further objects of the trust are as follows:
 - 3.1. to establish facilities to service members of the co-operative;
 - 3.2. to establish education and training facilities, for members of the co-operative and for the community;
 - 3.3. to promote the sustainable use of the land;
 - 3.4. to establish an eco-tourism project, or to facilitate the establishment of such a project by the community;
 - 3.5. to increase the participation of the community in the co-operative, by making land available to new members of the co-operative
 - 3.6. to promote economic development and self-employment in the community.
- 4.4 The income and property of the trust must be applied solely towards furthering its objects, on a non-profit basis. The trust may therefore not make any payment or transfer, directly or indirectly, to any trustee, or any relative of any trustee, except in respect of his/her employment with the trust, or in return for any services actually rendered to the trust by him/her.

5. **THE TRUSTEES**

1. **Initial trustees**

The initial trustees of the trust shall be as follows:

5.1.1

5.1.2

3.

5.1.4

5.1.5

2. Composition of trustees

It is recorded that the initial trustees whose names appear in clause 5.1.1 to 5.1.3 are members of the co-operative who have been nominated to serve as trustees for a period of three years, but who are eligible to be nominated again by the co-operative at the expiry of this period.

5.3 Minimum Number of Trustees

There shall at all times be not less than three (3) trustees, of whom at least two must be members nominated by the co-operative. If at any time there are for any reason less than the required number of Trustees, then the remaining trustees shall be entitled to co-opt as many persons to fill the vacancies as will ensure compliance with this clause.

5.4 New Trustees

5.4.1 A majority of trustees may from time to time appoint additional trustee(s), provided that the number of trustees shall not exceed six (6).

5.4.2 Any successor appointed as trustee in terms hereof shall, upon his written acceptance of appointment, be deemed to be vested with and bound by all the powers and duties of a trustee as set out in this Deed.

5.5 Alternates

Alternate trustee(s) may be nominated to act in the event of the temporary absence or inability to act of any trustee.

5.6 Removal of Trustee

A trustee may be removed by resolution approved by a majority of trustees : provided that this shall not preclude such trustee from invoking the disputes procedure as set out below.

5.7 Disqualification

The following persons shall be disqualified from acting as a trustee:

5.6.1 A person who would be disqualified from acting as a director of a Company in terms of the company laws in force from time to time;

5.6.2 A person whose estate has been sequestrated or liquidated;

5.6.3 A person who is declared to be mentally ill or incapable of managing his affairs;

5.6.4 A person who has been convicted of any crime involving dishonesty or has been sentenced to imprisonment without the option of a fine.

5.8 Vacancies

5.8.1 The office of a trustee shall become vacant if:

5.8.1.1 s/he becomes disqualified in terms of Clause 5.6;

5.8.1.2 s/he resigns in writing, in which case the resignation shall take effect not less than 60 days after it is received by the trust;

3. not less than two-thirds of the trustees resolve a trustee be removed, at a meeting convened for this purpose.

4. In the case of a member of the co-operative that is nominated to serve as trustee, the co-operative resolves to remove him or her as trustee, or is he or she ceases to be a member of the co-operative.

5.8.2 If there are at any time no trustees in office, the auditors of the trust, and if there be no auditors then appointed, the last appointed auditor, shall make the necessary nomination for appointment; and take all steps necessary to arrange for such appointment to be confirmed.

5.8.3 No act of the trustees shall be invalid merely by reason of a temporary vacancy in their number, provided that such vacancy shall not endure for a period longer than 180 days.

5. POWERS OF TRUSTEES

5.1 General

The trustees shall have such powers as they deem necessary to effectively administer the trust and promote its objects. In addition to all powers enjoyed by them under the common law or by statute, they shall have the general powers set out in Annexure A hereto.

5.2 Principle of Equity:

The powers of the trustees must be interpreted and implemented in accordance with an overriding principle of fairness and equity. In terms of this principle the trustees must try and ensure that the benefits received by

any member must be proportionate to the disadvantage he or she would otherwise experience, and that no member should receive a disproportionate benefit.

5.3 **General**

The trustees shall have the power to establish separate parts of the trust fund, with distinct objects and purposes, and to keep separate books and to account separately in respect of each such part of the trust fund, or to cause to be established one or more other trust, association, company or other legal entity, and to transfer funds and assets to such entity/ies, if in the opinion of the trustees they will be better able to achieve the objects of this deed by doing so.

6. **TRUSTEES MEETINGS**

6.1 **Office-bearers**

Upon their appointment and thereafter after every cycle of two years the trustees must elect a chairperson and vice-chairperson.

6.2 **Meetings**

The chairperson may convene a meeting of trustees at any time, but must do so not less than once every six (6) months, or upon a requisition signed by any two (2) trustees.

6.3 **Notice**

Not less than fourteen (14) days written notice must be given of meetings, except in the case of special meetings, where not less than seven (7) days written notice may be given;

6.4 **Quorum**

Three (3) trustees present at a meeting convened in terms of this deed shall constitute a quorum;

6.5 **Procedure at meetings**

The chairperson or in his/her absence the vice-chairperson shall preside at trustees meetings.

6.6 **Voting**

Decisions shall be made by a simple majority of trustees present. In the event of an equality of votes, the person presiding shall have a second or casting vote.

6.7 A resolution in writing signed by all the trustees shall be as valid and effectual as if it had been passed at a meeting of the trustees duly called and constituted;

6.8 **Minutes**

The secretary must keep a record of those present at trustee's meetings, and record the minutes of meetings. The chair must sign these minutes after they have been approved. The minutes must then be circulated to all trustees and be available for inspection by any member of staff.

7. **FINANCE**

7.1 **General**

Proper books of account of the trust must be kept. These books, together with all other papers and documents connected with or relating to the trust, must be kept at an office of the trust or such other place as may be agreed upon by the trustees and must at all times be accessible to each of them.

7.2 **Bank Account**

The trust must open an account at a bank or building society which shall be the operating account of the trust. If need be it may open an investment account, for the purpose of the investment of funds. Other accounts may be opened with the prior approval of the auditors appointed in terms of 11.6 below.

7.3 **Receipts**

All monies received by or on behalf of the trust must, on receipt thereof, be deposited in the trust's bank account.

7.4 **Payments**

All payments to be made on behalf of the trust must be made by cheque drawn on the trust's bank account, and signed by two trustees.

7.5 **Cash expenditure**

Despite the provisions of Clause 7.4 the trustees may from time to time maintain a cash float in an amount approved of by them in consultation with

the auditor of the trust, and make payments from such float not exceeding the sum so approved.

7.6 Auditors

The trustees may appoint an auditor or auditors who shall hold office for such period and subject to such conditions as may be determined by the trustees, and who may from time to time be replaced by the trustees, it being the intention, however that there shall at all times be an auditor of the trust. The auditors must have free and unhindered access to all the books of account, vouchers and records of the trust, and shall be entitled to require from the trustees, employees and agents of the trust such information and explanations as may be necessary for the performance of their duties as auditors.

7.7 Financial year

The financial year of the trust shall be from 1 March to 28 February of each year, and financial accounts must be prepared as at the end of each financial year.

7.8 Annual Financial Statements

The books of account and financial affairs of the trust must be audited, and the auditors must prepare a set of financial statements of the trust in respect of each financial year. A copy of the audited financial statements shall be submitted to each trustee and made available for inspection to the members of the community upon request.

8. DISPUTES

8.1 In the event of a serious disagreement amongst the trustees regarding the interpretation of this deed, any trustee shall be entitled to declare a dispute. Such declaration shall be in writing, stating the issue in dispute, and shall be addressed to the trust.

8.2 The trustees shall consider such declaration within two weeks of receiving it. Should the trustee not be able to resolve the dispute to the satisfaction of the person(s) declaring a dispute, the dispute shall either be referred to a mediator or arbitrator.

8.3 In the event that it is decided to refer the dispute to a mediator, the trustees must agree on a suitable mediator, and to the costs of such mediation. A mediator may recommend an appropriate resolution of the dispute.

- 8.4 In the absence of agreement regarding a mediator, the dispute may be referred to arbitration by such suitably qualified person/s as the trustees may mutually agree upon.
- 8.5 In the event that the dispute is referred to arbitration, the arbitration shall be held on an informal basis, and the arbitrator shall have the power to determine the procedure to be adopted subject to principles of natural justice.
- 8.6 The arbitrator may base his/her award not only upon the applicable law but also upon the principle of equity and fairness, having due regard to the nature of the matter in issue and the objects of the trust.
- 8.7 The decision of an arbitrator shall be final and binding upon all parties and capable of being made on Order of Court on application by any of them.

9. EXEMPTIONS & INDEMNIFICATION

- 9.1 The trustees shall be exempt from any obligation to furnish security in connection with their appointment and/or for the due administration of the trust to the Master of the Supreme Court or any other person, body or authority, as provided for in any law now in force or to come into force relating to trusts and the protection of trust monies, and the Master and any such other person, body or authority are hereby directed to dispense with such security.
- 9.2 A trustee shall not enter into a contract with the trust in which he or his business has an interest, or in his capacity as trustee, act in such a manner as to promote the interests of his/her employer, or any business in which he has an interest, save if such trustee has made full disclosure to the other trustees of any such interest.
- 9.3 No trustee shall be liable to make good to the trust or any member any loss occasioned or sustained by any cause, howsoever arising, except such loss as may arise from or be occasioned by a failure to show the degree of care, diligence and skill contemplated in section 9 of the Trust Property Control Act, No 57 of 1988, or his own personal dishonesty or other willful misconduct or gross negligence.
- 9.4 Subject to the provisions of any relevant statute:
- 9.4.1 no trustee shall be liable for any act of dishonesty or other misconduct committed by any other trustee unless he knowingly allowed it or was an accessory thereto;

9.4.2 the trustees shall be indemnified out of the trust fund against all claims and demands of whatsoever nature that may be made upon them arising out of the exercise or purported exercise of any of the powers hereby conferred upon them;

9.4.3 if the trustees in good faith make any payment to a person(s) whom they assume to be entitled thereto under the terms of this deed and it be subsequently found that some other person or persons is entitled thereto hereunder, the trustees shall nevertheless not be responsible for the monies so paid;

10. **AMENDMENTS**

The provisions of this deed may be amended by a resolution adopted by a majority of trustees voting at a meeting called specially for that purpose: provided further that thirty (30) days written notice of such proposed amendment is given to all trustees.

11. **TERMINATION OF TRUST**

11.1 This trust may be terminated by a majority of trustees at a meeting specially called for this purpose provided that:

11.1.1 not less than thirty (30) days notice of such meeting is given to all trustees.

11.1.2 in the event of a decision being taken to terminate the trust, then, if there remains any assets whatsoever after satisfaction of all the debts and liabilities of the trust such assets shall be paid or transferred to a trust(s) or body(ies) operating on a non-profit basis which the trustees, in their discretion, consider to have similar objects to the objects set out in this deed.

SIGNED AT:

DATE OF SIGNATURE:

FOR THE FOUNDER:

AS INITIAL TRUSTEES:

1.

2.

3.

4.

5.

AS WITNESSES 1:

2:

ANNEXURE A : TRUSTEES POWERS

1. **Acquisition of Property**

To acquire and hold, by purchase, lease, donation, bequest, in exchange or in any lawful manner whatsoever, any property (whether moveable or immovable, corporeal or incorporeal) and to sell, lease, donate, give in exchange or in any lawful manner dispose of such property.

2. **Investment**

From time to time, to invest all or any part of the trust fund, including the proceeds of any realisation of any property of the trust, in or with the financial institutions as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 or in first or further mortgage or notarial bonds over immovable or movable property, and to realise and vary any such investments from time to time;

3. **Donations**

To raise and accept donations or payments from any person or organization. Any donations or payments so accepted shall be deemed to form part of the trust fund in accordance with clause 3.3.;

4. **Borrowing**

To borrow from time to time such sums of money, on such terms and conditions as the trustees consider fit, with power from time to time to consent to any variations or alterations of the terms of any such borrowing, and to provide security for such borrowing;

5. **Disbursements**

To disburse the trust fund or any portion thereof in accordance with the provisions of this deed, in order to achieve the objects of the trust;

6. **Bank Accounts**

To open and operate accounts in banking institutions, building societies and other financial institutions, subject to the provisions of this deed, and to utilize such accounts for the purposes of the trust;

7. **Trustee Expenses**

To reimburse themselves from the trust fund for expenses actually incurred by them in the course of their duties;

8. Employment of Staff

To employ staff on a casual, temporary, or permanent basis to carry out the objects of the trust upon such terms and conditions as may from time to time be agreed, to pay their remuneration, and to terminate such employment;

9. Legal Proceedings

To call in, recover, collect and sue for all monies owing to the trust, to institute or defend legal proceedings and to sign all deeds, powers of attorney and other documents that may be necessary for any purpose;

10. Legal Documents

To sign and execute transfers and cessions of property, bonds, consents to cancellations of bonds, leases, servitudes and other deeds and powers of attorney relating thereto, and generally all documents of any nature whatsoever as may be necessary from time to time in connection with the acquisition, realisation, disposal or encumbrance of assets of or for the trust and the carrying out of the terms of this deed;

11. Contracts

To enter into contracts on behalf of the trust and to adopt and to accept benefits under contracts entered into for the benefit of the trust, whether before or after the creation of the trust;

12. Loans

To make secured or unsecured loans, or donations to the members of the beneficiary community, or to a person or persons other than a trustee or any relative of a trustee, for any purpose consistent with the objects of the trust, upon such terms and conditions as they may consider fit: provided that if any trustee or relative of a trustee is also an employee of the trust, then s/he shall not, in their capacity as an employee, be excluded from the benefit to which s/he would otherwise be entitled;

13. General

To do all things reasonably ancillary to the foregoing powers in order to efficiently and effectively to achieve the objects of the trust.

14. Requirements of Commissioner for Inland Revenue

Notwithstanding anything to the contrary in this trust deed and in further compliance with the anticipated requirements of the Commissioner for Inland Revenue:

- 14.1 The trustees shall not engage in any profit-making scheme involving trading operations or any speculative transactions;
- 14.2 The trust shall not:
 - 14.2.1 acquire any immovable property solely for the purposes of letting and deriving an income therefrom;
 - 14.2.2 let any immovable property of the trust, save such immovable property as may be donated to the trust;
 - 14.2.3 permit or condone the rent free occupation of any land or buildings owned by it from time to time by any person or organization, save for purposes which are consistent with the objects of the trust;
- 14.3 The trustees shall not accept any donation which is unilaterally revocable at the instance of the donor thereof, or which seeks to impose a condition on the trust which is inconsistent with the terms and conditions of this deed.
- 14.4 The trust shall be obliged to appropriate or expend, in the furtherance of its objects, at least 75% of the net income earned by the trust from any source (including donations), within a period of twelve months reckoned from the end of the financial year during which such net income was accrued, unless the office of the Receiver of Revenue to which the trust submits its annual tax returns has given specific approval for the retention of any such income.
- 14.5 The trustees shall not be entitled to any remuneration in respect of their services to the trust.

