

# Trust Deed

for

## Reclaim Camissa

### Contents

1.	ESTABLISHMENT OF THE TRUST .....	2
2.	NAME OF TRUST .....	2
3.	DEFINITIONS AND INTERPRETATIONS.....	2
4.	OBJECTS OF THE TRUST .....	2
5.	INCOME AND PROPERTY OF THE TRUST .....	3
6.	TAXATION OF THE TRUST .....	3
7.	TRUST FUND.....	3
8.	TRUSTEE POWERS.....	4
9.	BOARD OF TRUSTEES.....	4
10.	INITIAL TRUSTEES .....	5
11.	APPOINTMENT OF TRUSTEES .....	5
12.	TRUSTEES VACATING OFFICE .....	5
13.	SECURITY.....	6
14.	PROCEDURE AT BOARD MEETINGS .....	6
15.	ANNUAL GENERAL MEETINGS.....	7
16.	NOTICES.....	7
17.	BANK ACCOUNT.....	8
18.	SIGNATURES.....	8
19.	FINANCIAL YEAR END.....	8
20.	ANNUAL NARRATIVE AND FINANCIAL REPORTS.....	8
21.	AMENDMENTS, NAME CHANGE AND DISSOLUTION.....	8
22.	INDEMNITY .....	9

## **1. ESTABLISHMENT OF THE TRUST**

A nonprofit trust is hereby established for the object set out in this Trust Deed.

## **2. NAME OF TRUST**

The name of the Trust is:

***Reclaim Camissa***  
(the Trust)

## **3. DEFINITIONS AND INTERPRETATIONS**

In this Trust Deed, unless the context clearly indicates otherwise, the following terms shall have the following meanings assigned to them:

- 3.1 The Initial Donor – CARON VON ZEIL
- 3.2 The Trust - The Trust constituted in terms of this trust deed.
- 3.3 The Trustees - The individuals, nominated and authorised as the Initial Trustees and the individuals who are subsequently nominated and authorised as Trustees in terms of this Trust Deed and the provisions of the Trust Property Control Act of 1988.
- 3.4 The Trust Fund - The capital and income periodically accumulated in favour of the Trust.
- 3.5 The Beneficiaries – The general public who will benefit from the protection of the natural environment, including flora, fauna or the biosphere
- 3.6 The masculine shall include the feminine, and the singular shall include the plural, and terms referring to persons shall include juristic persons, and vice versa in all cases.

## **4. OBJECTS OF THE TRUST**

The Trust is a non-profit organisation of a public character, established for the object of:

- 4.1 Providing a stewardship for the waters that flow from Table Mountain to the Atlantic Ocean, through the implementation of a program that will reclaim Cape Town's central city connection to the water, by ensuring that the public is able to enjoy the right to safe and sufficient water; and that this water remains in good ecological health.
- 4.2 Increasing access to water as a scarce economic resource and assist in reducing

pressure on the Greater Cape Town Municipal Area's water resources.

- 4.3 Facilitating the development of the framework through institutional and civic collaboration, to advance an effective and sustainable system for the socio-ecological link of Cape Town's CBD.
- 4.4 Advocating for the preservation, restoration, and transformation of the (environmental and historical) heritage of the lost spaces associated with the water system, into a web of public landscapes where people will be enabled to learn about our past, present and our future in an integrated way.
- 4.5 Promoting and collaborating to reclaim not only the vital natural resource, but the related land, infrastructure and associated cultural landscape; through the implementation of key projects as 'bite size chunks' of the program; and promote these sites as places of interest to both Capetonians and visitors.
- 4.6 Enacting public awareness by co-ordinating, facilitating and implementing an environmental and cultural education campaign connected to this water, that will capture the imagination of the public.
- 4.7 Procuring the funding for ongoing expenses in attaining the objectives of the organisation.

## **5. INCOME AND PROPERTY OF THE TRUST**

- 5.1 The Trustees and other office-bearers have no rights in the property or other assets of the Trust solely by virtue of their being Trustees or office-bearers.
- 5.2 The income and property of the Trust shall be used solely for the promotion of its objects and shall not be paid or distributed directly or indirectly to any person, or to any Trustee or office-bearers, except as reasonable compensation for services actually rendered to the Trust or reimbursement of actual costs or expenses reasonably incurred on behalf of the Trust.

## **6. TAXATION OF THE TRUST**

The Trust intends to apply to the Commissioner for the South African Revenue Service for approval as a Public Benefit Organisation in terms of section 30 of the Income Tax Act. The provisions set out in **Schedule A** shall bind the Trust.

## **7. TRUST FUND**

- 7.1 The initial capital constituting the Trust Fund shall consist of an amount of One Hundred Rand (R100.00) which the Initial Donor hereby undertakes to pay to the Trust, immediately after the bank account has been opened in the name of the Trust.

- 7.2 The Trust Fund constituted under this paragraph may be increased, from time to time, by accruals of income and/or capital nature through donation, or in any other lawful manner.

## **8. TRUSTEE POWERS**

The powers of the Trustees shall include the powers to:

- 8.1 To institute or defend any legal or other proceedings and to settle any claims made by or against the Trust,
- 8.2 To prudently invest funds of the Trust,
- 8.3 To buy, attain, maintain, manage, lease, sell, or in any way deal with property and assets of the Trust,
- 8.4 To donate and transfer the property and assets of the Trust to public benefit organisations with similar objectives,
- 8.5 To borrow and to use the property or assets of the Trust as security for borrowing,
- 8.6 To execute any act or deed in any deeds registry, mining titles or other public office,
- 8.7 To exercise all the management and executive powers that are normally vested in the Board of Directors of a Company, and
- 8.8 To exercise all the powers and authority of the Trust in South Africa and in any other part of the world.

## **9. BOARD OF TRUSTEES**

The Trustees of the Trust shall be constituted into a Board of Trustees (“the Board”) which shall be responsible for promoting the objects of the Trust and implementing the provisions of this Trust Deed.

## **10. INITIAL TRUSTEES**

The initial Trustees shall be:

- 10.1 Prof. Anthony Richard Turton
- 10.2 Ms. Caron von Zeil
- 10.3 Mr. David John Crombie
- 10.4 Prof. David Dewar
- 10.5 Mr. Mahmood Suleman Limbada
- 10.6 Mr. Mokena Makeka
- 10.7 Ms. Sheryl Marian Ozinsky
- 10.8 Mrs. Yolanda Marie Methvin

## **11. APPOINTMENT OF TRUSTEES**

- 11.1 The Trust shall have at least five [5] Trustees with full voting rights.
- 11.2 The Board may appoint suitable individuals as Trustees with full voting rights.
- 11.3 Trustees must immediately appoint a suitable individual to fill any vacancy that has reduced the number of trustees below the minimum number of five [5].
- 11.4 If the board consist of less than five [5] trustees, the only resolutions that can be issued by the Board during that period should be directed towards filling the required vacancy and protecting the interests of the Trust.
- 11.5 Trusteeship may be terminated by two-third majority resolution adopted by a duly convened and quorate board meeting, provided that prior to the adoption of any such resolution, the Trustee/s facing possible termination shall be afforded an opportunity to address the Board in such manner as it deem appropriate; that is to say, either, verbally or in writing, and either personally or through a representative, with reference to the reasons for the proposed termination.
- 11.6 The Board, from time to time and in its sole discretion, may co-opt any individual for any period as it deem fit, as non-voting advisor, if they believe such person will assist the Board in achieving the objects of the Trust.

## **12. TRUSTEES VACATING OFFICE**

The office of a Trustee shall be vacated if s/he:

- 12.1 Dies, or submits a written resignation as envisaged in the Trust Property Control Act;  
or
- 12.2 Becomes of unsound mind and being incapable of executing his or her fiduciary duties; or
- 12.3 Is declared insolvent; or

- 12.4 Becomes for any other reason, legally disqualified from acting as a Director of a Company, or Trustee of a Trust; or
- 12.5 Is removed in terms of a resolution properly passed in accordance with 11.5 above.

### **13. SECURITY**

No Trustee, whether acting jointly or singularly, shall be required to furnish security for the proper performance of her or his functions as required in terms of section 6 (2) (a) of the Trust Property Control Act, No. 57 of 1988.

### **14. PROCEDURE AT BOARD MEETINGS**

Board meetings shall comply with the following requirements:

- 14.1 The Trustees must appoint a Chairperson and may elect from their number a:
- a) Secretary, and
  - b) Treasurer
- 14.2 The Chairperson may at any time convene such a meeting of the Board; and shall be obliged to convene a board meeting upon the requisition of any two Trustees to do so.
- 14.3 The quorum necessary for the transaction of any business by the Board shall be one-half plus one of the Trustees with full voting rights, being not less than five (5) Trustees.
- 14.4 Resolutions put to the vote shall be decided by means of a show of hands or by ballot. A vote shall be held only if demanded by the Chairperson or not less than two-thirds of those present at the Meeting and entitled to vote. The result of the vote shall be the resolution of the meeting.
- 14.5 At meetings of the Board, each Trustee present or represented shall have one (1) vote.
- 14.6 Questions arising shall be decided by a majority of votes. In the event of an equality of votes, the Chairperson shall have a second or casting vote.
- 14.7 Proper minutes shall be kept of the proceedings of the Board, and a record of the Trustees present at each meeting. Such minutes shall be signed by the Chairperson, and shall be available at all times for inspection or copying by any Trustee on reasonable notice to the Secretary.
- 14.8 Except for amending the Trust Deed or the name of the Trust or dissolving the Trust (in respect of which matters a meeting must be held) as provided for in clause 21, a resolution signed by all the voting Trustees shall be as valid as if it had been passed at a duly convened meeting of the Board.

- 14.9 The Board may delegate any of its powers or functions to a committee or Trustees provided that: such delegation and conditions are reflected in the minutes for that Board meeting, at least one Trustee serve on the committee, the Board in advance approves all expenditure of the committee or trustees, and the Board may at any time revoke the delegation or amend the conditions.
- 14.10 Any actual, potential or perceived conflict of interest on the part of any Trustee, on a matter pertaining to the Trust, must be disclosed in writing to the Board which shall record such conflict of interest in the minutes of the Board meeting. Such Trustee may be requested by the Board to state his/her position in the matter or to respond to pertinent questions, but shall not vote or use his/her influence on the matter and shall not be counted for purposes of determining a quorum for the meeting where the voting takes place.
- 14.11 All matters pertaining to litigation, security measures, contractual negotiations, employment matters and any other matters deemed confidential by the Trust, should be treated as confidential and only the actual decisions may be disclosed to the general public.

## **15. ANNUAL GENERAL MEETINGS**

- 15.1 The first Annual General Meeting of the Trust shall be held within eighteen (18) months of the date upon which this Trust is registered with the Master of the High Court. Subsequent Annual General Meetings shall be held within six (6) months of the end of each financial year. The business of each Annual General Meeting shall include the following:
- a) The presentation and adoption of the Annual Narrative and Financial Report;
  - b) The (re-)appointment of Accounting Officer or Auditors; and
  - c) Such other matters as may be considered appropriate by the meeting.
- 15.2 Annual General Meetings of the Trust shall be conducted and regulated in accordance with the procedures provided for in terms of clauses 14.3 – 9 above.

## **16. NOTICES**

- 16.1 Notice of all meetings provided for in this Deed, shall be delivered personally, or sent by prepaid post or addressed by e-mail transmission, to the last address notified by each Trustee or in any other manner as the Board may determine.
- 16.2 The accidental omission to address notice/s to any person shall not invalidate the proceedings of any meeting.
- 16.3 If posted, notices shall be deemed to have been received seven (7) days after posting.

- 16.4 A member present in person at any meeting shall be deemed to have received notice of such meeting

## **17. BANK ACCOUNT**

The Board shall open a bank account in the name of the Trust with a registered bank and shall ensure that all monies received by the Trust are deposited therein as soon as possible after receipt.

## **18. SIGNATURES**

All cheques, promissory notes and other documents requiring signature on behalf of the Trust shall be signed in such manner as the Board has resolved in writing provided that at least two (2) signatories authorised by the Board sign such documents.

## **19. FINANCIAL YEAR END**

The Trust's financial year end shall be the last day of March.

## **20. ANNUAL NARRATIVE AND FINANCIAL REPORTS**

- 20.1 The Board must ensure an Annual Narrative Report describing the Trust's activities are compiled and that proper records and books of account which fairly reflect the affairs of the Trust are kept and conform to the generally accepted accounting principles.
- 20.2 The Board must further ensure that within six months of the financial year a report is compiled by an independent practicing auditor registered in terms of the Auditing Profession Act or an accounting officer stating: whether or not the financial statements of the Trust are consistent with its accounting records, the accounting policies are appropriate and have been appropriately applied with in preparing the financial statements and the Trust has complied with the financial provisions of this Deed.
- 20.3 Copies of the Annual Narrative Report and the Audit Report shall be made available to all the Trustees as soon as possible after the close of the financial year.

## **21. AMENDMENTS, NAME CHANGE AND DISSOLUTION**

- 21.1 This Trust Deed may be amended, the name of the Trust may be changed, and the Trust may be dissolved by a resolution passed at a meeting convened for that purpose supported by two-thirds of the Trustees in office at the relevant time, being not less than the minimum number reflected in clause 11.1 above.
- 21.2 At least fourteen (14) days notice must be given to all the Trustees stating the nature of the resolution to be proposed.
- 21.3 Upon the dissolution of the Trust, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst the Trustees, but shall be transferred to one or more other non-profit organisations of a public character which the Trustees (failing which, any division of the High Court) may consider appropriate, and which have the same or similar objectives to those of the Trust; and should the Trust be an approved public benefit organisation to;
- a) Any similar public benefit organization which has been approved in terms of section 30 of the Income Tax Act,
  - b) Any institution, board or body which is exempt from tax under the provisions of section 10 (1)(cA)(i) of the Income Tax Act, which has its sole or principal object the carrying on of any public benefit activity,
  - c) Any department of state or administration in the national or provincial or local sphere of government of the Republic.

## **22. INDEMNITY**

- 22.1 Subject to the provisions of any relevant law, trustees, office-bearers or appointed delegates of the Trust shall be indemnified by the Trust for all acts executed in good faith on behalf of the Trust.
- 22.2 Subject to the provisions of any relevant statute, no Trustee or other office bearer of the Trust shall be liable for the acts, receipts, neglects or defaults of any other Trustee or office bearer, or for any loss, damage or expense suffered by the Trust, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

**SCHEDULE A****REQUIREMENTS FOR APPROVAL AS PUBLIC BENEFIT ORGANISATIONS**

As provided for in Clause 6 of this deed, the Trust intends to apply to the Commissioner for the South African Revenue Service (the Commissioner) for approval as a Public Benefit Organisation in terms of Section 30 of the Income Tax Act the Trust shall:

1. Be required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Trust.
2. Ensure that no single person directly or indirectly controls the decision making powers relating to the Trust.
3. Is prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established.
4. Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
5. Submit to the Commissioner a copy of any amendment to this trust deed.
6. Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner.
7. Not pay any remuneration to any employee, office bearer, member or other person, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
8. Has not and will not use its resources directly or indirectly to support, advance or oppose any political party.
9. Comply with such reporting requirements as may be determined by the Commissioner.
10. Ensure that any books of account, records or other documents relating to its affairs are:
  1. where kept in book form, retained and carefully preserved by any person in control of the Trust, for a period of at least four years after the date of the last entry in any such book; or
  2. where not kept in book form, are retained and carefully preserved by any person in control of the Trust, for a period of four years after the completion of the transaction, act or operation to which they relate.

Signed at Cape Town on 9 March 2010.

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**Initial Donor & Trustee:** Caron von Zeil

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**Trustee:** Prof. Anthony Turton

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**Trustee:** Mr. David Crombie

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**Trustee:** Prof. Dave Dewar

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**Trustee:** Mr. Mahmood Limbada

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**Trustee:** Mr. Mokena Makeka

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**Trustee:** Ms. Sheryl Ozinsky

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**Trustee:** Mrs. Yolanda Busbee Methvin

AS WITNESSES :

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2. \_\_\_\_\_