PROTOCOL NO. 146

NOTARIAL DEED OF DONATION AND TRUST

KNOW ALL MEN WHOM IT MAY CONCERN:

THAT on this 17th day of JULY 2003 before me

LAZELLE MELANIE ARON

notary public, by lawful authority duly sworn and admitted, practising at DURBAN in the province of KWAZULU-NATAL personally came and appeared:

ANNA VAN EYSSEN

being duly authorised thereto by virtue of Powers of Attorney which are filed with the Minute in my Protocol, and granted to her by:

PATMALOSINI NAICKER and ANTHONY MICHAEL O'NEILL in their capacity as duly authorised directors of **HAWAAN INVESTMENTS (PROPRIETARY) LIMITED** (No 2001/000257/07)
acting as Founder of the Trust
(hereinafter referred to as "the founder")

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and

PATMALOSINI NAICKER
Born on 6 June 1947

and

ANTHONY MICHAEL O'NEILL
Born on 26 July 1948

In their personal capacities

and

THAVANESAN CHETTY
Identity No. 660811 5079 08 3
In his capacity as duly appointed nominee of
MORELAND DEVELOPMENTS (PROPRIETARY) LIMITED
No. 1981/012378/07

and

GUY NICOLSON
Identity Number 490401 5106 08 0

and

WILLIAM DUTHIE
Identity Number 210624 8004 08 3

(hereinafter referred to as "the trustees")

AND the appearer declared that WHEREAS:

1. The Founder is about to become the registered owner of the Hawaan Forest as is hereinafter defined.

2. The Founder acknowledges that the Hawaan Forest is an environmentally sensitive area and has commissioned an Environmental Management Plan for the area.

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3. The Founder has agreed to create a trust on the terms and conditions hereinafter set out for the purposes of assisting it as owner of the Hawaan Forest in the management of the area and in the implementation of the Environmental Management Plan;

4. The trustees have agreed to accept office as such and to administer the trust herein created.

IT IS HEREBY AGREED THAT:

The founder does hereby settle upon, give and donate to the trustees (who together with their respective successors for the time being appointed or assumed pursuant to this deed are hereinafter referred to as "the trustees") an amount or R100,00 (ONE HUNDRED RAND) together with such further amounts as may be required from time to time (hereinafter with all additions and accretions thereto referred to as "the trust fund") to have, hold and receive the same and the benefits, receipts, advantages, profits and interest accruing upon the trust and for the objects hereinafter described subject to the following terms and conditions:

1. **Definitions**

In this deed unless the contrary appears from the context the following expressions shall have the following meanings:

1.1 Words importing the singular case shall include the plural case and vice versa and words relating to any gender shall include the other gender and vice versa;

1.2 "the assets, "the trust assets", "the trust", "the capital", "the trust capital" and "The Hawaan Forest Conservation Trust" shall be interchangeable and shall mean and include:

1.2.1 all assets and investments at any time or times hereafter ceded or transferred to and accepted by the trustees by way of addition or accretion to the assets hereby settled, whether by the founder or by any other person and either inter vivos or by last will;

1.2.2 the assets and investments from time to time representing the aforesaid assets and investments or any of them or any part thereof as may be occasioned by the application of any of the provisions of this deed;

but excludes the immovable property described as the Hawaan Forest which it is intended will remain in private ownership and will not be transferred to the Trust

1.3 "the trustees" shall mean and include the original trustees or any persons assumed by or succeeding them as trustees.

1.4 "the Hawaan Forest" and "the area" shall be interchangeable and shall mean the portion of Portion 417 of Lot 31 No 1560, Registration FU, Province of Kwa Zulu Natal identified on the plan annexed hereto marked "A" which is owned by the Founder;

1.5 "the EMP" shall mean the Environmental Management Plan duly approved of by the Department of Agriculture and Environmental Affairs, in respect of the Hawaan Forest;

1.6 "the Development" shall mean The Hawaan Forest Estate residential development to be developed by Hawaan Investments on the area of land adjacent to the Hawaan Forest;

1.7 "the Founder", "the Owner" and "Hawaan Investments" shall be interchangeable, and shall mean Hawaan Investments (Proprietary) Limited (No. 2001/000257/07) and its successors in title and/or assigns;

1.8 "the Municipality" shall mean the eThekwini Municipality or its successor in law;

1.9 "the HOA" shall mean the Home Owners Association to be created in respect of the Development;

1.10 "Moreland" shall mean Moreland Developments (Proprietary) Limited (No. 1981/012378/07);

1.11 "WESSA" shall mean the Wildlife and Environmental Society of South Africa or its successor;

1.12 The headings used in this document are used merely for the sake of convenience and shall be disregarded when this document is interpreted.

2. **Name of trust**

The trust created in terms of this deed shall be known as THE HAWAAN FOREST CONSERVATION TRUST (hereinafter referred to as "the trust").

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3. Principle object

3.1 The principal object of the Trust is to advise and assist the owner in the implementation of and management of the Hawaan Forest in accordance with the EMP.

3.2 Whilst it is envisaged that the Owner will be responsible for at least an initial period of 6 months for the management of the Hawaan Forest and the implementation of the EMP, as soon as the Trust starts receiving an income stream from the collection of levies, the costs of management of the Hawaan Forest and the implementation of the EMP, shall be paid for out of the Trust.

4. Trustees

4.1 The Body of Trustees of the Trust which shall be chaired by the duly appointed Director of Hawaan Investments (Pty) Ltd or its duly appointed agent shall at commencement of the Trust be made up of the following representatives:

4.1.1 two directors of Hawaan Investments for so as long as Hawaan Investments remains the registered owner of the Hawaan Forest, and thereafter 2 duly authorised representatives of its successor in title for the time being;

4.1.2 two duly qualified environmentalists, the first of whom shall be Bill Duthie and Guy Nicolson;

4.1.3 one duly authorised representative of Moreland for so long as Moreland(and/or The Tongaat – Hulett Group Limited) remains the registered owner of the neighbouring portions of the Hawaan Forest and thereafter a duly authorised representative of its successor, the first of whom shall be Thavanesan Chetty.

4.2 The trustees named at the commencement of this deed shall be the first trustees of the trust;

4.3 there shall at all times be a minimum of three trustees acting under this deed;

4.4 the Trustees in office from time to time shall be entitled under a written instrument to appoint further trustees from the following ranks:

4.4.1 the Environmental Manager of the Municipality;
4.4.2 one duly appointed representative of WESSA;
4.4.3 one duly authorised official of the Municipality's Planning Department;

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and

4.4.4 upon its formation two duly elected representatives of the HOA.

4.5 the trustees in office from time to time shall have the right under a written instrument to appoint any person as trustee to take the place of any trustee dying, resigning or vacating office for any reason provided the replacement trustee/s is appointed from the ranks of and in accordance with, the provisions of sub-clauses 4.1 and 4.4.

5. Trustees' powers

In addition to the powers vested in them by law the trustees shall have the widest powers and without prejudice to the generality of the aforegoing they may exercise the following powers in furtherance of the principle object of the Trust:

5.1 **To invest** To invest or reinvest the proceeds of any assets or any monies of the trust in their hands from time to time in immovable and movable property and in regard to the latter, in Government or municipal securities, banking institutions, registered building society investments or first mortgage bonds providing, however, that the founder shall have the right to authorise the trustees to invest in securities other than the aforementioned;

5.2 **To vary investments** To vary any investments made in terms of sub-clause 5.1 for other investments of like nature;

5.3 **To manage the trust assets** To exchange, sell, alienate, lease or otherwise deal with the trust assets of whatsoever nature and wheresoever situate, as they in their sole and absolute discretion may deem fit, and in exercising any powers of sale, whether conferred in this sub-clause or otherwise, they shall be entitled to cause such sale to be effected by public auction or by private treaty and in such manner and on such terms and conditions as they in their sole and absolute discretion may deem fit and, in exercising any powers of lease, they shall be entitled to cause any property to be let at such rental, for such period and on such terms and conditions as they, in their sole and absolute discretion may deem fit;

5.4 **To repair or improve** To pay out of the capital or, at their discretion, out of the income of the trust assets for any repairs, improvements or other works of whatsoever nature erected on the Hawaan Forest or on any buildings or other structures situated thereon;

5.5 **To exercise voting powers** To exercise all the voting powers accruing to them in terms of this Trust Deed and/or attaching to any securities at any time forming part of the trust assets, if any;

5.6 **To compromise and settle** To compromise and settle for such consideration and upon such terms and conditions as they may deem advisable all matters arising in relation to the trust;

5.7 **To consent to any re-organisation, arrangement or reconstruction** To consent to any re-organisation, arrangement or reconstruction of any company the securities of which form, from time to time, the whole or any part of the trust assets and to consent to any reduction of capital or other dealings with such securities as they may consider advantageous or desirable;

5.8 **To borrow money** In their sole and absolute discretion, to borrow money for the purposes hereof at such time or times, at such rate of interest or other consideration for any such loan and upon such terms and conditions as they may deem desirable. Such borrowings may be made from any suitable person or persons and, should they consider it advisable so to do, the trustees may secure the payment of any such loan by pledging or mortgaging the trust assets or any part thereof or by any other security device. Any such loan or loans may be extended, renewed or repaid from time to time as the trustees may deem to be in the best interest of the trust;

5.9 **To pay rates, taxes, etc** To pay out of the income or, at their discretion, out of the capital of the trust assets all taxes, duties and other impositions lawfully levied or imposed on the trust assets or income of the trust assets or any part thereof or which may be imposed on the trustees in respect of matters arising out of the trust;

5.10 **To apportion** To make all apportionments in the accounts of the trust which may be necessary;

5.11 **To employ agents** To employ accountants, attorneys, agents, brokers, or such professional or other assistants including environmental consultants as they may consider necessary to transact all or any business of whatsoever nature required to be done pursuant to this trust deed and to pay all such fees, charges and expenses so incurred as a first charge;

5.12 **To determine questions** To determine all questions and matters of doubt which may arise in the course of their management and administration of the Trust;

5.13 **To open a banking account** To open a banking account in the name of the Trust which shall however be operated by the Founders;

5.14 **To reimburse themselves for expenses incurred** To reimburse themselves and pay and discharge out of any income accruing from the trust, all expenses which may be incurred by them in or about the execution of the trust and powers conferred upon them by this trust deed;

5.15 **To charge the cost of secretarial services** To have any secretarial services, which they consider necessary for the administration of the trust, carried out at the cost of the trust;

5.16 **To pay costs** To pay out of the trust assets all expenses (including legal fees) incurred in the formation of the trust;

5.17 **To engage in legal proceedings** To institute or defend legal proceedings and to sign all deeds, powers of attorney and other documents that may be necessary in the circumstances;

5.18 **To execute documents** To execute any act, deed or document necessary to give effect to the principle object of the Trust including the granting of permits for access to the Hawaan Forest under the ownership of the Founders for organised groups, educational purposes and/or members of the HOA or such other persons and/or groups approved of by the Trustees from time to time;

5.19 **To accept further gifts** To accept and acquire for the purpose of the trust any gifts, bequests or payments from any person, firm, company or association that may be given, bequeathed or paid to them as an addition or with the intention to add to the funds hereby donated to them, any additions so accepted and acquired shall be deemed to form part of the trust fund to be administered and dealt with subject to the terms of this deed;

5.20 **To collect levies** To collect a levy from each member of the HOA to be formed to enable the Trustees to discharge their obligations in terms of this Trust Deed;

5.21 **To adopt and impose regulations** To adopt and impose regulations and guidelines for the management and use of the Hawaan Forest pursuant to the EMP and under the permitted use in terms of entrance to the forest;

5.22 **To appoint Environmental Consultants** To appoint Environmental Consultants to assist and advise the Trustees in the discharge of their duties in terms of this Trust Deed;

5.23 Generally, to perform all acts which may be necessary or desirable in order to give effect to the principle object of the Trust and provided all such acts and powers are exercised and duly authorised in accordance with the provisions of this Trust Deed.

6. Administrative functions and procedures in respect of meetings

6.1 Subject thereto that the trustees consistently carry out the objects of the trust, they are entitled, in their administration of the affairs of the trust, to follow such policy guidelines and lay down procedural and administrative steps as they from time to time deem desirable.

6.2 Any trustee is at all times entitled to convene a meeting of trustees by giving 14 (fourteen) days notice to all trustees in cases of emergency.

6.3 The required quorum for any meeting of trustees shall be the majority of serving trustees together with one Director or duly appointed agent of Hawaan Investments (Pty) Ltd.

6.4 All decisions and actions of the trustees shall be taken on a majority vote.

6.5 Any deadlock which may arise between the trustees shall be submitted to an arbitrator who shall be a senior advocate practising at the Durban bar and who shall, failing agreement between the trustees be nominated by the chairman or acting chairman of the Society of Advocates of South Africa, Natal Provincial Division. Any trustee shall be entitled to appear personally or by an agent, duly appointed, but without any legal or other professional assistance before the arbitrator which arbitration shall be conducted as informally as possible. The decision of the arbitrator shall be final and binding on the trustees.

6.6 A written resolution signed by all the trustees shall have the same legal standing as a resolution passed at a properly constituted meeting.

6.7 The trustees shall minute all resolutions concerning the affairs of the trust and in this regard shall follow the same procedures as prescribed for companies in terms of section 204 of the Companies Act 61 of 1973, as amended.

6.8 The trustees shall meet every three months for the first year of the Trust's existence, such meetings to take place on the following allocated dates but not necessarily in this order:

25 March
24 June
29 September; and
18 December

and thereafter twice yearly on the 24th day of March and 29th day of September respectively, in order to dispose of the business of the Trust.

6.9 The trustees may authorise one or more of them to sign all documents for official purposes as may be required for the administration of the trust and for the execution of any transaction in respect of the affairs of the trust on behalf of the trustees, and any resolution which is certified by the Chairman of the Board of Trustees as being a true extract from the minutes of a particular meeting of the trustees, shall have the legal effect of a resolution signed by all of the trustees.

6.10 Any trustee shall be entitled in writing to appoint any other person (including one of the other trustees) to act and vote on his behalf at all or any specified meetings of the trustees provided that the person so appointed shall, if he is not one of the other trustees, previously be approved of in writing by the other trustees.

6.11 At the first meeting of Trustees a chairperson shall be appointed from the ranks of the trustees appointed in accordance with sub-clause 4.1.2.

7. Funding of the Trust

7.1 For at least the first 6 (six) months from the date of establishment of the Trust, the Founder shall manage the Hawaan Forest and provide all necessary funding to the Trust.

7.2 As soon as the Trust starts receiving an income stream out of the levies collected by the HOA and paid over to the Trust, all costs incurred in the management of the Hawaan Forest shall be paid for out of the Trust Funds.

8. Accounts and Financial Administration

8.1 The trustees shall keep a true and correct account of their administration of the Trust and the affairs of the Trust shall be subject to an annual audit by auditors appointed by the owner.

8.2 The Owner shall administer the Trust funds on behalf of the Trustees.

8.3 All expenses incurred by the Trust shall be in furtherance of the principle object of the Trust and the owner shall not be obliged to give effect to any decisions of the Trustees regarding expenditure unless the expenditure is for the purposes of the enhancement and/or maintenance of the Hawaan Forest.

9. Duration of the trust

This trust shall remain in full force and effect for an indeterminate time.

10. Resignation and disqualification of trustees

A trustee shall be entitled to resign by giving written notice thereof and a trustee shall be deemed to have vacated office as such in the following circumstances:

10.1 If he becomes disentitled in law to hold office as such; or

10.2 if he ceases for any reason to be qualified for appointment as a director of companies; or

10.3 if he is absent from the Republic of South Africa for more than three (3) months without leave of absence from the board of trustees; or

10.4 if he is called upon by a resolution passed by at least 75% (seventy fie percent) of the trustees at a meeting called for that purpose to vacate his office as trustee;

10.5 if he fails to present himself in person for 3 consecutive meetings of the Trustees.

11. Waiver of security

No original or subsequent trustee appointed or assumed under the above provisions shall be required to furnish security to the Master of the Supreme Court of South Africa or any other official in terms of the Trust Property Control Act 57 of 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 any security whatever in connection with or arising out of his appointment as such.

12. Fees for professional services rendered

Any attorney, accountant or broker acting as a trustee under this deed shall be entitled for his own benefit or for the benefit of any firm or company of which he may be a member, to charge normal fees for professional services rendered to the trust or in connection therewith.

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13. Remuneration

No trustee shall be entitled to remuneration from the trust in respect of him fulfilling his duties as a trustee; provided that with the specific approval of the trustees in each instance, voting in the same manner as provided in clause 6, a trustee may be refunded his out-of-pocket expenses necessarily incurred in attending a meeting of the trustees but such expenses shall be limited to his actual travelling expenses and his accommodation and subsistence expense.

14. Indemnity

14.1 No trustee shall be answerable for or liable to make good any loss sustained by the trust save and except such loss as may arise from or be caused by his own dishonesty. Furthermore, the trustees shall be indemnified by and from the trust against any loss or damage or claim whatsoever which might arise against them or any of them out of the bona fide administration by them of the trust.

14.2 The trustees shall be indemnified out of the trust fund against all claims 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 subject, however, to the provisions of section 9 of the Trust Property Control Act 57 of 1988.

15. Amendment of the trust deed

The trustees by unanimous resolution, shall be entitled by supplementary deed or deeds to add to, alter or amend any of their terms of the trust; provided always that such alterations, addition or amendment does not constitute any revocation of the trust or its terms and provided it does not constitute a right of conferring on the trust fund, the income or any portion thereof, otherwise than for the objects of the trust as hereinbefore set out and provided further that the capital and/or income of the trust shall always be used for the purpose and objects of the trust as set out in clause 2 hereof.

16. Registration of trust deed

The trustees undertake to register this deed of trust and any amendment thereof or supplement thereto with the Master of the High Court of South Africa in terms of the Trust Property Control Act 57 of 1988 and the trustees shall be entitled to pay the costs of and incidental to the preparation and registration of this deed and any further requisite deeds out of the income and, if necessary, out of the capital and/or income of the Trust.

17. Acceptance clause

AND the appearer declared that:

17.1 The founder shall be irrevocably bound by the terms and conditions set out in this deed;

17.2 The trustees hereby accept their appointment as trustees subject to the terms and conditions set out in this deed.

THUS DONE AND EXECUTED at DURBAN on the day month and year first aforewritten in the presence of the undersigned witnesses.

AS WITNESSES:

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QUOD ATTESTOR

NOTARY PUBLIC