

DATED \_\_\_\_\_ 2003

\_\_\_\_\_

TRUST DEED

- between -

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and

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and

.THIS TRUST DEED is made the \_\_\_\_\_ day of \_\_\_\_\_ Two Thousand and

**BETWEEN:**

..... of Post Office Box Number ... in the Republic of Kenya and ..... of P O Box ... in the Republic of Kenya (hereinafter together called the "Promoters"); and

(a) ..... of Post Office Box Number \_\_\_\_\_ Mombasa aforesaid (b) ..... ..of Post Office Box Number .... Mombasa aforesaid (c) ... of Post Office Box Number , Mombasa aforesaid (d) ..... of Post Office Box Number \_\_\_\_\_ , Mombasa aforesaid and (e) ..... of Post Office Box Number \_\_\_\_\_ , Mombasa aforesaid (hereinafter collectively called the "Trustees" and individually to as a "Trustee").

**WHEREAS:**

The Promoters are possessed of and otherwise well and sufficiently entitled to the sum of KShs 1,000.00 (Kenya Shillings One Thousand).

The Promoters are desirous of forming a charitable trust the objects of which are set out in clause 3.1

The Trustees are persons of good standing residing in the Republic of Kenya and are satisfied that these objectives can be achieved by constituting a trust on the terms as set out herein.

The Trustees have agreed to become the first trustees of this trust as testified by their being parties to and executing this Deed.

For the purposes of carrying out the said objects the Promoters desire to create a charitable trust for the general protection and care of animals.

**NOW THIS DEED WITNESSES** as follow:

### **Definitions and Interpretation**

In this Deed (including its recitals) the following expressions shall, unless the context otherwise requires, have the following meanings:

<b>"Charitable"</b>	means charitable (and exclusively charitable), according to the laws for the time being of Kenya;
<b>"Policy Document"</b>	means the document prepared by Kenya Society for the Protection and Care of Animals attached to this Deed and marked "A";
<b>"Trust"</b>	shall have the meaning and the name ascribed to it in clause 2.1;
<b>"Trust Fund"</b>	means the property specified in the First Schedule all monies, investments and other properties and assets (including donations) afterwards paid or transferred by any person or persons to or so as to be under the control of and (in either case) accepted by the Trustees as additions to the Trust Fund all accumulations (if any) of income held as an accretion to capital and the money investments and property and additions;
<b>"Trustees"</b>	means and includes the trustees or trustee for the time being of this Deed and Trustee mean any one of the Trustees;
<b>"The Managing Trustee"</b>	means a Trustee appointed from time to time by the Trustees to manage the day to day affairs of the Trust.

In this Deed, unless the context otherwise requires, any reference to:

Sections, sub-clauses, clauses and the schedules shall be construed as references to sections, sub-clauses and clauses of and the Schedules to this Deed;

A "person" shall be construed as a reference to any legal or natural person, partnership, trust, company, joint venture, agency, government or local authority department or other body (whether corporate or un-incorporate);

Words and expressions importing the masculine gender shall include the feminine gender and neuter and vice versa and the singular number shall include the plural number and vice versa;

Any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or such re-enactment;

References to the "Trustees" shall include the survivor or survivors of them or the trustee or trustees for the time being of the trusts constituted by this Deed.

References in this Deed to the income of the Trust Fund shall extend to any interest or other income now accrued or accruing but not yet actually payable in respect of the Trust Fund.

### **The Trust**

The Trustees **HEREBY DECLARE** that with effect from the date hereof they constitute themselves as Trustees of the trust known or referred to as "**VALERIE MOTTRAM TRUST**".

The Promoters have paid to the Trust the amount stated in the First Schedule.

The Trust shall continue perpetually and shall be irrevocable.

### **Objectives of the Trust**

The objects of the Trust shall be wholly for the purposes of the protection and care of animals and as more particularly set out in the Policy Document.

In furtherance of its objects but not otherwise the Trust may:

Acquire by purchase, lease, exchange or otherwise and develop lands, buildings and hereditaments of any tenure or description and any estate or interest therein, and any right over or connected therewith and so situate and turn the same to account as may seem expedient;

Construct, reconstruct, alter, improve, decorate, fit-out and maintain workshops, offices, shops, buildings and conveniences of all kinds;

Procure to be written and print, publish, issue and circulate either gratuitously or otherwise such papers, books, periodicals, pamphlets or other documents as shall further the said objects;

Negotiate and enter into agreements with donors, commercial entities and government agencies to procure funding for the attainment of the objects of the Trust;

Borrow or raise money on such terms and on such security as the Trustees shall deem fit;

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Arrange and provide for or join in arranging providing for the holding of workshops, meetings, lecturers and seminars; and

Collect and disseminate information on all matters affecting the said objects and exchange such information with other bodies having similar objects whether in the Republic of Kenya or overseas.

### **The Trust Fund**

The Trustees shall stand possessed of the Trust Fund upon with and subject to the trusts powers and provisions declared and contained in this Deed and the Trustees shall be at liberty at any time to accept money investments assets or property of whatsoever nature and wheresoever situate from any person or by the provision of any other trust or otherwise to the intent that the same shall be held by or on behalf of the Trustees as an accretion to the Trust Fund and from and after the date of such acceptance the trustees shall hold the same as provided herein.

Without prejudice to clause 4.1 the Trustees may receive donations, grants, gifts and assistance in all forms and of any nature including, without limitation, land, buildings, shares, cash, negotiable instruments and financial instruments, equipment, fittings, furniture and books for the purposes of achieving the objects of this Trust.

The trustees may in their absolute discretion either allow the Trust Fund or any other property owned by the trust or any part or parts thereof to remain as actually invested or may sell, exchange, call in or convert into money the same and may invest the net sale proceeds thereof in the name of the Trust in or upon such investments as the Trustees may think proper.

The Trustees may manage or superintend the management of any properties or premises for the time being forming part of the Trust Fund with power to erect, pull down, rebuild and to repair any of the properties comprised in the Trust Fund.

The Trust Fund shall be invested by the Trustees as they may deem fit powers of investing and transporting investments in all respects as the trustees may consider desirable from time to time.

Subject to such consents as are required by law the Trustees may borrow money whether or not on the security at the Trust Fund or any part of it with power to charge any part of the capital or income with the repayment of the money so borrowed.

### **Appointment of Trustees**

There shall not be more than Five (5) and not less than Three (3) Trustees.

Without prejudice to any statutory or other power of appointing new trustees, a new trustee may be appointed by a resolution of a meeting of the Trustees and, whenever a new Trustees is appointed, a memorandum of his/her appointment shall be prepared and signed by the Trustees present at that meeting. Upon any appointment of a new Trustee or Trustees all monies and investments representing capital or income of the Trust Fund shall be paid or transferred to such new Trustee or new Trustees jointly with the other Trustees of

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this Deed for the time being and all acts, deeds and things necessary for such purposes shall be done and executed.

Any new trustees so appointed will have the same powers and rights as if he/she was originally appointed as trustee under these presents.

### **Acceptance of office by new Trustee**

Every new Trustee shall before acting in the trusts of this Deed sign in the minute book for which provision is made a declaration of acceptance and willingness to act in the trusts of this Deed.

### **Resignation, disqualification and removal of Trustees**

A Trustee shall cease to be a Trustee of the Trust when he resigns from his trusteeship on giving two (2) months notice in writing of his intention to do so and upon expiration of such two (2) months notice he shall be discharged from the trusts declared in this Deed and cease to be a trustee of the Trust.

If any of the following events happens in relation to any Trustee, namely, that he:

becomes bankrupt or makes arrangements with his creditors; or

becomes incapable or unfit through illness, insanity, incapacity or otherwise to act; or

acts by commission or omission contrary to the objects of the Trust; or

without good reason or consent of the majority of the Trustees fails to attend Trustees' meetings for a period of twelve (12) consecutive months if at least three (3) meetings are held during such period; or

dies;

in the event of any Trustee ceasing to reside in the Republic of Kenya;

that Trustee shall automatically be discharged from the trusts declared in this Deed and cease to be a trustee of the Trust.

A Trustee may be removed by a resolution passed unanimously at a meeting of the Trustees and immediately upon the passing of such a resolution to remove that Trustee, that Trustee shall stand discharged from the trusts declared in this Deed and cease to be a trustee of the Trust.

### **Bank accounts**

The Trustees may from time to time upon and maintain in the name of the Trust bank accounts at such bank or banks as they shall from time to time decide and may at any time pay any monies forming part or the Trust Fund to the credit of any such accounts and all cheques and orders shall be signed by at least two (2) of the

Trustees or as may be determined by the Trustees from time to time. All payments, donations and subscriptions to the Trust shall be paid into the Trust's bank account(s).

#### **Trustees powers to employ officers, etc**

The Trustees shall have the power from time to time to appoint one of their numbers as a Chairman, Secretary and Treasurer as the Trustees from time to time decide. The said Chairman, Secretary and Treasurer shall be appointed without remuneration and shall be dismissible by a resolution passed at the meeting of the Trustees where the majority of the Trustees voting thereat upon show of hands vote in favour of the removal of such Trustee as a Chairman, Secretary or Treasurer.

The Trustees shall have the power from time to time to appoint, employ or dismiss officers, secretaries, clerks or other employees as may be required for the purposes of the Trust and pay them such remuneration as may be agreed upon and shall be at full liberty to employ and pay any clerk or other agent or servant to transact all or any business of whatever nature required to be done in pursuance if the trusts hereof **PROVIDED ALWAYS THAT** no Trustees for the time being hereof maybe appointed to any salaried office of the Trust.

#### **Expenses, delegation, amendment and incorporation**

The Trustees may defray out of the Trust Fund or the income thereof all costs, charges and expense of or incidental to the administration of the Trust hereof or in relation thereof (including without prejudice to the generality of the foregoing the Trustee's remuneration and any taxes duties fines or imposts that may become payable by them in their representative capacity in respect of the income or asses of the Trust).

The Trustees may delegate all or any of the powers and authorities vested in them to a committee or committees of one (1) or more of them together with any other person or persons or of any other persons not being Trustees whom the Trustees may select and at any time revoke either wholly or partially the authority so conferred. The Trustees may appoint one (1) or more persons as agents or managers without remuneration with powers to exercise all or any of the powers, authorities and discretion vested in the Trustees by this Trust.

The Trustees may in their absolute and unfettered discretion amend, alter, delete and incorporate additional provisions to this Trust except that the Trustees shall have no power to delete any of the object clauses hereinabove.

The Trustees may apply for the incorporation of this Deed under the provisions of Trustees (Perpetual Succession) Act (Cap. 164) in due course of time.

#### **Liabilities of Trustees**

It is declared that in addition to any powers or provisions for the indemnity or otherwise for the protection of the Trustees conferred by or contained in this Deed the Trustees shall be entitled to exercise any powers conferred by law in trustees if an in so far as a contrary intention as not expressed in this Deed and to have the benefit of any indemnity or other protection given by law to trustees.

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None of the Trustees shall be liable for the act, neglect, default, fraud or misconduct of any agent, officer, servant, or other person employed by them or otherwise engaged or occupied in connection with the Trust notwithstanding that it may not have been strictly necessary or expedient for any person to be so employed, engaged or occupied or by reason of any mistake or omission made in good faith or by reason of any other matter or thing except willful fraud or wrong-doing on the part of the Trustees.

In the professed execution of the trusts and powers hereof or any matter relating thereto neither Trustees nor any one of them shall be liable for any loss to the Trust Fund arising by reason of:

any action taken or omission in good faith by the Trustees;

any decision taken in good faith not to take out or procure any insurance, indemnity or protection against any risk or eventuality (however material) or to discontinue or reduce or not to increase the level of any such insurance indemnity or protection already in effect;

the failure, depreciation or loss of any investment made in good faith;

any mistake or omission made in good faith; and

any other matter or thing except willful and individual fraud or wrong-doing on the part of the Trustee who is sought to be made liable.

None of the Trustees shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.

The Trustees shall be indemnified out of and by the Trust and the income thereof against:

all claims and demands of whatsoever nature that may be made upon them arising out of the existence or activities of the Trust or the exercise or purported exercise of any of the powers conferred upon them by this Deed or otherwise in connection with the Trust;

any duties taxes fines or impositions of any nature whatsoever for which they may be liable in their capacity as Trustees or by reason of their being Trustees whether the same is imposed on income or capital or by reason of the death of any person or of the distribution or any amounts (whether of the Trust Fund or the income thereof) in execution of the trusts or exercise of the powers herein or in consequence of the acquisition by the Trustees of any property (whether gratuitously or otherwise) or for any other reason whatsoever and whether or not any of the Trustees is primarily or in the first instance responsible therefor; and

all costs (including advocates costs) and expenses incurred in connection with the matters referred to in sub-clauses 11.5(a) and 11.5(b) payable at any time or from time to time by the Trustees.

### **Meeting of the Trustees and miscellaneous duties**

Meetings of the Trustees shall be held in accordance with the following regulations:

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the Trustees shall hold meetings at least twice (once every six months) in every calendar year and at such other times and in such places as they shall from time to time decide and any Trustee may at any time convene a special meeting of the Trustees upon giving at least Five (5) days notice to the other Trustees stating the time and place of holding the meeting and the matter to be discussed and the business to be transacted thereat;

there shall be a quorum when at least Two (2) Trustees are present at the meeting;

the Trustees shall at each of their meetings appoint one of their number to be Chairman and in case the Trustees are unable to agree on who should be Chairman, the Chairman shall be determined by the drawing of lots;

save as may otherwise be provided herein every matter shall be determined by the majority votes of the Trustees present and voting on the matter. In case equality of votes the Chairman shall have a second or casting vote;

any resolution of the Trustees may be rescinded or varied from time to time by the Trustees;

a resolution in writing signed by all the Trustees shall be as valid and effectual as a resolution properly passed at a duly convened meeting of the Trustees;

the Trustees shall have power at any time to make rules and regulations and bye-laws as they shall think fit for the purpose of regulating the meetings of Trustees;

the Trustees shall provide and keep a minute book in which shall be entered the proceedings of the Trustees meeting and which shall be signed by the Chairman at the conclusion of each meeting or at some future meeting if the minutes shall be duly confirmed; and

the appropriation of benefits shall be made by the Trustees at their meetings **PROVIDED THAT** they shall authorise any Two (2) of their number to make payments required to be made in pursuance of such appropriation.

### **Accounts and Audit**

The Trustees shall maintain books of accounts in which shall be recorded proper details of all monies, investments and other properties and assets received and paid into and out of the Trust Fund.

The financial year of the Trust will be from 1<sup>st</sup> January in each year. An Income and Expenditure Account for each financial year ending 31<sup>st</sup> December shall be produced together with a Balance Sheet as at that date.

The Trustees shall arrange for the accounts to be audited and the Trustees shall fix the remuneration of the Auditor.

### **Rules**

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The Trustees may amend any of the provisions of this Deed except sub-clauses 3.1 and 7.3 by any deed or deeds supplemental to this Deed provided no amendment shall be made which will cause the Trust to cease to be a charity at law.

Subject to the provisions of clause 14.1 the Trustees shall be at liberty to frame rules as may deem fit for the proper management conduct and administration of the Trust herein contained or any part thereof.

### **Remuneration of Trustees and professional services**

Any Trustee shall be entitled to charge and be paid out of the Trust fund and the income thereof such remuneration (if any) for such performance of his/her duties hereunder as may be agreed in writing by the Trustees.

Any Trustee (or director or officer of any Trustee which is a body corporate) who is a lawyer accountant or other person engaged in any professional or business shall be entitled to charge and be paid (in addition to any remuneration under sub-clause 15.1) all usual professional and other charges for business transacted time spent and acts done by him or nay partner or employee of his firm in connection with the trusts hereof including acts which a trustee not being in any professional or business could have done personally.

### **Discontinuance of Trust**

In the event of the failure of the objects of this Trust any money or property belonging to the Trust after payment of all expenses or liabilities properly incurred shall be distributed among such charitable organisations operating in the Republic of Kenya and having objects similar to those of the Trust as the Trustees may determine.

### **Governing law**

This Deed shall be governed by and construed in accordance with the law of the Republic of Kenya.

### **The First Schedule**

Kenya Shillings One Thousand (KShs 1,000.00)

**IN WITNESS WHEREOF** the Promoters and the Trustees have hereunto set their respective hands as of the day and year first hereinabove written.