

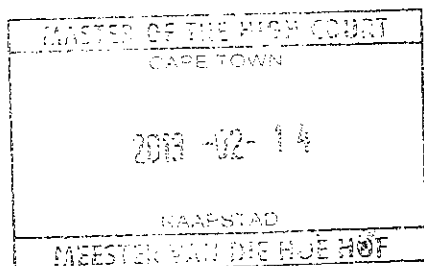


the do|ac|d

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

BRANCH: CAPE TOWN MASTERS OFFICE: TRUSTS

- Private Bag x9018, CAPE TOWN, 8000
- Iustitia Building, Parade Street, CAPE TOWN, 8000
- Tel: 021 410 8300
- E Mail Address: westerncapeinfo@justice.gov.za



My Ref: IT 4807/98

Enquiries: _____

Direct Tel: 021 410 83 10

Date: _____

YOUR REF: PA

Harold G

MO Box 23

Sir/Gentlemen/Madam

Re: The Tana Bana Trust

Your letter dated 12/4/13 refers.

The Amendment to the Trust Deed has been placed on record.

Yours faithfully


pp. MASTER OF THE WESTERN CAPE HIGH COURT, Cape Town
Office Hours Weekdays 07:45 -13:00 only.

**MEETING OF THE MEMBERS
OF THE
TANA BARU TRUST
HELD AT BOORHANOOL CENTRE, BO-KAAP
ON 14 NOVEMBER 2012
RESOLUTION TO REPLACE TRUST DEED**

I, MOGAMAT SHAHIED JACOB, hereby certify that :

1. I am the chairperson of the Tana Baru Trust.
2. At 20h15 on 14 November 2012, and at the Boorhanool Centre, Bo-Kaap, a meeting of the members of the Tana Baru Trust was held.
3. That meeting was duly convened in the manner stipulated in clause 18.1 of the trust deed executed on 22 December 1998 ("the original deed").
4. At that meeting, the members of the Tana Baru Trust unanimously supported a resolution to replace the original deed in its entirety with the new trust deed attached to this document as "A".

SIGNED AT CAPE TOWN ON THIS 10th DAY OF DECEMBER 2012.


_____, in his
capacity as chairperson of the Tana
Baru Trust

DEED OF TRUST

for

**THE TANA BARU TRUST
("the Trust")**

INDEX

Clause	Heading	Page
1	INTRODUCTION	1
2	CONTINUATION OF TRUST	2
3	DEFINITIONS AND INTERPRETATIONS	3
4	OBJECTS OF THE TRUST	3
5	THE TRUST FUND	6
6	THE TRUSTEES	7
7	TRUSTEE LEAVING OFFICE	8
8	SECURITY	10
9	TRUSTEE POWERS AND DISCRETIONS	10
10	PROCEDURE AT BOARD MEETINGS	11
11	FINANCIAL YEAR	17
12	NOTICES	18
13	BOOKS OF ACCOUNT AND ANNUAL FINANCIAL STATEMENTS	19
14	APPOINTMENT OF AUDITOR	19
15	BANK ACCOUNT AND SIGNATURES	20
16	AREA OF OPERATIONS	20
17	TRUSTEE INDEMNITY	21
18	INCOME AND CAPITAL DISTINGUISHED	22
19	TRUSTEE REMUNERATION, FEES AND EXPENSES	23
20	AMENDMENT AND DISSOLUTION	24
21	TRUSTEES' DISCRETION	25

SCHEDULE ONE : INVESTMENT AND ADMINISTRATIVE POWERS

SCHEDULE TWO : DEFINITIONS AND INTERPRETATION

SCHEDULE THREE : COMPLIANCE PROVISIONS

SCHEDULE FOUR : CURRENT TRUSTEES

SCHEDULE FIVE : THE SITE

* * * * *

1. INTRODUCTION

- 1.1 The Tana Baru Trust ("the Trust") was established in terms of a trust deed dated 22 December 1998 ("the Original Deed").
- 1.2 Clause 18.1 of the Original Deed provides that it may be amended in the following manner :
 - 1.2.1 The amendment must be approved by a "2/3 majority of the members" of the Trust at a "public meeting".
 - 1.2.2 The members must be given "at least 30 days clear notice in writing" of the meeting.
 - 1.2.3 The meeting must also be advertised in "morning and evening newspapers circulating in the Greater Cape Town area".
 - 1.2.4 The proposed amendments must be "set out" in the notice to the members, and in the advertisements.
- 1.3 The current Trustees of the Trust are the people named in Schedule Four.
- 1.4 The current Trustees came to the view that the Original Deed was unsuitable in a number of material respects, including but not limited to the following :

- 1.4.1 Its failure to incorporate the relevant provisions of the Income Tax Act, to facilitate the Trust's approval as a PBO.
- 1.4.2 Its failure to define a number of offices and people who are given power and authority in it, including "members" and "officials".
- 1.4.3 Its failure to legislate for the conduct of proceedings at meetings of the Trustees and members.
- 1.5 The current Trustees accordingly, on 14 November 2012, convened a quorate public meeting of the members in the manner stipulated in clause 18.1 of the Original Deed.
- 1.6 At that meeting a resolution was unanimously adopted for the amendment of the Original Deed by replacing it in its entirety with this new, replacement Trust Deed.

2. CONTINUATION OF TRUST

The trust already established as :

THE TANA BARU TRUST

will continue to exist indefinitely, until it is terminated in terms of clause 20.

3. DEFINITIONS AND INTERPRETATION

Definitions of certain words and phrases used in this Trust Deed, and provisions relating to its interpretation, are set out in Schedule Two.

4. OBJECTS OF THE TRUST

4.1 The Principal Object

4.1.1 The Principal Object of the Trust is to protect, preserve and maintain the Tana Baru Cemetery, a piece of land measuring approximately eighteen thousand (18 000) square metres in the Bo-Kaap at the foot of Signal Hill in Cape Town, comprising the thirteen (13) erven and the various portions of road reserves shown on Schedule Five ("the Site"). The Site was used as a burial ground for Muslims from the earliest days of human settlement at the Cape, until the late 19th century, and forms a seminal and integral part of the history and heritage of the Muslims of Southern Africa.

4.1.2 Without in any way limiting the general nature of clause 4.1.1, the Principal Object of the Trust will include :

4.1.2.1 Preserving and maintaining the Site in a pristine state.

- 4.1.2.2 Restoring, upgrading and maintaining the historical graves at the Site, including the shrines or mausoleums at the Site.
- 4.1.2.3 Restoring any heritage features at the Site.
- 4.1.2.4 Acquiring ownership of all thirteen (13) erven, and all road reserves or parts of road reserves, comprising the Site.
- 4.1.2.5 Acquiring the immovable properties on the periphery of the Site in order to construct facilities on them, to generate sources of sustainable income for the Trust.
- 4.1.2.6 Conducting education and training programmes in order to raise awareness among the general public about the Muslim heritage in South Africa and Cape Town, with specific reference to the Muslim pioneers buried on the Site.
- 4.1.2.7 Re-opening a portion of the Site as an active Muslim cemetery.

4.1.3 If and when the Trust becomes the registered owner of any part of the Site, that part will be regarded as "Waqf", which means that the Trust will not be entitled to sell, alienate, transfer, mortgage or otherwise encumber that part; on condition that, if and when the Trust is dissolved in the manner contemplated in clause 20, any part of the Site then registered in the name of the Trust must be transferred and donated to another organisation which :

4.1.3.1 Is approved as a PBO (if the Trust, at the time of its dissolution, is itself approved as a PBO);

4.1.3.2 Has objects the same as or similar to the Principal Object of the Trust; and

4.1.3.3 Is selected by the Trustees, on or before the dissolution of the Trust; or, failing that, by the High Court on application by any Trustee or other person having an interest in the preservation of the Site.

4.2 The Supplementary Object

4.2.1 The Supplementary Object of the Trust is to carry out or participate in for-profit business undertakings or trading activities ("Commercial Activities").

- 4.2.2 The Supplementary Object of the Trust must not supersede or take precedence over its Principal Object.
- 4.2.3 All the net profits from the Trust's Commercial Activities must be used only to fund the costs associated with the carrying out of the Trust's Principal Object.
- 4.3 In this Trust Deed, the Principal and Supplementary Objects of the Trust will be referred to collectively as "the Objects".
- 4.4 For the sake of certainty it is confirmed that the Board will decide from time to time, in its absolute discretion (but subject always to the Compliance Provisions) which Commercial Activities (if any) it will engage in.

5. THE TRUST FUND

- 5.1 The Trust Fund comprises all the assets under administration by the Trustees at the date of adoption of this new Trust Deed ("the Adoption Date").
- 5.2 The Trust Fund may be increased from time to time through accruals of a capital or income nature, whether by way of donation, sale, cession, accrual, assignment or in any other way.

6. THE TRUSTEES

- 6.1 The Trustees, operating together as the Board, will bear the fiduciary responsibility for the direction and management of the Trust, and the use and administration of the Trust Fund.
- 6.2 That fiduciary responsibility, and all the powers and discretions given to the Board in terms of this Trust Deed, must be exercised only for the purpose of achieving the Objects of the Trust, in strict compliance with the provisions of this Trust Deed.
- 6.3 The Trustees making up the Board as at the Adoption Date are the people listed on Schedule Four.
- 6.4 There must always be at least seven (7) Trustees on the Board, but no more than fifteen (15).
- 6.5 If the number of Trustees on the Board falls below the minimum number recorded in 6.4 above, for whatever reason, the remaining Trustees must, by way of a written resolution adopted by a simple majority, themselves appoint sufficient replacements to bring the number of Trustees to the required minimum.

- 6.6 Even if there are already enough Trustees on the Board to meet the required minimum, the Board may at any time, and from time to time, appoint as an additional Trustee any person whom the Board believes has the appropriate wisdom, knowledge and experience to assist the Trust to achieve its Objects; on condition that no such appointment may cause the number of Trustees in office to exceed the maximum number stipulated in clause 6.4.
- 6.7 The Board will be entitled, in its absolute discretion, if it believes this to be in the interests of the Trust, to adopt a resolution for the removal of any Trustee from the Board. Such a resolution may be adopted at a duly convened and quorate meeting of the Board, or in the manner contemplated in clause 10.12.
- 6.8 Any resolution referred to in clause 6.6 or 6.7 must be supported by at least two-thirds ($\frac{2}{3}$ rds) of the Trustees.

7. TRUSTEE LEAVING OFFICE

A member of the Board will automatically and immediately lose his/her position as Trustee if s/he :

- 7.1 Resigns by notice in writing to the Trust.
- 7.2 Dies.
- 7.3 Becomes unfit to act or incapable of acting as Trustee.

- 7.4 Is provisionally or finally sequestered; is placed under an administration order; or assigns his or her estate for the benefit of, or compounds with, his or her creditors.
- 7.5 Is or becomes disqualified in terms of the Companies Act, No. 71 of 2008, from being a director of a company.
- 7.6 Is removed by the Master in terms of section 20(2) of the Trust Property Control Act, or by any court of competent jurisdiction.
- 7.7 Is convicted of any offence involving violence or dishonesty and :
 - 7.7.1 Does not exercise any right to appeal against that conviction; or
 - 7.7.2 That conviction is upheld on appeal.
- 7.8 Is removed from office in terms of clause 6.
- 7.9 Fails to attend three (3) consecutive meetings of the Board and fails, before the times set for the start of those meetings, to deliver a written apology to the Trust. A written apology must be delivered to the chairperson or secretary of the Trust in one of the following ways :
 - 7.9.1 By delivery in printed form, by hand; or
 - 7.9.2 By email, fax or sms.

8. SECURITY

No Trustee will be required to furnish security in terms of the Trust Property Control Act.

9. TRUSTEE POWERS AND DISCRETIONS

9.1 For as long as the Trust is approved by the Commissioner as a PBO :

9.1.1 It must comply with all the provisions of the Income Tax Act which apply to PBOs from time to time, whether set out in section 30 or elsewhere in that Act.

9.1.1.1 Those provisions will be referred to in this Trust Deed as the "Compliance Provisions".

9.1.1.2 The Compliance Provisions which apply as at the date of establishment of the Trust are set out in Schedule Three.

9.1.1.3 If the Income Tax Act is amended so as to change the Compliance Provisions, Schedule Three must be amended accordingly.

9.1.2 All the powers and discretions given to the Board in terms of this Trust Deed will be limited to the extent set out in the Compliance Provisions.

- 9.1.3 The Compliance Provisions will override any contradictory or conflicting provision of this Trust Deed.
- 9.2 In fulfilling their fiduciary duty, the Trustees will have an absolute discretion as to :
 - 9.2.1 How the Trust pursues and achieves its Objects.
 - 9.2.2 How the Trust Fund will be used, administered and invested in order to achieve the Trust's Objects.
- 9.3 The Trustees will have all the powers which they decide are necessary to achieve the Objects of the Trust. Those powers will include the powers set out in Schedule One, which will be limited to the extent stipulated in clause 4.1.3.

10. PROCEDURE AT BOARD MEETINGS

- 10.1 Subject to the remaining provisions of this clause 10, the Board may conduct its meetings and organise its activities in any way it chooses.
- 10.2 The Board must elect the following officer bearers from among the Trustees :
 - 10.2.1 A chairperson.
 - 10.2.2 A secretary.

10.2.3 A treasurer.

Each such office bearer will, subject to clause 10.4, serve for a period of three (3) years, on condition that a retiring office bearer will at all times remain eligible for re-appointment, or for appointment to another office.

- 10.3 The Board will be entitled to appoint any other office bearers it chooses.
- 10.4 The Board may, in its absolute discretion, remove or substitute any office bearer at any time by resolution supported by a simple majority of the Trustees.
- 10.5 The chairperson may at any time convene a meeting of the Board, and must convene a Board meeting if requested to do so by any Trustee in writing.
- 10.6 If the chairperson, after being requested to do so in the manner stipulated in clause 10.5, does not within fourteen (14) days of the request give the requisite notice to convene a meeting of the Board, the Trustee requesting that meeting will be entitled to give notice and convene it him/herself.
- 10.7 The quorum necessary for the Board to meet or take decisions will be forty (40) percent of the Trustees; on condition that :

- 10.7.1 If there is no quorum present thirty (30) minutes after the time set for the start of a Board meeting, the Trustees present will (subject to clause 10.7.2) constitute a quorum.
- 10.7.2 At least three (3) Trustees must be present in order for a quorum to be constituted.
- 10.8 Each Trustee present at a Board meeting will have one (1) vote in respect of every matter to be decided by the Board.
- 10.8.1 A Trustee will be entitled to participate in a Board meeting by electronic communication.
- 10.8.2 The electronic communication facility employed for electronic participation in Board meetings must enable Trustees using that facility :
- To communicate concurrently with each other without an intermediary; and
 - To participate effectively in the meeting.
- 10.8.3 A Trustee will be deemed to be present at a Board meeting if he/she is present in person, or attends the meeting by electronic communication.

- 10.9 The Board must try its best to get unanimous agreement for Board decisions from all the Trustees present at the relevant meeting, on condition that, where this is not possible:
- 10.9.1 Except in those cases where this Trust Deed requires a two-thirds ($\frac{2}{3}$ ^{rds}) majority of the Trustees, any matter to be decided by the Board will be decided by a simple majority of votes; and
- 10.9.2 If there is an equal number of votes for and against a decision, the chairperson will not have a deciding or second vote.
- 10.10 The chairperson will be entitled to chair any Board meeting which he/she attends, on condition that, if the chairperson is not present within fifteen (15) minutes after the time set for the start of any Board meeting, the Trustees present must elect one of them to chair the meeting.
- 10.11 Written minutes must be kept of all meetings of the Board, and a record of the names of the Trustees present at each meeting. The minutes must be signed by the chairperson or the other Trustee who chairs the next Board meeting, and must be available at all times to be inspected or copied by any Trustee.

10.12 Despite anything to the contrary contained in this Trust Deed, a resolution signed or assented to in writing by two-thirds ($\frac{2}{3}$ ^{rds}) of the Trustees will be as valid as if it had been adopted at a properly convened and quorate meeting of the Board. It will not be necessary for the original resolution to be signed; signature of a true copy will be sufficient compliance with the provisions of this clause, as will be :

10.12.1 A true copy which is signed and then scanned and transmitted by electronic communication; and

10.12.2 A written assent to the resolution which is transmitted by electronic communication.

10.13 The Board may assign or delegate any of its powers or duties to a Trustee, to a special purpose committee, or to an employee, independent contractor or agent, as the Board wishes.

10.13.1 The people or committee to whom any assignment or delegation is made must, in the exercise of the relevant functions, comply with any rules and procedures which may be imposed by the Board from time to time.

10.13.2 The Board will at no time be divested of any power or duty despite its assignment or delegation.

10.13.3 The Board may revoke, or alter the terms of, any assignment or delegation at any time, in its absolute discretion.

10.14 Unless the chairperson for good reason decides otherwise, Trustees must be given at least seven (7) days' notice of any Board meeting.

10.15 Despite anything to the contrary contained in this Trust Deed, the Trustees will not be obliged to convene Board meetings in order to deal with the business of the Trust, but may discuss and reach decisions on all and any matters by way of electronic communication or in any other manner of their choice : On condition that, if decisions are taken by Trustees other than at a duly convened and quorate meeting of the Board, those decisions will be of no force or effect unless they are :

10.15.1 Recorded in writing;

10.15.2 Circulated to all the Trustees, whether by electronic communication or otherwise;

10.15.3 Signed or assented to by the required majority of the Trustees in the manner contemplated in clause 10.12; and

10.15.4 Kept with the minutes of the other meetings and decisions of the Board.

10.16 The fiduciary duty borne by the Trustees obliges each of them to :

- 10.16.1 Declare to the Board any personal interest he/she may have in any matter put before the Board for its decision, and any conflict of interest relating to any such matter.
- 10.16.2 Recuse him/herself from any discussion about and any voting on any such matter (except if it is a matter referred to in clause 6.10), unless he/she is excused from doing so by unanimous decision of all the remaining Trustees.
- 10.17 The Board must, at intervals not exceeding three (3) years, convene a public meeting for the purpose of :
 - 10.17.1 Informing the Muslim community of Cape Town of the work and activities of the Trust; and
 - 10.17.2 Soliciting the views and recommendations of that community in relation to the work and activities of the Trust.

11. FINANCIAL YEAR

Unless and until the Board decides differently, the financial year of the Trust will start on 1 January and end on 31 December.

12. NOTICES

12.1 Notice of meetings of the Board must be :

12.1.1 Delivered personally, or sent by prepaid registered post, e-mail, sms or fax to the last address, or fax or cell phone number, notified by each Trustee to the Trust, or in any other manner which the Board decides is convenient.

12.1.2 Accompanied by electronic or printed copies of all requisite ancillary documents.

12.2 If a mistake is made, and someone who should have been given notice of a Board meeting, is not given notice, that mistake alone will not prevent the meeting from taking place, and will not affect decisions taken at that meeting.

12.3 In the absence of proof to the contrary :

12.3.1 Notices which are posted will be deemed to have been received seven (7) days after the proven date of posting.

12.3.2 Notices sent by e-mail, sms or fax will be deemed to have been received on the first business day after the proven date of transmission.

13. BOOKS OF ACCOUNT AND ANNUAL FINANCIAL STATEMENTS

- 13.1 The Board must make sure that the Trust keeps proper financial records and books of account. Financial statements (including capital and revenue accounts) must be prepared at least once a year, in accordance with generally accepted accounting principles and practice, and must clearly reflect the financial affairs of the Trust. The books of account and financial statements must be audited and certified annually in the customary by the auditor of the Trust.
- 13.2 A copy of the annual financial statements must be made available to each Trustee as soon as possible after the close of the financial year.

14. APPOINTMENT OF AUDITOR

- 14.1 The Board must ensure that an independent accounting professional [as defined in Regulation 26(1)(d) of the Companies Regulations, 2011] is at all times is appointed as the auditor for the Trust.
- 14.2 The Board will be entitled, in its absolute discretion, to remove and substitute the auditor from time to time.

- 14.3 The Board must ensure that the Trust's auditor is given unrestricted access to the books of account and financial records of the Trust, and that the Trustees, and the employees of the Trust, give the auditor all information or explanations which the auditor may require to perform his/her duties.

15. BANK ACCOUNT AND SIGNATURES

- 15.1 The Board must open one or more bank accounts in the name of the Trust with a bank registered in terms of the Banks Act, No. 94 of 1990.

15.1.1 All money paid to or received by the Trust must be deposited in those accounts.

15.1.2 All money disbursed by the Trust must be paid out of those accounts.

- 15.2 All cheques, promissory notes and other documents which relate to banking transactions, which require the signature or authorisation of the Trust, must be signed or authorised by at least two (2) people appointed by the Board.

16. AREA OF OPERATIONS

- 16.1 The activities of the Trust will be conducted mainly in the Republic of South Africa.

- 16.2 However, the Trust will be entitled to solicit and accept donations, and (subject to the Compliance Provisions) conduct its activities anywhere else in the world.

17. TRUSTEE INDEMNITY

- 17.1 Subject to the provisions of any applicable statute :

17.1.1 All the Trustees will be indemnified by the Trust for everything done by them in good faith on behalf of the Trust.

17.1.2 The Trust must pay all costs and expenses incurred by any Trustee as a result of any contract entered into, or anything else done in good faith on behalf of the Trust with the authority of the Board.

- 17.2 Subject to the provisions of any relevant statute, no Trustee will be liable for any loss, damage or expense suffered by the Trust which :

17.2.1 Is caused by any act or omission of any other Trustee, even if he/she joined in that act or omission for conformity; or

17.2.2 Is caused by the insufficiency of, or deficiency in, the title to any property acquired by the Trust; or

17.2.3 Is caused by the insolvency, sequestration, liquidation or delictual act or omission of any person or institution with whom/which any money or other assets comprising the Trust Fund are deposited; or

17.2.4 Is caused in any other manner;

unless that loss, damage or expense is caused by :

17.2.5 The dishonesty of Trustee in question; or

17.2.6 The failure by that Trustee to exercise the degree of care, diligence and skill which is required by law.

18. INCOME AND CAPITAL DISTINGUISHED

Subject to the Compliance Provisions, the Board will be entitled, in its absolute discretion :

18.1 To capitalise any income received by the Trust.

18.2 To decide what receipts should be regarded as income, and what as capital, irrespective of whether those receipts are :

18.2.1 Liquidation dividends;

18.2.2 Returns of capital;

- 18.2.3 Capitalisation of surpluses arising from the carrying on of activities pursuant to the Trust's Principal Object; or
- 18.2.4 Capitalisation of net profits arising from Commercial Activities carried on pursuant to the Trust's Supplementary Object.
- 18.3 To treat as income any periodic receipts, even if they are received from wasting assets.
- 18.4 To make provision for the amortisation of assets.

19. TRUSTEE REMUNERATION, FEES AND EXPENSES

- 19.1 The Board will decide from time to time, in its absolute discretion, what remuneration, if any, will be paid to each of the Trustees as compensation for carrying out their duties as members of the Board.
- 19.2 The remuneration paid to individual Trustees may vary, depending on the nature of their respective duties.
- 19.3 In addition to the remuneration (if any) paid in terms of 19.1 above :

- 19.3.1 The Board will be entitled, in its absolute discretion, to reimburse Trustees for reasonable, necessary and authorised expenses incurred by them on behalf of the Trust.
- 19.3.2 The Board will be entitled to pay reasonable professional fees to a Trustee, or to a firm of which a Trustee is a member, who/which carries out legal, accounting or other professional work on behalf of the Trust.
- 19.4 Except as described above, no Trustee will be entitled to any remuneration, reimbursement or fees, or any other economic benefit, from the Trust.

20. AMENDMENT AND DISSOLUTION

- 20.1 Subject to the provisions of clause 20.5, the Board may, by resolution supported by at least two-thirds ($\frac{2}{3}$ rds) of the Trustees :
- 20.1.1 Amend or replace this Trust Deed.
- 20.1.2 Dissolve the Trust.
- 20.2 A copy of any such resolution must be delivered to :
- 20.2.1 The Commissioner (if the Trust is, at the relevant time, approved as a PBO).

20.2.2 The Master.

20.3 If the Trust is dissolved, the Board must, out of the Trust Fund, settle all remaining liabilities of the Trust, or make provision for such settlement.

20.4 Subject to clause 4.1.3, the net residue of the Trust Fund which remains after the settlement or provisions referred to in 20.3 above, must be donated to one or more PBOs which have objects the same as or similar to the Objects of the Trust.

20.4.1 Those PBOs must be selected by the Board in its absolute discretion.

20.4.2 If the Board fails to select those PBOs, then they must be selected by the High Court on application by any Trustee or former Trustee.

20.5 Despite anything to the contrary contained in this Trust Deed, the provisions of clause 4.1.3 may not be amended under any circumstances.

21. TRUSTEES' DISCRETION

Where discretions are given to the Trustees in terms of this Trust Deed, those discretions, except where expressly limited or qualified, will be complete and absolute, and no person affected by any decision made by the Trustees in good faith pursuant to their discretionary powers will be entitled to challenge that decision.

* * * * *

<p style="text-align: center;">SCHEDULE ONE INVESTMENT AND ADMINISTRATIVE POWERS</p>
--

Without in any way limiting the powers accorded to the Board in this Trust Deed, but subject to the limitations contained in it and in the Compliance Provisions, the Board will have the following general investment and administrative powers in relation to the Trust Fund :

1. To invest the Trust Fund in any way it chooses, in its absolute discretion.
2. To take over investments and assets donated to the Trust, and to retain them in the form in which they are received, or to sell them and re-invest the proceeds.
3. To sell or vary any investments from time to time, and to re-invest the proceeds in any investments of the Board's choice.
4. To allow funds to remain uninvested or in their original state of investment on acquisition by the Trust.
5. To borrow money for any purpose which the Board decides is necessary to fulfil the Objects of the Trust.

- 5.1 Any such borrowing may be on any terms and conditions of loan which are acceptable to the Board.

- 5.2 Without in any way limiting the borrowing powers of the Board, money may be borrowed :
 - 5.2.1 To pay any debt owed by the Trust.
 - 5.2.2 To develop, preserve or acquire any asset or investment.
- 5.3 The Board will be entitled, in its absolute discretion, by way of giving security for any money which the Trust may have borrowed :
 - 5.3.1 To mortgage or pledge all or any part of the Trust Fund.
 - 5.3.2 To encumber all or any part of the Trust Fund in any other way.
 - 5.3.3 To vary or replace any security previously provided.
- 6. To guarantee the performance by any person of any obligation owed by that person, on such terms and conditions as the Board may decide in its absolute discretion.
- 7. To grant loans on such terms and conditions, and with or without security, as the Board may decide in its absolute discretion.

8. To exercise the voting power attached to any shares, stocks, debentures, units or securities forming part of the Trust Fund in any manner the Board considers appropriate; and to enter into any arrangements it considers necessary for the liquidation, reconstruction, merger or amalgamation of any company of whose capital that equity forms a part; and to agree to a compromise affecting any company or trust in which that equity is held.
9. To deal with any assets by way of exchange, sale, lease or otherwise. In exercising any powers of sale the Board will be entitled to sell by public auction, tender or private treaty, as it considers appropriate.
10. To exchange, sell, lease, improve, develop or deal in any other way with immovable property or any portion of it, and to grant rights or options in respect of it; to register mortgage bonds; and to construct, maintain, repair, demolish, improve or reconstruct any buildings on or forming part of any immovable property.
11. To carry out any act relating to alienation, partition, exchange, transfer, mortgage, hypothecation or otherwise in any deeds registry, mining titles office or other public office; to deal with servitudes, usufructs, limited interests or otherwise; and to make any applications, grant any consents and agree to any amendments, variations, cancellations, cessions, releases, reductions or substitutions relating to any deed, bond or other document which relates to immovable property; to obtain copies of any deeds, bonds or documents for any purposes; and generally to do or cause to be done any act whatsoever in any such registry or office.

12. To exercise all those management and executive powers which are normally vested in the board of directors of a company, including the following powers :

12.1 To purchase or acquire in any way stock-in-trade, plant, machinery, land, buildings, agencies, shares, debentures and every other kind or description of movable and immovable property.

12.2 To manage, insure, sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to account or in any way otherwise deal with the Trust's undertaking or all or any part of its property and assets.

12.3 To apply for, purchase or by any other means acquire, protect, prolong and renew any patents, patent rights, licences, trademarks, concessions or other rights and to deal with and dispose of them as provided in paragraph 12.2 above.

12.4 To open and operate bank accounts, and to overdraw such accounts.

12.5 To make, draw, issue, execute, accept, endorse and discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments.

- 12.6 To take part in the management, supervision and control of the business or operations of any other trust, voluntary association, company or body, and to enter into partnerships.
- 12.7 To remunerate any person, in cash or otherwise, for services rendered in the establishment of the Trust or in the development or carrying-on of its activities.
- 12.8 To enter into contracts (including joint venture and co-funding agreements) both inside and outside the Republic, and execute any contracts, deeds and documents in the Republic and any foreign country.
13. To engage such employees and to enter into such service contracts as the Board decides; to provide remuneration and other employee benefits; and to discipline and dismiss employees.
14. To incorporate any company, or establish any trust, which is owned or controlled, directly or indirectly, by the Trust.
15. To sue for, recover and receive all debts or property which may become due, owing, payable or transferable to the Trust, and to bring sequestration, liquidation or judicial management proceedings against any person.
16. To institute and defend or oppose legal proceedings in the name of the Trust.

17. To adjust, settle, compromise or submit to arbitration any dispute which may arise between the Trust and any person.
18. To attend meetings of creditors of any person indebted to the Trust, whether those meetings relate to sequestration, liquidation, judicial management or other proceedings; to vote for the election of trustees, liquidators or judicial managers; to vote on all questions submitted to any meeting of creditors; and generally to exercise all rights accruing to the Trust in its capacity as a creditor.
19. To exercise and take up or sell any rights of conversion or subscription which attach or accrue to any share, debenture or unit.
20. To employ accountants, attorneys, agents, brokers or other professional advisors, and to pay all their fees, charges and expenses.
21. To deal with the assets and investments forming part of the Trust Fund in any manner the Board decides is proper, and to this end the Board is vested with all additional powers which are necessary to enable it to do so.
22. To exercise all its powers and discretions not only in the Republic but in any other part of the world.

* * * * *

<p style="text-align: center;">SCHEDULE TWO DEFINITIONS AND INTERPRETATION</p>
--

In this Trust Deed, unless the context clearly indicates otherwise :

- | | |
|------------------------------------|---|
| 1. "the Adoption Date" | means the date on which this Trust Deed was adopted to replace the Original Deed. |
| 2. "the Board" | means Trustees acting together as a Board in the manner described in clause 6. |
| 3. "business day" | means any day except a Saturday, Sunday or South African public holiday. |
| 4. "Commercial Activities" | means the activities contemplated in clause 4.2. |
| 5. "the Commissioner" | means the Commissioner for the South African Revenue Service. |
| 6. "the Compliance Provisions" | means those provisions of the Income Tax Act referred to in clause 9.1. |
| 7. "electronic communication" | bears the same meaning as defined in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002. |

- | | | |
|-----|-----------------------------|--|
| 8. | “the Income Tax Act” | means the Income Tax Act, No. 58 of 1962. |
| 9. | “Master” | means the Master of the High Court, Cape Town. |
| 10. | “the Ninth Schedule” | means the Ninth Schedule to the Income Tax Act. |
| 11. | “Objects” | means the Principal Object and the Supplementary Object. |
| 12. | “Original Deed” | means the trust deed referred to in clause 1.1. |
| 13. | “PBO” | means any person, body or group contemplated in the definition of <i>public benefit organisation</i> in section 30(1) of the Income Tax Act which has been approved by the Commissioner in terms of section 30(3) of that Act. |
| 14. | “Principal Object” | means the Object referred to in clause 4.1. |
| 15. | “Public Benefit Activities” | means the public benefit activities as defined in section 30(1) of the Income Tax Act, which activities include those listed the Ninth Schedule. |

16. "the Republic" means the Republic of South Africa.
17. "the Site" means the Tana Baru Cemetery referred to in clause 4.1.1, being the land comprising the thirteen (13) erven and the road reserves shown on Schedule Five.
18. "sms" means short message service.
19. "Supplementary Object" means the Object referred to in clause 4.2.
20. "Trust" means the trust referred to in clause 1.
21. "Trustees" mean the people appointed as Trustees from time to time in terms of this Trust Deed.
22. "the Trust Fund" means all assets, whether of a capital or an income nature, owned by or accruing to the Trust from time to time.
23. "the Trust Property Control Act" means the Trust Property Control Act, No. 57 of 1988.

24. "Waqf"

is an Arabic word meaning a voluntary, permanent, irrevocable dedication of a portion of a believer's wealth – in cash or kind – to Allah (SWT).

- A waqf is never given away, inherited by another, or sold.
- A waqf belongs to Allah and the corpus of the waqf always remain intact.
- The fruits of the waqf may be used for any shari'ah-compliant purpose.

25. The masculine includes the feminine, the singular includes the plural, and references to people include juristic persons, and *vice versa* in all cases.

26. Reference to any statutory provision includes a reference to that provision as modified, amended, extended or re-enacted from time to time, and any statutory replacement of that provision from time to time.

* * * * *

<p style="text-align: center;">SCHEDULE THREE COMPLIANCE PROVISIONS</p>

PROVISIONS IMPOSED BY SECTION 30 OF THE INCOME TAX ACT

For as long as the Trust is approved as a PBO, the Trust must comply with the following requirements, conditions and restrictions, which will override any inconsistent or contradictory provision of this Trust Deed :

1. The sole or principal object of the Trust must be and remain to carry on one or more Public Benefit Activities, on condition that :
 - 1.1 All such activities must be carried on in a non-profit manner and with an altruistic or philanthropic intent.
 - 1.2 No such activity may be intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the Trust, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.
 - 1.3 Each such activity carried on by the Trust must be for the benefit of, or widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).
2. The Trust must have at least three (3) persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility for the Trust, and no single person may directly or indirectly control the decision-making powers relating to the Trust.
3. The Trust may not distribute any of its funds directly or indirectly to any person (otherwise than in the course of undertaking any Public Benefit Activity) and must utilise its funds solely for the Objects for which the Trust has been established.

4. If and when the Trust is wound-up or dissolved in any manner provided for in this Trust Deed, or as required by law, the net remaining assets of the Trust, after all the obligations and commitments of the Trust have been met, must be transferred to :

- 4.1 Any PBO; or

- 4.2 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 as its sole or principal object the carrying on of any Public Benefit Activity; or

- 4.3 The government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a) of the Income Tax Act,

which is required to use those assets solely for purposes of carrying on one or more Public Benefit Activities.

5. The Trustees will 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 of the Income Tax Act: Provided that a donor (other than a donor which is an approved PBO or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any Public Benefit Activity) may not impose conditions which could enable that donor or any connected person in relation to that donor to derive some direct or indirect benefit from the application of the donation.

6. The Trustees must submit to the Commissioner a copy of any amendment to this Trust Deed, and must ensure that the Trust submits the required income tax returns together with the relevant supporting documents.
7. The Trustees must comply with such conditions as the Minister of Finance may prescribe by way of regulation to ensure that the activities and resources of the Trust are directed in the furtherance of its Objects.
8. The Trustees must make sure that the Trust does not knowingly become a party to, or does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is 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.
9. The Trust must not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, Trustee or other person which is excessive, having regard to what is generally considered reasonable in the sector in which the Trust operates, and in relation to the service rendered, and must not economically benefit any person in a manner which is not consistent with its Objects.
10. The Trustees must comply with such reporting requirements as may be determined by the Commissioner.
11. The Trustees must ensure that any books of account, records or other documents relating to the Trust :

- 11.1 Where kept in book form, are retained and carefully preserved for a period of four (4) years after the date of the last entry in any such book; or
- 11.2 Where not kept in book form, are retained and carefully preserved for a period of four (4) years after completion of the transactions, acts or operations to which they relate.
12. The Trust must not use its resources directly or indirectly to support, advance or oppose any political party.

* * * * *

<p style="text-align: center;">SCHEDULE FOUR CURRENT TRUSTEES</p>

The Trustees making up the Board as at the Adoption Date are :

1. MOGAMAT SHAHIED JACOBS.
2. FATIMA ESSOP.
3. MOHAMMAD AADIL BASSIER.
4. GOESAIN JOHARDIEN.
5. AKBAR KHALFE.
6. DAWOOD TERBLANCHE.
7. ABDUL-MUHAIMIN BASSIER.

* * * * *

Schedule 5

Properties constituting the Tana Baru Site

	Erf	Registered Owner	Title Deed No.	Date Registered	Extent (sqm)
1	682	Moslem Cemetery Board	T7764/1934	9/4/1934	1 942
2	401	Springwood Trust	T121077/2004	12/7/2004	1 645
3	681	Fouzia Abdulla	T36867/1975	11/26/1975	2 175
4	677	Fouzia Abdulla	T36868/1975	11/26/1975	1 045
5	9410	Omar Faried Pandie	T1235/1979	1/30/1979	575
6	680	Omar Faried Pandie	T28983/1981	7/10/1981	574
7	679	Muriel Cynthia Behardien	T84005/1999	10/20/1999	1 209
8	678	Hospital Welfare & Muslim Educational Movement	T8984/1967	5/5/1967	1 743
9	961	City of Cape Town			446
10	962	Mahometan Population of Cape Town	T176/1830	1830/11/26	1 794
11	938	Mahometan Population of Cape Town	T176/1830	1830/11/26	1 592
12	963	Chinese of the Town	T175/1830	1830/11/26	676
13	960	Sharifa Davids	T12579/1966	6/28/1966	692

