

## DEED OF TRUST

### PREAMBLE

**WHEREAS** the RAAD DER GEMEENTE made a grant of certain cemetery ground more commonly known as TANA BARU to FRANS of BENGAL on the 5th October 1805

**AND WHEREAS** Imam ACHMAT of BENGAL in 1829 wrote a Memorial to the authorities requesting the. transfer of the land known as TANA BARU to the Muslim Population of Cape Town.

**AND WHEREAS** the Muslim Cemetery ground known as TANA BARU and situated at Longmarket Street, Schotschekloof and more fully described as even numbers 938 and 962 Cape Town as registered in the name of The Mohametan Population of Cape Town in terms of Deed of Transfer dated 26 November 1830, a copy whereof is annexed hereto marked "A".

**AND WHEREAS** the Muslims of Cape Town wish to regularise the ownership of the cemetery known as TANA BARU which has been granted in Trust to the Muslims of Cape Town,

**AND WHEREAS** the Muslims of Cape Town have agreed in principle to the establishment of a Trust to administer and maintain the TANA BARU cemetery grounds.

NOW THEREFORE THE MUSLIM POPULATION OF CAPE TOWN MOHAMETAN POPULATION) at a meeting held at Cape Town on the **EIGHTH** day of **JULY 1998**, unanimously approved the following Trust :-

**1. NAME**

The name of the Trust shall be "**THE TANA BARU TRUST**".

**2. OBJECTS**

The objects of the TRUST shall be as follows:

- 2.1 To restore maintain, administer and preserve the TANA BARU CEMETERY
- 2.2 To acquire from people, who are presently regarded as private owners of portion of the TANA BARU CEMETERY, such properties.
- 2.3 To restore and maintain historical Muslim graveyards.
- 2.4 To associate, liaise, cooperate and/or affiliate with any other holdings or bodies having similar objects or interests as the Trust.
- 2.5 To employ persons permanently or temporarily for such purposes as may be necessary for the furtherance of the objects of the Trust.

**3. TRUSTEES**

3.1 The Trustees nominated by the Muslim Population of Cape Town and who have been authorised to constitute the Trust shall be:

- 3.1.1 Mahmood Sulaiman Limbada
- 3.1.2 Imam Abdurahman Bassier
- 3.1.3 Mastura Gasant
- 3.1.4 Mogamad Fuad Mathews
- 3.1.5 Seehaam Samaai
- 3.1.6 Omar Ebrahim
- 3.1.7 Yusuf Larnie
- 3.1.8 Mogamat Taliep Sydney
- 3.1.9 Gamat Tohar Sampson
- 3.1.10 Mogamad Mustapha Salie
- 3.1.11 Feizal Salie
- 3.1.12 Abubakar Adams

or their successors in office and they shall hold office for a period of 5 years which shall be renewable. No Trustee shall serve for a period of more than two consecutive terms.

3.2 All powers and assets of the Trust shall be vested in the Trustees and shall be administered in the interest of the community.

3.3 The Trustees shall nominate the first officials of the Trust and thereafter the officials shall be elected biennially of the Trust.

3.4 A Trustee shall vacate his/her office if:

- 3.4.1 he/she dies, resigns or is incapacitated from attending meetings of the Trust;
- 3.4.2 becomes inactive by failing to attend 3 consecutive meetings (and his/her reason/s for non-attendance is unacceptable to the majority of the Trustees);
- 3.4.3 is declared to be of unsound mind or mentally disabled or insolvent or incapable of managing his/her own affairs;

- 3.4.4 works contrary to the policy and principles of the Trust;
  - 3.4.5 is removed or replaced by the Trust;
  - 3.4.6 a Trustee who if he/she were a director of a company would be disqualified from being such a director by virtue of the provisions of Section 218(1) (b), (c) and (d) of the Companies Act 1973 shall cease to hold office forthwith;
  - 3.4.7 any vacancy shall be filled by a member co-opted by the Trust at any ordinary Trustees meeting and the incumbent shall serve for the remainder of the term of his/her predecessor. In the event of 3 or more members having to be co-opted onto the Trust, such vacancies shall be filled by a bi-election held by the Trust.
- 3.5 The Trustees shall at all times be Muslims and no AHMEDI, Qdiani, Mirzai, Bahai or any other person whom the Muslims regard as non-Muslim, unbeliever, or Murtaf, apostate, or sympathizer of the above non-accepted groups shall be a Trustee.
- 3.6 Any beneficiary of the TANA BARU TRUST would be eligible to attend meetings of the Trust.
- 3.7 A Trustee shall have the right and power to resign or retire from office at any time by giving one week's written notice to his/her co-Trustees.
- 3.8 Any decision taken by the majority of the Trustees shall be binding on all the Trustees save where an unanimous decision is otherwise provided in terms of this Trust Deed.

#### **4. OFFICE BEARERS**

- 4.1 The officials of the Trust shall be as follows:
- 4.1.1 The Chairperson;
  - 4.1.2 The Secretary;
  - 4.1.3 The Treasurer.
- 4.2 The officials shall hold office for a period of one (1) year provided that they are not disqualified, removed or replaced during that period.
- 4.3 Any vacancy shall be filled by the Trust at an ordinary meeting of the Trust;
- 4.4 The first officials shall be nominated by the Trustees and thereafter the officials shall be elected at the Annual General Meeting of the Trust.

#### **5. DUTIES OF OFFICE BEARERS**

- 5.1 The Chairperson shall preside at all meetings and functions of the Trust and in his absence a protem Chairperson shall be elected by the Trust;
- 5.2 The Chairperson shall present a Chairperson's report at the Biennial Meeting of the Trust;
- 5.3 The Chairperson shall be responsible for issuing of all statements to the press provided that the Chairperson shall, where reasonably possible, only issue statements after conferring with the Secretary and the Treasurer;
- 5.4 The Secretary shall be Chief Administrative Officer of the Trust and shall be responsible for all paid employees of the Trust;

- 5.5 The Secretary shall submit a report at the Annual General Meeting of the Trust.
- 5.6 The Treasurer shall submit a financial report to the Annual General Meeting of the Trust.

## **6. POWERS OF TRUSTEES**

- 6.1 To acquire immovable property for the purposes of the Trust;
- 6.2 To administer the Trust for the attainment of the objects of the Trust;
- 6.3 To let, hire or lease all movable and immovable assets of the Trust, provided that such assets shall not include any property which traditionally formed part of the cemetery known as the TANA BARU and provided further that the rate at which any such assets shall be let shall firstly have to be determined by the Trust;
- 6.4 To pay all necessary expenses incurred in connection with the administration of the Trust provided that in the event of any extra ordinary expenses, such extra ordinary expenses shall firstly be approved of by the Trust;
- 6.5 To appoint an agent(s) to represent the Trust for any purposes, provided that the appointment of such agent(s) shall be approved of by the Trust as soon as possible after such appointment by the Trustees at a special meeting called by the Trustees for this purpose;
- 6.6 To take action in a court of law or to defend any such action for and on behalf of the Trust provided that any such action shall at all times be approved of by the membership of the Trust to whom full disclosure of the facts of such action shall be made at special meetings called by the Trustees;
- 6.7 To collect all debts due to the Trust;
- 6.8 To accept donations, gifts, etc. for the benefit of the Trust, provided that full disclosure of any such gifts or donations shall be made to the membership as soon as reasonably possible;
- 6.9 To sanction any expenditure which the Treasurer may wish to disburse;
- 6.10 To invest the funds of the Trust in such manner/s as may be approved of by the majority of the membership;
- 6.11 To delegate any power, function or duty to any member or members of the Trust;
- 6.12 To raise monies by all lawful means to carry out the objects of the Trust;
- 6.13 To open bank and building society accounts in the name of the Trust and to maintain and run such accounts in such a manner as the Trustees deem fit.

## **7. MEETINGS OF THE TRUST**

- 7.1 An ordinary meeting shall be held at least once every quarter;
- 7.2 A special meeting shall be called by the Chairperson in consultation with the Secretary, or at the request of at least three (3) members of the Trust or 20 members of the Muslim public.
- 7.3 An Annual General Meeting shall be held annually on a date to be decided by the quorum of Trustees.

## 8. **QUORUM**

The quorum at a Trustees meeting; shall be. a simple majority and if there is no quorum within one (1) hour after the time scheduled for the meeting, those present shall constitute a quorum provided they are not less than five (5). At an Annual General Meeting a quorum shall constitute of 20 members of the public and a quorum of Trustees.

## 9. **FINANCE**

- 9.1 All the money of time Trust shall be deposited into the Trust account within 48 hours of receipt thereof;
- 9.2 The banking account shall be operated jointly by the Chairperson and the Secretary and Treasurer of the Trust and one additional Trustee nominated by the Trust.
- 9.3 Auditors shall be appointed by the Trust for the purpose of conducting an annual audit and preparing an Audited balance sheet.
- 9.4 The books of account shall be open for inspection to all members of the Trust and the public.

## 10. **LEGAL MATTERS**

- 10.1 The Chairperson, Secretary and Treasurer or any two (2) members nominated by the Trust shall represent the Trust in all legal matters and if authorised to do so shall have the following powers;
  - 10.1.1 They shall have the right to negotiate and to conclude any contract on behalf of the Trust and sign all necessary documents in connection therewith;
  - 10.1.2 They shall have the right to defend and institute legal proceedings against and for the Trust and sign all necessary documents in connection therewith;
  - 10.1.3 They shall have the right to sign all necessary documents for the taking and passing of transfer of immovable property for the registration and cancellation of any mortgage bond provided that no such rights shall pertain to any property owned by the Trust and which was historically known as the TANA BARU;
  - 10.1.4 They shall have the right to take all necessary legal steps and sign all necessary legal documents in connection with any legal matter affecting the Trust.

## 11. **DURATION OF THE TRUST**

- 11.1 The Trust shall endure in perpetuity and shall not be dissolved except by special resolution of the Trustees, supported by a public meeting.
- 11.2 In the event of the Trust being dissolved, the assets after paying the liabilities shall be handed to an organisation or Trust with similar aims as that of the Trust.

12. **IMMOVABLE ASSETS**

The immovable assets and/or property of the Tana Baru Trust at its inception shall be regarded as Wakaf and such Wakaf property shall under no circumstances be sold, alienated, mortgaged or incumbent in any way whatsoever.

13. **SECURITY**

The Trustees appointed in terms of clause 3 above or their successors shall not at any time or under any circumstances be required to furnish security in terms of the Trust Monies Protection Act 1934 or any other legislation which may now be or which may hereinafter become of force and effect; the intent and purpose being that no person, company or legal entity who or which shall at any time be a Trustee under this Deed shall be required to give any security in connection with or arising out of his appointment as such.

14. **DISAGREEMENT**

In the event of any disagreement between the Trustees at any time, the decision of the majority of them shall prevail and be of the same force and effect as if it were a unanimous decision of the Trustees. In the event of any equality of votes, any Trustee may require the matter to be informally and speedily arbitrated in accordance with Islamic Law upon by an Islamic Scholar/Entity selected by the unanimous decision of the Trust.

15. **REGISTRATION AND INVESTMENT**

All investments or other assets acquired by the Trust may be registered in the name of the Trust without specifically naming the Trustees, or in a manner as the Trustees may deem expedient from time to time.

16. **LIABILITY AND LOSS**

- 16.1 No Trustee shall be liable for any loss to the Trust arising by reason of any investment made on behalf of the Trust whether authorised in terms of the Trust Deed or not, or for the negligence or fraud of any agent employed by such Trustee or by reason of any mistake or omission made in good faith by any Trustee hereof or by reason of any other matter or thing whatsoever, except such as is occasioned by such Trustee's own personal willful act of dishonesty.
- 16.2 No Trustee shall be liable for any act, neglect or default or any act of dishonesty committed by any other Trustee unless he/she was privy thereto.
- 16.3 The Trustees shall be indemnified out of and by the Trust Fund against all claims and demands of whatsoever nature that may be made upon them arising out of the exercise of any of the powers conferred upon them by this Trust Deed.

17. **DEFINITION**

"The Trustees" shall mean the Trustees for the time being in office of terms of the provisions of this Trust Deed.

**18 AMENDMENT TRUST DEED**

- 18.1 No amendments or alterations and/or additions to this Deed shall be effected unless it is approved by a 2/3rds majority of membership and provided that at least thirty days clear notice in writing shall be given to the membership as also an advertisement in the morning and evening newspapers (circulating in the greater Cape Town area, and in such notices, the amendments. alteration/s and/or additions to the Trust Deed shall be set out;
- 18.2 Notwithstanding the provisions of clause 18.1 above the provisions of clauses 3.5 and 12 shall under no circumstances be altered, changed or amended.

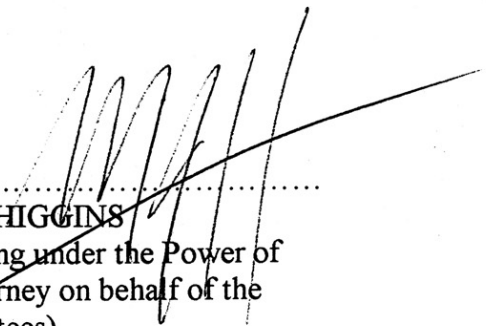
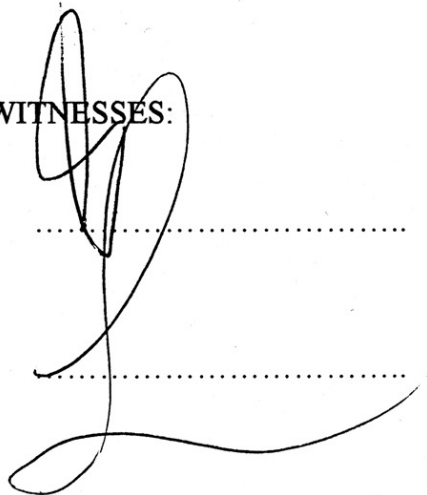
**AND** the aforesaid Trustees declare to accept and agree to the formation of this Trust subject to above terms.

IN WITNESSES WHEREOF WE HAVE HEREUNTO SET OUR HANDS AT CLAREMONT ON THIS 22nd DAY OF DECEMBER 1998 IN THE PRESENCE OF THE UNDERSIGNED WITNESSES.

AS WITNESSES:

1. ....

2. ....



.....  
**M I HIGGINS**  
(acting under the Power of  
Attorney on behalf of the  
Trustees)