

# **NOTARIAL TRUST DEED**

## **THE MICHAEL OAK SCHOOL ASSOCIATION**

NOTARIAL TRUST DEED

of

THE MICHAEL OAK SCHOOL ASSOCIATION

KNOW ALL MEN WHOM IT MAY CONCERN:

THAT on this the [ day of [ in the Year of Our Lord One Thousand Nine Hundred and Sixty Seven before me,

RICHARD BRADLEY ROSENTHAL

Notary Public by lawful authority duly sworn and admitted residing and practising at Cape Town in the Province of the Cape of Good Hope, and in the presence of the subscribed witnesses personally came and appeared

(a) HEINZ SCHOTTE

herein representing the said Michael Oak School Association (hereinafter referred to as the "Existing Association) he being duly authorised hereto by Resolution of a General Meeting of the members of the Association held at on the

(hereinafter referred to as the "First Appearer")

and

(b) (i) HEINZ SCHOTTE

herein representing Maria Ellen Schafer (born Koker) widow, duly authorised hereto by virtue of a General Power of Attorney executed at Cape Town on the 7th day of February, 1967 and which said Power of Attorney now remains filed in my protocol.

(ii) WILHELMINA ROBERTA VAN LENNEP (born Klink) married to according

to the laws of Germany; and

(iii) GRAHAM CHARLES THOMAS

(hereinafter collectively referred to as the "Second Appearers")

AND THE APPEARERS DECLARED THAT -

WHEREAS they are desirous of establishing a Trust in order to acquire and administer the assets and undertaking of the Michael Oak School, Marlow Road Kenilworth (hereinafter referred to as "the School");

AND WHEREAS the Existing Association presently conducts the business and owns the assets of the School and is both entitled to the benefit of all the rights, and subject to all the obligations appertaining to "the School";

NOW THEREFORE THESE PRESENTS WITNESSETH THAT:

1

The Trust hereby created shall be known as THE MICHAEL OAK SCHOOL ASSOCIATION (hereinafter referred to as "The Trust")

2

a) In implementation of a Resolution passed at a General Meeting of the Existing

Association held at Kenilworth on the 8 day of February 1967, the First Appearer does hereby cede, assign, transfer and make over to and in favour of The Trust, the entire undertaking of the Existing Association including all its rights and assets and all its duties and obligations.

(b) In implementation of certain Declaration of Trust executed by the Second Appearers in favour of The Trust then in the course of formation, the Second Appearers do hereby cede, assign and transfer to and in favour of the Trust the total shareholding in the capital of the Company, Michael Oak properties (Proprietary) Limited, held by them in Trust.

(c) The First and Second Appearers do hereby respectively warrant and undertake that they shall forthwith on request do all such things and sign all such documents as shall be necessary or requisite in order to give effect to these presents.

3

The objects of this Trust shall be as follows: -

(a) To organise and promote the teaching of children in accordance with the principles and methods expounded by Rudolf Steiner and in furtherance thereof to establish (Primarily in the Cape Peninsula, including the magisterial districts of Cape Town, Wynberg, Simon's Town, Goodwood and Bellville, and by extension

beyond this area, but within the Republic of South Africa, if the Trustees deem fit):

- (i) Schools, Colleges and other teaching establishments including Tutorial, Nursery, Primary and Secondary Schools, at which all and any subjects are taught in accordance with the principles and methods of Rudolf Steiner.
  - (ii) Institutions and facilities suitable for the recruitment and training of teachers according to the educational principles of Rudolf Steiner.
- (b) Generally to publicise and promote the objects aforesaid by means of lectures, exhibitions, meetings, classes, conferences, printing and publishing of pamphlets, newspapers, periodicals, books or leaflets or otherwise howsoever, not only within the area defined in clause 3(a) above but also elsewhere in the Republic of South Africa where Steiner education is already or could be conducted in the future
- (c) To conduct research and investigation in order to develop and improve the methods of education of Rudolf Steiner, and to make the results of such research generally available to the public.

#### 4

The income and property of the Trust whencesoever derived shall be applied solely towards the promotion of the objects of the Trust as set forth in this Deed and no portion thereof shall be paid or transferred directly or indirectly and whether by way of dividend bonus or otherwise howsoever by way of profit to any of the Trustees, provided that nothing herein contained shall preclude the payment in good faith of: -

- (i) reasonable remuneration to any officer or servant for services actually rendered to the Trust;
- (ii) reimbursement of all costs, expenses and liabilities incurred on behalf of the Trust;
- (iii) payment of a pension on the retirement of any person who shall have been previously in the employ of the Trust.

#### 5

Without in any way derogating from the generality of the objects hereinbefore set out, the Trust shall have the following powers:

- (a) To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal Estate which may be deemed necessary or convenient for any of the purposes of the Trust, and in order to provide

suitable accommodation, buildings and facilities for the purposes aforesaid.

- (b) To purchase, hire, or otherwise acquire any furniture, books, equipment and other aids and accessories that may advantageously be used in connection with the objects aforesaid.
- (c) To employ such teaching and administrative staff as may be required from time to time on such terms as it may determine, and to remunerate such staff by way of cash and/or accommodation and/or otherwise as the Trust shall deem fit.
- (d) To enrol fulltime or part-time students and pupils on such terms as the Trust may from time to time determine.
- (e) To grant scholarships, bursaries or other financial assistance to pupils of the school and to lend and advance money or give credit to or guarantee or become surety for any person, institution or concern in the discretion of the Trust.
- (f) To solicit and accept donations, bequests, contributions and subscriptions for the funds of the Trust from within the areas specified in clause 3 above and also from Steiner educational sources overseas.
- (g) To improve, manage, cultivate, develop, exchange, let or lease, mortgage, sell, dispose of, turn to account and grant options, rights and privileges in respect of or otherwise deal with all or any part of the property and rights of the Trust.
- (h) To invest the monies and assets of the Trust not immediately required in such securities and in such manner as may from time to time be determined.
- (i) To borrow or raise money in such manner as the Trust shall deem fit and in particular to secure the repayment of any money so borrowed, by means of mortgage, pledge, charge or lien upon the whole or any part of the Trust's property or assets; and also by mortgage, pledge, charge or lien to secure and guarantee the due performance by the Trust of any obligation or liability it may undertake.
- (j) To operate Banking Accounts and to draw, make, accept, endorse, sign, discount, execute and issue cheques, promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable documents.
- (k) To enter into any arrangements with any Governments or Authorities (supreme, municipal or otherwise) or any Corporation, companies, societies, organisations or persons that may seem conducive to the objects of the Trust or any of them and to obtain from such Government, Authority, Corporation, Company or person, any charters, contracts, decrees, rights, privileges and concessions which the Trust may think

desirable and to carry out, exercise and comply with any charters, contracts, decrees, rights, privileges and concessions.

(l) To pay all or any expenses incurred in connection with the formation, promotion or incorporation of the Trust or to contract with any person, firm or company to pay the same.

(m) To procure the Trust to be registered or recognised in any Colony or Dependency or in any foreign country or place.

(n) To promote any other Trust, Company or Concern, for the purpose of acquiring all or any of the property and/or undertaking any of the liabilities of this Trust, or of undertaking any of the purposes which may appear likely to assist or benefit this Trust or to enhance the value of any property or promote any of the objects of this Trust, and to place or guarantee the placing of, underwrite, subscribe for or otherwise acquire all or any part of the equity of any such Trust, Company or Concern as aforesaid.

(o) To establish and assist any association, institution, fund or trust for the benefit of employees or ex-employees of the Trust or their dependants, and to grant pensions, and allowances, and to make contributions towards suitable insurances for their benefit.

(p) To undertake and execute any trusts or agency which may seem directly or indirectly conducive to the attainment of any of the objects of the Trust.

(q) To amalgamate with any other Association, Institution, Society or Trust having the same or similar objects to those of the Trust.

(r) To purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the Associations, Institutions, Societies or Trusts with which the Trust is authorised to amalgamate.

(s) To transfer the property, assets, and engagements of this Trust or any of them, to and in favour of any one or more of the Companies, Institutions, Societies or Associations with which the Trust is authorised to amalgamate.

(t) To do all such things as may be deemed incidental or conducive to the attainment of the above objects or any of them.

## 6

(a) The management and control of the affairs of the Trust shall vest in and be exercised by a Board of Trustees, who shall have the fullest powers to exercise all and any of the functions of the Trust.

(b) The first members of the Board of Trustees shall be the following persons:

**Teachers**

Heinz Schotte

Lea Gabler

Alfred Bienewiitz

Lola Penfold

**Parents and Friends**

Graham Charles Thomas

Wilhelmina Roberta van Lennep

who shall respectively hold office until other Trustees are appointed at the first Annual General Meeting of the Trust in accordance with the undermentioned provisions.

(c) The Trustees shall be elected annually in the following manner, namely:

(i) The Trust shall hold an Annual General Meeting in each year which shall take place not more than fifteen (15) months after the last preceding Annual General Meeting, and in the case of the first such Meeting within fifteen (15) months of the date of execution of this Trust, the Annual General Meeting shall be held at such time and place as the Board of Trustees may determine and not less than twenty one (21) days written notice thereof shall be given to all members of the Trust as defined paragraph 6(d) hereof.

(ii) Members of the Board of Trustees shall be nominated in writing in each year by the Nominations Committee, who shall seek nominations from members of the Association who qualify, by advertising their search for at least three weeks. The Nominations Committee shall comprise six members elected at least 28 days before the AGM. Their tenure will run until a new Board of Trustees has been elected.

(iii) Members of the Nominations Committee will be selected as provided below. The incumbent chair of the Board of Trustees will initiate the process. The Nominations Committee will comprise:

a. Two (2) members of the incumbent Board of Trustees selected by the Board according to criteria decided at a meeting of the Board;

b. Two (2) teachers (not necessarily members of College) elected at a meeting of the College according to criteria decided at a College meeting.

c. Two (2) parents (not necessarily members of the Links) elected at a meeting of the Links Committee according to criteria decided at a Links meeting.

(iv) The incumbent Board of Trustees shall recommend to the Nominations Committee the size of the new Board. There shall always be not less than six (6) and not more than twelve (12) members of the Board.

(v) The Board must include a minimum of three (3) teachers in the employ of the Trust, who shall be selected for the Board by the College of Teachers according to available spaces as determined by the Board.

a. The Nomination Committee's election shall be published fourteen (14) days before the AGM to facilitate dialogue in the process towards ratification. Names of all nominees shall be published, with their consent.

b. The Nominations committee shall submit its list of selected nominees to the incumbent Chair of the Board at least 19 days before the AGM. These nominations will then be brought before the AGM for approval. If any of the selected nominees are rejected by the AGM, a replacement must be found by the Nominations Committee within thirty (30) days and a Special General Meeting must be called to ratify the replacement nominee. Should the entire list be rejected by the AGM, the retiring board will reconstitute an interim board.

(vi) Retiring Trustees shall at all times be eligible for re election.

(vii) In the event of any Trustee ceasing to be a Teacher or Parent during his term of office as Trustee, the Board of Trustees shall be entitled but not obliged to require his immediate resignation and such resignation shall not entitle the Trustee to any claim for damages.

(viii) Provided that the relative proportions of the Board of Trustees of one-third ( $\frac{1}{3}$ <sup>rd</sup>) teachers and two thirds ( $\frac{2}{3}$ <sup>rd</sup>s) parents be maintained:

A In the event of a Trustee being unable or unwilling for any reason to continue in such office for the full duration of his term, then and in such event, unless the remaining Trustees shall agree to the contrary, the vacancy shall be filled for the remainder of such Trustee's term of office by a person to be nominated by the Trustees then remaining.

B The Board of Trustees shall itself have the power at any time to co-opt any three persons as additional Trustees for the remaining duration of their office.

(ix) The Board of Trustees may from time to time entrust to or confer upon a Sub-Committee or individual, whether Trustee(s) or not, such of the powers and authorities vested in them as they may deem fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and upon such terms and conditions and with

such restrictions as they may deem expedient, and may at any time revoke or vary all or any of such powers and authorities. The following Sub Committees are established at the date of passing of these amendments:

- i. The College of Teachers which is given the mandate by the Board of Trustees to employ and terminate employment of all teaching staff, to participate with the Trustees in the employment and termination of employment of non-teaching staff, to carry the responsibility for all pedagogical matters and to uphold the principles and ethos of Waldorf Education at Michael Oak, and:
  1. The structure and membership criteria of the College of Teachers, shall be determined by the members of the College of Teachers;
  2. The College of Teachers shall act strictly within the legal and financial constraints determined by the Trustees and any financial or legal commitments made by College of Teachers shall be in accordance with those constraints;
  3. The College of Teachers shall conduct itself according to the criteria set out in the document entitled 'The College of Teachers', which outlines the role and responsibilities of the College of Teachers, which document shall be available to any member of the Association. The said document shall include the principles of membership, meeting structure and accountability, procedures for staff discipline, grievance procedures and shall be subject to the approval of the Board of Trustees.
- ii. The Links comprises a Sub-Committee of parents who are selected each year to take on the function of liaison between the teachers and the parents in each class and each Links group:
  1. shall be subject to the general approval of the parents of the class and also of the teacher principally responsible for the class;
  2. shall conduct themselves according to the criteria set out in a document entitled "The Links", which shall be available to any member of the Association and which document shall be subject to approval of the College of Teachers and the Board of Trustees.

(d) The members of the Trust shall be the teachers and parents (which term shall include guardians) of children of the School.



The office of a Trustee shall be vacated:-

- (a) If he resigns, or
- (b) If he becomes insolvent or assigns his Estate for the benefit of or compounds with his creditors, or
- (c) If he be found lunatic or becomes of unsound mind, or
- (d) If he would have ceased to be a Director of a Company by virtue of the provisions of Section 68(1) or Section 68(bis)(2) of Act No. 46 of 1926 (as amended)

provided that no Trustee shall vacate his office by reason of his being a member of any company which has entered into any contract or contracts with or done any work for the Trust or by reason of the fact that he personally has entered into any contract or contracts with or done any work for the Trust if he has disclosed to the Board of Trustees his interest in such contract or work.

8

Notwithstanding anything to the contrary hereinbefore contained the Trust may by Ordinary Resolution at a duly constituted General Meeting (Ordinary or Extraordinary) remove a Trustee from office during the currency of his term.

9

The Trustees shall appoint a Chairman, Secretary and Treasurer from their number, and they shall also appoint Auditors of the Trust. The said officers shall each hold office for a period of one (1) year terminating at the next annual general meeting of the Trust.

10

The quorum constituting any meeting of the Board of Trustees shall be six (6), of which not less than one-third ( $\frac{1}{3}^{\text{rd}}$ ) of the persons present shall be teachers in the employ of the Trust.

11

A Resolution put to the vote at a Meeting of Trustees shall, unless the same is unanimously agreed to, be decided by and as at a poll only. Each Trustee present or represented at such Meeting shall be entitled to one (1) vote. In the event of an equality of votes the Chairman shall not be entitled to a second or casting vote. Such poll shall be taken in such manner as the Chairman of the Meeting may direct and the result of the poll shall be deemed to be the Resolution of the Meeting. Any Resolution signed by all the Trustees of the Trust for the time being in the Republic of South Africa shall be as valid and effectual as if passed at a Meeting of Trustees convened for that purpose.

12

A Meeting of Trustees at which a quorum is present shall be competent to carry out all the objects of the Trust as set forth herein and to exercise all or any of the powers, authorities and discretions of the Trust for the time being vested in the Trustees.

13

Each Trustee shall have the power to name any person not necessarily another Trustee to act as Alternate in his place during his absence or inability to act as such, provided that the appointment of such Alternate Trustee shall be approved of by the Board whose consent shall not be unreasonably withheld. Upon such appointment being made and approved aforesaid, the Alternate Trustee shall in all respects be subject to the terms, qualifications and conditions existing with reference to the other Trustees.

14

Subject to the provisions of any relevant statute, every Trustee, Manager, Secretary and other Officer or servant of the Trust shall be indemnified by the Trust in respect of all acts done in good faith on its behalf, and it shall be the duty of the Trustees out of the funds of the Trust to pay all costs, losses and expenses which any such officer or servant may have incurred or become liable for by reason of any contract entered into, or act or deed done by him in his capacity as an officer or servant or in the discharge of his duties.

15

Subject to the provisions of any relevant statute, no Trustee or other officer of the Trust shall be liable for the acts, receipts, neglects or defaults of any other Director or Officer, or for joining in any receipt or other act for conformity or for any loss or expense happening to the Trust through the insufficiency or deficiency of title to any property acquired by order of the Trustees, for or on behalf of the Trust, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Trust shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited or for any loss or damage occasioned by any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto unless the same happen through its own dishonesty.

16

The Board of Trustees may at any time and it shall be obliged upon the written requisition of any five (5) parents or teachers, to convene an Extraordinary General Meeting, provided that at least twenty one (21) days written notice of such Meeting shall be given to all persons entitled to notice of any Annual General Meeting, which notice shall state the business to be transacted at the Meeting; provided that should the Board of Trustees fail to give the requisite notice within a period of twenty one (21) days of the date of requisition, the persons requisitioning the Meeting shall themselves be entitled to give the requisite notice.

17

(a) At any General Meeting (Ordinary or Extraordinary) a Resolution put to the vote of a Meeting shall be decided by and as at a poll only. A poll shall be taken in such manner as the Chairman of the Meeting directs and the result of the poll shall be deemed to be the Resolution of the Meeting. Each parent present and/or represented at such Meeting shall be entitled to one (1) vote. Each teacher present and/or represented at such Meeting shall be entitled to such proportionate number of votes as shall result in the parents present at the Meeting having an aggregate vote equivalent to one-third (1/3) of the aggregate vote of all teachers present at such Meeting. In the event of an equality of votes the Chairman shall not be entitled to a second or casting vote.

(b) The Chairman may with the consent of any General Meeting (Ordinary or Extraordinary) at which a quorum is present (and shall if so directed by the Meeting) adjourn the Meeting from time to time and place to place.

18

A person entitled to vote at any General meeting of the Trust (Ordinary or Extraordinary) shall be entitled to appoint any person to act as his proxy provided that the instrument appointing such proxy shall be in writing and lodged with the Trustees at least twenty four (24) hours before the relevant Meeting.

19

At any General Meeting fifteen (15) persons present or represented at such Meeting shall constitute a quorum.

20

(a) The Board of Trustees shall ensure that the Trust keeps proper Books of Account which shall be audited as soon as possible by an accountant or auditor, registered in terms of the Public Accountants' and

Auditors' Act, 1951 (Act no. 51 of 1951), who shall not be a member of the Board of Trustees. A copy of the Annual Balance Sheet shall be available for inspection by all persons entitled to notice of an Annual General Meeting. The Board of Trustees shall furthermore ensure that property minutes and Attendance Registers are kept in respect of every General Meeting of the Trust (Ordinary or Extraordinary).

(b) The financial year of the Trust shall commence on the 1st April in each year and shall continue to the 31 of March of the ensuing year, both days inclusive.

## 21

Notices may be served by the Trust upon any person, either personally or by sending it through the post in a prepaid letter addressed to such person at his registered address. Any notice served by post shall be deemed to have been served at the time the letter containing the same would normally have been received in the normal course of post and it shall be sufficient to prove that the letter containing the notice was properly addressed, prepaid and posted.

## 22

(a) The Trust may be dissolved at any time by a Resolution passed by a majority of four-fifths (4/5ths) of the teachers in the employ of the Trust and a majority if the parents (and other persons) present or represented at a Special General Meeting voting separately. Twenty-one (21) days written notice of such meeting shall be given to all Members of the Trust, which notice shall specifically state the purpose of such Meeting.

(b) If upon the winding up or dissolution of the Trust there remains after satisfaction of all its debts, liabilities and commitments, any property whatsoever, the same shall not be paid to or distributed among the members of the Trust, but shall be donated or otherwise transferred to the South African Federation of Waldorf Schools or some other institution or institutions having objects similar to this Trust and which is/are authorised in terms of the Fund-Raising Act, 1978 (Act no. 107 of 1978) to collect contributions, as determined by the members of the Trust, or in default thereof as may be decided by the Director of Fund-Raising.

## 22bis

22bis(i) The original Notarial Trust Deed of the MICHAEL OAK SCHOOL ASSOCIATION dated 22<sup>nd</sup> day of February 1967, as well as any subsequent amendment thereof, may be amended by:

- a) An ordinary resolution of the Board of Trustees taken in accordance with the provisions of clause 11 hereof; AND
- b) An ordinary resolution passed in accordance with the provisions of clause 17(a) hereof at a duly convened Annual/Extraordinary General Meeting of the Trust and in terms of which the General Meeting approves and/or ratifies the proposed amendments to the Trust Deed.

22bis(ii) Any resolution to be passed in accordance with clause 22bis(i) above shall be tabled for approval at the meeting concerned and shall set out in clear, written terms the exact and final wording of the proposed amendments to be made to the Trust Deed.

23

Also appeared before me the said Notary, on the day and place aforementioned:

**Teachers**

Heinz Schotte

Lea Gabler

Alfred Bienewitz

Lola Penfold

**Parents and Friends**

Graham Charles Thomas

Wilhelmina Roberta van Lennep

who respectively declared to accept office as the first Trustees under and in terms of this Trust Deed.

24

**EXEMPTION FROM SECURITY**

The Trustees or the survivors of them or any assumed Trustees are specifically exempted from the duty of furnishing security to the Master of the Supreme Court or any other person or body under the Trust Property Control Act No. 57 of 1988, or any amendments thereto, or under any other legislation relevant to Trust Monies.

THUS DONE AND SIGNED ON THE DAY MONTH AND YEAR FIRST  
AFOREWRITTEN AT CAPE TOWN IN THE PRESENCE OF THE  
SUBSCRIBING WITNESSES AND OF ME THE SAID NOTARY PUBLIC.

As Witnesses

1 \_\_\_\_\_  
\_\_\_\_\_

H SCHOTTE

2

q.q. The Existing Association

H SCHOTTE

q.q. M E SCHAFER

QUOD ATTESTOR

\_\_\_\_\_  
W R VAN LENNEP

NOTARY PUBLIC

\_\_\_\_\_  
G C THOMAS