

## DEED OF TRUST

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**THIS DECLARATION OF TRUST** is made the        day of        Two Thousand **BETWEEN:**

- (1)     .... of Post Office Box .....,
- (2)     ..... of Post Office Box .....Nairobi,
- (3)     ..... of Post Office Box .....,
- (4)     ..... of Post Office Box ..... Nairobi,
- (5)     ..... of Post Office Box ..... Nairobi,
- (

(hereinafter together referred to as "the Trustees" which expression shall where the context so admits include the survivor or survivors of them or other the trustee or trustees for the time being hereof whether original or substituted)

### **WHEREAS:-**

As from the First day of January Two Thousand (now past) (hereinafter referred to as "the Commencement Date") the Trustees wish to establish in Kenya an irrevocable public charitable trust to be known as "..... **TRUST**" for the education of the residents of Kenya through the preservation of its wildlife and natural habitat and in particular the preservation of the Ngong Road Forest and to this end the Trustees wish to declare certain trusts concerning the sum of Kenya Shillings One Hundred (K.Shs. 100/-) already held by them.

It is anticipated that further cash and property will hereafter be given devised or bequeathed to the Trustees by other persons corporations or organisations to be held by the Trustees upon the charitable trusts hereinafter declared.

**NOW THIS DEED WITNESSES** and it is hereby declared as follows: -

### **DEFINITION AND INTERPRETATION**

1.     In this Deed where the context so admits: -

The expressions hereinbefore defined shall have the meanings thereby assigned to them respectively and in addition: -

"Deed" shall mean any instrument in writing signed by the parties thereto in the presence of an independent witness and dated or in the case of a party or parties thereto which shall be a body or bodies corporate then executed in accordance with the Articles of Association or other statute of such corporate body or bodies;

"Investments" includes property of any kind whatsoever other than cash;

"Trust Fund" shall mean the said sum of Kenya Shillings One Hundred (K.Shs.100/=) and such further moneys investments or other property as may be added thereto by any other person or trust all accumulations of income lawfully made and the moneys investments or other property for the time being representing the same;

Any reference to any Act, Ordinance or Chapter number shall be taken to include any rules made thereunder and any statutory modification or re-enactment of such Act or Ordinance or re-numbering of the appropriate Chapter.

## **CHARITABLE TRUST**

2. As from the Commencement Date the Trustees shall hold the capital and income of the Trust fund upon the following irrevocable charitable trusts: -

Upon trust for such public charitable purpose or purposes directed wholly towards the advancement of the education of the residents of Kenya through the preservation of its wildlife and natural habitat as the Trustees may from time to time in their absolute discretion think fit and in particular for the preservation of the Ngong Road Forest;

The Trustees shall have power at their absolute discretion to accumulate and capitalise the whole or any part of the income of the Trust Fund by investing the same in any of the investments hereby authorised and so that any such investment shall be an accretion to the capital of the Trust Fund and be held upon the same trusts as the Trust fund and as one fund therewith for all purposes.

## **TRUST FOR SALE**

The Trustees shall hold any real or immovable property comprised in the Trust Fund upon trust to sell the same with power to postpone the sale thereof for such period as they shall in their discretion think fit and shall hold all other investments comprised in the Trust Fund upon trust in their absolute discretion either to permit the same to remain as invested or to sell or convert into money any such investments and upon trust as to money with like discretion to invest the same in their names or under their control in any of the investments hereinafter authorised with power from time to time to vary or transpose any such investments for others of a nature hereby authorised.

## **TRUSTS OF ADDITIONAL PROPERTY**

The Trustees shall have the power at any time or times to accept such additional moneys investments or property of whatsoever nature as may be paid or transferred to them upon the trusts hereof by any person either personally or by will or by gift or by the provisions of any other trusts or otherwise (including property of an onerous nature the acceptance whereof the Trustees consider to be beneficial or desirable as an addition to the Trust Fund) and either for the general purposes of the trusts hereby declared or upon any special trusts declared by the donor or testator and in the absence of any direction to the contrary any such additional moneys investments or property so accepted by the Trustees shall be held by them upon the trusts hereof: -

In the case of capital moneys investments or property as an accretion to the capital of the Trust Fund;

In the case of moneys being income as part of the income of the Trust Fund.

## **TRUSTEES ADDITIONAL POWERS**

Without prejudice to any powers which may expressly or by implication be vested in the Trustees under the provisions hereof or by law the Trustees shall have the following additional powers: -

### **investment**

To invest the Trust Fund in the purchase of or at interest upon the security of such stocks funds shares securities or other investments or property of whatsoever nature and wheresoever situate and whether involving liability or not and whether producing income or not or upon such personal credit with or without security as the Trustees shall in their absolute discretion think fit to the intent that the Trustees shall have the same full and unrestricted powers of investing and transposing investments in all respects as if they were absolutely entitled thereto beneficially.

### **purchase etc real property**

To purchase take on lease or otherwise acquire any freehold leasehold or other immovable property either by way of investment or for occupation and use for all or any of the charitable purposes hereby authorised and to sell exchange surrender let or otherwise deal with any such freehold leasehold or other immovable property and to facilitate the holding of such immovable or any other property to apply for and procure their registration as a body corporate with perpetual succession under the Trustees (Perpetual Succession) Act (Chapter 164 of the Revised Laws of Kenya 1962 Edition);

### **borrow**

At any time and from time to time to borrow money on the security of the Trust Fund with power to charge any part of the capital or income (including any future income) of the Trust Fund including without prejudice to the

generality of the foregoing any real or immovable property forming part thereof with the repayment of any moneys so borrowed and to pay or apply the moneys so raised in any manner in which money form part of the capital of the Trust Fund may be paid or applied and no purchaser lender or other persons paying for advancing money on a sale mortgage charge or other transaction purporting to be made by the Trustees under or for any of the purposes of this Trust shall be concerned to see that the money is wanted or that no more than is wanted is raised or otherwise as to the propriety of the transaction or the application of the money;

**purchase etc chattels**

To purchase hire or otherwise acquire any chattels required or likely to be required for the purposes of or in connection with any charitable works for the time being carried on by the Trustees and authorised hereby and to sell or otherwise deal with any such chattels;

**invite subscriptions**

At any time to invite and with or without such invitation receive contributions from any person or persons whomsoever either by way of donation or annual or other subscription or legacy or otherwise for the benefit or purposes of the charitable trusts declared or constituted hereunder;

**vest property in nominee names**

To allow any part of the Trust Fund to be or remain vested in the name of any nominee whether or not including the Trustees or any of them without being accountable for any default on the part of any such nominee;

**operate bank accounts**

From time to time to open and maintain in their joint names or in the names of any of them a banking account at such bank as they shall from time to time decide and to place any moneys forming part of the Trust Fund to the credit of such account or place the same on deposit with any banker or with any building or investment society or company;

**make by-laws or rules etc**

At any time and from time to time to make such arrangements draw up such schemes and make and frame such by-laws and rules as they shall in their uncontrolled discretion think fit for the administration of the charitable trusts declared herein and for the management of the Trust Fund or any part thereof and at any time or times to amend alter or repeal any of the said arrangements schemes by-laws or rules as they shall think fit;

**employ officers and others**

From time to time to appoint or employ a secretary and such other officers and employees and such members of a board of advisers or other committees as they shall from time to time think fit and to fix the remuneration or

wages of such secretary officers employees advisers and committees respectively and pay such remuneration and wages from the Trust Fund;

#### **incorporation**

To promote and procure the incorporation of registration of any company or companies with or without limitation of the liability of the members thereof to facilitate the carrying out of the charitable trust purposes declared hereunder;

#### **delegation**

To delegate such of the powers authorities and discretions by these presents or by law conferred on them as the Trustees shall see fit to any committee or committees or other proper officer as constituted in accordance with any by-laws or rules drawn up by the Trustees as aforesaid or otherwise employed by the Trustees;

#### **insure**

To insure against any loss or damage from any peril any property for the time being forming part of the Trust Fund for any amount and to pay the premia payable in respect thereof out of the Trust Fund or the income thereof;

#### **employ agents**

Instead of acting personally to employ and pay at the expense of the income or capital of the Trust Fund any agent in any part of the world whether attorneys advocates barristers solicitors accountants brokers banks trusts companies or other agents without being responsible for the default of any agent if employed in good faith to transact business or do any act required to be transacted or done in the execution of the trusts hereof including the receipt and payment of moneys and the execution of documents;

#### **carry on businesses**

To carry on or manage such business or commercial enterprise whether for profit or otherwise as the Trustees determine should be carried on or managed in connection with the trust hereinbefore declared;

#### **release powers**

- (o) By deed revocable or irrevocable to extinguish release revoke or restrict the future exercise of any power or powers conferred on the Trustees by the Trust Deed.

#### **ENLARGEMENT OF TRUSTEES' POWERS**

If in the course of the management or administration of the Trust Fund the Trustees shall consider that any transaction is expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the Trustees by this Trust Deed or by law the Trustees may by any deed confer upon themselves or on their nominees either generally or in any particular instance the necessary power for that

purpose without the necessity of obtaining an order of the Court provided always that no amendment under this clause shall be made to the trusts declared in Clause 2 hereof.

#### **NON-RESIDENT TRUSTEE**

In the event that any Trustee is a non-resident of Kenya for the purposes of the Exchange Control Act the Trust Fund shall only be held by and under the control of those of the Trustees as are residents of Kenya for such purposes.

#### **POWER FOR MAJORITY TO ACT**

So far as possible there shall never be less than Five trustees hereof and a majority of the trustees must always be residents of Kenya for exchange control purposes. All or any of the trusts and powers vested in or exercisable by the Trustees under this Deed shall be capable of being performed or exercised by a majority of the Trustees hereof for the time being and any action or decision of such majority shall be as valid and effectual as it would have been if done or made by all the Trustees for the time being. A Memorandum signed by a majority of the Trustees shall be as valid as effective as a resolution passed at a formal meeting of the Trustees.

#### **POWER OF DIRECTOR OF FORESTRY TO NOMINATE ONE TRUSTEE**

9. The Director of Forestry may from time to time and at any time by notice in writing to the Secretary of the Trust nominate any person to be a Trustee hereof; whereupon the trustees shall appoint such person as a Trustee; and the Director of Forestry may at any time and from time to time by notice likewise require the removal of any person so nominated by him who has been so appointed whereupon the Trustees shall remove such person.

#### **POWER OF DIRECTOR OF KENYA WILDLIFE SERVICE TO NOMINATE ONE TRUSTEE**

9A. The Director of the Kenya Wildlife Service may from time to time and at any time by notice in writing nominate any person to be a Trustee hereof; whereupon the Trustees shall appoint such person to be a Trustee; and the Director of Kenya Wildlife Service may at any time and from time to time by notice likewise require the removal of any person so nominated by him who has been so appointed whereupon the Trustees shall remove such person.

#### **REMOVAL OF TRUSTEES**

10. The Trustees may at any time and without assigning any reason therefor by deed signed by the rest of them remove any person from office as a trustee hereof and the person so removed shall forthwith upon receipt of a certified copy of such deed cease to be a trustee hereof and become and be

incapable of acting in the trusts hereof.

### **APPOINTMENT OF TRUSTEES**

The statutory power of appointing new and additional trustees contained in Section 37 of the Trustee Act shall apply to this Trust Deed and shall be exercisable by a majority of the Trustees provided that a trustee who has been removed under the provisions of the preceding clause shall not be regarded as a surviving or continuing trustee for the purposes of appointing new or additional trustees hereof.

### **PERSONS DEALING WITH TRUSTEES**

12. No purchaser mortgagee or other person dealing or proposing to deal with the Trustees or with any persons purporting to be the Trustees shall be concerned or entitled to enquire as to the title of the Trustees to make any appointment or as to the validity of any appointment or removal of any trustee or former trustee.

### **APPOINTMENT AND REMUNERATION OF CORPORATE TRUSTEE**

13. Nothing contained herein shall prevent the appointment of a corporation to be a trustee or sole trustee hereof upon such terms as to remuneration as at or prior to its appointment may be agreed in writing between such corporation and the person or persons making such appointment in default of such agreement in accordance with the corporation's published terms and conditions as to acceptance of trusts current at the date of its appointment.

### **REIMBURSEMENT OF TRUSTEES' EXPENSES**

The Trustees may retain and reimburse themselves out of the Trust Fund or income thereof all costs charges and expenses of or incidental to the administration of the trusts hereof or in relation thereto but (subject always to the provisions of the following clause) shall not otherwise be permitted to charge for their services.

### **PROFESSIONAL TRUSTEES' CHARGING CLAUSE**

Any Trustee for the time being hereof being an advocate or other individual engaged in any profession or business shall be entitled to charge and be paid all usual professional or other charges for business done and time spent and services rendered by him or his firm in the execution of the trusts and powers hereof whether in the ordinary course of his profession or business or not and although not of a nature requiring the employment

of an advocate or other professional person.

**NO TRUSTEE LIABLE FOR LOSS**

In the execution of the trusts powers and discretions herein contained or hereby or by law conferred no trustee shall be liable for any loss to the Trust Fund arising in consequence of the failure depreciation or loss of any investments made in good faith or by reason of any mistake or omission made in good faith or of any other matter or thing except willful and individual fraud and wrongdoing or personal conscious bad faith on the part of the trustee who is sought to be made liable.

**IN WITNESS** whereof the Trustees have hereunto set their hands and seals the day and year first hereinbefore written.

**SIGNED SEALED AND DELIVERED** by )  
.....in the presence )  
of:- )  
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 )  
 )  
ADVOCATE )

**Dated** **2000**

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**DEED OF TRUST**  
**re**  
**THE ,.....TRUST**

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