

# TURCAN CONNELL

## Deed of Trust

by

**Shetland Charitable Trust  
(SC027025)**

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2019

KJP/SAM/S.0608.003

**SHETLAND CHARITABLE TRUST**

**Scottish Registered Charity SCO27025**

Shetland Charitable Trust was created by a Deed of Trust dated 10<sup>th</sup> September 1997 and registered in the Books of Council and Session on 24<sup>th</sup> September 1997. There are two schedules annexed to the Deed of Trust, a Schedule of Powers and a Schedule of Governance Arrangements.

The Deed of Trust and Schedules as created and amended now comprise:-

- a. The Deed of Trust and Schedule of Powers comprising Appendix B referred to in the Resolution by the Trustees dated 15<sup>th</sup> May 2017 and registered in the Books of Council and Session on 23<sup>rd</sup> May 2017; and
- b. The Schedule of Governance Arrangements comprising the Appendix annexed to the Supplementary Deed of Trust by the Trustees dated 24<sup>th</sup> January 2019 and registered in the Books of Council and Session on 18<sup>th</sup> March 2019.

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This is Appendix B referred in the foregoing  
Resolution by the Trustees dated 15<sup>TH</sup> MAY 2017

WE, MALCOLM JOHN BELL, residing at Edgocott, 34 St Olaf Street, Lerwick ZE1 0BX, MARK ROBERT BURGESS, residing at Mayburn Cottage, Ladysmith Road, Scalloway ZE1 0XD, PETER JAMES CAMPBELL, residing at 8 Sandyloch Drive, Lerwick ZE1 0SR, GARY KENNETH CLEAVER, residing at 1 Hillsgarth, Baltasound, Unst, ZE2 9DY, ALASTAIR THOMAS JAMES COOPER, residing at Linga, Mossbank ZE2 9RB, STEVEN WILLIAM COUTTS, residing at Glenlea, Weisdale ZE2 9LQ, ALLISON GEORGE LESLIE DUNCAN, residing at 1 Hillock, Dunrossness ZE2 9JR, ROBERT SIMPSON HENDERSON, residing at Maraberg, Cullivoe, Yell ZE2 9DD, ANDREA ISOBEL MANSON, residing at Greystones, Brae, ZE2 9QJ, WILLIAM ANDREW RATTER, residing at Gaets A Voe, Ollaberry, ZE2 9RX, FRANK ANDREW ROBERTSON, residing at Columbus, Selivoe, Bridge of Walls ZE2 9NR, GARY ROBINSON, residing at 17 Burnside, Lerwick ZE1 0QH, DAVID ALEXANDER SANDISON, residing at Bonhoga, 7 Castle Street, Scalloway, ZE1 0TP, MALCOLM GEORGE SMITH, residing at Breasclate, Sandwick, ZE2 9HH, THEODORE GEORGE CAMERON SMITH, residing at Stenaquoy, Wormadale, Whiteness, ZE2 9LJ, MICHAEL WILLIAM STOUT, residing at Kirkabister, Bressay, ZE2 9ER, AMANDA JOAN WESTLAKE, residing at Maya Datcha, 41 Burgh Road, Lerwick, ZE1 0LA, JONATHAN WITNEY GARRIOCK WILLS, residing at Sundside, Bressay, ZE2 9ER, ALLAN SINCLAIR WISHART, residing at Seafield Lodge, Lower Sound, Lerwick ZE1 0RN and VALIA WISHART, Eden Cottage, Setter, Burra, ZE2 9LB, (the addresses of the foregoing parties all being in Shetland), being respectively some of the members of the Shetland Islands Council, incorporated under the Local Government etc (Scotland) Act 1994, for the electoral divisions of variously Lerwick South, Lerwick North, Shetland South, Shetland North, Shetland Central, Shetland West and North Isles and VALERIE MARGARET LILLIAS NICOLSON, residing at Midgarth, Twageos Road, Lerwick and ROBERT WALTER HUNTER, residing at Millburn, Bridge End, Burra, ZE2 9LD both Shetland, being respectively Head Teacher of the Anderson High School, Lerwick and Lord Lieutenant of Shetland, and as such members of Shetland Islands Council, such Head Teacher and such Lord Lieutenant, the present Trustees accepting and acting under Deed of Trust by

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Shetland Islands Council dated Tenth and registered in the Books of Council and Session on Twenty fourth, both days of September Nineteen hundred and ninety seven (hereinafter referred to as the "1997 Deed of Trust" and the Trust constituted by the 1997 Deed of Trust then being known as the Shetland Islands Council Charitable Trust, now being known as the Shetland Charitable Trust (Scottish Registered Charity SC027025) being hereinafter referred to as "the Trust") HEREBY DECLARE that in Implementation of a Scheme under Section 39 of the Charities and Trustee Investment (Scotland) Act 2005 as approved by the Office of the Scottish Charity Regulator on 3rd July 2012 the assets of the Trust comprising (i) all and any property heritable or moveable real or personal made over to us, as Trustees foresaid for the purposes of the Trust created by the 1997 Deed of Trust (ii) any other property of any description which may be made over to the Trustees as aftermentioned for the purposes of the Trust and (iii) the investments and property representing the property within (i) and (ii) from time to time (all hereinafter referred to as "the Trust Fund") are held on and from the Effective Date as defined in the Schedule of Governance Arrangements annexed and executed as relative hereto (hereinafter referred to as the "Schedule of Governance Arrangements") by the Trustees as defined in the Schedule of Governance Arrangements in trust in accordance with the terms and provisions of this Deed of Trust, the Schedule of Powers annexed and executed as relative hereto and the Schedule of Governance Arrangements (hereinafter referred to as the "2012 Deed of Trust") for the purposes hereinafter written namely:-

### Payment of Expenses

(FIRST) The Trustees shall pay all expenses which may be incurred by them or under their authority in connection with the trust hereby created as the same shall be instructed by an account under their hands or by the discharged accounts hereof paid by their order without any other voucher.

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## Objects of Trust

(SECOND) The Trustees shall hold the Trust Fund at their sole discretion for any charitable purposes which in the opinion of the Trustees are solely in the interests of the area administered by the local or other governmental authority for the time being of the Shetland Islands or of the inhabitants of the said area (hereinafter referred to as "the community") towards all or any of the following charitable purposes:-

- (a) the prevention or relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health;
- (e) the advancement of citizenship or community development;
- (f) the advancement of the arts, heritage, culture or science;
- (g) the provision of recreational facilities, or the organisation of recreational activities, or the organisation of recreational facilities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended;
- (h) the promotion of equality and diversity;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage;

Declaring that the Trustees shall have the following powers exercisable only in furtherance of its said charitable objects, namely:-

- (i) making grants or loans with or without interest;
- (ii) carrying out developments on or in connection with the said area;
- (iii) encouraging and assisting the holding of meetings of members of the community;

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- (iv) preserving and improving the said area in the manner which in the opinion of the Trustees is most conducive to promoting the said area for the benefit of the community and of the Nation;
- (v) repairing, maintaining and renewing any buildings, equipment and other assets held or used in the furtherance of any of the foregoing charitable purposes;
- (vi) doing all such other things as are incidental to the furtherance of the foregoing charitable purposes:

Declaring further that no act of the Trustees shall be deemed to be ultra vires by reason only that individuals or bodies who do not form part of the community may or will benefit indirectly by such act.

#### Surplus Income

(THIRD) Any income of the Trust Fund not expended in any year may at the discretion of the Trustees be accumulated as the Trustees may determine but with power to resort thereto in future years.

#### Supplementary Deed

(FOURTH) The Trustees may from time to time resolve by a 75% majority of the Trustees present and voting thereon to supplement or alter or amend the provisions of the 2012 Deed of Trust by Deed or Deeds revocable or irrevocable PROVIDED always that (a) any alteration or amendment to the charitable purposes set out in Clause (SECOND) hereof must be consistent with the spirit of the 2012 Deed of Trust only and (b) nothing in this Clause shall authorise or be deemed to authorise the application of any part of the Trust Fund or the income thereof for any purpose which is not a purpose charitable in law.

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## **Trustees' Powers**

The Trustees shall have the fullest powers of administration and management of the Trust Fund as if they were absolute owners thereof and beneficially entitled thereto, and in particular and without prejudice to these general powers the Trustees shall have the powers specified in the Schedule of Powers annexed and executed as relative hereto, such powers to be exercised or not exercised as the Trustees may decide in their sole and absolute discretion at any time and from time to time provided always that no power vested in the Trustees hereunder shall be exercised in such manner that the Trust Fund or the income thereof or any part thereof shall be held, paid or applied other than for purposes charitable in law.

## **Apportionments**

All interest, dividends, rents and other periodical payments of income received by the Trustees after the date of these presents shall be regarded as wholly income of the Trust Fund and that without reference to the periods in respect of which the same are earned or paid and that notwithstanding the provisions of any Statutes dealing with apportionments and similarly on the sale or realisation of any part of the Trust Fund by the Trustees or on the purchase or acquisition by them of any other property heritable or moveable, real or personal, the whole of the proceeds of sale or realisation shall be treated as capital and all the interest, dividends, rents and others received subsequent to such purchase or acquisition shall be treated as income, there being no apportionment of such proceeds or interest, dividends, rents and others as between capital and income.

## **Persons transacting with Trustees**

Purchasers, tenants, debtors and others transacting with the Trustees shall be nowise concerned with the application of the sums to be paid by them to the Trustees or with any of the conditions and provisions contained in these presents nor shall they be entitled to notice or to enquire whether these sums be applied or not towards the uses and purposes of the trust but they shall be

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sufficiently exonerated and discharged by the conveyances, discharges or other writings to be granted by the Trustees or by any factor, attorney, solicitor, accountant, stockbroker or agent duly authorised by them.

## Finality of discretionary powers

Whenever it shall be necessary in connection with the affairs of the trust hereby created for the Trustees to exercise any discretionary power whatever decision or resolution they may act upon shall be final and binding on all parties interested either directly or indirectly and the actings of the Trustees shall not be liable to be called in question upon any ground whatever except fraud.

## Trustees' Immunity

The Trustees shall not be in any way liable for any loss suffered as a result of the exercise of any of the powers given to them by these presents or for any fall in value of or for the validity and sufficiency of investments, securities and others held by them or on their account whether made or retained by the Trustees or for omissions or for neglect in their management or for one another or for factors, attorneys, solicitors, accountants, stockbrokers, agents or others appointed or employed by them except that they were habit and repute responsible at the time of their appointment or employment but each for his or her own actual personal intrusions only.

## Irrevocability

And we declare these presents to be irrevocable: IN WITNESS WHEREOF these presents typewritten on this and the preceding six pages together with the Schedule of Governance Powers and Schedule of Governance Arrangements annexed and executed were executed for and on behalf of the Trustees of Shetland Charitable Trust conform to a Power of Attorney by Malcolm John Bell and others as Trustees aforesaid dated Fourth July and subsequent dates and registered in the Books of Council and Session on Sixth August both months in the year Two thousand and twelve as follows: they were signed by William Andrew Ratter (subscribing "D Ratter") at Lerwick on the Thirteenth day of September Two thousand and Twelve in the presence of Simon Aeneas Mackintosh, Princes Exchange, 1 Earl Grey Street, Edinburgh, they were signed by Robert Walter Hunter (subscribing "R Hunter") at Lerwick on the Fourteenth day of the said last mentioned month and year in the presence of Edna Joy Mainland, 22-24 North Road, Lerwick, Shetland and there were signed by David Alexander Sandison (subscribing "D Sandison") at Lerwick on the said last mentioned date in the presence of the said Edna Joy Mainland.



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This is the SCHEDULE OF POWERS referred to in  
the 2012 DEED of TRUST by Malcolm John Bell  
and others dated 13<sup>th</sup> and 14<sup>th</sup> September 2012

## To hold original assets or to sell

1. To hold any assets heritable or moveable, real or personal, which are transferred by the 2012 Deed of Trust or which may subsequently be made over to the Trustees or to sell the same and reinvest the proceeds.

## To invest

2. To invest the Trust Fund in the purchase or on the security of such heritable or real property including rights under Leases, corporeal or incorporeal moveables, Investments, stocks, shares (including ordinary stocks and shares and including partly-paid shares), deposits and securities, real or personal (including bonds or securities payable to bearer) whether within the United Kingdom or abroad as the Trustees shall in their sole discretion think fit, it being our intention that the Trustees shall not be restricted to the class of investments authorised by law to Trustees but shall have as full and ample powers of investment as if they themselves were absolute owners of the Trust Fund and beneficially entitled thereto.

## To enter into Conservation Agreements

3. To enter into Conservation Agreements for the better preservation of the Trust Fund or any part thereof.

## To create Advisory Councils or Committees

4. To create, should the Trustees so desire, an Advisory Council or Councils or Committee or Committees to act along with them and/or advise them on any or all of the objects of the Trust provided always that the creation, constitution, membership and continuance of any such Advisory Council or Committee or the individual membership thereof shall be entirely at the discretion of the Trustees.

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## To use nominees

5. To have registered in the names of a nominee all or any part of parts of the Trust Fund and to pay reasonable fees to such nominee.

## To distinguish between capital and income

6. To decide what money represents capital and what represents Income of the Trust Fund and the proportion in which the expenses of the Trust are to be charged against capital and Income respectively, notwithstanding any rule of law or practice to the contrary, and all similar questions which may arise in relation to the trust.

## To repair and improve

7. To expend both capital and income of the Trust Fund as shall appear to the Trustees necessary or desirable to be expended from time to time in insuring, putting and keeping in good repair and replacing any heritable or real property (including without prejudice to the generality buildings, fences, drains, ditches, roads, plantations and others) corporal moveables and other effects forming part of the Trust Fund and in erecting any additional buildings or making any additional fences, drains, ditches, roads or plantations or executing any other works of any kind on such heritable or real property which they may consider necessary or desirable and in keeping up the offices, gardens and other grounds of and the game and fishings on any such heritable or real property.

## To cut woods and to plant

8. To thin or cut down woods or plantations forming part of the Trust Fund and to sell or dispose thereof as the Trustees shall judge necessary or desirable and to plant timber.

## To pay taxes, etc

9. To expend both capital and Income of the Trust Fund –
  - (a) for payment of all duties, rates, taxes, parochial burdens and other charges affecting or payable out of any property forming part of the Trust Fund, and

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- (b) for any purposes which the Trustees shall judge to be necessary or desirable for the administration, management, cultivation, letting, working, maintenance or improving of the Trust Fund or of any part thereof.

## **To deal with minerals**

10. To deal with minerals and mineral substances forming part of the Trust Fund either by themselves or in association with another or others and that in such way or ways as the Trustees may think fit provided always that this power is exercised in furtherance only of the terms and purposes of this Trust and that no part of the income or capital of the Trust Fund shall be applied otherwise than for purposes charitable in law.

## **To grant allowances to tenants**

11. To grant to tenants such allowances as the Trustees shall think fit in respect of expenditure made or undertaken by such tenants for improvements or repairs on their houses, farms, farm buildings or other possessions or on any other account which the Trustees may think proper.

## **To carry on businesses**

12. To begin or carry on or join or concur in the beginning or carrying on of any business or businesses where such business or businesses would be in furtherance of the terms and purposes of this Trust provided always that no part of the capital or income of the Trust Fund shall be applied in the exercise of this power otherwise than for purposes charitable in law.

## **To promote companies**

13. To promote or concur in the incorporation, flotation or reconstruction or amalgamation of any company where such company would be in furtherance of the terms and purposes of this Trust provided always that no part of the capital or income of the Trust Fund shall be applied in exercise of this power otherwise than for purposes charitable in law.

## **To grant proxies**

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14. To grant proxies in favour of one or more of the Trustees or any other person or persons to attend, act and vote for the Trustees at all meetings of any company, corporation, trust or undertaking or in any bankruptcy proceedings in which the Trustees may be interested as shareholders, stockholders, debenture holders, creditors or otherwise or at any class meeting of shareholders, stockholders, debenture holders or creditors of such company, corporation, trust, undertaking or bankruptcy.

### To settle claims

15. To settle all disputed claims competent to or against the Trust Fund.

### To borrow money

16. To borrow money either on the security of the Trust Fund or without security and pay or apply the monies so raised in any manner in which money forming part of the capital of the Trust Fund may be paid or applied.

### To appoint agents, etc

17. To appoint one or more of the Trustees or any other person or persons to be factors, solicitors, accountants, stockbrokers or agents for executing and carrying into effect the powers and purposes of the Trust or any of them with or without cautioners for their intromissions and to allow to such factors, attorneys, solicitors, accountants, stockbrokers or agents for their trouble their usual professional charges or if they are not members of a profession such fees as are proper and reasonable as also to employ such specialist and clerical assistance as may be required for the proper and efficient administration and management of the Trust Fund.

### To pay expenses

18. To reimburse the Trustees out of the Trust Fund for all expenses reasonably incurred by them in connection with the administration of the Trust without in any way prejudicing their rights, privileges and immunities as gratuitous trustees including the right to resign.

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## To Delegate

19. To delegate in any way and to any extent to any person or persons, committee or committees, company or authority whatsoever the exercise of any of the powers conferred on the Trustees herein or by law.

## To exercise powers conferred on Trustees by Statute

20. In so far as more ample powers are not given by these presents the Trustees shall have the powers conferred on trustees by the Trusts (Scotland) Acts 1921 and 1961 and by any Acts amending the same relating to trustees in Scotland (which powers shall not be held to be at variance with the terms and purposes of this Trust).
21. To renounce irrevocably in whole or in part at any time and from time to time any power given to the Trustees by this Schedule.

This is the Schedule of Governance Arrangements referred to in the foregoing Supplementary Deed by the Trustees dated 24 JANUARY 2019

This is the SCHEDULE OF GOVERNANCE ARRANGEMENTS referred to in the 2012 DEED of TRUST by Malcolm John Bell and others dated 13<sup>th</sup> and 14<sup>th</sup> September 2012

**1 Definitions:-**

In this Schedule of Governance Arrangements:-

"Trustee" means a trustee appointed or re-appointed by the Trustees under Paragraph 4 unless the context requires otherwise;

"Continuing Trustees" means the Trustees in office as at the Effective Date;

"Effective Date" means 29<sup>th</sup> November 2018;

"Schedule" means this Schedule of Governance Arrangements;

"Selection Panel" means such persons appointed by the Trustees under Paragraph 6;

"Term" means the term of office from the date of appointment for a period of four years;

"Trustees" includes Continuing Trustees.

**2 Trustees**

Subject as aftermentioned, Trustees shall be principally resident in the Shetland Islands and in the event that any Trustee ceases to be so resident such Trustee shall be deemed to have demitted office as a Trustee on the date he ceases to be so resident. In exceptional circumstances, Trustees may resolve:-

- (a) that a Trustee who ceases to be principally resident in the Shetland Islands may continue in office as a Trustee notwithstanding that he or she has ceased to be so resident; or
- (b) appoint as a Trustee an individual not principally resident in the Shetland Islands.

**3 Number and Body of Trustees**

- (a) The minimum number of Trustees shall be seven and the maximum number of Trustees shall be twelve in number and any vacancy shall be promptly filled allowing for due process.

- (b) Notwithstanding any vacancy in the number of Trustees at all times there shall be deemed to be at least the minimum number of Trustees.
- (c) No Trustee may serve for more than two consecutive Terms and once a Trustee has demitted office there must then be a break of at least two years before any subsequent Term. Any Trustee re-appointed following a break of two years will be deemed not to have served any prior term for the purposes of this Schedule.

#### 4 Trustees

- (a) The Trustees shall, on the recommendation of the Selection Panel, appoint Trustees.
- (b) Subject to sub-paragraph 8(b) below, Trustees shall serve a Term and shall be eligible for re-appointment for one further Term thereafter.
- (c) The office of Trustee shall be vacated in any of the following events, namely:-
  - (i) if he shall enter into an arrangement with his creditors or become apparently insolvent; or
  - (ii) if a registered medical practitioner who is treating him gives a written opinion to the Trust stating that he has become physically or mentally incapable of acting as a Trustee and may remain so for more than three months; or
  - (iii) if he is prohibited by law from being a Trustee or if he is disqualified from acting as a charity trustee in terms of the Charities and Trustee Investment (Scotland) Act 2005; or
  - (iv) if, in the sole opinion of the other Trustees, he shall have acted in such a way as would bring the Trust into disrepute and in all the circumstances his removal from office is justified to preserve the reputation of the Trust; or
  - (v) if he is removed from office by resolution of the other Trustees on the ground that he is considered to have been in serious or persistent breach of his duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005.
- (d) Trustees may suspend any Trustee from office by resolution of the other Trustees for such period as the Trustees think fit.

#### 5 Quorum, Chair and Trustees' Meetings

- (a) No business shall be transacted at a meeting of the Trustees unless a quorum is present and any and all such business shall be decided by a majority of the Trustees present and voting thereon. In the event of an equality of votes, the Chair of the Trust, or in his absence the Vice-Chair, or in the absence of both, the person presiding at the meeting shall have the second or casting vote.
- (b) The quorum for a meeting of the Trustees shall be five Trustees.

- (c) There shall be a Chair and Vice Chair of the Trust. The Chair and Vice Chair shall be elected by the Trustees for the remainder of their current Term unless removed as Chair or Vice Chair by resolution of the other Trustees.
- (d) Trustees shall be required to attend in person at least one-half of Trustee meetings in each financial year of the Trust and if they do not such failure to attend may be treated as grounds on which the remaining Trustees may remove such Trustee under paragraph 4(c)(iv).

#### **6 Selection Panel**

- (a) The Trustees shall establish a Selection Panel to guide the Trustees in relation to the selection of appropriate individuals for appointment as Trustees.
- (b) The Selection Panel shall comprise:-
  - (i) an independent Chair appointed by the Trustees or an Advisory Committee established in furtherance of Clause 4 of the Schedule of Powers annexed and executed as relative to the 2012 Deed of Trust but who shall not be a Trustee of the Trust; and
  - (ii) two Trustees.
- (c) In the event that the Selection Panel is unable to recommend appropriate individuals resident in the Shetland Islands for appointment as Trustees then that shall be deemed to be exceptional circumstances for the purpose of Paragraph 2.

#### **7 Annual General Meetings**

- (a) An Annual General Meeting shall be held in public once in every financial year at such time (within a period of not more than 15 months after the holding of the last Annual General Meeting) and place as may be determined by the Trustees.
- (b) The Chair, or in his absence for any reason the Vice-Chair, or in the absence of both for any reason a Trustee present and chosen by the other Trustees present shall preside as Chair of the Annual General Meeting.
- (c) At least 21 clear days' notice must be given of the Annual General Meeting, such notice being published on the Trust's website and in a local newspaper specifying the time and place of the meeting.
- (d) The purpose of the Annual General Meeting will be to present the Annual Report of the Trustees and such other business as the Trustees may decide.

#### **8 Transition etc**

As at the Effective Date the Continuing Trustees:-

- (a) shall be the Trustees;



- (b) shall be deemed to have been appointed on such date prior to the Effective Date as such Continuing Trustee was first appointed as a Trustee; and
- (c) shall be deemed to have served such Term or Terms as provided for in the 2012 Deed of Trust.

  
  


