

TRUST DEED

OF

SBC COMMUNITY ENHANCEMENT TRUST

March 2014

PFA/MDA/SCOT/166/32(1)

Trust Deed

We, SCOTTISH BORDERS COUNCIL established under the Local Government Etc (Scotland) Act 1994 with our principal offices at Council Headquarters, Newtown St Boswells, Melrose TD6 0SA ("**the Council**"),

In order to create a trust to be known as

SBC COMMUNITY ENHANCEMENT TRUST ("**the Trust**").

Appoint the said SCOTTISH BORDERS COUNCIL as trustee (who and whose successors are referred to as "**the Founding Trustee**");

Pay the sum of £1 to the Founding Trustee;

And we direct as follows:

Trust purposes

- 1 The Trustees (as hereinafter defined) shall hold and apply the sum of £1 paid by us to them, and such other funds and assets as may from time to time be comprised in the Trust Property (as hereinafter defined), in trust for the following purposes ("**the Trust Purposes**"):
 - (a) The advancement of community development;
 - (b) The advancement of the arts, heritage, culture or science, including the upkeep of heritage assets;
 - (c) The provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended; or
 - (d) The advancement of environmental protection or improvement;

By, among other things, the payment of grants and / or loans, to such charities or other organisations or to such individuals operating or living within the Scottish Borders area or with links to the Scottish Borders area, who are deserving of benefit as the Trustees shall, in their sole and unfettered discretion, select as suitable recipients of such benefit, to be applied by such recipients for the charitable purposes of either community development, or advancing the arts, heritage, culture or science, or the provision of recreational facilities or activities, as appropriate.

- 2 The expenses of creating and administering the Trust, and any tax payable in relation to the Trust, shall be met in priority to all other payments and transfers of assets out of the Trust Property.

Powers

- 3 In the administration of the Trust, the Trustees shall, in addition to the powers and rights which are conferred by law upon trustees who are acting without remuneration, have the fullest powers with regard to investment, sale, administration and management of the Trust Property as if they were owners; in particular (but without limiting the scope of the powers which they may exercise under the preceding provision), the Trustees shall have the following powers:
 - (a) To support such organisations, charities, and individuals, through the provision of payments whether as absolute grants and / or loans, and subject to such terms and conditions, as the Trustees shall, in their sole and unfettered discretion, select as suitable recipients of such

benefit.

- (b) To take over and assume the whole assets and liabilities and generally the whole undertaking of various trusts held by the Council with purposes related to either community development, or advancing the arts, heritage, culture or science, or the provision of recreational facilities or activities, or environmental protection or improvement with a view to managing, discharging and generally dealing with the same in furtherance of the Trust Purposes thereafter.
- (c) To carry on any other activities which further any of the Trust Purposes.
- (d) To raise funds and otherwise acquire such monies and assets in order to pursue the Trust Purposes.
- (e) To enter into any legal or financial negotiation or arrangement, as considered appropriate in order to pursue the Trust Purposes.
- (f) To take such steps as may be deemed appropriate for the purpose of raising funds.
- (g) To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them).
- (h) To establish and/or support any other charitable body, and to make donations for any charitable purpose falling within the Trust Purposes.
- (i) To purchase, take on lease, hire, or otherwise acquire, any property or rights, provided that appropriate financial, legal and other advice is obtained prior to any such action.
- (j) To improve, manage, develop, or otherwise deal with, all or any part of the Trust Property.
- (k) To sell, let, hire out, license, or otherwise dispose of, all or any part of the Trust Property.
- (l) To borrow money, and to give security in support of any such borrowings by the Trust, provided that appropriate financial, legal and other advice is obtained prior to any such action.
- (m) To employ such staff as are considered appropriate for the proper administration of the Trust or for the proper conduct of the Trust's activities, and to make reasonable provision for the payment of pension and / or other benefits for members of staff, ex-members of staff and their dependants.
- (n) To engage such consultants and advisers as are considered appropriate from time to time.
- (o) To effect insurance of all kinds (which may include officers' liability insurance).
- (p) To liaise with other voluntary sector bodies, local authorities, UK or Scottish government departments and agencies, and other bodies, all with a view to furthering the Trust Purposes.
- (q) To form any charitable company with objects which are similar (wholly or in part) to those of the Trust, and, if considered appropriate, to transfer to any such company (without any payment being required from the company) the whole or any part of the Trust Property.
- (r) To retain any property comprised in the Trust Property for such time as the Trustees think proper.
- (s) To have any part of the Trust Property registered in the name of a nominee and to pay reasonable fees to such nominee.
- (t) To grant proxies in favour of any of the Trustees (or any other person) to attend, act and vote for the Trustees at any meetings (whether of the nature of general meetings, class meetings, creditors' meetings or otherwise) relating to any investment held by the Trustees or relating to any claim by the Trustees in any liquidation or sequestration proceedings.

- (u) To compromise or settle by arbitration all disputed claims by or against the Trust or the Trust Property.
- (v) To appoint one or more of the Trustees (or any firm of which any of the Trustees is a partner) to be solicitors to the Trust or agent for the Trustees in any other capacity, and to pay to such solicitors or other agent his/her/their usual charges.
- (w) To reimburse any of the Trustees out of the Trust Property, in relation to all expenses reasonably incurred by him/her in the administration of the Trust.
- (x) To do anything which may be incidental or conducive to the furtherance of any of the Trust Purposes.

Number of Trustees

- 4 The number of Trustees shall not be less than 1 (one), being the Founding Trustee. There is no maximum number of Trustees.

Appointment / removal / resignation

- 5 The Trustees shall be entitled to appoint an additional trustee or trustees, whether a corporate body, an individual or an individual appointed *ex officio*, by way of a resolution passed by a majority vote at a meeting of the Trustees. The Founding Trustee and any additional trustees appointed in terms of this clause 5 shall be "**the Trustees**".
- 6 The Trustees shall have power to remove any individual as an additional trustee, by way of a resolution passed at a meeting of the Trustees by a majority of the Trustees then in office (where the Founding Trustee has one vote, and any additional Trustee also has one vote).
- 7 An individual holding office as an additional Trustee may retire by giving notice in writing to that effect to the secretary to the Trust.

Procedure at Trustees' meetings

- 8 Subject to the provisions of the following clauses, the Trustees may regulate their proceedings as they think fit. Decisions by the Founding Trustee will be taken in meetings constituted in the same manner as a meeting of the Council or a sub-committee of the Council.
- 9 A meeting of the Trust shall be held at least once in each year.
- 10 Any Trustee (or Council Member as a representative of the Founding Trustee) may call a meeting of the Trust, or request the secretary to the Trust to call a meeting of the Trust.
- 11 No notice of a meeting of the Trust need be given to any Trustee (or Council Member as a representative of the Founding Trustee) who is absent from the United Kingdom.
- 12 Questions arising at a meeting of the Trust shall be decided by a majority of votes, on the basis of one vote per Trustee present (or, for the Founding Trustee, by a majority of the Council Members present at the meeting); where there is an equality of votes, the chairperson of the meeting shall have a casting vote.
- 13 No business shall be dealt with at a meeting of the Trustees unless a quorum is present; the quorum for meetings of the Trustees shall be one, the Founding Trustee (and for a quorum representing the Founding Trustee, at least one quarter of the Council Members currently in post must be present).
- 14 The Founding Trustee shall appoint one of the Council Members to be Chairperson, and may at any time remove the person so appointed from that office.
- 15 Unless he/she is unwilling to do so the Chairperson shall preside as chairperson at every meeting of the

Trustees at which he/she is present; if the Chairperson is unwilling to act as chairperson or is not present within 15 minutes after the time when the meeting was due to commence, the Trustees present may elect from among themselves the person who will act as chairperson of the meeting.

- 16 All acts bona fide done by any meeting of the Trustees, by a committee of the Trustees or by a person acting as a Trustee, shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of any Trustee or that any of them had ceased to hold office or was not entitled to vote, be as valid as if every such person had been duly appointed and had continued to be a Trustee and had been entitled to vote.
- 17 A resolution in writing signed by all the persons holding office as Trustees at the time shall be as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held; a resolution of that kind may take the form of a number of copies containing the text of the resolution, with each copy being signed by one or more Trustees.

Sub-committees

- 18 The Trustees may delegate any of their powers to any committee consisting of two or more Trustees or two or more Council Members (as representatives of the Founding Trustee); any such delegation of powers may be made subject to such conditions as the Trustees may impose, and may be revoked or altered.
- 19 Subject to any condition imposed in pursuance of the preceding clause, the proceedings of a committee consisting of two or more Trustees shall be governed by the provisions of clauses 8 to 17 so far as they are capable of applying.

Personal interests

- 20 A Trustee or a Council Member who has a personal interest in any transaction or other arrangement which the Trust is proposing to enter into, must declare that interest at a meeting of the Trustees; he/she will be debarred from voting on the question of whether or not the Trust should enter into that arrangement.
- 21 For the purposes of the preceding clause 20, a Trustee or a Council Member shall be deemed to have a personal interest in an arrangement if any partner or other close relative of his/hers or any firm of which he/she is a partner or any limited company of which he/she is a substantial shareholder or trustee (or any other party who/which is deemed to be connected with him/her in terms of section 68(2) of the 2005 Act), has a personal interest in that arrangement.
- 22 Provided (a) he/she has declared his/her interest (b) he/she has not voted on the question of whether or not the Trust should enter into the relevant arrangement and (c) clauses 23 to 25 (remuneration) are complied with – then a Trustee or Council Member will not be debarred from entering into an arrangement with the Trust in which he/she has a personal interest (or is deemed to have a personal interest under clause 21) and may retain any personal benefit which he/she gains from his/her participation in that arrangement.

Remuneration and expenses

- 23 Trustees and / or Council Members may not:
- (a) Serve as an employees (full-time or part-time) of the Trust
 - (b) Be given any remuneration by the Trust for carrying out his/her duties as a Trustee.
- 24 Where a Trustee or Council Member provides services to the Trust, or might benefit from any remuneration paid to a connected party for such services, then:
- (a) the maximum amount of the remuneration must be specified in a written agreement and must be reasonable; and

- (b) the Trustees must be satisfied that it would be in the interests of the Trust to enter into the arrangement (taking account of that maximum amount); and
- (c) less than half of the Trustees must be receiving remuneration from the Trust (or benefit from remuneration of that nature); and less than half of the Council Members must be receiving remuneration from the Trust (or benefit from remuneration of that nature).

25 Trustees, and Council Members acting on behalf of the Founding Trustee, may be paid all travelling and other expenses reasonably incurred by them in connection with their attendance at meetings of the Trust or otherwise in connection with the carrying-out of their duties.

Conduct

26 Each of the Trustees shall, in exercising his/her functions as a Trustee (and each of the Council Members, in exercising his/her functions as a representative of the Founding Trustee), act in the interests of the Trust; and, in particular, must:

- (a) seek, in good faith, to ensure that the Trust acts in a manner which is in accordance with the Trust Purposes;
- (b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
- (c) in circumstances giving rise to the possibility of a conflict of interest of interest between the Trust and any other party, put the interests of the Trust before that of the other party, in taking decisions as a Trustee; or, where any other duty prevents him/her from doing so, disclose the conflicting interest to the Trust and refrain from participating in any discussions or decisions with regard to the matter in question;
- (d) ensure that the Trust complies with any direction, requirement, notice or duty imposed on it by the 2005 Act.

Secretary

27 The Trustees shall appoint a secretary to the Trust for such term, at such remuneration (if any) and on such conditions, as the Trustees may think fit; and any secretary so appointed may be removed by them. The secretary need not be a Trustee but may be an employee (in which case, they cannot also be a Trustee).

28 The Trustees shall ensure that the secretary:

- (a) Keeps proper minutes of all proceedings at meetings of the Trustees (and at meetings of committees of the Trustees), including the names of the Trustees present at each such meeting;
- (b) Keeps proper records and documents in relation to all other matters connected with the administration and management of the Trust.

Accounts

29 The Trustees shall ensure that proper accounting records are maintained, in accordance with all applicable statutory requirements.

30 The Trustees shall prepare annual accounts, in liaison with the treasurer appointed under clause 32, as appropriate, and complying with all relevant statutory requirements; if an audit is required under any statutory provisions or if the Trustees otherwise think fit, the Trustees shall ensure that an audit of such accounts is carried out by a qualified auditor.

31 An accountant engaged in an audit or independent examination of the Trust's accounts shall be entitled to have access to all accounting records and other documents relating to the Trust.

Operation of bank accounts

- 32 The Trustees shall appoint a treasurer to the Trust for such term, at such remuneration (if any) and on such conditions, as the Trustees may think fit; and any treasurer so appointed may be removed by them. The treasurer shall be the Founding Trustee's Section 95 Officer, or such other suitable individual with appropriate financial expertise identified for this role by the Founding Trustee. The Trustees shall identify an appropriate number of authorised signatories, including the treasurer, whose signature(s) (where appropriate, at least two signatures) shall be required in relation to all cheques issued by the Trust and all other operations (excluding lodgement of funds) on the bank and building society accounts held by the Trust.

Payments to charities etc

- 33 The receipt of the treasurer or other appropriate officer for any funds or other assets paid or transferred by the Trustees to any charitable body shall represent sufficient discharge to the Trustees.

Limitations on liability

- 34 The Trustees shall not be liable for loss or depreciation of the value of investments retained or made by them, nor for omissions, nor for neglect in management, nor for insolvency of debtors, nor for the acts, omissions, neglect or default of one another or of any banker, solicitor, factor or other agent employed by them.

Amendment of Trust Deed / winding-up

- 35 If in the opinion of the Trustees any change in circumstances or alteration in the law has made or is likely to make execution of the Trust Purposes impossible or impracticable, or if in the opinion of the Trustees the administration of the Trust could be improved, or the Trust Purposes be advanced in a more appropriate manner, the Trustees may (subject to clauses 36 and 37) in their discretion,
- (a) supplement or amend the provisions of this trust deed or any deed supplemental to this trust deed; or
 - (b) wind up the Trust and transfer the Trust Property (after settlement of all debts and liabilities) to some other charitable body or bodies having similar objects to those of the Trust.
- 36 The Trustees shall not take any of the steps referred to in clause 35 without the authority of a resolution passed at a meeting of the Trustees by a majority of three quarters or more of the Trustees then in office (the Founding Trustee's decision on any such step must be passed by at least three quarters of the Council Members then in office).
- 37 In no circumstances is the Trust Property to be held or applied for any purpose which is not an exclusively charitable purpose.

Interpretation

- 38 In this Trust Deed:

"the 2005 Act" means the Charities and Trustee Investment (Scotland) Act 2005 (including any statutory amendment or re-enactment for the time being in force);

"charitable" shall be interpreted as charitable within the meaning of both the Taxes Acts and section 7 of the 2005 Act;

"charity" shall mean a body on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts;

"Council Member" means an elected member of the said Scottish Borders Council;

"Section 95 Officer" means the proper officer appointed by the Founding Trustee in terms of Section 95 of the Local Government (Scotland) Act 1973 (including any statutory amendment or re-enactment for the time being in force) with responsibility for the proper administration of financial affairs of the Founding Trustee.

"Trust Deed" means this trust deed (including any supplementation or amendment effected in accordance with the provisions of clauses 35 to 37);

"Trustees" has the meaning specified in clause 5.

"Trust Property" means the sum of £1 paid by the Council to the Trustees, and such other funds and assets as may from time to time be received by the Trustees as Trustees under the Trust Deed (from the Council or any other person), and the assets in which any funds so received may from time to time be invested.

"Trust Purposes" has the meaning specified in clause 1.

We declare that the Trust Deed shall be irrevocable.

This trust deed, consisting of this and the six preceding pages, is executed as follows: