

No. 28

Vol. 271

REGISTERS OF SCOTLAND

H.M. CHANCERY

GREAT SEAL

SUPPLEMENTARY CHARTER

in the name of

THE CARNEGIE DUNFERMLINE
AND HERO FUND TRUSTEES

2006

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E **LIZABETH THE SECOND** by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith: **TO ALL TO WHOM**

THESE PRESENTS SHALL COME, GREETING! WHEREAS a Humber Petition has been presented to Us by The Carnegie Dunfermline and Hero Fund Trustees setting forth to the effect following:

(i) Our Royal Predecessor King George the Fifth on the 8th day of February, One thousand nine hundred and nineteen granted a Charter (hereinafter referred to as "the original Charter") incorporating The Carnegie Dunfermline and Hero Fund Trustees.

(ii) We were graciously pleased to grant on the 15th day of March, One thousand nine hundred and seventy nine a Supplemental Charter in order to amend part of Article 1 of the original Charter.

(iii) Article 10 of the original Charter granted by Our Royal Predecessor King George the Fifth gave permission for the granting of a Supplemental Charter in order to add to, amend or repeal the provisions of the original Charter:

AND WHEREAS by the said Petition the Petitioners most humbly pray that We might be graciously pleased to grant a Supplemental Charter amending and

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extending the original Charter as amended by Our said Supplemental Charter as hereinafter set forth;

NOW, THEREFORE, WE having taken the said Petition into Our Royal Consideration, and moved by Our desire to facilitate the furtherance of the objects of The Carnegie Dunfermline and Hero Fund Trustees, and in addition to and in amendment of the powers and provisions conferred by and contained in the original Charter are graciously pleased to grant, ordain, and declare as follows, that is to say that the Provisions set forth in the original Charter shall be treated as if they read in the manner following, namely:-

1. For the purpose of carrying out the provisions of the said Trust Deeds and relative Letters, and all other purposes of this Our Charter, We do hereby constitute the said John Ross, David Deas Blair, James Brown, The Earl of Elgin and Kincardine, John Hynd, James Currie Macbeth, David Marshall, George Mathewson, James Norval, Sir William Robertson, John Sanderson, Andrew Scobie, Andrew Reid Shearer, John Shaw Soutar, Robert Stevenson, and Alan Leonard Smith Tuke, and also such other person or persons as they may hereafter assume to act in room of such of their number as may die or resign office; and also the said David Harley, James Dick, Robert Wilson, John Dowie Taylor, William Irvine and John Hutchison Fisher, being six

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member of the Corporation of Dunfermline; and the said William Andrew Hutchison and Charles Donaldson Allister, who, along with the before-named John Ross (the Chairman of the School Board), form three members of the School Board of Dunfermline; and also such other members being not less than three and not exceeding six in numbers as may be selected by the Trustees to act in succession to the said members-of the Corporation of Dunfermline and of the School Board of Dunfermline or their successor bodies, such other members being selected by the Trustees from such bodies as they may determine in their discretion, having some connection with the town of Dunfermline, but always in accordance with the Standing Orders of the Trustees or of such other 'regulations as the Trustees set down for this purpose, ONE BODY POLITIC AND CORPORATE by the name and style of "THE CARNEGIE DUNFERMLINE AND HERO FUND TRUSTEES," of whom six Trustees present at any meeting duly called shall form a quorum; and We do grant that by the same name and style the said Trustees (hereinafter referred to as "the Trustees") shall have perpetual succession and a Common Seal, with power to make Standing Orders for the administration of the Trust and for regulating the carrying on of the business of the Corporation and procedure at Meetings, including the appointment of a

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Chairman who shall have a casting as well as a deliberative vote; and to lay down from time to time such rules as to the signature of deeds, transfers, agreements, cheques, receipts, and other writings as they may consider desirable in order to secure the due and safe transaction of the business of the Corporation. And WE do hereby ratify, confirm, and approve of the Standing Orders of the Trustees, made at a meeting thereof, held on 26th September 1918; but notwithstanding this ratification it shall be in the power of the Trustees at any time not only to alter or innovate the said existing Standing Orders, but also to rescind the same in part or in whole if they shall see good cause, and to substitute in their place others which may appear better calculated to promote the interest and welfare of the Corporation; provided always that the same shall not be repugnant to the provisions of this Our Charter or to the laws of Our realm; and also with power to frame rules and bye-laws for the regulation of the use by the public of the properties which they hold for the public behoof; and We do further grant that the said body politic may by and in the same name and style, sue and be sued in any Court or Place of Judicature, And WE direct and ordain that service and notice given to the Chief Executive for the time being of the Corporation shall be a sufficient service on or notice to the Corporation; And WE direct and ordain that the

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Chief Executive shall have charge of the Seal of the Corporation, which shall be kept in such a place as the Corporation shall from time to time fix.

2. WE do hereby grant to the Trustees the fullest powers of administration and management of the Trust Fund as if they were absolute owners of the Trust Fund and beneficially entitled to it. No power vested in the Trustees by this Our Charter or otherwise shall be exercised so that the Trust Fund or any income of the Trust Fund shall be held, paid or "applied other than for purposes expressed in this Our Charter. In particular but without limitation the Trustees shall have the following powers:

(a) **To invest widely**

Power to retain, hold and realise property and investments made over to the Trustees and to re-invest the Trust Fund in the purchase or on the security of such heritable or real property, corporeal moveables, investments, stocks, shares (including partly-paid shares), deposits and securities, real or personal (including bonds or securities payable-to bearer) whether within the United Kingdom or abroad or which belong to the Trustees in the name of "The Carnegie Dunfermline Trustees" and "The Carnegie Hero Fund Trustees" or in the names of the Chairman, the Chief Executive or either of them or of any other person for behoof of the Trustees; DECLARING that nothing contained

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in this clause, including the general power of realisation set out above, shall permit the Trustees to alienate ownership of the aforesaid property in Dunfermline acquired by the said Andrew Carnegie from James Maitland Hunt of Pittencreiff ("Pittencreiff Park"), the core of which the Trustees intend to retain as a recreational park for the public benefit, except to the extent that such alienation (for example, by means of the realisation of small parts of land at the fringes of Pittencreiff Park) is in the opinion of the Trustees necessary or desirable for the purposes of allowing the realignment of public or private roads or footpaths surrounding Pittencreiff Park or to permit any part of Pittencreiff Park to be let on commercial terms or otherwise where such lets or uses are broadly in sympathy with the general tenor of this Our Charter or for similar purposes, PROVIDED that the Trustees shall always have regard to the wishes set out by the said Andrew Carnegie in relation to the core of Pittencreiff Park that it shall be held in perpetuity as "a recreation park for the people" in order "to bring into the monotonous lives of the toiling masses.. .more of sweetness and light". Power to convey ownership of the whole or part of Pittencreiff Park to another charitable body for charitable purposes if, in the opinion "of the Trustees, there is some socially positive purpose in Dunfermline which would be served in so conveying

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ownership to another charitable body and which the Trustees could not practicably carry out, but which would retain the spirit of the original purposes set out by the said Andrew Carnegie in the said Trust Deed and relative Letter. Power to delegate the investment of the Trust Fund on a wholly discretionary portfolio management basis. Power also to hold and to invest not more than one twentieth of the Trust Fund in shares in unquoted private companies even if such investments do not produce income. PROVIDED ALWAYS that such investments are reasonably prudent having regard to the purposes for which the Trust Fund is held.

(b) To use nominees etc.

(i) Power to have registered in the name of a nominee any property from time to time forming part of the Trust Fund and to pay reasonable fees to such nominee.

(ii) Power to hold investments in certificated or uncertificated form.

(c) To repair and improve; to manage property etc.

(i) Power to expend both capital and income of the Trust Fund in insuring, putting and keeping in good repair, improving, restoring and replacing any property forming part of the Trust Fund.

(ii) Power to manage, administer and dispose of any property forming

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part of the Trust Fund as if they were beneficial owners including developing such property.

(d) To grant warranties and indemnities

In the event of any part of the Trust Fund being sold, power to grant such warranties and indemnities and such counter indemnities and counter guarantees in support of such warranties and indemnities as may be required in connection with the sale in accordance with normal commercial practice in relation to the type of asset concerned but only to the extent of the Trust Fund.

(e) To pay taxes etc

Power to expend both capital and income of the Trust Fund (i) for payment of all duties, rates, taxes, burdens and other charges payable in respect of any property forming part of the Trust Fund or its income (whether or not enforceable) by the Trustees; and (ii) for any purposes which the Trustees judge to be necessary or desirable for the administration and management of the Trust Fund.

(f) To borrow and to lend

Power to borrow and lend money on such terms and with or without security as the Trustees think fit (including power to make loans with or without interest) and to apply money so borrowed in accordance with their powers.

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Power also to charge any property forming part of the Trust fund by way of security for any money borrowed by the Trustees, PROVIDED that the granting of any such security shall not compromise or put at risk the core of Pittencreiff Park or its recreational character.

(g) To carry on business

Power to begin or carry on or join or concur in the beginning or carrying on of any business for such period as the Trustees think fit and for the purposes of this Our Charter to expend money out of the Trust Fund or the income of it; to appoint or concur in appointing any one or more of their own number or any other person as managers, employees, or otherwise, and to pay to him, her or them suitable remuneration including pensions and pensions to spouses; to enter into any partnership or other agreement with any person and to modify partnership or other conditions and, if entitled to control, joint control or supervision to exercise it or not to exercise it only to such extent as they think fit. No part of the Trust Fund or the income of it shall be expended in exercise of this power otherwise than for the purposes of this Our Charter. The Trustees shall be free from all personal responsibility in the event of loss arising from any business operations carried on in accordance with the powers given by this Our Charter.

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(h) To permit use of property in kind

Power to permit occupation, use or enjoyment of any moveable or immoveable property which for the time being forms part of the Trust Fund including, but without limitation, the aforesaid property in Dunfermline acquired by the said Andrew Carnegie from James Maitland Hunt of Pittencreiff on such terms or conditions and for such period as the Trustees think fit, provided always that the Trustees shall have regard to the original wishes of the said Andrew Carnegie as referred to in power 2(a) above in relation to the purposes for which the core of Pittencreiff Park is held.

(i) To promote Companies

Power to promote or concur in the flotation or reconstruction or amalgamation or attempted flotation or reconstruction or amalgamation of any company with limited liability including, but without limitation, any company to take over any business, company or concern carried on by the Trustees or in which they may be interested and to subscribe for and hold the debentures, stocks, shares or other scrip or obligations of such new company or to accept the debentures, stocks, shares or other scrip or obligations of such reconstructed or amalgamated company in lieu of or in substitution for the debentures, stocks and shares or other scrip or other obligations held by the Trustees prior to

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such reconstruction or amalgamation and to contribute to the expenses of such flotation, reconstruction or amalgamation.

(j) Holdings in Companies

The Trustees shall not be bound or required to interfere or take part in the management or conduct of the business of any company in which the Trustees shall be interested although holding the whole or a majority of the shares carrying the control of the company and so long as they have no notice of any act of dishonesty or misappropriation of moneys on the part of the directors who are managing such company the Trustees may leave the conduct of its business (including the payment or non-payment of dividends) wholly to such directors and no beneficiary shall be entitled to require the distribution of any dividend by any company in which the Trustees may be interested or require them to exercise any powers they may have of compelling any such distribution.

(k) To grant proxies

Power to grant proxies in favour of one or more of their own number or any other person to attend, act and vote for them 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

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holders, creditors or otherwise or at any class meeting of shareholders, stockholders, debenture holders or creditors of such company, corporation, trust, undertaking or bankruptcy.

(l) To settle claims

Power to settle all disputed claims by or against the Trust Fund.

(m) To delegate powers

The Trustees shall have power at any time and from time to time (notwithstanding any rule of law to the contrary) to grant any power of attorney or a mandate for the execution or exercise of all or any trusts, powers and discretions conferred on the Trustees by this Our Charter or by law.

(n) To appoint agents

Power to appoint one or more of their own number or any other person to be solicitors, accountants, stockbrokers or agents for executing and carrying into effect the powers and purposes of this Trust and to allow to such solicitors, accountants, stockbrokers or agents their usual charges.

(o) To make Appeals

Power to organise, advertise and pay the expenses of any appeal for donations to the Trust Fund.

(p) To pay fees and expenses

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- (i) Power to pay to any Trustee appointed to act in terms of power 2(n) above as a solicitor, accountant, stockbroker or agent of the Trust, such fees (in addition to reimbursement of his or its proper expenses) as may be in accordance with his or its terms and conditions as agreed to by the Trustees as part of his or its appointment as solicitor, accountant, stockbroker or agent aforesaid; and that without in any way prejudicing their rights, privileges and immunities as gratuitous trustees including the right to resign.
- (ii) Power to reimburse themselves out of the Trust Fund or its income for all expenses reasonably incurred by them in the administration of the Trust, without in any way prejudicing their rights, privileges and immunities as gratuitous trustees including the right to resign.

(q) To transact with other Trustees

Power to transact with the trustees of another trust even though one or more persons are common to the two sets of trustees, provided that the same persons never constitute the majority of the two sets of trustees.

(r) To appropriate

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Power to set apart and appropriate specified investments or assets of the Trust Fund, heritable or moveable, to represent the whole or part of the share or shares of any particular beneficiary or of any share of the Trust Fund, whether any beneficiary has a vested right to it or not and at such valuations as the Trustees shall determine whether made by themselves or others. After such appropriation the particular share shall have the whole benefit and the whole risk of the appropriated investments or assets. A Minute signed by the Trustees shall be sufficient evidence of such appropriation.

(s) To distinguish between capital and income

Power to decide what 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, notwithstanding any rule of law to the contrary, and all similar questions which may arise in relation to the Trust.

(t) To exercise powers in Trusts (Scotland) Acts

In so far as more ample powers are not given by this deed the Trustees shall have the powers conferred on trustees by the Trusts (Scotland) Acts 1921 and 1961 and the Charities and Trustee Investment (Scotland) Act 2005 and by any Acts amending the same relating to trustees in Scotland (which powers shall not be held to be at variance with the purposes or powers of this Trust).

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(u) **To renounce powers**

Power to renounce irrevocably in whole or in part at any time and from time to time any power given to the Trustees.

(v) **Failure of trust purposes**

In the event of the failure of the trust purposes set out in this Our Charter, or in the event of a winding up or a dissolution of the Trust howsoever caused, the Trust Fund, or the part of the Trust Fund remaining after the satisfaction of any debts and liabilities, shall be given or transferred to some other charitable institution or institutions or public body or bodies having objects similar to the Trust, which shall prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Trust under or by virtue of this Our Charter and which shall be able and willing, in receiving the Trust Fund, to have regard to the spirit of the said Andrew Carnegie's wishes in relation to the core of Pittencreiff Park insofar as they may be relevant, such institution or institutions or body or bodies to be determined by the Trustees at or before the time of the failure, winding up or dissolution, and if and so far as effect cannot be given to the foregoing provisions, then to some charitable object.

3. AND WE declared that all Charters, dispositions, bonds, and dispositions in

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security, assignations or other deeds affecting real or heritable property, and all personal bonds, contracts, or other deeds or instruments to be granted to and in favour of the Trustees shall be made and executed under the said Corporate name and title of "The Carnegie Dunfermline and Hero Fund Trustees" without specifying the names of the Trustees or any of them, or of any of the office-bearers of the Corporation, and without specifying or referring to the purposes expressed in the said Trust Deed, and that all Charters, dispositions, assignations, bonds, contracts, or other deeds or instruments to be granted by the Trustees shall bear to be granted by the Trustees without specifying the names of the Trustees or any of them, or any of the office-bearers of the Corporation, and shall be subscribed on behalf of the Corporation by the Chairman and one of the remaining Trustees, and by the Chief Executive, or in such other manner as shall comply with the terms of the Requirements of Writing (Scotland) Act 1995 and any consequent statutory consolidation, modification or re-enactment, and that all deeds or instruments so subscribed shall be equally valid as if the same had been subscribed by the whole Trustees. And We declare that the use of the Common Seal shall be governed by the Standing Orders of the Trustees.

4. AND WE do hereby appoint that the Accounts of the Trustees shall annually

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be audited by an Auditor to be appointed by the Trustees and that an Annual Report of the Trustees' actings including a Summary of the Accounts as audited, be published and distributed in Dunfermline, such publication and distribution to be made in such manner as the Trustees in their absolute discretion may from time to time decide is most appropriate, and which may at the Trustees' option include publication in electronic format and distribution by email.

5. The Trustees shall have the power, by a resolution carried by a majority of not less than two-thirds of the Trustees present and voting at a general meeting specially summoned for the purpose, to add to, amend or repeal the provisions of this Our Charter: Provided that no such addition amendment or repeal shall be effective unless and until it shall have been approved by Us, Our Heirs or Successors in Council.

Lastly WE DO hereby for Us, Our Heirs and Successors, grant that these, Our Letter Patent, shall be in and by all things good, firm, valid, sufficient, and effectual in law, notwithstanding any omission, imperfection, defect, matter; cause, or thing whatsoever to the contrary thereof in these Our Letters Patent contained, and shall be taken, construed, and adjudged in the most favourable and beneficial sense and to the best advantage of and for the said Trustees, as

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well in Our Courts of Law as elsewhere, notwithstanding any recital, misrecital, uncertainty, or imperfection in these Our Letters Patent.

IN WITNESS WHEREOF We have ordered the Seal appointed by the Treaty of Union to be kept and used in Scotland in place of the Great Seal of Scotland to be appended to these presents,

GIVEN at Our Court at Balmoral the Twenty-fourth day of August Two thousand and Six in the Fifty-fifth year of Our Reign.

PER SIGNATURUM MANU S.D.N. REGINAE SUPRA SCRIPTAM

Written to the Seal and Registered and Sealed at Edinburgh the Twenty second day September of Two thousand and Six.

Keeper of the Registers of Scotland
and Depute Keeper of the Seal.