

FORSTERS

DATED 202

(1) PARTY ONE

(2) PARTY TWO

(3)

DECLARATION OF TRUST

relating to

The garden at , London



Forsters LLP 31 Hill Street London W1J 5LS | DX: 82988 Mayfair
T: +44(0)20 7863 8333 | W: www.forsters.co.uk | R: RSB/RSB/55067.1

BETWEEN

(2) _____ of _____

(hereinafter called "the **Trustees**")

1.1 In this deed the following expressions shall have the following meanings:

Commented [RB1]: Names of up to four trustees to be inserted

Commented [RB2]: Reference to the relevant Act

Commented [RB3]: Insert garden name

Commented [RB4]: Insert name of the trust

the owners of the freeholds or any long leasehold interest (originally granted for a term in excess of 21 years) of any of the Properties Provided That in any building where there are long leasehold interests the Owner shall be the person(s) holding a long leasehold interest in possession (and any headlessee or freeholder shall not be considered an owner);]

Commented [RB5]: Definition of Owners and Properties to be used if the trust is to refer to them as the beneficiaries as an alternative to the beneficiaries being those entitled to use the Garden under the Act

Commented [RB6]: This is to allow the trustees to hold capital sums as well as the garden itself eg from legacies or the sale of rights and allows the garden to hold funds outside of precept funds

trusts declared by this deed and the investments from time to time representing the same and for the avoidance of doubt "the Garden" shall not form part of the Trust Fund; and

"Trust Period"

means the period ending on the earlier of:

- (i) the last day of the period of 125 years from the date of this deed; and
- (ii) such date as shall for the time being be specified pursuant to the power conferred by clause 6.

Commented [RB7]: 125 years is the maximum period permitted but it can be extended (see below)

1.2 Unless the context otherwise requires the singular includes the plural and the masculine includes the feminine and vice versa.

1.3 Clause headings are for reference only and shall not be taken into consideration in their interpretation.

2. Recitals

2.1 The Committee manages and maintains the Garden for which purpose funds are raised each year by means of a garden rate or levy made upon residents of the Garden by The Royal Borough of Kensington & Chelsea in response to a precept made by the Committee in general meeting.

2.2 The Garden is governed by the provisions of the Act.

2.3 The Trustees expect to now be granted freehold title to the Garden at HM Land Registry and have agreed to enter into this Deed to declare the trusts under which they will hold the Garden.

3. Object of the Trust

The object to the Trust is to hold the freehold interest in the Garden and the Trust Fund for the benefit of the [Owners] [all persons who are or shall become entitled by virtue of the Act or otherwise to use and enjoy the Garden] subject to the rules governing its use for the time being in force.

Commented [RB8]: Alternative provisions depending on who are to be the beneficiaries

4. The Trust Fund

The Trustees shall hold the Trust Fund on trust and may invest the same in any investments authorised by this Deed (with power to vary such investments from time to time) and to pay or apply the net income of the Trust Fund and any part of the capital at their absolute discretion in furtherance of the object of the Trust.

5. **Trustees' interest in the garden and the trust fund**

No Trustee shall take or hold any interest in any property belonging to the Trust otherwise than as Trustee for the purpose of the trust and no Trustee shall receive remuneration or be interested in the supply of work or goods at the expense of the Trust.

Commented [RB9]: The trustees have no personal interest in the assets of the trust

6. **Power to alter the trust period**

The Trustees may, at any time during the Trust Period, specify by deed, in relation to the whole or any part of the assets of the Trust, a date on which the Trust Period shall expire. The date specified shall not be earlier than the date of execution of such deed or later than the date on which the applicable perpetuity period expires.

Commented [RB10]: This allows the trustees to extend the trust period if necessary

7. **Ultimate default trust**

In the event of the expiry of the Trust Period the Garden and the Trust Fund shall be held upon trust for the Mayor and Citizens of the Royal Borough of Kensington & Chelsea absolutely.

Commented [RB11]: It is necessary under trust law to have an ultimate beneficiary when the trust ends

8. **Powers of the trustees**

In furtherance of the above objects but not further or otherwise the Trustees shall have the following powers:

Commented [RB12]: These powers are only likely to be used if the Trustees acquire other assets or investments

8.1 Employment of Services

To incur such professional advice and other services as the Trustees consider necessary for the proper administration of the Trust at such reasonable rates as the Trustees think fit.

8.2 Acquisition of property

To purchase take on lease or in exchange hire or otherwise acquire any property for use for the purposes of the Trust including but not limited to the acquisition of the remaining beneficial and legal interest in the Garden not held by the Trustees at the date of this deed.

8.3 Investment

To invest trust money in the purchase of or at interest on the security of such stocks funds shares securities or other investments or property of whatever nature and wherever situated as the Trustees 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 as if they were beneficially entitled to the Trust Fund.

8.4 Administrative regulations

To make regulations from time to time for the administration of the Trust and for the management and conduct of the Trustees' business including the summoning and

chairmanship of meetings the number of Trustees required to constitute a quorum the deposit of money at a proper bank and the custody of deeds securities and documents.

9. **To act in accordance with the wishes of the Committee**

The Trustees shall at all times and so far as is possible and is within the powers granted to them in this deed act in accordance with any reasonable direction given to them by the Committee.

Commented [RB13]: The trustees must act at the direction of the committee subject to the rules of the trust

10. **Restrictions on trustees' powers**

10.1 The Trustees shall not sell, charge, lease, or otherwise dispose of the Garden or any part or parts thereof.

Commented [RB14]: This is an absolute prohibition

10.2 [The Trustees may with the specific approval of the Committee given at a general meeting of the Committee by way of a majority of those persons who are entitled to vote at such meeting grant rights to persons not otherwise entitled to use the garden on an annual basis subject to such terms as the Committee shall specify.]

Commented [RB15]: This clause may not be required

10.3 The Trustees shall not develop or permit or in any way participate in the development of the Garden or any part or parts thereof whether such development be above or below ground level UNLESS such development is intended to and shall further the object of the trust as set out in Clause 3 and the proposal has been put to a general meeting of the Committee and the approval has been obtained of not less than seventy five per cent (75%) of those persons who are entitled to vote at that meeting.

Commented [RB16]: Some powers to develop are permitted but are restricted

11. **Appointment and retirement of trustees**

11.1 The power of appointing new Trustees shall be vested in the Committee and such appointments shall be made at a general meeting of the Committee provided that at all times there shall be no less than two nor more than four trustees.

Commented [RB17]: The Committee controls the appointment of trustees

11.2 No person shall be appointed a trustee unless he or she shall be [a person entitled to use the Garden in accordance with the Act] [an Owner].

11.3 Any Trustee who ceases to be an [a person entitled to use the Garden in accordance with the Act] [an Owner] shall resign as trustee.

11.4 Any Trustee shall resign as a trustee upon being requested to do so by a two thirds majority vote at a general meeting of the Committee.

Commented [RB18]: And can remove trustees

11.5 Any Trustee who is required to resign in accordance with Clauses 11.3 or 11.4 or otherwise wishes to resign as trustee shall upon request from the Committee execute a deed of retirement as trustee and a transfer of the legal title of the Garden to the remaining/and or replacement trustee(s). Should any Trustee fail to execute such document(s) within a

reasonable period of being requested to do so a remaining trustee shall have power to execute such document as attorney for and on behalf of the trustee.

12. **Accounts**

In the event that the Trustees hold funds in the Trust Fund they shall keep proper books of account and shall prepare consecutive statements of account consisting of an income and expenditure account relating to a period of not more than 15 months and of a balance sheet relating to the end of such period.

Commented [RB19]: Clauses 12 and 13 only relevant if the trust hold funds aside from the garden

13. **Banking**

In the event that the Trustees hold funds in the Trust Fund they shall maintain such banking accounts for the Trust as they consider convenient and every sum received on account of the Trust shall be paid to the credit of such accounts all cheques and order for the payment of money from any such account shall be signed by two or more Trustees.

14. **Trustees' expenses**

A Trustee shall be entitled to be reimbursed by the Committee any reasonable and proper expenses incurred by him or her in carrying out his or her duties as a Trustee.

15. **Trustees' indemnity**

In the execution of the trusts and powers of this Deed no Trustee shall be liable for any loss to the Trust arising by reason of any improper investment made in good faith so long as he shall have sought professional advice before making such investment or any mistake or omission made in good faith by him or any other Trustee or any other matter other than wilful and individual fraud wrongdoing or wrongful omission on the part of the Trustee who is sought to be made liable.

Commented [RB20]: It is normal for trustees to be indemnified for their actions where they act within the powers of the trust

16. **Failure of trust**

In the event of the failure of the trust of this deed any assets remaining after satisfaction of the debts and liabilities of the Trust shall not be paid or distributed among the Trustees but shall be given to such charitable institutions as the Trustees shall at their sole discretion decide.

IN WITNESS whereof this document is executed as a Deed the day and year first above written

SCHEDULE 1

ALL THAT the freehold property known as the garden enclosure situate in []
London [] in the Royal London Borough of Kensington & Chelsea which is more particularly described
in Land Registry title number [].

EXECUTED as a deed by)
)
in the presence of:) _____

Witness's signature

Name of witness (in BLOCK CAPITALS)
Address of witness:

EXECUTED as a deed by)
)
in the presence of:) _____

Witness's signature

Name of witness (in BLOCK CAPITALS)
Address of witness:

.....
.....
.....

EXECUTED as a deed by)
)
in the presence of:)

.....
Witness's signature

.....
Name of witness (in BLOCK CAPITALS)
Address of witness:

.....
.....
.....