

Registers of Scotland
Books of Council and Session

Extract Registered

DEED OF TRUST

by

CHARLES HENRY BILLINGS and
OTHERS

To Establish the Arniston
Improvement Trust

Registered 31st August 1987

DALFOUR & MANSON
EDINBURGH

FAS 0407

26.219
AT EDINBURGH the Thirty first day of August
Nineteen hundred and eighty seven the Deed hereinafter
reproduced was presented for registration in the Books
of the Lords of Council and Session for preservation and
is registered in the said Books as follows:-



ARNISTON IMPROVEMENT TRUST

BACKGROUND

(FIRST) WE, CHARLES HENRY BILLINGS, residing at 43 Main Street, Gorebridge, Midlothian, THOMAS KUTNIK, residing at 85 Barleyknowe Crescent, Gorebridge, Midlothian and PETER RUSSELL WEBB, residing at 30 Hogarth Avenue, Gorebridge, Midlothian, have for a number of years been the only Members of a Committee known as THE ARNISTON GOTHENBURG PUBLIC HOUSE COMMITTEE (also known as ARNISTON PUBLIC HOUSE IMPROVEMENT COMMITTEE) for which there has never at any time been a formal constitution. To enable the said Committee to overcome the difficulties arising from the absence of a constitution we, the said Charles Henry Billings, Thomas Kutnik and Peter Russell Webb, have obtained by Decree of Twenty ninth January Nineteen hundred and eighty seven the approval of the Court of Session to the terms of a constitution now given or about to be given to the said Committee in terms of which the Committee is to be formed into a Trust called the "Hunterfield Gothenburg Tavern Trust". Because of its primary function which is the running or provision of a public house, the said Committee and the said Hunterfield Gothenburg Tavern Trust will not qualify for exemption as a charity in terms of Section 360 of The Income & Corporation Taxes Act 1970 or Section 145 of The Capital Gains Tax Act 1979. The said Charles Henry Billings, Thomas Kutnik and Peter Russell Webb have accordingly decided to establish the further separate Trust constituted and to be constituted by this Deed to carry out all those parts of the functions and purposes of the said Committee or the said Hunterfield Gothenburg Tavern Trust which are charitable and to do so in such a way that the Trust created by this deed will qualify as a charity for exemptions under the above mentioned statutory provisions.

ESTABLISHMENT/

21

39

ESTABLISHMENT AND CONSITUION OF TRUST

(SECOND) THEREFORE, we, the said Charles Henry Billings, Thomas Kutnik and Peter Russell Webb DO hereby ESTABLISH and CONSTITUTE a charitable trust and that in the following terms, namely:-

Name

(One) The Trust shall be called the "ARNISTON IMPROVEMENT TRUST" and is hereinafter referred to as "the Trust".

Objects

(Two) The objects of the Trust shall be to apply all investment income, gifts and donations and other income from whatever source including all income covenanted from the Hunterfield Gothenburg Tavern Trust and all tax reclaimed thereon obtained by its Trustees for the benefit of the people of Corebridge and the surrounding district and without prejudice to the foregoing generality in particular to promote the following objects, namely:- education or training of children, youths and adults, the study, exposition and practice of the arts, painting, sculpture, literature, music and drama, the provision of facilities for recreation and other leisure-time occupation, cultural and recreational activities of all kinds and the care of or provision of recreation for, aged, infirm, incapacitated, handicapped or needy persons. Those objects shall, as far as possible, and primarily be promoted within (but not exclusively within) the area of Corebridge and the surrounding district. The Trustees shall also promote, assist and encourage, by grants of money or otherwise, any association, club or organisation of a voluntary character operating within the said Corebridge and the surrounding district and having as its purpose or one of its main purposes the promotion of the above/

above mentioned objects or any one or more of them. The Trustees shall take care that the funds of the Trust shall be applied in supplement of and not in substitution for any benefit which may be provided or available from public funds.

Management

(Three) The management of the Trust and its property and assets shall be in the hands of Trustees appointed or to be appointed as follows. The Trustees shall be known as the "Arniston Improvement Trustees" and are hereinafter referred to as "the Trustees". The following persons shall be the Trustees, namely:-

- (a) Mrs. Althea Dundas-Bekker, residing at Arniston House, Gorebridge, Midlothian or her heir or successor as owner of Arniston Estates or owner and sole occupier (with his or her family) of Arniston House or her nominee or the nominee of such heir or successor;
- (b) One member of Midlothian District Council as may be nominated by the said Council;
- (c) The Manager for the time being of the Gorebridge Branch of the Bank of Scotland and his successor from time to time whom failing one person nominated by the Bank of Scotland; and
- (d) Three local residents who shall in the first instance be us, the said Charles Henry Billings, Thomas Kutnik and Peter Russell Webb, (we, the said Charles Henry Billings, Thomas Kutnik and Peter Russell Webb and our successors as hereinafter provided, in their capacities as Trustees being hereinafter called "the local Trustees") (DECLARING that, until such time as/

Registers of Scotland

-4-

as the appointments of all other of the Trustees have been duly made and accepted, we, the said Charles Henry Billings, Thomas Kutnik and Peter Russell Webb and such of the others of the Trustees as have been appointed from time to time, shall as interim trustees have full power and authority to exercise all the powers of the Trustees);

Tenure of Office

(Four) The tenure of office of the Trustees shall be as follows, namely:-

- (a) The said Mrs. Althea Dundas-Bekker, Charles Henry Billings, Thomas Kutnik and Peter Russell Webb shall each hold office until his or her death or resignation;
- (b) The said Manager of the Gorebridge Branch of the Bank of Scotland shall hold office so long as he shall remain in the post of Manager;
- (c) The said nominated Councillor and the person (if any) nominated by the said Bank in place of the said Manager shall hold office for no more than three years from the date of nomination or election or until earlier death or resignation and shall at the termination of any one period of office be eligible for fresh nomination or election for a further period of office.
- (d) The said Councillor shall hold office so long as he shall remain in office as a Councillor and in any event shall hold office for no more than three years from the/

42

-5-

the date of nomination or election or until earlier death or resignation and shall at the termination of any one period of office be eligible for fresh nomination or election for a further period of office.

Further Appointments

- (Five) (a) On the death or resignation of any of the local Trustees the vacancy thus created shall be filled by such person resident within Gorebridge and the surrounding district as may be nominated by the remaining Trustees.
- (b) In the event of the said Councillor ceasing to hold office as Councillor or on his death or resignation, the vacancy thus created shall be filled by another member of Midlothian District Council as may be nominated by said Council.
- (c) On appointment a new Manager of the Gorebridge branch of the Bank of Scotland shall at once take the place of his predecessor or displace any person nominated by the Bank of Scotland during a period when there was no such Manager.
- (d) In the event that the Trustees are reasonably satisfied that it is impossible to appoint any one or more of the Trustees (other than the local Trustees) provided according to the arrangements detailed above, they shall have power to nominate in his or their place or places a person resident within Gorebridge and the surrounding district.

Tenure/

Tenure of such further Appointees

- (Six) Persons so nominated by the remaining Trustees as the local Trustees or to replace other Trustees shall hold office for a period of no more than five years from the date of nomination or until earlier death or resignation and shall at the end of any period of office be eligible for fresh nomination for a further period of office.

Disqualification

- (Seven) Any person holding office as a Trustee who has or acquires directly or indirectly by himself or herself or through a connected person an interest, other than as a paid employee, in any licensed premises or licensed business other than Hunterfield Tavern or such other additional or substituted tavern or public house as may be run or provided by the said Committee or Hunterfield Gothenburg Tavern Trust from time to time or, other than as merely a member, in the management of any club registered under the Licensing (Scotland) Acts within Gorebridge and the surrounding district shall be and become, from the time when he or she acquires such an interest, disqualified from being a Trustee. If the reason for disqualification be removed before the end of his or her period of tenure of office he or she will automatically be reinstated as a Trustee. In the event of a Trustee becoming disqualified and during such period as a Trustee may be disqualified, or if a Trustee dies or resigns or is otherwise removed before the end of his or her period of office, it shall be competent for the remaining Trustees to assume another person to act in the place of the Trustee who was disqualified or removed, such assumed Trustee/

Trustee to hold office for a period of no more than five years or until earlier death or resignation or during such period as the disqualification endures or until the end of the period of tenure of office of the Trustee whose place he or she has taken, whichever shall be the shortest.

Election of Office Bearers

(Eight) The Chairman and Vice-Chairman of and the Clerk to the Trustees and, if so desired, a Treasurer, shall be elected annually (or at other shorter intervals or periods as necessary and convenient) by the Trustees according to arrangements which they may determine.

Conditions

- (Nine) (a) In the event of a Trustee being sequestrated, becoming bankrupt or granting a Trust Deed for creditors or becoming insane then, provided that the other Trustees after reasonable enquiry are reasonably satisfied that such is the case, the other Trustees may resolve that such affected Trustee has, with effect from the date of such resolution or from any earlier date which shall seem appropriate to the other Trustees, ceased to hold office as Trustee. The vacancy thus arising shall be dealt with as in the case of a vacancy arising because of disqualification, death or resignation as aforesaid.
- (b) The Trustees shall meet at some suitable place within Gorebridge and the surrounding district at least twice yearly for the despatch of business and the Clerk shall keep Minutes of the Trustees' Meetings.
- The/

The Minutes of one meeting shall be submitted for approval by the Trustees and signature by the Chairman (or, in his absence the Vice-Chairman) at the earliest opportune meeting thereafter. If a meeting is called by written notice sent to the last known addresses of all the Trustees and giving fourteen days's notice of the place and date of the meeting and the business to be despatched then the quorum at such meeting shall be three. In the absence of the Chairman or Vice-Chairman within ten minutes after the appointed time of meeting a Chairman for the meeting may be elected by those present from among their number. If a meeting takes place without such prior notice the quorum at such meeting shall be five and in that event the presence of the Chairman or the Vice-Chairman shall be essential. The Chairman and (when the Chairman is absent and the Vice-Chairman takes his place and only then) the Vice-Chairman shall have a deliberative vote and in addition in the event of equality of voting an additional casting vote.

(c) It shall be the duty of the Clerk or his deputy to write or otherwise seek and request from the various persons, parties, the Council and others before-mentioned, nominations or re-nominations of Trustees and he shall commence such seeking not less than two months before the expected date of arising of the vacancy or vacancies among the Trustees to be filled.

(d) An excerpt of a Minute of a meeting of the Trustees shall, if signed by the Clerk to the Trustees and the Chairman of the Trustees be sufficient evidence of any matters competently resolved or confirmed or stated therein.

Trustees' /

46

Trustees' Powers and Duties

(Ten) The Trustees shall have all the powers, privileges and immunities competent to gratuitous trustees from time to time under the statutory and common law of Scotland. In addition and without prejudice to that generality they shall have power to buy or sell heritable property, to grant security thereon, to make, realise, deposit, uplift or invest money, securities and other investments, to employ accountants, auditors, surveyors, factors, builders, contractors of all kinds, solicitors, stockbrokers and all necessary advisers and agents and to pay them the usual professional remuneration as well as paying from the assets of the Trust the whole costs of setting up or formally constituting the Trust and of administering the same. The Trustees shall not be responsible for the actings, neglects, or defaults of each other or of any accountants, stockbrokers, solicitors or other advisers, contractors or agents or others as aforesaid appointed by them but each shall be liable only for his or her own actings, neglects or defaults. The Trustees shall have power to carry forward any part of the income of the Trust arising from investment or by donation, covenant, tax repayment claim or otherwise and they shall not be bound to expend the whole of the said income in the year in which it arises, if in the bona fide exercise of their discretion, they consider that the objects of the Trust or any of them would be better served by carrying forward the said income or any part of it from one year to another, even over a number of years in succession.

Accounts

(Eleven)

The accounts of the Trust shall be made up annually and shall be audited by Chartered Accountants or other suitably qualified persons appointed on an annual basis by the Trustees. The audited accounts shall be prepared by the Treasurer, if appointed, whom failing they shall be obtained by the Clerk to the Trustees and placed before the Trustees annually not more than nine months after the last day of the period to which they relate. The Trustees shall consider and have the accounts amended if required to meet their requirements, shall approve the accounts and shall either distribute the income or the surplus income or the capital or part of the capital or allocate the same or part thereof to reserves or invest the same for later distribution or allocation. The Trustees shall prepare or obtain preparation of an abbreviated form of the said accounts setting out the amount of the surplus and the disposal thereof, such abbreviated form to be approved by the auditors whether it is prepared by them or not and, with a short report by the Trustees advertised by publication in a newspaper which has a high level of circulation in Gorebridge and the surrounding district and copies shall also be displayed prominently in the Hunterfield Tavern or other convenient place where they may be seen by customers.

Property and Investments

(Twelve)

The Trust shall be bound to take the title to all property heritable and moveable and all investments in the names of the Chairman and Vice-chairman of the Trustees and the Clerk to the/

42

the Trustees for the time being as Holding Trustees for the Arniston Improvement Trust. The Trustees shall, however, have power to direct that the title to any property or securities may, if they so wish, be taken alternatively in the name of a Bank Nominee Company approved by the Trustees.

Dissolution

(Thirteen) In the event that the Trustees shall find after all reasonable investigation that it has become in their reasonable opinion impossible to continue to manage the affairs of the Trust or to fulfill the purposes of the Trust then it shall be in the power of the Trustees to choose or to create such charitable organisation as may in their view most closely resemble in its administration and purposes the Arniston Improvement Trust and they may convey to such charitable organisation the property and assets of the Trust or the proceeds of their realisation and, provided that the final accounts are audited and advertised as above specified, the Trustees shall within one year of the transfer of such heritable property and other assets be regarded as fully discharged and relieved of their responsibilities as the Trustees and the said Arniston Improvement Trust shall be regarded as having been dissolved unless within that period claims have been validly intimated against the said Arniston Improvement Trust or the Trustees in which case, the Trustees shall be discharged only on the settlement and discharge of such claims. For the avoidance of doubt it is specified that at no time during the administration of the Trust or on dissolution may any/

31

Registers of Scotland

-12-

any part of the heritable or moveable property or assets of the Trust be given or transferred to any of the Trustees or any connected persons for their own personal use and benefit but shall at all times be applied for the purposes of the Trust or such other charitable organisation as may have been chosen or created by the Trustees as having reasonably similar objects as aforesaid.

Consent to Registration

(Fourteen) And we, the said Charles Henry Billings, Thomas Kutnik and Peter Russell Webb consent to the registration of these presents for preservation:
IN WITNESS WHEREOF these presents typewritten on this and the eleven preceding pages are executed as follows, namely:-

THEY ARE SUBSCRIBED by us, the said
CHARLES HENRY BILLINGS, THOMAS KUTNIK
and PETER RUSSELL WEBB, all together at
Gorebridge on the *20th*
day of *August* Nineteen hundred
and eighty seven before these witnesses:-

Signature.....*HB*.....Witness

Full Name.....*HELEN JEAN BOWIE*.....

Address.....*24 LEWIS ROAD*.....

.....*EDINBURGH EH4 1RH*.....

Occupation.....*LOCAL GOVERNMENT OFFICER*.....

P. Russell Webb *143*

T. Kutnik *TR*

Signature.....*Jim Bennett*.....Witness

Full Name.....*ELSIE M. MOORE BARNETT*.....

Address.....*LILYSIDE GARDENS*.....

.....*GOREBRIDGE*.....

Occupation.....*PART-TIME ATTENDANT*
GOREBRIDGE LEISURE CENTRE.....

Peter Webb *PRW*

EXTRACTED by me having commission to that effect from the
Keeper of the Registers of Scotland.

C. T. Smith