

EGLINTON AND GLENCAIRN CRESCENTS GARDENS ASSOCIATION

CONSTITUTION

(As amended at Annual General Meeting on 3rd April 2023)

1. NAME

The name of the Association shall be “The Eglinton and Glencairn Crescents’ Gardens Association” hereinafter referred to as “the Association”. Its object is to maintain the pleasure ground in the centre of the two Crescents (hereinafter referred to as “the garden”) for the benefit of the members.

2. MEMBERSHIP

2.1 Membership: There will be two classes of membership – (A) & (B). Members (A) of the Association shall be limited to the proprietors of the heritable subjects entitled to a pro-indiviso inseparable interest in the garden as laid down and defined in the Feu Contract dated 5th, 7th, 11th, 12th, & 16th days of April and 14th day of May 1877 between the Trustees of George Heriot’s Hospital and James Steele sometime builder in Edinburgh (hereinafter referred to as “the Feu Contract”) Members (A) are therefore the owners of the several properties 2-23 Eglinton Crescent and 1A-26 Glencairn Crescent. Any decision as to whether a person is or is not a Member (A) shall in the event of dispute be determined by reference to the Title to the property of which he or she is a proprietor and therefore has an interest in the garden.

Members (B) of the Association are owners of the several properties 1 & 24 Eglinton Crescent and 1, 1B, 27 and 27B Glencairn Crescent and 44 Coates Gardens, who, on annual invitation, wish to be a Member of the Association.

Where a property is held jointly in pro-indiviso shares by two or more persons, they will be entitled to appoint one jointly of themselves to exercise the rights of the member on behalf of the joint owners including the right to membership, to obtain a key for the gardens for the use of the joint owners, to receive notices and assessments on behalf of the joint owners, to attend and vote at meetings on behalf of the joint owners and to be elected to the Committee. The name of the joint owner who is thus appointed shall be intimated to the Secretary and shall remain fixed and unchanged for the longer of the following periods, that is to say the period from next Annual General Meeting after their appointment to the next Annual General Meeting, or the period from appointment to the date on which the appointee ceases to reside or to have a proprietary interest in the dwelling house; and any intimation to be made to a proprietor shall be sufficiently made if the Secretary shall address to the appointee, or failing appointment to joint owners, appearing on the Register of Members at the time such intimation is to be made. Further, where the property is held by a spouse, he or she shall be entitled to appoint his or her spouse to exercise the foregoing rights of a member

notwithstanding that the spouse appointed has no proprietary interest in the dwelling house concerned. The appointment of a spouse shall be fixed and unchanged for the same period as referred to in the immediately preceding paragraph save that "to be a proprietor's spouse" is to be read in place of "to have a proprietary interest in the dwelling house".

2.2 Associate Membership: There will be a maximum of 25 Associate Members. Associate Membership may be conferred by the Committee at its sole and absolute discretion on proprietors of properties in the vicinity of the Gardens but beyond the addresses listed in 2.1 above. Associate Memberships are personal to the individual upon which they are conferred and shall automatically be relinquished, and the key returned to the Committee, upon the Associate Member either letting or selling the property which they owned at the time of the conferral of Associate Membership. Associate Memberships may not be passed on to any other person including a tenant or buyer of the property.

2.3 Membership and Voting: "Members" shall include both Members (A) & (B) and Associate Members unless the contrary is expressed or clearly implied by the context. Associate Members are welcome to attend meetings but are not entitled to vote thereat except as duly authorised proxies or as representatives of Members which authority must be produced at such meetings for inspection by the Chairman when the attendance roll is being signed by the proxy or representative.

2.4 Limitations of the Association's Liability: Members, their guests and visitors are bound by the following Rule which shall also be exhibited in a prominent place within the gardens:- "Members of the Association, their guests or visitors may use the gardens and any other facilities therein, entirely at their own risk and impliedly accept:- (a) The Association will not accept any liability for any damage to or loss of property belonging to members, their guests or visitors to the gardens. (b) The Association will not accept any liability of personal injury arising out of the use of the gardens, any other facilities of the Association either sustained by the members, their guests or visitors or caused by the said members, their guests or visitors whether or not such damage or injury could have been attributed to or was occasioned by the neglect, default or negligence of any of them, the Officers, Committee or employees of the Association".

3. COMMITTEE OF MANAGEMENT

3.1 Appointment of Members: A Committee shall be appointed by the Members to act as mandatory's for them as provided in the Feu Contract. The Committee shall consist of three office-bearers, a Chairman, a Secretary and a Treasurer who shall hold office for a period of four years from the date of their respective appointment unless two-thirds of the members present and voting at an Annual General Meeting or at a Special General Meeting called for the purpose, shall decide otherwise. In addition, there shall be a minimum of six Committee members, the two longest serving of whom shall retire at each Annual General Meeting and shall

not be eligible for re-election until the lapse of one year. Members may, in addition to or in lieu of appointing a member to fill the vacancy on the Committee for Treasurer in terms of Clause 3.1 above, appoint a suitable qualified Accountant to undertake the collection of membership fees and other income of the Association, keep account of same and prepare accounts for presentation to Committee and to the Annual General Meeting for information.

3.2 Co-option to the Committee: The Committee may co-opt any Member to the Committee to fill vacancies during the year should it seem to the Committee to be advisable to do so. They may also invite as advisors to the Committee such person or persons as they see fit whether or not such person is or is not a Member of the Association or an Associate Member. Co-opted members shall not serve beyond the Annual General Meeting next after the date of co-option except, where permissible, with the approval of the majority of Members at that Annual General Meeting, when they will be elected as members of the committee.

3.3 Committee Meetings: The Committee shall meet at such times as it may deem necessary for the conduct of its business but not less than five times each year.

3.4 Quorum: - A quorum at Committee meetings shall be five.

3.5 Committee Powers: The Committee shall be responsible for the upkeep of the garden and the enforcement of the Rules of the Association, as appended. The Committee shall have fully delegated powers for all financial matters including approval of accounts for the preceding year, setting budgets for the forthcoming financial year, setting annual assessments for Members and Associate Members and for contributions from non-residential properties.

3.6 Minutes of Register of Members: The Secretary shall maintain a Minute Book in which shall be recorded the business of all Committee and General Meetings, and also a Register of Members, both of which shall be available for inspection by members at all General Meetings and at other times on reasonable notice being given to the Secretary.

3.7 Limitation of Member's Liability: The Committee, or any person or subcommittee delegated by the Committee to act as agent for the Association or its members, shall enter into contract only as far as expressly authorised, or authorised by implication, by the members. No one shall, without the express authority of the membership in General Meeting, pledge the credit of the membership. In pursuance of the authority vested in the Committee by members of the Association members of the Committee are entitled to be indemnified by the members of the Association against any liabilities properly incurred by them or any one of them on behalf of the Association wherever the contract is of a duly authorised nature or could be assumed to be of a duly authorised nature and entered into on behalf of the Association. The limit of any individual member's indemnity in this respect shall be a sum equal to one year's assessment at the then

current rate of that category of membership unless the Committee has been authorised to exceed such limit by the General Meeting.

4. GARDEN ASSESSMENTS

4.1 Members' Assessments: Members (A) & (B) shall contribute to the funds of the Association such annual sums as may from time to time be assessed on them in accordance with the direction of the Committee. Members (A) & (B), whose rights are being enjoyed in their absence by a tenant, may instruct the Committee to collect their contribution from the tenant, but this will not absolve Members from the liability attaching to their property in the event of their tenant defaulting on payment of such assessments. The date for determining who the members liable to be assessed are shall be the date of the Annual General Meeting.

4.2 Associate Members' Assessments: Associate members admitted under Clause 2.2 shall contribute such annual sum being not less than that assessed on the other categories of membership, as the Committee may from time to time determine.

4.3 Payment of Assessments: Such assessments and contributions shall be payable within the month following the Annual General Meeting or confirmed with interest thereafter at Commissioners' rate of interest on landed securities as fixed at the Whitsunday or Martinmas term preceding the date of the Annual General Meeting until paid.

4.4 Single Ownership Properties: Members who own properties with the same address are liable for one annual assessment regardless of the number of title deeds and council taxes associated with the property.

5. GENERAL MEETINGS

5.1 Annual General Meetings: The Annual General Meeting of the Members shall be held in the months of March or April at a date, place, and hour to be fixed and advertised as necessary by the Committee. The Annual General Meeting shall have powers over all constitutional matters, but as all financial matters are delegated to Committee, it shall receive accounts, a budget for the forthcoming financial year and information on the setting of assessments for information and comment only. Included in the business of the Annual General Meeting shall be:

- (i) The presentation of the Treasurer's accounts for the preceding financial year.
- (ii) Report of expenditure by the Committee for the period following the end of the preceding financial year to the date of the meet.
- (iii) Budget of expenditure for the 12 months following the Annual General Meeting.

- (iv) Assessments on Members and on Associate Members under Clause 4.1 & 4.2.
- (v) The election of such office bearers or Committee members as may be required from time to time to fill vacancies on the Committee.
- (vi) Approval of any amendments to the Rules and Constitution of the Association.
- (vii) Such other business as may be submitted to the Secretary by the members.

Members who wish to submit motions for discussion at the Annual General Meeting which do not arise out of items (i) to (vii) above are requested to submit such motions to the Secretary not less than two weeks prior to the meeting so that the Secretary may circulate details of the motions to the members not later than one week prior to the meeting.

Except in emergency, the desirable period of notice to be given of any General Meeting shall be at least twenty-one days before the date proposed for the meeting notwithstanding the provisions of the Feu Contract that such meetings be called at three days' notice.

Members who wish to raise questions of detail on the accounts or on the execution by the Committee of its functions are required to give similar notice to the Secretary of such questions in order that the information can be readily available at the meeting.

5.2 Quorum: A Quorum at General Meetings shall be fifteen Members present in person. Except as provided in Clause 5.3 below, any resolutions shall be valid if approved by a majority of members present entitled to vote. The Chairman shall have a casting vote as well as a deliberative vote.

5.3 Amendments to the Constitution and Rules: The Constitution and Rules shall be amended only by the vote of two-thirds of the Members (A & B) present and voting at an Annual General Meeting or at a Special General Meeting called for the purpose of debating such amendments

5.4 Special General Meetings: Special General Meetings shall be called in the same manner as for general meetings or on requisition to the Secretary by not less than ten proprietors.

6. Online Meetings:

- 6.1 The Committee may if they consider appropriate (and must, if this is required under clause 6.1(b)) make arrangements for members and Committee members to participate in members' meetings and/or Committee meetings respectively by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting, providing:
- (a) the means by which members and Committee members can participate via that link or links are not subject to technical complexities, significant costs or other factors which are likely to represent - for all or a significant proportion of the membership - a barrier to participation;
 - (b) the notice calling the meeting (or notes accompanying the notice) contains the information required under clause 5.1; and
 - (c) the manner in which the meeting is conducted ensures, so far as reasonably possible, that those members and Committee members who participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those members and Committee members (if any) who are attending in person (and vice versa).
- 6.2 If restrictions arising from public health legislation or guidance are likely to mean that attendance in person at a proposed members' meeting would not be possible or advisable for all or a significant proportion of the membership, the Committee must make arrangements for members and Committee members to participate in that members' meeting by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting; and on the basis that the requirements set out in paragraphs 6.1(a)-(c) will apply.
- 6.3 A members' meeting or Committee meeting may involve two or more members or Committee members respectively participating via attendance in person while other members and/or Committee members participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.

EGLINTON AND GLENCAIRN CRESCENTS GARDENS ASSOCIATION RULES
(As amended at Annual General Meeting on 3rd April 2023)

1. INTRODUCTION

- 1.1 The garden between Eglinton and Glencairn Crescents belongs to the owners of the properties in 2 to 23 Eglinton Crescent and 1A to 26 Glencairn Crescent. This ownership confers the right to use the garden but also an obligation on each and every such property for the maintenance of the garden. This right and obligation stem from the original Feu Contract in 1877 between the feudal superior and the original builder.
- 1.2 All the proprietors of the above properties are automatically members of the Garden Association. Its current Constitution and Rules were adopted in 1976, with amendments passed by various subsequent Annual General Meetings, most recently in 2011.
- 1.3 Arrangements for membership, the Committee that manages the garden on behalf of proprietors and Annual General Meetings, are set out in the Constitution.
- 1.4 The Rules which follow clarify certain practical issues relating to membership and the use of the garden and should be read in conjunction with the Constitution itself. In the event of any inconsistency between the Rules and the Constitution, the Constitution shall prevail.

2. PAYMENTS OF ASSESSMENT

- 2.1 Assessments become due following the AGM each year. A lease or transfer of ownership during the year does not affect this obligation of the owner at the date of the AGM to pay the whole assessment. Payment of assessments relates to ownership and therefore is due for properties whether or not they are occupied. If an assessment has not been paid upon the sale of a property, the incoming owner shall be responsible for the whole of the current year's assessment.

3. KEYS FOR THE GARDEN

- 3.1 Each member of the Association in good standing is entitled to hold a key which is issued by the relevant office bearer on payment of a deposit, and is required to return the key on ceasing to qualify for membership. If an assessment remains outstanding, the Committee reserves the right to withhold a key until the assessment is paid. New proprietors during the financial year should in their own interest make sure that the vendor of their property had paid the assessment for the current year.

4. USE OF THE GARDEN

4.1 General: The use of the gardens shall be restricted to Members & Associated Members, their families and guests or visitors.

4.2 Recreation Areas: Permitted games (as defined in Rule 4.4 below) may only be played on the large lawn in the eastern half of the garden. No games, other than permitted games, are permitted in the garden. Permitted games may only be played by young children and under the conditions and to the extent defined in Rule 4.3 below.

4.3 General Conditions

4.3.1 Members are responsible for familiarising themselves, their children and their guests of the Rules of the Association, and ensuring that they are observed.

4.3.2 The gates must be properly closed after every entry and exit.

4.3.3 Parents must provide their children with a key when they are playing unsupervised in the garden.

4.3.4 Flowerbeds, shrubberies and trees are out of bounds. Any damage should be reported to a Committee member.

4.3.5 During the playing of permitted games, only soft soled shoes such as trainers or gym shoes may be worn. Studded and hard-soled footwear is not permitted.

4.3.6 No games may be played when the grass is wet, or when the gardeners are at work.

4.3.7 No game may be played in such a way as to cause concentrated wear on any part of the grass.

4.3.8 No hard ball may be used for any game except croquet.

4.3.9 The games defined below are permitted. No other games may be played without the express permission obtained from the Committee by the parent concerned.

4.3.10 No stone or other hard object likely to damage the mower may be left on the lawn.

4.3.11 Cycling is prohibited, with the sole exception of infants' tricycles.

4.4 Permitted Games

- 4.4.1 Rounders and cricket with a soft ball, croquet, Frisbee, hide and seek, softball, tennis, badminton and similar games provided that the General Conditions are strictly observed.
- 4.4.2 Football games between sides with marked goals are limited to children under 12 years, and no more than 8 may play at any one time. Lightweight balls only may be used. Football practice with either shape of ball (soft balls only) is permitted provided no more than 4 persons participate regardless of age.

4.5 Dogs

Members have been granted the privilege of exercising their dogs in the garden provided they adhere to the following conditions. If the conditions are not adhered to, the Committee reserves the right to take appropriate action, including the withdrawal of the privilege:-

- 4.5.1 Dogs must be kept under control and not be allowed to interfere with other members, their dogs or the gardeners.
- 4.5.2 Dogs must be accompanied and all dog excrement must be bagged and removed from the garden or placed carefully in the dog bin provided and under no circumstances placed in the litter bins. Dogs must be kept on leash after dark to ensure that excrement can be cleaned up immediately. Dog owners, who use the dog bin, must take their turn of emptying the dog bin by removing the bag from the gardens and replacing the bag.
- 4.5.3 Dogs are not permitted in the children's play area.
- 4.5.4 The Committee may from time-to-time issue regulations governing the exercising of dogs within the garden which shall be binding upon the Members.

4.6 Barbecues: Portable/Disposable barbecues may be used on the gravel or on the protective portable bricks provided and on no account directly on the grass unless adequate protection is provided to prevent the grass from being scorched. All portable/disposable barbecues and food stuffs must be removed from the gardens after use and under no circumstances be deposited in the litter bins. Any member using a barbecue provided in the garden must clean the barbecue subsequent to use such that it is in a suitable condition for use by other members.

4.7 Parties and Organised Events: Members' parties and other organised events must receive advance consent of the Committee.