

Firstsite

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RECORD OF WRITTEN RESOLUTION OF FIRSTSITE

Company number: 02884347

The special resolution set out below was passed as a written resolution pursuant to S 288 of the Companies Act 2006. The date the requisite number of members signified their agreement to it was 2nd June 2016.

SPECIAL RESOLUTION

That the existing Memorandum and Articles of Association in their entirety be removed and substituted with the new Articles of Association attached to this Resolution.

Signed



Helen Organ, Company Secretary

Date

14/6/16

SATURDAY



A13 *A59F3S5M* 18/06/2016 #234
COMPANIES HOUSE

Firstsite Limited Registered in England
Company no 2884347 Registered Charity no 1031800 VAT registered no 135 6101 44
Registered address
Lewis Gardens High Street Colchester CO1 1JH



Supported using public funding by
ARTS COUNCIL
ENGLAND



Essex County Council

TATE
PLUS

Company No 02884347
Charity registered in England and Wales No 1031800

Companies Acts 1985 to 2006
Company limited by guarantee not having a share capital

MEMORANDUM OF ASSOCIATION
OF
FIRSTSITE

WE, the several persons whose names and addresses are subscribed are desirous of being formed into a Company in pursuance of this Memorandum of Association

Name and address of each subscriber

FREDERICK DEREK ROUND of Pantiles Lower Street, Stratford St Mary, Colchester
Essex

KEITH ALBARN of The Bakery, Ford Street, Aldham, Colchester, Essex

RODERIC BARRETT of Rooks Ends, Church Lane, Stanway, Colchester, Essex

HILARY DAVIS of 11 King George Road, Berechurch, Colchester, Essex

MARGARET FISHER of 14 Gladwin Road, Colchester, Essex

WITNESS

ALISON MCFARLANE of Eastern Arts Board, Cambridge

Dates this 19th day of November 1993

ARTICLES OF ASSOCIATION
OF FIRSTSITE

1. Name

The name of the company is Firstsite

2. Registered office

The registered office of the Company will be situated in England

3. Objects

The Company is established to promote the Arts in society, in particular the visual and media arts, for the benefit of the inhabitants of Colchester and the surrounding area in particular and East Anglia in general by developing public appreciation of the arts and by improving public access to, and the quality of, the arts (Visual and Media Arts shall be defined as including painting, drawing, photography, film, video, sculpture, the crafts of pottery, woodwork, textiles, plastic, metal work, performance and current technology for arts purposes)

4. Powers

In furtherance of such objects, but not further or otherwise, the Company shall have power

- 4 1 to establish and maintain a centre for the visual arts in Colchester and the surrounding area,
- 4 2 to cause to be written, and printed or otherwise reproduced and circulated, gratuitously or otherwise, periodicals, magazines, books, leaflets or other documents or films or recorded tapes,
- 4 3 to hold exhibitions, meetings, lectures, classes seminars and courses either alone or with others,
- 4 4 to provide advice or information,
- 4 5 to carry out research and disseminate the results of any such research,
- 4 6 to co-operate with other bodies,
- 4 7 to support, administer or set up other charities,
- 4 8 to accept gifts and to raise funds (but not by means of taxable trading),
- 4 9 to borrow money,

- 4 10 to give security for loans or other obligations (but only in accordance with the restrictions imposed by the Charities Act),
- 4 11 to acquire or hire property of any kind,
- 4 12 to let or dispose of property of any kind (but only in accordance with the restrictions imposed by the Charities Act),
- 4 13 to set aside funds for special purposes or as reserves against future expenditure,
- 4 14 to deposit or invest its funds in any manner (but to invest only after obtaining such advice from a financial expert as the Trustees consider necessary and having regard to the suitability of investments and the need for diversification),
- 4 15 to delegate the management of investments to a financial expert, but only on terms that
 - a) the investment policy is set down in writing for the financial expert by the Trustees,
 - b) timely reports of all transactions are provided to the Trustees,
 - c) the performance of the investments is reviewed regularly with the Trustees,
 - d) the Trustees are entitled to cancel the delegation arrangement at any time,
 - e) the investment policy and the delegation arrangement are reviewed at least once a year,
 - f) all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt, and
 - g) the financial expert must not do anything outside the powers of the Charity,
- 4 16 to arrange for investments or other property of the Charity to be held in the name of a nominee company acting under the direction of the Trustees or controlled by a financial expert acting under their instructions, and to pay any reasonable fee required,
- 4 17 to deposit documents and physical assets with any company registered or having a place of business in England or Wales as custodian, and to pay any reasonable fee required,
- 4 18 to insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required,
- 4 19 to employ paid or unpaid agents, staff or advisers,
- 4 20 to enter into contracts to provide services to or on behalf of other bodies,
- 4 21 to establish or acquire subsidiary companies,
- 4 22 to do anything else within the law which promotes or helps to promote the Objects.

5 The Trustees

- 5 1 The Trustees as charity trustees have control of the Company and its property and funds
- 5 2 The subscribers to the Memorandum (being the first Members) are also the first Trustees. Subsequent Trustees are elected by the Members or co-opted by the Trustees
- 5 3 The Trustees when complete consist of at least 3 and not more than 14 persons, being individuals over the age of 18, all of whom must support the Objects
- 5 4 A Trustee may not act as a Trustee unless he/she
- a) is a Member, and
 - b) has signed a written declaration of willingness to act as a trustee of the Company
- 5 5 Trustees are appointed for three years. After three years Trustees are eligible for re-election twice. A Trustee who has served 3 terms can, after a period of 12 months, be reappointed as a Trustee for another 3 terms
- 5 6 A Trustee's term of office as such automatically terminates if he/she
- a) is disqualified under the Charities Act from acting as a charity trustee
 - b) is incapable, whether mentally or physically, of managing his/her own affairs,
 - c) is absent without good reason from three consecutive meetings of the Trustees and the Trustees so resolve,
 - d) resigns by written notice to the Trustees (but only if at least two Trustees will remain in office), or
 - e) is removed by the Members at a general meeting under the Companies Act
- 5 7 The Trustees may at any time co-opt any individual who is eligible under Article 5 3 as a Trustee to fill a vacancy in their number or (subject to the maximum number permitted by Article 5 3) as an additional Trustee, but a co-opted Trustee holds office only for one year
- 5 8 A technical defect in the appointment of a Trustee of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting

6 Trustees' proceedings

- 6 1 The Trustees must hold at least 4 meetings each year
- 6 2 A quorum at a meeting of the Trustees shall be one third of the membership of the board of Trustees subject to a minimum of 3

- 6 3 A meeting of the Trustees may be held either in person or by suitable electronic means agreed by the Trustees in which all participants may communicate with all the other participants but at least one meeting in each year must be held in person
- 6 4 The Chair or (if the Chair is unable or unwilling to do so) some other Trustee chosen by the Trustees present presides at each meeting
- 6 5 Any issue may be determined by a simple majority of the votes cast at a meeting, but a resolution in writing agreed by all the Trustees (other than any Conflicted Trustee who has not been authorised to vote) is as valid as a resolution passed at a meeting For this purpose the resolution may be contained in more than one document.
- 6 6 Every Trustee has one vote on each issue but, in case of equality of votes, the Chair of the meeting has a second or casting vote
- 6 7 A procedural defect of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting

7 Trustees' powers

The Trustees have the following powers in the administration of the Company in their capacity as Trustees

- 7 1 To appoint (and remove) any person (who may be a Trustee) to act as Secretary in accordance with the Companies Act
- 7 2 To appoint (and remove from those posts) a Chair and Vice-Chair from among their number
- 7 3 To delegate any of their functions to committees consisting of two or more individuals appointed by them At least one member of every committee must be a Trustee and all proceedings of committees must be reported to the Trustees
- 7 4 To make standing orders consistent with the Memorandum, the Articles and the Companies Act to govern proceedings at general meetings
- 7 5 To make rules consistent with the Memorandum, the Articles and the Companies Act to govern their proceedings and proceedings of committees
- 7 6 To make regulations consistent with the Memorandum, the Articles and the Companies Act to govern the administration of the Company and the use of its seal (if any).
- 7 7 To establish procedures to assist the resolution of disputes or differences within the Company
- 7 8 To exercise in their capacity as Trustees any powers of the Company which are not reserved to them in their capacity as Members

8 Benefits and Conflicts

- 8 1 The property and funds of the Company must be used only for promoting the Objects and do not belong to the Members but, subject to compliance with Article 8 4
- a) Trustees and Connected Persons may be paid interest at a reasonable rate on money lent to the Company,
 - b) A Trustee or a Connected Person may enter into a contract with the company to supply services or goods to the company in return for a payment or other material benefit if
 - the goods or services are actually required by the Company,
 - the nature and level of the payment or benefit is no more than is reasonable in relation to value of the goods or services and is set at a meeting of the Trustees and recorded in an agreement in writing,
 - the number of Trustees who are interested in any such a contract in any financial year of the company is in the minority,
 - before entering into such a contract, the Trustees have decided that they are satisfied that it would be in the best interests of the company, and likely to promote the success of the company, for the goods or services to be provided by the relevant person (as opposed to being provided by someone who is not a Trustee or a Connected Person) to, or on behalf of, the Company for the amount of benefit or payment set at the meeting referred to in this article
- 8 2 A Trustee must not receive any payment of money or other material benefit (whether directly or indirectly) from the Company except
- a) as mentioned in Articles 8 1 or 8 2,
 - b) reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) actually incurred in running the Company;
 - c) the benefit of indemnity insurance as permitted by the Charities Act,
 - d) an indemnity in respect of any liabilities properly incurred in running the Company (including the costs of a successful defence to criminal proceedings),
 - e) in exceptional cases, other payments or benefits (but only with the written consent of the Commission in advance and where required by the Companies Act the approval or affirmation of the Members)
- 8 3 Subject to Clause 8 5, any Trustee who becomes a Conflicted Trustee in relation to any matter must
- a) declare the nature and extent of his or her interest before discussion begins on the matter,

- b) withdraw from the meeting for that item after providing any information requested by the Trustees,
 - c) not be counted in the quorum for that part of the meeting, and
 - d) be absent during the vote and have no vote on the matter
- 8 4 When any Trustee is a Conflicted Trustee, the Trustees who are not Conflicted Trustees, if they form a quorum without counting the Conflicted Trustee and are satisfied that it is in the best interests of the Company to do so, may by resolution passed in the absence of the Conflicted Trustee authorise the Conflicted Trustee, notwithstanding any conflict of interest or duty which has arisen or may arise for the Conflicted Trustee, to
- a) continue to participate in discussions leading to the making of a decision and/or to vote, or
 - b) disclose to a third party information confidential to the Company, or
 - c) take any other action not otherwise authorised which does not involve the receipt by the Conflicted Trustee or a Connected Person of any payment or material benefit from the Company or
 - d) refrain from taking any step required to remove the conflict

9 Records and Accounts

- 9 1 The Trustees must comply with the requirements of the Companies Act and of the Charities Act as to keeping records, the audit or independent examination of accounts and the preparation and transmission to the Registrar of Companies and the Commission of information required by law including
- a) annual returns,
 - b) annual reports, and
 - c) annual statements of account
- 9 2 The Trustees must also keep records of
- a) all proceedings at meetings of the Trustees,
 - b) all resolutions in writing,
 - c) all reports of committees, and
 - d) all professional advice obtained
- 9 3 Accounting records relating to the Company must be made available for inspection by any Trustee at any time during normal office hours
- 9 4 A copy of the Company's constitution and latest available statement of account must be supplied on request to any Trustee. Copies of the latest accounts must also be supplied

in accordance with the Charities Act to any other person who makes a written request and pays the Company's reasonable costs

10 Membership

- 10 1 The Company must maintain a register of Members
- 10 2 The subscribers to the Memorandum are the first Members
- 10 3 Membership is open only to the Trustees and is terminated if the Member concerned ceases to be a Trustee
- 10 4 The form and the procedure for applying for Membership is to be prescribed by the Trustees
- 10 5 Membership is not transferable

11 General Meetings

- 11 1 Trustees in their capacity as Members are entitled to attend general meetings in person or by proxy (but only if the appointment of a proxy is in writing and notified to the Secretary before the commencement of the meeting)
- 11 2 General meetings are called on at least 14 and not more than 28 clear days' written notice indicating the business to be discussed and (if a special resolution is to be proposed) setting out the terms of the proposed special resolution
- 11 3 There is a quorum at a general meeting if the number of Members present in person or by proxy is at least two
- 11 4 The Chair at a general meeting is elected by the Members present in person or by proxy in his/her capacity as a Member and not as proxy for another Member
- 11 5 Except where otherwise provided by the Articles or the Companies Act, every issue is decided by ordinary resolution
- 11 6 Every Member present in person or by proxy has one vote on each issue
- 11 7 Except where otherwise provided by the Articles or the Companies Act, a written resolution (whether an ordinary or a special resolution) is as valid as an equivalent resolution passed at a general meeting. For this purpose the written resolution may be set out in more than one document
- 11 8 The Company may (but need not) hold an AGM in any year
- 11 9 Members being Trustees must annually
 - a) receive the accounts of the Company for the previous financial year,

- b) receive a written report on the Company's activities,
- c) be informed of the retirement of those Trustees who wish to retire,
- d) elect Trustees to fill the vacancies arising,
- e) appoint reporting accountants or auditors for the Company,

11 10 Members may also from time to time confer on any individual (with his/her consent) the honorary title of Patron, President or Vice-President of the Company

11 11 A general meeting may be called by the Trustees at any time and must be called within 21 days of a written request from one or more Trustees (being Members), at least 10% of the Membership or (where no general meeting has been held within the last year) at least 5% of the Membership

11 12 A technical defect in the appointment of a Member of which the Members are unaware at the time does not invalidate a decision taken at a general meeting or a Written Resolution

12 Limited Liability

The liability of Members is limited

13 Guarantee

Every Member promises, if the Company is dissolved while he/she remains a Member or within one year after he/she ceases to be a member, to pay up to £1 towards

- 13 1 payment of those debts and liabilities of the Company incurred before he/she ceased to be a Member,
- 13 2 payment of the costs, charges and expenses of winding up, and
- 13 3 the adjustment of rights of contributors among themselves

14 Communications

14 1 Notices and other documents to be served on Members or Trustees under the Articles or the Companies Act may be served

- a) by hand,
- b) by post,
- c) by suitable electronic means,

- 14 2 The only address at which a Member is entitled to receive notices sent by post is an address in the U K shown in the register of Members
- 14 3 Any notice given in accordance with these Articles is to be treated for all purposes as having been received
- a) 24 hours after being sent by electronic means or delivered by hand to the relevant address,
 - b) two clear days after being sent by first class post to that address,
 - c) three clear days after being sent by second class or overseas post to that address;
 - d) immediately on being handed to the recipient personally; or, if earlier,
 - e) as soon as the recipient acknowledges actual receipt
- 14 4 A technical defect in service of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting

15 Dissolution

- 15 1 If the Company is dissolved, the assets (if any) remaining after providing for all its liabilities must be applied in one or more of the following ways
- a) by transfer to one or more other bodies established for exclusively charitable purposes within, the same as or similar to the Objects,
 - b) directly for the Objects or for charitable purposes which are within or similar to the Objects,
 - c) in such other manner consistent with charitable status as the Commission approves in writing in advance
- 15 2 A final report and statement of account must be sent to the Commission
- 15 3 This provision may be amended by special resolution but only with the prior written consent of the Commission

16 Interpretation

- 16 1 The Articles are to be interpreted without reference to the model articles under the Companies Act, which do not apply to the Company
- 16 2 In the Articles, unless the context indicates another meaning

‘AGM’ means an annual general meeting of the Company,

‘the Articles’ means the Company’s Articles of Association and ‘Article’ refers to a particular Article,

‘Beneficiaries’ means the beneficiaries of the Company as defined in Article 1,

‘Chair’ means the chairman of the Trustees,

‘charitable’ means charitable in accordance with the law of England and Wales, provided that it will not include any purpose which is not charitable in accordance with any statutory provision regarding the meaning of the word charitable or the words ‘charitable purpose’ in force in any part of the United Kingdom,

‘the Company’ means the company governed by the Articles,

‘the Charities Act’ means the Charities Acts 1992 to 2006;

‘charity trustee’ has the meaning prescribed by the Charities Act;

‘clear day’ does not include the day on which notice is given or the day of the meeting or other event,

‘the Commission’ means the Charity Commission for England and Wales or any body which replaces it,

‘the Companies Act’ means the Companies Acts 1985 to 2006,

‘Conflicted Trustee’ means a Trustee in respect of whom a conflict of interest arises or may reasonably arise because the Conflicted Trustee or a Connected Person is receiving or stands to receive a benefit (other than payment of a premium for indemnity insurance) from the Company, or has some separate interest or duty in a matter to be decided, or in relation to information which is confidential to the Company,

‘Connected Person’ means, in relation to a Trustee, a person with whom the Trustee shares a common interest such that he/she may reasonably be regarded as benefiting directly or indirectly from any material benefit received by that person, being either a member of the Trustee’s family or household or a person or body who is a business associate of the Trustee, and (for the avoidance of doubt) does not include a company with which the Trustee’s only connection is an interest consisting of no more than 1% of the voting rights,

‘constitution’ means the Memorandum and the Articles and any special resolutions relating to them,

‘custodian’ means a person or body who undertakes safe custody of assets or of documents or records relating to them,

‘electronic means’ refers to communications addressed to specified individuals by telephone, fax or email or, in relation to meetings, by telephone conference call or video conference,

‘financial expert’ means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000,

‘financial year’ means the Company’s financial year,

‘firm’ includes a limited liability partnership,

‘indemnity insurance’ means insurance against personal liability incurred by any Trustee for an act or omission which is or is alleged to be a breach of trust or breach of duty, unless the act or omission amounts to a criminal offence or the Trustee concerned knew that, or was reckless whether, the act or omission was a breach of trust or breach of duty,

‘material benefit’ means a benefit, direct or indirect, which may not be financial but has a monetary value,

‘Member’ and ‘Membership’ refer to company Membership of the Company,

‘Memorandum’ means the Company’s Memorandum of Association,

‘month’ means calendar month,

‘nominee company’ means a corporate body registered or having an established place of business in England and Wales which holds title to property for another,

‘ordinary resolution’ means a resolution agreed by a simple majority of the Members present and voting at a general meeting or in the case of a written resolution by Members who together hold a simple majority of the voting power,

‘the Objects’ means the Objects of the Company as defined in Article 1,

‘Resolution in writing’ means a written resolution of the Trustees,

‘Secretary’ means a company secretary,

‘special resolution’ means a resolution of which at least 14 days’ notice has been given agreed by a 75% majority of the Members present and voting at a general meeting or in the case of a written resolution by Members who together hold 75% of the voting power. Where applicable, ‘Members’ in this definition means a class of Members,

‘taxable trading’ means carrying on a trade or business in such manner or on such a scale that some or all of the profits are subject to corporation tax,

‘Trustee’ means a director of the Company and ‘Trustees’ means the directors,

‘written’ or ‘in writing’ refers to a legible document on paper or a document sent by electronic means which is capable of being printed out on paper,

‘written resolution’ refers to an ordinary or a special resolution which is in writing,

‘year’ means calendar year

- 16 3 Expressions not otherwise defined which are defined in the Companies Act have the same meaning
- 16 4 References to an Act of Parliament are to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it
- 16 5 For the avoidance of doubt, the system of law governing the constitution of the Company is the law of England and Wales