



BY-LAW

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ST. CATHARINES PUBLIC LIBRARY BOARD

BY-LAW NUMBER 2

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ST. CATHARINES PUBLIC LIBRARY BOARD

ENDOWMENT AND TRUST

Preamble

Whereas the St. Catharines Public Library Board (hereinafter referred to as the "Board") desires to create a St. Catharines Public Library Endowment and Trust to receive donations from the public;

And whereas the income and capital of the Endowment and Trust are to be used for Library purposes and such other purposes as the Trustees deem advisable, for the benefit of the St. Catharines Public Library system;

Therefore, the Board has established an Endowment and Trust under the following terms and conditions:

Article 1

DEFINITIONS

- 1.1 "Trust Fund" shall mean all monies, securities, property and other assets, together with an interest, additions or accretions thereto, which are provided to the Endowment and Trust.
- 1.2 "Trustees" shall mean the Board for the time being thereof, whether original, additional, or subsequently appointed.

Article 2

THE FUND

- 2.1 The Board shall establish a special fund to be known as the St. Catharines Public Library Endowment and Trust (hereinafter referred to as the "Endowment and Trust"), and to receive gifts and bequests and such other monies as are designated by the Board.
- 2.2 The Trustees shall have full unfettered discretion in their administration and use of the Trust Fund, in whole or in part, provided that at all times the administration and use of the Trust Fund, including for clarity any expenditures made therefrom, are made, in good faith, for the benefit of the St. Catharines Public Library (the "Library").

Article 3

PROMOTION

- 3.1 The Board shall encourage members of the public to provide gifts and bequests to the Endowment and Trust and, in this regard, shall employ such promotion as is normally available to the Board. Any costs in connection with such promotion may be charged against the income earned by the Trust Fund.

Article 4

OBJECTS OF THE ENDOWMENT AND TRUST

- 4.1 Under the authority of the Board, in their capacity as Trustees, the Endowment and Trust shall be used for Library service to:
- a) improve collections and/or access to collections above and beyond that normally funded by provincial or municipal funds;
 - b) make available capital funds above and beyond that normally funded by provincial or municipal funds for the purchase of equipment, furniture, and such other capital projects approved by the Trustees to improve Library services;
 - c) provide a source of non-tax money, which may be used as matching funds under various library support programs established from time to time; and
 - d) without limiting the generality of the foregoing, for such other purposes as the Trustees may, in good faith, deem advisable from time to time for the benefit of the Library.

Article 5

TREATMENT OF RECEIPTS

- 5.1 Subject always to the expressed direction of the donor or of the testator, all funds received by the Endowment and Trust shall be added to the Trust Fund to be used in such manner as the Trustees may determined in their sole discretion.

Article 6

POWERS OF TRUSTEES

- 6.1 Investments
- a) The Trustees shall invest the Trust Fund in investments in which the Trustees are authorized to invest trust funds under the provisions of the *Trustee Act, R.S.O. 1990, section 26 to 31*, and shall manage and administer the Trust Funds to achieve within each Fund the purpose of the Endowment and Trust. The Trustees may combine investments to achieve a more effective and efficient administration and control of the investments.
 - b) Subject to any specific terms of a gift and bequest comprised within the Trust Fund, the income and capital earned by the Trust Fund shall be disbursed in the manner as determined by the Trustees from time to time or, in the alternative, may be accumulated within such Trust Fund in whole or in part as determined by the Trustees from time to time.
- 6.2 Other
- Without prejudice to any powers which may expressly or by implication be vested

in the Trustees under the provisions hereof or by law, the Trustees shall have the following additional powers:

- a) instead of acting personally, to employ and pay at the expense of the income or capital of the Trust Fund any agent in any part of the world, whether solicitors, accountants, brokers, banks, trust companies, or other agents, without being responsible for the default of any agent so employed, to transact any business or do any act required to be transacted or done in the execution of the Trust Fund, including the receipt and payment of monies and the execution of documents;
- b) to determine as the Trustees shall consider advisable whether any monies shall, for the purposes of this agreement, be considered as capital or income of the Trust Fund and whether any taxes, expenses, or losses shall be paid out of or borne by capital or income; PROVIDED that unless the Trustees shall, in their discretion, otherwise determine all dividends and other income received by the Trustees shall be treated as income at the date of receipt whether or not they shall have been earned wholly or partially in respect of a period prior to the date of receipt;
- c) with respect to any property constituting the whole or part of the Trust Fund;
 - i. to vote upon, or in respect of any shares, securities, bonds, notes, or other evidence of interest in, or obligation of, any corporation, trust, association, or concern whether or not affecting the security or the apparent security of the Trust Fund, or the purchase or sale or lease of the assets of any such corporation, trust, association or concern;
 - ii. to deposit any such shares, securities, or property in any voting trust or with any depository designated thereby;
 - iii. to give proxies or powers of attorney with or without power of substitution for voting or acting on behalf of the Trustees as the owner of any such property;
 - iv. to hold any or all securities or other property in bearer form or in the name of the Trustees or in the name of some other person, company or partnership, or in the name or names of nominees without disclosing the fiduciary relationship, and to deposit the said securities and any title deeds to other documents belonging or in relation to the Trust Fund in any part of the world, with any bank or trust company, or any other company that undertakes the safe custody of securities as part of its business without being responsible for the default of such bank, trust company, or other company, or for any loss occasioned thereby.

6.3 Liability and Indemnity

- a) The Trustees and any duly appointed agents acting on behalf of the Board and/or the Trustees will not be liable for any loss of the Trust Fund unless that loss was caused by his or her own fraud.

- b) The Trustees and any duly appointed agents acting on behalf of the Board and/or the Trustees are not personally liable for any moneys, costs, expenses, or other liabilities which may be due from or payable by the Trust Fund, any actions, claims or demands which may be made against the Trust Fund or any investments executed by the Trustees under the powers set out in this Trust Agreement.
- c) The Trustees have the power to bind the Trust without rendering the Trustees personally liable.
- d) Except to the extent that such breach results from his or her own fraud, no Trustee will be liable for any breach of trust by another Trustee.
- e) The Trustees and any duly appointed agents acting on behalf of the Board and/or the Trustees will be fully protected in exercising any discretion granted to the Trustees in this Agreement and will not be liable to any person whatsoever for any loss or damage including, without limiting the generality of the foregoing, any diminution in value of all or any part of the Trust Fund, by reason of the exercise of, or failure to exercise any such discretion.
- f) Without limiting any protection or indemnity otherwise available to the Trustees, the Trustees and any duly appointed agents acting on behalf of the Board and/or the Trustees will be indemnified and will be entitled to be reimbursed out of the Trust Fund in respect of all costs, outgoings, disbursements, liabilities, charges, rents, expenses, governmental charges, commissions, currency conversion costs, transfer fees, registration fees, taxes, penalties and all other charges (including legal fees and disbursements) which the Trustees or and any duly appointed agents acting on behalf of the Board and/or the Trustees may incur in respect of the Endowment and Trust and/or the Trust Fund, whether directly or indirectly, or which is or may be imposed on the Trustees and/or and any duly appointed agents acting on behalf of the Board and/or the Trustees, in respect of the receipt, collection, investment, disposal and distribution of moneys or property received by the Trustees and/or and any duly appointed agents acting on behalf of the Board and/or the Trustees, or in respect of the performance or exercise of the Trustees' and/or and any duly appointed agents acting on behalf of the Board and/or the Trustees duties and powers hereunder and in respect of all actions, proceedings, costs, claims and demands relating to any matter or thing done or omitted to be done concerning the operation, management, administration or investment of the Trust Fund including, without limiting the generality of the foregoing, any failure by the Trustees and/or and any duly appointed agents acting on behalf of the Board and/or the Trustees to withhold, report or pay any taxes relating to the administration of the Trust Fund.

- g) Provided only that the Trustees and/or and any duly appointed agents acting on behalf of the Board and/or the Trustees will not be entitled to be indemnified if the claim for indemnification arises as a result of the actual fraud of such Trustees.
- h) This indemnity will survive notwithstanding the resignation or removal of the Trustee(s), any agent of the Board or Trustees ceasing to be an agent, or the termination of the Endowment and Trust.

6.4 Real or Immovable Property

Where the Trust Fund for the time being includes any real or immovable property (in this paragraph referred to as "the said land"):

- a) The Trustees may lease the said land or any part thereof for any purpose, whether involving waste or not, and for any term, and either wholly or partly, in consideration of a rent (whether fixed or variable) or premium, or the erection, improvement, or repair, or any agreement to erect, improve, or repair, buildings on the said lands, and may accept (with or without consideration) a surrender of any lease of the said lands or any part thereof.
- b) The Trustees may, in executing any trust or power of sale, sell the said lands or any part thereof, either wholly or partly, in consideration of any sum payable either up front, in perpetuity or for any term (whether definite or indefinite) and being either reserved out of the lands sold or secured in such other manner as the Trustees may consider advisable.
- c) The Trustees may, in executing any trust or power of sale or leasing:
 - i. sell or lease any part of the said lands whether the division is horizontal or vertical or made in any other way;
 - ii. sell, lease, or reserve any easement or right or privilege over the said lands or any part thereof;
 - iii. sell, lease, accept, or reserve any timber or mines or minerals on or in or under the said lands or any part thereof together with any easements, rights, or privileges of cutting or working and carrying away the same or otherwise incident to or connected with forestry or mining purposes;
 - iv. impose and make binding for the benefit or any part of the said lands sold or leased any restrictions or stipulations as to user or otherwise affecting any part of the said lands retained;
 - v. accept in exchange for the said lands or any part thereof to be sold or leased (either with or without any money paid or received for equality of exchange) any other real or immovable property or any lease thereof;
 - vi. enter into any contract or grant any option for the sale or leasing of the said lands or any part thereof or otherwise for the exercise by the Trustees of any of the foregoing powers in this paragraph.

- d) Except as provided by paragraph (d) of this clause, the whole of any rent reserved by any lease of the said lands or any part thereof, and also the whole of any such annual sum as is referred to in paragraph (b) of this clause, shall be deemed to form part of the income of the Trust.
- e) All other monies received as consideration for any sale or lease in execution of any trust or power shall be deemed to be capital.
- f) The Trustees shall not be bound to see to, nor be liable or accountable for omitting or neglecting to see to, the repair or insurance of any buildings on the said lands or any payments in respect thereof, but may repair and insure any such buildings in such manner and to such extent as they shall think fit and may pay out of the income of the Trust Fund the costs of all such repairs and of effecting and keeping up any such insurance and any such payments as aforesaid in priority to any other trusts affecting the income.
- g) The Trustees may at any time and from time to time use the capital of the Trust Fund to erect, demolish, and rebuild, and make alterations and improvements to any buildings on the said lands or any part thereof to such extent and in such manner as they shall consider advisable, and any certificate in writing of any architect or surveyor employed by the Trustees to the effect that any work specified in such certificate is or includes an alteration or an improvement to any such building shall be conclusive as between the Trustees and all persons interested hereunder that any capital so expended was in proper exercise of this power.

6.4 Investment Advice

- a) The Trustees may at any time and from to time employ any person, firm, or company as an investment adviser on such terms as they may consider advisable, whether for a fixed period or subject to a fixed period of notice or otherwise, and either in relation to the whole of the Trust Fund or to such part thereof as may, for the time being, be invested in any particular country or group of countries.
- b) The Trustees shall pay to any such investment adviser such fees, commission, or other remuneration, and such compensation for expenses as the Trustees in their discretion shall consider advisable; and any such investment adviser shall be entitled to retain for its own use and benefit any commissions or shares of commissions customarily or by usage payable in relation to any dealing or transaction with or concerning the Trust Fund or any part thereof.
- c) The Trustees shall not incur any liability or be in any way responsible for any loss which may be incurred as a result of anything done or omitted as a result of advice or recommendations given or purporting to have been given by such investment adviser (whether in writing or by cablegram or radiogram, or orally or by telephone), or by any omission to take any action in the absence of non-

receipt of such advice or recommendation, or for failing to consult or ask for advice or recommendation from such investment adviser.

Article 7

RECORDS OF THE ENDOWMENT AND TRUST

7.1 The Trust Fund and all revenue and all expenditures in connection with the Trust Fund shall be recorded separately on the books and records of the Board on an accrual basis and shall form part of the annual financial statements.

Article 8

COSTS AND EXPENSES OF THE ENDOWMENT AND TRUST

8.1 Direct costs or expenses attributable entirely to the Endowment and Trust including any fees or other costs paid to a trust company or bank or custodian and/or manager of the investments of the Endowment and Trust shall be charged against the Trust Fund.

Article 9

PAYMENTS

- 9.1 Authorization for payments from the capital of the Trust Fund shall be made by motion of the Trustees passed by at least two-thirds majority of all Trustees and recorded in the minutes of any general or special meeting, but always subject to the expressed directions of the donor.
- 9.2 Payments from the Trust Fund, whether of income or of capital or both, and also payments of income from the Trust Fund, shall be made by the Board's Treasurer or such other person as the Board may appoint, for Library purposes as expressed by donors at the time the gift or bequest is made, and shall be reported to the Board from time to time.
- 9.3 Where no direction has been expressed by the donor, payments from the Trust Fund, whether of income or of capital or both, and also payments of income from the Trust Fund, shall be authorized by motion and recorded in the minutes of any general or special meeting of the Trustees, provided that such authorization may be generalized in nature and relate to monies to be expended over a period of time for the purposes set out in Article 4 hereof as directed by the Trustees.

Article 10

PROCEDURES

10.1 The Administration shall establish procedures for the efficient management of the Endowment and Trust.

Article 11

MISCELLANEOUS

11.1 This Trust has been created under the laws of the Province of Ontario, Canada, and its validity shall be determined by the laws of that Province.