

TRUST INDENTURE

This document has been prepared for the convenience of readers. It is a consolidation of:

- A. The original Trust Indenture dated 31 December 1965, between the Sidney and North Saanich War Memorial Society and the Royal Trust Company.
- B. On Order of the Supreme Court of British Columbia dated 15 July 1986, which relieved the Royal Trust Company of its duties as trustee and substituted the Sidney and North Saanich Memorial Park Society as Trustee.
- C. On Order of the Supreme Court of British Columbia dated 16 May 2016, which modified the terms of the Trust.

WHEREAS:

- A. The Sidney and North Saanich War Memorial Park Society (SNSWMPS) owned certain lands and premises.
- B. The SNSWMPS was desirous that said lands and premises continue to be used in perpetuity by the residents of the northern portion of the Saanich Peninsula in accordance with the expressed aims and objects of the SNSWMPS.
- C. The SNSWMPS and the Trustee (Royal Trust Company) agreed that the lands and premises would bear the name of The North Saanich Memorial Park.

NOW THEREFORE WITNESSTH that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration the SNSWMPS GRANTED unto the Trustee its successors and assigns forever ALL AND SINGULAR the lands and premises situate in the Victoria Assessment District and the Town of Sidney and Province of British Columbia and more particularly known and described as:

FIRST:

Lot A
Sections 10 and 11
Range 3 East
North Saanich District
Plan 15203

SECOND:

Lot 4
Sections 10 and 11
Range 3 East
District North Saanich
Plan 541
EXCEPT that part thereof included in Plan 5781

THIRD:

Lot A
Sections 10 and 11
Range 3 East
North Saanich District
Amended Plan 1479

(hereinafter collectively referred to as “the Lands and Premises”)

to have and to hold the same in trust for residents (hereinafter referred to as “the Residents”) of the Electoral District of Saanich (excluding the residents of the Gulf Islands) whose names appear from time to time on the then current list of voters of the said Electoral District prepared under the Provincial Elections Act and who reside north of the present North boundary of the Municipality of Central Saanich (as defined in Section 5 of the Provincial Elections Act, 1960) for community, cultural, athletic and recreational purposes subject to the terms and conditions hereinafter recited.

1. The Trustee shall preserve and maintain a memorial cenotaph, sculpture or other structure honouring those who gave their lives in the service of Canada during war time or peacekeeping in which Canada has taken part (the “Memorial”), locating the Memorial in a place on the Lands and Premises that is prominent and accessible to the public (the “Memorial Area”), and the Trustee may repair or replace at any time the Memorial then in existence or change its location within the Lands and Premises, as circumstances in the determination of the Trustee shall require.

2. All the remainder of the said Lands and Premises (hereinafter referred to as “the Park”) shall be held by the Trustee subject to the terms and conditions hereinafter recited.

3.1 The Trustee shall have the power to lease the Park or any part thereof subject to the terms and conditions of this Indenture to a Tenant or Tenants as hereinafter defined in paragraph 4 hereof PROVIDED THAT every Tenant shall first undertake in writing to permit the Park to be used by the Residents for community, cultural, athletic and recreational purposes and that the Tenant will encourage such use and that the Tenant will maintain the Memorial area in good repair, if the Memorial area forms part of the leased lands.

3.2 If the Trustee leases the Park or any part thereof for a term that exceeds five (5) years, the Trustee shall, at least once every five (5) years, take reasonable steps to satisfy itself that the Tenant is not in breach of the terms and conditions of this Indenture, including its objects and purposes, and shall report on that inquiry in its Annual Report filed in accordance with the requirements of the Society Act, RSBC, 1996, c.433, as amended

4. In this Indenture the word "Tenant" shall mean:

4(a) Any society incorporated under the provisions of the Societies Act of the Province of British Columbia or any statute enacted in place thereof.

4(b) Any company incorporated or registered pursuant to the Companies Act of the Province of British Columbia or the Companies Act of the Dominion of Canada or any statute enacted in place thereof.

4(c) Any municipal corporation incorporated pursuant to the Municipal Act of the Province of British Columbia or any statute enacted in place thereof.

4(d) Any legal entity created by an Act of the Legislature of the Province of British Columbia or by any Act of the Parliament of Canada.

5. A Tenant may grant a lease or license of all or any part of that portion of the Park being leased by the Tenant to any person, firm or organization for not more than seven (7) consecutive days in each calendar year for any purpose consistent with the Tenant's written undertaking given under Clause 3 hereof PROVIDED THAT a Tenant may with the prior consent in writing of the Trustee grant a lease or license of all or any part of that portion of the Park being leased by the Tenant to any person, firm or organization for a period of excess of seven (7) consecutive days.

6. The Trustee or any Fifteen (15) Residents may at any time call a public meeting of the Residents pursuant to Clause 17 hereof for the purpose of passing a resolution requesting the Trustee to conduct an investigation to determine whether any Tenant is carrying out the terms of the undertaking given by the Tenant pursuant to Clause 3 hereof PROVIDED THAT there shall first be deposited with the Trustee a sum of money which the Trustee considers sufficient to defray the cost of such an investigation.

7. Upon receipt of a resolution passed by a majority of those present and voting at a public meeting convened pursuant to the immediately preceding Clause 6 hereof the Trustee shall conduct the said investigation and the Trustee shall prepare a report of its findings and send by mail a copy of such report to any Resident who requests the same provided that the Resident is on record as having attended the said meeting.

8. In the event of a breach by any Tenant of the undertaking given under Clause 3 hereof and upon the Trustee receiving notice of the said breach the Trustee may upon thirty days written notice to the Tenant committing such breach determine the tenancy.

9. If all or any part of the Lands and Premises shall be expropriated then the Trustee shall use the proceeds of such expropriation after the payment of its just fees and expenses upon the following trusts:

9(a) For the purchase of such other lands and premises (hereinafter referred to as the “Substituted Premises”) as shall be chosen in accordance with the procedure set forth in Clause 10 hereof, the Substituted Premises to be held by the Trustee upon the same trusts as the Lands and Premises so expropriated.

9(b) To hold the balance of the proceeds in trust for the maintenance and improvement of the Substituted Premises or the rest of the Park or any part thereof.

10. Pursuant to Clause 9 hereof the Trustee or any Fifteen (15) Residents may call a public meeting of the Residents pursuant to Clause 17 hereof for the purpose of passing the following resolutions:

10(a) To appoint a committee to select one or more alternative Substituted Premises to be purchased by the Trustee to replace the Lands and Premises expropriated under Clause 9 hereof.

10(b) To request the Trustee to conduct a referendum amongst the Residents in order to determine which of the alternative lands and premises selected by the said committee appointed pursuant to the immediately preceding sub-clause (a) hereof shall be purchased by the Trustee as the Substituted Premises.

11. The Trustee shall prepare a report of the results of the referendum conducted pursuant to Clause 10 hereof and send by mail a copy of such report to any Resident who requests the same provided that the Resident is on the record as having attended the meeting convened pursuant to Clause 9 hereof.

12. Clauses 9, 10, and 11 hereof shall apply mutatis mutandis to any expropriation of any Substituted Premises acquired by the Trustee.

13. The Trustee may at any time call a public meeting of the Residents pursuant to Clause 17 hereof for the purpose of obtaining directions with respect to the management of the Lands and Premises or any other purpose whatsoever.

14. Subject to the trusts of this Indenture the Trustee shall have the following further ENABLING POWERS:

14(a) To grant options to renew any lease on whatever terms the Trustee shall see fit.

14(b) To grant easements and rights-of-way over and under the Lands and Premises and releases of easements and rights-of-way on whatever terms the Trustee shall see fit.

14(c) To authorize the demolition of any of the existing buildings and structures situated on the Lands and Premises.

14(d) To authorize the construction and alternation of buildings and structures on the Lands and Premises.

14(e) To authorize the repair of the Lands and Premises.

14(f) To insure the Lands and Premises against such risks and in such amounts as the Trustee may decide.

14(g) To accept additional properties adjacent to the Lands and Premises upon these same trusts.

14(h) To accept monies upon trust to be used for the maintenance and improvement of the Lands and Premises or the purchase of additional lands and premises or Substituted Premises.

14(i) To invest any monies held by the Trustee in pursuance of these Trusts and to accumulate any surplus income arising from the capital so invested by investing the same and the resulting income thereof as an accretion to the said capital.

14(j) To carry on business on the Lands and Premises, including business use and earning of rental income, subject to the terms and conditions of this Indenture which permit the Residents' use of the Lands and Premises for community, cultural, athletic and recreational purposes.

15. The Trustee for the time being of these trusts may at any time make an application to the Supreme Court of British Columbia to be relieved of it's duties as Trustee of these trusts and for the appointment by the Court of another trustee in its place.

16. Any Fifteen (15) Residents may call a public meeting of the Residents pursuant to Clause 17 hereof for the purpose of passing a resolution to make an application to the court for the removal of the then Trustee of these trusts and the appointment by the Court of another Trustee in it's place PROVIDED THAT such a resolution shall require the assent of 75% of those Residents present and voting at the said meeting.

17. Notice of any public meeting which may be called pursuant to the terms of this Indenture shall be given in the following manner:

17(a) Notice of the time and place of the meeting shall be delivered to the Trustee at least one week prior to such meeting

17(b) Notice of the time and place of the meeting shall be delivered to each Tenant of the Park at least one week prior to the meeting.

17(c) Notice of the time and place of the meeting shall be published at least one week prior to such meeting in a newspaper published and circulating in the Electoral District of Saanich lying to the North of the North boundary of the Municipality of Central Saanich or if no newspaper is published in the said area then in a newspaper circulating in the said area.

18. It is understood and agreed that the Sidney and North Saanich Memorial Park Society (SNSMPS) is contracting hereunder only as Trustee and not personally and that all obligations, covenants and warranties on the part of said Trustee herein contained or otherwise arising or implied are and shall be subject to the limitations and provisions following, namely, that the said Trustee shall be liable upon any covenant or warranty only to the extent of the assets of the Trust available for the purpose of meeting same but not further or otherwise, and that the said Trustee shall not be liable upon any such obligation, covenant or warranty in the absence of such assets and shall not be personally liable upon any such obligation, covenant or warranty in any case.

PREPARED BY: RICHARD PAQUETTE
BOARD CHAIR
SIDNEY AND NORTH SAANICH MEMORIAL PARK SOCIETY
June 1, 2016
Town of Sidney, Vancouver Island, BC