

DECLARATION OF TRUST

for the

ST. ANDREW'S AND ST. STEPHEN'S PRESBYTERIAN CHURCH

CAPITAL RETENTION TRUST FUND

1. BACKGROUND

- A. At an annual congregational meeting of St. Andrew's & St. Stephen's Presbyterian Church ("Congregation") held on 25th day of February 2013 and with the subsequent approval of the Presbytery of Westminster on 5th day of March 2013, the Congregation adopted a trust deed ("Principal Trust Deed") that addressed the appointment and duties of the Congregation's trustees ("Congregational Trustees") as agents of the Congregation and trustees for the property of the Congregation;
- B. The property of the Congregation includes the assets held under the terms of the Congregation's Church Growth Fund, the terms of which were adopted at the annual meeting of the Congregation in January 1993 and are set out in Appendix A;
- C. The Church Growth Fund had a total value of \$575,635 as at December 31, 2016, of which \$125,000 was used as a second mortgage for the home of the minister;
- D. At the annual congregational meeting of the Congregation on the 20th of February 2017, the Congregation agreed in principle to transfer the available Church Growth Fund assets, being approximately \$450,000, to two new trust funds of the Congregation, being the Capital Retention Trust Fund in an amount of \$350,000 and the Missional Trust Fund in for the remaining capital amount of approximately \$100,000;
- E. At the special congregational meeting of the Congregation on the 20th of August 2017, the Congregation approved (i) the creation, purposes, terms and form of the trust deeds for each of the Capital Retention Trust Fund and the Missional Trust Fund, (ii) the transfer from the Church Growth Fund of \$350,000 to the Capital Retention Trust Fund and all remaining assets of the Church Growth Fund as of June 30, 2017 (being the last calculated date of the value of the Church Growth Fund assets) of \$□ to the Missional Trust Fund to settle those trusts; and (iii) the termination of the Church Growth Fund with all its succession rights being granted to the Capital Retention Trust Fund;
- F. This Capital Retention Trust Deed governs the administration of the assets internally restricted by the terms of this Capital Retention Trust Deed (and more generally by the Principal Trust Deed), such assets consisting of capital and income as described in Paragraph 2D (the "Trust Property") governed by the Capital Retention Trust Fund and administered, held and disposed of by the Trustees not for their own use and benefit, but in trust for the uses and purposes and on the conditions stated in this Capital Retention Trust Deed;

- G. This Capital Retention Trust Deed is governed by and complies with the relevant laws of the Province of British Columbia.
- H. This Capital Retention Trust Deed may only be amended at a duly called and constituted meeting of the Congregation with the approval of two-thirds of those persons in attendance and eligible to vote.

2. CREATION OF THE CAPITAL RETENTION TRUST FUND

- A. The Capital Retention Trust Fund created by this Capital Retention Trust Deed shall be formally known as the “St. Andrew’s & St. Stephen’s Presbyterian Church Capital Retention Trust Fund”.
- B. The Congregation hereby settles upon the Capital Retention Trust Fund \$350,000 from the assets formerly retained by the Church Growth Fund.
- C. The Trustees by joining in the execution of this Capital Retention Trust Deed signify their acceptance of the Capital Retention Trust Fund and the duties and obligations contained herein.
- D. The Trust Property shall consist of Capital and Income (as defined in this Paragraph 2D) being the amount settled upon the Trustees as described in Paragraph 2B and shall also consist of any additional property which the Congregation may at any time and from time to time pay, transfer, assign or convey to the Capital Retention Trust Fund (principally from legacies and bequests), to be held by the Capital Retention Trust Fund on the terms and conditions contained in this Capital Retention Trust Deed (and more generally the Principal Trust Deed), and shall include (i) any and all property as well as any additions or accretions thereto less any losses therefrom (“Capital”) as well as (ii) any and all income and realized and unrealized capital gains derived from Capital, less all income losses realized and unrealized capital losses, and less an annual amount equal to the latest annual Consumer Price Index percentage calculated by StatsCan for British Columbia multiplied by the amount of Capital (to ensure the value of Capital is not eroded in real terms over time) (“Income”).
- E. No property or assets may be settled upon the Capital Retention Trust Fund from any person, corporation or trust, without the prior consent of the Session of the congregation (“Session”).
- F. Regarding the Trust Property, the Congregational Trustees hold any and all property and real estate of the Congregation for the sole use and benefit of the Congregation in accordance with the terms of the Principal Trust Deed. The investment of the Trust Property in Income bearing securities and other assets shall be obligation of Board of Managers of the Congregation (“Board of Managers”), subject to direction from the Congregation at a duly called and constituted meeting of the Congregation, or joint direction from both the Session and a majority of the Trustees. Notwithstanding the foregoing, the Trust Property shall at all times be invested in investments that a prudent

investor would make, all subject to the *Trustee Act* (British Columbia).

- G. The Capital Retention Trust Fund as set forth in this Capital Retention Trust Deed shall be irrevocable by the Congregation.

3. PURPOSE AND DISTRIBUTIONS OF THE CAPITAL RETENTION TRUST

- A. The Trustees shall administer the assets of the Capital Retention Trust Fund for the following purposes:

(i) to pay any amount or amounts from the Income for the purpose of acquiring capital assets or paying expenses directly relating to the Congregation's building or property located at 2641 Chesterfield Ave., North Vancouver (and not ordinary operating expenses of the Congregation) as may be approved by a simple majority of the Trustees or as directed by the Session; and

(ii) to pay any amount or amounts from Income or Capital for the purpose of acquiring capital assets or paying expenses directly relating to the Congregation's building or property located at 2641 Chesterfield Ave., North Vancouver (and not ordinary operating expenses of the Congregation) as may be directed by a resolution passed by more than two-thirds of those persons eligible to vote at a duly called and constituted meeting of the Congregation.

- B. No distributions of Trust Property for the purposes set out in Paragraph 3A shall be made until a written request for a distribution, in a form satisfactory to the Trustees, has been submitted to the Trustees for their approval. The Trustees shall provide written responses to all requests for a distribution and shall require proof of all distributions approved. The Trustees shall determine if and when such a written request should be brought before the Congregation for its consideration and if a meeting of the Congregation is to be called, to request Session such a meeting. If Session concurs that such a distribution recommendation should be made to the Congregation, Session shall call a meeting of the Congregation for such purpose.

- C. In addition to required approval from the majority of Trustees, Session and Congregation, any Capital distribution (such as major renovations or a building project) may be subject to Presbytery of Westminster approval as set out in the Book of Forms or Presbytery requirements.

- D. Notwithstanding the generality of Paragraph 3A, the Trustees cannot encroach upon the Trust Property to such an extent that the Trust Property settled on the Capital Retention Trust Fund is completely used up.

4. QUALIFICATIONS OF TRUSTEES

- A. All trustees for the Capital Retention Trust Fund (the "Trustees") acting under the terms of this Capital Retention Trust Deed must be professing members of the Congregation provided they are not under church discipline. A Trustee may also serve as a

Congregational Trustee or a trustee of the Missional Trust Fund, subject to the terms of appointment set out in this Capital Retention Trust Deed.

- B. All nominees for the position of Trustee shall be named by the Session prior to the meeting, three (3) of whom shall be members of Session at the time of appointment and two (2) of whom shall be members of the Board of Managers at the time of appointment.

5. ELECTION AND APPOINTMENT OF TRUSTEES

- A. The Trustees will be elected and appointed at an annual meeting of the Congregation or at another duly called meeting of the Congregation.
- B. The election of the Trustees will be by majority vote of those present at the annual meeting of the Congregation or another duly called meeting of the Congregation, as the case may be.
- C. A full complement of Trustees for the Congregation will be five(5) of which three (3) Trustees shall be members of Session at the time of appointment and two (2) Trustees shall be members of the Board of Managers at the time of appointment.
- D. If the number of Trustees who are members of Session or the Board of Managers at any time is less than three (3), the Session shall call a meeting of the Congregation within 30 days to elect the requisite number of replacement Trustees.
- E. If a Trustee dies or resigns as a Trustee, but there remains the minimum number of Trustees stated in Paragraph 5C above, the Session has the right but not the obligation to call an emergent meeting of the Congregation to replace the Trustee who has died or resigned.
- F. At the annual meeting of the Congregation, or another duly called meeting of the Congregation, the Congregation, upon both the recommendation of Session and by a majority vote of the members present at such meeting of the Congregation, may remove any Trustee and may elect and appoint any eligible person in the place of the Trustee so removed, for the remainder of their term, subject to the requirements of Paragraphs 4A and 4B above.
- G. Trustees are eligible for re-election provided they are not under church discipline that would prevent them from assuming this office.
- H. Once duly elected, the moderator of the meeting of the Congregation will declare the Trustees to be appointed to this office. The appointment of the Trustees will be communicated to the Congregation at large in each case in a manner to be determined by the Session.
- I. The minutes of the meeting of the Congregation held to appoint or remove Trustees will reflect that appointment or removal.

6. TERM OF OFFICE OF TRUSTEES

- A. The term of office for a Trustee will be the lesser of (i) the date of the subsequent annual meeting of the Congregation, (ii) until the Trustee resigns pursuant to Paragraph 6C below, or (iii) is removed from office pursuant to Paragraphs 5F above or 6B below.
- B. If a Trustee ceases to be a member of the Congregation not under church discipline, or ceases to be either a member of Session or the Board of Managers that person ceases automatically to be a Trustee of the Capital Retention Trust Fund.
- C. A Trustee may resign his or her office by written resignation delivered to the Session with a copy to the other Trustees who are then acting.
- D. If during a term of office a Trustee resigns or dies, is removed by the Congregation, or is automatically removed because he or she has ceased to be a professing member of the Congregation not under church discipline or a member of Session or the Board of Managers, the remaining Trustees will have all the powers of Trustees and will for all purposes be the Trustees of the Congregation unless and until the Congregation elects a replacement Trustee or Trustees pursuant to Paragraph 5F above.
- E. If at any time there are no Trustees acting hereunder, for any reason, the Clerk of Session and the Chair of the Board of Managers will automatically become Trustees of the Capital Retention Trust Fund until other Trustees are duly elected by the Congregation.

7. TRUSTEES' RESPONSIBILITIES

- A. Trustees will carry out their duties in accordance with the laws of The Presbyterian Church in Canada as found in the Book of Forms and various acts of the General Assembly.
- B. Trustees have only the power delegated to them by this Capital Retention Trust Deed and a duly called meeting of the Congregation and such power can be amended or withdrawn by another duly called meeting of the Congregation in accordance with the terms of this Capital Retention Trust Deed. Trustees must not alter or go beyond the instructions of the Congregation.
- C. The Trustees appointed under this Capital Retention Trust Deed, to the extent required to carry out their duties and subject to the Principal Trust Deed, shall instruct the Congregational Trustees and the Board of Managers to act as required in order to effect the decisions and actions of the Trustees of the Capital Retention Trust Fund.
- D. The Trustees shall, in addition to all other duties required by any statute, law or in this Capital Retention Trust deed have the following duties:
 - (i) to determine or cause to be determined as at the end of every calendar year the Income and to convert all Income not disbursed in the preceding calendar year into

Capital, including the annual amount described in Paragraph 2D being the amount equal to the latest annual Consumer Price Index percentage calculated by StatsCan for British Columbia multiplied by the amount of the preceding year's Capital (to ensure the value of Capital is not eroded in real terms over time);

(ii) to prepare an annual report to the Congregation which accurately discloses all additions and accretions to the Trust Property and disbursements from the Trust Property and to submit that report to the next annual meeting of the Congregation.

- E. Trustees are accountable to the Congregation for the full and faithful performance of tasks delegated to them. They will report on their activities to the annual meeting of the Congregation.
- F. Trustees shall not be entitled to remuneration for work done by them in relation to their duties as Trustees.

8. MEETINGS OF TRUSTEES

- A. The Trustees may meet together at such places as they think fit for the dispatch of business and may adjourn and otherwise regulate their meetings and proceedings as they think fit. The Trustees may from time to time fix the quorum necessary for the transaction of business and unless so fixed the quorum shall be a majority of the Trustees. The Chair shall be appointed by the Trustees and shall act as chair of every meeting of the Trustees until removed from that position by the Trustees or unless absent from a meeting, in which case any other Trustee may serve as chair for that meeting with the consent of the majority of Trustees present at such meeting. A Trustee interested in business to be dispatched shall be counted in a quorum notwithstanding his interest.
- B. Any Trustee may at any time call a meeting of the Trustees. Notice shall be given by written notice transmitted in any manner whatsoever or by telephone at least seven days before the time appointed for holding the meeting or such lesser time as may be reasonable under the circumstances or as agreed by all the Trustees. Accidental omission to give notice of a meeting of Trustees to or the non-receipt of notice by any Trustee shall not invalidate the proceedings at that meeting.
- C. The Trustees may hold meetings by means of conference telephone or any other communication facility whereby all persons participating in the meeting can hear each other and make themselves heard, provided that all such persons agree to such participation.
- D. The Trustees shall meet at least once annually not more than two months prior to the annual meeting of the Congregation and at any other times as requested by any Trustee.
- E. A resolution consented to in writing by every Trustee shall be as valid as if passed at a duly called and held meeting of Trustees. The resolution may be in counterparts each consented to in writing by one Trustee or more than one Trustee which together shall be deemed to constitute one resolution.

9. CONFLICT WITH DECISION TAKEN

- A. A Trustee who cannot carry out a decision of the Congregation, for the sake of conscience or any other reason, must resign pursuant to Paragraph 6C above. Before offering her/his resignation, the Trustee may ask the Session to have the decision reviewed by the Congregation. The Session may then call a meeting of the Congregation to review the decision and affirm, withdraw or amend it.

10. LIABILITY

- A. A Trustee and former Trustee shall not be liable for any error or mistake made during the exercise of his or her duties as Trustee, save for (i) willful misconduct, (ii) willful breach of trust, or (iii) fraud, and the Congregation will indemnify each and every Trustee or former Trustee against all costs, charges and expenses with respect to any proceeding to which he or she is made a party by reason of being a Trustee, if he or she acted honestly and in good faith, with a view to the best interests of the Congregation.
- B. If a Trustee willfully acts outside (i) the law, (ii) the direction of the Congregation or (iii) the terms of this Capital Retention Trust Deed, that Trustee could be subject to removal, church discipline and/or legal liability.

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Approved at a Special Congregational Meeting of St. Andrew's & St. Stephen's Presbyterian Church held the 20th of August 2017

Rev. Martin Baxter
Moderator of Congregation

Mr. Bill Todd
Congregational Trustee

Margaret Williams
Clerk of Session

Mrs. Rosalind Knight
Congregational Trustee

Mr. Rick Zimmer
Congregational Trustee

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Trustee of Capital Retention Trust Fund

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APPENDIX A

TERMS OF THE FORMER CHURCH GROWTH FUND

1. That the capital sum of the Fund, known previously as the W. J. Elder Fund, act as the seed capital for the new fund which will become known as "The Church Growth Fund"
2. The assets of the fund will be held by the Bankers of St. Andrew's & St. Stephen's Church, namely the Trustees.
3. That the Congregation will be encouraged to contribute to this fund by way of a bequest in their wills or in some other extraordinary gift which will not take away from the normal income of the church.
4. That the Trustees will report the status of the fund, including the names of the new contributors, to each Annual Meeting of the Congregation. These names will only be mentioned once in the Annual Report but if the donor so desires names shall be placed on the Memorial Plaque in the Sanctuary.
5. That the fund may be used for the benefit of the congregation for provision of the church meeting space or a minister's residence, for the support and maintenance of public worship, for the propagation of Christian knowledge, according to the Doctrines, Discipline and Modes of Worship of the Presbyterian Church in Canada and for any other charitable purpose the congregation may from time to time adopt or support, including the relief of sickness, poverty or suffering.
6. That for sake of order, suggestions for uses of the fund shall be submitted to session and brought to a congregational meeting for presentation to the congregation. With a 2/3 congregational favourable vote, all or portion of the fund except the seed capital may be used.
7. That no other funds shall be established, except as may be approved by the congregation. The creation of other funds by the congregation can only be considered when the Board of Managers or Session has prepared the appropriate guidelines and purposes of such other fund.

Approved at the January 1993 annual congregational meeting