

DECLARATION AND AGREEMENT OF TRUST
made this ____ day of April, 2019

THE MUSEUM LONDON OPERATING ENDOWMENT FUND TRUST

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THIS DECLARATION AND AGREEMENT OF TRUST is made as of the ____ day of April, 2019

AMONG:

THE CORPORATION OF THE CITY OF LONDON,
(the “City”)

– and –

MUSEUM LONDON FOUNDATION,
(the “Trustee” or the “Foundation”)

- and -

MUSEUM LONDON,
(the “Settlor” or “Museum London”)

PREAMBLE

- A.** Section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the “*Municipal Act*”) confers natural person powers on municipalities, including the power to enter into agreements and to hire and delegate responsibilities where a municipality exercises its authority under the *Municipal Act*.
- B.** Section 8 of the *Municipal Act* provides that the powers of municipalities shall be interpreted broadly so as to confer broad authority to enable municipalities to govern their own affairs as they consider appropriate and to enhance their ability to respond to municipal issues.
- C.** Subsection 10(1) of the *Municipal Act* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public.
- D.** Subsection 10(2) of the *Municipal Act* provides that a municipality may pass by-laws respecting, among other things: (i) governance structure of the municipality and its local boards; (ii) financial management of the municipality and its local boards; and (iii) economic, social and environmental well-being of the municipality.
- E.** The City established Museum London as a local board of the City pursuant to the Museum London By-Law.
- F.** The Museum London By-Law permits Museum London to collect and raise money by way of grants, gifts, donations, bequests, legacies and other payments and to hold, expend or deal with such funds.
- G.** Museum London maintains the Operating Endowment Fund as a reserve fund set aside on Museum London’s audited financial statements for specific purposes, which financial

statements are consolidated as part of the City's audited financial statements in accordance with the generally accepted accounting principles for the public sector established by the Public Sector Accounting Board of Canada.

- H. Pursuant to section 13.1 of the Museum London By-Law, the City may permit Museum London to use property that the City has an interest in, including trust funds, upon such terms and conditions as the City agrees to.
- I. Pursuant to section 17.1 of the Museum London By-Law, on dissolution of Museum London and after the payment of all debts and liabilities, the assets of Museum London, including the Operating Endowment Fund, shall be distributed to the City or to such other organizations having objects similar to those of Museum London as may be designated by Council.
- J. The Foundation exists to provide Museum London with financial support as more particularly described in the Foundation's constating documents.
- K. Museum London and Council consider it necessary and desirable for the Operating Endowment Fund to be managed, administered and invested wisely for the benefit of the City and Museum London.
- L. Museum London and Council are of the opinion that it would be in the best interest of both the City and Museum London for a trust to be established to improve the administration, operation and governance of the Operating Endowment Fund pursuant to the terms of this Agreement.
- M. The purpose of this Agreement is to set clear rules for the administration and operation of the Trust by the Foundation in its capacity as Trustee of the Trust Property.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINED TERMS

Definitions. In addition to the terms otherwise defined in this Agreement, the following terms shall have the meanings set out below:

1.1 "Agreement" means this declaration and agreement of trust, together with the preamble and all schedules attached hereto, as may be amended, supplemented or otherwise modified from time to time.

1.2 "Beneficiaries" means the collective reference to the City and Museum London and the term "Beneficiary" means any one of the foregoing as the context may require.

1.3 "Capital" means the Operating Endowment Fund and all monies and receivables now or hereafter on deposit in the Trust Account, which for greater certainty includes any and all investment instruments in which the monies in the Trust Account may from time to time be invested hereunder as well as any additions to capital or accruals thereto but excluding all

amounts which have been paid or disbursed therefrom in the normal course of the administration of or pursuant to the provisions of this Agreement.

1.4 “**City**” means The Corporation of the City of London, a municipal corporation established pursuant to the *Municipal Act*.

1.5 “**Council**” means the municipal council of the City.

1.6 “**Financial Advisor**” means a person not engaged in the sale of investment products and services to the Trust or the Trustee and which will provide independent advice to the Trustee on the development of the Investment Policy and selection of Investment Managers and evaluation of portfolio performance and which has an arm’s length relationship with the Trustee and the Investment Manager(s) and whose staff have been awarded the chartered financial analyst designation by the Chartered Financial Analyst Institute, or its successor.

1.7 “**Financial Advisor Service Agreement**” means an agreement between the Trustee and the Financial Advisor detailing the duties and responsibilities of the Financial Advisor in relation to this Agreement.

1.8 “**Financial Institution**” means: (a) any bank, authorized foreign bank or federal credit union as defined in section 2 of the *Bank Act*, S.C. 1991, c. 46; (b) a credit union as defined in section 1 of the *Credit Unions and Caisses Populaires Act, 1994*, S.O. c.11.; or (c) a trust corporation registered under the *Loan and Trust Corporations Act*, R.S.O. 1990, c. L.25.

1.9 “**Foundation**” means Museum London Foundation, a not-for-profit corporation established without share capital pursuant to the *Corporations Act*, R.S.O. 1990, c. C.38 and continued pursuant to the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23 and also a charitable public foundation registered with Canada Revenue Agency under charitable registration number 866377104 RR0001.

1.10 “**Investment Manager**” means a person which has obtained registration with the Ontario Securities Commission as an advisor in the category of portfolio manager in accordance with National Instrument 31-103 7.2(1)(a) as amended from time to time, and whose revenue is derived from the discretionary management of investment portfolios, and which has an arm’s length relationship with the Trustee and the Financial Advisor.

1.11 “**Investment Management Agreement**” means an agreement between the Trustee and an Investment Manager by which the investment management responsibility for funds invested in the public markets is to be undertaken solely by the Investment Manager pursuant to the terms of this Agreement and the Investment Management Agreement.

1.12 “**Investment Policy**” means the policy approved by the Trustee from time to time following the receipt of advice from the Investment Manager and Financial Advisor, which sets out the policy, objectives, and framework for investment of funds in the Trust in authorized investments by the Investment Manager.

1.13 “**Income Tax Act**” means the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) and the regulations thereunder.

1.14 “**Letter of Understanding**” means the letter of understanding, dated November 30, 2016, entered into between the Foundation and Museum London, as may be amended, revised or otherwise modified from time to time.

1.15 “**Museum London**” means the not-for-profit corporation continued as a local board of the City pursuant to the Museum London By-Law.

1.16 “**Museum London By-Law**” means City by-law number A.-6869-273 passed on September 18, 2012, as may be amended, replaced, restated or otherwise modified from time to time.

1.17 “**Operating Endowment Fund**” means the collective reference to the general operating funds of Museum London, including unrestricted donation revenue not subject to externally imposed donor restrictions, government grants, capital revenue and other ancillary revenue sources, held and maintained by Museum London in long term and short term investments for the purpose of earning additional returns over time, to fund innovative projects that benefit Museum London’s constituency, while ensuring that Museum London’s operational cash needs are met.

1.18 “**person**” or any cognate term, shall, subject to any express indication to the contrary, include an individual natural person, corporation, firm, partnership, trust, trustee, joint venture, limited liability company, association, or unincorporated organization.

1.19 “**Settled Amount**” has the meaning given to it at Section 4.1 of this Agreement.

1.20 “**Settlor**” means Museum London, and any other person who assigns transfers or delivers by deed, will or testamentary or *inter vivos* trust or in any other manner, any real, personal or mixed property to the Trustee to become part of the Trust Property.

1.21 “**Trust**” means the trust established by this Agreement.

1.22 “**Trust Account**” means an interest bearing account opened in a Financial Institution by the Trustee pursuant to Section 10.1 of this Agreement.

1.23 “**Trust Property**” means the collective reference to Capital, all monies, securities, properties and assets under the control of the Trustee from time to time pursuant to this Agreement and any further or additional property, whether personal or real, which the Settlor may donate to or cause to be vested in the Trustee and together with the full benefit of all assets and property at any time held by the Trustee upon the trusts declared in this Agreement, whether by way of further settlement, accumulation of income, capital accretion, or otherwise, and all property from time to time representing the foregoing respectively.

1.24 “**Trustee**” means the collective reference to the Foundation and any additional or successor trustee appointed in accordance with the terms of this Agreement holding office from time to time as a trustee under this Agreement, and the term “Trustee” in the singular form means any one of the foregoing as the context may require, and any reference in this Agreement to “Trustees” in the plural form shall include the singular form where the context so requires.

1.25 Index and Headings. The division of this Agreement into articles, sections, paragraphs and subparagraphs and the insertion of headings are for convenience of reference only and are not intended to assist in the construction or interpretation of any of the provisions of this Agreement.

1.26 Statutory References. Any reference in this Agreement to a statute, regulation or rule shall be construed to be a reference thereto as the same may from time to time be amended, re-enacted or replaced, and any reference to a statute shall include any regulations or rules made thereunder.

2. STATEMENT OF INTENTION

2.1 Settlor's Intention. The Settlor hereby expresses its intention to establish a revocable trust for the benefit of the Beneficiaries upon the terms and conditions as hereinafter set forth.

2.2 Trustee's Agreement. The Trustee agrees to stand seized and possessed of the Trust Property upon the terms and conditions hereinafter set forth.

3. PURPOSES OF THE TRUST

3.1 Trust Purposes. The general purposes of the Trust are to promote the financial welfare of Museum London and to foster a continuing improvement in the services offered by Museum London and the development and implementation of programs to assist with the needs of Museum London for the benefit of the public generally. In this regard, the Trustee shall work cooperatively with representatives of each Beneficiary to develop and implement strategic plans and policies for the management and use of the Trust Property, consistent with the purposes set out in this Agreement and in the Letter of Understanding. In developing and implementing the strategic plans, the Trustee may seek expert advice on investments, taxation, strategic planning, finance and such other advice as the Trustee deems appropriate in the circumstances.

4. ESTABLISHMENT OF TRUST

4.1 Statement of Intention. The Settlor hereby expresses the intention to establish an revocable trust for the benefit of the Beneficiaries upon the terms and conditions set forth in this Agreement, by hereby transferring to the Trustee the current balance of the Operating Endowment Fund (the "**Settled Amount**"), which together with any other additional or further sums or property which may be received by the Trustee from time to time and any accretions or additions thereto, shall constitute the Trust Property.

4.2 Name of Trust. The trust hereby established by this Agreement shall be known as "*The Museum London Operating Endowment Fund Trust*".

4.3 Acknowledgement of Receipt. The Trustee acknowledges receipt of the Settled Amount from the Settlor.

4.4 Additional Contributions. Subject to the Trustee's acknowledgment of receipt and the provisions hereinafter provided, any person may from time to time during the currency of

this instrument convey, transfer or assign by deed, will or testamentary or in any other manner, any real, personal or mixed property to the Trustee to become part of the Trust Property and such additional property so conveyed, transferred or assigned shall become and be subject to the terms and conditions herein set forth to the same extent and effect as if originally included in the Trust Property. With respect to the acceptance of any additional contributions of property, the Trustee is hereby advised to obtain independent legal and tax advice concerning any legal, tax or property implications to any of the Beneficiaries or the Trust Property arising from the acceptance of any such additional contributions.

4.5 Trust Accretions. The Trust Property shall include all property of any kind whatsoever acquired by the Trustee, whether such property originated as a settlement, gift or accretion to the Trust Property or property substituted therefor.

5. REVOCABLE TRUST; POWERS RESERVED BY SETTLOR

5.1 Right to Change Trust. The Settler hereby reserves the right to change, amend or alter any of the terms or provisions of this Agreement at any time. All changes, amendments or alterations by the Settlor must be in writing and will not become effective until signed by the Trustee and the Beneficiaries.

5.2 Right to Terminate. The Settler hereby reserves the right to terminate this Agreement, in whole or in part, at any time. Any complete or partial termination shall become effective upon delivery of written notice of termination to the Trustee.

5.3 Right to Withdraw Trust Property. The Settler hereby reserves the right to withdraw all or any part of the Trust Property. The exercise of this right of withdrawal, in whole or in part, shall become effective upon delivery of written notice to the Trustee.

6. TRUSTEE

6.1 Appointment of Trustee. The Settler hereby appoints the Foundation as the original Trustee of the Trust effective as of the date hereof, to have all of the rights, powers and duties set forth herein. The Trustee accepts its appointment by executing this Agreement. The Trustee will be subject to direction by its duly appointed board of directors and will have the degree of discretion to manage and control Trust Property as specified in this Agreement. Neither the Settlor nor any Beneficiary will be liable for any act or omission of the Trustee, as to duties delegated to the Trustee.

6.2 Additional or Successor Trustees. Additional and successor Trustees may be appointed from time to time by an appointment in writing executed by Museum London and the City. Any person meeting the qualifications set forth in Section 6.3 may be appointed as an additional or successor Trustee. A person who is appointed a Trustee hereunder shall not become a Trustee until such person has, either before or after such appointment, executed and delivered to Museum London, the City and the other Trustees, if any, a written consent to serve as a Trustee hereunder, at which time such person shall become a Trustee hereunder and shall be deemed to be a party to this Agreement.

6.3 Qualifications of Trustee. No person shall at any time be eligible to be appointed as a Trustee pursuant to Section 6, or to act as a Trustee at any time, other than:

- (a) an individual at least 18 years of age who is resident in Canada for purposes of the *Income Tax Act*; who is not the Settlor or anyone who has contributed property to the Trust Property; who has not been declared incompetent; and who does not have the status of bankrupt; or
- (b) a corporation incorporated under the laws of Canada or of a province that is a resident of Canada for purposes of the *Income Tax Act* and does not have the status of bankrupt.

For greater certainty, a Trustee shall immediately cease to be a Trustee at any time that such person fails to meet the qualifications set out in Section 6.3(a) or (b), as applicable.

6.4 Ceasing to Hold Office. A Trustee ceases to hold office when the Trustee:

- (a) dies (in the case of a Trustee who is a natural person);
- (b) resigns;
- (c) is removed in accordance with Section 13.4; or
- (d) fails to meet the qualifications set out in Section 6.3(a) or (b), as applicable.

The resignation of a Trustee becomes effective at the time specified in a written resignation delivered to Museum London and the City, provided that if, upon the resignation becoming effective, no successor Trustee has been appointed, the resignation is not effective until the resigning Trustee's successor is duly appointed as a Trustee. Upon a Trustee ceasing to hold office, such Trustee shall cease to be a party, as a Trustee, to this Agreement; provided, however, that such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee and to the benefits of the indemnity provided in Section 6.9.

6.5 Removal of Trustee. The Ontario Superior Court of Justice may remove any Trustee from office by resolution unanimously approved by the votes cast at a meeting of Museum London and the City called for that purpose.

6.6 Vesting in New Trustee. The right, title and interest of the Trustee in and to the Trust Property and all the trusts, powers and authorities herein contained shall vest automatically in all persons who may become Trustees upon their due election or appointment and qualification without any further act and they shall thereupon have all the rights, privileges, powers, obligations and immunities of a Trustee hereunder.

6.7 Validity of Acts. All acts of a Trustee are valid notwithstanding any irregularity in the appointment of the Trustee or any defect in the qualifications of the Trustee.

6.8 Decisions of Trustee. At such time that the Foundation is the sole Trustee, all decisions of the Trustee or the exercise of any discretion or power hereby or by law conferred on the Trustee, shall be approved by and signed by a quorum of the Foundation's board of directors present at a duly convened meeting of the Foundation's board of directors. At any time that there are two or more Trustees, all decisions of the Trustees shall be made by unanimous vote. The Trustee may, from time to time, consult with Museum London and the City for the purpose of seeking guidance or recommendations with respect to projects or programs to be funded by the Trust or management of the Trust, but the Trustee is not otherwise obliged or required to promote or develop projects or programs to fulfil the purposes of the Trust.

6.9 Liability of Trustee. The Trustee shall not be liable for any loss or damage which may happen to the Trust Property or any part thereof (including without limitation any company or other entity whose shares or ownership interests are comprised in the Trust Property) or the income thereof at any time from any cause whatsoever unless such loss or damage shall be caused by the Trustee's own actual fraud or gross negligence. The Trustee shall not be liable, answerable or accountable for any loss or damage resulting from the exercise of any discretion or a refusal to exercise any discretion. The Trustee shall be liable, answerable and accountable for its own dishonesty or gross negligence. The Trustee is not liable, answerable or accountable for the acts, receipts, neglects or defaults of any other Trustee or any other person having custody of any part of the Trust Property and is not liable, answerable or accountable for any loss of money or security for money unless the same happens through the Trustee's own dishonesty or gross negligence. Honesty and good faith shall be presumed in favour of each Trustee unless such presumption is rebutted. The Trustee shall be entitled in the purported exercise of its duties and discretions hereunder (including without limitation the management or administration of any company or other entity whose shares or ownership interests are comprised in the Trust Property) to be indemnified out of the Trust Property and the income thereof against all expenses and liabilities notwithstanding that such exercise constituted a breach of such Trustee's duties unless brought about by its own actual fraud or gross negligence. The indemnity thereby granted shall be in addition to any and all rights to indemnity by law implied.

6.10 Corporate Trustees. Any Trustee hereof from time to time that is a corporation may exercise or concur in exercising any discretion or power hereby or by law conferred on the Trustees by a resolution of such corporation or its board of directors or governing body or it may delegate the right and power to exercise or concur in exercising any such discretion or power to any one or more of its directors, officers or employees or to such other person or persons as such Trustee shall think proper.

6.11 Trustee's Bond. No Trustee shall be required to give any bond or security for the due and faithful administration of the Trust Property or for the discharge of the trusts hereof.

6.12 Conflict of Interest. Notwithstanding trusteeship or anything herein contained, the Trustee is expressly authorized to participate or to continue to participate personally with the Trust Property in any business or investment activities, whether such activities exist at the date of execution of this Agreement or arise subsequent thereto, and such Trustee shall not be required to account in any way for any profits made by the Trustee as a result thereof. Without limiting the generality of the foregoing, the Trustee is expressly authorized and empowered to participate or to continue to participate personally in any corporation, partnership or joint venture in which

the Trust Property and such Trustees may have an interest either at the date of execution of this Agreement or subsequent thereto. The participation referred to in this Section shall not in any way restrict or prohibit any Trustee from participating on behalf of the Trust Property in any decisions relating to any such business or investment activities in which the Trustee may have a personal interest. Nothing contained herein, however, shall absolve the Trustee from any obligations to the Trust Property which such Trustee may have in such Trustee's personal capacity or as partner, co-venturer, shareholder or director.

7. DISTRIBUTIONS OUT OF THE TRUST PROPERTY

7.1 Distributions of Income. The Trustee may pay and apply the whole or any part of the annual net income derived from the Trust Property to or for the benefit of the Beneficiaries, in such manner and under such terms, trusts and conditions as the Trustee in the exercise of an absolute discretion may determine. Any annual net income which is not paid or applied in any calendar year shall be accumulated and added to the Capital of the Trust Property at the end of each such calendar year and dealt with as part thereof. If, after the termination of the Trust, the Trustee continues to hold the Trust Property, the Trustee shall pay and apply all of the annual net income to or for the benefit of the Beneficiaries.

7.2 Distributions of Capital. The Trustee may, in the exercise of an absolute discretion, pay or transfer all or any part of the Capital of the Trust Property to the Beneficiaries in such manner and upon such terms and conditions as the Trustee in the exercise of an absolute discretion may decide.

7.3 Procedures for Withdrawal and Use of Trust Property. Each fiscal year, the Trustee shall allocate annual net income derived from the Trust Property to be spent by the Trustee in accordance with the procedures set out in this Section, as follows:

- (a) The Trustee shall prepare a budget identifying amounts required for authorized expenses of Museum London and any Museum London projects and programs that have been previously approved.
- (b) The Beneficiaries may make a proposal for the use of Trust Property. The proponent may present the proposal in writing, orally at a meeting of the Trustee, or both. However, if the Trustee develops any policies and procedures for filing, receiving and considering applications from the Beneficiaries for funding expenses, projects and programs, the Beneficiaries shall adhere to that process for submitting proposals. The Trustee may request additional information in such form and content as the Trustee reasonably considers necessary for a full understanding of the proposal. All costs of the application process are those of the project proponent.
- (c) Allocation of Trust Property for expenses, projects and programs to fulfil the purposes of the Trust set out in Section 3.1 will be done by the Trustee on a case by case basis. When considering which projects and programs to approve for the purposes of the Trust set out in Section 3.1, the Trustee will seek to increase the benefit provided by the use of Trust Property, wherever possible, by seeking to

fund projects and programs for which there will be funding or support from other sources, or for which the Trust's contributions will create or enhance the basis for funding or support from other sources. Applications from the Beneficiaries for funding from the Trust will be expected to demonstrate that the Beneficiaries have diligently explored and pursued other sources of funding and support, and where appropriate, to secure such other funding and support for the proposed project. Despite the generality of any part of this Agreement, the Trustee shall have absolute discretion to decide which projects and programs will be funded and the amount of funding to provide to those projects and programs to fulfill the purposes of the Trust, based on merit, need or any other reasonable criteria set by the Trustee. In providing funding, the Trustee shall consider the advancement and protection of Museum London.

- (d) All withdrawals of Trust Property from the Trust Account shall be by a decision duly documented in the minutes of a Trustee's meeting and evidenced by an executed Trustee resolution.
- (e) The Trustee may approve multi-year projects or programs and once such approval has been given, the commitment shall be binding on successor Trustees unless the Trustee and the proponent agree in writing to a modification or cancellation of the previously approved project or program.
- (f) The Trustee shall not pay or transfer any funds from the Trust Property for a project or program or authorized expense until:
 - (i) the proponent has, in respect of any amount previously advanced by the Trustee, fulfilled its obligations under this Trust, any agreement entered into with the Trustee and any other conditions imposed by the Trustee in respect of those amounts;
 - (ii) the Trustee and the proponent have entered into such written agreements or acknowledgements as may be reasonably required to ensure that the Trust Property is used only for the approved purpose and is advanced in a commercially responsible manner; and
 - (iii) the Trustee is reasonably satisfied that the primary purpose of the funding is in accordance with the purposes of this Trust.

8. AUTHORIZED INVESTMENTS AND INVESTMENT MANAGERS

8.1 Investment Powers. Subject to the provisions of Section 11.1(d), the Trust Property shall be invested in any investment or investments which the Trustee, in the exercise of an absolute discretion, deems advantageous to the Trust Property and in like manner from time to time to alter or vary such investments.

8.2 Appointment of Financial Advisor. In addition to and not by way of restricting the general investment powers of the Trustee, within 90 days of the date of this Agreement, the Trustee shall retain and engage a Financial Advisor and enter into a Financial Advisor Service

Agreement on terms that are consistent with the terms of this Agreement. The Financial Advisor shall review the terms of this Agreement and shall agree in writing to be bound by the terms of this Agreement as amended from time to time. With the assistance of the Financial Advisor, the Trustee shall develop and amend from time to time an Investment Policy setting out the policy, objectives and framework for the investment of Trust Property. The Trustee shall direct the Financial Advisor to deliver, at least once every calendar year, or more often if the Trustee deems it necessary, a written report to the Trustee rating and reporting on the quality of the Investment Manager's performance.

8.3 Appointment of Investment Manager. In addition to and not by way of restricting the general investment powers of the Trustee, within 90 days of the date of this Agreement, the Trustee shall, in consultation with the Financial Advisor, retain and engage one or more Investment Managers and enter into Investment Management Agreements that are consistent with the terms of this Agreement and the Investment Policy. The Investment Manager shall review the terms of this Agreement and shall agree in writing to be bound by the terms of this Agreement as amended from time to time. The Investment Manager(s) shall provide a quarterly report to the Trustee documenting the investments held and the rate of return. The Trustee, in consultation with the Financial Advisor, shall satisfy itself that the investment of Trust Property by the Investment Manager(s) complies with the terms of this Agreement and the Investment Policy. The Trustee may rely and act upon the advice of such investment counsel or investment advisor(s) and further they may delegate directly to such investment counsel or investment advisor(s) the direct management of the whole or any part of the Trust Property as the Trustee deems advisable and on such other terms as the Trustee considers advisable including for greater certainty delegated power to choose, acquire or dispose of investments from time to time and including the power to sub-delegate the power to choose, acquire and dispose of investments and the Trustee shall not be liable for any losses incurred as a consequence of the exercise or failure to exercise any such delegated powers by any such investment counsel or investment advisor(s). The Trustee may pay the proper fees and disbursements of such investment counsel or investment advisor(s) out of the Trust Property, which fees and disbursements shall be charged to either income or capital or part to income and part to capital as the Trustee in the exercise of an absolute discretion shall determine.

9. JOINT VENTURES AND PARTNERSHIPS

9.1 Joint Ventures and Partnerships. The Trustee may join in any syndicate, partnership or joint venture, contributing all or part of the assets of the Trust Property as the contribution of the Trust Property thereto and they may enter into agreements with co-investors which limit their rights to buy or sell assets of the Trust Property.

10. GENERAL ADMINISTRATIVE POWERS

10.1 Operate Accounts. The Trustee shall for the purposes of the Trust Property open and operate and maintain the Trust Account and other such accounts that the Trustee in its discretion may deem necessary from time to time, in a Financial Institution, for the management and investment of the Trust Property and to make such arrangements governing banking procedures as are consistent with this Agreement, including the delegation of authority to sign

cheques and withdraw monies from the Trust Account to no fewer than two (2) duly-authorized signatories.

10.2 Signing Authority. The Trustee shall appoint and delegate no fewer than two (2) duly-authorized persons to sign any or all banking documents, stock transfers, receipts, promissory notes, other negotiable instruments and any other documents of any kind required to be signed on behalf of the Trust at any time.

10.3 Power to Sue and Settle. The Trustee may from time to time institute, prosecute and defend any suit, action, arbitration or other proceeding affecting a Trustee or the Trust Property and may pay the fees, costs and expenses thereof out of the Trust Property. The Trustee may compromise or compound any debt owing to the Trust Property. The Trustee may compromise or settle any claim of or against the Trustee or the Trust Property upon such evidence or opinion as the Trustee shall deem sufficient.

10.4 Power to Pay Expenses. For the purposes of clarification, and not in any way to limit the powers of the Trustee hereunder, the Trustee is authorised to settle and to pay and satisfy out of the assets or property of the Trust Property (charging the same against income or Capital or part against income and part against Capital as the Trustee in the exercise of an absolute discretion shall determine) any of the following obligations:

- (a) the amount of any income, gift or other tax or any duty payable to any government to which the Trust Property is obligated arising from or in connection with the establishment, execution, operation, management, distribution or termination of the Trust Property or otherwise related to the Trust Property;
- (b) the amount of any expenses payable to the Trustee hereunder in respect of attendance at the Trustee's meetings;
- (c) the amount of any legal or other expenses necessarily or reasonably incurred in connection with the establishment, execution, management, operation, distribution or termination of the Trust Property;
- (d) the amount of any reasonable expenses for making and changing investments, or for purchasing, exchanging or leasing any property, including brokers' commissions and charges, auditors' fees and legal fees.

10.5 Separate Funds or Common Funds. The Trustee may in the exercise of an absolute discretion maintain the Trust Property in one common fund or may set aside one or more separate funds for any Beneficiary and the Trustee shall have the power to invest such separate funds for such Beneficiary only and shall have the power to re-allocate assets from one trust to another or discontinue one or more or all trusts so established and to re-establish such separate trusts or common funds as they from time to time deem it advisable so to do.

10.6 Carry on Business. The Trustee may carry on any business whatsoever and either independently or in partnership with any individual, trust or corporation which can in the

opinion of the Trustee be carried on advantageously by the Trust Property and the Trustee shall have power to do all things necessary or advisable for the carrying on of any such business.

10.7 Registration of Securities. It shall not be necessary for any securities or assets of the Trust Property to be registered in the name of the Trustee and the same may, in the discretion of the Trustee, be registered in the name of any agent or nominee of the Trustee.

10.8 Safekeeping and Insurance of Securities and other Assets. The Trustee may arrange for such safekeeping and storage of securities, other assets of the Trust Property and of records belonging to or relating to the Trust Property as the Trustee in the exercise of an absolute discretion considers appropriate and the Trustee may place such insurance upon securities and other assets at the expense of the Trust Property or refrain from placing insurance on some or all of the securities and other assets as the Trustee considers it appropriate so to do.

10.9 Professional Advisors to the Trustees. In addition to a Financial Advisor and Investment Manager, the Trustee may employ and act upon the advice of such professional or other experts and consultants including without limitation lawyers, valuers, accountants, surveyors, auctioneers, actuaries, corporate agents and nominees, as the Trustees consider advisable in the discharge of their duties and may delegate in writing to such agents all or any of their powers conferred on them herein. The Trustee may pay the proper fees and disbursements for such professional or other experts and consultants out of the Trust Property, charged either to income or capital or part to income and part to capital as the Trustee considers appropriate. The Trustee may act upon the opinion or advice of or upon information obtained from any such professional or other experts and consultants and the Trustee shall not be responsible, answerable or accountable for any loss, depreciation or damage occasioned to the Trust Property by their acting or not acting in accordance therewith.

10.10 Depreciation or Depletion Reserves. The Trustee may provide for depreciation or depletion reserves to be charged against the net income arising from depreciable or depleting assets held in the Trust Property. The rate of depreciation or depletion to be taken annually shall be such rate as the Trustee may determine. Any sums reserved for depreciation or depletion shall be set aside in each year and shall be deemed to form part of the Capital of the Trust Property. Notwithstanding any other provisions of this Agreement, the income arising from the Trust Property shall be the net income after providing for the aforesaid reserves for depreciation or depletion.

10.11 Elections, etc. The Trustee shall have full, absolute and unfettered discretion from time to time and at any time or times, either alone or in conjunction with the Beneficiaries, to make or refrain from making any election or elections, designations, determinations, distributions or allocations or both for the purposes of the *Income Tax Act* or any similar legislation of any province or other jurisdiction in force from time to time as in their absolute discretion deem to be in the best interests of the Trust Property or the Beneficiaries or both, either alone or in conjunction with the Beneficiaries. Where any specific funds or shares are created under this Trust Property, the Trustees shall have the absolute power to determine which specific assets shall form such fund or share, as the case may be, unless otherwise expressly provided in the Trust Property. The Trustee is specifically exonerated from any responsibility with respect to making or not making any such election or elections, designations,

determinations, distributions or allocations or both, if they act *bona fide* in the exercise of such powers. The exercise of a discretion by the Trustee shall be conclusive and binding on the Beneficiaries and notwithstanding any of the foregoing provisions, the making and filing of an election or elections, designations, determinations, distributions or allocations or both, for income tax purposes shall not in and of itself create a vested interest in the Beneficiaries to any portion of the Trust Property.

11. DUTIES TO BENEFICIARIES

11.1 Trustee's Duties to Beneficiaries. Without in any way limiting or derogating from the Trustee's powers, authorities, duties, discretions and immunities available to the Trustee, whether under applicable law or otherwise, the Trustee shall:

- (a) participate in meetings with representatives of Museum London, or the City, or both, to review and explain the Trustee's annual report and the audited financial statements and for any other purpose that Museum London, or the City, or both, may reasonably request;
- (b) upon request from any Beneficiary, deliver copies of all ledgers, registers and documents or recordings of transactions affecting the Trust Property;
- (c) at the expense of the Trust, obtain bonding or security for the due and faithful administration of the Trust, including errors and omission insurance; and
- (d) comply with all applicable investment requirements pursuant to the the *Municipal Act*.

12. AMENDMENT OF DEED OF SETTLEMENT

12.1 Amendment. Save and except for the right to amend reserved to the Settlor under Section 5.1, this Agreement shall not otherwise be amended, supplemented or otherwise modified except by an instrument in writing signed by the Beneficiaries, the Trustee and the Settlor.

13. SITUS AND GOVERNING LAW

13.1 Situs of the Trust Property. The Trust Property shall have its *situs* in and be subject to the laws of the Province of Ontario.

13.2 Governing Laws. This Agreement and any question of law relating to the construction of this Agreement and the administration of the Trust Property shall be construed in accordance with the laws of the Province of Ontario.

14. DURATION AND TERMINATION OF THE TRUST

14.1 The Settlor does not intend that there be any violation of the "rule against perpetuities" or any similar law which limits how long a trust may last. Accordingly, if any right or option to acquire any interest in the Trust Property exists under this Agreement, such right or

option must be exercised, if at all, so as to vest such interest within time periods permitted by applicable laws. If, however, such violation should inadvertently occur, or upon any earlier termination of the Trust, the Trustee shall prepare a plan detailing how the Trust Property will be resettled or transferred for the use and benefit of the Beneficiaries in such a way as to approximate most closely the intent of the Settlor and the purposes of the Trust.

15. POWERS – GENERAL

15.1 Powers. The powers granted herein are in addition to all other powers vested in trustees by law or otherwise and without restricting the general powers, discretions and authorities in this Agreement given to the Trustee, the Trustee shall have the power, discretion and authority to deal with the assets of the Trust Property without the interference of any person entitled hereunder.

16. ACCEPTANCE OF TRUST

16.1 Acceptance. By executing this Agreement, the Trustee hereby accepts the trusts herein contained upon the terms and conditions herein provided.

17. SIGNING BY COUNTERPARTS

17.1 Counterparts. This Agreement may be executed in any number of counterparts, including by way of facsimile or e-mail transmission of Adobe Acrobat or other digital image files, each of which shall constitute an original and all of which, taken together, shall constitute one and the same instrument. Any party executing this Agreement by facsimile or e-mail transmission shall, immediately following the request by any other party, provide an originally executed counterpart of this Agreement provided, however, that any failure to so provide shall not constitute a breach of this Agreement except to the extent that such electronic execution is not otherwise permitted under the *Electronic Commerce Act, 2000* (Ontario).

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
NEXT PAGE IS THE SIGNATURE PAGE.**

IN WITNESS WHEREOF the parties hereto have executed this Agreement as at the date first above written.

THE CORPORATION OF THE CITY OF LONDON

By: _____
Name:
Title:

By: _____
Name:
Title:
We have authority to bind the municipality.

MUSEUM LONDON FOUNDATION

By: _____
Name:
Title:

By: _____
Name:
Title:
We have authority to bind the corporation.

MUSEUM LONDON

By: _____
Name:
Title:

By: _____
Name:
Title:
We have authority to bind the corporation.