

## **CONSOLIDATED MEMORANDUM OF AGREEMENT**

Consolidating the original Memorandum of Agreement made in duplicate on the 20<sup>th</sup> day of November, A.D. 1952, as amended on the 18<sup>th</sup> day of January, A.D. 1954 and as further amended on the 9<sup>th</sup> day of May, A.D. 2006 and on the [Day] day of [Month] A.D. 2011.

**B E T W E E N:**

The Officer Commanding the 48<sup>th</sup> Highlanders of Canada,  
hereinafter called the Commanding Officer

**OF THE FIRST PART**

- and -

The trustees of the 48<sup>th</sup> Highlanders Trusts,  
hereinafter called the Trustees

**OF THE SECOND PART**

**WHEREAS** it was deemed advisable to appoint Trustees to raise, receive by way of donation, legacy, bequest or gift, to administer and apply funds and other assets or properties for the efficiency, welfare and well-being of the 48<sup>th</sup> Highlanders of Canada, and the Trustees have agreed to be the Trustees for such purpose,

**AND WHEREAS** it was desired to declare the trusts upon which such funds and other assets or properties so raised and received shall be held and administered by the Trustees which trusts, funds, assets and properties are hereinafter respectively called the “48<sup>th</sup> Highlanders Trusts” and “Funds”,

NOW THIS AGREEMENT WITNESSETH that in consideration of the premises and mutual covenants and agreements herein contained the parties hereto agree as follows:

1. The Commanding Officer hereby appoints the parties of the second part and their successors, appointed as hereinafter provided, as the Trustees of the Funds the Trustees hereby undertake and agree to act as such upon the terms and conditions as set forth herein.
  
2. The Trustees shall, from time to time, raise, receive by way of donation, legacy, bequest or gift, administer and apply Funds for the efficiency, welfare and well-being of the 48<sup>th</sup> Highlanders of Canada, hereinafter called "the Regiment". Provided always that the 48<sup>th</sup> Highlanders Trusts shall be carried on without remuneration or pecuniary gain to any of the Trustees or the Officers thereof and that any profits or other accretions of the 48<sup>th</sup> Highlanders Trusts shall be used in promoting its objects.
  
3. (a) The Trustees shall, at all times, consist of no less than three and no more than nine persons and all of the Trustees may be members of the Regimental Senate (the "Senate"), except for the OCA Trustee (as defined below) who is not required to be or number of the Senate. Subject to such minimum and maximum, the Trustees shall determine their numbers from time to time. In the event that the number of the Trustees at any time is less than three and if, within thirty (30) days from the Senate requesting the appointment of an additional Trustee or Trustees to bring the number up to three, the Trustees fail to do so the Senate may then appoint such additional Trustee or Trustees. The Senate is an unincorporated association consisting of former Commanding Officers and Honorary Colonels of the 48<sup>th</sup> Highlanders of Canada and other individuals admitted as members. The Senate is normally chaired by the current Honorary Colonel.  
  
(b) One of he Trustees (the "OCA Trustee") shall be nominated by the 48<sup>th</sup> Highlanders Old Comrades Association (the "OCA) and appointed with the approval of the other

Trustees. Each such appointment is for a term of one year. This power of the OCA to nominate a Trustee is conditional on the agreement of the Senate that the OCA continues to exist.

(c) Each year the Trustees shall select one Trustee, in addition to the OCA Trustee, to retire and if they deem fit appoint another Trustee in his place and stead, provided that the retiring Trustee shall be eligible for reappointment.

(d) Upon the death or resignation of a Trustee or for any reason upon a Trustee becoming unable to act as such, the Trustees may appoint another Trustee in the place and stead of the person so dying or resigning or becoming unable to act, provided always, however, that no resignation shall take effect until accepted by the Trustees.

(e) If the Trustee referred to in paragraph 3(d) above is the OCA Trustee, then the OCA shall have the right to nominate such Trustee's replacement subject to the approval referred to in paragraph 3(b) above.

(f) The Commanding Officer shall *ex-officio* be a Trustee in addition to the number of Trustees provided for in paragraph 3(a) hereof and shall have the same rights and privileges as the other Trustees except that the Commanding Officer shall not be entitled to vote at a meeting of the Trustees.

(g) The Trustees may appoint such other *ex-officio* or honorary Trustees and Officers for such terms and on such conditions as they may deem fit, and the Trustees may remove a person so appointed. No person so appointed shall have any vote at a meeting of the Trustees.

(h) The Trustees may remove a Trustee at any time for any reason they may deem fit, provided that all Trustees with the exception of the person being so removed agree to such removal.

4. The Trustees shall annually elect from amongst their number a Chairman, a Secretary and a Treasurer, or a Secretary-Treasurer, and may elect one or more Vice-Chairman, all of whom shall hold office for one year or until their respective successors are elected, and the Trustees may appoint, from outside their number, one or more Assistant Secretaries and Assistant treasurers, who shall hold office until their respective successors are appointed. All legal documents and cheques drawn upon the funds of the 48<sup>th</sup> Highlanders Trusts hereby constituted shall be signed by any two Trustees one of which must be one of the said Chairman, Vice-Chairman, Secretary, Treasurer or Secretary-Treasurer.
5. Save as otherwise herein specifically provided, and subject to 48 hours notice having been given to all the Trustees, any action of the Trustees may be taken by the majority in number of the Trustees then in office and which action may be evidenced by a document in writing signed by such majority, or by a resolution passed by a majority of the Trustees then in office at a meeting of the Trustees.
6. The Trustees may at any time from time to time make such regulations or arrangements for the better administration of the Funds and the 48<sup>th</sup> Highlanders Trusts, including the calling and holding of meetings of Trustees and for the carrying out of the 48<sup>th</sup> Highlanders Trusts hereby created as they deem fit.
7. The Trustees shall have the power to invest and re-invest the Funds in accordance with the Trustee Act (Ontario) or any successor legislation. To assist them with the investment of the Funds, the Trustees may appoint an investment committee (the "Investment Committee") of no more than six members and empower the Investment Committee to manage Funds within the scope of a Trustee approved "Statement of Investment Policies and Practices". At least three members of the Investment Committee must be Trustees and the Chairman of the Investment Committee will be a Trustee. The Investment Committee will report to the Trustees at least semi-annually. The Trustees shall apply the proceeds of such investments for the objects declared in clause 2 hereof.

- (a) The Chairman, the Vice-Chairman, the Secretary and the Treasurer, or the Secretary-Treasurer, or any two of them, may at any time, upon the direction of the Trustees evidenced by a resolution passed at any duly constituted meeting of the said Trustees, sell, assign or transfer to any assignee or transferee for and on behalf of the 48<sup>th</sup> Highlanders Trusts and in its name any and all shares of the capital stock or any voting trust certificates representing the right to receive shares of the capital stock or any registered bond or other securities of any Company or the securities of any Government Authority included in the Funds, and in relation to any such share certificates, bonds or securities, the said officers above-named, or any two of them, be and they are hereby authorized to execute, in the name of the 48<sup>th</sup> Highlanders Trusts and on its behalf, all assignments, powers of attorney, instruments of proxy, and voting certificates which may be necessary.
8. The Trustees shall submit at least annually to the Senate a report of their dealings with the Funds but shall not be otherwise accountable to the Commanding Officer or the Senate for such dealings.
9. The Trustees shall have the power, at any time and from time to time, upon unanimous agreement of all the Trustees other than the Commanding Officer, to amend or revoke any of the terms hereof, provided always that the objects of the 48<sup>th</sup> Highlanders Trusts hereby created and as expressed in clause 2 hereof may not be changed. The Trustees and the Commanding Officer and each of their lawful successors agree to execute any documents and to do all such acts as may be necessary to effect any amendment contemplated by and made in accordance with the terms of this paragraph.
10. The term “Commanding Officer” shall apply at any particular time to the then Officer Commanding the 48<sup>th</sup> Highlanders of Canada. The term Trustee shall apply to the Trustees for the time being hereunder.

11. If, in the opinion of both the Trustees and the Senate, the active component of “The Regiment” has ceased to exist for any reason and that all other parts of the Regimental family (including the Regimental Museum) have ceased to exist and the ability of the Trustees to apply the assets or the earnings therefrom consistent with the objects of clause 2 hereof has ceased, the Trustees will transfer all funds and assets of the 48<sup>th</sup> Highlanders Trusts to such other Canadian charitable organization(s) registered with the Canada Revenue Agency as the Trustees in their discretion select. To the extent practicable, such other organization(s) shall be of a military, military heritage or Scottish cultural nature but the Trustees shall not be limited by this expectation. The Trustees will then take such steps as may be necessary steps to terminate the 48<sup>th</sup> Highlanders Trusts.

## **RESOLUTION**

**RESOLVED** that the amendments to the Consolidated Memorandum of Agreement made on 20 November 1952 as amended on 18 January 1954 and 9 May 2006 shown on the document attached as **Schedule “A”**, which document has been tabled, be and are hereby ratified and approved.

**DATED** at Toronto this \_\_\_\_ day of September 2011

Moved: \_\_\_\_\_

Seconded: \_\_\_\_\_

Passed: Yes **OR** No