**APPENDIX C**

DECLARATION OF TRUST

(A TRUST DEED TEMPLATE)

A Trust Deed sets out various legal responsibilities and duties in the life of a congregation and should be in place for each congregation of The Presbyterian Church in Canada. The following template was prepared with the advice of legal counsel and may be adapted to suit local congregational needs. (see 1F and 5I below)

**Glossary**

Agent: One who acts on behalf of, in this case, a congregation. An agent is like a pen in the hand of the congregation. (e.g. Section 1B)

Trustee: One who takes on a level of responsibility for decisions taken. This includes fiduciary (or good faith) responsibility. Provincial laws normally require that there be Trustees willing to bear this duty. (e.g. section 1B)

Without limitation: Other responsibilities may be added; the list as presented is not necessarily exhaustive. (e.g. sections 1D, 7B) Without limiting restrictions: There are matters beyond this particular paragraph for which Trustees may also be responsible. (e.g. sections 5J, 5K)

**Notes**

3C: The template stipulates that the minimum number of Trustees is three. A congregation may choose to reduce this number even though it is not suggested as ideal.

5L: In stating that Trustees are not restricted to investments authorized by law for the investment of trust property, is simply noting that ‘investment of trust property’ is a separate technical and legal issue to the kind of investing that congregational Trustees facilitate, and the latter are not bound by those technical restrictions.

**1. Constitution**

1. This Declaration of Trust (herein called this “trust deed”) is established under the authority of Book of Forms section 149, of The Presbyterian Church in Canada with the approval of the congregation of {name of congregation} at a duly called congregation meeting held on {date of congregational meeting} and with the approval of the Presbytery of {name of presbytery} on {date of presbytery meeting}.
2. This trust deed sets out the rules governing the trustees of this trust deed, whose responsibilities are partially that of agent for the congregation and partially that of trustee for the property of the congregation.
3. The Trustees of this trust deed (herein called the “Congregational Trustees”) shall be appointed by the congregation in the manner set down in this trust deed. See 3 and 4 below.
4. The property of the congregation of {name of congregation} (herein called the “property”) is held by the Congregational Trustees. The property includes, without limitation, {site of church building, manse, cemetery, other}.
5. A copy of the original trust deed, duly signed by the clerk of session and all the Congregational Trustees who are appointed by the congregation, and all amended versions of this signed trust deed, will be lodged with the clerk of session of {name of congregation} and the Presbytery of {name of presbytery}.
6. This trust deed is governed by and complies with the relevant laws of the Province of {name of province} as confirmed in writing by {name of law firm used to review the trust deed} as of {date}. See 5.I below.
7. This trust deed may only be amended by a duly called congregational meeting.

**2. Qualifications of Trustees**

1. All Congregational Trustees acting under the terms of the trust deed must be professing members of the appointing congregation.

**3. Election and Appointment of Trustees**

1. The Congregational Trustees will be elected and appointed at an annual congregational meeting or at another duly called congregational meeting.

1. The election will be by majority vote of those present at the annual congregational meeting or another duly called congregational meeting, as the case may be.
2. A full complement of Congregational Trustees for the congregation will be at least three (3) and no greater than {number}. The congregation may determine that it require a larger minimum number of Congregational Trustees than three (3).
3. If the number of Congregational Trustees falls below three (3), or the larger minimum number determined by the congregation pursuant to 3C above, the session shall be asked by the remaining Congregational Trustees to call an emergent congregational meeting to elect the requisite number of replacement Congregational Trustee or Congregational Trustees, or the session may, on its own initiative, call an emergent congregational meeting for this purpose.
4. If a Congregational Trustee dies or resigns as a Trustee, but there remains the minimum number of Congregational Trustees stated in section 3C above, the session may call an emergent congregational meeting to replace the Congregational Trustee who have died or resigned.
5. At the annual congregational meeting, or another duly called congregational meeting, the congregation may, by a majority vote of the members present at such congregational meeting, remove any Congregational Trustee and secondly, may elect and appoint any eligible person in the place of the Congregational Trustee so removed, for the remainder of their term, subject to the requirements of paragraph 2A above.
6. Congregational Trustees are eligible for re-election provided they are not under church discipline that would prevent them from assuming this office.
7. Once duly elected, the moderator of the congregational meeting will declare the Congregational Trustees to be appointed to this office. The appointment of the Congregational Trustees will be communicated to the congregation at large in each case in a manner to be determined by the session.
8. The minutes of the regular or emergent congregational meetings held to appoint or remove Congregational Trustees will be entered into the minute book kept for this purpose.

**4. Term of Office of Trustees**

1. The term of office for a Congregational Trustee will be {number} year(s).
2. If a Congregational Trustee ceases to be a member of The Presbyterian Church in Canada or of the congregation, they automatically cease to be a Congregational Trustee of that congregation.
3. A Congregational Trustee may resign their office by written resignation delivered to the session with a copy to the other Congregational Trustees who are then acting.
4. If during a term of office a Congregational Trustee resigns or dies, is removed by the congregation, or is automatically removed because they have ceased to be a professing member of the congregation, the remaining Congregational Trustees will have all the powers of Congregational Trustees and will for all purposes be the Congregational Trustees of the congregation unless and until the congregation elects a replacement Congregational Trustee or Congregational Trustees. See Section 3 above.
5. If at any time there are no Congregational Trustees acting hereunder, for any reason, the moderator and clerk of the Presbytery of {insert name of presbytery} will automatically become Congregational Trustees of the trust deed until other Congregational Trustees are duly elected by the congregation.

**5. Trustees’ Responsibilities**

1. Congregational 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.
2. Congregational Trustees have only the power delegated to them by a duly called congregational meeting and such power can be amended or withdrawn by another duly called congregational meeting. Congregational Trustees must not alter or go beyond the instructions of the congregation. Congregational Trustees are no more and no less than a pen in the hand of the congregation.
3. Congregational Trustees will hold all property and real estate for the sole use and benefit of the congregation. It is noted that in the event that the congregation is dissolved, by provincial and federal law, the ownership of the church, contents, funds and property transfer to the Trustee Board of The Presbyterian Church in Canada and will be used to further the mission of the church.
4. Whether title to real property (land and building) has been assigned to the Congregational Trustees or not, Congregational Trustees may ask the congregation to have legal counsel confirm that church properties are properly registered with the local land registry office or land titles office, and the congregation may also be asked by the Congregational Trustees to confirm that all real property is properly and sufficiently insured for loss and liability.
5. Congregational Trustees are responsible for signing all legal documents related to the purchase and sale of any church property as agreed by the congregation with the approval of the presbytery.
6. Congregational Trustees are responsible for signing all documents related to obtaining a loan or mortgage on church property as agreed by the congregation with the approval of the presbytery.
7. Any {number} of the Congregational Trustees will have the authority to act on behalf of the congregation.
8. Congregational Trustees are responsible for carrying out any other duties that may be assigned to them by the congregation.
9. Congregational Trustees will have the trust deed reviewed periodically by a solicitor qualified to practice in the relevant jurisdiction to ensure that it remains compliant with the law of the local Province or Territory of Canada.
10. Without limiting restrictions placed on the powers of the Trustees by the congregation, Congregational Trustees have no power to decide on the receipt or disposition of bequests and legacies. This prerogative remains with duly called congregational meetings.
11. Without limiting restrictions placed on the powers of the Trustees by the congregation, Congregational Trustees have no power to decide on how bequests or legacies will be held or used except when empowered by the congregation to do so.
12. In making investments, if any, Congregational Trustees shall not be restricted to investments authorized by law for the investment of trust property and in making investments; the Congregational Trustees shall take direction from the congregation. (If the congregation empowers Congregational Trustees to make decisions on how investments are to be held and/or used, clear directions are to be approved by the congregation and could be included in the Trust Deed.)
13. Congregational 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 congregational meeting.

**6. Conflict with Decision Taken**

1. Congregational Trustee who cannot carry out a decision of the congregation, for the sake of conscience or any other reason, must resign. Before offering their resignation, the Congregational Trustee may ask the session to have the decision reviewed by the congregation. The session may then call a congregational meeting to review the decision and affirm, withdraw or amend it.

**7. Liability**

1. The Congregational Trustees and/or former Congregational Trustees shall not be liable for any error or mistake, save for willful misconduct or willful breach of trust or fraud, and the congregation will indemnify Congregational Trustees or former Congregational Trustees against all costs, charges and expenses with respect to any proceeding to which they are made a party by reason of being a Trustee, if they acted honestly and in good faith, with a view to the best interests of the congregation.
2. Along with general insurance, the congregation will maintain adequate Directors and Officers insurance coverage or such other relevant insurance coverage as may be required, as protection for those acting in such leadership positions, including, without limitation, Congregational Trustees.
3. If a Congregational Trustee willfully acts outside the direction of the congregation or outside the law, or outside the terms of this Trust Deed, that Congregational Trustee could be subject to removal, church discipline and/or legal liability.

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Name of Congregation Date

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[Signature], Moderator of Session [Signature], Congregational Trustee

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[Signature], Clerk of Session [Signature], Congregational Trustee

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Name of Presbytery Date

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[Signature], Moderator of Presbytery [Signature], Clerk of Presbytery