

CORPORATION OF THE TOWN OF NEWMARKET

BYLAW NUMBER 1988-170


A BYLAW TO APPROVE AN AGREEMENT BETWEEN ELMAN WINTON CAMPBELL AND THE CORPORATION OF THE TOWN OF NEWMARKET.

BE IT ENACTED by the Municipal Council of the Corporation of the Town of Newmarket as follows:

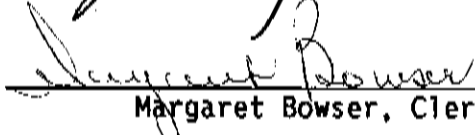
1. That the Agreement between Elman Winton Campbell and the Corporation of the Town of Newmarket, dated the 30th day of November, 1988, a true copy of which is attached hereto, be and the same is hereby approved.

2. That the Mayor and Clerk are hereby authorized and instructed to sign the same on behalf of the Corporation and to affix the Corporate Seal thereto.

PASSED this 5th day of December 1988.



R. J. Tynney, Mayor



Margaret Bowser, Clerk

THIS AGREEMENT made this 30th day of November,
1988.

B E T W E E N:

**ELMAN WINTON CAMPBELL, of the Town of
Newmarket, in the Regional Municipality of
York, Province of Ontario,**

**(hereinafter referred to as "Campbell"),
OF THE FIRST PART;**

-and-

CORPORATION OF THE TOWN OF NEWMARKET

**(hereinafter referred to as the "Town"),
OF THE SECOND PART.**

WHEREAS Campbell wishes to provide a capital fund to be known as **"THE ELMAN CAMPBELL MUSEUM FUND"**, hereinafter referred to as the "Museum Fund" for the benefit of the Board of Management for the Newmarket Museum, or others, and wishes to transfer to the Town the personal property listed in Schedule "A" annexed hereto and may hereafter transfer or cause to be transferred to the Town other real or personal property, all of which is to be held by the Town for the purposes and with and subject to the powers and provisions hereinafter declared and contained.

NOW THEREFORE THIS INDENTURE WITNESSETH THAT in consideration of the premises and of the mutual covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties hereto as follows:

ARTICLE I

DEFINITIONS

In this Agreement, unless the context indicates otherwise, the expressions recited hereunder shall have the following meaning and shall be construed accordingly and the singular shall include the plural and the masculine gender shall include the feminine gender.

1.1 "Board" means the board that manages and controls the affairs of the Museum.

1.2 "In the discretion of the Town" or other words of like import means the vesting in the Town of the discretion to decide and dispose of the matter or matters in respect of which the discretion has been given.

1.3 "Museum" means the Newmarket Museum, or its successor.

1.4 "Museum Fund" shall mean all moneys, securities, property and assets under the control of the Town and any further or additional real or personal property which Campbell or any other person may donate to or vest or cause to be vested in the Town and all capital accretions to and all income from such property to be held by the Town with and subject to the powers and provisions of this agreement and any property substituted therefor.

ARTICLE II

PAYMENT OF INCOME AND CAPITAL

2.1 The Town shall retain the Museum Fund for the benefit of the Museum. In the event that the Museum shall

discontinue its operation, the Town shall retain the Museum Fund for cultural purposes as defined by the Town by Resolution from time to time.

2.2 Subject to paragraph 3, the Town may pay to or for the benefit of the Board all or any part of the annual net income of the Museum Fund as the Town in its absolute discretion may determine by Resolution.

2.3 The Town may accumulate all or any part of the annual net income of the Museum Fund, and any income so accumulated is to be added to the capital of the Museum Fund at the end of each year.

ARTICLE III

CONDITIONS

3.1 The Board's interest in the Museum Fund is subject to the following conditions:

- (a) the Board shall use any money received from the Museum Fund only for the purchase and/or restoration of,
 - (i) artifacts,
 - (ii) accessories required for the display of artifacts
 - (iii) models for display purposes,
 - (iv) furniture, fixtures and equipment,
 - (v) capital improvements to premises used for museum purposes,
 - (vi) computer,

and not for expenditures incurred in operating and maintaining the Museum, including, but not restricted to, expenditures for,

- (vi) office supplies of any kind,
- (vii) bank charges,
- (viii) insurance,
- (ix) audits,
- (x) memberships,
- (xi) salaries and benefits, and
- (xii) seminars;

unless all of the capital requirements of the Board as described in paragraph 3.1(a)(i)-(v), inclusive, have been met in the current year in which case, 80% of the income earned in the year may be used for operating expenses and the balance shall be added to the capital and form part thereof.

- (b) Subject to the provisions of Article 3.1(a), the Corporation of the Town of Newmarket shall pay the operating expenses of the Museum;
- (c) the Museum shall conform to provincial standards and guidelines;
- (d) the Museum shall have a full time curator;
- (e) the Board shall have complete control of the building or portion thereof in which the Museum is lodged to the intent that the building or portion thereof be used exclusively for the benefit of the Museum and/or Archives;

- (f) Board members must be appointed in the manner prescribed by provincial legislation;
- (g) the Board shall manage and operate the Museum in accordance with provincial legislation;
- (h) the Board shall submit an annual budget to the Town on the same date (to be set by the Town so as to co-incide with the preparation of its annual budget) every year; and
- (i) the Board shall submit written requisitions for funds ("Requisitions for Funds") in Form 1.

ARTICLE IV

POWERS

4.1 In addition to all other powers conferred upon the Town by the other provisions of this Agreement or by any statute or general rule of law, the Town, shall have and is hereby given the following powers to administer the Museum Fund:

- (a) To sell and call in and convert into money any part of the Museum Fund not consisting of money provided that the Town may retain any Government of Canada Bonds, Guaranteed Investment Certificates, Bank Term Deposits, Certificates of Canadian Chartered Banks, or deposits in Canadian Banks originally transferred

to the Town pursuant to this Agreement or hereafter assigned, transferred or appointed to the Town by Campbell or by any other person or persons. Save as aforesaid the Town shall take such steps as are necessary to sell or list for sale, call in, or convert into money, such parts of the Museum Fund within one year of the date on which such property vests with it.

- (b) When making investments under this agreement to make only such investments which are interest bearing and in which municipal corporations are permitted by law to invest, as it may consider advisable and subject to the foregoing to alter or vary such investments.

- (c) To exercise all voting powers attaching to and all rights incidental to the ownership of stocks, shares, bonds and other securities, and any other investments and property held as part of the Museum Fund, including voting all stocks, shares and other securities and issuing proxies to others; to sell or exercise any subscription rights and in connection with the exercise of subscription rights, to use any part of the Museum Fund for such purpose; to enter into any agreements concerning the ownership of any investment (stocks or shares) of any corporation which at any time forms part of the Museum Fund; to consent to and join in any plan, reorganization, readjustment or amalgamation or consolidation concerning any corporation whose stock, shares, bonds, debentures, notes or other securities at any time form part of the investments of this Museum

Fund; and to authorize the sale of the undertaking or assets or any portion of the assets or undertaking of any such corporation.

- (d) To act on the written opinion obtained from any lawyer or chartered accountant or architect, and the Town shall not be responsible for any loss, depreciation or damage occasioned by acting or not acting in accordance therewith provided that the Town acts in good faith.
- (f) To determine all questions and matters of doubt which may arise in the course of the management, administration or realization of the Museum Fund.
- (g) To institute and defend proceedings at law and to proceed to the final determination thereof or compromise the same as the Town considers advisable.
- (h) To carry out any transactions and enter into any contracts or agreements with any person or corporation concerning any asset forming part of the Museum Fund where the Town considers such agreement to be in the best interest of the Museum Fund, and in connection therewith the Town may make, execute, acknowledge and deliver any and all instruments that may be necessary, proper or desirable.
- (i) To deposit any cash funds forming all or part of the Museum Fund in any bank or trust company inside Canada.

- (k) To pay out of either or both the income and capital of the Museum Fund, as it may from time to time determine, any taxes or other imposts payable in connection with the Museum Fund by the Town or by the Museum.
- (l) From time to time and at any time or times to make or not to make any election or elections, determinations, distributions and/or allocations for the purpose of the Income Tax Act (Canada) or any similar legislation of any province or other jurisdiction in force from time to time as it in its absolute discretion deems to be in the best interest of the Museum Fund and/or the Museum and shall not be subject to question by any person, official, authority, court or tribunal whatsoever or whomsoever, provided the Town acted bona fide in exercise of such power.

ARTICLE V

RIGHTS AND DUTIES OF THE TOWN

5.1 The Town is exonerated from any responsibility or liability to Campbell or to his estate or to the Museum for loss or damage to the Museum Fund or to any part thereof through a bona fide exercise by it of any power conferred on it by this Agreement or by any statute or law.

5.2 The Town shall keep or cause to be kept accurate accounts of the Museum Fund and may have them audited annually by the Town's Auditor and the expense thereof shall be charged as provided in Article 5.4.

5.3 The Town shall not be entitled to charge for its services to administer the Museum Fund.

5.4 Such other customary expenses in connection with the administration of this Museum Fund, and with the investment and reinvestment of any part of the Museum Fund and with the collection of income and other sums derivable therefrom, shall be charged against the income of the Museum Fund, but if such income is insufficient for the purpose, then such expenses shall be charged against the capital of the Museum Fund, or so much thereof as may be required.

ARTICLE VI

ADDITIONS TO THE FUND

6.1 Campbell or any other person may from time to time during the currency of this Agreement convey, transfer, or assign, by deed, or by will or in any other manner, any assets (being real, personal or mixed property) to the Town to become part of the Museum Fund and such additional assets so conveyed, transferred or assigned shall be held upon and be subject to the the terms and conditions herein set forth to the same extent and effect as if originally included in the property listed in Schedule "A" annexed to this Agreement.

ARTICLE VII

MISCELLANEOUS

7.1 This Agreement is intended and is hereby declared to be irrevocable by Campbell and notwithstanding anything herein

expressed or implied, no part of the capital or income of the Museum Fund shall be paid or lent or applied for the benefit of Campbell or any other donor in any manner or in any circumstances whatsoever, and no part of the capital shall revert to Campbell or to any other doner to the Museum Fund. In the event of the failure of any gift hereunder for any reason, the Museum Fund or the portion thereof shall be paid or transferred to the Town to be applied for cultural purposes, as defined by the Town by Resolution from time to time.

7.2 All assets of the Museum Fund shall hereby vest in the Town.

7.3 If at the time of delivery of any asset of the Museum Fund to the Museum, the whole or any part of the purchase price of such asset remains unpaid by Campbell or any donor or notes or other indebtedness of the Town made or incurred by it in connection with the purchase of such asset remains outstanding, the Town may deliver such asset to the Museum upon the Museum assuming the obligation to pay such price, note or other indebtedness or the Museum's pro rata share thereof, as the case may be, and agreeing to indemnify the Town in respect thereof and upon such terms and conditions as the Town thinks fit.

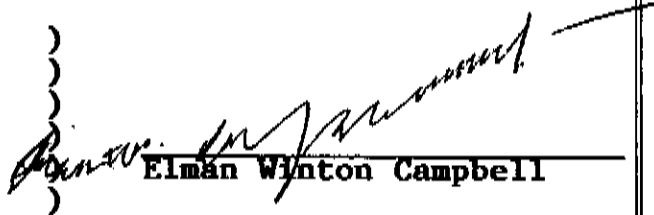
7.4 The Town may make a decision to exercise or not to exercise any of the powers conferred on the Town by this Agreement or by any statute or law notwithstanding that the Town may be or may hereafter be beneficially interested (directly or indirectly) in the result of such decision.

7.5 The Town hereby accepts the terms and conditions herein set forth and covenants and agrees to be bound by the provisions of this Agreement .

7.6 This Museum Fund has been created under the laws of the Province of Ontario, Canada, and its validity shall be determined by the laws of the Province of Ontario.

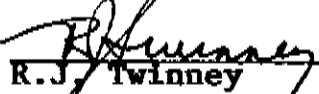
IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of:

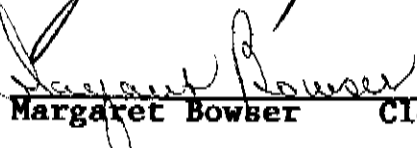


Elman Winton Campbell

Corporation of the Town
of Newmarket



R.J. Twinney Mayor



Margaret Bowser Clerk

SCHEDULE "A"

The sum of Fifty Thousand Dollars (\$50,000.00).

SCHEDULE "B"
FORM 1
REQUISITION FOR FUNDS

TO:

WE REQUEST you to provide us with \$ _____ for the purchase of the following articles.

Number	Cost/Article	Description	Use	Need	Total Cost

DATED this _____ day of _____, 19 _____ .
