



SUBJECT	ENDOWMENT VARIATION REQUEST
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MEETING DATE	JUNE 14, 2017
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Forwarded to the Board of Governors on the Recommendation of the President

APPROVED FOR SUBMISSION

Santa J. Ono, President and Vice-Chancellor

DECISION REQUESTED	IT IS HEREBY REQUESTED that the UBC Board of Governors approve the variation of the Brian K. Petersen Soccer Endowment Fund’s Endowment Trust Deed (the “Deed”), as recommended by the President and University Counsel.
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Report Date	May 19, 2017
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Presented By Hubert Lai, Q.C., University Counsel

EXECUTIVE SUMMARY

The Department of Athletics, together with the support of the donor, Brian K. Petersen (the “Donor”), requests approval to vary the Deed for the Brian K. Petersen Soccer Endowment Fund that was approved by the Board of Governors on March 15, 2001 to incorporate the original intentions of the Donor.

INSTITUTIONAL STRATEGIC PRIORITIES SUPPORTED

- Learning
 Research
 Innovation
 Engagement (Internal / External)
 International
- or Operational

DESCRIPTION & RATIONALE

BACKGROUND:

In 2001, Donor made a gift to the University to establish the Brian K. Petersen Soccer Endowment Fund (the “Fund”) to support awards for students on the men’s soccer team. As of December 31, 2016, the Fund now has capital of \$237,680. The Deed for the Fund was signed by the Director of Athletics, Bob Philips, on behalf of the Donor, as was the Athletics Director’s practice at the time of establishing the Fund. Recently, the Donor has informed the University that, in this case, the terms of the Deed do not reflect his original intentions for his gift.

Since its establishment, the Fund has been used only to provide awards for students on the men’s soccer team, which meets the Donor’s original intent.

However, the Deed permitted the income from the Fund to also be spent on travel costs for the men's soccer team. Further, it guided the University as to what the Fund could be used for in the unlikely event that the men's soccer program and all varsity sports were cancelled. Specifically, it provided that if the University were to ever cancel the men's soccer program, the Fund would be used to support awards for students on other varsity sports teams; and finally, it provided that if all varsity sports were cancelled, the Fund would be used to support awards for students in the School of Human Kinetics. These terms are consistent with several other deeds established for awards in Athletics around the same time as this Fund was established.

The Donor, a graduate of the Sauder School of Business, intended that the Fund be used for awards for students on the men's soccer team, which is consistent with the terms of the Deed, but if the men's soccer program were to be cancelled, then he intended that the Fund be used to support awards for students in the Sauder School of Business, which is not consistent with the terms of the Deed.

APPROVAL REQUESTED:

The Department of Athletics and Recreation together with the support of the Donor request that the Deed for the Fund be amended to support awards for students on the men's soccer team; and with instructions that if the soccer program were ever to be cancelled, then the Fund is to be used to support awards for students in the Sauder School of Business.

The Office of the University Counsel supports this request.

LEGAL AUTHORITY:

The Board's authority to vary the Deed is found in section 5 of the Deed, which provides that:

“If in the opinion of the University the operation of the Endowment becomes impossible or impractical or is not achieving its purpose in a satisfactory manner, the University may vary the terms of this Deed of Endowment; provided that such a variation may be made only upon the recommendation of the President to the Board of Governors and the approval of the Board. The University will attempt to contact the donor, Brian K. Petersen, at the contact information shown in the University's records, and will give the donor at least 60 days to provide his written advice prior to the Board of Governors varying the terms.”

The Board also has authority to rectify an error in endowment documentation to ensure the document matches the donor's original intent.

ADDITIONAL MATERIALS:

The amended blackline deed is attached to this report.

THE UNIVERSITY OF BRITISH COLUMBIA

BRIAN K. PETERSEN SOCCER ENDOWMENT DEED

Amended and Restated as of _____, 2017
*(Varies the original Endowment Deed for the Brian K. Petersen Soccer Endowment Fund,
approved March 15, 2001)*

1. The Endowment Fund shall be known as the **Brian K. Petersen Endowment Fund**.
2. (1) The capital of the Fund shall be held by the University of British Columbia and may be invested and reinvested by the University in such investments as the University shall decide; and in making such investments the University shall not be restricted to the investments for trustees set out in the Trustee Act of the Province of British Columbia in any similar legislation or in any amendments to the Act or similar legislation.

(2) Without restricting the generality of the provision of sub-clause (1) above, the University may invest the Fund as part of its pooled endowment investments.

(3) In making investment decisions, the University shall have as its objective the maintenance of the real capital value of the Fund and the generation of a sufficient flow in income to fund properly the Fellowship(s).

(4) The University may accept further contributions, from any other source, whether by gift, will or otherwise, or may add to the capital of the Fund, provided that the terms and conditions of any such donation or addition to the capital shall be in conformity with this deed of Endowment.
3. (1) The income of the Fund shall be used by the University:
 - (a) In so far as the University continues to have a Men's Soccer Program, to offer award(s) to student player(s) on the Men's Soccer Team;
 - ~~(b) In so far as the University continues to have a Men's Soccer Program, to use income for travel costs of the team;~~
 - ~~(c)~~ (b) In so far as the University cancels the Men's Soccer Program, to offer award(s) to student player(s) on a continuing varsity sports team in the Sauder School of Business.;
 - ~~(d) In so far as the University cancels all varsity sports teams altogether, to offer award(s) to UBC student at the School of Human Kinetics.~~

(2) Without restricting the generality of the authority of the University to use the income in any manner it sees fit in support of these activities, the University may:

- (a) use income to award scholarships;
- (b) use income to pay the expenses associated with the administration of the Fund;
- (c) where income is not for the time being used, invest such income in accordance with the provisions of clauses 2(1) and (2), but so that the investments shall retain the status of income;
- (d) capitalize income in order to preserve the real capital value of the Fund.

(3) If in the opinion of the University it is clearly necessary to do so in order to carry out the purposes of the Endowment, the University may from time to time encroach upon the capital of the Fund; provided however that such encroachment may take place only upon the recommendation of the President, to the Board of Governors and the approval of the Board.

- 4. Decisions on the making of the award(s), on the continuing eligibility of a holder of an award(s) to receive the award(s) or to obtain a renewal of the award(s), and decisions on the administration, financial and otherwise, of the Fund shall be made in accordance with the policies of the University as they may be amended from time to time.
- 5. If in the opinion of the University the operation of the Endowment becomes impossible or impractical or is not achieving its purpose in a satisfactory manner, the University may vary the terms of this Deed of Endowment; provided that such a variation may be made only upon the recommendation of the President to the Board of Governors and the approval of the Board. The University will attempt to contact the donor, Brian K. Petersen, at the contact information shown in the University's records, and will give the donor at least 60 days to provide his written advice prior to the Board of Governors varying the terms.

Approved as to form by the Office of the University Counsel:

Santa J. Ono
President and Vice Chancellor

Date

Date: _____