



SUBJECT ENDOWMENT FUND: REQUEST TO VARY THE RASHPAL DHILLON PULMONARY FIBROSIS RESEARCH ENDOWMENT

MEETING DATE JUNE 14, 2018

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 Rashpal Dhillon Pulmonary Fibrosis Research Endowment Fund's Terms of Reference, as recommended by the President and University Counsel.*

Report Date May 18, 2018

Presented By Hubert Lai, Q.C., University Counsel

EXECUTIVE SUMMARY

The Interim VP Development and Alumni Engagement, with the support of the Faculty of Medicine and the donor's representative, Peter P. Dhillon, requests that the Board of Governors approve a variation of the Terms of Reference for the Rashpal Dhillon Pulmonary Fibrosis Research Endowment Fund (the "Fund") to remove an outdated reference to an outdoor pool, to include background information about the Fund, and to add instructions to the University to attempt to contact Peter P. Dhillon prior to any encroachment on the Fund or variation of Terms.

Attachments:

- 1. Proposed amended blackline Terms of Reference

INSTITUTIONAL STRATEGIC PRIORITIES SUPPORTED

Learning Research Innovation Engagement International
(Internal / External)

or Operational

DESCRIPTION & RATIONALE BACKGROUND:

In 2005, the University received a \$2 million commitment from the Dhillon family in honour of the memory of Rashpal Dhillon to support either of two options: pulmonary fibrosis research and cranberry research, or the construction of a new outdoor pool at the University. The details of the commitment were documented in an agreement among the University of British Columbia Foundation, William Lorne Hartley and Surinder Harbhagan Dhillon, executors of the estate of Rashpal Dhillon, and Richberry Farms Ltd.

In 2008, following consultation with the Dhillon family, the University established the Fund with \$1 million of the funds received. The Terms of Reference for the Fund established included a right for the University to encroach upon the capital of the Fund to support an outdoor pool.

In 2008, the Dhillon family expressed a wish that the University apply the other half of their gift to support the construction of a new track and field oval, instead of cranberry research or the outdoor pool, and the University directed \$1 million to that project.

The Dhillon family's desire to support a track and field oval was recorded in an amending agreement dated March 3, 2009, among the University of British Columbia Foundation, Surinder Harbhagan Dhillon, as sole executor of the estate of Rashpal Dhillon, and Richberry Farms Ltd. The Rashpal Dhillon Track and Field Oval opened in 2010.

Since the funds have been used for pulmonary research and the track and field, the University may no longer use any portion of the contribution for an outdoor pool. Therefore, the University wishes to vary the Original Terms of Reference for the Fund to remove the reference to encroachment for an outdoor pool, and update the variation clause to add a reference to the Amending Agreement to ensure the accurate history of this gift is reflected in the University record. Finally, Mr. Dhillon has requested that the University attempt to consult with him if the University were to consider encroaching on the Fund or a variation of Terms, and the University wishes to accommodate this request.

APPROVAL REQUESTED:

The Interim VP Development and Alumni Engagement and Faculty of Medicine, with the support of Peter P. Dhillon, requests that the Board of Governors approve the request to vary the Terms of Reference for the Fund to remove reference to potential encroachment for an outdoor pool, to include background information about the Fund, and to provide instructions to the University to attempt to contact Peter P. Dhillon prior to any encroachment on the Fund or variation of the Terms.

The Office of the University Counsel supports this request.

LEGAL AUTHORITY:

The Board's authority to vary the Rashpal Dhillon Pulmonary Fibrosis Research Endowment is in section 6 of the Terms of Reference for the Rashpal Dhillon Pulmonary Fibrosis Research Endowment:

“The University may vary these Terms of Reference but only if that variation is (a) not inconsistent with the terms of the Gift Agreement dated November 21, 2005 among The University of British Columbia Foundation, William Lorne Hartley and Surinder Harbhagan Dhillon, executors of the estate of Rashpal Dhillon and Richberry Farms Ltd., and (b) recommended by the President to the Board of Governors

and approved by the Board of Governors. For greater certainty, and without limiting the generality of the foregoing, such variation may include a variation of the purpose set out in paragraph 2 of these Terms of Reference.”

THE UNIVERSITY OF BRITISH COLUMBIA

RASPAL DHILLON PULMONARY FIBROSIS RESEARCH ENDOWMENT FUND TERMS OF REFERENCE

Amended and Restated as of _____, 2018
(Varies the original Terms of Reference for the Rashpal Dhillon Pulmonary Fibrosis
Research Endowment Fund approved June 8, 2008)

BACKGROUND:

- A. Under an agreement dated November 21, 2005, among the University of British Columbia Foundation, William Lorne Hartley and Surinder Harbhagan Dhillon, executors of the estate of Rashpal Dhillon, and Richberry Farms Ltd. (the "Original Agreement"), the parties specified certain monies (the "Contribution") to be used in connection with certain research or an outdoor pool;
- B. The University (defined below) established the Rashpal Dhillon Pulmonary Fibrosis Research Endowment Fund Terms of Reference on July 4, 2008 (the "Original Terms of Reference") with half of the Contribution. The rest of the Contribution was handled separately. The Original Terms of Reference included a right to apply the fund to an outdoor pool;
- C. Under an amending agreement dated March 3, 2009, among the University of British Columbia Foundation, Surinder Harbhagan Dhillon, as sole executor of the estate of Rashpal Dhillon, and Richberry Farms Ltd. (the "Amending Agreement"), the parties agreed to amend the Original Agreement to add another option for using the Contribution, being half of the Contribution used for pulmonary fibrosis research and half of the Contribution used in connection with a track and field oval;
- D. The Contribution has been applied to pulmonary fibrosis research and to a track and field oval, as described in the Amending Agreement. Therefore, the Contribution no longer may be used for an outdoor pool; and
- E. The representative of the donor wishes to be consulted regarding any encroachment on the fund during his lifetime.

Therefore, the University wishes to vary the Original Terms of Reference to remove the reference to encroachment for an outdoor pool, add a reference to consultation with a named representative of the donor and update the variation clause to add a reference to the Amending Agreement. Accordingly, the Original Terms of Reference are amended and restated as follows:

1. Name of Fund

This Endowment Fund will be known as the Rashpal Dhillon Pulmonary Fibrosis Research Endowment Fund (the “Fund”).

2. Purpose of the Fund

The Fund is established by The University of British Columbia (the “University”) as an endowment with the intent that the capital will be held and kept invested in accordance with these Terms of Reference and the income will be used to support pulmonary fibrosis research at the University.

3. Use of Income

Without restricting the authority of the University to use the income of the Fund in any manner it decides in support of the purpose set out in paragraph 2 of these Terms of Reference, the University may:

- (a) use income to pay expenses associated with research in pulmonary fibrosis at the University of British Columbia;
- (b) use income to pay the expenses associated with the administration of the Fund;
- (c) invest, in accordance with paragraph 4 of these Terms of Reference, any income that is not for the time being used either so that invested income retains the status of income or so that invested income is added to the capital of the Fund in order to preserve the real capital value of the Fund, or both, in whatever combination the University decides.

4. Use of Capital

The University will hold the capital of the Fund and:

- (a) may invest and reinvest the Fund in the investments as the University decides and in making those investments the University is not limited to the investments authorized by the *Trustee Act* of British Columbia or any other law relating to trust funds;
- (b) may invest the Fund in any investments both inside and outside Canada as it decides;
- (c) may invest the Fund as part of the University’s pooled endowment investments and in any mutual or other pooled investment funds;
- (d) when making investment decisions, the University shall have as its objective the maintenance of the real capital value of the Fund over time and the generation of a sufficient flow of income to fund properly the purpose of the Endowment;
- (e) may accept further contributions, from any other source, whether by gift, Will or otherwise, or may otherwise add to the capital of the Fund, provided that the terms

and conditions of any donation or addition to the capital of the Fund conform to these Terms of Reference;

- (f) may, from time to time, encroach on the capital of the Fund if, in the opinion of the University, it is clearly necessary to do so in order to carry out the purposes of the Fund; provided however that the University may only encroach on the capital if that encroachment is recommended by the President to the Board of Governors and is approved by the Board of Governors, provided however, that the University will attempt to contact Peter P. Dhillon, at the address shown in the University's records, to seek Peter P. Dhillon's written advice prior to the Board of Governors approving such encroachment.

5. University Policy

Decisions on the administration, financial and otherwise, of the Fund will be made in accordance with the policies of the University as they may be amended from time to time.

6. Variation of Terms

The University may vary these Terms of Reference but only if that variation is (a) not inconsistent with the terms of the ~~Gift Agreement dated November 21, 2005 among The University of British Columbia Foundation, William Lorne Hartley and Surinder Harbhagan Dhillon, executors of the estate of Rashpal Dhillon and Richberry Farms Ltd., Original Agreement and the Amending Agreement as further amended from time to time,~~ and (b) recommended by the President to the Board of Governors and approved by the Board of Governors, provided however, that the University will attempt to contact Peter P. Dhillon, at the address shown in the University's records, to seek Peter P. Dhillon's written advice prior to the Board of Governors approving such variation. For greater certainty, and without limiting the generality of the foregoing, such variation may include a variation of the purpose set out in paragraph 2 of these Terms of Reference.

~~**7. Encroachment for Outdoor Pool**~~

~~In addition to the process for encroachment set out in Section 4(f) and upon approval by the Board of Governors under the Policy, the University may encroach on any or all of the capital of the Fund for the purpose of constructing and creating a new outdoor pool at the University~~

TO EVIDENCE the amended terms of the Fund the University has executed these Terms of Reference on the date appearing below.

The University of British Columbia

by its Authorized Signatory:

Santa J. Ono
President and Vice-Chancellor

Date:

Approved as to form by the Office of
the University Counsel

Date: _____