

CAPITAL TRUST  
FIRST UNITARIAN CHURCH  
OMAHA, NEBRASKA

John Wagner  
Proposed Changes  
04-04-18

THIS TRUST AGREEMENT, effective May 1<sup>st</sup>, 1981 and amended on ~~this 17<sup>th</sup> day of~~ May, 17, 1987, and May \_\_\_\_, 2018, by and between the FIRST UNITARIAN CHURCH of Omaha, Nebraska, hereinafter referred to as the "Unitarian Church," and THREE DULY ELECTED TRUSTEES, hereinafter referred to collectively as "Trustees," under the following terms and conditions;

WITNESSETH:

WHEREAS, the Unitarian Church owned the sum of \$118,285.95 as of the date that this agreement was first entered into, hereinafter referred to as the "capital," and

WHEREAS, the Unitarian Church is desirous of preserving the "capital," and thereby assume its protection from use for ordinary operating expenses of the Church, and

WHEREAS, the membership of the Unitarian Church at an annual meeting duly called the 29<sup>th</sup> day of May, 1981, voted unanimously to invest said proceeds to acquire the benefit of the income from interest and to have the management of said funds independent from the daily operations of the Church to preserve the capital nature of the funds, in the following form:

"RESOLVED, that the capital be paid into a trust to be administered by three trustees elected by the members of the Church. The trustees so elected shall be directed to invest the money, paying all income to the Board of Trustees for use as general church income, holding the principal intact, and, in any event, disbursing the principal only upon recommendation of the trustees approved by the Board of Trustees and ratified by the membership. In the event of a vacancy caused by the death or resignation of a trustee or trustees, the remaining trustee or trustees shall nominate successors from whom the Board of Trustees shall elect a trustee or trustees." and

WHEREAS, the membership of the Unitarian Church at its annual meeting in May, 2018, voted to amend this Agreement to allow the Trustees to increase the Capital Trust principal by prudently investing as best they can without regard to whether that increase results from income or capital gain, and made a related change to provide that rather than each year paying all income to the Church, the Church instead shall have the option during each Church fiscal year to withdraw up to 4% of the market value of the Capital Trust to pay for budgeted expenses if needed.

BE THESE TRUST POWERS THEREFORE HEREBY GRANTED:

1. Trust Property. For good and valuable consideration, including the promise of the Trustees to manage the Trust Estate for the benefit of the Unitarian Church, said Church did on the date of the original entry into this agreement transfer and deliver unto the Trustees, the sum of \$118,285.95 to have and to hold such "capital" to constitute the "Trust Estate," together with any other property that may be transferred and delivered to the Trustees thereafter by the Unitarian Church or any third party identified as a gift pursuant to the provisions of this trust; and the

Trustees agree to manage said Trust Estate for the uses and purposes of, and to transfer the income and principal thereof only upon, the terms and conditions set forth herein.

2. Name. This trust shall be known as, and property in the Trust Estate held in the name of: “THE FIRST UNITARIAN CHURCH OF OMAHA, NEBRASKA, CAPITAL TRUST” and shall be known herein as this “Trust.”

3. Dispositive Provisions. The Trustees shall hold, manage, invest and receive the Trust Estate in the manner hereinafter provided, shall collect the income thereof, and shall dispose of the net income and principal as follows:

- a. Income. The Trustees shall ~~pay annually or at such more frequent intervals as shall be convenient or in the best interests of the needs of the Church,~~ retain and reinvest as additional principal all income derived from investment of the Trust Estate, ~~as defined for income tax purposes, to the Treasurer of the Unitarian Church for its use as its Board of Trustees may from time to time direct.~~
- b. Principal. Nothing to the contrary withstanding and without discretion, the Trustees shall pay and distribute only so much of the principal as the membership of the Unitarian Church shall direct by resolution passed at a valid meeting called for that purpose, provided that in each Church fiscal year the Board of Trustees may direct the Trustees of the Capital Trust to pay and distribute no more than 4% of the market value of the assets of the Capital Trust (as of December 31 of the previous fiscal year) if and to the extent needed to pay budgeted expenses of the Church.
- c. Counsel. The Trustees are informed that they have a duty to advise the membership in the event a resolution is proposed that would require payment of such principal that would leave the balance of the Trust Estate in an amount less than the original sum in order that the membership be mindful of the purpose of this Trust at the time of a vote to expend the principal of the Trust Estate.
- d. Receipt. Receipt of any funds by the Treasurer of the Unitarian Church shall relieve the Trustees of any further accountability therefor.

4. Trustees’ Powers. The Trustees shall have the following powers and discretions, in addition to any conferred by law:

- a. To retain the capital described in paragraph 1 and any property added to the Trust Estate, without any liability for decrease in value.
- b. To sell or exchange any property comprising the Trust Estate and, without being restricted to property authorized by the State of Nebraska or of any other jurisdiction for trust investment, to invest in any kind of property whatsoever, real or personal, whether or not productive of income, and without regard to the proportion that such property, or property of a similar character held, may bear to the entire Trust Estate.

- c. To sell, exchange, or lease, mortgage, partition, or improve any property comprising the Trust Estate, upon such terms as they may deem proper, and to execute and deliver deeds, leases, mortgages, or other such instruments relating thereto. Any lease may be made for such period of time as it may deem proper without regard to the duration of the Trust or any statutory restrictions on leasing and without the approval of any court.
- d. To vote in person or by proxy any securities held by them and in such connection to delegate discretionary powers.
- e. To exercise options, conversion privileges, or rights to subscribe for additional securities and to make payments therefor.
- f. To consent to or participate in dissolutions, reorganizations, consolidations, mergers, sales, pledges, security agreements, transfers, or other changes affecting securities held by them and in such connection to delegate their discretionary powers and to pay assessments, subscriptions, and other charges.
- g. To extend or modify the terms of any bond and mortgage; to foreclose any mortgage or take title by deed in lieu of foreclosure or otherwise; to protect or redeem any property from forfeiture for nonpayment of taxes or other liens; and generally to exercise as to such bond and mortgage on such property all powers that an absolute owner might exercise.
- h. To retain any property acquired in connection with the foregoing provisions whether or not such property shall be authorized by the laws of the State of Nebraska or of any other jurisdiction for trust investments.
- i. To register any property in the Trust's own name or to hold property unregistered or in such other form that title shall pass by delivery, but without thereby increasing or decreasing their liability as Trustees.
- j. To make any division of distribution required by this agreement in cash or in other property, real or personal, or undivided interests therein, or partly in cash and partly in property.

5. Right to Rely. No person or corporation dealing with the Trustees shall be required to investigate the Trustees' authority for entering into any transaction or to see to the application of the proceeds of any transaction, or require or keep a copy of this trust agreement.

6. Trustees' Rights. The Trustees without regard to any legal restrictions otherwise applicable to trustees, shall be entitled:

- a. To act at any time and in any jurisdiction without bond or other security to ensure the faithful performance of their fiduciary duties.

- b. To rely on any document or other paper if believed by them to be genuine and to be signed and delivered by or on behalf of the proper person, firm, or corporation, without incurring liability for any action or inaction based thereon.
  - c. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or event, by reason of which an interest or estate under this agreement shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such an assumption.
  - d. To continue to have or exercise, after the termination of the Trust in whole or in part and until the final distribution and receipt thereof, all the title, powers, discretions, rights and duties conferred or imposed upon the Trustees by law or by this agreement during the existence of the Trust.
  - e. To use their best judgement in exercising the powers, discretions and rights conferred by this agreement or in performing the duties imposed on the Trustees by law, including in particular the prudent investor rule, and, in order to feel free in doing so, to be exempt from liability for any action taken or omitted in good faith.
  - f. To employ agents, depositories, and lawyers, and accountants, and to delegate to them discretionary powers if need be, and to compensate them for their services by charging the reasonable and necessary value of said services to the Board of Trustees of the Unitarian Church so long as said expenses do not exceed the annual income of the [trust estate] Trust, but not to pay for said services themselves.
  - g. To charge the Board of Trustees of the Unitarian Church for all reasonable expenses incurred in the administration thereof, but not to reimburse themselves directly therefor.
7. Principal and Income. The rights of the Unitarian Church in the Trust Estate shall be subject to the following provisions:
- a. As to any property originally or hereafter donated to the Trust Estate, all dividends declared but unpaid having a record date prior to the receipt of such property by the Trustees shall belong to the transferor, whereas all other dividends declared but unpaid and all interest accrued but unpaid at the time of the receipt of such property by the Trustees shall belong to the Trust Estate and shall be income, except as otherwise hereinafter provided in this paragraph.
  - b. If securities are acquired by the Trust Estate at values in excess of par or other stated values, the Trustees in their uncontrolled discretion may, but need not, use part of the income from such securities to restore such excess to principal. If, on the other hand, securities are acquired at values less than par or other stated value, no part of the discounts eventually realized from such securities shall be treated as principal.
  - c. All regular or ordinary dividends payable in cash, shares, bonds or other property shall be income regardless of whether or not such dividends represent either wholly

or in part assets of the declaring corporation other than earnings. All extraordinary dividends payable in the shares of the corporation declaring the dividend shall be treated as principal. All other extraordinary dividends payable in cash, shares, bonds, or other property to the extent that they represent earnings of the declaring corporation, regardless of when earned, shall be income. The Trustees shall nevertheless, to the extent possible, transfer cash rather than securities to the Board of Trustees of the Unitarian Church.

- d. The Trustees shall have discretion to resolve any doubts concerning the application of the provisions of this paragraph, or the allocation of any property between principal and income for which no express provision is made in this agreement, and their decision shall be binding upon all interested parties. The primary concern of the membership of the Unitarian Church in creating this Trust is for the preservation and growth of the principal, and they request the Trustees in exercising the foregoing discretions to take such fact into consideration.

8.8A. Additional Property. The Trust Estate may be increased from time to time by the addition of such cash or property as may be added to it by the Unitarian Church or by any person with the consent of the Trustees, and the Trustees shall receive, hold, manage, invest and reinvest any such cash and property as herein provided.

B. Unrestricted Investment Property. In addition to the Trust Estate as described in the preceding provisions, the Trustees may agree, at the request of the Board of Trustees of the Church, to accept other funds of the Church (or any Church group as approved by the Board of Trustees) (herein, "Unrestricted Funds") for management and investment pursuant to the terms and provisions of this agreement, provided that such funds (whether constituting income or principal, or both) may be withdrawn without limit at the request of the Board of Trustees (or the approved Church group). Such moneys may be commingled for investment purposes with investments of the restricted Trust Estate moneys, provided that the Trustees shall maintain appropriate records to account for the Trust Estate investments and any Unrestricted Funds investments.

9. Accounting by Trustees. The Trustees must once a year on April 30, render an account of their proceedings to the Unitarian Church, and the written approval of the Board of Trustees of the Unitarian Church shall be final, binding, and conclusive upon all persons then or thereafter interested in the Trust. The Trustees may also at any time enter a judicial account of their proceedings if they in their sole discretion deem it appropriate, provided however that the Trustees shall provide an account of their proceedings to the Board of Trustees of the Unitarian Church at least quarterly.

10. Compensation of Trustees. The Trustees agree that they will serve without compensation except for the reimbursement of actual expenses.

11. Expenses. The Board of Trustees of the Unitarian Church agrees to pay all reasonable expenses of the operation of this Trust upon submission of vouchers of the Trustees accompanied by statements of the parties performing services for the Trust for so long as such

expenditures are reasonably deemed necessary or advisable by the Trustees and do not exceed the income of the Trust for the fiscal year in which incurred.

12. Court Administration. The Trustees shall not be accountable to any court of competent jurisdiction until and unless they or the Board of Trustees of the Unitarian Church make valid petition to such court within Douglas County, Nebraska or in any other jurisdiction where assets may be held.

13. Audits and Reports. The Board of Trustees of the Unitarian Church ~~shall~~ may appoint an auditor to annually review the investments and accounting of the Trust Estate and prepare such report to the Board of Trustees as ~~he or she~~ it deems advisable. The Board of Trustees shall make any such report available to the membership of the Unitarian Church on or before the said Annual Meeting of the Church.

14. Call of Meetings. Semi-annual meetings of the Trustees shall be held at 12:00 noon on the first Sunday of April and October, each year, at the site of the Unitarian Church, or other such time or place specifically designated by the Trustees by notice. A special meeting may be called for a time and place upon seven (7) days actual notice delivered to each Trustee of this Trust called by the Board of Trustees of the Unitarian Church or by any two Trustees of this Trust. Any notice may be waived in writing.

15. Quorum and Vote. A quorum shall consist of any two Trustees and a vote of any two Trustees shall pass all actions of the Trust. Roberts Rules of Order shall prevail unless amended by a vote of two or more Trustees.

16. Offices. The Trustees shall appoint from among themselves a Chairman, Secretary, and Treasurer who shall assume the usual responsibilities of such offices.

17. Legal Instruments. All instruments required for the investment of the funds of the Trust Estate, promissory notes, or checks drawing upon any account of the Trust established with a depository of the funds of the Trust Estate shall require the signatures of any two Trustees.

18. Fiscal Year. The fiscal year of this Trust shall be from the first day of May, of each year through the last day of April.

19. Election of Trustee(s). Three Trustees having been elected as of the date that this agreement was first entered into, one for a one year term, one for a two year term, and one for a three year term, at the expiration of the term of any Trustee, the position shall be filled by another or the same Trustee elected for a subsequent three year term.

20. Expiration of Term, Resignation or Removal of Trustee(s). As specified in paragraph 19, Trustees are elected for three year terms. Additionally, any Trustee may resign by written notice to the other Trustees or the Board of Trustees of the Unitarian Church or his or her office terminate by reason of his or her death. Any Trustee may be removed at any time by majority vote of the membership of the Unitarian Church by written notice to the Trustees. Until the accounts of the Trustees are settled and the Trustees discharged, they shall continue to have all the powers and discretions granted to them hereunder or conferred by law. In case of the resignation or removal of any Trustee, or after his or her death, the remaining Trustees shall

nominate up to three successor Trustees from whom the Board of Trustees shall elect a substitute Trustee to serve the balance of the predecessor's term. Each successor Trustee upon executing an acknowledged acceptance of the trusteeship, and upon settlement of the accounts and discharge of the prior Trustee, shall be vested without further act on the part of anyone, with all the estate, title, powers, duties, immunities, and discretions granted to his or her predecessor. The prior Trustee or his or her legal representative shall, however, execute and deliver to the successor such assignments or other instruments as may be deemed advisable or necessary by counsel. If a successor Trustee is not appointed within 30 days after the giving of notice of a resignation, death or removal, the remaining Trustees may apply to a court of competent jurisdiction for the appointment of a successor. Any prior Trustee shall be entitled to reimbursement from the Unitarian Church for all expenses incurred by him or her in connection with the settlement of his or her accounts and the transfer of the Trust Estate to his or her successor.

21. Situs. This Trust has been accepted by the Trustees in the State of Nebraska, and all questions pertaining to its validity, construction, and administration shall be determined in accordance with the laws of that state.

22. Notice. Notice to any party shall be deemed sufficient if deposited in the United States mails with regular postage affixed to the following address or to the registered postal address of any one of the three Trustees, or such substitute communicated to all parties in writing:

First Unitarian Church  
3114 Harney Street  
Omaha, Nebraska 68131

23. Power of Amendment and Revocation. The membership of the Unitarian Church may from time to time by instrument signed, acknowledged, and delivered to the Trustees modify, amend, or revoke in whole or in part this agreement or the Trust hereby created. To the extent thus revoked, the Trustees shall deliver the principal assets of the Trust Estate to the Board of Trustees of the Unitarian Church, upon receiving a proper receipt, and shall execute and deliver any instruments required to release all interest of the Trustees in such property. No modification shall increase the obligations of the Trustees without their consent in writing.

24. Acceptance of Trust. The Trustees do hereby accept this Trust, and undertake to hold, manage and administer the Trust Estate in accordance with the terms of this agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this amended trust agreement.

TRUSTEES AS OF \_\_\_\_\_

FIRST UNITARIAN CHURCH

\_\_\_\_\_  
TRUSTEE

By \_\_\_\_\_  
Chairman of the Board of Trustees

\_\_\_\_\_  
TRUSTEE

Attest:

\_\_\_\_\_  
TRUSTEE

\_\_\_\_\_  
Secretary of the Board of Trustees



Document comparison by Workshare 9 on Wednesday, April 4, 2018 4:37:42 PM

<b>Input:</b>	
Document 1 ID	netdocuments://4845-2009-6862/1
Description	JJW First Unitarian Church Trust Agreement
Document 2 ID	netdocuments://4845-2009-6862/5
Description	JJW First Unitarian Church Trust Agreement
Rendering set	Kutak Option 1

<b>Legend:</b>	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	18
Deletions	6
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	26