

Order 185-06/07

Passage: 4/30/07 9-0

NICHOLAS M. MAVODONES (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES I. COHEN (5)
JAMES F. CLOUTIER (A/L)
JILL C. DUSON (A/L)
EDWARD J. SUSLOVIC (A/L)

**ORDER AMENDING ROSE BLEIER MEMORIAL
ART SCHOLARSHIP TRUST AGREEMENT**

ORDERED, that the Trust Agreement is amended to be the Rose Bleier Memorial Art Award Trust Agreement substantially as provided in Attachment A and accepting the additional funds therefor.

ATTACHMENT A

The Rose Bleier Memorial Art Award Charitable (Education) Trust Agreement

This Trust Agreement made this ___ day of April, 2001, and amended on _____, 2007, by and between Samuel Bleier of Alexandria, Virginia (the “Donor”) and the City of Portland, a body politic and corporate, having a place of business in the County of Cumberland and State of Maine, (the “Trustee”).

WITNESSETH

I, Samuel Bleier, establish this fund in memory of my mother, Rose Bleier, whose love of the arts determined the course of my life. When only thirteen, she arrived in New York from Europe. Through work and dedication, she survived hard times, educated herself and became a person of distinction, wisdom and compassion. All who knew her admired and cherished her. Therefore, I establish this Trust in her name, in perpetuity, that she may not be forgotten.

Now, therefore, for the reasons set forth above and in consideration of the mutual covenants set forth herein, the Donor and the Trustee agree to the Trust created hereby, upon the following terms and considerations:

1. Name. The Trust hereby established shall be known as “The Rose Bleier Memorial Art Award Fund” (The “Trust”).
2. Trust Property. The Donor hereby contributes to the Trustee the property described in Schedule A as the initial property and principal of the Trust.
3. Disposition of Principal and Income. The Trustee shall hold and manage the Trust principal, and such other property as may, from time to time, be delivered to it as part of this Trust, as a perpetual trust, the income

therefrom to be used for the purposes set forth herein. The Trustee will deposit Trust principal and income in the City of Portland's Endowment Trust Fund or in any similar account employed by the City of Portland to hold trust funds.

4. Disbursements.
 - (a) Prior to the end of the second semester of each school year, the Selection Committee (as defined herein) will designate a senior at Portland High School who has excelled in either painting or drawing to be the recipient of an award from the Trust.
 - (b) The initial award will be made in the spring semester of the year 2001.
 - (c) As of March, 2007, a First Place Award will be made pursuant to Section 4, paragraph (a) above, and will consist of a distribution from the Trust in the amount of 1.8% of the Trust's net asset value, rounded up or down to the nearest \$100.00.
 - (d) As of March, 2007, a Second and Third Place Award will be presented, sharing equally a distribution from the Trust in the amount of 1.8% of the Trust's net asset value (or 0.9% of net asset value for each award), rounded up or down to the nearest \$100.

5. Eligibility Requirements. The following shall apply as requirements for the three (3) annual awards:
 - (a) **FIRST PLACE AWARD:** To qualify to receive this award, the student must:
 - (i) be attending Portland High School as a full-time student and be a candidate for a diploma in his/her senior year;
 - (ii) have either completed or be enrolled in at least one art class during his or her junior or senior years;
 - (iii) have submitted one or more paintings or drawings or three dimensional art, at a time and under circumstances to be determined by the Selection Committee, for evaluation; and

- (iv) have agreed in writing that, if selected for the award, the painting or drawing will be donated by the recipient to Portland High School at the time of the presentation of the award.
 - (b) **SECOND AND THIRD PLACE AWARDS:** To qualify to receive these awards, a student must:
 - (i) be attending Portland High School as a full-time student and be a candidate for a diploma;
 - (ii) have completed or be enrolled in at least one art class at Portland High School;
 - (iii) have submitted one or more paintings or drawings or three dimensional art, at a time and under circumstances to be determined by the Selection Committee, for evaluation; and
 - (iv) have agreed in writing that, if selected for the award, the painting or drawing will be donated by the recipient to Portland High School at the time of the presentation of the award.
6. Selection Committee. At a suitable time following the start of each spring semester, the principal of Portland High School, with advice from the school's art teachers, will appoint no fewer than five members to the Selection Committee, who will be:
- (a) the principal of Portland High School or his or her designee;
 - (b) at least one qualified and impartial nominee who teaches art at the college level; or the director of the Portland Museum of Art, or a comparably qualified member of the Portland Museum of Art's staff; or other person who possess similar qualifications.
 - (c) two practicing art teachers from the City of Portland.
7. Criteria for Judging. The Selection Committee, acting by majority vote, will select the winning paintings or drawings based upon the following criteria:
- (a) quality as fine art;
 - (b) its significance and/or beauty; and its suitability for permanent display in Portland High School, as contemplated in this Agreement.

8. Failure to Make Award. If the Selection Committee should determine not to make an award or if a recipient of such an award should not qualify, then, in such an event, the funds which would have been distributed will be added to the principal.
9. Presentation of Award. The Donor requests that, insofar as is practicable, the award be made during the Annual Spring Awards Assembly.
10. Framing. A member of the Portland High School art department will arrange to have the painting or drawing selected by the committee suitably framed. He/she will also arrange to have an engraved name plate prepared to be affixed to the bottom center of the frame bearing the notation:

“The Rose Bleier Memorial Award”
[date]
[name of the artist].

The cost of framing and the name plate will be paid by the Trust.

11. Display.
 - (a) The First Place Award painting or drawing will become the property of the Portland High School Art Gallery and will be permanently displayed there so long as space reasonably permits such display.
 - (b) The Second and/or Third Place Award painting or drawing may, if deemed by the Selection Committee to be of such superior quality as to be appropriate for the Portland High School Art Gallery, also become the property of the Portland High School Art Gallery and be permanently displayed there so long as space reasonably permits such display. Otherwise, the painting or drawing will be returned to the student.
 - (c) Only those paintings or drawings selected for permanent display in the Portland High School Art Gallery shall be framed at the expense of the Trust.

12. Additions to Trust. The Donor, and any other person or entity, shall have the right at any time to add property acceptable to the Trustee to this Trust, and, in so doing, designate whether the same shall be construed, for the purposes of administration of the Trust and disposition of income, as principal or income; and, if income, then as to what fiscal year or years the same shall be applied.
13. Allocation of Income and Principal. The Trustee shall have the sole authority and discretion to determine what is income and what is principal of the Trust created by this Agreement. The Trustee shall have the sole judgment and authority to determine what expenses, costs, and charges of any kind whatsoever shall be charged against income and what shall be charged against principal. In furtherance hereof, the Trustee may apply any undistributed net income annually to principal, or to an accrual of income for use in the next following years.

The Trustee shall not be obligated, unless by order of court, to file an annual or other account in any court. The Trustee may, if requested by the Selection Committee, prepare an informal accounting for the Selection Committee, indicating the then balance of principal and income, as of an accounting date convenient to the Trustee, which date shall not be earlier than six months next prior to the date of such request, nor more than six months next after the request for such accounting. In practice, the Donor anticipates that the Trustee will make every reasonable effort to render an informal accounting to the Selection Committee within a much shorter period of time, the Trustee being specially and specifically exculpated from liability or responsibility for unintentional minor errors in expedited informal accountings, or report of current interest available (including anticipated interest within a fiscal year) which do not materially affect the duties and responsibilities of the Selection Committee.

14. Trustee's Powers. Unless specifically prohibited or limited by any other provision of this Trust Agreement, the Trustee shall have the powers specifically enumerated, set forth and described in 18-A M.R.S.A. §7-402, as it may be amended from time to time.
15. Limited Power of Amendment. Having in mind that the primary purpose and intent of the Donor in creating the Trust under this Agreement is to provide for an educational award recognizing Portland High School students who have achieved excellence in painting or drawing or three dimensional art, the provisions of this Trust Agreement shall be liberally construed in the interest of, and for the benefit of, the award recipients. The foregoing shall not, however, be deemed to limit the discretion otherwise conferred upon the Trustee by the terms of this Trust.

In furtherance hereof, the Trustee, being a municipal corporation, shall, acting alone, have the power to amend this Trust in any reasonable manner which is necessary or convenient for its own, the Selection Committee's or the Trust's administrative procedures; or to make the Trust comply with relevant provisions of the municipal ordinances and regulations of the City of Portland, the laws and regulations of the State of Maine and the laws and regulations of the United States Government, provided only that any such amendment shall not: (i) have the substantive effect of vitiating the aforesaid primary purpose and intent of the Donor; (ii) result in the Trust becoming a taxable entity for income tax purposes under state or federal law; or (iii) result in the Donor, his heirs or their respective estates, directly or indirectly, acquiring any interest in the Trust property, or rights as to its disposition not otherwise specially provided for herein.

16. Exculpation. Having in mind the benevolent and educational purpose of this Trust and the probable rendering of normal (but not extraordinary) services of the Trustee and the members of the Selection Committee without expectancy of compensation therefore, it is specially agreed, but not as a condition of such uncompensated service, that neither the Trustee, the members of the Committee nor the members of the faculty and administration of Portland High School shall be held liable in damages or otherwise be responsible to any party, whether or not of interest, for their acts or omissions hereunder for so long as the same shall not have been the result of willful misfeasance, malfeasance or fraud.
17. Governing Law. This Trust Agreement and the dispositions hereunder shall be construed and their validity and effect shall be determined by the laws of the State of Maine, as such laws may from time to time exist.

IN WITNESS WHEREOF, the parties have set forth their hands and seals on the date set forth above.

Samuel Bleier, Donor

Joseph E. Gray, Jr., City Manager

SCHEDULE A

641 shares of GPU Inc. valued at \$36.00 a share, or \$22,715.44, were delivered on December 6, 2000.

961 shares of Elan Corp., were added to the Trust and sold in January, 2006, for \$15,000.

1200 shares of Elan Corp were added to the Trust and sold on 1/29/07 for \$14,723.54.