

10459

I N A S S E M B L Y

May 27, 2016

Introduced by M. of A. WOZNIAK -- read once and referred to the Committee on Tourism, Parks, Arts and Sports Development

AN ACT to amend the arts and cultural affairs law, in relation to establishing a trust for cultural resources for the town of Cheektowaga and the city of Buffalo

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The arts and cultural affairs law is amended by adding a
2 new article 22-A to read as follows:

3 ARTICLE 22-A

4 TRUST FOR CULTURAL RESOURCES OF THE TOWN OF CHEEKTOWAGA
5 SECTION 22.20. SPECIAL DEFINITIONS.

6 22.21. LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSES.

7 22.22. CREATION AND ADMINISTRATION OF THE TRUST.

8 22.23. SPECIAL POWERS OF THE TRUST RELATING TO ASSISTING PARTIC-
9 IPATING CULTURAL INSTITUTIONS.

10 22.24. SPECIAL PROVISIONS RELATING TO THE FINANCING AND DEVELOP-
11 MENT OF FACILITIES IN THE TOWN OF CHEEKTOWAGA.

12 S 22.20. SPECIAL DEFINITIONS. AS USED OR REFERRED TO IN THIS ARTICLE,
13 ALL TERMS SHALL HAVE THE MEANINGS SET FORTH IN SECTION 20.03 OF THIS
14 CHAPTER, EXCEPT THAT THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEAN-
15 INGS:

16 1. "TOWN" SHALL MEAN THE TOWN OF CHEEKTOWAGA.

17 2. "MAYOR" SHALL MEAN THE MAYOR OF THE TOWN.

18 3. "PARTICIPATING CULTURAL INSTITUTION" SHALL MEAN ANY PERSON FORMED
19 OTHER THAN FOR PROFIT WHICH OPERATES OR MAKES AVAILABLE A CULTURAL
20 FACILITY IN THE CITY, INCLUDING BUT NOT LIMITED TO MUSEUMS, PERFORMING
21 ARTS CENTERS, PUBLIC TELEVISION AND RADIO STATIONS, THEATERS, AUDITORI-
22 UMS, LIBRARIES, EXHIBITION, PERFORMANCE AND REHEARSAL SPACE, GALLERIES,
23 ARTISTS' AND DANCERS' STUDIOS, RECORDING STUDIOS, AND RECREATIONAL,
24 EDUCATIONAL, OFFICE, LIVING, PARKING, RESTAURANT, RETAIL OR STORAGE
25 SPACE RELATED TO ANY OF THE FOREGOING. THE DECISION OF THE TRUST IN
26 DETERMINING THAT A PERSON IS A PARTICIPATING CULTURAL INSTITUTION SHALL
27 BE FINAL AND CONCLUSIVE. THE ANNUAL AVERAGE ADMISSIONS OF EACH PERSON

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD13382-02-6

1 WHICH WOULD ITSELF QUALIFY AS A PARTICIPATING CULTURAL INSTITUTION AND
2 WHICH LEASES OR LICENSES SPACE IN A PERFORMING ARTS CENTER FROM ANOTHER
3 PARTICIPATING CULTURAL INSTITUTION (THE "LESSOR") SHALL BE ATTRIBUTED TO
4 THE LESSOR FOR PURPOSES OF THIS ARTICLE AND ARTICLE TWENTY OF THIS CHAP-
5 TER.

6 4. "TRUST FOR CULTURAL RESOURCES" OR "TRUST" SHALL MEAN THE TRUST FOR
7 CULTURAL RESOURCES OF THE TOWN OF CHEEKTOWAGA CREATED BY THIS ARTICLE.

8 5. "CULTURAL DISTRICT" SHALL MEAN A GEOGRAPHIC AREA OF A CITY, TOWN OR
9 VILLAGE WITH A CONCENTRATION OF CULTURAL INSTITUTIONS WITHIN ITS
10 BORDERS.

11 S 22.21. LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSES. 1. THE LEGIS-
12 LATURE HEREBY FINDS, DETERMINES AND DECLARES:

13 (A) THAT CERTAIN MAJOR CULTURAL INSTITUTIONS LOCATED IN THE TOWN ARE
14 INVALUABLE CULTURAL, EDUCATIONAL AND RECREATIONAL RESOURCES OF THE STATE
15 AND THE CONTINUED OPERATION OF SUCH INSTITUTIONS IN THE TOWN IS FOR THE
16 BENEFIT OF THE PEOPLE OF THE STATE AND THE TOWN;

17 (B) THAT BY REASON OF THE SEVERE ECONOMIC AND FISCAL PROBLEMS FACING
18 BOTH THE STATE AND TOWN, NEITHER THE STATE NOR THE TOWN IS ABLE TO
19 ADEQUATELY SUPPORT THE CULTURAL INSTITUTIONS OF THE TOWN IN THEIR
20 EFFORTS BOTH TO PROVIDE CULTURAL, RECREATIONAL AND EDUCATIONAL OPPORTU-
21 NITIES TO THE PEOPLE OF THE STATE AND TO IMPROVE THE VIABILITY AND
22 GROWTH OF CULTURAL ORGANIZATIONS IN THE TOWN; AND

23 (C) THAT IT IS IN THE INTEREST OF THE PEOPLE OF THE STATE AND FOR
24 THEIR BENEFIT AND WELFARE TO ENCOURAGE THE CREATIVE AND INNOVATIVE USE
25 OF PUBLIC AND PRIVATE RESOURCES IN ORDER TO PRESERVE AND PROTECT THE
26 CULTURAL RESOURCES OF THE TOWN AND OTHERWISE TO EFFECTUATE THE PURPOSES
27 OF THIS ARTICLE AND ARTICLE TWENTY OF THIS CHAPTER BY THE CREATION OF
28 THE TRUST FOR CULTURAL RESOURCES OF THE TOWN OF CHEEKTOWAGA.

29 2. THE LEGISLATURE HEREBY FURTHER FINDS, DETERMINES AND DECLARES THAT
30 THE CREATION OF THE TRUST FOR CULTURAL RESOURCES OF THE TOWN OF CHEEKTOWAGA AND THE DELEGATION TO THE TRUST OF PART OF THE SOVEREIGN POWER OF
31 THE STATE ARE IN ALL RESPECTS FOR THE BENEFIT OF THE PEOPLE OF THE STATE
32 AND CONSTITUTE A GOVERNMENTAL, STATE, MUNICIPAL AND PUBLIC PURPOSE; AND
33 THAT THE EXERCISE BY THE TRUST OF THE FUNCTIONS AND POWERS GRANTED TO IT
34 UNDER THIS ARTICLE CONSTITUTES THE PERFORMANCE OF AN ESSENTIAL PUBLIC
35 AND GOVERNMENTAL FUNCTION.

36
37 S 22.22. CREATION AND ADMINISTRATION OF THE TRUST. 1. THERE IS HEREBY
38 CREATED THE TRUST FOR CULTURAL RESOURCES OF THE TOWN OF CHEEKTOWAGA
39 WHICH SHALL HAVE ALL THE POWERS, RIGHTS, PRIVILEGES AND EXEMPTIONS OF A
40 TRUST FOR CULTURAL RESOURCES DESCRIBED IN ARTICLE TWENTY OF THIS CHAPTER
41 AND THIS ARTICLE.

42 2. THE BOARD OF TRUSTEES OF THE TRUST SHALL CONSIST OF FIVE TRUSTEES,
43 ALL OF WHOM SHALL BE APPOINTED BY THE MAYOR WITH THE APPROVAL OF THE
44 TOWN COUNCIL AFTER CONSULTATION WITH PERSONS DESIGNATED BY PARTICIPATING
45 CULTURAL INSTITUTIONS. THE MAYOR, AFTER CONSULTATION WITH SUCH PERSONS,
46 SHALL APPOINT A TRUSTEE AS CHAIRPERSON OF THE BOARD OF TRUSTEES. THE
47 CHAIRPERSON SHALL PRESIDE OVER ALL MEETINGS OF THE BOARD OF TRUSTEES,
48 AND AFTER CONSULTATION WITH THE MAYOR, THE CHAIRPERSON SHALL APPOINT A
49 TRUSTEE AS PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE TRUST. THE
50 CHAIRPERSON AND THE PRESIDENT AND CHIEF EXECUTIVE OFFICER SHALL HAVE
51 SUCH POWERS AND DUTIES AS ARE SET FORTH IN THE BY-LAWS OF THE TRUST.
52 TRUSTEES SHALL BE APPOINTED FOR A TERM OF SIX YEARS FROM THE EFFECTIVE
53 DATES OF THEIR APPOINTMENTS; PROVIDED, HOWEVER, THAT THE TERM OF OFFICE
54 OF TWO TRUSTEES FIRST APPOINTED, OTHER THAN THE CHAIRPERSON AND THE
55 PRESIDENT, SHALL BE FIVE YEARS, AND THE TERM OF OFFICE OF ONE TRUSTEE
56 FIRST APPOINTED, OTHER THAN THE CHAIRPERSON AND THE PRESIDENT, SHALL BE

1 FOUR YEARS. ALL TRUSTEES SHALL CONTINUE TO HOLD OFFICE UNTIL THEIR
2 SUCCESSORS HAVE BEEN APPOINTED. IF AT ANY TIME THERE IS A VACANCY IN THE
3 MEMBERSHIP OF THE BOARD OF TRUSTEES, BY REASON OF DEATH, RESIGNATION,
4 DISQUALIFICATION OR OTHERWISE, SUCH VACANCY SHALL BE FILLED FOR THE
5 UNEXPIRED TERM IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT. THE MAYOR
6 MAY REMOVE ANY TRUSTEE FROM OFFICE FOR CAUSE.

7 S 22.23. SPECIAL POWERS OF THE TRUST RELATING TO ASSISTING PARTICIPAT-
8 ING CULTURAL INSTITUTIONS. IN ADDITION TO SUCH POWERS AS ARE CONFERRED
9 ELSEWHERE IN ARTICLE TWENTY OF THIS CHAPTER AND THIS ARTICLE, THE TRUST
10 SHALL HAVE THE FOLLOWING POWERS WHICH MAY BE EXERCISED, AT THE
11 DISCRETION OF THE BOARD OF TRUSTEES, SOLELY AND EXCLUSIVELY IN FURTHER-
12 ANCE OF ITS CORPORATE PURPOSES WITH OR WITHOUT PUBLIC AUCTION OR
13 BIDDING:

14 1. TO UNDERTAKE SURVEYS OF THE PRESENT AND ANTICIPATED NEEDS OF
15 NOT-FOR-PROFIT CULTURAL ORGANIZATIONS IN THE TOWN, INCLUDING WITHOUT
16 LIMITATION THE NEED FOR DEVELOPMENT OF THE FACILITIES OF SUCH ORGANIZA-
17 TIONS, IN ORDER TO DETERMINE WHETHER OR NOT THE TRUST MAY EFFECTIVELY
18 EXERCISE ITS POWERS AND FULFILL ITS PURPOSES IN COOPERATION WITH ANY
19 SUCH ORGANIZATIONS;

20 2. TO DEVELOP FACILITIES FOR NOT-FOR-PROFIT CULTURAL ORGANIZATIONS OR
21 CAUSE SUCH FACILITIES TO BE DEVELOPED, IN ACCORDANCE WITH THIS ARTICLE
22 AND ARTICLE TWENTY OF THIS CHAPTER, TO ACQUIRE IN CONNECTION THEREWITH
23 REAL PROPERTY OF A NOT-FOR-PROFIT CULTURAL ORGANIZATION, SUBJECT TO THE
24 RETENTION OR CREATION BY SUCH ORGANIZATION OF ANY FUTURE OR REMAINDER
25 INTERESTS IN SUCH PROPERTY, ALL OF WHICH SHALL BE VALID NOTWITHSTANDING
26 ANY RULE AGAINST PERPETUITIES, AND IN CONNECTION THEREWITH, TO INSTALL
27 OR CAUSE TO BE INSTALLED WATER, FUEL, GAS, ELECTRICAL, TELEPHONE, HEAT-
28 ING, AIR-CONDITIONING AND OTHER UTILITY SERVICES, INCLUDING APPROPRIATE
29 CONNECTIONS;

30 3. TO MAINTAIN, REPAIR, KEEP UP, MANAGE AND OPERATE ITS REAL PROPERTY
31 AND ANY FACILITY FOR A NOT-FOR-PROFIT CULTURAL ORGANIZATION OR PART
32 THEREOF DEVELOPED BY OR PURSUANT TO AN AGREEMENT WITH IT, BY MEANS WHICH
33 MAY INCLUDE THE ENFORCEMENT OF ITS RULES AND REGULATIONS IN THE MANNER
34 DESCRIBED IN PARAGRAPH (D) OF SECTION TWO HUNDRED TWO OF THE
35 NOT-FOR-PROFIT CORPORATION LAW WITH THE SAME EFFECT AS THOUGH SUCH PARA-
36 GRAPH APPLIED TO THE TRUST AND TO SUCH PROPERTY AND FACILITY;

37 4. TO OFFER TO CONVEY AND TO CONVEY ALL OR ANY PART OF THE NON-INSTI-
38 TUTIONAL PORTION OF A FACILITY OR ANY INTEREST THEREIN, AND TO TAKE ANY
39 AND ALL ACTIONS DEEMED NECESSARY OR APPROPRIATE BY THE TRUST TO ADVER-
40 TISE, PROMOTE, ENCOURAGE, AND EFFECT SUCH CONVEYANCES, ALL FUTURE OR
41 REMAINDER INTERESTS CREATED OR RETAINED BY THE TRUST IN CONNECTION THER-
42 EWITH WHICH SHALL BE VALID NOTWITHSTANDING ANY RULE AGAINST PERPETUI-
43 TIES;

44 5. TO CONVEY WITH OR WITHOUT CONSIDERATION, TO A NOT-FOR-PROFIT
45 CULTURAL ORGANIZATION THE INSTITUTIONAL PORTION OF A FACILITY DEVELOPED
46 IN COOPERATION WITH SUCH ORGANIZATION AND ANY REAL PROPERTY HELD BY THE
47 TRUST IN CONNECTION WITH SUCH DEVELOPMENT;

48 6. TO ENTER INTO A PARTNERSHIP, JOINT VENTURE OR OTHER ENTERPRISE IN
49 ANY CAPACITY DEEMED BY IT TO BE APPROPRIATE, FOR THE PURPOSE OF DEVELOP-
50 ING AND OPERATING A FACILITY FOR A NOT-FOR-PROFIT CULTURAL ORGANIZATION
51 OR ANY PART THEREOF;

52 7. TO CONVEY, WITHOUT PUBLIC AUCTION OR BIDDING, ANY REAL PROPERTY TO
53 A DEVELOPER FOR THE PURPOSE OF DEVELOPING THEREIN OR THEREON A FACILITY,
54 OR A PART OR PORTION THEREOF, SUBJECT TO THE CREATION OR RETENTION BY
55 THE TRUST OF SUCH FUTURE OR REMAINDER INTERESTS IN SUCH PROPERTY AS IT

DEEMS APPROPRIATE, ALL OF WHICH SHALL BE VALID NOTWITHSTANDING ANY RULE AGAINST PERPETUITIES;

8. TO PURCHASE OR LEASE THE INSTITUTIONAL PORTION OF A FACILITY FROM THE DEVELOPER THEREOF FOR USE AND OCCUPANCY BY A NOT-FOR-PROFIT CULTURAL ORGANIZATION;

9. TO FURNISH NOT-FOR-PROFIT CULTURAL ORGANIZATIONS WITH ADVICE AND WITH TECHNICAL AND OTHER ASSISTANCE; TO ACT AS LIAISON WITH FEDERAL, STATE AND MUNICIPAL AND OTHER LOCAL AUTHORITIES AND WITH USERS AND OCCUPANTS OF FACILITIES WITH RESPECT TO THE CULTURAL, RECREATIONAL AND EDUCATIONAL ACTIVITIES PROVIDED BY NOT-FOR-PROFIT CULTURAL ORGANIZATIONS; AND OTHERWISE TO FOSTER AND ENCOURAGE GREATER PUBLIC KNOWLEDGE OF, AND PARTICIPATION IN, THE CULTURAL, RECREATIONAL AND EDUCATIONAL ACTIVITIES OF SUCH ORGANIZATIONS;

10. TO ORGANIZE ONE OR MORE WHOLLY-OWNED SUBSIDIARY CORPORATIONS UNDER ANY APPLICABLE PROVISION OF LAW AND TO PERFORM THROUGH SUCH SUBSIDIARIES OR CAUSE SUCH SUBSIDIARIES TO PERFORM ALL OR ANY PART OF ITS POWERS AND FUNCTIONS;

11. TO ESTABLISH AND PROMULGATE SUCH RULES AND REGULATIONS AS THE TRUST MAY DEEM NECESSARY, CONVENIENT OR DESIRABLE FOR THE USE AND OPERATION OF ANY FACILITY, OR PART THEREOF, AND FOR THE USE OF ANY REAL PROPERTY DEVELOPED OR TO BE DEVELOPED BY OR PURSUANT TO AN AGREEMENT WITH IT, INCLUDING BUT NOT LIMITED TO RULES AND REGULATIONS GOVERNING THE CONDUCT AND SAFETY OF THE PUBLIC ON SUCH PREMISES;

12. TO MAKE AND EXECUTE SUCH AGREEMENTS, INCLUDING WITHOUT LIMITATION, INSTRUMENTS OF CONVEYANCE AND AGREEMENTS WITH NOT-FOR-PROFIT CULTURAL ORGANIZATIONS WITH RESPECT TO THE ARCHITECTURAL AND DESIGN CHARACTERISTICS OF ANY FACILITY, AS ARE NECESSARY OR CONVENIENT FOR THE EXERCISE OF ITS CORPORATE POWERS AND FULFILLMENT OF ITS PURPOSES;

13. TO MAKE LOANS IN ACCORDANCE WITH ARTICLE TWENTY OF THIS CHAPTER; AND

14. TO DESIGNATE, AS A CULTURAL DISTRICT, AS DEFINED IN SUBDIVISION FIVE OF SECTION 22.20 OF THIS ARTICLE, ANY REAL PROPERTY IN THE TOWN OF CHEEKTOWAGA BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF WALDEN AVENUE AND ST. MARY'S ROAD, HEADING NORTHERLY ON ST. MARY'S ROAD UNTIL INTERSECTING WITH DOAT STREET, TURNING EASTERLY ONTO DOAT STREET UNTIL PERPENDICULAR WITH THE SOUTHEAST CORNER OF SCHILLER PARK, TURNING NORTHERLY AND RUNNING PARALLEL TO SCHILLER PARK UNTIL INTERSECTING WITH PENNOCK PLACE, CONTINUING EASTERLY ON PENNOCK PLACE UNTIL INTERSECTING WITH PINE RIDGE ROAD, TURNING SOUTHERLY ON PINE RIDGE ROAD AND THEN TURNING EASTERLY AT THE INTERSECTION OF PINE RIDGE ROAD AND WILDY AVENUE, CONTINUING EASTERLY UNTIL THE INTERSECTION OF WILDY AVENUE AND HOERNER AVENUE, TURNING SOUTHERLY ONTO HOERNER AVENUE AND CONTINUING SOUTHERLY UNTIL IT INTERSECTS WITH DOAT STREET, TURNING EASTERLY AT THE INTERSECTION OF HOERNER AVENUE AND DOAT STREET AND CONTINUING EASTERLY UNTIL INTERSECTING WITH ALEXANDER AVENUE, TURNING SOUTHERLY ON ALEXANDER AVENUE AND CONTINUING SOUTHERLY UNTIL INTERSECTING WITH WALDEN AVENUE, TURNING WESTERLY AND CONTINUING WESTERLY ON WALDEN AVENUE TO THE POINT OR PLACE OF BEGINNING.

S 22.24. SPECIAL PROVISIONS RELATING TO THE FINANCING AND DEVELOPMENT OF FACILITIES IN THE TOWN OF CHEEKTOWAGA. 1. NO INDIVIDUAL WHO SERVES ON THE BOARD OF TRUSTEES, OR EQUIVALENT BODY, OF A NOT-FOR-PROFIT CULTURAL ORGANIZATION SHALL BE A DEVELOPER OF, OR SHARE IN ANY PROFITS ARISING FROM THE DEVELOPMENT OF, THE NON-INSTITUTIONAL PORTION OF A FACILITY DEVELOPED OR DESIGNED TO BE DEVELOPED FOR USE OR OCCUPANCY BY SUCH ORGANIZATION; PROVIDED THAT: (A) A PERSON IN WHICH SUCH INDIVIDUAL HAS A FINANCIAL INTEREST NOT EXCEEDING FIVE PER CENTUM OF THE EQUITY OF SUCH

1 PERSON MAY BE A DEVELOPER OF, AND MAY SHARE IN ANY PROFITS ARISING FROM
2 THE DEVELOPMENT OF, SUCH NON-INSTITUTIONAL PORTION, IF SUCH INDIVIDUAL
3 REFRAINS FROM VOTING AT ANY MEETING OF THE BOARD OF TRUSTEES, OR EQUIV-
4 ALENT BODY, OF SUCH INSTITUTION ON ANY MATTER RELATING TO THE APPROVAL
5 BY THE TRUST OF SUCH PERSON AS A DEVELOPER OF SUCH PORTION AND THE TERMS
6 AND CONDITIONS OF ANY AGREEMENT RELATING THERETO; (B) A PERSON IN WHICH
7 SUCH INDIVIDUAL HAS A FINANCIAL INTEREST MAY MAKE A LOAN TO THE TRUST,
8 TO A DEVELOPER OR TO ANY OTHER PERSON IN THE ORDINARY COURSE OF BUSINESS
9 IN CONNECTION WITH SUCH DEVELOPMENT; AND (C) ANY SUCH INDIVIDUAL MAY
10 PURCHASE OR RENT AN APARTMENT, OR ANY INTEREST THEREIN, IN SUCH PORTION,
11 FOR FAIR MARKET VALUE.

12 2. NO TRUSTEE OF THE TRUST AND NO PERSON IN WHICH SUCH TRUSTEE HAS A
13 FINANCIAL INTEREST SHALL BE A DEVELOPER OF THE NON-INSTITUTIONAL PORTION
14 OF ANY FACILITY.

15 3. IN ANY CASE IN WHICH REAL PROPERTY, CONSISTING OF ALL OR ANY PART
16 OF THE NON-INSTITUTIONAL PORTION OF A COMBINED-USE FACILITY OR IN OR ON
17 WHICH ALL OR ANY PART OF SUCH PORTION PRIOR TO COMPLETION IS DESIGNED TO
18 BE AND UPON COMPLETION IS DEVELOPED, IS EXEMPT FROM REAL PROPERTY TAXA-
19 TION PURSUANT TO SECTION 20.33 OF THIS TITLE, AND SUBJECT TO ANY AGREE-
20 MENTS WITH THE HOLDERS OF ITS BONDS OR NOTES, THE TRUST SHALL PAY OR
21 CAUSE TO BE PAID BY MEANS WHICH MAY INCLUDE AN AGREEMENT WITH A PARTIC-
22 IPATING NOT-FOR-PROFIT CULTURAL ORGANIZATION, A DEVELOPER OR AN OWNER,
23 ANNUAL SUMS IN LIEU OF TAXES TO ANY MUNICIPALITY OR POLITICAL SUBDIVI-
24 SION OF THE STATE TO WHICH SUCH TAXES WOULD OTHERWISE BE OWED, PROVIDED
25 THAT SUCH PAYMENTS IN LIEU OF TAXES SHALL BE FOR THE FULL AMOUNT OF ANY
26 SUCH TAX PAYMENTS DUE AND OWING, UNLESS SUCH MUNICIPALITY OR OTHER POLI-
27 TICAL SUBDIVISION SHALL AGREE TO A LESSER PAYMENT FOR A LENGTH OF TIME
28 TO BE SPECIFIED IN AN AGREEMENT BETWEEN THE TRUST AND SUCH MUNICIPALITY
29 OR POLITICAL SUBDIVISION; AND PROVIDED FURTHER THAT THE TRUST SHALL NOT
30 BE EMPOWERED TO RECEIVE TAX EQUIVALENCY PAYMENTS; AND FURTHER PROVIDED,
31 THAT THE NON-INSTITUTIONAL PORTION SHALL NOT BE EXEMPT FROM REAL PROPER-
32 TY TAXATION FROM AND AFTER THE DATE A TRUST CONVEYS SUCH NON-INSTITU-
33 TIONAL PORTION TO ANY NON-EXEMPT THIRD PARTY.

34 S 2. The arts and cultural affairs law is amended by adding a new
35 article 22-B to read as follows:

36 ARTICLE 22-B

37 TRUST FOR CULTURAL RESOURCES OF THE CITY OF BUFFALO

38 SECTION 22.50. SPECIAL DEFINITIONS.

39 22.51. LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSES.

40 22.52. CREATION AND ADMINISTRATION OF THE TRUST.

41 22.53. SPECIAL POWERS OF THE TRUST RELATING TO ASSISTING PARTIC-
42 IPATING CULTURAL INSTITUTIONS.

43 22.54. SPECIAL PROVISIONS RELATING TO THE FINANCING AND DEVELOP-
44 MENT OF FACILITIES IN THE CITY OF BUFFALO.

45 S 22.50. SPECIAL DEFINITIONS. AS USED OR REFERRED TO IN THIS ARTICLE,
46 ALL TERMS SHALL HAVE THE MEANINGS SET FORTH IN SECTION 20.03 OF THIS
47 CHAPTER, EXCEPT THAT THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEAN-
48 INGS:

49 1. "CITY" SHALL MEAN THE CITY OF BUFFALO.

50 2. "MAYOR" SHALL MEAN THE MAYOR OF THE CITY.

51 3. "PARTICIPATING CULTURAL INSTITUTION" SHALL MEAN ANY PERSON FORMED
52 OTHER THAN FOR PROFIT WHICH OPERATES OR MAKES AVAILABLE A CULTURAL
53 FACILITY IN THE CITY, INCLUDING BUT NOT LIMITED TO MUSEUMS, PERFORMING
54 ARTS CENTERS, PUBLIC TELEVISION AND RADIO STATIONS, THEATERS, AUDITORI-
55 UMS, LIBRARIES, EXHIBITION, PERFORMANCE AND REHEARSAL SPACE, GALLERIES,
56 ARTISTS' AND DANCERS' STUDIOS, RECORDING STUDIOS, AND RECREATIONAL,

EDUCATIONAL, OFFICE, LIVING, PARKING, RESTAURANT, RETAIL OR STORAGE SPACE RELATED TO ANY OF THE FOREGOING. THE DECISION OF THE TRUST IN DETERMINING THAT A PERSON IS A PARTICIPATING CULTURAL INSTITUTION SHALL BE FINAL AND CONCLUSIVE. THE ANNUAL AVERAGE ADMISSIONS OF EACH PERSON WHICH WOULD ITSELF QUALIFY AS A PARTICIPATING CULTURAL INSTITUTION AND WHICH LEASES OR LICENSES SPACE IN A PERFORMING ARTS CENTER FROM ANOTHER PARTICIPATING CULTURAL INSTITUTION (THE "LESSOR") SHALL BE ATTRIBUTED TO THE LESSOR FOR PURPOSES OF THIS ARTICLE AND ARTICLE TWENTY OF THIS CHAPTER.

4. "TRUST FOR CULTURAL RESOURCES" OR "TRUST" SHALL MEAN THE TRUST FOR CULTURAL RESOURCES OF THE CITY OF BUFFALO CREATED BY THIS ARTICLE.

5. "CULTURAL DISTRICT" SHALL HAVE THE SAME MEANING AS DEFINED IN SUBDIVISION FIVE OF SECTION 22.20 OF THIS ACT.

S 22.51. LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSES. 1. THE LEGISLATURE HEREBY FINDS, DETERMINES AND DECLARES:

(A) THAT CERTAIN MAJOR CULTURAL INSTITUTIONS LOCATED IN THE CITY ARE INVALUABLE CULTURAL, EDUCATIONAL AND RECREATIONAL RESOURCES OF THE STATE AND THE CONTINUED OPERATION OF SUCH INSTITUTIONS IN THE CITY IS FOR THE BENEFIT OF THE PEOPLE OF THE STATE AND THE CITY;

(B) THAT BY REASON OF THE SEVERE ECONOMIC AND FISCAL PROBLEMS FACING BOTH THE STATE AND CITY, NEITHER THE STATE NOR THE CITY IS ABLE TO ADEQUATELY SUPPORT THE CULTURAL INSTITUTIONS OF THE CITY IN THEIR EFFORTS BOTH TO PROVIDE CULTURAL, RECREATIONAL AND EDUCATIONAL OPPORTUNITIES TO THE PEOPLE OF THE STATE AND TO IMPROVE THE VIABILITY AND GROWTH OF CULTURAL ORGANIZATIONS IN THE CITY; AND

(C) THAT IT IS IN THE INTEREST OF THE PEOPLE OF THE STATE AND FOR THEIR BENEFIT AND WELFARE TO ENCOURAGE THE CREATIVE AND INNOVATIVE USE OF PUBLIC AND PRIVATE RESOURCES IN ORDER TO PRESERVE AND PROTECT THE CULTURAL RESOURCES OF THE CITY AND OTHERWISE TO EFFECTUATE THE PURPOSES OF THIS ARTICLE AND ARTICLE TWENTY OF THIS CHAPTER BY THE CREATION OF THE TRUST FOR CULTURAL RESOURCES OF THE CITY OF BUFFALO.

2. THE LEGISLATURE HEREBY FURTHER FINDS, DETERMINES AND DECLARES THAT THE CREATION OF THE TRUST FOR CULTURAL RESOURCES OF THE CITY OF BUFFALO AND THE DELEGATION TO THE TRUST OF PART OF THE SOVEREIGN POWER OF THE STATE ARE IN ALL RESPECTS FOR THE BENEFIT OF THE PEOPLE OF THE STATE AND CONSTITUTE A GOVERNMENTAL, STATE, MUNICIPAL AND PUBLIC PURPOSE; AND THAT THE EXERCISE BY THE TRUST OF THE FUNCTIONS AND POWERS GRANTED TO IT UNDER THIS ARTICLE CONSTITUTES THE PERFORMANCE OF AN ESSENTIAL PUBLIC AND GOVERNMENTAL FUNCTION.

S 22.52. CREATION AND ADMINISTRATION OF THE TRUST. 1. THERE IS HEREBY CREATED THE TRUST FOR CULTURAL RESOURCES OF THE CITY OF BUFFALO WHICH SHALL HAVE ALL THE POWERS, RIGHTS, PRIVILEGES AND EXEMPTIONS OF A TRUST FOR CULTURAL RESOURCES DESCRIBED IN ARTICLE TWENTY OF THIS CHAPTER AND THIS ARTICLE.

2. THE BOARD OF TRUSTEES OF THE TRUST SHALL CONSIST OF FIVE TRUSTEES, ALL OF WHOM SHALL BE APPOINTED BY THE MAYOR WITH THE APPROVAL OF THE CITY COUNCIL AFTER CONSULTATION WITH PERSONS DESIGNATED BY PARTICIPATING CULTURAL INSTITUTIONS. THE MAYOR, AFTER CONSULTATION WITH SUCH PERSONS, SHALL APPOINT A TRUSTEE AS CHAIRPERSON OF THE BOARD OF TRUSTEES. THE CHAIRPERSON SHALL PRESIDE OVER ALL MEETINGS OF THE BOARD OF TRUSTEES, AND AFTER CONSULTATION WITH THE MAYOR, THE CHAIRPERSON SHALL APPOINT A TRUSTEE AS PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE TRUST. THE CHAIRPERSON AND THE PRESIDENT AND CHIEF EXECUTIVE OFFICER SHALL HAVE SUCH POWERS AND DUTIES AS ARE SET FORTH IN THE BY-LAWS OF THE TRUST. TRUSTEES SHALL BE APPOINTED FOR A TERM OF SIX YEARS FROM THE EFFECTIVE DATES OF THEIR APPOINTMENTS; PROVIDED, HOWEVER, THAT THE TERM OF OFFICE

1 OF TWO TRUSTEES FIRST APPOINTED, OTHER THAN THE CHAIRPERSON AND THE
2 PRESIDENT, SHALL BE FIVE YEARS, AND THE TERM OF OFFICE OF ONE TRUSTEE
3 FIRST APPOINTED, OTHER THAN THE CHAIRPERSON AND THE PRESIDENT, SHALL BE
4 FOUR YEARS. ALL TRUSTEES SHALL CONTINUE TO HOLD OFFICE UNTIL THEIR
5 SUCCESSORS HAVE BEEN APPOINTED. IF AT ANY TIME THERE IS A VACANCY IN THE
6 MEMBERSHIP OF THE BOARD OF TRUSTEES, BY REASON OF DEATH, RESIGNATION,
7 DISQUALIFICATION OR OTHERWISE, SUCH VACANCY SHALL BE FILLED FOR THE
8 UNEXPIRED TERM IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT. THE MAYOR
9 MAY REMOVE ANY TRUSTEE FROM OFFICE FOR CAUSE.

10 S 22.53. SPECIAL POWERS OF THE TRUST RELATING TO ASSISTING PARTICIPAT-
11 ING CULTURAL INSTITUTIONS. IN ADDITION TO SUCH POWERS AS ARE CONFERRED
12 ELSEWHERE IN ARTICLE TWENTY OF THIS CHAPTER AND THIS ARTICLE, THE TRUST
13 SHALL HAVE THE FOLLOWING POWERS WHICH MAY BE EXERCISED, AT THE
14 DISCRETION OF THE BOARD OF TRUSTEES, SOLELY AND EXCLUSIVELY IN FURTHER-
15 ANCE OF ITS CORPORATE PURPOSES WITH OR WITHOUT PUBLIC AUCTION OR
16 BIDDING:

17 1. TO UNDERTAKE SURVEYS OF THE PRESENT AND ANTICIPATED NEEDS OF
18 NOT-FOR-PROFIT CULTURAL ORGANIZATIONS IN THE CITY, INCLUDING WITHOUT
19 LIMITATION THE NEED FOR DEVELOPMENT OF THE FACILITIES OF SUCH ORGANIZA-
20 TION, IN ORDER TO DETERMINE WHETHER OR NOT THE TRUST MAY EFFECTIVELY
21 EXERCISE ITS POWERS AND FULFILL ITS PURPOSES IN COOPERATION WITH ANY
22 SUCH ORGANIZATIONS;

23 2. TO DEVELOP FACILITIES FOR NOT-FOR-PROFIT CULTURAL ORGANIZATIONS OR
24 CAUSE SUCH FACILITIES TO BE DEVELOPED, IN ACCORDANCE WITH THIS ARTICLE
25 AND ARTICLE TWENTY OF THIS CHAPTER, TO ACQUIRE IN CONNECTION THEREWITH
26 REAL PROPERTY OF A NOT-FOR-PROFIT CULTURAL ORGANIZATION, SUBJECT TO THE
27 RETENTION OR CREATION BY SUCH ORGANIZATION OF ANY FUTURE OR REMAINDER
28 INTERESTS IN SUCH PROPERTY, ALL OF WHICH SHALL BE VALID NOTWITHSTANDING
29 ANY RULE AGAINST PERPETUITIES, AND IN CONNECTION THEREWITH, TO INSTALL
30 OR CAUSE TO BE INSTALLED WATER, FUEL, GAS, ELECTRICAL, TELEPHONE, HEAT-
31 ING, AIR-CONDITION AND OTHER UTILITY SERVICES, INCLUDING APPROPRIATE
32 CONNECTIONS;

33 3. TO MAINTAIN, REPAIR, KEEP UP, MANAGE AND OPERATE ITS REAL PROPERTY
34 AND ANY FACILITY FOR A NOT-FOR-PROFIT CULTURAL ORGANIZATION OR PART
35 THEREOF DEVELOPED BY OR PURSUANT TO AN AGREEMENT WITH IT, BY MEANS WHICH
36 MAY INCLUDE THE ENFORCEMENT OF ITS RULES AND REGULATIONS IN THE MANNER
37 DESCRIBED IN PARAGRAPH (D) OF SECTION TWO HUNDRED TWO OF THE
38 NOT-FOR-PROFIT CORPORATION LAW WITH THE SAME EFFECT AS THOUGH SUCH PARA-
39 GRAPH APPLIED TO THE TRUST AND TO SUCH PROPERTY AND FACILITY;

40 4. TO OFFER TO CONVEY AND TO CONVEY ALL OR ANY PART OF THE NON-INSTI-
41 TUTIONAL PORTION OF A FACILITY OR ANY INTEREST THEREIN, AND TO TAKE ANY
42 AND ALL ACTIONS DEEMED NECESSARY OR APPROPRIATE BY THE TRUST TO ADVER-
43 TISE, PROMOTE, ENCOURAGE, AND EFFECT SUCH CONVEYANCES, ALL FUTURE OR
44 REMAINDER INTERESTS CREATED OR RETAINED BY THE TRUST IN CONNECTION THER-
45 EWITH WHICH SHALL BE VALID NOTWITHSTANDING ANY RULE AGAINST PERPETUI-
46 TIES;

47 5. TO CONVEY WITH OR WITHOUT CONSIDERATION, TO A NOT-FOR-PROFIT
48 CULTURAL ORGANIZATION THE INSTITUTIONAL PORTION OF A FACILITY DEVELOPED
49 IN COOPERATION WITH SUCH ORGANIZATION AND ANY REAL PROPERTY HELD BY THE
50 TRUST IN CONNECTION WITH SUCH DEVELOPMENT;

51 6. TO ENTER INTO A PARTNERSHIP, JOINT VENTURE OR OTHER ENTERPRISE IN
52 ANY CAPACITY DEEMED BY IT TO BE APPROPRIATE, FOR THE PURPOSE OF DEVELOP-
53 ING AND OPERATING A FACILITY FOR A NOT-FOR-PROFIT CULTURAL ORGANIZATION
54 OR ANY PART THEREOF;

55 7. TO CONVEY, WITHOUT PUBLIC AUCTION OR BIDDING, ANY REAL PROPERTY TO
56 A DEVELOPER FOR THE PURPOSE OF DEVELOPING THEREIN OR THEREON A FACILITY,

1 OR A PART OR PORTION THEREOF, SUBJECT TO THE CREATION OR RETENTION BY
2 THE TRUST OF SUCH FUTURE OR REMAINDER INTERESTS IN SUCH PROPERTY AS IT
3 DEEMS APPROPRIATE, ALL OF WHICH SHALL BE VALID NOTWITHSTANDING ANY RULE
4 AGAINST PERPETUITIES;

5 8. TO PURCHASE OR LEASE THE INSTITUTIONAL PORTION OF A FACILITY FROM
6 THE DEVELOPER THEREOF FOR USE AND OCCUPANCY BY A NOT-FOR-PROFIT CULTURAL
7 ORGANIZATION;

8 9. TO FURNISH NOT-FOR-PROFIT CULTURAL ORGANIZATIONS WITH ADVICE AND
9 WITH TECHNICAL AND OTHER ASSISTANCE; TO ACT AS LIAISON WITH FEDERAL,
10 STATE AND MUNICIPAL AND OTHER LOCAL AUTHORITIES AND WITH USERS AND OCCU-
11 PANTS OF FACILITIES WITH RESPECT TO THE CULTURAL, RECREATIONAL AND
12 EDUCATIONAL ACTIVITIES PROVIDED BY NOT-FOR-PROFIT CULTURAL ORGANIZA-
13 TIONS; AND OTHERWISE TO FOSTER AND ENCOURAGE GREATER PUBLIC KNOWLEDGE
14 OF, AND PARTICIPATION IN, THE CULTURAL, RECREATIONAL AND EDUCATIONAL
15 ACTIVITIES OF SUCH ORGANIZATIONS;

16 10. TO ORGANIZE ONE OR MORE WHOLLY-OWNED SUBSIDIARY CORPORATIONS UNDER
17 ANY APPLICABLE PROVISION OF LAW AND TO PERFORM THROUGH SUCH SUBSIDIARIES
18 OR CAUSE SUCH SUBSIDIARIES TO PERFORM ALL OR ANY PART OF ITS POWERS AND
19 FUNCTIONS;

20 11. TO ESTABLISH AND PROMULGATE SUCH RULES AND REGULATIONS AS THE
21 TRUST MAY DEEM NECESSARY, CONVENIENT OR DESIRABLE FOR THE USE AND OPERA-
22 TION OF ANY FACILITY, OR PART THEREOF, AND FOR THE USE OF ANY REAL PROP-
23 erty DEVELOPED OR TO BE DEVELOPED BY OR PURSUANT TO AN AGREEMENT WITH
24 IT, INCLUDING BUT NOT LIMITED TO RULES AND REGULATIONS GOVERNING THE
25 CONDUCT AND SAFETY OF THE PUBLIC ON SUCH PREMISES;

26 12. TO MAKE AND EXECUTE SUCH AGREEMENTS, INCLUDING WITHOUT LIMITATION,
27 INSTRUMENTS OF CONVEYANCE AND AGREEMENTS WITH NOT-FOR-PROFIT CULTURAL
28 ORGANIZATIONS WITH RESPECT TO THE ARCHITECTURAL AND DESIGN CHARACTER-
29 ISTICS OF ANY FACILITY, AS ARE NECESSARY OR CONVENIENT FOR THE EXERCISE
30 OF ITS CORPORATE POWERS AND THE FULFILLMENT OF ITS PURPOSES;

31 13. TO MAKE LOANS IN ACCORDANCE WITH ARTICLE TWENTY OF THIS CHAPTER;
32 AND

33 14. TO DESIGNATE, AS A CULTURAL DISTRICT, AS DEFINED IN SUBDIVISION
34 FIVE OF SECTION 22.20 OF THIS ARTICLE, ANY REAL PROPERTY IN THE CITY OF
35 BUFFALO BOUNDED AND DESCRIBED AS FOLLOWS:

36 BEGINNING AT THE INTERSECTION OF WALDEN AVENUE AND ST. MARY'S ROAD,
37 HEADING NORTHERLY ON ST. MARY'S ROAD UNTIL INTERSECTING WITH DOAT
38 STREET, TURNING EASTERLY ONTO DOAT STREET UNTIL PERPENDICULAR WITH THE
39 SOUTHEAST CORNER OF SCHILLER PARK, TURNING NORTHERLY AND RUNNING PARAL-
40 LEL TO SCHILLER PARK UNTIL INTERSECTING WITH PENNOCK PLACE, CONTINUING
41 EASTERLY ON PENNOCK PLACE UNTIL INTERSECTING WITH PINE RIDGE ROAD, TURN-
42 ING SOUTHERLY ON PINE RIDGE ROAD AND THEN TURNING EASTERLY AT THE INTER-
43 SECTION OF PINE RIDGE ROAD AND WILDY AVENUE, CONTINUING EASTERLY UNTIL
44 THE INTERSECTION OF WILDY AVENUE AND HOERNER AVENUE, TURNING SOUTHERLY
45 ONTO HOERNER AVENUE AND CONTINUING SOUTHERLY UNTIL IT INTERSECTS WITH
46 DOAT STREET, TURNING EASTERLY AT THE INTERSECTION OF HOERNER AVENUE AND
47 DOAT STREET AND CONTINUING EASTERLY UNTIL INTERSECTING WITH ALEXANDER
48 AVENUE, TURNING SOUTHERLY ON ALEXANDER AVENUE AND CONTINUING SOUTHERLY
49 UNTIL INTERSECTING WITH WALDEN AVENUE, TURNING WESTERLY AND CONTINUING
50 WESTERLY ON WALDEN AVENUE TO THE POINT OR PLACE OF BEGINNING.

51 S 22.54. SPECIAL PROVISIONS RELATING TO THE FINANCING AND DEVELOPMENT
52 OF FACILITIES IN THE CITY OF BUFFALO. 1. NO INDIVIDUAL WHO SERVES ON THE
53 BOARD OF TRUSTEES, OR EQUIVALENT BODY, OF A NOT-FOR-PROFIT CULTURAL
54 ORGANIZATION SHALL BE A DEVELOPER OF, OR SHARE IN ANY PROFITS ARISING
55 FROM THE DEVELOPMENT OF, THE NON-INSTITUTIONAL PORTION OF A FACILITY
56 DEVELOPED OR DESIGNED TO BE DEVELOPED FOR USE OR OCCUPANCY BY SUCH

1 ORGANIZATION; PROVIDED THAT: (A) A PERSON IN WHICH SUCH INDIVIDUAL HAS A
2 FINANCIAL INTEREST NOT EXCEEDING FIVE PER CENTUM OF THE EQUITY OF SUCH
3 PERSON MAY BE A DEVELOPER OF, AND MAY SHARE IN ANY PROFITS ARISING FROM
4 THE DEVELOPMENT OF, SUCH NON-INSTITUTIONAL PORTION, IF SUCH INDIVIDUAL
5 REFRAINS FROM VOTING AT ANY MEETING OF THE BOARD OF TRUSTEES, OR EQUIV-
6 ALENT BODY, OF SUCH INSTITUTION ON ANY MATTER RELATING TO THE APPROVAL
7 BY THE TRUST OF SUCH PERSON AS A DEVELOPER OF SUCH PORTION AND THE TERMS
8 AND CONDITIONS OF ANY AGREEMENT RELATING THERETO; (B) A PERSON IN WHICH
9 SUCH INDIVIDUAL HAS A FINANCIAL INTEREST MAY MAKE A LOAN TO THE TRUST,
10 TO A DEVELOPER OR TO ANY OTHER PERSON IN THE ORDINARY COURSE OF BUSINESS
11 IN CONNECTION WITH SUCH DEVELOPMENT; AND (C) ANY SUCH INDIVIDUAL MAY
12 PURCHASE OR RENT AN APARTMENT, OR ANY INTEREST THEREIN, IN SUCH PORTION,
13 FOR FAIR MARKET VALUE.

14 2. NO TRUSTEE OF THE TRUST AND NO PERSON IN WHICH SUCH TRUSTEE HAS A
15 FINANCIAL INTEREST SHALL BE A DEVELOPER OF THE NON-INSTITUTIONAL PORTION
16 OF ANY FACILITY.

17 3. IN ANY CASE IN WHICH REAL PROPERTY, CONSISTING OF ALL OR ANY PART
18 OF THE NON-INSTITUTIONAL PORTION OF A COMBINED-USE FACILITY OR IN OR ON
19 WHICH ALL OR ANY PART OF SUCH PORTION PRIOR TO COMPLETION IS DESIGNED TO
20 BE AND UPON COMPLETION IS DEVELOPED, IS EXEMPT FROM REAL PROPERTY TAXA-
21 TION PURSUANT TO SECTION 20.33 OF THIS TITLE, AND SUBJECT TO ANY AGREE-
22 MENTS WITH THE HOLDERS OF ITS BONDS OR NOTES, THE TRUST SHALL PAY OR
23 CAUSE TO BE PAID BY MEANS WHICH MAY INCLUDE AN AGREEMENT WITH A PARTIC-
24 IPATING NOT-FOR-PROFIT CULTURAL ORGANIZATION, A DEVELOPER OR AN OWNER,
25 ANNUAL SUMS IN LIEU OF TAXES TO ANY MUNICIPALITY OR POLITICAL SUBDIVI-
26 SION OF THE STATE TO WHICH SUCH TAXES WOULD OTHERWISE BE OWED, PROVIDED
27 THAT SUCH PAYMENTS IN LIEU OF TAXES SHALL BE FOR THE FULL AMOUNT OF ANY
28 SUCH TAX PAYMENTS DUE AND OWING, UNLESS SUCH MUNICIPALITY OR OTHER POLI-
29 TICAL SUBDIVISION SHALL AGREE TO A LESSER PAYMENT FOR A LENGTH OF TIME
30 TO BE SPECIFIED IN AN AGREEMENT BETWEEN THE TRUST AND SUCH MUNICIPALITY
31 OR POLITICAL SUBDIVISION; AND PROVIDED FURTHER THAT THE TRUST SHALL NOT
32 BE EMPOWERED TO RECEIVE TAX EQUIVALENCY PAYMENTS; AND FURTHER PROVIDED,
33 THAT THE NON-INSTITUTIONAL PORTION SHALL NOT BE EXEMPT FROM REAL PROPER-
34 TY TAXATION FROM AND AFTER THE DATE A TRUST CONVEYS SUCH NON-INSTITU-
35 TIONAL PORTION TO ANY NON-EXEMPT THIRD PARTY.

36 S 3. This act shall take effect immediately.