

AGREEMENT AND DECLARATION OF TRUST

This Agreement and Declaration of Trust, made and entered into this 7th day of January, 1975, by and between THE CITY OF OKLAHOMA CITY, a municipal corporation, of the State of Oklahoma, hereinafter referred to as "City" (also referred to sometimes hereinafter as "Beneficiary"), and OKLAHOMA ZOOLOGICAL SOCIETY, INC., a charitable corporation organized under and by virtue of the laws of the State of Oklahoma, hereinafter referred to as "Trustor" (also referred to sometimes hereinafter as "Society").

WITNESSETH:

WHEREAS, the Society is duly incorporated and empowered among other things to establish, maintain, control, and operate zoological parks and gardens and other collections for the promotion of zoological, scientific purposes, and other kindred subjects and for the instruction and recreation of the people and the public and for scientific study and to promote all branches of natural history, to engage actively in biological research and participate in wild animal conservation and educational programs, to secure and receive funds and to disburse such funds in the achievement of the purposes of the corporation, and to acquire, sell, or exchange animals, plants, and specimens appropriate to the objects and purposes of the Society, and

WHEREAS, by virtue of its purposes and interests the Society is suited to supervise, plan, manage, and operate the Zoo and to select species of wildlife and other exhibits to be kept and exhibited at the Zoo, and

WHEREAS, the Society heretofore has contributed substantial sums of money and acquired various selected species of wildlife which presently are displayed at the Zoo and has assured the City that it will undertake to acquire additional species for exhibition in the Zoo, will solicit and obtain contributions to this end, will provide contribution of private citizen expertise and management for the Zoo and will expend time and effort in connection with the development, expansion and improvement of the Zoo, as has been done successfully under like or similar arrangements elsewhere in major cities with major zoos in the United States and

WHEREAS, it is deemed to be in the best interests of the City, Society, and general public that this agreement be consummated and that it will result ultimately in long-term reduced cost to the City which it now expends from tax dollars in operation of the Zoo (it being the intent to stabilize such costs for the next three years and substantially reduce it annually thereafter, barring any major unforeseen drastic changes in the general economy) and also will produce more flexibility in the growth of the Zoo and potential future operation of related activities of scientific, cultural, and educational nature and benefit the City, its surrounding metropolitan area and the tourism needs of the State of Oklahoma itself.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein contained, it is agreed as follows:

ARTICLE I

Creation of Trust

The undersigned Trustor creates and establishes a Trust for the use and benefit of The City of Oklahoma City and for the public purposes hereinafter set forth, and under the provisions of Title 60 Oklahoma Statutes, 1951, Sections 176 to 180, inclusive, as amended, the Oklahoma Trust Act, and other statutes of the State of Oklahoma.

ARTICLE II

Name

The name of this Trust shall be "OKLAHOMA CITY ZOOLOGICAL TRUST," hereinafter referred to as "Trust." Under that name it shall, so far as practicable, conduct all business and execute all instruments, and otherwise perform its duties and functions in the exercise of this Trust.

ARTICLE II

Purposes of Trust

The purposes of this Trust are:

(1) To hold, manage, invest, assign, convey and distribute as herein provided, authorized and directed, such property as Trustor, or others, may from time to time assign, transfer, lease, convey, give, bequeath, devise, or deliver unto this Trust or the Trustees thereof.

(2) To plan, establish, develop, acquire, construct, purchase, install, repair, enlarge, improve, maintain, equip, operate, and manage the existing City Zoo and such other facility for scientific, zoological or educational purposes which may hereafter be located on or near the Zoo premises as the City may hereafter authorize, including, but not limited to, the purchase, lease, construction, installation, equipping, maintenance and operation of such buildings and other facilities necessary for the servicing of the Zoo or other facilities, or for use by authorities or agencies of the United States of America, the State of Oklahoma, or other political subdivisions of government or for other uses that any municipality may undertake.

(3) To hold, maintain, and administer any leasehold rights in and to physical properties demised to the Beneficiary and to comply with the terms and conditions of any such lease.

(4) To acquire by lease, purchase, or otherwise, and to plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, and regulate any and all physical properties designated or needful for utilization in the furnishing and providing of services in connection with the Zoo and other facilities.

(5) To provide funds for the cost of financing, acquiring, constructing, leasing, equipping, maintaining, repairing and operating such Zoo, other facilities and systems and buildings and other improvements thereto and all properties (real, personal or mixed) as required for execution and fulfilling the Trust purposes as set forth in this instrument, and all other charges, costs and expenses necessarily incurred in connection therewith, and in so doing, to incur indebtedness, either unsecured or secured by all or any part of the Trust Estate and its revenues.

ARTICLE IV

Duration of Trust

This Trust shall have duration for the term of duration of the Beneficiary and until such time as its purposes shall have been fully fulfilled, or until it shall be terminated as hereinafter provided.

ARTICLE V

The Trust Estate

The Trust Estate shall consist of:

(1) The funds and property presently in the hands of the Trustees or to be acquired or constructed by Trustees and dedicated by the Trustor and others to be used for Trust purposes.

(2) Any and all leasehold rights demised to the Trustees by the beneficiary as authorized and empowered by law.

(3) Any and all money, property, real, personal or mixed, rights, choses in action, contracts, leases, privileges, immunities, franchises, benefits, and all other things of value coming into the possession of the Trustees pursuant to the provisions of this Trust Indenture.

(4) Cash in the sum of \$10.00 paid to Trustees and receipt hereby acknowledged by Trustees.

The instruments executed for each project, and each issuance of Trustees Bonds and other indebtedness, shall set out the specific property of the Trust Estate exclusively pledged and mortgaged for the payment of such indebtedness.

ARTICLE VI

The Trustees

(1) There shall be nine Trustees of this Trust.

(a) One of such Trustees shall be the Mayor of the City of Oklahoma City. The Mayor shall continue as such Trustee unless succeeded by or replaced by some other person as Mayor of the City of Oklahoma City and such latter person shall, without any further act or conveyance, become fully vested with all the estate, properties, rights, duties and obligations of such predecessor hereunder, with like effect as if originally named as Trustee hereunder.

(b) One of such Trustees shall be the person that currently has been appointed by the governing board of the Beneficiary as the City Manager of the City of Oklahoma City. We shall continue as such Trustee until succeeded by or replaced by some other person as City Manager of the City of Oklahoma City and such latter person shall, without any further act or conveyance, become fully vested with all the estate, properties, rights, duties, and obligations of his predecessor hereunder, with like effect as if originally named as Trustee hereunder. That in the event of the abolishment of the City Manager form of government for the City of Oklahoma City, then and in that event the governing board of the City of Oklahoma City shall appoint a successor Trustee upon nomination by the Mayor of Oklahoma City to said City Manager, or his successor in office.

(c) One of such Trustees shall be a person that currently has been elected as Councilman of the City of Oklahoma City, nominated by the Mayor of Oklahoma City and approved by the governing board of the City of Oklahoma City. He shall continue as such Trustee until he has been succeeded by or replaced by some other person. The governing board of the City of Oklahoma City shall appoint a successor Trustee upon nomination by the Mayor of Oklahoma City.

(d) John E. Kirkpatrick shall be a Trustee for a term of one year, commencing on the date of this indenture.

Ron Rosser shall be a Trustee for a term of two years, commencing on the date of this Indenture.

R.C. Jopling, Jr. shall be a Trustee for a term of three years, commencing on the date of this Indenture.

Wayne Parker shall be a Trustee for a term of four years, commencing on the date of this Indenture.

Lowe Runkle shall be a Trustee for a term of five years, commencing on the date of this Indenture.

S.N. Goldman shall be a Trustee for a term of six years, commencing on the date of this Indenture.

Successors to these Trustees shall be selected by the Mayor and confirmed by the City Council from a list submitted by the Society. Each of the successor Trustees so appointed shall serve a term of six years. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term in the same manner as that provided for the appointment as a successor to that position. These Trustees may succeed themselves.

Each successor duly appointed shall, without any further act or conveyance, become fully vested with all of the estate, properties, rights, powers, duties and obligations of his predecessor hereunder, with like effect as if originally named as Trustee.

No Trustee shall be paid any compensation of any kind for his or her services as a Trustee of this Trust.

(2) Bonds or other evidence of indebtedness to be issued by the Trustees shall not constitute an indebtedness of the State of Oklahoma, nor of the beneficiary, nor personal obligations of the Trustees of the Trust, but shall constitute obligations of the Trustees payable solely from the Trust Estate. Provided, however, that no indebtedness in excess of the Council approved budgeted amount during any budget year shall be incurred by the Trustees without the prior approval of the City Council of the City of Oklahoma City, both as to purpose and amount of indebtedness.

(3) The Trustees, the State of Oklahoma, and the Beneficiary hereof shall not be charged personally with any liability whatsoever by reason of any act or omission committed or suffered in good faith or in the exercise of their honest discretion in the performance of such Trust or in the operation of the Trust Estate; but any act or liability for any omission or obligation of the Trustees in the execution of such Trust, or in the operation of the Trust Estate, shall extend to the whole of the Trust Estate or so much thereof as may be necessary to discharge such liability or obligation.

(4) Notwithstanding any other provisions of this Indenture which shall appear to provide otherwise, no Trustee or Trustees shall have the power or authority to bind or obligate any other Trustee, or the Beneficiary, in his or its capacity, nor can the Beneficiary bind or obligate the Trust or any individual Trustee.

(5) The Trustees shall elect a Chairman from their members who shall preside at all meetings and perform other duties designated by the Trustees. The Trustees shall elect a Vice-Chairman from their members who shall serve as such until another member is elected as Vice-Chairman. The Vice-Chairman shall act as Chairman during the temporary absence or disability of the Chairman. If a permanent vacancy occurs in the office of Chairman or Vice-Chairman during the temporary absence or disability of the Chairman. If a permanent vacancy occurs in the office of Chairman or Vice-Chairman, the Trustees shall elect a succes-

sor thereto from its members. The Trustees shall designate the time and place of all regular meetings, which meetings shall be public. All actions by the Trustees pursuant to the provisions of this Trust Indenture shall be approved by the affirmative vote of at least a majority of all the Trustees.

ARTICLE VII

Powers and Duties of the Trustees

To accomplish the purposes of the Trust, and subject to the provisions and limitations otherwise provided in this Trust Indenture, the Trustees shall have, in addition to the usual powers incident to their office and the powers granted to them in other parts of this Trust Indenture, the following rights, powers, duties, authority, discretion and privileges, all of which may be exercised by them without any order or authority from any court.

(1) To hold, manage, operate and develop the Zoo, including the premises, buildings, equipment and zoological collection, in such manner as will, in the opinion of the Trustees, best serve the interest of the City, except that the Trustees must have the approval of the City Council to make any capital improvements to the land or buildings.

(2) To hire and discharge its employees as may be required in the management, operation and development of the Zoo, said employees to have all rights and privileges enjoyed by City employees so far as legally permissible. Retirement and other employee benefits equal or superior to those applicable to City employees shall be provided by the Trustees.

(3) To operate or provide for the operation of such concessions within the premises of this Agreement as may be useful or incidental to the operation of a Zoological Park and to receive and apply the net proceeds thereof solely to the management, operation and development of the Zoo, provided, however, that this provision is subject to any contracts existing upon the date of execution of this Indenture.

(4) To maintain insurance, naming the Trust, Trustor, and City as co-insured, insuring the parties against loss or claim for loss or damage by virtue of personal injury or property damage to third persons arising out of the operation of the Zoo or other facility in an amount and coverage of \$500,000.00 each person and \$1,000,000.00 each accident, and to maintain Workman's Compensation Insurance covering all statutory liability with regard to its employees.

(5) To request the City Council, from time to time, to provide for the making of capital improvements when, in the judgment of the Society, such improvements are necessary or desirable for the development of the Zoo and are consistent with the masterplanning as approved.

(6) To enter into contracts for the acquisition, construction, enlargement and improvement of buildings, works, and facilities authorized to be acquired and constructed, enlarged and improved, pursuant to the terms of this Trust Indenture and in compliance herewith, other than those buildings, works and other facilities to be constructed by the employees of the Trustees; provided, however, that:

(a) It is the intent of this Trust Indenture that there be effective competition on contracts for all construction work and materials involving an outlay and expenditure in excess of \$2,000.00; provided, howe, should the Trustees find that an immediate emergency exists by reason of which an immediate outlay of funds in an amount exceeding \$2,000.00is necessary in order to avoid loss of life, substantial damage to property, or damage to the public peace or safety, then contracts may be made and entered into without competitive bids. Contracts involving an outlay and expenditure in excess of \$750.00 but not in excess of \$2,000.00 may be

made only after informal quotations of costs have been obtained from at least three reliable sources capable of accomplishing the project contemplated, if available. Contracts in excess of \$2,000.00 for the construction of all improvements as a whole or in part shall be entered into only after reasonable public advertisement for bids, and the Trustees shall cause plans and specifications to be prepared in sufficient detail for contractors to submit bids on such construction work. Plans and specifications shall be made available to all bidders and, whenever practicable, in the opinion of the Trustees, final detailed plans and specifications will be prepared prior to advertisement for bids and shall be made available to all bidders.

(b) The Trustees may reject all bids and readvertise for bids or may enter into a contract or contracts with a responsible bidder or bidder who, in the opinion of the Trustees, shall offer the terms deemed most favorable to the Trust Estate. All contractors to whom any construction contract for any project or part thereof is let shall be financially responsible and bear a good reputation in the industry. The Trustees may prescribe such bidding qualifications as they deem necessary and desirable.

(c) All construction contracts shall be bonded (performance and statutory) for one hundred percent (100%) of the amount of the contract.

(d) On major construction projects the invitation to bid, the bidding, and letting of contracts may be by sections, segments or for particular parts or units of the total work to be performed.

(7) To employ such architectural and engineering firm or firms, as the Trustees deem necessary, to prepare such preliminary or detailed plans, specifications, cost estimate and feasibility reports as are required, in the opinion of the Trustees. The cost of such engineering and architectural work shall be paid out of the proceeds of the sale of bonds or from such other funds as may be available therefore.

(8) To enter into contracts for the sale of bonds, notes or other evidences of indebtedness or obligations of the Trust for the purpose of acquiring or constructing works and facilities authorized to be acquired or constructed pursuant to the terms of this Trust Indenture and for that purpose may:

(a) Employ a financial advisor, or committee of advisors, to advise and assist the Trustees in the marketing of such bonds, notes or other evidences of indebtedness or obligations, and to present financial plans for the financing of the acquisition or construction of each project, and to recommend to, or consult with, the Trustees concerning the terms and provisions of bond indentures and bond issues, and may pay appropriate compensation for such work and services performed in the furtherance of the project;

(b) Sell all bonds, notes or other evidences of indebtedness or obligations of the Trust in installments or series and on such terms and conditions and in such manner as the Trustees shall deem to be in the best interest of the Trust Estate.

(c) Appoint and compensate attorneys, paying agencies and corporate trustees in connection with the issuance of any such bonds, notes, evidences of indebtedness or other obligations of the Trust; and

(d) All bonds shall be sold to the highest bidder at not less than par and accrued interest and shall bear the lowest rate of interest obtainable not to exceed the maximum interest rate authorized by the laws of the State of Oklahoma.

(9) To enter into and execute, purchase, lease or otherwise acquire property, real, personal or mixed, contracts, leases, rights, privileges, benefits, choses in action, or other things of value and to pay for the same in cash, with bonds or other evidences of indebtedness or otherwise.

(10) To make and change investments, to convert real into personal property, and vice versa, to lease, improve, exchange or sell, at public or private sale, upon such terms as they deem proper, and to resell, at any time and as often as they deem advisable, any or all the property in the Trust, to refund outstanding bonded indebtedness and to execute therefor bonds, notes, or other evidences of indebtedness or obligations, and to secure the same by mortgage, lien, pledge or otherwise; to purchase property from any person, firm, corporation or public Trust, and lease or sublease land and other property to and from the Beneficiary or others and construct, improve, repair, extend, remodel, and equip buildings, improvements and other facilities thereon and to operate or lease or rent the same to individuals, partnerships, associations, corporations and others, including the United States of America or the State of Oklahoma and agencies or authorities of the United States of America, or of the State of Oklahoma, or of any municipality thereof, and also including all municipal or other political subdivisions of the State of Oklahoma as well as the Beneficiary hereof, and to do all things to accomplish the purposes set out in ARTICLE III of this Trust Indenture, and procure funds necessary for such purpose by the sale of bonds or other evidences of indebtedness by mortgages, liens, pledges or other encumbrances of such real and personal property, buildings, improvements and other facilities owned or otherwise acquired, leased or controlled by Trustees, and by rentals, income, receipts and profits therefrom or from any other revenues associated with the ownership, operation or control of the property of the Trust; to lease or sublease any property of the Trust or of which the Trustees may become the owners or lessees.

(11) Subject to approval of the City Council: (a) to fix, demand and collect charges, rentals and fees for the services and facilities of the Trust subject to the approval of the City Council and to discontinue furnishing of services and facilities to any person, firm or corporation, or public instrumentality, delinquent in the payment of any indebtedness to the Trust;

(b) to purchase and sell such supplies, goods, and commodities as are incident to the operation of its properties.

(12) To make and perform contracts of every kind, including management contracts, with any person, firm, corporation, association, trusteeship, municipality, government or sovereignty; and subject to the provisions of ARTICLE VI (2) set forth above without limit as to amount to draw, make, accept, endorse, assume, guarantee, account, execute and issue promissory notes, drafts, bills of exchange, acceptances, warranties, bonds, debentures, and other negotiable or non-negotiable instruments, obligations and evidences of unsecured indebtedness, or of indebtedness secured by mortgage, deed of trust or otherwise upon any or all income of the Trust, in the same manner and to the same extent as a natural person might or could do. To collect and receive any property, money, rents, or income of any sort and distribute the same or any portion thereof for the furtherance of the authorized Trust purposes set out herein.

(13) The Trustees shall file with the Mayor and City Council a quarterly Financial Report, including a balance sheet, a comparative analysis of income and expenses, an analysis of sale, acquisition or exchange of animals, together with a summary of the Trust activities for the quarter.

(14) The Trustees shall file with the Mayor and City Council a certified copy of the annual audit made, by an auditor or auditing firm appointed by the Trustees and approved by the City Council, of the funds, accounts, and fiscal affairs of the Trust at the time as is required by Section 180.1 of Title 60, Oklahoma Statutes Annotated.

(15) The governing body of the Beneficiary shall have the right to conduct, or have conducted, a complete audit, at its expense, of the funds, accounts and fiscal affairs of the Trust at any time, at its discretion.

(16) The Trustees shall, no later than March 1 of each year, file with the Mayor and City Council an operating and capital budget(s) for the next fiscal year. The form of such operating budget shall be as provided by the City Manager, or his successor Trustee.

(17) To do all other acts in their judgment necessary to do in connection with the management, investment, and distribution of the Trust Estate and income therefrom.

(18) The whole title, legal and equitable, to the properties of the Trust is and shall be vested in the Trustees, as such title in the Trustees is necessary for the due execution of this Trust. Said Trustees shall have and exercise exclusive management and control of the properties of the Trust Estate for the use and benefit of the Beneficiary; but may agree for approval of any or all of its actions and transactions by the governing board of the Beneficiary. The Trustees may select depositories for the funds and securities of this Trust.

(19) The Trustees may compromise any debts or claims of or against the Trust Estate, and may adjust any dispute in relation to such debts or claims by arbitration or otherwise and may pay any debts or claims against the Trust Estate upon any evidence deemed by the Trustees to be sufficient. The Trustees may bring any suit or action, which in their judgement is necessary or proper to protect the interests of the Trust Estate, or to enforce any claim, demand or contract for the Trust; and they shall defend, in their discretion, any suit against the Trust, or the Trustees, or employees, agents or servants hereof. They may compromise and settle any suit or action, a discharge the same out of assets of the Trust Estate, together with court costs and attorneys' fees. All of such expenditures shall be treated as expenses of executing this Trust.

No purchaser at any sale or lessee under a lease made by the Trustees shall be bound to inquire into the expedience, propriety, validity or necessity of such sale or lease or to see to or be liable for the application of the purchase or rental moneys arising therefrom.

ARTICLE VIII

Duties of the City

It is mutually agreed that, in consideration of the faithful performance of the Trust provided in the operation, management and development of the Zoo, during the continuance of this Agreement, the City agrees:

(1) Prior to submission of the budget to Council, the Trust shall file with the City Manager an operating budget in a form specified by the City Manager setting forth expenses and income estimation for the succeeding year. Said budget shall show that the Trust has adopted several measures (admission fees, concession contract, charges for rides, etc.) to collect all possible operating income in excess of the City's subsidy.

(2) The Trust shall file with the City quarterly budget reports comparing actual with estimated income and expenditures.

(3) To make such capital improvements as recommended by the Trust and approved by the City Council.

The Trustees shall have no duties, obligations or responsibilities whatsoever and shall not be required to take any action under provisions hereof, particularly, but not by way of limitation, those specified in ARTICLE VII hereof until such time as the actuating contracts contemplated herein have been approved and executed by the parties in the form of written lease contracts and other written agreements conveying the Trust Estate and contributions by the City making effective such provisions.

ARTICLE IX

Beneficiary of Trust

Trustor now declares that this Trust Indenture shall be irrevocable from the moment it is signed by it and delivered to the Trustees, and that it shall thereafter stand without any power whatsoever at any time to alter, amend, revise, modify, revoke or terminate any of the provisions of this Trust Indenture, except with the consent of all parties in interest.

Subject to the provisions of ARTICLE VII, set forth above, the Beneficiary shall have no legal title, claim or right to the Trust Estate, its income, or to any part thereof, or to demand or require any partition or distribution thereof. Neither shall the Beneficiary have any authority, power or right whatsoever, to do or transact any business for, or on behalf of, or binding upon the Trustees or upon the Trust Estate, nor the right to control or direct the actions of the Trust pertaining to the Trust Estate or any part thereof. The Beneficiary shall be entitled solely to the benefits of this Trust, as administered by the Trustees hereunder, and at the termination of the Trust as provided herein, and then only the Beneficiary shall receive the residue of the Trust Estate.

ARTICLE X

Termination of Trust

This Trust shall become effective upon the date of acceptance of the beneficial interest by the City and only shall terminate:

(1) When the purposes set out in ARTICLE III of this instrument shall have been fully executed; or

(2) In the manner provided by Title 60, Oklahoma Statutes 1951, Section 180.

(3) At the election of either party at the expiration of ninety (90) days from the date of service of written notice by either party upon the other stating its desire to terminate the Agreement of Trust.

(4) At the election of the Trust at the expiration of ninety (90) days from the date of service of written notice of the Trust upon the City, stating its desire to terminate this Agreement and Trust because of the Failure of the City to meet its financial obligations, as outlined in ARTICLE VIII herein provided for the operations of the said Oklahoma City Zoo.

Service of written notice: (a) upon the City shall be by registered or certified letter addressed to the City Manager of the City of Oklahoma City; (b) upon the Trust shall be by registered or certified letter addressed to its Secretary.

Provided, however, that this Trust shall not be terminated by voluntary action if there be outstanding indebtedness of fixed term obligations of the Trustees, unless all owners of such indebtedness or obligations shall have consented in writing to such termination.

Upon the termination of this Trust, the Trustees shall proceed to wind up the affairs of this Trust, and after payment of all debts, expenses and obligations out of the moneys and properties of the Trust Estate to the extent thereof, shall distribute the residue of the money and properties of the Trust Estate to the Beneficiary hereunder. Upon final distribution, the powers, duties and authority of the Trustees hereunder shall cease.

ARTICLE XI

The Trustees accept the Trust herein created and provided for, and agree to carry out the provisions of this Trust Indenture on their part to be performed.