

LAW OFFICES  
HIRSH, JOHANNING AND HUDSON  
OKLAHOMA CITY

DECLARATION OF TRUST  
OF  
THE BETHANY - WARR ACRES PUBLIC WORKS AUTHORITY

KNOW ALL MEN BY THESE PRESENTS:

I

DECLARATION AND COVENANT

The undersigned Trustor hereby contracts with the undersigned Trustees, and the latter, as individuals and not as holders of public office, hereby do declare and covenant, between themselves and unto the Trustor, the State of Oklahoma and the Beneficiaries hereinafter described, that they and their successors do and will hold, receive and administer the Trust Estate hereinafter described, as Trustees of a public trust under and pursuant to the laws of the State of Oklahoma now in force and effect (generally, but not exclusively, Sections 176 to 180, inclusive, of Title 60, Oklahoma Statutes 1971, and the Oklahoma Trust Act), solely for the use and benefit of said

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Beneficiaries for the public purposes and functions hereinafter set forth, in the manner provided in this instrument or, in the absence of applicable provision herein, then in the manner now provided by law. The aforesaid public trust is created by virtue of the execution of this instrument by the individuals signing the same as the Trustor and initial Trustees hereunder; and neither the acceptance of the beneficial interest hereunder, nor the endorsement hereon of such acceptance, for and on behalf of the designated Beneficiaries as provided by law, nor the fact that, at the time of signing this instrument, some or all of the initial Trustees are members of one of the governing bodies thereof, or of any component thereof shall be deemed or construed to be the creation of a public trust by said Beneficiaries or component thereof or the governing body of any thereof.

II

NAME

The name of this Trust shall be, and the Trustees in their representative fiduciary capacity shall be designated as,

THE BETHANY - WARR ACRES PUBLIC WORKS AUTHORITY.

Under that name they shall, so far as practicable, conduct all business, and execute all instruments in writing, and otherwise perform their duties and functions in the execution of this Trust.

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III

PURPOSES

The purposes of this Trust, for and on behalf of the Beneficiary as hereinafter described, are:

- (a) To furnish and supply to the inhabitants, owners and occupants of property, and to industrial, commercial and mercantile establishments and enterprises within the corporate limits of Oklahoma County, State of Oklahoma, and to the beneficiaries and any other governmental agencies or endeavors, utility facilities for all purposes that the same be authorized or proper as a function of the Beneficiaries, and to fix, demand and collect charges, rates and fees for said services and facilities to the same extent as the Beneficiaries themselves might do: PROVIDED, that the furnishing of any services or facilities to any person delinquent in the payment of any indebtedness whatsoever to the Trust may be discontinued at any time;
- (b) To provide a sanitary sewer system for the collection and disposal of waste in a manner which will protect the public health and welfare, prevent water pollution or air pollution, prevent the spread of disease, and abate public nuisances, conserve natural resources and enhance the quality of the environment;
- (c) For the furtherance of the greater convenience and welfare of the Beneficiaries and the inhabitants thereof, to provide and/or to aid in providing and/or to participate in providing to the United States of America, the State of Oklahoma, the Beneficiaries, the school district and/or districts included in whole or in part, within the limits of the Beneficiaries, and/or any agency or instrumentality or either or any of them, or to any one or more of them, facilities and/or services of any and/or all kinds necessary or convenient for the functioning thereof;
- (d) To hold, maintain and administer any leasehold rights in and to properties of the Beneficiaries demised to the Trustees, and to comply with the terms and conditions of any leases providing said rights;
- (e) To acquire by lease, purchase or otherwise, and to hold, construct, install, equip, repair, enlarge, furnish, maintain and operate or otherwise deal with, any and all physical properties and facilities needful or convenient for utilization in executing or promoting the execution of the aforesaid trust purposes or any of them; to lease, rent, furnish, provide, relinquish, sell or otherwise dispose of, or otherwise make provision for, any or all of said properties and facilities either in execution of any of the aforesaid trust purposes or in event that any thereof shall no longer be needful for such purposes;

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(f) To provide funds for the costs of financing, acquiring, constructing, installing, equipping, repairing, remodeling, improving, extending, enlarging, maintaining, operating, administering and disposing of or otherwise dealing with any of the aforesaid physical properties and facilities, and for administering the trust for any or all of the aforesaid trust purposes, and for all other charges, costs and expenses incidental thereto; and in so doing to incur indebtedness, either unsecured or secured by any part or parts of the Trust Estate and/or revenues thereof;

(g) To expend all funds coming into the hands of the Trustees, as revenue or otherwise, in the payment of the aforesaid costs and expenses, and in the payment of any indebtedness incurred by the Trustees for the purposes specified herein, and in the payment of any other debt or obligation properly chargeable against the Trust Estate, and to distribute the residue and remainder of such funds to the Beneficiaries for the payment of all or any part of the principal and/or interest of any bonded indebtedness of the Beneficiaries and/or for any one or more authorized or proper purposes of the Beneficiaries as shall be specified by the Trustees hereunder.

(h) Whenever the same shall be or become material, the purposes set forth in paragraphs (a), (b), and (c) of this Section shall be the primary objectives of this Trust and the provisions of paragraphs (d) to (g), inclusive, shall be deemed and construed in implementation thereof and collateral thereto.

For all purposes of this Section, the word "facilities" as used herein means real estate and all privileges, benefits and appurtenances thereto, also buildings, structures, installations, and all physical property whatsoever, and all rights, privileges and benefits appertaining or related thereto.

## IV

DURATION

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

## V

TRUST ESTATE

The Trust Estate shall consist of all money, property (real, personal and/or mixed), rights, choses in action, contracts, leases, privileges, franchises, benefits and all other things of value (whether or not above described)

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presently in or hereafter coming into the hands, or under the control of the Trustees pursuant to the provisions of this instrument or by virtue of the Trusteeship herein declared.

VI

THE TRUSTEES

(a) The Trustees of This Trust shall be five (5) in number designated respectively as Trusteeships I, II, III, IV, and V, and the Trustees of this Trust, except as hereinafter provided shall, ex officio, be the same persons who currently shall be:

As to Trusteeships I and II, the presiding officer of the governing body of the City of Bethany, Oklahoma, and the presiding officer of the governing body of the City of Warr Acres, Oklahoma; and

As to Trusteeship III, the City Manager of the City of Bethany, Oklahoma, or if there then be no City Manager thereof, the City Administrator thereof, or if there then be no City Administrator thereof, the City Clerk of said City; and as to Trusteeship IV, the City Manager of the City of Warr Acres, Oklahoma, or if there then be no City Manager thereof, the City Administrator thereof, or if there then be no City Administrator thereof, the City Clerk of said City:

As to Trusteeship V, the undersigned, to serve a term extending to December 31, 1974, and thereafter, on January 1 of each year, beginning January 1, 1975, this Trusteeship shall be a person, resident of either the City of Bethany, Oklahoma, or the City of Warr Acres, Oklahoma, appointed in odd numbered years by the presiding officer of the governing body of the City of \_\_\_\_\_ and in even numbered years by the presiding officer of the governing body of the City of \_\_\_\_\_, for a term extending to the succeeding December 31, and in each instance subject to the approval of a majority of the governing body over which said appointing officer presides;

PROVIDED:

- (1) Each undersigned Trustee shall continue as such, unless temporarily replaced pursuant to (d) of this Section, until succeeded and replaced by some other person as an officer of one of the Beneficiaries above-designated, ex officio, to be a Trustee and such other person shall have qualified as a Trustee hereunder as provided in (e) of this Section;
- (2) Each person who shall become such an above-designated officer of the respective Beneficiaries or who shall be appointed and approved as aforesaid, shall be entitled to qualify as, and to become, a Trustee hereunder and to continue as such, unless temporarily replaced pursuant to (d) of this Section, until succeeded and replaced by some other person as such officer or some other person shall have been appointed and approved as aforesaid, and such other person shall have qualified as a Trustee hereunder as provided in (e) of this Section; and

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- (3) All of the legal rights, powers, and duties of each Trustee shall terminate when he shall cease to be a Trustee hereunder and all of such legal rights, powers and duties shall devolve upon his successor and successors, with full right and power of the latter to do or perform any act or thing which his predecessor or any predecessor could have done or performed.
- (b) Each Trustee qualifying under this instrument shall continue as such until his successor shall have qualified as provided in (e) of this Section.
- (c) The determination of the fact of a vacancy shall be vested exclusively in the remaining Trustee or Trustees and his or their determination of such fact shall be conclusive; and, in the event that such a vacancy shall be determined to exist, the remaining Trustee or Trustees may fill such vacancy pending qualification, as provided in (e) of this Section, of the person entitled so to do.
- (d) The Trustees may contract, in connection with the incurring of any indebtedness or obligation related to the Trust Estate and/or its revenues, or any part of either or both, that Temporary Trustees, residents of Oklahoma County, Oklahoma, and approved by the District Court of said county or a Judge of said court, may be appointed to act in place and instead of permanent Trustees in relation to the Trust Estate or any part thereof, in such number that such Temporary Trustees may constitute a majority of the Trustees, in the event of a default in the performance of such obligations or the payment of the principal of and interest on any debt incurred in relation to the trust estate or any portion thereof or compliance with the terms of any instrument securing such debt or pursuant to which such debt be incurred. Any such contract, if made, shall provide for the method of appointment of each Temporary Trustee and shall also provide that any such appointment shall designate the permanent Trustee to be so temporarily supplanted. Each such Temporary Trustee so appointed shall, after he shall have qualified as provided in (e) of this Section, supplant in all respects the permanent Trustee so designated in relation to the Trust Estate or that portion thereof for which he was appointed; and, during the term of any such Temporary Trustee, the permanent Trustee so supplanted shall be wholly without authority, duty or liability of any kind in relation to the Trust Estate or said portion thereof, under the terms of this instrument. All Temporary Trustees shall cease to have any power or authority upon the termination of all defaults by which their appointments would have been authorized, and, automatically, the permanent Trustees supplanted shall be reinstated.

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(e) All Trustees, and all Temporary Trustees appointed hereunder, shall qualify by written acceptances of all of the terms of this instrument, duly acknowledged and filed in the offices of the respective Clerks of the Beneficiaries, and by subscribing and filing such oaths as shall be required by law of public officers of the State of Oklahoma.

(f) Upon each change of personnel of the Trustees hereunder, the Trustees shall cause to be filed in the offices of the Clerks mentioned in (e) above, a certificate as to the entire personnel of the Trustees of the Trust.

(g) The acceptance of the office of Trustee of this Trust shall not constitute the Trustees hereunder, Temporary or permanent or both, to be in partnership or association. Each shall be an individual and wholly independent Trustee only.

(h) Notwithstanding any other provision of this instrument which shall appear to provide otherwise, no Trustee or Trustees shall have any power or authority to bind or obligate any other Trustee, or any Beneficiary in his or its individual capacity.

All persons, firms, associations, trusteeships, corporations, municipalities, governments and sovereignties contracting with any Trustee or Trustees, Temporary or permanent or both, shall take notice that all expenses and obligations and all debts, damage, judgments, decrees or liabilities incurred by any Trustee or Trustees, Temporary or permanent or both and any of the foregoing incurred by any agent, servant or employees of the aforesaid Trustees, in the execution of the purposes of this Trust, whether arising from contract or tort, shall be solely chargeable to any payable out of the Trust Estate. In no event shall any Trustee, Temporary or permanent, in any manner be individually liable for any damage or injury to person or property, or for breach of contract or obligation, caused by, arising from, incident to, or growing out of the execution of this Trust, nor shall they, or any of them,

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be liable for the acts or omissions of each other, or of any agent, servant, or employee of the aforesaid Trustee, or of another such Trustee; PROVIDED, however, that the foregoing shall not apply to any wilfull or grossly negligent breach of trust of any said Trustee.

VII

POWERS AND DUTIES OF TRUSTEES

The Trustees, in the manner hereinafter set forth, shall do, or cause to be done, in lawful manner, all things which are incidental, necessary, proper or convenient to carry fully into effect the purposes enumerated in Section III of this instrument, the general authority hereby given being intended to make fully effective the power of the Trustees under this instrument; and said Trustees are specifically authorized (but their general powers not limited thereby, notwithstanding any specific enumeration or description), in effecting such purposes:

- (a) To enter in and conduct and execute, apply for, purchase, or otherwise acquire franchises, property (real or personal), contracts, leases, rights, privileges, benefits, choses in action, or other things of value, and to pay for the same in cash, with bonds or evidence of indebtedness, otherwise;
- (b) To acquire, own, hold, manage, and in any manner to convey, assign, dispose of, liquidate, compromise, or realize upon any contract, lease, right, privilege, benefit, chose in action, franchise, property (real or personal), or other thing of value, and to exercise all of the powers necessary or convenient in respect to same;
- (c) To guarantee, acquire, purchase, hold, sell, assign, transfer, encumber, dispose of, and deal in the stocks, bonds, debentures, shares or evidences of interest in or indebtedness of any corporation, association, municipality, government, sovereignty, trusteeship, firm or individual, to enter into and perform any lawful contract in relation thereto and to exercise all the rights, powers and privileges in relation thereto to the same extent as a natural person might or could do;

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- (d) To enter into, make and perform contracts of every lawful kind, including, but not restricted to, management contracts, with any person, firm, association, corporation, trusteeship, municipality, government or sovereignty; and without limit as to amount, to draw, make, accept, indorse, assume, guarantee, discount, execute and issue promissory notes, drafts, bills of exchange, acceptances, warrants, bonds, debentures, and other negotiable and transferrable, or non-negotiable or non-transferrable, instruments, obligations, and evidences of secured or unsecured indebtedness, and if secured by mortgage, deeds of trust, or otherwise, to create a charge upon any or all property of the Trust, and to pledge any or all income of the Trust, in the same manner and to the same extent as a natural person might or could do;
- (e) To collect and receive any property, money, rents, or income of any sort, and to distribute the same, or any portion thereof, for the furtherance of the purposes enumerated in Section III of this instrument;
- (f) The Trustees shall hold the legal title to all property at any time belonging to the Trust in the name of the Trust, and shall have and exercise exclusive management and control of the same, for the use and benefit of the Beneficiaries, in the execution of this Trust, and the right of said Trustees to manage, control and administer the said Trust, its properties, assets, facilities and services, shall be absolute and unconditional, free from the direction, control and management of the Beneficiaries or any person or persons whatsoever, but they shall file with the governing boards of the Beneficiaries, annually, a full report and statement of their annual operations;
- (g) The Trustees may employ such agents, servants and employees as they deem necessary, proper or convenient, and shall prescribe their duties and fix their compensation;
- (h) The Trustees may contract for the furnishing of any services or the performance of any duties that they deem necessary, proper or convenient and pay for the same as they see fit to provide in such contract;
- (i) The Trustees, by Resolution, may divide the duties of the Trustees hereunder, delegating all or any part of such duties to one or more of the Trustees as much as possible; but where specific duties are not delegated, a majority of the Trustees must act for the Trust;
- (j) No Trustee (other than a temporary Trustee appointed pursuant to paragraph (d) of Section VI of this Declaration of Trust) may be compensated in any manner for services rendered or responsibilities assumed; nor shall he be eligible to be compensated by the Trust solely by reason of his occupancy of a Trusteeship hereunder;

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(k) The Trustees shall, in the name of the Trust as above set forth, or in their respective or joint names as Trustees, bring any suit or action which may in their judgment, be necessary, proper, and convenient to protect the interests of the Trust, or to enforce any claim, demand or contract for the Trust, or to enforce any claim, demand or contract for the benefit thereof; and they likewise shall defend in their discretion, any suit against the Trust, or the Trustees or employees, agents, or servants thereof. And the Trustees jointly or respectively are expressly authorized to bring and prosecute or defend such suits, actions or proceedings, in their discretion, or to compromise and settle any suit, action, claim or proceeding in which the Trust is interested, and to discharge the same out of the Trust property and assets; and they likewise are specifically authorized to pay or transfer out of the Trust property or assets all sums of money or property under this joint or respective control necessary to discharge any judgment or decree rendered against them, or the Trust, together with all court or other costs, including counsel and attorneys fees, and also to pay out of the Trust property and assets such sums of money, or to transfer appropriate property thereof, for the purpose of settling, compromising, or adjusting any claim or controversy, together with all costs and expenses connected therewith, and all such expenditures and transfers shall be treated as expenses of executing this Trust;

(l) No bond shall be required of the Trustees, or any of them, unless they, by appropriate Resolution, so provide;

(m) At their first meeting the Trustees shall designate the place and times for regular meetings, which place and times shall not thereafter be changed unless designated at a meeting where all acting Trustees shall be present. No notice shall be required of the holding of regular meetings. Special meetings may be held upon call as shall be determined by the Trustess;

(n) All proceedings of the Trustees and all Resolutions adopted by them shall be kept in a record book at the principal office of the Trust and shall be subject to inspection, during customary business hours as public records of the State of Oklahoma; and

(o) The Trustees, by written instrument filed for record in the office of the County Clerk of Oklahoma County, shall designate an address in Oklahoma County, Oklahoma, as the principal office of the Trust. Any change in the address of the Trust shall be recorded in the same manner. All official records of the Trust shall be kept at its principal office.

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VIII

BENEFICIARIES

- (a) The term "Beneficiaries" as used in this instrument, denotes the incorporated Cities of Bethany and Warr Acres, State of Oklahoma, and likewise shall denote any municipal entity which hereafter may succeed said incorporated Cities, respectively, as the governing authority of the territory lying within the municipal boundaries thereof on the effective date of this instrument.
- (b) The Beneficiaries shall have no legal claim or right to the Trust Estate, or to any part thereof, against the Trustees or anyone holding under them; neither shall the Beneficiaries, as such, have any authority, power or right whatsoever to do or transact any business whatsoever for, or on behalf of, or binding upon, the Trustees of the Trust Estate; neither shall the Beneficiaries have the right to control or direct the actions of the Trustees in respect of the Trust Estate, or any part thereof; nor shall the Beneficiaries have any right to demand or require any partition or distribution of the Trust Estate, or any part thereof. The Beneficiaries shall be entitled solely to the benefits of this Trust, as administered by the Trustees hereunder, and at the termination of this Trust, as provided herein, and then only, the Beneficiaries shall receive the residue of the Trust Estate. Notwithstanding anything in the aforesaid appearing to be to the contrary, no provision in this instrument and/or of the Acceptance of Beneficial Interest thereunder by the governing bodies of the said Beneficiaries, limiting, restricting or denying any authority, power, or right of the Beneficiaries of said Trust in relation to the administration thereof is intended, or shall be construed or interpreted, to effect a surrender, or to attempt to effect a surrender, of any of the sovereign governmental powers of the State of Oklahoma or of the Beneficiaries but any and all provisions of this Trust instrument are intended, and shall be applied, to relate solely and only to the proprietary rights and property interests of the said Beneficiaries, in trust, as distinguished from their sovereign governmental powers and authority. Moreover, it further is agreed that nothing contained in the Declaration of Trust and/or in the Acceptance of Beneficial Interest thereunder shall be construed, interpreted or applied as intending to grant, or to grant to the Trustees hereunder an exclusive franchise in relation to any powers, rights or authority of the Trustees under this trust instrument.
- (c) Each distribution of money by the Trustees to the Beneficiaries shall be paid to said Beneficiaries for use by them, respectively, for any authorized or proper function or purposes as directed by the governing bodies thereof, without restrictions or limitations by the Trustees.

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(d) In the making of distribution of net operating income to the respective Beneficiaries under this instrument, the revenues and expenses from each kind of service or facility furnished or provided, and that portion of the Trust Estate used in connection therewith, shall be segregated by the Trustees. "Net operating income," from each kind of service or facility furnished or provided, is that money remaining of the gross income derived from the furnishing or providing of such service or facility after deducting therefrom (1) all charges, costs and expenses determined by the Trustees to be allocable to the furnishing or providing of such service or facility and (2) all amounts determined by the Trustees to be a fair proportionate part of the total charges, costs and expenses of execution and performances of the Trust purposes as a whole. Net operating income from each kind of service or facility shall be distributed to the respective Beneficiaries the jurisdictional limits of which received such service or facility during the period next preceding such distribution; and distribution to each shall be in the direct proportion of the amounts received from within the jurisdictional limits of each distributee to the gross amount received by the Trust from said service or facility during said period.

(e) In the making of distributions of the net proceeds from the disposal of Trust assets to the Beneficiaries under this instrument, the service or facility in which said asset had been utilized shall be segregated, from the other services and facilities of the Trust, by the Trustees. "Net proceeds from the disposal of Trust assets" is that money remaining from the gross money proceeds of such disposal after deducting therefrom all charges, costs and expenses determined by the Trustees to be allocable to the disposal of said assets. Net proceeds from the disposal of trust assets shall be made to the entities entitled thereto in the direct proportion of the amounts contributed by each, for acquisition of the installation of which said assets were a part, to the gross amounts so contributed by all distributees of said proceeds, or if no such contributions shall have been made, then in proportion of the value of the assets within the jurisdictional limits of each distributee to the entire of the value of the Trust Estate as determined by the Trustees.

## IX

TERMINATION

(a) This Trust shall be irrevocable by the Trustor and shall terminate:

(1) When the purposes set forth in Section III of this instrument shall have been fully executed and fulfilled; or

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(2) In the event of the happening of any event or circumstance that would prevent said purposes from being executed and fulfilled AND all of the Trustees and the governing body of each Beneficiary, with the approval of the Governor of the State of Oklahoma, shall agree that such event or circumstance has taken place; provided, however, that all indebtedness of the Trust shall have been paid; or

(3) In the manner provided by Title 60, Section 180, Oklahoma Statutes, 1971; provided, however, that this Trust shall not be terminated by voluntary action if there be outstanding indebtedness or obligations of the Trust unless all owners of such indebtedness or obligations, or one authorized by them so to do, shall have consented in writing to such termination.

(b) Upon the termination of this Trust, the Trustees shall proceed to wind up the affairs of the Trust, and after payment of all debts and obligations out of Trust money, to the extent thereof, shall distribute the residue of the Trust money to the Beneficiaries hereunder in the same manner as distribution made under Section VIII of this instrument. Upon final distribution as aforesaid, the powers, duties and authority of the Trustees hereunder shall cease.

X

PARTIAL INEFFECTIVENESS

The invalidity or ineffectiveness for any reason of any one or more words, phrases, clauses, paragraphs, subsections or sections of this instrument shall not affect the remaining portions hereof so long as such remaining portions shall constitute a rational instrument. Any such invalid or ineffective portion was inserted conditionally upon it being valid or effective only; and this instrument shall be construed as if such invalid or ineffective portion had not been inserted herein.

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XI

COVENANT

The provisions hereof shall be binding upon the undersigned, their heirs, executors, administrators and assigns.

IN WITNESS WHEREOF we have hereunto set out hands, executing this Declaration of Trust in several multiple originals all of which constitute one and the same instrument, on this 7<sup>th</sup> day of November, 1974.

Aud W. Rice

Trustor

Aud W. Rice

Elmer O. Young

Frank W. Wood

Wm. H. Rice

Tommy E. Pike  
Trustees

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ACCEPTANCE OF BENEFICIAL INTEREST

On this 14 day of May, 1974, pursuant to Resolution duly adopted by its governing body, the City of Bethany, Oklahoma, and said governing body of said City, hereby accept for, and on behalf of said City, the beneficial interest in the trust created by the within and foregoing Declaration of Trust, in all respects in accordance with the terms of said Declaration of Trust.

CITY OF BETHANY, OKLAHOMA

By *Elden O. Gordon*  
Mayor

ATTEST: (Seal)

*J.B. Hill*  
City Clerk

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ACCEPTANCE OF BENEFICIAL INTEREST

On this 23rd day of April, 1974, pursuant to Resolution duly adopted by its governing body, the City of Warr Acres, Oklahoma, and said governing body of said City, hereby accept for, and on behalf of said City, the beneficial interest in the trust created by the within and foregoing Declaration of Trust, in all respects in accordance with the terms of said Declaration of Trust.

CITY OF WARR ACRES, OKLAHOMA

By Jimmy E. Pike  
Mayor

ATTEST: (Seal)

Frank W. Wood  
City Clerk

