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# MEMO

APPROVED  
06/29/2020



DATE: June 22, 2020

FROM: Matney M. Ellis  
Procurement Director

A handwritten signature in black ink, appearing to read "Matney M. Ellis", with a long horizontal flourish extending to the right.

TO: Board of County Commissioners

SUBJECT: Lease Agreement – Animal Rescue Foundation (ARF)

Submitted for your approval and execution is the attached Lease Agreement between the Board of County Commissioners of Tulsa County on behalf of the Tulsa County Parks Department and the Animal Rescue Foundation (ARF) for lease of the LaFortune Park old Par 3 Clubhouse on Duck Pond for pet rescue and pet adoption.

Respectfully submitted for your approval and execution.

MME / arh

SUBMITTED FOR: The June 29, 2020 BOCC meeting agenda.

CMF# 20201610

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## LEASE AGREEMENT

This LEASE made and effective as of July 1, 2020, by and between the Board of County Commissioners of the County of Tulsa on behalf of Tulsa County Parks, whose administrative office address is 2315 Charles Page Blvd., Tulsa, OK. 74127, and Animal Rescue Foundation, Inc., an Oklahoma Not for profit corporation, whose address is P.O. Box 471483, Tulsa, OK. 74147

1. 1. TERMS: The words "Landlord" and "Tenant" as herein used shall mean the Landlord or Tenant hereinabove mentioned and also, when not inhibited by the context, shall mean their respective successors and assigns.
2. PREMISES: Landlord leases to Tenant the land and office building ("Building") located at 5201 S. Yale Ave, Tulsa , OK. a/k/a LaFortune Park old Par 3 Clubhouse on the Duck Pond ("Premises"), depicted on Exhibit A. Unplatted.
3. TERM: The term of the Lease shall be for one(1)years, commencing on July 1, 2020, and expiring on June 30, 2021, unless sooner terminated as provided herein. With four (4) subsequent options to renew for additional one(1)year terms upon written approval by both Parties to the Lease.
4. RENT:
  - (a) Tenant will pay Landlord rent in the amount of TWELVE AND 00/100 DOLLARS (\$12.00 ) in 12 monthly installments of ONE AND 00/100 DOLLARS(1.00) per month due in advance with the first such installment due July 1, 2020(the "rent commencement date"). The monthly payments are payable on the first day of each month during the Term of the Lease and shall be payable to Landlord at the above address or any other address designated by Landlord.
  - (b)Together with each rent installment, Tenant will include and pay the state tax imposed by the state of Oklahoma.
  - (c) Tenant will pay Landlord a reimbursement of the amount paid by Landlord annually as real estate ad valorem taxes. This reimbursement is considered to be an additional rent payment, and not a payment of the real estate ad valorem taxes. Landlord shall deliver via email, fax, courier, or US Post to Tenant verification of the amount paid in real estate ad valorem taxes, and Tenant shall reimburse Landlord

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within 60 days of receipt of verification of payment by Landlord. Tenant shall only reimburse Landlord for real estate ad valorem taxes for times during which Tenant occupies the property, or which are within the Term of this Lease when the Lease has not been terminated, according to the Terms of the Lease.

5. SECURITY DEPOSIT: Deleted

6. PARKING AREA AND OTHER FACTORS: Tenant will comply and cause its employees and agents to comply with all reasonable rules and regulations adopted by Landlord in connection with the use of the parking area and other facilities, none of which shall be inconsistent with any provisions of this Lease.

7. USE OF PREMISES:

(a) Tenant shall use the Premises for a pet rescue and pet adoption facility. Tenant shall not conduct nor permit any activity or use which violates any law, regulation of any governmental authority now in force or which may hereafter be in force, or which will in the Landlord's opinion, materially damage the image or reputation of the Premises.

(b) Tenant shall not permit the Premises or any part thereof to be used in any manner that will impair the foundation or the foundation's structural strength.

(c) In the conduct of its business in or around the Premises, Tenant shall observe and promptly comply with all laws, ordinances, and regulations of public authorities now or hereafter enacted, promulgated or adopted, with respect to the use or occupancy of the Premises by Tenant.

8. BUILDING OPERATING EXPENSES. Tenant shall pay directly all operating expenses for the Premises which shall include, but not necessarily be limited to: the total cost of operating and maintaining the Building (and the property on which it sits) and all Building and property improvements; repairs and replacements of any types for the Building and property required to be made by Tenant under this Lease (subject to Tenant's rights to utilize warranties from contractors and material or equipment suppliers to effect necessary repairs or replacements); and all premiums for insurance required under this Lease.

9. ALTERATIONS, CHANGES, AND ADDITIONS. Landlord must authorize Tenant to make changes, alterations, or additions to the Premises with prior written consent of the Landlord pursuant to city code and permits. Any changes, alterations, or additions may be removed by Tenant at the expiration or termination of this Lease. If Tenant elects removal, Tenant shall bear the full cost for removal of such changes, alterations, or additions and restoration of the Premises to its condition prior to such being made.

10. DEFECTS, DEFECTIVE CONDITION, WIND, ACTS OF THIRD PERSONS. Except in the event of Landlord's negligence, Tenant releases and holds the Landlord harmless from any costs, claims, or damages arising out of any damage or injury to Tenant or Tenant's property: (i) occasioned by any defect of plumbing, heating, air cooling, air conditioning and ducts, gas pipes, or steam pipes; (ii) from broken steps; (iii) from the backing up of any sewer pipe; (iv) from the busting, leaking, or running of any tank, tub, wash stand, water closet, water pipe, or waste pipe, drain, or any other pipe or tank in, on or about the Premises; or (v) from leaks of any nature coming through the roof, floor, stairs, walks, or any other place on or near the Premises. Tenant acknowledges Tenant is responsible for all costs of repairs and maintenance and therefore Landlord shall not be expected to have knowledge of physical conditions of the Building and property as Landlord would if Landlord were responsible for the maintenance of the Building and property.

11. CASUALTY DAMAGE, REPAIRS, ABATEMENT OF RENT. (a) In the event of a partial damaging or destruction of the Premises, Tenant shall continue to use the Premises to the extent Practicable. (b) Either Party hereto shall have the right to terminate this Lease if the Premises is damaged to an extent equal to three quarters of the then reconstruction cost of such Building as a whole based on bids received by Landlord; provided that in such an event, such termination of this Lease shall be effected by written notice to that effect to the other party delivered within thirty (30) days of the happening of such casualty causing the damage. (c) If the Premises shall be damaged or destroyed by fire or by any other cause whatsoever beyond Tenant's control, Landlord shall, except as provided herein immediately on receipt of insurance proceeds paid in connection with such casualty damage, proceed to repair or rebuild the same in a similar plan and design as existed immediately before such damage or destruction occurred. Subject to such delays as may be attributable to governmental restrictions or failure to obtain materials or labor, or other causes, beyond the control of Landlord. Material used in repair shall be nearly like original materials as may then be procured in regular channels of supply. (d) In the event Tenant continues to conduct business during the making of repairs, the monthly rent will be equitably reduced in the proportion that the unusable part of the Premises bears to the whole thereof. No rental shall be payable while the Premises is wholly unoccupied pending the repair of casualty damage Tenant shall, as soon as possible, replace or repair all fixtures in the Premises which may be damaged or destroyed by fire or any other cause whatsoever.

12. REPAIRS GENERALLY. Except as otherwise expressly provided in this Lease, Tenant shall be responsible to make all repairs, maintenance, and replacements at Tenant's sole expense, whether to the building or the Premises and mechanical systems thereof or to any other improvements of the demised property of any nature. Tenant shall have the right to utilize warranties from contractors or material and equipment suppliers to effect necessary

repairs or replacements. All repair work, whether interior or exterior, ordinary or structural, must be performed in good and workmanlike manner; by licensed, bonded, and fully insured professionals, in full compliance with any plans and specifications previously approved by Landlord; and in compliance with all applicable governmental rules and regulations. When completed, all repair work must be free and clear of all claims for lien for unpaid labor, services, or material.

Tenant shall be responsible for all repairs, maintenance and management of Premises to include (a) the building roof (and related structural components), foundation and exterior walls; (b) be responsible for all repairs to all water and waste lines occurring between the exterior of the Building and the public utility connection; (c) be responsible for all electrical repairs occurring between (and including) the Building's main circuit breaker panel and the public utility connection; and (d) maintain the parking lot surface. All costs of such repairs up to \$3,000.00 per item, shall be the responsibility of the Tenant. Any aforementioned repairs and maintenance costs in excess of \$3,000.00 per item, shall be negotiated between Tenant and Landlord on a case-by-case basis to arrive at a mutually agreeable cost-sharing resolution. In the event that such a cost-sharing arrangement, agreeable to both parties, cannot be reached, Tenant shall have the right to vacate the Premises, and terminate the Lease, with proper notice to the Landlord

13. Utilities. Tenant agrees to pay, before delinquency, all charges for water, gas, heat, electricity, power, telephone, waste collection (including dumpster fees), and other similar charges incurred by Tenant with respect to and during its occupancy of the Premises.

#### 14. TAXES.

(a) Tenant will pay, before delinquent, any and all taxes levied or assessed on Tenant's fixtures, equipment and personal property in and on the Premises, in addition to all federal, state or local tax obligations due from the operation of Tenant's business on the Premises.

(b) Landlord is solely responsible for payment of real estate ad valorem taxes on the property, but Tenant agrees to reimburse Landlord for the paid real estate ad valorem taxes for any period during which Tenant occupies the property according to the terms of this Lease specified in 4 (c) above.

(c) Tenant shall pay directly to the proper governmental authority, all taxes assessed, charged or imposed upon its personal property located in the Premises, including without limitation, any ad valorem personal property taxes and any taxes relating to its stock and trade kept on the Premises. Tenant shall abide by all valid laws, rules, and regulations of governmental authorities relating to such taxes with respect to the operation of the business operated on the Premises by Tenant, including without limitation, sales taxes.

#### 15. INSURANCE.

(a) Landlord and Tenant agree that any and all insurance this Lease requires either party to keep and maintain in force, shall be obtained from good and solvent insurance companies. Landlord shall be named as an additional named insured on all insurance policies obtained by the Tenant, and all policies obtained by the Tenant shall be on terms and provided by a company acceptable to Landlord. On or before the execution of this Lease, and within ten (10) days following Landlord's written demand therefore, Tenant shall have its insurer provide Landlord with a certificate of insurance for any insurance required of Tenant, herein, and a replacement certificate if coverage is changed. Where applicable, the amount of the insurance policy will not be less than the full replacement value of the items insured. If Tenant fails to keep in effect and pay any insurance policy required by this Lease, Landlord may (but is not required to) purchase or pay for said insurance, in which event, the insurance premiums paid by Landlord shall become due and payable forthwith as additional Rent and failure of the Tenant to pay same on demand shall constitute a breach of this Lease. Tenant's insurance policies shall name Landlord's lender as a co-insured if such is required in Landlord's loan documents.

(b) Tenant will maintain public liability insurance which will co-insure Landlord, its principals, its management agent and its lender against liability for injury to, or death of, persons or loss or damage to their property occurring in or about the Premises. The liability coverage shall not be less than \$500,000.00 for any one person injured or killed, \$1,000,000.00 for any one accident, and \$500,000.00 for property damage.

(c) Tenant agrees to keep in force all worker's compensation insurance required under the laws of the state of Oklahoma.

(d) Landlord will maintain in force, at all times during the term of this lease on the Building and improvements, a policy or policies of casualty insurance covering loss or damage by fire, wind storm, and such causes as Landlord specifies within the class of causes commonly referred to as "extended coverages" for the full insurable replacement value of such property and improvements. During the term of this Lease, Tenant shall maintain a policy of casualty insurance covering its equipment, fixtures, and personal property against all loss or damage from any cause whatsoever and at the full insurable replacement value.

(e) In the event the Premises shall be damaged or destroyed by fire or other casualty, Tenant hereby waives any interest Tenant may claim in any insurance settlement regarding any loss of the property; however, Tenant may seek its own settlement for loss of personal property, loss of income and business interruption if covered, and that will sign any and all documents required by Landlord or the insurance company or companies that may be necessary for use in connection with the settlement of any such loss.

(f) Tenant releases and waives any claim or right of recovery against Landlord, its agents, and affiliates for any loss resulting from causes covered by insurance. Landlord shall not be liable for any damage to Tenant's goods, merchandise, fixtures or property, caused by fire (or any other cause whatsoever), except in the event of negligence on the part of Landlord, its employees or agents.

16. TRANSFER OF PLEDGE OF LEASEHOLD INTEREST. Tenant shall not assign this Lease or any interest therein, or sublet the Premises or any part thereof, or license the use of all or any portion of the Premises or business conducted therein or thereon, or encumber or hypothecate this Lease, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld.

17. SURRENDER OF PREMISES. Tenant shall, at the termination or expiration of this Lease, vacate the Premises in as good condition as they are in at the time of entry thereon by Tenant, except for reasonable wear thereof. Upon vacating, Tenant shall leave the Premises free and clear of all trade fixtures, equipment, rubbish and debris.

18. TENANT IMPROVEMENTS: GENERAL INDEMNIFICATION OF LANDLORD.

(a) If Tenant desires to make any modification or improvement to the Premises and said work requires issuance of any permit by any governmental authority, Tenant shall serve a written notice on Landlord identifying Tenant's work at least 30 business days prior to allowing any such work to be commenced in or on the Premises.

(b) During construction of Tenant's improvements, either Tenant or tenant's contractor will carry builder's risk insurance coverage respecting the work being made to the Premises in the amount of the anticipated cost of construction of Tenant's work. To the extent applicable, such builder's risk insurance policy will comply with paragraph 15(a).

(c) Tenant shall indemnify and save harmless the Landlord and the Premises and all improvements placed thereon from all claims, liens, claims of lien, demands, charges, encumbrances, or litigation (including costs and reasonable attorney's fees) arising directly or indirectly out of or by reason of any work or activity of Tenant on the Premises. Tenant will be responsible for any and all costs associated with Tenant's work, including without limitation, the costs of all labor, permitting, services, and materials.

(d) Without Landlord's express prior written consent, Tenant shall enter into no agreement which would subject the Landlord's interest in the Premises to a lien to secure payment for any work, services, materials, other improvements made or finished to the Premises at Tenant's request. All persons performing labor or services, or furnishing materials to the Premises on the order of Tenant must look solely to Tenant and Tenant's interest in the

Premises for payment. Tenant will notify the contractors Tenant hires to perform Tenant's work that Landlord's Lease with Tenant limits Landlord's liability to Tenant's contractors.

19. LANDLORD'S RIGHT OF INSPECTION. Landlord shall have access to all of the Premises, during Tenant's regular business hours for the purpose of inspecting same, or other purposes under this Lease or provided by law. Landlord agrees not to cause undue disruption to Tenant's business while making such inspections.

20. EVENTS OF DEFAULT AND LANDLORD'S REMEDIES. All rights and remedies of Landlord herein enumerated in the event of a default shall be cumulative and nothing herein shall exclude any other right or remedy allowed hereunder, at law, or in equity.

(a) The occurrence of any of the following shall constitute a material default and breach of this Lease:

(i) The vacating or abandonment of the Premises by Tenant;

(ii) Tenant's failure to pay the Rent or make any other payment required to be made by Tenant hereunder, when due, or within thirty (30) days thereafter; or

(iii) Tenant's failure to observe and perform any other term, condition, or covenant of this Lease (including the Exhibits attached hereto) to be observed or performed by Tenant.

(b) Tenant shall not be in default in the performance of any obligation within fifteen (15) days after the date Landlord provides written notice to Tenant specifically stating Tenant's failure of performance.

(c) Landlord shall not be deemed to be in default in the performance of any obligation required to be performed hereunder by Landlord unless and until it actually has failed to perform such obligation. Provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion.

(d) In the event of a default by Tenant as outlined above, Landlord will have the following cumulative rights, privileges, and options, in addition to all other remedies now or hereafter provided by law:

(i) To perform any act or do anything required under this Lease to be performed by Tenant, and to recover the cost thereof from Tenant

(ii) To terminate the Lease, re-enter, and relet the Premises for the account of Landlord will be entitled to recover from Tenant all damages that result from the Tenant's default



(iii) To keep the Lease in force, re-enter, and re-let the Premises for the account of Tenant for a period equal to, or greater than, the remainder of the Term, at such rental and on such terms and concessions as Landlord deems reasonable. Landlord will not be liable for failure to re-let the Premises or, in the event of re-letting, failure to collect the rent therefor.

(iv) To keep the Lease in force, and to recover from Tenant the Rent and any other sum due from Tenant each month or less frequently at the election of Landlord, or to recover immediately the accelerated Rent due, or to recover the entire sum due at the expiration of the Term.

(v) To recover from Tenant all expenses including reasonable costs and charges for repairs, improvements, alterations (including redecorating), or additions to the Premises, which amounts will become due when incurred and will become payable to Landlord on demand.

(vi) To recover reasonable attorneys' fees and costs in connection with any action or proceeding to enforce this Lease, whether or not the Lease has been terminated, or to secure any rights due Landlord under this Lease, whether or not any action was instituted.

## 21. EMINENT DOMAIN.

(a) In the event thirty percent (30%) or more of the Premises shall be taken for a public or quasi-public use, this Lease shall terminate as of the date of the actual physical taking

(b) In the event of a partial taking of less than thirty percent (30%) of the Premises, Landlord shall, with reasonable diligence, proceed at its own expense to reconstruct Or repair the Premises and place the same in a tenantable condition within one hundred And twenty (120) days after the date of the actual physical taking. In the event of such termination under the Subsection (a) or (b) the parties shall be released from any and all further liability under this Lease, effective as of the date of actual physical taking.

(c) During any reconstructing or repairing, Tenant shall be required to pay only that proportion of the rentals herein reserved as the area of the Premises remaining in a tenantable condition bears to the entire area herein leased. On completion of such reconstruction or repairing, the rentals herein reserved shall be adjusted in the proportion that the reconstructed Premises bears to the original Premises, and thereafter Tenant shall be required to pay such adjusted rentals in accordance with the provisions of this Lease.

(d) If any portion of the Premises is taken which would have a substantial adverse

effect on the intended use of the Building, which could not be rectified by an addition to the Building in another area, Tenant shall have the right to terminate the Lease.

(e) Any award made in any such taking of the Premises or shall be the sole property of and be paid to the Landlord. Tenant shall have the right to terminate the Lease.

(e) Any award made in any such taking of the Premises or shall be the sole property of and be paid to Landlord. Tenant shall have the right to seek its own claim for damages with the taking authority.

22. WAIVER OF BREACH. No waiver by Landlord of any breach of this Lease by Tenant shall be construed to be a waiver of any preceding or succeeding breach of the same or any other provision, covenant, or condition.

23. SUBORDINATION. This Lease is made subordinate to all covenants, restrictions, easements, and encumbrances now or hereafter affecting the fee title of the property and to all ground and underlying leases and mortgages or any other method of financing or refinancing in any amounts, and all advances thereon, which may now or hereafter be placed against or affect any or all of the Premises or any of the improvements now or at any time hereafter constituting a part of the Building, and to all renewals, modifications, consolidations, participations, replacements and extensions thereof. The term "Mortgages" as used herein shall include trust indentures and deeds of trust. This section shall be self-operative and no further instrument of subordination shall be necessary unless required by any ground or underlying Landlords or mortgages. If Landlord or any ground or underlying Landlords or mortgages want confirmation of the subordination, Tenant shall execute and deliver, without charge, any documents (in form acceptable to Tenant's counsel) which subordinate this Lease and the Tenant's rights under it, within ten (10) business days following Landlord's written request. Any covenants, restrictions, easements or encumbrances that would affect Tenant's intended use of the Premises shall be communicated to Tenant as they become known to Landlord, in the normal course of business. Landlords agrees to secure from its lender a non-disturbance agreement in a form acceptable in a form acceptable to Tenant's counsel.

24. HEADINGS FOR CONVENIENCE ONLY. The headings used herein are for convenience and

Shall not be resorted to for purposes of interpretation or construction hereof.

25. PRONOUNS. Feminine or neuter pronouns shall be substituted for those of masculine form or vice versa, and plural shall be substituted for the singular number or vice versa in any place or places in which the context may require such substitution or substitutions.

26. AMENDMENTS TO BE IN WRITING. No prior or present agreements or representations (whether oral or written) shall be binding upon Landlord or Tenant unless included in this Lease. No modification to or change in this Lease shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

27. PARTIES BOUND. This Lease shall bind and shall inure to the benefit of the parties hereto and their legal representatives. The Term "legal representatives" is used in this Lease in its broadest possible meaning and includes, in addition to executors and administrators, every person, partnership, corporation, or association succeeding to the interest or to any part of the interest in or to this Lease or in or to the Premises, or either Landlord or Tenant herein, whether such succession results from the act of a party in interest, occurs by operation of law together with the act of such party. Each and every covenant, agreement, and condition of this Lease by the Tenant to be performed shall be binding on all assignees, subtenants, concessionaires, and/or licensees of Tenant.

28. HOLDING OVER. No holding over and continuation of any business by Tenant after the expiration of the Term hereof shall be considered to be a renewal or extension of this Lease unless written approval of such holding over and definite agreement to such effect assigned by Landlord defining the length of such additional Term. Any holding over without the consent of Landlord shall be considered to be a day-to-day tenancy at a rental of twice the daily rate for a maximum monthly payment provided herein, computed on the basis of the thirty (30) day month.

29. INTEGRATION. At time of execution, this Lease includes: the Lease Agreement and the attached Exhibit A. This Lease, including Exhibit A, represents the entirety of the agreement between the parties for the subject matter

Contained herein, and supersedes any other agreement or understandings between the parties  
Whether written or oral.

30. NOTICES. All notices or demands of any kind that Landlord may be required or may desire to serve on Tenant under the Terms of this Lease may be served on Tenant (as an alternative to personal service on Tenant signed by the person accepting service) by mailing a copy thereof by certified mail, postage prepaid, addressed to Tenant, Attention: President, the Premises or or at such address or addresses as may from time to time be designated by Tenant in writing to Landlord. Service shall be deemed complete at the time of the leaving of such notice as aforesaid or within two (2) business days after mailing of same. Any and all notices or demands from Tenant to Landlord may be similarly served on Landlord at the address at the address on page one of this Lease, or such other address as Landlord may in writing designate to Tenant.

31. RECORDING. Without Landlord approval, Tenant will not cause or allow this Lease, or memorandum of Lease, to be recorded in the public Records of any county in Oklahoma.

EXECUTION

Tenant:



Animal Rescue Foundation  
President  
Christian E. Gausvik

Landlord:

  
Chairman  
Board of County Commissioners

Approved as to form:

James G. Rea Digitally signed by James G. Rea  
Date: 2020.06.23 16:39:25 -05'00'  
Assistant District Attorney

  
Attest:  
Tulsa County Clerk

**THE PREMISES**

Exhibit A

