

# **AZTEC MUSEUM ASSOCIATION TRUST RESOLUTION**

BE IT RESOLVED:

WHEREAS the Board of Directors of the Aztec Museum Association, Inc., in regular meeting and upon notice to the membership of the Association of that meeting, has determined that it shall be in the best interest of the Association that the Trust Agreement dated December 10, 1984, be restated and updated on April 18, 2008, and;

WHEREAS said Board of Directors have determined, following notice and hearing, that the following shall be and hereby is in restatement of that Trust Agreement;

NOW THEREFORE, the following shall be the Restated Trust Agreement of the Aztec Museum Association, Inc., of Aztec, New Mexico:

## **RESTATEMENT OF TRUST AGREEMENT**

### **PURPOSE OF TRUST**

The purpose of this trust agreement is the establishment of a trust fund into which contributors may make tax-deductible gifts for the benefit of the Aztec Museum, which is under the administration of the Aztec Museum Association, Inc., a New Mexico not-for-profit corporation and that such gifts will be prudently managed and invested so to provide a perpetual source of income to the Aztec Museum Association.

It is a further purpose of this trust agreement that gifts made into trust will be retained by the Trustee and that the Trustee will distribute the income from such gifts and the investments thereof to the uses and purposes of Aztec Museum Association, Inc. or its successors.

### **SECTION ONE TRUST PROPERTY**

1.1 For good and valuable consideration, Grantor has delivered, conveyed, assigned, and transferred to the Trustee and their successors in office the sum of Ten Dollars (\$10.00), the receipt of which is hereby acknowledged. Other property may be added from time to time, which property shall be inventoried and described in Schedule A attached to this agreement.

1.2 So long as this agreement remains in effect, the Grantor, or any other person, may add any other property to this trust.

**SECTION TWO  
TRUSTEE/SUCCESSOR TRUSTEE**

- 2.1 The Trustee of this trust shall be the Board of Directors of Aztec Museum Association, Inc.
- 2.2 In the event that the Board of Directors of Aztec Museum Association, Inc. shall be unable or unwilling to serve as the Trustee, the Board of Directors shall appoint a corporate trustee empowered to serve as Trustee in the State of New Mexico.
- 2.3 Upon the occasion that the Board of Directors of Aztec Museum Association, Inc. shall serve as Trustee of this trust, it shall adopt sufficient written policies wherein it is set forth the following:
- a. Establishment of an Investment Committee: defining the purpose of the committee; number and selection of members, and terms of their office.
  - b. Investment Management: setting forth the establishment of an investment policy; investment criteria; manner of distribution of income; maintenance of restricted donations; asset review; retention of nonconforming assets; employment of agents, and; custodians and advisors.
  - c. Such other provisions as the Board of Directors may from time to time deem necessary for the prudent administration of the trust.

**SECTION THREE  
TRUST INVESTMENTS**

- 3.1 The Trustee shall hold the trust fund and, in a manner consistent with §3.5, infra, and the laws of the State of New Mexico, invest it or parts of it in securities in which trustees are permitted to invest under the laws of the State of New Mexico, or retain the fund in cash, and collect the income.
- 3.2 Trustee shall not less frequently than quarterly, distribute and apply all of the net income from the trust fund exclusively to the charitable uses and purposes of the Aztec Museum Association, Inc., Aztec, New Mexico. In the event that the Aztec Museum Association, Inc. shall cease existence or shall cease to be exempt from federal income taxation, the Trustee shall from time to time distribute all of the net income of the trust to any charitable corporation, trust or foundation which at the time of the contribution by Trustee is one of those organizations specified in the Internal Revenue Code of the United States, to which contributions are deductible for income tax purposes.
- 3.3 Trustee shall make distributions at times and in a manner as not to subject it to tax under 26 USCA §4942 of the Internal Revenue Code, as amended, and shall not engage in any act of self-dealing as defined in 26 USCA §4941.

- 3.4 Trustee shall not retain any excess business holdings as defined in 26 USCA §4943 and shall not make any investments as defined in 26 USCA §4944 nor make any taxable expenditure which would subject the trust or the corporate Trustee to tax under 26 USCA §4945.
- 3.5 The trust investments shall be limited to the following:
- a. United States Treasury obligations.
  - b. Certificates of Deposit and other bank deposit or savings accounts which are fully insured by the Federal Deposit Insurance Corporation.
  - c. Such other investments as the Board of Directors of the Aztec Museum Association, Inc., shall determine to be suitable investments for this trust. Except, however, no one investment or group of investments other than those described in §3.5 (a) and (b) above shall at any one time comprise more than twenty-five percent (25%) of the trust corpus.

#### **SECTION FOUR RESTIRCTIONS ON USE OF TRUST FUND**

- 4.1 The trust fund and all of the income of the trust fund shall be devoted exclusively to the purposes described above and shall not be given, contribute to, or inure to the benefit of any private person or corporation, except to the extent of the compensation of the corporate Trustee.
- 4.2 No part of the trust fund shall be used to carry on propaganda or otherwise attempt to influence legislation, or to participate in any political campaign.
- 4.3 Notwithstanding in this Restatement to the contrary, no part of the trust corpus shall be distributed to the beneficiary.

#### **SECTION FIVE GIFTS IRREVOCABLE/RETENTION POWERS OF TRUSTEE**

- 5.1 Gifts made in trust to the Trustee under this agreement shall be irrevocable.
- 5.2 If it shall be determined by the Internal Revenue Service, subsequent to the Restatement of Trust and the transfer of any funds to Trustee by the donor or any other person, that the trust fund is not exempt from the payment of income tax upon its income or that the donors to the fund may not be entitled to charitable deductions for income tax purposes for contributions made to the trust in the manner and to the full extent provided by the Internal Revenue Code, then such gifts as remain in the fund at the time of such determination shall be given by trustees to a qualified tax-exempt charitable organization selected by Trustees to best carry out the purposes of this trust. This trust shall thereupon terminate.

5.3 Notwithstanding anything in the preceding paragraph to the contrary, the Trustee shall have full authority to receive, retain, manage, sell, lease, and distribute assets contributed to this trust for the uses and purposes of the Aztec Museum Association, Inc. and may receive the same subject to reasonable limitations or qualifications ordered by the donor thereof.

## **SECTION SIX ACCOUNTING BY TRUSTEE**

- 6.1 The fiscal year of this trust shall commence on January 1 and conclude on December 31.
- 6.2 The Trustee shall render accountings showing all receipts and disbursements to the trust fund for the prior calendar year. Further, such accounting shall reflect all assets held by the Trustee as of the end of the year or accounting term together with the cost of all such assets as well as the current market value of each asset.
- 6.3 The annual accounting shall be made to the Board of Directors of the Aztec Museum Association, Inc. no later than March 31 of the year following the accounting year.
- 6.4 The Trustee shall provide the Board of Directors quarterly reports setting forth the receipts and disbursements of the trust for the period. The quarterly report shall be made to the Board of Directors not more than forty-five (45) days following the accounting quarter.

## **SECTION SEVEN CORPORATE TRUSTEE**

- 7.1 In such event as there shall be a corporate trustee, the corporate trustee shall have exclusive custody of the securities, cash, and other property of the trust fund.
- 7.2 The corporate trustee shall have the right to register securities or other property held under and pursuant to this instrument in the name of its nominee.

## **SECTION EIGHT REIMBURSEMENT AND COMPENSATION OF TRUSTEES**

- 8.1 Trustees shall be reimbursed from the trust income for all expenses and cost reasonably incurred in the administration of the trust fund.
- 8.2 The corporate trustee shall be entitled to such reasonable compensation for its services as may from time to time be agreed upon with trustor. Such compensation shall be charge to and paid from the income of the trust fund.

8.3 In the event that the Board of Directors of the Aztec Museum Association, Inc. shall serve as Trustee, it shall serve without compensation.

8.4 The compensation of the Trustee as well as all reimbursements for expenses and costs shall be paid entirely from the income of the trust.

**SECTION NINE  
MISCELLANEOUS PROVISIONS**

9.1 Except as limited or restricted herein, the Trustee and all successor trustees of this trust shall have all of the powers granted to trustees under Section 45-7-401, NMSA 1978 (1995 Repl. Pamp.), and amendments thereto.

9.2 This trust agreement shall be governed by and interpreted under the laws of the State of New Mexico.

9.3 This trust agreement may be amended by only the affirmative vote of two-thirds (66 2/3%) of the Board of Directors of Aztec Museum Association, Inc. following notice to all members of the Association.

IN WITNESS WHEREOF, the undersigned hereto have signed this instrument on this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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\_\_\_\_\_  
\_\_\_\_\_

# AZTEC MUSEUM ASSOCIATION TRUST

## POLICIES OF AND RELATING TO THE ADMINISTRATION OF THE TRUST INVESTMENTS

### SECTION ONE INVESTMENT COMMITTEE

**1.1 Purpose of Committee.** The purpose of the Investment Committee is:

- a. To receive contributions made to the Aztec Museum Association, Inc. and provide an accounting to the Board of Directors;
- b. To establish and employ criteria for the investment of the funds of the Aztec Museum Association, Inc. consistent with the limitation upon investments as stated in the Trust Agreement;
- c. To establish and maintain accurate records of any funds that may have been contributed to the Aztec Museum Association, Inc. with express limitations by the donor in the use and application of the contribution;
- d. In the event that the Aztec Museum Association, Inc. should employ an agent, custodian, or other fiduciary for the retention and management of Aztec Museum Association, Inc. assets, to develop and inform such fiduciary of the investment objectives and criteria of the Aztec Museum Association, Inc. and to review on a regular basis, the fiduciary's investments of funds under his or her care and management, and;
- e. To inform the Board of Directors on a regular basis of the sum of sums available for application to the uses and purposes of the Aztec Museum Association, Inc.

**1.2 Constitution of Committee.**

- a. Number of Members. The Investment Committee shall be formed of not less than three (3) members of the Board of Directors and one (1) elected member of the Association together with such other non-voting members as the Board of Directors shall determine to be appropriate or as otherwise provided by these Policies.
- b. Election and Term of Office. The Board of Directors shall elect, in a regularly called meeting, from their number a committee of members of the Board of Directors of no fewer than three (3) in number to constitute the Investment Committee. The Directors so elected shall serve for a term of two (2) years but not to exceed the remaining term of their offices as members of the Board of Directors.
- c. Chairperson of the Committee. At the first meeting immediately following the election of members to the committee and annually at the first meeting of each calendar year thereafter, the members of the Investment Committee shall elect from their number a member to serve as Chairperson of the committee. Thereafter, until the conclusion of the member's term as member of the

Investment Committee, that person shall preside over the meetings. The chairperson shall have the right to enter into discussion, second motions, and vote on all issues.

- d. Ex Officio Committee Member. The Secretary of the Aztec Museum Association, Inc. shall serve as an ex officio member of the Committee. The Secretary shall be permitted to contribute to the discussion of any matter considered by the Committee but shall not have any authority to cast a vote on any matter presented before the Committee. Further, the Secretary shall provide notice to the members as to time and place of meetings and keep official record of all of the actions of the Committee.
- e. Records. The Investment Committee shall maintain a record of all motions and actions taken by the Committee.
- f. Vacancies. In the event that a member of the Investment Committee shall be unable or unwilling to serve, the Chairperson of the Board of Directors shall declare a vacancy. At the next regularly scheduled meeting of the Board of Directors, the Chairperson shall announce the vacancy and receive nominations for nominees to fill the vacancy, whether one or more. The replacement member of the Investment Committee shall be elected in the manner provided above to complete the term of office of the person having vacated the office.
- g. Successorship. Members shall not serve more than two consecutive terms as members of the Investment Committee.
- h. Meetings. All meetings of the Committee shall be conducted only with (a) notice to all members of the Committee of the meeting and (b) a quorum being present. The secretary of the Committee shall maintain a record of the manner of notice and the members present at each meeting.
- i. Quorum. The number of members required to constitute a quorum for the Committee to meet and conduct business shall be a majority of the elected or appointed members of the Committee.
- j. Required Members Present for Actions. All actions of the Committee requiring Committee approval shall be approved by not less than a simple majority of all the members of the Committee.

## **SECTION TWO INVESTMENT MANAGEMENT**

### **2.1 Investment Policy.**

- a. The Investment Committee shall establish an investment policy setting forth the policies regarding the investment of the assets of the trust, management of uninvested cash, and security for assets. Such policy shall be consistent with the terms of the Trust Agreement.
- b. At each annual meeting, the Board of Directors shall review and approve the investment policy.

## **2.2 Investment Criteria.**

- a. The investments to be considered by the Investment Committee shall be limited to those set forth in the Trust Agreement.
- b. The Investment Committee shall further limit the investment of funds into those federally insured (FDIC and FSLIC) financial institutions whose financial worth shall meet or exceed such standards or criteria as the Investment Committee shall from time to time establish or U.S. Government Securities.
- c. The Investment Committee shall not restrict its consideration of suitable financial institutions to only the geographical limits of San Juan County, New Mexico.
- d. In the selection of investments, the Investment Committee shall consider the importance of the maintenance and security of the principal and income to the Association as being of paramount consideration.
- e. Further, in the establishment of the aforementioned investment criteria, the Investment Committee shall not utilize any standard of suitability of an investment predicated on the social, political, religious, or cultural values inherent in the investment and shall not direct, limit, or otherwise restrict the investment decisions made by any fiduciary for reasons of the social, political, or religious suitability.

## **2.3 Distribution of Income.**

- a. The Investment Committee shall take those steps as are reasonably necessary to insure that the income derived from investments is distributed to the Aztec Museum Association, Inc. in a manner consistent with the Trust Agreement.
- b. For the purposes of this section and only this section, "income" shall mean the net income received in the form of interest or dividends and shall not include gain or loss from the sale or maturity of investments.

## **2.4 Restricted Donations.**

- a. In the event that the Aztec Museum Association, Inc. should receive a donation, in cash or in kind, and the donor has provided in writing instructions restricting the use, investment, and application of the donation, the Investment Committee, in conjunction with the Board of Directors of the Aztec Museum Association, Inc., shall make every reasonable effort to comply with the restriction.
- b. In the event the Aztec Museum Association, Inc. is not able to comply with the intention of the restriction, the President shall communicate this impossibility to the donor or the donor's next of kin or representative for further instruction. Should the amendatory instructions fail to remove the impossibility, the Aztec Museum Association, Inc. shall relinquish the donation to the donor or the donor's next of kin, personal representative or the designee of the donor.

**2.5 Retention of Powers.** The Board of Directors of the Aztec Museum Association, Inc. shall have full authority to receive, retain, manage, sell, lease, and distribute assets

contributed to the Aztec Museum Association, Inc. for the uses and purposes of the Aztec Museum Association, Inc. and may receive same subject to reasonable limitations or qualifications ordered by the donor.

## **2.6 Review Prior to Acceptance/Nonconforming Assets.**

- a. Prior to the acceptance of any gift, bequest, donation, or other contribution other than cash contributions, the Board of Directors shall review the proposed gift, bequest, donation, or contribution and determine its suitability for acceptance by the Aztec Museum Association, Inc. In the event that the proposed gift, bequest, donation, or contribution shall be determined to be unsuitable, undesirable, or for any reason inconsistent to the goals of Aztec Museum Association, Inc. or unnecessarily burdensome to the Aztec Museum Association, Inc. by reason of cost of maintenance or management or having the potential for the occurrence of hazard of liability to the Aztec Museum Association, Inc., the Board of Directors shall decline to accept the gift, bequest, donation, or contribution.
- b. In the event that the investment fiduciary should decline to accept certain assets, it shall be the duty of the Board of Directors, if it should have the discretion to do so, to dispose of such assets. In the event that the Board should lack the discretion to dispose of such an asset, the Investment Committee shall propose to the Board of Directors at the next meeting of the Board the means and manner of which such an asset shall be managed for the benefit of the purposes of the Aztec Museum Association, Inc.

**2.7 Investment Fiduciary.** The Board of Directors shall have the authority to employ a corporate fiduciary to take possession, maintain, and account for the assets of the Aztec Museum Association, Inc.

## **2.8 Investment Advisor.**

- a. At such time and continuing from such time as the investable assets of the trust shall be of a sufficient amount in the discretion of the Board of Directors, the Investment Committee, with the consent of the Board of Directors, may employ an investment advisor.
- b. For the purposes of this section, “investment advisor” shall mean individuals, partnerships, or corporations so long as each shall meet the applicable licensing requirement and shall have had investment experience deemed suitable for the purposes of this corporation. The Investment Fiduciary, set forth above, may also serve as Investment Advisor. The Board of Directors shall act upon the recommendation of the Investment Committee to either accept the recommendation and engage the nominee as an advisor to this corporation or to decline the recommendation. Any advisor so engaged under this provision shall be employed as investment advisor for a term not to exceed three years and shall be an independent contractor of the corporation.
- c. The Board of Directors shall retain the right to terminate the agreement at any time with thirty days (30) notice. The Board of Directors shall review the investment performance of such advisor not less frequently than annually.

**2.9 Reporting and Accounting.** The Investment Committee shall prepare or cause to be prepared and submitted to the Board of Directors the following reports and accountings:

- a. A monthly report listing all income received since the prior report, expenses paid, distributions to the Aztec Museum Association, Inc., and a list of the investments;
- b. An annual report for the review and approval by the Board of Directors consisting of a detailed accounting of the activities of the Committee for the prior year. Such accounting shall set out in full detail each of the following items: (a) income received; (b) expenses incurred, paid, and payable; (c) a current inventory of investments; and (d) such other information as the Board of Directors shall from time to time direct, and;
- c. Such other reports or accountings as the Board of Directors may from time to time direct.

### **SECTION THREE MISCELLANEOUS PROVISIONS**

**3.1 Definitions.** For the purposes of this Policy, the following definition shall be used:

- a. “Board of Directors” shall mean those persons duly elected by the membership of Aztec Museum Association, Inc. as the directors of said corporation, meeting in regular session or special meeting duly and properly called, and acting upon motions made, seconded and approved in a manner consistent with the by-laws of the corporation.

**3.2 Impossibility.** In the event that the Aztec Museum Association, Inc. shall cease to exist, the final act of the Investment Committee shall be to comply with the terms of the Trust Agreement and to ensure that the remaining assets held in trust are distributed to the entity as provided by the Trust Agreement or by court order.

**3.3 Amendment.** These policies of the Investment Committee shall remain in force until the earlier of (a) their amendment or appeal by the Board of Directors; (b) exhaustion of all funds held in trust and termination of the Trust Agreement, or (c) a determination by a court of competent jurisdiction regarding and adverse to these policies.

Adopted by action of the Board of Directors of Aztec Museum Association, Inc. as grantor and beneficiary, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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Secretary of the Board of Directors