

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the "Agreement"), dated effective January 31, 2013, is by and between HAVE TRUNK WILL TRAVEL, INC., a California corporation ("HTWT"), and METRO, an Oregon municipal corporation established pursuant to Oregon law and the Metro Charter, doing business as the Oregon Zoo (the "Oregon Zoo").

Recitals

- A. The Oregon Zoo is an Association of Zoos and Aquariums accredited (#IN-5231600) Zoo, registered and licensed by the United States Department of Agriculture to research and exhibit, among other animals, Asian elephants (#92-C-001).
- B. HTWT is a private exhibitor ~~and exotic animal dealer~~, accredited by the Association of Zoos and Aquariums as a Related Facility and licensed by the United States Department of Agriculture (#93-C-066).
- C. HTWT owns the Asian elephant bull "Tusko" (Male *Elephas maximus*; local ID 1010, wild born India, est. 1971, Asian Elephant studbook # 270) (hereafter, "Tusko").
- D. On January 29, 2005, the Oregon Zoo and HTWT entered into a breeding loan agreement loaning Tusko to the Oregon Zoo for the purpose of exhibition, preservation and cooperative captive propagation through breeding with the Oregon Zoo's elephant herd (the "Breeding Loan Agreement"). The Breeding Loan Agreement assigns ownership of up to six resulting offspring in an alternating fashion between HTWT and the Oregon Zoo based on the offspring's date of birth, and provides the Oregon Zoo with a right of first refusal to purchase Tusko and any HTWT-owned offspring.
- E. Under the terms of the Breeding Loan Agreement, the parties agreed to follow recommendations from the AZA Elephant Taxon Advisory Group and Species Survival plan. Breeding recommendations from this group resulted in the conception of two live elephant calves through natural breedings.
- F. Tusko was bred with "Rose-Tu", an Asian elephant cow (*Elephas maximus*; local ID 94122, born Portland Oregon, August 31, 1994, Asian Elephant studbook # 361) owned by the Oregon Zoo.
- G. Two offspring resulted from the breeding: the Asian elephant bull calf "Samudra" (*Elephas maximus*; local ID A80122, born Portland Oregon, August 23, 2008, Asian Elephant studbook # 649), and the Asian elephant cow calf "Lily" (*Elephas maximus*; local ID B20189, born Portland Oregon, November 30, 2012, Asian Elephant studbook # 743) (hereafter, "Lily").

H. In accordance with the terms of the Breeding Loan Agreement, the Oregon Zoo received ownership of the first offspring - Samudra, and HTWT received ownership of the second offspring - Lily.

I. HTWT and the Oregon Zoo now wish to enter into this Purchase and Sale Agreement to provide for the termination of the Breeding Loan Agreement and the sale by HTWT of the Asian elephants Lily and Tusko to the Oregon Zoo, under the terms and conditions set forth below.

AGREEMENT

In consideration for payment to HTWT of the purchase price more specifically set forth below, and satisfaction of the mutual and reciprocal covenants and obligations of the parties set forth herein, HTWT agrees to sell and the Oregon Zoo agrees to purchase the elephants Lily and Tusko under the following terms and conditions:

1. **Purchase Price.** The Oregon Zoo agrees to pay HTWT \$400,000 (the "Purchase Price") for the Asian Elephants Lily and Tusko (the "Elephants"). The Purchase Price shall be paid in installments set forth below.

2. **Closing Dates.** Ownership of the Elephants shall pass to the Oregon Zoo in two separate transactions on February 8, 2013 ("Lily Closing Date") and April 20, 2013 ("Tusko Closing Date"), upon satisfaction of all Preconditions to Closing set forth below. The Breeding Loan Agreement shall be terminated as to each elephant on the applicable closing date. However, if any of the Preconditions to Closing set forth below have not been satisfied on or before either closing date, said transaction shall be extended for mutually agreed upon reasonable period not to exceed six months, to enable the parties to satisfy the Preconditions to Closing.

3. **Oregon Zoo Preconditions to Closing.** In addition to any other conditions contained in this Agreement, the following preconditions must be satisfied prior to the Oregon Zoo's obligation to purchase the Elephants. These preconditions are intended solely for the Oregon Zoo's benefit and the Oregon Zoo shall have the sole right and discretion to waive, by written notice, any of the conditions.

3.1 **Metro Council Approval.** This Agreement, the transaction completed herein, and Metro's obligations hereunder are expressly conditioned upon the formal approval by the Metro Council, by resolution, of the purchase of the Elephants under the terms and conditions set forth in this Agreement.

~~3.2 **Health.** Seven business days prior to each closing date, the subject Elephant must be examined by a mutually agreed upon veterinarian and pronounced in a state of health satisfactory to the Oregon Zoo. If either Elephant's health is found to have deteriorated~~

~~such that its health is dissatisfactory, the closing date relating to said Elephant shall be extended for 90 days or until said Elephant regains excellent health.~~ 

3.3 **Permits.** The Oregon Zoo will prepare and submit to the United States Fish and Wildlife Service ("USFWS") a "Form 3-200-37 Application" for the appropriate interstate commerce permit for Tusko, and will otherwise comply with state and federal requirements for the purchase and sale of Elephants, including but not limited to compliance with CITES (the Convention on International Trade of Endangered Species) and the Animal Welfare Act, if applicable.

3.4 **Satisfaction of HTWT's Obligations.** The following obligations of HTWT must be satisfied prior to Closing:

3.4.1 HTWT shall deliver copies of any and all written and electronic records and information on Tusko held by HTWT or known by owner to exist, including, but not restricted to, ISIS data, behavioral traits, medical history, diet, origin, and all other pertinent data shall be provided to the Oregon Zoo by HTWT.

3.4.2 HTWT will diligently and in good faith cooperate and assist the Oregon Zoo with the applications for permits necessary for the Oregon Zoo to take ownership of the Elephants, including but not limited to executing forms and providing documentary substantiation of 100% ownership of the Elephants and all other documentation held by HTWT that is necessary to accomplish a legal ownership transfer.

3.4.3 HTWT must have all necessary federal and state registrations, licenses, permits, and/or permissions necessary for HTWT to legally sell and transfer ownership of the Elephants to the Oregon Zoo, including but not limited to compliance with USFWS regulations, CITES and the Animal Welfare Act, if applicable.

3.4.4 HTWT shall acknowledge receipt of full payment for each Elephant and the completion of each sale in writing by executing a Bill of Sale provided by the Zoo.

4. **HTWT Conditions Precedent to Closing.** In addition to any other conditions contained in this Agreement, the following conditions precedent must be satisfied prior to the HTWT's obligation to sell each Elephant. These conditions are intended solely for HTWT's benefit and HTWT shall have the sole right and discretion to waive, by written notice, any of the conditions.

4.1 **Payment of the Purchase Price.** Receipt of the Purchase Price for Lily by HTWT via wire transfer of funds, in the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000), on or before the Lily Closing Date of February 8, 2013. Receipt of the Purchase Price for Tusko by HTWT via wire transfer of funds, in the amount of TWO

HUNDRED THOUSAND DOLLARS (\$200,000), on or before the Tusko Closing Date of April 20, 2013.

4.2 **Satisfaction of the Oregon Zoo's Obligations.** The following obligations of HTWT must be satisfied prior to each closing:

4.2.1 The Oregon Zoo shall have diligently and in good faith sought the Metro Council's approval for the transaction contemplated herein.

4.2.2 The Oregon Zoo shall have diligently and in good faith applied for and been issued all necessary federal and state registrations, licenses and permits to acquire and maintain ownership of the Elephants, including but not limited to submitting a "Form 3-200-37 Application" for the applicable interstate commerce permit, compliance with United State Fish and Wildlife Service regulations, CITES and the Animal Welfare Act, if applicable.

5. Special Provisions.

5.1 **Costs.** The Oregon Zoo and HTWT shall each pay its legal and professional fees incurred as a result of this transaction. Application fees for federal and state permits authorizing the sale shall be paid by the Oregon Zoo. HTWT shall pay any federal and or State of California taxes relating to or arising out of this transaction, including all sales, excise or transfer taxes.

5.2 **Elephant Mortality.** If both Elephants decease prior to the closings, this Agreement shall automatically terminate.

5.3 **Confidentiality.** HTWT and the Oregon Zoo and their officers, employees, contractors, professional consultants and other representatives agree to work collaboratively to coordinate public disclosure of the terms of this Agreement. Each party shall only disclose the terms hereof after providing reasonable notice to other party of its intent to do so.

5.4 **Media.** Except as set forth above, the Oregon Zoo reserves the exclusive right to give interviews, be quoted in the media and produce and distribute all press releases and media information pertaining to this transaction, the origin of the Elephants and their history. The Oregon Zoo will verify the accuracy of all such information relating to HTWT with HTWT prior to dissemination. HTWT agrees to forward all media and press inquiries to the Oregon Zoo, in the event HTWT is contacted directly. HTWT and the Oregon Zoo agree to work cooperatively on all press inquiries and media releases, and interviews pertaining to this transaction, the origin of the Elephants and their history.

5.5 **Notices.** All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To HTWT: Have Trunk Will Travel, Inc. (HTWT)

Attn: Gary and Kari Johnson

~~27575 Highway 74~~ 27455 Peach St.

Perris, CA 92570-9563

To: Oregon Zoo: The Oregon Zoo
Attention: Kim Smith, Executive Director
4001 SW Canyon Road
Portland, OR 97221

Copy to:
Office of the Metro Attorney
600 NE Grand Ave.
Portland OR 97232-2736

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended.

6. Legal and Equitable Enforcement of This Agreement. Either party may declare a default if the other party breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied or a cure commenced within ten (10) days after said breaching party receives written notice from the other party specifying the breach. Upon declaration of default, the complaining party shall have the right to pursue any remedy available to it at law or equity, specifically including the specific performance of this Agreement.

7. Representations and Warranties of HTWT. HTWT warrants and represents to the Oregon Zoo that the following matters are true and correct, and shall remain true and correct through Closing, and acknowledges that they are material inducements to Metro to enter into this Agreement:

7.1 Authority. HTWT has full power and authority to enter into this Agreement (and the persons signing this Agreement have full power and authority to sign for HTWT and to bind it to this Agreement) and to sell, transfer and convey all right, title, and interest in and to the Elephants in accordance with this Agreement. Except as set forth in this Agreement, no further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

7.2 **No Contracts, Leases, Rights Affecting Elephants.** HTWT has not entered into, and will not enter into, any other contracts for the sale of the Elephants, nor do there exist nor will there be any rights of first refusal, options to purchase the Elephants, perfected security interests, liens or other rights or agreement, written or oral, express or implied, which in any way affect or encumber the Elephants.

7.3 **No Legal Proceedings.** There is no suit, action, arbitration, judgment, legal, administrative, or other proceeding, claim, lien, or inquiry pending or threatened against HTWT that affects the Elephants, or which could affect HTWT's right or title to the Elephants.

7.4 **No Breach of Agreements.** The execution of this Agreement will not constitute a breach or default under any agreement to which HTWT is bound or to which the Elephants are subject.

7.5 **No Bankruptcy Proceedings.** No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of HTWT's knowledge, threatened against the HTWT, nor are any such proceedings contemplated by HTWT.

7.6 **No Dealer, Broker or Commission.** Each party represents and warrants to the other that it has not used or engaged a dealer or broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person or entity asserts a claim for a dealer or broker's commission or finder's fee against one of the parties to this Agreement, then the Oregon Zoo shall indemnify, hold harmless, and defend HTWT from and against any such claim if based on any action, agreement, or representations made by Oregon Zoo, and HTWT shall indemnify, hold harmless, and defend Oregon Zoo from and against any such claim if based on any action, agreement, or representations made by HTWT.

8. **Miscellaneous Terms and Conditions**

8.1 **Governing Law.** This Agreement shall be construed, governed and enforced in accord with the laws of Oregon. Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Multnomah County, or the United States District Court for the District of Oregon in Portland, Oregon.

8.2 **Partial Invalidity.** If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

8.3 **Waivers.** No waiver of any breach of any provision of this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other provision contained in this Agreement.

8.4 **Entire Agreement.** This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to it. This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein.

8.5 **Time of the Essence.** The HTWT and Oregon Zoo hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision.

8.6 **Reciprocal Indemnity.** Each party agrees to defend (using legal counsel reasonably acceptable to the indemnitee), indemnify and hold the other party and its agents, employees and elected officials, harmless from and against any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, reasonable attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively, "costs"), which may be imposed upon or claimed against said party to the extent that said matters, directly or indirectly arise from or are in any way connected with: (i) misrepresentation or the breach of any warranty set forth herein by a party; and/or (ii) any breach, violation or nonperformance of any of the obligations under this Agreement.

8.7 **Attorney Fees.** If a suit, action, or other proceeding of any nature whatsoever (including without limitation any administrative proceeding and any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney fees and all other fees, costs, and expenses actually incurred in connection therewith, at any hearing, at trial, on any appeal or any petition for review, in addition to all other amounts provided by law.

8.8 **No Assignment.** Neither this Agreement or any rights or privileges granted hereunder shall be assigned without the prior written consent of both institutions.

8.9 **Approvals.** Whenever consent or approval by the Oregon Zoo is required under the terms of this Agreement, all such consents or approvals shall be given in writing from Kimberly Smith, Oregon Zoo Executive Director.

8.10 **Good Faith and Reasonableness.** The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and

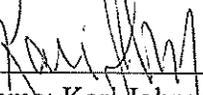
explicitly permitted as to the specific item in question, such as in the case of a party being given "sole discretion" or being allowed to make a decision in its "sole judgment."

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EXECUTED in multiple counterpart originals effective as of the date first set forth above:

HAVE TRUNK WILL TRAVEL, INC.
A California corporation

By: 
Name: Gary Johnson
Title: President

By: 
Name: Karl Johnson
Title: corp. secretary

METRO, dba THE OREGON ZOO

By: 
Martha J. Bennett
Chief Operating Officer