

LICENSE AGREEMENT

between
City of Portland,
By and through
Portland Parks and Recreation Bureau
and
Leach Garden Friends

TABLE OF CONTENTS

ARTICLES

ARTICLE I MUTUAL COOPERATION

ARTICLE II RESPONSIBILITIES OF THE PARTIES

ARTICLE III PREMISES AND USE

ARTICLE IV LICENSE

1. DEFINED TERMS	7
2. LICENSE.....	8
2.1 GRANT OF LICENSE.....	8
2.2 LICENSEE'S RIGHTS UNDER THE LICENSE.....	8
2.3 SPECIAL PROVISIONS CONCERNING PPR PROPERTY.....	9
2.4 MAINTENANCE AND REPAIR OF PREMISES.....	9
3. TERM OF LICENSE	9
3.1 COMMENCEMENT OF INITIAL TERM.....	9
3.2 EXPIRATION OF INITIAL TERM	9
3.3 RENEWAL TERM	9
4. FEES AND CHARGES	9
4.1 LICENSE FEE	9
5. ACCESS.....	10
5.1 ACCESS BY LICENSEE	10
5.2 PPR ACCESS	10
6. USE OF PPR PREMISES.....	10
6.1 LIMITATIONS ON USE OF PPR PREMISES.....	10
6.2 COMPLIANCE WITH LAWS AND SPECIFICATIONS.....	10
6.3 PHYSICAL INTERFERENCE WITH PPR'S OPERATIONS	11
6.4 HAZARDOUS MATERIALS.....	11
6.5 DAMAGE TO PPR'S PROPERTY	11
7. APPROVAL OF PLANS.....	11
7.1 PLAN REVIEW AND APPROVAL	11
7.2 PPR'S APPROVAL.....	12
7.3 APPROVAL OF CONTRACTORS.....	12
8. WORK BY LICENSEE.....	12
8.1 CONDITIONS	12
8.2 STRUCTURAL REQUIREMENTS	12
8.3 NO LIENS	13
8.4 COMPLETION OF INSTALLATION	13
8.5 MAINTENANCE AND REPAIR OF LICENSEE.....	13

9. INDEMNIFICATION AND INSURANCE	14
9.1 INDEMNIFICATION BY LICENSEE.....	14
9.2 EXCLUSION.....	15
9.3 DEFENSE OF CLAIMS.....	15
9.4 INSURANCE.....	15
10. DEFAULT; REMEDIES; FORCE MAJEURE.....	15
10.1 EVENTS OF DEFAULT	15
10.2 REMEDIES FOR DEFAULT	16
10.3 EXCLUSION OF CERTAIN DAMAGES.....	16
10.4 FORCE MAJEURE; TERMINATION	16
10.5 OWNERSHIP UPON TERMINATION OR EXPIRATION	17
11. MISCELLANEOUS	17
11.1 LICENSOR CONSENT	17
11.2 TAXES.....	17
11.3 THIRD-PARTY USE OF THE PREMISES	18
11.4 SIGNAGE:	18
11.5 ASSIGNMENT	18
11.6 NOTICES	18
11.7 GOVERNING LAW	19
11.8 ENTIRE AGREEMENT.....	19
11.9 NO THIRD PARTY RIGHTS.....	19
11.10 FURTHER DOCUMENTS	20
11.11 ILLEGALITY	20
11.12 WAIVER IN WRITING.....	20
11.13 NO PARTNERSHIP.....	20
11.14 EXHIBITS; SUCCESSORS; TIME OF ESSENCE; COUNTERPARTS; AMENDMENTS	20

LICENSE AGREEMENT

LICENSE AGREEMENT (this “Agreement”) is made and executed as of the ___ day of _____ 20___, by and between the CITY OF PORTLAND, by and through its PARKS and RECREATION BUREAU (hereinafter “LICENSOR”, “City” or “PPR”), and LEACH GARDEN FRIENDS, a non-profit corporation (hereinafter “LICENSEE” or “Friends”).

RECITALS

WHEREAS, City owns the real property located at 6704 SE 122nd Avenue in the City of Portland, State of Oregon and commonly called Leach Botanical Garden (“Garden”).

WHEREAS, the Garden was devised to the City by the terms of the wills of John and Lilla Leach with the express condition that it be used as a botanical park and museum for the benefit of the public;

WHEREAS, City entered into a Management Agreement with the Friends that has expired, and this new License Agreement is intended to replace and supercede any and all previous agreements concerning the Friends’ Garden management;

WHEREAS, the mission of the Friends is to sustain, enhance and promote the Garden as a unique educational resource for flora, horticulture and botany, and to maintain a museum for the displaying of related artifacts;

WHEREAS, both the Friends and PPR desire that the Friends manage the operations, programming, and development of the Garden in accordance with the Parties’ commitment to preserving the historical, educational and horticultural significance of the Garden;

WHEREAS, the purpose of this Agreement is to define the relationship between PPR and LICENSEE in regards to their purposes, responsibilities, and accountability;

NOW, THEREFORE, in consideration of the mutual covenants and benefits stated herein, and in further consideration of the obligations, terms and consideration hereinafter set forth and recited, PPR and LICENSEE agree as follows:

ARTICLE I: MUTUAL COOPERATION

This Agreement is a component of the ongoing cooperative relationship between PPR and the Friends whose mutual goal is the continued successful operation of the Leach Botanical Garden. In addition to their specific obligations under this Agreement, the parties pledge to cooperate and consult with one another on all material matters relating to their mutual interest in the Garden throughout the Term of this Agreement.

ARTICLE II: RESPONSIBILITIES OF THE PARTIES

1. **LICENSEE RESPONSIBILITIES AND AUTHORITY:** LICENSEE shall perform the services and have the responsibilities as set out below.
 - A. The Friends may charge fees for uses related to the Garden, after obtaining the consent of PPR's Manager, Strategy, Finance, Business Development (SFBD) to the schedule of fees.
 - B. The Friends shall employ such personnel as may be required during the term of this agreement and any renewals thereof. The number and compensation of such personnel shall be determined by the Friends, subject only to City approval of the Friends' budget, as required by this Agreement. The Friends shall observe and abide by all applicable federal, state and local laws, statutes and regulations relating to employment practices, including Equal Employment Opportunity.
 - C. The City shall pay no compensation directly to the Friends for the Friends' work under this Agreement. However, in consideration of its services under this Agreement, the Friends shall be entitled to keep all revenues it derives from operation of the Garden, including, but not limited to, donations, sponsorships, memberships, fees, leases, concessions and sales. The Friends shall use all such revenue solely for operating, programming, maintaining, repairing, improving, and investing on behalf of the Garden.
 - D. The Friends, in accordance with their PPR-approved business plan, shall progressively position the Garden to become a self-supporting operation, as resources permit. The Friends will not be liable to the City for rent for the Garden. The Friends will be responsible for developing a budget to meet the obligations of the Friends under this Agreement. In addition, PPR and the Friends will jointly develop a comprehensive budget for the Garden.
 - E. The Friends, in collaboration with PPR, shall develop a Capital Improvement Plan. The Friends shall assist in raising funds for the implementation of this Plan.
 - F. The Friends shall pay when due any and all applicable federal, state or local taxes assessed against the Garden or against distributions to the Friends under this Agreement.

- G. The Friends shall obtain advanced written approval by Manager, SFBD as provided for in Article IV Section 7 hereof, for all capital improvements. “Capital Improvements” means any permanent structural change or addition to the Garden. The Friends may make temporary or nonstructural improvements to the Garden with the prior written consent of PPR’s Manager, Strategy, Finance and Business Development. Subject to the normal budgeting procedures and funding limitations, in September of each year the Friends may submit a request to PPR for funding of major maintenance and capital improvements for the Garden.
- H. The Friends shall provide, as resources allow, a basic level of horticultural care to the Garden and perform general grounds maintenance, including but not limited to trail and hard surface maintenance, weeding, and litter pick up and removal. The Friends shall maintain the Garden in a generally clean, neat, and safe condition.
- I. During private or public events held at the Garden, the Friends shall provide an adequate level of security or crowd control to protect the Garden, its facilities and guests.
- J. The parties may, by agreement between the Friends and the City, include Garden purchases in existing Friends’ or City purchase arrangements. The Garden’s share of such purchases shall be allocated and charged to Garden operations.
- K. The Friends shall maintain books and records of the Friends operations and make such books and records available, upon request, for inspection, review and audit by the City. The Friends shall construct and submit to PPR copies of the Oregon 990 Forms; annual reports submitted to the Oregon Secretary of State and Oregon Department of Justice as part of their non-profit requirements; the latest version of the Friends’ Articles of Incorporation; and an Annual Financial Report as approved by the Friends’ accountant and adopted by its Board, showing all revenues of all types from the operation of the Garden and any preceding fiscal year, including cash and credit receipts and gross and net revenues and expenses, and detailing the manner in which any PPR grant monies were utilized each quarter. A current set of all these materials shall be submitted to PPR’s Project Manager with a copy to Manager, SFBD at the execution of this Agreement, and annually thereafter within 30 calendar days following the end of the Friends’ fiscal year.
- L. The Friends shall comply with all City liability and insurance requirements, as described in Exhibit B, and ensure that all contractors, sublessees, and concessionaires adhere to the same liability and insurance requirements as required of the Friends.
- M. Obtain all licenses and permits necessary, and comply with all federal, state and local laws in fulfilling the Friends’ obligations under this Agreement.

2. CITY RESPONSIBILITIES AND AUTHORITY

PPR shall have the following rights and responsibilities under this agreement:

- A. Subject to its normal budgeting procedures, the City shall consider each year an appropriate request from the Friends for a contribution for capital improvements or maintenance of the plants and facilities.
- B. To the extent funds are available, the City shall be responsible for all maintenance required for the structural elements of the Garden. As resources allow, PPR will assist with periodic grounds maintenance. City will also contribute, through the annual budget process, resources to ensure the public's safety within the Garden.
- C. PPR shall prepare a budget related to the costs of its obligations at the Garden. Parks will then work collaboratively with the Friends to develop a comprehensive budget for the Garden.
- D. PPR will meet with the Friends to develop and update as necessary a strategic business plan. PPR will assist with the implementation of the plan, as resources allow.
- E. In the event that the Garden suffers damages resulting from natural causes or acts of god, PPR will endeavor, as resources allow, to assist in the reestablishment of the Garden and its historic collection.
- F. PPR will take the lead in developing and updating, as needed, a Master Plan for the Garden.

ARTICLE III: PREMISES AND USE:

It is the intent of the Parties that the Friends manage the entirety of Leach Botanical Garden, as it now exists and as it may be expanded in the future. The Premises consists of the Leach Botanical Garden as described and delineated in Exhibit A. In addition, unless otherwise agreed in writing, the Premises shall also include any property acquired in the future that is incorporated into Leach Botanical Garden. The licensed use by the Friends will be solely for the management of the Garden in accordance with the terms and conditions of this Agreement.

ARTICLE IV: LICENSE

1. DEFINED TERMS

"Premises" as defined in ARTICLE III.

"LICENSEE Use" as defined in ARTICLE III.

"Hazardous Substance" as defined in ARTICLE IV, Section 6.5.

"Initial Term": as defined in ARTICLE IV, Section 3.0 TERM OF LICENSE.

"License Fee" as defined in ARTICLE IV, Section 4.0 FEES AND CHARGES.

"License Fee Commencement Date" as defined in ARTICLE IV, Section 4.1.

2. LICENSE

2.1 Grant of License

PPR hereby grants LICENSEE a non-exclusive license to use Premises for the purposes stated within and in accordance with the terms and conditions of this Agreement (the "License").

2.2 Licensee's Rights under the License

(a) The License grants LICENSEE the following rights, which shall be exercised in accordance with the terms and conditions of this Agreement:

(i) The right to use the Premises only for purpose(s) as stated in the RECITALS, defined in ARTICLE III, and in accordance with ARTICLES I AND II and the terms and conditions of this agreement;

(b) The License does not grant LICENSEE any of the following rights:

(i) No right or interest in the PPR Premises, other than the right to use the foregoing in accordance with this Agreement. Such rights of use are expressly declared not to be property rights, but are solely contractual in nature.

(ii) No right of access or entry to other PPR Premises, except that access designated and permitted by PPR herein.

(iii) No right to make or install major improvements in or on the PPR Premises without the express written consent of the PPR Manager, Strategy Finance and Business Development (Manager, SFBD) as provided for in this ARTICLE IV, Section 7.

(c) Rights granted under this License are personal to Licensee, and may not be transferred, sold, conveyed, or otherwise hypothecated without the prior express written consent of PPR, which consent may be granted or denied in PPR's sole discretion.

2.3 Special Provisions Concerning PPR Property

(a) LICENSEE shall not have the right to use PPR Premises to create any third party relationships, except with the written consent of Manager, SFBD or as otherwise permitted under this Agreement.

(b) LICENSEE acknowledges that it has sole responsibility for obtaining any and all approvals for LICENSEE's defined use of the PPR Premises hereunder.

2.4 Maintenance and Repair of Premises

(a) LICENSEE, in accordance with ARTICLE II, Section 1, shall be responsible for performing all maintenance and repairs, other than those expressly assumed by PPR, necessary to keep the Premises in good condition and repair and in compliance with all applicable federal, state and local laws, rules and regulations.

3. TERM OF LICENSE

3.1 Commencement of Initial Term

The Initial Term of the License granted under this Agreement shall commence on the date when this Agreement has been executed and delivered by both parties.

3.2 Expiration of Initial Term

The Initial Term of the License granted under this Agreement shall expire five (5) years from the commencement date of this License.

3.3 Renewal Term

Upon mutual agreement of both parties, the License may be renewed for one additional five (5) year period for a total term of ten (10) years on the same terms and conditions in effect during the initial term. If the Friends wishes to renew the license, it shall give written notice to that effect to the Manager, SFBD at least 180 days prior to the expiration of initial or subsequent term.

4. FEES AND CHARGES

4.1 License Fee

In consideration of its management services, the Friends will not be charged a license fee.

5. ACCESS

5.1 Access by LICENSEE

(a) LICENSEE shall have no right to access the PPR Premises, except as described in this Section 5.

(b) LICENSEE, its agents, employees, contractors (if any), subcontractors (if any) and LICENSEE's invitees shall be permitted reasonable access to the premises for purposes described in ARTICLES I, II, and III. When LICENSEE wishes to access the PPR premises for a purpose not previously approved by PPR under ARTICLES I, II and III of this agreement, LICENSEE shall, whenever possible, obtain advance written approval for such access and, in all cases, provide reasonable advance notice to PPR of LICENSEE's desire to access the PPR Premise. LICENSEE shall, at all times, observe and abide by PPR's access rules and regulations. The access rights described herein shall be exercised during the term of this Agreement and shall terminate when this Agreement terminates.

5.2 PPR Access

PPR shall have access to the Premise at all times, including without limitation during the periods when LICENSEE is performing any work with PPR's prior approval, and PPR shall have the right to inspect LICENSEE's work at all times. It is expressly understood by the parties that PPR, whether or not it conducts visits or inspections, assumes no responsibility for the quality, adequacy or safety of any work that is done by or for LICENSEE.

6. USE OF PPR PREMISES

6.1 Limitations on Use of PPR Premises

The PPR Premises may be used by LICENSEE only for the purposes listed in the RECITALS and defined in ARTICLES I, II, and III and as allowed or required by this Agreement. LICENSEE shall, at all times, maintain the PPR Premises in good condition and repair, reasonable wear and tear excepted, at its sole cost and expense.

6.2 Compliance with Laws and Specifications

(a) LICENSEE's use of the PPR Premises under this Agreement shall comply at all times with all applicable federal, state and local laws, rules, regulations, ordinances, statutes and decisions.

(b) Without limiting the generality of Section 6.1, LICENSEE shall use the Premises solely in accordance with PPR policies, rules and regulations, and all other applicable laws, codes, statutes and regulations.

6.3 Physical Interference with PPR's Operations

Any construction, reconstruction, maintenance, repair, operation, and/or use of the Premises by LICENSEE, and all work in connection therewith, shall be performed in a manner that shall not interfere with PPR's or its patrons' customary or ordinary use of the remainder of PPR's property, of which the Premises are a part. Prohibited interference includes, but is not limited to, interference with free and safe ingress and egress, parking and PPR's construction or maintenance work.

6.4 Hazardous Materials

LICENSEE shall not dispose at, on or about the PPR Premises any Hazardous Substance (as defined in ORS 465.200 or as it may hereafter be amended, and any implementing regulations) and shall handle all Hazardous Substances in a manner that protects the PPR Premises and the environment from accidental spills and releases. LICENSEE or any of its officers, employees, agents, contractors, subcontractors, servants, successors, assigns, sublessees, licensees or invitees shall not cause or authorize to occur any unauthorized release of a Hazardous Substance or any condition of pollution or nuisance at, on or about the PPR Premises, whether affecting surface water or groundwater, air, the land or the subsurface environment.

6.5 Damage to PPR's Property

If any property of PPR is damaged, destroyed or disturbed by LICENSEE's activities on or about the PPR Premises, LICENSEE shall promptly notify PPR and shall, at PPR's option, either repair or replace the affected property at LICENSEE's expense or shall reimburse PPR for its reasonable costs of repairing or replacing the affected property.

7. APPROVAL OF PLANS

LICENSEE's right to make any and all improvements to the Premises (including but not limited to the initial improvements at the start of the term) is contingent upon LICENSEE's obtaining all certificates, permits, licenses and other approvals (collectively "Approvals") required from all appropriate authorities under all applicable laws.

7.1 Plan Review and Approval

All Site plans and plans for the construction and the installation of equipment and related improvements by LICENSEE (the "Plans") shall be submitted to PPR's Manager SFBD for review and approval. No construction shall begin until (i) PPR delivers to LICENSEE in writing PPR's approval of the Plans, (ii) the Plans are submitted to and approved by appropriate authorities and (iii) the required insurance certificates are provided to PPR. If PPR does not approve the Plans submitted to it, PPR shall deliver written notice thereof to LICENSEE within thirty (30) days after delivery of the Plans to PPR. PPR makes no representations as to any third party approvals needed for construction, installation, operation or maintenance of any LICENSEE's equipment or improvements to Premises.

7.2 PPR's Approval

It is expressly understood by the parties that approval by PPR of the Plans shall not relieve LICENSEE of its full responsibility for the construction and installation of LICENSEE's improvements, nor shall any such approval restrict, modify or void the obligations of LICENSEE under Section 6.3 of this Agreement.

7.3 Approval of Contractors

PPR shall have the right to approve all contractors and subcontractors hired by LICENSEE to perform work in connection with this Agreement, which approval shall not be unreasonably withheld. PPR shall also have the right to require a certificate of insurance evidencing the contractors' or subcontractors' maintenance of the insurance required herein and proof that said contractors and subcontractors are validly licensed. Each contractor and subcontractor hired by LICENSEE to perform work in connection with this Agreement shall name The City as an additional insured on all appropriate insurance policies, as specified in Exhibit C of this Agreement. All contractors and subcontractors shall hold a valid City of Portland business license.

8. WORK BY LICENSEE

8.1 Conditions

LICENSEE shall inspect each and every location on or about the PPR Premises where work is to be performed by LICENSEE pursuant to this Agreement and fully familiarize itself with the conditions of such locations. LICENSEE agrees that no claim whatsoever shall be made against PPR for costs, damages or expenses as a result of the conditions of the PPR Premises or adjacent property. LICENSEE accepts the PPR Premises "AS IS," in its then-present physical condition, and makes no demands on PPR for any repair, improvement or alteration thereof. Except as specifically provided herein, LICENSEE acknowledges that neither PPR nor any representative, employee or agent of PPR has made any representation or warranty to LICENSEE with respect to the conditions at or suitability of the PPR Premises or adjacent property.

8.2 Structural Requirements

LICENSEE's installation and alteration work shall be performed in accordance with applicable building codes and shall not adversely affect the structural integrity or maintenance of PPR's property or improvements. Any structural work or reinforcement on an improvement shall be approved by a licensed structural engineer at LICENSEE's sole cost and expense and receive advanced written approval by PPR's Manager, SFB D as provided for in Section 7 hereof.

8.3 No Liens

LICENSEE shall keep the PPR Premises and all PPR property used in connection with this agreement free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of LICENSEE. If any lien is filed against any portion of the PPR Premises or PPR property used in connection with this agreement as a result of the acts or omissions of LICENSEE, or of LICENSEE's employees, agents or contractors, LICENSEE shall discharge, bond or otherwise secure the same to PPR's reasonable satisfaction within thirty (30) days after LICENSEE has notice that the lien has been filed. If LICENSEE fails to discharge, bond or secure any lien within such thirty (30) day period, then, in addition to any other right or remedy of PPR, PPR may, at its election, upon five (5) days' prior written notice to LICENSEE, discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding. LICENSEE shall pay on demand any amount so paid by PPR for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of PPR incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary reasonable disbursements in connection therewith.

8.4 Completion of Installation

(a) LICENSEE shall advise PPR in writing, when its installation work is completed. PPR shall then have sixty (60) days to inspect LICENSEE's work and give LICENSEE written notice of any deficiencies requiring correction by LICENSEE. LICENSEE shall correct any construction and installation deficiencies reported by PPR within sixty (60) days of LICENSEE's receipt of such written notice.

(b) In the event that any work by LICENSEE hereunder involves construction, LICENSEE shall, within thirty (30) days of completion of construction, submit to PPR a book of approved "as-built" drawings and specifications. Such "as-built" submittal shall consist of three (3) hard copies and one electronic copy (CD-ROM or other format approved by PPR) of the book of "as-built" drawings and specifications. The electronic copy shall be in a compatible software format (e.g., Auto CAD version 2002 or better) approved by PPR.

8.5 Maintenance and Repair of LICENSEE

(a) LICENSEE shall be solely responsible for performing all maintenance and repairs, except for those expressly assumed by the City under this Agreement, necessary to keep the LICENSEE Premises in good condition and repair and in compliance with all applicable federal, state and local laws, rules and regulations.

(b) PPR reserves the right, in its sole discretion, to make emergency repairs to the LICENSEE Premises, at the sole cost and expense of

LICENSEE, in the event that such repairs are needed on an emergency basis to protect PPR or the public.

9. INDEMNIFICATION AND INSURANCE

9.1 Indemnification by LICENSEE

LICENSEE shall indemnify, protect and defend the City, its directors, officers, employees and agents, against, and hold the City, its directors, officers, employees and agents, harmless from any and all liabilities, obligations, losses, damages, fines, penalties, claims, demands, suits, actions, causes of action, charges, judgments, costs and expenses (including all reasonable attorneys' fees and court costs) (collectively, "Losses") of any nature whatsoever that may be imposed upon, incurred or paid by, or asserted against the City, its directors, officers, employees and agents, LICENSEE, the PPR Premises or any interest therein to the extent that such Losses are the result of, arise from, or are in connection with any of the following:

(a) Any injury to or death of any person or any damage to property occurring from any use of or cause in, on or about the PPR Premises to the extent arising from the acts or omissions of LICENSEE or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;

(b) The use, non-use, condition, possession, occupation, operation, repair, maintenance or management of the portion of the PPR Premises occupied and maintained by LICENSEE or any part thereof, or of the LICENSEE improvements or any component thereof to the extent arising from the acts or omissions of LICENSEE or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;

(c) Any construction, reconstruction, repairs, changes or alterations on or to, or any work done in, on or about, the PPR Premises or any part thereof by or at the direction of LICENSEE;

(d) Any negligent or tortious act on the part of LICENSEE or any of its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;

(e) The release of any Hazardous Substance on the PPR Premises or the migration of any Hazardous Substances to other properties or released into the environment, caused by or resulting from the negligence or willful misconduct of LICENSEE or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees.

(f) Failure of LICENSEE to perform or comply with any term, covenant or condition of this Agreement; or

(g) Violation or alleged violation by LICENSEE of any contract or agreement to which LICENSEE is a party or any law, regulation, rule, ordinance, statute or decision, in each case affecting the Premises, or LICENSEE's use thereof, or LICENSEE's occupancy, use, possession, operation, repair, maintenance or management of or any portion of the PPR Premises pursuant hereto.

9.2 Exclusion

There is hereby expressly excluded from the scope of the foregoing indemnity any matter to the extent that such matter results solely from the negligence or willful misconduct of PPR (or its employees, agents, contractors or licensees other than the Friends).

Additionally, to the extent permitted by Oregon law, and subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 to 30.300, the City shall indemnify, defend and hold harmless THE FRIENDS and its officers, agents and employees against any claim, demand, suit or action (including attorney fees through trial and on appeal), to the extent such claim, demand, suit or action arises from the design, construction, or PPR maintenance of the Garden.

9.3 Defense of Claims

If any action or proceeding is brought against the City, its directors, officers, employees or agents, which action or proceeding is based upon a claim for which LICENSEE is obligated to indemnify the City hereunder, LICENSEE shall, upon notice from the City, at LICENSEE's expense, defend such action or proceeding through counsel reasonably acceptable to PPR.

9.4 Insurance

During the term of this Agreement, LICENSEE shall maintain insurance that satisfies PPR's standard insurance requirements for permit and license holders. A copy of PPR's current requirements is attached hereto as Exhibit C. PPR may notify LICENSEE, from time to time, of changes in PPR's standard insurance requirements.

10. DEFAULT; REMEDIES; FORCE MAJEURE

10.1 Events of Default

The following events shall constitute events of default by LICENSEE:

(a) if LICENSEE fails to pay any portion of the License Fees or other amounts payable hereunder within ten (10) days of written notice of such failure to pay;

(b) if LICENSEE fails to perform any other covenant in this Agreement within thirty (30) days after written notice from PPR specifying the failure, provided that if such failure cannot, with due diligence, be cured within a

period of thirty (30) days, LICENSEE shall not be deemed to be in default if LICENSEE begins to cure the failure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion;

(c) The bankruptcy or insolvency of Licensee or if a receiver or trustee is appointed to take charge of any of the assets of Licensee in or on the Premises and such receiver or trustee is not removed within thirty (30) days after the date of appointment, or in the event of judicial sale of the personal property in or on the Premises upon judgment against Licenses thereunder; or

(d) if LICENSEE is dissolved or fails to maintain its status as an Oregon non-profit corporation in good standing or its qualification as a tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code.

10.2 Remedies for Default

Upon the occurrence of an event of default under this Section 10, PPR shall have the following rights and remedies, as well as any other remedies available at law or in equity.

(a) PPR shall have the right to suspend LICENSEE's use of the Premises until the default is cured.

(b) So long as the default is not cured, PPR shall have the right to terminate this Agreement by written notice to LICENSEE. Such termination shall be effective immediately if public health, safety or welfare is at risk. Otherwise such termination shall be effective thirty (30) days after the written notice.

10.3 Exclusion of Certain Damages

Neither party shall be liable to the other party hereunder or in connection with the transactions contemplated hereunder, whether in contract or in tort, for indirect, incidental, exemplary, punitive, consequential or other special damages (including lost profits), whether or not such damages are foreseeable or unforeseeable, except to the extent that such damages are included in third-party claims that are covered by the indemnities under Section 9.1.

10.4 Force Majeure; Termination

(a) Neither PPR nor LICENSEE shall be in default hereunder if the performance of any act required of it hereunder is prevented or delayed by reason of events, contingencies or causes beyond its reasonable control and without its fault, including, but not limited to, fire, flood, earthquakes, lightning, unusually severe weather, acts of God, acts of any governmental authority, war, riot, accidents, embargoes, strikes, labor disputes, shortage of labor, fuel, raw materials, or machinery, or technical or yield failure, affecting such party or its suppliers or subcontractors; provided, however, that nothing in this Section 10.4 shall excuse

LICENSEE from the prompt payment of any amount required under this Agreement.

(b) Notwithstanding the proviso in Section 10.4(a), if the Premises are rendered unusable by an event described in Section 10.4(a) and if such condition continues for more than thirty (30) consecutive days, the License Fee for the Premises shall thereafter be abated until such time as such condition no longer exists. If such condition continues for more than sixty (60) consecutive days or if PPR notifies LICENSEE that it is impractical or uneconomic to restore any physical damage that is responsible for the interruption of service, either PPR or LICENSEE may terminate this Agreement by written notice to the other party. PPR shall not be required to refund any portion of the License Fee hereunder, but LICENSEE shall be entitled to a pro-rata credit for prepaid, but unusable, days in excess of thirty (30) consecutive days, which shall be applied against its next License Fee payment hereunder or, in the event of a termination of this Agreement, under any other similar agreement between PPR and LICENSEE.

10.5 Ownership upon Termination or Expiration

With the exception of personal property on loan from the Oregon Historical Society or other organizations, upon the expiration or termination of this Agreement, all fixtures, improvements and personal property located on or associated with the operation of the Garden premises shall become the property of the City. After satisfaction of the Friends' obligations outstanding as of the date of expiration or termination, all money remaining in the Friends' possession or accounts arising from the operation of the Garden, including, but not limited to, donations, sponsorships, memberships, fees, leases, concessions and sales, and any income derived therefrom, shall become the property of the City, to be used exclusively for operating, programming, maintaining, repairing and improving the Garden. In addition, upon dissolution of the Friends or the termination of this Agreement, the Friends' Board shall confer with PPR representatives to determine the appropriate entity to receive any remaining funds before providing direction to the Oregon Community Fund regarding the distribution of all undistributed net income and principal from any funds administered by the Oregon Community Foundation on behalf of the Garden.

11. MISCELLANEOUS

11.1 Licensor Consent

Unless otherwise stated, whenever consent, approval or direction by Licensor is required under the terms contained herein, all such consent, approval or direction must be in writing from the Director of PPR or a person designated in writing by the Director.

11.2 Taxes

(a) Pursuant to Oregon Revenue and Taxation Code, PPR hereby notifies LICENSEE that one or more of the rights granted to LICENSEE under Section 2.2(a) may be construed by Oregon state or county taxing authorities

as creating a possessory interest in LICENSEE that is subject to property taxation and that, if so, LICENSEE may be subject to the payment of property taxes levied on such possessory interest.

(b) If any other real property or personal property taxes or assessments of any kind are levied with respect to the LICENSEE's use of the PPR Premises, LICENSEE shall be responsible for such taxes or assessments. If bills for such taxes or assessments are sent to PPR, rather than LICENSEE, PPR shall timely provide LICENSEE with such bills or, if appropriate, with an invoice and documentation evidencing LICENSEE's share of such taxes or assessments.

(c) LICENSEE shall pay all taxes or assessments for which it is responsible, above, before the same become delinquent. LICENSEE shall have the right, at no cost to PPR, to contest with the taxing authorities any such taxes or assessments described in Sections 11.1(a) or 11.1(b).

11.3 Third-Party Use of the Premises

Except as provided for in this Agreement, LICENSEE may not lease, license, transfer to, or swap, exchange with, or otherwise allow the use of the Premises by third parties. It is understood and agreed that, notwithstanding any such arrangements, no such third party shall have any rights under this Agreement, either as a party hereto or a third-party beneficiary.

11.4 Signage:

LICENSEE may not display or erect any permanent signs on the Premises or other PPR property used in connection with this agreement without the advanced written approval of PPR's Manager, SFBG or unless such display is in conformance with Garden's PPR-approved sign plan.

11.5 Assignment

(a) PPR may assign, at its sole discretion, this Agreement to any successor entity having responsibility for PPR management and/or operation the property and premises thereon; and the assignee shall be responsible for the performance of all terms and conditions of this Agreement applicable to PPR.

(b) LICENSEE shall not assign this Agreement without the prior written consent of PPR, which consent may be withheld at PPR's sole discretion, and any purported assignment without such consent shall be void.

11.6 Notices

All notices under this Agreement shall be in writing and shall be deemed validly given if sent by mail, nationally recognized courier or facsimile transmission, and shall be effective upon receipt. If any such notice or communication is not received or cannot be delivered

due to a change in the address of the receiving party of which notice was not previously given to the sending party or due to a refusal to accept by the receiving party, such notice or other communication shall be effective on the date delivery is attempted. Notices should be addressed as follows, except that LICENSEE's communications to PPR concerning insurance coverage should be sent to the addresses described in Exhibit B:

<u>PPR:</u>	<p>Portland Parks and Recreation Bureau 1120 SW 5th Ave, Suite 1302 Portland, Or 97024</p> <p>Attention: Manager, Strategy, Finance and Business Development Telephone: (503) 823- Facsimile: (503) 823-5570</p>
	<p><u>With a copy to:</u> Office of the City Attorney 1221 SW 4th Ave, Room 430 Portland, OR 97204 Attention: Harry Auerbach Telephone: (503) 823-4047 Facsimile: (503) 823-3089</p>
<u>LICENSEE:</u>	<p>Leach Garden Friends PO Box 90667 Portland, OR 97290 Attention: Executive Director Telephone: (503) 823-1673 Facsimile: (503) 823-9504</p>

Any party may change the designated recipient of notices by so notifying the other party in writing.

11.7 Governing Law

This Agreement shall be governed by and construed under the laws of the State of Oregon, excluding its choice of law principles.

11.8 Entire Agreement

This Agreement constitutes the entire agreement of the parties and shall supersede any prior or contemporaneous agreements or negotiations, whether written or oral, between the parties, regarding the subject matter herein.

11.9 No Third Party Rights

Nothing in this Agreement is intended to create any rights in any third parties.

11.10 Further Documents

Each party agrees to cooperate with the other in the execution of any documents necessary to protect its rights under this Agreement.

11.11 Illegality

If any provision of this Agreement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement and this Agreement shall remain in full force and effect without such invalid, illegal or unenforceable provision.

11.12 Waiver in Writing

No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

11.13 No Partnership

Nothing contained in this Agreement is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership or a joint venture between PPR and LICENSEE.

11.14 Exhibits; Successors; Time of Essence; Counterparts; Amendments

The Exhibits attached to this Agreement are made a part of this Agreement. This Agreement shall benefit and bind PPR and LICENSEE and their respective personal representatives, heirs, successors and assigns. Time is of the essence of this Agreement. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement. This Agreement may not be amended or modified except by a written instrument signed by PPR and LICENSEE.

IN WITNESS WHEREOF, PPR and LICENSEE have caused their duly authorized representatives to execute this Agreement in triplicate.

LICENSOR:

LICENSEE:

PORTLAND PARK AND RECREATION
BUREAU

LEACH GARDEN FRIENDS

By: _____

By: _____

Name:

Name:

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

PREMISES

Map of Leach Botanical Garden

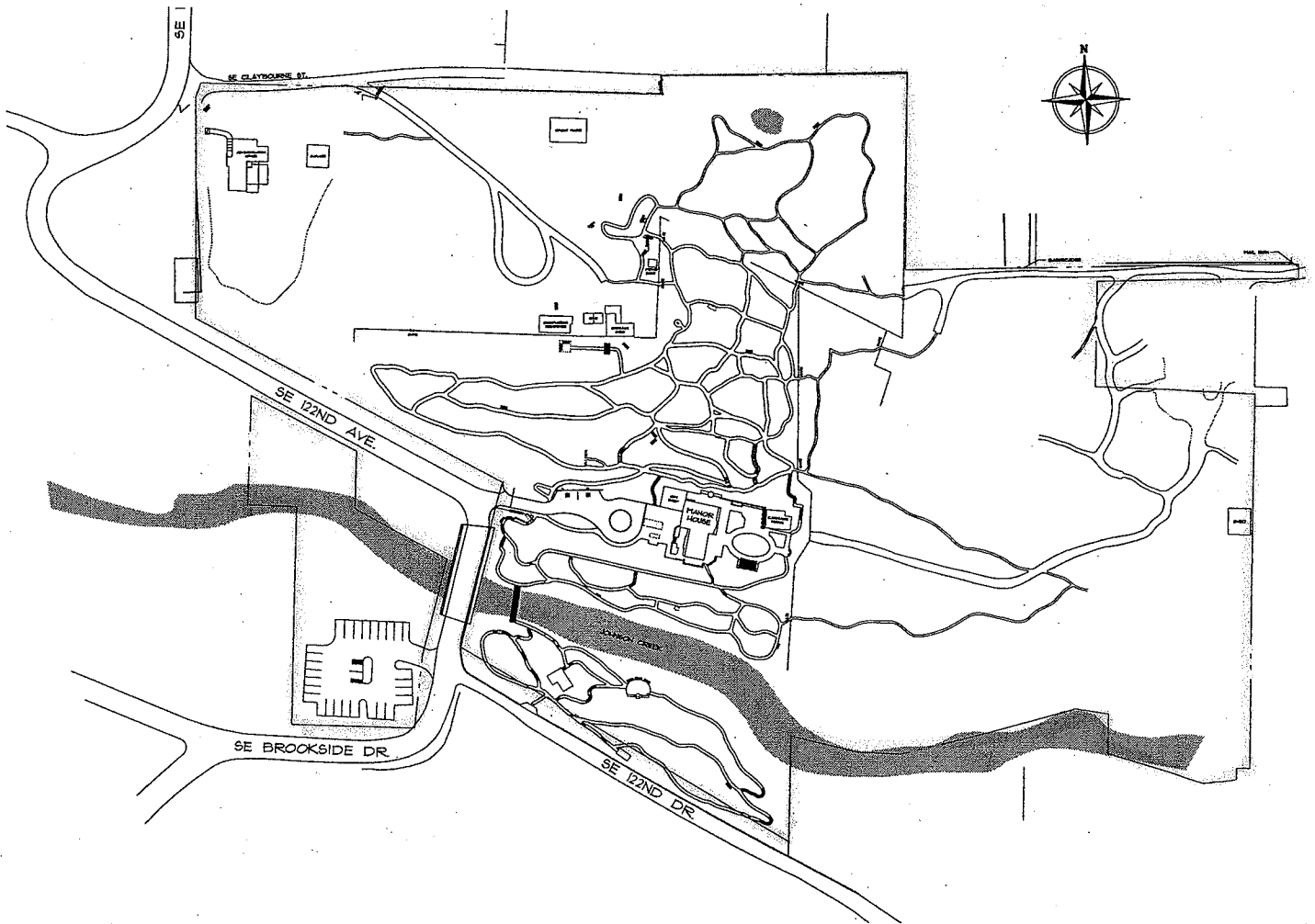


EXHIBIT B

EXHIBIT C

**LICENSOR'S STANDARD INSURANCE
REQUIREMENTS FOR LICENSE HOLDERS**

INSURANCE

At all times during the life of this License, or as may further be required by this License, LICENSEE at its own cost and expense, shall provide the insurance specified as follows:

1. **Evidence Required**
Licensee and its contractors or subcontractors, if any, shall maintain on file with the Property Manager, Portland Parks and Recreation, a certificate of insurance certifying the coverage required under this License. Such certification shall be submitted to PPR at or before execution of this License and then annually for the duration of the License. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this License by the City.
2. **Notice of Cancellation, Renewal, Reduction or Material Change in Coverage.**
The insurance policy shall provide that the insurance shall not terminate or be materially changed without thirty (30) days written notice first being given to Portland Parks and Recreation. Notices shall be sent to the PPR's Manager, Strategy, Finance and Business Development, 1120 SW 5th Ave, Suite 1320, Portland, Oregon 97204. If the insurance coverage is canceled, terminated, or reduced prior to completion of the License, the Licensee or its contractors or subcontractors, if any, shall provide a new policy with the coverage required under this License. The Licensee and its contractors shall maintain continuous, uninterrupted coverage for the duration of the permit.
3. **Insurance Required**
 - A. Licensee and its contractors and subcontractors, if any, shall maintain public liability and property damage insurance that protects the Licensee and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the Licensee's work under this License. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by the Licensee and its contractor or subcontractors, if any. The insurance shall provide coverage for not less than \$500,000 for personal injury to each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence.
 - B. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents and

employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage shall apply as to claims between insureds on the policy.

- C. Workers Compensation Insurance. LICENSEE, its contractors or subcontractors, if any, and all employers on its behalf are subject employers under Oregon Workers Compensation Law for this license agreement and shall comply with ORS Chapter 656 which requires them to provide Oregon workers compensation coverage in accordance with Oregon law for all of their subject workers. LICENSEE and its contractors and subcontractors shall provide and maintain a certificate of current and effective coverage with the City at all times during the term of this agreement.

4. Special Provisions

- A. The foregoing requirements as to the types and limits of insurance coverage to be maintained by LICENSEE, and any approval of said insurance by the CITY is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by LICENSEE pursuant to this License, including but not limited to the provisions concerning indemnification.
 - B. PPR reserves the right to terminate or suspend the License in the event of non-compliance with the insurance requirements of this Article. In no event shall any suspension entitle LICENSEE to an extension of the term of the License specified in this Article.
- **(Note: General liability limits may be increased, at the discretion of the CITY's Risk Manager, relative to risk involved).**

