

Bill No. 2484-06

No. 08-06-02

AN ORDINANCE

An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania authorizing the County to amend and restate a land lease agreement for a parcel of property located within Settlers Cabin Park with the Horticultural Society of Western Pennsylvania for the development, construction and operation of a Botanic Garden within Settler Cabin Park.

Whereas, the County of Allegheny (hereinafter "County") entered into a Land Lease with the Horticultural Society of Western Pennsylvania (hereinafter "Horticultural Society") dated April 6, 1998, further identified as Agreement No. 39177 for a certain parcel of land within Settlers Cabin Park for the development of a botanic garden ("Original Lease"); and

Whereas, County and Horticultural Society desire to modify, amend and restate the terms, covenants and conditions of the Original Lease in its entirety (hereinafter the "Amended and Restated Lease"); and

Whereas, the Amended and Restated Lease provides that in return for County continuing to lease to the Horticultural Society, for the original term of ninety-nine years commencing March 1, 1998, a parcel of property in Settlers Cabin Park (hereinafter the "Park"), including the mineral rights thereunder, consisting of 452 acres more or less (hereinafter the "Premises") for a One (\$1.00) Dollar per year, the Horticultural Society shall: (i) reclaim the abandoned coal mines through coal removal; (ii) abate, remediate and monitor existing water pollution in, on and under the Premises associated with the abandoned coal mines in accord with the plans approved by the Pennsylvania Department of Environmental Protection; (iii) develop, operate and maintain the Premises into a first class botanic garden, at no cost to the County, according to a Master Plan which will be approved in advance by the Director of the County Parks Department; (iv) keep the Premises landscaped in accordance with a first class botanical garden and maintain the Botanical Garden and improvements to the Premises in good and safe repair and condition during the term; (v) give preference to Allegheny County residents through a reduction in its admission fee for County residents on a routinely scheduled basis, or by providing another similar benefit acceptable to County; and (v) adhere to "street pricing" relating to the sale of all food, refreshments, clothing and paraphernalia to the public at the Botanic Garden and any other facilities on the Premises; (vi) dedicate to the Botanic Garden and its projects located solely within the boundaries of Settlers Cabin Park any payment the Horticultural Society may receive in the form of royalties related to the extraction of coal that the Horticultural Society owns under Settlers Cabin Park but outside of the Premises; and (vii) cooperate with County and bargain in good faith regarding a reasonable royalty rate to be paid to the County should County desire to develop and/or reclaim other portions of Settlers Cabin Park in the event such project calls for extraction of coal owned by the Horticultural Society.

Whereas, a copy of the Amended and Restated Lease is attached hereto, marked as Exhibit "A", and incorporated herein.

Whereas, Article IV Section 2(k) of the Allegheny County Home Rule Charter vests County's Council with the power and duty by ordinance to approve the lease or use of County owned property.

The Council of the County of Allegheny hereby enacts as follows:

Section 1. Incorporation of the Preamble.

The provisions set forth in the preamble to this Ordinance are incorporated by reference in their entirety herein.

Section 2 Authorization of Acceptance of a Donation of Personal Property.

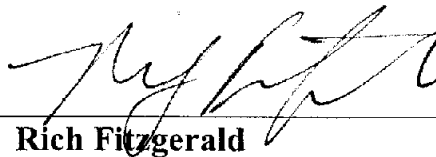
A. The County Council of Allegheny County hereby does approve the terms and conditions of the Amended and Restated Land Lease. The appropriate County officers and officials are authorized to execute the Amended and Restated Land Lease and any other documents required under the Amended and Restated Land Lease and take such other action as is necessary to carry out the purpose of the authorization granted herein.

Section 3. Severability. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.

Section 4. Repealer. Any resolution or ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Resolution.

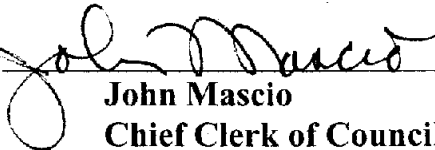
Enacted in Council, this 18th day of April, 2006.

Council Agenda No. 2484-06.



Rich Fitzgerald
President of Council

Attest:

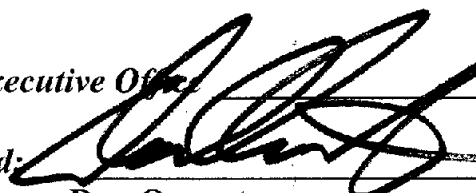


John Mascio
Chief Clerk of Council

Chief Executive Officer:

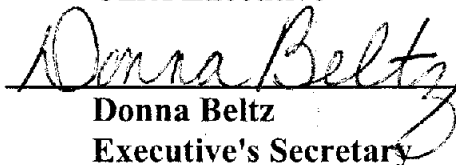
April 19, 2006.

Approved:



Dan Onorato
Chief Executive

Attest:



Donna Beltz
Executive's Secretary

SUMMARY

The County of Allegheny (hereinafter "County") entered into a Land Lease with the Horticultural Society of Western Pennsylvania (hereinafter "Horticultural Society") dated April 6, 1998, further identified as Agreement No. 39177 for approximately 391 acres of land within Settlers Cabin Park for the development of a botanic garden ("Original Lease"). The Original Lease is for a term of ninety-nine (99) years from March 1, 1998, with the Horticultural Society paying the County the nominal rent of \$1.00/year plus building and operating a Botanical Garden for the citizens of Allegheny County which would become a tourist attraction.

The area in Settlers Cabin Park where the Botanic Garden is to be situated is considered abandoned mine lands as it has been extensively mined for coal by both underground and surface mining techniques from the early 1900's to the 1940's. The resulting water pollution, including acid mine drainage and heavy metals from the historic mining has created a long-term pollution problem for the County as owner of the Park.

The Horticultural Society has been granted the mineral rights for a large portion of the area under the Park by the mineral owner in support of Botanic Garden development. The Horticultural Society has developed a plan to reclaim the abandoned mine lands and remediate the pollution and at the same time assist in financing the development of the proposed Botanic Garden. In summary, the County would amend and restate the existing lease agreement to provide that:


1. The Horticultural Society will reclaim the abandoned mines and consequently remediate the water and land pollution as set forth in the Amended and Restated Land Lease;
2. The County will lease the Horticultural Society an additional 60 acres [for a total of 452 acres] plus what mineral rights it may own under the parcel to be leased.
3. The Horticultural Society will enter into a contract to remove the coal, and related polluttional strata, which will abate water pollution and reclaim the surface to a condition suitable for the Botanic Garden.
4. The Horticultural Society will finance the development of the Botanic Garden through coal royalties as well from fund raising activities and contributions.
5. During reclamation the Horticultural Society will begin the development and construction of the Botanic Gardens in accordance with the Master Plan.
6. The Parks Department has reviewed and approved the Master Plan.
7. The Restated and Amended Land Lease has specific bench marks that the Horticultural Society must meet relating to the land reclamation and development of the Botanic Garden. The County has the option to terminate the lease in the event the Horticultural Society fails to meet the benchmarks. The Horticultural Society must have the Botanic Garden

substantially complete within 180 months of the execution of the Amended and Restated Land Lease and fully open within 300 months of the execution of the Amended and Restated Land Lease.

8. The Horticultural Society shall be responsible for the entire cost of land reclamation, abatement of the water pollution on the site, and the development and operation of the Botanic Garden with the County having no financial obligation for the same.

MEMORANDUM
OFFICE OF THE COUNTY MANAGER

TO: John Mascio
Chief Clerk

FROM: James M. Flynn, Jr. 
County Manager

DATE: March 16, 2006

RE: Proposed Ordinance

Attached is an Ordinance authorizing the County to amend and restate a land lease agreement for a parcel of property located within Settlers Cabin Park with the Horticultural Society of Western Pennsylvania for the development, construction and operation of a Botanic Garden within Settler Cabin Park.

The Allegheny County Law Department has reviewed this legislation prior to submitting it to Council.

Please place this on the next agenda for County Council approval.

Thank you.

AMENDED AND RESTATED
LAND LEASE

by and between

ALLEGHENY COUNTY
("Landlord")

and the

HORTICULTURAL SOCIETY OF
WESTERN PENNSYLVANIA
("Tenant")

Ex A

AMENDED AND RESTATED
LAND LEASE

THIS AMENDED AND RESTATED LAND LEASE dated as of _____, 2006 (hereinafter the "Lease") by and between:

ALLEGHENY COUNTY, a home rule municipality and political subdivision of the Commonwealth of Pennsylvania (hereinafter "Landlord" or "County")

and the

HORTICULTURAL SOCIETY OF WESTERN PENNSYLVANIA, a Pennsylvania non-profit association (hereinafter "Tenant" or "Society").

WHEREAS, Landlord and Tenant entered into a Land Lease dated April 6, 1998, further identified as Agreement No. 39177 of a certain parcel of land within Settlers Cabin Park for the development of a botanic garden ("Original Lease");

WHEREAS, Landlord and Tenant desire to modify, amend and restate the terms, covenants and conditions of the Original Lease in its entirety;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

A. **Incorporation of Recitals.** The recitals set forth above are hereby incorporated herein by reference with the same force and effect as if fully set forth herein.

B. **Amendment and Restatement of the Original Lease.** The Original Lease is hereby amended and restated in its entirety to read as follows:

ARTICLE I - DEFINITIONS; GRANT OF LEASE; PREMISES

1.1 Unless otherwise specified herein the following terms shall have the following definitions:

(a) "Botanic Gardens"- shall mean that portion of the Improvements that are open to the public as delineated on the Master Plan.

(b) "Environmental Law(s)" - shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 et seq., or the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. § 602.101 et seq., as any

of the foregoing may be amended, and the regulations promulgated thereunder, and any other federal, state and/or local laws or regulations, whether currently in existence or hereafter enacted or promulgated, that govern or relate to: (i) the mining of coal and reclamation of lands affected thereby; (ii) the existence, cleanup and/or remedy of contamination of property; (iii) the use, generation, discharge, transportation, treatment, removal or recovery of hazardous or toxic substances or wastes.

(c) "Improvements" - shall include but not be limited to the Botanic Gardens, any and all buildings, lighting, landscaping, display gardens, facilities, infrastructure improvements constructed by Tenant on the Premises that are ancillary and customary to the development and operation of the Botanic Garden.

(d) "Law" or "Laws" - shall mean any federal, state or local: statute, law, ordinance, rule, regulation, order or the like.

(e) "Master Plan" - Master Plan, including any updates, shall mean a plan that has been submitted by Tenant to the County for County's approval prior to execution of the Lease for design and development of the Botanic Garden and Improvements which shall not be unreasonably withheld. The Master Plan shall be attached hereto, marked as Exhibit "B" and incorporated herein.

(f) "Materials of Environmental Concern" - shall mean any existing environmental conditions, pollutants, toxic or "hazardous substances" or "hazardous wastes" as such terms are defined in Environmental Laws. The term "Materials of Environmental Concern" shall include, without limitation, petroleum products, or special nuclear or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. §3011, et seq., as amended.

(g) "Mineral Rights" - shall be limited to all of the coal, carbonaceous materials and strata above surface elevation 1050' including the Pittsburgh and related coal seams and all leaders, riders and splits thereof on or under the Property.

(h) "Premises" - All of the Property and Mineral Rights are hereinafter collectively referred to as the "Premises."

(i) "Property" - a surface tract of land within Settlers Cabin Park including all timber consisting of approximately 452 acres more or less (hereinafter the "Property") as more particularly set forth in Exhibit "A", which is attached hereto.

(j) "Retained Area" - an approximately two acre parcel fronting on the south side of Pinkerton Road which is the site of the maintenance building owned by Landlord and is outlined in red on Exhibit A. The Retained Area is specifically excluded from the Premises being leased to Tenant and shall remain under the ownership and control of County.

(k) "Street Pricing" - shall mean the regular price for merchandise or service charged at off-site facilities in Allegheny County, including museums, art galleries, zoos or other venues that promote and provide public access for the specific purposes of viewing and experiencing the venues' ambience and uniqueness of its collection.

(l) "Tenants Remaining Coal" - includes all coal owned by or which may hereafter be acquired by Tenant within Settlers Cabin Park, excluding the coal within the Premises.

1.2 Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the Premises.

1.3 The Premises are leased to Tenant in "AS IS" condition including any Materials of Environmental Concern (as hereinafter defined) located in, on about or under the Premises without representation or warranty by the County, except as otherwise set forth herein and subject to all applicable Laws now or hereafter in effect and subject to all matters of public record, any and all existing utility easements, right of ways, or licenses whether recorded or unrecorded and whether or not apparent from the inspection of the Premises.

1.4 If and so long as Tenant observes all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant may peaceably and quietly have, hold and enjoy the Premises for the entire Term, subject to all of the provisions of this Lease.

1.5 Landlord shall cooperate with Tenant in obtaining clear title to the Premises and Mineral Rights in, on or underlying the Premises in the Landlord to the extent the title is unclear and/or requires an adjudication of title. All costs associated with clearing title to the Premises and Mineral Rights on or underlying the Premises shall be the responsibility of Tenant, and County shall have no obligation to pay for or share in any of said costs.

ARTICLE II - TERM OF LEASE

2.1 This Lease shall be for a term (the "Term") of ninety-nine years, commencing on March 1, 1998 (the "Commencement Date"), subject to the limitations hereinafter set forth.

2.2 No later than one year prior to the scheduled expiration of the Term, Landlord and Tenant shall enter into good faith negotiations (based on the current economic and community conditions and aesthetic considerations) with respect to an extension of the Term. Landlord shall have no obligation to enter into such negotiation if there exists any uncured default by Tenant of its obligations under this Lease.

ARTICLE III - CONSIDERATION; NET LEASE

3.1 Tenant shall pay to Landlord as rent the sum of One Dollar annually, without demand, notice, offset or deduction. The obligation of Tenant to pay rent shall commence, and the first annual payment of rent shall be due, on Commencement Date. The rent provided for in this Lease is intended, with respect to the Premises, to be an absolutely net return to Landlord for the Term, free of any taxes, expenses or charges with respect to the Premises. Tenant shall be responsible for paying all taxes, expenses, fees or charges relating to the development, construction, operation and maintenance of the Premises.

3.2 As additional consideration, Tenant, during the Term hereof, and in compliance with existing Laws and as more particularly set forth herein, agrees to:

- (a) reclaim the abandoned coal mines through coal removal; and
- (b) abate, remediate and monitor existing water pollution in, on and under the Premises associated with the abandoned coal mines in accord with the plans approved by the Pennsylvania Department of Environmental Protection; and
- (c) develop, operate and maintain the Premises into a first class botanic garden according to the Master Plan and in accordance with the terms hereof; and
- (d) keep the Premises landscaped in accordance with a first class botanic garden and maintain the Improvements in good and safe repair and condition.

3.3 Tenant agrees that any payment Tenant may receive in the form of royalties related to the extraction of Tenant's Remaining Coal shall be dedicated to the Botanic Garden and its projects that are located solely within the boundaries of Settlers Cabin Park.

3.4 Tenant agrees that should Landlord desire to develop and/or reclaim other portions of Settlers Cabin Park and such project calls for extraction of Tenant's Remaining Coal that Tenant will cooperate with Landlord and bargain in good faith regarding a reasonable royalty rate to be paid to the County in support of such project.

3.5 Tenant will pay to Landlord or at Landlord's option the taxing entity, on demand and as additional rental hereunder all taxes, including but not limited to, real estate taxes (including taxes levied or assessed in lieu of or as a substitution for real estate taxes) imposed, assessed or levied upon or against the Premises during the term of this Lease, which may include each and every item of expense in the nature of a tax or imposition for the payment of which Landlord is or shall become liable by reason of Landlord's estate or interest in the Premises, or any portion thereof, including without limiting the generality thereof all personal property taxes, real estate transfer taxes, entertainment tax, amusement tax, income tax, parking taxes, sales taxes, excise taxes, use and occupancy taxes, whether or not the same are now customarily levied or enacted and regardless of whether the same shall be general or special, foreseen or unforeseen, provided the same shall be (i) levied or assessed against Landlord or Tenant in connection with the Premises, or any portion thereof, or (ii) levied, assessed or imposed upon or against, or which shall be measured by, any rents or rental income, as such, payable to Landlord.

ARTICLE IV - COMPLIANCE WITH LAWS

4.1 Tenant covenants throughout the term of this Lease, at the Tenant's sole cost and expense, to promptly comply with all laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, board and officers thereof, and the orders, rules and regulations of the Board of Fire Underwriters, or any other body hereafter constituted exercising similar functions, which may be applicable to the Premises or the Improvements thereon. The Tenant will likewise observe and comply with the requirements of any policy of insurance required by this Lease. Landlord agrees to cooperate with Tenant in complying with the provisions of this Article IV and, as requested by Tenant, to join in any application for all required licenses, permits and approvals, provided all such compliance shall be at the sole expense of Tenant and without any liability of Landlord.

4.2 Tenant shall have the right to contest by appropriate legal proceedings, without cost or expense to Landlord, the validity of any law, ordinance, order, rule, regulation or requirement, of the nature herein referred to, and, if by the terms of any such law, ordinance, order, rule, regulation or requirement compliance therewith may be legally held in abeyance without the incurrence of any lien, charge or liability of any kind against the fee of the Premises or the Tenant's leasehold interest therein, and without subjecting the Tenant or the Landlord to any liability of whatsoever nature for failure to so comply therewith, the Tenant may postpone compliance therewith until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch.

4.3 The provisions of Sections 4.1 and 4.2 shall apply to any demand that Landlord or Tenant pay any tax based on the value of the Premises or any Improvements thereon.

ARTICLE V - CONDITION OF PREMISES

5.1 Tenant acknowledges that it has inspected the Premises and, except as specifically set forth in this Section 5.1 and Section 5.3, Tenant is accepting the Premises in "AS-IS" condition, including but not limited to: (i) the abandoned underground and surface coal mines and related features; (ii) any aboriginal or Indian burial grounds or items or remains of historical or anthropological interest which would delay or prevent the development of the Premises as contemplated herein; (iii) any existing wetlands; and (iv) any existing areas that may be designated as wildlife production areas, or areas that may be determined to contain or constitute an environment for any endangered species of plant or animal life as the same might be defined or designated pursuant to the Endangered Species Act or any similar law or regulation. In conjunction with Tenant's development of the Premises, Tenant shall be responsible, at its cost, for correcting, remediating or complying with existing Laws with regard to the items set forth in Section 5.1 (i), (ii), (iii) and (iv) as aforesaid that may be or have been in existence at the time the Lease commences. Tenant shall, at its sole cost and expense, promptly take all actions required by any federal, state or local governmental agency or political subdivision under Environmental Law, which requirements or necessity arise from the mining and reclamation activities including but not limited to Tenant's obligations under Section 3.2(b) conducted by the Tenant, or from the presence upon, about or beneath the Premises of any "Materials of Environmental Concern" as that term is defined in Section 1.1(f), provided that the introduction of such Materials of Environmental Concern shall have originated during the term of this Lease due to, and only to the extent of, the activities of Tenant or its employees, agents, or invitees. The obligations of Tenant pursuant to this Section shall not apply to situations where Materials of Environmental Concern are released, brought upon, stored, produced, emitted, disposed of or used upon the Premises at a time prior to the term of this Lease. In the event any Materials of Environmental Concern as defined in Section 1.1(f) are discovered in, on, or under the Premises that are not Tenant's responsibility to abate and remediate as set forth in Sections 3.2, 5.1 and 5.5 herein, County shall have the right to terminate this Lease if the parties hereto cannot reach a mutually acceptable agreement relating to the abatement and remediation of the aforesaid.

5.2 Landlord is additionally under no obligation to make any alterations or improvements to the Premises.

5.3 Landlord has made no representations or warranties, express or implied, regarding the condition of the Premises or the fitness of the Premises for Tenant's proposed development

or the existence or availability of utilities to the Premises. Notwithstanding the foregoing, Landlord warrants that, with the exception of the prior underground and surface coal mining activities and related conditions and oil and gas wells on the Premises, the Director of Parks and the Manager of Settlers Cabin Park have no actual knowledge of the existence of any present or past activities, circumstances, conditions, or events that could form the basis for assertion of any liability under Environmental Law against Landlord, Tenant, or the Premises, and Landlord has furnished and/or will make available to Tenant its complete files pertaining to the past mining and oil and gas extraction.

5.4 Landlord has made no representation or warranty as to whether the Premises have been designated by any governmental entity as a flood hazard area. The parties agree that it shall be Tenant's responsibility to determine whether the Premises are located in a flood hazard area.

5.5 Oil and Gas Wells:

(a) Tenant shall coordinate and implement the closure of all abandoned oil and gas wells on the Premises in compliance with all federal, state and local laws.

(b) Tenant's leasehold shall be subject to any existing oil and/or gas lease agreements on the Premises. In the event Tenant negotiates a buyout of or is the grantee of any gas and/or oil interests underlying the Premises, Tenant shall at its cost and in compliance with all federal, state and local laws, close the related oil and gas wells on the Premises upon completion of extraction activities in compliance with all federal, state and local laws.

(c) Tenant shall be responsible for securing the wells in accord with federal, state and local laws.

ARTICLE VI - PURPOSE; USE OF PREMISES

6.1 Landlord and Tenant acknowledge that the primary purpose of this Lease is to provide Tenant with a parcel of property so Tenant can develop and establish a Botanic Garden on said parcel of property in conjunction with Tenant reclaiming the abandoned coal mines through coal removal and abating associated water pollution associated with those abandoned coal mines on Premises. The parties expressly acknowledge that reclamation and pollution abatement require the excavation and removal of remaining abandoned underground mine pillars and strata comprising the Pittsburgh coal seam. Such coal removal and reclamation under this Lease is to be accomplished at Tenant's sole expense without additional rent or charge, except as hereinafter set forth. The parties agree that the provisions of this Lease should be interpreted in light of that purpose.

6.2 Tenant shall develop, operate and maintain a Botanic Garden, as defined herein,. Tenant shall not occupy the Premises for any other purpose except for uses ancillary and customary to the development and operation of the Botanic Garden and further reclamation and pollution abatement on the Premises in compliance with all applicable Laws. Any use or activity conducted on the Premises in addition to the customary operation of the Botanic Garden must be approved by the Director in advance.

6.3 Landlord further grants Tenant the right to transport, process, store and ship coal or other material including rock and soil produced from adjacent properties in the development of the Botanic Garden upon, over, across and through the Premises in such a manner as Tenant may deem necessary, convenient or incidental to the development of the Botanic Garden, whether or not such other property is owned by Landlord, so long as it does not interfere with the operation of Settler Cabin Park or endanger the health, safety and well being of the public and shall comply with all applicable Laws.

6.4 In developing the Botanic Garden, Tenant shall meet the following bench marks and adhere to the following schedule:

(a) The Master Plan for the Premises shall be submitted to the County for its review and approval prior to the County's approval and execution of this Lease.

(b) An inventory of flora and fauna on the Premises shall be submitted to the County prior to the execution of this Lease.

(c) A major fund raising campaign for the Botanic Garden will begin within 18 months after the date of this Lease. Tenant shall raise a minimum of \$10,000,000 within forty-eight (48) months of the completion of Tenant's reclamation activities or one-hundred and eight (108) months from the execution date of this Lease which ever shall occur first.

(d) Tenant shall use its best efforts to obtain the necessary governmental approvals from the Pennsylvania Department of Environmental Protection to conduct the reclamation activities necessary for development of the Botanic Garden. Subject to paragraph 14.1(d), such approvals necessary to initiate the project shall be obtained within 12 months.

(e) Tenant shall select a reclamation contractor that is approved by the Pennsylvania Department of Environmental Protection within 120 days of this Lease.

(f) The Premises subject to land reclamation shall be reclaimed according to the plans and approvals by the Pennsylvania Department of Environmental Protection within sixty (60) months of receipt of those governmental approvals necessary to conduct mine land reclamation and related activities.

(g) Tenant shall have the duty and obligation to commence construction of the Improvements within twenty four (24) months of reclamation completion and receipt of acceptance and approvals of the reclamation project by the Pennsylvania Department of Environmental Protection.

(h) The Botanic Garden, or portions thereof, will be open to the general public within five (5) years of reclamation completion as defined in Paragraph 6.4(g) above.

(i) Landlord shall have the right to terminate this Lease without any liability to Tenant, if Tenant does not accomplish any of the foregoing bench marks within 150% of the time allotted.

(j) Notwithstanding any other language contained herein, including but not limited to Section 6.4(i) and 14.1(d) herein, Landlord shall have the right to terminate this Lease

without any liability to Tenant if Tenant does not substantially meet the following development schedule: (i) within 180 months from the date of the execution of this Lease, Tenant shall have completed construction of Improvements which include a combination of permanent structures, display gardens and support facilities that will collectively constitute a destination for which a fee can be charged for admission. Such facilities shall include but shall not be limited to the utilities and infrastructure, the Entrance Corridor, the Entrance Road, the Visitor Center Main Hall, the Children's Adventure Garden, three primary Display Gardens and the Auto Garden sufficient to provide parking for visitors to those facilities; and (ii) within 300 months from the date of the execution of this Lease, Tenant shall have substantially completed development and construction of the Improvements according to the Master Plan

6.5 Tenant may charge reasonable admission and concession fees at the Botanic Garden. Any and all income from the operation of the Botanic Garden shall be used by Tenant only for the benefit of the Botanic Garden and operations related to the Botanic Garden within Settlers Cabin Park.

6.6 Tenant shall give preference to Allegheny County residents through a reduction in its admission fee for County residents on a routinely scheduled basis, or by providing another similar benefit acceptable to Landlord.

6.7 Tenant shall not abandon the Premises.

6.8 Tenant shall not use, occupy, suffer or permit the Premises or any part thereof to be used or occupied for any purpose contrary to law. Tenant shall abide by and comply with all County Park ordinances, rules and regulations then in effect.

6.9 Tenant shall not use the name "Settler's Cabin Park" or "Allegheny County" in its promotions, advertisements, naming of the Botanic Garden or related facilities or the like in relation to the Botanic Garden without the prior written consent of County.

6.10 Tenant shall obtain County's prior written approval, which shall not be unreasonably withheld, regarding the naming of the Botanic Garden and any other facilities located on the Premises. Failure to comment on and/or approve the proposed name by the Landlord within 30 days shall be deemed approval by the Landlord.

6.11 Tenant shall not permit any billboards or outdoor advertisements or the like in, on or about the Premises without the prior written approval of County.

6.12 Tenant agrees that it shall adhere to Street Pricing relating to the sale of all food, refreshments and merchandise to the public at the Botanic Garden and any other facilities on the Premises.

ARTICLE VII - ALTERATIONS/IMPROVEMENTS; REPAIR AND MAINTENANCE

7.1 So long as they are materially consistent with the Master Plan, Tenant may make any alterations, Improvements or additions of any kind or nature to the Premises or any part without prior consent of Landlord. If such alterations, Improvements or additions are materially

inconsistent with the Master Plan, prior to constructing any roadway or permanent building on the Premises, Tenant shall provide Landlord with copies of the plans and specifications for such activity for its prior approval. Landlord shall then have a 30 day period to provide Tenant with approval or comments on the plans and specifications. Failure to comment on and/or approve the plans and specifications by the Landlord within 30 days shall be deemed approval by the Landlord. Prior to initiating reclamation activities, Tenant shall provide Landlord with copies of the plans and specifications for such activity that has been submitted to and approved by the Pennsylvania Department of Environmental Protection.

7.2 Whenever joinder or consent of Landlord is required by an outside agency or third party in connection with the development, financing or construction of any alterations, Improvements or additions on the Premises, or any licenses or permits in connection therewith, Landlord shall give such joinder or consent so long as it does not entail any cost or liability on the part of Landlord or violate any governmental laws, regulations, rules, policies or procedures.

7.3 Tenant, at its own expense, shall maintain the Premises and Improvements in good repair and condition, except for ordinary wear and tear. The County shall not be required to maintain, repair or replace the Premises and Improvements or any part thereof. Tenant waives any right to require the County to maintain or repair the Premises, and Improvements, or to make repairs at the expense of the County pursuant to any Laws or any contract, agreement, covenant, condition or restriction.

7.4 If Tenant refuses or neglects to repair or maintain the Premises and Improvements in violation of applicable Law, or if the County must make any repair necessitated by the misconduct of Tenant, then the County, after notice to Tenant and the passage of a reasonable period of time (which shall not be less than thirty (30) days or more than sixty (60) days for Tenant to cure the matter detailed in such notice, may make such repair on Tenant's behalf. Such repairs, unless they are to remedy an emergency, shall be let for bid to third parties and subject to the bidding procedures normally associated with the County work in accordance with the County Home Rule Charter and Administrative Code and all other applicable Law. Tenant shall reimburse the County for the cost of such repair, on the basis of direct labor costs plus fifteen (15%) for overhead and the like, plus the direct costs of tools, equipment and materials, if done by the County personnel, or for the County's out-of-pocket costs if done by an independent contractor.

ARTICLE VIII - EASEMENTS AND UTILITIES

8.1 Tenant further shall have the right to have utility lines for electric, telephone, gas, water, storm sewer and sanitary sewer constructed and installed as it may deem necessary to service the Premises, provided no expense for such lines, including tap-in-fees, other like charge or municipal benefit assessments, shall be charged to Landlord. In addition to any other approvals that Tenant must obtain for the aforesaid, Tenant shall obtain the written advance approval of the County, which shall not be unreasonably withheld.

8.2 Subject to the prior written approval of County, which shall not be unreasonably withheld, Tenant may grant from time to time to grant to public service corporations for the purpose of serving the Premises, rights of way or easements for telephone, electricity, water,

sanitary sewers and storm sewers over the Premises, and to grant such easement or dedicate such property as might reasonably be required by governmental authorities at the time of issuance of building permits or thereafter during the term of the Lease or any renewal thereof, placement of which is subject to the approval of Landlord, in order to protect its reversionary interest.

8.3 Tenant shall restore the site surrounding the Premises and other areas used for construction easements, utility easements, rights-of-way and the like to as good condition that existed prior to construction, as reasonably determined by the County.

ARTICLE IX – INSURANCE/BONDING/INDEMNIFICATION; DAMAGE AND DISTRUTION OF THE PREMISES

9.1 (a) Tenant shall, at its own cost and expense, obtain and maintain during the Term, commercial general liability insurance coverage covering claims for bodily injury or death and property damage occurring upon, in or about the Premises to afford protection to the limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence. All liability insurance shall name the County of Allegheny, its Chief Executive, elected officials, agents and employees as additional insureds and shall contain a clause requiring at least thirty (30) days advance written notice to Landlord prior to change or cancellation. Landlord may from time to time require such higher limits as may be reasonably prudent. Tenant shall provide Landlord with a certificate of insurance evidencing the above coverage and limits simultaneously with the execution of this Lease and thereafter on the annual anniversary date of said policies.

(b) During the abandoned coal mine reclamation phase of this Lease, Tenant shall require its Contractor to maintain general liability insurance coverage, covering claims for bodily injury or death and property damage consistent with Section 9.1(a). Tenant will also require Contractor to provide excess coverage, including explosion, collapse and underground coverage in an amount not less than \$5,000,000 per occurrence. Tenant shall require such insurance from Contractor to name the County of Allegheny, its Chief Executive, elected officials, agents and employees as additional insureds.

(c) During the Improvement construction phase of this Lease, Tenant shall require its Contractor to obtain and maintain the insurance coverages and terms as described in Section 9.1(a). In addition, such insurance shall provide explosion, collapse and underground coverage if applicable as determined by the final design of the Botanic Garden and in consultation between Tenant and Landlord. All liability insurance shall name the County of Allegheny, its Chief Executive, elected officials, agents and employees as additional insureds and shall contain a clause requiring at least thirty (30) days advance written notice to Landlord prior to change or cancellation. Tenant shall provide Landlord with a certificate of insurance evidencing the above coverage and limits prior to construction activities.

(d) Tenant shall maintain Workmens Compensation Insurance and Automobile Liability Insurance as required by law and shall submit evidence to Landlord upon request.

9.2 Tenant shall, at its own cost and expense, obtain and maintain during the Term commercial property insurance on any Improvements constructed on the Premises for replacement value. Tenant shall provide Landlord with a certificate of insurance evidencing the above coverage upon commencement of construction of the aforesaid and thereafter on the annual anniversary date of said policies.

9.3 Consistent with and in addition to coverage required under Section 9.1, during the abandoned coal mine reclamation phase of this Lease, Tenant and its contractors and subcontractors shall maintain all insurance coverages and bonds required by applicable Law and regulation.

9.4 Tenant will deliver to the County, prior to the commencement of any work in connection with the Improvements the following:

(a) A certificate of insurance certifying that the Tenant and/or its contractors and subcontractors have the insurance coverage and limits naming the County of Allegheny, its Chief Executive, elected officials, agents and employees as additional insured and containing a notice of cancellation clause providing for thirty (30) days prior notice of cancellation. All certificates shall bear signature of a direct representative of the insurance carrier authorized to do business in the State of Pennsylvania. Such certificates shall, in addition to the information relative to the types and amounts of coverage, contain the following: (i) inception and expiration dates of policy; (ii) limits of liability provided (General Liability and Property Damage); (iii) coverage provided, including special hazards, if required; (iv) name of insurance company; (v) policy number; (vi) certificate shall reflect self-insured retention applicable to any contract; and (vii) excess line liability carriers must be certified to do business in the State of Pennsylvania.

(b) Tenant will require that its contractors post a Performance Bond in a form reasonably acceptable to the County in an amount equal to one hundred ten (110%) percent of the estimated Improvement cost provided by an insurance or surety company with a Best Rating of AAA, and certifying that Contractor will perform in accordance with terms of this Agreement and the rules and regulations of the County and in compliance with all applicable Laws in connection with the construction of the specific Improvement.

(c) Tenant will require that its contractors post for each Improvement of for all Improvements a Labor and Material Payment Bond in an amount equal to one hundred ten (110%) percent of the estimated cost of the work, provided by a reliable insurance or surety company with a Best Rating of AAA guaranteeing the payment of all labor and materials performed or used in connection with the construction of each Improvement or all Improvements as the case may be.

(d) The requirements of subsection (b) and (c) of this Section 9.4 may be accomplished by the submission of one bond, one letter of credit or other financial security in the amount of hundred ten (110%) percent of the estimated Improvement cost (or collectively the cost of all Improvements as aforesaid), which shall be based on the estimate of the Tenant's

project engineer so long as such instrument clearly provides that same is submitted to satisfy both the Performance Bond requirement and the Labor and Material Payment Bond requirement.

9.5 Tenant shall protect, defend, indemnify and save harmless Landlord, its Chief Executive, elected and appointed officials, directors, agents, counsel and employees from and against any and all liens, liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from (a) the operation or use of the Premises or from any work performed thereon by Tenant, (b) injury to or death of any person, or damage to or loss of property occurring on the Premises or connected with the use, condition or occupancy of any thereof, (c) violation of this Lease by Tenant, (d) any act or omission of Tenant or its agents, contractors, licensees, subtenants or invitees, or (e) any contest referred to in Section 4.2.

9.6 Tenant shall protect, defend, indemnify and save harmless Landlord and its Chief Executive, elected and appointed officials, directors, agents, counsel and employees from and against any claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employees of Tenant or of any of its licensees, subcontractors or contractor.

9.7 Tenant shall indemnify, protect and save Landlord harmless from and against any and all damages, losses, liabilities, demands, judgments, suits, proceedings, costs, disbursements and expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys' and experts' fees and expenses, all costs of removal and remediation of such Hazardous Substances and all costs, fines and penalties imposed by any Federal, state or local governmental authority or agency) which may at any time be imposed upon, incurred by or asserted or awarded against Landlord as a result of any contamination of the Premises by any Hazardous Substances disposed by Tenant during the term of the Lease, which contamination is caused by Tenant's operations on the Premises or as a result of Tenant's failure to abate and remediate and monitor the existing water pollution as set forth in Section 3.2.

9.8 Damage or Destruction:

(a) If at any time during the term of this Lease the Botanic Gardens or any facilities constructed on the Premises (hereinafter "Improvements") are substantially damaged or destroyed, in whole or in part, by any casualty, Tenant shall promptly give written notice thereof to the County. Tenant, unless otherwise set forth herein, shall replace or repair the Premises and/or Improvements that are damaged or destroyed.

(b) If the Premises and/or Improvements are substantially damaged or destroyed and Tenant undertakes the replacement or repair of the Premises and/or Improvements pursuant to Subsection 9.8(a), but the insurance proceeds are not sufficient to pay in full the costs of such replacement or repair, Tenant will nonetheless complete the work, and will pay that portion of the costs thereof in excess of the amount of the insurance proceeds.

(c) If the parties agree to terminate this Lease without rebuilding, the insurance proceeds shall be utilized to effectuate the demolition and cleanup (including environmental cleanup and remediation) of the damaged Improvements and the Leased Premises

to a park-like setting materially consistent with Settlers Cabin Park unless otherwise mutually agreed to by the Parties.

(d) Before the commencement of any replacement or repair of the damaged Premises and/or Improvements as permitted by this Section, detailed plans and specifications shall be filed with and approved by the County if such plans and specifications are materially different from those previously approved as part of the Master Plan, and approval of such new plans shall not be unreasonably withheld. Promptly after receiving the County's approval of such plans and specifications, Tenant shall commence such replacement or repair and shall prosecute the same to completion with promptness and due diligence.

ARTICLE X - MECHANIC'S LIEN OR CLAIMS

10.1 Tenant shall not permit to be created nor to remain undischarged any lien, encumbrance or charge arising out of any work of any contractor, mechanic, laborer or materialman which might be or become a lien or encumbrance or charge upon the Premises. If any lien or notice of lien on account of an alleged debt of Tenant or any notice of contract by a party engaged by Tenant or Tenant's contractor to work in the Premises, Tenant shall, within twenty (20) days after notice of the filing thereof, cause the same to be discharged of record by payment deposit, bond, order of a court of competent jurisdiction or otherwise.

ARTICLE XI - LANDLORD'S ACCESS TO PREMISES AND RIGHT TO AUDIT

11.1 Tenant shall permit Landlord or Landlord's agents to inspect or examine the Premises at any reasonable time.

11.2 The authorized representatives of Landlord shall have access, upon reasonable prior notice, to the books and records maintained by Tenant in connection with Tenant's operation and maintenance of the Botanic Garden for the purpose of monitoring Tenant's compliance with the provisions of Sections 3.3, 3.5 and 6.5 this Lease. For such purpose, the Landlord's authorized representatives may audit, inspect and copy any books, records, memoranda, checks, correspondence or other documents relevant to Tenant's compliance with this Lease.

11.3 Tenant shall maintain books, program and financial records, documents and other evidence pertaining to costs and expenses related to this Lease in such detail as will properly reflect all costs of labor, materials, equipment, supplies, services and other costs and expenses of whatever nature under this Lease. The Tenant shall maintain such books, records, documents and other materials in accordance with Generally Accepted Accounting Principles, where applicable. Tenant shall provide access, during normal business hours, to such books, program and financial records, documents and other evidence upon request of the County Manager, the County Controller or their designees upon receipt of reasonable advance notice, either oral or written. Tenant's books, records, program and financial records, documents and other evidence pertaining to services provided under the Lease shall be preserved and made available for a period of three (3) years following the termination of the Lease. The County Manager, the County Controller or their designees may audit, examine, review, photocopy, and/or make excerpts or transcripts of Tenant's books, records, program and financial records, documents and

other evidence. Tenant's records regarding its private donors, capital campaign strategies and bequests shall be held in strict confidence and shall not be subject to publication whatsoever without prior approval by Tenant unless otherwise required by applicable law or order of court. Any deficiencies noted in any audit reports or otherwise must be fully resolved by the Tenant, to the County's sole satisfaction, within thirty (30) days after the Tenant's receipt of written notice of such deficiencies. Failure of the Tenant to comply with the provisions set forth in this paragraph may constitute a material breach of and default of this Lease.

ARTICLE XII - UTILITIES

12.1 Tenant shall make all arrangements necessary to receive utilities in its own name. Tenant shall pay when due all charges for such utilities as are provided to the Premises during the Term, and shall indemnify Landlord against any liability or damages for such charges. Landlord shall have no obligation or duty to provide utility lines to, through, on, under or over the Premises nor shall Landlord have any liability or duty to pay the charges for any utilities.

ARTICLE XIII - ASSIGNMENT AND SUBLETTING

13.1 Tenant may, subject to the prior written consent of Landlord, for the purposes of developing the Botanic Garden as described in Article VI, sublet this Lease, or any part thereof, or permit the Premises or any part thereof to be used by Tenants, agents, contractors, subcontractors for such purposes, so long as such sublease or use is consistent with the terms of this Lease and Master Plan. Such consent shall not be unreasonably withheld. Any subletting, even with the consent of Landlord, shall not relieve Tenant from liability for payment of rent or other sums herein provided or from the obligation to keep and be bound by the terms, conditions and covenants of this Lease. Tenant is strictly prohibited from assigning this Lease.

13.2 Tenant understands that Landlord may assign its interest in this Lease to a commission or other entity which will assume responsibility for some or all of the parks presently owned by Landlord. In the event of such assignment, Tenant will execute any amendment to this Lease requested by the assignee provided the amendment does not materially decrease the rights of Tenant or increase the obligations of Tenant.

ARTICLE XIV - DEFAULT BY TENANT; REMEDIES

14.1 The occurrence of any of the following where such failure continues for sixty (60) days after written notice, or such shorter period as noted herein shall, at Landlord's option, constitute a material default and breach of this Lease by Tenant:

- (a) The abandonment of the Premises by Tenant;
- (b) A failure of the Tenant to meet any of the bench marks set forth in Section 6.4 herein;
- (c) A failure by Tenant to pay any installment of rent, or to make any other payment required to be made by Tenant hereunder, where such failure continues for thirty (30) days after written notice thereof;

(d) A failure by Tenant to observe and perform any other provisions or covenants of this Lease to be observed or performed by Tenant, provided, however, that if the nature of the default is such that the same cannot reasonably be cured within such sixty (60) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion. It is acknowledged that the nature of the underlying projects in the Botanic Garden development require third party governmental approvals over which Tenant has no control. A delay in obtaining such approvals is not a default so long as Tenant has made application and is diligently pursuing them in good faith.

(e) The making by Tenant of any assignment for the benefit of creditors; the admission by Tenant in writing of its inability to pay its debts when due; the adjudication that Tenant is bankrupt or insolvent; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days after the filing thereof); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located in the Premises or elsewhere or of Tenant's interest in this Lease (unless possession is restored to Tenant within thirty (30) days after such appointment); or the attachment, execution or levy against, or other judicial seizure of, substantially all of Tenant's assets located in the Premises or elsewhere or of Tenant's interest in this Lease (unless the same is discharged within thirty (30) days after issuance thereof);

14.2 In the event of any default or breach of this Lease by Tenant as set forth in Section 14.1 hereof, Landlord, at its option, may terminate this Lease upon and by giving written notice of termination to Tenant and re-enter the Premises and retake possession of the same; or Landlord, without terminating this Lease, may at any time after such default or breach, perform for the account of Tenant any defaulted term or covenant on Tenant's part to be served or performed, and recover any expenditures made and the amount of any obligations incurred in connection therewith, without notice or demand additional to that provided in Section 14.1 hereof, and without limiting Landlord in the exercise of any other right or remedy which Landlord may have by reason of such default or breach.

14.3 In addition to the aforesaid, Landlord shall be entitled to pursue any and all available remedies at law and equity. The rights and remedies given to Landlord by this Lease shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive at law or in equity of the rights and remedies which Landlord might otherwise have by virtue of a default under this Lease, and the exercise of one such right or remedy by Landlord shall not impair Landlord's standing to exercise any other right or remedy.

ARTICLE XV - DEFAULT BY LANDLORD

15.1 Landlord shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within ninety (90) days (or within such additional time as is reasonably required to correct any such default) after notice to Landlord by Tenant properly specifying wherein Landlord has failed to perform any such obligations.

ARTICLE XVI - SURRENDER

16.1 Upon the expiration or earlier termination of this Lease, Tenant shall peaceably leave and surrender the Premises to Landlord as repaired, rebuilt, reclaimed, restored, altered, replaced or added to as permitted or required by any provision of this Lease. If Landlord terminates this Lease, Tenant shall provide Landlord with any surveys, plans or other material developed by Tenant in connection with the Botanic Garden. All personal property placed in or upon the Premises by Tenant shall remain property of Tenant. Upon such surrender, Tenant shall remove from the Premises all movable personal property which is owned by Tenant or third parties other than Landlord within a reasonable time. Buildings, structures, facilities and Improvements including fixtures and equipment and personal property not so removed shall become the property of Landlord. Landlord shall not in any manner or to any extent be obligated to reimburse Tenant for any such property which becomes the property of Landlord. Tenant shall cooperate in good faith with Landlord and provide consents or approvals where necessary for the transfer or assignment of any governmental permits, licenses or other approvals related to any facilities remaining on the Premises.

ARTICLE XVII - REIMBURSEMENT

17.1 All terms, covenants and conditions herein contained, to be performed by Tenant, shall be performed at its sole cost and expense and if Landlord shall pay any sum of money or do any act which requires the payment of money, by reason of the failure, neglect or refusal of Tenant to perform such term, covenant or condition, the sum of money so paid by Landlord shall be payable by Tenant to Landlord within thirty (30) days of written demand by County. All sums payable by Tenant to Landlord under this Lease shall be paid without deduction or setoff whatsoever.

ARTICLE XVIII - TITLES OF ARTICLES

18.1 The titles of the articles throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this instrument.

ARTICLE XIX - NOTICES

19.1 Any notice, request, demand, approval, consent or other communication which Landlord or Tenant may be required or permitted to give to the other party shall be in writing and shall be sent by first-class certified mail -- return receipt requested, or first-class express mail; overnight courier service; or personal delivery. Any properly given notice shall be effective upon receipt and shall be addressed as follows:

Landlord: County of Allegheny
Parks Department
211 County Office Building
542 Forbes Avenue

Pittsburgh, PA 15219
Attn: Andrew G. Baechle, Director

With a copy to:

Solicitor, County of Allegheny
Allegheny County Law Department
300 Fort Pitt Commons
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

Tenant: Horticultural Society of Western Pennsylvania
P. O. Box 5126
Pittsburgh, PA 15206
Attn: Lindsay B. Totten, President

Either party, by notice to the other, may change its notice address.

ARTICLE XX - NON-WAIVER

20.1 No waiver of any covenant or condition or of the breach of any covenant or condition of this Lease shall be taken to constitute a waiver of any subsequent breach of such covenant or condition nor to justify or authorize the nonobservance on any other occasion of the same or of any other covenant or condition hereof, nor shall the acceptance of rent by Landlord at any time when Tenant is in default under any covenant or condition hereof, be construed as a waiver of such default or of Landlord's right to terminate this Lease on account of such default, nor shall any waiver or indulgence granted by Landlord to Tenant be taken as an estoppel against Landlord, it being expressly understood that if at any time Tenant shall be in default in any of its covenants or conditions hereunder, an acceptance by Landlord of rental during the continuance of such default or the failure on the part of Landlord promptly to avail itself of such other rights or remedies as Landlord may have, shall not be construed as a waiver of such default, but Landlord may at any time thereafter, if such default continues, terminate this Lease on account of such default in the manner hereinbefore provided.

ARTICLE XXI - PROVISIONS BINDING

21.1 Except as herein otherwise expressly provided, the terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of Landlord and Tenant. Each term and each provision of this Lease to be performed by Tenant shall be construed to be both an independent covenant and a condition. The reference contained to successors and assigns of Tenant is not intended to constitute a consent to assignment by Tenant, but has reference only to those instances in which Landlord may have given consent to a particular assignment.

ARTICLE XXII - MEMORANDUM OF LEASE

22.1 Tenant may at its option and expense cause a memorandum of this Lease and any amendments or supplements to this Lease to be recorded in the Office of the Recorder of Deeds of Allegheny County. Landlord will cooperate with Tenant in the execution of any such memorandum.

ARTICLE XXIII - GENERAL

23.1 No personal liability. No elective official, appointed official, director, officer, agent or employee of County shall be charged personally or held contractually liable by or to Tenant under any term or provision of this Lease, or because of any breach hereof, or because of its or their execution, approval, or attempted execution of this Lease.

23.2 Failure to exercise rights. Failure of either party to exercise their respective rights under the terms of this Lease on any one occasion shall not be construed as a waiver on any subsequent occasion. No provision of this Lease shall be waived or altered except by writing, endorsed hereon, or attached hereto.

23.4 No co-partnership. It is understood and agreed that nothing herein contained is intended or shall be construed to in any respect create or establish the relationship of co-partners between Tenant and the County, or as constituting Tenant the general representatives or agent of the County for any purpose whatsoever.

23.5 Compliance with Laws.

(a) Tenant shall comply with all present and future Laws applicable to or directly or indirectly affecting Tenant or its operations on the Premises; provided, that Tenant may, at its own sole risk and cost, contest the applicability or legal validity of any Law by appropriate administrative or judicial procedure.

(b) Tenant shall defend, indemnify and hold harmless the County, its Chief Executive, and its elected or appointed officials, officers, agents and employees, from and against any claim, damages, liability, suit, lien, judgment and the like, including any claim for contribution or indemnification, caused by or arising out of any violation of any Law by Tenant or its agents, unless the violation was caused by the County, or their agents. Tenant's obligation under this Section includes without limitation all reasonable attorney fees and investigation expenses, incurred by the County in handling and defending against such claim, damages, liability, suit, lien, judgment and the like.

ARTICLE XXIV- COMPLETE AGREEMENT

24.1 This writing contains the entire agreement between the parties hereto, and no agent, representative, salesman or officer of Landlord hereto has authority to make or has made any statement, agreement or representation, either oral or written, in connection herewith, modifying, adding or changing the terms and conditions herein set forth. No modification of this Lease shall be binding unless such modification shall be in writing and signed by the parties hereto.

IN TESTIMONY WHEREOF, Landlord and Tenant have signed this Lease on the date first above written.

ATTEST:

Beverly Elliott
Secretary

TENANT:

HORTICULTURAL SOCIETY OF WESTERN
PENNSYLVANIA

By: Lindsay B. Totten
Lindsay B. Totten, President

ATTEST:

LANDLORD/COUNTY OF ALLEGHENY

By: _____
James M. Flynn, Jr.
County Manager

APPROVED:

Andrew Beuchle
Director, Department Parks

APPROVED AS TO FORM:

County Solicitor

Assistant County Solicitor