

City of Houston, Texas Ordinance No. 2015 - 49

AN ORDINANCE APPROVING AND AUTHORIZING A LEASE AND OPERATING AGREEMENT BETWEEN THE CITY OF HOUSTON, TEXAS, AND THE HOUSTON BOTANIC GARDEN AT GLENBROOK GOLF COURSE, 8205 BAYOU DRIVE, HOUSTON, TEXAS; CONTAINING FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

WHEREAS, the City owns the Glenbrook Golf Course ("Glenbrook"), and

WHEREAS, Houston Botanic Garden, a Texas not for profit corporation ("HBG") desires to raise funds to create, construct and operate a Botanic Garden (the "Improvements") at Glenbrook; and

WHEREAS, after completion of the Improvements, HBG desires to donate the completed Improvements to City upon termination of the lease excluding certain items reserved at that time including but not limited to sculptures, collections, and research materials; and,

WHEREAS, City desires to accept the gift of the Improvements, and desires to provide for long term sustainability of the Botanic Garden through an Operations agreement with HBG; and,

WHEREAS, the City of Houston and Houston Botanic Garden desire to enter into the attached agreement to allow HBG to install, construct, maintain and operate the Garden at Glenbrook, **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That City Council of the City of Houston, Texas hereby adopts the findings set out in the preamble hereof and finds and determines that the Lease and Operating Agreement is in the best interests of and benefits the City, and serves a public purpose for the benefit of the citizens.

Section 2. That the City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor (or, in the absence of the Mayor, the Mayor Pro Tem) is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary (or in the absence of the City Secretary, any Assistant City Secretary) is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under this agreement without further authorization from Council.

Section 3. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

LEASE and OPERATING AGREEMENT

by and between

CITY OF HOUSTON, TEXAS,

as Landlord,

and

Houston Botanic Garden

as Tenant

Houston, Harris County, Texas

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS	5
Section 1.1 Certain Definitions.....	5
Section 1.2 Certain Other Defined Terms	7
ARTICLE 2	7
Section 2.1 Option to Lease.	7
Section 2.2 Fundraising Schedule.	7
Section 2.3 Fundraising Reports..	8
Section 2.4 Fundraising Default.	8
Section 2.5 Grant of Development Rights.	8
2.5.1 Right of Entry.	8
2.5.2 Naming Rights.	8
Section 2.6 Commencement Date.	9
Section 2.7 Standards Committee.....	9
2.7.1 Composition..	9
2.7.2 Ex-Officio.....	10
2.7.3 Decisions.....	10
2.7.4 Committee Functions and Powers..	10
2.7.5 Powers.:.....	10
ARTICLE 3 LEASE GRANT; POSSESSION; QUIET ENJOYMENT; USE.....	10
Section 3.1 Lease Grant.	10
Section 3.2 Condition of the Premises.	10
Section 3.3 Delivery of Possession.....	11
Section 3.4 Covenant of Quiet Enjoyment	11
Section 3.5 Use.	11
Section 3.6 Prohibited Uses	12
ARTICLE 4 DESIGN AND CONSTRUCTION	13
Section 4.1 Plans and Specifications.	13
4.1.1 Approved Design.....	13
4.1.2 Plans.	13
4.1.3 Hike and Bike Trail.....	14
Section 4.2 Permits and Fees.....	14
Section 4.3 Contractors.	14
Section 4.4 Construction.	15
Section 4.5 Substantial Completion.	15
Section 4.6 Final Completion.	16
Section 4.7 MWBE.	16
ARTICLE 5 TERM	16

ARTICLE 6 RENT; UTILITIES; TAXES.....	16
Section 6.1 Rent.....	16
Section 6.2 Additional Capital contribution from the City.	17
Section 6.3 Special Events.	17
Section 6.4 Water.....	17
Section 6.6 Utilities.	17
Section 6.7 Taxes	17
Section 6.8 Contract Administrative Fee.	17
Section 6.9 Existing City Utilities.	18
ARTICLE 7 MAINTENANCE REPAIRS, and ALTERATIONS	18
Section 7.1 Maintenance and Housekeeping Responsibilities.....	18
Section 7.2 Right to Alter.	18
Section 7.3 Repairs.....	19
ARTICLE 8 OPERATIONS.....	19
Section 8.1 Duties.	19
Section 8.2 Operations Performance.	20
Section 8.3 Exhibits.	20
Section 8.4 Fees and Schedule.....	20
8.4.1 Admission Fees and membership	20
8.4.2 Scheduled.....	21
Section 8.5 Fixtures, Installations and Equipment.....	21
Section 8.6 Public Relations Marketing, Advertising, Fund Raising.	21
8.6.2 Cross-Marketing.	21
Section 8.7 HBG's Personnel.	21
Section 8.8 Reports and Records.	22
Section 8.9 Audited Statements..	22
Section 8.10 Inspections and Permits.	22
Section 8.11 Certifications.	23
ARTICLE 9 NONDISCRIMINATION	23
ARTICLE 10 INSURANCE.....	23
Section 10.1 Insurance.	23
Section 10.2 Additional insurance requirements.....	24
10.2.1 Forms of Policies.	24
10.2.2 Certificates.	24
10.2.3 Issuers.	24
10.2.4 Additional Insured.	24
10.2.5 Deductibles.	24
10.2.6 Cancellation.	25
10.2.7 Subrogation.	25
10.2.8 Endorsements.	25
10.2.9 Premiums..	25
10.2.10Blanket Policies.	25

10.2.12	Contractors	25
Section 10.3	WAIVER OF RIGHT OF RECOVERY	25
ARTICLE 11 DAMAGE OR DESTRUCTION.....		26
Section 11.1	Occurrence of Casualty and Use of Insurance Proceeds	26
Section 11.2	Repairs.	26
Section 11.3	Property at HBG's Risk.	26
Section 11.4	Destruction of Properties under Contract.	26
ARTICLE 12 CONDEMNATION		26
Section 12.1	Definitions.....	26
Section 12.2	Efforts to Prevent Taking.....	27
Section 12.3	Entire Taking.....	27
Section 12.4	Partial Taking.....	27
Section 12.5	Temporary Taking	28
Section 12.6	Condemnation Award.....	28
Section 12.7	Settlement of Proceedings.....	28
Section 12.8	Survival	28
ARTICLE 13 ASSIGNMENT; SUBLETTING.....		28
Section 13.1	Restrictions on Assignment.	28
Section 13.2	Concessions.	29
Section 13.3	Nondisturbance and Attornment Agreements.	29
ARTICLE 14 DEFAULT OF TENANT		29
Section 14.1	Defaults by Tenant.....	29
Section 14.2	Remedy.	30
ARTICLE 15 DEFAULT OF LANDLORD		30
Section 15.1	Defaults and Remedies.....	30
ARTICLE 16 RELEASE		31
ARTICLE 17 INDEMNIFICATION		31
Section 17.3	INDEMNIFICATION - PROCEDURES	32
17.3.1	Notice of Claims.....	32
17.3.2	Defense of Claims.....	32
ARTICLE 18 REPRESENTATIONS AND WARRANTIES		33
Section 18.1	Landlord's Representations and Warranties.....	33
Section 18.2	Tenant's Representations and Warranties.....	34
ARTICLE 19 MISCELLANEOUS		34
Section 19.1	Inspection.....	35
Section 19.2	Estoppel Certificates.....	35
Section 19.3	Release.....	35

Section 19.4	Landlord's Right to Perform Tenant's Covenants	35
Section 19.5	Notices	35
Section 19.6	Modifications	37
Section 19.7	Descriptive Headings.....	37
Section 19.8	Unavoidable Default and Delays	37
Section 19.9	Partial Invalidity.....	37
Section 19.10	Applicable Law and Venue	38
Section 19.11	Attorneys' Fees.....	38
Section 19.12	Interpretation	38
Section 19.13	Brokerage Commission	38
Section 19.14	Non-Waiver	38
Section 19.15	Survival	38
Section 19.16	Entire Agreement	38
Section 19.17	Parties in Interest; Limitation on Rights of Others	39
Section 19.18	Covenants Running with the Land	39
Section 19.19	Non-Merger of Estates	39
Section 19.20	City Council Approvals and Appropriations.....	39

EXHIBITS

Exhibit A	Description of site boundaries
Exhibit B	Operations rules
Exhibit C	Schedule - days, dates, and hours
Exhibit D	Minimum Maintenance Standards
Exhibit E	Transferred equipment
Exhibit F	Permitted Encumbrances
Exhibit G	Maximum Fees and Rates
Exhibit H	Employee/Volunteer Performance Manual
Exhibit I	Naming, Sponsorship, Advertising, and Signage Policy

LEASE and OPERATING AGREEMENT

This GROUND LEASE (this "Agreement") is made and entered into as of the date this agreement is Countersigned by the City Controller of the City of Houston, Texas (the "Effective Date"), by and between the City of Houston, Texas, a home-rule city organized under the laws of the State of Texas (the "City" or "Landlord"), and Houston Botanic Garden, a Texas Non-Profit corporation organized under Chapter 22 of the Texas Business Organizations Code, as amended ("HBG" or the "Tenant"). Landlord and Tenant are referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, the City owns the Glenbrook Golf Course ("Glenbrook"), and

WHEREAS, Houston Botanic Garden desires to raise funds to create, construct and operate a Botanic Garden (the "Improvements") at Glenbrook; and

WHEREAS, the City and the HBG desire to develop sustainable long term operations for the Botanic Garden,

WHEREAS, after completion of the Improvements, HBG desires to donate the completed Improvements to City upon termination of the lease excluding certain items reserved at that time including but not limited to sculptures, collections, and research materials; and

WHEREAS, City desires to accept the gift of the Improvements, and desires to provide for long term sustainability of the Botanic Garden through an Operations agreement;

NOW, THEREFORE, in furtherance of the foregoing, the parties hereto agree as follows:

AGREEMENTS

For and in consideration of the respective covenants and agreements of Landlord and Tenant set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landlord and Tenant, Landlord and Tenant do hereby agree as follows:

ARTICLE 1 **DEFINITIONS**

Section 1.1 Certain Definitions. The following terms not otherwise defined herein in writing shall have the meaning set forth below in this Section 1.1:

(a) Chief Development Officer ("CDO"). The director of the division of the Mayor's Office that develops, implements and manages citywide policies and procedures for economic development programs, or any other City official as designated in writing by the Mayor.

- (b) City Council. The acting City Council of the City.
- (c) Commencement Date. The Commencement Date for this Agreement as set forth in Section 2.6.2 of this Agreement.
- (d) Director. The Director of Houston Parks and Recreation Department or any director appointed by the mayor to administer this agreement.
- (e) Encumbrances. Any defects in, easements, covenants, conditions or restrictions affecting, or Liens or other encumbrances on, the title to the Premises, whether evidenced by written instrument or otherwise evidenced.
- (f) Firm Commitments. Firm Commitments shall include: cash donations and written pledges from credible and reliable donors.
- (g) Governmental Rule. Any statute, law, treaty, rule, code, ordinance or regulation applicable to Persons, facilities or activities within the jurisdiction of the Governmental Authority promulgating the same, any permit, interpretation, certificate or order of any Governmental Authority pursuant to the foregoing or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority with respect to any of the foregoing.
- (h) Improvements. Means all improvements, structures, buildings and fixtures of any kind whatsoever, whether above or below grade, including buildings, the foundations and footings thereof, utility installations, storage, loading facilities, walkways, driveways, landscaping, signs, site lighting, site grading and earth movement, and all fixtures, plants, apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts and equipment of every kind and description now or hereafter affixed or attached to any of such buildings, structures or improvements and used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating, air conditioning, refrigeration, or general operation of any of such buildings, structures or improvements, and any exterior additions, changes or alterations thereto or replacements or substitutions therefor installed or constructed to serve or for use at the Botanic Garden.
- (i) Liens. With respect to any property, any mortgage, lien, pledge, charge or security interest, and with respect to the Premises, the term "Lien" shall also include any lien for builder, mechanic, warehouseman, materialman, contractor, workman, repairman or carrier lien or other similar liens, including, but not limited to, Mechanic's Liens and claims.
- (j) Mechanic's Liens. Any Lien or claim of Lien, whether choate or inchoate filed or which any third party may be entitled to file against the interest of Landlord or Tenant in the Premises by reason of any work, labor, services or materials supplied or claimed to have been supplied on or to the Premises.

(k) Person. Any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

(l) Permitted Uses. Permitted uses are those allowed pursuant to Section 3.5 of this agreement

(m) Premises. The premises includes the property now known as Glenbrook Golf Course and a route of access through Charlton Park as illustrated but not defined in Exhibit A-1, less an allowance for the Hike and Bike Trail and access trails to be determined in the conceptual design to be approved by the Mayor in Section 4.1.1, and any additional real property acquired by the City or its subsets or the HBG during the term of this agreement to serve or service the Botanic Garden.

(n) Term. The term of this Agreement as provided in Section 5.1 of this Agreement.

Section 1.2 Certain Other Defined Terms. Any initially capitalized terms used in this Agreement and not specifically defined herein shall have the meanings assigned to such terms in the Lease and Development Agreement.

ARTICLE 2

FUNDING

Houston Botanic Garden, Inc. shall be solely responsible for raising any and all capital required to create, construct, install, maintain and operate a Botanic Garden and other desired improvements at Glenbrook. In consideration for this commitment, The City grants an irrevocable option to be exercised by the HBG to lease Glenbrook from the City, subject to the terms hereof, and upon exercise of the option, the City agrees to convey the personal property and fixtures existing at Glenbrook to HBG. HBG shall retain all revenue received from operations or concessions after the Commencement Date for the benefit of the Botanic Garden. The City will not provide any additional funding for the restoration, refurbishing, construction, maintenance or operations of the Botanic Garden.

Section 2.1 Option to Lease. No earlier than November 30, 2015 and no later than December 31, 2015, HBG may exercise an option to lease Glenbrook by written instrument to the Chief Development Officer, together with written representation of the Chairman of the Board of Directors of the HBG of Firm Commitments aggregating at least \$5,000,000.

Section 2.2 Fundraising Schedule. The total project is expected to cost \$40 million. Firm Commitments for the initial \$20 million shall be raised on the following schedule:

2.2.1 \$ 5 million prior to exercise of the option to lease the golf course but no later than December 31, 2015.

2.2.2 \$20 million (cumulative) by December 31, 2017.

2.2.3 By a vote of City Council, each deadline set by this section may be extended by one year at the request of the HBG.

Section 2.3 Fundraising Reports. After exercise of its option, HBG shall provide a report of fundraising activities and achievements to the Chief Development Officer on a quarterly basis.

Section 2.4 Fundraising Default. Failure to reach the required target of \$20,000,000 by the date specified constitutes a fundraising default. Upon the occurrence of a fundraising default, the City will provide notice to HBG that a fundraising default has occurred. Within 60 days of the date of the notice, HBG must cure the fundraising default and show proof to the Chief Development Officer that the fundraising default has been cured. Without amendment by City Council and HBG, this contract will terminate upon failure to show such proof.

Section 2.5 Grant of Development Rights. As of the Effective Date of this Agreement, City grants to HBG all of the Development Rights set forth in this Section 2.5. All such Development Rights shall remain in effect from the Effective Date of this Agreement throughout the term of this Agreement.

2.5.1 Right of Entry. City hereby grants to HBG, and its respective employees, engineers, architects and consultants, contractors and other representatives, following reasonable notice to the Director, the right of entry on Glenbrook to perform all activities as are reasonably necessary or appropriate in connection with the performance of their rights and obligations permitted or required hereunder and all other lawful acts incidental thereto. In connection with any work prior to the Commencement date on Glenbrook, HBG shall comply, and contractually require its contractors to comply with the insurance and indemnification requirements set forth in Article 10, Insurance, Article 16, Release, and Article 17, Indemnification, to the extent permitted by law.

2.5.2 Naming Rights. Subject to this Section, HBG may name features and improvements within the Botanic Garden in accordance with this Agreement.

(a) HBG must submit and obtain approval of the Standards Committee of a Names and Sponsorship policy prior to reaching any final agreement with respect to any feature for naming, accepting any gift contingent upon naming a feature, or seeking or accepting corporate sponsorship of any program or event at the Botanic Garden. HBG's policy must be consistent with the general principles in the Policy for Naming Park Property Policy Number 1010.4 or any successor policy adopted by the City and must incorporate, by reference or otherwise, the General Criteria set out therein.

(b) Names shall become effective only upon the substantial completion of construction as set out in Section 4.5. No name shall be granted for a term longer than the term of this Agreement.

(c) HBG shall not rename any area or feature at Glenbrook that was previously named by City except with the prior approval of City.

(d) In no event will any feature be named for a commercially available product unless the name of product is also the name of the corporation selling the product.

(e) Without the prior approval of the Standards Committee of any change, the Botanic Garden will be named the Houston Botanic Garden.

Section 2.6 Commencement Date. HBG shall prepare a detailed construction budget (the "Budget") for (i) the creation, installation or construction of the Botanic Garden and other desired improvements and (ii) a phasing cost plan and submit it to the Chief Development Officer and the Director. In addition, HBG will prepare an Operating Plan that projects the expenses and funding plan for the ongoing operation and maintenance of the Botanic Garden when it opens to the public and submit this Operating Plan to the Standards Committee for approval prior to the opening of the Botanic Gardens

2.6.1 Unless the dates in Section 2.2 are extended by the City Council, the Chair of the Board of Directors of HBG shall certify to the Chief Development Officer prior to January 1, 2018 that it has raised sufficient funds as required in Section 2.2.

2.6.2 The Chief Development Officer shall review and approve the certification and shall give notice of his/her approval and provide a Commencement Date to HBG in writing, which shall be no later than 30 days after submittal of the certification.

2.6.3 The provisions of Articles 3 through 14 of this agreement commence on the Commencement Date.

Section 2.7 Standards Committee. The Parties shall appoint a 5-member Standards Committee consisting of two representatives of HBG, two representatives of the City as appointed by the Mayor, and a fifth committee member selected by the other four committee members. At least one of the Mayor's representatives will not be an employee of the HPARD or a contractor doing or seeking business with the HPARD. At least one of the representatives of HBG will not be an employee of HBG or a contractor doing or seeking business with HBG.

2.7.1 Composition. The jointly selected fifth committee member shall be an individual who (i) has knowledge and expertise in the efficient and cost effective operation and maintenance of parks and green space, and (ii) is an independent, neutral party with respect to all Parties, or the other committee members, i.e., one who has no contractual, financial, fiduciary or other business or family relationship to any of such entities or individuals. Such fifth committee member shall serve for a term of three (3) years, each such term ending on the anniversary of the Date that HBG exercises an option to Lease; provided, however, no maximum number of terms is required under this Agreement; and provided further, that during any such term, the fifth committee

member shall withdraw, or the Standards Committee shall replace such member, if such member enters into a relationship with, and loses his or her independent, neutral status with respect to, any Party, or other committee members.

2.7.2 Ex-Officio. The Standards Committee shall also include a representative appointed by the Director who shall serve in an ex officio non-voting advisory role to the Standards Committee.

2.7.3 Decisions. All decisions of the Standards Committee shall be decided upon a majority vote, which must include at least one of the representatives of the City.

2.7.4 Committee Functions and Powers. The Standards Committee shall meet at a location in the City of Houston at least quarterly each calendar year.

2.7.5 Powers. The Standards Committee shall have the following powers:

(a) Approval of the Operations Rules (0), Schedule (0), Minimum Maintenance Standards (0), Maximum Fees and Rates (Exhibit G), Employee/Volunteer Performance Manual (Exhibit H) Naming, Sponsorship, Advertising and Signage Policy (Exhibit I), and any subsequent amendments; these Exhibits will be final no later than the date of substantial completion pursuant to Section 4.6 and when final will be attached and incorporated hereto.

(b) Approval of any future development of improvements and hardscape involving major capital in the Project; and

(c) Resolution of any disagreement between the Director and HBG as to any matter arising under Sections 4.1.2 and 4.1.4, ARTICLE 7, ARTICLE 8 or ARTICLE 13 of this agreement.

(d) To perform all functions assigned to the Standards Committee in this Agreement.

ARTICLE 3

LEASE GRANT; POSSESSION; QUIET ENJOYMENT; USE

Section 3.1 Lease Grant. Upon and subject to the terms and provisions contained herein, on the Commencement Date, Landlord does hereby lease, let, demise and rent unto Tenant, and Tenant does hereby take, lease and rent from Landlord, the Premises, to have and to hold such Premises for the Term as hereinafter provided.

Section 3.2 Condition of the Premises. HBG accepts the premises "as is" in its condition as of the execution of this Agreement.

3.2.1 HBG agrees that except as provided in this section no representations have been made by the City or its agents to HBG with respect to the condition of the Premises nor have there been any promises made to alter, repair, or improve same before or after execution of this Agreement. From the Effective Date to

the Commencement Date, that the City will not materially alter or allow the alteration of Glenbrook.

3.2.2 City accepts no responsibility or liability for any loss or damage to HBG-owned equipment or conveyances.

3.2.3 Condition and Surrender of the Premises. Upon expiration or termination of the Agreement, HBG shall give up to the City immediate possession of the Premises in as good condition as they are in on Commencement Date, subject to changes to Glenbrook under the terms of this Agreement and reasonable wear and tear and damage from fire or the elements only excepted. HBG is not required to re-install or return the property to a Golf Course, but HBG is required to remove any diseased vegetation, plant material which may become invasive if not managed and repair or remove any dangerous condition or building that exists at the time of termination. If HBG does not at once surrender possession of same, the Director may re-enter and repossess the premises.

3.2.4 Personal property of HBG must be removed from the property upon the expiration of the Contract Term unless otherwise authorized by the Director. If any property of HBG is not removed upon the expiration date of the Contract Term or by the date otherwise authorized by the Director, such property shall become and remain the property of the City. If termination is as of a date other than the scheduled lease termination, the City shall give HBG at least 90 days to remove personal property.

Section 3.3 Delivery of Possession. On the Commencement Date, Landlord shall deliver to Tenant exclusive possession, use and occupancy of the Premises, free of all litigation, liens, tenancies and parties in possession of the Premises (other than those arising by, through or under Tenant), subject only to (i) the rights of Landlord under this Agreement, and (ii) the easements and other encumbrances or restrictions of record set forth on 0 attached hereto and made a part hereof (collectively, the "Permitted Encumbrances").

Section 3.4 Covenant of Quiet Enjoyment. Effective as of the Commencement Date, Landlord covenants that Tenant, upon keeping, observing and performing the terms, covenants and conditions of this Agreement to be kept, observed and performed by Tenant, shall and may quietly and peaceably hold, occupy, use, and enjoy the Premises without ejection or interference by or from Landlord or any other Person (other than Persons claiming by, through or under Tenant), subject only to the Permitted Encumbrances.

Section 3.5 Use. Tenant throughout the Term shall install and operate a Botanic Garden, and a failure to do so shall be an event of Default as set out in Section 14.1 allowing early termination of this agreement in addition to any other remedy available to the City. Tenant throughout the Term, shall have the exclusive right to use and occupy the Premises, for any lawful purpose other than the Prohibited Uses (as hereinafter defined), including without limitation for the following purposes (collectively, the "Permitted Uses") but in all cases consistent with the Operating Rules (Exhibit B) and Applicable Laws:

- (a) The creation, installation, construction and operation of a Botanic Garden; and
- (b) Restaurants, event spaces, clubs and bars ;
- (c) Sale of food and alcoholic and non-alcoholic beverages, souvenirs and other items customarily sold and marketed in Botanic Gardens;
- (d) Parking in any parking facilities located on the Premises;
- (e) Retail uses, including such uses located in kiosks, carts and similar movable or temporary retail facilities;
- (f) Entertainment, museum and educational uses;
- (g) Conducting day-to-day business operations in Tenant's office space constructed or maintained on the premises;
- (h) Storage of maintenance equipment and supplies used in connection with the operation of the Premises or all other Permitted Uses;
- (i) Construction Work permitted or required pursuant to the terms of this Lease;
- (j) The use and enjoyment of the rights and licenses granted to Tenant under this Lease regarding any intangible property rights;

Other uses reasonably related or incidental to any of the foregoing or not inconsistent with any of the foregoing that are not Prohibited Uses.

Section 3.6 Prohibited Uses. Tenant shall not use, or permit the use of, the Premises for any of the following (collectively, the "Prohibited Uses"):

- (a) Use or allow the Premises to be used for the sale or display of any pornographic material or material which is obscene under standards set forth in any Applicable Laws, or operate or allow any Person to operate in, on or about the Premises any store or other facility, a principal or significant portion of the business of which is an "Enterprise," as such term is defined in Section 28-121 of the City of Houston Municipal Code, as same may be amended from time to time during the Term, or any similar business;
- (b) Use or allow the Premises to be used for the sale or display of any lewd, offensive or immoral sign or advertisement, including any sign or advertisement that promotes lewd, offensive or immoral activities, including sexually immoral activities;
- (c) Use or allow the Premises to be used for the sale of paraphernalia or other equipment or apparatus which is used primarily in connection with the taking or use of illegal drugs;

(d) Use or allow the Premises to be used as a place of residence by any Person except for a caretaker or security staff member and family;

(e) Use or permit the Premises to be used for a shooting gallery, target range, vehicle repair or cleaning facility (except vehicles primarily used onsite by HBG), car wash facility, warehouse (but any area for the storage of goods intended to be sold or used in connection with Tenants' operations permitted hereunder shall not be deemed to be a warehouse), convalescent care facility or mortuary, or use or permit the Premises to be used for any assembly, manufacture, distillation, refining, smelting or other industrial or commercial operation or use;

(f) Use any portion of the Premises for storage (other than than required for permitted uses); or

(g) Use or permit the use of the Premises as a casino (or other establishment in which gambling is permitted or games of chance are operated), an establishment that allows full or partial nudity, a massage parlor (provided that massage services may be offered by a licensed massage therapist as a part of a health, beauty or fitness operation) or a tanning parlor.

ARTICLE 4

DESIGN AND CONSTRUCTION

Section 4.1 Plans and Specifications. Subject to the other terms and provisions of this Agreement, HBG shall be the only party responsible for the design, development and construction, reconstruction, refurbishing, rehabilitation or restoration ("Construction") of the Improvements. Without limiting the generality of the foregoing, HBG shall have sole responsibility for the selection, engagement and payment of the project architect, the contractors, all subcontractors and consultants, and all others that may at any time and from time to time be engaged in the planning, development or construction of the Improvements.

4.1.1 HBG shall, without expense to City, prepare conceptual plans for the Improvements. No later than six months after the Commencement Date, HBG shall present to the Director and the Mayor or her designee ("Mayor") conceptual plans, schematic drawings and preliminary elevations for the Improvements (the "Conceptual Plans"), which shall include an event venue reasonably acceptable to the Mayor and shall show access, traffic, curb cuts, and similar matters (collectively, the "Approved Design"). A copy of the Approved Design shall be filed at the offices of Mayor.

4.1.2 Thereafter, HBG shall, without expense to City, prepare plans for construction and development of the Improvements. Thereafter, HBG shall submit copies of the plans to the Director (or the Director's designated representative) at intervals of 50% and 95% completion for review and approval solely to confirm that the Improvements, as so planned, conform to the Approved Design. The Director shall provide HBG comments or approval within fourteen (14) business days of receipt of HBG's submittals of the 50% complete and 95% complete plans; provided, however, if

no response is given to HBG within each 14-day review period, the plans so submitted shall be deemed to have been approved by the Director on behalf of the City. Upon completion of all Plans, HBG shall file same with the Director, and the plans shall be deemed to be incorporated herein by reference for all intents and purposes.

4.1.3 The City reserves the right to plan and construct a hike and bike trail in conjunction with the Bayou Greenways Initiative that may use land currently used by the Golf Course. HBG agrees to accommodate the Hike and Bike Trail without any compensation or reimbursement for its expenses, provided that the costs of the Hike and Bike Trail installation and maintenance shall not be costs of the HBG. HBG will coordinate design, planning and construction with the Director and Houston Parks Board to accommodate the trail running adjacent to the premises and any other existing or planned access trails. HBG acknowledges and recognizes that existence of the trail may be a significant amenity for the Botanic Garden, but may require certain accommodations or design constraints to accommodate spatial, access, aesthetic or safety concerns. HBG agrees to negotiate with the Houston Parks Board to reach amicable resolution of all such concerns, but in any event, the location and design of the trail is subject to the approval of the Director.

4.1.4 HBG agrees that the Plans will not be materially inconsistent with the approved design. During the construction of the Improvements, HBG shall invite the Director's designated representative to attend periodic project meetings with HBG's project manager and general contractor. During construction HBG shall have the right to approve change orders and field changes, but proposed changes that are materially inconsistent with the Approved Design shall be submitted to the Director for approval. Director shall provide such review within fourteen (14) business days of receipt of the proposed change; provided, however, if no response is given by the Director within each 14-day review period, the proposed change so submitted shall be deemed to have been approved by the Director on behalf of the City. If the Director's comments are not acceptable to the HBG, the matter will be referred to the Standards Committee.

4.1.5 City shall have no responsibility for the preparation of the Plans or the construction of the Improvements, except as otherwise set forth in this Agreement.

Section 4.2 Permits and Fees. HBG shall obtain all building permits, licenses and approvals required by all Governmental Authorities including the City, for the Improvements for construction.

Section 4.3 Contractors. HBG shall enter into the construction contracts with the contractors to construct the Improvements.

4.3.1 Each construction contract shall provide that: (1) the City is a third-party beneficiary of all representations and warranties made by the contractor to HBG; and (2) the contractor shall look solely to HBG for any payment due under the construction contract.

4.3.2 HBG shall require each contractor to furnish payment and performance bonds, naming City as co-obligee or co-beneficiary, in the full amount of

the contract sum for each construction contract, and in form and substance reasonably satisfactory to City, based on such bonds as are then commercially available for major construction projects in the City of Houston taking into account that the HBG as a private, non-profit corporation will be the contracting owner.

4.3.3 All warranties from each contractor shall inure to the benefit of HBG and City and shall be applied to benefit the Premises and Improvements.

Section 4.4 Construction. HBG shall not commence actual construction of the improvements until the Commencement Date. The construction of the Improvements shall be done substantially in accordance with the Plans and the Construction Schedule, in compliance with all Applicable Laws, and in a good and workmanlike manner. HBG shall pay all bills for labor, materials and supplies in connection with such construction, and shall obtain releases of liens from the parties performing such labor or furnishing such materials and supplies. HBG shall pay, or cause to be paid, all fees for engineering, architectural, legal and other professional services incurred by HBG and its contractors in connection with such construction. Upon request of City, HBG shall provide City with a status report covering the progress to date of the construction of the Improvements. HBG shall provide the Director with a monthly status report covering progress to date of the construction.

4.4.1 HBG shall, without expense to City, provide the construction, labor and materials necessary to connect the Improvements to water and sanitary and storm sewer lines and to provide proper surface drainage for the Botanic Garden. City warrants that water supply, sanitary sewer service, and storm drainage is available to Glenbrook subject to Section 4.4.3.

4.4.2 Wet utility lines and connections that serve the Improvements shall be underground except for lines mounted on bridges crossing the channels.

4.4.3 HBG shall arrange or pay for all utility connection fees, including, but not limited to, all fees and charges for water and wastewater capacity reservation (excepting irrigation water), capital recovery, connection and use in connection with the Improvements.

4.4.4 Irrigation plumbing shall be installed for operations under this agreement and shall be segregated from plumbing for delivery of water for human use so as to allow supply of irrigation water from reclaimed wastewater or greywater.

Section 4.5 Substantial Completion. When the work to be performed under a construction contract has been completed substantially in accordance with the Plans (the "Substantial Completion"), HBG will deliver to City a certificate from the Project Architect or Engineer or Landscape Architect certifying that, as of the date specified therein (the "Substantial Completion Date"), the work to be performed under such construction contract has been substantially completed in a good and workmanlike manner and in accordance with the Approved Design, the Plan and any change orders or field changes authorized under this Agreement subject only to items specified in such certificate as requiring corrective work.

Section 4.6 Final Completion. The Improvements shall be deemed to be finally completed on the date (the "Final Completion Date") by which HBG has received all of the items set forth below. The Final Completion Date shall not be later than four years after the Commencement Date subject to Section 19.8.

4.6.1 The Certificate of Final Completion to be issued by HBG's Architect for all of the Construction Contracts, shall include (a) a certification that all punch-list items identified in any Certificates of Substantial Completion have been completed except for any on-going work covered by contractors or manufacturers' warranties; (b) a certificate signed by the Contractor for each Construction Contract, certifying that all matters required to be performed under such Construction Contract have been completed and all labor and materials for which payment is due under the Construction Contract have been fully paid, and that all building materials, supplies and equipment physically incorporated into the Improvements are free and clear of all liens and encumbrances; and (c) all permits, approvals and certificates required by any and all Governmental Authorities for occupancy of the Improvements including but not limited to any applicable Certificate of Occupancy.

Section 4.7 MWBE. HBG shall comply and shall require its contractors to comply with the City's Small Business Minority and Women Business Enterprise ("MWBE") programs for design and construction of the Botanic Garden as in Chapter 15 of the City of Houston Code of Ordinances. The City's policy does not require HBG to in fact meet or exceed this goal, but it does require HBG to objectively demonstrate that it has made good faith efforts to do so. To this end, HBG's contractors shall maintain records showing: (i) subcontracts with MWBEs, and (ii) specific efforts to identify and award subcontracts and supply agreements to MWBEs.

ARTICLE 5

TERM

Section 5.1 Term. The term of this Lease (the "Term") is 30 years and shall commence at 12:00 a.m. on the Commencement Date, and expire at the end of 30 years or such earlier termination of this Agreement in accordance with the terms of this Agreement. Upon a vote of council, HBG may renew this Agreement on the same terms as set forth herein for two consecutive renewal terms of 30 years each, by giving the City written notice of renewal no less than one year before the last day of the then current term. The initial and renewal terms (if in effect hereunder) are individually and collectively referred to as the Term.

ARTICLE 6

RENT; UTILITIES; TAXES

Section 6.1 Rent. Landlord hereby acknowledges the receipt of Rent for the Term in the amount One Hundred and No/100 Dollars (\$100.00), which Tenant has pre-paid for the entire Term (the "Rent"). Notwithstanding the foregoing, the principal and primary consideration is the undertaking by Tenant to cause the Premises to be operated, maintained, and facilities to be constructed thereon as provided herein.

Section 6.2 Additional Capital contribution from the City. The City will commit at least \$1 million through its Capital Improvement Plan or other funding to road and bridge improvements, or any other form of access leading to and around the Botanic Garden, and Charlton Park. The City agrees that it will include the expenditures in its Capital Improvement Plan so that the improvements or other projects funded thereby are timed to support the opening of the Botanic Garden.

Section 6.3 Special Events. The City may use HBG facilities in the Garden for events up to six times a year for a period of no more than 12 hours each time without compensation to the Tenant. City use of the event space will be subject to reasonable scheduling and commitments to other events. The City will reimburse costs incurred by HBG for contract security or insurance riders necessitated by such City use. The City will provide its own catering or pay standard HBG catering rates if provided by HBG.

Section 6.4 Water. Landlord will provide water for ground irrigation purposes from either public potable water lines, reclaimed wastewater, or greywater, or captured rainwater at Landlord's election subject to the acceptability of the water quality and quantity for irrigation purposes. Tenant will develop a water conservation plan consistent with industry practice in similar climates and submit it to the Director for comment. Tenant agrees to follow the water conservation plan.

Section 6.6 Utilities. HBG shall be solely responsible for and promptly pay all charges for any and all desired utilities including but not limited to drinking water, sewage fees, garbage, telephone and internet, and building security system used or consumed by Tenant. The assumption of payments for such utilities shall commence on the Commencement Date. City will provide access for private utility connections through Charlton Park or from other public right-of-way, as needed.

Section 6.7 Taxes HBG shall be responsible for any and all sales taxes, ad valorem taxes, licenses, permits, and fees or other taxes incumbent upon such a business.

Section 6.8 Contract Administrative Fee. The City will provide contract administration services in regard to the lease contract which will require the use of staff time and resources. The annual fee will be calculated based on actual costs to the City not to exceed the following:

<u>Annual Gate Revenue</u>	<u>Maximum City Annual Fee</u>
< \$10,000,000	\$20,000
10,000,001-20,000,000	\$35,000
>20,000,000	\$50,000

The annual fee for Contract Administration will not be effective until two years after the HBG has substantially completed Phase One development and opened the HBG for public access. The City will invoice for these services on an annual basis, and the HBG will respond with payment within its subsequent payables cycle.

Section 6.9 Existing City Utilities. When the City deems it necessary to maintain, replace, upgrade, or construct new utilities within Glenbrook, the City will coordinate the location, design, construction, and schedule of construction with the HBG so as to minimize the impacts of construction, operation, and maintenance of said utilities on the current and future capital and operating plans of the HBG.

ARTICLE 7

MAINTENANCE REPAIRS, and ALTERATIONS

Section 7.1 Maintenance and Housekeeping Responsibilities. HBG shall be responsible at its sole expense for all maintenance and upkeep, including the gathering of litter and refuse.

7.1.1 HBG shall meet the maintenance standards made a part of this Agreement by 0, "Minimum Maintenance Standards." As technology and practices change, the Standards Committee will update and modernize the maintenance standards accordingly. Such maintenance standards will not be changed more than once annually and if a change is required, the Director shall notify HBG and the Standards Committee on the anniversary date of this Agreement.

7.1.2 HBG shall at its sole expense, maintain all equipment, fixtures, and conveyances related to this Agreement in a safe, clean, attractive, and orderly manner.

7.1.3 Should HBG fail to maintain acceptable standards with regard to the foregoing, the Director shall notify HBG, in writing, of noted deficiencies. Thereupon, HBG shall correct, remedy, or eliminate such deficiencies expeditiously, but no later than ten days following receipt of such notification.

Section 7.2 Right to Alter. Tenant shall have the right, pursuant to the terms of the this Lease, to alter, add to, reconstruct, reconfigure, remodel or rebuild any of the Improvements as often as and whenever Tenant and/or Subtenant deems proper or desirable.

7.2.1 HBG shall not make or cause to be made any alterations, additions, or improvements involving investment of more than \$50,000, in the Botanic Garden without first obtaining the Standard Committee's written approval. HBG shall present to the Director plans, specifications, and projected cost for such work at the time approval is sought. HBG shall be responsible for securing its permits for such alterations or additions in the Botanic Garden. HBG shall, at its cost and expense, make all ordinary

and reasonable repairs required to preserve any properties and equipment furnished by the City under this Agreement.

7.2.2 All Botanic Garden alterations, decorations, additions, and improvements made by HBG shall remain the property of the HBG during the Contract Term. The alterations, decorations, additions, and improvements shall not be removed from the Botanic Garden before the end of the Contract Term without the prior written approval of the Director or the Standards Committee or as identified in this Contract.

7.2.3 Upon expiration of this Agreement, HBG shall remove trade fixtures, specialized plant collections, and other items donated for use at the Botanic Gardens as it desires and all such alterations, decorations, additions, and improvements as the Director shall direct and shall restore the Botanic Garden to the same condition as at the Commencement Date, ordinary wear and tear, and damage by unavoidable casualty excluded. HBG is not required to re-install or return the property to a Golf Course, but HBG is required to remove any diseased vegetation, plant material which may become invasive if not managed and repair or remove any dangerous condition that exists at the time of termination. All alterations, decorations, additions, and improvements not directed to be removed shall, upon expiration of the Contract Term, become the property of the City of Houston.

Section 7.3 Repairs. HBG is authorized and required to make repairs of a non-casualty nature and must maintain records of substantive repairs. HBG shall be responsible for all rebuilding, restoration, and/or replacement of all property necessitated by casualty resulting from the negligence or intentional act of the HBG, its agents, or employees.

7.3.1 All repairs and/or maintenance, which are required to be performed by HBG under this Section, shall be completed as soon as possible and to the satisfaction of the Standards Committee.

7.3.2 In the event HBG believes the responsibility for a particular repair lies with the City, it shall immediately give such written notice to the Director.

7.3.3 The City may but is not required to authorize, by written notice and at its cost, the rebuilding, restoration and/or replacement of City property where same is necessitated by fire, wind, storm, or other natural casualty not resulting from the negligence or intentional act of the HBG, its agents, or employees. Nothing in this Agreement shall be construed as a requirement of the City to restore such loss.

ARTICLE 8 **OPERATIONS**

Section 8.1 Duties. HBG shall provide all labor, material and supervision necessary to perform the services described in this Agreement.

8.1.1 HBG shall maintain and operate the Botanic Garden in an environmentally sound manner that complies with all applicable federal, state and

local environmental and related laws and permits. HBG shall keep the Botanic Garden open for the benefit and enjoyment of the general public, collect fees (where applicable), sufficiently stock all products herein allowed that the public might be well served, and adequately staffed so that allowed services are rendered to the levels established by the Standards Committee.

8.1.2 HBG shall obtain written approval from the Standards Committee prior to instituting any service or offering any product that is materially dissimilar from those then authorized. HBG shall not offer any product or service disapproved by the Standards Committee.

Section 8.2 Operations Performance. HBG shall describe its performance goals to the Director and other person that the Director designates. HBG shall promptly inform the Director or his designee of all significant events relating to the performance of this Agreement. HBG and City shall use the first 30 days of the Term as a transition period to transfer the maintenance of the lease property from the City to HBG.

Section 8.3 Exhibits. 0, 0, 0, 0, Exhibit G, Exhibit H and Exhibit I may be amended by mutual agreement between the Director and HBG in order to accommodate necessary changes discovered before or during the transition period or after operations commence.

Section 8.4 Fees and Schedule. HBG shall operate the Botanic Garden in accordance with this Agreement and as further set forth in Exhibits C and G.

8.4.1 HBG will have the exclusive authority to set admission fees, membership rates, and other user fees and to budget and expend the revenues from such fees for the benefit of the Botanic Garden. The fees and rates shall be comparable to those charged by other botanic gardens in major metropolitan areas of the United States and shall be reflected in the Operating Plan described in Section 2.6.1 as updated over time.

(a) HBG will charge fees and set membership donation levels at rates sufficient to maintain the Botanic Garden and facilities.

(b) HBG will implement and administer admissions pricing and programs that are best suited to implement the goal of broad access to the Botanic Garden for all City residents through the adoption of need-based accessibility programs (including selective free admission) as well as education programs and other offerings, designed to encourage economically diverse visitorship of the Botanic Gardens and to provide recreational and educational opportunities for City residents of limited economic resources.

(c) HBG will have the right but not the duty to make distinctions in the admission fee for non-City residents, provided however that such non-resident admission shall never be lower than the amounts charged to comparably situated City residents.

(d) If any municipality other than the City or any county in the Greater Houston Metropolitan Area enters a written contract with HBG to contribute to the Capital, management fees or other comparable contribution, HBG shall have the right, per policy adopted by the Standards Committee, to treat such other jurisdiction's residents on a par with comparably situated City residents for purposes of admission pricing.

(e) Any proceeds from fees received must be used toward the administration, operation, maintenance, and improvements of the Botanic Garden.

8.4.2 HBG shall operate throughout the year in accordance with the scheduled days, dates, and hours as set out in Exhibit C. Certain circumstances beyond the control of HBG, such as weather, construction projects, or special events may necessitate extending, curtailing, or shortening the operating schedule.

Section 8.5 Fixtures, Installations and Equipment. HBG shall pay all costs of installation, maintenance, construction and operation necessary for satisfactorily providing for operation of the Botanic Garden subject to the terms of this Agreement. This will include, but is not limited to, utilities and salaries of HBG's employees, who shall never be considered City Employees. With the exception of the furnishings and fixtures currently located at the Golf Course, HBG shall furnish and maintain all necessary furniture and fixtures and a sufficient amount of movable equipment, including cash registers with recording/communicating devices.

Section 8.6 Public Relations Marketing, Advertising, Fund Raising.

8.6.1 Except as set forth in this Section 8.6, HBG will have exclusive authority and control over public relations, marketing, advertising, and fund raising related to the Botanic Garden.

8.6.2 Cross-Marketing. HBG shall promote other City activities, facilities, and concessions by prominently displaying related brochures, schedules, or other such literature as approved by the Director. The City shall promote HBG in the same manner as it promotes other city visitor facilities.

Section 8.7 HBG's Personnel. The HBG will hire and employ such personnel and volunteers as will, in its judgment, be necessary to operate, manage, and maintain the Botanic Garden facilities in accordance with the provisions of the Agreement. The HBG will prepare an Employee/Volunteer Performance Manual (Exhibit H) and submit it to the Standards Committee for approval.

8.7.1 HBG shall ensure that a number of employees sufficient to protect the employees, volunteers and visitors will be trained in CPR (Cardio Pulmonary Resuscitation), administering first aid, and other life-saving techniques. Certification in such area or techniques is not mandated by this clause.

8.7.2 Except for volunteers and contractors, all personnel shall be employees of HBG and shall be carried as employees on HBG's payroll and shall be

paid at least the minimum wage in accordance with the Fair Labor Standards Act as prescribed by the U. S. Department of Labor, Employee Standards Administration. HBG shall be solely responsible for the compensation of all such personnel, for the withholding of income, social security and other payroll taxes and for the coverage of all workers' compensation benefits.

8.7.3 The Employee/Volunteer Performance manual shall provide a method for accurate records of the names, addresses, and other legal identification of employees and volunteers and to whom badges with photographs are issued.

8.7.4 HBG shall have no authority to employ City personnel, and no employees or independent contractors of HBG shall be deemed to be employees or agents of the City, such persons at all times remaining HBG's employees.

Section 8.8 Reports and Records. HBG shall follow recognized, modern business practices to the end of providing efficient and adequate services to the public at fair and reasonable rates. Accurate, prompt, and timely reporting is of the essence, and failure to do so shall constitute default. The City reserves the right, for three years subsequent to contract termination, for whatever reason, to inspect all revenue records. HBG shall maintain all such records.

8.8.1 HBG shall submit an annual report to the City on April 1 of every year this Agreement is in effect. In addition to financial statements showing revenues, expenses and balance sheets the report shall include operational information including number of visitors, a description of activities and programs including community outreach and educational programs and participants in same, and any other relevant information concerning the operations.

8.8.2 HBG shall keep true, accurate and complete records of all its operations under this Agreement, including all receipts and disbursements. Ledgers, reporting forms, transaction documentation, and accounting methods shall be in such form and kept in such manner as is consistent with non-profit accounting. All books, accounts, records, and operations of HBG shall be open at any time during business hours for inspection and copying by the Department, City Controller's office, City auditor, or other authorized representative or agent. No more than 24 hours advance notice of such requested inspection or copying or both shall be required by HBG.

Section 8.9 The City reserves the right to require audited statements of HBG operations under this Agreement for any revenue periods. Such requirement should be anticipated in the event HBG defaults on this Agreement, with such expense being borne by HBG.

Section 8.10 Inspections and Permits. HBG is required to obtain and maintain any and all permits required by the City or any other governmental agency with authority to regulate the activities on the premises as well as perform or allow any annual or periodic inspections that are required

Section 8.11 Certifications. HBG shall maintain current certifications to use any and all chemicals used in connection with the operations of the Botanic Garden.

ARTICLE 9

NONDISCRIMINATION

Section 9.1 HBG shall not discriminate in its employment practices, service provision, or in any other manner in the use of the Properties or in the exercise of the rights and privileges granted by this Contract because of sex, race, color, ethnicity, national origin, age, familial status, marital status, religion, disability, sexual orientation, genetic information, gender identity or pregnancy ancestry, handicap, or religion.

Section 9.2 HBG will, in the conduct of its business as a private non-profit corporation, seek to encourage the hiring of minorities and women employees and the contracting with small minority and disadvantaged business enterprises.

ARTICLE 10

INSURANCE

Section 10.1 Insurance. Tenant agrees to obtain and maintain at all times during the Term of this Agreement and to cause any Subtenant and Contractor ("Contractor") to obtain and maintain at all times during the Term of their contract or sublease insurance meeting at a minimum all of the following requirements:

Coverage	Limit of Liability
1) Workers' Compensation:	Statutory Limits for Workers' Compensation
2) Employer's Liability:	<ul style="list-style-type: none">• Bodily Injury by Accident \$1,000,000 (each accident)• Bodily Injury by Disease \$1,000,000 (policy limit)• Bodily Injury by Disease \$1,000,000 (each employee)
3) Commercial General Liability: Including Bodily and Personal Injury; and Products and Completed Operations coverage	Bodily Injury and Property Damage, Combined limit of \$1,000,000 (each occurrence), and \$2,000,000 aggregate

<p>4) Automobile Liability Insurance:</p> <p>(For automobiles furnished by HBG in the course of its performance under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)</p>	<p>\$1,000,000 combined single limit each occurrence</p>
<p>Defense costs are excluded from the face amount of the policy.</p> <p>Aggregate Limits are per 12-month policy period unless otherwise indicated.</p>	

Section 10.2 Additional insurance requirements.

10.2.1 Forms of Policies. The insurance may be in one or more policies of insurance.

10.2.2 Certificates. The insurance coverages may be represented in one or more certificates of insurance. It is agreed, however, that nothing included within or omitted from the insurance certificates shall relieve the Tenant from its duties to provide the required coverage hereunder.

10.2.3 Issuers. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas issued by the Texas Board of Insurance and a rating of at least "B+" and a financial size of Class VI or better in the most current edition of Best's Insurance Reports. Each issuer must be responsible and reputable and must have financial capability consistent with the risks covered.

10.2.4 Additional Insured. Each policy, except those for Worker's Compensation and Employer's Liability, must name Landlord and its agents, officers, directors, officials, legal representatives, employees and assigns as additional insured parties on the original policy and all renewals or replacement during term of such HBG's agreement or contract with Tenant and/or Subtenant. If any of such policies are written as "claims made" coverage and Landlord is required to be carried as an additional insured, then HBG must purchase policy period extensions so as to provide coverage to Landlord for a period of at least two (2) years after the completion of the work contemplated by such Contractor's agreement or contract with Tenant and/or Subtenant.

10.2.5 Deductibles. A policy may contain deductible amounts as approved by HBG. HBG shall assume and bear any claims or losses to the extent of such deductible amounts and waives any claim it may ever have for the same against Landlord, its officers, agents or employees with respect to such deductible amounts.

10.2.6 Cancellation. All such policies and certificates shall contain an agreement that the insurer shall notify Landlord in writing not less than thirty (30) days before cancellation of any policy. HBG shall notify Landlord in writing not less than thirty (30) days before any material change or reduction of coverage. HBG shall give written notice to Landlord within five (5) days of the date upon which total claims by any party against the Contractor reduce the aggregate amount of coverage below the amounts required by this Agreement. HBG shall notify the Director in writing 30 days prior to any cancellation or material change to HBG's insurance coverage. Within the 30 day period, HBG shall provide other suitable policies in lieu of those about to be canceled or non-renewed so as to maintain in effect the required coverage. If HBG does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend HBG from any further performance under this Agreement and begin procedures to terminate for default.

10.2.7 Subrogation. Each policy must contain an endorsement to the effect that the insurer waives any claim or right in the nature of subrogation to recover against Landlord, its officers, agents or employees.

10.2.8 Endorsements. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to Landlord as an additional insured with respect to claims arising hereunder and that the insurance applies separately to each insured.

10.2.9 Premiums. HBG shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

10.2.10 Blanket Policies. HBG shall be entitled to purchase and maintain the insurance under so called "blanket" policies, provided the coverage thereunder is at least the levels contained herein and is otherwise adequate in keeping with prudent underwriting standards.

10.2.11 At Landlord's request, copies of all policies referred to above, certified by the attorney-in-fact issuing them, together with written proof that the premiums have been paid, shall be deposited by HBG with the Director of Houston Parks and Recreation Department (the "Director"). If the Director fails to request copies of such policies, HBG shall provide certificates of insurance, in lieu of policies, reflecting that the terms of this Section 10.1 have been met, such certificates to be provided before the Contractor begins any work in, on or about the Premises.

10.2.12 Contractors. HBG shall require all contractors whose contracts exceed \$100,000 to provide proof of liability coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

Section 10.3 WAIVER OF RIGHT OF RECOVERY. ANYTHING TO THE CONTRARY IN THIS AGREEMENT NOTWITHSTANDING, TO THE MAXIMUM EXTENT PERMITTED BY LAW, LANDLORD AND TENANT EACH WAIVE ALL RIGHTS OF RECOVERY, CLAIM, ACTION OR CAUSE OF ACTION OR

SUBROGATION AGAINST THE OTHER AND THE OTHER'S AFFILIATES AND THEIR RESPECTIVE PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, VOLUNTEERS, EMPLOYEES OR REPRESENTATIVES FOR ANY DAMAGE TO THE PREMISES AND/OR THE IMPROVEMENTS, TO THE EXTENT THAT SUCH DAMAGE IS DUE TO AN INSURED CASUALTY RISK (AS SUCH TERM IS DEFINED IN THE LEASE AND DEVELOPMENT AGREEMENT) REGARDLESS OF CAUSE OR ORIGIN, INCLUDING NEGLIGENCE OF LANDLORD, TENANT, THEIR AFFILIATES OR THEIR PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR REPRESENTATIVES.

ARTICLE 11

DAMAGE OR DESTRUCTION DURING LEASE TERM

Section 11.1 Occurrence of Casualty and Use of Insurance Proceeds. In the event that all or any part of the Premises or Improvements are materially damaged or destroyed, HBG will immediately notify City as to the nature and extent of such damage or destruction. All proceeds payable with respect to such damage or destruction shall be used promptly to reconstruct, rehabilitate or otherwise benefit the Improvements.

Section 11.2 Repairs. Promptly upon receipt of any insurance proceeds relating to damage or destruction to the Premises or Improvements, HBG will immediately begin to repair and restore the Premises and Improvements to substantially the same condition in which they existed immediately prior to the occurrence of the casualty to the extent of the insurance proceeds available for such restoration.

Section 11.3 Property at HBG's Risk. HBG's supplies and all merchandise, effects, and other property of every kind, nature, and description belonging to HBG, which may be on or in Glenbrook during the Lease Term or any extension thereof, shall be at the sole risk and hazard of HBG; and if the whole or any part thereof shall be destroyed or damaged for any reason, the City shall not be responsible.

Section 11.4 Destruction of Properties under Contract. If the Premises are destroyed or materially damaged to such extent that the Director determines that the Premises are wholly unfit, in whole or in part, for use by HBG in its operations, either the City or HBG may terminate this Agreement. If the Director determines that the Premises are wholly unfit, in whole or in part, due to the fault or neglect of HBG, HBG shall at its own expense cause the damage to be repaired, or the City may, at its option, terminate this Agreement. However, the HBG will have the opportunity to prepare a repair plan and submit it to the City for acceptance in lieu of a termination of the Agreement.

ARTICLE 12

CONDEMNATION

Section 12.1 Definitions. Whenever used in this Article 12, the following words shall have the definitions and meanings hereinafter set forth:

(a) "Condemnation Proceedings". Any action brought for the purpose of any taking of the Premises, any Improvements thereon, or any part thereof or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Premises), by a competent authority as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of condemnation or while such action or proceeding is pending.

(b) "Taking" or "Taken". The event and date of such competent authority's depositing of money into the registry of the court for purposes of obtaining title to the Premises, any Improvements thereon, or any part thereof, or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Premises), pursuant to a Condemnation Proceeding, or the event and date of execution and delivery of a deed-in-lieu of condemnation.

Section 12.2 Efforts to Prevent Taking. Landlord shall use its reasonable efforts to cause all other competent authorities with the power of eminent domain to refrain from instituting any Condemnation Proceedings or exercising any other powers of eminent domain with respect to the Premises, the Improvements, or any interest in any of the foregoing during the Term of this Agreement.

Section 12.3 Entire Taking. If all or substantially all of the Premises shall be Taken in Condemnation Proceedings, Tenant shall have the right to terminate this Agreement in accordance with Section 12.6 below effective as of the date of such Taking, and from and after such date Tenant and, provided Landlord has fully complied with its obligations under Section 12.2 above and under said Section 12.6 below, Landlord shall not have any further obligations under this Agreement with respect to the Premises.

Section 12.4 Partial Taking.

(a) If less than substantially all of the Premises shall be Taken in Condemnation Proceedings, from and after the effective date of such Taking, Tenant and, provided Landlord has fully complied with its obligations under Section 12.2 above and under Section 12.6 below, Landlord shall not have any further obligations under this Agreement with respect to the portion of the Premises so taken.

(b) If, following any such partial Taking, Tenant, in connection with any such partial Taking, exercises any right of termination under this Agreement, then Tenant, at its election may vacate the Premises, and from and after such vacation Tenant and, provided Landlord has fully complied with its obligations under Section 12.2 above and under Section 12.6 below, Landlord shall not have any other obligations under this Agreement with respect to the Premises. Such election to vacate must be exercised no later than one hundred eighty (180) days after the date of such partial Taking.

(c) If Tenant does not elect to vacate the Premises upon any partial Taking, then (i) the Premises shall be reduced by the portion thereof Taken in the

Condemnation Proceeding, and (ii) Tenant shall have the right to repair or reconstruct any building and any other remaining Improvements on the Premises in accordance with the provisions of this Lease with no abatement of Rent hereunder.

Section 12.5 Temporary Taking. If any right of temporary (hereinafter defined) possession or occupancy of all or any portion of the Premises shall be Taken, the obligations of Tenant hereunder as to the affected portion of the Premises shall be abated during the duration of such Taking. A Taking shall be considered "temporary" only if the period of time during which Tenant is deprived of usage of all or part of the Premises as the result of such Taking does not materially interfere with the ability of tenant to use the Premises for any of the Permitted Uses. Any other Taking that is not "temporary" as described above shall be treated as an entire Taking under Section 12.3 above or as a partial Taking under Section 12.4 above, as determined by Tenant.

Section 12.6 Condemnation Award.

(a) At any time within one hundred eighty (180) days after an entire Taking or a partial Taking following which Tenant vacates the remaining Premises as provided in Section 12.4(b) above, Tenant may terminate this Agreement by delivering a written termination notice to Landlord specifying the effective date of such termination, in which event the Term shall terminate as of the date specified by Tenant in such notice and the entire condemnation award shall be paid to Landlord.

(b) In the event this Agreement is not terminated in connection with a Taking as provided above, the entire condemnation award shall be paid to Tenant (or Subtenant) for use in the rebuilding, restoration and repair of the Improvements on the Premises in accordance with the provisions of this Agreement, and in such event Landlord hereby assigns to Tenant all right, title and interest in any such award.

Section 12.7 Settlement of Proceedings. Landlord shall not make any settlement with the condemning authority in any Condemnation Proceedings nor convey or agree to convey the whole or any portion of the Premises to such authority in lieu of condemnation without first obtaining the written consent of Tenant.

Section 12.8 Survival. The provisions contained in this ARTICLE 12 shall survive the expiration or earlier termination of this Agreement, but only insofar as such provisions relate to any Condemnation Proceedings or condemnation awards that arose prior to the expiration or earlier termination of this Agreement.

ARTICLE 13
ASSIGNMENT; SUBLETTING

Section 13.1 Restrictions on Assignment. HBG shall not assign this Contract in whole or in part, nor subcontract all or any part of the contract without first obtaining the written consent of the Director. In the event the Director consents to such assignment or subcontract, HBG shall remain primarily responsible for the Contract performance, including payments herein provided, unless otherwise

expressly provided by the written consent of the Director. If this Contract is assigned, or if the Premises or any part thereunder is sublet or occupied by any person other than HBG without the consent as hereinabove provided, the City may collect rent from the assignee, subtenant, or occupant, but no such assignment, subletting, occupancy, or collection shall be deemed a waiver of this Paragraph, or the acceptance of the assignee, subtenant, or occupant, or a release of HBG from any of the covenants herein contained. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, HBG, as appropriate, shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to or by the Assignee.

Section 13.2 Concessions. Notwithstanding Section 13.1, HBG may enter into concession agreements with any restaurant or other vendors as set out in the Operating Plan.

Section 13.3 Nondisturbance and Attornment Agreements. In connection with any subleases, licenses or concessions made by HBG pursuant to the provisions of Section 13.1 or any bookings made by HBG, the applicable subtenants, licensees or concessionaires or entities that are granted bookings by HBG may ask City to execute various estoppel letters and nondisturbance and attornment agreements and other such instruments (collectively, "Attornment Agreements"). It is expected that such Attornment Agreement would typically ask City to represent that, subject to the timely performance of the obligations of the applicable subtenant, assignee or organization that is granted such bookings, as the case may be, City will continue to honor the sublease, assignment or booking arrangement of the party requesting the Attornment Agreement notwithstanding the termination of this Agreement by City due to the failure by HBG to perform its obligations under this Agreement. If any such Attornment Agreement is in form and substance reasonably acceptable to the City Attorney of the City of Houston, City agrees that the Attornment Agreement shall be executed by the Mayor, to the extent he or she may lawfully do so and bind the City to the applicable Attornment Agreement, within a reasonable period not to exceed thirty (30) days after the delivery of each such Attornment Agreement to City. The Mayor is hereby authorized to execute the Attornment Agreements on behalf of City.

ARTICLE 14

DEFAULT OF TENANT

Section 14.1 Defaults by Tenant. The occurrence of any of the following shall be an "Event of Default" by Tenant or a "Tenant Default":

14.1.1 After installation of the Botanic Garden, the failure of Tenant to operate it as a public botanic garden subject to Section 19.8.

14.1.2 the failure of Tenant to keep, observe or perform any of the material terms, covenants or agreements contained in this Agreement to be kept, performed or

observed by Tenant if (i) such failure is not remedied by Tenant within thirty (30) days after written notice from Landlord of such default or (ii) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) days, Tenant fails to commence to cure such default within thirty (30) days after written notice from Landlord of such default or Tenant fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) days, the time within which Tenant is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith;

14.1.3 the (i) filing by Tenant of a voluntary petition in bankruptcy; (ii) adjudication of Tenant as a bankrupt; (iii) filing of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment, or composition of, or in respect of, Tenant under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally, unless within sixty (60) days after such filing such proceeding is stayed or discharged; or (iv) appointment of a receiver, trustee or other similar official of Tenant or its Property; and,

14.1.4 the failure of Tenant to correct any potentially hazardous condition, after written notice of such condition from the City. In the event HBG does not remedy such default within 24 hours or agreed time frame authorized by the Director, receipt of such notice, HBG may be declared in default, and all of their rights under this Agreement shall be terminated.

14.1.5 Landlord shall have all remedies available at law or in equity including, without limitation, injunction, specific performance and actions for damages. All remedies of Landlord under this Agreement shall be cumulative, and the failure to assert any remedy or the granting of any waiver of any event of default shall not be deemed to be a waiver of such remedy or any subsequent event of default.

Section 14.2 In the event such default is not remedied or steps taken to remedy default to the satisfaction and approval of the City within 30 days of receipt of such notice by HBG, HBG may be declared in default, and all of its rights under the Agreement shall be terminated. At the direction of the City, HBG shall vacate the Premises and shall have no right to further operate under this Agreement.

ARTICLE 15

DEFAULT OF LANDLORD

Section 15.1 Defaults and Remedies. In the event of any breach by Landlord of any covenant of Landlord under this Agreement, Tenant shall have the right to deliver to Landlord a written notice specifying such breach, and unless within thirty (30) days from and after the date of delivery of such notice Landlord shall have commenced to remove or to cure such breach or occurrence and shall be proceeding with reasonable diligence to completely remove or cure such breach or occurrence (provided such breach or occurrence must be cured within one hundred twenty (120)

days after such notice), then Tenant shall the right to terminate this agreement. All remedies of Tenant under this Agreement shall be cumulative, and the failure to assert any remedy or the granting of any waiver of any event of default shall not be deemed to be a waiver of such remedy or any subsequent event of default.

ARTICLE 16
RELEASE.

Section 16.1 **HBG AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.**

ARTICLE 17
INDEMNIFICATION

Section 17.1 **HBG AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

17.1.1 HBG'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', OR CONTRACTORS' (IN NUMBERED PARAGRAPHS 17.1.1, 17.1.2, AND 17.1.3, COLLECTIVELY REFERRED TO AS "HBG") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

17.1.2 THE CITY'S AND HBG'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER HBG IS IMMUNE FROM LIABILITY OR NOT; AND

17.1.3 THE CITY'S AND HBG'S ACTUAL OR ALLEGED PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER HBG IS IMMUNE FROM LIABILITY OR NOT.

HBG SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. HBG'S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. HBG SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

Section 17.2 **INDEMNIFICATION - CONTRACTORS INDEMNITY.** HBG SHALL REQUIRE ALL OF ITS CONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

Section 17.3 **INDEMNIFICATION - PROCEDURES**

17.3.1 **Notice of Claims.** If the City or HBG receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include the following:

- i. A description of the indemnification event in reasonable detail,
- ii. The basis on which indemnification may be due, and
- iii. The anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30-day period, it does not waive any right to indemnification except to the extent that HBG is prejudiced, suffers loss, or incurs expense because of the delay.

17.3.2 **Defense of Claims**

- i. **Assumption of Defense.** HBG may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. HBG shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, HBG must advise the City as to whether or not it will defend the claim. If HBG does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
- ii. **Continued Participation.** If HBG elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. HBG may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that HBG does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

ARTICLE 18
REPRESENTATIONS AND WARRANTIES

Section 18.1 Landlord's Representations and Warranties. Landlord hereby represents, warrants and covenants as follows: Existence. City is a home-rule city duly organized under the laws of the State of Texas and currently existing pursuant to the constitution and laws of the State of Texas.

(a) Authority. Landlord has all requisite power and authority to own the Premises, to execute, deliver and perform its obligations under this Agreement and to consummate the transactions herein contemplated and, by proper action in accordance with all applicable law has duly authorized the execution and delivery of this Agreement.

(b) Binding Obligation. This Agreement is a valid and binding obligation of Landlord and is enforceable against Landlord in accordance with its terms.

(c) No Defaults. The execution by Landlord of this Agreement and the consummation by Landlord of the transactions contemplated hereby do not (i) result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under any resolution, indenture, agreement, instrument or obligation to which Landlord is a party or by which the Premises or any portion thereof is bound, or (ii) constitute a violation of any Governmental Rule applicable to Landlord or any portion of the Premises, or of any Governmental Authority having jurisdiction over Landlord or any portion of the Premises.

(d) Consents. No permission, approval or consent by third parties or any other Governmental Authority is required in order for Landlord to enter into this Agreement, make the agreements herein contained or perform the obligations of Landlord hereunder, other than those consents which have been obtained.

(e) Proceedings. There are no actions, suits or proceedings pending or, to the best knowledge of Landlord, threatened or asserted against Landlord which could reasonably be expected to affect or impair Landlord's ability to enter into this Agreement or to perform its obligations hereunder, or which affect in any manner any portion of the Premises, at law or in equity or before or by any governmental authority.

(f) No Condemnation Proceedings. Landlord has not received any notice of any Condemnation Proceedings from any governmental authority.

(g) Free and Clear Use of Glenbrook. There are no liens, leases, or use agreements that would interfere with the use of Glenbrook by the HBG.

(h) Compliance with Laws. Landlord has not received any notice of any violation of any governmental rule or regulation pertaining to the Premises or any portion thereof.

(i) No Personal Liability. Notwithstanding anything herein, no provision, covenant, or agreement contained in this Agreement, or any obligation herein or therein imposed upon HBG or the Landlord, or the breach thereof, shall constitute or give rise to or impose upon any of HBG's or Landlord's officers, employees, or agents a pecuniary liability.

Section 18.2 Tenant's Representations and Warranties. Tenant hereby represents and warrants as follows:

(a) Existence. Tenant is a non profit corporation duly organized under the laws of the State of Texas and currently existing pursuant to the constitution and laws of the State of Texas and is recognized by the United State Internal Revenue Service as exempt from taxation under the section 501 (c) (3) of the Internal Revenue Code.

(b) Authority. Tenant has all requisite power and authority to own its property, operate its business, enter into this Agreement and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Agreement and the consummation of the transactions herein contemplated.

(c) Binding Obligations. This Agreement is a valid and binding obligation of Tenant and is enforceable against Tenant in accordance with its terms.

(d) No Default. The execution by Tenant of this Agreement and the consummation by Tenant of the transactions contemplated hereby do not (i) result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under Tenant's charter or any resolution, indenture, agreement, instrument or obligation to which Tenant is a party or by which the Premises or any portion thereof is bound, or (ii) constitute a violation of any Governmental Rule applicable to Tenant or of any Governmental Authority having jurisdiction over Tenant.

(e) Consents. No permission, approval or consent by third parties or any other Governmental Authority is required in order for Tenant to enter into this Agreement, make the agreements herein contained or perform the obligations of Tenant hereunder, other than those consents which have been obtained.

(f) Proceedings. There are no actions, suits or proceedings pending or, to the best knowledge of Tenant, threatened or asserted against Tenant which could reasonably be expected to affect or impair Tenant's ability to enter into this Agreement or to perform its obligations hereunder, at law or in equity or before or by any Governmental Authority.

ARTICLE 19

MISCELLANEOUS

Section 19.1 Inspection. Tenant shall permit Landlord and its agents, at all reasonable times and without interfering with the operation being conducted upon the Properties to enter into and upon the Premises during normal business hours for the purpose of inspecting the same, provided that such entry and inspection by Landlord does not interfere with the quiet enjoyment of the Premises by Tenant, Subtenant or any other Party with a right of possession under a Use Agreement.

Section 19.2 Estoppel Certificates. Tenant and Landlord shall, at any time and from time to time upon not less than twenty (20) days prior written request by the other Party, execute, acknowledge and deliver to Landlord or Tenant, as the case may be, a statement in writing certifying (a) its ownership of the interest of Landlord or Tenant hereunder (as the case may be), (b) that this Agreement is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which any charges required hereunder have been paid, and (d) that, to the best knowledge of Landlord or Tenant, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default). Upon request by Tenant, Landlord's estoppel certificate also shall be addressed to one or more of its subtenants.

Section 19.3 Release. Tenant shall upon termination of this Agreement, execute and deliver to Landlord an appropriate release, in form proper for recording, of all Tenant's interest in the Premises, and upon request of Tenant, Landlord will execute and deliver a written cancellation and termination of this Agreement and release of all claims (if none are then outstanding or threatened) in proper form for recording to the extent such release is appropriate under the provisions hereof.

Section 19.4 Landlord's Right to Perform Tenant's Covenants. If Tenant shall fail in the performance of any of its covenants, obligations or agreements contained in this Agreement, and such failure shall continue without Tenant curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, Landlord, after ten (10) days' additional written notice to Tenant specifying such failure (or shorter notice if any emergency [meaning that there is imminent danger to the safety of Persons or of substantial damage to property] exists), may (but without any obligation so to do) perform the same for the account and at the expense of Tenant, and the amount of any payment made or other reasonable expenses (including reasonable attorneys' fees) incurred by Landlord in curing such default, together with interest thereon at the rate of ten percent (10%) per annum, shall be payable by Tenant to Landlord on demand. This provision is not in lieu of, but is in addition to, any other rights or remedies Landlord may have with respect to any such failure of performance by Tenant.

Section 19.5 Notices. All notices, consents, directions, approvals, instructions, requests and other communications and all payments, as applicable, given to a Party under this Agreement shall be given in writing to such Party at the address set forth below or at any other address as such Party designates by written notice to the

other Party in accordance with this Section 19.5 and may be (i) sent by registered or certified U.S. Mail with return receipt requested, (ii) delivered personally (including delivery by private courier services) or (iii) sent by telecopy (with electronic confirmation of such notice) to the Party entitled thereto. Any notice shall be deemed to be duly given or made (x) three (3) business days after posting if mailed as provided, (y) when delivered by hand unless such day is not a business day, in which case such delivery shall be deemed to be made as of the next succeeding business day, or (z) in the case of telecopy (with electronic confirmation of such notice), when received, so long as it was received during normal business hours of the receiving Party on a business day or otherwise such delivery shall be deemed to be made as of the next succeeding business day. Each Party hereto shall have the right at any time and from time to time to specify additional parties (the "Additional Addressees") to whom notices hereunder must be given, by delivering to the other Party five (5) days' notice thereof setting forth a single address for each such Additional Addressee; provided, however, that no Party hereto shall have the right to designate, in addition to Subtenant, more than two (2) such Additional Addressees. The notice addresses for the Parties shall be as follows:

Notice to Landlord shall be sent to:

City of Houston
Mayor's Office
901 Bagby, 3rd Floor
Houston, Texas 77002
Attention: Mayor

with copies of all notices to Landlord being sent to:

City of Houston
City Attorney's Office
900 Bagby, 4th Floor
Houston, Texas 77002
Attention: City Attorney

and to:

City of Houston
Department of Parks and Recreation
2999 South Wayside
Houston, Texas 77023
Attention: Director

and to:

City of Houston
Office of the Mayor
901 Bagby, 4th Floor
Houston, Texas 77002
Attention: Chief Development Officer

Notice to Tenant shall be sent to:

Houston Botanic Garden
PO Box 27510
Houston, Texas 77227-0510
Attention: President & CEO

And to

Houston Botanic Garden 3701 Kirby Drive, Suite 992
Houston, Texas 77098

Section 19.6 Modifications. Subject to ARTICLE 7 AND ARTICLE 8 hereof, this Agreement may be amended or modified at any time, but only by written agreement signed by Landlord and Tenant except where allowed for the Standards Committee.

Section 19.7 Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience in reference only and do not in any way limit or amplify the terms and provisions of this Agreement.

Section 19.8 Unavoidable Default and Delays. The time within which either Party hereto shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed by Condemnation Proceedings, casualty damage, strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor, reason of priority or similar regulations or order of any Governmental Authority, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of the Party seeking the delay. The provisions of this Section shall not operate to excuse either Party from prompt payment of monetary obligations required by the terms of this Agreement.

Section 19.9 Partial Invalidity. If any term, provision, condition or covenant of this Agreement or the application thereof to any Party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, condition or covenant to Persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be

affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 19.10 Applicable Law and Venue. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE TERMS, PROVISIONS, OBLIGATIONS AND COVENANTS HEREOF ARE PERFORMABLE IN HARRIS COUNTY, TEXAS. THE PARTIES HEREBY AGREE THAT VENUE FOR ANY ACTION INSTITUTED TO ENFORCE THE RIGHT OF EITHER PARTY HEREUNDER SHALL BE IN A COURT OF COMPETENT JURISDICTION IN HARRIS COUNTY, TEXAS.

Section 19.11 Attorneys' Fees. Should either Party to this Agreement engage the services of attorneys or institute legal proceedings to enforce its rights or remedies under this Agreement, the prevailing party to such dispute or proceedings shall be entitled to recover its reasonable attorneys' fees, court costs and similar costs incurred in connection with the resolution of such dispute or the institution, prosecution or defense in such proceedings from the other party(ies).

Section 19.12 Interpretation. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the Parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the Parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the Parties hereto other than the relationship of Landlord and Tenant.

Section 19.13 Brokerage Commission. Landlord and Tenant represent and warrant one to the other that no broker commission, finder's fees or similar compensation is due to any party claiming by, through or under Landlord or Tenant, as applicable.

Section 19.14 Non-Waiver. No Party shall have or be deemed to have waived any default under this Agreement by the other Party unless such waiver is embodied in a document signed by the waiving Party that describes specifically the default that is being waived. Further, no Party shall be deemed to have waived its rights to pursue any remedies under this Agreement, unless such waiver is embodied in a document signed by such Party that describes specifically any such remedy that is being waived.

Section 19.15 Survival. Covenants in this Agreement providing for performance after termination of this Agreement shall survive the termination of this Agreement.

Section 19.16 Entire Agreement. This Agreement and the documents referenced in this Agreement constitute the entire agreement between Landlord and Tenant regarding the subject matter thereof. There are no representations, promises or agreements of either Landlord or Tenant, one to the other, regarding the subject matter

of this Agreement not contained in this Agreement or the documents referenced in this Agreement. In the event of any conflict between this Agreement and any document referenced in this Agreement, the provisions of this Agreement shall control.

Section 19.17 Parties in Interest; Limitation on Rights of Others. The terms of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their permitted successors and assigns.

Section 19.18 Covenants Running with the Land. The Parties hereto covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals contained in this Agreement, except as otherwise expressly stated herein, shall during the Term be construed as covenants running with title to the Premises, and the leasehold estate hereunder, respectively, which shall extend to, inure to the benefit of and bind Landlord, Tenant and their respective permitted successors and assigns to the same extent as if such successors and assigns were named as original parties to this Agreement, such that this Agreement shall during the Term bind the owner and holder of any fee or leasehold interest in or to the Premises, or any portion thereof, and shall bind predecessors thereof except as otherwise expressly provided herein.

Section 19.19 Non-Merger of Estates. The interests of Landlord and Tenant in the Premises shall at all times be separate and apart and shall in no event be merged, notwithstanding the fact that this Agreement or the leasehold estate created hereby, or any interest therein, may be held directly or indirectly by or for the account of the same Person who shall own the fee title to the Premises or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Premises or under this Agreement join in the execution and recordation of a written instrument effecting such merger of estates.

Section 19.20 City Council Approvals and Appropriations. This Agreement is subject to all applicable terms and provisions of the Charter and the Code of Ordinances of the City, and is subject to approval by the City Council, and shall not be effective until signed by the Mayor and countersigned by the Controller of the City. Notwithstanding anything contained in this Agreement to the contrary, this Agreement does not, nor shall it be construed to, foreclose or waive the application of all lawful requirements under the applicable laws of the State of Texas for (i) the appropriation and payment of funds by the City, or (ii) the approval or issuance of future agreements, permits or licenses by the City. Any provision of this Agreement which contemplates (x) the payment of money by the City, which payment would require the appropriation of funds over and above any sums appropriated prior to the Commencement Date in connection with this Agreement and the other Project Documents (and the transactions contemplated herein or therein), or (y) any other future action, decision, agreement, waiver or approval which by its nature must be approved by the City Council, including without limitation, the issuance of permits or licenses, shall be subject to the approval of

any subsequent City Council to which such matter is presented and to the appropriation by such City Council of the required funds, in the exercise of its legislative discretion.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the Effective Date.

ATTEST:

LANDLORD:

CITY OF HOUSTON, TEXAS, a home-rule city organized under the laws of the State of Texas

By: _____
Anna Russell, City Secretary

By: _____
Annise D. Parker, Mayor

COUNTERSIGNED:

By: _____
Ronald C. Green, Controller

DATE OF COUNTERSIGNATURE: _____

APPROVED:

By: _____
Andrew F. Icken,
Chief Development Officer

APPROVED:

By: _____
Joe Turner,
Director, Houston Parks and Recreation Department

APPROVED AS TO FORM:

By: _____
Steven Kirkland
Senior Assistant City Attorney
LD # 0421400091001

G:\REAL ESTATE\KIRKLAND\Botanic Garden\Final\Houston Botanic Garden Lease and Operating Agreement 11314.4.26.docm

HBG

ATTEST/SEAL (if a corporation):

HOUSTON BOTANIC GARDEN

By: _____

By: _____

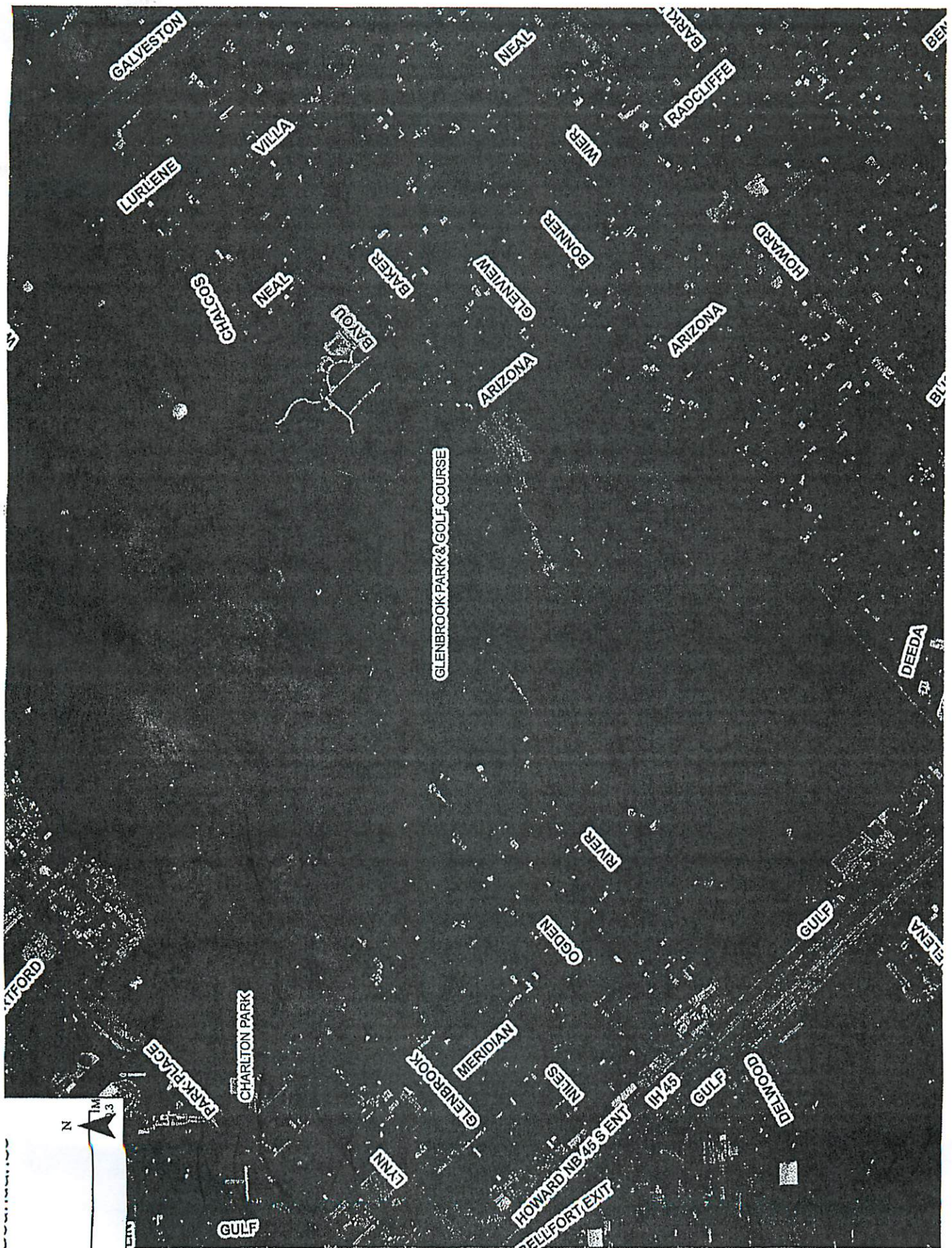
Name: Nancy O'Connor Abendshein

Name: Jeff E. Ross

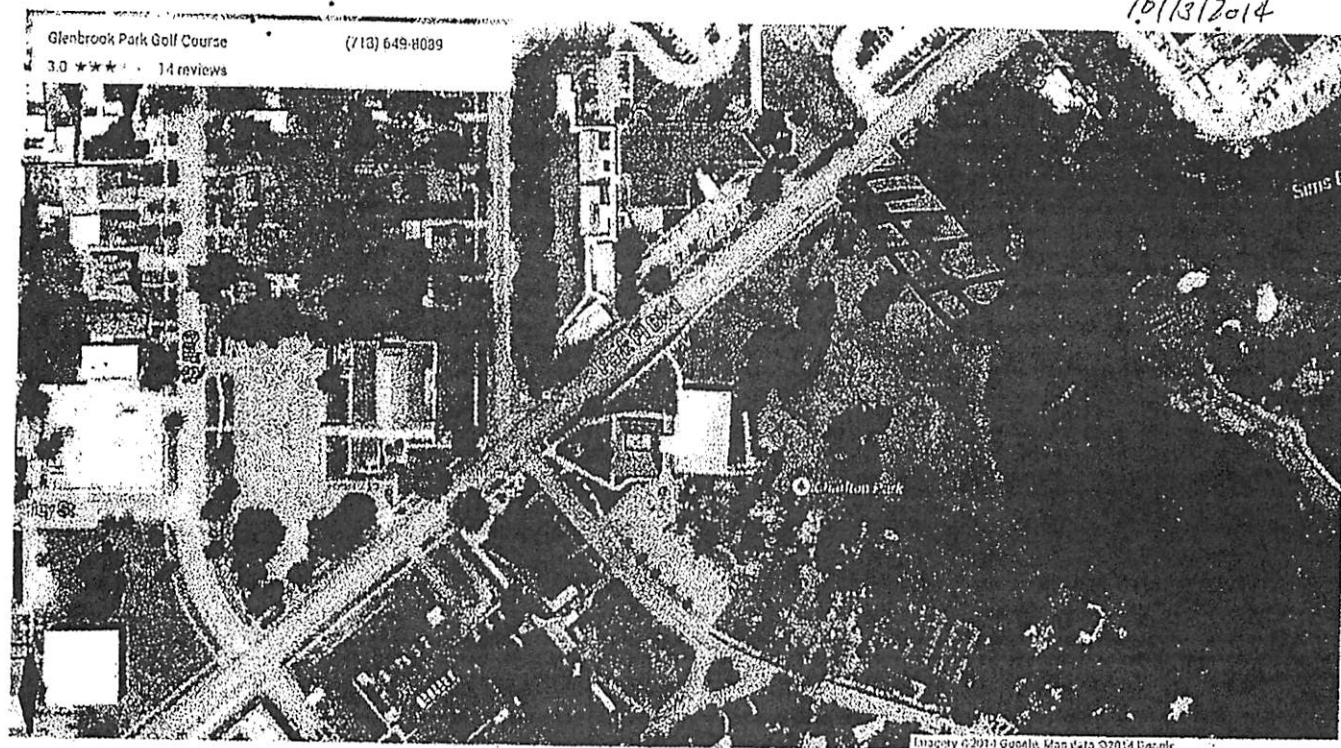
Title: Chairman

Title: President and CEO

Exhibit A Description of site boundaries



10/13/2014



Potential Entry Zone pending design & City approval.
Entry way landscaping, signage & monumentation may
extend further but will still be in this general area.

The intent of this exhibit is to show that existing
buildings, parking, and constructed play areas will
not be disturbed by the potential garden entry.

Exhibit B Operations rules

Exhibit C Schedule - days, dates, and hours

Exhibit D Minimum Maintenance Standards

Exhibit E Transferred equipment
NONE

Exhibit F Permitted Encumbrances

Handwritten marks and initials in the top left corner.

City of Houston, Texas Ordinance No. 2004-127

AN ORDINANCE MAKING CERTAIN FINDINGS AND APPROVING THE USE OF A PORTION OF GLENBROOK PARK GOLF COURSE FOR THE PROPOSED REALIGNMENT OF A PORTION OF THE SANITARY SEWER LINES THROUGH GLENBROOK PARK LOCATED IN THE 8200 BLOCK OF THE GULF FREEWAY, CITY OF HOUSTON, TEXAS; SAID FINDINGS MADE AFTER A PUBLIC HEARING HELD AT 9:00 A.M. ON WEDNESDAY, JANUARY 14, 2004, IN THE CITY COUNCIL CHAMBERS, SECOND FLOOR OF CITY HALL, HOUSTON, TEXAS, PURSUANT TO THE PROVISIONS OF CHAPTER 26, TEXAS PARKS AND WILDLIFE CODE; MAKING OTHER FINDINGS AND STATING OTHER MATTERS GENERALLY RELATING THERETO; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS: *102*

583-14-2848

Section 1. The City Council of the City of Houston, Texas does hereby find that:

- A. The City Council of the City of Houston, Texas, pursuant to Ordinance No. 2003-1175 ("Ordinance"), ordered and set a public hearing ("Hearing") to begin at 9:00 a. m. on Wednesday, January 14, 2004, in the City Council Chambers, Second Floor of City Hall, Houston, Texas, for the purposes of determining:
 - (1) whether there is any feasible or prudent alternative to the proposed use of a portion of the City of Houston's Glenbrook Park ("Park") for the proposed realignment of a portion of the sanitary sewer lines through the Park ("Project"); and
 - 2) whether such project includes all reasonable planning to minimize harm to the Park as a park, recreation area, scientific area, wildlife refuge, or historic site resulting from the Project.
- B. The Ordinance further provided that notice of the time and place of the Hearing be given to certain designated persons, as well as to all persons, organizations, agencies and departments interested in the use of the Park as a park, recreation area, scientific area, wildlife refuge or historic site. On December 9, 2003, the City Secretary gave notice of the Hearing by depositing with the U.S. Postal Service a letter and an original Notice of Hearing addressed to the following persons at the addresses shown:

The Honorable Lee P. Brown
Mayor of the City of Houston, Texas
P.O. Box 1562
Houston, Texas 77251

Roksan Okan-Vick, Director
Parks & Recreation Department
P.O. Box 1562
Houston, Texas 77251

who are the only persons who have supervision of the Park; which mailings were done in sufficient time to give said persons listed above thirty (30) days notice of the Hearing.

- 1583-14-2845
- C. Pursuant to the requirements concerning notice contained within the Ordinance, the City Secretary did further give notice of the Hearing by causing a copy of an original Notice of Hearing to be published once a week for three (3) consecutive weeks in the Houston Chronicle, a newspaper of general circulation in Harris County, Texas, which publishes seven (7) days a week, in the issues of December 22, December 29, and January 7, 2004; the last mentioned day of publication, January 7, 2004 being not less than one (1) week nor more than two (2) weeks before the date of the Hearing.
 - D. Glenbrook Park Golf Course is a City of Houston public park containing approximately 101.06 acres of land out of the John R. Harris Survey, Abstract 27, Harris County, Texas. The Park is located in the 8200 block of the Gulf Freeway, between Park Place Boulevard and Howard. The City acquired the land and golf course in 1941. However, all of the sanitary sewer lines running through the new park site were still in use and therefore left in place. The Department of Public Works and Engineering plans to abandon in place the deteriorated sanitary sewer pipe and to realign the new sanitary sewer lines running through the Park so that the sewer system functions more efficiently.
 - E. The Project involves abandoning in place approximately 48,350 square feet of land containing existing sanitary sewer lines and taking approximately 32,844 square feet of new sanitary sewer corridor, all located in the Park.
 - F. The City Council of the City of Houston, Texas had jurisdiction to conduct the Hearing at the time and place referred to above, with all necessary pre-requisites having been taken in accordance with the provisions of Chapter 26, Texas Parks and Wildlife Code.

- G. The City Council of the City of Houston, Texas held the Hearing at 9:00 a. m. on Wednesday, January 14, 2004 in the City Council Chambers, Second Floor of City Hall, Houston, Texas, with a quorum being present, on the questions of (1) whether there is any feasible or prudent alternative to the proposed use of the Park for the Project; and (2) whether the Project includes all reasonable planning to minimize harm to the Park as a park, recreation area, scientific area, wildlife refuge, or historic site resulting from the Project.

Evidence was presented at the Hearing as to the necessity of such public hearing; the location and description of the Park and the portion of the Park to be taken and used for the Project, as set forth above; the general details of the Project affecting the Park; an overall description of the Project, as set forth above; and the impact upon the Park of the Project and the efforts of the Public Works & Engineering Department to minimize the impact of the Project upon the Park.

Testimony was heard from Kathryn J. Farley, Senior Assistant City Attorney, Real Estate Division, City of Houston Legal Department; John J. Sakolosky, Senior Assistant Director, Department of Public Works and Engineering; and Mark Ross, Acting Deputy Director, City of Houston Department of Parks and Recreation, to the effect that (i) there is no feasible or prudent alternative to the proposed use of the Park for the Project; and (ii) the Project includes all reasonable planning to minimize harm to the Park as a park, recreation area, scientific area, wildlife refuge or historic site, resulting from the use of the Park for the Project, as described herein.

- H. The City Secretary having advised that no other persons, organizations, agencies, or departments interested in the use of the Park as a park, recreation area, scientific area, wildlife refuge, or historic site had requested to speak at the Hearing, or offer any testimony or evidence, or to propound any questions to the witnesses presented, Council passed a motion to close the Hearing.

Section 2. The City Council of the City of Houston, Texas, after consideration of all evidence and testimony presented at the Hearing, does hereby find and determine that:

- (1) There is no feasible or prudent alternative to the proposed use of the Park for the Project; and
- (2) The Project does include all reasonable planning to minimize harm to Glenbrook Park as a park, recreation area, scientific area, wildlife refuge or historic site, resulting from the proposed use of the Park for the Project.

Section 3. The City Council of the City of Houston, Texas, does hereby approve the abandonment in place of the existing sanitary sewer lines located in approximately 48,350 square

feet of land and the taking of approximately 32,844 square feet of land for the alignment of the new sanitary sewer corridor, all located in the Park. The new 32,844 square foot sanitary sewer corridor is more particularly described on Exhibit A attached hereto and made a part hereof for all purposes.

Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event, that the Mayor fails to sign this Ordinance within five (5) days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Charter of the City of Houston, Texas.

PASSED AND ADOPTED this the 25th day of February, 2004.

APPROVED this the _____ day of _____, 2004.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is MAR 02 2004, 2004.

Anna Russell
Anna Russell, City Secretary

(Prepared by Legal Dept.
KJP/jg)

Kathryn J. Farley
Senior Assistant City Attorney

L. D. File No. 081-0300077-001

U:\WPFILES\PARKS\GWBROOK\Ord.Final\lg.

WHEN RECORDED, RETURN TO:

Kathryn J. Farley
City of Houston, Legal Department
P.O. 1562
900 Bagby
Houston, Texas 77251

FILED
MAR 17 PM 4:16
CLERK OF COURTS
CLERK OF COURTS

583-14-2852

AYE	NO	2004-127
✓		MAYOR WHITE
****	****	COUNCIL MEMBERS
✓		LAWRENCE
✓		GALLOWAY
✓		GOLDBERG
✓		EDWARDS
	ABSENT	WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
	ABSENT-DUTY OF CITY OR PERSONAL BUSINESS	ELLIS
✓		GUAN
✓		SEKULA-GIBBS
✓		GREEN
✓		BERRY
CAPTION	ADOPTED	

MAY 017 Rev. 1/04

Metes and Bounds Description
40' Wide Sanitary Sower Easement
(32,844 Square Feet)

Quit Course

Description of a tract of land containing 32,844 square feet or 0.7540 acres situated in the John R. Harris Survey, Abstract 27 in Harris County, Texas. Said 0.7540-acre tract being out of a called 101.06-acre tract conveyed unto the City of Houston by deed recorded in Volume 1229, Page 627 of the Harris County Deed Records in Harris County, Texas, and being more particularly described by metes and bounds as follows; all coordinates and bearings recited herein are referenced to City of Houston Monumentation System; all distances and coordinates are surface values, and may be converted to grid values by multiplying by a combined Scale factor of 0.999882170;

COMMENCING FOR REFERENCE at City of Houston Survey Marker Number 5654-1001, (surface coordinate values, X=3,187,013.53, Y=687,779.34);

THENCE North 46°08'57" West, a distance of 2,856.03 feet to a 5/8-inch iron rod found at a chain link fence corner for the occupied southeast corner of a 22,388-square foot tract conveyed unto John Carpenter and Mary Carpenter by deed recorded under Harris County Clerk's File No. U437778 of the Official Public Records for Real Property in said Harris County, Texas. Said point located in the northerly right-of-way line of a public road known as Glenview Drive (60 feet wide) for the southwest corner of said called 101.06-acre tract, the southwest corner and POINT OF BEGINNING of said tract herein described, having surface coordinate values, X=3,184,953.91, Y=689,757.97;

THENCE North 52°11'48" West, a distance of 16.04 feet to a 5/8-inch iron rod set for an angle point of said tract herein described;

THENCE North 45°21'04" West, a distance of 381.97 feet to a 5/8-inch iron rod set for an angle point of said tract herein described;

THENCE North 36°07'42" West, a distance of 421.68 feet to a 5/8-inch iron rod set for an angle point of said tract herein described;

THENCE South 84°30'16" West, a distance of 3.45 feet to a 5/8-inch iron rod set for an "L" corner of said tract herein described;

THENCE North 05°25'03" West, a distance of 10.70 feet to a 5/8-inch iron rod set for the northwest corner of said tract herein described, located in the south line of a 33.7-acre tract conveyed unto Harris County Flood District by deed recorded under Harris County Clerk's File No. H413630 of the Official Public Records for Real said Property in Harris County, Texas, and in the north line of said called 101.06-acre tract, in a curve to the left;

Parcel No. _____
Drawing No. _____
Page 2 of 2

THENCE in a northeasterly direction with the south line of said 33.7-acre tract, along said curve to the left having a central angle of $02^{\circ}22'21''$, radius of 985.00 feet, chord bearing of North $77^{\circ}01'06''$ East, chord distance of 40.79 feet, for an arc length of 40.79 feet to a 5/8-inch iron rod set for the northeast corner of said tract herein described;

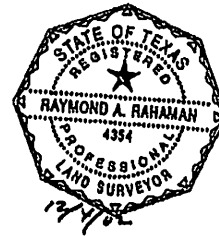
THENCE South $36^{\circ}07'42''$ East, a distance of 413.37 feet to a 5/8-inch iron rod set for an angle point of said tract herein described;

THENCE South $45^{\circ}21'04''$ East, a distance of 376.35 feet to a 5/8-inch iron rod set for an angle point of said tract herein described;

THENCE South $52^{\circ}11'48''$ East, a distance of 20.89 feet to a 5/8-inch iron rod set for the southeast corner of said tract herein describe, located in the south line of said called 101.06-acre tract and in the northerly right-of-way line of said Glenview Drive;

THENCE South $48^{\circ}03'27''$ West with the northerly right-of-way line of said Glenview Drive and the south line of said called 101.06-acre tract, a distance of 40.65 feet to the POINT OF BEGINNING and containing 32,844 square feet or 0.7540 acres of land.


Raymond A. Rahaman
Registered Professional Land Surveyor No. 4354
Western Group Consultants (File Glenv)



Checked: _____
Date: _____
Approved: _____

EXHIBIT A
Page 2 of 2

583-14-2854

583-14-2855

I, ANNA RUSSELL, City Secretary of the City of Houston, Texas, do hereby certify that the within and foregoing is a true and correct copy Ordinance No. 2004-127, passed and adopted by the City Council of said City on the 25th day of February, 2004, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 15th day of March 2004.



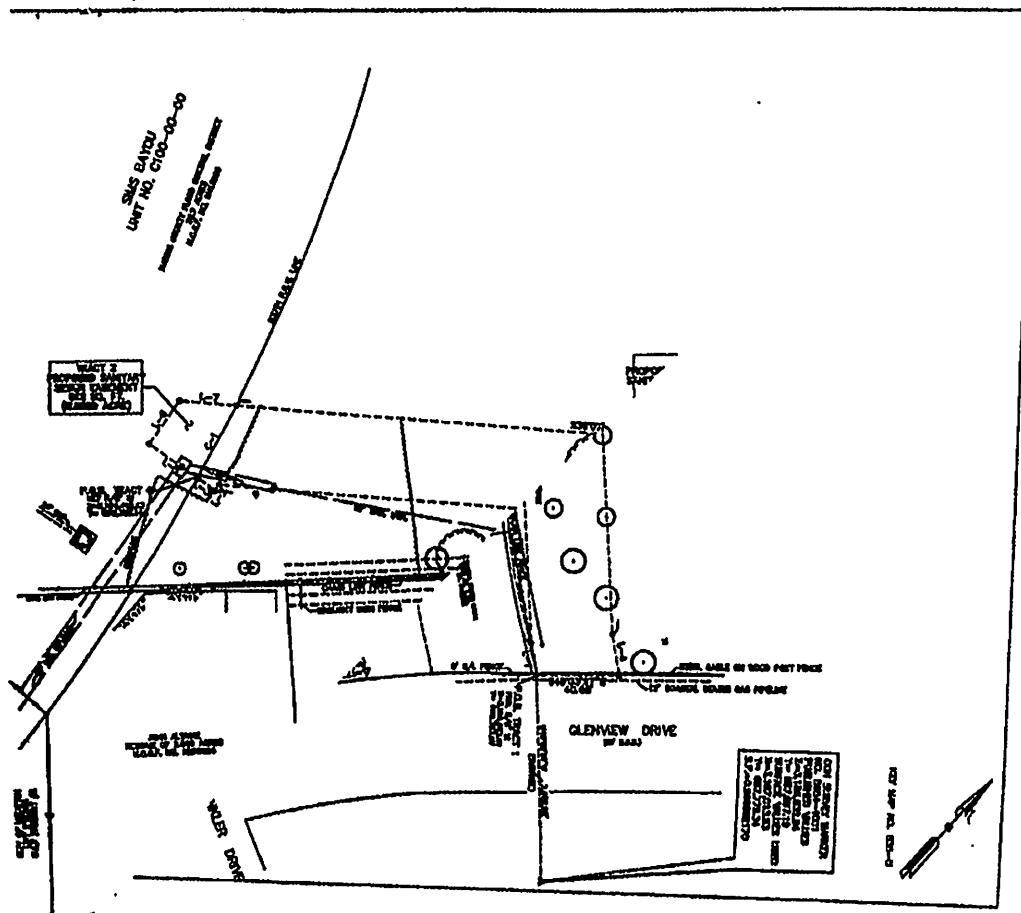
Anna Russell
City Secretary of the City of Houston

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE COPIES HEREIN BECAUSE OF COLOR OR PLACE OF BIRTH OR DISABILITY IS HEREBY REPEALED AND IS UNLAWFUL UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in the Public Records on the date and at the place indicated hereon by me, and was duly RECORDED, in the Official Public Records of said County, Texas on

MAR 17 2004




COUNTY CLERK
HARRIS COUNTY, TEXAS



122

recorded in vol. 969, page 550 of the Deed Records of Harris County, Texas.

Given under my hand and seal of office at Houston, Texas this 16th day of December, A.D. 1941.

Herbert Lott, Notary Public in and for Harris County, Texas. (Seal):

The State of Texas, County of Harris,

Before me, the under-

signed authority, on this day personally appeared Sam Taub, known to me to be the person whose name is subscribed to the foregoing instrument in writing and acknowledged to me that he had executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office at Houston, Texas this 16th day of December, A.D. 1941.

Herbert Lott, Notary Public in and for Harris County, Texas. (Seal):

The State of Texas, County of Harris,

Before me, the undersigned

authority, on this day personally appeared Ben Taub, known to me to be the person whose name is subscribed to the foregoing instrument in writing and acknowledged to me that he had executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office at Houston, Texas, this 15th day of December, A. D. 1941.

Herbert Lott, Notary Public in and for Harris County, Texas. (Seal):

Filed for record Dec. 16, 1941 at 3.40 p.m. by the Clerk of the County of Harris, Texas. By *[Signature]* Clerk.

No. 65-88

Carroll V. Wood

-To-

Gulf Refining Company, et al

Easement

State of Texas, County of Harris,

Know all men by these presents,

That, in consideration of Ten and no/100 Dollars and other valuable considerations (\$10.00) Dollars this day paid to Carroll V. Wood (hereinafter called grantor) by Gulf Refining Company and Gulf Oil Corporation (hereinafter called grantees), the receipt whereof is hereby acknowledged, I do hereby grant and convey unto the said grantees, their successors and assigns, a right of way over the land hereinafter described, and the right to construct, maintain and operate thereon pipe lines for the conveyance or transportation of oil, gas, water, steam, or any other material or substance which can be conveyed through a pipeline, or any one or more of said substances; said right of way being through and upon that certain tract of land situated in Harris County, State of Texas, and described as follows: All of Lot #4 and the 1/2 of Lot #3 and the 1/2 of Lot #5, Block 16 of the Houston Suburban Heights Subdivision, being part of the Whitney Britton Survey, Abstract #117-Being 20 acres, more or less. This easement covers the pipe lines and appurtenances as now constructed and being operated on the above lands. The grantees herein, and their successors and assigns, shall have the right to do whatever may be requisite for the enjoyment of the rights herein granted, including the right of clearing said right of way of timber, and of ingress and egress to and from said tract of land, for the purpose of laying, maintaining, repairing, renewing, changing the size of, and restoring of said pipelines, and for the removal of same when desired by the grantees, their successors and assigns.

The above recited consideration is received in full

No. 173003.

Park Place Company, By Pres.

-To-

Glenbrook Country Club.

General Warranty Deed & Map.

State of Texas, County of Harris.

Know all men by these presents:

That Park Place Company a corporation duly incorporated under the laws of the State of Texas with its principal office and place of business in the City of Houston, Harris County, Texas, in consideration of the sum of Eight Thousand (\$8,000.00) Dollars to be paid it by Glenbrook Country Club of Harris County, Texas, as hereinafter set forth: has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said Glenbrook Country Club, the following described parcel of land situated in Harris County, Texas, to-wit: Beginning at an iron pipe, on the bank of Simms Bayou set at the South corner of Villa Tract sixteen (16) and the East corner of Villa Tract Seventeen (17) in Block H for the South corner hereof; thence North 40 deg. West 375 feet following the line between tracts 16 and 17 to the property line on River Drive for corner; thence following the property line of River Drive in a Northerly direction 180.4 feet to an iron pipe dividing tracts 14 and 15 for corner; thence north 77 deg. 30" east 212 feet to an oak tree 10 inches in diameter for corner; thence north 23 deg. West 453 feet to an oak tree 10 inches in diameter for corner; thence north 43 deg. 30" east 197 feet to the bank of Simms Bayou for corner; thence following up the meanders of said Simms Bayou to the place of beginning, containing six (6) acres of land more or less, as per plat hereto attached and made a part hereof. The same being in Country Club District of a part of the John R. Harris Survey in Harris County, Texas, known as Park Place, according to the plat thereof.

Being parts of Villa Tracts 10, 11, 12, 13, 14 and all of 15 and 16, in said Block "H".

The consideration is to be paid in accordance with a certain promissory note in the said sum of Eight Thousand (\$8,000.00) Dollars payable by the said Glenbrook Country Club in favor of Park Place Company, of even date herewith, on or before five years after date, bearing interest at the rate of ten (10%) per cent per annum from date until paid, interest payable semi-annually as it accrues, both principal and interest payable at Houston, Texas, for value received, said note providing that failure to pay any installment of interest when due shall at the election of the holder of said note mature the entire obligation, and that past due interest shall bear interest at the rate of ten (10%) per cent per annum, and containing the usual stipulation of ten (10%) per cent attorney's fees in the event said note is placed in the hands of an attorney upon a failure to pay said note at maturity thereof, or if collected through the bankrupt or other court.

Said note is further secured by a deed of trust of even date herewith, executed by said Glenbrook Country Club in favor of Lawrence Sochat, trustee, for the use and benefit of said Park Place Company, upon the above described property.

As a part of the consideration for this conveyance, the grantee herein agrees and stipulates that within one year from this date it will construct and maintain across Simms Bayou leading from the property hereby conveyed to the Country Club property on the South side, a substantial bridge for vehicular and pedestrian traffic for the use of members, patrons and visitors to the Country Club properties, together with a roadway across the property hereby conveyed to said bridge and connecting the Club House with River Drive to Park Place; and that so long as said property is used for Country Club purposes there shall not be placed along the westerly boundary thereof any high board fence, unsightly wire fence nor shall there be grown a hedge along said line higher than four and one-half feet, this is not to be construed, however, so as to prevent the erection of an ornamental wire fence along said line, changes in this restriction may be made with the consent of both parties. This conveyance is made upon the further express conditions that in the event the property here conveyed ceases to be used for Country Club purposes, then the above mentioned road leading

from River Drive to the Club House and the Bridge across Simon Bayou upon and on said land and no restrictions shall apply except as follows, said property to remain subject thereto forever, that is to say:

First: The building line of the land hereby conveyed shall be thirty-five feet from the front line of said premises and the front of any residence erected thereon shall be parallel with the street. No building or any part thereof shall be erected or placed upon the space between the building and said front line.

Second: No building shall ever be erected or placed on said premises, the original cost of which shall be less than Forty-five Hundred (\$4,500.00) Dollars, said amount to include cost of residence proper only, and not to include outhouses, walks, fences, or other improvements.

Third: No building erected or placed upon the land hereby conveyed shall be used or occupied for any purpose except that of a residence, nor shall any land, or portion thereof, be used or occupied for any trade or business.

The foregoing shall not be construed as restraining the erection of outbuildings or stables in the rear or the main building or residence and subsidiary thereto, nor a business office in his residence, nor to the erection of buildings for residence.

Fourth: No part of said premises shall ever be conveyed, transferred, demise, leased or rented to any person, or persons of African descent.

Fifth: No vinous, spirituous or malt liquors shall ever be sold or exposed for sale on said premises.

Sixth: No closed fence, and no fence over three and one-half (3½) feet high, shall be constructed upon the street upon which said property fronts; if said property is on a corner, all lines bordering on any street, avenue or boulevard shall be considered a front line.

Fences on dividing lines shall not be more than five (5) feet high.

Seventh: The residence built on the above described property shall front on River Drive, and not more than one (1) residence shall be constructed on each seventy-five (75) feet frontage, and no outbuildings shall be constructed or maintained within one hundred (100) feet of said River Drive.

Eighth: No surface or open toilets shall be constructed, maintained or used upon said premises.

The grantee accepts this conveyance subject to the conditions, covenants and restrictions above set forth, which are agreed shall be deemed to be covenants running with the land, and for itself, its successors and assigns, covenants to and with the grantor, and its assigns, that it will, and that its successors and assigns shall, forever, faithfully observe and perform such several conditions and restrictions, covenanting for them and each of them.

And if grantees, or any person claiming under it, shall at any time violate, or attempt to violate, or shall omit to perform or observe any of the foregoing restrictions or conditions, it shall be lawful for any person owning land fronting on River Drive which is subject to the same restrictions or conditions in respect to which default is made, or for the grantor herein to institute and prosecute the proper proceedings at law or in equity for the wrong done or attempted.

In the event that said property shall cease to be used for Country Club purposes, the grantee herein, its successors and assigns may subdivide said property, in which event restrictions one and seven shall apply only to the 160.4 feet of said property fronting on River Drive.

To have and to hold said lands and premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Glenbrook Country Club, its successors and assigns, forever, but subject to the restrictions and limitations above set forth.

And said Park Place Company does hereby bind itself and its successors to forever warrant and defend said lands and premises unto the said Glenbrook Country Club, its successors and assigns, against any and

all persons whomsoever lawfully claiming or to claim the same, or any part thereof, except as to said Vendor's lien, which is to remain in full force and effect until all of said note is fully paid, according to its face, terms, tenor and effect. Taxon for 1924 to be paid by Grantor.

In witness whereof the said Park Place Company has caused this instrument to be executed by George L. Charlton, President, and its corporate seal hereunto affixed, and attested by Lewis Fogle, its Assistant Secretary, this 24th day of December, A. D., 1924.

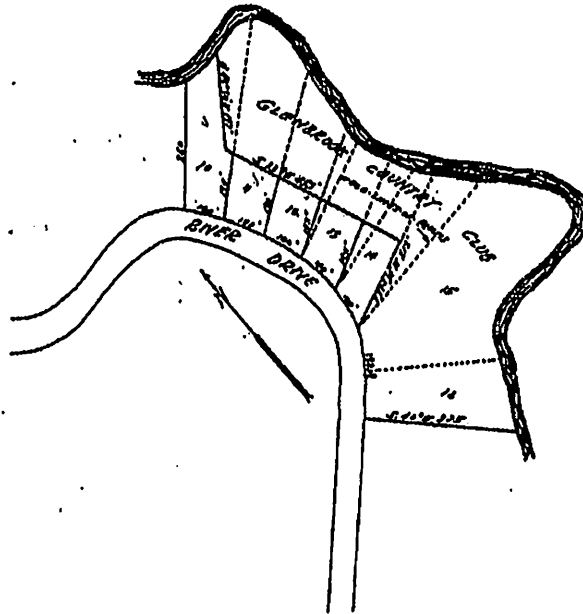
Park Place Company, By Geo. L. Charlton, President.

Attest: Lewis Fogle, Assistant Secretary. (Seal) (Stamps can. \$2.00)

State of Texas, County of Harris.

Before me, the undersigned authority, on this day personally appeared George L. Charlton, President of Park Place Company, and Lewis Fogle, its Assistant Secretary, known to me to be the persons whose names are subscribed to the foregoing instrument of writing, and known to me to be such officers of said corporation, and each of whom severally acknowledged to me that he executed the same for the purposes and considerations, and in the capacity therein stated, as the act and deed of said corporation. Given under my hand and seal of office at Houston, Texas, this 24th day of December, A.D., 1924.

S. C. Charlton, Notary Public in and for Harris County, Texas. (Seal)



Map showing parts of Villa Tracts Ten (10), Eleven (11), Twelve (12), thirteen (13), fourteen (14), all of Fifteen (15) and sixteen (16), in Block "H", Country Club District, of that certain subdivision in the John R. Harris Survey, known as Park Place.

Park Place Company to Glenbrook Country Club. Scale 1" = 100'.

Filed for record Dec. 30, 1924 at 11:20 O'clock A.M. Recorded Jan. 2, 1925 at 3:15 O'clock P.M.

Abstract of the same Clerk County Court, Harris County, Texas. By B. M. H. H. Deputy.

Callahan & Vince

Glenbrook Golf Links

GRANTOR	ADDITION	DEED NUMBER
---------	----------	-------------

Ben Tubb

684850

176 Acres in Callahan & Vince and
also located partly in the John R. Harris
Survey

ACQUIRED 12/16/61

TAX ACCTS:

054-072-00-010

056-002-01-011

056-004-11-001

Rosa G. Allen

General Warranty Deed.

The State of Texas, County of Harris. Know all men by these presents: That I, Rosa G. Allen, a single woman, of Harris County, Texas, for the consideration hereinafter stated, have bargained, granted, sold and conveyed and by these presents do bargain, grant, sell and convey unto Glenbrook Country Club, a corporation duly organized under the laws of the State of Texas, with its office and principal place of business in Harris County, Texas, the following described tracts of land situated in Harris County, Texas. One Hundred (100) acres out of the Callahan and Vince Survey and the John R. Harris Survey, being 91-5/10 acres out of the said Callahan and Vince, and 8-5/10 acres out of the said John R. Harris, and described by notes and bounds as follows, to-wit: Beginning at an iron pipe on the south bank of Simms Bayou, the same being the presents northeast corner of the Glenbrook Country Club 66 acre tract; Thence South 60° 25' West along the Glenbrook Country Club 66 acre tract line, 1674 feet to an iron pipe on the north bank of Simms Bayou; Thence up Simms Bayou with the following meanders: South 89° 59' East 44 feet; North 85° 45' East 78 feet; South 56° 09' East 104.3 feet; South 120° 56' East 112 feet; South 100° 30' East 200 feet; South 11° 37' East 90.4 feet; South 59° 0' East 259.1 feet; South 19° East 138 feet; South 29° 40' West 105.2 feet North 77° 30' West 231.7 feet; South 79° 15' West 46.8 feet; South 33° 20' West 204 feet; South 67° 30' West 155.1 feet; North 66° 10' West 166.7 feet; South 18° 15' East 39 feet; South 69° 30' East 95.4 feet; South 24° 0' East 68 feet, to a cedar stake on the north bank of Simms Bayou where a large gulley empties into the same; Thence North 65° 0' East 31 feet to a 25 inch pine marked P/X, Thence South 40° 28' East at 148 feet a pipe, at 246.8 ft. a pipe, at 475.4 ft. a pipe, at 646.4 ft. a pipe, in all 681.6 ft. to an inch and a half pipe from which a double young post oak 40 inches in diameter below the prongs marked X bears north 80 degrees, 15 min. east 15.5 ft. and a red oak 14 inches in diameter marked P/X bears north 75° 45' East 42.5 feet; Thence North 50° 23' East at 745.6 ft. a pipe, at 1765.6 ft. a pipe, in all 2743.6 ft. to an inch and a half pipe for corner; Thence North 28° 42' West at 417.7 ft. a pipe, at 617.7 ft. a pipe, at 1217.7 ft. a pipe, at 1617.7 ft. a pipe, in all 1617.7 ft. to an inch and a half pipe from which a cedar 10 inches in diameter marked X bears south 88° East 16 ft. being the place of beginning. Also 0.683 acres out of the Callahan & Vince Survey, described by notes and bounds as follows: Beginning at an inch and a half pipe on the west bank of Simms Bayou where the east line of the John R. Harris and the West line of the Callahan & Vince Survey crosses the same; Thence North 239.1 ft. with the east line of the said John R. Harris Survey and the west line of the Callahan & Vince Survey to an iron pipe on the south bank of Simms Bayou; Thence up said Simms Bayou with its meanders to the place of beginning. The consideration for the conveyance of said tracts of land is the sum of Thirty Thousand (\$30,000.00) Dollars, paid and represented to be paid as follows: Three Thousand (\$3000.00) Dollars cash in hand paid by Glenbrook Country Club, the receipt of which is hereby acknowledged; and the balance of Twenty-seven Thousand (\$27,000.00) Dollars represented by Thirty-six (36) certain promissory notes of even date herewith, executed by said Glenbrook Country Club, payable to the order of Rosa G. Allen, at Houston, Texas, each in the sum of Seven Hundred and Fifty (\$750.00) Dollars, note No. 1 due and payable on or before three (3) months after date thereof, and each succeeding note of said series due and payable on or before each succeeding three (3) months thereafter, the last note of said series, No. 36, being due and payable on or before nine (9) years after the date thereof; all of said notes bearing interest at the rate of six percent (6%) per annum, interest payable quarterly and all said notes contain the usual maturity accelerating and ten percent (10%) attorneys fee clauses; and being further secured

by a deed of trust of even date herewith from Glenbrook Country Club to Frank Andrews, for the use of Ross C. Allen.

To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Glenbrook Country Club, its successors and assigns forever. And I, the said Ross C. Allen, do hereby warrant and forever defend all and singular the said premises unto the said Glenbrook Country Club, its successors and assigns, against any person whomsoever lawfully claiming or to claim the same or any part thereof. But, a vendor's Lien is hereby expressly retained upon the property hereby conveyed, to secure the payment of the indebtedness herein described, until the same shall have been fully paid according to the tenor and effect thereof, when this deed shall become absolute.

Taxes for the year 1923 to be pro rated to date of deed.

Witness my hand at Houston, Texas, this 5th day of April, A. D. 1923.

Ross C. Allen (Stamps can. \$50.00)

The State of Texas, County of Harris. Before me, the undersigned authority, on this day personally appeared Ross C. Allen, a feme sole, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 7th day of April, A. D. 1923.

Kate Eldon, Notary Public, Harris County, Texas. (Seal)

Filed for record June 16, 1923 at 12.40 o'clock P. M. Recorded June 18, 1923 at 10.40 o'clock AM

Albert Lawrence Clerk, County Court, Harris County, Texas. By Verde Lawrence Deputy

O-O-O-O-O-O-O-O-O-O

No. 119455

J. W. Hazard

To

M. J. Haylor

General Warranty Deed.

The State of Texas, County of Harris. Know all men by these presents: That I, J. W. Hazard, a resident of Houston, Harris County, Texas, of for and in consideration of the sum of One thousand Dollars to me in hand paid by M. J. Haylor of Houston, Harris County, Texas, the receipt of which is hereby acknowledged, in cash, have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said M. J. Haylor, lot number seventeen in block number one of the Oakmont Addition to the City of Houston, in Houston, Harris County, Texas, the said addition being platted out of lot number nineteen, block number forty eight, Obadiah Smith Survey, the said lot number seventeen in block number one is located at the corner of Park Street and Madison Avenue, a map of said Oakmont addition being recorded in the Weed Records of Harris County, Texas, volume 517, page 538, and referred to for pertinent purposes. The grantees herein, and their heirs and assigns, for and during the period of twenty five years from and after January 1, 1923, shall hold the hereinabove described property and premises, subject to the obligations and restrictions hereinafter set forth, and shall faithfully observe and keep the provisions, all of which are set forth as follows:

- (1) No portion of the hereinabove described property or premises shall be sold, conveyed, transferred, leased or rented to any Negro or Mexican or any person or persons of Negro or Mexican descent, save and except that this restriction shall not be construed as restraining the erection or use of outbuildings for servants quarters on the rear of said premises.
- (2) No building shall be erected or used for a barber shop, commercial garage, grocery store,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

No. 173003.

572/218

-To-

Glenbrook Country Club.

General Warranty Deed & Map.

State of Texas, County of Harris.

Know all men by these presents:

That Park Place Company a corporation duly incorporated under the laws of the State of Texas with its principal office and place of business in the City of Houston, Harris County, Texas, in consideration of the sum of Eight Thousand (\$8,000.00) Dollars to be paid it by Glenbrook Country Club of Harris County, Texas, as hereinafter set forth: has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said Glenbrook Country Club, the following described parcel of land situated in Harris County, Texas, to-wit: Beginning at an iron pipe, on the bank of Simms Bayou set at the South corner of Villa Tract sixteen (16) and the East corner of Villa Tract Seventeen (17) in Block N for the South corner hereof; thence North 40 deg. West 375 feet following the line between tracts 16 and 17 to the property line on River Drive for corner; thence following the property line of River Drive in a Northerly direction 180.4 feet to an iron pipe dividing tracts 14 and 15 for corner; thence north 77 deg. 30' east 212 feet to an oak tree 10 inches in diameter for corner; thence north 23 deg. west 253 feet to an oak tree 10 inches in diameter for corner; thence north 43 deg. 30' east 197 feet to the bank of Simms Bayou for corner; thence following up the meanders of said Simms Bayou to the place of beginning, containing six (6) acres of land more or less, as per plat hereto attached and made a part hereof. The same being in Country Club District of a part of the John A. Harris Survey in Harris County, Texas, known as Park Place, according to the plat thereof. Being parts of Villa Tracts 10, 11, 12, 13, 14 and all of 15 and 16, in said Block "N".

The consideration is to be paid in accordance with a certain promissory note in the said sum of Eight Thousand (\$8,000.00) Dollars payable by the said Glenbrook Country Club in favor of Park Place Company, of even date herewith, on or before five years after date, bearing interest at the rate of ten (10%) per cent per annum from date until paid, interest payable semi-annually as it accrues, both principal and interest payable at Houston, Texas, for value received, said note providing that failure to pay any installment of interest when due shall at the election of the holder of said note mature the entire obligation, and that past due interest shall bear interest at the rate of ten (10%) per cent per annum, and containing the usual stipulation of ten (10%) per cent attorney's fees in the event said note is placed in the hands of an attorney upon a failure to pay said note at maturity thereof, or if collected through the bankrupt or other court.

Said note is further secured by a deed of trust of even date herewith, executed by said Glenbrook Country Club in favor of Lawrence Schat, trustee, for the use and benefit of said Park Place Company, upon the above described property.

As a part of the consideration for this conveyance, the grantee herein agrees and stipulates that within one year from this date it will construct and maintain across Simms Bayou leading from the property hereby conveyed to the Country Club property on the South side, a substantial bridge for vehicular and pedestrian traffic for the use of members, patrons and visitors to the Country Club properties, together with a roadway across the property hereby conveyed to said bridge and connecting the Club House with River Drive to Park Place; and that so long as said property is used for Country Club purposes there shall not be placed along the westerly boundary thereof any high board-fence, unsightly wire-fence nor shall there be grown a hedge along said line higher than four and one-half feet, this is not to be construed, however, so as to prevent the erection of an ornamental wire fence along said line, changes in this restriction may be made with the consent of both parties.

It is further agreed that in the event the property here conveyed is to be used for Country Club purposes, upon the above mentioned road leading

Club,
present;
of Texas
ity, Texas,
Glenbrook
placed, sold
said Glenbrook
cas, to-wit:
11th Tract
South corner
17 to
of River
5 for corner;
corner; thence
0 north by deg.
siders of said
ce, as per plat
f a part of
to the plat
5 and 16, in
a certain
the said
a before five
m date until
uable at River
t of inter-
aligance, and
mms, and
at said into
thereof, or
to further
try Club in
pany, upon
for this con-
date it will
ed to the
adestrian traffic
ther with a
b House with
Club purpose
no, unsightly
one-half feet,
that wire fence
parties.
a property here
and landing

from River Drive to the Club House and the bridge across Slane Bayou need not be maintained and no restrictions shall apply except as follows, said property to remain subject thereto forever, that is to say:

- First: The building line of the land hereby conveyed shall be thirty-five feet from the front line of said premises and the front of any residence erected thereon shall be parallel with the street. No building or any part thereof shall be erected or placed upon the space between the building and said front line.
- Second: No building shall ever be erected or placed on said premises, the original cost of which shall be less than Forty-five Hundred (\$4,500.00) Dollars, said amount to include cost of residence proper only, and not to include outhouses, walks, fences, or other improvements.
- Third: No building erected or placed upon the land hereby conveyed shall be used or occupied for any purpose except that of a residence, nor shall any land, or portion thereof, be used or occupied for any trade or business. The foregoing shall not be construed as restraining the erection of outbuildings or stables in the rear of the main building or residence and subsidiary thereto, nor a business office in his residence, nor to the erection of buildings for residence.
- Fourth: No part of said premises shall ever be conveyed, transferred, devised, leased or rented to any person, or persons of African descent.
- Fifth: No vinous, spirituous or malt liquors shall ever be sold or exposed for sale on said premises.
- Sixth: No closed fence, and no fence over three and one-half (3½) feet high, shall be constructed upon the street upon which said property fronts; if said property is on a corner, all lines bordering on any street, avenue or boulevard shall be considered a front line. Fences on dividing lines shall not be more than five (5) feet high.
- Seventh: The residence built on the above described property shall front on River Drive, and not more than one (1) residence shall be constructed on each seventy-five (75) feet frontage, and no outbuildings shall be constructed or maintained within one hundred (100) feet of said River Drive.
- Eighth: No surface or open toilets shall be constructed, maintained or used upon said premises. The grantee accepts this conveyance subject to the conditions, covenants and restrictions above set forth, which are agreed shall be deemed to be covenants running with the land, and for itself, its successors and assigns, covenants to and with the grantor, and its assigns, that it will, and that its successors and assigns shall, forever, faithfully observe and perform each several conditions and restrictions, covenanting for them and each of them. And if grantee, or any person claiming under it, shall at any time violate, or attempt to violate, or shall omit to perform or observe any of the foregoing restrictions or conditions, it shall be lawful for any person owning land fronting on River Drive which is subject to the same restrictions or conditions in respect to which default is made, or for the grantor herein to institute and prosecute the proper proceedings at law or in equity for the wrong done or attempted.
- In the event that said property shall cease to be used for Country Club purposes, the grantee herein, its successors and assigns may subdivide said property, in which event restrictions one and seven shall apply only to the 100.6 feet of said property fronting on River Drive.
- To have and to hold said lands and premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Glenbrook Country Club, its successors and assigns, forever, but subject to the restrictions and limitations above set forth. And said Park Place Company does hereby bind itself and its successors to forever warrant and defend said lands and premises unto the said Glenbrook Country Club, its successors and assigns, against any and

all persons who may lawfully claiming or to claim the same, or any part thereof, except as to said Vendor's lien, which is to remain in full force and effect until all of said note is fully paid, according to its face, terms, tenor and effect. Taxes for 1924 to be paid by Grantor.

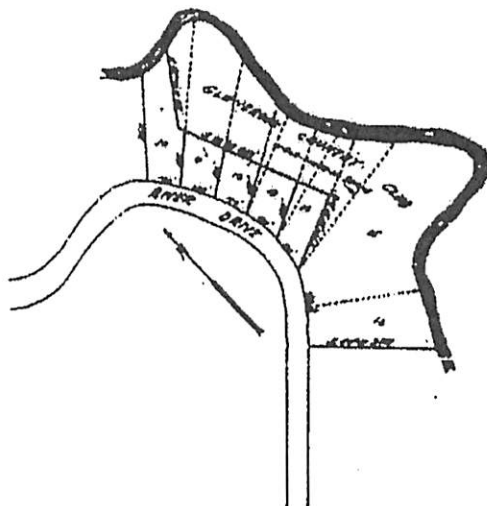
In witness whereof the said Park Place Company has caused this instrument to be executed by George L. Charlton, President, and its corporate seal hereunto affixed, and attested by Lewis Fogle, its Assistant Secretary, this 24th day of December, A. D., 1924.

Park Place Company, By Geo. L. Charlton, President.

Attest: Lewis Fogle, Assistant Secretary. (Seal) (Stamp can. \$5.00)
State of Texas, County of Harris.

Before me, the undersigned authority, on this day personally appeared George L. Charlton, President of Park Place Company, and Lewis Fogle, its Assistant Secretary, known to me to be the persons whose names are subscribed to the foregoing instrument of writing, and known to me to be such officers of said corporation, and each of whom severally acknowledged to me that he executed the same for the purposes and considerations, and in the capacity therein stated, as the act and deed of said corporation.

Given under my hand and seal of office at Houston, Texas, this 24th day of December, A.D., 1924.
S. O. Charlton, Notary Public in and for Harris County, Texas. (Seal)



Map showing parts of Villa Tracts Ten (10), Eleven (11), Twelve (12), thirteen (13), fourteen (14), all of fifteen (15) and sixteen (16), in Block "B", Country Club District, of that certain subdivision in the John R. Harris Survey, known as Park Place.

Park Place Company to Glenbrook Country Club. Scale 1" = 100'.

Filed for record Dec. 30, 1924 at 11:20 O'clock A.M. Recorded Jan. 2, 1925 at 3:15 O'clock P.M.

Albert J. [Signature] Clerk County Draft, Harris County, Texas. By [Signature] Deputy.

S. H. Curtis

State of Texas
That I, H. L.
do hereby a
and do here
of said Mar
Witness my

State of Texas
on this day
scribed to
purpose of
Given under

This plan
S. H. Curtis
by the P

the 20th day of February, A. D. 1935.

N. L. Battersby, Notary Public in and for Harris County, Texas. (Seal).

Filed for record Feb. 9, 1935, at 12:05 o'clock, P. M. Recorded Feb. 13, 1935 at 1:15 o'clock, P. M.

County Clerk, Harris County, Texas, by Edith J. ... Deputy.

No. 5369

To

Faye Kilpatrick.

Deed.

Know all men by these presents, that The Union Central Life Insurance Company, a Corporation incorporated under the Laws of the State of Ohio, and having its principal office in Cincinnati, Hamilton County, Ohio, for and in consideration of the sum of Fifty-eight Hundred and 00/100 (\$58,000.00) Dollars, the receipt whereof is hereby acknowledged, has granted, sold and conveyed, and by these presents does grant, sell and convey, unto the said Faye Kilpatrick of the County of Harris, State of Texas all that certain real estate situated in the County of Harris and State of Texas, to-wit: Lot 37 in Block 2 of Alden Place, an addition to the City of Houston, Harris County, Texas, per map recorded in Vol. 7 Page 2 Harris County Map Records; said property having a frontage of 50 feet South on West Polk Avenue and extends back North between parallel lines a distance of 100 feet for depth; the southwest corner of said lot being 55.24 feet East of the northeast intersection of West Polk Avenue and Stanford Street. Being the same property conveyed by The Union Central Life Insurance Company by Trustee's Deed from Howard E. Oaxman, Substitute Trustee, dated June 6, 1933, and recorded in Book 932, Page 33, of the record of Deeds for Harris County, Texas. To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Faye Kilpatrick, her heirs and assigns forever, and said The Union Central Life Insurance Company does hereby bind itself to warrant and forever defend all and singular the said premises unto the said Faye Kilpatrick her heirs and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof, by, through or under it, except all leases, rent contracts, rights of way and easements of every character now existing on, over, under or across said land; and the grantee assumes and agrees to pay all taxes and assessments for the year 1935 and thereafter as modified below and said Company does not warrant against such taxes and assessments. Subject to any and all restrictions of record. Taxes for the year 1935 are to be prorated as of Jan. 20, 1935, the grantor paying the taxes up to Jan. 20, 1935, and the grantee paying all taxes and assessments thereafter. In witness whereof, said The Union Central Life Insurance Company has hereunto caused its name to be subscribed and its corporate seal affixed this 15th day of January, A. D. 1935.

The Union Central Life Insurance Company, by Chas. Wommeyer, Vice-President, W. C. Dunkhorst, Asst. Treasurer. (Seal). — E. McHenry, E. Thornton. (Stamps Can. \$6.00). of the State of Ohio, County of Hamilton, 88. Before me, Wm. H. Bardee, a Notary Public in and for said County and State, on this day personally appeared Charles Wommeyer and W. C. Dunkhorst known to me to be the persons whose names are subscribed to the foregoing instrument and known to me to be the Vice-President and Assistant Treasurer respectively of The Union Central Life Insurance Company, a corporation, and acknowledged to me that The Union Central Life Insurance Company by them the said Charles Wommeyer, Vice-President, and W. C. Dunkhorst, Assistant Treasurer, signed, sealed with its corporate seal, and delivered the foregoing deed for the purposes and considerations therein expressed and as the act and deed of said Corporation.

Exhibit G Maximum Fees and Rates

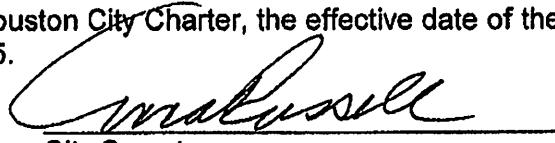
Exhibit H Employee/Volunteer Performance Manual


Exhibit I Naming, Sponsorship, Advertising, and Signage Policy

PASSED AND ADOPTED this 21st day of January, 2015.
 APPROVED this _____ day of _____, 2015.

 Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JAN 27 2015, 2015.


 City Secretary

(Prepared by Legal Dept. 
 (SEK 1/13/15) Senior Assistant City Attorney
 (Requested by Andy Icken, Chief Development Offi
 (L.D. File No. 0421400091001)
 G:\REAL ESTATE\KIRKLAND\Ordinances\Ordinance HGA - Glenbrook.doc

AYE	NO	
✓		MAYOR PARKER
....	COUNCIL MEMBERS
✓		STARDIG
✓		DAVIS
✓		COHEN
✓		BOYKINS
✓		MARTIN
✓		NGUYEN
✓		PENNINGTON
✓		GONZALEZ
✓		GALLEGOS
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		ROBINSON
✓		KUBOSH
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
 REVIEW
 DATE: JAN 27 2015