

**RESTATED AND AMENDED AGREEMENT**

This Agreement, made the \_\_\_\_\_ day of \_\_\_\_\_, 2021, between the TOWNSHIP OF LOWER MERION, the Trustees of the Parsons-Banks Arboretum (hereinafter “Trustees”), Party of the First Part, and THE APPLEFORD COMMITTEE, a non-profit corporation organized and existing under the law of the Commonwealth of Pennsylvania, Party of the Second Part, is a restatement and amendment of the Agreement between the parties dated November 23, 1976.

**RECITAL**

The Trustees hold in trust the Parsons-Banks Arboretum on 770 Mt. Moro Road, between Spring Mill Lane and Old Gulph Road, in Lower Merion Township, which includes approximately twenty-four acres, two of which were contributed by The Appleford Committee, that is to be maintained as a township park, an arboretum and bird sanctuary (hereinafter used collectively as “Arboretum”). Located on the premises is a residence, formerly the home of Anabelle C. Parsons now including a tent covering the patio (hereinafter “House”), outbuildings of varying size and usage, two cottages, a barn, a garage, chicken house and a greenhouse (hereinafter used collectively as “Outbuildings”). The property and buildings were given to the Trustees, under the terms and conditions of the will of Anabelle C. Parsons, dated November 1<sup>st</sup>, 1972. The will provides that the acreage is to be held in perpetual trust to be used as an arboretum and bird sanctuary. In addition, the land and all buildings shall be maintained in good condition and the house shall not be demolished.

The Appleford Committee’s purpose is to preserve and maintain the Parsons-Banks Arboretum; to assist, as agents of the Trustees, in operating the Arboretum, House and

Outbuildings; to encourage and implement horticultural, conservational, beautification and community benefit activities associated with and for the benefit of the Arboretum.

The Trustees share The Appleford Committee's purposes and objectives and have cooperated with The Appleford Committee in dividing and discharging various items of responsibility concerning the maintenance, improvements, renovations and other continuing expenditures of the Arboretum, House and Outbuildings.

The purpose of this Agreement is to set forth more definitely the areas of responsibility which the parties have assumed.

#### The Appleford Committee Board

The parties have agreed that in order to coordinate their activities, the Township Commissioner appointed by the President of the Board of Commissioners of the Township of Lower Merion as Chairman of the Parsons-Banks Arboretum Committee shall serve on The Appleford Committee's Board of Directors, ex officio.

#### Trustees' Committee

The Trustees shall have a committee, which will comprise the Parsons-Banks Arboretum Committee. This committee shall meet periodically, with notice of such meetings given to the President of The Appleford Committee or his duly authorized representative within a reasonable time prior to the scheduled meeting.

### Term

The intention of the parties is that the provisions contained herein shall control indefinitely. However, amendments or clarifications satisfactory to both may be made in writing at any time in furtherance of the purposes and objectives recited above. Should either party design an amendment or clarification or termination of this agreement at any time for any reason, not joined in by the other, notice of such proposal or termination shall be given to the other at least one-hundred eighty days prior to the anniversary of this Agreement, and during the one-hundred eighty day period a compromise amendment, clarification or termination date shall be negotiated; however, should the parties be unable to agree within the one-hundred eighty day period, this Agreement, at the option of either, shall terminate on the thirtieth day after the expiration of such one-hundred eighty day period.

### Personal Property

The Trustees acknowledge that The Appleford Committee is the sole owner of all personal property on the premises and shall be responsible for caring for these items.

Upon any voluntary or involuntary termination hereof, all of such personal property on the premises shall remain the property of the Trustees, except to the extent that the requirements of any deed of gift or bequest relating to any item thereof shall require that it be otherwise disposed of.

### Possession and Use

The Appleford Committee shall open and close the Arboretum and House to the public pursuant to schedules in effect from time to time as approved by the Trustees, acting through the

Parsons-Banks Arboretum Committee. Employees of the Trustees shall be provided continuous access.

The House, gardens and greenhouse shall be used by The Appleford Committee consistent with its charter and by-laws and the purposes and objectives recited herein. Admission charges and fees for events may be established by The Appleford Committee. It is understood that The Appleford Committee will, among other things, rent the land and buildings for a variety of events and to a variety of groups for weddings, retreats, receptions and parties and continue to rent the cottages and apartments in the House to tenants. The proceeds may be retained by The Appleford Committee in discharge or partial discharge of its responsibility for the interior of the House, gardens and greenhouse. Proceeds from any other funding, except funds received directly from the Trustees, may be budgeted and expended at the discretion of The Appleford Committee, provided such budgeting and expending is consistent with the purposes and objectives of this Agreement.

#### Improvements, Maintenance, Care and Utilities

The Trustees' shall be responsible for:

1. Major repairs, structural improvements, replacements and demolitions of the House, Arboretum, chicken house and Outbuildings and other structures (“Structures”).
2. Assistance, as requested, with the maintenance and repair of the structural elements, roof, exterior windows, HVAC systems, plumbing, electrical systems and existing burglar and fire alarm systems and connections to septic and sewer systems.
3. Paving, patching and/or repairing the driveway and parking areas.
4. Snowplowing and salting of roads, all access ways and walkways.
5. Routine trash removal.
6. Caring for streambeds and ponds.

7. Large item and emergency tree removal.
8. Financial assistance for capital improvements and major repairs as the parties may agree.

The Appleford Committee shall be responsible for:

1. All routine maintenance of the abovementioned Structures.
2. Maintaining the gardens and interior of the greenhouse.
3. Furnishing the House and maintaining an inventory thereof.
4. Utilities: Electrical service, heat, water and sewer.
5. Supervising activities in the House, gardens and greenhouse including supplying supervisory personnel in the House.
6. Renting the House, grounds and greenhouse for fundraising purposes and continue renting the apartments and cottage and receiving the rents therefrom.

#### Insurance

The Trustees shall purchase and maintain the following types and amounts of insurance during the term of this Agreement (the "Trustees Required Insurance").

"All Risk" Property insurance, including flood and earth movement, on real and personal property on the Premises owned by or in the care, custody, or control of the Trustees or the Committee.

The insurance shall at minimum cover direct physical loss of or damage to any:

- a. Buildings, boilers and machinery (including equipment breakdown), Party Tent connected to building; stand-alone Greenhouse and other building fixtures and equipment;
- b. Signs, fences, patios, walkways, parking lots, driveways, lighting systems, and other land improvements; and
- c. Property in the open, improvements and betterments, fine arts, growing crops, valuable papers, accounts receivable, electronic data, and other personal property.

The limits of insurance shall not be less than the cost to repair or replace the property. In addition, the limits shall cover the cost to comply with the enforcement of ordinances or laws regulating construction and repair of damaged buildings.

The Property insurance shall name the Committee as a Loss Payee "as their interests may appear".

The Committee shall be responsible for any deductibles up to \$10,000 each occurrence. The amount of any deductibles over \$10,000 shall be retained by the Trustees at their own expense.

The Trustees shall provide the Committee with evidence of the Trustees Required Insurance in the form of a Certificate of Insurance at any time upon request.

The Appleford Committee shall purchase and maintain the following types and amounts of insurance during the term of this Agreement (the "Committee Required Insurance").

1. "All Risk" Business Income insurance, excluding flood and earth movement, with a limit of not less than \$1,000,000 each loss for business interruption resulting from direct physical loss of damage to any real or personal property on the Premises.

2. Employee Theft insurance, with a limit of not less than \$500,000 each loss, including coverage for Customer's Property, with a limit of not less than \$100,000 each loss.

3. Workers Compensation insurance as required by the Commonwealth of Pennsylvania.

4. Commercial General Liability insurance with limits of not less than:

a. \$1,000,000 Each Occurrence;

b. \$2,000,000 General Aggregate (Other than Products - Completed Operations); and

c. \$1,000,000 Products-Completed Operations Aggregate with the Products and Completed Operations Hazard redefined to include food and beverages consumed on the Premises under ISO Endorsement CG 24 07 01 96 or equivalent.

5. Liquor Liability insurance with limits of not less than \$1,000,000 Each Occurrence and in the Aggregate.

Any deductibles shall be retained by the Committee at its own expense.

The General Liability and Liquor Liability insurance shall name the Trustees as an additional insured under ISO Endorsement CG 20 26 04 12 or equivalent. In addition, the additional insured coverage shall stipulate it is primary and will not seek contribution from any

insurance covering the Trustees as a Named Insured under ISO Endorsement CG 20 01 04 13 or equivalent.

The Appleford Committee shall provide the Trustees with continuous evidence of the Committee Required Insurance in the form of a Certificate of Insurance that provides at least thirty (30) days notice of cancellation.

#### Annual Audit

The Appleford Committee shall provide an annual audit of the operations to the Trustees.

#### Annual Operating Budget

If requested, The Appleford Committee shall present an annual operating budget to the Trustees for their consideration.

#### Assignment

The express intent of the parties is that The Appleford Committee may neither assign nor divide any of the benefits contained herein nor shall it delegate any of the duties which it has assumed, except with the written approval of the Trustees.

#### Approval

The Parsons-Banks Arboretum was the generous gift of Mrs. Anabelle C. Parsons pursuant to the provisions of her last will and testament dated November 1, 1972, and pursuant to its acceptance by the Trustees on October 19, 1973. The parties recognize that the will of Mrs. Parsons is controlling and that if any portion of this Agreement conflicts with such will, the will shall be deemed controlling.

Notices

Any notice required by the terms of this Agreement to be supplied to the Township may be served at 75 East Lancaster Avenue, Ardmore, Pennsylvania 19003, and to be supplied to The Appleford Committee may be served at Appleford, 770 Mt. Moro Road, Villanova, Pennsylvania 19085.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

TRUSTEES OF PARSONS-BANKS ARBORETUM

BY: \_\_\_\_\_  
President, Board of Commissioners  
Township of Lower Merion

Attest:

\_\_\_\_\_  
Secretary

THE APPLEFORD COMMITTEE

BY: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary