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**QUEENS BOTANICAL GARDEN SOCIETY, INC.**

**AND**

**LOCAL 374, DISTRICT COUNCIL 37, AFSCME, AFL-CIO**

**JULY 1, 2005 - JUNE 30, 2007**

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AGREEMENT entered into this        day of        by and between the QUEENS BOTANICAL GARDEN SOCIETY, INC., (hereinafter called "the Garden"), a corporation organized under the laws of the State of New York, and DISTRICT COUNCIL 37 and its affiliated Local 374 of the American Federation of State County and Municipal Employees, AFL-CIO, (hereinafter called "the Union").

**WITNESSETH:**

WHEREAS the parties have entered into collective bargaining and desire to reduce the results thereof to writing:

NOW, THEREFORE, it is mutually agreed as follows:

**ARTICLE I - UNION RECOGNITION**

- A. The Garden recognizes the Union as the bargaining representative of all the employees in the bargaining unit described below.
- B. The Garden agrees that during the term of this agreement, it will not recognize any other Union as the representative of the employees herein described unless required to do so by law.
- C. The Garden shall not interfere with the right of any employee to become a member of the Union, and the Garden shall not discriminate against, interfere with, or coerce any employee because of his/her membership in the Union.

**ARTICLE II - BARGAINING UNIT**

- A. The bargaining unit represented by the Union shall include all employees employed on a full-time basis in the titles listed below. The regular workweek for employees listed under group A shall be 35 hours a week. The workweek for employees under group B shall be 40 hours a week.

**Group A**

Administrative Assistant  
Administrative Associate  
Clerk  
Senior Clerk  
Supervising Clerk

Instructor  
Senior Instructor  
Supervising Instructor  
Clerical Associate I, II, III, IV

Group B

Botanical Garden Attendant Guard  
Senior Botanical Garden Attendant Guard  
Assistant Gardener  
Gardener  
Supervisor of Gardeners (formerly Foremen of Gardeners)  
Park Supervisor  
General Park Supervisor (formerly General Park Foreman)  
Botanical Garden Maintainer  
Assistant Botanical Garden Maintainer  
Supervising Botanical Garden Maintainer  
Custodial Assistant  
Custodian

- B. (1) The following positions/titles are exempt from this bargaining unit:  
Finance Director, Director of Operations, and Executive Director.
- (2) Employees hired in managerial and confidential positions/titles shall not be included in this bargaining unit.
- (3) Part time employees who work for one (1) year on a full time basis will be equated to a full time Garden employee, in a title covered by this agreement.

**ARTICLE III - UNION SECURITY AND  
DEDUCTION OF DUES**

- A. All employees covered by this Agreement, who are now or who hereafter become members of the Union in good standing, shall, as a condition of employment, maintain their Union membership in good standing during the term of this Agreement. Payment by an employee of the periodic dues uniformly required as a condition of membership in the Union, shall constitute membership in the Union in good standing for the purpose of this provision.

- B. The Garden will deduct from the wages and turn over to the Union the regular union dues of members who have authorized such deductions in writing in a form acceptable to the Garden.
- C. The Union shall indemnify and save the Garden harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken or not taken by the Garden in reliance upon signed authorization cards furnished to the Garden by the Union for the purpose of complying with the provisions of this article.
- D. All employees in the bargaining unit defined in Article II of this Agreement who are not members of the Union shall, as a condition of continued employment, pay to the Union each month a service charge toward the administration of this Agreement. Such service charge shall be an amount of money equal to the Union's regular monthly dues paid by each member of the Union. The Garden shall deduct the monthly service charge from the wages of an employee who is not a member of the Union, and the Garden shall remit the same to the Union.

#### **ARTICLE IV - UNION RIGHTS**

- A. The Union shall have the right to post Union information on the designated Union bulletin board in the Clerical, Gardening and Security areas.
- B. To the extent facilities may be available, Union meetings may be held on the premises of the Garden during non-working hours. Requests for the use of the Garden facilities must be submitted in writing to the Executive Director at least 2 days in advance.
- C. Authorized representatives or officers of the Union shall be admitted to the premises of the Garden during working hours for the purpose of representing employees for legitimate Union business.

#### **ARTICLE V - MANAGEMENT RIGHTS**

The responsibility of the management of the Garden to maintain discipline and the efficiency of its operations and the right of management to hire, transfer, promote,

discipline and discharge employees for just cause and to relieve employees from duty because of inefficiency or lack of work is expressly recognized, subject to the terms and provisions of this contract and the right of appeal through the grievance procedure herein. The Garden expressly retains all powers and authority of the Garden not abridged, delegated or granted by this contract. It is understood and agreed that management shall exercise those functions and responsibilities, which are customarily vested in management, including the management of the Garden's properties and business and the direction and supervision of the working force.

Decisions of the Garden on these matters are not within the scope of collective bargaining but notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees such as questions of workload or staffing are subject to discussion, and the fiscal constraints of the Garden. Final decisions regarding workload or staffing are vested exclusively with the Garden.

#### **ARTICLE VI - UNIFORMS AND LOCKERS**

- A. Effective January 1, 1998 any employee required to wear approved work clothing as defined by the standards of the occupational group (horticulture & grounds crew, maintenance, and security), and/or a uniform, the Garden will provide a combined annual uniform and shoe allowance. Effective July 1, 2005, the total maximum amount will be three hundred dollars (\$300.00). The maximum amount of this total to be used for the shoe allowance will be one hundred dollars (\$100.00) per annum. All shoes will have to be OSHA approved. Also, a receipt of purchase will be required in order to receive the shoe allowance. These amounts will be increased by the rate of inflation and adjusted accordingly. The employer will provide the combined allowance to all security, maintenance, and horticulture & grounds crew personnel provided they have passed probation.
- B. Each employee shall be given a locker for his or her personal effects.
- C. The Garden shall provide suitable protective clothing for employees performing work, which may cause damage to personal clothing. The employer will keep a supply of protective coveralls, goggles, hats, and gloves, for painting or when

using chemicals, as the need may arise. Examples of such work would include but not be limited to painting, automotive repair, and other like duties at the discretion of the management.

- D. The Garden shall furnish protective clothing for employees performing chemical spraying.
- E. The employer will keep a supply of rain gear for outdoor security, maintenance, and horticulture & grounds crew personnel, as the need may arise.
- F. Other types dangerous work, which either party believes may require protective clothing, shall be subject to labor management discussion.

**ARTICLE VII - HOURS OF WORK**  
**AND PREMIUM PAY**

**A. Regular Work Week**

- 1. Upon consultation and review with the Union, the Garden will establish alternate work schedules for its employees. Employees shall have two consecutive days off during each calendar week unless they specifically request otherwise, or in those instances when an alternate work schedule is agreed to.

**B. Overtime Pay**

- 1. An employee whose regular workweek is 35 hours shall be paid at the employee's basic hourly rate for involuntary overtime worked in excess of 35, but less than 40 hours in the employee's work week.
- 2. All employees shall be paid at the rate of time and one-half for all involuntary over-time hours worked in excess of 40 hours in the employee's regular workweek.
- 3. Any employee who works a regular week of 35 hours shall be compensated for all additional hours worked between 35 and 40 hours either in cash or time at straight time.

4. No credit shall be recorded for unauthorized overtime. Credit for all authorized overtime beyond the normal workweek shall accrue only after one hour in units of one-quarter hour to the nearest one-quarter hour.
5. All overtime work will be divided as equally as possible among the employees in a title and a record of all over-time work maintained by the Employer shall be available to the employees for inspection upon request.
6. Employees recalled from home for authorized ordered involuntary overtime work for the purposes of snow removal or in case of a natural emergency shall be guaranteed overtime compensation at the appropriate rate for no less than four (4) hours.

**C. Night Shift Differential**

The Garden will pay a night shift differential to Garden employees paid from City funds in accordance with the policy of the City of New York for its employees covered by the Citywide agreement.

**D. Meal Allowance**

Effective upon execution of this agreement, employees who work authorized overtime not compensated in cash of at least two (2) hours or more shall receive an eight dollar (\$8.00) meal allowance.

**ARTICLE VIII - HOLIDAYS**

- A. The following shall be paid holidays irrespective of the day of the week on which they occur:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
Lincoln's Birthday*	Election Day
President's Day	Veteran's Day
Memorial Day	Thanksgiving Day
July 4th	Christmas

\* Effective January 1, 1998, Lincoln's Birthday will no longer be an official holiday. Lincoln's Birthday will be designated as a floating holiday. (Note: all provisions of the Mayor's Office of

Labor Relations Interpretive Memorandum #84, dated July 15, 1996 shall apply.) The floating holiday shall be eliminated for employees hired on or after July 1, 2005.

- B. If the regular day off of an employee shall fall on a paid holiday, he/she shall receive a substitute day off within four (4) weeks, at a time to be designated by the employee and approved by his/her department head.
- C. No holiday credit shall be allowed to any employee absent for any reason other than annual vacation, his/her regular day off or paid documented sick leave.
- D. Any employee who works on a paid holiday shall, as provided by the City of New York, be paid at the rate of time and one-half and receive an additional day off. Effective upon signing of this agreement, employees will be given the option of being paid twice the normal rate in lieu of the above provision. Acceptance of this option must be in writing.
- E. If a holiday designated pursuant to this contract falls on a Saturday, the 50% cash premium and compensatory time off at the employee's regular rate of pay shall apply only to those employees who are required to work on the Saturday holiday. Employees required to work on the Monday or Friday designated by the Garden for holiday observance shall receive compensatory time only. With respect to an employee who is scheduled to work on both the Saturday holiday and the day designated for observance:
  - 1. If he/she is required to work on only one of such days, he/she shall be deemed to have received his/her compensatory time off (and he/she shall receive the 50% cash premium when required to work on the Saturday holiday); or
  - 2. If he/she is required to work on both such days, he/she shall receive the 50% cash premium and compensatory time off at his regular rate of pay for all hours worked on the Saturday holiday.

**ARTICLE IX**

**INSURANCE, PENSION AND DEATH BENEFITS**

Providing the City makes the necessary contributions to cover all costs:

A. **Life Insurance**

The Garden shall maintain a group life insurance plan pursuant to the provision of the Cultural Institutions Retirement System.

B. **Health Insurance**

The Garden shall maintain Health Insurance Plans pursuant to the provisions of the City Health Insurance Program as it applies to the Garden.

C. **Health and Security Fund**

The Garden agrees to have its employees who are covered by this Agreement and paid from City Funds included in the District Council 37 Cultural Institution Health and Security Plan Trust. The parties will work out procedures to facilitate the prompt transmission of monthly payments to the trust. Effective January 1, 1974, employees who have been separated from service by retirement subsequent to June 30, 1970, and who were covered by a welfare fund at the time of such separation pursuant to a separate agreement between the Union and the Employer, shall continue to be so covered subject to the provisions hereof on the same contributing basis as incumbent employees.

The Garden agrees to contribute to the District Council 37 Cultural Institution Health and Security Plan Trust on behalf of all private line employees covered by this agreement a sum equal to the amount contributed for City Reimbursed employees.

D. **Pension**

The Garden shall maintain a pension plan pursuant to the provisions of the Cultural Institutions Retirement System.

E. **Death Benefits**

1. When an employee dies, his/her accumulated annual leave to a maximum of 32 days credit and all unused compensatory time up to 200 hours shall be paid to his/her estate or designated beneficiary.

2. In the event that an employee dies on or after July 1, 1970 because of an injury arising out of and in the course of his/her employment through no fault of his/her own, and in the proper performance of his/her duties, the Garden will refer such issues to the Workers Compensation Board.

**ARTICLE X - ANNUAL LEAVE**

A. A combined vacation, personal business and religious holiday leave allowance, known as "annual leave allowance," shall be granted with full pay on the following basis:

- 1) Employees hired prior to July 1, 1985:

<u>Category</u>	<u>Monthly Accrual</u>	<u>Maximum Annual Leave Allowance</u>
Employees who shall have completed 14 years of service (beginning of 15th year)	2-1/4 work days per full calendar month of service	27 workdays (five week and two work days)
Employees who shall have completed 7 years of service (beginning of 8th year)	2 work days per full calendar month of service. One additional work day at the end of the vacation year.	25 workdays (five weeks)
All other employees	1-2/3 workdays per full calendar month of service.	20 workdays (four weeks)

- 2) Effective July 1, 1991, Employees hired after July 1, 1985:

<u>Category</u>	<u>Monthly Accrual</u>	<u>Maximum Annual Leave Allowance</u>
Employees who shall have completed 14 years of service (beginning of 15th year)	2-1/4 work days per full calendar month of service	27 workdays (five week and two workdays)

Employees who shall have completed 7 years of service (beginning of 8th year)	2 work days per full calendar month of service. One additional work day at the end of the vacation year.	25 workdays (five weeks)
Employees who shall have completed 4 years of service (beginning of 5th year)	1-2/3 work days per full calendar month of service	20 workdays (four weeks)
All other employees	1-1/4 workdays per calendar month	15 work days full (three weeks of service.)

2. Employees hired on or after July 1, 2005 will earn annual leave as follows:

<u>Years of Service</u>	<u>Annual Leave Accrual</u>
1-4	15
Beginning with 5 <sup>th</sup> year	16
6	17
7	18
8	19
9	20
10	21
11	22
12	23
13	24
14-16	25
17+	27

B. While on annual leave with pay or sick leave with pay, an employee shall continue to earn annual leave credits in accordance with the "monthly accrual" in the foregoing table.

C. 1. Annual leave credits shall be based upon a "vacation year" beginning May 1. All Annual Leave allowance standing to an employee's credit on April 30, and not used may be carried over from said vacation year to the next. The maximum annual leave days allowed to be accumulated shall be thirty-two (32) days. Employees whose leave accrual has exceeded 32 days will be required to take such leaves as are necessary, at mutually agreeable times

to reduce their accrual to the 32 day limit. Any such time not used within the prescribed period shall be credited to the employee's sick leave allowance.

2. If during a vacation year an employee fails to use part or all of the annual leave allowance standing to his/her credit on the April 30 immediately preceding that vacation year because the Garden required him/her to be on duty during the vacation year period, or if his/her failure to use any part of his/her allowance has received the prior written approval of the Garden, the employee shall be allowed to carry that portion of his/her unused annual leave allowance over, even if such carry over exceeds the limit stated in Section C (1).
- D. All absences with pay not specifically authorized herein under Article X, XI or XII shall, at the option of the Garden, be charged against the employee's annual leave credit, compensatory time or his/her holiday credit (referred to in Article VIII, Section B.).
  - E. Upon the resignation, retirement or severance of an employee, he/she shall receive payment for his/her unused accumulated annual leave.
  - F. No annual leave credit shall be earned by an employee while on leave without pay.
  - G. Three (3) days of annual leave will be allowed for personal business or religious observance, provided that the request is made in advance where possible and that it can be accommodated in the Garden's judgment when considering the ability of the Garden to maintain efficient operations. In cases other than emergencies, an employee will be required to give notice of at least 2 weeks in advance. The Garden may request documentation substantiating the emergency in instances where the leave is taken without the stated notice period.
  - H. When an employee is hospitalized or disabled while on annual leave, the period of such hospitalization and/or disability shall be charged to sick leave. Proof satisfactory to the employer may be required.

## ARTICLE XI - SICK LEAVE

- A. Sick leave credit with full pay of one workday per full calendar month of service shall be credited to all employees and shall be used only for personal illness of the employee. An employee while on leave without pay shall earn no sick leave credit.
- B. Effective January 1, 1998, employees may use two (2) days per year from their sick leave balances for the care of an ill family member. Employees with less than 20 days of accumulated annual leave, at the time of the request, may utilize one additional day per year from their sick leave balance for the care of an ill family member.
- C. Employees who have exhausted all earned sick leave and annual leave credits due to personal illness may, in the discretion of the Garden, be granted unearned sick leave, chargeable against future sick leave. In the event the Garden does not grant leave with pay, then the employee may be granted an extended leave without pay for the period of his illness, but not more than one year. All requests and responses for leave under this Section shall be in writing.
- D. As a condition to granting sick leave, the Garden may require either a certificate from the employee's attending physician or an examination or consultation by a physician selected by it. In the case of a protracted illness, additional certificates or examination may be required.
- E. If an employee who has been laid off is reinstated within one year to a permanent position, any unused sick leave balances at the time of his layoff shall be restored to his credit.
- F. Employees will be allowed to accrue unlimited sick leave, as provided for in the revised Time and Leave Rule Regulations adopted by the City of New York.

## ARTICLE XII

### OTHER AUTHORIZED ABSENCES WITH PAY

- A. An employee who is injured arising out of and within the course of his/her employment, through no fault of the employee, and who is unable resume his/her

duties may use his/her accumulated sick leave, annual leave or compensatory leave immediately until a determination is made whether the injury is compensable under the Workers Compensation Law.

Unless otherwise instructed by the employee, the Garden will deduct from the employees' benefit time (sick, annual or compensatory leave) accumulated to make up the difference between the employee's weekly salary and the employee's compensation rate for the time the employee is receiving Worker's Compensation benefits. No benefits shall be paid while an employee is suspended pending disciplinary action, or if an employee is subsequently found culpable of having commenced the assault or of having unnecessarily continued the assault.

Once it is found that the employee is entitled to Worker's Compensation benefits, the employee shall be entitled to have his/her sick, annual or compensatory leave returned to him/her from the date of the injury, as determined by the Worker's Compensation Board, until the date that the injury is compensable under the Worker's Compensation Law, as long as the total compensation paid, whether in time or money, does not exceed the total the employee would have received if not injured. The Garden and the employee will reconcile differences once documentation from the Worker's Compensation Division is obtained.

If it is determined that the Worker's Compensation injury was as a result of assault, the injured employee shall be granted a leave of absence with pay not to exceed twelve months. The injured employee shall receive the difference between his/her compensation rate and weekly salary without charge against annual, sick or compensatory time.

If an employee is receiving benefits for a compensable injury under the Worker's Compensation Law and has exhausted all his/her "benefit time," the Employer will grant differential pay for up to three (3) months. This additional leave must be taken immediately following the exhaustion of such balances. No such leave or differential pay shall be granted unless the injury is compensable under the Worker's Compensation Law.

The Employee, as a condition of receiving benefits under this section, will execute an assignment of the proceeds of any judgment or settlement in any third-party action arising from such injury, in the amount of the pay and medical disbursements received pursuant to this Section, but not to exceed the amount of such proceeds.

The injured employee receiving Worker's Compensation benefits shall undergo such medical examinations as are requested by either the Worker's Compensation Board or the Queens Botanical Garden. When found fit for duty by the Worker's Compensation Board, the employee shall return to his/her employment.

- B. An employee shall be granted leave with pay in the following cases, upon the submission of evidence satisfactory to the Garden:
- 1a. When there is a death in the immediate family of the employee, but not to exceed five work days. The term "immediate family" means spouse, parent, child, brother, sister, or any relative residing in the employee's household. Also, when there is a death of a grandparent, grandchild, mother-in-law, or father-in-law who does not reside in the employee's household, such leave shall not exceed three workdays.
  - 1b. Effective upon signing of this agreement, when there is a death of a brother-in-law or sister-in-law and when an employee has less than twenty (20) days in their annual leave bank, but not to exceed three work days.
  2. When there is a death of a domestic partner or the death of a parent or child of such domestic partner, or death of a relative of such domestic partner residing in the household as per Mayor's Executive Order No. 123 dated August 7, 1989.
  3. For jury duty, less jury fees. It is understood that if a jury session ends earlier than the end of the employee's regularly scheduled work day, the employee is expected to report to work, provided that at least one hour of the employee's regularly scheduled workday remains to be worked.
  4. For attendance in court under subpoena or court order less witness fees.
  5. To comply with a Health Department regulation with respect to quarantine of his/her household.

6. To attend any negotiations or conference with the Garden or with the Garden and any governmental agency as employee representative duly designated by the Union provided, however, that for the protection and safety of the Garden's collections, the total number of such representatives shall not exceed two.
  7. Military Leave with no loss of Garden pay will be granted for National Guard and active Reserve Training up to 30 calendar days or 22 work days, whichever is greater, in addition to regular vacation.
  8. The Garden will continue its present practice of granting equivalent time off to its employees, when such time has been granted to City employees in similar categories of work, to the extent that it does not seriously impair the proper functioning of the Garden. (It should be noted that the present practice does not include the summer hours schedule).
  9. An employee on duty shall be granted an additional one-half hour during banking hours on payday to cash his/her payroll check.
- C. Whenever feasible, a written request for leave shall be made in advance.

### ARTICLE XIII

#### AUTHORIZED ABSENCES WITHOUT PAY

- A. Other leaves of absence required by law shall be granted without pay.
- B. Up to 2 employees, including, the Chairman of the Union and/or delegates duly selected by the Union, shall be entitled to leave without pay to attend Union International Conventions and District Council Conferences, provided that the total aggregate number of such leaves in any two-year period for any one employee shall not exceed 5 work days.
- C. Leaves of absence without pay not hereinbefore mentioned may be granted only in exceptional circumstances in the discretion of the Garden and after written approval therefore from the Director or his/her representative.
- D. A Child Care Leave of Absence without pay shall be granted to an employee (male or female) who becomes the parent of a child up to four years of age, either

by birth or by adoption, for a period of up to twelve (12) months. Employee and the Garden will develop a written plan for such leave that is mutually agreeable. Employee shall give a minimum of sixty days notice of his/her intention to return to work.

- E. No absence under this Article may be taken by an employee except after 10 work days' written notice to the Executive Director, unless under Section A hereof such notice was impossible.

#### ARTICLE XIV - TERMINAL LEAVE

- A. Terminal leave with pay upon retirement will be granted to each employee at the rate of one month for each ten years of service, prorated for a fractional part thereof. As an alternative to the foregoing, an employee upon retirement may elect to receive a terminal leave allowance computed on the basis of one day of terminal leave for each two days of unused sick leave accumulation, to a maximum of one hundred (100) days terminal leave allowance. Under the latter option, terminal leave shall be computed on the basis of workdays, rather than calendar days.
- B. Employees hired on or after July 1, 2005 will cash out their sick leave on the basis of one day of terminal leave for each three days of accumulated sick leave upon separation from service after ten years of eligible service.

#### ARTICLE XV

##### GRIEVANCE AND ARBITRATION PROCEDURE

- A. Grievances, complaints or differences between the Garden and any employee shall be settled in the following manner:
  - 1. Any grievance, complaint or difference shall be submitted in writing by the employee to the Department Head concerned. The grievance shall be

presented not later than sixty (60) days after the date on which the grievance arose.

2. The dispute shall be discussed with the Department Head by the aggrieved employee and such representative as he/she may designate.
3. If the matter is not satisfactorily resolved within three (3) working days it shall be referred by the aggrieved employee and such representative as he/she may designate to the Executive Director of the Garden or his/her assistant.
4. If the matter is not satisfactorily resolved within five (5) working days it shall be presented by the aggrieved employee and such representative as he/she may designate to the appropriate committee or its designated representative. The committee shall conduct a hearing on the matter.
5. If the matter is not satisfactorily resolved within seven (7) working days, the Union shall have the right within fifteen (15) working days of the decision of the Committee or of the expiration of the seven (7) days, whichever is first, to have the controversy submitted to an impartial arbitrator selected by and in accordance with the rules and procedures of the American Arbitration Association, whose decision shall be final and binding in accordance with applicable law. The costs of such arbitration shall be borne equally by the parties to this Agreement.

**B. Exceptions**

1. By mutual consent of the Union and the Garden, any step of the grievance procedure may be waived.
2. Involuntary terminations and actions affecting several staff members may be brought directly to step II of the grievance procedure.
3. Grievances concerning discipline or discharge shall be filed within fifteen (15) days of the filing of such disciplinary/discharge charges.

## ARTICLE XVI - DISCIPLINARY ACTION

When it is determined that an employee is to be disciplined, he/she shall receive a written statement of charges.

When the disciplinary action would involve a suspension without pay for five working days or more, or termination, the imposition of such discipline shall not become effective until ten days after written charges are presented to the employee, except that such disciplinary action may be taken summarily by the Garden where the acts of the employee are criminal in nature or involve the health, welfare or safety of the staff or the public, or endanger Garden property.

## ARTICLE XVII - SENIORITY

### A. Definition

For gardening personnel and security-maintenance staff, seniority shall mean the length of continuous service in the respective category of employment. For all other employees, seniority shall mean the length of continuous service in a given job title.

### B. Lay-off

Lay-offs shall be made in inverse order to seniority. A recall list shall be created of laid off employees with a minimum of one year of service. This list shall be maintained for a period of two fiscal years from the date of layoff. Written notice shall be mailed to laid off employees of subsequent vacancies in the same or similar positions. All applicants shall be considered on the basis of qualifications.

### C. Vacancies

1. The Union will be notified of all unfilled positions covered by this agreement.
2. The Administration shall be responsible for the proper posting of all job openings represented by the Union. Such openings shall be posted conspicuously as far as possible in advance of the effective date. Notice will be given first to present employees who, if interested, must apply in writing. All employees who apply will be considered. If, after consideration of all

applicants, and in the judgment of the Garden the job will be offered to one of two or more in-house applicants who are equally well qualified on the basis of ability, experience, record of attendance and suitability for the position, preference will be given in promotion to the applicant having the greater seniority.

3. All vacancies shall be dated. All posting of vacancies will include title, department, position, and qualifications.
4. New applications for any posted positions shall whenever possible be accepted no later than two weeks after the initial posting.
5. The Chapter Chairperson of Local 374 shall be notified immediately when an appointment is made.

#### **ARTICLE XVIII - PERSONNEL PRACTICES**

**A. Pay Checks**

Upon written request, the paycheck of an employee either on sick leave or vacation shall be mailed to him/her via certified or registered mail.

**B. Break Periods**

The Garden shall grant two breaks of 15 minutes each, one in the morning and one in the afternoon. Clerical employees shall schedule their breaks so that the office is at all times covered.

**C. A probationary period of six (6) months shall be required for all appointments to positions covered by this agreement.**

**D. The employer will provide picture identification badges.**

**E. Heat Days - On very hot days during the summer months covering the period of June through Labor Day, the Garden will make every effort to schedule and/or move personnel into cooler areas.**

**F. In order to have consistency and compliance of Garden policies, the Garden shall establish Departmental Guidelines and/or a Garden Policy Manual. All employees shall receive a copy of such written departmental and/or Garden policy**

manual. In addition, the Garden shall provide all employees with copies of any changes made to these guidelines and/or policy manual.

#### **ARTICLE XIX - CLASSIFICATION**

- A. The job title of each employee covered by this contract shall be clearly defined in terms of function and salary in conformity with New York City Job Specifications and/or Staff Memoranda issued by the Queens Botanical Garden.
- B. Employees will be assigned duties appropriate to their title classification.
- C. The Garden will notify and consult with the Union prior to the creation of any new job titles and modifications in job specifications of work covered by this Agreement.

#### **ARTICLE XX**

##### **EVALUATION & PERSONNEL FOLDERS**

No material concerning an employee's performance shall be placed in an individual's file unless the employee has been given a copy. The employee shall acknowledge that he/she has read the material by affixing his/her signature to the file copy. Such signature shall merely signify that he/she has read the material, and it is not to be construed that he/she agrees with the contents. Such an employee may append written material or rebuttal to the file.

Any evaluatory statement with respect to an employee's work performance or conduct, a copy of which is not given to the employee, may not be used in subsequent disciplinary actions against said employee.

In the event an employee is exonerated of charges and/or disciplinary actions, the applicable adverse materials shall be expunged from the employee's folder.

Employees shall be granted reasonable requests, by appointment, to review their personnel folders provided such request are not made more frequently than once per year. However, an employee who has received a notice of disciplinary action may, within fifteen (15) days of the date of such notice, make an appointment to view his or her personnel folder.

Employee performance evaluations shall be recorded on standard forms and adhere to established procedures and guidelines.

#### **ARTICLE XXI - LABOR-MANAGEMENT**

- A. The Garden and the Union shall establish a Labor-Management Committee. This Committee shall meet as needed with agendas issued prior to each meeting.
- B. Upon termination and/or reduction of funding from the City of New York the following shall apply:
1. The Garden shall notify the Union immediately in writing. The Union and the Society will commence labor management meetings to discuss the impact, and the projected plan(s) that the Garden has determined that would be needed due to the termination and/or reduction of funding from the City of New York.
  2. The parties will continue to meet and confer with the objective of considering alternative actions on a consensual or voluntary basis such as and not limited to:
    - a) Furloughs
    - b) Work week reductions
    - c) Retirements
    - d) Early retirement incentives
    - e) Transfers to other cultural institutions  
(without loss in pay, benefits, or seniority)
    - f) Use of federal and/or state funds whenever possible to retain employees
    - g) Elimination or reduction of the amount of work contracted out to independent contractors
  3. If the savings attained and/or the alternatives utilized in Section 2 above will not achieve the necessary funding to avert any adverse affects on the Garden, the Union and the Garden will continue to meet and confer to discuss other alternatives.

4. Whether the parties agree or disagree on any of the plan(s), the plan(s) will not take effect until at least fourteen (14) days after notification as in Section 1 above. In either case when the Garden renders a final decision, the Garden shall notify the Union in writing.
5. This provision shall not bar either party from entering into any legal stipulations, implementing contractual rights, and/or implementing any rights under the law, after the Union's receipt of the final decision by the Garden.

#### **ARTICLE XXII - CITY-WIDE BENEFITS**

Nothing in this Agreement shall be construed as limiting or impairing the rights and benefits conferred upon employees in the bargaining unit as the result of City-wide negotiated benefits on overtime rates, shift differential, and Cultural Institutions Health & Security Plan Trust.

The Garden agrees that it will extend to its employees new benefits granted as the result of Economic Tripartite negotiations with District Council 37, the City of New York and the Cultural Institutions, to the extent that the funding for such is continued to be paid by the City of New York.

#### **ARTICLE XXIII - POLITICAL CHECKOFF**

- A. An employee may authorize deductions for political contributions from the employee's wages (political contributions or check off) by completing an authorization form acceptable to the Garden, which bears the signature of the member and specifies the amount to be deducted. Such authorization is voluntary and may be revoked at any time in writing. The authorization shall remain in effect until the Garden is notified, in writing, of the revocation of the authorization.
- B. The Garden shall be reimbursed by the Union for expenses incurred in administering the political check off system at the rate of five cents (5¢) for each

employee for whom a political check off was deducted on the last biweekly pay period of each month.

- C. The Union shall be responsible for complying with all legal requirements regarding the establishment and operation of a separate segregated fund. District Council 37 affirms that it has established a separate segregated fund, D.C. 37 PEOPLE, which is registered with the FEC, and that such fund is authorized to solicit contributions and make expenditures in accordance with applicable law.
- D. The Union shall refund to the employee any contribution wrongfully deducted and transmitted to its fund.
- E. No arrears of any kind or nature will be collected through the political check off.
- F. The Garden and its officials and employees shall not be liable in the operation of the political check off for any mistake or error of judgment or any other act of omission or commission and D.C. 37 agrees to hold the Garden harmless against any claim whatsoever arising out of the deduction and transmittal of said political contributions.
- G. The Garden shall transmit authorized deductions along with a listing of employees from whom the deductions have been made, the amounts deducted, and such other information agreed upon by the parties no later than thirty (30) days following the deductions.

#### **ARTICLE XXIV - NO STRIKE OR LOCKOUTS**

There shall be no strike, work stoppage, slowdown, picketing or other activity to obstruct the operations of the Garden and no lockout during the term of this Agreement.

#### **ARTICLE XXV - PAST BENEFITS**

Except as otherwise expressly provided herein, wherever practicable and feasible, all standard privileges and benefits hitherto enjoyed by employees as a matter of custom shall be maintained and continued by the Garden during the term of this Agreement. Specifically excluded from such category of standard privileges are those benefits (1) customarily extended to employees by vote of the Board of Directors or its executive

committee and (2) occasionally granted as a matter of administrative discretion to employees because of a special or emergency situation.

**ARTICLE XXVI - FAIR PRACTICE CLAUSE**

Neither the Garden nor the Union shall discriminate against any employee on the basis of race, creed, color, national origin, sex, sexual preference, age, physical disability, or alienage.

**ARTICLE XXVII - SAVING CLAUSE**

In the event that any provision of this Agreement is found to be legally invalid, such invalidity shall not impair the validity and enforcement of the remaining provisions of this Agreement.

**ARTICLE XXVIII - SAVE HARMLESS CLAUSE**

All money required for the implementation of the economic benefits of this contract must come from the City of New York and it is expressly understood that in the event that the City of New York does not for any reasons provide such monies, the Garden will not in any way be liable.

**ARTICLE XXIX - DURATION OF AGREEMENT**

This Agreement shall take effect as of July 1, 2001, and shall remain in effect and in full force through June 30, 2005. At least 60 days prior to June 30, 2005, the parties shall commence good faith negotiations for a new contract.

APPENDIX A

CITYWIDE AGREEMENT ON VOLUNTARY BENEFITS

A. In accordance with the Life Insurance and Related Voluntary Benefits Supplemental Checkoff Agreement between the City of New York and District Council 37, AFSCME, AFL-CIO, the Citywide bargaining representative, the following voluntary benefits shall be offered by the Queens Botanical Garden Inc., to employees who are members Local 374, DC 37, AFSCME, AFL-CIO:

Life Insurance  
Long Term Care

B. In accordance with the Citywide collective bargaining agreement between the City of New York and District Council 37, AFSCME, AFL-CIO, the Citywide bargaining representative, the following voluntary benefit shall be offered by the Queens Botanical Garden, Inc., to employees who are members of Local 374, DC 37, AFSCME, AFL-CIO:

Dependent Care Assistance Program ("DECAP")

FOR DISTRICT COUNCIL 37  
AMERICAN FEDERATION OF STATE,  
COUNTY, AND MUNICIPAL  
EMPLOYEES, AFL-CIO

BY: *Diana Sullivan*

DATE: 9/15/05

FOR QUEENS BOTANICAL  
GARDEN SOCIETY, INC.

BY: *Suzanne Perrotte*

DATE: 9 September 2005

FOR LOCAL 374, AFSCME, AFL-CIO

BY: *Luthbert D. ...*

DATE: 9/21/05

(QBG2005-2007ve)