

# **HOLD HARMLESS AGREEMENT**

***THIS HOLD HARMLESS AGREEMENT*** (the “Agreement”) is made as of \_\_\_\_\_ by and between The Hart County Botanical Garden Inc, as the person or entity receiving indemnity (hereinafter referred to as the “Indemnatee”), located at 1277 Elberton Hwy, Hartwell, Ga 30643, and \_\_\_\_\_, as the person or entity bound to provide and /or protect the Indemnatee (hereinafter referred to as the “Indemnitor”, located at \_\_\_\_\_, and at times the Indemnatee or Indemnitor may be referred to as the “Party” or may be collectively referred to as the “Parties.”

***WHEREAS***, the Indemnitor desires and wishes to hold harmless and indemnify the Indemnatee and its successors and assigns from any and all liabilities, losses, claims, judgments, suits, fines, penalties, demands or expenses, including, but not limited to, all reasonable costs for defense and investigation thereof (including but not limited to attorney’s fees, court costs, and expert fees) claimed by anyone by reason of injury or damage to persons or property sustained in or around the event as a proximate result of the acts or omissions of the Indemnatee, its agents, successors and assigns or arising out of the operation or actions of the Indemnatee upon or about the event, except when such liability may result from the sole negligence of the Indemnatee, its officers, directors, agents, servants, and /or employees; provided however, that upon the filing of any claim with the Indemnitor for damages arising out of incidents for which the Indemnatee herein agrees to hold Indemnitor harmless, then and in that event the Indemnitor shall notify the Indemnatee of such claim and Indemnatee shall have the right to settle, compromise, and/or defend the same.

## **REPRESENTATION ON AUTHORITY OF PARTIES/SIGNATORIES**

Each party signing this Agreement represents and warrants that s/he is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party’s obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

## **MODIFICATION OF AGREEMENT**

This Agreement may be supplemented, amended, and/or modified only by and through the mutual agreement of all parties. No supplement or modification of this Agreement shall be binding unless done in writing and signed by all parties to this Agreement.

## **GENERAL WAIVER**

The failure of any party at any time to require performance of the provision or to resort to any remedy provided under this Agreement shall in no way affect the right of that party to require performance or to resort to a remedy at any time thereafter, nor shall the waiver by any party of a breach be deemed to be a waiver of any subsequent breach. A waiver shall not be effective unless it is in writing and signed by the party against whom the waiver is being enforced.

## **ENTIRE AGREEMENT**

This is the entire agreement between the aforementioned parties. It replaces and supersedes any and all oral agreements between the parties, as well as prior writings.

## **ENFORCEABILITY, SEVERABILITY AND/OR REFORMATION**

In the event that the covenant, provision and /or restriction is found by court of competent jurisdiction to be unenforceable, such provision shall be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. In the event it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement shall be enforced as if such provision was not included.

In the event that any court determines that any of the covenants, provisions or restrictions to be excessive in duration scope or to be unreasonable or unenforceable under the laws of the state, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by the laws of the state.

**GOVERNING LAWS**

The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of Georgia applicable to contracts made and to be wholly performed within such state, without giving effect to any form of conflict of law provisions thereof. The Federal and State courts located in Georgia shall have sole and exclusive jurisdiction over any disputes arising under the terms of the Agreement.

**JURISDICTION AND VENUE**

This Agreement is to be construed pursuant to the current laws of the State of Georgia. In the event that any dispute shall arise under or in connection with the agreement or related to any matter which is subject of the agreement shall be subject to the exclusive jurisdiction of the state and /or federal courts located in Georgia.

**THE UNDERSIGNED HAVE READ, UNDERSTAND, AND ACCEPT THIS AGREEMENT**, and by signing this Agreement, all parties agree to all this aforementioned terms, conditions and policies.

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The Hart County Botanical Gardens, Inc

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Date

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Indemnitor

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Date