

CITY OF WINDER
COMMUNITY GARDEN
GARDEN USE, WAIVER OF LIABILITY, RELEASE AND INDEMNIFICATION AGREEMENT

Gardener Name: _____
Address: _____
City and State: _____
Phone: _____
E-mail: _____
Emergency Contact: _____

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Welcome to the City of Winder's Pine Shore Park Community Garden (the "Garden"). The City of Winder, called "Landowner" or "we" in this document, is the landowner and manages Pine Shore Park. This document, which is a legal contract between you and Landowner, describes the terms under which you may use a plot in the Garden, as assigned to you by us. By signing this document, you confirm that you understand agree to its terms, including the waiver terms, set out below.

1. GARDEN PLOT

1.1 **Plot.** You have the right to use plot  (the "Plot") in the Garden, [as identified in the Garden map attached to this agreement.] You may use the Plot from March 15 to December 15.

1.2 **Rules.** You understand that everyone using the Garden must comply with the Garden Rules and Regulations (the "Garden Rules") attached to this agreement. We establish the Garden Rules at our discretion. The Garden Rules cover a number of topics, including access, use of plots and tools, gardener conduct, communication, dispute resolution and termination. You confirm that you have read the Garden Rules, that you will comply with them at all times and that you understand that compliance with the Garden Rules is a requirement of your continued participation in the Garden.

1.3 **No Transfers.** You cannot sell or lease your right to use the Plot, or otherwise allow anyone to use it on a regular basis, unless we give our approval in writing.

2. LIABILITY WAIVER, RELEASE, INDEMNIFICATION AND ACKNOWLEDGEMENTS

2.1 **Awareness of Risk.** You understand that your participation in the Garden has the inherent risk of death or injury to yourself or your guests, and of damage to your property. These risks may result not only from your own actions or inactions, including overexertion, but also from the actions or inactions of other gardeners or Landowner. These risks may also arise from the condition of the land where the Garden is located, or the equipment and tools available at the Garden, or the weather or other environmental or local conditions. You also understand that hazardous conditions may exist at the Garden and that other gardeners may be unskilled.

2.2 **Assumption of Risk.** You assume full responsibility for any and all risks of death, bodily injury or property damage, including, without limitation, those identified in Section 2.1, caused by or arising from your direct or indirect participation in the Garden, regardless of the cause, even if that risk is caused by other persons' negligence, whether passive or active.

2.3 **Waiver and Release of Claims.** You waive and release any claims against Landowner and Landowner's directors, officers, agents, employees, volunteers, and affiliates (collectively, the "Released Parties"), for any liability, loss, damages, or claims resulting from death, injury, or property damage, to you, third parties, or any property, that occur while you or your guests are in the Garden, whether caused by active or passive negligence by any of the Released Parties or any other persons. You agree not to sue any of the Released Parties on the basis of these waived and released claims. [You understand that your releases and waivers in this document extend to claims that you do not know of or do not expect to exist at the time you sign this document] You understand that Landowner would not permit you to participate in the Garden without your agreeing to these waivers and releases.

2.4 **Medical Care Waiver.** You waive and release any claim against the Released Parties arising out of any first aid, treatment or medical service, including the lack of such or timing of such, rendered in connection with your participation in the Garden. You understand that you are not covered by or eligible for any insurance, health care, worker's compensation, or any other benefits maintained by Landowner.

2.5 **Indemnification.** You will indemnify and hold the Released Parties harmless from and against any and all claims, liabilities, losses, damages, expenses and attorneys' fees (together, "losses"), including, without limitation, losses arising from any death, property damage or injury of any nature whatsoever that may be suffered by you or your guests or any other person in a relationship with you, which may arise directly or indirectly from (i) your or their presence or participation in the Garden or (ii) any breach by you of this agreement, except to the extent the loss is caused by the gross negligence or willful misconduct of Landowner.

2.6 **Publicity.** You consent to the unrestricted use in any form of any photographs, interviews, videotapes, film, other visual or auditory recordings, or any other medium, including the internet, of you or your guests that we or others may create in connection with your or your guest's participation in the Garden. You waive any right to inspect or approve the finished product. You are not entitled to any compensation for creation or use of the finished product.

3. TERMINATION

3.1 **Failure to Comply with Agreement or Garden Rules.** We may terminate your right to use the Plot if you fail to comply with this agreement or with the Garden Rules, through the process described in the Garden Rules.

3.2 **Termination of Lease.** Your right to use the Plot will end if Landowner terminates the program. You understand that Landowner has the right to terminate at any time at Landowner's sole discretion.

3.3 **Personal License; No Refunds or Other Payments.** You acknowledge that your right to use the Plot is a license, personal to you, that is revocable by Landowner. You understand that you will not receive a refund, reimbursement for expenses or other payment if you decide not to use the Plot or if Landowner terminates your right to use the Plot under this agreement or the Garden Rules. In view of these facts, you expressly assume the risk of spending money and time on your Plot, even if your spending and time commitment is substantial.

4. OTHER PROVISIONS

4.1 **Entire Agreement, Severability and Modification.** This agreement, together with the Garden Rules, is the complete agreement between you and Landowner concerning the Garden and supersedes any prior documents or discussions relating to your participation in the Garden. If any provision in this agreement is held invalid or unenforceable, the other provisions will remain effective, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law. This agreement may be modified only as stated in a written document signed by both you and Landowner.

4.2 **Third-Party Beneficiaries.** Landowner and each Released Party are express third party beneficiaries of Section 2 of this Agreement, which means that they can enforce those provisions against you. Landowner is also an express third party beneficiary of Section 3.2 and 3.3 of this agreement. Except as specifically provided in this Section 4.2, this agreement is for the exclusive benefit of you and Landowner, and not for the benefit of any third party, including any of your family members.

GARDENER:

(signature)

Name: _____

Date: _____

LANDOWNER:

By: _____
(signature)

Name: _____

Title: _____

Date: _____

Attachment: Garden Rules