



**COMMUNITY GARDEN
GARDEN USE, WAIVER OF LIABILITY, RELEASE AND INDEMNIFICATION AGREEMENT**

Gardener Name: _____
Hereinafter referred to as "**Gardener**"

Address: _____

City and State: _____

Phone: _____

E-mail: _____

Emergency Contact: _____

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Welcome to the Purple Martin Farm Community Garden Box Program (the "**Garden**"). 5401 North, LLC, through its subsidiary Purple Martin Community Farm, LLC (the "**PMCF**") owns and manages the Garden as part of carrying out its mission. This agreement (the "**Agreement**") describes the terms under which Gardner may use a plot in the Garden, as assigned to Gardener by PMCF. By signing this document, Gardener confirms that he understands and agrees to its terms, including the waiver terms, set out below.

1. GARDEN BOX

1.1 **Box.** Gardener has the right to use to Box _____ (the "**Box**") in the Garden, as identified in the Garden map attached to this agreement. Gardener may use the Box from _____ to _____.

1.2 **Fee.** Upon execution of this Agreement, Gardener will pay a fee of \$_____ to use the Box. Gardener understands that PMCF may increase the fee in future years

1.3 **Rules.** Gardener understands that everyone using the Garden must comply with the Garden Guidelines and Regulations (the "Garden Guidelines") attached to this Agreement. The Garden Guidelines may be modified from time to time at PMCF's discretion. The Garden Guidelines cover a number of topics, including access, use of boxes and tools, gardener conduct, communication, dispute resolution and termination. Gardener confirms that Gardener has read the Garden Guidelines, that Gardener will comply with them at all times and that Gardener understand that compliance with the Garden Guidelines is a requirement of Gardener's continued participation in the Garden.

1.4 **No Transfers.** Gardener cannot sell or lease Gardener's right to use the Box, or otherwise allow anyone to use it on a regular basis, without the prior written consent of PMCF.

2. LIABILITY WAIVER, RELEASE, INDEMNIFICATION AND ACKNOWLEDGEMENTS

2.1 **Awareness of Risk.** Gardener understands that Gardener's participation in the Garden has the inherent risk of death or injury to Gardener or Gardener's guests, and of damage to Gardener's property. These risks may result not only from Gardener's own actions or inactions, including overexertion, but also from the actions or inactions of other gardeners or PMCF. 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. Gardener also understand that hazardous conditions may exist at the Garden and that other gardeners may be unskilled.

2.2 **Assumption of Risk.** Gardener assumes 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 Gardener's 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.** Gardener waives and releases any claims against PMCF and PMCF'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 Gardener, third parties, or any property, that occur while Gardener or Gardener's guests are in the Garden, whether caused by active or passive negligence by any of the Released Parties or any other persons. Gardener agrees not to sue any of the Released Parties on the basis of these waived and released claims. Gardener understands that PMCF would not permit Gardener to participate in the Garden without Gardener's agreeing to these waivers and releases.

2.4 **Medical Care Waiver.** Gardener waives and releases 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 Gardener's participation in the Garden. Gardener understands that Gardener is not covered by or eligible for any insurance, health care, worker's compensation, or any other benefits maintained by PMCF.

2.5 **Indemnification.** Gardener 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 Gardener or Gardener's guests or any other person in a relationship with Gardener, which may arise directly or indirectly from (i) Gardener's or their presence or participation in the Garden or (ii) any breach by Gardener of this Agreement, except to the extent the loss is caused by the gross negligence or willful misconduct of PMCF.

2.6 **Publicity.** Gardener consents 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 Gardener or Gardener's guests that we or others may create in connection with Gardener's or Gardener's guest's participation in the Garden. Gardener waives any right to inspect or approve the finished product. Gardener is not entitled to any compensation for creation or use of the finished product.

3. TERMINATION

3.1 **Failure to Comply with Agreement or Garden Guidelines.** PMCF may terminate Gardener's right to use the Box if Gardener fails to comply with this Agreement or with the Garden Guidelines, through the process described in the Garden Guidelines.

3.2 **Personal License; No Refunds or Other Payments.** Gardener acknowledge that Gardener's right to use of the Box is a license, personal to Gardener, that is revocable by PMCF. Gardener understands that Gardener will not receive a refund, reimbursement for expenses or other payment if Gardener decides not to use the Box or if PMCF terminates Gardener's right to use the Box under this Agreement or Gardener violates the Garden Guidelines. In view of these facts, Gardener expressly assumes the risk of spending money and time on Gardener's Box, even if Gardener's spending and time commitment is substantial.

4. OTHER PROVISIONS

4.1 **Entire Agreement, Severability and Modification.** This Agreement, together with the Garden Guidelines, is the complete agreement between Gardener and PMCF concerning the Garden and supersedes any prior documents or discussions relating to Gardener's 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 Gardener and PMCF.

4.2 **Third-Party Beneficiaries.** PMCF and each Released Party are express third-party beneficiaries of Section 2 of this Agreement, which means that they can enforce those provisions against Gardener. PMCF 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 Gardener and PMCF, and not for the benefit of any third party, including any of Gardener's family members.

GARDENER:

PURPLE MARTIN COMMUNITY FARM, LLC:

By: _____
(signature)

(signature)

Name: _____

Name (Title): Maureen Thiessen (Farm Manager)

Date: _____

Date: _____

Attachment: Garden Guidelines and Regulations