Melissa G. Whitten "Humble Beginnings" Community Garden

Garden Use, Waiver of Liability, Release and Indemnification Agreement

Completed online or in paper

Gardener Name: _____

Address: _____

City: _____

Phone: _____

Email: _____

Emergency Contact and Phone Number: _____

Welcome to Melissa G. Whitten "Humble Beginnings" Community Garden (the "**Garden**"). City of Avenal (the "**Licensee**") is the landowner. The garden committee and garden manager comprised of Avenal Citizens will oversee the Melissa G. Whitten, "Humble Beginnings" Community Garden. The "**Garden Manager**" of the Garden will be the enforce the Garden Rules. This document is a legal contract between you and the Licensee.

The Community Garden Agreement outlines details that the Gardeners will not oppose, protest, or act unreasonably towards the termination of the gardener's rights under this agreement.

1. **TEMPORARY RIGHT TO GARDEN**

1.1 **Plot.** You have the temporary right to garden in plot(s) ___ (the "**Plot**") in the Garden. Your immediate family members may garden with you as your guests. You may use the Plot from Dawn to Dusk. You will have the chance to renew your membership on an annual basis and keep your plot for as long as the garden is running at that location and that you are following the Garden Rules.

1.2 **No Refund.** You understand that you will not get a refund or reimbursement for your expense, or any other payment if you decide not to garden or if the Licensee terminates your right to garden, even if you spend a lot of time and money on the garden. You understand that only you and no one else, including your family, has any rights under this Agreement.

1.3 **Fee.** When you sign this document, you will pay a fee of $10 per month to use the Plot, due no later than the 5th of each month. You understand that we may increase the fee in future years.

1.4 **No Transfer.** You cannot let anyone other than your immediate family garden here unless the Garden Manager gives our agreement in writing.

2. LIABILITY WAIVER, RELEASE, INDEMNIFICATION AND ACKNOWLEDGEMENTS

2.1 **Awareness of Risk.** You understand that participating in the Garden has a risk of death or injury to yourself or your guests and damage to your personal property. The risks could be caused by you, other gardeners, or the Licensee. The risk could also come 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 and Waiver and Release of Claims.** In exchange for your right to participate in the Garden, you agree to take on the risk of harm even if the potential harm is caused by someone else (In legal terms, you agree to "**assume the risk**"). You also agree to give up ("**waive**") any right you may have to sue or otherwise attempt to collect money from the Licensee, Garden Manager, their board members, employees, volunteers, or anyone acting on their behalf (referred to altogether as "**Released Parties**") for any losses or damages resulting from death, injury, or personal property damage to you, anyone else, or any personal property, that occurs while you or your guests are in the Garden. (In legal terms, you "**waive and release all claims**" against the Released Parties). You understand that the Licensee would not permit you to participate in the Garden without your agreeing to these waivers and releases.

2.3 **Medical Care Waiver.** You give up any right to sue or otherwise attempt to collect money from ("**waive and release any claim from**") the Release Parties arising out of any first aid, treatment, or medical services, including the lack of such or timing of such, given in connection with your participation in the Garden. You understand that you are not covered by or eligible for any insurance, health care, workers' compensation, or any other benefits maintained by Licensee.

2.4 **Indemnification.** You are responsible for any damages or losses suffered by the Licensee that are caused by you or your guests' actions.

2.5 **Publicity.** You agree to allow the Licensee or Garden Manager to use any photograph, interview, 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 guests' participation in the Garden. You agree that you do not have to inspect or approve the finished project and you are not entitled to any compensation for the finished product.

3. TERMINATION

3.1 **Failure to Comply with Gardener Agreement or Garden Rules.** You confirm that you have read a copy of the Garden Rules attached to this agreement and you will comply with them. If you fail to obey the Gardener Agreement or the Garden Rules, the Licensee can terminate your right to garden.

4. OTHER PROVISIONS

4.1 **Entire Agreement, Severability and Modification.** If any part of this Gardener Agreement is ineffective, the remaining portions of the Gardener Agreement remain in effect. Any changes to this Agreement must be in writing and signed by you and the Licensee.

4.2 The Gardener fully understands these agreements terms and conditions and has signed this agreement under their own free will in a clear state of mind.

PLACE AN "X" UNDER THE PLOT SIZE YOU WANT:

PLOT SIZE	PLOT SIZE - ADA	PLOT SIZE	PLOT SIZE	PLOT SIZE
8 - 4' X 4'	1 - 4' X 6'	5 - 4' X 8'	6 - 4' X 12'	1 - 4' X 20'

We have a limited # of plots of various sizes – they will be rented on a first come first served basis.

GARDENER

By: _____
(signature)
Name: _____

Date: _____

ATTACHMENT: Garden Rules

CITY OF AVENAL("LICENSEE")

By: _____
(signature)
Name: _____

Date: _____

COMMUNITY GARDEN - GARDEN RULES

Community Garden Rules

This document sets out the rules that govern the MELISSA G. WHITTEN, "HUMBLE BEGININGS" COMMUNITY GARDEN (the "**Garden**"). These Rules are intended to help all our Gardeners grow fresh, healthy food in a thriving garden, to help create a sense of community among our gardeners, and to help the garden to be a good neighbor.

Every person who has a plot in the Garden (called "**Gardeners**") must sign a gardener agreement with the Licensee in which the Gardener agrees to comply with these Rules.

1. ACCESS TO THE GARDEN	
Season:	The Garden is open and accessible all year.
Hours:	Gardeners may only be in the Garden between dawn to dusk.
Keys and Security:	Where applicable, the Garden Manager will give each Gardener the combination or code to open the lock for access shed/toolbox and entrance gate. On leaving the Garden, Gardeners are responsible for locking the shed/toolbox if there are no other individuals in the Garden. Gardeners will follow any additional security guidelines that may be announced by the Garden Manager.

2. GARDEN PLOTS	
Use of Own Plot:	Gardeners may use only the plots assigned to them by the Garden Manager. Gardeners will maintain their plants within their plots and will trim any plants that extend into neighboring plots or into common areas. Gardeners may not alter the dimensions of their plot.
Plantings:	Gardeners may plant vegetables, fruits, and flowers. Gardeners may not maintain plantings or plant-supporting structures that impede the security of the garden or impede adjacent gardeners' access to sunlight by the nature of their height, material or density. Gardeners may not grow any plants above 4 feet in height.

Supplies:	Gardeners are solely responsible for the planning and management of their own plots, including providing their own seeds, plants, organic fertilizer, and any tools not provided by Licensee, Garden Manager or Gardeners collectively.

Organic Methods:	Gardeners will garden organically. Gardeners will check with the Garden Manager before applying any fertilizers, pesticides, herbicides, or rodenticides, even if labeled "organic." Use of compost, organic mulch, and weeding is always acceptable.
Water:	Each Gardener is responsible for watering his or her own plot using the hose provided by Licensee. Gardeners will not overwater their plants or leave a hose unattended.
Tools:	Gardeners may bring their own tools into the Garden to use in their plots, but the Garden Manager or Licensee are not responsible for the loss of these tools. Gardeners are responsible for any damage caused by tools they bring into the Garden and so should use them with care. Gardeners may not use any power tools, such as those that require gasoline, batteries, or electricity.
Plot Maintenance and Trash:	Gardeners will maintain their plots and adjacent paths in a clean and neat fashion, promptly removing any weeds, overgrowth, or other waste from their plot. Gardeners will promptly harvest edible plants. Gardeners are responsible for disposing of their own trash, trays, weeds in the proper receptacles provided by the Licensee.
Yearly Clean- up:	Gardeners will perform monthly clean-up on their plots on a date to be determined by the Garden Manager.
Compost:	Gardeners will place any organic waste such as weeds, dead plants, or rotten produce, in the compost pile designated by the Garden Manager. The gardeners should cut any organic waste to 4'' length before putting it into a compost bin and follow other compost rules as designated by the Garden Manager.
Absence:	Gardeners may not abandon their plots. Abandonment means failing to maintain a plot for 3 weeks. If a Gardener expects to be away from the Garden for more than 3 weeks, but less than 2 months, he or she must inform Garden Manager. The Gardener and the Garden Manager will then determine an alternative, such as a temporary substitute, acceptable to both. Gardeners who are away for more than 2 months will lose their plots.
No Personal Property:	Gardeners may not keep any personal property on their plots or in the Garden when they are not in the Garden. If Gardeners leave personal property on their plots after the termination of their participation in the Garden, Licensee can keep and sell the abandoned property.

3. COMMON AREAS AND RESPONSIBILITIES	
Common Tools:	Licensee, Garden Manager or Gardeners collectively may provide a set of tools in a storage shed in the Garden for use by all Gardeners (the "Common Tools"). Gardeners will return the Common Tools to the storage shed as soon as they are finished using them. If a Common Tool appears dangerous or in disrepair, Gardener will not use the Common Tool and inform Garden Manager immediately.

Common Responsibilities:	Gardeners will keep clean and neat any common areas, such as pathways and storage sheds. Gardeners will promptly report any concerns about the safety of the Garden to the Garden Manager. If there is vandalism, storm damage, or other damage to the Garden, all Gardeners are expected to help in cleaning up and restoring the Garden to its prior condition, but the Licensee will bear the cost of the repairs.
Garden Workdays:	All Gardeners must participate in 4 Garden Workdays per year, where they participate in cleaning and maintaining the Garden. The Garden Manager will organize these sessions on a quarterly basis (January, April, July and October)

4. COMMUNICATION	
Garden Management:	The Garden Manager has complete authority to interpret the Rules and make decisions.
Communication	The Garden Manager may designate two members as "Garden Coordinators" to be the official point of contact for the Licensee and Garden Manager with the Gardeners.
Contact Information:	The Garden Manager will provide a list of all gardeners' contact information and plot assignment. Gardeners must tell the Garden Manager of any change in their contact e-mail addresses or phone numbers.
Annual Meeting/ Registration:	Once a year, the Garden Manager will invite all Gardeners to an annual meeting to notify Gardeners of any changes made in how the Garden operates, these Rules, in assignments of plots, to discuss any issues or concerns.

5. CONDUCT	
General Conduct:	Gardeners are expected to be civil, honest, and cooperative in dealing with the Licensee, Garden Manager, Garden neighbors, other Gardeners, and guests of other Gardeners.
Guests:	Gardeners may bring guests, including children, into the Garden, provided that the guests comply with the Rules. Gardeners will supervise any child under the age of sixteen. Gardeners will be responsible for the conduct of children and their guests including making sure they do not damage or interfere with activities on other plots or otherwise engage in inappropriate conduct. Guest violations of these Rules are treated as violations by the Gardener.
Respect Others' Property:	Gardeners may not enter other plots, use another Gardener's tools or supplies, or harvest another Gardener's produce, without the explicit permission of the other Gardener.
No Illegal Plants:	Gardeners may not grow any plants considered illegal or invasive under provincial or federal law.
No Cannabis or Marijuana Plants	Notwithstanding any legalization of cannabis or marijuana, gardeners may not grow cannabis or marijuana in the Garden.
No Smoking:	Gardeners may not smoke in the Garden.
No Alcohol or Drug Use:	Gardeners may not consume or use alcohol or illegal drugs while on the Garden premises. Gardeners may not bring alcohol or illegal drugs onto the Garden premises.
No Loud Music:	Gardeners may not play music or the radio loud enough to be a nuisance to other Gardeners or to the Garden's neighbors.
No Sales:	The Garden is for personal, non-commercial use only; Gardeners may not sell any produce or flowers grown in the Garden. However, Baskets will be attached to the fence and Gardeners are encouraged to share their harvest with the community and other Gardeners.
Signs	Gardner's can place a small personal sign to identify the Gardener's plot inside the plot.

6. PROBLEMS	
Dispute Resolution:	Gardeners will raise with the Garden Manager and Garden Coordinator any disputes about the Garden or with fellow Gardeners. The Garden Manager and Garden Coordinators have the power to hear these disputes and will resolve them in the best interest of the Garden. The Licensee in the event a resolution cannot be found will have final authority over all disputes.
Rules Violation:	Gardeners may lose their rights to participate in the Garden if they fail to comply with any of these Rules, or if a Gardener: 1) endangers other Gardeners, Garden Manager, Licensee, neighbors, or other individuals. 2) takes or uses another Gardener's tools, supplies, or produce without permission. 3) encroaches on Garden neighbor's property. 4) grows illegal plants; or 5) uses alcohol or illegal drugs in the Garden. The Licensee may, at its discretion, terminate immediately the Gardener's right to participate in the Garden. The Gardener must leave the Garden by the end of Garden hours on the termination day and may not re-enter without Licensee's or Garden Manager's permission. If a Gardener violates any other of these Rules, Garden Manager will inform Gardener of the violation by sending an email to Gardener or putting a red flag on Gardener's plot. Gardener will have one week to correct the violation. If the violation is not corrected the Garden Manager or the Licensee may, at its discretion, terminate the Gardener's Agreement. After termination, Gardener will have two weeks to harvest and clean up the plot.
No Limit on Licensee Rights:	The process described in this Section 6 does not (i) limit the Licensee's or Garden Manager's ability to enforce its rights under these Rules; (ii) limit or qualify a Gardener's obligation to comply with applicable law or the Rules; or (iii) limit the Licensee's or Garden Manager's right to notify and/or involve government authorities as it may determine.
No Refund or Other Claims:	Gardeners under no circumstances will be entitled, directly or indirectly, to any refunds, any direct, incidental, consequential, punitive, or other damages, any other forms of compensation from the Licensee or Garden Manager.

7. OTHER PROVISIONS	
Changes in the Rules:	Licensee may amend these Rules in its discretion without advance notice. Licensee will provide all Gardeners with a copy of the current Rules, will post a copy of the current Rules at the Garden, and will summarize any changes in the next annual meeting. The Gardeners, through the Garden Managers and Garden Coordinators, may propose adjustments to the Rules for the Licensee's consideration.
Translation Not Binding:	Licensee may provide Gardeners with a translation of these Rules and related summaries or other explanatory materials. Licensee does so as a convenience. Should there be any ambiguity or conflict between the English and the translated versions of these documents, the English language versions will control. They, not the translations, are the official, legally binding documents.