

**BASIC NEEDS, INC. OF SOUTH WASHINGTON COUNTY
COMMUNITY GARDEN
USE, WAIVER OF LIABILITY, RELEASE AND INDEMNIFICATION**

Gardener Names: _____ (together, "Gardener")
Address: _____
City and State: _____
Phone: _____
E-Mail: _____
Emergency Contact: Name: _____ Phone: _____

Welcome to the Community Garden ("Garden") sponsored by Basic Needs, Inc. of South Washington County ("Basic Needs") and AH Auto, Inc. d/b/a Newport Collision Center ("Landowner"). This document, which is a legal contract between Gardener and Basic Needs, describes the terms under which Gardener may use one or more plots in the Garden. By signing this agreement, Gardener confirms that Gardener understands and agrees to its terms, including the waiver terms, set out below. Gardener understands that by signing this agreement, Gardener is giving up certain legal rights and represents that Gardener is entering into this agreement of Gardener's own free will.

1. GARDEN PLOT.

- a. **Plot.** Gardener has the right to use plot number(s) _____ (the "Plot," whether one or more). Gardener may use the Plot from May 15 until October 15 of the year 2022.
- b. **Fee.** When Gardener signs this document, Gardener will pay a fee of \$0.00 to use the Plot. Gardener understands that Basic Needs may increase the fee in future years.
- c. **Rules.** Gardener acknowledges that Gardener has received the Gardening Rules applicable to the Garden, has reviewed all such rules, understands all rules or has had a full and ample opportunity to ask questions of Basic Needs, and will comply with the Garden Rules at all times. Gardener understands that the Garden Rules are established at the sole discretion of Basic Needs and may be changed at any time with reasonable notice.
- d. **No Transfers.** Gardener may not sell or lease Gardener's right to use the Plot, or otherwise allow anyone to use it on a regular basis, without the prior written consent of Basic Needs.

2. LIABILITY WAIVER, RELEASE, INDEMNIFICATION AND ACKNOWLEDGMENTS.

- a. **Awareness of Risk.** Gardener understands that Gardener's participation in the Garden has inherent risks, including injury or death to Gardener and Gardener's guests and to damage of 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 guests, Basic Needs' employees or volunteers, or Landowner's employees. These risks may arise from the condition of the land where the Garden is located, the equipment or tools used or available at the Garden, or the weather or other environmental or local conditions. Gardener acknowledges (i) that hazardous conditions may exist at the Garden and (ii) the Garden is not staffed nor are gardeners supervised by Basic Needs.
- b. **Assumption of Risk.** Gardener assumes full responsibility for any and all risks of death, bodily injury or property damage, including without limitation those identified at Paragraph 2(a) herein, 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 the negligence of other individuals. Gardener understands that Gardener is solely responsible for Gardener's own safety and the safety of Gardener's guests and agrees to take all reasonable precautions to ensure such safety.
- c. **LIMITATION OF LIABILITY OF BASIC NEEDS.** GARDENER EXPRESSLY ASSUMES THE RISK OF SPENDING MONEY AND TIME ON THE PLOT, EVEN IF SUCH INVESTMENT IS SUBSTANTIAL. FURTHER, GARDENER UNDERSTANDS AND ACKNOWLEDGES THAT VEGETABLES, FLOWERS, OR OTHER PRODUCTS DONATED TO BASIC NEEDS WILL BE FURTHER DONATED OR SOLD, AT THE SOLE DISCRETION OF BASIC NEEDS, AND THAT UNDER NO CIRCUMSTANCES WILL GARDENER BE COMPENSATED FOR SUCH VEGETABLES, FLOWERS, OR OTHER PRODUCTS REGARDLESS OF THEIR ULTIMATE DISPOSITION. IN NO EVENT SHALL BASIC NEEDS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, EVEN IF BASIC NEEDS HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. BASIC NEEDS MAKES NO REPRESENTATIONS CONCERNING THE QUALITY OF ANY MATERIALS, SUPPLIES, OR EQUIPMENT PROVIDED AT THE GARDEN OR THE QUALITY OR QUANTITY OF VEGETABLES, FLOWERS, OR OTHER PRODUCTS DERIVED FROM THE PLOT. BASIC NEEDS IS NOT RESPONSIBLE FOR ANY LOSS AS A RESULT OF THEFT.
- d. **WAIVER AND RELEASE OF CLAIMS.** GARDENER WAIVES AND RELEASES ALL CLAIMS AGAINST LANDOWNER AND ITS DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, AND AFFILIATES AND BASIC NEEDS AND

ITS DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, AND AFFILIATES (TOGETHER, THE “RELEASED PARTIES”), WHETHER EXISTING NOW OR ARISING IN THE FUTURE, FOR ANY AND ALL LIABILITY, LOSS, DAMAGE, AND CLAIMS RESULTING FROM OR ARISING OUT OF GARDENER’S USE OF THE GARDEN EXCEPT THAT GARDENER DOES NOT WAIVE CLAIMS ARISING FROM THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF BASIC NEEDS OR LANDOWNER.

- e. **INDEMNIFICATION.** GARDENER WILL INDEMNIFY AND HOLD HARMLESS THE RELEASED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, EXPENSES, AND ATTORNEY FEES (TOGETHER, “LOSSES”) WHICH ARISE FROM (i) GARDENER’S OR GARDENER’S GUEST’S ACTS OR OMISSIONS RELATED TO THE USE OF THE GARDEN OR (ii) GARDENER’S BREACH OF THIS AGREEMENT.

3. TERMINATION.

- a. **Violation of Garden Rules.** Basic Needs may terminate Gardener’s right to use the Plot at any time if Gardener fails to comply with this agreement or with the Garden Rules.
- b. **Termination of Lease.** Gardener’s right to use the Plot terminates upon the termination of the lease between Basic Needs and Landowner.
- c. **Personal License; No Refunds or Other Payments.** Gardener acknowledges that Gardener’s right to use the Plot is a license, personal to Gardener, that is revocable by Basic Needs. Gardener understands that Gardener will not receive a refund, reimbursement of expenses, or other payment as a result of the termination of this agreement or Gardener’s license to use the Plot.

4. OTHER PROVISIONS.

- a. **Entire Agreement, Severability, Modification.** This agreement, together with the Garden Rules, comprises the complete agreement between Gardener and Basic Needs concerning the Garden and supersedes any prior documents or discussions relating to the subject matter or this agreement. If any provision of 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 Basic Needs.
- b. **Multiple Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one and the same agreement.
- c. **Assignability; Third-Party Beneficiaries.** This the rights and obligations of the parties under this agreement shall be binding upon and inure to the benefit of the parties’ respective successors, assigns, heirs, executors, administrators and legal representatives. Landowner and each Released Party are third-party beneficiaries of Paragraph 2(d)-(e) of this agreement.

GARDENER:

BASIC NEEDS:

Signature

Signature

Signature

Title

Date: _____

Date: _____

Community Garden Rules

Growing for Good Community Garden (the “Garden”), sponsored by Basic Needs, Inc. of South Washington County (the “Company”), is a space for gardening, education, and community service intended to provide a local source of organic food for the community.

All participants must agree to abide by the following rules as a condition to accessing the Garden unsupervised:

1. **Permissible Plants and Timing.** Participants may plant fruits, vegetables, herbs, and/or flowers. Participants may not grow illegal plants, controlled substances, shrubs, or trees. Participants must plant in each plot by May 31 unless they have prior written consent from the Company. All plots must be cleared by October 15. Any and all materials remaining in the Garden on October 15 are forfeited and may be destroyed, retained, or otherwise disposed of, all in the Company’s sole discretion.
2. **Harvesting.** All crops must be harvested when ripe. Participants should contact the Company if they do not wish to personally consume all ripe produce. The Company reserves the right to distribute excess harvest in any manner that it, in its sole discretion, deems advisable.
3. **Abandoned Plots.** A plot will be deemed abandoned if (i) it is not planted by May 31; (ii) it shows signs of inadequate maintenance or attention, including but not limited to excessive weeds, untended plants, overripe or rotting produce; or (iii) the participant does not timely respond to the Company’s communications.
4. **Garden Maintenance and Trash Removal.** Participants must remove all trash, grass, weeds, and debris from all Garden areas, including but not limited to walkways (use composting bins). Participants must ensure that their plants and associated products (i.e., tomato cages) remain within the boundaries of their plot(s) only. Participants may not permit their plants to vine into the aisles or other plots. Participants must devote reasonable time to maintain and/or improve the Garden throughout the year as requested by the Company. Participants must immediately inform the Company of any hazards or needs for maintenance.
5. **Tools, Equipment, Water.** Unless otherwise provided at the Garden, participants must pails for watering to the Garden to provide for the needs of their plot(s). Participants must provide their own tools, which are not permitted to be stored at the Garden.
6. **Respecting Others.** Participants may only use organic gardening methods. Participants may not use fertilizers or other chemicals that might in any way affect other plots or the Garden. Participants may only place compostable materials generated from the Garden into compost bins unless otherwise approved in advance by the Company. Participants may not dispose of weeds, produce, trash, or other debris in the plot of another participant or in any other area of the Garden. Participants may not damage, cut, destroy, or harvest any plant not located in the participant’s own plot(s).

7. **Disagreements Between Participants.** Participants must refer all conflicts with other participants to the Company. The Company will resolve all conflicts in its sole discretion and all decisions of the Company shall be final and binding on all involved Participants.
8. **Accessibility.** The Garden is accessible from the southwest corner of Tinucci's parking lot. Participants must be respectful of Tinucci's and Newport Collision's property. Each participant will receive a code for the gate lock. Participant must not share the code with non-participants.
9. **Children and Pets.** Participants must supervise children at all times. Pets are not permitted.
10. **Assignability.** Participants' rights and responsibilities related to the Garden are not transferrable without the prior written consent of the Company. However, if a participant is unable to tend to its plot(s), then such participant may give another permission to tend the participant's plot(s). Such permission must be given in a writing including the time period during which it is effective, which shall not exceed 2 weeks total over the course of the season.
11. **Company Rights.** The Company may access the Garden at any time. The Company may harvest ripe produce if it appears to the Company, in its sole discretion, that the produce is not likely to be harvested by the participant within a reasonable amount of time. Such harvested produce shall immediately become solely the property of the Company. The Company may weed or otherwise tend to any plot if, in the Company's sole discretion, such weeding or tending is necessary and is not likely to be performed by the participant within a reasonable amount of time.
12. **Enforcement.** In case of a rule violation, the Company will contact the participant by email describing the problem and the requested corrective action and providing a deadline by which such corrective action must be taken. If the participant does not correct the problem by the given deadline, participant's plot(s) will be considered abandoned and will be reassigned. Repeated violations of this rule by a participant may result in the immediate forfeiture of the plot(s). Such decisions will be made in the Company's sole discretion.
13. **Non-Discrimination.** The Company does not discriminate among participants on the basis of age, sex, sexual orientation, religion, disability, race, color, creed, or any other unlawful basis. Participant agrees that it will not discriminate against other participants on the basis of age, sex, sexual orientation, religion, disability, race, color, creed, or any other unlawful basis.
14. **Non-Exclusivity.** These rules are subject to change by the Company in its sole discretion upon 7 days' notice to participants by phone, email, or posting at the Garden.
15. **Waiver.** No consent or waiver, express or implied, by the Company will be deemed or construed to be a continuing consent or waiver with respect to the same rule or a consent or waiver with respect to any other rule. Failure on the part of the Company to complain of any act or failure to act of a participant will not be deemed or constitute a waiver by the Company of any rights hereunder.

Signature: _____ Email Address: _____
Printed Name: _____ Telephone Number: _____