WMU COMMUNITY GARDEN – WESTERN MICHIGAN UNIVERSITY – OFFICE FOR SUSTAINABILITY

FACILITY USE AGREEMENT

THIS Agreement is made ______, 2019, between the Board of Trustees of Western Michigan University on behalf of its Office of Sustainability (“WMU”) and ______________ (“Gardener”) (collectively, the “Parties”), regarding WMU’s grant of a limited license to Gardener for use of a portion of the WMU Community Garden, Plot __________ (“Plot”) for the purposes described in Section 2 (“License”). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions.** The Parties defined herein include each Party’s governing body, employees, agents, participants, guests, successors, assigns, and any individual or entity acting on behalf of that Party.

2. **License.** WMU hereby grants Gardener a non-exclusive, revocable license (“License”) to use the approximately ___ square foot plot (“Plot”) situated in the WMU Community Garden (depicted on Exhibit C), per the terms and conditions herein. WMU will not supply goods or services related to the Agreement/License. Gardener agrees to pay all amounts as set forth in this Agreement and in Exhibit A.

   Gardener accepts the Plot in its condition, “as is” and “where is,” without any further representation or warranty by WMU as to its condition, safety, or appropriateness for any activity. After Use, Gardener will return Plot to WMU in the same condition in which it was provided, reasonable wear and tear excepted. Gardener will be billed for any other damages or losses.

3. **Term.** The License shall commence on __________, 2019 and expire on __________, 2019 (“Term”), for occupancy of the Plot by Gardener, Monday through Sunday from dawn until dusk (“Use Periods”), unless earlier terminated by either Party according to the terms of this Agreement.

4. **Fees.** Gardener agrees to pay WMU a fee (“License Fee”) equal to: For Nonstudents- Small Plots: $25 per season and Large Plots: $35 per season. For Students- Small Plots: $20 per season and Large Plots: $30 per season. Payments are due on or before the first day of Garden Orientation. Gardener’s payment of License Fee to WMU is a precondition to Gardener’s use of the Plot.

5. **Revocation; Termination.**
   a. WMU may, in its sole discretion, upon seven (7) days’ prior notice to Gardener, terminate the Agreement and License for any reason, or for no reason.
   b. WMU may also terminate Agreement and revoke License, upon notice to Gardener, without penalty, if Gardener fails to perform, or is in default of, its obligations under this Agreement (including Exhibit A). Gardener shall immediately vacate the Garden, returning the Plot to WMU in as good a condition as upon the Commencement Date, reasonable wear and tear excepted.
   c. WMU may immediately terminate this License if it cannot perform any of its terms by reason of an act of God or other unforeseen or uncontrollable event, which, in WMU’s sole discretion, renders the facility and/or equipment unusable.
   d. Upon Termination, Gardener shall promptly pay WMU all sums due and owing hereunder. Termination shall not affect any liability or obligation either Party accrued prior to Termination. Upon expiration or termination of Agreement/License, Gardener shall return Plot to WMU in as good a condition as it was at Commencement of Term, reasonable wear and tear excepted.
6. **No Assignment.** Gardener may not assign all or any portion of its rights under this Agreement without the prior written consent of WMU, which consent may be withheld by WMU in its sole discretion.

7. **Compliance with Laws.** Gardener shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations. Gardener's failure to comply with any of the foregoing is a breach of this Agreement, at which point, WMU may immediately terminate this Agreement.

8. **Compliance with WMU Rules.** Gardener shall abide by all WMU rules and regulations, including, but not limited to, the prohibition of consumption of alcoholic beverages and/or smoking (to include electronic cigarettes/vaping/Juuls) on any part of WMU’s campus, including the Garden. Gardener shall at all times follow the WMU Community Garden Rules, as set forth in Exhibit A.

9. **Compliance with Fire and Safety Codes.** Gardener agrees not to bring into Garden any material, substances, equipment, or objects which are likely to endanger the life of, or cause bodily injury to, any person on the premises or which is likely to constitute a hazard to WMU's property, including but not limited to any illegal or invasive plants. WMU has the sole and exclusive right to determine whether such material is allowed on the premises and has the right to call for its immediate removal. Under NO circumstances are flammable materials, gasoline vehicles, or use of open flames allowed.

10. **Responsibility for Property.** Gardener will set up, install, and remove its own equipment and property at its own expense. WMU is in no way liable for Gardener's property or equipment, including but not limited to damage, vandalism or theft of same. Gardener shall not behave in an unsafe, careless, or negligent manner in or near Garden or permit any act likely to injure or harm any person(s) or to mar, deface, or injure any property of WMU or other gardeners. Gardener shall not allow any nuisance or illegal act to occur on the Plot.

11. **Right to Enter.** All facilities and/or premises, including locks, gates and fences, shall, at all times, be under control of WMU. WMU and its agents shall, at all times, have the right to enter any and all areas of Garden. During the Term, Gardener may only occupy Plot and common areas of the Garden as designated in Exhibit A. Gardener has no rights to enter any other area, except as designated by WMU.

12. **Affiliation, Use of Service Marks, Trademarks.** Except as provided in this Agreement, WMU and Gardener shall not be associated or affiliated in any way. Gardener shall not use WMU’s name, logo, seal or brand without WMU’s prior written consent.

13. **Choice of Law and Dispute Resolution.** This Agreement and License shall be governed by and construed in accordance with the laws of the State of Michigan.

14. **Independent Contractor.** Gardener is an independent contractor. Gardener is not acting as an employee, agent, partner, joint venturer, or lessee of WMU. Nothing in this Agreement confers any express or implied right, power, or authority for either Party to enter into any agreement or commitment, express or implied, or to incur any obligation or liability, on behalf of the other Party.

15. **Entire Agreement.** This Agreement contains the entire agreement between the parties. Should the language in Agreement conflict with any other writing, this Agreement shall govern. Any and all modifications must be in writing, signed, and dated by each party's authorized signatories.
16. **Insurance; Indemnification; Subrogation.** Gardener agrees to sign the Waiver attached as Exhibit B.

17. **Acceptance, Use, and Maintenance of Plot.**

(a) Gardener may use the Plot solely for the purpose of planting, maintaining, and harvesting produce (“Permitted Use”). Gardener may access the Plot from Monday through Sunday, from dawn until dusk; provided, however, that Gardener shall not have access to the Plot at those times, if any, which WMU determines in its sole judgment, that the WMU Community Garden is closed.

(b) Gardener agrees the Plot shall be used exclusively for the Permitted Use. If Gardener uses the Plot for other than the Permitted Use, WMU may immediately terminate Agreement by delivery of notice to Gardener.

(c) Gardener accepts and acknowledges the Plot is provided in “as is” condition. Gardener is responsible for all maintenance, supplies, and cleaning of Plot. Other than Permitted Use, Gardener shall make no alterations, additions or improvements to the Plot or Garden without WMU’s prior written consent.

18. **Notices.** All notices under this License shall be deemed effective if made to the Parties’ addresses set forth below, either by personal delivery, by certified US Mail, postage prepaid, or by nationally recognized overnight courier via next day delivery. Notice to Gardener shall also be effective if posted by WMU conspicuously on the Plot.

19. **Limitation of Liability.** WMU shall not be liable to Gardener for any personal injury, property damage or loss, or loss of life caused by, arising out of, or in connection with the Agreement, regardless of how such injury or damage may be caused. This limitation includes injury or damage due to any act or omission of WMU, whether arising from breach of contract or warranty, negligence, gross negligence, premises liability, strict or products liability or any other legal theory.

20. **Indemnification.** Gardener shall indemnify, save, and hold harmless WMU against any and all claims, demands, actions, causes of action, costs, or penalties, of any nature or character, relating to the performance or non-performance of the rights, duties and obligations under License/Agreement.

21. **Waiver.** No waiver of any provision of this Agreement is effective unless made in writing and signed by both Parties. The failure of any party to require performance of any part of Agreement, or the waiver of any breach of this Agreement, shall not prevent subsequent enforcement of said term or obligation, nor be deemed a waiver of any subsequent breach.

By signing and dating below, I confirm that the above terms and conditions are in accordance with my understanding of the Parties’ Agreement.

Signed: 

_________________________, Gardener 

PRINT NAME: ______________________________

Date: _________________, 2019

Board of Trustees of Western Michigan University on behalf of its Office of Sustainability

By: ______________________________

Michele L. Cole, Director of WMU Business Services

Date: _________________, 2019
Exhibit A

Rules, Terms, and Conditions for Participation

Breaking any rules, terms, and conditions is cause for exclusion from the Garden and loss of your plot. WMU may also terminate this contract at will.

If accepted as a gardener, I will abide by the above rules, terms, and conditions:

1. I use this garden at the sole discretion of WMU Community Garden. I agree to abide by its policies and practices as well as the WMU Code of Student Conduct.

2. The fee for the use of Garden is $25 per small plot, and $35 per large plot, per year (January 1 – December 31), due on or before (January 1). Fee for half a year after (beginning July 1 or later) is ($20.00). The Office for Sustainability will accept only cash as payment. Cash must be delivered to a representative of the Office for Sustainability before planting anything in the garden. There are no refunds.

3. My plot is 5 x 15 feet (small plot) or 5 x 30 feet (large plot). I will not expand my plot beyond these measurements or into paths or other plots. I will keep all of my plants entirely within my Garden Plot. I will plant tall crops where they will not shade neighboring plots and will not allow any plants to grow more than six feet high.

4. I will begin planting on or before June 1st and keep my plot planted and maintained throughout the growing season. I will clean up my plot by November 1st.

5. I understand that if my plot becomes neglected, I will be given two weeks’ notice to clean it up. If not cleaned up after two weeks notice, the plot will be reassigned or tilled in and I will lose my deposit. If I must abandon my plot, I will first notify the WMU Office for Sustainability.

6. I will keep weeds in my Plot and surrounding area under control. I will keep my plot free of pests and diseases. I will not apply any pesticides in the garden without the approval of the garden manager.

7. I will help prevent and remove trash and litter from my Plot and Garden common areas.

8. I will NOT use fertilizers, insecticides or weed repellents that will affect other plots.

9. I will NOT grow invasive or illegal plants. I will not smoke, drink alcoholic beverages, use illegal drugs, or gamble in the garden. I will not come to garden while under the influence of alcohol or illegal drugs.

10. I will NOT bring weapons or pets or other animals to the garden.

11. I will keep my plot, paths, and surrounding areas clean and neat. I will completely separate my trash into three groups: 1) dead plants, leaves, and other green waste plant parts; 2) rocks, stones, and asphalt; and 3) paper, plastic, cardboard, wood, metal, etc. I will put each type of trash only in the areas designated specifically for each. Anything I bring from my home I will take back home. I will not bring household trash and leave it at the WMU Community Garden.
12. Guests and visitors, including children, may enter the garden only if I accompany them. They must follow all rules, terms, and conditions stated here. I will supervise my children at all times when they are in the garden. I am solely responsible for the behavior of my guests.

13. The garden manager will assign me general garden maintenance tasks each month, and I must complete them by the end of the month that I am assigned them.

14. I will water my plot according to water-wise guidelines. (If I use more than recommended amount of water, I will pay a fee each month to cover the cost of this additional water.)

15. If offered, I will attend the regular (bi-monthly) garden club meetings. If workshops are offered, I will attend at least one on each of the following topics: soil preparation and maintenance, watering the vegetable garden, and pest and disease control.

16. I will not make duplicate keys of any Garden locks or give my key or lock combination to another person.

17. I will pick only my own crops unless given permission by other plot owner. I will not take food or plants from other gardeners’ plots. I will not take anything from Garden that is not rightfully mine.

18. I will respect other gardeners. I will not use abusive or profane language or discriminate against others.

19. I will work to keep the garden a happy, secure, and enjoyable place where all participants can garden and socialize peacefully in a neighborly manner.

20. I acknowledge that if I violate any of the above rules:
   a. I will receive one verbal warning from the garden manager.
   b. If no response or correction is made within two weeks, I will receive written notice.
   c. If the situation is still not corrected within two weeks of written notice, I will be deemed to have forfeited my gardening privileges and plot.
   d. In future years, I will only be allowed to reapply for a Garden Plot after a written application and at the discretion of WMU and the Garden Manager.

I have read and understand the application and accept these rules, terms, and conditions stated above for the participation in the WMU Community Garden.

Signed: ____________________________, Gardener                     Date: ______________

Approved: _______________________________ Garden Manager    Date: ______________
Assumption of Risk and Release of Liability / WAIVER OF LIABILITY

I understand that WMU, its Office for Sustainability, and WMU Community Garden are NOT responsible for my actions. I THEREFORE AGREE TO HOLD THEM HARMLESS FOR ANY LIABILITY, DAMAGE, LOSS OR CLAIM THAT OCCURS IN CONNECTION WITH THE License OF THE GARDEN BY ME OR MY GUESTS.

Assumption of Risk

In consideration for being allowed to participate in the WMU Community Garden at Western Michigan University (the “Garden”), I hereby acknowledge my voluntary and informed assumption of full responsibility and liability regarding any injuries I may incur coincident to my participation/use of the Garden. I am aware of and understand that such use/participation entails certain anticipated and unanticipated risks, and I assume all risks associated therewith as my responsibility.

Release of Liability

I waive, release, discharge and hold harmless Western Michigan University, its Board of Trustees, employees, volunteers, agents, representatives, and student organizations (collectively, the “University”) from and against any and all liability, claims, costs, expenses, bodily or personal injuries or losses, and/or death arising out of, in association with, or related in any way to my participation/use of the Garden, including those resulting from negligence by the University.

I have carefully read this Assumption of Risk and Release of Liability and fully understand its contents. I am aware this document is a contract between me and the University, and I sign it of my own free will, intending it to bind my representatives, heirs, and assigns.

Signature: _______________________________ Date: _______________________________

Printed Name: ______________________ Phone: ______________________ Email Address: ______________________

Witness to Signature: ______________________ Date: ______________________
Exhibit C