**TOWN OF MINTURN, COLORADO**

**RESOLUTION NO. 10 – SERIES 2014**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE TOWN OF MINTURN TO SIGN A LEASE AGREEMENT BETWEEN THE MINTURN COMMUNITY FUND, INC. AND THE TOWN OF MINTURN FOR THE MANAGEMENT AND LEASE OF THE COMMUNITY GARDEN LOCATED AT 243 BOULDER STREET IN THE TOWN OF MINTURN, COLORADO.**

**WHEREAS**, the Minturn Community Fund (MCF) is a non-profit, tax-exempt charitable organization involved in supporting community charitable, cultural, educational, and recreational programs and events in Minturn; and

**WHEREAS**, the Town desires to work with and encourages the MCF to undertake projects, which will benefit the citizens of and visitors to Minturn; and

**WHEREAS**, the MCF would like to manage and operate the Community Garden program for the Town in order to make the facility available for the citizens of Minturn, Eagle County, and the State of Colorado and for visitors to Minturn.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO THAT THE MAYOR OR HIS DESIGNEE IS AUTHORIZED TO SIGN ON BEHALF OF THE TOWN OF MINTURN ANY AND ALL NEGOTIATED DOCUMENTS REQUIRED TO EXECUTE SAID AGREEMENT.**

INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 16TH day of April, 2014.

TOWN OF MINTURN

By: Hawthorne Flaherty
Mayor

ATTEST:

Town Clerk

TOWN OF MINTURN, COLORADO
SEAL
1904

# 2014 Lease Agreement Between
# the Town of Minturn & the Minturn Community Fund

The Town of Minturn, a Colorado Municipal Corporation, "Lessor," agrees to lease the property located at Lot 30, Block F, Bocco's Subdivision, 243 Boulder St, Minturn, Colorado for a nominal charge of $1 (one dollar) to the Minturn Community Fund (Minturn Community Gardens), "Lessee."

The leased property is to be used as a public community garden with subleased plots, to be administered by the Minturn Community Fund. This lease agreement shall commence May 1, 2014 and continue through November 1, 2014. The Minturn Community Fund agrees to pay the full cost of water used during the time the lease is active.

This lease agreement will be reviewed at the termination date stated above with the option of renewal each year in the sole discretion of the Town of Minturn. The Town of Minturn agrees to permit the Minturn Community Fund and the community gardeners participating on the leased property to hold at least one community party/event on the property.

Minturn Community Fund agrees to act lawfully and will operate at all times in accordance with the Town of Minturn Municipal Code Colorado law. The garden "Rules and Regulations" are attached to and considered part of this lease agreement.

Minturn Community Gardens will be open daily to the public. The garden's Rules and Regulations will be visibly posted at the entrance of the garden. If any member of the public acts in violation of these Rules and Regulations, they will be given a preliminary warning. If a further violation occurs, the individual will be asked to leave the property for the remainder of the day. If repeated violations occur, the individual will be officially banned from the garden.

The waiver by the Town of Minturn of any default will not be deemed to be a waiver of any other default under this Agreement. Any remedy or election under this Agreement will not be deemed exclusive, but instead, whenever legally permissible, will be cumulative with all other remedies at law or in equity.

**Construction.** The rule of strict construction does not apply to this Agreement. This Agreement shall be given reasonable construction so that the intention of the parties can be carried out.

**Public Disputes.** Any disputes arising from the public in reference to the Community Garden shall first be addressed between the Minturn Community Fund and individual or entity with dispute. If an amicable resolution is not obtained between the two parties, the Town Manager shall then be notified by the Minturn Community Fund in order to assist in the reconciliation process.

**Notice.** All notices under this Agreement to the respective parties will be made in writing and will be served by prepaid registered or certified mail, personal delivery, or facsimile with machine confirmation addressed to the respective parties at the following addresses:

**<u>If to Licensor,</u>**

By mail: Town of Minturn
PO Box 309

Minturn, CO 81645
Attn: Town Manager

By personal delivery: Town of Minturn
302 Pine St
Minturn, CO 81645

By phone: 970-827-5645
By facsimile: 970-827-5545
By email: manager@minturn.org

**If to Licensee,**
By mail: Minturn Community Fund
PO Box 279
Minturn, CO 81645

By personal delivery: Minturn Community Fund
291 Main St
Minturn, CO 81645

By phone: 970-306-6553
By email: info@minturncommunityfund.org

**No Recording.** This Agreement shall not be recorded in whole or in part. In the event this Agreement or any memorandum thereof is recorded, then this Agreement and the license granted herein shall be null and void and have no further force or effect

**Attorney Fees.** In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party will be entitled to recover all costs and expenses, included reasonable attorneys' fees.

**Choice of Law and Venue.** This Agreement will be governed by and enforced under the laws of the State of Colorado. The venue for any lawsuit between the parties shall be the District Court, Eagle County, Colorado.

**Running of Benefits and Burdens.** None of the provisions of this Agreement shall run with the land or to the Town's successors and assigns. This Agreement is solely for the benefit of the Town and shall not be assigned to a third party.

**Counterparts.** This Agreement may be executed by any number of counterparts, each of which shall be deemed an original and all of which shall constitute one Instrument with the same effect as if all parties had signed the same signature page.

**Liability.** All gardeners will be required to sign a "waiver of liability" and submit to the Town of Minturn. Minturn Community Fund agrees to hold an active general liability insurance plan in the amount of

$1,000,000 for the property during the full duration of the lease agreement with the Town named as an additionally insured.

Minturn Community Fund will not discriminate against any individual or group on the basis of sex, race, sexual orientation, religion or political affiliation. At the termination of this agreement the site will be returned to the owner in a neat and orderly condition.

Town of Minturn:

Hawkeye Flaherty 4-16-14

Hawkeye Flaherty Date
Mayor, Town of Minturn

Minturn Community Fund:
Minturn Community Gardens

4.22.14

Minturn Community Fund Date
Director

**Minturn Community Garden Rules and Regulations**

Rules and Regulations – 2014 Members of the Minturn Community Garden agree to the following:

1. Plots - Individual plots will be assigned with a priority to those who had a plot last year, then those who live in or work in Minturn and then in order of requests if there are any plots left. Plots are to be used for personal use only. Plot fees ($35 for a full plot and $20 for a half plot) are collected after acceptance and before building day to help cover garden expenses. If an individual needs to abandon a plot for any reason, the member is to contact the garden leaders.

2. Operation – The garden will operate during daylight hours, seven days a week. Members will take full responsibility for children brought to the garden. Pets are not allowed (no exceptions.) Gardeners will respect other gardeners and neighbors by not picking produce from other plots, and by complying with Town of Minturn noise ordinances. Smoking is not allowed in the gardens.

3. Maintenance – Gardeners will maintain their individual plot and adjacent walkways. Plots and adjacent areas must be kept free of trash, weeds, dead plants and debris. Unsightly or large structures and decorations are not allowed. The Garden Committee reserves the right to request removal of structures that are deemed unsightly or receive complaints. If a plot becomes unkempt, the gardener will be given one week's notice to clean it or it may be re-assigned. Gardeners are expected to pack out anything that they bring in. Plots are to be maintained throughout the summer beginning May 1st and be fully cleaned by October 25th.

4. Practices – Gardeners will follow organic gardening practices. No pesticide, herbicides or non-organic fertilizers may be used in the garden. Water conservation practices are to be used. Be sure the water is turned off when done using it. Please consider plot location when choosing plantings as to not excessively shade neighboring plots. Growing or using pot or using illegal substances is not allowed in the garden and will lead to immediate expulsion with no return of the plot fee.

5. Involvement and Volunteering – Gardeners will participate in the Spring building and Fall cleanup efforts. If a gardener is unable to attend these events, other volunteer opportunities will be required. Gardeners may work at The Minturn Community Fund Booth at the Minturn Market to earn money on behalf of the Garden Club. Each gardener must agree to assume responsibility for one week of garden maintenance including, but not limited to watering, weed-eating, and poop patrol (Shared plots require shared maintenance.) Gardeners are asked to contribute volunteer efforts in creating and maintaining the cleanliness and appeal of the gardens in addition to their primary maintenance week. Garden members are encouraged to attend monthly general meetings and special events.

6. Garden Members agree to hold harmless the Minturn Community Garden committee, officers, volunteers, sponsors of the garden and the owners of the land for any liability, damage, loss, injury or claim that occurs in connection with the use of the garden by themselves or any of their guests. Rules and Regulations are subject to change.

Any questions? Email info@minturncommunityfund.org

# MINTURN COMMUNITY GARDEN

**Application – Summer 2014 (Please complete and attach a check made out to MCF)**

Name _____
(Please PRINT)

Date _____

Physical Address _____

Mailing Address _____

_____

Phone _____

What town do you work in? _____

Email _____

Size of plot preferred:
_____full - $35 (4' x 8')
_____half - $20 (4' x 4')

The following is asked for garden committee information purposes only & has no effect on your application acceptance:)
Please describe your gardening experience or any expertise you may contribute:

Please describe why you want to participate in the Community Garden:

Please describe any special needs or accommodations:

ALL APPLICANTS: I hereby apply for an individual plot, agree to pay the plot fee, and agree to abide by the Rules and Regulations of the Minturn Community Garden. I agree to hold harmless the Minturn Community Garden group, sponsors of the garden and the Town of Minturn for any liability, damage, loss, injury or claim that occurs in connection with the use of the garden by me or any of my guests.

In signing this, I am stating that I am prepared to meet the physical demands of gardening in the Minturn Community Garden (i.e. group work days, meetings and maintenance). *I have read the Minturn Community Garden Rules and Regulations understand that failure to meet the guidelines will result in loss of gardening privileges.*

_____
Signature

_____
Date

_____
Guardian Signature if under 18

_____
Date

Priority will be given to those who had a plot last year, then those who live in or work in Minturn and then in order of requests if there are any plots left. Please send completed application or any questions to info@minturncommunityfund.org , 970-306-6553 (voice mail) or to Minturn Community Fund, P.O. Box 279, Minturn, CO 81645.
Checks may be written to Minturn Community Fund or MCF. (Please write 'Garden' in the Memo line.)