

**TOWN OF MINTURN, COLORADO
ORDINANCE NO. 03 – SERIES 2015**

**AN ORDINANCE AUTHORIZING THE MAYOR OF THE
TOWN OF MINTURN TO ENTER INTO A LEASE WITH
JOHNIÉ'S GARDEN, INC FOR THE LEASE OF REAL
PROPERTY OWNED BY THE TOWN OF MINTURN**

WHEREAS, Johnie's Garden, Inc. ("Johnie's Garden"), a Colorado Corporation has petitioned the Town of Minturn ("The Town") to lease of a parcel of land owned by the Town; and

WHEREAS, it is in the mutual interest of The Town and Johnie's Garden to enter into the lease agreement; and

WHEREAS, in the interest of protecting and preserving public health, safety and welfare, it is desirable that the citizens of the Town of Minturn, Eagle County, Colorado be provided with adequate rental income for land owned by the Town.

WHEREAS, the Home Rule Charter of the Town of Minturn, Colorado, The Town Ordinances, and C.R.S. § 31-15-713, as amended authorizes the Town as a home rule municipal corporation to lease any real estate, together with any facilities thereon, owned by the municipality, when deemed by the governing body to be in the best interest of the municipality, with any lease for a period of one year or more to be done by ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE
TOWN OF MINTURN, COLORADO:**

SECTION 1. The Mayor is authorized to execute such documents and to do such other acts and things as may be necessary or advisable in association with the execution and delivery of a lease of real property.

SECTION 2. The lease agreement is attached hereto as Exhibit A and incorporated into this Ordinance by reference is approved, and the Mayor is authorized to execute it on behalf of the Town of Minturn, and the Town and its officers and employees are authorized to perform under it on behalf of the Town of Minturn, according to its terms.

SECTION 3. This Ordinance shall not be effective until the lease agreement attached hereto is signed by the representatives of all the necessary parties thereto.

SECTION 4. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance; and the Town Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or

phrases be declared invalid.

SECTION 5. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Minturn and the inhabitants thereof.

SECTION 6. The repeal or the repeal and reenactment of any provisions of the Minturn Municipal Code as provided in this ordinance shall not affect any right with has accrued, any duty imposed, any violation that occurred prior to the effective date hereof, any protection commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed or repealed and reenacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

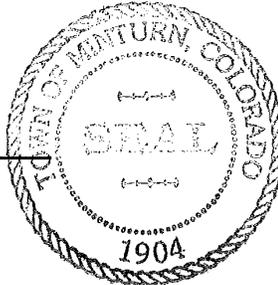
INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THE 20th DAY OF MAY, 2015. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO ON THE 3rd DAY OF JUNE, 2015 AT 6:30 p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.

TOWN OF MINTURN, COLORADO


Hawkeye Flaherty, Mayor

ATTEST:

By: 
Jay Brunvand, Town Clerk



Initials: _____
Town Tenant

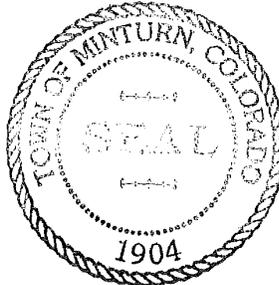
THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THIS 3rd DAY OF JUNE, 2015.

TOWN OF MINTURN, COLORADO

Hawkeye Flaherty
Hawkeye Flaherty, Mayor

ATTEST:

By: *Jay Brunvand*
Jay Brunvand, Town Clerk



Initials: _____
Town Tenant

LAND LEASE AND AGREEMENT

THIS LAND LEASE AND AGREEMENT (“Lease”) is made and entered into as of the date of the last signature hereto, by and between the TOWN OF MINTURN, Colorado, a municipal corporation (the “Town”) and Johnie’s Garden, Inc., a Colorado corporation (“Tenant”). In consideration of the payment of the Rent (as defined herein), other monies due the Town as provided for herein, and the performance of the covenants and agreements by Tenant set forth herein, Town leases to Tenant, and Tenant accepts, the Premises described below, subject to the terms and provisions set forth in this Lease. Town and Tenant may be referred to herein individually as a Party and collectively as the Parties.

1. **PREMISES.** The portion of that certain real property commonly known as 810 Cemetery Road, Minturn, Colorado more particularly depicted on Exhibit A, which is attached hereto and incorporated herein by this reference, together with improvements and attached fixtures appurtenant thereto (the “Premises”).

2. **TERM.** Town leases the Premises to Tenant from June 4, 2015 and terminating at 11:59 P.M. MST on June 30, 2018 (the “Term”), unless earlier terminated as provided in this Lease.

3. **RENT.**

a. **Monthly Rent.** Tenant covenants and agrees to pay the Town fixed monthly rent of one thousand six hundred twenty five DOLLARS (\$1625.00) (the “Rent”) payable in advance on or before 12:00 p.m. on the first day of each calendar month during the Term of this Lease. The fixed monthly rent shall be increased by the change in the consumer price index for the Denver-Boulder-Greeley area on an annual basis starting in June 2016 for each year during the term. For example, if the change in consumer price index between 2015 and 2016 is three percent, then Rent for the lease period of June 2016 through May 2017 would be increased 3% per month. Tenant shall mail Rent payments to Town care of the Town Clerk at P. O. Box 309, Minturn, Colorado, 81645; or at any such other place which Town may direct in writing, including direct deposit.

b. **Additional Charges.** Tenant agrees that, in case any rent or other charges payable hereunder shall not be paid upon the date when the same shall become due, Tenant shall pay to Town a late payment charge at the rate of eighteen percent (18%) per annum from the due date to the date of payment. Such late payment charges shall be considered Additional Rent.

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material if defined or designated as a hazardous or toxic substance, or other similar term, by any federal, state or local law, statute, regulation, or ordinance affecting the Premises, as such statutes, regulations and ordinances may be amended from time to time.

6. **OPTION TO RENEW.** Provided Tenant is not then in default under this Lease and there is no then-existing material breach of any agreement, covenant, warranty, or representation of Tenant hereunder, Tenant shall have the option, if approved by Council, to renew the term of this Lease for one additional term of three years (the “Renewal Term”). The Renewal Term shall commence at the expiration of the original Term of this Lease. Tenant shall exercise such option to renew by delivering written notice of such election to Town at least sixty (60) days prior to the expiration of the original Term and setting the renewal as an action item on a Council agenda. Council shall evaluate compliance with the terms of the lease and the conditional use permit during the existing Lease term and decide whether to renew the lease for the Renewal Term. Such renewal of this Lease shall be upon the same terms and conditions of this Lease. The rent for any Renewal Term shall be subject to the same escalation based on the Consumer Price Index as provided for in paragraph 3.

7. **TAXES.** Tenant shall pay in each year of the Term and the Renewal Term any general real estate, personal property and ad valorem taxes due and payable with respect to the Premises. Town shall provide Tenant with copies of any and all notices, assessments, tax bills, receipts for payment, or other documentation related to taxes on the Premises within ten (10) days of its receipt of the same to enable Tenant to contest the taxes as provided herein; Tenant shall have the right in its name to contest the validity of any tax or assessment which Tenant is required to bear, pay and discharge hereunder by appropriate legal proceedings.

8. **INSURANCE; WAIVER OF SUBROGATION.** During the term of this Lease, Tenant, at its sole cost and expense, and for the mutual benefit of Tenant and the Town, covenants and agrees to carry and maintain the following types of insurance and uphold the following covenants:

a. Fire and extended premises coverage insurance covering property and any improvements constructed on the Premises against loss or damage by fire and against loss or damage by other risks now or hereafter embraced by “extended coverage.” Town shall be named as an additional insured under the policy and protected under the terms and conditions of any such policy as Town of the Premises.

b. Comprehensive public liability insurance including property damage with respect to the Premises, including contractual liability and insuring the indemnity provisions set forth

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in this Agreement and providing minimum protection of not less than two million and no/100 Dollars (\$2,000,000.00) per person and one million and no/100 Dollars (\$1,000,000.00) per occurrence. Town shall be named as an additional insured under the policy and protected under the terms and conditions of any such policy as Town of the Premises.

c. Worker's Compensation and Employer's Liability Insurance, which shall fully comply with the statutory requirement of Colorado laws as well as Federal laws, if applicable. To the extent practicable, Town shall be named as an additional insured under the policy and protected under the terms and conditions of any such policy as Town of the Premises.

d. Tenant shall provide Town with proof that Tenant has obtained the insurance described in this paragraph and proof of payment for such insurance. If Tenant shall fail to obtain or pay for any insurance policy required by this paragraph, Town may, at its option, pay for such insurance (without waiving any other remedies available to Town) on account of Tenant, and the same shall be deemed to be Additional Rent and shall become due and payable ten (10) calendar days after Tenant's receipt of notice from Town regarding this Additional Rent.

e. Tenant shall obligate the provider of any insurance policy under which Town is named as an additional insured to notify Town in the event such policy lapses. In addition, Tenant shall obligate such insurance providers to give the Town 30 days' prior written notice by certified mail before terminating any insurance coverage described in this paragraph.

f. Any insurance that may be purchased by Tenant pursuant to this paragraph or any proceeds that may be payable as a result of a loss under any such insurance shall in no way reduce, alter, or modify any provisions of this Lease and specifically the indemnity provisions of this Lease.

9. **INDEMNIFICATION.**

a. Tenant agrees to exonerate, hold harmless, protect, and indemnify Town, and all beneficiaries, agents, and employees of Town, from and against any and all liabilities, losses, damages, costs, expenses (including all attorneys' fees and expenses of Town, including attorneys' fees incurred in the enforcement of the indemnity provisions in this Lease), causes of action, suits, claims, demands, liens or judgments of any nature

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whatsoever (except those arising from acts of Town, its agents or employees) arising from: (i) personal injury, loss of life, or damaged property sustained in or about the Premises; (ii) the investigation of the events or conditions, including environmental conditions, which resulted in the liability, loss, damage, cost, expense, cause of action, suit, claim, demand, lien or judgment and the defense thereof; (iii) the violation of any agreement or condition of this Lease; (iv) the violation by Tenant of any contract or agreement which Tenant is a party or any restriction, statute, law, ordinance, or regulation affecting any part of the Premises, including the use thereof; (v) the contamination by hazardous materials of any portion of the Premises; and (vi) violation of any applicable environmental laws relating to the handling or transportation of hazardous materials on the Premises.

b. Notwithstanding any other provision in this Lease to the contrary, in no event shall either Party be liable to the other under this Lease for, and each Party releases the other from and against, any indirect, special, incidental, punitive, exemplary or consequential damages, including, but not limited to, damages or losses for loss of production, loss of revenues, loss of profits, loss of business or business interruptions, loss of use of assets, or loss of product or downtime related to the subject matter of this Agreement (collectively, “Losses”), whether or not such losses are the result in whole or in part from the sole, concurrent, or comparative ordinary negligence of any person or Party, including the indemnified Party; any defect in the Premises; Pre-existing conditions, patent or latent; breach of statutory duty, or any other theory of legal liability, unless such losses are caused by strict liability or the gross negligence, fraudulent conduct, or willful misconduct of the other Party.

10. **LIABILITY FOR COST OF IMPROVEMENTS INSTALLED.** Except as may be subsequently agreed between the Parties, the Town shall not, under any circumstances, be liable for the payment of any expense incurred or the value of any work done or materials furnished to the Premises by virtue of construction of improvements on the Premises by Tenant for construction or maintenance of the Premises. All such work shall be at Tenant's sole cost and expense and Tenant shall be wholly responsible to and for all contractors, laborers and material therefor. Tenant specifically agrees to indemnify, hold harmless and defend Town from any liens related to work performed by or at request of Tenant.

11. **OWNERSHIP OF IMPROVEMENTS.** Tenant shall be the exclusive owner of any and all trade fixtures and equipment on the Premises. Upon the expiration of the Term or Renewal Term, Tenant shall remove trade fixtures and equipment from the Premises, and restore the underlying property to a condition similar to its existing condition. This paragraph shall not

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be construed to grant Tenant any interest in the personal property of the Town which may be located on the Premises.

12. **ASSIGNMENT AND SUBLEASE.** This Lease may be the subject of an assignment or sublease by Tenant, provided that any such assignment or sublease shall first be approved by the Town Council. Any assignee or sublessee shall expressly assume and agree to perform each and every covenant of Tenant contained in this Lease.

13. **MAINTENANCE.** During the Term of this Lease, or any Renewal Term, Tenant shall at its sole expense make all repairs reasonably necessary to keep the Premises and equipment in good condition and repair. Tenant shall not store inoperable equipment or junk on the Premises. Tenant shall be solely responsible to pay for utilities for the Premises (if any).

14. **DEFAULT.** If Tenant is in arrears in the payment of Rent or Additional Rent or in violation of any other covenants or agreements set forth in the Lease (a “Default”), and the Default remains uncorrected for a period of thirty (30) days after Town has given written notice of the Default to Tenant, then Town may, at Town’s option, undertake any of the following remedies without limitation: (i) declare the Term or Renewal Term of the Lease ended; (ii) terminate Tenant’s right to possession of the Premises and re-enter and repossess the Premises pursuant to applicable provisions of the Colorado Forcible Entry and Unlawful Detainer statute; (iii) recover all present and future damages, costs and other relief to which Town is entitled; (iv) pursue breach of contract remedies; and/or (v) pursue any and all available remedies in law or equity. If possession is terminated by reason of a Default before the Term or Renewal Term expires, Tenant shall still be responsible for the Rent and Additional Rent accruing for the remainder of the Term or Renewal Term, subject to Town’s duty to mitigate such damages. Pursuant to §§ 13-40-104 (d.5), (e) and (e.5), and 13-40-107.5, C.R.S., hereby incorporated by reference, if repeated or substantial Default(s) occur under the Lease, Town may terminate Tenant’s possession upon a written Notice to Quit, without a right to cure. Upon such termination, Town shall have available any and all of the above-listed remedies. In the event of a default where environmental conditions are degraded, or toxic or hazardous substances are released, the Town may immediately declare a default and take reasonable actions to abate the situation.

15. **ABANDONMENT.** If Tenant abandons the Premises, then Town may, without being obligated to do so and without terminating the Lease, retake possession of the Premises and exercise any of the remedies contained in paragraph 13.

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16. **RE-ENTRY.** If Town re-enters the Premises as a result of abandonment or a Default by Tenant:

a. Tenant shall be liable for damages to Town for all loss sustained, including, without limitation, the balance of the Rent and Additional Rent, court costs and reasonable attorneys' fees; and

b. Tenant's personal property and the personal property of any guest, invitee, licensee or occupant may be removed from the Premises and left on the street or alley or, at Town's option, it may be removed and stored or disposed of at Town's sole discretion. Any expense related to storage of Tenant's personal property is the sole responsibility of Tenant. Town shall not be deemed a bailee of the removed property, and Town shall not be held liable for either civil or criminal action as a result of the removal. Tenant shall indemnify Town for any expense in defending against any claim by Tenant or a third party and for any legal expense, cost, fine or judgment awarded to any third party as a result of Town's action under the term of the Lease; and

c. Town may attempt to re-let the Premises for such rent and under such terms as Town believes appropriate; and

d. any money that Town receives from Tenant shall be applied first to Rent, Additional Rent, and other payments due; and

e. Tenant will surrender all keys and peacefully surrender and deliver up possession of the Premises.

17. **SURRENDER OF PREMISES.** Tenant will return the Premises to Town at the expiration of the Term or Renewal Term in as good condition as when Tenant took possession of the Premises, normal wear and tear excepted. Any deterioration or damage caused by accident, abuse, carelessness, or negligence shall not be considered normal wear and tear. If Tenant fails to re-deliver the Premises in appropriate condition, Town may restore the Premises to appropriate condition, including repair, replacement and cleaning. The cost of any work necessitated will be chargeable to Tenant, and Tenant hereby expressly agrees to pay such charges.

18. **NO HOLDOVER.** Tenant must vacate the Premises and remove all of Tenant's personal property and fixtures from the Premises before 11:59 P.M. MST on the date the Term or Renewal Term expires, as applicable. Vacating the Premises at the end of the Term or Renewal Term is a material condition of this Lease. Upon any holdover by Tenant, Town may

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immediately commence eviction proceedings at its sole discretion. It is acknowledged that if Tenant remains in possession of the Premises after expiration of the Term or Renewal Term, Town will incur damages and losses of types and in amounts which are impossible to compute and ascertain with certainty, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, Town and Tenant agree that liquidated damages may be assessed and recovered by the Town as against Tenant in the event of holdover by Tenant and without the Town being required to present any evidence of the amount or character of actual damages sustained by Town due to the holdover. Therefore, Tenant shall be liable to Town for payment of liquidated damages in the amount of one hundred and no/100 Dollars (\$100.00) for each day that Tenant remains in possession of the Premises after the end of the Term or Renewal Term. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Tenant shall pay them to Town without limiting Town's right to eviction or other remedies provided in this Lease.

19. **ENTRY BY TOWN.** Town may enter the Premises at reasonable hours for reasonable purposes without notice to Tenant. Town may also enter the Premises in the event of an emergency, without notice, or in the event of abandonment of the Premises.

20. **SUBORDINATION.** The Lease is subordinate to all existing and future mortgages, deeds of trust and other security interests on the Premises.

21. **WAIVERS.** No right under the Lease may be waived except by written instrument executed by the Party who is waiving that right. No waiver of any breach of any provision contained in the Lease shall be deemed a waiver of any preceding or succeeding breach of that provision or of any other provision contained in the Lease. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.

22. **NOTICES.** All notices, demands, and requests required to be given by either Party to the other shall be in writing. All notices, demands, and requests shall be sent to the Parties at the addresses set forth below or at such other addresses as the Parties may designate in writing delivered pursuant to the provisions of this paragraph. Any notice when given as provided herein shall be deemed to have been delivered two (2) days subsequent to the date that said notice was deposited with the United States Postal Service. Any such notice may also be sent by e-mail to the e-mail addresses provided. There shall be no presumption of receipt of an e-mailed notice.

To Town: Town Clerk
Town of Minturn

Initials: _____
Town Tenant

P. O. Box 309
Minturn, Colorado, 81645

To Tenant: Johnie’s Garden, Inc
P. O. Box 850
Minturn, Colorado 81645

23. **ATTORNEYS’ FEES.** If either Party fails to perform any of its obligations under the Lease, or if a dispute arises concerning the meaning or interpretation of any provision of the Lease, then the defaulting Party or the Party not substantially prevailing in the dispute, as the case may be, must pay any and all costs and expenses incurred by the other Party, including, without limitation, court costs and reasonable attorneys’ fees.

24. **GOVERNING LAW.** The Lease is governed by and construed in accordance with the laws of the State of Colorado. Venue is proper in Eagle County, Colorado.

25. **AMENDMENTS AND TERMINATION.** Unless otherwise provided in the Lease, the Lease may be amended, modified, or terminated only by a written instrument executed by Town and Tenant.

26. **CAPTIONS.** The paragraph titles or captions in the Lease are for convenience only and shall not be deemed to be part of the Lease.

27. **PRONOUNS; JOINT AND SEVERAL USE OF CERTAIN TERMS.** Whenever the terms referred to in the Lease are singular, the same shall be deemed to mean the plural, as the context indicates, and vice versa. All references to the “Town” mean Town and/or its authorized agents, contractors, or employees as may be required by the specific context. All references to “Tenant” mean each and every person comprising Tenant or an individual person or combination of persons comprising Tenant as may be required by the specific context.

28. **SEVERABILITY.** If any term, covenant, condition, or provision of the Lease or the application thereof to any person or circumstance is found, at any time or to any extent, to be invalid or unenforceable, the remainder of the Lease, or the application of that term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of the Lease shall be valid and shall be enforced to the fullest extent permitted by law.

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