AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Acknowledgement of County Manager's Signature; Gro

Action Requested: County Manager Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

The attached lease will allow Garlic Mike's to utilize a portion of the property at 2714 SH 135 for overflow parking.

Fiscal Impact: $200/month

Submitted by: Katherine Haase **Submitter's Email Address:** khaase@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concners, will provide revenue to the general fund for rent. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 12/14/2017

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 12/14/17

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 12/14/2017 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 3/8/2018

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 3/27/2018

Revised April 2015

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT is made and entered into on this _2nd_day of March, 2018, by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, a political subdivision of the State of Colorado, whose address is 200 E. Virginia, Gunnison, Colorado 81230 (hereinafter "Lessor") and Garlic Mike's Italian Cuisine Restaurant, whose address is 2674 State Highway 135, Gunnison, CO 81230. (hereinafter "Garlic Mike's").

WHEREAS, Lessor owns the real property located at 2714 State Highway 135, Gunnison, CO 81230 (hereinafter the "Property"); and

WHEREAS, Lessor has determined that a portion of the Property, consisting of approximately 1,000 sq. feet (the "Leased Space"), may be leased to Garlic Mike's for overflow parking; and

WHEREAS, Garlic Mike's desires to lease from Lessor the Leased Space, and Lessor desires to lease to Garlic Mike's the Leased Space; and

NOW, THEREFORE, for and in consideration of the mutual covenants, terms and conditions herein contained, Lessor and Garlic Mike's do hereby agree as follows:

1. GRANT OF LEASE.

Lessor hereby leases to Garlic Mike's, its heirs, successors and assigns, that certain portion of the Property identified in Exhibit A attached hereto, and more particularly defined by temporary cordon and signage placed on the southwest corner of the property, as an overflow parking area and to occupy and use the same only as set forth in this Lease Agreement.

2. TERM OF LEASE.

The term of this Lease Agreement shall commence on the date noted above and terminate on December 31, 2018, unless otherwise terminated or extended under the terms of this Lease Agreement or mutual agreement of the Lessor and Garlic Mike's.

3. LEASE IS NONEXCLUSIVE.

Lessor expressly reserves the right to enter and use the Property, and construct improvements on it, for any and all purposes that will not substantially interfere with Garlic Mike's use.

4. CONSIDERATION.

In full and complete consideration of the rights granted herein, Garlic Mike's shall pay ground rent to Lessor in the amount of two hundred dollars and no cents ($200.00) per month. Said payment shall be payable to the "Gunnison County Finance" and forwarded by US mail to 200 East Virginia, Gunnison, CO 81230 in a timely manner and received no later than the 15th of every month.

5. UTILITIES.

Access to the Leased Space will be provided from Garlic Mike's existing access off of State Highway 135. Garlic Mike's shall be responsible for any and all other costs not identified herein, including snow removal and weed management, that may be associated with Garlic Mike's use of the Leased Space.

6. USE OF PROPERTY.

Garlic Mike's shall use the Leased Space exclusively and only for overflow parking. Garlic Mike's agrees to conduct its uses of the Leased Space in an orderly and good workmanlike manner. Garlic Mike's, its agents, and employees, will not discriminate against any person or class of person by reason of race, age, religion, gender, creed, sexual preference or national origin in providing any use of the Leased Space.

Garlic Mike's shall be responsible for ensuring the proper use of the Leased Space, as indicated in this contract, by its patrons. Further, Garlic Mike's shall be responsible for monitoring the established boundaries and enforcing compliance to ensure that no trespassing onto adjacent land occurs by Garlic Mike's patrons.

7. FURTHER ORDERS, RULES AND REGULATIONS.

Lessor and Garlic Mike's agree that, during the term of this Lease Agreement, in addition to or notwithstanding any terms of this Lease Agreement, Lessor may adopt and enforce such orders, rules or regulations as in the discretion of the Lessor which is reasonably necessary for the administration, protection or maintenance of the Property and Leased Space.

8. OPERATIONS.

Garlic Mike's agrees to secure all necessary licenses, permits and other approval required by Gunnison County, the State of Colorado, or the United States of America that may be necessary or associated with the Garlic Mike's business and use of the Leased Space.

9. MAINTENANCE, REPAIRS AND IMPROVEMENTS.

During the term of this Lease Agreement, Garlic Mike's shall provide for any necessary maintenance and repairs, such as snow removal and weed management, to the Property and Leased Space.
Garlic Mike's shall not modify, alter or reconstruct the Property or Leased Space without the prior written consent of Lessor.

All signage placed by Garlic Mike's at its expense in, on or about the Leased Space, including all fixtures temporarily affixed to the Leased Space but which may be removed without damage thereto, shall remain the items of Garlic Mike's and Garlic Mike's shall have the right at any time during the term hereof and responsibility at its termination, to remove all such equipment.

10. TAXES.

Lessor shall keep the Property and Leased Space free and clear of all levies, liens, and encumbrances and shall pay all license fees, registration fees, assessments, charges, and taxes (municipal, county, state and federal) which may now or hereafter be imposed.

11. DAMAGE TO OR DESTRUCTION OF PROPERTY.

During the term of this Lease Agreement notwithstanding anything herein to the contrary, in the event the Property or any portion of it or any improvements to it are damaged or destroyed, partially or wholly, by fire or otherwise, Lessor shall be under no obligation whatsoever to repair, replace or rebuild the same or to provide substitute Leased Space or improvements.

12. STRATEGIC RESULT.

Execution of this Agreement will assist the County with its Promote Prosperous, Collaborative and Healthy Communities strategy, as outlined in the Gunnison County Strategic Plan.

13. LIABILITY

Garlic Mike's agrees to obtain and keep in force, throughout the term of this Lease Agreement, comprehensive general public liability insurance, including personal injury protection:

a. For any injury to one person in any single occurrence, Three Hundred Fifty Thousand and No/100 U.S. Dollars ($350,000.00); and

b. For an injury to two or more persons in any single occurrence, the sum of Nine Hundred Ninety Thousand and No/100 U.S. Dollars ($990,000.00).

Additionally, Garlic Mike's agrees to obtain and keep in force, throughout the term of this Lease Agreement, personal property insurance coverage on any and all of Garlic Mike's personal property in the Property or Leased Space (i.e. signage).

Garlic Mike's shall provide Lessor with copies of appropriate insurance policies, as described above, within thirty (30) days after the execution of this Lease Agreement, listing Gunnison County as an additional insured. The insurance coverage required pursuant to this paragraph 13 shall remain in force during the term of this Lease Agreement and no cancellation or reduction may be made without thirty (30) days prior, written notice to Lessor. Garlic Mike's shall not allow the placement of any lien or other claim against the Property by reason of any improvements placed upon the Property, and shall indemnify, hold harmless and defend Lessor against any claim upon the premises, the Property, Leased Space or whatsoever.

Nothing in this Lease Agreement, including but not limited to the required insurance or the existence of the insurance required hereunder, is or shall be construed to be a waiver, in whole or in part, by the Lessor of any defense or claim of governmental immunity, or a waiver of any other provision of law relating to the liability of governmental units or the limits thereof, provided by the Colorado Governmental Immunity Act or otherwise.

14. INDEMNIFICATION.

During the term of this Lease Agreement, Garlic Mike's shall indemnify, hold harmless and defend Lessor, its Board of County Commissioners, its officers, agents and employees, against any claim for injury or damage caused by any act or omission of Garlic Mike's or any other person arising from the use of the Leased Space.

15. WARRANTIES.

Lessor makes no warranties, either express or implied, as to any matter whatsoever, including but not limited to, the condition of the Property.

16. OWNERSHIP.

The Property is, and shall at all times be and remain, the sole and exclusive property of Lessor, and Garlic Mike's shall have no right, title, or interest therein or thereto.

17. DEFAULT

Garlic Mike's shall be considered to be in default of this Lease Agreement upon failing to keep, perform and observe each and every other covenant, term or condition set forth in this Lease Agreement which failure continues for a period of more than 30 days after written notice from the Lessor of such breach or default.

No waiver of default by either party of any of the terms or conditions herein to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms or conditions herein contained to be performed, kept and observed by the other party.

18. TERMINATION.

Any party shall have the right to terminate this Lease Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. If this Lease Agreement is terminated, it is agreed that Lessor may retake possession of the premises upon thirty (30) days written notice to Garlic Mike's and that Garlic Mike's shall surrender and return the Leased Space to Lessor in good condition, normal wear and tear excepted.

19. NOTICES

Service of all notices under this Lease Agreement shall be sufficient if sent via certified mail return receipt requested to the following address:

Lessor:	Board of County Commissioners of the County of Gunnison, Colorado c/o County Manager's Office 200 East Virginia Avenue Gunnison, CO 8123O
Garlic Mike's:	Garlic Mike's Italian Cuisine Restaurant

c/o Michael Busse, Owner
2674 State Highway 135
Gunnison, CO 81230

20. PROHIBITION UPON ASSIGNMENT.

Without the prior written consent of Lessor, Garlic Mike's shall not (a) assign, transfer, pledge, or hypothecate this Lease Agreement, or any part thereof, or any interest therein, or (b) convey, sublet or lend the Property or Leased Space or any part thereof.

21. NON-WAIVER.

The failure of either party to insist in any one or more instances upon compliance with any of the covenants, terms or conditions agreed upon and herein contained, or the failure of either party to exercise any option, privilege or right agreed upon and herein contained shall not be construed as constituting a waiver of such right, option or the right to demand compliance with such covenant, term or conditions.

22. SEVERABILITY

In the event any term, condition or provision contained in this Lease Agreement is held by any court of competent jurisdiction to be invalid, the invalidity of such term, condition or provision shall in no way affect any other covenant, condition or provision herein contained. Provided, however, that if the invalidity of such term, condition or provision causes material prejudice to either party hereto with respect to its respective rights and obligations contained in the remaining valid portions of this Lease Agreement, then at the option of such party, this Lease Agreement may be declared to be terminated.

23. GOVERNING LAW, JURISDICTION AND VENUE

This Lease Agreement is entered into in the County of Gunnison, State of Colorado, and it is agreed that the proper jurisdiction and venue of any legal action regarding the interpretation and/or enforcement of this Lease Agreement, or any document related hereto, shall be the County or District. Court of the County of Gunnison, State of Colorado and this Lease Agreement shall be deemed to have been made in and be construed in accordance with the laws of the State of Colorado and be binding upon the parties hereto, their successors and assigns.

24. ENTIRE AGREEMENT

Lessor and Garlic Mike's agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, unless expressly reserved herein, shall be valid unless executed by an instrument in writing by Lessor and Garlic Mike's with the same formality as this Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first set forth above.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Matthew Birnie, County Manager

ATTEST:

_____
Deputy County Clerk

GUNNISON COUNTY SEAL COLORADO

GARLIC MIKE'S ITALIAN CUISINE RESTAURANT

By: _____
Michael Busse, Owner
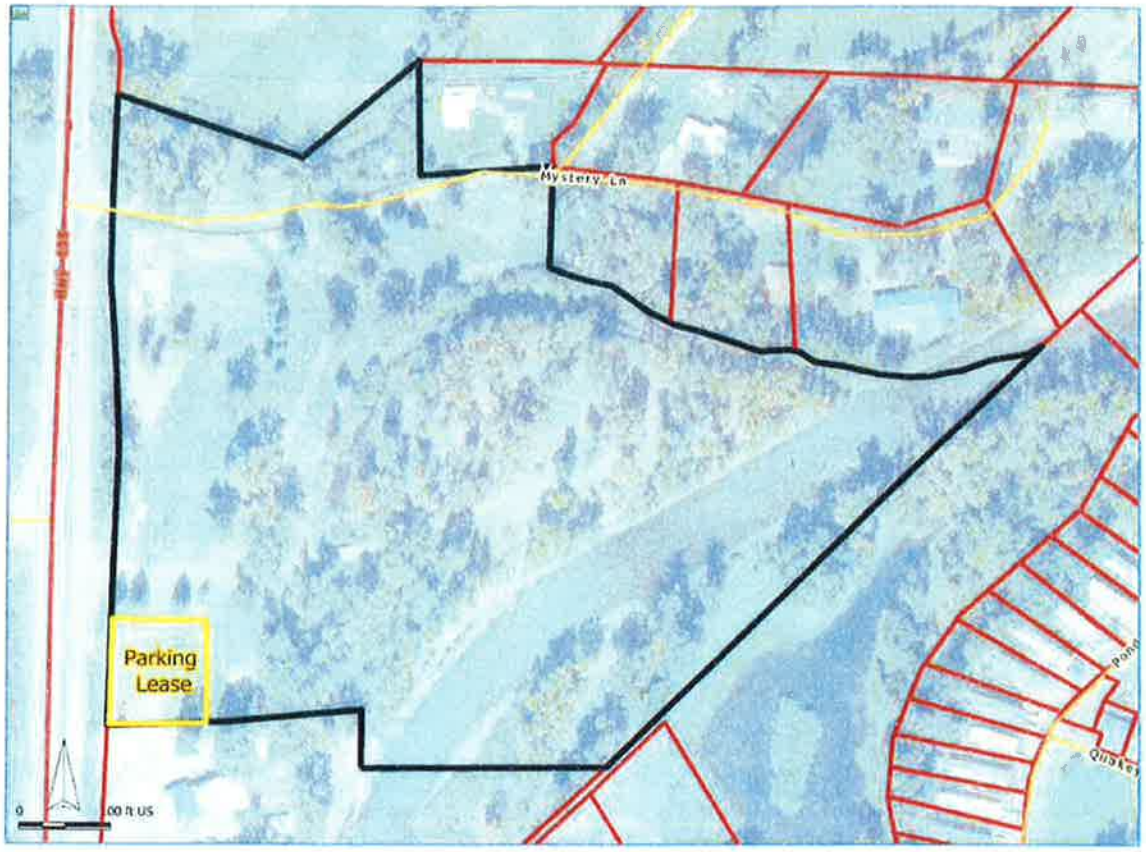
EXHIBIT A