

***MEMORANDUM***

TO: City Council  
FROM: Community Development Staff  
DATE: April 21, 2015  
RE: Ol' Miner Steakhouse - License Agreement Application

Frank and Sarah Cutrona, owners of Ol' Miner Steakhouse, have submitted an application for a license agreement at 129 North Main Street. The request is to take down the existing awning and construct and maintain a deck within the Main Street right-of-way. Enclosed with your packet are elevations and sections depicting the proposed structure, along with a letter describing the project.

The deck is proposed along the entire property face (33 feet). The deck extends 12 feet from the building face into the Main Street right-of-way and is a minimum of 8 feet above the existing sidewalk. Please see the elevation and sections provided with this memo for a visual explanation.

There is concern regarding the public use of this deck in relation to objects falling from the deck. Staff recommends that glassware and any other breakable items be prohibited on the deck.

Staff supports the proposal because the design breaks up the building mass and provides an outdoor restaurant experience that would add to and create a more vibrant public space. This license agreement is tentatively scheduled on the April 28<sup>th</sup> agenda should you choose to take action on this request.



139 N. Main St.  
Gunnison CO 8120  
(970) 641-5153

To: City of Gunnison  
From: Sarah & Frank Cutrona  
Ref: Balcony seating addition

Sarah & I would like to add an addition to our building that will enhance the downtown of Gunnison. Not only will there be outside seating added to the second floor, but we will also be adding more square feet on the interior of the building. The design will be rustic, keeping the theme of Ol Miner. Being a business in downtown Gunnison for the last 9 years, we always look for ways to improve the Ol Miner Steakhouse. We will work with the city in any way to make this improvement. Our concerns are the patrons traveling the sidewalks so we will implement rules to protect those and also the patrons in the restaurant. No glass will be allowed on the second floor. Planters will be installed to prevent patrons from leaning over the edge. The bartenders are trained not to over serve a customer. Working together on this will make our downtown more appealing to travelers going by.

Thank you

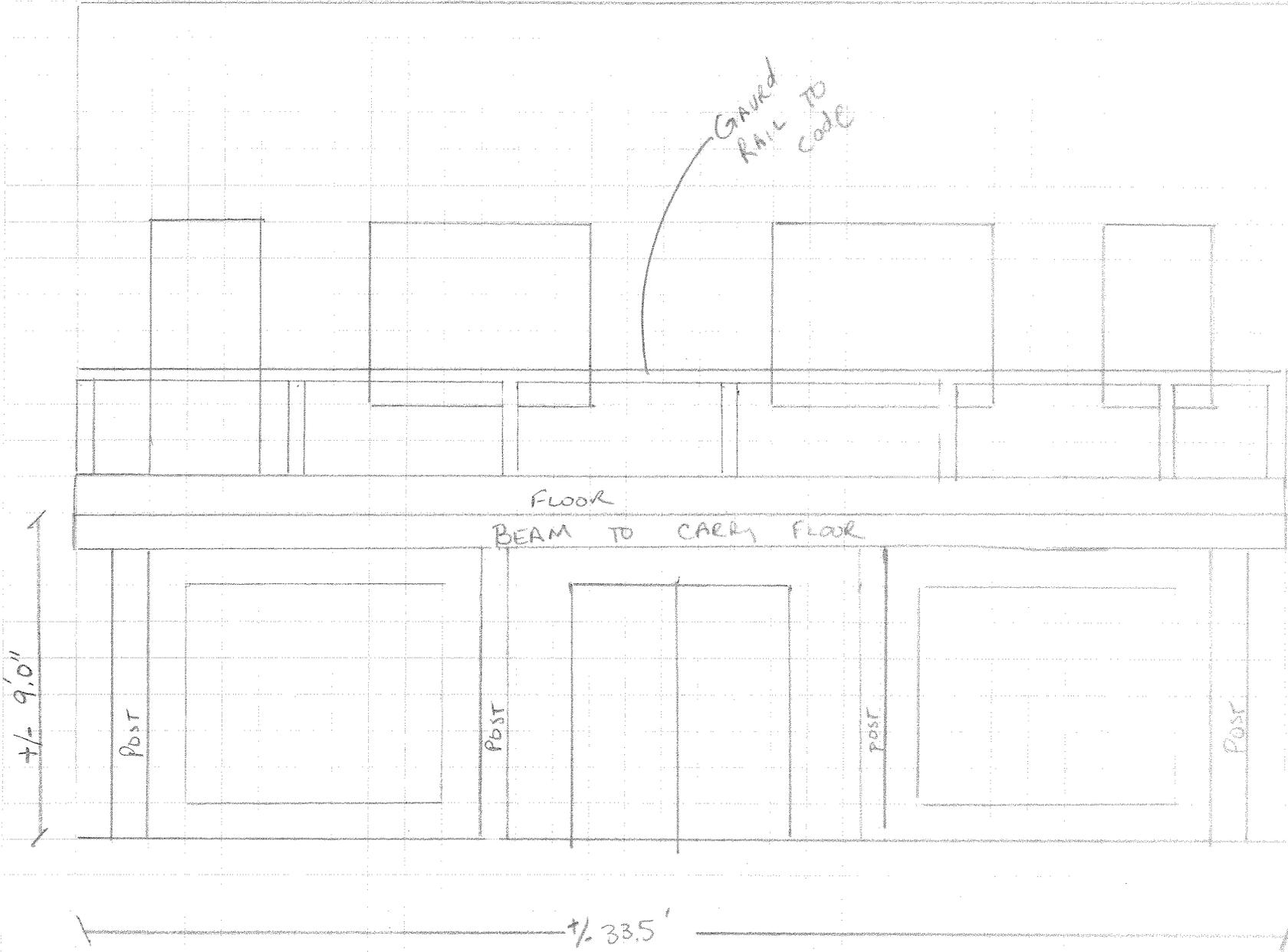
Frank & Sarah Cutrona

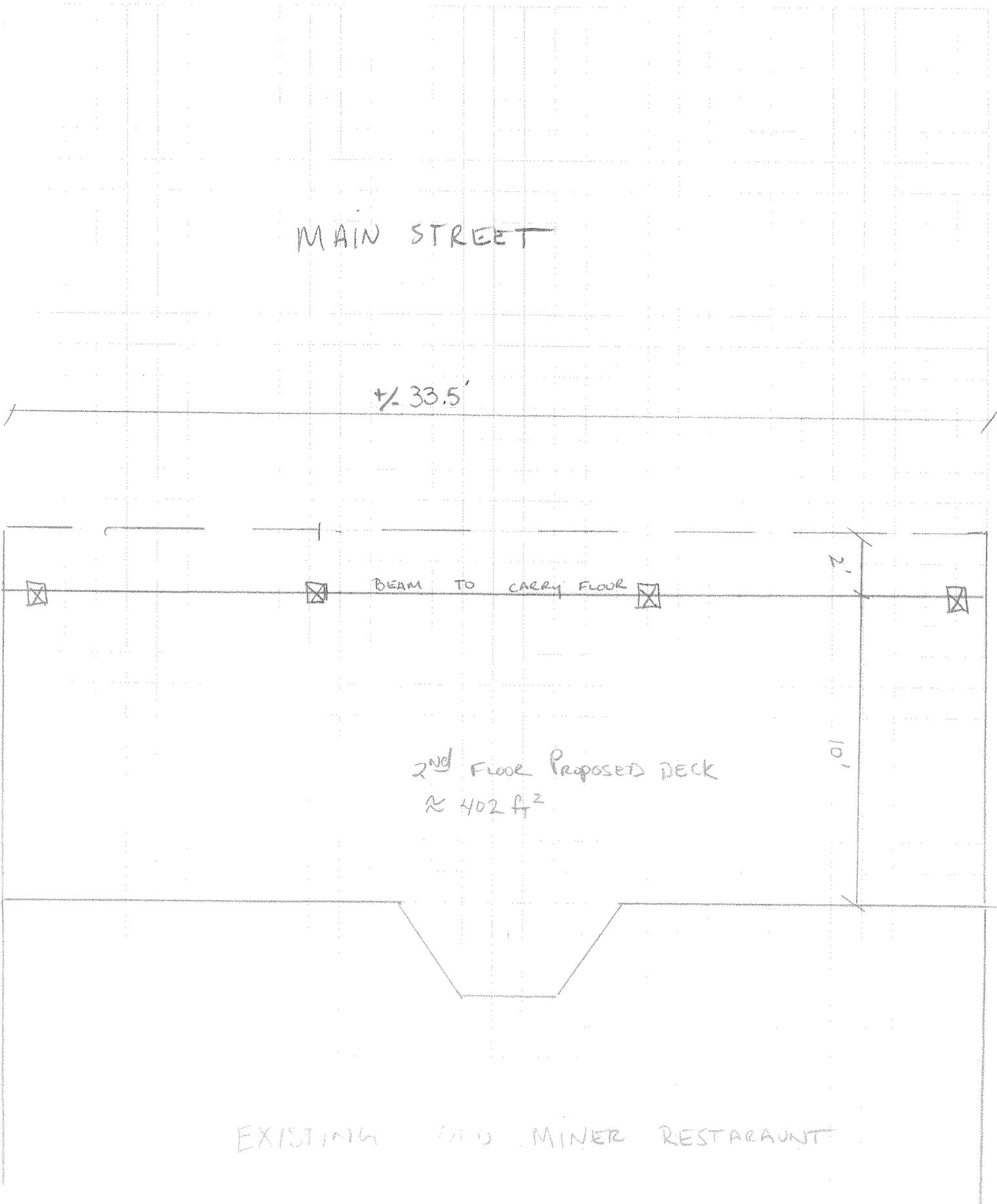
PROJECT:

JOB NO:

DATE:

# OLD MINER RESTAURANT





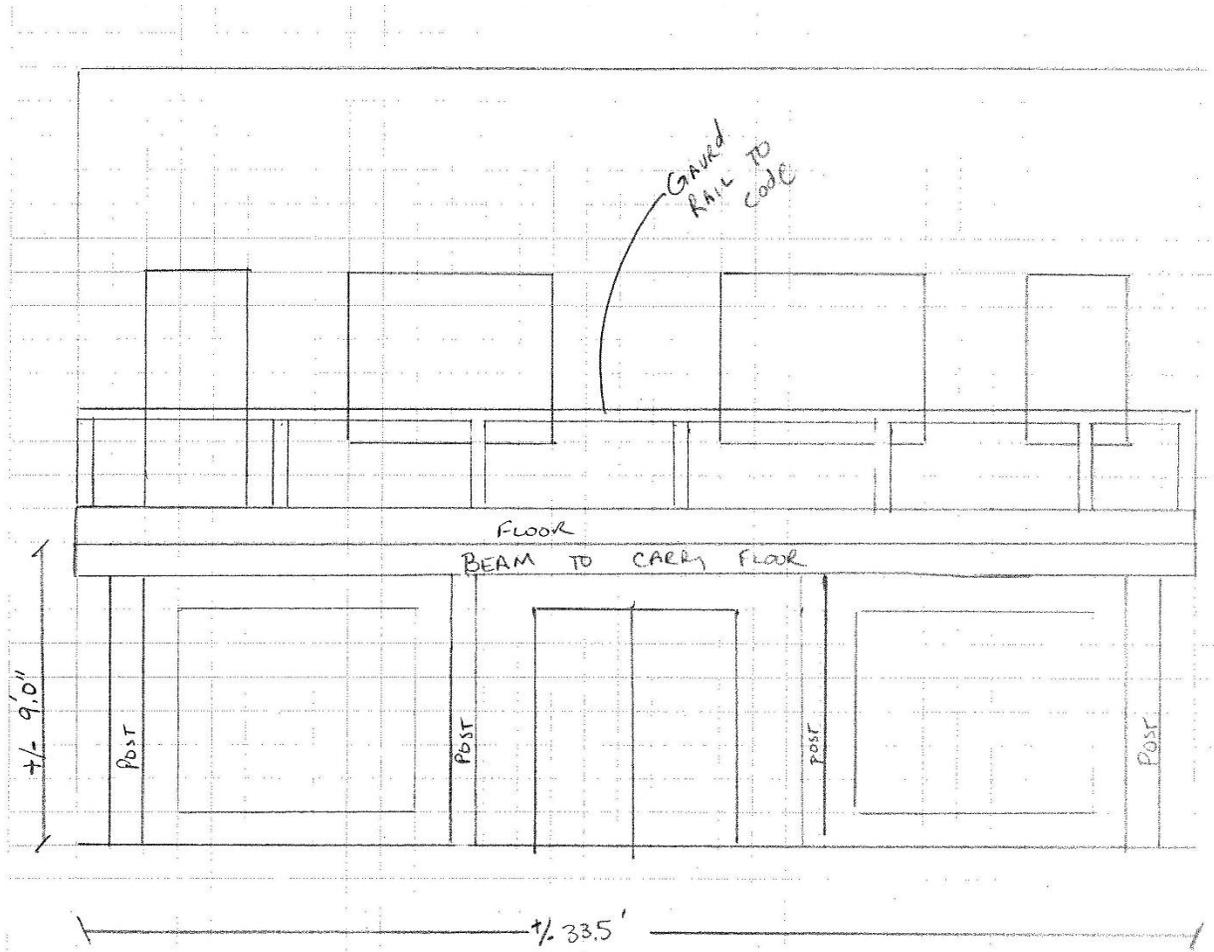
## LICENSE AGREEMENT

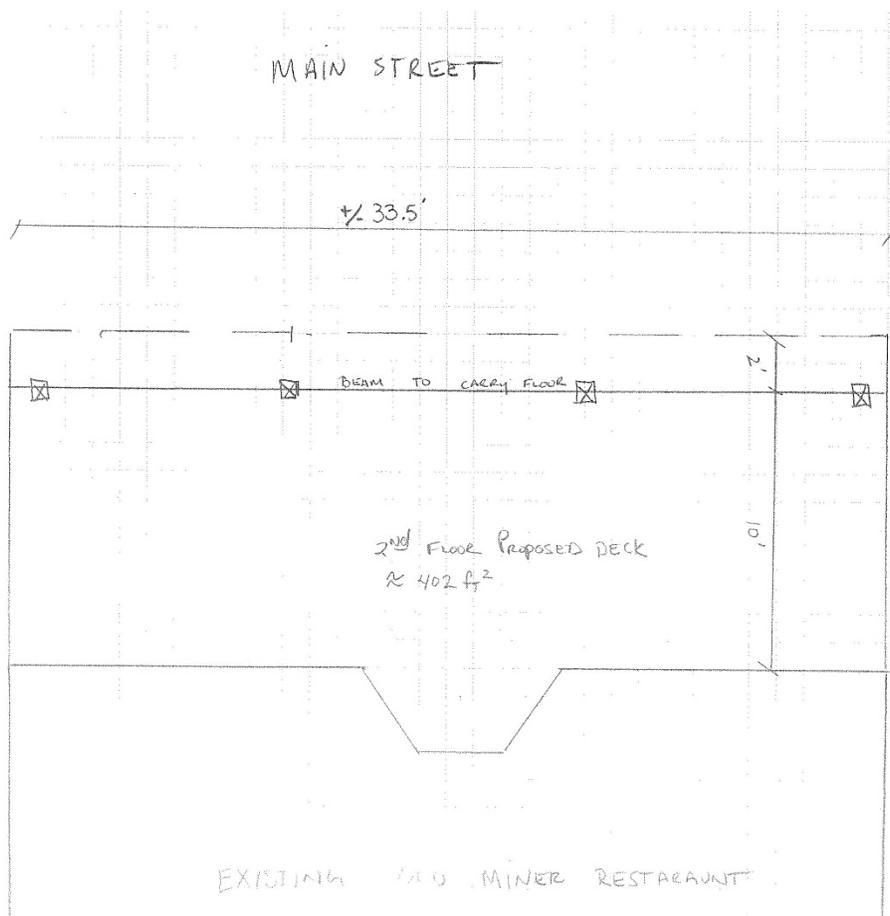
**THIS AGREEMENT**, executed in duplicate by and between The City of Gunnison, Colorado, a municipal corporation, hereinafter referred to as Licensor (“**LICENSOR**”), AND Ol’ Miner Steakhouse hereinafter referred to as Licensee (“**LICENSEE**”).

**WITNESSETH**, that, for and in consideration of **LICENSEE’S** promise to hold **LICENSOR** harmless as against claims of the public, evidence of which is incorporated hereto, and in consideration of other mutual promises recited herein, **LICENSOR** and **LICENSEE** hereby agree as follows:

1. **Temporary Nature.** Both parties hereto agree that anything licensed hereunder is by definition deemed to be temporary in nature. The **LICENSEE** further agrees that in the event **LICENSOR** demands removal of the subject of this License from public property, not to protest such decision in any manner.
2. **License to Use Public Property.** **LICENSEE** shall be, and hereby is, given a certain license to use certain public property, all of which such property is described in Exhibit “A” attached and incorporated hereto by this reference. Said Exhibit is initialed by the parties and bears even date herewith, upon the terms, conditions and limitations set forth in Exhibit “A”, for the following purposes, to wit:

Tear down the existing awning and *construct and maintain a deck structure above the first floor which extends into the ROW a total of 12 feet from the existing building face, is 33 feet wide and 8 feet above the sidewalk.*





3. **Repair and Maintenance.** In the event that **LICENSEE** hereby shall have been given permission to situate improvements on or affix them to the aforesaid real property, **LICENSEE** shall keep said improvements in good repair, and shall maintain them with such reasonable regularity and by such reasonable means and in such reasonable manner as to prevent them from being or becoming unsightly or otherwise detractive in general appearance of adjacent property or of all property within the City, generally.
4. **Indemnity, Insurance.** By execution hereof, the **LICENSEE**, for itself and its heirs, successors, representatives, and assigns, hereby agrees to indemnify and save harmless the **CITY**, and its officers, agents, and employees, against any and all claims for personal injury or property damage, including reasonable attorney's fees arising out of or connected in any way with the **LICENSEE'S** use of the **CITY'S** property to this license.

**LICENSEE** hereby gives to the **CITY** its assurance and promise to hold **CITY** harmless from any and all liability arising from harm to the public, whether in the form of property damage or bodily injury resulting from the erection and placement of the aforesaid improvements upon public property, or the use of the public property by **LICENSEE**. The **LICENSEE** also shall carry liability insurance to protect the public from injuries sustained by reason of the erection of and placement of the aforesaid improvements or use of the public property, and the coverage limits thereof shall be at least \$350,000.00 for property damage or bodily injury, including death, per person, and \$900,000.00 for property damage or bodily injury, per occurrence. The **CITY** shall be named as an additional insured on said policy of insurance and be provided with a certificate evidencing compliance with this requirement. Upon written notice by the **CITY** to the **LICENSEE** of a change in the limits of governmental liability pursuant to the "Colorado

Governmental Immunity Act” (C.R.S. 24-10-101, et. seq.) or any other similar or successor legislation, **LICENSEE** shall, within twenty days of such notice, obtain and provide proof of insurance complying with the change in liability limits. The **LICENSEE** also shall provide such certificates annually or otherwise, as the case may be, for any and all renewals or extensions of the terms of such coverage.

5. **Forfeiture, Removal.** If and whenever the **LICENSEE** shall have refused or otherwise failed to hold **LICENSOR** harmless and carry insurance as provided hereinabove, or whenever the City Council shall have determined that said public property or any portion thereof is needed by **LICENSOR** for other purposes, then, in that event, the privileges granted hereby to the **LICENSEE** automatically shall terminate. In that event, the **LICENSEE** upon written demand by **LICENSOR**, shall cause said improvements to be removed from public property at its own expense within a reasonable time period indicated in the notice. If **LICENSEE** shall have refused or otherwise failed to cause said improvements to be removed within a reasonable time after receipt of written demand therefore by **LICENSOR**, then in that event, **LICENSOR** shall have the right to remove the improvements or cause them to be removed, and **LICENSEE** shall be liable to **LICENSOR** for its costs therein.
6. **Privileges Personal to License.** This License is personal to the **LICENSEE**, and the privileges herein granted shall not inure to or for the benefit of the **LICENSEE's** successors or assigns.
7. **Snow Removal.** The use of licensed area shall not interfere with snow removal operations by **LICENSOR** on the City streets. **LICENSEE** shall be responsible for removing all snow from the licensed area in such fashion and manner as not to interfere with City traffic or to violate any City ordinance then in effect.
8. **Entirety of Agreement, Modifications.** The making, execution and delivery of this agreement by the **LICENSEE** has been induced by no representations, statements, warranties, or agreements other than those herein expressed. This agreement embodies the entire understanding of the parties and there are no further or other agreements or understanding, written or oral, in effect between the parties, relating to the subject matter thereof.

This instrument may be amended or modified only by an instrument of equal formality signed by the respective parties.

**IN WITNESS WHEREOF**, the parties hereunto affix their respective signatures on the dates appearing opposing thereto:

THE CITY OF GUNNISON, COLORADO  
LICENSOR

\_\_\_\_\_  
Robert Drexel, Mayor

DATE: \_\_\_\_\_

ATTEST:

(SEAL)

\_\_\_\_\_  
City Clerk

**STATE OF COLORADO**        )  
  ) **SS.**  
**COUNTY OF GUNNISON**    )

The foregoing License Agreement was subscribed to me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Robert Drexel, Mayor for the City of Gunnison and by Gail A. Davidson, City Clerk for the City of Gunnison.

My Commission Expires: \_\_\_\_\_

**WITNESS** my hand and official seal: **(SEAL)**

\_\_\_\_\_  
Notary Public



LICENSEE

\_\_\_\_\_  
Frank Cutrona, Ol' Miner Steakhouse

DATE: \_\_\_\_\_

**STATE OF COLORADO**        )  
  ) **SS.**  
**COUNTY OF GUNNISON**    )

The foregoing License Agreement was subscribed to me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Frank Cutrona, Ol' Miner Steakhouse.

My Commission Expires: \_\_\_\_\_

**WITNESS** my hand and official seal: **(SEAL)**

\_\_\_\_\_  
Notary Public



**EXHIBIT "A"**

To that certain License Agreement

Between

The City of Gunnison, Colorado, LICENSOR,

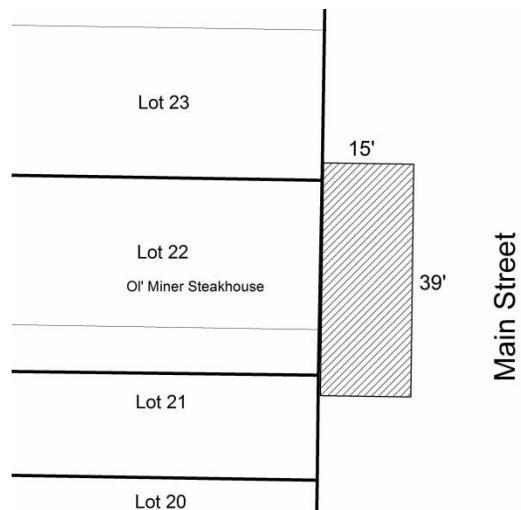
And

O' Miner Steakhouse, LICENSEE,

Which License Agreement is dated: April \_\_\_\_, 2015

**THE REAL PROPERTY** which the Licensee is permitted by the aforesaid License Agreement to use is described more particularly as follows:

*A portion of the Main Street right-of-way adjacent to the east line of Lots 21-23, Block 21, Original Gunnison, beginning at the northeast corner of lot 22, thence south 36 feet along said east line, thence east 15 feet, thence north 39 feet, thence west 15 feet, thence south 3 feet along said east line to the point of beginning.*



**SUBJECT TO:**

1. Construction of this deck shall be subject to issuance of a building permit.
2. The building permit application shall include detailed construction drawings and the plan must be stamped by a registered engineer licensed in the State of Colorado.
3. The deck layout shall be constructed with a railing design that does not accommodate the placement of drinks or other items that may fall onto the sidewalk.
4. Glassware or other breakable items are prohibited on the deck.
5. This license agreement shall not be effective until proof of adequate insurance coverage, as required by paragraph 4 of this agreement is provided to the Community Development Director.

Initialed by LICENSOR: \_\_\_\_\_

Date: \_\_\_\_\_

Initialed by LICENSEE: \_\_\_\_\_

Date: \_\_\_\_\_