

AIR93AVL

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT (OPTION AGREEMENT)

NAME OF AGENCY OR CONTRACTOR: MARY HAHN, PRESIDENT AIRCADIA
INVESTMENT CORPORATION

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: OPTION
AGREEMENT FOR THE AVALON THEATER (COOPER THEATER) LOTS, 11, 12,
13, 14, AND 15 OF BLOCK 116, 645 MAIN STREET

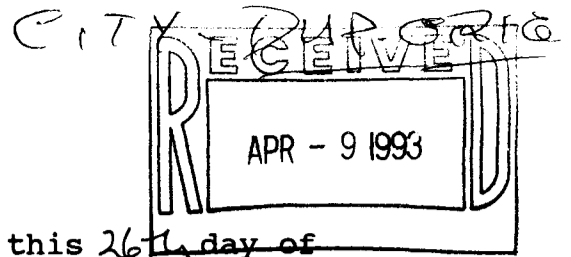
CITY DEPARTMENT: ADMINISTRATION

YEAR: 1993

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

OPTION AGREEMENT



This Option Agreement is entered into this 26th day of MARCH, 1993, by and between the City of Grand Junction, 250 North Fifth Street, Grand Junction, CO 81501 ("City"), and Aircadia Investment Corporation, a Colorado Corporation, P.O. Box 209, Colorado Springs, CO 80901 ("Seller");

WITNESSETH:

WHEREAS, Seller is the owner of the following described real property in the City of Grand Junction, Mesa County, Colorado, to wit:

The West 85 feet of lots, 11, 12, 13, 14, and 15 of Block 116, according to the plat filed in Book 868 at Page 823 of the official Records of Mesa County, Colorado, also known as 645 Main Street, Grand Junction, Colorado 81501, and commonly known as the Cooper Theater (the "Property"); and

WHEREAS, the City desires to acquire an option to purchase said Property, along with personal property and fixtures on the premises (the "Property"), from Seller:

NOW, THEREFORE, IT IS AGREED:

1. That in consideration of that amount of money which is equal to the ad valorem taxes attributable to the property for calendar year 1993 (payable in 1994), to be paid by the City to the Mesa County Treasurer on behalf of Seller, Seller does hereby give and grant to the City, or its assigns, the Option to Purchase the Property on the terms and conditions herein described. Notwithstanding the foregoing, if the City by written notice notifies Seller in calendar year 1993 that the City does not desire to exercise the option granted herein, the obligation to pay the 1993 taxes shall be modified so that the City is only obligated to pay a share of the 1993 taxes apportioned to the date the notice is sent.

2. If the City elects to exercise its option, the purchase price shall be Two Hundred Thousand Dollars (\$200,000.00), payable in good funds at the time of closing.

3. Notice of the City's intent to exercise this option shall be given to Seller on or before the 365th day after execution of this agreement.

4. If the option is exercised, the following terms shall apply:

a. A current commitment for title insurance policy in an amount equal to the purchase price, at Seller's expense, shall be furnished to the City within 20 days of the City's Notice of intent to exercise. Seller will deliver the title insurance policy to the City after closing and pay the premium thereon.

b. The date of closing shall be on or before 30 days following the Notice of Intent to Exercise the Option and shall be the date for delivery of deed as provided. The hour and place of closing shall be designated by City and shall be within Mesa County.

c. At closing, Seller shall convey to the City, free and clear of liens and encumbrances: the Property, by the delivery of a good and sufficient General Warranty Deed together with all fixtures and personal property on the premises at the date of closing.

d. If title is not merchantable and written notice of defect(s) is given by the City or City's agent to Seller or Seller's agent on or before the date of closing, Seller shall use reasonable effort to correct said defect(s) prior to closing. If Seller is unable to correct said defect(s) on or before the date of closing, at Seller's option and upon written notice to the City or City's agent, on or before the date of closing, the date of closing shall be extended thirty days for the purpose of correcting said defect(s). Except as stated in section (e) of this paragraph 4, at the City's option, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received, including all money paid for purchase of the option, including monies paid to the Mesa County Treasurer on behalf of Seller, shall be returned or paid forthwith to the City.

e. Any encumbrance, lien, or any security interest required to be paid by the Seller may be paid at the time of settlement from the proceeds of this transaction or from any other source. Provided, however, at the option of either party, if the total indebtedness secured by liens or security agreements on the Property exceeds the purchase price, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received, including option monies, shall be forthwith returned to the City.

f. General taxes for the year of closing, based on the most recent levy and the most recent assessment, prepaid rents, water rents, and sewer rents, if any, shall be apportioned to date of delivery of deed.

g. Possession of the Property shall be delivered to the City upon delivery of deed, free and clear of leases and tenancies.

h. In the event the City shall fail or refuse to perform its obligation pursuant to this paragraph 4, then all payments and things of value received hereunder shall be forfeited by the City and retained on behalf of Seller and both parties shall thereafter be released from all obligations hereunder. It is agreed that such payments and things of value are LIQUIDATED DAMAGES and are Seller's SOLE AND ONLY REMEDY for the City's failure to perform the obligations pursuant to this paragraph 4.

Seller expressly waives any remedies it may have of specific performance and for additional damages.

i. In the event Seller shall fail or refuse to perform its obligations pursuant to this paragraph 4, the City may, but shall not be obligated to, exercise any one or all of the following:

- Treat this agreement as terminated, in which case all payments and things of value received hereunder by Seller and all monies paid on behalf of Seller shall be forthwith returned or paid to the City and the City may recover such additional damages as may be proper;

- Treat this agreement as being in full force and effect, in which event the City shall have the right to an action for specific performance, or damages, or both.

5. Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this agreement, the court may award to the prevailing party all reasonable costs, expenses, and attorneys' fees.

6. If this Option Agreement is signed by both Seller and Buyer on or before April 15, 1993, this agreement shall become a contract between Seller and the City and shall inure to the benefit of the heirs, successors, administrators, executors and assigns of such parties.

7. So long as this agreement is in effect and until closing, or expiration of this option, the City and its designated representatives shall have the right of access to the property and shall have the right to perform engineering, architectural and other investigations concerning the property so long as the same are done in a way that does not damage the property, except for inspections that are done in order to determine if the structure is sound, if the original facade is in place under the present outer surface, and other examinations to determine the integrity of the property. The City may drill and/or remove samples from areas of the property reasonably necessary to determine the present condition of the property.

8. Seller shall maintain the property, specifically including, but not limited to, the interior and exterior structure(s), the seats and all other fixtures during the term hereof in order that no deterioration nor any diminution in value of any of the property shall occur.

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

ADDENDA:

Seller's *M&H*
Initials
City' *M&H*
Initials

A. The seats presently located in the theatre auditorium are specifically excluded from the term "Property" as used in this agreement, it being agreed by the parties that Seller does not hold title to said seats and that Seller has no obligation to acquire title thereto.

Seller's *M&H*
Initials
City's *M&H*
Initials

B. Paragraph 7 hereof is hereby amended by adding the following: but such drilling and removal of areas of the property shall be repaired or restored in such manner that no deterioration nor diminution in value of the property shall occur.

Attest:

The City of Grand Junction

Ronald M. Lippi
Acting City Manager

by: Sandra Glaze
City Clerk
Hobing

APRIL 6, 1993

Attest:

Aircadia Investment Corporation

Mary Han
President

by: SEAL
Notary