

AIR94AVL

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT (PURCHASE)

NAME OF AGENCY OR CONTRACTOR: WILLIAM L. MITCHELL, ADMINISTRATIVE ASSISTANT AIRCADIA INVESTMENT CORPORATION

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

CITY DEPARTMENT: ADMINISTRATION

YEAR: 1994

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

**CONTRACT TO BUY AND SELL REAL ESTATE**

THIS CONTRACT TO BUY AND SELL REAL ESTATE is entered into by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Aircadia Investment Corporation, a Colorado Corporation, P. O. Box 209, Colorado Springs, CO 80901, hereinafter referred to as "the Seller".

1. The following described real property is the subject of this Contract and is hereinafter referred to as the "Property."

The West 85 feet of lots 11, 12, 13, 14, and 15 of Block 116, according to the Original Plat of the City of Grand Junction, also known as 645 Main Street, Grand Junction, Colorado 81501, and commonly known as the Cooper Theater (the "Property") with a street address of 645 Main Street.

Subject to the provisions set forth herein, the City hereby agrees to purchase the Property, and the Seller agrees to sell the Property.

3. The purchase price for the Property shall be \$200,000.00, payable in "good funds" at closing. The City and the Seller each agree to pay their own closing costs according to local custom.

4. The Property also includes all improvements thereon or appurtenant thereto, and any and all other rights appurtenant to the Property, free and clear of all taxes, liens and encumbrances.

5. A current commitment for title insurance policy in an amount equal to the purchase price, at the Seller's expense, has been furnished to the City. The Seller shall cause the title insurance policy to be delivered to the City after closing and pay the premium thereon.

6. The date of closing shall be the date for delivery of deed as provided in paragraph 7. The hour and place of closing, in Mesa County, shall be as designated by the Seller's Title Company. Changes in time, place and date may be made with the consent of both the Seller and the City.

7. Title to the Property shall be merchantable in the Seller, except as stated in this paragraph and in paragraphs 8 and 9. Subject to payment or tender as above provided and compliance by the City with the other terms and provisions hereof, the Seller shall, with respect to the Property, execute and deliver a good and sufficient general warranty deed together with all fixtures, except fixtures and personal property on the premises as of the date this agreement is signed, to the City on September 30, 1994, or, by mutual agreement, at an earlier date, conveying the Property free

and clear of: all taxes, except the general taxes for the year of closing; free and clear of all liens for special improvements installed as of the date of the City's signature hereon, whether assessed or not; free and clear of all liens and encumbrances, including liens or assessments with respect to water, water/ditch shares and certificates; and subject to building and zoning regulations.

8. Except as stated in paragraphs 7 and 9, if title is not merchantable and written notice of defect(s) is given by the City to the Seller or the Seller's agent on or before ten days before closing, the Seller shall use reasonable efforts to correct said defect(s) prior to date of closing. If the Seller is unable to correct said defect(s) on or before date of closing, at the Seller's option and upon written notice to the City on or before date of closing, the date of closing shall be extended thirty (30) days for the purpose of correcting said defect(s). Except as stated in paragraph 9, if title is not rendered merchantable as provided in this paragraph 8, 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 hereunder shall be returned to the City.

9. Any encumbrance required to be paid may be paid at the time of settlement from the proceeds of this transaction or any other source. Provided, however, at the option of either party, if the total indebtedness secured by lien(s) 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 hereunder shall be returned to the City.

10. (a) The Seller shall, within five (5) days of acceptance of this contract by the Seller, furnish to the City at no cost to the City true copies of all information and documents in possession of the Seller which describes or informs concerning the condition of the Property including, but not limited to, field surveys, geological surveys and studies, engineering studies, and environmental studies.

(b) The Seller and the City agree that the City, its officers, employees, agents, contractors and licensees, will be permitted for a period commencing on the date of acceptance of this contract by the Seller and ending on the date which is forty-five (45) days after said date of acceptance ("Inspection Period"), to have access to and make inspections of the Property for the purposes of conducting field surveys, engineering studies, geological surveys and studies, and environmental studies.

(c) If the City, during the Inspection Period, determines that the condition of the Property is unsuitable for use by the City for reasons including, but not limited to, unstable soils or geology, groundwater, or the existence of any hazardous, toxic or regulated substances or materials which are located on or under the Property, the City shall notify the Seller of such defect(s) in writing. The Seller shall then have fifteen (15) days after receipt of said notice to either reasonably correct said defect(s)

or to terminate this Agreement. If this Agreement is so terminated, neither party shall have any further rights under this Contract and all payments and things of value received hereunder shall be returned to the City. If written notice of any unsatisfactory condition(s) is not mailed to the Seller as set forth above, the physical condition of the Property shall be deemed to be satisfactory.

11. Pre-paid rents, water rents and water assessments, sewer rents, FHA mortgage insurance premiums and interest on encumbrances, if any, shall be apportioned to date of delivery of deed; such apportionment shall be considered final settlement. Real and personal property taxes for the year of closing, based on the most recent levy and assessments shall be paid by the City. The Seller shall be responsible for any sales, use or other taxes that may accrue because of this transaction.

12. Possession of the Property shall be delivered to the City on date of deed delivery, subject to the provisions of paragraph 19 below. If the Seller fails to deliver possession as herein specified, the Seller shall be subject to eviction and shall be liable for a daily rental of \$100.00 until possession is delivered.

13. In the event the Property shall be damaged by fire, flood or other casualty prior to time of closing, in an amount of not more than ten percent (10%) of the total purchase price, the Seller shall be obligated to repair the same before the date herein provided for delivery of deed. In the event such damage is not or cannot be repaired within said time or if the damages exceed such sum, this contract may be terminated at the option of the City and all payments and things of value received hereunder shall be returned to the City; in such event the City shall return documents received by the City pursuant to 10(a), above. Should the City elect to carry out this contract despite such damage, the City shall be entitled to all the credit for the insurance proceeds resulting from such damage, not exceeding, however, the total purchase price.

14. Time is of the essence hereof. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed as herein provided, there shall be the following remedies:

(a) IF THE CITY IS IN DEFAULT, then all payments and things of value received hereunder shall be forfeited by the City and retained on behalf of the Seller and both parties shall thereafter be released from all obligations hereunder and seller shall have the right to an action for specific performance, but not damages.

(b) IF THE SELLER IS IN DEFAULT, the City may elect to treat this contract as (1) terminated, in which case all payments and things of value received hereunder shall be returned to the City and the City shall have the right to an action for specific performance;

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

15. This contract contains the entire agreement between the parties and cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. This contract and the terms and conditions hereof apply to and are binding upon the heirs, successors and authorized assigns of both parties.

16. The parties hereto represent to each other that the sale and purchase of the Property hereby contemplated was brought about without the efforts of any brokers or agents and that neither party has dealt with any brokers or agents in connection with the sale and purchase of the Property. Each party agrees to defend, indemnify and hold the other harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party as a result of dealings claimed to have been conducted with the respective party.

17. This Agreement shall be governed and construed by the laws of the State of Colorado. Venue shall be in Mesa County, Colorado.

18. All notices or other communications between the parties hereto shall be delivered by United States Certified Mail, return receipt requested, and shall be deemed served upon the receiving party as of the date of mailing indicated on the postal receipt, addressed as follows:

- To the City:                   c/o Property Agent  
250 North Fifth Street  
Grand Junction, CO   81501-2668
  
- With a Copy to:               City Attorney  
250 North Fifth Street  
Grand Junction, CO   81501-2668
  
- To the Seller:                 William L. Mitchell  
P. O. Box 209  
Colorado Springs, CO   80901

19. This entire contract and the City's obligation to proceed under its terms is expressly conditioned upon the consent and approval of the City Council of the City of Grand Junction. If such consent and approval is not obtained on or before July 21, 1994, then this contract shall automatically become void and of no effect, in which case all payments and things of value received hereunder shall be returned to the City.

20. Subject to paragraph 19, if this proposal is accepted by the Seller in writing and the City receives notice of such acceptance on or before August 1, 1994, this instrument shall

become a contract between the Seller and the City and shall inure to the benefit of the heirs, successors and assigns of both parties.

21. The Seller and the City have each obtained the advice of their own legal and tax counsel.

The City of Grand Junction, Colorado  
Purchaser

*Shark Achen*

City Manager

Dated: \_\_\_\_\_

City's Address: c/o City Property Agent  
250 North 5th Street  
Grand Junction, Colorado 81501.

Acceptance By Seller:

*William L. Mitchell*

Aircadia Investment Corporation

Dated: July 29, 1994

Seller's Address: P. O. Box 209  
Colorado Springs, CO 80901