



(Check One)  
 City  
 County



grand junction-mesa county  
 CITY - COUNTY PLANNING

Receipt No. 372  
 Date Rec. 5-2-83  
 Received By A. Origo

○○○○○○○○ Development Application ○○○○○○○○○○

We, the undersigned, being the owners of property situated in Mesa County, State of Colorado, as described on the attached Legal description form do hereby petition this:

	ACRES	PHASE	COMMON LOCATION	ZONE	TYPE OF USAGE
SUBDIVISION PLAT/PLAN <input type="radio"/>		<input type="radio"/> OUTLINE DEV <input type="radio"/> PRELIMINARY <input type="radio"/> FINAL			
REZONE <input type="radio"/>			<input type="radio"/> Grand Junction <input type="radio"/> Mesa County	From → To	
CONDITIONAL USE <input checked="" type="radio"/>	8,100 sq'		2839 N. Ave	C-1	Hotel / Restaurant
BULK DEVELOPMENT <input type="radio"/>					
HIGHWAY ORIENTED DEVELOPMENT <input type="radio"/>					
TEXT AMENDMENT <input type="radio"/>					
SPECIAL USE <input type="radio"/>					
VACATION <input type="radio"/>					<input type="radio"/> Road <input type="radio"/> R.O.W. <input type="radio"/> Alley <input type="radio"/> Easement

Indicate Primary Contact Person for Correspondence: (Check appropriate )

PROPERTY OWNER <input type="radio"/>	SUB-LESSEE <input checked="" type="radio"/>	REPRESENTATIVE <input checked="" type="radio"/>
Name	Name	Name
Address	Address	Address
Business Phone	Business Phone	Business Phone

H.J. Huston's *by Mrs Robert Traylor*  
 2025 8430 ASPEN CO. 81612 P.O. Box 2540 C.D. CO 81502  
 923-4151 242-2636

NOTE: Legal property owner is owner of record on date of submittal.

WE HEREBY ACKNOWLEDGE THAT WE HAVE FAMILIARIZED OURSELVES WITH THE RULES AND REGULATIONS WITH RESPECT TO THE PREPARATION OF THIS SUBMITTAL, THAT THE FOREGOING INFORMATION IS TRUE & COMPLETE TO THE BEST OF OUR KNOWLEDGE, AND THAT WE ASSUME THE RESPONSIBILITY TO MONITOR THE STATUS OF THIS APPLICATION AND THE REVIEW SHEET COMMENTS. WE RECOGNIZE THAT WE OURSELVES, OR OUR REPRESENTATIVE(S) MUST BE PRESENT AT ALL HEARINGS. IN THE EVENT THAT THE PETITIONER IS NOT REPRESENTED, THE ITEM WILL BE DROPPED FROM THE AGENDA, AND AN ADDITIONAL FEE CHARGED TO COVER RE-SCHEDULING EXPENSES BEFORE IT CAN AGAIN BE PLACED ON THE AGENDA.

Robert Traylor 4-29-83  
 Signature of person completing application Date

\_\_\_\_\_  
 Signature(s) of property owner(s) Date  
 (Attach additional sheets if necessary)

IMPACT STATEMENT  
and  
DEVELOPMENT SCHEDULE

H. J. Huston's Inc. is applying for a Conditional Use, at 2839 North Avenue in Grand Junction, Colorado, in order to open a new establishment called H. J. Huston's. No liquor license has previously existed at this location. H. J. Huston's, Inc. is currently applying for a Hotel and Restaurant Liquor License with the City of Grand Junction. The building in which the restaurant will be located is the site of the existing Western Steer Restaurant. This restaurant has been closed for the past several months. H. J. Huston's, Inc., a corporation, has executed a sub-lease with DRD Investments, who currently leases the property for the Western Steer Restaurant from McCoy Enterprises.

Adjacent uses are: to the west, A & W Drive-in Restaurant, a Site Station, and Solarius Square; to the south, a trailer park; to the north, Country Kitchen Restaurant and Eastgate Mall; to the east, a trailer park, one permanent residence and the Shamrock Motel. The restaurant is located on the south side of North Avenue just east of the A & W Restaurant. Vehicle access to the restaurant can be gained by traveling east or west on North Avenue. The restaurant is equipped with 122 parking places located in its parking lot to the northwest and south of the restaurant. Security lighting is located in the restaurant parking lot on the west and south of the restaurant. Street lighting is located on the median in North Avenue where there are three poles approximately 50 yards apart. Grass and trees are located on the frontage adjacent to North Avenue and on the north side of the restaurant. A seven-foot wooden fence extends along the east and south side of the restaurant parking areas. A fire hydrant is located on the northwest corner of the property.

H. J. Huston's will be open from 11:00 a.m. to 9:00 p.m. on weekdays, and 11:00 a.m. to 10:00 p.m. on weekends. The seating capacity of the restaurant will be 130 in the main dining area and banquet facilities are available for parties from 20 to 100 people. The restaurant will be open for lunch and dinner seven days a week. The restaurant will be a family style dining concept with a price range for lunch of \$2.00 to \$4.00, and dinner from \$6.00 to \$8.00.

The restaurant has one entrance on the north west corner of the building. Additional exits are provided on the east and south sides of the building.

Impact Statement and  
Development Schedule  
Page 2

Teller Arms, Coronado and Eastgate shopping centers with numerous retail outlets are in the neighborhood. The restaurant plans to provide services for business people and visitors alike. The restaurant also hopes to attract and cater to local clubs and other parties.

Cocktails, wine and beer will be strictly a service to highlight special occasions and to accommodate patrons. There will be no bar area, no bar, no bar stools and no bartender. A fully automated bar at a cost of \$20,000.00, will dispense cocktails and spirits. This automated bar will be operated by waitresses and waiters. No minors will have access to the service bar area. Senior citizens will be served at a discount. A no smoking area will be available. The restaurant anticipates that 35 to 45 new jobs will be provided.

Hans J. Lull is President of H. J. Huston's, Inc. and will manage the restaurant. Mr. Lull owned the Golden Barrel Restaurant in Aspen for 13 years. He has 29 years of professional experience in the restaurant field. Mr. Lull now owns property in Clifton. Louis Anaya is Secretary of H. J. Huston's, Inc. Mr. Anaya will also serve as manager of H. J. Huston's. He has 17 years restaurant experience. Mr. Anaya is a Colorado native, is married and has two children. He is a resident of Grand Junction.

Upon approval of the application, H. J. Huston's plans to begin preparations for opening the restaurant. A tentative opening date is scheduled for July of 1983. Remodeling will commence before that time.

pasture parking

2 stalls in back lot

6' fence

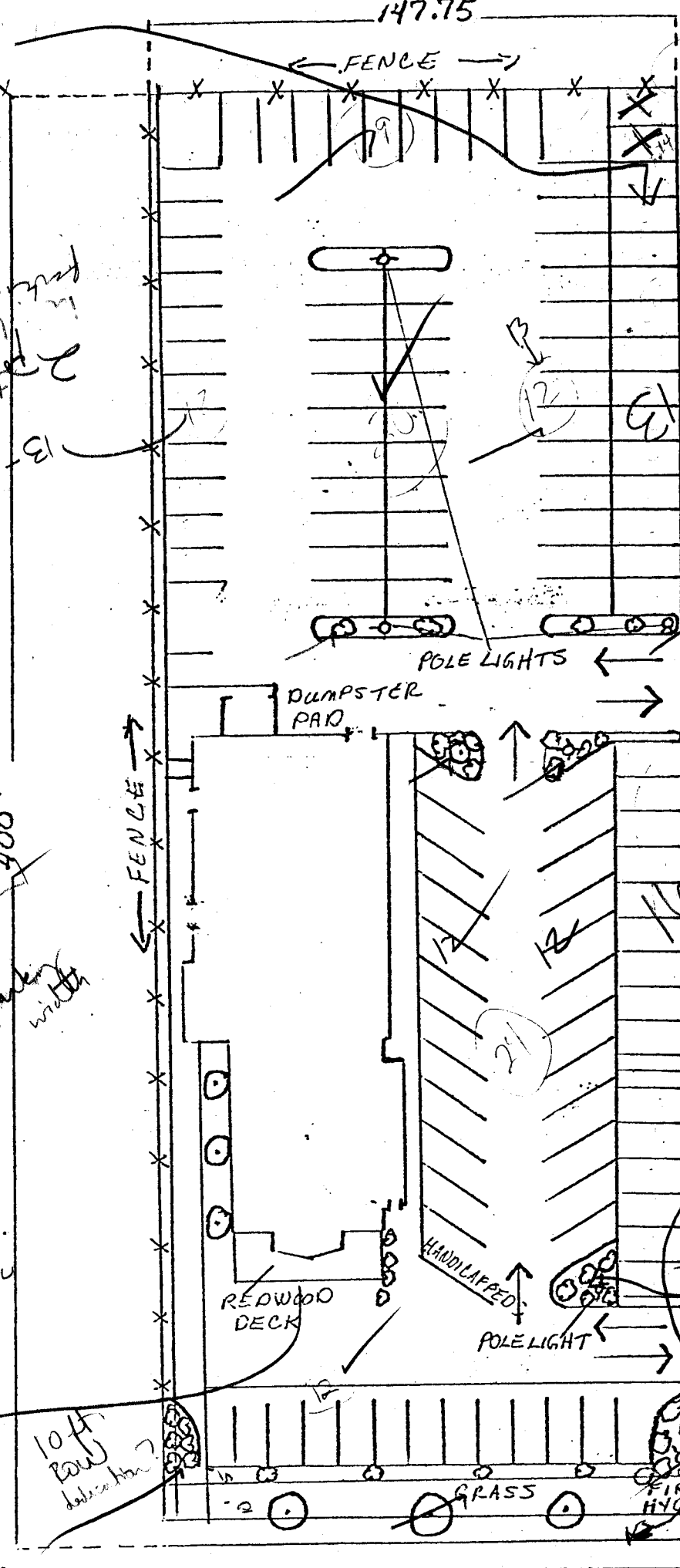
Total width of oak where trees & pasture 50'



10' parking pad width

106 space not including 12 on Ave North

10th row below here



Handwritten calculations:  
101  
21  
12  
96  
94  
12  
82  
16  
66  
+ 9  
12  
22  
20  
4  
13  
53  
24  
12  
1

8 11  
21 +  
901

89 A.W

15  
120

sidewalk wheel trail to now

OFFICE COPY

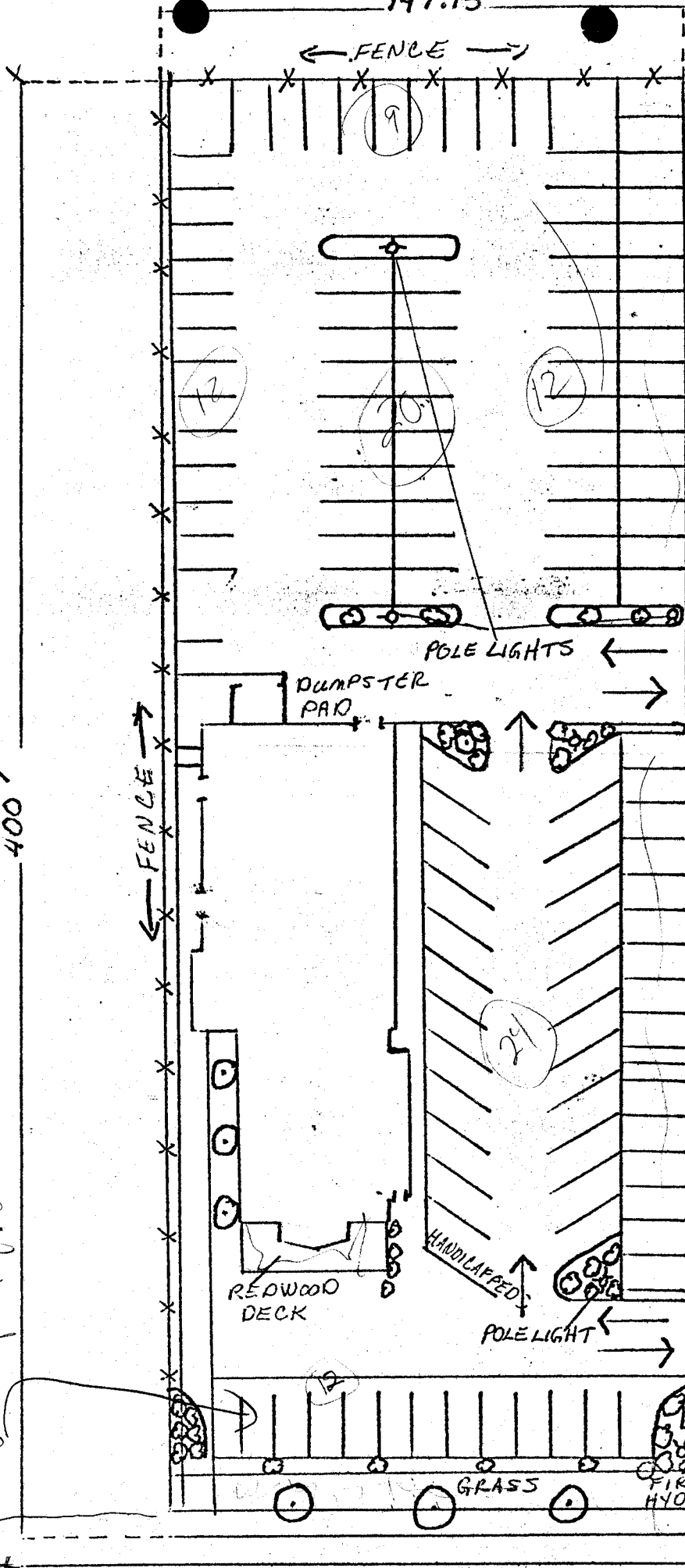
from A 27-83  
prints

ENTRANCE

NORTH AVENUE

147.75

FENCE



9
12
21
20
41
12
53
24
77
12
89

1
89
16
05
15
120

**OFFICE COPY**  
27-83

check on access

or detached - this is for fire

Redwood Deck

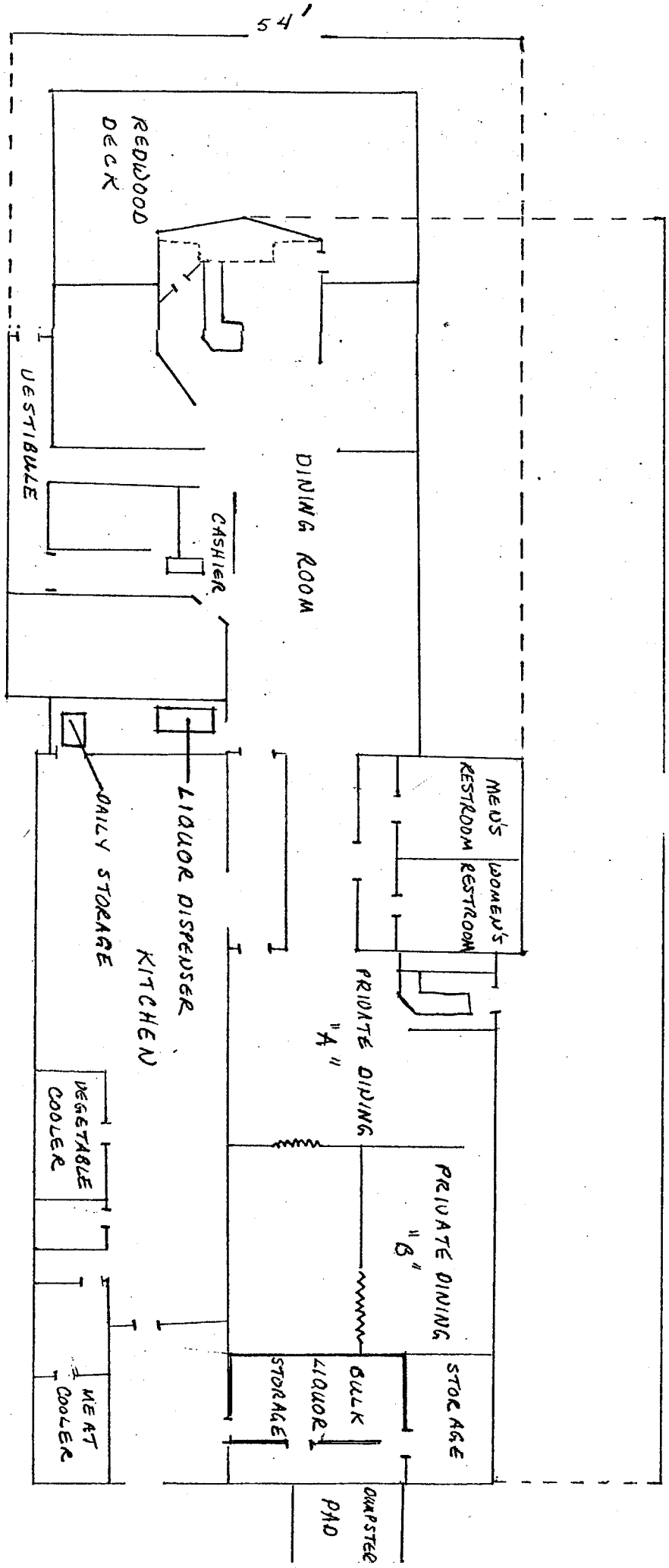
Handlapped

Sign

Entrance

back

NORTH AVENUE



OFFICE COPY  
 21-83

STATE OF COLORADO

SUB-LEASE AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1983, by and between DRD Investments (formerly known as D & R Investments), a General Partnership, hereafter referred to as "Landlord", and H. J. Hustoh's, Inc., a Colorado Corporation, hereafter referred to as "Tenant."

WHEREAS, the parties have agreed upon the terms of a sub-lease of property, and this agreement is being executed for the purpose of setting forth both the preliminary and final terms and conditions of the lease arrangement between the parties;

NOW, THEREFORE, for and in consideration of the premises, the sum of TEN (\$10.00) DOLLARS, in hand paid by each party to the other, and for the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, with the intention of being legally bound hereby, do agree as follows:

PART I

DEFINITIONS

1.1 DEFINITIONS

As used in this Lease Agreement, the following terms shall have the following meanings:

(a) PREMISES. The land described in Exhibit A, attached to this Lease Agreement and incorporated by reference herein, together with all improvements thereon, fixtures attached thereto and personal property located thereon and used in connection with said land.

(b) EFFECTIVE DATE. The date of execution of this Sub-Lease Agreement.

(c) LEASE AGREEMENT. This entire document between the parties.

(d) LEASE YEAR. A twelve month period, with the first Lease Year commencing on the first day of the month coinciding with or next following the Effective Date, and each successive twelve month period constituting the successive Lease Years.

PART II

SUB-LEASE

2.1 LEASE OF PREMISES.

Pursuant to and in accordance with the terms and provisions of this Lease Agreement, Landlord does hereby let and lease unto Tenant, and Tenant does hereby lease from Landlord, the Premises.

2.2. PRIME LEASES.

The Premises are subject to a lease under which Landlord herein is the tenant. Such lease is herein referred to



as the Prime Lease and is identified as that certain Lease Agreement dated August 11, 1981, with McCoy Enterprises, a General Partnership, as Landlord. Tenant acknowledges receipt of copies of the Prime Lease. Notwithstanding any other provision herein, Tenant agrees not to take any action, or to fail to take any action, if such action or failure would constitute a default on the part of the Landlord under the Prime Lease. In addition to all provisions hereof, Tenant shall comply with all obligations and responsibilities of the Landlord, and make all payments other than the regular fixed minimum rent to be paid by the Landlord, under the Prime Lease so as to maintain the Prime Lease in full force and effect. The parties acknowledge that the Lease Agreement is a sub-lease subject to the Prime Leases.

### PART III

#### SUB-LEASE PROVISIONS

##### 3.1 APPLICABILITY.

The provisions of this Part III shall become effective as of the Effective Date and shall govern the rights and obligations of the parties thereafter.

##### 3.2. TERM.

The term of the Lease Agreement is for a period from the Effective Date until the expiration of the original term of the Prime Lease on the 31st day of May, 2002.

##### 3.3. RENEWALS.

Landlord agrees to renew this Lease for successive terms coinciding with the renewal options under the Prime Lease. Tenant shall give Landlord at least six months written notice of its option to renew this Lease. Landlord then agrees to give the required notice to exercise the renewal options under the Prime Lease. All renewals shall be on the same forms and conditions of this Lease Agreement.

##### 3.4. FIXED MINIMUM RENT.

Tenant hereby covenants and agrees to pay to Landlord, at its office or at such place as Landlord may from time to time designate, an annual rental of \$96,000.00, payable in monthly installments of \$8,000.00 each, payable on the first day of each month in advance, and prorated for any portion of a month.

##### 3.5. PERCENTAGE RENT.

Tenant shall also pay as additional rent to Landlord a sum equal to six percent (6%) of Tenant's gross sales for each Lease Year in excess of \$1,000,000.00 up to \$1,400,000.00, and eight percent (8%) of Tenant's gross sales for each Lease Year in excess of \$1,400,000.00. The term "gross sales" as used in this Lease, shall mean the gross amount received by the Tenant for cash and credit accrual (less allowances for bad debts), except as hereinafter provided, from all sales of merchandise or services and from income from all other sources derived from business conducted on the Premises, including orders received on said Premises but filled elsewhere. There shall be deducted from the gross sales for the purpose of computing "gross sales" as herein provided the amount of all taxes, if any, which shall be payable on the sale of merchandise or services in or from the Premises under or pursuant to any federal, state or local law, now or hereafter in effect, levying or imposing a tax upon the sale or sales of merchandise or services; provided, however, that no capital stock tax, privilege tax or franchise tax, and no

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income or similar tax based upon income or profits as such shall be deducted from gross sales. Tenant's calculation of gross sales shall be binding and conclusive if not contested by Landlord within ninety days after submission by Tenant.

The Percentage Rental shall be determined and payable monthly on or before the twentieth (20th) day following the close of each full calendar month during the Term, based on Gross Sales for such period. Monthly payments of Percentage Rental shall be based on the amount by which 6% of gross sales for such month exceed the fixed minimum rent for such month. The first monthly payment of Percentage Rental due hereunder shall include Gross Sales from the date of the commencement of the Term through the last day of the month immediately prior to the first full calendar month in the Term. As soon as practicable after the end of each Lease Year, the Percentage Rental paid or payable for such Lease Year shall be adjusted between Landlord and Tenant, each party hereby agreeing to make such adjustment and to pay to the other, on demand, such amount as may be necessary to effect adjustment to the agreed Percentage Rental.

Tenant shall deliver to Landlord: (a) within twenty (20) days after the close of each calendar month of the Term, a written report signed by Tenant or by an authorized officer or agent of Tenant, showing the Gross Sales made in the preceding calendar month; and (b) within thirty (30) days after the close of each Lease Year and after the termination of the Lease, a statement of Gross Sales for the preceding Lease year which shall conform to and be in accordance with generally accepted accounting principles. The annual statement shall be verified by an officer of the Tenant.

For the purpose of permitting verification by Landlord of any amounts due as Rental, Tenant will keep and preserve for at least three (3) years, original or duplicate books and records which shall disclose all information required to determine Gross Sales and which shall conform to and be in accordance with generally accepted accounting principles. At any time or from time to time after advance notice to Tenant, Landlord or any mortgagee, their agents and accountants, shall have the right during business hours to make any examination or audit thereof which Landlord or such Mortgagee may desire. If such audit shall disclose a liability in any Lease Year for Percentage Rent in excess of the Percentage Rent theretofore paid by Tenant for such period, Tenant shall promptly pay such liability and the cost of the audit. Should any such liability for Percentage Rent equal or exceed three percent (3%) of the Percentage Rent, then, in addition, Landlord may terminate the Lease.

### 3.6. OTHER PAYMENTS, ADDITIONAL RENT.

During the term of this lease, Tenant shall further pay and discharge all occupancy taxes, assessments and/or installments thereof and other duties, charges or payments as shall during the term herein granted be imposed, assessed, levied or become a charge or lien upon the Premises or any part thereof. All payments under this paragraph shall be made before the items to be paid become delinquent. In the case of assessments for local improvements or betterments which may be assessed or imposed during the term hereof after the Effective Date and which may be payable in installments, Tenant shall be obligated to pay only such installments as fall due during the term of this lease after the Effective Date. Any of said items which may be applicable for a period at the beginning or the end of the lease term shall be prorated in a portion so that Tenant shall pay only the portions thereof corresponding to the portions of said period within the term of this lease after the Effective Commencement Date. At all times during the term hereof after the Effective

Date, Tenant shall pay for all utilities used on or in connection with the Premises.

### 3.7. CONTESTING OF IMPOSITIONS, ETC.

Tenant, at its expense, and, if legally required, in the name of Landlord, may contest (in the case of any item of importance, after prior written notice to Landlord), by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any imposition or lien therefor or any legal requirement or the application of any instrument of record, provided that (a) in the cases of unpaid mechanic's liens, impositions or liens therefor, such proceedings shall suspend the collection thereof from Landlord, and/or the leased Premises, (b) neither the Premises nor any part thereof or interest therein shall be in any danger of being sold, forfeited or lost, (c) in the case of a legal requirement, Landlord shall not be in any danger of an additional civil or criminal liability for failure to comply therewith, and (d) Tenant shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in the proceedings or reasonably requested by Landlord. Landlord, at the expense of Tenant, will cooperate with Tenant and execute any documents or pleadings legally required for any such contest, provided that any such cooperation or execution will not impose any obligation or expense on Landlord.

### 3.8. USE.

Tenant shall have the right to use the Premises for the operation of a restaurant and cocktail lounge. Any other use will be subject to the approval of Landlord, such approval not to be unreasonably withheld but which approval may take into consideration a likely reduction in Percentage Rentals. Tenant shall initiate and carry out a program of regular maintenance and repair so as to keep the Premises in an attractive condition.

### 3.9. INDEMNIFICATION.

After the Effective Date, Tenant shall have full and complete control and possession of the Premises and Tenant agrees to indemnify Landlord and hold it harmless from suits, actions, damages, liability and expenses in connection with injury or damage arising from or out of any occurrence at, in, on or from the Premises or any part thereof by reason of Tenant's use and occupancy of the Premises, by reason of Tenant's breach of any provision of this lease, or by reason of any negligent act or omission by Tenant, its agents or employees, except to the extent that the same may be due to acts or omissions of Landlord, its agents or employees.

### 3.10. LIMITATION OF LIABILITY.

The liability of Tenant to indemnify Landlord as provided herein shall not extend to any matter against which Landlord shall be effectively protected by insurance; provided, however, that if any such liability shall exceed the amount of the insurance in effect, the liability of Tenant shall apply to such excess.

### 3.11. INSURANCE.

(a) Liability. Tenant, at its expense, will maintain with insurers: (1) public liability and property damage insurance applicable to the Leased Property in such amounts as are usually carried by persons operating similar properties in the same general locality in an amount to be approved by

Landlord; and (2) appropriate workmen's compensation insurance in respect of any work on or about the Leased Property.

(b) Casualty. Tenant, at its sole cost and expense, shall keep the improvements insured, during the term of this Lease, against loss or damage by fire and against loss or damage by such other risks as now or hereafter included in an extended coverage endorsement in common use for commercial structures, including vandalism and malicious mischief. The amount of such insurance shall be sufficient to prevent Landlord or Tenant from becoming a co-insurer under the terms of the applicable policies, but in any event in an amount not less than eighty percent (80%) of the then "full replacement cost," such "full replacement cost" being the cost of replacing the improvements, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, less physical depreciation of the improvements.

(c) Form of Policies. All insurance required to be maintained by Tenant hereunder shall: (1) except for workmen's compensation insurance and casualty insurance, name Landlord and Tenant and the lessors under the Prime Lease as insured, as their respective interest may appear, with existing mortgagee as loss payee, and (2) provide that any losses shall be payable notwithstanding any act or negligence of Landlord or Tenant, and (3) provide that no cancellation thereof shall be effective until at least ten (10) days after receipt by Landlord and Tenant of written notice thereof. Tenant will deliver promptly upon request to Landlord the originals, or copies thereof certified as true copies by Tenant, of all insurance policies (or in the case of blanket policies, certificates thereof) with respect to the Premises which Tenant is required to maintain pursuant to this Section, together with evidence as to the payment of all premiums then due thereon.

### 3.12. LANDLORD MAY CURE DEFAULTS

If Tenant shall default in the performance of any covenant contained herein on the Tenant's part to be performed, Landlord may, after thirty days written notice to Tenant or on such notice as may be reasonable in the circumstances if an emergency exists, perform the same for the account and at the expense of Tenant. If Landlord shall incur any reasonable expense in such action, Tenant shall reimburse Landlord for the same. Any such action by Landlord shall not be deemed a waiver of the Tenant's default. Landlord shall have no obligation to cure any default of Tenant hereunder.

### 3.13. MECHANIC'S LIENS.

Tenant will not permit to remain undischarged any lien, encumbrance or charge (arising out of any work of any contractor, mechanic, laborer or materialman) which might be or become a lien or encumbrance or charge upon the Premises or any part thereof. If any lien or notice of a lien on account of an alleged debt of Tenant shall be filed against the Premises or any part thereof, Tenant, within ten days after notice of the filing thereof, will cause the same to be discharged or bonded.

### 3.14. ALTERATIONS AND IMPROVEMENTS.

Tenant shall have the right during the continuance of the term of this Lease to make any alterations or improvements on the Premises, provided that (i) the same do not decrease the value of the Premises and (ii) the same are approved by Landlord, such approval not to be unreasonably withheld.

### 3.15. DEFAULT BY TENANT.

This Lease is made upon the condition that the Tenant shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth, and (a) if any installment of Fixed Minimum Rent, Percentage Rent, Additional Rent or any other sums required to be paid by Tenant hereunder, or any part thereof, shall at any time be in arrears and unpaid for a period of ten (10) days after written notice by Landlord to Tenant (except that Tenant waives and shall not be entitled to more than one (1) written notice in any lease year), or (b) there be any default on the part of the Tenant in the observance or performance of any of the other covenants, agreements or conditions of this Lease on the part of the Tenant to be kept and performed, and said default shall continue for a period of thirty (30) days and Tenant diligently continues to pursue the curing of the same), or (c) the Tenant shall file a petition in bankruptcy or be adjudicated a bankrupt, or file any petition or answer seeking any reorganization, or similar relief for itself under any present or future federal, state or other statute, law or regulation, or make any assignment for the benefit of creditors, or (d) any trustee, receiver or liquidator of Tenant or all or any substantial part of its properties or of the Demised Premises shall be appointed in any action, suit or proceeding by or against Tenant and such proceeding or action shall not have been dismissed within (30) days after such appointment or (e) the leasehold estate hereby created shall be taken on execution or by other process of law, or (f) Tenant shall vacate or abandon the Demised Premises for a period of thirty (30) days after written notice by Landlord to Tenant, then and in any of said cases, the Landlord at its option may terminate this Lease and re-enter upon the Demised Premises and take possession thereof or retake possession of the Demised Premises without terminating this Lease, and in either case Landlord shall have the full right to due for and collect all sums or amounts with respect to which Tenant may then be in default and accrued up to the time of such entry, including damages, and any rent or amounts thereafter accruing.

In addition to, but not in limitation of any of the remedies set forth in this Lease or given to the Landlord by law or in equity, Landlord shall also have the right and option, in the event of any default by the Tenant under this Lease and the continuance of such default by the Tenant under this Lease and the continuance of such default after the period of notice above provided, to retake possession of the Demised Premises from the Tenant by summary proceedings or otherwise, and it is agreed that the commencement and prosecution of any action by the Landlord in forcible entry and detainer, ejectment or otherwise, or any execution of any judgment or decree obtained in any action to recover possession of the Demised Premises, shall not be construed as an election to terminate this Lease unless Landlord expressly exercises its option hereinbefore provided to declare the term hereof ended, whether or not such entry or re-entry be had or taken under summary proceedings or otherwise, and shall not be deemed to have absolved or discharged the Tenant from any of its obligations and liabilities for the remainder of the term of this Lease, and the Tenant shall, notwithstanding such entry or re-entry, continue to be liable for the payment of the rents and the performance of the other covenants and conditions hereof and shall pay to the Landlord all monthly deficits of such deficits from time to time are ascertained, and if in the event of any such ouster, Landlord rents or leases the Demised Premises to some other person, firm or corporation (whether for a term greater, less than or equal to the unexpired portion of the term created hereunder) for an aggregate rent during the portion of such new Lease co-extensive with the term created hereunder which is less than the rent and other charges which the Tenant would pay hereunder for such period, Landlord may, immediately upon the

making of such new lease or the creation of such new tenancy, sue for and recover the difference between the aggregate rental provided for in said new lease for the portion of the term co-extensive with the term created hereunder for such period, together with any expenses to which the Landlord be put for brokerage commissions, placing the Premises in tenantable condition for any new tenant, or otherwise with respect to said Demised Premises. If such new lease or tenancy is made for a shorter term than the balance of the term of this Lease, any such action brought by the Landlord to collect the deficit for that period, shall not bar the Landlord from thereafter suing for any loss accruing during the balance of the unexpired term of this Lease.

All rights and remedies of Landlord herein enumerated shall be cumulative and none shall exclude any other remedies allowed at law or in equity.

### 3.16. CONDEMNATION.

In the event that the whole of the Premises shall be taken by virtue of eminent domain or by condemnation or such part of the Premises is taken which results in a termination of the Prime Leases, then this Lease shall terminate and become null and void as of that date. In the event of a substantial taking which would allow the Tenant under the Prime Leases to terminate, and Tenant in its judgment cannot use the remainder of the Premises, then Tenant shall have the option to terminate this Lease by written notice to Landlord. If this Lease is not so terminated by Tenant, this Lease shall remain in full force and effect except that the rental hereunder shall abate proportionately to the abatement of Rent under the Prime Leases.

If any award is made for the condemning or taking of all or any part of the improvements on the Leased Premises during the original term of this Lease or any of the options thereof, the award for the improvements shall be paid to Tenant.

Termination of the Lease because of condemnation shall be without prejudice to the rights of either Landlord or Tenant to recover from the condemnor compensation and damages for the injury and loss sustained by them as a result of such taking and Tenant shall have the right to make a claim against the condemning authority for loss of profits, loss of its leasehold or damage to its business by the taking or condemnation.

### 3.17. CASUALTY.

In the event of any damage or loss to the Premises during the term hereof by reason of fire or other casualty involving more than \$25,000.00, Tenant shall give notice thereof to Landlord. If any improvements on the Premises shall at any time during the term hereof be damaged or destroyed by fire or other casualty, then to the extent of insurance proceeds available for such use, Tenant shall promptly repair or rebuild the same to the same condition as immediately prior to such occurrence. There shall be no abatement of rent pending any such repair or rebuilding except to the extent to which the Landlord shall have received a net sum as proceeds of rental insurance. If at any time during the last two years of the term of this Lease any loss, damage or casualty shall occur in excess of \$25,000.00, then Tenant shall have the option to terminate this Lease as of that time by written notice to Landlord rather than repairing or rebuilding. In the event such option is exercised by Tenant, this Lease shall terminate and expire as of the date specified in such written notice, and all insurance proceeds will belong to Landlord. Tenant shall exercise such option within 30 days after such casualty.

3.18. QUIET ENJOYMENT.

Landlord hereby covenants and agrees that, if Tenant shall perform all the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the continuance hereof have the peaceful and quiet enjoyment and possession of the Premises without any manner of hinderance from Landlord or any other person or persons whatsoever.

3.19. LANDLORD'S RIGHT OF INSPECTION.

Landlord shall have no right to enter upon the Premises and shall have no right to permit others in or upon the Premises during the term of this Lease after the Effective Commencement Date except as provided for in this paragraph. Landlord shall have the right at all reasonable times, and in conformity with reasonable security procedures adopted by Tenant and occupants of the Premises, to go upon and inspect the Premises and every part thereof, but shall not inspect any improvements upon the Premises except in conformance with the provisions of the Lease or other instrument permitting such occupant to occupy the improvements.

3.20. ASSIGNMENT AND SUBLETTING.

Tenant shall have the full, free and complete power to assign this Lease or to sublet and or all of the Premises to any party or parties from time to time and at any time. Upon written notice of any such assignment or subletting to Landlord, Landlord agrees to recognize the rights of such assignee or sublessee, and such assignee or sublessee shall be entitled to all the rights and benefits conferred unto Tenant by this Lease and shall be subject to all the obligations imposed upon Tenant by this Lease. Any such assignment shall not release Tenant from any liability hereunder.

3.21. ESTOPPEL CERTIFICATES.

At any time and from time to time, each party, upon request of the other, agrees to execute, acknowledge and deliver to such party, any mortgagee, financial institution or other party having or acquiring an interest in the Premises a statement in writing certifying to all or any part of the following information:

(a) That this Lease constitutes the entire agreement between Landlord and Tenant and is unmodified and in full force and effect (or setting forth any such modifications);

(b) The date to which rents have been paid;

(c) That no default has occurred (or specifying any such default);

(d) That the lease term has commenced, that the Tenant is occupying the Premises, and setting forth the Effective Commencement Date of the Lease.

Such estoppel certificates will be executed and delivered within ten days after request for the same.

3.22. SURRENDER.

Upon the expiration or earlier termination of this Lease, Tenant shall deliver up and surrender to Landlord possession of the Premises and all improvements thereon, in the same condition as on the Effective Date, except for ordinary wear and tear and damage by casualty.



### 3.23. NOTICES.

Any notice or consent required to be given by or on behalf of either party to the other shall be in writing and shall be given by mailing such notice or consent by registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their address following their signatures to this Lease Agreement, or to such other address as may be specified from time to time in writing sent to the other party by registered or certified mail.

### 3.24. PARAGRAPH HEADINGS.

The paragraph headings have been inserted herein only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease or in any way affect this Lease.

### 3.25. ENTIRE AGREEMENT.

This Lease Agreement, the exhibits attached hereto, and the Memorandum of Lease set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than set forth in such documents.

### 3.26. AMENDMENT.

No subsequent alteration, amendment, modification, change or addition to this Lease Agreement, nor any waiver of any provision of this Lease Agreement, shall be binding upon either party unless reduced to writing and signed by the party against whom the same is to be bound.

### 3.27. ATTORNEY FEES.

If any rent owing under this Lease is collected by or through an attorney at law, Tenant agrees to pay reasonable attorney fees and other expenses incurred by Landlord.

### 3.28. INTEREST.

All sums payable by Tenant to Landlord under this Lease, if not paid when due, shall accrue interest at the rate of twelve (12%) percent per annum but not in excess of the highest rate allowed under the laws of the State of Colorado, from their due date until paid, said interest to be so much additional rent under this Lease and shall be paid to Landlord by Tenant upon demand. Except for rental payments, interest shall not accrue until notice and demand for payment.

### 3.29. NET LEASE.

This Lease shall be deemed and construed to be a "net-net-net lease" and, except as herein otherwise expressly provided, the Landlord shall receive the Fixed Minimum Rent, Percentage Rent, and Additional Rent and all other payments hereunder to be paid by Tenant free from any charges, assessments, impositions, expenses or deductions of any and every kind or nature whatsoever, except as otherwise herein expressly provided.

### 3.30. BINDING EFFECT.

This Lease and each and every provision hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

3.31. AUTHORITY.

Each party to this Lease Agreement represents that it has full and complete authority to enter into this Agreement. Each person executing this Lease Agreement on behalf of such party represents that he has been fully authorized to execute this Agreement on behalf of such party and that such party is fully bound by the signature of such representative.

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

LANDLORD:

DRD INVESTMENTS, ~~INC.~~

By: David E. Hocker  
David E. Hocker, Partner

By: Roger L. Huston  
Roger L. Huston, Partner

LANDLORD'S ADDRESS:

P. O. Box 1539  
Owensboro, Kentucky 42302

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

TENANT:

H. J. HUSTON'S, INC.

By: Hans Lull  
Hans Lull, President

TENANT'S ADDRESS:

P. O. Box 1539  
Owensboro, Kentucky 42302

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

Before me, a Notary Public in and for said county and state, personally appeared ~~David E. Hecker~~ and Roger L. Huston, ~~by persons~~ to me known to be the person who executed the within and foregoing instrument, who acknowledged that they were duly authorized to execute such instrument on behalf of Landlord, that they did execute said instrument on behalf of DRD Investments and that the same is the free and voluntary act and deed of said DRD Investments for the uses and purposes set forth therein.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 1983.

Margie Pastern  
NOTARY PUBLIC

My Commission expires:  
NOTARY PUBLIC STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES SEPT 11 1983  
BONDED THRU GENERAL INS. UNDERWRITERS

STATE OF Colorado

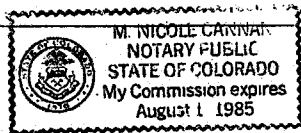
COUNTY OF Mesa

Before me, a Notary Public in and for said county and state, personally appeared Hans Lull, President of H. J. Huston's, Inc., to me known to be the person who executed the within and foregoing instrument, who acknowledged that he was <sup>Tenant</sup> duly authorized to execute such instrument on behalf of Landlord, that he did execute said instrument on behalf of H. J. Huston's, Inc. and that the same is the free and voluntary act and deed of said H. J. Huston's, Inc. for the uses and purposes set forth therein.

Witness my hand and seal this 25 day of April, 1983.

M Nicole Cannon  
NOTARY PUBLIC

My Commission expires:



STATE OF Georgia

COUNTY OF DeKalb

Before me, a Notary Public in and for said county and state, personally appeared David E. Hocker ~~and Roger L. Huston~~, by persons to me known to be the person who executed the within and foregoing instrument, who acknowledged that ~~they were~~ <sup>he was</sup> duly authorized to execute such instrument on behalf of Landlord, that ~~they~~ <sup>he</sup> did execute said instrument on behalf of DRD Investments and that the same is the free and voluntary act and deed of said DRD Investments for the uses and purposes set forth therein.

Witness my hand and seal this 22 day of April, 1983.

William C. McFee, Jr.  
NOTARY PUBLIC

WILLIAM C. McFEE, JR.  
Notary Public - Geo. Sta. at Large  
My Commission Expires June 10, 1984

My Commission expires:

STATE OF Colorado

COUNTY OF Mesa

Before me, a Notary Public in and for said county and state, personally appeared Hans Lull, President of H. J. Huston's, Inc., to me known to be the person who executed the within and foregoing instrument, who acknowledged that he was duly authorized to execute such instrument on behalf of Landlord, <sup>Tenant</sup> that he did execute said instrument on behalf of H. J. Huston's, Inc. and that the same is the free and voluntary act and deed of said H. J. Huston's, Inc. for the uses and purposes set forth therein.

Witness my hand and seal this 25 day of April, 1983.

M. Nicole Cannan  
NOTARY PUBLIC

My Commission expires:

M. NICOLE CANNAN  
NOTARY PUBLIC  
STATE OF COLORADO  
My Commission expires  
August 1, 1985

# REVIEW SHEET SUMMARY

FILE NO. #27-83 TITLE HEADING Conditional Use DUE DATE 5/13/83

ACTIVITY - PETITIONER - LOCATION - PHASE - ACRES Activity: Conditional Use - Hotel Restaurant,

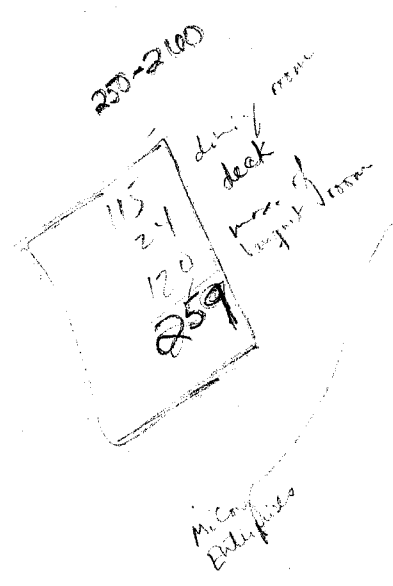
Petitioner: H.J. Hustons Inc., Location: 2839 North Avenue, Phase: Liquor License,

PETITIONER ADDRESS P. O. Box 8430, Aspen, CO

REPR.

~~ENGINEER~~ Robert Traylor 242-2636

<u>DATE REC.</u>	<u>AGENCY</u>	<u>COMMENTS</u>
5/3/83	Comp. Planning	No Comprehensive Planning concerns.
5/5/83	City Engineer	No comments.
5/10/83	Transportation Engineer	I have no problem with a liquor license at this location. I question the parking arrangement where the spaces break out on the access street to the trailer park,
5/11/83	Fire Dept.	This has no objections to granting of the liquor license.
5/12/83	Development Dept.	<p>The landscaping plan differs slightly from the observed. Will the currently graveled area (west side of driveway entrance) be landscaped with vegetation as shown on the site plan? Does the seating capacity of the restaurant as stated in the narrative include the seating capacity of the deck? If no, what is the seating capacity of the deck? What is the total load capacity of the restaurant? Is the deck area included in this figure? There currently exists a well-worn path through the landscaping on North Avenue. The City Engineer should be contacted concerning installing a sidewalk to city standards. We currently show a right-of-way dedication along North Avenue of 40' in our records. Therefore, we will need a quit-claim deed in reference to the additional 10' or a copy of an existing deed showing the 10' dedication for our records.</p> <p>Parking exceeds the required per seating capacity stated within the narrative; however:</p> <ol style="list-style-type: none"> <li>1. The parking row on the far southwest side needs to be restriped due to wear.</li> <li>2. The two furthest parking spaces on the far southwest side closest to the fence need to be X'd out due to sight distance problems.</li> <li>3. Bike racks or motorcycle parking could be considered for the spaces required to be X'd out.</li> <li>4. The two large potholes in the back lot need to be repaired.</li> </ol> <p>An adequacy in aisle width exists in reference to the restaurant parking and the trailer park parking. The width should be 62' per city standards. It is currently 56'. Could this area (the far southwest row) be designated employee parking in order to minimize the deficiency?</p> <p>New signage must comply with regulations.</p> <p>All other agency concerns need to be resolved.</p>



GJPC MINUTES, 5/31/83

MOTION: (COMMISSIONER QUIMBY) "MR. CHAIRMAN, CONCERNING ITEM #27-83 -- CONDITIONAL USE HOTEL-RESTAURANT LIQUOR LICENSE FOR H.J. HUSTON'S, INC. 2839 NORTH AVENUE -- I WOULD LIKE TO MOVE THAT WE SEND THIS REQUEST TO CITY COUNCIL WITH THE RECOMMENDATION OF APPROVAL CONTINGENT UPON THE ACQUISITION OF THE ADDITIONAL 10' OF RIGHT OF WAY WITHIN TWO WEEKS (JUNE 13, 1983)."

COMMISSIONER RINKER SECONDED THE MOTION.

CHAIRMAN TRANSMERER REPEATED THE MOTION, CALLED FOR A VOTE, AND THE MOTION CARRIED, 5-1 (COMMISSIONER O'DWYER VOTED AGAINST THE PROPOSAL).

TRAYLOR, PALO, COWAN & ARNOLD

ATTORNEYS AT LAW

CHARLES J. TRAYLOR  
DAVID B. PALO  
GARY R. COWAN  
RICHARD W. ARNOLD  
PETER R. BLACK  
JERRY B. TOMPKINS  
ROBERT TRAYLOR

THE PROFESSIONAL BUILDING  
443 NORTH 6TH STREET  
MAILING ADDRESS: P. O. BOX 2540  
GRAND JUNCTION, COLORADO 81502  
303-242-2636

May 27, 1983

Reps -  
5-3-3

Ms. Janet Stevens  
City County Planning Department  
Mesa County Courthouse  
Grand Junction, CO 81501

Re: Agency Review Comments Regarding  
H. J. Huston's, Inc. - Conditional  
Use Application

Dear Ms. Stevens:

The following are the responses of H. J. Huston's, Inc. to agency review comments regarding the conditional use application:

1. Agency comment: The landscaping plan differs slightly from the observed. Will the currently graveled area (West side of driveway entrance) be landscaped with vegetation as shown on the site plan?

Response: As we discussed in our telephone conference of May 26, 1983, this area appears to be sufficiently landscaped. It is my impression that the West side of the driveway entrance is property either leased or owned by the A & W Drive-in.

2. Agency comment: Does the seating capacity of the restaurant as stated in the narrative include the seating capacity of the deck? If no, what is the seating capacity of the deck? What is the total load capacity of the restaurant? Is the deck area included in this figure?

Response: Yes, the deck area is included in the total seating capacity of the restaurant. Although the restaurant interior is now under modification, we have determined that the maximum seating capacity of the entire restaurant including the deck and the rear dining area is approximately between 250 and 260 persons.

3. Agency comment: There currently exists a well worn path through the landscaping on North Avenue. The City Engineer should be contacted concerning installing a sidewalk to city standards.

Response: According to the review sheet summary, the City Engineer had no comments regarding the conditional use application. I contacted the City Engineer, Ron Rish, to determine whether a sidewalk would be required. He said that a memorandum from Carl Metzner had been issued regarding installation of missing

*June 13*  
*approval subject to receipt of quit-claim deed*  
*a day or so to get things straightened out of the owner?*

Ms. Janet Stevens  
May 27, 1983  
Page 2

improvements when building permits were applied for. He advised that requiring installation of improvements upon a conditional use application was a matter for Planning Department policy. H. J. Huston's, Inc. has no objection to installation of the sidewalk if such is required.

4. Agency comment: We currently show a right of way dedication along North Avenue of 40' in our records, therefore, we will need a quit claim deed in reference to the additional 10' or a copy of an existing deed showing the 10' dedication for our records.

Response: See copy of Special Warranty Deed attached hereto.

5. Agency comment: Parking exceeds the required per seating capacity stated within the narrative; however:

(1) The parking row on the farthest Southwest side needs to be restriped due to wear.

(2) The furthest parking spaces on the far Southwest side closest to the fence need to be X'd out due to sight distance problems.

(3) Bike racks or motorcycle parking could be considered for the spaces required to be X'd out.

(4) The two large potholes in the back lot need to be repaired.

Response: The parking lot will be restriped after cleaning. H. J. Huston's, Inc. has no objection to eliminating the two parking spaces referred to in comment number 2 above. The potholes in the parking lot will be repaired at the time that the parking lot is cleaned and restriped.

6. Agency comment: An inadequacy in aisle width exists in reference to the restaurant parking and the trailer park parking. The width should be 62' per city standards. It is currently 56'. Could this area (the farthest Southwest row) be designated employee parking in order to minimize the deficiency?

Response: H. J. Huston's, Inc. has no objection to designating the above area as employee parking.

7. Agency comment: New signage must comply with regulations.

Response: I have contacted Don Warner of the Planning Department and he informed me that the persons who install or revise the sign will be required to apply for a permit. They will be required to comply with sign regulations at that time. The only

*Stipulation  
of approval  
Have Don  
draw up a  
quit-claim  
deed*

*access -  
public or  
private  
residential  
map  
Easement  
common  
ownership  
(H.J. Huston's)*




Ms. Janet Stevens  
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Page 3

change to the existing sign will be facial changes only, i.e. change of logo. The existing sign will remain in place and unchanged in dimensions.

Very truly yours,

TRAYLOR, PALO, COWAN & ARNOLD

  
Robert Traylor

RT:sw

CC: Mr. Hans J. Lull  
Mr. David E. Hocker  
Mr. Roger L. Huston  
Mr. Louis Anaya

