







# DEVELOPMENT APPLICATION

Community Development Department  
250 North 5th Street, Grand Junction, CO 81501  
(303) 244-1430

Receipt \_\_\_\_\_

Date \_\_\_\_\_

Rec'd By \_\_\_\_\_

File No. VAR 95-221

We, the undersigned, being the owners of property situated in Mesa County, State of Colorado, as described herein do hereby petition this:

PETITION	PHASE	SIZE	LOCATION	ZONE	LAND USE
<input type="checkbox"/> Subdivision Plat/Plan	<input type="checkbox"/> Minor <input type="checkbox"/> Major <input type="checkbox"/> Resub				
<input type="checkbox"/> Rezone				From:          To:	
<input type="checkbox"/> Planned Development	<input type="checkbox"/> ODP <input type="checkbox"/> Prelim <input type="checkbox"/> Final				
<input type="checkbox"/> Conditional Use					
<input type="checkbox"/> Zone of Annex					
<input checked="" type="checkbox"/> Variance			715 Horizon Dr.	H.O.	Bus./Comm.
<input type="checkbox"/> Special Use					
<input type="checkbox"/> Vacation					<input type="checkbox"/> Right-of Way <input type="checkbox"/> Easement
<input type="checkbox"/> Revocable Permit					

<input checked="" type="checkbox"/> PROPERTY OWNER	<input type="checkbox"/> DEVELOPER	<input checked="" type="checkbox"/> REPRESENTATIVE
Name _____	Name _____	Name _____
Address _____	Address _____	Address _____
City/State/Zip _____	City/State/Zip _____	City/State/Zip _____
Business Phone No. _____	Business Phone No. _____	Business Phone No. _____

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 and complete to the best of our knowledge, and that we assume the responsibility to monitor the status of the application and the review comments. We recognize that we or our representative(s) must be present at all required 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 rescheduling expenses before it can again be placed on the agenda.

X Tony Wabnitz Signature of Person Completing Application          Dec 13, 1995 Date

X Tony Wabnitz for Signature of Property Owner(s) - attach additional sheets if necessary          Dec 13, 1995 Date  
STUART K. SIDNEY, OWNER

**Sign Variance Request  
715 Horizon Drive**

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**PROJECT NARRATIVE**

1. Variance Request: To decide that the 16'(L) X 6' (H) (approximate) brick address/building identifier wall built with the building in 1978 to identify the building as the "HORIZON CORPLEX" is not a free standing sign but is in fact an architectural feature of the premises that forms a part of the street side landscaping. Further, to decide this structure was never intended for building tenant advertising activity but solely to help the public in finding the premises. Should it be decided that the brick wall identifier is in fact a sign, it is requested that a variance be granted to allow two free standing signs on the premises.

2. Unique Situation: The Horizon Corplex Building was constructed for mixed use business activity, ie, offices, services and retail. While most of the building is devoted to offices, the original owner/developer built it to showcase his restaurant and discotheque, known as "Harry M's."

3. Hardship: This building continues to function with restaurant and night club facilities together with other retail activity including a retail liquor sales outlet. Consequently, it is critical to the business success of the restaurant, nightclub, liquor store and other tenants that a commercial marque sign is in place with high visibility exposure to Horizon Drive. The brick wall building identifier structure was not constructed nor ever intended to provide such business exposure.

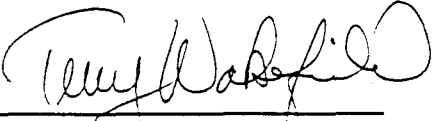
4. Mitigating Circumstances: Literal interpretation and strict application of the sign code currently in effect does not make a distinction between the brick identifier structure and the business advertising marque sign, installed in 1988 under City of Grand Junction permit. During the normal course of conducting business at the Horizon Corplex, tenant operators of the various businesses change. When this occurs, they want to develop their own style of signage.

A new restaurant, the Shanghai Garden, opened December 4, 1995 utilizing existing facilities closed for three years. To assist in their success, they need appropriate Horizon Drive sign exposure and made application to affix a new eye-catching sign on the existing marque sign. Something tastefully dramatic that would not let them be overshadowed by the newly open Applebee's Restaurant next door. Due to the literal interpretation of the sign code, the restaurant request is being disallowed posing a threat to the successful conduct of their business.

Another consideration, signage becomes outdated and shabby over time. By declaring the brick structure NOT a sign, the existing marque advertising sign can be managed like other business signage, upgraded, changed, or even replaced if necessary.

Page Two - Project Narrative

Signage at 715 Horizon Drive has been in place since 1988 without complaint from neighboring businesses. Changes or additions to the existing marque sign or its future replacement would be done professionally and in keeping with all Grand Junction sign codes and permit requirements. Such changes, additions or future replacement would not be contrary to the general objective of sign code regulations.

A handwritten signature in black ink, appearing to read "Terry Wakefield". The signature is written in a cursive style with a large, looping initial "T".

---

Terry Wakefield, Agent  
Certified Property Manager®

RCI WEST INC  
400 INTERSTATE N PRKWY STE 970  
ATLANTA, GA 30339

BOOKCLIFF COUNTRY CLUB INC.  
2730 G RD  
GRAND JUNCTION, CO 81506-8364

R C I WEST INC  
400 INTERSTATE N PRKWY STE 970  
ATLANTA, GA 30339

SHAMROCK INC  
C/O RASH & ASSOC  
PO BOX 1600  
ROWLETT, TX 75030-1600

ALDINO SARTI  
ERNA D C/O SANDMAN MOTEL  
236 JIBBOOM ST  
SACRAMENTO, CA 95814-0108

FEATHER-MEDSKER-SMITH LTD  
333 W HAMPDEN AVE STE 500  
ENGLEWOOD, CO 80110-0000

CAROUSEL MOTEL INC  
PO BOX 3196  
MONTEREY, CA 93942-3196

LOCO INC  
296 W MORRISON CT  
GRAND JUNCTION, CO 81503-2500

A L PARTEE  
C/O ROBERT L LIPSON III  
296 W MORRISON CT  
GRAND JUNCTION, CO 81503-2500

VANWAGNER PROPERTIES  
C/O ROGER VANWAGNER  
PO BOX 1630  
ARVADA, CO 80001-1630

Terry Wakefield  
Wakefield Property Management  
420 N 8th Street  
P.O. Box 2206  
Grand Junction, CO 81502

City of Grand Junction  
Community Development Dept.  
250 N 5th Street  
Grand Junction, CO 81501

2701-363-00-092  
RCI WEST INC  
400 INTERSTATE N PRKWY STE 970  
ATLANTA, GA 30339

2701-363-00-115  
BOOKCLIFF COUNTRY CLUB INCORPORATED  
2730 G RD  
GRAND JUNCTION, CO 81506-8364

2701-363-27-004  
R C I WEST INC  
400 INTERSTATE N PRKWY STE 970  
ATLANTA, GA 30339

2701-364-00-073  
SAMROCK INC  
C/O RASH & ASSOC #200-06-06091  
PO BOX 1600  
ROWLETT, TX 75030-1600

2701-364-00-074  
ALDINO SARTI  
ERNA D C/O SANDMAN MOTEL  
236 JIBBOOM ST  
SACRAMENTO, CA 95814-0108

2701-364-00-111  
FEATHER-MEDSKER-SMITH LTD  
333 W HAMPDEN AVE STE 500  
ENGLEWOOD, CO 80110-0000

2701-364-00-117  
FEATHER-MEDSKER-SMITH LTD  
333 W HAMPDEN AVE STE 500  
ENGLEWOOD, CO 80110-0000

2701-364-00-081  
CAROUSEL MOTEL INC  
PO BOX 3196  
MONTEREY, CA 93942-3196

2701-364-00-109  
LOCO INC  
296 W MORRISON CT  
GRAND JUNCTION, CO 81503-2500

2701-364-00-114

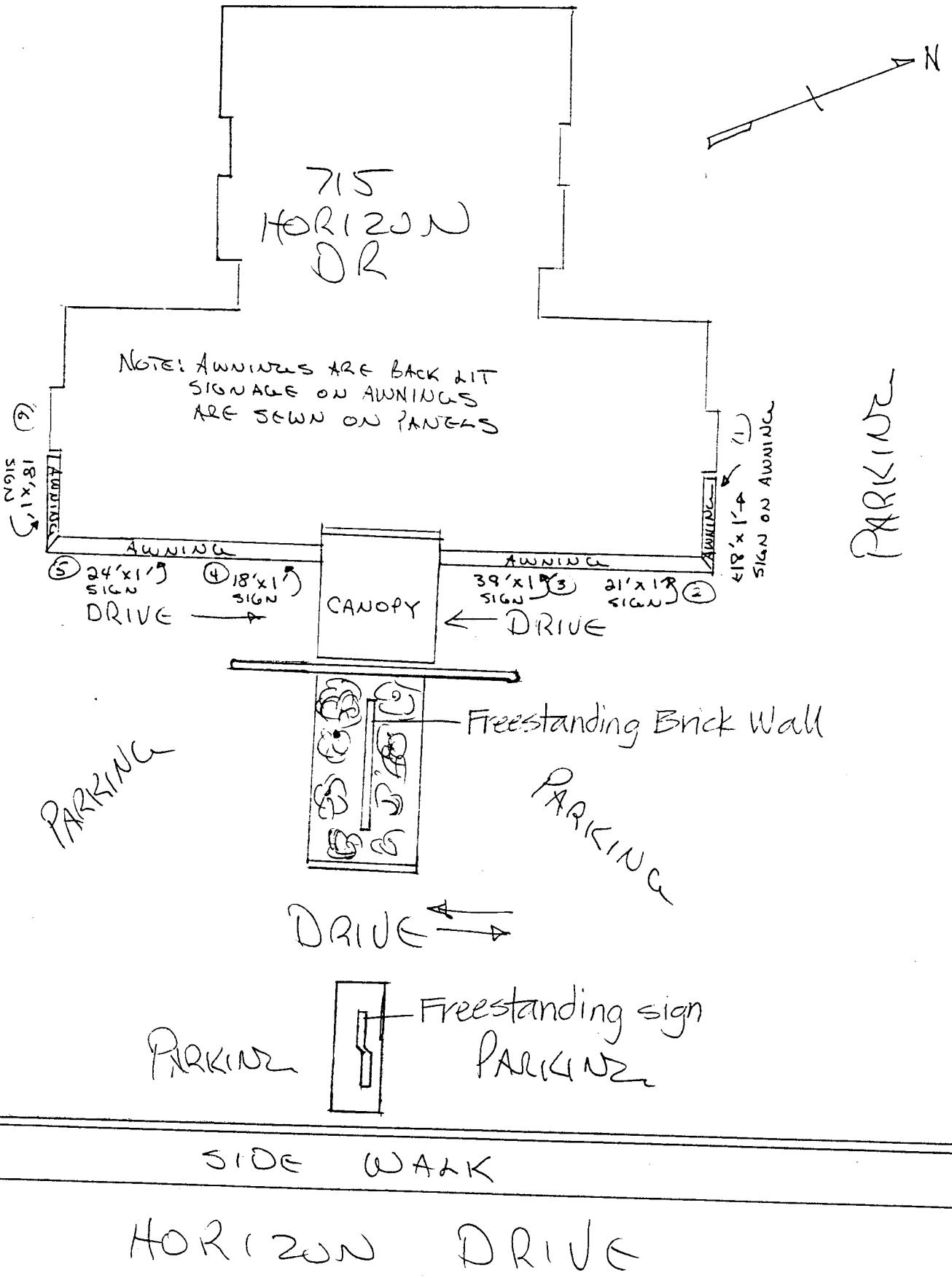
A L PARTEE  
C/O ROBERT L LIPSON III  
296 W MORRISON CT  
GRAND JUNCTION, CO 81503-2500

2701-364-00-087

VANWAGNER PROPERTIES  
C/O ROGER VANWAGNER  
PO BOX 1630  
ARVADA, CO 80001-1630



PARKING



PARKING

PARKING

PARKING

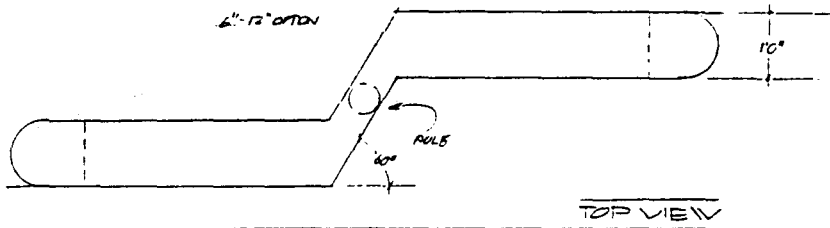
PARKING

PARKING

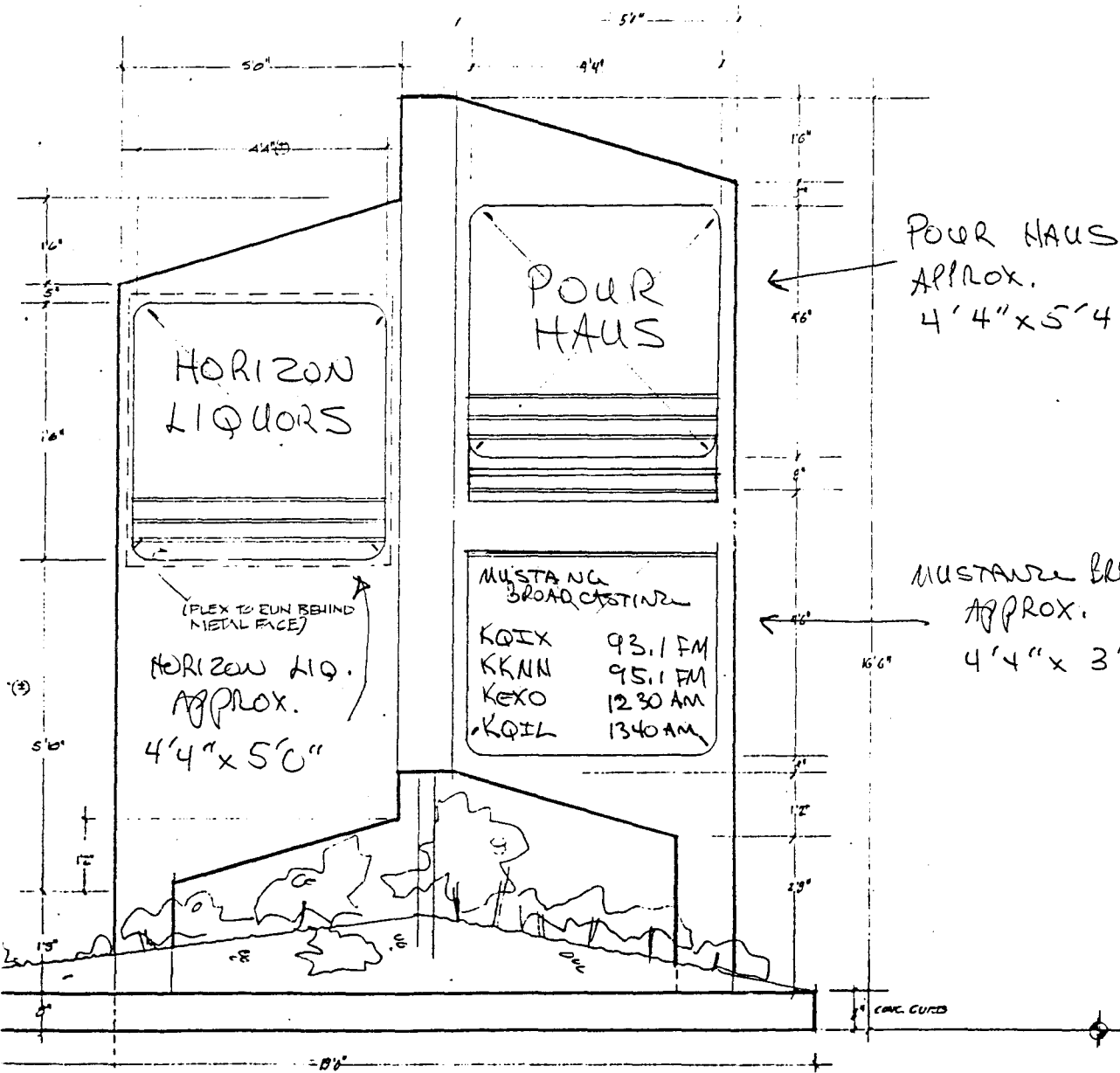
715 HORIZON DRIVE

SIGNAGE ON AWNING

- ① SNAP PHOTO • FILM • GIFTS
- ② SNAP PHOTO • FILM • GIFTS
- ③ PRIME PROPERTY & INVESTMENT CO.
- ④ CENTENNIAL MORTGAGE
- ⑤ HORIZON LIQUORS
- ⑥ HORIZON LIQUORS



TOP VIEW



SOUTH ELEVATION

POUR HAUS  
APPROX.  
4'4" x 5'4"

MUSTANG BROADCASTING  
APPROX.  
4'4" x 3'0"

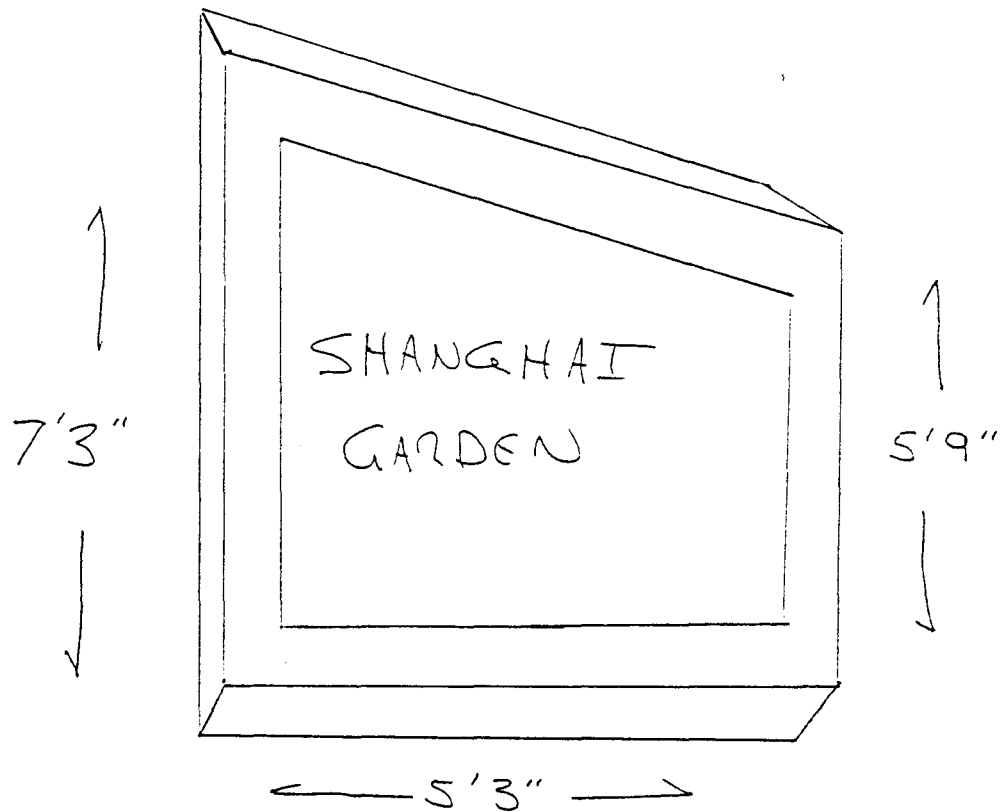
HORIZON LIQ.  
APPROX.  
4'4" x 5'0"

MUSTANG  
BROADCASTING  
KOIX 93.1 FM  
KKNN 95.1 FM  
KEXO 1230 AM  
KOIL 1340 AM

(FLEX TO EUN BEHIND  
METAL FACE)

CONC. CURB

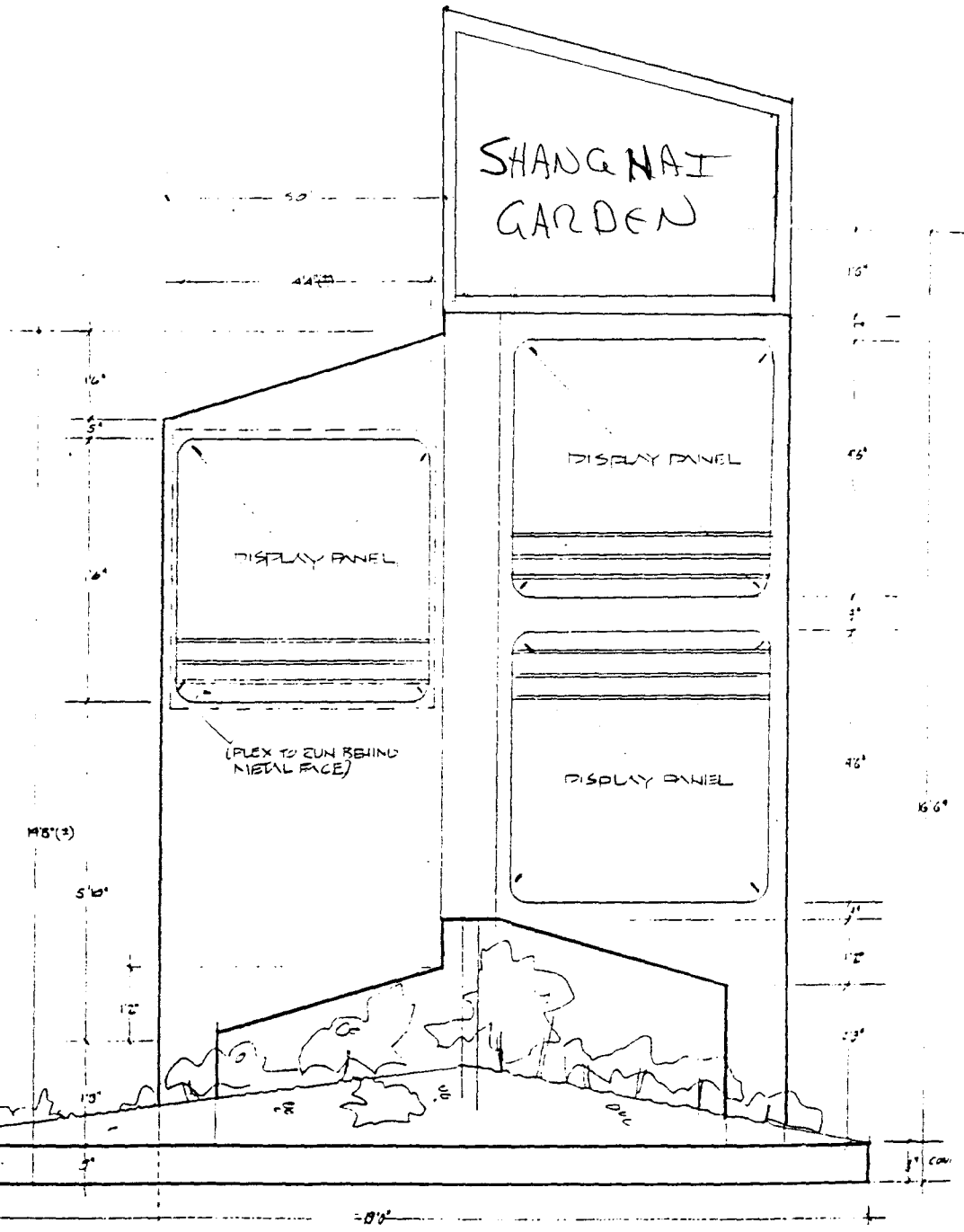
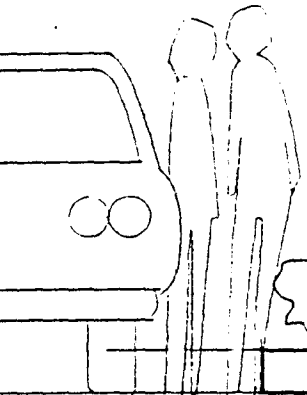
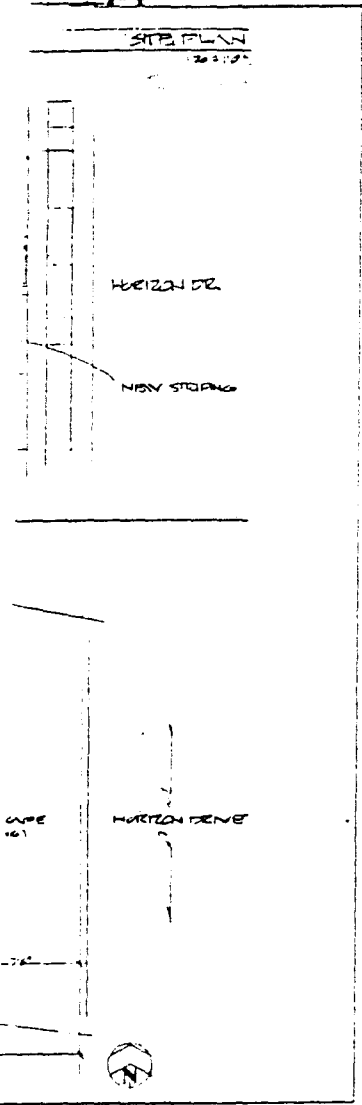
715 HORIZON DR.  
PROPOSED SIGN SKETCH



SIGN TO BE NEON LIGHTED,  
MOUNTED ON EXISTING MARQUE  
SIGN DIRECTLY ABOVE FOUR HAUS  
SIGN

SIGN CO: NEON FACTORY  
243-2788

715 HORIZON DR.  
PROPOSED SIGN SKETCH  
(VIEW 2)



SOUTH ELEVATION  
4.10

# REVIEW COMMENTS

Page 1 of 1

FILE #VAR-95-220

TITLE HEADING: Variance - Additional Freestanding Sign on One Parcel of Land

LOCATION: 715 Horizon Drive

PETITIONER: Stuart K. Sidney

PETITIONER'S ADDRESS/TELEPHONE: c/o Wakefield Property Management & Brokerage  
420 N 8th Street  
Grand Junction, CO 81501  
245-6411

PETITIONER'S REPRESENTATIVE: Terry Wakefield

STAFF REPRESENTATIVE: Kristen Ashbeck

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NOTE: THE PETITIONER IS REQUIRED TO SUBMIT FOUR (4) COPIES OF WRITTEN RESPONSE AND REVISED DRAWINGS ADDRESSING ALL REVIEW COMMENTS ON OR BEFORE 5:00 P.M., JANUARY 2, 1996.

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COMMUNITY DEVELOPMENT DEPARTMENT

12/21/95

Kristen Ashbeck

244-1437

1. Please provide inventory of ALL existing signs on site (on building and freestanding); size and location of each sign to be able to compare sign allowance with signs existing/proposed.
2. Provide drawing of second freestanding sign (Complex sign).
3. Provide site plan of entire site showing where freestanding signs are located relative to building, street frontage, etc.

CITY CODE ENFORCEMENT

12/28/95

Jan Koehn

244-1593

Because one of the two free-standing signs existing on the property at 715 Horizon Drive consists only of an address and name of building, on a brick facade which matches the building, it is similar in nature to an integral sign as defined in the sign code. Although it is not a part of the integral structure, it does appear to be architecturally appropriate. This interpretation could be applied only if there is no change to this sign, allowing anything other than the address and building name. No other objections to this request.

BOARD OF APPEALS - STAFF REVIEW

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FILE: VAR 95-220

DATE: January 3, 1996

REQUEST: Additional Freestanding Sign

LOCATION: 715 Horizon Drive

APPLICANT: Stuart K. Sidney c/o Terry Wakefield

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EXISTING LAND USE: Commercial - Horizon Complex

PROPOSED LAND USE: Same

SURROUNDING LAND USE:

NORTH: Commercial - Budget Host Motel  
SOUTH: Commercial - Applebee's Restaurant  
EAST: Commercial - Best Value Inn Motel & Denny's  
WEST: Golf Course (Bookcliff Country Club)

EXISTING ZONING: Highway Oriented (H.O.)

SURROUNDING ZONING:

NORTH: H.O.  
SOUTH: H.O.  
EAST: H.O.  
WEST: R1B (Mesa County Residential Zoning)

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ZONING AND DEVELOPMENT CODE REQUIREMENT:

Section 5-7-7.B.7.a. - No more than one free-standing sign shall be permitted for any parcel for each street frontage.

VARIANCE REQUESTED: Two freestanding signs on a single parcel having only one street frontage

APPLICANT'S REASON FOR REQUEST: The two "signs" have existed since 1988. One sign is a brick face that has the name and address of the building while the other, closer to the street, identifies some of the businesses within the building. The applicant feels that the brick face is not a sign, it is merely an architectural feature of the premises.

STAFF ANALYSIS: The Horizon Corplex is a commercial building with mixed uses including office, retail and restaurant establishments. Advertisement of these businesses presently exists on the building as well as on a freestanding sign near the street frontage. The Corplex also has a freestanding brick wall with the building's name and address on both sides. According to the broad definition of a sign in the Zoning and development Code, staff considers both of these signs. There is no record of when and if the brick wall was ever permitted as a sign. When the freestanding sign on the street was permitted, the site plan provided by the applicant did not indicate that the structure in the location of the brick wall was a sign. Thus, staff has historically allowed replacement of sign faces on the freestanding sign near the street frontage.

The building identification on the brick wall is considered a sign because it meets the general definition of a sign as stated in the Zoning and Development Code. It does not, however, meet the definition of an integral sign as stated in section 5-7-3 C. of the Code: "Names of buildings, dates of erection, monumental citations, commemorative tablets and the like when carved into stone, concrete or similar material or made of metal or other permanent-type construction and made an integral part of the structure." If the brick wall met this definition it would be exempt from the sign Code. Since it does not, it must be considered a regular free-standing sign. The freestanding brick wall sign is not unlike other buildings that have identification signage such as Mesa Mall or Teller Arms or smaller complexes such as the Medical Arts Center on North 7th Street. These identification signs have always been considered signage

The petitioner is now requesting that the freestanding sign along the street be enlarged by adding another panel above one side of the existing sign. Staff denied a sign permit for this proposal until signage on the site was in compliance with the Code or a variance was granted for this second freestanding sign.

The total sign allowance for this parcel is 646.5 square feet based on the linear feet of frontage along Horizon Drive. Of this, 360 square feet may be on the building. According to current sign permit records there is approximately 300 square feet of signage on the east, south and north facades of the building. There is a total of 578 square feet of signage on the two freestanding signs. There is approximately 68.5 square feet remaining of the sign allowance for the site. Thus there appears to be adequate sign allowance for the site to accommodate the various businesses within the building.

Staff's conclusion is that a hardship has not been demonstrated. Staff would recommend that the brick wall be demolished or all lettering removed and the name be incorporated on one (or more) of the facades of the building. The verbage would then be considered an integral sign which is exempt from the sign code. All of the sign allowance not placed on the building could be aggregated on a single freestanding sign, by either adding to the existing sign on the street or constructing a new sign that would better meet the needs of the businesses within the Corplex.



FINDINGS OF REVIEW:

**Literal Interpretation Would Cause Undue Hardship.** There are other options for advertisement using other signage that is allowed by Code. Failure to grant this variance will not affect reasonable use of the property or cause undue hardship.

**Not Detrimental to Surrounding Properties.** The potential proliferation of unnecessary visual clutter such as numerous freestanding signs on a parcel can degrade the quality of a business/commercial area, thereby compromising the image of the properties within that area.

**Unusual Conditions Do Not Apply Generally to Other Properties** There appear to be no exceptional conditions or undue hardship in this case. The petitioner has many other options for providing signage on the site without increasing the number of freestanding signs.

**Not Contrary to General Objectives of Sign Code.** It is within the public interest to enforce regulations pertaining to community aesthetics. The use of freestanding signs for advertising is strictly defined in the Code so as to minimize unnecessary visual clutter along transportation corridors. Granting this variance will result in a loss of control of community aesthetics which is contrary to the general objectives of the sign regulations within the Zoning and Development Code. This will set a precedent for the use of more than one freestanding sign per parcel, thereby encouraging the proliferation of this type of unnecessary visual clutter.

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STAFF RECOMMENDATION: Denial of freestanding sign variance request.

MANAGEMENT AND SERVICES AGREEMENT

For the Property known as:

Horizon Center  
715 Horizon Dr.

HORIZON CORPLEX MANAGEMENT AND SERVICES AGREEMENT

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MANAGEMENT AND SERVICES AGREEMENT

THIS AGREEMENT is made at Grand Junction, Colorado, as of the 15<sup>th</sup> day of DECEMBER, 1992, by STUART K. SIDNEY ("Owner"), whose address is P.O. BOX 1568 VICTORVILLE, CALIF. 92393, and TERRANCE W. WAKEFIELD, BROKER ("Agent"), whose address is WAKEFIELD PROP. MGMT. CO. 420 N. 8<sup>TH</sup> ST. GRAND JUNCTION, COLO. 81501.

IN CONSIDERATION of their mutual promises, the parties agree:

ARTICLE I  
Engagement of Agent

1. Property. Owner owns real property located at 715 HORIZON DRIVE in the City of Grand Junction, Mesa County, Colorado ("Property") also known as HORIZONS CORP. BLDG.

2. Appointment. Owner engages Agent, as an independent contractor, to provide services to Owner for the management and operation of the Property upon the terms and conditions stated in this Agreement, which appointment is accepted by Agent signing this Agreement.

2.1 The sole relationship between Owner and Agent is that of principal and agent. Agent's power and authority to act for Owner is limited to the express grants contained in this Agreement. Agent shall not, by act or omission, represent to any person or entity that Agent is an employee of Owner or misrepresent Agent's authority.

2.2 By signing this Agreement, Agent warrants and represents that he is a licensed Colorado real estate broker and is qualified by requisite education, training, and experience to manage the Property.

3. Term. The term of this Agreement ("Term") shall be for a period of SIX MONTH from DEC. 15, 1992 through JUNE 14, 1993 unless sooner terminated as specified in Article VI below. This contract shall be automatically renewed for successive time periods equal in length to the Term upon the same terms and conditions unless terminated as specified in Article VI below.

ARTICLE II  
Agent's Duties

1. Delegation of Authority. Agent agrees to perform, and Owner expressly authorizes Agent to perform, the duties specified in this Article II.

2. Operating Account(s). Agent shall establish and maintain at all times, in the name of Agent in trust for Owner, one or more separate bank accounts utilized only for Agent's operations under this Agreement. All accounts shall be held by FDIC-insured institutions and the balance of all accounts shall be maintained so that all funds in all accounts are fully insured at all times. All funds and all accounts held under this section shall at all times remain the property of Owner (except funds held as security deposits under any lease or tenancy of any portion of the Property).

3. Books and Records. Agent shall at all times during the Term maintain separate and complete books and records of the management and operation of the Property. All books and records shall be kept in accordance with generally accepted accounting principles and in a manner sufficient to adequately fulfill Owner's financial information requirements. All books and records relating to operation of the Property will be available to Owner and Owner's representatives at Agent's principal office at all reasonable times for examination, audit, inspection, and copying. All books and records described in this section shall at all times be and remain the property of Owner and shall be surrendered by Agent to Owner promptly upon termination of this Agreement.

4. Operating Statements. Agent will prepare and provide to Owner detailed monthly reports of the monthly and calendar-year-to-date operation of the Property under this Agreement for each calendar month, within 10 days after the end of that month, in form satisfactory to Owner. Each statement shall include (but not be limited to) a cash flow statement comparing monthly and year-to-date results to Budget (see Article V below) and a summary of all leases and service contracts then in effect concerning the Property. Concurrently with delivery of each monthly operating statement, Agent shall pay Owner all funds held by Agent for Owner (excluding security deposits) in excess of \$1,000.<sup>00</sup>.

5. Personnel. Agent shall employ, supervise, discharge, and pay whatever employees, agents, or independent contractors considered by Agent to be necessary for the competent and efficient discharge of Agent's duties under the terms of this Agreement.

5.1 Agent shall maintain, and pay at Agent's expense all premiums for, workers' compensation and disability insurance on all employees employed by Agent in connection with performance of Agent's obligations under this Agreement and insure any independent contractor providing services pursuant to this Agreement is carrying workers' compensation and disability insurance on all employees.

5.2 All persons performing services in connection with the operation and maintenance of the Property shall be employees of the Agent, or such contractors as Agent may

retain pursuant to this agreement, and not employees or contractors of the Owner.

5.3 If Agent desires to contract for any service described in this Agreement with a person or entity employed by or related to Agent, or in which Agent has any beneficial interest, that interest shall be disclosed to and approved by Owner before the services are provided and shall be provided at competitive rates agreed to in advance by Owner.

6. General Duties. Agent shall utilize its best efforts in the services performed under this Agreement and shall, in connection with those services, perform (by way of example and not limitation) the actions stated below:

6.1 Agent shall notify Owner of any major complaint made by any tenant, user, or other person, entity, or governmental authority concerning the Property or its operation; any defect in the Property; any fire or other damage to the Property; any personal injury or property damage occurring to or claimed by any person or entity relative to the Property; condemnation proceedings; rezoning or other governmental proceedings; actual or threatened lawsuits; or notice of violation or threat of violation relative to use or operation of the Property. In case of any property damage or personal injury, Agent shall also immediately telephone notice of the incident to Owner's insurance carrier so that an insurance adjuster can view the damage before repairs are started. Agent will complete customary loss reports in connection with any personal injury or damage. Agent shall promptly forward to the general liability insurance carrier, with copies to the Owner, any summons, subpoena, or other legal document served on Agent relating to actual or asserted claims against Owner, Agent (with regard to his actions or authority under this Agreement), or the Property.

6.2 Agent, for itself and all persons retained, utilized, or employed by Agent to perform services under this Agreement, agrees to hold in confidence (and not to use or disclose to others) any confidential or proprietary information disclosed to or acquired by any of them in the performance of services under this Agreement.

6.3 Agent shall not file, nor permit to be filed, any materialmen's or mechanic's liens against all, or any part, of the Property arising out of material incorporated or work performed performed on the Property at the request or order of Agent. Agent shall indemnify and hold Owner harmless from and against any such lien.

6.4 Agent shall, at its expense, qualify to do business and obtain and maintain all licenses, permits, and governmental approvals required for the performance by Agent of its services under this Agreement.

6.5 In all actions and operations under this Agreement, Agent shall fully comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Property and to Agent's actions and authority under this Agreement, including without limitation building and zoning codes, license requirements, and regulations governing health, safety, wages and benefits, working conditions, and energy usage.

6.6 Owner may from time to time provide to Agent written policies for the conduct of the operation, maintenance, and use of the Property by Agent under this Agreement. Agent shall comply with and enforce any and all such written policies commencing on the date received from Owner.

7. Indemnification. Agent shall indemnify and hold Owner harmless from and against all losses, liabilities, claims, damages, costs, expenses, suits, impositions, and penalties of every nature (including, without limitation, reasonable attorneys fees and all costs and expenses of any lawsuit) incurred by or asserted against Owner in any way arising from or related to Agent's failure to fully and adequately perform its obligations under the provisions of this Agreement, including, for example, loss or damage from criminal, intentional, negligent, or willful misconduct of Agent or any of its employees, agents, or independent contractors.

8. Maintenance. Agent shall keep the Property in good order and repair and first-class condition, subject to the limitations stated in the Budget, and shall make all repairs for tenants of the Property which are the obligation of Owner. Subject to limitations stated in Article III, section 2, Agent shall negotiate and contract on behalf of Owner for labor and materials required in the ordinary course of business to operate the Property in a first-class manner subject to Budget constraints. These contracts shall include, without limitation, utilities, cleaning, pest control, and landscaping. Unless specifically approved in the Budget, major repairs, and any alterations, renovations, capital improvements, or remediation shall be made only with Owner's prior written approval. Unless otherwise agreed by the parties in writing, all contracts described in this section shall be billed to Owner at Agent's actual cost.

9. Collections. Agent shall collect on behalf of Owner all rents and other sums due Owner from the tenants of the Property and shall supervise any necessary legal proceedings in the name of the Owner for the collection of such sums, enforcement and termination of any leases, and general enforcement of Owner's rights as landlord of the Property. Owner shall reimburse Agent for reasonable legal fees and costs incurred with the actions described above,



which shall be undertaken by attorneys selected or approved by Owner. The provisions of this section also include any claims brought against Owner arising from ownership or operation of the Property; provided, that no claim against Owner of the Property shall be settled for an amount in excess of \$1,000 without Owner's prior approval.

10. Building Operation. Agent shall take all actions reasonably required to supervise and control the general operations of the Property and improvements on it in conformance with all applicable laws, rules and regulations, and leases pertaining to the Property, including without limitation those actions described below.

10.1 Agent shall limit and control all signs on the Property in conformance with Owner's direction and provisions of any applicable leases. Agent shall be allowed to place Agent's sign on the Property, subject to Owner's approval as to location, design, and size.

10.2 Agent shall use its best efforts to control, to the extent permitted by law, use of the common areas of the Property and improvements on it; to avoid use of those common areas by unauthorized persons or entities; and to minimize or eliminate disturbance or disruption of tenants.

10.3 If provided in the Budget, Agent shall contract through an independent agency for security personnel for the Property upon terms and conditions approved by Owner.

10.4 Agent agrees that a representative of Agent will be available to tenants of the Property at all times. Agent shall also have a representative available after hours and in emergency situations.

11. Lease Compliance. Agent shall monitor compliance of tenants of the Property with the obligations imposed upon those tenants by their lease agreements.

12. Nondiscrimination. Agent shall not discriminate in any manner against any person in violation of any federal, state, or local law, regulation, or ordinance.

13. Agent Costs. Unless specifically identified in the approved annual Budget or otherwise made with the express prior written consent of Owner, the following expenses or costs incurred by or on behalf of Agent in connection with the management and operation of the Property shall be at the sole cost and expense of Agent and shall not be reimbursed by Owner:

13.1 General accounting and reporting services within the reasonable scope of Agent's responsibilities to Owner under this Agreement;

13.2 Costs of forms, ledgers, and other supplies and equipment used in Agent's offices;

13.3 Cost of telephone and general office expenses associated with Agent's operation;

13.4 Costs of computer and data processing hardware, software, and utilization;

13.5 Costs attributable to any loss, expense, or cost to Agent occasioned by payments (for example, charge-backs) required to be made by Agent to Owner under the indemnification provisions of this Agreement or for Agent's breach or violation of any of the provisions of this Agreement;

13.6 Costs of any insurance purchased by Agent for its own account;

13.7 All costs for any personnel employed or utilized by Agent regularly at the Property or in association with Agent's duties under this Agreement; and,

13.8 Costs of wages, salaries, Social Security, unemployment insurance, workers' compensation, and other costs of a similar nature required to be paid by law in comparable operations and attributable to services required to be performed by Agent under this Agreement and provided by those individuals.

14. Construction Contract Administration. Where any alterations, improvements, or additions to the Property are approved in writing by Owner, Agent shall inspect and supervise the work in Owner's behalf to confirm the work is completed as approved by Owner.

### ARTICLE III

#### Limits on Agent's Authority

1. Limits on Authority. Despite anything to the contrary stated elsewhere in this Agreement, Agent's authority shall be limited as specified in this Article III.

2. Limit on Expenditures. Any maintenance, repair, replacement, improvement, or alteration of the Property in excess of \$1,500.<sup>00</sup> shall not be undertaken by Agent without Owner's prior written approval unless specifically provided for in the Budget, unless the expenditure is made under circumstances which Agent reasonably considers to constitute an emergency. An emergency shall include, without limitation, any situation in which repairs are immediately required: (a) to comply with applicable law, order, or regulation necessary to keep the improvements on the Property open or operational or (b) to avoid immediate suspension of

any necessary service to the Property. Agent shall immediately notify Owner of any emergency condition under this provision.

3. Taxes and Mortgage Payments. Agent shall not pay any payment on any lien or encumbrance upon any portion of the Property, taxes, assessments, or premiums on Owner's insurance without the Owner's prior written authorization.

4. Contract Cancellation. Any service contracts made by Agent under this Agreement shall include a 30-day right of cancellation by Owner, unless Owner agrees otherwise in writing.

5. No Borrowing. Agent shall have no authority to borrow any money from any source without Owner's prior written consent, which Owner may deny in his sole discretion.

6. Prior Owner Approval. If any instance in this Agreement requires prior approval in any manner from Owner before Agent acts, Agent shall fully comply with such requirement.

7. Alterations, Improvements, or Additions. Agent shall not authorize any alterations, improvements, or additions to the Property without Owner's prior written consent.

#### ARTICLE IV Owner's Duties

1. Records. Owner agrees to promptly furnish Agent with all documents and records reasonably required to properly manage the Property. A list of those items necessary for Agent to commence management of the Property is attached and initialed by the parties.

2. Taxes and Mortgages. Owner shall pay, before they become delinquent, all real estate taxes and assessments and any mortgage payments on the Property; provided, Owner may, at Owner's expense, contest, appeal, or defend against any charge described in this section. Owner may delegate these duties to Agent without additional charge to Owner.

3. Owner Approval. Whenever Owner's approval of any action is required by this Agreement, Owner shall promptly grant or refuse his approval and confirm that decision in writing to Agent upon request.

4. Indemnification. Owner shall indemnify and hold Agent harmless from all losses, damages, costs, and expenses (including attorneys fees) arising from or related to any violation by Owner of Owner's obligations under this Agreement caused by intentional conduct or gross negligence of Owner.

ARTICLE V  
Expenses of Owner and Agent

1. Owner Expenses. Owner shall promptly pay all expenses incurred by Agent in the management and operation of the Property required to be paid by the provisions of this Agreement, or any Budget approved pursuant to this Agreement. These costs shall include, without limitation, the following: cleaning, maintenance, repair and replacement costs; equipment, appliances, materials, and supplies utilized on the Property; casualty insurance on the improvements on the Property; professional (for example, legal and auditing) fees and collection expenses; utilities; taxes and assessments; security services; and governmental compliance costs. Any payment due from Owner under this Agreement shall be made within 10 days following receipt of the billing statement from Agent. If sufficient funds are not generated from the Property to meet the current obligations of the Property in conformance with this Agreement, Owner shall advance such funds as needed. Owner has paid Agent an initial payment of \$ 200.<sup>00</sup> upon signing this Agreement to provide for commencement of operations by Agent under this Agreement.

2. Agent Expenses.

2.1 Unless specifically authorized in writing, no administrative, clerical, bookkeeping, or overhead expenses of Agent shall be charged to Owner. Agent shall pay all salaries, wages, workers' compensation insurance, and any other benefits or expense required by any governmental authority associated with personnel utilized by Agent to fulfill its obligations under this Agreement.

2.2 Agent shall maintain at all times at Agent's expense all workers' compensation or similar insurance required with respect to all persons performing obligations for or on behalf of Agent under this Agreement to comply with any federal, state, or local withholding, Social Security, unemployment, or other applicable laws, ordinances, and regulations presently or in the future affecting those individuals providing services relative to the Property or under the provisions of this Agreement.

2.3 In addition, Agent, at Agent's expense, shall obtain and keep in force at all times general liability insurance for Agent's actions under this Agreement, naming Owner as an additional insured, and fidelity bond or insurance covering all of Owner's funds and all security deposits at any time under Agent's control pursuant to this Agreement. All insurance and bonds required by this provision shall be in amounts, upon terms and conditions, and with carriers satisfactory to Owner in Owner's sole discretion.

ARTICLE VI  
Termination

1. End of Term or Renewal. Either party may terminate this Agreement at the end of the Term or any renewal term described in Article I, section 3, without cause and without payment of any termination fee upon not less than 45 days' prior written notice to the other party.

2. Without Notice for Cause. Owner may terminate at any time, effective immediately upon delivery to Agent written notice, for any of the causes specified in this section.

2.1 Violation of any federal, state, or local law, rule, or regulation concerning Agent's actions or operations pursuant to this Agreement;

2.2 Any act or omission which would cause cancellation of any insurance carried by or for the benefit of Owner relative to the Property;

2.3 Any criminal activity relative to the Property or any obligation of Agent under this Agreement by a person or entity utilized by Agent in performance of this Agreement;

2.4 Any breach of fiduciary duty by Agent related to performance of its obligations under this Agreement;

2.5 Any willful or reckless act or omission by any person or entity utilized by Agent in performance of this Agreement under the provisions of Article II, section 5 above;

2.6 Any violation of the recordkeeping, accounting, or reporting obligations of Agent (whether by act or omission) imposed by this Agreement;

2.7 Willful failure to account for or deliver any funds held by Agent under this Agreement; or,

2.8 Filing of any voluntary or involuntary petition in bankruptcy; appointment of a receiver or general assignment for the benefit of creditors by or against Agent.

3. Right to Cure. If Agent shall fail to fully and adequately comply with any provision of this Agreement other than those specified in the preceding section within 10 days after written notice of such noncompliance from Owner to Agent (unless cure of such default will reasonably require more than 10 days and Agent shall diligently pursue to completion correction of the noncompliance or default), Owner may, at its sole discretion and option, terminate this Agreement at any time after the expiration of that 10-day period.

4. Disposition of Property. This Agreement shall terminate automatically upon any sale, conveyance, transfer of title, or destruction or condemnation of all or a substantial portion of the Property by Owner of the Property.

5. Duties on Termination. Upon termination of this Agreement for any reason, Agent shall deliver to Owner, or its duly appointed representative, within five days following the date of termination of this Agreement:

5.1 A final accounting reflecting the income and expenses and all operations for the Property as of the date of termination;

5.2 Any funds of or due Owner held by Agent with respect to the Property; and,

5.3 All records, contracts, correspondence, receipts, unpaid bills, and all other papers and documents pertaining to the Property in Agent's possession, which data, information, and documents shall at all times remain the property of Owner.

6. No Termination Fee. No separate fee or charge shall be due to Agent upon termination of this Agreement for any reason.

#### ARTICLE VII Compensation

1. Basic Services. Owner agrees to pay Agent as compensation for its management and operating services described in this Agreement an amount equal to  $4\frac{1}{2}\%$  of the gross monthly revenues collected from the Property (excluding security deposits, proceeds of the sale of property, insurance or condemnation awards, administrative charges such as returned check charges, credit report fees, and any similar items). This payment shall be due and payable to Agent prior to or on the tenth (10th) day of the month following the month for which the management fee is attributable and may be deducted from the operating account (excluding security deposits).

#### ARTICLE VIII Budget

1. Budget Preparation. Agent shall provide Owner, within 30 days after the date of this Agreement, a budget containing an estimate of costs and expenses relative to operations under this Agreement for the remainder of the present calendar year. All budgets prepared by Agent shall be in form and substance satisfactory to Owner. For each full or partial calendar year of the Term and any renewal term, a preliminary budget for the calendar year will be due 90 days prior to the end of the prior calendar year, with a

final budget due 60 days prior to the end of the prior calendar year. The budget will provide monthly projections of expenses, any income, and capital expenditures, with a brief narrative description of significant anticipated operational activities and expenses.

2. Budget Approval. If Owner fails to approve Agent's final budget proposal for any reason within 30 days of submission, this Agreement shall terminate on the ending date of the existing Budget. Budget approval or disapproval by Owner shall be in writing.

3. Implementation. After approval of the annual budget by Owner, Agent shall implement the budget and shall be authorized, without need for further specific approval from owner, to make the expenditures and incur the obligations expressly provided for in the approved Budget. Agent agrees to use best efforts to insure that the actual costs of operation shall not exceed the approved Budget. Except as specifically stated in an approved Budget, Agent shall not spend any amount in excess of that specified in Article III, section 2, without Owner's prior approval.

#### ARTICLE IX Insurance

1. By Owner. Owner shall obtain and maintain in force at his expense such casualty insurance as Owner deems appropriate in his sole discretion concerning Owner's interest in the Property.

2. By Agent. Agent shall obtain at his expense and maintain in force at all times comprehensive general liability insurance in an amount of not less than \$1 million covering Agent's operations under this Agreement. In the alternative, at Owner's sole discretion, Agent may be named as an additional insured on any general liability policy of Owner relative to the Property on payment by Agent of any increase in premium attributable to Agent's addition as a named insured. Agent also shall obtain and keep in force at all times, at Agent's expense, adequate business insurance to include Agent's contractor liability and bonding insurance for all actions by Agent and his employees and contractors under this Agreement.

3. Agent's Cooperation. Agent shall cooperate and assist Owner in case of any insured loss.

4. No Waiver of Subrogation. Nothing contained in this article shall be construed as a waiver of subrogation by Owner or any insuror against Agent or any indemnification right of Owner against Agent under the provisions of this Agreement.

ARTICLE X  
General Provisions

1. Notices. Any notices required or permitted by this Agreement shall be in writing and shall be sent by fax transmission (which shall be effective upon transmission) or personal delivery (which shall be effective upon delivery) or by United States certified mail, postage prepaid (which shall be conclusively deemed to have been received by the addressee on the second regular mail delivery date following the date of mailing as shown by the United States Postal Service mailing receipt). Either party may change its address by notice of change of address given in the manner specified in this section. Any notice shall be addressed as follows:

AGENT WAKRFIELD & Co  
P.O. BOX 2206  
GRAND JUNCTION, CO. 81502  
FAX (303) 245-7400

OWNER STUART K. SIDNEY  
P.O. BOX 1568  
VICTORVILLE CA. 92393  
FAX (619) 241-9688

2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

3. Attorneys Fees. In any action, lawsuit, or proceeding concerning this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief allowed by this Agreement or applicable law, the prevailing party's reasonable attorneys fees and all costs and expenses of the action, lawsuit, or proceeding.

4. Binding Effect. Subject to section 10 below, the provisions of this Agreement shall bind and benefit Owner, Agent, and their respective successors in interest and assigns. The rights and obligations of the parties under this Agreement (including, without limitation, representations, warranties, and indemnification obligations) shall survive termination of this Agreement.

5. Final Agreement. This Agreement supersedes any prior or concurrent agreement made by the parties concerning its subject matter.

6. Written Modification Only. The provisions of this Agreement may be modified only by an additional written agreement signed by both Owner and Agent.

7. Delay No Waiver. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly so stated in this Agreement.



8. Signature Authorized. By signing this Agreement, any individuals signing on behalf of an entity represents to the other party that the entity for which the undersigned is signing is authorized and empowered to perform its obligations under this Agreement; and that the individual signing for that entity is duly authorized and empowered by the entity to sign this Agreement for that entity and to bind the entity to the provisions of this Agreement.

9. Severability. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

10. Assignability. This Agreement may be assigned or transferred by Owner. Subject to the provisions of Article II, section 5 above, Agent may not assign or transfer any or all of its rights or obligation under this Agreement without the prior written consent of Owner, which Owner may withhold in its sole discretion.

11. Agent's Authority Limited. Agent's authority shall be derived wholly from this Agreement, and Agent has no authority to act for or represent Owner except as herein specified.

12. Exclusiveness of Compensation. The payments to be made to Agent under this Agreement shall be in lieu of all other or further compensation or commissions of any nature for the services described in this Agreement unless otherwise agreed to in writing.

13. Relationship. Nothing contained in this Agreement shall be construed to create a relationship of employer and employee between Agent and Owner. It is the intent of the parties that the relationship created by the Agent is, in fact and intent, that of an attorney-in-fact and independent contractor. Nothing contained in this Agreement shall be deemed to constitute Owner and Agent as partners or joint venturers. The parties intend that their sole relationship is that of principal and agent. Notwithstanding the fact that Owner may exercise general supervision over the affairs of the Property and review Agent's activities under this Agreement, Owner shall not control or direct the manner, method, or specific details by which Agent performs its obligations under this Agreement.

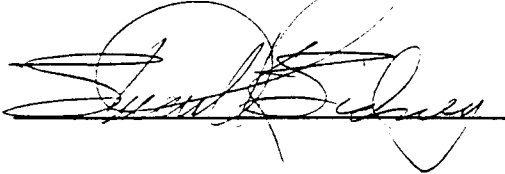
14. Best Efforts. Agent shall use its best efforts in performing all duties described in this Agreement. Agent

does not guarantee payment or performance by tenants of their obligations contained in their leases.

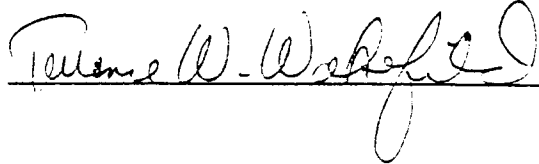
15. Time. Time is of the essence in all aspects and provisions of this Agreement.

16. Headings. Article and section headings are for convenience only and shall not affect interpretation of this Agreement.

OWNER:



AGENT:



A3/18/7893-001/3-17-93