

RESOLUTION NO. 69-94

AUTHORIZING A LEASE OF THE CITY PROPERTY AT 545 NOLAND AVENUE
TO DONALD FUGATE, DOING BUSINESS AS DON'S AUTOMOTIVE

WHEREAS, the City is the owner of the real property described as the North 150 feet of Lots 13 and 14 of Block 2, South Fifth Street Subdivision, also known as 545 Noland Avenue in the City of Grand Junction; and

WHEREAS, Donald Fugate, doing business as Don's Automotive, has requested a five (5) year lease of said property for the purpose of conducting an automotive repair business.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the City Manager be authorized, on behalf of the City and as the act of the City, to execute the attached Lease Agreement with Donald Fugate, doing business as Don's Automotive, for the lease of said property for a term of five (5) years, commencing on September 1, 1994, and expiring August 31, 1999, and for a rental fee of \$250.00 per month, subject to the several other terms and conditions of the attached Lease Agreement.

PASSED and ADOPTED this 17th day of August, 1994.

/s/ R.T. Mantlo
President of the Council

Attest:

/s/ Stephanie Nye
City Clerk

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into as of the 1st day of September, 1994, between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Donald Fugate, doing business as Don's Automotive, hereinafter referred to as "the Lessee".

RECITALS

A. The City is the owner of the following described real property situated in the City of Grand Junction, County of Mesa, State of Colorado, to wit:

The North 150 feet of Lots 13 and 14 of Block 2, South Fifth Street Subdivision, also known as 545 Noland Avenue in the City of Grand Junction and hereinafter referred to as "the Property".

B. The Lessee desires to lease the Property under the terms and conditions of this Lease Agreement.

NOW, THEREFORE, in consideration of the terms, promises, covenants and conditions stated herein to be kept by the parties hereto, the City hereby leases the Property and the improvements situated thereon to the Lessee.

1. The term of this Lease shall be for a period of five (5) years, commencing on September 1, 1994, and expiring on August 31, 1999, said term being subject to the provisions of paragraph 7 herein.

2. The Lessee agrees to pay to the City as rental for the Property the amount of \$250.00 per month, in advance, due and payable without demand by the City on or before the 1st day of each month during the term of this Lease. The first payment shall be due and payable on or before September 1, 1994. In the event the payment of rent is not received by the City on or before the 10th day of each month, the Lessee agrees to pay a late charge of \$50.00, which amount shall be added to the amount of rent(s) due.

3. (a) Lessee agrees to timely pay any and all taxes which might be levied against the Property and attributable to the occupancy of the Property by the Lessee during the term of this Lease, and to promptly pay for all utilities charges including, but not limited to, natural gas, electricity, water, sewer, telephone, and trash removal imposed with respect to the Property. (b) If the Lessee fails to timely pay any and all amounts required pursuant to this Lease, the City may pay such amounts and, in such event, the amount(s) paid by the City, plus interest thereon at the rate of fifteen percent (15%) per annum, shall be added to the amount(s) of the rent due and payable by the Lessee.

4. The Lessee agrees to:

a. Maintain and keep the Property and keep the Property and all improvements and fixtures situated thereon, including, but not limited to, sewer connections, roofing, plumbing, fencing, heating and ventilation systems, wiring and glass in good repair, all at the Lessee's expense and, at the expiration or termination of this Lease, to surrender the Property and improvements to the City in as good a condition as when the Lessee entered the Property, reasonable use and wear excepted.

b. Keep the Property free from all litter, dirt debris, weeds and obstructions.

c. Waive and forego any claim, cause of action or demand the Lessee may have against the City, its officers, employees and agents for injury to or destruction of any property of the Lessee or any third party that may be lost, injured, damaged, destroyed or devalued as a result of the act, or failure to act of the Lessee or any third party; and to indemnify the City, its officers, employees and agents and to hold the City, its officers, employees and agents harmless from any and all claims, damages, actions costs and expenses of every kind in any manner arising out of, or resulting from the Lessee's use and occupancy of the Property.

d. Use said Property for no purpose prohibited by the laws of the United States of America, the State of Colorado, the County of Mesa or the City of Grand Junction; to comply with all police, fire, sanitary and environmental regulations imposed by any municipal, state or federal authority either now in force or hereinafter enacted, and to use the Property for no improper or questionable purposes whatsoever.

e. At the Lessee's expense and during the term of this Lease, purchase and maintain in effect suitable comprehensive general liability insurance which will protect the Lessee and the City, its officers, employees and agents from liability in the event of loss of life, personal injury, or property damage suffered by any person or persons on, about or using the Property. Such insurance shall be written for at least a minimum of \$500,000.00, combined single limit, and shall not be cancelable without thirty (30) days prior written notice to the Risk Manager of the City of Grand Junction. The certificate of insurance must be deposited with the Risk Manager of the City and must designate the City of Grand Junction, its officers, employees and agents as additional insureds.

f. Comply with all Worker's Compensation Laws and provide proof of Worker's Compensation insurance to the Risk Manager of the City. Said Worker's Compensation insurance shall cover all obligations imposed by all applicable laws for any employee engaged in the performance of work on the Property.

5. (a) The Lessee has inspected the Property and the improvements and accepts the Property and the improvements in their present condition. The Lessee further agrees that the condition of the Property and the improvements is sufficient for the purposes of the Lessee. The City makes no

warranties nor promises that the Property or improvements are sufficient for the purposes of the Lessee. (b) In the event the Property or improvements are damaged due to fire, flood or any other casualty, or if the improvements or fixtures deteriorate to the extent that they are no longer functional for the purposes of the Lessee, the City shall have no obligation to repair or replace any such improvement or fixtures, nor to otherwise make the premises usable or occupiable; damages shall be at the Lessee's sole risk. If the City determines not to perform repairs, replacements, or to otherwise make the premises usable or occupiable, the Lessee may terminate this Lease by giving notice to the City that this Lease is to be terminated.

6. During the term of this Lease, the Lessee shall have the exclusive right-of-way for ingress and egress to and from the Property, provided that the City, its officers, employees and agents shall have the right to be on the Property during emergencies and may inspect the Property at any time.

7. Upon expiration of the third lease year (August 31, 1997), or any time thereafter, the City shall have the right to terminate this Lease by giving ninety (90) days advanced written notice. In such event, the Lessee shall be compensated in the amount of \$1,500.00, which amount represents one-half of the annual rent for the lease year in which this Lease may be terminated.

8. This Lease shall automatically terminate in the event the Lessee or the Lessee's business: becomes insolvent; is subject to a bankruptcy filing whether voluntary or involuntary; is subject to an assignment for the benefit of creditors or if a receiver is appointed; if the Lessee should become disabled or suffer death; if the Lessee fails in any manner to comply with any of the terms, promises, covenants or conditions of this Lease to be kept and performed by the Lessee; or should the Lessee, by any act of negligence or carelessness, or through any act of commission or omission permit, or suffer to be permitted, damage to the Property or the demised premises in any substantial or unreasonable manner. In such event, the City may immediately retake possession. If this Lease is terminated by the City in accordance with the provisions of this paragraph 8, the Lessee shall have reasonable access to the Property for a reasonable time, not to exceed thirty (30) days, to remove the Lessee's personal property. If the Lessee fails to remove his personal property within the time prescribed, the City shall not be responsible for the care and safekeeping thereof and may remove the same and store the same in a reasonable manner, the cost, expense and risk of which shall be borne by the Lessee. The Lessee hereby agrees that items not timely removed may be sold by the City to cover expenses, with net proceeds after expenses being paid to the Lessee. The City may also set off amounts owed under this Lease against the proceeds of said sale.

9. Notwithstanding the provisions of paragraphs 7 and 8 above, if the Lessee is in default in the performance of any term or condition of this Lease, the City may, at its option, terminate this Lease by giving thirty (30) days advance written notice. If the Lessee fails within any such thirty (30) day period to remedy each and every default specified in the City's notice, this Lease shall then terminate. If the Lessee remedies such default(s), the Lessee shall not thereafter have the right of thirty (30) days to remedy with respect to the same default, but rather, the Lessee's rights shall, with respect to a subsequent similar default, terminate upon the giving of notice by the City. All notices

sent pursuant to the Lease Agreement shall be delivered by United States Certified Mail, return receipt requested, and shall be considered served upon the Lessee as of the date of mailing indicated on the postal receipt. All notices to the Lessee shall be mailed to the Lessee at 545 Noland Avenue, Grand Junction, Colorado 81501. All notices to the City shall be mailed to the City Property Agent, 250 North 5th Street, Grand Junction, Colorado 81501.

10. The Lessee shall not sublet, assign or transfer any of the Lessee's interests in this Lease, or enter into any contract or agreement affecting the Lessee's interest in this Lease without obtaining the prior written approval of the City. Further, the Lessee shall make no structural changes or improvements to the Property without the prior written consent of the City, which consent shall not be unreasonably withheld.

11. Should the Lessee fail, for whatever reason, to vacate the Property at the expiration of this Lease or when this lease is terminated earlier than the expiration date, the Lessee agrees to pay to the City, in addition to all other sums due hereunder, daily rental in the amount of \$75.00 per day for each and every day thereafter. The parties agree that it would be difficult to establish the actual damages to the City in such event and that said \$75.00 per day is an appropriate liquidated damages amount.

12. It is expressly agreed and understood that this Lease is one of lease and not of partnership and that the City shall not be or become responsible for any debts contracted by the Lessee. The Lessee shall save, indemnify and hold the City, its officers, employees and agents harmless against all liability or loss, and against all claims or actions based upon or arising from any claim, lien, damage or injury, including death, to persons or property caused by the Lessee or sustained in connection with the performance of this Lease or by conditions created thereby, or based upon any violation of statute, code, ordinance or regulation, and the defense of any such claims or actions, including attorney's fees. The Lessee shall also pay and indemnify the City, its officers, employees and agents against all liability and loss in connection with, and shall assume full responsibility for the payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to employees engaged in performance of this Lease.

13. In the event the City uses its City Attorney or engages an attorney to enforce the City's rights hereunder, including, but not limited to, any lawsuit or any collection efforts, the Lessee agrees to pay for the value or cost of such attorney or collection efforts, plus costs including the costs of any experts. This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado. Venue shall be in Mesa County, Colorado.

14. The provisions of this Lease shall not inure to the benefit of the heirs, successors or assigns of the parties hereto.

IN WITNESS WHEREOF, each party to this Lease Agreement has caused it to be executed on the date indicated below.

Attest:

For the City of Grand Junction, Colorado

/s/ Stephanie Nye
City Clerk

Date

/s/ Mark K. Achen
City Manager

Date

Lessee:

Donald Fugate

Date