

RESOLUTION NO. 110-95

AUTHORIZING THE PURCHASE BY THE CITY OF GRAND JUNCTION,
COLORADO, OF CERTAIN REAL PROPERTY;
RATIFYING ACTIONS HERETOFORE TAKEN IN CONNECTION THEREWITH

WHEREAS, the City of Grand Junction has entered into a contract with the Public Service Company of Colorado for the sale by the Public Service Company of Colorado and the purchase by the City of that certain real property described as Lot 17 through 26, inclusive, Block 134 of the Original Plat of the City of Grand Junction in the County of Mesa, State of Colorado; and

WHEREAS, the City Council deems it necessary and proper that the City purchase said Property together with all improvements thereon and appurtenant thereto.

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

1. That the City Council hereby authorizes the purchase of the Property by the City for a purchase price of \$49,500. All actions heretofore taken by the officers, employees and agents of the City relating to the purchase of the Property which are consistent with the provisions of the attached Contract to Buy and Sell Real Estate and this Resolution are hereby ratified, approved and confirmed.
2. That the City Council hereby authorizes the expenditure of \$49,500.00 for the purchase of the Property, to be paid at closing on February 9, 1996 or, by mutual agreement, at an earlier date.
3. That the officers, employees and agents of the City are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution and the attached Contract to buy and Sell Real Estate, including, without limitation, the performance of environmental audits, boundary surveys, and the execution and delivery of such certificates and documents as may be necessary or desirable.

PASSED and ADOPTED this 6th day of December, 1995.

Attest:

/s/ Stephanie Nye
City Clerk

/s/ Ron Maupin
President of the City Council

CONTRACT TO BUY AND SELL REAL ESTATE
(Seller's Remedy Limited to Liquidated Damages)

THIS CONTRACT TO BUY AND SELL REAL ESTATE is entered into by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and The Public Service Company of Colorado, a Colorado corporation, hereinafter referred to as "the Seller".

WITNESSETH:

A. The Seller is the owner of the following described real property in the City of Grand Junction, County of Mesa, State of Colorado: Lots 17 through 26, inclusive, Block 134 of the Original Plat of the City of Grand Junction, hereinafter referred to as "the Property".

B. Pursuant to the Franchise Ordinance whereby the Seller obtained the right to operate as a public utility within the city limits of the City of Grand Junction, in the event the Seller proposes to sell or dispose of any of its land or water facilities lying within the designated Grand Junction Service Area, the Seller shall permit or grant to the City the right of first refusal to purchase the same, and that the City shall have ninety (90) days in which to exercise the right of first refusal and shall give written notice of its decision to the Seller.

C. George E. Preuss and Debra L. Preuss, by contract dated September 15, 1995, offered to purchase the Property from the Seller and the Seller accepted the offer to sell the Property to George E. Preuss and Debra L. Preuss for the purchase price of \$49,500.00.

D. The City has determined to exercise its first right to purchase the Property for the purchase price of \$49,500.00, subject to the terms and conditions of this Contract.

NOW, THEREFORE, subject to the provisions set forth herein, the City hereby agrees to purchase the Property from the Seller, and the Seller hereby agrees to sell the Property to the City, upon the terms and conditions stated herein.

1. The Seller hereby acknowledges having received from the City the sum of \$1,000.00, in the form of a check, to be held by Welton Properties, Inc., Broker for the Seller, in said Broker's escrow or trustee account, as earnest money and part payment for the Property. Said \$1,000.00 is non-refundable, except as otherwise provided herein, unless the City is unable to deliver merchantable title as set forth herein.

2. The purchase price for the Property shall be \$49,500.00, payable as follows: \$1,000.00 in earnest money as set forth above; the balance of \$48,500.00 in the form of "good funds" shall be paid at closing. The City and the Seller each agree to pay their own closing costs according to local custom.

3. The purchase price shall include the Property, all improvements thereon or appurtenant thereto, and any and all other rights appurtenant to the Property, free and clear of all taxes, special assessments, liens and encumbrances.

4. A current commitment for title insurance policy in an amount equal to the purchase price, at the Seller's expense, shall be furnished to the City on or before December 15, 1995. The Seller shall cause the title insurance policy to be delivered to the City after closing and pay the premium thereon.

5. The date of closing shall be the date for delivery of deed as provided in paragraph 6. The hour and place of closing shall be as designated by the Closing Agent. Changes in time, place and date may be made with the consent of both the Seller and the City.

6. Title shall be merchantable in the Seller, except as stated in this paragraph and in paragraphs 7 and 8. Subject to payment or tender as above provided and compliance by the City with the other terms and provisions hereof, the Seller shall execute and deliver a good and sufficient special warranty deed to the City on February 9, 1996, or, by mutual agreement, at an earlier date, conveying the Property free and clear of: all taxes, including, but not limited to, the estimated general property taxes which have accrued as of the date of closing; all liens for special improvements installed as of the date of the City's signature hereon, whether assessed or not; all liens and encumbrances.

7. Except as stated in paragraphs 6 and 8, if title is not merchantable and written notice of defect(s) is given by the City to the Seller on or before date of closing, the Seller shall use reasonable effort to correct said defect(s) prior to date of closing. If the Seller is unable to correct said defect(s) on or before date of closing, at the Seller's option and upon written notice to the City on or before date of closing, the date of closing shall be extended for a period not to exceed thirty (30) days for the purpose of correcting said defect(s). Except as stated in paragraph 8, if title is not rendered merchantable as provided in this paragraph 7, at the City's option, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to the City.

8. (a) Any encumbrance required to be paid shall be paid at or before the time of settlement from the proceeds of this transaction or any other source. Provided, however, at the option of either party, if the total indebtedness secured by liens on the Property exceeds the purchase price, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to the City.

(b) This Contract is expressly contingent upon the Seller obtaining a release of the Property from the Seller's Corporate Indenture. The Seller shall apply for a release of the Property from the Seller's Corporate Indenture within Fourteen (14) days after all contingencies in this Contract have been satisfied or removed.

9. (a) The Seller shall, without additional cost to the City and within ten (10) days of acceptance of this contract by the City Council of the City as set forth in paragraph 15, furnish to the City true copies of all information and documents in possession of the Seller regarding lease agreements and/or rental agreements, boundary surveys, geological surveys and studies, engineering studies and environmental surveys and studies.

(b) The Seller and the City agree that the City, its officers, employees, agents, contractors and licensees will be permitted, for a period commencing on the date of acceptance of this contract by the Seller and ending on the date which is sixty (60) days after said date of acceptance ("Inspection Period"), to have access to and make inspections of the Property for the purposes of conducting boundary surveys, soils surveys and sampling, engineering studies, and environmental surveys and studies.

(c) If the City, during the Inspection Period, determines that the condition of the Property is unsuitable for use by the City for reasons including, but not limited to, leaking underground storage tanks, unstable soils or geology, or the existence of any toxic, hazardous and/or regulated substances and materials which are located on, under or about the Property, the City shall notify the Seller of such defect(s) in writing. The Seller shall then have fifteen (15) days after receipt of said notice to either reasonably correct said defect(s) or to terminate this Agreement. If this Agreement is so terminated, neither party shall have any further rights under this Contract and all payments and things of value received hereunder shall be returned to the City and all documents delivered by the Seller to the City shall be returned to the Seller. If written notice of any unsatisfactory condition(s) is not mailed to the Seller as set forth above, the physical condition of the Property shall be deemed to be satisfactory; provided, however, that liabilities for toxic, hazardous and/or regulated substances and materials shall survive any such notice or the lack thereof.

(d) The Seller makes no representations or warranties regarding the existence of any toxic, hazardous and/or regulated substances and materials on, under or about the Property, except to the extent that: 1) the Seller states that it has not deposited or caused to be deposited any toxic, hazardous and/or regulated substances on, under or about the Property during the time that the Seller has owned the Property; 2) the Seller has provided the City with a true copy of an Environmental Review prepared by the Seller, a copy of which is attached hereto as Exhibit-"1". By providing the foregoing information, the Seller does not thereby create or intend to create any representations or warranties that the information contained therein is accurate or should be relied upon by the City.

(e) Nothing herein shall prejudice or be to the exclusion of any other rights or remedies either party may determine is necessary or appropriate to enforce its rights under any law, code or regulation, either now in effect or hereinafter enacted, in the event any toxic, hazardous and/or regulated substances or materials are discovered, whether or not prior to the closing, on, under or about the Property. The provisions of this paragraph and paragraph 9(d) shall survive the closing and transfer of title to the Property.

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

11. Possession of the Property shall be delivered to the City at closing, subject to the

existing tenancies of: a) All Good Mobile Homes and; b) Action Auto Repair; true copies of all documents supporting such tenancies shall be attached to this Contract by the Seller on or before December 15, 1995. These tenancies will be assigned to the City at closing and shall not be canceled by the Seller. Notwithstanding the existing tenancies, if the Seller fails to deliver possession on the date herein specified, the Seller shall be subject to eviction and shall be liable for a daily rental of \$50.00 until possession is delivered.

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

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

(a) IF THE CITY IS IN DEFAULT, then all payments and things of value received hereunder shall be forfeited by the City and retained on behalf of the Seller and both parties shall thereafter be released from all obligations hereunder. It is agreed that such payments and things of value are LIQUIDATED DAMAGES, and (except as provided in subparagraph (c)) are the Seller's SOLE AND ONLY REMEDY for the City's failure to perform the obligations of this contract. The Seller expressly waives the remedies of specific performance and additional damages;

(b) IF THE SELLER IS IN DEFAULT, the City may elect to treat this contract as (1) terminated, in which case all payments and things of value received hereunder shall be returned to the City and the City may recover such damages as may be proper, or (2) being in full force and effect and the City shall have the right to an action for specific performance or damages, or both.

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

14. Notwithstanding any termination of this Contract, the City and the Seller agree that, in the event of any controversy regarding the earnest money and things of value held by the Seller's Broker, unless mutual written instructions are received by said Broker, said Broker shall not be required to take any action but may await any proceeding, or at said Broker's option and discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction.

15. This entire contract and the City's obligation to proceed under its terms is expressly conditioned upon the consent and approval of the City Council of the City of Grand

Junction. If such consent and approval is not obtained on or before December 6, 1995, then this contract shall automatically become void and of no effect, in which case all payments and things of value received hereunder shall be returned to the City.

16. The Seller has entered into an agreement with a licensed real estate broker for the sale and purchase of the Property. Inasmuch that the said real estate broker represents the Seller under this agreement, the City shall not be obligated to pay any claim under the transaction contemplated herein which is associated with real estate brokerage commissions or finder's fees. The Seller agrees to defend, indemnify and hold the City harmless from any claim for real estate brokerage commissions or finder's fees asserted by said broker or by any other party as a result of dealings claimed to have been conducted between the parties.

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

To the City: City of Grand Junction
 c/o City Property Agent
 250 North 5th Street
 Grand Junction, CO 81501-2668

To the Seller: Welton Properties, Inc.
 c/o Gary Mogensen, Broker Associate
 1225 17th Street, Suite 1900
 Denver, CO 80202-5533

18. Subject to paragraph 15, if this proposal is accepted by the Seller in writing and the City receives notice of such acceptance on or before November 17, 1995, this instrument shall become a contract between the Seller and the City and shall inure to the benefit of the successors and assigns of such parties.

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

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

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

The City of Grand Junction, Colorado
Purchaser

Mark K. Achen, City Manager

Dated: _____

Purchaser's Address & Telephone:

c/o City Property Agent
250 North 5th Street
Grand Junction, CO 81501
(970) 244-1565

Acceptance By Seller:

Dated: _____

Seller's Address & Telephone:

Welton Properties, Inc.,
c/o Gary Mogensen, Broker Associate
1225 17th Street, Suite 1900
Denver, CO 80202-5533
(303) 294-2495

The undersigned Broker for the Seller acknowledges receipt of the earnest money deposit specified in Section 1.

By: _____

Dated: _____