

RESOLUTION NO. 112-95

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 Luz Magaly Allison for the sale by Luz Magaly Allison and the purchase by the City of that certain real property described as Lot 3, Block 2 of South 5th Street Addition to the City of Grand Junction in the County of Mesa, State of Colorado, also known as 1200 South 5th Street; 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 \$16,500.00. 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 \$16,500.00 for the purchase of the Property, to be paid at closing on January 16, 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 Luz Magaly Allison, hereinafter referred to as "the Seller".

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 Cole & Company Realty, Broker for the Seller, in said Broker's escrow or trustee account, as earnest money and part payment for the following described real property:

Lot 3, Block 2 of South 5th Street Addition, City of Grand Junction, County of Mesa, State of Colorado, also known as 1200 South 5th Street and hereinafter referred to as "the Property".

Said \$1,000.00 is non-refundable, except as otherwise provided herein, unless the Seller is unable to deliver merchantable title as set forth herein.

2. Subject to the provisions set forth herein, the City hereby agrees to purchase the Property, and the Seller agrees to sell the Property, upon the terms and conditions stated herein.

3. The purchase price for the Property shall be \$16,500.00, payable as follows: \$1,000.00 in earnest money as set forth above; the sum of \$15,500.00 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.

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

5. 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 13, 1995. The Seller shall cause the title insurance policy to be delivered to the City after closing and shall pay the premium thereon.

6. The date of closing shall be the date for delivery of deed as provided in paragraph 7. The hour and place of closing 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.

7. Title shall be merchantable in the Seller, except as stated in this paragraph and in paragraphs 8 and 9. Subject to payment or tender as above provided and compliance by the both parties with the other terms and provisions hereof, the Seller shall execute and deliver a good and sufficient general warranty deed to the City on January 16, 1995, 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 and encumbrances, including, but not limited to, liens for special improvements installed as of the date of the City's signature hereon, whether assessed or not.

8. Except as stated in paragraphs 7 and 9, if title is not merchantable and written notice of defect(s) is given by the City to the Seller 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 9, if title is not rendered merchantable, at the City's option, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to the City.

9. Any lien and/or encumbrance required to be paid shall be paid by the Seller 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 and/or encumbrances on the Property exceeds the purchase price, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to the City.

10. (a) The Seller shall, without additional cost the City and within ten (10) days of acceptance of this contract by the Seller, 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, notices of violations from any governmental agency and any other information regarding the condition of the Property.

(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 thirty (30) 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, asbestos surveys and sampling, soils sampling and surveys, engineering studies, geological surveys and 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 or under the Property, the City shall notify the Seller of such defect(s) in writing. The Seller shall then have fifteen (15) days after receipt of said notice to either reasonably correct said defect(s) or to terminate this Agreement. If this Agreement is so terminated, neither party shall have any further rights under this Contract and all payments and things of value received hereunder shall be returned to the City. If written notice of any unsatisfactory condition(s) is not mailed to the Seller as set forth above, the City may be required to close.

11. 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.

12. Possession of the Property shall be delivered to the City at closing without exception, lease or any tenancy. If the Seller fails to deliver possession at closing, the Seller shall be subject to eviction and shall be liable for a daily rental of \$100.00 until possession is delivered.

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, each party shall pay such party's own costs and 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. Notwithstanding that the said real estate broker represents the Seller under this agreement, the City agrees to pay to said broker the sum of \$990.00 as complete and total commission for the sale and purchase of the Property. The Seller agrees to defend,

indemnify and hold the City, its officers, employees and agents harmless from any other claims for real estate brokerage commissions or finder's fees asserted 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: c/o City Property Agent
250 North 5th Street
Grand Junction, CO 81501-2668

To the Seller: c/o Tom Guccini
Cole & Company Realty
2755 North Avenue
Grand Junction, CO 81501

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 4:00 o'clock p.m., Grand Junction Time on October 6, 1995, this instrument shall become a contract between the Seller and the City and shall inure to the benefit of the heirs, successors and assigns of 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 heirs, 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:

Luz Magaly Allison

Dated: _____

Seller's Address & Telephone: c/o Tom Guccini, Cole & Company Realty, 2755 North Avenue, Grand Junction, CO 81501, (970) 243-7711.

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

By: _____
Tom Guccini, Cole & Company Realty

Dated: _____