

RESOLUTION NO. 63-95

AUTHORIZING A LEASE OF THE CITY-OWNED AVALON THEATER
TO THE AVALON, INC.

WHEREAS, the City of Grand Junction is the owner of that certain real property described as the West 85 feet of Lots 11, 12, 13, 14 and 15 of Block 116 according to the Original Plat of the City of Grand Junction, also known as 645 Main Street in the City of Grand Junction; and

WHEREAS, The Avalon, Inc., a Colorado non-profit corporation, desires to lease the Property for the purpose of providing a performing arts center and other cultural amenities to benefit the inhabitants of the City of Grand Junction.

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 with The Avalon, Inc., for the lease of the above described Property for a term which commences on July 1, 1995, and shall renew each year thereafter on July 1, 1995, unless ninety (90) days prior written notification of intent to terminate is given by either party, and for a rental fee of \$1,500.00, which fee is hereby waived and considered as an in-kind contribution by the City as that term is used in accordance with governmental and other arts and culture programs and grants.

PASSED and ADOPTED this 21st day of June, 1995.

Attest:

/s/ Ron Maupin
President of the City Council

/s/ Stephanie Nye
City Clerk

LEASE

This Lease is made and entered into this ____ day of _____, 1995, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and The Avalon Theatre, Inc., a Colorado non-profit corporation, hereinafter referred to as "the Lessee".

RECITALS

A. The City is the owner of the following described real property and improvements situate in the City of Grand Junction, County of Mesa, State of Colorado:

The West 85 feet of Lots 11, 12, 13, 14 and 15 of Block 116, according to the Original Plat of the City of Grand Junction, also known as 645 Main Street, Grand Junction, Colorado, commonly known as the Avalon Theater and hereinafter referred to as "the Property".

B. The Lessee desires to lease the Property for the purpose of providing a performing arts facility to benefit the general public.

C. The City has agreed to lease the Property to the Lessee under the terms and conditions of this Lease Agreement.

NOW, THEREFORE, In consideration of the performance of the promises set forth herein, the City does hereby lease to the Lessee the above described property.

1. The term of this Lease shall commence on June 7, 1995, and, notwithstanding anything herein to the contrary, shall renew each year thereafter on June 7 ("the effective date"), unless written notification of intent to terminate is given by either party ninety (90) days in advance of the effective date.

2. Rental for the property shall be \$1,500.00 per month; provided, however, that the aforementioned rent is hereby waived and shall be considered as an in-kind contribution by the City as that term is used in accordance with governmental and other arts and culture programs and grants.

3. The Lessee agrees to:

(a) Timely pay any and all general property taxes and personal property taxes which may be levied against the Property and attributable to the occupancy of the Property by the Lessee; and to promptly pay for all utilities charges including, but not limited to, natural gas, electricity, water, sewer and trash removal with respect to the Property.

(b) Maintain and keep the building and all improvements and fixtures in and upon the Property in good repair, all at the Lessee's sole cost and expense, and at the expiration of this Lease, surrender the Property and improvements thereon to the City in good repair and working condition, reasonable use and wear excepted.

(c) Keep the Property free from all litter, dirt, debris and obstructions, and to keep all sidewalks free from snow and ice.

(d) 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 person that may be lost, injured, destroyed or devalued as a result of the act, or failure to act, of the Lessee or any third person.

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

(f) Purchase and maintain in effect suitable comprehensive general liability insurance which will protect 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 not be cancelable without thirty (30) prior days prior written notice to the City and shall be written for at least One Million Dollars (\$1,000,000.00), combined single limit. A certificate of insurance evidencing such coverage must be filed with the Risk Manager of the City and must designate the City of Grand Junction, its officers, employees and agents as additional insureds. The City may unilaterally modify the limits and policy requirements at any time.

(g) Pay and indemnify the City, its officers, employees and agents against all liability and loss in connection with, and shall assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required by its activities, including worker's compensation, unemployment insurance, social security income tax laws, with respect to employees engaged in performance of this Lease.

4. The Lessee may sublet, assign or transfer any of the Lessee's interests in the Lease, or enter into any contract or agreement affecting the Lessee's interest in this Lease, provided that the Lessee has first obtained the prior written approval of the City, which consent may be unreasonably withheld.

5. (a) If the Lessee is in default in the performance of any term or condition of this lease Agreement 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 manner, the City may, at its sole option, terminate this Lease upon giving thirty (30) days written notice. If the Lessee fails within any such 30 day period to remedy each and every default specified in the City's notice, this Lease shall automatically terminate.

(b) If this Lease is terminated by the City, except termination due to the expiration of the Lease term, 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 the Lessee's 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 solely by the Lessee.

6. It is expressly agreed that this Lease is one of lease and not of partnership and the City shall not be or become responsible for any debts contracted by the Lessee. The Lessee shall keep the Property and

demised premises free from any and all liens arising out of any work performed, materials furnished and obligations incurred by the Lessee.

7. 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.

IN WITNESS WHEREOF, each party to this Lease Agreement has caused it to be executed as of the day and year first above written.

Attest: For the City of Grand Junction, Colorado

City Clerk

City Manager

Attest: For the Avalon Theatre, Inc.

Name & Title:

Name & Title