

RESOLUTION NO. 94-99

**AMENDING AND EXTENDING THE LEASE OF CITY PROPERTY
AT 545 NOLAND AVENUE
TO DONALD FUGATE, DOING BUSINESS AS DON'S AUTOMOTIVE**

WHEREAS, pursuant to that certain Lease Agreement dated the 1st day of September, 1994, as authorized by City Resolution No. 69-94, the City leases to Donald Fugate, doing business as Don's Automotive, the following described real property in the City of Grand Junction, County of Mesa, State of Colorado:

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, the above referenced Lease is due to expire on August 31, 1999; and

WHEREAS, the City and Donald Fugate are desirous of entering into an agreement for the purposes of amending and extending the lease of the above described property.

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

That the City Manager on behalf of the City and as the act of the City, is hereby authorized to execute and enter into the attached Lease Amendment and Extension Agreement with Donald Fugate, doing business as Don's Automotive.

PASSED and ADOPTED this 18th day of August, 1999.

Attest:

/s/ Stephanie Nye
City Clerk

/s/ Gene Kinsey
President of the City Council

LEASE AMENDMENT AND EXTENSION AGREEMENT

THIS LEASE AMENDMENT AND EXTENSION AGREEMENT is made and entered into as of the 31st day of August, 1999, by and 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 "Lessee".

Recitals

A. By that certain Lease Agreement dated the 1st day of September, 1994 ("the Lease"), the City has leased to Lessee the following described real property situate in the City of Grand Junction, County of Mesa, State of Colorado:

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 term of the Lease is due to expire on August 31, 1999.

C. It is the desire of both parties to amend and extend the terms of the Lease in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, In consideration of the recitals above and the terms, covenants, conditions and restrictions contained herein, the parties agree as follows:

1. The term of the Lease shall be extended to a period commencing on August 31, 1999, and continuing through December 31, 2000, on which date the Lease shall expire.

2. The following terms, covenants, conditions, restrictions, duties and obligations shall be incorporated into and become a part of the Lease:

2.1 The City retains and reserves unto itself: (a) all rights to grant, sell, bargain and convey ownership interest(s) in and to the Property, or any division thereof, to any other party, including the conveyance of easements, so long as such action will not interfere with Lessee's use and quiet enjoyment of the Property for the purposes set forth in the Lease, and; (b) the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for any conveyance in lieu of condemnation. Lessee hereby assigns and transfers to the City any claim it may have to compensation for damages as a result of any condemnation, except for compensation for damages of property of Lessee actually so taken.

2.2 Lessee shall not cause or permit to occur by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees or employees:

(a) any violation of any Environmental Law on, under or about the Property or arising from Lessee's use and occupancy of the Property, including, but not limited to, air, soil and groundwater conditions; or

(b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance in violation of any federal state or local law, ordinance or regulation either now in force or hereafter enacted.

(c) Lessee shall, at Lessee's sole cost and expense, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances;

(d) Lessee shall, at Lessee's sole cost and expense, make all submissions to provide all information required by and/or to comply with all requirements of all governmental authorities ("the Authorities") under Environmental Laws and other applicable laws.

(e) Should any Authority or the City demand that a clean-up plan be prepared and that a clean-up plan be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances on, under or about the Property, Lessee shall, at Lessee's sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Lessee shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws.

(f) Lessee shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances requested by any Authority. If Lessee fails to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Lessee's behalf and, in such case, Lessee shall cooperate with the City in the preparation of all documents the City or any Authority deems necessary or appropriate to determine the applicability of Environmental Laws to the Property and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon the City's request. No such action by the City and no attempt made by the City to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of Lessee's obligations hereunder.

(g) Lessee's obligations and liabilities hereunder shall survive the expiration or termination of the Lease and this Agreement.

(h) Lessee shall indemnify, defend and hold the City, its officers, employees and agents harmless from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances and the violation of any Environmental Law and other applicable law by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees and employees that occur during the term of the Lease and this extension thereof, or from Lessee's failure to provide all information, make all submissions, and take all actions required by all Authorities under the Environmental Laws and other applicable laws. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of the Lease.

(i) The term "Hazardous Substances", as used in this Agreement, shall mean any substance which is: defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law enacted by any federal, state and local governmental agency or other governmental authority; a petroleum hydrocarbon, including, but not limited to, crude oil or any fraction thereof; hazardous, toxic or reproductive toxicant; regulated pursuant to any law; any pesticide or

herbicide regulated under state or federal law. The term "Environmental Law", as used in this Lease Agreement, shall mean each and every federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety of the environment, either now in force or hereafter enacted.

3. All other terms, conditions and responsibilities as they appear in that Lease Agreement dated the 1st day of September, 1994, shall continue in full force and effect during the term of this Lease Amendment and Extension Agreement.

Dated the day and year first above written.

Attest:

The City of Grand Junction,
a Colorado home rule municipality

City Clerk

City Manager

Lessee:

Donald Fugate, doing business as
Don's Automotive