

LOW96SR5

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	LOWE DEVELOPMENT CORPORATION
PROJECT/SUBDIVISION:	SOUTH RIM, FILING NO. FIVE
ADDRESS:	SOUTH RIM DRIVE AND 23 ROAD
TAX PARCEL NO:	2945-083-00-119
FILE #:	FPP-1996-052
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	1996
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

10

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. Parties: The parties to this Development Improvements Agreement ("the Agreement") are LOWE DEVELOPMENT CORPORATION ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City").

THEREFORE, for valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. Effective Date: The Effective Date of the Agreement will be the date that this agreement is recorded which is not sooner than recordation of the FINAL PLAT

RECITALS

The Developer seeks permission to develop property within the City to be known as SOUTH RIM, FILING NO. FIVE, which property is more particularly described on Exhibit "A" attached and incorporated by this reference (the "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the development and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the development or for the benefit of the purchasers or users of the development. The mutual promises, covenants, and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

DEVELOPER'S OBLIGATION

3. Improvements: The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit "B" attached and incorporated by this reference. The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. Security: To secure the performance of its obligations under this Agreement (except its obligations for warranty under paragraph 6), the Developer will enter into an agreement which complies with either option identified in paragraph 28, or other written agreement between the City and the Developer.

5. Standards: The Developer shall construct the Improvements according to the standards and specifications required by the City Engineer or as adopted by the City.

6. Warranty: The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of twelve (12) months from the date that the City Engineer accepts or approves the improvements completed by the Developer.

7. Commencement and Completion Periods: The improvements, each and every one of them, will be completed within (18) EIGHTEEN MONTHS from the Effective Date of this Agreement (the "Completion Period").

8. Compliance with Law: The developer shall comply with all relevant federal, state and local laws, ordinances, and regulations in effect at the time of final approval when fulfilling its obligations under this Agreement.

9. Notice of Defect: The Developer's Engineer shall provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's Engineer otherwise has knowledge, that an improvement does not conform to City standards and any specifications approved in the

development application or is otherwise defective. The developer will have thirty (30) days from the issuance of such notice to correct the defect.

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of improvements will not be given or obtained until the Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the improvements in fee simple and that there are no liens, encumbrances, or other restrictions on the improvements. Approval and/or acceptance of any improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the improvement that is detected or which occurs after approval and/or acceptance.

11. **Use of Proceeds:** The City will use funds deposited with it or drawn pursuant to any written disbursement agreement entered into between the parties only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

12. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. Developer's failure to complete each portion of the Improvements in conformance with the agreed upon time schedule; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any improvement within the applicable correction period; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

13. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. For improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit "B" will be prima facie evidence of the minimum cost of completion; however, neither that amount nor the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

14. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit "B") of all improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes

of constructing, reconstructing, maintaining, and repairing such improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or a lender) who has acquired the development by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished improvements and provides reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

15. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained, or alleged to be received or sustained, by any person or entity in connection with, or on account of, any act or failure to act concerning the performance of work at the development or the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named in an action concerning the performance of work or the failure to perform work pursuant to this Agreement. The Developer is not an agent or employee of the City.

16. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both City and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

17. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it shall be deemed effective.

18. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party; any City obligation under this section shall be subject to the overriding provisions of section 15, above. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker, subject to the overriding provisions of section 15, above.

19. **Vested Rights:** The City does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the City, if any, before the Developer is entitled to commence development or to transfer ownership of property in the development.

20. **Third Party Rights:** No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

21. **Time:** For the purpose of computing the Abandonment and Completion Periods, and time periods for City action, such times in which war, civil disasters, or acts of God occur or exist will not be included if such times prevent the Developer or City from performing its obligations under the Agreement.

22. **Severability:** If any part, term, or provision of this Agreement is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

23. Benefits/burdens: The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors, and assigns of the Developer, and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations under the improvements disbursement agreement if it accepts new security from any developer or lender who obtains the Property. However, no other act of the City will constitute a release of the original Developer from his liability under this Agreement.

24. Notice: Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows: SUITE 900

If to Developer: % DAVID G. BEHRHORST LOWE DEVELOPMENT CORP. 1280 UTE AVE., SUITE 32 ASPEN, CO. 81611 MITCH ROZALSKY LOWE DEVELOPMENT CORP. 1177 SAN VICENTE BLVD. LOS ANGELES, CA. 90049

If to City: City of Grand Junction
Community Development Director
250 N. 5th Street
Grand Junction, Colorado 81501

25. Recordation: Developer shall pay for all costs to record a copy of this Agreement in the Clerk and Recorder's Office of Mesa County, Colorado.

26. Immunity: Nothing contained in this Agreement constitutes a waiver of the City's immunity under any applicable law.

27. Personal Jurisdiction and Venue: Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement, letter of credit, improvements disbursements agreement, or cash escrow agreement or any action to collect security will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

28. Improvements guarantee. The improvements guarantee required by the City to ensure that the improvements described in the improvements agreement are constructed to City standards may be in one of the following forms: (If I or II, then attach as Exhibit C.)

(I) disbursement agreement between a bank doing business in Mesa County and the City, or

(II) a good and sufficient letter of credit acceptable to the City, or

(III) depositing with the City cash equivalent to the estimated cost of construction of the improvements under the following terms:

(a) The Finance Department of the City may act as disbursing agent for disbursements to Developer's contractor(s) as required improvements are completed and accepted if agreed to in writing pursuant to a disbursement agreement; and

(b) The Finance Department of the City will disburse any deposit or any portion thereof, with no more than three checks, at no charge. If disbursements are made in excess of three checks, the developer will be charged \$100 per transaction for every transaction in excess of three.

29. Conditions of Acceptance.

- a. The City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been accepted by the City. "Acceptance by the City" means a separate writing wherein the City specifies which improvements have been accepted and the date from which warranty(ies) shall run.
- b. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish to the City Engineer as-built drawings in reproducible form, blue-line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specifications; (ii) provide written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other regulated substances or materials; (iii) provide written evidence to the City Engineer that the title to lands underlying the improvements are merchantable and free and clear from all liens and encumbrances, except those liens and encumbrances which may be approved in writing by the City Engineer.

30. Phased Development. If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on his side of the street to enable an initial two-way traffic operation without on-street parking. That Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.

Samy Timin *RTD* 5/16/96
 Director of Community Development Date

City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

LOWE DEVELOPMENT CORPORATION

X David B. Bellows 2/26/96
 Developer VICE President Date

(If Corporation, to be signed by President and attested to by Secretary together with the Corporate seals)

Jeffery F. Parker *VP* 5/8/96
 Bank Date

Jeffery F. Parker, Vice President
Norwest Bank Grand Junction
2808 North Avenue
Grand Junction, CO 81502

EXHIBIT "A"

TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY. USE SINGLE SPACING WITH A ONE (1) INCH MARGIN ON EACH SIDE.

Beginning at the Northeast Corner of the Northwest Quarter of the Southwest Quarter (NW1/4 SW1/4) of Section 8, Township 1 South, Range 1 West of the Ute Meridian, which lies North 00 degrees 03 minutes 18 seconds East 1317.66 feet from the Southeast corner of the Northwest Quarter of the Southwest Quarter (NW1/4 SW1/4) of said Section 8, which corner bears South 89 degrees 47 minutes 07 seconds West from the Southeast Corner of the Northeast Quarter of the Southwest Quarter (NE1/4 SW1/4) of said Section 8 for a basis of bearings with all bearings contained herein relative thereto; thence North 00 degrees 03 minutes 18 seconds East, a distance of 146.51 feet to a point at the southerly line at the northwesterly end of a tract dedicated to the City of Grand Junction for Public Open Space in Book 2132, Pages 955 through 958 of the Mesa County Clerk and Recorders Official Records; thence along said southerly line of said Public Open Space the Seven (7) following courses: (1) South 58 degrees 13 minutes 29 seconds East, a distance of 734.98 feet; (2) thence South 19 degrees 00 minutes 55 seconds East, a distance of 163.21 feet; (3) thence with a non-tangent curve to the left, having a delta angle of 21°40'04", a radius of 1185.92 feet, an arc length of 448.48 feet, a chord bearing of South 60 degrees 09 minutes 03 seconds West, and a chord length of 445.82 feet; (4) thence South 49 degrees 19 minutes 01 seconds West, a distance of 259.08 feet; (5) thence South 40 degrees 40 minutes 55 seconds East, a distance of 10.00 feet; (6) thence with a non-tangent curve to the right, having a delta angle of 08°07'59", a radius of 686.20 feet, an arc length of 97.40 feet, a chord bearing of South 53 degrees 22 minutes 59 seconds West, and a chord length of 97.32 feet; thence South 00 degrees 00 minutes 00 seconds East, a distance of 22.42 feet; (7) thence South 60 degrees 45 minutes 38 seconds West, a distance of 87.07 feet; thence South 74 degrees 15 minutes 43 seconds West, a distance of 64.05 feet; thence North 65 degrees 01 minutes 37 seconds West, a distance of 14.78 feet; thence North 90 degrees 00 minutes 00 seconds West, a distance of 50.43 feet; thence with a non-tangent curve to the right, having a delta angle of 02°50'48", a radius of 222.00 feet, an arc length of 11.03 feet, a chord bearing of South 02 degrees 41 minutes 48 seconds West, and a chord length of 11.03 feet; thence North 90 degrees 00 minutes 00 seconds West, a distance of 44.14 feet; thence with a non-tangent curve to the right, having a delta angle of 11°19'31", a radius of 178.00 feet, an arc length of 35.18 feet, a chord bearing of South 10 degrees 48 minutes 13 seconds West, and a chord length of 35.13 feet; thence South 64 degrees 51 minutes 34 seconds West, a distance of 25.81 feet; thence North 03 degrees 33 minutes 06 seconds East, a distance of 141.58 feet; thence North 00 degrees 00 minutes 00 seconds East, a distance of 75.17 feet; thence North 00 degrees 00 minutes 00 seconds East, a distance of 247.52 feet; thence South 89 degrees 55 minutes 00 seconds East, a distance of 243.38 feet; thence North 00 degrees 03 minutes 18 seconds East, a distance of 520.14 feet to the POINT OF BEGINNING.

S.RIM # 5

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL
(Page 1 of 4)

BOOK 2239 PAGE 907

DATE: MAY 8, 1996

NAME OF DEVELOPMENT: SOUTH RIM FILING NO. FIVE

PRINTED NAME OF PERSON PREPARING: LANDesign LTD.

SOUTH RIM FILING NO. 5
STREET IMPROVEMENTS

08-May-96

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	Remove Clear & Grub	LOAD	10	\$130.00	\$1,300.00
2	Excavation	CY	395	\$1.80	\$711.00
3	Embankmant	CY	247	\$2.00	\$494.00
4	Sub-Grade Preperation	SY	2795	\$0.45	\$1,257.75
5	Class 6 ABC	CY	222	\$21.80	\$4,839.60
6	5" Grading C HBP	TON	769	\$24.25	\$18,648.25
7	6'- 6" Curbwalk	LF	1579	\$13.70	\$21,632.30
8	Spill Curb and Gutter	LF	95	\$3.00	\$285.00
9	Traffic Control Signs	EA	1	\$60.00	\$60.00
10	Adjust MH's & Valves	EA	7	\$80.00	\$560.00
11	Mail Box Pad (2-8 Unit)	EA	1	\$350.00	\$350.00
12	Compliance Testing	LS	1	\$1,200.00	\$1,200.00
13	Mobilization	LS	1	\$500.00	\$500.00
14	Trail Sign	EA	1	\$200.00	\$200.00
TOTAL STREET IMPROVEMENTS					\$52,037.90

SOUTH RIM FILING NO. 5
EROSION CONTROL IMPROVEMENTS

08-May-96

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	Silt Fence	LF	100	\$2.00	\$200.00
2	Hay Bail Barriers	EA	20	\$30.00	\$600.00
3	Erosion Control Swale	LF	1640	\$0.25	\$410.00
TOTAL EROSION CONTROL IMPROVEMENTS					\$1,210.00

SOUTH RIM FILING NO. 5
SANITARY SEWER IMPROVEMENTS

07-May-96

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	8" Sanitary Sewer Main	LF	746	\$8.00	\$5,968.00
2	4" Sanitary Sewer Main	LF	767	\$6.00	\$4,602.00
3	Standard Manhole	EA	5	\$800.00	\$4,000.00
4	Service Connections	EA	15	\$100.00	\$1,500.00
5	Trench Compaction	LF	1303	\$2.50	\$3,257.50
6	Pipe Bedding	CY	124	\$10.00	\$1,240.00
7	Join Existing	EA	1	\$200.00	\$200.00
8	Compliance Testing	LS	1	\$1,000.00	\$1,000.00

TOTAL SANITARY SEWER IMPROVEMENTS

\$21,767.50SOUTH RIM FILING NO. 5
DOMESTIC WATER IMPROVEMENTS

07-May-96

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	8" PVC Water Main	LF	745	\$12.00	\$8,940.00
2	Fire Hydrant Assembly	EA	2	\$1,620.00	\$3,240.00
3	Trench Compaction	LF	1097	\$2.00	\$2,194.00
4	Pipe Bedding	CY	94	\$10.00	\$940.00
5	Service Connections	EA	15	\$400.00	\$6,000.00
6	Join Existing	EA	1	\$200.00	\$200.00
7	Compliance Testing	LS	1	\$1,500.00	\$1,500.00

TOTAL DOMESTIC WATER IMPROVEMENTS

\$23,014.00

SOUTH RIM FILING NO. 5
DRY UTILITY IMPROVEMENTS

07-May-96

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	Trenching, Backfill, & Testing	LF	293	\$5.00	\$1,465.00
2	4" PVC Conduits	LF	373	\$2.00	\$746.00
3	Compliance Testing	LS	1	\$200.00	\$200.00
TOTAL DRY UTILITY IMPROVEMENTS					\$2,411.00

SOUTH RIM FILING NO. 5
IRRIGATION SYSTEM IMPROVEMENTS

07-May-96

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	4" PVC Irrigation Main	LF	1803	\$4.10	\$7,392.30
2	Service Connection	EA	16	\$150.00	\$2,400.00
3	4" Gate Valve w/ Box	EA	4	\$350.00	\$1,400.00
4	Trench Compaction	LF	45	\$2.50	\$112.50
5	Drainage Connections	EA	2	\$200.00	\$400.00
6	Join Existing	EA	1	\$100.00	\$100.00
7	Compliance Testing	LS	1	\$100.00	\$100.00
TOTAL IRRIGATION WATER IMPROVEMENTS					\$11,904.80

SOUTH RIM FILING NO. 5
STORM SEWER IMPROVEMENTS

08-May-96

ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	Standard Street Inlet	EA	1	\$1,000.00	\$1,000.00

TOTAL STORM SEWER IMPROVEMENTS

\$1,000.00

SOUTH RIM FILING NO. 5
MISC. ITEMS

08-May-96

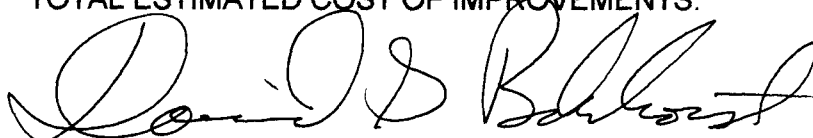
ITEM	DESCRIPTION	UNIT	QUAN	UNIT PRICE	CONTRACT TOTAL
1	City Inspection Fees	LS	1	\$1,000.00	\$1,000.00
2	Construction Surveying	LS	1		\$5,600.00
3	General Construction Supervision	LS	1		\$3,750.00

TOTAL MISC. ITEMS

\$10,350.00

TOTAL ESTIMATED COST OF IMPROVEMENTS:

\$123,695.20



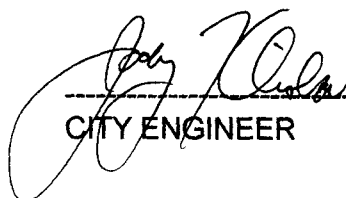
5/8/96

SIGNATURE OF DEVELOPER

DATE

(If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)

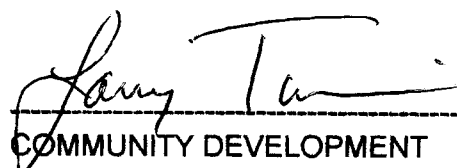
I have reviewed the estimated costs and time schedule shown above and, based on the plan layouts submitted to date and the current cost of construction, I take no exception to the above.



CITY ENGINEER

5-15-96

DATE



COMMUNITY DEVELOPMENT



5/16/96

DATE

1760192 0429PM 06/11/96
MONIKA TODD CLK® MESA COUNTY CO

DISBURSEMENT AGREEMENT
(Improvements Guarantee)

DEVELOPER: LOWE DEVELOPMENT, CORPORATION ATTN. MITCH ROZALSKY
11777 SAN VICENTE BLVD., SUITE 900
LOS ANGELES, CA 90040

BANK: NORWEST BANK GRAND JUNCTION N.A. ATTN. JEFFREY F. PARKER
2808 NORTH AVENUE
PO BOX 1568
GRAND JUNCTION, CO 81502

PROPERTY: SOUTH RIM, FILING NO.5, GRAND JUNCTION, CO

DISBURSEMENT AMOUNT: For the construction of improvements to the
Property in an amount not to exceed \$ 123,695.20.

This Agreement is entered into by and between LOWE DEVELOPMENT CORPORATION
("Developer"), NORWEST BANK GRAND JUNCTION, N.A.
("Bank") and the City of Grand Junction,
Colorado ("City").

RECITALS

Developer has been required by the City to construct certain
improvements to SOUTH RIM, FILING NO. 5 ("Improvements") in
accordance with the Zoning and Development Code, Improvements
Agreement and subdivision approval.

The Bank has agreed to loan funds to the Developer for construction
of the Improvements.

The City Engineer has approved an estimate of the costs of the
Improvements and that amount or an amount not to exceed
\$ 123,695.20, whichever is greater, shall be referred to as the
"Funds."

The parties desire to secure the full and complete performance of
the Developer's obligations and to secure that the Funds are
disbursed only to pay for the Improvements.

NOW, THEREFORE, THE PARTIES AGREE:

1. BANK PROMISES. Bank shall dedicate or set aside the Funds on
behalf of Developer and for the City's benefit within twenty-four
hours of execution of this Disbursement Agreement.

Disbursement Agreement
page 2 of 5

Bank warrants: that the Funds are to be held in trust solely to secure Developer's obligations under the Improvements Agreement; that the Bank shall act as agent of the City in holding the Funds; that the Funds will not be paid out or disbursed to, or on behalf of, the Developer except as set forth in this document and/or as set forth in the Improvements Agreement; and that the Bank may not modify or revoke its obligation to disburse funds to or on behalf of the Developer or the City. The Bank warrants that the Funds are and will be available exclusively for payment of the costs of satisfactory completion of the Improvements.

2. **DISBURSEMENT PROCEDURES.** The Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail attached to the Improvements Agreement, the terms of which are incorporated by this reference. All disbursements must comply with the following procedures:

(a) **Request for Advance.** Developer shall deliver to the Bank a written request for the disbursement of funds on forms acceptable to the Bank. Such requests shall be signed by Developer, Developer's General Contractor, Project Engineer and Architect, if applicable, and the City Engineer. By signing the request for disbursement the Developer is certifying: that all costs for which the advance is being requested have been incurred in connection with the construction of the Improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; the Project Engineer has inspected the Improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. Attached hereto is the list of those individuals, and their respective signatures, required to sign the above described request(s) for disbursement of funds.

(b) **Documentation, Waivers and Checks.** Each request for disbursement of funds shall be accompanied by: (i) one original and one copy of each invoice to be paid; (ii) checks drawn on Developer's construction loan account with the Bank, made payable to the payee(s) and for the amount of each invoice presented for payment; (iii) lien waivers in a form approved by the Bank prepared for signature by each payee; and (iv) postage paid envelopes addressed to each payee for the mailing of checks presented to the Bank.

Disbursements Agreement
page 3 of 5

The Bank shall verify its receipt of all lien waivers relating to any prior disbursements, which lien waivers shall be properly executed and contain no alterations or modifications from those lien waivers that have been previously presented to the Bank.

Upon approval by Developer, the Project Engineer and the Bank of the invoices being presented to the Bank, the Bank shall advance funds into the checking account designated for the payment of the invoices and mail the checks to the payee(s) in the envelopes presented to the Bank, together with lien waivers and copies of supporting invoices.

Under no circumstances shall the Bank make a disbursement for the payment of an invoice if it in good faith believes that: (i) the work has not been completed; (ii) the work has not been completed in a workmanlike manner; (iii) written approval has not been received from the Project Engineer; or (iv) any lien waiver has been altered or modified or has not been returned to the Bank.

(c) **Default.** Upon default of the Developer on any obligation to the Bank or under the Improvements Agreement, the Bank shall disburse no funds to, or at the direction of, the Developer except to the City under the terms of the Improvements Agreement. The Bank shall immediately notify the City, in writing, of any event of default or event of default as provided for in the Improvements Agreement and/or as provided herein.

(d) **Disbursement to City.** In the event the Improvements are not satisfactorily and timely constructed, or upon any default or event of default, the City Engineer shall notify the Bank to immediately cease disbursement of funds to the Developer and disburse the full amount of the remaining undisbursed funds to the City. Upon such notice, the Bank shall promptly honor the demand of the City Engineer to disburse the Funds to the City or a third party or parties designated in writing by the City. Upon final completion and acceptance of the performance required under the Improvements Agreement, the City shall refund to the Bank any funds disbursed, if any, which are not actually expended to pay all costs, expenses and liabilities, including attorney fees, incurred in completing the Improvements.

3. **DEVELOPER CONSENT:** The Developer, by the signature of DAVID G. BEHRHORST, V.P. (name & title), consents to disbursements and other actions authorized and provided for by the terms of this Agreement and/or the Improvements Agreement.

Disbursement Agreement
page 4 of 5

4. LIABILITY FOR LOSS: If the Bank fails to disburse funds in accordance with the procedures set forth, and the City suffers loss or damage, the Bank shall be liable to the City for the City's direct and consequential damages and all fees, costs and expenses, including attorneys fees.

5. BINDING EFFECT: This Agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the City has accepted the Improvements and has recorded a release of the Improvements Agreement.

6. IMMUNITY: Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable state law.

Dated this 8th day of MAY, 1996.

(BANK)

By: Jeffrey F. Parker, VP
Title JEFFREY F. PARKER, V.P.

P.O. BOX 1568, GRAND JUNCTION, CO 81502
Address

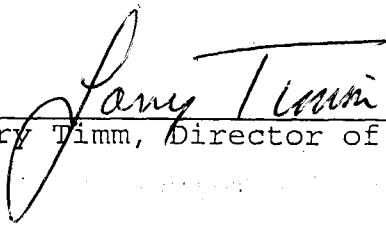

(DEVELOPER)

LOWE DEVELOPMENT CORPORATION

By: David G. Behrhorst, Vice President
Title DAVID G. BEHRHORST, V.P.

1177 SAN VICENTE BLVD. SUITE 900
Address LOS ANGELES, CA 90049

CITY OF GRAND JUNCTION

By: Larry Timm  
Larry Timm, Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between LOWE DEVELOPMENT CORPORATION Developer, NORWEST BANK, GRAND JUNCTION as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

DEVELOPER:

LOWE DEVELOPMENT CORPORATION (name) David D. Behrboist, Vice Pres. (signature)

(name) _____ (signature) _____

(name) _____ (signature) _____

DEVELOPER'S GENERAL CONTRACTOR:

ELAM CONSTRUCTION (name) [Signature] (signature)

EDEX INCORPORATED (name) [Signature] (signature)

DEVELOPER'S PROJECT ENGINEER:

Philip M. Hart (name) [Signature] (signature)

DEVELOPER'S ARCHITECT:

N/A (name) _____ (signature) _____

CITY ENGINEER:

Jody Kliska (name) [Signature] (signature)