

EDC88LFT

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: MESA COUNTY ECONOMIC DEVELOPMENT COUNCIL,  
INC., (MCEDC)

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: AGREEMENT DATED JULY 29,  
1988 REGARDING \$250,000 TO BE PROVIDED TO LIFT INDUSTRIES, INC., (LII)

CITY DEPARTMENT: ADMINISTRATION

YEAR: 1988

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

AGREEMENT

THIS AGREEMENT is made this 29<sup>th</sup> day of July, 1988, and is between the City of Grand Junction, Mesa County, Colorado (City herein), and the MESA COUNTY ECONOMIC DEVELOPMENT COUNCIL, INC., (MCEDC).

RECITALS:

A. MCEDC is a non-profit corporation seeking to provide business development in Mesa County, Colorado, including economic assistance to new businesses locating in Mesa County, Colorado.

B. The City has agreed to provide, under mutually understood parameters, assistance to MCEDC to enhance the attraction of new business in Mesa County, Colorado, to create employment, increase the tax base and broaden the economic base of the County for the benefit of all.

C. In response to a request from MCEDC, the City has agreed to provide \$250,000 to MCEDC to be provided to Lift Industries, Inc., (LII) for their use in facility improvement, equipment installation at their new Mesa County location at Lot 2 of Appleton West Planned Commercial Park, according to the official plat thereof recorded in Plat Book # 12 at Page 364, official records of Mesa County, Grand Junction, Colorado, and/or transportation of equipment and inventory from Canada.

D. MCEDC and LII have signed a formal agreement which is designed to provide for security of performance of its obligations in return for the provision of \$250,000. That agreement, dated July 5, 1988, will be recorded in the office of the Mesa County Trustee. A copy of the Agreement is attached.

E. MCEDC desires to provide to the City a commitment to insure that funds provided are used as intended and that the obligation of LII as stated in the attached Agreement are fulfilled.

NOW, THEREFORE, in consideration of the above, it is agreed as follows:

1. MCEDC will insure through personal inspection and monitoring that the grant of \$250,000 to LII will be expended solely for the purposes outlined in the attached Agreement.

2. MCEDC agrees to provide such reports as may be requested by the City.

3. After start-up of operations, MCEDC agrees to monitor the performance of LII annually on the anniversary date of LII's start of operations to insure that employment levels as provided in the attached Agreement are achieved. A report will be provided to the City.

4. In the event of default by LII under any terms and conditions of the Agreement, MCEDC shall undertake to enforce its remedies in the manner provided for in the Agreement. In the event MCEDC refuses to or fails to enforce remedies, the City is hereby empowered to act in place of MCEDC, and shall have the right to enforce the attached Agreement in court and or to perform MCEDC's obligations under this contract as may be deemed necessary by the City.

5. In the event MCEDC or the City declare a default by LII of the attached Agreement, MCEDC shall immediately pay to the City all funds made available to MCEDC under this Agreement but not yet disbursed.

6. This Agreement shall be interpreted in accordance with the laws of the State of Colorado and venue for any dispute hereunder shall be in the District Court of the County of Mesa, State of Colorado.

7. Any notice required or permitted to be given under the terms of this Agreement shall be given by United States Certified Mail, Return Receipt Requested with postage prepaid. Notice shall be deemed to have been given on the date of mailing as shown by United States postal receipt. Said notice shall be addressed as follows:

For notice given to MCEDC:

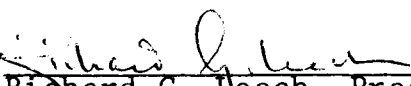
Mesa County Economic Development Council  
2828 H Road, Walker Field Terminal, 3rd Floor  
Grand Junction, Colorado 81506

For notice given to the City:

City Manager  
City of Grand Junction  
250 North 5th Street  
Grand Junction, Colorado 81501

DATED the day and year first written above.

MESA COUNTY ECONOMIC DEVELOPMENT  
COUNCIL, INC.  
a Colorado non-profit corporation

By   
Richard G. Leech, President

CITY OF GRAND JUNCTION

By Mark Achen  
City Manager

ATTEST:

Neva S. Lockhart, CMC  
City Clerk

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF MESA        )

24<sup>th</sup> The foregoing instrument was acknowledged before me this day of July, 1988, by Richard G. Leech, President of the Mesa County Economic Development Council, Inc.

Witness my and official seal.

My commission expires:

July 18, 1990

Lucia Thompson  
Notary Public

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF MESA        )

26 The foregoing instrument was acknowledged before me this day of July, 1988, by Mark Achen, City Manager, City of Grand Junction, Mesa County, Colorado.

Witness my hand and official seal.

My commission expires:

June 13, 1991

Theresa E. Martens  
Notary Public

AGREEMENT

This agreement is made this 5 day of July 1988 and is between G. Michael Ferris, President, Lift Industries, Inc., Post Office Box 3836, Grand Junction, Colorado 81502, and Richard G. Leech, President, Mesa County Economic Development Council, Inc., Grand Junction, Colorado 81506.

To induce a decision by Lift Industries, Inc. to relocate to Grand Junction, Mesa County, Colorado the Mesa County Economic Development Council, Inc. will provide an incentive in the form of a cash grant of \$250,000. The grant monies will be provided from local public sector monies in accordance with criteria established between MCEDC and the City of Grand Junction.

The grant is contingent on all of the following factors:

- 1.) That Lift Industries, Inc. relocates its Canadian operations to Mesa County not later than September 30, 1988 with the intention of maintaining its business/manufacturing operations in Mesa County.
- 2.) That financing for the relocation including purchase of a local physical operating facility is in place.
- 3.) That Lift Industries, Inc. agrees to employ not less than one hundred (100) additional full time employees, including any personnel transfers from Canada, in the Mesa County facility by December 31, 1990 and maintain or increase this level through the life of this agreement.
- 4.) That the average employee wage/salary will be not less than \$18,000 annually.
- 5.) That Lift Industries, Inc. agrees to a placement of a lien by MCEDC on the Mesa County operating real estate facility. The MCEDC lien will provide for Lift Industries to vest its interest in the \$250,000 cash grant over seven (7) years at the rate of one-seventh (1/7th) for each year Lift Industries, Inc. continues its operations in Mesa County at agreed employment levels. If operating conditions are met then the lien will be removed at the end of the 7th year. In the event Lift Industries, Inc. defaults on these agreed conditions then the unvested amount of the initial grant will be due and payable to MCEDC prior to removal of the lien.

Mesa County Economic Development Council  
a Colorado non-profit corporation

By Richard G. Leech  
Richard G. Leech, President

Lift Industries, Inc.

By G. Michael Ferris  
G. Michael Ferris, President

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF MESA         )

The foregoing instrument was acknowledged before me this 5 day of July, 1988 by G. Michael Ferris, President, Lift Industries, Inc., Post Office Box 3836, Grand Junction, Colorado 81502.

Witness my hand and official seal.

My Commission expires:

11-1-89

Kate Ades  
Notary Public

DEED OF TRUST

THIS DEED OF TRUST (Trust Deed) is made on this \_\_\_\_\_ day of \_\_\_\_\_, 1988. The parties are LIFT INDUSTRIES, INC. (LII), PUBLIC TRUSTEE OF MESA COUNTY, COLORADO (Trustee), and the beneficiary, MESA COUNTY ECONOMIC DEVELOPMENT COUNCIL, INC., a Colorado non-profit corporation (MCEDC). The address of MCEDC is 2828 H Road, Grand Junction, Colorado 81506. The address of LII is Post Office Box 3836, Grand Junction, Colorado 81502.

A. LII, in consideration of the obligation specified in section B below, assigns, transfers and conveys to the Trustee, in trust, the following described real estate (Property) in Mesa County, Colorado:

Lot 2 of Appleton West Planned Commercial Park, according to the official plat thereof recorded in Plat Book #12 at Page 364, official records of Mesa County, Colorado.

B. The conveyance described in section A above is to secure to MCEDC:

(1) Performance of each and all of LII's obligations under the terms of an Agreement (Contract) between MCEDC and LII dated July 5, 1988. A copy of that Contract is attached to this Trust Deed as Appendix A and is incorporated by this reference; and

(2) The payment of all other sums advanced in accordance with this Trust Deed to protect the security of this Trust Deed and the performance of the obligations of LII stated in it.

LII PROMISES, AGREES AND WARRANTS AS FOLLOWS:

1. Warranty of Title. LII is the owner of and has the right to grant this Trust Deed encumbering the Property. LII shall warrant and defend the title to the Property against all claims and demands, except for: (a) four deeds of trust as follows: first, United Bank of Grand Junction, \$1,000,000.00; second, Joy Technologies, Inc., \$100,000.00; third, United Bank of Grand Junction, \$1,000,000.00; and fourth, United Bank of Grand Junction, \$1,000,000.00; (b) easements, restrictions, reservations and rights-of-way of record in Mesa County as of the date of this Trust Deed; and (c) general property taxes and assessments for 1988 and all subsequent years.

2. Performance of Contract. LII shall promptly perform each and all of its obligations under, and comply with all terms and conditions of, the Contract.

3. Governmental Charges and Liens. LII shall pay all taxes, assessments and other governmental charges, fines and impositions attributable to the Property and any water rights pertaining to the Property. LII shall promptly discharge any lien which has priority over this Trust Deed, except as specified in section 1 above. LII shall be deemed to be fulfilling the obligation to discharge any lien so long as LII shall, in good faith, contest the same by appropriate legal proceedings which shall operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

4. Property Insurance. LII shall keep the improvements erected on the Property insured at all times with all risk

insurance in an amount equal to the lesser of: (1) the insurable value of the Property; or (2) an amount sufficient to pay the total of all sums secured by this Trust Deed as well as any prior encumbrances on the Property. All of the foregoing shall be known as "Property Insurance."

a. The insurance carrier providing the Property Insurance shall be qualified to write such insurance in Colorado and shall be chosen by LII subject to MCEDC's right to reject the chosen carrier for reasonable cause. All insurance policies and renewals shall include a standard mortgage clause in favor of MCEDC, and shall provide that the insurance carrier shall notify MCEDC at least ten (10) days before cancellation, termination or any material change of coverage. Insurance policies shall be furnished to MCEDC at or before closing. MCEDC shall have the right to hold the policies and renewals thereof.

b. In the event of loss, LII shall give prompt notice to the insurance carrier and MCEDC. MCEDC may make proof of loss if not made promptly by LII.

c. Insurance proceeds shall be applied to restoration or repair of the Property damaged; however, if such restoration or repair is not economically feasible and the security of this Trust Deed would be impaired, the insurance proceeds shall be applied to pay the sums secured by this Trust Deed, with the excess, if any, paid to LII. If the Property is abandoned by LII, or if LII fails to respond to MCEDC within fifteen (15) days from the date notice is given by MCEDC to LII that the insurance carrier offers to settle a claim for insurance benefits, MCEDC is authorized to collect and apply the insurance proceeds, at MCEDC's option, either to restoration or repair of the Property or to the sums secured by this Trust Deed.

d. All rights of LII and MCEDC under this Trust Deed with respect to insurance carriers, insurance policies and insurance proceeds are subject to the rights of any holder of a prior deed of trust with respect to those insurance carriers, policies and proceeds.

5. Preservation and Maintenance of Property. LII shall:

a. Not permit or suffer waste, impairment or deterioration of the Property;

b. Not remove, without MCEDC's prior written consent (which shall not be withheld unreasonably), demolish or alter any building or other improvements on the Property on the date of this Trust Deed or constructed upon the Property after the date of this Trust Deed;

c. Maintain the Property in good repair and condition at all times; and

d. Comply with all laws, ordinances, regulations and requirements of any governmental body which are applicable to the Property.

6. Protection of MCEDC's Security. If LII fails to perform LII's obligations stated in this Trust Deed, or if any action or proceeding is commenced which affects the Property (or title to, or the interest of MCEDC in the Property), including, without limitation, eminent domain, insolvency or bankruptcy, then MCEDC, at MCEDC's option, may enter such appearances, disburse such sums and take such actions as MCEDC considers

necessary to protect MCEDC's interests, including, but not limited to, disbursement of reasonable attorneys' fees and entry upon the Property to make repairs. Any amounts disbursed by MCEDC pursuant to this section 6 shall become additional indebtedness of LII secured by this Trust Deed.

Unless LII and MCEDC agree to other terms of repayment, amounts advanced pursuant to this section 6 shall be payable thirty (30) days after written demand and shall accrue interest from the date of disbursement at the default rate stated in the note, if any, otherwise at the regular rate for interest upon the principal amount of the note. MCEDC's option as stated in the preceding paragraph shall not be construed to require MCEDC to incur any expense or to do any act. MCEDC shall not incur liability for any act it may do or omit to do under this section 6.

7. Inspection. Upon reasonable notice to LII, MCEDC may make or cause to be made reasonable entries for inspection of the Property and for any other purposes permitted by the terms of this Trust Deed.

8. Acceleration. Upon the occurrence of any of the following events (Default), all of the sums secured by this Trust Deed shall become immediately due and payable at the option of MCEDC, without notice or demand, which LII expressly waives:

a. LII's failure to make any payment, perform any of its obligations or comply with any of the terms or conditions of the Contract;

b. Failure to make payment of any other amount due from LII to MCEDC or failure to perform any other obligation of LII in this Deed of Trust; or

c. Filing of voluntary or involuntary arrangements or other proceedings in bankruptcy by or against LII, initiation of insolvency proceedings by or against LII or assignment by LII for the benefit of its creditors.

9. Remedies. In case of Default by LII, MCEDC may file notice with the Trustee declaring such Default and may demand that the Property be advertised and sold in accordance with applicable Colorado law. The Trustee shall then proceed to advertise the Property and sell the same at public auction at the main door of the Mesa County Courthouse in Grand Junction, Colorado.

The Trustee shall apply the proceeds of any sale in the following order:

a. To all costs and expenses incident to the sale, including, but not limited to, reasonable attorneys' fees;

b. To all sums secured by this Trust Deed; and

c. The excess, if any, to the person legally entitled thereto, when established to the Trustee's satisfaction.

10. Receivership. Upon acceleration under section 8 above or abandonment of the Property, MCEDC, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by MCEDC or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, without limitation, receiver's fees,



premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Trust Deed. MCEDC and the receiver shall be liable to account only for those rents actually received.

11. Condemnation. All awards, proceeds and damages, direct or consequential, in connection with any condemnation of or injury to all or any part of the Property or for conveyance in lieu of condemnation, are assigned to, and shall be paid to, MCEDC to the extent of the sums secured by this Trust Deed. MCEDC, at MCEDC's option, shall apply such awards, proceeds or damages to restoration of the Property or to payment of the sums secured by this Trust Deed. MCEDC is authorized to receipt for such award in the name of LII and to execute and deliver valid releases and to appeal from any such award.

12. Forbearance by MCEDC not a Waiver. Any delay by MCEDC in exercising any right or remedy under this Trust Deed, or otherwise granted by applicable law, shall not be a waiver of, or preclude the exercise of, any such right or remedy. The failure of MCEDC to exercise any option to accelerate maturity of the sums secured by this Trust Deed, forbearance by MCEDC before or after the exercise of such option or the withdrawal or abandonment of proceedings provided for by this Trust Deed shall not be a waiver of the right to exercise such option or the right to accelerate or the right to reinstate such proceedings.

13. Binding Effect. The promises, warranties and agreements stated in this Trust Deed shall bind, and the rights granted shall inure to the benefit of, MCEDC and LII and their respective heirs, personal representatives, successors and assigns.

14. Notice. Any notice which either LII or MCEDC are required or permitted to give under this Trust Deed shall be placed in the United States mail, postage prepaid, directed to the party's address stated in the initial paragraph of this Trust Deed.

DATED as of the day and year first above written.

LIFT INDUSTRIES, INC.

Attest:

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
G. Michael Ferris, President

STATE OF COLORADO )  
                          ) ss.  
COUNTY OF MESA     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1988, by G. Michael Ferris, President of Lift Industries, Inc.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public



# The Mesa County Economic Development Council

Together.toward progress

July 18, 1988

Mr. Mark Achen  
City Manager  
City of Grand Junction  
250 North 5th Street  
Grand Junction, Colorado 81501

Dear Mark,


Attached are:

- a. Proposed AGREEMENT between MCEDC and the City of Grand Junction outlining MCEDC responsibilities regarding the \$250,000 grant to Lift Industries, Inc. through MCEDC.
- b. Copy of AGREEMENT between MCEDC and Lift Industries, Inc. dated July 5, 1988.
- c. Copy of DEED OF TRUST to be executed by Lift Industries, Inc. on or before July 20, 1988. The completed Deed of Trust will be filed with the Mesa County Clerk and Recorder prior to transfer of funds to Lift Industries, Inc.

The proposed date of funds transfer from MCEDC to Lift Industries, Inc. is Thursday, July 21, 1988. I will need the city check on that date.

Please advise if changes to the proposed MCEDC - City Agreement are desired.

Sincerely,

  
Richard G. Leech  
President  
Mesa County Economic Development Council

RGL:jls

Encl: A/S