

JHS94LAR

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	J.H.S. LIMITED LIABILITY COMPANY BY FREDRICK A. SCHUMANN, PARTNER
PROJECT/SUBDIVISION:	LARCHWOOD INN
ADDRESS:	2845 NORTH 15 TH STREET
TAX PARCEL NO:	2945-013-11-003
FILE #:	1993-0093
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	1994
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

IMPROVEMENTS AGREEMENT
(Site Plan)

1. **Parties:** The parties to this Improvements Agreement ("the Agreement") are JH5 LLC d/b/a FREDRICK SECURITY AND FIRE ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City").

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is recorded.

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

RECITALS

The Developer seeks permission to develop property within the City, which property is more particularly described on Exhibit A attached and incorporated by this reference hereinafter known as "the Property." The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements and limiting the harmful effects of substandard development. The purpose of this Agreement is to protect the City from the cost of completing improvements itself and is not executed for the benefit to materialmen, laborers, or others providing work, services or materials to the Developer. The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development Code.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those improvements listed on Exhibit B attached hereto and incorporated herein 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 City estimates that \$ 0 will be required for City inspection of the required improvements. 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 acceptable to the City to post a good and sufficient letter of credit, or deposit with the City cash equivalent to the estimated cost of construction of the improvements or provide a bank disbursement agreement acceptable to the City.

5. **Standards:** The Developer will construct the Improvements according to the standards and specifications required by the City Engineer or as otherwise 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, in writing, the improvements completed by the Developer.

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within 90 days 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 site plan/development 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, 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 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 the approval and/or acceptance.

11. **Use of Proceeds:** The City will use funds deposited with it or drawn under the bank 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 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 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 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 Developer will be the reasonable cost of satisfactorily completing the 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 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 or cash deposit to the extent of the face amount of the credit or full amount of the deposit, 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 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 disbursement agreement, 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 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 officer, employees and assigns harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the Development or on the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer. The Developer is not an agent or employee of the City for any purpose whatsoever.

16. No Waiver: No waiver of any provision of this Agreement by the City will be deemed to or constitute a waiver of any other provision, nor will it be deemed to 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 its authorized officer. Such amendment or modification shall be properly notarized before it may be 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. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

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 the courts 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: 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 will 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 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 this 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:

If to Developer:

JHS LLC.
2845 North 15th St
Grand Junction, Colo 81506

If to City:

City of Grand Junction
Community Development Director
250 N. 5th Street
Grand Junction, CO 81501

25. Recordation: Developer will pay for any and 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 sovereign immunity under any applicable state law.

27. Personal Jurisdiction and Venue: Personal jurisdiction and venue for any action commenced by either party to this Agreement, whether arising out of, or relating to the Agreement, letter of credit, disbursement agreement or cash deposit 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. The improvements guarantee required by the City Code to ensure that the improvements described in this Improvements Agreement are constructed (to City standards) may be in the form of a (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. Exhibit C attached hereto and incorporated herein by this reference as if fully set forth is the accepted form of guarantee.

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.

29. The City shall have no responsibility or liability with respect to any street, or any other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvement(s) shall have been accepted by the City.

Prior to requesting final acceptance of streets, storm drainage facilities or other required public improvement(s), the Developer shall furnish to the City Engineer as-built drawings in reproducible form and copies of results of all construction control tests required by City specifications.

30. 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 prescribed location and shall construct the required width of pavement from the edge of gutter on the side of the street being developed to enable an initial two-way traffic flow without on-street parking.

The Developer is also responsible for end-transitions, intersection paving, drainage facilities, adjustments to existing utilities and joints necessary to open the street or sidewalk to use.

City of Grand Junction

By: _____

Mark K. Achen

Mark K. Achen
City Manager



Attest:

Stephanie Nye
Stephanie Nye, City Clerk

Developer

By: Hubert A. Brown / Partner
President

Attest:

Secretary

MEMORANDUM OF IMPROVEMENTS AGREEMENT & GUARANTEE
Grand Junction Community Development Department
File #

This memorandum relates to an improvements agreement and guarantee dated 25 July 1994, by and between JMS LLC (Developer) and the City of Grand Junction (City) pertaining to LAKEMOOD TRMS (Project) in the City of Grand Junction.

Whereas, Developer is required to install and construct certain public and private improvements as a condition of approval of the Project, which completion is guaranteed by an improvements agreement and guarantee in the sum of \$ 10,656, and

Whereas, the City of Grand Junction and other agencies possessing regulatory authority over the Project and/or the improvements to be constructed, must inspect the improvements and accept the same before the improvements agreement and guarantee are released or if not constructed the City may use the proceeds or collateral of the guarantee to install the improvements, and

Whereas, the existence of the improvements agreement and guarantee may affect certain rights, responsibilities and actions of the Developer, the City or any other person or entity,

NOW THEREFORE, this memorandum is recorded to be notice to the world of the existence of said improvements agreement and guarantee. This memorandum is not a complete summary of the improvements agreement and guarantee. Provisions of this memorandum shall not be used to interpret the terms or provisions of the improvements agreement and/or guarantee. In the event of conflict between this memorandum and the unrecorded improvements agreement and/or guarantee, the unrecorded improvements agreement and guarantee shall control. The improvements agreement and guarantee may be inspected at the City of Grand Junction Community Development Department, 250 N. 5th Street, Grand Junction, CO.

CITY OF GRAND JUNCTION:

James Tan 8/17/94
Director of Community Development date

DEVELOPER:

Frank A. Schmitt 7/25/94
date

After recording mail to:

c/o Community Development Department
City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81501

Exhibit B

Bookcliff Gardens

755 - 26 ROAD
GRAND JUNCTION, CO 81506
PHONE: 242-7766

July 25, 1994

BHC Construction Inc.
2845 North 15th
Grand Junction, Co 81506

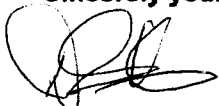
Dear Sirs;

This letter is to inform you of the progress made to date on the landscape of Larchwood Inns, located at the above address. As of todays date the following cash value applies to those items not completed.

ITEM	ORIGINAL AMOUNT	UNFINISHED
Site Prep	\$ 5,958.00	\$ 800.00
Landscape Edging	3,485.00	700.00
Planting	11,766.00	4,500.00
Mulching	5,763.00	2,856.00
Lawns	7,137.00	7,137.00
Topsoil	2,368.00	00.00
Irrigation System	26,183.00	2,663.00
TOTAL	\$ 62,660.00	\$ 18,656.00

- On Wed. 7/27 we are scheduled to lay sod in the front of the building.
- Hydroseed is scheduled to begin on August 2 & 3.
- Punchlist items to be completed by August 5.

Sincerely yours,



Daniel Komlo
Landscape Manager