

SHI95FRD

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: SUTHERLANDS HOME IMPROVEMENT COMPANY

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: 2415 F ROAD, SUTHERLAND  
LUMBER, File No. SPR-95-58

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1995

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

**DEVELOPMENT IMPROVEMENTS AGREEMENT**1717253 04:21 PM 05/15/95  
MONIKA TODD CLK&REC MESA COUNTY CO

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are Sutherlands Home Improvement Company, Inc. ("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 plat

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**RECITALS**

The Developer seeks permission to develop property within the City to be known as Sutherlands Home Improvement Company Inc. 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.



- 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 or 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 by any person or entity in connection with, or on account of 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 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 against the City. 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 may 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. 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 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:** 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 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:

If to Developer: Sutherlands Home Improvement Company, Inc.  
4000 Main Street  
Kansas City, Missouri 64111

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

**25. Recordation:** Developer will 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 sovereign 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. The **improvements guarantee** required by the City Code to ensure that the improvements described in the improvements agreement are constructed to City standards may be in one of the following forms:

(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.

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.

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.

Exhibit C, attached hereto and incorporated herein by this reference as if fully set forth, is the City approved and accepted guarantee for this project.

29. a. Conditions of Acceptance: 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.

Prior to requesting final acceptance of streets, storm drainage facilities, or other required improvements, the Developer shall 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.

- b. 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.



Attest:

Stephanie Nye  
Stephanie Nye  
City Clerk

Larry Tim  
Director of Community  
Development

9MTD

May 15, 1995  
Date

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

Craig Hill  
Developer

3.31.95  
Date

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

Attest:

John Hahn  
Asst Sec.



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

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EXHIBIT A

2415 F Road  
Grand Junction, CO 81505

Property located in the SW1/4  
SW1/4 of Section 4, T1S  
City of Grand Junction, Mesa County, Colorado

WNB ARCHITECTS

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

DATE: March 29, 1995

NAME OF DEVELOPMENT: Sutherland's Lumber

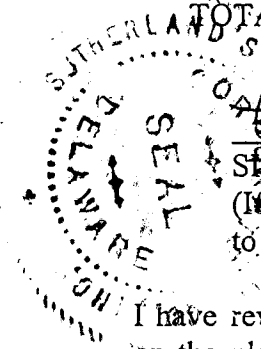
LOCATION: 2415 F Road, Grand Junction, CO 81501

PRINTED NAME OF PERSON PREPARING: Kelly Ford

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
<b>I. SANITARY SEWER</b>				
1. Clearing and grubbing	_____	n/a	_____	_____
2. Cut and remove asphalt	_____	n/a	_____	_____
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	_____	n/a	_____	_____
4. Sewer Services (incl. trenching, bedding, & backfill)	_____	n/a	_____	_____
5. Sanitary sewer manhole(s)	_____	n/a	_____	_____
6. Connection to existing manhole(s)	_____	n/a	_____	_____
7. Aggregate Base Course	_____	n/a	_____	_____
8. Pavement replacement	_____	n/a	_____	_____
9. Driveway restoration	_____	n/a	_____	_____
10. Utility adjustments	_____	n/a	_____	_____
<b>II. DOMESTIC WATER</b>				
1. Clearing and grubbing	_____	n/a	_____	_____
2. Cut and remove asphalt	_____	n/a	_____	_____
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	_____	n/a	_____	_____
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	_____	n/a	_____	_____
5. Connect to existing water line	_____	n/a	_____	_____
6. Aggregate Base Course	_____	n/a	_____	_____
7. Pavement Replacement	_____	n/a	_____	_____
8. Utility adjustments	_____	n/a	_____	_____
<b>III. STREETS</b>				
1. Clearing and grubbing	SF	13,090	0.08	1,047
2. Earthwork, including excavation and embankment construction	CY	850	3.20	2,720
3. Utility relocations	EA	1	650.00	650.00
4. Aggregate sub-base course (square yard)	CY	727	10.70	7,779
5. Aggregate base course (square yard)	CY	325	13.10	4,257

6. Sub-grade stabilization		n/a		
7. Asphalt or concrete pavement (square yard)	SY	1,024	8.28	8,478
8. Curb, gutter & sidewalk (linear feet)		n/a		
9. Driveway sections (square yard)		n/a		
10. Crosspans & fillets	SF	304	3.45	1,049
11. Retaining walls/structures		n/a		
12. Storm drainage system		n/a		
13. Signs and other traffic control devices -striping	LS	1	820	820
14. Construction staking	LS	1	490	490
15. Dust control	HR	26	45	1,170
16. Street lights (each)		n/a		
<b>IV. LANDSCAPING</b>				
1. Design/Architecture	LS	1	670	670
2. Earthwork (includes top soil, fine grading, & berming)	CY	29	16.50	478
3. Hardscape features (includes walls, fencing, and paving)		n/a		
4. Plant material and planting	LS	1	1,100	1,100
5. Irrigation system	LS	1	570	570
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)		n/a		
7. Curbing	LF	324	6.40	2,073
8. Retaining walls and structures		n/a		
9. One year maintenance agreement	LS	1	250	250
<b>V. MISCELLANEOUS</b>				
1. Design/Engineering	LS	1	2,835	2,835
2. Surveying	LS	1	920	920
3. Developer's inspection costs		n/a		
4. Quality control testing	LS	1	732	732
5. Construction traffic control	LS	1	2,300	2,300
6. Rights-of-way/Easements		n/a		
7. City inspection fees (see below)				
8. Permit fees	LS	1	466	466
9. Recording costs (see surveying)		n/a		
10. Bonds		n/a		
11. Newsletters				
12. General Construction Supervision	mo	1	3,440	3,440
13. Other				
14. Other				

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 14,294.00



Craig V. Hill 3.31.95  
SIGNATURE OF DEVELOPER DATE

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

Attest: Joan Hahn  
Asst Sec.

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

Judy Kessler 5-15-95  
CITY ENGINEER DATE

Jerry Tim mtd May 15, 1995  
COMMUNITY DEVELOPMENT DATE