

**RESOLUTION NO. 969**

**A RESOLUTION DETERMINING THE ADVISABILITY OF THE MAKING OF CERTAIN INTERNAL IMPROVEMENTS IN THE CITY OF COLBY, KANSAS, AND SETTING FORTH THE GENERAL NATURE OF THE IMPROVEMENTS, THE ESTIMATED OR PROBABLE COST THEREOF, THE EXTENT OF THE IMPROVEMENT DISTRICT TO BE ASSESSED FOR THE COST THEREOF, THE METHOD OF ASSESSMENT, AND THE APPORTIONMENT OF THE COST BETWEEN THE IMPROVEMENT DISTRICT AND THE CITY AT LARGE; AND AUTHORIZING AND PROVIDING FOR THE MAKING OF THE IMPROVEMENTS IN ACCORDANCE WITH THE FINDINGS OF THE GOVERNING BODY (STREET IMPROVEMENTS ON FIRST THREE HUNDRED SEVENTY FEET (370') OF SEWELL AVENUE NORTH OF WILLOW).**

WHEREAS, a Petition was filed with the City Clerk of the City of Colby, Kansas (the "City"), on the 8<sup>th</sup> day of September, 2008, proposing certain internal improvements; and said Petition sets forth: (a) the general nature of the proposed improvements; (b) the estimated or probable cost of the proposed improvements; (c) the extent of the proposed improvements to be assessed for the cost of the proposed improvements; (d) the proposed method of assessment; (e) the proposed apportionment of the cost between the improvement district and the city at large; and (f) a request that such improvements be made without notice and hearing as required by K.S.A. 12-6a04(a); and

WHEREAS, the Governing Body of the City hereby finds and determines that said Petition is sufficient.

**THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF COLBY, KANSAS:**

**SECTION 1.** The Governing Body of the City hereby finds and finally determines that:

(A) It is advisable to make the following improvements:

Asphalt paving, together with curb and gutter of Sewell Avenue from the intersection of Willow, extending North approximately three hundred seventy feet (370') in the City of Colby, Thomas County, Kansas.

(B) The estimated or probable cost of such improvements is: Two Hundred Five Thousand Five Hundred Nineteen and 65/100 Dollars (\$205,519.65).

(C) The extent of the improvement district in the City, to be assessed for the cost of the improvements is:

- (1) A tract of land located in the Southwest Quarter (SW 1/4) of Section Seven (S07), Township Eight South (T08S), Range Thirty-three West (R33W) of the Sixth Principal Meridian (6<sup>th</sup> P.M.) in Thomas County, Kansas, more particularly described as follows:

Commencing at the southeast corner of said Quarter, thence, on an assumed bearing of  $N89^{\circ}56'45''W$ , along the south line of said Section, a distance of one thousand two hundred seventy-six and fourteen hundredths (1276.14) feet and  $N00^{\circ}03'15''E$  for a distance of seventy and no hundredths (70.00) feet to the point of beginning.

From the point of beginning, thence  $N89^{\circ}56'45''W$  for a distance of one hundred eighty-one and twenty-eight hundredths (181.28) feet, thence  $N72^{\circ}24'35''W$  for a distance of twenty-two and three hundredths (22.03) feet, thence  $N00^{\circ}12'21''E$  for a distance of three hundred forty-four and eighty-seven hundredths (344.87) feet, thence  $S89^{\circ}56'45''E$  for a distance of two hundred one and fifty-eight hundredths (201.58) feet, thence  $S00^{\circ}05'17''W$  for a distance of three hundred fifty-one and fifty-one hundredths (351.51) feet to the point of beginning, containing 1.63 acres.

- (2) A tract of land located in the Southwest Quarter (SW 1/4) of Section Seven (7), Township Eight (8) South, Range Thirty-three (33) West of the Sixth Principal Meridian, more particularly described as follows:

Commencing at the southwest corner of said Section, thence, on an assumed bearing of  $N00^{\circ}12'21''E$ , along the west line of said Section, a distance of one hundred seventy and eight hundredths (170.08) feet, and  $S89^{\circ}47'39''E$  for a distance of seven hundred fifty-five and sixty-nine hundredths (755.69) feet to the point of beginning.

From the point of beginning, thence  $N00^{\circ}11'35''E$  for a distance of five hundred sixty-three and ninety-seven hundredths (563.97) feet, thence  $S89^{\circ}48'20''E$  for a distance of two hundred thirty and sixteen hundredths (230.16) feet, thence  $S00^{\circ}12'21''W$  for a distance of six hundred thirty-five and ninety-four hundredths (635.94) feet, thence  $N72^{\circ}25'57''W$  for a distance of two hundred forty-one and two hundredths (241.02) feet to the point of beginning.

Less:

A tract of land located in the Southwest Quarter (SW 1/4) of Section Seven (S07), Township Eight South (T08S), Range Thirty-three West (R33W) of the Sixth Principal Meridian (6<sup>th</sup> P.M.) in Thomas County, Kansas, more particularly described as follows:

Commencing at the southwest corner of said Section, thence, on an assumed bearing of N00°12'21" E, along the west line of said Section, a distance of one hundred seventy and eight hundredths (170.08) feet, and S89°47'39"E for a distance of seven hundred fifty-five and sixty-nine hundredths (755.69) feet to the point of beginning.

From the point of beginning, thence N00°11'35"E for a distance of two hundred eighty-nine and five hundredths (289.05) feet, thence S89°48'29"E for a distance of one hundred forty and twelve hundredths (140.12) feet, thence S00°12'21"W for a distance of three hundred thirty-two and eighty-seven hundredths (332.87) feet, thence N72°25'57"W for a distance of one hundred forty-six and seventy-four hundredths (146.74) feet to the point of beginning, containing 1.00 acres.

(D) The method of assessment is:

Nineteen and Forty-six Hundredths Percent (19.46%) - Farmers and Merchants Bank

And

Eighty and Fifty-four Hundredths Percent (80.54%) - Frank and Teresa Sanitate

(E) The apportionment of the cost of the improvements, between the improvement district and the City at large, is: One Hundred Percent (100.00%) to be assessed against the improvement district and Zero Percent (0.00%) to be paid by the City at large.

(F) The improvement district does not include all the property which may be deemed to be benefited by the proposed improvements and the persons who signed said petition are willing to pay the costs of the proposed improvements as set forth in the petition.

**SECTION 2.** The above said improvements are hereby authorized and ordered to be made in accordance with the findings of the Governing Body of the City as set forth in Section 1 of this Resolution.

**SECTION 3.** K.S.A. 12-6a04 provides for the above said improvements to be paid by general improvement funds available for such purposes.

SECTION 4. This Resolution shall be published one time in the official City newspaper, and shall also be filed of record in the Office of the Register of Deeds of Thomas County, Kansas.

ADOPTED AND APPROVED by the Governing Body of the City of Colby, on this 7<sup>th</sup> day of October, 2008.

K. G. Bieber, Mayor

ATTEST:

Joni L. Ketchum, City Clerk

INDEXED   
MICROFILMED



State of Kansas ss  
Thomas County  
Filed for Record October 8, 2008  
at 3:30 o'clock P. M. Book 196 Page 503-506  
Maybelle Moore  
Fee \$ 20.00 Register of Deeds

FILE NUMBER 20082450 BK 196 PAGE 503  
RECORDED 10/8/2008 at 3:30 PM  
RECORDING FEE: \$  
Thomas County, KANSAS  
LORA L. VOLK, DEPUTY  
MAYBELLE MOORE, REGISTER OF DEEDS

## AGREEMENT

THIS AGREEMENT, made and entered into and by and between C.E.S. Sutherland Investment Management LLC, (hereinafter called "Sutherland"), and the City of Colby, Kansas, (hereinafter called "City").

WHEREAS, Sutherland owns certain property located within the city limits of Colby, Kansas, located in Southwest Quarter (SW 1/4) of Section Seven (S07), Township Eight South (T08S), Range Thirty-three West (R33W) of the Sixth Principal Meridian (6th P.M.) adjacent to Sewell Avenue; and,

WHEREAS, Frank and Theresa Sanitate, and Farmers & Merchants Bank of Colby, Kansas have petitioned the City of Colby, Kansas, for authority to make street improvements including asphalt paving, curb and gutter, to Sewell Avenue from the intersection of Willow Street, North approximately three hundred seventy feet (370'), which petition and request excludes Sutherland's property on Sewell Avenue; and,

WHEREAS, City, by its codes and ordinances, would ordinarily require the entire street to be developed and paved with curb and gutters; and,

WHEREAS, Sutherland wishes to delay the obligation to improve that portion of Sewell Avenue which is north of the property subject to the pending petition and adjacent to Sutherland's property.

NOW, THEREFORE, in consideration of the mutual covenants, promises, representations, and warranties set forth above and contained herein, the parties agree:

1. This agreement, and the promises and commitments of Sutherland, shall bind the parties hereto and all successors and assigns acquiring any interest in and to the following described real estate in the City of Colby, Thomas County, Kansas:

A tract of land located in the Southwest Quarter (SW 1/4) of Section Seven (S07), Township Eight South (T08S), Range Thirty-three West (R33W) of the Sixth Principal Meridian (6th P.M.) more particularly described as follows: See Attachment

It is the specific intent of the parties that this agreement shall extend to and bind all subsequent owners of the property described herein and shall run with the land.

2. Sutherland shall, at such time as the above-described real estate is developed for commercial, industrial or residential purposes, all as may be permitted by the then current zoning regulations, improve Sewell Avenue with asphalt paving, curbing and gutters from the end of the paving which will be accomplished pursuant to the Sanitate and Farmers & Merchants Bank petition to the northern-most boundary of the Sutherland's

property, as described herein. The street improvement, asphalt paving, curb and guttering to be made when the lot develops will be made in a manner consistent with the design and construction of the adjacent street improvements of Sewell Avenue at the time.

3. This agreement shall be binding on the parties, their heirs, successors and assigns.

CITY OF COLBY, KANSAS

By: [Signature]  
K.G. Bieber, Mayor

ATTEST:

[Signature]  
City Clerk

C.E.S. SUTHERLAND INVESTMENT  
MANAGEMENT LLC

By: [Signature]  
Charles E. Sutherland

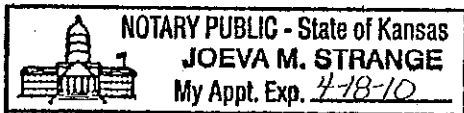
Its: Managing Member and President

STATE OF KANSAS, THOMAS COUNTY, ss:

This instrument was acknowledged before me on October 7, 2008, by K. G. Bieber and Joni L. Ketchum, as Mayor and City Clerk of the City of Colby, Kansas, respectively.

[Signature]  
Notary Public

My Appointment Expires: 4-18-10

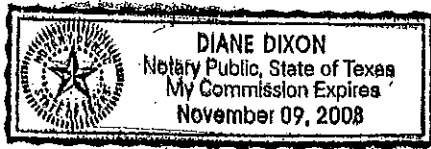


STATE OF TEXAS, DALLAS COUNTY, ss:

This instrument was acknowledged before me on September 26, 2008, by Charles E. Sutherland, as Managing Member & President of C.E.S. Sutherland Investment Management LLC.

Diane Dixon  
Notary Public

My Appointment Expires: 11-9-08



INDEXED  
MICROFILMED

BOOK 196 PAGE 510

State of Kansas ss  
Thomas County  
Filed for Record October 8, 2008 AD  
at 3:35 o'clock P. M. Book 196 Page 507-510  
Maybelle Moore  
Fee \$20.00 Register of Deeds



## LEGAL DESCRIPTION

### Sutherland Investments

A tract of land located in the Southwest Quarter (SW1/4) of Section Seven (S07), Township Eight South (T08S), Range Thirty-three West (R33W) of the Sixth Principal Meridian (6th P.M.) in Thomas County, Kansas, more particularly described as follows:

Commencing at the southeast corner of said Quarter, thence, on an assumed bearing of N89°56'45"W, along the south line of said Section, a distance of one thousand two hundred ninety-seven and eighteen hundredths (1297.18) feet and N00°03'15"E for a distance of four hundred twenty-one and fifty-one hundredths (421.51) feet to the point of beginning.

From the point of beginning, thence N89°56'45"W for a distance of one hundred eighty and thirty-three hundredths (180.33) feet, thence N00°12'21"E for a distance of two hundred ninety-eight and forty-nine hundredths (298.49) feet, thence S89°56'45"E for a distance of one hundred eighty and thirty-three hundredths (180.33) feet, thence S00°12'21"W for a distance of two hundred ninety-eight and forty-nine hundredths (298.49) feet to the point of beginning, containing 1.24 acres.

**FILE NUMBER 20082451 BK 196 PAGE 507**  
**RECORDED 10/8/2008 at 3:35 PM**  
**RECORDING FEE: \$**  
**Thomas County, KANSAS**  
**LORA L. VOLK, DEPUTY**  
**MAYBELLE MOORE, REGISTER OF DEEDS**