

RESOLUTION NO. 2013-17

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THAT CERTAIN AMENDED AND RESTATED SUBDIVISION IMPROVEMENTS AGREEMENT BY AND BETWEEN THE CITY OF BASEHOR, KANSAS AND MIDAMERICAN INVESTMENTS, LLC.

WHEREAS, the City of Basehor, Kansas wishes to enter into that certain Amended and Restated Subdivision Improvements Agreement with Midamerican Investments, LLC, attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF BASEHOR KANSAS:

Section 1. That the Governing Body approves and hereby authorizes the Mayor to execute the Amended and Restated Subdivision Improvements Agreement with Midamerican Investments, LLC, attached as Exhibit A.

Section 2. That this resolution shall become effective upon passage.

PASSED by the Governing Body this 18th day of November, 2013.

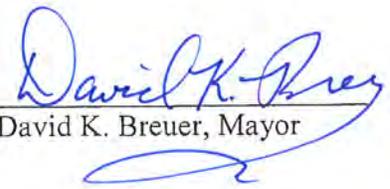
APPROVED by the Mayor this 18th day of November, 2013.

[SEAL]



ATTEST:


Corey Swisher, City Clerk


David K. Breuer, Mayor

APPROVED AS TO FORM:

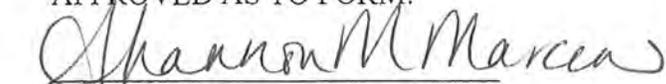

Shannon M. Marcano, City Attorney

Exhibit A
Amended and Restated Subdivision Improvements Agreement

To be attached.

AMENDED AND RESTATED SUBDIVISION IMPROVEMENTS AGREEMENT

This Amended and Restated Subdivision Improvements Agreement is entered into this 18 day of November, 2013, by and between the City of Basehor, Kansas, hereinafter known as the "City" and Midamerican Investments, LLC, hereinafter known as "Midamerican".

RECITALS

WHEREAS, Wolf Creek Junction ("Wolf Creek") is a subdivision generally located at the intersection of U.S. Highway 24/40 and 153rd Street in the City, and was established for the development of a retail shopping center; and

WHEREAS the Wolf Creek Junction Transportation Development District was approved by the City on June 5, 2006 regarding the funding of certain transportation related improvements to be made in conjunction with the subdivision; and

WHEREAS, on September 17, 2007, the City entered into a Subdivision Improvements Agreement with Benchmark Management, LLC/Basehor Properties, LLC, the "Developer", regarding the construction and maintenance of certain improvements to be made in conjunction with the subdivision; and

WHEREAS, Midamerican has stepped into the shoes of the Developer and assumes and agrees to perform all of the terms, covenants and conditions of the Subdivision Improvements Agreement on the part of the Developer therein required to be performed; and

WHEREAS, many of the improvements contemplated by the Subdivision Improvements Agreement have been completed; and

WHEREAS, it is now necessary to amend and restate the Subdivision Improvements Agreement to reflect those changes.

NOW, THEREFORE, the City and Midamerican, in consideration of the mutual covenants and agreements contained herein do amend and restate the Subdivision Improvements Agreement as follows:

A. Description of Public Improvements:

1. Construct US-24/40 right of way access control fence per Kansas Department of Transportation Highway Permit 1-13-175.
2. Construct detention pond retaining walls in accordance with revised plans which must be filed with and approved by the city engineer showing alternative treatment regarding detention pond retaining walls. The City shall retain the authority to require the installation of retaining walls if the alternative treatment does not, in the city engineer's opinion, perform as well as the current plans. Revised plans shall be prepared by a professional engineer licensed in the state of Kansas. Midamerican

shall file revised plans with the city engineer within 120 days of the execution of this agreement. The detention pond retaining walls or alternative shall be constructed within 1 year of the execution of this agreement.

B. Engineering Drawings:

These obligations have been met.

C. Bonding:

Any obligations requiring bonding have been met.

D. Construction of Public Improvements:

These obligations have been met.

E. Inspection of Public Improvements:

These obligations have been met.

F. Erosion Control:

These obligations have been met.

G. Parkland Fee Assessment:

Midamerican shall contribute to the Park Fund a sum as set out by separate resolution of the Governing Body as per Chapter IV, Section 4-109 of the Subdivision Regulations of the City. The Parkland Fee will be collected at the time of issuance of a building permit for each lot.

H. Transportation Excise Tax:

These obligations have been met.

I. Landscaping:

All landscaping shall be in accordance with Section 21 of the City's Zoning Ordinance and the City's Commercial Development Guidelines. Landscaping shall be installed in conjunction with the building permit for each lot. No occupancy permit shall be issued until all required landscaping is complete.

J. Maintenance of Lots and Common Areas (Medians and Detention Area):

Midamerican is responsible for the ownership and maintenance of all fixtures, signage, and landscaping in all areas designated as common areas, private improvement areas, or constructed as a type of median until the Wolf Creek Junction, 3rd Plat Business Owners' Association is formed and takes over this obligation. Midamerican will be responsible for the maintenance of all lots in the subdivision, until such time as an occupancy certificate is issued to the individual homeowners or property owner. This will include:

1. Providing a suitable ground cover to prevent erosion, the mowing of the ground cover, and control of weeds in the development;
2. Maintaining all building lots in such a manner as to eliminate the build-up of trash and construction debris;
3. Providing and maintaining appropriate erosion control measures such as silt fences, bale ditch checks, and gravel-filled bags to prevent mud and trash from entering the public streets and storm sewers.

Tracts A and B as shown on the Wolf Creek Junction, 3rd Plat, shall be used for storm detention and green space. It shall be the responsibility of Midamerican and the individual lot owners to maintain the stormwater management facilities located on Tract A and B until the Wolf Creek Junction, 3rd Plat Business Owners' Association is formed and takes over this obligation. If, and only if, these facilities are not maintained to the satisfaction of the City, the City shall have the right, but not the obligation, to enter upon said tract of land (after proper notification of the business owners association and individual lot owners) and take any necessary action and assess all costs associated with said action to the properties within the Wolf Creek Junction.

K. Protection of Existing Improvements:

These obligations have been met.

L. Building Permits:

These obligations have been met.

M. Occupancy Permits:

No temporary or final certificate of occupancy will be issued to any builder or homeowner in the development until all required work on the structure has been completed and the structure has passed final inspection by the City, all public improvements have been accepted by the City and all inspection fees have been paid.

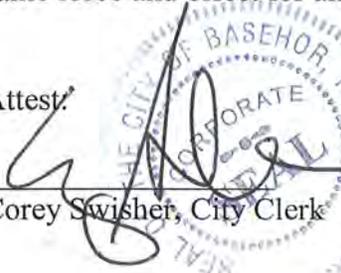
This agreement is not all-inclusive of the requirements of the City, nor does it relieve Midamerican from the requirements not expressly identified in this agreement that are required by the Zoning Ordinance, Subdivision Regulations and the Basehor City Code.

This agreement shall be binding upon the parties and their respective successors and assigns. Midamerican shall not assign its rights or duties and obligations pursuant to this agreement without the prior written consent of the City. Once said consent is given, any assignee shall expressly assume in writing the obligations of Midamerican hereunder, and shall furnish the City a copy of such assumption. Midamerican shall not be relieved of its obligations without the prior written consent of the city.

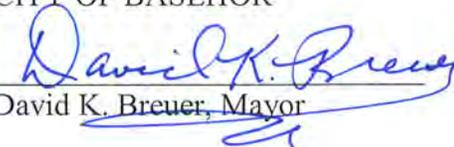
If any legal action or other proceeding is brought for the enforcement or interpretation of this agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this agreement, the prevailing party in any such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorneys' fees.

This agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same document. A scanned, facsimile, photocopied or other electronic signature of any party to this agreement shall have the same force and effect for all purposes as an original signature.

Attest:

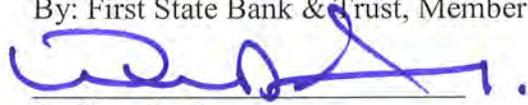

Corey Swisher, City Clerk

CITY OF BASEHOR


David K. Breuer, Mayor

Midamerican Investments, LLC
By: First State Bank & Trust, Member

By:



William D. Grant Jr.

Title:

PRESIDENT + CEO