

RESOLUTION NO. 2015-20

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THAT CERTAIN SUBDIVISION IMPROVEMENTS AGREEMENT BY AND BETWEEN THE CITY OF BASEHOR, KANSAS AND CORNERSTONE ASSOCIATES, LLC.

WHEREAS, the City of Basehor, Kansas wishes to enter into that certain Subdivision Improvements Agreement with Cornerstone Associates, 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 Subdivision Improvements Agreement with Cornerstone Associates, LLC, attached as Exhibit A.

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

PASSED by the Governing Body this 19th day of October, 2015.

APPROVED by the Mayor this 19th day of October, 2015.

[SEAL]



David K. Breuer
David K. Breuer, Mayor

ATTEST:

Katherine M. Renn
Katherine M. Renn, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano
Shannon M. Marcano, City Attorney

Exhibit A
Subdivision Improvements Agreement

To be attached.

SUBDIVISION IMPROVEMENTS AGREEMENT

THIS AGREEMENT, entered into on the 19th day of October, 2015, by and between the City of Basehor, Kansas, hereinafter known as the "City" and Cornerstone Associates, LLC, hereinafter known as the "Developer", witnesseth that;

WHEREAS, the Developer has requested the City to permit the platting of a tract of land known as the Final Plat of Legacy Senior Residences, and further described as a 4.77 acre tract of land located in the southwest quarter of Section 35, Township 10 South, Range 22 East, in Leavenworth County, Kansas, legally described in Exhibit A (the "Property"); and

WHEREAS, the City has approved such platting as being in compliance with requirements of the Basehor Zoning Ordinance and Basehor Subdivision Regulations in force by the City; and

WHEREAS, the Developer intends to develop the Property as a senior housing development (the "Development") in accordance with the Basehor Zoning Ordinance, the Basehor City Code and any and all applicable City ordinances and regulations; and

WHEREAS, the Developer, its vendors, grantees, assigns, successors, trustees, and all others holding any interest now or in the future, agree and enter into this Agreement which shall operate as a covenant running with the land and be binding upon the Developer and its representatives; and

NOW, THEREFORE, the City and the Developer, in consideration of the mutual covenants and agreements contained herein do mutually agree as follows:

A. Description of Public Improvements:

1. Streets, Curb and Gutter:

154th Terrace

Construction of approximately three hundred twenty-three (323) lineal feet of twenty-four (24) foot width open ditch street with 8" (eight inch) depth asphaltic concrete. No curb and gutters will be required.

2. Storm Sewer:

Storm sewers and storm drainage structures consist of one (1) curb inlet, one (1) junction box, one (1) special outlet, one (1) area inlet and five (5) end sections. Underground piping shall consist of approximately thirty-two (32) linear feet of corrugated metal piping (min.16 gauge) and four hundred and fifty-two (452) linear feet of HDPE pipe. Four (4) of the five (5) total end sections will require light 24" min. plain stone rip-rap.

3. Utilities:

All new utilities shall be installed underground.

B. Engineering Drawings:

Drawings shall be prepared in accordance with Chapter IV, Sections 4-101, 4-102, 4-106, and 4-107 of the Basehor Subdivision Regulations and the most recent adopted edition of the City of Basehor Technical Specifications for Public and Private Improvements. All drawings shall be submitted, reviewed, and approved before a construction permit will be issued for construction of the public improvements.

C. Bonding:

A performance bond must be on file with the City before any construction activities may take place. The Developer, through his contractors, has elected to provide a performance bond in the form of a corporate surety in the amount of 125% (one-hundred-twenty-five percent) of the construction costs as based on the City Engineer's estimate, or as based upon the actual construction contract amount if provided by the Developer and agreed upon by the City Engineer. Once the improvements have been completed, a maintenance bond in the amount of 25% (twenty-five percent) of the construction costs shall be filed with the City Clerk, prior to the acceptance of the improvements by the City. The maintenance bond will be in effect for a period of two years following the date of acceptance of the public improvements by the City. At the end of the two-year period of the maintenance bond, a subsequent inspection of the public improvements will be conducted prior to the release of the maintenance bond.

The maintenance bond will not be released until any deficiencies have been corrected and all sidewalks across vacant lots, where sidewalks are required, have been constructed and all work has been approved by the City.

D. Construction of Public Improvements:

All public improvements will be constructed in accordance with Chapter IV, Sections 4-102, 4-106, and 4-107 of the Basehor Subdivision Regulations and the most recent adopted edition of the City of Basehor Technical Specifications for Public and Private Improvements. No construction shall begin until all the below requirements have been met:

1. This Subdivision Improvements Agreement has been properly executed and recorded with the Leavenworth County Register of Deeds;
2. The engineering drawings have been approved by the City Engineer;
3. The performance bond has been submitted and approved by the City Engineer and placed on file with the City.
4. The City has an executed contract for inspection services.
5. The required fees have been paid; and

6. A five-day notice has been provided to the City Engineer before commencement of construction activities, in accordance with the Basehor Design Criteria for Public and Private Improvement Projects.

E. Inspection of Public Improvements:

1. Quality control of the sanitary sewer system shall be the responsibility of the Developer and will be accomplished in accordance with the most recent requirements of the Kansas Department of Health and Environment. Continuous observation of all construction and quality assurance inspections shall be performed by the City Engineer or his/her designee. The City Superintendent will be notified prior to air testing of the new sewer line sections, vacuum testing of manholes, mandrel testing of new lines. All new lines installed and existing sewer lines which require a tap and saddle connection in association with the Development shall have a videotape inspection done prior to the release of the maintenance bond. All costs associated with the inspection, videotaping, and testing of the sewer lines shall be bore by the Developer. Such testing shall proceed only after permission is granted by the City Superintendent, and will only be accomplished with the City Superintendent or his/her designee present during the actual testing and video-taping.
2. Quality control for construction of the storm sewer system, drainage, street sub-base, curb and gutter, pavement of the streets and cul-de-sacs, and sidewalks constructed as part of the public improvements, will be the responsibility of the Developer. Quality assurance inspections will be performed by the City Engineer or his/her designee.
3. The Developer shall pay for inspection personnel furnished by the City, under the supervision of the City Engineer, on all public improvements constructed by the Developer. Invoices shall be forwarded to the Developer within five days of receipt by the City. Payment shall be due within thirty (30) days of Developer's receipt of the invoice. The Developer shall keep the City informed as to what work is in progress, and will specifically notify the City and City Engineer prior to:
 1. Placement of any storm drain collection and junction boxes;
 2. Placement and backfilling of any storm sewer piping;
 3. Placement of any asphalt, whether it be base course or final course; and
 4. Placement of any curb and gutter, and sidewalks.

F. Erosion Control:

Control of erosion during construction of the Public and Private Improvements shall be the responsibility of the Developer. Control of erosion during the construction of

structures within the Development shall be the responsibility of the Developer until an occupancy certificate is issued. Erosion control measures shall include silt fencing, straw bale silt protection, gravel filter bags, and drainage swales. A design and layout of the erosion control measures have been included in the engineering drawings. Silt fences and straw bale silt protection will be installed to prevent silt from entering all creek tributaries, as needed and as required per plans.

During the construction of the sanitary sewer and storm sewers, erosion control will be provided to prevent siltation in all manholes, drainage piping, and inlet boxes. Upon completion of the streets, gravel filter bags will be installed and maintained at all storm box inlets. Additional silt fencing and straw bale silt protection shall be installed at any location where silt is likely to wash into a completed street. Such erosion protection shall be maintained until a suitable ground cover has been established.

Erosion control measures will be routinely inspected by the City Building Official. Failure to maintain adequate erosion control will be reason to issue a stop work order until such protection measures have been properly installed or repaired and approved by the City.

G. Parkland Fee Assessment:

The Developer shall contribute to the Park Fund in accordance with the City's Parkland Fee ordinance. The Developer has elected to have the Parkland Fee collected at the time of issuance of a building permit.

Total Parkland Fee due for a the Development is \$9,600.00
48 units @ \$200 per unit

H. Transportation Excise Tax:

The Developer shall contribute to the Transportation Excise Tax Fund in accordance with the City's Transportation Excise Tax ordinance. The developer has elected to have the fee collected at the time of issuance of a building permit.

Total Transportation Excise Tax due for the Development is \$18,700.29.
4.77 acres (207,781 sq. ft.) @ \$0.09 per sq. ft.

I. Landscaping:

All landscaping shall be in accordance with the City's landscape ordinance and the City of Basehor Commercial Development Guidelines. All landscaping shall be installed in conjunction with the installation and construction of all public and private improvements. No Occupancy Permit shall be issued until all required landscaping is complete and approved by the City.

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

The Developer 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. 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 the Development 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.

K. Protection of Existing Improvements:

The Developer shall be required to designate all roadways to be used as access to the Development by construction equipment for the construction of all improvements in the Development. The City Superintendent shall videotape all roadways designated by the Developer for the purpose of verifying the existing condition of the designated roadways. This videotape shall then be used to determine if deterioration of the roadbed and surface has occurred due to the construction traffic created by the Development. The Developer shall be responsible for any damage, labor, materials, and costs necessary to restore the roadbed and surface to its condition prior to the initiation of Development construction. The roadbed and surface must be restored to the City Superintendent's satisfaction before building permits will be issued.

L. Building Permits:

Building Permits will be issued when all of the following conditions have been met:

1. The Final Plat has been filed at the Leavenworth County Register of Deeds Office;
2. All erosion control measures are in place;
3. The building plans and site plans have been reviewed and approved and all fees have been paid;
4. All fees for plan review (including preliminary & final plats, development plans, improvement plans, etc.) and quality assurance construction inspections are paid current to date of Building Permit Application; and
5. Any damage to existing improvements have been restored to a condition acceptable to the City Superintendent.

No wood construction will be allowed to take place prior to all of the above conditions being met.

M. Occupancy Permits:

No Final Certificate of Occupancy will be issued for any structure within the Development until:

1. All required work on the structure has been completed;
2. The structure has passed final inspection by the City;
3. All inspection fees have been paid;
4. All storm systems and curb and gutter are in place;
5. Sanitary sewers have been installed and inspected by the City;
6. Water lines and fire hydrants have been installed, have been inspected by the City and are operational; and
7. All public improvements have been accepted by the City.

N. Failure to Maintain:

In the event the Developer, its successors and/or assigns, fails to maintain the medians and common areas in good condition, the City will notify the Developer, its successors and/or assigns, of deficiencies by letter. The Developer will have ten (10) days from the date of the letter to respond to the City with an adequate plan to resolve maintenance issues. If maintenance issues are not resolved by the Developer in a timely manner, the Developer hereby consents and agrees that City may enter upon the medians and common areas of the Development and take whatever steps necessary to correct deficiencies identified in the inspection report. All costs of resolving such maintenance issues shall be assessed to the Developer, its successors and/or assigns, including administrative costs, materials, personnel, attorneys fees and any penalties. The assessment may be accomplished by placing a special assessment on the Property, which may be placed on the tax bill and collected in the same manner as ordinary taxes. It is expressly understood and agreed that the City is under no obligation to routinely maintain the medians and common areas, and in no event shall this Agreement be construed to impose any such obligation on the City.

O. No Agency or Partnership:

This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between the City and Developer, nor between the City and any officer, employee, contractor or representative of Developer. No joint employment is intended or created by this Agreement for any purpose. Developer agrees to so inform its employees, agents, contractors and subcontractors who are involved in the implementation of or construction under this Agreement.

P. Indemnification:

Developer agrees to indemnify, defend, and hold harmless the City, its respective employees, officials, agents, representatives and volunteers from and against any and all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions or proceedings and reasonable attorney's fees, and actual damages of any kind or nature, arising out of the gross negligence or willful misconduct of Developer, its employees, agents, officers, contractors or subcontractors, or Developer's performance or failure to perform under the terms and conditions of this Agreement. Such indemnification, hold harmless and defense obligation shall exclude liability arising out of acts, omissions, or the negligence or willful misconduct of the City. The indemnification and defense obligations set forth herein shall survive the termination of this Agreement.

Q. Governing Law:

This Agreement shall be construed under the laws of the state of Kansas.

R. Entire Agreement:

This Agreement constitutes the entire agreement between the parties hereto. However, this Agreement is not all-inclusive of the requirements of the City, nor does it relieve the Developer from the requirements not expressly identified in this agreement that are required by the Zoning Ordinance, Subdivision Regulations, and the Basehor City Code.

S. Notices:

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, addressed as follows:

CITY:
City of Basehor
City Administrator
P.O. Box 406
2620 North 155th Street
Basehor, KS 66007

DEVELOPER:
Cornerstone Associates, LLC
Bobbi Jo Lucas
209 S. 19th Street
Omaha, NE 68102

T. Counterparts:

This Agreement may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original, and all of which shall constitute collectively one agreement.

U. Binding Effect:

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

V. Severability:

The provisions of this Agreement shall be deemed severable. If any part of this Agreement shall be held invalid, illegal or unenforceable, the remainder shall remain in full force and effect, and such invalid, illegal or unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.

W. Recording:

This Agreement shall be recorded among the land records of Leavenworth County, Kansas by the Developer and shall constitute a covenant running with the land, and shall be binding on the Developer, its administrators, executors, assigns, heirs and any other successors in interest, including any homeowner's and/or subdivision association. This Agreement shall be recorded with the record plat of any development of the Property.

X. Amendments:

This Agreement shall not be amended or modified in any way without the prior written approval of the City and that approval must be indicated on the face of any subsequently recorded document amending or modifying this Agreement.

{Remainder of this page left blank intentionally}

Signature Page to Subdivision Improvements Agreement



CITY OF BASEHOR

David K. Breuer
Mayor David K. Breuer

ATTEST:

Katherine M. Renn
Katherine M. Renn, City Clerk

DEVELOPER

Bobbi Lucas
Signature
Bobbi Lucas
Print Name

STATE OF Kansas)
COUNTY OF Leavenworth) ss.

On this 19 day of October, 2015, before me, the undersigned Notary Public, in and for said state, personally appeared Bobbi Lucas, Developer of Cornerstone Assoc., known to me to be the person described in and who executed the within Subdivision Improvements Agreement on behalf of said corporation, and acknowledged to me that she executed the same for the purposes therein stated and that the foregoing instrument was authorized by the board of directors of said corporation, and she acknowledged execution thereof to be on behalf of and the free act and deed of said corporation.

Notary Public
State of Kansas
My Commission Expires
8-6-17

Notary Public: [Signature]

My commission expires:
8-6-2017

EXHIBIT A
Legal Description

Description:

All that part of Southwest Quarter of Section 35, Township 10 South, Range 22 East, in the City of Basehor, Leavenworth County, Kansas, being more particularly described as follows:

Commencing at the Northwest corner of the Southwest Quarter of said Section 35; thence S 1°24'45" E, along the West line of the Southwest Quarter of said Section 35, a distance of 390.37 feet to the point of beginning; thence N 88°35'28" E, a distance of 529.01 feet; thence N 2°02'39" W, a distance of 103.21 feet; thence N 87°57'21" E, 293.00 feet South of and parallel with the North line of the Southwest Quarter of said Section 35, a distance of 255.00 feet; thence S 2°02'39" E, a distance of 310.00 feet; thence S 87°57'21" W, 603.00 feet South of and parallel with the North line of the Southwest Quarter of said Section 35, a distance of 396.30 feet; thence S 1°24'45" E, 390.00 feet East of and parallel with the West line of the Southwest Quarter of said Section 35, a distance of 169.06 feet to the Northwest corner of Lot 1, Block 2, RICKEL'S SUBDIVISION, a platted subdivision of land in the City of Basehor, Leavenworth County, Kansas; thence S 87°56'44" W, along the North plat line of said RICKEL'S SUBDIVISION, a distance of 60.00 feet to the Northeast corner of Lot 2, Block 1 of said RICKEL'S SUBDIVISION, thence N 1°24'45" W, 330.00 feet East of and parallel with the West line of the Southwest Quarter of said Section 35, a distance of 147.07 feet; thence S 87°57'21" W, 625.00 feet South of and parallel with the North line of the Southwest Quarter of said Section 35, a distance of 330.02 feet to a point on the West line of the Southwest Quarter of said Section 35; thence N 1°24'45" W, along the West line of the Southwest Quarter of said Section 35, a distance of 234.67 feet to the point of beginning, containing 4.7668 acres, more or less.