

LANDSCAPE MAINTENANCE PERIOD MUTUAL IMPROVEMENT AGREEMENT

This Mutual Improvement Agreement is made and entered into by and between **Timberhill Corporation**, the developer of Meadowridge Phases I & II, hereinafter referred to as the "Developer"; **Pacific Continental Bank**, an approved lending institution, hereinafter referred to as the "Lending Institution"; and the **City of Corvallis**, an Oregon municipal corporation, hereinafter referred to as the "City". The promises and agreements of each being in consideration of the promises and agreements of the other.

The above-named parties mutually agree to the following conditions of this Mutual Improvement Agreement which is hereby established to fulfill the Corvallis Planning Commission's Notice of Disposition # 2001-033 and Planning Case # PLD00-00030 / SUB00-00009 / PLD04-00001 / PLD04-00021. The name of this project is **Meadowridge Phases I & II**. Developer has proposed to use a mutual improvement agreement (MIA) in lieu of the bond. In order to comply with the condition of approval, Developer shall comply with the terms outlined below:

I. Developer agrees:

- A. That a secured savings account has been established at the Lending Institution in the total amount specified in Section II.D of this Agreement to financially guaranteed the landscaping and irrigation to provide a minimum of 90 percent ground coverage within 3 years (as per Land Development Code (LDC), sections 4.2.20.a and 4.2.20.e) through the establishment of a maintenance security fund as outlined in Section II.D. All landscape and irrigation maintenance funds shall be available to the City during the three (3) year period for use, as necessary in making improvements and/or repairs as required to meet LDC criteria.
- B. That the amounts for each item identified in Section II.D. of this Agreement, have been determined from actual bids received from qualified professionals and have been accepted and approved by the City. When approved by the City the amounts for the items may be determined by estimating, as approved by the City. In the event that the amounts established in this Agreement are insufficient to cover the actual costs as reasonably mutually determined by Developer and City, the Developer shall provide the City with a new or a supplemental MIA, which shall have sufficient funds to complete all required landscaping improvements.
- C. That the funds established in said account shall be used only for the required landscaping and irrigation maintenance as specifically identified in Section II.D. of this Agreement. Said funds shall be disbursed only by the items as specifically identified in Section II.D. of this Agreement. Said funds shall be disbursed only by the written mutual consent of the Developer, the Lending Institution, and the City in compliance with the terms of this Agreement.

- D. That interim disbursements may be made from the account on the basis of the work completed and itemized as presented by the Developer in a formal written request to the City's Planning Department, and by the written mutual consent of the City, the Developer, and the Lending Institution.

That an amount of not less than five (5) percent of the total amount established, shall remain in the account until the landscaping improvements have received final acceptance by the City.

- E. In the event that the Developer shall fail to comply with the terms of this Agreement, the Lending Institution is hereby authorized to release all funds remaining in the account, established by this Agreement, to the City upon written notification by the City, to the Developer and to the Lending Institution that the Developer has breached the Agreement, notwithstanding the provisions of Section I.C. If the amount remaining in the secured savings account is insufficient, as reasonably determined by the City, to cover the costs for completing all improvements and such other items as specifically called for in this Agreement for which the secured savings account was established, the Developer shall provide to the City such additional funds as reasonably required and substantiated in writing by the City. If the said additional funds are not forwarded to the City within thirty (30) calendar days of the written request for such funds, the City may file an action at law for the collection of the additional amounts plus all attorney fees and legal costs.

II. The Lending Institution agrees:

- A. That a secured savings account has been established for the Developer for the purpose of guaranteeing the landscape and irrigation improvements for the project, as approved by the City in the total amount of \$101,400.00, as specifically stated in Section II.D. of this Agreement.
- B. Funds from said account shall only be disbursed when reasonably approved by the City, in writing, on the basis of the percentage of the improvement completed as determined by the itemized cost figures as formally requested by the Developer. All funds so disbursed shall be made directly to the Party(ies) to whom the funds are due. In no case shall the disbursement of funds from this secured savings account exceed the total amount of the account, until the Developer shall have filed a new or a supplemental MIA with the City or the maintenance period has expired. Neither the Lending Institution nor Developer may cancel the secured savings account without the completion of all improvements specified in Section II.D. and its acceptance in writing by the City.
- C. A minimum of five (5) percent of the total account, as established by the written request from Developer, shall be retained in the account and shall be disbursed only with the Final Payment Release as approved by the City.

- D. That a secured savings account has been established for the following landscaping/irrigation improvements in the total amounts of \$101,400.00, and the funds are segregated for each item as follows:

5 year Landscaping/Irrigation Maintenance Security Fund
(to be released on May 9, 2018) \$ 40,560.00

3 year Landscaping/Irrigation Maintenance Security Fund
(to be released on May 9, 2016) \$ 60,840.00

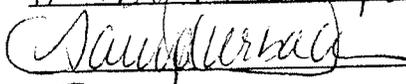
TOTAL ACCOUNT \$ 101,400.00

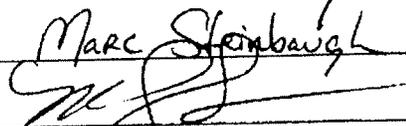
III. The City agrees:

- A. To accept this Agreement in lieu of a performance and payment bond or in lieu of the completed improvements required by the City's Land Development Code, Ordinance No. 93-20, as amended, and/or by other City policies and ordinances, or as otherwise required by the City, as a guarantee of performance by the Developer.
- B. The City shall, both during and at the end of the 3-year maintenance period conduct inspections of the landscaping and irrigation system. If, as a result of the inspections the City reasonably determines that the landscaping and irrigation does not meet the code criteria as required then the Developer shall be notified in writing of the deficiencies, corrections and/or repairs that need to be made. The Developer shall have one (1) month after the date of the notification to make the required corrections and/or repairs. If, after the one (1) month period, the corrections and/or repairs have not been made, then the established maintenance security fund made available to the City shall be used to make any and all improvements and/or repairs as necessary to meet the Code criteria, as required.
- C. One month prior to the end of the three (3) year maintenance period the City shall make a final inspection of the landscaping and irrigation. Once all the corrections and/or repairs have been made within the remaining one month period, the City shall send the Developer written notice of final acceptance of the landscaping and irrigation system, and written notice to the lending institution where the security fund is established, informing them that the fund may be released. If no corrections and/or repairs are required, the City shall send the Developer written notice of final acceptance of the landscaping and irrigation system along with written notice to the lending institution informing them that the funds may be released. Copies of these notifications will also be forwarded to the Developer.

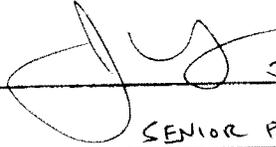
- D. To review the formal written pay requests as submitted by the Developer and approve or disapprove said request within ten (10) days of the receipt of said request – failure to respond by the City within the ten (10) day period shall be deemed approval of the request. The City shall only approve the Final Pay Release and release the retained funds when all improvements have been satisfactorily completed and Final Acceptance by the City has been given.

IN WITNESS WHEREOF, Developer, the Lending Institution, and the City have caused these presents to be executed by the officers of each who have been duly authorized to execute this agreement.

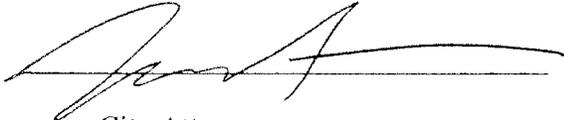
DEVELOPER of: Meadowridge Subdivisions I, II & III
DEVELOPER: Timberhill Corporation
Signature: 
Title: President
Date: 4/22/15

LENDING INSTITUTION: Pacific Continental Bank
ADDRESS: 111 W. 7th Avenue Eugene, OR 97401
PHONE/FAX: 541-338-1407 / 541-344-2843
REPRESENTATIVE: Marc Steinbaugh
Signature: 
Title: Vice President - Relationship Banking Officer
Date: 2-23-15

CITY OF CORVALLIS

Signature:  JASON YAICH
Title: SENIOR PLANNER
Date: 4/23/2015

APPROVED AS TO FORM:



City Attorney

