

BE IT RESOLVED BY THE ALBANY CITY COUNCIL that it does hereby accept the following Mutual Improvement Agreement between Bob G. Mitchell referred to as the Developer, Citizens Bank Albany Office referred to as an approved lending institution, and the City of Albany for the purpose of issuing Building Permits for Phases I through III, as shown in Exhibit B and consistent with the conditions contained within Exhibit A.

Dated this 25th day of September, 1991.

[Signature]
Mayor

ATTEST:

[Signature]
Gary Holliday, City Recorder

EXHIBIT A
RIDERWOOD SUBDIVISION
MUTUAL IMPROVEMENT AGREEMENT

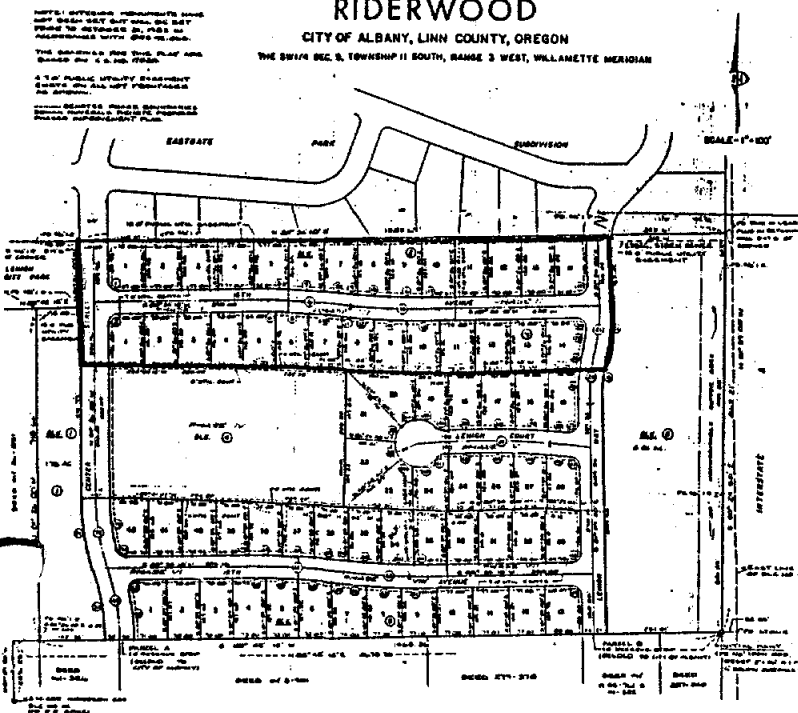
1. Center Court and Lehigh Way both shall have a minimum right-of-way width of 50'.
2. The final plat shall indicate the following easements:
 - a. 7' public utility easements along the road frontage of all lots.
 - b. Additional public utility easements as shown on attachments B & C.
 - c. The storm drainage easement located along the northern boundary of the proposed subdivision which contains a 66" storm drain.
3. A 50' uninhabitable space setback/buffer shall be designated on the plat adjacent to the freeway and the applicant shall provide a sound buffer to be located within the 50' setback.
4. Barrier strips along the south ends of both Center Street and Lehigh Way shall be deeded to the City.
5. Prior to submission of the final plat:
 - a. A petition for improvements and waiver of remonstrance shall be signed by all affected property owners.
 - b. Assurance will be provided to the City that PP and L will provide a water system adequate for firefighting purposes to the subdivision.
6. The final plat shall indicate:
 - a. Bearings and distances of all lot lines.
 - b. A boundary description.
7. The proposed R-3 property be re-subdivided into 8,000 square foot lots.
8. The final plat shall indicate bearings and distanced of all lot lines; curve data for all lot lines and center lines along with all center line distances; a boundary description; fire hydrants as located by the City Fire Department in cooperation with Pacific Power and Light Company.
9. That the variance be granted to allow six lots on a cul-de-sac (rather than four) and to allow less than the stated minimum lot width in an R-1(8) zone.

EXHIBIT B
RIDERWOOD SUBDIVISION
MUTUAL IMPROVEMENT AGREEMENT

RIDERWOOD

CITY OF ALBANY, LINN COUNTY, OREGON

THE SW1/4 SEC. 9, TOWNSHIP 11 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN



MUTUAL IMPROVEMENT AGREEMENT

NOW, THEREFORE, the Developer, the Lending Institution, and the City agree to the following conditions for the development of this subdivision to-wit:

This Agreement, made and entered into this 25th day of September, 1991, by and between Bob G. Mitchell, hereinafter called the "Developer", Citizens Bank, Albany Office, an approved lending institution, hereinafter referred to as the Lending Institution, and the City of Albany, a political subdivision of the State of Oregon, hereinafter called 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 requirements of the City of Albany Development Code, and in particular Section 10.050 of the Albany Municipal Code, as amended, and any or all other existing City policies and ordinances, and as a guarantee of faithful performance.

WHEREAS, on September 23, 1980, a preliminary plat for the division of a 28.8 acre tract into 72 lots, was submitted for approval; and

WHEREAS, on November 30, 1980, the Albany Planning Commission granted conditional approval to the preliminary plat of Riderwood Subdivision, Phases I through VIII (Subdivision Case No. M1-02-80), with the understanding that the developer agrees to comply with all conditions contained in the attached Exhibit A; and

WHEREAS, on April 14, 1982, the Community Development Department, Planning Division gave Final Plat approval for Riderwood Subdivision, Phases I through VIII (Exhibit B) consistent with the conditions of approval contained in the attached Exhibit A; and

WHEREAS, on July 30, 1991, the Department of Public Works Engineering/Utilities Division approved construction drawings and specifications for streets including curbs and gutters, sidewalk adjacent to Leigh Park, sanitary sewer, storm drainage, and water for Phases I through III consistent with the conditions contained within said Exhibit A; and

WHEREAS, the Developer wishes to obtain Building Permits for Phases I through III, as shown on the attached Exhibit B; and

WHEREAS, the Lending Institution hereby certifies that it is chartered and regulated by the United States of America or the State of Oregon.

The above-named parties mutually agree to the following conditions of this Mutual Improvement Agreement which is hereby established to fulfill the requirements of the City's Land Development Code, Section 19.010 and any or all other existing City policies and ordinances, and as a guarantee of faithful performance.

I. The Developer agrees:

- A. That an escrow account has been established in the Lending Institution in the total amount specified in Section II.E. of this Agreement to cover the cost of required improvements and other related engineering and inspection fees, permit fees, city costs, and contingency costs, as specifically called for in Section II.E. of this agreement.
- B. That the amounts for each construction item identified in Section II.E. of this Agreement, shall be determined from actual bids received from qualified contractors and approved by the City. In the event that the Developer obtains Lump Sum Bids, he shall furnish a breakdown of the lump sum amount showing an estimated amount for the various units of work. When approved by the City the amounts for the construction items may be determined by an itemized, detailed Engineer's Cost Estimate. The amounts for nonconstruction items may be determined by estimating, as approved by the City. An estimate prepared by a Registered Engineer and approved by the City may be submitted in lieu of actual bids.

In the event that the amounts established in this Agreement are insufficient to cover the actual costs, the Developer shall provide the City with a new or a supplemental Mutual Improvement Agreements, which shall have sufficient funds to complete all required public improvements. In such a case no work shall begin or continue until the new or supplemental agreement and funds have been approved and accepted by the City.

The City will make the sole final determination of project costs, such costs may be higher than those provided by the Developer due to additional costs which could be incurred by the City.

- C. That the funds established in said account shall be used only for the construction of the public improvements and such other items as specifically identified in Section II.E. of this Agreement. In the case of failure of the Developer to complete the necessary improvements, funds will be released to the City, upon the City's direction.
- D. That interim disbursements may be made from the account on the basis of the work completed and itemized on the City's standard Pay Estimate form and by the written mutual consent of the City Engineer, the Developer, and the Lending Institution.
- E1. The Developer further agrees to complete the public improvements listed in the attached Exhibit A within 18 months of the date of this Agreement. However, upon written request of the Developer, this completion date may be extended for an additional period of 18 months, if in the opinion of the City, conditions beyond the control of the Developer are deemed to have delayed the completion of the work.
- E2. To obtain a permit from the City for the construction of the improvements and for any other related items specifically identified. No construction shall be commenced prior to the receipt of the approved permit and all required improvements shall be completed in conformance with the permit requirements to the satisfaction of the City within twelve (12) months from the date of the issuance of said permit unless a written extension of time shall have been requested by the Developer and granted by the written mutual consent of the Lending Institution and by the City.
- E3. The Developer shall complete the public improvements as detailed on the construction drawings and specifications approved in writing by the City.
- E4. The Developer shall cause his engineer to provide all surveying services necessary to stake the project prior to construction and to submit mylar "record" drawings to the City when the project is complete. Mylars submitted must be approved by the City prior to acceptance of any facilities.
- E5. The Developer shall cause his engineer to provide construction services necessary to supervise construction, ensure compliance with City standards, and prepare "record" mylar drawings.
- E6. It is agreed that said Developer shall construct these improvements according to the City of Albany Standard Construction Specifications, the approved construction drawings and specifications, and the City of Albany will both accept said improvements and maintain them after said Developer completes the improvements to the satisfaction of the City Engineer and a one-year warranty period with all needed replacement or maintenance being completed.
- F. That the Developer shall be responsible for all improvements for a one (1) year warranty period from the date of Final Acceptance by the City and shall make all corrections for failures in the physical improvements so identified by the City within the warranty period.
- G. The Developer shall provide a 100 percent Warranty Bond or guarantee in conformance with the requirements of the permit referenced in item E1. Said Warrantee Bond or guarantee shall be prior to City acceptance of the improvements and connection to any utilities.
- H. In the event that the City determines that the Developer has failed to comply with the terms of this Agreement to the satisfaction of the City, the Lending Institution is hereby authorized to and agrees to the release of all funds remaining in the escrow 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 escrow account is insufficient, as 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 escrow account was established, the Developer shall provide to the City such additional funds as 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.
- I. The Developer agrees to waive any land use errors, omissions, and/or irregularities made by the City or its agents during the course of the land use approval process for the development and to indemnify the City and its agents from any delays, claims, and/or expenses resulting therefrom.
- J. The Developer agrees to remain responsible for all obligations hereunder notwithstanding the insolvency of the Lending Institution, and/or any loss or misappropriation of the funds held in the escrow account.
- K. The Developer agrees that City release of any money prior to final acceptance of the project by the City is in recognition of the work performed but does not constitute approval or partial acceptance of the work or signify that the work conforms to City Permit requirements.

II. The Lending Institution agrees:

- A. That an escrow account has been established for the Developer for the purpose of installing the public improvements in the Ryderwood Subdivision, for such other engineering fees, city costs, and contingencies as approved by the City which is in the total amount of \$ 277,017.84, as specifically stated in Section II.E. of this agreement.
- B. Funds from said account, shall only be disbursed when approved by the City Engineer, in writing, on the basis of the percentage of the improvement completed as determined by the itemized cost figures included on the City's standard Pay Estimate form. All funds so disbursed shall be paid directly to the party(ies) to whom the funds are due. In no case shall the disbursement of the funds from this account exceed the total amount of the account identified in Section II.E. of this Agreement, until the Developer shall have filed a new or a supplemental Mutual Improvement Agreement with the City. In the event that the Lending Institution disburses any funds from this account in any manner not provided for in this Agreement, the Lending Institution shall become jointly and severally liable with the Developer for any breach of this agreement.
- C. Notwithstanding the provisions of Section B above, all funds from said account shall be disbursed to the City upon demand by the City for the purposes outlined in these agreement at such time that the City shall determine that they are needed to complete the improvements or pay for other costs listed in Item II.E. below.
- D. A minimum of ten (10) percent of the total account as established within the Pay Estimate shall be retained in the account and shall be disbursed only with the Final Pay Estimate as approved by the City.
- E. That an escrow account has been established for the following physical improvements in the total amount of \$ 277,017.84, and the funds are segregate for each item as follows:

Streets	\$ 99,624
Sidewalks (adjacent to Leigh Park)	\$ 870
Storm Drainage	\$ 31,777
Sanitary Sewers	\$ 52,975
Water	\$ 56,900
Permit Fees	\$ 9,688.40
Contingencies and other City costs	\$ 23,183.44
(Minimum 10% of the total of total construction costs)	

TOTAL ACCOUNT: \$ 277,017.84

III. The City Agrees:

- A. To accept this Mutual Improvement agreement in lieu of a performance and payment bond or in lieu of the completed improvements required by the City's Land Development Code, Sections 20.01.010 to 20.22.900 of the Albany Municipal Code, 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 prior to recordation of the Subdivision Plat.
- B. To periodically inspect said improvements while under construction for compliance with City Standards and permit requirements. After receiving written notice that all improvements have been completed, the City shall make a complete inspection of the improvements. The City shall notify the Developer, in writing, of all items of work that shall be corrected and/or completed prior to Final Acceptance by the City.
- C. To review the Interim Pay Estimates as submitted by the Developer and approve or disapprove said Interim Pay Estimate within ten (10) days of the receipt of said Interim Pay Estimate. The City shall only approve the Final Pay Estimate and release the retained funds when all improvements have been satisfactorily completed, a Warrantee Guarantee has been provided, and Final Acceptance by the City has been given.
- D. To issue Building Permits for Phase I through III. No Occupancy Permits will be issued until the public improvements have been installed and accepted by the City.

The parties hereto agree that should any suit or action be filed to enforce the terms of this Agreement or for the breach thereof, the losing party agrees to pay the prevailing party's reasonable attorney fees in an amount to be set by the court, including costs, disbursements and any such attorney fees, costs, or disbursements associated with any appeal therefrom.

This agreement shall be binding upon the undersigned, and his/her heirs, successors, and assigns, and shall be come a covenant running forever with the land described in Exhibit B, regardless of whether said parties are signators to this agreement.

SEVERABILITY: The provisions of this document are severable. If any section, sentence, clause or phrase of this document is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions.

RECORDING: It is further agreed that this contract shall be recorded in the deed record of Linn County.

IN WITNESS WHEREOF, the 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(S)/PROPERTY OWNER(S):

Name(s): Bob G. Mitchell Signature(s): [Signature] Date: 9-9-91
Address: 4897 Chestnut Ct SE Telephone: 926-6289
Assessor's Map and Tax Lot No.(s) 11-3W-9CC, Tax Lots 200 through 2900

STATE OF OREGON,)
County of) ss.
City of)

STATE OF OREGON)
County of) ss.
City of)

Personally appeared the above named
BOB G. MITCHELL
and acknowledged the foregoing instrument
to be their voluntary act and deed. Before
me this 9TH day of SEPTEMBER, 1991

The foregoing instrument was acknowledged by
_____, President,
and by _____, Secretary,
of _____
on behalf of the corporation. Before me this
____ day of _____, 19__.

[Signature]
Notary Public for Oregon
My Commission Expires: 9/14/93

Notary Public for Oregon
My Commission Expires: _____

DEVELOPER(S)/PROPERTY OWNER(S):

Name(s): GORDON E. VOGT Signature(s): [Signature] Date: 9-9-91
Address: 38505 GROSBEAK RD. - ALBANY, OR Telephone: 926-2829
Assessor's Map and Tax Lot No.(s) _____

STATE OF OREGON,)
County of) ss.
City of)

STATE OF OREGON)
County of) ss.
City of)

Personally appeared the above named
GORDON E. VOGT
and acknowledged the foregoing instrument
to be their voluntary act and deed. Before
me this 9TH day of SEPTEMBER, 1991

The foregoing instrument was acknowledged by
_____, President,
and by _____, Secretary,
of _____
on behalf of the corporation. Before me this
____ day of _____, 19__.

[Signature]
Notary Public for Oregon
My Commission Expires: 9/14/93

Notary Public for Oregon
My Commission Expires: _____

LENDING INSTITUTION:

Name(s): CITIZENS BANK
ALBANY OFFICE
Address: P.O. BOX 249
ALBANY, OREGON 97321-0074

Signature(s): *Allen Hein* Date: 9/9/91
Telephone: 967-1992

STATE OF OREGON)
County of) ss.
City of)

The foregoing instrument was acknowledged by ALLEN R. HEINONEN VICE President,
and by ----- Secretary, of ----- on behalf of the
corporation. Before me this 9th day of SEPTEMBER, 1991

Jonathan Drang
Notary Public for Oregon
My Commission Expires: 9/14/93

CITY OF ALBANY:

STATE OF OREGON)
County of Linn) ss.
City of Albany)

I, Steve Bryant, as City Manager of the City of Albany, Oregon, pursuant to Resolution Number 3090, do
hereby accept on behalf of the City of Albany, the above instrument pursuant to the terms therein this
25 day of September, 1991

CITY OF ALBANY, OREGON
Steve Bryant
City Manager

STATE OF OREGON)
County of Linn) ss.
City of Albany)

Steve Bryant, City Manager, personally appeared and acknowledged acceptance of the foregoing instrument on behalf
of the City of Albany. Before me this 25 day of September, 1991

[Signature]
City Recorder

APPROVED AS TO FORM:
[Signature] 9-11-91
City Attorney Date

**EXHIBIT A
RIDERWOOD SUBDIVISION
MUTUAL IMPROVEMENT AGREEMENT**

1. Center Court and Lehigh Way both shall have a minimum right-of-way width of 50'.
2. The final plat shall indicate the following easements:
 - a. 7' public utility easements along the road frontage of all lots.
 - b. Additional public utility easements as shown on attachments B & C.
 - c. The storm drainage easement located along the northern boundary of the proposed subdivision which contains a 66" storm drain.
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