

**CITY OF PHILOMATH  
RESOLUTION 18-12**

**A RESOLUTION ENTERING INTO A DEVELOPMENT AGREEMENT, IN THE CITY OF PHILOMATH, BENTON COUNTY, OREGON.**

**WHEREAS**, the City of Philomath is an established municipal subdivision within the State of Oregon; and

**WHEREAS**, the Owner of property described in City of Philomath Ordinance #825 desires to make improvements known as the Millpond Crossing development project; and,

**WHEREAS**, the Philomath City Council held a public hearing on May 21, 2018 and subsequently adopted the findings of fact as presented in the Planning File #PC18-06 Staff Report; and,

**WHEREAS**, the Philomath City Council on May 21, 2018 directed staff by motion to present a Development Agreement to memorialize Owner's and City's commitment and agreement to the allocation of financial responsibilities for public facilities and services;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PHILOMATH HEREBY RESOLVES:**


**Section 1.** The Development Agreement between the City of Philomath and Millpond Crossing LLC is attached as Exhibit A.

**Section 2.** The City Manager is hereby directed to cause the Development Agreement as herein presented to be fully executed and recorded.

**Section 3.** This Resolution will be effective immediately upon passage by the Council and approval by the Mayor.

**PASSED** by the Philomath City Council this 10th day of September 2018.

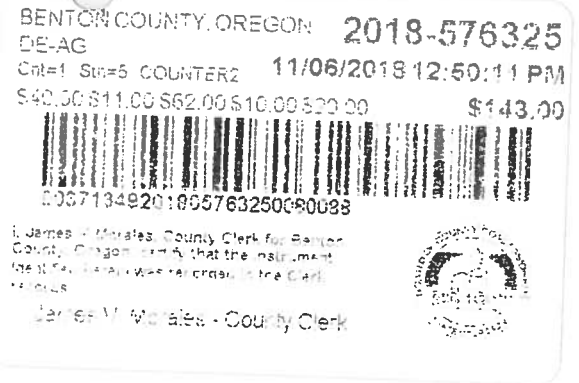
**APPROVED** by the Mayor this 10th day of September 2018.

SIGNED:   
Rocky Sloan, Mayor

ATTEST:   
Ruth Post, MMC, City Recorder

After Recording Return to:  
City of Philomath  
PO Box 400  
Philomath OR 97370

Tax Statements To:  
No Change.



## CITY OF PHILOMATH DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("Agreement") is entered into under the authority of ORS 94.504, this 10 day of October, 2018, by and between THE CITY OF PHILOMATH, an Oregon municipal corporation ("City") and MILLPOND CROSSING LLC ("Owner") for the development project called Millpond Crossing.

### RECITALS

Owner is the sole owner of that certain real property more particularly described in Exhibit A of this agreement (the "Property").

1. Owner desires to develop the Property for residential uses, consistent with the Owner's consolidated application to annex approximately 0.92 acres, to amend the Comprehensive Plan and Zone Map designations of the property from Benton County Medium Density Residential (MDR) and Philomath Industrial Park (IP) to Philomath High Density Residential (R-3), and to subdivide the property into 166 lots and a neighborhood park with a Master Plan Overlay, and this Development Agreement.
2. The purpose of this Agreement is to memorialize Owner's and City's commitment and agreement to the allocation of financial responsibility for public facilities and services for the Property and other users of the facilities, sufficient to meet the City's requirements for the provision of key urban services, including long-term public sanitary sewer, stormwater management systems, interconnected transportation systems, and Fire and Life Safety services necessary for an affirmative City recommendation for the proposed development.
3. To facilitate orderly development of the Property and ensure the full provision of key urban services that are satisfactory to the City, and to meet the City's conditions for an affirmative recommendation for approval of development to the Council, and in exchange for the obligations of the City set forth below, Owner shall comply with all requirements imposed on Owner in this Agreement.
4. It is the intention of the parties that the covenants herein are necessary for the annexation and development of the Property, and as such shall run with the Property and shall be binding upon the heirs, executors, assigns, administrators, and successors of the parties hereto, and shall be construed to be a benefit to and a burden upon the Property.

5. This Agreement shall be recorded at Owner's expense upon its execution, in the Benton County, Oregon, Deeds and Records. This Agreement may be assigned by Owner and shall benefit any assigns or successors in interest to Owner. Execution of this Agreement is a precondition to the support of the City for development of the Property described in Exhibit A to the City. Accordingly, the City retains all rights for enforcement of this Agreement.
6. In compliance with the requirement in ORS 94.504 (3) to set forth all future discretionary approvals required for the development specified in this Development Agreement, approval of the consolidated application results in no further discretionary approval being required to subdivide and develop the property subject to this Development Agreement.
7. In compliance with the requirement in ORS 94.504(6) to state the assumptions underlying the agreement that relate to the ability to serve the development, the Agreement is based on the assumption that all other components of the consolidated application have been simultaneously approved by the City Council and that approval of all components of the consolidated application would require a demonstration that the developed property would be adequately served by public infrastructure. The installation of the public infrastructure, or financially securing the installation of the public infrastructure required to serve the property, is a requirement for subdivision and development of the property, and this agreement provides a contractual security for this infrastructure so that development may occur.
8. The City Council held a public hearing to review all components of this consolidated application, including this Development Agreement.

This Development Agreement shall serve as an irrevocable petition and non-remonstrance for formation of a local improvement district benefiting the entire property and running with the land, should the public infrastructure required by this agreement not be completed according to the phasing plan set out in this Development Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. Term: This agreement shall have a duration of 15 years.
2. Permitted uses. The property may be used for a maximum of 168 single family homes and a roughly 3.4 public park. This agreement precludes construction of duplexes, triplexes, zero lot line homes, townhomes, and apartment complexes, and limits development to "detached single family units" within the project boundaries, as proposed in the application.
3. The density or intensity of use. Lots created by the subdivision shall have a minimum area of 5000 square feet and shall not exceed 7500 square feet.

4. The maximum height and size of proposed structures. No house shall exceed 30 feet in height.
5. Reservation or dedication of land for public purposes. The public park and public rights of way and easements for streets, sidewalks and utilities as set out in the tentative subdivision plan (attached and incorporated into this agreement).
6. Fees and charges. Development within the project boundaries shall pay the fees and charges required by City ordinance or resolution.
7. Schedule and procedure for compliance review. Work shall be commenced and completed no later than the schedule within the phasing plan. The City shall review the development for compliance upon the completion of each phase.
8. Responsibility for providing infrastructure and services. Owner is to provide all infrastructure, and once connected to City services, the City shall provide City services, and franchise utilities and private service providers shall provide those services.
9. Changes in regional policy or federal or state law or administrative rules. If changes in regional policy, federal or state law or administrative rules render compliance with any provision of this agreement impossible, unlawful or inconsistent with such laws, rules or policy, such a change shall not affect the remaining provisions of this agreement, which shall be valid and enforceable.
10. Remedies and defaults: A failure to comply with the terms of this Agreement shall constitute a default hereunder. The party in default shall have thirty (30) days, after receiving written notice from the other party of the event of default, to cure that default. If the default is not cured within that time period, the non-defaulting party may sue the defaulting party for specific performance under this Agreement or for damages or both, or may pursue such other remedies as may be available.
  - a. In addition to all other remedies available to City in equity or law, City, in its sole discretion, after recording the of the final plat, may complete any or all required infrastructure improvements for any subsequent incomplete phases, and may place a lien for an amount equaling the city engineer's estimate to complete the remaining public infrastructure and a 25% administrative fee, in the property records of Benton County against all remaining undeveloped lots or property in the subdivision, and may complete improvements for all infrastructure improvements required for any and all uncompleted phases. City may, at its option, foreclose the liens in the manner required for any other municipal lien placed as security for a debt owed to the City.
11. Assignability. This agreement is assignable and runs with the land.
12. Effect of annexation on the applicability or implementation of the agreement. This agreement is conditioned upon the City's approval of all the component parts of the consolidated application, including the annexation of the 0.92 acres described in the

consolidated application. This agreement shall not be implemented until the City takes the actions required under state law to incorporate the 0.92 acres inside the City limits.

13. Design and construction requirements. This agreement:

- a. Precludes construction of duplexes, triplexes, zero lot line homes, townhomes, and apartment complexes and limits development to “detached single family units” within the project boundaries as proposed in the application;
- b. Requires driveways to be a minimum of 18 feet wide;
- c. Requires garage setbacks from the front property line to be 40 feet, except in the case of shallow lots (E.g. Lots 131 and 132), which shall minimally meet R-3 setback standards;
- d. Prohibits shared driveways within the development, except where driveway separation standards from intersections necessitate shared driveway designs;
- e. Requires a planting strip containing street trees be included behind the sidewalks within the public right-of-way on local streets throughout the development.
- f. Requires that all public infrastructure shall be designed, constructed and installed to City standards for streets, sidewalks, water, sanitary sewer and storm sewer, with final engineering design to be approved by the City Engineer and Public Works Director.

14. The following provisions establish a phasing plan and boundary map, setting the minimum improvements associated with each phase and defining the timeframe within which each phase must be completed in relation to the previous phase, to ensure that the requirements of PMC 18.115.030(E)(1) (regarding phased platting) are satisfied:

- a. All Phase 1 improvements shall be completed and the final plat for Phase 1 shall be recorded within 2 years of the date that the land use approval is final, (PMC 18.115.030(C). All improvements for each subsequent phase shall be completed and the final plat for the subsequent phase recorded within 2 years of the date that the previous phase plat was recorded, or the land use approval will expire (PMC 18.115.030(E)(1). Extensions of not more than 12 months for each phase may be granted by the City Manager upon demonstration that there were issues outside of the Owner’s control which delayed the completion of the required improvements for the phase in question, and that all other provisions of PMC 18.115.030(D) are satisfied.
- b. The Owner shall have the option of constructing the development in a maximum of 5 phases. The phase boundaries shall generally conform with the attached phase map provided by Public Works and the City Engineer (Attachment B to this agreement), subject to modifications as approved by the Public Works Director required to most efficiently serve the property with public infrastructure, provided such changes do not contradict any of the requirements noted below.

c. If the development is constructed in phases, the installation of streets as well as public and private utilities in each phase shall be completed in a manner that is sufficient to meet all City standards and that ensures service to and connection into the subsequent phase, to provide service for upstream properties as applicable, and to ensure that emergency turnaround and emergency access is provided (with the Public Works Director approving the final engineering design that provides the appropriate level of improvements required to comply with this condition). For any phase, the Owner shall install the improvements required to provide:

- i. Access and utility service to all lots within the applicable phase.
- ii. Water, sewer or other utility improvements as may be required to provide service to future phases, including waterline looping outside of the phase boundary as required to address looping and fire flow considerations.
- iii. All-weather access drives for utilities and detention basins constructed outside of each phase boundary,
- iv. Offsite city-standard pedestrian improvements as required to connect to existing sidewalk systems).
- v. Any easements required for extension of public utilities through the subsequent phases and for the offsite portion of the project must be granted to the City as part of Phase 1. Phases 4 & 5 can be constructed out of sequence, if desired by the Owner. The Owner can combine sequential phases at any time.

15. In addition to the general requirements above, the Owner shall provide the following specific improvements by phase:

16. Phase 1 (33 lots)

- a. 15th Street frontage improvements and offsite storm drainage improvements associated with 15th Street and Phase 1 drainage, as well as applicable storm drainage improvements required to accommodate drainage that flows onto the property from the north and discharges to the 15th Street drainage system.
- b. Detention & water quality improvements, either sized for the entire development or designed to allow expansion with each subsequent phase(s).
- c. Full street improvements (or widening as applicable) along Willow Lane, including sidewalks on both sides.

17. Phase 2 (36 lots)

- a. Connection to 17th Street north of the project.
- b. Offsite street & sidewalk improvements along 17th Street from the project boundary to Cedar Street, consisting of the following as a minimum:

- c. Full street improvements as defined by the PWDS.
- d. Sidewalk on both sides, with connections to the 17th Street & Cedar Street sidewalks.
- e. Offsite waterline along 17th Street to connect to the existing 6-inch waterlines at 17th & Cedar.
- f. Offsite improvements to pond water detention area (located on Phase 3) as needed for Phase 2 storm needs.

18. Phase 3 (40 lots)

- a. Public park improvements, include public parking along the east side of the park. The Applicant shall submit the necessary park lot deed documents to the City for review and approval following completion of the park and prior to the first building permit being issued for Phase 3.
- b. Chapel Drive street improvements fronting Phases 1, 3 and 5, associated storm drainage, and any offsite tapers, bike/pedestrian path improvements and other improvements required by Benton County standards or land use conditions.

19. Phase 4 (35 lots)

- a. None.

20. Phase 5 (24 lots)

- a. None

21. Beneficiaries: This Agreement shall inure to the benefit of and shall be binding upon the Owner and City, and their respective successors and assigns (and any liability shall be joint and several). This Agreement is intended to and shall run with the Property. Owner will provide proof of recording this agreement against the Property within 10 days of the approval of this Agreement.

22. Recitals: The Recitals are hereby incorporated into this Agreement as if set forth fully herein. In particular, as stated in the 10<sup>th</sup> Recital and repeated here to ensure there is no ambiguity, this Development Agreement shall serve as an irrevocable petition and non-remonstrance for formation of a local improvement district benefiting the entire property and running with the land, should the public infrastructure required by this agreement not be completed according to the phasing plan set out in this Development Agreement. Following notice to the Owner of default, and a reasonable opportunity to cure, formation of such an improvement district shall be at the sole option of the City Council.

23. Certification: This agreement is executed on behalf of the City of Philomath after approval by the City Council pursuant to resolution at a duly noticed and constituted meeting on September 10, 2018.

IN WITNESS OF THIS AGREEMENT, the Owner and the City have caused this Agreement to be signed in their respective names by their authorized agents or officers as of the date first above written.

CITY OF PHILOMATH



Chris Workman  
City Manager



Lee Miller, Owner  
Millpond Crossing LLC

ATTEST:



City Recorder

APPROVED AS TO FORM:

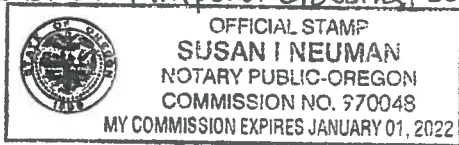


City Attorney

STATE OF OREGON

County of Benton

This instrument was acknowledge before me on October 12, 2018, by Lee Miller, owner of Millpond Crossing, LLC <sup>for</sup> 11/6/2018

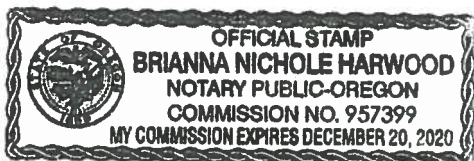



  
NOTARY PUBLIC OF OREGON  
My Commission Expires: 01/01/2022

STATE OF OREGON

County of Benton

This instrument was acknowledged before me on Oct 18, 2018, by Chris Workman as City Manager of the City of Philomath.



  
NOTARY PUBLIC OF OREGON  
My Commission Expires: 12-20-20



## Exhibit A

### Legal description of subject properties referred to in Ordinance #825

#### PARCEL I:

Beginning at the Southeast corner of block 11, Rose Park addition to Philomath, Benton County, Oregon; thence South  $1^{\circ}21' \frac{1}{2}''$  west along the West line extended, of Alice Street in said Rose Park, 17.865 chains to the north line of the Eldridge Hartless donation land claim no. 51, township 12 South, range 6 West of the Willamette Meridian, Benton County, Oregon; thence westerly along the North line of said claim to the east line of "I" street in brown's addition to Philomath; thence north  $1^{\circ}24' \frac{1}{2}''$  east along the east line of "I" street to the south line extended westerly of Rose Park; thence South  $88^{\circ}32' \frac{1}{2}''$  East 17.905 chains to the point of beginning.

Excepting therefrom a 30-foot strip of land along the south side thereof for the full length of said premises, said strip being the north half of county road no. 46.

Also excepting therefrom that certain property described in that certain deed from Hobin Lumber Company, Inc. to Gary R. Hobin and Mary Ellen Hobin, recorded June 7, 1979 as m-5166-79, microfilm records of Benton County, Oregon.

#### PARCEL II:

A strip of land fifty feet in width, the east line of which is described as follows, to-wit:

Beginning at the northwest corner of that tract of land conveyed to Karold K. Christener, et ux, by deed recorded April 2, 1965 in book 195, page 368, deed records of Benton County, Oregon which point is 505.10 feet south  $89^{\circ}50' \frac{1}{2}''$  west along the south line of the Henry Penland donation land claim no. 45, township 12 South, range 6 West, Willamette base and Meridian, Benton County, Oregon 1020.14 feet North  $1^{\circ}20' \frac{1}{2}''$  East along the West line of 19th Street and 259.50 feet North  $88^{\circ}32' \frac{1}{2}''$  west parallel with the south line of Rose Park Subdivision from the southeast corner of said donation land claim no. 45; and running thence south  $1^{\circ}21' \frac{1}{2}''$  west along the east line extended of Alice Street in said Rose Park Subdivision, 1027.67 feet, more or less, to the southerly terminus of said strip of land on the north line of the county road.

Excepting therefrom that portion which lies within that parcel described in deed recorded August 6, 1985 as m-69334-85, microfilm records of Benton County, Oregon.

