

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is effective this 1st day of March, 2021 ("Effective Date"), by, between, and among the following parties (sometimes collectively referred to herein as the "Parties" or individually as a "Party"):

### Party Name

### Party Designation

MPC Builders, LLC, an Oregon Limited Liability Company

("MPC")

City of Philomath, a Municipal Corporation and political subdivision of the State of Oregon

("City")

The Parties hereby state and agree as follows:

1. MPC is in the process of developing a number of single-family homes upon a former mill and log pond site located in City, commonly known as Millpond Crossing, the boundaries of which are described in that Final Plat Map recorded as Benton County Recording No. 2019-589657 (the "Property").
2. MPC is enrolled in the Voluntary Cleanup Pathway program with the Oregon Department of Environmental Quality ("DEQ"). DEQ has identified the presence of methane gas on and around the Millpond Crossing Property. MPC has used its best efforts to remove organic fill material that leads to the production of methane gas within the footprint of houses that have been and are being constructed. MPC represents that to date, testing of all houses completed by MPC (though independent consultants) has resulted in no detection of methane gas within any house.
3. MPC has also installed engineering controls such as fans and methane detection alarms in houses that have been completed but not yet sold. For houses that will be built in the future, MPC will install at least the same engineering controls (fans and methane detection alarms), and will also add certain membrane barriers during construction.
4. MPC intends to develop work plans and conduct monitoring recommended by DEQ to ensure that methane gas is not migrating into any existing or to be built homes. MPC also intends to cooperate with DEQ in identifying and installing further engineering controls that DEQ may identify, both as to existing homes and homes under construction and yet to be built.
5. Certain homes on the Property are completed and are awaiting issuance of a Certificate of Occupancy from the City before they can be sold.
6. Based on MPC's commitments described in this MOU, which are and will be implemented to protect public health and safety, the City will issue Certificates of Occupancy on all homes located on the Property to the extent all other land use permits and building permits have been satisfied, notwithstanding that further testing, monitoring, and other actions may be recommended or required by DEQ.
7. It is anticipated that a DEQ work plan will be in place by early March, 2021. A draft of

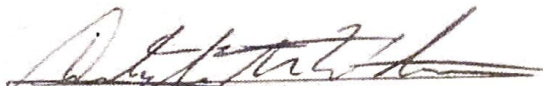
the proposed Work Plan to manage the methane is attached. In the event that such a plan is not in place by that time, MPC will test each occupied home on the Property not for the presence of methane gas not less than once per quarter (once the DEQ work plan is in place, MPC will follow the requirements of that plan, whether more or less stringent than the requirements of this MOU). Further, in the event that a homeowner (or other occupant) reports to MPC or the City that a methane gas alarm has been activated, MPC will as soon as practicable, but not to exceed 24 hours, take all necessary measures to address and mitigate a methane gas intrusion. This requirement shall remain in effect until a DEQ-approved monitoring plan is in place or for a period of two years, whichever occurs first.


8. For homes that are under contract with buyers for sale as of the date of this MOU, following issuance of a Certificate of Occupancy for each such home, MPC will provide a disclosure to each such buyer concerning the existence of methane gas on the Property, and which generally describes the mitigation methods and engineering controls employed by MPC to address methane gas issues. As part thereof, MPC will provide each such buyer a five (5) day right to rescind their pending sale which will provide for termination of the sale and return of a buyer's earnest money. Except as provided herein, the exact information included in the disclosure and recission document(s) shall be determined in the sole discretion of MPC. For homes not yet under contract, MPC will provide disclosures consistent with this paragraph in its purchase and sale agreement, but will not be required to offer a right to rescind.
9. MPC will indemnify the City for any damages for which the City is held liable arising out of the presence of methane gas in any home where the related Certificate of Occupancy was issued in reliance upon this MOU.
10. Either party may enforce the requirements of this MOU by a suit seeking specific performance and/or an injunction. Any such suit shall be filed in the Benton County Circuit Court. Neither party shall be required to post a bond or other undertaking to obtain any relief sought. The Party prevailing in any such lawsuit may recover from the non-prevailing party its costs, disbursements, and attorney fees (which shall expressly include all costs and fees of depositions, court reporters, expert witnesses and consultants, paralegals and legal assistants) at trial and upon any appeal therefrom.

This Memorandum of Agreement is executed the 1<sup>st</sup> day of March, 2021.


CITY OF PHILOMATH

MPC BUILDERS, LLC

  
Chris Workman, City Manager

  
Levi Miller, Member

Approved as to form:

  
James Brewer, Philomath City Attorney