

# Council Communication

## August 4, 2015, Business Meeting

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### Second reading of an ordinance modifying The Verde Village Subdivision Development Agreement

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**FROM:**

Derek Severson, Associate Planner, Community Development, [derek.severson@ashland.or.us](mailto:derek.severson@ashland.or.us)

**SUMMARY**

The ordinance being presented to the City Council for second reading would modify the Verde Village Subdivision's Development Agreement to: 1) Partition the property to be consistent with the approved phasing plan; 2) Adjust the property lines for Lots #3-#9 and #15-#17; 3) Modify the approval with regard to the timing of the installation of landscaping, irrigation, and open space improvements in Phase I with the addition of two new conditions; and 4) Modify Exhibit E, Condition #30 of the approved Development Agreement as it relates to the construction and timing of street improvements for both Perozzi Street and Alameda Drive. Findings are also presented for Council adoption to formalize the land use approval.

**BACKGROUND AND POLICY IMPLICATIONS:**

The Verde Village Subdivision was approved by the City Council in 2007, and included a land exchange between the applicants and the city, an Annexation, Comprehensive Plan and Zoning Map Changes, and a number of land use approvals which were included in a development agreement between the City and the applicants and adopted by ordinance. The applicants are requesting to modify the subdivision's Development Agreement to 1) Partition the property to be consistent with the approved phasing plan; 2) Adjust the property lines for Lots #3-#9 and #15-#17; 3) Modify the approval with regard to the timing of the installation of landscaping, irrigation, and open space improvements in Phase I with the addition of two new conditions; and 4) Modify Exhibit E, Condition #30 of the approved Development Agreement as it relates to the construction and timing of street improvements for both Perozzi Street and Alameda Drive, with the hope that these modifications will enable the phases of the development to be sold, financing to be obtained and construction to move forward.

The Council conducted the required land use public hearing to consider the request on July 21, 2015 and after the hearing and record had closed, the Council approved the land use application and first reading of the ordinance, with the modifications to the original request that had been recommended by the Planning Commission.

**COUNCIL GOALS SUPPORTED**

The project is in line with the Council's Goal 13 "*Develop and support land use and transportation policies to achieve sustainable development.*" The development is well situated relative to the existing



transportation system; schools, recreation and shopping are within walking and cycling distance; there is a good mix of unit types and sizes, including the already-built affordable units in Rice Park at Verde Village; and all homes in both phases are required to be built to Earth Advantage/Photovoltaic Ready standards.

**FISCAL IMPLICATIONS:**

N/A.

**STAFF RECOMMENDATION AND REQUESTED ACTION:**

Staff recommends that Council approve second reading of the ordinance titled “An Ordinance Modifying the Verde Village Subdivision Development Agreement,” and adopt the findings presented.

**SUGGESTED MOTION:**

Move to approve second reading and adopt the ordinance titled, “An Ordinance Modifying the Verde Village Subdivision Development Agreement,” with the two additional conditions recommended by the Planning Commission and authorize the Mayor to sign the Fifth Amendment to the Verde Village Development Agreement.

Move to adopt the findings for Planning Action #2015-00825.

**ATTACHMENTS:**

1. Proposed Ordinance.
2. Ordinance Exhibit A – Fifth Amendment to Verde Village Development Agreement
3. Ordinance Exhibit B - Revised Exhibit E. Verde Village Special Conditions
4. Ordinance Exhibit C - Revised Exhibit F. Timetable of Development
5. Findings for Council Adoption



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE MODIFYING THE VERDE VILLAGE SUBDIVISION’S DEVELOPMENT AGREEMENT TO ALLOW PARTITIONING OF THE PROPERTY CONSISTENT WITH THE APPROVED PHASING PLAN; ADJUSTING THE PROPERTY LINES FOR LOTS #3-#9 AND #15-#17; MODIFYING THE APPROVAL WITH REGARD TO THE TIMING OF THE INSTALLATION OF LANDSCAPING, IRRIGATION AND OPEN SPACE IMPROVEMENTS IN PHASE I; AND MODIFYING EXHIBIT E OF THE APPROVED DEVELOPMENT AGREEMENT WITH AMENDED LANGUAGE TO CONDITION #30 RELATED TO THE CONSTRUCTION AND TIMING OF STREET IMPROVEMENTS FOR PEROZZI STREET AND ALMEDA DRIVE, AND THE ADDITION OF TWO NEW CONDITIONS.**

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **bold lined through** and additions are **bold underlined**.

**WHEREAS**, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

**WHEREAS**, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. City of Beaverton v. International Ass’n of Firefighters, Local 1660, Beaverton Shop 20 Or. App. 293; 531 P 2d 730, 734 (1975); and

**WHEREAS**, the Verde Village Subdivision proposed in 2006 involved the development of 11.64 acres on the site of the old Ashland Greenhouses and included: an Annexation, Comprehensive Plan and Zoning Map changes from Jackson County Rural Residential (RR-5) to City of Ashland Single-Family Residential (R-1) and Suburban Residential (R-1-3.5); Outline Plan approval to develop the property as a 68-unit residential development; Site Review approval for a multi-family development; a Physical and Environmental Constraints Review Permit to locate a multi-use path in the Ashland Creek Riparian Preservation Area; a Tree Removal Permit; Exceptions to the Street Standards to install a curbside sidewalk on one side of a proposed street, to not locate a street adjacent to natural features and to not connect two of the proposed streets; Variances to reduce the on-street parking requirement from 78 to 38 spaces, to reduce the rear yard setback requirement for six of the townhomes in the northwestern corner of

the site from 20 feet to 12, 14 and 16 feet, and to reduce the required distance between buildings for the 27 cottages in the southwestern corner of the site; an Administrative Variance to the Site Design and Use Standards to have the primary orientation of the buildings to the south, rather than to the street, in order to maximize the use of solar energy; a land exchange with the City of Ashland dedicating 2.57 acres adjacent to Ashland Creek to the city for parks purposes in exchange for approximately 1.30 acres of the Dog Park in the area of the access and to the south of the existing parking area; and a Development Agreement with the City of Ashland which governed the development of the subdivision, and included unique, project-specific net-zero energy performance standards applicable to each home to be built, requirements for construction of a multi-use path within the riparian preservation corridor and for restoration, enhancement and maintenance of the riparian corridor, and a detailed timetable for completion of the project.

**WHEREAS**, on December 18, 2007 the Ashland City Council approved and adopted Ordinance No. 2945 after consideration of the staff report, the recommendation of the Planning Commission, and the comments and evidence presented during the public hearings on the Verde Village Development Agreement between the City of Ashland, Oregon and Ashland Flower Shop and Greenhouses, Inc., and found and determined that the Verde Village Development Agreement was in the best interest of the public health, safety and welfare of the City of Ashland; met a public need and provided a public benefit; and was consistent with all applicable City of Ashland laws and ordinances; and

**WHEREAS**, on January 5, 2009 the subject properties were sold by Ashland Flower Shop and Greenhouses, Inc. to WILMA LLC, the company owned by the original applicants, Greg and Valri Williams, to carry out the development of the properties.

**WHEREAS**, on July 17, 2009 the Planning Director approved and executed the First Amendment to the Verde Village Development Agreement, approving a 12 month administrative timetable extension as contemplated in Exhibit F of the original Development Agreement; and

**WHEREAS**, on March 2, 2010, the Ashland City Council adopted Ordinance No. 3007, the Recession Extension Ordinance, which ordinance created a ministerial process for the Planning Director to grant current planning actions a 12 month timetable extension in recognition of the difficult financial market; and

**WHEREAS**, on April 9, 2010 WILMA LLC requested an extension for the entire project in accordance with the Recession Extension Ordinance; and

**WHEREAS**, on June 6, 2010 the requested Amendment to the Development Agreement to extend the timetable was approved administratively by the Director in accordance with the Recession Extension Ordinance; and

**WHEREAS**, on June 4, 2013 the Ashland City Council approved and adopted Ordinance No. 3082 to grant a seven-year extension of all dates contained within the Verde Village Subdivision's Development Agreement timetable to provide the maximum 15 year duration for the Development Agreement allowed under the Oregon Revised Statutes. After consideration of the staff report, the recommendation of the Planning Commission, and the comments and

evidence presented during the public hearings, the Council found and determined that the extension of the Verde Village Subdivision's Development Agreement timeline was in the best interest of the public health, safety and welfare of the City of Ashland; met a public need and provided a public benefit; and was consistent with all applicable City of Ashland laws and ordinances; and

**WHEREAS**, on April 1, 2014 the Ashland City Council approved and adopted Ordinance No. 3092 to modify the Verde Village Subdivision's Development Agreement to clarify project phasing and make clear which improvements are required with each phase and to allow either phase to occur first; to change the energy efficiency requirements for the development so that all units will be constructed to at least Earth Advantage Gold Standards and will be Photovoltaic Ready; and to change the landscaping requirements associated with construction of the multi-use path. After consideration of the staff report, the recommendation of the Planning Commission, and the comments and evidence presented during the public hearings, the Council found and determined that the extension of the Verde Village Subdivision's Development Agreement timeline was in the best interest of the public health, safety and welfare of the City of Ashland; met a public need and provided a public benefit; and was consistent with all applicable City of Ashland laws and ordinances; and

**WHEREAS**, on May 1, 2015 Urban Development Services on behalf of WILMA LLC requested modifications of the Development Agreement for the Verde Village Subdivision for the properties located at 87 W. Nevada Street and 811 Helman Street. The requested modifications include: partitioning the property to be consistent with the approved phasing plan; adjusting the property lines for Lots #3-#9 and #15-#17; modifying the approval with regard to the timing of the installation of landscaping, irrigation, and open space improvements in Phase I; and modifying Exhibit E, Condition #30 of the approved Development Agreement as it relates to the construction and timing of street improvements for both Perozzi Street and Alameda Drive; and

**WHEREAS**, on June 9, 2015 the City of Ashland Planning Commission considered the above-referenced request for modifications to the Verde Village Subdivision Development Agreement and recommended that the City Council approve modifications to the development agreement, including modified language for Exhibit E, Condition #30 and the addition of two new conditions, #32 and #33, to the Development Agreement's Exhibit E "Verde Village Special Conditions"; and

**WHEREAS**, the City Council of the City of Ashland conducted a duly advertised public hearing on the above-referenced request for modifications to the Development Agreement on July 21, 2015; and

**WHEREAS**, the City Council of the City of Ashland, following the close of the public hearing and record, deliberated and conducted first and second readings approving adoption of the Ordinance in accordance with Article 10 of the Ashland City Charter; and

**WHEREAS**, the City Council of the City of Ashland has found and determined that the requested modifications of the Verde Village Subdivision's Development Agreement are in the

best interest of the public health, safety and welfare of the City of Ashland; meet a public need and provide a public benefit; and are consistent with all applicable City of Ashland laws and ordinances.

**THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

**SECTION 1.** The above recitations are true and correct and are incorporated herein by this reference.

**SECTION 2.** The City of Ashland declares the approval and adoption of the requested modifications to the original Verde Village Development Agreement, said modifications being attached to this Ordinance as **Exhibit A**, Fifth Amendment to the Verde Village Development Agreement to Reflect Council-Approved Modifications to the Agreement and Timetable; **Exhibit B**, Revised Exhibit E, Verde Village Special Conditions; and **Exhibit C**, Revised Exhibit F, Timetable of Development – Outline Plan Physical Commencement and Completion. These exhibits are made a part hereof by this reference.

**SECTION 3.** The adoption of this Ordinance declaring approval of the proposed modifications to the Verde Village Subdivision Development Agreement and associated amendments to the timetable are fully supported by evidence contained in the whole record, which is incorporated herein by this reference.

**SECTION 4.** The Ordinance shall be effective after execution of the Fifth Amendment to Verde Village Development Agreement to Reflect Council-Approved Modifications to the Agreement in **Attachment 1** by both the City and WILMA LLC, but not earlier than thirty (30) days after the second reading of this Ordinance and signature by the Mayor.

**SECTION 5. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2015, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Barbara M. Christensen, City Recorder

SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
John Stromberg, Mayor

Reviewed as to form:

\_\_\_\_\_  
David Lohman, City Attorney

**FIFTH AMENDMENT TO VERDE VILLAGE DEVELOPMENT AGREEMENT TO REFLECT COUNCIL-APPROVED MODIFICATIONS TO THE AGREEMENT AND TIMETABLE**

**THIS FIFTH AMENDMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2015, by and between the **City of Ashland**, a municipal corporation of the State of Oregon, (hereinafter referred to as "City"), and **WILMA, LLC**, an Oregon Limited Liability Company, (hereinafter referred to as "WILMA").

**Whereas**, on December 18, 2007, the City of Ashland approved Ordinance 2945 granting approval to the Verde Village Development Agreement, a land use decision; and

**Whereas**, on July 17, 2009 Planning Director Bill Molnar approved and executed the First Amendment to the Verde Village Development Agreement, approving a 12 month administrative timetable extension as contemplated in Exhibit F of the original Development Agreement; and

**Whereas**, on March 2, 2010, the Ashland City Council adopted Ordinance No. 3007, the Recession Extension Ordinance, which ordinance created a ministerial process for the Planning Director to grant current planning actions a 12 month timetable extension in recognition of the difficult financial market.

**Whereas**, on April 9, 2010, WILMA LLC requested an extension for the entire project in accordance with the Recession Extension ordinance.

**Whereas**, on June 6, 2010, the requested Amendment to the Development Agreement to extend the timetable was approved administratively by the Director in accordance with the Recession Extension Ordinance;

**Whereas**, on April 2, 2013, WILMA LLC requested an extension for the entire project in accordance with the allowances of the original development agreement and the Oregon Revised Statutes.

**Whereas**, on June 4, 2013, the Ashland City Council adopted Ordinance No. #3082 which amended the timetable for the entire project.

**Whereas**, on January 10, 2014, WILMA LLC requested modifications of the development agreement and timetable to clarify project phasing, alter the energy efficiency requirements for the development and make changes to the landscaping and maintenance requirements associated with the construction of a multi-use path in the riparian corridor.

**Whereas**, on April 1, 2014, the Ashland City Council adopted Ordinance No. #3092 which amended the development agreement and timetable for the entire project.

**Whereas**, on May 1, 2015, Urban Development Services LLC on behalf of WILMA LLC requested modifications of the development agreement and timetable to allow partitioning the

Exhibit A

property to be consistent with the approved phasing plan; adjusting the property lines for Lots #3-#9 and #15-#17; modifying the approval with regard to the timing of the installation of landscaping, irrigation, and open space improvements in Phase I; and modifying Exhibit E, Condition #30 of the approved Development Agreement as it relates to the construction and timing of street improvements for both Perozzi Street and Alameda Drive.

**Whereas**, on August 4, 2015 the Ashland City Council adopted Ordinance No. # \_\_\_\_\_ which amended the development agreement and timetable for the entire project.

**NOW THEREFORE, the Verde Village Development Agreement is hereby amended as follows:**

1. The above recitations are true and correct and are incorporated herein by this reference; and
2. The Development Agreement is hereby amended to reflect modifications of the development agreement and timetable to allow partitioning the property to be consistent with the approved phasing plan; adjusting the property lines for Lots #3-#9 and #15-#17; modifying the approval with regard to the timing of the installation of landscaping, irrigation, and open space improvements in Phase I; modifying Exhibit E, Condition #30 of the approved Development Agreement as it relates to the construction and timing of street improvements for both Perozzi Street and Alameda Drive; and the addition of two new conditions, #32 and #33, related to the timing of landscaping, irrigation and open space improvements, as follows:
  - a. Exhibit E, Verde Village Special Conditions, is hereby replaced in its entirety by a Revised Exhibit E, attached hereto and made a part hereof by this reference.
  - b. Exhibit F, Timetable of Development, is hereby replaced in its entirety by a Revised Exhibit F, attached hereto and made a part hereof by this reference.
3. All other provisions of the Verde Village Development Agreement, not inconsistent with the above changes remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed these presents on the dates indicated below. The date of this Amendment shall be the date on which this Agreement was executed by all parties.

**WILMA LLC**

**CITY OF ASHLAND**

By: \_\_\_\_\_  
Gregory D. Williams, Managing Member  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
John Stromberg, Mayor  
Date: \_\_\_\_\_



Exhibit A

Approved as to Form:

\_\_\_\_\_  
David Lohman,  
City Attorney

STATE OF OREGON        )  
                                  )  
County of Jackson        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2015,  
by Gregory D. Williams, as Managing Member and authorized agent of Wilma, LLC.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON    )  
                                  )  
County of Jackson    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2015,  
by John Stromberg, as Mayor and authorized agent for the City of Ashland pursuant to  
Ordinance # \_\_\_\_\_

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

**REVISED EXHIBIT E  
VERDE VILLAGE  
Special Conditions**

- 1) Affordable Housing Requirements. A deed restriction shall be recorded for the town home portion of the development specifying the land is required to be developed as affordable units in accordance with AMC 18.06.030.G(5) and in conformance with the approval of PA 2006-01663. The deed restriction shall require the affordable units to remain affordable per Resolution 2006-13 for a 60 year period from initial occupancy. The town home area shall be serviced with all needed public facilities. The deed restricted land shall be dedicated to a non-profit (IRC 501(3)(c)) affordable housing developer or comparable Development Corporation with proof of the dedication and deed restriction being presented to the City of Ashland Housing Program Specialist prior to issuance of a building permit for the development of the first market rate residential unit.

The deed for the land conveyed for affordable housing purposes shall include a reverter to the Owner or deed restriction requiring conveyance of the property to the City of Ashland if the affordable housing development is not fully developed in accordance with the approval of PA 2006-01663 within five years of this approval, unless administratively extended pursuant to Exhibit F. In the event the property reverts to the Owner the Owner shall thereafter convey the property, without encumbrances, to the City of Ashland, for affordable housing purposes. City may accept or reject the offer, but the owner shall not be relieved of the obligation to convey the property to another approved provider of affordable housing. All the affordable housing units shall be Net Zero Energy Ready as provided in Condition 12 below.

- 2) Annexation Sequence. The sequence is set forth in Section 16 of this Agreement. Property comprising Phase I shall be annexed first. The land dedicated to the City for parks purposes adjacent to Ashland Creek shall be annexed second. Following such Park annexation, Phase II of the project (single-family development) may be annexed.
- 3) Applicant's Proposals: The applicant agrees that Project shall be constructed to the standards as proposed in the application, and as finally approved by the Council, including supporting documentation as entered into the record. All proposals of the applicant are conditions of approval for purposes of enforcement.

Exhibit B

- 4) Archaeological Artifacts: In the event of discovery of archaeological artifacts during project construction, the Owner shall stop construction in that area and notify the City and the State of Oregon. Proper protection and/or relocation of artifacts, to the satisfaction of State and Local approval authorities shall be provided by the Owner, prior to recommencement of construction.
  
- 5) Ashland Creek Riparian Corridor Enhancement and Mitigation. The Owner shall be solely responsible for the restoration and enhancement of the area of the Riparian Corridor that is disturbed in the construction of the multi-use path and four (4) feet on either side of the multi-use path, to be conveyed to the City as part of the land exchange. A mitigation plan prepared by a riparian biologist or a natural resource professional with training and experience in biology, ecology or related fields for the impact of the construction of the multi-use path in the riparian corridor and to address the 10-foot wide riparian corridor buffer. The riparian corridor buffer is the setback between the new eastern property line adjacent to the Ashland Creek riparian corridor and the single family homes and yards for units 68, and 25 -39, and is delineated as common area in the application materials. Disturbed areas from the multi-use path construction shall be re-vegetated and an additional area restored and enhanced with local source native plant material including ground cover, shrubs and trees at a 1:1.5 ratio, erosion control material shall be applied (e.g. mulch, hay, jute-netting, or comparable) and temporary irrigation facilities installed. The mitigation plan shall include but not be limited to a statement of objectives, measurable standards of mitigation, an assessment of riparian corridor functions and values, a statement and detail plan of the location, elevation and hydrology of the mitigation area, a planting plan and schedule, a monitoring and maintenance plan, a contingency plan and performance guarantees. The applicants shall install the mitigation measures in the approved mitigation plan in conjunction with the multi-use path installation. The Final Plan application shall include a mitigation plan (see contract required plant materials). The Contract for Installation of Plant Materials with Security acceptable to the City Attorney and Planning Director shall be submitted for restoration and enhancement consistent on or before the commencement of construction as specified in the Timetable of Development.
  
- 6) Boundary Description. A final boundary description and map shall be prepared in accordance with ORS 308.225. A registered land surveyor shall prepare the description and map. The boundaries shall be surveyed and monuments established as required by statute subsequent to Council approval of the proposed annexation.

Exhibit B

- 7) Covenants Conditions and Restrictions. A draft copy of the CC&R's for the homeowners association(s) shall be provided at the time of Final Plan application. Lots 65 - 68 shall be included in a homeowners association and subject to all subdivision requirements. CC&R's shall describe responsibility for the maintenance of all common area and open space improvements, parkrows and street trees. CC&R's shall provide reciprocal easements for residents of the various homeowners associations (i.e. cottages, town homes and single-family residential) to access and use all of the project open spaces. CC&R's shall note that any deviation from the Tree Protection Plan must receive written approval from the City of Ashland Planning Department. ~~That~~ the CC&R's shall identify the units ~~are~~ which are subject to the City's Affordable Housing requirements and terms of affordability. The CCRs shall include reference to the administrative enforcement provisions of this agreement and the ability of the City to enforce and assess the association for the maintenance of common areas, including the association's responsibilities for maintenance of the storm water areas offsite.

The Final Plan submittal shall address the usability, including Verde Village community access, of the private open spaces. Usability shall be specifically addressed for the two small open spaces in the town home area (550 sf and 700 sf), one small open space in the cottage area (1,300 sf) and the one small open space adjacent to the alley (1,310 sf). Layout and landscaping of the open spaces as well as any improvements such as play equipment shall be detailed in the Final Plan submittals.

- 8) Curb-Cut Compliance. The Final Plan application shall include revised and corrected driveway curb-cuts for units 45 and 46 - spaced at least 24-feet apart as measured between the outside edges of the apron wings of the driveway approaches in accordance with the Ashland Street Standards.
- 9) Easements: Buildings or permanent structures shall not be located over easements, including but not limited to the sanitary sewer pressure line easement.
- 10) Endangered Species: In the event that it is determined that any representative of a protected plant or animal species pursuant to the federal, state, regional or local law, is resident on or otherwise is significantly dependent upon the Verde Village property, the Owner shall cease all activities which might negatively affect that individual or population and immediately notify the City of Ashland, State of Oregon and the U.S. Fish and Wildlife Service. Construction may resume when proper protection, to the satisfaction of all agencies, including the City, is provided by the

Exhibit B

Owner.

- 11) Energy Conservation: Earth Advantage Program. A minimum of 53 of the residential units shall qualify in the City of Ashland Earth Advantage program with at least a Gold rating. That a minimum of 53 of the residential units be constructed as Photovoltaic Ready.
- 12) That the 15 affordable residential units in the subdivision (i.e. town homes) shall meet the application "Net Zero Energy" Performance Standard as outlined in Exhibit K-3 of the Revised Outline Plan, Book III – Narrative revised October 24, 2007, except that the photovoltaic (PV) system is not required to be installed in the affordable units. The affordable unit shall be constructed with the appropriate infrastructure (e.g. wiring, conduit, roof structure) so that a photovoltaic (PV) system can be installed at a later date.
- 13) Intersection Design: Applicant shall design the pedestrian crossing at the new intersection of Helman St., Alameda Dr. and Nevada St. Pedestrian safety and refuge shall be addressed in the intersection design. Design must be submitted with the Final Plan application.
- 14) LID Non-remonstrance: Prior to Final Plan Approval, the applicant shall execute a document as consistent with ALUO 18.68.150 agreeing to participate in their fair share costs associated with a future Local Improvement District for improvements to Helman Street and to not remonstrate against such District prior to signature of the final subdivision survey plat. Executed documents shall be submitted with the application for Final Plan. Nothing in this condition is intended to prohibit an owner/developer, their successors or assigns from exercising their rights to freedom of speech and expression by orally objecting or participating in the LID hearing or to take advantage of any protection afforded any party by city ordinances and resolutions in effect at the time
- 15) Lot Coverage Compliance. The Final Plan application shall include revised and corrected lot coverage calculations in square footage and percentage for each development area (i.e. cottages, town homes and single-family/duplex areas). Any area other than landscaping such as structures, driveways, patios and pervious paving that does not allow normal water infiltration shall be included as lot coverage.
- 16) Measure 49 Waiver. The applicant expressly agrees to construct the project in accordance with the approved plan and City ordinances and

Exhibit B

waives the right to file a claim under Oregon Statewide Measure 49. The signed waiver shall be submitted to the City of Ashland Legal Department for review and approval prior to signature of the survey plat or adoption of a resolution or ordinance formally annexing the property, whichever is first.

- 17) Multi-Use Path Improvements. As specified in the approved Timetable of Development, all the multi-use paths shall be constructed according to City Code standards, specifically, paths shall be paved with concrete, asphalt or a comparable all-weather surfacing. Two to four foot wide gravel or planted strips are required on both sides of the multi-use paths in accordance with the Ashland Street Standards. Fencing or retaining walls shall be located two to four feet from the improved edges of the path to provide clear distance on both sides of the path for safe operation. The clear distance areas shall be graded to the same slope as the improved path to allow recovery room for pedestrians and bicyclists. The clear distance areas shall be limited to gravel or landscape materials, and vegetation in excess of six inches in height shall not be placed in the clear distance areas. The transition from Alameda Dr. to the multi-use path, from Canine Way to the multi-use path and from Nevada St. to the multi-use path shall be addressed. Specifically, the preliminary engineering shall address bicycle access from the street grade and provide sufficient turning radius for bicycle navigation. The preliminary engineering plans submitted with the Final Plan application shall include details for the multi-use path improvements and this design. All multi-use path public easements shall be clearly identified on the final survey plat, conveyed, and identified in the project, (with appropriate markings or compliant signage). Easements are required for paths between units 64-65 and adjacent to 39. The project CC&R's shall expressly note that the pathways are for public use and shall not be obstructed or through access restricted unless authorized by the City of Ashland and Ashland Parks Department.
- 18) Multi-Use Path Revisions: The adjustments to the width and location of the multi-use path in and adjacent to the Ashland Creek riparian corridor shall not affect the width or location of the 10-foot wide setback to buildings and structures or riparian corridor buffer between the new eastern property line adjacent to the Ashland Creek riparian corridor and the single family homes and yards for units 68, and 25-39 that is delineated as common area in the application materials. The 10-foot wide setback to buildings or structures or riparian corridor shall be located and sized as shown on plans S-1 dated June 8, 2007, S-4 dated June 8, 2007 and P-2 dated July 17 from the application.

Exhibit B

- 19) Open Space Usability. [Planning Commission Condition]. The Final Plan submittal shall address the usability, including community access, of the open spaces. Usability shall be specifically addressed for the two small open spaces in the town home area (550 sf and 700 sf), one small open space in the cottage area (1,300 sf) and the one small open space adjacent to the alley 1,310 sf). Layout and landscaping of the open spaces as well as any improvements such as play equipment shall be detailed in the Final Plan submittals.
- 20) Parking Compliance: The Final Plan application shall include revised and corrected on-street parking placement so that parking spaces are not counted that are within 20 feet measured along the curb of any corner or intersection of an alley or street in accordance with 18.92.025.D.
- 21) Sidewalk Construction. A sidewalk meeting the requirements of the Ashland Street Standards shall be installed on the north side of Nevada St. from the eastern project boundary to the intersection of Nevada S. to Oak St. Sidewalk design shall be at the discretion of the Staff Advisor in order to address site constraints such as grade and right-of-way width. These sidewalk improvements shall be included in the preliminary street improvement plan included with the Final Plan application.
- 22) Solar Ordinance Compliance. The Final Plan application shall demonstrate all new structures comply with the Solar Setback A, or that each home shall receive an equivalent certification by the project architects and mechanical engineers that the shadow height on southern facing exposures will not exceed that allowed under Solar Setback A in accordance with Chapter 18.70 of the Ashland Land Use Ordinance. Alternatively, the Final Plan application may seek a Variance to solar setback requirements, if applicants can submit architectural and engineering analysis supporting a variance.
- 23) Storm water Continuing Maintenance Obligation: The Owner, and thereafter, the Association, (or the owners of units in the project in the event the Association is dissolved), shall be responsible for permanent maintenance of both on-site and off site storm water bio-engineered swales and wetland systems. Specifically, the created wetland area and storm water swale system to be constructed with the project and to be located on property exchanged with the City shall remain the maintenance obligation of the Owner, Association, its successors and assigns. Maintenance shall be coordinated and approved by the City Public Works Department and Building Division and shall be performed in accordance with approved plans by licensed contractors, hired by the Association and authorized by City Public Works to enter property for maintenance

Exhibit B

purposes.

- 24) Sworn Statement. Prior to any land clearing, alteration, or physical construction (other than survey work or environmental testing) on a site the property owner and developer, if any, shall execute a sworn statement under penalty of perjury and false swearing, that owner/developer has obtained all required Federal, State, and local authorizations, permits and approvals for the proposed development, including any proposed use, or alteration of the site, including also any off-site improvements.
- 25) Tree Protection Compliance. The Final Plan application shall address mitigation for the removal of the 25-inch dbh Oak tree (tree 39 on Tree Survey and Protection Plan, T-1, June 8, 2007). Mitigation shall meet the requirements of Ashland Land Use Ordinance 18.61.084. A Verification Permit in accordance with 18.61.042.B shall be applied for and approved by the Ashland Planning Division prior to removal of the approved Oak tree(tree 39 on Tree Survey and Protection Plan, T-1, June 8, 2007) and prior to site work, storage of materials and/or the issuance of an excavation or building permit. The Verification Permit is to inspect the tree to be removed and the installation of the tree protection fencing. The tree protection for the trees to be preserved shall be installed according to the approved Tree Protection Plan prior to site work or storage of materials. Tree protection fencing shall be chain link fencing a minimum of six feet tall and installed in accordance with 18.61.200.B.
- 26) Vision Clearance Compliance. The Final Plan application shall include revised and corrected delineation of vision clearance areas at the intersections of streets and alleys throughout the project in accordance with 18.92.070.D. Structures, signs and vegetation in excess of two and one-half feet in height shall not be placed in the vision clearance areas. Building envelopes shall be modified accordingly on the Final Plan submittals.
- 27) No Waiver. The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions. Any matter or thing required to be done pursuant to the requirements of the ordinances of the City of Ashland shall not be amended, modified or waived unless such modification, amendment or waiver is expressly provided for in this Agreement with specific reference to the provisions so modified waived or amended.



Exhibit B

- 28) Wetland Setbacks. A minimum of five feet shall be maintained between the northern pavement edge of the multi-use path and the wetland. The Final Plan application shall address the full width of the path improvement including the base materials and methods to protect the wetland during construction (i.e. sediment fencing).
- 29) Zoning Compliance. The Final Plan application shall include demonstration that the buildings in the R-1-3.5 zoning district (cottages and town homes) meet the required front yard for the R-1-3.5 zoning district.
- 30) ~~Phasing. That Phase I and Phase II refer to specific portions of the development, and the applicants shall have the ability to construct Phase II prior to Phase I, or to construct both phases at the same time. If the project is built in a single phase, 24 lots (50 percent of the total number of lots in Phase I and Phase II) would need to meet the timetable for Phase I. If the project is built in phases, whichever phase is constructed first shall include: the construction of Alameda Drive from its current terminus out to Helman Street, and the construction of Perozzi Street (formerly 'Canine Way') from Alameda Drive to the Dog Park. Both streets shall be completed according to the approved plans (including paving, curbs, gutters, sidewalks and parkrow planting strips with street trees on both sides), inspected and approved prior to the construction of any homes for either phase.~~

Phasing. That Phase I and Phase II refer to specific portions of the development, and the applicants shall have the ability to construct Phase II prior to Phase I, or to construct both phases at the same time. If the project is built in a single phase, 24 lots (50 percent of the total number of lots in Phase I and Phase II) would need to meet the timetable for Phase I. If the project is built in phases, whichever phase is constructed first shall include: the construction of Alameda Drive from its current terminus out to Nevada Street., ~~and the construction of Perozzi Street (formerly 'Canine Way') from Alameda Drive to the Dog Park. Both streets shall be completed according to the approved plans (including paving, curbs, gutters, sidewalks and parkrow planting strips with street trees on both sides), inspected and approved prior to the construction of any homes for either phase.~~ If completed in phases, Alameda Drive shall be completed according to the approved plans, but allowed to be constructed to a ½ street + 12' street standard which includes include full-width paving, curbs and gutters on both sides (unless an alternative curb and gutter treatment on the Phase II side is approved by the Public Works Director), sidewalks and parkrow planting strips with street trees on the phased side, with the

street's remaining paving, curbs, gutters, sidewalks and parkrow planting strips and street trees to be built with the remaining phase.

Perozzi Street from Alameda to the Dog Park, shall be constructed with Phase II according to the approved plans (including street signs, paving, curbs, gutters, sidewalks and parkrow planting strips with street trees on both sides), inspected and approved prior to the construction of any home. If Phase I is completed first, temporary street connections to both the Dog Park and Rice Park Townhomes shall be completed in the Preliminary Layout, Thornton Engineering, Sheet 2. These temporary connections shall be a minimum of 20 feet in width to accommodate two-way traffic and emergency vehicle access.

- 31) Multi-Use Path & Nevada Street Sidewalk Timing. That the multi-use path and the sidewalk on Nevada Street, from Helman Street to Oak Street, shall be tied to the construction of Sander Way as part of Phase II, rather than as a part of Phase I. A revised plan (*replacing Sheet R-1 from December 1, 2008*) shall be provided prior to pathway installation illustrating the proposed pathway installation and the redefined limits of the slope stabilization and associated re-vegetation and shall include the planting of additional trees both inside and outside the pathway corridor to be selected based on recommendations of Parks Department staff as to the number, type and placement. The multi-use pathway improvements shall be installed with Phase II of the development, but no later than five years following completion of the first phase.

- 32) That prior to the issuance of a Certificate of Occupancy for any particular unit, the landscaping and irrigation plan as identified in Exhibits CL-1 and CL-2 shall be installed for that particular unit. However, at the written request of the applicants, the Staff Advisor may allow for a temporary Certificate of Occupancy (not to exceed 18 months) if it is determined that particular unit's landscaping is likely to be damaged during construction of the adjacent unit. If a temporary Certificate of Occupancy is granted by the Staff Advisor, the applicants shall post a Performance Guarantee bond issued by a surety authorized to do business in the State of Oregon, irrevocable letter of credit from a survey or financial institution acceptable to the City, cash or other form of security acceptable by the Staff Advisor. At the time of the adjacent units Certificate of Occupancy, the landscaping and irrigation for the original unit shall be completed and Performance Guarantee returned or cancelled.

Exhibit B

33) That the open space areas and associated common improvements between units #1-3, units #4-13, and #14-20 shall be completed prior to the issuance of a final occupancy permit for the final unit in each cluster, and prior to completion of 100 percent of the units, 100 percent of the open spaces within Phase I, including any remaining private walkways and curbs adjacent to the private street or elsewhere within the first phase of the development and any remaining land landscaping or irrigation will be completed.

**REVISED EXHIBIT F**  
**TIMETABLE OF DEVELOPMENT – OUTLINE PLAN**  
**PHYSICAL COMMENCEMENT AND COMPLETION**  
 [ORS 94.504(4)]

This development will be constructed in phases as shown on Exhibit D to this Agreement. Phase I includes the R-1-3.5 portion of the project, twenty four cottage units, along with one single family lot. Phase II includes all other lots, the multi-use path, the sidewalk on the north side of Nevada, the Riparian Corridor and Wetland area. Phase I and Phase II may be constructed in any order or at the same time. If the project is constructed in two phases the completion of Almeda will be included in the first phase. Each phase to be constructed, and the date which Final Plan and Site Review and final plat approval of each phase must be obtained, are as follows:

**Physical commencement** of construction of any phase of development shall occur on or before January 17, 2010. †

†[Physical Commencement of Rice Park affordable housing project, a portion of Phase I, commenced on June 1, 2009.

**Completion** of all infrastructure and vertical construction, except for single family units on individual platted lots, [4 total exempt from vertical construction deadline] shall occur no later than January 17, 2023.

Phase	Final Plan and Site Review Approval	Infrastructure Completion	Final Plat and Completion of Vertical Construction
I	July 17, 2009*	July 17, <u>2020</u>	January 17, <u>2022</u>

\*[Final Plan Approval was obtained on 01-06-09 for Rice Park, a portion of Phase 1]

\*[Final Plan Approval was obtained on 01-25-09 for the remainder of Phase 1]

July 25, 2018‡ Final Civil Plan Approval (construction authorization) and any associated construction permits must be obtained and Contract for Installation and Maintenance of Plant Materials with Security submitted and executed, and construction commenced with respect to the first phase elements no later than specified.

‡[Final Civil Plan Approval (construction authorization) for Rice Park, a portion of Phase 1, was obtained on May 5, 2009.]

July 17, 2020. Complete extension of Almeda to Nevada Street as provided in Exhibit E, Condition #30, completion of construction of “Canine Way” access to Dog Park, including installation of water, sanitary sewer, storm drainage power, gas, telephone

Exhibit C

and all utilities.

July 17, 2020. Complete construction of subdivision infrastructure to the affordable housing site and complete extension of all needed public facilities to the affordable housing site. (to service 15 townhome units).

July 17, 2020. Complete construction of “subdivision” Infrastructure for the first phase.

July 17, 2020. Deadline for final survey to be signed after completion of subdivision infrastructure and before start of vertical construction for the first phase.

July 17, 2011.†† Deadline to transfer property title to Affordable Housing Tract to Rogue Valley Community Development Corporation (RVCDC) or other approved non-profit affordable housing developer. Transfer shall occur prior to vertical construction on any Phase of the project.

†† *The Affordable Housing Tract was transferred to RVCDC on December 09, 2008, upon approval of the early conveyance by the City Council on October 07, 2009.*

January 17, 2022. Vertical construction deadline for all of the first phase or 24 units (50 percent of the units in this project).

Phase	Final Plan and Site Review Approval	Infrastructure Completion	Final Plat and Completion of Vertical Construction
II	July 17, <u>2020</u>	July 17, <u>2022</u>	January 17, <u>2023</u>

January 17, 2022.‡‡ Final Civil Plan Approval (construction authorization) and any associated construction permits must be obtained and Contract for Installation and Maintenance of Plant Materials with Security submitted and executed, and construction commenced with respect to the second phase elements within 18 months of Final Plan Approval, no later than specified.

July 17, 2022. Complete construction of

Exhibit C

“subdivision” Infrastructure for the second phase including construction of Perozzi Street (formerly “Canine Way”) from Alameda to the Dog Park as provided in Exhibit E, Condition #30.

July 17, 2022. Deadline for final survey to be signed after completion of subdivision infrastructure and before start of vertical construction for the second phase.

January 17, 2023. Vertical construction deadline for the remainder of the units.

Failure to strictly comply with this timetable of development requires an amendment to this Agreement and subjects the Owner to then current laws, including but not limited to engineering construction standards, contrary to the ordinary protection of ORS 92.040. The title transfer, physical commencement and the 2023 completion deadline shall not be administratively extended.

After the construction termination date, no further development as authorized herein (except for building permits for single family units on individual platted lots) shall be allowed on the subject property unless such development is in compliance with applicable development regulations in effect at the time. Any amendment to the extent of the Amendment shall comply with the laws in effect at the time the amendment is sought.

Failure of the timetable of development to list an element of the Project does not relieve or excuse the Owner from the requirement to complete that element.

**BEFORE THE CITY COUNCIL  
AUGUST 4, 2015**

IN THE MATTER OF PLANNING ACTION #2015-00825, A REQUEST TO )  
MODIFY THE DEVELOPMENT AGREEMENT FOR THE VERDE VILLAGE )  
SUBDIVISION FOR THE PROPERTIES LOCATED AT 87 WEST NEVADA ST., )  
811 HELMAN ST., AND 127 ALMEDA DR. PROPOSED MODIFICATIONS )  
INCLUDE PARTITIONING THE PROPERTY TO BE CONSISTENT WITH THE )  
APPROVED PHASING PLAN; ADJUSTING THE PROPERTY LINES FOR LOTS )  
#3-#9 AND #15-#17; MODIFYING EXHIBIT E, CONDITION #30 OF THE )  
APPROVED DEVELOPMENT AGREEMENT AS IT RELATES TO THE )  
CONSTRUCTION AND TIMING OF STREET IMPROVEMENTS FOR BOTH )  
PEROZZI STREET AND ALMEDA DRIVE; AND ADDING TWO CONDITIONS )  
(#32 and #33) TO EXHIBIT E RELATING TO THE TIMING OF LANDSCAPING, )  
IRRIGATION, AND OPEN SPACE IMPROVEMENT INSTALLATION. )

**FINDINGS,  
CONCLUSIONS  
& ORDERS**

**APPLICANT:** URBAN DEVELOPMENT SERVICES FOR WILMA, L.L.C. )  
-----)

**RECITALS:**

- 1) Tax lots 800, 1100 and 1400-1418 of Map 39 1E 04B are located at the intersection of Helman and Nevada Streets and are zoned Single Family Residential (R-1-3.5, R-1-5 and R-1-7.5).
- 2) The proposal involves a request for a modification of the previously approved Verde Village Subdivision for the properties located at 87 West Nevada Street, 811 Helman Street and 127 Alameda Dr. The proposed modifications include partitioning the property to be consistent with the approved phasing plan, to adjust the property lines for Lots #3-#9 and #15-#17, and to modify Exhibit E, Condition #30 of the approved Development Agreement as it relates to the construction and timing of street improvements for both Perozzi Street and Alameda Drive. The site plan and detailed application materials are on file at the Department of Community Development.
- 3) The criteria for Final Plan subdivision approval or modification from the Performance Standards Options Chapter are detailed in AMC 18.3.9.040.B as follows:

**Approval Criteria for Final Plan.** *Final Plan approval shall be granted upon finding of substantial conformance with the Outline Plan. This substantial conformance provision is intended solely to facilitate the minor modifications from one planning step to another. Substantial conformance shall exist when comparison of the outline plan with the final plan meets all of the following criteria.*

- a. *The number of dwelling units vary no more than ten percent of those shown on the approved outline plan, but in no case shall the number of units exceed those permitted in the outline plan.*

- b. *The yard depths and distances between main buildings vary no more than ten percent of those shown on the approved outline plan, but in no case shall these distances be reduced below the minimum established within this Ordinance.*
- c. *The open spaces vary no more than ten percent of that provided on the outline plan.*
- d. *The building size does not exceed the building size shown on the outline plan by more than ten percent.*
- e. *The building elevations and exterior materials are in conformance with the purpose and intent of this ordinance and the approved outline plan.*
- f. *That the additional standards which resulted in the awarding of bonus points in the outline plan approval have been included in the final plan with substantial detail to ensure that the performance level committed to in the outline plan will be achieved.*
- g. *The development complies with the Street Standards.*
- h. *Nothing in this section shall limit reduction in the number of dwelling units or increased open space provided that, if this is done for one phase, the number of dwelling units shall not be transferred to another phase, nor the open space reduced below that permitted in the outline plan.*

4) The criteria for Site Design Review are detailed in AMC 18.5.2.050 as follows:

- A. ***Underlying Zone:*** *The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*
- B. ***Overlay Zones:*** *The proposal complies with applicable overlay zone requirements (part 18.3).*
- C. ***Site Development and Design Standards:*** *The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*
- D. ***City Facilities:*** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.*
- E. ***Exception to the Site Development and Design Standards:*** *The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.*
  - 1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the*



*minimum which would alleviate the difficulty.; or*

2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.*
- 5) The City Council, following proper public notice, held a public hearing on July 21, 2015 at which time testimony was received and exhibits were presented. Following the close of the public hearing, the City Council approved the requested modifications including partitioning the property to be consistent with the approved phasing plan; adjusting the property lines for Lots #3-#9 and #15-#17; modifying Exhibit E, Condition #30 of the approved Development Agreement as it relates to the construction and timing of street improvements for both Perozzi Street and Alameda Drive, and adding two additional conditions to Exhibit E dealing with the phasing of the installation of landscaping and irrigation (#32) and open space improvements (#33).

Now, therefore, the City Council of the City of Ashland finds, concludes and orders as follows:

## SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the attached index of exhibits, data, and testimony will be used.

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

Hearing Minutes, Notices, Miscellaneous Exhibits lettered with an "M"

## SECTION 2. CONCLUSORY FINDINGS

2.1 The City Council finds that it has received all information necessary to make a decision based on the staff report, public hearing testimony and the exhibits received.

2.2 The City Council finds that the proposal for modifications of the Development Agreement for the Verde Village Subdivision including: partitioning the property to be consistent with the approved phasing plan; adjusting the property lines for Lots #3-#9 and #15-#17; modifying Exhibit E, Condition #30 of the approved Development Agreement as it relates to the construction and timing of street improvements for both Perozzi Street and Alameda Drive, and adding two additional conditions to Exhibit E dealing with the phasing of the installation of landscaping and irrigation (#32) and open space improvements (#33); meets all applicable

criteria for a modification of Final Plan approval described in Chapter 18.3.9.040.B and for the approval of Site Design Review described in Chapter 18.5.2.050. The City Council further finds that the originally adopted findings for the Verde Village Subdivision and the associated Development Agreement and its subsequent modifications shall remain in effect except as specifically modified herein.

2.3 The City Council finds that that the Development Agreement requires in 21.2 that, *“Amendment... of this agreement shall be made by adoption of an Ordinance.... The procedures and requirements for amendment... are the same as for approval of a Development Agreement, currently notice and hearing before the Planning Commission with a recommendation from the Planning Commission.”* The Council further finds that the Planning Commission conducted a public hearing on the request at its regular meeting of July 14, 2015 and recommended that the Council approve the request.

2.4 The City Council finds that the first proposed modification involves partitioning the property to be consistent with the approved phasing plan. The application materials provided explain that the proposed modification would legally separate the subdivision’s two already-approved phases in order to obtain project financing for Phase I, as illustrated on the application Sheet #1 Minor Modification Plan. Phase I could then be sold to a third party whereas Phase II would remain under the original applicants’ ownership. Once the initial partition plat is recorded, construction financing to complete the necessary utility infrastructure, including both public and private streets within Phase I would be installed. Once the public street’s infrastructure is complete and prior to any vertical construction, the subdivision’s Phase I plat would be recorded and house construction within Phase I could occur. The application emphasizes that the ultimate number of lots in the development does not increase or decrease with the proposal, and that the modification proposed simply allows the already approved phases to be separated so that they can be sold to obtain financing and develop each according to the approved Development Agreement.

The application further notes that the proposed modification would correct an omission that occurred during the original platting of the Rice Park Townhomes from the larger subdivision. The application explains that Lot #25 is technically part of the Phase I area but when the northern portion of Alameda Drive was dedicated to the city, this parcel appears was separated.

In reviewing the original treatment of Lot #25 in Planning Action #2008-01853, the Council finds that Lot #25 was included in the Final Plan approval for Phase I of the subdivision which also included Site Review approval for the 24 cottages, and it appears that with dedication of the right-of-way for Alameda Drive and Perozzi Street to the city, Lot #25 inadvertently became a separate tax lot. However, condition #9j of the Phase I final plan approval made clear, *“.... The single family lot (Lot #25) in Phase I and all single-family units in Phase II shall be included in the homeowners’ association and subject to all subdivision requirements.”*

The City Council finds that there are no significant issues with the partitioning of the property to reflect the two approved phases and allow them to be sold to obtain financing and move the originally approved development forward. With regard to Lot #25, the Council finds that it is important to make clear that it is to remain part of Phase I, and to be included in the homeowners' association and subject to the CC&R's and all subdivision requirements as originally required in the final plan approval.

2.5 The City Council finds that the application also requests to modify the property lines located at the side and rear of Lots #3-9 and #15-17, adjacent to the existing residences within the Quiet Village Subdivision. The application emphasizes that the landscaping plan and house footprints are to remain as is, however the yard areas around the cottages are proposed to become private landscaped yard areas. The application explains that the adjustment as proposed will not reduce the available land originally set aside as open space, which will remain unchanged.

In addition, the application notes that due to the style of the subdivision with multiple integrated and shared amenities such as shared private sidewalks, open parking spaces, open common areas, shared garden beds, etc., the applicants are also requesting some flexibility with regard to the timing of each home's landscaping and irrigation installation in order to avoid damage and unnecessary expense. The applicants explain that in a typical subdivision where each unit abuts on a public street, construction can be staged from the street or the private lot and the home's landscaping, irrigation and sidewalks are installed prior to occupancy. However, as proposed here, staging and construction may need to occur from a shared common area that could damage landscaping and irrigation if the units were built at different times. The applicants are therefore asking that a new condition (#32) be added to the Development Agreement stating, *"That prior to the issuance of a Certificate of Occupancy for any particular unit, the landscaping and irrigation plan as identified in Exhibits CL-1 and CL-2 shall be installed for that particular unit. However, at the written request of the applicants, the Staff Advisor may allow for a temporary Certificate of Occupancy if it is determined that particular unit's landscaping is likely to be damaged during construction of the adjacent unit. If a temporary Certificate of Occupancy is granted by the Staff Advisor, the applicants shall post a Performance Guarantee bond issued by a surety authorized to do business in the State of Oregon, irrevocable letter of credit from a survey or financial institution acceptable to the City, cash or other form of security acceptable by the Staff Advisor. At the time of the adjacent units Certificate of Occupancy, the landscaping and irrigation for the original unit shall be completed and Performance Guarantee returned or cancelled."*

The applicants also explain that they intend to complete the majority of the private street's infrastructure within the initial phase of construction, including the adjoining curbing, lighting and parking lot striping. However, some areas likely to be damaged by heavy equipment including private paths and some curbs are proposed to remain temporarily unfinished to allow for equipment access. The application indicates that prior to occupancy of 50 percent of the units, 50 percent of the open space area shall be complete as approved and prior to completion of

100 percent of the units, 100 percent of the open spaces within Phase I, including any remaining private walkways and curbs adjacent to the private street or elsewhere within the first phase of the development and any remaining land landscaping or irrigation will be completed. The application concludes that this proposed modification will not increase or decrease the number of parcels, alter the subdivision boundaries or change building locations, sizes or envelopes, and only involves adjustments to the lot lines for a portion of the lots to improve the homes' livability for future occupants.

The City Council finds no significant issues with allowing the requested adjustment of property lines for these units or the allowance for some flexibility in the timing of completion of landscaping and irrigation improvements to allow for the construction of adjacent units. However, the Council finds that there needs to be a clearer correlation between the completion of the individual open space areas and the units surrounding them, and the Council accordingly finds that the applicants' proposal must be modified somewhat to require that the open space areas and associated common improvements between units #1-3, units #4-13, and #14-20 be completed with the completion of each cluster of units; language to this effect is reflected in the modified Condition #33 below.

2.6 The City Council finds that the existing Condition #30 reads as follows:

- 30) **Phasing.** That Phase I and Phase II refer to specific portions of the development, and the applicants shall have the ability to construct Phase II prior to Phase I, or to construct both phases at the same time. If the project is built in a single phase, 24 lots (50 percent of the total number of lots in Phase I and Phase II) would need to meet the timetable for Phase I. If the project is built in phases, whichever phase is constructed first shall include: the construction of Alameda Drive from its current terminus out to Helman Street, and the construction of Perozzi Street (formerly 'Canine Way') from Alameda Drive to the Dog Park. Both streets shall be completed according to the approved plans (including paving, curbs, gutters, sidewalks and parkrow planting strips with street trees on both sides), inspected and approved prior to the construction of any homes for either phase.

The City Council further finds that the applicants propose that this condition be modified to read as follows:

- 30) **Phasing.** That Phase I and Phase II refer to specific portions of the development, and the applicants shall have the ability to construct Phase II prior to Phase I, or to construct both phases at the same time. If the project is built in a single phase, 24 lots (50 percent of the total number of lots in Phase I and Phase II) would need to meet the timetable for Phase I. If the project is built in phases, whichever phase is constructed first shall include: the construction of Alameda Drive from its current terminus out to Helman Street, ~~and the construction of Perozzi Street (formerly 'Canine Way') from Alameda Drive to the Dog Park. Both streets shall be completed according to the approved~~

~~plans (including paving, curbs, gutters, sidewalks and parkrow planting strips with street trees on both sides), inspected and approved prior to the construction of any homes for either phase.~~ If completed in phases, Alameda Drive shall be completed according to the approved plans, but allowed to be constructed to a ½ street + 12' street standard which includes paving, curbs, gutters, sidewalks and parkrow planting strips with street trees on the phased side, with the street's remaining paving, curbs, gutters, sidewalks and parkrow planting strips and street trees to be built with the remaining phase.

Perozzi Street from Alameda to the Dog Park, shall be constructed with Phase II according to the approved plans (including paving, curbs, gutters, sidewalks and parkrow planting strips with street trees on both sides), inspected and approved prior to the construction of any home. If Phase I is completed first, temporary street connections to both the Dog Park and Rice Park Townhomes shall be completed in the Preliminary Layout, Thornton Engineering, Sheet 2.

The application emphasizes that this modification would not alter the approval, but would instead clarify or address elements of real estate planning that are necessary to obtain real estate financing and provide a more logical infrastructure timeframe. If both streets were required to be completed with Phase I as currently conditioned, it would necessitate the installation of all necessary utility infrastructure for Phase II in the street corridor before completing the street improvements, and would burden the first phase financially to a degree that obtaining project financing could be difficult or impossible to obtain, compromising the ability to complete the subdivision.

The Council finds that the basis for the current Condition #30 was to insure both that city standard street improvements would be installed as approved and that paved access to the Rice Park affordable housing and Dog Park would be provided so that neither was in the position or relying on limited, temporary access measures should a second phase be delayed.

The Council further finds that a phased installation of street improvements is consistent with city standards and in keeping with the original approval, however the description of a 'half-street plus 12 feet' is somewhat confusing as a half-street improvement has typically meant sidewalks, park rows, curbs, and gutters on one side, with at least 20 feet of paving. An additional 12 feet of paving would approach the originally approved full paved width of the street. Given the potential length of time provided in the Development Agreement for completion of the project, drainage and maintenance issues, and the need to accommodate required on-street parking and circulation for the subdivision, park and surrounding neighborhood, the Council recommends that the improvement be the full paved width of the street, with curbs on both sides of Alameda Drive for its full extent (*unless the Public Works Director will accept an alternative curb treatment on the Phase II side*) with sidewalks, parkrows and street trees to be completed on the other side with the second phase. Language to this effect has been added in the conditions below, modifying the applicants' proposed language for Condition #30.

The Council similarly finds that the proposed paved driveway connection from the new installation of Alameda Drive to the current Dog Park access drive and the connection between this access and the Rice Park driveway to provide ingress, egress and emergency vehicle access address the underlying intent of the original condition. However, the Council finds that the Municipal Code requires a width of at least 20 feet for driveways serving seven or more parking spaces to accommodate the potential for two-way traffic as well as emergency vehicle access, and the Council has accordingly required that the paved width be increased to a minimum of 20 feet in the condition language below.

The Council further finds that the original land use approval included the original applicants being responsible for utilities which were connected through both phases and served adjacent properties as well, including the undergrounding of an existing overhead three-phase electrical line which also feeds the city's wastewater treatment plant, and there is the potential that the infrastructure installation associated with Phase I may trigger some utility improvements which go beyond its boundaries. The applicants have been made aware of this issue and advised to coordinate with the utility providers. Final engineered utility plans were under review some time ago detailing the required infrastructure improvements, however these plans never received final approval before the development stalled, and the Council accordingly finds that revised engineered drawings clearly detailing the subdivision improvements necessary, and proposed phasing of their installation, shall be resubmitted for final review.

### **SECTION 3. RECOMMENDATION**

3.1 Based on the record of the Public Hearing on this matter, the City Council concludes that the application for modification of the Development Agreement for the Verde Village Subdivision including partitioning the property to be consistent with the approved phasing plan; adjusting the property lines for Lots #3-#9 and #15-#17; modifying Exhibit E, Condition #30 of the approved Development Agreement as it relates to the construction and timing of street improvements for both Perozzi Street and Alameda Drive, and adding two additional conditions to Exhibit E dealing with the phasing of the installation of landscaping and irrigation (#32) and open space improvements (#33); has satisfied all relative substantive standards and criteria and is supported by evidence in the record.

The Verde Village project envisioned a unique mix of housing types and energy conserving housing that Ashland has not seen before in a subdivision, and included connectivity improvements to better serve the now constructed affordable housing in Rice Park, the Dog Park, the Bear Creek Greenway and the surrounding community. The merits of the project remain years following its approval and it is unfortunate that the economic downturn of the "Great Recession" has jeopardized realization of the applicants' original vision for the development. The Planning Commission and Council have previously expressed support for modifications of the approved timetable of development to give the applicants as much opportunity as allowed under city and state regulations to make the project happen, and the Council is pleased that there is renewed interest in moving the project forward. The Council is

supportive of the modifications proposed, and accordingly approves the request subject to the following conditions:

- 1) All conditions of the applicant shall be conditions of approval unless otherwise specifically modified herein.
- 2) All conditions of the previous land use approvals and the approved Development Agreement and subsequently approved modifications shall remain conditions of approval unless otherwise specifically modified herein, including but not limited to the requirement that safe and free public access, and associated temporary public access easements, to the Dog Park and Bear Creek Greenway be maintained during development; that the single-family zoned Lot #25 in Phase I shall be included in the homeowners' association and subject to the CC&R's and all subdivision requirements as required in the original Final Plan approval; and that the final engineered drawings detailing the installation and phasing of public utility and street, sidewalk and private drive improvements shall be approved prior to the issuance of an excavation permit or commencement of any construction.
- 3) That the wording of the existing Condition #30 of the Development Agreement's "Revised Revised Exhibit E, Verde Village Special Conditions" shall be modified to read as follows:

***Phasing.*** *That Phase I and Phase II refer to specific portions of the development, and the applicants shall have the ability to construct Phase II prior to Phase I, or to construct both phases at the same time. If the project is built in a single phase, 24 lots (50 percent of the total number of lots in Phase I and Phase II) would need to meet the timetable for Phase I. If the project is built in phases, whichever phase is constructed first shall include: the construction of Alameda Drive from its current terminus out to Helman Street, ~~and the construction of Perozzi Street (formerly 'Canine Way') from Alameda Drive to the Dog Park. Both streets shall be completed according to the approved plans (including paving, curbs, gutters, sidewalks and parkrow planting strips with street trees on both sides), inspected and approved prior to the construction of any homes for either phase.~~ If completed in phases, Alameda Drive shall be completed according to the approved plans, but allowed to be constructed to a ~~1/2~~ street + 12' street standard which includes include full-width paving, curbs and gutters on both sides (unless an alternative curb and gutter treatment on the Phase II side is approved by the Public Works Director), sidewalks and parkrow planting strips with street trees on the phased side, with the street's remaining paving, curbs, gutters, sidewalks and parkrow planting strips and street trees to be built with the remaining phase.*

***Perozzi Street from Alameda to the Dog Park, shall be constructed with Phase II according to the approved plans (including street signs, paving, curbs, gutters, sidewalks and parkrow planting strips with street trees on both sides), inspected and approved prior to the construction of any home. If Phase I is completed first, temporary street connections to both the Dog Park and Rice Park Townhomes shall be completed in the Preliminary Layout, Thornton Engineering, Sheet 2. These temporary connections shall be a minimum of 20 feet in width to accommodate two-way traffic and emergency vehicle access.***

- 4) That a new Condition #32 be added to the Development Agreement’s “Revised Revised Exhibit E, Verde Village Special Conditions” to read as follows:

*That prior to the issuance of a Certificate of Occupancy for any particular unit, the landscaping and irrigation plan as identified in Exhibits CL-1 and CL-2 shall be installed for that particular unit. However, at the written request of the applicants, the Staff Advisor may allow for a temporary Certificate of Occupancy (not to exceed 18 months) if it is determined that particular unit’s landscaping is likely to be damaged during construction of the adjacent unit. If a temporary Certificate of Occupancy is granted by the Staff Advisor, the applicants shall post a Performance Guarantee bond issued by a surety authorized to do business in the State of Oregon, irrevocable letter of credit from a survey or financial institution acceptable to the City, cash or other form of security acceptable by the Staff Advisor. At the time of the adjacent units Certificate of Occupancy, the landscaping and irrigation for the original unit shall be completed and Performance Guarantee returned or cancelled.*

- 5) That a new Condition #33 be added to the Development Agreement’s “Revised Exhibit E, Verde Village Special Conditions” to read as follows:

That the open space areas and associated common improvements between units #1-3, units #4-13, and #14-20 shall be completed prior to the issuance of a final occupancy permit for the final unit in each cluster, and prior to completion of 100 percent of the units, 100 percent of the open spaces within Phase I, including any remaining private walkways and curbs adjacent to the private street or elsewhere within the first phase of the development and any remaining land landscaping or irrigation will be completed.

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Mayor

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Date