

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

**AN ORDINANCE APPROVING THE "VERDE VILLAGE DEVELOPMENT AGREEMENT," AN AGREEMENT BETWEEN THE CITY OF ASHLAND OREGON AND ASHLAND FLOWER SHOP AND GREENHOUSES, INC., PURSUANT TO ORS CHAPTER 94 AND THE ASHLAND MUNICIPAL CODE**

**Recitals:**

The City of Ashland City Council after consideration of the staff report, the recommendation of the planning commission, and the comments and evidence presented during the public hearings on the requested Verde Village Development Agreement between the City of Ashland, Oregon and Ashland Flower Shop and Greenhouses, Inc., finds and determines that the proposed Verde Village Development Agreement is in the best interest of the public health, safety and welfare of the City of Ashland, meets a public need and provides a public benefit and that said Agreement is consistent with all applicable City of Ashland Laws and Ordinances; and

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

Annotated to show deletions and additions to the code sections being modified. Deletions are <del>lined through</del> and additions are <u>underlined</u> .
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**Section 1.** The above recitations are true and hereby incorporated herein by this reference.

**Section 2.** The City of Ashland declares the approval and adoption of the Verde Village Development Agreement (together with all Exhibits and documents attached thereto and incorporated therein) said Development Agreement being attached to this Ordinance as **Attachment 1** and made a part hereof by this reference.

**Section 3.** The adoption of this Ordinance declaring approval of the Verde Village Development Agreement, together with the conditional approval of the requested real property land exchange, and conditional approval of all land use applications contained in File # PA-2006--01663, (including but not limited to annexation, withdrawal from fire district 5, comprehensive plan map change, zoning map change, outline plan approval, two street exceptions, environmental constraints permit and tree removal permit) are fully supported buy evidence contained in the whole record, including specifically the evidence and application materials supporting the Findings of Fact, Conclusions of Law and Order on PA-2006-01663, and the Findings of Fact, Conclusions of Law and Order on Real

Property Exchange, attached to this Ordinance as **Attachment 2** and **Attachment 3** respectively, and made a part hereof by this reference.

**Section 4.** The Ordinance shall be effective after execution of the Verde Village Development Agreement by both the City and the Ashland Flower Shop and Greenhouses, Inc., but not earlier than thirty (30) days after the second reading of this Ordinance and signature by the Mayor. Individual approvals shall be effective upon compliance with all terms and conditions as more fully set forth in the Development Agreement, and Findings of Fact, Conclusions of Law and Orders.

**Section 5.** Severability. If any section, provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other sections, provisions, clauses or paragraphs of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**Section 6.** Codification. Provisions of this Ordinance shall be incorporated in the Ashland Municipal Code and the word "ordinance" may be changed to "code", "article", "section", or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that attachments to the Ordinance, Whereas clauses and boilerplate provisions need not be codified.

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 \_\_\_\_\_, 2007, and duly PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Barbara Christensen, City Recorder

SIGNED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
John W. Morrison, Mayor

Approved as to form:

\_\_\_\_\_  
Richard Appicello, Interim City Attorney

## **DEVELOPMENT AGREEMENT FOR VERDE VILLAGE**

**This Agreement** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between **CITY OF ASHLAND**, a municipal corporation and political subdivision of the State of Oregon (hereinafter referred to as "**City**"); and **ASHLAND FLOWER SHOP AND GREENHOUSES, INC.**, an Oregon corporation (hereinafter referred to as "**AFSG**").

### **RECITALS**

**WHEREAS**, AFSG is the owner of real property located on West Nevada Street in Ashland near the terminus of Helman Street (a portion of which is currently outside City's limits, but within City's Urban Growth Boundary); and,

**WHEREAS**, AFSG desires to develop three (3) Planned Unit Developments (Single Family, Cottage and Townhome Communities) consisting of, *inter alia*:

68 residences, in a variety of formats: (1) 25 Single Family Homes, approximately 2500 SF maximum, 19 as detached units and 6 attached units, some with attached garages, a common green space, surface conveyance of storm water in constructed treatment wetlands; (2) 24 Cottages, approximate size 800-1200 SF, of which 10 are duplexed, featuring community gardens, units clustered around open space and group parking with no garages; (3) 15 Townhome units, approximate size 900-1200 SF, with common open space and play area, developed as an Affordable Housing Project by Rogue Valley Community Development Corporation; and four additional standard residential lots for individual sale;

said development to be known as "**Verde Village**" more particularly described in the application, including but not limited to Revised Outline Plan Narrative – Book III, with Sub-Exhibits A through U, and Appendices, supporting documents, materials and official plans, in the Planning Department File #2006-01663, incorporated herein and made a part hereof by this reference; and

**WHEREAS**, Verde Village is proposed as a sustainable residential development featuring "Net Zero Energy Homes" (residences which can potentially produce as much energy annually as they consume) and AFSG hopes that Verde Village will serve as a prototype for sustainable development, and concurrently serve as an example of

economically feasible “green development” for builders in other communities throughout the Northwest; and,

**WHEREAS**, to realize the development of Verde Village, numerous City, County, State and Federal approvals and authorizations are required, including but not limited to:

1. Real Property exchange between AFSG and the City of Ashland, including Federal, State, County and City acceptance of the exchange;
2. Annexation;
3. Comprehensive Plan Map Change;
4. Zoning Map Change;
5. Outline Plan Approval;
6. Street Exceptions;
7. Physical Environmental Constraints Permit;
8. Tree Removal Permit.

**WHEREAS**, efficiency, public policy, and community involvement are best promoted if the various public processes and approvals required for the required real property exchange, annexation, comprehensive plan amendment, zone map change, and other land use approvals necessary to approve Verde Village are “bundled” for global consideration; and,

**WHEREAS**, AFSG and City agree that a Development Agreement pursuant to ORS Chapter 94 is the best tool to bundle the required approvals to achieve consolidated review and action on the approvals necessary for the Verde Village Project and,

**WHEREAS**, a decision to enter into a Development Agreement is a negotiated legislative land use decision by the City addressing the orderly and efficient development of land within the City’s urban growth boundary; and,

**WHEREAS**, on July 10, August 14, and August 28, 2007, City’s Planning Commission considered this proposed Development Agreement at a public hearing held in accordance with the notice and advertising requirements of the Ashland Land Use Ordinance and the Oregon Revised Statutes, and said Commission then recommended approval of the Development Agreement to City’s Council; and,

**WHEREAS**, on November 6, 2007 and November 20, 2007, City’s Council considered this Development Agreement at a public hearing held in accordance with the notice and advertising requirements of the Ashland Land Use Ordinance, the Oregon Revised Statutes [ORS 94.513(2)] and local policies; and,

**WHEREAS**, on November 20, 2007, the City's Council deliberated on the proposed Development Agreement and tentatively approved the requested agreement, land exchange and associated land use actions,

**WHEREAS**, on December 4, 2007 the City's Council conducted and approved the First Reading of an Ordinance declaring the approval of the Development Agreement, and associated approvals; and

**WHEREAS**, on December 19, 2007 the City's Council conducted and approved the Second Reading of an Ordinance approving the Development Agreement, and associated approvals with an effective date of January 17, 2007;

**WHEREAS**, City's Council finds and determines that this Development Agreement is consistent with City's Comprehensive Plan, the applicable provisions of City's Land Use Ordinance and provisions of the Oregon Revised Statutes in effect at the time of entering into the Development Agreement pursuant to ORS 94.508; and

**WHEREAS**, City has authority to enter into this Development Agreement and to adopt a City Ordinance, pursuant to ORS 94.508(2), approving this Development Agreement pursuant to City's Charter, City's Land Use Ordinance, and ORS 94.504 through ORS 94.528.

**WHEREAS**, the adoption of the ordinance approving the Verde Village Development Agreement, land exchange, annexation, comprehensive plan map change, zoning map change, outline plan approval, street exceptions, environmental constraints permit and tree removal permit, [PA #2006-01663], is fully supported by evidence in the whole record, including specifically the evidence supporting the Findings of Fact, Conclusions of Law and Order(s), attached to the Ordinance approving this Agreement as Attachment 2 and 3 and made a part hereof by this reference.

**NOW, THEREFORE, in consideration of the mutual promises and performance obligations of each party as set out in this Agreement, the City and AFSG do hereby agree as follows:**

**1.0 RECITALS.** The above Recitals are true and correct and are incorporated herein by this reference.

**2.0 INTENT AND PURPOSE.**

This Development Agreement is intended to facilitate, control and manage the development of the Verde Village project within the City of Ashland. The Ordinance

***Ordinance Attachment 1 - DEVELOPMENT AGREEMENT FOR VERDE VILLAGE***

approving the Development Agreement “bundles” required approvals for consolidated consideration and approval as well as enumerating the special terms, conditions and requirements of development, including a timetable of development, negotiated and agreed to by the City and AFSG.

### **3.0 LEGAL AND EQUITABLE OWNERSHIP.**

AFSG, an Oregon corporation, represents and warrants that it is the fee owner of the following real property located on West Nevada Street in Ashland near the terminus of Helman Street, (a portion of which is currently outside City’s limits, but within City’s Urban Growth Boundary): (39-1E-4BB, Tax Lots 700, 800 & 900) (39-1E-4B, Tax Lots 800 & 1100) City represents and warrants that it is the fee owner of real property adjacent to AFSG holdings, commonly referred to as the City’s Dog Park, more particularly described as follows: (39-1E-04BB, Tax Lot 200) City’s property is subject to limitations concerning a Federal Land and Water Conservation Funds and Jackson County deed limitations.

**3.1** Within the identified AFSG’s holdings, AFSG owns a parcel of property which is identified on City’s Parks, Trails and Open Space Master Plan Map for long-term acquisition by City (identified as Long-Term Acquisition Area “10” on said Map). A portion of the Dog Park property serves as ingress and egress to City’s Dog Park, but said access could be better utilized if that portion of the City’s parcel was exchanged for the identified portion of the AFSG holdings and standard street access to the Dog Park was provided. The appraised value of the City’s Dog Park access property is less than the appraised value of AFSG’s property proposed for exchange. AFSG and City desire to enter into a real property exchange pursuant to ORS 271.300, *et seq.*, in which City will convey to AFSG a portion of real property currently owned by City (“City’s Parcel”); and AFSG will concurrently convey to City a portion of real property currently owned by AFSG (“Williams Property”). This real property exchange is more fully described in Section 10.0 below and in the Findings attached to the Ordinance approving the Development Agreement.

**3.2** After the real property exchange is completed with the City as contemplated in the Agreement, AFSG, an Oregon corporation ), its successors or assigns, will be the fee owner of the “Verde Village Property”, including specifically the real property described and shown in **Exhibit A** attached hereto and made a part hereof by this reference.

### **4.0. DEFINITIONS.**

4.1 “AFSG” means Ashland Flower Shop and Greenhouses, Inc., an Oregon Corporation (principals: Gregory D. Williams, President; and Valri Williams, Secretary).

4.2 "ALUO" means Chapter 18 of the Ashland Municipal Code, known as the Ashland Land Use Ordinance.

4.3 "Agreement" means this Development Agreement, entered into between the parties pursuant to ORS 94.504 through ORS 94.528.

4.4 "Applicant" means AFSG, their successors and assigns.

4.5 "City" means the City of Ashland, Oregon.

4.6 "Council" means the City of Ashland's City Council and Mayor.

4.7 "Planning Commission" means the City of Ashland's duly appointed Planning Commission.

4.8 "City Property" means that portion of real property, approximately 1.54 acres in size, which is currently owned by City and proposed to be exchanged for a portion of the "Williams' Property" as part of the real property exchange described in this Agreement. It is generally that portion of real property serving as the current access to City's Dog Park, and is more specifically described in the "Dog Park Property" Appraisal Report as "portion to be traded" in the Appraisal Report for the City Property included in the Record, as well as the June 8, 2007 Revised Outline Plan Narrative: Sub-Exhibits A, B, C, M, N-1, and Q in the record.

4.9 "Comprehensive Plan" means the City of Ashland's Comprehensive Plan, as amended.

4.10. "Dog Park Property" means the entire collection of tax lots under City ownership prior to the date of the Agreement and more fully described in the Dog Park Property Appraisal Report for the City Property included in the Record. Only a portion of the Dog Park Property is to be exchanged for the Williams Property pursuant to this Agreement, as described in the Appraisal Report for the City Property included in the Record, as well as the June 8, 2007 Revised Outline Plan Narrative: Sub-Exhibits A, B, C, M, N-1, and Q in the record.

4.11 "ORS" means the Oregon Revised Statutes, as amended.

4.12 "Owner" means AFSG, their successors and assigns.

4.13 "Verde Village" and "Verde Village Project", and "Project" mean the AFSG residential subdivision project approved by City pursuant to this Agreement, as described in the record, including the June 8, 2007 Revised Outline Plan Narrative.

4.14 "Verde Village Property" means the real property to be owned by AFSG after the herein described real property exchange is consummated. This includes the real property owned by AFSG prior to the date of this Agreement (but not including the "Williams Property" to be exchanged), coupled with the access portion of the City's Dog Park Property ("City Property") to be exchanged for the "Williams Property" pursuant to this Agreement, as more fully described in the Record of this proceeding.

4.15 "Williams Property" means that portion of the real property, approximately 2.78 acres in size, which is currently owned by AFSG, and which borders Ashland Creek. The "Williams Property" is more specifically described in the Williams Property Appraisal Report in the Record as "portion to be traded". The Williams Property is to be

exchanged for the City Property which currently serves as access to the Dog Park, as more specifically described in the Dog Park Property Appraisal Report in the Record. 4.16 "Real Property Exchange" means transferring or conveying real property currently owned by City in exchange for the reciprocal transfer or conveyance of real property owned by a private party pursuant to ORS 271.310 through ORS 271.330. As used herein, "Real Property Exchange" refers specifically to trading the 2.78-acre "Williams Property" in exchange for the 1.54-acre "City Property", as per the detailed map in the June 8, 2007 Revised Outline Plan Narrative: Sub-Exhibit "N-1" .

**5.0 UNIFIED CONTROL.**

The Owner hereby warrants that he has or will have pursuant to this Agreement unified ownership of all real property included in the Verde Village Property, as set forth in **Exhibit A.** "Verde Village Property" means the real property currently owned or to be owned by AFSG. Documents certifying title are attached hereto and incorporated herein as **Exhibit B.** A covenant of Unified Control by the Owner is attached hereto and incorporated herein as **Exhibit C.**

**6.0 DEVELOPMENT PLAN USES, DENSITY, INTENSITY, HEIGHT.**

[ORS 94.504(2)(b)(c)(d)]

The Owner agrees that Verde Village will be undertaken and carried out in accordance with this Agreement and with the following:

**6.1** The permitted development uses, maximum densities, intensities, building height, and dimensions permitted for Verde Village shall be those specifically set forth below and as depicted on the approved outline plan, final plan and plat and final civil plans (engineering construction approval) and associated permits:

**Density or Intensity:** Up to 68 residential units; 6.57 units per acre (68 units on approximately 10.37 acres).

This Project is subject to a minimum density of 90% of the base density for the zone, pursuant to ALUO 18.106.030(F). Accordingly future development of the Verde Village property shall comply with the minimum density set forth on this agreement and the approved plans. 7/20/07: Revisions to Area and Density Tables

**Maximum Height:** Not to exceed 35 feet



**Maximum Structure Size:** (No structure size limit per se). The construction of all structures within the Project shall be governed by the size and dimension criteria (e.g. setbacks) set forth in this Agreement and reflected on the Outline Plan for the Project. When not specifically addressed the coverage limitations and other requirements of the following zones shall be met:

- R-1-3.5: up to 55% of total lot area
- R-1-5: up to 50% of total lot area
- R-1.7.5: up to 45% of total lot area

**Permitted uses of property:** The uses permitted within Verde Village, including three (3) separate PUDs and 4 individual lots shall be those uses indicated on the Outline Plan together with such accessory uses as may customarily be associated with the permitted uses. When not specifically addressed, the uses, standards, regulations, limitations and restrictions of the following zones shall be met in the designated areas:

- R-1-3.5 Townhome Area PUD
- R-1-5 Cottage Area PUD
- R-1.5 Single Family PUD & (3) Nevada Lots
- R-1-7-5 (1) single family lot on Alameda

The permitted uses, density and intensity of uses, and other aspects of the development requirements on the Verde Village Project shall also be governed by this Agreement and the City Council Findings of Fact, Conclusions of Law and Order concerning the development.

**6.2** It is agreed and understood that, unless otherwise expressly stated herein, the provisions of the City's Municipal Code, City's ALUO, City's Comprehensive Plan, and City's other rules and policies governing development of land were applied by City in considering and entering into this Development Agreement, to the extent such Code provisions, Ordinances, Comprehensive Plan provisions, rules and policies existed on the date of this Agreement. [ORS 94.518].

- (a) It is agreed and understood that the development of Verde Village will be undertaken and carried out in accordance with this Agreement, the outline plan approval, final plan and final plat, civil engineering approval (construction plans) and

applicable construction permits, and associated City approvals, as officially approved or to be approved and adopted by the City, and in strict compliance with the approved timetable of development.

(b) It is agreed and understood that the development of Verde Village authorized by the preliminary approval (outline plan) stage, includes no actual physical commencement of construction but only development of detailed Final Plan and Site Review Approvals and Final Civil (Engineering) Plans and Specifications, and that such plans comply with the laws and ordinances, including engineering standards then in effect, and shall also conform with and be accomplished pursuant to this Agreement as well as the outline plan approval, a copy of which is attached hereto as **Exhibit D** and made a part hereof by this reference.

(c) It is agreed and understood that the development of this PUD at Final Plan and Site Review Approval stage, including but not limited to infrastructure construction, shall be accomplished in accordance with the approved Final Plan and Site Review Approval, as well as the Final Civil Plan Approval, (construction plan authorization) and applicable construction permits to be approved by the Ashland Engineering Department, in accordance with such laws, ordinances and regulations, including engineering standards as were in effect at the time of the final plan application is deemed complete.

(d) It is agreed and understood that the remaining development of this PUD must be accomplished in accordance with the final plat or plats to be approved by the City in accordance with such laws, ordinances and regulations as may be in effect at the time the final plat application is deemed complete.

(e) When not specifically addressed in this Agreement, and except as provided for subdivision infrastructure construction in ORS 92.040, all permits and authorizations for the development of this PUD project shall be in accordance with the law in effect at the time further development permits or authorizations are sought.

**6.3** The special conditions and requirements adopted or imposed by the City in the process of the approval of the outline plan and PUD for the property which requirements are set forth in **Exhibit E**, attached hereto and made a part hereof, shall be strictly adhered to by the Owner.

## **7.0 TIMETABLE OF DEVELOPMENT AND PHYSICAL COMMENCEMENT.**

[ORS 94.504(4)]

The timetable for development, including commencement and completion dates, as officially approved and adopted by the City and agreed to by Owner, are described and shown in **Exhibit F**, attached hereto and made part hereof by this reference. The timetable shall be strictly adhered to by the Owner. Notwithstanding the above, it is expressly understood that all timetables set forth herein shall be tolled during any LUBA or subsequent appeal or remand of the development agreement and associated approvals.

## **8.0 VESTED RIGHTS.**

**8.1** Except where specified in this Agreement, the Owner shall have the right to develop Verde Village in accordance with applicable laws, ordinances and regulations, the provisions and requirements of this Agreement, the outline plan approval, the approved Final Civil Plan (engineering construction plan) and permits, and the final subdivision plat.

**8.2** There shall at all times be a strict adherence to the provisions of this Development Agreement and the approved outline plan and Final Plan and Site Review Approvals/plats as well as the approved construction plans and permits. Failure to strictly comply with any such provisions or requirements shall be deemed a breach of this agreement. Any change or amendment to this Agreement, the outline plan, final plans, plats, construction plans or permits can only be made in accordance with such laws and ordinances as may be in effect at the time of such Amendment or change. The limitations and restrictions imposed on local governments by ORS 92.040 are expressly understood to be inapplicable to changes or amendments to the above-referenced approvals.

**8.3** Notwithstanding the timetable of development, and subject to unilateral amendment by the City to address then current public health, safety and welfare regulations, in the event that all or a portion of the Verde Village project should be destroyed by a storm, fire or other common disaster, the Owner, its grantees, successors or assigns and/or the Association(s), shall have the right to rebuild and/or repair so long as there is strict compliance with the outline plan and Final Plan and Site Review Approval/plat, approved construction plans and permits, as the same may be formally amended from time to time.

## **9.0 DURATION OF AGREEMENT AND CONTINUING OBLIGATIONS.**

[ORS 94.504(2)(a)]

The duration of this Agreement commences upon Ordinance adoption, execution and effectiveness and terminates on January 17, 2015, (seven years from the anticipated effective date of the Agreement). Termination of the duration of this Agreement only terminates authorization to engage in physical construction and development of the property, excluding vertical construction of (4) single family dwelling units on individual

lots; this Agreement remains in full force and effect as the development approval and authorization for completed development, including all continuing maintenance obligations.

**10.0. PROVISION FOR THE RESERVATION, DEDICATION OR SALE OF LAND FOR PUBLIC PURPOSES.** [ORS 94.504(2)(e)]

**10.1 Temporary Access Easement.** Owner shall maintain safe and free public access to the City Dog Park during the development of the Verde Village Project. Accordingly, prior to physical commencement of infrastructure construction which has the effect of disrupting the existing City access to the Dog Park, Owner shall grant to the City a Temporary Access Easement or Easements for purpose of maintenance of free and unrestricted public access to the City Dog Park. The temporary free access need not be paved but must be sufficiently improved to provide safe access to the Park by the public. Temporary access does not excuse the Owner's obligation to timely complete the Phase I extension of Alameda to Nevada Street and timely complete the construction of "Canine Way" to the Dog Park, so that City standard access is provided at the earliest possible date. Said Temporary Access Easement shall be provided to the City Legal Department for approval prior to acceptance by the City and recording. The easement shall be in substantially the form set forth in **Exhibit H**. The precise location of such easement area shall be approved by the City Public Works Director, or designee. The Temporary Access Easement terminates only after conveyance of permanent easements and right-of-way dedications, containing City accepted public infrastructure providing improved public access to the City Dog Park.

**10.2 Subdivision improvements and Offsite Public Infrastructure.** Except where the timetable of development expressly provides otherwise, Owner shall make appropriate improvements and dedicate to the City prior to, or concurrent with, the final plat for each respective phase of the Project, all such public tracts, public rights-of-way, permanent easements, dedications, and public facility improvements, including specifically but not limited to, utility easements, public streets, rights-of-way, bike paths, recreation parcels, multi-use paths, drainage easements, and other improvements, as are necessary to implement the approved development in PA #2006-016663, including the Outline plan, final plans and civil plans to be approved, to fully address and implement all the public facility and service needs of the development. Said tracts, easements, dedications and improvements shall be in a form approved by the City Public Works Director and City Attorney and shall be recorded after approval and acceptance by the City. The dedications, including but not limited to easements, public rights-of-way and public improvements shall be provided by the Owner at no cost to the City of Ashland.

**10.3 AFSG and City Real Property Exchange**

AFSG proposed a real Property exchange with City in order to provide a more rational and efficient use of land within City and its UGB, to preserve the Ashland Creek riparian area and open it to public use, and to provide safe, efficient, and fully improved public access to City's Dog Park and the Bear Creek Greenway. The completed exchange results in AFSG owning the property represented and shown in **Exhibit A**, and the City will own a tract identified as Long-Term Acquisition Area "10" on City's Parks, Trails and Open Space Master Plan Map. AFSG proposes a real property exchange of IN sum, approximately **2.78 acres** of riparian area and field ("Williams Property") as a "quid pro quo" exchange for approximately **1.54 acres** of City land, consisting primarily of City's Dog Park access separating the East and West parcels owned by AFSG. See June 8, 2007 Revised Outline Plan Narrative Sub-Exhibit N-1(Map) in the record. The mechanics of the exchange are set forth in **Exhibit G** to this Agreement, incorporated herein and made a part hereof by this reference. The findings necessary to approve the exchange under ORS Chapter 271, are attached as Attachment 3 to the Ordinance Declaring the approval of this Development Agreement and are incorporated herein by this reference. For tax purposes, one hundred and fifty thousand dollars, \$150,000.00 shall be the agreed upon value of the gift or donation by AFSG (i.e. the acknowledged difference between the value of the Williams Property and the Value of the City Property exchanged.).

**11.0 SCHEDULE OF FEES OR CHARGES.** [ORS 94.504(2)(f)]

All development authorized in the Verde Village project is subject to payment of applicable System Development Charges (SDC's) and utility fees and charges at the applicable trigger times, usually building permit issuance, as specified in the SDC ordinances and other codes in effect at the time development occurs. This Agreement does not award or grant any SDC credits to any party nor does this Agreement freeze or otherwise fix the SDC charges for development referenced herein.

**12.0 RESPONSIBILITY FOR INFRASTRUCTURE.** [ORS 94.504(2)(h)]

The Owner is fully responsible for the construction of all infrastructure development to support the Verde Village project including public facility improvements (street/traffic improvements, water, sewer and storm water) recreation improvements, common area improvements and restoration and enhancement of natural areas, and internal project infrastructure, including private utilities, and amenities, both on-site and off-site and as required by the ALUO, including City Engineering Standards, as more fully set forth in the Findings of Fact, Conclusions of Law and Order attached to the Ordinance approving the Development Agreement, incorporated herein and made a part hereof by this reference.

### **13.0 RESPONSIBILITY FOR COMMON AREAS.**

The Ashland Land Use Ordinance requires that common areas, including shared open space, be shown on the final plan/plat and recorded. The Code further requires that the Owner make adequate provisions for the continuing maintenance and upkeep of common areas by an association or other legal entity. The following common area maintenance provisions shall apply:

**13.1** The OWNER shall create a Declaration of Covenants, Conditions and Restrictions for Verde Village, (hereinafter the "CCR"). As a part of said Covenants and Restrictions, the OWNERS ASSOCIATION shall be established for the maintenance, operation and management of the Common Areas as defined therein. All of the above areas in the PUD are designated and shown on the Outline Plan which is attached hereto as **Exhibit "D"** and made a part hereof. The CCR shall be part of the first application for Final Plan and Site Review approval and shall be in conformity with the ALUO and Oregon State Statutes.

**13.2** It shall be deemed a breach of this Agreement for any land to be conveyed by the Owner by an instrument which does not contain the Covenants and Restrictions or incorporate them by reference. The Association shall not be dissolved nor shall it dispose of any Common Areas, by sale or otherwise, except to an organization conceived and organized to own and maintain the Common Areas, without first receiving approval of the City. The City, as a condition precedent to the dissolution or disposal of Common Areas, may require dedication of common open areas, utilities or road rights-of-way to the public as are deemed necessary.

**13.3** In the event that the Association (or any successor organization) fails at any time to maintain the Common Areas of the PUD in reasonable order and condition in accordance with the approved outline plan, final plans and plats, and any preservation area management plan then the City can serve written notice by certified mail, return receipt requested, upon such organization or upon each owner of real property within the PUD, which notice shall set forth the manner in which the organization has failed to maintain the Common Areas in reasonable order and condition, and shall demand that such failure be remedied within thirty (30) days of the sending of such notice or, in the alternative, that such organization appear before the City Council or their designee at a specified time (at least ten (10) days but not more than thirty (30) days after the sending of such notice) either to contest the alleged failure to maintain the Common Areas or to show cause why it cannot remedy such failure within the thirty (30) day period. If such failure has not been remedied within the thirty (30) day period or such longer period as the City may allow, then the City, in order to maintain strict compliance with development authorizations, and in order to preserve the taxable values of the real property within the PUD and to prevent

the Common Areas from becoming a public nuisance, shall hold a public hearing to consider the advisability of the City entering upon such Common Areas and maintaining them for a period of one (1) year. Notice of such hearing shall be sent by certified mail, return receipt requested, to the organization involved and (if such organization is dissolved) to each owner of real property within the PUD and shall be published in a newspaper of general circulation published in Ashland , Oregon. Such notice shall be sent and published at least fifteen (15) days in advance of the hearing. At such hearing the City may determine that it is or is not advisable for the City to enter upon such Common Areas, take non-exclusive possession of them and maintain them, according to City standards and the management plan, if any, for one (1) year. Such entry, possession and maintenance when followed in accordance with the above procedures shall not be deemed a trespass. In no event shall any such entry, possession and maintenance be construed to give to the public or the City any right to use the Common Areas.

**13.4** The City may, upon public hearing with notice given and published in the same manner as above, return possession and maintenance of such Common Areas to the organization, or successor organization, abandon such possession and maintenance, or continue such possession and maintenance for additional one (1) year periods.

**13.5** The cost of such maintenance by the City, including the full administrative cost of the notice and hearing processes identified herein and outlined above, shall be assessed ratably against the real properties within the PUD, the owners of which have the right to the enjoyment of the Common Areas and shall become a charge or lien on said properties if not paid within thirty (30) days after the receipt of a statement therefore.

**14.0 ASSUMPTIONS UNDERLYING AGREEMENT AND CHANGED CIRCUMSTANCES.** [ORS 94.504(6)]

The assumptions underlying this Agreement, specifically as regards the ability of the City to service the Development with regards to public facilities, are set forth herein, or are included in the Findings of Fact, Conclusions of Law and Order, attached to the Development Agreement Ordinance and incorporated into or referenced in this Agreement. In sum, this agreement is based on the assumption that City has adequate capacity to provide necessary services to the Verde Village Project, as determined by the City's Director of Public Works.

In particular, the terms, conditions and restrictions of this Agreement as well as the law in effect at the time further development approvals are sought, determine the ability of the development to be served. In the event of changed circumstances, this Agreement provides for permitted amendment, modification or revocation. The parties will work together in good faith to find a solution to cure any inability to provide services or

otherwise comply with the terms of this Agreement. This Agreement specifically contemplates development of the Verde Village project in accordance with the approved timetable of development.

**15.0 BUDGET AND GENERAL DISCLAIMER. [ORS 94.504(5)]**

All City obligations pursuant to this Agreement which require the expenditure of funds are contingent upon future appropriations by the City as part of the local budget process. Nothing in this Agreement implies an obligation on the City to appropriate any such monies. City acknowledges that following the required review and approval of Final Plan and Site Review s for adequacy of public facilities, and approval of final civil plans (construction plan approval) and associated construction permits, the determination for issuing building permits for the construction of buildings on the Property is not an obligation that would require the expenditure of funds and, therefore, is not contingent upon future appropriations by the City.

The City and Owner are entering into this Agreement voluntarily in the spirit of cooperation and coordination to facilitate the Owner's desire to develop a sustainable residential development, with a focus on public recreation and environmental sensitivity. The City desires to facilitate forward thinking development which recognizes environmental constraints, the importance of public recreation and promotes sustainability. However, nothing in this Agreement makes the City or Owner responsible for the contracts or commitments of the other as regards development of the Verde Village or as regards public improvements constructed by Owner with the intention of donating such facilities to the City. The Owner is not subject to public contracting rules and regulations and nothing herein makes Owner subject to such public agency requirements. No City funds are provided by this agreement for City construction of public infrastructure in this project.

Owner is not the City's agent and City is not the Owner's agent for purposes of any contracts or commitments made by either party. Owner acknowledges and agrees that future final approvals, including final plan, final plat approval, final civil plan (construction plan approval) and construction permits and building permits are subject to compliance with all applicable approved plans, approval conditions and applicable land development regulations in effect at the time the approvals are sought, except as may be provided for infrastructure construction in ORS 92.040 or as otherwise provided in this Agreement. No rights to obtain final development approvals, e.g. final plan, plat, or building permits nor any other rights to develop Verde Village have been granted or implied simply by the City's approval of this Development Agreement, including the donations, dedications and land exchange contained herein, without Owner's full compliance with approved plans, approval conditions and the applicable law in effect at the time such final approvals are sought. The Owner, or its successors and assigns, may not attempt to force, coerce or



intimidate the City to approve the final plan, plat or other grant other development authorizations, including building permits, by asserting that the City has committed to such approvals for Verde Village based on the theory of vested rights or equitable estoppel or any other legal theory based on the City's approval of this Agreement, or other approval, or acceptance of donations, dedications or land exchange identified herein. City approval of final development orders requires strict compliance with applicable approval conditions and the applicable criterion for approval.

**16.0 FUTURE DISCRETIONARY APPROVALS.** [ORS 94.504(3)]

The following is a list of all discretionary local development approvals (**bold**) as well as other steps and ministerial actions necessary for the development of Verde Village:

1. **Ordinance Declaring Council Approval of Development Agreement, as well as Findings of Fact, Conclusions of Law and Order for other approvals, including Annexation, Comprehensive Plan Map Change, Zone Map Change, Outline Plan Approval, Street exceptions, Physical and Environmental Constrains Permit and Tree Removal Permit,** (some approvals have delayed effectiveness while prerequisite approvals, are finalized as stated below).
2. **Ordinance Approving Land Exchange by City Council** (same as 1 above)
3. **Land Exchange Approved by Resolution of Jackson County Board of County Commissioners pursuant to ORS 271.335** (condition of 1 above)
4. **Land Exchange Approved by State Parks** (condition of 1 above)
5. **Land Exchange Approved by Federal Parks** (condition of 1 above)
6. **Ordinance Approving Annexation and Fire District Withdrawal of Phase I** (condition of 1 above)
7. **Ordinance Approving Annexation and Withdrawal re: Recreation Tract** (condition of 1 above)
8. **Ordinance Approving Annexation and Fire District Withdrawal of Phase II** (condition of 1 above)
9. **Ordinance Approving Comprehensive Plan Map and Zone Changes for Annexed Lands** (concurrent with 6-8, condition of 1)
10. Owner prepares detailed Final Plan application and Civil Plans, processes other state, federal and agency permits and approvals.
11. **Final Plan and Site Review Approval Phase I** (Deadline July 4, 2009)
12. Final Civil (Engineering Construction) Plan Approval for Phase I
13. Final City Construction Permits.
14. Approval of all other State, County, Federal Agency permits prerequisite to construction activity.

15. Commencement Deadline January 17, 2010: Construction of Public Infrastructure, including street extensions, multi-use path, access roads to Dog Park and other Phase I Improvements to facilitate private development. (See **Exhibit F**)
16. Conveyance of deeds to effectuate land exchange, including acceptance by City of completed public recreation improvements constructed by Owner, or approved contract and security if conveyance prior to construction completion.
17. Final Plat Approval Phase I
18. Conveyance of Parcel from Owner to RVCDC or other approved affordable housing provider for Affordable Housing Project. (must occur prior to vertical construction)
19. Building Permits Phase I for Vertical Construction
20. **Final Plan and Site Review Approval Phase II** (Deadline July 4, 2011)
21. Final Civil (Engineering Construction) Plan Approval for Phase II
22. Final City Construction Permits.
23. Applicable State, County, Federal Agency permits prerequisite to construction activity.
24. Construction of Public Infrastructure, including street extensions and other Phase II Improvements to facilitate private development. (See Exhibit F)
25. Final Plat Approval Phase II
26. Building Permits Phase II for Vertical Construction
27. Deadline to complete Vertical Construction Phase I: January 4, 2013
28. Deadline to Complete Vertical Construction Phase II: January 4, 2015

The terms, restrictions and requirements of these approvals are set forth in the applicable City Ordinances, including the Ashland Land Use Ordinance, applicable State statutes and regulations, the preliminary approvals, including outline plan approval and this Agreement. Generally, the law in effect at the time of the application is deemed complete governs the review and approval of the decision, when not inconsistent with the Outline Plan approval, except for subdivision infrastructure. All local development approvals and permits identified in this Agreement shall be obtained at the sole cost of the Owner. 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 otherwise 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. In no event shall delay in obtaining permits from other agencies be deemed as automatically requiring an extension of time to obtain required development approvals or the Development Agreement with City. Nor shall such delay be interpreted as requiring the City to approve an extension of time to any existing development order or development agreement. The following sworn statement shall be submitted prior to commencement of Physical construction:

***Ordinance Attachment 1 - DEVELOPMENT AGREEMENT FOR VERDE VILLAGE***

## **Sworn Statement, Verification of Federal, State, and Local Permit Compliance.**

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. Owner/Developer shall be solely responsible for obtaining all approvals, permits, licenses, insurance, and authorizations from the responsible Federal, State and local authorities, or other entities, necessary to use the property in the manner contemplated, including all authorizations necessary to perform land clearing, construction and improvement of property in the location and manner contemplated. This provision includes, but is not limited to, when applicable, a permit or statement from the National Marine Fisheries Service and/or Fish and Wildlife Service that owner's proposed use and/or development will not take or harm any endangered or threatened species as that term is defined in applicable Federal Statutes and Regulations. Further, it is expressly agreed and understood that the City of Ashland has no duty, responsibility or liability for requesting, obtaining, ensuring, or verifying owner/developer's compliance with the applicable state and federal agency permit or approval requirements. Any permit or authorization granted by the City, including any exemption, exception, permit, approval or variance pursuant to the Ashland Land Use Ordinance shall not in any way be interpreted as a waiver, modification, or grant of any state or federal agency permits or authorizations or permission to violate any state or federal law or regulation. Owner/Developer shall be held strictly liable, and shall hold the City of Ashland, its officers and employees harmless for administrative, civil and criminal penalties for any violation of Federal and State statutes or regulations, including but not limited to the Clean Water Act, Endangered Species Act and regulations and rules implementing such laws. Nothing herein shall be interpreted as restricting or limiting the City from bringing an enforcement action under the Ashland Municipal Code.

### **17.0 SCHEDULE/PROCEDURE FOR COMPLIANCE REVIEW.** [ORS 94.504(2)(g)]

Two weeks prior to the anniversary date of the adoption of this Ordinance approving this Agreement, the Owner and City shall submit a written report to the Planning Director for the City, for review and consideration at the next available Council meeting. The report shall address the extent and timing of compliance with the terms and conditions of this Agreement by both parties. The submission shall be made in letter form to the City Planning Director for placement on the next available agenda. The Council shall review this report and this Agreement at the next available meeting, and if deemed necessary, may direct that a subsequent report be submitted and considered on or about the subsequent

anniversary date of this Agreement, and likewise thereafter. The Planning and Engineering Departments shall prepare the City's portion of the report. If the Council believes the reports demonstrate failure to comply with the terms of this Development Agreement, the reports and this Agreement shall be referred to the Planning Commission for recommendation to the Council. In accordance with the amendment/revocation procedures the Council shall determine whether the evidence demonstrates that the Owner or City has not complied in good faith with the terms and conditions of this Development Agreement. At such time the Council shall also determine whether this Agreement should be amended, modified, revoked or terminated.

**18.0 BREACH OF AGREEMENT/REMEDIES & ENFORCEMENT** [ORS 94.504(2)(j)]  
[ORS 94.522]

**18.1** It is the intent of the parties to strictly comply with the terms and conditions of this Development Agreement to the mutual benefit of both the Owner and the City.

**18.2** In the event either party believes a material breach of the terms and conditions of this Agreement has occurred, whether by action or inaction of a party, the injured party shall serve written notice on the other of the alleged breach and the other party shall have thirty (30) days to cure or respond in writing to the injured party. In the event of a disagreement after the exchange of writings, the City Administrator shall set a time, date, and place for a public meeting of the City Council. The meeting shall give the City and the Owner an opportunity to explain to the Council the facts supporting or disproving the alleged breach, and allow the parties to propose a method of fulfilling this Agreement's terms and conditions. The parties may mutually negotiate an amendment to this Agreement to cure the alleged breach, and approve such amendment, after required notice, hearing and ordinance procedures are followed. Material breach includes but is not limited to any assignment by a party for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over a party. Material breach also includes failure to proceed with the land exchange after all approvals are obtained from Federal, State and County approvals.

**18.3** Until termination or revocation of this Development Agreement, the terms of this Agreement are enforceable by any party to this Agreement. [ORS 94.522(B)] The parties stipulate and agree that enforcement in Circuit Court is subject to the prerequisite administrative process set forth above. Thereafter, each party shall have all available remedies at law or in equity to recover damages and compel performance of the other party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to and cumulative with any and all rights otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different

time, of any other remedy for the same default or breach or of any of its remedies for any other default or breach by the other parties, including, without limitation, the right to compel specific performance

**18.4** It is expressly agreed by the parties that the appropriate remedy for enforcement of this Agreement in relation to the land exchange is specific performance as it relates to the Owner or City's breach of the obligation to convey; provided however that no action shall be permitted if all City, County, State, and Federal approvals have not been obtained. In no event shall an injunctive order be issued which would require City of Ashland to issue a development approval or permit in violation of Ashland Land Use Ordinances, as they exist at the time of this Agreement, or as otherwise made applicable to the development authorized in this agreement or State Statutes or the terms and conditions of the outline plan approval or subsequent final approvals. This provision does not limit the available remedies for other forms of breach. The parties agree that the prevailing party shall be entitled to attorney fees and costs in the event of litigation, including any appeal, to enforce this Agreement.

**18.5** In the event of a material breach by the Owner, City may, but is not required as a prerequisite to legal action, pursue revocation or termination of this Agreement in accordance with the following administrative process:

If at the public hearing to revoke or terminate this Agreement, the City finds, based on substantial competent evidence, that the Owner is in material breach of this Agreement, and an amendment to this Agreement to cure the breach is not appropriate, the City may revoke and terminate the Development Agreement and the development authorization for all or part of the Verde Village Project. The breach hearing shall be held concurrent with a revocation hearing held pursuant to the Ashland Land Use Ordinance which may include revocation of final plan, outline plan, change of zoning or other designations on the property. In lieu of revoking this Agreement, and the development authorization, City may agree, in its sole discretion, to modify this Agreement upon a finding that such modification is in the best interests of City and the public. It is further agreed by the Owner and the City that all costs incurred by the City for the breach and revocation proceedings shall be paid by the Owner. However, no costs shall be assessed against the Owner if the result of the hearing or upon review by the Court, is a finding that the City is in material breach of the Agreement, or that the Owner is not in material breach. If assessed costs are not paid by the Owner, the City is empowered to place a lien against the property in the amount of the unpaid costs. This provision shall not be interpreted to provide an exclusive remedy, and either party may pursue any appropriate remedy at law or equity in the event the other party or its successors in interest fail to abide by the provisions of this Agreement. If Owner disagrees with City's decision concerning revocation or termination of this Agreement

as set forth above, then Owner may file a legal action in a court of competent jurisdiction to review and determine the merits of City's decision and issue an appropriate judgment or decree.

**18.6** In addition, any person who violates the Ashland Land Use Ordinance, and development approvals, authorizations and conditions issued pursuant thereto, are subject to the enforcement provisions set out in the Ashland Municipal Code, as amended from time to time, including civil and criminal the penalties set forth therein. Nothing herein shall constitute an exclusive remedy and the City reserves the right to pursue any and all legal and equitable remedies in order to abate a violation of this Ordinance.

**19.0 STATE AND FEDERAL LAW CHANGE.** [ORS 94.504(2)(I)]

The parties agree that this Agreement is based on the proposition that the Verde Village Project will comply with City, Regional, State, and Federal policies, laws, and rules. If Regional Policy, State or Federal laws are enacted after City approval of this Agreement, which are applicable to and preclude either party's compliance with the terms or conditions of this Agreement, or render compliance impossible, unlawful, or inconsistent with such laws or rules, or regional policies, this Agreement shall first be modified or amended, by mutual agreement, as is necessary, to comply or to sever provisions and give effect to the remainder of the Agreement. If such modification or amendment cannot remedy the inconsistency, this Agreement shall be revoked to comply with the relevant State or Federal laws or regional policies and regulations. Accordingly if this Agreement fails in its essential purpose, then the parties shall be placed into their original position to the extent practical. If not practical, such revocation proceeding, caused without fault to either party, shall preserve to the extent possible under the law, an equal balance between the parties, with protection afforded the City and protection for the Owner related to the development authorizations and improvements for which the Owner has expended funds in good faith reliance on the governmental authorization.

**20.0 EFFECT OF ANNEXATION** [ORS 94.504(2)(L)]

Annexation is necessary to authorize the development contemplated in the Verde Village project as described and shown in Planning Action 2006-01663. A portion of the property is located inside the City limits, but not a discrete geographic phase severable from the remainder. Accordingly, this Agreement contemplates that property which is the subject of this Agreement will be fully annexed into City as part of the terms and conditions of the Development Agreement. The required public hearings having been held concurrent with the approval of this Agreement, only the normal ordinance processes for annexation and withdrawal from Fire Districts remains to effectuate the approval. The Annexation is more fully described in the Findings of Fact, Conclusions

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of Law and Order concerning the land use approvals, attached to the Ordinance declaring approval of this Development Agreement. This Agreement contemplates and provides for annexation of all portions of the Verde Village Property not currently within City limits as a material term of this Agreement. Therefore, failure to accomplish annexation as contemplated will require amendment, modification, or revocation of the Development Agreement.

**21.0 AMENDMENT, TERMINATION OR REVOCATION.** [ORS 94.508(2)] [ORS 94.522]

**21.1** Owner and City, their successors and assignees may mutually agree to amend, modify, terminate or revoke this Agreement after compliance with the Ordinance amendment procedures identified herein, or as otherwise provided for in this Agreement. In the event of such mutual amendment, modification, termination or revocation, the parties shall be required to mutually agree as to any required allocation, return, or payment for public improvements, dedications or expenditures made in reliance upon this Agreement. In the event the land exchange is not approved by the Federal, State and County, the Parties agree that this Agreement shall be immediately scheduled for termination by Ordinance.

**21.2** The parties hereto shall at all times strictly adhere to the terms and conditions of this Agreement. Amendment, termination or revocation of this Agreement shall be made by adoption of an Ordinance declaring the action and setting forth the terms and conditions. Unless another procedure specific to Development Agreements is provided in a City Development Agreement Ordinance, (and such procedure pursuant to ORS 94.513(1) is specifically contemplated and anticipated herein) the procedures and requirements for amendment, revocation or modification of a Development Agreement are the same as for approval of a Development Agreement, currently notice and hearing before the Council with a recommendation from the Planning Commission. Except as provided below, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document approved and executed by all the parties hereto.

**21.3** Pursuant to ORS 94.518, except as provided in this Development Agreement, the local government law and policies governing this Agreement shall be those laws and policies in effect at the time of approval of this Development Agreement. Pursuant to the terms of this Development Agreement, generally, unless specifically inconsistent with the outline plan, the law in effect at the time of subsequent development approvals governs those approvals. In addition, unless a reservation of legislative power is included in a Development Agreement, the Agreement is subject to a legal challenge as void or voidable for "contracting away the police power". Accordingly, the following reservation of power is

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included in this and in all City Development Agreements. City may apply subsequently adopted laws and policies to this Development Agreement if the City holds a public hearing proposing imposition of such subsequently adopted laws in an amendment of this Agreement and determines any one of the following:

- A.** The laws and policies are not in conflict with the laws and policies governing the Development Agreement and do not prevent development of the land uses, intensities or densities in the Development Agreement; or
- B.** The laws and policies are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a Development Agreement; or
- C.** The laws and policies are specifically anticipated and provided for in the Development Agreement; or
- D.** City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of the Development Agreement; or
- E.** It is demonstrated that the Development Agreement is based on substantially inaccurate information supplied by the Owner.

Nothing in this section shall prohibit the City from applying subsequently enacted laws to the Development Agreement in the event an amendment or modification of this Agreement is requested by Owner pursuant to the terms of this Agreement. This Agreement specifically anticipates applying current health and safety regulations to any reconstruction of the PUD, should destruction occur, (e.g. current regulations will be used to guide re-installation of public infrastructure).

## **22.0 RECORDING AND EFFECTIVENESS. [ORS 94.528]**

**22.1 Recording.** The Owner shall provide the City an executed Development Agreement, unaltered except for changes agreed upon during consideration of the matter, or to correct typographical errors, together with executed and unaltered Exhibits, including legal description, prior to 5:00 p.m. on January 2, 2008. City shall record this Agreement and Exhibits with the County Clerk as required by ORS 94.528 within ten (10) days of the execution of this Agreement by all parties. Owner is solely responsible for recording costs. Any alteration or change to this Agreement not accepted by the City in writing shall render this Agreement and the Ordinance approving it, ineffective and recording shall not occur. If this Development Agreement is amended, canceled, modified, extended or revoked, the appropriate recording shall be made in the County records to reflect the action. The

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burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties of this Agreement.

**22.2 Finality and Effectiveness.** The Ordinance declaring approval and adopting the Development Agreement is a final City land use decision on the date the Ordinance Second Reading is completed, the Ordinance and Findings are signed by the Mayor and Notice of the City's Decision is provided. Notwithstanding the finality of the land use decision, the decision shall not be effective until the later of the following: the complete execution of this Development Agreement and Exhibits by AFSG and City; and (3) the finality of the Land Use Approvals defined herein. As used herein "finality of Land Use Approvals" means the date upon which the Ordinance is effective if no appeal is filed, and, if an appeal is filed, the date that all appeals are final. All timetables are tolled for the period of delay caused by any appeal; and the parties agree to an administrative addendum to restate deadlines for clarity after the resolution of any appeal.

### **23.0 ADOPTION OF ORDINANCE [ORS 94.508(1)&(2)]**

City's Council finds that this Development Agreement is consistent with the provisions of the ALUO in place at the time of its adoption, and approves this Agreement by adoption of an Ordinance declaring approval of this Agreement, and supported by Findings of Fact, Conclusions of Law and Orders concerning the actions referenced therein. This Development Agreement is a land use decision under ORS Chapter 197.

### **24.0 ENTIRE AGREEMENT.**

This Agreement incorporates or references all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in, incorporated into, or referenced in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

### **25.0 SEVERABILITY.**

If any clause, section, sentence or any other portion or any part of this Agreement is contrary to, prohibited by, or deemed invalid or null and void for any reason under any applicable law or regulation, such provisions shall be inapplicable and deemed omitted to the extent so contrary, prohibited, invalid or void, however, the remainder hereof shall not be invalidated thereby and shall be given full force and effect to the fullest extent permitted by law. In the event of such invalidation or prohibition, the Parties shall

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meet to discuss amendments and alternatives to address the deficiency.

**26.0 JURISDICTION AND GOVERNING LAW.**

The parties acknowledge that this Agreement has been negotiated and entered into in the State of Oregon. The parties hereto further agree that any and all suits or actions at law shall initially be brought in the Circuit Court of the State of Oregon for Jackson County, or the United States District Court for the District of Oregon. This Agreement shall be construed and interpreted under the laws of the State of Oregon.

**27.0 ASSIGNMENT/SUCCESSORS AND ASSIGNS. [ORS 94.504(k)]**

This Agreement shall be recorded pursuant to ORS 94.528 in the Official Records of Jackson County, Oregon and said Agreement shall run with the land. Such Agreement is binding upon the City and AFSG, their successors in interest, heirs, assigns and personal representatives. This Agreement shall be fully assignable, in whole or in discrete approved part (see the covenant of unified control), by AFSG and shall bind and inure to the benefit of AFSG and its assigns and successors.

**28.0 NOTICES.** All notices, demands, requests, or replies provided for or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid, to the addresses stated below; (c) by prepaid nationally-recognized overnight courier (such as UPS, overnight mail, or Federal Express), or be by facsimile transmission). Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal service. Notice by facsimile or overnight express delivery service shall be deemed effective one (1) business day after transmission or after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery. For purposes of notice demand, request or payment:

***Ashland Flower Shop and Greenhouses, Inc.  
Attn.: Gregory D. Williams, President  
744 Helman Street  
Ashland, OR 97520  
(541) 482-2699 fax  
with copy to:***

**Christian E. Hearn  
Davis, Hearn, Saladoff, Bridges & Visser, P.C.**

**515 East Main St.  
Ashland, OR 97520  
(541) 488-4455 fax**

In the case of notice or communication to the City, addressed as follows:

**City of Ashland  
Legal Department  
20 East Main St.  
Ashland, OR 97520  
(541) 552-2092 fax**

with copies to:

**City of Ashland  
Office of the City Administrator  
20 East Main St.  
Ashland, OR 97520  
(541) 488-5311 fax**

**City of Ashland  
Department of Community Development  
20 East Main St.  
Ashland, OR 97520  
(541) 552-2050**

or addressed in such way in respect to a Party as that Party may, from time to time, designate in writing and dispatched as provided in this Agreement.

## **29.0 MISCELLANEOUS PROVISIONS.**

**29.1 Headings.** The titles of the sections in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of its provisions.

**29.2 Waivers.** No waiver made by either Party with respect to the performance, or manner or time thereof, or any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of the rights of the other

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Party making the waiver. No waiver by City or AFSG or any provisions of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no waiver shall be construed to be a continuing waiver.

**29.3 Time of the Essence.** Time is of the essence in this Agreement.

**29.4 Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on a Saturday, Sunday, or legal holiday in the State of Oregon, the period shall be extended to include the next day which is not a Saturday, Sunday, or such legal holiday.

**29.5 Construction.** In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and neuter, as the context may require.

**29.6 Good Faith and Reasonableness.** The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally, and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clear and explicitly permitted as to the specific item in question, as in the case of a Party being given "sole discretion" or being allowed to make a decision in its "sole judgment."

**29.7 Cooperation in the Event of Legal Challenge.** In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, or Ordinance adopting this Agreement, the parties agree to cooperate in defending such action.

**29.8 Enforced Delay, Extensions of Time of Performance.** In addition to the specific provisions of this Agreement, a performance by any party shall not be in default where such default or delays is due to war; insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, unforeseen governmental restrictions imposed or mandated by governmental entities other than the City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance which is not within the reasonable control of the party to be excused; provided, however, that the Parties agree to proceed in good faith in accordance with the terms and conditions of this Agreement.

**29.9 No Third Party Beneficiaries.** City and AFSG, and their successors and assigns, are the only parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, or is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by





## MORTGAGE HOLDER CONSENT

ALL MORTGAGE HOLDERS MUST SIGN A CONSENT TO THE DEVELOPMENT AGREEMENT TO ACKNOWLEDGE AND CONSENT TO *INTER ALIA* THE PROVISION FOR THE RESERVATION OR DEDICATION OF LAND FOR PUBLIC PURPOSES. [ORS 94.504(2)(e)]

The undersigned mortgage holder, \_\_\_\_\_, hereby certifies that it is the holder of a certain mortgage lien or encumbrance on the land subject to this Development Agreement and does hereby consent and agree to the foregoing Development Agreement, including the reservations, dedications, donations, sales, and/or exchanges of land for public purposes contained herein and agrees that its mortgage, lien, or encumbrance shall be subordinate to such reservation, dedication, donation, sale or exchange.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007

### MORTGAGE HOLDER

\_\_\_\_\_

Signed, sealed and delivered in the presence of:

Signature of Authorized Agent

Witnesses:

Name printed: \_\_\_\_\_

Name printed: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Name printed: \_\_\_\_\_

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

City of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,

2005, by \_\_\_\_\_ of \_\_\_\_\_, a

*Name of Officer*

*Name of Corporation*

\_\_\_\_\_ corporation, on behalf of the corporation. He/She is personally

*State or Place of Incorporation*

known to me or has produced \_\_\_\_\_ as identification.

Notary Public

Notary Seal

My Commission Expires:

**EXHIBIT A**

**Verde Village  
LEGAL DESCRIPTION**

*attach legal description of Verde Village  
as configured after exchange*



**EXHIBIT B**

**Title Company Preliminary Title Report Certification**

## **EXHIBIT C**

### **UNIFIED CONTROL**

We, the undersigned, being the Owners of the property described in Exhibit A to that to that Development Agreement for "Verde Village", dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between The City of Ashland Oregon and Ashland Flower Shop and Greenhouses Inc.,, do hereby covenant and agree that said described parcel shall be held under single ownership, except to facilitate conveyance to the City contemplated in this agreement, and shall not be transferred, conveyed, sold or divided in any unit other than in its entirety; provided, however, (that individual subdivision lots or fully constructed condominium units, if any, may be conveyed to individual purchasers).

In addition, the following conveyances shall be permitted:

- (1) If the PUD is designed and planned to be developed in phases or portions of phases, and each phase or portion of a phase complies with the requirements contained within the Development Agreement and PUD documents, then each phase may be conveyed separately upon final development plat approval of that phase or approved sub-phase.
- (2) Common elements, common open area open spaces, preservation areas and developed recreation areas, if any, may be conveyed to a property owners' association or other legal entity or governmental entity, so long as such conveyance shall be subject to the express restriction that the subject property will never be used for any purpose other than as common elements, common open areas, open spaces, preservation areas or developed recreation areas, as applicable.
- (3) Other portions of the subject property that will be used or maintained by governmental, environmental, charitable or other organizations or agencies for such purposes as the City Council of the City of Ashland may deem appropriate.

Nothing herein contained shall limit, in any manner, the undersigned, or their successors or assigns, to mortgage or encumber the property or any part thereof. Encumbrances are encouraged to correspond to approved phase or lot lines.

The undersigned further agrees that this condition, restriction and limitation shall be deemed a covenant running with the land and shall remain in full force and effect and be binding on the undersigned, its successors and assigns, until such time as the same may be released in writing by the City of Ashland, Oregon.



**EXHIBIT D**  
**Preliminary Development Plan/Plat**

(The approved Outline Plan must be reduced to a legal sized legible document(s) for recording as Exhibit D)

**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.
- 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 Riparian Corridor 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.
- 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 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 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. The applicants shall meet with the Ashland Conservation Division regarding eligible site activities prior to issuance of an excavation permit. The required Earth Advantage documentation shall be submitted with each building permit application.
- 12) Energy Conservation: Net Zero Energy. 53 residential units, in the subdivision, including the cottages, duplexes and single family units, 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. The Final Plan application shall include systems for measuring and monitoring compliance of the development with the Performance Standard that is administered by the applicants and verified by the city.

"Net Zero Energy" Performance Standard as outlined in Exhibit K-3 of the Revised Outline Plan, Book III-Narrative revised October 24, 2007 shall be consistent with the following.

- That all dishwasher and washing machines shall qualify for the State of Oregon tax credit and be selected from the list of qualified machines maintained by the Oregon Department of Energy.
- That each home that would be built to the standards encompassed in the applicant's Exhibit K shall be provided with a Photovoltaic (PV) system that is either 3kW's in size or produces 1.5 Kwh's/Sq. Ft./Yr. whichever is less, and also be provided with enough available south facing unshaded roof space to double the size of the PV system.
- That the homes will meet a minimum requirement of R-49 attic insulation for flat ceilings.
- That the passive solar homes shall meet the State of Oregon's minimum requirements for the passive solar home tax credit.

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 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.
- 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 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.
- 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.

**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. 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.

**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, 2015.

<b>Phase</b>	<b>Final Plan and Completion Site Review Vertical Construction</b>	<b>Infrastructure Approval Completion</b>	<b>Final Plat and of</b>
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<b>I</b>	July 17, 2009	July 17, 2011	January 17, 2013
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January 17, 2010. 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 Phase I elements within 6 months of Final Plan Approval, no later than specified.

July 17, 2011. Complete extension of Alameda to Nevada Street, completion of construction of "Canine Way" access to Dog Park, including installation of water, sanitary sewer, storm drainage power, gas, telephone and all utilities.

July 17, 2011. Complete sidewalk on the north side of Nevada Street from the eastern project boundary to the intersection of Nevada and Oak Street.

July 17, 2011. Complete Restoration and

Enhancement of Riparian Corridor and Wetland Areas pursuant to Contract for Installation of Plant Materials, Security and Preserve Area Management Plan.

July 17, 2011. Complete construction of multi-use path and transfer deed to City of Ashland to effectuate land exchange and acceptance of tendered public recreation improvements.

July 17, 2011. 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 town home units).

July 17, 2011. Complete construction of "subdivision" Infrastructure for Phase I (R-1-3.5 portion) of the project inclusive infrastructure for one (1) single family lot, and infrastructure for twenty-four (24) cottage units

July 17, 2011. Phase I. Deadline for final survey to be signed after completion of subdivision infrastructure and before start of vertical construction.

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.

January 17, 2013. Vertical construction deadline for twenty-four (24) cottage units and vertical construction

deadline for fifteen (15) multi-family units for affordable housing (town-homes).

Phase	Final Plan and Completion Site Review Vertical Construction	Infrastructure Approval	Final Plat and Completion of
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<b>II</b>	July 17, 2011	July 17, 2013	January 17, 2015
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July 17, 2013. Complete construction of "subdivision" Infrastructure for Phase II (R-1-5 portion) of the project inclusive infrastructure for three (3) single family lots on Nevada Street, and infrastructure for twenty-five (25) single family lots, including Sander Way parkrow.

July 17, 2013. Phase II. Deadline for final survey to be signed after completion of subdivision infrastructure and before start of vertical construction.

January 17, 2015. Vertical construction deadline for twenty-five (25) single family homes of which 19 are detached and 6 are attached.

July 17, 2013. Completion of Maintenance and Security Period for Restoration and Enhancement of Riparian Corridor and Wetland Areas pursuant to Contract for Installation of Plant Materials, Security and Preserve Area Management Plan from Phase I.

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. Notwithstanding this provision, the Director may extend, once, by no more than twelve (12) months, any *internal* project timetable in accordance with procedures then in effect to extension of outline plan approvals. The title transfer, physical commencement and the 2015 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.



**EXHIBIT G**  
**Agreement for Purchase and Sale: Exchange of Real Property.**

**1. Definitions**

**Exchange Properties, (as used in this section):** For purposes of this Agreement, "**Property**" shall mean Exhibit A-1 or Exhibit A-2 depending upon who is the Buyer and who is the Seller.

**Exhibit A-1** describes the property to be deeded from the City of Ashland to AFSG. **Exhibit A-2** describes the property to be deeded from AFSG to City of Ashland, with completely constructed multi-use path improvements and completion restoration and enhancement of riparian areas.

**Parties to the Agreement:** For purposes of this Agreement, AFSG shall be considered both the **Buyer** of the property identified in Exhibit A-1 and **Seller** of the Property in Exhibit A-2. City shall be considered both the **Buyer** of the Property identified in A-2 and the **Seller** of the Property identified in A-1.

**Sell:** For purposes of this agreement, "Sell" means a *quid pro quo* exchange with no monetary exchange.

**2. Purchase and Sale.** The Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, the Property on the terms and conditions set forth in this Agreement.

**3. Purchase Price.** The purchase price for the Property shall be *quid pro quo property exchange*, with no financial remuneration to be paid by City Buyer to AFSG Seller, despite any disparity in appraised value of the real property interests being exchanged. The legal requirement is that the value of the Property the City receives is greater than the value of the property the City is exchanging. The difference in values of the real property, established by the City Finance Department after review of the appraisals in the record, shall be considered and acknowledged as a gift or donation to the City by the Williams family. The donation amount will be equal to the difference between appraised values of the two properties.

**4. Closing Date.** The exchange is approved by the City with the adoption of the Ordinance Declaring approval of the Development Agreement. However, the exchange is delayed until the occurrence of three (3) events outside the control of the parties: (1) approval of the transaction by the Federal Government; (2) approval of the transaction by the State Government; and (3) approval of the transaction by the County government. Accordingly, the transaction shall close on or before the date that is **thirty (30) business days** following the receipt by the City of written documents reflecting the "Trigger" to closing, that is the occurrence of the last required approval identified above. The City Buyer will provide the Seller AFSG with written notice of the Closing Date at least five business days before that date.

## 5. Conditions to Closing

**(a) Conditions Precedent to Buyer's Obligations.** The Closing and the Buyer's obligations with respect to the transaction contemplated by this Agreement are subject to the satisfaction, not later than the Closing Date (unless otherwise provided), of the following conditions, and the obligations of the parties with respect to such conditions are as follows:

(i) Title. At closing the Seller shall convey fee simple title to the Property by statutory warranty deed, subject only to non-delinquent real property taxes, items \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, and \_\_\_\_ of the preliminary title report Order No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_ (the "Preliminary Commitment"), a copy of which is included in the record of this proceeding and such other matters that may be approved in writing by the Buyer.

(ii) Within 15 days of the Trigger identified in 10.5.4. above, at the Seller's cost and expense, shall cause to issue to the Buyer its preliminary title report on the Property (the "Preliminary Commitment"), along with copies of all documents that give rise to exceptions listed in the report (the "Underlying Documents"). Within 10 days of receiving the Preliminary Commitment and the Underlying Documents, the Buyer shall give the Seller written notice setting forth the exceptions that are not acceptable to the Buyer (the "Unacceptable Exceptions"). All other exceptions shall be deemed acceptable to the Buyer. The Seller shall have 5 days after receiving the Buyer's notice within which to give the Buyer its written notice stating whether it will remove some or all of the Unacceptable Exceptions; provided, however, that the Seller must remove all monetary liens and encumbrances to the Buyer's reasonable satisfaction on or before the Closing Date. If the Seller agrees to eliminate the Unacceptable Exceptions, the Seller must do so at its cost and as of the Closing Date. If the Seller declines to eliminate all of the Unacceptable Exceptions, the Buyer has the right to terminate this Agreement by written notice given to the Seller within \_\_\_\_ days of receiving the Seller's notice.

(iii) Investigation and Review Within 15 days of the Trigger identified in 10.5.4. above, the Seller shall deliver or cause to be delivered to the Buyer the Investigation Documents. The Buyer shall have the right to review and approve each and every Investigation Document to its sole satisfaction within 10 days after the Buyer receives it. The Buyer's failure to respond timely shall constitute the Buyer's approval of the Investigation Document provided. If the Buyer disapproves any Investigation Document, the Buyer shall timely notify the Seller in writing, and the Seller shall have 5 days in which to cure. If a cure acceptable to the Buyer is not timely achieved, the Buyer may waive the requirement in writing, or elect to terminate this Agreement for failure to satisfy a condition precedent to the Buyer's obligation to close. . As a condition to closing, the documents described herein must be delivered to the Buyer and approved as provided, and the results of the Buyer's site studies identified herein must be acceptable to the Buyer in its sole discretion.

A. Records and Plans. Copies of all architectural drawings, construction plans and specifications, "as-built" records of the improvements, environmental studies, inspection reports, and all topographical surveys and soil tests for or relating to the Property in the Seller's possession or reasonably available to the Seller.

B. Leases. A copy of each tenant's lease or rental agreement, if any, together with all amendments.

C. Permits. Copies of all permits, orders, letters, and other documents available to the Seller relating to the zoning, land development and permitted uses of the Property.

E. Tax Notices. Copies of all tax and assessment notices and bills for the Property for the most recent two property tax years.

F. Past Uses. Any information in the Seller's possession or available to the Seller relating to the past uses of the Property.

G. Service Contracts. Copies of all service or maintenance contracts with respect to the Property.

H.. Site Study. Before closing, the Buyer may engage consultants or engineers of the Buyer's choosing to conduct site studies of the Property as the Buyer deems necessary. The Buyer or its agents shall have the right to enter the Property at reasonable times before closing to make such tests, inspections, studies, and other investigations as the Buyer may require, at the Buyer's expense and risk. The Buyer shall indemnify and hold the Seller harmless from any loss, damage, or claim arising out of the Buyer's access to the Property for the purpose of making tests, inspections, studies, and other investigations. It shall be a condition to closing that the results of such studies or analyses be acceptable to the Buyer in its sole discretion.

(iv) Representations, Warranties, and Covenants of Seller. The Seller shall have duly performed each and every agreement to be performed by the Seller hereunder and the Seller's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.

(v) No Material Changes. At the Closing Date, there shall have been no material adverse changes related to or connected with the Property, whether directly or indirectly.

(vi) Seller's Deliveries. The Seller shall have timely delivered each and every item to be delivered by the Seller pursuant to this Agreement.

(vi) Title Insurance. As of the Seller shall have issued or shall have committed to issue the title policy to the Buyer.

The conditions set forth above are solely for the benefit of the Buyer and may be waived only by the Buyer. The Buyer shall at all times have the right to waive any condition. Such waiver or waivers shall be in writing to the Seller. The waiver by the Buyer of any condition shall not relieve the Seller of any liability or obligation with respect to any representation, warranty, covenant, or agreement of the Seller. Neither the Seller nor the Buyer shall act or fail to act for the purpose of permitting or causing any condition to fail (except to the extent the Buyer, in its own discretion, exercises its right to disapprove any such items or matters).

**(b) Conditions Precedent to Seller's Obligations.** Closing and the Seller's obligations with respect to the transactions contemplated by this Agreement are subject to the each Buyer's performance, and delivery on or before the Closing Date, of the documents and materials described in Paragraph 6, below.

(c) Failure of Conditions to Closing. If any of the conditions set forth above are not timely satisfied or waived, or a reason other than the default of the Buyer or the Seller under this Agreement:

(i) This Agreement, and the rights and obligations of the Buyer and the Seller shall terminate, except as otherwise provided herein; and

(d) Cancellation Fees and Expenses. If this agreement terminates because of

the nonsatisfaction of any condition for a reason other than the default of the Seller or the Buyer under this Agreement, the Seller and the Buyer will equally bear any cancellation charges required to be paid. If this agreement terminates because of the Seller's default, the Seller will bear any cancellation charges required to be paid. If this agreement terminates because of the Buyer's default, the Buyer will bear any cancellation charges required to be paid. At this time, the Parties do not contemplate any cancellation charges.

## **6. Deliveries at closing.**

(a) By Seller. On or before the Closing Date, the Seller shall deliver the following:

(i) Deed. A statutory warranty deed, duly executed and acknowledged in recordable form by the Seller, conveying the Property to the Buyer subject only to nondelinquent property taxes, items \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, and \_\_\_\_ of the Preliminary Commitment, and other matters that may be approved in writing by the Buyer.

(ii) Bill of Sale. A bill of sale, duly executed and acknowledged by the AFSG Seller in favor of the City Buyer, assigning and conveying to the Buyer all of the Seller's right, title, and interest in and to the improvements, and personal property, if any, used in connection with the operation of the Property, free and clear of all liens, encumbrances, and adverse claims.

(iii) Assignment of Leases. There are no leases existing and the Parties agree not to enter into any leases impacting the Property. If leases are discovered, an assignment of leases, if any, duly executed and acknowledged by the Seller in recordable form, assigning to the Buyer, all of the Seller's right, title, and interest in and to all the tenant leases and tenant deposits.

(iv) General Assignment. An assignment, , duly executed by the Seller, assigning to the Buyer all of the Seller's right, title, and interest in and to all service contracts accepted by the Buyer and all other intangible property constituting part of the property being sold.

(v) Nonforeign Certification. The Seller represents and warrants that it is not a "foreign person" as defined in IRC §1445. The Seller will give an affidavit to the Buyer to this effect in the form required by that statute and related regulations.

(vi) Tenant Notification Letter. There are no tenants and the parties agree not to rent or lease the premises. In the event leases are discovered, a letter to tenants, duly executed by the Seller and dated as of the Closing Date, satisfactory in form and substance to the Buyer, notifying each tenant that:

- A. The Property has been sold to the Buyer;
- B. All of the Seller's right, title, and interest in and to the tenant leases and tenant deposits have been assigned to the Buyer; and
- C. Commencing immediately, all rent and other payments and any notices under tenant leases are to be paid and sent to the Buyer.

(vii) Changes of Address. Written notices executed by the Seller to taxing authorities having jurisdiction over the Property, changing the address for service of notice and delivery of statements and bills.

(viii) Proof of Authority. Such proof of the Seller's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any

instruments, documents, or certificates on behalf of the Seller to act for and bind the Seller, as may be reasonably required by the Buyer.

(ix) Lien Affidavits. Any lien affidavits or mechanic's lien indemnifications as may be reasonably requested by the Title Company in order to issue the title policy.

(b) By Buyer. On or before the Closing Date, the Buyer shall deliver the following to the Seller:

(i) Purchase Price. The purchase price in accordance with Paragraph B.3 above. The Buyer must complete performance as sellers in order to complete the transaction.

(ii) Tenant Lease Assignment. The tenant lease assignment, if any, duly executed and acknowledged by the Buyer in recordable form.

(iii) General Assignment. The general assignment duly executed by the Buyer.

(iv) Prorations. The amount due the Seller, if any, after the prorations are computed in accordance with Paragraph 10(b) below.

**7. Deliveries to Buyer at Closing.** The Seller shall deliver possession of the Property to the Buyer at close of escrow. On or before the Closing Date, the Seller shall deliver to the Buyer possession of the following:

(a) Tenant Leases, if any. Originals of all of the tenant leases or, to the extent an original tenant lease is unavailable, a duplicate original of it with a certificate executed by the Seller warranting the authenticity of the duplicate original.

(b) Service Contracts, if any. Originals of all service contracts or, to the extent an original service contract is unavailable, a duplicate original of it with a certificate executed by the Seller warranting the authenticity of the duplicate original.

(c) Personal Property. Possession of the improvements and personal property, if any.

(d) Termination Agreements. Executed termination agreements or other evidence reasonably satisfactory to the Buyer that any service contract disapproved by the Buyer in accordance with the terms of this Agreement has been duly and validly terminated effective on or before the Closing Date.

(e) Records and Plans. To the extent not already delivered to the Buyer, copies of all architectural drawings, construction plans and specifications, "as-built" records of the improvements, environmental studies, inspection reports, and all topographical surveys and soil tests for or relating to the Property in the Seller's possession or reasonably available to the Seller.

**8. Title Insurance.** At closing, the Seller shall provide, at its expense, a standard owner's title insurance policy in the amount of the value established in the respective appraisal documents, insuring title vested in the Buyer or its nominees, subject only to nondelinquent real property taxes, items \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, and \_\_\_\_ of the Preliminary Commitment, and other matters that may be approved in writing by the Buyer.

The Buyer has the right, if the Buyer so elects, to cause the title policy to be issued as an extended coverage policy, provided the Buyer pays the additional premiums and all survey costs associated with that coverage. If the Buyer elects extended coverage, it shall be at Buyer's sole cost and expense

**9. Adjustments.** The Seller shall pay for the standard coverage title insurance

policy, AFSG shall pay all recording charges, any other fees or costs, and the Seller's share of prorations pursuant to Paragraph 10 below. The City Buyer shall pay no recording charges, or any other fees and costs, and the Buyer's share of prorations pursuant to Paragraph 10 below. The Buyer and the Seller shall each pay its own legal and professional fees of other consultants incurred by the Buyer and the Seller, respectively. All other costs and expenses shall be allocated between the Buyer and the Seller in accordance with the customary practice in Jackson County, Oregon, except as otherwise set forth herein. At closing, the Buyer shall contribute any funds necessary to pay its share of adjustments.

## **10. Prorations**

(a) General. Rental, revenues, and other income, if any, from the Property and presently existing taxes, assessments, improvement bonds, and other expenses, if any, affecting the Property, shall be prorated as of the day following the Closing Date. For the purpose of calculating prorations, the Buyer shall be deemed to be in title to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date.

(b) Method of Proration. All prorations shall be made in accordance with customary practice in Jackson County, Oregon, except as expressly provided herein. The Buyer and the Seller agree to cause their accountants to prepare a schedule of tentative prorations before the Closing Date. Such prorations, if and to the extent known and agreed on as of the Closing Date, shall be paid by the Buyer to the Seller (if the prorations result in a net credit to the Seller) or by the Seller to the Buyer (if the prorations result in a net credit to the Buyer) by increasing or reducing the cash to be paid by the Buyer at closing. Any such prorations not determined or not agreed on as of the Closing Date shall be paid by the Buyer to the Seller, or by the Seller to the Buyer, as the case may be, in cash as soon as practicable following the Closing Date.

**11. Recording and Disbursements At Closing.** At closing the Seller and Buyer shall cause the deeds to be exchanged and recorded as well as any other documents that the parties may mutually direct to be recorded in the official records and obtain conformed copies for distribution to the Buyer and the Seller. Title Policies shall be issued and Disbursements of Documents to Buyer shall occur. Disburse to the Buyer the bill of sale, the general assignment, the FIRPTA certificate, the tenant notification letters and change of address notices duly executed by the Seller, and any other documents (or copies thereof) deposited into escrow by the Seller pursuant hereto.

**12. Seller's Representations and Warranties.** In addition to any express agreements of the Seller contained here, the following constitute representations and warranties of the Seller to the Buyer:

(a) Representations Regarding Seller's Authority.

(i) The Seller has the legal power, right, and authority to enter into this Agreement and the instruments referred to here and to consummate the transactions contemplated here.

(ii) All requisite action (corporate, trust, partnership, or otherwise) has been taken by the Seller in connection with entering into this Agreement, the instruments referred to here, and the consummation of the transactions contemplated here. No

further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

(iii) The persons executing this Agreement and the instruments referred to here on behalf of the Seller and the partners, officers, or trustees of the Seller, if any, have the legal power, right, and actual authority to bind the Seller to the terms and conditions of this Agreement.

(iv) This Agreement and all documents required to be executed by the Seller are and shall be valid, legally binding obligations of and enforceable against the Seller in accordance with their terms.

(v) Neither the execution and delivery of this Agreement and documents referred to here, nor the incurring of the obligations set forth here, nor the consummation of the transactions here contemplated, nor compliance with the terms of this Agreement and the documents referred to here conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which the Seller is a party or affecting the Property.

(b) Warranties and Representations Pertaining to Real Estate and Legal Matters.

(i) The information contained in the recitals is true and correct.

(ii) Except as disclosed to the Buyer in writing, there is no litigation, claim, or arbitration, pending or threatened, with regard to the Property or its operation.

(iii) No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of the Seller's knowledge, threatened against the Seller, nor are any such proceedings contemplated by the Seller.

(iv) To the best of the Seller's knowledge after due inquiry, the construction, occupancy, and operation of the Property materially conform to and comply with all applicable city, county, state, and federal law, statutes, ordinances, and regulations.

(v) To the best of the Seller's knowledge after due inquiry, there are no material structural defects in any building or structure, nor are there any major repairs required to operate the building or structures in a lawful, safe, and efficient manner.

(vi) The Seller is the legal and beneficial fee simple titleholder of the Property and has good, marketable, and insurable title to the Property, free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, judgments, or other matters, except as disclosed by the preliminary title report. There shall be no change in the ownership, operation, or control of the Seller from the date of this Agreement until the Closing Date.

(vii) The electrical, plumbing, heating, and air conditioning systems, if any, and any other utility systems will be in substantially the same condition at closing as when the Buyer conducted its inspection.

(viii) The improvements and personal property listed in the inventory is all located at the Property and is all of the personal property used in the operation of the Property, other than personal property owned by tenants.

(ix) The Seller has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal or options to purchase the Property.

(x) The Seller has not received any notices from any insurance company of any defects or inadequacies in the Property.

(xi) Any licenses and permits obtained by the Seller have been fully paid for and are not subject to any liens, encumbrances, or claims of any kind.

(xii) The Seller has not sold, transferred, conveyed, or entered into any agreement regarding "air rights" or other development rights or restrictions relating to the Property.

(xiii) To the best of the Seller's knowledge, the Property is materially in compliance with applicable local, state and federal environmental standards and requirements affecting it.

(xiv) The Seller has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property.

(xv) The Seller has not transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements. To the best of the Seller's knowledge, no other person has transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements.

(xvi) There are no proceedings, governmental administrative actions, or judicial proceedings pending or, to the best of the Seller's knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

(xvii) To the best of the Seller's knowledge, the Seller has not, during its ownership of the Property, stored, produced, or disposed of any hazardous substance, including asbestos, on the Property.

(c) Other Representations. To the best of the Seller's knowledge after due inquiry:

(i) The leases, and all other information and documentation to be provided by the Seller to the Buyer in connection with this transaction are complete, true, and accurate, and are presented in a manner that is not misleading.

(ii) All leases are in full force and effect with rents paid currently.

(iii) With regard to the tenant leases, the Seller knows of no default by it or by any of the tenants, and there have been no verbal changes and no concessions granted with respect to the leases or tenants under the leases, except as indicated in the rent roll.

(iv) The only service or maintenance contracts have been provided or disclosed in writing to the Buyer. Except where the Seller has indicated to the contrary, all the service contracts may be terminated without penalty or other payment, except for the current sum then owing by the Buyer on 30 days' or less notice.

(v) There is no current default or breach under the terms and provisions of any of the service contracts. The service contracts have not been and will not be amended or modified except as indicated here.

(vi) As of the Closing Date, the Seller's interest in tenant leases and rentals due or to become due thereunder will not be subject to any assignment, encumbrance, or liens.

(vii) No leasing or brokerage fees or commissions of any nature whatsoever



shall become due or owing to any person, firm, corporation, or entity after closing with respect to the tenant leases.

(viii) The operating statements provided to the Buyer are true and accurate in all material respects.

(ix) The Seller has no employees whom the Buyer will be required to employ after closing.

(d) Representations, Warranties, and Covenants Regarding Operation of the Property Through the Closing.

(i) The Seller further represents and warrants that, until this transaction is closed or escrow is terminated, whichever comes earlier, it shall:

A. Operate and maintain the Property in a manner consistent with the Seller's past practices;

B. Keep all existing insurance policies affecting the Property in full force and effect;

C. Make all regular payments of interest and principal on any existing financing;

D. Comply with all government regulations;

E. Keep the Buyer timely advised of any repair or improvement required to keep the Property in substantially the same condition or improved conditions as contemplated.

(ii) The Seller hereby agrees that the Seller will not hereafter modify, extend, or otherwise change any of the terms, covenants, or conditions of the tenant leases, or enter into new leases or any other obligations or agreements affecting the Property without the prior written consent of the Buyer, which consent shall not be unreasonably withheld. Without the prior written consent of the Buyer, the Seller shall not terminate any of the tenant leases, unless the tenant thereunder has materially defaulted in the payment of rent. The Seller shall not accept from any of the tenants payment of rent more than one month in advance or apply any security deposit to rent due from any tenant. Nothing contained here shall restrict the right of the Seller to enter into month-to-month leases or grant month-to-month extensions of existing tenant leases in the ordinary course of business at rates consistent with those reflected in the rent roll, nor shall anything here restrict the right of the Seller to enter into service contracts or extend existing service contracts in the ordinary course of business as long as such service contracts can be terminated, without penalty or payment by the Buyer, upon 30 days' or less notice.

(iii) The Seller will give the Buyer at least 10 business days' notice before commencing any forcible entry and detainer action or any other action with respect to the Property and will refrain from bringing any such action except on such terms as are mutually acceptable to the Seller and the Buyer. The Buyer shall not unreasonably withhold the Buyer's consent to any action that the Seller wishes to institute before closing, and the Buyer's failure to disapprove any such action within \_\_\_\_ business days after the Seller's request shall be deemed to constitute the Buyer's consent.

(iv) The Seller will not enter into any new leases until the Buyer has given its written approval of leases submitted to it by the Seller, which approval will not be unreasonably withheld or delayed.

(v) Any lease submitted by the Seller to the Buyer will be accompanied by a statement setting forth in reasonable detail all out-of-pocket costs to be incurred in

connection with each such lease during the interim period. This will include the cost of tenant improvements, leasing fees, any tenant concessions, any moving cost allowances, and any assumptions of existing rental or lease agreements. Such costs shall be approved in writing by the Buyer, together with the applicable lease, and such approval shall not be unreasonably withheld or delayed. Each of such costs shall be specifically set forth or, if it is not practical to designate a fixed amount, the manner of determining the amount of the cost shall be set forth.

(vi) All such preapproved costs that are incurred and paid out by the Seller before the closing date shall be reimbursed by the Buyer to the Seller by payment through the escrow at closing. All such costs that the Seller has incurred and that are payable following the closing date shall be assumed and paid by the Buyer as and when payable.

(vii) If the sale does not close because of failure of any of the conditions, it is understood that the Buyer will have no responsibility for payment or reimbursement of any such costs approved by the Buyer.

(viii) Except as otherwise provided here, the Seller will not extend, renew, modify, or replace any of the service contracts without the prior written consent of the Buyer. If the Buyer does not disapprove any request of the Seller regarding a service contract within 10 business days of the request, the Buyer shall be deemed to have approved the request.

(ix) The Seller will not make any alterations to the Property or remove any of the personal property from it, unless the personal property so removed is simultaneously replaced with personal property of similar quality and utility.

(e) General Representation. The Seller's representations and warranties contained here are true and accurate, and are not misleading. The Seller's representations and warranties contained here shall be continuing and shall be true and correct as of the Closing Date with the same force and effect as if remade by the Seller in a separate certificate at that time. The Seller's representations and warranties contained here shall survive the close of escrow and shall not merge into the deed and the recordation of the deed in the official records.

**13. As Is.** Other than the Seller's representations and warranties contained in this Agreement and those contained in any instrument delivered to the Buyer at closing, the Buyer acknowledges that it is purchasing the Property AS IS.

**14. Buyer's Representations and Warranties.** In addition to any express agreements of the Buyer contained here, the following constitute representations and warranties of the Buyer to the Seller:

(a) The Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to here and to consummate the transactions contemplated here.

(b) All requisite action (corporate, trust, partnership, or otherwise) has been taken by the Buyer in connection with entering into this Agreement and the instruments referred to here and the consummation of the transactions contemplated here. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

(c) The persons executing this Agreement and the instruments referred to

here on behalf of the Buyer have the legal power, right, and actual authority to bind the Buyer to the terms and conditions of this Agreement.

(d) This Agreement and all documents required by it to be executed by the Buyer are and shall be valid, legally binding obligations of, and enforceable against the Buyer in accordance with their terms.

(e) Neither the execution and delivery of this Agreement and documents referred to here, nor the incurring of the obligations set forth here, nor the consummation of the transactions contemplated, nor compliance with the terms of this Agreement and the documents referred to here conflicts with or results in the material breach of any terms, conditions, or provisions of or constitute a default under any bond, note, or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which the Buyer is a party.

**15. Damage or Destruction; Condemnation.** Until close of escrow, the risk of loss shall be retained by the Seller. The Seller shall keep the Property fully insured until close of escrow.

In the event all or any material portion of the Property is damaged, destroyed, or condemned or threatened with condemnation before the close of escrow, the Buyer may terminate this Agreement. In such event, escrow will be terminated, the earnest money deposit and accrued interest thereon will be promptly returned to the Buyer, and this Agreement shall have no further force or effect whatsoever. If a nonmaterial portion of the Property is destroyed or condemned, this Agreement shall remain in full force and effect, including, without limitation, the Buyer's obligation to close this transaction as provided for here and to pay the full purchase price to the Seller. In such event, the Buyer shall be assigned all insurance proceeds or condemnation proceeds payable to or for the account of the Seller.

**16. Required Actions of Buyer and Seller.** The Buyer and the Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated and shall use their best efforts to accomplish the close of escrow in accordance with the provisions here.

**17. Entry.** The Buyer, its agents, and designees shall have reasonable access to the Property for the sole purpose of confirming that it is in substantially the same condition at closing as it was when inspected. The Buyer's right to access does not negate the warranties and covenants contained here. The Buyer shall indemnify and hold the Seller harmless from any loss, damage, or claim arising out of the Buyer's access to the Property.

**18. Statutory Disclaimer.**

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER [ORS 197.352](#). THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND

***Ordinance Attachment 1 - DEVELOPMENT AGREEMENT FOR VERDE VILLAGE***

*Exhibit G*

REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN [ORS 30.930](#) AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER [ORS 197.352](#). "

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN [ORS 30.930](#) IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER [ORS 197.352](#). BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER [ORS 197.352](#).

IF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505. ORS 358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESERVATION OFFICER OF SALE OR TRANSFER OF THIS PROPERTY.

**BEFORE THE CITY COUNCIL  
CITY OF ASHLAND, JACKSON COUNTY, OREGON  
December 18, 2007**

IN THE MATTER OF AN ORDINANCE DECLARING THE APPROVAL OF THE )  
 VERDE VILLAGE DEVELOPMENT AGREEMENT, INCLUDING A REAL )  
 PROPERTY EXCHANGE AND APPROVAL OF PLANNING ACTION #2006-01663, )  
 INCLUDING A REQUEST FOR ANNEXATION OF A TOTAL OF 11.64-ACRE SITE )  
 (IN THREE PARTS) LOCATED AT 87 W. NEVADA ST AND 811 HELMAN STREET )  
 REQUEST FOR A COMPREHENSIVE PLAN MAP AND ZONING MAP CHANGE )  
 JACKSON COUNTY ZONING RR-5 (RURAL RESIDENTIAL) TO R-1 (SINGLE- )  
 FAMILY RESIDENTIAL) AND R-1-3.5 (SUBURBAN RESIDENTIAL). )  
 THE PROPOSAL INCLUDES A REQUEST FOR OUTLINE PLAN APPROVAL )  
 UNDER THE PERFORMANCE STANDARDS OPTIONS CHAPTER 18.88 TO )  
 DEVELOP THE PROPERTY AS A 68-UNIT RESIDENTIAL DEVELOPMENT. ) **FINDINGS OF FACT,**  
 EXCEPTIONS TO THE STREET STANDARDS ARE REQUESTED FOR ) **CONCLUSIONS OF LAW**  
 NOT LOCATING A STREET ADJACENT TO NATURAL FEATURES AND ) **AND ORDER**  
 TO USE A PRIVATE DRIVE TO ACCESS THE COTTAGES RATHER THAN )  
 THE REQUIRED PUBLIC STREET. A PHYSICAL CONSTRAINTS REVIEW )  
 PERMIT IS REQUESTED TO LOCATE A MULTI-USE PATH IN THE ASHLAND )  
 CREEK RIPARIAN PRESERVATION AREA. A TREE REMOVAL PERMIT IS )  
 REQUESTED TO REMOVE A 25-INCH DIAMETER AT BREAST HEIGHT OAK )  
 TREE. APPLICANT: Greg and Valri Williams )

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**I. NATURE OF PROCEEDINGS**

This matter comes before the City Council for the City of Ashland for a *de novo* hearing on a request for an Ordinance declaring the approval of a Development Agreement, land exchange and associated planning actions as identified in PA #2006-01663.

**Now, Therefore, the City Council of the City of Ashland makes the following Findings of Fact, Conclusions of Law and Order.**

**II. FINDINGS OF FACT:**

1) Tax lots 700, 800 and 900 of 39 1E 04BB and tax lots 800 and 1100 of 39 1E 04B are located at 87 W. Nevada St. and 811 Helman St. Tax lot 200 of 39 1E 04BB is City of Ashland property and is commonly referred to as the Dog Park. Tax lots 700 and 800 of 39 1E 04BB are located outside of the Ashland city limits and are Jackson County zoning Rural Residential (RR-5). Tax lots 800 and 1100 of 39 1E 04B and tax lot 900 of 39 1E 04BB are partially located in the Ashland city limits. The portions of 39 1E 04B 800 and 1100 and tax lot 900 of 39 1E 04BB in the Ashland city limits are zoned Single Family Residential (R-1-5) and the portions of the same tax lots outside the Ashland city limits is Jackson County zoning Rural Residential (RR-5).

2) The applicant is requesting an Annexation for an 11.64 acre site located at 87 W. Nevada St. and 811 Helman St. The application includes a request for a Comprehensive Plan Map and Zoning Map change from Jackson County zoning RR-5 (Rural Residential) to City of Ashland zoning R-1-3.5 (Suburban Residential) and R-1 (Single-Family Residential). The application includes a request for Outline Plan approval for a 68-unit residential development under the Performance Standards Options Chapter 18.88. The application includes two requests for Exceptions to the Street Standards for not locating a street adjacent to natural features and to use a private drive to access the cottages rather than the required public street. A Physical Constraints Review Permit is requested to locate a multi-use path in the Ashland Creek Riparian Preservation Area. A Tree Removal Permit is requested to remove a 25-inch diameter at breast height Oak tree. The application includes a request for a land exchange with the City of Ashland. Site improvements are outlined on the plans on file at the Department of Community Development.

**3) The criteria for an Annexation are described in 18.106.030 as follows:**

- A. The land is within the City's Urban Growth Boundary.
- B. The proposed zoning for the annexed area is in conformance with the designation indicated on the Comprehensive Plan Map, and the project, if proposed concurrently with the annexation, is an allowed use within the proposed zoning.
- C. The land is currently contiguous with the present City limits.
- D. Adequate City facilities for the provision of water to the site as determined by the Public Works Department; the transport of sewage from the site to the waste water treatment plant as determined by the Public Works Department; the provision of electricity to the site as determined by the Electric Department; urban storm drainage as determined by the Public Works Department can and will be provided to and through the subject property. Unless the City has declared a moratorium based upon a shortage of water, sewer, or electricity, it is recognized that adequate capacity exists system-wide for these facilities.
- E. Adequate transportation can and will be provided to and through the subject property. For the purposes of this section "adequate transportation" for annexations consists of vehicular, bicycle, pedestrian and transit transportation meeting the following standards:
  - 1. For vehicular transportation a 20' wide paved access exists, or can and will be constructed, along the full frontage of the project site to the nearest fully improved collector or arterial street. All streets adjacent to the annexed area shall be improved, at a minimum, to a half-street standard with a minimum 20' driving surface. The City may, after assessing the impact of the development, require the full improvement of streets adjacent to the annexed area. All streets located within annexed areas shall be fully improved to city standards. Where future street dedications are indicated on the City's Street Dedication Map or required by the City, provisions shall be made for the dedication and improvement of these streets and included with the application for annexation.

2. For bicycle transportation safe and accessible bicycle facilities exist, or can and will be constructed. Should the annexation be adjacent to an arterial street, bike lanes shall be provided on or adjacent to the arterial street. Likely bicycle destinations from the project site shall be determined and safe and accessible bicycle facilities serving those destinations shall be indicated.
  3. For pedestrian transportation safe and accessible pedestrian facilities exist, or can and will be constructed. Full sidewalk improvements shall be provided on one side adjacent to the annexation for all streets adjacent to the proposed annexed area. Sidewalks shall be provided as required by ordinance on all streets within the annexed area. Where the project site is within a quarter of a mile of an existing sidewalk system, the sidewalks from the project site shall be constructed to extend and connect to the existing system. Likely pedestrian destinations from the project site shall be determined and the safe and accessible pedestrian facilities serving those destinations shall be indicated.
  4. For transit transportation, should transit service be available to the site, or be likely to be extended to the site in the future based on information from the local public transit provider, provisions shall be made for the construction of adequate transit facilities, such as bus shelters and bus turn-out lanes. All required transportation improvements shall be constructed and installed prior to the issuance of a certificate of occupancy for any new structures on the annexed property.
- F. For all residential annexations, a plan shall be provided demonstrating that the development of the entire property will ultimately occur at a minimum density of 90% of the base density for the zone, unless reductions in the total number of units is necessary to accommodate significant natural features, topography, access limitations, or similar physical constraints. The owner or owners of the property shall sign an agreement, to be recorded with the county clerk after approval of the annexation, ensuring that future development will occur in accord with the minimum density indicated in the development plan. For purposes of computing maximum density, portions of the annexed area containing undevelopable areas such as wetlands, floodplain corridor lands, or slopes greater than 35%, shall not be included.
- G. For all annexations with a density or potential density of four residential units or greater and involving residential zoned lands, or commercial, employment or industrial lands with a Residential Overlay (R-Overlay):
1. 35% of the base density to qualifying buyers or renters with incomes at or below 120% of median income; or
  2. 25% of the base density to qualifying buyers or renters with incomes at or below 100% of median income; or
  3. 20% of the base density to qualifying buyers or renters with incomes at or below 80% of median income; or

4. 15% of the base density to qualifying buyers or renters with incomes at or below 60% of median income; or
5. Title to a sufficient amount of buildable land for development is transferred to a non-profit (IRC 501(3)(c)) affordable housing developer or comparable Development Corporation for the purpose of complying with subsection 2 above. The land shall be located within the project and all needed public facilities shall be extended to the area or areas proposed for transfer. Ownership of the land shall be transferred to the affordable housing developer or Development Corporation prior to commencement of the project.

The total number of affordable units described in this section G shall be determined by rounding down fractional answers to the nearest whole unit. A deed restriction, or similar legal instrument, shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years. Properties providing affordable units as part of the annexation process shall qualify for a maximum density bonus of 25 percent.

H. One or more of the following standards are met:

1. The proposed area for annexation is to be residentially zoned, and there is less than a five-year supply of vacant and redevelopable land in the proposed land use classification within the current city limits. "Redevelopable land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the likelihood that existing development will be converted to more intensive residential uses during the planning period. The five- year supply shall be determined from vacant and redevelopable land inventories and by the methodology for land need projections from the Housing Element of the Comprehensive Plan; or
2. The proposed lot or lots will be zoned E-1 or C-1 under the Comprehensive Plan, and that the applicant will obtain Site Review approval for an outright permitted use, or special permitted use concurrent with the annexation request; or
3. A current or probable public health hazard exists due to lack of full City sanitary sewer or water services; or
4. Existing development in the proposed annexation has inadequate water or sanitary sewer service; or the service will become inadequate within one year; or
5. The area proposed for annexation has existing City of Ashland water or sanitary sewer service extended, connected, and in use, and a signed "consent to annexation" agreement has been filed and accepted by the City of Ashland; or
6. The lot or lots proposed for annexation are an "island" completely surrounded by lands within the city limits.

**4) The criteria for a Comprehensive Plan Map Change and Zone Change are described in 18.108.060.B as follows:**

1. Zone changes, zoning map amendments and comprehensive plan map changes subject to the Type III procedure as described in subsection A of this section may be approved if in compliance with the comprehensive plan and the application demonstrates that:



- a. The change implements a public need, other than the provision of affordable housing, supported by the Comprehensive Plan; or
- b. A substantial change in circumstances has occurred since the existing zoning or Plan designation was proposed, necessitating the need to adjust to the changed circumstances; or
- c. Circumstances relating to the general public welfare exist that require such an action; or
- d. Proposed increases in residential zoning density resulting from a change from one zoning district to another zoning district, will provide one of the following:
  - 1. 35% of the base density to qualifying buyers or renters with incomes at or below 120% of median income; or
  - 2. 25% of the base density to qualifying buyers or renters with incomes at or below 100% of median income; or
  - 3. 20% of the base density to qualifying buyers or renters with incomes at or below 80% of median income; or
  - 4. 15% of the base density to qualifying buyers or renters with incomes at or below 60% of median income; or
  - 5. Title to a sufficient amount of buildable land for development is transferred to a non-profit (IRC 501(3)(c)) affordable housing developer or comparable Development Corporation for the purpose of complying with subsection 2 above. The land shall be located within the project and all needed public facilities shall be extended to the area or areas proposed for transfer. Ownership of the land shall be transferred to the affordable housing developer or Development Corporation prior to commencement of the project; or
- e. Increases in residential zoning density of four units or greater on commercial, employment or industrial zoned lands (i.e. Residential Overlay), will not negatively impact the City of Ashland's commercial and industrial land supply as required in the Comprehensive Plan, and will provide one of the following:
  - 1. 35% of the base density to qualifying buyers or renters with incomes at or below 120% of median income; or
  - 2. 25% of the base density to qualifying buyers or renters with incomes at or below 100% of median income; or
  - 3. 20% of the base density to qualifying buyers or renters with incomes at or below 80% of median income; or
  - 4. 15% of the base density to qualifying buyers or renters with incomes at or below 60% of median income; or
  - 5. Title to a sufficient amount of buildable land for development is transferred to a non-profit (IRC 501(3)(c)) affordable housing developer or comparable Development Corporation for the purpose of complying with

subsection 2 above. The land shall be located within the project and all needed public facilities shall be extended to the area or areas proposed for dedication. Ownership of the land and/or air space shall be transferred to the affordable housing developer or Development Corporation prior to commencement of the project.

The total number of affordable units described in sections D or E shall be determined by rounding down fractional answers to the nearest whole unit. A deed restriction, or similar legal instrument, shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years.

Sections D and E do not apply to council initiated actions.

**5) The criteria for Outline Plan approval are described in 18.88.030.A.4 as follows:**

The Planning Commission shall approve the outline plan when it finds the following criteria have been met:

- a. That the development meets all applicable ordinance requirements of the City of Ashland.
- b. That adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.
- c. That the existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the open space, common areas, and unbuildable areas.
- d. That the development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.
- e. That there are adequate provisions for the maintenance of open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.
- f. That the proposed density meets the base and bonus density standards established under this Chapter.
- g. The development complies with the Street Standards.

**6) The criteria for an Exception to the Street Standards are described in 18.88.050.F as follows:**

An exception to the Street Standards is not subject to the Variance requirements of section 18.100 and may be granted with respect to the Street Standards in 18.88.050 if all of the following circumstances are found to exist:

- A. There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.
- B. The variance will result in equal or superior transportation facilities and connectivity;
- C. The variance is the minimum necessary to alleviate the difficulty; and
- D. The variance is consistent with the stated Purpose and Intent of the Performance Standards Options Chapter.

**7) The criteria for a Physical Constraints Review Permit are described in 18.62.040.I as follows:**

- 1. Through the application of the development standards of this chapter, the potential impacts to the property and nearby areas have been considered, and adverse impacts have been minimized.
- 2. That the applicant has considered the potential hazards that the development may create and implemented measures to mitigate the potential hazards caused by the development.
- 3. That the applicant has taken all reasonable steps to reduce the adverse impact on the environment. Irreversible actions shall be considered more seriously than reversible actions. The Staff Advisor or Planning Commission shall consider the existing development of the surrounding area, and the maximum permitted development permitted by the Land Use Ordinance.

**8) The criteria for a Tree Removal Permit are described in 18.61.080 as follows:**

An applicant for a Tree Removal-Staff Permit shall demonstrate that the following criteria are satisfied. The Staff Advisor may require an arborist's report to substantiate the criteria for a permit.

A. Hazard Tree: The Staff Advisor shall issue a tree removal permit for a hazard tree if the applicant demonstrates that a tree is a hazard and warrants removal.

- 1. A hazard tree is a tree that is physically damaged to the degree that it is clear that it is likely to fall and injure persons or property. A hazard tree may also include a tree that is located within public rights of way and is causing damage to existing public or private facilities or services and such facilities or services cannot be relocated or the damage alleviated. The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard or a foreseeable danger of property damage to an existing structure and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

2. The City may require the applicant to mitigate for the removal of each hazard tree pursuant to AMC 18.61.084. Such mitigation requirements shall be a condition of approval of the permit.

B. Tree that is Not a Hazard: The City shall issue a tree removal permit for a tree that is not a hazard if the applicant demonstrates all of the following:

1. The tree is proposed for removal in order to permit the application to be consistent with other applicable Ashland Land Use Ordinance requirements and standards. (e.g. other applicable Site Design and Use Standards). The Staff Advisor may require the building footprint of the development to be staked to allow for accurate verification of the permit application; and

2. Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks; and

3. Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property.

The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone. Nothing in this section shall require that the residential density be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures or alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with other provisions of the Ashland Land Use Ordinance.

4. The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to AMC 18.61.084. Such mitigation requirements shall be a condition of approval of the permit.

9) The City Council, following proper public notice, held public hearings on November 6, 2007 and November 20, 2007 at which time testimony was received and exhibits were presented. The City Council approved the application subject to conditions pertaining to the appropriate development of the site.

**Now, Therefore, the City Council of the City of Ashland makes the following Findings of Fact, Conclusions of Law and Order.**

### **III. FINDINGS APPLYING APPLICABLE CODE CRITERIA AND MINIMUM STANDARDS FOR ELIGIBILITY FOR ANNEXATION**

3.1 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.

3.2 The City Council finds that the proposal to annex an 11.64 acre site located at 87 W. Nevada St. and 811 Helman St. meets all applicable criteria for an Annexation. The City Council finds that

the proposal to change the Ashland Comprehensive Plan Map from a Single-Family Residential designation to a Suburban Residential designation for the cottage and town home portion of the development meets all applicable criteria for a Comprehensive Plan change. The City Council finds the proposal to develop a 68-unit single-family residential subdivision meets all applicable criteria for an Outline Plan approval described in the Performance Standards Options Chapter 18.88. The City Council finds and that the proposed location the multi-use path adjacent to the natural feature rather than a public street, and the proposed use of a private drive to access the cottages rather than the required public street meet all applicable criteria for Exceptions to the Street Standards. The City Council finds the request to locate a multi-use path in the Ashland Creek Riparian Preservation Area meets all applicable criteria for a Physical Constraints Review Permit. The City Council finds the request to remove a 25-inch diameter at breast height Oak tree meets all applicable criteria for a Tree Removal Permit.

### 3.3 The City Council finds that the proposal to annex 11.64 acres meets all applicable criteria for an Annexation.

The site is comprised of five parcels and all of the parcels are located in the Ashland Urban Growth Boundary. In addition, the land is currently contiguous with the present city limits. The west part of the development is contiguous to the city limits on all sides. The east part of the development is contiguous to the city limits on the west and south.

The Annexation approval criteria require the proposed zoning for the annexed area to be in conformance with the designation indicated on the Comprehensive Plan Map. The entire site is designated as Single-Family Residential on the Ashland Comprehensive Plan Map. The proposal includes a Comprehensive Plan Map Change for approximately 42 percent of the site, for the cottage and town home portion of the development, to modify the Single-Family Residential (R-1) designation in the Ashland Comprehensive Plan Map to the Suburban Residential (R-1-3.5) designation. The request for the Comprehensive Plan Map Change is discussed in the following section. Therefore, the ability of the cottage and town home portion of the development to meet this criterion is dependent on the approval of the Comprehensive Plan Map Change. The remainder of the site, the single-family portion of the development, would remain in the Single-Family designation. Therefore, the single-family portion of the development is in conformance with the Comprehensive Plan Map, and satisfies this Annexation criterion.

The proposed uses included in the Annexation are required to be allowed uses in the zoning districts. Phase I, or the R-1-3.5 portion of the project to the west of Alameda Dr. and Canine Way includes single-family and multi-family dwellings. Single-family and multi-family dwellings are permitted uses in the R-1.3.5 zoning district. Phase II, or the R-1-5 portion of the project to the east of Alameda Dr. and Canine Way includes single-family dwellings and duplexes. Single-family dwellings, and duplexes on corner lots are permitted uses in the R-1 zoning district.

Adequate city facilities to provide water to the site, to transport sewage from the site, to carry storm drainage to and through the site and to provide electricity to the site are included in the preliminary

utility plan and utility power plan. Eight-inch water lines will be installed to serve the development with connections to the existing system in Nevada and Alameda streets. Two existing 12-inch and 18-inch sanitary sewer lines run through the property and are retained in Alameda Dr. Eight-inch lines will be installed in Sander Way, Canine Way and the cottage driveway to serve the development with connections to the existing lines. Storm drainage is directed to two locations. The southwesterly area of the project is directed to the City's existing demonstration wetlands located north of the project using standard underground pipes. The northeasterly area of the project is directed and treated through a combination of a pipe system and a newly built system of swales and sediment ponds to Ashland Creek. Electric utilities will run through the site from the existing system across Nevada St. The utility power plan delineates the location of new lines, equipment and street lights.

Adequate transportation can and will be provided to and through the subject property. A Traffic Impact Study was prepared for the project and has been included with the application. The study projects that the intersection of Helman, Nevada and Alameda, and the intersection of Oak and Nevada will continue to operate at acceptable levels with build out of the proposed project.

Outside of the Exceptions to the Street Standards requested in the application, the proposed streets meet the requirements of the Street Standards. The new streets are connected to Nevada Street which is a Neighborhood Collector. The Nevada St. frontage of the site will be improved with a parkrow and sidewalk. Sidewalks will be installed on all of the new streets running through the site. The new intersection of Helman St., Alameda Dr. and Nevada St. will be an important pedestrian crossing point for residents of the development and for visitors of the Dog Park and Bear Creek Greenway. Bicycle lanes are not required because none of the adjacent or new streets are classified arterials. The application findings state that transit service is not planned to the site.

The Annexation approval criteria require that where the project site is within a quarter of a mile of an existing sidewalk system, the sidewalks from the project site shall be constructed to extend and connect to the existing system. The Oak St. sidewalk system is approximately 450 feet away or less than 1/10 of a mile away from the project boundary. Sidewalks are in place on Oak St. from Nevada St. to the downtown. As also required by the Annexation approval criteria, the proposal includes the installation of a city standard parkrow and sidewalk on the Nevada St. frontage of the site. This will result in a gap in the sidewalk network on the north side of Nevada St. from the project site to Oak St. The City Council finds installation of the sidewalk on the north side of Nevada St. from the site to Oak St. is required to meet the Annexation approval criteria.

The "Revisions to Area and Density Tables" submittal dated July 20, 2007 included in the application includes a table demonstrating that the 90% density is achieved in each housing type and for the project as a whole.

The application satisfies the annexation affordable housing requirement by providing title to a sufficient amount of buildable land to a non-profit to develop 25% of the base density to buyers or renters at or below 100% of median income (base density of 58 units \* .25 = 14.5 units). The application includes 15 affordable housing units in a town home format in the northwest portion of the site. The project description states that the land will be donated to Rogue Valley Community

Development Corporation (RVDC) to develop as 15 affordable units for the range of 80 to 100 percent of median income.

The western portion of the project is an island surrounded by lands within the city limits, and therefore satisfies Section 18.106.030.H.6 of the Annexation approval standards. This part of the annexation shall occur first and shall be reflected in an Ordinance approving the annexation and withdrawal from the Fire District.

The eastern portion of the project must also meet one of the six standards in Section 18.106.030.H. Currently, the eastern portion of the project is adjacent to and in the city limits on two sides, to the south and west. The application states that Phase I of the project will be development of the western portion of the project and the dedication of the property adjacent to Ashland Creek to the city for parks purposes. The second part of the annexation is an annexation of the dedicated City property pursuant to ALUO 18.106.040, including annexation to the boundaries of Ashland Creek as permitted by ORS 222. This annexation shall also be reflected in an Ordinance. Finally, as a result of the land dedication and annexation of the approximately 2.78 acres of new City property contiguous to the dog park and located along Ashland Creek in Phase I, the eastern portion of the property will be an island completely surrounded by lands within the city limits, and therefore “through the imposition of conditions”, authorized by ALUO 18.106.030 (concerning timing) also complies with ALUO 18.106.030.H.6. This part of the annexation shall occur third and shall be reflected in an Ordinance approving the annexation and withdrawal from the Fire District.

3.4 The City Council finds that the request for an Ashland Comprehensive Plan Map change from a Single-Family Residential designation to a Suburban Residential designation for the cottage and town home portion of the development meets all applicable criteria for a Comprehensive Plan Map change.

The application includes a request for a Comprehensive Plan Map Change for approximately 4.35 acres or 42 percent of the site to modify the Single-Family Residential (R-1) designation in the Ashland Comprehensive Plan Map to the Suburban Residential (R-1-3.5) designation. The location of the Comprehensive Plan Map Change is for Phase I, or the cottage and town home portion of the project to the west of Alameda Dr. and Canine Way. The remainder of the site would remain in the Single-Family designation.

The approval criteria for a Comprehensive Plan Map Change require that the proposed change meet one of five factors and be in compliance with the Comprehensive Plan. The City Council finds that the change to the Suburban Residential Family designation for Phase I of the project (i.e. cottages and town homes) enables a minimum of 53 of the 68 units in the development to be constructed at an energy and water conserving performance standard. Additionally, the Suburban-Residential designation and subsequent R-1-3.5 zoning allows flexibility with the housing types and site design that is well-suited for the cottage and town home areas of the development. The cottage and town homes include attached dwellings that are grouped in clusters around open space. The flexibility in building placement and site design allows all of the proposed buildings to be located on an east-west axis for a true South building orientation so that the optimum solar efficiency is gained for both solar collection devices and for passive solar

gain. Finally, the total number of units in the proposed development is comparable to the site being developed as a Single-Family Residential development with R-1-5 zoning and the density bonuses permitted in Chapter 18.88 Performance Standard Options. For example, a project could be developed under the R-1-5 zoning and used a density bonus for conservation housing and affordable housing. In this case, the base density of the subject properties developed at a R-1-5 density is 46.67 units (10.37 Ac \* 4.5 du/ac = 46.67 units). A 40% density bonus with a 15% density bonus for conservation housing and a 25% bonus for affordable housing would allow 65 units (46.67 units \* 1.40 = 65.34 units). In comparison, the proposed number of units in the development is 68 units.

The energy and water conservation housing provided by the development will address a public need for energy and water conservation in new homes that is supported by the Ashland Comprehensive Plan. The Ashland Comprehensive Plan includes the following goals and policies concerning energy and water conservation in Chapter XI: Energy.

*The City shall strive, in every appropriate way, to reduce energy consumption within the community. Water conservation and air quality enhancement should also be promoted. Programs should emphasize greater efficiency in end use, rather than sacrifices in living standards. In general, policies that effect change through a combination of economic incentives and public education shall be considered more appropriate than policies involving strict legal requirements or mandates. The City shall give due attention to energy and resource conservation and air quality enhancement in all planning actions and all city activities.*

*Policy 3) New Housing*

*C) New homes and apartments are being built which do not utilize the latest technological advances in water consuming devices. The City shall use any legal means to insure that only water conserving equipment be installed in new construction. This should be done to accommodate growth with lesser incremental water demand and also to eliminate the need to return to these homes later to retrofit them with water conserving devices.*

*D) Passive solar design and sun tempering are very cost effective in new home construction. They shall be encourage in new housing development and individual houses.*

*E) The City shall address overall energy usage of new developments instead of just looking at houses on an individual bases. Areas to be considered could be transportation energy, recycling, composting, communal gardens, water usage and solar access protection.*

*G) Appliance efficiency shall be encouraged in new housing. This could be done through existing programs (i.e. Super Good Cents), by codes, by education or by incentive programs (i.e. density bonuses). Also of these options shall be considered in*



*trying to achieve this goal.*

*Policy 8) Future Considerations*

*B) The future will be quite dynamic and volatile in the energy arena. The City needs to actively keep abreast of new advances in technology and embrace and encourage ones which can benefit water conservation, air quality, energy conservation or production.*

The City Council finds that the energy and water conservation performance standard as outline in Exhibit K-3 of Book III: Narrative, July 8, 2007, states that the units in the development will be designed to use 50% less energy than a typical code compliant home. Energy efficiency features included in the project performance standard are solar orientation, roofs designed for solar hot water collection systems, passive solar heating, integrated thermal mass, high efficiency heat source, improved thermal envelope (insulation), heat recovery ventilation, fluorescent or compact fluorescent lighting, energy efficient appliances, photovoltaic electric systems and night flush cooling. In addition, the goal of the development is to use approximately 50% less potable water than a typical code compliant development. Water efficiency features included in the project performance standard are water efficient toilets, showerheads and faucets, rainwater capture, water and energy efficient washers, drought resistant plantings and water efficient irrigation.

In regards to transportation facilities and amendments to an acknowledged comprehensive plan, Oregon Administrative Rule (OAR) 660-012-00060 requires local governments to address amendments that would “significantly affect an existing or planned transportation facility.” The original proposal was reviewed by the Oregon Department of Transportation (ODOT) in November 2006 and they commented that “ODOT Development Review is generally satisfied no adverse impacts to state facilities will occur as a result of the proposed land use amendments” (see page 494 of the record). The revised proposal was reviewed by ODOT in October 2007 and they had no comment (see page 17 of the record).

The City Council finds the proposed Ashland Comprehensive Plan Map change from a Single-Family Residential designation to a Suburban Residential designation for the cottage and town home portion of the development will not significantly affect an existing or planned transportation facility as defined in OAR 660-12-0060(1). As stated earlier, the total number of units in the proposed development is comparable to the site being developed under the current Comprehensive Plan designation of Single-Family Residential. Chapter 18.88 Performance Standards Options permits density bonuses for conservation housing, common open space, major recreational facilities and affordable housing. Using the density bonus provision, the subject property could be developed at a density close to the proposed 68 units under the current Single-Family Residential designation. In this case, the base density of the subject properties developed at a R-1-5 density is 46.67 units (10.37 Ac \* 4.5 du/ac = 46.67 units). A 40% density bonus with a 15% density bonus for conservation housing and a 25% bonus for affordable housing would allow 65 units (46.67 units \* 1.40 = 65.34 units). As a result, three additional units result from the Comprehensive Plan Map change from the current Single-Family Residential designation to the proposed Suburban Residential Designation. Three units generate an average of thirty motor

vehicle trips per day according to the ITE, Trip Generation Model, 7<sup>th</sup> addition. Thirty additional trips will not significantly affect the surrounding street network including Nevada St., Helman St. and Oak St.

The following discussion addresses the requirements of OAR 660-12-0060(1) and *the OAR text is in italics*.

*(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:*

*(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*

According to the Traffic Impact Study submitted with the application, the proposed development will generate 730 trips per day. While the Comprehensive Plan Map change results in a few more residential units as compared to development of the subject site under the current Comprehensive Plan Map designation, even considering the total traffic impact from the proposed development does not change the functional classification of the street network in the vicinity including Nevada St., Helman St. and Oak St.

The streets most likely to be impacted by motor vehicle traffic generated by the development are Nevada St., Helman St., and Oak St. Nevada St is identified in a Neighborhood Collector, and Helman St. and Oak St. are identified as Avenues in the Ashland Transportation System Plan.

The Transportation Element of the Ashland Comprehensive Plan, the Ashland Transportation System Plan and the Ashland Street Standards provide street classification guidelines. The function of a Neighborhood Collector such as Nevada St. is to distribute traffic from Boulevards or Avenues to neighborhood streets and vice versa, and the average traffic volumes of a Neighborhood Collector is 1,500 to 5,000 motor vehicle trips per day. The function of an Avenue such as Helman St. and Oak St. is to provide concentrated pedestrian, bicycle and motor vehicle access from Boulevards to neighborhoods and neighborhood activity centers and vice versa, and the average traffic volumes of an Avenue is 3,000 to 10,000 motor vehicle trips per day.

Traffic counts for Nevada St. are approximately 1,400 trips per day (2002), Helman St. are approximately 1,450 trips per day (2004) and for Oak St. are approximately 3,500 trips per day (2004). The Traffic Impact Study included in the application projects that approximately 47% of the peak PM hour traffic will use Helman St., 38% will go west on Nevada towards Oak St. and 15% of the traffic will go east on Nevada. All of the trips generated by the proposed by the development could be added to Nevada St., Helman St. or Oak St., and all of the streets would be well within the range of average traffic volumes identified in the Ashland street classification guidelines. Additionally, Nevada St. will continue to function as a Neighborhood Collector

distributing traffic from the adjacent neighborhoods to the larger Avenue streets in the neighborhood including Helman St. and Oak St. Helman St. and Oak St. will continue to operate as Avenue streets taking traffic to the Boulevards in the city limits such as N. Main St., Lithia Way and E. Main St.

*(b) Change standards implementing a functional classification system; or*

The proposed Comprehensive Plan Map change does not include a modification of the Ashland street classification guidelines.

*(c) As measured at the end of the planning period identified in the adopted transportation system plan:*

*(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*

The Comprehensive Plan Map change results in the addition of a few more residential units as compared to development of the subject site under the current Comprehensive Plan Map designation. The approximately 30 additional motor vehicle trips resulting from three additional units allowed by the Comprehensive Plan Map change will be the type of travel and level of travel that is consistent with the functional classification of the surrounding street network including Nevada St., Helman St. and Oak St.

*(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or*

The Ashland Transportation System Plan identifies the minimum acceptable performance standard for intersections as a LOS D. The Traffic Impact Study included in the application projects of LOS B for the intersections of Helman St./Alameda Dr./Nevada St. and of Nevada St. and Oak St. in 2010 with build out of the project and incorporating an annual average traffic growth rate.

*(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.*

The Ashland Transportation System Plan does not identify existing or planned transportation facilities in the vicinity that will have insufficient capacity at the end of the 20-year planning period of 2017.

3.5 The City Council finds the proposal to develop a 68-unit single-family residential subdivision meets all applicable criteria for an Outline Plan approval described in the Performance Standards Options Chapter 18.88.

The site is located at a northernmost section of the Ashland Urban Growth Boundary and there are no other undeveloped parcels located in the immediate vicinity. Therefore, the development of the subject site will not prevent adjacent land from being developed for the uses

in the Comprehensive Plan.

Adequate key city facilities and utilities are available and can be provided, and were discussed previously under the Annexation section. Outside of the Exceptions to the Street Standards requested in the application, the proposed streets meet the requirements of the Street Standards.

A multi-use path for pedestrians and bicyclists is proposed in the Ashland Creek riparian corridor connecting Nevada St. to the north end of Canine Way. The proposed multi-use path weaves above and below the biologically determined riparian zone and the top of the uppermost slope grade break. A second multi-use path is proposed between units 64 and 65 in the northwest corner of the project. The path would connect Alameda Dr. directly to the Bear Creek Greenway path connection. The subject section of Ashland Creek Corridor is identified for open space in the Long Term Plan on the Parks, Trails and Open Space Program fro 2002-2012. Additionally, the connection from Alameda Dr. to the Bear Creek Greenway path is also identified as a proposed greenway connection on the Parks, Trail and Open Space Program for 2002-2012.

A total of 127 off-street parking spaces and 68 on-street parking spaces are required for the proposed development of 68 units. The proposal meets the parking requirements. There are 114 off-street parking spaces proposed in a combination of garages and surface parking areas. The remaining required 13 off-street parking spaces are satisfied by 17 on-street spaces which is the equivalent to 13 off-street parking credits. There are 85 on-street spaces available which results in the 17 on-street spaces that can be used towards the off-street parking credits.

The proposed density of 68 units meets the base and bonus density standards of the Performance Standards Options Chapter 18.88. The base density of the property is 58.15 units. The project qualifies for a density bonus of 22% for the 15 affordable housing units that are provided ( $15 \text{ affordable units} / 68 \text{ units} = .22$ ). Therefore the permitted density with the affordable housing density bonus is 70 units ( $58.15 \text{ units} * 1.22 = 70.94 \text{ units}$ ).

With one exception, the proposed building setbacks meet the requirements of the Performance Standards Options Chapter 18.88. The front yards of the R-1-5 portion of the development meet the required 15 feet to the building and 20 feet to garages, and the setbacks along the perimeter of the development meet the required side and rear yards. The front yards of the R-1-3.5 portion of the development (cottages and town homes) do not meet the front yard requirements along Alameda Dr. and Canine Way. Fifteen feet is shown and 20 feet is required for front yards in the R-1-3.5 zoning district. As a result, a condition has been added that the buildings delineated in the Final Plan meet the required front yard for the R-1-3.5 zoning district. The heights of the proposed buildings and minimum width between buildings appear to be met, and will be verified at the Final Plan and building permit submittals. It is not clear the application if the proposed units meet the Solar Setback requirements of Chapter 18.68 as is required in the Performance Standards Options Chapter 18.88.070.E. A condition has been added requiring the Final Plan application address the Solar Setback requirements.

The entire subdivision is required to provide a minimum of five percent of the lot area in open space

for Outline Plan approval under the Performance Standards Options. A total of 21,688 square feet is required in open space, and the proposal includes 25,230 square feet identified as common open space areas. With the exception of the four standard single-family lots in the subdivision, the units also have a private yard space identified for each unit. Since the common open space provides an additional 3,542 square feet in open space beyond the requirements, the application meets the open space acreage requirements.

The Outline Plan approval criteria require that there are adequate provisions for the maintenance of open space and common areas, and that if the development is done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project. The application findings state that the development will be done as three separate entities for the cottages, town homes and single-family/duplex groups. The proposal is to have a Planned Unit Development for each of the three groups and provide CC&R's detailing specific maintenance responsibilities for each community. Phase I will include the development of the cottages and town homes. Approximately 55% of the open space is included in Phase I. Therefore, the same or higher ratio of common open space would occur in the first phase of the project than in Phase II, and the approval criterion is satisfied.

The City Council finds the significant natural features of the site are the wetland in the northern portion of the site, two trees located outside of the riparian corridor, the Ashland Creek floodplain corridor and Ashland Creek riparian corridor. Three of the significant natural features – the wetland, floodplain corridor and riparian corridor - are located in a separate parcel that is proposed to be dedicated to the city for parks purposes as part of the land exchange. As a result, the City Council finds the wetland, floodplain corridor and riparian corridor are included in open space that is an unbuildable area. The two significant trees are a 19-inch diameter at breast height (dbh) Oregon Ash (tree 20 on the Tree Survey and Protection Plan, T-1, June 8, 2007) and a 39-inch dbh California Black Oak (tree 21 on T-1). The two significant trees are located near units 28 and 31. The City Council finds the trees are included in the common area of the subdivision, and the common area is unbuildable.

3.6 The City Council finds and that the proposed location of the multi-use path adjacent to the natural feature rather than a public street, and the proposed use of a private drive to access the cottages rather than the required public street meet all applicable criteria for an Exception to the Street Standards.

An Exception to the Street Standards is requested to locate a multi-use path in the Ashland Creek riparian corridor rather than locating a street adjacent to natural features as is required. The proposed multi-use path weaves above and below the biologically determined riparian zone and the uppermost top of the slope grade break.

The Preserving Natural Features of the Street Standards is as follows.

“Streets shall be located in a manner which preserves natural features to the greatest extent feasible. Whenever possible, street alignments shall follow natural contours and features so that visual and physical access to the natural feature is possible. Streets shall be situated

between natural features, such as creeks, mature trees, drainages, open spaces and individual parcels in order to appropriately incorporate such significant neighborhood features.”

The City Council finds there are several unusual aspects of the site that make it difficult to locate a street adjacent to Ashland Creek. First, there are two existing main sanitary sewer lines that bisect the site (see Exhibit E-E, Preliminary Utility Plan). The application includes a Geotechnical Investigation (see Appendix D, Geotechnical Investigation) which identifies “relatively hard bedrock” comprised of sedimentary rock including siltstone, sandstone and conglomerate at shallow depths throughout the site. As a result, the application identifies the relocation of the main sanitary sewer lines as impractical. The new main street into the development from Nevada St., Almeda Dr., is located over the existing main sanitary sewer lines so the lines can be accessed and do not have to be moved. The second unusual aspect of the site is the location of Ashland Creek is approximately 200 feet east of the existing intersection of Helman St. and Nevada St. The project traffic engineer recommended that the main access to the site be located opposite of the Helman St. and Nevada St. intersection. Locating a secondary street access to the development from Nevada St. and adjacent to Ashland Creek poses safety issues in terms of the close proximity to the Helman St., Nevada St. and Almeda Dr. intersection. The final unusual aspect of the site is the relatively narrow area from the new Almeda Dr. to Ashland Creek. The City Council agrees the existing sanitary sewer lines, the need to align the new street with the existing intersection of Nevada and Helman streets and the narrowness of the area from the new Almeda Dr. to Ashland Creek are significant constraints in the development of the new street network that create a demonstrable difficulty in meeting the Street Standard on Preserving Natural Features.

The City Council finds that the multi-use path achieves a similar buffering effect as a street to the Ashland Creek riparian corridor. The multi-use path will provide visual and physical access to the riparian corridor. Although the multi-use path is largely located in the riparian corridor, it is situated at the western edge of the corridor, and will be located between the individual parcels and the riparian zone. The City Council finds that the multi-use path is an equally valuable transportation facility as compared to a city street because it provides a connection to the existing Bear Creek Greenway, thereby increasing the reach of this pedestrian and bicycle off-road transportation system. The City Council finds that by providing a transportation facility in the form of a multi-use path that the proposed exception is the minimum variance necessary to address the site constraints. The City Council finds that Exception to the Street Standards to use the proposed multi-use path rather than a public street to protect and provide access to the Ashland Creek riparian corridor uses the natural features of the landscape to the greatest advantage and will improve the quality of life of the residents of the development as outlined in the Purpose and Intent of Chapter 18.88 Performance Standards Options.

An Exception to the Street Standards is requested to use a private drive to access the 24 cottages rather than the required public street. The proposed private drive is a looped system that is approximately 300 feet in length and is connected at both ends to Almeda Dr. The proposed private drive is 20 feet in width, includes 26 head-in parking spaces and has a sidewalk system adjacent to the curb. In contrast, a public street would be required to be 22 feet in width with parkrows and sidewalks on both sides. Additionally, a 22-foot wide public street would allow parallel parking on

one side of the street.

The City Council finds there is demonstrable difficulty in providing a public street and the required off-street parking given the geographic layout of the corner of the property that is proposed for the cottages. A public street does not allow head-in parking adjacent to the street, and the proposal is to allow 26 head-in parking spaces adjacent to the private drive. In addition, by consolidating most of the cottage parking adjacent to the private drive, it allows more of the land area to be used as open space for the cottages rather than to be used for surface parking. In addition, fewer parallel parking spaces would fit on one side of the public street of the length proposed compared to the number of spaces that can be achieved with head-in parking. Residents and visitors will have no reason to travel on this short drive other than to visit the cottage development. As a result, motor vehicles, bicyclists and pedestrians traveling through the development will use Alameda Dr. In terms of sidewalks, pedestrians will have little reason to travel on the cottage drive unless visiting one of the cottages because Alameda Dr. provides a more direct route for moving through the neighborhood. The City Council concurs that a private street is a better fit for the cottage development than a public street because the cottages will function as a multi-family development with a shared surface parking area that is accessed by a driveway.

The City Council finds that Exception to the Street Standards to use a private drive to access the 24 cottages rather than the required public street will provide for more efficient land use as outlined in the Purpose and Intent of Chapter 18.88 Performance Standards Options.

3.7 The City Council finds the request to locate a multi-use path in the Ashland Creek Riparian Preservation Area meets all applicable criteria for a Physical Constraints Review Permit with the attached conditions of approval. The applicants propose to construct a multi-use path located in the Ashland Creek riparian corridor that would connect Nevada St. to the Bear Creek Greenway connection located in the Dog Park. The proposed multi-use path weaves above and below the biologically determined riparian zone and the uppermost top of the slope grade break. The multi-use path itself and the disturbance created by the construction is located largely inside of the biologically determined riparian zone.

The City Council finds that the multi-use path in the Ashland Creek riparian corridor itself is a benefit to the general community and that there should be a balance of the environmental resource protection issues and the parks and open space issues.

The City Council finds that the multi-use path is located along the upper edge of the riparian corridor in an effort to minimize adverse impacts to Ashland Creek and in an effort to retain the general topography of the riparian corridor. The proposed multi-use path, is except for the first 50 feet, is located outside of the 100-year flood plain for Ashland Creek. The section of path in the flood plain is at grade and will not create a potential flooding hazard.

The City Council finds the applicant has not addressed the reasonable steps necessary to reduce the adverse impact on the Ashland Creek riparian corridor including the irreversible actions caused by the construction of the multi-use path in the riparian corridor. A mitigation plan is

required as a condition of approval at the Final Plan application. The mitigation plan requires an assessment of the Ashland Creek riparian corridor functions, an assessment of the impact of the path construction on the resource functions and mitigation measures to offset those adverse impacts.

3.8 The City Council finds the request to remove a 25-inch diameter at breast height Oak tree meets all applicable criteria for a Tree Removal Permit.

One of the eight trees identified for removal requires a Tree Removal Permit due to the size of the tree being 18 inches diameter at breast height or greater. A Tree Removal Permit is requested to remove a 25-inch diameter at breast height Oak tree (tree 39, Tree Survey and Protection Plan, T-1, June 8, 2007). The tree is an Oregon White Oak and located between proposed units 33 and 34.

The Oregon White Oak identified for removal is described as stressed because of heavy infestation of mistletoe and as having numerous dead limbs through the crown. Additionally, the arborist predicts that the disruption to the root system due to nearby structures would cause further decline in the tree. The Tree Commission reviewed the proposed tree removal in November 2006, and recommended approval of the plan.

3.9 The proposal includes a real property exchange with the City of Ashland. The proposal is to exchange approximately 2.78 acres adjacent to Ashland Creek to the City for parks purposes in exchange for approximately 1.54 acres of the City Dog Park in the area of the access and to the south of the existing parking area. The Land Exchange is addressed in separate findings attached to the Ordinance approving the Development Agreement.

#### **IV. ORDER**

In sum, the City Council concludes that the requested Ordinance declaring the approval of a Development Agreement, and all associated planning actions contained in Planning Action 2006-01663, including the Development Agreement, Annexation, (in three parts), Comprehensive Plan Map and Zoning Map change from Jackson County zoning RR-5 (Rural Residential) to City of Ashland zoning R-1-3.5 (Suburban Residential) and R-1 (Single-Family Residential), request for Outline Plan approval for a 68-unit residential development under the Performance Standards Options Chapter 18.88, requests for Exception to the Street Standards for not locating a street adjacent to natural features and to use a private drive to access the cottages rather than the required public street, request for a Physical Constraints Review Permit to locate a multi-use path in the Ashland Creek Riparian Preservation Area, and request for a Tree Removal Permit to remove a 25-inch diameter at breast height Oak tree are consistent with or comply with applicable criterion and minimum standards in the City's comprehensive Plan and applicable land development code, including minimum requirements for annexation eligibility, and are supported by evidence contained within the whole record

Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the City Council hereby declares approval of the Development Agreement and APPROVES Planning Action #2006-01663 subject to strict compliance with the conditions of approval, set forth herein as well as those requirements conditions and restrictions set forth in the accompanying Verde Village



Development Agreement and Land Exchange Order. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #2006-01663 is denied. The following are the conditions and they are attached to the approval:

- 1) That all proposals of the applicant are conditions of approval unless otherwise modified here.
- 2) That Site Review approval shall be obtained for the cottages, town homes and duplexes prior to any site work, issuance of an excavation permit or issuance of a building permit.
- 3) That the applicants 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. 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.
- 4) That all easement for sewer, water, electric and streets shall be indicated on the Final Plan application as required by the City of Ashland.
- 5) The Final Plan application shall identify the sanitary sewer pressure line easement, and buildings shall not be located in the easement.
- 6) That the preliminary engineering for utility improvements shall be submitted with the Final Plan application. The utility plan shall include the location of connections to all public facilities in and adjacent to the development, including the locations of water lines and meter sizes, fire hydrants, sewer mains and services, manholes and clean-outs, storm drainage pipes and catch basins. Any required private or public utility easements shall be delineated on the utility plan.
- 7) That the preliminary engineering for storm drainage collection and treatment shall be submitted with the Final Plan application. The permanent maintenance of on and off site storm water bio-engineered swales and wetland systems must be addressed through the obligations of the homeowners' association and approved by the Public Works Department and Building Division.
- 8) That the applicants shall submit an electric distribution plan with the Final Plan application including load calculations and locations of all primary and secondary services including transformers, cabinets, meters and all other necessary equipment. This plan shall be reviewed and approved by the Electric Department prior to submission of the Final Plan application. Transformers and cabinets shall be located in areas least visible from streets, while considering the access needs of the Electric Department.
- 9) That the required pedestrian-scaled streetlight shall consist of the City of Ashland's residential streetlight standard, and shall be included in the utility plan and engineered construction drawings for the street improvements.

- 10) The preliminary engineering for proposed street improvements shall be provided at Final Plan application. Street improvements shall be consistent with City of Ashland Street Standards. The sidewalk improvement on Nevada St. shall be a minimum of six feet in width in accordance with the Ashland Street Standards.
- 11) The preliminary engineering for the Final Plan application shall address the treatment of 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.
- 12) The Final Plan application shall include revised 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.
- 13) The preliminary engineering shall include details for the multi-use path improvements. The multi-use 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.
- 14) The preliminary engineering shall address 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. Specifically, the preliminary engineering shall address bicycle access from the street grade and provide sufficient turning radius for bicycle navigation.
- 15) The Final Plan application shall include 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.

- 16) That the multi-use paths shall be constructed by the applicants as part of the required subdivision improvements.
- 17) That the Final Plan application shall demonstrate that the driveway curb cuts for units 45 and 46 are 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.
- 18) That the Final Plan application shall delineate 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.
- 19) That the street names shall be reviewed and approved by Ashland Engineering for compliance with the City's resolution for street naming prior to submission of the Final Plan application.
- 20) That a size and species specific landscaping plan for the parkrows, common areas and open spaces shall be provided at the time of the Final Plan application.
- 21) That 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 identify the units are which are subject to the City's Affordable Housing requirements and terms of affordability.
- 22) That the Final Plan application shall include 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.
- 23) The buildings in the R-1-3.5 zoning district (cottages and town homes) shall meet the required front yard for the R-1-3.5 zoning district in the Final Plan application.
- 24) The width between buildings requirement of 18.88.070.D shall be met and identified in the Final Plan application.
- 25) That 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.

- 26) That 53 residential units in the subdivision, including the cottages, duplexes and single-family units, 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. The Final Plan application shall include systems for measuring and monitoring compliance of the development with the Performance Standard that is administered by the applicants and verified by the city.
- 27) That a minimum of 53 of the residential units shall qualify in the City of Ashland Earth Advantage program. The applicants shall meet with the Ashland Conservation Division regarding eligible site activities prior to issuance of an excavation permit. The required Earth Advantage documentation shall be submitted with each building permit application.
- 28) That the hydrant placement and fire apparatus access requirements shall be met and addressed in the Final Plan application.
- 29) That 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.
- 30) That 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.
- 31) That a grading plan addressing preliminary finished grade (i.e. existing contours and proposed contours) and areas of cut and fill shall be submitted with the Final Plan application.
- 32) That public easements shall be identified on the final survey plat for all multi-use pathways. The project CC&R’s shall 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.
- 33) That 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 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.

- 34) That the applicant agrees to construct the project in accordance with the approved plan and City ordinances and waives the right to file a claim under Oregon Statewide Measure 37. 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.
- 35) That 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.
- 36) That the land dedicated to the city for parks purposes adjacent to Ashland Creek shall be annexed prior to the annexation of the Phase II area of the project (single-family development).
- 37) That the Sander Way sidewalks shall provide public access either by being included in the street right-of-way or having a public pedestrian easement as required by the Ashland Engineering Division. The Final Plan submittals shall be modified accordingly.
- 38) That 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).
- 39) That 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.
- 40) That 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.
- 41) That 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 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 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.

- 42) That the land being dedicated for affordable housing shall be dedicated to the City of Ashland if it is not fully developed as affordable housing in accordance with the approval of PA 2006-01663 within five years of this approval.
- 43) 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.
- 44) That “Net Zero Energy” Performance Standard as outlined in Exhibit K-3 of the Revised Outline Plan, Book III-Narrative revised October 24, 2007 shall be revised as follows.
- That all dishwasher and washing machines shall qualify for the State of Oregon tax credit and be selected from the list of qualified machines maintained by the Oregon Department of Energy.
  - That each home that would be built to the standards encompassed in the applicant’s Exhibit K shall be provided with a Photovoltaic (PV) system that is either 3kW’s in size or produces 1.5 Kwh’s/Sq. Ft./Yr. whichever is less, and also be provided with enough available south facing unshaded roof space to double the size of the PV system.
  - That the homes will meet a minimum requirement of R-49 attic insulation for flat ceilings.
  - That the passive solar homes shall meet the State of Oregon’s minimum requirements for the passive solar home tax credit.

**Ashland City Council Approval**

\_\_\_\_\_  
 Mayor John W. Morrison

\_\_\_\_\_  
 Date

Signature authorized and approved by the full Council this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Approved as to form:

\_\_\_\_\_  
Ashland City Interim Attorney

Date: \_\_\_\_\_

**BEFORE THE CITY COUNCIL  
CITY OF ASHLAND, JACKSON COUNTY, OREGON  
December 18, 2007**

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<b>IN THE MATTER OF A REAL PROPERTY EXCHANGE</b>	)
<b>SUPPORTIVE OF PLANNING ACTION # 2006-01663, A</b>	) <b>FINDINGS OF FACT</b>
<b>EXCHANGE OF APPROXIMATELY 1.54 ACRES OF CITY</b>	) <b>CONCLUSIONS OF LAW</b>
<b>PROPERTY FOR 2.78 ACRES OF PRIVATE PROPERTY</b>	) <b>AND ORDER</b>
<b>PURSUANT TO ORS 271.310 – 271.350 AND PUBLIC HEARING )</b>	
<b>PROCEDURES IN ORS 221.725</b>	)
<b>APPLICANT: Greg and Valri Williams</b>	)

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**I. NATURE OF PROCEEDINGS**

This matter comes before the City Council for the City of Ashland for a public hearing concerning a real property exchange pursuant to statutory notice and hearing requirements of ORS 221.725.

On November 6, 2007 and November 20, 2007, the Ashland City Council, at the City Council Chambers at 1175 East Main Street conducted an advertised public hearing on a proposed real property exchange pursuant to ORS 271.310 – ORS 271.350.

The public hearing was conducted together with public hearing on an Ordinance declaring the approval of a proposed Verde Village Development Agreement, and several associated land use actions necessary for the development of the Verde Village project.

The nature of the land exchange, including appraisal and other evidence of market value were fully disclosed in the staff report and supporting documents entered into the record at the public hearing.

At such Public Hearing the City Council received written and oral testimony from interested parties on the question of the land exchange.

Based upon the evidence in the record, the City Council for the City of Ashland makes the following findings of fact and conclusions of law:

**II. FINDINGS OF FACT**

- 1) The Nature of Proceedings set forth above are true and correct and are incorporated herein by this reference.
  
- 2) The City property subject to the real property exchange consists of approximately 1.54 acres of the 10 acre City –owned parcel known as the Ashland Dog Park (TL 200 39 1E 04BB). The specific area of exchange  
***Ordinance Attachment 3– Real Property Exchange Findings***

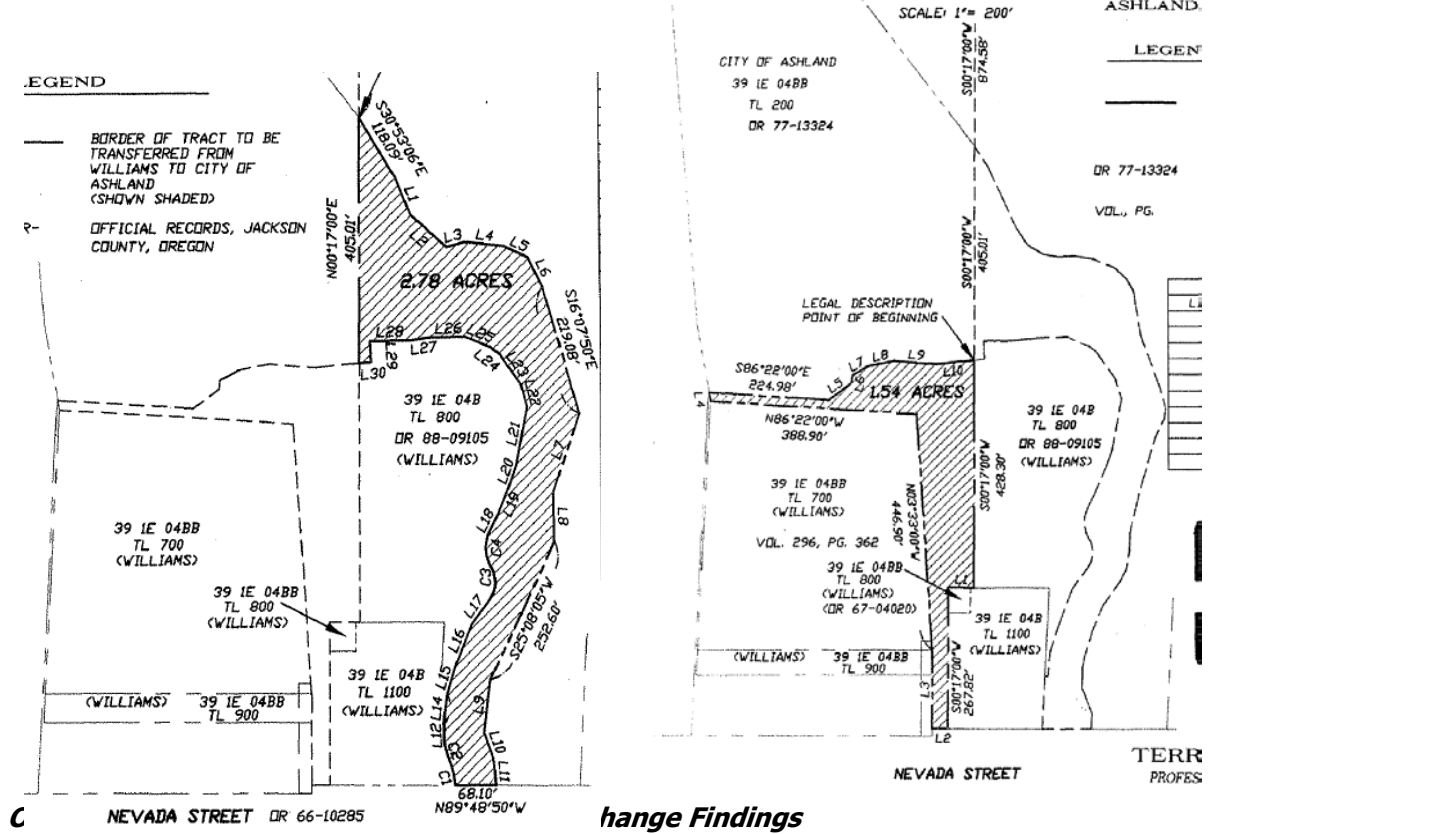


is the entrance road and lawn area associated with the entrance to the dog park. The exchange does not impact the parking lot or actual dog park itself. The exchanged City property will be incorporated into the Verde Village residential development, located generally at 87 W. Nevada St. and 811 Helman St. (Ashland Greenhouses). The legal description and drawings of the City property is more fully set forth in the record of this proceeding and incorporated herein by this reference.

3) The private property subject to the real property exchange consists of approximately 2.78 acres of property contiguous to the dog park and located along Ashland Creek. The owner of the property is Ashland Flower Shop and Greenhouses, Inc. (AFSG) (Greg and Valri Williams). This property appears on City's Parks, Trails and Open Space Master Plan Map (a part of City's Comprehensive Plan) as Long-Term Acquisition Area "10". The legal description and drawings of the AFSG property (a/k/a/ Williams Property) is more fully set forth in the record of this proceeding and incorporated herein by this reference. In addition to this real property, the City will receive as part of a Development Agreement for Verde Village, a new city standard public street entrance to the dog park and an additional 1300 lineal feet of Bear Creek Greenway Trail. These improvements are not included in the valuation of this exchange.

4) The approximately 2.78 acres of property received by the City will be used for public open space and passive recreation, including the greenway trail. The reasons stated for City Council consideration for the exchange include but are not limited to the added value to the City's Parks and Trails system.

5) The acreage for the land exchange as revised and updated based on an October 2007 survey is set forth in the revised Verde Village application materials in the record. (Exhibits N-1 and N-2 in Book III-Narrative, dated stamped October 30, 2007). (2.78 acres, up from 2.57 acres) (1.54 acres, up from 1.37 acres)



### III. FINDINGS APPLYING APPLICABLE STATUTORY CRITERIA

- 1) The Council finds and determines that the relevant statutory criteria to find property eligible for a real property exchange involving City property are found in or referenced in ORS 271.310-ORS 271-350 as well as ORS 221.725.
- 2) The Council finds that it has received all information necessary to make a decision based on the Staff Report, public hearing testimony and the exhibits and evidence received.
- 3) The Council finds and determines that this proposal to exchange real property meets all applicable statutory minimum criteria for eligibility to exchange real property, as more fully set forth herein. Further the City Council finds and determines that the proposed disposition of real property in the real property exchange is deemed “**necessary or convenient**” to the City, and furthers the public interest as incorporated into and made part of the negotiated Development Agreement for Verde Village, approved by City Ordinance declaring adoption of the Development Agreement. This finding is supported by competent substantial evidence in the whole record as well as the detailed findings set forth herein, the detailed findings of the Ashland Planning Commission, as well as those submitted by the Applicant, and incorporated herein by this reference.

#### Minimum Criterion for Eligibility for Real Property Exchange

- 4) [ORS 271.310], [ORS 271.340] & [ORS 271.350]

**ORS 271.310. Transfer or lease of real property owned or controlled by political subdivision; procedure in case of qualified title.**

**(1) Except as provided in subsection (2) of this section, whenever any political subdivision possesses or controls real property not needed for public use, or whenever the public interest may be furthered, a political subdivision may sell, exchange, convey or lease for any period not exceeding 99 years all or any part of their interest in the property to a governmental body or private individual or corporation. The consideration for the transfer or lease may be cash or real property, or both.**

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**(3) Unless the governing body of a political subdivision determines under subsection (1) of this section that the public interest may be furthered, real property needed for public use by any political subdivision owning or controlling the property shall not be sold, exchanged, leased or conveyed under the authority of ORS 271.300 to 271.360, except that it may be exchanged for property which is of equal or superior useful value for public use. Any such property not immediately needed for public use may be leased if, in the discretion of the governing body having control of the property, it will not be needed for public use within the period of the lease.**

**ORS 271.340. Property valuation in exchange to be equal.**

**When property is exchanged under the authority of ORS 271.310 to 271.330, the value of the real property accepted by the political subdivision in exchange for any of its property plus cash, if any, shall not be less than the value of the property relinquished.**

**ORS 271.350. Determining valuation of property in exchanges.**

**The value of the respective properties proposed to be exchanged shall be determined by the governing body of the political subdivision. The governing body shall cause it to be appraised by one or more competent and experienced appraisers. The compensation, if any, of the appraisers shall be borne equally by the respective owners of the property. In case the valuation shall not be mutually satisfactory to the respective owners it shall not be binding upon them.**

The statutory requirements are summarized herein:

In order to sell, convey or exchange real property, ORS 271.310(1) (3) requires that the Council find either that the property is “not needed for public use” or “that the public interest may be furthered.” ORS 271.310(3) also requires that unless there is a finding the public interest may be furthered, if the property is needed for public use, that property may only be exchanged if the property received is of equal or superior useful value for public use. (also a requirement of Land and Water Conservation). ORS 271.340 clearly established that the monetary value of real property accepted by the City must not have a monetary value less than the value of the property relinquished. The valuation must be established by the City pursuant to ORS 271.350 based on appraisal.

Other approvals required:

County, State and Federal approval of the real property exchange is required. Because the City Property was acquired using Land and Water Conservation Funds, State and Federal Park agencies must approve the exchange. Because the County’s deed to the City reserved to the County a reversionary interest, it must be released by Resolution of the Board of Commissioners under ORS 271.335. Specifically, City’s deed to City’s Parcel (recorded as Doc # 77-13325) reflects that the original conveyance of the City’s Property from Jackson County to City is subject to City’s continued utilization of City Property “for public park and recreation purposes or ... [its maintenance] ... for the benefit of the public as a scenic and open space area. When said property is no longer so used, the interest of the grantee [City], or its assigns, shall automatically terminate and the property shall revert to the grantor (Jackson County).” Accordingly, as a condition of the real property exchange, the Jackson County’s Board of County Commissioners must release (by resolution) the reversionary interest. City can provide County with an identical or similar reversionary interest in the deed to the Williams Property being provided to City by AFSG pursuant to the exchange and Development Agreement. City and AFSG have agreed to cooperate in good faith to secure approval from Jackson County for said exchange of Jackson County’s reversionary interest, such that the same reversionary interest in favor of Jackson County will similarly burden the Williams Property upon transfer of the Williams Property to City pursuant to the real property exchange; and will no longer burden the City Property being transferred to AFSG pursuant to the real property exchange. Jackson County’s approval of the reversionary interest release or exchange concurrent with the actual real property transfer is a material term of this approval and Development Agreement. The Federal,

State and County approvals must be addressed as conditions of approval, because the applications cannot be fully processed until the City approves the exchange under ORS 271.310.

Pursuant to ORS 271.310, the City Council finds and determines that the **public interest will be furthered** by the exchange of the City Property previously and currently utilized as access to City's Dog Park in exchange for the Williams Property owned by AFSG. Verde Village Application Materials *Exhibit 1, Sub-Exhibit N-1 (Map)*. The Williams Property appears on City's Parks, Trails and Open Space Master Plan Map (a part of City's Comprehensive Plan) as Long-Term Acquisition Area "10". The real property exchange allows City to acquire a parcel of property (Williams Property) identified on City's Parks, Trails, and Open Space Master Plan's long term acquisition list since 2002. Acquisition by City of the Williams Parcel also provides City with the opportunity to extend City's multi-use path, which is part of the regional Bear Creek Greenway. The real property exchange also provides the public with additional scenic frontage along Ashland Creek. Further, acquisition of the Williams Property provides City with an opportunity to benefit the community by preserving and enhancing the riparian area along Ashland Creek. In contrast, the City Parcel to be exchanged herein currently serves as a sub-standard access for vehicles, pedestrians, and cyclists from West Nevada Street to City's Dog Park and the Bear Creek Greenway multi-use "bike path". When the Verde Village Project is completed under the Verde Village Development Agreement, access to City's Dog Park will be enhanced via fully improved public streets, approved and constructed to serve the Verde Village Project, while also serving as a safer and more efficient access to the City's Dog Park and the Bear Creek Greenway "bike path". The Bear Creek Greenway "bike path" connects the City of Ashland with the City of Central Point, and promotes the goal of "modal equity", in a time when the financial and environmental costs associated with petroleum resource dependence are under enhanced scrutiny. The real property exchange is also described in Exhibit "1"[Outline Plan Narrative] (at page 6) and Sub-Exhibits M and N-1 appended thereto, incorporated herein by this reference. Because the City Property to be exchanged currently includes access to the City Dog Park, the City cannot find that the property is not necessary for public use.

Concerning the monetary value of the exchange, the City Council finds and determines that consistent with ORS 271.350, on January 2, 2007, the City's Council after considering public comment, authorized AFSG to proceed with its land use application including City's Property, and concurrently directed its Staff to commission the necessary appraisal reports, without reviewing or considering the merits of the Verde Village Project application, in compliance with law. Thereafter, City commissioned appraisals reports to determine the fair market value of the respective real property proposed for exchange from a qualified licensed appraiser with experience in similar real estate appraisals under the strenuous "Yellow Book" guidelines required by the National Parks Service. After considering a number of licensed appraisers, City engaged Candence E. Robinson, State Certified Appraiser # C000582, Vesta Real Estate Services, Inc., Salem, Oregon. *Exhibit 2-44 and Exhibit 3-44*.

In June 2007, the City of Ashland received Appraisal Reports reflecting the respective value of the Williams Property and City's Dog Park Property. See Verde Village application materials *Exhibit 2 and Exhibit 3 as revised*. These Appraisal Reports were commissioned by City, with the appraisal cost borne equally by City and AGFS. Corrections to the appraisals were made after input from interested citizens were taken into account. The Council finds and determines that appraiser was competent and experienced. The respective Appraisal Reports, as revised, for the Williams Property and the City Property are included in the record and incorporated herein by reference. The Appraisal Reports and supporting documents were made available to the

public prior to the public hearings before both the Planning Commission and City Council

The City Council is charged with the determination of the value of the exchanged properties pursuant to ORS 271.350. Based upon the revised appraisal documents, the City Council finds and determines that the City Property to be conveyed to AFSG in connection with the real property exchange authorized by the Verde Village Development Agreement **is less than** the monetary value of the Williams Property to be conveyed to the City in connection with said real property exchange, as reflected in attached Exhibit 2 and Exhibit 3 in the record, incorporated herein by reference. Pursuant to ORS 271.310, ORS 271.340, and ORS 271.350, City finds that the value of the Williams Property to be exchanged is \$284,000. City further finds that the value of the City Property to be exchanged is \$ 134,000. City finds that the difference in value between the two parcels being exchanged is \$150,000 in favor of City, based on the analysis and conclusions contained in the Appraisal Reports commissioned by City, contained in the record and incorporated herein by this reference. AFSG agrees to “gift” the \$150,000 difference in value to City. The proposed use of the property received by the City shall be parkland, recreation, open space, or similar uses consistent with Jackson County deed restrictions.

Concerning the requirement that the property received have **equal or superior useful value for public use** (in terms of FLWCF equal or superior public recreational value), the City’s Parks and Recreation Commission unanimously endorsed the real property exchange, conceptually, on October 24, 2006 following review of the materials and documents presented. The record of the Parks Commission action is included in the record of this proceeding and incorporated herein by this reference. *See. E.g. Verde Village Application Materials Exhibit 1, Sub-Exhibit M, (Park Commission Endorsement)*. Subsequently, on June 25, 2007, City’s Parks and Recreation Commission again unanimously confirmed their support of the real property exchange, after reviewing revised materials. See Verde Village Materials Exhibit 1, Sub-Exhibit N-1; Exhibit 2; Exhibit 3, and related submittals.

#### **IV. ORDER**

In sum, the City Council finds and determines that the real property exchange is necessary or convenient, that the exchange furthers the public interest, that the exchange will be for property that is of equal or superior useful value for public use, including recreational use, and that the monetary value of the real property accepted is not less than the monetary value of the property relinquished.

Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the City Council hereby APPROVES as part of the negotiated Verde Village Development Agreement approved by Ordinance, the real property exchange described herein and in the record of Planning Action #2006-1663, subject to compliance with the conditions of approval, set forth herein. The following are the conditions and they are attached to the approval:

- The real property exchange is subject to County, State and Federal approval of the real property exchange. Receipt of written evidence of such approvals in appropriate legal form triggers the exchange under the terms and conditions of the Development Agreement. City shall record a document restricting use of the exchange parcel for recreational use in accordance with County approval of release on the City property.
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- The real property exchange is subject to all applicable conditions and requirements of the Development Agreement and associated land use approvals for the Verde Village project.

**Ashland City Council Approval**

\_\_\_\_\_  
Mayor John W. Morrison

Signature authorized and approved by the full Council this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Approved as to form:

\_\_\_\_\_  
Interim City Attorney

Date: \_\_\_\_\_