

Council Communication

Public Hearing for an Ordinance declaring approval of a Development Agreement, including a Land Exchange involving a portion of the City Dog Park property and Planning Action 2006-01663 for the Annexation and associated development approvals for the properties located at 87 W. Nevada St. and 811 Helman St. (Ashland Greenhouses).

Meeting Date:	November 6, 2007	Primary Staff	Richard Appicello
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	Community Development		harrism@ashland.or.us
Secondary Depts.:	Parks	Secondary Contact:	Don Robertson
Approval:		Estimated Time:	2 hours

Question:

Does the Council find that the negotiated development agreement that governs a land exchange, three annexations, a Comprehensive Plan Map and Zone change, an Outline Plan, and exception to street standards, a physical constraints review permit, and tree removal permit is consistent with State law, City Code, and City policies either as presented or as modified?

Staff and Commission Recommendations:

The Ashland Parks and Recreation Commission made a recommendation for approval of the land exchange on June 25, 2007. Staff supports the recommendation of the Parks and Recreation Commission.

The Ashland Planning Commission recommended approval of Planning Action 2006-01663 on August 28, 2007 for an Annexation, 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. The Planning Commission also reviewed the proposed land exchange and recommended approval. Staff supports the recommendation of the Planning Commission as stated in the recommendation document dated August 28, 2007 (pages 30-59 of the record).

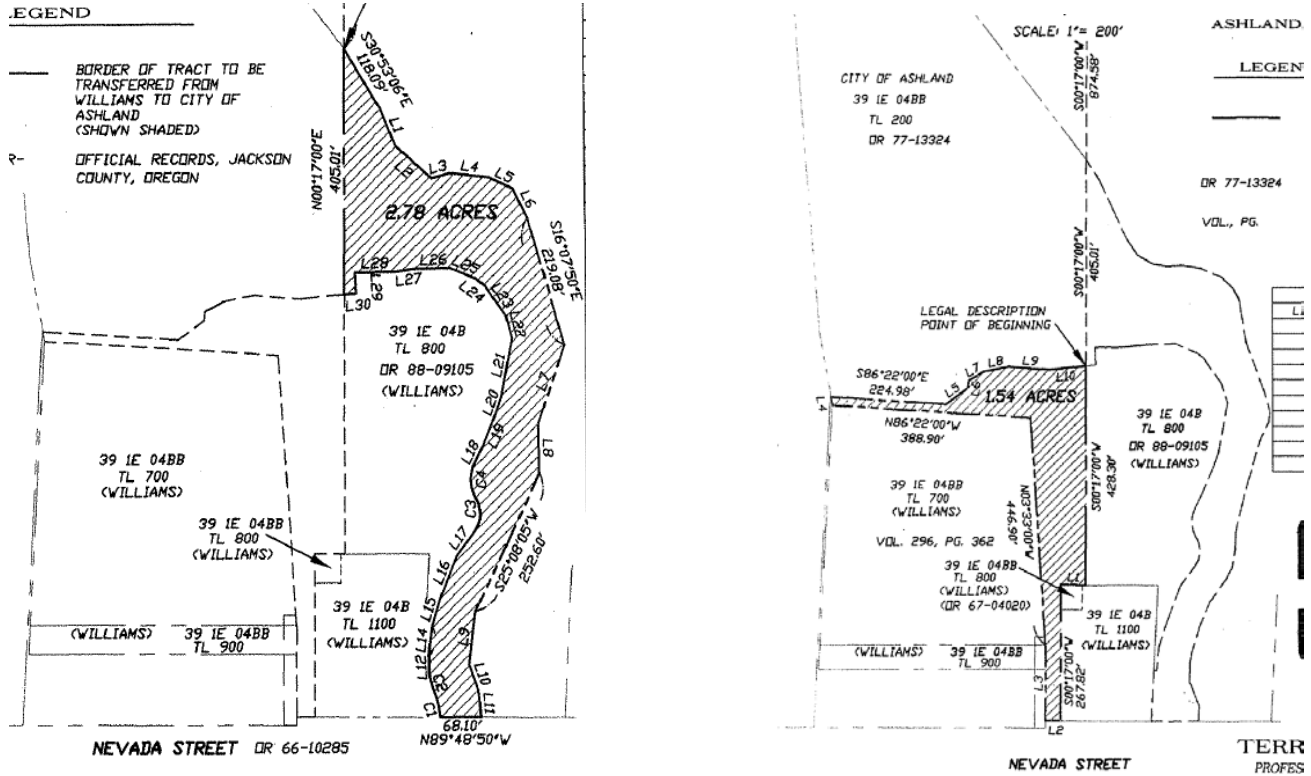


Background:

1. Land Exchange

The application includes a request for a land exchange with the City of Ashland. The land exchange is a prerequisite to development of the property as proposed in PA-2006-01663. The proposal is for the City to receive approximately 2.78 acres adjacent to Ashland Creek for City parks purposes in exchange for approximately 1.54 acres of the Dog Park access area. The specific area of exchange is the entrance road and lawn area to the south of the parking lot. The exchange will not impact the parking lot or actual Dog Park itself. Tax lot 200 of 39 1E 04BB is City of Ashland property and is commonly referred to as the Dog Park.

The acreage for the land exchange has been revised and updated based on an October 2007 survey in the revised application. (Exhibits N-1 and N-2 in Book III-Narrative, dated stamped October 30, 2007). (2.78 acres, up from 2.57 acres previously) (1.54 acres, up from 1.37 acres previously)



ORS 221.725 requires an advertised public hearing when the City finds it “necessary or convenient” to sell or otherwise dispose of real property or an interest in real property. At the public hearing, “any resident of the City” may submit written or oral testimony concerning the exchange. The hearing has been properly advertised. ORS 271.310 –ORS 271.350 requires findings by the Council in order to sell, convey, or exchange real property. To sell, convey or exchange property the City Council must find either that the property is “not needed for public use” or “that the public interest may be



furthered.” The consideration for the transaction may be cash, real property or both. [ORS 271.310(1)]. ORS 271.310(3) further provides that real property needed for public use may only be exchanged for property which is of equal or superior useful value for public use. (While the finding that “the public interest may be furthered” can avoid this equal value requirement, it is required by State and Federal approvals). Finally, ORS 271.340 expressly provides that the value of the real property accepted by the City in exchange for any of its property cannot be less than the value of the property relinquished. In addition, County, State and Federal approval of the real property exchange is required. Because the 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. The County will require a similar encumbrance on the new parcel. 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. Although not part of the land exchange, the Development Agreement requires construction of City standard street access to the Dog Park and construction of the multi-use path (Greenway) at developer’s expense.

The applicant’s attorney submitted the following draft findings concerning compliance with these criteria as part of an earlier draft of the Development Agreement (emphasis added):

City’s Council finds 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. *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 this 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 described in Exhibit “1”[Outline Plan Narrative] (at page 6) and Sub-Exhibits M and N-1 appended thereto.

Concerning the monetary value of the exchange, Applicant’s counsel offered:



On or about June 7, 2007, City received Appraisal Reports reflecting the respective value of the Williams Property and City's Dog Park Property. *Exhibit 2 and Exhibit 3*. These Appraisal Reports were commissioned by City, with the appraisal cost borne equally by City and AGFS. The appraiser was competent and experienced. The respective Appraisal Reports for the Williams Property and the City Property are attached as Exhibit 2 and Exhibit 3, and incorporated herein by reference. The Appraisal Reports were made available to the public prior to the public hearings before Planning Commission and Council. ...

The value of the City Property to be conveyed to AFSG in connection with the real property exchange authorized by this Agreement **is less than** the 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, incorporated herein by reference. City's approval of the real property exchange is approved based, in part, on the attached Appraisal Reports, and pursuant to ORS 271.310(1). City finds that the value of the Williams Property to be exchanged is \$360,000. *See: Exhibit 2 (pages 1 and 6)*. City finds that the value of the City Property to be exchanged is \$ 101,000. *See: Exhibit 3 (pages 1 and 6)*. City finds that the difference in value between the two parcels being exchanged is \$259,000 in favor of City, based on the analysis and conclusions contained in the Appraisal Reports commissioned by City, attached hereto as Exhibit 2 and Exhibit 3, and incorporated herein by reference. AFSG agrees to "gift" the \$259,000 difference to City, so that same may be used for the purposes of parkland, recreation, open space, or similar uses consistent with Jackson County deed restrictions contemplated for transfer as agreed below.

The Council can find based on the evidence in the record, that it is necessary or convenient to exchange the Dog Park Property, 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, and that the monetary value of the real property accepted is not less than the monetary value of the property relinquished.

2. Planning Action

Summary of Application

The land use application requires seven planning approvals. A summary of the application according to the required planning approvals follows. The approval criteria from the Ashland Land Use Ordinance (ALUO) are listed in parenthesis after each approval. The July 10, 2007 and August 14, 2007 Staff Reports included in the record provide further information on the project description, project impact and applicable approval criteria (see pages 231-248 and 112-138 of the record).

- **Annexation (18.106.030)**
The application involves the annexation of an 11.64-acre site and subsequent development of approximately 10.40 acres.
- **Comprehensive Plan Map and Zoning Change (18.108.060.B)**
The application includes a Comprehensive Plan Map and Zoning Map change from City of Ashland Single-Family Residential (R-1) to a combination of City of Ashland Suburban



Residential (R-1-3.5) and Single-Family Residential (R-1). The Ashland Comprehensive Plan Map currently identifies the entire site as Single-Family Residential (R-1). The requested Comprehensive Plan Map and Zoning Change is 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.

- **Outline Plan Approval (18.88.030.A.4)**

The application requests Outline Plan approval to develop a 68-unit single-family residential subdivision. The units are a mixture of housing formats and sizes including 24 cottages, 15 town homes and 29 single-family homes. The 15 town homes are identified as affordable housing to meet the annexation and comprehensive plan map and zone change requirements. The project description states that the land with utilities and access constructed to the site will be donated to Rogue Valley Community Development Corporation (RVCDC) to develop as 15 affordable units for the range of 80 to 100 percent of median income.

- **Exceptions to the Street Standards (18.88.050.F)**

The application includes two requests for Exceptions to the Street Standards. The first is to locate the multi-use path adjacent to the natural feature, being Ashland Creek, rather than a public street. The second exception requested is to use a private drive to access the cottages rather than the required public street.

- **Physical Constraints Review Permit (18.62.040.I)**

The application includes a request for a Physical Constraints Review Permit to locate a multi-use path in the Ashland Creek Riparian Preservation Area. 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.

- **Tree Removal Permit (18.61.080)**

The application includes a request to remove a 25-inch diameter at breast height Oak tree (see tree 39 on Exhibit D-D, Sheet T-1, Revised Outline Plan, Book III-Narrative, revised October 24, 2007). The tree is an Oregon White Oak and located between proposed units 33 and 34.

Revisions to Application

The applicants submitted a revised application for the Council review (see Revised Outline Plan, Book III-Narrative, revised October 24, 2007). The revised application includes a few



changes from the application which was reviewed by the Planning Commission. The revisions are described below.

- **Exception to the Street Standards to Install Curbside Sidewalks on Sander Way**
The revised application includes a redesign of Sander Way, the new street that would provide access to the eastern portion of the development. The redesign of Sander Way provides a parkrow between the curb and sidewalk on both sides of Sander Way (see Exhibit D-D, Sheet S-5, Revised Outline Plan, Book III-Narrative, revised October 24, 2007). The Street Standards require a parkrow to be located between the curb and sidewalk. Since the redesign of Sander Way meets the Street Standard requirement, the previous request for an Exception to the Street Standards to install curbside sidewalks on Sander Way is no longer included in the revised application.

The application reviewed by the Planning Commission included a request to deviate from the Street Standards requirement by installing curbside sidewalks on both sides of Sander Way. The Planning Commission did not recommend approval of the exception request finding that this portion of the application did not meet the approval criteria for an Exception to the Street Standards (see Section 2.6 of the August 28, 2007 Planning Commission recommendation, pages 30-59 of the record). As a result, the following condition was added in the Planning Commission August 28, 2007 Recommendation requiring a parkrow on both sides of Sander Way. If the Council approves the revised application, this condition is no longer necessary.

- 37) That a parkrow a minimum of seven feet in width shall be provided between the curb and sidewalk on both sides of Sander Way in accordance with the Ashland Street Standards and in accordance with 18.88.050. The Sander Way parkrow and sidewalk design shall be included in the preliminary street design in the Final Plan application.

- **Number of Units and the “Net Zero Energy” Performance Standard**
The revised application states that the 15 town homes can not be guaranteed to meet the “Net Zero Energy” Performance Standard. As a result, the current proposal is for 53 units (68 total units – 15 town homes = 53 units) to meet the “Net Zero Energy” Performance Standard proposed by the applicant (see Exhibit K-3, Revised Outline Plan, Book III-Narrative, revised October 24, 2007).

The town homes will be deeded to RVCDC to meet the affordable housing requirements for an annexation and comprehensive plan map and zoning change. The application states that “the Net Zero Energy and sustainable aspect of the Townhomes are dependant upon an additional grant, which RVCDC is pursuing.”

The number of units meeting the “Net Zero Energy” Performance Standard was not clear in the application reviewed by the Planning Commission. As a result, a condition was added in the Planning Commission August 28, 2007 Recommendation that required all of the 68 residential units to meet the performance standard (see below). If the Council approves the application, this condition may need to be modified.



26) That all of the residential units in the subdivision shall meet the application “Net Zero Energy” Performance Standard as outlined in Exhibit K-3 of the application Book III dated June 8, 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.

- **Cottage Front Yard Setbacks**

The front yard setback from the cottages fronting Alameda St. to the front property line was increased to 20 feet in the revised application (see Exhibit D-D, Sheet S-1, Revised Outline Plan, Book III-Narrative, revised October 24, 2007). The front yard setback was increased to meet the front yard requirement for the R-1-3.5 zoning district (Suburban Residential). The previous version of the application delineated 15 feet from the cottages fronting Alameda St. to the front property line.

Suggested Condition Modifications and Additions

If the Council approves the application, staff recommends incorporating the conditions of approval included in the August 28, 2007 Planning Commission recommendation document (see pages 30-59 of the record) into the Council Findings, Orders and Conclusions. If the Council approves the development agreement, Findings, Orders and Conclusions will be prepared for Planning Action 2006-01663 and will be included in the development agreement.

In addition, staff recommends the following modifications and additions to the August 28, 2007 Planning Commission recommendation because of the revisions to the application. ~~Deleted text is shown with strikethrough~~ and new text is shown with an underline.

- **Delete Condition 37 for Sander Way Sidewalk Design**

~~37) That a parkrow a minimum of seven feet in width shall be provided between the curb and sidewalk on both sides of Sander Way in accordance with the Ashland Street Standards and in accordance with 18.88.050. The Sander Way parkrow and sidewalk design shall be included in the preliminary street design in the Final Plan application.~~

- **Possible Modification of Condition 26 Concerning Number of Units and the “Net Zero Energy” Performance Standard**

26) That ~~all of the~~ a minimum of 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 ~~application~~ Revised Outline Plan, Book III-Narrative ~~dated June 8, 2007~~ 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.



- **Sander Way Sidewalk**

The redesign of Sander Way includes a system of treatment wetlands and bio-swales for conveyance and treatment of storm drainage between the sidewalk and curb. The treatment wetlands and bio-swales are curvilinear and vary in width from seven to 25 feet in width. As a result, the sidewalk as shown in the revised application is located outside of the street right-of-way in some locations. Since the sidewalk is a component of the public street, it is required to provide public access. Staff recommends the following condition be added if the application is approved.

43) 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.

- **Conservation Division Recommendations**

The Conservation Division reviewed the “Net Zero Energy” Performance Standard proposed by the applicant (see Exhibit K-3, Revised Outline Plan, Book III-Narrative, revised October 24, 2007), and made four recommendations for revisions to the standard. Staff recommends adding these items as conditions of approval. The Conservation Division memo from Dick Wanderscheid, Electric Director detailing the recommendation is on pages 10-11 of the record.

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 unit shall be provided with a photovoltaic system that is at least three kilowatts in size. In addition, all units will have enough available roof space to add photovoltaic panels that can provide enough electricity to offset the total energy use of the home on a BTU basis.
- 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.



3. Development Agreement

The land exchange and numerous land use applications are “bundled” in an ORS Chapter 94 Development Agreement. There are two reasons for this consolidation. First, the Development Agreement allows the Council and the public to consider in one consolidated review all the issues presented by the applications. Second, by using the statutorily authorized negotiated development agreement, a legislative decision, (i.e. you are not required to enter into a development agreement), you maintain and emphasize the discretionary character of the annexation question. That is, the expansion of the City limits will occur in an orderly fashion, with the City and Developer *planning together* in a contract, the logical and timely extension of urban public facilities and services. The negotiated agreement also permits you more flexibility; for example, exactions can be creative and negotiated where otherwise they would be subject to strict case law restrictions of *Nolan* and *Dolan* (i.e. rationally related to impacts of development and rough proportionality).

The technical terms of the Development Agreement are in large part dictated by Oregon Statutes ORS 94.504 – 94.528. The Agreement provides protection to the Developer from the application of new laws, except where the agreement provides otherwise. The Agreement presents certainty about what the developer is expected to do and when. Exhibit F presents the Timetable of Development for this phased project. The Council should examine the timetable and note that public infrastructure, recreational improvements and affordable housing are scheduled early in the timetable. Exhibit E includes special conditions and incorporates all the staff conditions that are not otherwise required as part of the Code at final plan. There are some added “risk management” provisions in the Agreement to protect the City from liability and reservation of legislative power. The agreement also incorporates a real property exchange (purchase /sale) that is triggered only after the required Federal, State and County approvals of the land exchange (this probably needs refinement). Similarly the Council should note in Section 16, that there is an order to the approvals, conveyances and annexations. The Federal, State and County approvals are prerequisites to the land exchange, as is construction of the multi-use path in the riparian area. Similarly, the annexation request requires three ordinances and must occur in the order provided in the special conditions. Vertical construction of the project units cannot occur prior to conveyance of the deed to the affordable housing provider.

The Development Agreement is approved by Ordinance. The Ordinance will contain the Agreement, as well as supporting Findings of Fact, Conclusions of Law and Order for PA- 2006-01663 and Findings of Fact, Conclusions of Law and Order for the land exchange.

Related City Policies:

None

Council Options:

The Council may approve, approve with modifications and conditions, or deny the development agreement including: 1) approval of the proposed land exchange pursuant to ORS 271.310 -271.350 to dedicate approximately 2.78 acres adjacent to Ashland Creek to the city for parks purposes in exchange for approximately 1.54 acres of the Dog Park access area, and 2) approval of Planning



Action 2006-01663 for the annexation and development of the properties located at 87 W. Nevada St. and 811 Helman St., consistent with ALUO criteria for an Annexation in 18.106.030, Comprehensive Plan Map and Zone Change in 18.108.060.B, Outline Plan in 18.88.030.A.4, Exception to the Street Standards in 18.88.050.F, Physical Constraints Review Permit in 18.62.040.I and Tree Removal Permit in 18.61.080.

Potential Motions:

Move to declare by Ordinance the approval of a ORS Chapter 94 negotiated development agreement including: 1) approval of the proposed land exchange to dedicate approximately 2.78 acres adjacent to Ashland Creek to the city for parks purposes in exchange for approximately 1.54 acres of the Dog Park access area, and 2) approval of Planning Action 2006-01663 for the annexation and development of the properties located at 87 W. Nevada St. and 811 Helman St.

Move to declare by Ordinance the approval of a ORS Chapter 94 negotiated development agreement with modifications and conditions including: 1) approval of the proposed land exchange to dedicate approximately 2.78 acres adjacent to Ashland Creek to the city for parks purposes in exchange for approximately 1.54 acres of the Dog Park access area, and 2) approval of Planning Action 2006-01663 for the annexation and development of the properties located at 87 W. Nevada St. and 811 Helman St. List modifications and added conditions:

Move to deny the request and not declare approval of an Ordinance approving the development agreement including: 1) approval of the proposed land exchange to dedicate approximately 2.78 acres adjacent to Ashland Creek to the city for parks purposes in exchange for approximately 1.54 acres of the Dog Park access area, and 2) approval of Planning Action 2006-01663 for the annexation and development of the properties located at 87 W. Nevada St. and 811 Helman St.

Attachments:

Appraisal for the Dog Park Property, June 22, 2007

Appraisal for the Williams Property, June 22, 2007

ORS 271.310 – 271.350 (Land Exchange Requirements)

Record of Planning Action 2006-01663, 87 W. Nevada St. and 811 Helman St.

Draft Development Agreement

Letter from Davis Hearn Saladoff and Bridges



ORS § 271.310 (2005)

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.

(2) If the ownership, right or title of the political subdivision to any real property set apart by deed, will or otherwise for a burial ground or cemetery, or for the purpose of interring the remains of deceased persons, is limited or qualified or the use of such real property is restricted, whether by dedication or otherwise, the political subdivision may, after the county court or governing body thereof has first declared by resolution that such real property is not needed for public use, or that the sale, exchange, conveyance or lease thereof will further the public interest, file a complaint in the circuit court for the county in which such real property is located against all persons claiming any right, title or interest in such real property, whether the interest be contingent, conditional or otherwise, for authority to sell, exchange, convey or lease all or any part of such real property. The resolution is prima facie evidence that such real property is not needed for public use, or that the sale, exchange, conveyance or lease will further the public interest. The action shall be commenced and prosecuted to final determination in the same manner as an action not triable by right to a jury. The complaint shall contain a description of such real property, a statement of the nature of the restriction, qualification or limitations, and a statement that the defendants claim some interest therein. The court shall make such judgment as it shall deem proper, taking into consideration the limitation, qualifications or restrictions, the resolution, and all other matters pertinent thereto. Neither costs nor disbursements may be recovered against any defendant.

(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.

(4) The authority to lease property granted by this section includes authority to lease property not owned or controlled by the political subdivision at the time of entering into the lease. Such lease shall be conditioned upon the subsequent acquisition of the interest covered by the lease.

ORS § 271.335 (2005)

271.335. Relinquishing reversionary interest held by political subdivision.

Any political subdivision, by resolution adopted by the governing body of the

political subdivision, may waive and relinquish any reversionary interest held by the political subdivision in property transferred under ORS 271.330 when the transfer occurred not less than 20 years prior to the date on which the resolution is adopted.

ORS § 271.340 (2005)

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 (2005)

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.

ORS § 221.725 (2005)

221.725. Sale of city real property; publication of notice; public hearing.

(1) Except as provided in ORS 221.727, when a city council considers it necessary or convenient to sell real property or any interest therein, the city council shall publish a notice of the proposed sale in a newspaper of general circulation in the city, and shall hold a public hearing concerning the sale prior to the sale.

(2) The notice required by subsection (1) of this section shall be published at least once during the week prior to the public hearing required under this section. The notice shall state the time and place of the public hearing, a description of the property or interest to be sold, the proposed uses for the property and the reasons why the city council considers it necessary or convenient to sell the property. Proof of publication of the notice may be made as provided by ORS 193.070.

(3) Not earlier than five days after publication of the notice, the public hearing concerning the sale shall be held at the time and place stated in the notice. Nothing in this section prevents a city council from holding the hearing at any regular or special meeting of the city council as part of its regular agenda.

(4) The nature of the proposed sale and the general terms thereof, including an appraisal or other evidence of the market value of the property, shall be fully disclosed by the city council at the public hearing. Any resident of the city shall be given an opportunity to present written or oral testimony at the hearing.

(5) As used in this section and ORS 221.727, "sale" includes a lease-option agreement under which the lessee has the right to buy the leased real property in accordance with the terms specified in the agreement.

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, 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 approved the First Reading of an Ordinance approving the Development Agreement; and

WHEREAS, on December 4, 2007 the City's Council approved the Second Reading of an Ordinance approving the Development Agreement, with an effective date of January 4, 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 #2006-016663], 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 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

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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 4, 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)]

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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, \$_____ 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 Reviews 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 4, 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.
17. Final Plat Approval Phase I

18. Conveyance of Parcel from Owner to RVCDC 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:

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 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 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 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 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 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 Columbia 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 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 name herein and expressly described as the intended beneficiaries of this Agreement.

29.10 Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents and take such additional acts (which in the

case of the City, shall require adopting necessary ordinances and resolutions) as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

29.11 Survival of Representations. The covenants, agreements, representations, and warranties made here shall survive the close of escrow and shall not merge into the deed and the recordation of it in the official records.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written. The date of this Agreement shall be the date on which this Agreement is effective (i.e. 30 days after it was approved by Ordinance at Second Reading by the City Council of the City of Ashland , Oregon.)

**OWNER
ASHLAND FLOWER SHOP
AND GREENHOUSES, INC. ("AFSG")**

Signed, sealed and delivered in
the presence of:

Gregory D. Williams, President

Dated: _____

Witness Name printed:

Address: _____

Witness Name printed:

STATE OF OREGON)

) ss

County of Jackson)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by Gregory Williams, as the President and authorized agent of Ashland Flower Shop and Greenhouses, Inc.

Notary Public for Oregon
My Commission Expires: _____

Approved as to Form:

Davis, Hearn, Saladoff, Bridges & Visser, P.C.

Christian E. Hearn, OSB 01182
Attorneys for Ashland Flowershop and Greenhouses, Inc.

CITY OF ASHLAND, OREGON ("City")

By: _____
John Morrison, Mayor

STATE OF OREGON)
) ss
County of Jackson)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by John Morrison, as the Mayor and authorized agent of the City of Ashland, Oregon, on behalf of said City.

Notary Public for Oregon
My Commission Expires: _____

Approved as to Form:

Legal Department, City of Ashland

Richard Appicello, OSB 90433
Interim City Attorney

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

 Signature of Authorized Agent
 Name printed: _____
 Title: _____
 Address: _____

Signed, sealed and delivered in
 the presence of:
 Witnesses:

 Name printed: _____

 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
 My Commission Expires:

Notary Seal

EXHIBIT A

Verde Village
LEGAL DESCRIPTION

*attach legal description of Verde Village
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 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.

The undersigned further agrees that this instrument may be recorded in the public records of Jackson County, Oregon.

IN WITNESS WHEREOF, the parties hereto have executed these presents on the dates indicated below.

OWNER
ASHLAND FLOWER SHOP
AND GREENHOUSES, INC. ("AFSG")

Signed, sealed and delivered in
the presence of:

Gregory D. Williams, President

Dated: _____

Witness Name printed:

Address: _____

Witness Name printed:

STATE OF OREGON)

) ss

County of Jackson)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by Gregory Williams, as the President and authorized agent of Ashland Flower Shop and Greenhouses, Inc.

Notary Public for Oregon
My Commission Expires: _____

Approved as to Form:

Davis, Hearn, Saladoff, Bridges & Visser, P.C.

Christian E. Hearn, OSB 01182
Attorneys for Ashland Flowershop and Greenhouses, Inc.

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. 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 provide affordable housing.

- 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.

- 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 48 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. All of the residential units in the subdivision shall meet the application "Net Zero Energy" Performance Standard as outlined in Exhibit K-3 of the application Book III dated June 8, 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.
- 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 37 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 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.
- 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 St. 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.
- 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 4, 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 4, 2015.

Phase	Final Plan and Site Review Approval	Infrastructure Completion	Final Plat and Completion of Vertical Construction
I	July 4, 2009	July 4, 2011	January 4, 2013

January 4, 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 4, 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 4, 2011. Complete sidewalk on the north side of Nevada Street from the eastern project boundary to the intersection of Nevada and Oak Street.

July 4, 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 4, 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 4, 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 townhome units).

July 4, 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 4, 2011. Phase I. Deadline for final survey to be signed after completion of subdivision infrastructure and before start of vertical construction.

July 4, 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 4, 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 Site Review Approval	Infrastructure Completion	Final Plat and Completion of Vertical Construction
II	July 4, 2011	July 4, 2013	January 4, 2015
		July 4, 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 4, 2013. Phase II. Deadline for final survey to be signed after completion of subdivision infrastructure and before start of vertical construction.

January 4, 2015. Vertical construction deadline for twenty-five (25) single family homes of which 19 are detached and 6 are attached.

July 4, 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.

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 **sixty (60) 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 30 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 30 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 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.

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 ~~lined through~~ and additions are underlined.

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, (annexation, comprehensive plan map change, zoning map change, outline plan approval, 2 of 3 requested 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

TERRASURVEY, INC. 
PROFESSIONAL LAND SURVEYORS
274 FOURTH STREET
ASHLAND, OREGON 97520

TELEPHONE: (541) 482-6474
FACSIMILE: (541) 552-0292
ELECTRONIC: terrain@bisp.net

TRANSMITTAL

DATE: 10-22-07
JOB NO: 478-05

TO: Alex Forrester

SUBJECT: Verde Village

Attached are the originals of the legal descriptions and maps for the property swap between the Williams and the City.

If you have any questions please feel free to call me.

Sincerely,



Stuart M. Osmus

cc:

Hand Delivered to
Chris Heenan 10.24.07

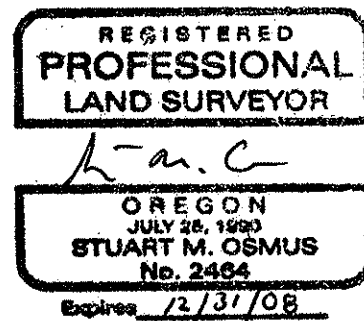
EXHIBIT 'A'

CITY OF ASHLAND TO VERDE VILLAGE

A parcel of land, being a portion of that certain tract conveyed from Jackson County to the City of Ashland in Document No. 77-13324, Official Records, Jackson County, Oregon, and being more particularly described as follows:

Commencing at a point 356.40 feet West of the Northwest Corner of Donation Land Claim No. 53, Township 38 South, Range 1 East, Willamette Meridian, Jackson County, Oregon; thence South 0° 17' 00" West, 874.58 feet to the center of Ashland Creek; thence along the easterly line of said tract described in Document No. 77-13324 of said Official Records, South 0° 17' 00" West, 405.01 feet to the **Point of Beginning**; thence continuing along said easterly line, South 0° 17' 00" West, 428.30 feet to a point East of the Northeast corner of tract described in Correction Deed recorded as Document No. 67-04020 of said Official Records; thence to said Northeast corner and along the North line of said tract, West, 50.00 feet to the Northwest corner thereof; thence along the West line of said tract and it's extension South 0° 17' 00" West, 267.82 feet to the northerly line of Nevada Street as described in Document No. 66-10285 of said Official Records; thence along said northerly line, North 89° 49' 50" West, 30.00 feet to the easterly line of tract described in deed recorded in Volume 296, Page 362, Deed records, Jackson County, Oregon; thence along said easterly line, North 0° 17' 00" East, 149.34 feet; thence continuing along said easterly line, North 3° 33' 00" West, 446.90 feet to the Northeast corner of said tract; thence along the northerly line of said tract, North 86° 22' 00" West, 388.90 feet to the northwest corner thereof; thence North 9° 58' 00" West, 16.03 feet; thence South 86° 22' 00" East, 224.98 feet; thence North 53° 38' 46" East, 53.42 feet; thence North 5° 13' 34" East, 14.61 feet; thence North 61° 56' 43" East, 36.00 feet; thence North 78° 29' 33" East, 50.25 feet; thence South 85° 33' 47" East, 79.84 feet; thence North 84° 03' 01" East, 72.17 feet to the Point of Beginning, containing 1.54 acres more or less.

October 22, 2007



MAP OF
VERDE VILLAGE / CITY DOG PARK
PROPERTY EXCHANGE
CITY OF ASHLAND TO WILLIAMS

FOR
FORRESTER & FORRESTER
545 A STREET, SUITE 1
ASHLAND, OREGON 97520

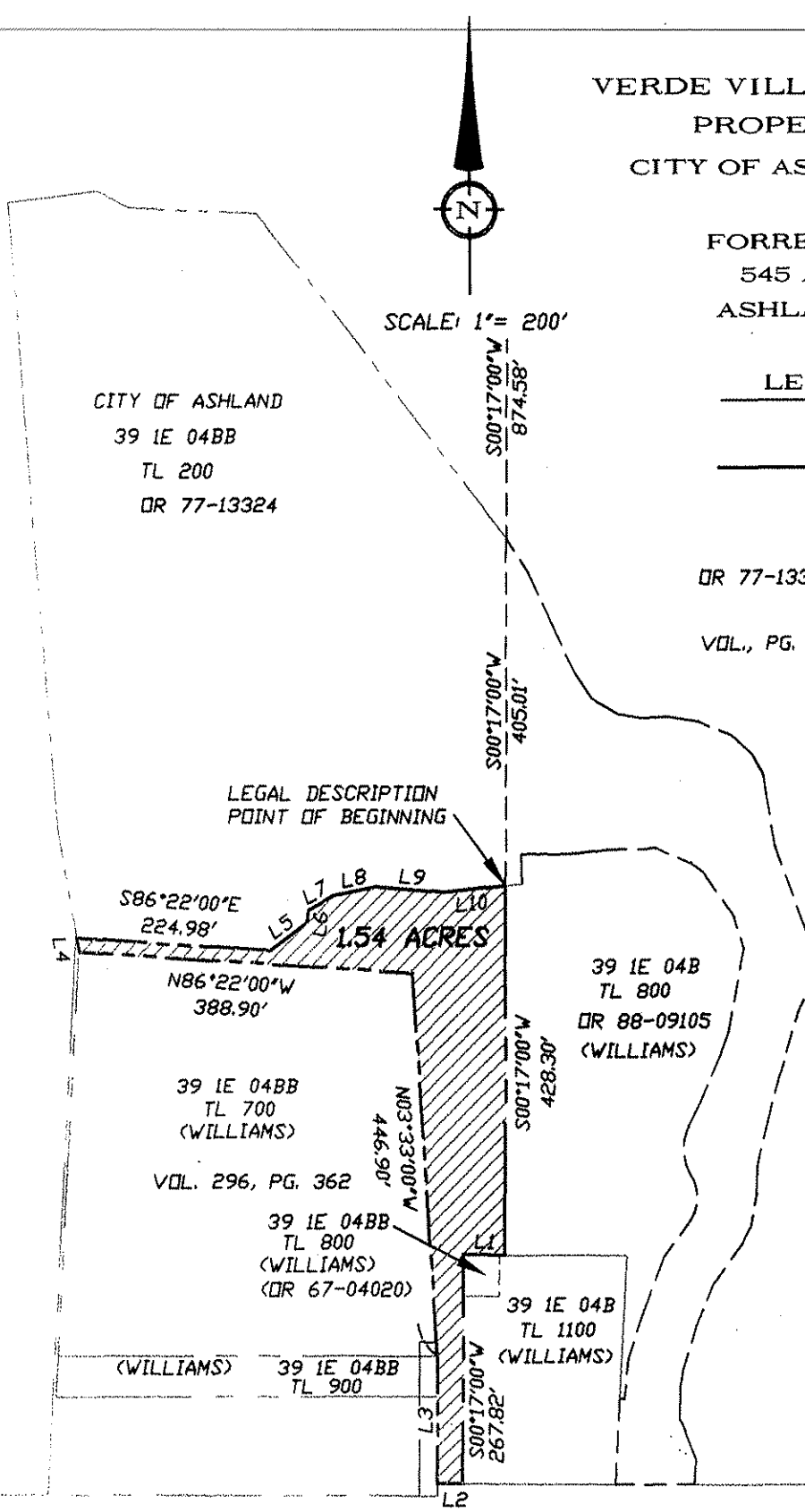
LEGEND

— BORDER OF TRACT TO BE
TRANSFERRED FROM CITY
OF ASHLAND TO WILLIAMS
(SHOWN SHADED)

OR 77-13324 OFFICIAL RECORDS, JACKSON
COUNTY OREGON

VOL., PG. DEED RECORDS, JACKSON
COUNTY OREGON

LINE TABLE		
LINE	LENGTH	BEARING
L1	50.00	WEST
L2	30.00	N89°49'50"W
L3	149.34	N00°17'00"E
L4	16.03	N09°58'00"W
L5	53.42	N53°38'46"E
L6	14.61	N05°13'34"E
L7	36.00	N61°56'43"E
L8	50.25	N78°29'33"E
L9	79.84	S85°33'47"E
L10	72.17	N84°03'01"E



REGISTERED
PROFESSIONAL
LAND SURVEYOR

Stuart M. Osmus

OREGON
JULY 28, 1990
STUART M. OSMUS
No. 2464

Expires 12/31/08

TERRASURVEY, INC.
PROFESSIONAL LAND SURVEYORS
274 FOURTH STREET
ASHLAND, OREGON 97520
(541) 482-6474
terrain@bisp.net

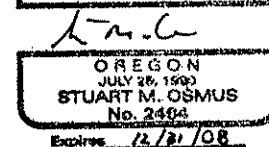
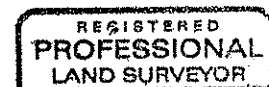
EXHIBIT 'A'

WILLIAMS TO CITY OF ASHLAND

A parcel of land, being a portion of that certain tract conveyed to the Ashland Flowershop and Greenhouses, Inc. in Document No. 88-09105, Official Records, Jackson County, Oregon, and being more particularly described as follows:

Commencing at a point 356.40 feet West of the Northwest Corner of Donation Land Claim No. 53, Township 38 South, Range 1 East, Willamette Meridian, Jackson County, Oregon; thence South 0° 17' 00" West, 874.58 feet to the center of Ashland Creek, being the most northerly corner of said tract described in Document No. 88-09105 and being the **Point of Beginning**; thence along the center of Ashland Creek the following courses and distances; thence South 30° 53' 06" East, 118.09 feet; thence South 21° 59' 31" East, 66.00 feet; thence South 48° 04' 13" East, 78.43 feet; thence North 75° 10' 41" East, 30.58 feet; thence South 83° 19' 34" East, 65.92 feet; thence South 65° 07' 06" East, 44.31 feet; thence South 26° 42' 09" East, 51.85 feet; thence South 16° 07' 50" East, 219.08 feet; thence South 18° 54' 37" West, 136.23 feet; thence South 0° 23' 16" East, 81.45 feet; thence South 25° 08' 05" West, 252.60 feet; thence South 7° 01' 15" West, 87.65 feet; thence South 19° 50' 49" East, 45.13 feet; thence South 4° 48' 17" East, 43.49 feet to the northerly line of Nevada Street as described in Document No. 66-10285 of said Official Records; thence along said northerly line, North 89° 49' 50" West, 68.10 feet; thence leaving said northerly line, 42.53 feet along the arc of a non-tangent curve which is concave to the southwest, having a radius of 121.45 feet, a central angle of 20° 03' 58", and a long chord which bears North 13° 12' 33" West, 42.32 feet; thence 40.91 feet along the arc of a curve to the right, having a radius of 98.52 feet, a central angle of 23° 47' 36", and a long chord which bears North 11° 20' 44" West, 40.62 feet; thence North 0° 33' 04" East, 18.93 feet; thence North 5° 53' 11" East, 47.20 feet; thence North 17° 37' 31" East, 54.81 feet; thence North 21° 26' 34" East, 72.03 feet; thence North 35° 59' 13" East, 48.55 feet; thence 57.31 feet along the arc of a curve to the left, having a radius of 48.70 feet, a central angle of 67° 25' 26", and a long chord which bears North 2° 16' 30" East, 54.06 feet; thence 58.49 feet along the arc of a curve to the right, having a radius of 57.76 feet, a central angle of 58° 01' 05", and a long chord which bears North 2° 25' 41" West, 56.02 feet; thence North 26° 34' 52" East, 30.74 feet; thence North 22° 55' 37" East, 58.94 feet; thence North 18° 57' 01" East, 32.25 feet; thence North 10° 39' 55" East, 97.44 feet; thence North 15° 38' 24" West, 38.84 feet; thence North 35° 24' 16" West, 60.15 feet; thence North 53° 22' 56" West, 19.90 feet; thence North 66° 58' 54" West, 44.99 feet; thence South 88° 56' 50" West, 54.96 feet; thence South 82° 05' 30" West, 35.65 feet; thence South 89° 31' 29" West, 67.18 feet; thence South 3° 26' 59" East, 34.10 feet; thence South 84° 03' 01" West, 20.18 feet to the easterly line of tract described in Document No. 77-13324 of said Official Records; thence along said easterly line, North 0° 17' 00" East, 405.01 feet to the Point of Beginning, containing 2.75 acres more or less.

October 22, 2007



MAP OF
VERDE VILLAGE / CITY DOG PARK
PROPERTY EXCHANGE

WILLIAMS TO CITY OF ASHLAND
FOR

FORRESTER & FORRESTER
545 A STREET, SUITE 1
ASHLAND, OREGON 97520

SCALE: 1" = 200'



CITY OF ASHLAND
39 1E 04BB
TL 200
OR 77-13324

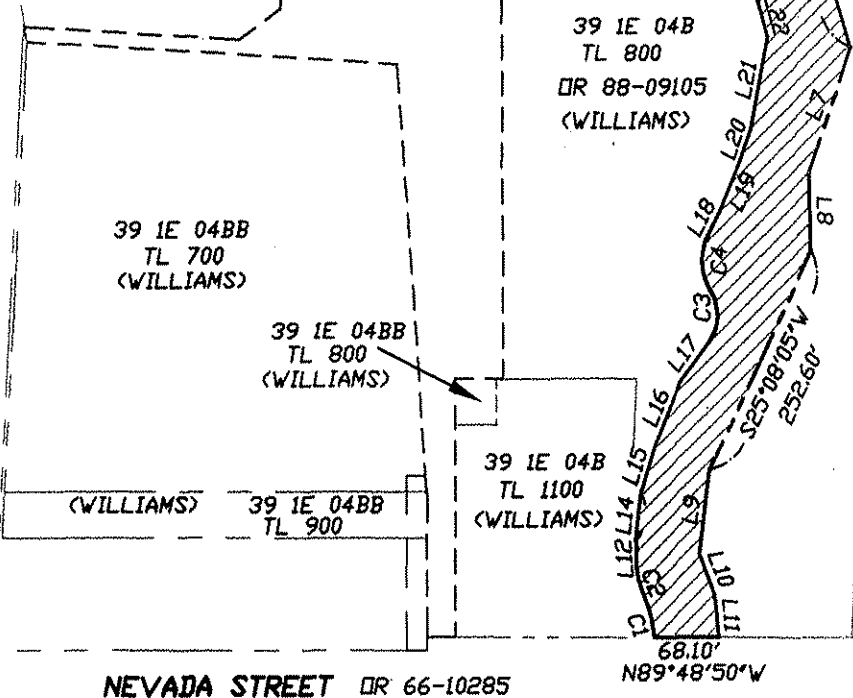
LEGEND

BORDER OF TRACT TO BE
TRANSFERRED FROM
WILLIAMS TO CITY OF
ASHLAND
(SHOWN SHADED)

OR- OFFICIAL RECORDS, JACKSON
COUNTY, OREGON

LEGAL DESCRIPTION
POINT OF BEGINNING

LINE TABLE		
LINE	LENGTH	BEARING
L1	66.00	S21°59'31"E
L2	78.43	S48°04'13"E
L3	30.58	N75°10'41"E
L4	65.92	S83°19'34"E
L5	44.31	S65°07'06"E
L6	51.85	S26°42'09"E
L7	136.23	S18°54'37"W
L8	81.45	S00°23'16"E
L9	87.65	S07°01'15"W
L10	45.13	S19°50'49"E
L11	43.49	S04°48'17"E
L12	18.93	N00°33'04"E
L14	47.20	N05°53'11"E
L15	54.81	N17°37'31"E
L16	72.03	N21°26'34"E
L17	48.55	N35°59'13"E
L18	30.74	N26°34'52"E
L19	58.94	N22°55'37"E
L20	32.25	N18°57'01"E
L21	97.44	N10°39'55"E
L22	38.84	N15°38'24"W
L23	60.15	N35°24'16"W
L24	19.90	N53°22'56"W
L25	44.99	N66°58'54"W
L26	54.96	S88°56'50"W
L27	35.65	S82°05'30"W
L28	67.18	S89°31'29"W
L29	34.10	S03°26'59"E
L30	20.18	S84°03'01"W



REGISTERED
PROFESSIONAL
LAND SURVEYOR

h n c

OREGON
JULY 18, 1993
STUART M. OSMUS
No. 2464
Expires 12/31/08

NEVADA STREET OR 66-10285

68.10'
N89°48'50"W

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD BRG.	CHORD
C1	42.53	121.45	20°03'58"	N13°12'33"W	42.32
C2	40.91	98.52	23°47'36"	N11°20'44"W	40.62
C3	57.31	48.70	67°25'26"	N02°16'30"E	54.06'
C4	58.49	57.76	58°01'05"	N02°25'41"W	56.02

TERRASURVEY, INC.

PROFESSIONAL LAND SURVEYORS

274 FOURTH STREET
ASHLAND, OREGON 97520

(541) 482-6474
terrain@bisp.net

DAVIS HEARN
SALADOFF & BRIDGES
ATTORNEYS AT LAW

Established 1953

A Professional Corporation

515 EAST MAIN STREET
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C. CASEY WHITE*

SAM B DAVIS - Retired
SIDNEY E. AINSWORTH (1927-2003)
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* Also Admitted to Practice in CA
‡ Also Admitted to Practice in DC, MD, PA and NJ

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November 1, 2007

FACSIMILE COVER SHEET

Deliver to: Richard Appicello - Ashland Legal Department

Fax Number: 552-2092

Fax From: Jack Davis

Subject: Verde Village Development Agreement

No. of Pages (including cover page): 3

An original is being mailed.

Fax transmittal only.

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November 1, 2007

RICHARD APPICELLO
ASHLAND LEGAL DEPARTMENT

VIA FACSIMILE TRANSMISSION 552-2092

Re: Verde Village Development Agreement

Dear Richard:

Because my partner, Chris Hearn, is completely unavailable to help with the Owner's response to your latest revision of the Development Agreement, and in view of the deadline of 11:00 o'clock this morning for submission of the response, I am standing in for him. Please present the following to the Council with the disclaimer that I have not been able to receive the input of either the clients or Chris before preparing this. There may be additional items of concern and they may feel differently about some of the following.

Section 16: I feel it might be wise to make it clear that these items should occur in the order stated. Of particular concern to the Owners is that Items 1 - 14 must be achieved before 16 and 18 take place. There should be no conveyances until every approval is received. Also, I would think that the Owners should have the right to move Item 17 and 25 in front of 15 and 24, respectively, with acceptable sureties or cash deposits. We now know that approvals of final plats are sometimes appealed.

Section 18.4: Please remove "or as otherwise made applicable to the development authorized in this Agreement". Because this is, first and foremost, a bilateral agreement, the City cannot reserve for itself the right to unilaterally change "the deal" by enacting ordinances which trump terms in the Agreement. I feel this language permits that.

Section 18.5: In the middle of the larger paragraph, you have stated that the Owner will not be liable for costs if not determined to be in breach. Please expand the sentence to have it also apply if the Court determines that the Owner is not in breach if a lawsuit is later filed.

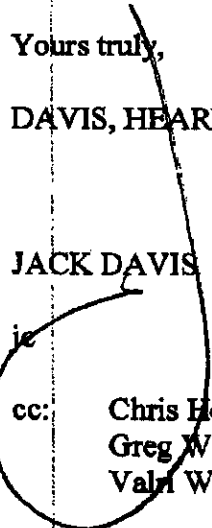
Page -2-

Exhibits E, F and G: Your revisions to E and F, as well as the whole of G, have not been reviewed by the Owners and discussion of these will have to be deferred.

Yours truly,

DAVIS, HEARN, SALADOFF & BRIDGES, P.C.

JACK DAVIS

cc:  Chris Hearn chearn@davishearn.com
Greg Williams greg@verdevillage.net
Valri Williams valri@ashlandgreenhouses.com

DAVIS, HEARN
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ASHLAND, OREGON 97520
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For the Verde Village public hearing packet.

Diana Shiplet
Exec. Secretary
Administration
City of Ashland
541-552-2100

>>> Martha Bennett 09/03/07 2:47 PM >>>

Colin - Thanks. I will hold this email for the packet when Verde Village gets to the Council. It's likely to be late October or November.

Martha

>>> "Colin Swales" <colinswales@gmail.com> 08/28/07 10:04 AM >>>

Martha,
(cc David)

Re: Williams/Dog Park properties exchange

I read with interest the response from Vesta Real Estate Services Inc. dated Aug 6, 2007 - answering previous questions I had with regard to the proposed Land Swap in connection with the Verde Village project.

[see my original questions Pages 92/93 - Vesta's answers 63/64

<http://www.ashland.or.us/Files/August14PlanningCommissionPacket.pdf>]

(BTW, I was disappointed that the proposed Land Exchange - or an Easement alternative) was not even discussed by the PC at their Aug 14 meeting - apart from the further testimony in support of the Applicants from Parks Commissioner Mike Gardiner [approx hr. 2:32:00 of meeting video], and I have previously shared my concerns about its appropriateness)
Firstly, my question about the wisdom of building a "sustainable development" at the city's periphery was not directed toward the Appraisal per se, but to the City in general. While I am interested in the Appraiser's personal opinion "...sustainable development is not dependent on public transport..." I feel is not within the scope of the appraisal work requested and shows an arguable bias toward the proposed development that is quite unprofessional.

Also her definition quote from Webster's Dictionary seems to differ from that available online, in that the latter makes no mention whatsoever of "construction" at all - which is what the appraiser seems to only limit her thoughts to

{see

<http://www.websters-online-dictionary.org/definition/SUSTAINABLE+DEVELOPMENT>

]

Her opinion also seems to be at odds with that of some Planning Commissioners who mentioned during the public hearing their concerns about public transportation. [about Hr 1:30:00 (?) of meeting video

<http://rvtv.roguedatavault.net:554/ramgen/ashland/planning/plan08-14-07.rm>]

So let me also deal with the enumerated points on page 2 of her answers in order.

1&2.

The Appraiser mentions previously that she "...cannot address the planning issues of annexation and upzoning..." - yet she had been in contact with city staff. Did they not inform her adequately?

Density bonuses seem now to have been factored in, but still not the affordable penalties of that would apply to only the Williams' property upon annexation and up-zoning.

The presumption of annexation being "well into the process" is misguided. The PC can only opine on whether the proposal meets the threshold of possible consideration for annexation. The Council MAY decide if this is to be approved - or not.

Such presumption of a future outcome for the Williams' property does not

address the very modest "highest and best use" currently allowed and possible at the time of the appraisal (minimum 5 ac lot size) and such future value is purely speculative. (The City "dog park" property is currently already zoned for city R-1 residential use). Even the "...presumed zoning of R-1-5..." for the Williams' property takes no account of the R-1-7.5 lots that are adjacent to the north and west.

3. Developable Land is not the same as a "large box of detergent".* To compare the value of a scoop from one box with a scoop from a larger box is facile. The residentially-zoned City property could be easily partitioned off and developed. The Williams' flood plain land could not. Therein lies the major flaw in the appraiser's methodology.

4. The land was not appraised "as-is".*
The Williams' land was valued after a "presumed" annexation and re-zone etc.

Affordable housing requirements would not apply to the City property as it does not require annexation nor upzoning, both of which procedures (required for the Williams' property) demand affordable sacrifices.

5. The other comparables have no flood plain land...therefore they are worth more? Yet only they are considered to be "high indicators" for both the City (flat, non-flood plain) and the Williams' riparian embankment parcel ? Identical comparables used for totally different land - go figure...

6. "...the sale is a high indicator due to the size issues discussed earlier..".* Earlier discussion points to the fact that the appraiser puts very different values on disparate sized parcels. But the City property considered for swapping could easily be partitioned to a similar size as #2, hence having a similar value. The Williams property could not be similarly partitioned and developed.

7. The #2 Fordyce Co-Housing property was approved for up-zone to R-2 with Comp Plan change and Planning Permission by Council on (minimum 5 ac lots).
The subsequent "comparable" sale took place -according to the appraisal - on June 06 at R-1-5.
How does the appraiser judge that this sale "meets the criteria" as a "high indicator" with the Williams County 5 -ac minimum land?

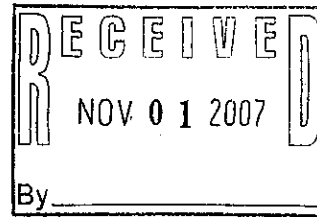
8. "...Location of the sewerage works, in my experience, would not reduce the value of the lots..."*
While it would appear that it is mainly the "affordable" lots (that are to be donated, and therefore have zero value to the Williams) that are clustered around the part of the site closest to the sewerage works, I find the appraiser's opinion curious.
Could she give some examples of her experience selling such lots in other places to substantiate her claim?

I realize the Record is now closed for public input before the PC, so I am writing so that you can share this with Council at the appropriate time. (or the PC should they re-open the Record).
thanks

Colin
**

October 30, 2007

City Council of Ashland
20 East Main Street
Ashland, OR 97520



Dear City Council Members:

I am writing this letter to show my strong support for the Verde Village project. I have lived in Ashland for 11 years and have watched various building projects be accepted and implemented. None of these projects have had the positive impact that Verde Village would have to our community.

In this time of great concern over energy use, Verde Village would be the most energy and water efficient project ever built in Ashland, if not in all of Oregon. For the first time we would have a community focused on environmentally responsible home design and construction as well as careful land planning, management and stewardship. I feel that Verde Village would quickly become a model for other housing projects throughout the nation.

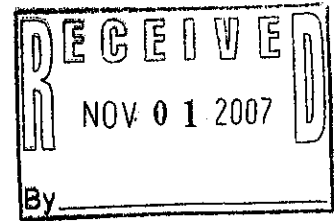
We are all well aware of the shortage of low cost housing in our city. Verde Village would help to alleviate this need by providing both low cost housing as well as work force housing.

Our Chamber of Commerce describes Ashland as a place which offers qualities of life many towns only dream about. Verde Village would enhance that description by respecting the environment, fostering a spirit of community and just being a great place to live. I was pleased to see that the Planning Commission approved Verde Village. It is my hope that the City Council gives their whole hearted approval as well.

Respectfully submitted,


Jesse Harwit

458 Beach Street
Ashland, OR 97520
552-1841



To: The Ashland Mayor and City Council

This letter is in support of the Verde Village project. Unfortunately I will be out of town on the night of the meeting

You are the leaders of our town, and as leaders you are charged with seeing the big picture while they analyze the detail. Not an easy task in this case, but a crucial one. This is obviously a complex application. The fact that the application is so thick, and the process has taken so long, is evidence of it.

The applicants are not developers. They are simple 3rd generation Ashland small town farmers, who have for better or worse watched their town grow up around them, and who now have a unique, progressive vision for the property that, because of forces beyond their control, is too valuable to leave as farm land. They have been courageous in spending what it took to hire the best advisors who did their best to make all the many constituencies of this town happy. These people care about this town because they live here, and will continue to live here when this project is complete.

In my opinion the big picture is this. If there ever was a project that belonged in Ashland, it is this one. If there ever was a project that Ashland could look back on and be proud of it is this one. It has the best known use of energy efficiency, it is giving the city much needed affordable housing (and because of the size of the rest of the houses the whole development will stay relatively affordable) and it retains much of the natural beauty of the area by giving the city a sweet deal on open space. Scores of folks who have spoken in favor of this agree. Very few disagree, and they are the ones who never see a development they like.....you know who they are.

I urge you all now to show some courage and see the big picture. The details have been nit-picked for almost a year. Please don't nit-pick it to its death. Please don't force these good people to develop this property to its allowed use, large homes on large lots. Please allow this wonderful and needed project to go forward.

Thank You,
Dave Bernard.
378 Terrace St.
Ashland

A handwritten signature in black ink, appearing to read "Dave Bernard", written over a horizontal line.