

DEVELOPMENT AGREEMENT
FOR THE DEVELOPMENT OF THE CITY OF ASHLAND
LITHIA PARKING LOT AFFORDABLE HOUSING DEVELOPMENT

Dated this ____ day of _____, 2006.

BETWEEN: THE CITY OF ASHLAND, an Oregon Municipal Corporation,
hereinafter "City"

AND: KENDRICK ENTERPRISE, LLC, and Oregon Limited Liability
Company, hereinafter "Kendrick"

AND: ACCESS, Inc, a nonprofit community action agency, hereinafter
"ACCESS".

RECITALS:

1. City owns a parcel of property in its downtown area, Ashland, Jackson County, Oregon, located on the South side of Lithia Way, between Pioneer Street and North First Street which is more particularly described in Exhibit A, attached hereto and hereinafter referred to as the "Property."
2. The Property is currently being used as a public parking lot with surface parking providing thirteen parking spaces.
3. The City solicited a request for proposals for innovative designs to construct as many units of affordable housing on the property as feasible while maintaining at least ten spaces of public parking.
4. Kendrick submitted the successful proposal, which includes sixteen units of underground parking, one unit of surface, on-street parking, 6000 square feet of commercial space, ten affordable housing units either studio or one bedroom design and three market-rate housing units.
5. The Ashland City Council deems it to be in the public's best interest to stimulate affordable housing opportunities in the downtown area and believes construction of the contemplated project will promote that goal.

AGREEMENT

The Parties Agree as follows:

DEFINITIONS

The following terms shall have the designated meanings for purposes of this Agreement:

1. "Affiliate" shall mean any entity owned by, controlled by or under common control with the designated party.
2. "Agreement" shall mean this Disposition and Development Agreement and all Exhibits hereto.
3. "Completion Date" shall mean the date that the certificate of occupancy for the final portion of the Project is issued.
4. "Effective Date" shall mean the date upon which this Agreement is executed by all three parties.
5. "Land" shall mean the property described on Exhibit A.
6. "Mortgagee" shall mean the holder of any Mortgage affecting or encumbering any portion of the Private Project or leasehold interest under the leases of the Project or any portion thereof, together with any successor or assignee of such holder.
7. "Notice" shall mean any summons, citation, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, issued by the Oregon Department of Environmental Quality, the United States Environmental Protection Agency, any other federal, state or local agency or authority or any other governmental agency having jurisdiction with respect to the Project.
8. "Private Project" shall mean the commercial and residential portions of the Project to be leased or owned by Kendrick or by Access.
9. "Project" shall mean the entire development; the Land with all improvements to be constructed thereon as contemplated by this Agreement, including the Parking Structure, the Affordable Residential Structures, the Market Rate Residential Structures and the Commercial Structures.

Other capitalized terms used herein shall have the meanings attributed to them elsewhere herein.

1. CONDITIONS PRECEDENT TO OBLIGATIONS

- 1.1 Conditions to City's Obligations. City's obligations under this Agreement are subject to satisfaction, on or before the date identified in Section 1.1 hereof, of the following conditions precedent:

1.1.1 Financing Commitments. Kendrick provides evidence no later than the ___ day of _____, 200__ of the following financing for the Project that is

satisfactory to City in its reasonable discretion that the funding is available to complete the Project Construction:

- (a) Documentation from Kendrick's primary lender and/or from the ACCESS setting forth the terms and conditions upon which it/they will finance construction of the Project, including information as to the source of the funds, whether all conditions have been met to obtain funding from the specified sources and what obligation, if any, will be placed on the City or on the land in the event the project fails to be used as proposed; and
- (b) Evidence of available equity and/or commitments for the same to fund the balance of Kendrick's costs for the Project that are not being financed.

Kendrick and ACCESS shall periodically (at least monthly) update the other parties to this Agreement on the Status of the financing commitments. Kendrick shall immediately inform City if it has any reason to believe that it may not be able to commence construction of the Project within the time periods set forth herein.

- 1.2 Financing Commitments. Kendrick has received all commitments necessary, in its sole discretion, to finance and to fund the Project and to perform its obligations under this Agreement.
- 1.3 Condition of Land. Kendrick has satisfied itself, in its sole discretion, as to the condition of the Land and the feasibility of the Project. To this regard, City recognizes and agrees that City shall take steps to relocate any utility lines or laterals located in or on the property which would make it infeasible to build the Project as proposed..
 - (a) Within **thirty** (30) days of the Effective Date, City shall deliver to Kendrick all materials or information relating to the Land and the Project that are in City's possession or control, including, but not limited to (i) topographical, boundary, and other surveys or maps of the Land, and (ii) all environmental, soils, geotechnical, wetlands, seismic, and land use reviews, reports, assessments, inspections, and studies relating to the Land or the Project.
 - (b) Kendrick, its agents, employees, and independent contractors are hereby granted the right to enter upon the Land for the purpose of making or conducting any inspection, investigation, test, or surveys of the Land, at Kendrick's sole cost and expense, as Kendrick may deem appropriate to satisfy this condition. Kendrick shall repair any damage to the Land caused by any such tests or investigations, shall keep the Land free from liens in connection with such activities, and shall not unreasonably interfere with City's use of the Land. Kendrick shall indemnify, defend, and hold City harmless from and against any and all claims, demands, actions, costs, and expenses that may arise or

result from Kendrick's activities on the Land pursuant to this paragraph.

- (c) City hereby represents and warrants to Kendrick and ACCESS that:
1. City owns fee simple title to the Land which is not subject to any lien, encumbrance, restriction, or easement of any kind or nature except the utility lines and laterals for which City has agreed to locate and except as may be set forth in the Title Report.
 2. City has the legal power, right, and authority to enter into this Agreement and to consummate the transactions contemplated herein. The individual executing this Agreement on behalf of City has the legal power, right, and actual authority to bind City to the terms and conditions of this Agreement.
 3. To the best of City's knowledge, there is no pending or threatened action, suit, proceeding, or investigation before any agency, court, or other governmental authority which relates to the Land or the use thereof, including, but not limited to, any pending or threatened condemnation proceeding.
 4. City has received no notice nor is aware of any existing violations of any federal, state, county, or municipal laws, ordinances, orders, codes, regulations, or requirements affecting the Land
 5. City knows of no default or breach by City under any covenants that affect the Land or any portion thereof, nor of any condition that will result in the termination or impairment of access to the Land or discontinuation of necessary sewer, water, electric, gas, telephone, or other utilities except the utility lines and laterals for which City has agreed to locate,.

- 1.4 Failure of Conditions Precedent. If any of the foregoing conditions precedent are not satisfied or waived by the party entitled to the condition within the applicable time period set forth herein, that party shall have the right, by giving notice to the other party on or before the last day of the applicable period, to terminate this Agreement. Failure of any party to notify the other parties and to terminate this Agreement prior to Kendrick beginning construction on the Project, shall be deemed a waiver of the conditions. If any party exercises its right to terminate this Agreement in accordance with this subsection, this Agreement shall terminate as of the date such notice of termination is given, at which time any documents or other materials in the possession of the other parties shall be returned to the owner thereof, whereupon all parties shall be relieved from further liability hereunder.

2. DEVELOPMENT

2.1 Construction

- 2.1.1 Parking. Kendrick agrees, subject to the terms and conditions of this Agreement and in accordance with the schedule prepared as

set forth herein, at Kendrick's labor and cost, to construct an underground parking structure on the Land which shall contain 16 parking spaces, one of which shall be ADA compliant. The parking structure shall be constructed in such fashion that it will serve as a pedestal to support a three story structure on top of it, which shall contain the commercial, affordable housing and market rate housing components.

2.1.2 Residential and Commercial. Subject to the terms and conditions of this Agreement, and subject to ACCESS obtaining the necessary funding to pay the cost of construction of the Affordable Residential Units and payment thereof to Kendrick, Kendrick covenants to complete the construction of three-story structure above the parking garage in substantial conformance with the submitted concept plan containing 6000 square feet of commercial space, ten affordable residential units and three market rate residential units.

2.1.3 Utility Construction. City represents to Kendrick that, to the best of City's knowledge, all utilities (water, electricity, gas, sanitary sewer, storm drain, broadband and telephone) are available to the Project site. City acknowledges the existence of certain utility lines and laterals currently existing on or in the land that City agrees to relocate to facilitate construction of the Project. Kendrick will be responsible, at Kendrick's cost for connecting all of Kendrick's improvements to the utility lines and for payment of all permit and development fees, including but not limited to building permits, planning review, engineering review fees and system development charges.

2.2 Plans and Specifications: Waiver of Claims. Kendrick shall be responsible for preparing and submitting all architectural and engineering drawings, plans and specifications required to obtain approval of any needed public infrastructure modifications and connections, planning approval, and building permits.

2.3 Construction Schedule. Subject to the terms and conditions of this Agreement, including the Force Majeure provisions set forth in Section 8.2 hereof, Kendrick shall commence construction of the Project improvements no later than June 30, 2008, but no sooner than commitment is made for all funds necessary to complete the affordable housing component of the project. After commencing construction, Kendrick shall diligently pursue completion of the construction of the Project. All Project improvements shall be complete no later than two years following the date of necessary governmental approvals.

2.4 Demolition of the Existing Parking Lot. Kendrick shall not demolish, remove or substantially alter the existing surface parking lot so as to

render the parking area unusable more than 30 days prior to commencement of construction on the Project.

- 2.5 Permits. Kendrick will obtain, at its own cost, all governmental approvals necessary for the construction of the Project. Each party covenants to use its diligent, good faith efforts to assist the other party in obtaining the required permits and approvals. Kendrick acknowledges that assistance by City in obtain permits in accordance with this section and as a party to this Agreement does not bind City, in its administrative capacity through its Community Development Department or other departments to (among other things) issue said permits, nor does it constitute a representation by City that necessary permits will be issued by City.
- 2.6 Safety Matters; Indemnification. Kendrick shall:
- 2.6.1 Safety. Take all safety measures necessary to protect the public, Kendrick's employees, agents contractors, subcontractors, licensees and invitees and City's employees, agents, contractors, subcontractors, licensees and invitees from injury or damage by or resulting from the performance of its construction;
- 2.6.2 Security. Take all steps reasonably necessary to secure the Project site to prevent access to the same by the public during the period of construction.
- 2.6.3 Liability Claims. Indemnify and hold the City harmless from all claims, costs, expenses and liabilities arising from the death of or accident, injury, loss or damage whatsoever caused to any person or to the property of any person as occurs in the process of the construction work; and
- 2.6.4 Indemnity from Liens. Indemnify, defend and hold the City harmless from and against all mechanic's, materialmen's, and laborer's liens and all costs, expenses, and liabilities arising from the construction.
- 2.7 Liens. The parties agree that in the event any statutory lien shall be filed during the term of this Agreement against any portion of the Land or the Project by reason of labor, services, or materials supplied to or at the request of a party, that party shall pay and discharge the same of record within thirty (30) days after the filing thereof, subject also to the provisions of the following sentence. Each party shall have the right to contest the validity, amount or applicability of any such liens by appropriate legal proceedings, and so long as it shall furnish bond or indemnity as hereinafter provided and be prosecuting such contest in good faith, the requirement that it pay and discharge such items within said thirty (30) day period shall not be applicable; provided, however, that in any event, such party shall within thirty (30) days after the filing thereof, bond in accordance with applicable laws, or in the alternative indemnify

against such liens in amount and form satisfactory to induce the title insurance company which insured title to the Project to insure over such liens or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such liens and, further, such party shall indemnify and save harmless the other parties hereto from all loss, damage, liability, expense or claim whatsoever (including attorneys' fees and other costs of defending against the foregoing) resulting from such liens. In the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to a party, that party shall within five (5) days thereafter cause the lien(s) to be discharged of record.

- 2.8 Completion of Construction. Receipt of final certificates of occupancy for each portion of the Project (Parking garage, Commercial Area, Affordable Residential Units and Market Rate Residential Units) shall, except as otherwise provided for herein, be conclusive evidence of Kendrick's satisfactory performance of its obligations under this Agreement to construct that portion. Issuance of such certificates of occupancy shall mean (i) that any party acquiring or leasing that portion of the Commercial Structures or Residential Structures (Affordable or Market Rate) shall not (because of such purchase or lease) have any obligation under this Agreement with respect to the construction of the Commercial Structures and/or Residential Structures, and (ii) that, except for ongoing construction or other obligations under this Agreement neither City nor any other party shall thereafter have or be entitled to exercise with respect to the Commercial Structures and/or Residential Structures any rights or remedies or controls that it may otherwise have been entitled to exercise under this Agreement with respect to the construction of the Commercial Structures and/or Residential Structures or as a result of a default in or breach of any provision of this Agreement by Kendrick or by any successors in interest or assigns of Kendrick.

3 CREATION OF PROPERTY AND CONVEYANCE

- 3.1 Condominium Form of Ownership Prior to Completion. Concurrent with the development of plans and construction, Kendrick's attorneys will assist in the creation of a condominium form of ownership by completing and recording a Declaration and Bylaws, the form of which shall be agreed to by the parties, subject to modifications required by regulatory agencies or Mortgagees. Said Declaration shall create the following condominium units within the Project: (i) one unit for the parking garage, containing 16 parking spaces; (ii) two commercial units one of which would consist of 4,500 square of commercial space on the ground floor and one of which would consist of 1500 square feet of commercial space on the second floor; (iii) one unit consisting of ten (10) studio or one bedroom affordable housing units; (iv) three market rate residential units;

and (v) the common areas e.g., elevators, lobbies, stairways, etc., for use by all units, and limited common elements, all as more particularly described in the Declaration. The parties agree to take all actions necessary to finalize and to complete the Declaration and other documents necessary to create the condominium, including an independent budget, reserve analysis, association members dues and to record the same as necessary. All costs associated with the converting the Project to the condominium form of ownership, including, but not limited to, the costs of preparing and recording the plat, shall be shared equally by City and Kendrick; provided, however, that all costs of preparing the Declaration, the condominium bylaws, and other legal documents shall be the responsibility of and shall be borne solely by Kendrick.

- 3.2 Closing. Upon recording of the Declaration and creation of the Affordable Residential Units, the Market Rate Residential Units and the Commercial Units, City will convey fee title to the Affordable Residential Units, together with an undivided interest in the Common Areas, to ACCESS to be managed as Affordable Housing to be targeted at those earning 60% of the area median income or less. In the event the Affordable Residential Units ever cease to be used to provide affordable housing as defined in the Ashland Municipal Code, ownership of the Affordable Residential Units shall revert to the City. The City will convey fee title to the Market Rate Residential Units, together with an undivided interest in the Common Areas, to Kendrick, with a deed restriction that the Units be occupied as the occupant's principal residence. The City will lease the Commercial Units to Kendrick for a term of 60 years. Consideration for this lease agreement is Kendrick constructing, at his cost, the underground parking garage and the Commercial. Kendrick may sublease the Commercial Units. Sub leases of the Commercial Units towards the end of the sixty-year term may continue for no more than five years after the end of the sixty years so long as such leases provide for lease rates which are comparable to similar commercial space in downtown Ashland and provision is made for payments to be made to the City, its successors or assigns for any lease amounts attributable to periods after expiration of the 60 year lease to Kendrick. At the end of the sixty-year lease term, the City may, at its option, sell the Commercial Units, retain the Commercial Units for public purpose, lease the Commercial Units or convey ownership of the Commercial Units to ACCESS to be used in assisting ACCESS with their purpose of providing affordable housing. Such conveyances and title to the property shall be subject only to the condominium documents, exceptions as set forth in this section above and standard Permitted Exceptions.
- 3.3 Title Insurance, Survey, Property Taxes and Closing Costs. City shall provide Kendrick with a 1992 standard ALTA Owner's Policy of Title Insurance issued by Title Company, insuring good and marketable fee title

to the Market Rate Residential Units as of the date of closing with coverage in the amount of \$1,050,000, insuring that title is vested in Kendrick free and clear of encumbrances except the condominium documents, the Exceptions set forth in Section 3.2 of this Agreement and the Permitted Exceptions. Kendrick will be responsible to pay the cost of the title insurance premium for the title insurance on the Market Rate Residential Units. Kendrick, at its option, may elect to obtain extended coverage and additional endorsements under such policy of title insurance, at its sole cost and expense, and City agrees to execute such documents that may reasonably be required by the Title Company to enable Kendrick to obtain such coverage. Kendrick shall pay the cost of preparing a survey in form suitable to support issuance of an ALTA Owner Extended Coverage Title Policy, if requested by Kendrick. Recording costs will be paid by Kendrick. Real property taxes, if any, for the year in which Closing occurs shall be prorated as of the Closing Date. City and Kendrick shall each pay one-half (1/2) of any escrow fees charged by the Title Company.

- 3.4 Amendment to Declaration Following Completion of Construction. If deemed necessary or advisable by Kendrick following completion by Kendrick of the Project Construction and issuance of certificates of occupancy for such improvements, Kendrick and City agree to amend the Declaration and other condominium documents and to take such other actions as are necessary to redefine the Affordable Residential Structures, the Market Rate Residential Structures and the Commercial Structures to reflect the actual structures constructed therein. All costs associated with amending the Declaration and other condominium documents shall be paid for by Kendrick. Both parties shall cooperate in amending the Declaration in accordance with this section and shall execute any and all documents reasonably necessary to accomplish the same, including, but not limited to, an amended Declaration and any deeds necessary to establish the unit ownerships.

4 CONSIDERATION

The consideration for the Kendrick's acquisition of the rights to construct and acquire ownership of the Market Rate Residential Units and for Kendrick's right to construct and lease from the City the Commercial Units for a term of 60 years is twofold and is as follows:

- 4.1 In accordance with the terms and conditions of this Agreement, Kendrick is to pay all engineering, architectural and design costs, application and permit fees, systems development charges associated with preparation for construction of the Project and all costs associated with the preparation and recording of the condominium documents;

- 4.2 Kendrick is to construct the Parking Garage, the Commercial Structure and the Market Rate Residential Structures at Kendrick's cost; and
- 4.3 Kendrick, using funding obtained by ACCESS, shall construct the Affordable Residential Units.
- 4.4 Kendrick, or its assigns or successors in interest shall, at his sole costs, maintain the common areas and the limited common elements for the Commercial Units and the Market Rate Residential Units of the Project during the term of the lease to Kendrick of the Commercial Structure.
- 4.5 ACCESS shall maintain, at its costs, the common areas and limited common elements allocable to the Affordable Residential Units.
- 4.6 Kendrick's Default. In the event City determines not to proceed with the construction of the Project because of Kendrick's failure to perform its obligations under this Agreement or because of loss of or failure to secure the financing commitments required by Section 1.2 hereof, Kendrick shall turn over all permits, construction documents, surveys or other documents already completed to the City and City shall have no further obligations to Kendrick.

5 FINANCING.

- 5.1 Definitions. As used in this Section, the following terms have the following meanings (and other defined terms shall have the meanings set forth in the Definitions section of this Agreement) and, where applicable, shall be interpreted in accordance with generally accepted accounting principles:
 - 5.1.1 "Additional Financing" means any of the following financing permitted under this Agreement (other than Construction Financing, Initial Financing, Equipment Financing, Refinancing or Sale):
 - 5.1.1.1 Any transaction (other than one permitted under this Agreement admitting new members to Kendrick or transfers among members permitted under this Agreement) encumbering or otherwise creating any interest in all or an portion of or any interest in (a) the Project, (b) the improvements thereon, or (c) Gross Revenues or net cash flow from the Project; or
 - 5.1.1.2 Any loan or other financing, the proceeds of which are used to (a) pay for Capital Improvements or (b) generate proceeds to Kendrick for any purpose, other than any

transfers of individualized interests among Kendrick's members, secured in whole or in part by an interest in the Project.

- 5.1.2 “Capital Improvements” means any modifications, repairs, or replacements to the Improvements or construction of additions to the Private Project (including, without limitation, costs of tenant allowances), (i) occurring subsequent to the Completion Date, (ii) the cost of which may be capitalized in accordance with generally accepted accounting principles, and (iii) the cost of which is not included in the Construction Financing and/or Initial Financing.
- 5.1.3 “Construction Financing” means the construction loan for the initial development of the Project secured by Kendrick.
- 5.1.4 “Debt Service Payments” means all principal and interest, rental and other sums and amounts paid or payable by Kendrick for or during the applicable pertinent period to a lender or Mortgagee under any Construction Financing, Initial Financing, Additional Financing or Refinancing; provided, however, that in the event of a foreclosure of any mortgage, leasehold mortgage, or the conveyance of Kendrick's estate in the Improvements to any lender by deed in lieu of foreclosure, or in the event of termination of any lease or sublease arising out of a sale-subleaseback financing transaction of such estate, the term “Debt Service Payments” shall included thereafter, for the period in which a Mortgagee or lender is in possession, all principal and interest, rental and other sums and amounts which would have become payable to such Mortgagee or lender pursuant to or in connection with such mortgage, leasehold mortgage or sale-subleaseback transaction but for such foreclosure, deed in lieu of foreclosure or lease termination.
- 5.1.5 “Gross Revenues” means all revenues and funds of any kind whatsoever derived by Kendrick (and not by any tenant, subtenant or licensee of Kendrick) from the ownership, rental and/or operation of the Project, including, without limitation, all gross rental income (including all amounts actually received by Kendrick as rent from tenants or licensees, including minimum rent and rent based or dependent on volumes of sales or business transacted) whether characterized as rent or not; operating contributions and other payments or reimbursables received from tenants; proceeds of rental or business interruption insurance (including interest thereon); all income earned on invested finds (including interest earned on any reserves); all income from vending machines, telephones and other sources located in the Project; all refunds,

rebates and recovery of items, if any, previously charged as Project Expenses or deductions from the Gross Revenues of the Project; refinancing Proceeds; and Sale Proceeds. Prepaid rents, prepaid payments and security deposits shall not be included in the Gross Revenues of the Project until the Fiscal year in which earned, applied or forfeited.

Gross Revenues shall not include: funds received as capital contributions; property insurance proceeds (including interest thereon), except to the extent in excess of the amount applied to collection and restoration costs or otherwise applied to reduce or retire debt; and condemnation proceeds (including interest thereon).

Gross Revenue and Project Expenses may be reported on an accrual basis by Kendrick or and Affiliate provided that the same method of reporting is used under the Initial Financing or Refinancing; with respect to transferees of Kendrick other than Affiliates, the accrual basis may be used subject to the reasonable approval of City, and if not used, all calculations hereunder shall be on a cash basis notwithstanding any other provision herein to the contrary.

- 5.1.6 “Improvements” means the improvements comprising the Project.
- 5.1.7 “Initial Financing” means permanent financing secured by Kendrick to pay off the Construction Financing.
- 5.1.8 “Refinancing” means any financing, other than Additional Financing or Equipment Financing, by way of a mortgage or by way of a sale-leaseback of Kendrick’s estate in the Project and the Improvements thereon, which retires or replaces the Initial Financing or a prior Refinancing as herein defined, provided that the same is at then-market rates for such financing.
- 5.1.9 “Refinancing Proceeds” means all proceeds available to Kendrick out of any Refinancing with respect to any portion of the Project, after deduction of (i) amounts paid by Kendrick to discharge principal, accrued interest and prepayment charges under any Financing or any other payment required to be made to discharge such Financing or any security for the same; (ii) reasonable costs, fees and expenses payable by Kendrick with respect to the negotiation, closing and consummation of such Refinancing; and (iii) the total outstanding Unreturned Capital Contributions at the time of such Refinancing.

- 5.1.10 “Sale” means (i) any bona fide total or partial sale, assignment or transfer (other than a mortgage, lease, or a sale, assignment or transfer for less than fair market value consideration to any entity which controls, is controlled by, or is under common control with Kendrick, or any leases of the residential or commercial units in the ordinary course of business) of any portion of the Project or any right or interest therein; or (ii) any bona fide total or partial sale, assignment, transfer or syndication of any stock or other ownership interest in Kendrick (other than for admission of new members or transfers among members of Kendrick as permitted under this Agreement); or (iii) a condemnation (other than a condemnation by City) or transfer in lieu of condemnation of the Project or any part thereof or any right to interest in or to the same, to the extent of proceeds available to Kendrick and not applied to restoration or required to be paid to a Mortgagee.
- 5.1.11 “Sale Proceeds” means all proceeds available to Kendrick from the Sale (including any noncash consideration which shall be deemed Sale Proceeds at its fair market value) of the Project, or any portion thereof, after deduction of (i) amounts paid by Kendrick to discharge principal, accrued interest and prepayment charges under any Financing (Construction Financing, Initial Financing, Additional Financing or Refinancing) or any other payment required to be made to discharge such financing or any security for the same in connection with such Sale; (ii) reasonable costs, fees and expenses paid with respect to the negotiation, closing and consummation of such Sale; and (iii) the total outstanding Unreturned Capital Contributions at the time of such Sale.
- 5.1.12 “Unreturned Capital Contributions” means the aggregate initial and additional capital contributions of all members of Kendrick, reduced by the total of all distributions to said members from Refinancing or Sale Proceeds in accordance with Kendrick’s operating agreement.
- 5.2 Right to Obtain Financing. Kendrick and ACCESS shall have the right to obtain Construction Financing, Initial Financing, Equipment Financing, Refinancing or Additional Financing using as security their real property interests in the Affordable Residential Units, the Market Rate Residential Units or the lease term in the Commercial Units. Any financing which uses the lease in the Commercial Units as security must be completely paid and any security interests in the Commercial Units released prior to the termination of the 60-year lease term.
- 5.3 Annual Accounting Statements.

5.3.1 Kendrick shall furnish to City as soon as it is prepared prior to the end of the first quarter of each Fiscal Year of Kendrick, a detailed statement of income and expenses (“Accounting Statement”) from the Commercial Units portion of the Private Project prepared by Kendrick’s accountant, setting forth in reasonable detail the computation of Revenue Payments, if any, for the immediately preceding Fiscal Year, including a detailed breakdown and calculation of Unreturned Capital Contributions, Gross Revenues, Project Expenses and other relevant categories and such other information as City shall have specified by notice to Kendrick prior to such Fiscal Year, as shall be reasonably necessary for City to maintain an accurate record of the financial viability of the Project.

5.4 Covenants Running with the Land. The obligations of Kendrick provided herein in this Agreement shall be covenant’s running with the Private Project for the benefit of City and shall be binding upon and enforceable by City against Kendrick and all successors in interest in or to the Private Project, or any portion thereof. The parties agree that this Agreement or a Memorandum of this Agreement setting forth, among other things, the obligations contained in this section, shall be recorded in the Jackson County Records following execution of this Agreement by all parties. The cost of recording this Agreement or the Memorandum shall be born by Kendrick.

6 PARKING AGREEMENT. Concurrently with entering into this Agreement, City Kendrick, and ACCESS shall enter into a separate mutually agreeable Parking Permit Agreement, whereby City agrees to provide Kendrick, its successors, lessees, and assigns, and ACCESS , its successors, lessees, and assigns, certain parking rights in the Parking Garage, to be more particularly described therein. The Parking Permit Agreement, or a memorandum thereof, shall be recorded by the parties, the cost of which shall be born by Kendrick.

7 OPERATION OF PROPERTY

7.1 Standard of Operation. The parties acknowledge that their respective portions of the Project are interrelated and are dependent upon the other portions of the Project for success. Accordingly, in order to insure the success of the entire Project, the parties hereby agree the Project shall be operated as a first-class mixed use development, consistent with the standard of other similar projects. The failure of one party to maintain the standards prescribed in this clause does not effect a default or penalty attributable to the other parties.

7.2 Commercial Tenants. Consistent with the provisions of the preceding subsection, Kendrick agrees to make every reasonable effort to recruit and

lease the Commercial Structures to tenants which are compatible with the residential components of this project and with the commercial uses in the downtown area around the Project.

- 7.3 Changes in Use. For a period of ten (10) years from and after the date the certificate of occupancy for Commercial Units is issued, the Commercial Unit portion of the Private Project shall be used solely for commercial uses permitted as outright uses in the City's C-1-D zone. Any change in use of the Commercial Units during this 10-year period shall require the prior written consent of City, which may be granted or not in City's sole discretion. The Market Rate Residential Units shall be used solely for residential purposes. Subject to the provisions of the immediately preceding subsection and Section 4 hereof, nothing contained herein shall restrict or prevent Kendrick or its assigns from a change in use to a different commercial use for the applicable portions of the Commercial Units, so long as such use is permitted outright in the City's C-1-D zone.

8 DEFAULT; REMEDIES

8.1 Default-Cure.

8.1.1 Default by Kendrick. Kendrick shall be in default if it breaches any of the provisions of this Agreement, whether by action or inaction, and such breach shall continue and not be remedied within sixty (60) days after City shall have given notice specifying the breach, or in case of a breach which cannot with due diligence be cured within a period of sixty (60) days, if Kendrick shall not within such sixty (60) day period commence the cure of the breach and thereafter diligently prosecute to completion such cure within a reasonable time after the notice from City. A default shall occur if Kendrick shall have made any assignment for the benefit of creditors, or shall have become adjudicated bankrupt, or shall have had a receiver, trustee or creditor's committee appointed over it. Kendrick shall not be deemed to be in default hereunder for failure to pay any tax, assessment, lien or other charge if Kendrick, in good faith, is contesting the same and, if necessary to avoid foreclosure, has furnished an appropriate bond or other undertaking to assure payment in the event Kendrick's contest is unsuccessful.

8.1.2 Default by City. A default shall occur if City shall breach any of the provisions of this Agreement, whether by action or inaction, and such breach shall continue and not be remedied within sixty (60) days after Kendrick shall have given notice specifying the breach, or in the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, if City shall not within

such sixty (60) day period commence to cure the breach and thereafter diligently prosecute to completion such cure within a reasonable time after the notice from Kendrick.

8.1.3 Remedies. In case such action is not taken, or is not commenced and thereafter diligently pursued, or the default or breach shall not be cured or remedied within said sixty (60) day period (or, if the default or breach is not curable within said sixty (60) day period, within a reasonable time), or if the default or breach is of such a nature that it poses an immediate threat to human health or safety, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations, or taking such actions as are reasonably necessary to cure the default or breach and collecting the reasonable costs thereof from the defaulting or breaching party, or pursuing such other remedies as are available at law or in equity for such default or breach, subject to rights of Mortgagees under Section 8.5 hereof.

8.1.4 Forfeiture of Development Rights. As an alternative to and in lieu of exercising the remedies available to City upon Kendrick's default provided for in Section 8.1.3, City may elect instead to declare a forfeiture of Kendrick's rights hereunder as follows:

8.1.4.1 Subject to the notice and cure provisions in Section 8.1.1, in the event Kendrick fails to commence construction of the Project within the time period set forth in Section 2.3 and has not commenced construction of the Project, City shall have the right, as its sole and exclusive remedy, to terminate this Agreement by notice to Kendrick, whereupon Kendrick shall forfeit its rights to develop the Project. Upon such forfeiture, Kendrick shall deliver and assign to City all of Kendrick's rights to the architectural and engineering plans for the applicable portions of the Project, without cost or liability to City, and shall reconvey any interest it may have in the applicable portions of the Project to City.

8.1.4.2 Subject to the notice and cure provisions in Section 8.1.1, in the event Kendrick fails to commence construction of the Residential Structures within the time periods set forth in Section 2.3, but has commenced construction of the Commercial Structure, City shall have the right, but not the obligation, as its sole and exclusive remedy, to purchase

from Kendrick all of Kendrick's rights to the Commercial Structure and all improvements thereto, for the actual costs (both hard and soft costs) of such improvements less the amount of any liens or encumbrances against the property being purchased arising out of and from Kendrick's activity on the property that City would be subject to, and Kendrick shall forfeit its rights to develop the Residential Structures. In the event the parties are unable to agree on the costs for the Commercial Structure, the matter shall be submitted to arbitration in accordance with Section 8.3 hereof.

8.1.4.3 Subject to the notice and cure provisions in Section 8.1.1, in the event Kendrick commences construction of both the Residential Structures and the Commercial Structure in accordance with Section 2.3, but fails to complete the same within two (2) years of all necessary governmental approvals, City shall have the right, but not the obligation, as its sole and exclusive remedy, to purchase from Kendrick all of Kendrick's rights to the incompleting portion of the Project that extended beyond said two (2) year period and all improvements thereto, for the actual costs (both hard and soft costs) for such improvements. In the event the parties are unable to agree on the costs for said improvements, the matter shall be submitted to arbitration in accordance with Section 8.3 hereof.

8.2 Force Majeure.

8.2.1 Delays During Arbitration. During the term of this Agreement, neither City nor Kendrick, as the case may be, nor any successor in interest, shall be considered in breach of or in default in its obligations with respect to any obligations created hereunder or progress in respect thereto, in the event of and for the period of enforced delay in performance of such obligations due to arbitration pursuant to Section 8.3 hereof; provided however, that either party may, at its option, perform any such obligation pending a resolution of the dispute, without waiving or otherwise affecting its rights under the dispute resolution process.

8.2.2 Unavoidable Delays. Neither City, nor Kendrick, nor ACCESS, as the case may be, nor any successor in interest, shall be considered in breach of or default in its obligations with respect to any obligations created hereunder or progress in respect thereto, in the event of enforced delay ("Unavoidable Delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to,

acts of God or of the public enemy, acts of the Government, fires floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, riot, inability to procure or rationing of labor, equipment, facilities, sources of energy, materials or supplies (or reasonable substitute materials or supplies) in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the Project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes, or any similar events and/or occurrences beyond the control of City, or Kendrick; it being the purpose and intent of this provision that in the event of the occurrence of any such unavoidable delay, the time or times for performance of the obligations of City or Kendrick, as the case may be, shall be extended for the period of the Unavoidable Delay; provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the party becomes aware of or reasonably should have become aware of the causes of any such Unavoidable Delay, have first notified the other party thereof in writing of the cause or causes thereof and the estimated time of correction. Any action or failure to act by a party pursuant to this Agreement which is not due to Unavoidable Delay shall not excuse the performance hereunder by that party.

- 8.3 Arbitration Provision. Except where this Agreement provides otherwise, all disputes or questions arising out of this Agreement shall be settled first by mutually accepted mediation services in Jackson County, by arbitration in Jackson County, Oregon, in accordance with the then applicable commercial arbitration rules of the Oregon Arbitration Association, or its successor, by a single, neutral arbitrator appointed in the manner provided for in said rules, which arbitrator shall have experience in the development, operation, and management of mixed use developments and not a bidder or in any way connected with any portion of the Project, and, judgment upon the award rendered shall be final and binding on the parties enforceable by any court having jurisdiction thereof
- 8.4 Dispute Resolution. Prior to submitting a matter to mediation and arbitration in accordance with the preceding subsection, the parties shall first attempt to resolve the dispute informally in accordance with the section. In the event a dispute arises, the complaining party shall deliver notice of the matter in dispute to the other party at the address and in the manner provided for in Section 9.2 hereof. Each party shall thereafter promptly designate a representative to address the matter, which representatives shall attempt, in good faith, to resolve the disputed matter. In the event the designated representatives are unable, despite their good efforts, to resolve the disputed matter within fifteen (15) days of the initial

notice thereof, then, and in that event, either party may submit the matter to mediation then arbitration in accordance with the preceding subsection.

8.5 Rights of Mortgagees.

8.5.1 Subordination. City's exercise of its rights under this Agreement upon Kendrick's default shall always be subject and subordinate to and be limited by, and shall not defeat, render invalid, or limit in any way:

- (a) The lien of any Mortgage or security interest for any Financing authorized by this Agreement secured by any portion of the Private Project; or
- (b) Any lease of any portion of the Private Project.

8.5.2 Notices to Mortgagees; Right to Cure. Whenever City shall deliver or make any notice or demand to Kendrick with respect to any breach or default by Kendrick in its obligations or covenants under this Agreement, City shall at the same time furnish a copy thereof to any Mortgagee who has requested in writing that City furnish it with a copy of such notice or demand.

8.5.2.1 Each such Mortgagee (or, in the case of more than one Mortgagee electing to cure, the first in priority to so elect shall be recognized by City) shall have the right, at its option, to cure or remedy such breach or default or cause the breach or default to be cured, in the manner provided for such cure under this Agreement, and City will not terminate this Agreement or take any action to enforce any claim with respect to said breach or default until the expiration of the applicable cure period set forth in Section 8.1.1.

8.5.2.2 If the breach or default is one that the Mortgagee cannot cure until the Mortgagee acquires possession of the mortgaged property, City shall take no action to effect a termination of this Agreement without first giving the Mortgagee a reasonable time after receipt of the Notice of breach or default within which either (a) to obtain possession of the mortgaged property (including possession by a receiver), or (b) to institute, prosecute, and complete foreclosure proceedings or otherwise to acquire Kendrick's interest under this Agreement with diligence. Upon obtaining possession of the mortgaged property or otherwise acquiring Kendrick's interest under this Agreement, the Mortgagee shall be required promptly to

cure all defaults then reasonably curable by the Mortgagee, including, without limitation, the payment of other charges pertaining to the period prior to the date of the Mortgagee's possession or acquisition of Kendrick's interest. Prior to completion of any foreclosure or other acquisition, the Mortgagee may elect to return possession of the mortgaged property to Kendrick or discontinue any foreclosure proceedings then in progress. No provision of this Agreement shall be interpreted as an obligation on the part of the Mortgagee to commence or to continue any action to obtain possession of the mortgaged property or acquire Kendrick's interest under this Agreement.

8.5.3 No Mortgagee Obligation to Construct. Notwithstanding any other provision of this Agreement, including, but not limited to, any covenants running with the Private Project, any Mortgagee, including any such Mortgagee who obtains title to the Private Project or any portion thereof, shall not in any way be obligated by the provisions of this Agreement to construct or to complete the Private Project or to guarantee such construction or completion thereof; provided, however, that any third party which thereafter obtains title to the Private Project or any interest in the leases from or through such Mortgagee or any purchaser at a foreclosure sale, other than such Mortgagee, shall be obligated to develop or complete and to guarantee such construction or completion in a manner consistent with Kendrick's obligations hereunder. Nothing in this section or any other section or provision of this Agreement shall be deemed or construed to permit or authorized any such Mortgagee to devote any portion of the Private Project or its interest in the leases to any use, or to construct any improvements thereof, other than those uses or improvements required or permitted under this Agreement.

8.5.4 Mortgagee's Rights as to Kendrick Preserved. In the event of a default by Kendrick under this Agreement or under any loan agreement with a Mortgagee described above, the Mortgagee may, so long as it cures any default under the Agreement as permitted above, exercise such rights as the Mortgagee may have against Kendrick, including the right to take possession of the mortgaged property and exercise Kendrick's rights and perform Kendrick's obligations under the Agreement (including, but not limited to, Kendrick's leasing, operation, and management obligations), foreclose Kendrick's interest in the mortgaged property and the Agreement as permitted by law, and reassign or sell Kendrick's interest in the Agreement. Notwithstanding any other provision of this Agreement, City will not unreasonably withhold approval of

such assignment or sale to third parties where the transferee assumes Kendrick's obligations under the Agreement. Any transfer of Kendrick's interest in this Agreement or the mortgaged property to the Mortgagee or a transferee, shall include all land use approvals, parking entitlements and other entitlements, if any, associated with the portion of the mortgaged property so transferred.

- 8.5.5 Release of Mortgagee. If a Mortgagee acquires Kendrick's interest in the Agreement or the mortgaged property or otherwise forecloses on such interest, and such interest is assigned to a transferee approved by City as provided above, the Mortgagee shall be automatically released from all liability for the performance or observance of the terms of the Agreement from and after the date of such assignment, so long as the approved transferee assumes the Agreement in a form reasonably acceptable to City.
- 8.5.6 Amendments Requested by Mortgagees. City agrees to execute amendments to this Agreement or separate agreements from time to time to the extent reasonably requested by a Mortgagee proposing to make Kendrick a loan secured by the Private Project or a portion thereof, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of City or its interest in the Project. All expenses incurred by City in connection with any such amendment shall be paid by Kendrick.
- 8.5.7 City Statement of Defaults: Estoppel Certificates. The Mortgagees shall have the right at any time after a default by Kendrick under this Agreement to obtain from City a written statement of all events of default under this Agreement then known to City. City will also cooperate with Kendrick in executing an agreement substantially in accordance with this Section and executing any estoppel certificates, acknowledgments, or similar documents reasonably required by Kendrick and the Mortgagee(s) in connection with any financing permitted by this Agreement.
- 8.5.8 No Liabilities to City. Neither this Agreement, the loan instruments with the Mortgagee(s), any assignment of the Agreement or mortgaged property as security, nor any action taken under such instruments, shall be construed as giving rise to any duty, obligations, or liability on the part of the Mortgagee to City.
- 8.5.9 No Cancellation of Agreement. There shall be no cancellation, termination, surrender, or modification of the Agreement by joint action of City and Kendrick without the prior written consent of all

Mortgagees, and any such cancellation, termination, surrender or modification shall be null and void and of no effect in the absence of such written consent.

8.5.10 Notice of Arbitration. Each Mortgagee shall be given notice of any arbitrations by the parties to the Agreement and a copy of any award or decision made in the proceeding.

9 MISCELLANEOUS PROVISIONS

9.1 Notice. A notice or communication under this Agreement by either party to the other, or to any Mortgagee, shall be delivered by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

In the case of a notice or communication to Kendrick:

24 Crocker Street
Ashland, OR 97520

In the case of a notice or communication to ACCESS

CEO
ACCESS, INC.
PO Box 4666
Medford, OR 97501

In the case of a notice or communication to City:

City of Ashland
City Administrator
20 E. Main Street
Ashland, OR 97520

With a copy to :

City of Ashland
City Attorney
20 E. Main Street
Ashland, OR 97520

Or addressed in such other way with respect to a party as that party may, from time to time, designate in writing dispatched as provided in this section.

- 9.2 Merger. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the Residential Units from City to Kendrick or any successor in interest, and the same shall continue and survive following closing, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.
- 9.3 Captions. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- 9.4 Counterparts. This Agreement is executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 9.5 Waivers. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the party making the waiver. No waiver by City or Kendrick of any provision of this Agreement or any breach thereof, shall be of any force or effect unless in writing, and no such waiver shall be construed to be a continuing waiver.
- 9.6 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals, accountants', and other experts, fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.
- 9.7 Time of the Essence. Time is of the essence of this Agreement.
- 9.8 Choice of Law. This Agreement shall be interpreted under the laws of the State of Oregon.
- 9.9 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 any Saturday, Sunday or such holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or such a holiday.

- 9.10 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 to include the feminine and the neuter, as the context may require.
- 9.11 Severability. If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.
- 9.12 Entire Agreement. This Agreement and the attachments hereto are the entire agreement between the Parties relating to the subject matter in this Agreement. There are no other oral or written agreements between the parties with regard to this subject matter. There are no oral or written representations made by either party, implied or express, other than those contained in this Agreement.
- 9.13 Modification. Any modifications to this Agreement shall be made in writing executed by both parties. The parties recognize that circumstances may change and that it may be in the interest of both parties that the Construction Schedule or other provisions hereof be amended from time to time. For this reason, each of the parties will consider changes which may be proposed by the other during the term of this Agreement.
- 9.14 Successors and Assigns. During the development stage of plans and project approvals, Kendrick may assign to another entity in which Kendrick will remain the managing member, subject to approval by City upon a reasonable determination the new entity is sufficiently capitalized to meet Kendrick's obligations and responsibilities under this Agreement. After this first assignment neither party shall assign any or all of its rights under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. City agrees that it will not withhold its consent to an assignment by Kendrick if the assignee can demonstrate that it has the financial resources and experience reasonably necessary to carry out the obligations of Kendrick under this Agreement. If City shall fail to respond to a request to any assignment within fifteen (15) business days from a written request therefore from Kendrick and receipt of evidence of the financial resources and experience of the proposed assignee, Kendrick shall send notice to City of City's failure to respond to the earlier request. If City shall fail to respond within seventy-two (72) hours of the second notice, City shall be deemed to have consented to such request.

- 9.15 Binding Effect. Subject to the provisions of the immediately preceding subsection, the benefits conferred by this Agreement and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and assigns of the parties hereto, including any mortgagee permitted by this Agreement. The obligations of City and Kendrick, and their remedies for breach thereof, shall be covenants and conditions running with the land.
- 9.16 Place of Enforcement. Any action or suit to enforce or construe any provision of this Agreement by any party shall 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, Medford, Oregon branch.
- 9.17 No Partnership. Neither anything contained in this Agreement nor any acts of the parties to this Agreement shall be deemed or construed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties.
- 9.18 No Third Party Beneficiaries. The parties intend that the rights, obligations and covenants in this Agreement and the deed shall be exclusively enforceable by City and Kendrick. There are no third beneficiaries to this Agreement.
- 9.19 Exclusive Remedies. The rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to and cumulative with any and all rights otherwise available at law or in equity, and 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 times, of any other such remedies for the same default or breach or any of its remedies for any other default or breach by the other party.
- 9.20 Nonwaiver of Government Rights. Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the deeds, City is specifically not obligating itself or any other agency with respect to any action relating to development or operation of the improvements to be constructed on the Land, including, but not limited to, rezoning, variances, environmental clearances or any other governmental agency approvals which are or may be required, except as expressly set forth herein.
- 9.21 Approvals. Where approval or consent of City is required, City will approve or disapprove within fifteen (15) business days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary in this Agreement. If City shall fail to respond to Kendrick within such fifteen (15) day period, Kendrick shall

send a notice to City of City's failure to respond. Failure by City to respond and approve or disapprove within seventy-two (72) hours of the second notice, shall be deemed an approval. Any disapproval shall state in writing the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are reserved to City's sole discretion. Kendrick, upon receipt of such disapproval, may revise such disapproved portions in a manner responsive to the stated reasons for disapproval and resubmit the same to City within forty-five (45) days after receipt of the notice of disapproval or, unless such disapproval is within the sole discretion of City, submit the matter to arbitration pursuant to Section 8.3.

- 9.22 Estoppel Certificates. City and Kendrick shall at any time and from time to time, within thirty (30) days after written request by the other, execute, acknowledge and deliver to the party which has requested the same or to any prospective mortgagee, assignee or subtenant designated by Kendrick, a certificate stating that (i) the Agreement is in full force and effect and has not been modified, supplemented or amended in any way, and if there have been modifications, the Agreement is in full force and effect as modified, identifying such modification agreement; and if the Agreement is not in force and effect, the certificate shall so state; (ii) the dates on which the term of this Agreement commenced and will terminate; (iii) all conditions under the Agreement to be performed by City or Kendrick, as the case may be, have been satisfied and, as of the date of such certificate, there are no existing defenses or offsets which City or Kendrick, as the case may be, has against the enforcement of the Agreement by the other party, or, if such conditions have not been satisfied or if there are any defenses or offsets, the certificate shall so state. The party to whom any such certificate shall be issued may rely on the matters therein set forth and thereafter the party issuing the same shall be estopped from denying the veracity or accuracy of the same.
- 9.23 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 clearly and explicitly permitted as to the specific item in question, such as in the case of a party being given "sole discretion" or being allowed to make a decision in its "sole judgment. "
- 9.24 Statutory Disclosure. THIS INSTRUMENT WILL 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 AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

CITY OF ASHLAND

John W Morrison, Mayor

Barbara Christensen, City Recorder

KENDRICK

By: _____

Name: _____

Title: _____

ACCESS, INC.

By: _____

Name: _____

Title: _____

DEVELOPMENT AGREEMENT
FOR THE DEVELOPMENT OF THE CITY OF ASHLAND
LITHIA PARKING LOT AFFORDABLE HOUSING DEVELOPMENT

Dated this ____ day of _____, 2006.

BETWEEN: THE CITY OF ASHLAND, an Oregon Municipal Corporation,
hereinafter "City"

AND: KENDRICK ENTERPRISE, LLC, and Oregon Limited Liability
Company, hereinafter "Kendrick"

AND: ACCESS, Inc, a nonprofit community action agency, hereinafter
"ACCESS".

RECITALS:

1. City owns a parcel of property in its downtown area, Ashland, Jackson County, Oregon, located on the South side of Lithia Way, between Pioneer Street and North First Street which is more particularly described in Exhibit A, attached hereto and hereinafter referred to as the "Property."
2. The Property is currently being used as a public parking lot with surface parking providing thirteen parking spaces.
3. The City solicited a request for proposals for innovative designs to construct as many units of affordable housing on the property as feasible while maintaining at least ten spaces of public parking.
4. Kendrick submitted the successful proposal, which includes sixteen units of underground parking, one unit of surface, on-street parking, 6000 square feet of commercial space, ten affordable housing units either studio or one bedroom design and three market-rate housing units.
5. The Ashland City Council deems it to be in the public's best interest to stimulate affordable housing opportunities in the downtown area and believes construction of the contemplated project will promote that goal.

AGREEMENT

The Parties Agree as follows:

DEFINITIONS

The following terms shall have the designated meanings for purposes of this Agreement:

1. "Affiliate" shall mean any entity owned by, controlled by or under common control with the designated party.
2. "Agreement" shall mean this Disposition and Development Agreement and all Exhibits hereto.
3. "Completion Date" shall mean the date that the certificate of occupancy for the final portion of the Project is issued.
4. "Effective Date" shall mean the date upon which this Agreement is executed by all three parties.
5. "Land" shall mean the property described on Exhibit A.
6. "Mortgagee" shall mean the holder of any Mortgage affecting or encumbering any portion of the Private Project or leasehold interest under the leases of the Project or any portion thereof, together with any successor or assignee of such holder.
7. "Notice" shall mean any summons, citation, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, issued by the Oregon Department of Environmental Quality, the United States Environmental Protection Agency, any other federal, state or local agency or authority or any other governmental agency having jurisdiction with respect to the Project.
8. "Private Project" shall mean the commercial and residential portions of the Project to be leased or owned by Kendrick or by Access.
9. "Project" shall mean the entire development; the Land with all improvements to be constructed thereon as contemplated by this Agreement, including the Parking Structure, the Affordable Residential Structures, the Market Rate Residential Structures and the Commercial Structures.

Other capitalized terms used herein shall have the meanings attributed to them elsewhere herein.

1. CONDITIONS PRECEDENT TO OBLIGATIONS

- 1.1 Conditions to City's Obligations. City's obligations under this Agreement are subject to satisfaction, on or before the date identified in Section 1.1 hereof, of the following conditions precedent:

1.1.1 Financing Commitments. Kendrick provides evidence no later than the ___ day of _____, 200__ of the following financing for the Project that is

satisfactory to City in its reasonable discretion that the funding is available to complete the Project Construction:

- (a) Documentation from Kendrick's primary lender and/or from the ACCESS setting forth the terms and conditions upon which it/they will finance construction of the Project, including information as to the source of the funds, whether all conditions have been met to obtain funding from the specified sources and what obligation, if any, will be placed on the City or on the land in the event the project fails to be used as proposed; and
- (b) Evidence of available equity and/or commitments for the same to fund the balance of Kendrick's costs for the Project that are not being financed.

Kendrick and ACCESS shall periodically (at least monthly) update the other parties to this Agreement on the Status of the financing commitments. Kendrick shall immediately inform City if it has any reason to believe that it may not be able to commence construction of the Project within the time periods set forth herein.

- 1.2 Financing Commitments. Kendrick has received all commitments necessary, in its sole discretion, to finance and to fund the Project and to perform its obligations under this Agreement.
- 1.3 Condition of Land. Kendrick has satisfied itself, in its sole discretion, as to the condition of the Land and the feasibility of the Project. To this regard, City recognizes and agrees that City shall take steps to relocate any utility lines or laterals located in or on the property which would make it infeasible to build the Project as proposed..
 - (a) Within **thirty** (30) days of the Effective Date, City shall deliver to Kendrick all materials or information relating to the Land and the Project that are in City's possession or control, including, but not limited to (i) topographical, boundary, and other surveys or maps of the Land, and (ii) all environmental, soils, geotechnical, wetlands, seismic, and land use reviews, reports, assessments, inspections, and studies relating to the Land or the Project.
 - (b) Kendrick, its agents, employees, and independent contractors are hereby granted the right to enter upon the Land for the purpose of making or conducting any inspection, investigation, test, or surveys of the Land, at Kendrick's sole cost and expense, as Kendrick may deem appropriate to satisfy this condition. Kendrick shall repair any damage to the Land caused by any such tests or investigations, shall keep the Land free from liens in connection with such activities, and shall not unreasonably interfere with City's use of the Land. Kendrick shall indemnify, defend, and hold City harmless from and against any and all claims, demands, actions, costs, and expenses that may arise or

result from Kendrick's activities on the Land pursuant to this paragraph.

- (c) City hereby represents and warrants to Kendrick and ACCESS that:
1. City owns fee simple title to the Land which is not subject to any lien, encumbrance, restriction, or easement of any kind or nature except the utility lines and laterals for which City has agreed to locate and except as may be set forth in the Title Report.
 2. City has the legal power, right, and authority to enter into this Agreement and to consummate the transactions contemplated herein. The individual executing this Agreement on behalf of City has the legal power, right, and actual authority to bind City to the terms and conditions of this Agreement.
 3. To the best of City's knowledge, there is no pending or threatened action, suit, proceeding, or investigation before any agency, court, or other governmental authority which relates to the Land or the use thereof, including, but not limited to, any pending or threatened condemnation proceeding.
 4. City has received no notice nor is aware of any existing violations of any federal, state, county, or municipal laws, ordinances, orders, codes, regulations, or requirements affecting the Land
 5. City knows of no default or breach by City under any covenants that affect the Land or any portion thereof, nor of any condition that will result in the termination or impairment of access to the Land or discontinuation of necessary sewer, water, electric, gas, telephone, or other utilities except the utility lines and laterals for which City has agreed to locate,.

- 1.4 Failure of Conditions Precedent. If any of the foregoing conditions precedent are not satisfied or waived by the party entitled to the condition within the applicable time period set forth herein, that party shall have the right, by giving notice to the other party on or before the last day of the applicable period, to terminate this Agreement. Failure of any party to notify the other parties and to terminate this Agreement prior to Kendrick beginning construction on the Project, shall be deemed a waiver of the conditions. If any party exercises its right to terminate this Agreement in accordance with this subsection, this Agreement shall terminate as of the date such notice of termination is given, at which time any documents or other materials in the possession of the other parties shall be returned to the owner thereof, whereupon all parties shall be relieved from further liability hereunder.

2. DEVELOPMENT

2.1 Construction

- 2.1.1 Parking. Kendrick agrees, subject to the terms and conditions of this Agreement and in accordance with the schedule prepared as

set forth herein, at Kendrick's labor and cost, to construct an underground parking structure on the Land which shall contain 16 parking spaces, one of which shall be ADA compliant. The parking structure shall be constructed in such fashion that it will serve as a pedestal to support a three story structure on top of it, which shall contain the commercial, affordable housing and market rate housing components.

- 2.1.2 Residential and Commercial. Subject to the terms and conditions of this Agreement, and subject to ACCESS obtaining the necessary funding to pay the cost of construction of the Affordable Residential Units and payment thereof to Kendrick, Kendrick covenants to complete the construction of three-story structure above the parking garage in substantial conformance with the submitted concept plan containing 6000 square feet of commercial space, ten affordable residential units and three market rate residential units.
- 2.1.3 Utility Construction. City represents to Kendrick that, to the best of City's knowledge, all utilities (water, electricity, gas, sanitary sewer, storm drain, broadband and telephone) are available to the Project site. City acknowledges the existence of certain utility lines and laterals currently existing on or in the land that City agrees to relocate to facilitate construction of the Project. Kendrick will be responsible, at Kendrick's cost for connecting all of Kendrick's improvements to the utility lines and for payment of all permit and development fees, including but not limited to building permits, planning review, engineering review fees and system development charges.
- 2.2 Plans and Specifications: Waiver of Claims. Kendrick shall be responsible for preparing and submitting all architectural and engineering drawings, plans and specifications required to obtain approval of any needed public infrastructure modifications and connections, planning approval, and building permits.
- 2.3 Construction Schedule. Subject to the terms and conditions of this Agreement, including the Force Majeure provisions set forth in Section 8.2 hereof, Kendrick shall commence construction of the Project improvements no later than June 30, 2008, but no sooner than commitment is made for all funds necessary to complete the affordable housing component of the project. After commencing construction, Kendrick shall diligently pursue completion of the construction of the Project. All Project improvements shall be complete no later than two years following the date of necessary governmental approvals.
- 2.4 Demolition of the Existing Parking Lot. Kendrick shall not demolish, remove or substantially alter the existing surface parking lot so as to

render the parking area unusable more than 30 days prior to commencement of construction on the Project.

- 2.5 Permits. Kendrick will obtain, at its own cost, all governmental approvals necessary for the construction of the Project. Each party covenants to use its diligent, good faith efforts to assist the other party in obtaining the required permits and approvals. Kendrick acknowledges that assistance by City in obtain permits in accordance with this section and as a party to this Agreement does not bind City, in its administrative capacity through its Community Development Department or other departments to (among other things) issue said permits, nor does it constitute a representation by City that necessary permits will be issued by City.
- 2.6 Safety Matters; Indemnification. Kendrick shall:
- 2.6.1 Safety. Take all safety measures necessary to protect the public, Kendrick's employees, agents contractors, subcontractors, licensees and invitees and City's employees, agents, contractors, subcontractors, licensees and invitees from injury or damage by or resulting from the performance of its construction;
- 2.6.2 Security. Take all steps reasonably necessary to secure the Project site to prevent access to the same by the public during the period of construction.
- 2.6.3 Liability Claims. Indemnify and hold the City harmless from all claims, costs, expenses and liabilities arising from the death of or accident, injury, loss or damage whatsoever caused to any person or to the property of any person as occurs in the process of the construction work; and
- 2.6.4 Indemnity from Liens. Indemnify, defend and hold the City harmless from and against all mechanic's, materialmen's, and laborer's liens and all costs, expenses, and liabilities arising from the construction.
- 2.7 Liens. The parties agree that in the event any statutory lien shall be filed during the term of this Agreement against any portion of the Land or the Project by reason of labor, services, or materials supplied to or at the request of a party, that party shall pay and discharge the same of record within thirty (30) days after the filing thereof, subject also to the provisions of the following sentence. Each party shall have the right to contest the validity, amount or applicability of any such liens by appropriate legal proceedings, and so long as it shall furnish bond or indemnity as hereinafter provided and be prosecuting such contest in good faith, the requirement that it pay and discharge such items within said thirty (30) day period shall not be applicable; provided, however, that in any event, such party shall within thirty (30) days after the filing thereof, bond in accordance with applicable laws, or in the alternative indemnify

against such liens in amount and form satisfactory to induce the title insurance company which insured title to the Project to insure over such liens or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such liens and, further, such party shall indemnify and save harmless the other parties hereto from all loss, damage, liability, expense or claim whatsoever (including attorneys' fees and other costs of defending against the foregoing) resulting from such liens. In the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to a party, that party shall within five (5) days thereafter cause the lien(s) to be discharged of record.

- 2.8 Completion of Construction. Receipt of final certificates of occupancy for each portion of the Project (Parking garage, Commercial Area, Affordable Residential Units and Market Rate Residential Units) shall, except as otherwise provided for herein, be conclusive evidence of Kendrick's satisfactory performance of its obligations under this Agreement to construct that portion. Issuance of such certificates of occupancy shall mean (i) that any party acquiring or leasing that portion of the Commercial Structures or Residential Structures (Affordable or Market Rate) shall not (because of such purchase or lease) have any obligation under this Agreement with respect to the construction of the Commercial Structures and/or Residential Structures, and (ii) that, except for ongoing construction or other obligations under this Agreement neither City nor any other party shall thereafter have or be entitled to exercise with respect to the Commercial Structures and/or Residential Structures any rights or remedies or controls that it may otherwise have been entitled to exercise under this Agreement with respect to the construction of the Commercial Structures and/or Residential Structures or as a result of a default in or breach of any provision of this Agreement by Kendrick or by any successors in interest or assigns of Kendrick.

3 CREATION OF PROPERTY AND CONVEYANCE

- 3.1 Condominium Form of Ownership Prior to Completion. Concurrent with the development of plans and construction, Kendrick's attorneys will assist in the creation of a condominium form of ownership by completing and recording a Declaration and Bylaws, the form of which shall be agreed to by the parties, subject to modifications required by regulatory agencies or Mortgagees. Said Declaration shall create the following condominium units within the Project: (i) one unit for the parking garage, containing 16 parking spaces; (ii) two commercial units one of which would consist of 4,500 square of commercial space on the ground floor and one of which would consist of 1500 square feet of commercial space on the second floor; (iii) one unit consisting of ten (10) studio or one bedroom affordable housing units; (iv) three market rate residential units;

and (v) the common areas e.g., elevators, lobbies, stairways, etc., for use by all units, and limited common elements, all as more particularly described in the Declaration. The parties agree to take all actions necessary to finalize and to complete the Declaration and other documents necessary to create the condominium, including an independent budget, reserve analysis, association members dues and to record the same as necessary. All costs associated with the converting the Project to the condominium form of ownership, including, but not limited to, the costs of preparing and recording the plat, shall be shared equally by City and Kendrick; provided, however, that all costs of preparing the Declaration, the condominium bylaws, and other legal documents shall be the responsibility of and shall be borne solely by Kendrick.

- 3.2 Closing. Upon recording of the Declaration and creation of the Affordable Residential Units, the Market Rate Residential Units and the Commercial Units, City will convey fee title to the Affordable Residential Units, together with an undivided interest in the Common Areas, to ACCESS to be managed as Affordable Housing to be targeted at those earning 60% of the area median income or less. In the event the Affordable Residential Units ever cease to be used to provide affordable housing as defined in the State of Oregon, Home Program, ownership of the Affordable Residential Units shall revert to the City. The City will convey fee title to the Market Rate Residential Units, together with an undivided interest in the Common Areas, to Kendrick, with a deed restriction that the Units be occupied as the occupant's principal residence. The City will lease the Commercial Units to Kendrick for a term of 60 years. Consideration for this lease agreement is Kendrick constructing, at his cost, the underground parking garage and the Commercial. Kendrick may sublease the Commercial Units. Sub leases of the Commercial Units towards the end of the sixty-year term may continue for no more than five years after the end of the sixty years so long as such leases provide for lease rates which are comparable to similar commercial space in downtown Ashland and provision is made for payments to be made to the City, its successors or assigns for any lease amounts attributable to periods after expiration of the 60 year lease to Kendrick. At the end of the sixty-year lease term, the City may, at its option, sell the Commercial Units, retain the Commercial Units for public purpose, lease the Commercial Units or convey ownership of the Commercial Units to ACCESS to be used in assisting ACCESS with their purpose of providing affordable housing. Such conveyances and title to the property shall be subject only to the condominium documents, exceptions as set forth in this section above and standard Permitted Exceptions.
- 3.3 Title Insurance, Survey, Property Taxes and Closing Costs. City shall provide Kendrick with a 1992 standard ALTA Owner's Policy of Title Insurance issued by Title Company, insuring good and marketable fee title

to the Market Rate Residential Units as of the date of closing with coverage in the amount of \$1,050,000, insuring that title is vested in Kendrick free and clear of encumbrances except the condominium documents, the Exceptions set forth in Section 3.2 of this Agreement and the Permitted Exceptions. Kendrick will be responsible to pay the cost of the title insurance premium for the title insurance on the Market Rate Residential Units. Kendrick, at its option, may elect to obtain extended coverage and additional endorsements under such policy of title insurance, at its sole cost and expense, and City agrees to execute such documents that may reasonably be required by the Title Company to enable Kendrick to obtain such coverage. Kendrick shall pay the cost of preparing a survey in form suitable to support issuance of an ALTA Owner Extended Coverage Title Policy, if requested by Kendrick. Recording costs will be paid by Kendrick. Real property taxes, if any, for the year in which Closing occurs shall be prorated as of the Closing Date. City and Kendrick shall each pay one-half (1/2) of any escrow fees charged by the Title Company.

- 3.4 Amendment to Declaration Following Completion of Construction. If deemed necessary or advisable by Kendrick following completion by Kendrick of the Project Construction and issuance of certificates of occupancy for such improvements, Kendrick and City agree to amend the Declaration and other condominium documents and to take such other actions as are necessary to redefine the Affordable Residential Structures, the Market Rate Residential Structures and the Commercial Structures to reflect the actual structures constructed therein. All costs associated with amending the Declaration and other condominium documents shall be paid for by Kendrick. Both parties shall cooperate in amending the Declaration in accordance with this section and shall execute any and all documents reasonably necessary to accomplish the same, including, but not limited to, an amended Declaration and any deeds necessary to establish the unit ownerships.

4 CONSIDERATION

The consideration for the Kendrick's acquisition of the rights to construct and acquire ownership of the Market Rate Residential Units and for Kendrick's right to construct and lease from the City the Commercial Units for a term of 60 years is twofold and is as follows:

- 4.1 In accordance with the terms and conditions of this Agreement, Kendrick is to pay all engineering, architectural and design costs, application and permit fees, systems development charges associated with preparation for construction of the Project and all costs associated with the preparation and recording of the condominium documents;

- 4.2 Kendrick is to construct the Parking Garage, the Commercial Structure and the Market Rate Residential Structures at Kendrick's cost; and
- 4.3 Kendrick, using funding obtained by ACCESS, shall construct the Affordable Residential Units.
- 4.4 Kendrick, or its assigns or successors in interest shall, at his sole costs, maintain the common areas and the limited common elements for the Commercial Units and the Market Rate Residential Units of the Project during the term of the lease to Kendrick of the Commercial Structure.
- 4.5 ACCESS shall maintain, at its costs, the common areas and limited common elements allocable to the Affordable Residential Units.
- 4.6 Kendrick's Default. In the event City determines not to proceed with the construction of the Project because of Kendrick's failure to perform its obligations under this Agreement or because of loss of or failure to secure the financing commitments required by Section 1.2 hereof, Kendrick shall turn over all permits, construction documents, surveys or other documents already completed to the City and City shall have no further obligations to Kendrick.

5 FINANCING.

- 5.1 Definitions. As used in this Section, the following terms have the following meanings (and other defined terms shall have the meanings set forth in the Definitions section of this Agreement) and, where applicable, shall be interpreted in accordance with generally accepted accounting principles:
 - 5.1.1 "Additional Financing" means any of the following financing permitted under this Agreement (other than Construction Financing, Initial Financing, Equipment Financing, Refinancing or Sale):
 - 5.1.1.1 Any transaction (other than one permitted under this Agreement admitting new members to Kendrick or transfers among members permitted under this Agreement) encumbering or otherwise creating any interest in all or an portion of or any interest in (a) the Project, (b) the improvements thereon, or (c) Gross Revenues or net cash flow from the Project; or
 - 5.1.1.2 Any loan or other financing, the proceeds of which are used to (a) pay for Capital Improvements or (b) generate proceeds to Kendrick for any purpose, other than any

transfers of individualized interests among Kendrick's members, secured in whole or in part by an interest in the Project.

- 5.1.2 “Capital Improvements” means any modifications, repairs, or replacements to the Improvements or construction of additions to the Private Project (including, without limitation, costs of tenant allowances), (i) occurring subsequent to the Completion Date, (ii) the cost of which may be capitalized in accordance with generally accepted accounting principles, and (iii) the cost of which is not included in the Construction Financing and/or Initial Financing.
- 5.1.3 “Construction Financing” means the construction loan for the initial development of the Project secured by Kendrick.
- 5.1.4 “Debt Service Payments” means all principal and interest, rental and other sums and amounts paid or payable by Kendrick for or during the applicable pertinent period to a lender or Mortgagee under any Construction Financing, Initial Financing, Additional Financing or Refinancing; provided, however, that in the event of a foreclosure of any mortgage, leasehold mortgage, or the conveyance of Kendrick's estate in the Improvements to any lender by deed in lieu of foreclosure, or in the event of termination of any lease or sublease arising out of a sale-subleaseback financing transaction of such estate, the term “Debt Service Payments” shall include thereafter, for the period in which a Mortgagee or lender is in possession, all principal and interest, rental and other sums and amounts which would have become payable to such Mortgagee or lender pursuant to or in connection with such mortgage, leasehold mortgage or sale-subleaseback transaction but for such foreclosure, deed in lieu of foreclosure or lease termination.
- 5.1.5 “Gross Revenues” means all revenues and funds of any kind whatsoever derived by Kendrick (and not by any tenant, subtenant or licensee of Kendrick) from the ownership, rental and/or operation of the Project, including, without limitation, all gross rental income (including all amounts actually received by Kendrick as rent from tenants or licensees, including minimum rent and rent based or dependent on volumes of sales or business transacted) whether characterized as rent or not; operating contributions and other payments or reimbursables received from tenants; proceeds of rental or business interruption insurance (including interest thereon); all income earned on invested funds (including interest earned on any reserves); all income from vending machines, telephones and other sources located in the Project; all refunds,

rebates and recovery of items, if any, previously charged as Project Expenses or deductions from the Gross Revenues of the Project; refinancing Proceeds; and Sale Proceeds. Prepaid rents, prepaid payments and security deposits shall not be included in the Gross Revenues of the Project until the Fiscal year in which earned, applied or forfeited.

Gross Revenues shall not include: funds received as capital contributions; property insurance proceeds (including interest thereon), except to the extent in excess of the amount applied to collection and restoration costs or otherwise applied to reduce or retire debt; and condemnation proceeds (including interest thereon).

Gross Revenue and Project Expenses may be reported on an accrual basis by Kendrick or and Affiliate provided that the same method of reporting is used under the Initial Financing or Refinancing; with respect to transferees of Kendrick other than Affiliates, the accrual basis may be used subject to the reasonable approval of City, and if not used, all calculations hereunder shall be on a cash basis notwithstanding any other provision herein to the contrary.

- 5.1.6 “Improvements” means the improvements comprising the Project.
- 5.1.7 “Initial Financing” means permanent financing secured by Kendrick to pay off the Construction Financing.
- 5.1.8 “Refinancing” means any financing, other than Additional Financing or Equipment Financing, by way of a mortgage or by way of a sale-leaseback of Kendrick’s estate in the Project and the Improvements thereon, which retires or replaces the Initial Financing or a prior Refinancing as herein defined, provided that the same is at then-market rates for such financing.
- 5.1.9 “Refinancing Proceeds” means all proceeds available to Kendrick out of any Refinancing with respect to any portion of the Project, after deduction of (i) amounts paid by Kendrick to discharge principal, accrued interest and prepayment charges under any Financing or any other payment required to be made to discharge such Financing or any security for the same; (ii) reasonable costs, fees and expenses payable by Kendrick with respect to the negotiation, closing and consummation of such Refinancing; and (iii) the total outstanding Unreturned Capital Contributions at the time of such Refinancing.

- 5.1.10 “Sale” means (i) any bona fide total or partial sale, assignment or transfer (other than a mortgage, lease, or a sale, assignment or transfer for less than fair market value consideration to any entity which controls, is controlled by, or is under common control with Kendrick, or any leases of the residential or commercial units in the ordinary course of business) of any portion of the Project or any right or interest therein; or (ii) any bona fide total or partial sale, assignment, transfer or syndication of any stock or other ownership interest in Kendrick (other than for admission of new members or transfers among members of Kendrick as permitted under this Agreement); or (iii) a condemnation (other than a condemnation by City) or transfer in lieu of condemnation of the Project or any part thereof or any right to interest in or to the same, to the extent of proceeds available to Kendrick and not applied to restoration or required to be paid to a Mortgagee.
- 5.1.11 “Sale Proceeds” means all proceeds available to Kendrick from the Sale (including any noncash consideration which shall be deemed Sale Proceeds at its fair market value) of the Project, or any portion thereof, after deduction of (i) amounts paid by Kendrick to discharge principal, accrued interest and prepayment charges under any Financing (Construction Financing, Initial Financing, Additional Financing or Refinancing) or any other payment required to be made to discharge such financing or any security for the same in connection with such Sale; (ii) reasonable costs, fees and expenses paid with respect to the negotiation, closing and consummation of such Sale; and (iii) the total outstanding Unreturned Capital Contributions at the time of such Sale.
- 5.1.12 “Unreturned Capital Contributions” means the aggregate initial and additional capital contributions of all members of Kendrick, reduced by the total of all distributions to said members from Refinancing or Sale Proceeds in accordance with Kendrick’s operating agreement.
- 5.2 Right to Obtain Financing. Kendrick and ACCESS shall have the right to obtain Construction Financing, Initial Financing, Equipment Financing, Refinancing or Additional Financing using as security their real property interests in the Affordable Residential Units, the Market Rate Residential Units or the lease term in the Commercial Units. Any financing which uses the lease in the Commercial Units as security must be completely paid and any security interests in the Commercial Units released prior to the termination of the 60-year lease term.
- 5.3 Annual Accounting Statements.

5.3.1 Kendrick shall furnish to City as soon as it is prepared prior to the end of the first quarter of each Fiscal Year of Kendrick, a detailed statement of income and expenses (“Accounting Statement”) from the Commercial Units portion of the Private Project prepared by Kendrick’s accountant, setting forth in reasonable detail the computation of Revenue Payments, if any, for the immediately preceding Fiscal Year, including a detailed breakdown and calculation of Unreturned Capital Contributions, Gross Revenues, Project Expenses and other relevant categories and such other information as City shall have specified by notice to Kendrick prior to such Fiscal Year, as shall be reasonably necessary for City to maintain an accurate record of the financial viability of the Project.

5.4 Covenants Running with the Land. The obligations of Kendrick provided herein in this Agreement shall be covenant’s running with the Private Project for the benefit of City and shall be binding upon and enforceable by City against Kendrick and all successors in interest in or to the Private Project, or any portion thereof. The parties agree that this Agreement or a Memorandum of this Agreement setting forth, among other things, the obligations contained in this section, shall be recorded in the Jackson County Records following execution of this Agreement by all parties. The cost of recording this Agreement or the Memorandum shall be born by Kendrick.

6 PARKING AGREEMENT. Concurrently with entering into this Agreement, City Kendrick, and ACCESS shall enter into a separate mutually agreeable Parking Permit Agreement, whereby City agrees to provide Kendrick, its successors, lessees, and assigns, and ACCESS , its successors, lessees, and assigns, certain parking rights in the Parking Garage, to be more particularly described therein. The Parking Permit Agreement, or a memorandum thereof, shall be recorded by the parties, the cost of which shall be born by Kendrick.

7 OPERATION OF PROPERTY

7.1 Standard of Operation. The parties acknowledge that their respective portions of the Project are interrelated and are dependent upon the other portions of the Project for success. Accordingly, in order to insure the success of the entire Project, the parties hereby agree the Project shall be operated as a first-class mixed use development, consistent with the standard of other similar projects. The failure of one party to maintain the standards prescribed in this clause does not effect a default or penalty attributable to the other parties.

7.2 Commercial Tenants. Consistent with the provisions of the preceding subsection, Kendrick agrees to make every reasonable effort to recruit and

lease the Commercial Structures to tenants which are compatible with the residential components of this project and with the commercial uses in the downtown area around the Project.

- 7.3 Changes in Use. For a period of ten (10) years from and after the date the certificate of occupancy for Commercial Units is issued, the Commercial Unit portion of the Private Project shall be used solely for commercial uses permitted as outright uses in the City's C-1-D zone. Any change in use of the Commercial Units during this 10-year period shall require the prior written consent of City, which may be granted or not in City's sole discretion. The Market Rate Residential Units shall be used solely for residential purposes. Subject to the provisions of the immediately preceding subsection and Section 4 hereof, nothing contained herein shall restrict or prevent Kendrick or its assigns from a change in use to a different commercial use for the applicable portions of the Commercial Units, so long as such use is permitted outright in the City's C-1-D zone.

8 DEFAULT; REMEDIES

8.1 Default-Cure.

8.1.1 Default by Kendrick. Kendrick shall be in default if it breaches any of the provisions of this Agreement, whether by action or inaction, and such breach shall continue and not be remedied within sixty (60) days after City shall have given notice specifying the breach, or in case of a breach which cannot with due diligence be cured within a period of sixty (60) days, if Kendrick shall not within such sixty (60) day period commence the cure of the breach and thereafter diligently prosecute to completion such cure within a reasonable time after the notice from City. A default shall occur if Kendrick shall have made any assignment for the benefit of creditors, or shall have become adjudicated bankrupt, or shall have had a receiver, trustee or creditor's committee appointed over it. Kendrick shall not be deemed to be in default hereunder for failure to pay any tax, assessment, lien or other charge if Kendrick, in good faith, is contesting the same and, if necessary to avoid foreclosure, has furnished an appropriate bond or other undertaking to assure payment in the event Kendrick's contest is unsuccessful.

8.1.2 Default by City. A default shall occur if City shall breach any of the provisions of this Agreement, whether by action or inaction, and such breach shall continue and not be remedied within sixty (60) days after Kendrick shall have given notice specifying the breach, or in the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, if City shall not within

such sixty (60) day period commence to cure the breach and thereafter diligently prosecute to completion such cure within a reasonable time after the notice from Kendrick.

8.1.3 Remedies. In case such action is not taken, or is not commenced and thereafter diligently pursued, or the default or breach shall not be cured or remedied within said sixty (60) day period (or, if the default or breach is not curable within said sixty (60) day period, within a reasonable time), or if the default or breach is of such a nature that it poses an immediate threat to human health or safety, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations, or taking such actions as are reasonably necessary to cure the default or breach and collecting the reasonable costs thereof from the defaulting or breaching party, or pursuing such other remedies as are available at law or in equity for such default or breach, subject to rights of Mortgagees under Section 8.5 hereof.

8.1.4 Forfeiture of Development Rights. As an alternative to and in lieu of exercising the remedies available to City upon Kendrick's default provided for in Section 8.1.3, Cit may elect instead to declare a forfeiture of Kendrick's rights hereunder as follows:

8.1.4.1 Subject to the notice and cure provisions in Section 8.1.1, in the event Kendrick fails to commence construction of the Project within the time period set forth in Section 2.3 and has not commenced construction of the Project, City shall have the right, as its sole and exclusive remedy, to terminate this Agreement by notice to Kendrick, whereupon Kendrick shall forfeit its rights to develop the Project. Upon such forfeiture, Kendrick shall deliver and assign to City all of Kendrick's rights to the architectural and engineering plans for the applicable portions of the Project, without cost or liability to City, and shall reconvey any interest it may have in the applicable portions of the Project to City.

8.1.4.2 Subject to the notice and cure provisions in Section 8.1.1, in the event Kendrick fails to commence construction of the Residential Structures within the time periods set forth in Section 2.3, but has commenced construction of the Commercial Structure, City shall have the right, but not the obligation, as its sole and exclusive remedy, to purchase

from Kendrick all of Kendrick's rights to the Commercial Structure and all improvements thereto, for the actual costs (both hard and soft costs) of such improvements less the amount of any liens or encumbrances against the property being purchased arising out of and from Kendrick's activity on the property that City would be subject to, and Kendrick shall forfeit its rights to develop the Residential Structures. In the event the parties are unable to agree on the costs for the Commercial Structure, the matter shall be submitted to arbitration in accordance with Section 8.3 hereof.

8.1.4.3 Subject to the notice and cure provisions in Section 8.1.1, in the event Kendrick commences construction of both the Residential Structures and the Commercial Structure in accordance with Section 2.3, but fails to complete the same within two (2) years of all necessary governmental approvals, City shall have the right, but not the obligation, as its sole and exclusive remedy, to purchase from Kendrick all of Kendrick's rights to the incompleting portion of the Project that extended beyond said two (2) year period and all improvements thereto, for the actual costs (both hard and soft costs) for such improvements. In the event the parties are unable to agree on the costs for said improvements, the matter shall be submitted to arbitration in accordance with Section 8.3 hereof.

8.2 Force Majeure.

8.2.1 Delays During Arbitration. During the term of this Agreement, neither City nor Kendrick, as the case may be, nor any successor in interest, shall be considered in breach of or in default in its obligations with respect to any obligations created hereunder or progress in respect thereto, in the event of and for the period of enforced delay in performance of such obligations due to arbitration pursuant to Section 8.3 hereof; provided however, that either party may, at its option, perform any such obligation pending a resolution of the dispute, without waiving or otherwise affecting its rights under the dispute resolution process.

8.2.2 Unavoidable Delays. Neither City, nor Kendrick, nor ACCESS, as the case may be, nor any successor in interest, shall be considered in breach of or default in its obligations with respect to any obligations created hereunder or progress in respect thereto, in the event of enforced delay ("Unavoidable Delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to,

acts of God or of the public enemy, acts of the Government, fires floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, riot, inability to procure or rationing of labor, equipment, facilities, sources of energy, materials or supplies (or reasonable substitute materials or supplies) in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the Project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes, or any similar events and/or occurrences beyond the control of City, or Kendrick; it being the purpose and intent of this provision that in the event of the occurrence of any such unavoidable delay, the time or times for performance of the obligations of City or Kendrick, as the case may be, shall be extended for the period of the Unavoidable Delay; provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the party becomes aware of or reasonably should have become aware of the causes of any such Unavoidable Delay, have first notified the other party thereof in writing of the cause or causes thereof and the estimated time of correction. Any action or failure to act by a party pursuant to this Agreement which is not due to Unavoidable Delay shall not excuse the performance hereunder by that party.

- 8.3 Arbitration Provision. Except where this Agreement provides otherwise, all disputes or questions arising out of this Agreement shall be settled first by mutually accepted mediation services in Jackson County, by arbitration in Jackson County, Oregon, in accordance with the then applicable commercial arbitration rules of the Oregon Arbitration Association, or its successor, by a single, neutral arbitrator appointed in the manner provided for in said rules, which arbitrator shall have experience in the development, operation, and management of mixed use developments and not a bidder or in any way connected with any portion of the Project, and, judgment upon the award rendered shall be final and binding on the parties enforceable by any court having jurisdiction thereof
- 8.4 Dispute Resolution. Prior to submitting a matter to mediation and arbitration in accordance with the preceding subsection, the parties shall first attempt to resolve the dispute informally in accordance with the section. In the event a dispute arises, the complaining party shall deliver notice of the matter in dispute to the other party at the address and in the manner provided for in Section 9.2 hereof. Each party shall thereafter promptly designate a representative to address the matter, which representatives shall attempt, in good faith, to resolve the disputed matter. In the event the designated representatives are unable, despite their good efforts, to resolve the disputed matter within fifteen (15) days of the initial

notice thereof, then, and in that event, either party may submit the matter to mediation then arbitration in accordance with the preceding subsection.

8.5 Rights of Mortgagees.

8.5.1 Subordination. City's exercise of its rights under this Agreement upon Kendrick's default shall always be subject and subordinate to and be limited by, and shall not defeat, render invalid, or limit in any way:

- (a) The lien of any Mortgage or security interest for any Financing authorized by this Agreement secured by any portion of the Private Project; or
- (b) Any lease of any portion of the Private Project.

8.5.2 Notices to Mortgagees; Right to Cure. Whenever City shall deliver or make any notice or demand to Kendrick with respect to any breach or default by Kendrick in its obligations or covenants under this Agreement, City shall at the same time furnish a copy thereof to any Mortgagee who has requested in writing that City furnish it with a copy of such notice or demand.

8.5.2.1 Each such Mortgagee (or, in the case of more than one Mortgagee electing to cure, the first in priority to so elect shall be recognized by City) shall have the right, at its option, to cure or remedy such breach or default or cause the breach or default to be cured, in the manner provided for such cure under this Agreement, and City will not terminate this Agreement or take any action to enforce any claim with respect to said breach or default until the expiration of the applicable cure period set forth in Section 8.1.1.

8.5.2.2 If the breach or default is one that the Mortgagee cannot cure until the Mortgagee acquires possession of the mortgaged property, City shall take no action to effect a termination of this Agreement without first giving the Mortgagee a reasonable time after receipt of the Notice of breach or default within which either (a) to obtain possession of the mortgaged property (including possession by a receiver), or (b) to institute, prosecute, and complete foreclosure proceedings or otherwise to acquire Kendrick's interest under this Agreement with diligence. Upon obtaining possession of the mortgaged property or otherwise acquiring Kendrick's interest under this Agreement, the Mortgagee shall be required promptly to

cure all defaults then reasonably curable by the Mortgagee, including, without limitation, the payment of other charges pertaining to the period prior to the date of the Mortgagee's possession or acquisition of Kendrick's interest. Prior to completion of any foreclosure or other acquisition, the Mortgagee may elect to return possession of the mortgaged property to Kendrick or discontinue any foreclosure proceedings then in progress. No provision of this Agreement shall be interpreted as an obligation on the part of the Mortgagee to commence or to continue any action to obtain possession of the mortgaged property or acquire Kendrick's interest under this Agreement.

8.5.3 No Mortgagee Obligation to Construct. Notwithstanding any other provision of this Agreement, including, but not limited to, any covenants running with the Private Project, any Mortgagee, including any such Mortgagee who obtains title to the Private Project or any portion thereof, shall not in any way be obligated by the provisions of this Agreement to construct or to complete the Private Project or to guarantee such construction or completion thereof; provided, however, that any third party which thereafter obtains title to the Private Project or any interest in the leases from or through such Mortgagee or any purchaser at a foreclosure sale, other than such Mortgagee, shall be obligated to develop or complete and to guarantee such construction or completion in a manner consistent with Kendrick's obligations hereunder. Nothing in this section or any other section or provision of this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote any portion of the Private Project or its interest in the leases to any use, or to construct any improvements thereof, other than those uses or improvements required or permitted under this Agreement.

8.5.4 Mortgagee's Rights as to Kendrick Preserved. In the event of a default by Kendrick under this Agreement or under any loan agreement with a Mortgagee described above, the Mortgagee may, so long as it cures any default under the Agreement as permitted above, exercise such rights as the Mortgagee may have against Kendrick, including the right to take possession of the mortgaged property and exercise Kendrick's rights and perform Kendrick's obligations under the Agreement (including, but not limited to, Kendrick's leasing, operation, and management obligations), foreclose Kendrick's interest in the mortgaged property and the Agreement as permitted by law, and reassign or sell Kendrick's interest in the Agreement. Notwithstanding any other provision of this Agreement, City will not unreasonably withhold approval of

such assignment or sale to third parties where the transferee assumes Kendrick's obligations under the Agreement. Any transfer of Kendrick's interest in this Agreement or the mortgaged property to the Mortgagee or a transferee, shall include all land use approvals, parking entitlements and other entitlements, if any, associated with the portion of the mortgaged property so transferred.

- 8.5.5 Release of Mortgagee. If a Mortgagee acquires Kendrick's interest in the Agreement or the mortgaged property or otherwise forecloses on such interest, and such interest is assigned to a transferee approved by City as provided above, the Mortgagee shall be automatically released from all liability for the performance or observance of the terms of the Agreement from and after the date of such assignment, so long as the approved transferee assumes the Agreement in a form reasonably acceptable to City.
- 8.5.6 Amendments Requested by Mortgagees. City agrees to execute amendments to this Agreement or separate agreements from time to time to the extent reasonably requested by a Mortgagee proposing to make Kendrick a loan secured by the Private Project or a portion thereof, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of City or its interest in the Project. All expenses incurred by City in connection with any such amendment shall be paid by Kendrick.
- 8.5.7 City Statement of Defaults: Estoppel Certificates. The Mortgagees shall have the right at any time after a default by Kendrick under this Agreement to obtain from City a written statement of all events of default under this Agreement then known to City. City will also cooperate with Kendrick in executing an agreement substantially in accordance with this Section and executing any estoppel certificates, acknowledgments, or similar documents reasonably required by Kendrick and the Mortgagee(s) in connection with any financing permitted by this Agreement.
- 8.5.8 No Liabilities to City. Neither this Agreement, the loan instruments with the Mortgagee(s), any assignment of the Agreement or mortgaged property as security, nor any action taken under such instruments, shall be construed as giving rise to any duty, obligations, or liability on the part of the Mortgagee to City.
- 8.5.9 No Cancellation of Agreement. There shall be no cancellation, termination, surrender, or modification of the Agreement by joint action of City and Kendrick without the prior written consent of all

Mortgagees, and any such cancellation, termination, surrender or modification shall be null and void and of no effect in the absence of such written consent.

8.5.10 Notice of Arbitration. Each Mortgagee shall be given notice of any arbitrations by the parties to the Agreement and a copy of any award or decision made in the proceeding.

9 MISCELLANEOUS PROVISIONS

9.1 Notice. A notice or communication under this Agreement by either party to the other, or to any Mortgagee, shall be delivered by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

In the case of a notice or communication to Kendrick:

24 Crocker Street
Ashland, OR 97520

In the case of a notice or communication to ACCESS

CEO
ACCESS, INC.
PO Box 4666
Medford, OR 97501

In the case of a notice or communication to City:

City of Ashland
City Administrator
20 E. Main Street
Ashland, OR 97520

With a copy to :

City of Ashland
City Attorney
20 E. Main Street
Ashland, OR 97520

Or addressed in such other way with respect to a party as that party may, from time to time, designate in writing dispatched as provided in this section.

- 9.2 Merger. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the Residential Units from City to Kendrick or any successor in interest, and the same shall continue and survive following closing, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.
- 9.3 Captions. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- 9.4 Counterparts. This Agreement is executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 9.5 Waivers. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the party making the waiver. No waiver by City or Kendrick of any provision of this Agreement or any breach thereof, shall be of any force or effect unless in writing, and no such waiver shall be construed to be a continuing waiver.
- 9.6 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals, accountants', and other experts, fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.
- 9.7 Time of the Essence. Time is of the essence of this Agreement.
- 9.8 Choice of Law. This Agreement shall be interpreted under the laws of the State of Oregon.
- 9.9 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 any Saturday, Sunday or such holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or such a holiday.

- 9.10 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 to include the feminine and the neuter, as the context may require.
- 9.11 Severability. If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.
- 9.12 Entire Agreement. This Agreement and the attachments hereto are the entire agreement between the Parties relating to the subject matter in this Agreement. There are no other oral or written agreements between the parties with regard to this subject matter. There are no oral or written representations made by either party, implied or express, other than those contained in this Agreement.
- 9.13 Modification. Any modifications to this Agreement shall be made in writing executed by both parties. The parties recognize that circumstances may change and that it may be in the interest of both parties that the Construction Schedule or other provisions hereof be amended from time to time. For this reason, each of the parties will consider changes which may be proposed by the other during the term of this Agreement.
- 9.14 Successors and Assigns. During the development stage of plans and project approvals, Kendrick may assign to another entity in which Kendrick will remain the managing member, subject to approval by City upon a reasonable determination the new entity is sufficiently capitalized to meet Kendrick's obligations and responsibilities under this Agreement. After this first assignment neither party shall assign any or all of its rights under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. City agrees that it will not withhold its consent to an assignment by Kendrick if the assignee can demonstrate that it has the financial resources and experience reasonably necessary to carry out the obligations of Kendrick under this Agreement. If City shall fail to respond to a request to any assignment within fifteen (15) business days from a written request therefore from Kendrick and receipt of evidence of the financial resources and experience of the proposed assignee, Kendrick shall send notice to City of City's failure to respond to the earlier request. If City shall fail to respond within seventy-two (72) hours of the second notice, City shall be deemed to have consented to such request.

- 9.15 Binding Effect. Subject to the provisions of the immediately preceding subsection, the benefits conferred by this Agreement and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and assigns of the parties hereto, including any mortgagee permitted by this Agreement. The obligations of City and Kendrick, and their remedies for breach thereof, shall be covenants and conditions running with the land.
- 9.16 Place of Enforcement. Any action or suit to enforce or construe any provision of this Agreement by any party shall 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, Medford, Oregon branch.
- 9.17 No Partnership. Neither anything contained in this Agreement nor any acts of the parties to this Agreement shall be deemed or construed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties.
- 9.18 No Third Party Beneficiaries. The parties intend that the rights, obligations and covenants in this Agreement and the deed shall be exclusively enforceable by City and Kendrick. There are no third beneficiaries to this Agreement.
- 9.19 Exclusive Remedies. The rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to and cumulative with any and all rights otherwise available at law or in equity, and 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 times, of any other such remedies for the same default or breach or any of its remedies for any other default or breach by the other party.
- 9.20 Nonwaiver of Government Rights. Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the deeds, City is specifically not obligating itself or any other agency with respect to any action relating to development or operation of the improvements to be constructed on the Land, including, but not limited to, rezoning, variances, environmental clearances or any other governmental agency approvals which are or may be required, except as expressly set forth herein.
- 9.21 Approvals. Where approval or consent of City is required, City will approve or disapprove within fifteen (15) business days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary in this Agreement. If City shall fail to respond to Kendrick within such fifteen (15) day period, Kendrick shall

send a notice to City of City's failure to respond. Failure by City to respond and approve or disapprove within seventy-two (72) hours of the second notice, shall be deemed an approval. Any disapproval shall state in writing the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are reserved to City's sole discretion. Kendrick, upon receipt of such disapproval, may revise such disapproved portions in a manner responsive to the stated reasons for disapproval and resubmit the same to City within forty-five (45) days after receipt of the notice of disapproval or, unless such disapproval is within the sole discretion of City, submit the matter to arbitration pursuant to Section 8.3.

- 9.22 Estoppel Certificates. City and Kendrick shall at any time and from time to time, within thirty (30) days after written request by the other, execute, acknowledge and deliver to the party which has requested the same or to any prospective mortgagee, assignee or subtenant designated by Kendrick, a certificate stating that (i) the Agreement is in full force and effect and has not been modified, supplemented or amended in any way, and if there have been modifications, the Agreement is in full force and effect as modified, identifying such modification agreement; and if the Agreement is not in force and effect, the certificate shall so state; (ii) the dates on which the term of this Agreement commenced and will terminate; (iii) all conditions under the Agreement to be performed by City or Kendrick, as the case may be, have been satisfied and, as of the date of such certificate, there are no existing defenses or offsets which City or Kendrick, as the case may be, has against the enforcement of the Agreement by the other party, or, if such conditions have not been satisfied or if there are any defenses or offsets, the certificate shall so state. The party to whom any such certificate shall be issued may rely on the matters therein set forth and thereafter the party issuing the same shall be estopped from denying the veracity or accuracy of the same.
- 9.23 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 clearly and explicitly permitted as to the specific item in question, such as in the case of a party being given "sole discretion" or being allowed to make a decision in its "sole judgment. "
- 9.24 Statutory Disclosure. THIS INSTRUMENT WILL 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 AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

CITY OF ASHLAND

John W Morrison, Mayor

Barbara Christensen, City Recorder

KENDRICK

By: _____

Name: _____

Title: _____

ACCESS, INC.

By: _____

Name: _____

Title: _____