

**AGENDA ITEM SUMMARY**

**DATE:** 09/08/08 **DEPARTMENT:** Legislative **DEPT. HEAD SIGNATURE:** HD

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**SUBJECT:**

Consideration of Memorandum of Understanding drafted by Blaine County setting terms for dispatch service for fiscal year 2008-2009

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**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

At the August 25, 2008 Hailey City Council meeting Blaine County had asked for an increase in the \$60,000 amount Hailey had offered to help dispatch function through the 2008-09 year in which a county-wide election will be held to ask voters to fund dispatch services.

The Hailey City Council responded to the request for an additional \$4,700 by stating that it could increase to a total of \$64,700, but that it had a second contingency (the first being a county-wide election) that no monies would be paid to the county unless the county commissioners stated that there would be no reduction in dispatch service to Hailey.

On August 26 the Hailey City Administrator attended a Blaine County Commission meeting in which the request from the county administrator that Hailey pay and the county accept increased funds was discussed. The Hailey City Administrator informed the county commissioners of the Hailey City Council's motion associating payment from Hailey with full dispatch service from Blaine County, and disassociating Hailey's payment from any number of dispatchers or level of service numbers produced by the county. Furthermore, if Hailey Police Department takes any voluntary action to reduce its impact on county dispatch, that would be strictly voluntary and language relative to that should not be couched in terms of county requirements. The Hailey City Administrator said that although that may become a model by which long-term escalating costs of dispatch are controlled by all the jurisdictions on a voluntary basis, the important element to that day's discussion is that dispatch center employees be given the same procedure and be trained to handle all calls the same, without any consideration or question about from which jurisdiction the call is coming, or why the call is being made.

During the course of that discussion, the county administrator suggested a Memorandum of Understanding be agreed upon between the entities, and was instructed to draft such for county commissioner review, after which the county would forward it on to cities for their review.

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**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:** - Heather Dawson

The term "administrative calls" is not defined. That term should be defined before the city council can determine whether the clause stating that Hailey will handle its own administrative calls is or is not a decrease in current levels of service.

The agreement should not refer to HPD's use of mobile data terminals, unless the use is strictly voluntary and the same voluntary use is encouraged of other jurisdictions and is tied to the long term funding goal expressed in Section 8 of the agreement.

Language referring to the "users based funding formula" should be stricken throughout, as that language undermines Section 8 of the agreement.

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**FOLLOW-UP REMARKS:**

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Memorandum of Understanding  
Blaine County Emergency Communications  
Fiscal Year 2008-2009 Interim Funding

*Whereas* The Blaine County Commission has made a commitment to providing 911 emergency telephone service, said service having been funded through a voter-approved 911 surcharge on telephone service in Blaine County since 2003, and approved as Enhanced-911 in 2005, and

*Whereas* in recent years dispatching of emergency responders to those calls was divided between separate and independent centers covering different jurisdictions and operated by Blaine County and the City of Ketchum, and

*Whereas* during 2007 the formerly separate centers were consolidated both physically and operationally into one by agreement of Blaine County and the City of Ketchum, said center currently operated by Blaine County under the supervision of the Director of Emergency Communications, and providing 911 telephone and emergency dispatch service to all first-responder agencies county-wide, and

*Whereas* for FY 2007-2008 this county-wide service was funded by mutual agreement and entirely by Blaine County, the City of Ketchum, and the City of Sun Valley, and

*Whereas* it has been determined by those agencies that a mechanism of funding for this service must be developed that more equitably distributes its cost among all who benefit , and

*Whereas* such methodology that is acceptable to all partner jurisdictions, as listed below, has yet to be devised, and

*Whereas* an interim plan must be adopted allowing for the funding of operations for fiscal year 2008-2009, allowing for such time as required for a more permanent funding plan to be devised .

*Therefore* herein defined are Terms of Service under which Blaine County will provide and the partner jurisdictions will receive 911 telephone and emergency dispatch services for the period October 1, 2008 through September 30, 2009.

*Partner Jurisdictions*

City of Bellevue  
Blaine County  
Carey Rural Fire and Rescue District  
City of Hailey

City of Ketchum  
City of Sun Valley  
Wood River Fire/Rescue District

Blaine County Emergency Communications  
Terms of Service  
October 1, 2008 – September 30, 2009

1. Blaine County will continue to own, maintain and operate the county-wide enhanced 911 telephone system as funded by the \$1.00 monthly telephone surcharge.
2. Blaine County will operate the emergency communications center (“the center”), providing first-responder dispatch service with a staffing formula based on a minimum of two telecommunicators assigned to each shift, with a third telecommunicators to be assigned to the shift and days of the week with the typically highest volume of emergency calls. This formula calls for Blaine County to employ a total of 12 full-time equivalent telecommunicators.
3. It is understood by all parties to this Memorandum that Blaine County cannot guarantee that all allowed telecommunicator positions will remain filled at all times. In the event of employee attrition involving those positions, Blaine County will make its best effort to manage the operation of the emergency communications center to the benefit of the partner jurisdictions and at the same time minimize the time during which any such vacancies exist.
4. Funding for salaries, employee benefit costs, and certain other related expenses of the emergency communications center (detailed as Attachment A) for this period shall be provided by the partner jurisdictions in the following amounts:

Blaine County	\$351,742
Carey Rural Fire and Rescue District	\$ 3,346
City of Bellevue	\$ 13,600
City of Hailey	\$ 64,700
City of Ketchum	\$249,481
City of Sun Valley	\$104,514
Wood River Fire and Rescue	<u>\$ 28,514</u>
 Total	 \$815,875

5. Recognizing that this funding formula is based on a calls-for-service distribution methodology, and that the Cities of Bellevue and Hailey are unable to fund the “full share” portion of the emergency communications center operations as defined on that basis to provide for optimal staffing levels, to minimize demand on the telecommunicators’ time, administrative calls to the Bellevue Marshall’s office and the City of Hailey Police Department will not be routed to or answered by the center.



## STAFF REPORT

**TO:** Hailey City Council  
**FROM:** Beth Robrahn, Planning Director   
**RE:** Final Plat – Quigley View Condominium Subdivision  
**HEARING:** September 8, 2008

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**Applicant:** J. Walt and Jenny Femling  
**Project:** Quigley View Condominiums  
**Request:** Final Plat  
**Location:** Lots 1, 2 and 3, Del Norte Apartments Subdivision (631 E Croy St)  
**Zoning:** Limited Residential (LR)  
**Note:** Staff analysis is in lighter type.

### Notice

Notice for the public hearing on August 25, 2008 was published in the Wood River Journal and mailed to property owners within 300 feet on August 6, 2008. The public hearing was continued on the record to September 8, 2008.

### Application

J. Walt and Jenny Femling, represented by Bruce Smith of Alpine Enterprises, Inc., has submitted an application for final plat approval of a 12-unit residential condominium project located at 631 E Croy St, east of 6th Avenue between Bullion and Croy Streets. As the application submitted is for a condominium project, the ground under and around the units would be owned and maintained by the condominium association. During preliminary plat the applicants proposed to provide 3 community housing units. The applicant submitted a concurrent Design Review application to do a remodel of the entire project which was approved by the Planning and Zoning Commission on October 16, 2006. The project is currently under construction.

The 12 unit project was constructed in the mid 1970's. It is an existing non-conforming use as it is located in the Limited Residential zoning district, which does not allow multi-family housing.

### Procedural History

Section 2.4.1 of the Subdivision Ordinance allows for applications for platting condominium units in existing structures to be reviewed through the short plat procedure.

In this procedure, the Hearing Examiner or Commission reviews the preliminary plat only. Upon approval of preliminary plat, the applicant submits a final plat for Council approval.

The application was heard by the Hailey Planning and Zoning Commission on October 16, 2006 and approved with the following conditions:

- a) **The final plat shall include a note stating that the subdivision is subject to the recorded CC&R's, along with the instrument numbers thereof.**

This has been met; see plat note 2.

- b) **Each unit shall be individually metered for water and each unit shall have a separate sewer service.**

This condition should be carried over and changed to "each building shall be individually metered for water and ...".

- c) **The renovations and landscaping described in the community housing plan shall be completed prior to the recordation of the final plat. These improvements include but are not limited to:**

1. **New siding and paint to match the neighboring market units.**
2. **Installing Firewall between the units to meet the Building Code.**
3. **Interior finishes upgrades as determined by BKHA and owner.**
4. **New landscaping as shown in attached plan LA 1.0.**
5. **New entry on end units as shown on plan to match market units.**
6. **New pavement as shown on plan for walkways.**

This condition should be carried over.

- d) **Pursuant to Section 4.11.3.4 of the Subdivision Ordinance the parties shall execute an agreement incorporating the community housing plan.**

This condition should be carried over.

- e) **A new site plan shall be submitted prior to issuance of a Building Permit showing the location of drywells and revised snow storage.**

This condition has been met.

- f) **Sidewalk shall be constructed adjacent to the project or an in-lieu contribution shall be made; the location of the sidewalk shall be determined by the City Engineer and Staff.**

The applicant has opted to make an in-lieu contribution. The ordinance requires 110% of the estimated cost of construction of concrete sidewalks and drainage improvements provided by a qualified contractor, plus associated engineering costs, as approved by the City Engineer. This condition should be carried over.

- g) **Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 3.1 of the Subdivision Ordinance, requiring certain improvements.**

This condition should be carried over.

- h) All improvements and other requirements shall be completed and accepted, or surety provided pursuant to Sections 2.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.**

This condition should be carried over.

- i) The final plat must be submitted within one (1) calendar year from the date of approval of the preliminary plat, unless otherwise allowed for within a phasing agreement.**

This condition has been met.

On January 8, 2007, the City Council considered the Community Housing Plan submitted by the applicant. The Council approved three (3) Community Housing Units at Income Category 4. At that time the Blaine County Housing Authority calculated the maximum sale price to be approximately \$172,000. The 2008 BCHA Community Housing Pricing Calculator sets the maximum price of a 2 bedroom unit in Category 4, assuming a \$50 per month Homeowners Association (HOA) due, at \$168,193. The maximum price with no HOA dues is \$176,348. According to BCHA there are several Hailey residents within Category 4 who have been qualified and are ready to buy.

The applicant is requesting an amendment to the Community Housing Plan for Council approval of an alternate deed restriction for resident workers, rather than the income deed restriction originally approved. The applicant proposes the sale price of the Community Housing units to be \$198,000. A letter and a revised housing plan from the applicant are attached. The proposed Community Housing Plan provides that the condominium assessments shall be limited and that the Condominium Declaration may not be amended without the consent of the Blaine County Housing Authority. The proposed Condominium Declaration refers to the Blaine Ketchum Housing Authority. The Condominium Declaration should be revised to insure that assessments shall be limited, that the Condominium Declaration may not be amended without the consent of the Blaine County Housing Authority and that the Blaine County Housing Authority is correctly identified.

The applicant is also requesting phased final plat approval to allow sale of the first eight (8) units completed in two (2) of the three (3) buildings to commence upon their tentative completion in October 2008. Construction of the third, and final building would tentatively begin in March 2009.

The City could enter into a phasing agreement with the applicant that would allow a final plat to be recorded for the first two buildings, allowing for a subsequent final plat for the third building. Our ordinance allows for this procedure and was done for the Sweetwater development. This agreement has been added as a condition of approval (condition e) should the Council choose to allow phasing of the final plats of the buildings. The applicant is proposing one (1) community housing unit be included in the two (2) of the

buildings proposed for the first phase and one (1) community housing unit be included in the third building proposed for the second phase.

On August 25, 2008 the City Council discussed the applicant's requests. There were no issues with the development of a phasing agreement and the City Attorney was to work on a draft for the Council's consideration. The Council was generally amenable to negotiating changes to the Community Housing Plan. Staff was to verify that the provisions of Section 4.11 of the Subdivision Ordinance would be met by allowing an alternative deed for a portion of the three (3) Community Housing units.

Since the August 25 meeting the applicant has requested an additional modification; the preliminary plat was approved with four (4) units in each of the three (3) buildings on site for a total of ten units. The applicant would like to modify the third building to have two (2) units instead of four (4) (construction of the third, and final building would tentatively begin in March 2009). This change would bring the total number of units to ten (10) and would change the Community Housing requirement to two (2) units.

This modification does not violate any provision of the Subdivision Ordinance. Because the applicant is proposing to reduce the number of units rather than increasing them the administrator finds that the change is generally consistent with the approved preliminary plat and can proceed to Council for review. The Council may decide to remand the plat back to the Commission for preliminary plat review due to the change in number of total units proposed.

It is recommended that the two (2) Community Housing units be designated as follows:

- One (1) unit designated as Category 5 income deed restricted with priority given to a Hailey Police officer or Blaine County Sheriff officer.
- One (1) unit designated with an alternative deed restriction limiting buyers to individuals who work full time within Blaine County, similar to the deed drafted as part of the Old Cutters annexation agreement.

**Life/Safety Issues:**

The location of the hydrant approved on the preliminary plat interferes with vehicular circulation on the site. The applicant relocated the fire hydrant at the request of the City; however the requested relocation was within an access and parking easement. The hydrant will be relocated by the City to a location off site as determined by the Fire Chief.

**Standards of Evaluation:**

**Maximum Multi-Family Density – 1 unit per 1/10 acre.**

**SECTION 3 – PROCEDURE**

**3.3 Final Plat Approval.**

The final plat, prepared by a Professional Land Surveyor, must be submitted within one (1) calendar year from the date of approval of the preliminary plat, unless otherwise allowed for within a phasing agreement or as otherwise provided herein. Plats not submitted for final approval within one (1) year or according to the phasing agreement, shall be considered expired and preliminary plat approval shall become null and void. The Council may extend the deadline for submitting the final plat upon holding a public hearing.

The Commission's approval of the preliminary plat was on October 16, 2006.

**3.3.2 The administrator shall review the Final Plat application to ensure that the application submitted is consistent with the approved preliminary plat. The conditions imposed on the preliminary plat approval must be either completed or shown on plans or the plat prior to any public notice for final plat approval.**

The final plat is consistent with the preliminary plat approved by the Commission. Conditions of preliminary plat approval have been met or are carried over.

**SECTION 4 – DEVELOPMENT STANDARDS**

Development standards were reviewed in detail during the preliminary plat approval process. Please refer to the preliminary plat Findings of Fact and Decision. No changes have been made to the plat since preliminary plat approval.

**Condominiums shall not be subject to Section 4.10 of this Ordinance.**

**CONDOMINIUMS (Section 7 of the Subdivision Ordinance)**

**7.1 Plat Procedure. The Developer of a condominium project shall submit with the preliminary plat application as required by this Ordinance a copy of the proposed by-laws and condominium declarations of the proposed condominium development. The documents shall adequately provide for the control (including billing where applicable) and maintenance of all common utilities, common area, recreational facilities, and Green Space. The Developer may submit a final plat application following inspection and approval by the Building Inspector of the footings and setbacks of the condominium building. Prior to final plat approval, the Developer shall submit to the City a copy of the final by-laws and condominium declarations to be recorded with the County Recorder, including the instruments number(s) under which each document was recorded.**

Draft CC&R's have been submitted and address utilities and the maintenance of common areas. The City has not and will not in the future determine the enforceability or validity of the Declaration of Covenants, Conditions, and Restrictions or other private agreements.

- 7.2 Garages. All garages shall be designated on the preliminary and final plats and on all deeds as part of the particular condominium units. Detached garages may be platted on separate sub-lots, provided that the ownership of detached garages is tied to specific condominium units on the condominium plat and in any owner's documents and that the detached garage(s) may not be sold and/or owned separate from any dwelling unit(s) within the condominium project.**

Three 3-unit carports were approved in design review and are required to be completed prior to the recordation of a final plat. During the Council's review of the Community Housing Plan, the Council agreed to allow the applicant to eliminate the construction of the carports from the plans.

- 7.3 Storage/Parking Areas. Condominium projects shall provide parking spaces according to the requirements of Article IX of the Hailey Zoning Ordinance No. 532, as amended.**

Section 9.4.1 of the Zoning Ordinance requires 1.5 parking spaces per unit for multi-family projects; 15 spaces are required and 18 are proposed.

- 7.4 Construction Standards. All condominium project construction shall be in accordance with the International Building Code and International Fire Code as adopted.**

The Building Official has verified that the building meets occupancy separation requirements.

- 7.5 General Applicability. All other provisions of this Ordinance and all applicable ordinances, rules and regulations of the City and all other governmental entities having jurisdiction shall be complied with by Condominium developments.**

Upon meeting proposed conditions of approval, the proposed application does not appear to conflict with other provisions.

- 7.6 The conversion by subdivision of existing units into Condominiums shall not be subject to Section 4.10 of this Ordinance.**

As noted above, Section 4.10 is not applicable because the units are being converted into condominium units.

#### **Summary and Suggested Conditions**

The City Council shall hold a public hearing and approve, conditionally approve, or deny the final plat application. The following conditions are suggested to be placed on any approval of this application:

- a) The final plat submitted for signature shall include plat notes 1 through 4 as stated on the approved final plat.
- b) Each building shall be individually metered for water and each unit shall have a

- separate sewer service. The Homeowners Association shall be billed for the water usage.
- c) The Housing Plan shall be amended to reflect the changes agreed upon by the Council and shall be stated in an agreement signed by the City and applicant.
  - d) The renovations and landscaping described in the community housing plan shall be completed prior to the recordation of the final plat. These improvements include but are not limited to:
    - 1. New siding and paint to match the neighboring market units.
    - 2. Installing Firewall between the units to meet the Building Code.
    - 3. Interior finishes upgrades as determined by the Blaine County Housing Authority and owner.
    - 4. New landscaping as shown in attached plan LA 1.0.
    - 5. New entry on end units as shown on plan to match market units.
    - 6. New pavement as shown on plan for walkways.
    - 7. One community housing unit shall be available in each of the 2 buildings in the first phase.
  - e) Pursuant to Section 4.11.3.4 of the Subdivision Ordinance the parties shall execute an agreement incorporating the community housing plan prior to recording of the final plat. The Community Housing Plan should be reviewed and approved by the Blaine County Housing Authority.
  - f) The parties shall execute a phasing agreement to allow a final plat to be recorded for the first two buildings and to allow for a subsequent final plat for the third building. One (1) community housing unit shall be included in each of the two (2) buildings proposed for the first phase. The phasing agreement shall be executed prior to recording of the final plat for the buildings in the first phase.
  - g) An in-lieu contribution for sidewalk shall be made prior to recordation of a final plat regardless whether a phasing agreement is signed. The estimated cost of construction of concrete sidewalks and drainage improvements provided by a qualified contractor, plus associated engineering costs, shall be submitted to the City Engineer for approval.
  - h) Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 3.1 of the Subdivision Ordinance, requiring certain improvements.
  - i) All improvements and other requirements shall be completed and accepted, or surety provided pursuant to Sections 3.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.
  - j) All provisions of the Zoning Ordinance #532, including but not limited to use regulations and parking requirements shall continue to be met. Additional parking

may also be required upon subsequent change in use, in conformance with Hailey's Zoning Ordinance at the time of the new use.

- k) The final plat shall be recorded within one year of the date of final plat approval (unless otherwise provided for within a phasing agreement.) The final plat submitted for signature shall conform to the requirements found in Article 50-1301 (et. seq.) of the Idaho Code (as amended) and to the requirements set forth by Blaine County for digital plat submittals. The applicant shall provide the City with a letter-size or ledger-size photocopy of the recorded plat showing the instrument number and date of recordation.
- l) Any subdivision inspection fees due shall be paid prior to recording the final plat.

AUG 17 2008

**QUIGLEY VIEW CONDOMINIUMS  
COMMUNITY HOUSING PLAN**

**QUIGLEY VIEW CONDOMINIUMS**, by SV FLYING SQUIRREL LLC., (the "Applicant") submits this its Amended Community Housing Plan, as part of its subdivision application for Quigley View Condominiums pursuant to Section 4.11 of the Subdivision Ordinance (the "Ordinance"); at the direction of the Hailey City Council at its January 8, 2007, meeting; pursuant to the Findings of Fact, Conclusions of Law and Decision thereon and thereafter, discussions with Hailey City staff members. Preliminary Plat approval was had for this 12-unit residential condominium conversion from rental project on October 16, 2006 by short plat procedure, pursuant to Section 2.4.1 of the Ordinance, under which the Council is required to review and approve a written community housing plan pursuant to Section 4.11.3.4.

1. General Requirements. (4.11.3.1.1)

a. Requirements Calculation.

Base number of Dwelling Units is 12  
12 units x 20% = 2.4 Community Housing Units  
Round up 2.4 units to three units  
Total Number of CH units constructed is 3

b. Method. The Community Housing Units shall be constructed by the Applicant, one unit on each lot, 1, 2 & 3. All three units shall meet the income restriction requirement of Section 4.11.4.2.

c. Analysis of Standards.

Standard 4.11.4.1. All of the Community Housing Units, which exceed twenty percent (20%) of the actual number of the market rate Dwelling Units, shall be constructed on site.

Standard 4.11.4.2. The applicant offers each 955 square foot community housing unit not in accordance with this Standard and the commonly accepted BKHA limited income deed restriction, but an alternate plan. The actual sales price of the community housing units when sold by the Applicant to the initial Qualified Buyer shall be set to allow purchase by households with incomes ranging from category 4 to category 5, as defined by BKHA, and allowing purchase by households with incomes between 50% and 140% of AMI. The proposed sale price of each unit is One Hundred Ninety Eight Thousand (\$198,000) Dollars. Applicant now proposes this alternative plan, pursuant to section 4.11.5.1.2, which includes an alternate deed restriction and alternate price, due to economic viability and other practical considerations.

Applicant continues to propose that the Community Housing Units would be first made available to the Blaine County Sheriff Department employees and second to Hailey City Police Department employees and then to individuals who reside and work in Blaine County, as more fully described herein.

The three (3) Community Housing Units will be restricted to certain resident workers of Blaine County who (a) presently reside and work in Blaine County or who have employment offers pending in Blaine County, (b) do not own any other residential real property anywhere, and (c) have a personal net worth, as defined by the guidelines, of not more than two hundred percent of sales price of the Community Housing Unit which they have qualified to purchase as a resident worker. These resident workers shall be divided into (3) groups: Group 1 – individuals who are employed, or have employment offers pending with the Blaine County Sheriff's Department; Group 2 – individuals who are employed, or have employment offers pending with the City of Hailey Police Department; and Group 3 – anyone else who currently resides in Blaine County.

**Phase I. Step 1.** – Individuals who qualify as Group 1 buyers shall have two weeks from the date of issuance of occupancy permit hereon, to fill out and submit application along with a Five Hundred (\$500) Dollar fee. BKHA will verify qualification, and by lottery draw two (2) qualified, plus one (1) alternate. These individuals, in the order of their drawing shall pick the unit of their choice and within one (1) week sign a purchase and sale agreement to buy their unit. The application fee shall be applied to the earnest money due under the purchase and sale agreement. The application fee for individuals not drawn shall be refunded. The application fee shall not be refunded to those whose names are drawn but who do not sign a purchase and sale agreement, or who do not thereafter close on their selected unit.

**Step 2.** – If there are not two (2) individuals who qualify as Group 1 buyers, then the remaining units will be made available to Group 2 buyers in the same manner as described above.

**Step 3.** – If there are not two (2) individuals who qualify as Group 2 buyers, then the remaining units will be made available to Group 3 buyers in the same manner as described above.

**Phase II.** Procedure for sale of the single and final Community Housing Unit to be completed with Phase II shall repeat the selection of purchaser procedure utilized for the two units available in Phase I.

Standard 4.11.4.3. The sale of all three Community Housing Units shall be restricted to owner occupancy pursuant to the adopted guidelines of BKHA or its successor.

Standard 4.11.4.4. The three Community Housing Units shall be located one in each of the three residential buildings being converted from rental use to condominiums. The community housing units will be the same size and have the same exterior and landscaping as the market rate units. The units size, 955 square feet, exceeds BKHA category IV condominium size of 900 square feet.

Standard 4.11.4.5. The initial two (2) Community Housing Units are being completed together with the first six (6) Market Rate Units. The final Community Housing Unit will be completed together with the next final three (3) Market Rate Units, as Phase II of the project. Thus, the Community Housing Units will each be constructed and offered for sale before the issuance of the fifth certificate of occupancy for the Market Rate Units.

Standard 4.11.4.6. The deed restrictions for the Community Housing Units shall be in perpetuity.

Standard 4.11.4.7. The initial dues for the community housing units will be \$25 per month. The condominium declaration shall provide that assessments will be limited and that an amendment of the condominium declaration will require the consent of the BKHA or the City if assessments are proposed to exceed BKHA limitations.

Standard 4.11.4.8. The applicant does not propose an alternative to onsite provision of Community Housing Units as required by the Ordinance.

2. Construction of Onsite Community Housing Units. (4.11.3.1.2)
  - a. Unit descriptions. Each Community Housing Unit, like each Market Rate Unit will be 955 square feet, with two bedrooms and two bathrooms. The Community Housing Units will be located in one of the two interior unit positions, and will not be end units. See attached schematic site plan and building floor plans.
  - b. External Unit Design. The Community Housing Units and Market Rate Units will be indistinguishable from an exterior elevation perspective. The construction and landscape design materials will be identical.

- c. Schedule. Construction completion of building one, together with Community Housing Unit 1, has occurred. Construction completion of Building two, together with Community Housing Unit 2, will occur within eight (8) weeks. Construction of Building three, together with Community Housing Unit 3, will begin as Phase 2 in the Spring of 2009.
- d. Targeted Income Categories. The applicant will be targeting income categories 4 and 5 as defined by BKHA, but sale will be restricted only according the resident worker status as defined herein.
- e. Deed and CC&Rs. Draft deeds for the Community Housing Units, in accordance with BKHA guidelines, and draft Covenants, Conditions and Restrictions governing both the Market Rate and Community Housing Units will be provided upon approval of this alternative Community Housing Plan proposal.

QUIGLEY VIEW CONDOMINIUMS  
FLYING SQUIRREL, LLC

**FILE COPY**

August 8, 2008

RECEIVED

City of Hailey City Council  
C/O Ned Williamson  
City Attorney

AUG 11 2008

Via Facsimile:

Re: Alternative Community Housing Plan / Quigley View Condominiums

Dear Ned,

Please accept this letter as our request for approval of an alternative community housing plan as part of an adjustment to overall plan for the above referenced project.

Quigley View Condominiums is a conversion development from existing rental apartments to for sale units, consisting of three (3) buildings of four (4) units each. In this regard the subdivision was submitted as a short plat and received preliminary plat approval on October 16, 2006. On January 8, 2007 Hailey City Council considered a Community Housing Plan, originally proposing four (4) deed restricted units restricted for sale to law enforcement, when the ordinance formula provided for only 2.4 units. Council preliminarily approved three units, to be sold as Income Category IV between \$180,000 and \$190,000 pursuant to the recommendation of BKHA.

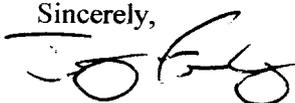
Market conditions have not improved since the date of preliminary plat approval, nor are current forecasts positive. Construction on only one of the three (3) buildings has been completed, with a second building to be completed and ready for occupancy by October of 2008. Construction on the third building will not begin until next Spring.

Given current market conditions, construction progress and legal jeopardy of Hailey's Inclusionary Housing Ordinance we are seeking amendments to the preliminary plat approval and the Community Housing Plan for this project. We are requesting phased final plat approval of for the project to allow sales to begin of the first eight units, including the two deed restricted affordable housing units. Secondly, we are requesting approval of an alternate affordable housing deed restriction, providing for resident worker, rather than standard BKHA income restriction. The proposed sale price of the units is \$198,000.

We would like an opportunity to present this request to City Council at the first possible opportunity to do so. A more formal proposed Community Housing Plan is attached hereto for the Council's consideration.

I look forward to your reply.

Sincerely,



J. Walt Femling

Encl.

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On October 16, 2006, the Hailey Planning and Zoning Commission considered the application by J. Walt and Jenny Femling for Preliminary Plat approval of [REDACTED] Condominiums (formerly known as Del Norte Apartments). The application would subdivide Lots 1, 2 and 3, Del Norte Apartments Subdivision, located east of 6th Avenue between Bullion and Croy Streets. The Commission, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact, Conclusions of Law and Decision.

### FINDINGS OF FACT

#### Notice

Notice for the public hearing was published in the Wood River Journal and mailed to property owners within 300 feet on September 27, 2006.

#### Application

J. Walt and Jenny Femling, represented by Bruce Smith of Alpine Enterprises, Inc., has submitted an application for preliminary plat approval of a 12-unit residential condominium project located at east of 6<sup>th</sup> Avenue between Bullion and Croy Streets. As the application submitted is for a condominium project, the ground under and around the units would be owned and maintained by the condominium association. The applicants have proposed to provide 4 community housing units. The applicant has submitted a concurrent Design Review application to do a "face-lift" on the entire project.

Section 2.4.1 of the Subdivision Ordinance allows for applications for platting condominium units in existing structures to be reviewed through the short plat procedure. In this procedure, the Hearing Examiner or Commission reviews the preliminary plat only. Upon approval, the applicant submits a final plat for Council approval. Because this project has a concurrent Design Review application, the Commission rather than the Hearing Examiner held the public hearing on the preliminary plat.

#### Standards

For each of the following pertinent standards of the Subdivision Ordinance (shown in bold print), the Commission makes the following Findings of Fact:

##### **Bulk requirements:**

**Maximum height in the Limited Residential District is 30 feet.**

**Height of Building is defined as: The greatest vertical distance measured from the lowest point of record grade within any portion of the building footprint to the highest point of the roof surface thereof, exclusive of cupolas, chimneys up to ten (10) feet above the highest point of the roof surface, steeples, and spires.**

Existing building height is 24 feet'; the proposed carports are 12' 3".

*The applicant is hereby advised that height of building is from record (natural) grade, not from finished grade or finished floor.*

**Required setbacks are Front: 25'; Side and Rear: 1' for every 2' of building height for all portions of the building exceeding 20' in height, however, no side or rear yard shall be less than 10'**

The residential buildings are existing with setbacks of 25' on the south side, 33' on the north side 17' on the west side and 44' on the east side; building height is 24'. The applicants are proposing to construct three 3-bay carports on the property; the carports are approximately 41' from the east property line.

The 12 unit project was constructed in the mid 1970's. It is non-conforming as it is located in the Limited Residential zoning district, which does not allow multi-family housing.

#### **SECTION 4 – DEVELOPMENT STANDARDS**

##### **4.2 Sidewalks and Curbs.**

**4.2.1 Sidewalks, as required in all public street improvements, shall be a minimum of 5 feet wide, shall be constructed of concrete installed to City standards or shall be constructed of an alternative material as approved by the Hailey Planning and Zoning Commission and/or the Hailey City Council. The Council, following a recommendation by the Planning and Zoning Commission, may waive this requirement pending a finding that the installation of sidewalks within the development will provide a substantial burden to the developer and no reasonable benefit to either the public or the occupants of the development.**

As noted above, the project was constructed in the mid 1970's. The Commission considered if and/or where sidewalks could be constructed in or adjacent to this project. They determined that sidewalks should be installed for the project or an in-lieu contribution be made. The location of sidewalks will be up to the City Engineer and Staff.

##### **4.11 Inclusionary Community Housing.**

The applicant has submitted a booklet that provides additional details and exhibits.

**4.11.4 Standards. The applicant shall have the burden of establishing that the proposed Community Housing Plan meets the following standards:**

**4.11.4.1 The number of Community Housing Units shall be constructed on-site equivalent to a minimum of twenty percent (20%) of the actual number of lots or Dwelling Units approved, unless one or more alternatives under in Section 4.11.5 of this ordinance are approved.**

The buildings are existing. The number of housing units needed to meet this requirement is 20%, or for this project 2.40 units; the applicant is proposing 4 units.

**4.11.4.2 Community Housing Units shall be provided with sales prices that will allow the purchase of Community Housing Units by households with incomes between 50% and 140% of AMI. Unless otherwise approved in a Community Housing Plan, Income Categories to be served shall accommodate the range of Income Categories 2 through 6, with the average of all units equivalent to the approximate mid-point (approximately Income Category 4). The Income Categories to be served shall be determined based in part on the availability of Community Housing Units for the various Income Categories at the time projected for occupancy. The number and type(s) of Community Housing Units shall be appropriate to the location of the development and the type and design of the development (e.g. mixed use, single family, etc.).**

The applicants state that the price of the community housing units is currently planned to be \$190,000 which is between a category 4 and category 5. According to BKHA, the square footage requirement for a category I-III condominium is 750 square feet, while the square footage requirement for a category IV condominium is 900 square feet. Each proposed unit is 855 square feet. The BKHA is willing to waive this requirement, as stated in Michael David's letter, pages 1-2. BKHA has established a formula to calculate the maximum sales price for a unit based on several considerations, such as the category, the interest rate and the projected homeowner's association dues. According to BKHA, the interest rate is 6.79% and the association dues in the Hailey area should be approximately 8-10 cents per square foot, per month. For these units, the BKHA estimate would place the association dues at \$68.40 to \$88.50 per month. The applicant has estimated association dues of \$25 per month.

Using the BKHA formula for maximum sale price, Staff has calculated the maximum sales price to be slightly under \$160,000.

The applicant is also proposing that two of the community housing units would first be made available to the Blaine County Sheriff Department employees.

**4.11.4.3 The sale of Community Housing Units shall be restricted to owner occupancy pursuant to the adopted guidelines of the Local Housing Authority, or other criteria set forth by the Council.**

The units will be governed by the Blaine Ketchum Housing Authority and the Quigley View CC&R's. The Covenants are included in the booklet and provide additional details.

**4.11.4.4 Community Housing Units on-site shall harmonize and be dispersed throughout any approved subdivision with Market Rate Units. The size of a Community Housing Unit and its bedroom sizes, exterior materials, design appearance and landscaping shall be similar to the Market Rate Units in the development. Unit size shall meet the minimum requirements of the adopted guidelines of the Local Housing Authority, except as otherwise allowed by the Council.**

The 4 units proposed to be dedicated for community housing are all contained within the northern most building rather than being dispersed throughout the subdivision as this standard requires. The proposal shows carports being constructed for the remaining 8 market units in order to increase their marketability but not for the community housing units. The BKHA has stated that they do not feel that the social benefits of integrating the community housing units are lost by grouping them together. The community housing units will be the same size and have the same exterior and landscaping as the market rate units. The Fire Chief has been asked to review the site plan it determine whether adequate access would be available in the event that another 3 unit carport could be constructed for the northern most building.

**4.11.4.5 On-site and off-site Community Housing Units shall be constructed and offered for sale before the issuance of the fifth (or multiples of five) certificate of occupancy for the Market Rate Units in the subdivision. (For example, in a project with ten Market Rate Units and two Community Housing Units, the first Community Housing Unit shall be constructed and offered for sale before the issuance of the fifth certificate of occupancy for the Market Rate Units, and the second Community Housing Unit shall be constructed and offered for sale before the issuance of the tenth certificate of occupancy for the Market Rate Units.) The developer may not post financial security in lieu of actual construction of the Community Housing Units to meet this standard.**

The community housing units will be scheduled to be renovated first and offered for occupancy as per the requirements set forth by the BKHA.

**4.11.4.6 The Deed Restriction for Community Housing Units shall be in perpetuity for individual(s) meeting criteria approved by the City of Hailey, or restricted as may be otherwise approved by the Council.**

The BKHA Covenants are described in the booklet.

**4.11.4.7 The dues or assessments that may be imposed by a homeowner's association against the Community Housing Units shall be controlled so that Community Housing Units shall remain affordable to the owner. Amendment of provisions for assessments in a subdivision's covenants, conditions and restrictions may require consent of the Local Housing Authority or City.**

The applicant is suggesting that the initial dues for the community housing units will be a maximum of \$25 per month. The condominium declaration does not provide that assessments will be limited, nor does the condominium declaration provide that an amendment of the condominium declaration will require the consent of the BKHA or the City.

**4.11.4.8 If a Community Housing Plan proposes an alternative to the provision of on-site Community Housing Units, the alternative shall comply with all applicable requirements described in Section 4.11.5.1.**

N/A

## CONDOMINIUMS (Section 7 of the Subdivision Ordinance)

- 7.1 **By-laws.** The developer of a condominium project shall submit with the preliminary plat application as required by this Ordinance a copy of the proposed by-laws and condominium declarations of the proposed condominium development. Said documents shall adequately provide for the control (including billing where applicable) and maintenance of all common utilities, common area, recreational facilities, and open space. Prior to final plat approval, the developer shall submit to the City a copy of the final by-laws and condominium declarations which shall be approved by the Council and filed with the Blaine County Recorder, including the instrument number(s) under which each document was recorded.

Draft Covenants have been submitted. The City has not and will not in the future determine the enforceability or validity of the Declaration of Covenants, Conditions, and Restrictions or other private agreements. Section 2.07 addresses party walls which is a requirement for a town home development.

- 7.2 **Garages.** All garages shall be designated on the preliminary and final plats and on all deeds as part of the particular condominium units. Detached garages may be platted on separate sub-lots, provided that the ownership of detached garages is tied to specific condominium units on the condominium plat and in any owner's documents and that the detached garage(s) may not be sold and/or owned separate from any dwelling unit(s) within the condominium project.

Three 3-unit carports are proposed.

- 7.3 **Storage/Parking Areas.** Condominium projects shall provide parking spaces according to the requirements of Article IX of the Hailey Zoning Ordinance No. 532, as amended.

Section 9.4.1 of the Zoning Ordinance requires 1.5 parking spaces for multi-family projects; 18 spaces are required and proposed.

- 7.4 **Construction Standards.** All condominium project construction shall be in accordance with the International Building Code and International Fire Code as adopted.

- 7.5 **General Applicability.** All other provisions of this Ordinance and all applicable ordinances, rules and regulations of the City and all other governmental entities having jurisdiction shall be complied with by Condominium developments.

- 7.6 The conversion by subdivision of existing units into Condominiums shall not be subject to Section 4.10 of this Ordinance.

## CONCLUSIONS OF LAW AND DECISION

Based upon the above Findings of Fact, the Commission makes the following Conclusions of Law and Decision:

1. Adequate notice, pursuant to Section 2 of the Hailey Subdivision Ordinance, was given for the public hearing.
2. Upon compliance with the conditions noted below, the application substantially meets the standards of approval set forth in the Hailey Subdivision Ordinance.
3. The application for Preliminary Plat is approved by the Hailey Planning and Zoning Commission, with the following conditions:
  - a) The final plat shall include a note stating that the subdivision is subject to the recorded CC&R's, along with the instrument numbers thereof.
  - b) Each unit shall be individually metered for water and each unit shall have a separate sewer service.
  - c) The renovations and landscaping described in the community housing plan shall be completed prior to the recordation of the final plat. These improvements include but are not limited to:
    1. New siding and paint to match the neighboring market units.
    2. Installing Firewall between the units to meet the Building Code
    3. Interior finishes upgrades as determined by BKHA and owner.
    4. New landscaping as shown in attached plan LA 1.0.
    5. New entry on end units as shown on plan to match market units.
    6. New pavement as shown on plan for walkways.
  - d) Pursuant to Section 4.11.3.4 of the Subdivision Ordinance the parties shall execute an agreement incorporating the community housing plan.
  - e) A new site plan shall be submitted prior to issuance of a Building Permit showing the location of drywells and revised snow storage.
  - f) Sidewalk shall be constructed adjacent to the project or an in-lieu contribution shall be made; the location of the sidewalk shall be determined by the City Engineer and Staff.
  - g) Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 3.1 of the Subdivision Ordinance, requiring certain improvements.
  - h) All improvements and other requirements shall be completed and accepted, or surety provided pursuant to Sections 2.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.

- i) The final plat must be submitted within one (1) calendar year from the date of approval of the preliminary plat, unless otherwise allowed for within a phasing agreement.

Signed this 6 day of Nov, 2006.



Kristin Anderson, Chair, Planning and Zoning

Attest:

  
Becky Mead, Administrative Assistant

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8<sup>th</sup> day of Nov, 2006, I served a true and correct filed copy of the within and foregoing document upon the parties named below, in the manner noted:

U.S. Mail  
 Via Facsimile  
 Hand Delivered

J. Walt and Jenny Femling  
PO Box 2273  
Hailey, ID 83333

U.S. Mail  
 Via Facsimile  
 Hand Delivered

Bruce Smith / Alpine Enterprises  
PO Box 2037  
Ketchum, ID 83340

CITY OF HAILEY

By \_\_\_\_\_  
Becky Mead, Administrative Assistant

# City of Hailey

115 MAIN STREET SOUTH  
HAILEY, IDAHO 83333  
Planning and Zoning Department

(208) 788-9815  
Fax: (208) 788-2021

**RECEIVED**

AUG 12 2008

BR

August 6, 2008

Dear Property Owner:

The applicant for the agenda item(s) listed below has given City Staff your name and address as a required part of the application. This notice is issued to solicit comment on the matter from owners of nearby property.

The public hearing will be part of the Hailey City Council meeting on Monday, August 25, 2008, at **5:30 p.m.** in the second floor meeting room within Hailey City Hall, 115 Main Street South, Hailey, Idaho and will conduct a public hearing on an application by Walt and Jenny Femling for final plat approval of Quigley View Condominiums, currently Lots 1, 2, and 3, Del Norte Apartments Subdivision (631 E Croy St). The plat would create 12 condominium units in 3 existing buildings. The parcel is within the Limited Residential (LR-1) district. The application received preliminary plat approval by the Commission on October 16, 2006.

Any and all interested persons are invited to attend said hearing or submit their comments in writing to the Hailey City Offices at 115 South Main Street, Hailey, Idaho, 83333. Verbal comments may be time limited at the meeting. Correspondence in excess of two pages must be received by the Planning Department at least 4 days before the public hearing to be entered into the record at the hearing.

For special accommodations to participate in the noticed meeting, please contact Mary Cone at 788-4221 extension 11.

*To whom it may concern!*

*We are in support of Walt & Jennie's project. It is beautiful and a wonderful addition to our neighborhood.*

*Thank you*

*Fred & Jennie Branshaw  
700 E Croy*

October 16, 2006

To: Hailey Planning and Zoning

From: Nate and Jen Galpin, Lot 3, Quigley Subdivision

To Whom It May Concern:

Sorry to submit this so late. I just found out about the P&Z meeting regarding Walt's plan to condominiumize the Del Norte Apartments next door to me yesterday.

First of all let me say that I am very enthusiastic about his plans to update and enhance the apartment complex. We feel that overall, this will be a big improvement to our neighborhood.

With this in mind, we have a couple of questions regarding our easement. In the original easement it states that Walt has use of the land for "access and parking." Right now it is being used for dumpster storage inside a permanent structure that was built on the easement. We are glad to see this removed in the site plan as I don't think the original easement granted permission for permanent structures or dumpster storage.

The second question is regarding snow storage. In the past, the easement has been used for snow storage for the Del Norte apartments, and as you can see on the proposed site plan, some of the easement is designated as snow storage. Snow storage on this property could be in question because the original easement doesn't state snow storage as a use.

The final question with regard to the easement has to do with the property taxes. Condominiumization means a change in ownership, possibly becoming many owners. I don't know how the new condominium ownership will work. I'm guessing a condominium association will take over payment of the property taxes owed to us for use of the easement, but I want to make sure this is not overlooked in subsequent plans.

Thank you in advance for your consideration,

Nate and Jen Galpin

RECEIVED

AUG 9 2008

original copy  
submitted in 2006  
not in file (B)

October 16, 2006

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RECEIVED

original copy  
submitted in 2006  
not in file (SE)

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Nate and Jen Galpin

RECEIVED

APR 17 2007  
original copy  
submitted in 2006  
not in file (SR)

**QUIGLEY VIEW CONDOMINIUMS  
COMMUNITY HOUSING PLAN AGREEMENT**

This Quigley View Condominiums Community Housing Plan Agreement (“**Agreement**”) is entered into this \_\_\_\_\_ day of September, 2008, by and between the City of Hailey (“**City**”) and SV Flying Squirrel LLC (“**Applicant**”).

**RECITALS**

**A.** The City is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to approve the subdivisions of property within its municipal boundaries pursuant to the provisions of its Subdivision Ordinance No. 821 and other relevant ordinances, and the power to contract.

**B.** The Applicant is an Idaho limited liability company, organized to do business in the State of Idaho.

**C.** Applicant owns real property, more particularly described in the plat of the Quigley View Condominium Subdivision, according to the official plat thereof, recorded as Instrument No. \_\_\_\_\_ records of the County Recorder, Blaine County, Idaho (the “**Property**”). On October 16, 2006, the City Council for the City approved the preliminary plat to subdivide the Property pursuant to the provisions of Subdivision Ordinance No. 821 into twelve (12) condominium units (the “**Subdivision**”), with four condominium units in each of the three existing buildings on the Property. The City Council approved a plan requiring one community housing unit in each of the three buildings on the Property.

**D.** Following the approval of the Subdivision, the Applicant has remodeled and substantially completed the two southern buildings located on the Property, and now wishes to submit a final plat for the condominium units for the two southern buildings located on the Property.

**E.** The Applicant desires to start completion of the third building in March, 2009, and now wishes to plat two condominium units in the third or the north building, instead of four condominium units. By reducing the number of units on the entire project, the Applicant is legally required to provide two community housing units, instead of three community housing units as required in the Decision.

**F.** The parties desire to enter into this Agreement to address the requirements of Section 4.11.3.4 of the Hailey Subdivision Ordinance for a community housing plan.

**AGREEMENT**

**NOW, THEREFORE, IN CONSIDERATION** of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ORIGINAL IN RED

**I. Community Housing Plan.** The following requirements are required components of the Community Housing Plan which the Applicant agrees to provide on the Property:

1. Section 4.11.3.1.1 General Requirements.

a. Requirements Calculation.

Base number of Dwelling Units is 10  
10 units x 20% = 2.0 Community Housing Units  
Total Number of CH units constructed is 2

b. Method. The Community Housing Units shall be constructed by the Applicant, one (1) unit in each of the two (2) buildings in the first phase. One (1) unit shall meet the income restriction requirement of Section 4.11.4.2 and one (1) unit shall meet the alternative deed restriction requirement of Section 4.11.5.1.6.

c. Analysis of Standards.

Section 4.11.4.1. All of the Community Housing Units shall be constructed on site.

Section 4.11.4.2.

1. Income Based Deed Restricted Community Housing Unit. The actual sales price of one (1) community housing unit when sold by the Applicant to the initial Qualified Buyer shall be set to allow purchase by households with incomes ranging from category 4 to category 5, as defined by BCHA, and allowing purchase by households with incomes between 50% and 140% of AMI. The sale price of the unit shall be in accordance with the BCHA housing price index for the applicable category. The Community Housing Units would be first made available to the Blaine County Sheriff Department employees and second to Hailey City Police Department employees and then to individuals who reside and work in Blaine County, as more fully described herein. Eligible buyers of the unit provided under Section 4.11.4.2 of the Ordinance shall be divided into (3) groups: Group 1 – individuals who are employed, or have employment offers pending with the Blaine County Sheriff's Department; Group 2 – individuals who are employed, or have employment offers pending with the City of Hailey Police Department; and Group 3 – anyone else who currently resides in Blaine County. To determine an eligible buyer of the income based deed restricted unit, the following steps shall be included in the approved deed restriction for such a unit:

Step 1. – Individuals who qualify as Group 1 buyers shall have two weeks from the date of issuance of occupancy permit hereon, to fill out and submit application along with a Five Hundred Dollar (\$500) fee. BCHA will verify

qualification, and by lottery draw one (1) qualified, plus one (1) alternate buyer. Within one (1) week of selection and notification, the qualified buyer shall sign a purchase and sale agreement to buy the unit. The application fee shall be applied to the earnest money due under the purchase and sale agreement. The application fee for individuals not drawn shall be refunded. The application fee shall not be refunded to those whose names are drawn but who do not sign a purchase and sale agreement, or who do not thereafter close on the selected unit.

Step 2. – If there is not one (1) individual who qualifies as a Group 1 buyer, then the unit will be made available to Group 2 buyers in the same manner as described in Step 1.

Step 3. – If there is not one (1) individual who qualifies as a Group 2 buyer, then the unit will be made available to Group 3 buyers in the same manner as described in Step 1.

2. Alternative Deed Restricted Community Housing Unit. The actual sales price of the other community housing unit when sold by the Applicant to the initial Qualified Buyer shall be set according to an alternative deed restriction agreed upon by the City. The unit will be restricted to certain resident workers of Blaine County who (a) presently reside and work in Blaine County or who have employment offers pending in Blaine County, (b) do not own any other residential real property anywhere, and (c) have a personal net worth, as defined by the guidelines, of not more than two hundred percent of sales price of the Community Housing Unit which they have qualified to purchase as a resident worker.

Section 4.11.4.3. The sale of the two (2) Community Housing Units shall be restricted to owner occupancy pursuant to the adopted guidelines of BCHA or its successor.

Section 4.11.4.4. The two (2) Community Housing Units shall be located one in each of the two residential buildings within the first phase of the Subdivision. The community housing units will be the same size and have the same exterior and landscaping as the market rate units. The units' size, 955 square feet, exceeds BCHA category 4 condominium size of 900 square feet.

Section 4.11.4.5. The two (2) Community Housing Units are being completed together with the first six (6) Market Rate Units. Thus, the Community Housing Units will each be constructed and offered for sale before the issuance of the fifth certificate of occupancy for the Market Rate Units.

Section 4.11.4.6. The deed restrictions for the Community Housing Units shall be in perpetuity.

Section 4.11.4.7. The initial dues for the community housing units will be \$25 per month. The condominium declaration shall provide that assessments will be limited and that an amendment of the condominium declaration will require the consent of the BCHA or the City if assessments are proposed to exceed BCHA limitations.

Section 4.11.4.8. The Applicant does not propose an alternative to onsite provision of Community Housing Units as required by the Ordinance.

2. Section 4.11.3.1.2 Construction of On-Site Community Housing Units.

- a. Unit descriptions. Each Community Housing Unit, like each Market Rate Unit will be 955 square feet, with two bedrooms and two bathrooms. The Community Housing Units will be located in one of the two interior unit positions, and will not be end units.
- b. External Unit Design. The Community Housing Units and Market Rate Units will be indistinguishable from an exterior elevation perspective. The construction and landscape design materials will be identical.
- c. Schedule. Construction completion of the most southern building, together with community housing unit therein, has occurred. Construction completion of the second building in phase 1, together with the community housing unit therein 2, will occur within eight (8) weeks of the date of this Agreement.
- d. Targeted Income Categories. One (1) unit will be sold at an income category of 4 or 5 as defined by BCHA. One (1) unit will be sold as an alternative deed restriction as defined herein.
- e. Deed and CC&Rs. Deeds for the Community Housing Units, in accordance with BCHA guidelines, and draft Covenants, Conditions and Restrictions governing both the Market Rate and Community Housing Units shall be approved by the City Council and recorded at the same time as the final plat for the first phase of the Subdivision. The alternative deed restriction shall be consistent with the alternative deed restriction approved by the City Council for the Old Cutters Subdivision, shall contain a flip clause and shall meet all other requirements of this Agreement.

**II. Miscellaneous Provisions.**

A. Police Powers. Except as otherwise provided, nothing contained herein is intended to limit the police powers of City. Except as provided herein, this Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulations, including, without

limitation, applicable building codes, fire codes, City's Zoning Ordinance, City's Subdivision Ordinance, and Planned Unit Development requirements for the Property.

B. Amendment. This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by both parties hereto.

C. Remedies. In the event of a breach of this Agreement, in addition to all other remedies of law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

D. Attorney's Fees. In the event either party hereto is required to retain counsel to enforce a provision of this Agreement, or to recover damages resulting from a breach hereof, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees incurred, whether or not litigation is actually instituted or concluded, on appeal, or in bankruptcy.

E. Relationship of Parties. It is understood that the contractual relationship between City and Applicant is such that neither party is the agent, partner, or joint venture of the other party.

F. Successor and Assigns; Covenant Running With the Land. This Agreement shall inure to the benefit of City and Sweetwater and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns.

G. Recordation. This Agreement shall be recorded with the Blaine County Recorder.

H. No Waiver. In the event that City or Applicant, or his successors or assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by Applicant, or his successors in interest, or City, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

I. Partial Invalidity. In the event any portion of this Agreement shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Agreement, or parts hereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part hereof.

J. Entire Agreement. This Agreement constitutes the full and complete agreement and understanding between the parties hereto. No representations or covenants made by either party shall be binding unless contained in this Agreement or subsequent written amendments hereto.

K. Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho applicable to agreements made and performed in that state.

L. Necessary Acts. Each party agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purpose of this Agreement.

M. Authority. Each of the persons executing this Agreement represents that they have lawful authority and authorization to execute this Agreement, as well as any other documents required hereunder, for and on behalf of the entity executing this Agreement.

N. Notices. Any and all notices, demands, requests, and other communications required to be given hereunder by either of the parties hereto shall be in writing and be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or when sent, two (2) days after deposit in the U.S. mail, postage prepaid, or upon the sending of a facsimile, followed by a copy sent by U.S. mail as provided herein, addressed as follows:

To City:

The City of Hailey

c/o Director, Planning Department

115 Main Street South, Suite H

Hailey, Idaho 83333

208/788-4221 (telephone)

208/788-2924 (facsimile)

To Applicant:

SV Flying Squirrel, LLC

P.O. Box 2273

Hailey, Idaho 83333

or at such other address, or facsimile number, or to such other party which any party entitled to receive notice hereunder designates to the other in writing as provided above.





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## QUIGLEY VIEW CONDOMINIUMS PHASING AGREEMENT

This Quigley View Condominiums Phasing Agreement (“**Agreement**”) is entered into this \_\_\_\_\_ day of September, 2008, by and between the City of Hailey (“**City**”) and SV Flying Squirrel LLC (“**Applicant**”).

### RECITALS

**A.** The City is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to approve the subdivisions of property within its municipal boundaries pursuant to the provisions of its Subdivision Ordinance No. 821 and other relevant ordinances, and the power to contract.

**B.** The Applicant is an Idaho limited liability company, organized to do business in the State of Idaho.

**C.** Applicant owns real property, more particularly described in the plat of the Quigley View Condominium Subdivision, according to the official plat thereof, recorded as Instrument No. \_\_\_\_\_ records of the County Recorder, Blaine County, Idaho (the “Property”). On October 16, 2006, the City approved the preliminary plat (the “Decision”) to subdivide the Property pursuant to the provisions of Subdivision Ordinance No. 821 (the “Ordinance”) into twelve (12) condominium units (the “Subdivision”), with four condominium units in each of the three existing buildings on the Property.

**D.** Following the approval of the Subdivision, the Applicant has remodeled and substantially completed the two southern buildings located on the Property, and now wishes to submit a final plat for the condominium units for the two southern buildings located on the Property. After a preliminary plat approval, Section 3.3 of the Ordinance allows two or more final plats of property described in a preliminary plat to be approved in accordance with a phasing agreement.

**E.** The Applicant desires to start completion of the third building in March, 2009, and now wishes to plat two condominium units in the third or the north building, instead of four condominium units. By reducing the number of units on the entire project, the Applicant is legally required to provide two community housing units, instead of three community housing units as required in the Decision.

**F.** The parties desire to enter into this Agreement to address the requirements of the Ordinance for the phased development of the Subdivision.

## AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Phasing.** The Applicant is allowed to submit a first phase final plat, substantially in compliance with the preliminary plat approval set forth in the Decision, so that eight (8) condominium units are platted in accordance with the final plat attached hereto as **Exhibit "A."** The second phase of the Project, as shown on the attached final plat, shall include two (2) condominium units in the north building located on the Property. Applicant shall obtain a building permit on or before April 1, 2009, and diligently construct the two (2) condominium units in the north building until completed. Upon issuance of a certificate of occupancy (including a temporary certificate of occupancy), the Applicant may record an amended final plat for the entire Property with ten (10) condominium units.

2. **General Requirements.**

A. **Police Powers.** Except as otherwise provided herein, nothing contained herein is intended to limit the police powers of City and this Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulations, including, without limitation, applicable building codes, fire codes, City's Zoning Ordinance, City's Subdivision Ordinance, and Planned Unit Development requirements for the Property.

B. **Amendment.** This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by both parties hereto.

C. **Force Majeure.** Neither party shall be responsible for any loss, damage, detention or delay caused by fire, strike, civil or military authority, governmental restrictions, moratoriums or controls, insurrection or riot, railroad, marine or air embargoes, lockout, tempest, accident, breakdown of machinery, delay in delivery of material by other parties, or any other cause which is unavoidable or beyond its reasonable control. Any time periods provided herein shall be extended for a period equal to the length of the delay, provided that performance shall, as practicable, recommence immediately upon cessation of such unavoidable event. In any event, neither party shall be responsible or liable to the other, or to any third party, for any incidental, special or consequential damages, including without limitation, lost profits arising with respect to the Property, this Agreement or the termination thereof.

D. **Remedies.** In the event of a breach of this Agreement, in addition to all other remedies of law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

E. **Attorney's Fees.** In the event either party hereto is required to retain counsel to enforce a provision of this Agreement, or to recover damages resulting from a breach hereof, the prevailing party shall be entitled to recover from the other party all reasonable

attorney's fees incurred, whether or not litigation is actually instituted or concluded, on appeal, or in bankruptcy.

F. **Relationship of Parties.** It is understood that the contractual relationship between City and Applicant is such that neither party is the agent, partner, or joint venture of the other party.

G. **Successor and Assigns; Covenant Running With the Land.** This Agreement shall inure to the benefit of City and Sweetwater and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns.

H. **Recordation.** This Agreement shall be recorded with the Blaine County Recorder.

I. **No Waiver.** In the event that City or Applicant, or his successors or assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by Applicant, or his successors in interest, or City, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

J. **Partial Invalidity.** In the event any portion of this Agreement shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Agreement, or parts hereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part hereof.

K. **Entire Agreement.** This Agreement constitutes the full and complete agreement and understanding between the parties hereto. No representations or covenants made by either party shall be binding unless contained in this Agreement or subsequent written amendments hereto.

L. **No Third Party Rights.** This Agreement shall be for the sole benefit of the Parties and/or their successors and assigns, and no covenants or agreements herein shall be for the benefit of or create any rights in favor of any third parties.

M. **Governing Law.** The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho applicable to agreements made and performed in that state.

N. **Time of Essence.** Time is of the Essence in this Agreement.

**O. Necessary Acts.** Each party agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purpose of this Agreement.

**P. Authority.** Each of the persons executing this Agreement represents that they have lawful authority and authorization to execute this Agreement, as well as any other documents required hereunder, for and on behalf of the entity executing this Agreement.

**Q. Notices.** Any and all notices, demands, requests, and other communications required to be given hereunder by either of the parties hereto shall be in writing and be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or when sent, two (2) days after deposit in the U.S. mail, postage prepaid, or upon the sending of a facsimile, followed by a copy sent by U.S. mail as provided herein, addressed as follows:

To City:

The City of Hailey  
c/o Director, Planning Department  
115 Main Street South, Suite H  
Hailey, Idaho 83333  
208/788-4221 (telephone)  
208/788-2924 (facsimile)

To Applicant:

SV Flying Squirrel, LLC  
P.O. Box 2273  
Hailey, Idaho 83333

or at such other address, or facsimile number, or to such other party which any party entitled to receive notice hereunder designates to the other in writing as provided above.

**IN WITNESS WHEREOF**, the parties, having been duly authorized, have hereunto caused this Agreement to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

CITY OF HAILEY:

Attest:

By: \_\_\_\_\_  
Richard L. Davis, Mayor

\_\_\_\_\_  
Mary Cone, City Clerk

