

AGENDA ITEM SUMMARY

DATE: 10/11/2010 DEPARTMENT: Legislative

DEPT. HEAD SIGNATURE: HD

**SUBJECT:**

Consideration of Agreement with Blaine County for Consolidated Emergency Communications Services (Dispatch Agreement) for fiscal year 2010/2011

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

A year ago Hailey entered into an agreement to pay for dispatch services on a quarterly basis. This year's proposed agreement is similar, except that the quarterly payment will be made in the first month of each quarter. Last year, due to cash flow constraints, we had structured the agreement such that no payments were made at all until well into the second quarter. Those cash flow constraints have not been identified this year.

The distribution formula, attached as Exhibit A of the agreement, is the same formula as was previously used. The data, however has been updated, so the number of units reflect current information in the county's GIS data, rather than 2-year old data. Hailey's payment is modified by the data very slightly, from \$143,249 to \$143, 688.

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Discuss agreement, move to approve, deny, or amend.

\* LAST YEAR'S DATA MATRIX

		Expenses				Expenses			Expenses			Expenses	Expenses
Salary/Overtime		\$600,465				\$277,138			\$92,379			\$230,948	\$600,465
Benefits		\$270,209				\$124,712			\$41,571			\$103,926	\$270,209
Op. Expenses		\$34,000							\$34,000				
<b>Total Expenses</b>		<b>\$904,674</b>				<b>\$401,850</b>			<b>\$167,950</b>			<b>\$334,874</b>	<b>\$904,674</b>
Jurisdiction	Addresses in Parcel Data System (by fire district*)	Hotel Units	Fire/Med. Units	Law Enf. Units	Total Units	Allocation Dispatchers 1-6	% of Total Units	Allocation of Dispatchers 7-8 w/ Op. Expenses	% of Urban Units	Allocation of Dispatchers 9-13	Total Allocation		
City of Bellevue	1008	30	1021	1022	2049	\$0	7.9%	\$13,221	4.6%	\$15,348	\$28,569		
Carey Rural F&R	681		681	0	681	\$0	2.6%	\$4,394	0	\$0	\$4,394		
City of Hailey	3250	183	3327	3374	6701	\$0	25.7%	\$43,240	29.9%	\$100,010	\$143,249		
City of Ketchum	3830	237	3930	3991	7921	\$0	30.4%	\$51,108	35.3%	\$118,208	\$169,316		
Ketchum Rural	1665	16	1672	0	1672	\$0	6.4%	\$10,787	0.0%	\$0	\$10,787		
Minidoka	19		19	0	19	\$0	0.1%	\$123	0.0%	\$0	\$123		
Smiley Creek	77		77	0	77	\$0	0.3%	\$497	0.0%	\$0	\$497		
City of Sun Valley	2565	253	2671	2737	5408	\$0	20.8%	\$34,897	24.1%	\$80,713	\$115,610		
West Magic	121		121	0	121	\$0	0.5%	\$781	0.0%	\$0	\$781		
WRFR	1380		1380	0	1380	\$0	5.3%	\$8,904	6.2%	\$20,595	\$29,499		
Blaine County	n/a		n/a	n/a	n/a	\$401,850	n/a	\$0	n/a	0	\$401,850		
<b>Total</b>	<b>14,596</b>	<b>719</b>	<b>14,898</b>	<b>11,131</b>	<b>26029</b>	<b>\$401,850</b>	<b>100.0%</b>	<b>\$167,950</b>	<b>100%</b>	<b>\$334,874</b>	<b>\$904,674</b>		

Notes: \*District Boundaries as verified by State Tax Commission Data

**FOLLOW-UP REMARKS:**

## CONSOLIDATED EMERGENCY COMMUNICATIONS SERVICES AGREEMENT

This AGREEMENT is made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between BLAINE COUNTY, 206 1<sup>st</sup> Avenue South, Suite 300, Hailey, ID 83333, (hereinafter referred to as "County") and \_\_\_\_\_ ("Customer");

WHEREAS, the County operates a consolidated emergency communications system for various fire protection and law enforcement agencies within Blaine County; and

WHEREAS, the Board of County Commissioners serves as the Governing Board as defined by Idaho Code Section 31-4802(7) for the purpose of maintaining and operating a consolidated emergency communications system; and

WHEREAS, County and Customer desire to enter into an agreement whereby the County will provide consolidated emergency communications services for Fiscal Year 2011; and

WHEREAS, the parties to this services agreement have agreed to a funding model that allocates the cost of providing these services amongst the Customers of said services for Fiscal Year 2011;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREIN CONTAINED, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Services: County agrees to provide consolidated emergency communications services to customer in the manner set forth in this Agreement. Service shall include 24 hour per day staffing by qualified communications personnel for the purpose of answering and dispatching calls requesting fire, law enforcement, and medical services, including emergency and routine radio communications with law enforcement and fire agencies, communications between members and other dispatch related resources, and support relating to the functions of Customer.
2. Personnel: Personnel providing consolidated emergency communications services shall be County employees and the County shall be responsible for the hiring, training, and supervision of said employees. The parties agree that from time to time, labor shortages may arise, in which case the County will use its best efforts to maintain the necessary staff and equipment to meet its obligations under this Agreement and endeavor to maintain at least two emergency communicators on shift at all times.

3. Hold Harmless: County and Customer hereby covenant and agree to hold and save harmless the other and all of its officers, agents, and employees from all claims whatsoever that might arise against its officers, agents, or employees in the performance of the duties to be performed by County and Customer under the terms of this Agreement.
4. Cost of Services Formula: The parties have agreed to a formula to determine Customer's payment responsibility for Fiscal Year 2011, which is attached to this agreement as Exhibit A. Nothing herein binds or entitles either party to a particular cost of services formula beyond Fiscal Year 2011.
5. Cost of Services: Pursuant to the agreed upon Cost of Services Formula, Customer agrees to pay County \$\_\_\_\_\_ for the services outlined in this Agreement for Fiscal Year 2011.
6. Method of Payment: Payment for services shall be paid to the Blaine County Clerk quarterly on the twenty-sixth day of each quarter (October 26th, January 26th, April 26th and July 26th).
7. Dispatch Advisory Councils: Upon entering into this Agreement, Customer becomes a member in both the Technical Advisory Council and the Partner Advisory Council. The Technical Advisory Council will be comprised of dispatch users who will provide input and recommendations to the County Administrator and Governing Board on technical issues relating to PSAP (9-1-1) and Dispatch services and equipment. The Partner Advisory Council will be comprised of Customer representatives who will provide input and recommendations to the County Administrator and Governing Board on funding issues relating to PSAP (9-1-1) and Dispatch services and equipment. Meetings of both Councils shall be open public meetings and minutes shall be taken and circulated to Council Members pursuant to the notice specified by this agreement.
8. Notices: Any notice may be served upon County by certified mail to the Board of County Commissioners at 206 1<sup>st</sup> Avenue South, Suite 300, Hailey, ID 83333, and any notice may be served upon Customer by certified mail to \_\_\_\_\_ at \_\_\_\_\_. Service of a notice by certified mail shall be deemed complete upon the date of the postmark by certified mail. Either party may change the address for services of notice by written notice to the other party.
9. Term: The term of this Agreement shall be for Fiscal Year 2011, which commences on October 1, 2010 and concludes on September 30, 2011. The parties may extend the term beyond September 30, 2011, by mutual written agreement.

10. Termination: Either party may terminate this agreement before the end of the term, with or without cause, by providing the other party with ninety (90) days written notice, but shall be responsible for a pro rata share of services rendered prior to termination.
11. Merger: This Agreement embodies the sole understanding of the parties. There are no other oral or written agreements outside of this Agreement. No modification, amendment or addition to this Agreement shall be effective unless agreed to by the Parties in a written instrument duly executed by Contractor and the Board.
12. Waiver: The failure of any Party to insist upon strict performance of any of the obligations contained herein shall not be deemed a waiver of any rights or remedies that said Party may have, and shall not be deemed a waiver of any subsequent breach in the performance of any of the terms and provisions contained herein by the same or any other person.
13. Third Party Beneficiary Rights: This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.
14. Construction: No presumptions shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of this Agreement.
15. Venue and Controlling Law: In the event an action is brought to enforce or interpret this Agreement, the parties submit to the exclusive jurisdiction of the courts of the State of Idaho, and agree that venue for any such action shall be in Blaine County, Idaho. The validity, performance and construction of this Agreement shall be governed by the laws of the State of Idaho.
16. Attorney Fees: In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, or to declare forfeiture or termination, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

EXECUTED and effective as of the day and year provided herein.

BLAINE COUNTY, IDAHO

\_\_\_\_\_  
By: Lawrence Schoen  
Chairman, Board of County Commissioners

Attest: \_\_\_\_\_  
Jolynn Drage, Clerk

CUSTOMER

\_\_\_\_\_  
By: Rick Davis  
Mayor, City of Hailey

Attest: \_\_\_\_\_  
Mary Cone, City Clerk

Exhibit A

Fiscal Year 2011 Dispatch Services Pricing Matrix

		Expenses					Expenses		Expenses		Expenses	Expenses
Salary/Overtime		\$600,465					\$277,138		\$92,379		\$230,948	\$600,465
Benefits		\$270,209					\$124,712		\$41,571		\$103,926	\$270,209
Op. Expenses		\$34,000							\$34,000			
Total Expenses		\$904,674					\$401,850		\$167,950		\$334,874	\$904,674
Jurisdiction	Addresses in Parcel Data System (by fire district*)	Hotel Units	Fire/Med. Units	Law Enf. Units	Total Units	Allocation Dispatchers 1-6	% of Total Units	Allocation of Dispatchers 7-8 w/ Op. Expenses	% of "Urban" Units	Allocation of Dispatchers 9-13	Total Allocation	
City of Bellevue	1011	30	1024	1031	2055	\$0	7.9%	\$13,207	4.6%	\$15,284	\$28,491	
Carey Rural F&R	620		620	0	620	\$0	2.4%	\$3,985	0	\$0	\$3,985	
City of Hailey	3281	183	3358	3405	6763	\$0	25.9%	\$43,468	29.9%	\$100,221	\$143,688	
City of Ketchum	3845	237	3945	4006	7951	\$0	30.4%	\$51,099	35.2%	\$117,816	\$168,915	
Ketchum Rural	1668	16	1675	0	1675	\$0	6.4%	\$10,763	0.0%	\$0	\$10,763	
Minidoka	12		12	0	12	\$0	0.0%	\$77	0.0%	\$0	\$77	
Smiley Creek	77		77	0	77	\$0	0.3%	\$495	0.0%	\$0	\$495	
City of Sun Valley	2621	253	2727	2793	5520	\$0	21.1%	\$35,479	24.4%	\$81,801	\$117,280	
West Magic	126		126	0	126	\$0	0.5%	\$810	0.0%	\$0	\$810	
WRFR	1333		1333	0	1333	\$0	5.1%	\$8,567	5.9%	\$19,753	\$28,320	
Blaine County	n/a		n/a	n/a	n/a	\$401,850	n/a	\$0	n/a	0	\$401,850	
Total	14,594	719	14,896	11,236	26132	\$401,850	100.0%	\$167,950	100%	\$334,874	\$904,674	

Notes:

\*District Boundaries as verified by State Tax Commission Data

**AGENDA ITEM SUMMARY**

DATE: October 7, 2010 DEPARTMENT: Planning

DEPT. HEAD SIGNATURE: 

**SUBJECT:** Village and Hailey Center – Amended Development Agreement

**AUTHORITY:**  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

The Planning and Zoning Commission approved a modification to design review on September 21, 2009, for the Village at Hailey Center. The modifications included changes to the on-site parking design to accommodate the retention of a forest service building on Lot 13 that was originally intended to be demolished and redeveloped with parking. This approval required that an amended Development Agreement be approved by City Council to accommodate the proposed modifications.

The design review modification findings of fact and the original development agreement are attached.

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:** Case # \_\_\_\_\_  
Budget Line Item # \_\_\_\_\_ YTD Line Item Balance \$ \_\_\_\_\_  
Estimated Hours Spent to Date: \_\_\_\_\_ Estimated Completion Date: \_\_\_\_\_  
Staff Contact: \_\_\_\_\_ Phone # \_\_\_\_\_  
Comments: \_\_\_\_\_

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:** (IF APPLICABLE)

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> City Administrator       | <input type="checkbox"/> Library             | <input type="checkbox"/> Safety Committee |
| <input checked="" type="checkbox"/> City Attorney | <input type="checkbox"/> Mayor               | <input type="checkbox"/> Streets          |
| <input type="checkbox"/> City Clerk               | <input type="checkbox"/> Planning            | <input type="checkbox"/> Treasurer        |
| <input type="checkbox"/> Building                 | <input type="checkbox"/> Police              | _____                                     |
| <input type="checkbox"/> Engineer                 | <input type="checkbox"/> Public Works, Parks | _____                                     |
| <input type="checkbox"/> Fire Dept.               | <input type="checkbox"/> P & Z Commission    | _____                                     |

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Motion to authorize the Mayor to sign the amended development agreement.

**ADMINISTRATIVE COMMENTS/APPROVAL:**

City Administrator \_\_\_\_\_ Dept. Head Attend Meeting (circle one) Yes No

**ACTION OF THE CITY COUNCIL:**

Date \_\_\_\_\_

City Clerk \_\_\_\_\_

**FOLLOW-UP:**

\*Ord./Res./Agmt./Order Originals: Record  
Copies (all info.): \_\_\_\_\_  
Instrument # \_\_\_\_\_

\*Additional/Exceptional Originals to: \_\_\_\_\_  
Copies (AIS only)

FILE  
RECEIVED  
OCT 05 2010  
AD NW

AMENDED DEVELOPMENT AGREEMENT

This Amended Development Agreement (the "Agreement") is entered into 2010, ~~2009~~ by and between the City of Hailey ("City") and FaPo Holdings Idaho LLC, an Idaho limited liability company ("Owner").

RECITALS

A. Owner is the owner of record of that certain real estate more particularly described as Lots 13 through 20, inclusive, Block 20, and Lots 4 through 10, inclusive, Block 20, Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder (the "Property"). Owner has applied to City to develop the Property by constructing improvements thereon in the form of a three-story mixed use building, including retail, commercial, and residential uses, to be known as the Village at Hailey Center ("Phase I").

B. The City's Planning & Zoning Commission and City Council have held public hearings and taken other action with respect to the development of the Property as required by law prior to the adoption and execution of this Agreement.

C. The City and Owner have previously entered into a Development Agreement on July 23, 2007. Among other things, the Development Agreement approved of an Area Development Plan which contemplated underground parking for three (3) buildings to be constructed. The Development Agreement also provided that if parking on Lots 14, 15 and 16 was to remain beyond two (2) years additional landscaping was to be provided and the Area Development Plan was to be amended.

D. Following the execution of the Development Agreement, the Owner has acquired additional adjacent lots, Lots 9 and 10, Block 20. In addition, the Owner now wishes to maintain a building on the parking lot contemplated in the Development Agreement. The Owner now wishes to relocate some of the parking required for Phase I and the remainder of the uses on the Property as depicted on attached **Exhibit "A."**

E. With the execution of this Amended Development Agreement, the applicable covenants of the Development Agreement are incorporated into this Agreement. It is the intent and desire of the parties hereto that development of the Property proceed as provided herein, subject to the terms and conditions of this Agreement.

AGREEMENT

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

1. Development. The Property shall be developed as required and approved by the Hailey Planning and Zoning Commission under the City's Comprehensive Plan, Subdivision Ordinance and Zoning Ordinance in effect at the time of any application.

2. Conditions. Owner and City are mutually bound by, and shall comply with all of the conditions contained in the final decision and findings of fact of the City and this Agreement.

3. Area Development Plan. As set forth in its *Findings of Fact, Conclusions of Law and Decision* dated Sept. 21, 2009 ("Findings") and incorporated by reference herein, the Hailey Planning and Zoning Commission has evaluated and reviewed the criteria in Section 6A.8 (*Area Development Plan*) of the Hailey Zoning Ordinance, and as set forth in its *Findings*, found that the basic site criteria enumerated in Section 6A.8 are satisfied. Contingent upon suitable market, financial, and development considerations and the potential addition to or sale of contiguous parcels, the Owner envisions the potential development of up to and including three (3) more buildings, for a total of four buildings: two fronting River Street and two fronting Main Street with a central landscaped plaza/pedestrian area extending from Main Street to River Street between the four proposed buildings (the "Area Development Plan"). See "**Exhibit B.**" On-site parking requirements for all existing buildings located on the Property are described in **Exhibit "A."**) Subject to the foregoing, the Area Development Plan shall bind the Owner and Owner's successors and assigns.

4. Sidewalks. The Property owner(s), unit owners, and/or the Owners' Association shall maintain the sidewalks and landscaping within the adjacent public right-of-way in a safe and attractive manner, and shall be responsible for the timely snow removal from the sidewalks within the adjacent right-of-way.

5. Surface Parking Lot. All approved on-site parking on the Property shown on Exhibit "A" may be comprised of a gravel (or similar) surface for a period not to exceed five (5) years from the date of issuance of the certificate of occupancy for the existing buildings within the Property, with the exception of the asphalt paved handicap stall. In addition, the curb-cut area into the parking area from River Street shall be paved. On or before the expiration of the five (5) year period, the Owner shall appear before the Hailey Planning and Zoning Commission with a plan for additional development of the site and adjacent areas, or additional landscaping or other screening of the parking lot from River Street and/or other areas on the site, and plans for paving the approved on-site parking on the Property shown on Exhibit "A" to City standards.

6. Remedies. In the event either party, including heirs, successors and assigns of Owner's interest in the Party, or subsequent owners of the Property, fail to faithfully comply with all of the terms and conditions included in this Agreement in connection with the Property, this Agreement may be enforced in any court of competent jurisdiction by either City or Owner, or by any successor or successors in title or interest or by the assigns of the parties hereto. Enforcement may be sought by an appropriate action at law or in equity to secure the performance of the covenants, agreements, conditions and

obligation contained herein, and may include an action for specific performance, breach of contract, reformation and/or rescission.

7. Right to Cure. In the event of a material breach of this Agreement, the parties agree that City and Owner, shall have thirty (30) days after delivery of notice of said breach to correct the same prior to the non-breaching party seeking any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (30) day period, if the defaulting party shall commence to cure the same within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, then the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity.

8. Force Majeure. In the event the performance of any covenant to be performed hereunder by either Owner or City is delayed for causes which are beyond the reasonable control of the party responsible for such performance, which shall include, without limitation, acts of civil disobedience, strikes, war or similar causes, the time for such performance shall be extended by the amount of time of such delay.

9. Miscellaneous.

- (a) Waiver. A waiver by either party of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of City or Owner as applied to any subsequent breach of any such or other covenants and conditions.
- (b) 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:  
City of Hailey  
c/o Administrator, Planning & Zoning Department  
115 S. Main St, Ste. H  
Halley, Idaho 83333  
(208) 788-9815

To Owner:  
Jon C. McGowan  
FaPo Holdings Idaho LLC  
PO Box 6  
Sun Valley, ID 83353

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.

- (c) **Attorney Fees.** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's fees as determined by a Court of competent jurisdiction.
- (d) **Time is of the Essence.** The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the party so failing to perform.
- (e) **Binding upon Successors.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including City's corporate authorities and their successors in office. This Agreement shall be binding on the owner of the Property, each subsequent owner and each other person acquiring an interest in the Property. Nothing herein shall in any way prevent sale or alienation of the property, or portions thereof; except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed.
- (f) **Recordation & Effective Date of Agreement.** Upon finalization the City shall record this Agreement with the Blaine County Recorder. This Agreement shall be effective on the date of its recording with the Blaine County Recorder
- (g) **Final Agreement.** This Agreement sets forth all promises, inducements, agreements, conditions and understandings between Owner and City relative to the subject matter hereof and there are no promises, agreements, conditions or understanding, oral or written, express or implied, between Owner and City, other than as stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assign, and pursuant, with respect to City, to a duly adopted ordinance or resolution of the City.
- (h) **Invalid Provisions.** If any provision of this Agreement is held not valid, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained herein.
- (i) **No Presumptions.** There shall be no presumptions for or against either party hereto as a result of the preparation of this Agreement.

- (j) Police Powers. Except as otherwise expressly provided herein, nothing contained herein is intended to limit the police powers of the City or its discretion in review of subsequent applications regarding development of the Property. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation not expressly provided for herein, including, without limitation, applicable building codes, fire codes, Hailey's Zoning Ordinance and Hailey's Subdivision Ordinance.
- (k) Relationship of Parties. It is understood that the contractual relationship between the City and Owner is such that neither party is the agent, partner, or joint venturer of the other party.
- (l) No Waiver. In the event that the City or Owner, or its successors and 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 Owner, the City, or their successors and assigns, 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.
- (m) Partial Invalidity. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law, or by reason of the interpretation placed thereon by any court or other governmental body, this Agreement shall be construed as not containing such provision and the invalidity of such provision shall not affect the validity of any other provision hereof, and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.
- (n) Authority. Each of the persons executing this Agreement represents and warrants that he has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.
- (o) 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.
- (p) 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.
- (q) 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.

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.

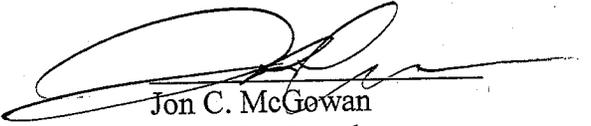
CITY OF HAILEY, an Idaho municipal corporation

\_\_\_\_\_  
Richard L. Davis  
Mayor

ATTEST:

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

FaPo Holdings Idaho LLC, an Idaho limited liability company

  
\_\_\_\_\_  
Jon C. McGowan  
Managing Member

STATE OF IDAHO)

) ss

County of Blaine )

On this        day of       , <sup>2010</sup>~~2009~~, before me, a notary public in and for said state, personally appeared Richard L. Davis, known or identified to me to be the authorized agent of the City of Hailey, and acknowledged to me that he executed the same in said name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

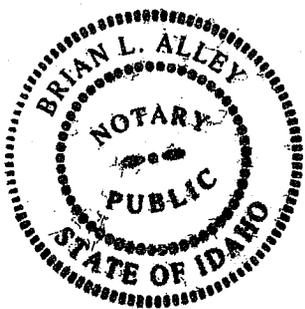
STATE OF IDAHO)

) ss

County of Blaine )

On this 29<sup>th</sup> day of September, <sup>2010</sup>~~2009~~, before me, a notary public in and for said state, personally appeared Jon C. McGowan, known or identified to me to be the authorized agent of FaPo Holdings Idaho LLC, and acknowledged to me that he executed the same in said name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Brian L. Alley

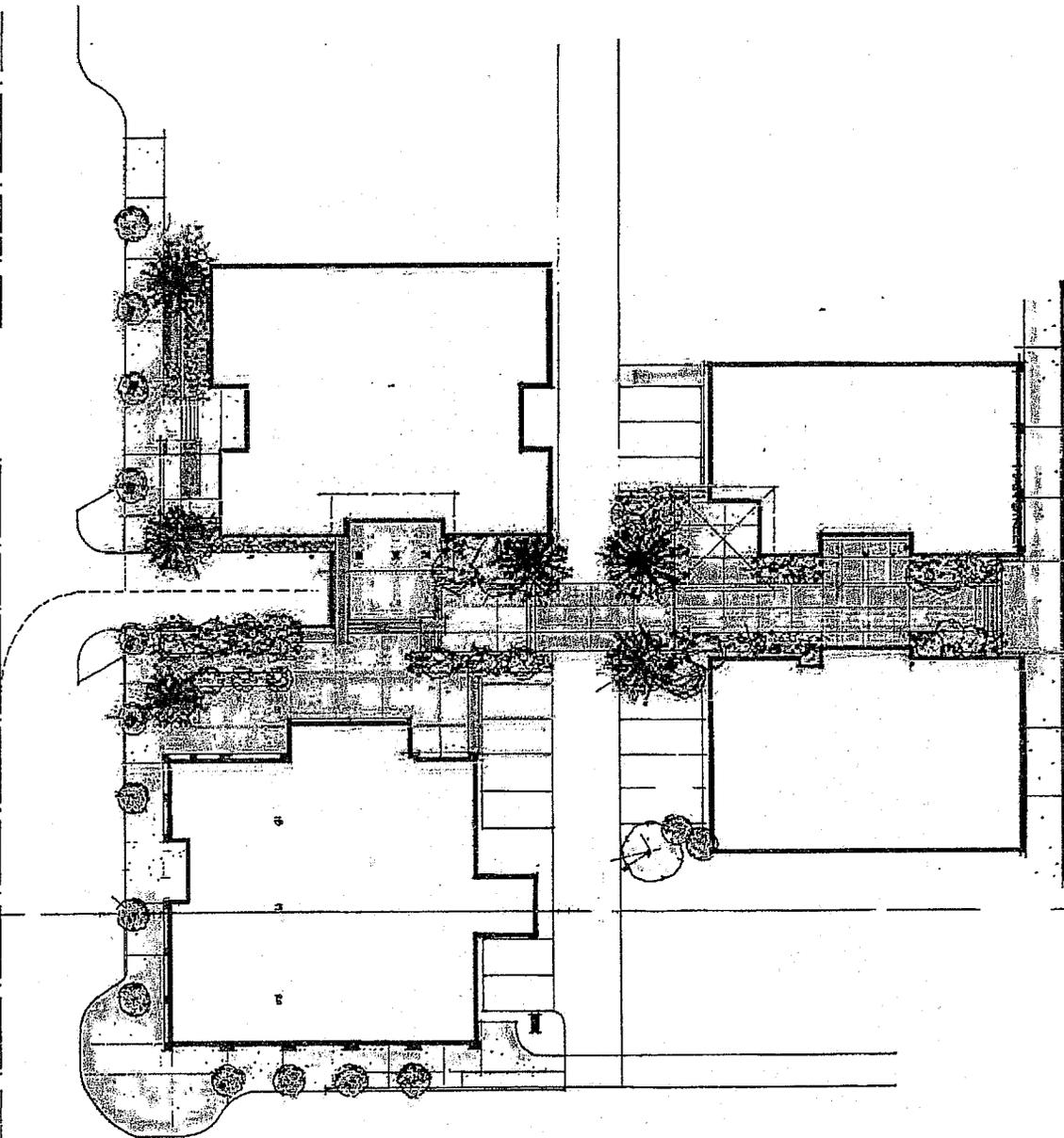
\_\_\_\_\_  
Notary Public for Idaho

Residing at Hailey

My commission expires March 30, 2013



WALNUT STREET



PLANNING UNIT  
RIVER STREET

PINE STREET

**AREA DEVELOPMENT PLAN**  
**The Village at Hailey Center**

**EXHIBIT**  
**B**

**TORIN**  
 ARCHITECTS/PA  
 OFFICE OF ARCHITECTURE  
 AND DESIGN  
 ARCHITECTS  
 300 W. WALNUT STREET  
 SUITE 100  
 DENVER, CO 80202  
 TEL: 303.733.1111  
 FAX: 303.733.1112  
 WWW.TORINARCHITECTS.COM  
 P.O. BOX 1000  
 DENVER, CO 80202

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On September 21, 2009 the Hailey Planning and Zoning Commission considered a recommendation by the Administrator to approve a request submitted by FAPO Holdings Idaho, LLC for a Design Review Modification, changing the previously approved parking plan for the Village at Hailey Center, located on Lots 13-16, Block 20, Hailey Townsite (314 River St. So.) within the Business (B) and Townsite Overlay (TO) districts. This modification also amends the applicant's Development Agreement with the City. Modifications to Design Review approval determined by the Administrator not to be minor may be placed on the consent agenda for approval or denial by the Commission based on the Administrator's recommendations. The Administrator recommends approval of the modification. The Commission, having been presented with all information regarding the proposal, hereby makes the following Findings of Fact, Conclusions of Law and Decision.

### FINDINGS OF FACT

#### Standards of Evaluation

Articles IV and VIA of the Hailey Zoning Ordinance establish the criteria for applications for Zoning and Design Review. For each applicable standard (in bold print), the Commission makes the following Findings of Fact:

**6A.3.g. the Administrator has the authority to approve minor modifications to projects that have received design review approval by the Commission prior to, and for the duration of a valid Building Permit. The Administrator shall make the determination as to what constitutes minor modifications and may include, but are not limited to changes to approved colors and/or siding materials, changes to site plans that do not increase building footprints or significantly change driveway or road alignment, changes to landscape plans that do not decrease the amount of landscaping, changes to dumpster enclosures, changes to exterior lighting fixtures and location, or changes to windows that do not significantly affect project design, appearance or function. All approved modifications must be documented in a memo to the project file and on the approved set of plans on file with the city.**

**For modifications to design review approval that are determined by the Administrator not to be minor, the Administrator has the authority to recommend approval or denial of such modifications, subject to final decision by the Commission on its consent agenda. Such recommendation for approval or denial shall be drafted in the form of Findings of Fact and Conclusions of Law.**

The proposed modification consists of reconfiguring the on-site parking spaces. This modification was determined by the Administrator not to be minor. Notice is not required for modifications to design review however, notice was given to property owners within 300 feet of the subject property.

The original parking configuration, approved April 16, 2007, anticipated the existing Forest Service building would be removed from Townsite Lot 14. A gravel parking lot was planned to be located on Townsite Lots 14, 15 and 16. The applicant has since rented the building located on Lot 14 to a new business; this precipitated the need to amend the previously approved parking plan.

The amended parking plan includes locating the 46 on-site parking required for the newly constructed building (located on Lots 17 – 20) on portions of Lots 9 and 10. This is acceptable given the applicant owns Lots 4 – 10 located east of the alley within Block 20 and Lots 13 – 20 located west of the alley and an area development plan for the entirety of property owned within Block 20 is included as part of the

City's development agreement with the applicant. The amended parking plan provides a total of 49 spaces. The amended parking plan results in an amended area development plan which results in an amended development agreement. The amended development agreement includes an explanation of how the on-site parking requirements for all of the seven (7) buildings located on the applicant's property within Block 20 are met.

Lot	Building Square Footage	Number of On-Site Parking Space Required*	Location of Required Spaces	Applicable Zoning Code Section
4	1,000 (vacant)	2	Main Street ROW	9.2.3.c. - Main Street Improvement LID; parking credit carries with the property
4-6	1,208 (office)	3		
6-8	1,500 (office)	3		
9-10	1,000 (vacant)	2		
10	Residential use	2	Pine Street ROW	9.4.1.a.
14	2,600 (retail)	3	River Street ROW Pine Street ROW Lots 9, 10, 13 -18, and 20	9.2.3.g and development agreement
17-20	6,842 (retail)	7		
	1,987 (restaurant)	4		
	10,333 (office)	21		
	1,162 (residence)	1		
	6,270 (office)	13		

\* parking requirement for vacant buildings was calculated at 1/500 sq ft; the most restrictive requirement

**6A.8 Area Development Plan.** When the owner of Contiguous Parcels is required to obtain Design Review approval for any portion of the Contiguous Parcels, an Area Development Plan shall be submitted and approved. The Commission shall evaluate the following basic site criteria and make appropriate findings of fact:

- a. Streets, whether public or private, provide an interconnected system and shall be adequate to accommodate anticipated vehicular and pedestrian traffic.
- a. Non-vehicular circulation routes provide safe pedestrian and bicycle ways and provide an interconnected system to streets, parks and green space, public lands, or other destinations.
- b. Water main lines and sewer main lines are designed in the most effective layout feasible.
- c. Other utilities including power, telephone, cable, and gas are designed in the most effective layout feasible.
- d. Park land is most appropriately located on the Contiguous Parcels.
- e. Grading and drainage are appropriate to the Contiguous Parcels.
- f. Development avoids easements and hazardous or sensitive natural resource areas.

Upon any approval of the Design Review application, the Owner shall be required as a condition of approval to record the Area Development Plan or a development agreement depicting and/or detailing the approved Area Development Plan with a statement that the Area Development Plan shall bind the Owner and Owner's successors.

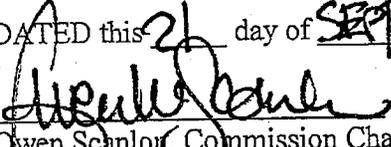
The change to the on-site parking configuration does not effect the basic site criteria considered in an Area Development Plan. However, the change to the on-site parking configuration shall be included as an amendment to the recorded Development Agreement for the Village at Hailey Town Center project.

## CONCLUSIONS OF LAW AND DECISION

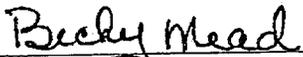
Based upon the above Findings of Fact, the Commission makes the following Conclusions of Law and Decision:

1. The proposed modifications are consistent with the Findings of Fact, Conclusions of Law and Decision adopted by the Commission for the aforementioned project on the 20th day of October, 2008.
2. The modification is approved subject to the following conditions:
  - a. A forty-ninth space shall be provided on Lot 13 parallel to the alley.
  - b. No portion of the required dimensions of an on-site parking space shall extend into the alley or street right-of-way.
  - c. Signage identifying parking on Lots 9 and 10 as parking for the new building on Lots 17-20.
  - d. An amendment to the Development Agreement to amend the Area Development Plan to include the changes to the on-site parking configuration is approved by the City Council.
3. Approval of the Design Review modification does not in any way waive any Design Review requirements approved by the Commission. All Design Review elements must be installed, or security provided, prior to issuance of a Certificate of Occupancy.

DATED this 21 day of SEPTEMBER 2009.

  
Owen Scanlon, Commission Chair  
Hailey Planning & Zoning Commission

Attest:

  
Becky Mead, Deputy Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22nd day of Sept., 2009, 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 Electronic Mail
- Via Facsimile
- Hand Delivered

- U.S. Mail
- Via Electronic Mail
- Via Facsimile
- Hand Delivered

Applicant:

FaPo Holdings of Idaho, LLC  
jcmrexford@aol.com

Applicant's Representative:

Michael Pogue  
mdp@lawsonlaski.com

CITY OF HAILEY

By Becky Mead  
Becky Mead, Deputy Clerk

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

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### FINDINGS OF FACT

#### Standards of Evaluation

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## DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is entered into 8th  
November, 2007 by and between the City of Hailey ("City") and FaPo Holdings  
Idaho LLC, an Idaho limited liability company ("Owner").

### RECITALS

Owner is the owner of record of that certain real estate more particularly described as Lots 13-20, and Lots 4-8, inclusive, Block 20, City of Hailey, Blaine County, State of Idaho (the "Property"). Owner has applied to City to initially develop the Property by constructing improvements thereon in the form of a three-story mixed use building on Lots 17-20, Block 20, including retail, commercial, and residential uses and a parking area on Lots 14-16, Block 20, to be known as the Village at Hailey Center ("Phase 1").

Upon development of future phases of the Property, the Owner intends to replace the parking area with underground parking, under certain of the remaining three buildings as depicted on the Area Development Plan, attached hereto as Exhibit "A."

The City has evaluated and reviewed the criteria under Section 6A.8 (Area Development Plan) of the Hailey Zoning Ordinance, and found the criteria in Section 6A.8 are satisfied.

The City's Planning & Zoning Commission and City Council have held public hearings and taken other action with respect to the development of the Property as required by law prior to the adoption and execution of this Agreement.

It is the intent and desire of the parties hereto that development of the Property proceed as provided herein, subject to the terms and conditions of this Agreement.

### AGREEMENT

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

1. Development. The Property shall be developed as required and approved by the Hailey Planning and Zoning Commission under the City's Comprehensive Plan and Zoning Ordinance in effect at the time of the filing of the application. In addition, if the Project is converted to condominiums, the Project shall be subject to any applicable provisions of the Hailey Subdivision Ordinance (including Section 4.10, Parks, and Section 4.11, Community Housing).

Development Agreement - 1

**Instrument # 558094**  
HAILEY, BLAINE, IDAHO  
5-12-2008 02:51:53 No. of Pages: 8  
Recorded for : CITY OF HAILEY  
JOLYNN DRAGE Fee: 0.00  
Ex-Officio Recorder Deputy  
Index to: AGREEMENT/CORRECTION

2. Conditions. Owner and City are mutually bound by, and shall comply with all of the conditions contained in the final decision and findings of fact of the City and this Agreement.

3. Area Development Plan. Contingent upon suitable market, financial, and development considerations and the potential addition to or sale of contiguous parcels, the Owner envisions the potential development of up to and including a total of four buildings: two fronting River Street and two fronting Main Street with a central landscaped plaza/pedestrian area extending from Main Street to River Street between the four proposed buildings as depicted on the "Area Development Plan," attached hereto as Exhibit "A." Subject to the foregoing the Area Development Plan shall bind the Owner and Owner's Successors.

4. Sidewalks. The Property owner(s), unit owners, and/or the Owners' Association shall be responsible for the maintenance of the sidewalks and landscaping within the adjacent public right-of-ways, and shall be responsible for the snow removal from the sidewalks within the adjacent right-of-ways.

5. Surface Parking Lot. The parking area on Lots 14-16 may be comprised of a gravel (or similar) surface for a period not to exceed two years from the date of issuance of the Certificate of Occupancy for the Phase 1 building. However, the approach area shall be paved from River Street to the first parking stall. On or before the expiration of the two-year period, the Owner shall submit a landscaping plan before the Hailey Planning & Zoning Commission with a plan for additional landscaping or other screening of the parking lot from River Street and/or other areas on the site, and plans for paving the parking lot to City standards. In the event the parking area on Lots 14-16 remains after two (2) years from the issuance of a certificate of occupancy for the Phase 1 building, this Development Agreement shall be amended before any future phased development is permitted on the Property to determine whether there will be compliance with Section 6A.8 of the Hailey Zoning Ordinance, as amended.

6. Remedies. In the event either party, including heirs, successors and assigns of Owner's interest in the Party, or subsequent owners of the Property, fail to faithfully comply with all of the terms and conditions included in this Agreement in connection with the Property, this Agreement may be enforced in any court of competent jurisdiction by either City or Owner, or by any successor or successors in title or interest or by the assigns of the parties hereto. Enforcement may be sought by an appropriate action at law or in equity to secure the performance of the covenants, agreements, conditions and obligation contained herein, and may include an action for specific performance, breach of contract, reformation and/or rescission.

7. Right to Cure. In the event of a material breach of this Agreement, the parties agree that City and Owner, shall have thirty (30) days after delivery of notice of said breach to correct the same prior to the non-breaching party seeking any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (30) day period, if the defaulting party shall commence to cure the same within such thirty (30) day period and thereafter shall

prosecute the curing of same with diligence and continuity, then the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity.

8. Force Majeure. In the event the performance of any covenant to be performed hereunder by either Owner or City is delayed for causes which are beyond the reasonable control of the party responsible for such performance, which shall include, without limitation, acts of civil disobedience, strikes, war or similar causes, the time for such performance shall be extended by the amount of time of such delay.

9. Miscellaneous.

- (a) Waiver. A waiver by either party of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of City or Owner as applied to any subsequent breach of any such or other covenants and conditions.
- (b) 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:  
City of Hailey  
c/o Administrator, Planning & Zoning Department  
115 S. Main St, Ste. H  
Halley, Idaho 83333  
(208) 788-9815

To Owner:  
Jon C. McGowan  
FaPo Holdings Idaho LLC  
PO Box 6  
Sun Valley, ID 83353

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.

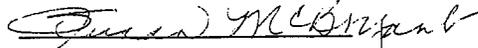
- (c) Attorney Fees. Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's fees as determined by a Court of competent jurisdiction.

- (d) Time is of the Essence. The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the party so failing to perform.
- (e) Binding upon Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including City's corporate authorities and their successors in office. This Agreement shall be binding on the owner of the Property, each subsequent owner and each other person acquiring an interest in the Property. Nothing herein shall in any way prevent sale or alienation of the property, or portions thereof; except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed.
- (f) Recordation & Effective Date of Agreement. Upon finalization the City shall record this Agreement with the Blaine County Recorder. This Agreement shall be effective on the date of its recording with the Blaine County Recorder
- (g) Final Agreement. This Agreement sets forth all promises, inducements, agreements, conditions and understandings between Owner and City relative to the subject matter hereof and there are no promises, agreements, conditions or understanding, oral or written, express or implied, between Owner and City, other than as stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assign, and pursuant, with respect to City, to a duly adopted ordinance or resolution of the City.
- (h) Invalid Provisions. If any provision of this Agreement is held not valid, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained herein.
- (i) No Presumptions. There shall be no presumptions for or against either party hereto as a result of the preparation of this Agreement.
- (j) Police Powers. Except as otherwise expressly provided herein, nothing contained herein is intended to limit the police powers of the City or its discretion in review of subsequent applications regarding development of the Property. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation not expressly provided for herein, including, without limitation, applicable building codes, fire codes, Hailey's Zoning Ordinance and Hailey's Subdivision Ordinance.

- (k) Relationship of Parties. It is understood that the contractual relationship between the City and Owner is such that neither party is the agent, partner, or joint venturer of the other party.
- (l) No Waiver. In the event that the City or Owner, or its successors and 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 Owner, the City, or their successors and assigns, 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.
- (m) Partial Invalidity. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law, or by reason of the interpretation placed thereon by any court or other governmental body, this Agreement shall be construed as not containing such provision and the invalidity of such provision shall not affect the validity of any other provision hereof, and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.
- (n) Authority. Each of the persons executing this Agreement represents and warrants that he has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.
- (o) 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.
- (p) 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.
- (q) 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.

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, an Idaho municipal corporation

  
Susan McBryant  
Mayor

ATTEST

  
Heather Dawson, Clerk



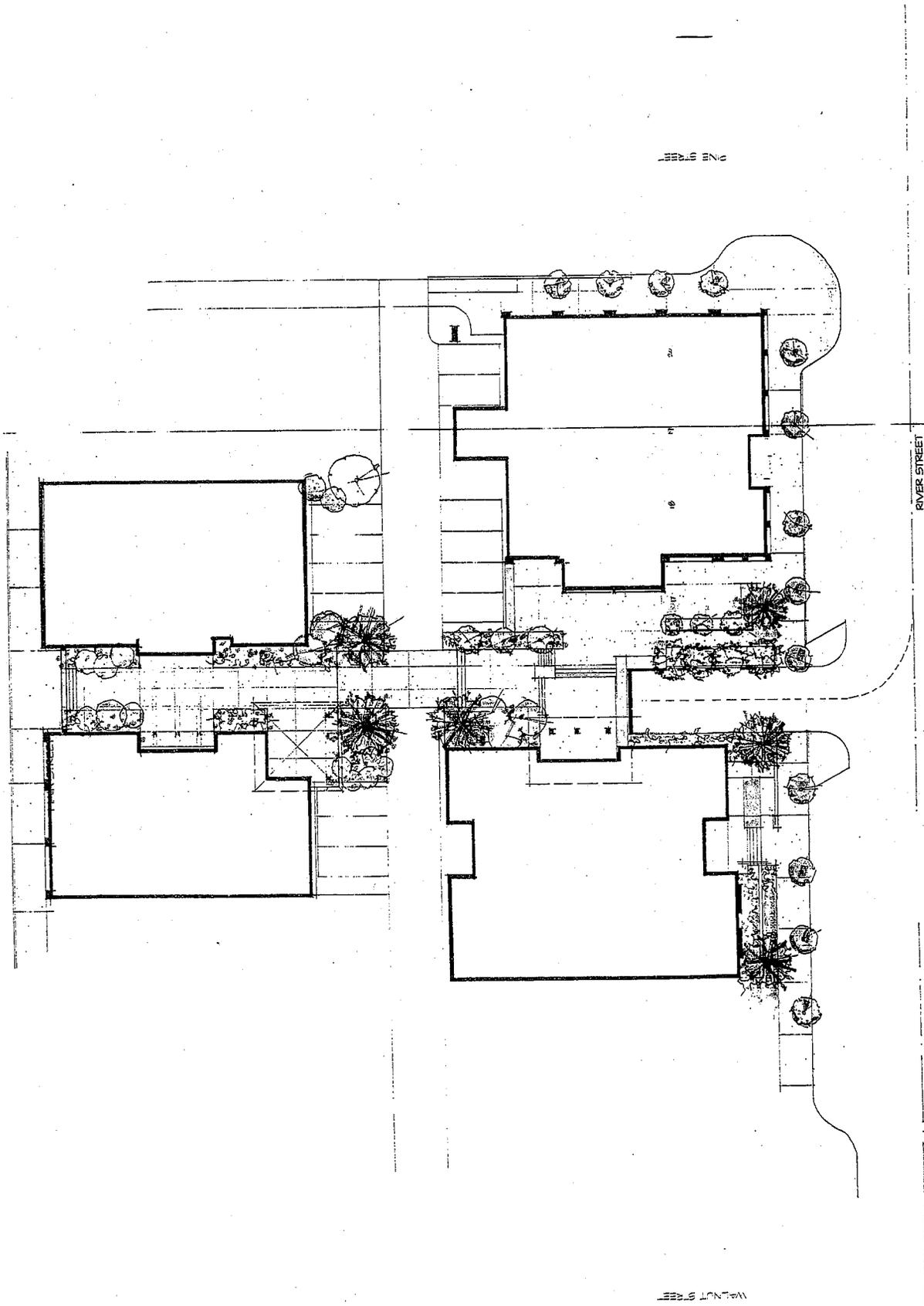
FaPo Holdings Idaho LLC

  
Jon C. McGowan  
Managing Member



**T** **O** **B** **I** **N**  
**ARCHITECTS PA**  
**OFFICE OF ARCHITECTURE**  
**PLANNING**  
**AND DESIGN**

PROFESSIONAL  
 ASSOCIATION  
 301 W. MARKET ST. 10TH  
 FLOOR  
 WILMINGTON, DE 19801-3003  
 TEL: 302.739.7100  
 FAX: 302.739.7103  
 P.O. BOX 303180  
 WILMINGTON, DE 19803-0180



**AREA DEVELOPMENT PLAN**  
 The Village at Hailey Center

PLAN SCALE 1/8" = 1'-0"

WALNUT STREET

PLANT STREET

**EXHIBIT** **A**

