

STAFF REPORT

TO: Hailey City Council
FROM: Mariel Platt, Planner 
RE: Planned Unit Development – River Street Senior Housing
HEARING: October 11, 2010

Applicant: ARCH Community Housing Trust
Location: Lot 2A, Block 1, Sutton Subdivision (731 River Street North)
Zoning: Business (B)

Note: Staff analysis is in lighter type

Notice

Notice for the September 13, 2010 public hearing was published in the Idaho Mountain Express and mailed to property owners within 300 feet on August 25, 2010; and notice was posted on the property on September 3, 2010. The application was continued to October 11, 2010 at the September 13, 2010 meeting.

Application

ARCH Community Housing Trust has submitted an application for a Planned Unit Development (PUD) of 24 new residential units, located on Lot 2A, Block 1, Sutton Subdivision (731 River St. N.) within the Business (B) zoning district. An application for Design Review was concurrently submitted and approved with conditions by the Planning and Zoning Commission on July 19, 2010.

The PUD is requested for waivers to:

1. Increase allowed density and
2. Decrease the number of required parking spaces.

The applicant has provided a waiver analysis (see attached analysis). Staff analysis is included in the Standards of Evaluation.

Procedural History

On July 19, 2010, the Commission recommended approval of the PUD application with the following conditions:

- a) All Fire Department and Building Department requirements shall be met.
- b) All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required.
- c) A PUD agreement shall be drafted by the applicant and submitted prior to

review of the PUD by the Council. The PUD agreement between the City and ARCH Community Housing Trust shall be executed prior to final PUD application approval by the Council.

A draft PUD agreement has been submitted to the City for review.

d) A lease agreement between the City and ARCH Community Housing Trust shall be executed prior to the issuance of a building permit. The building permit plans may be submitted for review, prior to the execution of said lease.

e) Approval is contingent on the approval of the concurrently submitted Design Review application.

The Design Review application was approved by the Commission on July 19, 2010 and the findings were signed on August 3, 2010.

Department Comments:

Life/safety issues: No issues.

Water and Sewer issues: No issues.

Engineering issues: No issues.

Standards of Evaluation:

Section 10.3 sets forth General Requirements.

10.3.1 The minimum gross size for properties that may be developed as a PUD is one (1) acre, except in the Business and Limited Business zoning districts within the Central Business District, the minimum gross size shall be 18,000 square feet. All land within the development shall be contiguous except for intervening streets and waterways.

The lot size is 26,615 square feet or 0.587 acres. The property is zoned Business. All land proposed for development is contiguous.

10.3.2 A tract or parcel of land proposed for PUD development must be in one (1) ownership or the subject of an application filed jointly by the owners of all property included.

ARCH Community Housing Trust intends on having a real property interest in the property by signing a 99 year lease with the property owner – the City of Hailey. On February 8, 2010, ARCH and the City entered into a memorandum of understanding, which established some of the lease and development terms of 731 River Street North, thereby providing consent for ARCH to file an application for a Planned Unit Development.

10.3.2.1 When the owner of Contiguous Parcels is required to obtain PUD approval for any portion of the Contiguous Parcels; an Area Development Plan shall be submitted and approved. The Commission and Council shall evaluate the following basic site criteria and make appropriate findings of fact:

a) Streets, whether public or private, shall provide an interconnected system and be adequate to accommodate anticipated vehicular and pedestrian traffic.

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

Upon any approval of the PUD application, the Owner shall be required as a condition of approval to record the Area Development Plan or a PUD agreement depicting and/or detailing the approved Area Development Plan. The Area Development Plan shall bind the Owner and Owner's successors.

This standard is not applicable. The owner does not have a real interest in property contiguous to Lot 2A.

10.3.3 Street and lot orientation, landscaping, and placement of structures shall provide for solar access to all south roofs and walls to the maximum extent feasible in order to promote energy efficiency.

The existing street and lot configuration are not conducive to maximizing solar access on the south side of the building. The south elevation of the building is a shorter elevation compared to the east and west elevations. This building configuration conforms to the orientation of the lot. All trees proposed adjacent to the south elevation are deciduous and will therefore maximize solar access during the winter months. The proposed roof design is a flat roof.

10.3.4 Access shall be provided in accordance with standards set forth in Section 4, Development Standards, of the Subdivision Ordinance. Buildings may not be so arranged that any structure is inaccessible to emergency vehicles.

Access exists and is provided in accordance with Section 4, Development Standards, of the Subdivision Ordinance. The building and 22 foot wide asphalt driveway, which leads to the underground parking area, is accessed off of River Street.

10.3.5 Underground utilities, including telephone and electrical systems, shall be required within the limits of all PUDs.

It is a recommended condition of approval that all utility lines from the property line to the building be installed underground.

10.3.6 In each case where a PUD project is located adjacent to public lands, a public easement to those lands shall be provided. All existing public accesses to public lands must be preserved.

The subject property is not adjacent to any public lands.

10.3.7 In each case where a PUD project encompasses a non-vehicular pathway as depicted on the Master Plan, a pathway constructed to City standards shall be provided.

No pathways are depicted on the Master Plan within or adjacent to the subject property.

10.3.8 Each PUD shall provide one (1) or more of the following amenities, commensurate with the size and density of the development, and commensurate with the modifications requested by the applicant, to ensure a public benefit:

The applicant proposes 3 of the 11 amenities listed, plus additional Community Housing.

- a. **Green Space.** All Green Space shall be granted in perpetuity and the PUD agreement shall contain restrictions against any encroachment into the Green Space. Where a subdivision is involved as part of the PUD approval process, Green Space shall be identified as such on the plat. A long-term maintenance plan shall be provided. Unless otherwise agreed to by the City, the PUD agreement shall contain provisions requiring that property owners within the PUD shall be responsible for maintaining the Green Space for the benefit of the residents or employees of the PUD and/or by the public.

Green space shall be set aside in accordance with the following formulas:

For residential PUDs, a minimum of .05 acres per residential unit.

For non-residential PUDs: a minimum of 15% of the gross area of the proposed PUD.

The applicant has not proposed to provide this amenity.

- b. **Active recreational facilities.** Active recreational facilities include amenities such as a swimming pool, tennis courts or playing fields, of a size appropriate to the needs of the development. The PUD agreement shall contain provisions requiring that such facilities be maintained in perpetuity, or replaced with another similar recreation facility.

The applicant has not proposed to provide this amenity.

- c. **Public transit facilities.** Public transit facilities include a weather-protected transit stop or transit station, and must be located on a designated transit route.

The applicant proposes to construct a weather protected transit stop in front of the development, along River Street. The transit stop would be located along Mountain Rides' designated Hailey circulator route.

- d. **Preservation of Vegetation.** Preservation of significant existing vegetation on the site must include the preservation of at least 75% of mature trees greater than 6-inch caliper on the site.

The applicant has not proposed to provide this amenity.

- e. **Wetlands.** Protection of significant wetlands area must constitute at least 10% of the gross area of the proposed PUD.

The applicant has not proposed to provide this amenity.

- f. **River Enhancement.** Enhancement of the Big Wood River and its tributaries, must include stream bank restoration and public access to or along the waterway.

The applicant has not proposed to provide this amenity.

- g. **Community Housing.** For residential PUDs, the provision of at least thirty percent (30%) of the approved number of dwelling units or lots as Community Housing Units affordable to households earning between 50% and 120% of the Area Median Income (the 30% would include the 20% community housing required for a subdivision established by Section 4.11 of the Subdivision Ordinance), or the provision of at least twenty percent (20%)

as Community Housing Units affordable to households earning less than 50% of the Area Median Income.

The applicant proposes to build 24 units. All 24 units would be affordable to households earning less than 60% of the area median income. Half of the units (12) would be affordable and restricted to households earning less than 60% of the area median income. The other half (12 units) would be affordable and restricted to households earning less than 50% of the area median income.

- h. Real Property. Dedication or conveyance of real property or an interest in real property to the City.**
- i. Sidewalks. Off-site sidewalk improvements shall be constructed according to City Standard Improvement Drawings and provided (in addition to sidewalk improvements that are required by ordinance adjacent to the subject property) in accordance with the following formulas:
For residential PUDs, a minimum of 100 linear feet per residential unit.
For non-residential or mixed-use PUDs: a minimum of 100 linear feet per 1000 square feet of gross floor area.**
- j. Underground Parking. Underground parking must be provided for at least 50% of the required number of parking spaces in the PUD.**

The parking requirement is 36 spaces (1.5 spaces for every unit in a multi-family dwelling). The applicant is requesting a parking waiver, to provide 26 spaces. Twenty-four (24) of these spaces would be covered and enclosed, located beneath the living areas of the building.

- k. Energy Consumption. All principal buildings within the PUD must comply with sustainable building practices, as follows:
For residential PUDs: buildings comply with local “Built Green” standards for certification, federal EPA “Energy Star” program, or Leadership in Energy and Environmental Design - Homes (LEED-H) standards for basic certification.
For non-residential or mixed-use PUDs: buildings comply with Leadership in Energy and Environmental Design (LEED) standards for basic certification.**

Although the applicant has stated there will be numerous energy saving and sustainable building practices incorporated into the building (please refer to Section 10.3.8 (k) of the analysis), the applicant does not propose to pursue all of the Built Green, Energy Star, or LEED-H standards which are required for basic certification.

- l. Other Amenities. Other project amenities and/or benefits to the community that are found, by recommendation of the Commission and approval of the Council, to promote the purpose of this Article and the goals and objectives of the Comprehensive Plan.**

In addition to the 30% Community Housing Units, provided to satisfy 10.3.8 (g), the applicant proposes to provide the remaining 70% of the units as Community Housing Units, affordable to persons with an area median income of 60% or less. No other amenities are mentioned by the applicant.

Section 10.4 sets forth Developer Benefits and relevant standards.

The Council may grant modifications or waivers of certain zoning and/or subdivision requirements to carry out the intent of this Article and Ordinance and the land use policies of the City.

10.4.1 Density Bonus. The following maximum increases in density may be granted only if one of the following conditions are met, and if no other density increase has been granted (e.g. for Community Housing Units under Section 4.11 of the Subdivision Ordinance):

- a. **Ten percent (10%): Solar, wind, geothermal, or other alternative renewable energy source will provide at least fifty percent (50%) of the total energy needs of the PUD.**
- b. **Ten percent (10%): At least twenty five percent (25%) of the property included in the PUD is located in the floodplain and no development occurs within the floodplain.**
- c. **Ten percent (10%): The developer of the PUD provides or contributes to significant off-site infrastructure benefiting the City, (e.g. water tank, fire station).**
- d. **Twenty percent (20%): The developer of the PUD provides or contributes to significant multi-modal infrastructure providing both vehicular and non-vehicular amenities benefiting the City and Wood River Valley.**
- e. **Ten percent (10%): The non-residential or mixed-use PUD complies with Leadership in Energy and Environmental Design (LEED) standards for Silver certification. The bonus unit(s) shall not be constructed until a later phase, after actual certification for prior phase(s) is achieved.**
- f. **Fifteen percent (15%): The non-residential or mixed-use PUD complies with Leadership in Energy and Environmental Design (LEED) standards for Gold certification. The bonus unit(s) shall not be constructed until a later phase, after actual certification for prior phase(s) is achieved.**
- g. **Twenty percent (20%): The non-residential or mixed-use PUD complies with Leadership in Energy and Environmental Design (LEED) standards for Platinum certification. The bonus unit(s) shall not be constructed until a later phase, after actual certification for prior phase(s) is achieved.**

The applicant requests a density bonus increase in excess of those increases stated in (a) through (g) above. No additional amenities or benefits have been proposed that (a) through (g) above would be applied to, other than what has previously been described under Section 10.3.8.

Density bonuses for project amenities and benefits to the community other than those listed here may be granted by unanimous vote of the Council, following a recommendation by the Commission, in order to carry out the purpose and intent of this Article and the land use policies of the City.

The applicant has requested 24 units. The maximum allowed density without a waiver is 20 units per acre in the Business District. The lot size is 0.587, which allows for 11.74 units, without a waiver. This is approximately a 100 percent increase in the number of units allowed and the applicant proposes 100 percent of the units as Community Housing.

No other density increases have been requested or granted to meet Section 4.11 of the

Subdivision Ordinance. This project is not subject to Section 4.11 of the Subdivision Ordinance because the units will not be platted for individual ownership, but will be leased as apartment units.

The Commission recommended the proposed density bonus based on the following factors:

- the 99 year lease with the City, which the PUD approval is contingent on, will require that the property be used for affordable senior housing.
- the potential impacts created by density from senior housing are less than traditional housing developments at the same density and
- the applicant demonstrated a specific need for affordable, senior rental units, through a market analysis, which helped the Commission determine that the project is a benefit to the community.

10.4.4 Off-street Parking Modification. The number of off-street parking spaces required by this Ordinance may be increased or decreased in consideration of the following factors:

a. Proximity to Central Business District or other employment center.

The project is within the north end of Central Business District and is within a half mile of Downtown.

b. The actual parking needs of any non-residential uses as clearly shown by the applicant.

Not applicable. The parking needs are for residential uses.

c. The varying time periods of use, whenever joint use of shared parking is proposed; provided shared parking is approved in accordance with Section 9.4.8 of this Ordinance.

Not applicable. Shared parking is not proposed.

d. Available public transit.

There is a transit stop adjacent to the proposed project along River Street that serves the Mountain Rides Hailey Circulator. In addition, the applicant proposes to construct a transit shelter.

Section 10.5.4.c sets forth Standards of Evaluation required by the Commission to consider and make findings on in the Commission's recommendation to the City Council.

1. The proposed development can be completed within one (1) year of the date of approval or phased according to a development schedule as submitted in accordance with Section 10.4.5 of this Ordinance and approved by the City;

A phasing schedule has not been proposed by the applicant.

2. The streets and thoroughfares proposed are suitable and adequate to carry anticipated traffic;

It is anticipated that River Street is suitable to support traffic associated with the River Street Senior Housing project.

3. The PUD will not create excessive additional requirements at public cost for public facilities and services;

It is not anticipated that the PUD will create additional public costs.

4. The PUD is in general conformance with the Comprehensive Plan;

The applicant has submitted a Comprehensive Plan analysis, which was reviewed by the Commission. Additional Comprehensive Plan goals, policies, and implementation items have been identified by staff and are listed below.

Section 5.4, Land Use Districts

Policy 1. "Encourage integration of compatible land uses in order to retain a compact City comprised of a central downtown with surrounding diverse neighborhoods, thereby reducing sprawl and traffic, increasing efficiency, and creating neighborhood community character."

Section 5.7, Density, Policy 1.

Implementation (a). "Consider density bonuses for the provision of recreation space, public areas, and amenities, deed restricted affordable housing, or other identified goals."

Implementation (d). "Allow residential densities greater than twenty units per acre within the Central Business District or generally along and between River Street and First Avenue. Community amenities should accompany developments with increased density."

Section 7.2, Population Diversity

Goal 1. "Maintain and improve the quality of Hailey's social fabric."

Policy 1. "Encourage diversity within Hailey's population."

Implementation (d). "Encourage proposals that help meet the needs of those who risk suffering effects of discrimination or are economically less advantaged."

5. The existing and proposed utility services are adequate for the population densities and non-residential uses proposed;

The Wastewater Superintendent and Public Works Director have reviewed the application and have no issues pertaining to the inability to provide adequate services to the proposed population density.

6. The development plan incorporates the site's significant natural features;

The land was previously developed with a single family dwelling; however, it has since been demolished and the lot is vacant. There are no significant natural features on the site except for existing trees that are proposed to be removed. There are six (6) existing and mature trees located on-site: three (3) chokecherries, one (1) elm, one (1) maple, and one (1) spruce. At this time, the health of the trees is not known. All trees, excluding the maple are located in either the proposed driveway or building footprint. The removal and relocation of trees and the determination of their health are addressed in the approved Design Review application. The applicant does propose to retain and utilize two large and mature elms, located in the right-of-way adjacent to the front of the property, by creating a walkway through the elms that provides pedestrian access from the building, across the sidewalk, to River Street. The building is positioned in a manner that places the elm trees directly adjacent to the front and center of the building's entrance, adding interest and character to the development.

7. Each phase of such development shall contain all the necessary elements and improvements to exist independently from proposed future phases in a stable manner;
A phasing schedule has not been proposed by the applicant.

8 One or more amenities as set forth in Section 10.3.8 of this Ordinance shall be provided to ensure a public benefit;

The applicant proposes the following three benefits:

1. Community housing
2. Public transit facility
3. Underground parking.

The Planning and Zoning Commission considered each amenity and determined that each does provide a public benefit.

9. All exterior lighting shall comply with the standards set forth in Article VIII B of this Ordinance;

This requirement is addressed in the design review application concurrently submitted and reviewed by the Planning and Zoning Commission with the PUD application.

10. The proposed PUD Agreement is acceptable to the applicant and the City.

The draft PUD Agreement has been submitted to the City Attorney for review. It is attached and should be concurrently reviewed by the Council.

The developer is responsible for the payment of the fee of 2% of the unit's sales price to the Blaine County Housing Authority when one of the provided amenities is community housing. While this project is a rental project, the agreement should provide for this requirement should the units be subdivided and sold at some future date. It is a recommended condition of approval that language to addresses this shall be included in the PUD agreement.

Summary

After conducting a public hearing and reviewing of the application, all supporting documentation and plans, and the recommendation of the Commission, the Council shall either approve or disapprove the plan, or approve with supplementary conditions that relate directly to the Standards of Evaluation set forth in Section 10.5.4.c of this Article. These findings are required in order to approve the modification or waiver of any standard zoning regulation. If approved or conditionally approved, the Council shall find that the facts presented to them establish that these standards are met.

Suggested Conditions

The following conditions are suggested to be placed on any approval of this application:

- a) All Fire Department and Building Department requirements shall be met.
- b) All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required.
- c) The PUD agreement between the City and ARCH Community Housing Trust shall be executed prior to final PUD application approval by the Council. The agreement shall include, language stating that the developer is responsible for the payment of the fee of 2% of the unit's sales price to the Blaine County Housing Authority should the units be subdivided and sold at some future date.
- d) A lease agreement between the City and ARCH Community Housing Trust shall be executed prior to the issuance of a building permit. The building permit plans may be submitted for review, prior to the execution of said lease.

Motion Language:

Approval:

Motion to approve the PUD application for River Street Senior Housing located on Lot 2A, Block 1, Sutton Subdivision (731 River Street North), finding that the project is in conformance with Section 10.5.4.c., (1) through (10) of the Hailey Zoning Ordinance; with conditions () through ().

Denial:

Motion to deny the PUD application for River Street Senior Housing located at Lot 2A, Block 1, Sutton Subdivision (731 River Street North), finding that _____ [the Council should cite which standards are not met and provided the reason why each identified standard is not met].

Continuation:

Motion to continue the public hearing upon the PUD application for River Street Senior Housing to _____ [the Council should specify a date].

PLANNED UNIT DEVELOPMENT AGREEMENT

RIVER STREET SENIOR HOUSING (AFFORDABLE SENIOR HOUSING)

This **PLANNED UNIT DEVELOPMENT AGREEMENT** (“Agreement”) is entered into this ____ day of _____, 2010, by and between the **CITY OF HAILEY** (“City”) and **RIVER STREET APARTMENTS LIMITED PARTNERSHIP** (“River Street”) in contemplation of the following:

I. RECITALS

1. River Street is a limited partnership organized under the laws of the State of Idaho in the business of providing affordable housing to low and moderate individuals and households. River Street is desirous of implementing a Planned Unit Development (PUD) on property described below for the creation of a 24-unit senior housing community;
2. The property (the “Property”) subject to this Agreement is described in Exhibit “A” and is also described in the PUD Application and is, presently zoned Business and is subject to City’s Land Use Ordinances and Zoning Regulations;
3. The City’s Planning and Zoning Commission and City Council have held the required public hearings, accompanied with proper notice, with respect to the PUD Application;
4. City approved River Street’s PUD Application on _____, 2010, and adopted Findings of Fact and Conclusions of Law on _____, 2010;
5. In order to ensure that the housing community is constructed consistent with City’s applicable ordinances and regulations, the City and River Street deem it in their mutual interest to enter into an agreement with regard to the manner and timing of construction, construction and landscaping of the Property and other factors affecting the general health, safety and welfare of the citizens of City and users of the Property;
6. The Property shall be developed substantially in accordance with City’s Comprehensive Plan, Zoning Ordinances, City’s Standards and other applicable City ordinances and the terms and conditions of this Agreement;
7. City and River Street desire that construction of the Improvements proceed as approved by City’s City Council as set forth in the Findings of Fact and Conclusions of Law adopted by the City Council;
8. The River Street PUD Application is consistent with the housing and other sections of City’s Comprehensive Plan
9. .

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:

II. AGREEMENT

- A. **Description and Location of Property.** The total Property encompassed within the PUD Application is approximately 0.587 acres, zoned Business ("B") and has been approved by the City for the purposes of this Agreement as a Planned Unit Development, subject to certain conditions, in accordance with the Hailey Zoning Ordinance, Article 10.
- B. **Construction of Improvements.** River Street agrees to construct the Improvements in accordance with this Agreement, City's approval of River Street's PUD Application and the drawings and site plans submitted with River Street's PUD Application. The Improvements, shall include a 24-unit three story apartment building, with at grade interior parking
- C. **Zoning Ordinance Modifications.** The city agrees to provide the following waivers to the City of Hailey Zoning Ordinance:
1. Total allowed density for this project is increased to 24 residential units.
 2. Total on-site parking required for this property is reduced to 26 spaces.

These modifications are approved in consideration of the provision of the following community benefits within the PUD:

- a. 100% of units will be community housing units affordable to senior (55 years of age and older) individuals and households earning less than 60% of the area median income.
 - b. A weather-protected transit stop on River Street.
 - c. Covered/enclosed parking for 24 of 26 parking spaces.
- D. **PUD Approval.** The PUD approval is granted subject to the following conditions:
1. All Zoning Ordinance, City's Standards and other City ordinances not specifically modified by this Agreement shall remain in full force and effect.;
 2. All Fire Department and Building Department requirements are to be met;
 3. All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans of all infrastructure to be installed or improve at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required;

4. The City and River Street shall execute a formal written lease agreement for the Property acceptable to both parties;
5. River Street shall obtain City of Hailey Design Review approval on all improvements as required under City Ordinance

III. GENERAL REQUIREMENTS

- A. **Property Maintenance.** River Street shall be responsible, at its sole expense, so long as the Property continues to be used by the River Street for housing purposes, for all maintenance of the Property common area, including maintaining all landscaping, irrigation systems, parking and drainage systems.
- B. **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.
- C. **Specific Performance.** In addition to all other remedies at law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.
- D. **Dispute Resolution.**
 1. **Mediation.** Any controversy or claim arising out of or relating to this Agreement or breach thereof, shall first be submitted to mediation in accordance with the American Arbitration Association Commercial Mediation Rules. Mediation shall be held in Blaine County. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of Idaho. Each party shall bear its own costs and the parties shall split equally the cost and expenses of the mediator.
 2. **Arbitration.** In the event mediation proves unsuccessful, all controversies or claims arising out of, or relating to, this Agreement or the breach thereof shall be decided by arbitration. Such arbitration shall be final and binding, and conducted by one (1) neutral arbitrator, and shall proceed in accordance with the American Arbitration Association Construction Arbitration Rules unless the parties mutually agree otherwise. Judgment on the arbitrator's award may be entered in any court having jurisdiction thereof. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of Idaho. Arbitration shall take place in Blaine County, Idaho. The parties shall split equally the American Arbitration Association costs and the arbitrator's costs and expenses. The arbitrator shall have no authority to consider in its decision, or to actually award, attorney fees or costs.

- E. **Relationship of Parties.** It is understood that the contractual relationship between City and River Street 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 River Street 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. **No Waiver.** In the event that City or River Street, or its 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 River Street, or its 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.
- H. **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.
- I. **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.
- J. **No Third Party Beneficiaries.** This Agreement is not intended, nor shall it be deemed or construed, to create or confer any rights upon third parties.
- K. **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.
- L. **Default.** In the event either City or River Street, its successors and assigns, fail to faithfully comply with all the terms and conditions included in this Agreement it shall be in breach of this Agreement.
- M. **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 River Street:

River Street Apartments Limited Partnership
c/o ARCH Community Housing Trust, Inc.
Executive Director
P. O. Box 1272
Ketchum, Idaho 83340
208/726-4411 (telephone)
208/_____ (facsimile)

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.

- N. **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.

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.

Dated this ____ day of _____, 2010.

CITY OF HAILEY, an Idaho municipal corporation

ATTEST:

By: _____
Heather Dawson, City Clerk

By: _____
Rick Davis, Mayor

RIVER STREET APARTMENTS LIMITED PARTNERSHIP

an Idaho Limited Partnership

By: River Street Senior Housing, LLC, General Partner

By: _____
Michelle Griffith, Manager

By: _____
Gregory A. Urrutia, Manager

STATE OF IDAHO)
) ss.
County of Blaine)

On this _____ day of _____, 2010, before me, _____, a Notary Public in and for said State, personally appeared Michelle Griffith, the Manager of River Street Senior Housing, LLC, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same on behalf of the General Partner.

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 _____ day of _____, 2010, before me, _____, a Notary Public in and for said State, personally appeared Gregory A. Urrutia, the Manager of River Street Senior Housing, LLC, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same on behalf of the General Partner.

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 _____



Blaine County Housing Authority
PO Box 550
Hailey, ID 83333

5 Galena Street East
208.788.6102 ~ 208.788.6136 Fax

September 8, 2010

Mayor Davis and City Council
City of Hailey
415 South Main Street
Hailey, ID 83333

RE: ARCH application for River Street Senior Project

Dear Mayor Davis and City Council:

On behalf of the Blaine County Housing Authority (BCHA), I have reviewed the PUD application by ARCH Community Housing Trust for a senior housing project at 731 North River Street. The project would provide affordable housing for 24 senior individuals or households in a central location in Hailey. The BCHA Board has been kept apprised of and supports this proposal.

Seniors have been an overlooked segment of the population in terms of the provision of new affordable homes. With seniors being the fastest growing sector of the population, the need is and will continue to be very strong. The fact that the proposed housing is an approved Low Income Housing Tax Credit project means several things, including:

1. The entire project will serve seniors earning less than 60% of Area Median Income (less than \$32,760 for a single person).
2. The units are guaranteed to remain affordable to seniors of lower incomes.
3. The need for these units has been verified by the funders through the market study.
4. The units will be professionally managed and maintained by a State-approved property management company.

The Housing Authority supports this project at the proposed density, finding that it qualifies as legitimate community housing for the retired and senior population of Blaine County and forwards BCHA's mission.

Sincerely,

Kathy Grotto
Executive Administrator

cc: Michelle Griffith, ARCH

The Blaine County Housing Authority's mission is to advocate, promote, plan and preserve the long-term supply of desirable and affordable housing choices in all areas of Blaine County in order to maintain an economically diverse and vibrant community.

GROUND LEASE

GROUND LEASE dated as of the _____ day of _____, 2010, between CITY OF HAILEY, a municipality and political subdivision of the state of Idaho, ("Landlord") and RIVER STREET APARTMENTS LIMITED PARTNERSHIP, an Idaho limited partnership ("Tenant.")

1. (a) Property and Term. Upon and subject to the terms, covenants and conditions set forth herein, Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the property described on Exhibit A attached hereto (the "Premises") subject to the matters set forth in said Exhibit A.

TO HAVE AND TO HOLD the Premises for a term commencing at Noon on January 1, 2011, (the "Commencement Date") and ending at Noon on January 1, 2110, unless terminated as herein set forth; provided, however, that Tenant shall have no obligation to pay rent, taxes, charges, for insurance, utilities, maintenance for similar items, or any other costs of expenses with respect to the Premises, until the date (the "Effective Date") upon which Tenant commences construction of the Improvements. Landlord and Tenant shall cooperate in procuring all approvals, allocations, permits or other consents (including, without limitation, zoning approvals or variances, building permits or clearances, tax credit allocations, financing approvals, environmental clearances and similar items).

(b) Use of Property. Tenant shall construct an apartment community in which all units shall be continuously held for senior citizens, in which 80% of the units must have at least one household member aged 55 or older; and no more than 20% of the units may be occupied by households other than those aged 55 years or older.

2. Rent. Tenant shall pay to Landlord at the Premises, or such other place as Landlord may hereafter designate in writing, fixed annual rents of One and 00/100 (\$1.00) Dollar per year, without any setoff or deduction whatever and without prior demand.

3. Taxes, Assessments, etc. (a) Payment by Tenant. Tenant shall pay all real estate taxes, special improvement and other assessments (ordinary and extraordinary), water rents and charges, and all other taxes, duties, charges, fees and payments imposed by any governmental or public authority, which shall be imposed, assessed or levied upon, or arise in connection with the use, occupancy or possession of the Premises or any part thereof during the terms of this Lease (collectively, "Governmental Impositions"). In each case, upon written request of Landlord, Tenant shall deliver to Landlord prior to the last day upon which the same may be paid without penalty or interest, a receipt showing the payments thereof. The term "Governmental Impositions" shall not be deemed to include transfer, gift, inheritance, income, estate, intangible personal property, corporation, franchise or succession taxes or other similar taxes.

(b) Assessments. Tenant's obligation to pay assessments shall apply only to assessments which shall accrue and become payable during the term of this Lease. Tenant may take the benefit of any statute or ordinance permitting assessments to be paid in installments over a period of time, and in that event Tenant shall be obligated to pay only such installments as shall become payable during the term.

(c) First and Last Year. Governmental impositions for the tax year in which the term

shall commence and for the tax year in which the term shall expire shall be apportioned according to the number of days during which each party shall be in possession during such tax years, whether or not the same may be liens at the beginning or end of the term. This provision shall not limit Landlord's right to receive prorated amounts in the event of earlier termination of this Lease by reason of Tenant's default.

(d) Contest of Taxes. Tenant may contest, in good faith, any Governmental Imposition by appropriate proceedings conducted promptly at Tenant's expense, in Tenant's name, or (whenever necessary) in Landlord's name. Landlord agrees to cooperate reasonably with Tenant and to execute any documents or pleadings reasonably required for such purpose, but Landlord shall not be obligated to incur any expense or liability in connection therewith. Tenant may defer payment of the contested Governmental Imposition pending such contest, if such deferment shall not subject Landlord's interest in the Premises to forfeiture. Tenant shall deposit with Landlord, if Landlord so requests, funds which shall be at least equal in value to the payment so deferred plus estimated penalties and interest thereon and Landlord shall deposit such funds in an interest-bearing account. When all contested Governmental Impositions shall have been paid or cancelled, funds so deposited to secure the same and interest earned thereon which was not applied by Landlord to the payment thereof, shall be repaid to Tenant. In lieu of any such deposit, Tenant may, at its election, furnish a bond in a form, in an amount, and with a surety reasonably satisfactory to Landlord or other security reasonable satisfactory to Landlord. All refunds of taxes and assessments shall be the property of tenant to the extent they may be based on payments made by Tenant, any balance being Landlord's property.

4. Charges. (a) For Utilities. Tenant shall promptly pay before the imposition of late charges or penalties, all charges for gas, electricity, water, sewer, telephone and other services furnished to the Premises or the occupants thereof during the term of this Lease.

(b) For Permits. Subject to Tenant's right to contest set forth in Section 9(d) hereof, Tenant shall, at Tenant's own cost and expense, procure every permit, license, certificate or other authorization required in connection with the lawful and proper use of the Premises or required in connection with any building or improvements hereafter erected on the Premises

5. Insurance. (a) During the term of this Lease, following the Effective Date, the Tenant will, at its sole costs and expense, keep and maintain in force policies of insurance on the Improvements and all related furniture, equipment and facilities, and replacement thereof, to the extent the same are owned by Tenant, in amounts and on terms as may be reasonably determined by Tenant to be appropriate (assuming for this purpose only that it owned the Premises and all Improvement outright and not subject to this Lease). Such policies shall insure against such insurable hazards as are commonly insured against in the case of Premises similarly situated, taking into account the height and type of the Improvements and other buildings and structures on the Premises (including any replacements or substitutions), and their construction, location, use and occupancy.

(b) During the term of this Lease, following the Effective Date, Tenant will at its sole costs and expense keep and maintain in force such policies of comprehensive general liability coverage with respect to the Premises, the Improvements and the activities of Tenant thereon. Such coverages shall be in such amounts and limits as are maintained in connection with premises similarly situated and otherwise on terms as reasonably determined by Tenant. As of the date hereof, Tenant maintains general liability coverage with limits of **\$1,000,000/\$3,000,000.**

(c) All insurance coverages obtained or maintained under this Section 5 shall be

secured and maintained in such company or companies as reasonably determined by Tenant, and shall be carried in the name of the Landlord and Tenant (and any mortgagee) as their interests may apply. Such policies may expressly provide that Tenant alone may adjust any loss where the proceeds are used to repair the damage or any other loss not in excess of \$250,000. Tenant agrees to furnish and thereafter maintain with Landlord certificates of coverage issued by such insurance companies to the effect that the policies described above are in effect, and will not be cancelled or materially altered without 30 days' advance notice to Landlord and Tenant. Tenant shall also provide to Landlord original endorsements showing the Landlord as an additional insured. Any coverage which Tenant is required to carry hereunder may be carried under a blanket policy (or policies) covering other properties of Tenant and/or its related or affiliated partnerships, corporations or other entities. If coverage is maintained under a blanket policy, Tenant shall procure and deliver to Landlord a statement from the insurer or general agent of the insurer setting forth the coverage maintained under such blanket policy and the amount thereof allocated to the risks intended to be insured hereunder.

(d) If Tenant fails to maintain coverage required by this Section 5, Landlord, in addition to other available remedies, may at its election (but shall not be obligated to), after 10 days' written notice to Tenant, procure such coverage as may be necessary to comply with this Section 5, with the cost payable to Landlord on demand, with interest at the rate described in Section 20.

6. Construction and Alteration. (a) Acceptance of Premises. Tenant accepts the Premises in its present condition and will not call on Landlord for any repairs, improvements or alterations thereto.

(b) Construction of Improvements. From time to time and at any time, Tenant shall have the right, at its sole cost and expense, to construct improvements on the Premises (the "Improvements"), subject, however, to satisfaction of all of the following conditions:

(i) In addition to obtaining permits, licenses, certificates and approvals described in Section 4(b), Tenant shall submit to Landlord for approval comprehensive plans and specifications for the construction of the Improvements (the "Construction Plans"). Landlord shall not unreasonably withhold or delay its approval of the Construction Plans, and any failure by Landlord to respond to Tenant's request for approval within 15 days of receipt of such Construction Plans shall be deemed to be an approval of the same.

(ii) Notwithstanding that Landlord has approved the Construction Plans, in the event (a) Tenant makes any substantial modification to the Construction Plans or (b) Tenant makes any substantial modification to the Improvements at any time after construction of the Improvements, Tenant shall submit modified plans to Landlord for Landlord's approval in accordance with the procedures and approval standards set forth in subsection (i) above. For the purposes of this Lease, the term "substantial modification" shall mean any expansion of the building envelope or any work involving estimated costs of \$250,000 or more.

(c) Workmanship. All construction, remodeling and alterations shall be made in a good and workmanlike manner and in full compliance with all building laws and ordinances applicable thereto.

(d) Mechanics' Liens. If, because of any act or omission of Tenant, any mechanics' or other lien or order for the payment of money shall be filed against the Premises or the Improvements, or against Landlord (whether or not such lien or order is valid or enforceable as such), Tenant shall, at Tenant's own cost and expense, cause the same to be cancelled and

discharged of record within 90 days after Tenant's receipt of notice of such lien, insured against by an insurance company reasonably acceptable to Landlord or bonded by a surety company reasonably acceptable to Landlord in the event Tenant elects to contest the validity thereof, and Tenant shall have the right at its own expense to contest all such liens and orders. Tenant shall indemnify and save harmless Landlord from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys' fees, resulting therefrom.

(e) Ownership of Alterations and Improvements. All improvements, alterations and additions placed upon the Premises by Tenant or any subtenant or other occupant (including but not limited to doors, partitions, tile and wood floorings, lighting fixtures and the like), as well as any fixtures attached to any building at the expiration or earlier termination of this lease included in the Premises and used in connection with the operation and maintenance thereof (excepting in each case property removable by subtenants under their respective subleases) are and shall be the property of Tenant and Tenant shall be the absolute owner of such alterations, additions and improvements during the term hereof. All improvements in existence at the Premises at the termination of this Lease shall be the property of Landlord.

7. Repairs. Tenant, at its own expense, shall keep the entire Premises and the Improvements (including without limitation, the roof, walls, foundations and appurtenances, water sewer and gas connections, pipes and mains, elevators, heating, cooling, lighting and electrical distribution systems and all other fixtures, machinery and equipment forming part of the Premises and the Improvements) in constant good order, condition and repair (both inside and outside), whether the necessity of such repairs may arise from wear, tear, casualty or any other cause, suffering no waste or injury. To that end Tenant shall timely make or cause to be made all needed repairs, replacements (including replacements to fixtures, furnishings and equipment) and renewals, ordinary and extraordinary, structural or otherwise. Tenant shall, at its own expense, keep parking areas, sidewalks and curbs on the premises, and the sidewalks and curbs adjoining the premises, free of snow and ice and in a good state of repair.

8. End of Term. (a) Surrender by Tenant. On the last day of the term or on the earlier termination of this Lease, Tenant shall peaceably and quietly leave, surrender and deliver up to Landlord the Premises, broom-clean, together with all buildings and all alterations, changes, additions and improvements which may have been made upon the Premises (except for personal property removable by Tenant and subtenants) in the condition in which Tenant is required to maintain the same pursuant to Section 7; provided, that Tenant shall not be required to terminate any residential subleases, or force residential tenants to vacate the Premises.

(b) Removal of Personal Property. Tenant shall, by the date referred to in subsection 8(a) above, remove from the Premises all personal property and trade fixtures belonging to Tenant, repairing all damage caused in such removal and restoring the Premises to their condition prior to the installation of any such property. All Tenant's property not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by landlord without notice to Tenant or any other person and without obligation to account therefor, but subtenants, in the event of the termination of this Lease may for 30 days thereafter remove their property in accordance with the terms of their subleases. Subleases at the option of the Landlord, may be extended beyond the 30-day period.

9. Use, etc. (a) Senior Low Income Housing Purpose. Tenants shall use the Premises only for the operation of senior low income housing (as more particularly described in Section 17(a)(ii) hereof) and for purposes incidental and related thereto.

(b) Compliance with Law. Tenant shall, at the Tenant's own costs and expense, timely comply with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of the United States of America or of the State, county and city governments, or of any other municipal, governmental or lawful authority whatsoever, affecting the Premises or appurtenances or any part thereof, and of all their departments, bureaus or officials (collectively, "Requirements of Law"), whether such requirements may relate to: (i) structural or other alterations, changes, additions, improvements; or (ii) repairs, inside or outside, extraordinary or ordinary; or (iii) the manner in which the Premises maybe used or occupied; or (iv) to any other matter affecting the Premises, whether like or unlike the foregoing. If Tenant is required by the Requirement of Law to make any alterations, changes, additions, improvements or repairs or to change the manner in which the Premises may be used or occupied, Landlord hereby consents to such change to the extent required by the Requirement of Law

(c) No Violations. Tenant shall upon the discovery of any violation of a Requirement of Law which might subject Landlord to liability or forfeiture of any interest, take all necessary steps, legal and equitable, to compel the discontinuance thereof and to oust and remove any subtenants, occupants or other persons guilty of such use. Tenant shall indemnify and save harmless Landlord from and against any and all liabilities and penalties incurred by reason of any violation of this section. Tenant shall pay all costs and expenses, including reasonable attorneys fees, that may in any manner arise out of the failure of Tenant to comply with the provisions of this Section 9. As used in this section, the work "Premises" shall include any building thereon, the streets, sidewalks, alleys and curbs adjacent thereto, and all vaults, passageways, rights of way and appurtenances of the Premises.

(d) Contest of Requirements. Tenant may contest in good faith, by appropriate proceedings conducted promptly at its own expense, in its name, or (whatever necessary) in Landlord's name, the validity or enforcement of any Requirement of Law and may defer compliance therewith provided that (i) such non-compliance shall not constitute a crime or misdemeanor on the part of the Landlord, (ii) Tenant shall diligently prosecute such contest to final determination by the court, department or governmental authority or body having final jurisdiction, and (iii) if so required by Landlord and if the amount in dispute is in excess of \$50,000 Tenant shall furnish to Landlord a surety bond issued by a bonding company approved by Landlord (such approval not to be unreasonably withheld or delayed), or other security reasonably satisfactory to Landlord, in an amount equal to the cost of such compliance as estimated by Landlord, indemnifying Landlord against the cost thereof and all liability in connection therewith. Landlord agrees to cooperate reasonably with Tenant, and to execute all documents and pleadings required for the purpose of such contest, provided Tenant shall discharge any expense or liability of the Landlord in connection therewith.

10. Damage or Destruction. (a) Restoration by Tenant. In case of damage to or destruction of the Premises or any part thereof, by any cause whatsoever, Tenant shall give Landlord prompt notice of such occurrence. In such event, the leasehold mortgagee shall, as indicated by written notice to Tenant and Landlord within 60 days after such damage or destruction, make any and all insurance proceeds available to Tenant so that Tenant may repair or rebuild the Improvements so as to make them at least as valuable as immediately before such occurrence.

(b) Termination Remedy. If the work of repairing, replacing or rebuilding the Improvements shall not have been commenced within 180 days from the date of any such loss, damages or destruction or if such work shall not after commencement be diligently carried out, Landlord shall have the right to terminate this Lease and the term hereof by giving to Tenant Notice

of such intention. If upon the expiration of the date fixed in such notice, such work shall not have been commenced and the other conditions hereof complied with, or if after commencement such work shall not have been diligently prosecuted, this Lease and the term hereby granted shall at the option of the Landlord wholly cease and expire. If Landlord fails to exercise its option to cancel this Lease as provided in subsections (a) and (b) of this Section 10 within six months after the event of damage of destruction, Tenant shall have the right to terminate this Lease by giving Landlord written notice to such effect. In the event of any termination provided for in this Section 10, the insurance proceeds received and recoverable under all policies of insurance shall be paid over to and be retained by Tenant and Landlord, or to any mortgagee (including any Affiliate of Tenant) to whom the same may be payable, as their interests may appear. For this purpose, any proceeds not payable to any mortgagee shall be apportioned between Tenant and Landlord based upon the relative values of Tenant's right to use the Improvements over the remaining Lease term, and Landlord's right to the Improvements upon termination of the Lease.

11. Condemnation. (a) Total Taking. If the entire Premises or Improvements shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by purchase by public authority in lieu thereof, then in that event, this Lease and the term hereby granted shall cease and expire as of the date upon which title shall vest in the condemning authority and all rents, taxes, insurance premiums and other charges shall be prorated and paid to the date of such termination. Each party shall be free to prove by judicial proceedings and to obtain and retain the rights of mortgagees in the condemnation proceedings. It is specifically agreed that Tenant's interest consists of all improvements fixtures and personal property on the Premises, its leasehold interest in the Premises and its business operations on the Premises; Landlord's interest consists of its reversionary interest in the Premises and its right to receive income from the Premises as provided in Section 2 above.

(b) Partial Taking. If less than the entire Premises shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by purchase by public authority in lieu thereof, and as a result, it is impractical for Tenant to conduct its business, then, Tenant shall have the option to terminate this Lease upon written notice to Landlord. If this Lease shall not be so terminated, this Lease shall remain unaffected except that within a reasonable time after such taking Tenant shall restore that part of the Premises and the Improvements not so taken to a complete architectural unit of a unit and kind approved by Landlord, which approval shall not be unreasonably withheld or delayed. Subject to the rights of mortgagees in the condemnation proceedings, all condemnation awards on account of Landlord shall be paid to Landlord and all awards on account to Tenant's interest shall be paid to Tenant to be applied by Tenant to the cost of restoring the Improvements to a complete architectural unit as set forth above, as if the damages were caused by fire and such award consisted of insurance proceeds. The division of the award for partial taking between Landlord and Tenant (subject to the rights of mortgagees, if any) shall be made by agreement of Landlord and Tenant, if possible, or if the parties hereto cannot agree, then by arbitration between Landlord and Tenant, taking into account (i) the value of Landlord's interest in the Premises affected by such taking and under this Lease, and (ii) the value of Tenant's interest therein under the Lease at the rent reserved and subject to all the terms and provisions of this Lease.

(c) Temporary Taking. If less than a fee title to all or any portion of the premises shall be so taken for temporary use or occupancy, the foregoing provisions of this section shall be inapplicable to such taking. This Lease shall continue in full force and effect without reduction or abatement of rent and tenant shall be entitled to make claim for, recover and retain so long as it shall not be in default hereunder any awards in the form of rent recoverable in respect to such taking, except that if such taking shall be for a period extending beyond the expiration of the term of this Lease, Landlord shall be entitled to receive such portion of the award as shall be attributable

to the portion of such period occurring after such expiration.

12. Indemnity. Tenant agrees to indemnify, defend, save, hold and keep Landlord harmless from any loss, cost, expense or liability whatsoever, including reasonable attorneys' fees on or for, or in connection with the defense or investigation of, any and all claims for damages suffered or sustained by any person or person or for injury to or death of any person or persons arising or asserted to have arisen as a result of or incident to the Premises or the performance by Tenant of its obligations hereunder, including without limitation the construction, erection, maintenance, operation, use or occupancy of the Improvements throughout the term of this Lease, except that Tenant shall not be obligated to indemnify or hold Landlord harmless for any loss, expense or liability caused by Landlord's willful misconduct or negligence or any such misconduct or negligence by any affiliate, agent or employee acting by, through or under the direction of Landlord.

13. Transfers. (a) Assignment and Subletting.

(i) With Landlord's approval, which approval shall not be unreasonably withheld or delayed, Tenant may sell, assign, sublet or transfer this Lease, in whole or in part, to (a) any Affiliate of Tenant (an Affiliate of Tenant shall mean any organization or corporation directly affiliated with Tenant or the organizations that control Tenant) or any limited partnership in which an Affiliate or Tenant is a general partner, or (b) to any other party.

(ii) Any purchaser of the leasehold estate through foreclosure or deed in lieu of foreclosure, and any third party acquiring the leasehold estate through such purchaser shall be subject to the terms of this Section 13.

(iii) Notwithstanding anything to the contrary set forth herein, any transfer of a general partner or limited partner interest in Tenant in accordance with the terms of the Partnership Agreement shall be permitted and shall not require the Landlord's consent.

(b) Mortgages. (i) On the Leasehold Interest. With the approval of Landlord, which approval shall not be unreasonably withheld or delayed, Tenant may at any time and from time to time mortgage its interest in the leasehold estate created hereby and in the Improvements by mortgage or deed of trust; so long as the term of any such mortgage or deed of trust shall not extend beyond the Termination Date.

(A) Landlord agrees at any time and from time to time, when requested by Tenant, to enter into reasonable agreements for the benefit of lenders as may be necessary to enable Tenant to obtain financing for the improvements, provided that such agreements do not in any manner materially adversely effect Landlord's interest in the Premises or place the Landlord in a position of liability with the Lender.

(B) Tenant may at any time and from time to time encumber the premises with no-perpetual land use required in connection with tax credits and other financing, and landlord agrees to execute, acknowledge and deliver any such agreements. Such agreements shall terminate at the end of the Lease Term

(C) The execution of a leasehold mortgage shall not constitute the mortgagee as an assignee for the purpose of this Lease or any liability hereunder.

(D) Any such mortgage or deed of trust shall grant to the Landlord the right to cure any default by

Tenant.

(ii) Landlord's Interest. Landlord shall have the right to freely mortgage its interest in the Premises provided that Landlord gives notice of its intent to make such an encumbrance to Tenant and provided any such mortgage shall in no way impair the rights of the Tenant under this Section 13, and provided that any such mortgage shall be expressly subject and subordinate to this Lease and the prior lien of any leasehold mortgage. Landlord shall not transfer or otherwise dispose of the property without Tenant's consent, which consent shall not be unreasonably withheld.

(iii) Payment of Mortgages. Tenant covenants to and agrees with Landlord that all sums which fall due under any note secured by any mortgage on Tenant's interest in the Premises will be paid as and when due, and that Tenant, as borrower, will comply with all its obligations under the mortgage and the related loan documents. Tenant, on a monthly basis, shall, upon written request of Landlord, provide Landlord evidence, in form and substance reasonably satisfactory to Landlord, that such payments have been made.

(iv) Estoppel Certificate. Landlord agrees at any time and from time to time when requested by Tenant, or the holder of any mortgage or deed of trust, to execute, acknowledge and deliver to Tenant or the holder of such instrument within 45 days after receipt of such written request, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); that there are no defaults hereunder by Tenant, if such is the fact; and otherwise specifying such defaults in detail; and the dates to which the rent and other charges have been paid, it being intended that any such statement delivered pursuant to this section may be relied upon by the holder of any such mortgage, deed of trust, or other instrument of security or any prospective purchaser of Tenant's leasehold estate. Landlord agrees to use its best efforts to provide such statement in a shorter period of time than requested by Tenant or any other interest holder.

(c) Mortgagee's Protection Clause. (i) Each party agrees to send any mortgagee or holder of deed of trust, by registered or certified mail, return receipt requested, a copy of any notice of default under this Lease served upon the other party simultaneously with such notice and upon prior written notice of any modification, amendment or termination of this Lease, provided that prior to such notice such party has been notified, in writing, of the address of such mortgagees or holders of deeds of trust. Each party further agrees that if the other party shall have failed to cure such default within the time provided for in the Lease, then the mortgagee or holders of deeds of trust shall have an additional 30 days within which to (a) cure such default or if such default cannot be cured within that time, then in such additional time as may be necessary if within such 30 days any mortgagee or holder of a deed of trust has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure) in which event this Lease shall not be terminated while such remedies are being so diligently pursued, or (b) if this Lease is terminated due to a default by Tenant hereunder, give Landlord written notice of its intention to enter into a lease with Landlord as described below. If this Lease is terminated due to a default by Tenant hereunder and Landlord receives timely notice of the intention of a mortgagee or holder of a deed of trust to enter into a lease with Landlord, Landlord shall enter into a lease on the same terms and conditions as this Lease with any such mortgagee or holder of a deed of trust or any partner thereof covering the Premises, if such mortgagee or holder of a deed of trust so desires, on the condition that the mortgagee or holder of a deed of trust pay to the Landlord the monetary obligations of Tenant due hereunder up to and including the date such lease commences and that such mortgagee or holder of

a deed of trust agrees to use the Premises for the purposes set forth in Section 9 hereof.

(ii) Landlord shall accord to persons who are limited partners or members of Tenant the same rights granted to mortgagees and holders of deeds of trust under this Section 13(e), and any performance by such limited partner(s) or member(s) of Tenant shall be considered performance by the Tenant hereunder.

14. Inspection, Etc. Tenant shall permit Landlord or Landlord's agents to enter the Premises at all reasonable times upon 5 days written notice to Tenant for the purpose: (i) of inspecting the same; (ii) of performing obligations of Tenant hereunder which Tenant may neglect or refuse to perform; and (iii) for the purpose of showing the Premises to persons wishing to purchase Landlord's interest therein. If, at reasonable times, admission to the Premises for such purposes cannot be obtained, or if at any time an entry shall be deemed necessary for the protection of the Premises, Landlord, or Landlord's agents or representative may enter the Premises by force or otherwise, without rendering Landlord, or Landlord's agents or representatives, liable to any claim or cause of action for damages by reason thereof, except for damages resulting from Landlord's negligence or willful misconduct or the negligence or misconduct of Landlord's agents or representatives. The provisions contained in this section shall not increase Landlord's obligations under this Lease, and the right and authority hereby reserved does not impose upon Landlord any responsibility for the repair, care or supervision of the Premises, or any building, equipment or appurtenance thereto.

15. No Abatement. Except as otherwise specifically provided herein, there shall be no abatement or reduction of any rent payable by Tenant for any reason, including, but without limiting the generality of the foregoing: (a) by reason of any damage or destruction of the Premises whether caused by an insured or uninsured peril, condemnation or other matters like or unlike the foregoing, or during any period of restoration, or (b) by reason of diminution of the amount of usable space caused by legally required changes in the construction, equipment, operation or use of the Premises.

16. Quiet Enjoyment. Landlord covenants that, if and so long as tenant pays the rent and other charges reserved by this Lease and performs all the obligations of Tenant hereunder, Tenant shall quietly enjoy the Premises, subject, however, to the terms of this Lease and the matters set forth on Exhibit A attached hereto, or consented to by Tenant.

17. Events of Default; Remedies. (a) If any one or more of the following events ("Events of Default") shall occur, and after Notice by Landlord has been given as provided below, Landlord shall have, at its election, the remedies stated in paragraphs 17 (b), (c), (d), (e) and (f).

(i) If Tenant shall fail to pay any rent or other sum payable hereunder by Tenant to Landlord within 10 days after written notice from Landlord that the same shall have become due and payable; or

(ii) If Tenant shall fail to use the Premises to provide low income housing without the consent of Landlord. This requirement shall be satisfied if (a) at least 50% of the units are rented to families or person with incomes of 60% or less of the area medium gross income ("AMGI") established by the United States Department of Housing and Urban Development ("HUD") and the remaining units are rented to families or person with incomes of 80% or less of AMGI; or (b) the monthly rents do not exceed 40% of the individual tenants'

monthly income. It is Tenant's intention that 100% of the units will be rented to families or person at or below 60% of AMGI, although it may become necessary to rent at higher levels to obtain financing. Tenant may submit to Landlord for Landlord's consent, which consent shall not be unreasonably withheld, a financing plan reflecting anticipated rent and income levels. Landlord's approval of such plan shall be deemed to be consent to rent at higher rental rates or to persons or families with higher income. Notwithstanding the foregoing, it shall not be an Event of Default hereunder if Tenant is unable, after reasonable effort, to lease units to tenants meeting the applicable income guidelines and thereafter leases such units to others. In no event shall Tenant be required to force a tenant to move out of a unit if that tenant's income increases above permitted levels, provided, however, that the next vacancy shall be filled by a tenant meeting the applicable requirement; or

(iii) If Tenant shall fail to perform or comply with any other term hereof and such failure shall continue for more than 60 days after Notice thereof from Landlord, provided that such 60 day period shall be extended for up to one year so long as Tenant is diligently proceeding to cure such failure and is making reasonable progress toward that end; or

(iv) If any execution or attachment shall be issued whereby any of the Premises shall be taken or attempted to be taken by someone claiming through or under the Tenant, and the same shall not be vacated or bonded within 90 days after the issuance thereof; or

(v) If Tenant shall become unable to pay its debts as they fall due, or shall make a general assignment for the benefit of creditors, or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief, under any present or future statute, law or regulation or shall file an answer admitting or shall fail to deny the material allegations of a petition against it for any such relief; or

(vi) If any proceeding against Tenant of the type referred to in subsection 17(a)(v) above, seeking any such relief shall not have been dismissed within 90 days after the commencement thereof; or

(vii) If a trustee, receiver or liquidator of tenant or of any substantial part of its properties or assets shall be appointed with the consent or acquiescence of Tenant, or if any such appointment if not so consented to or acquiesced in, shall remain unvacated or unstayed for an aggregate of 90 days (whether or not consecutive); then and in any such event Landlord at any time thereafter, while such Event of Default shall continue, may give a written termination notice to Tenant, and upon the date specified in such notice (subject to the provision of this section relating to the survival of Tenant's obligations) the term of this Lease shall expire and terminate by limitation and all rights of Tenant under this Lease shall cease. Tenant shall pay, as additional rent, all reasonable costs and expenses incurred by or on behalf of Landlord, including, without limitation, reasonable attorneys' fees and expenses, occasioned by any default or Event of Default by Tenant under this Lease.

(b) Repossession, etc. If an Event of Default shall have occurred, Landlord shall give Notice thereof to Tenant and to an Investor Limited Partner or Member (as later identified by Tenant), its affiliates, successors and/or assigns. If the event of Default is not cured within 90 days of such Notice, Landlord, whether or not the term of this Lease shall have been terminated, may, to the extent permitted by applicable law, enter upon and repossess the Premises or any part thereof by force, summary proceedings, ejection or otherwise, and may

remove Tenant and all other persons and any and all property therefrom. Landlord shall be under not liability for or by reason of any such entry, repossession or removal.

(c) Reletting At any time or from time to time after the repossession of the Premises or any part thereof pursuant to subsection 17(b), whether or not the term of this Lease shall have been terminated pursuant to subsection 17(a), Landlord may (but shall be under no obligation to) relet the Premises or any part thereof for the account of Tenant, in the name of Tenant or Landlord or otherwise, without notice to Tenant, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions (which may include concessions or free rent) and for such uses as Landlord, in its reasonable judgment, may determine, and may collect and receive the rents therefor.

(d) Termination of Lease Not To Relieve Tenant of Obligations. No expiration or termination of the term of this Lease pursuant to subsection 8(a) or by operation of law or otherwise (except as expressly provided herein), and no repossession of the Premises or any part thereof pursuant to subsection 17(b) or otherwise, shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination or repossession.

(e) Current Damages. In the event of any such expiration, termination or repossession, Tenant will pay to Landlord the rent and all other sums required to be paid by Tenant upon to the time of such expiration, termination or repossession, and thereafter Tenant, until the end of what would have been the term of this Lease in the absence of such expiration, termination or repossession, shall pay to Landlord, as liquidated and agreed damages for Tenant's default, (i) the rent and all other sums which would be payable under this Lease by Tenant in the absence of such expiration, termination or repossession less (ii) the net proceeds, if any, of any reletting effected for the account of Tenant pursuant to subsection 17 (c), after deducting from such proceeds all of Landlord's reasonable expenses in connection with such reletting, including, without limitation, all reasonable repossession costs, reasonable brokerage commissions, reasonable legal expenses, reasonable attorneys' fees, reasonable employees' expenses, reasonable alteration costs, and reasonable expenses of preparation for such reletting.

(f) Right to Receivership. In addition to all other remedies of Landlord hereunder set forth, in the event of the nonpayment by Tenant of the rent reserved herein or of any other sum payable hereunder within the periods of time described herein, or in the event Tenant shall default in the performance of any of its other covenants, agreements or obligations herein contained and the Tenant shall fail to cure any such default in the manner and within the periods of time specified in this section, Landlord shall be entitled to a receiver for the Premises and the Improvements, fixtures and equipment thereon and appurtenances thereto and of the rents, issues and profits thereof as a matter of right, and such receiver may be appointed by any court of competent jurisdiction upon written notice to Tenant, and all rents, issues and profits, income and revenues from the Premises and the Improvements thereon shall be applied by such receiver to the payment of the rent, together with taxes and insurance premiums and expenses of receivership. Upon the curing of all Tenant's defaults the Premises shall be returned to Tenant and the receivership shall terminate.

(g) Right to Cure. Investor Limited Partner or Member and the leasehold mortgagee each shall have the right to cure any Event of Default, and Landlord shall not terminate this Lease for Tenant's default unless and until Landlord has given Investor Limited Partner or Member and the leasehold mortgagee Notice of such Event of Default and 30 days in addition to any applicable cure period given to Tenant in which to cure it. If any Event of Default cannot reasonably be cured within 30 days, then Investor Limited Partner or Member and/or the

leasehold mortgagee shall have such additional time as it shall reasonably require, so long as Investor Limited Partner or the leasehold mortgagee is proceeding with reasonable diligence and so long as such additional time to cure does not exceed a maximum of an additional 60 days beyond the initial 30-day cure period. Notwithstanding anything to the contrary contained herein, for any Event of Default that cannot be cured without possession of the Premises, Landlord shall allow such additional time as Investor Limited Partner and/or the leasehold mortgagee shall reasonably require to prosecute and complete a foreclosure or equivalent proceeding and obtain such possession, including time to obtain relief from a bankruptcy stay in Tenant's bankruptcy.

18. Landlord's Representations. (a) Title. Landlord represents and warrants that as of the Commencement Date, Landlord has good and marketable title to the Premises. Landlord shall, at Tenant's sole cost and expense, provide Tenant with a policy of title insurance covering the Premises on or before the execution of this Lease.

(b) Use Restrictions. Landlord represents and warrants that Landlord shall not use, or permit the use of, any property currently owned by Landlord and adjacent to the Premises for commercial or industrial purposes (other than the present use) without first obtaining the prior written consent of Tenant, which consent shall not be unreasonably withheld or delayed. Landlord shall, at tenant's cost and expense, execute, acknowledge and deliver a Memorandum of Ground Lease, setting forth this restriction on such adjacent property, or such other instrument as Tenant shall reasonably request to carry out the intention of this Section 18(b).

(c) Environmental Indemnity. If Tenant becomes liable under any statute, regulation, ordinance or other provision of federal, state, or local law pertaining to the protection of the environment or otherwise pertaining to public health or employee health and safety, including, without limitation, protection from hazardous waste, lead-base paint, asbestos, methane gas, urea formaldehyde insulation, oil, toxic substance, underground storage tanks, polychlorinated biphenyls (PCBs), and radon, the Tenant is required to discharge such costs, expenses, damages, or liabilities in whole or in part from any source. The foregoing indemnification shall survive the dissolution of the Tenant and any transfer of the Premises.

19. Acts of God, Etc. In any case where either party is required to perform any work hereunder, delays caused by war, strike, riot, acts of God, shortages of material or labor, governmental regulation, or other causes beyond such party's reasonable control shall not be counted in determining the time during which such work shall be completed. In any case where work shall be paid for out of insurance proceeds or condemnation awards, due allowance shall be made, both to the party required to perform such work and to the party required to make such payment, for delays in the collection of such proceeds and awards.

20. Interest Upon Arrears or Upon Default. Every installment of rent accruing under this Lease and all other sums becoming due or payable to Landlord under this Lease or on account of any default by Tenant in performance or observance of any of the covenants of this Lease, shall, if it is not paid within 10 days after written notice from Landlord that the same is due and payable, bear interest from said date until the same shall be paid at one percent per year above the prime rate for commercial loans then being made by the largest bank in Idaho as ascertained by the Idaho Department of Finance, however, in no event shall such amount bear interest at a rate higher than the maximum rate of interest allowed by law. All sums so advanced or paid by Landlord under the provisions of this Lease shall become due and payable with the installment of rent next becoming due after the date of such advance or payment.

21. Landlord's Representations and Warranties. Landlord hereby represents and warrants to Tenant that:

(a) Landlord owns fee simple title to the Premises, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements and other matters affecting title, except for those matters affecting title which are of record. The Premises are in compliance with all easements, restrictions, and other matters affecting title as of the date hereof.

(b) Landlord has full right, power and authority to make, execute, deliver and perform its obligations under this Lease. Landlord has obtained and received all required and necessary consents and approvals to enter into this Lease with Tenant. The entry by Landlord into this Lease with Tenant and the performance of all the terms, provisions and conditions contained herein does not and will not violate or cause a breach of or default under any agreement or obligation to which Landlord is a party or by which it is bound.

(c) There are no tenants, lessees or other occupants of the Premises having any right or claim to possession or use of the Premises or a claimed preference for occupancy in the Premises.

(d) There are no unpaid special assessments of which Landlord has received notice, or of which Landlord is otherwise aware, for sewer, sidewalk, water, paving, gas electrical or utility improvements or other capital expenditure, matured or unmatured, affecting the Premises.

(e) Landlord is not obligated under any contract, lease or agreement, oral or written, with respect to ownership, use, operation, management, maintenance, lease, sale or financing of the Premises except as previously disclosed to Tenant.

(f) No representation, statement or warranty by Landlord contained in this Lease or in any exhibit attached hereto contains any untrue statement or omits a material fact necessary to make the statement of fact therein recited not misleading.

(g) There is no action, suit, litigation or proceeding pending or, to Landlord's knowledge, threatened against Landlord and/or the Premises which could prevent or impair Landlord's entry into this Lease and/or performance of its or any of Tenant's obligations hereunder or materially and adversely impact Tenant's rights hereunder.

(h) The person signing the Lease on behalf of Landlord is duly and validly authorized to do so.

(i) There are no pending condemnation proceedings relating to any portion of the Premises, and Landlord has received no notices of the institution or the proposed institution of condemnation proceedings relating to any portion of the Premises or of any other proceedings against or any taking of all or any part of the Premises.

(j) There are no special assessments assessed or due with respect to pending or completed public improvements.

(k) There is no pending or threatened litigation, governmental proceedings, notice of action required to be taken, judgment or cause of action against or related to the Premises

and the project, or any portion thereof, or against the Landlord or Landlord's agents with respect to the premises or any portion thereof.

22. Tenant's Representations and Warranties. Tenant hereby warrants and represents to Landlord that:

(a) Tenant is lawfully organized as a limited liability company under the laws of the State of Idaho and the United States.

(b) Tenant has the full right, power and authority to make, execute, deliver and perform this Lease.

(c) Tenant's execution and delivery of this Lease has been authorized by all requisite action on the part of the Tenant, and the execution and delivery of the Lease by Tenant and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which Tenant is a party or by which it is bound.

(d) There is no action, suit, litigation or proceeding pending or, to Tenant's knowledge, threatened against Tenant that could prevent or impair Tenant's entry into this Lease and/or performance of its obligations thereunder.

(e) The person signing this Lease on behalf of Tenant is duly and validly authorized to do so.

23. Attorneys' Fees. (a) If Landlord or Tenant is made a party to any litigation concerning this Lease, the Premises or the Improvements, solely by reason of any act or omission of the other party (the "Defaulting Party") or the Defaulting Party's authorized representatives, the Defaulting Party shall be liable for the reasonable attorneys' fees and court costs incurred in the litigation by the non-defaulting party.

(b) If either party successfully maintains an action against the other arising out of or in connection with this Lease, the successful party shall be entitled to have and receive from the other party reasonable attorneys' fees and court costs.

24. Severability. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

25. Short Form. At the request of either party, the parties hereto shall execute and record a short form or memorandum of this Lease to evidence Tenant's interest in the Premises.

26. Business Days. If any amount payable hereunder becomes due on a Saturday, Sunday or a banking holiday, then such amount shall be due and payable on the next business day following such Saturday, Sunday or holiday.

27. Headings. The headings contained in this Lease are for the convenience of reference only and shall not be considered in the construction or interpretation of any provision hereof.

28. Notices. All notices, demands and communications hereunder shall be in writing,

shall be given at least 60 days prior to the event covered by the notice, and shall be served or given either in person or by certified or registered mail, addressed as follows:

City of Hailey, Idaho
c/o Mayor
115 Main Street South, Suite H
Hailey, Idaho 83333

River Street Apartments Limited Partnership
River Street Senior Housing, LLC, General Partner
C/O ARCH Community Housing Trust, Inc.
Executive Director
P. O. Box 1292
Ketchum, Idaho 83340

Any notice given hereunder by mail shall be deemed delivered when received. At the request of the party giving a Notice, the party receiving the Notice shall use its best efforts to reply within less than the 60 days (or other period) otherwise given, and such period may be shortened (but in no event to less than 15 days) if required by the terms of any mortgage loan or other financing arrangement binding upon the Tenant.

29. Consents. In any instance where Landlord's consent is required hereunder, if Landlord shall fail to notify Tenant of Landlord's approval or disapproval of the matter within 30 days after notice to Landlord by Tenant, it shall be concluded that Landlord has consent to such matter.

30. Entire Agreement. This Lease, together with the exhibits attached hereto, contains the entire agreement between the parties with respect to the matters contained herein, and shall not be modified, altered or amended in any manner except (a) by an instrument in writing executed by the parties or their respective successors in interest and (b) with the prior written consent of any leasehold mortgagee.

31. Binding Effect. Except as otherwise provided herein, the terms, covenants and conditions in this Lease and in any exhibits attached hereto shall be binding upon and inure to the benefit of Landlord and Tenant and their respective successors and assigns.

32. No Partnership or Joint Venture. The relationship created hereby between the parties in one of Landlord and Tenant. Nothing contained in this Lease shall create or be construed to create a partnership or joint venture between Landlord and Tenant.

33. Miscellaneous. (a) Opinion Letter. Landlord shall deliver to Tenant on or prior to execution of this Lease, an opinion from Landlord's attorney with respect to Landlord's authority to enter into this Lease and the due execution of the Lease.

(b) Tenant's Obligations Conditional. Tenant's obligations hereunder are conditioned upon Tenant receiving an environmental review of the Premises which is reasonably acceptable to Tenant.

(c) Governmental Notices. Landlord and Tenant agree to promptly send copies of all notices received from governmental authorities to any leasehold mortgagee.

(d) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease the day and year first above written.

ATTEST:

CITY OF HAILEY, IDAHO

By:

Rick Davis, Mayor

ATTEST:

RIVER STREET APARTMENTS
LIMITED PARTNERSHIP,
an Idaho limited liability company

By: River Street Senior Housing, LLC,
an Idaho limited liability company
General Partner

By:

Michelle Griffith
Manager

By:

Gregory A, Urrutia
Manager

State of Idaho)
):ss
County of Blaine)

On this _____ day of _____, 2010 before me, a Notary Public in and for said State, personally appeared RICK DAVIS, known or identified to me to be the Mayor of the CITY OF HAILEY, IDAHO and is the authorized representative of the City of Hailey, Idaho and that the within and foregoing instrument was signed on behalf of the City of Hailey by authority of the City Council with full authority to do so.

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 _____
Residing at: _____

My Commission Expires: _____

State of Idaho)
):ss
County of Blaine)

On this _____ day of _____, 2010 before me, a Notary Public in and for said State, personally appeared MICHELLE GRIFFITH known or identified to me to be the Manager of RIVER STREET SENIOR HOUSING, LLC an Idaho limited liability company, and acknowledged to me that she executed said instrument on behalf of said general partner of the limited partnership.

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 _____
Residing at: _____

My Commission Expires: _____

State of Idaho)
):ss
County of Canyon)

On this _____ day of _____, 2010 before me, a Notary Public in and for said State, personally appeared GREGORY A. URRUTIA known or identified to me to be the Manager of RIVER STREET SENIOR HOUSING, LLC an Idaho limited liability company, and

acknowledged to me that she executed said instrument on behalf of said general partner of the limited partnership.

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 _____

Residing at: _____

My Commission Expires: _____

