

# PLANNED UNIT DEVELOPMENT AGREEMENT

## RIVER STREET SENIOR HOUSING (AFFORDABLE SENIOR HOUSING)

This **PLANNED UNIT DEVELOPMENT AGREEMENT** ("Agreement") is entered into this \_\_\_\_ day of December, 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 ("Project");

The property (the "Property") subject to this Agreement is more particularly described as follows:

**Lot 2A of a Replat of LOT 2A AND PARCEL A, SUTTON SUBDIVISION, BLAINE COUNTY, IDAHO**, according to the official plat thereof, recorded December 8, 2006, as Instrument No. 542685, records of Blaine County, Idaho.

The Property is also described in the PUD Application and is presently zoned Business and is subject to City's Land Use Ordinances and Zoning Regulations;

2. 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;
3. City approved River Street's PUD Application on December 20, 2010, and adopted Findings of Fact and Conclusions of Law on December 27, 2010;
4. In order to ensure that the housing units are 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;
5. 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;
6. City and River Street desire that construction of the Project 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; and

7. The River Street PUD Application is consistent with the housing and other sections of City's Comprehensive Plan.

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 and Amenities.** River Street agrees to construct the Project 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 following improvements and amenities of the Project shall be installed in a single phase:
  1. A 24-unit three story apartment building consisting of 23 units utilized entirely for affordable senior housing and one unit used as a manager unit,
  2. At grade interior parking for 24 of the 26 on-site parking spaces, and
  3. A public transit facility shelter.
- C. **Zoning Ordinance Waivers.** 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.
- 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 waived 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, consistent with the Memorandum of Understanding between the parties.
5. The Design Review plans dated June 11, 2010, approved by the City of Hailey Planning and Zoning Commission on July 19, 2010, and conditions of approval listed in the Findings of Fact signed on August 2, 2010.
6. Twenty three (23) units shall be reserved for and occupied by qualifying seniors. All twenty three (23) units shall be affordable to households earning less than 60% of the area median income. Twelve (12) of the units shall be affordable and restricted to households earning less than 60% of the area median income, while eleven (11) of the units shall be affordable and restricted to households earning less than 50% of the area median income.
7. River Street shall pay the City Fifteen Thousand and no/100's dollars (\$15,000.00) on or before the execution of this Agreement and Fifty Thousand and no/100's dollars (\$50,000.00) on or before the issuance of a building permit for the Project.

### 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.** 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.
- 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)

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.
- O. **Release.** River Street hereby waives any right it may have to assert that the condition requiring payment of \$65,000 is invalid in whole or in part.

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

CITY OF HAILEY, an Idaho municipal corporation

By: \_\_\_\_\_  
Fritz X. Haemmerle, Council President  
City of Hailey

ATTEST:  
By: \_\_\_\_\_  
Mary Cone, City Clerk  
City of Hailey

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 December, 2010, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared Fritz X. Haemmerle, Hailey City Council President, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same in said name.

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

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of Blaine )

On this \_\_\_\_\_ day of December, 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 December, 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 he 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 \_\_\_\_\_

