

WILLIAMS · BRADBURY

A T T O R N E Y S A T L A W

January 24, 2020

Via E-mail

Mayor Nissula and
Cascade City Council
105 S. Main
Cascade, ID 83611

Re: Development Agreement for The River District

Dear Mayor and Council:

For the past several months the applicant team and city staff have been working on a proposed development agreement to present to the council for its consideration. The applicant received staff's latest proposal on Tuesday, January 21, a copy of which is delivered with this letter. Unfortunately it has become apparent to the applicant that agreement cannot be reached between the applicant and staff on a number of issues, necessitating that the council take the matter up at the hearing scheduled for January 27. The issues upon which agreement has not been reached and on which the applicant seeks council consideration and decision are as follows:

Section 3.2 Minimum Lot Size For 4-Plex Lots: The applicant sought, through a PUD exception, a reduction in the minimum lot size for the 4-Plex lots from 9,000 square feet to 5,000 square feet in order to permit the drive aisle, parking areas, and utility easements to be placed in a separate common lot rather than in an easement in the building lots. The Planning and Zoning Commission approved that exception. Staff, however, seeks to impose the 9,000 square foot minimum (which would require revision of the preliminary plat). The applicant asks that council approve the requested exception.

Sections 3.5 and 4.4 Building Heights: The applicant originally requested approval for three story multifamily buildings. Based on comments by the Fire District, the applicant agreed to reduce those buildings to 2 story. The applicant has proposed building heights be permitted up to 35 feet unless a lesser height is required by the fire district at the time of issuance of the building permit. Staff recommends that building height be universally limited to 25 feet. Perhaps a better way to address the issue is to limit buildings to two stories and require the fire district to approve the building height. If the 25 foot height limit is to be imposed, the applicant asks if this is a policy that the council intends will apply to all new buildings in the city or if it will only apply to the buildings in the applicant's project.

Section 4.5 Floodplain: The city adopted a new floodplain damage prevention ordinance in January 2019, effective on February 1, 2019. The applicant has proposed that its

project conform to the city's ordinance. Staff seeks to add to the requirements of that ordinance a stricter no net rise standard to the applicant's project which would not be required by the ordinance (the applicant's engineer has been advised by the city's engineer that this is not a requirement he has requested, which begs the question of where it is coming from). It seems safe to assume that, when the council adopted the new floodplain ordinance just one year ago, the council knew what it was doing and adopted the standards it sought to require of developments in the floodplain. Staff now seeks to modify council's action, not by ordinance applicable to all, but through a development agreement applicable only to the applicant's project. That is inappropriate and council should not support it.

Section 5.2a Streets and Highways-Internal Project Improvements: In order to order to assist the City with the maintenance costs of the internal roadways in the project before tax revenues for such improvements are being assessed and collected, the applicant has offered to be responsible to provide snow removal for such improvements until such time as thirty five percent (35%) of the lots in the first phase have been sold to third party purchasers – when the city would be collecting new tax revenue. Staff is asking, however, that the applicant be responsible to provide snow maintenance and removal for such improvements in every phase until eighty percent (80%) of the lots in the phase have been sold and built upon. So, instead of priming the pump, so to speak, for the first phase when the need is clear, staff wants shift the cost of snow removal to the applicant essentially through the life of the project, long after the city will have been collecting tax dollars from the owners and residents of the project. Staff should be required to justify its position.

Section 5.2b State Highway Improvements: The applicant proposes that the council condition its approval of the project (if council chooses to approve) on the applicant's compliance “with all access and intersection requirements of the Idaho Transportation Department (ITD) applicable to the Project and construct all improvements reasonably and necessarily required to mitigate traffic impacts of the Project as finally determined by ITD.” Staff however, recommends that the council not take action on the application until ITD has approved the applicant's proposal and established its requirements for connection to the state highway. Staff's recommendation results in an unnecessary delay. ITD is solely responsible for determining what improvements the applicant will be required to make in the state's right of way and no work in the right of way can commence until the ITD has given its approval. Granting conditional approval of the project prior to ITD approval places absolutely no risks or burdens on the city and the applicant asks the council to do so.

Sections 5.4 and 5.6 Water and Wastewater System Service Availability Fees: In view of the comments made in December by the city's sewer and water consultant (that no system upgrades are required for the first phase of the applicant's project), the applicant has proposed that sewer and water connection fees for the project be paid as, when and in the amounts required by the applicable ordinances and resolutions of the City, and that those fees be used by the city to fund possible future improvements. The first phase of the project will generate over \$440,000 in water service availability fees and over \$1,250,000 in sewer service availability fees during build out. Staff, however, recommends that the applicant be required to pay 50% of those fees up front for each phase. For the first phase, the developer's up-front payment is nearly \$850,000. Staff's recommendation is not financially feasible. Simply said,

that requirement is a potential project killer. The up-front payment requirement on the first and each subsequent phase adds too much financial risk to the project compared to the potential project benefits.

Sections 5.4 and 5.6 Water and Wastewater Facility Plans: Staff has recommended that the applicant also be required to help the city pay for its required sewer and water facilities plans. The amount of the applicant's contribution is unsaid. Assuming that the council rejects staff's proposed up-front payments described above, and recognizing that the city will be required to prepare the facilities plans with or without the applicant's project, the applicant would agree to contribute one-half of the city's out of pocket costs (net of grants or sources other than city funds). This seems a reasonable allocation of those costs between the city and the applicant.

Sections 5.4 and 5.6 Sewer and Water Line Size Modeling: Staff has recommended that before the city take action on the applicant's preliminary plat, the applicant be required to perform models of the city's existing water line and wastewater collection line to determine if they have sufficient capacity to serve the applicant's project. The applicant notes that those pipelines were sized by the city when the new bridge was built and that the city certainly must have engineered the sizing to accommodate future development of the area at the time. The applicant shouldn't need to re-engineer it for the city. Certainly the city's engineer should know the answer to that question. Staff's request seems to be make work for the applicant. In any event, these determinations will be made during final engineering and agency review for the final plat. There is no reason to further delay action on the preliminary plat for this reason.

Section 5.4 Water Storage Plan: Staff seeks to require the applicant to develop a fire suppression water storage plan for the city prior to final plat approval. The applicant notes, however, that this is a topic that should be addressed as a part of the water facilities plan addressed above and not separately by the applicant. The city's sewer and water consultant has indicated that the applicant's development will have minimal impact on the city's water storage.

Section 5.8 Stormwater: There appears to be some un-defined concern on staff's part about how storm water should be treated. The applicant will commit to comply with the city's code (and the requirements of any other applicable agencies) and agrees that its storm water plan should be reviewed and approved by the city engineer (and any other applicable agencies) prior to final plat approval. The applicant is not seeking any variances or waivers from state or city code respecting storm water.

Section 5.9 Pathways: The applicant has proposed 6 foot wide pathways in the project. Staff points out that the city's comprehensive plan calls for regional pathways to be 10 feet wide. By now everyone knows that comprehensive plans are not controlling zoning law – only adopted ordinances are. Staff nevertheless seeks to elevate the comprehensive plan to law and to broaden the application of the comprehensive plan provision to the proposed pathways in the project – which are not regional pathways. In an effort to compromise, the applicant will agree to construct 10 foot wide pathways on either side of the main collector

road and 6 foot wide pathways in the other areas of the project, except in wetland areas where the standards and requirements of the Army Corps of Engineers will apply. Staff has also recommended that the project pathway be connected to the existing city system. The applicant is willing to extend a pathway to the SH-55 right of way for connection to the city's pathway system.

Section 5.11 Application Review Fee Costs: Staff has included a provision requiring that the applicant pay, prior to preliminary plat approval, some unstated amount to the city for application review and consultant, engineering and legal costs. The applicant has just received (on January 22) an invoice dated January 8 seeking payment of \$60,824.68 for those and other services. The applicant acknowledges that, pursuant to the city's fee schedule resolution and by the terms of the city's application materials, the applicant is obligated to pay the city's legal and engineering fees. The invoice received by the applicant, however, includes substantial charges for services which are neither categorized nor qualify as engineering services. Instead, a substantial amount of the invoice seeks payment of fees for the city's contract planner. Neither the city's fee resolution nor its application materials require the applicant to do so. If the city expected the applicant to pay those fees the matter should have been addressed, and the applicant so advised, when the planner was hired and not now, near the end of the process. Moreover, the applicant recalls that at the time the council authorized hiring the contract planner the council stated that it would be at the city's expense.

Section 6 Plat Approval Timelines: The applicant has requested that it be permitted two (2) years for approval of the final plat of its first phase and that it be permitted two year intervals to apply for subsequent phases. Staff has agreed to the timeline for the first phase but not for subsequent phases, which staff recommends be in one year intervals. The applicant knows, and has previously disclosed to the city, that it is not feasible to meet those time frames. The applicant anticipates that it might not be able to submit its 5th (last) phase until 2034-5. In order to reduce the number and frequency of extension requests, the applicant asks for two years to apply for each phase. The applicant may still need to seek extensions, but the city will not be burdened with quite so many.

Although the list of issues upon which the applicant and staff disagree seems rather long, council should know that quite a bit of agreement between staff and the applicant has been achieved both during the P&Z hearing process and through discussions on the development agreement. For example, in connection with the staff's most recent draft development agreement, the applicant has agreed with the following:

- River setback of 50 feet;
- A ban on wood burning stoves and fireplaces in multifamily units;
- Adding a five foot wide bike path to the main collector road;
- Sharing equally the city's cost of the sewer and water facilities plans;
- Providing a landscape plan certified by a licensed landscape architect;
- Constructing some portions of proposed pathways 10 feet wide and connecting to the city's system; and
- Council approval for reducing or delaying proposed phases.

Mayor and City Council

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An applicant proposed development agreement and a comparison version showing differences between the staff's proposal and the applicant's proposal are included with this letter. Please include this letter, the applicant's proposed development agreement, staff's proposed development agreement and the comparison version in the record of this matter and post them to the city's website for public review. The applicant looks forward to discussing the above unresolved matters with the council at its meeting of January 27.

Very truly yours,

Stephen A. Bradbury

Cc: Client (via e-mail)

Matthew A. Johnson (via e-mail)

Steve Arnold (via e-mail)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”), entered into this ____ day of _____, 2020, by and between the CITY OF CASCADE, IDAHO, a municipal corporation (“**City**”), and CASCADE RIVER, LLC, an Idaho limited liability company authorized to do business in the state of Idaho (“**Developer**”).

RECITALS

This DEVELOPMENT AGREEMENT is predicated upon the following facts:

WHEREAS, Developer owns contiguous parcels of land approximately 122.4 acres in size currently within Valley County and more particularly described in **Exhibit A**, attached hereto and made a part hereof, and which is currently zoned “Agricultural” under Valley County’s Zoning Ordinance (the “**Property**”);

WHEREAS, Developer filed with the City a Request for Annexation of the Property and Zoning upon Annexation; a Preliminary Plat Application; and a Planned Unit Development Application that are being processed by the City file numbers ANNEX-19-01, ZON-19-01, PUD-19-01, and SUB-19-01 (collectively “Project Applications”) and are for a development project named “The River District”;

WHEREAS, Developer has requested that the Property be annexed into the city, and be zoned and developed in accordance with the applicable ordinances and regulations of the City and this Agreement;

WHEREAS, at City’s request and as a condition of annexation, Developer, as the owner of the Property, agreed to submit the Property to a development agreement pursuant to Cascade City Code, Title 3, Chapter 7, and Idaho Code Section 67-6511A;

WHEREAS, City is a municipal corporation having all of the powers and authority granted municipalities under the laws of the State of Idaho, including, without limitation, the authority to contract (Idaho Code § 50-301), to annex (Idaho Code § 50-222), to zone parcels of real property (Idaho Code § 67-6511), and to enter into development agreements (Idaho Code § 67-6511A);

WHEREAS, City having held all lawfully required public hearings and meetings for consideration of said annexation request and this Agreement, and on the __ day of ____, 2020 City Council (“**Council**”) approved the annexation request and zoning and land use applications, subject to this Agreement, and Council, on the ____ day of _____, 2020, adopted findings of fact, conclusions of law and a written decision with regard thereto;

WHEREAS, it is in the best interests of City that the Property be annexed into the City and be developed in accordance with the Applications as approved and this Agreement;

WHEREAS, Council has determined that annexation of the Property constitutes an orderly extension of City’s municipal boundaries and property within the City’s area of impact; that such annexation is (1) not in conflict with the comprehensive plan; (2) appropriately zoned with R-III

and C zoning designations as set forth in the Zoning Ordinance and Map; (3) complies with the requirements of all state statutes and city ordinances or as otherwise permitted in this Agreement; and (4) it is in the best interests of City to enter into this Agreement in order to provide for orderly annexation and development of the Property;

WHEREAS, Developer has agreed to the use restrictions and other limitations set forth herein upon the use and development of the Property and the zoning designation to be placed upon the Property;

WHEREAS, the intent of this Agreement is to protect the Developer's rights of use and enjoyment of the Property while at the same time mitigating any adverse impacts of the development upon neighboring properties and the existing community and ensuring the Property is developed in a manner consistent with City ordinances and in substantial conformance with the approved planned unit development and preliminary plat; and

WHEREAS, Developer and City enter this Agreement for the purpose of establishing certain rights and obligations of the parties with regard to annexation, zoning and development of the Property including limitations as to the use, development and design.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, Developer and City hereby mutually covenant and agree as follows:

1. **DEFINITIONS.** Throughout this Agreement, the following terms will be defined and certain restrictions and covenants are hereby placed upon the areas so defined, as follows:

- 1.1 “**City**” shall mean the City of Cascade, Idaho, a municipal corporation, acting by and through City’s duly elected Council.
- 1.2 “**Developer**” shall mean Cascade River, LLC, an Idaho limited liability company, and its successors in interest to the Property.
- 1.3 “**Preliminary Plat/PUD Map**” shall mean and consist of the approved preliminary plat/PUD Map dated _____, a copy of which is attached hereto as **Exhibit B** and shall be incorporated herein by reference.
- 1.4 “**Property**” shall mean that certain real property legally described in **Exhibit A**.
- 1.5 “**Project**” shall mean the development project known as The River District as approved by the City in file numbers ANNEX-19-01, ZON-19-01, PUD-19-01, and SUB-19-01 and as described in this Agreement.
- 1.6 “**Project Applications**” shall mean City application file numbers ANNEX-19-01, ZON-19-01, PUD-19-01, and SUB-19-01.

2. **LEGAL AUTHORITY.** This Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Cascade City Code Title 3 Chapter 7 and other applicable state statutes and city ordinances.

3. USES PERMITTED BY THIS AGREEMENT.

3.1 General. The Project will include a mix of residential and commercial uses as well as open spaces and pathways to create a mixed-use community. The uses allowed pursuant to this Agreement are those uses allowed in the R-III and C zones under City's Zoning Ordinance in effect on the date of approval of the Project and as described in Cascade City Code Sections 3-1-8 and 3-1-10, as applicable. Developer agrees that this Agreement specifically allows the uses described in the aforementioned sections of the Zoning Ordinance. No change in the uses specified in this Agreement shall be allowed without modification of this Agreement pursuant to the requirements of the City's Zoning Ordinance and Idaho Code. In the event Developer changes or expands the uses permitted by this Agreement without formal modification of this Agreement as allowed by the City's Zoning Ordinance, Developer shall be in default of this Agreement.

3.2 Residential Uses. The Developer is providing a variety of lot sizes in order to accommodate a mix of housing types and to attract a diversity of income levels and households. Developer shall be entitled to subdivide, construct, develop, market, sell and improve the following types of residential building lots and on approximately 80.45 acres substantially as shown on the Preliminary Plat/PUD Map attached hereto as **Exhibit B**:

- a. One hundred thirty-five (135) single family residential building lots with a minimum size of 8,000 square feet (the Single Family Lots) for detached single family homes;
- b. Nine (9) single family "cottage" lots with a minimum lot size of 5,000 square feet (the Cottage Lots") for detached single family homes;
- c. Forty-Three (43) townhome lots with a minimum size of 3,000 square feet (the "Townhome Lots") for attached or detached residential townhomes;
- d. Forty-eight (48) multi-family four-plex lots with a minimum size of 5,000 square feet (the "Four-plex Lots") for residential four-plex buildings; and
- e. Four (4) lots for multi-family buildings with up to sixteen (16) residential units each (the "Multi-family Lots") for multifamily residential buildings; and
- f. No manufactured or mobile homes are permitted.

3.3 Commercial Uses. Developer shall be entitled to subdivide, construct, develop, market, sell and improve twelve (12) commercial building lots on approximately 6.17 acres substantially as shown on the Preliminary Plat/PUD Map attached hereto as **Exhibit B** for such uses as are permitted by the Cascade Zoning Ordinance.

3.4 Open Space/Common Lots. Developer shall be entitled to subdivide, construct, develop, and improve common/open space lots to be owned and maintained by one or more property owner associations for landscaping, pathways, picnic areas, ponds, wetland protection, snow storage, parking and drive aisles and similar such uses substantially as shown on the Preliminary Plat/PUD Map attached hereto as **Exhibit B**.

A total of at least twenty-five percent (25%) of the gross Project area shall be committed to such open space.

3.5 PUD Exceptions. Pursuant to Cascade City Code Section 3-2-6(C), the following exceptions to City Code have been granted for the Project:

- a. Cul-de-sac Length. Cul-de-sacs may exceed 500 feet in length, but shall not be greater than 750 feet.
- b. Building Heights. Limited to two stories at such height as approved by the Cascade Rural Fire District at the time of issuance of the applicable building permit.
- c. Parking. A minimum of 652 stalls combined for the multi-family area.
- d. Lot Sizes. Minimum lot sizes shall be as specified in Section 3.2, above.
- e. Setbacks. Setback requirements shall be as specified in Section 4.1, below.
- f. Storage Areas. Developer is not required to provide centralized storage areas for boats, trailers, campers and other recreational vehicles or equipment.

4. BUILDING RESTRICTIONS.

4.1 Residential Setbacks. The following minimum setbacks shall apply to the buildings constructed on the residential lots:

	<u>Front</u>	<u>Back</u>	<u>Side</u>
Single Family Lots	20'	20'	15'
Cottage Lots	15'	15'	5'
Townhome Lots	10'	10'	0'
Four-plex Lots	15'	10'	10'
Multifamily Lots	15'	10'	10'

4.2 Commercial Setbacks. The following minimum setbacks shall apply to the buildings constructed on the commercial lots:

Front	15'
Side	0'
Back	0'

4.3 River Setbacks. All buildings in the Project shall be set back at least 50 feet from the ordinary high-water mark of the Payette River. This setback, when applicable, shall supersede any other minimum setbacks.

4.4 Height Restrictions. Limited to two stories at such height as approved by the Cascade Rural Fire District at the time of issuance of the applicable building permit

4.5 Floodplain. Developer shall comply with the flood damage prevention regulations of the Cascade City Code Title 3, Chapter 5, as the same may be applicable to the Project.

4.6 Wetlands. Development of the Project shall be subject to approval by the US Army Corps of Engineers through the issuance of required permits, including any required Section 404 permit(s).

4.7 Design Requirements. Developer will comply with the following design standards:

Generally, building design shall comply with the design nature detailed in the submittal narrative as a part of the Project Applications. This includes maintaining a general rustic design, use of exposed beams, and use of neutral earth-tone colors to ensure the Project is in harmony with the natural context of its location. “Cookie-cutter” building design (repetitive and substantially similar adjacent designs) shall not be allowed. Such design standards shall also be specified for long-term preservation in the Project CC&Rs. No manufactured or mobile homes are permitted.

4.8 Wood Burning Stoves/Fireplaces. Developer will include language in the CC&R’s restricting the types of wood burning stoves and fireplaces permitted to be installed to ensure that high efficiency, low emitting CO2 stoves are used to minimize air pollution. Wood-burning stoves and fireplaces will not be permitted in the multi-family units and a restriction to such effect shall be included in the CC&Rs.

4.9 CC&Rs. CC&Rs are required to be prepared and recorded as applicable to the Project properties. Developer shall submit proposed CC&Rs to the City for review and comment prior to finalizing and recording such.

4.10 Propane/ Gas Tanks. Any household tanks for the storage of propane or other gases must be buried underground.

5. INFRASTRUCTURE IMPROVEMENTS. Developer shall engineer, construct, and otherwise provide, at Developer’s sole expense (except to the extent otherwise set forth below), the following improvements, facilities and services (public and private) with each phase of the project in accordance with this Agreement. Developer hereby warrants all infrastructure improvements for one (1) year from acceptance thereof by the City.

5.1 Utilities. All utilities, including water, sewer, storm drainage, pressurized irrigation, cable, phone and electric shall be installed underground within the street rights-of-way, in easements or as otherwise shown on the approved construction plans for each phase of the Project. All utilities shall be installed in accordance with City improvement standards and as set forth in Cascade City Code Section 3-2-5 and other sections as may be applicable. Detailed engineered construction drawings and specifications for construction of such improvements shall be prepared by Developer and approved by all applicable governmental entities prior to construction. Prior to

acceptance of any such improvements to be dedicated to City, City shall inspect and approve same and Developer shall provide City with "as built" drawings thereof. All required off-site utility improvements must be completed as directed by the applicable governmental entity or as otherwise specified in this Agreement.

5.2 Streets and Highways.

a. Internal Project Improvements. All internal minor public streets will be constructed within a fifty (50) foot right-of-way with an improved surface twenty-six (26) feet in width, excepting the following: the portions fronting the Townhome Lots may be constructed within a forty (40) foot right of way with an improved surface twenty-six (26) feet in width; the main collector(s) shall be constructed within a one-hundred (100) foot right-of-way with an improved surface twenty-nine (29) feet in width, with a five (5) foot bicycle lane, for a total of a thirty-four (34) foot wide paved surface. All streets, roadways and walkways shall be designed and constructed as shown on the approved construction plans for each phase of the Project and in accordance with City standards. Prior to acceptance of any such improvements to be dedicated to City, City shall inspect and approve same and Developer shall provide City with "as built" drawings thereof. City shall approve and accept the dedication of all such improvements in the manner and at the time provided for by the ordinances, resolutions, policies and practices of the City as of the date of completion thereof. Developer retains all responsibility to maintain and upkeep such streets until time of final acceptance by the City. Upon completion of each of such improvements and acceptance thereof by City, such improvements shall become a part of the City's street system and the City shall assume all responsibility therefore subject to Developer's warranty set forth above; provided, however, that Developer shall be responsible to provide snow removal for such improvements until such time as thirty five percent (35%) of the lots in the first phase have been sold to third party purchasers in order to assist the City with the maintenance costs thereof before tax revenues for such improvements are being assessed and collected.

b. State Highway Improvements. Developer shall comply with all access and intersection requirements of the Idaho Transportation Department (ITD) applicable to the Project and construct all improvements reasonably and necessarily required to mitigate traffic impacts of the Project as finally determined by ITD.

5.3 Lighting. Street lighting throughout the Project shall be in accordance with the approved construction plans for each phase of the Project. The lighting shall be installed in each block of the Property as the same is developed. All lighting must comply with the standards and purposes of the City dark sky ordinance, City Code, and regulations.

5.4 Water System. In addition to the requirements set forth in Section 5.1, above, Developer shall be responsible for the following specific to the water system.

Developer shall engineer, construct and extend, at Developer's sole expense, a drinking water distribution system throughout the Property and connect to the City's drinking water distribution system. All such improvements shall be designed and constructed in accordance with the standards of the City and the State of Idaho, Department of Environmental Quality, as applicable. Upon completion of each of such

improvements and acceptance thereof by City, such improvements and the offsite improvements, if any, shall become a part of the City's drinking water system and the City shall assume all responsibility therefore subject to Developer's warranty.

The Parties understand that the City is without a current water system facility plan (Water Plan). Based on the information available, the existing system can service the first phase of the Project and likely more. Preliminary review indicates that additional storage or pumping may be needed before ultimate buildout of the Project. Therefore, the City plans to prepare a new facility study to determine future water system needs. To expedite the process for preparation and adoption of such Water Plan, Developer agrees to contribute to the City one half of the city's out of pocket costs (net of grants or sources other than city funds) of preparing the Water Plan, which shall be held in the Water Fund and dedicated for timely pursuit of the funding and preparation of such Water Plan. This new facility plan shall be completed prior to 2023 and the start of Phase 2 of the Project. For the Initial Phase of the Project, the City will commit 260 water system connections (equal to number of proposed Phase 1 connections). Further connection will be determined after the new facility plan is completed and any improvements that are needed are identified. The collected water connection fees for the Project, which shall be paid as, when and in the amounts required by the applicable ordinances and resolutions of the City, can be used by the city to fund these possible improvements.

All units within the Project must have individual unit-specific water meters, including all individual units within multi-unit buildings (fourplexes, apartments, etc.). Water meters must be of radio-read type and as reviewed and approved by the City in accordance with City standards.

5.5 Private Irrigation Water System. A private landscape irrigation system shall be installed by Developer to provide irrigation to all lots in the Project in accordance with the approved construction plans for each phase of the Project. Developer shall irrigate said lands using Developer's existing water rights and convey the water rights now appurtenant to the Property necessary therefore to the owners' associations created with regard to the Property or as provided in applicable law. Irrigation using the City water supply is not permitted, which shall be specified in the CC&Rs.

5.6 Wastewater System. In addition to the requirements set forth in Section 5.1, above, Developer shall be responsible for the following specific to the wastewater system.

a. Internal Project Improvements. Pursuant to City specifications, Developer shall engineer, construct and extend, at Developer's sole expense, the wastewater collection system throughout the Property, including a lift station as reviewed and approved by the City Engineer. All such improvements shall be designed and constructed in accordance with the standards of the City and the State of Idaho, Department of Environmental Quality (DEQ), as applicable. Upon completion of each of such improvements and acceptance thereof by City, such improvements and the offsite improvements, if any, shall become a part of the City's wastewater system and the City shall assume all responsibility therefore subject to Developer's warranty set forth above.

b. Wastewater System Improvements. The Parties understand that the City is in need of an updated wastewater system facility plan (Wastewater Plan). Based on the information available the existing system can service the first phase of the Project and likely more. Preliminary review indicates that aeration and other improvements may be needed before ultimate buildout of the Project. The City is currently installing monitoring wells and working with DEQ to determine if the effluent from the existing rapid infiltration beds meets the requirements of the City's discharge permit. This monitoring and review will be completed in early 2021. Concurrently with this review the City shall prepare a Wastewater Plan to be completed in late 2021 that includes the results of the effectiveness of the rapid infiltration beds and recommended changes, if any, as a result of this review. This Wastewater Plan will also include a review of the rapid infiltration bed function for the increased flow rates resulting from the Project and future city growth. To expedite the process for preparation and adoption of such Wastewater Plan, Developer agrees to contribute to the City one half of the city's out of pocket costs (net of grants or sources other than city funds) of preparing the Wastewater Plan, which shall be held in the Wastewater Fund and dedicated for timely pursuit of the funding and preparation of such Wastewater Plan. For the Initial Phase of the Project, the City will commit 260 wastewater system connections (equal to number of proposed Phase 1 connections). Further connections will be determined after the Wastewater Plan is completed and any improvements that are needed are identified. The collected wastewater service availability fees for the Project, which shall be paid as, when and in the amounts required by the applicable ordinances and resolutions of the City, can be used by the City to fund these possible improvements.

The Parties understand and agree that the City is currently working with IDEQ to monitor and evaluate compliance with the requirements of the City's discharge permit. Any improvements to the existing system required as a result of such monitoring and evaluation, and not necessitated by Project development, will be the responsibility of the City and not a direct cost to the Developer.

5.7 Landscaping. All landscaping improvements shall be in accordance with a landscape plan to be submitted to and approved by the City as a condition to final plat approval. This landscape plan must be certified by a professional landscape architect and shall include species sizes, quantities and location.

5.8 Stormwater. Developer shall comply with City Code and the requirements of any other agency having jurisdiction of stormwater management and control. Developer's stormwater plan shall be reviewed and approved by the city engineer and any other agency having jurisdiction thereof.

5.9 Pathways. All pathways and trails shall generally be in accordance with the City's Bicycle and Pedestrian Plan purposes and associated standards. Developer shall construct ten (10) foot wide pathways on either side of the main collector road and six (6) foot wide pathways elsewhere in the Project. Developer shall extend a pathway to the SH-55 right of way for connection to the City's pathway system. Pathways will be constructed of compacted gravel or appropriate paving material, with such design and section to be reviewed and approved by the City. Pathways located within wetlands shall be approved by a USACE 404 permit and may be reduced in width and type to comply

with USACE standards. For example pathways may be single track scraped earth trails within wetlands. All pathways and trails are to be owned and maintained as common areas and shall be the responsibility of the Owners' Association. All pathways and trails shall be made available for general public use.

5.10 Erosion and Sediment Control. Developer shall provide an Erosion and Sediment Control Plan, to be reviewed and approved by City staff, and which shall be made a part of the governing construction documents with which Developer must comply.

5.11 Phases. The Project will be completed in phases as generally proposed and presented on the approved Preliminary Plat/PUD Map. Phases may be combined or advanced to accommodate market, financing, site and other conditions in conjunction only upon notice of intent to do so to the City and with timely combination and advancement of any improvements required for such phase(s). Other alterations or delays to the Phasing Plan may only occur by appropriate amendment to this Agreement in accordance with the amendment process.

5.12 Performance Commitments. For all required utility and infrastructure improvements required to be provided by the Developer under this Agreement and the Phasing Plan, at the time of design review and approval there shall be included a reasonable and City-approved estimation of costs. Developer shall then submit a performance bond or letter of credit, which must be reviewed and approved as to form by the City, sufficient to secure and ensure completion of such improvements.

6. RECORDATION OF SUBDIVISION. Due to the nature of the construction season in Valley County, the Developer shall obtain approval from the City for the Initial Phase final plat within two (2) years of the date of City's final approval of the Project Applications. Developer will apply for approval for final plats for subsequent phases of the subdivision in successive two (2) year intervals; provided that Developer may request extensions thereof as permitted by the Cascade City Code.

7. SUBSEQUENT FILINGS AND APPROVALS. Developer shall submit and City shall consider all subsequent applications for development of the Property in accordance with the approved Project Applications and this Agreement. Nothing contained herein is intended to limit the police powers of City in reviewing any subsequent applications, but in the exercise of City's discretion, City shall act in a manner which is not inconsistent with this Agreement. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation, including without limitation, applicable building codes, fire codes, zoning ordinances, subdivision ordinances, or comprehensive plan provisions, unless expressly provided herein.

8. SALE OR TRANSFER OF THE PROPERTY. This Agreement, which shall be duly recorded in the records of Valley County, Idaho, shall run with the land comprising the Property as provided further herein, and it shall be binding upon and benefit the City, Developer and any successor in interest to any portion of the Property. No person or entity acquiring any portion of the Property shall be permitted to develop, construct, erect, or install any building, utility, improvement or landscaping which does not conform in all respects to this Agreement. In the event that Developer or a successor in interest to Developer, sells or transfers the Property, or

any portion thereof, written notice of said transaction shall be given to City no less than thirty (30) days prior to the closing in connection with such transfer. This requirement shall not apply to the sale and/or transfer of platted lots.

9. AMENDMENT OF AGREEMENT AND CHANGES TO PROJECT APPLICATIONS. This Agreement shall be amended or cancelled, in whole or in part, only by the mutual consent of the parties, executed in writing. Both parties acknowledge that the site plans, building locations, floor plans, elevations and design of the buildings will be refined prior to submission in connection with each phase of the Project and final construction drawings for building permits and other permits. The parties acknowledge and agree that the covenants, conditions and agreements set forth in this Agreement are made based on the information and circumstances pertaining to the Property and the infrastructure needs for the Project known to the parties as of the date of this Agreement. If during the course of development of the Project any material changes to that information and/or circumstances are revealed, the parties agree to discuss and negotiate proposed reasonable and necessary changes to this Agreement in good faith and in accord with appropriate process as required by law.

10. TERM OF AGREEMENT. The Term of this Agreement shall commence on the Effective Date and shall automatically terminate on the 20th anniversary of the Effective Date. Annexation of any additional property shall not extend the Term of this Agreement unless the Agreement is expressly amended to extend the Term.

11. SUPERSEDING PRIOR AGREEMENTS. This Agreement supersedes and extinguishes all prior agreements, if any, between the parties with regard to the Property or any portion thereof.

12. DEFAULT/CONSENT TO DE-ANNEXATION AND REVERSAL OF ZONING DESIGNATION:

12.1 Acts of Default. Either party's failure to faithfully comply with all of the terms and conditions included in this Agreement, or the terms and conditions of any permit issued by the City pursuant to this Agreement, shall constitute default under this Agreement.

12.2 Notice and Cure Period. In the event of a default of this Agreement, the party claiming a default has occurred (the "Claimant") shall serve the defaulting party with a written notice of default. The written Notice of Default shall state the factual and legal reasons for the claim of default, the actions to be taken by the defaulting party to cure the claim of default and a demand that the defaulting party respond in writing, within a reasonable stated time, as to whether or not the defaulting party consents to comply with the Notice of Default or denies the claim of default. The defaulting party shall have a minimum of thirty (30) days to remedy any default. If the default is such that more than thirty (30) days would reasonably be required to cure default, then the defaulting party shall have such additional time as may be necessary to perform or comply so long as the defaulting party commences performance within such thirty (30) day period and diligently proceeds to complete such performance and timely cures any exigent circumstance of the claim of default that affects public health and safety.

12.3 Hearing. In the event the defaulting party fails to correct and remedy a default or noncompliance, within the reasonable time designated in the Notice of Default, to the satisfaction of the Claimant, the Claimant shall then request the City Council to proceed to set a hearing to take action as identified in the Notice of Default and to enforce the terms of this Agreement, which such hearing shall be held on a date at least twenty-eight (28) days after written notice thereof is provided to the parties. At the hearing to show cause, the defaulting party may present evidence as to why it or they are not in default. Following any presentation of evidence by the defaulting party and any rebuttal by the Claimant and any other interested persons, the City Council shall determine the matter and issue an Order of Decision in accordance with the evidence presented at the hearing. The Order of Decision issued by the City Council shall be the final administrative remedy of any claim of default under this Agreement.

12.4 Remedies. Either party may thereafter seek legal action in a court of competent jurisdiction for any legal or equitable remedy, including, without limitation, declaratory relief and or specific performance of this Agreement as the case may be in the Fourth Judicial District Court in Valley County. In the event of default by Developer that is not cured, and upon City's compliance with all applicable laws, ordinances and rules, including any applicable provisions of Idaho Code §§ 67-6509 and 67-6511, Developer shall be deemed to have consented to modification of this Agreement and de-annexation and reversal of the zoning designations described herein, solely against the offending portion of Property.

12.5 Waiver. A waiver by either of any default by the other party of any one or more of the covenants or conditions hereof shall apply solely to the default and defaults waived and shall neither bar any other rights or remedies of a party nor apply to any subsequent default of any such or other covenants and conditions.

13. RELATIONSHIP OF PARTIES. It is understood the contractual relationship between City and Developer is such that Developer is not the agent, partner, or joint venturer of City.

14. FORCE MAJEURE. If either party hereto is delayed in the performance of any of such party's obligations hereunder because of extreme inclement weather, labor dispute or strike, civil strife, act of God, the time of performance for completion of such amenity or improvement may be extended for the same time as lost by Developer.

15. ATTORNEY FEES AND COSTS. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorney fees and costs incurred with regard to such action including, without limitation, any appeals.

16. NOTICES. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices shall 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. Notices required to be given to City shall be addressed as follows:

City of Cascade
c/o City Clerk
PO Box 649
Cascade, Idaho 83611

Notices required to be given to Developer shall be addressed as follows:

Cascade River, LLC
c/o Phil Davis
19 Warm Lake Highway
Cascade, Idaho 83611

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

17. **NO WAIVER.** Any forbearance of any kind that may be granted or allowed by City or Developer to the other under this Agreement shall not in any manner nor in any way be deemed or construed or considered as waiving or surrendering any of the conditions or covenants of this Agreement or any subsequent default.

18. **RECORDATION.** This Agreement, including subsequent amendments thereto, shall be recorded in the Offices of the Valley County Recorder, Caldwell, Idaho, by Developer and Developer shall pay the costs of recordation.

19. **PARTIAL INVALIDITY.** In the event any portion of this Agreement or part thereof shall be determined by any Court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or parts thereof, shall remain in full force and effect.

20. **ENTIRE AGREEMENT.** This Agreement constitutes the full and complete Agreement of and between the parties hereto. No representations or warranties made by either party or such party's officers, employees or agents shall be binding unless contained in this Agreement or subsequent written amendments thereto.

21. **NO THIRD PARTY BENEFICIARIES.** Nothing contained herein shall be deemed or construed to create any third party beneficiaries or third party rights.

22. **RULES OF CONSTRUCTION.** The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive. The captions to paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

23. **EXHIBITS.** Attached to this Agreement and made a part of this Agreement by reference are the following Exhibits:

- A - Legal Description of Annexation Property
- B - Preliminary Plat/PUD Map

24. **RECITALS INCORPORATED.** The recitals set forth in this Agreement are hereby incorporated herein by reference.

25. **AUTHORITY TO EXECUTE.** Each of the persons executing this Agreement represent and warrant that such person has the lawful authority and authorization from such person's respective entities to execute this Agreement, as well as all applications, plats and other documents required hereunder for and on behalf of the entity executing this Agreement.

26. **ANNEXATION.** This Agreement is subject to and shall become effective upon annexation of the Property.

[Signature page follows as separate page]

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”), entered into this ____ day of _____, 2020, by and between the CITY OF CASCADE, IDAHO, a municipal corporation (“**City**”), and CASCADE RIVER, LLC, an Idaho limited liability company authorized to do business in the state of Idaho (“**Developer**”).

RECITALS

This DEVELOPMENT AGREEMENT is predicated upon the following facts:

WHEREAS, Developer owns contiguous parcels of land approximately 122.4 acres in size currently within Valley County and more particularly described in **Exhibit A**, attached hereto and made a part hereof, and which is currently zoned “Agricultural” under Valley County’s Zoning Ordinance (the “**Property**”);

WHEREAS, Developer filed with the City a Request for Annexation of the Property and Zoning upon Annexation; a Preliminary Plat Application; and a Planned Unit Development Application that are being processed by the City file numbers ANNEX-19-01, ZON-19-01, PUD-19-01, and SUB-19-01 (collectively “Project Applications”) and are for a development project named “The River District”;

WHEREAS, Developer has requested that the Property be annexed into the city, and be zoned and developed in accordance with the applicable ordinances and regulations of the City and this Agreement;

WHEREAS, at City’s request and as a condition of annexation, Developer, as the owner of the Property, agreed to submit the Property to a development agreement pursuant to Cascade City Code, Title 3, Chapter 7, and Idaho Code Section 67-6511A;

WHEREAS, City is a municipal corporation having all of the powers and authority granted municipalities under the laws of the State of Idaho, including, without limitation, the authority to contract (Idaho Code § 50-301), to annex (Idaho Code § 50-222), to zone parcels of real property (Idaho Code § 67-6511), and to enter into development agreements (Idaho Code § 67-6511A);

WHEREAS, City having held all lawfully required public hearings and meetings for consideration of said annexation request and this Agreement, and on the __ day of __, 2020 City Council (“**Council**”) approved the annexation request and zoning and land use applications, subject to this Agreement, and Council, on the ____ day of _____, 2020, adopted findings of fact, conclusions of law and a written decision with regard thereto;

WHEREAS, it is in the best interests of City that the Property be annexed into the City and be developed in accordance with the Applications as approved and this Agreement;

WHEREAS, Council has determined that annexation of the Property constitutes an orderly extension of City’s municipal boundaries and property within the City’s area of impact; that such annexation is (1) not in conflict with the comprehensive plan; (2) appropriately zoned with R-III

and C zoning designations as set forth in the Zoning Ordinance and Map; (3) complies with the requirements of all state statutes and city ordinances or as otherwise permitted in this Agreement; and (4) it is in the best interests of City to enter into this Agreement in order to provide for orderly annexation and development of the Property;

WHEREAS, Developer has agreed to the use restrictions and other limitations set forth herein upon the use and development of the Property and the zoning designation to be placed upon the Property;

WHEREAS, the intent of this Agreement is to protect the Developer's rights of use and enjoyment of the Property while at the same time mitigating any adverse impacts of the development upon neighboring properties and the existing community and ensuring the Property is developed in a manner consistent with City ordinances and in substantial conformance with the approved planned unit development and preliminary plat; and

WHEREAS, Developer and City enter this Agreement for the purpose of establishing certain rights and obligations of the parties with regard to annexation, zoning and development of the Property including limitations as to the use, development and design.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, Developer and City hereby mutually covenant and agree as follows:

1. DEFINITIONS. Throughout this Agreement, the following terms will be defined and certain restrictions and covenants are hereby placed upon the areas so defined, as follows:

- 1.1 "City" shall mean the City of Cascade, Idaho, a municipal corporation, acting by and through City's duly elected Council.
- 1.2 "Developer" shall mean Cascade River, LLC, an Idaho limited liability company, and its successors in interest to the Property.
- 1.3 "Preliminary Plat/PUD Map" shall mean and consist of the approved preliminary plat/PUD Map dated, a copy of which is attached hereto as **Exhibit B** and shall be incorporated herein by reference.
- 1.4 "Property" shall mean that certain real property legally described in **Exhibit A**.
- 1.5 "Project" shall mean the development project known as The River District as approved by the City in file numbers ANNEX-19-01, ZON-19-01, PUD-19-01, and SUB-19-01 and as described in this Agreement.
- 1.6 "Project Applications" shall mean City application file numbers ANNEX-19-01, ZON-19-01, PUD-19-01, and SUB-19-01.

2. LEGAL AUTHORITY. This Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Cascade City Code Title 3 Chapter 7 and other applicable state statutes and city ordinances.

3. USES PERMITTED BY THIS AGREEMENT.

3.1 General. The Project will include a mix of residential and commercial uses as well as open spaces and pathways to create a mixed-use community. The uses allowed pursuant to this Agreement are those uses allowed in the R-III and C zones under City's Zoning Ordinance in effect on the date of approval of the Project and as described in Cascade City Code Sections 3-1-8 and 3-1-10, as applicable. Developer agrees that this Agreement specifically allows the uses described in the aforementioned sections of the Zoning Ordinance. No change in the uses specified in this Agreement shall be allowed without modification of this Agreement pursuant to the requirements of the City's Zoning Ordinance and Idaho Code. In the event Developer changes or expands the uses permitted by this Agreement without formal modification of this Agreement as allowed by the City's Zoning Ordinance, Developer shall be in default of this Agreement.

3.2 Residential Uses. The Developer is providing a variety of lot sizes in order to accommodate a mix of housing types and to attract a diversity of income levels and households. Developer shall be entitled to subdivide, construct, develop, market, sell and improve the following types of residential building lots and on approximately 80.45 acres substantially as shown on the Preliminary Plat/PUD Map attached hereto as **Exhibit B**:

a. One hundred thirty-five (135) single family residential building lots with a minimum size of 8,000 square feet (the Single Family Lots) for detached single family homes;

b. Nine (9) single family "cottage" lots with a minimum lot size of 5,000 square feet (the Cottage Lots") for detached single family homes;

c. Forty-Three (43) townhome lots with a minimum size of 3,000 square feet (the "Townhome Lots") for attached or detached residential townhomes;

d. Forty-eight (48) multi-family four-plex lots (~~the "Four-plex Lots"~~) with a minimum size of ~~nine thousand 9,000~~ 5,000 square feet (~~9,000 sf~~) the "Four-plex Lots" for residential four-plex buildings; and

e. Four (4) lots for multi-family buildings with up to sixteen (16) residential units each (the "Multi-family Lots") for multifamily residential buildings; and

f. No manufactured or mobile homes are permitted.

3.3 Commercial Uses. Developer shall be entitled to subdivide, construct, develop, market, sell and improve twelve (12) commercial building lots on approximately 6.17 acres substantially as shown on the Preliminary Plat/PUD Map attached hereto as **Exhibit B** for such uses as are permitted by the Cascade Zoning Ordinance.

3.4 Open Space/Common Lots. Developer shall be entitled to subdivide, construct, develop, and improve common/open space lots to be owned and maintained by one or more property owner associations for landscaping, pathways, picnic areas, ponds, wetland protection, snow storage, parking and drive aisles and similar such uses substantially as shown on the Preliminary Plat/PUD Map attached hereto as **Exhibit B**.

A total of at least twenty-five percent (25%) of the gross Project area shall be committed to such open space.

3.5 PUD Exceptions. Pursuant to Cascade City Code Section 3-2-6(C), the following exceptions to City Code have been granted for the Project:

a. Cul-de-sac Length. Cul-de-sacs may exceed 500 feet in length, but shall not be greater than 750 feet.

b. Building Heights. ~~Up to 25 feet is permitted.~~ Limited to two stories at such height as approved by the Cascade Rural Fire District at the time of issuance of the applicable building permit.

Commented [MAJ1]: Developer requests following: "Up to 35 feet is permitted unless a lesser height is required by the fire district at time of issuance of the applicable building permit."

c. Parking. A minimum of 652 stalls combined for the multi-family area.

d. Lot Sizes. Minimum lot sizes shall be as specified in Section 3.2, above.

e. Setbacks. Setback requirements shall be as specified in Section 4.1, below.

f. Storage Areas. Developer is not required to provide centralized storage areas for boats, trailers, campers and other recreational vehicles or equipment.

Commented [MAJ2]: Staff intends to flag this for attention noting that this was an item of some discussion at the P&Z level.

4. BUILDING RESTRICTIONS.

4.1 Residential Setbacks. The following minimum setbacks shall apply to the buildings constructed on the residential lots:

	<u>Front</u>	<u>Back</u>	<u>Side</u>
Single Family Lots	20'	20'	15'
Cottage Lots	15'	15'	5'
Townhome Lots	10'	10'	0'
Four-plex Lots	15'	10'	10'
Multifamily Lots	15'	10'	10'

4.2 Commercial Setbacks. The following minimum setbacks shall apply to the buildings constructed on the commercial lots:

Front	15'
Side	0'
Back	0'

4.3 River Setbacks. All buildings in the Project shall be set back at least 50 feet from the ordinary high-water mark of the Payette River. This setback, when applicable, shall supersede any other minimum setbacks.

Commented [MAJ3]: Developer requests reduction to 35 feet. Justification from Developer for request needed.

4.4 Height Restrictions. ~~No greater than 25 feet.~~ Limited to two stories at such height as approved by the Cascade Rural Fire District at the time of issuance of the applicable building permit

Commented [MAJ4]: See 3.5(b).

4.5 Floodplain. Developer shall comply with the flood damage prevention regulations of the Cascade City Code Title 3, Chapter 5, as the same may be applicable to the Project. ~~Development of the Project may not cause loss or impacts to water storage area within the floodplain that would adversely impact properties upstream or downstream.~~

Commented [MAJ5]: Staff recommendation is firm on keeping this no net loss style language. Floodplain management requirement. See supporting documentation from City Engineer.

4.6 Wetlands. Development of the Project shall be subject to approval by the US Army Corps of Engineers through the issuance of required permits, including any required Section 404 permit(s).

4.7 Design Requirements. Developer will comply with the following design standards:

Generally, building design shall comply with the design nature detailed in the submittal narrative as a part of the Project Applications. This includes maintaining a general rustic design, use of exposed beams, and use of neutral earth-tone colors to ensure the Project is in harmony with the natural context of its location. "Cookie-cutter" building design (repetitive and substantially similar adjacent designs) shall not be allowed. Such design standards shall also be specified for long-term preservation in the Project CC&Rs. No manufactured or mobile homes are permitted.

4.8 Wood Burning Stoves/Fireplaces. Developer will include language in the CC&Rs restricting types of wood-burning stoves and fireplaces permitted to be installed to ensure that high-efficiency, low emitting CO2 stoves are used so as to minimize air pollution. Wood-burning stoves and fireplaces will not be permitted in the multi-family units and a restriction to such effect shall be included in the CC&Rs.

4.9 CC&Rs. CC&Rs are required to be prepared and recorded as applicable to the Project properties. Developer shall submit proposed CC&Rs to the City for review and comment prior to finalizing and recording such.

4.10 Propane/ Gas Tanks. Any household tanks for the storage of propane or other gases must be buried underground.

5. INFRASTRUCTURE IMPROVEMENTS. Developer shall engineer, construct, and otherwise provide, at Developer's sole expense (except to the extent otherwise set forth below), the following improvements, facilities and services (public and private) with each phase of the project in accordance with this Agreement. Developer hereby warrants all infrastructure improvements for one (1) year from acceptance thereof by the City.

5.1 Utilities. All utilities, including water, sewer, storm drainage, pressurized irrigation, cable, phone and electric shall be installed underground within the street rights-of-way, in easements or as otherwise shown on the approved construction plans for each phase of the Project. All utilities shall be installed in accordance with City improvement standards and as set forth in Cascade City Code Section 3-2-5 and other sections as may be applicable. Detailed engineered construction drawings and specifications for construction of such improvements shall be prepared by Developer and approved by all applicable governmental entities prior to construction. Prior to acceptance of any such improvements to be dedicated to City, City shall inspect and approve same and Developer shall provide City with "as built" drawings thereof. All required off-site utility improvements must be completed as directed by the applicable governmental entity or as otherwise specified in this Agreement.

5.2 Streets and Highways.

a.— **Internal Project Improvements.** All internal minor public streets will be constructed within a fifty (50) foot right-of-way with an improved surface twenty-six (26) feet in width, excepting the following: the portions fronting the Townhome Lots may be constructed within a forty (40) foot right of way with an improved surface twenty-six (26) feet in width; the main collector(s) shall be constructed within a one-hundred (100) foot right-of-way with an improved surface twenty-nine (29) feet in width, with a five (5) foot bicycle lane, for a total of a thirty-four (34) foot wide paved surface. All streets, roadways and walkways shall be designed and constructed as shown on the approved construction plans for each phase of the Project and in accordance with City standards. Prior to acceptance of any such improvements to be dedicated to City, City shall inspect and approve same and Developer shall provide City with "as built" drawings thereof. City shall approve and accept the dedication of all such improvements in the manner and at the time provided for by the ordinances, resolutions, policies and practices of the City as of the date of completion thereof. Developer retains all responsibility to maintain and upkeep such streets until time of final acceptance by the City. Upon completion of each of such improvements and acceptance thereof by City, such improvements shall become a part of the City's street system and the City shall assume all responsibility therefore subject to Developer's warranty set forth above; provided, however, that Developer shall be responsible to provide snow ~~maintenance and~~ removal for such improvements until such time as ~~eighty~~^{thirty five} percent (~~80~~³⁵%) of the lots in the first phase have been sold ~~are~~ are built upon to third party purchasers in order to assist the City with the maintenance costs thereof before tax revenues for such improvements are being assessed and collected.

b.— **State Highway Improvements.**— Developer shall comply with all access and intersection requirements of the Idaho Transportation Department (ITD) applicable to the Project and construct all improvements reasonably and necessarily required to mitigate traffic impacts of the Project as finally determined by ITD.

~~Developer will provide a letter of credit, in form satisfactory to the City, sufficient to ensure timely construction of any such improvements and mitigation measures required in accord with the required schedule for such.~~

Commented [MAJ6]: Developer proposed language.

Commented [MAJ7]: This remains an issue. Staff recommendation is that no approval on applications until after ITD review.

5.3 Lighting. Street lighting throughout the Project shall be in accordance with the approved construction plans for each phase of the Project. The lighting shall be installed in each block of the Property as the same is developed. All lighting must comply with the standards and purposes of the City dark sky ordinance, City Code, and regulations.

5.4 Water System. In addition to the requirements set forth in Section 5.1, above, Developer shall be responsible for the following specific to the water system.

Developer shall engineer, construct and extend, at Developer's sole expense, a drinking water distribution system throughout the Property and connect to the City's drinking water distribution system. All such improvements shall be designed and constructed in accordance with the standards of the City and the State of Idaho, Department of Environmental Quality, as applicable. Upon completion of each of such improvements and acceptance thereof by City, such improvements and the offsite improvements, if any, shall become a part of the City's drinking water system and the City shall assume all responsibility therefore subject to Developer's warranty.

The Parties understand that the City is without a current water system facility plan (Water Plan), ~~but is proceeding on steps for the preparation of such. In order to address uncertainty about the ability of the City to provide water services for the Project it is necessary to expedite this planning process.~~ Based on the information available, the existing system can service the first phase of the Project and likely more. Preliminary review indicates that additional storage or pumping may be needed before ultimate buildout of the Project. Therefore, the City plans to prepare a new facility study to determine future water system needs. To expedite the process for preparation and adoption of such Water Plan, Developer agrees to contribute \$ _____ ~~to the City~~ to the City one half of the city's out of pocket costs (net of grants or sources other than city funds) of preparing the Water Plan, which shall be held in the Water Fund and dedicated for timely pursuit of the funding and preparation of such Water Plan. ~~This new facility plan shall be completed prior to 2023 and the start of Phase 2 of the Project. For the Initial Phase of the Project, the City will commit 260 water system connections (equal to number of proposed Phase 1 connections). Further connection will be determined after the new facility plan is completed and any improvements that are needed are identified. The collected water connection fees for the Project, which shall be paid as, when and in the amounts required by the applicable ordinances and resolutions of the City, can be used by the city to fund these possible improvements.~~

~~In order to assure the ability of the City to continue to timely address planning, study, and improvement needs with respect to the additional burdens the Project will place on the City system, Developer agrees to the following front loaded payment of water service availability fees (SAF):~~

- ~~a) At time of final plat on a phase, Developer will pay fifty percent (50%) of the total water SAF applicable to all lots within the phase. (Initial 50%)~~
- ~~b) Developer will then pay the applicable SAF on individual lots on a lot by lot basis at the time of building permit for an individual lot, up and until~~

~~individual lot SAFs equivalent to the remaining fifty percent (50%) of the total water SAF within the phase have been paid.~~

- e) ~~City, as required by law, shall hold all such SAF paid in the water enterprise fund. The Initial 50% funds will be committed to timely addressing further system planning, and improvements connected to the increased demand from ongoing buildout on the Project.~~

All units within the Project must have individual unit-specific water meters, including all individual units within multi-unit buildings (fourplexes, apartments, etc.). Water meters must be of radio-read type and as reviewed and approved by the City in accordance with City standards.

~~Developer will perform and submit a water model, at Developer's sole expense, to determine and confirm that the existing City twelve-inch water line anticipated to supply the Project can adequately provide required fire flows to the Project. This modeling must take place prior to approval of the Preliminary Plat.~~

~~Water storage sufficient to satisfy fire suppression needs, as specified by the regulations of the Cascade Rural Fire District, must be provided. A plan for such storage shall be reviewed and approved by both the Fire District and the City prior to Final Plat.~~

5.5 Private Irrigation Water System. A private landscape irrigation system shall be installed by Developer to provide irrigation to all lots in the Project in accordance with the approved construction plans for each phase of the Project. Developer shall irrigate said lands using Developer's existing water rights and convey the water rights now appurtenant to the Property necessary therefore to the owners' associations created with regard to the Property or as provided in applicable law. Irrigation using the City water supply is not permitted, which shall be specified in the CC&Rs.

5.6 Wastewater System. In addition to the requirements set forth in Section 5.1, above, Developer shall be responsible for the following specific to the wastewater system.

a. Internal Project Improvements. Pursuant to City specifications. Developer shall engineer, construct and extend, at Developer's sole expense, ~~at the~~ wastewater collection system throughout the Property ~~and connect to the City's wastewater system. The Project collection system is anticipated to include, including~~ a lift station ~~and potential increased collection line between~~ as reviewed and approved by the lift station and City treatment plant. Engineer. All such improvements shall be designed and constructed in accordance with the standards of the City and the State of Idaho, Department of Environmental Quality, (DEQ), as applicable. Upon completion of each of such improvements and acceptance thereof by City, such improvements and the offsite improvements, if any, shall become a part of the City's wastewater system and the City shall assume all responsibility therefore subject to Developer's warranty set forth above.

b. Wastewater System Improvements. The Parties understand that the City is in need of an updated wastewater system facility plan (Wastewater Plan). ~~Based on the information available the existing system can service the first phase of the Project and likely more. Preliminary review indicates that aeration and other improvements may be needed before ultimate buildout of the Project. The City is proceeding on steps currently installing monitoring wells and working with DEQ to determine if the effluent from the existing rapid infiltration beds meets the requirements of the City's discharge permit. This monitoring and review will be completed in early 2021. Concurrently with this review the City shall prepare a Wastewater Plan to be completed in late 2021 that includes the results of the effectiveness of the rapid infiltration beds and recommended changes, if any, as a result of this review. This Wastewater Plan will also include a review of the rapid infiltration bed function for the preparation of such. In order to address uncertainty about the ability of the City to provide wastewater services for the Project it is necessary to expedite this planning process.~~ increased flow rates resulting from the Project and future city growth. To expedite the process for preparation and adoption of such Wastewater Plan, Developer agrees to contribute \$ _____ to the ~~City~~ to the City one half of the city's out of pocket costs (net of grants or sources other than city funds) of preparing the Wastewater Plan, which shall be held in the Wastewater Fund and dedicated for timely pursuit of the funding and preparation of such Wastewater Plan.

~~_____ In order to assure the ability of the City to continue to timely address planning, study, and improvement needs with respect to the additional burdens the Project will place on the City system, Developer agrees to the following front loaded payment of For the Initial Phase of the Project, the City will commit 260 wastewater system connections (equal to number of proposed Phase 1 connections). Further connections will be determined after the Wastewater Plan is completed and any improvements that are needed are identified. The collected wastewater service availability fees (SAF):~~

- ~~a) At time of final plat on a phase, Developer will pay fifty percent (50%) of the total wastewater SAF for the Project, which shall be paid as, when and in the amounts required by the applicable to all lots within the phase. (Initial 50%)~~
- ~~b) Developer will then pay the applicable SAF on individual lots on a lot by lot basis at the time of building permit for an individual lot, up and until individual lot SAFs equivalent to the remaining fifty percent (50%) of the total wastewater SAF within the phase have been paid.~~
- ~~c) ordinances and resolutions of the City, as required by law, shall hold all such SAF paid in the wastewater enterprise can be used by the City to fund. The Initial 50% funds will be committed to timely addressing further system planning, and improvements, including anticipated aeration needs if necessary, connected to the increased demand from ongoing buildout on the Project.~~

~~_____ Developer will perform and submit a wastewater line model, at Developer's sole expense, to determine and confirm that the existing City wastewater collection line~~

~~anticipated to serve the Project has sufficient capacity. This modeling must take place prior to approval of the Preliminary Plat [these possible improvements](#).~~

The Parties understand and agree that the City is currently working with IDEQ to monitor and evaluate compliance with the requirements of the City's discharge permit. Any improvements to the existing system required as a result of such monitoring and evaluation, and not necessitated by Project development, will be the responsibility of the City and not a direct cost to the Developer.

5.7 Landscaping. All landscaping improvements shall be in accordance with a landscape plan to be submitted to and approved by the City as a condition to final plat approval. This landscape plan must be certified by a professional landscape architect and shall include species sizes, quantities and location.

Commented [MAJ8]: Developer requests "landscape professional."

~~**5.8 Stormwater.** Offsite drainage and flows that flow onto and across the Project site shall not be impeded and their conveyance to the river maintained. Stormwater that falls on the developed portions of the Project site, buildings, roadways, parking lots, and other hardscape, shall be retained on site in accordance with City Code and Idaho DEQ standards. Undeveloped and natural areas shall generally retain their historic drainage function and flow paths to the extent reasonably possible.~~

Commented [MAJ9]: Review drainage plan to confirm approach and identify areas of concern. Drainage plan must be submitted, if not done so already.

5.8 Stormwater. [Developer shall comply with City Code and the requirements of any other agency having jurisdiction of stormwater management and control. Developer's stormwater plan shall be reviewed and approved by the city engineer and any other agency having jurisdiction thereof.](#)

5.9 Pathways. All pathways and trails shall generally be in accordance with the City's Bicycle and Pedestrian Plan purposes and associated standards. ~~Pathways must be at least ten (10) feet wide, of sufficient size, and Developer shall construct ten (10) foot wide pathways on either side of the main collector road and six (6) foot wide pathways elsewhere in the Project. Developer shall extend a pathway to the SH-55 right of way for connection to the City's pathway system. Pathways will be constructed of compacted gravel or appropriate paving material, with such design and section to be reviewed and approved by the City. Pathways located within wetlands shall be approved by a USACE 404 permit and may be reduced in width and type to comply with USACE standards. For example pathways may be single track scraped earth trails within wetlands.~~

Commented [MAJ10]: Developer requests reduction to 6 feet. Comprehensive plan calls for 10 feet.

~~All pathways and trails are to be owned and maintained as common areas and shall be the responsibility of the Owners' Association. All pathways and trails shall be made available for general public use. **Before or at eighty percent (80%) Project completion, Developer will ensure that the Project pathways system will directly connect to the City pathway and greenbelt system currently in existence.**~~

Commented [MAJ11]: Pathways plan review between parties can likely resolve.

5.10 Erosion and Sediment Control. Developer shall provide an Erosion and Sediment Control Plan, to be reviewed and approved by City staff, and which shall be made a part of the governing construction documents with which Developer must comply.

~~5.11 Application Review Fee Costs. Developer shall pay the amount of \$ _____, which is agreed by the parties to constitute the remaining application fee owed by Developer to the City for application review and consultant, engineering, and legal costs associated with the applications. This amount shall be paid to City prior to the approval on the preliminary plat.~~

~~5.12~~ 5.11 **Phases.** The Project will be completed in phases as generally proposed and presented on the approved Preliminary Plat/PUD Map by the Phasing Plan attached hereto as Exhibit C and hereby incorporated into and made a part of this Agreement. Phases may be combined or advanced to accommodate market, financing, site and other conditions in conjunction only upon notice of intent to do so to the City and with timely combination and advancement of any improvements required for such phase(s). Other alterations or delays to the Phasing Plan may only occur by appropriate amendment to this Agreement in accordance with the amendment process.

Commented [MAJ12]: Developer would like to add "reduced or delayed" to this list.

5.13 **Performance Commitments.** For all required utility and infrastructure improvements required to be provided by the Developer under this Agreement and the Phasing Plan, at the time of design review and approval there shall be included a reasonable and City-approved estimation of costs. Developer shall then submit a performance bond or letter of credit, which must be reviewed and approved as to form by the City, sufficient to secure and ensure completion of such improvements.

6. RECORDATION OF SUBDIVISION. ~~The~~ Due to the nature of the construction season in Valley County, the Developer shall obtain approval from the City for the Initial Phase final plat within two (2) years of the date of City's final approval of the Project Applications. Developer will apply for approval for final plats for subsequent phases of the subdivision in successive ~~one~~ two (2) year intervals; provided that Developer may request extensions thereof as permitted by the Cascade City Code.

Commented [MAJ13]: Developer requests this be extended to 2 years due nature of construction season in Valley County.

7. SUBSEQUENT FILINGS AND APPROVALS. Developer shall submit and City shall consider all subsequent applications for development of the Property in accordance with the approved Project Applications and this Agreement. Nothing contained herein is intended to limit the police powers of City in reviewing any subsequent applications, but in the exercise of City's discretion, City shall act in a manner which is not inconsistent with this Agreement. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation, including without limitation, applicable building codes, fire codes, zoning ordinances, subdivision ordinances, or comprehensive plan provisions, unless expressly provided herein.

8. SALE OR TRANSFER OF THE PROPERTY. This Agreement, which shall be duly recorded in the records of Valley County, Idaho, shall run with the land comprising the Property as provided further herein, and it shall be binding upon and benefit the City, Developer and any successor in interest to any portion of the Property. No person or entity acquiring any portion of the Property shall be permitted to develop, construct, erect, or install any building, utility, improvement or landscaping which does not conform in all respects to this Agreement. In the event that Developer or a successor in interest to Developer, sells or transfers the Property, or any portion thereof, written notice of said transaction shall be given to City no less than thirty (30) days prior to the closing in connection with such transfer. This requirement shall not apply to the sale and/or transfer of platted lots.

9. AMENDMENT OF AGREEMENT AND CHANGES TO PROJECT

APPLICATIONS. This Agreement shall be amended or cancelled, in whole or in part, only by the mutual consent of the parties, executed in writing. Both parties acknowledge that the site plans, building locations, floor plans, elevations and design of the buildings will be refined prior to submission in connection with each phase of the Project and final construction drawings for building permits and other permits. ~~The parties acknowledge and agree that the covenants~~^{covenants}, conditions, and agreements set forth in this Agreement are made based on the information and circumstances pertaining to the Property and the infrastructure needs for the Project known to the parties as of the date of this Agreement. If during the course of development of the Project any material changes to that information and/or circumstances are revealed, the parties agree to discuss and negotiate proposed reasonable and necessary changes to this Agreement in good faith and in accord with appropriate process as required by law.

Commented [MAJ14]: Bulk is Developer proposed addition with some revision by MAJ.

10. TERM OF AGREEMENT. The Term of this Agreement shall commence on the Effective Date and shall automatically terminate on the 20th anniversary of the Effective Date. Annexation of any additional property shall not extend the Term of this Agreement unless the Agreement is expressly amended to extend the Term.

11. SUPERSEDING PRIOR AGREEMENTS. This Agreement supersedes and extinguishes all prior agreements, if any, between the parties with regard to the Property or any portion thereof.

12. DEFAULT/CONSENT TO DE-ANNEXATION AND REVERSAL OF ZONING DESIGNATION:

12.1 Acts of Default. Either party's failure to faithfully comply with all of the terms and conditions included in this Agreement, or the terms and conditions of any permit issued by the City pursuant to this Agreement, shall constitute default under this Agreement.

12.2 Notice and Cure Period. In the event of a default of this Agreement, the party claiming a default has occurred (the "Claimant") shall serve the defaulting party with a written notice of default. The written Notice of Default shall state the factual and legal reasons for the claim of default, the actions to be taken by the defaulting party to cure the claim of default and a demand that the defaulting party respond in writing, within a reasonable stated time, as to whether or not the defaulting party consents to comply with the Notice of Default or denies the claim of default. The defaulting party shall have a minimum of thirty (30) days to remedy any default. If the default is such that more than thirty (30) days would reasonably be required to cure default, then the defaulting party shall have such additional time as may be necessary to perform or comply so long as the defaulting party commences performance within such thirty (30) day period and diligently proceeds to complete such performance and timely cures any exigent circumstance of the claim of default that affects public health and safety.

12.3 Hearing. In the event the defaulting party fails to correct and remedy a default or noncompliance, within the reasonable time designated in the Notice of Default, to the satisfaction of the Claimant, the Claimant shall then request the City Council to proceed to set a hearing to take action as identified in the Notice of Default and to

enforce the terms of this Agreement, which such hearing shall be held on a date at least twenty-eight (28) days after written notice thereof is provided to the parties. At the hearing to show cause, the defaulting party may present evidence as to why it or they are not in default. Following any presentation of evidence by the defaulting party and any rebuttal by the Claimant and any other interested persons, the City Council shall determine the matter and issue an Order of Decision in accordance with the evidence presented at the hearing. The Order of Decision issued by the City Council shall be the final administrative remedy of any claim of default under this Agreement.

12.4 Remedies. Either party may thereafter seek legal action in a court of competent jurisdiction for any legal or equitable remedy, including, without limitation, declaratory relief and or specific performance of this Agreement as the case may be in the Fourth Judicial District Court in Valley County. In the event of default by Developer that is not cured, and upon City's compliance with all applicable laws, ordinances and rules, including any applicable provisions of Idaho Code §§ 67-6509 and 67-6511, Developer shall be deemed to have consented to modification of this Agreement and de-annexation and reversal of the zoning designations described herein, solely against the offending portion of Property.

12.5 Waiver. A waiver by either of any default by the other party of any one or more of the covenants or conditions hereof shall apply solely to the default and defaults waived and shall neither bar any other rights or remedies of a party nor apply to any subsequent default of any such or other covenants and conditions.

13. RELATIONSHIP OF PARTIES. It is understood the contractual relationship between City and Developer is such that Developer is not the agent, partner, or joint venturer of City.

14. FORCE MAJEURE. If either party hereto is delayed in the performance of any of such party's obligations hereunder because of extreme inclement weather, labor dispute or strike, civil strife, act of God, the time of performance for completion of such amenity or improvement may be extended for the same time as lost by Developer.

15. ATTORNEY FEES AND COSTS. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorney fees and costs incurred with regard to such action including, without limitation, any appeals.

16. NOTICES. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices shall 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. Notices required to be given to City shall be addressed as follows:

City of Cascade
c/o City Clerk
PO Box 649
Cascade, Idaho 83611

Notices required to be given to Developer shall be addressed as follows:

Cascade River, LLC
c/o Phil Davis
19 Warm Lake Highway
Cascade, Idaho 83611

____ A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

17. **NO WAIVER.** Any forbearance of any kind that may be granted or allowed by City or Developer to the other under this Agreement shall not in any manner nor in any way be deemed or construed or considered as waiving or surrendering any of the conditions or covenants of this Agreement or any subsequent default.

18. **RECORDATION.** This Agreement, including subsequent amendments thereto, shall be recorded in the Offices of the Valley County Recorder, Caldwell, Idaho, by Developer and Developer shall pay the costs of recordation.

19. **PARTIAL INVALIDITY.** In the event any portion of this Agreement or part thereof shall be determined by any Court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or parts thereof, shall remain in full force and effect.

20. **ENTIRE AGREEMENT.** This Agreement constitutes the full and complete Agreement of and between the parties hereto. No representations or warranties made by either party or such party's officers, employees or agents shall be binding unless contained in this Agreement or subsequent written amendments thereto.

21. **NO THIRD PARTY BENEFICIARIES.** Nothing contained herein shall be deemed or construed to create any third party beneficiaries or third party rights.

22. **RULES OF CONSTRUCTION.** The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive. The captions to paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

23. **EXHIBITS.** Attached to this Agreement and made a part of this Agreement by reference are the following Exhibits:

- A - Legal Description of Annexation Property
- B - Preliminary Plat/PUD Map
- ~~C - Phasing Plan~~

24. **RECITALS INCORPORATED.** The recitals set forth in this Agreement are hereby incorporated herein by reference.

25. **AUTHORITY TO EXECUTE.** Each of the persons executing this Agreement represent and warrant that such person has the lawful authority and authorization from such person's respective entities to execute this Agreement, as well as all applications, plats and other documents required hereunder for and on behalf of the entity executing this Agreement.

26. **ANNEXATION.** This Agreement is subject to and shall become effective upon annexation of the Property.

[Signature page follows as separate page]

DRAFT

Commission expires _____

DRAFT

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”), entered into this ____ day of _____, 2020, by and between the CITY OF CASCADE, IDAHO, a municipal corporation (“**City**”), and CASCADE RIVER, LLC, an Idaho limited liability company authorized to do business in the state of Idaho (“**Developer**”).

RECITALS

This DEVELOPMENT AGREEMENT is predicated upon the following facts:

WHEREAS, Developer owns contiguous parcels of land approximately 122.4 acres in size currently within Valley County and more particularly described in **Exhibit A**, attached hereto and made a part hereof, and which is currently zoned “Agricultural” under Valley County’s Zoning Ordinance (the “**Property**”);

WHEREAS, Developer filed with the City a Request for Annexation of the Property and Zoning upon Annexation; a Preliminary Plat Application; and a Planned Unit Development Application that are being processed by the City file numbers ANNEX-19-01, ZON-19-01, PUD-19-01, and SUB-19-01 (collectively “Project Applications”) and are for a development project named “The River District”;

WHEREAS, Developer has requested that the Property be annexed into the city, and be zoned and developed in accordance with the applicable ordinances and regulations of the City and this Agreement;

WHEREAS, at City’s request and as a condition of annexation, Developer, as the owner of the Property, agreed to submit the Property to a development agreement pursuant to Cascade City Code, Title 3, Chapter 7, and Idaho Code Section 67-6511A;

WHEREAS, City is a municipal corporation having all of the powers and authority granted municipalities under the laws of the State of Idaho, including, without limitation, the authority to contract (Idaho Code § 50-301), to annex (Idaho Code § 50-222), to zone parcels of real property (Idaho Code § 67-6511), and to enter into development agreements (Idaho Code § 67-6511A);

WHEREAS, City having held all lawfully required public hearings and meetings for consideration of said annexation request and this Agreement, and on the __ day of ____, 2020 City Council (“**Council**”) approved the annexation request and zoning and land use applications, subject to this Agreement, and Council, on the ____ day of _____, 2020, adopted findings of fact, conclusions of law and a written decision with regard thereto;

WHEREAS, it is in the best interests of City that the Property be annexed into the City and be developed in accordance with the Applications as approved and this Agreement;

WHEREAS, Council has determined that annexation of the Property constitutes an orderly extension of City’s municipal boundaries and property within the City’s area of impact; that such annexation is (1) not in conflict with the comprehensive plan; (2) appropriately zoned with R-III and C zoning designations as set forth in the Zoning Ordinance and Map; (3) complies with the

requirements of all state statutes and city ordinances or as otherwise permitted in this Agreement; and (4) it is in the best interests of City to enter into this Agreement in order to provide for orderly annexation and development of the Property;

WHEREAS, Developer has agreed to the use restrictions and other limitations set forth herein upon the use and development of the Property and the zoning designation to be placed upon the Property;

WHEREAS, the intent of this Agreement is to protect the Developer's rights of use and enjoyment of the Property while at the same time mitigating any adverse impacts of the development upon neighboring properties and the existing community and ensuring the Property is developed in a manner consistent with City ordinances and in substantial conformance with the approved planned unit development and preliminary plat; and

WHEREAS, Developer and City enter this Agreement for the purpose of establishing certain rights and obligations of the parties with regard to annexation, zoning and development of the Property including limitations as to the use, development and design.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, Developer and City hereby mutually covenant and agree as follows:

➔ DEFINITIONS. Throughout this Agreement, the following terms will be defined and certain restrictions and covenants are hereby placed upon the areas so defined, as follows:

- 1.1 "City" shall mean the City of Cascade, Idaho, a municipal corporation, acting by and through City's duly elected Council.
- 1.2 "Developer" shall mean Cascade River, LLC, an Idaho limited liability company, and its successors in interest to the Property.
- 1.3 "Preliminary Plat/PUD Map" shall mean and consist of the approved preliminary plat/PUD Map, a copy of which is attached hereto as **Exhibit B** and shall be incorporated herein by reference.
- 1.4 "Property" shall mean that certain real property legally described in **Exhibit A**.
- 1.5 "Project" shall mean the development project known as The River District as approved by the City in file numbers ANNEX-19-01, ZON-19-01, PUD-19-01, and SUB-19-01 and as described in this Agreement.
- 1.6 "Project Applications" shall mean City application file numbers ANNEX-19-01, ZON-19-01, PUD-19-01, and SUB-19-01.

LEGAL AUTHORITY. This Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Cascade City Code Title 3 Chapter 7 and other applicable state statutes and city ordinances.

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USES PERMITTED BY THIS AGREEMENT.

3.1 General. The Project will include a mix of residential and commercial uses as well as open spaces and pathways to create a mixed-use community. The uses allowed pursuant to this Agreement are those uses allowed in the R-III and C zones under City's Zoning Ordinance in effect on the date of approval of the Project and as described in Cascade City Code Sections 3-1-8 and 3-1-10, as applicable. Developer agrees that this Agreement specifically allows the uses described in the aforementioned sections of the Zoning Ordinance. No change in the uses specified in this Agreement shall be allowed without modification of this Agreement pursuant to the requirements of the City's Zoning Ordinance and Idaho Code. In the event Developer changes or expands the uses permitted by this Agreement without formal modification of this Agreement as allowed by the City's Zoning Ordinance, Developer shall be in default of this Agreement.

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3.2 Residential Uses. The Developer is providing a variety of lot sizes in order to accommodate a mix of housing types and to attract a diversity of income levels and households. Developer shall be entitled to subdivide, construct, develop, market, sell and improve the following types of residential building lots and on approximately 80.45 acres substantially as shown on the Preliminary Plat/PUD Map attached hereto as Exhibit B:

- a. One hundred thirty-five (135) single family residential building lots with a minimum size of 8,000 square feet (the Single Family Lots) for detached single family homes;
- b. Nine (9) single family "cottage" lots with a minimum lot size of 5,000 square feet (the Cottage Lots") for detached single family homes;
- c. Forty-Three (43) townhome lots with a minimum size of 3,000 square feet (the "Townhome Lots") for attached or detached residential townhomes;
- d. Forty-eight (48) multi-family four-plex lots (the "Four-plex Lots") with a minimum size of nine-thousand square feet (9,000 sf) for residential four-plex buildings; and
- e. Four (4) lots for multi-family buildings with up to sixteen (16) residential units each (the "Multi-family Lots") for multifamily residential buildings; and
- f. No manufactured or mobile homes are permitted.

3.3 Commercial Uses. Developer shall be entitled to subdivide, construct, develop, market, sell and improve twelve (12) commercial building lots on approximately 6.17 acres substantially as shown on the Preliminary Plat/PUD Map attached hereto as Exhibit B for such uses as are permitted by the Cascade Zoning Ordinance.

3.4 Open Space/Common Lots. Developer shall be entitled to subdivide, construct, develop, and improve common/open space lots to be owned and maintained by one or more property owner associations for landscaping, pathways, picnic areas, ponds, wetland protection, snow storage, parking and drive aisles and similar such uses substantially as shown on the Preliminary Plat/PUD Map attached hereto as Exhibit B. A

total of at least twenty-five percent (25%) of the gross Project area shall be committed to such open space.

3.5 PUD Exceptions. Pursuant to Cascade City Code Section 3-2-6(C), the following exceptions to City Code have been granted for the Project:

- a. Cul-de-sac Length. Cul-de-sacs may exceed 500 feet in length, but shall not be greater than 750 feet.
- b. Building Heights. Up to 25 feet is permitted.
- c. Parking. A minimum of 652 stalls combined for the multi-family area.
- d. Lot Sizes. Minimum lot sizes shall be as specified in Section 3.2, above.
- e. Setbacks. Setback requirements shall be as specified in Section 4.1, below.
- f. Storage Areas. Developer is not required to provide centralized storage areas for boats, trailers, campers and other recreational vehicles or equipment.

Commented [MAJ1]: Developer requests following: "Up to 35 feet is permitted unless a lesser height is required by the fire district at time of issuance of the applicable building permit."

Commented [MAJ2]: Staff intends to flag this for attention noting that this was an item of some discussion at the P&Z level.

4. BUILDING RESTRICTIONS.

4.1 Residential Setbacks. The following minimum setbacks shall apply to the buildings constructed on the residential lots:

	<u>Front</u>	<u>Back</u>	<u>Side</u>
Single Family Lots	20'	20'	15'
Cottage Lots	15'	15'	5'
Townhome Lots	10'	10'	0'
Four-plex Lots	15'	10'	10'
Multifamily Lots	15'	10'	10'

4.2 Commercial Setbacks. The following minimum setbacks shall apply to the buildings constructed on the commercial lots:

Front	15'
Side	0'
Back	0'

4.3 River Setbacks. All buildings in the Project shall be set back at least 50 feet from the ordinary high-water mark of the Payette River. This setback, when applicable, shall supersede any other minimum setbacks.

Commented [MAJ3]: Developer requests reduction to 35 feet. Justification from Developer for request needed.

4.4 Height Restrictions. No greater than 25 feet.

Commented [MAJ4]: See 3.5(b).

4.5 Floodplain. Developer shall comply with the flood damage prevention regulations of the Cascade City Code Title 3, Chapter 5, as the same may be applicable to the Project. Development of the Project may not cause loss or impacts to water storage area within the floodplain that would adversely impact properties upstream or downstream.

Commented [MAJ5]: Staff recommendation is firm on keeping this no net loss style language. Floodplain management requirement. See supporting documentation from City Engineer.

4.6 Wetlands. Development of the Project shall be subject to approval by the US Army Corps of Engineers through the issuance of required permits, including any required Section 404 permit(s).

4.7 Design Requirements. Developer will comply with the following design standards:

Generally, building design shall comply with the design nature detailed in the submittal narrative as a part of the Project Applications. This includes maintaining a general rustic design, use of exposed beams, and use of neutral earth-tone colors to ensure the Project is in harmony with the natural context of its location. "Cookie-cutter" building design (repetitive and substantially similar adjacent designs) shall not be allowed. Such design standards shall also be specified for long-term preservation in the Project CC&Rs. No manufactured or mobile homes are permitted.

4.8 Wood Burning Stoves/Fireplaces. ~~Wood-burning stoves and fireplaces are not allowed in the Project. Developer shall further document such restriction in the Covenants, Conditions, and Restrictions ("CC&Rs") to be recorded on the Property.~~ Developer will include language in the CC&Rs restricting types of wood-burning stoves and fireplaces permitted to be installed to ensure that high-efficiency, low emitting CO2 stoves are used so as to minimize air pollution. Wood-burning stoves and fireplaces will not be permitted in the multi-family units and a restriction to such effect shall be included in the CC&Rs.

4.9 CC&Rs. CC&Rs are required to be prepared and recorded as applicable to the Project properties. Developer shall submit proposed CC&Rs to the City for review and comment prior to finalizing and recording such.

4.10 Propane/ Gas Tanks. Any household tanks for the storage of propane or other gases must be buried underground.

5. INFRASTRUCTURE IMPROVEMENTS. Developer shall engineer, construct, and otherwise provide, at Developer's sole expense (except to the extent otherwise set forth below), the following improvements, facilities and services (public and private) with each phase of the project in accordance with this Agreement. Developer hereby warrants all infrastructure improvements for one (1) year from acceptance thereof by the City.

5.1 Utilities. All utilities, including water, sewer, storm drainage, pressurized irrigation, cable, phone and electric shall be installed underground within the street rights-of-way, in easements or as otherwise shown on the approved construction plans for each phase of the Project. All utilities shall be installed in accordance with City

improvement standards and as set forth in Cascade City Code Section 3-2-5 and other sections as may be applicable. Detailed engineered construction drawings and specifications for construction of such improvements shall be prepared by Developer and approved by all applicable governmental entities prior to construction. Prior to acceptance of any such improvements to be dedicated to City, City shall inspect and approve same and Developer shall provide City with "as built" drawings thereof. All required off-site utility improvements must be completed as directed by the applicable governmental entity or as otherwise specified in this Agreement.

5.2 Streets and Highways.

a. Internal Project Improvements. All internal minor public streets will be constructed within a fifty (50) foot right-of-way with an improved surface twenty-six (26) feet in width, excepting the following: the portions fronting the Townhome Lots may be constructed within a forty (40) foot right of way with an improved surface twenty-six (26) feet in width; the main collector(s) shall be constructed within a one-hundred (100) foot right-of-way with an improved surface twenty-nine (29) feet in width, with a five (5) foot bicycle lane, for a total of a thirty-four (34) foot wide paved surface. All streets, roadways and walkways shall be designed and constructed as shown on the approved construction plans for each phase of the Project and in accordance with City standards. Prior to acceptance of any such improvements to be dedicated to City, City shall inspect and approve same and Developer shall provide City with "as built" drawings thereof. ~~City reserves the right, at City's discretion, to delay acceptance until such time as adequate lots are built out such that appropriate tax revenues for such improvements are being assessed and collected.~~ Developer retains all responsibility to maintain and upkeep such streets until time of final acceptance by the City. Upon completion of each of such improvements and acceptance thereof by City, such improvements shall become a part of the City's street system and the City shall assume all responsibility therefore subject to Developer's warranty set forth above, provided, however that Developer shall be responsible to provide snow maintenance and removal for such improvements until such time as eighty percent (80%) of the lots in the phase have been sold are are built upon in order to assist the City with the maintenance costs thereof before tax revenues for such improvements are being assessed and collected.

Commented [MAJ6]: Developer alternative language proposed would delete and replace. Perhaps discuss % buildout acceptance? 80% [PB]

b. State Highway Improvements. Developer shall comply with all access and intersection requirements of the Idaho Transportation Department (ITD) applicable to the Project and construct all improvements reasonably and necessarily required to mitigate traffic impacts of the Project as finally determined by ITD.

Commented [MAJ7]: Developer proposed language.

Developer will provide a letter of credit, in form satisfactory to the City, sufficient to ensure timely construction of any such improvements and mitigation measures required in accord with the required schedule for such.

Commented [MAJ8]: This remains an issue. Staff recommendation is that no approval on applications until after ITD review.

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5.3 Lighting. Street lighting throughout the Project shall be in accordance with the approved construction plans for each phase of the Project. The lighting shall be installed in each block of the Property as the same is developed. All lighting must comply with the standards and purposes of the City dark sky ordinance, City Code, and regulations.

5.4 Water System. In addition to the requirements set forth in Section 5.1, above, Developer shall be responsible for the following specific to the water system.

Developer shall engineer, construct and extend, at Developer's sole expense, a drinking water distribution system throughout the Property and connect to the City's drinking water distribution system. All such improvements shall be designed and constructed in accordance with the standards of the City and the State of Idaho, Department of Environmental Quality, as applicable. Upon completion of each of such improvements and acceptance thereof by City, such improvements and the offsite improvements, if any, shall become a part of the City's drinking water system and the City shall assume all responsibility therefore subject to Developer's warranty.

The Parties understand that the City is without a current water system facility plan (Water Plan), but is proceeding on steps for the preparation of such. In order to address uncertainty about the ability of the City to provide water services for the Project it is necessary to expedite this planning process. To expedite the process for preparation and adoption of such Water Plan, Developer agrees to contribute \$ _____ to the City, which shall be held in the Water Fund and dedicated for timely pursuit of the funding and preparation of such Water Plan.

In order to assure the ability of the City to continue to timely address planning, study, and improvement needs with respect to the additional burdens the Project will place on the City system, Developer agrees to the following front-loaded payment of water service availability fees (SAF):

- a) At time of final plat on a phase, Developer will pay fifty-percent (50%) of the total water SAF applicable to all lots within the phase. (Initial 50%)
- b) Developer will then pay the applicable SAF on individual lots on a lot-by-lot basis at the time of building permit for an individual lot, up and until individual lot SAFs equivalent to the remaining fifty-percent (50%) of the total water SAF within the phase have been paid.
- c) City, as required by law, shall hold all such SAF paid in the water enterprise fund. The Initial 50% funds will be committed to timely addressing further system planning, and improvements connected to the increased demand from ongoing buildout on the Project.

All units within the Project must have individual unit-specific water meters, including all individual units within multi-unit buildings (fourplexes, apartments, etc.). Water meters must be of radio-read type and as reviewed and approved by the City in accordance with City standards.

Developer will perform and submit a water model, at Developer's sole expense, to determine and confirm that the existing City twelve-inch water line anticipated to supply the Project can adequately provide required fire flows to the Project. This modeling must take place prior to approval of the Preliminary Plat.

Water storage sufficient to satisfy fire suppression needs, as specified by the regulations of the Cascade Rural Fire District, must be provided. A plan for such storage shall be reviewed and approved by both the Fire District and the City prior to Final Plat~~final platting~~.

5.5 Private Irrigation Water System. A private landscape irrigation system shall be installed by Developer to provide irrigation to all lots in the Project in accordance with the approved construction plans for each phase of the Project. Developer shall irrigate said lands using Developer's existing water rights and convey the water rights now appurtenant to the Property necessary therefore to the owners' associations created with regard to the Property or as provided in applicable law. Irrigation using the City water supply is not permitted, which shall be specified in the CC&Rs.

5.6 Sewer-Wastewater System. In addition to the requirements set forth in Section 5.1, above, Developer shall be responsible for the following specific to the wastewater system.

Developer shall engineer, construct and extend, at Developer's sole expense, a wastewater collection system throughout the Property and connect to the City's wastewater system. The Project collection system is anticipated to include a lift station and potential increased collection line between the lift station and City treatment plant. All such improvements shall be designed and constructed in accordance with the standards of the City and the State of Idaho, Department of Environmental Quality, as applicable. Upon completion of each of such improvements and acceptance thereof by City, such improvements and the offsite improvements, if any, shall become a part of the City's wastewater system and the City shall assume all responsibility therefore subject to Developer's warranty.

The Parties understand that the City is in need of an updated wastewater facility plan (Wastewater Plan), and is proceeding on steps for the preparation of such. In order to address uncertainty about the ability of the City to provide wastewater services for the Project it is necessary to expedite this planning process. To expedite the process for preparation and adoption of such Wastewater Plan, Developer agrees to contribute \$ _____ to the City, which shall be held in the Wastewater Fund and dedicated for timely pursuit of the funding and preparation of such Wastewater Plan.

In order to assure the ability of the City to continue to timely address planning, study, and improvement needs with respect to the additional burdens the Project will place on the City system, Developer agrees to the following front-loaded payment of wastewater service availability fees (SAF):

- a) At time of final plat on a phase, Developer will pay fifty-percent (50%) of the total wastewater SAF applicable to all lots within the phase. (Initial 50%)
- b) Developer will then pay the applicable SAF on individual lots on a lot-by-lot basis at the time of building permit for an individual lot, up and until

individual lot SAFs equivalent to the remaining fifty-percent (50%) of the total wastewater SAF within the phase have been paid.

- c) City, as required by law, shall hold all such SAF paid in the wastewater enterprise fund. The Initial 50% funds will be committed to timely addressing further system planning, and improvements, including anticipated aeration needs if necessary, connected to the increased demand from ongoing buildout on the Project.

Developer will perform and submit a wastewater line model, at Developer's sole expense, to determine and confirm that the existing City wastewater collection line anticipated to serve the Project has sufficient capacity. This modeling must take place prior to approval of the Preliminary Plat.

The Parties understand and agree that the City is currently working with IDEQ to monitor and evaluate compliance with the requirements of the City's discharge permit. Any improvements to the existing system required as a result of such monitoring and evaluation, and not necessitated by Project development, will be the responsibility of the City and not a direct cost to the Developer.

5.7 Landscaping. All landscaping improvements shall be in accordance with a landscape plan to be submitted to and approved by the City as a condition to final plat approval. This landscape plan must be certified by a professional landscape architect and shall include species sizes, quantities and location.

Commented [MAJ9]: Developer requests "landscape professional."

5.8 Stormwater. Offsite drainage and flows that flow onto and across the Project site shall not be impeded and their conveyance to the river maintained. Stormwater that falls on the developed portions of the Project site, buildings, roadways, parking lots, and other hardscape, shall be retained on site in accordance with City Code and Idaho DEQ standards. Undeveloped and natural areas shall generally retain their historic drainage function and flow paths to the extent reasonably possible. ~~All stormwater is required to be retained on site. Developer shall be responsible to mitigate and remedy any stormwater drainage identified to be moving off site.~~

Commented [MAJ10]: Review drainage plan to confirm approach and identify areas of concern. Drainage plan must be submitted, if not done so already.

Commented [MAJ11]: Revise based on discussion about on-site v. off-site; increased impacts on natural areas.

5.9 Pathways. All pathways and trails shall generally be in accordance with the City's Bicycle and Pedestrian Plan purposes and associated standards. Pathways must be at least ten (10) feet wide, of sufficient size, and constructed of compacted gravel or appropriate paving material, with such design and section to be reviewed and approved by the City. Pathways located within wetlands shall be approved by a USACE 404 permit and may be reduced in width and type to comply with USACE standards. For example pathways may be single track scraped earth trails within wetlands.

Commented [MAJ12]: Developer requests reduction to 6 feet. Comprehensive plan calls for 10 feet.

All pathways and trails are to be owned and maintained as common areas and shall be the responsibility of the Owners' Association. All pathways and trails shall be made available for general public use. Before or at eighty percent (80%) Project completion, Developer will ensure that the Project pathways system will directly connect to the City pathway and greenbelt system currently in existence, ~~including by Developer provision of a pathway bridge over the river to connect in to the City system at Fisher~~

~~Pond Park. Upon design, review, and approval of that pathway connection within the phasing, Developer shall also submit a performance bond or letter of credit, which must be reviewed and approved by the City, sufficient to secure and ensure completion of such.~~

Commented [MAJ13]: Pathways plan review between parties can likely resolve.

5.10 Erosion and Sediment Control. Developer shall provide an Erosion and Sediment Control Plan, to be reviewed and approved by City staff, and which shall be made a part of the governing construction documents with which Developer must comply.

5.11 Application Review Fee Costs. Developer shall pay the amount of \$ _____, which is agreed by the parties to constitute the remaining application fee owed by Developer to the City for application review and consultant, engineering, and legal costs associated with the applications. This amount shall be paid to City prior to the approval on the preliminary plat.

5.11.2 Phases. The Project will be completed in phases as generally proposed and presented by the Phasing Plan attached hereto as Exhibit C and hereby incorporated into and made a part of this Agreement. Phases may be combined or advanced to accommodate market, financing, site and other conditions in conjunction only upon notice of intent to do so to the City and with timely combination and advancement of any improvements required for such phase(s). Other alterations or delays to the Phasing Plan may only occur by appropriate amendment to this Agreement in accordance with the amendment process.

Commented [MAJ14]: Developer would like to add "reduced or delayed" to this list.

5.13.2 Performance Commitments. For all required utility and infrastructure improvements required to be provided by the Developer under this Agreement and the Phasing Plan, at the time of design review and approval there shall be included a reasonable and City-approved estimation of costs. Developer shall then submit a performance bond or letter of credit, which must be reviewed and approved as to form by the City, sufficient to secure and ensure completion of such improvements.

6. RECORDATION OF SUBDIVISION. The Developer shall obtain approval from the City for the Initial Phase final plat within ~~two~~ **one (+2)** years of the date of City's final approval of the Project Applications. Developer will apply for approval for final plats for subsequent phases of the subdivision in successive one-year intervals; provided that Developer may request extensions thereof as permitted by the Cascade City Code.

Commented [MAJ15]: Developer requests this be extended to 2 years due nature of construction season in Valley County.

7. SUBSEQUENT FILINGS AND APPROVALS. Developer shall submit and City shall consider all subsequent applications for development of the Property in accordance with the approved Project Applications and this Agreement. Nothing contained herein is intended to limit the police powers of City in reviewing any subsequent applications, but in the exercise of City's discretion, City shall act in a manner which is not inconsistent with this Agreement. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation, including without limitation, applicable building codes, fire codes, zoning ordinances, subdivision ordinances, or comprehensive plan provisions, unless expressly provided herein.

8. SALE OR TRANSFER OF THE PROPERTY. This Agreement, which shall be duly recorded in the records of Valley County, Idaho, shall run with the land comprising the Property as provided further herein, and it shall be binding upon and benefit the City, Developer and any successor in interest to any portion of the Property. No person or entity acquiring any portion of the Property shall be permitted to develop, construct, erect, or install any building, utility, improvement or landscaping which does not conform in all respects to this Agreement. In the event that Developer or a successor in interest to Developer, sells or transfers the Property, or any portion thereof, written notice of said transaction shall be given to City no less than thirty (30) days prior to the closing in connection with such transfer. This requirement shall not apply to the sale and/or transfer of platted lots.

9. AMENDMENT OF AGREEMENT AND CHANGES TO PROJECT APPLICATIONS. This Agreement shall be amended or cancelled, in whole or in part, only by the mutual consent of the parties, executed in writing. Both parties acknowledge that the site plans, building locations, floor plans, elevations and design of the buildings will be refined prior to submission in connection with each phase of the Project and final construction drawings for building permits and other permits. The parties acknowledge and agree that the covenants, conditions, and agreements set forth in this Agreement are made based on the information and circumstances pertaining to the Property and the infrastructure needs for the Project known to the parties as of the date of this Agreement. If during the course of development of the Project any material changes to that information and/or circumstances are revealed, the parties agree to discuss and negotiate proposed reasonable and necessary changes to this Agreement in good faith and in accord with appropriate process as required by law.

Commented [MAJ16]: Bulk is Developer proposed addition with some revision by MAJ.

10. TERM OF AGREEMENT. The Term of this Agreement shall commence on the Effective Date and shall automatically terminate on the 20th anniversary of the Effective Date. Annexation of any additional property shall not extend the Term of this Agreement unless the Agreement is expressly amended to extend the Term.

11. SUPERSEDING PRIOR AGREEMENTS. This Agreement supersedes and extinguishes all prior agreements, if any, between the parties with regard to the Property or any portion thereof.

12. DEFAULT/CONSENT TO DE-ANNEXATION AND REVERSAL OF ZONING DESIGNATION:

12.1 Acts of Default. Either party's failure to faithfully comply with all of the terms and conditions included in this Agreement, or the terms and conditions of any permit issued by the City pursuant to this Agreement, shall constitute default under this Agreement.

12.2 Notice and Cure Period. In the event of a default of this Agreement, the party claiming a default has occurred (the "Claimant") shall serve the defaulting party with a written notice of default. The written Notice of Default shall state the factual and legal reasons for the claim of default, the actions to be taken by the defaulting party to cure the claim of default and a demand that the defaulting party respond in writing, within a reasonable stated time, as to whether or not the defaulting party consents to comply with the Notice of Default or denies the claim of default. The defaulting party

shall have a minimum of thirty (30) days to remedy any default. If the default is such that more than thirty (30) days would reasonably be required to cure default, then the defaulting party shall have such additional time as may be necessary to perform or comply so long as the defaulting party commences performance within such thirty (30) day period and diligently proceeds to complete such performance and timely cures any exigent circumstance of the claim of default that affects public health and safety.

12.3 Hearing. In the event the defaulting party fails to correct and remedy a default or noncompliance, within the reasonable time designated in the Notice of Default, to the satisfaction of the Claimant, the Claimant shall then request the City Council to proceed to set a hearing to take action as identified in the Notice of Default and to enforce the terms of this Agreement, which such hearing shall be held on a date at least twenty-eight (28) days after written notice thereof is provided to the parties. At the hearing to show cause, the defaulting party may present evidence as to why it or they are not in default. Following any presentation of evidence by the defaulting party and any rebuttal by the Claimant and any other interested persons, the City Council shall determine the matter and issue an Order of Decision in accordance with the evidence presented at the hearing. The Order of Decision issued by the City Council shall be the final administrative remedy of any claim of default under this Agreement.

12.4 Remedies. Either party may thereafter seek legal action in a court of competent jurisdiction for any legal or equitable remedy, including, without limitation, declaratory relief and or specific performance of this Agreement as the case may be in the Fourth Judicial District Court in Valley County. In the event of default by Developer that is not cured, and upon City's compliance with all applicable laws, ordinances and rules, including any applicable provisions of Idaho Code §§ 67-6509 and 67-6511, Developer shall be deemed to have consented to modification of this Agreement and de-annexation and reversal of the zoning designations described herein, solely against the offending portion of Property.

12.5 Waiver. A waiver by either of any default by the other party of any one or more of the covenants or conditions hereof shall apply solely to the default and defaults waived and shall neither bar any other rights or remedies of a party nor apply to any subsequent default of any such or other covenants and conditions.

13. RELATIONSHIP OF PARTIES. It is understood the contractual relationship between City and Developer is such that Developer is not the agent, partner, or joint venturer of City.

14. FORCE MAJEURE. If either party hereto is delayed in the performance of any of such party's obligations hereunder because of extreme inclement weather, labor dispute or strike, civil strife, act of God, the time of performance for completion of such amenity or improvement may be extended for the same time as lost by Developer.

15. ATTORNEY FEES AND COSTS. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing

party is entitled to reasonable attorney fees and costs incurred with regard to such action including, without limitation, any appeals.

16. **NOTICES.** All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices shall 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. Notices required to be given to City shall be addressed as follows:

City of Cascade
c/o City Clerk
PO Box 649
Cascade, Idaho 83611

Notices required to be given to Developer shall be addressed as follows:

Cascade River, LLC
c/o Phil Davis
19 Warm Lake Highway
Cascade, Idaho 83611

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

17. **NO WAIVER.** Any forbearance of any kind that may be granted or allowed by City or Developer to the other under this Agreement shall not in any manner nor in any way be deemed or construed or considered as waiving or surrendering any of the conditions or covenants of this Agreement or any subsequent default.

18. **RECORDATION.** This Agreement, including subsequent amendments thereto, shall be recorded in the Offices of the Valley County Recorder, Caldwell, Idaho, by Developer and Developer shall pay the costs of recordation.

19. **PARTIAL INVALIDITY.** In the event any portion of this Agreement or part thereof shall be determined by any Court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or parts thereof, shall remain in full force and effect.

20. **ENTIRE AGREEMENT.** This Agreement constitutes the full and complete Agreement of and between the parties hereto. No representations or warranties made by either party or such party's officers, employees or agents shall be binding unless contained in this Agreement or subsequent written amendments thereto.

21. **NO THIRD PARTY BENEFICIARIES.** Nothing contained herein shall be deemed or construed to create any third party beneficiaries or third party rights.

22. **RULES OF CONSTRUCTION.** The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive. The captions to CASCADE RIVER DISTRICT DEVELOPMENT AGREEMENT - 13

paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

23. **EXHIBITS.** Attached to this Agreement and made a part of this Agreement by reference are the following Exhibits:

- A - Legal Description of Annexation Property
- B - Preliminary Plat/PUD Map
- [C - Phasing Plan](#)

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24. **RECITALS INCORPORATED.** The recitals set forth in this Agreement are hereby incorporated herein by reference.

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25. **AUTHORITY TO EXECUTE.** Each of the persons executing this Agreement represent and warrant that such person has the lawful authority and authorization from such person's respective entities to execute this Agreement, as well as all applications, plats and other documents required hereunder for and on behalf of the entity executing this Agreement.

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26. **ANNEXATION.** This Agreement is subject to and shall become effective upon annexation of the Property.

[Signature page follows as separate page]

DRAFT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in accordance with the laws of the State of Idaho, effective to the the date designated ~~and year first written above~~.

CITY:
CITY OF CASCADE
an Idaho municipal corporation

DEVELOPER:
CASCADE RIVER, LLC
an Idaho limited liability company

By: _____
Judith Nissula, Mayor

By: _____
Phil Davis

STATE OF IDAHO)
) ss.
County of Valley)

On this ____ day of _____, 2020, before me, a Notary Public in and for said State, personally appeared _____, known or identified to me to be a _____ of Cascade River, LLC, an Idaho limited liability company that executed the within instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.

NOTARY PUBLIC for IDAHO
Residing at _____
Commission expires _____

STATE OF IDAHO)
) ss.
County of Valley)

On this ____ day of _____, 2020, before me, a Notary Public in and for said State, personally appeared _____, Mayor of the City of Cascade, Idaho, known or identified to me to the person whose name is subscribed to the within instrument as the Mayor of the City of Cascade, Idaho, and acknowledged to me that he executed the same as Mayor of the City of Cascade, Idaho.

NOTARY PUBLIC for IDAHO
Residing at _____
Commission expires __