

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 "Equivalent Dwelling Unit (EDU)" shall mean a unit of measurement, for purposes of water or wastewater connection and services fees, equivalent to one single-family residential household and as calculated per City policy.
 - 1.4 "Preliminary Plat/PUD Map" shall mean and consist of the approved preliminary plat/PUD Map dated March 20, 2020, a copy of which is attached hereto as Exhibit B and shall be incorporated herein by reference.
 - 1.5 "Property" shall mean that certain real property legally described in Exhibit A.
 - 1.6 "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.

Commented [SB1]: I think we should consider referencing the map by date since recording a full size copy as an exhibit is a problem and recording a reduction will probably reduce readability.

1.7 “Project Applications” shall mean City application file numbers ANNEX-19-01, ZON-19-01, PUD-19-01, and SUB-19-01.

1.8 “Service Availability Fee (SAF)” shall mean a fixed cost connection fee on an EDU basis and as established by City policy, for the availability of water or wastewater service. SAF is independent of any consumption fee or charge.

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 five-thousand square feet (5,000 sf) with a maximum lot coverage of sixty percent (60%)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

3.3 Commercial Uses. Developer shall be entitled to subdivide, construct, develop, market, sell and improve ~~twelve~~^{eleven} (1~~2~~¹) 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, determined in accordance with the definition of “Height of Building” set forth in Cascade City Code Section 3-1-4.
- 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 Permissions. Building heights in the Project shall be permitted up to twenty-five (25) feet, determined in accordance with the definition of “Height of Building” set forth in Cascade City Code Section 3-1-4.

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, and all further requirements as set forth in a subsequent Floodplain Development Permit.

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.

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 Council 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, broadband conduit, 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, the City Engineer shall inspect and approve same and Developer shall provide the City Engineer with "as built" drawings thereof for the City records. 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 Engineer shall inspect and approve same and Developer shall provide City with "as built" drawings thereof. Developer retains all responsibility to maintain and upkeep such streets until time of final acceptance by the City Council. 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 ~~fifty-thirty five~~ percent (35%) of the lots in the Initial P phase have received a building permits 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. These requirements shall be as set forth in *The River District – ITD Traffic Impact Study Acceptance Letter*, dated February 25, 2020, and which is incorporated herein as Exhibit D to this Agreement.

- c. **City Transportation Network Impacts.** As a condition of ~~approval for~~[City Engineer signature on the](#) final plat on the Initial Phase, Developer will reimburse to City its actual out of pocket costs, not to exceed \$4,000.00, for ~~the city to~~ prepare ~~and submit~~ a local traffic impact model and analysis for ~~the City, which the city may use for planning purposes and as a basis for seeking transportation grants and other appropriate sources of funding for transportation improvements.~~ ~~Engineer review and approval by the City Council. That model will adequately identify how Project generated traffic impacts the City transportation network, what (if any) mitigation is required, and the estimated costs of any such mitigation. That model will include traffic count data already scheduled by the City and ITD to be collected in the summer of 2020. To the extent, if any, that such model shows the Project causes substantial local traffic impacts sufficient to require necessary improvements, then as a condition of final plat on subsequent phases the City and Developer will enter into further agreement on the scope and cost share for such improvements with Developer responsible proportionally for the impacts apportioned to the Project under the local traffic impact model.~~

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. The City has been awarded an IDEQ grant for the preparation of a Water Plan, though such grant is limited for planning use on the existing system. In order to address uncertainty about the ability of the City to provide water services for the Project it is necessary to supplement the Water Plan with an addendum specific to the Project (Project Addendum). Developer agrees to contribute to City the City's [actual](#) out-of-pocket costs for preparing the Water

Plan Project Addendum, not to exceed \$10,000. Such contribution ~~which~~ shall be made by Developer as a condition of City Engineer signature on the final plat of the Initial Phase and shall be held in the Water Fund and dedicated for timely pursuit of the funding and preparation of such Project Addendum.

City and Developer have discussed and identified certain necessary water system (pumping and storage) improvements anticipated to be necessary to accommodate full build-out the Project. The Initial Phase is anticipated be accommodated with existing capacity.

~~For the Initial Phase of the Project t~~The City will commit a will-serve of fifty (50) water system connections for the Initial Phase of the Project at the time as of the date of this Agreement is recorded. This initial will serve commitment will expire if such are not used. If Developer has not recorded a final plat for the Initial Phase within threefour (4) years of the date this Agreement is recorded this initial will-serve commitment will expire. Further connections availability will be evaluated after the updated facility plan and any improvements that are needed are identified. ~~This initial will serve commitment will expire if such are not used within three years of this Agreement.~~ Developer remains responsible for payment of water SAFs, on an EDU basis and per City policy, as lots connect to the system. City, as required by law, will hold all paid SAFs in the water enterprise fund and commit reasonable use of such fees to timely addressing the identified water system planning and improvements necessitated by the Project No pre-payment of water SAFs is required for the Initial Phase.

As a condition to City Engineer signature on the final plat of the Initial Phase, Developer will perform and submit a water model, at Developer's 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. As a condition to the issuance of a building permit for any building in excess of 25,000 square feet of total building area, the applicant therefore must provide documentation that there exists sufficient water storage in the City's water system.~~A water storage plan sufficient~~ to satisfy fire suppression needs, as specified by the regulations of the Cascade Rural Fire District, ~~must be provided.~~ The modeling and storage ~~plans~~ documentation are subject to both City Engineer and Rural Fire District comment and approval. ~~The modeling and storage plans are a required condition prior to approval of the Initial Phase Final Plat.~~

All units within the Project must have individual unit-specific water meters, including all individual units within multi-unit buildings (four-plexes, apartments, etc.). Water meters must be of radio-read type and as reviewed and approved by the City Engineer 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, and connect to the City's wastewater 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 wastewater system and the City shall assume all responsibility therefore subject to Developer's warranty.

b. Wastewater System Planning and Improvements. The Parties understand that the City is in need of an updated wastewater facility plan (Wastewater Plan). Based on the information currently available, the existing wastewater system can likely serve some portion of the first phase of the Project. Preliminary review indicates that aeration and other improvements will be needed for further 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 may prepare a Wastewater Plan targeted for completion in late 2021.

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 payment of wastewater service availability fees (SAF) on an Equivalent Dwelling Unit (EDU) basis:

- i. ~~At or before time~~As a condition of City Engineer signature on the final plat on the Initial Phase, Developer will pre-pay fifty (50) wastewater SAF applicable to the Initial Phase. (Initial 50).
- ii. At the time that the Project requires or requests to pursue a substantial number of wastewater connections and commitments beyond the Initial 50, the Developer will notify City and pre-pay SAFs in an amount sufficient to finish design and to procure and construct wastewater improvements reasonably necessary to increase capacity, generally understood at this time to be aeration improvements (Capacity Increase SAF). The number of SAFs pre-paid with the Capacity Increase SAF will be reasonably calculated at an amount sufficient cover the cost of finishing design, procuring, and constructing the necessary wastewater improvements minus ~~any the~~ amounts ~~the City may opt, under the City Council's budgetary discretion, to dedicate to~~ reasonably available for such improvements from accumulated wastewater SAFs or wastewater funds or other sources such as grant funding ~~or other accumulated wastewater SAFs or wastewater funds.~~
- iii. City, as required by law, shall hold all SAFs paid in the wastewater enterprise fund. City commits to the reasonable use of wastewater funds for preparation

of the design of anticipated aerations improvement, to be ~~done~~completed within three (3) months of payment of the Initial 50. City also commits to the reasonable use of wastewater funds for the procurement and completion of construction of the anticipated aeration improvements, or reasonable alternative sufficient to achieve forecasted needed increased capacity, within four (4) months of payment of the Capacity Increase SAF.

- iv. It is reasonably anticipated that the regular payment and accumulation of Project-related SAFs over time will be sufficient to keep pace with funding needs for potential further increased capacity at subsequent Project phases. However, upon each subsequent phase of the Project, an evaluation of capacity needs for further Project development will be conducted and if it is reasonably shown that additional Project SAFs pre-payment is needed to timely increase needed capacity, then the Parties will calculate a further pre-payment of SAFs using the same approach as the Capacity Increase SAF above.

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 is a condition of ~~approval of~~ City Engineer signature on the Final Plat of the Initial Phase.

~~For the Initial Phase of the Project the City will commit to serve fifty (50) wastewater system connections for the Initial Phase of the Project. This connections commitment will expire if such are not used. If Developer has not recorded a final plat for the Initial Phase within threefour (34) years of the date this Agreement is recorded this connections commitment will expire. Further connections availability will be evaluated after the updated facility plan and any improvements that are needed are identified. This connections commitment will expire if such are not used within three (3) years of this Agreement.~~

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 Engineer 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. Generally 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 hardscape developed portions of the Project site (such as buildings, roadways, and parking lots) 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. Developer's stormwater plan will be reviewed and approved by the City Engineer and any other agency having jurisdiction thereof, as and when required by City Code.

5.9 Pathways. All pathways and trails shall generally be in accordance with the [pathways plan accompanying the Project Applications](#) ~~City's Bicycle and Pedestrian Plan purposes and associated standards. Pathways~~ and must be 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 ~~Engineer and in general accordance with the pathways plan accompanying the Project Applications.~~ 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. Before or at ~~eighty percent (80%)~~ [City Engineer signature on the final plat the fifth phase of the](#) Project ~~completion~~, Developer shall extend a pathway to the State Highway 55 right of way [at or near the southwest corner of the Property or post a financial guarantee of performance therefore in accordance with Section 5.12, below](#) ~~sufficient to establish connectivity to the City's pathway and greenbelt system currently in existence.~~

5.10 Erosion and Sediment Control. Developer shall provide an Erosion and Sediment Control Plan, to be reviewed and approved by the City Engineer, 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 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, reductions, 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 infrastructure and improvements required to be provided by Developer under this Agreement, Developer shall provide to the City a financial guarantee of performance, such as a performance bond or letter of credit, subject to review and approval as to form by the City Attorney and City Council, sufficient to secure and ensure completion of such improvements. This financial guarantee will be in accordance with the requirements of City Code Section 3-2-5(C).

6. **RECORDATION OF SUBDIVISION.** The final plat [application](#) for [the Initial Phase One](#) shall be submitted to the City within two (2) years of the [date this Agreement is recorded](#) ~~City's final approval of the Project Applications.~~ The final plat for Phase One

shall be signed and recorded within two (2) years of ~~submission~~ City Council approval of said plat. ~~Subsequent phases~~ Developer shall submit applications for final plats approval for each subsequent phase to the City within three (3) years of the previous phase final plat recordation. The final plats for each such ~~subsequent phases~~ shall be signed and recorded within two (2) years of ~~submission~~ City Council approval of each such plat.

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 ~~23~~³⁰~~th~~th 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 reasonably 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~~[Cascade](#), 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
 - D - *The River District – ITD Traffic Impact Study Acceptance Letter*, dated February 25, 2020,
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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in accordance with the laws of the State of Idaho, effective to the date designated.

CITY:

DEVELOPER:

CITY OF CASCADE
an Idaho municipal corporation

By: _____
Judith Nissula, Mayor

By: _____
Phil Davis, Cascade River, LLC

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 Judith Nissula, 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 __