A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CAVE CREEK, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO APPROVE A DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF CAVE CREEK AND HIGGINBOTHAM CONCEPTS, LLC AN ARIZONA LIMITED LIABILITY COMPANY, PROVIDING FOR INTERIM FIRE FLOW WATER SERVICE AND CONSTRUCTION WATER AND REIMBURSEMENT OF CERTAIN EXCESS WATER FUNDS PAID TO CITY OF PHOENIX BY DEVELOPER THAT ARE OVER AND ABOVE THE WATER CAPACITY FEES THAT WOULD HAVE BEEN CHARGED BY THE TOWN.

WHEREAS, the Town Council is authorized by Arizona Revised Statutes § 9-500.05 to enter into development agreements; and

WHEREAS, Developer is the owner of the approximately one-acre of real property located at the southwest corner of Cave Creek Road and Barbie Lane within the Town, legally described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"). Developer intends to construct a commercial business on the Property (the "Development").

WHEREAS, the Property lies within the jurisdiction of the Town, but within the City of Phoenix ("Phoenix") Water Service Area.

WHEREAS, the Town currently provides domestic water service and a dedicated fire service line to certain commercial businesses within the Town, but within the Phoenix Water Service Area; and Phoenix and the Town desire that Phoenix ultimately provide all domestic water service and fire flow water service to such commercial businesses within the Phoenix Water Service Area, including the Property, and have agreed to enter into an Intergovernmental Agreement.

WHEREAS, the Town Council approved an Intergovernmental Agreement on November 28, 2018 (the "IGA") that requires the payment by Developer of certain water service development fees to Phoenix that substantially exceed the water service development fees charged by the Town.

WHEREAS, the Town will receive a credit for Developer’s water service development fees paid to Phoenix for the Property against a $600,000 infrastructure obligation borne by the Town pursuant to the Intergovernmental Agreement ("Cave Creek Obligation") and the Town desires to refund to Developer an amount equal to the excess funds paid to Phoenix by Developer that are over and above the Water Capacity Fees that would have been charged by the Town.

WHEREAS, This Agreement is a development agreement within the meaning of A.R.S. §9-500.05 and shall be construed as such.
NOW, THEREFORE, IT IS RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF CAVE CREEK, ARIZONA AS FOLLOWS:

Section 1 - Authorization. That the Town Council hereby approves, and the Mayor is hereby authorized to execute on behalf of the Town of Cave Creek that certain Development Agreement with Higginbotham Concepts, LLC, a copy of which is attached to this Resolution as Exhibit "A".

Section 2 – Modification. That the Mayor, Town Manager and Town Attorney are hereby authorized to take and perform such other and further actions as are necessary or appropriate to carry out the purposes of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the Town of Cave Creek, Arizona this _______ day of ______________, 2018.

ATTESTED TO: FOR THE TOWN OF CAVE CREEK:

_____________________________  _____________________________
Carrie Dyrek, Town Clerk    Ernie Bunch, Mayor

APPROVED AS TO FORM:

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William J. Sims, Town Attorney