WHEN RECORDED RETURN TO:

Town of Cave Creek
Attn: Town Clerk
37622 N. Cave Creek Road
Cave Creek, Arizona 85331

DEVELOPMENT AND REIMBURSEMENT AGREEMENT

TOWN OF CAVE CREEK, ARIZONA,

an Arizona municipal corporation

AND

HIGGINBOTHAM CONCEPTS, LLC,

an Arizona limited liability company

___________________________, 2018
DEVELOPMENT AND REIMBURSEMENT AGREEMENT

This Development and Reimbursement Agreement (this “Agreement”) is made and entered into as of the ____ day of December, 2018, by and between THE TOWN OF CAVE CREEK ARIZONA, an Arizona municipal corporation (the "Town"); and HIGGINBOTHAM CONCEPTS, LLC, an Arizona limited liability company ("Developer"). Town and Developer are sometimes referred to in this Agreement collectively as the "Parties," or individually as a "Party."

RECITALS

A. 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”).

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

C. 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.

D. 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.

E. 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 service fees that would have been charged by the Town.

F. This Agreement is a development agreement within the meaning of A.R.S. §9-500.05 and shall be construed as such.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Town and Developer agree as follows:

1. Accuracy of Recitals. The Parties hereby confirm the accuracy of the Recitals set forth above which are incorporated herein by this reference.
2. **Effective Date.** This Agreement will become effective upon the adoption of a resolution by the Town Council of the Town approving of this Agreement and the execution by all parties to this Agreement and subsequent recordation in the Official Records of Maricopa County, Arizona.

3. **Reimbursement of Water Service Fees.**

   3.1. **Reimbursement Obligation.** Developer will be required, and agrees, to pay certain fees to Phoenix at the time of Developer’s request for water service from Phoenix, including a Development Impact Fee (“Phoenix DIF”) or its equivalent as well as a Water Resource Acquisition Fee, Development Occupational Fee, and standard and customary water meter and tap fees. The Town agrees to reimburse Developer for an amount equal to the Phoenix DIF less the equivalent Town Water Capacity Fee calculated using the fee chart attached as **Exhibit B** (the “Cave Creek Fees”), which represent the fees that would have been paid by Developer to the Town had the Town been the water service provider for the Property, (“Reimbursement Amount”). The Reimbursement Amount may not exceed $600,000. Both the Phoenix DIF and the Cave Creek Fees will be calculated using the number and size of water meters required for the Development. As an example only, if the Phoenix DIF charged for the Development based on an assumed 1.5” meter equal $42,492 and the equivalent Cave Creek Fees would have been $15,160, then the Town will reimburse Developer the difference between $51,123 and $15,160, which is $35,963.

   3.2. **Reimbursement Timing.** Within thirty (30) calendar days after Developer provides to the Town copies of invoices and receipts for payment of the Phoenix DIF, and the Town receives written correspondence from Phoenix confirming the amount of the Phoenix DIF that will be credited against the Cave Creek Obligation, the Town will reimburse to Developer the Reimbursement Amount; provided that the Reimbursement Amount, in the Town’s sole discretion, may not be paid until July 1, 2019.

4. **Interim Fire Flow Water Service and Construction Water.** The Town agrees to provide fire flow water service to the Property pursuant to the terms of the IGA and to provide construction water to the Property as required to commence construction provided that a hydrant meter will be installed and the Developer charged standard and customary rates for such construction water.

5. **Water Capacity Fees.** The Town agrees that Developer will not be charged Water Capacity Fees by the Town.

6. **General Provisions.**

   6.1. **No Personal Liability.** No member, shareholder, director, partner, manager, officer or employee of Developer shall be personally liable to Town, or any successor or assignee, (a) in the event of any default or breach by the Developer,
(b) for any amount which may become due to the Town or its successor or assign, or (c) pursuant to any obligation of Developer under the terms of this Agreement.

6.2. **No Personal Liability.** No member, official or employee of the Town shall be personally liable to Developer, or any successor or assignee, (a) in the event of any default or breach by the Town, (b) for any amount which may become due to the Developer or its successor or assign, or (c) pursuant to any obligation of the Town under the terms of this Agreement.

6.3. **Conflict of Interest.** Pursuant to Arizona law, rules and regulations, no member, official or employee of the Town shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to A.R.S. § 38-511.

6.4. **Notice.** All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted by registered or certified mail, return receipt requested, or by personal delivery or by overnight mail, addressed as follows:

**To Developer:**
HIGGINBOTHAM CONCEPTS, LLC

With a copy to:
Gammage & Burnham, P.L.C.
Attn: Susan Demmitt, Esq.
Two North Central, 15th Floor
Phoenix, Arizona 85004
Tel: (602) 256-4456
Email: SDemmitt@gblaw.com

**To the Town:**
Town of Cave Creek
Attn: Town Clerk
37622 N. Cave Creek Road
Cave Creek, Arizona 85331
Tel: (480) 488-6612
Email: CDyrek@cavecreek.org

With a copy to:
Town of Cave Creek
Attn: Town Attorney
37622 N. Cave Creek Road
Cave Creek, Arizona 85331

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein. The date of service of any
communication hereunder shall be the date of personal delivery or seventy-two (72) hours after the postmark on the certified or registered mail, or the date received if sent by overnight mail, as the case may be.

6.5. **Successors and Assigns.** The rights and obligations of Developer under this Agreement may be transferred or assigned by written instrument to a person or entity who accepts and assumes such rights and obligations in writing. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

6.6. **Town Clerk’s Power to Consent.** The Town authorizes and empowers the Town Clerk to consent to any and all requests of the Developer requiring the consent of the Town hereunder without further action of the Town Council, except for any actions requiring Town Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

6.7. **Estoppel Certificates.** Within fifteen (15) days after receipt of a request therefor from Developer, the Town shall furnish to the Developer an estoppel certificate ("Estoppel Certificate") stating that the Developer has, to the date of the issuance of such Estoppel Certificate, satisfied Developer's contractual obligations with respect to the Property or, if the Developer has not satisfied its contractual obligations, stating those obligations which the Developer has not satisfied. Upon issuance of an Estoppel Certificate, the Town shall be estopped to deny the truth of any statement made in such Estoppel Certificate.

6.8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

6.9. **Jurisdiction and Venue: Jury Waiver.** In the event any lawsuit is filed to enforce the terms of this Agreement, the parties hereby agree that such lawsuit shall be filed in the Superior Court of Arizona, in the County of Maricopa, and that jurisdiction and venue shall be proper in such court. The parties hereby waive the right to trial by jury in any such lawsuit.

6.10. **Attorneys' Fees.** In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court.

6.11. **Waiver.** No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

6.12. **Severability.** In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void
or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, provided that the overall intent of the parties is not materially vitiated by such severability.

6.13. Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

6.14. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

6.15. Counterparts/Facsimiles. This Agreement may be executed in one or more counterparts, which taken together shall have the force and effect of one original document. Facsimile and .pdf copies of the signature pages to this Agreement shall be deemed originals.

6.16. Restriction on Amendments. This Agreement may not be amended or modified except by a writing executed by both the Town and Developer.

6.17. Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after execution of this Agreement by the Town.

[Signature Pages Follow]
[SIGNATURE PAGE TO DEVELOPMENT AND REIMBURSEMENT AGREEMENT]

IN WITNESS HEREOF, the parties have executed this Agreement as of the date first above written.

TOWN:

By:___________________________________
Ernie Bunch, Mayor

ATTEST:

___________________________________
Carrie A. Dyrek
Town Clerk, Town of Cave Creek

APPROVED AS TO FORM:

___________________________________
William J. Sims
Town Attorney, Town of Cave Creek
IN WITNESS HEREOF, the parties have executed this Agreement as of the date first above written.

**DEVELOPER:**

HIGGINBOTHAM CONCEPTS, LLC, An Arizona limited liability company

By: ______________________________

Name: ______________________________

Title: _______________________________

STATE OF ARIZONA  

) ss.

County of Maricopa  

) ss.

The foregoing instrument was acknowledged before me this ___ day of __________, 20___ by _______________________, as ___________________ of HIGGINBOTHAM CONCEPTS LLC, An Arizona limited liability company.

______________________________  

Notary Public

My Commission Expires:
EXHIBIT A

Legal Description of Property

Lot 2, of TRACTOR SUPPLY COMPANY-CAVE CREEK, according to Book 1237 of Maps, page 50, records of Maricopa County, Arizona.
# EXHIBIT B
Cave Creek Development and Utility Capacity Fees

## TOWN OF CAVE CREEK

### DEVELOPMENT FEES

<table>
<thead>
<tr>
<th>LAND USE</th>
<th>GENERAL GOVERNMENT</th>
<th>PARKS</th>
<th>TOTAL</th>
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<tr>
<td>Residential (PER Housing Unit)</td>
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<tr>
<td>Single Unit</td>
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<td>$192.00</td>
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<td>2+ Units</td>
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<tr>
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<td>Industrial/Flex</td>
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### UTILITY CAPACITY CHARGES

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<th>LAND USE</th>
<th>WATER</th>
<th>WASTEWATER</th>
<th>TOTAL</th>
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<td>All Development Meter Size:</td>
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</tr>
<tr>
<td>5/8&quot; and 3/4&quot;</td>
<td>$4,589.00</td>
<td>$8,475.00</td>
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*Effective: October 6, 2014*