DEVELOPMENT AGREEMENT

TOWN OF CAVE CREEK, ARIZONA,
an Arizona municipal corporation

AND

K. HOVNANIAN COMPANIES OF ARIZONA, LLC,
an Arizona limited liability company

AND

CAVE CREEK PROJECT, LLLP,
an Arizona limited liability limited partnership

_________________________ 2018
DEVELOPMENT AGREEMENT

This Development Agreement (the “Agreement”) is made as of the ____ day of ____________, 2018, by and between the TOWN OF CAVE CREEK, ARIZONA, an Arizona municipal corporation (the “Town”) acting by and through the Mayor and Town Council (the “Council”), and K. HOVANIAN COMPANIES OF ARIZONA, LLC, an Arizona limited liability company (the “Developer”) and CAVE CREEK PROJECT, LLLP, an Arizona limited liability limited partnership (“Owner”). The Town, Developer, and Owner are sometimes referred to herein collectively as the "Parties,” or individually as a “Party.”

RECITALS

A. The Owner holds fee simple title to 22.03 acres of unimproved real property planned as a mixed-use development including residential uses adjacent to commercial uses (the “Master Development”), which is located within the municipal boundary of the Town and legally described in Exhibit A attached hereto and incorporated herein by reference (the “Property”).

B. The Developer has the contractual right to purchase approximately 18.27 acres of the Property as legally described in Exhibit A-1 attached hereto and incorporated herein by reference (the “Developer Property”). Owner will retain ownership of the balance of the Property, approximately 3.76 acres of real property adjoining the Developer Property as legally described in Exhibit A-2 attached hereto and incorporated herein by reference (the “Owner Property”).

C. The Property is currently zoned Town Core Commercial (“TCC”) and is designated as commercial pursuant to the 2005 Town of Cave Creek General Plan (collectively, the “Entitlements”). The Town has previously approved the development of up to 252 resort casitas within a substantial portion of the Master Development (the “Casita Project”).

D. A Certificate of Assured Water Supply was previously issued for the Casita Project for a total of 55.51 acre-feet per year (“AF-YR”) (the “Original Water Demand”).

E. Developer has submitted to Town for its consideration a complete Site Plan Application dated July 17, 2018, and designated Case No. SPR-18-06 that includes the Developer Property (the “Site Plan”), which is attached hereto as Exhibit B and incorporated herein by reference. The Site Plan will facilitate the development of the Developer Property as phase 1 of the Master Development, as more particularly described in the Site Plan Narrative dated July 16, 2018, attached hereto as Exhibit C and incorporated herein by reference. The Site Plan and Site Plan Narrative collectively describe the phase 1 residential uses within the Master Development (the “Project.”)

F. The residential uses within the Project will generate Project water demand of 25.61 AF-YR based on approval of 70 lots and community center as shown on Exhibit B (the “Project Water Demand”), computed as 110% of the amount set out in the Water Demand Calculation by CVL Consultants dated October 31, 2018, attached hereto as Exhibit D and incorporated herein by reference, prepared for the Developer Property. The Project Water Demand is significantly lower than the water demand for the Casita Project previously approved by the Town.

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G. Developer is willing to reduce the water use on the Developer Property and to seek re-issuance of the Certificate of Assured Water Supply for the Project Water Demand, which will reduce the water required to be provided by the Town for the Property and result in significant benefits to the Town.

H. Owner will limit water use on the Owner Property to the uses permitted under this Agreement and any amount of water used in an amount less than 18.46 AF-YR shall be retained by the Town. Owner shall have the right to use such water on the Owner Property pursuant to this Agreement.

I. Owner and Developer are seeking assurances to the extent required by this Agreement from the Town that are significant to the development of the Property, including but not limited to the provision of water and sewer services by the Town for the Project.

J. The Parties understand and acknowledge that this Agreement is a “Development Agreement” within the meaning of and entered into pursuant to the terms of Ariz. Rev. Stat. § 9-500.05, to facilitate the development of the Property by providing for, among other things, conditions, terms, restrictions, and requirements related to the development of the Project on the Property, and consistent within the Town’s applicable requirements and development standards. The terms of this Agreement shall constitute covenants running with the Property as more fully described in this Agreement.

K. The Town is entering into this Agreement to implement and to facilitate development of the Project on the Developer Property consistent with the policies of the Town reflected in the previously adopted ordinances establishing the Town’s General Plan.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. DEFINITIONS.

In this Agreement, unless a different meaning clearly appears from the context:

(a) “Affiliate”, as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) “control” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) “person” means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.
(b) "Agreement" means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through I, inclusive, are incorporated herein by reference and form a part of this Agreement but are not intended to expand the scope, number or nature of Developer's or the Town's obligations beyond those expressly set forth in the numbered Sections of this Agreement.

(c) "Applicable Rules" has the meaning set forth in Section 3.2

(d) "A.R.S." means the Arizona Revised Statutes as now or hereafter enacted or amended.

(e) "Casita Project" means as defined in Recital C.

(f) "Council" means the Town Council of the Town of Cave Creek, Arizona.

(g) "Default" or "Event of Default" means one or more of the events described in Section 10.1 or 10.2; provided, however, that such events shall not give rise to any remedy until effect has been given to all grace periods and/or cure periods provided for in this Agreement and that in any event the available remedies shall be limited to those set forth in Section 10.

(h) "Developer" means the Party or Parties designated as Developer on the first page of this Agreement, and its permitted successors and assigns that conform with the requirements of this Agreement.

(i) "Effective Date" means the date on which all of the following has occurred: (1) this Agreement has been adopted and approved by the Town Council, executed by duly authorized representatives of the Town and Developer, (2) this Agreement is recorded in the office of the Recorder of Maricopa County, Arizona.

(j) "Entitlements" means as defined in Recital C.

(k) "General Plan" means the Town's 2005 General Plan, adopted by the Town by Resolution No. R2004-22 and dated December 6, 2004, as required by statute, and as required, from time to time, by the Town.

(l) "Party" or "Parties" means as designated on the first page of this Agreement.

(m) "Permitted Assignee" means the successor-in-interest of Owner or Developer, as applicable, including but not be limited to any entity that controls, is controlled by or is under common control with such Party or the owners, members or principals of such Party or that would generally be referred to as an Affiliate of such Party or the owners, members or principals of such Party, or a joint venture partner or as part of a land banking transaction.
(n) "Phase 1.1" shall mean the first sixteen (16) units of the Project and shall not commence before December 1, 2019.

(o) "Project" means as defined in Recital E.

(p) "Project Water Demand" means as defined in Recital F.

(q) "Property" means as defined in Recital A and as described in Exhibit A.

(r) "Site Plan" means as defined in Recital E.

(s) "Term" means the period commencing on the Effective Date and terminating on the twentieth (20th) anniversary of the Effective Date.

(t) "Third Party" means any person (as defined in Section 1(a) above) other than a Party, or an Affiliate of any Party.

(u) "Town" means the Party designated as Town on the first page of this Agreement.

(v) "Town Code" means the Code of the Town of Cave Creek, Arizona, in effect as of the Effective Date.

(w) "Town Representative" means as defined in Section 4.2 (c).

(x) "Zoning Ordinance" means the Zoning Ordinance of the Town of Cave Creek, Arizona in effect as of the Effective Date, as may be amended pursuant to Section 3 of this Agreement.

2. PARTIES AND TERM OF THIS AGREEMENT.

2.1. Parties to the Agreement. The Parties to this Agreement are the Town, the Developer, and the Owner.

(a) The Town. The Town is a municipal corporation and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, exercising its governmental functions and powers.

(b) Developer. Developer is K. Hovnanian Companies of Arizona, LLC, an Arizona limited liability company qualified to do business in the State of Arizona, together with its successors in interest and approved assigns.
(c) **Owner.** Owner is Cave Creek Project, LLLP, an Arizona limited liability limited partnership, qualified to do business in the State of Arizona, together with its successors in interest and approved assigns.

2.2. **Term.** Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate, or be deemed to terminate at the end of the Term, unless terminated earlier pursuant to Section 2.3 or Section 11.21 of this Agreement.

2.3 **Termination of Agreement if Developer Fails to Close on Developer Property.** The Parties hereby acknowledge and agree that if Developer or any Affiliate or Permitted Assignee of Developer has not obtained fee title to the Developer Property on or before November 5, 2021, then this Agreement shall terminate as of such date but any accrued obligation under Sections 7.1, 7.2, and 7.3 of this Agreement (collectively, the **"Accrued Obligations"**) shall survive such termination.

3. **DEVELOPMENT APPROVALS.**

3.1. **Applications.** Developer has submitted to Town for its consideration complete applications for the Site Plan.

3.2 **Applicable Rules.** The Town shall submit the Site Plan to the Town Council for its consideration and approval no later than 45 days after the meeting at which the Town Council considers and approves this Agreement. Upon the approval of the Site Plan, for the duration of the Term, the Town shall be restricted from changing, restricting or limiting the rights of Developer or its successors and assigns to use and develop the Developer Property in accordance with the ordinances, rules, regulations, permit requirements, development fees, capacity fees, filing fees, review fees and other requirements and/or official policies of the Town (collectively, the **"Applicable Rules"**) that apply to the development of the Project as of the date that the Site Plan is approved, except as set forth in Section 3.3. In addition, the Town shall review and approve, subject to the Applicable Rules, all subsequent administrative approvals necessary to allow Developer to develop the Project on the Developer Property in accordance with the Applicable Rules.

3.3 **Permissible Additions to the Applicable Rules.** Notwithstanding the provisions of Section 3.2 above, the Town may enact the following provisions, and take the following actions, which shall be applicable to and binding on the development of the Property:

3.3.1 Future land use ordinances, rules, regulations, permit requirements, and other requirements and official policies of the Town which are consistent with the express provisions of this Agreement and not contrary to the existing land use regulations established in Section 3.2 above, provided that such land use ordinances, rules, regulations, permit requirements, and other requirements and official policies shall not materially impair Developer’s ability to develop the Property in the manner provided in the Site Plan, and this Agreement, and that any such future ordinances, rules, regulations, permit requirements, and other requirements and official policies
will be applied to the Property in the most minimal and least intrusive manner which is practical under the circumstances;

3.3.2 Other future land use ordinances, rules, regulations permit requirements, development fees, and other requirements and official policies, which Developer may agree in writing apply to the development of Property;

3.3.3 Future land use ordinances, rules, regulations, permit requirements and other requirements and official policies of the Town enacted as necessary to comply with mandatory requirements imposed on the Town by county, state or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the Town, provided that in the event any such mandatory requirement prevents or precludes compliance with this Agreement, if permitted by law, such affected provision of this Agreement shall be modified as may be necessary to achieve the minimum permissible compliance with such mandatory requirements;

3.3.4 Future generally applicable ordinances, rules, regulations, permit requirements and other requirements and official policies of the Town reasonably necessary to alleviate legitimate severe threats to public health and safety, in which event any ordinance, rule, regulation, permit requirement or other requirement or official policy imposed in an effort to contain or alleviate such a legitimate severe threat to public health and safety shall be the most minimal and least intrusive alternative practicable and, except in a bonafide emergency, may be imposed only after public hearing and comment and shall not, in any event, be imposed arbitrarily;

3.3.5 Future imposition of development fees, capacity fees, filing fees, permit fees, review fees, hookup fees, establishment of service fees, new meter set fees, other fees related to water and wastewater services or modifications thereto, so long as such fees are imposed or charged uniformly by the Town to all persons and entities;

3.3.6 Future updates of, and amendments to, existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, and similar construction and safety related codes, such as the International Building Code, which updates and amendments are generated by a nationally recognized construction/safety organization, such as the International Code Council ("ICC"), or by the county, state or federal governments or by the Maricopa Association of Governments, provided, such code updates and amendments shall be applied in the most minimal and least intrusive manner which is practicable under the circumstances; and

3.3.7 Amendments to such construction and safety codes generated by the Town for the purpose of conforming such codes to the conditions generally existing in the Town, provided that such code amendments shall be applied in the most minimal and least intrusive manner which is practicable under the circumstances.

3.3.8 Nothing in this Agreement, however, shall be interpreted as relieving Developer of any obligation which it may have, either currently or in the future, to comply with all governmental rules and regulations, enacted by entities other than the Town, which apply to the Property and Project.
3.4 Expedited Town Decisions. If at any time Developer believes that an impasse has been reached with the Town Staff on any issue affecting the Developer Property, Developer shall have the right to immediately appeal to the Town Manager for an expedited decision pursuant to this paragraph. If the issue on which an impasse has been reached is an issue where a final decision can be reached by the Town Staff, the Town Representative shall give Developer a final decision not more than fifteen (15) days after Developer’s request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the Town Council, the Town Manager shall be responsible for scheduling a Town Council hearing on the issue at the next regular meeting of the Council after Developer’s request for an expedited decision; provided, however, that if the issue is appropriate for review by the Town Planning and Zoning Commission, the matter shall be submitted to the Commission first, and then to the Town Council. If the issue on which an impasse has been reached is one where a final decision requires action by the Board of Adjustment or another duly constituted board of the Town, the Town Representative shall be responsible for scheduling a Board of Adjustment hearing on the issue within the applicable period provided by law for such a decision, but in any event as promptly as possible. Both parties agree to continue to use reasonable good faith efforts to resolve any impasse pending any such expedited decision. The foregoing expedited review process shall always be subject to notice and hearing procedures required by law.

3.4 Mixed Use Development. The Project is being developed as a mixed use development with multiple residences as permitted under the Town Core Commercial (“TCC”) zoning district. Chapter 3 of the Town of Cave Creek Zoning Ordinance outlines permitted uses and development standards for Commercial Zones. Section 3.2 specifically addresses the permitted uses and development standards for the TCC zone. The proposed Project will be developed in two phases; phase one is a residential use located adjacent to phase two, a commercial use consisting of hotel, spa and other similar commercial development that is authorized pursuant to Section 3.2.B.2.a of the Cave Creek Zoning Ordinance (collectively, the “Owner Permitted Uses.”). The proposed Project is a subdivision under the Cave Creek Zoning Ordinance in that it is a Project containing at least four lots and internal, private streets owned by the owners of the lots. When applying the Bulk Regulations set forth in Sec. 3.2(D) of the Cave Creek Zoning Ordinance and the Lot Coverage and Land Disturbance Regulations set forth in Section 3.2(E) of the Cave Creek Zoning Ordinance to condominiums in the TCC under Section 3.2.B.a of the Cave Creek Zoning Ordinance, the Town has exercised the discretion to apply such regulations to the overall condominium project, not each individual condominium. Accordingly, as authorized by A.R.S.§ 9-500.05, when reviewing the site plan for the proposed Project, Town staff will apply the Bulk Regulations set forth in Sec. 3.2(D) of the Cave Creek Zoning Ordinance and the Lot Coverage and Land Disturbance Regulations set forth in Section 3.2(E) of the Cave Creek Zoning Ordinance to the overall Project on the Property, or such portion thereof that is subject to the plat, and shall not be applied to each individual lot within such plat.

4. OWNER OBLIGATIONS.

4.1 Application for Certificate of Water Supply Re-issuance. Owner agrees to execute the application for reissuance of the Certificate of Assured Water Supply prepared by
Developer for the Developer Property no later than sixty (60) days following the Town’s approval of the preliminary plat for the Project.

4.3 **Final Plat.** Owner agrees to execute the final plat for the Property in accordance with the Town Code and prior to the final plat being placed on the agenda for Town Council consideration.

5. **DEVELOPER OBLIGATIONS.**

5.1 **Project Development.** Developer agrees to develop and construct the Project in accordance with all Applicable Rules, as well as the improvement plans and specifications approved by the Town.

5.2 **Certificate of Assured Water Supply Reissuance.** Developer will seek reissuance of the Certificate of Assured Water Supply for the Project with a maximum allocation of 25.61 AF-YR, the Project Water Demand. The final allocation will be made by the Arizona Department of Water Resources (“ADWR”) when issuing the Certificate of Assured Water Supply. Developer agrees to prepare and execute the application for reissuance of the Certificate of Assured Water Supply for the Developer Property no later than sixty (60) days following the Town’s approval of the preliminary plat for the Project.

5.3 **Water Infrastructure.** Developer, at its sole cost and expense, will design and construct on-site water and sewer distribution infrastructure necessary to serve the Developer Property.

5.4 **Town Fees.** Developer agrees to pay the Town duly-adopted capacity fees, hook-up fees, establishment of service fees, new meter set fees, and such other fees related to water and wastewater services (the “**Water and Wastewater Fees**”) as may be required from time to time by the Town in conjunction with the development of the Project on the Developer Property, subject to the provisions of Section 3.2 and 3.3. Notwithstanding the foregoing and Section 3.2, the Water and Wastewater Fees applicable to the Project shall not be increased for a period upon the Effective Date, and ending on the date that is twelve (12) months following the date on which Developer pulls the first building permit for a non-model home dwelling unit within the Project (the “**Cap Period**”). During the Cap Period, Developer will not be required to pay any additional amount to the Town for water or wastewater-related development fees, impact fees, water resources fees, water or wastewater capacity charges and fees, service fees, hook-up fees, new meter fees, or otherwise.

6. **TOWN OBLIGATIONS.**

6.1 **Will Serve.**

(a) The Town agrees to cooperate, provide all approvals and execute all documents as may be necessary or required, but only to the extent required by Applicable Rules for (i) the issuance of the Certificate of Assured Water Supply for 25.61 AF-YR for the Project based on the Project Water Demand calculations; and (ii) the provision of water and wastewater
services to the Developer Property as needed for the Project (including but not limited to the services described in Section 6.2). This includes but is not limited to the Town’s execution of a Notice of Intent to Serve Agreement on a form provided by ADWR, which form is included in the application for a Certificate of Assured Water Supply.

(b) Provided the Owner’s sole use of water provided by the Town pursuant to this Agreement is for the Owner’s Permitted Uses on the Owner Property, and provided that Owner complies with all Applicable Rules in connection with the application for and use of Town water provided hereunder, the Town agrees to provide up to 18.46 AF-YR of water to the Owner Property. The Owner must advise the Town when the Owner requires the first delivery of water to the Owner Property (the “Owner Property Water Delivery Date”). One-hundred and eighty (180) days prior to the Owner Property Water Delivery Date, the Owner must deliver to the Town a water master plan regarding the anticipated use of Town water on the Owner Property. If the anticipated use exceeds 18.46 AF-YR, the Town shall have no obligation to deliver water to the Owner Property on the Owner Property Water Delivery Date. Following the Owner Property Water Delivery Date, the Town shall have no obligation to provide water to the Owner Property in an amount greater than 18.46 AF-YR.

6.2. Sewer and Water Services.

(a) Sewer Services.

(i) Provided the Developer complies with all Applicable Rules pursuant to which the Developer pays any and all costs required by the Town codes and regulations for sewer service, the Town, at its sole cost and expense, shall provide and cause to be available to the Phase 1.1 of the Project full and complete wastewater services as may be necessary and appropriate to service Phase 1.1 of the Project. Subject to the terms of the prior sentence, the Town, at its sole cost and expense, shall timely cause to be commenced and completed such construction or expansion of wastewater facilities and infrastructure as may be necessary or desirable to meet such deadline.

(ii) The Town has commissioned a report on the capacity requirements for the Rancho Manana lift station (the “Rancho Manana Lift Station Capacity Report”) and anticipates that the Rancho Manana Lift Station Capacity Report to be completed on or before January 31, 2019. The Town will consult with the Developer and incorporate into the Rancho Manana Lift Station Capacity Report the sewer requirements for the follow-on phases of the Project, and any amounts charged to and payable by the Developer for the capacity to serve the follow-on phases of the Project shall be assessed, charged and paid as required by Applicable Rules. The Town and Developer each agree and acknowledge that the Town will, at its sole cost and expense, design and construct improvements to the Rancho Manana Lift Station (the “Lift Station Improvements”) based on the Rancho Manana Lift Station Capacity Report. The Town and Developer further acknowledge that completion of the Lift Station Improvements by the Town will
be in accordance with the Schedule and Milestones set forth in Exhibit E, and that adherence to such Schedule and Milestones is critical to the success of the Project. Further, Town will complete the Lift Station Improvements and provide and cause to be available to the follow-on phases of the Project full and complete wastewater services as may be necessary and appropriate to service the Project prior to the date upon which Developer commences construction of the seventeenth (17th) dwelling unit within the Project, which shall not occur before May 15, 2020.

(iii) If Town fails to commence, pursue and complete the Lift Station Improvements prior to the corresponding Schedule and Milestones set forth in Exhibit E, or fails to provide and cause to be available to the follow-on phases of the Project full and complete wastewater services as may be necessary and appropriate to service the Project before the date upon which Developer commences construction of the seventeenth (17th) dwelling unit within the Project, which shall not occur before May 15, 2020, or if Town otherwise fails to perform its obligations under this Section 6.2, the Town will be in default. In such event, Developer shall deliver to Town written notice of default and Town shall have a three (3) business day cure period during which Town shall cure its failure, or if the cure cannot reasonably be completed within three (3) business days, and, within three (3) business days, Town shall have commenced to cure such failure and shall continue to diligently pursue such cure until completion, then Town shall have a ten (10) day cure period during which Town shall completely cure such failure. If Town fails to cure its failure prior to the end of such cure period, Developer shall have the right (but not the obligation), in addition to any other rights and remedies provided to Developer in this Agreement, to pursue self-help rights ("Self-Help Rights") to take over and complete the Lift Station Improvements (or any Punch List items relating thereto) (the "Self-Help Work"), which may be exercised by Developer from time to time in its sole discretion. If Developer invokes its Self-Help Rights to perform the Self-Help Work: (i) Developer and its representatives, agents and contractors, shall have an irrevocable right and license to enter upon the Town's Property as and when necessary; (ii) Town agrees to cooperate and take all action reasonably necessary or appropriate to enable Developer to exercise its Self-Help Rights, including executing and delivering any plans, documents, letters or authorization relating thereto; and (iii) provided the Developer has procured all materials and services for which the Developer requests reimbursement in accordance with any and all public solicitation requirements, the Town shall be liable to Developer for all costs and expenses (including for labor, material, permits, transportation and other costs incurred by Developer) to accomplish any Self-Help Work. Any amounts due by Town to Developer hereunder shall be paid to Developer within ten (10) days after Developer from time to time submits any invoices to Town, and any costs and expenses that are not timely reimbursed by Town to Developer shall accrue interest at the rate of ten percent (10%) per annum from the date due hereunder until paid.
(b) Water Services. Provided the Developer complies with all Applicable Rules pursuant to which the Developer pays any and all costs required by the Town codes and regulations for water service, the Town, at its sole cost and expense, shall provide and cause to be available to the Developer Property potable water as may be necessary and appropriate to service the fully completed Project consistent with the Project Water Demand calculations. Subject to the terms of the prior sentence, the Town, at its sole cost and expense, shall timely cause to be commenced and completed such construction or expansion of potable water facilities and infrastructure as may be necessary or desirable to meet such deadline.

7. **INDEMNITY; RISK OF LOSS.**

7.1. **Indemnity by Developer.** To the extent permitted by law, Developer shall indemnify, defend, pay and hold harmless the Town and its Town Council members, officers, officials and employees, and Owner and its Affiliates and Permitted Assignees and their respective partners, shareholders, officers, managers, members, agents and representatives (collectively, all of the foregoing the “Developer Indemnified Parties”) for, from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorney’s fees, experts’ fees and court costs associated) which arise from breach of Developer’s obligations under this Agreement. The provisions of this Section 7.1, however, shall not apply to loss or damage or claims to the extent caused by the negligent acts or omissions of the Developer Indemnified Parties, its agents, employees, contractors, subcontractors or representatives including, but not limited to, any default of the indemnified Party under this Agreement. The foregoing indemnity and defense obligations of Developer shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

7.2. **Indemnity by Owner.** To the extent permitted by law, Owner shall indemnify, defend, pay and hold harmless the Town and its Town Council members, officers, officials and employees, and Developer and its Affiliates and Permitted Assignees and their respective partners, shareholders, officers, managers, members, agents and representatives (collectively, all of the foregoing the “Owner Indemnified Parties”) for, from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorney’s fees, experts’ fees and court costs associated) which arise from breach of Owner’s obligations under this Agreement. The provisions of this Section 7.2, however, shall not apply to loss or damage or claims to the extent caused by the negligent acts or omissions of the Owner Indemnified Parties, its agents, employees, contractors, subcontractors or representatives including, but not limited to, any default of the indemnified Party under this Agreement. The foregoing indemnity and defense obligations of Owner shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

7.3 **Indemnity by the Town.** To the extent permitted by law, the Town shall indemnify, defend, pay and hold harmless Developer, Owner and their Affiliates and Permitted Assignees and their respective partners, shareholders, officers, managers, members, agents and representatives (collectively, all of the foregoing the “Town Indemnified Parties”) for, from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations,
judgments, liabilities and suits (including attorneys' and experts' fees and court costs associated) which arise from the Town's breach of the Town's obligations under this Agreement. The provisions of this Section 7.3, however, shall not apply to loss or damage or claims to the extent caused by the negligent acts or omissions of the Town Indemnified Parties, its agents, employees, contractors, subcontractors or representatives, including, but not limited to, any default of the indemnified Party under this Agreement. The foregoing indemnity and defense obligations of the Town shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

8. **TOWN REPRESENTATIONS.** The Town represents and warrants to Owner and Developer that:

8.1. The Town has the full right, power and authorization to enter into and perform this Agreement and each of Town's obligations and undertakings under this Agreement, and the Town's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the Town Code.

8.2. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

8.3. The Town will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

8.4. The Town knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Town or its officials with respect to this Agreement.

8.5. The execution, delivery and performance of this Agreement by the Town is not prohibited by, and does not materially and adversely conflict with, any other agreements, instruments or judgments or decrees to which the Town is a party or is otherwise subject.

8.6. The Town has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

8.7. The Town represents and warrants that in furtherance of its express obligation to provide wastewater services for the Project, that: (i) capacity to provide full and complete wastewater services for 16 units within the Project is available as of the Effective Date, and (ii) capacity to provide full and complete wastewater services for all units within the Project will be available on or before the date upon which Developer commences construction of the seventeenth (17th) dwelling unit within the Project, which shall not occur before May 15, 2020.

8.8. The performance of either party under this Agreement shall be extended by any causes that are beyond the control of the party required to perform, due to an event which prohibits or materially interferes with, delays or alters the performance of the applicable duty under this Agreement, including, but not limited to the following: strikes or lockouts; unanticipated
shortages of material or labor (excluding those caused by lack of funds); acts of the public enemy; confiscation or seizure by any government or public authority; injunction, restraining order or other court order or decree, initiative or referendum action; moratorium; wars or war-like action (whether actual and pending or expected, and whether de jure or de facto); blockades; insurrections; riots; civil disturbances; weather; and acts of God; but excluding delays caused by lack of funds.

9. **OWNER AND DEVELOPER REPRESENTATIONS.**

9.1 Developer represents and warrants to the Town and Owner that, upon the acquisition of fee title to the Developer Property by Developer or any Affiliate or Permitted Assignee of Developer:

(a) Developer has the full right, power and authorization to enter into and perform this Agreement and each of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.

(b) All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

(c) Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

(d) As of the date of this Agreement, Developer knows of no litigation, proceeding or investigation pending or overtly threatened against or affecting Developer, which could have a material adverse effect on Developer's performance under this Agreement.

(e) This Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors’ rights and by equitable principles, whether considered at law or in equity. The severability and reformation provisions of Section 11.3 shall apply in the event of any successful challenge to this Agreement.

(f) The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not materially and adversely conflict with, any other agreements, instruments, judgments or decrees to which Developer is a party or to which Developer is otherwise subject.
(g) Developer has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

(h) Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9.2 Owner represents and warrants to the Town and Developer that:

(a) Owner has the full right, power and authorization to enter into and perform this Agreement and each of the obligations and undertakings of Owner under this Agreement, and the execution, delivery and performance of this Agreement by Owner has been duly authorized and agreed to in compliance with the organizational documents of Owner.

(b) All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

(c) Owner will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

(d) As of the date of this Agreement, Owner knows of no litigation, proceeding or investigation pending or overtly threatened against or affecting Owner, which could have a material adverse effect on Owner’s performance under this Agreement.

(e) This Agreement (and each undertaking of Owner contained herein) constitutes a valid, binding and enforceable obligation of Owner, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors’ rights and by equitable principles, whether considered at law or in equity. The severability and reformation provisions of Section 11.3 shall apply in the event of any successful challenge to this Agreement.

(f) The execution, delivery and performance of this Agreement by Owner is not prohibited by, and does not materially and adversely conflict with, any other agreements, instruments, judgments or decrees to which Owner is a party or to which Owner is otherwise subject.

(g) Owner has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.
(h) Owner has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

10. EVENTS OF DEFAULT; REMEDIES.

10.1. Events of Default by Developer or Owner. "Event of Default" by Developer or Owner, as applicable, under this Agreement shall mean one or more of the following:

(a) Any representation or warranty made in this Agreement by Developer or Owner, as applicable, was materially inaccurate when made or shall prove to be materially inaccurate during the Term;

(b) Developer or Owner, as applicable, transfers or attempts to transfer or assign this Agreement in violation of Section 11.2; or

(c) Developer or Owner, as applicable, fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement after the expiration of all applicable notice and cure periods;

10.2. Events of Default by the Town. Event of Default by the Town under this Agreement shall mean one or more of the following:

(a) Any representation or warranty made in this Agreement by the Town was materially inaccurate when made or shall prove to be materially inaccurate during the Term;

(b) The Town fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.

10.3. Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party shall, upon written notice from another Party, proceed promptly to cure or remedy such Event of Default and, in any event, such Event of Default shall be cured within thirty (30) days from the effective date of the written notice (or five (5) days from the effective date of the written notice in the event of a monetary Event of Default) after receipt of such notice, or, if such non-monetary Event of Default is of a nature that it is not reasonably capable of being cured within thirty (30) days from the effective date of the written notice, the curing of such Event of Default shall be commenced within such period and diligently pursued to completion, but in all events within sixty (60) days from the effective date of the written notice.

10.4. Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the non-performing Party in accordance with Section 10.3 of this Agreement, the Party giving notice of default shall proceed with mediation as provided in Section 10.7. If, after the forty-five (45) day moratorium provided in Section 10.7 the Event of Default has not been cured, the Party giving notice of default and, if applicable, the other non-defaulting Party may take any of one or more of the following actions (and no remedial action shall be taken or
remedial rights shall exist until the expiration of the notice and cure period set forth in Section 10.3).

(a) Remedies of the Town. The Town’s exclusive remedies for an Event of Default by Owner or Developer shall consist of, and shall be limited to the following:

(i) If an Event of Default by Developer or Owner occurs with respect to any obligations of Developer or Owner, as applicable, under this Agreement, the Town may suspend its obligations under this Agreement to the extent such obligations relate to the defaulting Party and the portion of the Property owned by such defaulting Party or exercise any right and remedy allowed at equity.

(ii) Developer’s and Owner’s obligations of indemnity are independent obligations, and the Town may enforce its rights of indemnity granted by Section 7.1 and 7.2 at any time.

(b) Remedies of Developer and Owner. Each of Developer’s and Owner’s exclusive remedies for an Event of Default by the Town shall consist of and shall be limited to the following:

(i) If an Event of Default by the Town occurs at any time, Developer and/or Owner may each seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring the Town to undertake and to fully and timely perform its obligations under this Agreement.

(ii) The Town’s obligations of indemnity are independent obligations, and Developer and/or Owner, as applicable, may enforce its rights of indemnity granted by Section 7.3 at any time.

10.5. Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Event of Default by the other Party shall not be considered as a waiver of rights with respect to any other Event of Default by the performing Party or with respect to the particular Event of Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or other similar doctrine at a time when it may still hope to resolve the problems created by the Event of Default involved.

10.6. Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.
10.7. **Mediation.** In the event that there is a dispute hereunder which the Parties cannot resolve between themselves, the Parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Owner and/or Developer, as applicable, and the Town. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days following commencement of the forty-five (45) day moratorium described in this Section 10.7, then within three (3) days thereafter, the Town, Developer, and/or Owner, as applicable, shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years’ experience in mediating or arbitrating disputes relating to commercial development. The cost of any such mediation shall be divided equally between the Town and Developer and/or Owner, as applicable. The results of the mediation shall be nonbinding on the Parties, and any party shall be free to initiate litigation subsequent to the moratorium.

11. **MISCELLANEOUS PROVISIONS.**

11.1. **Governing Law: Choice of Forum.** This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 11.1.

11.2. **Assignment.** Developer and Owner shall each be permitted to assign this Agreement, in whole or in part, to its Permitted Assignee, by written assignment which shall be recorded in the Official Records of Maricopa County, and such written assignment shall identify the rights and obligations assumed by the Permitted Assignee. No voluntary or involuntary successor-in-interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. No transfer of the Property, or any portion thereof, shall result in any transfer or assignment of any rights of Developer or Owner hereunder unless there is an express assignment of such rights in writing executed by Developer or Owner, as applicable. Town shall, at any time upon ten (10) days’ notice by Developer and Owner, provide to a prospective Permitted Assignee of any portion of the Property an estoppel certificate or other document evidencing that (i) this Agreement is in full force and effect; (ii) that no default by Developer or Owner exists hereunder (or, if appropriate, specifying the nature and duration of any existing default); and (iii) such other matters as such Permitted Assignee or Developer or Owner, as applicable, may reasonably request.

(a) **Rights Run with the Land.** The rights established under this Agreement and the Entitlements are not personal rights but attach to and run with the Property,
pursuant to the provisions in Subsection 2.2 entitled “Term.” Upon the Effective Date of this Agreement, the Developer and its successors or assigns are entitled to exercise the rights granted pursuant to this Agreement in conformance to A.R.S. § 9-500.05(D). This Agreement shall be interpreted and construed so as to preserve any vested rights respecting the Owner, Developer and/or the Property existing under this Agreement and applicable law.

(b) All of the provisions hereof are binding and shall inure to the benefit of the Parties and be binding upon the successors and assigns of the Parties hereof.

11.3. Limited Severability. The Town, Owner, and Developer each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the Town to do any act in violation of any Applicable Rules, constitutional provision, law, regulation, Town code or Town charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

11.4. Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

11.5. Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to the Town: Town of Cave Creek
               Attn: Town Clerk
               37622 N. Cave Creek Road
Cave Creek, AZ  85331

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

If to the Developer:  K. Hovnanian Homes
20830 North Tatum Boulevard
Suite 250
Phoenix, Arizona  85050
Attention:  Michael Fulmer

With a required copy to:  K. Hovnanian Homes
20830 North Tatum Boulevard
Suite 250
Phoenix, Arizona  85050
Attention:  Chad Fuller

With a required copy to:  Cameron Carter
Rose Law Group pc
7144 E. Stetson Drive, Suite 300
Scottsdale, Arizona  85251

If to the Owner:  Cave Creek Project, LLLP
4600 East Pebble Ridge Road
Paradise Valley, Arizona  85253
Attention:  Robert H. Kite

With a required copy to:  Law Office of William E. Moore
4336 East San Miguel
Phoenix, Arizona  85018
Attention:  William E. Moore

(b) Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. Any Party may designate a different person or entity or change the place to which any notice shall be given as herein provided.
(c) **Payments.** Payments shall be made and delivered in the same manner as Notices; provided, however, that payments shall be deemed made only upon actual receipt, in good and available funds, by the intended recipient.

11.6. **Time of Essence.** Time is of the essence of this Agreement and each provision hereof.

11.7. **Section Headings.** The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

11.8. **Attorneys’ Fees and Costs.** In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute shall be entitled to reimbursement of its reasonable attorney’s fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

11.9. **Waiver.** Without limiting the other terms or provisions of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

11.10. **Third Party Beneficiaries.** No person or entity shall be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders and except that the indemnified Parties referred to in the indemnification provisions of Sections 7.1 and 7.2 (or elsewhere in this Agreement) shall be third party beneficiaries of such indemnification provisions.

11.11. **Exhibits.** Without limiting the provisions of Section 1 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

11.12. **Integration.** Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement; provided however, that if this Agreement terminates pursuant to Section 2.3 of this Agreement, the Owner shall retain whatever water rights it has concerning the Owner Property as of the Effective Date.
11.13. **Further Assurances.** Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

11.14. **Business Days.** If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

11.15. **Consents and Approvals.** Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

11.16. **Recordation.** Within ten (10) days after this Agreement has been approved by the Town and executed by the Parties the Town shall cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

11.17. **Amendment.** No change or addition is to be made to this Agreement except by written amendment executed by the Town, Owner, and Developer. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to “Agreement” or “Development Agreement” shall mean the Agreement as amended. If, after the effective date of any amendment(s), the parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the “Original Development Agreement.” When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

11.18. **Good Faith of Parties.** Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

11.19. **Survival.** All indemnifications contained in Sections 7.1, 7.2, and 7.3 of this Agreement (and any other provision of this Agreement that is expressly stated as surviving) shall survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section.
11.20. **Non-liability of Town Officials, Etc., and of Employees, Members and Partners, Etc. of Owner and Developer.** No Town Council member, official, representative, agent, attorney or employee of the Town shall be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or Event of Default or breach by the Town or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of the Town under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Owner and Developer under this Agreement shall be limited solely to the assets of Owner or Developer, as applicable, and shall not extend to or be enforceable against the individual assets of any of the individuals or entities who are direct or indirect shareholders, members, managers, constituent partners, officers or directors of Owner or Developer.

11.21. **Conflict of Interest Statute.** This Agreement is subject to, and may be terminated by the Town in accordance with, the provisions of A.R.S. §38-511.

11.22. **Anti-Moratorium.** The parties agree and acknowledge that this Agreement contemplates the phasing of the development of the Property and that no moratorium, ordinance, except for applicable provisions of the Adequate Public facilities Ordinance, resolution or other land use rule or regulations or limitation on the rate, timing or sequencing of the development of the Property or any portion thereof adopted by the Town shall apply to or govern the development of the Property during the terms hereof unless such moratorium is in compliance with A.R.S. §9-463.06.

11.23. **Vesting.** The Town acknowledges that, upon the Town’s approval of the Site Plan, the Entitlements shall be vested for the entire Term of this Agreement, subject to Section 3.2 and Section 3.3 hereof, and Developer will have a contractually vested right to develop the Developer Property for the uses included in the approved Site Plan, and, except as provided in Section 3.3 hereof, if the Town, without Developer’s consent, thereafter changes the zoning of any portion of the Developer Property to a more restrictive zoning district or classification or, if the Town reduces the development rights within a classification in such a manner that would apply to the Developer or the Developer Property, such action by the Town shall not be permitted. The determinations of the Town memorialized in this Agreement, together with the assurances provided to Developer in this Agreement, are provided pursuant to and as contemplated by A.R.S. §9.500.05, and other applicable law, bargained for and in consideration for the undertakings of Developer set forth herein, and are intended to be and have been relied upon generally, and in expending monies and undertaking the planning, design, engineering, construction, installation, and/or provision of infrastructure improvements benefiting the site and a larger land area in which the Developer Property is located.

11.24. **Waiver.** Developer and Owner each hereby waive and release the Town ("Waiver") from any and all claims under A.R.S. § 12-1134, et seq., including any right to compensation for reduction to the fair market value of all or any part of the Property, as a result of the Town’s approval of this Agreement, the Town’s approval of Developer’s plans and specifications for the Project, the issuance of any permits, and the Town’s approval of the Entitlements. The terms of this Waiver shall run with all land that is the subject of this Agreement.
and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

[The balance of this page is blank; signatures are on the following two pages.]
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

DEVELOPER:

K. HOV NANIAN COMPANIES OF ARIZONA, LLC, an Arizona limited liability company

By: _______________________________
Name: ____________________________
Title: _____________________________

STATE OF ARIZONA )
) ss.
County of Maricopa )

The foregoing Development Agreement was acknowledged before me this ______ day of __________, 2018, by ______________________, the ______________________ of K. HOV NIAN COMPANIES OF ARIZONA, LLC, an Arizona limited liability company, for and on behalf of the company for the purposes therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

______________________________
Notary Public

My Commission Expires:

______________________________

OWNER:

CAVE CREEK PROJECT, LLLP, an Arizona limited liability limited partnership

By: _______________________________
Name: Robert H. Kite
Title: _____________________________
STATE OF ARIZONA

) ss.

County of Maricopa

The foregoing Development Agreement was acknowledged before me this ______ day of ________, 2018, by Robert H. Kite, the ______________________ of CAVE CREEK PROJECT, LLLP, an Arizona limited liability limited partnership, for and on behalf of the company for the purposes therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

______________________________
Notary Public

My Commission Expires:
TOWN:

CAVE CREEK, ARIZONA, an
Arizona municipal corporation

By: __________________________
   Mayor

ATTEST:

By: __________________________
   Town Clerk

APPROVED AS TO FORM:

By: __________________________
   Town Attorney
EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:
EXHIBIT A-1

LEGAL DESCRIPTION OF THE DEVELOPER PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

THAT PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, CAVE CREEK, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 28 (BRASS CAP IN HANDHELD) FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 28 BEARS SOUTH 00 DEGREES 10 MINUTES 33 SECONDS EAST A DISTANCE OF 2631.34 FEET (MARICOPA COUNTY BRASS CAP 33307 IN POTHOLE);

THENCE SOUTH 89 DEGREES 58 MINUTES 00 SECONDS WEST ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 0 DEGREES 10 MINUTES 33 SECONDS EAST PARALLEL WITH AND 40.00 FEET WEST OF THE EAST LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 521.26 FEET;

THENCE NORTH 90 DEGREES 00 MINUTES AND 00 SECONDS WEST A DISTANCE OF 554.80 FEET;

THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 242.10 FEET TO THE NORTHEAST CORNER OF THAT CERTAIN PARCEL DESCRIBED IN INSTRUMENT 2011-0421232;

THENCE NORTH 89 DEGREES 53 MINUTES 40 SECONDS WEST ALONG THE NORTH LINE OF SAID CERTAIN PARCEL A DISTANCE OF 500.30 FEET TO A POINT ON THE EAST LINE OF THE WEST 210.00 FEET OF SAID NORTHEAST QUARTER;

THENCE SOUTH 0 DEGREES 34 MINUTES 00 SECONDS EAST ALONG LAST SAID EAST LINE A DISTANCE OF 69.56 FEET;

THENCE SOUTH 89 DEGREES 26 MINUTES 00 SECONDS WEST A DISTANCE OF 20.00 FEET;

THENCE SOUTH 0 DEGREES 34 MINUTES 00 SECONDS EAST A DISTANCE OF 9.78 FEET TO THE NORTHEAST CORNER OF LOT 26 MOON RIDGE PER BOOK 64 OF MAPS, PAGE 14;
THENCE NORTH 69 DEGREES 12 MINUTES 00 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 26 A DISTANCE OF 139.59 FEET (M) 139.64 FEET (R) TO THE NORTHWEST CORNER OF SAID LOT 26;

THENCE NORTH 0 DEGREES 34 MINUTES 00 SECONDS WEST PARALLEL WITH AND 60.00 FEET EAST OF THE WEST LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 791.74 FEET TO A POINT ON SAID NORTH LINE OF THE NORTHEAST QUARTER;

THENCE NORTH 89 DEGREES 58 MINUTES 00 SECONDS EAST ALONG LAST SAID NORTH LINE A DISTANCE OF 1211.04 FEET TO THE POINT OF BEGINNING. CONTAINING 795,789 SQ.FT. OR 18.269 ACRES, MORE OR LESS.
LOT 2 LEGAL DESCRIPTION

THAT PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, CAVE CREEK, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 28 (BRASS CAP IN HANGHOLE) FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 28 BEARS SOUTH 00 DEGREES 10 MINUTES 33 SECONDS EAST A DISTANCE OF 2631.34 FEET (MARICOPA COUNTY BRASS CAP 515927 IN HANGHOLE); THENCE SOUTH 80 DEGREES 58 MINUTES 00 SECONDS WEST ALONG THE NORTH LINE OF SAID NORTH QUARTER A DISTANCE OF 40.00 FEET; THENCE SOUTH 0 DEGREES 10 MINUTES 33 SECONDS EAST PARALLEL WITH AND 40.00 FEET WEST OF THE EAST LINE OF SAID NORTH QUARTER A DISTANCE OF 52.26 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES 10 MINUTES 33 SECONDS EAST A DISTANCE OF 195.00 FEET TO THE NORTHEAST CORNER OF SAID EXCEPTION "G" DESCRIBED IN SAID INSTRUMENT 2013-098225; THENCE SOUTH 80 DEGREES 49 MINUTES 27 SECONDS WEST ALONG THE NORTH LINE OF LAST SAID EXCEPTION "G" A DISTANCE OF 292.00 FEET TO THE NORTHEAST CORNER OF SAID EXCEPTION "G"; THENCE SOUTH 0 DEGREES 10 MINUTES 33 SECONDS EAST ALONG THE WEST LINE OF SAID EXCEPTION "G" A DISTANCE OF 209.00 FEET TO THE SOUTHEAST CORNER OF CERTAIN PARCEL DESCRIBED IN INSTRUMENT 2016-0255127; THENCE SOUTH 80 DEGREES 49 MINUTES 27 SECONDS WEST ALONG THE SOUTH LINE OF SAID CERTAIN PARCEL DESCRIBED IN INSTRUMENT 2016-0255127 A DISTANCE OF 262.44 FEET TO A POINT ON THE EAST LINE OF EXCEPTION "B" DESCRIBED IN SAID INSTRUMENT 2013-098225; THENCE NORTH 00 DEGREES 33 MINUTES 41 SECONDS WEST ALONG LAST SAID EAST LINE A DISTANCE OF 163.60 FEET TO THE NORTHEAST CORNER OF SAID EXCEPTION "B"; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 242.10 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 554.80 FEET TO THE TRUE POINT OF BEGINNING.
EXHIBIT A-1

LEGAL DESCRIPTION OF THE DEVELOPER PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

THAT PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, CAVE CREEK, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 28 (BRASS CAP IN HANDHOLD) FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 28 BEARS SOUTH 00 DEGREES 10 MINUTES 33 SECONDS EAST A DISTANCE OF 2631.34 FEET (MARICOPA COUNTY BRASS CAP 33307 IN POTHOLE);

THENCE SOUTH 89 DEGREES 58 MINUTES 00 SECONDS WEST ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 0 DEGREES 10 MINUTES 33 SECONDS EAST PARALLEL WITH AND 40.00 FEET WEST OF THE EAST LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 521.26 FEET;

THENCE NORTH 90 DEGREES 00 MINUTES AND 00 SECONDS WEST A DISTANCE OF 554.80 FEET;

THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 242.10 FEET TO THE NORTHEAST CORNER OF THAT CERTAIN PARCEL DESCRIBED IN INSTRUMENT 2011-0421232;

THENCE NORTH 89 DEGREES 53 MINUTES 40 SECONDS WEST ALONG THE NORTH LINE OF SAID CERTAIN PARCEL A DISTANCE OF 500.30 FEET TO A POINT ON THE EAST LINE OF THE WEST 210.00 FEET OF SAID NORTHEAST QUARTER;

THENCE SOUTH 0 DEGREES 34 MINUTES 00 SECONDS EAST ALONG LAST SAID EAST LINE A DISTANCE OF 69.56 FEET;

THENCE SOUTH 89 DEGREES 26 MINUTES 00 SECONDS WEST A DISTANCE OF 20.00 FEET;

THENCE SOUTH 0 DEGREES 34 MINUTES 00 SECONDS EAST A DISTANCE OF 9.78 FEET TO THE NORTHEAST CORNER OF LOT 26 MOON RIDGE PER BOOK 64 OF MAPS, PAGE 14;
THENCE NORTH 69 DEGREES 12 MINUTES 00 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 26 A DISTANCE OF 139.59 FEET (M) 139.64 FEET (R) TO THE NORTHWEST CORNER OF SAID LOT 26;

THENCE NORTH 0 DEGREES 34 MINUTES 00 SECONDS WEST PARALLEL WITH AND 60.00 FEET EAST OF THE WEST LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 791.74 FEET TO A POINT ON SAID NORTH LINE OF THE NORTHEAST QUARTER;

THENCE NORTH 89 DEGREES 58 MINUTES 00 SECONDS EAST ALONG LAST SAID NORTH LINE A DISTANCE OF 1211.04 FEET TO THE POINT OF BEGINNING. CONTAINING 795,789 SQ.FT. OR 18.269 ACRES, MORE OR LESS
EXHIBIT A-2

LEGAL DESCRIPTION OF THE OWNER PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:
LOT 2 LEGAL DESCRIPTION

THAT PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, CAVE CREEK, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 28 (BRASS CAP IN HANDBOX) FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 28 BEARS SOUTH 00 DEGREES 10 MINUTES 33 SECONDS EAST A DISTANCE OF 2631.34 FEET (MARICOPA COUNTY BRASS CAP 33507 IN POOL); THENCE SOUTH 89 DEGREES 56 MINUTES 00 SECONDS WEST ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 40.00 FEET; THENCE SOUTH 0 DEGREES 10 MINUTES 33 SECONDS EAST PARALLEL WITH AND 40.00 FEET WEST OF THE EAST LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 521.26 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES 10 MINUTES 33 SECONDS EAST A DISTANCE OF 195.00 FEET TO THE NORTHEAST CORNER OF EXCEPTION "G", DESCRIBED IN SAID INSTRUMENT 2015-0989245; THENCE SOUTH 89 DEGREES 49 MINUTES 27 SECONDS WEST ALONG THE NORTH LINE OF LAST SAID EXCEPTION "G" A DISTANCE OF 292.00 FEET TO THE NORTHWEST CORNER OF SAID EXCEPTION "G"; THENCE SOUTH 0 DEGREES 10 MINUTES 33 SECONDS EAST ALONG THE WEST LINE OF SAID EXCEPTION "G" A DISTANCE OF 209.00 FEET TO THE SOUTHEAST CORNER OF CERTAIN PARCEL DESCRIBED IN INSTRUMENT 2016-0255127; THENCE SOUTH 89 DEGREES 49 MINUTES 27 SECONDS WEST ALONG THE SOUTH LINE OF SAID CERTAIN PARCEL DESCRIBED IN INSTRUMENT 2016-0255127 A DISTANCE OF 262.44 FEET TO A POINT ON THE EAST LINE OF EXCEPTION "B" DESCRIBED IN SAID INSTRUMENT 2013-0989245; THENCE NORTH 00 DEGREES 10 MINUTES 33 SECONDS WEST ALONG LAST SAID EAST LINE A DISTANCE OF 163.60 FEET TO THE NORTHEAST CORNER OF SAID EXCEPTION "B"; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 242.10 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 554.80 FEET TO THE TRUE POINT OF BEGINNING:
LOT LINE ADJUSTMENT

A PORTION OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 5, RANGE 4, EAST OF THE 5TH MERIDIAN, 70TH PARALLEL, McLean County, Illinois.
EXHIBIT B

SITE PLAN

[AVAILABLE IN THE OFFICE OF THE TOWN CLERK]
EXHIBIT C
SITE PLAN NARRATIVE

[AVAILABLE IN THE OFFICE OF THE TOWN CLERK]
EXHIBIT D

PROJECT WATER DEMAND CALCULATION
Galloway Ridge

Water Demand Calculations

The calculations shown below utilize the demand, flow and peak factors found in the Arizona Department of Water Resources (ADWR) Project Demand Calculator rev. 11.24.15.

Water Demand Calculations*

<table>
<thead>
<tr>
<th>Land Use</th>
<th>DU's</th>
<th>Area (Ac.)</th>
<th>Population</th>
<th>Demand Factor</th>
<th>Average Day Demand (gpd)</th>
<th>Avg. Day Demand (AF-Yr)</th>
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<tbody>
<tr>
<td>SFR</td>
<td>70</td>
<td>210</td>
<td>98 gpcd</td>
<td>20,580</td>
<td>23.05</td>
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<tr>
<td>Amenity Center**</td>
<td>1</td>
<td>2</td>
<td>102 gpcd</td>
<td>204</td>
<td>0.23</td>
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<tr>
<td><strong>Total</strong></td>
<td>71</td>
<td>212</td>
<td></td>
<td>20,784</td>
<td>23.28</td>
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*Per attached ADWR Demand Calculator

**The amenity center consists of a private pool, two bathrooms and a shower. It was assumed that the demands would be equivalent to a single MF unit with low water use landscaping.
### EXHIBIT E

**LIFT STATION IMPROVEMENTS SCHEDULE AND MILESTONES**

<table>
<thead>
<tr>
<th>Month</th>
<th>Event Description</th>
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</thead>
<tbody>
<tr>
<td>January 2019</td>
<td>Receive Final Report from Consultant</td>
</tr>
<tr>
<td>March 2019</td>
<td>Selection of Design Consultant</td>
</tr>
<tr>
<td>April 2019</td>
<td>Award of Engineering Design for Lift Station Improvements</td>
</tr>
<tr>
<td>July 2019</td>
<td>Review of Engineering Design and submittal for MCDEQ Approval</td>
</tr>
<tr>
<td>August 2019</td>
<td>Advertise Project for Competitive Bid</td>
</tr>
<tr>
<td>September 2019</td>
<td>Award of Bid for Construction</td>
</tr>
<tr>
<td>March 1, 2020 to May 15, 2020</td>
<td>Substantial Completion of Construction. Construction estimated at 6 months for wet well only and 9 months for wet well with pumps / electrical</td>
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</table>