DEVELOPMENT AND REIMBURSEMENT AGREEMENT

TOWN OF CAVE CREEK, ARIZONA,
an Arizona municipal corporation

AND

CCCOEF, LLC,
a Delaware 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 CCCOEF, LLC, a Delaware 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 under contract to purchase (4) parcels of real property located west of the southwest corner of the intersection of Carefree Highway and Cave Creek Road within the Town, which parcels are legally described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"). Developer intends to construct a commercial shopping center anchored by a grocery store tenant 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:

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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.


3.1. 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 or its equivalent, Water Resource Acquisition Fee, Development Occupational Fee, and standard and customary water meter and tap fees (the “Phoenix Fees”). An estimate of the Phoenix Fees is attached as Exhibit B. The Town agrees to reimburse Developer for an amount equal to the Phoenix Fees less $133,342.00, which is the estimated amount of the Town Water Capacity Fees calculated using the fee chart attached as Exhibit C (the “Cave Creek Fees”) that would have been paid by Developer to the Town had the Town been the water service provider for the Property, (“Reimbursement Amount”); provided that the Reimbursement Amount may not exceed $600,000. Both the Phoenix Fees 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 Fees charged for the Development equal $486,772, then the Town will reimburse Developer the difference between $486,772 and $133,342, which is $353,430.

3.2. Reimbursement Timing. Within three (3) business days (meaning Monday through Thursday per the Town’s normal operating hours) after Developer provides to the Town copies of invoices and receipts for payment of the Phoenix Fees, and the Town receives written correspondence from Phoenix confirming the amount of the Phoenix Fees 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 for construction to commence 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:** CCCOE, LLC  
Rob Schramm  
Kitchell Development Company  
1707 E. Highland, Suite 100  
Phoenix, Arizona 85016  
Tel: (602) 631-6197  
Email: RSchramm@kitchell.com

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]
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:**

CCCOEF, LLC, a Delaware limited liability company

By: Kitchell Development Company, an Arizona corporation

Its: Manager

By: ______________________________

Name: ______________________________

Title: ______________________________

STATE OF ARIZONA )

) ss.
County of Maricopa )

The foregoing instrument was acknowledged before me this ___ day of __________, 20___ by ____________________, as __________________ of CCCOEF, a Delaware limited liability company.

______________________________

Notary Public

My Commission Expires:
EXHIBIT A

Legal Description of Property
EXHIBIT A

LEGAL DESCRIPTION

CAVE CREEK RETAIL CENTER

A portion of the Northwest quarter of the Northeast quarter of the Northwest quarter of the Northeast quarter. ALSO a portion of the Northeast quarter of the Northwest quarter of the Northeast quarter. ALSO the Southeast quarter of the Northeast quarter of the Northwest quarter of the Northeast quarter. ALSO the Southwest quarter of the Northeast quarter of the Northwest quarter of the Northeast quarter, all being in Section 8, Township 5 North Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of the Northeast quarter of said Section 8; thence North 89 degrees 58 minutes 40 seconds East, a distance of 663.88 feet along the North line of the Northeast quarter of said Section 8, to the northwest corner of the Northwest quarter of the Northeast quarter of the Northwest quarter of said Section 8;

THENCE South 0 degrees 02 minutes 37 seconds East, a distance of 65.00 feet along the West line of said Northwest quarter of the Northeast quarter of the Northwest quarter of the Northeast quarter of Section 8, to the south right of way line of a public highway designated Carefree Highway and the TRUE POINT OF BEGINNING;

THENCE North 89 degrees 58 minutes 40 seconds East, a distance of 663.87 feet along said south right of way line, to a point on the East line of the Northeast quarter and the Northeast quarter of the Northwest quarter of said Section 8;

THENCE South 0 degrees 02 minutes 27 seconds East, a distance of 595.94 feet along said East line and the East line of the Southeast quarter of the Northeast quarter of the Northwest quarter of the Northeast quarter of Section 8, to the southeast corner thereof;

THENCE South 89 degrees 58 minutes 17 seconds West, a distance of 663.84 feet along the South line of said Southeast quarter of the Northeast quarter of the Northwest quarter of the Northeast quarter and the Southwest quarter of the Northeast quarter of the Northwest quarter of the Northwest quarter, to the southwest corner thereof;

THENCE North 0 degrees 02 minutes 37 seconds West, a distance of 596.01 feet along said West line of the Southwest quarter of the Northeast quarter of the Northwest quarter of the Northeast quarter and the Northwest quarter of the Northeast quarter of the Northwest quarter of said Section 8, to the TRUE POINT OF BEGINNING.

Prepared by:
The WLB Group, Inc.
1600 W. Broadway Rd., Ste. 150
Tempe, AZ 85282
EXHIBIT B

Estimated Phoenix Water Service Fees
Estimated Water Meter and Tap Fees

1.5" Tap & Meter = $4,005 each x 4 = $16,020
2" Tap & Meter = $4,125 each x 3 = $12,375

TOTAL = $28,395

TOTAL FEES
Capital Facility Fees $458,772
Meter and Tap Fees $28,395
TOTAL Phoenix Fees = $487,167
## EXHIBIT C

Cave Creek Development and Utility Capacity Fees

**TOWN OF CAVE CREEK**

### DEVELOPMENT FEES

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<th>LAND USE</th>
<th>GENERAL GOVERNMENT</th>
<th>PARKS</th>
<th>TOTAL</th>
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<tr>
<td><strong>Residential (PER Housing Unit)</strong></td>
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<tr>
<td>Single Unit</td>
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### UTILITY CAPACITY CHARGES

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Effective: October 6, 2014