

Oct 18 04 03:37p

Jason Williamson

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p. 2

**SECOND AMENDMENT TO WASTEWATER UTILITY FACILITIES
DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO WASTEWATER UTILITY FACILITIES DEVELOPMENT AGREEMENT is entered into this 20th day of August, 2004 (the "Effective Date") by and between HARVARD SIMON I, L.L.C., an Arizona limited liability company ("Harvard"), and PIVOTAL UTILITY MANAGEMENT COMPANY, L.L.C., a Colorado limited liability company ("Pivotal"), for the purposes and considerations hereinafter set forth.

RECITALS

A. Harvard and Pivotal previously entered into that certain WASTEWATER UTILITY FACILITIES DEVELOPMENT AGREEMENT dated May 16, 2001 (the "Facilities Development Agreement"), incorporated herein by reference.

B. Except as defined herein, defined terms used herein shall have the definitions attributed to them in the Development Agreement.

C. The Facilities Development Agreement was amended by an amendment (the "First Amendment"), incorporated herein by reference, entered into by the parties on or about July 10, 2002.

D. Pursuant to the Facilities Development Agreement, Harvard and Pivotal reached certain agreements concerning the design, construction and installation of a wastewater treatment plant and related infrastructure, including an effluent lift station on the plant site (collectively, "WWTP"), necessary for the provision of wastewater utility service to Harvard's Talking Rock development.

Oct 18 04 03:37p

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p.3

E. The Facilities Development Agreement contains certain provisions regarding the payment of certain development fees (the "Development Fees") by Harvard to Pivotal, including the payment of such fees on a per lot basis and Harvard's guarantee concerning the payment of such fees. Specifically, Harvard agreed to pay to Pivotal, on a quarterly basis, a Development Fee equal to \$2417 per lot (as adjusted from time to time pursuant to paragraph 4(b)(i) of the Facilities Development Agreement) for each lot developed, sold or leased in the Talking Rock development, such payment to be made upon issuance of a building permit for such lot. The Facilities Development Agreement further provided, however, for the satisfaction of Harvard's obligation to pay the per lot Development Fees if and to the extent that such fees were paid from closing funds of the purchasers of the lots.

F. The purpose of this Second Amendment is to amend the parties' agreement concerning payment of Development Fees by Harvard to allow for the direct payment of a Development Fee allocable to a lot in the Talking Rock development by the purchaser of the lot at the earlier of (i) December 31, 2012 or (ii) time of issuance of a building permit for the lot, and the consequent release of Harvard from the obligation to pay such per lot Development Fee, so long as the purchaser's obligation to pay the Development Fee is secured by a deed of trust in favor of Pivotal.

G. In the First Amendment, Harvard and Pivotal agreed to certain changes related to payment of Development Fees as they relate to Harvard's proposed sale of parcels to specific merchant home builders, whereby the obligation of payment for each parcel was modified. Those specific merchant builders failed to purchase lots in the Talking Rock development and the parties now desire, as a further purpose of this Second Amendment, to terminate the First Amendment such that it will no longer have any force and effect.

Oct 18 04 03:37p

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P. 4

NOW, THEREFORE, in consideration of the following covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend the Facilities Development Agreement as follows:

AGREEMENTS

1. Payment of Per Lot Development Fees by Lot Purchasers; Credit to Harvard; Refunds.

(a) Payment of Development Fees on a Per Lot Basis. The following shall be deemed added to paragraph 4(b) of the Facilities Development Agreement:

Subject to the provisions of paragraph 4(d)(iv) of this Facilities Development Agreement, Harvard furthermore may satisfy and shall be released from its obligation to pay the development fee allocable to a lot by (i) assigning to Pivotal (in a form reasonably approved by Pivotal) the contractual obligation of the purchaser of the lot to pay the development fee allocable to the lot upon the earlier of (1) December 31, 2012 or (2) issuance of a building permit for such lot; and (ii) providing to Pivotal satisfactory evidence of the recordation of a deed of trust (in a form reasonably approved by Pivotal) against such lot, naming Pivotal as the beneficiary and securing such obligation of the purchaser of the lot, with the lien of such deed of trust being subordinate in priority only to (1) liens that are existing prior to the acquisition of the lot by the purchaser and (2) any new lien for acquisition financing so long as such new lien secures payment of an amount that does not exceed 95% of the purchase price of the lot. Pivotal shall promptly release the lien of such deed of trust following receipt of payment of the development fee allocable to the lot.

(b) Credit Against Guarantee of Development Fees. The following shall be deemed added to the Facilities Development Agreement as new paragraph 4(d)(iv):

Oct 18 04 03:37p

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P. 5

(iv) Notwithstanding anything in this Facilities Development Agreement to the contrary, (A) all development fee payments received by Pivotal from third-party lot purchasers shall be credited against the \$29,004 quarterly payments that Harvard has agreed to guarantee under the Facilities Development Agreement as if Harvard had made such payments directly to Pivotal; and (B) the obligation of Harvard to guarantee the payment from purchasers of the related lot fees shall continue in full force and effect until Pivotal has received all of the lot fees due and payable under the provisions of the Facilities Development Agreement.

(c) Refunds of Development Fees Paid by Harvard. The following shall be deemed added to the Facilities Development Agreement as new paragraph 4(g):

(g) Notwithstanding anything herein to the contrary, on a quarterly basis Pivotal shall provide Harvard a report comparing past payments made by Harvard with any new payments received from third-party lot purchasers since the last such report. In addition, where payment of a development fee has been received by Pivotal with respect to a lot on which Harvard has already paid the applicable development fee, Pivotal shall provide a refund of the excess development fee payment to Harvard along with the quarterly report.

2. Termination of First Amendment. The First Amendment is hereby terminated and shall be deemed to have no force or effect.

3. Miscellaneous. The Recitals set out above are incorporated into and made a part of the Agreements contained herein. This instrument shall be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Except as amended hereby, the Facilities Development Agreement is hereby ratified and confirmed.

Oct 18 04 03:38p

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P. 8

IN WITNESS WHEREOF, the parties hereto have caused this Amendment, to be executed as of the day and year first above written.

HARVARD SIMON I, L.L.C., an Arizona limited liability company

By: HARVARD TALKING ROCK, L.L.C., an Arizona limited liability company, its Member

By: HARVARD INVESTMENTS, INC., a Nevada corporation, its Manager

[Handwritten signature]
By: _____
By: _____

"Harvard"

PIVOTAL UTILITY MANAGEMENT COMPANY, L.L.C., a Colorado limited liability company

[Handwritten signature]
By: Jason Williamson, Member

[Handwritten signature]
By: _____, Member

[Handwritten signature]
By: John Chapman, Member

"Pivotal"

FROM : FAIRFIELD INN BY MERRITT HALL PHONE NO : 9726618118
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Oct 18 04 03:38p

Jason Williamson

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P. 7

SANTEC CORP

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Jason Williamson

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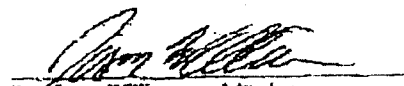
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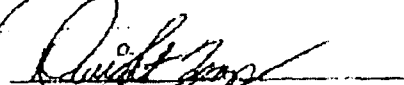
APPROVAL

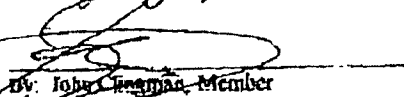
In accordance with paragraph 4(b) of that certain WASTEWATER UTILITY FACILITIES DEVELOPMENT AGREEMENT dated May 16, 2001, as amended by SECOND AMENDMENT TO WASTEWATER UTILITY FACILITIES DEVELOPMENT AGREEMENT of even date herewith, by and between HARVARD SIMON I, L.L.C., an Arizona limited liability company ("Harvard"), and PIVOTAL UTILITY MANAGEMENT COMPANY, L.L.C., a Colorado limited liability company ("Pivotal"), Pivotal hereby approves that certain WASTEWATER DEVELOPMENT FEE ADDENDUM TO ESCROW INSTRUCTIONS AND REAL ESTATE PURCHASE CONTRACT, together with the DEED OF TRUST AND ASSIGNMENT OF RENTS attached thereto, delivered to and reviewed by Pivotal as of the date of this instrument.

DATED this ___ day of August, 2004.

PIVOTAL UTILITY MANAGEMENT COMPANY, L.L.C., a Colorado limited liability company


By: Jason Williamson, Member


By: Dwight Zeng, Member


By: John Cragman, Member

"Pivotal"