

Memorandum of Understanding (“MOU”)
January __, 2019

As of this __ day of January, 2019 (the “Effective Date”), the INSCRIPTION CANYON RANCH SANITARY DISTRICT (the “District”) and TALKING ROCK LAND LLC, an Arizona limited liability company (“TRL” or “Developer”) agreed in good faith to resolve their outstanding differences related to the District’s refusal to authorize service to Developer lots in the Talking Rock Ranch community located in Yavapai County, Arizona as set forth in this MOU (alternatively, the “Agreement”).

Specifically the District and TRL agree to the following matters that will govern the relationship between the District and TRL on a going forward basis, all of which will be accomplished within forty-five (45) days of execution of this Agreement.

1. Newsletter. On or before January 31, 2019, the District will issue a newsletter to all members of the District and post a copy thereof on the District’s website that includes various statements of fact designed to clarify the current dispute between the Developer and the District and the outcome of the recently concluded litigation (Case No. P1300CV2018800380) and award of attorneys’ fees. Prior to publication, the content of the draft newsletter shall be shared with the Developer for review to insure accuracy and completeness. Thereafter, the District shall incorporate all reasonable comments of the Developer in the final version of the newsletter that is published.
2. Attorneys’ Fees. The District shall accept, as a final decision, any award of attorneys’ fees issued by Judge Napper and promptly remit payment of the amount awarded to the Developer within twenty (20) business days of issuance of the order. Further, the Board agrees not to expend further District funds to appeal the fee award.
3. Insurance Carrier. On or before January 31, 2019, the District shall contact its insurance carrier, Allied World Specialty Insurance Company (dba Allied Public Risk, LLC) for the purpose of: (i) providing the carrier with a copy of the Developer’s Notice of Claim dated May 17, 2018 (the “Notice”) attached hereto (without attachments) as Exhibit “A”; and (ii) arranging a meeting (telephonic or otherwise) with a representative(s) of the carrier, the District and the Developer to discuss the Developer’s Notice. Thereafter, the District shall use good faith efforts to negotiate with the Developer and insurer to obtain a timely and mutually agreeable resolution of the Developer’s claim for damages.
4. District Board Leadership. On or before January 31, 2019, the District Board shall hold a meeting for purposes of accepting the resignation of Dave Barreira, thereby creating a vacancy in office thus requiring the District Board to appoint a qualified elector of the District to fill the remaining portion of Mr. Barreira’s term. Promptly upon receipt of Mr. Barreira’s resignation, Mr. Barreira shall recommend [_____] as his replacement and the District Board shall immediately authorize the appointment of [_____] to complete Mr. Barreira’s term on the Board and the Board shall thereafter, appoint Bob Hilb as the Board Chairman in light of his prior experience serving on the Board.

5. Amendment to Development Agreement. On or before February 15, 2019, a designated Board representative and the Developer shall hold a series of up to three (3) meetings to, in good faith, explore the merits of and potential for modifying the terms of that certain Amended and Restated Development Agreement by and between the District, Developer, Whispering Canyon Development and Old Capitol Investments LLC dated March 1, 2012, as amended by that certain First Amended and Restated Development Agreement dated May 16, 2014 (collectively, the “ARDA”) via either letter agreement or amendment to raise additional capital for the District to use in expanding the Santec Plant. Items from the ARDA for discussion may include, but not be limited to, the following:

A. Accelerate Rate for Effluent Payments. Section 6(b) of the ARDA sets forth rates for effluent (i.e., \$4,000 per month for every 1,000,000 gallons and for every thousand gallons thereafter: Years 1-5 (\$1.10); Years 6-10 (\$1.20); Years 11-15 (\$1.30); Yrs. 16-20 (\$1.40). The District and Developer could consider adjusting these rates.

B. Santec Plant Expansion Funding: Section 5(a) of the ARDA has a cap of \$150,000 (for which Developer is responsible for paying 80% and Whispering Canyon 20%) which could be adjusted.

C. Accelerate Developer Lot Fee: Per Section 9(d) of the ARDA (as slightly modified in the First Amendment to the ARDA at Section 2 to address seven lots where owners disputed payment), the following Developer lot fee schedule applies: Years 1-5: \$3,000 per lot, Years 6-10: \$3,250 per lot; Years 11-15: \$3,500 per lot; Years 16-20: \$3,750. Thereafter fees may be increased in five year increments to adjust for inflation but any increase shall be capped at \$250 for each five year period. Adjustments to the per lot fee paid by Developer could be discussed.

D. Forego Portion of Developer Reimbursement or Shorten 20 Year Term: Per ARDA Section 9(e), the District must (for a period of 20 years commencing Jan. 1, 2014) refund annually to the Developers an amount equal to ten percent of the District’s gross annual income as pro-rata reimbursement for the prior Developer Constructed Facilities (both existing and new). A reduction in the total amount of the reimbursement or the term could be explored.

6. Binding on Successors. This Agreement shall be binding upon the parties hereto, together with their respective representatives, successors and assigns.

7. Fees and Costs. The parties agree that each side will bear their own costs and attorneys' fees incurred related to the negotiation and implementation of this Agreement.

8. No Admission of Liability. IT IS UNDERSTOOD AND AGREED TO BY THE PARTIES THAT THIS SETTLEMENT IS A COMPROMISE OF DISPUTED CLAIMS AND THAT NEITHER THIS AGREEMENT NOR ANY PAYMENTS MADE HEREUNDER ARE TO BE CONSTRUED AS AN ADMISSION OF LIABILITY BY ANY PARTY.

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which combined shall constitute one and the same instrument.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

11. Enforcement of this Agreement. In the event proceeding are instituted to enforce, remedy, prevent or obtain relief from a breach of this Agreement, the prevailing party shall recover all such reasonable attorneys' fees and costs, including reasonable expert fees, incurred in each and every proceeding, including any and all appeals or petitions therefrom. It is further agreed that Yavapai County shall be the venue for any proceeding brought to enforce this Agreement.

12. Amendments. This Agreement may not be modified or amended except through a writing signed by all parties bound hereby.

13 Severability. In the event any provision of this Agreement should be held void, voidable, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

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

DISTRICT:

INSCRIPTION CANYON RANCH
SANITARY DISTRICT

By: _____

Dave Barreira

Its: Board Chair

By: _____

Bob Summers

Its: Board Member

By: _____

Bob Hilb

Its: Board Member

DEVELOPER:

TALKING ROCK LAND, LLC, an Arizona
limited liability company

By: _____

Peter Burger

Its: Authorized Agent

DRAFT
01/09/2019

Note: The ICR Sanitary District is working on a response to this proposal

