

RESOLUTION No. 2010-01

RESOLUTION OF I.C.R. SANITARY DISTRICT YAVAPAI COUNTY, ARIZONA

MORATORIUM ON SEWER HOOKUPS AND CONDITIONS FOR LIFTING MORATORIUM OR PARTIAL LIFTING OF MORATORIUM

WHEREAS, the I.C.R. Sanitary District (the “District”) was duly formed under Chapter 14 of Title 48 of the *Arizona Revised Statutes* as a body corporate with the powers, privileges and immunities generally granted to municipal corporations by the constitution and laws of Arizona for the purposes prescribed in such chapter, pursuant to *Arizona Revised Statutes* § 48-2001 (D); and

WHEREAS, the District, acting through its Board of Directors (the “Board”), was formed for the purposes of regulating, purchasing, establishing, constructing and operating a sewerage system which is owned by the District or any person which provides for sewage collection, treatment and disposal in the District, pursuant to *Arizona Revised Statutes* § 48-2001 (B) (1); and

WHEREAS, the Board has the fiduciary responsibilities for the safe, adequate and timely collection and treatment of wastewater within the District, such that all sewage shall be collected, treated and disposed of in accordance with health, safety and environmental laws; and

WHEREAS, the District has formulated and adopted rules governing the installation, use and maintenance of private sewer disposal systems and connections to the sewer system and lines of the District, pursuant to *Arizona Revised Statutes* § 48-2011(10); and

WHEREAS, the Board requires permits for any and all connections to the sewer system and lines in the District and for installation and maintenance of private sewage disposal systems, pursuant to *Arizona Revised Statutes* § 48-2011(11); and

WHEREAS, all persons who desire to connect to a sewer line within the District must first obtain written approval from the District and anyone who violates a rule adopted by the District or this Moratorium is guilty of a misdemeanor, pursuant to *Arizona Revised Statutes* § 48-2031; and

WHEREAS, regulations of the Arizona Department of Environmental Quality (“ADEQ”), A.A.C. R18-9-E301(C) (1) and (2), requires the District to be assured it will have adequate capacity of its sewage collection system and sewage treatment facility so that the design flows of the sanitary system within the District will not be exceeded or so that any permit conditions will not be exceeded; and

WHEREAS, the designed flow of the existing wastewater treatment plant within the District is inadequate to treat additional homes that may be built on lots approved by Yavapai County or the lots sold by the developers in the District; and

WHEREAS, the existing capacity of the wastewater treatment plant is insufficient to treat the estimated wastewater from residential and other facilities within the District that have been approved for construction; and

WHEREAS, the Board is responsibly and deeply concerned that all landowners in the District may be burden with the obligations and related costs of transporting untreated effluent to another wastewater treatment plant(s) if the wastewater treatment plant in the District exceeds its capacity; and

WHEREAS, the Board has worked diligently and aggressively in an attempt to resolve these matters for more than three years without satisfactory resolution of the wastewater generation and requests for wastewater treatment capacity assurances relative to the availability of adequate wastewater treatment plant capacity; and

WHEREAS, the District is experiencing timing problems in expanding the wastewater treatment plant, which the construction thereof is the obligation of Harvard Simon I, L.L.C. ("Harvard"), at its own cost, to meet the existing and future demands for wastewater treatment in the District; and

WHEREAS, wastewater from properties within the District will exceed the wastewater treatment plant's present capacity in the near future if the homes presently constructed in the District are fully-occupied; and

WHEREAS, the Board deems it prudent to limit its risks and legal obligations in providing sanitary services to additional sewer connections within the District until wastewater treatment capacity is online to serve subdivided lots; and

WHEREAS, the District initially provided wastewater collection and treatment service for 356 single family platted homes in Inscription Canyon Ranch development, consisting of a Sequencing Batch Reactor treatment plant ("SBR Plant"), sludge digester, chlorination facilities and effluent disposal, with a designed and constructed treatment capacity of 120,000 gallons per day ("gpd") and an authorized average permitted (and not peak) daily flow of 0.046 million (or 46,000) gpd under its initial Aquifer Protection Permit ("APP") No. P-103119; and

WHEREAS, Harvard's Talking Rock Ranch development, in which it has options as a secondary beneficiary under trust deed, encompasses approximately 3,188 acres of land with an estimated 1,500 or 1,596 homes, golf course and clubhouse, restaurant, swimming pool and exercise facility; and

WHEREAS, Harvard requested annexation of the Talking Rock Ranch development into the District instead of creating its own private sanitary company; and

WHEREAS, on December 08, 2000, Harvard entered into a Development Agreement with the District in which Harvard agreed to, among other things, to provide wastewater treatment for all sewage generated within the District at no cost to the District, in that certain "Development Agreement and Order to Extend the Boundaries of the ICR Sanitary District recorded on December 13, 2000 at Book 3799, Page 86 (Document No. 3311094) in Yavapai County, Arizona (the "Harvard-District Agreement"); and

WHEREAS, the Harvard-District Agreement provides, in part, that the wastewater treatment plant "shall be designed to comply with applicable standards of requirements of [Yavapai County] Environmental Services, ADEQ and the District," and the wastewater treatment plant "shall be in strict conformance with the plans and specifications therefor, and the applicable regulations of Environmental Services, ADEQ, the District or any other governmental authority having jurisdiction over the design and construction of wastewater treatment systems;" and

WHEREAS, Harvard unilaterally selected, consulted with and hired Pivotal Management Utility, LLC. ("Pivotal") to provide for wastewater treatment services for Talking Rock Ranch and all other developments in the District, including the pre-existing Inscription Canyon Ranch development, as no cost to the District, as set forth in that agreement, titled "Wastewater Utility Facilities Development Agreement," dated May 15, 2001 (the Harvard-Pivotal Agreement); and

WHEREAS, Pivotal hired its affiliated firm, Santec Corporation ("Santec"), to install a wastewater treatment plant in the District so that Harvard may receive Class B+ quality of effluent for the Talking Rock Ranch golf course; and

WHEREAS, Harvard employed Santec and Shephard-Wesnitzer, Inc. (SWI) to engineer the construction of the wastewater treatment plant designed by Santec and file an application with the ADEQ to amend the APP; and

WHEREAS, Harvard in December 2002 sought a significant amendment to the District's APP to install a modified extended aeration wastewater treatment plant proposed by Santec (the "Santec Plant") with an initial designed capacity of 62,500 gpd in conjunction with the existing capacity SBR Plant; and

WHEREAS, the ADEQ issued a Significant Amendment to the APP based upon 200 gallons per day (gpd) per subdivided lot as the regulatory standard for determining the adequacy of the capacity of the Santec Plant; and

WHEREAS, Harvard, Pivotal and Santec did not seek the approval of the District when they decided to decommission the SBR Plant and thereby significantly reduce the available treatment capacity in the District; and

WHEREAS, the District has not approved or accepted the Santec Plant; and

WHEREAS, Harvard submitted plans for subdividing lots in Talking Rock Ranch with Yavapai County and sought sewer service agreements from the District so that Yavapai County would subdivide lots, and the District relied on Harvard's contractual commitment to construct the wastewater treatment plant for its subdivided lots (and the subdivided lots of Whispering Canyon and continued wastewater treatment for Inscription Canyon Ranch development) in the Harvard-District Agreement;

WHEREAS, Harvard filed Public Reports with the Arizona Department of Real Estate, representing to the State and lot purchasers that Harvard would expand the wastewater treatment plant in the District to service subdivided lots in Talking Rock Ranch, and Harvard would collect a wastewater-lot fee from lot purchasers to assist Harvard in paying for expanding the wastewater treatment plant in the District; and

WHEREAS, the wastewater-lot fee was not determined by an engineering study of the cost of a wastewater treatment plant to serve subdivided lots, and the District did not participate in the setting of that fee by Harvard, which initially was \$2,417 per lot and later increased to \$3,000 per lot; and

WHEREAS, on information and belief, some wastewater-lot fees were collected by Harvard at the time of close of escrow when lots were sold to assist in paying for expanding the wastewater treatment plant, and on information and belief, some of those collected fees were paid to Pivotal; and

WHEREAS, some wastewater-lot fees were not collected by Harvard at the close of escrow when lots were sold; and instead a deed of trust for payment of the wastewater-lot fees for expanding the treatment plant was given by lot purchasers, under an arrangement between Harvard and Pivotal that was not disclosed to the District until long after that arrangement had been implemented by the "Second Amendment to Wastewater Utility Facilities Development Amendment" to the Harvard-Pivotal Agreement, dated August 20, 2004; and

WHEREAS, Harvard and Pivotal, in the Harvard-Pivotal Agreement, contemplated that Whispering Canyon would be included in their effort to build expanded wastewater treatment facilities to serve both the Talking Rock Ranch and Whispering Canyon developments; and

WHEREAS, Whispering Canyon is a real estate development to be comprised of 400 homes and a clubhouse with meeting rooms, swimming pool and other recreational facilities, and Whispering Canyon is represented to the District as being owned by Old Capitol Investments, LLC and Whispering Canyon Development, LLC ("Whispering Canyon"); and

WHEREAS, Whispering Canyon entered into an agreement with Pivotal for the construction of wastewater treatment facilities titled “Wastewater Utility Facilities Development Agreement, “dated December 02, 2002; and

WHEREAS, Whispering Canyon did not enter into a development agreement with the District for reasons unknown to the District, but Whispering Canyon was annexed into the District under Resolution 2002-4 dated on or about December 19, 2002; and

WHEREAS, Pivotal agreed to expand the wastewater treatment plant by 50,000 gpd no later than 235 days from when Pivotal received notice from Whispering Canyon that it sold its first lot; and

WHEREAS, a portion of Talking Rock Ranch, known as Phase 26, was transferred to The Preserve at the Ranch, LLC (“The Preserve”), without prior knowledge of or approval by the District, and the The Preserve is comprised of 38 residential units; and

WHEREAS, Whispering Canyon and The Preserve filed Public Reports with the Arizona Department of Real Estate, representing to the State and lot purchasers that Harvard would expand the wastewater treatment plant in the District to service subdivided lots, and Whispering Canyon and The Preserve would collect a wastewater-lot fee from lot purchasers to assist Harvard in paying for expanding the wastewater treatment plant in the District; and

WHEREAS, on information and belief, some wastewater-lot fees were collected by Whispering Canyon and The Preserve at the time of close of escrow when lots were sold to assist in paying for expanding the wastewater treatment plant, and on information and belief, some of those collected fees were paid to Pivotal; and

WHEREAS, Harvard, Whispering Canyon and The Preserve are collectively referred to herein as the “Developers”; and

WHEREAS, Developers requested the District to sign certain sewer service agreements for sewer collection systems (and not wastewater treatment capacity) on the pretense that such agreements were necessary before they could file plans with Yavapai County to their developments, recognizing that the recorded Harvard–District Agreement that Harvard required construction of wastewater treatment facilities capacity to serve the subdivided lots at no cost to the District; and

WHEREAS, Developers represented to their lot purchasers and the State that Harvard would pay for expanding the wastewater treatment plant to serve the Developers’ subdivided lots and the Inscription Canyon Ranch development, if the lot purchasers paid the wastewater-lot fee; and

WHEREAS, before and during 2006, the District Board expressed concerns, including among others, (a) the current and accurate wastewater flow projections based upon expected planned developments within the District, (b) use of inconsistent average daily sewage generation rates for residential units, the designing of treatment plant(s) for average rather than peak sewage flows, and the lack of peak flow rates for non-residential units, (c) lack of timely disclosure of development plans for planning of the District's operation and expansion plans, (d) failure to seek advanced approval to construct developments from the District in accordance with its Ordinance (Section 402 – Request for Capacity), and (e) whether the footprint of the wastewater treatment site for the 46,000-gpd SBR plant would legally accommodate the expansion for a 455,500-gpd Santec Plant as well as provide necessary odor and noise controls at that site; and

WHEREAS, the District Board had repeatedly requested a feasibility study be performed by Harvard regarding its proposed sewage demands for wastewater treatment and the feasibility of the Santec Plant and its projected expansion to treat such demands; and

WHEREAS, Harvard hired SWI to prepare a “*Sewer System Feasibility Study – Inscription Canyon Ranch Sanitary District*” dated March 2006 (the “Harvard-SWI Study”) in which the average daily flow of sewage generated for the Talking Rock Ranch Compound and recreation facilities at Whispering Canyon were reported to be 76,270 gpd and 13,906 gpd, respectively, and the total projected average daily sewage generated within the service area of the District was reported to be 484,527 gpd, which included sewage from 2,390 homes and 90,173 gpd for the Talking Rock Ranch Compound and Whispering Canyon's recreational facilities; and

WHEREAS, the Board hired Fann Environmental, LLC (“Fann”) as an unbiased third-party expert to review Harvard's Feasibility Study, titled *Review of Sewer System Feasibility Study for the Inscription Canyon Ranch Sanitary District*, dated May 10, 2006, in which Fann determined the “regulation value of 450 gpd for a three [person] residential unit” and the average wastewater flows for developments built and planned in the District far exceeded the 62,500 gpd designed capacity of the Santec Plant; and

WHEREAS, sixty-four (64) issues were raised by Fann regarding the accuracy and completeness of the SWI Feasibility Study in its review dated May 10, 2006, including among others, the use of 165 gpd per residential unit in the Harvard-SWI Study and the Study's failure to address peak sewage demands that would require wastewater treatment; and

WHEREAS, outstanding unresolved issues in 2006 included, among others, (a) wastewater demand assumptions (such as the projected gallons per day per developed unit and equivalent residential units), (b) the design and construction of an appropriate treatment plant(s) that will be able to treat peak sewage flows within the District, (c) feasibility of an expanded Santec Plant to treat the increased quantities of wastewater, and (d) adequacy of the existing wastewater treatment site within the District to expand and comply with all applicable laws; and

WHEREAS, in 2006 the District Board determined the existing Santec Plant is currently treating the existing and near-term future flows of Inscription Canyon Ranch; the initial flows from Whispering Canyon, plus a community center (with an estimated 13,906 gpd for the center); approximately 500 lots on Talking Rock Ranch which have been approved for construction by Yavapai County and the District; and the Talking Rock Ranch Compound (with an estimated 76,270 gpd for the Compound) which was provisionally approved for construction by the District, subject to certain conditions; and

WHEREAS, in 2006 the District Board determined the existing capacity of the Santec Plant is insufficient to treat the estimated wastewater from residential and other facilities within the District that have been approved for construction; and

WHEREAS, in 2006, Harvard for its Talking Rock Ranch development sought approvals to construct residences on 235 additional lots in Phases 10, 12 and 13 from the District which will require additional wastewater treatment capacity, which approvals have not been granted; and

WHEREAS, the District was experiencing timing problems in expanding the wastewater treatment plant as early as 2006, which the construction thereof is the obligation of Harvard at its own cost, to correspond with the number of completed homes, properties with building permits that are under construction, and the construction of the Talking Rock Ranch Compound; and

WHEREAS, issuance of “approvals to construct” by Yavapai County for future developments within the District already exceed the Santec Plant’s treatment capacity; and

WHEREAS, wastewater from properties within the District can exceed the wastewater treatment plant’s present capacity when considering the homes in the District and the Talking Rock Ranch Compound that are presently connected to the sewer system connected to the Santec Plant; and

WHEREAS, residential lots sold in the District substantially exceed the limited wastewater treatment capacity of the Santec Plant if connected to the sewer system; and

WHEREAS, subdivided lots in the District greatly exceed would the limited wastewater treatment capacity of the Santec Plant if connected to the sewer system; and

WHEREAS, the issuance of additional “approvals to construct” would further exceed the design and operational capacity of the Santec Plant to treat wastewater from those subdivisions, while the District has not received satisfactory resolution of these and other matters pending with Harvard; and

WHEREAS, the District Board adopted Resolution No. 2006-01, adopting the District’s policy on approvals to construct in which the District required each Developer

to submit “Capacity Assurance for Sewage Collection System” and “Sewage Treatment Facility Capacity Assurance” forms, as set forth in ADEQ regulations, A.A.C. R18-9-E301(C) (1) and (2) (of which copies were attached to the moratorium resolution), for each subdivision, including those which were previously approved for construction and subdivisions that are connected to the District’s sewerage system (the “2006 Moratorium”); and

WHEREAS, the 2006 Moratorium required the Developers to obtain the District’s approval of the “Capacity Assurance for Sewage Collection System” and “Sewage Treatment Facility Capacity Assurance” forms before the District would authorize any approval to construct within the District or receive sewage from the subdivision; and

WHEREAS, the 2006 Moratorium resulting in the District’s adoption of a moratorium on approvals to construct because of inadequacy of wastewater treatment capacity and a moratorium on any connections to the sewerage system within the District that may exceed the capacity of the Santec Plant, until further action and notice of the Board; and

WHEREAS, the District hired its engineering firm, Civiltec Engineering, Inc. (“Civiltec”) to determine the wastewater treatment capacity for the Talking Rock Ranch Compound, and Civiltec reported its results in the “Calculation for Talking Ranch Compound (TRRC) Average Daily Flow (ADF) Estimate Contributing to Inscription Canyon Ranch Sanitary District (ICRSD) Wastewater Treatment Plant Influent Flow,” dated April 04, 2007, in which Civiltec’s detailed analysis using ADEQ regulatory standards determined the Talking Rock Ranch Compound requires 19,869 gpd wastewater treatment capacity; and

WHEREAS, the District engaged Civiltec to estimate wastewater treatment plant flows within the District, and Civiltec reported its analysis in the “Inscription Canyon Ranch Sanitary District (ICRSD) Average Daily Wastewater Flow (ADWP) and Peak Hourly Wastewater Flow (PHWF) Estimates” in a spreadsheet dated April 10, 2007, in which Civiltec determined that for **lots sold** in the District at that time required a minimum of **81,920 gpd** average wastewater flow capacity (if the entire District were subject to retirement community restrictions) and a minimum of **102,400 gpd** for family communities (which is the current status of all communities in the District) and Civiltec determined that for **lots platted** in the District at that time required a minimum of **134,080 gpd** average wastewater flow capacity (if the entire District were subject to retirement community restrictions) and a minimum of **201,120 gpd** for family communities (which is the current status of all communities in the District); and

WHEREAS, the estimated wastewater treatment demands within the District as professionally determined by Civiltec far exceeds the designed 62,500 gpd capacity of the Santec Plant: and

WHEREAS, the District sought and received from Talking Rock Ranch (Harvard Investments, Inc.), The Preserve at the Ranch, and Whispering Canyon Capacity

Assurance forms in which the Developers requested wastewater treatment capacity for their developments, and the Developers' requests for sanitary wastewater treatment far exceed the capacity of the Santec Plant; and

WHEREAS, Harvard employed Aqua Engineering to assist in selecting the appropriate type of wastewater treatment plant, in which Aqua Engineering selected the Membrane Bio Reactor plant (the "MBR Plant"), which was agreed upon by Harvard and the District; and

WHEREAS, Harvard and Whispering Canyon terminated their agreements with Pivotal, as set forth in the "Termination of Wastewater Utility Facilities Development Agreement" dated April 13, 2007 (and which was not provided to the District until after the Developers' filed suit against the District); and

WHEREAS, on information and belief wastewater-lot fees were paid by lot purchasers in the Developers' real estate developments and were to be transferred to an escrow account with First American Title (the "First American Escrow Account"); and

WHEREAS, Harvard and the District entered into a Memorandum of Understanding with the District, dated October 16, 2006 ("Escrow MOU") requiring Harvard to deposit wastewater-lot fees collected by Pivotal into an escrow account for a "New Waste Water Treatment Plant" in the District, and Harvard "guarantees to completely fund their [sic] share [of] the new waste water treatment plant that the ICRSD Board selects": and

WHEREAS, on October 25, 2006, Harvard and the District established and entered into an Escrow Agreement with First American Title Insurance Agency, Inc., under the Escrow MOU; and later Whispering Canyon requested to be a party to the Escrow Agreement and Escrow MOU, which was amended under the April 30, 2007 "Amendment to Escrow Agreement" to pay Twenty Percent (20%) of the monetary obligations under the Escrow MOU with Harvard guaranteeing to pay the balance of Eighty Percent (80%) for "the construction, repair, and/or expansion of the New Waste Water Treatment Plant for the Inscription Canyon Ranch Sanitary District"; and

WHEREAS, Harvard then hired Aqua Engineering and Granite Basin Engineering to design and engineer a new MBR plant; and

WHEREAS, since August 2007 more than \$221,000 has been paid to Aqua Engineering and approximately \$15,000 paid to Granite Basin Engineering from the First American Escrow Account for the designing and engineering of the MBR Plant; and

WHEREAS, since August 2007 approximately \$90,277, representing a ten percent (10 %) downpayment towards the purchase of some MBR Plant equipment have been paid from the First American Escrow Account, and other MBR Plant equipment purchases have been made from the First American Escrow Account; and

WHEREAS, despite the extensive efforts to design, engineer and construct the MBR Plant and pursue permit approval from ADEQ, Harvard informed the District in July 2009 that it had no funds and it would not go forward with building the expanded new plant; and

WHEREAS, the District employed Civiltec to study the Talking Rock Ranch Sewer System and it presented its report titled *Talking Rock Ranch Sewer System: Analysis and Recommendation Report for that portion of Talking Rock Ranch Subdivision lying northeast of Williamson Valley Road*, date June 30, 2010, in which 270 gpd per lots average load and various calculations of the Ranch Compound average flow rates were determined; and

WHEREAS, in December 2009, the District Board adopted the 2009 Moratorium on Sewer Hookups (“2009 Moratorium”), which is incorporated herein by this reference; and

WHEREAS, the 2009 Moratorium precludes new or additional sewer hookups within the District and will be lifted no sooner than after payment of all outstanding invoices by Developers and no sooner than one-hundred sixty (160) days of when the new and expanded wastewater treatment plant is in actual operation; and

WHEREAS, the ADEQ approved the MBR Plant and issued a final decision to issue a Significant Amendment to the APP, File No. 103119 LTF 47152, on or about January 22, 2010; and

WHEREAS, the District has been and is desirous of entering to an amended Harvard–District Agreement with all Developers in which they agree to provide for financial assurances to the District for the building of wastewater treatment facilities to serve all subdivided lots and all phases of the their developments through buildout; and

WHEREAS, the District Board’s counsel employed an expert, Paul Hendricks, to investigate and study the wastewater treatment capacity requirements of the District and the available wastewater treatment capacity of the existing Santec Plant; and

WHEREAS, Mr. Paul Hendricks opined that the District is required to have wastewater treatment capacity to serve subdivided lots within the District and that the limited 62,500 gpd design capacity of the Santec Plant is inadequate to serve subdivided lots or lots sold in the District; and

WHEREAS, the balance in the First American Escrow Account as of August 31, 2010 was approximately \$542,000, which funds may only be used for designing, engineering and building the expanded wastewater treatment plant and disbursements require the approval of Harvard and the District (however, Whispering Canyon questions the ability of Harvard and the District to make disbursements without Whispering Canyon’s approval); and

WHEREAS, the District does not have the financial resources to expand the wastewater treatment plant to serve the subdivided lots or sold lots in the District, which Harvard agreed to construct; and

WHEREAS, the District has sought to resolve these matters with the Developers in good faith without success, and the Developers wish to continue to allow for sewer hookups of sold lots without providing financial assurances that the Developers would pay for the wastewater treatment plant expansion to service those hookups, sold lots or subdivided lots; and

WHEREAS, the District, its customers and lot purchasers in the District would be subjected to paying for the Developers' wastewater treatment plant expansion to serve the Developers' subdivided lots if the Developers' do not provide financial assurances to the District; and

WHEREAS, Harvard (or any other Developer) has not provided any financial assurances to the District guaranteeing that wastewater treatment capacity will be available to serve subdivided lots or sold lots in the District; and

WHEREAS, Harvard's unwillingness to fund and build the MBR Plant in accordance with the Harvard-District Agreement, the Escrow MOU, the ADEQ regulatory standards, the Significant Amendments to the APP, and the District's Ordinance reasonably jeopardizes the health, safety and public welfare of the District and its members; and

WHEREAS, since November 2009 Harvard has not paid for operating the Santec Plant and Harvard continues to receive the use of effluent for its Talking Rock Ranch golf course without payment to the District; and

WHEREAS, the financial inability of the District to treat sewage from lots sold in the District or from lots subdivided in the District reasonably jeopardizes the health, safety and public welfare of the District and its members; and

WHEREAS, despite notice of the 2009 Moratorium certain developers and lot owners (the "Post-2009 Moratorium Lot Owners," as described in Attachment A to this Resolution) allege that they have received building permits from Yavapai County since the 2009 Moratorium, with the understanding from the County that they could install onsite septic systems in lieu of connecting to the District's centralized sewer system, which is contrary to and in violation of the District's Ordinance which precludes the installation of onsite septic systems.

NOW, THEREFORE,

BE IT RESOLVED, that the District will lift the Moratorium on sewer hookups if the Developers (collectively or individually) place financial assurances with the District

to pay the complete cost of the design, engineering and construction of the MBR Plant or alternative wastewater plant selected by the District in its sole discretion through buildout of all phases of the Developers (the "Developers' Financial Assurances"), at no cost to the District as per prior agreements with Developers; and

BE IT FURTHER RESOLVED, that the Developers' Financial Assurances shall be in the form of an irrevocable letter of credit, subdivision bond, cash deposit in an escrow account under the exclusive control of the District, or such other financial guarantee that may be acceptable to the District in its sole discretion; and

BE IT FURTHER RESOLVED, that the amount of the Developers' Financial Assurances shall be recommended by a professional consultant in the field of sanitary services as may be selected by the District Board and in an amount as may be approved by the District Board; and

BE IT FURTHER RESOLVED, that the 2009 Moratorium shall be lifted if the Developers' Financial Assurances are in a form and amount acceptable to the District and provided to the District; and

BE IT FURTHER RESOLVED, that if the Developers' Financial Assurances are not filed with the District on or before December 27, 2010, the District shall transfer the complete operation of the Santec Plant (including all of its operating cost and regulatory compliance obligations) to Harvard effective on 12:01 a.m. January 01, 2011; and

BE IT FURTHER RESOLVED, if Harvard accepts operation of the Santec Plant it shall then be able to determine when wastewater treatment capacity should be expanded, and as a condition precedent to such transfer of the Santec Plant's operation, Harvard shall (a) provide the District with either (i) ADEQ's written confirmation that the wastewater treatment capacity for sanitary services in the District presently complies with Arizona laws and regulations and ADEQ's assurances that the District, its Board and its members will not be subject to any regulatory violations, penalties or costs under Federal, Arizona and local laws if Harvard fails to expand the wastewater treatment plant, or (ii) Harvard is the sole permittee under the APP and the District is legally removed as a liable party under the APP, or (iii) Harvard indemnifies and holds harmless the District, its Board and its members, consultants, agents and representatives against all demands, claims, liabilities, damages, injuries (including death), fines, penalties and costs (including reasonable attorneys' fees, expert witnesses and court costs) relating to the use, operation and non-use of the Santec Plant and the District's property, including but not limited to regulatory violations, penalties or costs of ADEQ and/or under Federal, Arizona and local laws, and includes the District, its Board and its members as additional named insured in a liability insurance policy and environmental pollution policy with an insurance company and an amount acceptable to the District, (b) the District will waive land rent in consideration of Harvard assumption of all operational costs of the Santec Plant, and (c) pay the cost of a District consultant that provides periodic review of the wastewater system operating and maintenance practices; and

BE IT FURTHER RESOLVED, that if Harvard accepts the aforescribed offer, the District shall continue to maintain and operate the sewer collection infrastructure of the Inscription Canyon Ranch and The Preserve developments at its own cost; and

BE IT FURTHER RESOLVED, that if Harvard rejects the offer to accept the operation of the Santec Plant (including all of its operating cost and regulatory compliance obligations and the ADEQ conditions described previously), then (a) the 2009 Moratorium shall remain in force, (b) Harvard shall be responsible for the maintenance and equipment replacement costs of the Santec Plant (which has not been approved or accepted by the District) and the District shall invoice Harvard for such costs and sixty percent (60%) of all operational costs of the Santec Plant as the estimated price for effluent received by Harvard (however, the District reserves the right to seek a higher percentage in the future or negotiate with Harvard another basis for determining the price of effluent), and (c) all outstanding balances invoiced by the District to Harvard and by the District to Whispering Canyon, including late fees and interest, shall be paid in full before the Moratorium shall be lifted; and

BE IT FURTHER RESOLVED, that if Harvard rejects the offer to accept the operation of the Santec Plant (including all of its operating cost and regulatory compliance obligations and the ADEQ conditions described previously), that the District requests Developers to release all funds in the First American Escrow Account to the District, for the sole and exclusive use and discretion by the District for the purpose of attempting to resolve the wastewater treatment capacity deficiencies for service to those presently connected to sewer collection systems in the District; and

BE IT FURTHER RESOLVED, that the District shall cause to be determined (a) the wastewater treatment capacity required to treat the subdivided lots within the District from Capacity Assurance forms filed by the Developers with the District, (b) the estimated cost of designing, engineering and constructing wastewater treatment capacity to service the subdivided lots, including but not limited to the services of the professional consultant in the field of sanitary services performed in connection with this Resolution, and (c) the estimated wastewater-lot fee for such subdivided lots that were not connected to the centralized collection system in the District as of January ____, 2010; and

BE IT FURTHER RESOLVED, that the District amends Resolution No. 2002-3 of November 18, 2002; and

BE IT FURTHER RESOLVED, that the District shall conduct a hearing on the wastewater-lot fee recommendation pursuant to A.R.S. § 48-2027(H) to set the wastewater-lot fee, also known as the "Capacity Fee," under A.R.S. § 48-2027(G)(4); and

BE IT FURTHER RESOLVED, that the Capacity Fee shall be paid into an escrow account created by the District (separate from the First American Escrow Account, known as the "District's Escrow Account") for the sole purposes of constructing an expanded wastewater treatment plant before the District will issue a partial waiver of the 2009 Moratorium for the hookup of the paying subdivided lot; and

BE IT FURTHER RESOLVED, that the District understands that Developers will submit a master plan for undeveloped phases of their real estate developments for purposes of disclosing their demands for wastewater treatment (including among other things the number of subdivided residential lots and subdivided non-residential lots) as soon as possible, but not later than April 01, 2011 (for purposes of reviewing and perhaps adjusting the wastewater-lot fee for the 2011-2012 budget); and

BE IT FURTHER RESOLVED, any Post-2009 Moratorium Lot Owner may connect to the sewer system of the District provided the lot owner signs a recorded agreement with the District and agrees to pay the sum of _____ (\$ _____) (the "Post-2009 Moratorium Lot Fee") into the District's Escrow Account; and after the Capacity Fee is set by the District, if the Post-2009 Moratorium Lot Fee is more than the Capacity Fee, the difference shall be refunded to the lot owner, and if the Post-2009 Moratorium Lot Fee is less than the Capacity Fee, the lot owner shall promptly pay the District the difference, and if not paid within thirty (30) days after invoice by the District, the lot owner agrees under the recorded agreement that the District shall have a collectible lien on the lot subject to judgment of foreclosure and sale under Arizona's deed of trust laws and the lot owner shall agree to pay late fees and interest as set forth in the District's Ordinance; and

BE IT FURTHER RESOLVED, that the District urges Developers to submit revised or amended Public Reports with the Arizona Department of Real Estate which reflects the terms and conditions of this Resolution; and

BE IT FURTHER RESOLVED, that this Resolution be recorded with the County Recorders' Office of Yavapai County, Arizona; and

BE IT FURTHER RESOLVED, that a copy of this duly adopted Resolution shall be provided to the Yavapai County Department of Developmental Services; and

BE IT FURTHER RESOLVED, that the District's members and Developers shall be promptly notified of this Resolution.

PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE I.C.R. SANITARY DISTRICT, this ____ day of _____, 2010.

Gene Leasure, Chairman

Dayne Taylor, Board Member

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Charles F. Turney, Board Member

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