

At the request of ICR Sanitary District

WHEN RECORDED MAIL TO:

ICR Sanitary District  
P.O. Box 215  
Chino Valley, AZ 86323



SPACE ABOVE THIS LINE FOR RECORDER'S USE

## **FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

This FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the "Amendment") is made this 16<sup>th</sup> day of May, 2014 by and between the ICR SANITARY DISTRICT, a special taxing district formed pursuant to A.R.S. §§ 48-101 et seq. and 48-2001 et seq. (the "District"), HARVARD SIMON I, L.L.C., an Arizona limited liability company ("Talking Rock"), WHISPERING CANYON DEVELOPMENT LLC, an Arizona limited liability company and OLD CAPITOL INVESTMENTS LLC, an Arizona limited liability company (collectively "Whispering Canyon" and individually (with Talking Rock) a "Developer" and collectively as "Developers").

### **RECITALS**

A. The District, Talking Rock and Whispering Canyon entered into Amended and Restated Development Agreement dated March 1, 2012 and recorded with Yavapai County Recorder's Office on April 13, 2012 at Book 4873, Page 909 (the "Agreement") in order to establish: (i) an orderly basis for operating the Santec Plant and the existing infrastructure, (ii) clear procedures for the expansion of sewer capacity when needed in the future, (iii) a protocol for approving future phases of Developers property, and (iv) provide for the acceptance of the existing Santec Plant, the Talking Rock infrastructure, on-site and off-site and confirmation of the acceptance of the Whispering Canyon infrastructure pursuant to the terms and conditions set forth in this Amended Development Agreement.

B. Certain collection system facilities located in Tract F, Talking Rock Ranch Phase Twelve, specifically known as On-Site Wastewater Facilities-Phase 12 Sewer Lift Station, were inadvertently omitted from Exhibit E – Bill of Sale, Talking Rock Ranch, Off-site, On-Site and Other Related Wastewater Facilities of the Agreement.

C. Pursuant to paragraph 7. District User Fees of the Agreement, the District agreed that the Developers and individual lot owners or other sewer utility customer within the Developers' Property would not be subject to any hook-up or similar fee related to the establishment of sewer service including, without limitation, the tie-in (hook-up) or in the schedule of rates and charges established by the District because the Developers are obligated to construct and install, or cause to be constructed and installed, any sewer facilities within their respective developments necessary for the District to establish and provide sewer utility service to and within each Developers' Property to the extent the respective Developer chooses to develop and sell lots within the Existing District Annexed Boundary.

D. Developer Lot Fees, as set forth in paragraph 9(2)(d) of the Agreement, were paid for all sold lots within the Developers' Property except for those lots listed on Exhibit "L" attached hereto and made a part hereof (the "Lots"). Payment of the Developer Lot Fees for the Lots, which were to be paid by the buyer(s) of the Lots at the closing of the sale from Developer to buyer, were deferred to the sooner of (i) issuance of a building permit or (ii) by December 31, 2012 and secured by recorded deeds of trust (the "DOT(s)"). However, the buyers of the Lots defaulted on their respective DOTs and the fees were not paid.

E. There is a grammatical error in paragraph 7 of the Agreement that is corrected in this Amendment.

NOW THEREFORE, in consideration of the following covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties hereby agree as follows:

#### AGREEMENT

1. District Acceptance of Ownership:

a. Within thirty (30) days of execution of this Amendment, the District shall accept the On-Site Wastewater Facilities identified in Exhibit "1". Thereafter, Talking Rock shall record the Talking Rock Bill of Sale and the listed facilities shall become and remain the sole property and responsibility of the District in "as-is", "where-is" condition without warranty by Talking Rock. These On-Site Wastewater Facilities have been located and constructed in public right of way or within easements granted to the District by Talking Rock in the same fashion as those listed on Exhibit E to the Agreement, pursuant to Section 8 of the Agreement.

b. The On-Site Wastewater Facilities accepted by the District in the above paragraph shall, for the purposes of Developer Reimbursement pursuant to paragraph 9e of the Amended and Restated Development agreement, be considered as part of the improvements accepted on pursuant to that Agreement. The Talking Rock improvement total is adjusted by \$141,878.56 to the approximate amount of \$4,531,470. The facilities accepted in the above paragraph shall not be considered as "New Facilities" described in paragraph 2b and 9e of the Amended and Restated Agreement.

2. Paragraph 7. District User Fees of the Agreement is hereby amended and restated in its entirety as follows:

7. District User Fees. The District and Developers hereby acknowledge that, pursuant to this Agreement, the Developers are obligated to construct and install, or cause to be constructed and installed, any sewer facilities within their respective developments necessary for the District to establish and provide sewer utility service to and within each Developers' Property to the extent the respective Developer chooses to develop and sell lots within the Existing District Annexed Boundary. These facilities may also be used by the District to provide sewer service to existing customers consistent with the Agreement. Therefore, the District hereby agrees that neither the Developer nor any individual lot owner or other sewer utility customer within the Developers' Property shall be subject to any hook-up or similar fee related to the establishment of sewer service including, without limitation, the tie-in (hook-up) or other fee set forth in the schedule of rates and charges established by the District, which fees are used by

the District to pay the costs of constructing and installing sewer facilities necessary to extend service to new customers. This provision shall not be construed to preclude the District from requiring that lot owners and other customers within the Developers' Property establishing accounts with the District pay an account establishment or similar fee. Further, the District agrees that it will not adopt any impact fees or other fees inconsistent with the fees authorized by A.R.S. § 48-2027(G) as a source of funding for operations and maintenance. Other than authorized user fees and other administrative fees designed to recover costs incurred for approving hook-ups, etc., the District agrees it will not charge the Developers or any lot or home purchasers in Talking Rock or Whispering Canyon any additional fees pursuant to A.R.S. § 48-2027(G)(2)-(5). Notwithstanding the foregoing, the Lots listed in Exhibit "L" will each be assessed a tie-in (hook-up) fee and such other fees as appropriate under A.R.S. § 48-2027(G)2-5, in the then current amount established by the District, when a building permit is applied for with Yavapai County Planning and Development Service. Nothing in this Agreement affects the District's assessment of fees, establishment and collection thereof or the setting of rates therefor except as expressly agreed to herein by the District.

3. Counterparts. This Amendment may be executed in two or more originals, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

4. Legality/Enforceability. In case any provision of this Amendment shall be determined to be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as most nearly to retain the intent of the parties. If such modification is not possible, such provision shall be severed from this Amendment. In either case the validity, legality and enforceability of the remaining provisions of this Amendment shall not in any way be affected or impaired thereby. Except as herein amended, the provisions of the Agreement shall remain in full force and effect.

5. Headings/Interpretation. The headings in this Amendment are inserted for convenience only, and shall not constitute a part of this Amendment or be used to construe or interpret any of its provisions. The parties have participated jointly in the negotiation and drafting of this Amendment. If a question of interpretation arises, this Amendment shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Amendment.

IN WITNESS WHEREOF, the parties enter into this First Amendment to Amended and Restated Development Agreement the date and year first specified above.

[signatures on following page]

ICRS D:

INSCRIPTION CANYON RANCH SANITARY DISTRICT,  
an Arizona special district

By: [Signature]  
Bob Hilb, Board Director and Chairman

By: [Signature]  
Bill Dickrell, Board Director

By: [Signature]  
Al Poskanzer, Board Director

DEVELOPERS:

HARVARD SIMON I, L.L.C.,  
an Arizona limited liability company  
By: TRR Holdings, LLLP, Its Manager,  
By: TTLC-TRR Management, LLC, Its General Partner,  
By: True Life Communities, LLC, Its Manager

By: Signed in Counterpart  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

OLD CAPITOL INVESTMENTS LLC,  
an Arizona limited liability company  
By: Four Capital Group, Inc., Its Member

By: Signed in Counterpart  
Name: Cole Johnson  
Title: President

WHISPERING CANYON DEVELOPMENT LLC,  
an Arizona limited liability company,  
By: Four Capital Group, Inc., Its Member

By: Signed in Counterpart  
Name: Cole Johnson  
Title: President

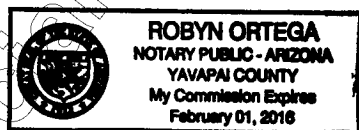
**NOTARIAL CERTIFICATE**

STATE OF ARIZONA

COUNTY OF Yavapai

DESCRIPTION OF DOCUMENT THIS NOTARIAL CERTIFICATE IS BEING ATTACHED TO:	
Type/Title:	First Amendment to Amended and Restated Development Agreement
Date of Document:	5/16/14
Number of Pages:	11
Additional signers:	Bill Dickrell, Al Poskanzer, Cole Johnson and

The above-described instrument was acknowledged before me this 16<sup>th</sup> day of May, 2014 by Bob Hilb, Board Director and Chairman of Inscription Canyon Ranch Sanitary District.



[Signature]  
Notary Public

ICRSD:

INSCRIPTION CANYON RANCH SANITARY DISTRICT,  
an Arizona special district

By: [Signature]  
Bob Hilb, Board Director and Chairman

By: [Signature]  
Bill Dickrell, Board Director

By: [Signature]  
Al Poskanzer, Board Director

DEVELOPERS:

HARVARD SIMON I, L.L.C.,  
an Arizona limited liability company  
By: TRR Holdings, LLLP, Its Manager,  
By: TTLC-TRR Management, LLC, Its General Partner,  
By: True Life Communities, LLC, Its Manager

By: [Signature]  
Name: Isabel Anderson  
Title: Manager

OLD CAPITOL INVESTMENTS LLC,  
an Arizona limited liability company  
By: Four Capital Group, Inc., Its Member

By: Signed in counterpart  
Name: Cole Johnson  
Title: President

WHISPERING CANYON DEVELOPMENT LLC,  
an Arizona limited liability company,  
By: Four Capital Group, Inc., Its Member

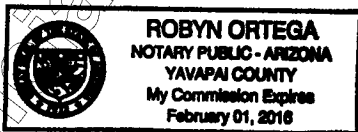
By: Signed in counterpart  
Name: Cole Johnson  
Title: President

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STATE OF ARIZONA  
COUNTY OF Yavapai

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[Signature]  
Notary Public

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an Arizona special district

By: Signed in counterpart  
Bob Hilb, Board Director and Chairman

By: Signed in counterpart  
Bill Dickrell, Board Director

By: Signed in counterpart  
Al Poskanzer, Board Director

DEVELOPERS:

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an Arizona limited liability company  
By: TRR Holdings, LLLP, Its Manager,  
By: TTLC-TRR Management, LLC, Its General Partner,  
By: True Life Communities, LLC, Its Manager

By: Signed in counterpart  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

OLD CAPITOL INVESTMENTS LLC,  
an Arizona limited liability company  
By: Four Capital Group, Inc., Its Member

By: Cole Johnson  
Name: Cole Johnson  
Title: President

WHISPERING CANYON DEVELOPMENT LLC,  
an Arizona limited liability company,  
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By: Cole Johnson  
Name: Cole Johnson  
Title: President

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COUNTY OF YAVAPAI §

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Additional signers:	Bill Dickrell, Al Poskanzer, Cole Johnson and

The above-described instrument was acknowledged before me this 17<sup>th</sup> day of June, 2014 by Bob Hilb, Board Director and Chairman of Inscription Canyon Ranch Sanitary District.

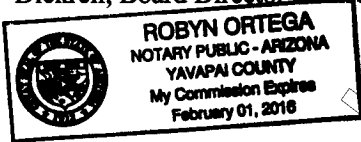
\_\_\_\_\_  
Notary Public

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Additional signers:	Bob Hilb, Al Poskanzer, Cole Johnson and

The above-described instrument was acknowledged before me this 14<sup>th</sup> day of May, 2014 by Bill Dickrell, Board Director of Inscription Canyon Ranch Sanitary District.



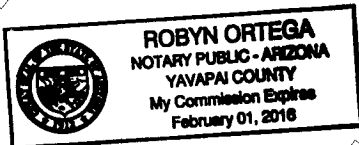
Robyn Ortega  
Notary Public

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Date of Document:	<u>5/15/14</u>
Number of Pages:	<u>11</u>
Additional signers:	Bob Hilb, Bill Dickrell, Cole Johnson and

The above-described instrument was acknowledged before me this 15<sup>th</sup> day of May, 2014 by Al Poskanzer, Board Director of Inscription Canyon Ranch Sanitary District.



Robyn Ortega  
Notary Public

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COUNTY OF \_\_\_\_\_ } §

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Additional signers:	Bob Hilb, Bill Dickrell, Al Poskanzer, and Cole Johnson

The above-described instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_ of True Life Communities, LLC, Manager of TTLC-TRR Management, LLC, General Partner of TRR Holdings, LLLP, Manager of Harvard Simon I, L.L.C.

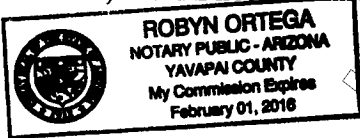
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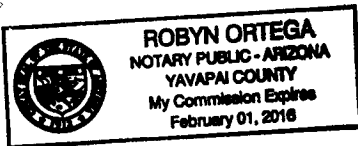
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The above-described instrument was acknowledged before me this 15<sup>th</sup> day of May, 2014 by Al Poskanzer, Board Director of Inscription Canyon Ranch Sanitary District.



Robyn Ortega  
Notary Public

**NOTARIAL CERTIFICATE**

STATE OF ARIZONA }  
COUNTY OF MARICOPA } §

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Date of Document:	5/16/14
Number of Pages:	11
Additional signers:	Bob Hilb, Bill Dickrell, Al Poskanzer, and Cole Johnson

The above-described instrument was acknowledged before me this 17 day of May, 2014 by Tabeek Anderson, Manager of True Life Communities, LLC, Manager of TTLC-TRR Management, LLC, General Partner of TRR Holdings, LLLP, Manager of Harvard Simon I, L.L.C.



Taryn Lachter  
Notary Public

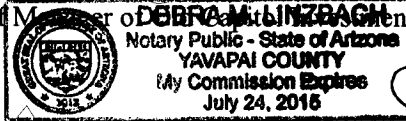


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Additional signers:	Bob Hilb, Bill Dickrell, Al Poskanzer, and

The above-described instrument was acknowledged before me this 17<sup>th</sup> day of June, 2014 by Cole Johnson, President of Manager of Whispering Canyon Development, LLC.



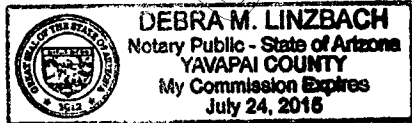
*[Signature]*  
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*[Signature]*  
Notary Public

**EXHIBIT "1"**

**TALKING ROCK RANCH**

**ON-SITE WASTEWATER FACILITIES  
PHASE TWELVE SEWER LIFT STATION**

**SEWER DEVELOPMENT COSTS  
PHASE DETAIL**

TRR PHASE TWELVE, Bk 60, Pg 41-6/28/07

DESCRIPTION	QTY	UM	Gross Unit Price	TOTAL COST
LIFT STATION	1	EA	75,000.00	75,000.00
AIR/VAC RELEASES	3	EA	2,900.00	8,700.00
AIR RELEASE	1	EA	3,200.00	3,200.00
HD SUPPLY	1	EA	21,000.00	21,000.00
APS PULL BOX	1	EA	6,000.00	6,000.00
ELECTRIC GEAR INSTALL	1	EA	14,336.00	14,336.00
GENERATOR	1	EA	1,079.67	1,079.67
GRADING	1	EA	960.00	960.00
MANHOLES - CONCRETE	2	EA	286.35	572.70
MANHOLES-VACUUM TESTING & SEALING	1	EA	546.67	546.67
TESTING	1	EA	234.29	234.29
INSTALLATION OF PERIMETER FENCE	1	EA	10,837.00	10,837.00
4' X 8' DOUBLE GATE	1	EA	412.23	412.23
<b>TOTAL:</b>				<b>\$ 142,878.56</b>

**Exhibit L**

<b>YAVAPAI COUNTY ASSESSOR NO.</b>	<b>ADDRESS</b>	<b>LEGAL DESCRIPTION</b>
306-35-347	12750 W. Cooper Morgan Tr.	Lot 182, Talking Rock Ranch Phase One-C, recorded on May 2, 2005 at Book 53 of Maps, at Page 19 in the official records of Yavapai County Recorder's Office.
306-35-603	5425 W. Bruno Canyon Dr.	Lot 39, Talking Rock Ranch Phase Three-D, recorded on August 10, 2005 at Book 54 of Maps, at Page 12 in the official records of Yavapai County Recorder's Office.
306-35-455	5455 W. Simmons Peak Rd.	Lot 30, Talking Rock Ranch Phase Eight-B, recorded on May 2, 2005 at Book 53 of Maps, at Page 22 in the official records of Yavapai County Recorder's Office.
306-35-311	5130 W. Johnny Guitar Rd.	Lot 67, Talking Rock Ranch Phase Eight-C, recorded on August 17, 2004 at Book 50 of Maps, at Page 97 in the official records of Yavapai County Recorder's Office.
306-35-317	5055 W. Billy Jack Way	Lot 73, Talking Rock Ranch Phase Eight-C, recorded on August 17, 2004 at Book 50 of Maps, at Page 97 in the official records of Yavapai County Recorder's Office.
306-35-546	15275 N. Ft. Apache Pl.	Lot 15, Talking Rock Ranch Phase Nine-C, recorded on August 10, 2005 at Book 54 of Maps, at Page 8 in the official records of Yavapai County Recorder's Office.
306-35-547	15305 N Ft. Apache Pl.	Lot 16, Talking Rock Ranch Phase Nine-C, recorded on August 10, 2005 at Book 54 of Maps, at Page 8 in the official records of Yavapai County Recorder's Office.