

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement (“this Agreement”) is entered into this 15<sup>th</sup> day of September, 2021, by Allied World Specialty Insurance Company (“Allied World”), ICR Sanitary District (“the District”), and Talking Rock Land LLC (“Talking Rock”) (collectively referenced herein as the “Parties”).

### **RECITALS**

- A. Talking Rock is the owner and developer of land located in Yavapai County, Arizona, commonly known as the Talking Rock master planned community in Prescott, Arizona.
- B. The District is a sanitary district also located in Yavapai County, Arizona. The Talking Rock master planned community is within the boundaries of the District.
- C. Allied World issued the District a Water Plus Package policy No. 5105-0495-05 effective February 7, 2018 to February 18, 2019 (the “Policy”).
- D. On April 24, 2018, Talking Rock filed a complaint against the District and others in the Yavapai County Superior Court, Case No. P1300CV201800380 (the “2018 Lawsuit”).
- E. On March 29, 2019, Talking Rock filed a complaint against the District in the Yavapai County Superior Court, Case No. P1300-CV201900298 (the “2019 Lawsuit”). On January 30, 2020, Talking Rock filed a first amended complaint in the 2019 Lawsuit.
- F. On March 22, 2021, Allied World filed a complaint against the District and Talking Rock in the Yavapai County Superior Court, Case No. P1300202100223 (the “Allied World Lawsuit”).
- G. Without admitting any liability or wrongdoing, Allied World, the District, and Talking Rock now wish to resolve all claims in the 2018 Lawsuit, the 2019 Lawsuit, and the Allied World Lawsuit as set forth below.

### **AGREEMENTS**

In consideration of the mutual promises contained here, the Parties agree as follows:

1. Within 20 (twenty) business days after all parties have executed this Agreement, Allied World and the District will pay Talking Rock the sum

of \$325,000.00 (the "Settlement Payment"). The Settlement Payment will be paid by wire transfer or check, payable to the Fennemore Craig Client Trust Account, and delivered to Dawn Meidinger at Fennemore Craig, 2394 E. Camelback Rd. Ste 600, Phoenix, AZ 85016. Allied World will contribute \$250,000.00 and the District will contribute \$75,000.00 to the Settlement Payment.

2. Within 10 (ten) business days after Fennemore receives the full Settlement Payment, Talking Rock shall file a notice of dismissal of the 2019 Lawsuit, with prejudice, both sides to bear their own attorneys' fees and costs. Talking Rock and the District agree to cooperate to the extent that any additional documents must be filed to effectuate dismissal with prejudice of the 2019 Lawsuit.

3. Within 5 (five) days after receipt of notice of the dismissal of the 2019 Lawsuit pursuant to paragraph 2 above, Allied World shall file a stipulation executed by the Parties and a proposed order for dismissal of the Allied World lawsuit, with prejudice, the Parties to bear their own attorneys' fees and costs.

4. Talking Rock irrevocably releases the District and its past and present Board members (including but not limited to David Barreira), attorneys, agents, employees, representatives, personal representatives, heirs, and their assigns and successors from any and all claims or causes of action on account of any and all damages (known and unknown, foreseen and unforeseen, fixed or contingent, and all consequences thereof, including death) either in tort or contract, which have resulted from or arise out of the 2018 Lawsuit, the 2019 Lawsuit, and/or the Allied World Lawsuit. This release includes any claims for breach of contract or the implied covenant of good faith relating to the Amended and Restated Development Agreement dated March 1, 2012 arising from the allegations set forth in the amended complaint in the 2019 Lawsuit. This release, however, does not include claims alleging a breach of the Development Agreement that do not arise from the allegations contained in the amended complaint in the 2019 Lawsuit. This release also does not apply to claims alleging a breach of this Agreement.

5. The District irrevocably releases Talking Rock and its affiliated companies, subsidiaries, attorneys, agents, employees, representatives, successors, assigns, officers and directors, personal representatives, heirs, assigns and successors from any and all claims or causes of action on account of any and all damages (known and unknown, foreseen and unforeseen, fixed or contingent, and all consequences thereof, including death) either in tort or contract, which have resulted from or arise out of the 2018 Lawsuit, the 2019 Lawsuit, and/or the Allied World Lawsuit. This release includes any claims

for breach of contract or the implied covenant of good faith relating to the Amended and Restated Development Agreement dated March 1, 2012 arising from the allegations set forth in the amended complaint in the 2019 Lawsuit. This release, however, does not include claims alleging a breach of the Development Agreement that do not arise from the allegations contained in the amended complaint in the 2019 Lawsuit. This release also does not apply to claims alleging a breach of this Agreement.

6. The District irrevocably releases Allied World and its affiliated companies, subsidiaries, attorneys, agents, employees, representatives, successors, assigns, officers and directors, personal representatives, heirs, assigns and successors from any and all claims or causes of action on account of any and all damages (known and unknown, foreseen and unforeseen, fixed or contingent, and all consequences thereof, including death) either in tort or contract, which have resulted from or arise out of the 2018 Lawsuit, the 2019 Lawsuit, and/or the Allied World Lawsuit.

7. Allied World irrevocably releases the District and its past and present Board members, attorneys, agents, employees, representatives, successors, assigns, officers and directors, personal representatives, heirs, assigns and successors from any and all claims or causes of action on account of any and all damages (known and unknown, foreseen and unforeseen, fixed or contingent, and all consequences thereof, including death) either in tort or contract, which have resulted from or arise out of the 2018 Lawsuit, the 2019 Lawsuit, and/or the Allied World Lawsuit.

8. The mutual releases set forth in paragraphs 6 and 7 are applicable to any and all claims between Allied World and the District including but not limited to, the processing, investigation, adjustment, litigation, payment of, failure to pay benefits or delay in payment of any benefits under the Policy, which have resulted or may in the future result from matters raised or which could have been raised in the Allied World Lawsuit. This Agreement includes all claims and causes of action for negligence, breach of contract, breach of fiduciary duty, bad faith, statutory violations, unfair claims and practices, punitive damages, emotional distress, misrepresentation, fraud, defamation and any other claims or causes of action that Allied World and the District may have against one another except for claims alleging a breach of this Agreement.

9. Timely performance of the obligations set forth in paragraphs 1 and 2 of this Agreement is a condition precedent to this Agreement. In the event that the condition precedent is not satisfied, the mutual releases set forth herein are void, the Settlement Payments shall be refunded promptly to the

payors and the parties shall otherwise be restored to their positions before this Agreement was executed.

10. The Parties understand and represent no promise, inducement, or agreement not contained in this Agreement has been made to them, this Agreement contains the entire agreement between the Parties, the terms of this Agreement are contractual and not a mere recital, and that each has the capacity and authority to enter into and execute this Agreement.

11. The Parties agree in the event any party breaches this agreement, the breaching party agrees to indemnify and hold the other party harmless for all expenses incurred in enforcing this Agreement, including costs and attorneys' fees.

12. The Parties warrant they have carefully read this Agreement, discussed it fully with counsel and signed it voluntarily, and this Agreement is binding upon the personal representatives, heirs, assigns and successors of the Parties.

TALKING ROCK LAND LLC

By: \_\_\_\_\_

*[Handwritten signature]*

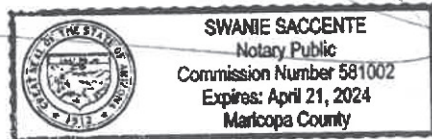
STATE OF ARIZONA )  
 )ss.  
County of )

SUBSCRIBED AND SWORN to before me this 21 day of Sept, 2021, by Peter Burkner of Talking Rock Land, LLC.

Notary Public

My Commission Expires:

4/21/24



ALLIED WORLD SPECIALTY INSURANCE  
COMPANY

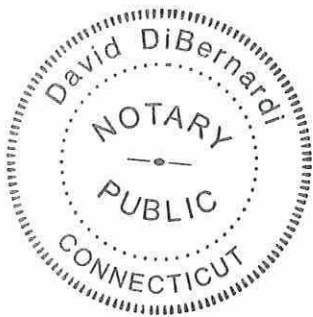
By:                     *Kim Bush*                    

STATE OF Connecticut )  
  )ss.  
County of Hartford )

SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of October,  
2021, by Kim Bush of Allied World Specialty Insurance Company

*David DiBernardi*, David DiBernardi  
Notary Public ( # 149844 )

My Commission Expires:  
10/31/22



ICR SANITARY DISTRICT

By:

Bob M. Summers

STATE OF ARIZONA     )  
  )ss.  
County of                     )

SUBSCRIBED AND SWORN to before me this 15 day of SEPTEMBER 2021, by BOB M. SUMMERS of ICR Sanitary District.

Jean M Pearson  
Notary Public

My Commission Expires:

9-17-2021

