At the request of ICR Sanitary District

2023-0042396 Page: 1 of 11 09/28/2023 10:22:34 AM \$30.00 Michelle M. Burchill OFFICIAL RECORDS OF YAVAPAI COUNTY

WHEN RECORDED MAIL TO: ICR Sanitary District P.O. Box 2344
Prescott, AZ 86302

### THIRD AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This THIRD AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the "Third Amendment") is made this 29th day of August, 2023, by and between the ICR SANITARY DISTRICT, a political subdivision of the State of Arizona (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**

WHEREAS, the District and the Developers, entered into an Amended and Restated Development Agreement dated March 1, 2012, and recorded in the Yavapai County Recorder's Office on April 13,2012 at Book 4873, Page 909 (the "Agreement"); and

WHEREAS, thereafter, the District and the Developers entered into a First Amendment to Amended and Restated Development Agreement, dated May 16, 2014, and recorded in the Yavapai County Recorder's Office on June 30, 2014, Instrument No. 2014-0029551 (the "First Amendment"); and

WHEREAS, thereafter, the District and the Developers entered into a Second Amendment to Amended and Restated Development Agreement dated May 27, 2022, and recorded in the Yavapai County Recorder's Office on June 20, 2022, Instrument No. 2022-0037792 (the "Second Amendment"); and

WHEREAS, a majority of the registered voters living within the District's boundaries approved the District's \$3,463,000 bond proposal to fund the expansion of the District's wastewater treatment plant at the November 8, 2022 general election, the District submitted its Project Finance Application and related documents to the Water Infrastructure Finance Authority of Arizona ("WIFA") on November 30, 2022, and the WIFA Board of Directors approved a 25-year, \$3,400,000 loan to the District on March 17, 2023; and

WHEREAS, the parties would like to clarify that the Developer Reimbursement payment calculation specifically includes interest income, capacity fees charged for initial connections to the District system by lots not located within the Developers' Property ("Capacity Fees") and any amounts collected or to be collected to repay interest or principal for any financing from which proceeds are used to fund an expansion or improvement to the District's wastewater treatment plant ("Expansion-related Fees") but excludes the Effluent fee paid by Talking Rock, Direct Costs reimbursed to the District by the Developers and Developer Lot Fees; and

WHEREAS, the parties would like to change the timing of Developer Reimbursement calculation from a calendar year to a fiscal year ending June 30.

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 as follows:

#### **AGREEMENT**

- 1. Section 9(e) (Developer Reimbursement) of the Agreement is hereby amended and restated in its entirety to read as follows:
  - <u>Developer Reimbursement.</u> Commencing in 2014, the District shall refund annually to the Developers an amount equal to ten percent (10%) of the District's gross annual income (including, without limitation, prior, or to-be-collected, ad valorem property taxes, user and availability fees, interest income, Capacity Fees, Expansion-related Fees and miscellaneous income, but excluding the Effluent fee paid by Talking Rock, Direct Costs reimbursed to the District by the Developers and Developer Lot Fees) as a pro-rata reimbursement for the Developer Constructed Facilities (as defined herein). For purposes of this Section, "Developer Constructed Facilities" shall mean collector sewers, collection and transmission mains, manholes, lifts, pumps and other sewer utility facilities both on-site and off-site necessary for the District to furnish sewer service to each lot, building or other customer within the Developer's Property, including but not limited to, existing infrastructure identified in the Talking Rock and Whispering Canyon Bills of Sale, any New Facilities and the Santec Plant (or any expansion or modification thereof) directly funded by Developers. In the event of the sale or other transfer of the District's assets that includes the sale or transfer of the Santec Plant, the District agrees to ensure that the District's refund obligations are assumed by the buyer or transferor.
  - i. <u>Timing of Payment and Reimbursement Cap.</u> Refunds for existing Developer Constructed Facilities shall be paid by the District to each respective Developer on or before January 31 of each calendar year commencing in January, 2014 for the 2013 calendar year continuing thereafter in each succeeding calendar year, provided however, that the 2021 refund payment of \$62,719, due January 31, 2022 shall be deferred to October 31, 2034, and recalculated based on the District's income for the fiscal year ending June 30, 2034, thus extending the refund payment period from twenty (20) years to a period of twenty-one (21) years from the date of District acceptance. Any unpaid balance remaining at the end of the twenty-one (21) year period shall become non-refundable except to the extent that such

balance relates to unpaid reimbursement obligations of the District. In order to accommodate a transition for the Developer Reimbursement payment from a calendar year to a fiscal year schedule, a \$22,384.54 Developer Reimbursement payment for the period January 1, 2022, to June 30, 2022, was paid to the Developers in February 2023. Thereafter, the next Developer Reimbursement payment will be calculated based on the fiscal year period from July 1, 2022, to June 30, 2023 and paid by October 31, 2023. Thereafter, annual Developer Reimbursement payments will be calculated based on the fiscal year ending June 30 and paid by October 31 of each year (ending twenty-one (21) years after the last effective date of District acceptance of Developer Constructed Facilities). No interest shall accrue or be payable on the amounts to be refunded hereunder. In no event shall the total amount of the refunds paid by the District pursuant to this Agreement exceed fifty percent (50%) of the total amount of refundable advances paid by the Developers in connection with the The funds from the deferred 2021 Developer Developer Constructed Facilities. Reimbursement payment will be used by the District toward funding for the contemplated wastewater treatment plant expansion.

- ii. <u>Reimbursement Amounts and Fund Sources.</u> The District acknowledges that all Developer Constructed Facilities will be eligible for the reimbursement and that the District will properly account for reimbursements for a period of twenty-one (21) years. As of the date of this Agreement, the District acknowledges the Developer's eligibility for reimbursement of the following costs for Developer Constructed Facilities pursuant to Paragraph 9.(e.)(i.) above:
- Talking Rock \$708,522 for the Santec Plant plus improvements identified on the initial Talking Rock Bill of Sale in the approximate amount of \$4,388,591 and five subsequent bills of sale in the aggregate amount of \$581,130, as detailed on Exhibit K.
- Whispering Canyon \$177,130 for the Santec Plant plus improvements identified on the initial Whispering Canyon Bill of Sale in the approximate amount of \$1,184,000 and one subsequent bill of sale in the amount of \$198,140, as detailed on Exhibit K.

The gross annual income from eligible fees and property taxes revenues collected from all subdivisions within the Existing District Annexed Boundary are eligible funds for Developer reimbursement purposes for the Santec Plant. Thereafter, the eligible funds for Developer reimbursement shall exclude eligible fees and property tax revenue from the ICR Subdivision.

Allocation of Reimbursement. The allocation among the Developers with respect to the Santec Plant shall be on the basis of total funds contributed by the Developers for the construction of the Santec Plant. The allocation among the Developers with respect to the Developer Constructed Facilities other than the Santec Plant shall be on the basis of total funds contributed by the Developers for such Developer Constructed Facilities that are still eligible for reimbursement. All reimbursements to be made to the Developers shall first be allocated toward the Santec Plant costs (continuing until the sooner of repayment of 50% of the cost of the Santec Plan or twenty-one (21) years) and then to the Developer Constructed

Facilities (continuing until the sooner of repayment of 50% of the costs incurred by the Developers for the Developer Constructed Facilities or until twenty-one (21) years after the effective date of District acceptance of Developer Constructed Facilities). The District, in its sole discretion, will specify the annual reimbursement amounts and pay each Developer in accordance with the methodology contained in Exhibit "K".

2. Exhibit "K" to the Agreement is hereby amended and restated in its entirety with the new Exhibit "K" attached hereto.

IN WITNESS WHEREOF, the parties enter into this Third Amendment to Amended and Restated Development Agreement as of the day and year first specified above.

THE	DISTRICT:	

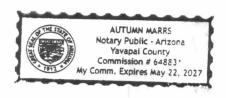
ICR SANITARY DISTRIC	T, a political subdivision of the State of Arizona	
By: Bob Summers, Boar	d Chairman	
STATE OF ARIZONA	)	
County of Yavapai	) ss: )	

The foregoing instrument was acknowledged before me this 1 day of 2023, by Bob Summers, Board Chairman of the Board of Directors of ICR Sanitary District.

Notary Public

My Commission Expires:

May 22, 2027



By: Member De Santis, Board Member
STATE OF ARIZONA ) ) ss: County of Yavapai )
The foregoing instrument was acknowledged before me this 13th day of September 2023, by Gerald DeSantis, a member of the Board of Directors of the ICR Sanitary District.
ROBYN LYNN ORTEGA Notary Public - Arizona Yavapai County Commission # 577676 My Comm. Expires Feb 25, 2024  My Commission Expires:
2/25/2024
By: Jeff McLeod, Board Member
STATE OF ARIZONA ) ) ss: County of Yavapai )
The foregoing instrument was acknowledged before me this day of
Notary Public
My Commission Expires:  AUTUMN MARRS Notary Public - Arizona Yavapai Country Commission # 64883' My Comm. Expires May 22, 2027

#### **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:
Name: PETER BOTTGER Title: Athorized Agent
STATE OF ARIZONA )
) ss:
County of Mapay )
The foregoing instrument was acknowledged before me this 4 day of Septemble, 2023, by 1974 Bullet , 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.
Notary Public
My Commission Expires:
May 22, 2027
AUTUMN MARRS Notary Public - Arizona Yavapai County Commission # 648831 My Comm. Expires May 22, 2027

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

By:	Colella.	<u> </u>
	Name:	20bert Cole Johnson Janager
	Title: N	anager

STATE OF ARIZONA	)
	) ss:
County of Yavapai	)

The foregoing instrument was acknowledged before me this 15t day of Septemb, er 2023, by Robert Cole Johnson President of Manager of Old Capitol Investments, LLC.



Melisse adams

My Commission Expires:

July 26, 2027

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

By:	Color	nia		
	Name:	Robert	Cole	Johnson
	Title: _	Manag	er	

STATE OF ARIZONA	)
	) ss
County of Yavapai	)

The foregoing instrument was acknowledged before me this <u>lst</u> day of <u>september</u> 2023, by <u>Robert Cole Johnson</u>, President and Manager of Whispering Canyon Development LLC.



Jeliosa adams
Notary Public

My Commission Expires:

July 26,2027

Oct. 2023 FYE 6/30/23	608,550	48.684	12,171	60,855	482.286		403,366		4,388,591	1,184,000	79,964	102,033	200,384	107,007	91,742	198,140			6,834,147
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Feb. 2023 1/1 - 6/30/22	223,845	17,908	4,477	22,385	543.141		342,511		4,388,591	1,184,000	79,964	102,033	200,384	107,007	91,742	198,140		•	6,895,002
1/	\$	40	8	\$	S	-	\$		\$	\$	S	S	S	S	s	S	S	S	S
2022	626,840	•	٠	1	565,526		320,126		4,388,591	1,184,000	79,964	102,033	200,384	107,007	91,742	198,140			6,917,387
	₩.	S	\$	\$	S		S		\$	\$	S	s	S	S	45	S	\$	S	\$
2021	538,897	43,112	10,778	53,890	565,526		320,126		4,388,591	1,184,000	79,964	102,033	200,384	107,007		2		,	6,627,505
	\$	S	S	₩.	S		S		S	S	45	S	s	S	S	S	S	s	S
2020	447,399	35,792	8,948	44,740	619,416		266,236		4,388,591	1,184,000	79,964	,	,	1	•	ï	ı	1	6,271,971
	\$	⟨\$	S	\$	S		\$		\$	\$	5	s	S	S	\$	\$	S	\$	\$
2019	421,254	33,700	8,425	42,125	664,156		221,496		4,388,591	1,184,000	,		,			٠	1		6,236,747
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2018	303,562	24,285	6,071	30,356	706,281		179,371		4,388,591	1,184,000	ı	•	,	•		•		1	6,278,872
	\$	\$	S	\$	\$		\$		\$	\$	S	\$	S	S	\$	S	s	S	\$
2017	511,196	40,896	10,224	51,120	736,637		149,015		4,388,591	1,184,000		£	•	•		1	•	•	6,309,228
	<>	₩.	S	\$	S		S		S	\$	\$	\$	\$	S	S	S	S	s	S
2016	311,527	24,922	6,231	31,153	787,757		97,895		4,388,591	1,184,000	1	•	ï	,		1	ř	٠	6,360,348
	₩.	\$	\$	₩.	S		S		S	S	S	S	S	S	S	S	S	S	S
2015	312,589	25,007	6,252	31,259	818,910		66,743		4,388,591	1,184,000	1	ı	1.		3		Ę	*	6,391,501
	\$	\$	S	\$	S		S		S	\$	\$	S	S	S	\$	\$	S	\$	S
2014	354,836	28,387	7,097	35,484	850,168		35,484		4,388,591	1,184,000	ï	1	10	•	,	ı	ı		6,422,759
	\$	<>-	\$	₩.	\$	350/02	\$		S	\$	\$	S	S	S	S	Ş	S	S	\$
2013	\$ 000'008	11,056			885,652	193,312			\$ 4,388,591	1,184,000	•		r	•	•			£	6,651,555
	\$	\$			S	*				\$	\$	S	S	\$	S	S	s	s	\$
Year of Payment Payment for Year	Income District Income Except ICR	Payment to Preserve Payment to TRR	Payment to WC	Total Payments	Cost Amount Santec	Cost Amount Preserve	Cumulative Repayments - Santec	Cumulative Repayments - Other	TRR WW Facilities Costs (exc Santec)	WC WW Facilities Costs (exc Santec)	TRR WW Facilities Cost Phase 12A2	TRR WW Fac. Cost Double Adobe Ext.	TRR WW Fac. Cost Sterl. Ranch Ph 1	TRR WW Facilities Cost Phase 13	TRR WW Facilities Cost Phase 6	WC WW Facilities Cost Phase 5	WC WW Facilities Cost Phase next	WC WW Facilities Cost Phase next	Total Remaining Costs



Added

1. Refunds went to the Preserve in 2013 and then were suspended.

All refunds due to TRR and WC beginning in 2014 are allocated to the Santec Plant until the Santec Plant is 50% paid off. Following that the reimbursements are made on a proportional basis to TRR and WC WW

3. The ICR sub-division income is not used for rembursements except for the Santec Plant.

4. There are 6 potential phases shown for WC and TRR. When these phases are developed, the methodology used in this spreadsheet will be updated to include the added amount of the new infrastructure.

5. The numbers will be updated annually to reflect the actual District Gross Income. Because of this, the write

off years and amounts may vary accordingly.

2035	1,086,579	814,934	75%		60,773	20,721	81,493				862,446			39,982	81,242	200,384	107,007	91,742	177,419			657,795
	<>	S			S	\$	S	S			\$	S	S	\$	s	S	Ş	ν.	S			\$
2034	1,069,391	802,043	75%		62,744	17,461	80,204				780,953	3,776,972	1,014,666	79,964	102,033	200,384	107,007	91,742	198,140		,	779,270
	S	S			S	S	\$	S			S	45	45	\$	S	\$	\$	\$	S	\$	8	45
2033	1,052,540	789,405	75%		61,755	17,186	78,941				700,749	3,839,716	1,032,127	79,964	102,033	200,384	107,007	91,742	198,140		ï	5,651,112
	\$	s	9		S	S	\$	S			\$	\$	S	\$	\$	S	\$	\$	S	S	S	s
2032	1,036,020	777,015	75%		982'09	16,916	77,701	,			621,808	3,901,470	1,049,312	79,964	102,033	200,384	107,007	91,742	198,140		•	5,730,053
	S	\$			S	S	\$	S			S	\$	S	S	S	S	s	S	S	S	\$	\$
2031	1,019,823	764,868	75%		59,835	16,651	76,487	,			544,107	3,962,256	1,066,228	79,964	102,033	200,384	107,007	91,742	198,140	•		5,807,754
	\$	S			S	S	S	S			\$	\$	\$	\$	s	s	S	\$	S	S	\$	\$
2030	1,003,945	752,958	75%		58,904	16,392	75,296	i			467,620	4,022,091	1,082,880	79,964	102,033	200,384	107,007	91,742	198,140		r	5,884,241
	\$	S	<b>S</b>		\$	S	\$	S			\$	\$	\$	\$	\$	\$	S	S	S	S	s	S
2029	988,377	741,283	75%		57,990	16,138	74,128				392,324	4,080,995	1,099,272	79,964	102,033	200,384	107,007	91,742	198,140	1	ī	5,959,537
	\$	S	.0		S	s	\$	\$			\$	S	\$	S	\$	s	s	s	S	S	S	S
2028	973,115	729,836	75%		57,095	15,889	72,984	1			318,196	4,138,985	1,115,410	79,964	102,033	200,384	107,007	91,742	198,140	î		6,033,665
	\$	S			\$	S	Ş	Ş			S	S	\$	S	S	s	s	\$	s	s	\$	s
2027	958,152	709,032	74%		55,467	15,436	70,903	1			245,212	4,196,080	1,131,299	79,964	102,033	200,384	107,007	91,742	198,140		ı	6,106,649
	\$	S	.0		s	S	S	S			S	S	S	S	S	s	s	S	S	S	s	s
2026	943,482	688,742	73%		53,880	14,994	68,874	ı			174,309	4,251,547	1,146,735	79,964	102,033	200,384	107,007	91,742	198,140			6,177,552
	\$	\$	%		S	s	S	S			\$	S	S	S	\$	s	s	s	S	S	S	S
2025	929,100	668,952	72%		52,332	14,563	66,895	1			105,435	\$ 4,357,759 \$ 4,305,428 \$	1,161,729	79,964	102,033	200,384	107,007	91,742	198,140	,	•	6,246,426
	\$	\$			\$	\$	\$	\$			\$	S	\$	S	S	S	S	S	S	\$	S	S
2024	780,000				62,400	15,600	78,000	442,826		442,826	38,540	4,357,759	1,176,292	79,964	102,033	200,384	107,007	91,742	198,140	•	ı	6,313,321
	\$				Ş	S	\$	\$		\$	\$	S	\$	\$	\$	\$	S	\$	\$	s	\$	\$
Year of Payment Payment for Year	Income District	Income Except ICR		Payment to Preserve	Payment to TRR	Payment to WC	Total Payments	Cost Amount Santec	Cost Amount Preserve	Cumulative Repayments - Santec	Cumulative Repayments - Other	TRR WW Facilities Costs (exc Santec)	WC WW Facilities Costs (exc Santec)	FRR WW Facilities Cost Phase 12A2	TRR WW Fac. Cost Double Adobe Ext.	IRR WW Fac. Cost Sterl. Ranch Ph 1	<b>FRR WW Facilities Cost Phase 13</b>	TRR WW Facilities Cost Phase 6	WC WW Facilities Cost Phase 5	WC WW Facilities Cost Phase next	WC WW Facilities Cost Phase next	Total Remaining Costs

## Written Off

## Added

# Simple example:

- 1. The actual TR Wastewater Facilities costs of \$581,130 added 2019-2021 and actual \$198,140 WC Wastewater Facilities cost added in 2021 are initially memo items because all reimbursement goes toward the Santec plant.
  - 2. When the Santec Plant is 50% paid off , the balance is written off and excluded from the pro-rata distribution calculation. 3. After the Santec remaining balance is written off, the \$779,270 costs for additional phases noted above are included with

    - 4. In 2034 the remaining balances for the initial TRR and WC Facilities costs are written off and excluded from the pro-rata the initial Facilities Costs in the pro-rata distribution calculation.
      - distribution calculation, and
        - 5. at this point all reimbursement is applied against the \$779,270 additional phases cost until the earlier of 50% reimbursement or 21 years from the effective date of District acceptance for each phase.
- 6. The earlier of 50% or 21 year reimbursement process will be used for any Developer Facilities Costs incurred by TRR or WC

2043	1,237,052 927,789	ī	1 1	i	1			ż	J - 3		1
	\$ \$	\$	\$ \$	\$	\$	\$ \$	\$ 5	S	\$ 0	· 45	<>
2042	1,216,914 \$ 912,685 \$	,	1 1	ï	ı			,	1 - 2		1
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2041	1,197,170 897,878 857	ì	1 1	,	3	1 1	1 1		3 - 3		
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2040	1,177,814 883,360 883,360	i	i i	ī	,		к 1			,	
	\$ \$	\$	\$ \$	<>>	\$	\$ \$	\$ 5	s	\$ 4	· 45	₹
2039	1,158,837 869,128	48,090	7,577	,	\$ 1,170,588		1 1		53,504	070,66	198,445
	\$ \$	\$	\$ \$	\$	<>>	\$ \$	\$ \$	s	s u	2	45
2038	1,140,233 855,174	59,776	25,741 85,517	1	\$ 1,114,922	х т	1 1	100,192	55,722	106,647	354,303
	\$ \$	\$	\$ \$	₩.	₩.	\$ \$	\$ \$	\$	\$ 0	· 45	\$
2037	1,121,993 841,495	61,453	22,697	,	\$ 1,029,404		1 1	108,684	107,007	132,388	439,820
	\$ \$	\$	\$ \$	₩.		\$ \$	\$ \$	s	\$ V	\$ 5	\$
2036	1,104,110 828,083 75%	60,473	22,335	,	945,255		51,017	170,137	107,007	155,084	574,986
	\$ \$	\$	\$ \$	₩.	\$	\$ \$	\$ \$	\$	\$ 4	*	<>→
Year of Payment Payment for Year	Income District Income Except ICR	Payment to Preserve Payment to TRR	Payment to WC Total Payments	Cost Amount Santec Cost Amount Preserve	Cumulative Repayments - Santec Cumulative Repayments - Other	TRR WW Facilities Costs (exc Santec) WC WW Facilities Costs (exc Santec)	TRR WW Facilities Cost Phase 12A2 TRR WW Fac. Cost Double Adobe Ext.	TRR WW Fac. Cost Sterl. Ranch Ph 1	TRR WW Facilities Cost Phase 13	WC WW Facilities Cost Phase 5	WC WW Facilities Cost Phase next WC WW Facilities Cost Phase next Total Remaining Costs