AMENDED AND RESTATED WATER SERVICE AGREEMENT

This Amended and Restated Water Service Agreement ("Agreement") is fully executed this 3rd day of December, 2008, by and between ICR Water Users Association, Inc., an Arizona public service corporation ("ICRWUA"), Harvard Simon I, LLC ("Harvard Simon"), Talking Rock Land, L.L.C., an Arizona limited liability company ("TRL") and Talking Rock Golf Club, L.L.C., an Arizona limited liability company ("TRGC"). The parties may be referred to collectively herein as the "Parties" or individually as a "Party," and one, two or all three of "Harvard Simon", "TRL" and "TRGC" may be referred to collectively as the "Talking Rock Parties". The Parties do hereby enter into this Agreement for the purpose of seeking approval of the Arizona Corporation Commission ("ACC") to: (1) resolve and settle the Parties' respective concerns over their existing agreements and compliance with ACC Decision No. 64360 (January 15, 2002); (2) supersede, replace and terminate any and all existing agreements between the Parties, except for certain provisions specifically identified herein; and (3) govern the Parties' relationship from the time of final ACC approval, if obtained, until the expiration of this Agreement according to its express terms.

RECITALS

A. ICRWUA is a public service corporation as defined in Article 15, Section 2 of the Arizona Constitution and, as such, is regulated by the ACC.

B. The Talking Rock master planned community ("Talking Rock") is located in Yavapai County, Arizona. Talking Rock contains approximately 3,100 acres and, at build-out, will include roughly 1,600 homes. Talking Rock also includes common areas, a clubhouse, a health and fitness center and an 18-hole golf course ("Golf Course") owned and operated by TRGC.

C. Harvard Simon and ICRWUA entered into that certain Main Extension Agreement, dated March 5, 2001, ("MXA") pertaining to the extension of water utility service to Talking Rock. Under the MXA, Harvard Simon was obligated to finance, construct and transfer title to all on-site and off-site facilities necessary for ICRWUA to provide water utility service to Talking Rock. The MXA sets forth ICRWUA's "unconditional consent" for Harvard Simon to supply water to the Golf Course for "landscape irrigation, the filling of lakes and other non-potable purposes." The MXA also sets forth that ICRWUA "agrees to provide water utility service to the Golf Course for landscape irrigation, the filling of lakes and other non-potable purposes at a future date but only upon receipt of [Harvard Simon's] written request at which time such service would be provided consistent with the rules and regulations of the Commission and Utility's Commission approved tariffs."

D. Harvard Simon and ICRWUA entered into that certain Water Purchase Agreement dated April 27, 2001 ("WPA"). TRL had previously obtained a well site that could be used to serve Talking Rock and conducted test drilling. Pursuant to the WPA, Harvard Simon agreed to supply water from one or more wells drilled or to be drilled at this well site to ICRWUA on a wholesale basis to be used by ICRWUA for all purposes, excluding water service for landscape irrigation, lake fill, construction and other non-potable purposes.

E. On January 15, 2002, the ACC issued Decision No. 64360 extending ICRWUA's CC&N to include Talking Rock, subject to the condition that Harvard Simon transfer to ICRWUA "the wells which it has drilled for the purpose of providing water to the extension area … to ensure that the utility has adequate water for its customers and to ensure that they are not subject to relying for their water on a third party over which the Commission lacks jurisdiction."

F. ICRWUA, Harvard Simon and TRGC entered into that certain Well Agreement dated February 25, 2003 ("Well Agreement"). Pursuant to the Well Agreement, Harvard Simon and TRGC agreed to transfer two wells in Talking Rock to ICRWUA: Production Well No. 2 ("Well 2") and Production Well No. 3 ("Well 3"). The Well Agreement further provided that a third well, Production Well No. 1 ("Well 1") (collectively, Well 1, Well 2 and Well 3 will be referred to as the "Talking Rock Wells"), had been drilled and that TRGC would retain title to Well 1 and continue to use water from wells that it or its affiliates owned to provide its own water for landscape irrigation, lake fill, construction and other non-potable purposes. The Well Agreement superseded, replaced and terminated the WPA.

G. ICRWUA and Harvard Simon entered into that certain First Amendment to Main Extension Agreement on February 25, 2003 ("First Amendment to MXA"). The First Amendment modified the MXA such that Well 2 and Well 3 would be included in the Talking Rock Parties advances in aid of construction. All other aspects of the MXA were left in full force and effect, with the Talking Rock Parties remaining obligated to finance and construct the water system necessary for (1) ICRWUA to serve customers residing within Talking Rock; and (2) the Talking Rock Parties to serve themselves and satisfy landscape irrigation, lake fill, construction and other non-potable water demand with water from the wells owned by the Talking Rock Parties.

H. On March 7, 2003, ICRWUA filed the Well Agreement and the First Amendment to MXA with the ACC for the purpose of complying with ACC Decision No. 64630. The ACC Staff approved both the MXA and First Amendment to MXA on September 19, 2003. The Parties have relied on the express language of the Well Agreement and MXA, as amended, in connection with their development activities and operation of the Golf Course.

I. Harvard Simon assigned its rights and interest in the Well Agreement to TRL pursuant to that certain Assignment and Assumption of Well Agreement dated October 9, 2003. The Talking Rock Parties then executed the First Amendment to Well Agreement dated October 23, 2003 correcting the name to Talking Rock Golf Club, L.L.C.

J. Harvard Simon transferred Well 3 to ICRWUA pursuant to that certain Bill of Sale (Production Well) dated October 28, 2003 ("Well 3 Bill of Sale") recorded in Book 4088, Page 386, records of Yavapai County, Arizona.

K. ICRWUA and TRL entered into that certain Second Amendment to Well Agreement ("Second Amendment to Well Agreement") on September 15, 2005. Under the Second Amendment to Well Agreement, TRL agreed to provide additional water supply at its own expense in the event production from Well 3 was inadequate to meet demand from customers in Talking Rock before service to the 800th lot was extended.

L. On June 26, 2007, ICRWUA filed an application for rate increases with the ACC, ACC Docket No. W-02824A-07-0388. On April 3, 2008, TRGC moved to intervene in ICRWUA's rate case. TRGC asserted that it had a direct and substantial interest in the proceeding as a result of the positions taken by other parties to the proceeding. TRGC was granted intervention on April 3, 2008.

M. On April 14, 2008, ICRWUA's rate case was delayed to allow ICRWUA and TRGC an opportunity to negotiate an agreement that would address the Parties' concerns over claims and position taken in ICRWUA's rate case. ICRWUA and TRGC entered into that certain Letter of Understanding ("LOU") on April 18, 2008.

N. TRGC transferred Well 2 to ICRWUA pursuant to that certain Bill of Sale (Production Well) dated as of May 21, 2008, ("Well 2 Bill of Sale") recorded in Book 4598, Page 645, records of Yavapai County, Arizona.

O. On September 12, 2008, the Parties entered into that certain Water Service Agreement ("Water Service Agreement"). On December 1, 2008, the Parties entered into that certain First Amendment to Water Service Agreement ("First Amendment"). The Parties have agreed to additional revisions to the Water Service Agreement and the First Amendment as set forth in this Agreement as a further effort to address and resolve issues raised in ACC Docket No. W-02824A-07-0388 (the "Docket"), and to further set forth agreements that will govern the relationship of the Parties on a going-forward basis. The further agreements between the Parties set forth in this Agreement are expressly intended by the Parties to make their agreements more consistent with the recommendations by ACC Utilities Division Staff ("Staff"), including the recommended special commodity rate set forth in Staff's November 14, 2008, filing in the Docket, and to further address issues raised by an intervenor in the Docket and through public comment.

P. By this Agreement, the Parties intend to (1) resolve and settle the Parties' concerns over their existing agreements and compliance with ACC Decision No. 64630; (2) supersede, replace and terminate all existing agreements between the Parties, except for certain provisions specifically identified herein; and (3) govern the Parties' relationship from the time of final ACC approval of this Agreement, if obtained, until the expiration of this Agreement according to its express terms.

AGREEMENTS

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Amendment and Restatement of Water Service Agreement and First Amendment. The Water Service Agreement and First Amendment are hereby superseded and replaced in their entirety by this Agreement, and the Water Service Agreement and First Amendment are of no further force or effect.

2. Acknowledgement of Recitals. The Parties acknowledge the recitals set forth above and that the recitals provide the factual background under which this Agreement is executed.

3. Well 1 Transfer; Well 2 Pump Motor Replacement; Warranties; Waiver of Prior Restrictions; Use of Talking Rock Wells.

a. Well 1 Transfer. Within fifteen (15) days of the Effective Date of this Agreement as defined in Section 13(b) below, the Talking Rock Parties shall transfer Well 1 to ICRWUA via bill of sale ("Well 1 Bill of Sale") in a form mutually satisfactory to the Parties, without condition, and subject only to the terms and conditions set forth herein.

b. Well 2 Pump Motor Replacement. After the Effective Date of this Agreement as defined in Section 13(b) below, the Talking Rock Parties shall pay the actual cost of purchasing and installing a new pump motor at Well 2 ("Well 2 Pump Motor Replacement") up to a maximum cost of $50,000. ICRWUA shall be responsible for identifying the make and model of the new pump motor and arranging for the installation of the pump motor. ICRWUA shall provide the Talking Rock Parties with an invoice specifying the cost of the Well 2 Pump Motor Replacement, and the Talking Rock Parties shall pay the invoice (up to a maximum of $50,000) within ten (10) business days of the date of receipt of the invoice from ICRWUA.

c. Warranties. The Talking Rock Parties shall provide the warranties in this Section against construction defects, manufacturing defects and defects in workmanship, but such warranties do not cover the negligent or intentional acts of ICRWUA, its employees, agents, contractors or representatives.

i. Well 1. For a period of one (1) year from the date of the Well 1 Bill of Sale (the "Well 1 Warranty Period"), the Talking Rock Parties shall warrantee (i) the workmanship and construction of Well 1, including without limitation, the well casing; and (ii) the pump motor, bowls and related components of Well 1.

ii. Well 2. For a period of one (1) year from the date of installation of the Well 2 Pump Motor Replacement (the "Well 2 Pump Motor Replacement Warranty Period") as required in Section 3(b) above, the Talking Rock Parties shall warrantee the Well 2 Pump Motor Replacement against any and all defects in manufacturing and workmanship.

iii. Air Production. The Talking Rock Parties agree that the maximum allowable air production ("Air Production") in water withdrawn from Well 1 and/or Well 2, expressed as a percent of unit volume of water produced from each well at atmospheric pressure, shall not exceed three point five percent (3.5%) (the "Maximum Allowable Air Production"). The Talking Rock Parties shall warrantee the Maximum Allowable Air Production (the "Air Production Warranty Period") for Well 1 during the Well 1 Warranty Period and for Well 2 during the Well 2 Pump Motor Replacement Warranty Period; provided, however, that if the Air Production Warranty Period for either Well 1 or Well 2 will expire on or after April 15 but on or before September 15 of the same calendar year, then the Air Production Warranty Period for such well shall be extended through and including September 15 of that calendar year. If the Air Production of Well 1 or Well 2 exceeds the Maximum Allowable Air Production during the Air Production Warranty Period, then ICRWUA shall notify the Talking Rock Parties of such occurrence in writing, and the Talking Rock Parties shall take such actions, in consultation and agreement with ICRWUA, as are necessary to reduce the Air Production at Well 1 and/or Well 2 to a level at or below the Maximum Allowable Air Production at the Talking Rock Parties' sole

cost and expense. Air Production shall be measured using the procedure established during the test of the Talking Rock Wells (as hereinafter defined) as summarized in Attachment 1, which is incorporated herein as part of this Agreement.

d. Waiver of Prior Restrictions. The Talking Rock Parties hereby waive and release all restrictions on the amount and rate of water that may be pumped from Well 2 and Well 3 which are contained in the Well 2 Bill of Sale and the Well 3 Bill of Sale.

e. Transfer of Well Field Real Property. TRL and/or Harvard Simon are the owner of a parcel of real property (the "Talking Rock Real Property") legally described in Attachment 2, which is incorporated herein as part of this Agreement. The Talking Rock Wells are located on a portion of the Talking Rock Real Property. Within ninety (90) days of the Effective Date, the Talking Rock Parties shall transfer to ICRWUA, at no cost to ICRWUA, that portion of the Talking Rock Real Property which contains the Talking Rock Wells (the "Well Field Real Property"). The Well Field Real Property shall be approximately one (1) acre in size and shall be adequate for ICRWUA to operate, repair and maintain the Talking Rock Wells. The Talking Rock Parties shall have the right to retain an easement (the "Easement") across the Well Field Real Property for the placement of underground utilities for and access to the Talking Rock Real Property and other property owned by the Talking Rock Parties; provided, however, that the Easement shall in no way adversely effect ICRWUA's ability to operate, repair and maintain the Talking Rock Wells. The Parties shall mutually agree upon the form of the warranty deed and easement conveying the Well Field Real Property.

f. Prohibition on Construction or Equipping of Wells on the Talking Rock Real Property. The Talking Rock Parties agree, on behalf of themselves and their respective successors and assigns, that they shall not construct or permit the construction of any well on the Talking Rock Real Property or the equipping and use of any existing well on the Talking Rock Real Property by any person or entity. The Parties intend that the rights of ICRWUA granted under this Section 3(f) shall run with the land and shall survive the expiration or termination of this Agreement, and the Parties agree that they will execute such additional documents, in recordable form, as may be deemed necessary to ensure that the rights granted to ICRWUA hereunder run with the Talking Rock Real Property.

4. Operation of the Talking Rock Wells. ICRWUA agrees that it will, at all times following the transfer of Well 1, operate, test, inspect, repair, replace and maintain the Talking Rock Wells at its own expense and in a manner that complies with Arizona and federal laws and that fulfills both its obligations under its CC&N and under this Agreement. ICRWUA further acknowledges and agrees that water from the Talking Rock Wells will only be used to serve its customers on the Talking Rock water system and for purposes of this Agreement, and that such restriction arises from recorded deed restrictions put in place by the seller of the Well Field Property whereon the Talking Rock Wells are located.

5. Service of Water for Landscape Irrigation, Lake Fill, Construction and Other Non-Potable Purposes; Maximum Amount; Definitions. ICRWUA agrees to and will deliver to any and all of the Talking Rock Parties: (i) water to be used at the Golf Course for Landscape Irrigation, Lake Fill and other non-potable purposes up to a maximum of 400 acre-feet per annum; and (ii) water for Construction Purposes in an amount reasonably requested by the

Talking Rock Parties for the development of Talking Rock, subject to the terms and conditions set forth in this Agreement. The term "Landscape Irrigation" when used in this Agreement means the irrigation of any and all landscaping located anywhere within the Golf Course, whether such landscaping is turf or non-turf, and without regard to whether the water is delivered through sprinklers or drip irrigators or other means. The term "Lake Fill" when used in this Agreement means the filling of any water retention structures within the Golf Course, including decorative water features and holding ponds for Landscape Irrigation. The term "Construction Purposes" when used in this Agreement means water used by the Talking Rock Parties within Talking Rock for grading and compaction, installation of subdivision infrastructure, construction of structures (excluding residential home construction), and related uses.

6. Residential Priority; Curtailment of Water Service to Talking Rock Parties. Residential delivery of water pumped from the Talking Rock Wells shall have priority (the "Residential Priority") over all other use classifications including uses by the Talking Rock Parties under this Agreement; provided that curtailment ("Curtailment") in order to meet the Residential Priority shall occur only when there is insufficient water production from the Talking Rock Wells, in aggregate, to meet both the demand from residential customers and the demand from non-residential customers at Talking Rock (a "Water Shortage"), and shall continue only so long as the Water Shortage continues. During any Curtailment, ICRWUA shall make reasonable efforts to meet, in part, the demand from the Talking Rock Parties after ICRWUA fully meets the Residential Priority, and to resume normal water service to the Talking Rock Parties under this Agreement as soon as is practicable. ICRWUA shall provide as much advance notice of a Curtailment to the Talking Rock Parties as is reasonably practicable under the circumstances necessitating the curtailment.

7. Charge for Water Service; Meter Readings; Access to Meters; Point of Contact; No Other Charges.

a. Charge for Water Service. During the Term of this Agreement, the Talking Rock Parties shall pay the "special commodity" rate ("Special Commodity Rate") set forth in ICRWUA's tariff on file with the ACC for all water delivered by ICRWUA for Landscape Irrigation, Lake Fill, Construction Purposes and other non-potable purposes. In the Docket, Staff recommended an initial Special Commodity Rate of $1.40 per one-thousand gallons of water as set forth in the Direct Testimony of Charles R. Myhlhousen dated November 14, 2008. In the event the ACC approves a Special Commodity Rate that is greater than $1.40 per one-thousand gallons or that is otherwise inconsistent with this Agreement in the Docket, then this Agreement shall not become effective, shall have no force and effect, and the Parties' existing agreements shall remain in full force and effect. Subject to Section 7(a)(ii) below, the Talking Rock Parties acknowledge that the Special Commodity Rate is subject to change by the ACC in future rate case proceedings.

i. No Monthly Minimum Charge or Monthly Meter Charge. The Talking Rock Parties shall not be required to pay a monthly minimum charge or monthly meter charge for water delivered by ICRWUA for Landscape Irrigation, Lake Fill, Construction and other non-potable purposes.

ii. Moratorium on Increases in Rate and Charges. ICRWUA agrees that it will not file with the ACC any application or other request to increase any rate or charge, including but not limited to the Special Commodity Rate, which increase would become effective before the date which is five (5) years from the date of a final decision in the Docket (the "Moratorium Period"). This Section 7(a)(ii) shall terminate immediately upon the date that the Talking Rock Parties cease taking water from ICRWUA for Landscape Irrigation and/or Lake Fill, and ICRWUA shall thereafter have the unrestricted right to file with the ACC to increase any rate or charge.

iii. Obligation to Purchase Water. The Talking Rock Parties shall not be required to take any minimum amount of water under this Agreement; provided, however, that the Talking Rock Parties agree that during the Moratorium Period, the Talking Rock Parties shall purchase all water required for Landscape Irrigation, Lake Fill, Construction and other non-potable purposes from ICRWUA, less available effluent that the Talking Rock Parties may use for Landscape Irrigation, Lake Fill, Construction and other non-potable purposes. The Parties further acknowledge and agree that the Talking Rock Parties may leave the ICRWUA water system at any time consistent with Arizona law.

iv. New Treatment Requirement; Contamination. The Talking Rock Parties acknowledge that ICRWUA might be required to seek interim rate relief from the ACC during the Moratorium Period in the event that: (1) a Federal, State or County entity (excluding any special taxing district established under A.R.S. Title 48) imposes upon ICRWUA a new rule, requirement, regulation, ordinance, judgment, order or similar decree (collectively, a "New Treatment Requirement"); and/or (2) the groundwater withdrawn by ICRWUA from the Talking Rock Wells becomes contaminated ("Contamination") with any pollutant regulated by any Federal, State or County entity (excluding any special taxing district established under A.R.S. Title 48), and such New Treatment Requirement or Contamination requires additional treatment and/or remediation ("Treatment and/or Remediation") by ICRWUA which: (a) increases ICRWUA's capital and/or operational costs of delivering water through the Talking Rock water system; and (b) was not required as of the Effective Date of this Agreement. In the event that ICRWUA is required to seek interim rate relief during the Moratorium Period, ICRWUA hereby agrees not to seek to increase any rates, including but not limited to the Special Commodity Rate, beyond that needed to recover from all of its customers the costs of the Treatment and/or Remediation on the same cost-of-service basis ICRWUA has employed in the Docket.

b. Meter Readings; Access to Meters. On a monthly basis, ICRWUA shall provide the Talking Rock Parties with meter readings of all meters measuring the delivery of water for Landscape Irrigation, Lake Fill and Construction Purposes. The Talking Rock Parties shall allow representatives of ICRWUA reasonable access to property owned and/or controlled by the Talking Rock Parties as necessary for ICRWUA to read the water meters. The Talking Rock Parties may request that ICRWUA calibrate and adjust the meter recording devices under this Agreement not more frequently than once per calendar year, at the cost of the Talking Rock Parties, unless the meter is found to be in error by more than 3%, in which event no costs of the meter reading and repair shall be charged to the Talking Rock Parties.

c. Point of Contact. The Talking Rock Parties shall identify a single point of contact ("Point of Contact") for receipt of all invoices to the Talking Rock Parties under this

Agreement and shall notify ICRWUA in writing of the identity of the Point of Contact at the address set forth in Section 16(f) below. The Point of Contact shall be responsible for remitting payment on behalf of the Talking Rock Parties for all invoices received by the Talking Rock Parties. Late fees shall be assessed in accordance with ICRWUA's tariff.

d. No Other Charges. ICRWUA agrees that it will not bill or otherwise require payment from the Talking Rock Parties for water for purposes of Landscape Irrigation, Lake Fill, Construction Purposes and other non-potable purposes except as provided for in this Agreement. This Agreement does not relate to or impact the rates and charges for water service by ICRWUA to other customers of the Talking Rock water system, including for example, the Talking Rock health and fitness center and clubhouse.

e. Temporary Emergency Water. In the event the Talking Rock Parties cease taking water from ICRWUA for Landscape Irrigation and Lake Fill but request water from ICRWUA in an emergency on a temporary basis for Landscape Irrigation and Lake Fill, then ICRWUA shall provide such water on a temporary emergency basis at the ACC-approved Special Commodity Rate. ICRWUA agrees that it will seek to retain an ACC-approved Special Commodity Rate in future rate case proceedings during the Term of this Agreement.

8. Financial Assistance. In order to help defray ICRWUA's costs to negotiate and obtain approval of this Agreement, upon execution of this Agreement the Talking Rock Parties shall pay ICRWUA the amount of $30,000. Within thirty (30) days of the Effective Date of this Agreement as defined in Section 13(b) below, the Talking Rock Parties shall pay ICRWUA an additional $50,000.

9. Prior Agreements. The Parties agree that the MXA, as amended, and Well Agreement, as amended, are valid and remain in full force and effect until the Effective Date of this Agreement as defined in Section 13(b) below. The Parties further agree that, as of the Effective Date, this Agreement shall become the principle agreement governing the Parties' relationship as water utility, developer, and Golf Course owner, and that each and every existing agreement between the Parties, as identified in the Recitals, is hereby superseded, replaced and terminated by this Agreement, except as follows:

a. Utility Facilities; Transfers; Refunds. Within sixty (60) days of the Effective Date of this Agreement, the Talking Rock Parties shall convey to ICRWUA and ICRWUA shall accept from the Talking Rock Parties all utility infrastructure constructed to serve Talking Rock which has not been transferred as of the Effective Date, subject only to the applicable warranties of the Talking Rock Parties with respect to such infrastructure including, without limitation, the warranties set forth in Section 3(c) of this Agreement, and any outstanding punch list items applicable to such infrastructure. The Parties agree that their rights and obligations under Sections 1, 2, 3, 4, 5, 6, 7, 8 (as amended by Section 1(d) of the First Amendment to MXA), 9, 11, 12(a), 14 and 15 of the MXA with respect to the financing, construction and transfer of on-site and off-site facilities necessary for ICRWUA to extend water utility service to Talking Rock in accordance with its CC&N remain in full force and effect in conjunction with this Agreement, except as modified by this Section 9(a). The Parties further agree that ICRWUA's obligation to make refunds under Sections 8 and 9 of the MXA, as amended by Section 1(d) of the First Amendment to MXA, remains in full force and effect;

provided, however, that ICRWUA may elect in its sole discretion to characterize utility infrastructure provided by the Talking Rock Parties as either advances in aid of construction or contributions in aid of construction, provided that no less than thirty percent (30%) of plant advanced or contributed is characterized as advances in aid of construction. The Parties further agree that amounts paid by the Talking Rock Parties under Section 7 of this Agreement shall not be used in the determination of revenues for the purpose of determining the amount of any refunds for advances in aid of construction.

b. Incorporation of Surviving Provisions of MXA, as Amended by the First Amendment to MXA. The Parties agree that the portions of the MXA, as amended, that are intended to survive this Agreement, which sections are identified in this Section 9, are attached hereto as Attachment 3, and incorporated herein as part of this Agreement.

10. Conservation. The Talking Rock Parties agree to continue to use reasonable efforts to promote conservation within Talking Rock and to minimize the use of groundwater for Landscape Irrigation, Lake Fill and other non-potable purposes, including continuing reasonable efforts to maximize the use of effluent. TRGC further agrees to complete construction of an additional planned storage pond with an estimated capacity of 25,000,000 gallons no later than May 1, 2009, which deadline may be extended by the Talking Rock Parties for good cause and following notice to ICRWUA.

11. Non-Opposition. Subject to the limitations contained in Sections 3(f) and 7(a)(iii) in this Agreement, ICRWUA shall not oppose the construction of a well or wells and/or a water transmission main by the Talking Rock Parties to enable the Talking Rock Parties to supply their own water for Landscape Irrigation, Lake Fill, Construction Purposes and other non-potable purposes. ICRWUA shall provide such cooperation as may reasonably be requested by the Talking Rock Parties in connection with this Section; provided, however, that in no event shall such cooperation require the expenditure of money by ICRWUA unless such costs are reimbursed by the Talking Rock Parties.

12. Notifications. ICRWUA shall provide the Talking Rock Parties notice of the filing of any request with the ACC that could impact the Special Commodity Rate at least ninety (90) days before such filing is made. The Talking Rock Parties shall provide ICRWUA notice at least ninety (90) days before ceasing to take water from ICRWUA during the Moratorium Period.

13. ACC Approval; Effect of Issuance of ACC Approval; Effective Date; Term.

a. Cooperation of the Parties; ACC Approval. The Parties agree to cooperate fully and in good-faith to take all steps necessary and reasonable to seek ACC approval of the Special Commodity Rate defined in Section 7(a) of this Agreement. The Parties further agree to seek approval of this Agreement, however, the Parties agree that unless the ACC specifically approves this Agreement without material change, each of the Parties shall submit either a Statement of Acceptance or a Statement of Non-Acceptance within ten (10) business days of the ACC decision in the Docket becoming final and non-appealable. If any of the Parties submits a Statement of Non-Acceptance, such statement shall specify the reason for non-acceptance of the ACC order approving the Agreement and, thereafter, the Parties shall meet within ten (10)

business days to discuss whether the reason for non-acceptance can be cured. If the Statement of Non-Acceptance is not withdrawn as a result of such meeting and a Statement of Acceptance issued, the Parties hereby agree that the Agreement shall not become effective, shall have no force and effect, and that the Parties' existing agreements shall remain in full force and effect.

b. Effective Date. The Agreement has been executed as the date first included above. However, the Parties agree that the Agreement shall not be effective until the effective date ("Effective Date"), which shall be defined for purposes of this Agreement as the date upon which all Parties have submitted a Statement of Acceptance indicating that the final and non-appealable ACC decision approving the Agreement is acceptable.

c. Term. The term ("Term") of this Agreement shall be as long as necessary to perform each of the terms and conditions set forth herein, but in no event shall the Term extend beyond the date which is thirty-five (35) years from the Effective Date.

14. Non-Discrimination Provision. ICRWUA agrees to treat the Talking Rock Parties and all customers in Talking Rock in a non-discriminatory manner.

15. Authority, Representations and Warranties.

a. ICRWUA represents and warrants that:

i. It is a non-profit association and public service corporation, duly organized and existing under the laws of the State of Arizona, and has, and as of the Effective Date will have, full legal right, power and authority to: (i) enter into this Agreement; and (ii) carry out and consummate the transactions contemplated by this Agreement.

ii. The Board of Directors of ICRWUA: (i) has duly authorized and approved the execution and delivery of, and the performance of its obligations under this Agreement; and (ii) has duly authorized and approved the consummation of all other transactions contemplated by this Agreement.

iii. The consummation of the transactions contemplated in this Agreement will not conflict with or constitute a breach of or default under any provision of applicable law or administrative regulation of the State of Arizona or the United States of America or any department, division, agency or instrumentality thereof or any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which ICRWUA is a party or may be otherwise subject, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement or any of the transactions contemplated by this Agreement.

iv. There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the knowledge of ICRWUA, threatened: (i) in any way affecting ICRWUA's powers or the existence of ICRWUA; (ii) in any way contesting or affecting the validity or enforceability of this Agreement or any agreements entered into in connection therewith; or (iii) that may adversely affect ICRWUA or the purposes of this Agreement.

b. The Talking Rock Parties represent and warrant that:

i. Each are duly organized and existing under the laws of the State of Arizona, and have, and as of the Effective Date will have, full legal right, power and authority to: (i) enter into this Agreement; and (ii) carry out and consummate the transactions contemplated by this Agreement.

ii. Each is: (i) duly authorized and approved the execution and delivery of, and the performance of its obligations under this Agreement; and (ii) duly authorized and approved the consummation of all other transactions contemplated by this Agreement.

iii. The consummation of the transactions contemplated in this Agreement will not conflict with or constitute a breach of or default under any provision of applicable law or administrative regulation of the State of Arizona or the United States of America or any department, division, agency or instrumentality thereof or any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which one or more of the Talking Rock Parties is a party or may be otherwise subject, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement or any of the transactions contemplated by this Agreement.

iv. There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the knowledge of the Talking Rock Parties, threatened: (i) in any way affecting the Talking Rock Parties' powers or existence; (ii) in any way contesting or affecting the validity or enforceability of this Agreement or any agreements entered into in connection therewith; or (iii) that may adversely affect one or more of the Talking Rock Parties or the purposes of this Agreement.

c. Accuracy of Representations and Warranties. The Parties acknowledge that each and every representation, warranty, term and condition in this Agreement shall be true and accurate as of the date of execution of this Agreement, and as of the Effective Date as defined in Section 13(b) above, and shall constitute a material part of the consideration hereunder, and shall survive the execution of this Agreement.

16. Miscellaneous Provisions.

a. No Right to Challenge Withdrawal of Groundwater. The Talking Rock Parties hereby waive on behalf of themselves and their respective successors and assigns any right to challenge ICRWUA's withdrawal of water from the Talking Rock Wells. It is the Parties' mutual understanding and good faith belief that ICRWUA has the legal right and authority to withdraw groundwater from the Talking Rock Wells, and once groundwater is withdrawn from such wells, ICRWUA is the owner of such groundwater.

b. Estoppel Certificate. After the Effective Date as defined in Section 13(b) above, a Party shall at any time and from time to time upon not less than ten (10) days' prior written notice from the other Party execute, acknowledge and deliver to the requesting Party a statement in writing: (i) certifying that this Agreement is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect), and the date to which amounts due hereunder are paid in advance, if any; (ii) acknowledging that there are not, to the knowledge of the certifying Party, any uncured defaults on the part of the other Party hereunder, or specifying such defaults, if there

are any claimed; and (iii) confirming such other matters as the requesting Party may reasonably request. Any such statement may be relied upon by the requesting Party, and any prospective purchaser or encumbrancer of the requesting Party's property. Upon a failure to sign the statement or notify the requesting Party in writing of any inaccuracies in the statement within the time period stated above, the statement submitted by a requesting Party shall be deemed approved.

c. Force Majeure. No Party to this Agreement shall be liable to the others for failure, default or delay in performing any of its obligations hereunder, other than for the payment of money obligations specified herein, in case such failure, default or delay is caused by strikes or other labor problems; forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, passage of laws, orders of the court; adoption of rules or ordinances; acts, failures to act, decisions or orders or regulations of any governmental or military body or agency, office or commission; delays in receipt of materials; or any other cause, whether of similar nature, not within the control of the Party affected and which, by the exercise of due diligence, such Party is unable to prevent or mitigate the outcome ("Force Majeure Matters"); provided, however, that the Party's failure, default or delay in performance shall be excused only for so long as such cause or event is present. Should any Force Majeure Matter occur, the Parties hereto agree to proceed with diligence to do whatever is reasonable and necessary with respect to the Force Majeure Matter so that each Party may perform its obligations under this Agreement.

d. Indemnity. After the Effective Date, ICRWUA shall indemnify, save and hold harmless the Talking Rock Parties and their members, officers, directors, partners, principals, employees and agents for, from and against any and all loss or damage arising from or relating to the storage, treatment, delivery or service of water withdrawn from the Talking Rock Wells by ICRWUA for the purpose of serving ICRWUA's customers in Talking Rock, including any liability resulting from the quality of the water of the Talking Rock Wells, or any violation of laws, rules or regulations relating to human health or the safety or protection of the environment.

e. Assignment.

i. Right of Assignment as Part of Sale. Any of the Talking Rock Parties may assign this Agreement, or any rights and obligations hereunder, to another entity as part of a sale of the Golf Course, or of the Talking Rock development, in whole or in part, or as part of the sale or merger of any of the entities making up the Talking Rock Parties, but only after notice to ICRWUA of the assignment. The notice required in this Section of the Agreement shall include (i) the assigning Party's written agreement to assign this Agreement, in whole or in part; and (ii) the assignee party's written agreement to be bound by the terms and conditions of this Agreement, including all financial obligations. An assignment under this Section of the Agreement shall be effective ten (10) business days after receipt by ICRWUA.

ii. Right of Assignment by Harvard Simon. The Parties hereby agree that all prospective rights and obligations imposed on Harvard Simon by virtue of this Agreement are hereby assigned by Harvard Simon to TRL and/or TRGC consistent with the material rights and obligations imposed on the Parties under this Agreement, and ICRWUA hereby agrees that, as of the Effective Date, Harvard Simon is released from any and all prospective obligations hereunder.

iii. Right/Duty of Assignment by ICRWUA as Part of Condemnation, Sale of Assets or Other Reorganization Impacting its Non-Profit or Other Corporate Status. ICRWUA shall ensure that all of its obligations under this Agreement are assigned to and accepted by any person or entity, including a restructured association or corporation, acquiring the Talking Rock water system by condemnation, purchase, merger, assignment or other lawful means of acquisition. The notice required in this Section of the Agreement shall include (i) ICRWUA's written agreement to assign this Agreement, in whole or in part; and (ii) the assignee party's written agreement to be bound by the terms and conditions of this Agreement, including all obligations for delivery of water to the Talking Rock Parties for Landscape Irrigation, Lake Fill, Construction Purposes and other non-potable purposes. An assignment under this Section of the Agreement shall be effective ten (10) business days after receipt of notice by the Talking Rock Parties.

iv. Other Assignments. Any other assignments shall require the other Party's or Parties' prior written consent to the assignment, such consent not to be unreasonably withheld.

v. Outstanding Amounts Due. On or before the date of assignment under this Agreement, the Talking Rock Parties agree to pay all unpaid charges due under this Agreement.

f. Manner of Giving Notice. Any notice required or permitted to be given hereunder shall be in writing and directed to the address set forth below for the Party to whom the notice is given and shall be deemed delivered: (i) by personal delivery, on the date of delivery; (ii) by first class United States mail, three (3) business days after being mailed; or (iii) by Federal Express Corporation (or other reputable overnight delivery service), one (1) business day after being deposited into the custody of such service. The address of ICRWUA for all notices under this Agreement shall be:

ICR Water Users Association, Inc.
Attn: Robert M. Busch
P.O. Box 5669
Chino Valley, Arizona 86323

With a copy also provided to:

Jeffrey W. Crockett, Esq.
SNELL & WILMER
One Arizona Center
400 East Van Buren
Phoenix, Arizona 85004-2202

The address of the Talking Rock Parties for all notices under this Agreement shall be:

Harvard Investments
Attn: Craig Krumwiede
17700 North Pacesetter Way
Scottsdale, AZ 85255

With a copy also provided to:

Jay L. Shapiro, Esq.
Fennemore Craig
3003 N. Central Ste. 2600
Phoenix, Arizona 85012-2913

Any Party may designate another person or address for notices under this Agreement by giving the other Party notice at least thirty (30) days prior to the effective date of the new designation.

g. Attorneys Fees and Costs. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party or Parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such Party or Parties may be entitled.

h. Binding Effect. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns.

i. Default. If any Party breaches or defaults under this Agreement, and such breach or default continues for a period of two (2) days with respect to any breach or default by ICRWUA under Section 4, or for a period of ten (10) days with respect to any breach or default in the payment of money, or for a period of thirty (30) days with respect to any other breach or default, in each case after receipt by the defaulting Party of a written notice describing the default, the non-defaulting Party may immediately pursue any and all remedies available for such breach or default at law or in equity, including bringing an action for injunctive relief or for specific performance. Notwithstanding the foregoing, the Parties agree at all times during the Term of this Agreement to use good faith efforts to resolve, through negotiation, disputes arising under this Agreement.

j. Time of the Essence. Time is of the essence of every provision hereof.

k. Governing Law. This Agreement shall be governed by the laws of the State of Arizona.

l. No Waiver. No change in, addition to, or waiver of any provisions of this Agreement shall be binding upon any Party unless in writing and signed by all Parties.

m. Counterparts. This Agreement may be executed in two or more original or facsimile counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

n. Enforceability; Invalidity of Provision or Provisions. In case any provision of this Agreement 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 Agreement. In either case the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

o. Joint Drafting and Negotiation. The Parties have participated jointly in the negotiation and drafting of this Agreement, and each have been represented by legal counsel. If a question of interpretation arises, this Agreement 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 Agreement.

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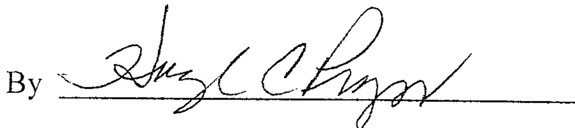
IN WITNESS WHEREOF, the Parties hereto have caused this Water Service Agreement to be executed as of the day and year first above written.

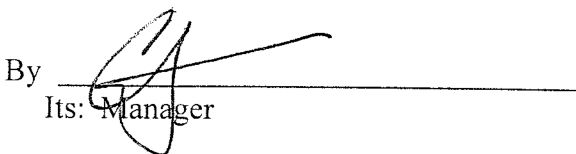
ICR WATER USERS ASSOCIATION, INC.



By ______________________

Its: President______________________

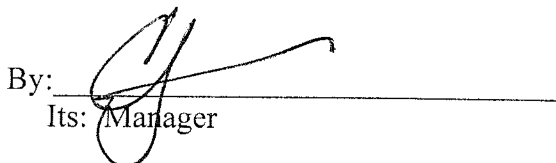
HARVARD SIMON I, L.L.C.



By ______________________

Its: Manager

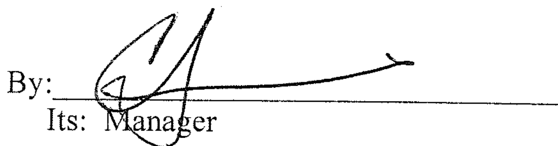
TALKING ROCK LAND, LLC



By:______________________

Its: Manager

TALKING ROCK GOLF CLUB, LLC



By:______________________

Its: Manager

ATTACHMENT 1

PROCEDURE FOR MEASURING AIR PRODUCTION

Measurement of Allowable Air Production in Talking Rock Well 1 and Well 2

The measurement of the amount of air produced by Talking Rock Well 1 and Well 2 is based on a method developed by Southwest Ground Water for the test conducted in October 2007. The test was designed to establish the approximate volume of air in a given volume of water measured at atmospheric pressure. This percentage is obtained by:

1. Collecting a sample of water from the well in question in a small balloon. The volume collected in the balloon needs to be standardized for repeatability (try for 400 ml +/- 50 ml).

2. This sample is then inserted into a graduated beaker, the beaker is filled with water to a given volume (1,000 ml) and the balloon is removed. The water level in the beaker is measured and subtracted from the given volume thus obtaining the total volume of the balloon.

3. The balloon is then inserted into an Imholff Cone completely filled with water, inverted and standing in a tank of water nine (9) inches deep.

4. The balloon is ruptured inside the Imholff Cone and the volume of air released into the Cone is recorded.

5. This air volume is divided by the volume of the balloon obtained in step two above and multiplied by 100 to obtain the percentage of air per unit volume of water produced by the well.

Although only providing an approximate value for the volume of air in a given volume of water measured at atmospheric pressure, the technique does provide results that are consistently comparable and relate directly to the values obtained during the October 2007 well field test. The latter values have been used to set the allowable standard for the approximate volume of air in a given volume of water measured at atmospheric pressure.

ATTACHMENT 2

WELL FIELD PROPERTY LEGAL DESCRIPTION

LEGAL DESCRIPTION

That certain portion of Lot 2 of Valley View Estates as recorded in the "Amended Record of Survey for Valley View Estates" in Book 49 of Land Surveys, Page 66, Yavapai County Records, Arizona located in Section 17, Township 16 North, Range 3 West, of the Gila and Salt River Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the Southwest Corner of said lot:

Thence North 02° 27' 51" East along the westerly line of said lot a distance of 303.11 feet to the POINT OF BEGINNING:

Thence continuing North 02° 27' 51" East a distance of 269.75 feet;

Thence South 79° 51' 35" East leaving said westerly line a distance of 389.85 feet;

Thence South 04° 03' 10" West a distance of 619.62 feet to a point on the Northerly Right-of-Way line of the Williamson Valley Road as recorded in Book 11, Page 47, Yavapai County Records;

Thence North 62° 07' 46" West along said Right-of-Way a distance of 12.98 feet to terminus of said Right-of-Way, the beginning of a 25' easement for public utilities, public roadway, and drainage purposes, and the beginning of a nontangent curve concave to the southwest and having a radius of 1471.23 feet, the radius point of which bears South 28° 09' 35" West;

Thence northwesterly along said curve thru a central angle of 09° 31' 15" an arc length of 244.47 feet to a point on an existing well easement as recorded in the said "Amended Record of Survey for Valley View Estates";

Thence North 20° 15' 50" West along said well easement a distance of 334.90 feet to the POINT OF BEGINNING.

Containing 4.59 acres more or less.

That certain portion of Parcel 2 of Valley View Estates as recorded in the "Amended Record of Survey for Valley View Estates" in Book 49 of Land Surveys, page 66, Yavapai County Records, Arizona, located in Section 17, Township 16 North, Range 3 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

Commencing at the Southwestern most corner of said parcel;

Thence North 02 degrees 27 minutes 51 seconds East along the Westerly line of said Parcel a distance of 25.48 feet to the POINT OF BEGINNING;

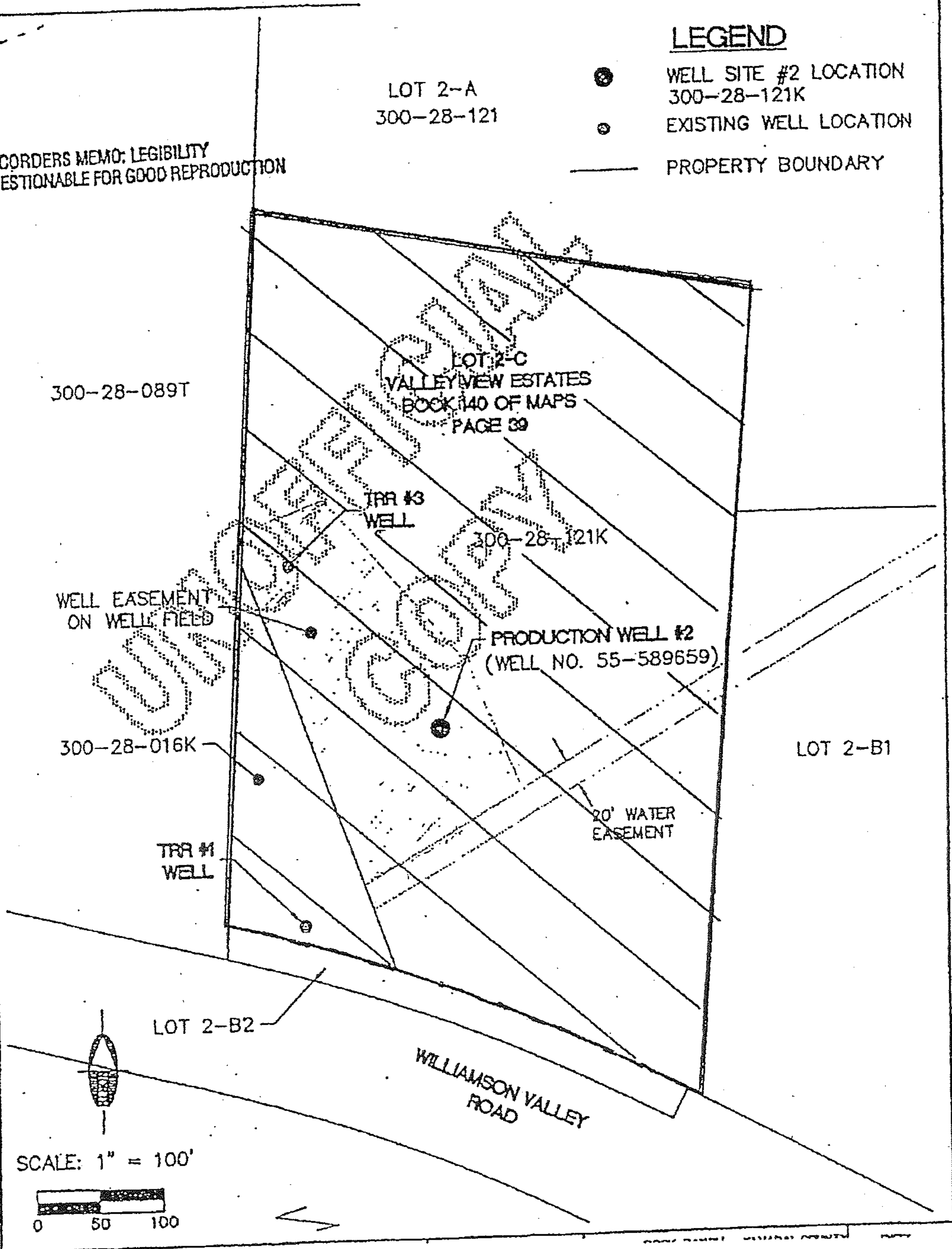
Thence continuing North 02 degrees 27 minutes 51 seconds East, a distance of 303.10 feet;

Thence South 20 degrees 15 minutes 50 seconds East leaving said Westerly line a distance of 334.90 feet to a point on the curved Northerly right of way line of a 25 feet wide easement for ingress, egress, utility, roadway and drainage, said curved right of way line being concave to the Southwest and having a radius of 1471.23 feet, the radius point of which bears South 73 degrees 55 minutes 50 West;

Thence Northwesterly along said last mentioned curve thru central angle of 05 degrees 08 minutes 20 seconds an arc length of 131.95 feet;

Thence continuing along the Northerly right of way line of said 25 foot wide easement South 76 degrees 30 minutes 00 second East, a distance of 1.21 feet to the POINT OF BEGINNING.

Containing approximately 0.45 acres more or less.


LEGEND
WELL SITE #2 LOCATION
300-28-121K
EXISTING WELL LOCATION
PROPERTY BOUNDARY
LOT 2-A
300-28-121
RECORDERS MEMO: LEGIBILITY
QUESTIONABLE FOR GOOD REPRODUCTION
LOT 2-C
VALLEY VIEW ESTATES
BOOK 140 OF MAPS
PAGE 39
300-28-089T
TRR #3
WELL
300-28-121K
WELL EASEMENT
ON WELL FIELD
PRODUCTION WELL #2
(WELL NO. 55-589659)
300-28-016K
LOT 2-B1
20' WATER
EASEMENT
TRR #1
WELL
LOT 2-B2
WILLIAMSON VALLEY
ROAD
SCALE: 1" = 100'
0 50 100
UNOFFICIAL COPY

LEGAL DESCRIPTION

A parcel of land lying within Parcel 2, Amended Record of Survey of Valley View Estates as recorded in Book 49 of Land Surveys, Page 66 in the Yavapai County Recorder's Office (R1), lying in Section 17, Township 16 North, Range 3 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona;

BEGINNING at the Southeast corner of Section 17, from which the East Quarter corner of Section 17 bears North 04°56'24" East, a distance of 2644.68 feet (Record per a Results of Survey as recorded in Book 53 of Land Surveys, Page 24 in the Yavapai County Recorders Office (R2) and Basis of Bearings for this description);

Thence North 46°18'18" West, a distance of 5869.55 feet (R2) to the Southwest corner of said Parcel 2 and the Southwest corner of a Well Easement as recorded in Book 3697 of Official Records, Page 369, Yavapai County Recorder's Office (R3), said point being on the Northerly Right of Way line of Williamson Valley Road;

Thence North 02°31'38" East, along the Westerly line of said Parcel 2, a distance of 25.48 feet (North 02°27'51" East, a distance of 25.48 feet R3);

Thence South 76°26'12" East, along the Northerly line of a 25.00 feet wide Easement for Public Utilities, Public Roadway and Drainage Purposes per R1, a distance of 1.21 feet (South 76°30'00" East, a distance of 1.21 feet R3), to a point of curvature, the central point of which bears South 13°33'48" West;

Thence along a curve concave Southwest, having a radius of 1471.23 feet, through a central angle of 05°08'20", a distance of 131.95 feet (R3);

Thence leaving said Northerly Easement line, North 20°12'03" West, (North 20°15'50" West R3), along the Easterly line of R3, a distance of 69.75 feet to the TRUE POINT OF BEGINNING;

Thence continuing along the Easterly line of R3, North 20°12'03" West (North 20°15'50" West R3), a distance of 265.15 feet to a point on the West line of said Parcel 2 (per R1);

Thence leaving the Easterly line of R3, North 02°31'38" East (North 02°27'51" East R1), along the West line of Parcel 2, a distance of 24.22 feet;

Thence leaving the West line of Parcel 2, North 69°47'57" East, a distance of 65.64 feet;

Thence South 40°37'38" East, a distance of 170.16 feet;

Thence South 22°57'00" East, a distance of 104.63 feet;

Thence South 60°13'27" West, a distance of 141.37 feet to the TRUE POINT OF BEGINNING.

Containing 0.75 Acres, more or less.

That certain portion of Parcel 2 of Valley View Estates as recorded in the "Amended Record of Survey for Valley View Estates" in Book 49 of Land Surveys, page 66, Yavapai County Records, Arizona, located in Section 17, Township 16 North, Range 3 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

Commencing at the Southwestern most corner of said parcel;

Thence North 02 degrees 27 minutes 51 seconds East along the Westerly line of said Parcel a distance of 25.48 feet to the POINT OF BEGINNING;

Thence continuing North 02 degrees 27 minutes 51 seconds East, a distance of 303.10 feet;

Thence South 20 degrees 15 minutes 50 seconds East leaving said Westerly line a distance of 334.90 feet to a point on the curved Northerly right of way line of a 25 feet wide easement for ingress, egress, utility, roadway and drainage, said curved right of way line being concave to the Southwest and having a radius of 1471.23 feet, the radius point of which bears South 73 degrees 55 minutes 50 West;

Thence Northwesterly along said last mentioned curve thru central angle of 05 degrees 08 minutes 20 seconds an arc length of 131.95 feet;

Thence continuing along the Northerly right of way line of said 25 foot wide easement South 76 degrees 30 minutes 00 second East, a distance of 1.21 feet to the POINT OF BEGINNING.

Containing approximately 0.45 acres more or less.

LEGEND

WELL SITE #2 LOCATION 300-28-121K

EXISTING WELL LOCATION

PROPERTY BOUNDARY

LOT 2-A
300-28-121

RECORDERS MEMO: LEGIBILITY QUESTIONABLE FOR GOOD REPRODUCTION

UNOFFICIAL COPY

LOT 2-C
VALLEY VIEW ESTATES
BOOK 140 OF MAPS
PAGE 39

300-28-089T

TRR #3
WELL

300-28-121K

WELL EASEMENT
ON WELL FIELD

PRODUCTION WELL #2
(WELL NO. 55-589659)

300-28-016K

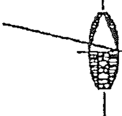
LOT 2-B1

20' WATER
EASEMENT

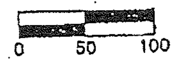
TRR #1
WELL

LOT 2-B2

WILLIAMSON VALLEY
ROAD



SCALE: 1" = 100'



King Rock Ranch\DWG\DWG\04046 DWG\WELL SITE #2 LOCATION 5-7-08\04046-004 Well site 2 exhibit WITH EASEMENT 5-8-08.dwg PLOTTED: ... 2008-10:44am

ATTACHMENT 3

MXA PROVISIONS

ATTACHMENT 3
MXA PROVISIONS

MXA: Sections 1, 2, 3, 4, 5, 6, 7, 8 (as amended by Section 1(d) of the First Amendment to MXA), 9, 11, 12(a), 14 and 15.

1. Construction of Water Utility Facilities by Developer.

(a) Construction of Facilities. At its sole expense, Developer shall construct and install, or shall cause to be constructed and installed water utility facilities consisting of water distribution mains and pipelines, valves, hydrants, fittings, service lines and all other related items of utility plant, both on-site and off-site, to be used to extend water service to each lot, building or other customer within the Property (the "Facilities") as more particularly described in Exhibit "C" attached hereto and incorporated herein by this reference. Exhibit "C" also contains an estimated cost of construction for the Facilities. Utility hereby acknowledges and agrees that the Property may be developed in separate phases and that Developer may construct and install the Facilities in phases in a manner that will allow for the provision of water utility services to each phase as necessary and in a timely manner. The size, design, type and quality of materials used to construct the Facilities, as well as the location of the Facilities upon and under the ground, shall be approved by Utility, which approval shall be promptly provided and which shall not be unreasonably withheld.

(b) Utility's Use of the Facilities. Utility covenants and agrees that it shall use its best efforts to ensure that the Facilities are not used to serve customers outside the Property in a manner that adversely impacts the provision of water utility service to the Property. Utility further represents to Developer that, in Utility's judgment, the cost of constructing the Facilities is disproportionate to anticipated revenues to be derived from future customers within the Property.

2. Engineering Plans. Developer has retained Shephard-Wesnitzer, Inc. to prepare engineering plans and specifications for the Facilities to be constructed hereunder. Developer may retain additional engineers or other consultants as determined in Developer's sole discretion to be necessary in connection with the design and installation of the Facilities. All plans and specifications shall be submitted to Utility and its engineers for review and approval, together with a copy of the subdivision plat for the Property and drawings depicting the infrastructure improvements for the subdivision.

3. Design and Construction Standards; Regulatory Approvals. All Facilities designed and constructed by Developer hereunder shall be in strict conformance with the plans and specifications therefor, and the applicable regulations of the Yavapai County Environmental Services Department ("Environmental Services"), Arizona Department of Environmental Quality ("ADEQ"), the Commission and/or any other governmental agency exercising jurisdiction over the design and construction of potable water systems. Prior to construction of any Facilities, Developer shall obtain approval to construct from either Environmental Services or ADEQ. Upon completion of the Facilities, Developer shall obtain approval of construction from either Environmental Services or ADEQ. Developer shall also be responsible for obtaining any additional permits, licenses and/or approvals required for the construction of the Facilities. Utility shall cooperate with and assist Developer promptly, as may be reasonably required, in obtaining such certificates and approvals. All contractors and subcontractors employed by Developer in connection with the construction of the Facilities shall be licensed by the Arizona Registrar of Contractors and shall be qualified in the construction of public water systems.

4. Right of Inspection; Corrective Action. Utility shall have the right to have its engineers, the selection of which shall be subject to Developer's approval, inspect and test the Facilities at reasonable times during the course of construction as necessary to ensure conformance with plans and specifications. If at any time before the final acceptance by Utility of the Facilities any construction, materials or workmanship are found to be defective or deficient in any way, or the Facilities fail to conform to this Agreement, then Utility may reject such defective or deficient construction, materials and/or workmanship

and require Developer to fully pay for all necessary corrective construction efforts ("Corrective Action"). Utility reserves the right to withhold approval and to forbid connection of any defective portion of the Facilities to Utility's system unless and until the Facilities have been constructed in accordance with plans and specifications and all applicable regulatory requirements. Further, Developer shall promptly undertake any Corrective Action required to remedy such defects and deficiencies in construction, materials and workmanship upon receipt of notice by Utility. The foregoing notwithstanding, Utility shall not unreasonably withhold or delay acceptance of the Facilities.

5. Transfer of Ownership; As-Built Plans; Warranty.

(a) Transfer of Ownership. Upon proper completion, testing and final inspection of the Facilities by Utility, Utility shall issue a written notice of acceptance to Developer. Immediately thereafter, Developer shall convey to Utility, via a bill of sale in a form satisfactory to Utility, the Facilities together with any permanent easements and/or rights-of-way required pursuant to paragraph 7 below. All Facilities so transferred shall thereafter become and remain the sole property and responsibility of Utility. Developer covenants and agrees that, at the time of transfer, the Facilities shall be free and clear of all liens and encumbrances, and Developer shall provide evidence in the form of lien waivers or other appropriate documents that all claims of contractors, subcontractors, mechanics and materialmen have been paid and are fully satisfied.

(b) As-Built Plans. At the time of transfer, Developer shall provide to Utility three (3) sets of "as-built" drawings and specifications for the Facilities, certified and sealed by Developer's engineers to be true and correct.

(c) Warranty. Developer warrants that, upon their completion, the Facilities will be free from all defects and deficiencies in construction, materials and workmanship for a period of time commensurate with the warranty period provided to Developer by contractors retained by Developer to construct the Facilities, but in no event, for a period of less than one (1) year from the date of Utility's acceptance. During the warranty period, Developer agrees to promptly undertake any Corrective Action required to remedy such defects and deficiencies upon notice by Utility. Upon Utility's acceptance of the Facilities, as provided in this paragraph, Utility shall be deemed to have accepted the Facilities in "as is" and "as-constructed" condition, subject only to the warranty period concerning defects and deficiencies in construction, materials and workmanship provided for herein.

6. Reimbursement for Inspection Costs, Overhead and Other Expenses of Utility. Developer shall reimburse Utility for Utility's reasonable fees, costs and expenses incurred in connection with its review of the engineering plans and specifications for the Facilities, the preparation of this Agreement and other necessary legal services, inspection and testing of the Facilities during their construction, and other fees, costs and expenses reasonably and necessarily incurred by Utility with respect to this project during the course of construction and in connection with obtaining approval of the Commission to extend Utility's CC&N to include the Extension Area (collectively, "Administrative Costs"). Utility covenants to use reasonable efforts to incur Administrative Costs only as necessary and prudent. On a monthly basis, Utility shall provide Developer with a written statement describing with specificity all Administrative Costs incurred by Utility during the preceding month, together with complete copies of all bills, statements and invoices supporting such Administrative Costs. Developer shall make payment on or before the fifteenth (15th) day of the calendar month following the month in which Utility's statement is received. Utility hereby acknowledges its receipt of $5,000.00 as a deposit, which deposit shall be applied as a credit against Administrative Costs incurred by Utility hereunder.

7. Public Streets and Rights-of-Way; Easements; Spacing of Lines. At the time of transfer of ownership of any Facilities, as provided in paragraph 5 above, Developer shall provide Utility with evidence satisfactory to Utility that all distribution mains and service lines within the Property are located within dedicated streets and/or public rights-of-way. In the event that any distribution mains or service lines are not located within dedicated streets and/or public rights-of-way, then at the time of transfer of ownership of such Facilities, Developer shall grant to Utility, or shall cause to be granted to Utility,

easements and/or rights-of-way, free from all liens and security interests thereon, and in a form that is satisfactory to Utility, over, under, and across all pipeline routes and all portions of the Property necessary to operate, maintain and repair such Facilities. Unless otherwise mutually agreed upon in writing, such easements and/or rights-of-way within the Property shall be free of physical encroachments, encumbrances or obstacles, and shall have a minimum width of ten (10) feet. The distribution mains and service lines constructed and installed by Developer within the Property shall be separated by a reasonable distance from other utility lines and facilities to prevent damage or conflicts in the event of repairs or maintenance.

8. Determination of Amount of Developer Advances. The actual cost of constructing and installing the Facilities described in paragraph 1 above and all amounts paid by Developer pursuant to paragraph 6 above shall constitute an advance in aid of construction and shall be refundable to Developer in accordance with paragraph 9, below. Developer shall provide Utility with a written statement setting forth in detail Developer's actual costs of construction within ten (10) business days following receipt of Utility's notice of acceptance of the Facilities, together with copies of all invoices, bills, statements and other documentation evidencing the cost of construction. The costs of any Corrective Action, as defined in paragraph 4 above, the costs of curing any defects arising during the warranty period, as provided herein, and the costs of any unreasonable overtime incurred in the construction of the Facilities shall not be included in the actual cost of constructing and installing the Facilities, and shall not be subject to refund by Utility hereunder.

9. Refunds of Advances to Developer. Following the District's acquisition of the Facilities pursuant to paragraph 5(a) hereinabove, Utility shall refund annually to Developer an amount equal to fifteen percent (15%) of the gross annual operating revenues from water sales to bona fide customers of Utility within the Property. Such refunds shall be paid by Utility on or before August 31 of each calendar year for the preceding July 1 to June 30 period, commencing in the fifth calendar year immediately following the initiation of water utility service to the first customer within the Property by Company, continuing thereafter in each succeeding calendar year for a total of twenty (25) years. No interest shall accrue or be payable on the amounts to be refunded for the Facilities hereunder, and any unpaid balance remaining at the end of such twenty-five year period shall become a non-refundable contribution in aid of construction to Utility and be recorded as such in the Utility's books and records of account. In no event shall the total amount of the refunds paid by Utility pursuant to this Agreement exceed the total amount of all refundable advances paid by Developer in connection with the construction of the Facilities.

11. Risk of Loss: Indemnification. Until Utility has issued its written notice of acceptance of the Facilities constructed hereunder, all risk of loss with respect to the Facilities shall remain with Developer. Developer shall indemnify and hold Utility and its officers, directors, employees and agents harmless for, from and against all claims or other liability, whether actually asserted or threatened, arising out of or related to Developer's construction of the Facilities hereunder. Developer's obligations under this paragraph shall not extend to any claims or liability arising out of Utility's ownership and operation of the Facilities following their acceptance.

12. Utility's Obligation to Serve.

(a) Developer's Failure to Perform. Utility shall have no obligation to accept and operate the Facilities to be constructed hereunder in the event Developer fails to make any payment provided in this Agreement, fails to complete the construction and installation of the Facilities in accordance with their plans and specifications or otherwise fails to comply with any of the terms and conditions of this Agreement in any material respect.

14. Right of Assignment. Developer may assign this Agreement, or any of its rights and obligations hereunder, to another party provided that written notice of such assignment is given to Utility prior to the effective date of assignment and that the assignee agrees in writing to fully perform Developer's obligations hereunder and to be bound by this Agreement.

15. Condemnation or Sale of Utility. In the event of the condemnation or sale of the Facilities, Utility shall promptly pay to Developer any unrefunded portion of Developer's advances in aid of construction.

Payment by Utility shall be made on or before thirty (30) days from the date on which Utility receives payment.

First Amendment to MXA: Section 1(d).

1. Amendment to Agreement.

(d) Determination of Amount of Developer Advances. Paragraph 8 of the Agreement is amended to provide that the actual costs of Production Well 3 and Production Well 2, including all equipment, pumps, motors, valves, pipes, electrical system and other appurtenances installed and constructed by Developer and transferred and conveyed by Developer or by Talking Rock Golf to Company, shall constitute an advance in aid of construction and shall be refundable to Developer in accordance with paragraph 9 of the Agreement.