

When recorded mail to:  
ICR Water Users Association  
P.O. Box 4413  
Prescott, AZ 86302

## WATER FACILITIES

### LINE EXTENSION AGREEMENT

This Agreement, made this 12 day of MARCH, 2001 by and between ICR Water Users Association, an Arizona Corporation, whose address is Post Office Box 4413, Prescott, AZ 86302 (hereinafter referred to as "ICR") and Whispering Canyons whose address is 118 S. Pleasant, Suite 102, Prescott, AZ 86302 (hereinafter referred to as "Developer").

RECITALS: ICR Water Users Association is providing public utility water service in the vicinity of Prescott, Yavapai County, Arizona; and,

Developer proposes to construct a residential community (hereinafter referred to as the "Developer") within the area generally described as Whispering Canyons subdivision.

To meet the public utility water service needs of the Development, certain off-site facilities and/or on-site facilities described in Exhibit "A," attached hereto and made a part hereof, must be constructed; and,

ICR is willing to have Developer design and construct said on-site facilities, subject to ICR's written approval of such design and construction,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereby agree as follows:

1. Developer shall, upon signing this Agreement, design, construct and install, or cause to be designed, constructed or installed, all on-site and off-site facilities necessary to provide adequate water service to the Development. Said facilities are more fully described in Exhibit A. Developer shall pay all of the costs of constructing, installing and connecting on-site facilities, including but not limited to the costs of engineering, materials, labor, transportation equipment, necessary permits and approvals, testing, corrections, insurance and bonds. Developer's cost for the construction and installation of the on-site facilities shall be subject to the provisions of paragraph 11 of this Agreement. In addition, Developer shall pay all costs of CC&N expansion with Arizona Corporation Commission and Arizona Department of Water Resources.

2. The off-site and on-site facilities for the Development will be designed and constructed with sufficient capacity to accommodate the water service requirements of the Development.

3. Developer agrees that the completion of the on-site facilities will be timed so as to enable ICR to provide water service to the Development as such service is requested. Developer desires ICR to provide water utility service to each phase of the Development and in connection therewith, Developer is willing to construct and install certain water distribution facilities and transfer ownership of such facilities to ICR as each phase of the Development is undertaken. ICR is willing to operate and maintain these facilities upon their proper construction for the benefit of landowners and to provide water utility service within each phase of the Development in accordance with ICR's duties and obligations as a public service corporation. The construction and installation of each phase of the facilities, and every portion thereof, shall be in strict conformance with the approved plans, the applicable regulations of the Yavapai County Health Department, the Arizona Corporation Commission and the standards specified by ICR. The size, design, type and quality of materials, location in the ground and the manner of installation of each phase of the facilities shall be specified and approved by ICR, in writing, prior to the commencement of construction. Developer shall require that its contractor be bound by and strictly conform to the approved plans and specifications for the facilities. No changes, amendments or modifications of the plans or specifications contained therein

shall be made or authorized by Developer unless Developer first submits such change, amendment or modifications in writing to ICR and receives ICR's written approval therefore and, if required, the approval of the Yavapai County Health Department and any other governmental authority having jurisdiction thereover.

4. Developer shall obtain all requisite permits, zoning and other approvals in advance of construction of the on-site facilities. All plans, specifications, construction and installation of the on-site facilities shall be in accordance with good utility practices, and the rules, regulations and requirements of all other governmental agencies having jurisdiction thereover. Additionally, all of said plans and specifications shall have the written approval of ICR before construction is commenced. Approval by ICR will not be unreasonably withheld or delayed.

5. Developer shall comply with the inspection and testing requirements of ICR for the on-site facilities; said requirements shall be reasonable and shall not cause Developer unwarranted delays in the ordinary course of construction. Developer shall give <sup>to</sup> ICR adequate notice when the on-site facilities under construction are ready for inspection and testing, and ICR shall inspect promptly after being so notified. ICR specifically reserves the right to withhold acceptance of the on-site facilities unless said facilities have been constructed in accordance with the approved plans and specifications and are satisfactory to ICR upon inspecting and testing. Subsequent to inspection by ICR and for one year following ICR's final acceptance of on-site facilities, Developer agrees that at ICR's option and request it will promptly either correct all defects and deficiencies in construction, materials and workmanship at its expense or reimburse ICR for ICR's costs of correcting all defects and deficiencies in construction, materials and workmanship. Inspection or acceptance by ICR shall in no way relieve or limit Developer's responsibility and liability for construction and installation of the on-site facilities in accordance with the terms of this Agreement.

6. The off-site and the on-site facilities constructed pursuant to this Agreement shall become, and remain, the sole property of ICR without the requirement of any written document or transfer to ICR. However, Developer shall furnish any document pertaining to ownership and title as may be requested by ICR including documents which evidence or confirm transfer of possession to ICR, and good and merchantable title free and clear of liens, or which contain provisions for satisfaction of liens by Developer. All risk or loss shall be with the Developer until acceptance by ICR of the on-site facilities, or any portion thereof. Developer shall repair or cause to be repaired promptly, and at no cost to ICR, all damage to the on-site facilities caused by construction operations, until all construction in Development by or for Developer has been completed and accepted by ICR. Developer acknowledges that ICR has the right to, and may in the future, connect its existing or future water systems to the on-site and off-site facilities.

7. Developer shall, at no cost to ICR, grant or cause to be granted to ICR perpetual non-exclusive rights of way and easements. Developer shall be responsible to apply for and obtain all necessary zoning or other governmental approvals, including certificates of approval to construct and operate, as required, in a form satisfactory to ICR's counsel, for any on-site facilities constructed pursuant to the Agreement.

8. Upon execution of this Agreement, Developer shall convey or cause to be conveyed to ICR, by warranty deed, free and clear title to the land upon which any storage tanks, booster pumps, surge tanks and the like will be located.

9. Developer shall, within 60 days of acceptance of off-site and on-site facilities by ICR, furnish ICR with: (a) copies of all bills, invoices, and other statements of expenses incurred by Developer, covering all the costs of materials, equipment, supplies, construction and installation of the on-site facilities; (b) lien waivers and releases from contractors, subcontractors and vendors for materials, equipment, supplies and construction included in the on-site facilities; (c) receipts, specifying exact amounts for payments in full by Developer to all contractors, subcontractors and vendors for all materials, equipment, supplies, labor and other costs of construction of the on-site facilities; and (d) "as-built" drawings certified as to correctness by an engineer registered

in the State of Arizona and showing the location and respective sizes for all on-site facilities.

10. Subject to the Developer's satisfactory performance of the conditions herein, ICR will provide water service to the Developer in accordance with the rates, charges and conditions set forth in the tariffs of ICR as filed with the Arizona Corporation Commission. Those rates are subject to change from time to time upon application of ICR and approval by the Commission.

11. The funds advanced for off-site facilities and the on-site facilities as evidenced by invoices furnished to ICR pursuant to paragraph 9 hereof shall be contributed to ICR by Developer as a Contribution-in-Aid-of-Construction and Developer shall have no right to refunds or any payments of any kind from ICR for any of the funds advanced or expended by Developer to construct or install the off-site or on-site facilities. DEVELOPER ACKNOWLEDGES THAT IT UNDERSTANDS THAT IT HAS A RIGHT TO A REFUNDABLE AGREEMENT BUT HAS DECIDED TO CONTRIBUTE THE FACILITIES.

12. This line extension Agreement shall operate as a security interest given by Developer to ICR. By signing this Agreement, Developer gives to ICR those rights that are sated in this Agreement and those rights that Arizona law gives to lenders who hold mortgages on real property. Developer gives ICR these rights to protect ICR from losses that might result if Developer fails to pay any amounts owed to ICR. Developer grants ICR a mortgage security interest in the real property described in the Recitals at the beginning of this Agreement. ICR agrees that it will not record this instrument unless Developer defaults on the payment obligations set forth in this Agreement.

13. ICR will endeavor to maintain satisfactory and continuous service, but does not guarantee a continuous supply of water service. ICR shall not be liable for damages occasioned by interruptions or failure to commence service or unsatisfactory service caused by act of God or the public enemy, inevitable accidents, fire, explosions, strikes, riots, war, delay in receiving shipments of required material, order of any court or judge

granted in any bona fide adverse legal proceedings or action, or any order of any commission or tribunal having jurisdiction in the premises; or, without limitation by the preceding enumeration, or any other act or thing reasonably beyond its control or incident to interruptions necessary for repairs or changes in ICR's production, storage, transmission, or distribution facilities.

14. Developer hereby assumes the entire responsibility and liability for injury or death of any person, or loss or damage to any property contributed to or caused by the active or passive negligence of Developer, its agents, servants, employees, contractors or subcontractors in the execution of the work or in connection herewith. Accordingly, Developer will obtain liability insurance in the amount of \$1,000,000 to cover all liabilities arising under this contract. Developer will indemnify and hold harmless ICR, its officers, directors, agents, and employees from and against claims or expenses, including penalties and assessments and attorneys fees to which they or any of them may be subjected by reason of such injury, death, loss, claim, penalty, assessment or damage, and in case of any suit or other proceeding shall be brought on account thereof, Developer will assume the defense at Developer's own expense and will pay all judgments rendered therein.

15. The failure of either party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall, nevertheless, be and remain in full force and effect.

16. Communications shall be sent to Developer at: Whispering Canyons, 118 S. Pleasant, Suite 102, Prescott, AZ 86303 or to such other addresses as Developer may advise ICR in writing, and to ICR at ICR Water Users Association, P.O. Box 4413, Prescott, AZ 86302 or to such other addresses as ICR may advise Developer in writing.

17. It is agreed that ICR is not an agent of Developer and shall not incur any costs or expenses on behalf of Developer and that Developer is not agent of ICR and shall not incur any costs or expenses on behalf of ICR.

18. This Agreement shall be governed by the laws of the State of Arizona and shall be subject to such approvals of regulatory agencies as may be required under the laws of said State.

19. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. However, Developer shall not assign its rights, obligations and interest in this Agreement without the prior written consent of ICR, and any attempted assignment without such consent shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate counterparts, with each counterpart constituting an original.

ICR WATER USERS ASSOCIATION

WHISPERING CANYONS

By: *McLennan*

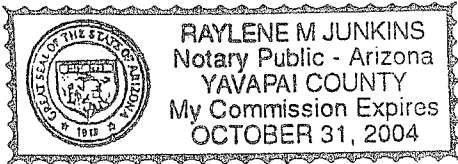
By: *Cole*

Its: *President*

Its: *Redeye*

State of Arizona     )  
  ) ss.  
County of Yavapai    )

Before me this 23<sup>rd</sup> day of April, 2001 came Swayze McGraime as the President of the ICR Water Users Association, who has executed the foregoing document as of the date written above.



Raylene M. Junkins  
Notary Public

My Commission Expires:

Oct 31, 2004

State of Arizona     )  
  ) ss.  
County of Yavapai    )

Before me this 12 day of April, 2001 came Cole Johnson as the Developer of Whispering Canyons, who has executed the foregoing document as of the date written above.

Darlene Barnes  
Notary Public

My Commission Expires:

May 6, 2003

