

## SETTLEMENT AGREEMENT

This Settlement Agreement ("**Settlement Agreement**") is hereby entered into 30<sup>th</sup> day of July, 2013, by and between ICR Water Users Association, Inc., an Arizona public service corporation ("**ICRWUA**"), Harvard Simon I, LLC ("**Harvard Simon**"), and Talking Rock Land, L.L.C., an Arizona limited liability company ("**TRL**"). The parties may be referred to collectively herein as the "**Parties**" or individually as a "**Party**," and "Harvard Simon" and "TRL" may be referred to collectively as the "**Talking Rock Parties**".

### RECITALS

A. Talking Rock Ranch master planned community ("**Talking Rock**") is located in Yavapai County, Arizona. Talking Rock contains approximately 3,450 acres and, is presently entitled for 1636 homes at build-out (including Phase 26). Talking Rock also includes common areas, a clubhouse, a health and fitness center and an 18-hole golf course owned and operated by Talking Rock Golf Club, L.L.C.

B. ICRWUA and the Talking Rock Parties entered into that certain Main Extension Agreement, dated March 5, 2001, as amended (the "**MXA**") pertaining to the extension of water utility service to Talking Rock, a copy of which is attached hereto as Exhibit 1. Under the MXA, Harvard Simon was obligated to finance, construct and transfer title to all on-site and off-site facilities necessary in order for ICRWUA to provide water utility service to Talking Rock and in exchange, ICRWUA agreed to include Talking Rock in its Certificate of Convenience and Necessity ("**CC&N**"). On January 15, 2002, the Arizona Corporation Commission issued Decision No. 64360 extending ICRWUA's CC&N to include Talking Rock, attached hereto as Exhibit 2. ICRWUA currently serves Talking Rock Ranch under public water system number AZ04-13263.

C. On September 30, 1999, Harvard Investments, Inc. made application to the Arizona Department of Water Resources ("**ADWR**") to obtain and approve a Physical Availability Demonstration ("**PAD**") for Inscription Canyon Ranch (now known as Talking Rock) for approximately 3500 acres to be developed into approximately 1700 additional residential units and a golf course. On November 22, 1999, ADWR issued approval of PAD #20-400192 for Talking Rock, attached hereto as Exhibit 3.

D. On April 24, 2001, TRL made application to ADWR to obtain an approved Analysis of Adequate Water Supply for Talking Rock Phase I (now known as Talking Rock Phase One-A, One-B and One-C) and Talking Rock Golf Course which included a Notice of Intent to Serve ("**NOI**") executed by the ICRWUA on April 21, 2001 for the entire Talking Rock subdivision, as attached hereto as Exhibit 4. On August 17, 2001, ADWR issued Analysis of Adequate Water Supply #22-400519 for Talking Rock Phase I and Golf Course, attached hereto as Exhibit 5.

E. On July 16, 2001, Talking Rock made application to ADWR to obtain and approve an Analysis of Adequate Water Supply for Talking Rock Phases 2-8 which included a

NOI executed by ICRWUA on July 11, 2001 for all of the Talking Rock subdivisions, as attached hereto as Exhibit 6. Attached to the application was Phase Plan 1-8 dated May 30, 2001 that included all of the Talking Rock property now known as Talking Rock Phases One through Twenty-Seven, as shown on Exhibit 7, attached hereto. On December 20, 2001, ADWR issued an Analysis of Adequate Water Supply #23-400556 (the "Phase 2-8 Analysis") valid through July 16, 2011 determining that 347 acre-feet per year of groundwater will be continuously available to meet Talking Rock's projected demands for all property/phases in Talking Rock Ranch, as attached hereto as Exhibit 8. TRL made an application to extend the term of the Phase 2-8 Analysis and, on November 16, 2010, ADWR issued approval of the extension of the Analysis through July 16, 2016, as shown on Exhibit 9.

F. On December 31, 2001, TRL made an application to ADWR for a Water Adequacy Report ("WAR") for Talking Rock Phases Two and Three which included the NOI attached hereto as Exhibit 4. On March 14, 2002, ADWR approved the WAR as shown on Exhibit 10, attached hereto.

G. On June 17, 2002, TRL made an application to ADWR for a WAR for Talking Rock Phase Four-A which included the ICRWUA executed NOI attached hereto as Exhibit 4. On July 30, 2002, ADWR approved the submitted WAR shown on Exhibit 11, attached hereto.

H. On September 11, 2002, TRL made an application to ADWR for a WAR for Talking Rock Phase Five-A, Phase Five-B and Phase Six which included the ICRWUA executed NOI attached hereto as Exhibit 4. On October 8, 2002, ADWR approved the submitted WAR as shown on Exhibit 12, attached hereto.

I. On December 10, 2003, TRL made an application to ADWR for a WAR for Talking Rock Phase Eight which included the ICRWUA executed NOI attached hereto as Exhibit 13. On February 17, 2004, ADWR approved the WAR as shown on Exhibit 14, attached hereto.

J. On January 8, 2004, TRL made an application to ADWR for a WAR for Talking Rock Phase Twenty-Seven which included the NOI executed by ICRWUA on January 5, 2004, as attached hereto as Exhibit 15. On February 17, 2004, ADWR approved the WAR as shown on Exhibit 16, attached hereto.

K. On May 11, 2004, TRL made an application to ADWR for a WAR for Talking Rock Phase Twenty-Six which included the NOI executed by ICRWUA on July 6, 2004 attached hereto as Exhibit 17. On September 8, 2004, ADWR approved the WAR as shown on Exhibit 18, attached hereto.

L. On July 7, 2004, TRL made an application to ADWR for a WAR for Talking Rock Ranch Phase Nine which included the NOI executed by ICRWUA on July 6, 2004, as attached hereto as Exhibit 19. On September 8, 2004, ADWR approved the WAR as shown on Exhibit 20, attached hereto.

M. On September 14, 2005, TRL made an application to ADWR for a WAR for Talking Rock Phase Ten, Phase Twelve and Phase Thirteen which included the NOI executed by

ICRWUA on September 16, 2005, as attached hereto as Exhibit 21. On December 1, 2005, ADWR approved the WAR as shown on Exhibit 22, attached hereto.

N. On December 3, 2008, the Parties entered into that certain Amended and Restated Water Service Agreement (the “**WSA**”) (attached hereto as Exhibit 23) which governs the relationship between the Parties from said date and which superseded, replaced and terminated all of the then existing agreements between the Parties, except for certain provisions specifically identified therein (i.e., WSA Attachment 3, MXA Provisions).

O. Molly Way Infrastructure (as defined below) was constructed by Harvard using design documentation submitted to Yavapai County through the appropriate permitting process. The Yavapai County certificate of Approval to Operate Water Facilities is attached hereto as Exhibit 24, and pursuant to Arizona Department of Environmental Quality (“**ADEQ**”) regulations. ICRWUA agreed to assume operation of the Facilities (as defined below) in October, 2008 with the letter as attached hereto as Exhibit 25. ADEQ issued the Approval to Operate the Facilities on November 18, 2008, attached hereto as Attachment C in Exhibit 26.

P. Pursuant to Section 5 of Attachment 3 of the MXA Provisions to the WSA, which governs the transfer of ownership of facilities to ICRWUA, the President of ICRWUA sent a letter dated October 20, 2009, as attached hereto as Exhibit 27, to the Talking Rock Parties accepting the Molly Way Infrastructure, acknowledging receipt of the as-built plans and confirming that the warranty period for the Facilities began on October 27, 2008 and concluded on October 26, 2009. A Bill of Sale dated October 20, 2009 by TRL, (as seller thereunder), conveying Molly Way Infrastructure to ICRWUA, (as buyer thereunder), was also recorded at Book 4702, Page 908 in the Yavapai County Recorder’s Office on October 26, 2009, as attached hereto as Exhibit 28.

Q. Subsequently, the ICRWUA Board sent the Talking Rock Parties a letter dated September 20, 2010, as attached hereto as Exhibit 29, stating that Molly Way Infrastructure was not accepted and a warranty correction notice letter would be forthcoming.

R. On October 10, 2010, the Talking Rock Parties received a Notice of Demand from ICRWUA, as attached hereto as Exhibit 30, for reimbursement of estimated costs incurred or to be incurred by ICRWUA in order to correct deficiencies at the Facilities. On December 2, 2010, ICRWUA sent a subsequent demand letter to the Talking Rock Parties, as attached hereto as Exhibit 31.

S. On March 1, 2011, Talking Rock’s engineer (Granite Basin Engineering Inc.) authored a response to the notice and demand letter referenced in Recital R above, attached hereto as Exhibit 32, concluding that the deficiencies at the Facilities were standard operation and maintenance items.

T. In an effort to resolve any and all differences regarding water service provided by ICRWUA to Talking Rock, the Parties agreed that ICRWUA would undertake, at their sole cost, a water assurance study (the “**Water Study**”) of Talking Rock Well Field consisting of Well 1, Registration # 55-584177; Well 2, Registration # 55-589659; Well 3, Registration # 55-589660 (hereafter the “**Talking Rock Well Field**”) to verify that water resources are available to

ICRWUA in order to provide water services to all customers within Talking Rock at full build out. The Water Study assumed, among other things, a build-out demand of 1,636 homes, and a reduction in ground water demand at the well field resulting from the use of effluent derived from the ICR Sanitary District wastewater treatment facility. The Water Study was completed on August 18, 2011 by William Meyer, President of ICRWUA, and titled “*Comparison of the Capacity of the TRR Well Field to Demand*”). A copy of the Water Study is attached hereto as Exhibit 33. The Water Study was reviewed by Gary D. Weesner, Certified Professional Geological Scientist, with Southwest Water and Mineral Resources (the “Review”) on October 2, 2011. A copy of the Review is attached hereto at Exhibit 34.

U. The Parties do hereby desire to enter into this Settlement Agreement for the following purposes: (1) to resolve and settle ICRWUA’s claims related to the infrastructure, water tank and booster pump station in Talking Rock Phase Nine-C (hereafter the “Molly Way Infrastructure” or the “Facilities”); (2) to allow the Talking Rock Parties to obtain confirmation of acceptance of Molly Way Infrastructure; (3) to confirm the prior issued ADWR WAR approvals and related ICRWUA issued NOIs; (4) to affirm the results of the Water Study and Review; (5) to affirm that ICRWUA reasonably believes water resources are currently available from the Talking Rock Well Field to serve Talking Rock at full build out relying on the assumptions in the Water Study; and (6) to acknowledge compliance with certain obligations set forth in Section 3 of the WSA as described therein.

**NOW THEREFORE**, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### AGREEMENTS

1. **Incorporation of Recitals/Acknowledgement of Agreements.** By this reference, the Parties hereby incorporate the recitals above and the referenced Exhibits as part of their agreement as if fully set forth herein. For clarity within this Agreement, Exhibits 4, 6, 13, 15, 17, 19, 21 and 24 incorrectly reference the ICRWUA Inscription Canyon Ranch water system designation, 13-303, as the source of supply for the Talking Rock Ranch water. The correct designation of the ICRWUA Talking Rock Ranch water system is PWS # AZ04-13263.

2. **Payment of Certain Costs by the Talking Rock Parties.** The Talking Rock Parties agree to pay ICRWUA a total of One Hundred Twenty One Thousand, One Hundred Seventy One and No/100 Dollars (\$121,171.00) (the “Settlement Funds”) for ICRWUA’s use in addressing the operational and maintenance items generally identified on Exhibit “A” attached hereto and incorporated herein by reference, which include the following:

a. Installation of a new vault in the public right-of-way, a (six-inch) discharge meter, and appurtenances in order to meter water discharged into the storage lake at Talking Rock Golf Course;

b. Installation of a replacement pump at Talking Rock Well No. 1 with reduced capacity to mitigate the air entrainment issue pursuant to WSA (paragraph 3.c.i. therein); and

c. Items set forth in the Fann Environmental Report dated October 20, 2010 (the "**Fann Report**"), the estimated costs of which are detailed in Exhibit "A-1", Exhibit "A-2" and Exhibit "A-3" to this Settlement Agreement attached hereto and incorporated herein by reference.

ICRWUA acknowledges advance receipt of a portion of the Settlement Funds for the replacement pump for Talking Rock Well No. 1, pursuant to the WSA, in the amount of \$13,426 and that said amount will be deducted from the initial payment pursuant to paragraph 3.a. below.

3. **Timing and Manner of Payment of Remaining Settlement Funds.** Payment of the Settlement Funds shall be as follows:

a. One-third of the total Settlement Funds (\$40,390.34) less \$13,426.00 previously paid for the replacement pump for Talking Rock Well No. 1, for the total initial payment of (\$26,964.34) due upon full execution this Settlement Agreement and execution and recordation of the Memorandum of Agreement;

b. One-third of the total Settlement Funds (\$40,390.33) on or before December 31, 2013; and

c. The remaining one-third of the total Settlement Funds (\$40,390.33) on or before December 31, 2014.

Following complete payment of the total Settlement Funds, no further payment of any funds related to the work on Exhibits "A-1"; "A-2" and "A-3" shall be required by the Talking Rock Parties.

4. **Acceptance of Molly Way Infrastructure.** By signing this Settlement Agreement, ICRWUA acknowledges and confirms that Molly Way Infrastructure has been accepted in "as is" "where-is" condition, with no further warranty provided from the Talking Rock Parties.

5. **Water Service for Current Phases in Talking Rock:** ICRWUA agrees that the following approvals are valid existing authorizations:

a. the ADWR's approvals related to the Analysis of Adequate Water Supply and WARs identified in the Recitals;

b. the ICRWUA executed NOIs as identified in the Recitals; and

c. the CC&N.

6. **Water Study and Water Study Review Findings.** The Parties acknowledge and agree:

a. The findings of the Water Study Review indicated that ADWR demand calculations yield 132 gallons per day per residence [gpd/r] for Talking Rock and recommended that "... the actual demand rate of 142 [gpd/r] be used in the demand calculations."

Notwithstanding, ICRWUA concluded that utilizing 199 [gpd/r] in the Water Study demand calculations would be consistent with demand estimates contained within TRL's application to ADWR for its Analysis of Adequate Water Supply.

b. Using the assumptions set forth in the Water Study, the findings of the Water Study concluded, in part, that "... projected demand at the TRR subdivision that includes residential, commercial, landscape, and the golf course, falls within the capacity of the [Talking Rock Well Field] assuming a residential demand of 199 gpd/r. In addition, the [Talking Rock Well Field] will be capable to meet variations in monthly demand by a combination of any two wells while holding a third well in reserve."(Exhibit 33 at pg. 18).

c. According to the Water Study, golf course demand for ground water has generally fallen from approximately 383 acre-feet annually in 2006 to about 296 acre-feet annually in 2011 and "demand will continue to fall as more effluent becomes available owing to continual growth." (Exhibit 33 at pg. 3).

d. The Water Study states as follows: "The ICR Sanitary District serves four subdivisions (TRR, Inscription Canyon Ranch, preserve at the Ranch, and Whispering Canyon), that will ultimately include about 2,434 homes. The values for Demand on the TRR well field at full build-out . . . do not include additional effluent from the latter three subdivisions beyond that currently available from the 275 homes presently serviced by the wastewater plant. Given that the three subdivisions will contain 784 homes at full build-out, exclusion of the future growth in effluent makes the estimate of demand conservative." (Exhibit 33 at pg. 17-18).

7. **WSA Acknowledgements.** The Parties agree and acknowledge that all requirements and obligations identified in Section 3 of the WSA have been completed (i.e., Well 1 Transfer and Well 2 Pump Motor Replacement) and that the warranties set forth in Section 3 (c) therein have expired. Further, the Parties agree that as of the date of execution of this Settlement Agreement neither party is in breach or default of any relevant acknowledgements, representations, warranties, agreements, covenants or indemnity under the WSA, and no event or default has occurred or failed to occur which, whether with or without the giving of notice, the passage of time or both, would constitute a breach or default by either party under the WSA.

8. **Covenants to Cooperate:** In recognition of the authorizations identified in Section 5 and the conclusions of the Water Study and Review set forth in Section 6 herein, each Party hereto, upon reasonable request to the other Party, shall cooperate with such other Party in the performance and fulfillment of the terms of this Settlement Agreement. In addition:

a. ICRWUA agrees:

i. to take no action that will reduce the capacity of the Talking Rock Well Field below that required to meet demand at Talking Rock, including the-golf course, as specified in the Water Study; and

ii The Talking Rock Parties may, on written request, obtain from ICRWUA all data and information used in analysis of the TRR well field's capacity by ICRWUA.

iii. to keep the Talking Rock Parties informed of the status of the Well Field by providing a report on the annual water demand at Talking Rock and current groundwater levels.

b. Talking Rock Parties agree:

i. they will inform ICRWUA of their intent to submit a water adequacy report application to ADWR and/or plans for a newly platted phase to Yavapai County in a timely manner;

ii. they will follow all ADWR and Yavapai County regulatory requirements and or conditions related to the required application submittals and related approvals; and

iii. in the event the capacity of the Talking Rock Well Field is unable to meet the demands of a newly platted phase in Talking Rock, and by no fault of ICRWUA, it is the responsibility of the Talking Rock Parties to provide the additional water facilities, including water source, necessary to meet the incremental demand for the newly platted phase at their sole expense in accordance with and subject to provisions of the WSA.

## 9. **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: (a) enter into this Settlement Agreement; and (b) carry out and consummate the transactions contemplated by this Settlement Agreement;

ii. the Board of Directors of ICRWUA has duly authorized and approved the execution and delivery of, and the performance of its obligations under this Settlement Agreement including the obligation to undertake the repair and replacement of the items identified on Exhibit "A-1", "A-2" and "A-3", as required;

iii. The consummation of the transactions contemplated in this Settlement 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 Settlement Agreement or any of the transactions contemplated herein;

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 Settlement Agreement or any agreements entered into in connection therewith; or (iii) that may adversely affect

ICRWUA or the purposes of this Settlement Agreement; and

v. ICRWUA will use the Settlement Funds to address the operational and maintenance items identified in Exhibit "A-1", "A-2", and "A-3" at their discretion and as Settlement Funds become available consistent with the funding schedule in Paragraph 3 herein.

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 Settlement Agreement; and (ii) carry out and consummate the transactions contemplated by this Settlement Agreement;

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

iii. The consummation of the transactions contemplated in this Settlement 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 Settlement Agreement or any of the transactions contemplated by this Settlement Agreement; and

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 Settlement 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 Settlement Agreement.

c. The Parties acknowledge that:

i. Each and every representation, warranty, term and condition in this Settlement Agreement shall be true and accurate as of the date of execution of this Settlement Agreement; and

ii. Each and every representation, warranty, term and condition in this Settlement Agreement shall constitute a material part of the consideration hereunder, and shall survive the execution of this Settlement Agreement.

#### 10. Miscellaneous Provisions.

a. Force Majeure. No Party to this Settlement Agreement shall be liable to any other Party 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, 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 Matter**”); 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 Settlement Agreement.

b. **Indemnity.** Each Party shall indemnify, save and hold harmless all other 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 that Party’s performance of its relevant obligations under the terms of this Settlement Agreement.

c. **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; (iii) by facsimile at the numbers listed for the Parties, on date of such transmission, or (iv) 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 and facsimile number of ICRWUA for all notices under this Settlement Agreement shall be:

ICR Water Users Association, Inc.  
Attn: Bill Meyer,  
President, ICRWUA Board of Directors  
P.O. Box 2344  
Prescott, AZ 86302-2344

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

c/o Harvard Investments  
Attn: Craig Krumwiede  
17700 North Pacesetter Way  
Scottsdale, AZ 85255  
FAX No. (480)348-8976

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

d. Right of Assignment. Each of the Talking Rock Parties may assign this Agreement, or any of their rights and obligations hereunder, to another party provided that written notice of such assignment is given to ICRWUA prior to the effective date of assignment and that the assignee agrees in writing to fully perform the Talking Rock Party's obligations hereunder and to be bound by this Agreement.

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

f. Default. If any Party breaches or defaults under this Settlement Agreement, and such breach or default continues for a period of fifteen (15) days 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.

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

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

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

j. Counterparts. This Settlement 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.

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

l. Joint Drafting and Negotiation. The Parties have participated jointly in the negotiation and drafting of this Settlement Agreement. If a question of interpretation arises, this Settlement 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 Settlement Agreement.

m. Memorandum of Agreement. The Parties agree to execute and record a Memorandum of Agreement in the form attached hereto as Exhibit 35.

The remainder of this page left intentionally blank

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

ICR WATER USERS ASSOCIATION, INC.,  
an Arizona public service corporation

By   
William Meyer, Its President

By   
Tom Sullivan, Its Treasurer

HARVARD SIMON I, L.L.C.,  
an Arizona limited liability company,  
By: Harvard Talking Rock, L.L.C.,  
an Arizona limited liability company,  
Its Operating Member,  
By: Harvard Investments, Inc.,  
a Nevada corporation,  
Its Manager

  
By: Craig L. Krumwiede, Its President

TALKING ROCK LAND, LLC,  
an Arizona limited liability company,  
By: Harvard Simon I, L.L.C.,  
an Arizona limited liability company,  
Its Manager  
By: Harvard Talking Rock, L.L.C.,  
an Arizona limited liability company,  
Its Operating Member,  
By: Harvard Investments, Inc.,  
a Nevada corporation,  
Its Manager

  
By: Craig L. Krumwiede, Its President

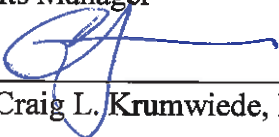
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ICR WATER USERS ASSOCIATION, INC.,  
an Arizona public service corporation


By \_\_\_\_\_  
William Meyer, Its President

By: \_\_\_\_\_  
Tom Sullivan, Its Treasurer

HARVARD SIMON I, L.L.C.,  
an Arizona limited liability company,  
By: Harvard Talking Rock, L.L.C.,  
an Arizona limited liability company,  
Its Operating Member,  
By: Harvard Investments, Inc.,  
a Nevada corporation,  
Its Manager

  
\_\_\_\_\_  
By: Craig L. Krumwiede, Its President

TALKING ROCK LAND, LLC,  
an Arizona limited liability company,  
By: Harvard Simon I, L.L.C.,  
an Arizona limited liability company,  
Its Manager  
By: Harvard Talking Rock, L.L.C.,  
an Arizona limited liability company,  
Its Operating Member,  
By: Harvard Investments, Inc.,  
a Nevada corporation,  
Its Manager

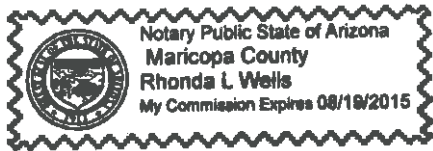
  
\_\_\_\_\_  
By: Craig L. Krumwiede, Its President

NOTARIAL CERTIFICATE

STATE OF ARIZONA }  
COUNTY OF MARICOPA } ss.

Title/Type of Document: Settlement Agreement  
Date of Document: July 30<sup>th</sup> 2013  
Number of Pages (including this notarial certificate): 17 pages  
Names of Signers: Craig L. Krumwiede

The above-described instrument was acknowledged before me this 30<sup>th</sup> day of July, 2013 by Craig L. Krumwiede, President of Harvard Investments, Inc., in its capacity as Manager of Harvard Talking Rock, L.L.C., in its capacity as Operating Member of Harvard Simon I, L.L.C., in its capacity as Manager of Talking Rock Land, L.L.C.



Rhonda L. Wells  
Notary Public

NOTARIAL CERTIFICATE

STATE OF ARIZONA }  
COUNTY OF YAVAPAI } ss.

Title/Type of Document: Settlement Agreement  
Date of Document: \_\_\_\_\_, 2013  
Number of Pages (including this notarial certificate): 17 pages  
Names of Signers: William Meyer

The above-described instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by William Meyer, President of I.C.R. WATER USERS ASSOCIATION, INC.

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

NOTARIAL CERTIFICATE

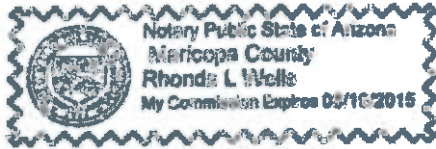
STATE OF ARIZONA

COUNTY OF MARICOPA

}  
} ss.  
}

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Rhonda Wells  
Notary Public

NOTARIAL CERTIFICATE

STATE OF ARIZONA

COUNTY OF YAVAPAI

}  
} ss.  
}

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Number of Pages (including this notarial certificate): 17 pages  
Names of Signers: William Meyer

The above-described instrument was acknowledged before me this 30<sup>th</sup> day of July, 2013 by William Meyer, President of I.C.R. WATER USERS ASSOCIATION, INC.



Kathy Wright  
Notary Public

NOTARIAL CERTIFICATE

STATE OF ARIZONA

COUNTY OF YAVAPAI

} ss.

Title/Type of Document: Settlement Agreement  
Date of Document: July 30<sup>th</sup>, 2013  
Number of Pages (including  
this notarial certificate): 17 pages  
Names of Signers: Tom Sullivan

The above-described instrument was acknowledged before me this 30<sup>th</sup> day of July,  
2013 by Tom Sullivan, Treasurer of I.C.R. WATER USERS ASSOCIATION, INC.



Kathy Wright  
Notary Public

**EXHIBIT "A"**

**TO SETTLEMENT AGREEMENT**

	<b>ITEM</b>	<b>Minimum</b>	<b>Maximum</b>	<b>Average</b>	<b>Even Split</b>
1	Installation of new golf course meter	\$15,250	\$16,750	\$16,000	\$ 8,000
2	Molly Way Fann Environmental Report:				
	Revised Exhibit B - Detail attached as Exhibit "A-2"	\$80,400	\$113,300	\$96,850	\$48,425
	Exhibit C – Detail attached as Exhibit "A-3"	\$55,000	\$55,000	\$55,000	\$27,500
3	Bestway corrections of pump deficiencies	\$2,716	\$2,716	\$2,716	\$1,358
	9/13/2010 Flowtronics				
4	Bestway corrections of pump deficiencies	\$7,805	\$7,805	\$7,805	\$3,903
	12/3/2010 Flowtronics				
5	Exhibit A – Detail attached as Exhibit "A-1"	\$36,800	\$36,000	\$36,000	\$18,400
6	<b>Sub-Total</b>	<b>\$197,971</b>	<b>\$232,371</b>	<b>\$215,171</b>	<b>\$107,586</b>
					100%
7	Replacement of pump at TRR Well #1 (1/13/11 Estimate)	\$13,426	\$13,426		\$13,426
	<b>Sub-Total</b>				<b>\$13,426</b>
8	<b>TOTAL</b>	<b>\$211,397</b>	<b>\$245,797</b>	<b>\$215,171</b>	<b>\$121,171</b>

**Summary of Costs**



**EXHIBIT "A-1"**  
**Costs Included in Settlement Agreement**  
**MOLLY WAY INFRASTRUCTURE**  
**(REVISED EXHIBIT A TO FANN REPORT)**

ITEM	PROBLEM	SOLUTION	Cost Range		Fann Cost RPT #
1	The fire hydrant is located behind a locked gate	Relocate hydrant to meet as-built plans			5
2	There is no fire alarm system.	New system with alarm dialer connection.	\$2,500	\$2,500	
3	Door alarm needs to be hard wired with a battery backup.		\$150	\$150	
4	There are blind spots in video coverage.	Expand system to achieve full coverage.	\$2,500	\$2,500	
5	All alarms need to be addressed into the existing dialer unit.	Most of the work is done.	\$200	\$200	
6	The original plans call for the alarms and video to be tied to the "existing SCADA system".	\$250,000 for the SCADA, not much more to tie it all together.	TBD	TBD	
7	There is no chemical shower as shown on the original plans. Shower needs to have its alarm function wired to the emergency dialer	\$2,500 and up. We are talking about OSHA			23
8	A full pre-delivery quality control diagnostic check for both pumping units with documentation of all software and programming changes from original factory setting.	A factory level tech for two days, including travel & per diem ... \$3,500 - \$4,500.	\$5,000	\$5,000	
9	A full load test of the generator and transfer switch has never been done.	\$1,500 for GenTech and the FlowTronics rep. 1 day.	\$1,500	\$1,500	
10	Surge suppression for the entire electrical system is needed.	Good equipment, \$5,000 for the whole building.	\$5,000	\$5,000	
11	Correct as-built plans for the electrical system.	A few hours for the engineering firm at ?/hour. Shephard-Wesnitzer	\$4,000	\$4,000	
12	A valved bypass for the low pressure skid working in conjunction with the first bypass from the high pressure skid allowing for a pump exercise program.	We have a bid of \$4,800 at the moment.	\$4,800	\$4,800	
13	A realistic, continuous tank stringing device.	\$4,000 and up. A simple high volume, low head pump would do most of it. Wire and mechanical could bring it to \$7,000ish.	\$7,500	\$7,500	
14	The chlorine system re-location re-wiring and plumbing needs to be completed.	\$500 to finish this one if we can pull a little more wire through the existing conduit.	\$500	\$500	
15	A set of step-by-step instructions for the proper back feed of the main TRR residential areas using the low pressure pump system.	An hour or two of engineer time just to clarify which valves to open/close and in what order.	\$800	\$800	
16	Floor drain covers are missing allowing entry for all manner of rodents	\$250 +/-			19
17	Regrade for building drain.		\$750	\$750	
18	Relocation of the small electric heaters away from the gable vents to the middle of the building	\$1,000 because of all of the new wire and conduit			22
19	Pump ventilation fans and louvers should be located at the floor level as per plans	Relocate fans and louvers.			24
20	The "Sanitary Sewer" lid needs to be replaced with something that is less misleading.	\$75 or so.	\$100	\$100	
21	Doors have different locks and only one key is available	Provide common keys for all doors & deadbolts			17
22	The landscaping indicated on the original plans to include on-going weed control.		\$500	\$500	2
23	Gravel for the driveway.		\$500	\$500	
24	Driveway access through curb.		\$500	\$500	
25	CP-1 soft start failure and system design deficiencies contributing to it.	Engage FlowTronics to diagnose systems.	TBD	TBD	
26	CP-1 pressure transducer problems and installation irregularities contributing to them.	Engage FlowTronics to diagnose systems.	TBD	TBD	
27	CP-1 PLC anomalies.	Engage FlowTronics to diagnose systems.	TBD	TBD	
28	#1 pump programming anomalies.	Engage FlowTronics to diagnose systems.	TBD	TBD	
29	CP-2 pressure transducer problems and installation irregularities contributing to them.	Engage FlowTronics to diagnose systems.	TBD	TBD	
30	CP-2 PLC anomalies.	Engage FlowTronics to diagnose systems.	TBD	TBD	
31	CP-2 pump programing issues. (improper shutdown procedure)	Engage FlowTronics to diagnose systems.	TBD	TBD	
<b>TOTAL:</b>			<b>\$36,800</b>	<b>\$36,800</b>	

## EXHIBIT "A-2"

### Costs Included in Settlement Agreement REVISED EXHIBIT B TO FANN REPORT Cost Under Item 2

Fann Cost RPT No.	PROBLEM	SOLUTION	Cost Range	
1	Electric Code and standards violations	See Summit Controls Evaluation (Exhibit A-3)	0	0
	<b>Fann Evaluation Revised Exhibit B:</b>			
2	Weed Control		\$0	\$0
3	Main gate fence post is leaning and impedes gate operation	Replant post	\$1,000	\$1,500
4	Site grading around tank and building does not promote proper drainage	Regrading required	\$13,500	\$14,700
5	Fire Hydrant located inside fence	Relocate hydrant	\$3,000	\$3,500
6	Mag Meter underground installation could lead to damage	Install in proper vault	\$14,000	\$15,250
7	Main tank drain and overflow pad is of marginal size	Replace old pad with larger size	\$1,000	\$1,500
8	Tank piping is not painted	Paint pipes and touch up tank paint	\$1,800	\$2,000
9	Tank weld seam leakage	Weld and recoat	\$4,250	\$5,500
10	Grade ring and tank are not aligned	Survey the tank/grade ring for possible settling	\$800	\$800
11	Tank interior inspection	This a maintenance item	\$2,800	\$3,800
12	Tank foundation settling		\$0	\$0
13	ADEQ air permit may be required for generator	Obtain permit if required	\$1,800	\$2,200
14	Electrical penetrations through floor of pump building are not per code	Replace per code	\$10,000	\$32,000
15	Building exterior needs refinishing	Refinish. Is this a maintenance item?	\$4,500	\$4,500
16	Ridge cap is coming off allowing water to enter	Repair roof to prevent leaks	\$600	\$600
17	Doors need common key access	Rekey door locks	\$0	\$0
18	No pull downs on overhead doors	Add pull downs	\$50	\$50
19	No covers on floor drains	Add covers	\$200	\$200
20	Building interior not finished	Repair and paint	\$8,000	\$8,000
21	Pump building lacks ceiling	Install ceiling	\$2,500	\$3,000
22	Relocate heaters		\$600	\$600
23	Shower		\$1,200	\$1,500
24	Pump ventilation fans and louvers should be located at floor level per plans		\$4,500	\$5,000
25	Chlorine analyzer not working		\$0	\$0
26	FlowTronics issues		\$0	\$0
27	UPS backup		\$2,500	\$2,500
28	Hydro tank not working	Inspect controls and replace as required	\$1,800	\$2,200
<b>TOTAL:</b>			<b>\$80,400</b>	<b>\$113,300</b>

**EXHIBIT "A-3"**

**Costs Included in Settlement Agreement  
EXHIBIT C OF FANN REPORT  
Summit Controls Electrical Evaluation Summary Sheet**

ITEM	PROBLEM	SOLUTION	Cost Range		Fann Cost RPT #
1	The fire hydrant is located behind a locked gate.		TBD	TBD	
2	There is no fire alarm system.		TBD	TBD	
3	Door alarm needs to be hard wired with a battery backup.		TBD	TBD	14
4	There are blind spots in video coverage.		TBD	TBD	
5	All alarms need to be addressed into the existing dialer unit.		TBD	TBD	
6	The original plans call for the alarms and video to be tied to the "existing SCADA system".		TBD	TBD	
7	There is no chemical shower as shown on the original plans. Shower needs to have its alarm function wired to the emergency dialer.		TBD	TBD	
8	A full pre-delivery quality control diagnostic check for both pumping units with documentation of all software and programming changes from original factory setting.		TBD	TBD	
9	A full load test of the generator and transfer switch has never been done.		TBD	TBD	
10	Surge suppression for the entire electrical system is needed.		TBD	TBD	
11	Correct as-built plans for the electrical system.		TBD	TBD	
12	A valved bypass for the low pressure skid working in conjunction with the first bypass from the high pressure skid allowing for a pump exercise program.		TBD	TBD	
13	A realistic, continuous tank stringing device.		TBD	TBD	
14	The chlorine system re-location re-wiring and plumbing needs to be completed.		TBD	TBD	
15	A set of step-by-step instructions for the proper back feed of the main TRR residential areas using the low pressure pump system.		TBD	TBD	
<b>TOTAL:</b>			<b>\$55,000</b>	<b>\$55,000</b>	