

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is made as of March 25, 2016 (the “Effective Date”), by and between ICR Water Users Association, an Arizona nonprofit corporation (“ICRWUA”) and Old Capitol Investments L.L.C., an Arizona limited liability company (“Old Capitol”) and Whispering Canyon Development L.L.C., an Arizona limited liability company (“Whispering Canyon”). Old Capitol and Whispering Canyon are hereafter referred to jointly as “Developer.” ICRWUA, Old Capitol and Whispering Canyon may also hereafter be referred to individually as a “Party” or collectively as the “Parties” to the Agreement.

RECITALS

WHEREAS, ICRWUA and Developer entered into a Water Facilities Line Extension Agreement on March 12, 2001, and a First Amendment to Water Facilities Line Extension Agreement on January 31, 2002, collectively referred to herein as “WFLEA”;

WHEREAS, the WFLEA creates rights and obligations of the Parties to this Agreement related to the design, construction and funding of the water facilities and the provision of water service to the Whispering Canyon subdivision (“Subdivision”) located on approximately 300 acres in a portion of Sections 33 and 34, Township 16 North, Range 3 West, G&SRB&M, Yavapai County, Arizona more fully described on Exhibit A;

WHEREAS, the Subdivision was preliminarily platted for 11 phases. Phases 1-4 have been final platted and phases 5-11 remain preliminarily platted. The subdivision will ultimately consist of approximately 400 residential lots (“Build-Out”);

WHEREAS, Developer intends to design, fund and construct the water facilities needed for ICRWUA to provide water service to the Subdivision in multiple phases over a number of years;

WHEREAS, ICRWUA is providing water service to Phases 1-4;

WHEREAS, certain disputes have arisen under the WFLEA and Developers have filed a complaint in Yavapai County, Arizona Superior Court against ICRWUA as Case No. P1300CV201400954;

WHEREAS, the Parties to this Agreement desire to avoid the costs of litigation, settle disputes and dismiss the complaint with prejudice as more fully set forth herein;

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, including the mutual promises contained in this Agreement, it is agreed between ICRWUA and Developer that:

TERMS OF AGREEMENT

1. The foregoing recitals are incorporated herein by this reference.
2. On the Effective Date, Old Capitol will advance the sum of \$78,125.00 to ICRWUA for the purpose of infrastructure improvement as ICRWUA sees fit.
3. On the Effective Date, Old Capitol will convey to ICRWUA, by recordable warranty deed, free and clear title to the land, currently a part of Yavapai County Assessor Parcel No. APN 306-35-633E, in the configuration set forth on the diagram attached hereto as Exhibit B, consisting of the existing storage tank and land for all potential future facilities that may be installed at the location, including the Phase 9 booster station to be paid for by Developer and a potential second storage tank, when and if built at ICRWUA's sole discretion, will be the responsibility of ICRWUA to fund and construct. The form of Warranty Deed, including the legal description of the land being conveyed, is attached hereto as Exhibit C.
4. On the Effective Date, Old Capitol will convey to ICRWUA by recordable right-of-way a private easement for ingress, egress, and the installation of underground water lines and related facilities, to the site conveyed pursuant to Item 3 in the form attached hereto as Exhibit D.
5. Developer shall pay the reasonable costs for Civiltec, or other comparable engineer firm selected by ICRWUA, to inspect on-going construction of water facilities for Phases 5 – 11 of the Subdivision, with inspections to occur in a timely manner.
6. On the Effective Date, ICRWUA will deliver to Developer executed forms of Water Service Agreement required by Yavapai County for Phases 5, 6, and 7 respectively of the Subdivision. Unless otherwise modified by the Arizona Department of Environmental Quality and/or Yavapai County, the Water Service Agreements shall be in the form of Exhibit E attached hereto without additional terms or conditions. The execution and delivery of the Water Service

Agreement form is not intended to and shall not alter the rights and obligations of Developer or ICRWUA under the WFLEA as it may be amended and/or clarified in writing by the parties.

7. Upon ICRWUA's approval of plans for the water infrastructure necessary to provide adequate water service to Phase 8, 9, 10 and/or 11, ICRWUA will execute the form of Water Service Agreement required by Yavapai County for the applicable Phase, provided the Developer has satisfactorily performed all obligations that have accrued under the WFLEA and this Agreement up to the time of execution. In the event ICRWUA deems the Developer has not satisfactorily performed all obligations that have accrued under the WFLEA and settlement documents, ICRWUA, within thirty (30) days of receiving a written request for an executed water service agreement form, will provide written notice setting forth the items that it contends have not been satisfactorily performed by Developer and identify not less than four (4) days when it is available to discuss and attempt to resolve, over the next thirty (30) days, the items identified. ICRWUA and Developer shall have an obligation to meet during the latter thirty (30) day period and attempt, in good faith, to resolve the items identified. If no resolution is reached between the Developer and ICRWUA within the latter thirty (30) day period, either party may proceed with available remedies.

8. At the time of delivery by ICRWUA to Developer of an executed form of Water Service Agreement required by Yavapai County for Phases 8, 9, 10 and/or 11, Old Capitol shall pay to ICRWUA the pro rata portion of an additional \$78,125.00 advance for use for the purpose of infrastructure improvement as ICRWUA sees fit. The pro rata portion shall be determined by multiplying the \$78,125.00 by the fraction (or equivalent percentage) where the quantity of lots in the applicable Phase(s) is the numerator and the total quantity of lots in Phases 8 – 11, inclusive (or 120 lots) is the denominator. In the event, the pro rata amount is not paid by Developer on the same date the executed form Water Service Agreement is delivered by ICRWUA, the form shall be of no force or effect and shall not be delivered to Yavapai County.

9. ICRWUA and Developer agree that upon payment of all sums required by this Agreement, the Developer has fully constructed or funded water production, storage and pump facilities, or upgrades thereto, sufficient to serve the current projected water demands for the Subdivision at Build-Out, with the exception of the booster facilities needed to lift water to Phases 9-11 that the Developer will provide at no cost to ICRWUA.

10. Except as set forth in this Agreement, ICRWUA will make no demand for further advances under the WFLEA related to water production, storage or pump facilities for the Subdivision at Build-Out.

11. Developer will cooperate with ICRWUA to eliminate any duplication or inaccurate booking of water lines, water production, storage or pump facilities installed by Developer to serve the Subdivision and transferred to ICRWUA. Cooperation shall include, but is not limited to:

- a. Meeting with ICRWUA to review the plant and values booked by ICRWUA within fourteen (14) days of receiving a written request from ICRWUA to do so; and Developer advising ICRWUA of any inconsistencies with Developer's business record within thirty (30) days of such meeting; and;
- b. Assisting in documenting the costs in the future if such documentation is requested from ICRWUA or Developer by the Arizona Corporation Commission or pursuant to subpoena.

12. **The Parties to this Agreement agree that this Agreement shall act as a release of any and all claims arising from or relating to conduct prior to the date of this Agreement in connection with the WFLEA, the design, funding and construction of water facilities for the Subdivision, and/or the provision of water service to the Subdivision whether such claims are known, unknown, foreseen, or unforeseen, fixed or contingent.**

13. **The Parties to this Agreement hereby release and forever discharge each other, and each of their past and present predecessors, successors, affiliates, subsidiaries, parents, insurers, officers, directors, employees, heirs, assigns, agents, and attorneys from any and all known and unknown claims, disputes, demands, debts, liabilities, obligations, causes of action suits, attorneys' fees and/or costs, of whatever nature, character or description, whether fixed or contingent, relating to the design, funding and construction of water facilities for the Subdivision or the provision of water service to the Subdivision that have accrued as of the date of this Agreement.**

14. Upon the Effective Date, Developer shall file in Yavapai County, Arizona Superior Court against ICRWUA as Case No. P1300CV201400954, pursuant to Rule 41 of the Arizona Rules of Civil Procedure, a Notice of Dismissal with Prejudice, together with a proposed form of order.

15. The WFLEA remains in full force and effect and its terms and conditions are hereby affirmed and ratified by the Parties to this Agreement. The Parties expressly acknowledge that this Agreement is intended to, and does clarify, and supplement the WFLEA and, in the event of a conflict between this Agreement and the WFLEA, this Agreement shall control.

16. The execution of this Agreement is not an admission of any liability, fault, responsibility or wrong doing on the part of any Party to this Agreement. Any settlement made pursuant to the Agreement is regarded as reasonable to avoid the expense, inconvenience and uncertainty of litigation.

17. The Parties to this Agreement acknowledge that they have been represented by counsel of their own choice in the negotiations leading to their execution of this Agreement, and that they have read this Agreement and have had it fully explained to them by their counsel.

18. The Parties represent and warrant that, in executing and entering into this Agreement, they are not relying and have not relied upon any representation, promise or statement made by anyone which is not recited, contained or embodied in this Agreement and are entering into this Agreement wholly of their own free will and volition. This Agreement comprises and contains the entire agreement between the Parties respecting the matters set forth in this Agreement. This Agreement may not be amended or modified in any way, except by a writing signed by the Parties.

19. All Parties have participated in the drafting of this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party hereto.

20. The Parties intend that this Agreement be treated as a whole and if any material provision hereof is found to be unenforceable, then the entire Agreement shall be unenforceable

except to the extent performance has occurred prior to the Agreement being found to be unenforceable.

21. Failure to insist on compliance with any term or condition contained in this Agreement shall not be deemed a waiver of that term or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

22. Each of the persons executing this Agreement represents they are empowered and authorized to do so on behalf of the entity for which they are signing. Each Party agrees to take such further actions and to execute such further documents, instruments and agreements as may be reasonably requested by the other Party to further confirm and effect the consummation of the transactions contemplated by this Agreement.

23. This Agreement shall be governed by the laws of the State of Arizona. In the event any court action is brought to enforce this Agreement, the Parties agree that the Superior Court of Yavapai County, Arizona shall constitute the most appropriate venue for any such lawsuit. The Parties also recognize that ICRWUA is subject to various regulatory agencies, including without limitation, the Arizona Corporation Commission and that such agency(ies) may provide the most appropriate forum in which to address disputes arising under this Agreement.

24. The Parties to this Agreement agree to bear their own costs and attorneys' fees connected with and/or arising from the underlying disputes and the drafting of this Agreement and no claim for such may be made at any subsequent time.

25. 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 ICRWUA, and any attempted assignment without such consent shall be void and of no effect.

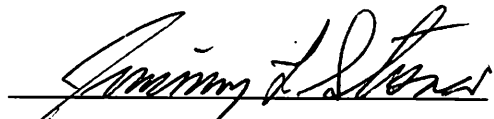
Notwithstanding the foregoing, Developer is authorized, without the written or other consent of ICRWUA, to assign its rights, obligations and interest in this Agreement to the Arizona PSPRS Trust or its nominee, which is the Secured party under that certain Amended and Restated Collateral Assignment and Security Agreement recorded at Book 4640, Page 425, Official

Records of Yavapai County, Arizona, when and if, and to the extent legal or equitable title to any portion of the Subdivision is acquired by the Arizona PSPRS Trust or its designated nominee.

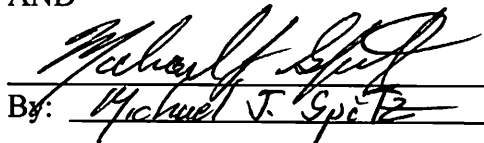
26. This Agreement may be signed in counterparts, and each counterpart so signed shall constitute a part of one valid original document. This agreement may be signed by facsimile or as a PDF document. A photocopy of this Agreement may be used as the original.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as of the date set forth above.

ICR Water Users Association


By: Jimmy L. STONER
Its: President

AND


By: Michael J. Spitz
Its: Treasurer

Old Capitol Investments L.L.C.

By PJJR Consulting LLC, Manager

By: Paul E. Johnson, Jr.
Its: Member

Whispering Canyon Development L.L.C.

By Four Capital Group Inc., Member

By: Robert Cole Johnson
Its: President

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By PJJR Consulting LLC, Manager

Paul Johnson

By: Paul E. Johnson, Jr.
Its: Member

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Robert Cole Johnson

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