CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS

CC: 15R
Amend No. _____

Date prepared: October 7, 2008 **Council Meeting Date: October 21, 2008**

TO: Carl Swenson, City Manager

FROM: Glen Van Nimwegen, AICP, Community Development Director GVN

THROUGH: Chris Jacques, AICP, Interim Planning Manager CJ

PREPARED BY: Robert Gubser, AICP, Senior Planner RG

SUBJECT: Cavan Commercial Pre-Annexation Agreement

RECOMMENDATION:
A request for Approval and Authorization of a Pre-Annexation Agreement between the City of Peoria and Cavan Commercial for approximately 40 acres located at the southwest corner of Happy Valley Road and Vistancia Boulevard.

SUMMARY:
The Cavan Commercial Ownership group ("Owner") which is a combination of Happy Valley 303 West, LLC and Happy Valley Badlands, LLC, owns approximately 40 acres of land located in an unincorporated area of Maricopa County, Arizona. The property is generally located at the southwest corner of Happy Valley Road and Vistancia Boulevard as depicted in the location map attached to this communication.

The property currently is subject to the Maricopa County Comprehensive Plan as amended by the County on February 20, 2008. The Owner has filed a rezoning application with the County to change the Property's zoning to the County's R-4 R.U.P.D. (Residential Unit Plan of Development) and C-1 C.U.P.D. (Commercial Unit Plan of Development) zoning categories (such rezoning together with the County Plan, the "County Entitlements"). As proposed, the proposed development of the property is in conformance with the City's General Plan and Loop 303 Specific Area Plan as of the date of this Agreement.

The Owner intends to develop the Property in accordance with the County Entitlements. Although the Owner and the City desire to annex the Property into the City, annexation

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CITY CLERK USE ONLY:
☐ Consent Agenda
☐ Carry Over to Date:_____
☐ Approved
☐ Unfinished Business (Date heard previous:_____)
☐ New Business
☐ Public Hearing: No Action Taken

ORD. #_____ RES. #_____
LCON#19008 LIC. #_____
Action Date:

is not currently legally permissible because the property is not contiguous to the incorporated boundaries of the City. The intention is to proceed with annexation of the property into the City when it becomes legally permissible.

The City wishes to encourage the reasonable development of vacant lands in the vicinity of the City, including but not limited to the property and land adjacent to the property owned by the Arizona State Land Department ("ASLD"), in a manner that is consistent with the City's development standards, improves the City's tax base and provides for increased employment opportunities. The City believes that annexation of the property into the City and development of the property in accordance with the Pre-Annexation Agreement will result in furthering these goals.

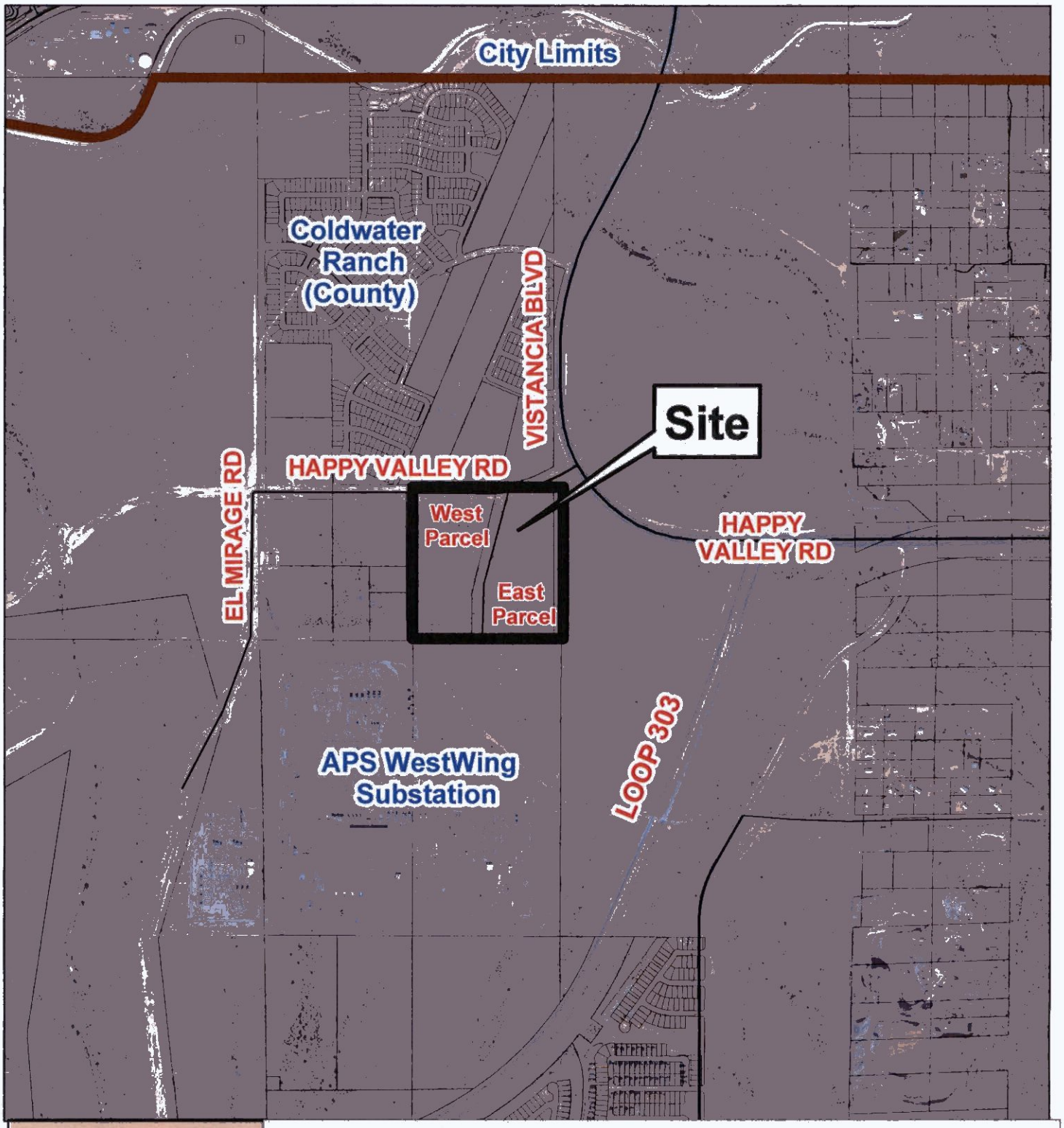
The Owner believes that annexation of the Property into the City and development of the property pursuant to the terms of the Pre-Annexation Agreement will result in significant benefits to the property and to the future residents, greater certainty concerning the City's regulatory treatment of the property, and assurances regarding infrastructure and public amenities affecting the property.

A.R.S. §9-500.05 authorizes the City to enter into a development agreement with the Ownership group for the purposes of establishing the conditions, terms, restrictions and requirements for annexation of the property by the City and other matters relating to the development of the property.

ATTACHMENTS:

- Location Map
- Pre-Annexation Agreement

Location / Context Map



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CITY OF PEORIA
Not toScale

Cavan Commercial Pre-Annexation Agreement

A request for Approval and Authorization of a Pre-Annexation Agreement between the City of Peoria and Cavan Commercial for approximately 40 acres located at the southwest corner of Happy Valley Road and Vistancia Boulevard.

When recorded, return to:
Gammage & Burnham, P.L.C.
2 North Central Avenue, 18th Floor
Phoenix, Arizona 85004
Attention: Stephen W. Anderson

PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement ("Agreement") is entered into as of the _____ day of _____, 2008 by and between the CITY OF PEORIA, Arizona, an Arizona municipal corporation ("City"), and HAPPY VALLEY 303 WEST, LLC, an Arizona limited liability company ("HV303"), and HAPPY VALLEY BADLANDS, LLC, an Arizona limited liability company ("HV Badlands" and, together with HV303, the "Owner") (collectively "Parties").

RECITALS

A. The Owner owns approximately 40 acres of land ("Property") located in an unincorporated area of Maricopa County, Arizona (the "County"). The Property is legally described and depicted on Exhibit A.

B. The Property currently is subject to the County's Comprehensive Plan as amended by the County on February 20, 2008 (the "County Plan"). The Owner has filed a rezoning application with the County to change the Property's zoning to the County's R-4 R.U.P.D. (Residential Unit Plan of Development) and C-1 C.U.P.D. (Commercial Unit Plan of Development) zoning categories (such rezoning together with the County Plan, the "County Entitlements").

C. The Owner intends to develop the Property in accordance with the County Entitlements. Although the Parties desire to annex the Property into the City, annexation is not currently legally permissible because the Property is not contiguous to the incorporated boundaries of the City. The Parties intend to proceed with annexation of the Property into the City when it becomes legally permissible.

D. The City wishes to encourage the reasonable development of vacant lands in the vicinity of the City, including but not limited to the Property and land adjacent to the Property owned by the Arizona State Land Department ("ASLD"), in a manner that is consistent with the City's development standards, improves the City's tax base and provides for increased employment

opportunities. The City believes that annexation of the Property into the City and development of the Property in accordance with this Agreement will result in furthering these goals.

E. The Owner believes that annexation of the Property into the City and development of the Property pursuant to the terms of this Agreement will result in significant benefits to the Property and to the future residents, greater certainty concerning the City's regulatory treatment of the Property, and assurances regarding infrastructure and public amenities affecting the Property.

F. A.R.S. §9-500.05 authorizes the City to enter into a development agreement with the Owner for the purposes of establishing the conditions, terms, restrictions and requirements for annexation of the Property by the City and other matters relating to the development of the Property.

G. The Owner's proposed development of the Property is in conformity with the City's General Plan as of the date of this Agreement.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing premises and agreements herein, the Parties hereto state, confirm, and agree as follows:

1. Incorporation of Recitals and Exhibits. The foregoing recitals and all exhibits attached to this Agreement are hereby incorporated into this Agreement as though fully restated herein.

2. Annexation of Property. When it becomes legally permissible for the City to annex the Property, the Owner will execute and file with the City an annexation petition as required by A.R.S. §9-471 *et seq.* to initiate the annexation. The City will then hold such hearings and take such action as is necessary pursuant to A.R.S. §9-471 *et seq.* to annex the Property. As part of the annexation ordinance, the City will adopt equivalent City zoning corresponding to the County Entitlements ("Translation Zoning") for the Property. The City acknowledges that the Owner is seeking certain specified development standards through the County's Unit Plan of Development Zoning designation. The Parties acknowledge that the likely City Zoning category for the Translation Zoning will be P.A.D. (Planned Area Development).

3. Waiver of Proposition 207 Rights. The parties agree that the Property is subject to the provisions of Proposition 207, as adopted by the voters of the State of Arizona during the November 7, 2006, General Election, which is codified at A.R.S. § 12-1131, *et seq.* ("Proposition 207"). The Owner acknowledges that the Owner and the City are empowered to agree to a waiver of the terms and requirements of Proposition 207, in particular those items codified at A.R.S. § 12-1134, pursuant to A.R.S. § 12-1134(I). The Owner on

behalf of itself and all other parties having an interest in the Property knowingly and intelligently waives the provisions of Proposition 207, in particular A.R.S. § 12-1134, resulting from the City's actions with respect to the negotiation, execution, and implementation of this Agreement. In addition, execution by the Owner (or its successor) of the City's standard Proposition 207 Waiver shall be a precondition to the City's obligation to undertake and complete annexation of the Property as required by this Agreement.

4. Development Plans.

4.1 City Standards. The Owner agrees that if it develops the Property prior to annexation, it shall develop in general accordance with City development standards, and that it shall develop in specific compliance with City development standards related to a) police and fire access and needs on-site, b) City commercial design review standards, and c) City landscaping standards for that portion of the Property adjacent to Happy Valley Road. The City hereby approves the Owner's proposed building setbacks of 10 feet (as measured 75 feet from centerline of existing Happy Valley Road alignment) and 25 feet along the north and east perimeters, respectively, of the Property. Owner agrees to cooperate with the City to provide review by City staff during any development efforts through the County prior to annexation.

4.2 Water and Wastewater. The City does not currently offer municipal water or wastewater service in the area of the Property. The Property will be served by water and wastewater systems owned and maintained by the Arizona American Water Company, the utility that holds the certificates of convenience and necessity to provide water and wastewater services to the area that includes the Property as determined by the Arizona Corporation Commission. Copies of the water and wastewater will-serve letters issued to the Owner by Arizona American are attached as Exhibits B and C to this Agreement. The Owner and the City acknowledge and agree that Arizona American facilities are available, and that no City water or wastewater services or infrastructure are required as a result of the annexation or development of the Property. Because the Property does not benefit from City water or wastewater services, the City acknowledges and agrees that the Owner shall not be required to pay any City hook-up or impact fees for the Property in water or wastewater categories, unless and until such time as the City offers municipal water or wastewater services in the area of the Property.

4.3 Police and Fire. The City agrees that, if and when the City annexes the Property, the City shall provide police and fire service to the Property. The Owner acknowledges that prior to annexation the City shall not, nor shall the City have any legal obligation to, provide police or fire service to the Property. The Owner shall take appropriate steps to

ensure police coverage by the Maricopa County Sheriff's Office or other appropriate law enforcement agency, and to ensure fire coverage by the Sun City West Fire District or other appropriate fire safety agency prior to annexation. The City acknowledges that the Owner may need to annex into the Sun City West Fire District to secure fire protection for the Property prior to annexation into the City. In the event the Property is not annexed into the Sun City West Fire District and the City then provides any fire services to the Property (including EMT or other ambulance service) the Owner agrees to reimburse the City for its actual costs incurred in providing this service and further agrees to promptly remit such fees upon receipt of an itemized invoice from the City.

4.4 Happy Valley Road. The Parties acknowledge that the City ultimately wishes to realign Happy Valley Road on an east-west alignment starting at the northwestern corner of the Property and running adjacent to the Property's northern perimeter, and that the City ultimately wishes to realign Vistancia Boulevard in a north-south alignment that runs adjacent to the Property's eastern perimeter. The Owner agrees that it will dedicate to the County at no cost for right-of-way purposes as part of the County Entitlements the approximately 75 northernmost feet along the northern boundary of the Property as depicted on the site plan attached hereto as Exhibit D. In addition, the Owner shall reserve for future acquisition by the City, in its discretion, at fair market value for the term of this Agreement the roughly triangular shaped strip of land of 4,818 square feet for a future realignment of Happy Valley Road along the northern edge of the Property, also as indicated on the site plan attached hereto as Exhibit D. The Owner also further agrees that it shall install and maintain landscaping in this area at the time of the Owner's construction.

4.5 Impact Fees. The City acknowledges that the Owner may obtain building permits in the County prior to annexation, and that the Owner shall not pay City impact fees for any such permits. Further, as indicated above, the City acknowledges that because the Owner will be using Arizona American water and wastewater services, the Owner shall not have to pay any City impact or hook-up fees at any time for City water or wastewater services, unless and until such time as the City offers municipal water or wastewater services in the area of the Property. Finally, the Parties hereby agree that the Property shall be subject to all other City impact fees applicable upon annexation.

4.6 Vested Rights. The City acknowledges that the Owner has made significant efforts to proceed with development of the Property, including, but not limited to the commitment of significant amounts of time by key personnel and the expenditure of significant sums of money on various professional consultants. The City further acknowledges that the Owner seriously intends to develop the Property. As a result of these

factors, the City acknowledges that if the City Council approves the Translation Zoning for the Property consistent with this Agreement, then the Owner shall have vested rights under Arizona common law and this Agreement to develop the Property consistent with that zoning and this Agreement for the term of this Agreement.

4.7 City Council Action Requirement. Notwithstanding any language of this Agreement or any subsequent additional documents, the Parties acknowledge that no act, requirement, payment, or other agreed upon action to be done or performed by the City which would, under any federal, state, or city constitution, statute, charter provision, ordinance, or regulation, require formal action, approval, or concurrence by the City Council (a "Legislative Act"), will be required to be done or performed by the City unless and until said formal City Council action has been taken and completed.

5. Successors and Assigns. The burdens and benefits of this Agreement will run with the land and be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Upon the transfer of all or any portion of the Property, the transferring party will be released from any liability arising after the transfer with respect to the portion of the Property transferred.

6. Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled, in whole or in part and with respect to all or any portion of the Property, with the mutual written consent of the Parties hereto. Within ten (10) days after any such amendment or cancellation of this Agreement, the City will record such amendment or cancellation in the Official Records of Maricopa County. Arizona.

7. Notice.

7.1 Manner of Service. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith ("Notices") will be validly given, filed, made, delivered or served if in writing and delivered personally or sent by registered or certified United Stales Postal Service Mail, return receipt requested, postage prepaid to:

If to the City: City of Peoria
City Manager's Office
8401 West Monroe Street
Peoria, Arizona 85345

With a copy to:	City of Peoria City Attorney's Office 8401 West Monroe Street Peoria, Arizona 85345
If to the Owner:	Happy Valley 303 West, LLC and Happy Valley Badlands, LLC c/o Cavan Development Group, L.L.C. 8800 East Raintree Drive, Suite 140 Scottsdale, Arizona 85260 Attn: Vice President of Development
With a copy to:	Stephen W. Anderson, Esq. Gammage & Burnham P.L.C. Two North Central Avenue, 18th Floor Phoenix, Arizona 85004

or to such other addresses as either party may from lime to time designate in writing and deliver in a like manner. Any such change of address Notice will be given at least ten (10) days before the date on which the change is to become effective.

7.2 Mailing Effective. Notices given by mail must be certified and will be deemed delivered seventy-two (72) hours following deposit in the U.S. Postal Service, in the manner set forth above, or the next business day if sent by overnight delivery or courier.

8. General Provisions.

8.1 Waiver. No delay in exercising any right or remedy will constitute a waiver thereof and no waiver by the Parties of the breach of any provision of this Agreement will be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement.

8.2 Attorneys' Fees and Costs. If legal action by cither party is brought because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs.

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

8.4 Headings. The description headings of the paragraphs of this Agreement arc inserted for convenience only and will not control or

affect the meaning or construction of any of the provisions of this Agreement.

8.5 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and will not be changed or added to except in the manner provided in Section 6. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement. All prior and contemporaneous agreements, representations and understandings of the City with any other parties, oral or written, other than specifically incorporated herein by reference, regarding any portion of or all of the Property, are superseded by this Agreement.

8.6 Governing Law. This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona.

8.7 Recordation. No later than ten (10) days after the City and the Owner have executed this Agreement, it will be recorded in its entirety by the City in the Official Records of Maricopa County. Arizona.

8.8 Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice thereof from the other party ("Cure Period"), shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional lime as may be necessary to perform or comply so long as such party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting party shall have all rights and remedies legally and equitably available to it.

8.9 Authority. The Owner represents and warrants to the City: (1) that it is duly formed and validly existing under the laws of the State of Arizona: and (2) that the individual(s) executing this Agreement on behalf of the Owner is authorized and empowered to bind the Owner. The City represents and warrants to the Owner: (1) that it is a duly formed municipal corporation with the State of Arizona; and (2) that the individual(s) executing this Agreement on behalf of the City are authorized and empowered to bind the City.

8.10 Estoppel. The Parties hereto covenant and agree with each other to provide within twenty-one (21) days of written request from the other an estoppel certificate signed by a duly authorized representative of such party indicating that the other party is not then in default under any of the obligations pursuant to this Agreement.

8.11 Cancellation. This Agreement is subject to cancellation for conflict of interest without penalty or further obligation as provided by A.R.S. § 38-511.

8.12 Term. This Agreement shall be effective upon its recordation and shall automatically terminate ten (10) years after the effective date of the City Ordinance annexing the Property, provided, however, the City shall not discontinue applicable municipal services to the Property, once commenced, except as permitted by applicable law.

8.13 No Owner Representations. Nothing contained herein shall be deemed to obligate the Owner to commence or complete any part or all of the development of the Property or any planning in connection with such development (including Infrastructure expenditures); provided, however, that any development of the Property undertaken by the Owner shall be done in accordance with this Agreement as may be amended from time to time.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as provided herein.

CITY:

CITY OF PEORIA, an Arizona municipal corporation

By: _____
Bob Barrett, Mayor

Date: _____

Approved as to Form:

By: _____
City Attorney

Date: _____

Attested by:

By: _____
City Clerk

Date: _____

OWNER:

HAPPY VALLEY 303 WEST, LLC, an Arizona limited liability company

By: Cavan Development Group, L.L.C., an Arizona limited liability company, its Manager

By:_____
Name: Dale Cavan
Title: Manager

Date: _____

HAPPY VALLEY BADLANDS, LLC, an Arizona limited liability company

By:_____
Name: Dale Cavan
Title: Manager

Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed and sworn to before me this ___ day of _____, 2008, by Dale Cavan, the Manager of Cavan Development Group, LLC, an Arizona limited liability company, the Manager of Happy Valley 303 West, LLC, an Arizona limited liability company.

_____
Notary Public

_____
My Commission Expires

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed and sworn to before me this ___ day of _____, 2008, by Dale Cavan, the Manager of Happy Valley Badlands, LLC, an Arizona limited liability company.

_____
Notary Public

_____
My Commission Expires

I:\USERS\EllenV\Pre-Annexation\Contract\Cavan Commercial\Contract\091808 EVR DRAFT 1 (marked).DOC

LIST OF EXHIBITS

Exhibit A	Legal Description and Depiction of the Property
Exhibit B	Arizona American Water Will-Serve Letter
Exhibit C	Arizona American Wastewater Will-Serve Letter
Exhibit D	Current Site Plan Depicting Future Happy Valley Road Alignment

EXHIBIT A

DEI
Professional Services, LLC

Civil Engineering
Land Surveying
Project Management

www.deipro.com

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
36888
DALE A.
MATTINGLY
4-20-07
ARIZONA, U.S.A.

JOB # 06173
APRIL 20, 2007

LEGAL DESCRIPTION
HAPPY VALLEY WEST – PARCEL A

A PARCEL OF LAND LOCATED WITHIN SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 4 NORTH, RANGE 1 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 1, TOWNSHIP 4 NORTH, RANGE 1 WEST, BEING A GLO STONE, FROM WHICH THE SOUTHEAST CORNER THEREOF, BEING A MARICOPA COUNTY ALUMINUM CAP FLUSH, BEARS NORTH 89 DEGREES 44 MINUTES 51 SECONDS EAST, A DISTANCE OF 2,632.00 FEET;

THENCE SOUTH 89 DEGREES 53 MINUTES 20 SECONDS WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 732.36 FEET TO THE EAST LINE OF AN ELECTRIC EASEMENT AS SHOWN IN INSTRUMENT #90 - 4651888, RECORDS OF MARICOPA COUNTY;

THENCE NORTH 00 DEGREES 09 MINUTES 53 SECONDS WEST, ALONG SAID EAST LINE AND DEPARTING SAID SOUTH LINE, A DISTANCE OF 426.74 FEET;

THENCE NORTH 13 DEGREES 16 MINUTES 20 SECONDS EAST, CONTINUING ALONG THE EAST LINE OF AN ELECTRIC EASEMENT AS SHOWN IN INSTRUMENT #90 - 4651888, RECORDS OF MARICOPA COUNTY, A DISTANCE OF 917.62 FEET TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 4 NORTH; RANGE 1 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

THENCE NORTH 89 DEGREES 53 MINUTES 34 SECONDS EAST, ALONG SAID NORTH LINE, A DISTANCE OF 513.68 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1;

THENCE SOUTH 00 DEGREES 24 MINUTES 04 SECONDS EAST, ALONG SAID EAST LINE, A DISTANCE OF 1,319.43 FEET TO THE **POINT OF BEGINNING** OF THE PARCEL HEREIN DESCRIBED.

CONTAINING 867,527.63 SQUARE FEET OR 19.9157 ACRES, MORE OR LESS.

6225 North 24th Street, Suite 200 • Phoenix, AZ 85016 • 602.954.0038 Phone • 602.944.8605 Fax

DEI
Professional Services, LLC

Civil Engineering
Land Surveying
Project Management

www.deipro.com

REGISTERED LAND SURVEYOR
CERTIFICATE NO. 36888
DALE A. MATTINGLY
Date Signed 4-20-07
ARIZONA, U.S.A.

JOB # 06173
APRIL 20, 2007

LEGAL DESCRIPTION
HAPPY VALLEY WEST – PARCEL B

A PARCEL OF LAND LOCATED WITHIN SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 4 NORTH, RANGE 1 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 1, TOWNSHIP 4 NORTH, RANGE 1 WEST, BEING A GLO STONE, FROM WHICH THE SOUTHEAST CORNER THEREOF, BEING A MARICOPA COUNTY ALUMINUM CAP FLUSH, BEARS NORTH 89 DEGREES 44 MINUTES 51 SECONDS EAST, A DISTANCE OF 2,632.00 FEET;

THENCE SOUTH 89 DEGREES 53 MINUTES 20 SECONDS WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 732.36 FEET TO A POINT ON THE EAST LINE OF AN ELECTRIC EASEMENT AS SHOWN IN INSTRUMENT #90 - 4651888, RECORDS OF MARICOPA COUNTY, SAID POINT ALSO BEING THE **POINT OF BEGINNING** OF THE PARCEL HEREIN DESCRIBED;

THENCE CONTINUE SOUTH 89 DEGREES 53 MINUTES 20 SECONDS WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 583.95 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 4 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

THENCE NORTH 00 DEGREES 29 MINUTES 10 SECONDS WEST, ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, A DISTANCE OF 1,319.53 FEET TO THE NORTH LINE THEREOF;

THENCE NORTH 89 DEGREES 53 MINUTES 34 SECONDS EAST, ALONG SAID NORTH LINE, A DISTANCE OF 804.58 FEET TO A POINT ON THE EAST LINE OF AN ELECTRIC EASEMENT AS SHOWN IN INSTRUMENT #90 - 4651888, RECORDS OF MARICOPA COUNTY;

THENCE SOUTH 13 DEGREES 16 MINUTES 20 SECONDS WEST, ALONG SAID EAST LINE, A DISTANCE OF 917.62 FEET;

6225 North 24th Street, Suite 200 • Phoenix, AZ 85016 • 602.954.0038 Phone • 602.944.8605 Fax

THENCE SOUTH 00 DEGREES 09 MINUTES 53 SECONDS EAST, CONTINUING ALONG SAID EAST LINE, A DISTANCE OF 426.74 FEET, TO THE **POINT OF BEGINNING** OF THE PARCEL HEREIN DESCRIBED.

CONTAINING 870,572.65 SQUARE FEET OR 19.9856 ACRES, MORE OR LESS.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
36888
DALE A.
MATTINGLY
Date Signed 4-10-07
ARIZONA, U.S.A.

EXHIBIT B

Arizona American Water

Luke Bathel

Cavan Commercial
8960 East Raintree Drive, Suite 100
Scottsdale, AZ 85260

Development Services

Name Karan Moore
Phone 623-445-2441
Fax 623-445-2452
E-Mail Karan.moore@amwater.com

September 11, 2006

Will-Serve Letter – Happy Valley West

Dear Mr. Bathel:

This letter is to verify that the Arizona Corporation Commission has issued Arizona American Water (AAW) a Certificate of Convenience & Necessity, allowing us to serve the subject property. We have reviewed our records and have verified that the subject property is within our service area and that water service will be provided in accordance with the rules and regulations on file with the Arizona Corporation Commission.

Prior to the start of construction of water facility improvements by the owner/developer, the owner/developer must enter into the required Line Extension Agreement (LXA), obtain plan approval by AAW and all other city, county and state approvals that may be required. For additional information, please contact Clifff Wahlers @ (623) 445-2447.

The property is described as follows:

The Southeast quarter of the Southwest quarter of Section 1, Township 4 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Sincerely,

[redacted]

Karan Moore
Development Coordinator

Arizona American Water

101 Corporate Center
19820 N. 7th Street -
Suite 201
Phoenix, Arizona 85024
USA

T +1 623 445 2400
F +1 623 445 2452
I www.amwater.com

EXHIBIT C

ARIZONA
AMERICAN WATER

19820 N. 7th Street Suite 201
Phoenix, AZ 85024
www.amwater.com

P 623-445-2435
F 623-445-2454

Luke Bathel
Cavan Commerical
8960 E. Raintree Drive, Suite 100
Scottsdale, AZ 85260

October 13, 2008

Re: Will Serve Letter – Happy Valley West

Dear Mr. Bathel:

This letter is in response to the request of Cavan Commerciial ("Developer") to Arizona American Water Company (AAWC) regarding AAWC's willingness to provide sewer service to the development described on Exhibit A to this letter (the "Development"). AAWC provides the following information for your consideration:

1. AAWC has confirmed that the Development is located within the area encompassed by AAWC's Certificate of Convenience & Necessity ("CC&N") as issued by the Arizona Corporation Commission.
2. Sewer service to the Development by AAWC will be conditioned upon Developer entering into a Line Extension Agreement (a "LXA") with AAWC in a form acceptable to AAWC, and upon Developer fully performing its obligations under the LXA. The LXA will provide, among other things, that Developer will be responsible for constructing at its cost all sewer main extensions necessary to connect to AAWC's existing system plus any required facility construction (pump stations, force mains, etc.). The design and construction of all such main extensions will be subject to AAWC's approval, and ownership of the main extensions, together with related real property easement rights, must be transferred to AAWC prior to the initiation of sewer service in the Development.
3. Based on the sewer service currently provided by AAWC in the CC&N, AAWC will have adequate sewer capacity for normal use in the Development upon Developer's fulfillment of its obligations under the LXA.
4. Developer will also be required, as a condition to AAWC providing sewer service to the Development, to pay all required fees pursuant to AAWC's then-current tariffs and as may be provided in the LXA.

This letter assumes that construction of the main extensions within the Development will begin within one (1) year after the date of this letter.

ARIZONA
AMERICAN WATER

If Developer begins construction of any sewer mains in the Development or any other sewer service infrastructure intended to serve the Development without, in each instance, the prior written approval of such construction by AAWC, Developer will be proceeding with such construction at its own risk.

This letter does not independently create any rights or obligations in either Developer or AAWC, and is provided to Developer for information only. Any agreement between Developer and AAWC for water service in the Development must be memorialized in a written agreement executed and delivered by their respective authorized representatives.

For additional information, please contact Josh Vig @ (623) 445-2495.

Sincerely,

Thomas W. Williams, P.E.
Development Services Manager

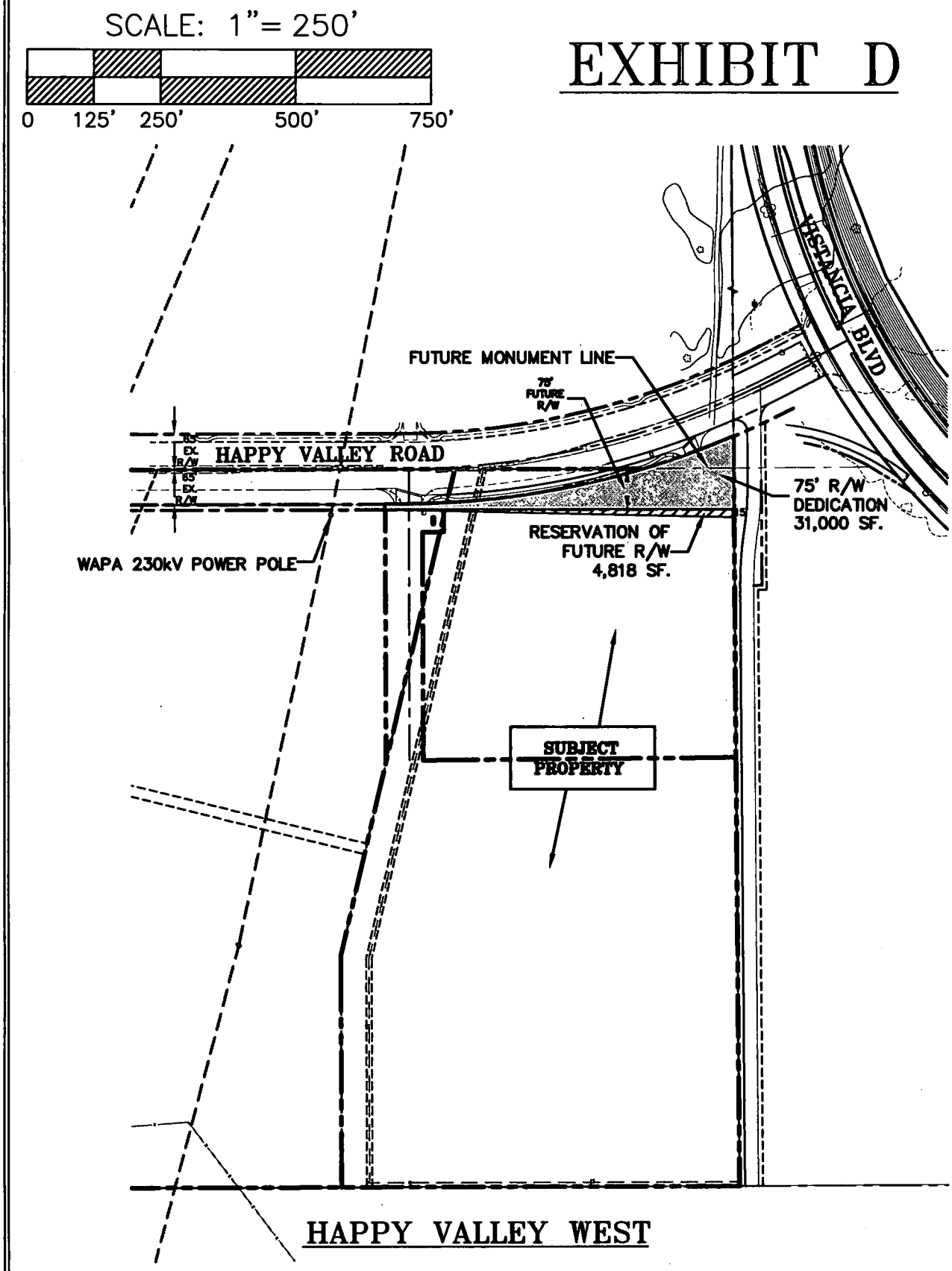
<add enclosure>

ARIZONA
AMERICAN WATER

Exhibit A

DRAFT

EXHIBIT D



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HAPPY VALLEY WEST
EXHIBIT D
MARICOPA COUNTY, ARIZONA

DATE: 10/16/08	SCALE: 1"=250'	PROJ. NO: 6173	CAD FILE: 6173EX13

EXHIBIT D