

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION**

CC: 5C
Amend No. _____

Date Prepared: March 5, 2008 **Council Meeting Date:** March 18, 2008

TO: Terry Ellis, City Manager

THROUGH: Susan K Thorpe, Deputy City Manager *SKT*

FROM: Robert McKibben, Fire Chief *LD G RM*

PREPARED BY: Kimberly Drabik, Administrative Assistant

SUBJECT: Waterline Agreement between Barclay-Pleasant Valley, LLC and the City of Peoria

RECOMMENDATION: The Peoria Fire Department requests that the City Council execute the Construction of Waterline Agreement between Barclay-Pleasant Valley, LLC and the City of Peoria to construct a loop system water service line for their development at Mountainside Crossing.

SUMMARY: A Construction of Waterline Agreement has been negotiated between the City of Peoria and Barclay-Pleasant Valley, LLC regarding the developer's plans to construct a 12-inch water service line capable of providing a minimum of 3,000 gpm @ 20 psi in Phase I of their development project. Pursuant to City requirements, the developer must construct a second 8-inch water service line in Phase II of the project to create a loop system. It is anticipated that Happy Valley 160 will construct the Phase II Waterline with a neighboring development (Aviara Estates) for which they currently own. Since the required second connection is relying on the neighbor's development and construction, this agreement will ensure that if Happy Valley 160 does not construct the Phase II Waterline needed to create the loop, Barclay-Pleasant LLC will construct the required waterline at an alternate location in order to maintain the City's loop system requirements. Additionally, Barclay-Pleasant LLC shall build the waterline within 24 months starting from the issuance date of the first Certificate of Occupancy or prior to the building permit of the last building in the project site, whichever comes first. By that time, the second water line shall connect to the existing water line at 93rd Avenue to complete the true loop system. Additionally, Barclay-Pleasant Valley, LLC is required to submit a surety bond to the City of Peoria in the amount of \$86,554 as a financial assurance for the cost of design and construction of the Phase II waterline.

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# 02308 LIC. # _____
Action Date: _____

ATTACHMENTS:

Construction of Waterline Agreement

When recorded return to:
City of Peoria
Office of the City Clerk
8401 W. Monroe Street
Peoria, AZ 85345

CONSTRUCTION OF WATERLINE AGREEMENT

This CONSTRUCTION OF Waterline AGREEMENT ("**Agreement**") is entered into as of the _____ day of _____, 2008 ("**Effective Date**"), by and between **Barclay-Pleasant Valley, LLC**, an Arizona limited liability company ("**Developer**") and the **City of Peoria**, an Arizona municipal corporation organized and existing under the laws of the State of Arizona (the "**City**"). Developer and the City are collectively referred to as the "**Parties**" and independently as Developer, City, or "**Party**."

RECITALS

A. Developer is the owner of certain real property (the "**Subject Property**"), which it desires to develop as shown on **Exhibit "A."**

B. Development of the Subject Property will require that certain improvements are made to the Subject Property.

C. Developer is prepared to construct one (1) new 12-inch water service line (the "**Phase I Waterline**") to serve the Subject Property as shown on **Exhibit "B."**

D. Pursuant to City requirements, the Subject Property must have a second 8-inch water service line (the "**Phase II Waterline**") to create a loop system. Based upon civil plans submitted by Happy Valley 160, L.L.C., an Arizona limited liability company ("**Happy Valley 160**"), and reviewed by the City, in order to satisfy the City's requirements for a loop system it is anticipated that Happy Valley 160 would construct the Phase II Waterline within a neighboring development (Aviara Estates) currently owned by Happy Valley 160 in the location depicted on Exhibit "**C-1**" attached hereto.

E. If Happy Valley 160 does not construct the Phase II Waterline necessary to create a loop system in accordance within the time requirements set forth in subsection 6(a) herein, then the required loop system will be at risk and Developer will be required to construct the Phase II Waterline in an alternative location in order to satisfy the City's loop system requirements. In such instance, the Phase II Waterline would be constructed in the location depicted on Exhibit "**C-2**" attached hereto.

F. Developer and the City agree to certain terms and conditions for the construction of the Phase I Waterline and the Phase II Waterline for the Subject Property.

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AGREEMENT

NOW THEREFORE, IN CONSIDERATION of the foregoing Recitals, and the mutual promises, covenants, and agreements hereinafter contained, and each act of the Parties hereto, the Parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

2. Incorporation of Exhibits. The following documents are referred to in this Agreement and are attached hereto and made a part of this Agreement by this reference:

<u>Exhibit</u>	<u>Description</u>
A	Depiction of Subject Property
B	Depiction of Phase I Waterline
C-1	Depiction of Phase II Waterline if constructed by Happy Valley 160
C-2	Depiction of Phase II Waterline if constructed by Developer
D-1	Engineer's Opinion of Preliminary Costs
D-2	Performance Bond
D-3	Regular Method of Assurance

3. Interest of Developer. Developer hereby represents and warrants to the City that it is the sole fee title owner of Subject Property.

4. Applicability of this Agreement. The terms and conditions of this Agreement shall only apply to the timing, construction, installation, etc. of the Phase II Waterline. Developer shall continue to be required to adhere to all of the City's ordinances, rules, regulations, and legislation applicable to the development of the Subject Property. Nothing in this Agreement shall be interpreted as relieving Developer of any obligation it may have to comply with all of the governmental rules and regulations enacted by the City or other governmental entities which apply to the Subject Property.

5. Construction of Phase I Waterline. The City will allow Developer to construct a single 12-inch waterline as shown in Exhibit "B" to begin to serve the Subject Property.

6. Conditions of Phase II Waterline Construction.

a. The Phase II Waterline must be constructed in order to complete the loop system required by City as shown in Exhibit "C-1 or Exhibit "C-2", as applicable, by the earlier of the following two dates:

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i. 24 months following the City's issuance of the first Certificate of Occupancy for the Subject Property, or

ii. Prior to the City's issuance of the building permit for the final building on the Subject Property.

b. If construction of the Phase II Waterline has not been commenced by Happy Valley 160 by the earlier of the following dates: (i) 12 months following the City's issuance of the First Certificate of Occupancy for the Subject Property; or (ii) prior to the City's issuance of the building permit for the final building on the Subject Property, then Developer agrees to construct it within the timeframe specified in subsection 6(a). If Developer is required to construct the Phase II Waterline, the City shall provide or obtain for the benefit of Developer licenses or temporary construction easements on and over the property on which the Phase II Waterline is to be constructed including, without limitation, licenses or temporary construction easements across any private properties or private rights-of-way necessary for the construction of the Phase II Waterline.

7. Financial Assurance. At the time a construction permit for the Phase II Waterline is issued to Developer, Developer shall provide the City with a bond in the form attached hereto as Exhibit "D" as a financial assurance for the cost of design and construction of the Phase II Waterline. Developer shall provide a bond in the amount equal to one hundred ten percent (110%) of the approved engineer's estimate of the cost to complete Phase II Waterline.

8. City Cash in Bond. The City shall have the option of cashing in the bond and designing or having designed and constructed the Phase II Waterline as shown in Exhibit "C-2" should the Developer fail to have the Phase II Waterline constructed pursuant to subsection 6(a)(i) or 6(a)(ii) above. If the actual cost of the design and construction of Phase II Waterline exceeds the funds available through cashing in the bond, the Developer shall be responsible for such additional cost.

9. Developer Grant City Easement. The Developer shall grant the City an easement for access and construction of the Phase II Waterlines if necessary.

10. Applicability of Restriction on Building Permits. The Developer agrees that the City is entitled to withhold building permits for the Subject Property pursuant to the conditions specified in subsection 6(a).

11. Indemnification. Developer shall indemnify and hold harmless the City, its directors, officers, employees, and agents for, from and against all claims, demands, suits and costs including, but not limited to, costs of defense, reasonable attorneys' fees, witness fees of any type, losses, actual (and not consequential) damages, expenses and liabilities, whether direct or indirect, to any person or to property to the extent caused by the negligent or willful acts or omissions of Developer or any of its owners, officers, directors, agents, employees or contractors, provided that this indemnity shall not apply to the extent that (i) any claim arises out of the negligent or willful acts or omissions of the City or its directors, officers, employees, agents or invitees or (ii) any failure on the part of the City, or any of its directors, officers, employees, agents or invitees to fulfill their obligations hereunder. The provisions of this

Section 11 shall survive revocation and/or termination of this Agreement for a period of one (1) year.

12. Successors and Assigns. The burdens and benefits of this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns (*i.e.*, it shall run with the land). A future owner of any interest greater than fifty percent (50%) of the net acreage of the Subject Property will be deemed a successor-in-interest to the Developer. "Net acreage" of the Subject Property shall mean the gross acreage within the Subject Property zoned for commercial use less any presently existing or proposed dedications or easements for public rights-of-way for roadway purposes. Notwithstanding the foregoing, however, in the event no owner within the Subject Property owns greater than fifty percent (50%) of the net acreage within the Subject Property at the time construction of the Phase II Waterline is required, then the owner owning the largest percentage of net acreage within the Subject Property at such time shall cause the Phase II Waterline to be constructed in accordance with the terms of this Agreement and in the location depicted on Exhibit "C-2." Upon the written assumption of any of the Developer's obligations under this Agreement by any successor-in-interest as set forth in this section, Developer will be released of all obligations assumed, and such assumption agreement shall be recorded by the City in the official records of Maricopa County, Arizona.

13. Relationship of the Parties. It is acknowledged and understood that the contractual relationship between the Parties is undertaken pursuant to this Agreement and nothing contained in this Agreement will create any partnership, joint venture or agency relationship between the City and the Developer. No term or provision of this Agreement is intended to, or will be, for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation will have any right or cause of action hereunder, whether as a third-party beneficiary or otherwise, unless stated herein.

14. Amendment or Cancellation of the Agreement. This Agreement may be amended or cancelled, in whole or in part with respect to all or any portion of the Subject Property, with the mutual written consent of the Parties hereto. Within twenty (20) days after any such amendment or cancellation of this Agreement, the amendment or cancellation will be recorded by the City in the Official Records of Maricopa County, Arizona.

15. Duration. If not sooner terminated in accordance with the terms of this Agreement, this Agreement will automatically terminate and be of no further force or effect four (4) years from the Effective Date of the Agreement; provided, however, that some provisions of the Agreement may provide for earlier termination. However, Section 11 of the Agreement shall survive revocation and/or termination of this Agreement for a period of one (1) year.

GENERAL PROVISIONS

1. Assignment. Developer shall not assign, encumber, mortgage or transfer any rights under this Agreement, or the rights and privileges herein, in whole or in part, without the City's prior written consent, which consent may be withheld for any reasonable reason.

2. Attorneys' Fees and Costs. If the City or Developer defaults in the timely performance of its obligations under this Agreement, the prevailing Party shall be entitled to

recover court costs and reasonable attorneys' fees, as determined by a court, in any suit or proceeding to enforce its rights under this Agreement. The foregoing shall not in any way limit or restrict any right or remedy at law or equity, which would otherwise be available to such Party in a default.

3. Authority. The Developer 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 executing this Agreement on behalf of the Developer is authorized and empowered to bind the Developer. The City represents and warrants to the Developer: (1) that it is a duly formed municipal corporation within the State of Arizona; and (2) that the individuals executing this Agreement on behalf of the City are authorized and empowered to bind the City.

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

5. 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.

6. Default, Remedies. If any Party to this Agreement breaches any provision of the Agreement, the non-defaulting Party will be entitled to all remedies available at both law and in equity, including but not limited to specific performance.

7. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to this issue and will not be changed or added to except in the manner provided in Section 14. 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.

8. Governing Law. This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. Venue is proper in Maricopa County Superior Court only, unless the parties mutually agree to pursue alternative dispute resolution mechanisms.

9. Headings. The description headings of the paragraphs of this Agreement are inserted for convenience only and will not control or affect the meaning or construction of any of the provisions of this Agreement.

10. Recordation. No later than twenty (20) days after this Agreement has been executed by the City and the Developer, it will be recorded in its entirety, by the City, in the Official Records of Maricopa County, Arizona.

11. Severability. If any provision of this Agreement is declared void or unenforceable, the provisions will be severed from this Agreement and the remainder of the Agreement will otherwise remain in full force and effect, provided that the overall intent of the Parties is not materially vitiated by such severability.

12. Service of Notice. All notices and demands required or permitted by this Agreement shall be in writing and shall be deemed to have been given properly when (i) sent by

certified mail (postage fully prepaid) or delivered personally or by overnight courier, to the respective address below or to such other address as may be furnished in writing by either Party to the other pursuant to this Section 12; or (ii) transmitted by telefacsimile to the respective telefacsimile number below or to such other telefacsimile number as may be furnished in writing by either Party to the other pursuant to this Section 12, and the appropriate confirmation is received.

Notices to Developer:

Barclay/Pleasant Valley, LLC
Attn: Robert E. Austin
7702 E. Doubletree Ranch Rd.
Suite 220
Scottsdale, Arizona 85260
Facsimile No. 480/596-6366
Telephone: 480/596-9399

Notices to City:

City of Peoria

Attn: _____
Peoria, Arizona 85345
Facsimile No. 623/773-_____
Telephone No. 623/773-_____

All notices and demands shall be deemed effective upon delivery, if delivered personally or by overnight courier, or if transmitted by telefacsimile; or twenty-four (24) hours after deposit in the U. S. Mail, if by certified mail.

13. Waiver. No waiver by either Party of any breach of any of the covenants or conditions of this Agreement which are to be performed by the other Party shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition.

14. Time of the Essence. Time is of the essence in this Agreement and each and every provision of this Agreement.

CITY OF PEORIA, an Arizona municipal corporation

By: _____
Bob Barrett, Mayor Date

APPROVED AS TO FORM

By: _____
Steve Kemp, City Attorney Date

ATTEST:

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STATE OF ARIZONA)
)ss:
COUNTY OF MARICOPA)

On this 14th day of February, 2008, before me, Kristin Downey, a Notary Public in and for the county and state aforesaid, personally appeared Scott T. Archer, Manager of Barclay Holdings XXVII, LLC, Member of Barclay/Pleasant Valley, LLC.

WITNESS my hand and official seal.

Signature Kristin Downey
(Notary Public)



My Commission Expires: August 9, 2008

STATE OF ARIZONA)
)ss:
COUNTY OF MARICOPA)

On this 14th day of February, 2008, before me, Kristin Downey, a Notary Public in and for the county and state aforesaid, personally appeared Jon M. James, Trustee of the Jon M. James Family Trust Dated January 30, 2002, Majority Member of JCMJ Investors, LLC, General Partner if JMJ Investor Limited Partnership, Administrative Member of Pleasant Valley, L.L.C., Member of Barclay/Pleasant Valley, LLC.

WITNESS my hand and official seal.

Signature Kristin Downey
(Notary Public)



My Commission Expires: August 9, 2008

CC: The Office of City Attorney (this document has been reviewed and approved by the Office of City Attorney)

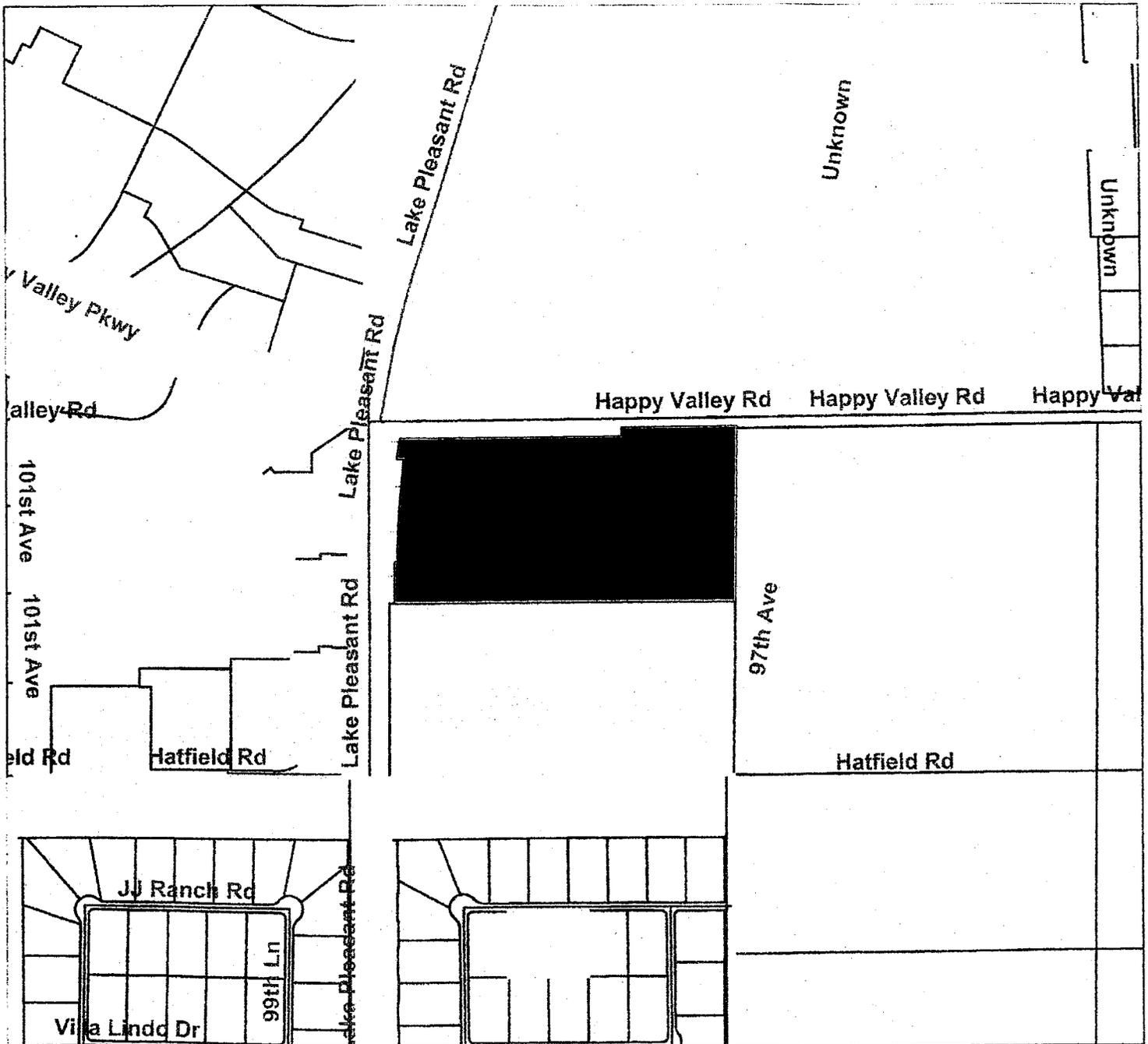
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Exhibit "A"

Depiction of Subject Property

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County Parcels



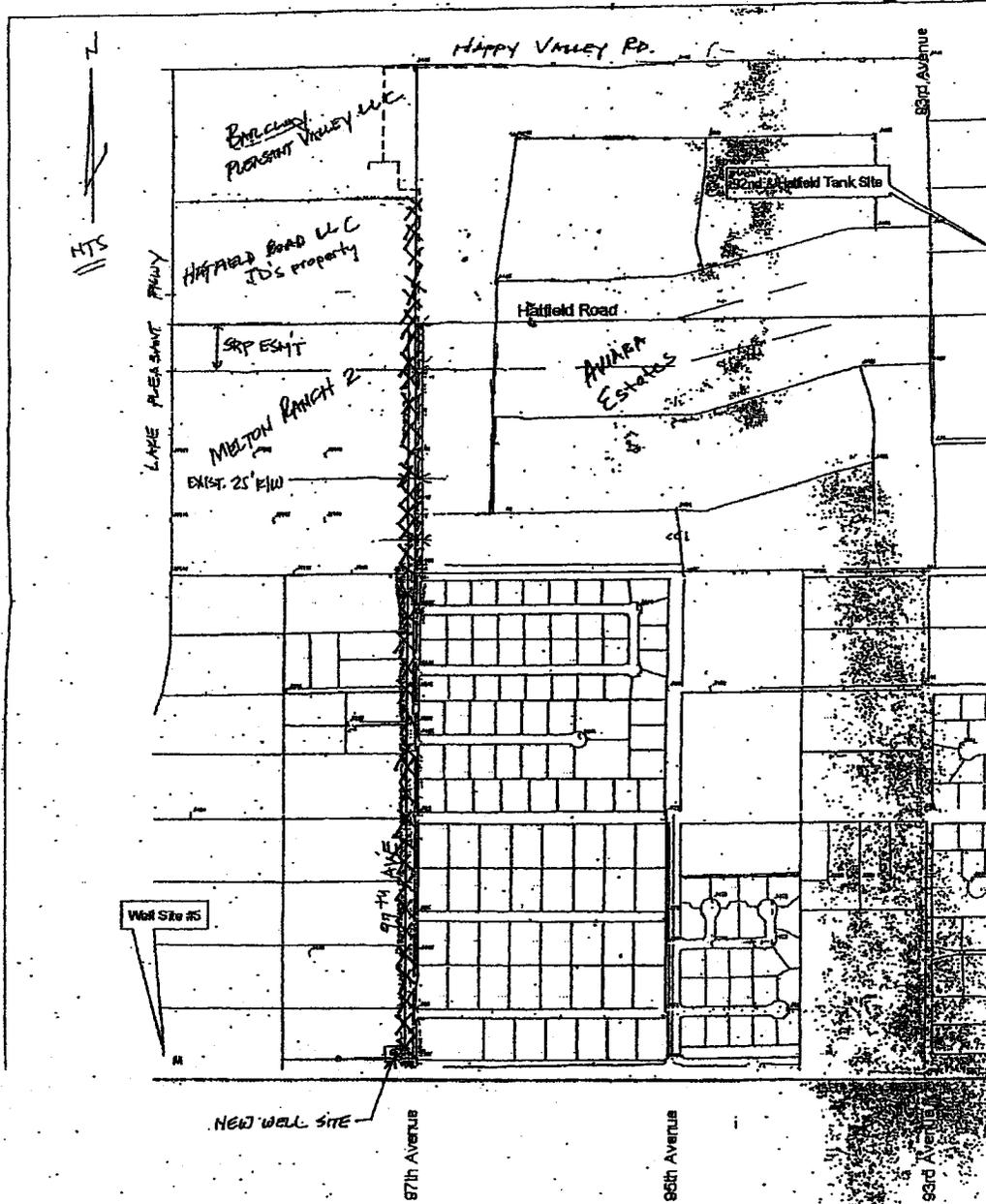
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Exhibit "B"

Depiction of Phase I Waterline

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EXHIBIT "B"
 PHASE I WATERLINE



Phase I Waterline

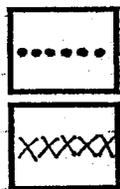
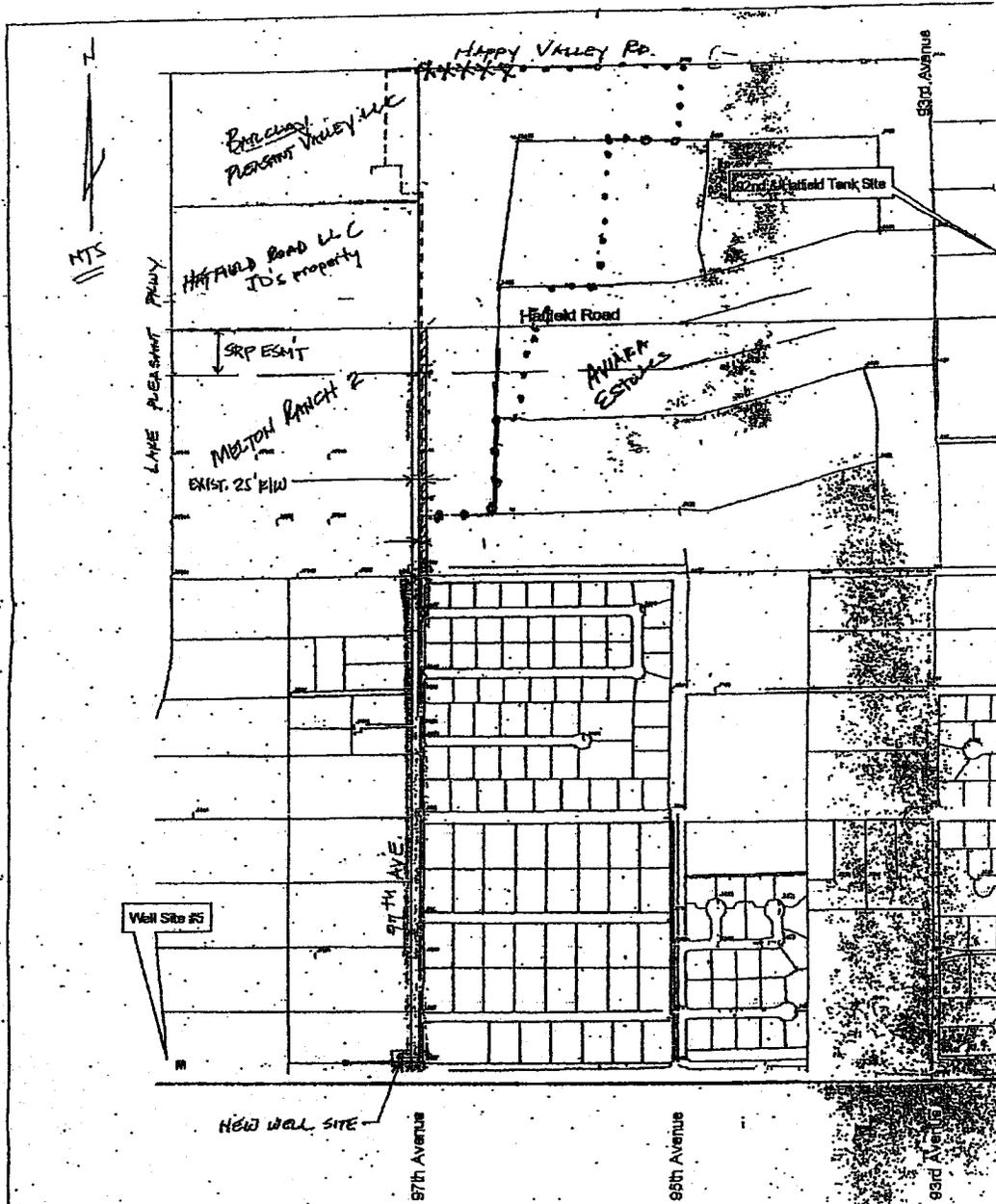
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Exhibit "C-1"

Depiction of Phase II Waterline if Constructed by Happy Valley 160

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EXHIBIT "C-1"
Phase II Waterline



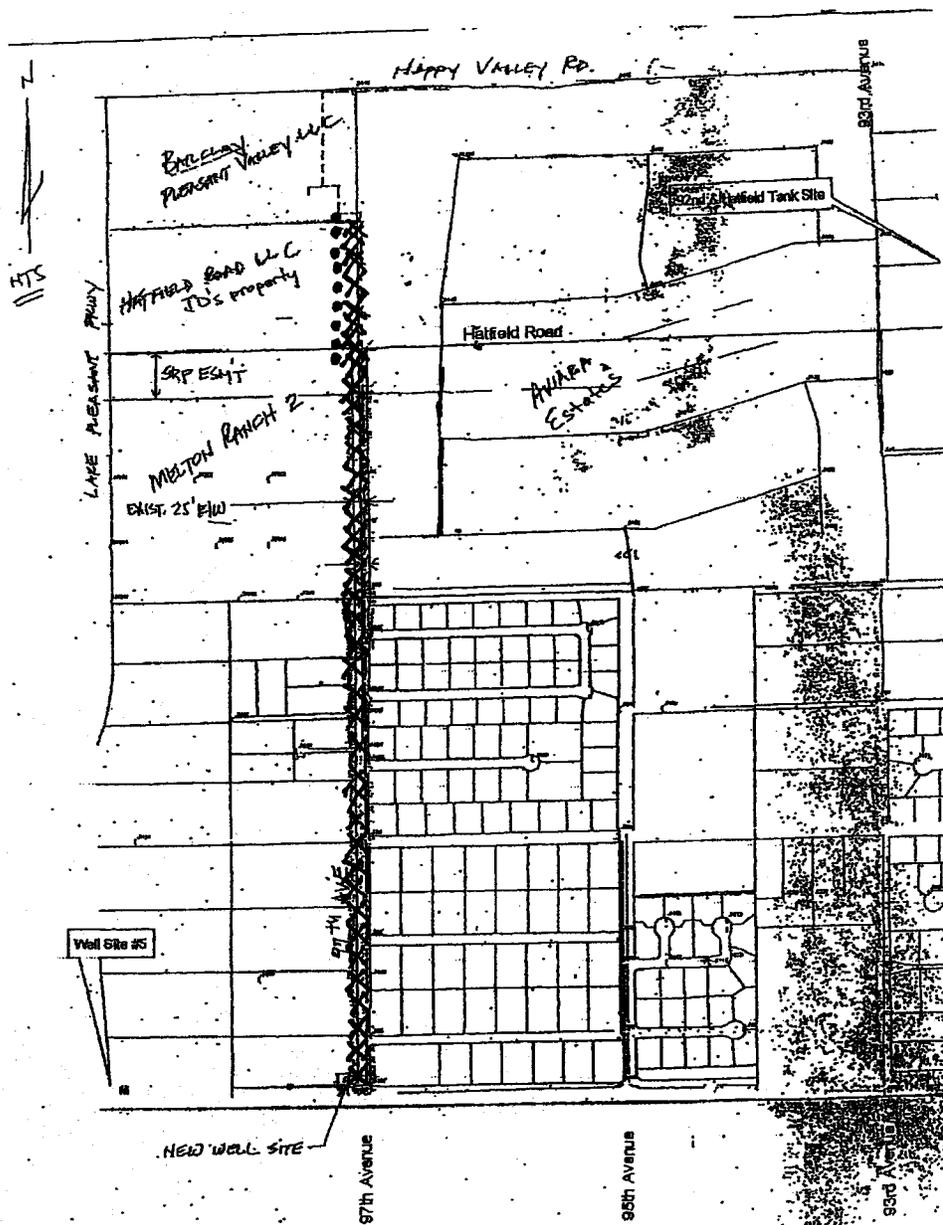
Phase II line by Aviara Estates

Connection Line by Developer

Exhibit "C-2"

Depiction of Phase II Waterline if Constructed by Developer

EXHIBIT "C-2"
PHASE I and II WATERLINES



Phase I Waterline



Phase II Waterline

Exhibit "D-1"

Engineer's Opinion of Preliminary Costs

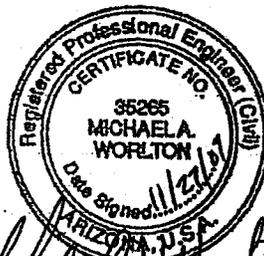
Mountainside Crossing

Engineer's Opinion of Preliminary Costs

Offsite Potable Water:

#	Description	Quantity	Unit	Unit Cost	Total Cost
Construction					
1	8" DIP Class 350, Excavation, Backfill and Fittings	710	LF	\$ 90	\$ 63,900
2	8" VB&C (MAG 391-2 Type "A")	3	EA	\$ 1,200	\$ 3,600
3	Fire Hydrant Complete (MAG 360)	1	EA	\$ 8,500	\$ 8,500
4	12"x8" DIP Tee	1	EA	\$ 400	\$ 400
5	8"x8" DIP Tee	1	EA	\$ 300	\$ 300
6	2" Curb Stop and Box (MAG 392)	2	EA	\$ 290	\$ 580
Total					\$ 77,280
Miscellaneous					
1	Permits – Approximately 2% of Construction Cost				\$ 1,546
2	Engineering Fees – Approximately 10% of Construction Cost				\$ 7,728
Total					\$ 9,274
Project Total					\$ 86,554

The preliminary estimate above was prepared based on the ENGINEER's understanding of the project. Since the ENGINEER has no control over labor, materials, equipment or services furnished by others or over the Contractor(s)' method of determining prices, or over the competitive bidding or market conditions; the opinions of probable costs provided herein are made on the basis of experience and qualifications. The bid estimate represents the best judgment as an engineer, familiar with the construction industry; but the ENGINEER cannot and does not guarantee that proposals, bids or actual project or construction cost will not vary from the opinion of probable cost. The costs for engineering and construction staking have not been included as part of this opinion of probable cost.



Michaela Worlton

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Exhibit "D-2"
Performance Bond

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Bond No. _____

PERFORMANCE BOND
(Developer/Owner)

KNOW ALL PERSONS BY THESE PRESENTS:

That we, Barclay/Pleasant Valley, LLC,

as Principal, and Developer
as Surety, are bound to the City of Peoria, Maricopa County, Arizona, a municipal corporation ("City"), in the sum of Eighty Six Thousand Five Hundred Fifty Dollars (\$ 86,554) (See attached *Exhibit "A"* for the actual cost breakdown), lawful money of the United States, for the payment of which sum of money well and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS THAT:

WHEREAS, Principal is in the process of obtaining civil plan (as identified on the approved site plan) or final plat approval for a subdivision/development within the City known as Mountainside Crossing (hereinafter "Development"); and

WHEREAS, Principal in order to obtain final plat or civil plan approval for the Development has entered into a certain written contract (Agreement to Install Improvements - A/B-Form) with the City, to ensure the installation of all the required improvements for the Development, dated _____, 200__ (hereinafter called the "Contract") for Construction of Waterline Agreement

_____, which Contract shall be deemed a part hereof as fully as if set out herein and which reference is made here for all particulars, and is required by that to give this bond in connection with the execution of that contract; and

WHEREAS, the Peoria City Code requires among other things a surety bond sufficient to cover the costs and installation of all the required improvements for development for which final plat or civil plan approval and certification is sought; and

WHEREAS, provision has been made by law and ordinance so that Principal shall file a bond acceptable to the City of Peoria in favor of the City, which shall indemnify the City and secure to it the actual construction of those improvements in a manner satisfactory to the City, in the event the Principal shall fail to install such improvements by January, 2010; and

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WHEREAS, the presentation of this Performance Bond is a condition precedent to execution of the Contract, submission of a final plat or civil plan to the City for approval and the commencement of any construction.

NOW THEREFORE, the condition of this obligation is such, that the above Principal, its successors, assigns, or if an individual, its personal representative, heirs, legatees, devisees, successors or assigns, shall faithfully perform and fulfill all of the undertaking, covenants, terms, conditions and agreements of the Contract during the term of the Contract with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also perform and faithfully comply with the provisions of the Peoria City Code, to the satisfaction of the City in completing the installation and construction of such improvements as are prescribed and required by the City under the Contract mentioned above, then this obligation shall be void; otherwise to remain in full force and effect.

Description of Work

Offsite 8" waterline to the shopping center

Name of Development/Project

Mountainside Crossing

Address or Location of Construction

SEC Happy Valley Rd and Lake Pleasant Rd
Peoria, Arizona

IN WITNESS WHEREOF, the Principal and Surety have executed this Bond under seal, this _____ day of _____, 200_____.

Principal

Surety

Printed Name

Printed Name

By

Signature

By

Attorney-in-Fact Signature
(Attach Certified Copy of General Power of Attorney Certification)

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Principal Acknowledgment

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 200__, before me, a Notary Public, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledged that they have executed the same. If this person's name is subscribed in a representative capacity, it is for the principal named and in the capacity indicated.

Notary Public

My Commission Expires:

Corporate Surety Acknowledgment

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 200__, before me, a Notary Public, personally appeared _____, who being duly sworn did depose and say that they are the Attorney-in-Fact of the _____ Company of _____, that the seal affixed to the attached bond to the City of Peoria, a municipal corporation of the State of Arizona, is the corporate seal of said corporation and that said bond was signed and sealed on behalf of said corporation by authority of its board of directors and the said _____ acknowledges that they executed said instrument as such Attorney-in-Fact and as the free act and deed of said corporation.

Notary Public

My Commission Expires:

Seal:

Approved as to Form:

City Attorney

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October 2006 s/c dag

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Exhibit "D-3"

Regular Method of Assurance

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FORM INSTALL-A
REGULAR METHODS OF ASSURANCE

This AGREEMENT TO INSTALL IMPROVEMENTS ("AGREEMENT") entered into this _____ day of _____, 20____, by and between Barclay/Pleasant Valley, LLC DEVELOPER/OWNER/SUBDIVIDER ("DEVELOPER"), whose address is 7702 East Doubletree Ranch Road, Suite 220, Scottsdale, AZ 85258 and the CITY OF PEORIA, an Arizona municipal corporation ("CITY") whose address is 8401 West Monroe Street, Peoria, Arizona, 85345.

I. RECITALS.

A. The DEVELOPER of Mountainside Crossing

COMMERCIAL/INDUSTRIAL/MULTI-FAMILY/SUBDIVISION development ("DEVELOPMENT") as laid out on the plat/site plan dated _____, 20____, in which the City of Peoria City Council and/or the City of Peoria Planning & Zoning Commission have granted plat/site plan approval.

B. In conjunction with the development of the DEVELOPMENT, the DEVELOPER in accordance with City of Peoria Ordinances is required to construct certain DEVELOPMENT improvements as described in the submitted final improvement plans and approved by the City Engineer.

C. The CITY requires as a precondition to the recordation of the Final Plat/ Site Plan of the DEVELOPMENT and the issuance on off-site construction permits certain assurances, that the improvements described therein, on the CITY approved improvement plans will be constructed.

D. DEVELOPER desires to provide assurances to the CITY that the DEVELOPMENT improvements will be constructed.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and the faith full performance thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

II. AGREEMENT.

1. Construction of Improvements.

DEVELOPER shall construct, or cause to be constructed at its sole cost and expense, in a manner satisfactory to the City Engineer, all of the DEVELOPMENT improvements required by the CITY as shown on the improvement plans on or before September 20, 2007.

2. Right to Complete.
In the case that the improvements are not completed in a satisfactory manner to the City Engineer, within the specified time period, the CITY may complete the improvements and recover from the DEVELOPER the full costs and expenses thereof.
3. Security.
As security for completion of the required improvements, DEVELOPER shall provide a Financial Guarantee of performance. Such Financial Guarantee shall be a performance bond from a Surety Bonding Company, an escrow account with the CITY or a financial institution, cash deposit, certified check(s), negotiable bonds, or a letter of credit. The financial institution and surety company shall be licensed to do business in the State of Arizona. The City Attorney shall approve the form of the assurance and the City Engineer shall approve the assurance amount.
4. Attorney's Fees.
In the event that the CITY shall incur attorney fees and costs of any nature relating to this Agreement, DEVELOPER shall reimburse the CITY for its reasonable attorney fees and disbursement incurred in connection therewith.
5. Authority of Signatory.
DEVELOPER or any individual executing this Agreement on behalf of DEVELOPER represents and warrants that they are duly authorized to execute and deliver this Agreement.
6. Choice of Law.
This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Arizona applicable to agreements made and performed wholly therein, and any legal action commenced pursuant to this Agreement shall be brought in an appropriate court in Maricopa County.
7. Exhibits, Plats, Site Plans or Addenda.
All plat/site plans, exhibits, or addenda, if any, referenced in this Agreement are a part hereof.
8. Headings.
The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraph or of this Agreement nor in any way affect this Agreement.

