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BEFORE THE ARIZONA CORPORATION COMMISSION

2009 NOV 10 P 4:12

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF THE APPLICATION
OF LITCHFIELD PARK SERVICE
COMPANY, AN ARIZONA
CORPORATION, FOR A DETERMINATION
OF THE FAIR VALUE OF ITS UTILITY
PLANTS AND PROPERTY AND FOR
INCREASES IN ITS WASTEWATER
RATES AND CHARGES FOR UTILITY
SERVICE BASED THEREON.

DOCKET NO. SW-01428A-09-0103

IN THE MATTER OF THE APPLICATION
OF LITCHFIELD PARK SERVICE
COMPANY, AN ARIZONA
CORPORATION, FOR A DETERMINATION
OF THE FAIR VALUE OF ITS UTILITY
PLANTS AND PROPERTY AND FOR
INCREASES IN ITS WATER RATES AND
CHARGES FOR UTILITY SERVICE BASED
THEREON.

DOCKET NO. W-01427A-09-0104

NOTICE OF FILING
TESTIMONY OF PHILIP
ZEBLISKY

PebbleCreek Properties Limited Partnership, hereby files the Direct Testimony of Philip Zeblisky.

RESPECTFULLY SUBMITTED this 10th day of November, 2009.

MORRILL & ARONSON, P.L.C.

By Martin Aronson

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Arizona Corporation Commission

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1 **ORIGINAL** and fifteen (15) copies
2 of the foregoing filed this 10th day of
November, 2009 with:

3 Docket Control - Utilities Division
4 Arizona Corporation Commission
5 1200 W. Washington Street
Phoenix, Arizona 85007

6 **COPIES** of the foregoing e-mailed and mailed
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DOCKET NO. W-01427A-09-0104

DIRECT TESTIMONY OF PHILIP ZEBLISKY, CPA

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PHILIP ZEBLISKY, CPA
ON BEHALF OF
PEBBLECREEK PROPERTIES LIMITED PARTNERSHIP**

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I. INTRODUCTION AND PURPOSE OF TESTIMONY

Please state your name and business address.

My name is Philip Zeblisky. My business address is 302 West Surrey Avenue, Phoenix, AZ 85029.

On whose behalf are you testifying in this proceeding?

I am testifying on behalf of PebbleCreek Properties Limited Partnership, an Arizona limited partnership ("PPLP"). PPLP is the developer of the PebbleCreek Resort Community in Goodyear, Arizona ("PebbleCreek").

What is your educational and employment background as it is relevant to these proceedings?

I am representing PPLP as an independent consultant with experience in both utility accounting, finance and ratemaking and as an individual who has over 15 years of experience in managerial and executive positions with various homebuilding and land development companies.

In 1980, I earned a Bachelor's Degree in Political Science and a Masters Degree in Urban and Policy Sciences from Stony Brook University in New York. In 1988, I earned a Masters Degree in Accounting from Long Island University (CW Post Campus). I was employed by Touche Ross and its successor, Deloitte and Touche, in New York City from 1988 to 1991. I joined KPMG Peat Marwick ("KPMG") in 1991 when I moved to Arizona from New York. I became an audit manager at KPMG in 1993. During my public accounting career my clients were concentrated in the real estate, finance and defense industries. I am a Certified Public Accountant in Arizona.

In 1993 I joined Del Webb Corporation as an Assistant Controller at the Sun City West project in Sun City West Arizona and for the next 8 years I worked on several of the Del Webb master-planned communities. I left Del Webb Corporation in 2002 after it was acquired by Pulte Corporation. Prior to leaving Pulte Corporation, I was Vice President of Finance for Del Webb's Nevada operations. Immediately prior to that I was Vice President of Finance for Anthem, Arizona, a master-planned community in north Phoenix. During my tenure at Anthem, I was responsible for negotiating a utility services contract and participated in the rate case and certification process for Citizens Utilities Company (now Arizona American), which is the water and wastewater provider at Anthem. I was also heavily involved in working with the division's land development management team in developing water and wastewater plans and budgets for the community.

Since leaving Del Webb, I have worked as an independent consultant to various development companies. For the past 4 ½ years, I also served as General Manager of Sandia, a 3,200 acre master-planned community located in Coolidge, Arizona. The entitlements for this community were obtained by Pivotal Sandia, LLC. Pivotal Sandia, LLC obtained a certificate of convenience and necessity to provide water and wastewater

service to the Sandia community during my tenure through its wholly owned subsidiaries Woodruff Water, Inc. and Woodruff Utilities, Inc (“the Woodruff entities”). I continued to be responsible for overseeing the planning and entitlement activities associated with Sandia and the Woodruff entities through the completion of those activities in 2008.

What is the purpose of your direct testimony?

Intervener PPLP is challenging the water and wastewater hook-up fees (“HUFs”) that Litchfield Park Service Company (“LPSCO”) has included in its proposed tariff in its pending rate case. My testimony will support PPLP’s position and will be limited to a discussion of the HUFs as they relate to the PebbleCreek community.

II. EXECUTIVE SUMMARY

Mr. Zeblisky, why is it that you believe that the Hook-Up Fees that are proposed in the current rate case should not be applied to the PebbleCreek community?

I will show that PPLP developed PebbleCreek under a development paradigm that did not anticipate HUFs. When PPLP, LPSCO and SUNCOR (LPSCO’s parent at the time of the negotiations), established the development paradigm they negotiated certain contributions and advances in aid of construction in exchange for an agreement that PPLP would not have to pay HUFs. Since PPLP has been operating under this development paradigm for over 15 years, I will demonstrate that it is not equitable to institute a HUF at this stage of the development of the project.

I will then challenge the equity of the HUF as proposed because it does not adequately consider the differential impacts of Active Adult Communities on infrastructure requirements when those communities are compared to non-age restricted communities. Since HUFs are equitable only when they relate to the infrastructure that is built to satisfy specific development, I will explain that the differences in system demands created by Active Adult versus non-age restricted communities should result in different HUFs for these different types of communities.

Next, I will discuss the specific infrastructure contributions that have been made by PPLP and will show that these contributions have effectively provided or will provide, in the normal course of development, for materially all of the infrastructure that is required to serve the water and wastewater demands created by PebbleCreek.

I will then discuss the reasons that an equitable HUF tariff should consist of differential rates for different development areas. After establishing the basis for my position that different HUFs should be considered for different portions of LPSCO’s certificated area, I will outline various concerns that I have with the structure of the current proposed HUF tariff.

Next I will discuss various concerns that I have with the manner in which Plant in Service additions since the last rate case have been accounted for in LPSCO’s records. I will then discuss the impact that this could potentially have on the development of rates and the

ability to propose an equitable HUF tariff that adequately relates back to the infrastructure that is being placed in service.

Next I will demonstrate that the HUF places an unfair burden on residential development as opposed to commercial development.

Finally, I will review various discussions of HUFs in the prior LPSCO rate case. At that time I will restate RUCO's arguments in the last rate case that HUFs could reduce rate basis to a level that will not support stable financial operations of the utility and I will discuss the need to further study the HUF to determine the impact it will have on future development patterns and the financial viability of the utility. I will also discuss a post test year adjustment that I believe should have been made in LPSCO's filing and I will argue that if that adjustment is made there would be a significant decline in indicated rates in this case and in the level of HUFs that would result in a prudent balance of the various sources of capital to be used by LPSCO in the next three years.

III. REVIEW OF THE DEVELOPMENT PARADIGM FOR THE PEBBLECREEK PROJECT

As a result of the purchase documents that Intervener PPLP executed in connection with its acquisition of the property upon which the PebbleCreek community is located, and the line extension agreements that PPLP entered into during the development of the PebbleCreek community, PPLP has for over 15 years been paying for the infrastructure that is supposed to be paid for by the proposed HUFs.

In testimony submitted with this application, Greg Sorenson indicated that LPSCO was, in part, considering the implementation of HUFs because "all customers within a class should pay the same amount because each customer is contributing to the same extent to the operating and administrative costs of the utility and each customer is providing a like amount in support of the return on rate base" (Sorensen testimony at pages 16 and 17). I disagree with Mr. Sorenson's position if he means to include PebbleCreek in the same class as other residential areas that do not have PebbleCreek's unique characteristics and paradigm of development.

PPLP has incurred additional land acquisition, subdivision improvement and off-site improvement costs that it would not normally have incurred but for its agreements with SunCor Development Company ("SunCor") and what was then SunCor's wholly-owned subsidiary, LPSCO. I believe that various costs incurred by PPLP and various reimbursements that PPLP agreed to forego amounted to contributions that other developers were not required to make. These additional contributions resulted from the purchase agreement with SunCor and the various line extension agreements with LPSCO under which infrastructure has been constructed to date. Since other developers were not subject to the same agreements, they did not experience the full burden of all of these costs.

In view of these facts, it is not equitable to treat PPLP in the same fashion as other developers who are just beginning to request service in the certificated area. If LPSCO is

going to treat PPLP equitably, it should give PPLP credit for what PPLP contributed in the past. Those credits may be greater than the contributions that LPSCO is seeking from PPLP through this HUF.

Can you outline the basis for your claim that PPLP incurred additional costs and lost various reimbursements as a result of these agreements?

When SunCor, who at that time was the parent of LPSCO, negotiated the land purchase agreement with PPLP, a simple paradigm for development of water and sewer infrastructure was developed. Under this paradigm SunCor and/or LPSCO would be responsible for constructing all of what is known as "off-site" infrastructure to the PebbleCreek property boundary and PPLP agreed to construct all of the water distribution lines, sewer collection lines and associated valves, manholes, hydrants and other infrastructure associated with the development within PebbleCreek. LPSCO would provide reimbursements under line extension reimbursement agreements ("known as 10/10 agreements") in exchange for advances of the subdivision improvements that were constructed by PPLP.

This paradigm was also documented in the Planned Area Development ("PAD") for PebbleCreek dated December 7, 1991. In that document it was noted that "[w]ater lines within the PebbleCreek community will be installed by the developer. These lines will be sufficiently sized as required for any future development west of the project" (see page 78).

This sounds like a pretty standard development paradigm, how was it different for PPLP?

The development paradigm was different in several ways. First, PPLP was required to pay to SunCor the reimbursements due PPLP under the line extension agreements. This means that the parent of LPSCO recovered line extension reimbursements made to PPLP. In effect, the consolidated entities received a return on capital that they did not obtain from other developers who were able to retain their line extension agreement reimbursements.

The second difference related to the costs associated with the infrastructure that was included within the PebbleCreek community. Because other developers incorporated subdivisions into the certificated areas by signing line extension agreements just for those subdivisions, LPSCO had to incur the costs of connecting those subdivisions to each other with off-site lines. Areas outside of those subdivisions were considered off-site lines. In the case of PPLP, the area associated with the line extension agreements consisted of the entire set of subdivisions plus the connection points between these subdivisions. In other words, lines that were "off-site" to subdivisions within PebbleCreek were nonetheless paid for by PPLP if they were within the boundaries of the PebbleCreek master-planned community. Furthermore, certain lines that were designed into the subdivisions by PPLP were effectively "off-site lines". This was consistent with the simplified development paradigm that I referred to above, but it resulted in certain additional costs to PPLP that LPSCO benefited from and that other developers were not obligated to pay. Due to the size of the community, certain infrastructure that would be

classified as "off-site" in smaller projects was treated as "on-site" or subdivision infrastructure in PebbleCreek.

In effect, PPLP was responsible for putting in the off-site lines that are or will be used to serve areas outside of the boundaries of the applicable PebbleCreek subdivisions. If the HUFs are approved, PPLP will now pay a fee that will cover, in part, off-site lines and appurtenances for future development. This constitutes what I view as being a "double burden". The additional costs discussed above eventually became Contributions in Aid of Construction and hence they will be treated in the same fashion as a HUF for ratemaking purposes.

Can you give us an example of the impact on PPLP of paying these additional "off-site costs"?

I have an example that is very current.

Recently LPSCO submitted two water line extension agreements to PPLP for its Units 53 and 54. (See Exhibits 1 and 2) The agreements indicated that "If requested by the Utility, Developer shall "over-size" the Facilities as specified by the Utility. Utility shall reimburse Developer for the amount by which the material prices of the over-sized facilities exceed the actual material prices of these Facilities prior to the "over-sizing"."

The agreement then goes on (in its Exhibit C) to specify various water distribution lines that PPLP would have to construct within these subdivisions. These lines include 6", 8" and 12" lines. Since these subdivisions consist of only 165 lots, 8" water distributions lines will meet the capacity requirements of the subdivisions. Instead, PPLP designed "over-sized lines" through its subdivisions (i.e., the 12" lines) for which it is not being compensated by LPSCO under the proposed line extension agreement. In other parts of the certificated area, these lines would be placed in major arterial roadways that were not part of the subdivisions included in the line extension agreements.

This is one example of how PPLP paid additional costs by adhering to the development paradigm above.

So had PPLP not been responsible for all of the water distribution lines within PebbleCreek, it might not have incurred all of the costs associated with this agreement?

PPLP would have had the opportunity to demonstrate that the lines that served more than just the lots in its subdivisions (i.e., the 12" lines) constituted over-sized lines. Also, any lines that were not located in subdivisions but were lines larger than 8" (i.e., those lines that were located in main arterials) could be viewed as being off-site lines. In view of that fact, PPLP would have been able to demonstrate that it should be compensated for the additional costs of the 12" lines that were located in PebbleCreek.

How much in over-size costs were associated with these subdivisions?

The total costs for the construction of the subdivision improvements within these two subdivisions were estimated at \$511,613. The costs associated with over-sizing from 8"

lines to 12" lines can be estimated from the budget set forth in Exhibit C of the proposed agreement at \$26,894. (See Exhibit 3)

Where there any other oversize costs associated with these subdivisions?

Yes. 12" valve boxes and covers were associated with the 12" lines and there was a sampling station in one of the subdivisions that clearly serves more than just the one subdivision.

What were the additional costs of these items?

Using the construction estimates in Exhibit C of the line extension agreement, the over-sizing costs associated with these valve boxes and covers and the sampling station was \$11,400. In effect, the total cost of over-sizing was \$38,294 or just over \$232 per lot. But the problem is even more pronounced because in one subdivision the total over-sizing costs were only about \$147 per lot while in the other subdivision the costs were about \$318 per lot. Clearly, taken alone, one subdivision was making more of a "contribution" than the other. More importantly, both of these costs are contributions that should offset the HUF but did not and will not because they occurred under the current development paradigm. This further supports the position that a fixed HUF may not be equitable because it does not consider other cost factors associated with developing a specific subdivision.

And so your position is that since PPLP incurred additional costs under the current development paradigm, the rules should not be changed?

Precisely. Unless LPSCO gives PPLP full credit for the additional burden it has incurred to date, whether that burden consists of over-sizing costs or reimbursements foregone, PPLP is not being treated equitably and Sorenson's argument in the testimony referenced above fails. In addition to these costs, PPLP also incurred the cost of capital associated with installing these improvements at an increased cost when compared to other developments that were not being developed under the same development paradigm.

You have addressed how PPLP made additional contributions to off-sites by virtue of what you refer to as the "development paradigm" and you addressed how line extension reimbursements that would previously be due PPLP were in fact retained by the consolidated entity. How can you support your claim that PPLP paid more for the land as a result of its agreement with SunCor and its affiliate LPSCO?

The land upon which the PebbleCreek community was developed was acquired in the early 1990's by PPLP. Under the terms of the land purchase agreement, PPLP agreed to pay SunCor a "floor price" for the land subject to upward adjustment based on a percentage of future real estate sales within the community.

Any developer will tell you that the value of land is a function of what you can do with the land and what it will cost you to do it. One of the costs of "doing something with the land" is the cost of solving the water and wastewater infrastructure issues associated with the development. Because SunCor and its subsidiary, LPSCO, agreed to install all off-site infrastructure to the perimeter of the property at no cost to PPLP, the value of the land was enhanced and a higher price could be assessed by SunCor.

PPLP has been paying that higher price for over 15 years. To now require that PPLP pay a HUF that was not anticipated in the purchase agreement is inequitable because it double charges PPLP for the increased purchase price, infrastructure costs incurred and reimbursements foregone.

IV. SYSTEM DEMANDS OF ACTIVE ADULT COMMUNITIES VS. NON-AGE RESTRICTED COMMUNITIES

Are there any differences between Active Adult Communities and non-age restricted communities that should be considered in establishing a HUF?

Based on several historical studies of utility usage in other PPLP adult communities and in various Del Webb Sun City communities, it has been established that Active Adult Communities such as PebbleCreek generate lower water and wastewater flows than non-age restricted developments within a relevant certificated area.

What is the importance of these differences?

As noted above, Mr. Sorenson indicated in his testimony that "all customers within a class should pay the same amount because each customer is contributing to the same extent to the operating and administrative costs of the utility and each customer is providing a like amount in support of the return on rate base" (Sorensen testimony at pages 16 and 17). This not accurate. I believe that residents in Active Adult Communities pay the same monthly minimum charge as all other customers with similarly sized meters but they place less demand on the system.

What is the magnitude of this difference?

While it would take a very detailed analysis that I have not undertaken at this time to fully answer this question, there are some general rules of thumb that can help us understand the magnitude of this issue. Using these rules of thumb, average water demand for Active Adult Communities is generally planned as being somewhere in the range of 240 to 260 gallons per household per day while demand for homes in non-age restricted communities tends to be planned in the range of 360 to 380 gallons per household per day. Sewer demand is generally in the range of 120 to 140 gallons per household per day for homes in Active Adult Communities while demand is generally in the range of 180 to 220 gallons per household per day in non-age restricted communities.

Why the differences in demand requirements by type of community?

Generally the usage in Active Adult Communities differs from usage in non-age restricted communities for at least 3 reasons.

First, homes in Active Adult Communities generally have fewer occupants (somewhere around an average of 1.8 per household) than non-age restricted communities (which have an average of about 2.8 residents per household).

Second, residents of Active Adult Communities are more likely to be seasonal residents than are residents of non-age restricted communities. These two differences will impact

the amount of interior (sewer) demand of Active Adult Communities. Note that in Exhibit 4 the **per person** interior use in both active adult and non-age restricted communities is very comparable using the assumptions above but the per household numbers are lower because of the lower occupancy within Active Adult Communities.

Active Adult Communities also tend to have lower exterior demand because lots are frequently smaller in size and use fewer high water use and maintenance plants and turf on home sites because many of the homes are set up to be "lock and leave" and because seniors prefer low maintenance yards. Homes in Active Adult Communities also rarely have pools because pools are available in recreation facilities that are part of the amenity packages of Active Adult Communities. Since pools can easily use 20,000 gallons of water per year, the higher number of pools coupled with more lawns and other exterior water uses result in greater exterior demand for non-age restricted communities versus Active Adult Communities.

I estimate that Active Adult Communities have interior usage of between 120 and 140 gallons per household and exterior usage of between 110 and 130 gallons per household per day. Non-age restricted communities, on the other hand, have interior usage of between 180 and 220 gallons per household per day and exterior usage of between 160 and 180 gallons per household per day.

How does this translate into total demand for PebbleCreek versus other communities within LPSCO's service area?

I have estimated in Exhibit 4 that at build-out, homes in PebbleCreek will demand approximately 1.56 Million Gallons of water per day and deliver approximately .8 Million Gallons of wastewater per day. At this point in its development history, I estimate that if PebbleCreek were a non-age restricted community it would demand 1.43 Million Gallons of Water and deliver .8 Million Gallons of Wastewater per day.

So then, in your opinion, when PebbleCreek is compared to non-age restricted communities, since it places lower demands on the utility systems, PebbleCreek has effectively paid for substantially all of the water and wastewater infrastructure that it will demand at build-out?

Well, not exactly, pipe sizes and other appurtenances are not as sensitive to quantities as are things like treatment capacity, which is a major driver of costs that LPSCO is trying to recover with a HUF. PPLP has effectively paid for over 90% of PebbleCreek's required water treatment and supply infrastructure demand and over 95% of its required wastewater treatment infrastructure demands. As I noted above, under the existing development paradigm, PPLP will continue to develop the transmission, distribution and collection lines and related appurtenances that are needed to serve the PebbleCreek community. Consequently, I believe that PPLP has paid for sufficient infrastructure to meet substantially all of its treatment and source demands at the current time and it will provide the infrastructure to meet future transmission, distribution and collection demands as it builds new subdivisions under the line extension agreements as they have been applied in the past.

So then are you saying that the HUF is simply a redundant cost for PPLP since it has already borne the costs of its development?

As I discussed above, PPLP has contributed more than its fair share of Contributions in Aid of Construction, but it has done so in the context of the overall land purchase and line extension agreements under which it has been developing the property. PPLP has been developing for over 15 years under the development paradigm that it agreed to, and the HUF is contrary to that paradigm. For that reason I believe that the HUF should not be imposed on PPLP for the benefit of future development. In my opinion, imposing a HUF at this point in time is like changing the rules of the game in the fourth quarter.

IV. SPECIFIC HISTORICAL CONTRIBUTIONS IN AID OF CONSTRUCTION MADE BY PPLP

So far you have spoken in general terms about additional Contributions in Aid of Construction that PPLP has made to LPSCO during the development of PebbleCreek. Can you support your position with any concrete examples of off-site infrastructure that has already been provided by or on behalf of PPLP?

I believe that I can demonstrate that sufficient water infrastructure was provided by SunCor and PPLP to provide for all of the off-site needs of the PebbleCreek community. To do this I will deal with the source of water provided by SunCor and PPLP and will then demonstrate that the off-site lines required to serve the PebbleCreek community were completed early in the development process.

I can also demonstrate that sufficient off-site wastewater collection lines were provided by SunCor and PPLP.

Finally, I note that in a letter dated September 20, 2005, Mr. James W. Humble, Development Services Manager for LPSCO, advised PPLP's engineering firm, B&R Engineering, Inc. (Mr. Mark Maloney) (Exhibit 5), that "[t]his letter is to confirm that the Litchfield Park Service Company (LPSCO) has the authority and **necessary capacity** to provide wastewater collection **and wastewater treatment (emphasis added)** for the project known as PebbleCreek II bounded by Indian School Road to the north, PebbleCreek Parkway to the east, Loop 303 to the west and McDowell Road to the south in Goodyear, Arizona."

Before we go on, could you confirm that the property boundaries set forth in your last answer pertain to the remaining land within PebbleCreek?

That is correct. PebbleCreek is now a two phase project, and PebbleCreek II contains substantially all of the land remaining to be served in PebbleCreek by LPSCO.

Thank you. As you know, LPSCO has indicated that it will have a need to build additional wastewater treatment capacity in the near future. How can you reconcile this need with Mr. Humble's statement?

I am unable to speculate on how LPSCO allocates its treatment capacity to the various developments within its certificated area. I can say, though, that I believe that it was reasonable for PPLP to believe that its needs for wastewater treatment had been met for

the entire project at the time of this letter. Recall from my testimony above that the homes in PebbleCreek will only require about .8 MGD of wastewater treatment capacity when the community is completed. Mr. Sorenson testified in LPSCO's rate filing that "The Palm Valley Water Recovery Facility ("PVWRF") is currently permitted to process up to 4.1 million gallons of sewage." (See Page 6 Sorenson Testimony). Clearly this plant provides sufficient capacity to treat the needs of PebbleCreek and it is PPLP's and my position that Mr. Humble was confirming an understanding that sufficient capacity for PebbleCreek had already been allocated at PVWRF.

Thank you. Could you now address how PPLP and SunCor provided a source of water (wells) for the PebbleCreek Community?

The original PAD for the PebbleCreek project was submitted on December 7, 1991 and was subsequently approved by the City of Goodyear. This document (page 35) included a list of seven wells that were located on the property. One of those wells (ADWR well number 55-611717) has now been included as Plant in Service by LPSCO.

It is my opinion that this well represented Contributions in Aid of Construction. Based on ADWR well information, this well pumped an average of approximately 1.37 Million Gallons per Day for the last year in which data is currently available (2007).

And how much supply will be required for the PebbleCreek community at build-out?

I testified earlier that at build-out, the homes in the PebbleCreek community will require approximately 1.56 Million Gallons of water per day to meet their needs. For this reason, I believe that the well that was contributed as noted above provided a sufficient source of supply to meet almost 88% of the supply required for the homes in PebbleCreek.

Are there any other wells operating at PebbleCreek?

Yes. Engineers for PPLP have advised me that there are at least 5 additional operating wells at PebbleCreek that are not owned by LPSCO. These wells are used to recover type one water rights currently owned by PPLP and the water pumped from these wells is used for a variety of on-site irrigation purposes. By doing this they reduce the demands placed on LPSCO and since water systems are integrated wholes, I believe that these wells can or will effectively provide for the remaining source needs of PebbleCreek.

But LPSCO does not get "paid" for this water. How can these wells benefit LPSCO? I believe that these wells do benefit LPSCO. Although LPSCO does not receive revenue from these wells, LPSCO has not been required to make any capital investment (in itself a Contribution in Aid of Construction which is similar to what would be achieved by a HUF). LPSCO also does not have any operating expenses associated with these wells. In effect if a utility has no rate base, it will earn revenues equal only to its operating expenses. Since LPSCO had no rate base for these wells and there were no operating expenses associated with the wells, the fact that it received no revenue in no way compromises the return that it is entitled to.

OK, so LPSCO did not lose return because of these wells, but how did it benefit?

Again I return to the notion that water systems are developed as integrated wholes. The water from these type I wells was important in the early stages of the project because effluent was not available for irrigation uses. Before effluent was needed, it was not cost-efficient to use treated water for these purposes because treated potable water is expensive, but not needed for water used for irrigation purposes. Under the terms of the agreements between SunCor and PPLP, if effluent was received by PebbleCreek later in the project, PebbleCreek agreed to use this water on the property. In effect, these wells served both interim and ultimate needs of the system and in so doing they benefited LPSCO. The operation of these wells resulted from performance under a "master" agreement for the development of land and water resources that was negotiated by PPLP and LPSCO's parent, SunCor. This agreement resulted in a more effective and efficient water strategy and it is reflective of how PPLP effectively made additional Contributions in Aid of Construction to LPSCO.

And you testified earlier that the water agreement was part of the negotiation process relating to the price of the land?

That is correct. I believe that as more effective and efficient solutions were negotiated between the parties, additional value in the project was created. This value simultaneously translated into additional profits for PPLP and additional land sales revenues for SunCor. Effectively the water development strategy was a "win-win".

But despite these observations, my underlying position is that the overall development paradigm that was carefully negotiated between SunCor (who at the time of the negotiations was the parent of LPSCO) and PPLP was part of the total consideration exchanged by the parties. This consideration included representations from the owner of LPSCO that PPLP would not have to pay any HUFs in the future. PPLP has now been performing under the terms of these agreements for over 15 years. The project is "in the fourth quarter" and it is not equitable for the rules to be changed to exact additional Contributions in Aid of Construction in the form of HUFs from PPLP.

You spoke earlier about the fact that off-site water lines and related appurtenances have also been provided for PPLP. Could you explain how you came to that conclusion?

Yes. In 1998, the land area associated with PebbleCreek was changed to address some development constraints in the area north of Indian School Road, related in part to proximity to Luke Air Force Base. In response to this change in land area, PPLP submitted a second PAD to the City of Goodyear. This PAD contained a water and wastewater master plan that demonstrated that all of the required off-site lines to get water to the perimeter of PebbleCreek were already constructed.

What specifically did the Water Master Plan show in 1998?

The Water Master Plan showed that there were existing 16" lines just north of the Southeast boundary of the project, an existing 24" line at PebbleCreek and Indian School Road and a 12" existing line located at the intersection of PebbleCreek Parkway and the planned neighborhood commercial site.

And do you believe that these off-site lines were sufficient to meet the needs of the community?

The Water Master Plan did not include any un-built off-site lines and hence, yes, it appears from the plan that all of the lines that would be needed to get water to the community were developed by 1998.

And the off-site lines that would be constructed in the future were the lines that would be constructed within PebbleCreek to serve future subdivisions?

Correct.

So is it your opinion that the off-site water needs of the PebbleCreek community were met by 1998?

It is my position that if PPLP continued to develop any lines that were not designed to meet the specific needs of the subdivisions that it was building (i.e., the over-sized lines that I addressed above) that the off-site needs of the community would be met in the normal course of development. I further believe that if the off-site needs of the community were met in the normal course of development, then a HUF introduced now would effectively be an inequitable "double charge" for infrastructure commitments that PPLP had already satisfied.

Please address wastewater off-site needs.

I have already addressed the fact that LPSCO confirmed that it had treatment capacity in 2005 to meet the future needs of the remaining land in PebbleCreek. According to the Master Sewer Plan, wastewater generally flows from the north to an outfall location at the southern boundary of the property (i.e., into a 24" line at McDowell Rd.).

And this existing 24" line is sufficient for all of the wastewater collection associated with the community?

Not only is it sufficient for the flow associated with the community but it also serves as a collection point for an additional 1.1 Million Gallons per Day flow from off-site through the community to the line along McDowell Rd. As part of the improvements constructed within the land area of PebbleCreek, this 1.1 Million Gallons is being conveyed through the community in lines constructed by PPLP. This is another example of off-site lines being constructed by PPLP as a result of the development paradigm that I outlined above.

So does that conclude your assessment of specific infrastructure provided by PPLP and SunCor for the benefit of PebbleCreek?

Yes. The wells were generally existing agricultural wells that were provided when the land was incorporated into the certificated area, the water transmission and distributions lines either existed by 1998 or will be built in the normal course of construction. LPSCO provided confirmation that wastewater treatment capacity was available for PebbleCreek in 2005. Mr. Sorenson has confirmed that arsenic treatment has been constructed for all of the wells in the LPSCO system and he has confirmed that storage needs have been met according to the master plan developed by Carollo Engineering.

In summary PebbleCreek can be built out without any additional off-site investment by LPSCO. LPSCO and SunCor have performed their obligations under the development paradigm that was negotiated, and PPLP continues to do so in the normal course of development. For these reasons, imposition of a HUF at this stage of development is not equitable.

V. PRECEDENT AND BASIS OF DIFFERENT HUFs IN DIFFERENT DEVELOPMENT ZONES

Is there any precedent for not applying the HUF to PPLP in the same manner as it would be applied to other builders?

I am not aware of any precedent among regulated utilities, but municipalities frequently charge different impact fees for different areas of their city. Impact fees are very much like HUFs. They are not taxes *per se*, but instead are contributions to fund off-site infrastructure that are charged for each equivalent residential unit that a developer builds. When cities develop impact fee programs they set up various planning areas and each planning area has its own set of fees.

A precedent could emerge from this case. I have noted that commercial landowners in another portion of LPSCO's certificated area have filed a Motion to Intervene in this matter. In this filing, docketed October 14, 2009, Westcor/Goodyear, LLC and Globe Land Investors, LLC have moved to intervene seeking relief from any proposed HUF. These entities claim that they have negotiated - and LPSCO has accepted - negotiated fees for off-site water and sewer infrastructure associated with their Estrella Falls development.

Should the claims made by these interveners be approved, their development would not be subject to the HUFs in the future. PPLP believes that the situation these interveners face is very similar to the situation that PPLP faces, as both parties believe that they already have contributed capital that would be the subject to the HUFs. In the case of Westcor/Goodyear, LLC and Globe Land Investors, LLC, these interveners would have made payments under a settlement agreement; while PPLP has been performing under agreements it made with SunCor and LPSCO for over 15 years. While both PPLP and these interveners would appear to be entitled to relief from future HUFs, I believe that PPLP has a more substantial vested right to relief due to the long period of time that it has been operating under the previously negotiated development paradigm.

Why is it that cities charge lower impact fees in some areas of the city than others?

Generally cities charge impact fees based upon the actual cost of the infrastructure that will be built to support a particular developing area. An infrastructure improvement plan is developed for each area of the city and that plan calculates the cost of developing off-site infrastructure for each equivalent residential unit that will be benefited by that infrastructure. Areas that are less dense or further from existing facilities will generally have higher impact fees and areas that are more dense and better able to connect to existing systems will have lower impact fees.

So under a typical impact fee system there is a relationship between actual costs to construct infrastructure to support an area and the impact fee charged in that area?

That is correct. In addition to that, if a developer constructs some of the infrastructure that is required to serve the area, they will get impact fee credits for the cost that was budgeted for that infrastructure when the impact fees for the various development areas were calculated. For example a large developer, Sun Belt Holdings in the Vistancia project (City of Peoria), would get credit for the cost of a major arterial that it constructed in Peoria if that major arterial would normally have to be constructed by the City. These credits could be used to offset transportation impact fees associated with the equivalent residential units that it is constructing.

On the other hand, an individual subdivision outside of a master planned community cannot fund the construction of a major arterial because it does not have the scale to undertake such a major project. Consequently, it would be required to pay the impact fee for the portion of the cost of that major arterial that will serve its area. Theoretically, if all of the equivalent residential units get built and the infrastructure development plan was properly prepared, that portion of the infrastructure that the municipality is seeking to fund will be completely funded when the last equivalent residential unit in the planning area is completed.

Would a system such as this be considered to be equitable?

In my opinion, it is equitable to the extent that the infrastructure improvement plans are properly developed. A properly developed plan accurately projects the type of development that will occur and then relates that development plan to demands on infrastructure by considering the relative demand of each type of development on the infrastructure to be built with an effective equivalent development unit calculation.

Mr. Sorenson in his testimony said that one of the reasons for instituting HUFs was to create equity. Do you believe that the HUFs do this?

No. The HUFs make no attempt to relate the cost of the infrastructure that will be built to support various zones of its certificated area to the amount charged in that zone. Instead the HUF proposed is a flat amount across the certificated area. Furthermore, the HUF makes no allowance for off-site infrastructure constructed by a large developer such that this developer, PPLP, pays a lower HUF than the builder of an individual subdivision that is merely installing the lines to provide service within its individual subdivision.

So going back to the Impact Fee analogy above, the large developer at Vistancia would not get credit for construction that it completed under LPSCO's proposed HUF?

Correct. And I believe that this is contrary to the public interest because Sun Belt would need to recover this cost in some fashion. Consequently, the cost of building this project becomes higher. Sun Belt would pay both the costs of constructing the major arterial AND the cost of the impact fee. The individual subdivision builder would pay only the impact fee. Since most people would agree that master planned communities can deliver

more value to buyers in the form of open space, amenities and superior planning, putting these communities at a cost disadvantage is, I believe, contrary to the public interest.

Do the HUFs as proposed have any other negative consequences?

In my opinion yes. Unless the HUF accurately calculates the actual cost impact of a unit to be added to a certificated area, it will allow areas that are further from existing infrastructure to pay the same fee as areas that are closer to the existing infrastructure. This will result in a higher relative cost for the "closer in" developments when compared to the "further out" developments. In effect critics would claim that this is the definition of a policy that supports "leap frog development".

You indicated earlier that you know of no precedent among private regulated utilities to support different HUF rates within a certificated area. Is there any basis to claim that HUFs should be treated the same as impact fees, rather than in the manner proposed by LPSCO?

I believe that there is. The Arizona Administrative Code R14-2-406B (1) indicates that "In the event that additional facilities are required to provide pressure, storage, or water supply EXCLUSIVELY FOR THE NEW SERVICES OR SERVICES REQUIRED (emphasis added), and the cost of the additional facilities is DISPROPORTIONATE TO ANTICIPATED REVENUES TO BE DERIVED FROM FUTURE CUSTOMERS USING THESE FACILITIES (emphasis added), the reasonable costs of such additional facilities may be included in refundable advances in aid of construction to be paid to the company."

Since these costs would be incorporated into line extension agreements and since advances under line extension agreements are virtually never reimbursed in full (i.e. the unreimbursed contributions revert to Contributions in Aid of Construction), I believe that the costs that might be covered by HUFs should be included as a component of the line extension agreement and recovered in relationship to the benefit derived by the subdivision in question.

And since PPLP would have fewer or perhaps no additional facilities of this nature required, it would not be charged a HUF?

Since all customers pay for utility service under the same tariff, the only determining factor of the size of the HUF would be the amount of additional facilities for that type of service. Consequently, yes, I believe that PPLP should not be charged a HUF.

VI. IDENTIFICATION OF ACCOUNTING INCONSISTENCIES THAT MIGHT IMPACT THE DEVELOPMENT OF EQUITABLE HUFs AND RATES

Are there any other problems with the manner in which the HUF are proposed to be applied that is problematic to PPLP?

Yes. In order to equitably assess a HUF, I believe that LPSCO should be able to identify the infrastructure that is going to benefit future connections to its system.

And LPSCO has not done this?

No, I have reviewed the filings in this case and the only reference to the cost of infrastructure to be constructed is a general statement in Mr. Sorenson's testimony that in proposing the HUFs, "[w]e considered the historical average cost of plant per customer to be approximately \$3,900 for sewer and \$3,200 for water in our system. We also considered our estimated reasonable costs of increased capacity and off-site facilities for new service connections".

While I believe that this information is appropriate background for the establishment of a HUF, I do not believe that it is sufficient to uniformly apply that HUF to all development within the certificated area. For example, this level of detail would never support the requirements of statute as it relates to the imposition of an impact fee on development within a municipality.

In addition to not having identified the basis for its request for a uniform HUF throughout its certificated area, I believe that LPSCO has not instituted sufficient detail within its Plant in Service accounting system to provide this information in the future.

Could you please describe these Plant in Service accounting issues?

I have identified a number of instances of what appear to be accounting inaccuracies in the LPSCO rate case filing. The inaccuracies that I believe exist relate to additions made in the Airline Reservoir, PVWRF and Arsenic Treatment projects that were completed by LPSCO since the last rate case.

Let's take each in turn. Please start with the Airline Reservoir project.

On page 9 of his testimony, Greg Sorenson indicates that the Company "constructed and completed in June 2008 a 4.0 MG Reservoir to satisfy fire flow, diurnal and emergency water requirements." On page 10 of his testimony he indicates that the cost of the project, the "Airline Reservoir" as this project was known, was approximately \$10,600,000. Furthermore, on page 10 of his testimony, Sorenson indicates that arsenic treatment facilities costing \$4,200,000 were associated with the Airline Reservoir, but he does not indicate whether these costs were included in the \$10,600,000 above or were in addition to those costs.

I believe that this testimony is not consistent with Schedule B-2 Page 3.8. This schedule indicates that that there were no "collecting or impounding reservoirs" and only \$1,150,000 in Water Treatment Equipment added in 2008. In view of this fact, it appears that large amounts of the costs of the reservoir were inappropriately included in "Structures and Improvements," which contained \$24,000,000 of the \$31,000,000 in total plant additions for 2008.

I have not been able to review the detailed accounting records associated with this project, but I appear to have identified a misclassification of costs within LPSCO's property schedules.

Since over 42% of LPSCO's entire system-wide water plant in service was added in 2008, this classification problem could have large impacts on rates as is demonstrated in Exhibit 6. It would also impact the accurate calculation of an infrastructure improvement plan that could be used to accurately calculate a HUF.

The second project was the PVWRF. Please address your concerns with the accounting for this project.

On Page 7, lines 18 to 26, of his testimony, Greg Sorenson describes approximately \$7,000,000 in improvements that were done to the PVWRF in 2007 and 2008. Based on his description of these improvements, virtually all of them appear to be properly includable in the Plant in Service account "Treatment and Disposal Equipment". Instead, in 2007 and 2008, there were only a total of \$860,000 in additions to this account. Once again, it appears that many of these costs may have been misclassified in Structures and Improvements which contained \$8,300,000 of the \$12,900,000 in costs added in 2008.

The correction of this matter would actually have a negative impact on rates (i.e., it would raise rates) since "Treatment and Disposal Equipment" has a higher depreciation rate than Structures and Improvements. Regardless of the impact of these changes on rates, the point that I am making is that LPSCO does not appear to have integrity in its plant accounting. If that is, in fact, the case, inappropriate rates might be proposed AND it might be difficult for developers to properly identify projects for which they are being charged HUFs.

The final project that you referenced is the Town Well Reservoir.

On page 10, lines 17 and 18, of his testimony, Greg Sorenson indicates that LPSCO completed a \$4,700,000 arsenic treatment facility for its Town Well Reservoir. I have reviewed the Plant in Service accounts from 2001 to 2007 for any account codes that are likely to contain costs for this facility and I have not been able to identify the \$4,700,000 in costs referenced in his testimony. For this reason, I again believe that LPSCO is not properly classifying its Plant in Service. This could result in inaccurate rates and other problems to those using the books for tariff related decisions such as a decision on a HUF.

VII. CURRENT HUF PROPOSAL PLACES UNDUE BURDEN ON RESIDENTIAL VS. COMMERCIAL DEVELOPMENT

Are there any other problems that you can identify with the manner in which LPSCO has developed the proposed HUF component of its tariff?

Yes. I believe that the proposed Water HUF as proposed unfairly increases the relative size of the HUF for smaller residential meters (5/8" and 3/4") as compared to larger residential and commercial meters.

Please explain.

The table below summarizes the water HUF by type of service that is being proposed by LPSCO. As you can see, a 6" meter places a load factor on the system that is 50 times as great as a 5/8" meter, but the 6" meter only bears a HUF of about 27.8 times the HUF of

a 5/8" meter. Based upon the number of customers currently in the system and assuming that the relationship between meter types would be consistent between future development and development to date, the proposed HUF at the far right column of this chart would provide for the same total HUF receipts but, as you can see, would shift the burden from the 5/8" and 3/4" inch meters that predominate in an Active Adult Community and other residential areas to the 2" to 6" meters that predominate in commercial and non-residential developments.

Meter Size	Load Factor	Proposed HUF	Alternate HUF
5/8	1	\$1,800	\$1,066
3/4	1.5	\$2,000	\$1,599
1	2.5	\$2,000	\$2,665
1-1/2	5	\$5,000	\$5,330
2	8	\$8,000	\$8,528
3	16	\$16,000	\$17,056
4	25	\$25,000	\$26,650
6	50	\$50,000	\$53,300

NOTE: see also Exhibit 8 which shows that if water HUFs had been collected at the proposed rates since inception of the utility, HUFs collected for meters that are most associated with residential connections at PebbleCreek (i.e. 5/8" and 3/4") would be greater than the current rate base associated with 5/8" and 3/4" meters.

You discussed the fact that the Water HUF inappropriately allocates additional burden to residential connections as opposed to commercial and other connections. Is this also true of the Wastewater HUF?

I believe that it is. Under the proposed Wastewater HUF, each equivalent residential unit ("ERU") will pay a HUF of \$1,800 based upon a per ERU demand factor of 320 gallons per day. Since the homeowners at PebbleCreek generate substantially less than 320 gallons of wastewater per day, this means of allocating the HUF burden to different classes of customers also discriminates against PPLP.

What would you recommend to address these concerns?

In my testimony on impact fees, I discussed the technique that municipalities go through to determine equitable and sufficient impact fees within the various portions of their municipalities. I recommend that LPSCO submit for review a study that links the following elements to the development of its HUF tariff:

- (1) its capital improvement plan;
- (2) its future service area development projections; and
- (3) an analysis of excess Contributions in Aid of Construction made by various master developers such as PPLP and Westcor/Goodyear, LLC and Globe Land Investors, LLC so that credits for those Contributions in Aid of Construction previously made can be credited against future HUFs.

In my opinion, until this study is done it impossible to equitably establish appropriate HUFs. In addition to this, I will show later in this testimony that it might be impossible to opine on the reasonableness of other components of the rate relief sought by LPSCO if this issue is not addressed before a final order is issued.

VIII. HISTORICAL REVIEW OF HUFs IN LPSCO RATE CASES

Has the Commission ever discussed a HUF with LPSCO in the past?

Yes and the proceedings of the last rate case have relevant bearing on this rate case.

What occurred in the last rate case?

In Decision No. 65346, dated December 9, 2002, the Commission ordered LPSCO to, among other things, "...file, by April 15, 2003, tariffs for hook-up fees for both water and wastewater connections for Commission consideration and possible approval".

Did LPSCO file a hook-up fee tariff in response to this decision?

No. Instead of filing this tariff, LPSCO developed several arguments for not filing a Tariff. LPSCO's arguments were based on a study of its capital structure that was prepared by Company employee Dan Neidlinger. (See Summary at Exhibit 7). After developing these arguments, LPSCO met with staff and RUCO. During those meetings the parties (LPSCO, RUCO and staff) decided that a HUF was not indicated at that time and hence the Company did not include a HUF with the tariff that it submitted in response to Decision No. 65346.

What did the Neidlinger study conclude?

The study concluded that the Company's most recent 5-year Capital Improvement Forecast revealed that the projected rate base per customer for both the water (before including Arsenic Treatment) and sewer divisions will trend downward and flatten beginning in 2004. It also showed that under current financing policies, Advances in Aid of Construction and Contributions in Aid of Construction as a percentage of net utility plant will increase to very high levels by 2006. As a result of this shift in the capital structure of LPSCO, it was Neidlinger's opinion that **"the adoption of hook-up fees for LPSCO would increase its financial risk to precarious and unacceptable levels"**.

Why would adoption of a HUF increase financial risk to precarious and unacceptable levels?

Utilities earn returns on their invested capital (in this case, their Original Cost Rate Base). If HUFs are implemented such that invested capital is reduced below prudent levels, the utility may not be able to earn profits. This inability to earn sufficient profit may reduce the utility's ability to weather increases in operating expenses and other adverse changes. This could result in an unstable utility that could put customers at risk of a utility failure.

Has a study similar to the one referenced above been performed to address the concerns of interested parties in this rate case?

No. Surprisingly, very limited information has been provided on a matter that created great interest in the prior rate case.

Do you have an opinion as to whether hook-up fees are appropriate at this time?

I cannot develop a complete opinion on this matter with information that is readily available to me at this time because there are many variables that I would not be able to adequately address given the long history of the company. I did, though, put together a simple analysis of what LPSCO's current rate base might look like had HUFs similar to those proposed today been in place since the inception of the company.

And what did you find?

I found that the Water Division currently has adjusted plant in service of about \$73,700,000, accumulated depreciation of approximately \$9,100,000 and Contributions in Aid of Construction and Advances in Aid of Construction (after amortization) of about \$26,700,000, leaving a rate base of approximately \$37,900,000. I also found that in this division, the 14,811 (excluding irrigation connections) connections would have paid approximately \$32,400,000 (See Exhibit 8) in HUFs since the inception of the certificated area. It is impossible to determine how much amortization would be associated with these Contributions in Aid of Construction, but as you can see, if HUFs were collected in the past in the same manner as currently being proposed, rate base would be quite low potentially putting the utility at risk as noted above.

In the Wastewater Division, LPSCO currently has plant in service of about \$60,400,000, accumulated depreciation of approximately \$8,500,000 and Contributions in Aid of Construction and Advances in Aid of Construction (after amortization) of about \$23,500,000, leaving a rate base of approximately \$28,400,000. I also found that in this division, the approximately 18,980 equivalent residential unit connections would have paid approximately \$34,200,000 (See Exhibit 8) in HUFs since the inception of the certificated area. Again, it is impossible to determine how much amortization would be associated with these Contributions in Aid of Construction, but as you can see, if HUFs were collected in the past in the same manner as currently being proposed, rate base would be quite low potentially putting the utility at risk as noted above.

I understand that LPSCO is expecting to make significant capital investments in the next several years, but if future investment is similar, on a per unit basis, to that experienced by the company to date and the proposed HUFs are implemented, then rate base on a per customer basis will, I believe, trend downward. If this happens, future development might be subsidizing current customers and given the fact that developers currently have little pricing power, this subsidy will reduce the viability of a real estate recovery because developers will be unable to recover their costs at a time when they are most vulnerable to the market.

Is there anything else that would cause you to argue that rate base per customer could continue to drop at the very same time that the LPSCO is significantly increasing its rates?

In the Wastewater Division, there is another post test year matter that further supports my conclusion that rate base per customer will fall in the periods after the test year.

Shortly after the conclusion of LPSCO's test year (test year ending 9/30/09), the Commission (in its Decision 70563, dated October 23, 2009) approved a Settlement Agreement between LPSCO and Westcor/Goodyear, LLC and Globe Land Investors, LLC ("Westcor") as it relates to the provision of sewer capacity to Westcor's Estrella Falls commercial project. Under the terms of that decision (see paragraph 18) Westcor agreed to make wastewater treatment capacity payments to LPSCO amounting to \$4,844,623 (hereinafter, the "Stipulated Payment"). A portion of this payment would be treated as Advances in Aid of Construction (\$710,248) and would be reimbursable under the terms of a Settlement Agreement that was negotiated between the parties in 2001. The remainder (\$4,134,375) would be treated as Contributions in Aid of Construction. At the time of the Commission's decision, it is PPLP's understanding that Westcor had attempted to tender payment but that LPSCO had refused to accept payment of said fees. Due to the timing of the decision, it appears that the Settlement Agreement might have been negotiated between the parties before the end of the test year. We also understand that the final Westcor payment was dated October 20, 2008 and tendered to LPSCO on November 3, 2008 (less than 35 days after the end of the test year).

What is the relevance of this finding?

In view of the timing of the foregoing, PPLP believes that the payment of \$4,844,623 may have been known and estimatable before the end of the test year. While the payment appears to have been made **after** the end of the test year, I believe that this payment should have been, but was not, included in the post test year adjustments to rate base at Schedule B-2. Since LPSCO is seeking other post test year adjustments to Plant in Service in its Water Division, it is reasonable to expect that this payment also should be included as a post test year adjustment in the Wastewater Division. This post test year adjustment (if adopted) constitutes a material portion of LPSCO's – Wastewater Division rate base (\$28,367,071 per above referenced Schedule B-2). Once this adjustment has been made, I believe that two changes should be made to the LPSCO filing. First, the revenue requirement should be reduced to recognize the significant reduction in OCRB and, second, the HUF should be reassessed in the context of this revised rate base.

Does the rate filing provide any information that might indicate the impact on HUFs if this adjustment is made?

Schedule F-4 indicates that projected construction requirements in the Wastewater Division will be about \$10,900,000 over the next 3 years. If we assume that there are a total of 2,100 connections other than the connections made by Westcor (significantly below historical averages), an additional approximately \$2,300,000 in rate base (before considering amortization and other factors) will be added over this 3 year period in the Wastewater Division (\$10,900,000 less \$4,800,000 (Westcor Payment) less \$3,800,000 (additional customers)). Since about 4,000 additional ERU's would be added as noted above (about 1,900 for Westcor and about 2,100 others), the rate base added would be less than \$600 per additional ERU (\$2.3 Million / 4,000).

And what is rate base per customer today?

As noted above, the rate base reported in LPSCO's rate filing is approximately \$28,400,000, and I estimate that there are approximately 19,000 equivalent hook-ups. This would result in an OCB of close to \$1,500 per customer, which, by the way, is less than the proposed HUF of \$1,800 per equivalent residential unit.

And did LPSCO ever argue that introduction of HUFs might result in a declining rate base per customer?

Yes. In its docketed filing of April 15, 2003, which was filed in compliance with Decision 65436, LPSCO asserted that "[t]he Company's present line extension policy is fair and equitable to existing customers and future developers and consisted (nee "is consistent") with the Commission policy of "growth paying for growth." Presumably, the implementation of a HUF would not be consistent with these goals.

Why do you think that LPSCO has changed its position?

In the water division, I believe that costs associated with Arsenic Treatment have been a big factor in changing LPSCO's position. In the wastewater division, the investments that they needed to make to remediate PVWRF probably had a hand in changing LPSCO's position, but at this point in time, I am unable to project what the impact of these and other changes will be. Consequently, I challenge a HUF that has not been supported in the same fashion as a properly developed impact fee would be as described above.

So what would your recommendation be with regard to this matter?

At a minimum, I would recommend that LPSCO conduct a study to address the concerns that were set forth by RUCO in the last rate case. I would also recommend that this study include an infrastructure improvement plan and an analysis of future development patterns in LPSCO's service area so that HUFs that equitably distribute the burden of future development can be set by the various portions of the service area that will benefit from planned infrastructure investment. The study should also identify prior creditable contributions in aid of construction such as those made by PPLP and Westcor .

Until that study is completed, I believe that future trends in rates cannot be adequately evaluated in this case. I also believe that the impact of HUFs on the capital structure of LPSCO will not be understood adequately and that these impacts should be examined to insure the future stability of LPSCO and the future of rate stability for LPSCO's customers.

Is there any other reason that you are making this recommendation?

One thing that should be taken into consideration is that LPSCO is applying for some very large rate increases in this application. Its cost of capital request is over 285 basis points higher than in the last rate case.

If it is now going to change its capital structure by incorporating significant additional Contributions in Aid of Construction, rate base per customer may decline. If LPSCO simultaneously starts to incorporate more debt (see Dockets W-01427A-09-0116 and W-

01427A-09-0120, which were filed immediately after this rate case was filed) into its capital structure, its weighted average cost of capital could also begin to decline.

If both of these things occur simultaneously, the rates that the Commission is considering now might prove to be substantially higher than what could be supported in future years. I believe that a study that demonstrates all of these impacts could be helpful in insuring that ratepayers are protected from a strategically timed filing that establishes dramatically higher rates and then changes the manner in which future capital investments are financed in the future.

IX. SUMMARY OF TESTIMONY

We have been through a lot of material. Could you summarize quickly?

I first addressed several special circumstances that PPLP faced in developing PebbleCreek that will not be faced by all current and future developers in LPSCO's certificated area. I then demonstrated that these circumstances resulted in significant additional Contributions in Aid of Construction by PPLP and noted that if HUFs are introduced at this time, they should take into account this historical development paradigm.

I then discussed the fact that as an Active Adult Community, PebbleCreek will not generate the same demands on the system as non-age restricted communities and hence PPLP should not be subjected to the same HUFs as other developers. I framed this discussion in the context of how a statutorily acceptable impact fee system results in different impact fees for different areas of the same municipality.

I then offered specific examples of how PPLP has contributed what I believe is its fair share of contributions in aid of construction through build-out of PebbleCreek.

I reviewed what I believe are various accounting inconsistencies in LPSCO's Plant in Service accounts and noted that such inconsistencies negatively impact LPSCO's ability to accurately set rates and equitably develop a HUF.

I questioned the means by which the Contributions in Aid of Construction sought by the new HUF was divided between residential and commercial development arguing that it places an undue burden on residential development.

Finally, I reviewed the historical treatment of HUFs in LPSCO's prior rate cases and I expressed concern that the HUFs proposed in this rate case do not seem to have been subjected to the same level of scrutiny as the HUFs deferred in past cases. I expressed concern that certain unintended consequences (such as instability of the utility and risk to customers associated with that instability) could occur as a result of this lack of scrutiny.

Does this conclude your testimony in this matter?

Yes.

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THIS WATER LINE EXTENSION AGREEMENT ("Agreement"), entered into this _____ day of _____, 2008, by and between LITCHFIELD PARK SERVICE COMPANY, an Arizona public service corporation, (hereinafter referred to as "Utility"), and PEBBLECREEK PROPERTIES LIMITED PARTNERSHIP, an Arizona limited partnership (hereinafter referred to as "Developer")(individually, a "Party" and collectively, "Parties"), in respect of the construction of utility infrastructure necessary to extend and provide water utility service to PebbleCreek Phase II Unit 53, a residential land parcel in Goodyear, Arizona ("Development").

RECITALS

WHEREAS, Utility represents and warrants to Developer that it is a public service corporation, and holds a Certificate of Convenience and Necessity ("CC&N") granted by the Arizona Corporation Commission ("Commission"), together with other required permits and governmental approvals authorizing it to serve the public with water utility service in certain parts of Goodyear, Arizona; and

WHEREAS, Developer desires that water utility service be extended to the Development, consisting of 21.8 acres located in Goodyear, Arizona. A legal description and map of the proposed Development are attached hereto in Exhibit "A" and incorporated herein by reference for all purposes; and

WHEREAS, the Development is located within the Utility's CC&N, and Utility is willing to extend water utility service to the Development subject to the terms of this Agreement; and

WHEREAS, the Utility does not presently have onsite water distribution facilities within the Development and Developer is prepared to construct and then convey such facilities all at his sole unrecoverable expense as may be provided for herein; and

WHEREAS, the Utility does not presently have sufficient or appropriate off-site facilities to convey the water to the Development and the Developer is prepared to either: i) construct such facilities and convey them to the Utility and/or, ii) provide the advance funding to Utility so that Utility may construct such off-site facilities (an In-Kind Advance or Money Advance and together "Advance") and in either case the cost thereof shall be subject to a partial refunding to the Developer over time as may be provided for herein; and

WHEREAS, Developer is willing to transfer to the Utility legal title to: i) all on-site facilities within the Development, ii) all offsite facilities that are necessary to extend water utility service to the Development which it undertakes to construct, subject to the terms and conditions set forth hereinafter; and

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WHEREAS, Developer recognizes that in order for Utility to provide the requested water utility service to the Development, Utility will ultimately have to develop additional potable water production, treatment and handling capacity and that Developer will be required to contribute to the funding of the costs for Utility to construct new, or to upgrade existing off-site infrastructure to develop that water production, treatment and conveyance capacity as required by the Development which funding shall be supplied by the Developer to Utility by way of an advance in aid of construction according to the terms and conditions set forth hereinafter; and

WHEREAS, Utility is willing to provide such water utility service to the Development in accordance with applicable law, including the rules and regulations of the Commission, on the condition that Developer fully and timely perform the obligations and satisfy the conditions and requirements of this Agreement as set forth below; and

WHEREAS, unless otherwise provided in this Agreement, capitalized terms used herein shall have the same meaning as set forth in the Commission Rules and Regulations.

NOW, THEREFORE, it is mutually covenanted and agreed by and between the Parties hereto as follows:

I. UTILITY FACILITIES; OVERSIZING; COST; ADMINISTRATIVE COSTS; WATER SUPPLY; LETTER OF CREDIT; GROUNDWATER REPLENISHMENT DISTRICT.

A. **Utility Plant Additions.** Developer will construct, or cause to be constructed, the water utility facilities described on Exhibit "B" (the "Facilities").

B. **Oversizing.** If requested by Utility, Developer shall "oversize" certain components of the Facilities. To the extent that such oversizing is not part of the general Utility's Development Guide specifications (e.g. the size of mains paralleling major roadways fronting the Development which will be to specifications and not considered oversize even if in excess of the actual specific needs of the Development alone), Utility shall reimburse Developer for the amount by which the material costs of the oversized facilities exceed the actual material costs of the same Facilities prior to "oversizing". Reimbursement for oversizing will be made by Utility to Developer within thirty (30) days of written notice to Utility after Utility's Final Acceptance of said Facilities, as that term is defined in Paragraph VI.F herein.

C. **Cost.** The estimated cost to construct the Facilities, as shown in Exhibit "C", attached hereto and incorporated herein by reference for all purposes, shall be \$217,821.00. In addition, Developer shall be required to advance a deposit for all estimated administrative, engineering, and legal costs associated with the extension of water utility service, as more fully set forth in Paragraph I.D ("Deposit").

1. **Advances.** Any off-site facilities shall be the responsibility of the Utility to construct but must be funded by the Developer. Such required funds shall be advanced to the Utility in accordance with Paragraph I.F as an advance in aid of construction. The estimated cost

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to the Utility to approve, administer and inspect the Developer's installation of the Facilities described in **Exhibit "B"** shall likewise be funded in accordance with Paragraph I.F.

D. Reimbursement for Inspection Costs, Overhead and Other Expenses of Utility. Upon execution of this Agreement, Developer shall submit the Deposit to Utility in respect of the Utility's anticipated reasonable fees, costs and expenses incurred in connection with its preparation of this Agreement, review and approval of engineering plans and specifications for the Facilities, periodic inspection and testing of the Facilities during and after their construction, and any other fees, costs and expenses reasonably and necessarily incurred by Utility (collectively, "Administrative Costs"). The Deposit shall be 5% of the estimated cost of construction of the Facilities as shown in **Exhibit "C"**, with a minimum Deposit of \$5,000 and a maximum Deposit of \$25,000. In the event Utility's Administrative Costs exceed the amount of the Deposit, Utility shall provide to Developer invoices and records supporting such Administrative Costs, and payment shall be made by Developer on or before the fifteenth (15th) day of the calendar month following the month in which Utility's invoice is received by Developer.

E. Capacity Costs. For water utility service to the Development, Utility is required to develop new or improve existing off-site water supply capacity ("Capacity Cost"). Developer is responsible for funding its pro-rata share of the Capacity Costs, at an estimated total of **\$136,950.00**. The Capacity Cost will be treated as an advance in aid of construction. This estimate shall be valid for up to **ONE YEAR** after the execution of this Agreement. If construction of the Facilities has not been completed by this deadline, the estimated Capacity Cost is thereafter subject to change based on the cost of gallons per day capacity required for each equivalent dwelling unit within the Development.

F. Letter of Credit. Developer agrees to post an irrevocable Letter of Credit ("LOC") in favor of Utility with a recognized financial institution consented to by Utility, which consent shall not be unreasonably withheld, equal to the total estimated Capacity Cost, and any applicable construction, installation and permitting costs for that portion of the Facilities to be constructed by Utility, plus ten percent (10%). For purposes of this Agreement, the LOC shall total **\$150,645.00**, and shall be posted within ten (10) calendar days upon execution of this Agreement. A copy of applicable LOC documents is attached hereto as **Exhibit "D"**. **UTILITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL NOT COMMENCE UNTIL THE LOC IS ESTABLISHED IN ACCORDANCE HEREWITH. UTILITY SHALL HAVE THE OPTION TO TERMINATE THIS AGREEMENT AT ANY TIME IF DEVELOPER FAILS TO TIMELY ESTABLISH THE LOC WITHIN TEN (10) CALENDAR DAYS OF THE EXECUTION OF THIS AGREEMENT.** Utility may draw upon such LOC at any time for reimbursement of Developer's pro-rata share of costs for the off-site facilities required to extend water utility serve to the Development. Developer acknowledges that it will be required to supplement the LOC for any change in the applicable estimated cost set forth in **Exhibit "C"**. Once all cost obligations have been satisfied to Utility's satisfaction, Utility will provide written notice to Developer that the LOC can be terminated.

G. Groundwater Replenishment District. In the event the Developer enrolls, or applies to enroll, the property within the Development as "membership land" in the Central

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Arizona Groundwater Replenishment District ("CAGR") pursuant to ARS § 48-4401 et seq., or the property in any way becomes subject to that law as it may be amended, then and in that event the Developer shall pay, in addition to all other terms, conditions, rates and charges set forth in this Agreement, a one-time charge of \$1,000.00 to the Utility for the establishment of the reporting procedure mandated by the CAGR. For all Lots within the Development that become subject to the CAGR, the Developer shall provide to the Utility the following information for each parcel to be served under this Agreement: (i) the APN number as assigned to that Lot by the applicable taxing authority as and when available; (ii) the street address of each Lot; and (iii) any other information necessary for the Utility to comply with the requirement of the CAGR. Said information for all Lots and parcels within the Development shall be provided to the Utility prior to the Utility's obligation to serve water to any Lot or parcel within the Development. Payment of the CAGR fee shall be made upon execution of this Agreement.

II. SERVICE; FIRE FLOW; APPLICABLE RATES

A. **Service.** The Facilities are being installed for the purpose of providing water utility service to the Development consistent with the Utility's Tariff and Commission Rules and Regulations. The service provided by the Utility to the Development pursuant to this Agreement (the "Service") shall be in accordance with good utility practice for water utility service as well as any law and regulation, including the Commission's Rules and Regulations.

B. **Fire Flow.** UTILITY EXPRESSLY DISCLAIMS ANY RESPONSIBILITY OR OBLIGATION TO PROVIDE WATER AT A SPECIFIC PRESSURE OR GALLONS PER MINUTE FLOW RATE AT ANY FIRE STANDPIPE, OR FIRE HYDRANT, OR FOR FIRE PROTECTION SERVICE. IN THE EVENT FIRE PROTECTION SERVICE IS INTERRUPTED, IRREGULAR, DEFECTIVE, OR FAILS FROM CAUSES BEYOND THE UTILITY'S CONTROL OR THROUGH ORDINARY NEGLIGENCE OF ITS EMPLOYEES, SERVANTS OR AGENTS, THE UTILITY WILL NOT BE LIABLE FOR ANY INJURIES OR DAMAGES ARISING THEREFROM.

C. **Applicable Rates.** It is mutually understood and agreed that the charges for the Service shall be at the applicable rates and tariffs which Utility is authorized by the Commission to and that those rates are subject to change from time to time upon application by the Utility and approval by the Commission.

III. PERMITS AND LICENSES; EASEMENTS; TITLE

A. **Permits and Licenses.** Developer agrees to obtain, at its own initial expense, all licenses, permits, certificates and approvals from public authorities that may be required for the construction of the Facilities and to comply with all municipal, environmental and other public laws, ordinances, and requirements in regard to the same.

B. **Easements.** In the event the Facilities are not located within a dedicated right of way or public utility easement, Developer shall grant such easements as are reasonably necessary to permit the Utility to maintain repair or replace the Facilities, which Utility shall record in the

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Maricopa County Recorder's Office. In no event shall such easement be less than sixteen (16) feet in width.

C. **Title.** All materials installed, facilities constructed and equipment provided by Developer in connection with construction of the Facilities, and the completed Facilities as installed for which an Approval of Construction has been issued by ADEQ, and for which the Utility has provided written Final Acceptance pursuant to Paragraph IV.F, shall become the sole property of the Utility, and full legal and equitable title thereto shall then be vested in the Utility, free and clear of any liens. Developer agrees to execute or cause to be executed promptly such documents as counsel for the Utility may reasonably request to evidence good and merchantable title to the Facilities (free and clear of all liens) vested in the Utility. The Utility shall confirm in writing the acceptance of title to the Facilities.

**IV. COMMENCEMENT OF PERFORMANCE AND TIME OF COMPLETION;
PLANS AND SPECIFICATIONS; WORKMANSHIP, MATERIALS,
EQUIPMENT AND MACHINERY; CONNECTING NEW FACILITIES;
EXISTING UNDERGROUND FACILITIES RESPONSIBILITIES**

A. **Commencement of Performance and Time of Completion.** This Agreement shall automatically terminate if Developer fails to begin construction within **ONE YEAR** from the plan approval date, unless otherwise agreed to in writing by Utility. In the event this Agreement is terminated pursuant to this Paragraph, any monies advanced by Developer for Administrative Costs spent by Utility shall be non-refundable. The remainder of the Deposit shall be refunded within thirty (30) days after termination of the Agreement.

B. **Plans and Specifications.** The construction of the Facilities shall be in accordance with plans and specifications (and any material changes thereto) which have been (i) prepared in accordance with good water utility practice as generally accepted in Maricopa County, and with all applicable rules, regulations and requirements of all regulatory agencies having jurisdiction over water service in the Development, (ii) approved, in writing, by the Utility, which approval shall not be unreasonably conditioned, delayed or denied, and (iii) approved, in writing, by any governmental entity having authority over water service in the Development ("Approved Plans"). The Utility shall provide to the Developer the Utility's written approval or disapproval with comments, of any plans and specifications for the Facilities within thirty (30) calendar days after submittal of such plans and specifications to the Utility. If such plans and specifications are disapproved by the Utility, the Utility's approval of such plans and specifications shall be provided within thirty (30) calendar days after resubmittal of such plans and specifications incorporating the Utility's comments to the originally submitted plans and specifications. The Approved Plans shall be incorporated herein by reference and made part of this Agreement. Developer shall not commence construction of the Facilities prior to the issuance of any Approved Plans.

C. **Materials, Workmanship, Equipment, and Machinery.** All materials used to construct the Facilities shall be new and both workmanship and materials shall be of good quality that meets the specifications and standards of the Utility's Development Guide, the Commission, ADEQ, the Arizona Department of Health Services and all other applicable

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regulatory agencies. Developer shall assign to the Utility the warranties of its contractor(s) for the Facilities. Developer agrees to remove or replace at its own cost, or reimburse the Utility for all reasonable costs incurred by the Utility for removing and replacing any defective part or parts of the Facilities, for two (2) years after Utility's written Operational Acceptance, as that term is defined in Paragraph IV.F.

D. Connecting New Facilities. The Facilities shall not be connected to the Utility's existing facilities without Approved Plans, and execution of this Agreement, including all regulatory approvals, if necessary which approval shall not be unreasonably withheld, conditioned, or delayed. Any such unapproved connection may result in either rejection of the Facilities by the Utility, or extraordinary charges to Developer to purge the Facilities prior to Utility's written Final Acceptance.

E. Existing Underground Facilities Responsibility. In connection with the construction of the Facilities, Developer shall be responsible for complying with A.R.S. 40-360.21. et seq., and related local regulations, and will assume all costs and liabilities associated with (1) coordination with the owners or agents of all underground facilities within and adjacent to the Development regarding the location of such facilities, and (2) construction near, or damage to, such underground facilities. Developer will conduct, or cause to be conducted, all excavation in a careful and prudent manner in its construction of the Facilities.

F. Acceptance. Operational Acceptance of the Facilities by the Utility shall occur at the time the Developer has provided all of the following items to the Utility as required by this Agreement: (i) all fees, costs, and funds required under this Agreement; (ii) the Approval to Construct the Facilities; and (iii) recorded copies of all required Deeds and Easements. The Utility shall assume operational responsibilities for the Facilities only after receipt of the above. Final Acceptance of the Facilities by the Utility shall occur only after the Company receives all of the following as otherwise required by this Agreement: (i) all items required for Operational Acceptance; (ii) approved Final Inspection by Utility, including all punch list items; (iii) all invoices; (iv) all lien waivers; (v) copies of all permits and licenses; (vi) all required evidences of title, including a Bill of Sale; (vii) the as-built" plans. If all documents for the Utility's Final Acceptance are not received within sixty (60) days of the Operational Acceptance, the Company shall have no obligation to set additional meters within the Development until such time as Developer has complied with these requirements

V. INSPECTION, TESTING AND CORRECTION OF DEFECTS, COMPLETION

A. Inspection. Developer shall comply with the inspection and testing requirements of the Utility for the Facilities; said requirements shall be reasonable and shall not cause Developer unwarranted delays in the ordinary course of construction. Developer shall promptly notify the Utility when the Facilities (or portions thereof) are ready for inspection and testing, and the Utility shall inspect promptly after being so notified. The Utility agrees to conduct any "open trench" inspection within twenty-four (24) hours after being notified by Developer that the trench is ready for inspection, provided Developer gives the Utility at least three (3) business days' advance written notice of the first inspection date consistent with the notice provisions of Paragraph IX. If not inspected and approved by the Utility, Developer shall provide, within ten

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(10) business days, written certification from Developer's engineer that the Facilities (or the applicable portion thereof) were installed in accordance with the Approved Plans. At this time the condition will be deemed automatically approved by Utility if the Utility fails to inspect the condition within such twenty-four (24) hour period, provided the Utility received such three (3) business days' advance written notice.

B. **Testing and Correction.** For the purpose of inspection and testing of the Facilities, Developer shall give the Utility and any inspectors appointed by it, free access to the facilities for properly inspecting such materials and work and shall furnish the Utility and any inspectors appointed by it with full information whenever requested as to the progress of the work on the various components of the Facilities. Developer agrees that no inspection by or on behalf of the Utility shall relieve Developer from any obligation under this Agreement. If, at any time before Completion, any part of the work is found to be defective or deficient in any way or in any way fails to conform to this Agreement, the Utility is hereby expressly authorized to reject or revoke acceptance of such defective or deficient work and require Developer to correct such defective work. No costs incurred by Developer to correct defective work shall be included in the Advance pursuant to Paragraph VII.A. The Utility specifically reserves the right to withhold approval and to forbid connection of the Facilities to the Utility's system. Developer agrees that it will promptly correct all defects and deficiencies in construction, materials, and workmanship upon request by the Utility made subsequent to inspection by the Utility.

C. **Completion.** The "Completion" of the Facilities (or any portion(s) or component(s) thereof) shall be deemed to have occurred when the Utility delivers to Developer the Utility's approved Final Inspection of the Facilities (or any portion(s) or component(s) thereof) as having been constructed in substantial conformance with the Approved Plans, which written acknowledgement shall not be unreasonably delayed or denied.

VI. INVOICES; LIENS; "AS-BUILT" PLANS

A. **Invoices.** Developer agrees to furnish Utility, within thirty (30) days after completion of construction, copies of Developer's, subcontractors', vendors' and all others' invoices for all engineering, surveying, and other services, materials installed, construction performed, equipment provided, materials purchased and all else done for construction pursuant to this Agreement at the actual cost thereof.

B. **Lien Releases.** Developer acknowledges its duty to obtain lien waivers from all providing labor, materials, or services hereunder. Developer hereby irrevocably waives any rights it may now have or which it may acquire during the course of this Agreement to record liens against the Utility or its property. Developer shall also pay, satisfy and discharge, or bond over, all mechanics', material men's and other liens, and all claims, obligations and liabilities which may be asserted against the Utility or its property by reason of Developer's construction of the Facilities.

C. **"As-Built" Plans.** Developer agrees to furnish the Utility, within forty-five (45) days after Completion, "as-built" drawings showing the locations of all Utility owned Facilities. The drawings shall be certified by Developer's engineer of record and shall be provided on

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reproducible 4-mil Mylar prints and in AutoCAD format on CD (or as otherwise specified by the Utility).

VII. CALCULATION OF ADVANCE; TIME OF PAYMENT; INCOME TAX; CALCULATION OF REFUND, MAXIMUM REFUND; TRANSFER; ASSIGNMENT

Calculation of Advance. Based on the estimated costs for Facilities and Capacity Costs contained in Paragraph I.C, and Deposit in Paragraph I.D, and subject to receiving invoices pursuant to Paragraph VI.A totaling at least the estimated cost plus applicable Administrative Costs, the total refundable estimated Advance by Developer is \$365,662.05, subject to adjustment as provided for in this Agreement. If the actual Advance is less than the estimated Advance, the Advance shall be the lesser amount, to the extent supported by invoices provided pursuant to Paragraphs I.D and VI.A. If the actual Advance is more than the estimated Advance, the Advance shall be the greater amount, to the extent supported by invoices provided pursuant to Paragraphs I.D and VI.A.

Time of Payment. The payment of the funds under this Agreement shall be made as follows:

1. Developer shall submit as the initial Deposit for the Utility's total estimated Administrative Costs the sum of \$10,891.05 upon execution of this Agreement.
2. If the Deposit is greater than \$5,000, Utility shall compute the unexpended portion of the Deposit, if applicable, and refund such amount within sixty (60) days of Utility's Final Acceptance of the Facilities pursuant to Paragraph IV.F. All other amounts shall be added to the Advance.
3. Upon completion of the construction of the Facilities to be performed by Developer, Developer shall provide the documentation required by Paragraphs III, IV, V, and VI of this Agreement.
4. Developer shall post a LOC in the amount of \$150,645.00 within ten (10) calendar days upon execution this Agreement.

C. Income Taxes. In the event it is determined by Congress, the Internal Revenue Service, the Arizona Legislature or the Arizona Department of Revenue that all or a portion of the cost estimates in Exhibit "C" is taxable income to the Utility as of the date of this Agreement, or upon receipt of said costs or facilities by the Utility, Developer will pay to the Utility funds equal to the applicable income taxes for the Utility's state and federal tax liability on all funds contributed pursuant to this Agreement. These funds shall be payable by Developer to the Utility within thirty (30) days after the Utility provides to Developer written notice of such taxes, along with reasonable supporting documentation.

D. Computation of Refund. The Utility shall refund to Developer the Advance by making annual payments (each an "Advance Refund Payment" and collectively, the "Advance

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Refund Payments) on or before the 31st day of August of each year. Each Advance Refund Payment shall be equal to ten percent (10%) of the gross annual operating revenues, exclusive of any taxes or pass-through costs by Utility, from the sale of water utility services to bona fide customers of Utility within the Development. Any other amounts to be refunded by the Utility to Developer pursuant to this Agreement, including without limitation, the amount of any income taxes pursuant to Paragraph VII.C, shall be in addition to the Advance Refund Payments, and shall be paid contemporaneously with each Advance Refund Payment. The Utility shall continue to pay Advance Refund Payments for a period of ten (10) years. Utility retains the right to refund all or any portion of the outstanding Advance balance to Developer at any time prior to the termination of refunds made pursuant to this Agreement, and to extend the refund period prior to the expiration of the initial 10-year term, upon proper notice to the Developer. Any amount of the Advance that has not been refunded to Developer at the end of the refund period, or extended refund period, shall become a contribution in aid of construction.

E. **Maximum Refund; Interest on Advance; Limitation on Revenues.** The sum total of the Advance Refund Payments shall in no event exceed the amount of the Advance, as adjusted. No interest shall be paid by the Utility on any amounts to be refunded to Developer pursuant to this Agreement.

F. **Transfer of Facilities.** In the event of the sale, conveyance or transfer by the Utility, pursuant to the approval of the Commission, of any portion of its water system, including the Facilities, the Utility's obligation hereto shall cease (except as to any payment which is then due), conditioned upon the transferee assuming, and agreeing to pay Developer, any sums becoming payable to Developer thereafter in accordance with the provisions of this Agreement.

G. **Assignment; Utility's Right of First Refusal.** Developer may assign this Agreement, or any of its rights and obligations hereunder, to another party, including another company under the same corporate umbrella, provided that such assignment is made in connection with the sale of the Development and further provided that Developer first receives written consent of such assignment from Utility prior to the effective date of the assignment, which consent shall not be unreasonably withheld; provided, however, that Developer acknowledges that Utility may, in its sole discretion, require that the assignee agree in writing to fully perform Developer's obligations hereunder to be bound by this Agreement and to require that the assignee demonstrate financial ability to assume Developer's obligations hereunder. Before selling, assigning or otherwise transferring to any third party Developer's right to the receipt of the Advance Refund Payments or any other payment from the Utility pursuant to this Agreement, Developer shall first give the Utility, or its assigns, reasonable opportunity to purchase the same at the same price and upon the same terms as contained in any bona fide offer which Developer has received from any third person or persons which Developer desires to accept. Upon such assignment, the Utility shall make all refunds under the Agreement to the Developer's assignee.

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VIII. RISK; LIABILITY; INSURANCE

A. **Risk.** Developer shall carry on all work required hereunder at its own risk until Completion and will, in case of accident, destruction or injury to the work or material before Completion, replace or repair forthwith the work or materials so injured, damaged or destroyed, in accordance with the Approved Plans, to the reasonable satisfaction of the Utility and at Developer's own expense.

B. **Risk of Loss, Indemnification:** Until Utility has issued its written notice of Final Acceptance of the Facilities constructed by Developer hereunder, all risk of loss with respect to the Facilities shall remain with Developer. Developer shall indemnify and hold Utility and its officers, directors, employees and agents harmless for, from and against all claims or other liability, whether actually asserted or threatened, arising out of or related to Developer's construction of the Facilities hereunder. To the fullest extent permitted by law, Developer, and its successors, assigns and guarantors, shall defend, indemnify and hold harmless Utility and its partners, members, directors, principals, officers, agents, employees, representatives, parents, subsidiaries, affiliates, consultants, insurers and/or sureties, from and against any and all liabilities, claims, damages, losses, costs, expenses (including but not limited to, attorney's fees), injuries, causes of action, or judgments occasioned by, contributed to and/or in any way caused, in whole or in part, by Developer and/or Developer's contractors, agents or employees, or any subcontractor, consultant or sub-subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to construction, design and/or installation of the Facilities, including but not limited to any active or passive negligence of Utility, and/or any act or omission of Utility, unless such negligence, act and/or omission of Utility was the sole cause of such liability and/or claim. This Indemnity Clause shall apply to any claim arising out of or related to construction of the Facilities that is sustained or asserted before or after completion of the work or termination of this Agreement. This Indemnity Clause extends to and includes all claims, just or unjust, based on a tort, strict liability, contract, lien, statute, stop notice, rule, safety regulation, ordinance or other affiliated relief or liability, and whether the injury complained of arises from any death, personal injury, sickness, disease, property damage (including loss of use), economic loss, patent infringement, copyright infringement, or otherwise, even if such claim may have been caused in part by Utility as set forth above. Developer's obligations under this paragraph shall not apply to any claims or liability arising out of or are caused by Utility's ownership and operation of the Facilities following their acceptance.

C. **Insurance.** Developer agrees to obtain and maintain all insurance described below, and shall provide to the Utility certificates evidencing the same, prior to commencement of construction of the Facilities:

1. Workmen's compensation in the benefit amounts, and occupational disease disability insurance, as required by the laws and regulations of the state.
2. Commercial general liability insurance, with minimum combined single limits of \$2,000,000.00, including operations and protective liability

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coverage. When the work to be performed requires blasting, Developer's insurance shall specifically cover that risk.

3. Comprehensive automobile liability insurance with minimum combined single limits of \$1,000,000.00, and covering all owned and non-owned automobiles or trucks used by or on behalf of Developer, in connection with the construction of the Facilities.

IX. NOTICE

1. Any notice required or permitted under this Agreement must be in writing and must be given by either: (i) personal delivery; (ii) United States certified mail, return receipt requested, with all postage prepaid and properly addressed; (iii) any reputable, private overnight delivery service with delivery charges prepaid and proof of receipt; or (iv) facsimile with confirmation of transmittal. Notice sent by any of the foregoing methods must be addressed or sent to the party to whom notice is to be given, as the case may be, at the addresses or telecopy numbers set forth below:

UTILITY

Litchfield Park Service Company
Attn: Development Services
12725 W. Indian School Road, Suite D-101
Avondale, AZ 85323

DEVELOPER

PebbleCreek Properties Limited Partnership
Attn : Jim Poulos
9532 E. Riggs Road
Sun Lakes, AZ 85248

2. Any party may change its notice information for purposes of delivery and receipt of notices by advising the other parties in writing of the change. Notice provided by the methods described above will be deemed to be received: (i) on the Business Day of delivery, if personally delivered; (ii) on the date which is three (3) days after deposit in the United States mail, if given by certified mail; (iii) on the next regular Business Day after deposit with an express delivery service for overnight, "same day", or "next day" delivery service; No notice will be effective unless provided by one of the methods described above.

X. DISPUTE RESOLUTION

The Parties hereto agree that each will use good faith efforts to resolve, through negotiation, disputes arising hereunder without resorting to mediation, arbitration or litigation. However, to the extent that a dispute arises which cannot be resolved through negotiation, the Parties agree to the following dispute resolution mechanisms:

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a. Mediation. The Parties shall first attempt, in good faith, to resolve the dispute through mediation administered by the American Arbitration Association under its Commercial Mediation Rules.

b. Arbitration. If a dispute cannot be resolved as set forth above, the matter shall be submitted to binding arbitration in accordance with the rules of commercial arbitration ("Rules") then followed by the American Arbitration Association ("AAA"), Phoenix, Arizona. If the claim in dispute does not exceed \$20,000, then there shall be a single arbitrator selected by mutual agreement of the parties, and in the absence of agreement, appointed according to the Rules. If the claim in dispute exceeds \$20,000, the arbitration panel shall consist of three (3) members, one of who shall be selected by Developer, one of who shall be selected by Company, and the third, who shall serve as chairman, whom shall be selected by the AAA. The arbitrator or arbitrators must be knowledgeable in the subject matter of the dispute. The costs and fees of the arbitrator(s) shall be divided equally between the parties. Any decision of the arbitrator(s) shall be supported by written findings of fact and conclusions of law, and shall be based upon sound engineering practice. The decision of the arbitrator(s) shall be final, subject to the exceptions outlined in the Arizona Uniform Arbitration Act, A.R.S. Section 12-1502, et seq., and judgment may be entered upon the same; provided, however, that any decision of the arbitrator(s) may be appealed to the Superior Court of Maricopa County if it is based on an erroneous interpretation, application or disregard of the law applicable to the dispute. The arbitrator(s) shall control discovery in the proceedings and shall award the prevailing party its reasonable attorneys' fees and costs.

XI. MISCELLANEOUS

Any future agreements between Developer and the Utility for the construction of additional water utility facilities within the Development not specifically provided for herein or specified in the attached Exhibits shall be governed by separate agreement(s) in substantially the same form as this Agreement.

This Agreement may not be modified or amended except by a writing signed by both parties. The Recitals are hereby incorporated by reference and made a part of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. It is the understanding of the Utility and Developer that this Agreement is not effective until it receives specific approval of the Commission. DEVELOPER AGREES TO PROVIDE ALL APPROVALS TO CONSTRUCT FOR THE FACILITIES PRIOR TO UTILITY'S SUBMITTAL OF THE AGREEMENT TO THE COMMISSION FOR APPROVAL PURSUANT TO A.A.C. R14-2-406. DEVELOPER ALSO HEREBY ACKNOWLEDGES THAT IT SHALL BEAR ANY AND ALL RISKS ASSOCIATED WITH COMMENCING CONSTRUCTION OF THE FACILITIES PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and expressly supersedes and revokes all other prior or contemporaneous promises, representations and assurances of any nature whatsoever with respect to the subject matter hereof. The remedies provided in this Agreement shall not be

Initials_____

deemed exclusive remedies but shall be in addition to all other remedies available at law or in equity. No waiver by either Party of any breach of this Agreement nor any failure by either party to insist on strict performance by the other Party of any provision of this Agreement shall in any way be construed to be a waiver of any future or subsequent breach by such defaulting Party or bar the non-defaulting Party's right to insist on strict performance by the defaulting Party of the provisions of this Agreement in the future. Developer is an independent contractor and not an agent or employee of the Utility. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the Parties hereto and their respective successors and assigns.

Each party represents that it is a sophisticated commercial party capable of understanding all of the terms of this Agreement, that it has had an opportunity to review this Agreement with its counsel, and that it executes this Agreement with full knowledge of the terms of the Agreement.

END OF AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized individuals on the day, month, and year first above written.

LITCHFIELD PARK SERVICE COMPANY
an Arizona corporation

PEBBLECREEK PROPERTIES
LIMITED PARTNERSHIP
an Arizona limited partnership

By: _____
Robert Dodds
President

By: _____
Jim Poulos
President of Land Development

Initials _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008 by Robert Dodds, President of Litchfield Park Service Company, an Arizona corporation, on behalf of the corporation.

Name

Title

My Commission expires:

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008 by Jim Poulos, President of Land Development of PebbleCreek Properties Limited Partnership, an Arizona limited partnership, on behalf of the partnership.

Name

Title

My Commission expires:

Initials_____

EXHIBIT A

Desert Sky Surveying, Inc.
1930 W. Decatur Avenue
Mesa, Az 85201

Legal Description
PebbleCreek Unit 53

June 27, 2008

A parcel of land located in the South Half of Section 36, Township 2 North, Range 2 West, Gila and Salt River Meridian, City of Goodyear, Maricopa County, Arizona more particularly described as follows:

COMMENCING at the South quarter corner of said Section 36, a found $\frac{1}{2}$ " rebar stamped RLS 35869, from which the Southwest corner of said section 36, a found brass cap stamped RLS 35869, bears N 89° 40' 22" W, 2644.27 feet distant;

THENCE N 17° 07' 18" E, a distance of 74.60 feet to the Northerly right-of-way line of McDowell Road as recorded in Book 705, Page 39, Maricopa County Records, and the TRUE POINT OF BEGINNING;

THENCE N 45° 19' 38" E along said Northerly right-of-way line of McDowell Road, a distance of 46.67 feet to the Westerly right-of-way line of N. Clubhouse Drive, as recorded in PebbleCreek Unit 58, Book 711, Page 47, Maricopa County Records;

THENCE N 00° 19' 38" E along said Westerly right-of-way line of N. Clubhouse Drive a distance of 245.06 feet to the beginning of a tangent curve to the left;

THENCE Northwestery along the arc of a 50.00 foot radius curve to the left through a central angle of 25° 50' 31" an arc length of 22.55 foot along said Westerly line of N. Clubhouse Drive to the beginning of a 50.00 foot radius reverse curve;

THENCE Northerly along the arc of said curve, through a central angle of 51° 41' 02", an arc length of 45.10 feet along said Westerly line of N. Clubhouse Drive to the beginning of a 50.00 foot radius reverse curve to the left;

THENCE Northerly along the arc of said curve through a central angle of 25° 50' 31" an arc length of 22.55 feet along said Westerly line of N. Clubhouse Drive;

THENCE continuing along said Westerly line of N. Clubhouse Drive N 00° 19' 38" E a distance of 230.32 feet to the beginning of a 1540.00 foot radius tangent curve to the right;

THENCE Northeastery along the arc of said curve through a central angle of 11° 16' 25" an arc length of 303.01 feet,

EXHIBIT A

**Desert Sky Surveying, Inc.
1930 W. Decatur Avenue
Mesa, Az 85201**

**Legal Description
PebbleCreek Unit 53 (Cont'd)**

June 27, 2008

THENCE leaving said Westerly right-of-way line of N. Clubhouse Drive, S 73° 38' 17" W a distance of 154.11 feet to a point on the arc of a 50.00 foot radius curve that is concave Southwesterly, the radius point of which bears S 48° 13' 01" W;

THENCE Northwesterly along the arc of said curve through a central angle of 49° 01' 04", an arc length of 42.78 feet to the beginning of a compound curve, concave to the South, having a radius of 1015.00;

THENCE Westerly along the arc of said curve, through a central angle of 7° 36' 36", an arc length of 134.81 feet to a point of tangency;

THENCE S 81° 35' 19" W, a distance of 392.73;

THENCE S 08° 24' 41" E, a distance of 50.00 feet to a point on the arc of a 12.00 foot radius curve that is concave Southwesterly, the radius point of which bears S 08° 24' 41" E;

THENCE Southeasterly along the arc of said curve through a central angle of 90° 00' 00" an arc length of 18.85 feet to a point of tangency;

THENCE S 08° 24' 41" E, a distance of 82.79 feet to the beginning of a 475.00 foot radius tangent curve that is concave Southwesterly;

THENCE Southeasterly along the arc of said curve through a central angle of 3° 24' 14", an arc length of 28.22 feet;

THENCE S 84° 34' 49" W, a distance of 136.01 feet;

THENCE S 84° 45' 14" W a distance of 56.00 feet;

THENCE N 87° 38' 33" W, a distance of 56.00 feet;

THENCE N 88° 32' 14" W, a distance of 56.00 feet;

THENCE N 84° 43' 00" W, a distance of 56.00 feet;

THENCE N 80° 53' 47" W, a distance of 56.00 feet;

THENCE N 77° 04' 33" W, a distance of 56.00 feet;

EXHIBIT A

Desert Sky Surveying, Inc.
1930 W. Decatur Avenue
Mesa, Az 85201

Legal Description
PebbleCreek Unit 53 (Cont'd)

June 27, 2008

THENCE N 73° 15' 30" w, a distance of 56.00 feet;

THENCE S 18° 24' 07" W, a distance of 110.00 feet to a point on the arc of a 325.00 foot radius curve that is concave Southwesterly, the radius point of which bears N 18° 24' 07" E;

THENCE Southeasterly along the arc of said curve through a central angle of 00° 09' 59", an arc length of 0.94 feet to the beginning of, a reverse curve, concave Northeasterly, having a radius of 950.00 feet;

THENCE Southeasterly along the arc of said curve through a central angle of 00° 36' 16", an arc length of 10.02 feet;

THENCE S 17° 57' 50" W, a distance of 50.00 feet to a point on the arc of a 12.00 foot radius curve that is concave Southwesterly, the radius point of which bears S 17° 57' 50" W;

THENCE Southeasterly along the arc of said curve through a central angle of 89° 10' 29", an arc length of 18.68 feet to a point of tangency;

THENCE S 17° 08' 20" W, a distance of 55.25 feet to the beginning of a 175.00 foot radius tangent curve to the right that is concave Southeasterly;

THENCE Southwesterly along the arc of said curve through a central angle of 16° 48' 42", an arc length of 51.35 feet to a point of tangency;

THENCE S 00° 19' 38" W, a distance of 143.68 feet to the beginning of a 12.00 foot radius tangent curve to the left that is concave Northwesterly;

THENCE Southwesterly along the arc of said curve through a central angle of 90° 00' 00", an arc length of 18.85 feet;

THENCE S 00° 19' 38" W, a distance of 50.00 feet;

THENCE S 89° 40' 22" E, a distance of 12.89 feet;

THENCE S 00° 19' 38" E a distance of 115.00 feet;

THENCE N 89° 40' 22" W, a distance of 620.96 feet;

THENCE S 25° 29' 08" E, a distance of 72.05 feet to the Northerly right-of-way line of said McDowell Road;

EXHIBIT A

**Desert Sky Surveying, Inc.
1930 W. Decatur Avenue
Mesa, Az 85201**

**Legal Description
PebbleCreek Unit 53 (Cont'd)**

June 27, 2008

THENCE S 89° 40' 22" E along said Northerly right-of-way line of McDowell Road, a distance of 1550.28 feet;

THENCE N 76° 17' 28" E along said Northerly right-of-way line of McDowell Road, a distance of 42.96 feet;

THENCE S 89° 40' 22" E along said Northerly right-of-way line of McDowell Road, a distance of 181.74 feet to the TRUE POINT OF BEGINNING.

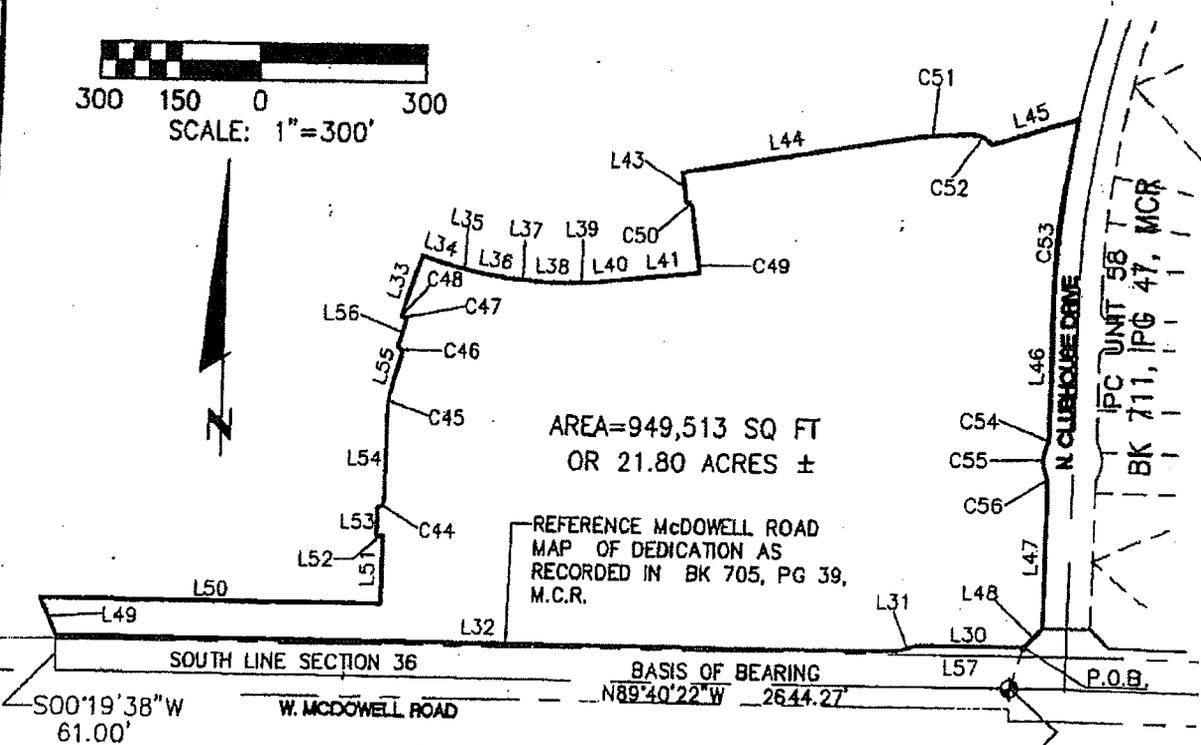
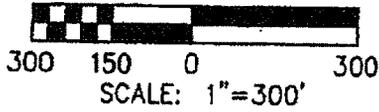
The above parcel contains an area of 21.80 acres, more or less.



EXPIRES 3-31-09

EXHIBIT A

EXHIBIT TO ACCOMPANY LEGAL
DESCRIPTION OF PEBBLECREEK
PHASE II UNIT 53
JUNE 27, 2008



AREA=949,513 SQ FT
OR 21.80 ACRES ±

REFERENCE McDOWELL ROAD
MAP OF DEDICATION AS
RECORDED IN BK 705, PG 39,
M.C.R.

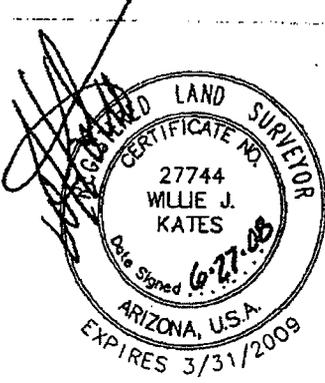
SOUTH LINE SECTION 36
W. McDowell Road
BASIS OF BEARING
N89°40'22"W 2644.27'
P.O.B.

LINE TABLE		
LINE	LENGTH	BEARING
L30	181.74	S89°40'22"E
L31	42.96	N76°17'28"E
L32	1550.28	S89°40'22"E
L33	110.00	S18°24'07"W
L34	56.00	N73°15'30"W
L35	56.00	N77°04'33"W
L36	56.00	N80°53'47"W
L37	56.00	N84°43'00"W
L38	56.00	N88°32'14"W
L39	56.00	S87°38'33"W
L40	56.00	S84°45'14"W
L41	136.01	S84°34'49"W
L42	82.79	S08°24'41"E
L43	50.00	S08°24'41"E
L44	392.73	S81°35'19"W
L45	154.11	S73°38'17"W
L46	230.32	N00°19'38"E
L47	245.06	N00°19'38"E
L48	46.67	N45°19'38"E
L49	72.05	S25°29'08"E
L50	620.96	N89°40'22"W
L51	115.00	S00°19'38"W
L52	12.89	S89°40'22"E
L53	50.00	S00°19'38"W
L54	143.68	S00°19'38"W
L55	55.25	S17°08'20"W
L56	50.00	S17°57'50"W
L57	74.60	N17°07'18"E

NOTE: McDOWELL ROAD RIGHT OF WAY
PER DKT. 10732, PAGE 64, M.C.R.
DESIGNATED COUNTY ROAD PER BOOK
16 OF ROAD MAPS, PAGE 69, M.C.R.

CURVE TABLE		
CURVE	LENGTH	RADIUS
C44	18.85	12.00
C45	51.35	175.00
C46	18.68	12.00
C47	10.02	950.00
C48	0.94	325.00
C49	28.22	475.00
C50	18.85	12.00
C51	134.81	1015.00
C52	42.78	50.00
C53	303.01	1540.00
C54	22.55	50.00
C55	45.10	50.00
C56	22.55	50.00

P.O.C.
S 1/4 COR SEC 36, T.2N., R.2W.,
G&SRM, 1/2" REBAR STAMPED RLS
35869



DESERT SKY
SURVEYING, INC.

1930 WEST DECATUR AVE
MESA, ARIZONA 85201
PHONE: (602) 499-0884

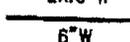
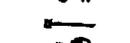
LAND SURVEYING • LAND DEVELOPMENT

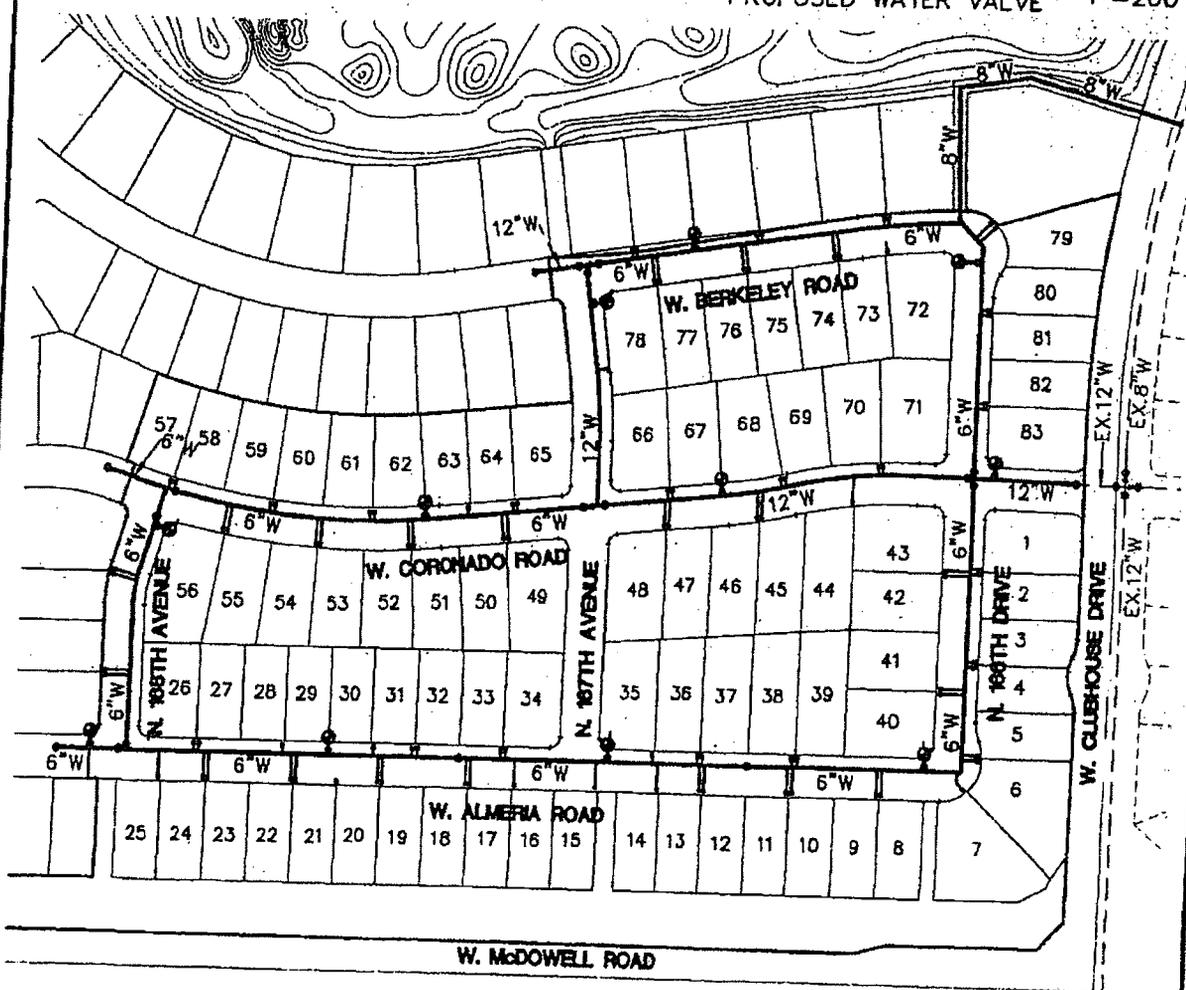
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**PEBBLECREEK PHASE II
UNIT 53
WATER FACILITIES MAP**

EXHIBIT B

LEGEND

-  EX. 6" W
 -  6" W
 -  PROPOSED WATER SERVICE
 -  PROPOSED FIRE HYDRANT
 -  PROPOSED WATER VALVE
- 1" = 200'





BR ENGINEERING INC.

9666 E. RIGGS RD. SUITE 118
SUN LAKES, ARIZONA 85248
PHONE: (480) 895-0799

CIVIL ENGINEERING ● LAND DEVELOPMENT

**Exhibit C
B&R Engineering, Inc.
Cost Estimate**

PebbleCreek Phase II - Unit 53

<u>WATER</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
12" DUCTILE IRON PIPE**	LF	951	\$39.00	\$37,089.00
8" DUCTILE IRON PIPE**	LF	441	\$32.00	\$14,112.00
6" DUCTILE IRON PIPE**	LF	3201	\$20.00	\$64,020.00
FIRE HYDRANT	EA	11	\$3,450.00	\$37,950.00
12" VALVE, BOX & COVER	EA	5	\$1,815.00	\$9,075.00
8" VALVE, BOX & COVER	EA	1	\$980.00	\$980.00
6" VALVE, BOX & COVER	EA	9	\$675.00	\$6,075.00
1" WATER SERVICE	EA	94	\$460.00	\$43,240.00
2" BLOW OFF	EA	2	\$900.00	\$1,800.00
SAMPLING STATION	EA	1	\$1,380.00	\$1,380.00
ASPHALT REMOVAL & REPLACEMENT	SY	21	\$100.00	\$2,100.00
8" TAPPING SLEEVE AND VALVE	EA	1	\$3,850.00	\$3,850.00
WATER TOTAL				\$217,821.00

** Water main unit costs include Tees, Crosses, Bends, and Reducers



Expires 9/30/09

2

THIS WATER LINE EXTENSION AGREEMENT ("Agreement"), entered into this _____ day of _____, 2009, by and between LITCHFIELD PARK SERVICE COMPANY, an Arizona public service corporation, (hereinafter referred to as "Utility"), and PEBBLECREEK PROPERTIES LIMITED PARTNERSHIP, an Arizona limited partnership (hereinafter referred to as "Developer")(individually, a "Party" and collectively, "Parties"), in respect of the construction of utility infrastructure necessary to extend and provide water utility service to PebbleCreek Ph II Unit 54 Phase 2, a residential land parcel in Goodyear, Arizona ("Development").

RECITALS

WHEREAS, Utility represents and warrants to Developer that it is a public service corporation, and holds a Certificate of Convenience and Necessity ("CC&N") granted by the Arizona Corporation Commission ("Commission"), together with other required permits and governmental approvals authorizing it to serve the public with water utility service in certain parts of Goodyear, Arizona; and

WHEREAS, Developer desires that water utility service be extended to the Development, consisting of 49 lots located in Goodyear, Arizona. A legal description and map of the proposed Development are attached hereto in **Exhibit "A"** and incorporated herein by reference for all purposes; and

WHEREAS, the Development is located within the Utility's CC&N, and Utility is willing to extend water utility service to the Development subject to the terms of this Agreement; and

WHEREAS, the Utility does not presently have onsite water distribution facilities within the Development and Developer is prepared to construct and then convey such facilities all at his sole unrecoverable expense as may be provided for herein; and

WHEREAS, the Utility does not presently have sufficient or appropriate off-site facilities to convey the water to the Development and the Developer is prepared to either: i) construct such facilities and convey them to the Utility and/or, ii) provide the advance funding to Utility so that Utility may construct such off-site facilities (an In-Kind Advance or Money Advance and together "Advance") and in either case the cost thereof shall be subject to a partial refunding to the Developer over time as may be provided for herein; and

WHEREAS, Developer is willing to transfer to the Utility legal title to: i) all on-site facilities within the Development, ii) all offsite facilities that are necessary to extend water utility service to the Development which it undertakes to construct, subject to the terms and conditions set forth hereinafter; and

Initials 

WHEREAS, Developer recognizes that in order for Utility to provide the requested water utility service to the Development, Utility will ultimately have to develop additional potable water production, treatment and handling capacity and that Developer will be required to contribute to the funding of the costs for Utility to construct new, or to upgrade existing off-site infrastructure to develop that water production, treatment and conveyance capacity as required by the Development which funding shall be supplied by the Developer to Utility by way of an advance in aid of construction according to the terms and conditions set forth hereinafter; and

WHEREAS, Utility is willing to provide such water utility service to the Development in accordance with applicable law, including the rules and regulations of the Commission, on the condition that Developer fully and timely perform the obligations and satisfy the conditions and requirements of this Agreement as set forth below; and

WHEREAS, unless otherwise provided in this Agreement, capitalized terms used herein shall have the same meaning as set forth in the Commission Rules and Regulations.

NOW, THEREFORE, it is mutually covenanted and agreed by and between the Parties hereto as follows:

I. UTILITY FACILITIES; OVERSIZING; COST; ADMINISTRATIVE COSTS; WATER SUPPLY; LETTER OF CREDIT; GROUNDWATER REPLENISHMENT DISTRICT.

A. Utility Plant Additions. Developer will construct, or cause to be constructed, the water utility facilities described on **Exhibit "B"** (the "Facilities").

B. Oversizing. If requested by Utility, Developer shall "oversize" certain components of the Facilities. To the extent that such oversizing is not part of the general Utility's Development Guide specifications (e.g. the size of mains paralleling major roadways fronting the Development which will be to specifications and not considered oversize even if in excess of the actual specific needs of the Development alone), Utility shall reimburse Developer for the amount by which the material costs of the oversized facilities exceed the actual material costs of the same Facilities prior to "oversizing". Reimbursement for oversizing will be made by Utility to Developer within thirty (30) days of written notice to Utility after Utility's Final Acceptance of said Facilities, as that term is defined in Paragraph VI.F herein.

C. Cost. The estimated cost to construct the Facilities, as shown in **Exhibit "C"**, attached hereto and incorporated herein by reference for all purposes, shall be **\$292,792.00**. Developer shall advance as an advance in aid of construction, the estimated cost to construct, install and obtain necessary permits for the Facilities described in **Exhibit "B"** as required for Utility to extend water utility service to the Development. Developer shall also be required to advance a deposit for all estimated administrative, engineering, and legal costs associated with the extension of water service, as more fully set forth in Paragraph I.D ("Deposit").

D. Reimbursement for Inspection Costs, Overhead and Other Expenses of Utility. Upon execution of this Agreement, Developer shall submit the Deposit to Utility in respect of the Utility's anticipated reasonable fees, costs and expenses incurred in connection with its preparation of this Agreement, review and approval of engineering plans and specifications for the Facilities, periodic inspection and testing of the Facilities during and after their construction, and any other fees, costs and expenses reasonably and necessarily incurred by Utility (collectively, "Administrative Costs"). The Deposit shall be 5% of the estimated cost of construction of the Facilities as shown in Exhibit "C", with a minimum Deposit of \$5,000 and a maximum Deposit of \$25,000. In the event Utility's Administrative Costs exceed the amount of the Deposit, Utility shall provide to Developer invoices and records supporting such Administrative Costs, and payment shall be made by Developer on or before the fifteenth (15th) day of the calendar month following the month in which Utility's invoice is received by Developer.

E. Capacity Costs. For water utility service to the Development, Utility is required to develop new or improve existing off-site water supply capacity ("Capacity Cost"). Developer is responsible for funding its pro-rata share of the Capacity Costs, at an estimated total of \$80,850.00. The Capacity Cost will be treated as an advance in aid of construction. This estimate shall be valid for up to **ONE YEAR** after the execution of this Agreement. If construction of the Facilities has not been completed by this deadline, the estimated Capacity Cost is thereafter subject to change based on the cost of gallons per day capacity required for each equivalent dwelling unit within the Development.

F. Letter of Credit. Developer agrees to post an irrevocable Letter of Credit ("LOC") in favor of Utility with a recognized financial institution consented to by Utility, which consent shall not be unreasonably withheld, equal to the total estimated Capacity Cost, and any applicable construction, installation and permitting costs for that portion of the Facilities to be constructed by Utility. For purposes of this Agreement, the LOC shall total \$80,850.00, and shall be posted within ten (10) calendar days upon execution of this Agreement. A copy of applicable LOC documents is attached hereto as **Exhibit "D"**. **UTILITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL NOT COMMENCE UNTIL THE LOC IS ESTABLISHED IN ACCORDANCE HERewith. UTILITY SHALL HAVE THE OPTION TO TERMINATE THIS AGREEMENT AT ANY TIME IF DEVELOPER FAILS TO TIMELY ESTABLISH THE LOC WITHIN TEN (10) CALENDAR DAYS OF THE EXECUTION OF THIS AGREEMENT.** Utility may draw upon such LOC at any time for reimbursement of Developer's pro-rata share of costs for the off-site facilities required to extend water utility serve to the Development. Developer acknowledges that it will be required to supplement the LOC for any change in the applicable estimated cost set forth in **Exhibit "C"**. Once all cost obligations have been satisfied to Utility's satisfaction, Utility will provide written notice to Developer that the LOC can be terminated.

G. Groundwater Replenishment District. In the event the Developer enrolls, or applies to enroll, the property within the Development as "membership land" in the Central Arizona Groundwater Replenishment District ("CAGRd") pursuant to ARS § 48-4401 et seq., or the property in any way becomes subject to that law as it may be amended, then and in that event the Developer shall pay, in addition to all other terms, conditions, rates and charges set forth in

this Agreement, a one-time charge of \$1,000.00 to the Utility for the establishment of the reporting procedure mandated by the CAGR. For all Lots within the Development that become subject to the CAGR, the Developer shall provide to the Utility the following information for each parcel to be served under this Agreement: (i) the APN number as assigned to that Lot by the applicable taxing authority as and when available; (ii) the street address of each Lot; and (iii) any other information necessary for the Utility to comply with the requirement of the CAGR. Said information for all Lots and parcels within the Development shall be provided to the Utility prior to the Utility's obligation to serve water to any Lot or parcel within the Development. Payment of the CAGR fee shall be made upon execution of this Agreement.

II. SERVICE; FIRE FLOW; APPLICABLE RATES

A. **Service.** The Facilities are being installed for the purpose of providing water utility service to the Development consistent with the Utility's Tariff and Commission Rules and Regulations. The service provided by the Utility to the Development pursuant to this Agreement (the "Service") shall be in accordance with good utility practice for water utility service as well as any law and regulation, including the Commission's Rules and Regulations.

B. **Fire Flow.** UTILITY EXPRESSLY DISCLAIMS ANY RESPONSIBILITY OR OBLIGATION TO PROVIDE WATER AT A SPECIFIC PRESSURE OR GALLONS PER MINUTE FLOW RATE AT ANY FIRE STANDPIPE, OR FIRE HYDRANT, OR FOR FIRE PROTECTION SERVICE. IN THE EVENT FIRE PROTECTION SERVICE IS INTERRUPTED, IRREGULAR, DEFECTIVE, OR FAILS FROM CAUSES BEYOND THE UTILITY'S CONTROL OR THROUGH ORDINARY NEGLIGENCE OF ITS EMPLOYEES, SERVANTS OR AGENTS, THE UTILITY WILL NOT BE LIABLE FOR ANY INJURIES OR DAMAGES ARISING THEREFROM.

C. **Applicable Rates.** It is mutually understood and agreed that the charges for the Service shall be at the applicable rates and tariffs which Utility is authorized by the Commission to and that those rates are subject to change from time to time upon application by the Utility and approval by the Commission.

III. PERMITS AND LICENSES; EASEMENTS; TITLE

A. **Permits and Licenses.** Developer agrees to obtain, at its own initial expense, all licenses, permits, certificates and approvals from public authorities that may be required for the construction of the Facilities and to comply with all municipal, environmental and other public laws, ordinances, and requirements in regard to the same.

B. **Easements.** In the event the Facilities are not located within a dedicated right of way or public utility easement, Developer shall grant such easements as are reasonably necessary to permit the Utility to maintain repair or replace the Facilities, which Utility shall record in the Maricopa County Recorder's Office. In no event shall such easement be less than sixteen (16) feet in width.

C. **Title.** All materials installed, facilities constructed and equipment provided by Developer in connection with construction of the Facilities, and the completed Facilities as installed for which an Approval of Construction has been issued by ADEQ, and for which the Utility has provided written Final Acceptance pursuant to Paragraph IV.F, shall become the sole property of the Utility, and full legal and equitable title thereto shall then be vested in the Utility, free and clear of any liens. Developer agrees to execute or cause to be executed promptly such documents as counsel for the Utility may reasonably request to evidence good and merchantable title to the Facilities (free and clear of all liens) vested in the Utility. The Utility shall confirm in writing the acceptance of title to the Facilities.

**IV. COMMENCEMENT OF PERFORMANCE AND TIME OF COMPLETION;
PLANS AND SPECIFICATIONS; WORKMANSHIP, MATERIALS,
EQUIPMENT AND MACHINERY; CONNECTING NEW FACILITIES;
EXISTING UNDERGROUND FACILITIES RESPONSIBILITIES**

A. **Commencement of Performance and Time of Completion.** This Agreement shall automatically terminate if Developer fails to begin construction within **ONE YEAR** from the plan approval date, unless otherwise agreed to in writing by Utility. In the event this Agreement is terminated pursuant to this Paragraph, any monies advanced by Developer for Administrative Costs spent by Utility shall be non-refundable. The remainder of the Deposit shall be refunded within thirty (30) days after termination of the Agreement.

B. **Plans and Specifications.** The construction of the Facilities shall be in accordance with plans and specifications (and any material changes thereto) which have been (i) prepared in accordance with good water utility practice as generally accepted in Maricopa County, and with all applicable rules, regulations and requirements of all regulatory agencies having jurisdiction over water service in the Development, (ii) approved, in writing, by the Utility, which approval shall not be unreasonably conditioned, delayed or denied, and (iii) approved, in writing, by any governmental entity having authority over water service in the Development ("Approved Plans"). The Utility shall provide to the Developer the Utility's written approval or disapproval with comments, of any plans and specifications for the Facilities within thirty (30) calendar days after submittal of such plans and specifications to the Utility. If such plans and specifications are disapproved by the Utility, the Utility's approval of such plans and specifications shall be provided within thirty (30) calendar days after resubmittal of such plans and specifications incorporating the Utility's comments to the originally submitted plans and specifications. The Approved Plans shall be incorporated herein by reference and made part of this Agreement. Developer shall not commence construction of the Facilities prior to the issuance of any Approved Plans.

C. **Materials, Workmanship, Equipment, and Machinery.** All materials used to construct the Facilities shall be new and both workmanship and materials shall be of good quality that meets the specifications and standards of the Utility's Development Guide, the Commission, ADEQ, the Arizona Department of Health Services and all other applicable regulatory agencies. Developer shall assign to the Utility the warranties of its contractor(s) for the Facilities. Developer agrees to remove or replace at its own cost, or reimburse the Utility for all reasonable costs incurred by the Utility for removing and replacing any defective part or parts

of the Facilities, for two (2) years after Utility's written Operational Acceptance, as that term is defined in Paragraph IV.F.

D. Connecting New Facilities. The Facilities shall not be connected to the Utility's existing facilities without Approved Plans, and execution of this Agreement, including all regulatory approvals, if necessary which approval shall not be unreasonably withheld, conditioned, or delayed. Any such unapproved connection may result in either rejection of the Facilities by the Utility, or extraordinary charges to Developer to purge the Facilities prior to Utility's written Final Acceptance.

E. Existing Underground Facilities Responsibility. In connection with the construction of the Facilities, Developer shall be responsible for complying with A.R.S. 40-360.21. et seq., and related local regulations, and will assume all costs and liabilities associated with (1) coordination with the owners or agents of all underground facilities within and adjacent to the Development regarding the location of such facilities, and (2) construction near, or damage to, such underground facilities. Developer will conduct, or cause to be conducted, all excavation in a careful and prudent manner in its construction of the Facilities.

F. Acceptance. Operational Acceptance of the Facilities by the Utility shall occur at the time the Developer has provided all of the following items to the Utility as required by this Agreement: (i) all fees, costs, and funds required under this Agreement; (ii) the Approval to Construct the Facilities; and (iii) recorded copies of all required Deeds and Easements. The Utility shall assume operational responsibilities for the Facilities only after receipt of the above. Final Acceptance of the Facilities by the Utility shall occur only after the Company receives all of the following as otherwise required by this Agreement: (i) all items required for Operational Acceptance; (ii) approved Final Inspection by Utility, including all punch list items; (iii) all invoices; (iv) all lien waivers; (v) copies of all permits and licenses; (vi) all required evidences of title, including a Bill of Sale; (vii) the as-built" plans. If all documents for the Utility's Final Acceptance are not received within sixty (60) days of the Operational Acceptance, the Company shall have no obligation to set additional meters within the Development until such time as Developer has complied with these requirements

V. INSPECTION, TESTING AND CORRECTION OF DEFECTS, COMPLETION

A. Inspection. Developer shall comply with the inspection and testing requirements of the Utility for the Facilities; said requirements shall be reasonable and shall not cause Developer unwarranted delays in the ordinary course of construction. Developer shall promptly notify the Utility when the Facilities (or portions thereof) are ready for inspection and testing, and the Utility shall inspect promptly after being so notified. The Utility agrees to conduct any "open trench" inspection within twenty-four (24) hours after being notified by Developer that the trench is ready for inspection, provided Developer gives the Utility at least three (3) business days' advance written notice of the first inspection date consistent with the notice provisions of Paragraph IX. If not inspected and approved by the Utility, Developer shall provide, within ten (10) business days, written certification from Developer's engineer that the Facilities (or the applicable portion thereof) were installed in accordance with the Approved Plans. At this time the condition will be deemed automatically approved by Utility if the Utility fails to inspect the

condition within such twenty-four (24) hour period, provided the Utility received such three (3) business days' advance written notice.

B. Testing and Correction. For the purpose of inspection and testing of the Facilities, Developer shall give the Utility and any inspectors appointed by it, free access to the facilities for properly inspecting such materials and work and shall furnish the Utility and any inspectors appointed by it with full information whenever requested as to the progress of the work on the various components of the Facilities. Developer agrees that no inspection by or on behalf of the Utility shall relieve Developer from any obligation under this Agreement. If, at any time before Completion, any part of the work is found to be defective or deficient in any way or in any way fails to conform to this Agreement, the Utility is hereby expressly authorized to reject or revoke acceptance of such defective or deficient work and require Developer to correct such defective work. No costs incurred by Developer to correct defective work shall be included in the Advance pursuant to Paragraph VII.A. The Utility specifically reserves the right to withhold approval and to forbid connection of the Facilities to the Utility's system. Developer agrees that it will promptly correct all defects and deficiencies in construction, materials, and workmanship upon request by the Utility made subsequent to inspection by the Utility.

C. Completion. The "Completion" of the Facilities (or any portion(s) or component(s) thereof) shall be deemed to have occurred when the Utility delivers to Developer the Utility's approved Final Inspection of the Facilities (or any portion(s) or component(s) thereof) as having been constructed in substantial conformance with the Approved Plans, which written acknowledgement shall not be unreasonably delayed or denied.

VI. INVOICES; LIENS; "AS-BUILT" PLANS

A. Invoices. Developer agrees to furnish Utility, within thirty (30) days after completion of construction, copies of Developer's, subcontractors', vendors' and all others' invoices for all engineering, surveying, and other services, materials installed, construction performed, equipment provided, materials purchased and all else done for construction pursuant to this Agreement at the actual cost thereof.

B. Lien Releases. Developer acknowledges its duty to obtain lien waivers from all providing labor, materials, or services hereunder. Developer hereby irrevocably waives any rights it may now have or which it may acquire during the course of this Agreement to record liens against the Utility or its property. Developer shall also pay, satisfy and discharge, or bond over, all mechanics', material men's and other liens, and all claims, obligations and liabilities which may be asserted against the Utility or its property by reason of Developer's construction of the Facilities.

C. "As-Built" Plans. Developer agrees to furnish the Utility, within forty-five (45) days after Completion, "as-built" drawings showing the locations of all Utility owned Facilities. The drawings shall be certified by Developer's engineer of record and shall be provided on reproducible 4-mil Mylar prints and in AutoCAD format on CD (or as otherwise specified by the Utility).

VII. CALCULATION OF ADVANCE; TIME OF PAYMENT; INCOME TAX; CALCULATION OF REFUND, MAXIMUM REFUND; TRANSFER; ASSIGNMENT

Calculation of Advance. Based on the estimated costs for Facilities and Capacity Costs contained in Paragraph I.C, and Deposit in Paragraph I.D, and subject to receiving invoices pursuant to Paragraph VI.A totaling at least the estimated cost plus applicable Administrative Costs, the total refundable estimated Advance by Developer is **\$388,281.60**, subject to adjustment as provided for in this Agreement. If the actual Advance is less than the estimated Advance, the Advance shall be the lesser amount, to the extent supported by invoices provided pursuant to Paragraphs I.D and VI.A. If the actual Advance is more than the estimated Advance, the Advance shall be the greater amount, to the extent supported by invoices provided pursuant to Paragraphs I.D and VI.A.

Time of Payment. The payment of the funds under this Agreement shall be made as follows:

1. Developer shall submit as the initial Deposit for the Utility's total estimated Administrative Costs the sum of **\$14,639.60** upon execution of this Agreement.
2. If the Deposit is greater than \$5,000, Utility shall compute the unexpended portion of the Deposit, if applicable, and refund any such amount over \$5,000 within sixty (60) days of Utility's Final Acceptance of the Facilities pursuant to Paragraph IV.F. All other amounts shall be added to the Advance.
3. Upon completion of the construction of the Facilities to be performed by Developer, Developer shall provide the documentation required by Paragraphs III, IV, V, and VI of this Agreement.
4. Developer shall post a LOC in the amount of **\$80,850.00** within ten (10) calendar days upon execution this Agreement.

C. Income Taxes. In the event it is determined by Congress, the Internal Revenue Service, the Arizona Legislature or the Arizona Department of Revenue that all or a portion of the cost estimates in **Exhibit "C"** is taxable income to the Utility as of the date of this Agreement, or upon receipt of said costs or facilities by the Utility, Developer will pay to the Utility funds equal to the applicable income taxes for the Utility's state and federal tax liability on all funds contributed pursuant to this Agreement. These funds shall be payable by Developer to the Utility within thirty (30) days after the Utility provides to Developer written notice of such taxes, along with reasonable supporting documentation.

D. Computation of Refund. The Utility shall refund to Developer the Advance by making annual payments (each an "**Advance Refund Payment**" and collectively, the "**Advance Refund Payments**") on or before the 31st day of August of each year. Each Advance Refund Payment shall be equal to ten percent (10%) of the gross annual operating revenues, exclusive of

any taxes or pass-through costs by Utility, from the sale of water utility services to bona fide customers of Utility within the Development. Any other amounts to be refunded by the Utility to Developer pursuant to this Agreement, including without limitation, the amount of any income taxes pursuant to Paragraph VII.C, shall be in addition to the Advance Refund Payments, and shall be paid contemporaneously with each Advance Refund Payment. The Utility shall continue to pay Advance Refund Payments for a period of ten (10) years. Utility retains the right to refund all or any portion of the outstanding Advance balance to Developer at any time prior to the termination of refunds made pursuant to this Agreement, and to extend the refund period prior to the expiration of the initial 10-year term, upon proper notice to the Developer. Any amount of the Advance that has not been refunded to Developer at the end of the refund period, or extended refund period, shall become a contribution in aid of construction.

E. **Maximum Refund; Interest on Advance; Limitation on Revenues.** The sum total of the Advance Refund Payments shall in no event exceed the amount of the Advance, as adjusted. No interest shall be paid by the Utility on any amounts to be refunded to Developer pursuant to this Agreement.

F. **Transfer of Facilities.** In the event of the sale, conveyance or transfer by the Utility, pursuant to the approval of the Commission, of any portion of its water system, including the Facilities, the Utility's obligation hereto shall cease (except as to any payment which is then due), conditioned upon the transferee assuming, and agreeing to pay Developer, any sums becoming payable to Developer thereafter in accordance with the provisions of this Agreement.

G. **Assignment; Utility's Right of First Refusal.** Developer may assign this Agreement, or any of its rights and obligations hereunder, to another party, including another company under the same corporate umbrella, provided that such assignment is made in connection with the sale of the Development and further provided that Developer first receives written consent of such assignment from Utility prior to the effective date of the assignment, which consent shall not be unreasonably withheld; provided, however, that Developer acknowledges that Utility may, in its sole discretion, require that the assignee agree in writing to fully perform Developer's obligations hereunder to be bound by this Agreement and to require that the assignee demonstrate financial ability to assume Developer's obligations hereunder. Before selling, assigning or otherwise transferring to any third party Developer's right to the receipt of the Advance Refund Payments or any other payment from the Utility pursuant to this Agreement, Developer shall first give the Utility, or its assigns, reasonable opportunity to purchase the same at the same price and upon the same terms as contained in any bona fide offer which Developer has received from any third person or persons which Developer desires to accept. Upon such assignment, the Utility shall make all refunds under the Agreement to the Developer's assignee.

VIII. RISK; LIABILITY; INSURANCE

A. **Risk.** Developer shall carry on all work required hereunder at its own risk until Completion and will, in case of accident, destruction or injury to the work or material before Completion, replace or repair forthwith the work or materials so injured, damaged or destroyed,

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in accordance with the Approved Plans, to the reasonable satisfaction of the Utility and at Developer's own expense.

B. Risk of Loss. Indemnification: Until Utility has issued its written notice of Final Acceptance of the Facilities constructed by Developer hereunder, all risk of loss with respect to the Facilities shall remain with Developer. Developer shall indemnify and hold Utility and its officers, directors, employees and agents harmless for, from and against all claims or other liability, whether actually asserted or threatened, arising out of or related to Developer's construction of the Facilities hereunder. To the fullest extent permitted by law, Developer, and its successors, assigns and guarantors, shall defend, indemnify and hold harmless Utility and its partners, members, directors, principals, officers, agents, employees, representatives, parents, subsidiaries, affiliates, consultants, insurers and/or sureties, from and against any and all liabilities, claims, damages, losses, costs, expenses (including but not limited to, attorney's fees), injuries, causes of action, or judgments occasioned by, contributed to and/or in any way caused, in whole or in part, by Developer and/or Developer's contractors, agents or employees, or any subcontractor, consultant or sub-subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to construction, design and/or installation of the Facilities, including but not limited to any active or passive negligence of Utility, and/or any act or omission of Utility, unless such negligence, act and/or omission of Utility was the sole cause of such liability and/or claim. This Indemnity Clause shall apply to any claim arising out of or related to construction of the Facilities that is sustained or asserted before or after completion of the work or termination of this Agreement. This Indemnity Clause extends to and includes all claims, just or unjust, based on a tort, strict liability, contract, lien, statute, stop notice, rule, safety regulation, ordinance or other affiliated relief or liability, and whether the injury complained of arises from any death, personal injury, sickness, disease, property damage (including loss of use), economic loss, patent infringement, copyright infringement, or otherwise, even if such claim may have been caused in part by Utility as set forth above. Developer's obligations under this paragraph shall not apply to any claims or liability arising out of or are caused by Utility's ownership and operation of the Facilities following their acceptance.

C. Insurance. Developer agrees to obtain and maintain all insurance described below, and shall provide to the Utility certificates evidencing the same, prior to commencement of construction of the Facilities:

1. Workmen's compensation in the benefit amounts, and occupational disease disability insurance, as required by the laws and regulations of the state.
2. Commercial general liability insurance, with minimum combined single limits of \$2,000,000.00, including operations and protective liability coverage. When the work to be performed requires blasting, Developer's insurance shall specifically cover that risk.
3. Comprehensive automobile liability insurance with minimum combined single limits of \$1,000,000.00, and covering all owned and non-owned

automobiles or trucks used by or on behalf of Developer, in connection with the construction of the Facilities.

IX. NOTICE

1. Any notice required or permitted under this Agreement must be in writing and must be given by either: (i) personal delivery; (ii) United States certified mail, return receipt requested, with all postage prepaid and properly addressed; (iii) any reputable, private overnight delivery service with delivery charges prepaid and proof of receipt; or (iv) facsimile with confirmation of transmittal. Notice sent by any of the foregoing methods must be addressed or sent to the party to whom notice is to be given, as the case may be, at the addresses or telecopy numbers set forth below:

UTILITY

Litchfield Park Service Company
Attn: Development Services
12725 W. Indian School Road, Suite D-101
Avondale, AZ 85323

DEVELOPER

PebbleCreek Properties Limited Partnership
Attn : Jim Poulos
9532 E. Riggs Road
Sun Lakes, AZ 85248-7411

2. Any party may change its notice information for purposes of delivery and receipt of notices by advising the other parties in writing of the change. Notice provided by the methods described above will be deemed to be received: (i) on the Business Day of delivery, if personally delivered; (ii) on the date which is three (3) days after deposit in the United States mail, if given by certified mail; (iii) on the next regular Business Day after deposit with an express delivery service for overnight, "same day", or "next day" delivery service; No notice will be effective unless provided by one of the methods described above.

X. DISPUTE RESOLUTION

The Parties hereto agree that each will use good faith efforts to resolve, through negotiation, disputes arising hereunder without resorting to mediation, arbitration or litigation. However, to the extent that a dispute arises which cannot be resolved through negotiation, the Parties agree to the following dispute resolution mechanisms:

a. Mediation. The Parties shall first attempt, in good faith, to resolve the dispute through mediation administered by the American Arbitration Association under its Commercial Mediation Rules.

b. Arbitration. If a dispute cannot be resolved as set forth above, the matter shall be submitted to binding arbitration in accordance with the rules of commercial arbitration ("Rules") then followed by the American Arbitration

Initials

Association ("AAA"), Phoenix, Arizona. If the claim in dispute does not exceed \$20,000, then there shall be a single arbitrator selected by mutual agreement of the parties, and in the absence of agreement, appointed according to the Rules. If the claim in dispute exceeds \$20,000, the arbitration panel shall consist of three (3) members, one of who shall be selected by Developer, one of who shall be selected by Company, and the third, who shall serve as chairman, whom shall be selected by the AAA. The arbitrator or arbitrators must be knowledgeable in the subject matter of the dispute. The costs and fees of the arbitrator(s) shall be divided equally between the parties. Any decision of the arbitrator(s) shall be supported by written findings of fact and conclusions of law, and shall be based upon sound engineering practice. The decision of the arbitrator(s) shall be final, subject to the exceptions outlined in the Arizona Uniform Arbitration Act, A.R.S. Section 12-1502, et seq., and judgment may be entered upon the same; provided, however, that any decision of the arbitrator(s) may be appealed to the Superior Court of Maricopa County if it is based on an erroneous interpretation, application or disregard of the law applicable to the dispute. The arbitrator(s) shall control discovery in the proceedings and shall award the prevailing party its reasonable attorneys' fees and costs.

XI. MISCELLANEOUS

Any future agreements between Developer and the Utility for the construction of additional water utility facilities within the Development not specifically provided for herein or specified in the attached Exhibits shall be governed by separate agreement(s) in substantially the same form as this Agreement.

This Agreement may not be modified or amended except by a writing signed by both parties. The Recitals are hereby incorporated by reference and made a part of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. It is the understanding of the Utility and Developer that this Agreement is not effective until it receives specific approval of the Commission. DEVELOPER AGREES TO PROVIDE ALL APPROVALS TO CONSTRUCT FOR THE FACILITIES PRIOR TO UTILITY'S SUBMITTAL OF THE AGREEMENT TO THE COMMISSION FOR APPROVAL PURSUANT TO A.A.C. R14-2-406. DEVELOPER ALSO HEREBY ACKNOWLEDGES THAT IT SHALL BEAR ANY AND ALL RISKS ASSOCIATED WITH COMMENCING CONSTRUCTION OF THE FACILITIES PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and expressly supersedes and revokes all other prior or contemporaneous promises, representations and assurances of any nature whatsoever with respect to the subject matter hereof. The remedies provided in this Agreement shall not be deemed exclusive remedies but shall be in addition to all other remedies available at law or in equity. No waiver by either Party of any breach of this Agreement nor any failure by either party to insist on strict performance by the other Party of any provision of this Agreement shall in any way be construed to be a waiver of any future or subsequent breach by such defaulting Party or bar the non-defaulting Party's right to insist on strict performance by the defaulting Party of the provisions of this Agreement in the future. Developer is an independent contractor and not an

agent or employee of the Utility. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the Parties hereto and their respective successors and assigns.

Each party represents that it is a sophisticated commercial party capable of understanding all of the terms of this Agreement, that it has had an opportunity to review this Agreement with its counsel, and that it executes this Agreement with full knowledge of the terms of the Agreement.

END OF AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized individuals on the day, month, and year first above written.

LITCHFIELD PARK SERVICE COMPANY
an Arizona corporation

PEBBLECREEK PROPERTIES
LIMITED PARTNERSHIP
an Arizona limited partnership

By: _____
Robert Dodds
President

By: _____
Jim Poulos
Vice President of Land Development

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009 by Robert Dodds, President of Litchfield Park Service Company, an Arizona corporation, on behalf of the corporation.

Name

Title

My Commission expires:

STATE OF ARIZONA)

Initials JD

County of Maricopa) ss.
)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009 by Jim Poulos, Vice President of Land Development of PebbleCreek Properties Limited Partnership, an Arizona limited partnership, on behalf of the partnership.

Name

Title

My Commission expires:

Initials JP

EXHIBIT A

Desert Sky Surveying, Inc.
1930 W. Decatur Avenue
Mesa, Az 85201

Legal Description
PebbleCreek Unit 54

June 27, 2008

A portion of the South 1/2 of Section 36, T.2N., R.2W., of the Gila and Salt River Meridian, City of Goodyear, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the South Quarter Corner of said Section 36, a found ½" rebar stamped 35869, from which the Center Quarter Corner, a found ½" rebar with tag labeled "RLS 35869", bears North 00°08' 30" East, a distance of 2647.78 feet distant;

THENCE North 05°18' 08" East, a distance of 971.70 feet to a point on the Westerly right-of-way line of N. Clubhouse Drive as recorded in PebbleCreek Unit Fifty Eight, Book 711, Page 47, Maricopa County Records, and the TRUE POINT OF BEGINNING:

THENCE South 73°38'17" West, a distance of 154.11 feet to the beginning of a non-tangent curve, concave to the Southwest, having a radius of 50.00 feet, the radius point of said curve bears South 48°13'01" West;

THENCE northwesterly along said curve, through a central angle of 49°00'57", an arc distance of 42.78 feet to the beginning of a non-tangent curve, concave to the South, having a radius of 1,015.00 feet, the radius point of said curve bears South 00°48'04" East;

THENCE Westerly along said curve, through a central angle of 07°36'36", an arc distance of 134.81 feet;

THENCE South 81°35'19" West, a distance of 392.73 feet;

THENCE South 08°24'41" East, a distance of 50.00 feet;

THENCE South 81°35'19" West, a distance of 119.88 feet to the beginning of a tangent curve, concave to the Northeast, having a radius of 725.00 feet;

THENCE Northwesterly along said curve, through a central angle of 98°11'54", an arc distance of 1,242.56 feet;

THENCE North 00°12'47" West, a distance of 486.55 feet to the beginning of a tangent curve, concave to the East, having a radius of 2,035.00 feet;

THENCE Northerly along said curve, through a central angle of 03°44'53", an arc distance of 133.12 feet;

THENCE North 03°32'06" East, a distance of 461.62 feet to the beginning of a tangent curve, concave to the East, having a radius of 1,535.00 feet;

EXHIBIT A

Desert Sky Surveying, Inc.
1930 W. Decatur Avenue
Mesa, Az 85201

Legal Description
PebbleCreek Unit 54 (Cont'd)

June 27, 2008

THENCE Northerly along said curve, through a central angle of 19°44'28", an arc distance of 528.88 feet;

THENCE South 66°43'26" East, a distance of 50.00 feet to the beginning of a non-tangent curve, concave to the East, having a radius of 12.00 feet, the radius point of said curve bears South 66°43'26" East;

THENCE Southerly along said curve, through a central angle of 91°26'22", an arc distance of 19.15 feet;

THENCE South 68°09'47" East, a distance of 67.21 feet to the beginning of a tangent curve, concave to the North, having a radius of 1,675.00 feet;

THENCE Easterly along said curve, through a central angle of 03°24'44", an arc distance of 99.75 feet;

THENCE South 71°34'31" East, a distance of 351.41 feet to the beginning of a tangent curve, concave to the Northwest, having a radius of 12.00 feet;

THENCE Northeasterly along said curve, through a central angle of 85°58'26", an arc distance of 18.01 feet;

THENCE South 67°32'58" East, a distance of 50.00 feet to the beginning of a non-tangent curve, concave to the East, having a radius of 465.00 feet, the radius point of said curve bears South 67°32'58" East;

THENCE Southerly along said curve, through a central angle of 18°25'24", an arc distance of 149.52 feet;

THENCE South 04°01'38" West, a distance of 457.09 feet to the beginning of a tangent curve, concave to the East, having a radius of 2,465.00 feet;

THENCE Southerly along said curve, through a central angle of 02°19'40", an arc distance of 100.15 feet;

THENCE South 01°41'58" West, a distance of 481.68 feet;

THENCE South 80°19'04" East, a distance of 74.18 feet;

THENCE South 78°50'36" East, a distance of 64.76 feet;

EXHIBIT A

Desert Sky Surveying, Inc.
1930 W. Decatur Avenue
Mesa, Az 85201

Legal Description
PebbleCreek Unit 54 (Cont'd)

June 27, 2008

THENCE South 77°08'48" East, a distance of 106.88 feet;

THENCE South 80°11'27" East, a distance of 63.15 feet;

THENCE North 86°15'07" East, a distance of 63.00 feet;

THENCE North 85°20'49" East, a distance of 79.61 feet;

THENCE North 85°14'28" East, a distance of 300.63 feet;

THENCE North 88°06'47" East, a distance of 99.79 feet;

THENCE North 89°06'30" East, a distance of 79.16 feet;

THENCE South 83°38'00" East, a distance of 56.13 feet;

THENCE South 52°35'12" East, a distance of 73.83 feet;

THENCE South 37°24'48" West, a distance of 15.25 feet to the beginning of a tangent curve, concave to the Southeast, having a radius of 425.00 feet;

THENCE Southwesterly along said curve, through a central angle of 13°19'26", an arc distance of 98.83 feet;

THENCE South 72°48'54" East, a distance of 50.41 feet to the beginning of a non-tangent curve, concave to the East, having a radius of 12.00 feet, the radius point of said curve bears South 64°59'05" East;

THENCE Southerly along said curve, through a central angle of 91°29'24", an arc distance of 19.16 feet to the beginning of a reverse curve, concave to the Southwest, having a radius of 525.00 feet;

THENCE Southeasterly along said curve, through a central angle of 06°09'00", an arc distance of 56.35 feet;

THENCE South 60°19'29" East, a distance of 60.03 feet;

EXHIBIT A

Desert Sky Surveying, Inc.
1930 W. Decatur Avenue
Mesa, Az 85201

Legal Description
PebbleCreek Unit 54 (Cont'd)

June 27, 2008

THENCE North $75^{\circ}26'27''$ East, a distance of 47.31 feet to the beginning of a non-tangent curve located on the Westerly right-of-way line of said N. Clubhouse Drive, said curve being concave to the East, having a radius of 1,540.00 feet, the radius point of said curve bears South $58^{\circ}09'59''$ East;

THENCE Southerly along said curve and said Westerly right-of-way line of N. Clubhouse Drive, through a central angle of $20^{\circ}13'59''$, an arc distance of 543.83 feet to the TRUE POINT OF BEGINNING.

The above-described parcel contains 2,193,406 square feet or 50.35 acres, more or less.



EXPIRES 3-31-09

EXHIBIT A

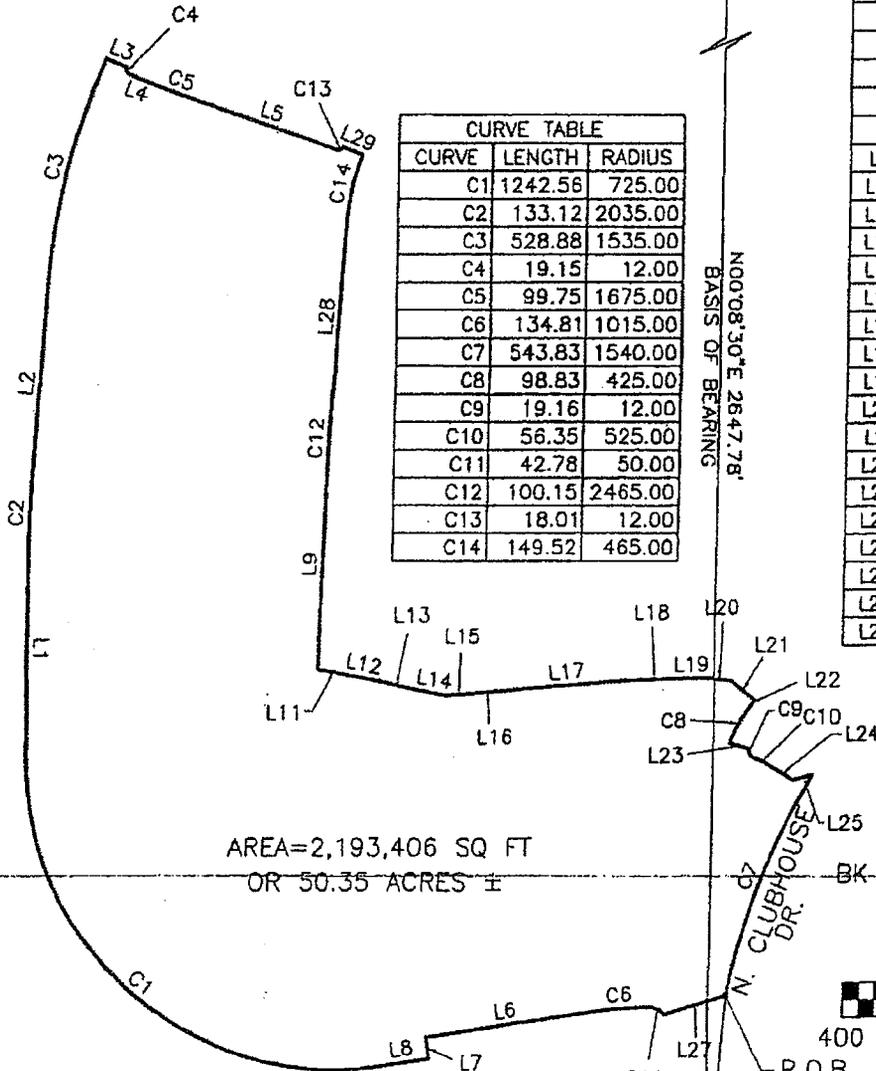
EXHIBIT TO ACCOMPANY LEGAL
DESCRIPTION OF PEBBLECREEK
PHASE II UNIT 54

JUNE 27, 2008

CENTER SEC 36 1/2"
REBAR W/ BRASS TAG
STAMPED RLS 35869

LINE TABLE		
LINE	LENGTH	BEARING
L1	486.55	S00°12'47"E
L2	461.62	S03°32'06"W
L3	50.00	N66°43'26"W
L4	67.21	N68°09'47"W
L5	351.41	N71°34'31"W
L6	392.73	N81°35'19"E
L7	50.00	N08°24'41"W
L8	119.88	N81°35'19"E
L9	481.68	N01°41'58"E
L11	74.18	N80°19'04"W
L12	64.76	N78°50'36"W
L13	106.88	N77°08'48"W
L14	63.15	N80°11'27"W
L15	63.00	S86°15'07"W
L16	79.61	S85°20'49"W
L17	300.63	S85°14'28"W
L18	99.79	S88°06'47"W
L19	79.16	S89°06'30"W
L20	56.13	N83°38'00"W
L21	73.83	N52°35'12"W
L22	15.25	N37°24'48"E
L23	50.41	N72°48'54"W
L24	60.03	N60°19'29"W
L25	47.31	S75°26'27"W
L27	154.11	N73°38'17"E
L28	457.09	N04°01'38"E
L29	50.00	N67°32'58"W

CURVE TABLE		
CURVE	LENGTH	RADIUS
C1	1242.56	725.00
C2	133.12	2035.00
C3	528.88	1535.00
C4	19.15	12.00
C5	99.75	1675.00
C6	134.81	1015.00
C7	543.83	1540.00
C8	98.83	425.00
C9	19.16	12.00
C10	56.35	525.00
C11	42.78	50.00
C12	100.15	2465.00
C13	18.01	12.00
C14	149.52	465.00



AREA=2,193,406 SQ FT
OR 50.35 ACRES ±

PC UNIT 58
BK 711, PG 47, MCR

400 200 0 400
SCALE: 1"=400'

SW COR SEC 36

S89°40'22"E 2644.27'

P.O.C.
S 1/4 COR SEC 36, T.2N.,
R.2W., G&SRM 1/2" REBAR
STAMPED RLS 35869

L:\PC\EXHIBITS\PC UNIT 54.dwg 6/26/2008 4:09:53 P.M. UMST



DESERT SKY
SURVEYING, INC.

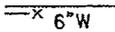
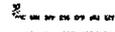
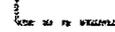
1930 WEST DECATUR AVE
MESA, ARIZONA 85201
PHONE: (602) 499-0884

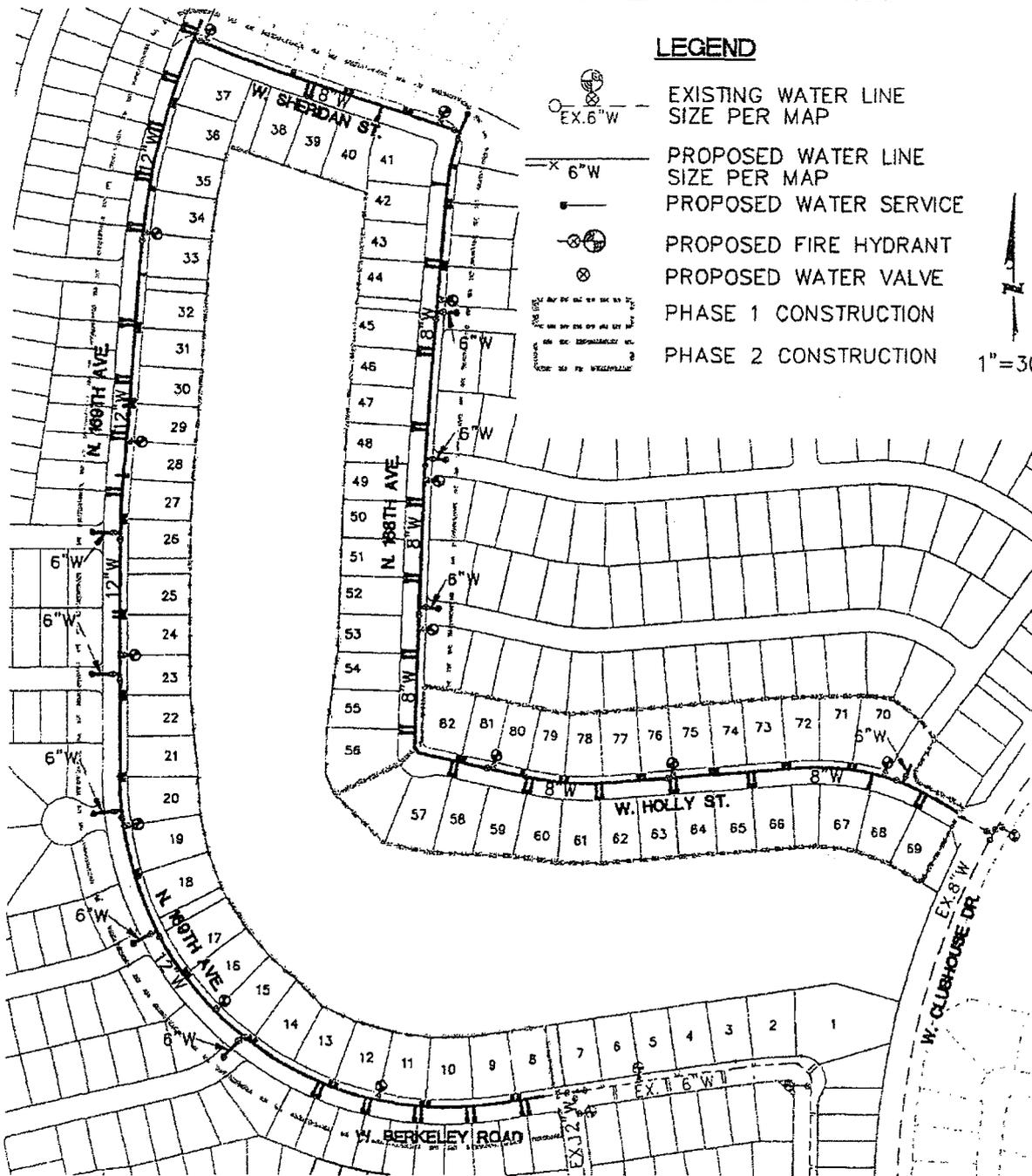
LAND SURVEYING ● LAND DEVELOPMENT

EXHIBIT B

PEBBLECREEK PHASE II
UNIT 54
WATER FACILITIES MAP

LEGEND

-  EX. 6" W — EXISTING WATER LINE
SIZE PER MAP
 -  6" W — PROPOSED WATER LINE
SIZE PER MAP
 -  — PROPOSED WATER SERVICE
 -  — PROPOSED FIRE HYDRANT
 -  — PROPOSED WATER VALVE
 -  — PHASE 1 CONSTRUCTION
 -  — PHASE 2 CONSTRUCTION
- 1" = 300'



	BR ENGINEERING INC.
9666 E. RIGGS RD. SUITE 118 SUN LAKES, ARIZONA 85248 PHONE: (480) 895-0799	
CIVIL ENGINEERING	LAND DEVELOPMENT

Exhibit C
B&R Engineering, Inc.
Cost Estimate

PebbleCreek Phase II - Unit 54

<u>WATER - PHASE 2</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
12" DUCTILE IRON PIPE**	LF	2891	\$39.00	\$112,749.00
8" DUCTILE IRON PIPE**	LF	1309	\$32.00	\$41,888.00
6" DUCTILE IRON PIPE**	LF	1053	\$20.00	\$21,060.00
FIRE HYDRANT	EA	15	\$3,450.00	\$51,750.00
12" VALVE, BOX & COVER	EA	7	\$1,815.00	\$12,705.00
8" VALVE, BOX & COVER	EA	6	\$980.00	\$5,880.00
6" VALVE, BOX & COVER	EA	8	\$675.00	\$5,400.00
1" WATER SERVICE	EA	86	\$460.00	\$39,560.00
2" BLOW OFF	EA	2	\$900.00	\$1,800.00
WATER TOTAL				\$292,792.00

** Water main unit costs include Tees, Crosses, Bends, and Reducers



Expires 9/30/09

3

**Exhibit 3 - Testimony of Philip Zebliksy
On Behalf of Intervenor PebbleCreek Properties, LLC**

Litchfield Park Service Company
 Calculation of Water Over-sizing Costs
 Proposed Water Line Extension Agreements Units 53 and 54
 November, 2009

Unit 53	Units	Unit Cost	Subdivision Cost	Oversized Cost	Subdivision Cost	Oversizing Costs
12" Ductile Iron Pipe	951 LF	\$39.00	\$32.00	\$37,089.00	\$30,432.00	\$6,657.00
12" Valve Box and Cover	5 each	\$1,815.00	\$980.00	\$9,075.00	\$4,900.00	\$4,175.00
Total Pipe Oversizing						\$10,832.00
Sampling Station						\$1,380.00
Total Unit 53						\$12,212.00
Homes						83
Per Unit						\$147.13

Unit 54	Units	Unit Cost	Subdivision Cost	Oversized Cost	Subdivision Cost	Oversizing Costs
12" Ductile Iron Pipe	2891 feet	\$39.00	\$32.00	\$112,749.00	\$92,512.00	\$20,237.00
12" Valve Box and Cover	7 each	\$1,815.00	\$980.00	\$12,705.00	\$6,860.00	\$5,845.00
Total Pipe Oversizing						\$26,082.00
Homes						82
Per Unit						\$318.07

Total						\$26,894.00
12" Ductile						\$10,020.00
12" VB&C						\$1,380.00
Sampling Station						\$38,294.00
Total						165
Homes						\$232.08
Per Unit						

4

**Exhibit 4 - Testimony of Philip Zablisky
On Behalf of Intervenor PebbleCreek Properties, LLC**

Litchfield Park Service Company
Demand Differences between Active Adult and non-age restricted communities
November, 2009

Area	Average Water Demand	Average Sewer (Interior) Demand	Average Exterior Usage	Average Residents	Interior per Person	Water Demand per Month
Pebble Creek	250	130	120	1.8	72	7,604
All Other	370	200	170	2.8	71	11,254

Pebble Creek has 8,526 maximum units. About 6,500 have been built

	Units	GPHPD	MGD
Water Capacity Built (homes to date)	3,871	370	1,432,270
Sewer Capacity Built (homes to date)	3,871	200	774,200

	Units	GPHPD	MGD
Water Capacity Required (at Buildout)	6,232	250	1,558,000
Sewer Capacity Required (at Buildout)	6,232	130	810,160

Conclusion is that by doing 3,871 Active Adult Homes, PebbleCreek, LLC has built enough capacity to meet over 90% of the total water demand and 95% of the sewer demand required at buildout when compared to non-age restricted Communities. PebbleCreek, LLC has already paid for substantially all of the capacity required at buildout and should not be subject to a HUF for Water and Sewer Capacity.

5



LITCHFIELD PARK SERVICE COMPANY

11 W. WIGWAM BLVD., SUITE B

LITCHFIELD PARK, AZ 85348

(623) 935-9367

September 20, 2005

Mr. Mark Maloney
B&R Engineering, Inc.
9666 E. Riggs Road, Suite 118
Sun Lakes, Arizona 85248
(480) 895-5557 (Fax)

RE: Sewer Capacity for Pebble Creek Phase II
NW Corner of McDowell Road & Pebble Creek Parkway, Goodyear, Arizona

Dear Mr. Maloney:

This letter is to confirm that Litchfield Park Service Company (LPSCO) has the authority and necessary capacity to provide wastewater collection and wastewater treatment for the project known as Pebble Creek Phase II bounded by Indian School Road to the north, Pebble Creek Parkway to the east, Loop 303 to the west, and McDowell Road to the south in Goodyear, Arizona.

Operation and maintenance of the sewerage system will be in accordance with LPSCO policies and procedures. LPSCO will provide the services in accordance with the current regulations of the Arizona Corporation Commission, the Arizona Department of Water Resources, and any other regulatory agencies having jurisdiction.

Sincerely,

James W. Humble, P.E.
Development Services Manager
Litchfield Park Service Company

6

**Exhibit 6 - Testimony of Philip Zeblisky
On Behalf of Intervenor PebbleCreek Properties, LLC**

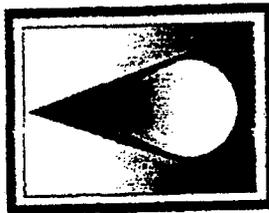
Litchfield Park Service Company
Illustration of Potential Impact of Plant in Service Misclassifications on Revenue Requirements
October, 2009

Airline Reservoir Project (\$10.6 Million) See Sorenson Testimony Page 9 and 10			
As Recorded		If recorded as Collecting and Impounding Reservoir	
Structures and Improvements	\$10,600,000	Collecting and Impounding Reservoir	\$10,600,000
Depreciation Rate	3.33%	Depreciation Rate	2.50%
Depreciation Expense	\$353,333.33	Depreciation Expense	\$265,000.00
Depreciation Prior year	\$176,666.67		\$132,500.00
Impact of classification as Structures and Improvements			
Change in Depreciation Adjusted Test Year			-\$88,333.33
Capital Change in Revenue Requirement (OCRB X 11.41%)			\$5,039.42
Net change in Revenue Requirement			-\$83,293.92
Tax Gross up Factor			1.38
Total Potential Change in Revenue Requirement			-\$114,945.60
<p>Note: the Sorenson Testimony is unclear as to whether the Airline Reservoir project cost of \$10.6 Million included the \$4.6 Million in Arsenic Treatment Facilities associated with that Reservoir. If it does my numbers would be adjusted downward since the depreciation rate for treatment facilities is the same as for Structures and Improvements. An accounting reclassification would be required for the Arsenic Treatment facilities but it would not have an impact on rates</p>			

Wastewater

Palm Valley Water Reclamation Facility Upgrade (\$7 Million) See Sorenson Testimony Page 7			
As Recorded		If recorded as Treatment and Disposal Equipment	
Structures and Improvements	\$7,000,000	Treatment and Disposal Equipment	\$7,000,000
Depreciation Rate	3.33%	Depreciation Rate	5.00%
Depreciation Expense	\$233,333.33	Depreciation Expense	\$350,000.00
Depreciation Prior year	\$116,666.67		\$175,000.00
Impact of classification as Structures and Improvements			
Change in Depreciation Adjusted Test Year			\$116,666.67
Capital Change in Revenue Requirement (OCRB X 11.41%)			-\$6,655.83
Net change in Revenue Requirement			\$110,010.83
Tax Gross up Factor			1.38
Total Potential Change in Revenue Requirement			\$151,814.95
<p>Note that the Sorenson testimony indicated that the cost of this project was approximately \$7 Million. Virtually none of the expenses that he referred to in his testimony qualifies as Structures and Equipment. Almost all would appear to qualify as Treatment and Disposal Equipment. In view of that fact and the fact that in 2007 and 2008 LPSCO only recorded additions of \$870K TOTAL for Treatment and Disposal Equipment, it appears that this project was incorrectly DUMPED into Structures and Improvements</p>			

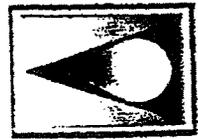
7



ALGONQUIN
WATER RESOURCES
— OF AMERICA, INC. —

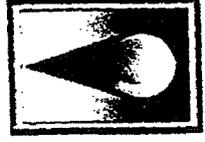


**Presentation to ACC
Hook-up Fees for LPSCO?**



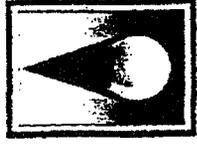
Agenda

- Introductions
- LPSCo is no longer a Developer Owned Utility
- Impetus for Analysis of Hook-up Fees
- Litchfield Park's Concerns
- RUCO's Testimony
- LPSCo's Line Extension policy
- Dan Neidlinger's Study
- Sector Standards & Trends
- Conclusions
- Recommendations



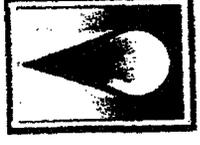
LPSCo is No Longer a Developer Owned Utility

- As of February 26, 2003 LPSCo's stock was purchased by Algonguin Water Resources of America.
- LPSCo is no longer affiliated with SunCor Development Company



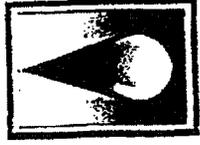
Impetus for Hook-up Analysis

- Concern that rapid growth would drive rates up.
- Belief that LPSCo was not using enough "Developer" money -- and that growth would have a negative effect on rates going forward
- Because LPSCo was owned by a developer there would be preferential treatment to the parent at the expense of the rate-payers in general



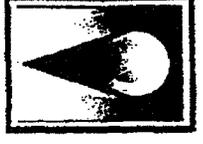
Litchfield Park's Concerns

- Growth is going to hurt residents of Litchfield Park
- LPSCO's parent (SunCor) gets favorable treatment for its projects at the expense of the Litchfield Park residents.
- Without hookup fees rates will be rising in the immediate future.



RUCO'S TESTIMONY

- RUCO testified that LPSCO's CAIC/AIAC was in line with what the ACC had said was appropriate.
- RUCO testified... "of all I've seen of these related party-type circumstances, that this company has been the most responsible in not reflecting that conflict of interest through their either over or under use of advances"



LPSCo Line Extension Policy

- **Water Services Policy**
 - Onsite water lines are advanced
 - Standard size lines to subdivision are advanced - LPSCo pays for up-sizing costs
 - LPSCo provides storage and pressure equipment
 - Developer provides well site - LPSCo provides well equipment

- **Wastewater Services Policy**
 - Onsite wastewater lines are contributed
 - Standard size lines to subdivision are contributed - LPSCo pays for up-sizing costs
 - LPSCo provides lift stations and major trunk lines
 - LPSCo provides wastewater treatment facilities

- Outside its CC & N area, the developer contributes or advances all facilities

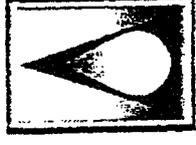


Neidlinger Study Findings

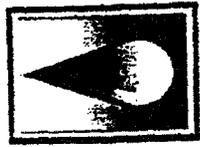
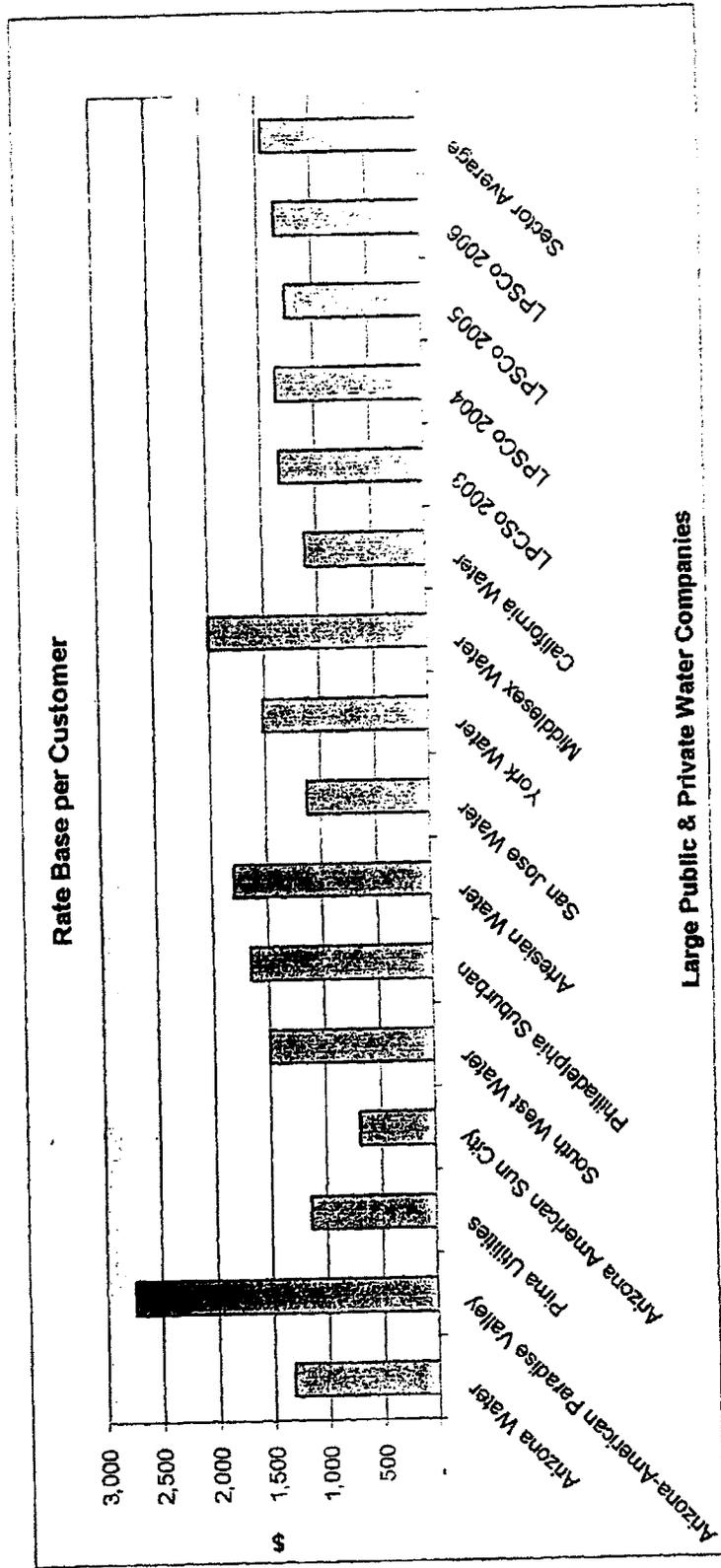
- Based on the most recent 5-year Capital Improvement Forecast (excluding arsenic treatment) the projected rate base per customer for both the water and sewer divisions will trend downward and flatten beginning in 2004.
- Under current financing policies, AIAC & CIAC, as a percentage of net utility plant will increase to very high levels by 2006: 44% for water and 47% for sewer.
- Similarly, AIAC & CIAC, as a percentage of rate base, will jump to approximately 90% of rate base by 2006.
- Industry comparisons show LPSCo with a significantly lower rate base per customer but significantly higher AIAC & CIAC percentages and accordingly, at greater financial risk than the rest of the industry.
- The adoption of hook-up fees for LPSCo would increase its financial risk to precarious and unacceptable levels.

Conclusions

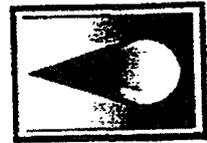
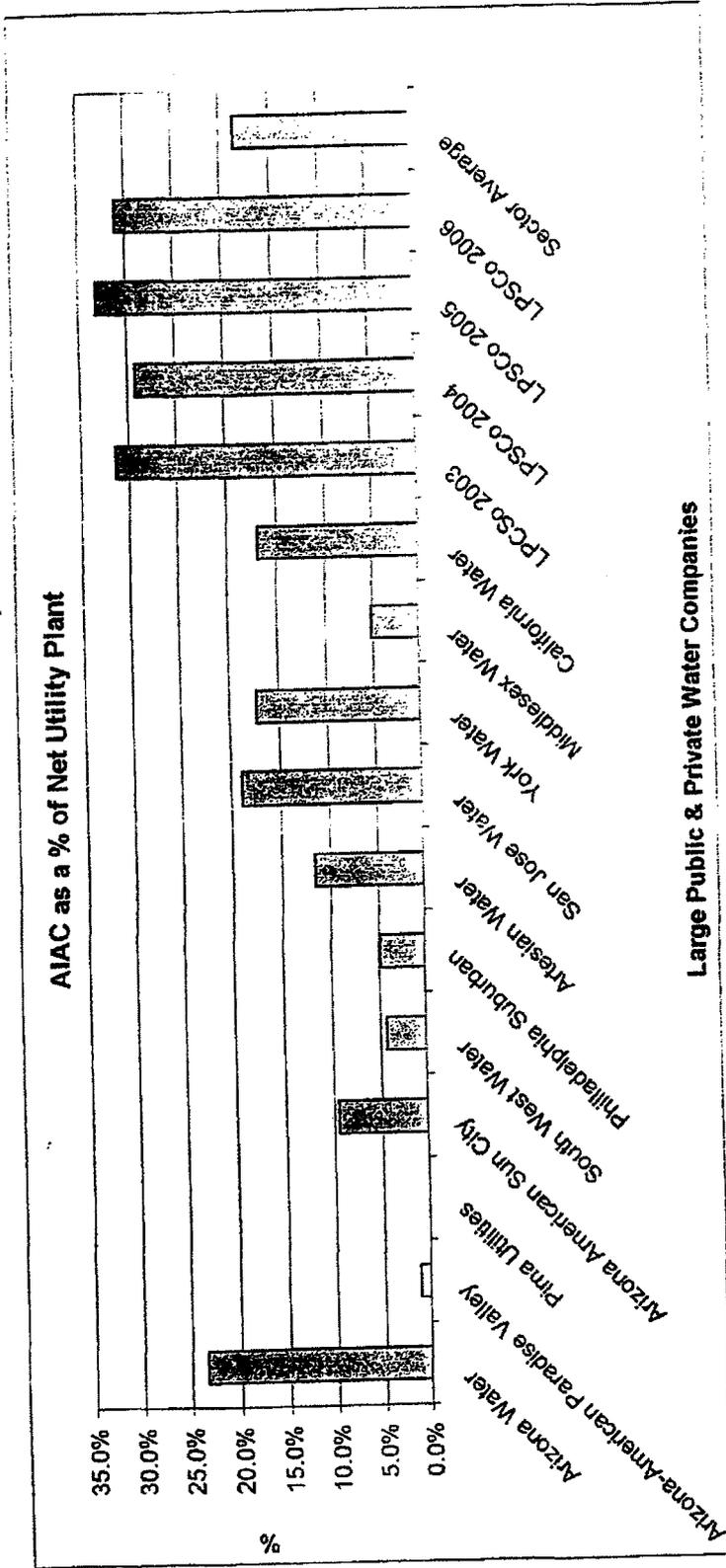
1. The current financing policies of LPSCo adequately protect current customers from costs related to plant expansion activities.
2. Hook-up fees are not justified at this time.



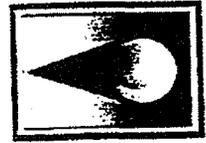
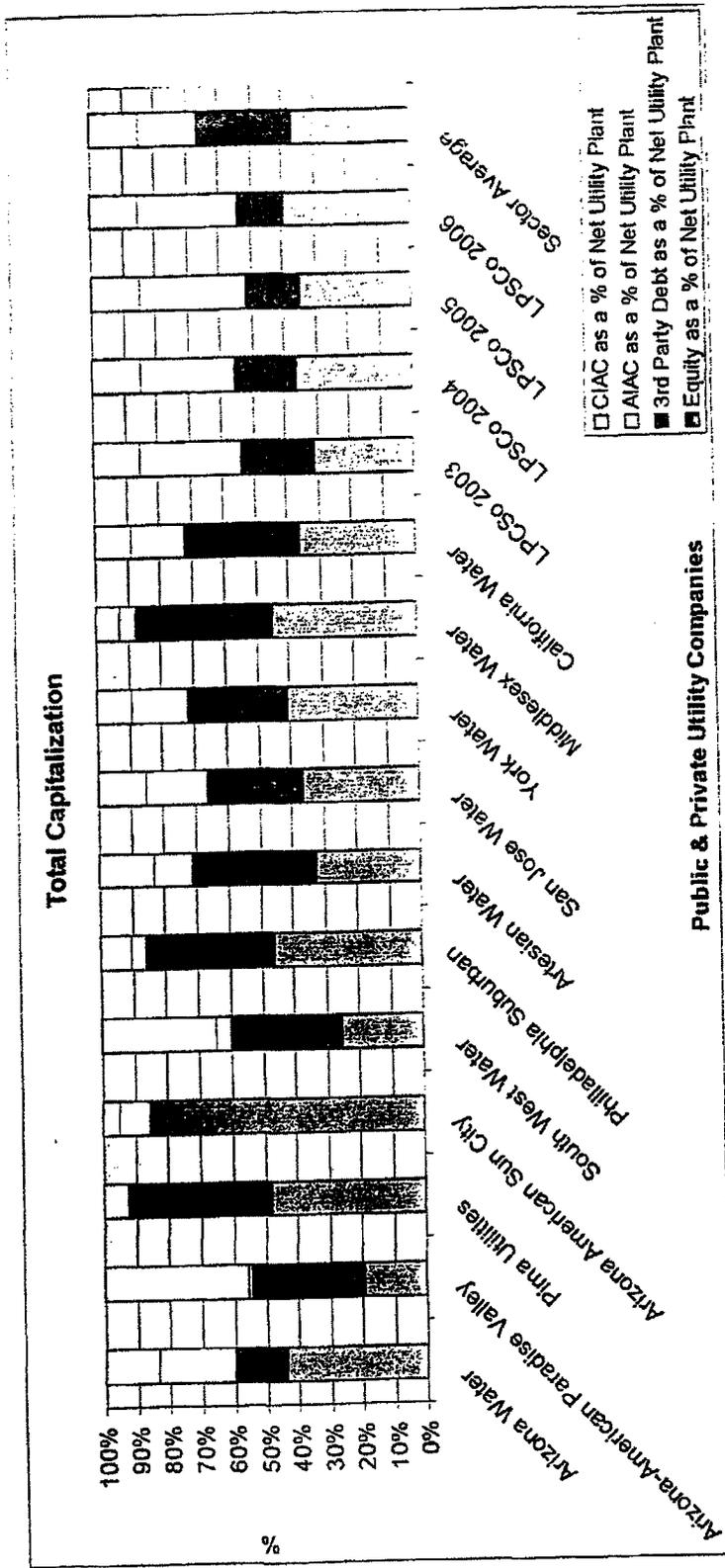
Sector Financial Statistics vs. LPSCO



Sector Financial Statistics vs. LPSCO

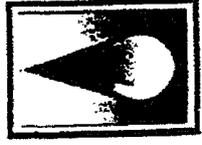


Sector Financial Statistics vs. LPSCO



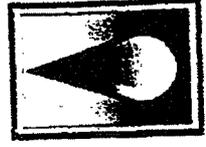
Conclusions

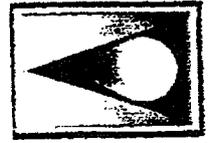
- LPSCo is no longer a developer owned utility
- LPSCo has an effective Line Extension Policy that should remain in place.
- LPSCo has significantly lower rate base per customer than several other representative utilities in the state and the sector
- There is no foreseen pressure (other than arsenic) to drive rates up
- LPSCo already has significantly higher CIAC and AIAC ratios than other representative utilities in the state and the sector
- Over the next 5 years, the capital structure continues to be skewed further toward use of CIAC and AIAC on the basis of the company's currently executed agreements under existing AIAC and CIAC policy
- Litchfield Park's expressed concerns are statistically unwarranted
- Hook-up fees are unnecessary and undesirable



Recommendations

- Implementation of hook-up fees are unnecessary and will weaken the company's financial position leading to higher rates in the future.





8

**Exhibit 8 - Testimony of Philip Zeblisky
On Behalf of Intervenor PebbleCreek Properties, LLC**

Litchfield Park Service Company
Analysis of Proposed Rate Base on HUF's
November, 2009

Water

Meter Size	Number of meters	Per meter HUF	Total HUF Paid	Current Rate Base
5/8 "	113	\$1,800	\$203,400	\$141,745
3/4"	8,940	\$2,000	\$17,880,000	\$15,640,763
1"	5,274	\$2,000	\$10,548,000	\$15,162,442
1.5"	96	\$5,000	\$480,000	\$1,003,380
2"	374	\$8,000	\$2,992,000	\$5,289,046
4"	13	\$16,000	\$208,000	\$573,638
10"	1	\$50,000	\$50,000	\$114,907
	14,811		\$32,361,400	\$37,925,921

Source of Meters is per Schedule H-2 of rate filing, irrigation not included
Per Meter HUF is per proposed tariff
Current rate base is per Schedule G-3 of rate filing

Note also that HUF's collected from meters that are usually residential in nature (5/8", 3/4" and 1" have total HUF's collected in excess of rate base

Wastewater

Meter Size / Type	Number	ERU / meter	ERU's	HUF per ERU	Total HUF Paid
5/8" Res.	58	1	58	\$1,800	\$104,400
3/4" Res.	8,919	1	8,919	\$1,800	\$16,054,200
1" Res.	5,209	1	5,209	\$1,800	\$9,376,200
1.5 " Res.	44	1	44	\$1,800	\$79,200
2" Res	101	1	101	\$1,800	\$181,800
4" Res	3	1	3	\$1,800	\$5,400
Outside Water Area	2,100	1	2,100	\$1,800	\$3,780,000
5/8" Comm.			81	\$1,800	\$146,210
3/4" Comm.			47	\$1,800	\$84,329
1" Comm.			118	\$1,800	\$211,882
1.5 " Comm.			321	\$1,800	\$577,224
2" Comm.			1,571	\$1,800	\$2,827,767
4" Comm.			320	\$1,800	\$575,266
10" Comm.			89	\$1,800	\$159,318
Total			18,980		\$34,163,195

Residential Meter numbers are from Schedule H-2 of rate filing and HUF per ERU is from proposed tariff
2,100 meters outside water area approximates difference between water and wastewater service area connections

Calculation of HUF's Based on Meters from Schedule H-2 and 320 gallons per day

	Number of Meters	Average Monthly Consumption	Gallons per ERU	ERU's per Meter	ERU's
5/8" Comm.	148	5,342	9,733	0.549	81
3/4" Comm.	57	8,000	9,733	0.822	47
1" Comm.	83	13,804	9,733	1.418	118
1.5 " Comm.	46	67,854	9,733	6.971	321
2" Comm.	232	65,909	9,733	6.771	1,571
4" Comm.	8	388,837	9,733	39.949	320
10" Comm.	1	861,500	9,733	88.510	89