

#6  
FEB 08 2007



**MEMORANDUM**                      **Public Works - Council Memo No. PWE 07-020**

**DATE:**            FEBRUARY 8, 2007

**TO:**                MAYOR & COUNCIL

**THRU:**            W. MARK PENTZ, CITY MANAGER   
                         DAVE SIEGEL, MUNICIPAL UTILITIES DIRECTOR 

**FROM:**            ELIZABETH HUNING, ASSISTANT PUBLIC WORKS DIRECTOR   
                         CITY ENGINEER

**SUBJECT:** APPROVE RESOLUTION NO. 4037 AUTHORIZING THE APPROVAL OF THE FIRST AMENDMENT TO THE PRE-ANNEXATION AGREEMENT BETWEEN THE CITY AND LH-EH LAYTON LAKES ESTATES LLC TO ACCEPT A PAYMENT OF \$1,500,000 FOR AN OFFSITE AQUIFER STORAGE AND RECOVERY (ASR) WELL IN LIEU OF CONSTRUCTING A NEW ASR WELL WITHIN THE SUBDIVISION AND SETTING ASIDE A POTABLE WATER WELL SITE AT A COST OF \$67,500 TO THE CITY.

**RECOMMENDATION:** Staff recommends that Council approve Resolution No. 4037 authorizing the approval of the first amendment to the pre-annexation agreement between the City and LH-EH Layton Lakes Estates LLC to accept a payment of \$1,500,000 for an offsite aquifer storage and recovery (ASR) well in lieu of constructing a new ASR well within the subdivision and setting aside a potable water well site at a cost of \$67,500 to the City.

**BACKGROUND/DISCUSSION:** The Layton Lakes subdivision, located at the southeast corner of Gilbert Road and Queen Creek Road, was annexed into the City by Council action on February 12, 2001. At the time it was annexed, a pre-annexation development agreement was also approved as Resolution No. 3364.

The Layton Lakes subdivision is partially located in Chandler and partially in the Town of Gilbert. However, the subdivision is one development with a central lake system that will be used to irrigate all landscaping both in Chandler and Gilbert. The developer asked that Chandler reclaimed water be provided for irrigation of the entire subdivision

as if it were all within the City of Chandler. In exchange for the water, the developer agreed to construct a reclaimed water aquifer storage and recovery (ASR) well within the subdivision as well as construction of approximately 1 mile of 36-inch diameter reclaimed water transmission main in Queen Creek Road, 0.5 mile of 24-inch diameter reclaimed water main in Lindsay Road, 1 mile of 12-inch reclaimed water line in Gilbert Road, and 0.25 mile of 12-inch reclaimed water line in Ocotillo Road. The agreement also included provisions that, in the event the ASR could not be located within the subdivision, the City would accept a payment of \$1,500,000 and would then construct the ASR well at another site. The \$1,500,000 payment was meant to cover acquisition of another ASR well site as well as design and construction of the ASR well.

After review of the initial investigations, City staff met with the developer and agreed that it would be mutually beneficial for the City to accept the lump sum payment for the ASR well and construct it at one of the City's other recharge sites. Additionally, the City asked that the developer provide a site to accommodate a potable water well.

This amendment is the first amendment to the pre-annexation agreement and modifies the original agreement to allow the City to accept a payment of \$200,000 upon execution of this first amendment and a second payment of \$1,300,000 on or before the City commences delivery of reclaimed water to the development. The agreement also sets aside property for a potable water well at a cost to the City of \$67,500. The developer will still be required to install the reclaimed water mains as established in the original agreement. In exchange, the entire Layton Lakes subdivision will be treated as if it were an "in-City" reclaimed water user.

**FINANCIAL IMPLICATIONS:** The City will receive \$1,500,000 in two payments to construct an ASR well at a City site. In addition, the City will pay \$67,500 to acquire a potable well site.

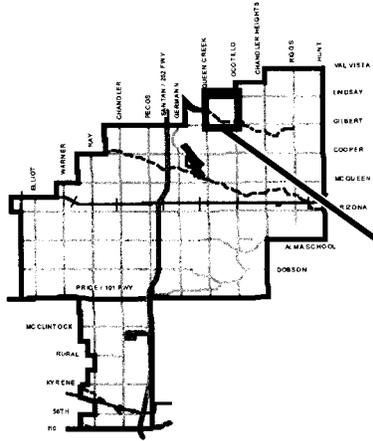
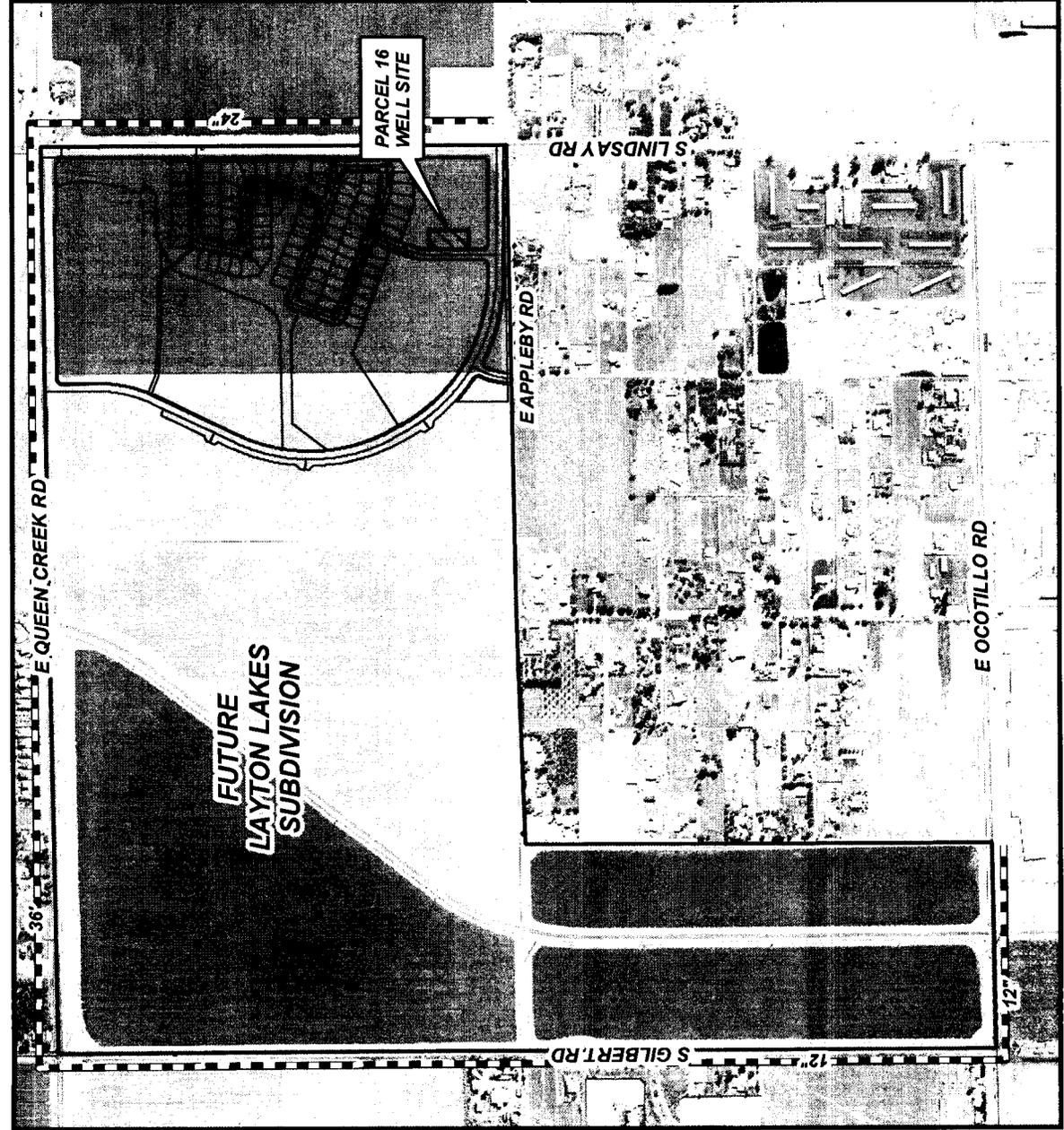
FUNDING SOURCE: (WELL SITE ONLY)

<u>Acct. No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Amount:</u>
603.3820.0000.6814.7WA034	Water System Development Fees	Well Construction	FY06/07	\$67,500

**PROPOSED MOTION:** Move to approve Resolution No. 4037 authorizing the first amendment to the pre-annexation agreement between the City and EH-LH Layton Lakes Estates LLC to accept a payment of \$1,500,000 for an offsite aquifer storage and recovery (ASR) well in lieu of constructing a new ASR well within the subdivision and setting aside a potable water well site at a cost of \$67,500 to the City.

Attachments: Location Map  
Resolution No. 4037

**PRE-ANNEXATION AGREEMENT BETWEEN  
CITY OF CHANDLER / LAYTON LAKES ESTATES LLC**



**MEMO NO. PWE07-020  
RESOLUTION NO. 4037**

- LEGEND**
-  PARCEL 16 WELL SITE
  -  RECLAIMED WATER TRANSMISSION MAIN



RESOLUTION NO. 4037

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA (THE CITY) APPROVING A FIRST AMENDMENT TO PRE-ANNEXATION AGREEMENT (FIRST AMENDMENT) BETWEEN THE CITY OF CHANDLER AND LH-EH LAYTON LAKES ESTATES LLC (LH-EH)

**RECITALS:**

WHEREAS, the City and LH-EH's predecessors-in-interest, Wahpeton Limited Partnership, an Arizona limited partnership and Lakota Resources, an Arizona general partnership (collectively, the "Prior Owners"), entered into that Pre-Annexation Development Agreement dated March 20, 2001 (the "Original Agreement") pursuant to Resolution No. 3364 with respect to the development of a lake community ("Layton Lakes") for mixed residential and commercial uses located within both the Town of Gilbert and the City; and

WHEREAS, the Prior Owners are scheduled to assign property and all of their right, title and interest in the Original Agreement to LH-EH through close of escrow on or about January 15, 2007; and

WHEREAS, under the terms of the Original Agreement, the Prior Owners must pay the City the sum of One Million Five Hundred Thousand Dollars (\$1,500,000) if it is not viable to construct an Aquifer Storage and Recovery (ASR) well for the City within that portion of Layton Lakes located in the City; and

WHEREAS, since the execution of the Original Agreement, the City and LH-EH (collectively, the "Parties") have determined that it would be mutually beneficial to modify their respective obligations and rights relating to the ASR well to be constructed pursuant to the Original Agreement wherein the City would be paid the sum of One Million Five Hundred Thousand Dollars (\$1,500,000), construct the ASR well at an off-site location and purchase what was to be the ASR well site within that portion of Layton Lakes located within the City from LH-EH for use as a potable well site.

WHEREAS, any modification to the terms of the Original Agreement must be in writing and the Parties wish to modify the terms of the Original Agreement as set forth in the First Amendment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Chandler, Arizona, hereby approves the First Amendment to the Pre-Annexation Agreement between the City of Chandler and LH-EH Layton Lakes Estates LLC in the form attached hereto.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2007.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. \_\_\_\_\_ was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

**FIRST AMENDMENT TO  
PRE-ANNEXATION DEVELOPMENT AGREEMENT**

This First Amendment To Pre-Annexation Development Agreement (“First Amendment”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF CHANDLER, an Arizona municipal corporation (the “City”) and LH-EH LAYTON LAKES ESTATES LLC, an Arizona limited liability company (“LH-EH”).

**RECITALS:**

A. The City and LH-EH’s predecessors-in-interest, Wahpeton Limited Partnership, an Arizona limited partnership and Lakota Resources, an Arizona general partnership (collectively, the “Prior Owners”), entered into that Pre-Annexation Development Agreement dated March 20, 2001 (the “Original Agreement”) with respect to the development of a lake community (“Layton Lakes”) for mixed residential and commercial uses located within both the Town of Gilbert and the City.

B. The Prior Owners are scheduled to assign property and all of their right, title and interest in the Original Agreement to LH-EH through close of escrow on or about January 15, 2007. For all purposes under the Original Agreement, as modified by this First Amendment, all references to “Owner” shall mean and refer to LH-EH, and any successors in interest to LH-EH and all references to the “Agreement” shall refer to the Original Agreement as modified by this First Amendment.

C. Under the terms of the Original Agreement, the Prior Owners must pay the City the sum of One Million Five Hundred Thousand Dollars (\$1,500,000) if it is not viable to construct an Aquifer Storage and Recovery (ASR) well for the City within that portion of Layton Lakes located in the City.

D. Since the execution of the Original Agreement, the City and LH-EH (collectively, the “Parties”) have determined that it would be mutually beneficial to modify their respective obligations and rights relating to the ASR well to be constructed pursuant to the Original Agreement wherein the City would be paid the sum of One Million Five Hundred Thousand Dollars (\$1,500,000), construct the ASR well at an off-site location and purchase what was to be the ASR well site within that portion of Layton Lakes located within the City from LH-EH for use as a potable well site.

E. Any modification to the terms of the Original Agreement must be in writing.

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

## AGREEMENT

1. Contingency and Incorporation of Recitals. This First Amendment is expressly contingent upon the assignment of rights referenced in Recital B and shall be of no force and effect if the assignment of interest to LH-EH does not occur prior to February 15, 2007. The foregoing Recitals are hereby incorporated into this First Amendment as though fully restated.

2. Definitions. The terms used in this First Amendment shall have the respective meanings set forth in the Original Agreement, as modified by this First Amendment, unless the context clearly requires otherwise.

3. Amendment of Subsection 4.A. Subsection 4.A of the Original Agreement entitled "Infrastructure Required" is hereby amended by deleting the last sentence of such Subsection in its entirety.

4. New Subsection 4.B. Subsection 4.B of the Original Agreement entitled "Site Investigation" is hereby deleted in its entirety and replaced with a new Subsection. 4.B entitled "Payment Obligation" reading as follows:

“B. Payment Obligation. Owner shall pay the City the sum of One Million Five Hundred Thousand Dollars (\$1,500,000) for the City to design, permit and construct an ASR well and related infrastructure at an off-site location of City’s choosing. Owner shall pay the City the sum of Two Hundred Thousand Dollars (\$200,000) as a first payment upon execution of the First Amendment. The remaining One Million Three Hundred Thousand Dollars (\$1,300,000) shall be paid by Owner as a second payment on or before Owner requests delivery of reclaimed water from City to Layton Lakes. Upon receipt of such payments, the City shall, at its sole cost, assume all obligations regarding site investigation and acquisition, design, permitting and construction of an ASR well and related infrastructure at an off-site location of its choosing. City shall construct the ASR well funded by the payments it receives pursuant to this Subsection 4.B within two (2) years of City’s receipt of all payments set forth in this Subsection 4.B., and shall notify Owner when construction of that ASR well is completed. Owner shall have no obligation for, or approval authority over, the design, construction, operation, maintenance or replacement of the ASR well, other than making the payments set forth in this Subsection 4.B. City shall have no obligation to provide reclaimed water to Layton Lakes until it receives all payments set forth in this Subsection 4.B.

5. New Subsection 4.C. Subsection 4.C of the Original Agreement entitled “Construction of ASR Well” is hereby deleted in its entirety and replaced with a new Subsection 4.C entitled “Potable Well Site” reading as follows:

“C. Potable Well Site. Owner shall convey to City, by special warranty deed with no conditions or reversionary provisions included therein, the real property (well site) owned by Owner generally located at the northwest corner of Lindsay Road and Appleby Road, all as more particularly described in Exhibit E. The Parties may make minor administrative modifications to Exhibit E upon the mutual agreement of City’s Municipal Utility Director and Owner if the general location and size of the well site, and terms of conveyance, remain materially the same as those set forth herein. The City shall pay Owner the sum of Sixty Seven Thousand Five Hundred Dollars (\$67,500.00) for the well site. Fee simple title to the well site to be conveyed shall be free of any liens, encumbrances or other exceptions to title. City shall choose the escrow agent for the conveyance of the well site and the Parties will diligently attempt to complete all documents necessary to close escrow on or before February 15, 2007. City shall be responsible for all reasonable escrow fees associated with the conveyance of the well site. Additional escrow provisions and instructions consistent with this Subsection 4.C shall be agreed upon and developed by the Parties.”

6. New Subsection 4.D. Subsection 4.D of the Original Agreement entitled “Payment Obligations If Construction of ASR Well Is Not Viable” is hereby deleted in its entirety and replaced with a new Subsection 4.D entitled “Construction and Operation of Potable Well” reading as follows:

“D. Construction and Operation of Potable Well. City shall, at its sole cost, be responsible for all costs relating to the testing, designing, constructing and permitting of a potable well and related infrastructure on the well site to be conveyed to City pursuant to Subsection 4.C of this Agreement. City shall, to the extent reasonable, construct all improvements on the well site to be conveyed pursuant to Subsection 4.C of this Agreement in a manner that is consistent with the surrounding Layton Lakes development, including perimeter wall design, colors and architectural treatment. To the extent that the Parties later agree that Owner should construct any walls, pipelines or other infrastructure relating to the potable well, a separate reimbursement between Owner and City will be executed to reimburse Owner for these costs. City shall also, at its sole cost, abandon and close the agricultural well (the “ag well”) located near the well site in accordance with state rules and regulations. Owner

hereby grants to City, without need of further notice, free access to the ag well to permit City to abandon and close the well. City shall abandon and properly close the ag well no later than ninety (90) days after it drills the new potable well. City shall complete construction of the new potable well within two (2) years of close of escrow on the well site. Owner shall reasonably cooperate with City, as necessary, regarding any permit application necessary to either close the ag well or construct and operate the potable well to be constructed pursuant this Subsection 4.D. Owner shall also grant to City a temporary construction easement necessary to construct the potable well and related infrastructure and a thirty (30) foot permanent easement to maintain, repair and utilize a potable water line from the potable well to the transmission lines within the Lindsay Road right-of-way at no cost to City. Owner further agrees to permit City to flush its potable water line into the lakes to be constructed within Layton Lakes and to grant any easements necessary for City to construct, maintain, repair and utilize flush lines from City's potable water lines to the lakes at Layton Lakes at no cost to City under the following conditions: (i) the City provide prior notice to Owner of any scheduled line flushing activities to be undertaken together with the quantity of water to be flushed; (ii) Owner is not charged for the water to be flushed; (iii) City only uses biodegradable oils to lubricate the well pumps; and (iv) the water to be flushed satisfies the water quality standards set forth in the then current Reclaimed Water Use Agreement entered into between the City and Owner pursuant to Subsection 4.G. The Parties agree that both the well site and any permanent easement granted relating to the potable well and related infrastructure, shall be considered open space for Layton Lakes. Owner further agrees to provide a thirty (30) foot buffer between the well site and: (i) any residential lot line; and (ii) any non-residential occupied structure located within Layton Lakes. Owner shall have no obligation for, or approval authority over, the operation, maintenance or replacement of the potable well and related infrastructure to be constructed and utilized by City pursuant to this Subsection 4.D.”

7. Amendment of Subsection 4.E. Subsection 4.E of the Original Agreement entitled “Piping to Lakes and ASR Well” is hereby amended as follows:

- (i) the phrase “. . . and ASR Well” is hereby deleted from the title of this Subsection so that Subsection 4.E is now entitled “Piping to Lakes”; and
- (ii) the first full sentence at the top of page 5 of the Original Agreement beginning with the phrase: “If it is viable to construct

the ASR well within the property comprising Layton Lakes pursuant to Subsection 4.C . . .” is hereby deleted in its entirety.

8. Amendment to Subsection 4.J. Subsection 4.J of the Original Agreement entitled “Water Use During Times When Reclaimed Water Not Available” is hereby amended by adding the phrase “. . . , except the ag well which shall be closed by the City pursuant to Subsection 4.D of this Agreement, . . .” after the phrase “Layton Lakes” in the second line of the first full sentence of page 7 of the Original Agreement.

9. Amendment to Subsection 4.L. Subsection 4.L of the Original Agreement entitled “Impact Fees” is hereby amended by deleting the words “4.A through 4.E” after the word “Subsection” in the first sentence thereof and replacing them with the words “4.A, 4.B and 4.E” so that the end of such first sentence reads: “. . . set forth in Subsections 4.A, 4.B and 4.E herein.”

10. Amendment of Subsection 8.H. Subsection 8.H of the Original Agreement entitled “Notices” is hereby amended by deleting the contact information for Owner on page 10 of the Original Agreement and replacing the Owner contact information to read as follows:

“To Owner: LH-EH LAYTON LAKES ESTATES, L.L.C., an Arizona limited liability company, in care of:  
Lennar Communities Development, Inc., a Delaware corporation  
1150 W. Grove Parkway, Suite 109  
Tempe, Arizona 85283  
Attention: Jeff Gunderson  
Telephone No. (480) 345-0077  
Facsimile No. (480) 897-5643

and,

Tousa Homes, Inc., a Florida corporation,  
d/b/a Engle Homes, an Arizona limited liability company  
2600 North Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attention: Carl Mulac  
Telephone No. (602) 968-7700  
Facsimile No. (602) 968-0258

Copy to:

Edwin C. Bull, Esq.  
Burch & Cracchiolo, P.A.  
702 E. Osborn Road, Suite 110  
Phoenix, Arizona 85014

Telephone No. (602) 234-9913  
Facsimile No. (602) 240-3823

11. Exhibit E. Exhibit E, in the form attached hereto, is hereby incorporated into the Original Agreement, as modified by this First Amendment, in the same manner as Exhibits A through D in the Original Agreement.

12. Effect of Original Agreement Provisions Not Modified. Except as expressly amended by this First Amendment, all provisions included in the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to Pre-Annexation Agreement to be duly executed as of the date written above.

CITY OF CHANDLER,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa        )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_,  
200\_\_, by Boyd W. Dunn, Mayor, in his capacity as Mayor of the City of Chandler,  
Arizona.

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

My Commission Expires:

LH-EH LAYTON LAKES ESTATES,  
L.L.C., an Arizona limited liability company

By: Lennar Communities Development  
Inc., a Delaware Corporation

Its: Manager/Member

By: [Signature]  
Its: SR.V.P.  
Date: \_\_\_\_\_

and,

By: TOUSA HOMES, INC., a Florida  
Corporation, d/b/a ENGLE HOMES,  
an Arizona limited liability company

Its: Manager/Member

By: [Signature]  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

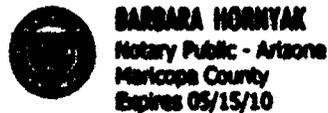
STATE OF ARIZONA        )  
  )ss  
County of Maricopa        )

SUBSCRIBED AND SWORN to before me this 24<sup>th</sup> day of January,  
2007, by Jeffery Gunderson, of Lennar Communities  
Development, Inc., ("Lennar") in his capacity as SR.V.P. of Lennar,  
the Manger and a Member of LH-EH LAYTON LAKES ESTATES, L.L.C., an Arizona  
limited liability company.

[Signature]  
Notary Public

My Commission Expires:

5-15-10

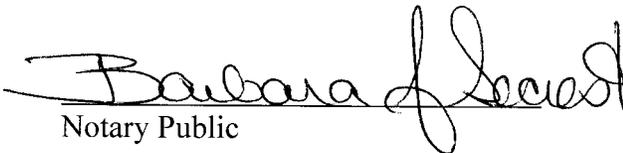


THE UNIVERSITY OF  
MICHIGAN LIBRARIES  
SERIALS ACQUISITION  
300 N ZEEB RD  
ANN ARBOR MI 48106-1500



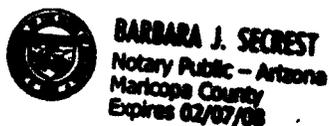
STATE OF ARIZONA        )  
  )ss  
County of Maricopa        )

SUBSCRIBED AND SWORN to before me this 23<sup>rd</sup> day of January,  
2007 by Carl Mulac, in his/her capacity as President of  
TOUSA HOMES, INC., a Florida corporation, d/b/a Engle Homes, an Arizona limited  
liability company, a Member of LH-EH Layton Lakes Estates, L.L.C., an Arizona limited  
liability company.

  
Notary Public

My Commission Expires:

2-17-08



1944  
1945  
1946  
1947

January 16, 2007

LEGAL DESCRIPTION FOR  
LAYTON LAKES PHASE 2 GILBERT  
PARCEL 16 WELL SITE

That part of the Northeast Quarter of Section 18, Township 2 South, Range 6 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Brass Cap flush marking the East Quarter Corner of said Section 18, from which the Brass Cap in handhole marking the Northeast Corner of said Section 18 bears North 00°02'02" West, a distance of 2,633.27 feet;

Thence North 00°02'02" West, along the East line of the Northeast Quarter of said Section 18, a distance of 61.00 feet;

Thence North 89°36'31" West, departing said East line, a distance of 620.02 feet to a point on a line which is parallel with and 620.00 feet Westerly, as measured at right angles, from the East line of the Northeast Quarter of said Section 18;

Thence North 00°02'02" West, along said parallel line, a distance of 151.32 feet;

Thence North 89°57'58" East, departing said parallel line, a distance of 25.00 feet to a point on a line which is parallel with and 595.00 feet Westerly, as measured at right angles, from the East line of the Northeast Quarter of said Section 18 and the True Point of Beginning;

Thence North 00°02'02" West, along said parallel line, a distance of 225.00 feet;

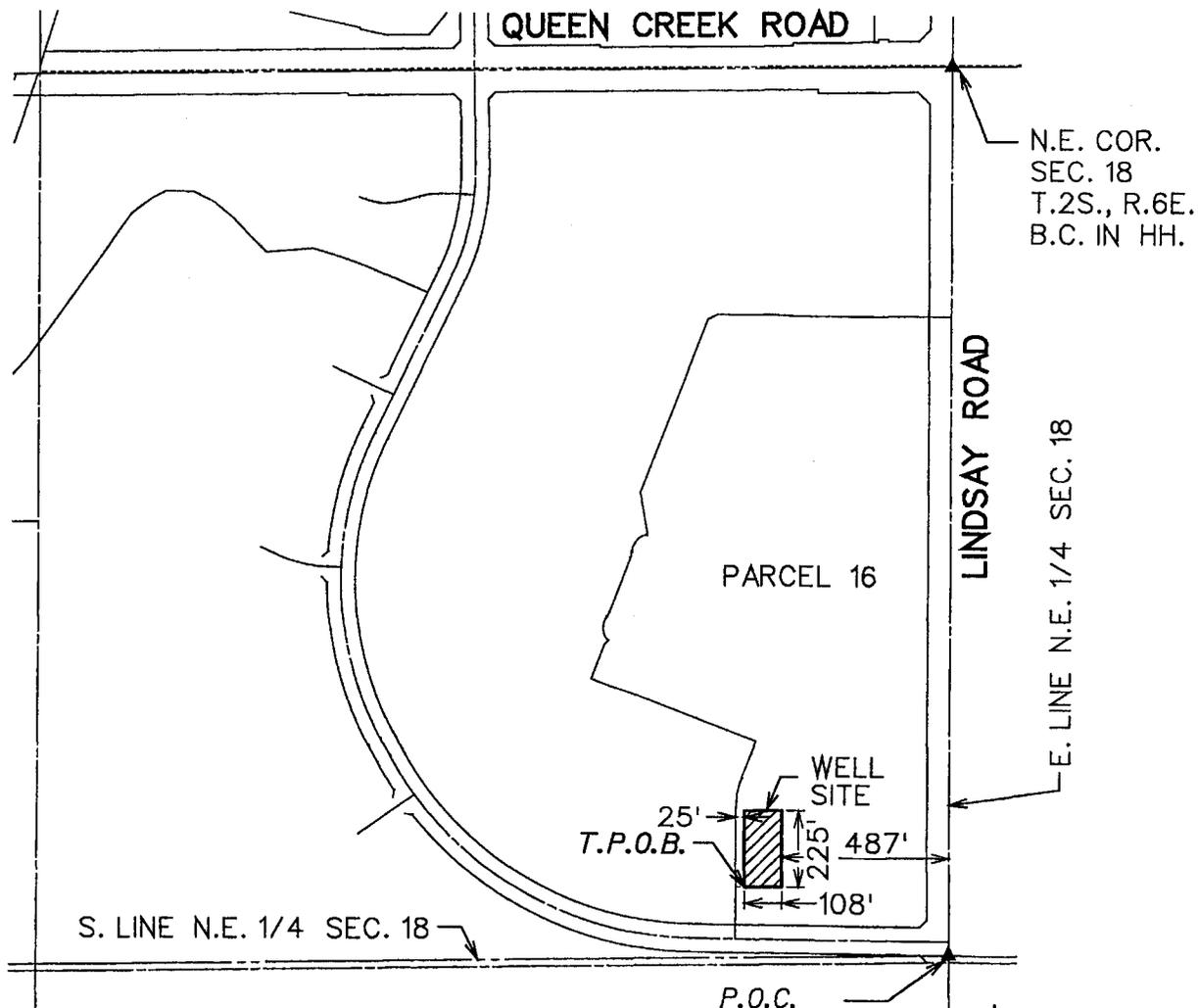
Thence North 89°57'58" East, departing said parallel line, a distance of 108.00 feet to a point on a line which is parallel with and 487.00 feet Westerly, as measured at right angles, from the East line of the Northeast Quarter of said Section 18;

Thence South 00°02'02" East, along said parallel line, a distance of 225.00 feet;

Thence South 89°57'58" West, departing said parallel line, a distance of 108.00 feet to the True Point of Beginning.

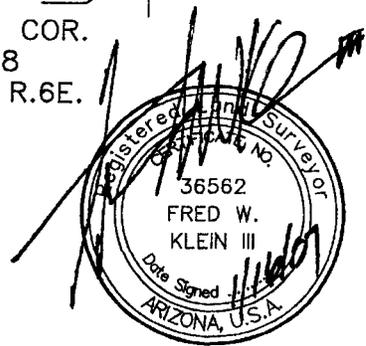
Containing 0.558 Acres, more or less.





SCALE: 1" = 500'

P.O.C.  
E. 1/4 COR.  
SEC. 18  
T.2S., R.6E.



<b>EXHIBIT</b>	LAYTON LAKES PHASE 2 GILBERT	JOB NO
N:\030003\LAND\EHWELL16.DGN	PARCEL 16 WELL SITE	030003
4550 NORTH 12TH STREET PHOENIX, ARIZONA 85014 TELEPHONE (602) 264-6831	<b>COE &amp; VAN LOO</b> PLANNING • ENGINEERING • LANDSCAPE ARCHITECTURE	SHEET 1 of 1