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Russell Shirts Washington County Recorder
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DEVELOPMENT AGREEMENT FOR PAINTED HILLS COLLINA TINTA

THIS DEVELOPMENT AGREEMENT for Painted Hills Collina Tinta (the "Agreement") is entered into as of the 7 day of September, 2006, by and among Summit-Hurricane Development, Inc., a Nevada corporation ("Developer"), Toquerville Enterprises, LLC, a Nevada limited liability company, each an Owner (as defined below) ("Toquerville"); and City of Hurricane, a municipal corporation and political subdivision of the State of Utah ("City") (individually a "Party" and collectively the "Parties").

RECITALS:

A. Owners each presently own a portion of approximately 560 acres of land located within the municipal boundaries of City of Hurricane, Washington County, State of Utah, as more particularly described in Exhibit "A" (the "Property") attached hereto and incorporated herein.

B. Developer desires and intends to develop the Property as a master-planned community currently known as Painted Hills Collina Tinta (the "Project") as generally depicted on a preliminary site plan dated _____, 2005 and prepared by Psomas Corp. (the "Preliminary Site Plan") attached hereto as Exhibit "B" and incorporated herein.

C. Owners by their signatures on this Agreement acknowledge their prior and continuing authorization for Developer, on behalf of Owners, to apply for and obtain from City vested development entitlements and to establish development parameters for the Project as set forth in this Agreement.

D. Owners have each agreed to cooperate with Developer and City as reasonably necessary to obtain the vested development entitlements set forth in this Agreement and have agreed to be bound by the terms of this Agreement, as evidenced by their signatures below.

E. On June 1, 2005 Developer and Owners filed with City a complete application (Application # 2005-71) to rezone the Property from the current R-1-10 zone to the R-1-10 (PD) overlay zone (the "PDO Zone") and approve the Preliminary Site Plan to enable development of the Project, all as provided in City's Land Use Ordinance (the "PDO Application").

F. Developer also filed with City complete preliminary plat applications to develop subdivisions located within the Project (Application # 2005-73) and (Application # 2005-74) (together, the "Subdivision Applications").

G. On October 26, 2005, City's Planning Commission recommended approval of the PDO Application and the Subdivision Applications, each subject to certain findings and conditions as set forth in Exhibit "C", attached hereto and incorporated herein, and forwarded them to City's City Council for consideration.

IN WITNESS WHEREOF, this Agreement has been executed by Developer, by persons duly authorized to execute the same, by City, acting by and through its City Council and by each of the Owners by duly authorized persons as of the 27th day of September, 2006.

CITY:

Attest:

City Recorder

City of Hurricane, a Utah municipal corporation and political subdivision of the State of Utah

Mayor

DEVELOPER:

Summit-Hurricane Development, Inc., a Nevada corporation

By:
Heath Johnston, President

OWNERS:

Toquerville Enterprises, LLC, a Nevada limited liability company

By:
Jerry Spilsbury, Manager

By:
Vyonne Mendenhall, Manager

State of Utah
County of Washington

On this 27th day of September in the year 2006,before me Deeona L. Cox, a notary public, personally appeared Jerry Spilsbury, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same. Witness my hand and official seal.

Deeona L. Cox
Notary Public

NOTARY PUBLIC
DEEONA L COX
147 N 870 W
HURRICANE, UT 84737
MY COMM EXP. 02/16/2008
STATE OF UTAH

State of Utah
County of Washington

On this 27th day of September in the year 2006,before me Deeona L. Cox, a notary public, personally appeared Vyonne Mendenhall, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same. Witness my hand and official seal.

Deeona L. Cox
Notary Public

NOTARY PUBLIC
DEEONA L COX
147 N 870 W
HURRICANE, UT 84737
MY COMM EXP. 02/16/2008
STATE OF UTAH

State of Utah
County of Washington

On this 27th day of September in the year 2006,before me Deeona L. Cox, a notary public, personally appeared Heath Johnston, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same. Witness my hand and official seal.

Deeona L. Cox
Notary Public

NOTARY PUBLIC
DEEONA L COX
147 N 870 W
HURRICANE, UT 84737
MY COMM EXP. 02/16/2008
STATE OF UTAH

H. On November 3, 2005, City's City Council approved the PDO Application (the "PDO Zone Approval") and the Subdivision Applications, each subject to certain findings and conditions as set forth in Exhibit "D", attached hereto and incorporated herein, including creation and City Council approval of this Agreement.

I. On March 16, 2006, City's City Council adopted Ordinance 2006-9 enacting Section 10-24-1 et seq. of City's Land Use Ordinance to regulate development on sensitive lands (the "Sensitive Lands Ordinance"). Portions of the Property include sensitive lands as defined in the Sensitive Lands Ordinance.

J. Section 10-24-3G1 of the Sensitive Lands Ordinance allows City to approve development that incorporates alternative methods to protect sensitive lands so long as such methods are consistent with the purpose of such ordinance and City's General Plan.

K. To satisfy the spirit and intent of the Sensitive Lands Ordinance, as contemplated by City prior to its adoption, approximately forty percent (40%) of the Property will remain as undeveloped land and the Project will be constructed in a manner that minimizes potential hazards in sensitive lands areas as set forth herein.

L. City finds the Project satisfies the spirit and intent of the Sensitive Lands Ordinance and that construction of the Project as contemplated under this Agreement meets the requirements of Section 10-24-3G1 of the Sensitive Lands Ordinance.

M. City also finds the PDO Zone Approval and the Preliminary Site Plan (i) do not conflict with any applicable policy of City's General Plan; (ii) meet the spirit and intent of Section 10-23-1 of City's Land Use Ordinance; (iii) will allow integrated planning and design of the Property and, on the whole, better development than would be possible under conventional zoning regulations; (iv) meet applicable use limitations and other requirements of the R-1-10 zone with which the planned development overlay zone will be combined; and (v) meet the density limitations of the R-1-10 zone.

N. City believes, based upon Developer's representations, that Developer has (i) sufficient control over the Property to ensure development of the Project will occur as approved; (ii) the financial capability to carry out the Project; and (iii) the capability to start construction within one (1) year of final site plan approval as required by Section 10-23-7(D) of City's Land Use Ordinance.

O. Developer, on behalf of Owners, desires to take all steps necessary to finalize approval of the Project and develop the Project as provided in this Agreement.

P. Each of the Parties are willing to enter into this Agreement in order to implement the purposes and conditions of both the PDO Zone Approval and the Preliminary Site Plan for the Project and to more fully set forth the covenants and commitments of each Party, while giving effect to applicable state law and City's Land Use Ordinance.

Q. Acting pursuant to its authority under Utah Code Annotated, §§ 10-9a-101, et seq., and after all required public notice and hearings, City, in its exercise of its legislative discretion has determined that entering into this Agreement furthers the purposes of the (i) Utah Municipal Land Use, Development, and Management Act, (ii) City's General Plan, and (iii) City's Land Use Ordinance. As a result of such determination City (i) has elected to approve the Project in a manner resulting in negotiation, consideration, and approval of this Agreement and (ii) has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of City.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

SECTION I. DEFINITIONS

Any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by City's Land Use Ordinance in effect on the date of the Application for the PDO or, if different, by this Agreement, as the case may be. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement.

1.1 **"Ash Creek SSD"** means the Ash Creek Special Service District, a body politic created for the purpose of providing sewer and waste water removal and treatment to the Hurricane Valley Basin Area, which includes the Project.

1.2 **"City's Standards and Specifications for Public Improvements"** means the standards and specifications that City uses for construction of public improvements.

1.3 **"Commercial Uses"** means neighborhood convenience, sales and other commercial uses, excluding Multi-Family Uses, located as shown on the Preliminary Site Plan.

1.4 **"Continuing Owner"** means any Owner (and its successors and assigns) who has not yet sold or contracted with Developer for purchase of Owner's property. At the time any Owner enters into a contract with Developer for sale of all of Owner's property, it ceases to be a Continuing Owner; provided that in the event (a) either (i) the sale of any portion of Owner's property to Developer has not closed, or (ii) any portion of Owner's property is reacquired by Owner (or its successors or assigns) through foreclosure, forfeiture, or repossession, and (b) Owner (or its successor(s) or assign(s) or any of them) files any Land Use Application for development of any portion of Owner's property, Owner (or its successors or assigns) immediately and automatically regains the status of a Continuing Owner. Unless specifically provided otherwise herein, all rights and obligations of Developer herein shall also mean the right and obligation of each Continuing Owner with respect to the specific parcel of property owned by such Continuing Owner (or Land Use Application filed by such Continuing Owner);

provided that in that case, Developer shall not be responsible for any obligation specific to such Continuing Owner or its property or Land Use Application.

1.5 **"Culinary Water Master Plan"** means a comprehensive plan to provide culinary water within the Project as approved by City.

1.6 "**Density Transfer**" means the ability of Developer to transfer densities from areas within the Project to other areas within the Project including transferring such densities from one type of use to another type of use, for example, and not by way of limitation, transferring density from Multi-Family Uses to Single-Family Uses as provided in Paragraph 2.4.5 of this Agreement.

1.7 "**Design Guidelines**" means the design standards and guidelines (including the landscape plan) adopted by Developer, as may be amended from time to time, and as approved by Owners, applicable to the Project.

1.8 **"Developer"** means Summit-Hurricane Development, Inc., a Nevada corporation or its approved replacement developer, assigns and successors in interest, whether in whole or in part. Developer shall cause its employees and agents to act in accordance with the terms of this Agreement. For the limited purpose of specifying rights and obligations under this Agreement, references to Developer shall include Continuing Owners as set forth in Paragraphs 1.5 and 6.13 of this Agreement.

1.9 **"Development Activity"** means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for public facilities.

1.10 **"Development Guidelines"** means collectively, the (a) Design Guidelines; (b) Master Declaration; Culinary Water Master Plan; Secondary Water Plan; Sanitary Sewer Master Plan; Storm Water and Drainage Control Master Plan; and City's Standards and Specifications for Public Improvements.

1.11 **"Development Phase"** means a separately developed portion of the Project for which a Site Plan and one (1) or more corresponding subdivision applications is filed with City and which is identified on the Painted Hills Phasing Table attached hereto as Exhibit "F".

1.12 **"Final Plat"** means a final subdivision plat of each Development Phase to be filed with City which, after approval by City's governing body, is to be recorded in the Official Records in Office of the Recorder of Washington County, State of Utah.

1.13 **"Golf Course"** means that certain golf course to be constructed as generally depicted on the Preliminary Site Plan.

1.14 **"Golf Course Company"** means that a company or its approved replacement, assigns and successors in interest, whether in whole or in part, selected by Toquerville and developer to construct the golf course.

1.15 **"Land Use Application"** means any application for development within the Project submitted to City by Developer or any other person subsequent to the execution of this Agreement.

1.16 **"Land Use Ordinance"** means Title 10 of the Hurricane City Code.

1.17 **"Master Association"** means the Collina Tinta Master Association, Inc., a Utah nonprofit corporation, its successors or assigns.

1.18 **"Master Declaration"** means that certain Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Collina Tinta Project to be recorded in phases against portions of the Property corresponding to each Development Phase.

1.19 **"Multi-Family Uses"** means all permitted residential uses shown on Table 10-13-1 of City's Land Use Ordinance, excluding Single-Family Uses.

1.20 **"Ordinances"** means the Hurricane City Municipal Ordinances, including City's Land Use Ordinance.

1.21 **"Owners"** means collectively Toquerville and Developer, and their respective successors and assigns, who together, own or will own all of the land within the Project with the exception of the Golf Course, which is or will be owned by the Golf Course Owner or an entity approved by Toquerville and Developer at such time and in their sole and absolute discretion. Any Owner may hereafter be referred to individually as "Owner".

1.22 **"Planning Commission"** means the Hurricane City Planning Commission.

1.23 **"PDO Zone Approval"** means City's approval of Preliminary Site Plan and zone change request (Application # 2005-71) for the Project on November 3, 2005, which was subject to certain findings and conditions set forth in Exhibit "D".

1.24 **"Preliminary Site Plan"** means the conceptual site plan map attached hereto as Exhibit "B", and approved by the Hurricane City Council on November 3, 2005 as part of Developer's PDO Application (Application #2005-71).

1.25 **"Project"** means the improvement and development of the Project pursuant to this Agreement, the Development Guidelines, and/or the Ordinances as generally depicted on the Preliminary Site Plan.

1.26 **"Project Improvements"** means, with respect to the Project, site improvements and facilities that are planned and designed to provide service for development resulting from

Development Activity and necessary for the use and convenience of the occupants or users of development resulting from Development Activity. "Project Improvements" does not mean System Improvements.

1.27 **"Proportionate Share"** means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any Development Activity.

1.28 **"Sanitary Sewer Master Plan"** a comprehensive plan to provide sanitary sewer within the Project as approved by the Ash Creek SSD.

1.29 **"Secondary Water Plan"** means a secondary water system as generally depicted on Exhibit "E" attached hereto and as approved by City.

1.30 **"Single-Family Uses"** means all permitted single-family residential uses shown on Table 10-13-1 of City's Land Use Ordinance, excluding Multi-Family Uses.

1.31 **"Site Plan"** means a site plan submitted for a Development Phase as provided in Sections 10-7-10 and 10-23-7D of City's Land Use Ordinance.

1.32 **"Storm Water and Drainage Control Plan"** means a comprehensive plan to provide storm water and drainage control within the Project as approved by City.

1.33 **"System Improvements"** means existing public facilities that are designed to provide services to service areas within the community at large; and future public facilities identified in a capital facilities plan that are intended to provide services to service areas within the community at large. "System improvements" does not mean Project Improvements.

SECTION II. PLANNED DEVELOPMENT OVERLAY

2.1 **Designation as a Planned Development.** In compliance with the requirements of Utah Code Ann. § 10-9a-501 et. seq., applicable provisions of City's Land Use Ordinance, and following a public hearing on November 3, 2005, City, pursuant to its legislative authority, approved the PDO Zone and the Preliminary Site Plan. City agrees development of the Project may proceed as provided in this Agreement and acknowledges the Preliminary Site Plan and Design Guidelines are consistent with City's Land Use Ordinance and set forth densities, location of densities and Developer-offered amenities. Developer acknowledges that development of the Project is subject to all normally-applicable City processes and the following:

2.1.1 Design Guidelines;

2.1.2 Master Declaration;

2.1.3 Culinary Water Master Plan;

2.1.4 Secondary Water Plan;

2.1.5 Sanitary Sewer Master Plan;

2.1.6 Storm Water and Drainage Control Master Plan; and

2.1.7 City's Standards and Specifications for Public Improvements.

2.2. **Applicable Laws and Regulations.** Except as otherwise set forth in this Agreement, all development and improvements of any sort, on-site or off-site, relating to the Project shall comply with City's Ordinances, regulations, requirements, and procedures established by and for City.

2.2.1 **PDO Approval.** The PDO Zone and the Preliminary Site Plan shall not be affected by any inconsistent or contrary moratorium, ordinance, resolution, rule or regulation enacted by City that prohibits or regulates the total number of residential dwelling units, land uses, and site improvements shown on the Preliminary Site Plan.

2.2.2 **Sensitive Lands Ordinance.** Pursuant to Section 10-24-3G1 of the Sensitive Lands Ordinance and Recitals J, K, and L set forth above, the Project shall not be subject to the Sensitive Lands Ordinance but shall incorporate the alternative methods listed below to protect sensitive lands. The specific application of such methods to any Development Phase, or a particular portion thereof, shall be reasonably determined by the City Engineer; provided, however, that such determination shall not have the effect of negating the rights or duties of Developer or Owners as provided in this Agreement.

2.2.2.1 **Cuts and Fills.** Retaining walls shall be provided as needed to stabilize cut and fill areas. Wherever possible, a combination of smaller cuts and fills shall be used instead a single larger cut or fill. Individual structures shall be located in a manner that minimize the need for cut and fill areas. Landscaping shall be provided to stabilize cut and fill areas and to create a natural-looking or better appearance.

2.2.2.2 **Local Roads.** In order to minimize cuts and fills for roads in sensitive lands areas, City acknowledges and agrees it has approved the cross section design of certain local roads in the Project as more particularly described on the "Road Cross Section Designs" attached hereto as Exhibit "H". Such roads shall be constructed according to City's Standards and Specifications for Public Improvements except as otherwise provided in Exhibit "H", the Development Guidelines, and this Agreement.

2.2.3 **Land Use Applications.** Except as provided in Paragraphs 2.2.1 and 2.2.2 above, any Land Use Application made subsequent to the execution of this Agreement shall conform to applicable provisions of the of City's Land Use Ordinance in effect when a complete application is submitted.

2.2.4 **Building Permits.** Any person or entity applying for a building permit within the Project shall be subject to the building, electrical, mechanical, plumbing, fire codes and other City ordinances relating to the construction of any structure in effect when such person or entity files with City a complete application for such building permit.

2.2.5 **Later Enacted State or Federal Law.** The rights and obligations of the Parties under this Agreement shall be subject to later enacted State and Federal laws and regulations, to the extent applicable to the Project.

2.3 **Design Guidelines.** Developer may establish Design Guidelines for each Development Phase, and if established, shall provide a copy of the guidelines to City when a Site Plan application is submitted to City for approval of such phase. Developer and Master Association shall be solely responsible to enforce the Design Guidelines to the extent such guidelines exceed City Ordinance requirements. Nevertheless, as a courtesy to Developer and the Master Association, City, prior to issuing any building permit for property within the Project, may request the building permit applicant to produce a letter from Developer or the Master Association indicating the building plans which are the subject of the permit application have been approved by Developer or the Master Association.

2.4 **Zoning.** The zoning for the Project shall be the R-1-10 (PD) zone which shall be shown on City's zoning map. The following development standards shall apply to the Project:

2.4.1 **Maximum Development Area.** The entire area of the Project shall be contained within the land described on Exhibit "A".

2.4.2 **Residential Density.** The total residential density permitted within the Project shall not exceed one thousand eight hundred eighty six (1,886) residential dwelling units. As shown on the Preliminary Site Plan, residential units are dispersed throughout the Project at varying densities, which may be modified by Density Transfers as provided in Paragraph 2.3.5 of this Agreement. A Development Phasing Table for the Project is attached hereto as Exhibit "F". The final density identified for each Development Phase is not yet specifically authorized by this Agreement and the Parties acknowledge that the density allowed in each Development Phase will be determined upon review and approval of a Site Plan for each such Development Phase.

2.4.3 **Commercial Density.** In Owners' sole discretion, the Project may include up to one hundred thousand (100,000) square feet of floor space of Commercial Uses in the locations shown on the Preliminary Site Plan. Following permission from Owners and subject to Developer's successful completion of all requirements and obligations herein, Developer shall be entitled to develop such Commercial Uses. The square footage for amenities located within the clubhouse for the Golf Course and residential community shall not be counted against the floor space authorized for Commercial Uses. Uses allowed within these locations shall be determined upon submission and approval of a Site Plan for such commercial development, if any.

2.4.4 **Phasing.** City acknowledges that Developer intends to submit multiple Land Use Applications from time to time, in Developer's sole discretion, to develop and/or construct portions of the Project in Development Phases. However, to coordinate City-provided services and facilities and services and facilities provided by other public agencies with the demand for public services and facilities generated by uses and activities within the Project, development sequencing of the Project shall provide for the logical extension, as reasonably determined by City, of all required infrastructure and the provision of all reasonably related municipal services, including but not limited to, adequate fire protection and necessary ingress and egress.

2.4.5 **Density Transfers.** Developer's transfer of density units from one Development Phase or more to others within the Project shall be approved provided that (a) the total density does not exceed the density authorized for the Project; (b) the proposed transfer does not assign any density to park or open spaces shown on the Preliminary Site Plan; (c) any compatibility standards for uses on adjoining parcels as set forth in City' Land Use Ordinance are satisfied; (d) in the event the property from which density units are transferred is not owned by the owner of the property to which the density units are transferred, the owner of the property from which units are transferred consents in writing to such transfer; (e) in the event either parcel is jointly owned, the Density Transfer is determined on a pro-rata basis unless mutually agreed otherwise between the owners of the applicable parcels, and (f) infrastructure is sufficient and available to meet the demands created by such transfer, as reasonably determined by City. Density transfers shall be initiated by notice to City from Developer which describes the Development Phase from which density is to be transferred, describes the Development Phase to which density is to be transferred and summarizes the impact of such transfer on infrastructure improvements. The Density Transfer shall be considered approved and complete when modification of a subdivision application submitted by Developer, including the extension or expansion of required infrastructure improvements, is approved by City.

2.4.6 **Development Applications.** Each residential development application submitted by Developer and/or its assignees who have purchased portions of the Project shall, in addition to those items required by City's Land Use Ordinance, or any other City ordinance, include a statement of (a) the total number of residential dwelling units allowed in the Project under this Agreement; (b) the cumulative total number of residential dwelling units previously approved for all of the properties within the Project from the date of approval of this Agreement to the date of the application; (c) the number of dwelling units and densities for which a permit is sought under the particular Development Phase application; and (d) the balance of residential dwelling units remaining allowable to the Project. Each commercial development application submitted by Developer and/or its assignees who have purchased portions of the Project shall include, in addition to those items required by City's Land Use Ordinance, or any other City ordinance, a statement of (a) the total number of square feet of land area of Commercial Uses allowed in the Project under this Agreement; (b) the cumulative total number of square feet of land area of Commercial Uses previously approved for all of the properties within the Project from the date of approval of this Agreement to the date of the application; (c) the number of commercial square feet of land area for which a permit is sought under the particular

Development Phase application; and (d) the balance of Commercial Uses square footage remaining allowable to the Project.

2.5 **Consent of Owners.** The Parties hereto recognize that the density configurations anticipated herein provide for greater density in certain portions of the Project and less density in other portions, and that some areas shall be designated by Owner as open space with no density. By executing this Agreement, each of the Owners consents to, according to the terms hereof, the restrictions this Agreement may impose on those portions of the Project owned by such Owner. Developer and Owners acknowledge that such restrictions may preclude development other than as herein permitted and Owners agree that all property owned by them within the Project is subject to and bound by the terms of this Agreement whether or not Developer hereafter acquires their property.

2.6 **Recordation of First Final Plat.** Developer shall record the approved Final Plat for the first Development Phase within one (1) year of Site Plan approval as required by Section 10-7-10(J) of City's Land Use Ordinance, subject to any extension authorized pursuant to Section 10-7-3(I) thereof.

SECTION III. GENERAL RIGHTS AND RESPONSIBILITIES

3.1 **General Rights and Responsibilities of Developer.**

3.1.1 **Conditions of Approval and Impact Fees.** With respect to the development of the Project, Developer accepts and agrees to comply with the plan examination, building and similar fees (excluding impact and connection fees) of City currently in effect, or as amended, and City agrees and represents that any such fee schedule will be applied uniformly within City or any service area of City, as applicable. Developer acknowledges the Project requires infrastructure supported by impact and connection fees and finds such fees to be a reasonable monetary expression of public facility improvements required to support the Project. Developer agrees not to challenge, contest, or bring a judicial action seeking to avoid payment of or to seek reimbursement for such fees, so long as such fees comply with Utah law, are applied uniformly within City or service area, as applicable, and Developer receives all credits and offsets against such fees as provided in Paragraphs 3.2.2, 3.2.3, and 3.2.4 below or a Reimbursement Agreement.

3.1.2 **Reliance.** City acknowledges that Developer is relying on the execution and continuing validity of this Agreement and City's faithful performance of City's obligations under this Agreement in Developer's existing and continued expenditure of substantial funds in connection with the Project. Developer acknowledges that City is relying on the execution and continuing validity of this Agreement and Developer's faithful performance of its obligations under this Agreement in continuing to perform the obligations of City hereunder.

3.1.3 **Vested Rights Granted by Approval of the PDO and Project.** To the fullest extent permissible under the law, this Agreement grants and vests in Developer and Owners all rights, consistent with the PDO Zone Approval, the Preliminary Site Plan, and City's

Land Use Ordinance, to develop the Project according to the Preliminary Site Plan under applicable law as provided in Paragraph 2.2 of this Agreement. The Parties intend that the rights granted to Developer and Owners and the entitlements for the Project under this Agreement are both contractual and provided under the common law concept of vested rights. It is expressly understood by City that Developer and Owners may assign all or portions of its rights under this Agreement and the PDO Zone Approval provided such assignees agree to be bound by the terms of this Agreement as provided in Paragraph 5.2, below.

3.1.4 **Statement Regarding "Compelling, Countervailing Public Interests".** City, Developer, and Owners acknowledge they are familiar with the "compelling, countervailing public interest" exception to the doctrine of vested rights in the State of Utah. City acknowledges that as of the date of this Agreement, to the best of its knowledge, information and belief, City is presently unaware of any material facts under which a desire of City to modify Developer's or Owner's rights under this Agreement or the Preliminary Site Plan would be justified by a "compelling, countervailing public interest." City shall immediately notify Developer and Owners if any such facts come to City's attention after the execution of this Agreement, and shall take all reasonable steps to maintain Owners vested rights as set forth in this Agreement or the Preliminary Site Plan.

3.1.5 **Construction Mitigation.** Developer shall provide the following measures, all to the reasonable satisfaction of City's Engineer, to mitigate the impact of construction within the Project. Developer shall also adhere to the usual construction impact mitigation measures required by City. Additional reasonable site-specific mitigation measures may be required. The following measures shall be included in each application for approval of a Site Plan for any Development Phase:

3.1.5.1 Limits of disturbance, vegetation protection and the revegetation plan for all construction, including construction of public improvements (an NPDES permit being required on any construction involving a parcel in excess of one [1] acre in size).

3.1.5.2 Construction staging, on-site batch plants, and materials stockpiling and recycling to keep all excavated materials on one (1) or more sites during infrastructure and construction of any Development Phase of the Project. The location of such areas shall be approved by City prior to construction of a Development Phase.

3.1.5.3 Construction traffic routing plan to minimize traffic impacts on City roads and residential areas by requiring construction traffic to use roads approved by City.

3.1.5.4 Mitigation of dust throughout construction, pursuant to Rule R-307-205 of the Utah Administrative Code, applicable City Ordinances, and any other applicable statute or regulation.

3.1.5.5 Protection of existing infrastructure improvements from abuse or damage while new infrastructure improvements are being constructed.

3.1.6 **Demonstration of Ability.** Developer or any Continuing Owner, as applicable, shall demonstrate that Developer (or such Continuing Owner) possesses or is reasonably certain to receive the financial resources (money, equity, loans, and the like) necessary to undertake and complete the Project's development or its portion thereof. If and at any time Developer or such Continuing Owner fail to perform their respective obligations under this Agreement, City may request, and Developer or a Continuing Owner shall provide, reasonable evidence that it still possesses or is reasonably certain to receive the financial resources necessary to continue the contemplated development within the Project.

3.1.7 **Dedication of Infrastructure Improvements.** Unless otherwise specifically provided herein, Developer shall dedicate, subject to the reimbursement obligations of the City as set forth in Paragraphs 3.2.2, 3.2.3, and 3.2.4 below, any System Improvements in the Project to City when such improvements are accepted by City.

3.2 **General Rights and Responsibilities of City.**

3.2.1 **Reserved Legislative Powers.** This Agreement shall not limit the future exercise of the police powers of City to enact ordinances, standards, or rules regulating development. City acknowledges, however, that any exercise of its legislative or police powers which alters or modifies this Agreement to Developer or Owners' legal detriment may render City liable to such remedies as may be available to Developer or Owners under such circumstances.

3.2.2 **Project and System Improvements – Cost Sharing.** Developer shall bear the entire cost of constructing Project Improvements needed to service the Project. Developer shall also bear the initial cost of constructing System Improvements required as a result of the Project but shall be entitled to be reimbursed for the cost of such System Improvements except for Developer's Proportionate Share of System Improvements costs. System Improvements may include, but are not limited to, the following regardless of whether such improvements are located within the Project or off-site: easements and rights-of-way; road construction, curb and gutter and curb cuts, sidewalks, road signs, water distribution facilities, fire hydrants, storm drainage facilities, road signalization and telecommunications equipment and conduit, road lighting, electrical utilities, flood control facilities, bridges, parks, survey monuments, water rights, landscaping and revegetation.

3.2.3 **Reimbursement Agreement.** Prior to constructing any System Improvements required for the Project authorized by approval of a Site Plan, Final Plat, or other Land Use Application, Developer and City shall execute an agreement whereby Developer shall be reimbursed by City for the cost of constructing such System Improvements less Developer's Proportionate Share thereof. Developer shall furnish an estimate of the cost of constructing such System Improvements prepared by an engineer registered to practice in the State of Utah and approved by City. The reimbursement agreement shall assure that neither Developer nor City bears more than their respective Proportionate Share of the cost of System Improvements and shall take into consideration the provisions of Paragraph 3.2.4 below.

3.2.4 **Impact Fee Credits.** In the event Developer constructs, prior to the date an impact fee would be due, any System Improvements for which an impact fee is normally collected, Developer's cost of constructing such improvement shall be credited against the impact fee otherwise charged. Developer shall also be given a credit for impact fees for land and water source supplies dedicated to and accepted by City. In each instance, Developer shall submit to City invoices demonstrating the reasonable and verified costs incurred for such improvements/supply sources or appraisals indicating the fair market value of dedicated land and/or water source supplies. The amount of the credit shall be equal to the lesser of (i) the impact fee otherwise required, or (ii) the reasonable and verified costs of the improvements paid by Developer or, in the case of dedicated land, the fair market value of such land at the time of dedication. If an impact fee credit for dedicated land is calculated using the fair market value at the time of dedication, such credit shall be based on the amount of the impact fee payable at the time of dedication.

3.2.5 **Compliance with City Requirements and Standards.** Except as provided in Paragraphs 2.2 and 3.1.3 of this Agreement, Developer and Owners acknowledge they shall comply with applicable laws and regulations, as set forth in Paragraph 2.2 of this Agreement, necessary for approval of a Land Use Application to develop property within the Project.

3.2.6 **Power of Eminent Domain.** City agrees that in the event Developer needs to obtain easements or rights-of-way for the purpose of constructing infrastructure improvements for the Project and is otherwise unable to negotiate a reasonably acceptable contract for such easements or rights-of-way, City, upon the request of Developer, may exercise its power of eminent domain to obtain such easements or rights-of-way, the cost of which shall be borne by Developer. Developer shall reimburse City for all reasonable expenses incurred in taking the requested action, including reasonable attorney's fees and costs.

3.2.7 **Project a Part of City.** The Project shall remain, for all purposes, including government, taxation, municipal services and protection, and consideration in all municipal matters, a part of City. Except as otherwise provided herein, Development within the Project, and the residents and occupants thereof, shall be treated in all respects as is any other development, resident, or occupant of City.

3.2.8 **Cooperation of City.** City may cooperate with Developer in connection with financing of certain aspects of the Project including without limitation creation of a special improvement district.

3.2.9 **Irrigation Pond.** City shall cooperate with Developer and negotiate in good faith to provide sufficient irrigation water for the operation of the Golf Course, a storage pond, an urban fishing pond and improved water features for the Project as described on the Preliminary Site Plan.

SECTION IV. SPECIFIC RIGHTS AND RESPONSIBILITIES

4.1 **Water.**

4.1.1 **Developer's Obligations.**

4.1.1.1 **Water System.** Developer shall, consistent with governmental requirements as of the date hereof, except as otherwise provided in Paragraph 2.2.5 of this Agreement, design, build, and dedicate to City culinary and secondary water facilities of sufficient size to serve the Project, according to City specifications and standards, including all distribution lines, fire flow, and irrigation needs for the Project. The facilities required to provide culinary and secondary water within a subdivision or Site Plan area shall be constructed and installed concurrent with the construction of other improvements in such subdivision or Site Plan area. Except for the irrigation system and facilities used solely in connection with the Golf Course, all facilities necessary to provide a culinary water system installed by Developer within the Project, upon acceptance by City, shall be owned, operated, and maintained by City.

4.1.1.2 **Easements.** As part of the preparation of a water storage and delivery system for culinary water and a secondary water system, Developer and Owners shall grant to City such easements, rights-of-way, rights of entry, or other servitudes as may be reasonably necessary for City to introduce into, store in, and remove water from such ponds, streams, and lakes as may exist or be constructed by Developer or others within the Golf Course corridor of the Project for the secondary water system and designated storage water tank.

4.1.2 **City's Obligations**. Upon dedication, acquisition and/or acceptance by City of the water delivery system City shall provide all use areas served by such infrastructure within the Project with culinary water service at a level generally provided to other areas of City.

4.1.2.1 **Reimbursement and Impact Fee Credits.** Developer shall be reimbursed for water System Improvements costs as provided in Paragraphs 3.2.2, 3.2.3, and 3.2.4 above.

4.1.2.2 **Easements and Rights-of-Way for Water Distribution System.** If needed and pursuant to Paragraph 3.2.6 above, City shall obtain from third parties the appropriate easements, rights-of- way, rights of entry, or other servitudes as may be necessary for the construction, placement and maintenance of the water distribution system's collection and transmission lines.

4.2 **Sanitary Sewer Service and Facilities.**

4.2.1 **Developer's Obligations.** The Project is located within the service boundaries of the Ash Creek SSD. Developer shall design, fund, and construct sewer and waste water collection systems to service the Project in compliance with all regulations and specifications of Ash Creek SSD. Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall be binding on Ash Creek SSD.

4.2.2 **City's Obligations.** City has accepted and adopted the standards and requirements of Ash Creek SSD and shall require Developer to adhere, where applicable, to such standards and requirements with respect to the sewer and waste water collection systems.

4.3. **Power.**

4.3.1 **Developer's Obligations.** Developer shall, consistent with governmental requirements as of the date hereof, except as otherwise provided in Paragraph 2.2.5 of this Agreement, design, build, and dedicate to City an electrical power transmission system to service the Project. City shall reimburse Developer for City's Proportionate Share of Systems Improvements.

4.3.2 **City's Obligations.** Upon dedication, acquisition and/or acceptance by City of the electrical power transmission system, City shall provide all use areas served by such infrastructure within the Project with electrical power service at a level generally provided to other areas of City.

4.4 **Transportation, Traffic Mitigation and Landscaping.**

4.4.1 **Developer's Obligations.** Developer agrees to provide the following transportation and traffic mitigation measures:

4.4.1.1 **Roads and Intersection Improvements.** The Site Plan for each Development Phase shall show all road and intersection improvements and shall identify which improvements Developer will construct at no cost to City. Road and intersection improvements may be located differently than shown on the Preliminary Site Plan so long as any such road connects to an existing or planned road which intersects or abuts the exterior boundary of the Preliminary Site Plan. Except as otherwise set forth in this Agreement and in the Development Guidelines, road and intersection improvements shall be constructed according to City's Standards and Specifications for Public Improvements in phases according to a schedule determined by Developer and approved by City, which approval shall not be unreasonably withheld, conditioned, or delayed, consistent with the actual construction schedule for a particular Development Phase. Prior to construction of any of such improvements, City shall reasonably review and approve or reject with suggested changes all plans, drawings and specifications with respect to the alignment and construction of such road and intersection improvements. Subject to reimbursement by City of its Proportionate Share of Systems Improvements, Developer shall dedicate such improvements to City upon completion and acceptance by City.

4.4.1.2 **Reimbursement Agreements.** Developer, in partnership with successors, assignees, adjoining landowners or acting alone, shall construct all roads required for the Project. Developer shall be reimbursed for road System Improvements costs as provided in Paragraphs 3.2.2, 3.2.3, and 3.2.4 above.

4.4.1.3 **Landscaping.** Upon City's approval of each Development Phase, Developer agrees to construct and create, at Developer's sole cost and expense, the landscape improvements as set forth in the Design Guidelines for such Development Phase. Developer shall have the right to determine the timing and/or sequencing of the installation of such landscaping improvements so long as all landscaping in a Development Phase is completed in conjunction with such phase. The Master Declaration shall include provisions which obligate the Master Association to provide continuous maintenance of any such landscaping, including landscaping provided in a public right-of-way pursuant to an agreement with City. Developer acknowledges that such landscaping shall be deemed a Project Improvement and that but for Developer's desire to provide such landscaping, City would not otherwise establish landscaping in a public right-of-way.

4.4.2 **City's Obligations.**

4.4.2.1 **Road Rights-of-Way.** City shall cooperate with Developer, as necessary, to obtain necessary road rights-of-way located outside the Project, including if required and as mutually agreed by City and Developer as provided in Paragraph 3.2.6 above, the exercise of eminent domain by City to insure the desired location of arterial, parkway and collector roads necessary for the Project. Developer and Owners shall grant, at no cost to City or each other, rights- of-way as set forth on the Preliminary Site Plan.

4.4.2.2 **Road Design.** Except as otherwise provided in Paragraph 2.2.2.2 above, regarding construction of local roads in sensitive land areas, City accepts the road design, as contained and provided in the Development Guidelines, as the specifications and standards for road design for parkway, arterial, collector, and local roads within the Project. All roads in the Project shall conform to City's Standards and Specifications for Public Improvements except as otherwise shown on Exhibit "H" attached hereto and made a part hereof. City acknowledges the road cross section designs shown on Exhibit "H" vary from City's Standards and Specifications for Public Improvements and that such roads may be constructed as shown thereon.

4.4.2.3 **Dedication.** City shall accept the dedication of and thereafter maintain all arterial, parkway and collector roads in the Project so long as such roads are constructed in accordance with applicable City Standards and Specifications for Public Improvements, the Development Guidelines the Residential Road Profile, and are dedicated free and clear of liens and encumbrances.

4.5 **Police and Fire Protection.** City shall provide to all residential and nonresidential use areas in the Project, police and fire protection services.

4.6 **Park and Open Space Areas.**

4.6.1 **Developer's Obligations.** In recognition and consideration that City shall be required to provide and improve park and recreational amenities, as practical, within the Project, the Parties agree as follows:

4.6.1.1 **Parks Sites, Trails, Ponds and Open Areas.** Owners and Developer have provided for approximately two hundred forty nine (249) acres of open areas within the Project, including, but not limited to, one hundred sixty (160) acres for the Golf Course, forty (40) acres of recreational open space, Sullivan's Knoll, public trails, a public fishing pond and multiple park areas of varying sizes as shown on Exhibit "G" attached hereto.

4.6.1.2 **Conveyance to City.** Developer and Owners shall convey to City fee title to a minimum of thirty-four (34) acres of park land within the Project based on City's ratio of six (6) acres of park land per one thousand (1,000) residents (the "Minimum Park Land Requirement"). The Minimum Park Land Requirement is based upon an assumption of three (3) persons per dwelling unit multiplied by a minimum of one thousand eight hundred eighty six (1,886) dwelling units in the Project, yielding a Project population of approximately five thousand six hundred fifty-eight (5,658) persons (5.658 x 6 = 33.948 park land acres required [rounded to 34 acres]). Park land shall be conveyed by special warranty deed, at no cost to City, free and clear of liens and encumbrances, except non-delinquent taxes, easements, covenants, conditions and restrictions and rights-of-way of record, for park sites as described on the Preliminary Site Plan and Exhibit "G" attached hereto. Developer (or any Owner directly deeding such land to City) shall be entitled to reimbursement as provided in this Agreement, including Paragraphs 3.2.2, 3.2.3, and 3.2.4 above, for improvements made to the park sites and for land conveyance beyond the Minimum Park Land Requirement. Developer (or Owners) and City shall negotiate in good faith regarding the amount of the reimbursement, including sums expended by Developer (or Owners) for improvement of public park areas. City acknowledges and agrees that, under the terms of this Agreement, the land being conveyed to City in the Project for parks and open spaces substantially exceeds the minimum requirements of City for open area and green space.

4.6.1.3 **Private Parks - Timing of Construction.** The largest proposed park is approximately three to four (3-4) acres in size. Those areas smaller than three (3) acres noted on the Preliminary Site Plan and/or Exhibit "G" as "Park" shall be deemed private parks and shall be completely developed by Developer primarily for use by Project residents. Each private park shall be developed and available for use upon occupancy of seventy-five percent (75%) of the dwelling units in a Development Phase which includes the park. The acreage of such private parks shall be included in open space requirements applicable to the Project. Park land acreage shall be identified on the Site Plan for each Development Phase.

4.6.1.4 **Public Parks - Timing of Conveyance.** Public park land may be conveyed to City at any time, but no later than the recording of a subdivision plat for the nearest neighborhood area adjacent to a park identified on Exhibit "G" attached hereto. Public park land may also include Sullivan's Knoll and a public fishing pond. Developer shall provide curb, gutter, and sidewalk where a public park abuts a public or private road.

4.6.1.5 **Trails Plan.** Numerous trails are identified on the Preliminary Site Plan. A preliminary trails plan with specific design standards, along with a schedule for improvement, shall be provided prior to the first Development Phase of the Project which preliminary trails plan shall be subject to revisions and changes and thereafter finalized as each

Development Phase is completed. The trails plan shall differentiate between public and private trails. Public trails shall be provided consistent with City's Master Trail Plan. Any public trail planned as of the date hereof which is intended to connect to the boundary of the Project shall be continued through the Project as a public trail.

4.6.1.6 **Golf Course.** To add an open space amenity to the Project, Developer, together with the applicable Continuing Owner, shall establish a Golf Course within the Project as generally shown on the Preliminary Site Plan. Golf Course land shall be credited as open space within the Project. Such land shall not be conveyed to City, but shall be owned by Developer, one (1) or more Owners or other third party or their successors and assigns.

4.6.2 **City's Obligations.**

4.6.2.1 **Park Facilities.** Upon dedication and acceptance by City of public park and trail areas shown on the Preliminary Site Plan, City shall provide to all residential and nonresidential use areas within the Project, trails, and park, and recreational services at a level generally provided to other areas of City, subject to Developer's obligations as set forth herein.

4.6.2.2 **Use of Park and Recreation Impact Fees.** As permitted by applicable Utah law and City Ordinances, and as practical as determined by City, City shall use park impact fees received as a result of the Project to improve public parks and trails located within the Project. Said impact fees shall be collected as provided in City's Ordinances. City acknowledges Developer shall not be required to pay impact fees otherwise imposed on Developer for park System Improvements constructed by Developer as provided in Paragraphs 3.2.2, 3.2.3, and 3.2.4 above.

4.7 **Miscellaneous Utilities.**

4.7.1 **Developer's Obligations.** Developer shall be responsible for providing miscellaneous utility infrastructure to service the Project including, but not necessarily limited to, the following:

4.7.1.1 **Storm Drainage**. Prior to approval of a Final Plat for any Development Phase, Developer shall prepare a Storm Water and Drainage Control Plan, consistent with any storm water master plan as may be approved by City. At a minimum the Storm Water and Drainage Control Plan shall identify (a) needed storm water detention/retention and transportation facilities within such Development Phase and/or off-site drainage basins and/or sub-basins, including sizing based on a one hundred (100) year storm; and (b) when such improvements will be provided.

4.7.1.2 **Gas.** If reasonably required by Questar Gas consistent with similar projects in the area, Developer shall provide design and engineering for natural gas to be provided by Questar Gas.

4.7.1.3 **Other Utility Services.** Except to the extent Developer constructs telecommunications improvements which shall be owned by Developer and/or Owners, Developer shall install telephone and cable television, and telecommunication facilities within the Project as may be required by providers of such services.

4.7.1.4 **Infrastructure Easements.** Subject to reimbursement by City of its Proportionate Share, Developer and Owners shall provide and/ or dedicate to City, Developer or other Owners, as applicable, all reasonable easements, rights-of-way, rights of entry, or other servitudes as may be necessary to install and maintain infrastructure required for the Project (excluding telecommunications improvements which shall be owned by Developer and/or Owners).

4.7.1.5 **Undergrounding of Utility Lines.** Developer acknowledges that all utility lines, conduits, pipes, maintenance or service stations and pump houses shall be installed underground, to the extent that such installation (a) is reasonably practicable, (b) falls within the parameters of City specifications except as otherwise provided for in this Agreement, (c) complies with applicable federal, state and local law, regulation, and ordinance, except as otherwise provided for in this Agreement, and (d) meets industry standards and practice.

4.7.2 **City's Obligations**. Subject to the location of existing or planned improvements, City agrees to dedicate easements and infrastructure on property owned by City as may be necessary to connect, link, construct or accommodate such utility improvements in the Project.

4.8 **Public Trails.** Developer and/or Owners, as applicable, shall construct and dedicate public trails shown on the Preliminary Site Plan. Such trails shall be constructed to the standards reasonably set forth in the Design Guidelines.

4.9 **Maintenance of Common Areas, Trails, Detention Ponds and Road Landscaping.** Developer shall create a homeowners association for the Project, which shall have the responsibility to maintain all common areas, private trails, detention or retention ponds, and road landscaping on collector and arterial roads.

SECTION V. GENERAL PROVISIONS

5.1 **Binding Effect.** The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties hereto and their successors in interest. A successor in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project to which the successor holds title. Such titleholder is not a third party beneficiary of the remainder of this Agreement, a zoning classification, or benefits relating to other portions of the Project to which the successor does not hold title. The obligations of Developer and Owners under this Agreement are enforceable by City, and no Continuing Owner shall or may be a third party beneficiary of such obligations unless specifically provided in this Agreement.

5.2 **Change in Developer.** Developer acknowledges that its qualifications and identity are of particular concern to City, and that it is because of such qualifications and identity that City is entering into this Agreement. Accordingly, Developer agrees for itself and any successor in interest of itself that, prior to the contemplated completion of the terms of this Agreement, Developer shall not convey, assign, or dispose of ("Transfer") the Project to another developer other than Summit Development & Management, LLC, a Utah limited liability company, except as provided in this Paragraph 5.2, unless the proposed replacement developer (through its principals) has financing and skill reasonably satisfactory to City to take over the contemplated development of the Project. Any replacement developer shall provide City with documentation of the expertise and financial capability of its principals. In the event of a Transfer of the Project, or any portion thereof, Developer and the transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such Transfer an agreement satisfactory to City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by City. Alternatively, prior to such Transfer, Developer shall obtain from the transferee a letter (i) acknowledging the existence of this Agreement and (ii) agreeing to be bound thereby. Said letter shall be signed by the transferee, notarized, and delivered to City in connection with the Transfer. In such event, the transferee of the property so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the property so transferred. Notwithstanding the foregoing, a Transfer by Developer of individual subdivision lots within the Project to a builder, individual or other developer shall not be deemed to be a Transfer subject to the above requirement for approval.

5.3 **No Agency, Joint Venture or Partnership.** It is specifically understood and agreed to by and among the Parties that: (i) the Project is a private development; (ii) City, Developer and Owners hereby renounce the existence of any form of agency relationship, joint venture or partnership among City, Developer and/or any Owner; and (iii) nothing contained herein shall be construed as creating any such relationship among City, Developer and/or any Owner.

5.4 **Consent.** In the event this Agreement provides for consent from City or Developer or Owners, such consent shall be deemed to be given thirty (30) days after consent is requested in writing in the event no response to the request is received within that period. All requests for consent shall be made in writing, and in no event shall consent be unreasonably withheld, conditioned, or delayed.

5.5 **Process for Modifying the PDO.**

5.5.1 **Intent.** City acknowledges that the PDO Zone Approval and Preliminary Site Plan is a generalized depiction of the proposed development of the Project with specific land uses permitted as shown on the Preliminary Site Plan. This Agreement contemplates that Developer may modify the Preliminary Site Plan so long as the total density allowed, land uses permitted depicted and described in the Preliminary Site Plan are not changed or increased. Subject to this limitation, and as provided in this paragraph and other related provisions

throughout this Agreement, Developer is specifically entitled to, and City hereby grants to Developer, the right to change and/or adjust the exact location of various development uses and densities under the provisions of this Agreement between or among Development Phases shown on the Preliminary Site Plan, or any amendment approved pursuant to this paragraph. The purpose of this provision is to allow Developer the opportunity to change the configuration of uses shown on the Preliminary Site Plan to reflect future changes in economic factors, development, ownership or other relevant matters so long as such changes do not require the uncompensated relocation of public improvements which have been constructed or which materially and adversely impact other public improvements depicted and planned on the Preliminary Site Plan, as reasonably determined by City. Any proposed modification of the Preliminary Site Plan which increases the total density allowed or adds other land uses or property not depicted or described in the Preliminary Site Plan shall be accomplished only as provided in Section 10-23-7 and other related sections of City's Land Use Ordinance, as amended.

5.5.2 **Submittal of Form.** If Developer or its successors and assigns, desire to modify the Preliminary Site Plan as described in Paragraph 5.51 above, Developer shall submit a Preliminary Site Plan Modification Application together with any required fee to City. Any modifications which, after consultation with City's staff, are deemed to be within the scope of modifications permitted by Paragraph 5.5.1, as reasonably determined by City, may be modified by Developer by providing City with a modified Preliminary Site Plan containing the revision date and supplemental summary referencing the revision date. Said supplemental summary shall briefly detail the changes made to the modified Preliminary Site Plan. Said modifications shall be deemed effective upon receipt by City of a modified Preliminary Site Plan and the supplemental summary.

5.5.3 **City Acceptance of Preliminary Site Plan Modification Application.** City shall have fifteen (15) calendar days after submittal of a Preliminary Site Plan Modification Application to inform Developer whether City considers the Preliminary Site Plan Modification Application to be complete. If City does not notify Developer in writing of any additional information required to complete the application, the Preliminary Site Plan Modification Application shall thereafter be deemed complete. If City determines the Preliminary Site Plan Modification Application is not complete as submitted, City shall notify Developer in writing within the fifteen (15) days specifying in detail any incomplete or missing information. If City does not notify Developer in writing within fifteen (15) days after submittal of the additional information requested, the Preliminary Site Plan Modification Application shall be deemed complete. If City determines that the required additional information for the Preliminary Site Plan Modification Application is not complete as submitted, City shall notify Developer in writing within fifteen (15) days thereafter and shall specifically identify the additional information required to complete the Preliminary Site Plan Modification Application.

5.5.4 **City Review.** City shall have forty five (45) calendar days to review the changes proposed in the Preliminary Site Plan Modification Application after said application is accepted as complete or deemed complete. If City does not object within forty five (45) days, the final completed Preliminary Site Plan Modification Application shall be deemed accepted by

City and shall constitute a modification of the PDO Zone Approval and Preliminary Site Plan, provided that any such modification conforms to applicable law set forth in Paragraph 2.2 of this Agreement.

5.5.5 **City's Objections.** If City objects to the Preliminary Site Plan Modification Application, City shall specify in writing with reasonable detail the reasons City believes that the proposal is not consistent with City's General Plan or other policies, plans and ordinances of general applicability allowed by this Agreement and the vested rights conveyed by this Agreement.

5.5.6 **Mediation.** City and Developer shall meet within fifteen (15) calendar days ("Mediation Deadline"), after receiving an objection asserted by City pursuant to the preceding paragraphs, to mediate and resolve all outstanding issues.

5.5.7 **Arbitration.** If City and Developer are unable to resolve the issues via mediation pursuant to the preceding paragraphs, by the Mediation Deadline, the Parties shall attempt within seven (7) days to appoint a mutually acceptable land use planning expert to arbitrate the terms of the Preliminary Site Plan Modification Application. The Party requesting the arbitration shall pay the fees to initiate the arbitration. If the Parties are unable to agree on a single acceptable arbitrator they shall each, within seven (7) additional days, appoint their own individual land use planning expert. These two land use planning experts shall, between them, choose the single arbitrator within the next seven (7) calendar days. The chosen arbitrator shall within fifteen (15) days, review the positions of the Parties regarding the Preliminary Site Plan Modification Application and issue a decision. The arbitrator shall ask the prevailing Party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, after consideration of such objections, the arbitrator's decision shall be final and binding upon both Parties and shall constitute an approved modification of the PDO Zone Approval and the Preliminary Site Plan. As part of the arbitrator's decision, the arbitrator shall determine the payment of the arbitrator's costs based on to the success or failure of each Party's position in the arbitration.

5.6 **No Obligation to Undertake Development.** Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall impose on Developer or any Owner an obligation or affirmative requirement to develop the Project or any portion of an Owner's property. If Developer undertakes to develop all or any portion of the Project pursuant to the Preliminary Site Plan and this Agreement, Developer and each Owner of the affected property being developed agree to abide by the terms and conditions of this Agreement and the Preliminary Site Plan.

SECTION VI. MISCELLANEOUS

6.1 **Incorporation of Recitals, Introductory Paragraphs, and Exhibits.** The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and all Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

6.2 **Headings.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control the meaning or construction of any of the provisions hereof.

6.3 **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

6.4 **Construction.** This Agreement has been reviewed and revised by legal counsel for Developer, Owners and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

6.5 **Further Assurances, Documents and Acts.** Each Party hereto agrees to cooperate in good faith with the others, and to execute and deliver such further documents and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each Party as allowed by law.

6.6 **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned by Developer or the Owners to any other party, individual or entity (except an approved replacement developer) without assigning the rights as well as the obligations under this Agreement and complying with Paragraph 5.2 above and any other provision herein concerning assignment. The rights of City under this Agreement shall not be assigned, but City is authorized to enter into a contract with a third party to perform obligations of City to operate and maintain any infrastructure improvement so long as such Party adequately and reasonably maintains and operates such facility or improvement.

6.7 **Recording.** No later than ten (10) days after this Agreement has been executed by City, Developer, and Owners it shall be recorded in its entirety, at Developer's expense, in the Official Records of Washington County, Utah.

6.8 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

6.9 **Notices.** Any notice or communication required hereunder between the Parties shall be in writing, and may be given either personally, by overnight courier, by hand delivery or by registered or certified mail, return receipt requested or by facsimile. If given by overnight courier or registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the Party to whom it is addressed. If given by facsimile to the address and number for such Party set forth below (provided, however, that the notice is not effective unless transmission is confirmed and a duplicate copy of the facsimile notice is promptly given by one of the other methods permitted under this paragraph), the notice is deemed to have been given upon receipt by the other Party. Any Party hereto may

at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the address set forth below:

If to Owners: Toquerville Enterprises, LLC
Attn: Vyonne S. Mendenhall
1701 Duneville Street
Las Vegas, Nevada 89146
Fax No.: (702) 878-4874

Summit-Hurricane Development, LLC
Attn: Heath Johnston
1270 W 1130 S, Suite 145
Orem, UT 84058
Fax No.: 801-764-9874

If to Developer: Summit Development & Management, LLC
Attn: Heath Johnston
1270 W 1130 S, Suite 145
Orem, UT 84058
Fax No.: 801-764-9874

If to City: Hurricane City
c/o City Manager
147 North 870 West
Hurricane, Utah 84737
Fax No: (435) 635-2184

With a copy to: Fay Reber, Esq.
260 West St. George Blvd, #205
St. George, Utah 84770City of Hurricane
Fax No: (435) 628-7680

6.10 **No Third Party Beneficiary.** This Agreement is made and entered into for the sole protection and benefit of the Parties and their assigns, subject to the provisions of Paragraph 5.1 above. No other Party shall have any right of action based upon any provision of this Agreement whether as third party beneficiary or otherwise.

6.11 **Counterparts and Exhibits; Entire Agreement.** This Agreement may be executed in multiple counterparts, each of which is deemed to be an original. This Agreement consists of twenty -nine (29) pages, and the eight (8) exhibits identified below, which together constitute the entire understanding and agreement of the Parties to this Agreement.

Exhibit "A" Legal Description of Project
Exhibit "B" Preliminary Site Plan

Exhibit "C" Planning Commission Recommendation of Approval, Application # 2005-71, October 26, 2005
Exhibit "D" City Council Approval, Application # 2005-71, November 3, 2005
Exhibit "E" Secondary Water Plan
Exhibit "F" Development Phasing Table
Exhibit "G" Open Space and Parks Map
Exhibit "H" Road Cross Section Designs

6.12 **Duration.** This Agreement shall continue in force and effect until all public and private infrastructure improvements in the Project have been constructed and accepted as complete by City and certificates of occupancy have been issued for all buildings and/or dwelling units in the Project; provided, however, that this Agreement shall become null and void if (i) initial construction of the infrastructure in a Development Phase does not begin within five (5) years of the date of this Agreement, or (ii) construction and development cease for a period of ten (10) consecutive years during the term of the Agreement. Upon the happening of either of such events, all approvals or development rights and obligations of City shall lapse unless extended for up to ten (10) years by City's City Council. Upon the termination of this Agreement, the Parties shall, at the request of either Party, execute an appropriate recordable instrument confirming that this Agreement has been fully performed, terminated, or lapsed as provided for herein.

6.13 **No Further Exactions.** Subject to the obligations of Developer and Owners hereunder, no further exactions shall be required of Developer or Owners by City. Notwithstanding the foregoing, this paragraph shall not be construed to relieve Developer from any dedications or other requirements required by applicable law or ordinance in effect when this Agreement is executed unless otherwise provided in this Agreement.

6.14 **Good-Standing; Authority.** The Parties warrant and represent as follows:

6.14.1 **Developer.** Developer hereby represents and warrants to City: (a) Developer is registered business entity in good standing with the State of Nevada; (b) the individual executing this Agreement on behalf of Developer is duly authorized and empowered to bind Developer; and (c) this Agreement is valid, binding, and enforceable against Developer in accordance with its terms.

6.14.2 **Owners.** Owners hereby represent and warrant to City: (a) Owners are registered business entities in good standing with the State of Nevada; (b) the individuals executing this Agreement on behalf of Owners are duly authorized and empowered to bind Owners; and (c) this Agreement is valid, binding, and enforceable against Owners in accordance with its terms.

6.14.3 **City.** City hereby represents and warrants to Developer and Owners that: (a) City is a Utah municipal corporation; (b) City has power and authority pursuant to enabling legislation, the Utah Land Use and Development Management Act (U.C.A. § 10-9a-101 et seq), and City's Land Use Ordinances to enter into and be bound by this Agreement; (c) the individual

executing this Agreement on behalf of City is duly authorized and empowered to bind City; and (d) this Agreement is valid, binding, and enforceable against City in accordance with its terms.

6.15 **Acknowledgment.** By their signatures below, each Owner acknowledges that the respective parcels of property owned by such Owner at the time of execution of this Agreement shall be subject to all of the terms and conditions of this Agreement upon execution of this Agreement by all Parties. City, Developer and each Owner further acknowledge that all rights and obligations of Developer herein shall also mean the right and obligation of each Continuing Owner, except those rights and obligations set forth in Paragraph 5.5 and except as specifically provided otherwise herein.

6.16 **Failure to Execute.** The failure of any Party named above to execute this Agreement shall not invalidate the Agreement with respect to any of the remaining Parties or the property owned by such Parties at the time of execution; provided the total density and Preliminary Site Plan shall be modified to remove that parcel and the applicable density and infrastructure.

6.17 **Concurrency.** City desires that the resources, services and facilities needed to support development are available when a Land Use Application is approved. Notwithstanding any provision in this Agreement, City shall not be obligated to approve a Land Use Application if infrastructure and services will not be available in a reasonable time to serve the development contemplated under such application.

6.18 **Indemnification.** Developer, Owners, and City each agree to defend and hold each other and their respective officers, employees and consultants harmless for any and all claims, liability, and damages arising out of or related to any work or activity connected with the Project, including approval of the Project; performed by a Party, its agents or employees except for willful misconduct or negligent acts or omissions of Developer, Owners, or City, as the case may be, or their respective officers, agents, employees or consultants.

6.19 **Default.** Failure by a Party to perform any of the Party's obligations under this Agreement within a thirty (30) day period (the "Cure Period") after written notice thereof from the other Party shall constitute a default ("Default") by such failing Party under this Agreement; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing Party commences its efforts to cure within the initial thirty (30) day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged Default and the manner in which said Default may be satisfactorily cured, if possible. Upon the occurrence of an uncured Default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or may terminate this Agreement. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action.

6.19.1 **Termination.** If City elects to consider terminating this Agreement due to an uncured Default by Developer, then City shall give to Developer written notice of City's

intent to terminate this Agreement and the matter shall be scheduled for consideration and review by City's legislative body at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If City's legislative body determines that a Default has occurred and is continuing, and elects to terminate this Agreement, City shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated. City may thereafter pursue any and all remedies at law or equity.

6.19.2 **No Monetary Damages Relief Against City.** The Parties acknowledge that City would not have entered into this Agreement had it been exposed to monetary damage claims from Developer for any breach thereof except as set forth herein. As such, the Parties agree that specific performance, as may be determined by the court, is the intended remedy for any breach of this Agreement. In the event specific performance is not available as a remedy to Developer for the City's breach hereof, then Developer shall be entitled to pursue any and all remedies at law or equity.

6.20 **Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by City or Developer for the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

6.21 **Enforcement.** The Parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer. City shall be free from any liability arising out of the exercise of its rights under this paragraph.

6.22 **Severability; Invalidity.** If City's approval of the Project is held invalid by a court of competent jurisdiction this Agreement shall be null and void. If any provision of this Agreement shall be held to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction or as a result of any legislative action, such holding or action shall be strictly construed. Furthermore, provided the Parties are still able to retain all of the material benefits of their bargain hereunder, such provision shall be construed, limited or, if necessary, severed, but only to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions of this Agreement shall remain unaffected and this Agreement shall be construed and enforced as if such provision in its original form and content had never comprised a part hereof.

6.23 **Force Majeure.** Developer shall not be liable for any delay or failure in the keeping or performance of its obligations under this Agreement during the time and to the extent

that any such failure is due to causes beyond the control and without the fault or negligence of the Party affected, including, acts of God, acts of the United States Government or the State of Utah, fires, floods, strikes embargoes, wars, terrorist acts or unusually adverse weather conditions. Upon the occurrence of any such cause, Developer shall notify City and shall promptly resume the keeping and performance of the affected obligations after such cause has come to an end.

6.24 **Nondiscrimination.** Neither City nor Developer nor any Owner, nor the agents, employees, or representatives of any of them, shall discriminate against, segregate, persecute, oppress, or harass one another's agents, employees, or representatives; other developers (including any potential replacement developer); contractor or subcontractor; or the agents, employees, or representatives of any of the foregoing; tenants, owners, occupants or residents, whether actual or potential, or any other person or entity.

6.25 **No Waiver of Governmental Immunity.** Nothing in this Agreement is intended to, or shall be deemed, a waiver of City's governmental immunity.

6.26 **Institution of Legal Action.** In addition to any other rights or remedies, any Party may institute legal action to cure, correct, or remedy any Default or breach, to specifically enforce any covenants or agreements set forth in this Agreement, to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fifth District Court, State of Utah, or in the Federal District Court for the District of Utah.

6.27 **Names and Plans**. Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature developed, formulated or prepared by or at the request of Developer in connection with the Project.

6.28 **Annual Review.** City may review progress pursuant to this Agreement at least once every twelve (12) months to determine if Developer has complied with the terms of this Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer and/or Owners to be in Default as provided in Paragraph 6.19 of this Agreement. City's failure to review at least annually Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any Party as a Default under this Agreement.

6.29. **Amendment of Agreement.** This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the Parties. No change shall be made to any provision of this Agreement unless this Agreement is amended pursuant to a vote of the City's City Council taken with the same formality as the vote approving this Agreement.

[SIGNATURE PAGE FOLLOWS]

Exhibit "A"
Painted Hills Collina Tinta
Legal Description of Project

EXHIBIT 'A'

LEGAL DESCRIPTION

Beginning at the Northwest Corner of Section 4, Township 42 South, Range 13 West, Salt Lake Base and Meridian and running thence along the Section line South 89°43'42" East 1,688.58 feet; thence South 00°01'00" West 208.71 feet; thence South 89°43'42" East 208.71 feet; thence North 00°01'00" East 208.71 feet to the North Section of said Section 4; thence along said Section line South 89°43'42" East 65.85 feet; thence South 00°00'05" East 405.02 feet; thence North 89°59'55" East 236.70 feet; thence South 32°44'48" East 802.71 feet; thence South 00°13'28" West 1,718.18 feet; thence South 89°52'53" East 2,392.27 feet; thence South 00°17'42" West 560.86 feet; thence South 89°50'57" East 247.50 feet to the East Section line of said Section 4; thence along said Section line South 00°17'41" West 757.13 feet North 89°50'57" West 1319.08 feet; thence South 00°15'32" West 1318.25 feet to the South Section line of said Section 4; thence along the Section line North 89°49'00" West 1318.50 feet to the South Quarter Corner of said Section 4; thence along the Section line North 89°49'00" West 2,636.30 feet to the Southwest Corner of said Section 4; thence along the Section line North 00°14'51" East 1,316.02 feet; thence North 89°45'29" East 1,321.80 feet; thence North 00°14'51" East 1,317.75 feet; thence North 00°11'38" East 2,800.60 feet to the North Section line of Section 5, Township 42 South, Range 13 West, Salt Lake Base and Meridian and running thence along said Section line South 89°46'40" East 1320.18 feet to the point of beginning.

Contains 24,379,912 Square feet or 559.68 Acres

H-3-2-4-4401

H-3-2-4-4201

H-3-2-4-3201

H-3-2-4-215

H-3-2-5-1101

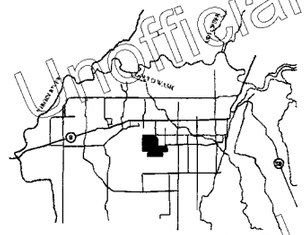
Exhibit "B"
Painted Hills Collina Tinta
Preliminary Site Plan

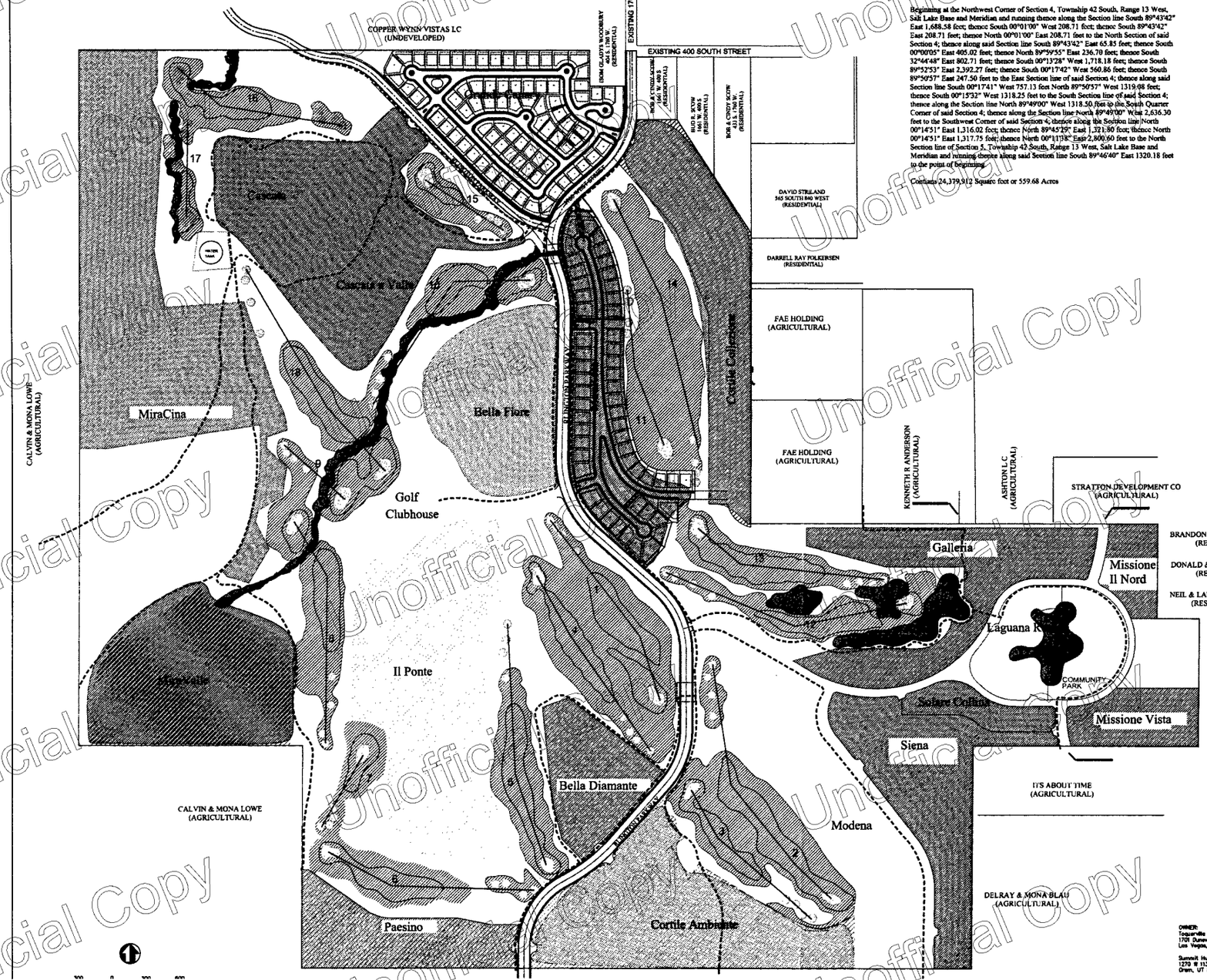
LEGAL DESCRIPTION

Beginning at the Northwest Corner of Section 4, Township 42 South, Range 13 West, Salt Lake Base and Meridian and running thence along the Section line South 89°43'42" East 1,688.58 feet; thence South 00°01'00" West 208.71 feet; thence South 89°43'42" East 208.71 feet; thence North 00°01'00" East 208.71 feet to the North Section of said Section 4; thence along said Section line South 89°43'42" East 65.85 feet; thence South 00°00'05" East 405.02 feet; thence North 89°59'55" East 236.70 feet; thence South 32°44'48" East 802.71 feet; thence South 00°13'28" West 1,718.18 feet; thence South 89°52'53" East 2,392.27 feet; thence South 00°17'42" West 560.86 feet; thence South 89°50'57" East 247.50 feet to the East Section line of said Section 4; thence along said Section line South 00°17'41" West 757.13 feet North 89°50'57" West 1319.08 feet; thence South 00°15'32" West 1318.25 feet to the South Section line of said Section 4; thence along the Section line North 89°49'00" West 1318.50 feet to the South Quarter Corner of said Section 4; thence along the Section line North 89°49'00" West 2,636.30 feet to the Southwest Corner of said Section 4; thence along the Section line North 00°14'51" East 1,316.02 feet; thence North 89°45'35" East 1,321.80 feet; thence North 00°14'51" East 1,317.75 feet; thence North 00°11'38" East 2,800.60 feet to the North Section line of Section 5, Township 42 South, Range 13 West, Salt Lake Base and Meridian and running thence along said Section line South 89°46'40" East 1320.18 feet to the point of beginning.

Contains 24,379,912 Square feet or 559.68 Acres

VICINITY MAP





OWNER:
Toquerville Enterprises, LLC
1701 Dunsville Street
Las Vegas, NV 89146

Summit Hurricane Development, LLC
1270 W 1130 S, Suite 145
Orem, UT 84058

DEVELOPER:
Summit Development & Management, LLC
1270 W 1130 S, Suite 145
Orem, UT 84058

CIVIL ENGINEERS:
PSOMAS
328 South River Road
Suite # 170
St. George, UT 84790
(435) 628-6812

PSOMAS

COLLINA TINTA
PRELIMINARY SITE PLAN
EXHIBIT 'B'

Exhibit "C"
Painted Hills Collina Tinta
Planning Commission Recommendation of Approval
Application # 2005-71
October 26, 2005

Michael Snow came forward and stated he is working with the Wilson's on the Autumn Hills project. He said in reading through this ordinance it will make 2/3 of the Wilson property non-developable. He asked what destination resort means?

Mark Owens of Land Mark testing came forward. He stated he is a geologist and has served on the review committee for Sensitive Lands in St George for a couple of years. He indicated that Gerold Pratt asked him to come to this meeting. He indicated there needed to be some definitions in the ordinance for Bluffs, Ridges. He also said the fault line is not defined at this time only inferred. He indicated he felt that a beginning slope of 15% would be reasonable.

Dean Mc Neill asked Mr. Owens if he would submit his comments in writing?

Kurt Wilson who is also involved with the Autumn Hills project said he is opposed to the ordinance as it is written, because it will severely limit their ability to develop their property on the hill.

Frank Lindhardt asked what the City is trying to accomplish? The developers need to be required to cover up the scaring on the hills so they will want to move off the slopes. Retaining walls and covering up the cuts should be considered our friends. He indicated developers are already required to build to a D-1 zone. He asked what else would be required if they are already building to this requirement. He said the City would need a review committee to administer this ordinance.

Duane Stout came forward to read a letter he and his partners wrote and presented to the Planning Commission concerning this ordinance. The letter requested some changes to the ordinance.

Kathleen McCallister came forward and stated she would not like to see townhomes all along the ridges as on 20th East in Salt Lake City. She said she would like to see us keep the natural beauty that surrounds this area.

Dean McNeill made a motion to close the Public Hearing and open the regular meeting. Mike Jensen seconded the motion. All approved.

Mike Jensen made a motion to continue the Public Hearing for the Sensitive Lands Amendment to the General Plan and the Land Use Ordinance until the City received the maps showing the true 2-foot contours, which will better define what properties will be considered sensitive land. Duane Beecher seconded the motion. All approved.

Gerold Pratt made a motion to close the regular meeting and open the Public Hearing. Vera Hirschi seconded the motion. All approved.

Application #2005-71 Zoning map amendment adding a Planned Development Overlay zone to an existing Single Family Residential 10 (R1-10) base zone. The subject 560-acre property is located south of Painted Hills Unit I, and south of the end of Rlington Parkway (2260 West), on, and east of Sullivan's Knoll, north of a westerly extension of 1300 South, and west of the southerly extension of 1150 West Street. Applicant Toquerville Enterprises.

Bob Britzman came forward and stated this application was continued from the last meeting by the Planning Commission to clarify some items in the Development Agreement. The first being what they consider the Cinder Knoll to be. The applicant was going to present some information on this but it has not yet been seen. The second item is they were going to address the density not allowed by the ordinance. The third item needed was a yield plan, which they have presented in part. Bob stated Staff's summary and recommendation is divided into 3 parts as follows:

A.) PDO rezoning:

Staff believes the Planning Commission can make a reasonable finding that the density proposed complies with the intent of the General Plan, and that the yield plan analysis is adequate. There still may be a conflict with the General Plan policy to leave the Cinder Knoll in an undeveloped state. The applicant should be submitting information to support their position at the meeting. As an option to the Cinder Knoll issue, a condition could be added to the Development Agreement, which specifically precludes development on the Cinder Knoll, with the boundaries of the Cinder Knoll to be determined prior to approving a final site plan / preliminary plan in the area.

B.) Preliminary Site Plan:

The Preliminary Site Plan per Section 10-7-10 D 2b. does not create any vested rights to development. However, its approval as a companion document with the PDO zone does imply some level of acceptance. It is a plan that is not cast in stone and changes will likely occur over time as a result of either applicant or City action. Regardless, in the approval of the Preliminary Site Plan, the Planning Commission should mention that it is contingent on the provisions included in the Development Agreement.

C.) Development Agreement:

The attached "Draft Development Agreement Concepts" exhibit lists those concepts that staff recommends be incorporated into the Development Agreement, in addition to other standard language recommended by the City Attorney. If the Planning Commission agrees with these concepts, your motion should include referral of the Draft Development Agreement Concepts to the City Council for incorporation into the Development Agreement, and signing of the agreement by the applicant before the Council takes final action on the PDO zone.

Mr. Britzman said there are 13 stipulations that will need to be met for the Preliminary Plat approval. He said if any of those 13 stipulations were not met the applicant would need to start over or if there were a substantial change they would need to come back in and start over.

Vyonne Mendenhall came forward and said this is not a new project they are working on. She indicated they have been working on this project since the before the General Plan was formulated with Mr. Jeff Winston. An exhibit as a definition of the Cinder Knoll was handed out, which she said would be included as a part of their development agreement. She said their yield plan specified the density bonuses could be transferred to other property. A traffic study is being done and will be adhered to per the engineers recommendations, which also part of the Development Agreement. She said she could not respond to the 13 items because she did not have that list, but Danny with PSMOS met with Mr. Britzman has that list. He will address each one of those items on the plat but the Preliminary Plats cannot happen until the PDO zoning is in place.

Danny with PSMOS came forward and said they will not be build on top of the knoll. He handed out a copy of a revised yield plan analysis. He asked Mr. Britzman to define "substantial change"?

Jerry Spilsbury came forward and said he has been in the building industry for 40 years and indicate he feels it is reasonable to ask for the ability to move forward with the conditions set.

Duane Beecher made a motion to close the Public Hearing and open the regular meeting. Vera seconded the motion. All approved.

Mac J. Hall came forward and stated they have worked hard to make the PDO work for tonight's meeting.

Bob Petersen said that in the Development Agreement it states they will donate 16 acres for parks. He said he felt there should be a clarification of where those parks will be and the size of each one.

Dean McNeill suggested because of the pending Sensitive Lands Ordinance it puts the Development at a significant risk.

Vyonne Mendenhall said this would not be a problem and it all would be worked out.

Mayor Hirschi called for a point of order because the Public Hearing had been closed and thus the time for public comment was over.

Council John Bramall said he as a City Councilman has not seen anything that would keep him from not being able to approve this subject to approval of the Development Agreement. He said he was not uncomfortable with the PDO because they should be able to meet the requirements for open space and parks, since 240 acres will be golf course and parks.

Gerold Pratt made a motion to recommend approval to the City Council of application # 2005-71, with the recommendation the approval be divided into 3 parts. A.)PDO rezoning: be approved if the City Council finds the exhibit presented on the cinder knoll to be consistent with the General Plan and subject to the approval of a Development Agreement. Vera Hirschi seconded the motion. All approved.

Gerold Pratt made a motion to recommend approval to the City Council for application #2005-71, B.) Preliminary Site Plan contingent on the provisions included in the Development Agreement. Mike Jensen seconded the motion. All approved

Gerold Pratt made a motion to recommend approval to the City Council of application #2005-71, C.) Development Agreement with the staff recommended concepts incorporated into the Development Agreement, and signing of the agreement by the applicant before the Council takes final action on the PDO zone. Mike Jensen seconded the motion. All approved.

Application#2005-73 A preliminary plat in Painted Hills Phase II (Grand Canary Subdivision) for 75 lots on 19.076 acres, located southerly of the extension of 1760 West. Applicant Toquerville Enterprises

Mike Jensen made a motion to recommend approval to the City Council of application # 2005 –73, for Preliminary Plat subject to City Council's approval of the PDO and to the 13 items listed in Staff comments for this application being addressed as well as all other State and City ordinances being met. Bob Petersen seconded the motion. All approved.

Application #2005-74 A preliminary plat in Painted Hills Phase II (Tacora Subdivision) for 43 lots on 15.1 acres located southerly of the extension of 1760 West. Applicant Toquerville Enterprises.

Bob Petersen made a motion to recommend approval to the City Council of application # 2005-74, for Preliminary Plat subject to City Council's approval of the PDO, and the 13 items listed in Staff Comments for this application being addressed as well as all other State and City ordinances being met. Vera Hirschi seconded the motion. All approved.

<u>DISCUSSION of Sensitive Lands Amendment</u>

There was a question asked if we should add a statement to the Sensitive Lands Ordinance that if a superior plan is provided it would be considered?

Exhibit "D"
Painted Hills Collina Tinta
City Council Approval
Application # 2005-71
November 3, 2005

COUNCIL 11-3-05

he objected to several story buildings on the ridges. He asked if the approval tonight is a commitment to the density. Ms. Mendenhall said they would like to get a density credit on this project and transfer the added density to another property. She stated they have not yet completed a full yield analysis.

Where is the drainage going? Mrs. Mendenhall said the development will retain on site according to a hydrology study started by Psomas Engineering. A representative said they will do a 500 year study and retain all but a 10 year storm. He said there will be less water coming down during storms than there is now. They plan to capture storms and put the run off into the detention ponds.

Ethelyn Humphries made a motion at 7:18 p.m. to close the Public Hearing and re-open the regular meeting, seconded by John Bramall. Motion unanimously approved.

Discussion and possible approval of intent to approve a zone change for Painted Hills Phase II from R-1-10 to PDO Overlay

Ethelyn Humphries said it is a nice plan. She said she understands there is a long way to go yet and the developers are working with the City. The development agreement is key and she realizes there are many things that need to be adjusted. She stated she is in favor of the development. Fay Reber said there are many things to go over before the agreement and the plan are finalized.

Bob Britzman said there are basically three different issues with this project. The PDO zone allows the developers to move the overall density around. The plan is the preliminary site plan. This plan is very conceptual. They are waiting for the traffic study to decide on 400 South. Each phase must come back if the PDO is approved. The final site plan will address landscaping issues and design standards. He pointed out that the photographs shown tonight are not part of the application but are an indication of the direction the development is going. The developers are willing to work with staff and attorneys.

Fay Reber recommended that the Council made a motion to the effect that they will adopt the he PDO zoning at such time as the development agreement is approved. The PDO zoning would then be applied when the development agreement is accepted by the Council.

Preliminary site plan does have 14 conditions. The individual subdivision plats must have the PDO zoning to go into effect and that cannot happen until the development agreement is finalized. Every phase will then go through site plan approval.

Fay Reber said the Council could approve the PDO zoning tonight if they feel comfortable enough to do it. He recommended that their motion to approve the zoning should clearly state that the zoning would not take effect until such time as the development agreement is executed and approved.

COUNCIL 11-3-05

Larry LeBaron made a motion to approve the PDO zoning with the understanding the zoning will not take effect until a development agreement is executed and approved by the City Attorney and City Council, seconded by Glenwood Humphries. Motion unanimously approved.

Ethelyn Humphries said she is excited about this approval and this plan. John Bramall stated he would not be in favor of transferring density. Wilbur Jennings warned against density transfers.

Fay Reber said the current proposed development agreement includes language that does allow a transfer of densities to other properties outside this project.

Consideration and possible approval of a preliminary plat for Grand Canary Subdivision located within Painted Hills Phase II - Toquerville Enterprises applicant

Bob Britzman said the Planning Commission recommended approval be given subject to compliance with 14 conditions included in the staff recommendations and subject to approval of the PDO zone change.

Fay Reber said everyone must understand that if an acceptable development agreement is never approved, this approval becomes null and void.

Ethelyn Humphries made a motion to approve the preliminary plat based on the 14 items from the Planning Commission and the legal issues including approval of a development agreement, seconded by Danny Campbell.

Ethelyn Humphries amended the motion to substitute the words "subject to" for the words "based on", seconded by Danny Campbell. Motion unanimously approved.

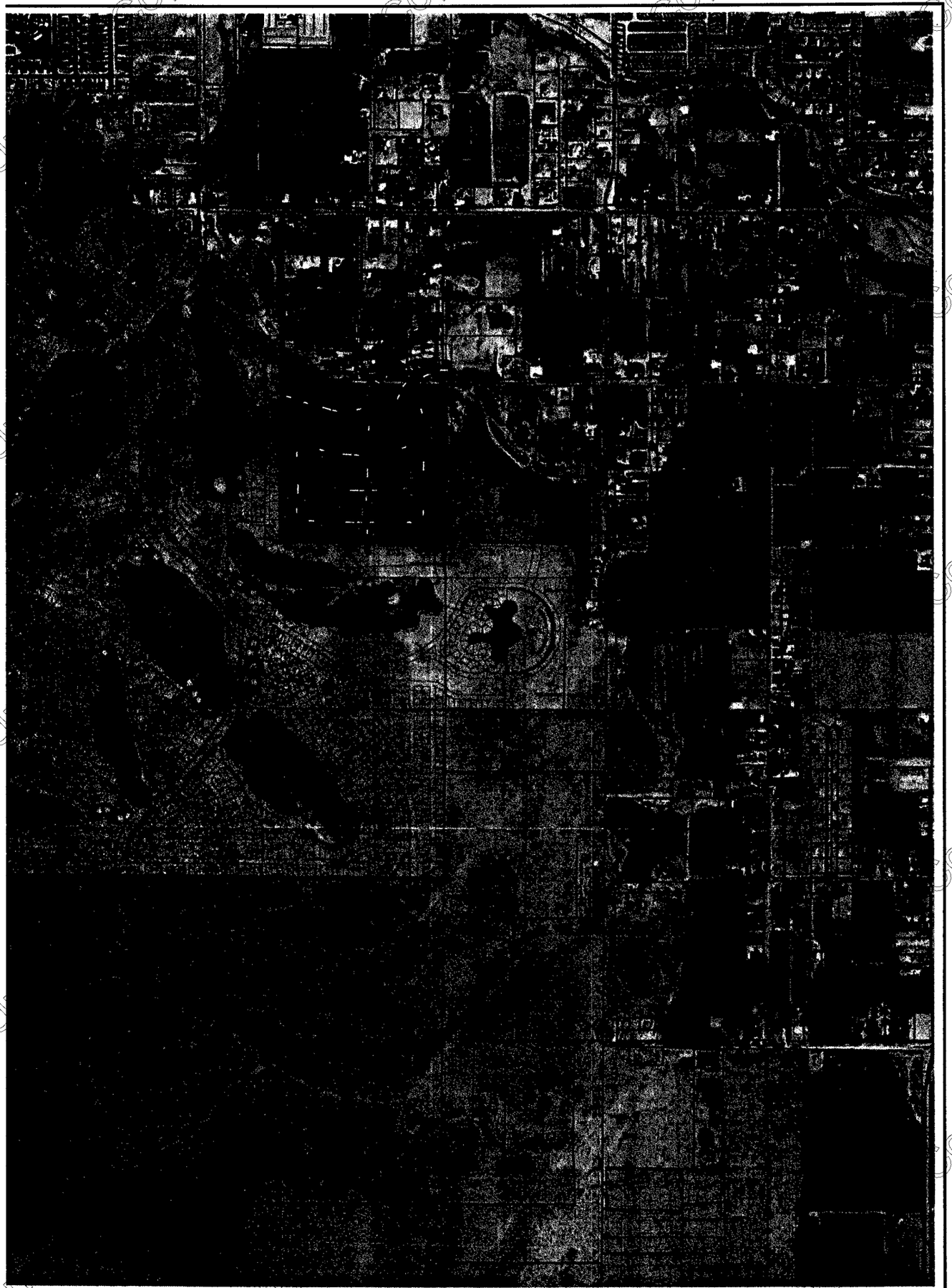
Consideration and possible approval of a preliminary plat for Tacora Subdivision located within Painted Hills Phase II - Toquerville Enterprises applicant

Larry LeBaron made the motion to approve the preliminary plat for Tacora Subdivision subject to the 14 items from the Planning Commission and meeting all legal issues including approval of a development agreement, seconded by John Bramall. Motion unanimously approved.

7:33 p.m. Public Forum. John Klodnicki said the Rotary Club asks for help from other groups within the community to help with their project. This year they organized the parking at the County Fair and received $4,000 in revenue. In keeping with Rotary Club policy, this money will be given back to the community. He then presented a check from the Rotary Club to the Hurricane City Youth City Council for $200. Youth Council advisor Deanne Law accepted the check. Clark Fawcett told her he had received a very complimentary letter from the bike racers of the Huntsman Senior Games concerning the break station at the Hurricane City Park manned by Youth City Council members. She invited everyone to come to their meetings on the first and third Mondays at 4:30 pm.

Consideration and possible approval of a resolution Approving the Amended and Restated Interlocal Agreement creating the Utah Local Governments Trust Clark Fawcett explained

Exhibit "E"
Secondary Water Plan
Painted Hills Collina Tinta



ption: *Total Length 5517*

Exhibit "F"
Development Phasing Table
Painted Hills Collina Tinta

EXHIBIT 'F'

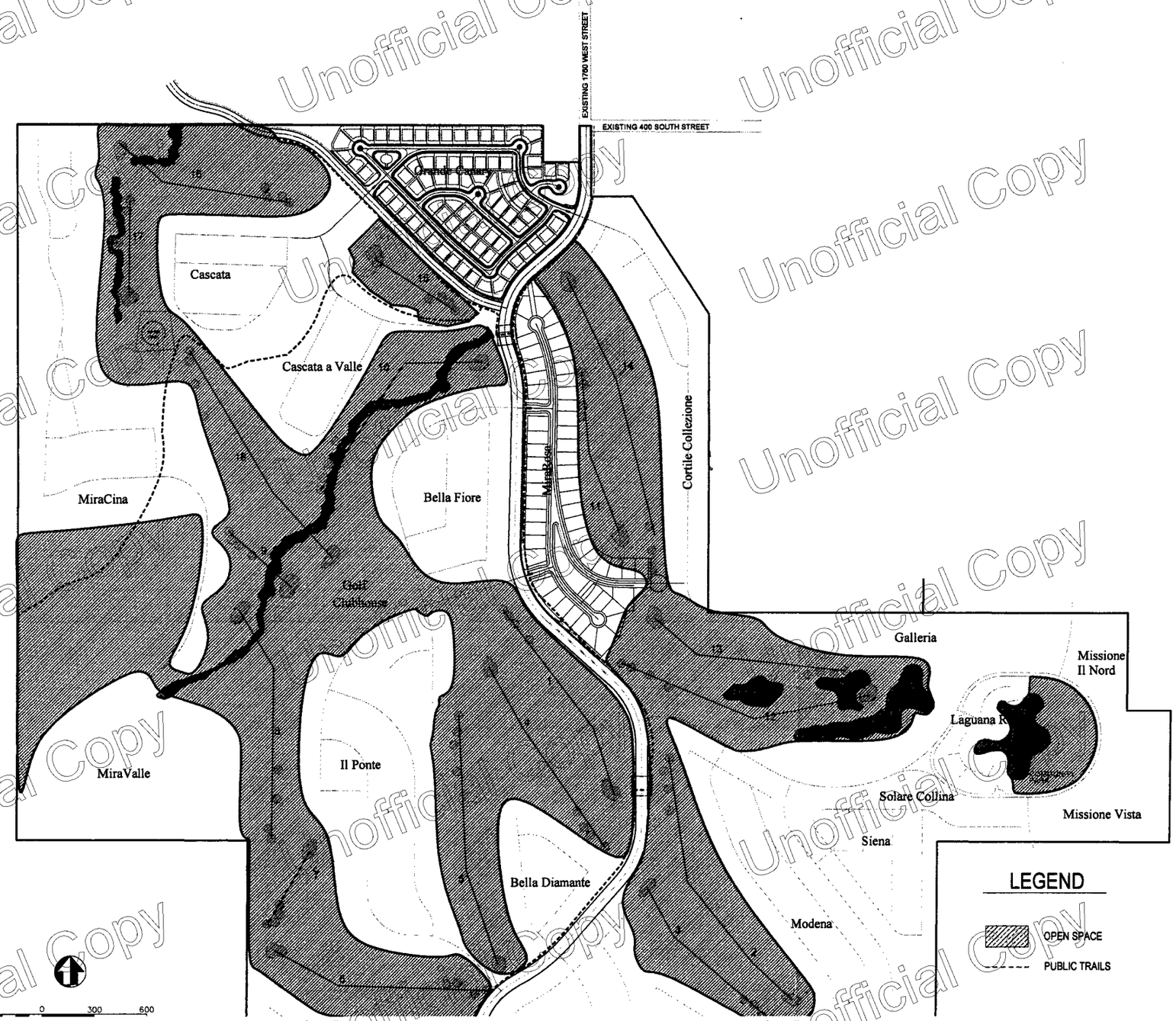
Painted Hills Phasing Table

Total Project Footage/Acreage 24,379,912 / 560 Acres

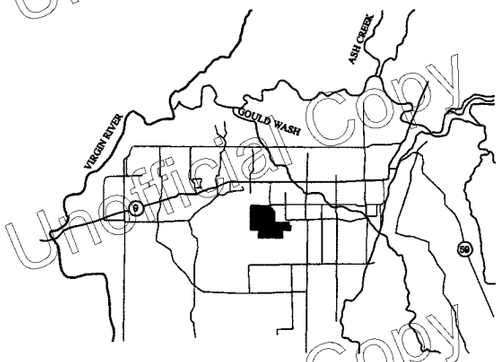
Phase		Sq Footage	Acres	# of Units	Lot Size	Density
Grande Canary	II	828,966	19.0	79	7,500+	3.9
MiraRosa	III	679,211	15.6	54	12,150	2.7
Cortile Corllezione	IV	743,257	17.0	69	7,500+	4.0
Cascata and Cascata Valle	V	1,283,796	29.5	94	9,000+	3.2
MiraCina	VI	1,677,761	38.5	80	10,000+	3.2
Bella Fiore	VII	753,386	17.3	74	7,500+	4.2
Il Ponte	VIII	1,342,679	30.8	125	7,500	4.0
Bella Diamante	IX	389,352	8.9	40	7,500	4.5
Paesino	X	438,536	10.1	37	7,500	3.6
Cortile Ambiente	XI	966,702	22.2	165	3,825	7.4
Modena	XII	847,630	19.5	162	Zero Lot Line	8.4
Siena	XIII	716,208	16.4	128	Zero Lot Line	7.8
Solare Collina	XIV	49,448	3.4	80	Multi Family	23.5
Laguna Reale	XV	209,905	4.8	38	2500+	7.9
MiraValle	XVI	855,203	19.6	100	Multi Family	23.5
Missione Vista	XII	232,839	5.3	96	Multi Family	18.0
Missione Il Nord	XVII	155,910	3.6	48	Multi Family	13.4
Galleria	XIX	667,394	15.3	352	Multi Family	23.0

Exhibit "G"
Open Space and Parks Map
Painted Hills Collina Tinta

Exhibit "H"
Local Residential Road Design
Painted Hills Collina Tinta



VICINITY MAP



SUMMARY

RLINGTON AND 1760 WEST TRAILS AND OPEN SPACE - 3.8 ACRES
SULLIVANS KNOLL - 27.94
PUBLIC PARK AND POND - 6.5 ACRES
TRAILS AND OPEN SPACE - ± 2 ACRES

NOTES

THIS IS AN EXHIBIT OF PUBLIC TRAILS TO BE CONSTRUCTED THROUGH THE DEVELOPMENT, ENTERING AT 1760 AND MEANDERING SOUTHERLY/WESTERLY TO THE TOP OF SULLIVANS KNOLL. THIS IS NOT AN EXACT ALIGNMENT BUT THIS WILL BE COMPLETE BEFORE FINAL PHASE OF DEVELOPMENT.

LEGEND

OPEN SPACE

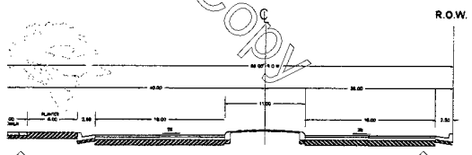
PUBLIC TRAILS

CIVIL ENGINEERS:
PSOMAS
1173 South 250 West
Suite 308
St. George, UT 84770
(435) 628-6912

DEVELOPER:
Summit Development & Management, LLC
1270 W 1130 S, Suite 145
Orem, UT 84058

OWNER:
Toquerville Enterprises, LLC
1701 Duneville Street
Las Vegas, NV 89146

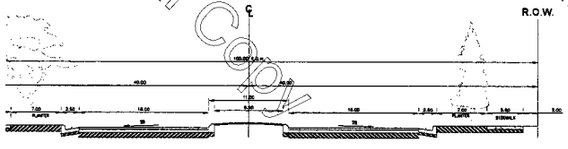
Summit Hurricane Development, LLC
1270 W 1130 S, Suite 145
Orem, UT 84058



66 R.O.W - 1760 WEST

SCALE: NONE

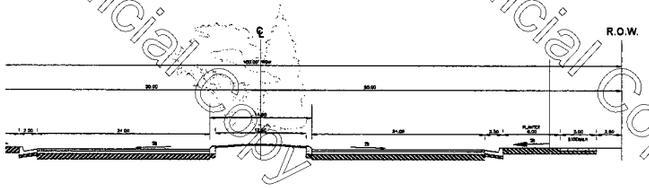
SECTION A



80 R.O.W 1760 West

SCALE: NONE

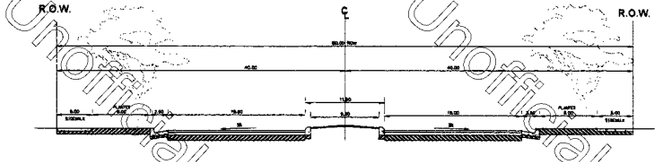
SECTION B



TYPICAL 100 R.O.W. - RLINGTON PARKWAY

SCALE: NONE

SECTION C



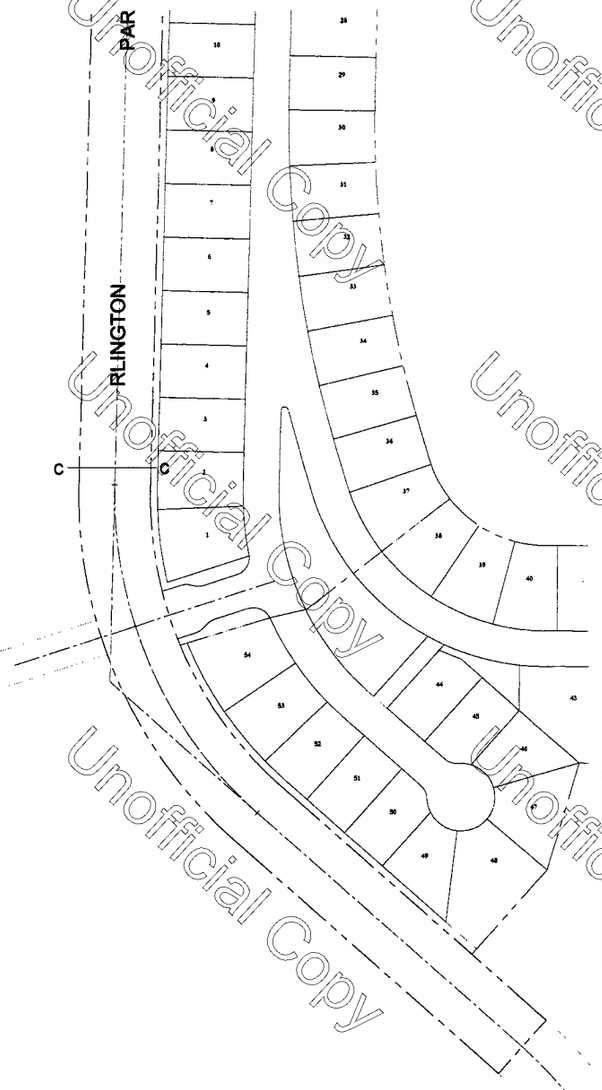
TYPICAL 80 R.O.W. - RLINGTON PARKWAY

SCALE: NONE

SECTION D

PLAN VIEW 1"=100'
SECTIONS 1"=10'
DETAIL 1"=50'

DETAIL A



Rlington Parkway & 1760 West

COLLINTA TINTA
RLINGTON PARKWAY & 1760 WEST
CROSS SECTION EXHIBIT
HURRICANE, UTAH

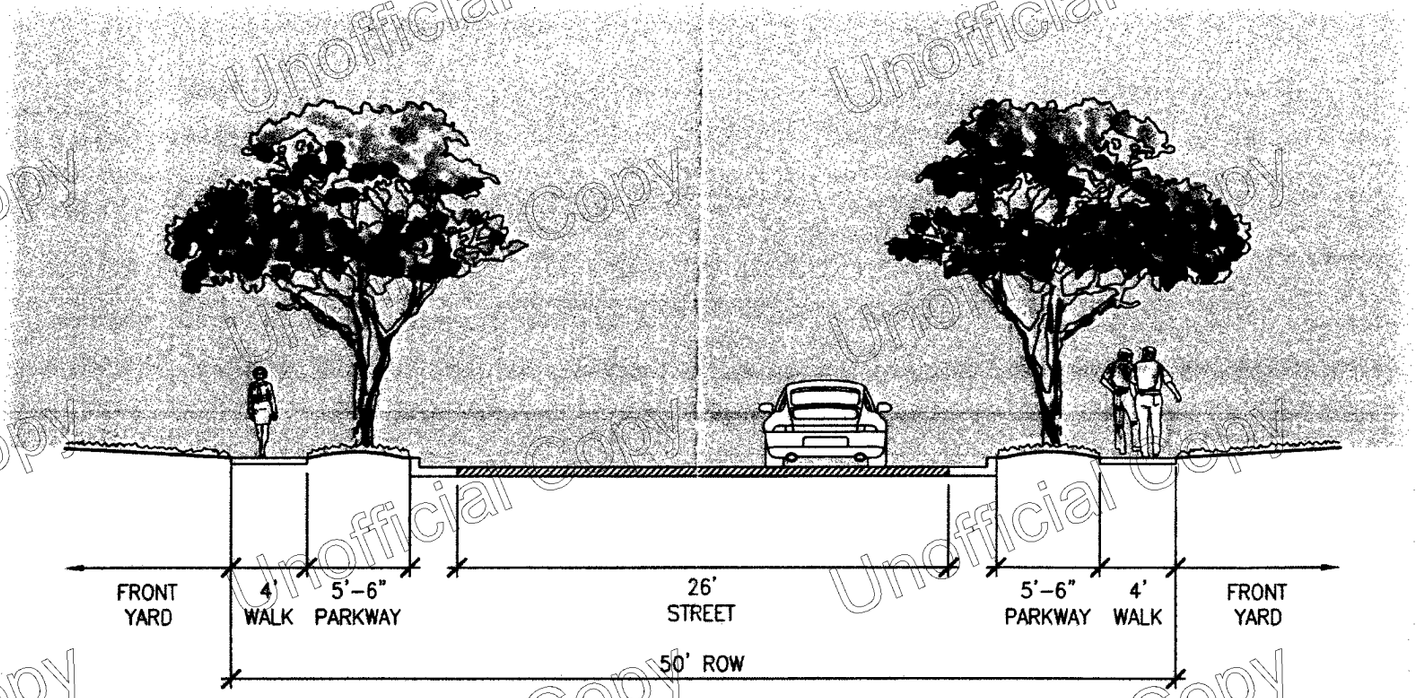
DATE: AU
SCALE:
PROJECT NUMBER: 05

PSOMAS
1173 So. 250 West Suite 108
St. George, Utah 84770
(435) 628-6910 (435) 674-0236 (FAX)

DESIGNED: PSOMAS
DRAFTED: PSOMAS
CHECKED: DRG

SHEET
1
OF
1

Quercus virginiana



scale: 1/8" = 1' - 0"

ollina Tinta

ndscape Street Sections

Residential Street

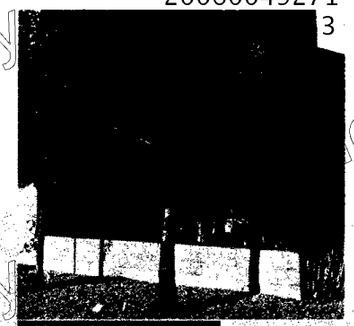

Yucca glauca

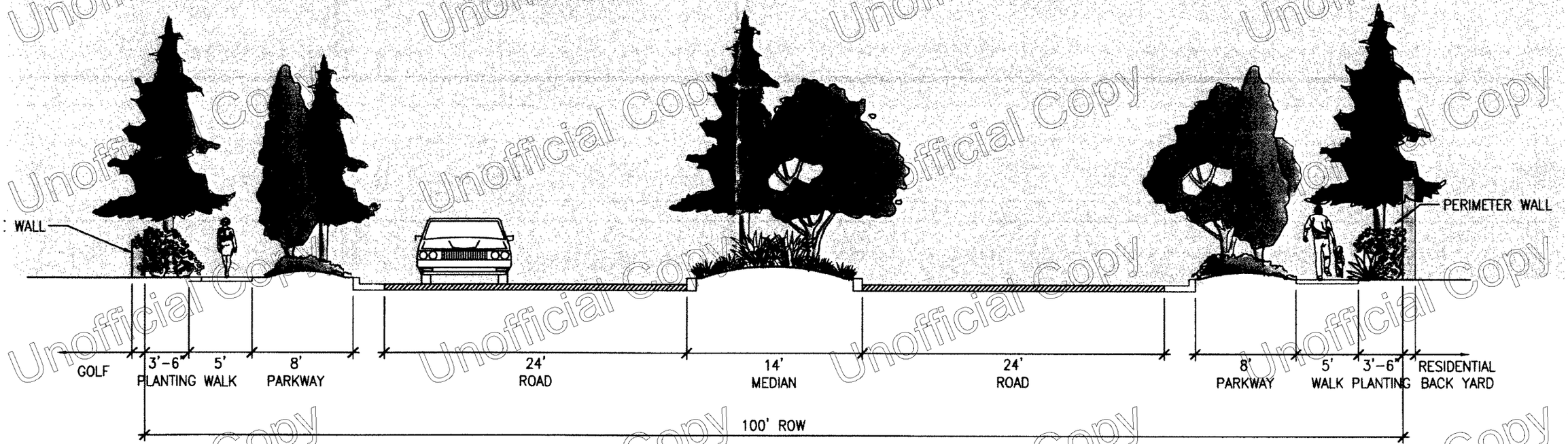

Lagerstoroemia indica


Cupressus glabra 'Silver Smoke'


Thuja 'Green Giant'


Spiraea x bumalda 'Froebelii'


Pinus eldarica



scale: 1/8" = 1' - 0"

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ndscape Street Sections

1760 Road

DEVELOPMENT & MANAGEMENT


Pinus eldarica

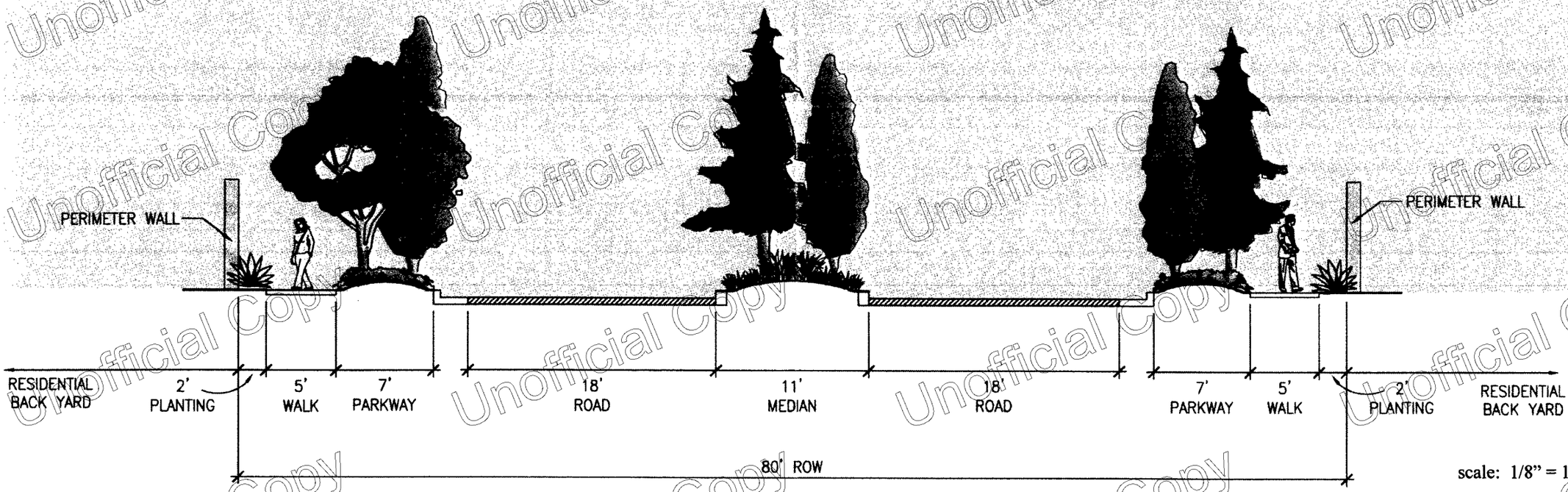

Sedum x 'Brilliant'


Lagerstroemia indica


Cupressus glabra 'Silver Smoke'


Thuja 'Green Giant'


Yucca glauca



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ndscape Street Sections

1760 Road


Yucca glauca

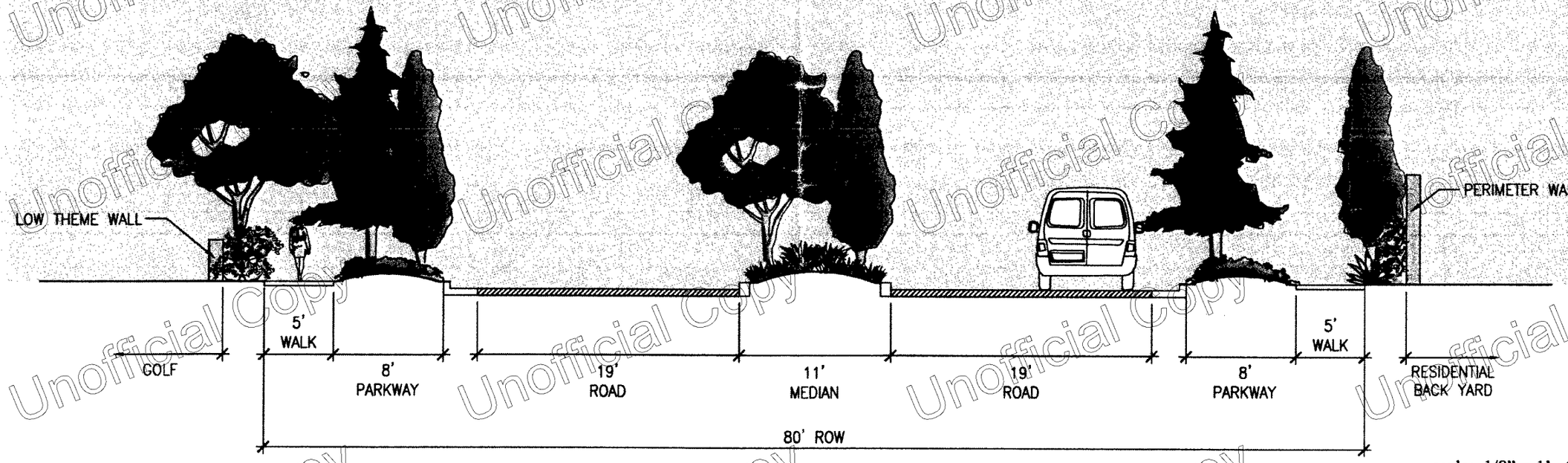

Sedum x 'Brilliant'


Lagerstroemia indica


Cupressus glabra 'Silver Smoke'


Thuja 'Green Giant'


Pinus eldarica



scale: 1/8" = 1' - 0"

ollina Tinta

ndscape Street Sections

Rlington Road