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P-8

**When Recorded Return To:**  
Parsons Behle & Latimer  
One Utah Center  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Attn: Kerry Owens

**DOC # 20070037256**

Agreement Page 1 of 10  
Russell Shirts Washington County Recorder  
07/20/2007 11:29:00 AM Fee \$ 28.00  
By SUMMIT DEVELOPMENT



Space above for County Recorder's Use

### WATER SUPPLY AGREEMENT

THIS WATER SUPPLY AGREEMENT ("Agreement") is made and entered into by and between Hurricane City, a Utah municipal corporation ("City"); Toquerville Enterprises, LLC, a Nevada limited liability company ("Toquerville"); and Summit-Hurricane Development, Inc., a Nevada corporation, its successors and assigns ("Summit-Hurricane") (Toquerville and Summit-Hurricane are referred to herein collectively sometimes as "Owner"), with reference to the following:

#### RECITALS:

A. The City and Summit-Hurricane have entered into that certain Development Agreement for Painted Hills/Collina Tinta ("Development Agreement") dated September 27, 2006, which Development Agreement concerns development of the project commonly referred to as Collina Tinta (the "Project") on approximately 560 acres of unimproved real property owned by Owner located in City of Hurricane, Washington County, State of Utah as more particularly described on Exhibit A attached hereto and made a part hereof (the "Property").

B. The City is willing to supply irrigation water to Owner for the Project for various uses including, without limitation, a golf course, parks, green space, landscaping and related uses.

NOW, THEREFORE, for the mutual promises herein contained and other good and valuable consideration herein described, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

#### AGREEMENT:

1. City Water. During the term of this Agreement, the City agrees to supply to the Project and grants to Summit-Hurricane the sole and exclusive right to put to beneficial use 1,000 acre feet annually of irrigation water ("City Water") for the construction, operation, maintenance, use, replacement and repair of the Project for irrigating the golf course, parks, green space, landscaping and related uses. Neither this paragraph nor anything else in this

Agreement shall be construed to divest title to any water rights owned by the City, which title shall remain in the City.

2. Payment by Summit-Hurricane.

(a) In consideration for supplying the City Water, Summit-Hurricane shall reimburse the City for the charges and fees levied by the Washington County Water Conservancy District ("District") and paid by the City for the previous [six (6) years in the amount of \$650,000]. Summit-Hurricane shall pay the foregoing amount in equal annual installments of \$130,000 over a five (5) year period commencing on January 10, 2008 and continuing thereafter until January 10, 2012.

(b) In further consideration for supplying the City Water, Summit-Hurricane shall reimburse the City for all ongoing charges and fees levied by the District with respect to the City Water together with a ten percent (10) percent administrative fee. The foregoing administrative fee shall be calculated on the amounts payable under this Section 2(b) and not under Section 2(a). Summit-Hurricane shall reimburse the City on an annual basis commencing on January 10, 2008. The City shall deliver to Summit-Hurricane a detailed invoice of the District's fees and charges together with copies of all backup documentation from the District.

(c) All payments shall be considered due upon receipt of invoice, and shall be considered delinquent if not paid within sixty (60) days of date of invoice. All delinquent payments shall bear interest from the delinquent date, until paid, at the rate of ten percent (10%) per annum.

3. Delivery of Water. The parties agree that the City Water shall be delivered to the Project through existing secondary water delivery facilities owned and operated by the District to a connection at 2260 West 600 North. Notwithstanding the foregoing, Summit-Hurricane shall have the right from time to time to reasonably designate alternate means and/or locations for deliver of the City Water.

4. Effective Date and Term. This Agreement shall become effective ("Effective Date") upon the date this Agreement is executed by the parties and shall terminate on the date that is ninety nine (99) years from the Effective Date and annually thereafter unless terminated by Summit-Hurricane upon ninety (90) days notice prior to the expiration of the initial term or any subsequent anniversary date thereof.

5. Assignment. Summit-Hurricane shall have the right to assign, subordinate or pledge this Agreement and its rights hereunder for the purpose of obtaining financing or otherwise funding development of the Project. Summit-Hurricane shall also have the right to assign its rights under this Agreement to a successor in interest, provided, however, that any such assignment shall require written notice to the City and that the successor assume the obligations of Summit-Hurricane hereunder. The City shall also have the right to assign its rights under this Agreement to a successor in interest, provided, however, that any such assignment shall require written notice to Summit-Hurricane and that the successor assume the obligations of the City hereunder.

6. Water Conservancy District. The City represents, warrants, covenants and agrees that: (a) all agreements with the District are in good standing and shall be maintained in good standing during the term of this Agreement; (b) it has the authority to enter into this Agreement, and (c) it has satisfied all legal preconditions to entering into this Agreement. The City agrees to provide to Summit-Hurricane copies of all filings, notices or other communications it delivers or receives in connection with the City Water and the District.

7. Notices. All notices, requests, demands or other communications hereunder shall be in writing and deemed given when delivered personally, when deposited to be sent via a nationally-recognized overnight courier keeping receipts of delivery, service prepaid or billed to sender, or on the day said communication is deposited in the U.S. mail, by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the City: Hurricane City  
147 North 870 West  
Hurricane, Utah 84737  
Attn: City Manager

If to the Toquerville: Toquerville Enterprises, LLC  
1701 Duneville Street  
Las Vegas, NV 89146  
Attn: Yvonne S. Mendenhall

If to the Summit-Hurricane: Summit-Hurricane Development, Inc.  
1270 West 1130 South, Suite 145  
Orem, Utah 84058  
Attn: Heath J. Johnston

or to such other address as the parties may from time to time designate by notice in writing to the other parties. While notice given by courier service or mail shall be effective when deposited with the courier service or in the mails, properly addressed and postage paid or shipping charges paid or billed to the sender, all as aforesaid, the period in which a response to such a notice must be given or taken shall run from the date of receipt by the addressee. Rejection, refusal to accept delivery or inability to deliver due to changed address of which no notice has been given shall be deemed receipt by the addressee.

8. Dispute Resolution. All disputes with respect to either party's performance under this Agreement must be brought in the state of Utah, and further must be brought by arbitration proceedings in accordance with the provisions of sections 78-31a-1, et seq., Utah Code Annotated, and the rules of the American Arbitration Association. Any arbitration concerning this Agreement must be commenced, if at all, within one (1) year after the cause of action has accrued. In the event a dispute is resolved by arbitration the arbitrator (or arbitration panel) may award attorneys' fees and costs to the prevailing party.

9. General Provisions.

(a) Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah.

(b) Entire Agreement. This Agreement shall constitute the entire agreement between the parties and supersedes any prior understanding, representation, or agreement of the parties regarding the subject matter hereof.

(c) Modification of Agreement. Except as provided in Section 5, any modification of this Agreement or additional obligation assumed by any party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

(d) No Waiver. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute waiver of that or any other right, unless expressly provided herein. Either party may, by notice delivered in the manner provided in this Agreement, but shall not be under obligation to, waive any of its rights or any conditions to its obligations hereunder, or any covenant or duty of any other party. No waiver shall affect or alter the remainder of this Agreement, and each and every covenant, duty, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

(e) Persons Bound by Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective employees, representatives, successors, and assigns.

(f) Recording. This Agreement shall be recorded in the official records of the Washington County Recorder's Office concurrently with the execution and delivery hereof.

(g) Authorization. Each individual executing this Agreement does thereby represent and warrant to each other so signing (and each other entity for which another person may be signing) that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth where he or she signs.

(h) Rights and Remedies. The parties shall have all rights and remedies provided under Utah law for a breach or threatened breach of this Agreement, these rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy.

(i) Attorneys' Fees. If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the prevailing party, if any, in such action shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees that may have been incurred,

including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

(j) Necessary Acts and Cooperation. The parties hereby agree to do any act or thing and to execute any and all instruments required by this Agreement and which are necessary and proper to make effective the provisions of this Agreement.

(k) Execution of Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, each party to this Water Supply Agreement has caused it to be executed on the dates indicated below.

**CITY:**

Hurricane City,  
a Utah municipal corporation

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SUMMIT-HURRICANE:**

Summit-Hurricane Development, Inc.,  
a Nevada corporation

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TOQUERVILLE:**

Toquerville Enterprises, LLC,  
a Nevada limited liability company

Date: July 17, 2007

By: *Yvonne S. Mendishall*  
Print Name: Yvonne S. Mendishall  
Title: Manager

STATE OF UTAH )  
 ) :ss.  
COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_ of Hurricane City, a Utah municipal corporation.

\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

STATE OF UTAH )  
 ) :ss.  
COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_ of Summit-Hurricane Development, Inc., a Nevada corporation.

\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_

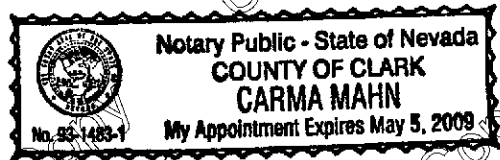
My commission expires: \_\_\_\_\_

STATE OF ~~UTAH~~ Nevada )  
 ) :ss.  
COUNTY OF ~~WASHINGTON~~ Clark )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of July, 2007, by Vyonne Mendenhall the Manager of Toqueville Enterprises, LLC, a Nevada limited liability company.

[Signature]  
Notary Public  
Residing at: Las Vegas, NV

My commission expires: \_\_\_\_\_



IN WITNESS THEREOF, each party to this Water Supply Agreement has caused it to be executed on the dates indicated below.

**CITY:**

Hurricane City,  
a Utah municipal corporation

Date: July 19, 2007

By: *Thomas B. Hirsch*  
Print Name: Thomas B. Hirsch  
Title: Mayor



ADTEST:  
Joni Jovan

Date: July 17 2007

**SUMMIT-HURRICANE:**

Summit-Hurricane Development, Inc.,  
a Nevada corporation

By: *[Signature]*  
Heath Johnston, as President

**TOQUERVILLE:**

Toquerville Enterprises, LLC,  
a Nevada limited liability company

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF UTAH )  
 )  
 ) :ss.  
COUNTY OF WASHINGTON )

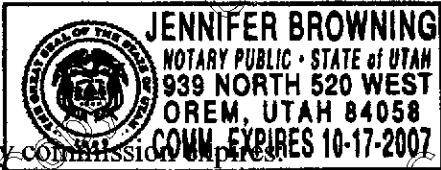
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, \_\_\_\_\_ of Hurricane City, a Utah municipal corporation.

\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_

My commission expires:  
\_\_\_\_\_

STATE OF UTAH )  
 )  
 ) :ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 17 day of July, 2007, by Heath Johnston, the President of Summit-Hurricane Development, Inc., a Nevada corporation.



Jennifer Browning  
Notary Public  
Residing at: Orem, UT

My commission expires:  
10-17-2007

STATE OF \_\_\_\_\_ )  
 )  
 ) :ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, \_\_\_\_\_ of Toquerville Enterprises, LLC, a Nevada limited liability company.

\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_

My commission expires:  
\_\_\_\_\_

**EXHIBIT A  
TO  
WATER SUPPLY AGREEMENT**

The real property referenced in the foregoing instrument is located in Washington County, Utah and is more particularly described as:

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