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7 **BEFORE THE WASHINGTON STATE**  
8 **UTILITIES AND TRANSPORTATION COMMISSION**

9 IN RE:

DOCKET NO. UW-\_\_\_\_\_

10 THE PETITION OF SUMMIT VIEW  
11 WATERWORKS, LLC FOR APPROVAL  
12 OF AFFILIATED INTEREST  
TRANSACTIONS

PETITION FOR APPROVAL OF  
AFFILIATED INTEREST TRANSACTIONS

13  
14 1. Summit View Waterworks, LLC, a Washington limited liability company (SVWW)  
15 hereby petitions the Washington Utilities and Transportation Commission (Commission) for an  
16 order approving certain affiliated interest transactions as described herein.

17 **BASIS FOR PETITION**

18 2. SVWW serves as a purveyor of water to customers in Benton County, Washington  
19 and is subject to the Commission's jurisdiction.

20 3. SVWW has common ownership interests with Candy Mountain Limited Liability  
21 Company (CMLLC) and Tri-City Development Corporation (TCDC) which constitute affiliated  
22 interests as defined in RCW 80.16.010. SVWW has entered into two agreements with these  
23 affiliates, which will not take effect until after some time has elapsed after filing.

24 4. The first agreement is a Purchase and Sale Transfer Agreement among CMLLC,  
25 TCDC and SVWW. This contract involves the purchase of assets by SVWW from CMLLC and

26 **PETITION FOR APPROVAL OF AFFILIATED  
INTEREST TRANSACTIONS - 1**

Law Office of  
Richard A. Finnigan  
2112 Black Lake Blvd SW  
Olympia, WA 98512  
(360) 956-7001

1 TCDC. These are assets that are used in the delivery of water service by SVWW to its customers.  
2 A true and correct copy of the Purchase and Sale Transfer Agreement is attached hereto as Exhibit  
3 1.

4 5. The second agreement is a Wholesale Water Agreement for the delivery of irrigation  
5 water from CMLLC to SVWW. This irrigation water source is needed to allow SVWW to provide  
6 irrigation water to its customers. A true and correct copy of the Wholesale Water Agreement is  
7 attached hereto as Exhibit 2.

8 6. RCW 80.16.020 requires that affiliated interest agreements be filed with the  
9 Commission prior to their effective date. That statute gives the Commission authority to review the  
10 agreements at any time after filing.

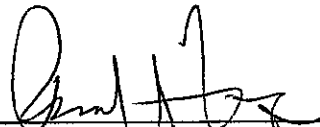
11 7. Under RCW 80.16.040, those contracts may be approved or disapproved as  
12 determined by the Commission in examining whether the agreements are in the public interest.

13 8. Because the two Agreements are central to SVWW's capability to continue to  
14 provide water service to its customers, SVWW is requesting that the Commission review these  
15 affiliated interest transactions rather than simply allow them to be filed and wait for review at some  
16 future date.

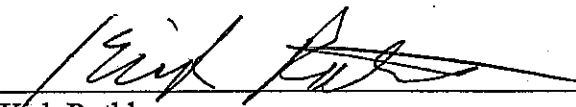
#### 17 REQUEST FOR RELIEF

18 9. Based on the foregoing, SVWW respectfully requests that the Commission conduct a  
19 review of the two affiliated interest agreements that are filed with this Petition and issue an order  
20 approving the same. SVWW understands that any such approval would be subject to further review  
21 and possible disallowance based upon actual experience under the contracts pursuant to the  
22 Commission's authority under RCW 80.16.050. Even with that caveat, it is important that SVWW  
23 obtain an initial review of the affiliated transactions in order to know if SVWW is appropriately  
24 providing service to its customers.

1 Respectfully submitted this 30<sup>th</sup> day of September, 2010.

2  
3   
4 \_\_\_\_\_  
Richard A. Finnigan, WSBA #6443  
Attorney for Summit View Waterworks, LLC

5  
6 I, Kirk Rathbun, am the Managing Member of Summit View Waterworks, LLC and in that  
7 capacity verify that the two contracts attached hereto as Exhibits 1 and 2 are true and correct copies  
8 of the Agreements.

9  
10   
11 \_\_\_\_\_  
Kirk Rathbun

# **EXHIBIT 1**

**PURCHASE AND SALE TRANSFER AGREEMENT**

This Purchase and Sale Transfer Agreement ("Agreement") is made as of the 23 day of September, 2010, by, between, and among Candy Mountain Limited Liability Company (CMLLC), a Washington limited liability company, Tri-City Development Corporation (TCDC), a Washington corporation, and Summit View Waterworks, LLC (SVWW), a Washington limited liability company (occasionally collectively referred to as the "Parties").

**RECITALS**

WHEREAS, CMLLC is the owner of certain water permits, delivery devices, facilities, buildings, real property, easements, fixtures, and other assets and property located in Benton County, Washington associated with the delivery of water.

WHEREAS, TCDC is the owner of certain delivery devices, facilities, buildings, real property, easements, fixtures, and other assets and property located in Benton County, Washington associated with the delivery of water under CMLLC's water permits.

WHEREAS, SVWW is a water company regulated by the Washington Utilities and Transportation Commission (WUTC) that operates and manages the delivery of domestic and irrigation water as a privately owned Group A water system with the Washington State Department of Health (DOH Identification No. 03303-4), and whereas the WUTC desires that SVWW own and control certain rights, permits, assets, and property associated with the domestic water system and associated delivery components.

WHEREAS, CMLCC and TCDC desire to transfer and sell to SVWW and SVWW desires to purchase and accept ownership of certain property, assets, and liabilities of CMLLC and TCDC, respectively.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements of the Parties, and for good and valuable consideration, CMLLC, TCDC, and SVWW hereby agree as follows:

**I. TRANSFER OF RIGHTS, ASSETS, AND PROPERTY**

1.1 Transfer of Water Right Permits. CMLLC agrees to, and hereby does, transfer, convey, assign, and set over to SVWW all of CMLLC's rights and interests in the following State of Washington Department of Ecology groundwater permits:

Groundwater Right Permit No. G4-30279 (Priority Date May 29, 1990)  
Groundwater Right Permit No. G4-30508 (Priority Date Nov. 30, 1990)

Contemporaneous with this agreement, CMLLC shall execute a Washington State Department of Ecology Assignment of Application or Permit to Appropriate or Store Water and Quit Claim Deed, in a form and manner acceptable for recording, assigning and conveying its rights in the above permits. The water right permits and real property affected are set out in Exhibit A.

1.2 Transfer of Certain Assets. On the terms and subject to the conditions of this Agreement, CMLLC and TCDC agree to, and hereby do, transfer to SVWW, and SVWW agrees to, and hereby does, accept from CMLLC and TCDC, the assets, property, and interests described in the attached Schedule 1 to this Agreement.

1.3 CMLLC Transfer of Real Property Interests. CMLLC agrees to convey, transfer, and quitclaim to SVWW the following real property:

a. Tract A of Summit View #1 (Domestic Water Building Tract):

Tract A of recorded survey of the plat of Summit View No. 1, as recorded in volume 14 of plats page 116.

Situate in the County of Benton, State of Washington.

b. Tract A of Summit View #5 (Irrigation Pond Tract):

Tract A of recorded survey of the plat of Summit View - Phase 5, as recorded in volume 15 of plats page 362.

Situate in the County of Benton, State of Washington.

c. Easements: Its rights and interests in those Easements identified and described on the attached Schedule 2. Said easement interests to be conveyed by quitclaim deed.

1.4 TCDC Transfer of Real Property Interests. TCDC agrees to transfer to SVWW the following real property:

a. BMID I-82 Undercrossing Use Agreement. TCDC agrees to transfer and assign its interest in the undercrossing easement and/or use agreement, including all after acquired interest in the same, related to the existing Badger Mountain Irrigation District I-82 undercrossing used to provide domestic irrigation water to Badger View Estates.

b. Other Easements: Its rights and interests in those Easements identified and described on the attached Schedule 2. Said easement interests to be conveyed by quitclaim deed.

1.5 Consideration/Payment.

a. Purchase Price of CMLLC Assets and Property. SVWW agrees to pay CMLLC Four Hundred Ninety-Nine Thousand One Hundred Fifteen Dollars (\$499,115.00), which payment obligation shall be in the form of a promissory note, delivered at Closing. SVWW shall execute and deliver at Closing a Promissory Note ("Note") in the principal amount of \$499,115.00, to CMLLC, in the form attached hereto as Exhibit B.

b. Purchase Price of TCDC Assets and Property. SVWW agrees to pay TCDC Five Hundred Seventy-Four One Hundred Sixty-Nine Dollars (\$574,169.00), which payment obligation shall be in the form of a promissory note, delivered at Closing. SVWW shall execute and deliver at Closing a Promissory Note ("Note") in the principal amount of \$574,169.00, to TCDC, in the form attached hereto as Exhibit C.

1.6 Prorations. All expenses related to the transferred Domestic Water Building Tract and the Irrigation Pond Tract, including but not limited to, real property taxes, assessments, water, sewer, and utility charges, and any other expenses normal to the ordinary operation and maintenance of the tracts, shall be prorated as of the Closing Date.

## II. WARRANTIES, COVENANTS, AND INDEMNIFICATION

2.1 As-Is. Except as otherwise expressly provided in this agreement, CMLLC and TCDC make no covenants, representations, or warranties with respect to the condition of the real or personal property, or any of the buildings, structures, improvements, or apparatus, located on or under the real property. The real property and personal property is conveyed "AS-IS".

2.2 Assumption of Delivery Costs. As of the Effective Date of this Agreement, SVWW agrees to assume the costs incurred in the delivery of domestic water within the SVWW, Washington State Department of Health designated Service Area, as presently existing or hereafter amended.

2.3 Assumption of Liabilities. In addition to the consideration provided herein, SVWW agrees to, and hereby does, assume all obligations related to the domestic water system, including all contractual liabilities and obligations, and duties, now existing or arising in the future. As part of the above assumption, SVWW agrees to, and hereby does, assume all duties and liabilities associated with or related to the domestic water system delivery infrastructure used in the delivery of domestic water within the SVWW, Washington State Department of Health assigned Service Area. Further, without limitation as to the general assumption above, SVWW expressly agrees to assume the maintenance of irrigation pond landscaping.

2.4 Indemnification. As of the Effective Date of this Agreement, SVWW agrees to indemnify, defend, and hold CMLLC and TCDC, and their respective members,

directors, officers, employees and agents, harmless from any and all claims, liability, or damages, which arise out of or relate to the assets, property, and interests transferred by this Agreement and which arise following the Effective Date of this Agreement, including but expressly not limited to, any claims, actions, or suits for breach of contract, property damage or personal injury or death, environmental matters, regulatory compliance, and/or any and all liability rising from the process of delivering and/or duty to deliver water. Furthermore, SVWW agrees to indemnify, defend, and hold CMLLC and TCDC, and their respective members, directors, officers, employees and agents, harmless from any and all claims or demands based on any alleged duty to serve or provide water under the permits and associated delivery system transferred herein, whether based in contract, law, or equity.

2.5 No Encumbrances. CMLLC and TCDC hereby confirm and warrant that each of them is lawfully seized of the property transferred herein, and that there are no present mortgages or lienhold interests affecting said real property.

2.6 Further Assurances or Necessary Action. CMLLC, TCDC, and SVWW, respectively, agree they shall take all such action as may be necessary or appropriate in order to effectuate the transactions contemplated hereby. On or after the Effective Date, if any further action is necessary or desirable to carry out the purposes of this Agreement and to vest SVWW with full title to all property, assets, or interests contemplated herein, the Parties agree to act promptly and in good faith to take all such necessary or appropriate action.

2.7 Survival of Terms. The promises, agreements, indemnities, representations, covenants, warranties set forth in or made in writing pursuant to this Agreement or in any document or instrument delivered hereunder shall remain in full force and effect and shall survive the Effective Date of this Agreement and any transfers of title.

### III. RESERVATION OF RIGHTS

3.1 CMLLC Right of Access. CMLLC hereby expressly reserves a continuing non-exclusive right of access in, on, over, under, and above the real property tracts and easements being granted to SVWW to the extent such real property tracts and easements are currently being used to service CMLLC's separate non-domestic irrigation service or CMLLC's development efforts.

3.2 TCDC Right of Access. TCDC hereby expressly reserves a continuing non-exclusive right of access in, on, over, under, and above the easements being granted to SVWW.

3.3 CMLLC Irrigation Infrastructure and Components. CMLLC expressly reserves and does not intend to lease, transfer, or agree to transfer any irrigation delivery system components or piping not located on or within Summit View Phases No. 1 through No. 6. Furthermore, CMLLC expressly reserves and does not intend to lease,



transfer, or agree to transfer those large irrigation mains, piping, and components located in Summit View Phase No. 5 that are current present within the utility easements located between lots 25 and 26 and lots 40 and 41, the existing roadway, and elsewhere. Further, CMLLC hereby expressly reserves a right of access in, on, over, under, and above the real property tracts and easements to the extent such real property tracts and easements are currently being used to service CMLLC's separate non-domestic irrigation service, including, but not limited to, an easement in, on, over, under, and above the property-described utility easements located in Summit View Phase No. 5 where irrigation delivery system components are currently located. Nothing in this Agreement shall be construed to transfer to SVWW any rights or interests in irrigation components not serving domestic irrigation to Summit View Phases Nos. 1 through 6.

3.4 CMLLC Water Rights/Wells. Except as specifically transferred by this Agreement, CMLLC does not intend by this Agreement to transfer any rights or interests in CMLLC's groundwater rights, groundwater right permits, or groundwater right applications, the rights to which are expressly reserved in and to CMLLC. Without limiting the generality of the foregoing, CMLLC expressly reserves and does not intend to lease, transfer, or agree to transfer its interests in the following groundwater right permits:

Groundwater Right Permit No. G4-30505  
Groundwater Right Permit No. G4-30506  
Groundwater Right Permit No. G4-30507  
Groundwater Right Permit No. G4-30509  
Groundwater Right Permit No. G4-30510  
Groundwater Right Permit No. G4-30511

CMLLC expressly reserves its interests in the above rights and permits, together with its interests in any well associated therewith.

#### IV. GENERAL TERMS AND CONDITIONS

4.1 Authority to Enter into Agreement. The Parties signing this Agreement have authority to enter into this Agreement.

4.2 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

4.3 Severability. If any term, provision, or covenant of this Agreement is held by any governmental entity or court to be invalid, void, or unenforceable, the remainder of the terms, provisions, and covenants shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

4.4 Remedies. SVWW shall be entitled to specific performance of this Agreement as its sole and exclusive remedy, exclusive of attorneys' fees and costs if allowable, in the event of any default hereunder. SVWW shall not be entitled to

consequential, incidental, or other damages in the event of any breach by either CMLLC or TCDC.

4.5 Non-Waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants or agreements contained herein shall not be construed to be a waiver or relinquishment of such rights, or any other covenants or agreements, and the same shall remain in full force and effect.

4.6 Binding Effect. This Agreement shall be binding upon the Parties hereto and shall bind and inure to the benefit of their respective heirs, representatives, successors, and assigns.

4.7 Effective Date. The Effective Date of this Agreement shall be the date of mutual execution or, if approval of this Agreement is requested by one or more agencies, then the Effective Date is the date the last of these approvals is obtained.

4.8 Recording. A memorandum reflecting this Agreement shall be recorded with the Benton County Auditor's/Recorder's Office.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CANDY MOUNTAIN LIMITED  
LIABILITY COMPANY

TRI-CITY DEVELOPMENT  
CORPORATION

By: [Signature]  
Name: Sirk Rathbun  
Title: Managing Member

By: [Signature]  
Name: Sirk Rathbun  
Title: Vice-President

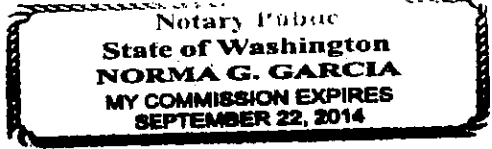
SUMMIT VIEW WATERWORKS, LLC

By: [Signature]  
Name: Sirk Rathbun  
Title: Managing Member

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Benton )

I certify that I know or have satisfactory evidence that Kirk Rathbun is the person who appeared before me, and said person acknowledged that s/he signed this instrument on oath, stated that s/he was authorized to execute the instrument, and acknowledged it as the Managing Member of **Candy Mountain Limited Liability Company**, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: September 23<sup>rd</sup>, 2010.



(Seal or Stamp)

*Norma G. Garcia*  
(Signature of Notary)

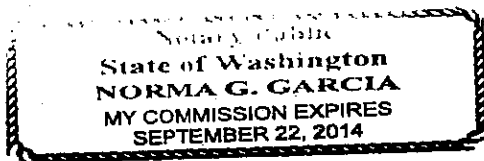
Norma G. Garcia  
(Print name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at Kennewick  
My appointment expires: 9-22-2014

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Benton )

I certify that I know or have satisfactory evidence that Kirk Rathbun is the person who appeared before me, and said person acknowledged that s/he signed this instrument on oath, stated that s/he was authorized to execute the instrument, and acknowledged it as the Vice President of Tri-City Development Corporation, a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: Sept 23rd, 2010.



(Seal or Stamp)

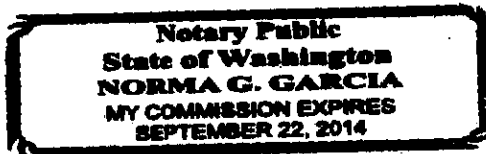
Norma G. Garcia  
(Signature of Notary)  
Norma G. Garcia  
(Print name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at Kennewick  
My appointment expires: 9-22-2014

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Benton )

I certify that I know or have satisfactory evidence that Kirk Rathbun is the person who appeared before me, and said person acknowledged that s/he signed this instrument on oath, stated that s/he was authorized to execute the instrument, and acknowledged it as the Managing Member of Summit View Waterworks, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: Sept 23rd, 2010.



(Seal or Stamp)

Norma G. Garcia  
(Signature of Notary)  
Norma G. Garcia  
(Print name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at Kennewick  
My appointment expires: 9-22-2014

## Schedule 1

### Assets

1. **Assets Associated with CMLLC Domestic Permits, Well, and Delivery System.**

CMLLC hereby transfers the following:

- a. Water Right Permit No. G4-30508.
- b. Water Right Permit No. G4-30279.
- c. All delivery system components, including, but not limited to the well, well and water distribution equipment and apparatus, valves, delivery piping, filtration equipment and apparatus, and all other fixtures associated with Water Right Permit Nos. G4-30279 and G4-30508.
- d. The buildings, reservoir, fencing, equipment, permanent and temporary fixtures, landscaping, and other personal and real property located on or associated with the Tract A of Summit View Phase No. 1, said tract being legally described as Tract A of recorded survey of plat of Summit View #1 as recorded in volume 14 of plats page 116.
- e. All of the domestic delivery system piping and associated water distribution equipment and apparatus situate on lands located in underground easements in Summit View Phase No. 1.
- f. All of the domestic delivery system piping and associated water distribution equipment and apparatus situate on lands located in underground easements in Summit View Phase No. 2.
- g. All of the domestic delivery system piping and associated water distribution equipment and apparatus situate on lands located in underground easements in Summit View Phases Nos. 3 and 4.

2. **Assets Associated with CMLLC Irrigation Pond and Delivery System**

CMLLC hereby transfers the following:

- a. The irrigation pond, building, housing, fencing, equipment, permanent and temporary fixtures, landscaping, and other personal and real property located on or associated with the Tract A of Summit View Phase No. 5, said tract being legally described as Tract A of recorded survey of the plat of Summit View #5 as recorded in volume 15 of plats page 362.

b. All of the domestic irrigation delivery system piping and associated water distribution equipment and apparatus situate on lands located in underground easements in Summit View Phase No. 1.

c. All of the domestic irrigation delivery system piping and associated water distribution equipment and apparatus situate on lands located in underground easements in Summit View Phase No. 2.

d. All of the domestic irrigation delivery system piping and associated water distribution equipment and apparatus situate on lands located in underground easements in Summit View Phase Nos. 3 & 4.

**3. Assets Associated with Domestic Irrigation Delivery System (Phases 5 & 6)**

TCDC hereby transfers the following:

a. All of the domestic delivery system piping and associated water distribution equipment and apparatus situate on lands located in underground easements in Summit View Phase No. 5 and Summit View Phase No. 6, together with any ingress, egress, access, or utility easements associated therewith.

b. All of the domestic irrigation delivery system piping and associated water distribution equipment and apparatus situate on lands located in underground easements in Summit View Phase No. 5 and Summit View Phase No. 6, together with any ingress, egress, access, or utility easements associated therewith.

**4. Assets Associated with Delivery System for Badger View Estates**

TCDC hereby transfers the following:

a. All of its interest in the easement/use agreement with Badger View Irrigation District for I-82 under crossing to serve and provide water to the Badger View Estates, including all after acquired interest.

b. All of its interest in the domestic irrigation delivery system piping and associated water distribution equipment and apparatus situate on lands located in underground easements in Badger View Estates.

**5. Assets Associated with the Hickman/Sunrise Canyon Estates System**

CMLLC hereby transfers the following:

a. All of its rights in the domestic irrigation delivery system piping and associated water distribution equipment and apparatus situate on lands located in underground easements in or associated with the short plats of "Sunrise Canyon Estates," Short Plat Nos. 3004 and 3007, recorded under Benton County Auditor's File Numbers

2007-016412 and 2007-017392; *Provided that* CMLLC does not transfer the main irrigation line crossing CMLLC's property not being transferred by this Agreement, nor the irrigation means through which the above water is delivered.

Schedule 2

**Easements**

1. CMLLC to SVWW

a. Easements for Summit View Phases Nos. 1 through 4

Summit View No. 1

10' Public Utility Easement (as set forth in Plat of Summit View No. 1)

5' Irrigation Easement (as set forth in Plat of Summit View No. 1)

Well easement, including 100' sanitary setback

Any and all other utility easements disclosed on the plat

Summit View No. 2

10' Utility Easement (as set forth in Plat of Summit View No. 2)

10' Utility and Waterline Easement (as set forth in Plat of Summit View

No. 2)

Any and all other utility easements disclosed on the plat

Summit View Nos. 3 & 4

10' Utility Easement (as set forth in Plat of Summit View Nos. 3 & 4)

Any and all other utility easements disclosed on the plat

b. Sunrise Canyon Estates Easements

10' Utility Easement (as set forth in Short Plat No. 3004)

10' Utility Easement (as set forth in Short Plat No. 3007)

c. Badger View Estates Easements

Easement for utility purposes under 2007-004296

Easement for utility purposes under 2007-000265

[Easements for utility purposes as disclosed on face of plat?]

[Irrigation easement as disclosed on face of plat?]

2. CMLLC and TCDC to SVWW

a. Easements for Summit View Phases Nos. 5 and 6.

Summit View No. 5

10' Utility Easement (as set forth in Plat of Summit View No. 5)

10' Irrigation Easement (as set forth in Plat of Summit View No. 5)

Any and all other utility easements disclosed on the plat

Summit View No. 6



10' Utility Easement (as set forth in Plat of Summit View No. 6)  
5' Irrigation Easement (as set forth in Plat of Summit View No. 6)  
Any and all other utility easements disclosed on the plat

b. BMD Use Agreement [Not yet consummated]

**EXHIBIT A**

**LEGAL DESCRIPTIONS**

**Summit View No. 1:**

Plat of Summit View No. 1, as recorded in volume 14 of plats, page 116, records of Benton County, Washington.

Situate in County of Benton, State of Washington.

PTN SW ¼ Sec. 9, T. 8 N., R. 28 E W.M.

**Summit View No. 2:**

Plat of Summit View No. 2, as recorded in volume 15 of plats, page 211, records of Benton County, Washington.

Situate in County of Benton, State of Washington.

PTN SW ¼ Sec. 9, T. 8 N., R. 28 E W.M.

**Summit View Nos. 3 & 4:**

Plat of Summit View - Phases 3 & 4, as recorded in volume 15 of plats, page 299, records of Benton County, Washington.

Situate in County of Benton, State of Washington.

PTN S ½ Sec. 9, T. 8 N., R. 28 E W.M.

**Summit View Phase No. 5:**

Plat of Summit View - Phase 5, as recorded in volume 15 of plats, page 362, records of Benton County, Washington.

Situate in County of Benton, State of Washington.

PTN W ½ Sec. 9, T. 8 N., R. 28 E W.M.

**Summit View Phase No. 6:**

Plat of Summit View - Phase 6, as recorded in volume 15 of plats, page 372, records of Benton County, Washington.

Situate in County of Benton, State of Washington.

PTN Sec. 9, T. 8 N., R. 28 E. W.M.

**Badger View Estates:**

Plat of Badger View Estates, as recorded in volume 15 of plats, page 329, records of Benton County, Washington.

Situate in County of Benton, State of Washington.

PTN N ½ Sec. 9, T. 8 N., R. 28 E. W.M.

**Short Plat No. 3004 (a/k/a Sunrise Canyon Estates):**

Short Plat No. 3004, as recorded in volume 1 of short plats, page 3004, records of Benton County, Washington.

Situate in County of Benton, State of Washington.

PTN SW 1/4, Sec. 5, T. 8 N, R. 28 E. W.M.

**Short Plat No 3007 (a/k/a Sunrise Canyon Estates):**

Short Plat No. 3007, as recorded in volume 1 of short plats, page 3007, records of Benton County, Washington.

Situate in County of Benton, State of Washington.

PTN SW 1/4, Sec. 5, T. 8 N, R. 28 E. W.M.

**Groundwater Right Permit No. G4-30279:**

State of Washington Department of Ecology Groundwater Right Permit No. G4-30279.

PTN Sec. 9, T. 8 N., 28 E. W.M., except Interstate 82.

**Groundwater Right Permit No. G4-30508:**

State of Washington Department of Ecology Groundwater Right Permit No. G4-30508.

PTN Sec. 9, T. 8 N., 28 E.W.M., except Interstate 82.

**Section 8 Easement**

Easement with Premiere Property of Delaware for an Easement across Section 8 T8N R28E through the orchard.

Easement with Premiere Property of Delaware for an Easement across Section 8 and Section 17 T8N R28E, along east section line.

**EXHIBIT B**

**PROMISSORY NOTE**

\$449,115.00

Olympia, Washington  
\_\_\_\_\_, 2010

**FOR VALUE RECEIVED**, the undersigned promises to pay to the order of Candy Mountain Limited Liability Company, the principal sum of Four Hundred Forty-Nine Thousand One Hundred Fifteen and 00/100 Dollars (\$449,115.00) in lawful money of the United States of America with interest thereon in like lawful money at the rate of six percent (6.0%) per annum with monthly payments of principal and interest of Two Thousand Six Hundred Ninety-Two and 67/100 Dollars (\$2,692.67), with the first payment due on or before the tenth (10th) day of \_\_\_\_\_, 2010, and shall continue at that rate until paid in full.

Any amounts not paid by the twentieth (20th) day of the month shall be subject to a late payment fee of one and one-half percent (1 1/2%) of the amount due.

The undersigned, at its option, may prepay the principal balance plus accrued interest at any time without penalty.

If an installment of principal and interest is not paid within thirty (30) days of the date when due, at the option of the holder of this Note, an action may be instituted to recover the full amount of the principal and interest owed, or any part thereof, and in such case, the prevailing party, in addition to the costs provided by statute, shall be entitled to a reasonable attorney's fee incurred as a result of the action. If an action is so instituted, all principal amounts due shall bear interest at the rate of twelve percent (12%) per annum from the date when the amount was not paid when due. Any judgment rendered under this Promissory Note shall bear interest at the rate of twelve percent (12%) per annum.

The undersigned waives presentment for payment, protest and notice of dishonor of this note.

Pay to:  
Candy Mountain Limited Liability  
Company

SUMMIT VIEW WATERWORKS, LLC

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

Its: \_\_\_\_\_

EXHIBIT C

PROMISSORY NOTE

\$574,169.00

Olympia, Washington  
\_\_\_\_\_, 2010

FOR VALUE RECEIVED, the undersigned promises to pay to the order of Tri-City Development Corporation, the principal sum of Five Hundred Seventy-Four Thousand One Hundred Sixty-Nine and 00/100 Dollars (\$574,169.00) in lawful money of the United States of America with interest thereon in like lawful money at the rate of six percent (6.0%) per annum with monthly payments of principal and interest of Three Thousand Four Hundred Forty-Two and 43/100 Dollars (\$3,442.43), with the first payment due on or before the tenth (10th) day of \_\_\_\_\_, 2010, and shall continue at that rate until paid in full.

Any amounts not paid by the twentieth (20th) day of the month shall be subject to a late payment fee of one and one-half percent (1 1/2%) of the amount due.

The undersigned, at its option, may prepay the principal balance plus accrued interest at any time without penalty.

If an installment of principal and interest is not paid within thirty (30) days of the date when due, at the option of the holder of this Note, an action may be instituted to recover the full amount of the principal and interest owed, or any part thereof, and in such case, the prevailing party, in addition to the costs provided by statute, shall be entitled to a reasonable attorney's fee incurred as a result of the action. If an action is so instituted, all principal amounts due shall bear interest at the rate of twelve percent (12%) per annum from the date when the amount was not paid when due. Any judgment rendered under this Promissory Note shall bear interest at the rate of twelve percent (12%) per annum.

The undersigned waives presentment for payment, protest and notice of dishonor of this note.

Pay to:  
Tri-City Development Corporation

SUMMIT VIEW WATERWORKS, LLC

\_\_\_\_\_  
\_\_\_\_\_

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

Its: \_\_\_\_\_

# **EXHIBIT 2**

After recording, return to:  
Richard A. Finnigan  
2112 Black Lake Blvd SW  
Olympia, WA 98512

**CONTRACT FOR DELIVERY OF IRRIGATION WATER  
(WHOLESALE WATER AGREEMENT)**

This Wholesale Water Agreement ("Agreement") is made and entered into this 23 day of September, 2010, by and between Candy Mountain Limited Liability Company (CMLLC) and Summit View Waterworks, LLC (SVWW).

**RECITALS**

WHEREAS, CMLLC is a an agricultural operation with its farm land situated in Benton County, Washington;

WHEREAS, CMLLC has an existing well and related infrastructure associated with Groundwater Right Permits No. G4-30505 and No. G4-30509 (the "Water Rights") servicing an extensive irrigation system on its farm lands;

WHEREAS, SVWW is a private water company regulated by the Washington Utilities and Transportation Commission (WUTC) that operates and manages the delivery of domestic and irrigation water as a privately owned Group A water system with the Washington State Department of Health (DOH Identification No. 03303-4), and whose designated service area includes property encompassed within the above groundwater permit rights' authorized place of use;

WHEREAS, SVWW provides irrigation water to domestic and residential properties within its service area;

WHEREAS, SVWW desires to obtain delivery of the irrigation water for its customers utilizing the existing well and pipeline system of CMLLC;

WHEREAS, CMLLC presently has the extra capacity within its pipeline system to deliver irrigation water to SVWW under certain terms, conditions, and limitations;



WHEREAS, the parties are now desirous of entering into a delivery agreement to formalize the terms, conditions, and limitations under which they will so operate.

NOW, THEREFORE, in consideration of the premises and the mutual agreements bargained for and exchanged by the parties, it is agreed as follows:

### TERMS AND CONDITIONS

1.1 Benefited Parties: Identification of SVWW Service Area. This Agreement is made for the sole benefit of SVWW, and for no other property, individual, or other third party.

1.2 Delivery. Subject to the terms, conditions, and limitations contained elsewhere in this Agreement, CMLLC agrees to supply and up to 550 acre-feet per year ("afy") to SVWW annually at a rate not to exceed 1055 gallons per minute ("gpm"). Such water will be pumped by CMLLC from its existing or future wells and transported from there through the pipelines maintained and operated by CMLLC. Delivery will be made at such times as are established and set from time to time by CMLLC and SVWW. SVWW is obligated to regularly contact CMLLC in order to remain informed of the delivery schedule and any changes made therein by CMLLC. So long as this Agreement remains in existence, SVWW shall be entitled to have a connection or delivery point attached to CMLLC's pipeline for the benefit of SVWW's water system.

1.3 Limitations and Acknowledgements. The water delivered by CMLLC to SVWW hereunder shall be used by SVWW solely for provision of irrigation water within SVWW's service area and for no other purposes. CMLLC makes no warranties, representations, or guarantees regarding the quality of water delivered.

CMLLC is not providing to SVWW any interest in the Water Rights. SVWW acknowledges and agrees that notwithstanding the use of water within the SVWW service area, SVWW does not own any portion of the Water Rights by such use and that CMLLC has full and sole authority to use the water, and transfer or sell the Water Rights, subject to its commitments herein.

Without in any way limiting the above, should the delivery of water by CMLLC to SVWW be prevented, delayed, limited or terminated in any way by a cause or causes beyond CMLLC's reasonable ability to control, including and without limiting the generality of the foregoing, acts of God, landslides, earthquakes, fires, storms, floods, wash-outs, draw-downs, or droughts; acts of public enemy, blockades, wars, insurrections, or riots; governmental restraints; inability to obtain necessary permits, power, equipment, supplies, water, or labor due to existing or future governmental rules, regulations, orders, laws, or proclamation; or strikes, lockouts, or other industrial disturbances, CMLLC shall not be liable in any manner for any such prevention, delay, limitation, or termination.

1.4 Term. Unless otherwise terminated under the provisions of this Agreement, this Agreement shall have a term of twenty (20) years and shall automatically renew for successive five (5) year periods unless either party provides notice of termination in writing to the other party at least ninety (90) days prior to the end of a particular term, or as otherwise mutually agreed by the parties. Such notice shall fully and immediately terminate this Agreement, and SVWW shall no longer receive any water under the Water Rights unless further agreed in writing by the parties.

1.5 Delivery Charges. SVWW agrees to pay CMLCC a delivery charge per acre-foot of water delivered to SVWW's system at the rate calculated according to Exhibit A, attached hereto and incorporated by this reference. Such delivery charge billings shall be paid by SVWW to CMLLC within thirty (30) days of issuance. Any such billing not paid within said thirty (30) days shall thereafter bear interest at the rate of twelve percent (12%) per annum until paid. If any such billing is not timely paid, in addition to any other remedies provided by this Agreement, law, or equity, CMLLC shall have the right to terminate this agreement on thirty (30) days' advance notice in writing.

1.6 Assessment Billings. CMLLC will issue assessment billings to SVWW on an annual basis. The amount of each such assessment will be based on CMLLC's estimate of SVWW's monthly proportional share of the maintenance, depreciation, supervisory, utility, operating, and other expense associated with that year's operation of CMLLC's well station and pipeline system plus a charge for overhead, including accounting, of five percent (5%). Such assessment billings shall be paid by SVWW to CMLLC within thirty (30) days of issuance. Any such billing not paid within said thirty (30) days shall thereafter bear interest at the rate of twelve percent (12%) per annum until paid. If any such billing is not timely paid, in addition to any other remedies provided by this Agreement, law, or equity, CMLLC shall have the right to terminate this agreement on thirty (30) days' advance notice in writing.

1.7 Reserve Funds. CMLLC currently serves five hundred eighty-three (583) acres with agricultural service. SVWW currently serves eighty-six (86) acres for primarily residential purposes and agricultural uses. CMLLC and SVWW agree that each party has the capacity to draw three (3) acre feet per acre per year for purposes of this Agreement. CMLLC and SVWW agree that CMLLC will assess SVWW a charge of thirteen dollars (\$13.00) per acre foot of capacity per year, which assessment shall be paid within thirty (30) days of the date the assessment is delivered from CMLLC to SVWW. The calculation for the assessment is as follows:  $86 \text{ acres} \times 3 \text{ acre feet} \times \$13.00 = \$3,354.00$ . CMLLC will deposit the funds received under this provision into a fund labeled "CM/SV Irrigation System Repair Fund" or "ISRF." CMLLC will also deposit a proportional equivalent amount into the ISRF on an annual basis. In the case of CMLLC, the calculation would be  $583 \text{ acres} \times 3 \text{ acre feet} \times \$13.00 = \$22,737.00$ . This calculation of amount and acreage will be conducted annually as set out on Exhibit A.

The charge will vary on annual basis depending on the number of acres served by SVWW and the number of acres served by CMLLC.

The charge will be continued to be assessed and paid on an annual basis until the ISRF has grown to a total of Two Hundred Fifty Thousand Dollars (\$250,000.00). The ISRF is owned by CMLLC and is managed and maintained by CMLLC. SVWW and CMLLC agree that the funds in the ISRF may be used only for the purpose of repairing or replacing the two well pumps, motors, panels, pipes, telemetry, telemetry upgrades, well repairing or re-drilling, transmission mains and repairing and replacing any other equipment or facilities that are used to provide irrigation water under this Agreement. Once the ISRF is at Two Hundred Fifty Thousand Dollars (\$250,000.00), all remaining funds received from SVWW may be retained by CMLLC and used for any purpose. If the ISRF falls below Two Hundred Fifty Thousand Dollars (\$250,000.00), then the monies from SVWW and the corresponding proportional contribution from CMLLC will be used to replenish the ISRF.

The rates set forth in this Section will be reviewed by CMLLC and if, in the opinion of CMLLC, the rates are insufficient to provide the source of funds to cover needed repairs and replacements as set forth above, the rate may be increased by CMLLC upon sixty (60) days written notice to SVWW.

## II. COVENANTS, LIABILITIES, INDEMNIFICATION

2.1 Assumption of Liabilities. SVWW agrees to, and hereby does, assume all obligations related to its water system and the delivery of the wholesaled domestic irrigation water provided herein within its service area, including all contractual liabilities and obligations, duties, now existing or arising in the future.

2.2 Indemnification. Each of the parties shall indemnify, defend and hold the other party and its members, officers, employees and agents harmless from any loss, claim or liability arising from or out of the negligent or tortuous actions or inactions or fault of the indemnifying party's members, officers, employees or agents, including the reasonable costs of defense by counsel of the indemnified party's own choosing. Liability shall be apportioned among the parties or other defendants in accordance with the laws of the State of Washington. Furthermore, SVWW agrees to indemnify, defend, and hold CMLLC and its members, officers, employees and agents harmless from any and all claims or demands based on any alleged duty to serve or otherwise provide either domestic or domestic irrigation water under the permits and associated delivery system which are the subject of this Agreement, whether based in tort, contract, law, or equity. This paragraph shall survive expiration or termination of this Agreement.

2.3 Further Assurances or Necessary Action. CMLLC and SVWW, respectively, agree they shall take all such action as may be necessary or appropriate in order to effectuate the transactions contemplated hereby.

2.4 Maintenance. CMLLC has the general obligation to maintain the water system that it uses to deliver water to SVWW under this Agreement. However, in no case shall SVWW or anyone claiming through SVWW, directly or indirectly, have any cause of action of any nature whatsoever against CMLLC for any failure to maintain the CMLLC water system. SVWW is assuming all risks of delivery with its sole remedy the right to specific performance as set out in Paragraph 4.5, below.

2.5 Dispute Resolution. Disputes arising out of or related to this Agreement shall be resolved in accordance with this provision. The parties agree to act in good faith to resolve any disputes that may arise between them. If the parties cannot resolve the matter by informal dialogue or there is a reason to give notice immediately, either party may give Notice of Dispute to the other party. The Notice of Dispute shall state the nature of the dispute and the corrective action necessary to remedy the dispute.

After Notice of Dispute, the parties shall first attempt to resolve any disputes by mediation. The parties shall agree on a single mediator. Mediation shall be conducted in Benton County, Washington. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.

If the dispute has not been resolved by mediation within 45 days after Notice of Dispute, or the parties are unable to agree to a mediator within 15 days after Notice of Dispute, the dispute shall be resolved by binding arbitration in accordance with Washington's Uniform Arbitration Act, chapter 7.04A RCW. The arbitrator shall render a decision within 30 days of the arbitration hearing. Arbitration shall be conducted in Benton County, Washington. Each party shall pay its own attorneys' fees and the costs of arbitration shall be split equally between the parties.

Notwithstanding the above, if either party, at any time, believes that there is the need to maintain the status quo pending resolution by one or more of the methods set forth above, that party may seek a temporary restraining order, preliminary injunction or other equitable relief from any court of competent jurisdiction.

### III. RESERVATION OF RIGHTS

3.1 CMLLC Water Rights/Wells. CMLCC does not intend by this Agreement to transfer any rights or interests in CMLLC's Water Rights, or any other water rights, groundwater right permits, or groundwater right applications, or any of the wells associated therewith, the rights to which are expressly reserved in and to CMLLC.

### IV. MISCELLANEOUS PROVISIONS

4.1 Effective Date. The Effective Date of this Agreement shall be the date of mutual execution; provided, that, if approval of this Agreement by one or more public agencies is required, the Effective Date shall be the date the last of those approvals is obtained.

4.2 Authority to Enter into Agreement. The parties signing this Agreement warrant and represent they have authority to do so and to bind the party on whose behalf they are signing.

4.3 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

4.4 Severability. If any term, provision, or covenant of this Agreement is held by any governmental entity or court to be invalid, void, or unenforceable, the remainder of the terms, provisions, and covenants shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

4.5 Remedies. SVWW shall be entitled to specific performance of this Agreement as its sole and exclusive remedy, exclusive of attorneys' fees and costs if allowable, in the event of any default hereunder. SVWW shall not be entitled to consequential, incidental, or other damages in the event of any breach by CMLLC.

4.6 Non-Waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants or agreements contained herein shall not be construed to be a waiver or relinquishment of such rights, or any other covenants or agreements, and the same shall remain in full force and effect.

4.7 Binding Effect. This Agreement shall be binding upon the Parties hereto and shall bind and inure to the benefit of their respective heirs, representatives, successors, and assigns; provided, that, SVWW shall not assign this agreement without the prior written consent of CMLLC, which consent may be withheld in the discretion of CMLLC, and any attempt at assignment without such prior written consent shall be void ab initio.

4.8 Actions on Assessments. Notwithstanding anything in this Agreement to the contrary, CMLLC may commence an action to collect an unpaid assessment(s) and in any such action shall be entitled to recover reasonable attorneys' fees and all costs and expenses reasonably incurred in the preparation and prosecution of said action, in addition to taxable costs permitted by law and specifically including, but not limited to, costs of title reports, litigation guarantees, and title searches. In any such action, the judgment shall be for an amount equal to all delinquent assessments and advances, plus all costs and expenses in connection with such action, including a reasonable sum as attorneys' fees and for the costs, if any, of title company services mentioned above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Candy Mountain Limited Liability  
Company

By: [Signature]  
Its: Managing Member

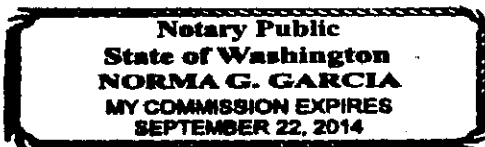
Summit View Waterworks, LLC

By: [Signature]  
Its: Managing Member

STATE OF WASHINGTON )  
County of Benton ) ss.

On this 23<sup>rd</sup> day of September, 2010, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kirk Rathbun, to me known to be the Managing Member of Candy Mountain Limited Liability Company, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.



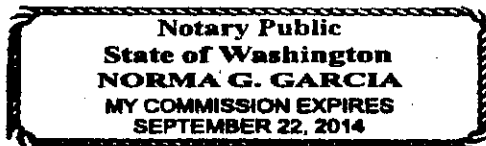
Norma G. Garcia  
Norma G. Garcia  
[Printed Name]

Notary Public in and for the State of Washington, residing at Kennewick  
My commission expires 9-22-2014.

STATE OF WASHINGTON )  
County of Benton ) ss.

On this 23<sup>rd</sup> day of September, 2010, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kirk Rathbun, to me known to be the Managing Member of Summit View Waterworks, LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.



Norma G. Garcia  
Norma G. Garcia  
[Printed Name]

Notary Public in and for the State of Washington, residing at Kennewick  
My commission expires 9-22-2014.

EXHIBIT A



**SUMMIT VIEW WATER WORKS, LLC**

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8428 W Gage Blvd Ste E • Kennewick, WA 99336 • Tel 509-735-2151 • Fax 509-735-2436

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**METHODOLOGY USED IN CALCULATING IRRIGATION RATES  
PERTAINING TO WATER, POWER, AND PUMPING**

SVWW staff shall calculate annual irrigation rates using the following WUTC approved methods.

- 1) Annually, SVWW shall calculate the acreage area associated with all residential customers. This shall be done using a survey of the plat map. These acres shall be a combined sum of all SVWW residential accounts that are classified by SVWW staff as being "customers" on the date that first half billing is sent, (generally April 1st.). Customers added after this date shall be billed on a pro-rated basis using the current years acreage charge. SVWW shall keep on hand and available to the public, all plat maps used for the purposes of describing residential acreage.
- 2) Annually, SVWW shall calculate the acreage area associated with all agriculture land using GPS survey maps. The latest survey may be used so long as it reflects an accurate accounting of land irrigated for agricultural purposes. SVWW shall keep on hand and available to the public all survey maps used for the purposes of describing agricultural acreage.
- 3) When the residential and agricultural survey is complete, a "percentage of use" (POU) calculation shall be made. The POU calculation shall determine the percentage of residential and percentage of agricultural acreage.
- 4) Monthly, SVWW shall combine the total cost of water entering the irrigation system. This may include but not be limited to a well drawing water under Department of Ecology (DOE) permit G4-30509, and a well drawing water under DOE permit G4-30505, of which said water rights are owned by Candy Mountain, LLC (CMLLC). SVWW may also receive water into its system from other sources for peak season use, emergency use, or other purposes approved by SVWW management. Monthly, SVWW shall pay its portion of irrigation water cost pertaining to residential acreage, and CMLLC shall pay the portion of irrigation water cost pertaining to agricultural acreage.