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WHEN RECORDED, RETURN TO:

DURHAM JONES & PINEGAR
192 East 200 North, 3rd Floor
St. George, Utah 84770
Attention: Jeff Starkey

DOC # 20070000768

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Russell Shirts Washington County Recorder
01/05/2007 09:22:44 AM Fee \$ 123.00 by DURHAM JONES & PINEGAR



DEVELOPMENT AGREEMENT FOR ELIM VALLEY

THIS DEVELOPMENT AGREEMENT for Elim Valley (the "Agreement") is entered into as of the 21st day of December, 2006, by and among Elim Valley Planning and Development Company, LLC ("Developer"), a Utah limited liability company, and Hurricane City, a municipal corporation and political subdivision of the State of Utah ("City") (individually a "Party" and collectively the "Parties").

RECITALS:

A. Developer is the owner of approximately 2,300 acres of real property located within the municipal boundaries of Hurricane City, 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 Elim Valley (the "Project" or "Elim Valley") as generally depicted on a preliminary site plan dated August 30, 2006 and prepared by Rosenberg Associates (the "Preliminary Site Plan") attached hereto as Exhibit "B" and incorporated herein.

C. On July 13, 2006, after a public hearing, the Hurricane City Planning Commission (the "Planning Commission") recommended an amendment to the Hurricane City General Land Use Plan (the "General Land Use Plan"), incorporating the general development of Elim Valley as proposed by Developer as proposed by Developer in the Preliminary Site Plan.

D. On August 8, 2006, after a public hearing, the Hurricane City Council (the "City Council") granted final approval for the amendment to the Hurricane City General Land Use Plan, incorporating the general development of Elim Valley as proposed by Developer in the Preliminary Site Plan.

E. On August 30, 2006, Developer filed with City a complete application (Application # 2006-ZC-16) to rezone the Property from the current RA-1 zone to the R-1-8 (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. On November 9, 2006, City's Planning Commission recommended approval of the PDO Application 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.

G. On November 16, 2006, City's City Council approved the PDO Application (the "PDO Zone Approval") subject to certain findings and conditions as set forth in Exhibit "D", attached hereto and incorporated herein, including approval of this Agreement.

H. City 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-1-8 zone with which the planned development overlay zone will be combined; and (v) meet the density limitations of the R-1-8 zone.

I. 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.

J. Developer desires to take all steps necessary to finalize approval of the Project and develop the Project as provided in this Agreement.

K. Each of the Parties is 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.

L. 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 Zone 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, including pedestrian oriented commercial uses, located as shown on the Preliminary Site Plan.

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

1.5 **“Density”** means the number of dwelling units per acre as shown on the Preliminary Site Plan and as authorized under this Agreement.

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, applicable to the Project.

1.8 **“Developer”** means Elim Valley Planning and Development Company, LLC, a Utah limited liability company, or its approved replacement developer, assigns and successors in interest, whether in whole or in part.

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 (and declarations developed and recorded against individual Phases); 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 thereafter approved by City.

1.12 **“Dixie REA”** means Dixie Escalante Rural Electrical Association, which is, to the extent Dixie REA has been franchised and permitted to provide power by Hurricane City within Hurricane City boundaries, one of the electrical power providers to some of the area where the Project is located, as more particularly described pursuant to franchise or other agreement between the City and Dixie REA.

1.13 **“Final Plat”** means a final subdivision plat of property, located within an approved Development Phase, which is approved by City’s governing body and is recorded in the Official Records in Office of the Recorder of Washington County, State of Utah.

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

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 Elim Valley 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 Elim Valley Project and which is recorded against portions of the Property corresponding to an approved Development Phase (as distinguished from various Phase or Neighborhood Declarations, which will be created and recorded with individual phases and subdivision plats throughout the Project).

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 **“Planning Commission”** means the Hurricane City Planning Commission.

1.22 **“PDO Zone Approval”** means City’s approval of the Preliminary Site Plan and zone change request (Application # 2006-ZC-16) for the Project on November 16, 2006, which was subject to certain findings and conditions set forth in Exhibit “D”.

1.23 **“Preliminary Site Plan”** means the conceptual site plan map attached hereto as Exhibit “B”, and approved by the Hurricane City Council on November 16, 2006 as part of Developer’s PDO Application (Application #2006-ZC-16).

1.24 **“Project”** means the improvement and development of the Project pursuant to this Agreement, the Development Guidelines, and City’s Ordinances as generally depicted on the Preliminary Site Plan.

1.25 **“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.

1.26 **“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.

1.27 **“Sanitary Sewer Master Plan”** means a comprehensive plan to provide sanitary sewer within the Project as approved by the Ash Creek SSD.

1.28 **“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.

1.29 **“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.

1.30 **“Storm Water and Drainage Control Master Plan”** means a comprehensive plan approved by the City to provide storm water and drainage control within the Project.

1.31 **“SWPPP Permit”** means an approved storm water pollution prevention plan.

1.32 **“System Improvements”** means existing public facilities owned and/or operated by the City of Hurricane 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.

1.33 **“Civic Building Site”** means a parcel or lot of ground reserved for future spaces where people gather for communication or culture, an important element in strong communities. Typical civic uses include but are not limited to schools, churches, local government buildings, emergency service buildings, community centers, pavilions, libraries, post offices, service group buildings, neighborhood recreation centers, etc.

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 16, 2006, 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 General Plan. Developer acknowledges that development of the Project is subject to all normally-applicable City processes as set forth in Paragraph 2.2 and the following:

2.1.1 Design Guidelines;

2.1.2 Master Declaration (and various Phase or Neighborhood Declarations, which will be created and recorded with each development phase throughout the Project);

2.1.3 Culinary Water Master Plan;

2.1.4 Sanitary Sewer Master Plan;

2.1.5 Storm Water and Drainage Control Master Plan; and

2.1.6 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 **Local Roads.** 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 “F”. Such roads shall be constructed according to City’s Standards

and Specifications for Public Improvements except as otherwise provided in Exhibit "F", which refers to road cross section designs per this Agreement.

2.2.3 Land Use Applications. Except as otherwise 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 City's Land Use Ordinance in effect when a complete application is submitted, or to the extent approved with each Development Phase and/or subdivision plat submittal.

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-1-8 (PDO) 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". Notwithstanding this Paragraph 2.4.1, the Parties acknowledge that the owners of other land adjacent to or surrounded by the Property may request to be included in the Project at a later date. Such requests shall be made pursuant to City's then applicable Ordinances and considered in City's usual course of such business. Any change in the maximum development area of the Project shall be accomplished only pursuant to City's then-applicable Ordinances and an amendment to this Agreement as provided in Paragraph 6.29 herein.

2.4.2 Residential Density. The total residential density permitted within the Project shall not exceed the base density level of eight thousand six hundred eighty-nine (8,689) residential dwelling units; provided, however, that a density bonus may be authorized pursuant to a final site plan as set forth in Section 10-23-8C2 of City's Land Use Ordinance in effect when this Agreement is executed. As shown on the Preliminary Site Plan, residential dwelling units are dispersed throughout the Project at varying densities, which may be modified pursuant to the Density Transfer provision set forth in Paragraph 2.4.5 of this Agreement. 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 Developer's sole discretion, the Project may include up to three million (3,000,000) square feet of gross floor area of Commercial Uses in the locations shown on the Preliminary Site Plan. The particular uses allowed within these locations shall be determined upon submission and approval of a Site Plan for such commercial development subject to applicable provisions of City's Land Use Ordinance except as otherwise provided by this Agreement.

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's Land Use Ordinance are satisfied; and (d) 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 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 gross floor area of Commercial Uses referenced in this Agreement; (b) the cumulative total number of square feet of gross floor 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 square feet of gross floor area of Commercial Uses for which a permit is sought under the particular Development Phase application; and (d) the balance of square footage remaining for Commercial Uses compared to the total amount permitted under this Agreement.

2.5 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 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 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 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 and Developer, 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 rights under this Agreement or the Preliminary Site Plan would be justified by a "compelling, countervailing public interest." City shall immediately notify Developer if any such facts come to City's attention after the execution of this Agreement, and shall take all reasonable steps to maintain Developer's 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 SWPPP 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 shall demonstrate that Developer 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. If and at any time Developer fails to perform its obligations under this Agreement, City may request, and Developer 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.

3.1.8 Developer's Employees and Agents. Developer shall cause its employees and agents to act in accordance with the terms of this Agreement.

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's legal detriment may render City liable to such remedies as may be available to Developer under such circumstances. Notwithstanding the foregoing, after the date of this Agreement, City shall not enact any temporary zoning regulation that prohibits or regulates the erection, construction, reconstruction, or alteration of any building or structure in the Project which is inconsistent with the terms of the Preliminary Site Plan and the PDO Zone Approval unless the temporary zoning regulation:

- (a) complies in all respects with applicable state law;
- (b) was enacted to reasonably alleviate or otherwise reasonably respond to a legitimate, bona fide threat to public health and safety for which application to the Property is

determined by City to be necessary and cannot be sufficiently addressed by application only to other development in the City; and

(c) has a period of effectiveness not to exceed six (6) months with no renewal provisions.

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. If, prior to the date an impact fee would be payable as provided under City's Ordinances, Developer constructs System Improvements for which an impact fee is normally collected, Developer's cost of constructing such System Improvements shall be credited against the impact fees otherwise due. Developer shall also be given an impact fee credit for land dedicated to and accepted by City for System Improvements. In each instance, Developer shall submit to City invoices, or other reasonably acceptable documentation, as determined by City, demonstrating the reasonable and verified costs incurred for such System Improvements or, in the case of land, appraisals indicating the fair market value of the dedicated land. The amount of the credit shall be equal to the lesser of (i) the total amount of impact fees otherwise required, or (ii) the reasonable and verified costs of the System Improvements paid by Developer and the fair market value of 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. In applying the foregoing provisions, any impact fee which is payable shall be charged as provided under City's Ordinances and any impact fee credit shall be used to offset the amount of the impact fee due.

3.2.5 Compliance with City Requirements and Standards. Except as otherwise provided in Paragraphs 2.2 and 3.1.3 of this Agreement, Developer acknowledges it 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.

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 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 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. 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 the culinary water system, the Parties shall cooperate in granting such easements, rights-of-way, rights of entry, or other servitudes as may be reasonably necessary for Parties to introduce into, store in, and remove water from such ponds, streams, lakes, well sites, connections onto existing Washington County Water Conservancy District water lines, and the like, as may exist or be constructed on the Project for both Project and System water delivery system(s).

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 water System Improvements.

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 or Dixie REA, as applicable, an electrical power transmission system to service the Project for those portions of the Project for which City or Dixie REA respectively manages a given portion of the power system. 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 any portion 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.

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

4.3.2.2 Easements and Rights-of-Way for Power 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 power System Improvements.

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 with or abuts the exterior boundary of the Project shown on the Preliminary Site Plan. Road and intersection improvements shall be constructed according to City's Standards and Specifications for Public Improvements, except as otherwise set forth in this Agreement and in the Development Guidelines, 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. When road construction (specifications/cross sections) and layout are subject to discretionary design decisions by City, Developer shall have the opportunity to provide data and information to support the inclusion, exclusion, or

modification of any such design prior to approval by City. City shall reasonably review and approve or reject Developer's suggested design changes. Notwithstanding the foregoing, road and intersection improvements shall conform to the requirements of the Hurricane Fire and Rescue Department set forth in the attached Exhibit "G". 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. Except as otherwise agreed between City and Developer pursuant to an approved Development Phase (and as then accordingly reflected in the Master and Phase Declarations), the Master Declaration shall include provisions which obligate the Master Association to provide continuous maintenance of any such landscaping provided in a public right-of-way pursuant to an agreement with City. Such agreement shall also include a provision requiring the Master Association to maintain the lower canopy of mature trees within or abutting a public or private right of way at a minimum height of thirteen feet six inches (13'6") or more to preserve access for fire prevention apparatus. 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 shall grant, at no cost to City, rights-of-way as set forth on the Preliminary Site Plan.

4.4.2.2 Road Design. 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 "F" attached hereto and made a part hereof. City acknowledges the road cross section designs shown on Exhibit "F" 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 section 4.4.2.2 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. All buildings in the Project, both residential and commercial, shall have an automatic fire sprinkler system installed (including garages and/or other spaces

pursuant to approval by the Hurricane City Fire Department). Fire hydrants in the Project shall be provided as set forth in Exhibit "G".

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, Civic Space and Open Areas.** Developer has provided for approximately eight hundred forty-one (841) acres of open areas within the Project, including, but not limited to, two hundred fifty-four (254) acres for the Golf Course, one hundred sixteen (116) acres of parks, and fifty-three (53) acres of civic space as generally shown on the Exhibit "E" schematic attached hereto.

4.6.1.2 **Conveyance to City.** Developer shall convey to City fee title to 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"). 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. Developer 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 and City shall negotiate in good faith regarding the amount of the reimbursement, including sums expended by Developer for improvement of public park areas. City acknowledges and agrees that, under the terms of this Agreement, the open space within the Project substantially exceeds City's minimum requirements for open area and green space.

4.6.1.3 **Private Parks - Timing of Construction.** Parks are planned and intended throughout the Project of varying types and sizes as generally shown on Exhibit "E". Those areas smaller than one (1) acre 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 "E" attached hereto. Public park land may also include public trails, public fishing and other ponds, ATV trails, horse trails, and other similar uses. Developer shall provide curb, gutter, and sidewalk where a public park abuts a public or private road.

4.6.1.5 **Trails Plan.** Trails are planned for the Project as generally shown on Exhibit "E". A trails implementation 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 for each Development Phase as each such phase is approved by City. 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. Developer shall construct and dedicate the public trails shown on Exhibit

"E". Such trails shall be constructed according to Utah Division of Parks and Recreation trail construction guidelines.

4.6.1.6 Golf Course. Developer intends to 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, or other third party or their successors and assigns. The Golf Course shall be constructed by Developer as part of the Project.

4.6.2 City's Obligations.

4.6.2.1 Park Facilities. Upon dedication and acceptance by City of public park and trail areas, 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, and at a level of service which maintains the area in at least the same condition as at the time of dedication to the 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 receive a park impact fees credit for Developer-provided park System Improvements 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 cooperate with Questar in the design and placement location for natural gas to be provided by Questar Gas.

4.7.1.3 Other Utility Services. [Reserved.]

4.7.1.4 Infrastructure Easements. Subject to reimbursement by City of its Proportionate Share, Developer shall provide and/ or dedicate to City all reasonable easements, rights-of-way, rights of entry, or other servitudes as may be necessary to install and maintain System Improvements required for the Project.

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, as determined by City; (b) falls within the parameters of City specifications except as otherwise provided 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 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.

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 during the term of this Agreement Developer shall not convey, assign, or dispose of ("Transfer") the Project or any portion thereof to another developer except as provided in this Paragraph 5.2. Any replacement developer shall have financing and skill reasonably satisfactory to City to develop the Project and 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 an approved Development Phase 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 and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership among City and Developer; and (iii) nothing contained herein shall be construed as creating any such relationship among City and Developer.

5.4 Consent. In the event this Agreement provides for consent from City or Developer, 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 5.5.1 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 an obligation or affirmative requirement to develop the Project or any portion thereof. If Developer undertakes to develop all or any portion of the Project pursuant to the Preliminary Site Plan and this Agreement, Developer agrees 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 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 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 and Developer, 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 Developer: Elim Valley Planning and Development Company, LLC
Attn: Parker Atkins, Project Manager
192 East 200 North, Suite 203
St. George, Utah 84770

With a copy to: Jeffrey N. Starkey
Durham Jones & Pinegar
192 East 200 North, 3rd Floor
St. George, Utah 84770
Fax No: 435.628.1610

If to City: Hurricane City
c/o Clark Fawcett, City Manager
147 North 870 West

Hurricane, Utah 84737
Fax No: 435.635.2184

With a copy to: Fay Reber, Hurricane City Attorney
249 East Tabernacle Street, Suite #1
St. George, Utah 84770
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. 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-five (25) pages, and the seven (7) (A through G) 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 # 2006-ZC-16
- Exhibit "D" City Council Approval, Application # 2006-ZC-16
- Exhibit "E" Open Space and Parks Schematic Plan
- Exhibit "F" Road Cross Section Designs
- Exhibit "G" Hurricane Fire and Rescue letters, October 14 and 16, 2006

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 hereunder, no further exactions shall be required of Developer 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 Utah; (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 City. City hereby represents and warrants to Developer 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 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.

6.16 Concurrence. 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.

6.17 Indemnification. Developer 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 or City, as the case may be, or their respective officers, agents, employees or consultants.

6.18 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.

6.18.1 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.

6.18.2 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.

6.19 **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.

6.20 **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.

6.21 **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.

6.22 **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.

6.23 **Nondiscrimination.** Neither City nor Developer 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.

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

6.25 **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.

6.26 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.

6.27 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 to be in Default as provided in Paragraph 6.18 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.

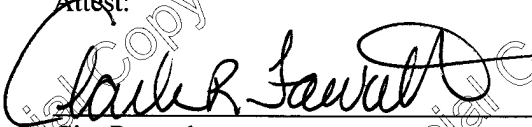
6.28. Amendment of Agreement. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the Parties. No change shall be made to any provision of this Agreement unless this Agreement is amended pursuant to a vote of the City's City Council taken with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

[SIGNATURE PAGE FOLLOWS]

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 by duly authorized persons as of the ___ day of December, 2006.

CITY:


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

Attest:

City Recorder


Mayor

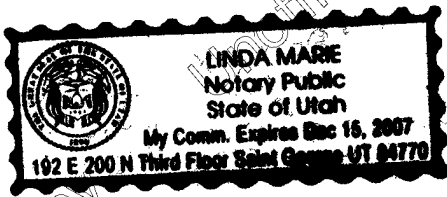
DEVELOPER:

Elim Valley Planning and Development, LLC


Roland N. Walker, Manager

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On the 20th day of December 2006, personally appeared before me ROLAND N. WALKER whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the Manager of **Elim Valley Planning and Development, LLC**, and did duly acknowledge to me that the foregoing document was entered into on behalf of such entity for its stated purpose.




Notary Public
Residing at: _____

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Exhibit "A"
Elim Valley
Legal Description of Project

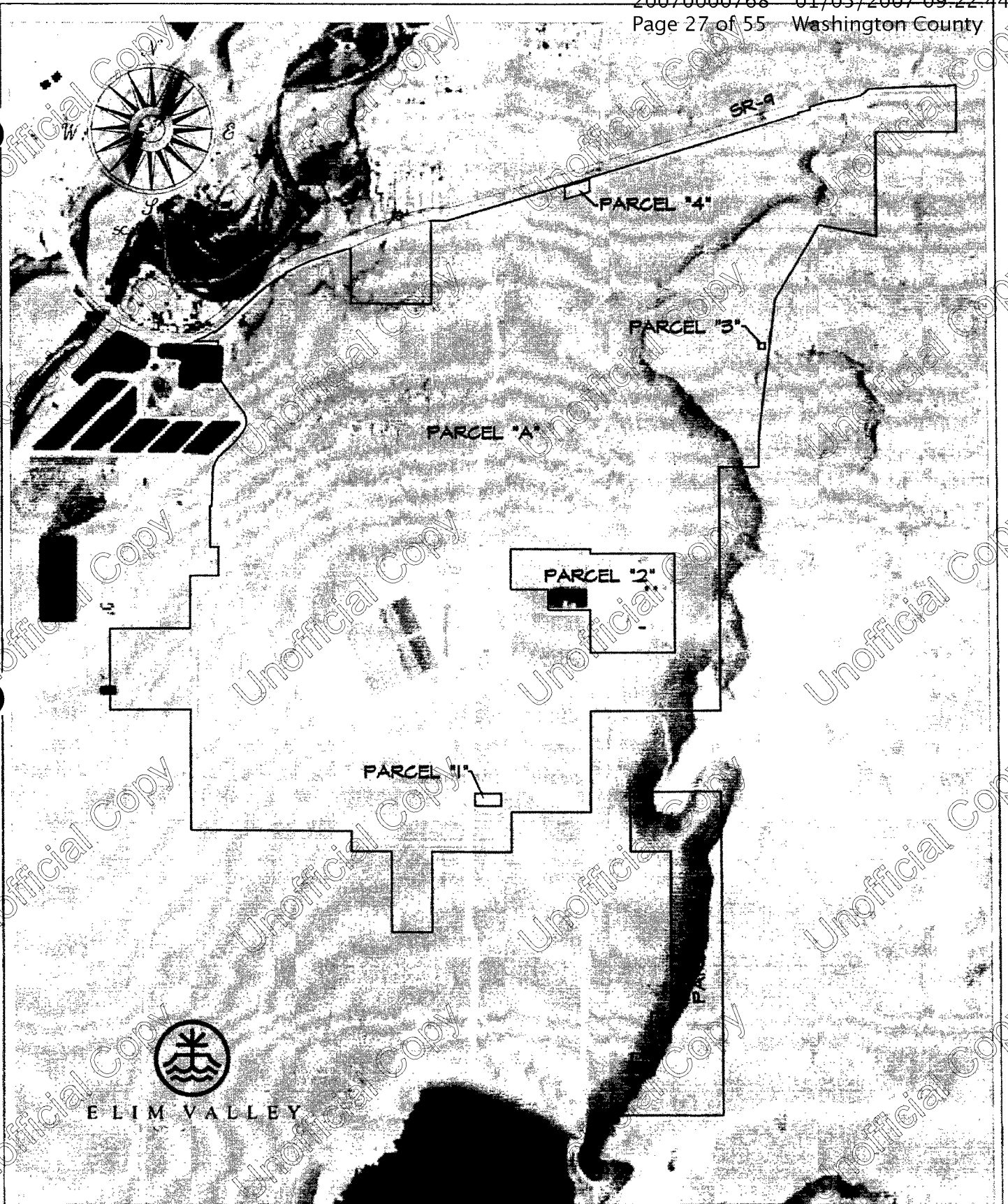
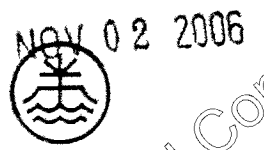


EXHIBIT "A" MAP

NTS:



ELIM VALLEY

EXHIBIT "A"

- 1 -

**ELIM VALLEY
LEGAL DESCRIPTION-PARCEL "A"**

Beginning at the Southeast corner of Section 12, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence North 89°39'33" West 7.45 feet along the South Section line of said Section 12;

thence South 00°05'20" West 330.63 feet;
thence North 89°38'57" West 1,315.51 feet;
thence South 00°05'20" West 330.63 feet;
thence North 89°38'57" West 1,315.51 feet;
thence South 00°03'25" West 661.13 feet;

thence North 89°38'49" West 1,322.87 feet to the Center Section line of Section 13 Township 42 South, Range 14 West, Salt Lake Base & Meridian;

thence South 00°01'09" West 1,321.77 feet along said Center Section line;
thence North 89°37'30" West 661.24 feet;
thence North 00°00'17" East 1,321.72 feet;
thence North 89°38'55" West 661.57 feet;
thence North 00°00'21" West 330.34 feet;
thence North 89°40'14" West 1,325.52 feet;
thence North 89°48'05" West 1,325.34 feet;

thence North 00°04'20" West 1,971.59 feet to the East and West running 1/16th line of the Southeast Quarter of Section 11 Township 42 South, Range 14 West, Salt Lake Base & Meridian;

thence South 89°43'24" West 1,327.48 feet along said 1/6th line to the Center Section line of said Section 11;

thence North 00°05'30" West 1,323.28 feet along said Center Section line;
thence North 89°45'34" East 1,327.43 feet along the Center Section line;
thence North 00°03'28" West 858.04 feet;
thence North 89°54'53" East 466.69 feet;
thence North 00°03'20" West 466.69 feet;
thence South 89°54'53" West 134.63 feet;
thence North 00°02'54" West 661.92 feet;
thence North 89°59'32" East 26.64 feet;
thence North 01°55'31" East 551.57 feet;
thence North 05°30'35" East 25.00 feet;

thence northerly 87.72 feet along an arc of a 400.00 foot radius curve to the right (center bears South 84°29'25" East long, chord bears North 11°47'31" East 87.54 feet

NOV 2 2006

with a central angle of 12°33'52");
thence northeasterly 212.41 feet along an arc of a 400.00 foot radius curve to the right (center bears South 71°55'34" East long chord bears North 33°17'11" East 209.92 feet with a central angle of 30°25'30");
thence North 48°29'56" East 250.77 feet;
thence North 42°44'37" East 146.42 feet;
thence North 35°39'06" East 152.80 feet;
thence northerly 324.23 feet along an arc of a 250.00 foot radius curve to the left (center bears North 54°20'54" West long chord bears North 01°30'07" West 301.98 feet with a central angle of 74°18'26");
thence North 38°39'20" West 256.21 feet;
thence North 35°11'28" West 316.56 feet;
thence northerly 265.46 feet along an arc of a 420.00 foot radius curve to the right (center bears North 54°48'32" East long chord bears North 17°05'03" West 261.06 feet with a central angle of 36°12'50");
thence North 01°01'22" East 374.68 feet;
thence northerly 57.01 feet along an arc of a 351.35 foot radius curve to the left (center bears North 81°43'04" West long chord bears North 03°38'01" East 56.95 feet with a central angle of 09°17'50");
thence South 89°52'56" West 386.70 feet to the Southerly Right of Way line of State Route 9, and running the following (6) courses along said south line;
thence northeasterly 340.68 feet along an arc of a 1,532.39 foot radius curve to the left (center bears North 20°24'55" West long chord bears North 63°12'57" East 339.97 feet with a central angle of 12°44'16");
thence South 31°43'22" East 25.01 feet;
thence northeasterly 258.89 feet along an arc of a 1,557.39 foot radius curve to the left (center bears North 33°07'49" West long chord bears North 52°06'27" East 258.59 feet with a central angle of 09°31'28");
thence North 47°20'43" East 689.70 feet;
thence northeasterly 1,258.99 feet along an arc of a 2,775.00 foot radius curve to the right (center bears South 42°39'18" East long chord bears North 60°20'32" East 1,248.22 feet with a central angle of 25°59'40");
thence North 73°20'22" East 494.46 feet;
thence South 00°22'05" West 898.65 feet to the Center Section line of Section 1 Township 42 South, Range 14 West, Salt Lake Base & Meridian;
thence South 89°35'08" East 1,327.22 feet along said Center Section line;
thence North 00°10'33" East 1,350.90 feet to the Southerly Right of Way line of State Route 9, and running Northeasterly the following (16) courses along said south line;
thence South 89°58'12" East 254.45 feet;
thence North 73°19'03" East 413.47 feet;
thence easterly 134.73 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South 16°40'57" East long chord bears North 73°29'14" East 134.75 feet with a central angle of 00°20'21");

NOV 2 2006

thence North 73°39'24" East 1,951.74 feet;
 thence North 73°39'24" East 3,609.85 feet;
 thence North 00°08'36" West 19.03 feet;
 thence North 73°38'48" East 214.52 feet;
 thence North 16°37'33" West 36.32 feet;
 thence North 73°39'24" East 350.33 feet;
 thence North 84°56'32" East 254.78 feet;
 thence North 75°40'25" East 283.52 feet;
 thence North 51°40'18" East 174.13 feet;
 thence North 87°28'01" East 687.67 feet;
 thence North 89°03'09" East 384.16 feet;
 thence South 89°56'48" East 163.49 feet;
 thence North 84°49'43" East 213.73 feet to the East Section line of Section 31
 Township 41 South, Range 13 West, Salt Lake Base & Meridian;
 thence South 00°14'57" East 756.21 feet along said East Section line to the
 Southeast Corner of said Section 31;
 thence South 89°58'42" West 50.03 feet;
 thence South 89°55'25" West 1,298.32 feet;
 thence South 00°05'38" West 1,688.70 feet;
 thence North 79°32'12" West 977.04 feet;
 thence South 31°21'48" West 1,412.00 feet;
 thence South 07°15'46" West 2,239.94 feet;
 thence South 00°00'47" East 495.70 feet to the South Section line of Section 6,
 Township 42 South, Range 13 West, Salt Lake Base & Meridian;
 thence South 89°56'34" West 662.21 feet along said South Section line to the
 Northwest Corner of Sectional Lot 1, Section 7, Township 42 South, Range 13 West,
 Salt Lake Base & Meridian;
 thence South 00°00'25" East 2,642.64 feet along the West line's of Sectional Lot's
 1 & 6 to the Center Section line and the Northeast corner of Sectional Lot 7, of said
 Section 7;
 thence South 00°00'22" West 1,320.08 feet along the West line of said Lot 7 to the
 Southeast corner of Sectional Lot 8;
 thence South 89°50'33" West 2,141.15 feet along the South line of Sectional Lot's 8
 & 9 to the West Section line of said Section 7;
 thence South 00°02'18" West 1,321.40 feet along said West line to the Point of
 Beginning.

Containing 91,741,842 square feet or 2,106.103 acres

Less and excepting any portion of land lying within the following described (+) parcels

PARCEL 1

NOV 2 2006

Beginning at a point being North 89°39'31" West 173.50 feet along the South Section line and South 33.00 feet from the 16th corner common to Sections 12 and 13 Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence South 00°02'07" West 200.00 feet;
thence North 89°39'31" West 435.60 feet;
thence North 00°02'07" East 200.00 feet;
thence South 89°39'31" East 435.60 feet to the Point of Beginning.

Containing 87,119 square feet or 2.000 acres.

PARCEL 2

Beginning at the 1/16th corner common to Section's 12 and 7, said corner being located South 00°02'27" West 1,322.53 feet along the East Section line from the Northeast Corner of Section 12, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence South 00°02'18" West 73.47 feet;
thence South 89°57'42" East 1,400.00 feet;
thence South 00°02'18" West 1,617.00 feet;
thence North 89°57'42" West 1,400.00 feet;
thence North 00°01'56" East 368.50 feet;
thence North 00°02'43" East 330.49 feet;
thence North 89°39'27" West 702.43 feet;
thence North 00°01'48" East 330.50 feet;
thence North 89°39'24" West 622.36 feet to the 1/16th line;
thence North 00°00'59" East 660.95 feet along the 1/16th line;
thence South 89°39'30" East 1,325.10 feet along the 1/16th line to the Point of Beginning.

Containing 3,371,714 square feet or 77.404 acres.

PARCEL 3

Beginning at a point being North 89°52'29" East 2,803.74 feet along the Center Section line and South 629.44 feet from the West Quarter corner of Section 6, Township 42 South, Range 13 West, Salt Lake Base & Meridian, and running;

thence East 100.00 feet;
thence South 100.00 feet;
thence West 100.00 feet;
thence North 100.00 feet to the Point of Beginning.

NOV 2 2006

Containing 10,000 square feet or 0.230 acres.

PARCEL 4

Beginning at a point being South 00°15'22" West 304.47 feet along the East Section line of Section 1, from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

- thence South 00°15'22" West 200.00 feet along said East Section line;
- thence South 73°53'22" West 435.60 feet;
- thence North 00°15'22" East 200.00 feet;
- thence North 73°53'22" East 435.60 feet to the Point of Beginning.

Containing 83,590 square feet or 1.919 acres.

LEGAL DESCRIPTION -PARCEL "B"

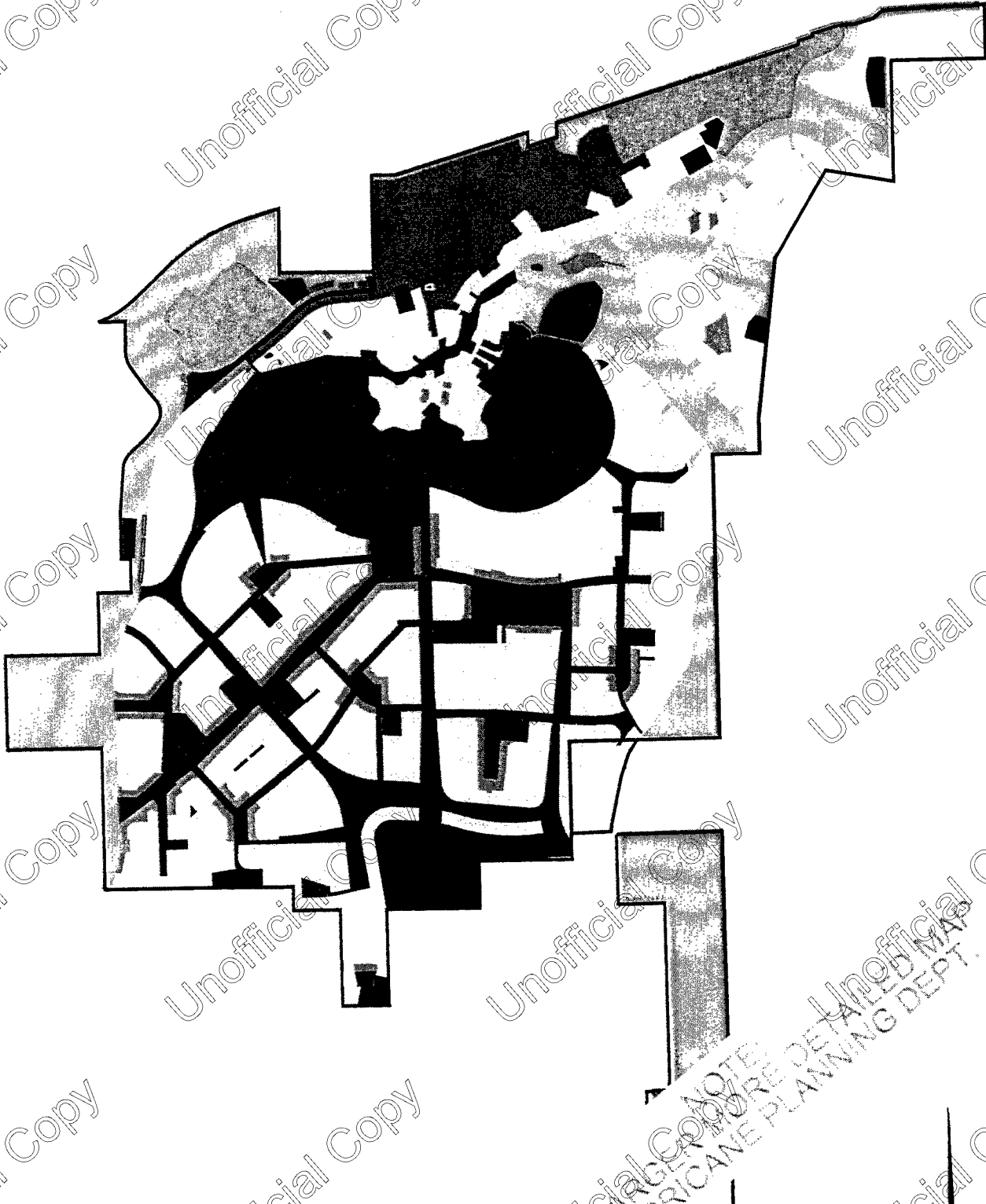
Beginning at a point being North 89°51'09" East 329.10 feet along the South Section line from the Southwest Corner of Section 18, Township 42 South, Range 13 West, Salt Lake Base & Meridian, and running;

- thence North 00°00'41" West 352.39 feet;
- thence North 89°59'19" East 330.00 feet;
- thence North 00°00'41" West 660.00 feet;
- thence North 89°59'19" East 330.00 feet;
- thence North 00°00'31" East 660.22 feet;
- thence North 89°59'28" East 330.00 feet;
- thence North 00°00'32" West 2,640.00 feet;
- thence South 89°59'28" West 660.00 feet;
- thence North 00°00'32" West 978.17 feet to the North Section line of said Section 18;
- thence North 89°47'40" East 1,490.83 feet along said North line;
- thence South 00°10'22" East 2,647.63 feet;
- thence South 00°14'04" East 2,643.87 feet to the South Section line of said Section 18;
- thence South 89°51'09" West 1,838.96 feet along said South line to the Point of Beginning.

Containing 6,087,510 square feet or 139.750 acres.

NOV 2 2006

Exhibit "B"
Elim Valley
Preliminary Site Plan
August 30, 2006



UNOFFICIAL COPY NOTE: SEE HURRICANE PLANNING DEPT.



SCALE SCALE

ROSENBERG		ASSOCIATES
CONSULTING ENGINEERS		AND LAND SURVEYORS
302 East Riverside Drive, Suite A-2 St. George, Utah 84790		
Phone (435) 873-8585 Fax (435) 873-8397		

Exhibit "C"
Elim Valley
Planning Commission Recommendation of Approval
Application #2006-ZC-16

Exhibit "D"
Elim Valley
City Council Approval
Application # 2006-ZC-16

NEW BUSINESS

Consideration and possible approval of purchase of new ambulance. Ed Campbell explained this new ambulance was included in the budget. The department will keep the old ambulance in service to provide better options for response. There is a \$30,000 grant and funds from reserves to help finance this project. Chief Campbell recommended the Council award the bid to Rocky Mountain Ambulance for an ambulance manufactured in Florida at a cost of \$117,490 partially equipped. He explained it will take an additional \$3,000 to fully equip the new ambulance. He said they are averaging about 1200 medical calls.

Glenwood Humphries motioned to approve the purchase of the new ambulance through Rocky Mountain Ambulance, seconded by Dave Sanders. Motion unanimously approved. Council members expressed appreciation for the grant to lower the cost for the City.

Clark Fawcett told the story of a group of fire and ambulance personnel who once went to pick up a new ambulance and ended up in Mexico and got stopped at the border with the drug-sniffing dog in the ambulance. Chief Campbell clarified that was fifteen years ago!

Consideration and possible acceptance of road dedication plats for:

A. Gilbert Industrial Court Road Mike Bradshaw from Coral Canyons explained this road is tied to Foothills Canyon Drive. The road is a cul de sac and will serve some industrial development.

B. Foothills Canyon Drive This is the portion of the road tied to Gilbert Industrial Court road. Larry LeBaron motioned to accept these road dedications for Gilbert Industrial Court Road and Foothills Canyon Drive, seconded by Dave Sanders. Motion unanimously approved.

C. 2000 West and a portion of 100 North Mac J. Hall explained some months ago the developers asked the Council if they could move 2170 West to 2000 West. This plat dedicates the new alignment. The developers have provided a bond for improvements.

Dave Sanders motioned to accept the dedication plat for 2000 West and a portion of 100 North, seconded by Glenwood Humphries. Motion unanimously approved.

Consideration and possible approval of an ordinance approving a zone change from PDO, Planned Development Overlay; R-1, Single Family Residential; RA-1, Residential Agricultural one acre; and HC, Highway Commercial, to PDO/R-1-8, Planned

Development Overlay/ Single Family Residential 8,000 square foot lots on approximately 2164 acres located at approximately 3700 West south of SR-9 for the project known as Elin Valley – applicant McNeil Development, Parker Atkins agent

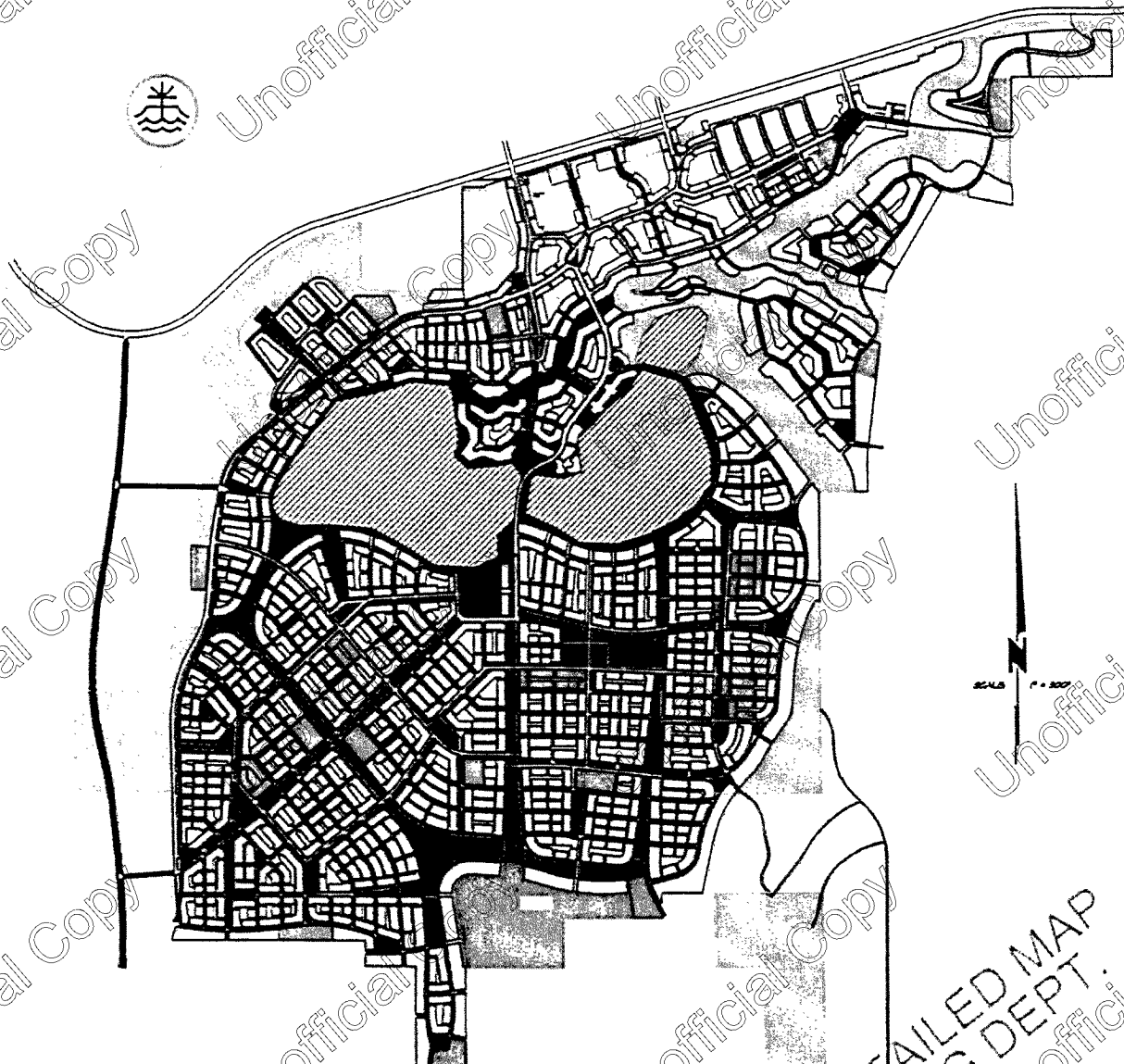
Mike Jensen asked if the PDO site plan does commit to a golf course and not just desert open space. Mr. Parker stated their designation on the site plan is improved open space. The golf course is being designed and language in the development agreement at 4.6.1.1 covers the golf course. Numbers are being clarified for this development agreement. Based on the digitized map approximately 200 acres for golf course are specified. Jeff Starkey stated the developers understood they would have to amend the development agreement and the site plan if they decide not to provide this improved open space or golf course in the plan. Mr. Jensen emphasized the desirability of an improved golf course over undeveloped open space.

Ethelyn Humphries motioned to approve the ordinance granting the PDO/R1-8 zone change subject to development agreement approval and acceptance, seconded by Dave Sanders. Motion unanimously approved.

Parker Atkins asked if there were any specific issues to be addressed tonight regarding the development agreement. Jeff Starkey said he talked to Neil Lindberg and the agreement should be ready for approval at the next meeting.

Exhibit "E"
Elim Valley
Open Space and Parks Schematic Plan
February 20, 2006

PARKS AND OPEN SPACE SCHEMATIC



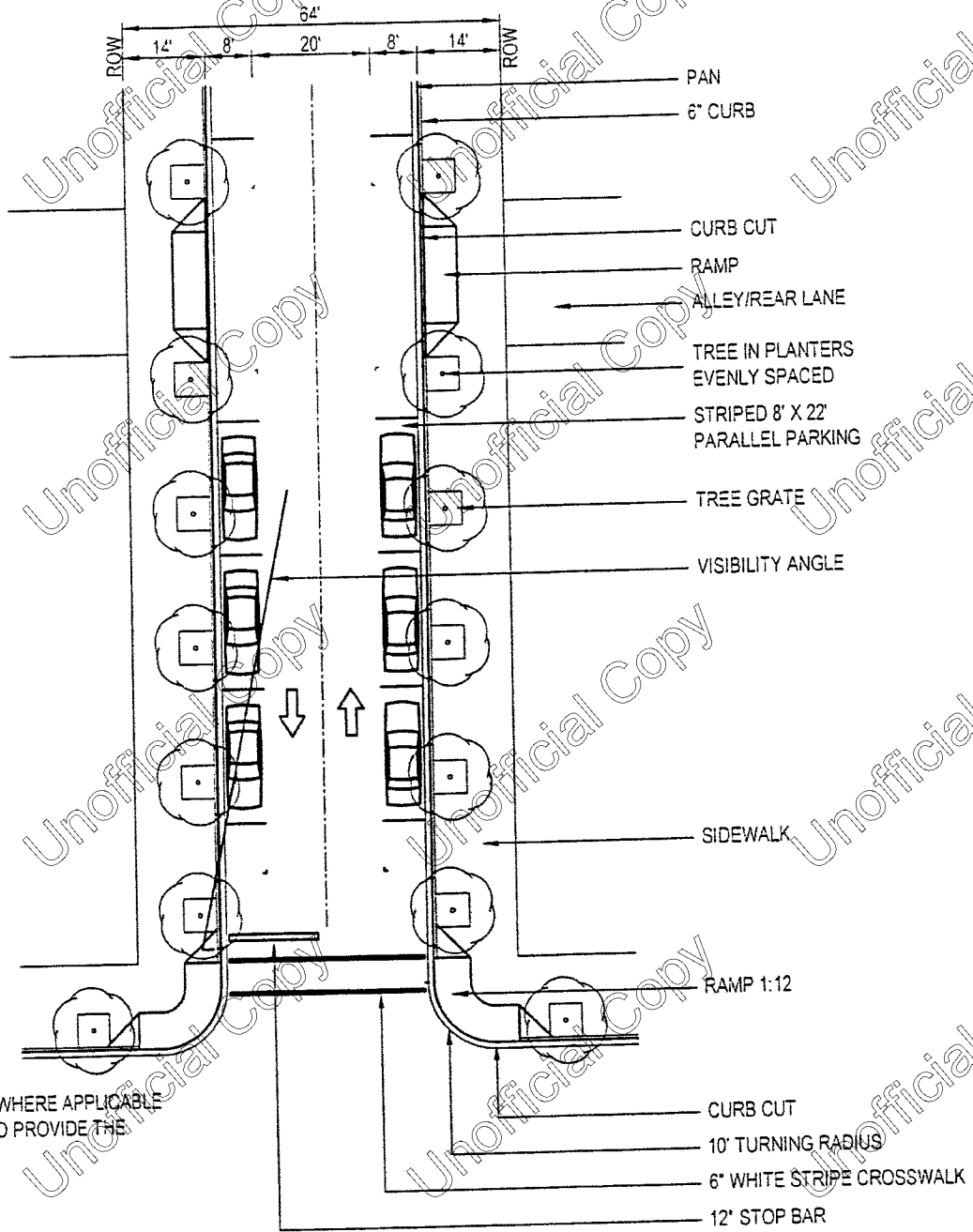
LEGEND	
	NATURAL PRESERVE
	MAINTAINED PARKS
	GOLF COURSE
	OPEN SPACE

FOR A LARGER MORE DETAILED MAP
SEE HURRICANE PLANNING DEPT.

NOV 2 2006

NOTE:
FOR A LARGER MORE DETAILED MAP
SEE HURRICANE PLANNING DEPT.

Exhibit "F"
Elim Valley
Road Cross Section Designs



NOTE:
 FIRE LANES WILL BE REQUIRED WHERE APPLICABLE
 BETWEEN PARALLEL PARKING TO PROVIDE THE
 MINIMUM 26' CLEARANCE.

CS-64-36

SCALE: NTS

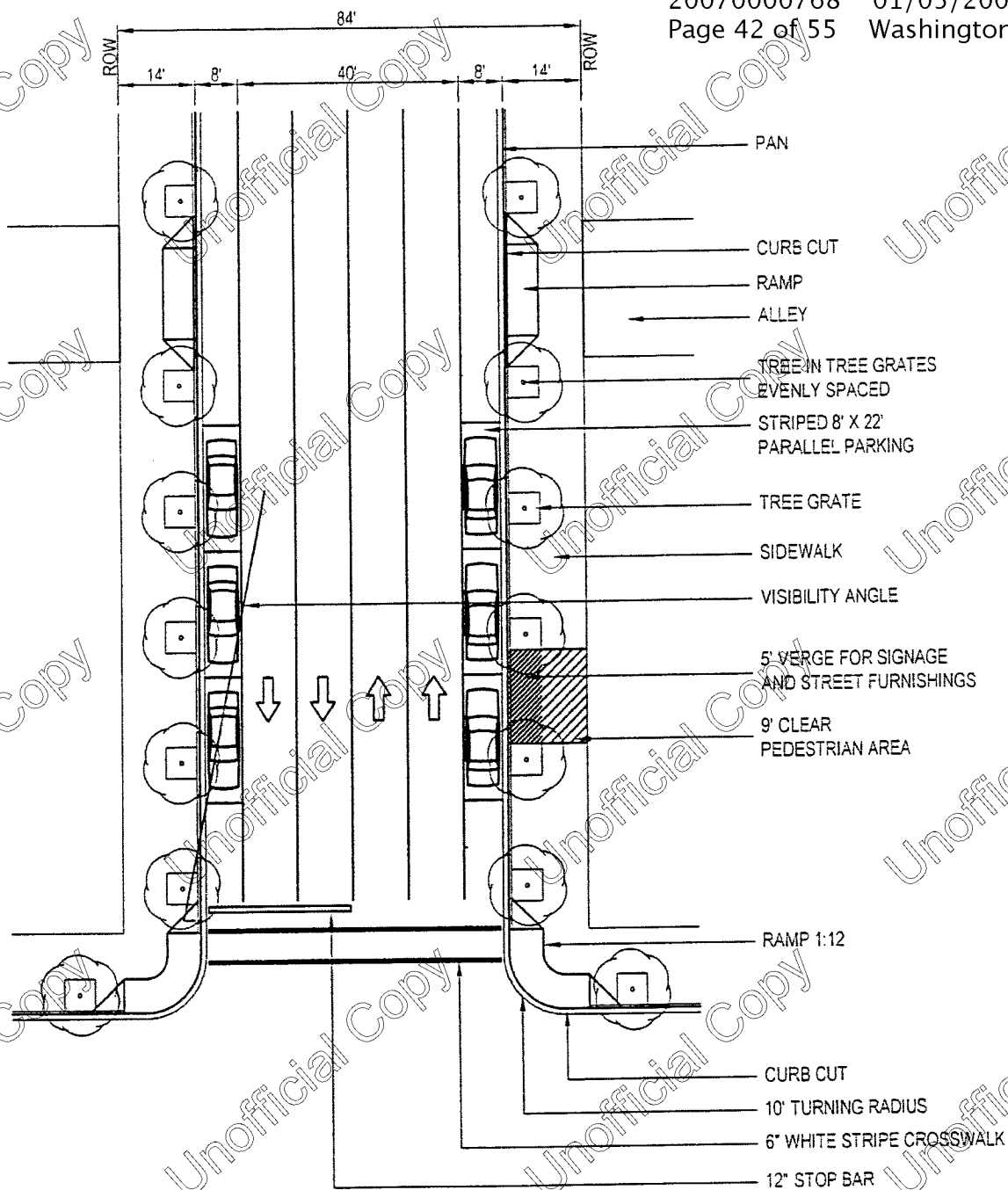
LANES: 2
 WIDTH: 10'

PARKING: YES (8' LANE, EACH SIDE)



ELIM VALLEY
 NOURISH LIFE

NOV 2 2006



NOTE:
 FIRE LANES WILL BE REQUIRED WHERE APPLICABLE
 BETWEEN PARALLEL PARKING TO PROVIDE THE
 MINIMUM 25' CLEARANCE.

CS-84-56

SCALE: NTS

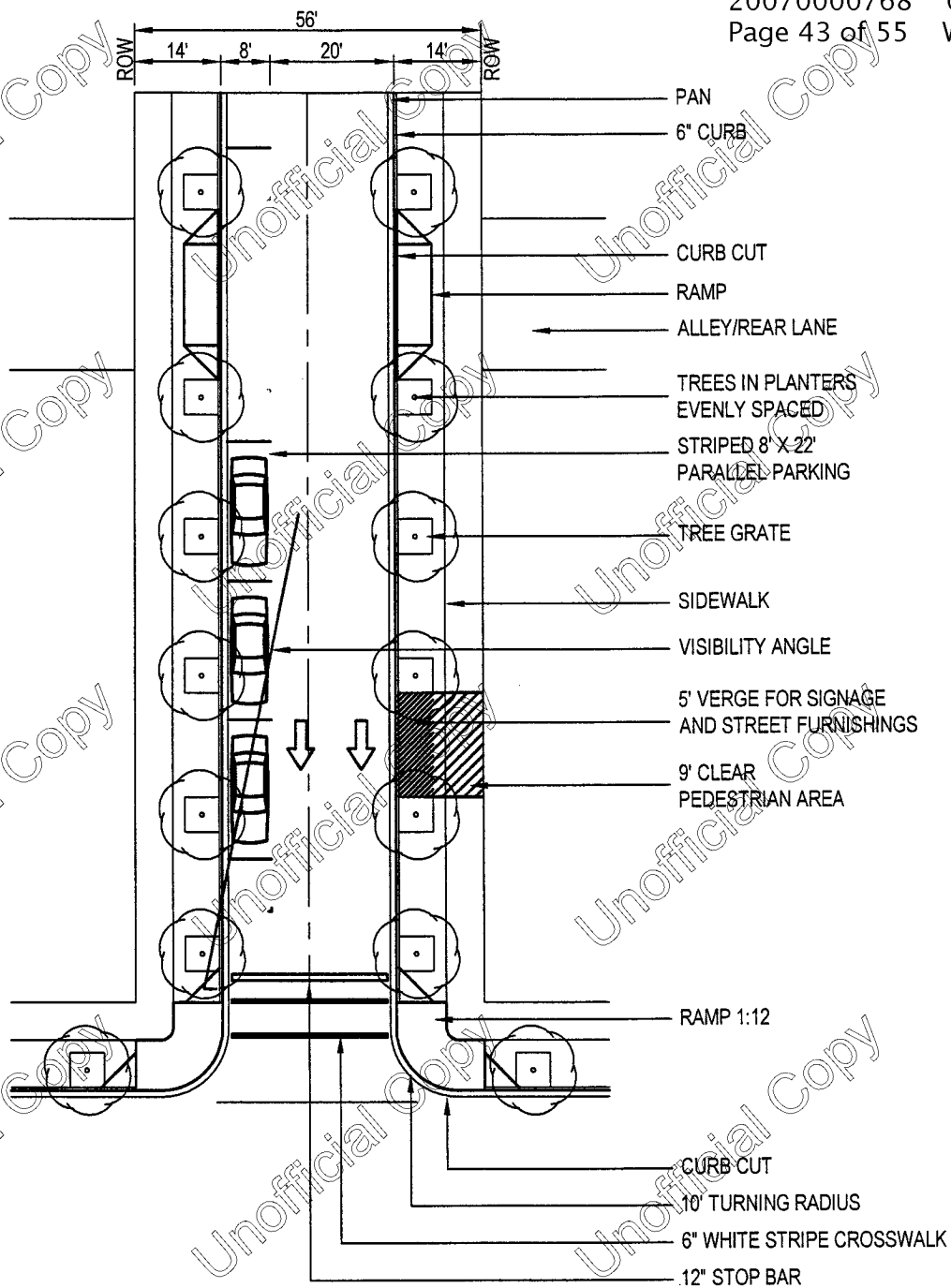
LANES: 4
 WIDTH: 10'

PARKING: YES (8' LANE, EACH SIDE)

NOV 2 2006



ELIM VALLEY
 NOURISH LIFE



NOTE:

FIRE LANES WILL BE REQUIRED WHERE APPLICABLE BETWEEN PARALLEL PARKING TO PROVIDE THE MINIMUM 26' CLEARANCE.

LOCATIONS OF UTILITIES ARE TYPICAL. SITE SPECIFIC LOCATIONS MAY VARY DUE TO FIELD CONDITIONS AND EXISTING UTILITIES.

CS-56-28 (ONE WAY)

SCALE: NTS

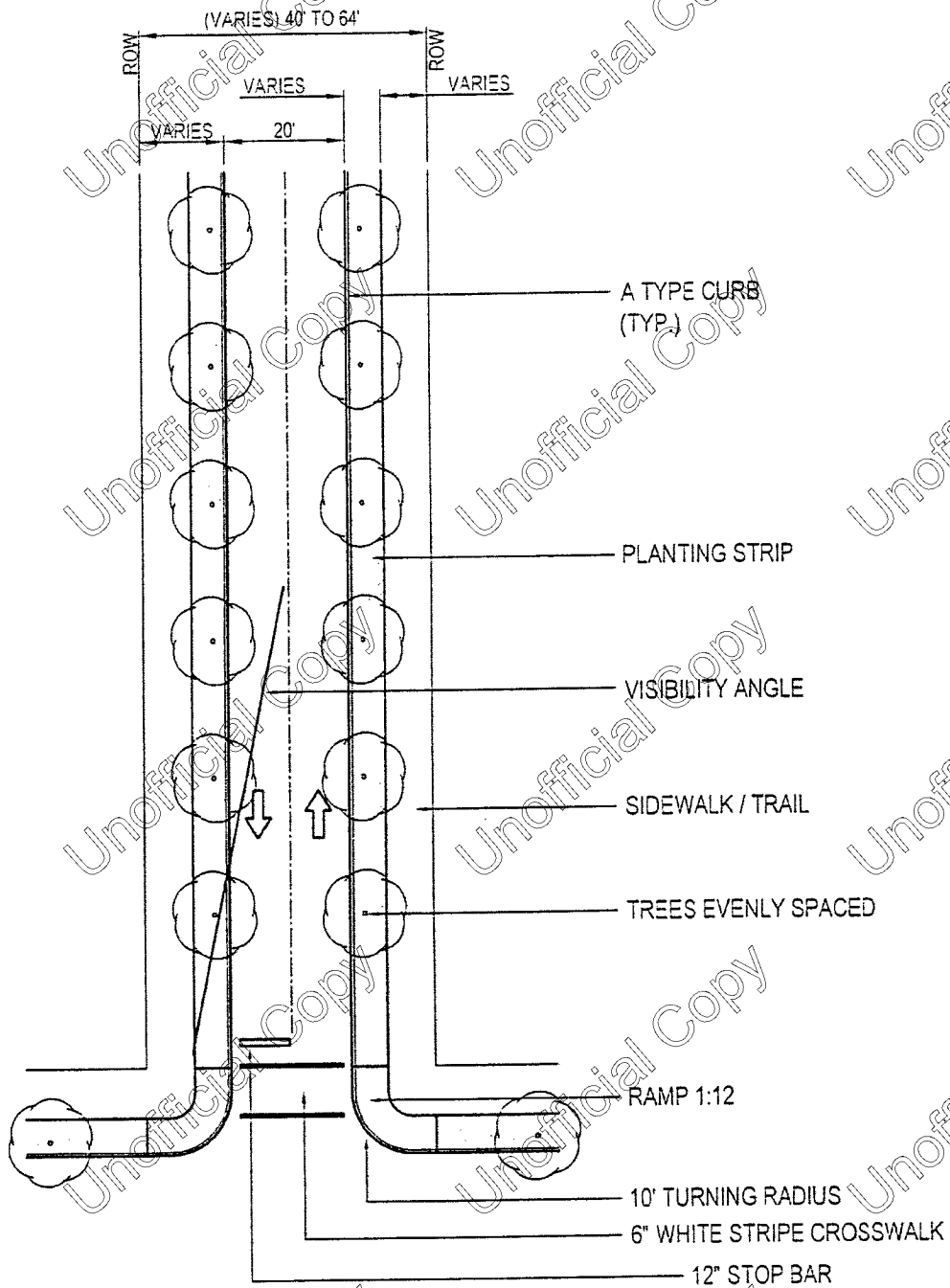
LANES: 2
WIDTH: 10'

PARKING: YES (8' LANE, ONE SIDE)

NOV 2 2006



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AV-V-20

SCALE: NTS

LANES: 2
WIDTH: 10'

PARKING: NO

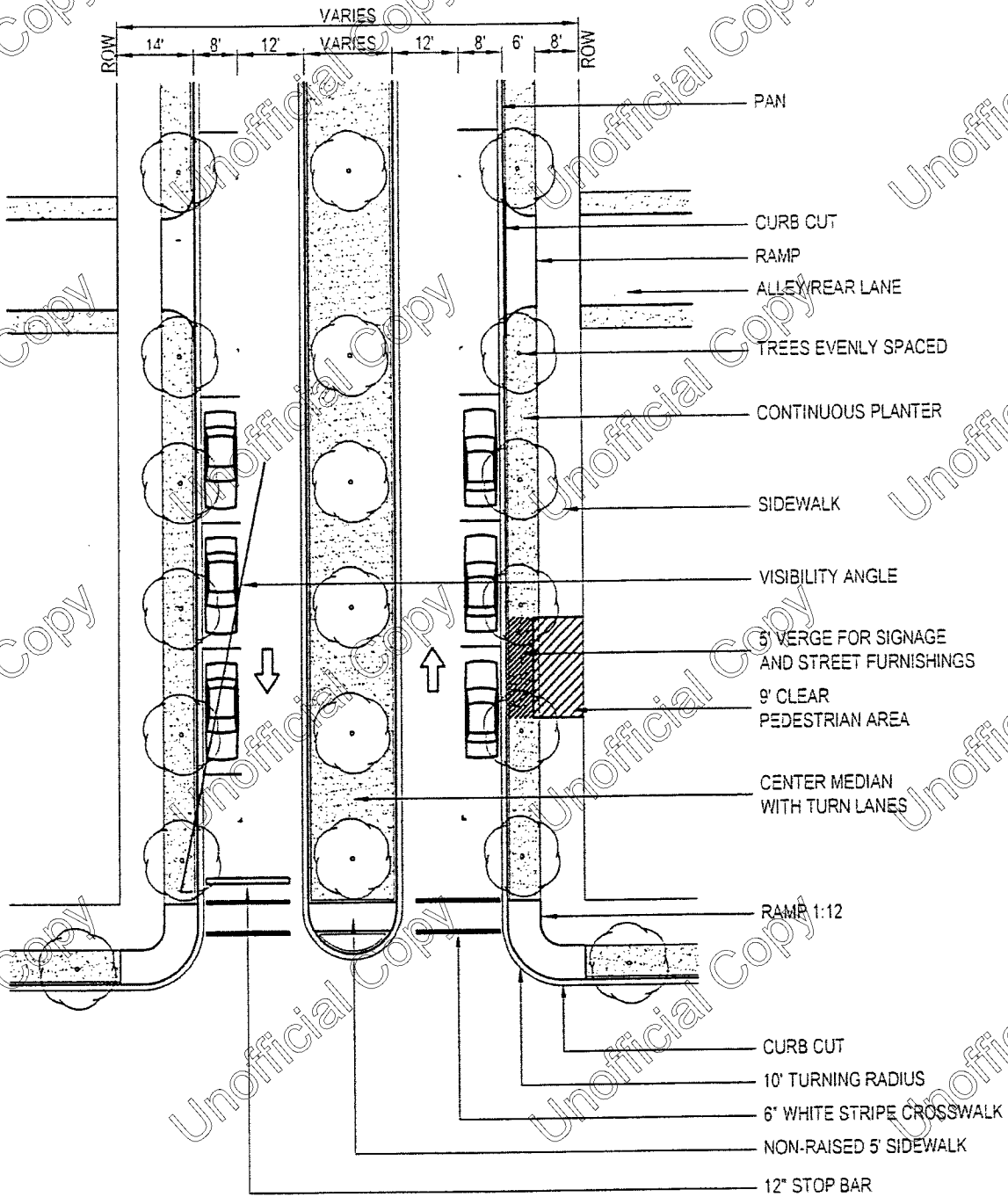
NOV 2 2006



ROSENBERG
ASSOCIATES
CONSULTING ENGINEERS - LAND ARCHITECTS



ELIM VALLEY
NOURISH LIFE



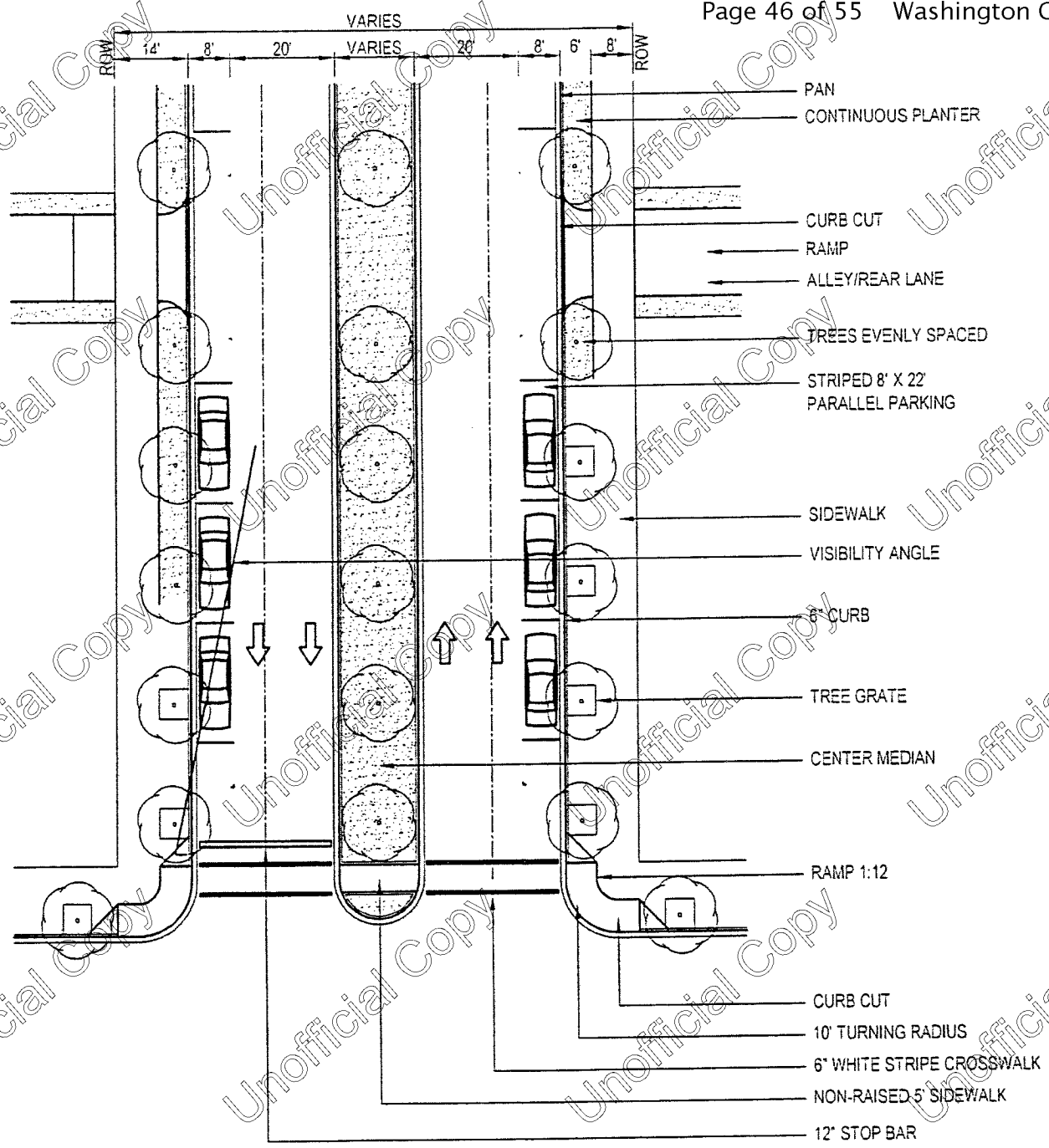
AV-V-40
SCALE: NTS

LANES: 2
 WIDTH: 12'

PARKING: YES (8' LANE EACH SIDE)

NOV 2 2006





NOTE:
 FIRE LANES WILL BE REQUIRED WHERE APPLICABLE
 BETWEEN PARALLEL PARKING TO PROVIDE THE
 MINIMUM 26' CLEARANCE.

LOCATIONS OF UTILITIES ARE TYPICAL. SITE
 SPECIFIC LOCATIONS MAY VARY DUE TO
 FIELD CONDITIONS AND EXISTING UTILITIES.

LANES: 4
 WIDTH: 10'

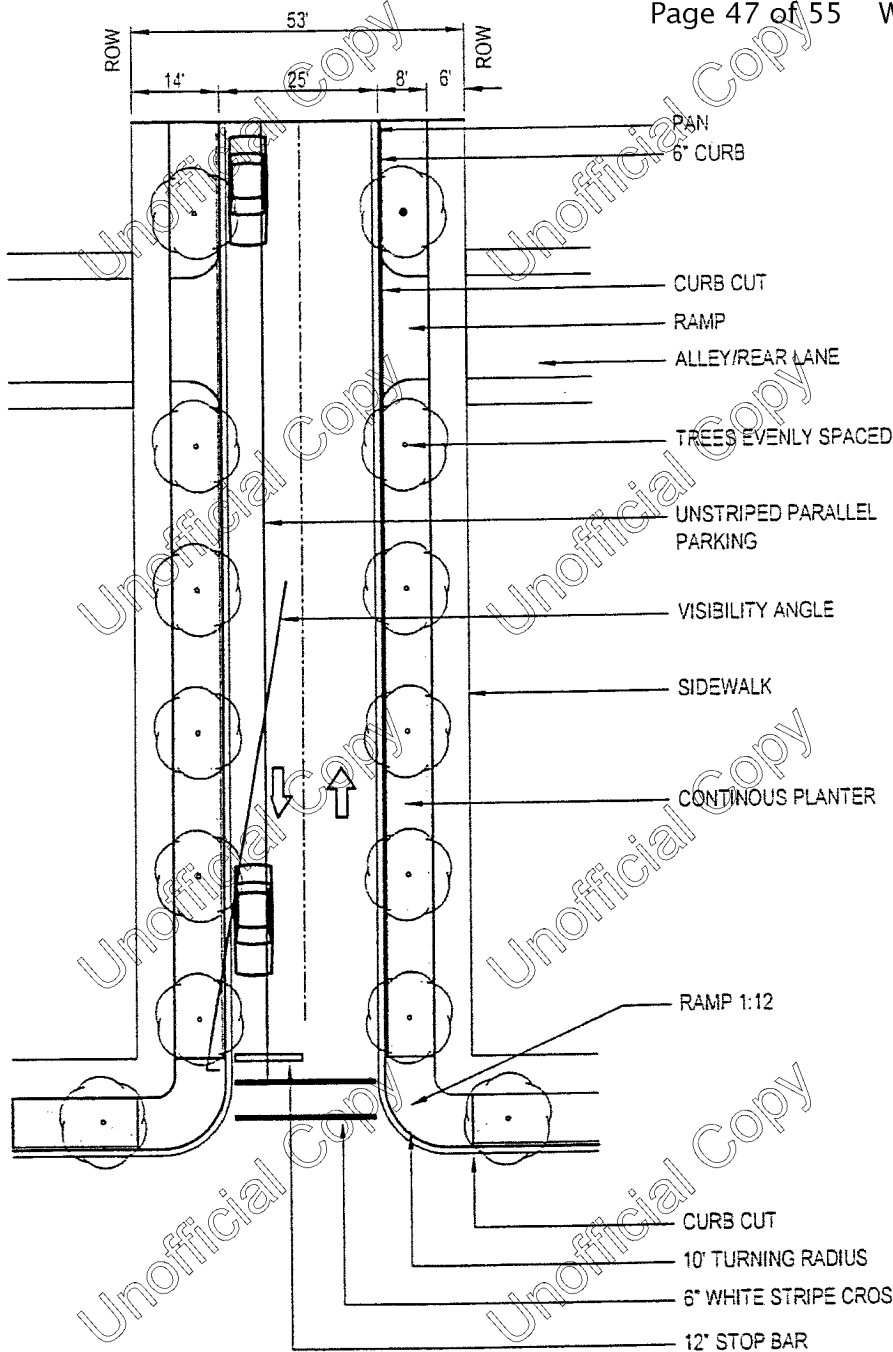
AV-V-56
SCALE: NTS

PARKING: YES (8' LANE EACH SIDE)

NOV 2 2006



ELIM VALLEY
 NOURISH LIFE



NOTE:

FIRE LANES WILL BE REQUIRED WHERE APPLICABLE BETWEEN PARALLEL PARKING TO PROVIDE THE MINIMUM 26' CLEARANCE.

ST-53-25

SCALE: NTS

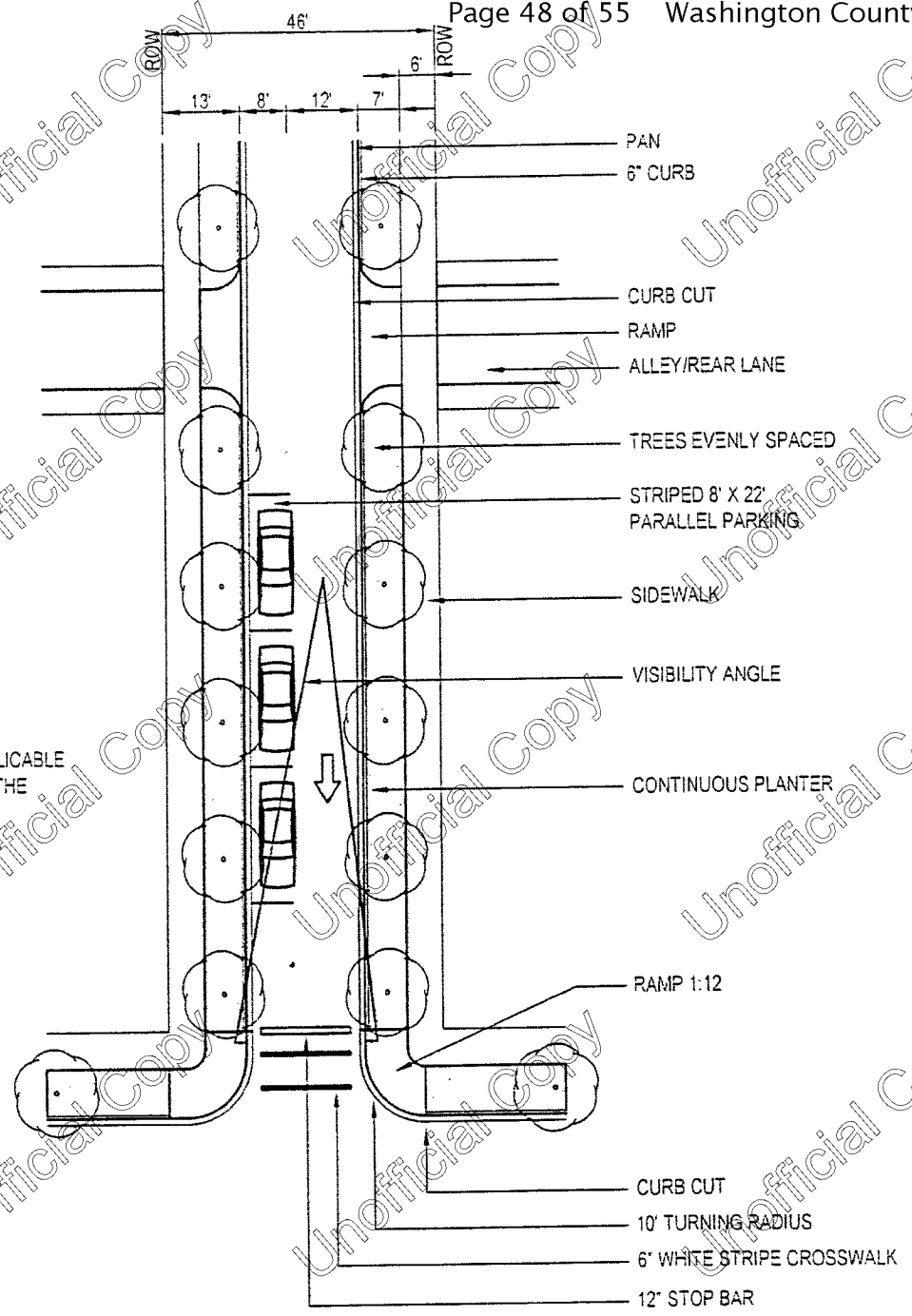
LANES: 2
WIDTH: 9'

PARKING: YES (7' LANE, ONE SIDE)

NOV 2 2006



ELIM VALLEY
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NOTE:
 FIRE LANES WILL BE REQUIRED WHERE APPLICABLE
 BETWEEN PARALLEL PARKING TO PROVIDE THE
 MINIMUM 26' CLEARANCE.

ST-46-20 (ONE WAY)

SCALE: NTS

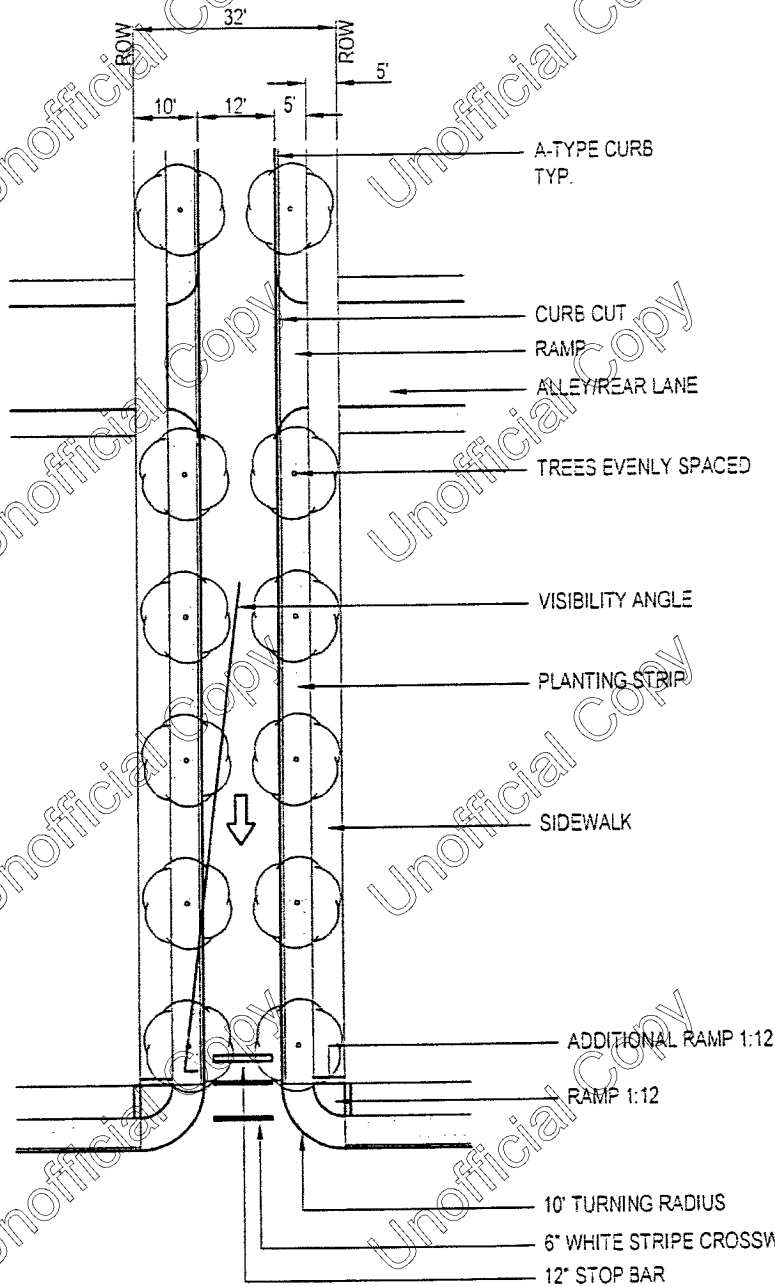
LANES: 1
 WIDTH: 12'

PARKING: YES (8' LANE, ONE SIDE)

NOV 2 2006



ELIM VALLEY
 NOURISH LIFE



RD-32-12 (ONE WAY)

SCALE: NTS

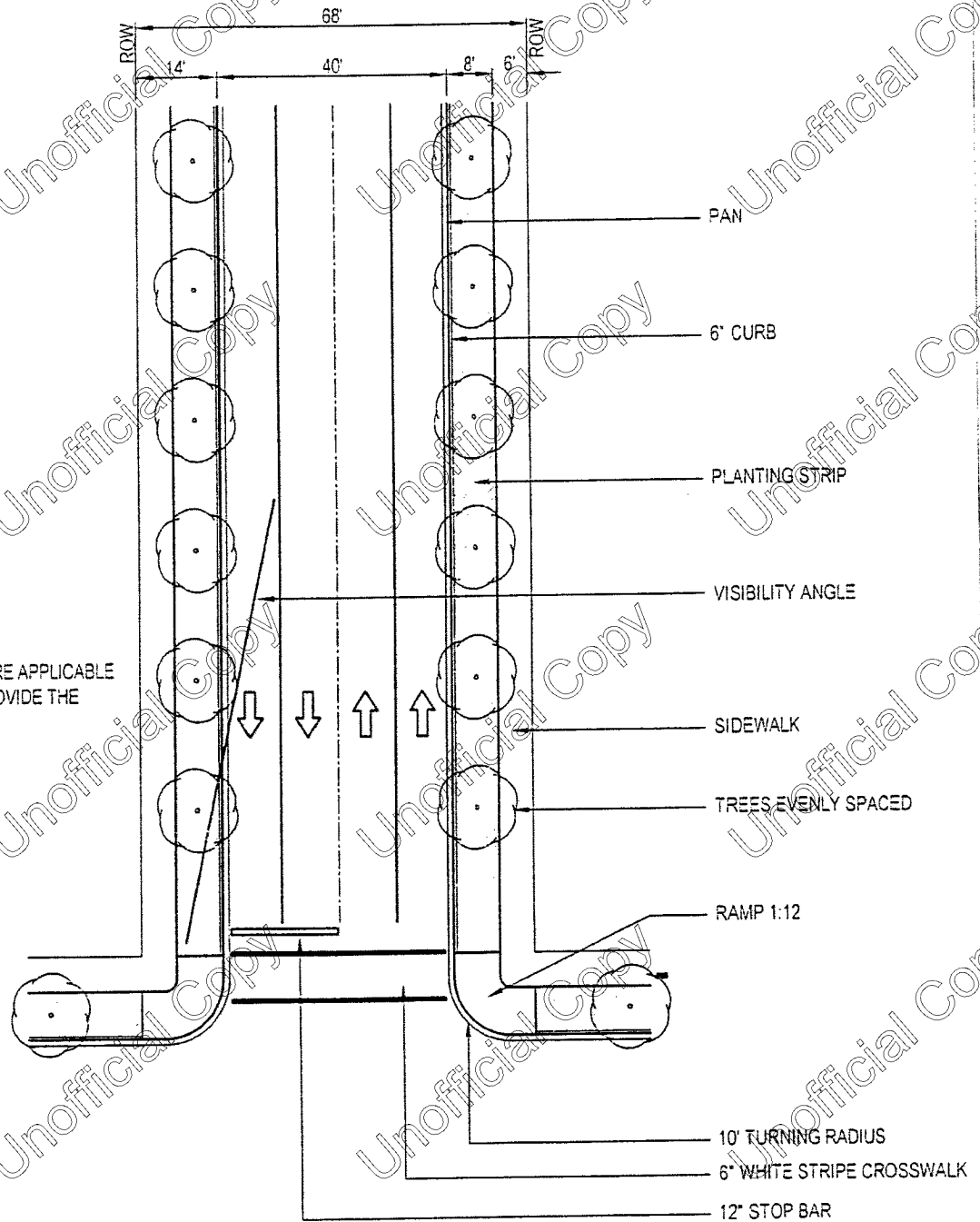
LANES: 1
WIDTH: 12'

PARKING: NO

NOV 2 2006



ELIM VALLEY
NOURISH LIFE



NOTE:

FIRE LANES WILL BE REQUIRED WHERE APPLICABLE BETWEEN PARALLEL PARKING TO PROVIDE THE MINIMUM 26' CLEARANCE.

RD-68-40

SCALE: NTS

LANES: 4
WIDTH: 10'

PARKING: NO
FIRE ACCESS: YES

NOV 2 2006



ROSENBERG
ASSOCIATES
CONSULTING ENGINEERS - LANDSCAPE ARCHITECTS



ELIM VALLEY
NOURISH LIFE

Exhibit "G"
Elim Valley
Hurricane Fire and Rescue Letters
October 14 and 16, 2006

HURRICANE FIRE & RESCUE

Chief Ed Campbell

202 E. State

Hurricane, Utah 84737

Phone 435-635-9562

Fax 435-635-5259

October 14, 2006

Mayor, City Council, City Manager,

Re: Elim Valley Project

While I do not advocate reducing the minimum clearances as per the International Fire Code (IFC) adopted by both the State Of Utah and Hurricane City, Elim Valley Planning and Development has offered some remedy to mitigate the potential problems that may arise. If the City Council so chooses, I believe it may be possible to provide an adequate level of protection to this area with the following requirements:

- 1- Inter-connectivity is proposed with no cul-de-sacs. This does allow for response from more than one direction.
- 2- They have offered to reduce the normal hydrant spacing by 50%. In addition, I would propose hydrants and mains capable of providing the required fire flows to be placed in the alley ways with a maximum spacing of 400'. (Alleys will need to be a minimum of 26' wide unobstructed)
- 3- Require all buildings, both residential and commercial, to have an approved automatic sprinkler system installed. (Including garages, concealed spaces, and attics)
- 4- Provide a minimum width of 12' for travel lane (unobstructed) instead of the 9' and 10' proposed in some areas. (When only one travel lane exists)
- 5- Concerns with tree canopies being maintained at the required minimum height of 13'6" for the full width as the trees mature.

Each phase will need to be reviewed carefully for access and hydrants.

With these proposals, I am only asking for additional widths on two of their proposed road designs. (ST-46-18 modify to require one 8' parking & one 12' travel lane; AV-V-36 modify to require one 8' parking & one 12' travel in each direction) Eight of the ten proposed road designs would be acceptable with items 1-5 above in place. If ST-46-18 and AV-V-36 are widened as I propose, then all road designs would be acceptable with the

above mentioned additional requirements.

Mr. Parker Atkins has asked for a technical explanation of any changes from their proposal. I would simply state that with a width of 10' mirror to mirror on our apparatus, that a travel lane width of 10' or less would not allow for access to buildings from the roadway if a vehicle was parked. (It would still be difficult and conditions would not be optimum at 12' widths)

Also, the requirements for sprinklers in all areas would be needed to possibly slow the spread of fire. Sprinklers are not a 100% guarantee that the fire would be totally extinguished. With the requirements that I have proposed, I believe all of them to be a minimum to ensure that the Fire Department would be able to provide an adequate response as we would in a "normal" or traditional development that would meet all aspects of the IFC.

Please feel free to contact me if I can answer any questions or concerns that you may have.

Sincerely,



Chief Ed Campbell
Hurricane Fire & Rescue

**HURRICANE
FIRE & RESCUE**

Chief Ed Campbell

**202 E. State
Hurricane, Utah 84737**

**Phone 435-635-9562
Fax 435-635-5259**

October 16, 2006

Re: Fire Department review of proposed street sections for Elim Valley

To whom it may concern:

In reviewing the proposed street sections for Elim Valley, I would approve the following as they would apply in this development with additional requirements as listed in my letter to the City Council dated October 14, 2006.

CS-64-36; CS-84-56; RD-32-12(one way); RD-68-40; ST-53-25; AV-V-20; AV-V-56; CS-56-28(one way).

Street sections ST-46-18 & AV-V-36 would need to have travel lanes increased from 10' to 12', with one 8' parking lane.

Without the requirements I listed in the above referenced letter in place, then all street sections would have to be reviewed again.

Sincerely,



Chief Ed Campbell
Hurricane Fire & Rescue

Toni,

I also have a \$200 check for you too.... I'll run it over in the morning....

ACCOUNT NUMBER	TAX IDENTIFICATION NUMBER
751043	H-4-2-1-1103
751076	H-4-2-2-2303
751027	H-3-2-6-1402
751035	H-3-2-7-4402
751472	H-4-2-11-2102
751084	H-4-2-12-1102
751092	H-4-2-13-1409

Thanks,

Travis B. Walbeck, P.E.
Rosenberg Associates
Phone: (435) 673-8586
Fax: (435) 673-8397

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Version: 7.5.432 / Virus Database: 268.16.4/615 - Release Date: 1/3/2007 1:34 PM

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1/4/2007