

When Recorded Return To:

Drew W. Gilliland
Summit-Hurricane Development, Inc.
1270 W. 1130 S. Suite 145
Orem, UT 84058

DOC # 20080004968

Amendments Page 1 of 13
Russell Shirts Washington County Recorder
02/05/2008 03:31:25 PM Fee \$ 34.00
BY SUMMIT-HURRICANE DEVELOPMENT



Space above for County Recorder's Use

PARCEL I.D. # H-3-2-4-4921

H-3-2-4-4201

H-3-2-4-3201

H-3-2-4-215-

H-3-2-5-1101

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

FOR PAINTED HILLS COLLINA TINTA

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR PAINTED HILLS COLLINA TINTA ("Amendment") is made to be effective as of January 3, 2008 (the "Effective Date"), by and among Summit-Hurricane Development, Inc. a Nevada corporation ("Developer"), Toquerville Enterprises, LLC, a Nevada limited liability company ("Toquerville"), and the City of Hurricane, a municipal corporation and political subdivision of the State of Utah ("City") (individually a "Party" and collectively the "Parties").

RECITALS

A. The Parties entered into that certain Development Agreement for Painted Hills Collina Tinta dated September 7, 2006, and recorded in the Official Records of Washington County, Utah on October 24, 2006, as Document No. 20060049271 (the "Agreement") for the development of approximately 560 acres of land located in Hurricane, Utah (the "Project").

B. At a duly noticed public hearing of the City Council on October 18, 2007, the Developer requested that the City approve certain alternative standards for the street signs, golf cart crossings, street pavers, rolled curbs, and pigmented curbing for the Project (the "Alternative Standards"), as more particularly set forth on Exhibit "H" attached hereto.

C. At the hearing, the City Council conditionally approved the Alternative Standards subject only to the Developer working with the City Staff and City Attorney. The minutes from this hearing are attached hereto as Exhibit "A".

D. The Developer and City Staff have met and agreed on the Alternative standards.

E. Section 4.4.2.2 of the Agreement provides that the roads in the Project shall conform to the City's standards and specifications except as set forth on Exhibit "H". The City

Attorney and the Developer have reviewed the Agreement and determined that Exhibit "H" should be amended to include the Alternative Standards approved by the City.

F. The Parties desire to amend the Agreement by modifying Exhibit "H" to the Agreement to include the Alternative standards set forth in Exhibit "H" attached hereto.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Amendment to Agreement. This Amendment amends the Agreement. In the event of any conflict or inconsistency between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall control. Unless otherwise indicated herein, all capitalized terms used in this Amendment shall have the definitions assigned to them in the Agreement.

2. Alternative Standards. Exhibit "H" to the Agreement is hereby amended to include as permitted alternative standards from the City Code for the City the Alternative Standards as set forth in Exhibit "H" attached hereto.

3. Maintenance Agreement. Developer and the City shall enter into a maintenance agreement wherein Developer shall reimburse the City for any additional costs in connection with increased maintenance cost in connection with the Alternative Standards.

4. Execution and Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall together constitute and be one and the same document.

5. No Other Changes. Except as herein expressly provided, the Agreement remains in all other respects unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR PAINTED HILLS COLLINA TINTA as of the date first above written.

TOQUERVILLE:

Toquerville Enterprises, LLC, a Nevada limited liability company

DEVELOPER:

Summit-Hurricane Development, Inc., a Nevada corporation

By: *Cyenne Mendonca*
Print Name: *Cyenne S. Mendonca*
Title: *Manager*

By: *[Signature]*
Print Name: *Heath Johnston*
Title: *Pres.*

By: *Jerald M. Spitsbury*
Print Name: *Jerald M Spitsbury*
Title: *MANAGER*

CITY

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

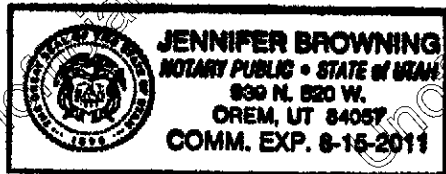
By: *Thomas B. Hirsch*
Print Name: *Thomas B. Hirsch*
Title: *Mayor*

STATE OF UTAH

COUNTY OF _____)

: ss.

On the *11th* day of *Jan.*, 2008, personally appeared before me *Heath Johnston*, who, being by me duly sworn, did say that he/she is the *President* of Summit-Hurricane Development, Inc. a Nevada corporation, and said person acknowledged to me that said company executed the same.



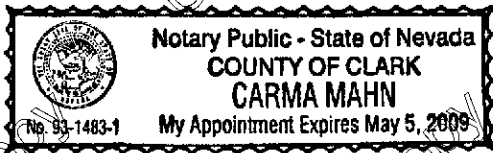
Jennifer Browning
NOTARY PUBLIC
Residing at: *Orem, UT*

My Commission Expires:

8-15-2011

STATE OF)
 : ss.
COUNTY OF)

On the 3rd day of January, 2008, personally appeared before me Vyonne S. Mendenhall and Jerald M. Spilsbury, who, being by me duly sworn, did say that he/she/they is/are the Managers of Toquerville Enterprises, LLC, a Nevada limited liability company, and said person acknowledged to me that said company executed the same.

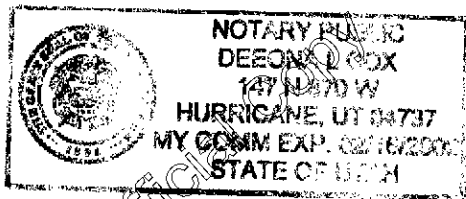


[Signature]
NOTARY PUBLIC
Residing at: Las Vegas, NV

My Commission Expires:

STATE OF UTAH)
 : ss.
COUNTY OF)

On the 11th day of Jan, 2008, personally appeared before me Heath Johnston, who, being by me duly sworn, did say that he/she is the _____ of the City of Hurricane, a municipal corporation and political subdivision of the State of Utah, and said person acknowledged to me that said company executed the same.



[Signature]
NOTARY PUBLIC
Residing at: 147N. 870 West
Hurricane

My Commission Expires:
2-16-09

Feb 14 07 01:35p

Hurricane City

435*635*2184

p. 33

EXHIBIT 'A'

LEGAL DESCRIPTION

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

Contains 24,379,912 Square feet or 559.68 Acres

H-3-2-4-4401

H-3-2-4-4201

H-3-2-4-3201

H-3-2-4-215

H-3-2-5-1101

**EXHIBIT H
TO
FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

DESCRIPTION OF ALTERNATIVE STANDARDS

(SEE ATTACHED)

HURRICANE CITY COUNCIL 10/18/07

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coming into effect which would bind the City regarding "gray water." Mr. LeBaron said it would not but thought that Bowen and Collins would be willing to give the City some advice on the matter as it developed. Mr. LeBaron expressed his wishes to create a storm water committee to have public involvement. He said Toni Foran told him she had money in her budget for the storm drain master plan. Clark Fawcett confirmed this to be true. Larry LeBaron motioned to approve the agreement for Professional Services, seconded by John Bramall. Motion unanimously approved.

Consideration and possible approval of request for the following variances to the Hurricane city Standards:

- a. Rolled curbs**
- b. Pavers at Intersections and cul-de-sacs in Grande Canary and Mira Rosa**
- c. Street sign change with street name**
- d. Colored concrete – Summit Development**

Larry LeBaron said he was contacted by Toni Foran in regard to this matter and because the staff hadn't had a chance to review the material and because it would require revisions to the development agreement, she suggested the matter be continued for a few weeks. Mayor Hirschi said Jerry wanted to make a presentation on the matter and advised Jerry that his proposal for the street signs was backwards from what the City suggested. Mayor Hirschi said the City preferred the quadrant to be larger than the street name. Jerry acknowledged the fact these enhancements did not follow the development agreement but felt they would really improve the development and thought the proper chain would be to bring them to the Council for consideration. He said he had conversed with staff and is more than willing to comply with any recommendations the staff would offer. Jerry said the rolled curb they are offering actually carries more water than the one in the standards. He said he realized the pavers at the intersections and the colored concrete is not in the standards either but the developers are willing to bear the costs on all in order to improve the development. Jerry said they are here to ask for the Councils permission and said they are ready to start the curb work immediately. Fay Reber said he hadn't had a chance to review the development agreement but thought it could be looked at as an amendment to the agreement and therefore the City Council could take care of it, but thought that an amendment of the City standards might be required which would need to be addressed by the Board of Adjustments. Mr. Reber said if the Council wanted to approve the requests they could simply express that in the minutes and then go back and discuss in further detail the best was to implement the changes by either amending the development agreement or sending it back to the Planning Commission or Board of Adjustments. David Sanders had concerns whether this was going to make variances to the City Standards and if so, they may need to be changed at some point in time. Mr. Reber thought it would be a good idea to look into it. Jerry felt the changes really enhanced the development and said they were looking for the most expedient way to

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take care of the requests. Arthur LeBaron said he did not have a problem with the rolled curbs but thought they didn't belong on Rlington Parkway. Jerry confirmed the rolled curbs would only be within the subdivisions and would not be on Rlington Parkway. Mike Jensen wondered if the Council made an exception for Elim Valley in regard to rolled curbs. Arthur LeBaron said an exception was made but it was for a different type of curb. He confirmed it was a deviation from our standards and that the standards were amended to include the proposed curb. Mike Jensen said he was ok with the rolled curb, but had concerns with the pavers and colored concrete. Mr. Jensen said if the developer was willing to maintain them then he is ok with those requests as well. Mike Vercimak pointed out that water valves are located at every intersection in the streets and wanted confirmation that if the street gets dug up the developer would be responsible for replacing the pavers. Fay Reber said if the Council approved these requests the development agreement would need to be amended to include specific language to that affect. John Bramall said he was ok with the changes but wanted to see the amendment to the development agreement that stated the developer was willing to be responsible for the maintenance of the requested changes. Mr. Reber said if the Council was going to approve the requests, the development agreement should be amended with clear and specific language as to the responsibility and it should be brought back before the Council for final approval. David Sanders asked Arthur if the standards could be looked at and revised as well in the case another developer wanted to use these new proposed changes. Arthur LeBaron didn't think it would be a problem. Chief Excell expressed his concerns with the street signs and wanted it to be on record that he does not approve of the change as it creates problems for the police department. Arthur LeBaron wanted confirmation that the developer intended on maintaining the street signs as well. Jerry confirmed this to be true. Fay Reber advised if the Council was willing to approve the requests the minutes should reflect that the concept is approved and the language can be drafted as to an amendment of the development agreement or decide whether it needed to be addressed by the Board of Adjustment. Mr. Reber said if it can be done just by an amendment, it can be drafted and put onto the next agenda for final approval. Larry LeBaron made a motion to that affect, seconded by David Sanders. Motion unanimously approved.

Consideration and possible approval of request to be a gated neighborhood community – Summit Development

Jerry stated the area around the clubhouse was the area they are requesting to be gated at this time. Jerry said he had discussed the matter with Mac Hall and is willing to adhere to all of the provisions that were made on the last gated community. It was confirmed the gates would be just off of Rlington Parkway. Discussions took place as to the exact location of the gated area. Mac Hall said the staff members he spoke with agreed with the water lines and that the streets would be private but at the same

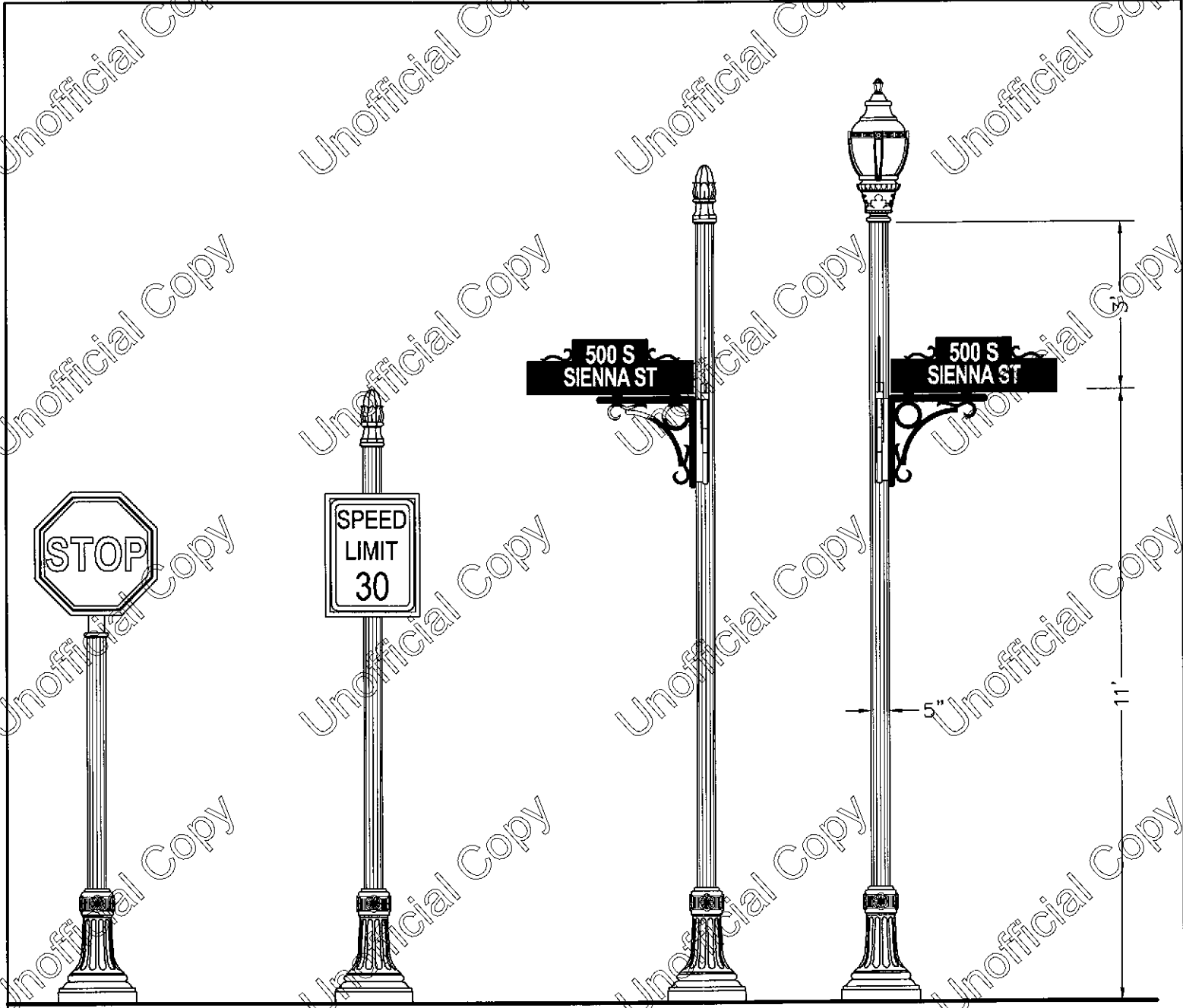
HURRICANE CITY COUNCIL 10/18/07

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standards as public streets. He said the gates would be far enough back so there could be a turn around in front of the gate and have all the necessary safety and fire requirements. Fay Reber wanted confirmation the developer would be responsible for the maintenance and utilities as well as the sewer for the area. Jerry confirmed this to be true. Mr. Reber advised Jerry the sewer district would require a special agreement be entered into and the City would probably want one as well. Fay Reber suggested the developer give the City its proposal for the gated community, the staff get together, draw up a draft amendment and present it at the next meeting for approval. Larry LeBaron asked if the entrance would be big enough for a fire truck to turn around. Jerry confirmed this to be true for both entrances. Mike Jensen asked Arthur and Mike if they had a chance to look at the proposal. Arthur LeBaron said they have looked at the packet but was never approached as staff in regard to the request. Larry LeBaron motioned to continue the matter for two weeks to give the staff a chance to look at it and have the language drafted so it could be presented as amendment B at the next meeting, seconded by Mike Jensen. Motion unanimously approved.

Request for the building of a wall between Harrisburg Estates and the surrounding development and reflectors on the main road around Quail Lake – Don Holmstead

Don Holmstead explained to the Council it was the understanding of the homeowners of Harrisburg Estates that a wall would be built to protect the current homes. He said they understood there to be a bond in place to ensure a wall would be built. Mr. Holmstead advised the Council it had been two years and there is still no wall. He said during the last storm his yard was flooded because there was nothing to stop the water from draining down into his yard. Mr. Holmstead wanted to know if there was anything Hurricane City could do to make the developer build the wall. Larry LeBaron asked if the bond was of public record. Another audience member who is also a Harrisburg homeowner said he was told by a Marleen Stephenson that a bond was in place. He said he is not sure what happened to the bond as there have been 2 – 3 different developers since then. He added the retaining rock wall has started to fall over into the backyards of current homeowners and is causing damage. He said the Harrisburg residents have been told several different things as to the time frame of when the wall would be built and now it has been two years and the wall still has not been built. Mayor Hirschi said the minutes would have to be researched to see what was said and then a decision could be made from there as to what the City could do. Mike Vercimak said he didn't believe a bond was recorded in regards to the wall but recalled the agreement was the wall would be built as each house was built. He agreed with the Harrisburg homeowners in that the development had been sold a few times since the agreement was made and does not know who was in control at this time. Alexis one of the homeowners who has been impacted by the problems said she had met with Lance several times and confirmed there was a bond in place and the whole wall was to be built when the construction of the first house commenced. She said the



APPROVAL

STREET DEPT. _____ DATE: _____

PUBLIC WORKS _____ DATE: _____

FIRE DEPT. _____ DATE: _____

CITY ENGINEER _____ DATE: _____

PER DEVELOPMENT AGREEMENT, COLLINA TINTA HOA WILL MAINTAIN STREET SIGNS.

11/20/07 11:18:18 AM gsherman
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 11/20/07 11:18:18 AM gsherman
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P S O M A S

1173 SOUTH 250 WEST, Suite 308
 ST. GEORGE, Utah 84770
 (435) 628-8912 (435) 674-0236 (FAX)

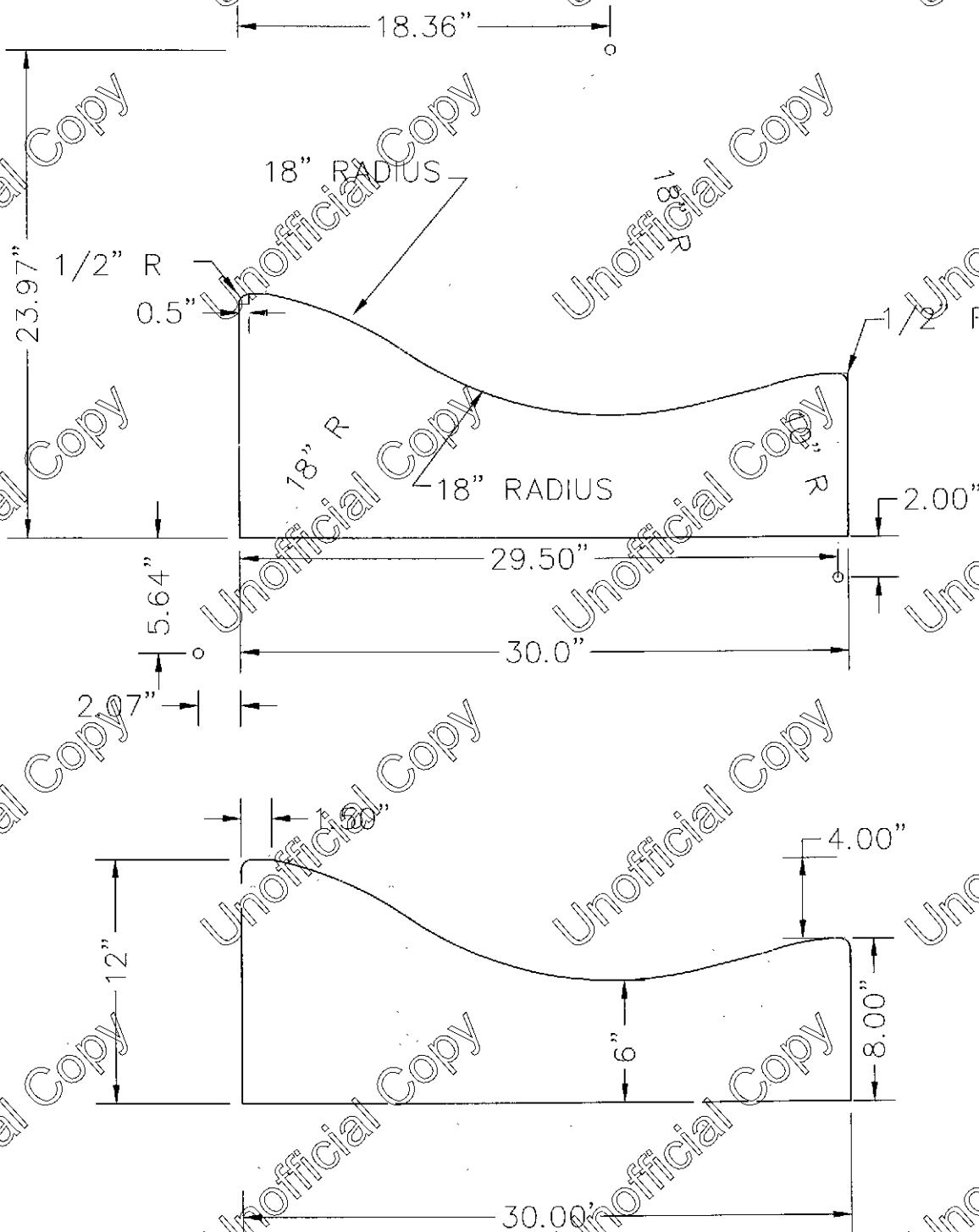
**COLLINA TINTA
 STREET SIGNS**

EXHIBIT H-2

SHT 1 OF 2

DATE: 12-2007
 SCALE: 3/8" = 1'-0"

MANUFACTURING TEMPLATE



CITY OF HURRICANE

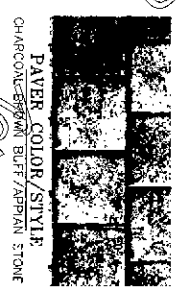
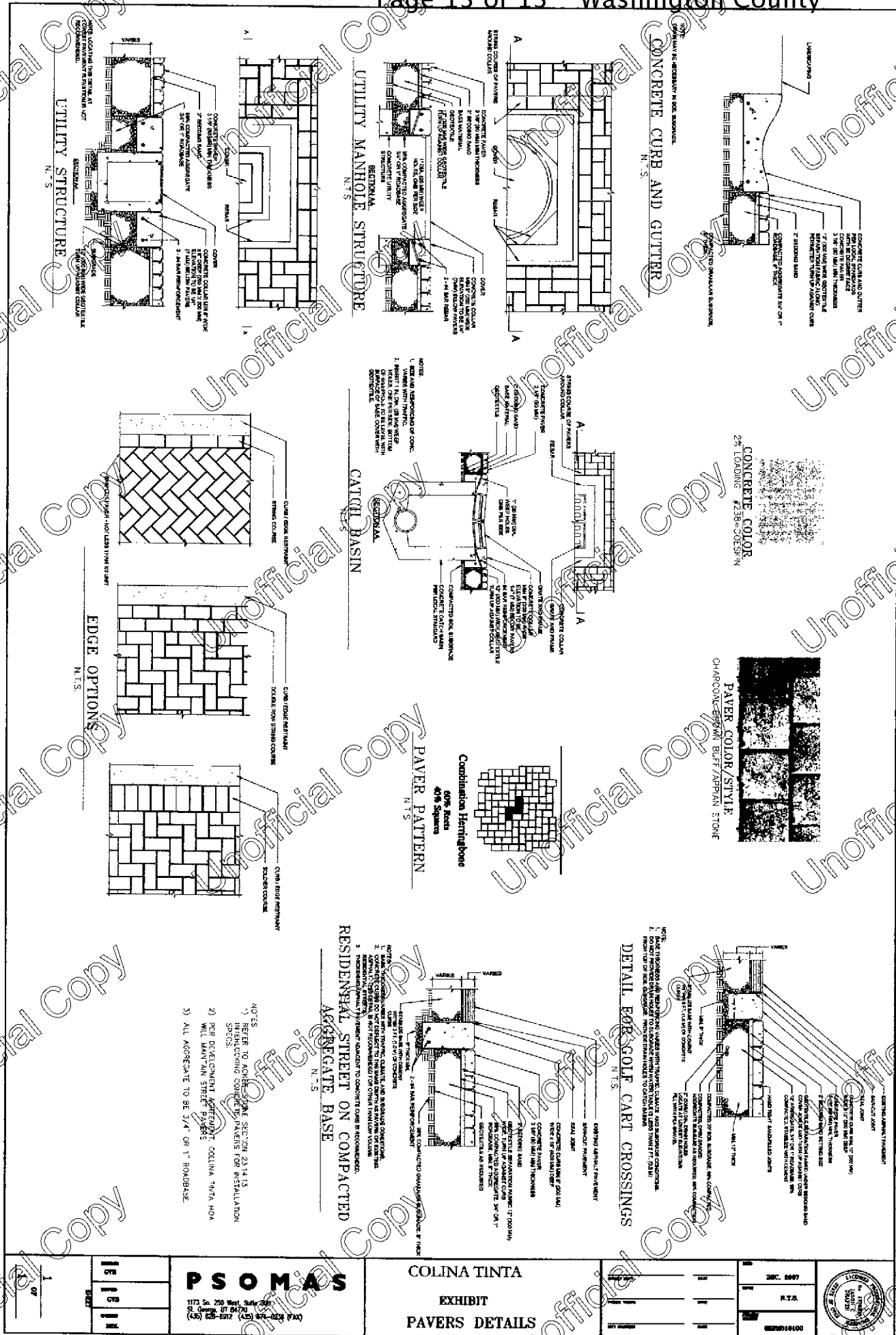
ROLL CURB & GUTTER DETAIL

EXHIBIT H-1

STANDARD DWG. NO.
 CAP 2 OF 2
 APPROVED:
 DATE: BY: MDL

P:\DC\010100\Vanances Rolled Curb\Gutter drawings\Curb and Gutter drawings\Curb and Gutter.dwg, 12/10/2007 11:07:44 AM, gburdick
 sig: gburdick 12/10/2007 11:07:44 AM

Unofficial Copy



- NOTES:
 1) REFER TO AGREEMENT SECTION 231.4.1.3 FOR THE LATEST SPECIFICATIONS FOR INSTALLATION SPECIES.
 2) PER DEVELOPMENT AGREEMENT COLLINA TINTA HOME WILL MAIN AND STREET PAVES.
 3) ALL AGGREGATE TO BE 3/4" OR 1" ROADBASE.

	COLINA TINTA EXHIBIT PAVERS DETAILS	2008-0004968 P.T.A. 02/06/2008	
	1 OF 1		