

1300 South Agreement-11/15/94 Final Draft

City of Orem Agreement No. A-94-0184

ENT 90571 BK 3577 PG 546
NINA B REID UTAH CO RECORDER BY MB
1994 NOV 29 2:23 PM FEE .00
RECORDED FOR OREM CITY

AGREEMENT

This Agreement is executed this 1st day of November, 1994, by and between the following parties:

1. City of Orem, Utah, a political subdivision of the State of Utah, with its principal offices located at 56 North State Street, Orem, Utah 84057 (hereinafter referred to as "OREM"),
2. Utah Department of Transportation, a Department of the State of Utah, with its regional office located at 825 North 900 West, Orem, Utah 84057 (hereinafter referred to as "UDOT"),
3. Eagle Hardware and Garden, Inc., a Washington corporation, with its principal offices located at 101 Andover Park East, Suite 200, Tukwila, WA 98188 (hereinafter referred to as "EAGLE"),
4. Lake Pointe Associates, LTD, a Utah limited partnership, with its principal offices located at 675 East 500 South, Suite 600, Salt Lake City, UT 84102 (hereinafter referred to as "LAKE POINTE"),
5. Fitch & Co., with its offices located at 550 West 700 South, Orem, UT 84058 (hereinafter referred to as "FITCH"),
6. BAT Investments, L.C., a Utah limited liability company, with a mailing address of P.O. Box 496, Orem, UT 84057 (hereinafter referred to as "BAT"),
7. Barber Brothers Family Partnership, a Utah Partnership, with its office located at 45 West 1300 South, Orem, UT 84058 (hereinafter referred to as "BARBER"),
8. FHP of Utah, Inc., a Utah corporation with its principal offices located at 35 West Broadway, Salt Lake City, UT 84101 (hereinafter referred to as "FHP"),
9. National Carpet Brokers, a corporation, with its principal offices located at 55 West 1300 South, Orem, UT 84058 (hereinafter referred to as "NATIONAL"),
10. America First Credit Union, a _____, with its office located at 1356 South Main, Orem, Utah 84058 (hereinafter referred to as "AMERICA FIRST").
11. Orem Community Bank, a Utah corporation, with its principal offices located at 49 West 1300 South, Orem, Utah 84058 (hereinafter referred to as "OCB").
12. Central Utah Water Conservancy District, a political subdivision of the State of Utah, with its principal offices located at 355 West 1300 South, Orem, UT 84058 (hereinafter referred to as "CUWCD").

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RECITALS

WHEREAS EAGLE, LAKE POINTE, FITCH, BAT, BARBER, FHP, NATIONAL, AMERICA FIRST, OCB and CUWCD shall hereinafter collectively be referred to as the "PROPERTY OWNERS;" and

WHEREAS 1300 South Street in Orem, Utah (also known as SR-265 and the BYU Diagonal), is a limited access highway owned by the State of Utah; and

WHEREAS UDOT, OREM and property owners owning property adjacent to 1300 South Street executed an agreement dated October 18, 1985 governing access onto 1300 South Street between 400 West and 200 East; and

WHEREAS 1300 South Street is currently being developed with uses that will bring more traffic to the area; and

WHEREAS the parties desire to amend the October 18, 1985 agreement to provide safer and more convenient accesses from businesses abutting 1300 South Street; and

WHEREAS the proposed access plan governs 1300 South Street from approximately 600 West to Main Street; and

WHEREAS the parties desire to amend only those portions of the October 18, 1985 Agreement that control 1300 South from 400 West to Main Street; and

WHEREAS the PROPERTY OWNERS are the successors in interest to the property owners who signed the October 18, 1985 Agreement or own property not included in the October 18, 1985 Agreement; and

WHEREAS several of the parties to this Agreement signed an agreement designated as the 10/25/94 Draft that is being superseded and replaced by this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Purpose.** The purpose of this Agreement is to establish a Master Street Plan for access onto 1300 South Street in Orem, Utah. This Agreement supersedes the agreement dated October 15, 1985 between UDOT, OREM, and property owners owning property that abuts 1300 South. However, only the portion of the October 15, 1985 agreement that controls 400 West to Main Street shall be superseded by this Agreement. The portion of the October 15, 1985 agreement that controls Main Street to 200 East shall remain in full force and effect. The PROPERTY OWNERS in this Agreement are the same property owners that signed the October 15, 1985 agreement, the successors in interest to those property owners, or own property that was not included in the October 15, 1985 agreement.

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2. **Access onto 1300 South Street.** The parties agree that 1300 South Street shall be developed and accessed as shown on Exhibit "A," which is attached hereto and incorporated herein by reference. No other accesses onto 1300 South Street shall be permitted without approval from UDOT and OREM.

3. **Easements.**

A. **North Side of 1300 South Street.** The PROPERTY OWNERS on the north side of 1300 South Street (EAGLE and LAKE POINTE) agree to the provisions of the 1300 South Development Access Map (Exhibit "A") and agree that their respective site plans that were approved by the Orem City Council (EAGLE on March 22, 1994 and LAKE POINTE on August 2, 1994) establish the easements and accesses shown on Exhibit "A." EAGLE and LAKE POINTE agree to abandon any accesses from their respective properties onto 1300 South Street other than those shown on Exhibit "A."

B. **South Side of 1300 South Street.** The PROPERTY OWNERS on the south side of 1300 South Street agree to grant any easements necessary, including easements across parking lots, to effectuate the traffic flow and accesses shown on Exhibit "A," acknowledging a common goal of keeping 1300 South Street and Main Street as accessible as possible for each of the PROPERTY OWNERS. The PROPERTY OWNERS agree to exchange any existing accesses onto 1300 South Street for the improvements set forth in this Agreement, and to vacate existing accesses that are not included on Exhibit "A."

4. **Development Responsibilities.** The parties shall have the following responsibilities regarding the development of the 1300 South Street as shown on Exhibit "A." All improvements required in this Agreement shall be constructed according to the City of Orem Development Standards and Specifications (UDOT standards for areas within UDOT's right-of-way) and shall be completed on or before October 31, 1995, unless a different time is specified in this Agreement.

A. **OREM.** OREM shall do the following:

1. **RTI/RTO.** Construct a right turn in/right turn out access on the south side of 1300 South at approximately 100 West.
2. **FHP.** Remove the current FHP access and replace it with landscaping.
3. **Curb, Gutter and Street.** Complete approximately 660 feet of curb, gutter and street widening improvements on the south side of 1300 South east of 400 West and adjacent to the CUWCD property.
4. **Traffic Signals.** Engineer, coordinate, and install traffic signals at 400 West 1300 South and 200 West 1300 South. OREM's financial obligation for the traffic signals shall be limited to the difference between the amounts that EAGLE, LAKE POINTE and BAT have agreed to pay and the total cost of engineering and installing the traffic signals. The parties acknowledge that certain issues related to the traffic signal project are beyond OREM's control. OREM cannot install either traffic signal until (1) UDOT approves of the need for and design of the traffic signal, (2) OREM

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has received the required contributions for the traffic signal to be installed, and (3) the independent contractor to be hired by OREM to complete the traffic signal installation is able to schedule the job. OREM agrees to proceed expeditiously with the parts of the project that it can control. If a traffic signal is delayed because of the failure of a party to make its required payment, any other party may make the payment on behalf of the dilatory party and be reimbursed by OREM when OREM receives the money from the dilatory party. If a traffic signal cannot be installed, OREM shall return any funds contributed toward that traffic signal, without interest, to the party that contributed the money.

B. EAGLE. EAGLE shall do the following:

1. **Improvements.** Improve the north side of 1300 South Street from Main Street to 200 West, according to its approved site plan and other drawings on file with the CITY.
2. **Traffic Signal.** Pay OREM the amount that it agreed to contribute for the traffic signal at 200 West 1300 South in a letter from Sconzo Associates to OREM dated August 2, 1994. Payment shall be made on or before the earlier of the following dates: (1) March 1, 1995, or (2) thirty (30) days from the date that EAGLE receives notice from OREM that OREM is ready to construct the signal light.

C. LAKE POINTE. LAKE POINTE shall do the following:

1. **Improvements.** Improve the north side of 1300 South Street from 200 West to 400 West, according to its approved site plan and other drawings on file with the CITY.
2. **Traffic Signals.** Pay OREM the amount that it agreed to contribute for the traffic signals at 200 West 1300 South and 400 West 1300 South in a letter to OREM dated July 11, 1994. Payment shall be made on or before the earlier of the following dates: (1) March 1, 1995, or (2) thirty (30) days from the date that LAKE POINTE receives notice from OREM that OREM is ready to construct the signal light(s).

D. FITCH. FITCH shall do the following:

1. **Improvements.** Improve the south side of 1300 South Street from FITCH's east boundary with FHP to FITCH's west property line, according to Golden Corral's approved site plan and the final plat and other drawings on file with the CITY.
2. **Access Road.** Develop an access road across its property according to plans approved by OREM's and UDOT's engineers.

E. BAT. BAT shall do the following:

1. **Improvements.** Improve 400 West Street to a length of 100 feet to the South from its intersection at 1300 South with the necessary geometric improvements (such as curb, gutter, road base, asphalt, etc.) for the traffic light installation.

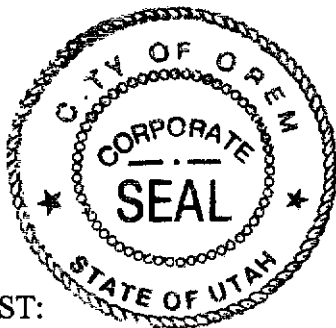
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2. **Traffic Signal.** Pay OREM the sum of \$25,000.00 as BAT's contribution for the traffic signal at 400 West 1300 South. Payment shall be made on or before the earlier of the following dates: (1) March 1, 1995, or (2) thirty (30) days from the date that BAT receives notice from OREM that OREM is ready to construct the signal light.
5. **Lawful Agreement.** The parties represent that each of them has lawfully entered into this Agreement, having complied with all relevant statutes, ordinances, resolutions, by-laws, and other legal requirements applicable to their operation.
6. **Utah Law.** This Agreement shall be interpreted pursuant to the laws of the State of Utah.
7. **Time of Essence.** Time shall be the essence of this Agreement.
8. **Attorney's Fees.** In the event that any party should be required to retain an attorney because of the default or breach of any other party, or to pursue any other remedy provided by law, the non-breaching or non-defaulting party shall be entitled to a reasonable attorney's fee, whether or not the matter is actually litigated.
9. **Interpretation of Agreement.** The validity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraph and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.
10. **Amendments.** No oral modifications or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement.
11. **No Presumption.** Should any provision of this Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that all parties have participated in the preparation hereof.
12. **Binding Effect.** This Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties hereto.
13. **Signature Pages.** To expedite the signing of this Agreement, the parties agree that each party may sign its individual signature page and forward that page to OREM. The Agreement shall be considered executed when all parties have signed their respective pages and returned them to OREM.

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SIGNED AND ENTERED INTO this 1st day of November, 1994.

CITY OF OREM



Stella Welsh
by Stella Welsh, Mayor

ATTEST:

Melody Downey
Melody Downey, City Recorder

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SIGNED AND ENTERED INTO this 23rd day of NOVEMBER, 1994.

UTAH DEPARTMENT OF TRANSPORTATION

[Handwritten Signature]

by W. CRAIG ZUICK, EXECUTIVE Director

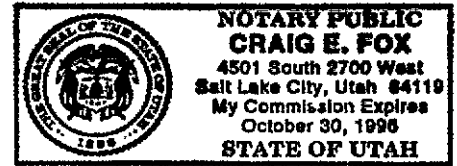
by _____, Commission Secretary

Approved as to Form:

JAN GRAHAM

[Handwritten Signature]

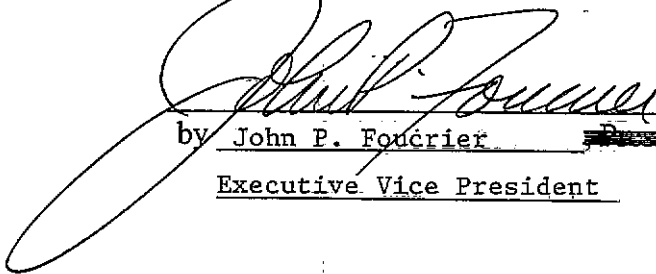
by D.S. COLEMAN, Assistant Attorney General



Craig E. Fox
Commission EXPIRES Oct. 30, 1996
RESIDING IN: SALT LAKE CITY, UT.

SIGNED AND ENTERED INTO this 21st day of November, 1994.

EAGLE HARDWARE & GARDEN, INC.


by John P. Foucrier ~~President~~
Executive Vice President

STATE OF WASHINGTON)
):ss
KING COUNTY)

The foregoing instrument was acknowledged before me this 21 day of November, 1994, by John P. Foucrier, Executive Vice President of EAGLE HARDWARE & GARDEN, INC.




NOTARY PUBLIC

My commission expires: 3/15/97
Residing at: Tacoma

SIGNED AND ENTERED INTO this 16th day of November, 1994.

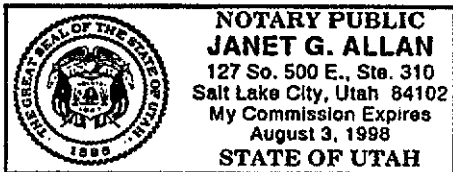
LAKE POINTE ASSOCIATES, LTD.
by its general partner THE BOYER COMPANY, L.C.

Kern C. Gardner
by Kern C. Gardner, President

STATE OF UTAH)

COUNTY OF Salt Lake)
:SS

The foregoing instrument was acknowledged before me this 16th day of November, 1994, by Kern C. Gardner



Janet G. Allan
NOTARY PUBLIC

(Seal)
My commission expires: 8/3/98
Residing at: Salt Lake County

SIGNED AND ENTERED INTO this 17 day of Nov, 1994.

ENT90571 BK 3577 PG 555

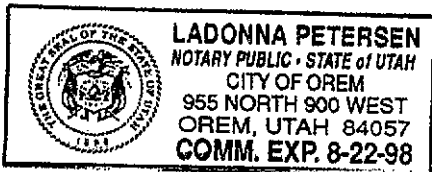
FITCH & CO



by Robert H. Fitch, President & Owner

STATE OF UTAH)
COUNTY OF Utah) :SS

The foregoing instrument was acknowledged before me this 17 day of November 1994, by Robert H. Fitch, President & Owner of Fitch & Co.



Ladonna Petersen
NOTARY PUBLIC

(Seal)
My commission expires: 8/22/98
Residing at: Orem, Utah

SIGNED AND ENTERED INTO this 16th day of November, 1994.

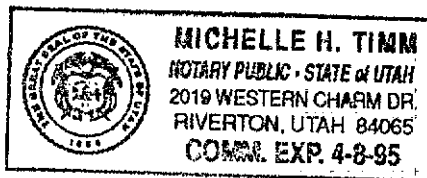
ENT90571 BK 3577 PG 556

BAT INVESTMENTS, L.C., a Utah limited liability company
BY ESNET, LTD., a Utah limited partnership, Manager

BY: *Daniel W. Campbell*
Daniel W. Campbell, General Partner

STATE OF UTAH)
)
) :SS
COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 16th day of November, 1994, by
Daniel W. Campbell



Michelle Timm
NOTARY PUBLIC

(Seal)
My commission expires: 4-8-95
Residing at: Salt Lake County, Utah

SIGNED AND ENTERED INTO this _____ day of _____, 1994.

ENT90571 BK 3577 PG 557

BARBER BROTHERS FAMILY PARTNERSHIP

Charles F. Barber
by Charles F. Barber, Partner

STATE OF UTAH)
) :SS
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 15TH day of NOVEMBER 1994, by Charles F. Barber, Partner.

M. Annette Lloyd
NOTARY PUBLIC
NOTARY PUBLIC
M. ANNETTE LLOYD
45 West 1300 S. #111
Orem, Utah 84058
My Commission Expires: 9-24-97
State of Utah

(Seal)
My commission expires: 9/24/97
Residing at: Orem, UT

SIGNED AND ENTERED INTO this 18th day of Nov, 1994.

ENT90571 BK 3577 PG 558

FHP OF UTAH, INC.

by Larry Bridge, President

STATE OF UTAH)

:ss

COUNTY OF _____)

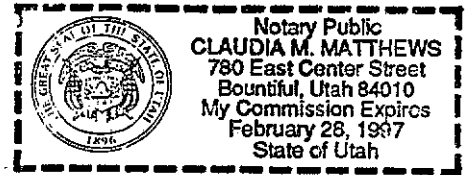
The foregoing instrument was acknowledged before me this 18th day of Nov 1994, by Larry Bridge, President of FHP of UTAH, INC.

NOTARY PUBLIC

(Seal)

My commission expires: _____

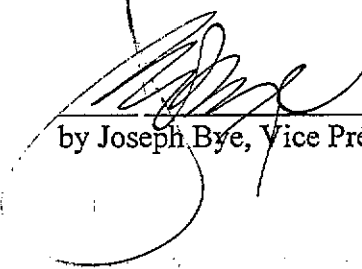
Residing at: _____



SIGNED AND ENTERED INTO this 15 day of Nov., 1994.

ENT90571 BK 3577 PG 559

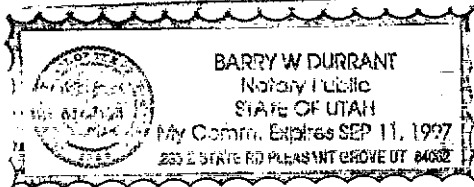
NATIONAL CARPET BROKERS

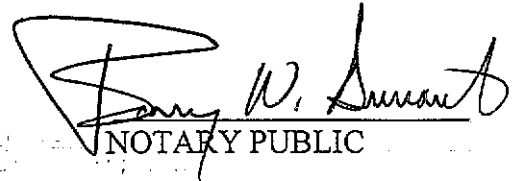


by Joseph Bye, Vice President

STATE OF UTAH)
)
 :SS
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this 15th day of Nov., 1994, by Joseph Bye, Vice President.




 NOTARY PUBLIC

(Seal)
 My commission expires: Sept 11, 1997
 Residing at: Pleasant Grove, Ut.

SIGNED AND ENTERED INTO this 17th day of November, 1994.

ENT90571 BK 3577 PG 560

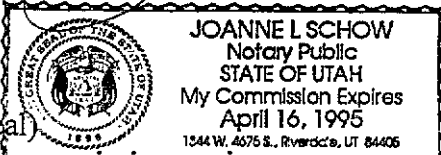
AMERICA FIRST CREDIT UNION

by [Signature]

STATE OF UTAH)
COUNTY OF Weber) :ss

The foregoing instrument was acknowledged before me this 17th day of November, 1994, by

[Signature]



[Signature]
Notary Public

My commission expires: _____
Residing at: _____

SIGNED AND ENTERED INTO this 15TH day of NOV, 1994.

ENT90571 BK 3577 PG 561

OREM COMMUNITY BANK

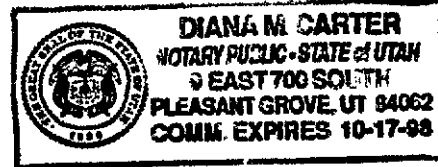
Mr Allen

by Hal J. Allen, President

STATE OF UTAH)

COUNTY OF Utah)

:SS



The foregoing instrument was acknowledged before me this 15TH day of November 1994, by Hal J. Allen, President of Orem Community Bank.

Diana M. Carter
Notary Public

(Seal)

My commission expires: 10/17/98
Residing at: Pleasant Grove

SIGNED AND ENTERED INTO this 16th day of November, 1994.

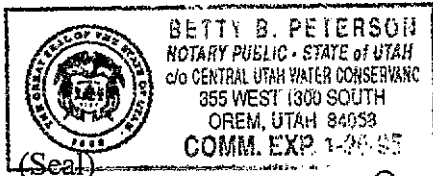
ENT90571 BK 3577 PG 562

CENTRAL UTAH WATER CONSERVANCY DISTRICT

Don A. Christiansen
by Don A. Christiansen, General Manager

STATE OF UTAH)
)
)
) :SS
COUNTY OF Utah)

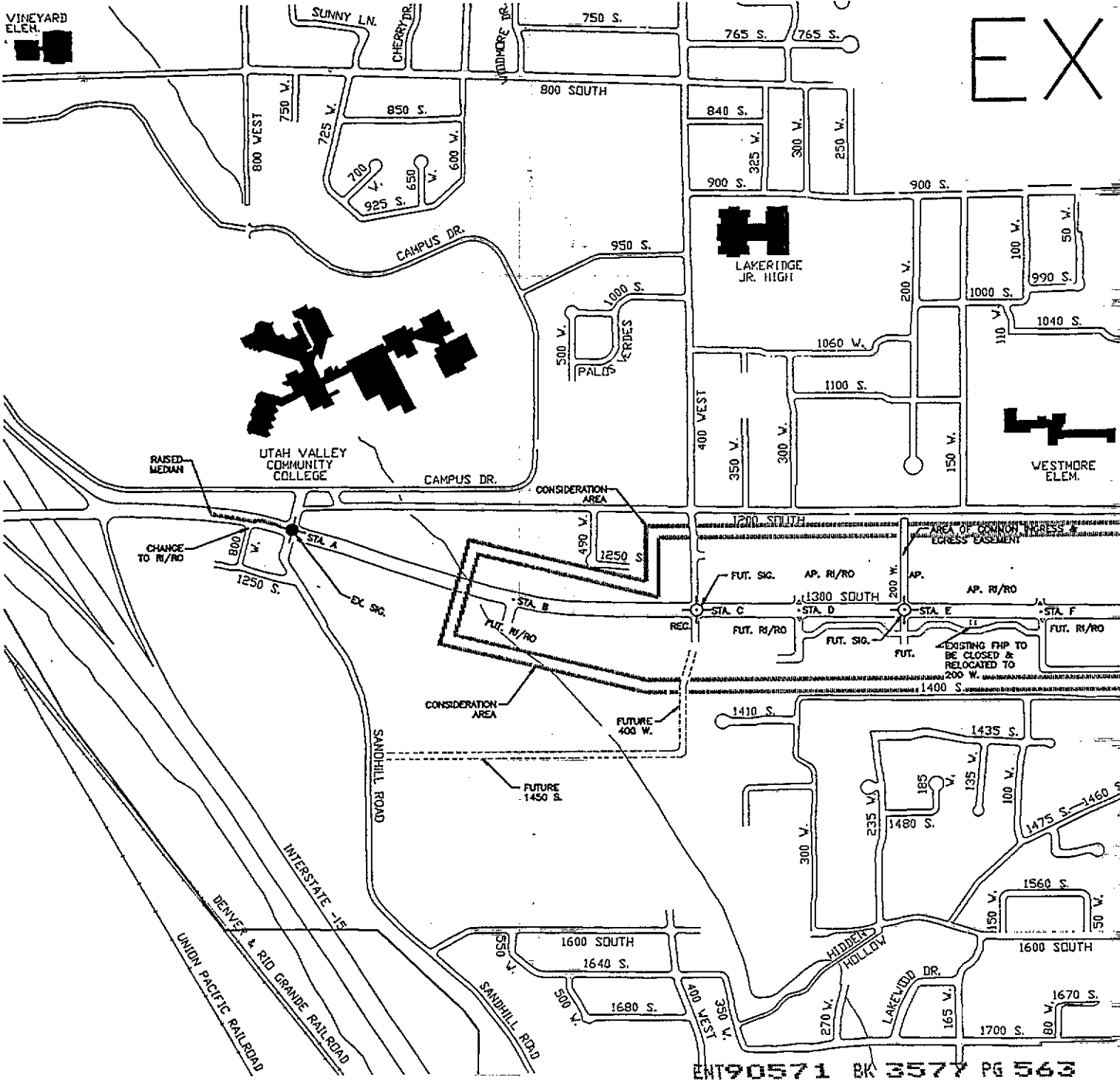
The foregoing instrument was acknowledged before me this 16th day of November, 1994, by Don A. Christiansen, General Manager.



Betty B. Peterson
Notary Public

My commission expires: January 26, 1995
Residing at: Alpine, Utah

EX



ENT90571 BK 3577 PG 563



NORTH
SCALE 1"=400'

LEGEND:

- RI/RO - RIGHT TURN IN - RIGHT TURN OUT
- SIG. - TRAFFIC SIGNAL LIGHT
- EX. - EXISTING
- FUT. - FUTURE
- AP. - APPROVED

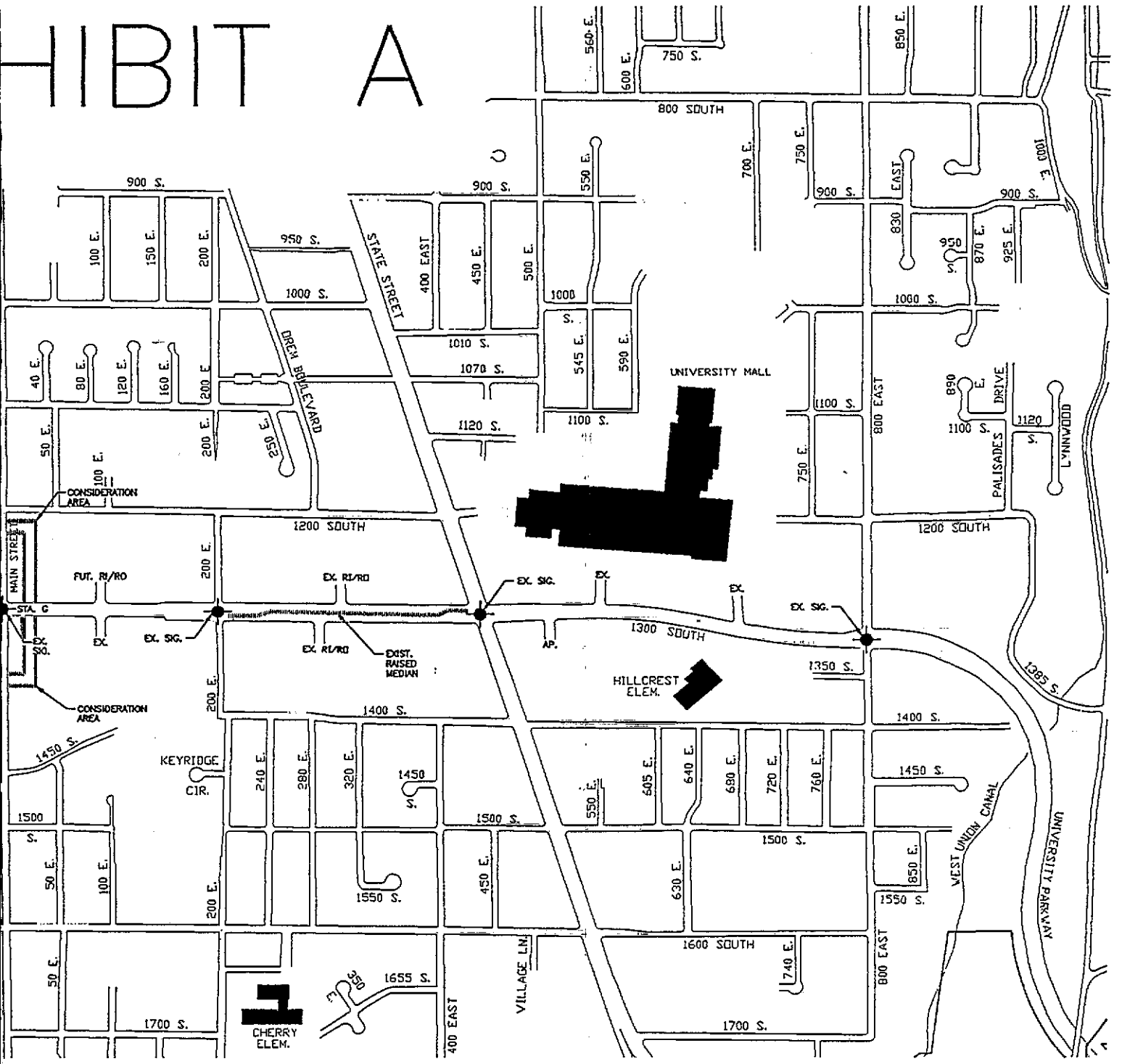
NOTES:

1. THIS PROJECT MODIFIED WAS BY CITY OF
2. BASED ON THE 1985
3. OREM CITY ENGINEERING TYPE 1

ENGINEER STATIONS FOR SR265:

LOCATION	STATION	ACCESS WIDTH
A	35+55	-
B	54+00 ±	33 FT.
C	60+56 ±	66 FT.
D	67+25 ±	33 FT.
E	73+93 ±	66 FT.
F	80+61 ±	33 FT.
G	87+29	66 FT.

HIBIT A



ENT90571 BK 3577 PG 564

FOR ACCESS TO 1300 SOUTH (STATE ROAD 265) IS TO THE AGREEMENT DATED 18 OCTOBER 1985. SAID AGREEMENT BETWEEN UTAH DEPARTMENT OF TRANSPORTATION (UDOT), THE OREM (OREM) AND PROPERTY OWNERS ALONG 1300 SOUTH.

IN TRAFFIC ANALYSIS, THIS PLAN IS AN IMPROVEMENT TO 85 PLAN.

CAUSING COMMERCIAL DEVELOPMENT IN THIS AREA TO HAVE AND EGRESS CROSS EASEMENTS ESTABLISHED FOR FRONTAGE ROAD TRAFFIC MOVEMENT.

4. THE TIMING AND COST FOR THE INSTALLATION OF TRAFFIC SIGNALS AT 200 WEST AND 400 WEST ON 1300 SOUTH WILL BE COORDINATED BY UDOT AND OREM.
5. AT SOME FUTURE DATE 200 WEST FROM 1300 SOUTH TO 1200 SOUTH MAY BECOME A CITY STREET. THE COMMERCIAL DEVELOPMENTS ADJACENT TO THIS STREET ARE IMPROVING IT TO CITY STANDARDS WITH THE STREET ENDING AT A MASONRY WALL ADJACENT TO 1200 SOUTH. CURRENT ZONING ORDINANCE IS REQUIRING A 6 FOOT MASONRY WALL TO BE CONSTRUCTED ALONG 1200 SOUTH FROM MAIN STREET TO 400 WEST.

EXHIBIT A

REVISION DATE: OCT. 25, 1994

PREPARED BY: ENGINEERING DIVISION OF PUBLIC WORKS	 CITY OF OREM 955 NORTH 900 WEST OREM, UTAH 84057	1300 SOUTH - SR 265 DEVELOPMENT ACCESS MAP EXISTING & PROPOSED (MAIN STREET TO 600 WEST)	DATE: JUNE 20, 1994 SCALE: 1"=400' TRACING #: 94-01
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EXHIBIT "B"

Source of Funds for the 1300 South Access Project

RDA Project area # 8503A	\$164,000
Main Street RDA project	20,000
1200 North lot sale	28,000
Surplus Fund 20	14,000
State Street (RDA will reimburse)	<u>84,000</u>
	310,000
State Street (Reserve for contingency projection)	20,000