

BD4640

SECOND RECORDING  
ENT 17613 BK 2606 PG 620  
NINA B REID UTAH CO RECORDER BY MB  
1989 JUN 22 10:39 AM FEE .00  
RECORDED FOR AMERICAN FORK CITY

When Recorded Return to:  
Gary B. Hansen  
BALLARD, SPAHR, ANDREWS & INGERSOLL  
57 West 200 South, Suite 400  
Salt Lake City, Utah 84101

~~ENT 12944 BK 2597 PG 77  
NINA B REID UTAH CO RECORDER BY AT  
1989 MAY 9 4:33 PM FEE .00  
RECORDED FOR AMERICAN FORK CITY~~

ACKNOWLEDGMENT, WAIVER, CONSENT AND AGREEMENT

THIS ACKNOWLEDGMENT, WAIVER, CONSENT AND AGREEMENT (this "Agreement") is entered into as of the 9 day of May, 1989 by and between American Fork City, Utah (the "City") and North Valley Investment Group, a Utah general partnership (the "Owner").

WHEREAS, the City Council of the City (the "City Council") adopted Resolution No. 88-01-01R on January 12, 1988 declaring its intention to create the American Fork City, Utah, Special Improvement District No. 88-1 (the "District") and adopting a form of Notice of Intention (the "Notice of Intention") describing, among other things, the District and the improvements proposed to be constructed and installed therein (the "Improvements"); and

WHEREAS, in accordance with the Notice of Intention and after having given notice as required by statute, the City Council held a hearing (the "Hearing") with respect to the creation of the District on February 23, 1988; and

WHEREAS, prior to and at the Hearing persons having an interest in the District were allowed to comment on or protest the creation of the District; and

WHEREAS, the City Council deferred creation of the District at the Hearing pending further study and consideration of issues raised by questions asked and concerns expressed at the Hearing; and

WHEREAS, upon the completion of such study and consideration of such issues the City Council adopted Resolution No. 88-05-07R on May 10, 1988 creating and establishing the District and authorizing the acquisition and construction of the Improvements all as described in the Notice of Intention without deletion or change; and

WHEREAS, the Owner owns the real property described in Exhibit "A" attached hereto (the "Subject Property"); and

WHEREAS, the Subject Property was originally included within the District as described in the Notice of Intention and was included in the District as created and established by the City Council; and

WHEREAS, the Notice of Intention was mailed to the Owner within the ten (10) day period following the first

Rerecorded to correct property description on pages 8 and 10.

(RB) (MB)

publication of the Notice of Intention as prescribed by statute and was received by the Owner; and

WHEREAS, the City Council and the Owner have reviewed the proposed assessment to be levied upon the Subject Property to finance a portion of the Improvements, and have mutually agreed to the adjustment, as necessary, of such assessment to more accurately reflect the relative benefit to be received by the Subject Property as a result of the Improvements; and

WHEREAS, the City Council and the Owner have accordingly agreed to the amount of the assessment to be levied upon the Subject Property with respect to the Improvements set forth on Exhibit "A" attached hereto (the "Assessment"); and

WHEREAS, the time for issuance of special assessment bonds to finance the Improvements (the "Bonds") can be shortened by the consent of owners of all properties within the District to the elimination of the need for a Board of Equalization and Review with respect to the District as prescribed by statute (the "Board of Equalization") which shortening of time will be beneficial to the Owner, the City and the District; and

WHEREAS, the Owner and the City therefore desire to hereby eliminate the need for the Board of Equalization.

NOW THEREFORE, in consideration of the premises, the creation of the District, the acquisition and construction of the Improvements and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Acknowledgments and Agreements of Parties.

The City and the Owner hereby acknowledge and agree that:

(i) the Subject Property will be benefited as a result of the Improvements in an amount not less than the Assessment, and that the Assessment fairly reflects and does not exceed the relative benefits to the Subject Property resulting from the Improvements and does not exceed the Subject Property's proportionate share of the cost of the Improvements; and

(ii) the assessments to be levied upon all properties within the District, including the Subject Property, as set forth on Exhibit "B" attached hereto are fair, equitable and appropriate and accurately

(PAA) (KR)

reflect the relative benefits to each respective property resulting from the Improvements.

Section 2. Representations and Warranties of City.  
The City hereby represents and warrants that:

(i) the execution and delivery of this Agreement by the City does not conflict with, violate or constitute on the part of the City a breach or violation of any of the terms and provisions of, or constitute a default under (a) any existing constitution, law, or administrative rule or regulation, decree, order or judgment; (b) any corporate restriction or any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the City is a party or by which the City is or may be bound or to which any of the property or assets of the City is or may be subject; or (c) the creation and governing instruments of the City; and

(ii) there is no action, suit, proceeding, inquiry or investigation at law or in equity by or before any court or public board or body and to which the City is a party, or threatened against the City wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability or the execution and delivery by the City of this Agreement.

Section 3. Representations and Warranties of Owner.

The Owner hereby represents and warrants that:

(i) it exists and is in good standing as a general partnership under the laws of the State of Utah;

(ii) it is the sole owner of the Subject Property;

(iii) it has taken all action necessary to become and is duly authorized to execute and deliver this Agreement;

(iv) the execution and delivery of this Agreement by the Owner does not conflict with, violate or constitute on the part of the Owner a breach or violation of any of the terms and provisions of, or constitute a default under (a) any existing constitution, law, or administrative rule or regulation, decree, order or judgment; (b) any corporate restriction or any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Owner is a party or by which the Owner is or may be bound or to which any of the property or assets

*(Handwritten initials)*

of the Owner is or may be subject; or (c) the creation and governing instruments of the Owner; and

(v) there is no action, suit, proceeding, inquiry or investigation at law or in equity by or before any court or public board or body and to which the Owner is a party, or threatened against the Owner wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability or the execution and delivery by the Owner of this Agreement.

Section 4. Acknowledgments and Agreements of Owner.

The Owner hereby acknowledges and agrees that:

(i) it has received a copy of the Notice of Intention;

(ii) the District has been duly and validly created and the Improvements have been duly and validly authorized; and

(iii) the Owner has had, and this Agreement manifests and constitutes its expression with respect to, the opportunity to consider and to be heard with respect to the creation and establishment of the District, the authorization, acquisition and construction of the Improvements, and the levy of assessments on all properties within the District, including the Assessment to be levied on the Subject Property, to finance the same.

Section 5. Waivers by Owner. The Owner hereby waives:

(i) the right to have the City Council appoint a Board of Equalization;

(ii) the right to a hearing before a Board of Equalization;

(iii) the right to appeal from any determination of a Board of Equalization;

(iv) the right to appeal, protest or object to the Assessment or any other assessments levied upon any of the other properties within the District contemporaneously with the Assessment; and

(v) the right to pay cash for the Assessment during a cash payment period which would otherwise extend for fifteen (15) days after the adoption and publication of the assessment ordinance levying the assessments on all of the properties within the District.

*(Handwritten initials)*

Section 6. Amendment. The City and the Owner hereby acknowledge that counsel will rely in part on the representations, warranties, acknowledgements, waivers, consents and agreements herein contained in issuing opinions relating to the issuance of the Bonds and consequently hereby agree that this Agreement may not be amended, modified or changed without the prior written consent of such counsel.

Section 7. Severability. The invalidity or unenforceability in particular circumstances of any provision of this Agreement shall not extend beyond such provision or circumstances and no other provision hereof shall be affected by such invalidity or unenforceability.

Section 8. Headings. The headings of the sections of this Agreement are inserted for convenience only and shall not affect the meaning or interpretation hereof.

Section 9. Successors and Assigns. This agreement shall be binding upon the parties hereto and their successors and assigns.

Section 10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

Section 11. Counterparts. This Agreement may be executed in several counterparts, all or any of which may be treated for all purposes as an original and shall constitute and be one and the same instrument.

Section 12. No Contractual Obligations. Notwithstanding anything herein to the contrary, this Agreement is intended only to satisfy the Board of Equalization requirements of the Utah Municipal Improvement District Act, Chapter 16, Title 10, Utah Code Annotated 1953, as amended (the "Act"), and therefore the parties hereto hereby agree that: (i) this Agreement shall not give rise to or create any contractual obligations between or on the part of the parties hereto, including without limitation, any obligation with respect to the District, the Subject Property, the Improvements, the Bonds or the Assessments, and (ii) obligations of the parties, if any, with respect to the District, the Subject Property, the Improvements, the Bonds and the Assessments shall be only those which arise solely by operation of the Act; provided, however, that this Section 12 shall not be construed so as to nullify the acknowledgements, waivers and consents in this Agreement, which shall remain in full force and effect.

*PA* *MA*

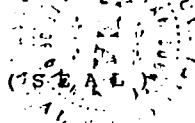
IN WITNESS WHEREOF, the Mayor of the City has hereunto set his hand and has caused the official seal of the City to be hereunto affixed, and the City Recorder of the City has attested the same, and the undersigned, as general partners of the Owner, have hereunto set their hands, all as of the date first hereinabove set forth.

AMERICAN FORK CITY, UTAH

*R Kent Evans*  
Mayor

ATTEST

*R. J. M. Quinn*  
City Recorder



NORTH VALLEY INVESTMENT GROUP

By *Wallace R. Woodbury*  
Wallace R. Woodbury  
Attorney-in-Fact

By *Roy Hammond*  
Roy Hammond  
Attorney-in-Fact

By *Joe R. Birrell*  
Joe R. Birrell  
Attorney-in-Fact

STATE OF UTAH )  
                  ) ss.  
COUNTY OF SALT LAKE )

On the 4<sup>th</sup> day of May, 1989, personally appeared before me Wallace R. Woodbury, the signer of the above instrument, who duly acknowledged to me that he is Attorney-in-Fact of North Valley Investment Group, a Utah general partnership, and that he executed the same on behalf of said partnership.

*Jolene Terry*  
NOTARY PUBLIC

*RJD* *(WR)*



ENT 17613 BK 2606 PG 626

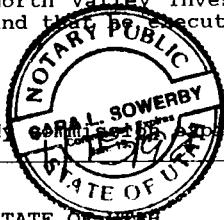
~~ENT 12944 BK 2597 PG 83~~

Residing at Salt Lake City, Utah

My commission expires: 1-4-93

STATE OF UTAH )  
COUNTY OF Utah ) ss.

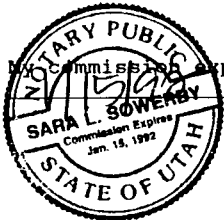
On the 5th day of May, 1989, personally appeared before me Roy Hammond, the signer of the above instrument, who duly acknowledged to me that he is Attorney-in-Fact of North Valley Investment Group, a Utah general partnership, and that he executed the same on behalf of said partnership.



Sara L. Sowerby  
NOTARY PUBLIC  
Residing at Salt Lake County, Utah

STATE OF UTAH )  
COUNTY OF Utah ) ss.

On the 5th day of May, 1989, personally appeared before me Joe R. Birrell, the signer of the above instrument, who duly acknowledged to me that he is Attorney-in-Fact of North Valley Investment Group, a Utah general partnership, and that he executed the same on behalf of said partnership.



Sara L. Sowerby  
NOTARY PUBLIC  
Residing at Salt Lake County

*Handwritten initials/signature*

EXHIBIT "A"

## DESCRIPTION AND ASSESSMENT FOR SUBJECT PROPERTY

Assessment to be levied on Subject Property: \$911,050

## Legal Description of Subject Property:

Commencing at a point located North 90.15 feet and East 106.72 feet from the North one-quarter corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian (basis of bearing South 89°39'06" East along the Section line from said Section corner); thence South 89°59'59" East 406.62 feet; thence South 0°28'28" West 44.96 feet; thence South 89°46'15" East 756.02 feet; thence North 0°0'0" East 8.81 feet; thence South 89°27'34" East 70.84 feet; thence South 0°30'38" West 642.38 feet; thence South 0°51'59" West 721.35 feet; thence South 89°56'10" East 944.21 feet; thence South 0°24'30" East 779.27 feet; thence North 89°50'30" West 1122.81 feet; thence South 2°51'37" West 143.98 feet; thence North 49°50'23" West along the Easterly boundary of State Road Commission Property 1437.00 feet; thence North 30°35'27" West 931.22 feet; thence North 1°11'00" East 635.29 feet; thence North 86°49'00" West 367.92 feet; thence North 1°00'00" East along the East boundary of 500 East Street, American Fork; thence South 89°33'30" East along a fence line 886.93 feet; thence South 0°35'57" West along a fence line 589.27 feet to the point of beginning.

536.65 feet

AREA = 94.7590 ACRES

Basis of bearing South 89°34'06" East along the Section line.

Less a road described as follows:

Part (100)



Commencing at a point located South 0°19'24" East along the Section line 1294.31 feet and West 405.74 feet from the Northeast corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 0°24'30" East 779.27 feet; thence North 89°50'30" West 0.29 feet; thence North 0°38'16" West 376.63 feet; thence along the arc of a 25.00 foot radius curve to the left 38.92 feet (chord bears North 45°14'23" West 35.11 feet); thence North 89°50'30" West 1046.53 feet; thence along the arc of a 433.00 foot radius curve to the right 302.31 feet (chord bears North 69°50'27" West 296.20 feet); thence North 49°50'23" West 786.89 feet; thence along the arc of a 433.00 foot radius curve to the right 388.86 feet (chord bears North 24°06'44" West 375.92 feet); thence North 1°36'54" East 364.05 feet; thence along the arc of a 367.00 foot radius curve to the left 202.51 feet (chord bears North 14°11'33" West 199.95 feet); thence North 30°00' West 55.08 feet; thence along the arc of a 433.00 foot radius curve to the right 231.25 feet (chord bears North 14°42'02" West 228.51 feet); thence North 2°50'04" West 100.18 feet; thence North 0°35'57" East 377.82 feet; thence along the arc of a 25.00 foot radius curve to the left 39.34 feet (chord bears North 44°28'47" West 35.40 feet); thence North 89°33'30" West 789.47 feet; thence North 1°00' East 87.25 feet; thence South 89°33'30" East 886.93 feet; thence South 0°41'46" West 590.34 feet; thence along the arc of a 367.00 foot radius curve to the left 196.00 feet (chord bears South 14°42'02" East 193.68 feet); thence South 30°00' East 55.08 feet; thence along the arc of a 433.00 foot radius curve to the right 238.92 feet (chord bears South 14°11'33" East 235.90 feet); thence South 1°36'54" West 364.05 feet; thence along the arc of a 367.00 foot radius curve to the left 329.59 feet (chord bears South 24°06'45" East 318.62 feet); thence South 49°50'23" East 786.89 feet; thence along the arc of a 367.00 foot radius curve to the left 256.23 feet (chord bears South 69°50'27" East 251.05 feet); thence South 89°50'30" East 1044.92 feet; thence along the arc of a 25.00 foot radius curve to the left 39.62 feet (chord bears North 44°45'37" East 35.60 feet); thence North 0°38'16" West 286.66 feet; thence South 89°56'10" East 3.41 feet to the point of beginning.

AREA = 7.724 ACRES

RD (W)

ENT17613 BK 2606 PG 629

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EXHIBIT "B"

DESCRIPTION AND ASSESSMENT FOR ALL PROPERTIES IN DISTRICT

Parcel No. 1

Assessment to be levied on Parcel No. 1: \$911,050

Legal Description of Parcel No. 1:

Commencing at a point located North 90.15 feet and East 106.72 feet from the North one-quarter corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian (basis of bearing South 89°39'06" East along the Section line from said Section corner); thence South 89°59'59" East 406.62 feet; thence South 0°28'28" West 44.96 feet; thence South 89°46'15" East 756.02 feet; thence North 0°0'0" East 8.81 feet; thence South 89°27'34" East 70.84 feet; thence South 0°30'38" West 642.38 feet; thence South 0°51'59" West 721.35 feet; thence South 89°56'10" East 944.21 feet; thence South 0°24'30" East 779.27 feet; thence North 89°50'30" West 1122.81 feet; thence South 2°51'37" West 143.98 feet; thence North 49°50'23" West along the Easterly boundary of State Road Commission Property 1437.00 feet; thence North 30°35'27" West 931.22 feet; thence North 1°11'00" East 635.29 feet; thence North 86°49'00" West 367.92 feet; thence North 1°00'00" East along the East boundary of 500 East Street, American Fork; thence South 89°33'30" East along a fence line 886.93 feet; thence South 0°35'57" West along a fence line 589.27 feet to the point of beginning.

536.65 feet

AREA = 94.7590 ACRES

Basis of bearing; South 89°34'06" East along the Section line.

Less a road described as follows:

(Pe) (W)

Commencing at a point located South 0°19'24" East along the Section line 1294.31 feet and West 405.74 feet from the Northeast corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 0°24'20" East 779.27 feet; thence North 89°50'30" West 0.29 feet; thence North 0°38'16" West 376.63 feet; thence along the arc of a 25.00 foot radius curve to the left 38.92 feet (chord bears North 45°14'23" West 35.11 feet); thence North 89°50'30" West 1046.53 feet; thence along the arc of a 433.00 foot radius curve to the right 302.31 feet (chord bears North 69°50'27" West 296.20 feet); thence North 49°50'23" West 786.89 feet; thence along the arc of a 433.00 foot radius curve to the right 388.86 feet (chord bears North 24°06'44" West 375.92 feet); thence North 1°36'54" East 364.05 feet; thence along the arc of a 367.00 foot radius curve to the left 202.51 feet (chord bears North 14°11'33" West 199.95 feet); thence North 30°00' West 55.08 feet; thence along the arc of a 433.00 foot radius curve to the right 231.25 feet (chord bears North 14°42'02" West 228.51 feet); thence North 2°50'04" West 100.18 feet; thence North 0°35'57" East 377.82 feet; thence along the arc of a 25.00 foot radius curve to the left 39.34 feet (chord bears North 44°28'47" West 35.40 feet); thence North 89°33'30" West 789.47 feet; thence North 1°00' East 87.25 feet; thence South 89°33'30" East 886.93 feet; thence South 0°41'46" West 590.34 feet; thence along the arc of a 367.00 foot radius curve to the left 196.00 feet (chord bears South 14°42'02" East 193.68 feet); thence South 30°00' East 55.08 feet; thence along the arc of a 433.00 foot radius curve to the right 238.92 feet (chord bears South 14°11'33" East 235.90 feet); thence South 1°36'54" West 364.05 feet; thence along the arc of a 367.00 foot radius curve to the left 329.59 feet (chord bears South 24°06'45" East 318.62 feet); thence South 49°50'23" East 786.89 feet; thence along the arc of a 367.00 foot radius curve to the left 256.23 feet (chord bears South 69°50'27" East 251.05 feet); thence South 89°50'30" East 1044.92 feet; thence along the arc of a 25.00 foot radius curve to the left 39.62 feet (chord bears North 44°45'37" East 35.60 feet); thence North 0°38'16" West 286.66 feet; thence South 89°56'10" East 3.41 feet to the point of beginning.

AREA = 7.724 ACRES

Rep'd (WP)

ENT17613 BK 2606 PG 631

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Parcel No. 2

Assessment to be levied on Parcel No. 2: \$38,950

Legal Description of Parcel No. 2:

Commencing at a point located North 129.21 feet and West 416.04 feet from the North one-quarter corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 1'11" West 634.84 feet; thence along the State Road right-of-way as follows: North 30°42' West 127.73, North 49°49" West 375.08 feet, North 76°34" West 6.63 feet, North 0°25' East 126.78 feet, North 1°00' East 175.00 feet; thence South 86°49' East 367.92 feet to the point of beginning.

AREA = 3.739 ACRES

(Pao) (WR)