

Orem City
56 N. State St
Orem, Ut 84057

7-11663

AGREEMENT

A-07-0034
ENT 121290:2007 PG 1 of 10
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2007 Aug 20 11:10 am FEE 31.00 BY EO
RECORDED FOR BACKMAN OREM
ELECTRONICALLY RECORDED

This Agreement is executed in duplicate this 9th day of March, 2007, by and between the City of Orem, a municipal corporation and political subdivision of the State of Utah, with its principal offices located at 56 North State Street, Orem, Utah 84057 (hereinafter referred to as "City"), and Garff-Warner Nissan of Orem, LLC, a Utah limited liability company, located at 195 East University Parkway, Orem, Utah 84058 (hereinafter referred to as "Garff").

RECITALS

WHEREAS Garff owns property located at 195 East University Parkway, Orem, Utah (hereinafter referred to as the "Garff Property"), on which Garff currently operates an automobile dealership; and

WHEREAS the City, in conjunction with UDOT, intends to widen and improve the intersection at 200 East and University Parkway (hereinafter referred to as the "Project"); and

WHEREAS the City needs to acquire a portion of the Garff Property consisting of 895 square feet (hereinafter referred to as the "Acquisition Parcel"), and a sidewalk and public utility easement consisting of 1,291 square feet (hereinafter referred to as the "Public Utility Easement"), in order to construct the Project; and

WHEREAS the location of the Acquisition Parcel and the Public Utility Easement are illustrated in Exhibit "A" and are more particularly described in Exhibits "B" and "C," copies of which exhibits are attached hereto and by reference are made a part hereof; and

WHEREAS the Project includes the relocation of the existing Garff driveway on 200 East as shown in Exhibit "A".

WHEREAS University Parkway Street in Orem is a limited access highway owned and operated by the Utah Department of Transportation (UDOT); and

WHEREAS Garff desires to obtain a new "right-in, right-out" access to/from the Garff Property from University Parkway; and

WHEREAS Garff is willing to convey the Acquisition Parcel to the City in exchange for a new right-in/right-out access on University Parkway and the City's agreement to construct a new driveway at the location of the new access; and

WHEREAS the City and the Garff desire to set forth their respective rights and obligations in 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 City and Garff hereby agree as follows:

1. Conveyances.

1.1 Acquisition Parcel and Public Utility Easement. Garff shall convey to the City by special warranty deed, a portion of the Garff Property located at 195 East University Parkway consisting of 895 square feet (the "Acquisition Parcel") and a sidewalk and public utility easement consisting of 1,291 square feet (the "Public Utility Easement"). The location of the Acquisition Parcel and the Public Utility Easement are illustrated in Exhibit "A." A copy of the special warranty deed including a description of the Acquisition parcel is contained in Exhibit "B." A copy of the Public Utility Easement is attached hereto as Exhibit "C." Exhibits "A," "B" and "C" are attached hereto and by reference are made a part hereof.

1.2 Temporary Construction Easement. Garff grants the City and UDOT a temporary construction easement over a portion of the remainder of the Garff Property adjacent to the Acquisition Parcel for the duration of the Project as may be reasonably necessary or convenient for the construction of the Project, so long as such work does not materially interfere with Garff's business operations on the Garff Property. The area of the temporary construction easement is shown in Exhibit "A" and is more particularly described in Exhibit "D" which is attached hereto and by reference made a part hereof.

1.3 Street Dedication Plat. Garff agrees to sign a Street Dedication Plat that will be prepared at a later date by the Orem City Surveyor. The Street Dedication Plat will reflect the conveyances described in this Agreement.

2. Supervision of Construction. The City will assign a Project Manager during the construction phase of the Project to coordinate with Garff regarding issues related to the Project. The Project Manager will be responsible to coordinate with Garff and minimize the impact to Garff's business operations on the Garff Property.

3. New Access. In exchange for the conveyance of the Acquisition Parcel and the easements to the City by Garff, the City, working with UDOT, shall provide a new access to the Garff Property from University Parkway at the location shown in Exhibit "E." The new access shall be "right-in/right-out" only. The City shall construct a new driveway at the location of the new access. The City shall provide Garff with evidence of UDOT's consent and approval of the new access prior to the recordation of the special warranty deed described in Section 1.1 above.

4. Closing. This transaction shall be closed on or before March, 10, 2007. Closing shall occur when City and Garff have signed and delivered to each other through Mountain West Title Company of Utah (hereinafter referred to as "Mountain West"), all documents required by this Agreement, by written escrow instructions and by applicable law. The City shall pay all of the closing costs. Garff shall deliver possession of the Acquisition Parcel and the Public Utility Easement immediately after Closing.

4.1. Title Insurance. Garff shall provide to the City a current, standard form Owner's policy of title insurance on the Acquisition Parcel in the amount of \$83,000. The title policy shall conform with Garff's obligations set forth in Section 5 of this Agreement. The City shall pay for the title insurance policy.

5. Title to Property. Garff has, or shall have at Closing, fee title to the Acquisition Parcel and agrees to convey good and marketable fee title to the City by special warranty deed, free of all liens, assessments, easements, title exceptions and other encumbrances of any kind, other than those expressly accepted and approved by the City. Garff also agrees to convey the Public Utility Easement described in this Agreement to the City free of any conflicting easements, liens, title exceptions and encumbrances of any kind other than those expressly accepted and approved by the City.

6. Payment of Taxes. Garff shall pay all taxes which have accrued on the Acquisition Parcel and easement up to the date of closing. Once the City takes ownership of the Acquisition Parcel, the Acquisition Parcel will assume a tax and assessment exempt status.

7. Immediate Occupancy. The parties agree that the City shall have the right to enter upon the Acquisition Parcel as well as the Public Utility Easement and temporary construction easement immediately after execution of this Agreement in order to begin construction of the Project, subject to the limitations in Section 1.2 above.

8. Authority of Signers. The Parties warrant that they have authority to execute this Agreement. The person executing this Agreement on behalf of Garff and the City warrants his or her authority to do so and to bind said party.

9. Brokerage. Garff and City agree to indemnify and hold the other harmless from and against any and all commissions, liabilities, claims, losses, damages or expenses, including reasonable attorney's fees, arising from any claims for brokerage or any other fee or commission by any person.

10. No Merger. The provisions of this Agreement shall survive the delivery of the deeds and shall not be deemed to become merged in or extinguished by the deeds.

11. General Provisions.

11.1. Lawful Agreement. The parties represent that they have lawfully entered into this Agreement, having complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation.

11.2. Utah Law. This Agreement shall be interpreted pursuant to Utah law.

11.3. Time of Essence. Time shall be of the essence of this Agreement.

11.4. Interpretation of Agreement. 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 the other gender. The paragraph and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

11.5. **No Presumption.** All parties have participated in preparing this Agreement. Therefore, the parties stipulate that any Court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.

11.6. **Amendments.** This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

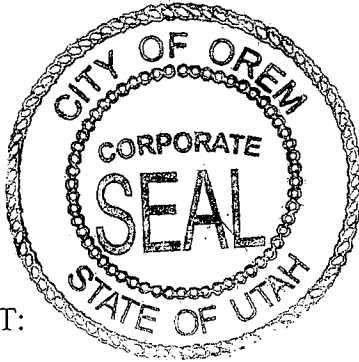
11.7. **No Assignment.** This Agreement shall not be pledged or assigned without the prior written consent of all other parties.

11.8. **Binding Agreement.** This Agreement shall be binding on the heirs, successors, administrators and assigns of each of the parties.

12. **Incorporation of Recitals.** The Recitals to this Agreement are hereby incorporated into the Covenants sections of this Agreement as if fully set forth herein.

13. **Complete Agreement.** This instrument together with its addenda, any attached exhibits, and Garff disclosures constitute the entire Agreement between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. This Agreement cannot be changed except by written agreement of the parties.

SIGNED and ENTERED INTO this 9 day of March, 2007.



ATTEST:

Donna R. Weaver
Donna Weaver, City Recorder

City of Orem

By:

Jim Reams
Jim Reams, City Manager

Garff-Warner Nissan of Orem, LLC

By:

Robert H. Garff
Robert H. Garff, CEO

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 9 day of March, 2007, by Robert H. Garff as CEO for Garff-Warner Nissan of Orem, LLC who represented and acknowledged that he signed the same for and on behalf of Garff-Warner Nissan of Orem, LLC.

Kimberly Jense
Notary Public

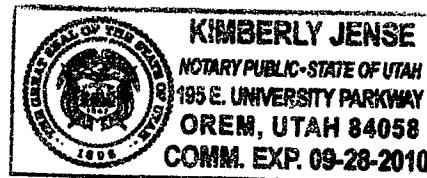
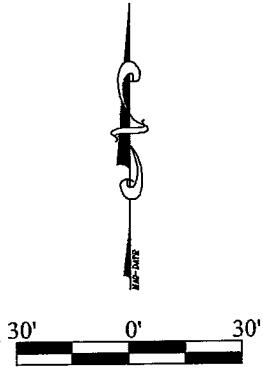


EXHIBIT "A"



Extents of Temporary Construction Line

Drive access to be relocated

Relocate Business Sign

Fee Area = 895 Sq. Ft.

6' Sidewalk & Public
Utility Easement

Relocate 3 Parking
Lot Lights

Relocate Business Sign

Traffic Utilities
to be relocated

200 East

Existing Lip
of Gutter

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Fee Area = 895 Sq. Ft.
Easement Area = 1,291 Sq. Ft.
Temporary Construction Easement Line

Title Line

University Parkway

Fiber Bo
Power Box

SHEET

200 East and University Parkway Intersection

Garff-Warner Nissan Property

Property Display

X/TRAFFIC/200 E and Univ.Pkwy/dwg/Property.dwg

CITY OF OREM

DEVELOPMENT SERVICES
ENGINEERING DIVISION
56 NORTH STATE ST
OREM, UT 84057



EXHIBIT "B"

SPECIAL WARRANTY DEED

200 East & University Parkway
 When Recorded send copy to:
 Garff-Warner Nissan of Orem, LLC
 54 West 700 South, # 200
 Salt Lake City, Utah, 84101

Garff-Warner Nissan of Orem, LLC, a Utah limited liability company, **GRANTOR**, hereby conveys and warrants against all claiming by, through or under it to the City of Orem, a municipal corporation organized and existing under the laws of the State of Utah, with its principal office located at 56 North State, Orem, Utah, **GRANTEE**, for the sum of Ten Dollars and other valuable consideration, a parcel of real property located in the NW Quarter of Section 26, T. 6 S., R. 2 E., S.L.B. & M., and more particularly described as follows:

Commencing at a point which is S. 89°24'57" E. 1307.98 feet along the Section Line and South 554.70 feet from the NW Corner of Section 26, T. 6 S., R. 2 E., S.L.B. & M., to the point of beginning, (which point is the SE Corner of a parcel of land described by a Corrective Special Warranty Deed known as Entry 22869:2005 on record in the Utah County Records Office); thence N. 0°42'00" W. 175.62 feet; thence S. 11°50'08" W. 26.89 feet; thence S. 1°02'00" E. 138.54 feet; thence along a non-tangent Curve to the Right, the Radius is 20.00 feet, the Arc Length is 11.24 feet, the Chord Bearing is S. 16°06'03" W. the Chord Length is 11.09 feet; thence S. 89°13'00" E. 8.24 feet to the point of beginning.

Containing 895 Square Feet or 0.02 Acres

WITNESS the hand of said Grantor, this _____ day of _____, 2007.

Garff-Warner Nissan of Orem, LLC

By:

 Name _____ Title _____

STATE OF UTAH)

) ss.

COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by _____ as _____ (title) of Garff-Warner Nissan of Orem, LLC who acknowledged that he/she has authority from and executed this instrument for and on behalf of Garff-Warner Nissan of Orem, LLC.

 Notary Public

EXHIBIT "C"

200 East & University Parkway
When Recorded send copy to:
Garff-Warner Nissan of Orem, LLC
54 West 700 South, # 200
Salt Lake City, Utah, 84101

SIDEWALK & PUBLIC UTILITY EASEMENT

Garff-Warner Nissan of Orem, LLC, a Utah limited liability company, **GRANTOR**, hereby grants and conveys to the City of Orem, a municipal corporation organized and existing under the laws of the State of Utah, with its principal office at 56 North State, Orem, Utah, **GRANTEE**, an easement for the construction, installation, maintenance, operation, repair and upgrade of a sidewalk and public utilities (including but not necessarily limited to water, sewer, gas, electricity, storm water, telephone, cable, street lighting etc.), and related facilities pertaining to all of the foregoing, over, under, across and through a parcel of property located in the NW Quarter of Section 26, T. 6 S. R. 2 E. S.L.B. & M, and more particularly described as follows:

Commencing at a point which is S. 89°24'57" E. 1305.83 feet along the Section Line and South 379.11 feet from the NW Corner of Section 26, T. 6 S., R. 2 E., S.L.B. & M., to the point of beginning; thence S. 11°50'08" W. 26.89 feet; thence S. 1°02'00" E. 138.54 feet; thence along a non-tangent Curve to the Right, the Radius is 20.00 feet, the Arc Length is 11.24, the Chord Bearing is S. 160°06'03" W. the Chord Length is 11.09 feet; thence N. 89°13'00" W. 22.88 feet; thence North 8.02 feet; thence S. 88°41'55" E. 18.00 feet; thence N. 43°59'01" E. 2.83 feet; thence N. 1°02'00" W. 139.80 feet; thence N. 11°50'08" E. 54.56 feet; thence S. 0°42'00" E. 27.64 feet to the point of beginning.

Containing 1,291 Square Feet.

WITNESS the hand of said Grantor, this _____ day of _____, 2007.

Garff-Warner Nissan of Orem, LLC
By:

Name _____ Title _____

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by _____ as _____ (title) of Garff-Warner Nissan of Orem, LLC who acknowledged that he/she has authority from and executed this instrument for and on behalf of Garff-Warner Nissan of Orem, LLC.

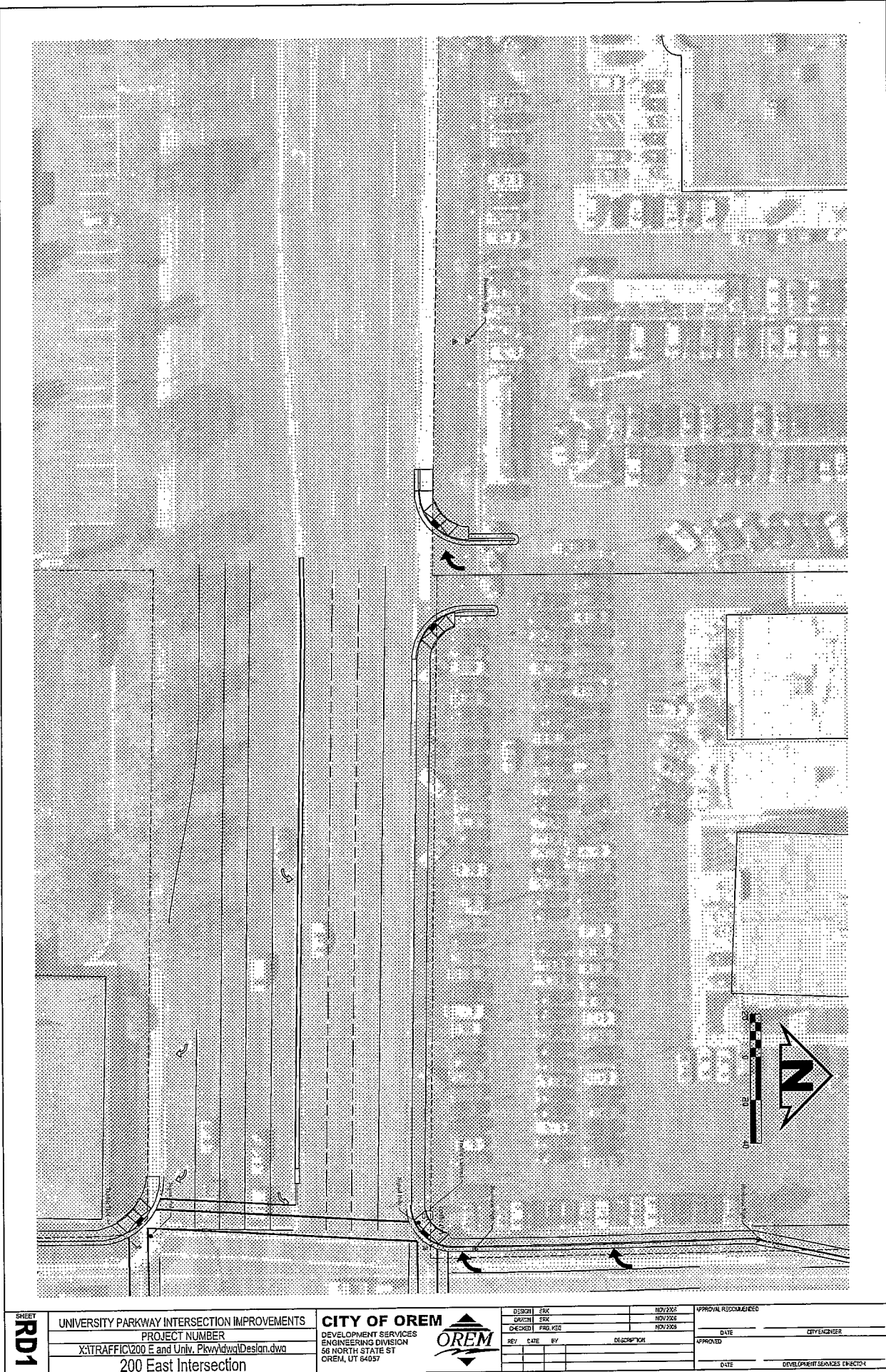
Notary Public

EXHIBIT "D"

Temporary Construction Easement

Commencing at a point which is S. 89°24'57" E. 1305.37 feet along the Section Line and South 341.02 feet from the NW Corner of Section 26, T. 6 S., R. 2 E., S.L.B. & M., to the point of beginning, (which point is on the easterly boundary line of a parcel of land described by a Corrective Special Warranty Deed known as Entry 22869:2005 on record in the Utah County Records Office); thence S. 0° 42'00" E. 38.10 feet; thence S. 11°50'08" W. 26.89 feet; thence S. 1°02'00" E. 138.54 feet; thence along a non-tangent Curve to the Right, the Radius is 20.00 feet, the Arc Length is 11.24 feet, the Chord Bearing is S. 16°06'03" W. the Chord Length is 11.09 feet; thence N. 89°13'00" W. 32.88 feet; thence North 18.12 feet; thence S. 88°42'24" E. 25.82 feet; thence N. 1°02'00" W. 132.16 feet; thence N. 11°50'08" E. 26.92 feet; thence N. 0°42'00" W. 37.12 feet; thence East 10.00 feet to the point of beginning.

Containing 2,598 Sq. Ft.



SHEET RD1	UNIVERSITY PARKWAY INTERSECTION IMPROVEMENTS	CITY OF OREM DEVELOPMENT SERVICES ENGINEERING DIVISION 50 NORTH STATE ST OREM, UT 84403		DESIGN	ERK	NOV 2007	APPROVAL RECORD/REVISIONS	
	PROJECT NUMBER			DRAWN	ERK	NOV 2008	DATE	CITY ENGINEER
	X:\TRAFFIC\200 E and Univ. Pkwy\dwg\Design.dwg			CHECKED	PRG KSE	NOV 2008	APPROVED	
	200 East Intersection			REV	DATE	BY	DESCRIPTION	DATE