

## AGREEMENT

This Contractual Agreement is executed in duplicate in the 12 day of February, 1996, 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 NOVELL, INC., a Delaware corporation, with its headquarters at 1555 North Technology Way, Orem, Utah 84057 (hereinafter referred to as "NOVELL").

ENT 13460 M 3891 PG 694  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
1996 FEB 20 8:35 AM FEE .00 BY JD  
RECORDED FOR OREM CITY

### RECITALS

WHEREAS NOVELL owns property at the Timpanogos Research and Technology Park Subdivision by virtue of its merger with WordPerfect Corporation (WordPerfect Corporation was the owner of WP Properties which is the owner of record of the property subject of this Agreement); and

WHEREAS the CITY has an existing storm drainage easement and desires to modify a portion of the easement; and

WHEREAS the CITY will be installing a storm drain in the modified portion of the easement as outlined in Exhibit "A"; and

WHEREAS the CITY desires to maintain an easement and right-of-way for the maintenance and access of the storm drainage pipe system running through said subdivision from 1600 North to 1200 North; and

WHEREAS the CITY and NOVELL have reached an agreement regarding the deeding of

an easement at Timpanogos Research and Technology Park and desire to put their agreement in writing.

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### **COVENANTS**

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, and for other good and valuable consideration, the CITY and NOVELL hereby agree as follows:

**1. NOVELL's Obligation to the CITY.**

A. NOVELL hereby deeds to the CITY a new twenty (20) foot wide storm drainage utility easement, ten (10) feet on each side of the following described centerline:

Commencing at a point located on 1200 North Street which is located West 1753.219 feet and South 25.599 feet from the Southeast Corner of Section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian (basis of bearing is South 89° 54'39" West along the section line); thence as follows: North 43° 40'18" West 229.962 feet, North 26° 03'11" East 83.004 feet, North 44° 53'15" East 101.312 feet, North 58° 37'38" East 141.105 feet, North 5° 38'35" East 88.834 feet, North 0° 31'13" West 260.765 feet, North 33° 55'45" West 106.285 feet, North 0° 26'32" West 628.737 feet, North 90° 0'0" West 164.854 feet, North 0° 11'52" East 425.151 feet, North 2° 51'12" East 425.164 feet, North 75° 51'41" East 128.688 feet, North 11° 4'20" West 31.736 feet, North 5° 16'19" East 71.458 feet to a point located on the south boundary of the Provo Reservoir Canal, which point is located West 1758.358 feet and North 2410.13 feet from the Southeast Corner of said Section 2.

B. NOVELL agrees to allow the CITY to have access through existing roads and parking areas to inspect, maintain and repair the storm drain.

**2. The CITY's Obligation to NOVELL.**

A. The CITY hereby replaces the old twenty (20) foot wide storm drainage utility easement with the new easement as described in 1.A. The old twenty (20) foot storm drainage utility easement as contained in Agreement A-95-0018 between NOVELL and the CITY, envelopes the following described centerline ten (10) feet on each side:

Commencing at a point located on 1200 North Street which is located West 1753.219 feet and South 25.599 feet from the Southeast Corner of Section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian (basis of bearing is South 89°54'39" West along the section line); thence as follows: North 43°40'18" West 229.962 feet, North 26°03'11" East 83.004 feet, North 44°53'15" East 101.312 feet, North 58°37'38" East 141.105 feet, North 6°54'15" West 440.539 feet, North 0°27'21" West 737.514 feet, North 4°03'27" East 282.111 feet, North 74°08'32" West 74.398 feet, North 1°14'22" East 81.364 feet, North 47°16'09" East 126.362 feet, North 9°52'49" East 30.592 feet, North 55°48'16" West 116.482 feet, North 20°40'59" East 68.425 feet, North 16°17'04" East 76.245 feet, North 11°04'29" West 103.90 feet, North 5°17'17" East 71.462 feet to a point located on the south boundary of the Provo Reservoir Canal, which point is located West 1758.358 feet and North 2410.13 feet from the Southeast Corner of said Section 2.

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B. The CITY shall be responsible for the costs associated with the relocation of the existing drain to the modified easement location.

C. The CITY shall be responsible for restoring the property to NOVELL's satisfaction (including asphalt, concrete, landscaping, and etc.) using contractors with NOVELL's approval at the CITY's expense and shall indemnify and hold NOVELL harmless for any damage and/or liability resulting from any use by the CITY of the easement. This includes any initial construction of the storm drainage system, any subsequent modifications, and all maintenance responsibilities. This indemnification and hold harmless responsibility includes, but is not limited to, indemnifying NOVELL for any claims related to hazardous waste on the easement resulting from CITY's use.

D. The CITY will provide NOVELL two working days' notice, except in the event of an emergency, of any maintenance by the CITY which requires excavation. Such notice must be made to the NOVELL Facilities Department.

E. The CITY agrees that it will move, at NOVELL's expense, the storm drain and easement upon request from NOVELL. This right shall be a continuing right.

3. **Time.** The parties agree to the following time deadlines:

A. Improvements made within the new storm drainage utility easement described in 1.A. and cited in Exhibit "A" are to be completed in the spring or summer of 1996.

4. **Enforcement.** This Agreement may be enforced by either party in any appropriate court of law.

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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 in-laws, and other legal requirements applicable to their operation.

6. **Utah Law.** This contract shall be interpreted pursuant to the laws of the State of Utah.

7. **Time of Essence.** Time shall be of the essence of this Agreement.

8. **Attorney's Fees.** In the event that either party should be required to retain an attorney because of the default or breach of the other or to pursue any other remedy provided by law, that the non-breaching or non-defending 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 contained 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 both parties have participated in the preparation hereof.

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12. **Binding Effort.** This Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties hereto.

RECOMMENDED BY



K. Edward Gifford, Orem City Engineer

SIGNED and ENTERED INTO this 12 day of February 1996.

ENT 13460 K 3891 PG 699



Attest:

CITY OF OREM, by

Michael Dyal

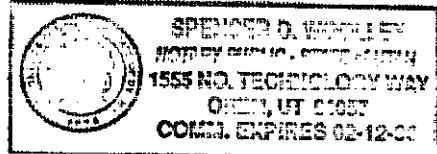
Michael Dyal, City Manager

Melody Downey  
Melody Downey, City Recorder

NOVELL, INC., by

Darcy Mott  
Darcy Mott, Treasurer

STATE OF UTAH )  
ss.  
COUNTY OF UTAH)



The foregoing instrument was acknowledged before me this 2 day of February 1996, by Darcy Mott, Treasurer for Novell, Inc.

Spencer D. Woolley  
Notary Public

My Commission Expires: 2-12-96

Residing at: Utah County Novell

**EXHIBIT "A"**

