

EASEMENT AGREEMENT

AGREEMENT made as of the 17th day of February, 1992, between the City of St. George, a Utah municipal corporation, herein referred to as "City", and G. Byron McLeese, Betty McLeese, Margie Siebert, and Ronald L. Thomas, herein referred to as "McLeese",

W I T N E S S E T H :

WHEREAS, the City is desirous of obtaining an easement across property belonging to McLeese near the confluence of the Santa Clara and Virgin Rivers in St. George (the "Property") for the continuation of a bicycle and footpath (the "Trail") which it is developing along streambottoms in the City of St. George; and

WHEREAS, McLeese is agreeable to allowing the Trail to traverse the Property provided certain conditions and accommodations are extended by the City in connection therewith;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties do agree as follows:

1. Grant of Easement. McLeese grants to the City a Trail and Recreation Easement across the Property 15' in width for such period as it may be continuously used by the City for the recreational purposes now intended. The form of and conditions pertaining to such easement are set forth in Schedule 1, attached hereto and made a part hereof. The route of such easement is contained in the attachment to Schedule 1 entitled "Main Trail

Alignment", and the parties have reviewed on site and are fully aware of the approximate alignment of said easement. Part of the consideration for the grant of such easement and the release by McLeese of certain claims against the City arising out of the sewer installation shall be the payment by City to McLeese of the sum of \$750,00, receipt of which is hereby acknowledged.

2. Access on North. Access to the Trail on the north will be across an existing bridge crossing the Santa Clara River adjacent to the Property which will be made safe by the City for use by bicycles, pedestrians, and one-way vehicular traffic. The City will limit access to the Trail at a point near the south terminus of said bridge on The Property by means of a fence or gate that will allow foot and bicycle access but no type of motorized vehicle access. The City will fence the south approach to said bridge on the Property in such manner as to accommodate the entrance to the Trail on one side and a gate wide enough to accommodate vehicles on the other side but not otherwise allowing passage beyond the south bridge approach. The vehicular gate will be locked with access available to the City and McLeese only, it being understood that the City will use its access for the sole purpose of accessing its sewer trunkline easement traversing the McLeese property for the purpose of maintenance and repair.

3. Access on South. At an appropriate narrow point of passage on the south side of the Property, the Trail shall have another fence/gate which will permit passage only of pedestrians and bicycles. Access of larger or motorized vehicles from the

south will be limited by placement of a locked gate at a point near where the sewer line easement crosses onto the Property. Notwithstanding such possible access from the south, City maintenance and repair of the sewer line will be effected whenever reasonably possible by use of the north access across the bridge.

4. Access to the Trail to be Limited. Other than the access on the north and south described hereinabove, access between the Trail and the Property shall be limited either by the natural slope adjoining the Trail on the north and west or, in an area where the slope is insufficient or not present, by a revetment of earth faced with rocks constructed by the City adjacent to and along the north/west side of the Trail for approximately 150-200' as needed. Such revetment shall be approximately 6' high or of such other height as may be necessary or adequate for the purpose intended.

McLeese authorizes the City to move and relocate loose dirt and rocks along the sewer easement across the Property resulting and remaining after sewer installation as material for use in constructing said berm. Such berm shall be maintained by the City in a manner that will thwart the comfortable passage at any point of pedestrians or bicycles from the Trail onto the Property.

5. Second Vehicular Gate. At a point approaching the Virgin River where the dirt roadway leading south from the bridge across Santa Clara Creek reaches a dugway and begins a descent to the Virgin River floodplain, a second gate will be installed by the City, even though not on the Trail easement, so as to further prevent unauthorized access on said roadway and onto the City's

sewer line easement. Such second vehicular gate shall also be locked with access available only to McLeese and the City, the latter using such road and dugway only for access to its sewerline easement. Access by other parties, such as Bloomington Country Club, through either of the two vehicular gates shall be controlled through and determined by McLeese.

6. Construction of Trail. Construction of the Trail along the easement granted herewith shall be effected in such manner as to minimize its impact on existing slopes and topography. Bank stabilization measures shall be employed wherever necessary to carry out such minimization of impact. The City shall have the right to clean and remove trash and debris from portions of the Property adjacent to the Trail whenever reasonably necessary for aesthetic purposes. Appropriate signage will be installed to direct users of the Trail into the appropriate area and warn them against leaving the same.

7. Abandonment of Power Line. The City recognizes that poles formerly used by Dixie Escalante REA to carry power lines across the Property are now owned by the City as the result of acquisition by the City of Dixie Escalante REA properties north of the Virgin River. Certain of said power poles at present do not support energized power lines. It is understood and agreed that the City herewith relinquishes all right, title and interest it may have to such poles and any easement on which they are located, intending that any such right, title and interest revert to the Property owner, McLeese. The City does not represent hereby that it has any

authority to bind Mountain West or any other party who may have an interest in said easement or power poles. It is further understood that the said abandonment does not affect power poles or easements on the Property which presently support energized power lines operated by the St. George Water and Power Department, but recognizing that such energized lines are service lines only, it agrees to abandon those and the easements upon which they are located if they cease to be used.

8. Indemnity. Par. 4 of the Easement (Schedule 1) is agreed to be expanded to include injury to any person resulting from acts, omission or negligence of the City, its agents and employees, in prior years when the sewer line was installed. An indemnity of McLeese by the City to the extent of defending on behalf of McLeese any claim or suit brought by a trespasser onto the Property from the Trail is further tendered by the City, provided such injury is not directly or indirectly the result of negligence, act or omission on the part of McLeese. As such claim is expected to be of nuisance value only, the City does not extend its indemnity beyond affording a legal defense.

9. Both parties agree to cooperate with each other in such ways as will preserve and protect the interests of the other. Breach by either party of any covenant of this agreement may result in termination of the agreement by the other party upon 30 days written notice to the breaching party, provided such breach is not remedied within said 30 day period. Any action by either party which is perceived as a violation of the intent and spirit of this

agreement, even if not an actual breach of covenant, shall result in a meeting of the parties hereto in an effort to reach some reasonable and mutually satisfactory resolution of the perceived violation. However, the parties acknowledge that the entire agreement between them is contained herein, and all verbal understandings are merged into this agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

CITY:

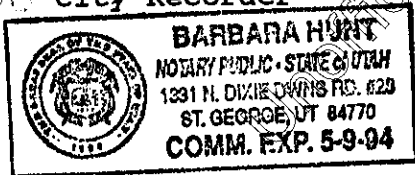
CITY OF ST. GEORGE

By Karl Brooks
Karl Brooks, Mayor



ATTEST:

Barbara Hunt
City Recorder



MCLEESE:

G. Byron McLeese
G. Byron McLeese

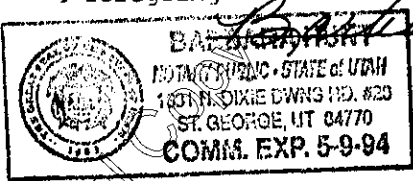
Betty McLeese
Betty McLeese

Margie Siebert
Margie Siebert

Ronald L. Thomas

STATE OF UTAH
County of Washington

On the 9th day of June, 1992 personally appeared before me G. Byron McLeese, and acknowledged to me that G. Byron McLeese Betty McLeese and Margie Siebert executed foregoing instrument.



SCHEDULE 1

TRAIL AND RECREATION EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That in consideration of One Dollar (\$1.00) and other good and valuable consideration paid to G. Byron McLeese and Betty McLeese, Margie Siebert, and Ronald L. Thomas, hereinafter referred to as "Grantors," by the City of St. George, a Utah municipal corporation, hereinafter referred to as "Grantee," receipt of which is hereby acknowledged, Grantors do hereby grant, transfer and convey unto the Grantee a temporary easement with the right to erect, construct and install, and thereafter a nonexclusive permanent easement to use, operate, inspect, repair, maintain, replace and expand a trail suitable for bicyclists and pedestrians along any portion of the property described herein which may be owned by Grantors in Washington County, State of Utah, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement.

The temporary easement shall be thirty (30) feet in width during the period of construction; and upon completion, the permanent easement shall be fifteen (15) feet in width, the center line of which is described in Exhibit "A", Exhibit "B" and Exhibit "C", attached hereto.

The grant of easement herein is conditioned upon the following:

1. Grantee shall pay for and install a paved trail with a minimum width of eight (8) feet for bicycle and pedestrian use within the easement. Upon completion of the trail, the Grantee shall maintain and repair it as needed.
2. Grantee may make other improvements incidental to the use and enjoyment of the trail, so long as these improvements do not interfere with the Grantors' reasonable use of its property on both sides of the easement, and do not interfere with the Grantors' concurrent use of the easement incidental to its use of its property, it being understood that the paved trail will not so interfere.
3. Grantee shall not use the easement for any purpose other than as contemplated herein and shall restore the surrounding area of the above-described property following any construction, repair or maintenance to a condition substantially equivalent to its condition immediately preceding entry by the Grantee, and Grantee shall repair or replace all improvements of Grantors' that are disturbed or damaged in the exercise of the rights and privileges herein granted.

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4. As between Grantors and Grantee, Grantee shall bear responsibility for the use and enjoyment of the above-described easement and shall indemnify and hold the Grantors harmless for any claim of damages to person or property resulting from the use, occupancy, and possession by the Grantee, its agents, employees, invitees or easement users, but such indemnification shall extend only to claims of damage resulting from the act or negligence of Grantee, its agents and employees.

5. The covenants and agreements herein contained are for the benefit of the Grantors and Grantee only, and do not create any obligations or duties to persons not parties hereto.

6. Grantors herein reserve to themselves, their successors and assigns, the right to enter upon, occupy, and use said property for any and all purposes not inconsistent with the rights and privileges herein granted.

7. If the easement is no longer used by the Grantee for the purposes stated herein for a period of six months, the easement shall be considered permanently abandoned, and all right, privilege, and interest shall revert to the Grantors.

8. It is the intention of the parties to make the land and water areas of the easement available to the public for recreational purposes without charge.

The grant, benefits and obligations of this easement shall constitute a covenant running with the land for the benefit of Grantee and any municipal successor thereof, but shall not inure to or be for the benefit of any private assignee of Grantee.

IN WITNESS WHEREOF, the Grantors have executed this instrument this 17th day of February, 1992.

GRANTORS:

G. Byron McLeese
G. Byron McLeese

Betty McLeese
Betty McLeese

Margie Siebert
Margie Siebert

Ronald L. Thomas
Ronald L. Thomas

STATE OF UTAH
County of Washington

On the 9th day of June, 1992 personally appeared before me G. Byron McLeese, and acknowledged to me that G. Byron McLeese, Betty McLeese and Margie Siebert executed the foregoing instrument.

Babara Hunt
Notary Public
130 W. DINEEN DRIVE, #203
SALT LAKE CITY, UT 84119
COMM. EXP. 6-1-94

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BUSH & GUDGELL, INC.
Engineers • Planners • Surveyors
205 East Tabernacle
St. George, Utah 84770
(801) 673-2337

Legal Description
Prepared For
St. George Leisure Service

Main Trail Alignment
Exhibit "A"

Beginning at a point N 89°16'52" W 1937.97 feet from the South quarter corner of Section 12, Township 43 South, Range 16 West, Salt Lake Base and Meridian and running thence N 00°02'35" W 21.17 feet; thence N 24°30'58" W 58.87 feet; thence N 02°10'30" E 50.12 feet; thence N 28°51'00" E 60.20 feet; thence N 29°16'39" E 145.30 feet; thence N 19°55'10" E 127.51 feet; thence N 00°35'54" E 146.52 feet; thence N 01°14'32" E 136.80 feet; thence N 00°42'25" E 89.71 feet; thence N 11°38'14" W 105.34 feet; thence N 13°24'14" W 149.81 feet; thence N 77°54'42" W 14.45 feet; thence S 16°14'44" W 66.32 feet; thence S 30°04'08" W 51.71 feet; thence N 52°20'27" W 45.10 feet; thence N 29°12'32" W 21.55 feet; thence N 43°47'49" W 38.60 feet; thence N 10°52'32" W 51.46 feet; thence N 28°41'35" W 72.29 feet; thence N 25°26'34" W 54.93 feet; thence N 21°40'53" W 289.47 feet; thence N 05°14'39" W 107.17 feet; thence N 09°57'04" E 95.18 feet; thence N 21°00'48" E 85.97 feet; thence N 26°41'08" E 38.15 feet; thence N 31°45'02" E 189.96 feet; thence N 62°04'58" E 58.83 feet; thence N 56°49'19" E 111.15 feet; thence N 49°55'03" E 53.74 feet; thence N 57°09'21" E 173.57 feet; thence N 54°58'06" E 120.23 feet; thence N 53°22'23" E 84.01 feet; thence N 55°58'15" E 97.13 feet; thence N 57°18'56" E 108.15 feet; thence N 56°24'04" E 121.43 feet to the point of curvature of a 150.00 foot radius curve to the right; thence along the arc of said curve 28.88 feet; thence N 67°25'57" E 119.23 feet; thence N 64°56'36" E 67.33 feet to the point of curvature of a 200.00 foot radius curve to the right; thence along the arc of said curve 24.44 feet; thence N 71°56'43" E 31.80 feet to the point of curvature of a 150.00 foot radius curve to the left; thence along the arc of said curve 61.90 feet; thence N 44°20'14" E 88.04 feet; thence N 39°20'39" E 40.73 feet to the point of curvature of a 150.00 foot radius curve to the left; thence along the arc of said curve 81.83 feet; thence N 08°05'17" E 22.91 feet; thence N 08°50'04" E 74.16 feet; thence N 07°14'47" E 174.14 feet; thence N 07°49'02" E 99.69 feet to the point of curvature of a 160.00 foot radius curve to the right; thence along the arc of said curve 102.15 feet; thence N 44°23'54" E 57.32 feet; thence N 35°45'49" E 105.58 feet; thence N 41°20'26" E 122.71 feet; thence N 78°26'24" E 94.85 feet; thence N 70°11'40" E 333.45 feet; thence N 78°00'49" E 216.72 feet; thence N

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43°58'10" E 235.46 feet; thence N 05°39'16" W 82.01 feet;
thence N 43°36'14" E 65.62 feet; thence N 61°04'46" E
105.54 feet; thence N 60°24'41" E 84.52 feet; thence N
58°18'36" E 295.39 feet; thence N 54°31'42" E 249.21 feet;
thence N 54°10'38" E 121.86 feet; thence N 45°26'44" E
88.12 feet; thence N 59°07'18" E 97.24 feet; thence N
45°23'05" E 77.74 feet; thence N 44°47'14" E 136.58 feet;
thence N 47°15'45" E 176.00 feet; thence N 51°59'31" E
235.19 feet; thence N 52°30'28" E 83.00 feet; thence N
32°58'09" E 199.96 feet; thence N 43°37'24" E 125.29 feet;
thence N 44°32'00" E 103.94 feet; thence N 43°37'43" E
112.38 feet; thence N 45°20'56" E 164.12 feet; thence N
48°37'25" E 108.43 feet; thence N 45°40'37" E 120.31 feet;
thence N 49°16'07" E 111.56 feet; thence N 47°04'23" E
57.63 feet; thence N 67°38'58" E 118.46 feet; thence N
51°38'54" E 85.96 feet; thence N 49°59'21" E 107.13 feet;
thence N 44°43'12" E 63.22 feet; thence N 39°56'03" E
135.41 feet; thence N 34°39'24" E 83.66 feet; thence N
33°37'41" E 105.46 feet; thence N 34°20'46" E 107.85 feet;
thence N 27°18'48" E 64.41 feet; thence N 40°44'19" E 51.64
feet; thence S 74°17'42" E 51.90 feet; thence N 80°36'44" E
34.25 feet; thence N 60°21'07" E 33.86 feet; thence N
57°42'39" E 135.10 feet; thence N 49°33'25" E 32.39 feet;
thence N 43°50'03" E 34.55 feet; thence N 23°18'18" E 53.52
feet; thence N 04°14'01" E 67.70 feet; thence N 00°08'11" W
57.44 feet; thence N 00°15'07" E 62.88 feet; thence N
74°07'07" E 61.77 feet; thence N 78°33'14" E 173.02 feet;
thence N 52°38'58" E 221.83 feet; thence N 53°30'41" E
224.21 feet; thence N 39°31'12" E 53.43 feet; thence N
11°08'38" E 46.25 feet; thence N 04°12'26" E 58.59 feet;
thence N 17°25'40" W 176.59 feet; thence N 32°08'22" W
111.02 feet; thence N 19°17'58" W 75.24 feet; thence N
29°38'17" W 56.53 feet; thence N 20°49'18" W 66.33 feet;
thence N 51°03'46" W 110.21 feet; thence N 73°10'50" W
115.91 feet; thence N 64°00'37" W 98.30 feet; thence N
83°43'18" W 44.67 feet; thence N 37°22'13" W 23.65 feet;
thence N 01°19'13" E 96.73 feet; thence N 69°40'43" W
241.10 feet; thence N 55°08'36" W 88.75 feet; thence N
68°35'06" W 145.24 feet; thence N 54°46'18" W 100.62 feet;
thence N 68°22'04" W 51.71 feet; thence N 04°19'22" E 60.42
feet; thence N 00°19'42" E 130.92 feet; thence N 03°16'11" W
115.09 feet; thence N 09°39'49" W 56.61 feet; thence N
08°22'55" E 49.42 feet; thence N 01°12'44" W 91.60 feet;
thence N 09°46'39" W 122.29 feet; thence N 03°10'52" E
140.87 feet; thence N 03°11'50" E 202.57 feet; thence N
02°11'24" E 114.01 feet to a point on the Easterly right of
way line of Hilton Drive/Dixie Drive, said point being the
terminus point of this easement.

TE/lg
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