

35/13
WHEN RECORDED, RETURN TO:

Stephen B. Doxey
Attorney at Law
4625 South 2300 East, Suite 206
Holladay, Utah 84117

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RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2007 Apr 05 9:09 am FEE 35.00 BY VM
RECORDED FOR DOXEY, STEPHEN B

EM

CORRECTED UTILITY LINE AGREEMENT

THIS CORRECTED UTILITY LINE AGREEMENT (this "Agreement") is made and entered into this 27 day of March, 2007 (the "Effective Date"), by and between the MARGERY DOXEY HATCH FAMILY LIVING TRUST (the "Trust"), and WESTERN STATES LODGING, LLC, a Utah Limited liability company ("Western"). This Agreement corrects and replaces the Utility Line Agreement recorded February 27, 2007, in the office of the Utah County Recorder as Entry No. 28890:2007.

Recitals

A. The Trust sold Western certain real property, which is more particularly described in Exhibit A (the "Western Property") under a Real Estate Purchase Contract dated February 22, 2006, as amended (the "REPC"). The Trust retained ownership of certain real property located adjacent and to the south of the Western Property (collectively, the "Hatch Property").

B. Western has applied to the City of Provo (the "City") for approval of a subdivision to be located on the Western Property. In connection with the approval process, Western has requested the Trust to grant the City an easement to construct and maintain a sanitary sewer line across the Hatch Property to service some of the lots in the proposed subdivision (the "Easement").

C. The Trust is willing to grant the Easement on the terms set forth below, as well as the terms set forth in the Easement itself.

NOW, THEREFORE, as a condition of granting the Easement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **LOCATION OF SEWER LINE.** The Trust will execute a Sanitary Sewer Line Easement in favor of the City in substantially the same form as the attached Exhibit B. The Easement will be located as shown in Exhibit B. No portion of any sewer lateral for any lot in the subdivision on the Western Property will be located on the Hatch Property.

2. **CONSTRUCTION SCHEDULE.** Western will schedule and perform the installation of the sanitary sewer line and other improvements described below so as to reasonably accommodate the vehicular access requirements of the occupants of the Hatch Property. Western will complete all improvements and restorative work called for under this Agreement, except for roadway resurfacing, within 60 days after construction of the sanitary sewer line commences. All roadway resurfacing will be completed as soon as reasonably possible given the weather and availability of asphalt.

3. **INDEMNITY.** Western will indemnify, defend, and hold harmless the Trust, its trustees, beneficiaries, agents, successors, and assigns, from and against any claim,

demand, loss, damage, or cost (including reasonable attorney and expert fees), arising out of the construction, use, maintenance, repair, replacement, or removal of the sanitary sewer line.

4. HATCH SEWER LATERAL AND CONNECTION. Western will provide a lateral sewer line and connection to the residence on the Hatch Property, at a location reasonably specified by the Trust. Western will pay all connection fees, as well as all installation costs of the lateral and connection.

5. ABANDONMENT OF SEPTIC SYSTEM. Western will implement all measures necessary to abandon the current septic system on the Hatch Property according to governmental regulations. The landscaping above and around the septic tank will remain undisturbed or will be restored. The Trust will submit to the Utah County Health Department the application to abandon the system; Western will cover the application fee by way of a credit to the Trust, as provided in Section 9.b.

6. LANDSCAPING. Western will replace any trees, shrubs, pathways, or other landscaping features disturbed or removed during installation of the sanitary sewer line and lateral. Replacement trees will be similar in species to any trees disturbed or removed, or of such other species as the Trust may reasonably specify. Any replacement conifers will be of at least five-inch caliper; any deciduous trees will be of at least three-inch caliper.

7. RESTORATION OF DRIVEWAY. Western (with the City's assistance or otherwise) will restore the driveway on the Hatch Property and adjacent Poppen property (collectively, the "Hatch Driveway") to its original condition following installation of the sanitary sewer line, lateral, and irrigation lines. The entire asphalted area, including the parking area on the Hatch Property, will be resurfaced according to City standards and the Trust's reasonable specifications.

8. CURBING. Western will restore any curbing damaged during installation of the sanitary sewer line, lateral, and irrigation lines. Western will straighten out, asphalt, and re-curb the indentation at the north of the entrance to the Poppen driveway (on and adjacent to the Hatch Property) so as to widen that entrance to the Trust's reasonable satisfaction.

9. IRRIGATION LINES.

a. East-West Line. Western will install, at its own expense, an irrigation line and diversion boxes as agreed in the REPC (collectively, the "East-West Line"), and in accordance with the engineering drawings dated May 31, 2006, prepared by McNeil Engineering and Land Surveying (the "Engineering Drawings"). However, Western will place the diversion box at the west end of the East-West Line so as not to be located in the Hatch Driveway; and Western will also stub an irrigation line from the diversion box to a location near the northeast tip of the landscaped island in the Hatch Driveway. The location of the diversion box and stubbed irrigation line will be as reasonably specified by the Trust.

b. North-South Line. Western will install an irrigation line, similar in size to the East-West Line, in the location of the "FUTURE IRRIGATION PIPE" depicted in the Engineering Drawings. The irrigation line will be in the location of the current irrigation ditch, extending roughly north and south from the double diversion box on the East-West Line along the east boundary of the Hatch Property to a new diversion box to be installed at approximately the southeast corner of the Hatch Property (collectively, the "North-South Line"), as reasonably specified by the Trust. The Trust will pay Western \$3,856.00 toward the cost of installing the North-South Line (which represents one-half of the installation cost, less a \$50.00 credit for the application fee to abandon the septic system on the Hatch Property). Any additional installation costs will be borne by Western, or the owners of the Covey property adjacent to the Hatch Property, as the case may be.

10. MISCELLANEOUS.

a. **Notice.** All notices required under this Agreement must be in writing and will be deemed to have been sufficiently given or served when presented personally or when deposited in the United States Mail, by registered or certified mail, addressed as follows:

Western:

Western States Lodging, LLC
6138 South 380 West
Murray, Utah 84107

The Trust:

Margery Doxey Hatch Family Living Trust
C. Steven Hatch, M.D., Trustee
c/o Kenneth Johnson, M.D.
2152 East Calle Maderas
Mesa, Arizona 85203

With a copy to:

Stephen B. Doxey
Attorney at Law
4625 South 2300 East, Suite 206
Holladay, Utah 84117

Either party may designate a different address by written notice to the other party. Any notice given under this Agreement will be deemed given as of the date delivered or mailed.

b. **Assignment.** Western may not assign any rights or delegate any obligations under this Agreement without the Trust's prior written consent, which will not be unreasonably withheld. Subject to this limitation, this Agreement will be binding upon and will inure to the benefit of the parties' respective permitted successors, agents and assigns.

c. **Severability.** The provisions of this Agreement are severable, and the invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of the remaining provisions.

d. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Utah, irrespective of any conflicts of laws provisions, except as Utah law may be preempted or superseded by the laws of the United States. Each party hereby consents to the jurisdiction of the courts of the State of Utah or the courts of the United States located in the State of Utah, as the case may be, with venue in Utah County, in any dispute arising out of this Agreement.

e. **Attorney Fees.** In the event of a dispute relating to the terms of this Agreement, or any party's performance under this Agreement, the prevailing party in any proceeding brought in connection with the dispute will be entitled to recover from the other party its costs, including reasonable attorney fees, whether incurred in litigation or otherwise.

f. **Warranty of Authority.** The person signing below on behalf of each party represents that he has been duly authorized to do so and to bind the party to the terms of this Agreement.

g. **Counterparts.** This Agreement may be executed in counterparts, each of which will represent an original and all of which, taken together will constitute one instrument. A signature transmitted by facsimile, e-mail, or other comparable means will be deemed an original.

h. Entire Agreement, Modification, and Waiver. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter, and supersedes all previous or contemporaneous representations or agreements of the parties regarding such subject matter. No modification of this Agreement shall be valid or binding unless made in writing and signed by both parties. Any waiver of any provision of this Agreement shall be in writing and shall be signed by the party waiving the provision.

i. Covenants Run with the Land. Western's obligations under this Agreement are covenants running with the land. The Trust may record this Agreement against the Western Property, evidencing the obligations of Western and its successors and assigns. Upon fulfillment of Western's obligations under this Agreement, Western may request the Trust to record a release of any further obligation under this Agreement, which request the Trust will not unreasonably deny.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties execute this Agreement as of the Effective Date.

MARGERY DOXEY HATCH
FAMILY LIVING TRUST

C. Steven Hatch, M.D., Trustee

WESTERN STATES LODGING, LLC

Stephen P. Miles
Stephen P. Miles, Manager

STATE OF ARIZONA)
: ss.
COUNTY OF MARICOPA)

C. Steven Hatch, M.D., personally appeared before me this ____ day of _____, 2007, and, being duly sworn, acknowledged to me that he is the duly authorized Trustee of the Margery Doxey Hatch Family Living Trust (the "Trust"), and that he signed the foregoing instrument on behalf of the Trust.

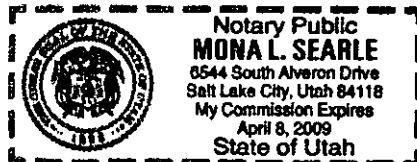
Notary Public

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

March Stephen P. Miles personally appeared before me this 8th day of _____, 2007, and, being duly sworn, acknowledged to me that he is the duly authorized Manager of Western States Lodging, LLC ("Western"), and that he signed the foregoing instrument on Western's behalf.

Mona L. Seal

Notary Public



IN WITNESS WHEREOF, the parties execute this Agreement as of the Effective Date.

MARGERY DOXEY HATCH

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FAMILY LIVING TRUST WESTERN STATES LODGING, LLC

C. Steven Hatch, M.D.,

C. Steven Hatch, M.D., Trustee Stephen P. Miles, Manager

STATE OF ARIZONA)

: ss.

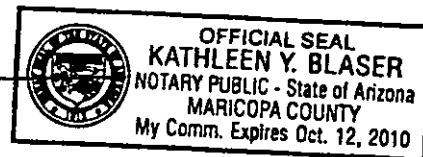
COUNTY OF MARICOPA)

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C. Steven Hatch, M.D., personally appeared before me this 26 day of March, 2007, and, being duly sworn, acknowledged to me that he is the duly authorized Trustee of the Margery Doxey Hatch Family Living Trust (the "Trust"), and that he signed the foregoing instrument on behalf of the Trust.



Notary Public



STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

Stephen P. Miles personally appeared before me this _____ day of _____, 2007, and, being duly sworn, acknowledged to me that he is the duly authorized Manager of Western States Lodging, LLC ("Western"), and that he signed the foregoing instrument on Western's behalf.


Notary Public

EXHIBIT A

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Description of Western Property

Beginning at a chainlink fence corner on the north boundary line of a Provo City Park, which fence corner is located South 0°47'00" East 362.90 ft. along the section line and EAST 1196.70 ft. from the West 1/4 Corner of Section 30, Township 6 South, Range 3 East, Salt Lake Meridian;

thence South 89°25'00" West 297.50 ft. along a chainlink fence line called for in that certain Settlement and Boundary Line Agreement, dated June 5, 1995, and recorded in Book 3692 at Pages 209 through 219 of the Official Records of Utah County, to a metal post as called for in said boundary line agreement;

thence South 89°25'00" West 118.00 ft. to an iron pin;

thence North 0°35'00" West 23.80 ft. to an iron pin;

thence South 89°25'00" West 49.10 ft. to an iron pin;

thence South 8°30'00" West 24.10 ft. to an iron pin;

thence South 89°25'00" West 13.92 ft. to an iron pin;

thence North 0°06'00" East 371.96 ft. to an iron pin;

thence South 64°35'00" West 157.16 ft. to an iron pin; -x

thence South 52°15'00" West 243.38 ft., more or less, to the easterly right-of-way line of old U.S. Highway 189 (Provo Canyon Road), and an iron pin;

thence northeasterly 467.10 ft. along said R/W line along the arc of an 1106.30 foot radius curve to the right, through a central angle of 24°11'29" (chord bears North 38°14'17" East 463.64 ft.), to an iron pin;

thence North 50°20'00" East 536.38 ft. along said R/W line to an iron pin;

thence easterly 28.28 ft. along the right-of-way line of a city street along the arc of an 18 foot radius curve to the right through a central angle of 90°01'07" (chord bears South 84°20'53" East 25.46 ft.) to an iron pin;

thence South 39°20'53" East 35.93 ft. along the westerly R/W line, of said city street to an iron pin;

thence southerly 81.90 ft. along said R/W line along the arc of a 122 foot radius curve to the right, through a central angle of 38°27'46" (chord bears South 20°07'03" East 80.37 ft.) to an iron pin;

thence South 0°53'13" East 188.56 ft. along said R/W line to an iron pin;

thence southerly 30.86 ft. along said R/W line along the arc of a 156 foot radius curve to the left, through a central angle of 11°20'04" (chord bears South 6°33'13" East 30.81 ft.) to an iron pin;

thence southerly 19.78 ft. along said R/W line along the arc of a 100 foot radius curve to the right, through a central angle of 11°20'04" (chord bears South 6°33'13" East 19.75 ft.) to an iron pin;

thence South 0°53'13" East 105.30 ft. along said R/W line to an iron pin;

Description of Western Property

thence North $89^{\circ}33'25''$ East 23.49 ft. to a fence line called for in those certain boundary line agreements recorded in Book 2859 at Page 307 and in Book 2900 at Page 42 and in Book 3055 at Page 300 of the Official Records of Utah County, and an iron pin;
thence South $1^{\circ}00'25''$ East 222.17 ft. along said Boundary Line Agreement line to an existing iron pin at a fence corner;
thence South $0^{\circ}50'30''$ East 185.39 along said agreement fence line to the Point of Beginning.

Basis of Bearing: Utah State Plane Coordinate System, Central Zone.

* * *

The foregoing property is proposed to be known as the Rock Canyon Subdivision.

EXHIBIT B

Sanitary Sewer Line Easement

WHEN RECORDED, RETURN TO:
Provo City Corporation
ATTN: Property Coordinator
P.O. Box 1849
Provo, Utah 84603

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SANITARY SEWER LINE EASEMENT

MARGERY DOXEY HATCH FAMILY LIVING TRUST, C. STEVEN HATCH TRUSTEE, Grantor, of Utah County, Utah, hereby grants and conveys to **PROVO CITY CORPORATION**, a municipal corporation, its successors in interest and assigns, Grantee, for the sum of One (\$1.00) Dollar and other valuable consideration, a perpetual easement and right-of-way for the construction of and continued maintenance, repair, alteration, and replacement of a sanitary sewer line of the Grantee, constructed and maintained upon and across the perpetual right-of-way of the Grantor, in Utah County, Utah, as depicted in the attached Exhibit A, along the areas described as follows:

A 20.00 Foot Sanitary Sewer Easement lying 10.00 feet each side of the following described centerline:

Beginning at a point on the Southerly line of Lot 6 of the Proposed Rock Canyon Subdivision, said point being South 00°47'00" East along the Section Line 375.07 feet to the extension of said southerly line and North 89°25'04" East along said Southerly line and line extended 718.97 feet from a found Utah County brass cap monument stamped 1966, said monument marking the West Quarter Corner of Section 30, Township 6 South, Range 3 East, Salt Lake Base and Meridian, and running thence South 02°23'00" East 10.00 feet; thence South 83°32'33" West 113.94 feet; thence South 05°19'23" West 89.73 feet; thence South 72°21'43" West 373.39 feet to a point 10.00 feet Southwesterly of a proposed sanitary sewer manhole in Canyon Road.

Together with all rights of ingress and egress necessary or convenient for the full and complete use, occupation and enjoyment of the easement hereby granted, and all rights and privileges incident thereto, including but not limited to, the right to cut and remove timber, trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation or enjoyment of this easement.

In connection with this easement, Grantee covenants as follows:

1. Grantee will schedule maintenance of the sanitary sewer line, except in cases of emergency, so as to reasonably accommodate the vehicular access requirements of the occupants of Grantor's property.
2. Grantee will restore to its original condition, to the extent reasonably possible, any road surface, landscaping, or other feature on Grantor's property damaged by the use, maintenance, repair, replacement, or removal of the sanitary sewer line.
3. Grantee will indemnify, defend, and hold harmless Grantor, its trustees, beneficiaries, heirs, agents, successors, and assigns, from and against any claim, demand, loss, damage, or cost (including reasonable attorney and expert fees), arising out of the construction, use, maintenance, repair, replacement, or removal of the sanitary sewer line.
4. The foregoing covenants are covenants running with the land.

IN WITNESS WHEREOF, the Grantor has executed this instrument this 21st day of February, 2007.

GRANTOR:

MARGERY DOXEY HATCH FAMILY LIVING
TRUST

C. Steven Hatch, Trustee

STATE OF Utah) : ss.
COUNTY OF Utah)

On the 21st day of February, 2007, C. Steven Hatch, Trustee, the signer of the above instrument, personally appeared before me, a Notary Public in and for the State of Utah, and duly acknowledged to me that he executed the same on behalf of the Margery Doxey Hatch Family Living Trust.

Shannon Tuckett
Notary Public

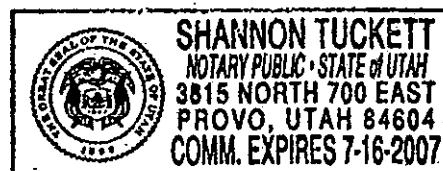


EXHIBIT A
Engineering Drawing of Sanitary Sewer Line Easement

20.00" SANITARY SEWER
LINE EASEMENT
PROPOSED ROCK CANYON
SUBDIVISION

—WEST QUARTER CORNER SECTION 30, TOWNSHIP 6
SOUTH, RANGE 3 EAST, SALT LAKE BASE AND
MERIDIAN, FOUND UTAH COUNTY BRASS CAP
MONUMENT STAMPED "1966"

375.07
S 0047.00 E

N 88°25'04" E 718.97

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PROPOSED SIGHTS

JOURNAL

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SOLARIS SERVIR
EISENST~~

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HOSPITAL DRIVE

SEARCH IMAGE
PROCESSED SURFACE

Final Report on the 2000 Web Site at www.ontario.ca