

WHEN RECORDED, RETURN TO:

Kays Creek Irrigation
P.O. Box 190
Layton, Utah 84041
Scott Green – Manager

E 3362817 B 7723 P 969-979
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
03/24/2021 10:43 AM
FEE \$40.00 Pgs: 11
DEPT REC'D FOR IHC HEALTH SERVICES INC

With a copy to:

Corporate Real Estate Director
IHC Health Services, Inc.
36 South State Street
21st Floor
Salt Lake City, UT 84111

RETURNED
MAR 24 2021

11 - 856 - 0001 to 0007

**AMENDED AND RESTATED
IRRIGATION LINE EASEMENT AGREEMENT**

This AMENDED AND RESTATED IRRIGATION LINE EASEMENT AGREEMENT (this "Agreement") is made and entered into effective as of the 11 day of March, 2020, by and between IHC HEALTH SERVICES, INC., a Utah nonprofit corporation ("Grantor"), and KAYS CREEK IRRIGATION COMPANY, a Utah nonprofit corporation ("Grantee").

Background

- A. Grantor is the owner of that certain real property located in Davis County, Utah, more particularly described on Exhibit A (the "Grantor Property").
- B. Grantor and Grantee entered into that certain Irrigation Line Easement Agreement dated March 9, 2020, recorded March 9, 2020 as Entry Number 3232506 in Book 7465, Page 1497 in the official records of Davis County, Utah (the "Original Easement").
- C. Grantor and Grantee now desire to amend and restate the Original Easement to extend the Easement across additional real property, as more particularly described herein and subject to the terms and conditions of this Agreement.

Terms

1. **Grant of Irrigation Line Easement.** Grantor hereby conveys, without warranty, unto Grantee a non-exclusive easement (the "Easement") on, over, under and across those portions of the Grantor Property more particularly described on Exhibit B and depicted on Exhibit C (the "Easement Area"), for the sole purpose of constructing, installing, operating, inspecting, maintaining, repairing, and replacing an irrigation line and related improvements that serve the Grantor Property (collectively, the "Improvements").
2. **Access.** Grantee and its agents, servants, employees, consultants, contractors and subcontractors (collectively, "Grantee's Agents") will have the right to enter upon the Easement Area solely for the purposes permitted by this Agreement. Grantee will enter upon the Easement Area from existing roads at its sole risk and hazard, and Grantee and its successors and assigns, release Grantor from any and all claims relating to the condition of the Easement Area and the entry upon

the Easement Area by Grantee and Grantee's Agents. Grantee and Grantee's Agents will enter onto the Easement Area at commercially reasonable times.

3. Reservation by Grantor. Notwithstanding anything to the contrary stated herein, Grantor reserves the right to use the Easement Area for any use not inconsistent with Grantee's permitted use of the Easement Area. Without limiting the foregoing, Grantor may install and maintain landscaping, hardscaping, sidewalks, driveways, drainage and other improvements on the Easement Area (collectively, the "Permitted Improvements"). Except for the Permitted Improvements, Grantor agrees not to construct or erect any other improvements, buildings or structures on the Easement Area without obtaining Grantee's written consent, which will not be unreasonably withheld, conditioned or delayed. Grantor also reserves the right to grant additional rights, easements or encumbrances to other third parties to use or occupy the Easement Area or the surface of the Grantor Property above same.
4. Condition of Easement Area. Grantee accepts the Easement Area and all aspects thereof in their "AS IS," "WHERE IS" condition, without warranties, either express or implied, "WITH ALL FAULTS," including but not limited to both latent and patent defects, the existence of hazardous materials, if any, and any other easements, rights, or other encumbrances affecting the Easement Area. Grantee waives all warranties, express or implied, regarding the title, condition and use of the Easement Area, including, but not limited to any warranty of merchantability or fitness for a particular purpose.
5. Right to Relocate. Grantor may, at Grantor's sole cost and expense, relocate the Improvements and the Easement to any other location on the Grantor Property after providing Grantee with at least sixty (60) days' advance written notice describing the proposed location. Grantor will comply with Grantee's ordinances, rules and regulations and all applicable state laws and regulations when performing the relocation. Following the relocation, the parties agree to execute and record an amendment to this Agreement identifying the new Easement Area and releasing those portions of the Grantor Property no longer required for the Easement.
6. Maintenance and Restoration. Grantee, at its sole cost and expense, will promptly repair any damage to the Improvements, Grantor Property and Grantor's improvements located thereon (including, without limitation, any and all landscaping, trees, fences, water and/or irrigation pipes, lines and ditches, curbs, gutters, asphalt surfaces, fences, signs, lighting, buildings, Permitted Improvements, etc.) caused by Grantee or Grantee's Agents, and will restore the Improvements, Grantor Property and the improvements thereon to the same or better condition as they existed prior to any entry onto the Grantor Property by Grantee and Grantee's Agents within thirty (30) days of receiving written notice from Grantor describing the damage. Grantee's restoration responsibilities will also include, but not be limited to: (i) removal of all equipment or materials other than the Improvements which it has caused to be placed upon the Grantor Property; (ii) the filling in and repairing of all other portions of the Grantor Property which are damaged, rutted or otherwise disturbed as a result of Grantee's operations; and (iii) leaving the Grantor Property in a condition which is clean, free of debris and hazards which may be caused by Grantee's activities, and subject to neither, environmental hazards, nor liens caused by Grantee's activities.
7. Compliance with Laws. Grantee will comply with all present or future laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any building, zoning and land use laws.

8. Insurance. Prior to entering onto the Easement Area, Grantee will maintain, or will cause to be maintained, policies which, at a minimum, provide Grantor the protections set forth below. Additionally, Grantee will ensure that prior to entering onto the Easement Area or the Grantor Property, all of Grantee's Agents and other such parties who assist with the Improvements or use of the Easement Area are either covered under the terms of Grantee's insurance policies, or that each obtain similar policies and which, at a minimum, provide Grantor the same protections. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of Grantee. Prior to any entry onto, or construction within, the Easement Area by Grantee, Grantor will have the right to approve Grantee's insurance and Grantee will (i) provide certificates to Grantor evidencing such insurance in a form acceptable to Grantor, and (ii) cause its consultants, contractors, and subcontractors to add Grantor as an additional insured.
- (a) A commercial general liability insurance policy insuring Grantee's interests against claims for personal injury, bodily injury, death, property damage occurring on, in or about the Easement Area and the ways immediately adjoining the Easement Area, with a "Combined Single Limit" covering personal injury liability, bodily injury liability and property damage liability of not less than Two Million Dollars (\$2,000,000.00). Licensor must be endorsed as an additional insured on such policy on ISO Form CG 20 10 (10/93) or its equivalent. The coverage set forth above will be primary coverage and will apply specifically to the Easement Area, activities on the Grantor Property, and adjacent areas;
 - (b) All Workers' Compensation and Employers' Liability Insurance required under applicable Workers' Compensation Acts and/or applicable law. In addition, Grantee will maintain Employers' Liability Insurance with a minimum limit of not less than Five Hundred Thousand Dollars (\$500,000.00); and
 - (c) Automobile Liability Insurance with a minimum limit of not less than Two Million Dollars (\$2,000,000.00) Combined Single Limit per accident, and coverage applying to "Any Auto."
9. Indemnification by Grantee. Grantee agrees to indemnify, save, defend (with counsel reasonably acceptable to Grantor) and hold harmless Grantor, and any entity controlling, controlled by, or under control with Grantor, and its and their Affiliates' officers, directors, employees, managers, members, agents and servants ("Affiliates") from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage that may be incurred by Grantor or its Affiliates as a result of any liabilities, damages, judgments, costs, expenses, penalties, and/or injuries to persons or property caused by or arising out of, either directly or indirectly, (i) the use of the Easement Area by Grantee and/or Grantee's Agents; (ii) any entry onto the Easement Area and/or the Grantor Property by Grantee and/or Grantee's Agents; and (iii) any work performed on the Easement Area by Grantee and/or Grantee's Agents, except to the extent caused solely by Grantor and/or its Affiliates' gross negligence or willful misconduct.
10. Liens. Grantee will keep the Easement Area and the Grantor Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for, or under Grantee, and will indemnify, hold harmless and agree to defend Grantor from any liens that may be placed on the Easement Area and/or the Grantor Property pertaining to any work performed, materials furnished, or obligations incurred by, through, for, or under Grantee or any of Grantee's Agents. Any such liens will be released of record within thirty (30) days.

11. Environmental Matters. Grantee will not permit any contamination, dumping or other environmental waste to be left, stored, disposed, or released in or on the Easement Area or the Grantor Property. Additionally, Grantee will not create, exacerbate or cause any "Environmental Condition" (as defined below) on or about the Grantor Property or the Easement Area. For purposes of this Agreement, "**Environmental Condition**" means (a) contamination or pollution of soil, air, surface or groundwater, (b) the disposal, placement, existence, presence or release or threat of release of a "**Hazardous Material**" (as defined below) and the affects thereof, or (c) noncompliance with or violation of "**Applicable Law**" (as defined below) including, without limitation, any lack of required governmental permits or approvals. "**Hazardous Material**" means (x) any substance, the presence of which requires investigation, remediation, or other response or corrective action under Applicable Law, or (y) any substance which is defined as a hazardous waste, hazardous substance, extremely hazardous substance, hazardous material, hazardous matter, hazardous chemical, toxic substance, toxic chemical, pollutant or contaminant, or other similar term, in or pursuant to Applicable Law, or (z) any asbestos or asbestos-containing material, PCBs or equipment or articles containing PCBs, petroleum, diesel fuel, gasoline or other petroleum hydrocarbons. "**Applicable Law**" means all existing federal, state or local laws, common law, statutes or regulations, including, without limitation, those relating to the protection of human health and safety, protection of the environment, or prevention of pollution.

12. Notices. All communications, consents, and other notices provided for in this Agreement (collectively, "**Notice**") will be in writing and will be effective on the date sent by receipted hand delivery, confirmed facsimile or e-mail, nationally-recognized, overnight courier, or registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Grantor: IHC Health Services, Inc.
36 South State Street, 23rd Floor
Salt Lake City, UT 84111
Attn: Corporate Real Estate Director

With a copy to: Kirton McConkie
Attn: Tyler Buswell
50 E. South Temple #400
Salt Lake City, UT 84111

If to Grantee: Kays Creek Irrigation
P.O. Box 190
Layton, Utah 84041
Scott Green – Manager

13. Miscellaneous.

(a) Except as expressly stated herein, the provisions of this Agreement will be binding upon and inure to the benefit of the parties, as well as the successors and assigns of such persons, and shall run with the land.

(b) If any term, covenant or condition of this Agreement or the application of it to any person or circumstance will to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances, other than those as to which it is invalid or unenforceable, will not be affected thereby, and each term, covenant or condition of this Agreement will be valid and will be enforced to the extent permitted by law.

(c) The captions and headings in this Agreement are for reference only and will not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

(d) Nothing contained herein will be construed to make the parties hereto partners or joint venturers, or render any of such parties liable for the debts or obligations of the other party hereto.

(e) This Agreement may be canceled, changed, modified or amended in whole or in part only by the written and recorded agreement of the parties or their successor and assigns (as determined by the provisions herein).

(f) In the event any legal action or proceeding for the enforcement of any right or obligation herein is commenced, the prevailing party will be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

(g) Nothing herein contained will be deemed to be a gift or dedication of any portion of the Grantor Property it being the intention that this Agreement will be strictly limited to and for the purposes herein expressed. This Agreement is not intended to create, nor will it be in any way interpreted or construed to create, any third party beneficiary rights in any person not specifically benefited by the terms and provisions hereof. Grantor will have the right to perform any act, or do anything, from time to time that Grantor may deem necessary or desirable to assure that no public gift dedication (or deemed gift dedication) occurs.

(h) This Agreement is to be governed by and construed in accordance with Utah law. Time is of the essence. The failure of a person to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein will not be deemed a waiver of any rights or remedies, and will not be deemed a waiver of any subsequent breach or default.

(i) Grantee may not at any time during this Agreement assign its rights and obligations under this Agreement without the prior written consent of Grantor, which consent may be granted or withheld in Grantor's sole and absolute discretion and for any reason or no reason at all. Notwithstanding the foregoing, Grantee may assign its rights and obligations under this Agreement to Layton City upon providing written notice to the Grantor.

(signatures and acknowledgements to follow)

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Grantor: IHC HEALTH SERVICES, INC.,
a Utah nonprofit corporation

By: [Signature]
Name (Prints): Clay L. Ashdown
Its: VP

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

The foregoing Agreement was acknowledged before me this 3rd day of March, 2020, by Clay Ashdown, the Vice President of IHC HEALTH SERVICES, INC., a Utah nonprofit corporation.



[Signature]
NOTARY SIGNATURE AND SEAL

[Grantee's Signature and Acknowledgement Follows]

[Handwritten scribble]

Grantee:

KAYS CREEK IRRIGATION COMPANY,
a Utah nonprofit corporation

By: *Scott H. Green*
Name (Prints): Scott H. Green
Its: President

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

On the 11th day of March, 2020, personally appeared before me
Scott H. Green, who being duly sworn, did say that he/she is the President
of Kays Creek Irrigation Company, a Utah nonprofit corporation, and that the foregoing instrument was
signed in his/her capacity of such entity.

Kathleen M. Graham
NOTARY SIGNATURE AND SEAL



EXHIBIT A

(Legal Description of the Grantor Property)

DESCRIPTION

A part of the Northeast Quarter of Section 29 and the Northwest Quarter of Section 28 Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, Layton City, Davis County, Utah:

Beginning at the Southeastly Corner of Lot 2, Brookside Farms Subdivision, Layton City, Davis County, Utah, said point being 738.05 feet North 0°04'16" East along the Section Line and 33.73 feet South 89°55'44" East from the East Quarter Corner of said Section 29; and running thence North 36°47'44" West 3.42 feet; thence North 42°29'59" West 540.21 feet to the Southerly Line of the Layton City Property; thence North 53°24'30" East 359.91 feet; thence North 00°04'16" East 338.07 feet; thence North 46°34'32" East 62.15 feet to the Section Line; thence South 0°04'16" West 38.17 feet along the Section line; thence South 36°00'03" East 178.21 feet; thence North 63°00'00" East 178.64 feet to the West property line of the Doyle Property (Davis County Parcel #11-061-0010); thence two (2) course along the West and South Boundary of said Doyle Property as follows: (1) South 00°04'16" West 28.62 feet; and (2) North 47°59'16" East 98.38 feet; thence North 63°00'00" East 151.33 feet to the South Line of said Doyle Property; thence two (2) courses along said South Boundary line as follows: (1) South 70°25'44" East 102.00 feet; and (2) North 48°29'16" East 17.15 feet to a point on a non-tangent curve, said point being on the Westerly right of way line of the Union Pacific Railroad Property; of which the radius point lies South 43°20'19" West; thence Southeastly along the arc of a 5,630.00 foot radius curve to the right a distance of 798.14 feet (Central Angle equals 08°07'21" and Long Chord bears South 42°36'00" East 797.47 feet) along said Westerly right of way line to the Northerly Line of Layton Parkway; thence South 65°09'10" West 304.17 feet along said Northerly Line; thence South 33°09'51" East 53.79 feet; thence Easterly along the arc of a 36.00 foot radius curve to the left a distance of 48.54 feet (Central Angle equals 77°15'11" and Long Chord bears South 71°47'27" East 44.95 feet) to said Northerly Line; thence South 65°56'29" West 127.10 feet along said Northerly line to a point on a non-tangent curve to the left, of which the radius point lies North 25°27'06" West; thence Northerly along the arc of a 38.30 foot radius curve to the left a distance of 61.13 feet (Central Angle equals 91°26'08" and Long Chord bears North 18°49'50" East 54.84 feet); thence South 56°50'09" West 561.02 feet to a point on a non-tangent curve of which the radius point lies North 05°02'19" East said point being on the Easterly right of way of 100 West Street; thence along said Easterly and Northerly right of way lines the following three (3) courses: (1) Northwestly along the arc of a 25.00 foot radius curve to the right a distance of 22.02 feet (Central Angle equals 50°28'07" and Long Chord bears North 59°43'37" West 21.32 feet); (2) North 34°29'34" West 261.45 feet; and (3) South 48°54'49" West 195.66 feet to the POINT OF BEGINNING.

Together with:

A part of the Northeast Quarter of Section 29 and the Northwest Quarter of Section 28 Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, Layton City, Davis County, Utah:

Beginning at a point 420.14 feet North 0°04'16" East along the Section Line to the Northerly Right-of-Way Line of Layton Parkway and 182.51 feet North 58°02'51" East along said Northerly Right-of-Way Line from the East Quarter Corner of said Section 29; and running thence along said Northerly Right-of-Way Line the following six (6) courses: (1) South 58°02'51" West 264.41 feet, (2) South 59°30'49" West 131.47 feet, (3) South 41°45'50" West 58.95 feet to a point of curvature, (4) Southwestly along the arc of a 2570.00 foot Radius curve to the right a distance of 189.36 feet (Central Angle equals 4°13'18" and Long Chord bears South 64°18'18" West 189.32 feet) to a point of non-tangency, (5) South 73°17'02" West 98.81 feet and (6) South 68°22'04" West 250.06 feet; thence North 22°52'04" West 13.88 feet to the South Boundary line of Amended Plat of Hodson Estates Phase 1; thence North 48°55'33" East 721.55 feet along said South Boundary line more or less to a point of a non-tangent curve and the Westerly Right-of-Way Line of 225 West Street; thence along said Westerly and Southerly Right-of-Way the following eight (8) courses: (1) Southeastly along the arc of a 51.50 foot Radius curve to the left a distance of 161.01 feet (Central Angle equals 179°07'45" and Long Chord bears South 87°38'35" East 103.00 feet) to a point of reverse curvature, (2) Northeastly along the arc of a 31.00 foot Radius curve to the right a distance of 25.82 feet (Central Angle equals 47°42'59" and Long Chord bears North 26°39'02" East 25.08 feet), (3) North 50°30'46" East 217.18 feet to a point of curvature, (4) Northeastly along the arc of a 120.50 foot Radius curve to the right a distance of 53.33 feet (Central Angle equals 25°21'34" and Long Chord bears North 63°11'32" East 52.90 feet) to a point of non-tangency, (5) South 64°18'39" East 38.67 feet to a point of a non-tangent curve, (6) Southeastly along the arc of a 290.00 foot Radius curve to the left a distance of 52.29 feet (Central Angle equals 10°19'52" and Long Chord bears South 31°02'50" East 52.22 feet) to a point of tangency, (7) South 36°05'31" East 51.37 feet to a point of curvature, and (8) Southwestly along the arc of a 40.00 foot Radius curve to the right a distance of 63.06 feet (Central Angle equals 90°19'39" and Long Chord bears South 9°04'19" West 56.73 feet) to the Northerly Right-of-Way Line of said Layton Parkway; thence South 54°16'29" West 93.67 feet along said Northerly Right-of-Way to the Point of Beginning.

Contains 24.150 Acres, more or less

Layton Parkway North
11-856-0001 to 0004

Layton Parkway North
11-856-0005 to 0007



March 18, 2021

**Layton Parkway North
7-foot-wide Private Irrigation Easement Description**

A part of the Northeast Quarter of Section 29 and the Northwest Quarter of Section 28 Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, Layton City, Davis County, Utah:

Beginning at a point 420.14 feet North 0°04'16" East along the Section Line to the Northerly right of way line of Layton Parkway and running thence two courses along said Northerly right of way line as follows: (1) South 58°02'51" West 81.90 feet; and (2) South 59°30'49" West 49.13 feet from the East Quarter Corner of said Section 29; thence South 59°30'49" West 15.00 feet along said Northerly right of way line; thence North 32°03'01" West 7.00 feet; thence North 59°30'49" East 15.00 feet; thence South 32°03'01" East 7.00 feet to the POINT OF BEGINNING.

Containing 105 square feet, more or less.

Note

Rotate NAD83 bearings counterclockwise 0°21'09" to match Davis County bearings

11-856-0005



EXHIBIT C

(Depiction of the Easement Area)

