

WHEN RECORDED, MAIL TO:

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Salt Lake City, Utah 84111

ENT 14831;2009 PG 1 of 7  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2009 Feb 12 12:55 pm FEE 0.00 BY SS  
RECORDED FOR SARATOGA SPRINGS CITY

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**DECLARATION AND GRANT  
OF EASEMENT**

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(30' Landscaping, Public Access and Utility Easement)

This DECLARATION AND GRANT OF EASEMENT (this "Agreement") is made and entered into as of the 22 day of April, 2008, by and between IHC HEALTH SERVICES, INC., a Utah nonprofit corporation ("Intermountain Healthcare"), having a mailing address at 36 South State Street, 21<sup>st</sup> Floor, Salt Lake City, Utah 84111, and the CITY OF SARATOGA SPRINGS, UTAH, a Utah municipal corporation (the "City"), having a mailing address at 1307 N. Commerce Dr., Suite 200, Saratoga Springs, Utah 84045.

RECITALS

WHEREAS, Intermountain Healthcare owns certain real property located in the City of Saratoga Springs, Utah County, Utah, as particularly described in the attached Exhibit "A" (the "Intermountain Healthcare Property");

WHEREAS, the City desires to (1) construct, operate, repair, and maintain certain municipal infrastructure including sidewalks, storm drain, water, irrigation, sewer, and/or other capital facility structures and facilities, together with related facilities and components as may be necessary therefor, (collectively, the "Improvements"), on, over or under a portion of the Intermountain Healthcare Property for the purpose of servicing the Intermountain Healthcare Property and providing public access across the Intermountain Healthcare Property, and (2) install, repair, maintain and replace certain landscape improvements on and around the Intermountain Healthcare Property, ((1) and (2) are referred to herein collectively as the "Work");

WHEREAS, the City desires to provide for public access on, over, across and through a portion of the Intermountain Healthcare Property located along and adjacent to State Route 73 (the "Access") for purpose of providing the public, non-motorized, pedestrian access over and across the Intermountain Healthcare Property;

WHEREAS, in order to facilitate the Work and provide the Access, the City desires a nonexclusive, perpetual easement and right-of-way, approximately thirty (30) feet in width, with respect to that certain portion of the Intermountain Healthcare Property as particularly described in Exhibit "B" (the "Easement Property"); and

WHEREAS, Intermountain Healthcare is willing to grant a nonexclusive, perpetual easement within the Easement Property, to the City solely for the purpose of the Work and the Access, subject to the terms and conditions herein.

NOW, THEREFORE, to these ends and in consideration of the terms and conditions set forth herein, as well as the mutual benefits to be derived herefrom, Intermountain Healthcare and the City agree as follows:

### TERMS

1. Grant of Easement. Subject to the terms and conditions of this Agreement, Intermountain Healthcare hereby grants and conveys to the City a nonexclusive, perpetual easement, approximately thirty (30) feet in width and as more particularly described in Exhibit "B," solely for purposes of conducting the Work, placement of the Improvements, and providing for the Access, on, over, through and under the Easement Property (the "Easement").

2. Limitations on Easement. The City's exercise of the rights granted pursuant to the Easement shall be strictly limited to the Work and the Access (the "Limited Use"). The Easement shall be utilized so as to minimize any impact on the use, enjoyment and development of the Intermountain Healthcare Property. Exclusive use of the Easement Property is expressly not granted, and the right to use the Easement Property in common with the City is hereby expressly reserved by Intermountain Healthcare, so long as such use does not unreasonably interfere with the non-exclusive right and easement which is hereby granted to the City.

3. Limitations on Improvements. Except to the extent Improvements need to be located above ground in order to function properly and subject to approval by Intermountain Healthcare, which approval shall not be unreasonably withheld, conditioned or delayed, any and all Improvements shall be located underground within the Easement Property and shall be buried under at least thirty-six (36) inches of cover (subject to any applicable engineering or safety requirements or as otherwise approved in writing by Intermountain Healthcare).

4. General Limitations. Subject to the terms and conditions of Paragraphs 2 and 3, above, the use by the holder of the dominant tenements of the Easement granted herein shall be limited to the Work, the Access and the Limited Use, which Work, Access and Limited Use shall be made in such manner as to least interfere with the use of the servient tenements by the owners thereof.

5. The Work and Access. All of the Work shall be conducted at the City's sole risk, and further, the Work shall conform to, and shall be conducted in accordance with any and all applicable ordinances, laws, rules and regulations relating to building, fire, sanitary, safety and other relevant matters. The Work, in any event, also shall be performed in a good and workmanlike manner.

Further, the City shall and hereby agrees:

(a) if, in connection with the use, occupation and enjoyment of the Easement hereby granted, landscape, hardscape, sidewalk, existing utilities or other improvements of Intermountain Healthcare are damaged or destroyed by the City or the public accessing the Intermountain Healthcare Property pursuant to the access rights granted herein, within thirty (30) days thereafter, to repair or replace such damaged or destroyed improvements to a condition substantially identical to that existing before any such damage or destruction;

(b) to repair, in a manner acceptable to Intermountain Healthcare, damage to any roads, road surfaces, wetlands and sensitive lands, whether or not located on, near, adjacent or contiguous to the Intermountain Healthcare Property, in the event such damage is, in any way, caused by the City or any employee, agent, representative, guest, invitee, permittee, contractor or builder of the City;

(c) to indemnify, defend and hold harmless Intermountain Healthcare from and against any and all losses, claims or damages arising from the City's use of the rights and privileges herein granted (expressly including any and all losses, claims or damages arising from the Access and use

of the Easement Property by the public as provided herein) and agrees to keep and maintain the Intermountain Healthcare Property free from any liens, claims, encumbrances and liabilities arising out of work performed, materials furnished or obligations incurred by the City; and

(d) except in exigent circumstances or to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, or to prevent a public dedication or the accrual of any rights to the public, not to erect, locate or construct any fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of and access to the Easement Property without Intermountain Healthcare's advance written consent (which may be withheld in Intermountain Healthcare's reasonable discretion).

6. Improvements by Intermountain Healthcare. Intermountain Healthcare shall be permitted to landscape, hardscape and make other improvements on the Easement Property, as appropriate or consistent with Intermountain Healthcare's development of the Intermountain Healthcare Property, so long as such improvements do not unreasonably interfere with the rights granted to the City hereunder.

7. Relocation of Easement at Intermountain Healthcare's Expense. Notwithstanding that any of the Improvements shall have been installed, constructed and operating under the Easement Property as described above, Intermountain Healthcare may provide written notice to the City requesting the City to remove and relocate the Easement and the City shall remove and relocate the Improvements, to any other location identified by Intermountain Healthcare on the Intermountain Healthcare Property, provided that (i) the Easement will remain not less than thirty (30) feet in width, (ii) such new location shall be adequate for the purposes of the Easement described herein, and (iii) Intermountain Healthcare shall be responsible for the actual costs of removing and relocating the Improvements to the new location.

8. Right to Terminate Easement. The City may elect to terminate its use of the Easement Property at any time. In connection with any such termination, the City shall execute and deliver to Intermountain Healthcare, suitable for recording, a termination of easement. Further, upon termination of the Easement, unless and to the extent otherwise requested in writing by Intermountain Healthcare, the City shall restore the Intermountain Healthcare Property to a condition as near as practical to that existing immediately before the exercise by the City of its rights hereunder. Any such restoration shall be completed within thirty (30) days, subject to reasonable delays due to weather conditions, following any termination of the Easement.

9. Modification of Agreement. This Agreement may not be modified except with the consent of Intermountain Healthcare and the City, and, then, only by written instrument duly executed and acknowledged and recorded in the office of the County Recorder of Utah County, State of Utah.

10. No Public Gift or Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the Easement Property for the general public or for any other public purpose whatsoever, it being the intention of Intermountain Healthcare that this Agreement be strictly limited to the purposes expressed herein, and the City's rights hereunder shall not be exercised in any manner which substantially interferes (a) with the purposes for which the Intermountain Healthcare property is being (or to be) used or (b) with the rights and easements of any other party.

11. No Waiver. The failure of a party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein by the same or any other person.

12. No Joint Venture. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any similar relationship between the parties. Nothing in this Agreement is intended to create an enforceable right,

claim or cause of action by any third party against any party to this Agreement.

13. Entire Agreement; Governing Law. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

14. Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable or unenforceable, such void, voidable or unenforceable term or provision shall not affect any other term or provision of this Agreement.

15. Compliance with Laws. In the exercise of their respective rights and obligations under this Agreement, each of Intermountain Healthcare and the City shall comply with any and all applicable federal, state and local laws, rules, regulations, and orders.

16. Recording; Binding on Successors and Assigns. This Agreement shall be recorded in the official records of the Utah County Recorder, Utah County, Utah. All of the provisions in this Agreement, including the benefits and burdens, shall be and are binding upon and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

IHC HEALTH SERVICES, INC., a Utah nonprofit corporation

By: [Signature]  
Name: D. R. Gardner  
Title: VP

CITY OF SARATOGA SPRINGS, a Utah municipal corporation

By: [Signature]  
Name: Timothy L. Parker  
Title: Mayor

Attest:

Approved as to Form:

By: [Signature]  
Name: Lori Yates  
Title: City Recorder

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_





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EXHIBIT "A"

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(Description of the Intermountain Healthcare Property)

Property located in Utah County, Utah, more particularly described as follows:

No. NCS-269904-SLC

All that part of the Northwest Quarter of Section 14, Township 5 South, Range 1 West, Salt Lake Base and Meridian, bounded and described as follows:

Beginning at the Northwest Corner of said Section 14, and running thence North 89°38'31" East 314.19 feet; thence South 17°18' West 220.40 feet; thence South 00°22'06" West 1081.29 feet; thence North 89°22'42" West along the North Right-of-way Line of SR-73, 250.00 feet; thence North 00°22'06" East 1287.04 feet to the point of beginning.

No. NCS-269914-SLC

Parcel 1:

Commencing North 1.96 feet and East 314.18 feet from the Northwest Corner of Section 14, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 89°38'31" East 811.86 feet; thence South 37°42'48" West 767.86 feet; thence South 17°50'25" West 503.43 feet; thence South 2°48'01" West 213.06 feet; thence North 89°22'42" West 250 feet; thence North 0°22'06" East 1081.29 feet; thence North 17°18'00" East 220.4 feet to the point of beginning.

Parcel 2:

Commencing North 7.03 feet and East 1126.04 feet from the Northwest Corner of Section 14, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 37°42'48" West 767.86 feet; thence South 17°50'25" West 503.43 feet; thence South 2°48'01" West 213.07 feet; thence South 89°22'42" East 250 feet; thence North 43°16'42" West 18.75 feet; thence North 2°48'00" East 199.55 feet; thence North 25°53'30" East 180.67 feet; thence North 31°05'30" East 1083.98 feet; thence South 89°38'31" West 251.21 feet to the point of beginning.

SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of the title, or which would be disclosed by a physical inspection or survey of the Easement Property or Intermountain Healthcare Property.

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EXHIBIT "B"

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(Description of the Easement Property)

Property located in Utah County, Utah, more particularly described as follows:

A 30.00 foot wide Easement for Landscaping, Public Access and utilities along the frontage of State Highway 73 as widened to 60.00 feet half-width; the South Line of said easement being described as follows:

Beginning at the Grantors West property line and the North Line State Highway 73 as widened to 60.00 feet half-width located 1277.05 feet South 0°22'06" West along the Section Line from the Northwest Corner of said Section 14; and running thence South 89°22'42" East 739.92 feet along said North line of State Highway 73 as widened to the Easterly Line of Grantors Property and the end of this easement line. The East and West boundaries of this easement are to be lengthened or shortened to exactly match Grantors Property Lines.

SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of the title, or which would be disclosed by a physical inspection or survey of the Easement Property or Intermountain Healthcare Property.