

10/11/20

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When Recorded, Mail To:

Susan Kelley  
4437 W. 3000th  
West Point, UT 84015

E 3403995 B 7810 P 1184-1194  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
07/28/2021 02:16 PM  
FEE \$40.00 Pgs: 11  
DEP RT REC'D FOR CENTURY COMMUNITI  
ES INC

12-043-0057; 12-043-0112;  
Tax Parcel Nos.: ~~120430107~~ and ~~12043110~~  
~~112~~ ~~0110~~ 12-043-0113

(Space above for Recorder's use only)

**IRRIGATION WATER LINE CONSTRUCTION AND MAINTENANCE EASEMENT AND LICENSE AGREEMENT**

RETURNED  
JUL 28 2021

THIS IRRIGATION WATER LINE CONSTRUCTION AND MAINTENANCE EASEMENT AND LICENSE AGREEMENT (this "Instrument") is entered into this 3 day of Dec., 2020, by and between CENTURY LAND HOLDINGS OF UTAH, LLC a Utah limited liability company ("Century") on the one side, and BOYD L. KELLEY and SUSAN D KELLEY, TRUSTEES OF THE BOYD L. KELLEY AND SUSAN D. KELLEY REVOCABLE LIVING TRUST, DATED THE 24<sup>TH</sup> OF JUNE 2016 (collectively referred to as the "Trust") on the other side.

**RECITALS**

A. Century and the Trust are the current owners of those parcels of real property located in the City of West Point, Davis County, Utah, identified as the "Century Property" and the "Trust Property" on the map attached hereto as Exhibit A-1 (as applicable, the "Century Property" and the "Trust Property"), and as the Century Property is also shown on the plat attached hereto as Exhibit A-2 (the "Final Plat").

B. The Trust has requested that Century construct and install irrigation lines to bring irrigation water over the Century Property to the Trust Property, which irrigation lines will be owned and maintained by the Trust.

C. Century and the Trust each desire that Century (i) grant to the Trust a non-exclusive easement on, under and through that portion of the Century Property identified on the Final Plat as the "10.0' Irrigation Easement in Favor of Boyd L & Susan D. Kelley", as the same crosses the westerly 10 feet of Lots 101, 102 and 103, the westerly ten feet of a portion of Lot 104, and the northerly 10 feet of Lots 105 and 106, all as shown on the Final Plat (the "Easement Area"), (ii) construct and install the requested irrigation lines within the Easement Area, and (iii) upon completion thereof, quitclaim the irrigation lines to the Trust, all on the terms and conditions herein.

**TERMS AND CONDITIONS**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the conditions set forth below, the parties agree as follows:

**1. Irrigation Lines.**

a. Installation. Century hereby agrees to construct and install within the Easement Area those irrigation lines (the "Improvements") shown on the Construction Drawings for Dahlia Estates, identified as "Dahlia Estates Subdivision Phase 1 and 2" prepared by Ensign for Ovation Homes dated November 18, 2020, which were approved in form and substance by the City of West

Point on November 24, 2020 (collectively, the "**Construction Drawings**"), at Grantor's sole cost and expense.

b. **Construction License.** The Trust hereby grants to Century a license to enter upon the Trust Property for the purpose of Century completing the construction and installation of the Improvements in accordance with the Construction Drawings (the "**Construction License**"). The Construction License shall commence as of the date hereof, and shall terminate upon the date that Century delivers the Bill of Sale (as defined below) of the Improvements to the Trust in accordance with this Instrument.

c. **Completion and Quitclaim.** Once Century has completed the construction and installation of the Improvements, Century shall quitclaim any and all of its rights, title and interests in and to the Improvements to the Trust via a quitclaim bill of sale (the "**Bill of Sale**"), free and clear of any liens and monetary encumbrances, and the Trust shall accept the same and thereafter shall own and be responsible for the Improvements.

2. **Easement.** Effective from and after Century's delivery of the Bill of Sale to the Trust (the "**Easement Effective Date**"), Century hereby grants and conveys to the Trust a perpetual, non-exclusive easement on, under, and through the Easement Area (the "**Easement**") solely for the purpose of the Trust owning, operating, maintaining, repairing and/or replacing the Improvements. The grant of the Easement and the Trust's rights hereunder shall be subject to those rights and matters of record existing as of the Easement Effective Date.

3. **Access.** The Trust and its agents, servants, consultants, contractors and subcontractors (collectively, the "**Trust Agents**") shall have the reasonable right to enter upon those relevant portions of the Century Property identified as Lots 101 through 106, as shown on the Final Plat (each, a "**Lot**" and collectively, the "**Lots**") for the purposes permitted by this Instrument, provided however, that before entering any of the Lots, the Trust shall give prior written notice to the then fee owner(s) of such Lots. The Trust and any Trust Agents will enter upon the relevant Lots at their sole risk and hazard, and the Trust, and its successors and assigns, hereby release Century, its successors and assigns, from any claims relating to the condition of the relevant portions of the Century Property and the entry thereon by the Trust and/or Trust Agents.

4. **Reservation by Century.** Century hereby reserves the right to use the Easement Area for any use not inconsistent with the Trust's permitted use of the Easement Area as set forth herein. Without limiting the above, Century reserves the right to require the relocation of the Improvements at any time at Century's cost and expense, provided that such relocation provides the Trust with comparable easement rights and such relocation terminates the use of the Easement in its prior location.

5. **Maintenance and Restoration.** The Trust will promptly repair any damage to the Century Property, including the Lots, and any improvements located thereon caused by the Trust, any of the Trust Agents, or the condition, use, operation, maintenance and/or repair of the Improvements, and will restore the Century Property, including the Lots, and the improvements thereon to the same or better condition as they existed prior to any entry onto or work performed on the Century Property by the Trust and/or an Trust Agents, or any damage arising from the condition, use or operation of the Improvements.

6. **Condition of Grantor's Property/Release.** The Trust accepts the Easement Area and all aspects thereof in its "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 Trust hereby 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.

7. **No Mechanic's Liens.** The Trust shall not suffer or permit any mechanic's lien or other lien to be filed against all or any portion of the Easement Area, or any other portion of the Century Property, by reason of any work, labor, services, or materials supplied, or claimed to have been supplied, to the Trust or anyone claiming by, through or under the Trust in connection with the Improvements, or any rights or obligations of the Trust arising under this Instrument (any such liens, the "**Trust Liens**"). If any Trust Liens do arise, then Century, its successors or assigns, may (but without being required to do so, and without limiting any other rights or remedies available at law or in equity) pay such Trust Liens and any costs and amounts so paid, together with reasonable attorneys' fees incurred in connection therewith, which sums shall be promptly due and payable from the Trust to Century, its successors or assigns.

8. **Indemnity.** To the fullest extent permitted by law, the Trust shall indemnify, defend and hold harmless Century, its parent corporation and affiliates, related parties, and agents, and its and their successors and assigns (including, Century, each a "**Century Party**") for, from and against any and all claims, actions, suits, proceedings, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees and disbursements, arising out of or resulting from the acts or omissions of the Trust and any Trust Agents, and their successors and assigns (including the Trust, each a "**Trust Party**") relating to (i) their entry onto the Century Property, including accessing the Easement Area for the purposes under this Instrument, (ii) the condition, operation, use, maintenance and/or repair of the Improvements, and (iii) the use (or misuse) of the Easement, the Easement Area or any other portion of the Century Property by any Trust Party.

9. **Grantor Successors.** The Trust acknowledges that Century intends to sell and convey each of the Lots to a third-party homebuyer. From and after the Easement Effective Date, the term "Century" under this Instrument shall mean each of the fee owners of each of the Lots.

10. **Exhibits.** All exhibits expressly attached here are incorporated herein by this reference.

11. **Notice.** Any notices or other communications required or permitted by this Instrument or by law to be served on, given to, or delivered to any party hereto, by any other party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal services, (i) three (3) days after being deposited in the United States' mail, sent first-class certified mail, with postage prepaid and properly addressed to the intended party, or (ii) one (1) business day after being deposited with FedEx or other nationally-recognized overnight air courier service, sent for next business day delivery, prepaid and sent to the intended party, at the following addresses:

To Century: Century Land Holdings of Utah, LLC  
2989 W. Maple Loop Drive, Suite 110, Lehi, Utah 84043  
Attn: David Vitek and Scott Hair  
Email: [David.Vitek@centurycommunities.com](mailto:David.Vitek@centurycommunities.com); [ScottH@centurycommunities.com](mailto:ScottH@centurycommunities.com)

To Trust: Boyd Kelley and Susan Kelley  
4437 W. 300th, West Point, UT 84015  
Email: N/A

12. **Counterpart Execution.** This Instrument may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

13. **Attorneys' Fees; Costs.** In the event of any dispute arising out of this Instrument, or in the event of enforcement of any of the provisions of this Instrument, the prevailing party shall be awarded its reasonable costs and attorneys' fees from the non-prevailing party, including, without limitation, reasonable attorneys' fees incurred prior to or at trial, or on appeal.

14. **Miscellaneous.** This Instrument shall run with the land, and shall be binding upon and for the benefit of Century, the Trust and their successor and assigns. This Instrument constitutes and represents the entire agreement of the parties hereto with respect to the subject matter hereof, and all other prior agreements, covenants, promises and conditions, oral or written, between the parties are incorporated herein or superseded in their entirety by this Instrument. The Trust's right to use the Easement Area shall be subject to the aforementioned conditions, which upon the recordation of this Instrument or use of the Easement granted herein shall be deemed to have been agreed to and accepted by the Trust. No term or provision of this Instrument or the Exhibits attached hereto is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation, or other entity not a party hereto, or a successor or assign of a party hereto, and no such other person, firm, corporation, or entity shall have any right or cause of action hereunder. This Instrument shall be construed and enforced under the laws of the State of Utah.

*[signatures and acknowledgement commence on the next page]*

IN WITNESS WHEREOF, Grantor and Grantee have executed this Instrument on the day and year first above written.

**GRANTOR: CENTURY LAND HOLDINGS OF UTAH, LLC,**  
a Utah limited liability company

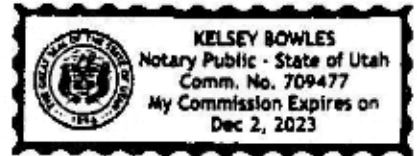
By: [Signature]  
Name: David Vitek  
It: Vice President

STATE OF UTAH )  
 ) :ss  
COUNTY OF Utah )

On this 8<sup>th</sup> day of December 2020, personally appeared before me David Vitek, in his capacity as Vice President of Century Land Holdings of Utah, LLC, a limited liability company, who acknowledged before me that he signed the foregoing instrument with due authorization on behalf of Grantor.

[Signature]  
Notary Public

*[signatures and acknowledgements follow]*



**The Trust:** The Boyd L. Kelley and Susan D. Kelley Revocable Living Trust dated the 24<sup>th</sup> day of June 2016

*Boyd L. Kelley*  
Boyd L. Kelley, Trustee

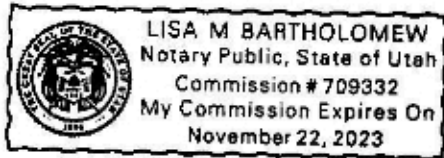
*Susan D. Kelley*  
Susan D. Kelley, Trustee

T

STATE OF UTAH                    )  
  :SS  
COUNTY OF Davis            )

On this 3 day of December, 2020, personally appeared before me Boyd L. Kelley and Susan D. Kelley, Trustees of The Boyd L. Kelley and Susan D. Kelley Revocable Living Trust dated the 24<sup>th</sup> day of June 2016, the signers of the within instrument, who duly acknowledged to me that they executed the same as trustees.

WITNESS my hand and official seal.

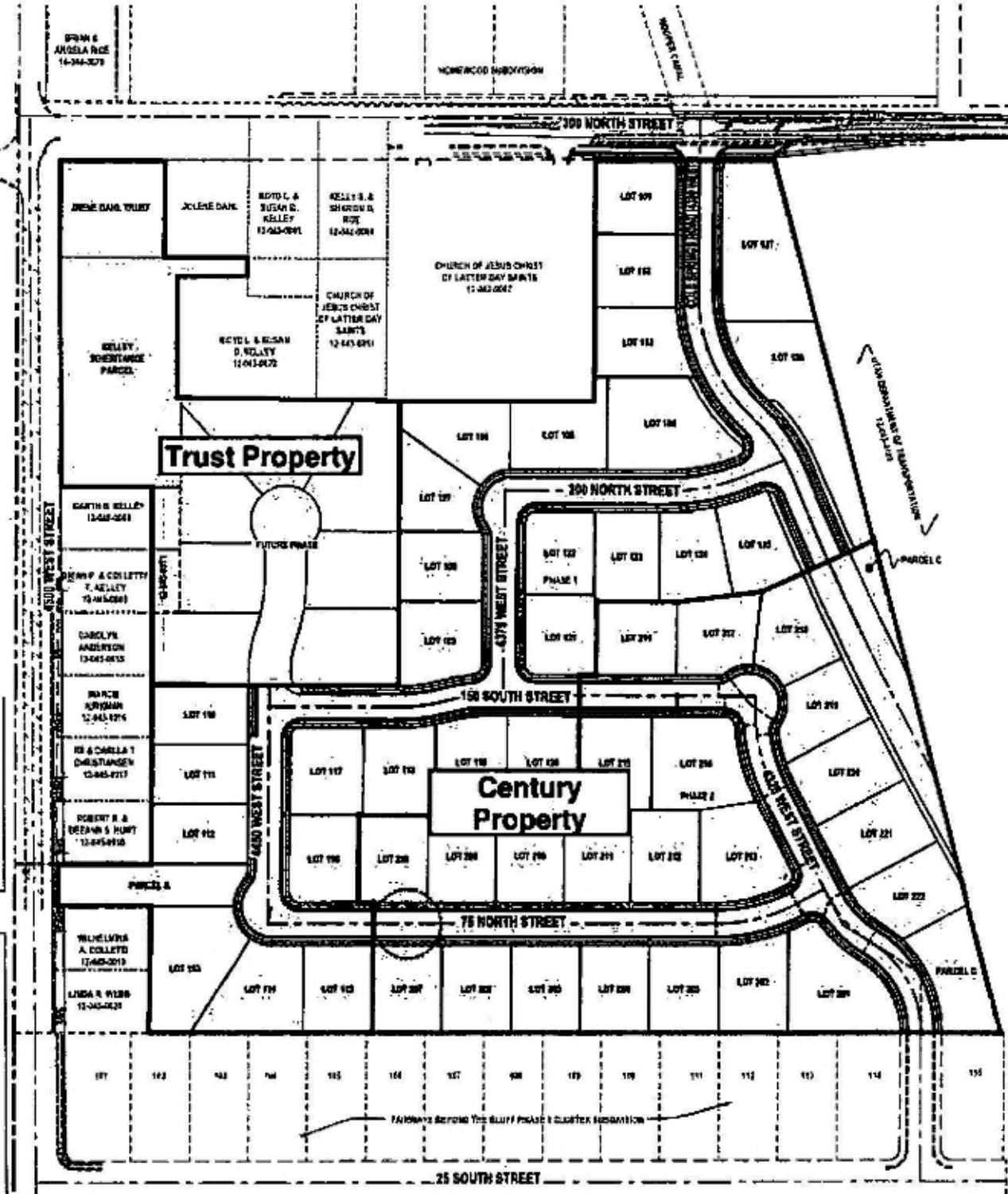


*Lisa M Bartholomew*  
\_\_\_\_\_  
Notary Public  
My Commission Expires: Nov. 22, 2023  
Residing in Davis, County, Utah

**EXHIBIT A-1**

(Map of Century Property and Trust Property)

[See attached.]





**EXHIBIT A-2**

(Final Plat – Shows Easement Area)

[See attached.]



By: TRW

Date: July 26, 2021

Project: L2264

### **Kelly Irrigation Easement Description**

A strip of land 10 feet in width, 5 feet each side of the following described centerline, situate in the Northeast Quarter of Section 6, Township 4 North, Range 2 West, Salt Lake Base and Meridian, said parcel also located in West Point City, Davis County, Utah. Being more particularly described as follows:

Beginning at a point on the southerly right-of-way line of 300 North Street, said point being South 89°43'00" East 836.99 feet along the section line (NAD83 Bearing being South 89°22'24" East between the North Quarter Corner and the Northeast Corner of said Section 6 per the Davis County Township Reference Plat) and South 00°17'00" West 55.00 feet from the North Quarter Corner of said Section 6 and running thence:

South 00°17'00" West 355.75 feet

thence North 89°43'00" West 283.50 feet to the Point of Termination.