

When Recorded Return To:
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LES BARKER, Recorder
GARFIELD COUNTY CORPORATION
For: DAVID J BIRD

ACCESS AND UTILITY EASEMENT AND TERMINATION OF PRIOR EASEMENT

This **ACCESS AND UTILITY EASEMENT AND TERMINATION OF PRIOR EASEMENT** (this "Easement") is executed by and between **John P. Kelly, Jr. and Susan M. Kelly**, of North Easton, Massachusetts ("Kelly") and **Anson Fogel and Alexandra Fuller**, of Salt Lake City, Utah (collectively "Fogel") on this 1st day of ~~May~~ ^{June}, 2018, for the purposes recited herein.

WHEREAS, Kelly is the owner of real property situated in Garfield County, Utah known as Serial No. B-98-1-2-2 ("Kelly Parcel"), more particularly described on *Exhibit A*, attached hereto and incorporated herein by this reference; and

WHEREAS, Fogel is the owner of real property situated in Garfield County, Utah known as Serial Nos. B-98-1-2 ("Parcel 1") and B-98-1-2-1 ("Parcel 2"), more particularly described on *Exhibit A*;

WHEREAS, the Parties' predecessors-in-interest recorded a prior easement described within a Warranty Deed on February 28, 2000 in the real property records of Garfield County, Utah at Entry No. 222654, in Book 351 at Page 888, which Deed erroneously describes the easement location and area ("2000 Easement"); and

WHEREAS, the Parties desires to provide access for ingress and egress through the Kelly Parcel and Parcel 2 for the benefit of the Kelly Parcel, Parcel 1, and Parcel 2 as set forth herein and terminate and relinquish the 2000 Easement. The Kelly Parcel, Parcel 1 and Parcel 2 are hereinafter jointly referred to as the "Parcels" or individually as a "Parcel."

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Access Easement.** The Parties hereby grant mutual perpetual non-exclusive easements over, across and through the Kelly Parcel and Parcel 2 for ingress and egress to the Kelly Parcel, Parcel 1, and Parcel 2 ("Access Easement"), which easement shall be thirty (30) feet wide, lying fifteen (15) feet on each side of the centerline particularly described in *Exhibit B* and shown in *Exhibit C*, attached hereto and incorporated herein by this reference (the "Easement Area").
 - a. **Construction and Maintenance.** All costs and expenses incidental to the installation, construction, repair or maintenance of a road on the Access Easement shall be shared proportionately by the owners of the Kelly Parcel, Parcel 1, and Parcel 2 to the extent the Access Easement is utilized for access to each of these

4. Miscellaneous.

- a. *Obstruction.* The Parties shall not install or maintain any permanent structures or improvements which will impair the use of the Easements granted herein.
- b. *Binding Effect.* This Easement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, agents, shareholders, members, managers, directors, officers, successors, and assigns forever.
- c. *Full Use and Enjoyment.* Except as described herein, each party shall continue to enjoy the full use and enjoyment of their respective real property.
- d. *Covenant Running with the Land.* The Easements granted, and all conditions and limitations stated, herein shall run with the land, shall burden and benefit the Kelly Parcel and Parcel 2, and shall benefit Parcel 1. Nothing herein shall be construed to limit or supersede the obligations of the Parties under other easements of record except the 2000 Easement.
- e. *Mutual Indemnification.* The owner of each Parcel shall indemnify, defend and hold harmless the owners of the other Parcels from and against any and all damages, claims, causes of action, actions, losses, liabilities, fines, costs and expenses (including reasonable attorneys' fees and court costs), of whatsoever nature or kind, directly or indirectly, arising out of, in connection with, or attributable to all uses of this Easement and the exercise of any rights granted hereunder by the owner(s) of such Parcel and that owner(s) guests, licensees, or invitees, unless due solely to the willful misconduct or gross negligence of the indemnified party.
- f. *Governing Law, Jurisdiction, and Venue.* This Easement shall be construed pursuant to the laws of the State of Utah. The place of performance is Garfield County, and the exclusive venue for any future dispute arising under this Easement shall be the courts of Garfield County, Utah.
- g. *Severability.* In the event that any provision of this Easement is found to be illegal or unenforceable by a court of competent jurisdiction, such provision will be severed and modified or replaced with an enforceable provision evidencing the Parties' intent.
- h. *Attorneys' Fees.* In the event of a dispute hereunder, the Prevailing Party shall be entitled to an award of its costs and fees, including reasonable attorneys' fees.
- i. *Recordation.* The Parties shall record this Easement in the real property records of Garfield County, Utah.

IN WITNESS WHEREOF, this Access and Utility Easement and Termination of Prior Easement is effective as of the date first written above.

THREE SIGNATURE PAGES FOLLOW

John P. Kelly, Jr.

STATE OF Massachusetts)
COUNTY OF Bristol) ss

The foregoing Access and Utility Easement and Termination of Prior Easement was acknowledged before me this 17th day of May, 2018 by John P. Kelly, Jr.

SEAL

Laurie Greene
NOTARY PUBLIC



Susan M. Kelly

Susan M. Kelly

STATE OF RI

COUNTY OF Providence) ss

The foregoing Access and Utility Easement and Termination of Prior Easement was acknowledged before me this 8th day of May, 2018 by Susan M. Kelly.



Kathleen M Lowry
NOTARY PUBLIC

KATHLEEN M. LOWRY
Notary Public-State of Rhode Island
My Commission Expires
December 19, 2020



Anson Fogel

Alexandra Fuller

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

The foregoing Access and Utility Easement and Termination of Prior Easement was acknowledged before me this _____ day of _____ 2018 by Alexandra Fuller.

SEAL

NOTARY PUBLIC

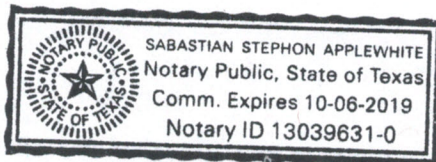
STATE OF *Texas*)
) ss
COUNTY OF *Dallas*)

The foregoing Access and Utility Easement and Termination of Prior Easement was acknowledged before me this 1 day of June 2018 by Anson Fogel.

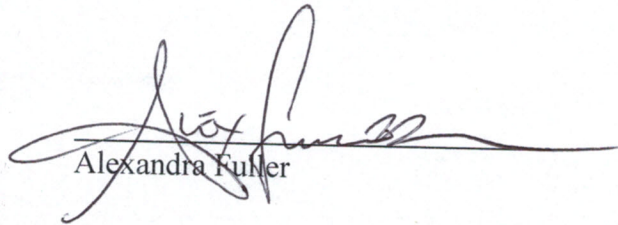
SEAL



NOTARY PUBLIC



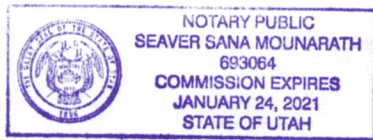
Anson Fogel

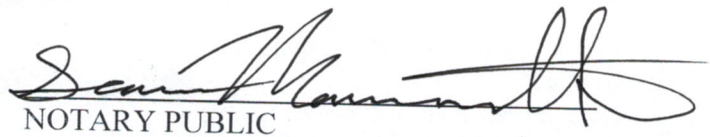

Alexandra Fuller

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

The foregoing Access and Utility Easement and Termination of Prior Easement was acknowledged before me this 1 day of June 2018 by Alexandra Fuller.

SEAL




NOTARY PUBLIC

STATE OF)
) ss
COUNTY OF)

The foregoing Access and Utility Easement and Termination of Prior Easement was acknowledged before me this _____ day of _____ 2018 by Anson Fogel.

SEAL

NOTARY PUBLIC

EXHIBIT A
PARCEL DESCRIPTIONS

Kelly Parcel:

A parcel of land located in Garfield County, Utah particularly described as:

Beginning at a point 1487.45 ft. S 00°03'50" E along the Section Line from the East Quarter Corner of Section 1, T34S, R04E, SLBM, and running thence S 89°49'02" W 2499.75 ft., more or less, to a Boulder Town Road; thence S 00°03'05" E 174.25 ft. along said road; thence N 89°49'02" E 2499.75 ft., more or less, to the East line of said Section 1; thence N 00°03'50" W 174.25 ft. to the point of beginning.

Parcel 1 (Parcel No. 02-0005-0242):

A parcel of land located in Garfield County, Utah particularly described as:

Beginning at a point 1138.94 ft. S 00°03'50" E along the Section Line from the East Quarter Corner of Section 1, T34S, R04E, SLBM, and running thence S 89°49'02" W 2499.75 ft. more or less to a Boulder Town Road; thence S 00°03'05" E 174.25 ft. along said road; thence N 89°49'02" E 2499.75 ft., more or less, to the East line of said Section 1; thence N 00°03'50" W 174.25 ft. to the point of beginning.

Parcel 2 (Parcel No. 02-0005-0243):

A parcel of land located in Garfield County, Utah particularly described as:

Beginning at a point 1313.20 ft. S 00°03'50" E along the Section Line from the East Quarter Corner of Section 1, T34S, R04E, SLBM, and running thence S 89°49'02" W 2499.75 ft., more or less, to a Boulder Town Road; thence S 00°03'05" E 174.25 ft. along said road; thence N 89°49'02" E 2499.75 ft., more or less, to the East line of said Section 1; thence N 00°03'50" W 174.25 ft. to the point of beginning.

EXHIBIT B
EASEMENT DESCRIPTION

Access Easement:

A perpetual, non-exclusive easement for ingress and egress thirty (30) feet wide in Garfield County, Utah, lying fifteen (15) feet on each side of the following described centerline:

Beginning at a point S 00°03'50" E 1313.20 ft. along the Section Line and S 89°49'02" W 1250 ft. from the East Quarter Corner of Section 1, T34S, R04E, SLBM, running thence S 166.75 ft.; thence S 89°49'02" W 1250 ft. more or less to Boulder Town Road, to the point of ending.

**EXHIBIT C
EASEMENT MAP**

**RECORD OF SURVEY FOR
ANSON FOGEL**
BOULDER TOWN, GARFIELD CO., UT
LOCATED IN THE SE 1/4 OF SECTION 1, TOWNSHIP 34
SALT LAKE BASE & MERIDIAN

