When Recorded Return To: David J. Bird D J Bird Law, PLLC 2120 E 3900 S Ste 300 Holladay, UT 84124-1774 Ent 273169 Bk 516 Pg 401
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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 ________ day of May, 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

parcels, so that the owner of the Kelly parcel will pay only for those costs relative to the portion of the Access Easement which runs east and west along the common border between the Kelly Parcel and Parcel 2; provided, however, that the owner of the Kelly parcel will not be required to pay for repair or maintenance expenses unless that owner is utilizing the Access Easement more than more than 2 weeks a year, or agrees in advance to pay a portion of such expenses; and provided further, that if such repair or maintenance is necessary due to the negligence of one party, the cost and expense of the repair and maintenance shall be borne by the negligent party. It is agreed that Kelly's share for the costs to construct the road on the Access Easement shall not exceed \$4,455.00.

- b. *Improvement*. Either party may improve the surface of the Access Easement to road base or another compacted, permeable surface at that party's sole cost and expense, including the increased cost to repair and maintain the same, unless the other party agrees in advance to pay a portion of such expenses.
- c. Limitations on Use of Access Easement. The access easement granted hereby may be used by the owners of the Kelly Parcel, Parcel 1, and Parcel 2 for ingress and egress for agricultural purposes or for residential use for one dwelling on each parcel. There shall be no commercial use of the Access Easement, nor any use for access to any more than one dwelling on each parcel.
- 2. <u>Utility Easement</u>. Further, the Parties hereby grant mutual perpetual, nonexclusive utility easements over, under, across, and through said Easement Area as described herein for the installation, construction, burial, repair and maintenance of utilities, including water, sewer, gas, electricity, telephone and internet (the "Utility Easement") for the benefit of the Parcels. The Access Easement and the Utility Easement may be collectively referred to herein as the "Easements."
 - a. Obligation to Bury Utilities. Each party shall bury all utilities within the Easement Area and restore it to its original condition after any disturbance of the same.
 - b. *Maintenance*. All costs and expenses incidental to the installation, construction, repair or maintenance (collectively "Maintenance") of the utilities placed pursuant to the Utility Easement shall be borne by the owners of the Parcels who will initially utilize such utilities. Unless the owner of a Parcel or the owner's predecessor in interest in that Parcel has previously shared in the Maintenance expenses for any utilities installed in the Utility Easement, that owner may not connect to such utilities for the benefit of his Parcel without a written agreement with the owners of Parcels who have paid for the Maintenance of those utilities.
- 3. <u>Termination and Relinquishment of 2000 Easement</u>. The Parties hereby acknowledge and agree that the 2000 Easement is hereby terminated, relinquished, void, and of no further effect, and shall no longer benefit or burden any of the Parcels.

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

Access and Utility Easement and Termination Of Prior Easement John P. Kelly, Jr.

STATE OF TOSSACHUSETTS)

COUNTY OF Bristol

SS

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

SEAL

NOTARY PUBLIC



Jusin M. Kolles			
Susan M. Kelly			
STATE OF BT)		
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.

SEAL

NOTARY PUBLIC

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

Anson Fogel	Alexandra Fuller
STATE OF UTAH)	
COUNTY OF SALT LAKE)	
The foregoing Access and Util acknowledged before me this day	lity Easement and Termination of Prior Easement was of 2018 by Alexandra Fuller.
SEAL	
	NOTARY PUBLIC
TATE OF Texas)	NOTARY PUBLIC
TATE OF Texas) SOUNTY OF Dullas)	NOTARY PUBLIC
The foregoing Access and Utili	ty Easement and Termination of Prior Easement was of

Notary ID 13039631-0

Anson Fogel		Alexandra Fuller
STATE OF UTAH)) ss	
COUNTY OF SALT		
The foregoin acknowledged before SEAL	e me this day of	Easement and Termination of Prior Easement was 2018 by Alexandra Fuller. NOTARY PUBLIC
STATE OF)) ss	
COUNTY OF)	
The foregoing acknowledged before	g Access and Utility Emerge this day of	assement and Termination of Prior Easement was2018 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 FO ANSON FOGEL

BOULDER TOWN, GARFIELD CO., I LOCATED IN THE SE 1/4 OF SECTION 1, TOWNSHIP 3-SALT LAKE BASE & MERIDIAN

