

## **EASEMENT AND USE AGREEMENT**

Ent 130878 N 309 P 1634  
Date: 14-NOV-2013 12:56:25PM  
Fee: \$31.00 Check  
Filed By: CB  
BRENDA NELSON, Recorder  
MORGAN COUNTY  
For: GREENWOOD PARTIES

### **AN EASEMENT AND USE AGREEMENT**

Executed this 14<sup>th</sup> day of November, 2013 by

"Grantor" Clay Carter and Kelly S. Carter

(Clay Carter) on the other hand, to Grantees:

Moyle Greenwood, Trustee of the Glen B. Greenwood Family Trust;

Michael Robinson, Personal Representative of the Melissa Robinson Family LC;

Patrick Kelly, Trustee of the James Patrick Kelly Family Protection Trust, 2-23-1993  
(collectively the Greenwood Parties.) The Greenwood Parties and the Carters are

sometimes collectively referred to as the "Parties".

### **RECITALS**

A. The Greenwood Parties are the fee owners of certain real property situated in Porterville, Morgan County, Utah, more particularly described on Exhibit A attached hereto (the "Greenwood Properties").

B. Clay Carter is the fee owner of certain real property Situated in Porterville, Morgan County, Utah, more particularly described on Exhibit B attached hereto (the Clay Carter Property").

C. The Greenwood Parties and their respective predecessors in interest have used a portion of the Clay Carter Property for access to the Greenwood Properties.

D. The Greenwood Parties have historically used the Greenwood Properties exclusively for grazing, agricultural, and recreational purposes.

E. The Greenwood Parties and Clay Carter each desire that the Greenwood Parties will be permitted to continue to access the Greenwood Properties by way of the Clay Carter Property exclusively upon the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the covenants, restrictions, easements and encumbrances contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **ACREEMENT AND DEDICATION**

1. Incorporation. The above recitals are incorporated herein and made a part thereof:

2. **Creation of Easement.** Clay Carter hereby grants to the Greenwood Parties a non-exclusive right of ingress, egress and access of vehicular and pedestrian traffic (the "Easement") over and across the following portion of the Clay Carter Property exclusively for the purposes, and upon the conditions, outlined in this Agreement (the "Easement Property"):

3. **Restrictions.** The Easement shall be used exclusively for access to the Greenwood Properties for grazing, agricultural and recreational uses only. The Easement shall not be used by the Greenwood Properties when the Easement Property is wet, either from rain, snow, hail or other elements or spring runoff. In the event that the Easement Property or the Clay Carter Property is damaged by either the Greenwood Parties, their guests, agents or other invitees, the Greenwood Parties shall, within ten (10) days notice from Clay Carter that such damage has occurred, restore the Easement Property or the Clay Carter Property to substantially the same condition it was prior to the damage occurring. Neither the Greenwood Parties nor their guests, agents or other invitees shall park any vehicles on the Easement Property or on the Clay Carter Property. In no event shall the Greenwood Properties be used for any commercial or other profit making ventures nor shall the Greenwood Parties subdivide or otherwise commercially develop the Greenwood Properties; except that, the Greenwood Parties may conduct guided hunting tours on the Greenwood Properties. -

4. **Defense and Indemnification.** The Greenwood Parties agree to defend, indemnify and hold Clay Carter harmless from any and all liability, claims, damages and costs, including attorneys fees, which arise out of or are related in any way to the use of the Easement or the Easement Property by the Greenwood Properties their agents or other invitees including, but not limited to, claims for damage or injury to person, personal property or real property.

5. **Miscellaneous.**

(a) **Gate and Keys.** The Carters shall be entitled to maintain in their sole discretion, a locked gate(s) leading to or at any location(s) along the Carter road. If a keyed lock is placed by the Carters on a gate, the Carters shall place a copy of the key in a safe location of their choosing, within reasonable proximity to the gate. They shall provide the location of the key to the Greenwoods for their use pursuant to this Easement and Use Agreement.

(b) **Not a Public Dedication.** Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Easement Property to or for the general public or for any public purposes whatsoever, it being the intention of the parties hereto that this Agreement be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Easement Property herein affected, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission and subject to the control of the parties hereto.

(c) **Amendment.** This Agreement can only be amended, modified or terminated by a written instrument, signed by all parties owning a fee interest in the Greenwood Properties and the Clay Carter Property. Any such amendment shall be recorded at the office of the Morgan County Recorder. However, nothing herein shall be deemed to prevent the Parties from making changes to their respective properties, so long as such changes do not materially affect the easements and rights granted herein.

(d) **No Waiver.** A delay in enforcing or a failure to enforce any breach or violation of any restriction herein contained shall not be deemed to be a waiver or abandonment of any such restriction, or a waiver of the right to enforce any subsequent breach or violation of such restriction. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these restrictions) had knowledge of the breach or violation.

(e) **Severability.** If any one or more of the provisions of this Agreement or the applicability of any such provision to a specific situation shall be held invalid or unenforceable by a court of competent jurisdiction, the validity and enforceability of all the remaining provisions of this Agreement and all other applications of such provisions shall not be affected thereby.

(f) **Captions.** Any captions contained in this Agreement are inserted as a matter of convenience, and in no way define, limit, extend or describe the scope of this agreement, or the intent of any provision hereof. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.

(g) **Duration.** This Easement and Use Agreement is to exist in perpetuity and shall transmit to Greenwood heirs and/or legal successors without prejudice.

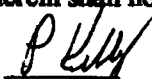
(h) **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

(i) **Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

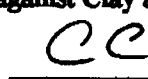
(j) **Counterparts and Faxed Copies.** This Agreement may be executed in any number of counterparts, provided each counterpart is identical in its terms. Each such counterpart, when executed and delivered will be deemed to be an original, and all such counterparts shall be deemed to constitute one and the same instrument. Facsimile transmission of a signed counterpart shall be deemed to constitute delivery of the signed original.

3 (a) Except as set forth in the preceding sentence, in the event that the Greenwood Properties are used for purposes other than grazing, agricultural or recreational purposes or otherwise in a manner or purposes inconsistent with this Agreement, this Agreement shall immediately terminate and the easement and access rights created herein shall no longer be enforceable against Clay and Kelly S. Carter

  
M. Greenwood

  
P. Kelly

  
M. Robinson

  
C. Carter

  
K. Carter



# Exhibit A

EXHIBIT "A"

STATE OF UTAH

MORGAN COUNTY

MFS No. U-13505

Glenn B. Greenwood

ML 16

TOWNSHIP 2 NORTH, RANGE 2 EAST, SALT LAKE MERIDIAN

Section 1 and 2

Book M 15, Pages 70-71 et seq. in the office of the County Recorder, Morgan County, Utah.

Being a tract in Sections 1 and 2, T.2N., R.2E., of the SLM, Morgan County, Utah, the center line of said 50 foot strip of land shall extend through and across the above described land and premises as follows:

Beginning at Station 691 + 97.19 a point on the west line of Section 2, T.2N., R.2E., of the SLM, whence the southwest corner thereof bears S.0°01'E., for a distance of 2126.98 feet;  
Thence N.89°23'06"E. for a distance of 945.82 feet to Station 701 + 43.01;  
Thence N.58°54'33"E. for a distance of 887.97 feet to Station 710 + 30.98;  
Thence N.31°17'30"E. for a distance of 1667.65 feet to Station 726 + 98.63;  
Thence N.35°04'46"E. for a distance of 1630.21 feet to Station 743 + 28.84;  
Thence N.62°23'33"E. for a distance of 1738.29 feet to Station 760 + 67.13 a point on the east line of said Section 2, whence the northeast corner thereof bears N.94.22 feet.  
Continuing N.62°23'33"E., for distance of 203.30 feet to Station 762 + 70.43 a point on the north line of Section 1, T.2N., R.2E. of the SLM, whence the northwest corner thereof bears west 180.16 feet.

BOOK M 4 6 PAGE 1 2 8

bb

## Exhibit B

THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 3 NORTH, RANGE 2 EAST OF THE SALT LAKE BASE AND MERIDIAN.

LESS AND EXCEPTING THE FOLLOWING:

A TRACT OF LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 25, AND THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 3 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, MORGAN COUNTY, UTAH BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 36, THE TRUE POINT OF BEGINNING, AND RUNNING THENCE SOUTH 00DEG 00MIN 00SEC EAST 10.09 FEET; THENCE SOUTH 57DEG 46MIN 47SEC WEST 57.73 FEET; THENCE 99.77 FEET ALONG THE NORTHWESTERLY LINE OF WOODS CREEK ROAD, A CURVE TO THE RIGHT, HAVING A RADIUS OF 602.90 FEET, AN INCLUDING ANGLE OF 09DEG 28MIN 54SEC, AND A LONG CHORD BEARING SOUTH 62DEG 31MIN 14SEC WEST 99.66 FEET; THENCE SOUTH 67DEG 15MIN 41SEC WEST 39.06 FEET; THENCE 31.81 FEET ALONG THE NORTHWESTERLY LINE OF WOODS CREEK ROAD, A CURVE TO THE RIGHT, HAVING A RADIUS OF 25 FEET, AN INCLUDED ANGLE OF 72DEG 53MIN 43SEC, AND A LONG CHORD BEARING SOUTH 76DEG 17MIN 28SEC WEST 29.70 FEET; THENCE 53.51 FEET ALONG THE NORTHWESTERLY LINE OF WOODS CREEK ROAD, A CURVE TO THE LEFT, HAVING A RADIUS OF 60 FEET, AN INCLUDING ANGLE OF 51DEG 06MIN 05SEC, AND A LONG CHORD BEARING NORTH 65DEG 23MIN 28SEC WEST 51.76 FEET; THENCE NORTH 00DEG 56MIN 41SEC WEST 185.99 FEET; THENCE SOUTH 89DEG 56MIN 55SEC EAST 252.36 FEET; THENCE SOUTH 00DEG 03MIN 05SEC WEST 112.38 FEET MORE OR LESS TO THE POINT OF BEGINNING.

TOGETHER WITH ALL WATER AND WATER RIGHTS INCLUDING CLAIM #35-8357 DESCRIBED AS 36 HOURS PER WEEK OF CREEK WATER OUT OF WOODS CREEK, AND 8 TWELVE HOUR DAYS OF LAKE WATER OUT OF WOODS CREEK DITCH AND RESERVOIR, ALSO, WATER RIGHTS AS DESCRIBED IN WAYER USER'S CLAIM #35-5681 AND #35-8391.

Pt. of 01-003-~~065~~  
365-01  
~~000000~~  
00-0059-9215 JPK