

**MUTUAL RELEASE AND SETTLEMENT, FENCE  
EASEMENT AND BOUNDARY AGREEMENT**

This mutual release and settlement, fence and boundary agreement, executed on August 6, 2009, between parties of the first part X Quarter Circle Bar Ranch, LLP, Mark Keller and Barbara Keller, hereafter collectively referred to as **Keller**, and parties of the second part John R. Jenson and Keith P. Jenson, hereafter referred to collectively as **Jenson**, is intended to effect the extinguishment of obligations as designated in this release, and to create obligations concerning a partition and boundary fence between real estate owned by the parties.

**GENERAL RECITALS**

Keller, owns, possesses and controls property in Montrose County, Colorado having the legal description described on attachment A hereto, and referred to hereafter as the Keller Property. Jenson owns, possess and controls real estate in Montrose County Colorado having the legal description attached hereto as exhibit B and referred to hereafter as the Jenson Property.

A. Disputes and differences have arisen between the Keller and Jenson with respect to the record legal boundary between the Keller Property and the Jenson Property, and with respect to a certain fence in the general area of that record legal boundary.

B. The disputes and differences have given rise to a lawsuit in the District Court for Montrose County Colorado, case No. 08CV118 (hereafter called the lawsuit).

C. The parties have agreed to execute this mutual release in settlement of such disputes and differences and the lawsuit.

D. The parties desire to bind themselves, their successors, heirs and assigns, to an agreement for the construction and maintenance of a partition fence so that their properties may be separated by a sufficient fence, and so they and any future owners of their properties will have a clear record of the boundary and clearly defined duties with respect to the maintenance of that fence, all to the end that good relations between owners and tenants of the respective properties may be maintained.

**MUTUAL RELEASE AGREEMENT**

In consideration of the mutual relinquishment of their respective legal rights with reference to the above-mentioned disputes and differences, the execution of the mutual release contained herein, dismissal by all parties of all claims and defenses which they raised or could have raised in the lawsuit, execution of the within fence and boundary agreements, grant of an easement from Keller to Jenson (described in a separate

Easement agreement)and in consideration of the payment by Keller of \$7,500.00 to Jenson on or before May 7, 2009, each party, for itself and its heirs and legal representatives, releases the other, and its heirs, successors, assignees and legal representatives, from all liability for claims and demands arising out of the above-described circumstances.

All parties state that the settlement underlying the execution of this document was made in contemplation not only of known damages, injuries, losses and liabilities, but also in contemplation of the possibility that they have sustained or will in the future sustain damages, injuries, losses and liabilities which are presently in existence but unknown to them or which may not now be in existence, but which may arise or become known in the future resulting directly or indirectly from the lawsuit, disputes and differences and each party fully intends to release every other party, their Employees, Agents, and Assigns, individually and in their professional capacity, from liability for any and all such known or unknown, or unrealized damages, injuries, losses and liabilities.

For the consideration stated herein, each party assumes the risk that the settlement underlying the execution of this document was made on the basis of mistake or mistakes, mutual or unilateral, including but not limited to mistakes regarding: the nature or extent of the underlying damages, injuries, losses or liabilities; the impression that it is fully informed as to the nature, extent, complications, effects, or consequences of the underlying damages, injuries, losses or liabilities.

All parties have been advised of their rights to consult, at their expense, additional professionals of their choosing, regarding any and all known and unknown, foreseen and unforeseen, damages, injuries, losses and liabilities of whatsoever kind and nature they may have or will incur resulting directly or indirectly from the occurrence.

Each party warrants that no promise or inducement has been offered except as set forth herein and that this document was executed without reliance upon any extrinsic statement or representation by the other parties, and/or their Employees, Agents, and Assigns, Individually and in their professional capacity, and that the parties are competent to execute this document and accept full responsibility for it and assume the risks of any mistake of fact as stated herein.

#### **EASEMENT**

Keller shall grant to Jenson an easement appurtenant for the benefit of the Jenson property across the Keller property. Said easement shall be for the use of an existing roadway across the Keller property to access a spring, and shall be restricted to its historical location, character and scope, and shall not be improved, expanded or modified in any way except by written agreement of the parties. Keller shall execute a deed granting said easement.

### **FENCE RECITALS**

- A. The parties wish to replace a portion of the existing partition fence between the Keller and Jenson properties, and to relocate and maintain said portion of the partition fence along the existing record legal boundary between the Keller and Jenson properties.
- B. The parties wish to leave and maintain the remainder of the existing partition fence between their properties in its present location.
- C. The parties wish to establish and acknowledge the resulting partition fence between their properties as the legal boundary between the Keller and Jenson properties.
- D. The parties wish to clearly define their respective rights and duties with respect to the resulting partition/boundary fence.
- E. Keller has caused a surveyor to locate and stake the existing record legal boundary between Keller and Jenson Properties.
- F. In consideration of the matters described above, and of the mutual benefits and obligations set forth in this agreement, the parties further agree as follows:

### **FENCE AND BOUNDARY AGREEMENT**

#### **Center Post**

The new section of fence shall begin at the intersection of the existing legal record boundary between the Keller and Jenson properties with an existing cross fence on or along the South boundary of the Jenson property where it adjoins U.S. Forest Service Lands, and shall continue along said legal record boundary north for approximately 4355 feet to where it intersects an existing cross fence. A permanent center post shall be located at the intersection of the new fence with said existing cross fence. At that time, the parties shall cooperate in sinking the post.

#### **Covenant by Keller**

Keller covenants, for itself, its heirs and assigns, to erect and maintain, at its sole cost and expense, the new fence from the center post south to its termination at the existing cross fence along or near the boundary between the Jenson property and Forest Service Lands.

#### **Covenant by Jenson**

Jenson covenants, for itself, its heirs and assigns, to maintain a fence from the center post generally east along the existing fence line for approximately \_\_\_\_\_ feet, and

thence generally north along said existing fence line for approximately 1513 feet to an existing corner post, thence generally west along the existing fence line approximately 1360 feet to another existing corner post, thence generally north along the existing fence line approximately 1367 feet to the northern terminus of the common boundary between the Jenson property and the Keller property .

#### Type of Fence

The fence erected and maintained pursuant to this agreement shall be a four strand wire fence of either, at the sole discretion of the party responsible for maintenance, a lay-down style or high tensile style barbed wire fence, and in any case shall be otherwise designed and maintained so as to constitute a legal fence within the meaning of CRS 35-46-101(1)

#### Encroachments

Each party agrees to permit any encroachment by the other party where necessary to anchor a post, provided that any encroachment shall not exceed five feet, and further provided that the encroaching party sufficiently covers and shields all anchors and guy wires to prevent injuries.

#### Remedies

Should either party default in performance of its maintenance duties pursuant to this agreement, the other shall be entitled to undertake and perform any such duties and to recover from the defaulting party the reasonable cost of any such performance, including any attorney fees and litigation costs occasioned thereby, provided the party so performing such duties has first made reasonable efforts to notify the defaulting party of any such default, and allowed the defaulting party reasonable opportunity to correct said default.

Should any livestock cross the fence/boundary as a result of any default by either party in performance of its maintenance duties under this agreement, the other party shall be entitled to recover from the defaulting party all damages and costs caused by such livestock, and shall have all rights and remedies available under Colorado Law..

#### Governing Law

This agreement shall be governed by, construed, and enforced in accordance with the laws of Colorado.

X QUARTER CIRCLE BAR RANCH, LLP

  
BY: Barbara Keller, General Partner

  
Barbara Keller

  
\_\_\_\_\_  
Mark Keller

  
\_\_\_\_\_  
John R. Jenson

  
\_\_\_\_\_  
Keith P. Jenson

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