

**GRANT OF TRAIL EASEMENT**

This Grant of Trail Easement (herein "Agreement") is made and entered by and between **1500 UPPER CANYON, LLC, A NEW MEXICO DOMESTIC LIMITED LIABILITY COMPANY** (herein "Grantor") and the **CITY OF SANTA FE, NEW MEXICO, A NEW MEXICO MUNICIPAL CORPORATION** (herein "Grantee"), effective as of the date of its recordation in the Office of the County Clerk, Santa Fe County, New Mexico (the "Effective Date").

**RECITALS**

A. Grantor is the legal title holder of certain real estate located in the City and County of Santa Fe, New Mexico, more particularly described in Exhibit A attached hereto (the "Grantor Property").

B. Grantee is a municipality desiring to establish a comprehensive network of trails promoting public access to natural open space property owned by Grantee, State and Federal agencies and other individuals or entities, which allow for public recreational use and enjoyment.

C. Grantor desires to grant to Grantee, and Grantee desires to receive from Grantor, a trail easement over and across portions of the Grantor Property that connects into Grantee's existing and future network of trails, upon the terms and provisions hereinafter set forth.

**GRANT AND AGREEMENTS**

NOW THEREFORE, in consideration of the premises, the following grant of easement and agreements, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Easement Grant.** Grantor hereby grants to Grantee two easement areas consisting of a strip 5 feet wide by 70 feet long and a second not to exceed more than 5 feet in width (2.5 feet on either side of the centerline of the existing trail) both located along the northerly boundary of Grantor Property (subject to the use limitations set forth in paragraph 2 hereof) for pedestrian trail use (the "Easement") over and across that portion of the Grantor Property, the areas more particularly described in Exhibit A attached hereto (the "Easement Property").

2. **Use of Easement Property.** Use of the Easement within the Easement Property shall be limited solely to recreational (non-commercial), non-motorized trail use by the public ("Trail Users"). Use of the Easement Property is further restricted as follows:

- a. Trail Users shall create no nuisance when on the Easement Property and comply at all times with all applicable governmental laws, ordinances, codes and regulations governing and restricting the use of trails and the Easement Property.
- b. Motorized, electric or other powered vehicles, as determined by the City of Santa Fe, are prohibited on the Easement Property.

- c. No improvements shall be constructed, installed, placed or located on the Easement Property, such as pathway paving, benches, steps or hand-rails, except for (1) signage indicating area information, directions, hazardous conditions or the restrictions and requirements set forth herein, or (2) improvements as required under applicable governing ordinances, codes and regulations.
- d. Grantee shall use reasonable efforts and methods in monitoring and enforcing sections 2(a) and 2(b) above but are ultimately not responsible for the actions of Trail Users.
- e. A sign with an official City of Santa Fe seal shall be placed at Grantee's costs on both ingresses and egresses of the Trail traversing private property that reads, "Private Property Just Beyond. Please Stay on Trail and Keep Dog on Leash."
- f. All expenses associated with or arising out of the construction of the Trail, and its maintenance and improvement, shall be borne solely by or on behalf of the Grantee. The Grantor shall have no responsibility or obligation to maintain, inspect or repair the Trail.
- g. The Agreement does not grant to the Grantee or to the general public or to any private person any rights in, under or across any portion of the Grantor's property, other than along the Trail, and only for the purposes stated above.

3. **Grantee Covenants.** Grantee covenants and agrees that the Easement Property shall remain in its natural, undisturbed condition, except for a pathway for trail use, the signage described in Section 2(c) above, and any trail alterations necessary to remove a hazardous condition shall use natural materials of the neighboring vicinity, unless a man-made material is the only feasible material required to remove a hazardous condition on the Easement Property.

It is the intention of the parties that Grantor's duty of care to Trail Users shall be no greater than that of a landowner as described in NMSA 1978 16-3-9. Grantee acknowledges and understands that Grantor shall not maintain, repair, reconstruct or monitor the use or conditions of the Easement and the Easement Property.

4. **Running of Benefits and Burdens.** The grant of Easement, covenants, rights and obligations set forth herein shall run with the land and shall be binding upon and inure to the benefit of Grantor and Grantee, any person(s) or entit(ies) acquiring, holding or owning an interest in or to the Grantor Property and Grantor's heirs, successors and assigns.

5. **Termination.** This Agreement and the Easement granted herein shall terminate upon the occurrence of any one of the following events:

- a. Grantee's relinquishment of the Easement as set forth in a relinquishment instrument signed by Grantee recorded in the Office of the County Clerk, Santa Fe County, New Mexico.
- b. The cessation of the connection of the Easement and the Easement Property with the integrated trail system maintained by Grantee. Upon such cessation and the request of Grantor, Grantee shall with Grantor execute and record an instrument of termination of the

Easement and this Agreement in the Office of the County Clerk, Santa Fe County, New Mexico.

6. **Enforcement.** In the event of a party's breach of its obligations under this Agreement, the non-defaulting party shall have all right and remedies available at law or in equity, including but not limited to the right of specific performance. Neither party shall declare the other in default until (i) the defaulting party is given written notice of default, describing the matters giving rise to the defaulting party's breach of its obligations under this Agreement, and (ii) the defaulting party has failed to cure the default within ten (10) days after receipt of the notice of default, provided that , if such cure cannot be completed within such ten (10) day period, the defaulting party shall have such additional time as is reasonably necessary to accomplish the cure with timely due diligence.

7. **Notices.** All notices and communications required or permitted under this Agreement shall be in writing and shall be deemed given and delivered to, and received by, the receiving party:

- a. When hand delivered to the address of the receiving party set forth below;
- b. One day after deposit with a national overnight courier addressed to the receiving party at the address set forth below; or
- c. Three days after deposit in the U. S. mail, certified mail, return receipt requested, postage prepaid, addressed to the receiving party at the address set forth below.
  - a. Any party may change the address set forth below upon giving notice thereof to the other party(s) in accordance herewith.

Grantor: 1500 Upper Canyon, LLC, a NM Domestic limited liability company  
Address: Attn. Daniel Fierro and Jennifer Gilreath, Managing Members  
312 E Mandalay Dr  
Olmos Park, TX 78212

Grantee: The City of Santa Fe  
Address: Attn. Public Works Director  
P.O. Box 909  
200 Lincoln Avenue  
Santa Fe, NM 87504-0909

With a copy to:  
City Attorney's Office  
P.O. Box 909  
200 Lincoln Avenue  
Santa Fe, NM 87504-0909

8. **Captions.** The captions and paragraph headings of this Agreement are not necessarily descriptive, or intended or represented to be descriptive, of all the provisions thereunder, and in no

manner shall such captions and paragraph heading be deemed or interpreted to limit the provisions of this Agreement.

9. **Numbers and Genders.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include all genders, and the use of the words “include” and “including” shall be construed as if the phrases “without limitation” or “but not [be] limited to” were annexed thereafter.

10. **Severability.** If any provisions of this Agreement, or the application of such provisions to any person or circumstances, shall be held invalid, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

11. **Governing Law.** This Agreement and the rights of the parties shall be governed by and construed in accordance with the laws of the State of New Mexico.

12. **Modification.** Any modification of this Agreement must be made in writing and must be executed by the parties.

13. **Recitals.** Each and all of the recitals set forth at the beginning of this instrument are hereby incorporated herein by this reference.

14. **Exhibit.** Each and all of the Exhibits stated herein and attached hereto are hereby incorporated herein by this reference.

15. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and any other prior agreements between the parties, written or oral, are merged herein.

16. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective heirs, successors, and assigns.

17. **New Mexico Tort Claims Act.** Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sect 41-4-1, et. Sep. NMSA 1978, as amended. The City and its “public employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.



CITY OF SANTA FE:

BY:   
JOHN A BLAIR, CITY MANAGER

ATTEST:

  
GERALYN CARDENAS,   
INTERIM CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

  
ASSISTANT CITY ATTORNEY

APPROVED:

  
EMILY OSTER, FINANCE DIRECTOR