

**PUBLIC RECREATIONAL REGIONAL TRAIL EASEMENT AGREEMENT  
(Regional Trail)**

**THIS PUBLIC RECREATIONAL REGIONAL TRAIL EASEMENT AGREEMENT**

("Agreement"), made effective as of May 31, 2016 ("Effective Date"), is made by and between The Aldasoro Ranch Homeowners Company, a Colorado nonprofit corporation ("Grantor") and San Miguel County, Colorado ("Grantee"), acting by and through The Board of County Commissioners of San Miguel County, Colorado ("BOCC"). Grantor, Grantee, and the BOCC are sometimes collectively referred to as the "**Parties**" and sometimes individually referred to as a "**Party**".

**RECITALS**

A. Grantor is the fee simple owner of Open Space Tract OS 11 and Tract OS-12, The Aldasoro Ranch PUD/Subdivision, San Miguel County, Colorado ("**Grantor Property**").

B. Grantee desires to operate, manage and maintain a certain multi-use, non-motorized public Regional Trail ("**Regional Trail**"), a portion of which would be located over and across a portion of the Grantor Property.

C. At the request of Grantee, subject to the continuing compliance with the terms, conditions and restrictions of this Agreement, Grantor has agreed to grant to Grantee a certain recreational Regional Trail easement to accommodate a portion of the Regional Trail ("**Easement**") and allow for such Authorized Uses as stated in this Agreement. The final Easement will be ten (10) feet in width over and across a portion of the Grantor Property ("**Easement Area**"). The Regional Trail will be located within a corridor ("**Easement Corridor**") as depicted on attached Exhibit "A", which is wider than ten feet to reasonably allow for flexibility in the final siting of the Regional Trail, which will be established in the field at the time of its construction, but will generally be located in the Easement Corridor and not exceed ten feet in width. Upon the completion of the construction of the Regional Trail, Grantor, at its cost and expense, shall cause an "as built" survey showing the final location of the constructed Regional Trail to be prepared, at which time the parties will execute an amendment to this Agreement, confirming the grant of the Easement and limiting the dimensions of the Easement Area to the location indicated on the "as built" survey.

D. Subject to the terms and conditions set forth herein, the Easement authorizes each of the Authorized Users (defined below) to undertake certain Authorized Uses (defined below).

E. The Parties, in entering into this Agreement and granting and accepting this Easement desire to avail themselves of the maximum immunities, benefits and protections which may be available to each of them pursuant to the public recreational use statute, C.R.S. Section 33-41-101, *et seq.*, the Colorado landowner liability statute, C.R.S. Section 13-21-115 (1.5), and the Colorado Governmental Immunity Act, C.R.S. Section 24-10-114 (collectively, the "Colorado Landowner Protection Statutes").

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual promises and agreements made and entered into by the Parties, the sufficiency of which is hereby acknowledged, the undersigned Parties hereby agree as follows:

1. **Grant of Easement.**

1.1. Subject to the continuing compliance with terms, conditions and restrictions set forth herein, Grantor hereby grants and conveys the Easement on, over and across the Easement Area, to Grantee and its designees, including members of the general public as well as to its contractors and

consultants retained to undertake the Authorized Uses allowed by this Agreement (“**Authorized Users**”), which Easement grant is deemed to be perpetual and non-exclusive, subject to relocation and/or termination as provided for herein.

1.2. The Easement and the Easement Area may be used by an Authorized User for any or all of the following purposes, subject to the limitations and restrictions stated hereinbelow (“**Authorized Uses**”):

1.2.1. To construct, operate, use, repair and maintain the segment of the Regional Trail located on the Grantor Property, which shall be available for use by the public for only pedestrian walking, hiking, dog walking, biking, mountain biking, and other non-motorized travel by the public.

1.2.2. To enable reasonable vehicular and pedestrian access and the use of equipment as necessary for the construction, repair, replacement and maintenance of the Regional Trail.

1.3. The use of the Easement and the Easement Area by Grantee is subject to the following restrictions and limitations:

1.3.1. Drainage from the Regional Trail will be controlled by Grantee and not drained onto the Grantor Property.

1.3.2. The Easement may be used by Grantee, its citizens, residents, visitors, licensees and invited guests (as defined at C.R.S. Section 33-41-103(2)(e)(I)).

1.3.3. Grantee or its designee agrees to be responsible for inspecting, repairing and maintaining the Easement Area, such that the Easement Areas does not constitute a “dangerous condition” as that term is defined at C.R.S. Section 24-10-103(1.3), and generally managing, supervising, directing, allowing, and administering the use, operation, protection, repair, and maintenance of the Easement Areas (“**Grantee Obligations**”). In connection with such maintenance responsibility, Grantee hereby assumes complete responsibility for and agrees to care for and maintain the Easement Areas, such that they do not constitute a “dangerous condition” as that term is defined at C.R.S. Section 24-10-103(1.3), at its sole cost and expense and to the extent that such Regional Trail have been historically maintained, unless the need therefore is caused by Grantor, in which case Grantor shall perform the maintenance or care so required. Grantee may designate or contract with a responsible third party to carry out these care and maintenance requirements, which designation or contract will not change or alter any of these requirements or relieve Grantee of any of its responsibilities under this Agreement.

1.3.4. The Easement and the Easement Area shall only be used for the Authorized Uses specified herein and Grantee shall have no right to use the Easement Area for any other or additional use or purpose, except as may be authorized from time to time by other written agreement. No other uses, express or implied, are authorized by this Agreement.

1.3.5. Grantee may install signage, the location and content of which shall be approved by Grantor, not to be unreasonably withheld. The foregoing shall not limit or preclude Grantor from placing signage on the Grantor Property, including, without limitation, signage noting limitations and restrictions on usage.

1.3.6. Without limiting their generality, the following uses are strictly prohibited:

a. Motorized vehicles, except motorized vehicles used by Grantor and its designees or otherwise authorized herein, are specifically precluded from any use within the

Easement Area. Grantee is authorized to have only such motorized access as is necessary for access by maintenance, utility or emergency vehicles in connection with the inspecting, policing, maintaining and/or repairing of the Regional Trail located upon the Easement Area. Such authorized motorized vehicles shall have the right of way between all other users of the Easement, and hikers and bikers must yield to motorized vehicles and in no way impede access and use of the Easement Area by motorized vehicles.

- b. Horses.
- c. Littering, defacing the Grantor Property, interfering with any and all of Grantor's activities upon the Grantor Property, impeding access to the Grantor Property, removing any survey staking, collecting and removing water, firewood, rocks and artifacts, if any.
- d. Camping, picnicking and similar activities.
- e. Hunting.
- f. Installation of fencing, gates or other improvements, unless approved in advance in writing by Grantor, provided that the foregoing shall not limit or preclude the right of Grantor to place gates and fences along the Regional Trail.
- g. Parking or storage of vehicles, equipment or other materials.
- h. Lighting.

1.4. The design, use and operation of the Regional Trail are further subject to the following restrictions and limitations for the protection of wildlife and environmental features:

1.4.1. The Regional Trail will be closed in the winter (December 15 to March 15 dates inclusive) to accommodate big game winter range occupancy;

1.4.2. The Regional Trail will be closed from dusk to dawn between March 16 and December 14 to facilitate wildlife use of bisected habitats

1.4.3. Dogs are allowed in the Easement Area only if leashed, which leash must be held by the owner. Authorized Users are not allowed to allow dogs to leave the Easement Area.

1.4.4. The following design criteria shall be considered:

- a. Keep trail as close to Airport Road and residences as practicable, to minimize habitat fragmentation.
- b. Avoid bisecting higher value habitats.
- c. Keep trail out of the Remine Creek riparian corridor.
- d. Buffer (screen) the trail from residences with existing vegetative cover and topography.
- e. Minimize tree removal

1.4.5. Nothing herein shall obligate Grantor to repair or maintain the Regional Trail or to pay any costs or expenses in connection with such uses and activities.

1.4.6. Grantee's use shall be nonexclusive, and as such shall not interfere with Grantor's or its designee's concurrent use of the Grantor Property for all lawful purposes for which Grantor may use the Grantor Property.

1.4.7. Neither Grantor nor Grantee shall impose any fees or charges upon any member of the public entering upon and making use of the Easement Area for the Authorized Uses.

1.5. The Regional Trail may only be located in the Easement Area, not any other portion of the Grantor Property, and may not exceed a trail tread width of more than 24 to 36 inches when constructed depending upon the terrain topography, located within an Easement Area width of ten feet.

1.6. In granting the Easement, Grantor expressly represents that Grantor does not:

1.6.1. Extend any assurance that the Easement Area is safe for any purpose;

1.6.2. Confer upon any person using the Easement the legal status of an invitee or licensee to whom a duty of care is owed by Grantor; or

1.6.3. Assume responsibility or incur liability for any injury to person or property or for the death of any person caused by an act or omission of such person.

1.7. While undertaking any work associated with the exercise of the Authorized Uses, Grantee shall: (a) maintain the Grantor's Property in a clean, safe, and orderly condition, consistent with general construction trade practices in the area; (b) adhere to appropriate safety measures and devices, (c) perform the Work in a professional workmanlike manner, (d) comply with all applicable federal, state and local laws, rules, regulations and safety standards, (e) not disturb, compromise or otherwise impair the Grantor Property or any ditches, structures, improvements or facilities located or to be located thereon, and (f) carry out all activities related to the construction/installation/maintenance of the Regional Trail, and any other facilities, structures, improvements and other elements authorized herein in a good, workmanlike and professional manner and in accordance with applicable law. Any such work shall be undertaken in a manner that reasonably causes the least amount of disturbance to the Grantor Property, including existing vegetation. Upon completion of such work, Grantee shall re-grade, re-vegetate (seeding and plantings) and re-contour the Grantor Property, which will be designed to best replicate the condition of the Grantor Property which pre-existed prior to such site disturbance activities.

1.8. Grantor, for itself and its owners and members, expressly reserves unto itself, the right to: (A) use and enjoy the land covered by the Easement Area, including the Regional Trail, for all lawful purposes that will not unreasonably interfere with the rights and interests hereby granted to Grantee; (B) grant additional licenses, easements or rights-of-way upon or across the Easement Area to other persons or entities, (C) if the location of the Regional Trail interferes with Grantor's use and development of the Grantor Property, Grantor, at its cost and expense, may elect to relocate the Regional Trail to another portion of the Grantor Property as reasonably and mutually determined by Grantor and Grantee, and (D) construct, at its cost and expense, and use a private connecting trail located on the Grantor Property that connects to the Regional Trail ("**Grantor Connecting Trail**"). In the event that the Regional Trail is relocated, Grantor shall be authorized to record a modification/supplement to this Agreement revising the Easement Area which Grantee shall promptly execute and deliver to evidence such relocation, which consent and delivery shall not be unreasonably withheld, delayed or otherwise conditioned. Nothing herein shall limit or preclude the ability of Grantor to develop the Grantor Property, provided Grantor has reasonably identified an alternative alignment for the Easement.

1.9. Grantor reserves the right to suspend the Easement and use of any or all of the easements within the Easement Area granted by this Agreement upon any of the following events or occurrences:

1.9.1. Grantee shall have breached any covenants contained herein;

1.9.2. Grantee shall have failed to substantially and promptly perform any of the Grantee obligations;

1.9.3. The Easement Area shall be repeatedly used for other than the Authorized Uses ; or

1.9.4. Grantee fails to obtain or maintain the Insurance Coverage.

1.10. Prior to denial of the use of the Easement Area by Grantor, if the suspension is due to one of the causes set forth in 1.9.1 through 1.9.4 above, Grantor shall deliver written notice to Grantee itemizing the specific violation under the terms of this Agreement, or the specific instances of trespassing or interference. Thereupon, Grantee shall have thirty (30) days from the date of the notice to in good faith comply with the notice and cure the violation or to provide assurances acceptable to Grantor that the trespasses or interferences will cease. If Grantee fails to either cure the violation or provide such assurances within that timeframe, the Grantor may suspend the Easement and the use of the Easement Area, granted hereunder until such violation is cured or such assurances are provided to its reasonable satisfaction. If Grantee fails to obtain or maintain the Insurance Coverage, then the Easement and any rights to use the Easement Area hereunder shall be immediately and automatically suspended until such time as the Insurance Coverage is in force and proof thereof has been furnished to Grantor. In addition, in the event the Colorado Landowner Protection Statutes, in effect as of the date hereof, are amended or repealed in whole or part, which amendment or repeal, in the reasonable judgment of Grantor, reduces or terminates the liability protections afforded Grantor, then unless and until Grantee is able to obtain additional liability insurance coverage which to Grantor's reasonable satisfaction fully protects Grantor against the additional exposure, Grantor may, upon written notice to Grantee, immediately suspend the Easement and prevent further use of any or all of the Easement Area until and unless Grantee obtains such additional liability insurance coverage, reasonably acceptable to Grantor.

2. **Construction of the Regional Trail.** Grantor agrees to cause the Regional Trail to be designed and constructed at its cost and expense. The plans and specifications for the Regional Trail shall substantially conform to San Miguel County guidelines for trail design, as set forth in the San Miguel County Land Use Code Section 5-506, Figure 5-2, for a Multi-Use Mountain Single Track Trail with a trail tread width of 24 to 26 inches depending upon the trail terrain's topography and constructed using natural surface materials, located within an Easement Area width of ten feet, and shall be acceptable to the Grantee. Grantor shall complete the installation of the Regional Trail within two years from the recordation of this Easement. Following its installation, as confirmed by the Grantee, not to be unreasonably delayed or withheld, the Grantee shall be responsible for ongoing maintenance and repair, without cost or expense to the Grantor.

3. **Indemnification. Insurance. Liability of the Parties.**

3.1. By granting the Easement, Grantor shall have no obligation to insure or indemnify Grantee for any injury, claim or damage to any person or property, whether alleged to have occurred while using the Easement Area for the Authorized Uses or otherwise. Nothing herein is intended to waive any limits on liability afforded to the Parties under the Colorado Landowner Protection Statutes. The Parties expressly acknowledge that the Easement is granted for a "recreational purpose" under C.R.S. Section 33-41-101, *et. seq.*, and that Grantor is entitled to the benefits, protections and limitations on liability afforded by Colorado law governing recreational easements, including without limitation said Section 33-41-101, *et. seq.* By granting the Easement, Grantor shall have no obligation to repair clear or otherwise maintain the Easement Area, or to insure or indemnify Grantee or the public for any injury, claim or damage to any person or property, whether alleged to have occurred as a result of use of the Easement for public non-motorized travel or otherwise, or due to condition of the Regional Trail unless the need therefore is caused by Grantor, in which case Grantor shall perform the maintenance or care so required.

3.2. Grantee, for itself, its successors and assigns, and for each of its specifically designated designees, contractors and consultants who are undertaking some or all of the Authorized Uses at the direction of Grantee, does hereby indemnify, to the extent permitted by Colorado law, and save harmless Grantor and its officers, directors, managers, members, partners, employees, agents, representatives, assignees, attorneys, successors and assigns from any and all claims, demands judgments, liability, litigation and/or claims for injury or death to persons or damage to property asserted against Grantor arising from or in connection with any Authorized Use of the Easement by an Authorized User as well as any claims based on alleged or actual negligence or breach of any express or implied warranty and for any mechanics' lien(s), expense, claim, action, liability, loss, damage, or suit (including attorney's fees and costs), and costs of any kind arising out of, or in any way connected with the Authorized Uses ("**Grantee's Indemnifications**"), excepting any such claims or losses which may arise directly from the willful, intentional, reckless, and grossly negligent acts of Grantor, its agents or employees, or other claims as described in C.R.S. Section 33-41-104(l).

3.3. Grantee shall keep and maintain, at their sole cost and expense, public entity general liability insurance coverage for itself and for each of its specifically designated designees, contractors and consultants who are undertaking some or all of the Authorized Uses at the direction of Grantee when contractually required, containing minimum limits per occurrence of \$1,000,000 and \$2,000,000 in the aggregate ("**Policy**"). Within seven (7) days of the Effective Date, Grantee shall provide Grantor with certificates of insurance naming Grantor as an additional insured. The Policy shall include a provision requiring a minimum of ten (10) days' notice to Grantor of any change or cancellation. Said insurance coverage shall commence and continue for the full term of the easement. The amount of the coverage shall be reviewed as necessary and any changes mutually agreed upon, at least every five (5) years, and adjusted to keep pace with the market for similar coverages, but in no event will the amount of the coverage be less than the amount stated above. Grantee may satisfy this obligation by maintaining comprehensive public entity liability insurance coverage to which the Grantor is named as an additional insured.

#### 4. **Miscellaneous**

4.1. **Runs with the Land, Successors and Assigns.** The easements, benefits and rights granted and agreed to herein and the burdens, duties and obligations imposed and agreed to herein shall run with the land and shall be a benefit of and burden upon Grantor Property on the one hand, and the Grantee Property on the other hand, as applicable, during the term of this Agreement. Further, the easements, benefits and rights granted and agreed to herein and the burdens, duties and obligations imposed and agreed to herein shall be binding upon and shall inure to the benefit of, and be a burden upon, the designees, successors, and assigns of all of the Parties to this Agreement during the term of this Agreement.

4.2. **Recording.** This Agreement will be recorded in the Official Records.

4.3. **Performances.** Time is of the essence of this Agreement and for the performance of each of the duties and obligations provided herein.

4.4. **Default, Notice and Cure.** In all instances under this Agreement, at such time as a Party ("**Claiming Party**") claims that any other Party ("**Responding Party**") has violated or breached any of the terms, conditions or provisions of this Agreement ("**Default**"), the Claiming Party shall promptly prepare and deliver to the Responding Party a written notice ("**Notice of Default**") claiming or asserting that the Responding Party is in default under a term or provision of this Agreement, which notice shall clearly state and describe: (a) each section(s) of the Agreement which the Responding Party has allegedly violated, (b) a summary of the facts and circumstances being relied upon to establish the alleged violation, (c) the specific steps ("**Cure Events**") that must be undertaken to come into compliance with the Agreement, and (d) the reasonable timeframe, not less than ten days for a monetary

default and not less than thirty days for a non-monetary default (unless emergency circumstances require a shorter response time), within which time the alleged violation should be cured (“**Cure Completion Date**”). In the event of unforeseen weather conditions that may delay the full and final completion of the Cure Events, the Responding Party shall send written notice of such circumstances to the Claiming Party, state the grounds for the delay and indicate the reasonable dates that work on addressing the Cure Events will commence and the anticipated Cure Completion Date. The Claiming Party shall have the right to reasonably accept the proposed schedule for initiating and completing the Cure Events or pursue its rights and remedies hereunder if the proposed schedule is not reasonably acceptable.

4.5. **Governing Law, Remedies, Costs and Expenses.** This Agreement shall be construed under and governed by the laws of Colorado, with jurisdiction and venue restricted to a court of competent jurisdiction in San Miguel County, Colorado. A Party may pursue any and all available remedies under applicable law, including, without limitation, injunctive relief and specific performance. All of the rights and remedies of the Parties under this Agreement shall be cumulative. In any action to enforce or construe the terms of this Agreement, the substantially prevailing Party shall recover all legal and related court costs, including all reasonable attorneys’ fees and expert witness fees, costs and expenses.

4.6. **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement shall be found invalid or unenforceable, this shall not affect the validity of the remaining provisions of this Agreement, and the remaining provisions shall remain in full force and effect.

4.7. **Notice.** All notices, demands or writings in this Agreement provided to be given or made or sent that may be given or made or sent by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and delivered either by Fax, Email or United States Mail (certified, return receipt requests and postage pre-paid), and addressed to the party, at the below stated mailing address, email address or fax number. The mailing address, email address or fax number to which any notice, demand or writing may be changed by sending written notice to each party notifying the party of the change.

<b>Grantor:</b>	<b>Grantee:</b> San Miguel County Administrator P.O. Box 1170 Telluride, CO 81435
<b>With a Copy to:</b> Thomas G. Kennedy, Esquire P.O. Box 3081 Telluride, CO 81435	<b>With a Copy to:</b> Steven J. Zwick San Miguel County Attorney P.O. Box 791 Telluride, CO 81435

4.8. **Parties Representations.** In entering into this Agreement, the Parties acknowledge and agree and represent and warrant to each other as follows: (a) that they will perform their duties and obligations in a commercially reasonable and good faith manner and that this commitment is being relied upon by each other Party; (b) that the Party is a duly qualified and existing entity, capable of doing business in the state of Colorado; and (c) that the Party has actual and express authority to execute this Agreement, has taken all actions necessary to obtain such authorization, the Agreement constitutes a binding obligation of the Party and the person signing below is duly authorized and empowered to execute this Agreement.

4.9. **Entire Agreement.** This Agreement contains the entire agreement and

understanding of the Parties with respect to the subject matter hereof, and no other representations, promises, agreements or understandings or obligations with respect to the payment of consideration or agreements to undertake other actions regarding the subject matter hereof shall be of any force or effect unless in writing, executed by all Parties hereto and dated after the date hereof.

4.10. **Modifications and Waiver.** No amendment, modification or termination of this Agreement or any portion thereof shall be valid or binding unless it is in writing, dated subsequent to the date hereof and signed by each of the Parties hereto. No waiver of any breach, term or condition of this Agreement by any party shall constitute a subsequent waiver of the same or any other breach, term or condition.

4.11. **Counterparts and Facsimile Copies.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Facsimile copies of any party's signature hereon shall be deemed an original for all purposes of this Agreement.



**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement, intending it to be effective as of the Effective Date.

**GRANTOR:**

The Aldasoro Ranch Homeowners Company,  
a Colorado nonprofit corporation

By: *ABA*

Date: 5/25/16

Printed Name: BANKS BROWN

Title: PRESIDENT ARHOC

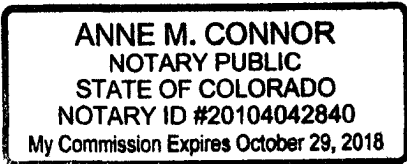
STATE OF COLORADO        )  
  ) ss.  
COUNTY OF San Miguel )

Acknowledged, subscribed and sworn to before me this 25<sup>th</sup> day of May, 2016, by Banks Brown, as the President of The Aldasoro Ranch Homeowners Company, a Colorado nonprofit corporation.

Witness my hand and official seal.

Anne M Connor  
Notary Public

My commission expires: 10/29/18



**GRANTEE:**

**SAN MIGUEL COUNTY, COLORADO:  
BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF SAN MIGUEL,  
STATE OF COLORADO**

By: Joan May

Date: May 31, 2016

Printed Name: Joan May

Title: Chair

ATTEST: Carmen L. Warfield  
Chief Deputy Clerk

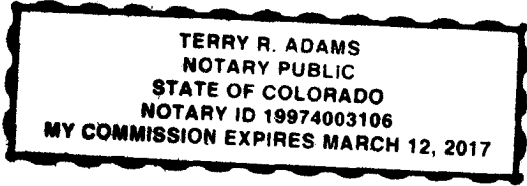
STATE OF COLORADO     )  
  ) ss.  
COUNTY OF SAN MIGUEL )

Acknowledged, subscribed and sworn to before me this 31<sup>st</sup> day of MAY, 2016, by Joan May, as Chair of the Board of Commissioners of San Miguel County, Colorado, and by CARMEN L. WARFIELD, as Chief Deputy Clerk to the Board of County Commissioners of San Miguel County, Colorado.

Witness my hand and official seal.

Terry R. Adams  
Notary Public

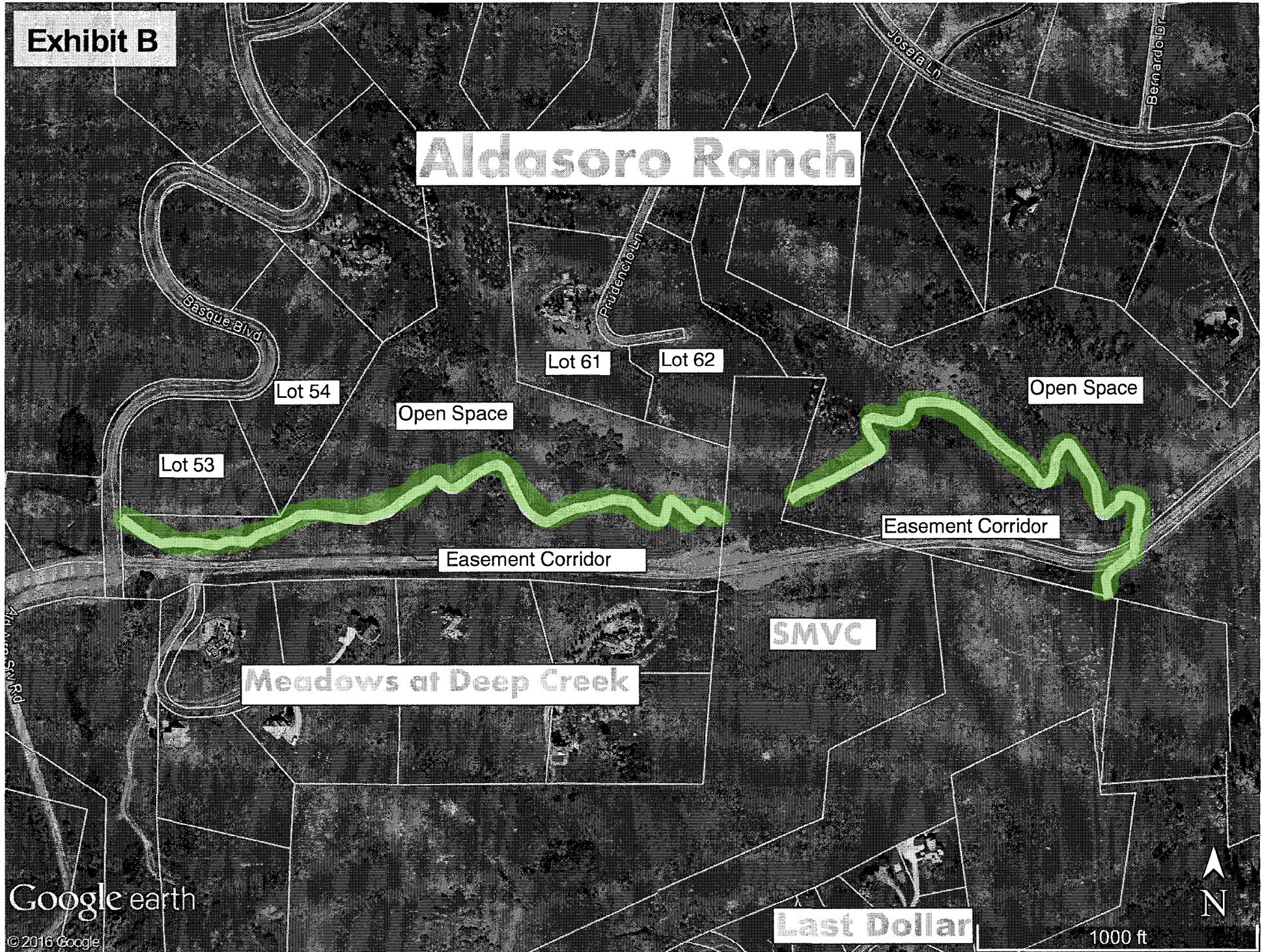
My commission expires: 3/12/2017



**EXHIBIT "A"**  
**(Depiction of Easement Area)**

Exhibit B

# Aldasoro Ranch



Open Space

Open Space

Lot 53

Lot 54

Lot 61

Lot 62

Easement Corridor

Easement Corridor

Meadows at Deep Creek

SMVC

Last Dollar

1000 ft

Google earth

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