

ACCESS AND EASEMENT AGREEMENT

This ACCESS AND EASEMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2022 (the "Effective Date"), by and between San Juan Vista Landowners Association, Inc. a Colorado non-profit corporation ("Grantee"), whose legal address is _____, and Park Brady ("Brady") whose legal address is _____ and John Pryor ("Pryor") whose legal address is _____ (collectively "Grantors"). Grantee and Grantors may sometimes singularly be referred to as a "Party" or collectively be referred to as the "Parties." Grantee's Property and Grantors' Property (each as defined below) may sometimes singularly be referred to as a "Property" or collectively be referred to as the "Properties."

RECITALS:

A. Grantee is a Colorado non-profit corporation which is charged with the duty to administer and maintain all roads and easements which provide access to the San Juan Vista Subdivision, Filing No. 1, which is more particularly described by the plat thereof filed in Plat Book No. 1, Pages 78-80 and Pages 523-525 ("Plat"), San Miguel County public records, (hereinafter referred to as the "Subdivision"), and further to conduct any and all business which may be beneficial to the Subdivision.

B. Brady owns Lot 29 in the Subdivision ("Brady's Property") and Pryor owns, among other lots, Lot 27 in the Subdivision ("Pryor's Property") (collectively "Grantors' Property").

C. The Plat depicts a 60 foot wide strip ("Strip") between Lots 27 and 29, 30 feet on either side of the common boundary between Lots 27 and 29, running from the southern terminus of Overlook Way to the southern boundary of the Subdivision. At the point where the Strip joins the southern boundary of the Subdivision, the Uncompahgre National Forest ("National Forest") adjoins the Subdivision.

D. The Plat contains no indication, identification or dedication of the ownership or use of the Strip although it appears similar to another 60 foot wide strip shown on the Plat between Lots 24 and 25 which is labeled "Easement." Further, there is no recorded document identifying or describing the Strip. Similarly, none of the Subdivision's governing documents address, describe or dedicate the Strip between Lots 27 and 29.

E. During the time Grantors have owned their properties, the Strip has occasionally been used by owners of lots within the Subdivision for pedestrian access to the National Forest. Grantors have occasionally observed non-owners using the Strip. Further, Grantors have experienced trespass problems on their properties and there have also been parking problems at the end of Overlook Way near the north terminus of the Strip. The lack of any description or dedication of ownership and use of the Strip is a further problem for Grantors. Grantee acknowledges these problems and seeks a solution in cooperation with Grantors.

F. Grantee desires to enter into an agreement with Grantors for the grant of a perpetual, nonexclusive access easement across Grantors' Property within the location of the Strip as depicted in the Plat ("Walkway Easement"), for pedestrian and equestrian use only for recreational purposes from the southern terminus of Overlook Way to the boundary of the National Forest. Such use shall be further limited as described in paragraph 3, below.

THEREFORE, in consideration of the Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions hereof, the Parties agree as follows.

AGREEMENTS:

1. Walkway Easement. Grantors hereby sell, bargain, grant, quitclaim, convey, assign, establish, and create to and for the benefit of Grantee and the use of Grantee's owners (the owners of lots within the Subdivision) ("Grantee's Owners") a perpetual, non-exclusive easement, over and across a 10 foot wide walkway within the Strip (as defined above) in its location as of the date of this Agreement for recreational access to the National Forest from the southern terminus of Overlook Way ("Walkway Easement") for use by pedestrians and equestrians only. The Walkway Easement shall inure to the benefit of Grantee and Grantee's Owners. The Walkway Easement shall run with the land of Grantors.

2. Consideration. In exchange for the Walkway Easement granted above, Grantee agrees to pay Grantors the sum of \$1.00, together with other good and valuable consideration including the other promises and covenants in this Agreement as well as resolution of the uncertainty surrounding ownership and use of the Strip.

3. Restrictions on Use. Use of the Walkway Easement shall be limited to recreational pedestrian and equestrian use. Use of the Walkway Easement is limited to Grantee's Owners and guests of Grantee's Owners of lots in the Subdivision provided the guests are accompanied by at least one of Grantee's Owners at all times such guest is physically present on the Walkway Easement. No motor vehicles, bicycles, or mechanical conveyances of any type shall be used on the Walkway Easement. Grantee shall be responsible for enforcing these restrictions. No members of the general public shall be allowed to use the Walkway Easement.

4. Parking. Grantee shall limit parking on Overlook Way to four vehicles at one time. Grantee shall enforce this limitation by installing signage along and near the southern terminus of Overlook Way indicating the location of the four parking spaces and indicating areas where no parking is allowed and by towing vehicles parked in contravention to this Agreement. The designated parking area shall be on the east side of Overlook Way, beginning 200 feet north of the driveway to the Pryor residence (121 Overlook Way) and extending 72 feet further to the North. No other parking will be available. Grantee will encourage Subdivision lot owners to walk to the easement.

5. Compliance with Laws. Each Party shall, in exercising all rights granted under this Agreement, comply with all applicable Laws. "Laws" shall mean all laws, statutes, ordinances, rules, codes, regulations, orders, and interpretations of all federal, state, and other governmental or quasi-governmental authorities, including, but not limited to the local fire department, having jurisdiction over the Subdivision or Grantors' Property, or the Parties, including but not limited to environmental laws and the Americans with Disabilities Act.

6. Exercise of Rights. Any exercise of any right granted hereunder to Grantee with respect to Grantors' Property including, without limitation, the use of the Walkway Easement granted hereunder, shall be exercised in a manner which shall not unreasonably hinder, impede or impose upon Grantors' use of their Property.

7. Default. In the event of a default by either Party under this Agreement in the observance or performance of any of the covenants or other provisions of this Agreement to be observed or performed by such Party, if such default is not cured within sixty (60) days after notice to defaulting Party (or if such default is incapable of cure within such 60-day period and defaulting Party commences to cure within such 60-day period and thereafter diligently and continuously takes action to effect a cure), the non-defaulting Party shall have the following remedies: (a) to cure, if capable of cure, the breach by the defaulting Party, with the right of reimbursement from the defaulting Party for all reasonable costs and expenses incurred in connection with such cure, including reasonable legal fees; (b) an action for specific performance and/or injunction; and (c) an action for actual damages. No breach of this Agreement shall entitle any party to consequential, incidental, economic, treble or punitive damages or to cancel, rescind, or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Party may have by reason of any breach of this Agreement. Grantee agrees that, in the event any of Grantee's Owners breaches any covenant in this Agreement ("Breaching Owner"), including, but not limited to, parking violations, trespassing outside the boundaries of the Walkway Easement or allowing unaccompanied guests on the Walkway Easement, Grantee shall take action against such Breaching Owner to prevent future breaches. Such action can include, but is not limited to, precluding a Breaching Owner from using the Walkway Easement for a year or more.

8. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered, (b) deposited with a nationally recognized overnight delivery service that routinely issues receipts, or (c) given by registered or certified mail. Any such notice or other communication shall be effective when such notice is delivered to the addresses set forth below and received or refused by the addressee:

To the Grantee: _____

With copy to: _____

To the Grantor:

Any Party, by ten (10) days' prior written notice given as set forth above, may change the address to which future notices or other communications intended for such Party shall be sent.

9. Indemnification. Grantee shall for itself, its owners and owners' agents, contractors, tenants, employees, customers, licensees, guests, invitees, successors and assigns ("Agents"), indemnify and save harmless Grantors and their agents, representatives, heirs, successors and assigns from and against any and all expenses, claims, actions, liabilities, losses, damages (including attorney's fees and costs), and costs of any kind arising out of, or in any way connected with Grantee's or its Agents' use of the Walkway Easement, unless such expense or damage is the result of Grantors' or their Agents' intentional misconduct or negligence.

10. Modification. No provision or term of this Agreement may be amended, modified, revoked, supplemented, waived, or otherwise changed except by a written instrument duly executed by the Parties hereto or such others as may from time to time own an interest in the respective Properties.

11. Entire Agreement. This Agreement constitutes and incorporates the entire agreement among the Parties hereto concerning the subject matter of this Agreement and supersedes any prior agreements concerning the subject matter hereof.

12. Attorneys' Fees. If any action is commenced between the Parties concerning this Agreement or for the enforcement of rights and duties of any Party pursuant to this Agreement, the court shall award the substantially prevailing Party in the action its reasonable attorneys' fees in addition to any other relief that may be granted.

13. Severability. If any provision of this Agreement shall be held invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.

14. Successors and Assigns/Covenants Run With Land. The terms and conditions of this Agreement bind and inure to the benefit of the Parties, and their respective successors, assigns and personal representatives. The Walkway Easement granted herein shall constitute a covenant running with the land and shall bind Grantors' Property described herein and inure to the benefit of and be binding upon the Parties, their grantees, and respective successors and assigns, and any persons claiming by, through or under them.

15. No Waiver. No provision of this Agreement may be waived except by written instrument signed by the Party to be charged with such waiver. Waiver by any Party of any agreement, condition, or provision contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Agreement.

16. Construction of Agreement. This Agreement resulted from review and negotiations between the Parties and their attorneys. This Agreement will be construed to have been drafted by all of the Parties so that the rule of construing ambiguities against the drafter will have no force or effect.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to conflicts of law principles.

18. Authorization. Each Party is authorized and empowered to execute this Agreement and all necessary corporate or partnership action has been taken to authorize execution of this Agreement.

19. Execution. The Parties shall execute and deliver such further documents as may be reasonably required in order to effect the intent of this Agreement.

20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to constitute an original and all of which when taken together shall constitute one and the same instrument; provided, however, that this Agreement will not become binding upon any Party unless and until executed (whether or not in counterpart) by all the Parties.

21. Facsimile/E-Mail. Original signatures of the parties hereto on copies of this Agreement transmitted by facsimile or e-mail shall be deemed originals for all purposes hereunder and such copies shall be binding on all parties hereto.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement as of the date first above written.

GRANTORS:
Park Brady

GRANTEE:
San Juan Vista Landowners Association, Inc.,
a Colorado non-profit corporation

John Pryor

By: _____

Name: _____

Title: _____

The foregoing instrument was acknowledged before me by _____ this ____ day of _____, 20__, in the ____ and County of _____, Colorado.

Witness my hand and official seal.

My Commission Expires:

Notary Public

The foregoing instrument was acknowledged before me by _____ this ____ day of _____, 20__, in the ____ and County of _____, Colorado.

Witness my hand and official seal.

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