

**PERMANENT SEVERANCE OF TRANSFERABLE DEVELOPMENT RIGHTS AND LAND USE RESTRICTION AGREEMENT**

This Permanent Severance of Transferable Development Rights and Land Use Restriction Agreement (“Agreement”) is between \_\_\_\_\_ (collectively, “Owner”), whose address is \_\_\_\_\_, and Santa Fe County, a political subdivision of the State of New Mexico (“County”), whose address is 102 Grant Avenue, Santa Fe NM 87501. The Owner and the County are collectively referred to in this Agreement as the “Parties.”

**RECITALS**

**A.** The County has established a Transferable Development Rights (“TDR”) Program under NMSA 1978, Section 5-8-43 (2003) and Chapter 12, Section 12.14 of the County Sustainable Land Development Code (“SLDC”), County Ordinance No. 2023-07.

**B.** Owner is the sole owner in fee simple of the real property described on the Warranty Deed and Boundary Survey Plat filed in the records of the County Clerk as Instrument No. \_\_\_\_\_, respectively, and comprising \_\_\_\_\_ acres, more or less (“Property”).

**C.** The Property is zoned \_\_\_\_\_ on the Sustainable Land Development Code (SLDC) Zoning Map (“Current Zoning”), which allows a base density of one dwelling per \_\_\_\_\_ acres under the SLDC. The property is currently improved with \_\_\_\_\_.

**D.** As documented in TDR File No. \_\_\_\_\_ of the County Growth Management Department, the County has determined that the Property has the potential to generate a total of \_\_\_\_\_ TDR Certificates. The County has further determined that it is in the public interest to conserve the Property, or a portion of the Property, through the TDR Program in accordance with the TDR Qualification Report for the following purposes (“Conservation Purposes”):

- \_\_\_\_\_ From Sending areas identified by a Community District Overlay Zones;
- \_\_\_\_\_ From areas designated as an environmental and resource protection overlay, historic protection overlay or agricultural overlay;
- \_\_\_\_\_ From sensitive environmental lands (e.g. riparian habitats, endangered or threatened species habitat, archaeological sites);
- \_\_\_\_\_ From agricultural land;
- \_\_\_\_\_ From lands providing open space and preserving scenic vistas, natural features, and areas of special character; and
- \_\_\_\_\_ Through a Transfer of Development Rights as part of a development order granting Beneficial Use and Value Determination relief.

**E.** Owner desires to sever permanently the \_\_\_\_\_ TDR Certificates from the Property in accordance with the TDR Program. The specific area of the Property from which the TDRs are severed (“Sending Area”) is identified on Exhibit A and in the Sending Area Plat filed in the records of the County Clerk as Instrument No. \_\_\_\_\_, at Book \_\_\_\_\_, Page \_\_\_\_\_.

F. Section 12.14.4.1 of the SLDC provides:

*A development right shall be severed ... only by a development right certificate [“TDR Certificate”] issued by Santa Fe County. A conservation easement, restrictive covenant, or other permanent and enforceable restriction on future development shall be placed on the sending area limiting future development to the total number of development rights established by the zoning of the property minus:*

- a. *all development rights previously transferred in accordance with this Chapter [i.e., Chapter 12, Section 12.14 of the SLDC];*
- b. *any development rights previously extinguished or limited as a result of a recorded covenant or plat applicable to the property;*
- c. *the number of development rights to be transferred by the proposed transaction; [and]*
- d. *the number of existing single-family dwellings or square footage of development allowed on the sending site.*

G. Section 12.14.6.1 of the SLDC further provides that, “A development right may be severed from an approved sending site only after a restriction on future development is imposed on the sending area pursuant to Section 12.14.4.1.” Finally, Section 12.14.4 of the SLDC provides that, “The restriction on future development imposed on the sending area under Section 12.14.4.1 shall be created by a written instrument approved by the County Attorney and identified on a survey plat, which shall reference the recorded instrument.”

H. The Owner intends by this Agreement to permanently sever \_\_\_\_\_ TDRs from the Sending Area and simultaneously establish a “permanent and enforceable restriction on future development” of the Sending Area within in the meaning of Chapter 12 of the SLDC as amended, to include Sections 12.14.4.1, 12.14.4, and 12.14.6.1.

I. The permanent severance of \_\_\_\_\_ TDRs from the Sending Area is evidenced by TDR Certificate No. \_\_\_\_\_ issued by the County TDR Administrator, which may be transferred or redeemed in accordance with the County TDR Program and the instructions provided on the back of the TDR Certificates.

J. No mortgage, lien, or other security interest encumbers the Property.

## **AGREEMENT**

In accordance with the TDR Program and the recitals set out above, which are incorporated into and made a part of this Agreement by reference, Owner hereby severs \_\_\_\_\_ TDRs from the Sending Area and establishes the development restrictions on the Sending Area, which touch and concern the land, which shall run with the land in favor of the County, and which shall be binding upon the Owner and the Owner’s heirs, successors and assigns (hereinafter collectively referred to as “Owner”), in perpetuity, whether or not these land use restrictions are individually recorded or noticed with subsequent grants of the Property or any division of the Property:

### 1. Development Restrictions within Sending Area

The Sending Area comprises of the following: Parcel Number \_\_\_\_\_ which is \_\_\_\_\_ acres, more or less, as shown on Exhibit A.

- a. No residential dwellings shall be constructed within the Sending Area. In addition, future “development” (as defined in the SLDC) within the Sending Area shall be further restricted as follows:
- b. The Sending Area is restricted to uses in accordance with the Conservation Purposes of the TDR Sending Area.
- c. After the effective date of this Agreement, Owner shall not grant any easement in, on, over, or under the Sending Area except as approved by the County, in writing; *provided*, however, that this restriction shall not apply to utility easements; and *provided further* that the County shall not withhold its approval of any easement unless the easement would defeat or be substantially inconsistent with the Conservation Purposes, as determined by the County Land Use Administrator.
- d. The Owner shall not subdivide the Sending Area or otherwise divide it into separate legal lots or parcels, nor shall the Owner sever the mineral estate of the Sending Area from the surface estate; *provided*, however, that nothing in this Agreement shall prohibit the creation of undivided interests in the Sending Area.

2. Existing Structures. These development restrictions do not prohibit the repair, maintenance, and replacement of structures, and other improvements existing on the Sending Area on or after the effective date of this Agreement.

3. General Provisions.

- a. Amendment. This Agreement shall not be subject to amendment.
- b. Venue; Applicable Law. In any legal dispute regarding the restrictions identified in this Agreement, the New Mexico First Judicial District State Court, Santa Fe County, shall be the exclusive venue. This Agreement shall be interpreted and enforced in accordance with New Mexico law.
- c. County Enforcement. The County Attorney may enforce this Agreement by bringing suit against Owner, and/or Owner’s heirs, successors, and assigns.
- d. Agreement. This Agreement shall be construed to carry out the Owner’s intent to permanently sever XXX TDRs from the Sending Area and simultaneously impose the Land Use Restrictions on the Sending Area described above.
- e. Attorney’s Fees and Costs. In the event the County prevails in an action to enforce this Agreement, including defending an action brought by Owner or Owner’s heirs, successors and assigns, Owner shall pay the County’s costs and reasonable attorney’s fees.

IN WITNESS of the forgoing, the Parties execute this Agreement as of the latest date written below.

**OWNERS:**

\_\_\_\_\_ Date: \_\_\_\_\_                      \_\_\_\_\_ Date: \_\_\_\_\_

**SANTA FE COUNTY:**

By: \_\_\_\_\_  
Chair

**ATTEST:**

\_\_\_\_\_ Date: \_\_\_\_\_  
Santa Fe County Clerk

Approved as to form:

\_\_\_\_\_  
Santa Fe County Attorney

**APPROVED:**

\_\_\_\_\_ Date: \_\_\_\_\_  
Land Use Administrator

*[Owner acknowledgement on following page]*

ACKNOWLEDGEMENT OF OWNER

State of New Mexico

County of Santa Fe

The forgoing Permanent Severance of Transferrable Development Rights and Land Use Restriction Agreement was acknowledged before me on \_\_\_\_\_ (date) by \_\_\_\_\_.

\_\_\_\_\_  
Signature of Notarial Officer

My commission expires: \_\_\_\_\_

DRAFT