



*Dana DeBeauvoir*

Dana DeBeauvoir, County Clerk  
Travis County, Texas

Dec 11, 2019 03:39 PM Fee: \$62.00

**2019194809**

\*Electronically Recorded\*

When recorded return to:

The Access Fund  
PO Box 17010  
Boulder, CO 80308  
Attn: Joe Sambataro

### RECREATION EASEMENT AGREEMENT

**THIS RECREATION EASEMENT AGREEMENT** (hereinafter "Agreement") made this <sup>6/11</sup> day of ~~December~~, 2019, by and between **TEXAS CLIMBERS COALITION**, a Texas nonprofit corporation, having an address at 1102 Elm Lane, Marble Falls, TX 78654 ("Grantor"), in favor of **THE ACCESS FUND**, a Colorado nonprofit corporation, having an address at PO Box 17010, Boulder, CO 80308 ("Grantee").

#### I. RECITALS

WHEREAS, Grantor is the sole owner in fee simple of certain real property known as Monster Rock whose address is 2208 Pace Bend Road South, Spicewood, TX 78669 which is in Travis County, Texas, more particularly described in Exhibit "A" and shown on Exhibit "B" (hereinafter "the Property");

WHEREAS, Grantor is a qualified 501(c)(3) organization that works to protect climbing access and help maintain climbing areas in Texas, and is organized to own and manage the Property;

WHEREAS, Grantor accepted a donation of the Property from John Croyle Hogge of Travis County, TX to conserve this unique climbing area and keep it open for public recreation for generations to come;

WHEREAS, Grantee is a qualified 501(c)(3) organization, and Grantee's purposes include the preservation, protection, and/or enhancement of land for recreational and, specifically, rock climbing use;

WHEREAS, Grantor is willing to convey, and Grantee is willing to accept, an easement for the purpose of preserving recreational rock climbing opportunities on a portion of the Property for the general public and in connection therewith, Grantee desires to provide Grantor additional support for long-term stewardship and management of the recreational easement; and

WHEREAS, Grantor and Grantee recognize that a residential area depicted on Exhibit "B" attached hereto is intended to be excluded from this Agreement and the recreational easement granted hereunder for the purpose of allowing a possible caretaker's home site to assist in management of the Property and education of the general public (the "Proposed Homesite Area").

## II. CONVEYANCE

A. For and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Grantor conveys unto Grantee a recreational easement over, through, and under that portion of the Property excluding the Proposed Homesite Area (“Recreational Easement”) for the recreational purposes described herein, subject to the provisions of this Agreement.

B. This Agreement and the Recreational Easement granted herein shall bind and run with title to the Property in perpetuity, and shall inure to the benefit of Grantee and Grantee’s successors and assigns, enforceable by Grantee against the Grantor and its successors and assigns in perpetuity. If any provision of this Agreement is found to be invalid or otherwise unenforceable, the remainder of its provisions shall not be affected thereby.

## III. PERMITTED AND PROHIBITED USES

A. Permitted Uses. Grantor, Grantee, and the general public are permitted non-exclusive public recreational access with no cost or fees on and over the Recreational Easement for limited recreational activities primarily consisting of rock climbing and associated activities including rappelling and the use of climbing anchors, rappel anchors, and fixed protection, hiking, and enjoyment of views and open space (the “Permitted Uses”); provided however that without the prior written consent of Grantor and Grantee, no motorized uses shall be permitted on the Recreational Easement (except as expressly provided below). Grantor and Grantee agree that access by the general public to the Recreational Easement shall be from Pace Bend Road South.

Other uses permitted on the Recreational Easement by the general public include recreational instructional services, including but not limited to paid guide services, climbing gym-organized outings, and club, nonprofit, or qualified educational and university-organized outings coordinated through Grantor; provided such uses do not substantially interfere with the primary permitted uses of the Recreational Easement, stated above. During any and all instructional services, the public shall have non-exclusive use of the Recreational Easement so long as their use is also consistent with this section. Any commercial guiding or paid instructional services by rock climbing outfits or organizations using the Recreational Easement for such permitted uses shall be required to name Grantor and Grantee as “additional insureds” under their general liability insurance policy for the purpose of coverage, but not for the purpose of any payment. Such general liability insurance shall have coverage of no less than \$1,000,000 for each occurrence; \$2,000,000 general aggregate limit.

The uses permitted herein are included among the defined recreational activities listed in the Texas Recreational Use Statute (“RUS”) under Texas Civil Practice and Remedies Code, Chapter 75. Grantor and Grantee acknowledge and agree that members of the general public shall have access to and use of the Recreational Easement for their own purposes to engage in recreational activities that are inherently risky in nature, and that can result in accidents that can cause bodily injury or death, and are not accessing or using the Recreational Easement as “invitees” of Grantor or Grantee. Grantor and Grantee intend to afford themselves the full protections

available to them under the RUS in connection with the access to and use of the Recreational Easement by the general public as provided herein.

Notwithstanding the foregoing, Grantee and Grantor acknowledge that certain portions of the Recreational Easement may not be appropriate for rock climbing, or other types of recreation at all times, and may be best managed through certain restrictions, or seasonal limitations on the activities. Therefore, Grantee and Grantor, upon mutual agreement, may restrict access to the Recreational Easement or parts thereof, but only to the extent and for the duration necessary to assure safety, to permit necessary maintenance, or to preserve important natural resources of the Recreational Easement.

Grantor and Grantee acknowledge and agree that Grantor may determine it is appropriate or necessary to construct, install, operate and maintain stairs, fences, gates, trash cans, benches, native vegetation, landscaping, landscape structures, erosion control and drainage devices, trails, signs, bathroom facilities, pedestrian bridges, and other facilities for the preservation of the permitted uses hereunder, and Grantor may utilize all tools or equipment (including motorized equipment) necessary to accomplish these activities, for the use of the Recreational Easement by the general public and the protection of the general public's safety.

Further, Grantor and Grantee shall have the right, but not the duty, to authorize third parties to construct, install, operate, maintain, and replace climbing anchors, rappel anchors, and fixed protection including bolts, and may utilize all tools or equipment (including motorized equipment) which Grantee or Grantor deem reasonably necessary to accomplish these activities. At its sole discretion, Grantor may require a review process for members of the general public to request approval of climbing anchors, rappel anchors, and bolts, and other forms of permanent climbing protection; provided that Grantee, in its sole discretion, may reject, or amend any request it deems necessary to be inconsistent with this Agreement. Neither Grantor nor Grantee shall have any duty, liability, obligation or responsibility for such climbing gear or installations on the Recreational Easement, including, without limitation, to install, construct, test, inspect, maintain, repair, or warn about the same.

B. Prohibited Uses: This Agreement shall not be construed to allow, nor are the uses permitted hereunder deemed to include, access to or use of the Recreational Easement except as provided in Section III.A, above, and any such other uses shall be considered as trespass, for which Grantor shall have all rights and remedies under applicable law. In particular, and without limiting the foregoing, the following uses by Grantee, Grantor, and the general public are strictly prohibited: overnight camping and other overnight uses; lighting of fires of any kind; use of firearms, bow-and-arrow, or any other form of arms or weapons; use of alcohol or illegal drugs; and any other uses not specifically permitted under the terms of this Agreement or in violation of applicable laws or regulations.

Other than in connection with the uses permitted in Section III.A, above, Grantee, Grantor, and the general public shall refrain from marring or impairing the appearance of the Recreational Easement, obstructing access thereto, interfering with the Proposed Homesite Area outside the boundaries of the Recreational Easement, or jeopardizing the safety of any persons or property on the Recreational Easement or the Proposed Homesite Area.

Grantor shall not conduct, engage in, or permit any installation of utility systems on the Recreational Easement, including, without limitation, pipelines, wells, septic systems, or any other water, sewer, electrical, fuel, or communication lines or related facilities, or the placement or construction of any buildings, structures, or other improvements of any kind; except those necessary for the uses permitted under Section III.A, above, or such necessary water, electrical, sewer, fuel, or communication lines to connect from utilities along Pace Bend Road South directly to the Proposed Homesite Area. Grantor shall not conduct, engage in or permit any exploration for, or development and extraction of, minerals, oil, gas, or other hydrocarbons, timber, soils, sands, or gravel on or below the surface of the Recreational Easement.

#### IV. GRANTOR'S RIGHTS AND RESPONSIBILITIES

A. In General: Grantor reserves all rights to use and enjoy the Recreational Easement subject to the terms of this Agreement. This Agreement and the Recreational Easement granted herein shall not in any way affect the right of Grantor or Grantee, and their respective agents, employees or assignees to enter upon and use the Recreational Easement at any and all times, for inspection, maintenance, and enforcement of the terms hereof.

B. Signage and Education. Grantor shall comply and shall use good faith, reasonable efforts to encourage and educate the general public to comply with all applicable federal, state, municipal and local laws, rules, orders, and regulations, to follow the terms and conditions of this Agreement, the assumption of risk in connection with uses permitted hereunder, and the use of Leave No Trace ethics on the Recreational Easement.

C. Proposed Homesite Area. As more particularly described in Exhibit "A" and shown on Exhibit "B", nothing in this Easement restricts the use of the Proposed Homesite Area, or access, ingress, and egress to and from the Proposed Homesite Area from Pace Bend Road South, by Grantor and its respective lessees, officers, directors, agents, employees, invitees, affiliates, guests, contractors, successors, and assigns.

#### V. EXPRESS DISCLAIMERS

A. In General: Grantor and Grantee hereby acknowledge that all or portions of the Recreational Easement may comprise steep, rugged or otherwise hazardous terrain. Accordingly, Grantor and Grantee make no warranty, express or implied, including any warranty of fitness of the Recreational Easement for any particular purpose including any uses permitted on the Recreational Easement. The Recreational Easement is, therefore, granted on an "as is, where is" basis, and neither Grantor nor Grantee shall be under any duty or obligation to improve or otherwise make the Recreational Easement safe for use by the general public. Nothing herein shall be construed to grant an invitation, license or standing to bring an action at law or in equity hereunder.

B. Grantee's Indemnity. Grantee agrees to defend, indemnify and hold Grantor harmless from and against all liability, claims, actions, and demands on account of injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, or death on the Recreational Easement, resulting from any negligence of Grantee (the "Grantor Indemnified Claims"). Grantee agrees to investigate, handle, respond to, provide defense for and defend against, any such Grantor Indemnified Claims at the sole expense of the Grantee; provided, however, that Grantee's indemnity hereunder shall be limited in type and amount to the coverage provide by Grantee's liability insurer.

C. Grantor's Indemnity. Grantor agrees to defend, indemnify and hold Grantee harmless from and against all liability, claims, actions, and demands on account of injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, or death on the Recreational Easement, resulting from any negligence of Grantor (the "Grantee Indemnified Claims"). Grantor agrees to investigate, handle, respond to, provide defense for and defend against, any such Grantee Indemnified Claims at the sole expense of the Grantor; provided, however, that Grantor's indemnity hereunder shall be limited in type and amount to the coverage provide by Grantor's liability insurer.

D. No Limitation under Texas Statutes. The rights granted herein and other provisions in this Agreement, are in addition to, and are not intended to constitute any limitation or restriction of, the liability protection granted to Grantor and Grantee under the RUS.

## VI. GENERAL PROVISIONS

A. Recordation. This Agreement shall be recorded in a timely fashion in the Travis County Clerk's Office.

B. Transfers and Assignments. Grantee may transfer or assign this Agreement and the Recreational Easement, including rights arising hereunder, only to an organization that is a qualified 501(c)(3) organization at the time of transfer with a purpose similar to that of Grantee.

C. Notices. Any notice required to be given hereunder shall be either mailed, certified mail return receipt requested, personally delivered, or sent by email (if available) to Grantee or Grantor at their respective addresses listed on Page 1 of this Agreement, or to such other address as either party from time to time shall designate by written notice to the other.

D. Governing Law. The interpretation and performance of this Agreement shall be governed by applicable laws of the State of Texas.

E. Entire Agreement. This Agreement supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof. Any modification or addition to this Agreement shall be in writing and duly executed by the parties hereto.

F. Successors and Assigns. All of the above respective covenants, obligations, representations, warranties, and remedies of the parties hereto shall be binding upon the heirs,

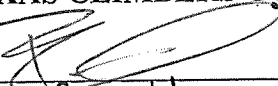
successors, executors, administrators and permitted assigns of the parties hereto and shall continue in full force and effect.

G. Counterparts. The parties may execute this Agreement in counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement  
EFFECTIVE this 6 day of December, 2019.

Grantor

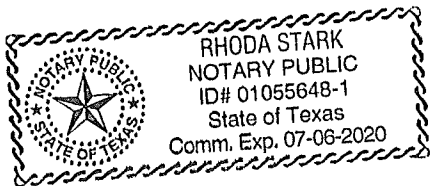
**TEXAS CLIMBERS COALITION**

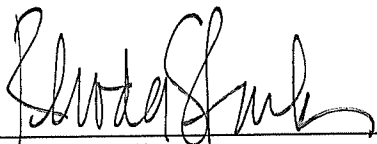
By   
Name Ben Wayne Edwards  
Title Authorized Signatory

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me this 10 day of December 2019  
by Ben Wayne Edwards, Auth. Sign. of Texas Climbers Coalition, a Texas non-  
profit corporation, on behalf of said corporation.



  
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Notary Public





**EXHIBIT "A"**  
**Description of Property**

Lot 19 of CURIOSITY CAVE, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Volume 8, Page 42 of the Plat Records of Travis County, Texas.

