

When recorded return to:

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

## **CONSERVATION AND RECREATION EASEMENT**

Grantor: ILLINOIS CLIMBERS ASSOCIATION

Grantee: THE ACCESS FUND

A Conservation and Recreation Easement situated in the County of Jackson, State of Illinois more particularly described on Exhibits "A" and "B" attached hereto and made a part hereof by reference.

THIS CONSERVATION AND RECREATION EASEMENT ("Easement") is made effective as of the date of recording by **ILLINOIS CLIMBERS ASSOCIATION**, an Illinois nonprofit corporation, ("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 that certain real property (the "Protected Property") in Jackson County, Illinois, more particularly described in Exhibit "A" (legal description) and shown on Exhibit "B" (graphic exhibit), which are attached and incorporated into this Easement by this reference; and

WHEREAS, the Protected Property possesses recreational, natural, scenic, and open space values of great importance to Grantor, Grantee, the people of Jackson County and the people of the State of Illinois (collectively, "Recreational and Conservation Values"); and

WHEREAS, the Protected Property is approximately forty six and three tenths of an acre (46.3 acres) including but not limited to sandstone boulders suitable for rock climbing, oak and ash forest, wildlife habitat, and a portion of land along Tripp's Lane suitable for parking and trailhead improvements; and

WHEREAS, the Protected Property abuts Shawnee National Forest land to the north and west, and portions of its southern and eastern boundary abut landlocked parcels of Shawnee National Forest land. Restrictions on uses of the Protected Property would benefit Shawnee National Forest because it establishes public access and connection between the Protected Property and Shawnee National Forest lands; and

WHEREAS, Tripp's Lane and adjacent Shawnee National Forest land provide public access to the Protected Property according to Section XI herein; and

WHEREAS, the specific Recreational and Conservation Values of the Protected Property are documented in an inventory of relevant features of the Protected Property, of even date, and signed by Grantor and Grantee, on file at the offices of Grantee (with a copy at the offices of Grantor) and incorporated by this reference ("Baseline Documentation"), which consists of a survey and photographs that the parties agree provide, collectively, an accurate representation of the Protected Property at the time of this Easement and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement, which Baseline Documentation may be supplemented from time to time by Grantee, and incorporated into the Easement by this reference; and

WHEREAS, Grantor intends that the Recreational and Conservation Values of the Protected Property be preserved and maintained in perpetuity by the continuation of land use

patterns, including, without limitation, those relating to public recreation existing as of the date hereof that are consistent with this Easement; and

WHEREAS, Grantor further intends, as owner of the Protected Property, to convey to Grantee a conservation and recreation easement including the right to preserve and protect the Recreational and Conservation Values of the Protected Property in perpetuity; and

WHEREAS, Grantee is a “qualified organization” as defined by Section 170(h)(3) of the Internal Revenue Code and a “tax-exempt non profit organization” as defined in Section 501(c)(3) of the Internal Revenue Code and is qualified to receive and hold conservation easements under Illinois statute, and Grantee’s primary purpose is the preservation, protection, or enhancement of land in its natural, scenic, and open space condition for recreational and specifically rock climbing use; and

WHEREAS, Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation and recreation values of the Protected Property for the benefit of this generation and the generations to come;

## **II. CONVEYANCE AND CONSIDERATION**

**A.** For the reasons stated above, and in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, and pursuant to the laws of the State of Illinois, Grantor hereby voluntarily grants and conveys to Grantee a conservation and recreation easement in perpetuity over the Protected Property, consisting of certain rights in the Protected Property, as defined in this Easement, subject only to the restrictions contained in this Easement.

**B.** Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

## **III. PURPOSE**

The purpose of this Easement is to implement the mutual intentions of Grantor and Grantee as expressed in the above Recitals, which are incorporated herein by this reference, and in the provisions that follow, to prevent any use of the Protected Property that will significantly interfere with or impair the Recreational and Conservation Values of the Protected Property (the "Purpose") and to maintain the following primary and secondary purposes:

1. As a primary purpose, to provide for public access and recreation, specifically including rock climbing and bouldering, so that present and future generations may enjoy the Protected Property predominantly in its natural, scenic, and open space condition.

2. As a secondary purpose, to conserve and protect natural and open space values, including wildlife habitat, native flora and fauna, and ecological processes on the Protected Property as these values exist on the date of this instrument and as they may evolve in the future.

#### IV. RIGHTS CONVEYED TO GRANTEE

To accomplish the Purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

**A. Identification and Protection.** To identify, enhance, preserve and protect the Recreational and Conservation Values of the Protected Property.

**B. Access.** To enter the Protected Property at reasonable times in order to inspect, monitor Grantor's compliance with and otherwise enforce the terms of this Easement for the purpose of making a general inspection to monitor compliance with this Easement, and that Grantee shall not unreasonably interfere with Grantor's use of the Protected Property.

**C. Restoration.** To prevent any activity on or use of the Protected Property that is inconsistent with the Purpose of this Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to Section X.

**D. Enforcement.** To enforce the terms of this Easement, consistent with Section X, including without limitations performing any and all actions permitted under this Easement and the right to enforce public access as required under Section XI.

**E. Assignment.** To assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section XV.

**F. Development Rights.** All development rights that are now or hereafter allocated to, implied, reserved or inherent in the Protected Property, except such as are specifically reserved by Grantor under Section V below, and the parties agree that such non-reserved development rights are terminated and extinguished, and may not be used on or transferred to any portion of the Protected Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield or density of the Protected Property or any other property.

**G. Property Interest Owner.** The right, as an interest owner in the Protected Property, to receive notification from and join Grantor as a party to any condemnation or eminent domain proceedings affecting the Protected Property, or to any leases, surface use agreements, damage agreements or rights-of-way that may be proposed, granted or required hereafter as a result of activities with the potential to impact the surface of the Protected Property or its Recreational and Conservation Values.

## V. USES AND ACTIVITIES CONSISTENT WITH THE PURPOSE OF THE EASEMENT

**A. General.** Grantor reserves for itself and its personal representatives, heirs, successors and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Protected Property that is consistent with the Purpose of the Easement and that is not prohibited by this Easement. Without limiting the generality of this subsection, Grantor specifically reserves for itself and its personal representatives, heirs, successors, and assigns, the following uses and activities:

**B. Recreation.** To develop, maintain, and use the Protected Property and to permit use by the public of the Protected Property for recreation as required under Section XI; subject to the following:

1. Primary uses shall include rock climbing, bouldering, hiking, and enjoyment of views and natural habitat consistent with the Purpose of this Easement. Notwithstanding the foregoing, Grantee and Grantor acknowledge that certain portions of the property may not be appropriate for rock climbing, bouldering, or other types of recreation at all times, and may be best managed through certain restrictions, or seasonal limitations on the activities. Therefore, Grantee or Grantor, upon mutual agreement, may restrict access to the Protected Property or parts thereof, but only to the extent and for the duration necessary to assure safety, to permit necessary maintenance, or to preserve important scenic, ecological, and other Recreational and Conservation Values of the Protected Property.

2. Other possible permitted uses of the property by the public may include instructional services, including but not limited to paid guide services, climbing gym-organized outings, and club, nonprofit, or university-organized outings; provided such uses do not significantly impact the natural character of the area or substantially interfere with the primary uses of the Protected Property stated above. During any and all instructional services, the property shall remain open to other public users so long as their use is also consistent with the Purpose and this section.

3. Public use shall not substantially interfere with the peace and quiet enjoyment of adjacent residential uses.

4. Construct, install, operate and maintain stairs, fences, trash cans, benches, native vegetation, landscaping, landscape structures, erosion control and drainage devices, trails, signs, bathroom facilities, parking areas off Tripp Lane, and other facilities as necessary, and may utilize all tools or equipment necessary to accomplish these activities, for the use of the Protected Property by the public and the protection of the public's safety.

5. Allow the public to construct, install, operate and maintain climbing anchors, rappel anchors, and bolts, and may utilize all tools or equipment which Grantee or Grantor deem reasonably necessary to accomplish these activities with the use of motorized equipment as

necessary. At its sole discretion, Grantor may require a review process for the public to request approval of climbing anchors, rappel anchors, and bolts; provided that Grantee, in its sole discretion, may approve, reject, or amend any request it deems necessary to be consistent with the Purpose and this section.

6. Overnight camping and use by the public shall be allowed at the sole discretion of the Grantor so long as such use is restricted by Grantor to be consistent with the Purpose of this Easement. Grantor may construct, establish, operate, and maintain designated camping areas necessary to accomplish these activities for the use of the Protected Property by the public.

7. Hunting, target shooting or other discharge of firearms, or any trapping, are prohibited.

8. The removal of wildlife, trees and other vegetation by the public are prohibited, except as deemed necessary by Grantee to enhance the Recreational and Conservation Values of the Protected Property.

**C. Road Maintenance.** The construction, maintenance, renovation, expansion, or replacement of existing roads necessary to provide public access for permitted uses hereunder, and to further or maintain the Recreational and Conservation Values of the Protected Property. The design and location of any construction, renovation, expansion, or replacement shall be subject to the prior written approval of Grantee, and maintenance of the roads and trails may not adversely impact the Recreational and Conservation Values of the Protected Property.

**D. Trail Maintenance.** The construction, maintenance, renovation, expansion, or replacement of existing pedestrian trails necessary to maintain public access for permitted uses hereunder, and to further or maintain the Recreational and Conservation Values of the Protected Property, and maintenance, construction, renovation, expansion, or replacement of the trails may not adversely impact the Recreational and Conservation Values of the Protected Property.

**E. Bathroom Facilities and Parking Improvements.** The construction, maintenance, renovation, or replacement of future bathroom facilities (such as a vault toilet or composting toilet) and a parking area; provided that such facilities and improvements are located to preserve, as much as possible, the undisturbed Recreational and Conservation Values of the Protected Property. The design and location of any construction, renovation, or replacement shall be mutually agreed to by Grantor and Grantee.

**F. Fences.** The construction and maintenance of fences or gates; provided that reasonable public access for permitted uses hereunder is provided and maintained. The design and location of any fences or gates shall be subject to the prior written approval of Grantee.

**G. Signs.** The placement of signs on the Protected Property to advertise for sale, to state the conditions of access for permitted uses hereunder, to acknowledge the placement of this Easement on the Protected Property, to direct trail users, and to provide interpretive information

regarding the natural environment; provided that such signs are located to preserve, as much as possible, the undisturbed Recreational and Conservation Values of the Protected Property.

**H. Forest Management.** The maintenance of existing forest management activities; provided that such activities are carried out in compliance with federal, state, and local regulations and the specific terms and conditions of this Easement and do not impact the integrity of the watershed, water quality and quantity and the Recreational and Conservation Values of the Protected Property. The forest management activities are subject to the following limitations:

1. Prescribed fires must be carried out by public agencies or licensed contractors for the purposes of maintaining the Recreational and Conservation Values of the Protected Property.

2. No clear-cut harvest methods may be used. For the purpose of this Easement, a forested area will be deemed “clear-cut” unless there remains after harvesting or permitted selective cutting, a sufficiently dense and well distributed stand of developing and mature indigenous trees so that the character of the landscape remains substantially forested.

3. Forest chemicals may be used on the Protected Property only in the amounts and with the frequency constituting the minimum necessary to accomplish reasonable forest management objectives. The use of such chemicals shall be conducted in such a manner as to minimize the adverse effect upon the Recreational and Conservation Values of the Protected Property and to avoid any impairment of the natural ecosystem.

4. Timber harvesting shall be supervised by a licensed professional forester and conducted under a written contract with competent operators. The contract shall specify relevant requirements for compliance with this Easement and shall be subject to the prior written approval of Grantee.

**I. Protection of Public Health or Safety.** The undertaking of other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; provided that any such activity shall be conducted so that interference with the Recreational and Conservation Values of the Protected Property is avoided, or, if avoidance is not possible, minimized to the extent possible.

**J. Creation of Mortgage Liens.** The creation of consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of securing repayment of indebtedness of the Grantor is allowed, so long as such liens shall remain subordinate to this Easement.

## VI. USES AND ACTIVITIES INCONSISTENT WITH THE PURPOSE OF THE EASEMENT

A. **General.** Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of this subsection, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited; except as expressly permitted in Section V above:

B. **Subdivision.** The legal or "de facto" division, subdivision, or partitioning of the Protected Property; except as deemed necessary by Grantee to preserve, protect or enhance the Recreational and Conservation Values of the Protected Property.

C. **Industrial Uses.** Use of the Protected Property for any industrial purpose.

D. **Commercial Uses.** Use of the Protected Property for any commercial purpose that is not consistent with and directly supportive of the use of the Protected Property in accordance with Section V.B above.

E. **Utilities.** The above ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities.

F. **Construction.** The placement or construction of any buildings, structures, or other improvements of any kind (including, without limitation, pipelines, wells, septic systems, and drain fields); except as deemed necessary by Grantor and Grantee to be consistent with and directly supportive of the use of the Protected Property in accordance with Section V.B above.

G. **Alteration of Land.** The alteration of the surface of the land, including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat, or sod; except as deemed necessary by Grantor and Grantee to preserve or protect the Recreational and Conservation Values of the Protected Property.

H. **Alteration of Water Courses.** The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses; except as deemed necessary by Grantee to preserve, protect or enhance the Recreational and Conservation Values of the Protected Property.

I. **Erosion or Water Pollution.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

J. **Feedlots.** The establishment and maintenance of a commercial feedlot. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the

land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.

**K. Agricultural Activities.** The conducting of grazing or agricultural activities of any kind.

**L. Waste Disposal.** The disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property.

**M. Signs.** The placement of commercial signs, billboards, or other advertising material on the Protected Property; except as deemed necessary by Grantee to be consistent with and directly supportive of the use of the Protected Property in accordance with Section V.B and V.G above.

**N. Hunting.** Hunting, target shooting or other discharge of firearms, or any trapping, unless the prior consent of Grantee has been granted as may be determined appropriate if such proposed action shall be consistent with the Purpose of this Easement (such as rodent removal).

**O. Mining.** The exploration for, or development and extraction of, minerals, oil, gas, or other hydrocarbons, soils, sands, or gravel on or below the surface of the Protected Property.

**P. Herbicides or Pesticides.** The use of any herbicides or pesticides; except for forest chemicals in accordance with Section V.H.; and as deemed necessary by Grantor and Grantee, mutually, to preserve, protect or enhance the Recreational and Conservation Values of the Protected Property.

**Q. Removal of Trees and Other Vegetation.** The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property; except in accordance with Section V; and except as deemed necessary by Grantee to preserve, protect or enhance the Recreational and Conservation Values of the Protected Property or to conduct recreational, educational or research activities consistent with the Purpose of this Easement.

**R. Introduced Vegetation.** The introduction of nonnative wetland plants and nonnative invasive species on the Protected Property; except as deemed necessary by Grantee to enhance the Recreational and Conservation Values of the Protected Property.

**S. Off-Road Vehicles and Excessive Noise.** The operation of motorcycles, dune buggies, snow mobiles, or any other type of off-road motorized vehicles or the operation of other sources of excessive noise pollution.

**T. Additional Easements.** Granting any additional easements, rights of way or other interests in the Protected Property (other than compatible easements or a security interest

subordinate to this Conservation Easement) without first obtaining the written consent of Grantee.

**U. Unlawful activity.** Engaging in any use or activity that may violate, or may fail to comply with, all federal, state, or local laws, regulations, and policies. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Recreational and Conservation Values of the Protected Property.

## **VII. AFFIRMATIVE OBLIGATIONS AND COMMITMENTS**

**A. Invasive Non-Native Species.** Grantor and Grantee commit to work together over the coming years to explore and implement reasonable methods of controlling or eradicating invasive non-native species on the Protected Property.

**B. Native Species.** Grantor and Grantee commit to work together over the coming years to encourage the establishment of appropriate native species on the Protected Property.

## **VIII. NOTICE AND APPROVAL**

**A. Notice.** Grantor acknowledges and agrees that several provisions of this Easement require Grantor to notify Grantee and to receive Grantee's written approval prior to undertaking certain permitted uses and activities within the Protected Property. The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Easement. Whenever such notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms of this Easement and the Purpose thereof.

**B. Approval.** Where approval by one of the parties is required under this Easement, such approval shall be granted or denied in writing within thirty (30) days of the recipient's determining that a written request for approval is complete, including all necessary documentation, and such approval shall not be unreasonably withheld.

1. **Grantor.** If Grantor must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without Grantee's approval only if Grantor notifies Grantee prior to taking such action and Grantee cannot provide its approval, with or without conditions, within such time as is reasonable under the circumstances.

2. Grantee. Grantee's approval for any discretionary consent permitted by this Easement may be withheld only upon a reasonable determination by Grantee that the use or activity as proposed would be inconsistent with the Purpose of this Easement. Grantee's approval may include reasonable conditions that must be satisfied in undertaking the proposed use or activity.

3. Failure to Approve Within the Required Time. When approval is required under this Easement, and when such approval is not granted or denied within the time period and manner set forth in this subsection, approval of the permitted use or activity in question may be presumed.

**C. Addresses.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class certified mail, postage prepaid, or by facsimile (if available) with original dispatched by certified mail, addressed as follows, or to such other address as either party from time to time shall designate by written notice to the other:

To Grantor: Illinois Climbers Association  
C/O Kelly Bliss  
550 S Rocky Comfort Rd  
Makanda, IL 62958

To Grantee: The Access Fund  
PO Box 17010  
Boulder, CO 80308

or to such other address as either party designates by written notice to the other.

## **IX. ALTERNATIVE DISPUTE RESOLUTION**

**A. Preventive Discussions.** Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other's actions under the Easement or the use of or activities or conditions on the Protected Property, and will meet as needed, but no later than fifteen (15) days after receipt of a written request for a meeting, or on the date specified in the meeting request, to minimize the same.

**B. Optional Alternative Dispute Resolution.** If a dispute is not resolved through preventive discussions under subsection A, Grantor and Grantee may by mutual agreement submit the matters to mediation or arbitration upon such rules of mediation or arbitration as Grantor and Grantee may agree. If a dispute arises between the parties concerning the consistency of any present or proposed use or activity with the Purpose of this Easement, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, the parties shall meet together to discuss the dispute and attempt resolution. If the dispute is not resolved through preventive discussions, either party may thereafter refer the dispute to

mediation or arbitration by request made in writing to the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single mediator or arbitrator to hear the matter. The matter shall be settled in accordance with any Illinois State mediation or arbitration statute then in effect, and a mediation settlement or an arbitration award may be entered in any court having jurisdiction. If mediation is pursued, the parties shall share equally the costs of the mediator and shall specify in the settlement agreement how the costs of all other aspects of the settlement are to be paid. If arbitration is pursued, the prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrator and reasonable attorney's fees, which shall be determined by the arbitrator or any court having jurisdiction that may be called upon to enforce or review the award.

## **X. REMEDIES**

**A. Notice of Violation, Corrective Action.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

**B. Grantor's Failure to Respond.** Grantee may bring an action as provided in subsection C if Grantor:

1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from Grantee; or

2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

**C. Grantee's Action.**

1. **Injunctive Relief.** Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:

a. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and without the necessity to post a bond; and

b. To require the restoration of the Protected Property to the condition that existed prior to any such injury.

2. **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Recreational and Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability in any way, Grantee shall apply any damages recovered to the cost of undertaking corrective or restoration action on the Protected Property.

**D. Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Recreational and Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

**E. Scope of Relief.** Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**F. Costs of Enforcement.** In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses, including reasonable attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity. If Grantor ultimately prevails in any judicial proceeding initiated by Grantee to enforce the terms of this Easement, the costs of Grantor's reasonable expenses shall be borne by Grantee and those of its personal representatives, heirs, successors, or assigns.

**G. Discretion in Enforcement.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

**H. Waiver of Certain Defenses.** Grantor acknowledges that Grantee and its successors and assigns have limited resources for monitoring compliance with the terms of this Easement. In recognition of this fact, and in full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription. Except for the foregoing, Grantor specifically retains any and all rights it has under the law as owner of the Protected Property, including but limited to the right to make claims against Grantee for any breach by Grantee of the terms of this Easement.

**I. Acts Beyond Grantor's Control.** Neither Grantor nor Grantee shall be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if such party is prevented from fulfilling such obligation by, or such condition fails to occur due to:

a. Forces beyond such party's reasonable control, including without limitation, destruction or impairment of facilities resulting from breakdown not resulting from lack of ordinary care and maintenance, flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, proceeding by court or public authority, or act or failure to act by court, public authority or third party, which forces by exercise of due diligence and foresight such party could not reasonably have expected to avoid; or

b. Any action deemed reasonable by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

**J. Compliance Certificates.** Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including a compliance certificate, that certifies, to the best of Grantee's knowledge, the status of Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, and provide the compliance certificate to Grantor within thirty (30) days of receipt of Grantor's written request and payment therefore. If Grantee believes it cannot in good faith prepare such a certificate, Grantee shall prepare in writing and deliver to Grantor a description of the reasons which it reasonably believes prevent it from issuing such a certificate and the actions reasonably necessary for Grantor to take to enable Grantee to issue such a certificate.

## **XI. ACCESS BY PUBLIC**

Access by the general public to the Protected Property shall be open year-round as consistent with the Purpose of this Easement.

## **XII. COSTS, LIABILITIES AND TAXES, ENVIRONMENTAL COMPLIANCE, AND INDEMNIFICATION**

**A. Costs, Legal Requirements, Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of any adequate liability insurance coverage. Grantee shall have no responsibility for the protection of Grantor, the public or any third parties from risks relating to conditions on the Protected Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor.

Neither Grantor nor Grantee assumes any obligation to maintain or make safe the Protected Property for public recreational use, including rock climbing, bouldering, hiking, and camping, and each claims all the rights and immunities against liability for injury to the public to the fullest extent of the law, including under 745 ILCS 65/1 to 65/7 and successor sections. Nothing herein shall be construed to grant an invitation or license or standing to bring an action at law or in equity hereunder, nor any rights in the Protected Property by implied dedication, prescription, adverse possession or otherwise.

Grantor shall install signs on the boundary of the Protected Property sufficient to protect the Recreational and Conservation Values, identify where public access is permitted, and inform the public and abutting property owners that the Protected Property is under the protection of this Easement.

**B. Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. If Grantor fails to pay any taxes when due, Grantee is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.

**C. Representations and Warranties.** Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge:

1. There are no apparent or latent defects in or on the Protected Property;

2. Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;

3. There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials, or wastes that are or are designated as, hazardous, toxic, dangerous, or harmful or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;

4. Neither Grantor nor Grantor's predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances at sites designated or proposed to be designated as federal Superfund (42 U.S.C. § 9601 et seq.) sites; and

5. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Recreational and Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

**D. Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee should be responsible for remediation in accordance with all applicable laws.

**E. Control.** Grantor acknowledges that Grantee has neither possessory rights in the Protected Property, nor any responsibility or right to control, maintain or keep up the Protected Property other than as set forth in Section IV above. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA").

**F. Grantor's Indemnity.** Grantor shall hold harmless, indemnify, and defend Grantee and Grantee's heirs, personal representatives, successors, and assigns (collectively, "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation,

reasonable attorneys' and consultants' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property that is the result of Grantor's actions or the actions of Grantor's directors, officers, employees, agents, or contractors on or about the Protected Property, and the obligations, covenants, representations and warranties in subsections A, B, C, and D of this section; provided, however, that Grantor's indemnity hereunder shall be limited in type and amount to the coverage provide by Grantor's liability insurer.

**G. Grantee's Indemnity.** Grantee shall hold harmless, indemnify, and defend Grantor and Grantor's heirs, personal representatives, successors, and assigns (collectively, "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property that is the result of Grantee's actions or the actions of Grantee's directors, officers, employees, agents, or contractors on or about the Protected Property and the obligations, covenants, representations and warranties in subsections A, B, C, and D of this section; provided, however, that Grantee's indemnity hereunder shall be limited in type and amount to the coverage provide by Grantee's liability insurer.

### **XIII. EXTINGUISHMENT, CONDEMNATION AND SUBSEQUENT TRANSFER**

**A. Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by mutual agreement of the Grantor and Grantee or by judicial proceedings in a court having jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined in accordance with Section XIII.C of this Easement; except if this Easement is terminated or extinguished, whether in whole or in part, by mutual agreement of the Grantor and Grantee.

**B. Condemnation.** If all or any part of the Protected Property is taken by condemnation, or by purchase in lieu of condemnation by any public, corporate, or other authority so as to terminate the Easement in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Protected Property subject to the taking or in-lieu purchase, and all damages resulting there from. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in-lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the percentage set forth in Section XIII.C of this Easement below.

**C. Valuation.** Grantor and Grantee stipulate that as of the date of this Easement, they are each vested with a real property interest in the Protected Property. Grantor and Grantee further stipulate that Grantee's interest in the Easement has a value of fifteen percent (15%) of the fair market value of the Protected Property from this date forward, and such percentage interest shall remain constant in relation to any future fair market value of the Protected Property. Such percentage interest shall be used only for determining Grantee's proportion of proceeds from any payment of any sale, exchange, or involuntary conversion compensation, or any damages or action, resulting from circumstances described in the Extinguishment and Condemnation paragraphs above. The Parties agree that the value of any improvements to the Protected Property made by Grantor after the date of this Easement is reserved to Grantor.

**D. Application of Proceeds.** Grantee shall use any proceeds received under the circumstances described in this Section XIII in a manner consistent with its conservation purposes.

**E. Subsequent Transfers.** Grantor agrees to:

1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;

2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property;

3. Give written notice to Grantee of the intended transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

#### **XIV. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, as amended (or any successor provision(s) then applicable). Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, and shall be recorded in the official records of Jackson County, Illinois, and any other jurisdiction in which such recording is required.

#### **XV. ASSIGNMENT AND SUCCESSION**

**A. Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the State of Illinois. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

**B. Succession.** If at any time Grantee ceases to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and prior to such time Grantee has not named a successor organization in accordance with the requirements of Section XV.A above, then Grantee's rights and obligations under this Easement shall become vested and fall upon a qualified entity acceptable to Grantor to the extent that such qualified entity shall accept this Easement, and so long as said qualified entity is not the present owner of the Protected Property, with purposes similar to Grantee's, constituting a "qualified organization" within the meaning of the Internal Revenue Code of 1986; provided that if such vesting in any of the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court having jurisdiction shall direct, pursuant to the applicable Illinois law and the Internal Revenue Code and with due regard to the Purpose of this Easement.

## **XVI. RECORDATION**

Grantee shall record this instrument in a timely fashion in the official records of Jackson County, Illinois, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

## **XVII. GENERAL PROVISIONS**

**A. Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Illinois.

**B. Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the Purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. **Severability.** If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

D. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIV.

E. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.

F. **"Grantor" - "Grantee".** The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, its personal representatives, successors and assigns.

G. **Successors and Assigns.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

H. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

I. **Counterparts.** The parties may execute this instrument in two or more 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.

J. **Joint Obligations.** The obligations imposed by this Easement upon Grantor shall be joint and several.

K. **Effective Date.** The effective date of this Easement is the date of recording in the records of Jackson County, Illinois.

L. **No Third Party Rights.** This instrument is made and entered into for the sole benefit and protection of Grantor and Grantee and their respective successors and assigns. No person or entity other than the parties hereto and their respective successors and assigns shall have any right of action under this Easement or any right to enforce the terms and provisions hereof.

**XVIII. SCHEDULE OF EXHIBITS**

- A. Legal Description of the Conservation and Recreation Easement
- B. Graphic Exhibit of the Conservation and Recreation Easement

IN WITNESS WHEREOF, Grantor and Grantee have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2016.

Grantor

**ILLINOIS CLIMBERS ASSOCIATION**

By \_\_\_\_\_  
 Name \_\_\_\_\_  
 Its \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
 } ss  
 COUNTY OF \_\_\_\_\_ }

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016,  
 By \_\_\_\_\_ as \_\_\_\_\_ of ILLINOIS  
 CLIMBERS ASSOCIATION.

Witness my hand and official Seal.

\_\_\_\_\_  
 Notary Public

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



## EXHIBIT "A"

### Legal Description of Protected Property

**General Description Parcel 1:** A part of the East one-half of the Southwest Quarter of Section 26, Township 10 South, Range 3 West of the Third Principal Meridian, County of Jackson, State of Illinois.

**Detail description Parcel 1:** Beginning at an aluminum post monument found monumenting the Southeast corner of the East one-half of the Southwest Quarter of Section 26, Township 10 South, Range 3 West of the Third Principal Meridian; thence North along the monumented East line of the Southeast Quarter of the Southwest Quarter of the last aforesaid Section 26, a measured distance of 329.30 feet to an iron pin monument with an aluminum cap; thence West along a line with a measured deflection angle of 87°20'05" to the left, a measured distance of 592.96 feet to an iron pin monument with an aluminum cap; thence Northwest along a line with a measured deflection angle of 65°42'43" to the right, a measured distance of 496.96 feet to an iron pin monument with an aluminum cap; thence North along a line with a measured deflection angle of 23°56'22" to the right, a measured distance of 883.10 feet to an iron pin monument with an aluminum cap; thence Northwest along a line with a measured deflection angle of 22°38'36" to the left, a measured distance of 755.09 feet to an iron pin monument with an aluminum cap; thence North along a line with a measured deflection of 16°49'07" to the right, a measured distance of 143.46 feet to an iron pin monument with an aluminum cap; thence East along a line with a measured deflection angle of 93°41'58" to the right, a measured distance of 683.99 feet to an iron pin monument with an aluminum cap; thence Southeast along a line with a measured deflection angle of 42°48'01" to the right, a measured distance of 294.36 feet to an iron pin monument with an aluminum cap; thence South along a line with a measured deflection angle of 46°55'09" to the right, a measured distance of 560.68 feet to an iron pin monument with an aluminum cap in the centerline of a public road being identified as Tripp's Lane; thence Southerly along the centerline of the last aforesaid public road being identified as Tripp's Lane being the arc of a circular curve concave to the Southeast having a measured radius of 188.54 and a measured internal angle of 17°45'22", with a measured deflection angle of 18°53'57" to the right to the chord thereof, a measured distance of 58.43 feet to an iron pin monument with an aluminum cap; thence Southerly along the centerline of the last aforesaid public road being identified as Tripp's Lane being tangent to the last aforesaid arc of a circular at the last aforesaid point, a measured distance of 215.28 feet to an iron pin monument with an aluminum cap; thence East along a line with a measured deflection angle of 99°07'57" to the left, a measured distance of 166.33 feet to an iron pin monument with an aluminum cap in the monumented East line of the Northeast Quarter of the Southwest Quarter of the last aforesaid Section 26; thence North along the monumented East line of the Northeast Quarter of the Southwest Quarter of the last aforesaid Section 26 with a measured deflection angle of 90°53'18" to the left, a measured distance of 1209.45 feet to an aluminum post monument found monumenting the Northeast corner of the East one-half of the Southwest Quarter of the last aforesaid Section 26; thence West along the monumented North line of the East one-half of the Southwest Quarter of the last aforesaid Section 26 with a measured deflection angle of 89°43'11" to the left, a measured distance of 1326.03 feet to an aluminum post monument found monumenting the Northwest

corner of the East one-half of the Southwest Quarter of the last aforesaid Section 26; thence South along the monumented West line of the East one-half of the Southwest Quarter of the last aforesaid Section 26 with a measured deflection angle of  $89^{\circ}53'04''$  to the left, a measured distance of 2701.10 feet to an aluminum post monument found monumenting the Southwest corner of the East one-half of the Southwest Quarter of the last aforesaid Section 26; thence East along the monumented South line of the East one-half of the Southwest Quarter of the last aforesaid Section 26 with a measured deflection angle of  $88^{\circ}56'04''$  to the left, a measured distance of 671.07 feet to an aluminum post monument found monumenting the Southwest corner of the Southeast Quarter of the Southeast Quarter of the Southwest Quarter of the last aforesaid Section 26; thence continuing East along the monumented South line of the East one-half of the Southwest Quarter of the last aforesaid Section 26 projected, a measured distance of 671.92 feet to the point of beginning for this description, containing 46.301 acres more or less, being subject to the right-of-way of a public road being identified as Macedonia Road over and across the Northeast corner of the foregoing described parcel or tract of land and being subject to the right-of-way of a public being identified as Tripp's Lane over and across the East portion of the foregoing described parcel or tract.

# EXHIBIT "B"

## Graphic Exhibit of Protected Property – Parcel 1

