

MEMORANDUM OF AGREEMENT FOR BUFFALO PIT

This Memorandum of Agreement for Buffalo Pit ("Agreement") is entered into by THE ACCESS FUND ("AF"), a Colorado nonprofit corporation qualified under Section 501(c)(3) of the Internal Revenue Code, RUMNEY CLIMBERS' ASSOCIATION, a New Hampshire nonprofit corporation qualified under Section 501(c)(3) of the Internal Revenue Code ("RCA"), and GARY AND ROBYN ZIELINSKI ("Seller") to establish the process under which the parties will investigate and negotiate the purchase and sale of certain real estate commonly known as Buffalo Pit. The Buffalo Pit real property is owned by Seller and is more particularly described in Exhibit A attached and is referred to herein as "Buffalo Pit".

WHEREAS, AF is organized with a mission to keep U.S. climbing areas open and conserve the climbing environment, including the acquisition and financing for acquisition of climbing areas by local climbing organizations;

WHEREAS, RCA is organized with a mission to preserve climbing resources located on Rattlesnake Mountain through collaborative efforts and education;

WHEREAS, Seller has provided a long history of climbing and public access at Buffalo Pit and desires to continue this tradition by selling Buffalo Pit to a nonprofit or public entity that will preserve access to Buffalo Pit and its natural and recreational resources;

WHEREAS, with support from AF, RCA can serve as an interim owner of Buffalo Pit to help manage, steward, and fundraise and advocate for a subsequent permanent transfer from RCA to White Mountain National Forest; and

WHEREAS, AF and RCA desire to investigate, negotiate, and facilitate if desirable and reasonably possible pursuant to subsequent agreements, the purchase of Buffalo Pit by RCA.

NOW, THEREFORE, AF, RCA, and Seller agree as follows:

1. Appraisal Process.

(a) AF, with input from the RCA, shall together select a short list of appraisers who are members in good standing of the Appraisal Institute to conduct an independent, third party appraisal of Buffalo Pit.

(b) RCA shall contract one of the selected appraisers to separately appraise the fair market value of Buffalo Pit within NINETY (90) days of executing this Agreement.

(c) RCA shall pay the full appraisal fee upon ordering or delivery of the appraisal.

(d) If the parties move forward with a subsequent Purchase and Sale Agreement as described in Section 4 below, Seller shall reimburse RCA the cost of the appraisal as described above.

2. Preliminary Title Review. RCA will obtain a preliminary title commitment for title insurance showing title to the Property to be vested in Seller and committing to insure such title to the buyer in the amount of the Purchase Price. RCA shall pay for any preliminary title commitment fees.

3. Purchase Price. The purchase price for Buffalo Pit shall be based on the final appraised value as determined in Section 1 and as further agreed in a separate Purchase and Sale Agreement. Seller, in its sole discretion, may consider a bargain sale to RCA at a purchase price below the final appraised value. The difference between appraised value and the final purchase price may be considered as a tax-deductible donation by Seller, pursuant to applicable laws. All parties will work together in good faith to negotiate and attempt to determine a contractual purchase price.

4. Purchase and Sale Agreement.

(a) If Seller, AF, and RCA agree to a purchase price for Buffalo Pit, the parties shall negotiate in good faith to enter into a Purchase and Sale Agreement between Seller and RCA, as buyer, within thirty (30) days of delivery of the final appraisal.

(b) RCA and Seller agree to a due diligence option period of sixty (60) days from the date of any Purchase and Sale Agreement for Buffalo Pit. During this period, RCA will evaluate title and the condition of the property. RCA's obligations to purchase Buffalo Pit are subject to fulfillment and satisfaction of clean title, sufficient funding/financing, board approval, and other conditions as agreed upon in the Purchase and Sale Agreement.

(c) AF shall offer to make a loan to RCA for its ultimate purchase of Buffalo Pit, subject to the Access Fund Land Conservation Campaign Revolving Loan Program guidelines, AF Board approval, and entering into final executed loan documentation between AF and the RCA. Seller, in its sole discretion, may consider offering RCA some amount of seller-financing if agreed by the parties.

5. Confidentiality; Exclusivity. The fact and substance of this Agreement is confidential. No public statements, communication, or press releases shall be issued without written consent and mutual agreement by all parties during the terms of this Agreement. The Seller agrees not to discuss, or use agents to facilitate discussion of, the sale of Buffalo Pit with any other person or entity for a period of ONE HUNDRED AND EIGHTY DAYS (180) following execution of this Agreement.

6. This Agreement shall automatically expire in the event that RCA and Seller are unable to enter into a Purchase and Sale Agreement for the purchase of Buffalo Pit on or before August 31, 2015. The parties agree that the term of this Agreement may be extended in writing by mutual agreement.

7. Sections 1, 2 and 5 of this Agreement are enforceable according to their terms, but this Agreement does not constitute a valid, binding or enforceable obligation to either sell or purchase Buffalo Pit. Such obligation to either sell or purchase Buffalo Pit may only be established pursuant and subject to execution of a separate Purchase and Sale Agreement as described above.

8. Other.

- (a) **AUTHORITY.** Each party to this Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance of this Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- (b) **AFFILIATES, SUCCESSORS, AND ASSIGNS.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- (c) **INTEGRATED AGREEMENT; MODIFICATION.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations and representations. This Agreement may not be modified except in writing signed by the parties.
- (d) **INTERPRETATION.** Each party acknowledges that it and its legal counsel have reviewed this Agreement.
- (e) **CHOICE OF LAW & VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to conflict of law provisions. The parties agree to submit to the jurisdiction of any state or federal court within the State of New Hampshire in any action or dispute resolution process arising out of the terms, enforcement, or breach of this Agreement.
- (f) **ATTORNEYS' FEES.** Should any legal action or proceeding be commenced by either party in order to enforce this Agreement or any provision hereof, or in connection with any alleged dispute, breach, default, or misrepresentation in connection with any provision herein contained, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any on appeal, discovery or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.
- (g) **SEVERABILITY.** If any provision of this Agreement is held to be invalid or unenforceable, such provision will not affect or invalidate the remainder of this Agreement, and to this end the provisions of this Agreement are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Agreement.
- (h) **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall

constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Agreement.

- (i) RECITALS. The Recitals set forth above are incorporated herein as essential terms hereof.
- (j) THIRD PARTY BENEFICIARIES. There are no third parties intended to be benefitted by this Agreement.
- (k) TIME. Time is of the essence in the performance of all obligations by a party hereunder.

IN WITNESS WHEREOF, the undersigned duly authorized representatives of the parties hereto have executed and delivered this Agreement as of the date first above written.

THE ACCESS FUND

By: Brady Robinson
Name: Brady Robinson
Title: Access Fund

RUMNEY CLIMBERS' ASSOCIATION

3/2/2015 By: Rose Kenny
Name: Rose Kenny
Title: RCA

GARY ZIELINSKI

G. Zielinski

ROBYN ZIELINSKI

Robyn Zielinski

Exhibit A

LEGAL DESCRIPTION OF BUFFALO PIT

A certain tract or parcel of land situated on the northerly side of the highway leading from Rumney to Wentworth on the north side of Bakers River (Buffalo Road) bounded and described as follows:

Beginning at a stake and stones in the hollow on said highway, northerly on line to land now or formerly of C.W. Herbert, thence westerly to land now or formerly known as the Farnsworth Place, thence southerly on said Herbert's line to the highway, thence easterly by said highway to the bound begun at containing 66 acres, more or less.

SUBJECT TO an easement given by Charles E. Keniston to White Mountain Power Company to erect and maintain electric light lines across this property.

Meaning and intending to describe and convey all and the same premises as described in the second tract of the deed of Charles E. Keniston to Charles E. Keniston, Jr., dated September 21, 1949 and recorded in the Grafton County Registry of Deeds in Book 1229, Page 239. See also deed of Charles E. Keniston, Jr. to Charles E. Keniston, Jr. and Jane B. Keniston dated September 2, 1983 and recorded in the Grafton County Registry of Deeds in Book 1481, Page 740. I derive my title as sole surviving joint tenant of Charles E. Keniston, Jr. who died January 23, 1987; see certified copy of Certificate of Death recorded in said Registry in Book 1784, Page 734.

The conveyed premises is being conveyed with the restriction that no mobile home shall be permitted on the premises at any time.

The grantees acknowledge that the property is under current use taxation, that they are taking title subject to a current use lien and shall be responsible for payment of any penalties assessed by the Town of Rumney should the property be removed from current use.

The premises conveyed herewith do not constitute the homestead premises of the grantor.