

This document was prepared by
~~and after recording return to:~~
Locke Lord LLP
111 S. Wacker Dr.
Chicago, IL 60606
Attention: Grace Poe

Return To:
Wheatland Title Guaranty
105 W. Veterans Parkway, Yorkville, IL 60560

STATE OF ILLINOIS } ss No. 0007
HARDIN COUNTY }
FILED IN THE RECORDER'S OFFICE OF HARDIN COUNTY,
ON THE 4 DAY OF MARCH AD 2014
AT 1:11 O'CLOCK PM RECORDED IN BOOK 44
OF MISS CON PAGE 20
Grace Conner RECORDER

Date: 03/04/14
Rental Housing Support
Program Fund Surcharge: \$ 10.00

This space reserved for Recorder's use only.

CRE-2013HD-7013

GATING AGREEMENT

This GATING AGREEMENT (this "Agreement") is entered into as of this 24 day of November, 2013 by and between Pioneer Trail Wind Farm, LLC, a Delaware limited liability company ("Pioneer Trail"), and Randall Conkle and Regina Conkle (collectively, "Owner").

RECITALS:

A. Owner is the owner of fee title to that certain parcel of land located in Elizabethtown, Hardin County, Illinois, which land is legally described on Exhibit A attached hereto and by this reference made a part hereof ("Owner's Land"). There is a naturally occurring cavern located on Owner's Land commonly known as Griffith Cave. Griffith Cave has been identified as a winter hibernacula of the Indiana bat (*Myotis sodalis*), a species listed as endangered under the federal Endangered Species Act ("ESA"). The entrance to Griffith Cave is currently unsecured and readily accessible to trespassers.

B. In connection with its application to the U.S. Fish & Wildlife Service ("USFWS") for an incidental take permit for Indiana bats under Section 10(a)(1)(B) of the ESA, Pioneer Trail desires to install and maintain specialized gating at the entrance to Griffith Cave, at no cost or expense to Owner, in an effort to protect the viability of the cave as Indiana bat hibernacula. Owner desires for Pioneer Trail to install such gating, and the parties desire to memorialize the terms of such agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby covenant and agree as follows:

1. Incorporation of Recitals. The Recitals are hereby incorporated into this Section 1 as if fully set forth herein.



2. Compensation. As consideration for the easements and other covenants granted and made by Owner herein, Pioneer Trail shall pay Owner the sum of ten thousand dollars (\$10,000.00), which amount shall be due and payable to Owner in full within thirty (30) days of the date hereof.

3. Grant of Easements. Owner hereby grants to Pioneer Trail an exclusive easement to construct and install the Gating (as defined below) on Owner's Land on or about the location identified as the Griffith Cave Opening/Entrance on the site plan attached hereto as **Exhibit B** and by this reference made a part hereof (the "**Cave Entrance**"). Owner hereby further grants to Pioneer Trail, and to the USFWS and the U.S. Forest Service ("**USFS**"), a non-exclusive easement to enter upon those portions of Owner's Land as may be necessary or desirable for Pioneer Trail, USFWS, or USFS (or their respective consultants, contractors or representatives) to (A) maintain, repair and replace (collectively, "**Maintain**") the Gating from time to time, and (B) perform periodic surveys of the bat population utilizing the cave and such other studies as may be required or requested of Pioneer Trail by the USFWS ("**Surveys**"). As used herein, "**Gating**" shall mean a locking fence, gate and/or other structure installed at the Cave Entrance for the purpose of securing the Cave Entrance, which fence and gate shall be constructed of such materials, and designed and installed in such manner, as may be necessary or appropriate to achieve the desired level of protection of the Indiana bat colony utilizing the cave.

4. Provision of Keys. Pioneer Trail shall provide keys to the Gating to Owner, the USFWS and the USFS. Pioneer Trail, USFWS and USFS shall endeavor to provide Owner with notice prior to entering onto the Owner's Land in the exercise of the easement rights to Maintain the Gating or to conduct Surveys, but any failure by any of the easement holders to provide such prior notice shall not constitute a default hereunder by Pioneer Trail or otherwise affect in any manner any of Pioneer Trail's, USFWS' or USFS' rights and Owner's obligations, under this Agreement.

5. Restoration Obligation. Following the completion of any activities to Maintain the Gating, Pioneer Trail shall restore Owner's Land to substantially the same condition that existed prior to the performance of such activities by Pioneer Trail, other than those modifications to Owner's Land and the Cave Entrance that may be required to Maintain the Gating.

6. Insurance. Any contractors or subcontractors performing work for Pioneer Trail on Owner's Land to install or Maintain the Gating pursuant to this Agreement shall at all times maintain adequate general liability insurance, to afford protection against any and all claims for personal injury, death or property damage arising directly or indirectly out of the exercise of the rights and privileges granted herein.

7. No Liens. All activities to Maintain the Gating or conduct Surveys shall be undertaken at no cost or expense to Owner and Pioneer Trail shall not cause or permit any mechanics' liens to be recorded against Owner's Land.

8. Owner Covenant. Owner covenants and agrees that Owner shall not remove, alter or otherwise tamper with the Gating. Owner reserves the right to enter the cave and escort guests into the cave for personal enjoyment; however, to prevent harassment or other disturbance of the

Indiana bats within Griffith Cave, Owner shall not permit entry into the cave between October 1 and April 30, shall generally minimize its access to the cave at other times, and shall not provide use of its key to third parties, nor invite or permit third parties to enter the cave for commercial, recreational or other non-essential purposes. Owner acknowledges and agrees that the continued existence and maintenance of the Gating, and the maintenance and expansion of the Indiana bat colony utilizing Griffith Cave as winter hibernacula, is of significant importance to Pioneer Trail's business operations, and that Pioneer Trail is relying upon Owner's covenants contained in this Agreement.

9. Disclaimer and Release. Owner acknowledges and agrees that the Gating is not intended to provide security or to address any safety issues associated with Griffith Cave or any other portion of Owner's Land, but that it is solely intended to protect and preserve the Indiana bat colony utilizing Griffith Cave. Accordingly, the persons constituting Owner, on behalf of themselves and their respective heirs and personal representatives, hereby release Pioneer Trail and any direct or indirect partner, affiliate, member, manager, shareholder, director, officer, principal, employee or agent of Pioneer Trail (collectively, the "**Pioneer Trail Parties**") from, and waive any claims that Owner may have against the Pioneer Trail Parties relating to, any and all liability or responsibility to Owner, or anyone claiming by, through or under Owner, by way of subrogation or otherwise, for any injury to or death of persons, or damage to or loss of real or personal property caused by or resulting from the exercise of Pioneer Trail's right to install or Maintain the Gating or conduct Surveys.

10. Miscellaneous.

(a) Any notice, request, demand, consent, approval and other communications under this Agreement (a "**notice**") shall be in writing, and shall be deemed to have been duly given if (i) delivered personally, (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid or (iii) sent by next-day or overnight mail or delivery, and, in any such case, shall be given to the address for each party set forth by each party's signature below. Any party, by written notice to the other in the manner herein provided, may designate an address different from that set forth below.

(b) No forbearance on the part of either party in enforcing their respective rights under this Agreement shall constitute a waiver or a forfeiture of any rights or remedies of such party under this Agreement.

(c) All of the limitations, covenants, conditions and easements contained herein shall be irrevocable and binding upon Owner and the heirs, personal representatives and other successors and assigns of Owner for a period of 45 years from the date hereof.

(d) This Agreement shall be governed and construed under the laws of the State of Illinois.

(e) This Agreement may be executed in counterparts, all of which when taken together shall constitute a single instrument.

(f) If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such

term or provision shall not be affected thereby. All words used shall be understood and construed of such gender or number as circumstances may require.

(g) The terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto. No third party beneficiaries are intended pursuant to this Agreement and none shall be recognized as receiving any benefit hereunder. The respective rights and obligations of Pioneer Trail may be assigned by Pioneer Trail from time to time. In the event of any such assignment, Pioneer Trail shall thereupon be released from all liability under this Agreement.

(h) No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by Pioneer Trail and Owner (or their respective successors and assigns).

(i) Owner shall not look to the property or assets of any of the Pioneer Trail Parties in seeking either to enforce Pioneer Trail's obligations under this Agreement or to satisfy a judgment for Pioneer Trail's failure to perform such obligations; and none of the Pioneer Trail Parties shall be personally liable for the performance of Pioneer Trail's obligations under this Agreement.

[SIGNATURE PAGES FOLLOW]

[Signature Page Attached to Gating Agreement]

PIONEER TRAIL:

PIONEER TRAIL WIND FARM, LLC

By: _____
Name: Peter J. De Marco
Title: CEO

Address:

Pioneer Trail Wind Farm, LLC
c/o ECRNA
353 N. Clark Street, 30th Floor
Chicago, IL 60654
Attn: General Counsel

STATE OF _____)
) SS.
COUNTY OF _____)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that _____, personally known to me to be the _____ of Pioneer Trail Wind Farm, LLC, whose name is subscribed to the within Agreement, appeared before me this day in person and acknowledges that he/she signed and delivered the said Agreement as his/her free and voluntary act and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this ___ day of _____, 2013.

Notary Public

Print Name: _____
County of Residence: _____
My Commission Expires: _____

[SEAL]

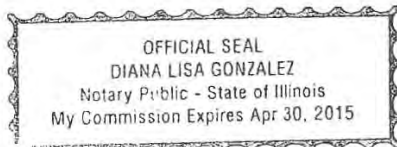


EXHIBIT A

LEGAL DESCRIPTION OF OWNER'S LAND

THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION TWENTY-ONE, TOWNSHIP TWELVE SOUTH, RANGE EIGHT EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE MINERALS AS RESERVED IN WARRANTY DEED RECORDED IN DEED RECORD 19 PAGE 517, IN THE RECORDER'S OFFICE OF HARDIN COUNTY, ILLINOIS), SITUATED IN HARDIN COUNTY, ILLINOIS:

LESS AND EXCEPT THE PROPERTY CONVEYED BY QUIT-CLAIM DEED RECORDED DECEMBER 30, 2003, AS DOCUMENT NO. 1570 BOOK 83 OF DEEDS PAGE 113, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND BEING A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN. SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT AN IRON ROD SET AT THE SOUTHEAST CORNER OF SAID QUARTER-QUARTER SECTION; THENCE NORTH 89 DEGREES 34 MINUTES 07 SECONDS WEST, 32.71 FEET ALONG THE SOUTH LINE OF SAID QUARTER-QUARTER SECTION TO A POINT; THENCE NORTH 00 DEGREES 10 MINUTES 12 SECONDS EAST, 209.68 FEET ALONG AN EXISTING FENCE LINE TO A POINT; THENCE NORTH 07 DEGREES 14 MINUTES 23 SECONDS EAST, 250.72 FEET TO A POINT IN THE EAST LINE OF SAID QUARTER-QUARTER SECTION; THENCE SOUTH 00 DEGREES 03 MINUTES 40 SECONDS EAST, 458.65 FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING. SAID PARCEL TO CONTAIN 0.246 ACRES, MORE OR LESS, PER SURVEY BY BILLY J. ABERNATHY, ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 3536, DATED DECEMBER 1, 2003.

EXCEPTING FURTHER THAT PROPERTY CONVEYED BY WARRANTY DEED RECORDED JULY 25, 2005, AS DOCUMENT NO. 3041 BOOK 85 OF DEEDS PAGE 136, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER (SW-1/4) OF THE SOUTHWEST QUARTER (SW-1/4) OF SECTION TWENTY-ONE (21), TOWNSHIP TWELVE (12) SOUTH, RANGE EIGHT (8) EAST OF THE THIRD PRINCIPAL MERIDIAN, HARDIN COUNTY, ILLINOIS, THENCE NORTH ALONG THE EAST LINE OF SAID 40-ACRE TRACT A DISTANCE OF 475 FEET TO THE POINT OF BEGINNING; FROM SAID POINT OF BEGINNING, THENCE WEST A DISTANCE OF 250 FEET TO A POINT, THENCE NORTH FOR A DISTANCE OF 210 FEET TO A POINT, THENCE EAST FOR A DISTANCE OF 250 FEET TO THE EAST LINE OF SAID 40-ACRE TRACT, THENCE SOUTH ALONG SAID LINE FOR A DISTANCE OF 210 FEET TO THE POINT OF BEGINNING, CONTAINING ONE (1) ACRE MORE OR LESS.

EXCEPTING FURTHER THAT PROPERTY CONVEYED BY QUIT CLAIM DEED RECORDED DECEMBER 20, 2012, AS DOCUMENT NO. 9230 BOOK 91 OF DEEDS PAGE 202, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

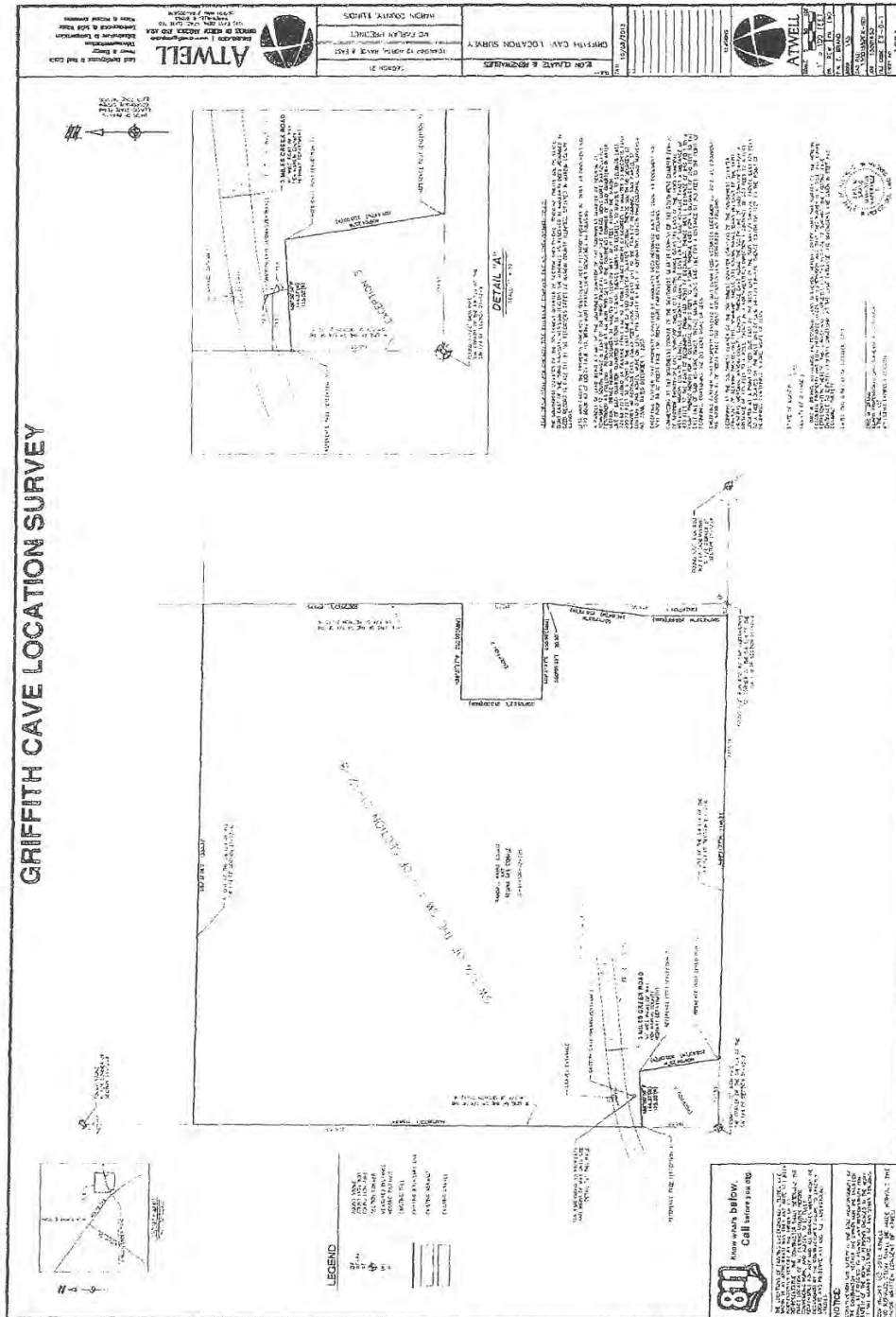
BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER (SW-1/4) OF THE SOUTHWEST QUARTER (SW-1/4) OF SECTION TWENTY-ONE (21), TOWNSHIP TWELVE (12) SOUTH, RANGE EIGHT (8) EAST OF THE THIRD PRINCIPAL MERIDIAN, HARDIN COUNTY, ILLINOIS, THENCE EAST ALONG THE SOUTH LINE OF SAID SW-1/4 SW-1/4 A DISTANCE OF 175 FEET TO A POST, THENCE IN A NORTHWESTERLY DIRECTION A DISTANCE OF 200 FEET TO A POST LOCATED AT A POINT 125 FEET DUE EAST OF THE WEST LINE OF THE SAID SW-1/4 SW-1/4, THENCE EAST 125 FEET TO A TREE LOCATED ON THE WEST LINE OF SAID SW-1/4 SW-1/4, THENCE SOUTH 191 FEET TO THE POINT OF BEGINNING, CONTAINING 1/2 ACRE, MORE OR LESS.

PINS 06-81-126-02-000/MA 06-1-291

EXHIBIT B

SITE PLAN DEPICTING LOCATION OF CAVE OPENING

[attached]



B-2