

When recorded return to:
Demille Mackay
3550 S. 4800 W. Suite K
West Valley City, UT
84120

12679532
12/14/2017 3:21:00 PM \$24.00
Book - 10629 Pg - 6346-6352
ADAM GARDINER
Recorder, Salt Lake County, UT
US TITLE
BY: eCASH, DEPUTY - EF 7 P.

14-25-476-015-0000 **USAGE AGREEMENT**

THIS USAGE AGREEMENT (the “**Agreement**”) is entered into as of the last date set forth below by and between DeMILLE MACKAY DENTAL, LLC, a Utah limited liability company (hereinafter “**DeMille**”), and AMERICA FIRST FEDERAL CREDIT UNION, a federally chartered credit union (hereinafter the “**Credit Union**”). DeMille and the Credit Union may hereafter be referred to individually as a “**Party**” or collectively as the “**Parties**”.

RECITALS

WHEREAS, 4850 Associates, LC, a Utah limited liability company (“**4850 Associates**”) is the fee simple owner of certain real property located in Salt Lake County, Utah, legally described on **Exhibit “A”**, which is attached hereto and made a part hereof (the “**4850 Associates Parcel**”); and

WHEREAS, the 4850 Associates Parcel and the Shopping Center (as such term is defined in the Cross-Easement Agreement) are subject to that certain Cross-Easement Agreement dated February 21, 1989, and recorded February 21, 1989, as Entry No. 4738354, in Book 6105, at Page 892, in the Official Records of the Salt Lake County Recorder, as amended from time to time (collectively, the “**Cross-Easement Agreement**”);

WHEREAS, 4850 Associates has agreed to sell to DeMille the 4850 Associates Parcel and DeMille has agreed to purchase the 4850 Associates Parcel contingent upon the execution and recording of an amendment to the Cross-Easement Agreement (the “**Fourth Amendment**”), which is attached hereto as **Exhibit “B”** and made a part hereof, which amendment shall permit DeMille to operate a dental office on the 4850 Associates Parcel;

WHEREAS, the Fourth Amendment must be executed by a certain percentage of fee title holders within the Shopping Center, including the Credit Union, owner of that certain real property located in Salt Lake County, Utah, in proximity to the 4850 Associates Parcel and legally described on **Exhibit “C”**, which is attached hereto and made a part hereof (the “**Credit Union Parcel**”), in order to amend the Cross-Easement Agreement to permit DeMille to operate a dental office on the 4850 Associates Parcel; and

WHEREAS, the Credit Union has agreed to execute the Fourth Amendment contingent upon DeMille agreeing not to oppose or prevent the Credit Union from further amending the Cross-Easement Agreement to allow for the operation of a dental office on the Credit Union Parcel in the event the Credit Union should elect to sell the Credit Union Parcel.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, it is mutually agreed as follows:

1. **Usage.** In the event that the Credit Union should elect to sell the Credit Union Parcel, DeMille agrees that DeMille shall not oppose, prevent, or stall the Credit Union from seeking to further amend the Cross-Easement Agreement to allow for the operation of a dental office on the Credit Union Parcel.

2. **Miscellaneous.**

a. **Entire Agreement.** This Agreement contains the entire agreement among the Parties with respect to the subject matter hereof and supersedes all negotiations, representations, prior discussions and preliminary agreements between the Parties relating to the subject matter hereof.

b. **Cooperation.** Each Party hereto agrees to execute and deliver such additional documents and instruments and to perform such additional acts as any Party may reasonably request or as may be necessary or appropriate to effectuate, consummate, or perform any of the terms, provisions or conditions of this Agreement. This Agreement shall inure to and bind the successors, assigns, heirs, devisees, executors, administrators and personal representatives of the respective Parties.

c. **Construction and Enforcement.** The Parties agree that they were each represented by counsel or had an opportunity to retain counsel to represent and advise them in connection with the negotiation and drafting of this Agreement, and that this Agreement shall be construed as though all Parties had drafted it.

d. **Modification.** This Agreement may not be modified, waived, amended or changed unless the same is in writing and is signed by the Party against whom the enforcement of such modification, waiver, amendment or change is sought.

e. **Authorization of Signators.** The signators to this Agreement warrant that they have the full authority to sign the Agreement and that by signing this Agreement, the Parties shall be fully bound by the terms and conditions of the Agreement.

f. **Attorney's Fees and Costs.** In the event it becomes necessary for any Party to retain an attorney to enforce this Agreement, the prevailing Party in said effort shall be entitled to recover any and all costs, fees and expenses, including reasonable attorney's and expert fees, incurred in enforcing or seeking enforcement hereof, whether incurred through litigation or otherwise.

g. **Jurisdiction and Venue.** In the event that a dispute should arise between the Parties regarding the terms of this Agreement, the Parties agree that jurisdiction and venue are properly before the Third District Court of Salt Lake County, State of Utah.

Exhibit "A"

4850 Associates Parcel

Lot 2, SHOPKO 3500 SOUTH SUBDIVISION, according to the official plat thereof, on file and of record in the Office of the Salt Lake County Recorder.

Tax Parcel 12-25-476-015

Exhibit "B"

Fourth Amendment

Exhibit "C"

Credit Union Parcel

Lot 1, AFFCU 3500 SOUTH SUBDIVISION AMENDED, according to the official plat thereof, on file and of record in the Office of the Salt Lake County Recorder.

Tax Parcel 14-25-476-018

And

Lot 2A, AFFCU 3500 SOUTH SUBDIVISION AMENDED, according to the official plat thereof, on file and of record in the Office of the Salt Lake County Recorder but I can't tell you from the website if they are the owners.

Tax Parcel 14-25-476-017