

14206433 B: 11472 P: 6935 Total Pages: 8  
02/20/2024 02:51 PM By: BGORDON Fees: \$40.00  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.  
1996 EAST 6400 SOUTH SUITE 120 SALT LAKE CITY, UT 84121

WHEN RECORDED MAIL TO:

**MOUNTAIN AMERICA FEDERAL  
CREDIT UNION**  
Attn: Corporate Real Estate  
9800 South Monroe Street  
Sandy, Utah 84070

Affects Parcel Tax ID No. 20-01-101-044-0000  
20-01-101-046-0000 and 20-01-101-042

### **DECLARATION OF RESTRICTIVE COVENANT**

THIS DECLARATION OF RESTRICTIVE COVENANT (this "Covenant") is made on February 20<sup>th</sup> 2024 (the "Effective Date"), by and between ELVA RUPP RUSHTON PROPERTIES, LLC, a Utah limited liability company whose address is 4441 S. 5400 W., West Valley, UT 84120 ("Rushton"), and MOUNTAIN AMERICA FEDERAL CREDIT UNION, a Utah non-profit corporation, whose address is 9800 South Monroe Street, Sandy, Utah 84070 ("MACU"). Rushton and MACU may each be referred to herein individually as a "Party" or collectively as the "Parties," as appropriate under the circumstances.

### **RECITALS**

- A. Rushton is the owner of that certain real property legally described on Exhibit "A" attached hereto and incorporated herein (the "Rushton Property").
- B. Effective as of the Effective Date, MACU has purchased from Rushton that certain real property legally described on Exhibit "B" attached hereto and incorporated herein (the "MACU Property").
- C. MACU intends to develop, construct, and operate a state or federally chartered credit union on the MACU Property.
- D. In connection with the conveyance of the MACU Property to MACU, Rushton and MACU desire to enter into this Covenant in order to impose restrictive covenants on the Rushton Property, pursuant and subject to the terms and conditions set forth below.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby declare and agree as follows:

1. **Exclusive Use.** RUSHTON hereby declares, covenants, and agrees that it will not lease or sell any portion of the RUSHTON property without subjecting such lease or sale to a restriction whereby such property may not be used or operated as a state or federally chartered credit union, bank, or other business conducting retail depository banking activities (the "Restriction") commencing on the Effective Date; provided, however that this Covenant and the Restriction shall automatically terminate in the even the MACU Property is not used for the operation of a state or federally chartered credit union for a period of ninety (90) days in any three hundred sixty-five (365) day period (the "Operating Condition") (excluding therefrom time periods during which the credit union is closed for business to the public for the purpose of repairing the MACU property or any buildings thereon as a result of a casualty or fire) or to update the MACU Property. In the event of such automatic termination, any owner (or principal thereof) of the RUSHTON Property or any portion thereof, may record in the real property records of Salt Lake County, Salt Lake a declaration or affidavit under penalty of perjury memorializing such termination. Further provided, that the Operating Condition shall not commence until MACU has received a certificate of occupancy for the building it is constructing on the Property, this in order to provide MACU sufficient time to develop, construct, and begin operating a state or federally chartered credit union on the MACU Property. The Restriction shall not include the installation of an automatic teller machine (ATM) on the premises of any business within the RUSHTON Property.
2. **Binding Effect.** All of the covenants, conditions, declarations, restrictions contained herein shall run with the land, shall be a burden on the Rushton Property and all owners or tenants thereof, shall be for the benefit of the MACU Property, and shall benefit and bind the Parties and their respective successors and assigns; provided, however, once an owner sells any portion of the Rushton Property to a third party, such owner shall be released from its obligations under this Covenant as to such sold portion of the Rushton Property and the purchaser thereof shall be bound by this Covenant as to such purchased portion of the Rushton Property.
3. **Remedies.** RUSHTON acknowledges that the breach of this Covenant may cause immediate and irreparable harm for which damages are not adequate and that, to protect against such harm, MACU may seek and obtain from a court of competent jurisdiction the issuance of a restraining order or injunction to prohibit the actual or threatened breach hereof..
4. **Attorneys' Fees.** In the event of any controversy, claim, or action being filed or instituted between the Parties to interpret or enforce the terms of this Assignment, or arising from the breach of any provision hereof, the prevailing Party shall be entitled to receive from the non-prevailing Party all costs, damages, and expenses, including without limitation reasonable attorneys' fees incurred by the prevailing Party (prior to trial, at trial, on appeal, and during any post-judgment collection activities).
5. **Original.** Each party agrees to take such further acts and execute such further documents and instruments as may be reasonably required to consummate the transactions set forth herein. The recitals to this Covenant are true, correct, material, and are incorporated by reference as if set forth in their entirety herein. This covenant shall be governed in all respects by the laws of the State of Utah. This Covenant may be executed in one or more counterparts, which taken together shall constitute one and the same document.

**SEE EXHIBITS A and B ATTACHED HERETO AND MADE A PART HEREOF**

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Assignment effective as of the Effective Date.

**Rushton:**

EVLA RUPP RUSHTON, LLC,  
a Utah limited liability company

By: Terry L. Rushton  
Name: Terry L. Rushton  
Title: Manager  
Date: February 15, 2024

**MACU:**

MOUNTAIN AMERICA FEDERAL CREDIT  
UNION, a Utah non-profit corporation

By: \_\_\_\_\_  
Name: Chris Tapia  
Title: Senior Vice President of Property Services  
Date: \_\_\_\_\_

[ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Assignment effective as of the Effective Date.

**Rushton:**

EVLA RUPP RUSHTON, LLC,  
a Utah limited liability company

By: \_\_\_\_\_  
Name: Terry L. Rushton  
Title: Manager  
Date: \_\_\_\_\_

**MACU:**

MOUNTAIN AMERICA FEDERAL CREDIT  
UNION, a Utah non-profit corporation

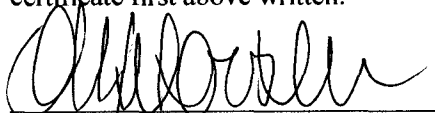
By: Chris Tapia  
Name: Chris Tapia  
Title: Senior Vice President of Property Services  
Date: 2/20/24

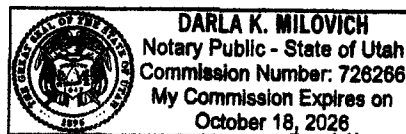
**[ACKNOWLEDGEMENTS ON FOLLOWING PAGE]**

State of Utah )  
County of Salt Lake ) : ss

On this 15 day of February, 2024, before me, Darla K. Milovich, a Notary Public in and for said State, personally appeared, Terry L. Rushton known or identified to me to be the Manager of ELVA RUPP RUSHTON, LLC, the Utah limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

  
Notary Public



My commission expires: 10/18/26

Residing at: Salt Lake County, UT

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) : ss

On this \_\_\_\_ day of February, 2024, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared, \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of MOUNTAIN AMERICA FEDERAL CREDIT UNION, the Utah non-profit corporation that executed the instrument or the person who executed the instrument on behalf of said non-profit corporation, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

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

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

Residing at: \_\_\_\_\_

State of \_\_\_\_\_ )  
 : SS  
County of \_\_\_\_\_ )

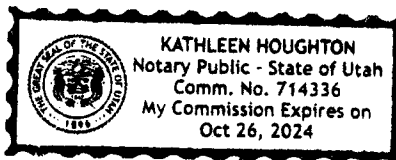
On this \_\_\_\_\_ day of February, 2024, before me, Darla K. Milovich, a Notary Public in and for said State, personally appeared, Terry L. Rushton known or identified to me to be the Manager of ELVA RUPP RUSHTON, LLC, the Utah limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Residing at: \_\_\_\_\_

State of Utah )  
 : SS  
County of Salt Lake )



On this 20 day of February, 2024, before me, KATHLEEN HOUGHTON, a Notary Public in and for said State, personally appeared, CHRIS TAPIA, known or identified to me to be the SVP PROP SERVICES of MOUNTAIN AMERICA FEDERAL CREDIT UNION, the Utah non-profit corporation that executed the instrument or the person who executed the instrument on behalf of said non-profit corporation, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Kathleen Houghton  
Notary Public  
My commission expires: Oct 26, 2024

Residing at: West Jordan

## EXHIBIT A

(Legal Description of Rushton Property)

A tract of land, situate in the NW1/4 NW1/4 of Section 1, T.2S., R.2W., S.L.B. & M. The boundaries of said tract of land are described as follows:

Beginning at the northwest corner of said tract of land in the existing southerly right of way line of 4100 South Street, which corner is 535.80 feet East along the section line and 76.77 feet South from the Northwest Corner of said Section 1; and running thence easterly 111.65 feet along said existing southerly right of way line and along the arc of a 1,130.00-foot radius non-tangent curve to the left, through a central angle of  $05^{\circ}39'40''$  (Note: Radius bears  $N.02^{\circ}03'20''W.$ , Chord bears  $N.85^{\circ}06'50''E.$  for a distance of 111.61 feet) to the northeast corner of said tract; thence South 427.86 feet along the easterly boundary line of said tract to the southeast corner of said tract; thence  $N.59^{\circ}57'21''W.$  128.46 feet along the southerly boundary line of said tract to the southwest corner of said tract; thence North 354.04 feet along the westerly boundary line of said tract to the point to of beginning.

## EXHIBIT B

(Legal Description of MACU Property)

### PARCEL 1:

A tract of land, situate in Lot 1, Floyd L. Rushton Subdivision, a subdivision recorded as Entry No. 5634039 in Book 93-10 at Page 290, in the Northwest quarter of the Northwest quarter of Section 1, Township 2 South, Range 2 West, Salt Lake Base and Meridian. The boundaries of said tract of land are described as follows:

Beginning at the Northwest corner of said tract in the Southerly existing right of way line of 4100 South Street, which corner is 37.31 feet South 00°13'44" West from the Northwest corner of said Lot 1, and running thence Easterly 20.01 feet along said existing Southerly right of way line and the arc of a 1,130.00-foot radius non-tangent curve to the left, through a central angle of 01°00'52" (Note: Radius bears North 00°48'44" West, Chord bears North 88°40'50" East for a distance of 20.01 feet) to the Northeast corner of said tract; thence South 00°13'44" West 354.04 feet along the Easterly boundary line of said tract to the Southeast corner of said tract; thence North 59°43'37" West 125.59 feet along the Southerly boundary line of said tract to the Southwest corner of said tract; thence North 00°13'44" East 168.93 feet along the Westerly boundary line of said tract to a Northwesterly corner of said tract; thence South 89°46'16" East 77.10 feet along a Northerly boundary line of said tract to the beginning of a 29.40-foot radius curve to the left (Note: Radius bears North 36°58'59" West); thence Northeasterly 27.09 feet along the arc of said curve, through a central angle of 52°47'24" (Note: Chord to said curve bears North 26°37'19" East for a distance of 26.14 feet); thence North 00°13'44" East 98.28 feet along the Westerly boundary line of said tract to the point of beginning.

### PARCEL 2:

A tract of land, situate in Lot 2, Floyd L. Rushton Subdivision, a subdivision recorded as Entry No. 5634039 in Book 93-10 at Page 290, in the Northwest quarter of the Northwest quarter of Section 1, Township 2 South, Range 2 West, Salt Lake Base and Meridian. The boundaries of said tract of land are described as follows:

Beginning at the Northeast corner of said tract in the Southerly existing right of way line of 4100 South Street, which corner is 37.31 feet South 00°13'44" West from the Northeast corner of said Lot 2, and running thence along the Easterly boundary line of said tract the following two (2) courses: (1) South 00°13'44" West 98.28 feet to the beginning of a 29.40-foot radius curve to the right; thence (2) Southwesterly 27.09 feet along the arc of said curve through a central angle of 52°47'24" (Note: Chord bears South 26°37'19" West for a distance of 26.14 feet); thence North 89°46'16" West 77.10 feet along a Southerly boundary line; thence South 00°13'44" West 168.93 feet along the Easterly boundary line of said tract to the Southeasterly corner of said tract; thence along the Southerly boundary line the following two (2) courses: (1) North 59°43'37" West 19.29 feet; thence (2) North 82°46'10" West 19.71 feet to the Southwest corner of said tract; thence along the Westerly boundary line of said tract the following two (2) courses: (1) North 00°07'47" East 197.55 feet; thence (2) North 00°58'30" West 80.84 feet to the Northeast corner of said tract; thence along said Southerly existing right of way line the following two (2) courses: (1) South 89°46'16" East 106.48 feet to the beginning of a 1,130.00-foot radius tangent curve to the left; thence (2) Easterly 20.53 feet along the arc of said curve, through a central angle of 01°02'28" (Note: Chord bears North 89°42'30" East for a distance of 20.53 feet) to the point of beginning.