

WHEN RECORDED RETURN TO:

14206434 B: 11472 P: 6943 Total Pages: 9
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

Elva Rupp Rushton Properties, LLC
4441 S. 5400 W
West Valley City, Utah 84120

Affects Parcel Serial Number: 20-01-101-042-0000
20-01-101-044-000 and 20-01-101-046-0000

RECIPROCAL ACCESS EASEMENT AGREEMENT

THIS RECIPROCAL ACCESS EASEMENT AGREEMENT (the “**Agreement**”) dated this 26th day of February, 2024 (the “**Effective Date**”), is made by Elva Rupp Rushton Properties, LLC, a Utah limited liability company, whose address is 4441 S. 5400 W, West Valley City, Utah 84120 (“**Rushton**”), and Mountain America Federal Credit Union, a Utah non-profit corporation, whose address is 9800 S Monroe Street, Sandy, Utah 84070 (“**MACU**” and together with Rushton, the “**Owners**”).

RECITALS:

A. MACU is the owner of the real property located in West Valley City, Utah, Salt Lake County, Parcel Numbers 20-01-101-044-0000 and 20-01-101-046-0000, and more particularly described on **Exhibit A** hereto (the “**MACU Property**”).

B. Rushton is the owner of the real property located in West Valley City, Utah, Salt Lake County, State of Utah, Parcel No. 20-01-101-042-0000, and more particularly described on **Exhibit B**, hereto (“**Rushton Property**”, and each of the MACU Property and the Rushton Property are sometimes referred to herein as a “**Property**”).

C. MACU desires to grant Rushton the right to use so much of the MACU Property as is improved for vehicular and pedestrian traffic, and Rushton desires to grant MACU the right to use so much of the Rushton Property as is improved for vehicular and pedestrian traffic, in each case for the purposes of permitting cross access through each parcel to 4100 South.

D. The Owners now enter into this Agreement for the purpose setting forth their rights and duties with respect to the easements granted herein.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners hereby agree as follows:

1. **Reciprocal Grant of Access Easement.** Each Owner, on its own behalf and on behalf of its employees, agents, respective guests, patrons, and invitees (collectively “**Owner Representatives**”), hereby grants to the other Owner, the perpetual right to use such portion of such Owner’s Property as is improved, from time-to-time, with improvements for through traffic of vehicles and pedestrian (the “**Easement Areas**”) as are necessary to permit the other Owner, and its guests and invitees, to use the Easement Areas to access 4100 South. Each Owner does covenant and agree that, at all times, such Owner’s Property shall be improved with commercially reasonable improvements that provide the other Owner, its guests and invitees with reasonable access to 4100 South, in a location comparable to the existing traffic pattern, and in a manner consistent with the surrounding commercial developments. The Parties agree there will be reasonable and continuous access to the Property at all times.
2. **Maintenance.** Each Owner, at such Owner’s sole cost and expense, shall maintain the Easement Areas located on such Owner’s Property in a commercially reasonable manner consistent surrounding commercial developments, and shall not seek contribution from the other Owner for such costs and expenses. Neither Owner shall block access to the Easement Area, except for periods reasonably necessary for periodic maintenance of the Easement Area.
3. **Term.** This easement is perpetual and shall continue in perpetuity unless both parties agree in writing to terminate it (the “**Term**”).
4. **Periodic Relocation of Reciprocal Access Easement; Covenant of Rushton.** Each Owner acknowledges and agrees that the location of the Easement Area may change from time to time to allow for future construction or reconstruction on such Owner’s Property; provided, however, that each Owner shall not make modifications to the Easement Area that would unreasonable impede the flow of vehicular or pedestrian traffic. Each Owner acknowledges that the Owner relies upon the easement granted herein for partial access to 4100 South and that denial of access to the Easement Area would cause material harm. Each Owner therefore covenants to maintain the Easement Area, to provide the other Owner with unrestricted reasonable access and to take no action to impede the other Owner from having access to the necessary roadways and thoroughfares.
5. **Compliance with Laws; Indemnification.** The Owners shall comply with all rules and regulations, whether federal, state, county, or municipal relating to the use of the Easement Area. Each Owner shall indemnify and defend the other Owner from damage or loss caused to the Easement Area, person or property located on the other Owner’s Property caused by the acts of such Owner, its guests or invitees.
6. **Liens.** Neither Owner nor anyone claiming through such Owner shall have the right to file mechanics liens or any other kind of lien on the other Owner’s Property. Each Owner shall take the necessary steps to keep the other Owner’s property free of all liens arising from or relating to such Owner. If either Owner fails to have any such lien canceled or discharged, the other Owner

may, but shall not be obligated to, pay the claim upon which such lien is based so as to have such lien released of record; and, if such Owner does so, then such other Owner shall pay to the paying Owner, upon demand, the amount of such claim, plus all other costs and expenses incurred in connection therewith.

7. **Default.** A violation of the terms herein contained constitutes an event of default (“**Event of Default**”) under this Agreement. If such Event of Default shall continue for more than ten (10) days after the non-offending party’s written notice of such event or failure is received by the offending party, the non-offending party shall have the right to injunctive relief as well as any other relief available at law or equity, provided, however, it is expressly agreed that no Event of Default or breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate or modify this Agreement.

8. **Litigation; Attorneys’ Fees.** If any action is brought by either party against the other party, relating to or arising out of this Agreement, or the enforcement hereof, the prevailing party shall be entitled to recover from the other party the reasonable attorneys’ fees, costs and expenses incurred in connection with the prosecution or defense of such action, including the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding.

9. **Notices.** All notices and other communications given pursuant to this Agreement shall be in writing and shall be (a) mailed by first class, United States mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the address listed below, (b) hand delivered to the intended addressee, (c) transmitted by electronic mail transmission or (d) sent by nationally recognized overnight courier. Notice sent by certified mail, postage prepaid, shall be effective three (3) business days after being deposited in the United States mail; all other notices shall be effective upon delivery to the address of the addressee. The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision:

To Rushton: Elva Rupp Rushton Properties, LLC
4441 S. 5400 W
West Valley City, Utah 84120
Attn: Terry L. Rushton
Email: corey@coreyrushton.com

To MACU: Mountain America Federal Credit Union
9800 S Monroe Street
Sandy, Utah 84070
Attn: Corporate Real Estate
Email: kjohanos@macu.com

10. **Miscellaneous Provisions.**

a. ***Authority.*** The individual(s) executing this document represents and warrants that he/she has the legal authority to convey the Reciprocal Access Easement described herein.

b. *Amendments.* This Agreement may be amended only by in writing with the signatures of all parties hereto, or their heirs, successors, and assigns.

c. *No Waiver.* The failure to enforce or perform any provision of this Agreement shall not be deemed a waiver of any such right.

d. *Successors and Assigns.* All rights and obligations contained herein or implied by law are intended to bind and inure to the benefit of Rushton and MACU and their respective heirs, successors, and assigns.

e. *Entire Agreement.* This Agreement, together with all Exhibits attached hereto, contains and embodies the entire agreement of the parties hereto, and no representations, inducements or agreement, oral or otherwise, between the parties which are not contained and embodies in this Agreement (including said Exhibits) shall be of any force or effect. All Exhibits attached to and recitals contained in this Agreement are hereby incorporated herein and shall be deemed to be a portion of the enforceable provisions hereof as is restated within the body of this Agreement.

f. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

g. *Severability.* In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such provision shall be severed from this Agreement, shall not affect the validity of the remainder of this Agreement, and all of the other provisions of this Agreement, including such illegal, invalid or unenforceable provision to the fullest extent not illegal, invalid or unenforceable, will continue in full force and effect. It is understood and agreed that each such provision shall be valid and enforceable to the fullest extent allowed by, and be construed wherever possible as being consistent with, applicable law.

h. *Limitation of Liability.* Neither party hereto shall be liable for incidental, special, or consequential, indirect and punitive damages that may arise out of or relate to this Agreement, including but not limited to loss of use, cost of money, loss of profits, loss of services of employees, loss of reputation and loss of financing.

i. *Governing Law.* This Agreement is made and executed under and in all respects shall be governed and construed by the laws of the State of Utah. The venue for all actions, litigation, arbitration, mediation and all other proceedings to enforce, interpret or determine the rights or liabilities of the Parties under or in connection with this Agreement shall be in the courts of Salt Lake County, State of Utah.

[Signatures appear on the following page(s)]

IN WITNESS WHEREOF, the parties have executed this Agreement intending to be legally bound hereby as of the Effective Date.

RUSHTON:

ELVA RUPP RUSHTON PROPERTIES, LLC,
a Utah limited liability company

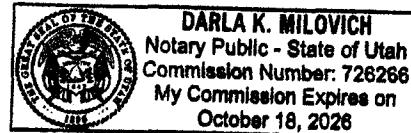
By: Terry L. Rushton
Its: Manager

STATE OF UTAH)
:ss.
COUNTY OF SALT LAKE)

15 AM

On February 2, 2024, personally appeared before me Terry L. Rushton who acknowledged signing the foregoing instrument in the capacity indicated.

NOTARY PUBLIC: Darla K. Milovich



**** MACU SIGNATURE ON FOLLOWING PAGE ****

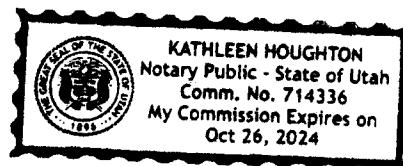
MACU:
MOUNTAIN AMERICA FEDERAL CREDIT UNION,
a Utah non-profit corporation,

By: Chris Tamm

Name: Chris Tapia

Title: Senior Vice President of Property Services

STATE OF UTAH)
COUNTY OF SALT LAKE)



On Feb 20, 2024, personally appeared before me Chris Tapia who acknowledged signing the foregoing instrument in the capacity indicated.

NOTARY PUBLIC

PUBLIC 

EXHIBIT A

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 $00^{\circ}13'44''$ 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 $01^{\circ}00'52''$ (Note: Radius bears North $00^{\circ}48'44''$ West, Chord bears North $88^{\circ}40'50''$ East for a distance of 20.01 feet) to the Northeast corner of said tract; thence South $00^{\circ}13'44''$ West 354.04 feet along the Easterly boundary line of said tract to the Southeast corner of said tract; thence North $59^{\circ}43'37''$ West 125.59 feet along the Southerly boundary line of said tract to the Southwest corner of said tract; thence North $00^{\circ}13'44''$ East 168.93 feet along the Westerly boundary line of said tract to a Northwesterly corner of said tract; thence South $89^{\circ}46'16''$ 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 $36^{\circ}58'59''$ West); thence Northeasterly 27.09 feet along the arc of said curve, through a central angle of $52^{\circ}47'24''$ (Note: Chord to said curve bears North $26^{\circ}37'19''$ East for a distance of 26.14 feet); thence North $00^{\circ}13'44''$ 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 $00^{\circ}13'44''$ 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 $00^{\circ}13'44''$ 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 $52^{\circ}47'24''$ (Note: Chord bears South $26^{\circ}37'19''$ West for a distance of 26.14 feet); thence North $89^{\circ}46'16''$ West 77.10 feet along a Southerly boundary line; thence South $00^{\circ}13'44''$ 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 $59^{\circ}43'37''$ West 19.29 feet; thence (2) North $82^{\circ}46'10''$ 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 $00^{\circ}07'47''$ East

197.55 feet; thence (2) North $00^{\circ}58'30''$ 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 $89^{\circ}46'16''$ 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 $01^{\circ}02'28''$ (Note: Chord bears North $89^{\circ}42'30''$ East for a distance of 20.53 feet) to the point of beginning.

EXHIBIT B

Rushton's Property

Serial number: 20-01-101-042

Legal Description:

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°39'40" (Note: Radius bears N.02°03'20"W., Chord bears N.85°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°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.