

Amended Restrictive Covenants Page 1 of 9
Russell Shirts Washington County Recorder
03/18/2020 02:32:51 PM Fee \$40.00 By
SUTHERLAND TITLE COMPANY

WHEN RECORDED RETURN TO:

Red Cliffs Square, LC
920 East Woodoak Lane #200
Salt Lake City, Utah 84117

**THIRD AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTION, AND GRANT OF
EASEMENTS**

THIS THIRD AMENDMENT TO DECLARATION is made and executed effective the 18th day of March, 2020, by RED CLIFFS SQUARE, LC, a Utah limited liability company, (successor in interest to Irvine Investment Company, L.C.), SRE ASL SG PROPCO, LLC, a Delaware limited liability company, and MOUNTAIN AMERICA FEDERAL CREDIT UNION, a Utah non-profit corporation ("MACU").

WHEREAS:

- A. The original Declaration of Covenants, Conditions and Restrictions, and Grant of Easements was recorded February 6, 2006, as Entry No. 2006001691, in the official records of the Washington County Recorder (the "Declaration").
- B. A First Amendment to Declaration of Covenants, Conditions and Restrictions, and Grant of Easements was recorded June 6, 2011 as Entry No. 20110017151, in the official records of the Washington County Recorder ("First Amendment").
- C. A Second Amendment to Declaration of Covenants, Conditions and Restrictions, and Grant of Easements was recorded September 25, 2018 as Entry No. 20180039059, in the official records of the Washington County Recorder ("Second Amendment").
- D. The land referred to in the original Declaration, the First Amendment and the Second Amendment is located in Washington County, State of Utah and is described on Exhibit "A" attached hereto.
- E. The parties to this Amendment consist of the owners of property within the land described on Exhibit "A", which land is currently known as the Red Cliffs Square Shopping Center located in St. George, Utah.
- F. The parties to this Amendment desire to remove the real property being acquired by MACU from the terms and provisions of the Declaration, the First Amendment and the Second Amendment, all pursuant to the terms and conditions set for below.

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NOW, THEREFORE, for the foregoing purposes and in consideration for which this Amendment is now a part, the parties hereby agree as follows:

1. Removal of MACU Property. MACU has acquired a portion of the land "(MACU Property)" originally described in the Declaration, the First Amendment and the Second Amendment, such MACU Property being described on the attached Exhibit "B". From and after the date hereof, the MACU Property is removed from any and all of the conditions and obligations contained in the Declaration, the First Amendment and the Second Amendment. Accordingly, from and after the date of this document, the MACU Property has no further obligation for payments of CAM charges or expenses described in Section 4 of the Declaration, nor any other provision of such Declaration.
2. Remaining Responsibilities of MACU Property. It is acknowledged that the MACU property will hereafter maintain, and be responsible for, all costs and expenses incurred in maintenance of the MACA Property, including its own utilities, landscaping, real property taxes, and asphalt repairs.
3. Continued Validity of Declaration (as amended) by Remaining Property Owners. The remaining owners of property described in Exhibit "A" will remain subject to the provisions of the Declaration, the First Amendment and the Second Amendment.
4. Use Restriction.
 - a. Notwithstanding the foregoing, the remaining owners of property in the Red Cliffs Square Shopping Center agree that as long as MACU is the owner of the MACU Property, no other property in the Shopping Center (other than the MACU Property) may operate as a credit union, bank, or financial institution, service center or corporate office nor any related financial business activities generally performed by credit unions, banks, and financial institutions and their affiliates ("Exclusive Use"). Such activities are reserved for the exclusive use of the MACU Property.
 - b. The purpose of this use restriction is to ensure that so long as MACU (or any successor owner, occupant, or tenant of the MACU Property) operates the MACU Property for the Exclusive Use, the owner of the MACU Property shall have the right to operate the only credit union, bank, financial institution office or ATM on the MACU Property and the Shopping Center. Accordingly, so long as MACU (or any successor owner, occupant, or tenant of the MACU Property) operates the MACU Property for the Exclusive Use, the owners, occupants, tenants, and any other person or entity having any right, title, or interest in or to any portion of the Shopping Center shall be prohibited from operating any portion of the Shopping Center Property for any portion of the Exclusive Use.
 - c. This use restriction shall be a covenant running with the land of the MACU Property and the other property listed on Exhibit "A" (the MACU Property being the dominant estate and the other property being the servient estate), as a restriction against the Red Cliffs Square Shopping Center and as a benefit to the MACU Property. This use restriction shall be for the benefit of MACU and any successor owner, occupant, or tenant of the MACU Property and any other person or entity having any right, title, or interest in or to the MACU Property, or any portion thereof. This use restriction shall be binding on Red

Cliffs Square Shopping Center and any successor owner, occupant, or tenant of any portion of the Red Cliffs Shopping Center and any other person or entity having any right, title, or interest in or to any portion of the Red Cliffs Square Shopping Center.

- d. This Declaration shall continue in full force and effect so long as MACU or any successor owner, occupant, or tenant of the MACU Property is operating the MACU Property for the Exclusive Use. In the event the MACU Property shall not be used for the Exclusive Use for a period of twelve (12) consecutive months or more (excluding therefrom time periods during which the credit union, bank, or financial institution is closed for business to the public for the purposes of renovating or repairing the MACU Property or any buildings and structures thereon, or as a result of a casualty or fire) this Declaration and all restrictions imposed herein on all the parcels that make up the Red Cliffs Shopping Center shall automatically terminate and have no further force or effect, and in such event MACU or the successor owner, occupant, or tenant of the MACU Property shall upon request from Red Cliffs Square, LC or any successor owner(s) of the Red Cliffs Property, as the case may be, execute and record in the Washington County Recorder's Office, a Termination of Declaration of Covenants, Conditions, and Restrictions (the "**Termination**") terminating this use restriction of record. In the event a dispute arises between any of the owners regarding whether the MACU Property has not been used for the Exclusive Use for a period of twelve (12) consecutive months, as set forth above, then such parties shall make commercially reasonable efforts among the Parties to resolve such dispute, including mediation.
 - e. In the event any owner, tenant, or any other person or entity having any right, title, or interest in or to the Red Cliffs Shopping Center (as described on the attached Exhibit "A"), or any portion thereof, violates any covenant, condition, or restriction contained within this use restriction, including without limitation the restrictions imposed by the Exclusive Use, the owner or tenant of the MACU Property shall notify the owner of the applicable portion of the Red Cliffs Shopping Center causing the breach, of such violation in writing, and such notified owner, shall have ten (10) days to cure such violation. In the event that such violation is not cured within such ten-day period, the owner or tenant of the MACU Property shall be entitled to pursue all remedies available at law or in equity, including without limitation a claim for specific performance, damages, or injunctive relief to enforce such owner or tenant's Exclusive Use rights contained in this Declaration.
5. No amendment, change, or modification to this Declaration shall be valid unless it is in writing signed by all of the Parties hereto, or all Parties' successors in interest.

AND, THEREFORE, the remaining Shopping Center and the land which continues to be subject to the Declaration and First Amendment and Second Amendment shall be held, sold and conveyed subject to the Declaration, the First Amendment, the Second Amendment and this Third Amendment, as outlined above, which shall run with the lands and be binding on all parties having any right, title or interest in the lands or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof. Except to the extent herein amended and/or modified herein, all other terms and conditions of said original Declaration, the First Amendment and the Second Amendment shall remain in full force and effect.

IN WITNESS WHEREOF the undersigned have hereunto set their hand effective as of the day, month and year first stated above.

RED CLIFFS SQUARE, LC

a Utah limited liability company

By its Manager Irvine Construction and Realty

a Utah corporation

By: 

Its: President

SRE ASL SG PROPCO, LLC

a Delaware limited liability company

By: SRE ASL Propco JV, LLC,
a Delaware limited liability company,
its sole member

By: ASL SRE Sponsor, LLC,
an Arizona limited liability company,
its sole manager

By: _____

Authorized signatory

MOUNTAIN AMERICA FEDERAL CREDIT UNION

a Utah non-profit corporation

By: 

Its: SVP Corporate R.E.

IN WITNESS WHEREOF the undersigned have hereunto set their hand effective as of the day, month and year first stated above.

RED CLIFFS SQUARE, LC

a Utah limited liability company

By its Manager Irvine Construction and Realty

a Utah corporation


By: _____
Its: President

SRE ASL SG PROPCO, LLC

a Delaware limited liability company

By: SRE ASL Propco JV, LLC,
a Delaware limited liability company,
its sole member

By: ASL SRE Sponsor, LLC,
an Arizona limited liability company,
its sole manager

By: 
Authorized signatory

MOUNTAIN AMERICA FEDERAL CREDIT UNION

a Utah non-profit corporation

By: _____
Its: _____

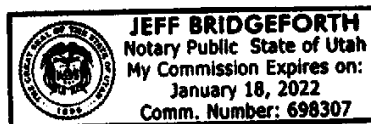
ACKNOWLEDGEMENTS

STATE OF UTAH)

SS:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 18 day of March, 2020, by R. Scott Irvine, whom being duly sworn did say that he is the President of Irvine Construction and REALTY, a Utah corporation, Managing Member of Red Cliffs Square, LC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Red Cliffs Square, LC by authority granted in its Operating Agreement and that the said R. Scott Irvine duly acknowledged to me that he executed the same in the capacity indicated above.

[Signature]
Notary Public



STATE OF UTAH)

SS:
COUNTY OF _____)

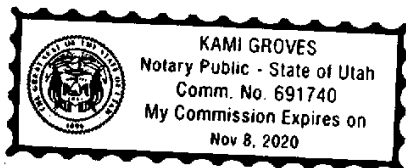
The foregoing instrument was acknowledged before me this ____ day of March, 2020, by _____, whom being duly sworn did say that he/she is the authorized signatory of ASL SRE Sponsor, LLC, an Arizona limited liability company, and that the within and foregoing instrument was signed in the capacity indicated above and that the said _____ duly acknowledged to me that he/she executed the same.

Notary Public

STATE OF UTAH)

SS:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 17th day of March, 2020, by Chris Tapia, whom being duly sworn did say that he is the SUP CORP RE of Mountain America Federal Credit Union, a Utah non-profit corporation and that the within and foregoing instrument was signed in behalf of said company by authority of its By-Laws or applicable Consents and that the said Chris Tapia duly acknowledged to me that he executed the same.



[Signature]
Notary Public

ACKNOWLEDGEMENTS

STATE OF UTAH)
SS:
COUNTY OF _____)

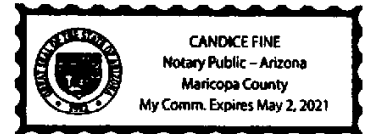
The foregoing instrument was acknowledged before me this ____ day of March, 2020, by R. Scott Irvine, whom being duly sworn did say that he is the President of Irvine Construction and REALTY, a Utah corporation, Managing Member of Red Cliffs Square, LC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Red Cliffs Square, LC by authority granted in its Operating Agreement and that the said R. Scott Irvine duly acknowledged to me that he executed the same in the capacity indicated above.

Notary Public

STATE OF ~~UTAH~~ Arizona
SS:
COUNTY OF Maricopa

The foregoing instrument was acknowledged before me this 16th day of March, 2020, by Kristopher Woolley, whom being duly sworn did say that he/she is the authorized signatory of ASL SRE Sponsor, LLC, an ~~Arizona~~ Arizona limited liability company, and that the within and foregoing instrument was signed in the capacity indicated above and that the said Kristopher Woolley duly acknowledged to me that he/she executed the same.

Candice Fine
Notary Public



STATE OF UTAH)
SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of March, 2020, by _____, whom being duly sworn did say that he/she is the _____ of Mountain America Federal Credit Union, a Utah non-profit corporation and that the within and foregoing instrument was signed in behalf of said company by authority of its By-Laws or applicable Consents and that the said _____ duly acknowledged to me that he/she executed the same.

Notary Public

EXHIBIT 'A'
(original Declaration Property)

[insert legal description]

Beginning at a point being 424.91 feet South 89°03'43" East along the Section line and 165.90 feet South 00°56'17" West from the Northwest corner of Section 22, Township 42 South, Range 15 West, Salt Lake Base and Meridian; said point being on a Southerly boundary of the "Red Cliffs Drive" Right of Way (St. George Commercial Center Subdivision, Entry No. 737111 Book: 1428 Page 2649); and running thence along said "Red Cliffs Drive" the following three (3) courses: North 54°39'25" East 162.67 feet to a point on a 1400.00 foot radius curve to the right; thence 164.88 feet along said curve through a central angle of 06°44'52" (chord bears North 58°01'51" East 164.78 feet); thence North 61°24'17" East 162.88 feet to a point on a 30.00 foot radius curve to the right; thence 48.88 feet along said curve through a central angle of 93°20'45" (chord bears South 71°55'20" East 43.65 feet); thence South 25°14'58" East 162.71 feet to a point on a 997.00 foot radius curve to the right; thence 451.50 feet along said curve through a central angle of 25°56'48" (chord bears South 12°16'34" East 447.65 feet); thence South 00°41'50" West 339.62 feet to a point on the Northerly boundary the "850 North Street" Right of Way boundary; thence along said Right of Way boundary the following two (2) courses: 28.32 feet along a 18.00 foot radius curve to the right through a central angle of 90°08'05" (chord bears South 45°45'53" West 25.49 feet); thence North 89°10'05" West 449.26 feet; thence North 31°08'38" West 188.62 feet to a point on a 69.49 foot radius curve to the left; thence 85.67 feet along said curve through a central angle of 70°37'56" (chord bears North 20°53'08" East 80.34 feet); thence North 59°05'29" East 152.68 feet; thence North 30°49'29" West 260.08 feet; thence North 59°00'51" East 10.44 feet; thence North 30°59'58" West 170.36 feet to the point of beginning.

The description has been rotated to the City HCN:

Basis of Bearing is South 89°03'43" East, between the Northwest corner of Section 22, and the North Quarter Corner of Section 22, Township 42 South, Range 15 West, Salt Lake Base and Meridian.

EXHIBIT 'B'
(MACU Property)

[insert legal description]

Lot 1, RED CLIFFS SQUARE, according to the official plat thereof, as recorded in the office of the County Recorder, Washington County, State of Utah, on March 16, 2020, as Entry No. 20200012883, of official records.

Tax Parcel No.: SG-RDCS-1