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ADAM GARDINER  
Recorder, Salt Lake County, UT  
STEWART TITLE INS AGCY OF UT  
BY: eCASH, DEPUTY - EF 11 P.

When Recorded Return To:  
DB Trail Crossing, LLC  
1178 W. Legacy Crossing Blvd., Suite 100  
Centerville, UT 84014

Attn: Spencer H. Wright

01459-26815

26-24-353-001, 26-24-353-004, 26-24-353-005, 26-24-353-006  
26-24-353-007 MUTUAL ACCESS, MAINTENANCE AND EASEMENT AGREEMENT,  
26-24-353-009 WITH EXCLUSIVE USE RESTRICTION

This Mutual Access, Maintenance and Easement Agreement, With Exclusive Use Restriction (this "Agreement") is executed as of the 12 day of September, 2017 (the "Effective Date"), by DB Trail Crossing, LLC, a Delaware limited liability company (the "Developer"), whose address is 1178 W. Legacy Crossing Blvd., Suite 110, Centerville, Utah 84014 and Mountain America Federal Credit Union, a Utah non-profit corporation ("MACU"), whose address is 7181 South Campus View Drive, West Jordan, Utah 84084.

A. Developer is the fee owner of that certain real property consisting of six tracts located within the Kennecott Daybreak Village 7A Plat 1 Subdivision (the "Shopping Center") in South Jordan, Salt Lake County, Utah, being more particularly described on Exhibit A attached hereto and incorporated herein by this reference for all purposes (the "Developer Tracts").

B. MACU is the fee owner of that certain tract of real property located in the Shopping Center in South Jordan, Salt Lake County, Utah, which abuts a portion of the Developer Tracts and is described on Exhibit B attached hereto and incorporated herein by this reference for all purposes (the "MACU Tract").

C. The parties desire to establish certain easements and restrictions upon, over and across portions of their respective tracts of real property.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree and declare as follows:

1. Shopping Center Restrictions and Easements. Developer and MACU acknowledge: (a) the Restrictions and Easements Agreement, recorded on 11/25/2015 as entry number 12178028 in the Office of the Salt Lake County Recorder (the "Shopping Center REA"); (b) the Subdivision Plat, recorded on 11/20/2015 as entry number 12174130 in the Office of the Salt Lake County Recorder (the "Shopping Center Plat"); and (c) the Covenants for Community for Daybreak, recorded on 2/27/2004 as entry number 8989517 in the Office of the Salt Lake County Recorder (the "Community Declaration"). The Shopping Center REA, the Shopping Center Plat, and the Community Declaration are referred to hereafter collectively as the "Shopping Center Documents". The parties agree that the Shopping Center Documents burden and benefit the Developer Tracts and the MACU Tract, as applicable. In the event of any conflicts between the Shopping Center Documents and this Agreement, the Shopping Center Documents shall control.

2. Additional Use Restriction. In addition to the restrictions on use set forth in the Shopping Center Documents, for so long as the MACU Tract is used as a credit union (the "Exclusive Use") any and all owners, tenants, or other persons or entities having any right, title or interest in or to the Developer Tracts or any portion thereof shall be prohibited, prevented, barred, and precluded from operating the Exclusive Use or any element thereof on the Developer Tracts or any portion thereof (the "Exclusive Use Restriction"). Accordingly, the Exclusive Use Restriction shall prohibit Developer from permitting any portion of the Developer Tracts to be used for the Exclusive Use. Notwithstanding anything set forth in this Section 2 or elsewhere in this Agreement, the Developer Tracts, or any portion thereof, may be used as a bank or other financial institution other than a credit union and such use shall not violate the Exclusive Use Restriction. The owner or tenant of the MACU Tract, may enforce the foregoing Exclusive Use Restriction (as described below) against the offending

user, including any owner, tenant, or other user of the Developer Tract(s), as applicable (the “Offending User”). In the event of any violation of this Exclusive Use Restriction by any owner, tenant, or other user of the Developer Tract(s), the owner or tenant of the MACU Tract shall notify the Offending User of such violation in writing, and such notified Offending User 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 Tract shall be entitled to recover reasonable attorney’s fees and costs from such notified Offending User in connection with the owner or tenant of the MACU Tract’s enforcement of the Exclusive Use rights contained in this Section 2, including without limitation any action, claim, proceeding for damages or injunctive relief for any breach or violation of the Exclusive Use Restriction contained herein. This Exclusive Use Restriction shall run with the land of the Developer Tracts and the MACU Tract (the MACU Tract being the dominant estate and the Developer Tracts being the servient estate), as a restriction against the Developer Tracts and as a benefit to the MACU Tract.

3. Easements.

a. Subject to the terms of this Agreement, Developer hereby grants to MACU and its successors and assigns a non-exclusive, perpetual easement for the limited purposes of vehicular and pedestrian ingress and egress to and from the MACU Tract over, upon, and across those certain portions of the Developer Tracts that are specifically constructed, improved and utilized as sidewalks, access drives, drive aisles or other similar improvements, but only to the extent the Drive Improvements (as defined below) are actually constructed on the Developer Tracts or any portion thereof. The foregoing easement is for the benefit of and shall be appurtenant to the MACU Tract.

b. Subject to the terms of this Agreement, MACU hereby grants to Developer and its successors and assigns a non-exclusive, perpetual easement for the limited purposes of vehicular and pedestrian ingress and egress to and from the Developer Tracts over, upon, and across those certain portions of the MACU Tract that are specifically constructed, improved and utilized as sidewalks, access drives, drive aisles or other similar improvements, but only to the extent the Drive Improvements (as defined below) are actually constructed on the MACU Tract or any portion thereof. The foregoing easement is for the benefit of and shall be appurtenant to the Developer Tracts.

4. Development and Maintenance of Drive Aisles.

a. Each of Developer and MACU, shall install and construct the access drives on their respective Tracts, as applicable, and depicted on Exhibit C hereto (including curb cuts, driveways, curbs, sidewalks, street lighting, utilities and other related improvements thereto) (collectively, the “**Drive Improvements**”) (for the benefit of both the MACU Tract and the Developer Tracts) at such time as Developer and/or MACU improves their respective Tracts. Each of Developer and MACU shall pay the costs of the Drive Improvements on their respective Tracts, without reimbursement or participation of the other party. Following completion of any of the Drive Improvements, each of Developer and MACU shall maintain (which shall include sweeping, snow removal, and other general maintenance) the Drive Improvements on their respective Tracts, in good condition and repair and in a condition consistent with and similar to the Shopping Center and other comparable areas. In addition to the foregoing, pursuant to the Shopping Center Documents, Developer and/or Smith’s shall maintain the Shopping Center drive aisles. In consideration of Developer’s maintenance of the Shopping Center drive aisles and all other common areas within the Shopping Center, MACU shall pay Developer an annual payment equal to \$.60 per square foot of building on the MACU Tract, commencing on the 10<sup>th</sup> day of the month immediately following completion of the Drive Improvements and payable on the 10<sup>th</sup> day of such month every year thereafter, after ten days’ notice from Developer. By way of example, if the MACU Tract has a building that is 4,400 square feet, then the annual payment would be \$2,640 per year (4,400 s.f. x \$.60 = \$2,640). The foregoing amount will increase by 1.5% per annum on a cumulative basis.

b. Any damage (whether by specific incident or passage of time) to the Drive Improvements within the MACU Tract and/or the Developer Tracts requiring repair or replacement shall be

repaired or replaced by Developer to the quality and condition that existed prior to such damage. MACU agrees to pay for its proportionate share of replacements made to the Drive Improvements. MACU's pro rata share shall be its ownership percent of the road that is immediate and adjacent to the MACU property (e.g. whatever percent of the road surface area that is on the property owned by MACU).

5. Remedy for Non-Performance. Any amounts which become owing under this Agreement to any party which are not paid when due shall bear interest at the Default Rate defined below from the date due until paid. In the event either party fails to perform any non-monetary covenant or condition contained in this Agreement (within the applicable time period allotted in this Agreement, or if absent a time period such party fails to commence to perform any covenant or condition contained in this Agreement within ten (10) business days following receipt of written notice from the other party and thereafter proceed diligently to complete and cure such failure) the other party may, but shall not be required to enter the non-performing party's Tract(s) and perform the construction, maintenance and/or repair work above-mentioned and receive reimbursement therefor from the non-performing party. In such event, within ten (10) business days following written notice of same, the non-performing party shall reimburse the other party all reasonable costs and expenses incurred by such other party, as evidenced by paid invoice, in connection with effectuating such cure, plus all interest which shall accrue against such unpaid amount(s) at the rate of interest equal to the prime rate of interest then announced in the Wall Street Journal plus 4% or the highest rate permitted by applicable law, whichever is less (the "**Default Rate**"), running from the end of the aforesaid 10-day period until paid in full. The non-performing party hereby grants to the other party a non-exclusive right of entry and non-exclusive easement to cross over and under all parts of the non-performing party's Tract(s) for all purposes reasonably necessary to enable the performing party (acting directly or through contractors, agents or subcontractors) to perform the terms, provisions or conditions of this Agreement which the non-performing party failed to perform, after notice and time to cure, as aforesaid, but no notice and time to cure need be given in the event of an emergency.

6. Indemnification. Any Tract owner exercising its rights under this Agreement (the "**Indemnifying Owner**") agrees to indemnify, defend and hold harmless the other Tract owner (the "**Indemnified Owner**") from and against any and all costs, losses, suits, actions, expenses, liabilities, judgments, liens, damages, or claims, including but not limited to reasonable attorneys' fees and cost (collectively "**Loss**") arising out of the Indemnifying Owner's negligence, breach, or willful misconduct in carrying out or directing such activity, except to the extent caused by the negligence, breach, or willful misconduct of such Indemnified Owner. Notwithstanding the forgoing, MACU shall not be obligated to indemnify, defend or hold Developer harmless for any Loss resulting from a default of this Agreement by Developer and Developer shall not be obligated to indemnify, defend or hold MACU harmless for any Loss resulting from a default of this Agreement by MACU.

7. Subject to Matters of Record. The easement grants contained herein are expressly subject and subordinate to all outstanding easements, conveyances, liens and other matters of record in the real property records for Salt Lake County, Utah.

8. Running With Land. The easements and the Exclusive Use restriction created herein and the covenants, rights, privileges, benefits, duties, obligations and liabilities created hereunder shall run with the land, shall burden the Developer Tracts and the MACU Tract and shall be binding upon Developer and MACU, and their heirs, legal representatives, successors and assigns. This Agreement and the easements, covenants, rights, privileges, benefits, duties, obligations and liabilities created hereunder are subject to all matters currently of record in Salt Lake County in which the MACU Tract and the Developer Tracts are located.

9. Transfers of Ownership. If, during the existence of this Agreement, Developer or MACU sells or transfers its ownership of the Developer Tracts or the MACU Tract or any part thereof, then from and after the effective date of such sale or transfer, that party shall be released and discharged from any and all covenants, duties, obligations, responsibilities and liabilities under this Agreement and accruing thereafter, insofar as they relate to the parcel so conveyed, and any such transferee, by the acceptance of the transfer of such interest, shall

thereupon become subject to the easements, covenants, duties, obligations, and liabilities contained herein, insofar as they relate to the Tract so conveyed to the same extent as if such transferee were originally a party hereto.

10. No Parking Easements. Nothing contained herein shall be construed to grant any parking easements, privileges or rights.

11. No Dedication to the Public. The easements created herein are solely for benefit of the owners of the MACU Tract and the Developer Tracts, are private and are not intended to grant any rights to the public. Each party agrees that nothing herein shall be construed as giving it any interest in any award or payment made to the other in connection with any exercise of eminent domain or transfer in lieu thereof affecting the other's Tract(s).

12. Taxes. Any and all taxes imposed either upon the value of real property or upon any right, privilege or other incident of ownership related to the Developer Tracts and the MACU Tract shall be paid by the legal or equitable owner thereof according to the requirements of law.

13. Amendment. This Agreement and the rights, privileges and benefits arising hereunder or pursuant hereto may be terminated, modified, amended or waived only with the written consent of the owner of the MACU Tract and the owner of the Developer Tracts.

14. Severability. If any clause or provision of this Agreement is held to be illegal, invalid or unenforceable under any law applicable to the terms hereof, then the remainder of this Agreement shall not be affected thereby, and in lieu of each such clause or provision of this Agreement that is illegal, invalid or unenforceable, such clause or provision shall be judicially construed and interpreted to be as similar in substance and content to such illegal, invalid or unenforceable clause or provision, as the context thereof would reasonably suggest, so as to thereafter be legal, valid and enforceable.

15. Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Utah, without regards to conflicts of laws principles.

16. No Partnership or Joint Venture. Nothing in this Agreement shall be construed to make the owner of the MACU Tract and the owner of the Developer Tracts partners or joint venturers or render any of such persons or entity liable for the debts and obligations of any other such persons or entity.

17. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original to the same effect as if all parties had executed the same instrument.

18. Multiple Tracts.

a. The Developer Tracts contain more than one Tract of land. The easements and rights granted to Developer shall inure to the benefit of and shall be appurtenant to each Tract of land comprising the Developer Tracts, including, without limitation, any Tract created from the further subdivision of the Tracts currently comprising the Developer Tracts. The owner of any such Tract, regardless of whether it owns any other portion of the land comprising the Developer Tracts, shall be entitled to exercise and benefit from the easements, covenants, rights, privileges, benefits, duties, obligations and liabilities created hereunder.

b. The MACU Tract may in the future contain more than one Tract of land. The easements and rights granted to MACU shall inure to the benefit of and shall be appurtenant to each Tract of land comprising the MACU Tract, including, without limitation, any Tract created from the further subdivision of the MACU Tract. The owner of any such Tract, regardless of whether it owns any other portion of the land comprising the MACU Tract, shall be entitled to exercise and benefit from the easements, covenants, rights,

privileges, benefits, duties, obligations and liabilities created hereunder.

19. Waiver. The failure of either Developer or MACU to exercise any right given hereunder shall not constitute a waiver of either party's right to exercise such right.

20. Notices. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (a) personally delivered; (b) mailed by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by recognized overnight express delivery service; to the parties at the addresses set forth in the introductory paragraph. Either party may change its address, and addresses for successors and assigns may be added, for the purposes of this Section by giving five (5) days prior written notice of such change to all other party in the manner provided in this Section.

*[SIGNATURES ON FOLLOWING PAGES]*

EXECUTED as of Effective Date set forth above.

**DB TRAIL CROSSING, LLC,**  
a Delaware limited liability company

By: *Spencer H. Wright*  
Name: SPENCER H. WRIGHT  
Title: MANAGER

STATE OF UTAH

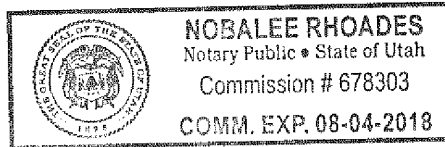
COUNTY OF Davis

This instrument was acknowledged before me on the 11 day of September, 2017, by Spencer H. Wright, the \* of DB TRAIL CROSSING, LLC, a Delaware limited liability company on behalf of said limited liability company.

\* Manager of WDG Trail Crossing, LLC, the managing member of DB Trail Crossing, LLC  
me

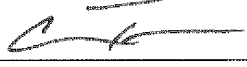
*Nobalee Rhoades*  
Notary Public in and for the State of Utah

[SIGNATURES ON FOLLOWING PAGE]



**MACU:**


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

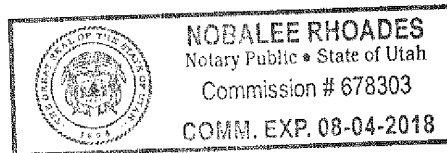
By:   
Name: Chris Tapia  
Title: Senior Vice President of Corporate Real Estate

STATE OF UTAH

COUNTY OF SALT LAKE

This instrument was acknowledged before me on the 12 day of September, 2017, by Chris Tapia, the Senior Vice President of Corporate Real Estate of MOUNTAIN AMERICA FEDERAL CREDIT UNION, a Utah non-profit corporation, on behalf of said non-profit corporation.

  
Notary Public in and for the State of Utah



**EXHIBIT A  
DEVELOPER TRACTS**

**Tract 1**

Lot C-109 of KENNECOTT DAYBREAK VILLAGE 7A PLAT 1, AMENDING LOTS B3 AND WTC2, 1ST AMENDED KENNECOTT MASTER SUBDIVISION, according to the Official Plat thereof, on file and of record in the office of the Salt Lake County Recorder's Office.

Tax ID: 26-24-353-001

For information purposes only, the property address is purported to be:  
5422 W Daybreak Parkway, South Jordan, UT 84009

**Tract 4**

Lot C-103 of KENNECOTT DAYBREAK VILLAGE 7A PLAT 1, AMENDING LOTS B3 AND WTC2, 1ST AMENDED KENNECOTT MASTER SUBDIVISION, according to the Official Plat thereof, on file and of record in the office of the Salt Lake County Recorder's Office.

Tax ID: 26-24-353-004

For information purposes only, the property address is purported to be:  
5462 W Daybreak Parkway, South Jordan, UT 84009

**Tract 5**

Lot C-104 of KENNECOTT DAYBREAK VILLAGE 7A PLAT 1, AMENDING LOTS B3 AND WTC2, 1ST AMENDED KENNECOTT MASTER SUBDIVISION, according to the Official Plat thereof, on file and of record in the office of the Salt Lake County Recorder's Office.

Tax ID: 26-24-353-005

For information purposes only, the property address is purported to be:  
5474 W Daybreak Parkway, South Jordan, UT 84009

**Tract 6**

Lot C-105 of KENNECOTT DAYBREAK VILLAGE 7A PLAT 1, AMENDING LOTS B3 AND WTC2, 1ST AMENDED KENNECOTT MASTER SUBDIVISION, according to the Official Plat thereof, on file and of record in the office of the Salt Lake County Recorder's Office.

Tax ID: 26-24-353-006

For information purposes only, the property address is purported to be:  
5434 W Daybreak Parkway, South Jordan, UT 84009



**Tract 7**

Lot C-106 of KENNECOTT DAYBREAK VILLAGE 7A PLAT 1, AMENDING LOTS B3 AND WTC2, 1ST AMENDED KENNECOTT MASTER SUBDIVISION, according to the Official Plat thereof, on file and of record in the office of the Salt Lake County Recorder's Office.

Tax ID: 26-24-353-007

For information purposes only, the property address is purported to be:  
5408 W Daybreak Parkway, South Jordan, UT 84009

**Tract 9**

Lot C-108 of KENNECOTT DAYBREAK VILLAGE 7A PLAT 1, AMENDING LOTS B3 AND WTC2, 1ST AMENDED KENNECOTT MASTER SUBDIVISION, according to the Official Plat thereof, on file and of record in the office of the Salt Lake County Recorder's Office.

Tax ID: 26-24-353-009

For information purposes only, the property address is purported to be:  
5396 W Daybreak Parkway, South Jordan, UT 84009

**EXHIBIT B  
MACU TRACT**

Lot C-107 of KENNECOTT DAYBREAK VILLAGE 7A PLAT 1, AMENDING LOTS B3 AND WTC2, 1ST AMENDED KENNECOTT MASTER SUBDIVISION, according to the Official Plat thereof, on file and of record in the office of the Salt Lake County Recorder's Office.

Tax ID: 26-24-353-008

For information purposes only, the property address is purported to be:

5382 W Daybreak Parkway, South Jordan, UT 84009

EXHIBIT C  
DRIVE IMPROVEMENTS

