

When recorded return to:

Esperanza Land Holding, LLC
801 North 500 West, Ste 300
Bountiful Utah 84010

11784851
1/3/2014 2:41:00 PM \$29.00
Book - 10203 Pg - 3667-3675
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 9 P.

USE AND MAINTENANCE AGREEMENT

This USE AND MAINTENANCE AGREEMENT ("**Agreement**") is made and entered into this 12th day of December, 2013, by and between AMERICA FIRST FEDERAL CREDIT UNION, (the "**Credit Union**"), and ESPERANZA LAND HOLDING, LLC (hereafter "**Esperanza**"). Credit Union and Esperanza are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, the Credit Union is the owner of real property as legally described on Exhibit "A" attached hereto ("**Credit Union Property**"), which Property is located at approximately 3500 South 4900 West, West Valley, Salt Lake County, State of Utah; and

WHEREAS, Esperanza is the owner of real property as legally described on Exhibit "B" attached hereto (the "**Esperanza Property**"), which Property is located contiguous to the Credit Union Property and is also located at approximately 3500 South 4900 West, West Valley, Salt Lake County, State of Utah; and

WHEREAS, the Parties desire to create and grant certain easements upon and across portions of their respective properties, provide for restrictions regarding the development of the Esperanza Property, and provide for the maintenance of shared easement and access areas; and

WHEREAS, attached hereto as Exhibit "C" is the proposed site plan (the "**Site Plan**") for the Esperanza Property that Esperanza intends to follow and abide by as the Esperanza Property is developed and improved.

NOW, THEREFORE, the Parties enter into the following Agreement:

1. Easement for Ingress and Egress: Credit Union and Esperanza hereby grant to each other joint and cross easements (the "**Easement**") over and across, and agree that their respective members, employees, invitees, guests, tenants, contractors, agents, successors, assignees, customers, faculty members and students may use, the access road identified on the Site Plan (the "**Access Road**") for ingress to and egress from the Credit Union Property and the Esperanza Property.

2. Development of the Esperanza Property in Compliance with the Site Plan: Esperanza shall develop and improve the Esperanza Property in a method and in a way that is in substantial compliance with the Site Plan. This development will include the stop signs, traffic guides, and other items on the Access Road as identified on the Site Plan. Specifically,

Esperanza agrees to install and maintain the stop signs as designated on the Site Plan and the red curb painting required by the Site Plan. Esperanza shall maintain said stop signs and red paint in a reasonable manner consistent with industry standards.

3. Access Road Maintenance Costs: Each Party shall pay one half (1/2) of the costs to maintain the Access Road, which includes snow removal, repairs and maintenance. The Credit Union shall choose and contract with the contractors for such snow removal, repairs and maintenance. The Credit Union shall invoice Esperanza on a yearly basis for Esperanza's portion of the shared maintenance costs.

4. No Obstruction: It is the Parties' intent that the Access Road never be obstructed; however, the Parties recognize that there may be limited times when the Parties need to obstruct the access for maintenance or repair purposes. Therefore, neither Party shall obstruct the Access Road without the prior written consent of the other Party unless it is an emergency. If it is an emergency, the responsible Party will promptly resolve the issue that gave rise to the obstruction and will only obstruct that portion of the Access Road as necessary to resolve the issue.

5. Indemnity: Each Party (the "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party, its members, employees, invitees, guests, tenants, contractors, agents, successors, assignees, customers, faculty members and students (the "**Indemnified Party**") from and against any and all claims, liabilities, losses, costs, charges or expenses which may be incurred by the Indemnified Party arising from or as a result of any negligent act or omission or intentional misconduct of the Indemnifying Party in its use of the Access Road or with respect to any breach of its obligations under this Agreement (each an "**Indemnified Claim**"). If any Indemnified Claim is made against an Indemnified Party, the Indemnifying Party agrees to assume the expense and shall pay all costs, charges, attorney fees, settlements, judgments or other expenses incurred by or obtained against the Indemnified Party.

6. Insurance: Each Party shall obtain and maintain at all times commercial general liability insurance insuring against claims on account of death, bodily injury or property damage that may arise from or be occasioned by the condition, use or occupancy of the Access Road located on its respective parcel. Said insurance shall be obtained and maintained from a reputable insurance company or companies qualified to do business in the State of Utah with a rating in the Best's Key Rating Guide of A- Class XI or better and having limits for bodily injury or death in the amounts of not less than \$1,000,000 for injury to or death of one person, \$2,000,000 for injury to or death of more than one person in one accident, and property damage insurance in an amount of not less than \$1,000,000 (or, as an alternative, single limit coverage in the amount of \$2,000,000). Such insurance shall name each other Party as an additional insured. From time to time and upon written request by a Party, a certificate of insurance shall be furnished by the providing Party showing the required coverage. Such insurance shall provide that the insurance may not be canceled without at least thirty (30) days prior written notice by the insurer to the Party named as an additional insured and shall provide for waiver of subrogation rights. Said insurance may be carried under a "blanket" policy or policies covering other properties of the providing Party and its subsidiaries, controlling or affiliated corporations and entities.

7. Binding Effect: The Easement and all of the covenants, conditions and declarations contained herein, including the benefits and burdens, shall run with the land and shall benefit and bind the heirs, successors and assigns of the Parties, and all current and future owners of the benefited and burdened parcels.

8. No Public Dedication: The Easement established, granted and conveyed is for the use and benefit of the Credit Union and Esperanza, and their respective members, employees, invitees, guests, tenants, contractors, agents, successors, assignees, customers, faculty members and students and is not intended to confer any benefit or right upon the general public.

9. Duration: This Agreement and the Easement granted herein run in perpetuity and may only be modified or canceled in writing signed by all the Parties.

10. Merger: All oral negotiations and agreements between the Parties are merged into this Agreement and this Agreement becomes the final agreement between the Parties.

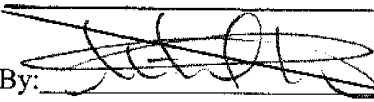
11. Attorney Fees: If either Party breaches this Agreement, they shall pay the other Party's attorney fees and costs, whether or not suit is filed.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed the day and year first above written.

America First Federal Credit Union

By: 
Jil Morby, Senior Vice President

Esperanza Land Holding, LLC

By: 
Michael Wright, Manager

7. Binding Effect: The Easement and all of the covenants, conditions and declarations contained herein, including the benefits and burdens, shall run with the land and shall benefit and bind the heirs, successors and assigns of the Parties, and all current and future owners of the benefited and burdened parcels.

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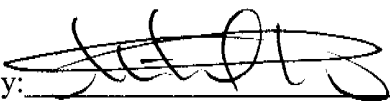
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America First Federal Credit Union

By: _____
Jil Morby, Senior Vice President

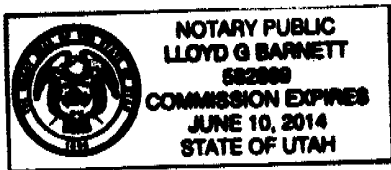
Esperanza Land Holding, LLC

By:  _____
Michael Wright, Manager

ACKNOWLEDGMENTS

STATE OF UTAH)
 : ss.
COUNTY OF WEBER)

On this 12 day of December, 2013, personally appeared before me, Jil Morby, Senior Vice President of **America First Federal Credit Union**, the signor of the within instrument who duly acknowledged before me that she executed the same.



Lloyd G Barnett
Notary Public

~~STATE OF UTAH)
 : ss.
COUNTY OF Davis)~~

~~On this 12th day of December, 2013, before me personally appeared before me Michael Wright, the manager of Esperanza Land Holding, LLC, the signor of the within instrument who duly acknowledged before me that she executed the same.~~



~~Heidi Mease
Notary Public~~

~~ACKNOWLEDGMENTS~~

STATE OF UTAH)
: ss.
COUNTY OF WEBER)

On this ___ day of _____, 2013, personally appeared before me, Jil Morby, Senior Vice President of **America First Federal Credit Union**, the signor of the within instrument who duly acknowledged before me that she executed the same.

Notary Public

STATE OF UTAH)
:ss.
COUNTY OF Davis)

On this 12th day of December, 2013, before me personally appeared before me Michael Wright, the manager of Esperanza Land Holding, LLC, the signor of the within instrument who duly acknowledged before me that she executed the same.



Heidi Mease
Notary Public

EXHIBIT "A"

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.

And *14-25-476-018*

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

PART OF 14-25-476-017 owners.

EXHIBIT "B"

Lot 3, 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.

PART OF 14-25-476-017

And

Parcel A, 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.

PART OF 14-25-476-017

EXHIBIT "C"

