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Book - 10999 Pg - 1536-1547
RASHELLE HOBBS
Recorder, Salt Lake County, UT
SECURED LAND TITLE
BY: eCASH, DEPUTY - EF 12 P.

When Recorded, Mail To:

Canon Heyman & Weiss, LLP
Attn.: David Kuracina
54 State Street, 5th Floor
Albany, New York 12207

Affecting Assessor's Parcel Nos.: 15:01:428:026
15:01:428:024

(Space above for Recorder's use only)

AMENDED & RESTATED DECLARATION OF ACCESS EASEMENT

THIS AMENDED & RESTATED DECLARATION OF ACCESS EASEMENT (this "Declaration") is made and entered into to be effective this 14 day of ~~August~~, 2020, by and between 370 SOUTH WEST TEMPLE LLC, a New York limited liability company ("370 SWT") and EVEREN T. BROWN 360 IMAGES, LLC, formerly known as FAE HOLDINGS 417008R, LLC, a Utah limited liability company ("Everen T. Brown," and collectively with the 370 SWT, the "Parties").

RECITALS

A. 370 SWT is the fee simple owner of that certain property located in Salt Lake City, Salt Lake County, State of Utah, which property are located at: 370 South West Temple Street – APN 15:01:428:026 ("Parcel 1"), as more particularly described in Exhibit A, attached hereto and incorporated by reference.

B. Everen T. Brown is the fee simple owner of that certain property located in Salt Lake City, Salt Lake County, State of Utah, which property is located at: 358 South West Temple Street – APN 15:01:428:024 ("Parcel 2").

C. The Parties desire to amend and restate those certain access easement and open easement upon specified portions of Parcel 1 for the benefit of Parcel 2 and Parcel 2 for the benefit of Parcel 1, as stated in (i) that certain Declaration of Access Easement ("Access Easement #1) made by KPB Land, LLC, a predecessor in title to 370 SWT, dated May 8, 2013 and recorded on May 8, 2013 as Entry No. 11636664, Book 10136 and Page 3613-3617 of Official Records, and (ii) that certain Reciprocal Easement Agreement (the "Existing Open Easement") by and between Air Land, LLC, a Utah limited liability company, a predecessor in title to 370 SWT, and FAE Holdings 41008R, LLC, a Utah limited liability company, now known as Everen T. Brown, dated November 19, 2013 and recorded on November 27, 2013 as Entry No. 11767249 in Book 10195 at page 6743 of Official Records ("Access Easement #2," and together with Access Easement #1, collectively, the "Existing Access Easement"), in accordance with the provisions of this Declaration.

D. The Parties intend that the easements herein granted shall be granted, established, and maintained and that such easements shall survive any severance or divestiture of title to Parcel 1 or Parcel 2 and inure to any successor-in-interest of the Parties.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the conditions set forth herein, the Parties agree as follows:

1. Parcel 1 Subject to the Easement. 370 SWT hereby declares that Parcel 1 shall be held, sold, conveyed,

transferred, constructed, operated, maintained, leased, and occupied subject to or as applicable, together with, the easement set forth in Section 2 of this Declaration. Further, in the event of any sale, conveyance, or transfer of Parcel 1 to a third party, no further actions or agreements shall be necessary to effectuate such Access Easement (as defined herein) and said Access Easement shall remain effective against and for Parcel 1.

2. Access Easement. Prior to commencement of construction by 370 SWT on Parcel 1, 370 SWT does hereby grant and declare that there shall exist a perpetual, non-exclusive access easement (the "Access Easement") for the purposes of pedestrian and vehicular ingress and egress to and from 400 South Street (Salt Lake City) to and from both Parcel 1 and Parcel 2 as may be commercially reasonable in order for the Parties to accommodate deliveries and access by each Party and the party legally occupying Parcel 1 and Parcel 2 along with their owners, employees, clients, customers, guests, licensees, invitees, consultants, contractors, subcontractors and agents. The Access Easement shall be exercised over that portion of the Parcel 1 legally described on Exhibit B and depicted on Exhibit C (labeled 20' Access Easement), both attached hereto and incorporated herein by this reference (the "Access Easement Area"), for the benefit of both Parcel 1 & Parcel 2. The Access Easement will permit Parcel 1 and Parcel 2, as such are currently developed and as may be developed in the future, to use the Access Easement Area for the purposes set forth herein. Notwithstanding the foregoing, Everen T. Brown will not have access to the Access Easement Area during the construction of the intended improvements by 370 SWT on Parcel 1 (the "Construction Period"). 370 SWT shall only be entitled to one (1) Construction Period and the Construction Period shall only commence upon at least one month's prior written notice to Everen T. Brown (the "Construction Notice"). The Construction Notice shall include the dates the Construction Period is to begin and end. The Construction Period shall only last for a period of thirty-six (36) months from the beginning date described in the Construction Notice without written consent of Everen T. Brown. After the Construction Period ends, the Access Easement Area shall be located in the area described on Exhibit D and depicted on Exhibit E and extend from grade vertically to a height of fourteen (14) feet. 370 SWT shall be permitted to construct and maintain improvements around and above the post-construction Access Easement Area.
3. Regular Maintenance of the Access Easement. The owner of Parcel 1, at its sole cost, shall be responsible for paving of and the maintenance of the post-construction Access Easement Area, and shall keep the same in good, clean, safe, and repaired condition, and in such condition as to provide reasonable and continuous means of ingress and egress as contemplated by this Declaration. The owner of Parcel 1 will complete, at its sole cost and expense, any snow removal needed for the Access Easement Area. Except as set forth above, all costs and expenses incurred in connection with the maintenance of the Access Easement shall be the sole responsibility of the owner of the parcel for which such costs are incurred. To be clear, neither Party may demand reimbursement from the other for expenses a Party alone authorized and incurred in maintaining the Access Easement. The Parties agree to maintain the Access Easement Area in a neat, clean and orderly condition at standards comparable to the standards of other similar roadways and their surrounding areas located within Salt Lake City. All work and maintenance conducted within Access Easement Area will also be in conducted in a good workman like manner, and in accordance with the standards established by any applicable municipal/government authorities. Notwithstanding the foregoing, any damage to the Access Easement Area and the improvements/utilities constructed thereon or therein that is solely attributable to the owner of Parcel 1 or Parcel 2, or their guests, agents, invitees, customers, and/or patrons that owner will be solely responsible, at its sole cost, to repair said Easement Area or improvements/utilities to a condition that existed prior to the damage.
4. Open Easement Abandoned. 370 SWT hereby abandons the Open Easement Area that benefitted Parcel 1 as described in Access Easement #2.
5. Conditions of the Easement Area. Each grantee accepts the Easement Areas and all aspects thereof in "AS IS," "WHERE IS" condition, without warranties, either express or implied, "with all faults," including but not limited to both latent and patent defects, and the existence of hazardous materials, if

any. Each grantee hereby waives all warranties, express or implied, regarding title, condition, and use of the Easement Areas, including, but not limited to any warranty of merchantability or fitness for a particular purpose. Without limiting the generality of the foregoing, the Easement Areas are granted subject to: (a) any state of facts which an accurate ALTA/ASCM survey (with Table A items) or physical inspection of the Easement Areas might show, (b) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and (c) reservations, easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, and encumbrances and all other matters of record or enforceable at law or in equity.


6. Covenants to Run With Land. This Declaration and the Easement Areas created herein are intended to and shall run with the land described herein and, as applicable, portions of Parcel 1 and Parcel 2 shall be burdened by the Easement Areas, and portions of Parcel 1 and Parcel 2 shall benefit from the Easement Areas.
7. Modification of Declaration. This Declaration shall not be amended or modified without the express prior written consent of the Parties or each party which is a successor-in-interest to both Parcel 1 and Parcel 2.
8. No Merger. It is the express intent of Parties that this Declaration remain in full force and effect and that the Easement Areas herein granted not be deemed to have merged with any other estate now held or which may in the future be held by the Parties or their successors-in-interest.
9. Applicable Law. This Declaration shall be construed in accordance with and governed by the laws of the State of State of Utah.

IN WITNESS WHEREOF, the Parties have executed this Declaration to be effective as of the day and year first above written.

370 SWT:

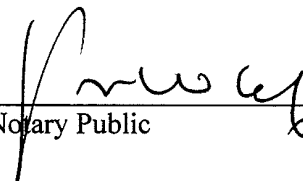
370 SOUTH WEST TEMPLE LLC,
a New York limited liability company

By:

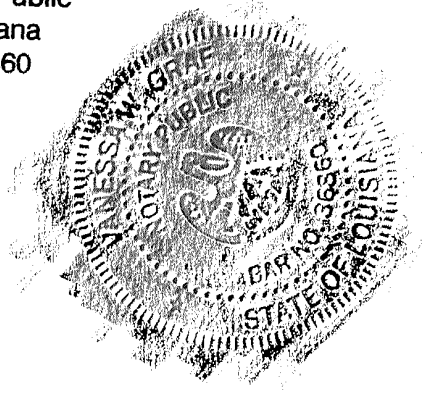

Name: Matthew Schwartz
Title: Authorized Signatory

STATE OF LOUISIANA)
 :ss.
PARISH OF ORLEANS)

On the 12th day of August in the year 2020 before me, the undersigned, personally appeared **Matthew Schwartz**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

Vanessa W. Graf
Attorney/Notary Public
State of Louisiana
LSBA No. 36860



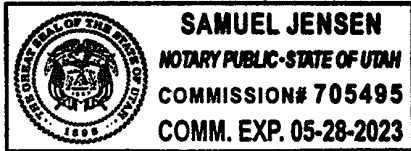
EVEREN T. BROWN:

EVEREN T. BROWN 360 IMAGES, LLC
formerly known as FAE HOLDINGS 417008R,
LLC, a Utah limited liability company

By: *Everen T. Brown*
Name: EVEREN T. BROWN
Title: MANAGER

STATE OF UTAH)
) :SS.
COUNTY OF Salt Lake)

On the 14th day of August in the year 2020 before me, the undersigned, personally appeared Everen T. Brown, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



[Signature]
Notary Public

E/DOMAIN.190319/Title/Easement/A&R Access Easement

EXHIBIT A

Legal Description of Parcel 1

That certain real property located in the County of Salt Lake, State of Utah, more particularly described as follows:

Beginning at the Southeast Corner of Lot 1, Block 50, Plat "A", Salt Lake City Survey, thence South 89°58'00" West 214.5 feet; thence North 00°01'10" West 330 feet; thence North 89°58'00" East 49.5 feet; thence South 00°01'10" East 13 feet; thence North 89°58'00" East 28.52 feet; thence South 63.93 feet; thence East 136.5 feet; thence South 00°01'10" East 252.99 feet to the beginning.

EXHIBIT B

Legal description of Pre-Construction Access Easement Area

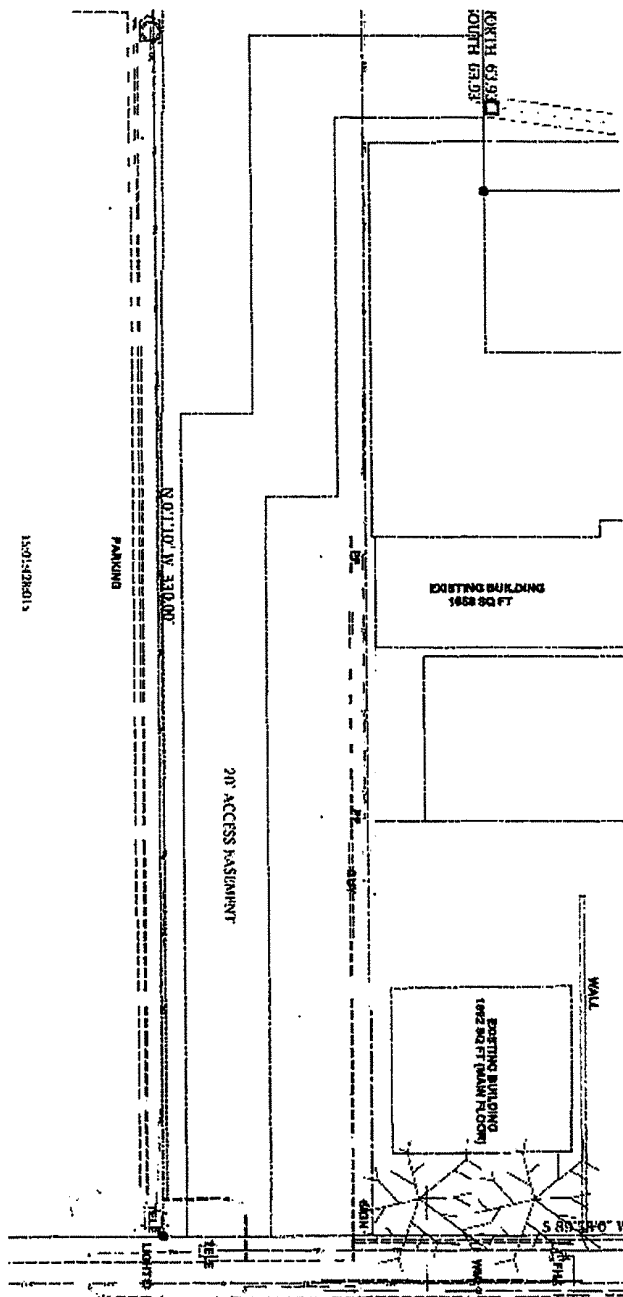
That certain real property located in Salt Lake County, Utah, specifically described as follows:

Beginning at a point located South 89°58'00" West along the northerly line of 400 South Street a distance of 23.93 feet from the southeast Corner of Lot 2, Block 50. Plat "A", Salt Lake City survey, said point being also being located South 89°57'54" West 252.93 feet along monument line and North 64.07 feet from the Block Monument in the intersection of 400 South Street and West Temple~ thence South 89°58'00" West along the northerly line of 400 South Street a distance of 20.00 feet~ thence North 199.33 feet~ thence East 17.25 feet thence North 91.78 feet~ thence East 55.09 feet; thence South 20.00 feet~ thence West 35.09 feet thence South 91.78 feet; thence West 17.25 feet: thence South 179.32 feet to the point of beginning.

EXHIBIT C

Depiction of Pre-Construction Access Easement Area

[Depiction of the Easement Area]



4831-4167-8867.1

~~BK 10750 PG 3647~~

EXHIBIT D

Legal Description of Post-Construction Access Easement Area

An Easement 20.0 feet wide for Access Purposes being 10.0 feet each side of the following described centerline:

A part of Lots 1 and 2, Block 50, Plat 'A', Salt Lake City Survey in Salt Lake County, Utah:

Beginning at a point on the North Line of 400 South Street located 25.58 feet North 89°47'54" West along said North Line from the Southeast Corner of said Lot 2; and running thence North 0°13'58" East 281.67 feet along a Line parallel with the West Line of Grantor's Property; thence South 89°45'02" East 54.16 feet to the East Line of Grantor's Property and the endpoint of this easement centerline.

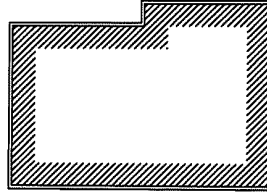
EXHIBIT E

Depiction of Post-Construction Access Easement Area

DWB, LLC
In & Out Corp.

330 West Temple, LLC

Fae Holdings
41700SR, LLC



New 20' wide
Access Easement

54.2'

28.5'

New 20' wide
Access Easement
(6,716 s.f.)

(252.99' record)

SLC 130 West Owner, LLC

281.7'

24.0'

West Temple Street

(Paved Public Street)

400 South Street