

PREPARED BY AND WHEN  
RECORDED RETURN TO:

Greenberg Traurig, LLP  
18565 Jamboree Road, Suite 500  
Irvine, CA 92612  
Attn: L. Bruce Fischer, Esq.

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5/7/2020 3:34:00 PM \$40.00  
Book - 10940 Pg - 1023-1034  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 12 P.

119599-DTF

THIS SPACE FOR RECORDER'S USE ONLY

Tax Parcel Nos. 08-36-376-053, 08-36-376-054, 08-36-376-055, 08-36-376-056 and 08-36-376-057

### FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (this "**First Amendment**") is executed as of the 1<sup>TH</sup> day of MAY 2020, by KBSIII 155 NORTH 400 WEST, LLC, a Delaware limited liability company, and HARDWARE WEST VILLAGE, LLC, a Delaware limited liability company (collectively, "**Declarant**"), whose address for purposes hereof is c/o KBS Capital Advisors LLC, 800 Newport Center Drive, Suite 700, Newport Beach, California 92660, Attention: Rodney Richerson. All capitalized terms used and not otherwise defined in this First Amendment shall have the meanings ascribed to them in the Declaration (as hereinafter defined).

#### RECITALS:

A. Declarant is the current Owner of the Easement Parcel, Lot 2, Lot 3, Office Parcel 1 and Office Parcel 2 under that certain Declaration of Easements, Covenants and Restrictions dated as of February 9, 2017, and recorded February 9, 2017 as Entry No. 12473511, in Book 10528, at Page 3796 of the Official Records of the Salt Lake County Recorder (the "**Declaration**").

B. Declarant, as the current Owners of all the Parcels that are subject to the Declaration, desires to amend the Declaration as provided herein. The Parcels are more particularly described in Exhibit A attached hereto.

**NOW, THEREFORE**, for the foregoing purposes, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby amends the Declaration as follows:

1. **Manager.** The definition of "**Manager**" appearing in Section 1 of the Declaration shall be, and hereby is, deleted in its entirety and the following definition shall be substituted in its place:

"**Manager**" means the Owner of Office Parcel 1, or such other Person approved in writing by the Owners holding in the aggregate seventy-five (75%) or more of the Owners' Proportionate Share."

2. **Budget.** The second sentence in Section 4.3 of the Declaration shall be, and hereby is, deleted in its entirety and the following sentence shall be substituted in its place:

“If Owners holding an aggregate of greater than fifty-percent (50%) or more of the Owners’ Proportionate Share believe the charge for a particular line item in the Budget is excessive, such Owners shall notify Manager of such belief, and thereupon Manager shall obtain no fewer than two (2) competitive bids for such function.”

3. **Budget Objection Notice.** The first sentence in Section 4.4 of the Declaration shall be, and hereby is, deleted in its entirety and the following sentence shall be substituted in its place:

“If Owners holding an aggregate of greater than fifty-percent (50%) or more of the Owners’ Proportionate Share disapprove of the proposed Budget, such Owners shall give written notice to Manager within thirty (30) days of Manager’s delivery of such Budget (the “**Budget Objection Notice**”), which Budget Objection Notice shall include a reasonably detailed description of what changes, if made, would result in such Owners approving the proposed Budget.”

4. **Future Development and Temporary Construction Easement.**

A. The Owners of Lot 2 and Lot 3 agree, now and in the future, for themselves and their successors and assigns, not to oppose, directly or indirectly, the future development of Office Parcel 1 and Office Parcel 2 (including, without limitation, the extension of 490 West Street, a public right-of-way, south across the Westerly portion of Office Parcel 2 to the Northerly boundary of North Temple Street) (the “**Future Development**”) provided that such Future Development is limited to office, retail, hotel and/or apartments and related ancillary uses. For avoidance of doubt, the provisions of this paragraph 4 shall not restrict, in any way, how Office Parcel 1 and/or Office Parcel 2 may be developed in the future, as this paragraph is only intended to restrict the circumstances, if any, under which the Owners of Lot 2 and/or Lot 3 may oppose the Future Development of Office Parcel 1 and/or Office Parcel 2 in the future.

B. Declarant hereby grants and creates a temporary, non-exclusive easement appurtenant to each of Office Parcel 1 and Office Parcel 2 and for the benefit of the Owners of Office Parcel 1 and Office Parcel 2, on, over, under and through the Easement Parcel for the purpose of construction and staging activities and the deposition and storage of construction equipment and/or materials related to, or in connection with, any Future Development (the “**Temporary Construction Easement**”). The Temporary Construction Easement shall include the right for the Owners of Office Parcel 1 and Office Parcel 2 to temporarily close portions of the Easement Parcel West of North Salt Street in a commercially reasonable manner, and to direct any traffic in connection with such temporary closures in a commercially reasonable manner, during the period of any Future Development; provided, however, in no event shall the Temporary Construction Easement unreasonably interfere with the pedestrian and vehicular ingress and egress rights of the Owners and Occupants of Lot 2 and Lot 3.

5. **Common Area Maintenance Costs.** The following sentence is hereby added to Section 4.1 of the Declaration: “Notwithstanding the foregoing, or anything to the contrary contained herein, in no event shall Common Area Maintenance Costs include any management, administrative or other similar fees payable to the Manager or its affiliate for the management or oversight by Manager or its affiliate of any maintenance or repair work on the Common Access Road.”

6. **Authority.** The Declarant represents and warrants it has the full capacity, right, power and authority to execute, deliver and record this First Amendment, and that it comprises all of the Owners of all the Parcels that are subject to the Declaration.

7. **Declaration.** Except as expressly modified by this First Amendment, the Declaration remains unchanged, in full force and effect and enforceable and binding in accordance with its terms.

[See Attached Signature Pages]

IN WITNESS WHEREOF, the undersigned has executed this First Amendment as of the date first set forth above.

**DECLARANT:**

KBSIII 155 NORTH 400 WEST, LLC,  
a Delaware limited liability company

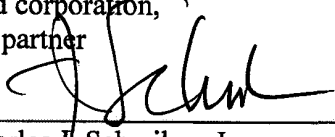
By: KBSIII REIT ACQUISITION V, LLC,  
a Delaware limited liability company,  
its sole member

By: KBS REIT PROPERTIES III, LLC,  
a Delaware limited liability company,  
its sole member

By: KBS LIMITED PARTNERSHIP III,  
a Delaware limited partnership,  
its sole member

By: KBS REAL ESTATE INVESTMENT TRUST III, INC.,  
a Maryland corporation,  
its general partner

By:

  
\_\_\_\_\_  
Charles J. Schreiber, Jr.,  
Chief Executive Officer

HARDWARE WEST VILLAGE, LLC,  
a Delaware limited liability company

By: HARDWARE VILLAGE COMMUNITY, LLC,  
a Delaware limited liability company,  
its sole member

By: KBSIII HARDWARE VILLAGE, LLC,  
a Delaware limited liability company,  
its managing member


By: KBSIII REIT ACQUISITION XXXI, LLC,  
a Delaware limited liability company,  
its sole member

By: KBS REIT PROPERTIES III, LLC,  
a Delaware limited liability company,  
its sole member

By: KBS LIMITED PARTNERSHIP III,  
a Delaware limited partnership,  
its sole member

By: KBS REAL ESTATE INVESTMENT TRUST III, INC.,  
a Maryland corporation,  
its general partner

By:

  
\_\_\_\_\_  
Charles J. Schreiber, Jr.,  
Chief Executive Officer

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

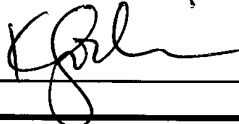
State of California  
County of Orange

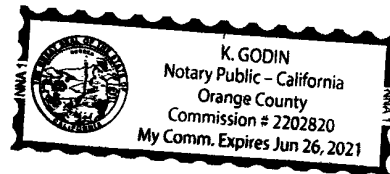
On March 19, 2020 before me, K. Godin, Notary Public  
(insert name and title of the officer)

personally appeared Charles J. Schreiber, Jr.,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

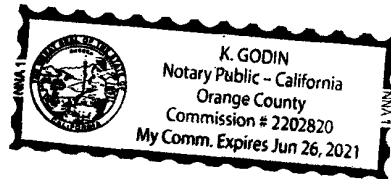
State of California  
County of Orange

On March 19, 2020 before me, K. Godin, Notary Public  
(insert name and title of the officer)

personally appeared Charles J. Schreiber, Jr.,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature  (Seal)

## CONSENT OF LENDER

In consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, U.S. Bank National Association, the owner of certain indebtedness secured by that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated October 17, 2018, and Recorded October 17, 2018, in Book 10722, Pages 5233-5272, in the Official Records of Salt Lake County, Utah (the "Security Document") that create liens, security interests and other rights and powers (collectively "Liens") and encumbers/all or parts of Easement Parcel, Office Parcel 1 and Office Parcel 2 and certain personal property, executes this Consent of Lender for the limited purpose of (i) consenting to the terms and conditions of the Declaration, as amended by this First Amendment, and (ii) agreeing that the Security Document and the Liens are and shall be subordinate and inferior to all of the terms and provisions of this First Amendment, including but not limited to all of the rights created thereby, so that no enforcement of the terms of the Security Document shall amend, impair or otherwise affect the terms and provisions of this First Amendment, provided in no event shall a violation or the exercise of any\*\*

DATED this 24th day of March, 2020.

\*, among other things,

U.S. BANK NATIONAL ASSOCIATION,  
as administrative agent and as lender

By:   
Name: Christopher Coburn  
Its: Vice President

\*\*rights or remedies under the Declaration, as amended by this First Amendment, or any easements conveyed thereunder defeat or otherwise render invalid any of the Liens created by the Security Document (or the rights of the beneficiary thereunder).



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California  
COUNTY OF Orange<sup>SS</sup>

On March 24<sup>th</sup>, 2020 before me, T.L. Allianic Baiza, Notary Public  
personally appeared Christopher R. Coburn, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

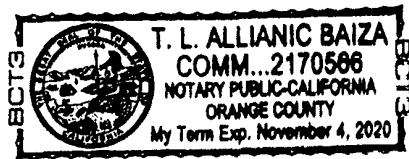
WITNESS my hand and seal.

T.L. Allianic Baiza

Signature

Printed Name: T.L. Allianic Baiza

(SEAL)



**EXHIBIT A**

**LEGAL DESCRIPTION**

**Easement Parcel**

Lot 1, HARDWARE VILLAGE PHASE 1 SUBDIVISION, according to the official plat thereof, recorded February 9, 2017 as Entry No. 12473510 in Book 2017P at Page 27, in the Salt Lake County Recorder's office, State of Utah.

**Lot 2 & Lot 3**

Lots 2 and 3, HARDWARE VILLAGE PHASE 1 SUBDIVISION, according to the official plat thereof, recorded February 9, 2017 as Entry No. 12473510 in Book 2017P at Page 27, in the Salt Lake County Recorder's office, State of Utah.

*[Exhibit continues on following page]*

## **Office Parcel 1 and Office Parcel 2**

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

### PARCEL 1:

Beginning at the Northeast corner of Lot 8, Block 98, Plat "A", Salt Lake City Survey, said point being South 00°00'59" East 67.88 feet and South 89°58'53" West 67.00 feet from a street monument found at the intersection of 400 West and 200 North, and running thence South 00°04'10" West 660.00 feet along the West line of said 400 West and being the East line of Block 98 to the Southeast corner of Lot 1, Block 98, Plat "A", Salt Lake City Survey; thence South 89°58'54" West 165.00 feet along the North line of North Temple and being the South line of Block 98 to the Southwest corner of said Lot 1; thence North 00°04'10" East 0.50 feet along the West line of said Lot 1; thence North 89°53'56" West 110.23 feet; thence North 88°00'00" West 4.57 feet; thence North 00°00'27" West 483.92 feet; thence Northwesterly 69.60 feet along the arc of a 645.28 foot radius curve to the left (center bears South 89°59'33" West and the long chord bears North 03°05'51" West 69.57 feet with a central angle of 06°10'48"); thence North 06°11'15" West 50.04 feet; thence Northwesterly 56.17 feet along the arc of 1098.72 foot radius curve to the right (center bears North 83°48'45" East and the long chord bears North 04°43'23" West 56.16 feet with a central angle of 02°55'45") to the North line of said Block 98; thence North 89°58'53" East (North 89°58'54" East, Deed) 294.43 feet along the North line of said Block 98 and to and along the South line of 200 North Street to the point of beginning.

(The foregoing being the boundary description of the 1-lot, SALT LAKE HARDWARE MINOR SUBDIVISION, according to that certain Notice of Amended Minor Subdivision Approval for Salt Lake Hardware Minor Subdivision recorded December 21, 2011 as Entry No. 11300852 in Book 9976 at Page 2542 of the official records of the Salt Lake County Recorder.)

EXCEPTING THEREFROM all the minerals and all mineral rights as conveyed to Union Pacific Land Resources Corporation, a corporation of the State of Nebraska, in that certain Mineral Deed dated April 1, 1971 and recorded October 3, 1996 as Entry No. 6472020 in Book 7504 at Page 1156 of the official records.

FURTHER EXCEPTING THEREFROM any portion thereof lying within the bounds of the following: A portion of Block 98, Plat "A", Salt Lake City Survey, lying and situate in the Southwest quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, being more particularly described as follows: Beginning at the Northeast corner of Lot 8, Block 98, Plat "A", Salt Lake City Survey said point being South 00°00'59" East 67.88 feet and South 89°58'53" West 67.00 feet from a street monument found at the intersection of 400 West and 200 North, and running thence South 00°04'10" West 322.11 feet along the West line of said 400 West and being the East line of Block 98; thence South 89°59'40" West 599.47 feet to a point on the East line of property conveyed to the Utah Transit Authority by Warranty Deed recorded May 16, 2006 as Entry No. 9725435 in Book 9294 at Page 9879 of the official records of the Salt Lake County Recorder; thence North 00°04'20" West 321.97 feet along said East line; thence North 89°58'53" East 600.27 feet to the point of beginning. (now known as Hardware Village Phase 1)

FURTHER EXCEPTING THEREFROM the following described parcel of land conveyed to Salt Lake City Corporation, a municipal corporation of the State of Utah, in that certain Quit Claim Deed recorded October 27, 2010 as Entry No. 11061707 in Book 9872 at Page 6349 of the official records of the Salt Lake County Recorder, to-wit:

A parcel of land in fee, being part of two (2) entire tracts of property situate in Lots 2, 3 and 4, Block 98, Salt Lake City Survey, Plat "A", situate in the East half of the Southwest quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, State of Utah, incident to the construction of the "Airport Light Rail Transit Project", a Utah Transit Authority Project, known as "ALRT", and described as follows: Beginning at a Southwest corner of said entire tract, which point is 61.37 feet North 89°58'54" East from the Southwest corner of said Block 98; and running thence North 00°04'20" West 15.25 feet along the Westerly boundary line of said entire tract; thence East 32.04 feet; thence South 00°01'46" West 7.51 feet; thence North 89°59'22" East 93.01 feet; thence South 88°00'00" East 198.50 feet; thence South 89°53'56" East 110.23 feet to the Easterly line of said Lot 2; thence

South 00°04'10" West 0.50 feet along said Easterly lot line to the Southerly boundary line of said entire tracts; thence South 89°58'54" West 433.63 feet along said Southerly boundary line to the point of beginning.

PARCEL 2:

Beginning at a point on the East line of property conveyed to the Utah Transit Authority by Warranty Deed recorded May 16, 2006 as Entry No. 9725435 in Book 9294 at Page 9879, of the official records of the Salt Lake County Recorder, said point being North 89°58'54" East 61.38 feet and North 00°04'20" West 15.25 feet from the Southwest corner, Block 98, Plat "A", Salt Lake City Survey and running thence North 00°04'20" West 644.75 feet along the East line of said Utah Transit Authority property to the North line of Block 98, Plat "A", Salt Lake City Survey; thence North 89°58'53" East 305.83 feet along the North line of said Block 98; thence Southeasterly 56.17 feet along the arc of a 1,098.72 foot radius curve to the left (center bears North 86°44'30" East and the chord bears South 04°43'23" East 56.16 feet with a central angle of 02°55'45"); thence South 06°11'15" East 50.04 feet; thence Southeasterly 69.60 feet along the arc of a 645.28 foot radius curve to the right (center bears South 83°48'45" West and the chord bears South 03°05'51" East 69.57 feet with a central angle of 06°10'48"); thence South 00°00'27" East 483.92 feet to the North line of property conveyed to Salt Lake City Corporation by Quit Claim Deed recorded October 27, 2010 as Entry No. 11061707 in Book 9872 at Page 6349 of the official records of the Salt Lake County Recorder; thence North 88°00'00" West 193.94 feet along the North line of said Salt Lake City Corporation property; thence South 89°59'22" West 93.01 feet along the North line of said Salt Lake City Corporation property; thence North 00°01'46" East 7.51 feet along the North line of said Salt Lake City Corporation property; thence West 32.04 feet along the North line of said Salt Lake City Corporation property to the point of beginning.

EXCEPTING THEREFROM the following described parcel of land conveyed to the Utah Transit Authority in that certain Special Warranty Deed recorded September 28, 2012 as Entry No. 11481044 in Book 10060 at Page 9632 of the official records of the Salt Lake County Recorder, to-wit:

A parcel of land in fee, being part of an entire tract of property situate in Lot 3, Block 98, Salt Lake City Survey, Plat "A", situate in the East half of the Southwest quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, State of Utah, described as follows: Beginning at a point on the Southerly boundary line of said entire tract, said point being 190.33 feet North 89°58'54" East and 7.59 feet North from the Southwest corner of said Block 98; and running thence North 60°00'00" East 11.63 feet; thence East 19.42 feet; thence South 60°00'00" East 14.57 feet to the said Southerly boundary line; thence North 88°00'00" West 42.14 feet along said Southerly boundary line to the point of beginning.

FURTHER EXCEPTING THEREFROM all the minerals and mineral rights reserved by Union Pacific Railroad Company, a Delaware corporation, in that certain Special Warranty Deed recorded December 24, 1998 as Entry No. 7202238 in Book 8208 at Page 2578 of the official records of the Salt Lake County Recorder, wherein Gateway Associates, Ltd., a Utah limited partnership, is the Grantee.

ALSO FURTHER EXCEPTING THEREFROM any portion thereof lying within the bounds of the following:

A portion of Block 98, Plat "A", Salt Lake City Survey, lying and situate in the Southwest quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, being more particularly described as follows: Beginning at the Northeast corner of Lot 8, Block 98, Plat "A", Salt Lake City Survey, said point being South 00°00'59" East 67.88 feet and South 89°58'53" West 67.00 feet from a street monument found at the intersection of 400 West and 200 North, and running thence South 00°04'10" West 322.11 feet along the West line of said 400 West and being the East line of Block 98; thence South 89°59'40" West 599.47 feet to a point on the East line of property conveyed to the Utah Transit Authority by Warranty Deed recorded May 16, 2006 as Entry No. 9725435 in Book 9294 at Page 9879, of the official records of the Salt Lake County Recorder; thence North 00°04'20" West 321.97 feet along said East line; thence North 89°58'53" East 600.27 feet to the point of beginning. (now known as Hardware Village Phase 1)