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Gary W. Ott
Recorder, Salt Lake County, UT
PARR BROWN GEE & LOVELESS
BY: eCASH, DEPUTY - EF 15 P.

AFTER RECORDING, PLEASE RETURN TO:

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Salt Lake City, Utah 84111-1537

Parcel Nos. 08-36-376-013; 08-36-376-025; and 08-36-376-026

Space above for Recorder's Use

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

[The Gateway - Gateway Office 6 Parcel and Adjoining Parcel]

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (the "**Declaration**") is made this 16th day of June, 2011, by GATEWAY ASSOCIATES, LTD., a Utah limited partnership ("**Declarant**").

RECITALS:

A. Declarant owns the Gateway Office 6 Parcel, the Retail Phase II Parcel and the North Retail and Parking Parcel (all capitalized terms in this Declaration not defined above are defined in Section 1 below). The Parcels are part of The Gateway, which is a mixed-use retail/office project.

B. Declarant desires to establish with respect to the Parcels, reciprocal rights of ingress and egress for pedestrians, reciprocal easements for utilities, and certain covenants and restrictions, all on the terms and conditions set forth in this Declaration.

NOW, THEREFORE, for the foregoing purposes, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant makes the following declarations, creates the following easements and establishes the following covenants, conditions and restrictions, all of which apply to, bind, affect and run with title to each Parcel.

1. Definitions. Certain capitalized terms which are used in this Declaration are defined in this Declaration prior to this Section. In addition to those previously defined terms, the following capitalized terms shall have the meanings indicated:

"**Access Areas**" means the areas on the Parcels used at any time and from time to time as traffic lanes, driveways, sidewalks, walkways or similar areas for ingress and egress of vehicles and pedestrians, but does not include any land covered by a Building or any exterior service areas that are intended for the exclusive use of the occupants of a particular Building, such as loading docks and trash areas.

"**Benefitted Parties**" means, with respect to a Parcel, the Owners and Occupants of that Parcel, and their respective employees, customers, guests and invitees. During periods of

construction or maintenance permitted or contemplated by this Declaration, "**Benefitted Parties**" includes all workers and suppliers and their vehicles and equipment required for such construction or maintenance.

"**Building**" means a building or other principal structure on a Parcel including, without limitation, all extensions or projections thereof, all structures or facilities accessory or integral thereto, and any garages, platforms or docks, storage tanks, canopies or overhangs, porches and similar items.

"**Gateway Office 6 Parcel**" means that certain real property located in Salt Lake County, Utah as more particularly described on Exhibit "A," attached hereto and incorporated herein by this reference.

"**Governmental Authorities**" means all governmental or quasi-governmental units, commissions, councils, boards, agencies, staffs or similar bodies having jurisdiction over a specified matter.

"**Government Requirements**" means all laws, ordinances, statutes, regulations or other similar laws with respect to a specified matter promulgated by Governmental Authorities.

"**Improvements**" means all improvements other than Buildings and related improvements located from time to time on a Parcel substantially including, without limitation, any Access Areas, Parking Areas, landscaping, driveways, walkways, exterior lighting, striping, curbs, retaining walls, screening walls and signs.

"**Indemnitee**" is defined in Section 10.

"**Indemnitor**" is defined in Section 10.

"**Mortgage**" means a recorded mortgage, deed of trust, fixture filing or other security agreement creating and/or perfecting a lien on a Parcel or a portion of a Parcel as security for the payment of indebtedness.

"**Mortgagee**" means a Person which is the mortgagee, beneficiary or other secured party under a Mortgage.

"**No Build Area**" means a ten (10) foot wide area on the North Retail and Parking Parcel immediately north of the Gateway Office 6 Parcel that is more particularly described and depicted on Exhibit "B-1" and depicted on Exhibit "B-2", both of which Exhibits are attached hereto and incorporated herein by this reference.

"**North Retail and Parking Parcel**" means that certain real property located in Salt Lake County, Utah as more particularly described on Exhibit "C," attached hereto and incorporated herein by this reference.

“Occupant” means any Person that, pursuant to a lease, a rental arrangement, a license or any other instrument, agreement, contract, document, understanding or arrangement is entitled to or does occupy, possess or use any Parcel or any portion of a Parcel.

“Owner” means the Person that, at a specified time, is the owner of record in the office of the County Recorder of Salt Lake County, Utah of a fee or an undivided fee interest in a Parcel or portion of a Parcel. In the event that, at any time, there is more than one Owner of a Parcel, the liability of each such Owner for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory or law relating to a mortgage, deed of trust, or like instrument, the term “Owner” shall not mean or include a Mortgagee unless and until such Person has acquired fee title to the Parcel encumbered by a Mortgage pursuant to foreclosure, trustee's sale or any deed, agreement, arrangement or proceeding in lieu thereof. Except as set forth above in this definition, a ground lessee or other long term tenant shall not be deemed to be an Owner for purposes of this Declaration.

“Parcel” means any one of the Parcels.

“Parcels” means the Gateway Office 6 Parcel, the Retail Phase II Parcel and the North Retail and Parking Parcel.

“Parking Areas” means the areas, including any parking garages, structures or other similar improvement, on or hereafter constructed on each Parcel that are used at any time and from time to time for parking.

“Person” means a natural person, legal entity or trust.

“Permitted Uses” means with respect to all of the Parcels, all commercial, retail, service, restaurant, office, hotel, lodging or residential use permitted by law.

“Phase II Parcel” means that certain real property located in Salt Lake County, Utah as more particularly described on Exhibit “D,” attached hereto and incorporated herein by this reference.

“Rules and Regulations” is defined in Section 5.

2. **Grant of Easements.** Declarant hereby creates the following easements with respect to the Parcels for the benefit of the Benefitted Parties of the other Parcels as set forth below, which easements shall be appurtenant to the Parcels but which may only be used to such extent set forth below and as may be reasonably related to the use of the Parcels for the Permitted Uses:

a. **Pedestrian Easements.** Non-exclusive easements across the sidewalks or walkways on each Parcel for pedestrian use by the Benefitted Parties of the other Parcels.

b. **Utility Easements.** Subject to the provisions of Section 3, non-exclusive right

to construct, maintain, repair, relocate and operate underground utility lines and pipes in the Parking Areas and Access Areas; provided that no Owner shall have the right to construct any utility lines and pipes in any areas in the Parking Areas on which a Building is located or in an area which provides support for a Building or its footings.

c. Access. Non-exclusive easements across the traffic lanes and driveways within the Access Areas on the Gateway Office 6 Parcel, the Retail Phase II Parcel and the North Retail and Parking Parcel for the purpose of furnishing access and the right of access for the vehicles of the Benefitted Parties of the Parcels.

3. Construction of Buildings, Improvements and Utilities.

a. Construction of Buildings and Improvement on the Parcels. Subject to the other provisions of this Section 3 and to the No Build provisions of Section 4, each Owner, at its own cost and expense, may construct the Buildings and any Improvements contemplated to be located on its Parcel. Once commenced, construction of any Buildings and related improvements shall be diligently pursued to completion. Construction of all Buildings shall be performed in a good and workmanlike manner.

b. Destruction of Buildings. If any Building on a Parcel is at any time destroyed or condemned and the Owner of the Parcel does not diligently proceed to rebuild the same, such Owner shall either promptly reconstruct the damaged Building or raze the remaining portion of such Building. Any unimproved land or land rendered unimproved as a result of the razing of a destroyed or condemned Building shall be maintained in a weed-free condition and shall be paved or covered with gravel or asphalt, or landscaped to avoid dust.

c. Construction of Utilities. Any Owner may construct additional required utilities or relocate existing utilities at its own cost and expense in the Access Areas and Parking Areas at a location and in accordance with plans and specifications approved by Governmental Authorities; provided that no Owner shall have the right to construct any utilities in areas on which a Building is located. The Owner installing such utilities shall promptly restore any damage to the Access and/or Parking Areas caused by such installation. All Owners shall cooperate in the granting of further appropriate and proper easements to each other or to utility companies and governmental authorities for the installation, operation, maintenance, repair, replacement, relocation, restoration and removal of the utility facilities set forth above. Each Owner shall have the right to enter upon any portion of the Access Areas and Parking Areas as may be necessary or appropriate in order to accomplish the installation, operation, maintenance, repair, replacement, relocation, restoration and removal of the utility facilities referred to above; provided, however, each Owner does not unreasonably interfere with the use of the Access Areas and Parking Areas by Benefitted Parties and that no relocation, restoration or removal of any such utility facilities shall be made without the prior written consent of the Owner of the Parcel on which the work occurs, which consent shall not be unreasonably withheld, conditioned or delayed.

d. Staging. When an Owner is constructing, reconstructing, repairing, maintaining, remodeling, or enlarging any improvements on its Parcel, such Owner shall establish a

staging and storage area on its Parcel prior to commencing such work. Notwithstanding anything to the contrary contained in this Declaration, such staging and storage areas shall not unreasonably interfere with access for other Parcels, with the use of any other Parcel, or with the operation of any business or permitted activity on any other Parcel by the Benefitted Parties thereof (such Benefitted Parties to have free and unobstructed access to the loading docks, compactors, sidewalks and entrances and exits). If substantial work is to be performed, such Owner, at the request of any other Owner of a Parcel which would be materially and adversely affected by such staging or storage area, or where otherwise required by Governmental Requirements, shall fence off such staging and storage area. Upon completion of such work, such staging and storage area shall be restored to a condition at least equal to that existing prior to commencement of such work.

e. Interruptions. Any construction of Buildings, Improvements and/or additional utilities shall not adversely impact the easements and rights of the Benefitted Parties of the Parcels pursuant to Section 2 except for temporary closures (which shall not occur during customary business hours) or other interruptions (which shall not unnecessarily interrupt the flow of vehicular and pedestrian traffic to, and parking on, the Parcels during normal weekday business hours).

f. Notice to Adjoining Owners. The Owner proposing to construct any Buildings, Improvements and/or utilities pursuant to this Section 3 shall provide to the other Owners written notice of, and conceptual plans and a construction schedule for, the proposed construction not less than thirty (30) days before any work commences.

4. No-Build Area. To preserve the view from, and to minimize the loss of light to, the Gateway Office 6 Parcel, no Buildings or vertical Improvements items (collectively "Structures") shall be constructed, placed, grown or otherwise located on the No Build Area directly to the west or east of the Gateway Office 6 Parcel.

5. Rules and Regulations. The Owners of the Parcels may promulgate reasonable rules regarding the use of the Access Areas on their respective Parcels (the "Rules and Regulations"). If any Owner objects to the Rules and Regulations, it shall state the basis for the objection in writing to each other Owner.

6. Maintenance of Access Areas. Each Owner shall continuously maintain and keep in good order, condition and repair all Access Areas located on its Parcel. If an Owner fails to maintain the Access Areas on its Parcel, the Owner of an adjoining Parcel may, after thirty (30) days written notice setting forth in reasonable detail the particular failure, enter the Parcel and perform the required maintenance at the cost and expense of the defaulting Owner. The Owner performing the maintenance shall invoice the defaulting Owner. If the defaulting Owner fails to pay the invoice within fifteen (15) days, then: (i) a five percent (5%) late payment fee shall be added to the invoice on the sixteenth (16th) day; (ii) the unpaid balance shall thereafter accrue interest at the rate of eighteen percent (18%) per annum; and (iii) all sums owing shall be secured by a lien against the Parcel owned by the defaulting Owner.

7. Further Subdivision of Parcels. Any Owner may further subdivide its Parcel or create a condominium project with respect to any of its Parcel without the prior written consent of each

other Owner. Upon any such subdivision, each subdivided lot shall be a separate "Parcel" for all purposes under this Declaration.

8. Title and Mortgage Protection. No amendment to this Declaration shall in any way affect the rights of any Mortgagee pursuant to a Mortgage that is recorded at the time of the recordation of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, unless such Mortgagee consents in writing to such amendment. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Parcel. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair or render invalid the lien of or other rights under any Mortgage; provided, a lien arising under this Declaration shall have priority over the Mortgage if a notice of such lien is recorded prior to the date of recordation of a Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure, trustee's sale or any deed, arrangement or proceeding in lieu thereof, a Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration except the obligation to subordinate its lien or security interest to this Declaration.

9. Insurance on Parcels Maintained by Owner.

a. Maintenance of Insurance. Each Owner shall, during the term of this Declaration, except as otherwise expressly set forth herein, maintain, or cause to be maintained, at its sole expense, in full force and effect, with good and solvent insurance companies authorized to do business in the State of Utah and having a rating by Best's Insurance Reports of not less than A-/X, on all Buildings and other Improvements located on its Parcel (including the portion of the Circulation Roads located on such Owner's Parcel), a policy or policies of commercial general liability, bodily injury, personal injury and property damage liability insurance with combined single limits of at least Five Million Dollars (\$5,000,000). Each Owner shall, upon request thereof from Declarant or any other Owner, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section.

b. Waiver of Subrogation. Each Owner hereby waives any claim that it might have against any other Owner for damages which would be covered by any of the insurance required to be carried under this Section. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or any damage to the said property of any Owner. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation) each Owner shall give to each insurance company which has issued to it policies of all-risk insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waiver. All such insurance maintained pursuant to this Section shall provide that such insurance shall not be canceled or amended without ten (10) days prior written notice to the other Owners.

c. Right of Other Owners to Insure. If any such Owner shall fail to maintain any of the insurance required to be maintained by such Owner pursuant to this Declaration, then any other Owner shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of ten (10) days in which to cure such default. If the defaulting Owner does not cure such default within said ten (10) day period, the Owner(s) and/or tenant(s) giving the notice of default may do so and the curing Owner or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within fifteen (15) days, then: (i) a five percent (5%) late payment fee shall be added to the invoice on the sixteenth (16th) day; (ii) the unpaid balance shall thereafter accrue interest at the rate of eighteen percent (18%) per annum; and (iii) all sums owing shall be secured by a lien against the Parcel owned by the invoiced Owner.

10. Indemnification. Each Owner ("**Indemnitor**") covenants and agrees to defend, protect, indemnify and hold harmless each other Owner ("**Indemnitee**") from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees actually incurred and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person located on the Lot owned or leased by each Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitees, its agents, servants, partners or employees.

11. Amendment or Termination; Duration of Declaration. This Declaration may be amended or terminated by, but only by, an instrument filed for record in the office of the County Recorder of Salt Lake County, Utah that is executed by all of the Owners of all of the Parcels. The term of this Declaration is perpetual and shall be and remain in force and effect until terminated pursuant to this Section.

12. Covenants to Run with Land. This Declaration and the easements and covenants created by this Declaration are intended by the Declarant to be and shall constitute covenants running with the land as to each of the Parcels, and shall be binding upon and shall inure to the benefit of each Owner any Person who acquires or comes to have any interest in any Parcel or portion thereof, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. Each Owner shall comply with, and all interests in all Parcels shall be subject to, the terms of this Declaration. By acquiring, in any way coming to have an interest in, or occupying a Parcel or portion thereof, the Person so acquiring, coming to have such interest in, or occupying a Parcel or portion thereof, shall be deemed to have consented to, and shall be bound by, each and every provision of this Declaration.

13. Enforcement. The Owner of a Parcel or any portion of a Parcel shall have the right to enforce, through any permitted proceeding at law or in equity, the terms, provisions, restrictions and requirements of this Declaration. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, covenants and requirements of this Declaration shall not result in or be construed to be an abandonment or termination of this Declaration or any waiver of the right to insist upon such performance or compliance with the terms of this Declaration in the future. If any action or proceeding is brought because of a default under, or to enforce or interpret any of the covenants, provisions, or requirements of, this Declaration, the party prevailing in such action or

arbitration shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court or the arbitrator and made a part of any judgment rendered.

14. Effective Date. This Declaration, any amendment or termination hereof, and any supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

15. Miscellaneous.

a. Titles, Captions and References. All section titles or captions in this Declaration are for convenience only, shall not be deemed part of this Declaration and in no way define, limit, extend or describe the scope or intent of any provisions of this Declaration. When this Declaration refers to a Section by number or other designation, such reference shall be deemed to be to the correspondingly numbered Section of this Declaration unless the context refers to another agreement, document or instrument.

b. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Declaration shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

c. Applicable Law. This Declaration shall be construed in accordance with and governed by the laws of the State of Utah, without reference to its choice of law rules that would apply the law of another jurisdiction.

d. Exhibits. All exhibits attached to this Declaration are expressly made a part of and incorporated in this Declaration as fully as though completely set forth in this Declaration.

e. Time of Essence. Time is of the essence of this Declaration.

(Signature on the following page)

EXECUTED as of the date and year first above written.

"DECLARANT"

GATEWAY ASSOCIATES, LTD., a Utah limited partnership, by its general partner:

BOYER GATEWAY, L.C., a Utah limited liability company, by its Manager:

THE BOYER COMPANY, L.C., a Utah limited liability company

By: *Jacob L. Boyer*
Name: **Jacob L. Boyer**
Its: **Manager**

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 10th day of June, 2011 by Jacob L. Boyer, a Manager of The Boyer Company, L.C., a Utah limited liability company, which is the manager of Boyer Gateway, L.C., a Utah limited liability company, which is the general partner of Gateway Associates, Ltd., a Utah limited partnership.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Rachael N. Musulu
NOTARY PUBLIC

My Commission Expires: 9-17-11

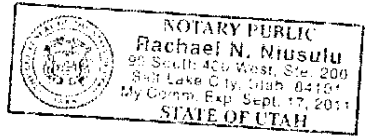


EXHIBIT "A"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of Gateway Office 6 Parcel

Lot 7B, Gateway 6 Subdivision Amending Lot 7 of the Boyer Gateway Subdivision, according to the official plat thereof, filed on December 23, 2008 as Entry No 10584220, in Book "2008P" of Plats, at Page 308 of the Official Records of the Salt Lake County Recorder.

Tax Parcel No.: 08-36-376-026

EXHIBIT "B-1"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of the No Build Area

BEGINNING AT A POINT WEST ALONG THE NORTH LINE OF LOT 1, GATEWAY 6 SUBDIVISION AMENDING LOT 7 OF THE BOYER GATEWAY SUBDIVISION AS RECORDED WITH THE OFFICE OF THE SALT LAKE COUNTY RECORDER A DISTANCE OF 12.89 FEET FROM THE NORTHEAST CORNER OF SAID LOT 1, AND RUNNING THENCE SOUTH 6.20 FEET; THENCE WEST 239.33 FEET; THENCE NORTH 10.50 FEET; THENCE EAST 239.33 FEET; THENCE SOUTH 4.30 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B-2"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Depiction of the No Build Area

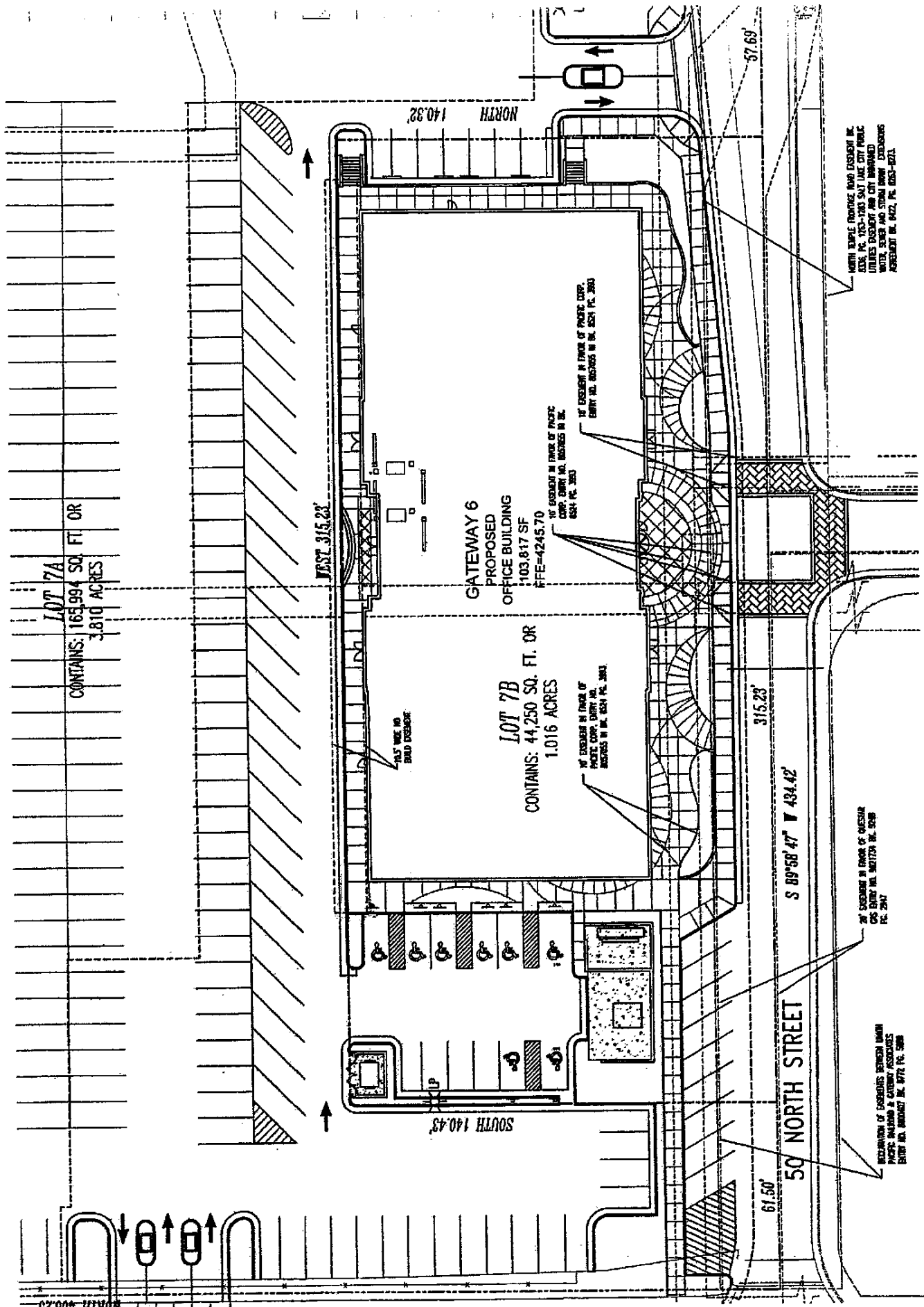


EXHIBIT "C"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of the North Retail and Parking Parcel

Lot 7A, Gateway 6 Subdivision Amending Lot 7 of the Boyer Gateway Subdivision, according to the official plat thereof, filed on December 23, 2008 as Entry No 10584220, in Book "2008P" of Plats, at Page 308 of the Official Records of the Salt Lake County Recorder.

Tax Parcel No.: 08-36-376-025

EXHIBIT "D"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of the Retail Phase II Parcel

LOT 6, Boyer Gateway Subdivision Plat, recorded in the office of the Salt Lake County Recorder on February 23, 2001, as Entry No. 7828967, in Book 2001P at Page 37 of Plats.

Tax Parcel No.: 08-36-376-013