

COURTESY RECORDING  
NO TITLE LIABILITY

13019121  
6/28/2019 10:18:00 AM \$40.00  
Book - 10797 Pg - 3525-3554  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
FIRST AMERICAN TITLE AZ  
BY: eCASH, DEPUTY - EF 30 P.

**AFTER RECORDING, RETURN TO:**  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
Attn: David E. Gee

Tax Parcel Nos.: 08-36-376-043-0000;15-01-130-130-001

## ENCROACHMENTS AGREEMENT

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THIS ENCROACHMENTS AGREEMENT (this "**Agreement**") is entered into as of the 27 day of June, 2019 (the "**Effective Date**") by and between VESTAR GATEWAY, LLC, a Delaware limited liability company ("**Vestar**"), and GATEWAY ASSOCIATES, LTD., a Utah limited partnership ("**Gateway Associates**," and, together with Vestar, the "**Parties**").

### RECITALS

A. Gateway Associates owns the real property described on **Exhibit "A"** attached to this Agreement ("**Lot 6B**").

B. Vestar owns the real property described on **Exhibit "B"** attached to this Agreement ("**Retail Unit 1**").

C. The Block C-2 Association, Inc., a Utah corporation (the "**Block C-2 Association**") is the controlling association for the owners of the condominium units (the "**Condominium Units**") contained in the Gateway Block C-2 Condominium Project as such Condominium Units are identified in the Record of Survey Map recorded in the office of the Salt Lake County Recorder on December 27, 2000, as Entry No. 7788089, in Book 2000P at Page 365 of Plats (as said Record of Survey Map shall have heretofore been amended or supplemented) (the "**Block C2 Map**") and in the Amended and Restated Declaration of Condominium for Gateway Block C2 Condominium Project, recorded in the office of the Salt Lake County Recorder on April 27, 2001, as Entry No. 7881709, in Book No. 8450 at Page 4843-4926 (as may have heretofore been amended or supplemented, the "**Block C2 Declaration**").

D. Retail Unit 1 is subject to the Block C2 Map and the Block C2 Declaration.

E. Gateway Associates constructed a building and related improvements on Lot 6B (the "**Lot 6B Building**") that encroaches onto Retail Unit 1 and may encroach onto certain limited portions of certain of the Common Elements (as defined in the Block C2 Declaration and depicted on the Block 2B Map).

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Description of Encroachments Area and Encroachments. As used in this Agreement:

“**Encroachments Area**” means the actual area covered by the Encroachments.

“**Encroachments**” means all present actual encroachments of the Lot 6B Building and its related improvements onto, over or under Retail Unit 1 and, if and to the extent applicable, the Common Elements including, without limitation, the following regardless of whether the same are within the area depicted on Exhibit “C”: (a) any roofs, decks, porches, protrusions or projections located above ground level that presently extend from the Lot 6B Building; (b) all footings, utility lines and facilities, underground vaults, or supporting elements located below ground level that presently extend from or support the Lot 6B Building; and (c) all further and future encroachments developing after the Effective Date as a result of shifting, settlement, or movement of the Lot 6B Building caused by naturally occurring changes or changes attributable to construction defects.

“**Encroachments Right**” is defined in Section 3.

“**Loading Area**” means the area labeled as “Loading” as set forth on Exhibit “C”.

“**Loading Easement**” means the right to access and deliver to and from the Lot 6B Building across the Loading Area.

“**Mortgage**” means a mortgage, deed of trust or other security agreement creating a lien on a Parcel or a portion of a Parcel as security for the payment of indebtedness recorded in the Official Records.

“**Mortgagee**” means a Person that is the mortgagee, beneficiary, secured party or other Person holding the lien or security interest under a Mortgage.

“**Official Records**” means the official records of the Salt Lake County Recorder, State of Utah.

“**Owner**” means, with respect to a Parcel, the Person that at the time concerned is the legal owner of record in the Official Records of the fee interest in any Parcel or portion of any Parcel. If there is more than one Owner of a Parcel at the time concerned, the obligations and liabilities of each such Owner for performance under, and compliance with, the applicable provisions of this Agreement shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term “**Owner**” shall not mean or include a Mortgagee unless and until such Mortgagee has acquired fee title of record to the Parcel concerned pursuant to foreclosure or trustee’s sale or any deed, arrangement or proceeding in lieu of thereof.

“**Parcel**” means either Lot 6B or Retail Unit 1.

“**Parcels**” means Lot 6B and Retail Unit 1

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

2. Acceptance of Encroachments. Vestar hereby accepts, approves and consents to the Encroachments and irrevocably and unconditionally waives all rights and claims it may have to object to, prohibit or cause the removal of the Encroachments.

3. Grant of Encroachments Right and Easement. Vestar hereby grants unto the Owner of Lot 6B a perpetual and irrevocable easement for the Encroachments on, above, below, over and across the Encroachments Area (the "**Encroachments Right**"). The foregoing Encroachments Right includes, without limitation, the right to construct, reconstruct, install, operate, maintain, inspect, repair and replace all or any part of the Lot 6B Building. The Encroachments Right also includes the right to use the Encroachments Area and the Loading Area for construction access to the Lot 6B Building as may be reasonably necessary to install, repair, maintain and replace the Lot 6B Building within the Encroachments Area, subject to the terms of this Agreement. Notwithstanding the foregoing, the Owner of Lot 6B shall not be entitled to replace the Lot 6B Building with a building that creates new encroachments that extend beyond the Encroachment Area of the current Lot 6B Building. Further, the Owner of Lot 6B covenants and agrees to maintain the Encroachment Area and all improvements therein, including the Lot 6B Building, at its sole cost and expense, in good condition and repair.

4. Loading Easement. Vestar hereby grants to the Owner of Lot 6B a perpetual and irrevocable non-exclusive easement and right to use the Loading Area to provide access for deliveries and the ingress and egress of vehicles and pedestrians to and from the Lot 6B Building, and for the additional purposes set forth in Section 3.

5. Ingress and Egress Rights. The Encroachments Right includes, without limitation, the right of ingress and egress to use the Lot 6B Building located in the Encroachments Area and to enter upon such areas of Retail Unit 1 and, if applicable, the Common Elements as may be reasonably necessary, with such equipment as is reasonably necessary to from time to time install, maintain, repair, inspect, protect, remove and replace said Lot 6B Building and keep the Lot 6B Building and the Loading Area free from ice, snow, debris and obstructions. The Parties acknowledge and agree that an emergency walkway exit (the "**Emergency Exit**") servicing Retail Unit 1 is located immediately adjacent to the southern portion of the Lot 6B Building. Notwithstanding anything herein to the contrary, the Owner of Lot 6B covenants and agrees not to exercise any right hereunder in a manner that would cause the Emergency Exit to be blocked or otherwise in violation of any law, including, without limitation, applicable building codes. The Owner of Lot 6B agrees to indemnify, defend and hold harmless the Owner of Retail Unit 1 and the Association from and against any all damages, liabilities, claims, actions, causes of actions and expenses (including reasonable attorneys' fees), arising out of its use of Encroachments Area or Loading Dock in connection with the exercise of the Encroachments Rights by the Owner of Lot 6B, its agents, employees and contractors except to the extent caused by the Owner of Retail Unit 1 or the Association, or their respective agents, employees and contractors.

6. Limitations. Vestar covenants and agrees that it will not make any use of the Encroachments Area that will unreasonably interfere with the usual and customary operations of the Lot 6B Building or the maintenance or repair of the Lot 6B Building. Gateway Associates covenants and agrees that it will not make any use of the Loading Area that will unreasonably interfere with the usual and customary operations of Retail Unit 1 or the Common Elements.

7. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the Parcels for the general public or for any public purpose whatsoever, it being the intention of the undersigned that this Agreement be strictly limited to the purposes expressed in this Agreement.

8. Covenants Run with Land. Each right-of-way, easement, covenant and restriction contained herein (whether affirmative or negative in nature) shall: (a) create an equitable servitude on the burdened land in favor of each Owner of each Parcel; (b) constitute a covenant running with the land as to each Parcel; and (c) be binding upon and inure to the benefit of the Owners of each Parcel and their respective legal representatives, successors and assigns. The Parties specifically and expressly agree that it is their intent that the burdens imposed by this Agreement on Retail Unit 1 and, to the extent applicable, the Common Elements shall constitute a burden upon said affected lands as that term is used at law and that all Persons hereafter claiming an interest in said lands shall be bound by such burdens.

9. Term of Agreement Perpetual. Except and to the extent set forth in Section 11 and this Section 9, this Agreement and the Encroachments Right and each other right and obligations set forth in this Agreement shall be perpetual.

a. Notwithstanding anything herein to the contrary, in the event that substantially all of the portion of the Lot 6B Building that encroaches onto the Encroachments Area should be torn down and removed for any reason, the Owner of Retail Parcel 1 shall have the right and option to terminate this Agreement (the "**Termination Right**") if the Owner of Lot 6B does not commence reconstruction of the Lot 6B Building within two (2) years of the date the Lot 6B Building is torn down or removed and diligently prosecutes same to completion thereafter, subject to force majeure. The Owner of Retail Parcel 1 may exercise the Termination Option only by giving written notice to the Owner of Lot 6B (the "**Termination Notice**"). If the Owner of Retail Parcel 1 delivers the Termination Notice to the Owner of Lot 6B, then the Owner of Lot 6B shall have ninety (90) days following the delivery of the Termination Notice to commence or recommence construction, as applicable, and diligently prosecutes same to completion thereafter, subject to force majeure. If the Owner of Lot 6B fails to do so, this Agreement shall terminate upon further written notice from the Owner of Retail Parcel 1 and the Owner of Lot 6B shall deliver to the Owner of Retail Parcel 1 such further documents that may be necessary to record a termination of this Agreement in the Official Records.

b. If any part of the Encroachment Area is taken by eminent domain or agreement in lieu thereof, the amount paid by the condemning authority shall be allocated between the value of the land in the Encroachment Area and the value of the Lot 6B Building. The Owner of Retail Parcel 1 shall be entitled to the award for the value of the land and the balance of the award shall be paid to the Owner of Lot 6B.

c. If the Lot 6B Building suffers any casualty, all of the insurance proceeds received from insurance policies maintained by the Owner of Lot 6B shall be the property of, and be retained by or paid to, the Owner of Lot 6B.

d. The Owner of Lot 6B shall have no obligation to rebuild the Lot 6B Building in the event of any taking by right of eminent domain or damage or destruction; provided that the Owner of Lot 6B shall be obligated to remove debris caused by any damage or destruction and subsequently maintain such area in a condition comparable to the surrounding buildings and improvements.

10. Effect of Breach. No breach of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement but such limitation on termination shall not affect any other right or remedy or limit any obligation that any Owner may have under this Agreement or under applicable law by reason of any such breach including, without limitation, specific performance or injunctive relief.

11. Abandonment. Gateway Associates shall have the unilateral right and at any time to abandon the Encroachments Rights either with respect to all or any part of the Encroachments Area by filing a written notice of abandonment in the Official Records.

12. Modification. Except as set forth in Section 10, this Agreement and any easement, covenant or restriction contained in this Agreement may not be terminated, extended, modified, or amended without the consent of the Owners of Lot 6B and Retail Parcel 1, and any such termination, extension, modification, or amendment shall be effective only on recordation in the Official Records of a written document effecting the same, executed and acknowledged the Owners of Lot 6B and Retail Parcel 1; provided, however, that no such termination, extension, modification, or amendment shall affect the rights of any mortgagee or beneficiary holding a mortgage or deed of trust constituting a lien on the Encroachments Areas, or any portion thereof, unless such mortgagee or beneficiary consents to the same in writing.

13. Identical Ownership. The ownership of both Parcels by the same Person shall not result in the termination of this Agreement, the Encroachments Right, the Loading Easement or any other right, obligation or provision of this Agreement.

14. Mortgagee Protection. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Parcels shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Agreement.

15. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah. Whenever possible, each provision of this instrument shall be interpreted in a manner as to be valid under applicable law; but if any provision of this instrument shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

16. Further Assurances; Estoppels. The Owners of Lot 6B and Retail Parcel 1 shall execute such other and further agreements, instruments or documents, including, without limitation, estoppel certificates as may be required at any time or from time to time as may be reasonably required by

prospective lenders or purchasers lenders to confirm the existence of this Agreement, the existence or non-existence or rights or claims under this Agreement, that no defaults or breach has occurred under this Agreement, and such additional information as may reasonably be requested.

17. Attorneys' Fees. If any Owner brings suit or other proceeding to enforce this Agreement or for damages on account of the breach of any provision of this Agreement, the prevailing Owner shall be entitled to recover its reasonable attorneys' fees and costs incurred in the action or in any appeal of the action.

*[Remainder of Page Intentionally Left Blank.]*

COURTESY RECORDING  
NO TITLE LIABILITY

**AFTER RECORDING, RETURN TO:**

Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
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Attn: David E. Gee

Tax Parcel Nos.: 08-36-376-043-0000;15-01-130-130-001

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**RECITALS**

A. Gateway Associates owns the real property described on **Exhibit "A"** attached to this Agreement ("**Lot 6B**").

B. Vestar owns the real property described on **Exhibit "B"** attached to this Agreement ("**Retail Unit 1**").

C. The Block C-2 Association, Inc., a Utah corporation (the "**Block C-2 Association**") is the controlling association for the owners of the condominium units (the "**Condominium Units**") contained in the Gateway Block C-2 Condominium Project as such Condominium Units are identified in the Record of Survey Map recorded in the office of the Salt Lake County Recorder on December 27, 2000, as Entry No. 7788089, in Book 2000P at Page 365 of Plats (as said Record of Survey Map shall have heretofore been amended or supplemented) (the "**Block C2 Map**") and in the Amended and Restated Declaration of Condominium for Gateway Block C2 Condominium Project, recorded in the office of the Salt Lake County Recorder on April 27, 2001, as Entry No. 7881709, in Book No. 8450 at Page 4843-4926 (as may have heretofore been amended or supplemented, the "**Block C2 Declaration**").

D. Retail Unit 1 is subject to the Block C2 Map and the Block C2 Declaration.

E. Gateway Associates constructed a building and related improvements on Lot 6B (the "**Lot 6B Building**") that encroaches onto Retail Unit 1 and may encroach onto certain limited portions of certain of the Common Elements (as defined in the Block C2 Declaration and depicted on the Block 2B Map).

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**[Signature Page by GATEWAY ASSOCIATES, LTD.]**

IN WITNESS WHEREOF, Gateway Associates, LTD., a Utah limited liability company has caused this Agreement to be executed as of the day and year first above written.

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

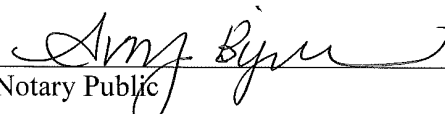
**BOYER GATEWAY, L.C.,**  
a Utah limited liability company,  
by its Manager:

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

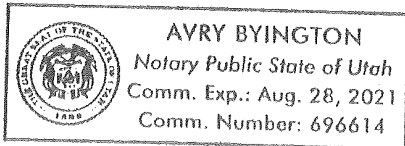
By:   
Name: Brian Gochnour  
Title: Manager

STATE OF UTAH                    )  
  ) SS:  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 5 day of June, 2019, by Brian Gochnour, the Manager of The Boyer Company, L.C., a Utah limited liability company which is a manager of Boyer Gateway, L.C., a Utah limited liability company, which is the general partner of Gateway Associates, LTD., a Utah limited partnership.

  
Notary Public

[Seal]







1. Description of Encroachments Area and Encroachments. As used in this Agreement:

“**Encroachments Area**” means the actual area covered by the Encroachments.

“**Encroachments**” means all present actual encroachments of the Lot 6B Building and its related improvements onto, over or under Retail Unit 1 and, if and to the extent applicable, the Common Elements including, without limitation, the following regardless of whether the same are within the area depicted on Exhibit “C”: (a) any roofs, decks, porches, protrusions or projections located above ground level that presently extend from the Lot 6B Building; (b) all footings, utility lines and facilities, underground vaults, or supporting elements located below ground level that presently extend from or support the Lot 6B Building; and (c) all further and future encroachments developing after the Effective Date as a result of shifting, settlement, or movement of the Lot 6B Building caused by naturally occurring changes or changes attributable to construction defects.

“**Encroachments Right**” is defined in Section 3.

“**Loading Area**” means the area labeled as “Loading” as set forth on Exhibit “C”.

“**Loading Easement**” means the right to access and deliver to and from the Lot 6B Building across the Loading Area.

“**Mortgage**” means a mortgage, deed of trust or other security agreement creating a lien on a Parcel or a portion of a Parcel as security for the payment of indebtedness recorded in the Official Records.

“**Mortgagee**” means a Person that is the mortgagee, beneficiary, secured party or other Person holding the lien or security interest under a Mortgage.

“**Official Records**” means the official records of the Salt Lake County Recorder, State of Utah.

“**Owner**” means, with respect to a Parcel, the Person that at the time concerned is the legal owner of record in the Official Records of the fee interest in any Parcel or portion of any Parcel. If there is more than one Owner of a Parcel at the time concerned, the obligations and liabilities of each such Owner for performance under, and compliance with, the applicable provisions of this Agreement shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term “**Owner**” shall not mean or include a Mortgagee unless and until such Mortgagee has acquired fee title of record to the Parcel concerned pursuant to foreclosure or trustee’s sale or any deed, arrangement or proceeding in lieu of thereof.

“**Parcel**” means either Lot 6B or Retail Unit 1.

“**Parcels**” means Lot 6B and Retail Unit 1

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





2. Acceptance of Encroachments. Vestar hereby accepts, approves and consents to the Encroachments and irrevocably and unconditionally waives all rights and claims it may have to object to, prohibit or cause the removal of the Encroachments.

3. Grant of Encroachments Right and Easement. Vestar hereby grants unto the Owner of Lot 6B a perpetual and irrevocable easement for the Encroachments on, above, below, over and across the Encroachments Area (the "**Encroachments Right**"). The foregoing Encroachments Right includes, without limitation, the right to construct, reconstruct, install, operate, maintain, inspect, repair and replace all or any part of the Lot 6B Building. The Encroachments Right also includes the right to use the Encroachments Area and the Loading Area for construction access to the Lot 6B Building as may be reasonably necessary to install, repair, maintain and replace the Lot 6B Building within the Encroachments Area, subject to the terms of this Agreement. Notwithstanding the foregoing, the Owner of Lot 6B shall not be entitled to replace the Lot 6B Building with a building that creates new encroachments that extend beyond the Encroachment Area of the current Lot 6B Building. Further, the Owner of Lot 6B covenants and agrees to maintain the Encroachment Area and all improvements therein, including the Lot 6B Building, at its sole cost and expense, in good condition and repair.

4. Loading Easement. Vestar hereby grants to the Owner of Lot 6B a perpetual and irrevocable non-exclusive easement and right to use the Loading Area to provide access for deliveries and the ingress and egress of vehicles and pedestrians to and from the Lot 6B Building, and for the additional purposes set forth in Section 3.

5. Ingress and Egress Rights. The Encroachments Right includes, without limitation, the right of ingress and egress to use the Lot 6B Building located in the Encroachments Area and to enter upon such areas of Retail Unit 1 and, if applicable, the Common Elements as may be reasonably necessary, with such equipment as is reasonably necessary to from time to time install, maintain, repair, inspect, protect, remove and replace said Lot 6B Building and keep the Lot 6B Building and the Loading Area free from ice, snow, debris and obstructions. The Parties acknowledge and agree that an emergency walkway exit (the "**Emergency Exit**") servicing Retail Unit 1 is located immediately adjacent to the southern portion of the Lot 6B Building. Notwithstanding anything herein to the contrary, the Owner of Lot 6B covenants and agrees not to exercise any right hereunder in a manner that would cause the Emergency Exit to be blocked or otherwise in violation of any law, including, without limitation, applicable building codes. The Owner of Lot 6B agrees to indemnify, defend and hold harmless the Owner of Retail Unit 1 and the Association from and against any all damages, liabilities, claims, actions, causes of actions and expenses (including reasonable attorneys' fees), arising out of its use of Encroachments Area or Loading Dock in connection with the exercise of the Encroachments Rights by the Owner of Lot 6B, its agents, employees and contractors except to the extent caused by the Owner of Retail Unit 1 or the Association, or their respective agents, employees and contractors.

6. Limitations. Vestar covenants and agrees that it will not make any use of the Encroachments Area that will unreasonably interfere with the usual and customary operations of the Lot 6B Building or the maintenance or repair of the Lot 6B Building. Gateway Associates covenants and agrees that it will not make any use of the Loading Area that will unreasonably interfere with the usual and customary operations of Retail Unit 1 or the Common Elements.



7. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the Parcels for the general public or for any public purpose whatsoever, it being the intention of the undersigned that this Agreement be strictly limited to the purposes expressed in this Agreement.

8. Covenants Run with Land. Each right-of-way, easement, covenant and restriction contained herein (whether affirmative or negative in nature) shall: (a) create an equitable servitude on the burdened land in favor of each Owner of each Parcel; (b) constitute a covenant running with the land as to each Parcel; and (c) be binding upon and inure to the benefit of the Owners of each Parcel and their respective legal representatives, successors and assigns. The Parties specifically and expressly agree that it is their intent that the burdens imposed by this Agreement on Retail Unit 1 and, to the extent applicable, the Common Elements shall constitute a burden upon said affected lands as that term is used at law and that all Persons hereafter claiming an interest in said lands shall be bound by such burdens.

9. Term of Agreement Perpetual. Except and to the extent set forth in Section 11 and this Section 9, this Agreement and the Encroachments Right and each other right and obligations set forth in this Agreement shall be perpetual.

a. Notwithstanding anything herein to the contrary, in the event that substantially all of the portion of the Lot 6B Building that encroaches onto the Encroachments Area should be torn down and removed for any reason, the Owner of Retail Parcel 1 shall have the right and option to terminate this Agreement (the "**Termination Right**") if the Owner of Lot 6B does not commence reconstruction of the Lot 6B Building within two (2) years of the date the Lot 6B Building is torn down or removed and diligently prosecutes same to completion thereafter, subject to force majeure. The Owner of Retail Parcel 1 may exercise the Termination Option only by giving written notice to the Owner of Lot 6B (the "**Termination Notice**"). If the Owner of Retail Parcel 1 delivers the Termination Notice to the Owner of Lot 6B, then the Owner of Lot 6B shall have ninety (90) days following the delivery of the Termination Notice to commence or recommence construction, as applicable, and diligently prosecutes same to completion thereafter, subject to force majeure. If the Owner of Lot 6B fails to do so, this Agreement shall terminate upon further written notice from the Owner of Retail Parcel 1 and the Owner of Lot 6B shall deliver to the Owner of Retail Parcel 1 such further documents that may be necessary to record a termination of this Agreement in the Official Records.

b. If any part of the Encroachment Area is taken by eminent domain or agreement in lieu thereof, the amount paid by the condemning authority shall be allocated between the value of the land in the Encroachment Area and the value of the Lot 6B Building. The Owner of Retail Parcel 1 shall be entitled to the award for the value of the land and the balance of the award shall be paid to the Owner of Lot 6B.

c. If the Lot 6B Building suffers any casualty, all of the insurance proceeds received from insurance policies maintained by the Owner of Lot 6B shall be the property of, and be retained by or paid to, the Owner of Lot 6B.

**EXHIBIT "A"**  
**TO**  
**ENCROACHMENTS AGREEMENT**

Legal Description of 6B Parcel

The following real property located in Salt Lake County, Utah, and more particularly described as:

Lot 6B, Boyer Gateway Lot 6 Amended Subdivision, according to the official plat thereof on record as Entry No. 12306373 in Book 2016P at Page 136 in the Salt Lake County Recorder's Office.

Tax Parcel No.: 08-36-376-043-0000



d. The Owner of Lot 6B shall have no obligation to rebuild the Lot 6B Building in the event of any taking by right of eminent domain or damage or destruction; provided that the Owner of Lot 6B shall be obligated to remove debris caused by any damage or destruction and subsequently maintain such area in a condition comparable to the surrounding buildings and improvements.

10. Effect of Breach. No breach of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement but such limitation on termination shall not affect any other right or remedy or limit any obligation that any Owner may have under this Agreement or under applicable law by reason of any such breach including, without limitation, specific performance or injunctive relief.

11. Abandonment. Gateway Associates shall have the unilateral right and at any time to abandon the Encroachments Rights either with respect to all or any part of the Encroachments Area by filing a written notice of abandonment in the Official Records.

12. Modification. Except as set forth in Section 10, this Agreement and any easement, covenant or restriction contained in this Agreement may not be terminated, extended, modified, or amended without the consent of the Owners of Lot 6B and Retail Parcel 1, and any such termination, extension, modification, or amendment shall be effective only on recordation in the Official Records of a written document effecting the same, executed and acknowledged the Owners of Lot 6B and Retail Parcel 1; provided, however, that no such termination, extension, modification, or amendment shall affect the rights of any mortgagee or beneficiary holding a mortgage or deed of trust constituting a lien on the Encroachments Areas, or any portion thereof, unless such mortgagee or beneficiary consents to the same in writing.

13. Identical Ownership. The ownership of both Parcels by the same Person shall not result in the termination of this Agreement, the Encroachments Right, the Loading Easement or any other right, obligation or provision of this Agreement.

14. Mortgagee Protection. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Parcels shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Agreement.

15. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah. Whenever possible, each provision of this instrument shall be interpreted in a manner as to be valid under applicable law; but if any provision of this instrument shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

16. Further Assurances; Estoppels. The Owners of Lot 6B and Retail Parcel 1 shall execute such other and further agreements, instruments or documents, including, without limitation, estoppel certificates as may be required at any time or from time to time as may be reasonably required by

**EXHIBIT "B"**  
**TO**  
**ENCROACHMENTS AGREEMENT**

Legal Description of Retail Parcel 1

RETAIL UNIT 1, contained within the Block C2 Condominium Project as the same is identified in the Record of Survey Map recorded in the office of the Salt Lake County Recorder on December 27, 2000, as Entry No. 7788089, in Book 2000P at Page 365 of Plats (as said Record of Survey Map shall have heretofore been amended or supplemented) (the "Block C2 Map") and in this Agreement of Condominium for Gateway Block C2 Condominium Project, recorded in the office of the Salt Lake County Recorder on April 27, 2001, as Entry No. 7881709, in Book No. 8450 at Page 4843-4926 (as said Block C2 Declaration may have heretofore been amended or supplemented), TOGETHER WITH the undivided ownership interest in said Block C2 Condominium's Common Elements that is appurtenant to said Unit as more particularly described in the Block C2 Declaration. As affected by Assignment of Declarant's Rights (Block C-2), made as of December 5, 2014, by Northgate Village Associates, L.P., as assignor, and PC Northgate, LLC, as assignee, recorded December 8, 2014, as Entry No. 11958082, in Book 10280 at Page 2838.

Tax Parcel No.: 15-01-130-130-001

prospective lenders or purchasers lenders to confirm the existence of this Agreement, the existence or non-existence or rights or claims under this Agreement, that no defaults or breach has occurred under this Agreement, and such additional information as may reasonably be requested.

17. Attorneys' Fees. If any Owner brings suit or other proceeding to enforce this Agreement or for damages on account of the breach of any provision of this Agreement, the prevailing Owner shall be entitled to recover its reasonable attorneys' fees and costs incurred in the action or in any appeal of the action.

*[Remainder of Page Intentionally Left Blank.]*

**EXHIBIT "C"**  
**TO**  
**ENCROACHMENTS AGREEMENT**

(See attached depiction)

**[Signature Page by GATEWAY ASSOCIATES, LTD.]**

IN WITNESS WHEREOF, Gateway Associates, LTD., a Utah limited liability company has caused this Agreement to be executed as of the day and year first above written.

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

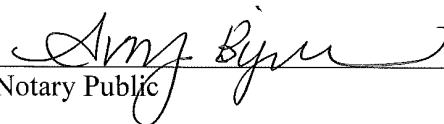
**BOYER GATEWAY, L.C.,**  
a Utah limited liability company,  
by its Manager:

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

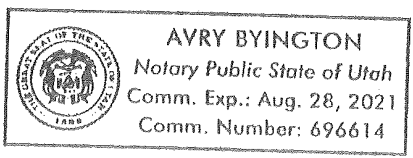
By:   
Name: Brian Gochnour  
Title: Manager

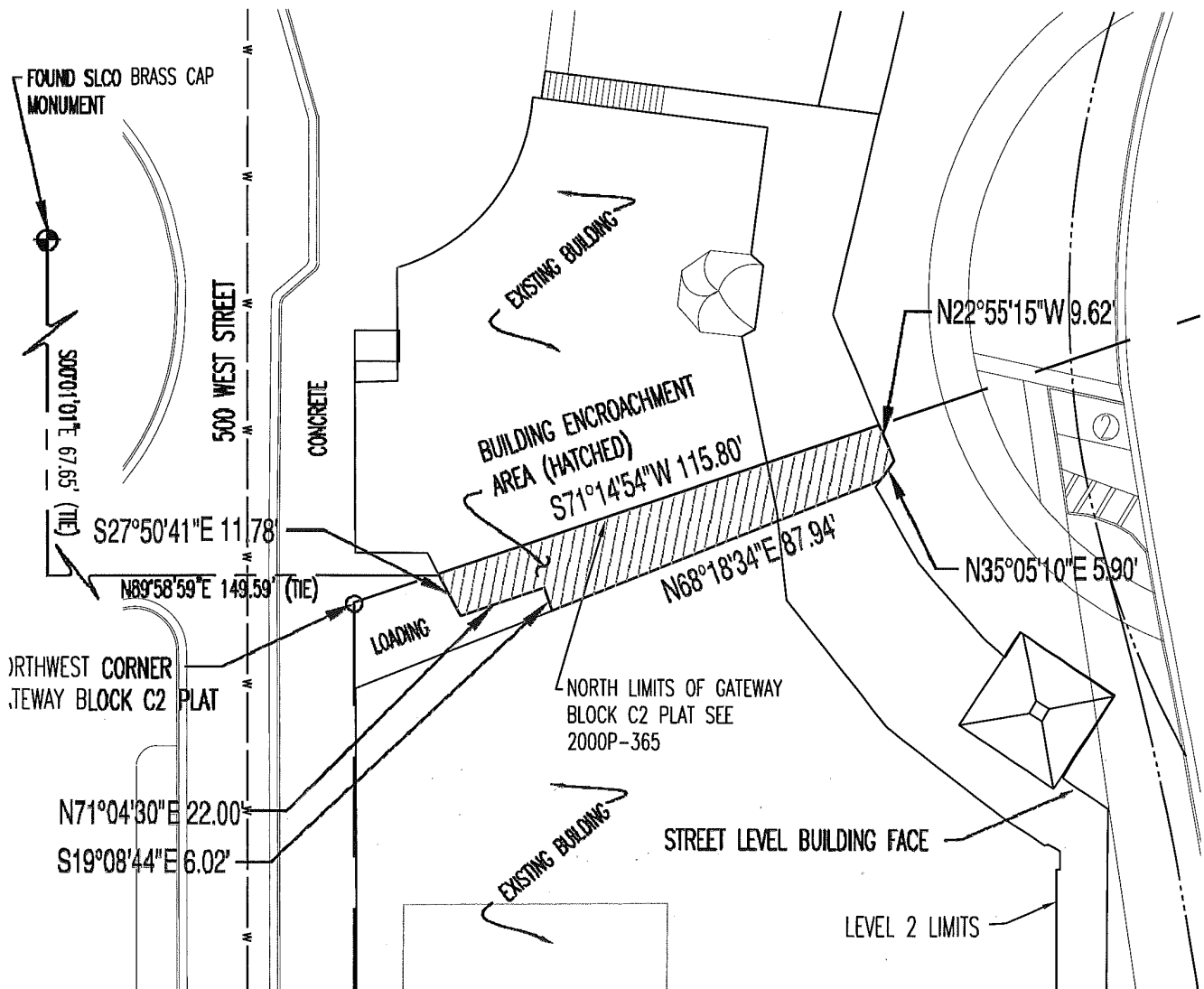
STATE OF UTAH                    )  
  ) SS:  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 5 day of June, 2019, by Brian Gochnour, the Manager of The Boyer Company, L.C., a Utah limited liability company which is a manager of Boyer Gateway, L.C., a Utah limited liability company, which is the general partner of Gateway Associates, LTD., a Utah limited partnership.

  
Notary Public

[Seal]





[Signature Page by VESTAR GATEWAY, LLC]

IN WITNESS WHEREOF, Vestar Gateway, LLC has caused this Agreement to be executed as of the day and year first above written.

VESTAR:

VESTAR GATEWAY, LLC,  
a Delaware limited liability company

By: Gateway Mezzanine, LLC  
a Delaware limited liability company  
its sole member

By: SLC Gateway Retail, LLC,  
a Delaware limited liability company,  
its sole member

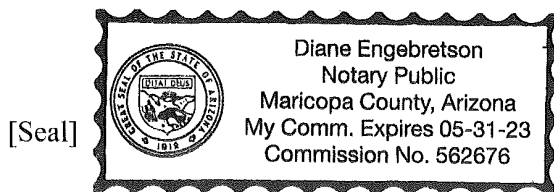
By: VGSLM, LLC,  
a Delaware limited liability company,  
its managing member

By: [Signature]  
Name: R. Patrick McGinley  
Title: Manager Manager

STATE OF Arizona §  
  § ss:  
COUNTY OF Maricopa §

The foregoing instrument was acknowledged before me this 25 day of June, 2019, by R. Patrick McGinley the Manager of VGSLM, LLC, a Delaware limited liability company which is the managing member of SLC Gateway Retail, LLC, a Delaware limited liability company, which is the sole member of Gateway Mezzanine, LLC, a Delaware limited liability company, which is the sole member of VESTAR GATEWAY, LLC, a Delaware limited liability company, for and on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]  
NOTARY PUBLIC





**CONSENT OF LIENHOLDER  
TO  
ENCROACHMENTS EASEMENTS  
(Lot 6B)**

Wells Fargo Bank, National Association, a national banking association (the "Lender"), hereby acknowledges and consents to the recording of this Encroachments Agreement (the "Agreement") and subordinates the lien of that certain Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of June 6, 2005 executed by Gateway Associates, L.C., a Utah limited liability company in favor of Landmark Title Company, a Utah corporation, as trustee for the benefit of the Lender recorded in the Official Records of Salt Lake County, Utah (the "Official Records"), on June 23, 2005 as Entry No. 9413044 in Book 9149, beginning at Page 2756 (as subsequently amended, the "Deed of Trust") to the Agreement and the recording thereof in the Official Records. Such subordination is intended to ensure that after any foreclosure of the Deed of Trust the parties to the Agreement, and their respective successors and assigns, shall have the rights granted in the Agreement. Such subordination shall not be construed as a release of the collateral secured by the Deed of Trust or a subordination of the Deed of Trust as to any other recorded interest in the property secured by the Deed of Trust.

DATED: June 20, 2019.

WELLS FARGO BANK, NATIONAL  
ASSOCIATION,  
a national banking association

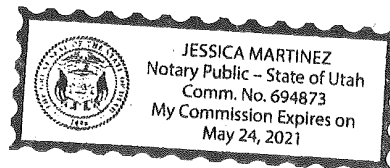
By: Ben Bliss  
Name: Ben Bliss  
Title: Vice President

State of UTAH)  
: ss.  
County of SALT LAKE)

The foregoing instrument was acknowledged before me on JUNE 20<sup>TH</sup>, 2019, by BEN BUSS, the VICE PRESIDENT of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association.

Jessica Martinez  
Notary Public

My Commission Expires: May 24, 2021





**EXHIBIT "A"**  
**TO**  
**ENCROACHMENTS AGREEMENT**

Legal Description of 6B Parcel

The following real property located in Salt Lake County, Utah, and more particularly described as:

Lot 6B, Boyer Gateway Lot 6 Amended Subdivision, according to the official plat thereof on record as Entry No. 12306373 in Book 2016P at Page 136 in the Salt Lake County Recorder's Office.

Tax Parcel No.: 08-36-376-043-0000

**EXHIBIT "B"**  
**TO**  
**ENCROACHMENTS AGREEMENT**

Legal Description of Retail Parcel 1

RETAIL UNIT 1, contained within the Block C2 Condominium Project as the same is identified in the Record of Survey Map recorded in the office of the Salt Lake County Recorder on December 27, 2000, as Entry No. 7788089, in Book 2000P at Page 365 of Plats (as said Record of Survey Map shall have heretofore been amended or supplemented) (the "Block C2 Map") and in this Agreement of Condominium for Gateway Block C2 Condominium Project, recorded in the office of the Salt Lake County Recorder on April 27, 2001, as Entry No. 7881709, in Book No. 8450 at Page 4843-4926 (as said Block C2 Declaration may have heretofore been amended or supplemented), TOGETHER WITH the undivided ownership interest in said Block C2 Condominium's Common Elements that is appurtenant to said Unit as more particularly described in the Block C2 Declaration. As affected by Assignment of Declarant's Rights (Block C-2), made as of December 5, 2014, by Northgate Village Associates, L.P., as assignor, and PC Northgate, LLC, as assignee, recorded December 8, 2014, as Entry No. 11958082, in Book 10280 at Page 2838.

Tax Parcel No.: 15-01-130-130-001

**EXHIBIT "C"**  
**TO**  
**ENCROACHMENTS AGREEMENT**

(See attached depiction)

