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01/13/2000 03:10 PM NO FEE  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
SL CITY REDEVELOPMENT AGENCY  
451 S STATE ROOM 418  
SLC UT 84111  
BY: RDJ, DEPUTY - WI 23 P.

WHEN RECORDED, RETURN TO:

REDEVELOPMENT AGENCY OF SALT LAKE CITY  
Room 418, City & County Building  
451 South State Street  
Salt Lake City, Utah 84111  
Attn: Alice Larkin Steiner, Executive Director

RECORDED

JAN 05 2000

CITY RECORDER

### RIO GRANDE STREET GRANT OF EASEMENT

<sup>2000</sup> THIS GRANT OF EASEMENT (this "Agreement") is made this 3rd day of January, ~~1999~~, by GATEWAY ASSOCIATES, LTD., a Utah limited partnership ("Owner") in favor of REDEVELOPMENT AGENCY OF SALT LAKE CITY, a public agency organized and existing under the Utah Neighborhood Development Act ("Agency") and SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah ("City"). Owner, Agency and City are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties". Reference in this Agreement to a Party or the Parties shall include, unless the context requires otherwise, the successors and assigns of the Parties, including their successors in interest to the applicable real property and/or the rights granted in this Agreement.

### RECITALS

A. This Agreement relates to that certain real property located in Salt Lake City, Utah and legally described on Exhibit "A" attached hereto (the "Retail Parcels") and shown on the Site Plan attached as Exhibit "B" (the "Site Plan"). The Retail Parcels are located within what is known as the Depot District Redevelopment Project Area (the "Depot Project Area"), which generally includes the area located between North Temple Street and 400 South Street and 400 West Street and I-15, in Salt Lake City, Utah.

B. Pursuant to the terms of a Participation and Reimbursement Agreement between Agency and Owner (the "Reimbursement Agreement"), Owner has agreed to construct certain Developer Improvements (as such term is defined in the Reimbursement Agreement), including development of a permanent road on the Retail Parcels, to be known as Rio Grande Street, as depicted on the Site Plan (the "Rio Grande Street").

C. In partial consideration for Agency's agreement to reimburse Owner for certain of its costs associated with the Developer Improvements, Owner has agreed, among other things, to grant to Agency and City a public use easement over Rio Grande Street, in perpetuity, and to record such easement against the portion of the Retail Parcels constituting Rio Grande Street which is legally described on Exhibit "C" attached hereto and incorporated herein by reference ("Rio

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Grande Easement"). The real property constituting the Rio Grande Easement is sometimes referred to herein as the Rio Grande Easement or Rio Grande Street.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, for themselves and their successors and assigns, hereby covenant as follows:

**1. PUBLIC EASEMENT**

1.1 *Conveyance of Easement.* Owner hereby grants to Agency and City for use by the general public, the Agency and the City, subject to and limited by the Rules of Conduct (defined later), a perpetual, nonexclusive public easement in, over, across and through the Rio Grande Easement. The Rio Grande Easement shall not be no less than sixty-six (66) feet in width. Subject to the limitations of Section 1.3 and Section 2, the Rio Grande Easement may be used by the public and Agency for all related public purposes, including without limitation both pedestrian and vehicular traffic and the installation, operation, use, maintenance, repair and replacement of that portion of the Developer Improvements as shall be owned by City; provided, Owner or City may construct or reconstruct the improvements contemplated by Section 1.2 upon the Rio Grande Easement. Owner reserves the right to adopt, enforce and post reasonable rules of conduct (the "Rules of Conduct") governing the use and maintenance of the Rio Grande Easement, consistent with the terms of this Agreement. Owner reserves the right to include in the Rules of Conduct a prohibition against the use of Rio Grande Street for expressive activities or other conduct including activities or conduct that would otherwise be protected by the United States Constitution or the Utah State Constitution if such activities were conducted on land owned by the City. Such prohibited conduct and activities may include, without limitation, picketing, hand billing, circulation of petitions, speeches, political campaigning, parades, marches, strikes, organized gatherings, demonstrations, solicitation of charitable donations, proselytizing or other religious activity, erection of signs, symbols or other displays, loitering, panhandling; musical performances; skateboarding; roller blading; and other sports activities.

1.2 *Design and Construction of Rio Grande Street and Easement.* Rio Grande Street shall be designed and constructed in accordance with the Reimbursement Agreement, which provides that prior to commencing construction of any portion of Developer Improvements (which include, without limitation, the street and sidewalk improvements constituting Rio Grande Street), Owner shall obtain the approval of the Planning Commission ("Commission) of City to the design thereof or such other approvals of persons designated by the Commission.

Before seeking the Commission's (or its designee's) design approval, Owner shall submit the design for review by City's Crime Prevention Task Force (the "CPTF Review"). Following the CPTF Review, Owner shall submit the design, together with the results of the CPTF Review, to the Commission (or its designee) for review and approval. The Commission (or its designee) may, at its sole discretion, require Owner to implement and adopt any or all of the findings and recommendations from the CPTF Review results. Construction of Rio Grande Street shall be constructed in accordance with the terms of the Reimbursement Agreement. Developer Improvements constructed in the Rio Grande Easement may be owned by Agency or City, and Owner intends to grant to City the right and easement to install, maintain, operate and otherwise deal with all such improvements as may be owned by City.

1.3 *Hours of Operation.* The Rio Grande Easement shall be open to the general public twenty-four (24) hours per day all days of the year. Notwithstanding the foregoing, the Rio Grande Easement may be temporarily closed to accommodate special public and private events staged on the Rio Grande Easement, and for limited reasonable periods to facilitate deliveries as determined by Owner pursuant to the Rules of Conduct.

1.4 *Limited Construction.* Except as provided in Section 1.3, neither Owner nor its successors and assigns shall construct any impediment on any portion of the Rio Grande Easement or Rio Grande Street unless permitted by the design approved pursuant to Section 1.2, or engage in any other act, unless permitted by the design approved pursuant to Section 1.2, which would obstruct the right granted herein to Owners and occupants of the Retail Parcels and to the general public over, across and through the Rio Grande Easement.

1.5 *Public Utilities.* It is contemplated that the water and sewer lines serving portions of the project and situated in the Rio Grande Easement shall be owned, operated and maintained by the City. Prior to the construction of such utilities, and to the extent required by the City, the Owner shall grant and convey to the City an easement for such utilities, in addition to this Agreement, in a form acceptable to the City. The Owner shall also enter into standard main line extension agreements or other similar documents as may be required in connection with the financing of such utilities, as approved by the City.

## 2. MAINTENANCE

Owner shall at its sole cost and expense: repair, replace, restore and maintain the Rio Grande Easement, in an attractive, first-class, high quality condition; keep the Rio Grande

Easement clean and free of rubbish, debris, filth, refuse, snow, ice, standing water, graffiti and hazards to persons using the Rio Grande Easement; inspect the Rio Grande Easement on a regular basis in order to detect needed repairs or maintenance; and provide all security necessary and appropriate to protect the health and safety of persons using the Rio Grande Easement. City and Agency shall have no obligation whatsoever to repair, replace, restore or maintain Rio Grande Street; provided, City may become obligated therefore in accordance with and to the extent set forth in Section 9.15.

### **3. DEFAULT**

Should Owner fail to timely perform any of its obligations hereunder and such failure shall continue for thirty (30) days after its receipt of notice from Agency or City (or, if a cure takes longer than thirty (30) days to effect, such longer period as may be required to cure if the cure is commenced within thirty (30) days and thereafter diligently prosecuted to completion) then Agency or City shall, in addition to any other remedy provided at law or in this Agreement, have the right (but not the obligation) to perform Owner's obligations and Owner shall reimburse Agency or City, as the case may be, for the cost incurred by City or Agency in performing Owner's obligations (together with interest on all amounts advanced at the rate of six percent (6%) per annum over the "Federal Reserve Discount Rate" as set by the Federal Reserve Bank from time to time (the "Default Rate")), within ten (10) days after receipt of billing therefor and proof of payment thereof. In the event Owner does not reimburse Agency or City, as the case may be, within such ten (10) days, Agency or City shall have the right to exercise any and all rights it might have at law or in equity to collect the same, including any right of setoff granted by the Reimbursement Agreement. All of the rights and remedies of City or Agency pursuant to this Section shall be subject to the rights of Qualified Mortgagees pursuant to Section 9.11.

### **4. INJUNCTIVE RELIEF**

In the event of any violation or threatened violation of any provision of this Agreement, Agency or City shall have the right, in addition to any other remedies herein or by law provided, to enjoin such violation or threatened violation.

### **5. NOTICES**

All notices, demands, requests, and other communications required or permitted hereunder shall be in writing and shall either be hand delivered or mailed by United States mail, registered or certified with return receipt requested and postage prepaid, addressed as follows:

If to Owner: Gateway Associates, Ltd.  
The Boyer Company, L.C.  
127 South 500 East  
Salt Lake City, Utah 84102  
Attention: H. Roger Boyer

If to Agency: Redevelopment Agency of Salt Lake City  
Room 418, City & County Building  
451 South State Street  
Salt Lake City, Utah 84111  
Attn: Alice Larkin Steiner

If to City: Salt Lake City Corporation  
Room 306, City & County Building  
451 South State Street  
Salt Lake City, Utah 84111  
Attn: Mayor's Office

Notices and demands shall be deemed effective upon receipt if hand delivered, or three (3) days after the date postmarked, if properly mailed. The person and place to which notices are to be given may be changed by Owner, City or Agency by notice to the other Parties pursuant to this Section.

#### **6. ATTORNEYS' FEES**

In the event legal proceedings are brought or commenced to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to receive and shall receive from the defaulting party, a reasonable sum as attorneys' fees and costs, to be fixed by the court in the same action.

#### **7. INDEMNIFICATION**

To the fullest extent permitted by law, Owner and its agents, representatives, successors and assigns, shall release, indemnify, defend and hold harmless Agency and City, their respective successors and assigns, from and against any and all judgments, claims, expenses, causes of action, damages, and liabilities (including attorneys' and other consultants' reasonable fees and costs) (the "Claims and Actions"), directly or indirectly arising out of the design, construction, use, operation, maintenance, repair, security and any activities whatsoever, including without limitation adopting, posting, or enforcing the Rules of Conduct or the compliance with or violation

of such Rules, with regard to the Rio Grande Easement and including, without limitation, any Claims or Actions relating to the Rio Grand Easement for activities that would be protected by the United States Constitution or the Utah State Constitution if such activities were conducted upon land owned by City but which are prohibited by the Rules of Conduct pursuant to Section 1.1; provided, such indemnification shall not extend to or be applied with respect to any Claims or Actions arising out of the negligence of City with respect to the indemnification of City, or arising out of the negligence of Agency with respect to the indemnification of Agency, in connection with its exercise of any cure right granted herein. In accordance with the terms of the Reimbursement Agreement, Agency shall have the right to offset any reimbursements payable to Owner under the Reimbursement Agreement by any amounts expended by Agency or City as a result of the failure of Owner to indemnify Agency or City under this Agreement. The obligation of Owner to indemnify, and Agency's right of offset, shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which may otherwise exist in favor of Agency, its successors and assigns.

## 8. DAMAGE OR DESTRUCTION

If the Developer Improvements located on the Rio Grande Easement or any portion of such Improvements is damaged or destroyed by fire or other casualty or any other cause whatsoever, Owner shall proceed with due diligence to reconstruct the Developer Improvements located on the Rio Grande Easement and restore such improvements to substantially the condition in which they existed prior to such damage or destruction, or in the manner approved pursuant to Section 1.2, as the case may be.

## 9. MISCELLANEOUS

9.1 *Compliance with Law.* Owner shall not use the Rio Grande Easement, nor permit anything to be done on or about the Rio Grande Easement which will conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may be hereafter enacted or promulgated, nor shall they cause, maintain or permit any nuisance or waste in or about the Rio Grande Easement.

9.2 *Constructive Notice and Acceptance.* Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Retail Parcels is and shall be conclusively deemed to have consented and agreed to be bound by every covenant, condition, and restriction contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person or entity acquired an interest in the Retail Parcels.

9.3 **Headings.** The headings used herein are for convenience only and are not intended to be a part of this Agreement or in any way to define, limit or describe the scope and intent of the sections to which they refer.

9.4 **Effect of Invalidation.** If any provision (by reference or otherwise) of this Agreement is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

9.5 **Amendments.** This Agreement may not be modified or rescinded, in whole or in part, except by a writing executed by Owners of all of the fee title interests in and to the Retail Parcels, and Agency and City. Any such written amendment shall become valid when recorded against the Retail Parcels in the Salt Lake County Recorder's office.

9.6 **Rights of Agency and City.** The Parties acknowledge and agree that Agency and City are deemed a beneficiary of the terms and conditions of this Agreement for and in their own right and for the purpose of protecting the interests of the community and other parties, public or private, in favor of and for whose benefit this Agreement and the covenants herein are deemed to run. This Agreement and the covenants, conditions and the rights of Agency and City set forth in this Agreement shall run in favor of Agency and City regardless of whether Agency or City owns any real property within the real property burdened by the Rio Grande Easement or any land or interest therein. Agency or City shall have the right, if this Agreement is breached to exercise all rights and remedies set forth herein and as exist at equity or in law as to which it or any other beneficiaries of this Agreement may be entitled. Each of Agency and City shall have the right, as determined in either Agency or City's discretion, to assign its respective rights under this Agreement, in which case the assignee shall have all rights, benefits and remedies of Agency or City, as the case may be, under this Agreement.

9.7 **Binding Effect.** It is intended and agreed that the covenants set forth herein shall run with the land and that they shall be binding on the owners of the Retail Parcels, as provided herein, and all future owners of such property, to the fullest extent permitted by law and equity.

9.8 **Governing Law.** This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Utah.

9.9 **Not a Public Dedication.** This Agreement creates an easement in favor of City, Agency and the public, and as such constitutes an interest in real property. However, nothing contained in this Agreement shall be deemed to be a

gift or dedication of any portion of Rio Grande Street to the general public or for any public purposes whatsoever, it being the intention of the Parties that this Agreement shall be strictly limited to and for the purposes expressed in this Agreement. Owner shall be permitted to close Rio Grande Street for such periods as may be required to prevent a public dedication from occurring or prescriptive rights or easements from being created in favor of third persons.

9.10 *Not a Public Forum.* Owner reserves all rights necessary to establish that the Rio Grande Street shall not be deemed a public forum as contemplated by the Utah Constitution and/or the United States Constitution.

9.11 *Mortgagee Protection.*

(a) Definitions. As used in this Section 9.11 each of the following terms shall have the indicated meaning:

(1) "Mortgage" means a mortgage or a deed of trust, or other security instrument recorded in the Official Records.

(2) "Mortgagee" means the mortgagee under a mortgage, the beneficiary under a deed of trust or the secured party under any security agreement recorded with respect to the Retail Parcels or any portion thereof in the Official Records.

(3) "Official Records" means the official records of the Salt Lake County Recorder, State of Utah.

(4) "Qualified Mortgagee" means a Mortgagee which has given at least fifteen (15) days written notice to City and Agency of its claimed status to Agency and City, including such Mortgagee's name and address.

(b) Obligations of Mortgagee. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Qualified Mortgagee 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.

(c) Notices; Right to Cure. On delivering to Owner any notice, demand or other communication pursuant to the provisions of this Agreement, Agency and City, as the case may be, shall deliver copies of



such notice to each Qualified Mortgagee at the latest address provided to Agency and City by such Qualified Mortgagee. Although otherwise effective with respect to Owner, no notice delivered to Owner shall affect any rights or remedies of a Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance with the immediately preceding sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to Owner plus, in the case of monetary defaults, an additional thirty (30) days and, in the case of non-monetary defaults, an additional thirty (30) days; provided, however, that if a non-monetary default reasonably requires more than thirty (30) days to cure, each Qualified Mortgagee shall have the right to remedy such default if such Qualified Mortgagee promptly commences such cure and thereafter diligently prosecutes such cure to completion, and the running of all time periods shall be tolled while the Qualified Mortgagee is so performing.

(d) Performance. A Qualified Mortgagee shall have the right to act for and in the place of Owner to the extent permitted by the applicable Mortgage or otherwise agreed to by Owner in writing. Agency and City shall accept performance by or on behalf of a Qualified Mortgagee as if the same had been performed by Owner. A Qualified Mortgagee shall have the right, to the extent Owner agrees in writing, to appear in a legal action or proceeding on behalf of Owner in connection with the Retail Parcels.

(e) Recognition. Within fifteen (15) days of a written request therefor together with evidence as Agency and City may reasonably require that a proposed Qualified Mortgagee in fact meets the requirements of a Qualified Mortgagee as set forth herein, Agency and City agree to execute, acknowledge and deliver to each Qualified Mortgagee an instrument stating that the Qualified Mortgagee is a "Qualified Mortgagee" entitled to the benefits of this Section. The fifteen (15) day period set forth in the prior sentence shall be tolled for such time as may elapse after City or Agency requests from the person claiming the benefits of this Section additional information regarding its purported status until City or Agency receives such information. If no additional information is requested within such fifteen (15) day period, or if additional information is supplied in response to a request and neither City nor Agency further responds within fifteen (15) days after receiving additional information, the proposed Qualified Mortgagee shall be deemed to be a Qualified Mortgagee. Neither Agency nor City shall be obligated to make any other statement or agreement for the benefit of the Qualified Mortgagee.

9.12 *Successor Owners.* After Owner conveys fee title to any portion of the Retail Parcels, the grantee shall assume all of the obligations of Owner arising after the date of such conveyance. Such grantee of the Retail Parcels shall constitute an "Owner" for all purposes under this Agreement. If an Owner has disposed of fee title to all of the Retail Parcels, such Owner shall be released of all further obligations under this Agreement arising after the date of such conveyance. If more than one person holds fee title to the Retail Parcels (i.e., there is more than one "Owner"), such Owners shall be jointly and severally obligated to perform the obligations of Owner under this Agreement; provided, upon written request, Agency and City shall agree in writing that a grantee or grantees of a tract or parcel (or tracts or parcels) containing in the aggregate twenty percent (20%) or less of the leaseable area in all buildings to be located on the Retail Parcels shall not be primarily obligated to perform the obligations of Owner under this Agreement, and that such grantee or grantees shall only be liable to pay a portion of the costs and expenses for which Owner is liable under this Agreement, and shall only be assessed such portion of the Assessment Lien (as defined in Section 9.13 below), based upon the ratio which the leaseable area in all buildings to be located on the Retail Parcels which it owns bears to the leaseable area of all buildings to be located on the Retail Parcels. Owner may delegate the obligations of Owner under this Agreement to a third person, including a manager, but such delegation shall not relieve Owner of such obligations.

9.13 *Assessment Lien.*

(a) *Assessment Lien Procedure.* In the event any sum of money shall be payable by Owner pursuant to Section 3 of this Agreement to Agency or City (a "Monetary Obligation"), and such Monetary Obligation is not paid when due and after expiration of any applicable grace period set forth in Section 3, as extended for any Mortgagee pursuant to the provisions of Section 9.11, then Agency or City, as the case may be, shall have the right to record, in the Official Records with respect to the Retail Parcels, an assessment lien (the "Assessment Lien") which shall set forth the then delinquent amount of the Monetary Obligation, together with interest thereon at the Default Rate. Upon recordation of such Assessment Lien, the delinquent Monetary Obligation, together with interest thereon at the Default Rate, shall constitute a lien upon the Retail Parcels. In the event the Assessment Lien has been recorded, City or Agency, as the case may be, may enforce payment of the amount due pursuant to the Assessment Lien, or enforce the Assessment Lien against the Retail Parcels or Owner of the Retail Parcel by taking either or both of the following actions, concurrently or separately:

(1) Bringing an action at law against Owner of the Retail Parcels.

(2) Foreclosing the Assessment Lien against the Retail Parcels in accordance with the then prevailing applicable law relating to the foreclosure of mortgages (including the right to recover any deficiency); or

(3) Pursuing any other remedy against Owner as may be available at law or in equity.

(b) **Priority of Assessment Lien.** The Assessment Lien shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon the Retail Parcels; provided, however, that such Assessment Lien shall be subject and subordinate to:

(1) Liens for taxes and other public charges which by applicable law are expressly made superior including, without limitation, an Assessment of the District pursuant to Section 9.15;

(2) The lien of any Mortgage recorded prior to the date of recordation of the Assessment Lien; and

(3) The rights of any and all tenants occupying any portion of the Retail Parcels under written leases except tenants which control, are controlled by or are under common control with an Owner.

(c) **Contest.** Any provision contained in this Agreement to the contrary notwithstanding, any Owner of a fee interest in any portion of the Retail Parcels shall have the right to contest, in a court of competent jurisdiction, the recordation or enforcement of any Assessment Lien against the Retail Parcels on the basis that the recordation or enforcement of such Assessment Lien or the amounts claimed to be delinquent therein is or are incorrect or improper under the provisions of this Agreement. The prevailing party in such action shall be entitled to recover from the other party or parties its reasonable attorneys' fees incurred in connection with such action.

(d) **Cure.** Upon the curing of any default for which an Assessment Lien was recorded, the person recording such Assessment Lien shall record an appropriate release of such Assessment Lien.

9.14 **Third Party Beneficiary.** As of the date of this Agreement, Owner also owns certain parcels described on Exhibit "D" which are labeled "Hotel Parcel" and "Office Parcels." In addition to all other rights and remedies granted to City and Agency pursuant to this Agreement, Owner, as fee title owner of the Hotel Parcel and the Office Parcels as of the date of this Agreement, agrees that each of City and Agency shall be a third party beneficiary of any right which Owner may have under any agreement whenever executed (each a "Contribution Agreement") between Owner and any successor owner of the Hotel Parcel and successor owners of the Office Parcels (each a "Contributing Party"), to cause any Contributing Party to contribute towards the cost of performing the obligations of Owner under this Agreement. The foregoing third party beneficiary rights shall burden the Hotel Parcel and the Office Parcels, and shall run with title to the Hotel Parcel and the Office Parcels. By assuming fee title to any portion of the Hotel Parcel and the Office Parcels, each Contributing Party evidences its intention to designate City and Agency as third party beneficiaries under each and every Contribution Agreement to which it is a party or by which it or its fee interest is bound.

9.15 **Municipal Improvement District.** Owner shall consent to the formation of a Municipal Improvement District (the "District") under the Utah Municipal Improvement District Act, Utah Code Annotated Section 17A-3-301 et seq. (the "Act") which shall, to the extent permitted by such Act, be authorized to perform the obligations of Owner under this Agreement.

(a) As used in this Section, the following terms shall have the meanings set forth:

(1) "Arbitrator" means a Qualified Arbitrator selected pursuant to Section 9.15(d). Once an Arbitrator is selected, such Arbitrator shall conduct any and all arbitrations occurring pursuant to Section 9.15(d) during the twelve (12) month period following such selection.

(2) "Assessment" shall have the meaning defined in the Act.

(3) "Qualified Arbitrator" means a person who is certified as a "Certified Shopping Center Manager" by the International Council of Shopping Centers and has at least five (5) years of experience planning and/or supervising the performance of maintenance in connection with urban retail or mixed use complexes or malls in Salt Lake County such as, but not limited to, Crossroads, ZCMI Mall or Fashion Place Mall.

(4) "Public Areas" means the Rio Grande Easement and all Developer Improvements located thereon.

(5) "Threshold Amount" means, in 2002, \$50,000, which amount shall be increased each January 1 of each succeeding calendar year based upon the increase in the Consumer Price Index (U.S. Cities Average for All Items for All Urban Wage Earners and Clerical Workers) using January 2001 as the base year.

(6) "Triggering Event" means that either:

(A) Three (3) or more notices have been sent under Section 3 of this Agreement within a period of six (6) months, each of which deals with a separate factual circumstance.

(B) Owner owes more than the Threshold Amount in Assessment Liens and Owner has been and is at least thirty (30) days delinquent in paying such amount.

(b) The District shall be formed not later than December 31, 2000 and shall proceed expeditiously with the construction and financing of the capital improvement component of the District. However, the City shall not conduct any maintenance activities or levy any Assessments (as defined in the Act) for maintenance expenses until the conditions set forth in Section 9.15(d) below have been satisfied.

(c) After the City commences to maintain the Public Areas, City and Agency shall not exercise any rights or remedies pursuant to Section 9.13 of this Agreement with respect to any maintenance within the scope of the authority of the District.

(d) Upon the occurrence of a Triggering Event, City or Agency may, by written notice to Owner, cause an Arbitrator to be appointed. In such notice, City or Agency, as the case may be, shall name three (3) proposed Qualified Arbitrators. Within five (5) business days after receiving the notice, Owner by written notice to City or Agency, as the case may be, shall select one of the proposed Qualified Arbitrators. If Owner fails to timely select one of the proposed Qualified Arbitrators, City or Agency, as the case may be, may select one of the Qualified Arbitrators by written notice to Owner. The Qualified Arbitrator so selected shall proceed to determine whether Owner has regularly failed and is likely to continue to fail to substantially perform its obligations under this Agreement to maintain the Public Areas to a standard of maintenance that is adhered to by the City in generally maintaining similar improvements in the Depot District Project Area, and that as a result it is necessary that the City commence to maintain the Public Areas as contemplated in the ordinance creating the District. At the commencement of such determination process, City or Agency, as the case may be, shall set forth in

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writing the specifics in which it maintains that Owner has not so maintained the Public Areas, and Owner may respond in writing to such allegation. The procedural and evidentiary rules governing the arbitration shall be determined by the Arbitrator at its sole discretion. In no event shall the entire arbitration pursuant to this Section 9.15(d) last more than twenty-one (21) days from the date of selection of the Arbitrator. If the Arbitrator determines that the City should commence to maintain the Public Areas, Owner shall pay the costs of the Qualified Arbitrator. If the Arbitrator determines that the City should not commence to maintain the Public Areas, City or Agency, as the case may be, shall pay the cost of the Arbitrator.

(e) The provisions of this Section are in addition to the provisions of Section 9.13 of this Agreement but Owner shall not be required to pay twice for the same item (i.e., the City shall not assess for any item which is the subject of an existing Assessment Lien under Section 9.13).

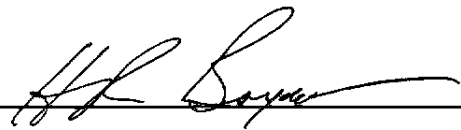
(f) To the extent permitted by law, Agency or City may cause any outstanding Assessment Lien under Section 9.13 to be converted to an Assessment.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

**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   
Its: Manager

REDEVELOPMENT AGENCY OF SALT LAKE CITY

By *Deedee Corradini*  
Deedee Corradini  
Its Chief Administrative Officer

By *Alice Larkin Steiner*  
Alice Larkin Steiner  
Its Executive Director

Approved as to form by  
Legal Counsel:

Jones, Waldo, Holbrook & McDonough:

*[Signature]*

RECORDED SALT LAKE CITY CORPORATION

JAN 05 2000

CITY RECORDER

By *Deedee Corradini*  
Deedee Corradini  
Mayor

Attest and Countersign:

*Christina Meek*  
Christina Meek  
Chief Deputy City Recorder



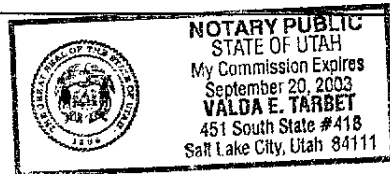
Approved as to form by *Chris Ball*

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

On the 3<sup>rd</sup> day of January, 2000, personally appeared before me Deedee Corradini and Alice Larkin Steiner, who being by me duly sworn did say they are the Chief Administrative Officer and Executive Director of The Redevelopment Agency of Salt Lake City, and that the within and foregoing instrument was signed on behalf of said Agency.

Valda E. Tarbet  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
9/20/03

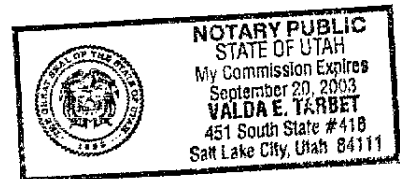


STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 3<sup>rd</sup> day of January, 2000, personally appeared before me H. Roger Boyer, the signer of the foregoing instrument, who being by me duly sworn did say he is the manager of The Boyer Company, L.C., which is the manager of Boyer Gateway, L.C., which is the general partner of Gateway Associates, Ltd., and that the within and foregoing instrument was signed on behalf of said entities.

Valda E. Tarbet  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
9/20/03





STATE OF UTAH )

: ss.

COUNTY OF SALT LAKE )

On the 3<sup>rd</sup> day of January, 2000, personally appeared before me Deedee Corradini, who being by me duly sworn did say she is the Mayor of the City of Salt Lake City, and that the within and foregoing instrument was signed on behalf of said Salt Lake City Corporation.

Valda E. Tardet

NOTARY PUBLIC

Residing at: \_\_\_\_\_

My Commission Expires:

9/20/03

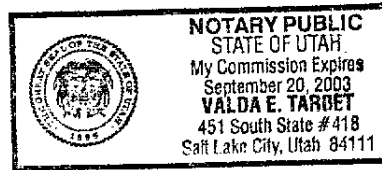


Exhibit A

**Legal Description of the Retail Parcels**

This Exhibit pertains to the retail space to be located on the below described tracts and not the office space or residential space to be located on such tracts. The Owner intends to legally subdivide each tract into a separate lot and to record a condominium declaration and record of survey map creating a condominium project and separate condominium units on such tract pursuant to Utah Code Ann. Section 57-8-1 et seq. At such time, an amendment to the Agreement modifying this Exhibit to describe only the units of such condominium project which are intended to be used for rental purposes shall be executed and recorded.

**Legal Description for Retail #1 Parcel:**

BEGINNING AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 65, PLAT "A", SALT LAKE CITY SURVEY; THENCE S89°58'15"W, ALONG THE SOUTH BLOCK LINE, 402.13 FEET TO THE SOUTHEAST CORNER OF THE McDONALD BROTHERS PROPERTY AS DESCRIBED BY THE WARRANTY DEED RECORDED IN BOOK 6196, PAGE 491; OF THE SALT LAKE COUNTY RECORDS; THENCE WITH THE EAST LINE OF SAID TRACT, WITH THE FOLLOWING BEARINGS AND DISTANCES: N00°01'01"W, 100.48 FEET, N90°00'00"W, 27.03 FEET, N00°00'36"W 64.55 FEET TO THE SOUTHEAST CORNER OF THE UTAH POWER AND LIGHT PROPERTY AS DESCRIBED BY THE DEED RECORDED IN BOOK 6280, PAGE 3 OF THE SALT LAKE COUNTY RECORDERS; THENCE ALONG THE EAST LINE OF SAID TRACT, N00°00'36"W, 165.04 FEET; THENCE ALONG THE NORTH LINE OF SAID TRACT S89°58'20"W, 171.24 FEET; THENCE N00°00'00"E, 345.05 FEET; THENCE S90°00'00"E, 600.27 FEET; THENCE S00°01'01"E, 674.83 FEET TO THE POINT OF BEGINNING AND CONTAINING 7.94 ACRES. (345,991 SQ. FT.)

LESS THE FOLLOWING PORTION OF RETAIL #1 PARCEL:

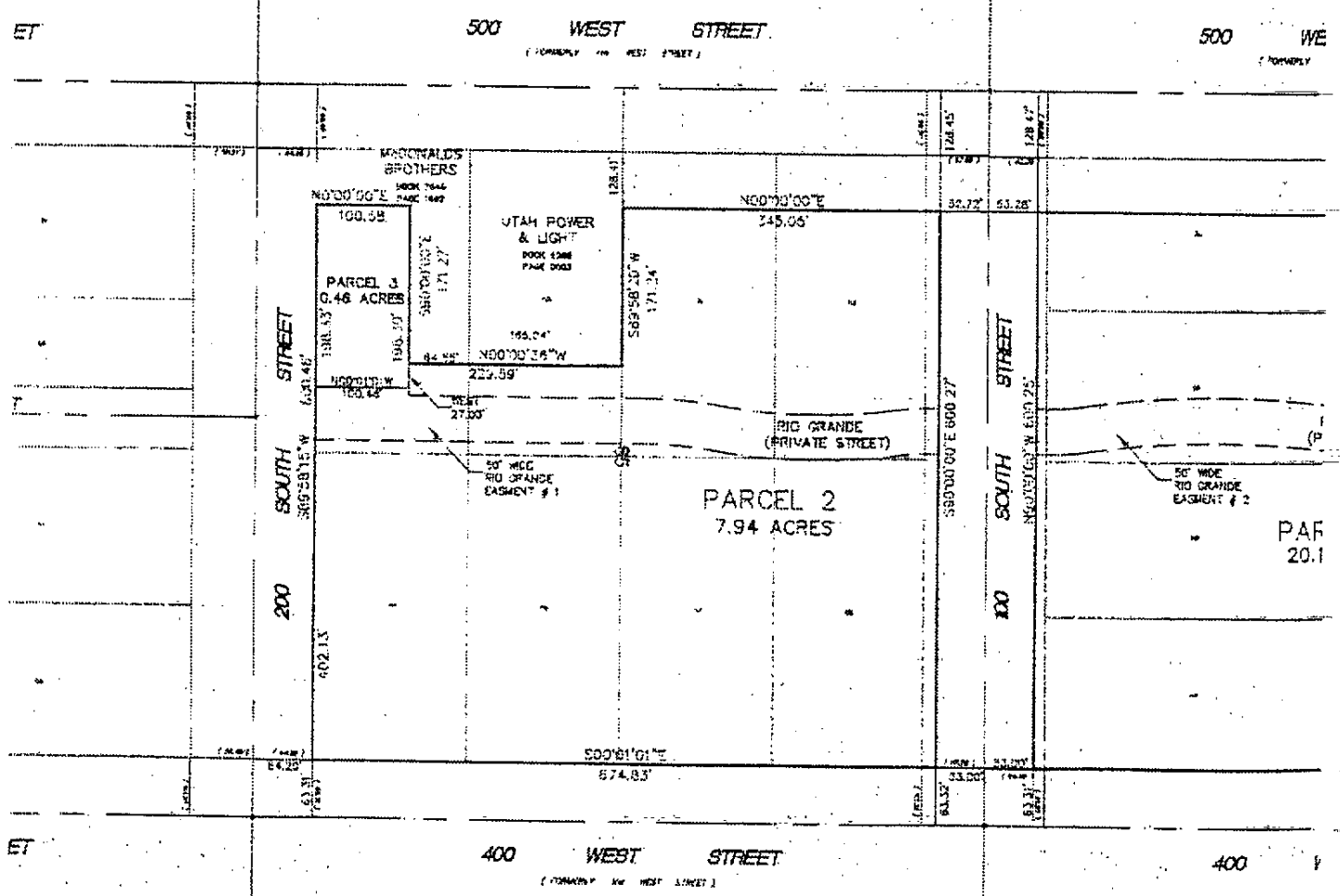
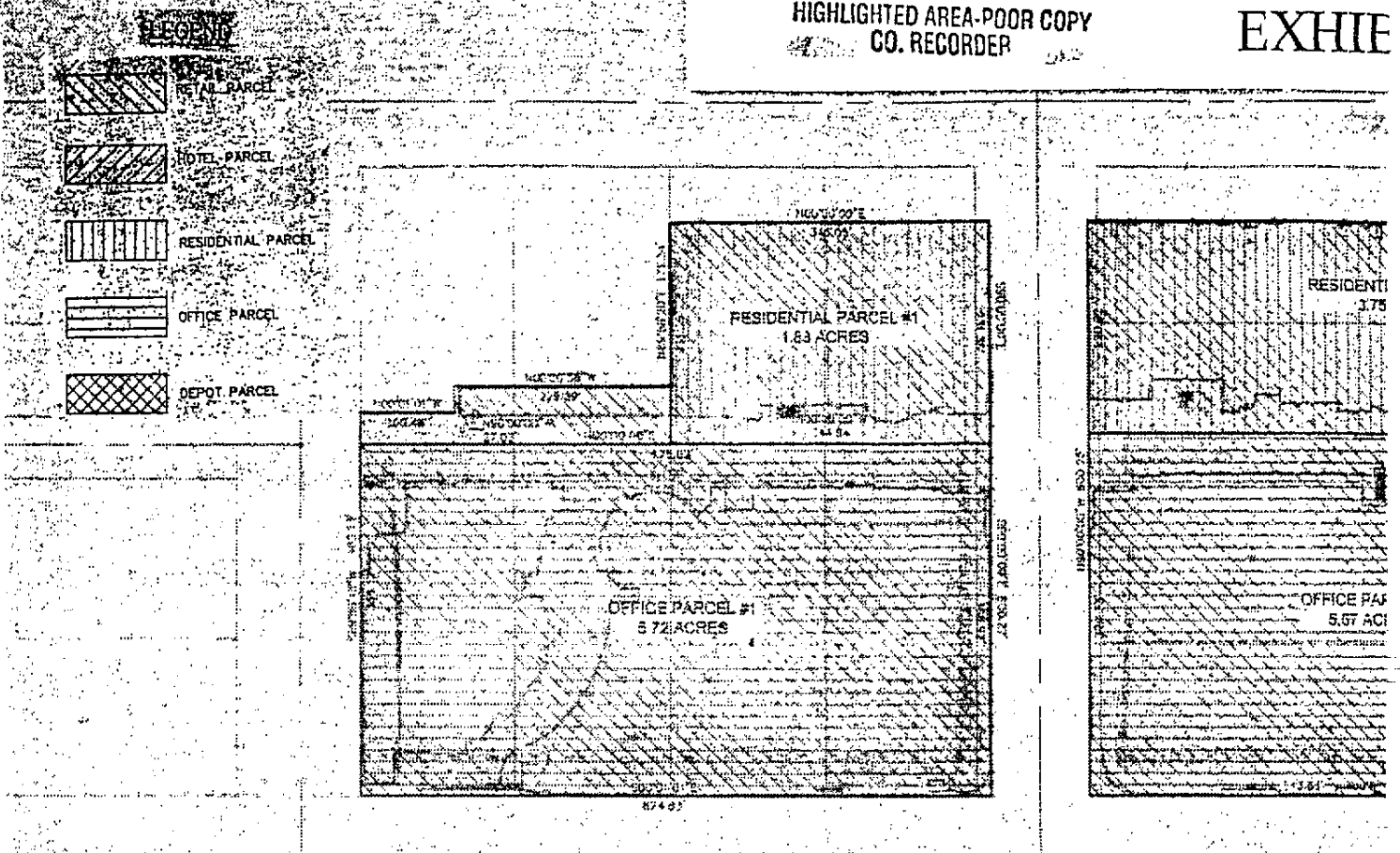
**Legal Description for Depot Restricted Parcel:**

BEGINNING AT A POINT SOUTH, 128.20 FEET AND EAST 0.43 FEET FROM THE NORTHEAST CORNER OF BLOCK 80, PLAT "A", SALT LAKE CITY SURVEY; THENCE N90°00'00"W, 115.08 FEET; THENCE N38°16'34"W, 117.35 FEET; THENCE N00°00'00"E, 206.06 FEET; THENCE N38°16'34"E, 112.99 FEET; THENCE S90°00'00"E, 117.78 FEET; THENCE S00°00'00"W, 386.88 FEET TO THE POINT OF BEGINNING, CONTAINING 1.52 ACRES. (66,190 SQ. FT.)

**Legal Description for Retail #2 Parcel:**

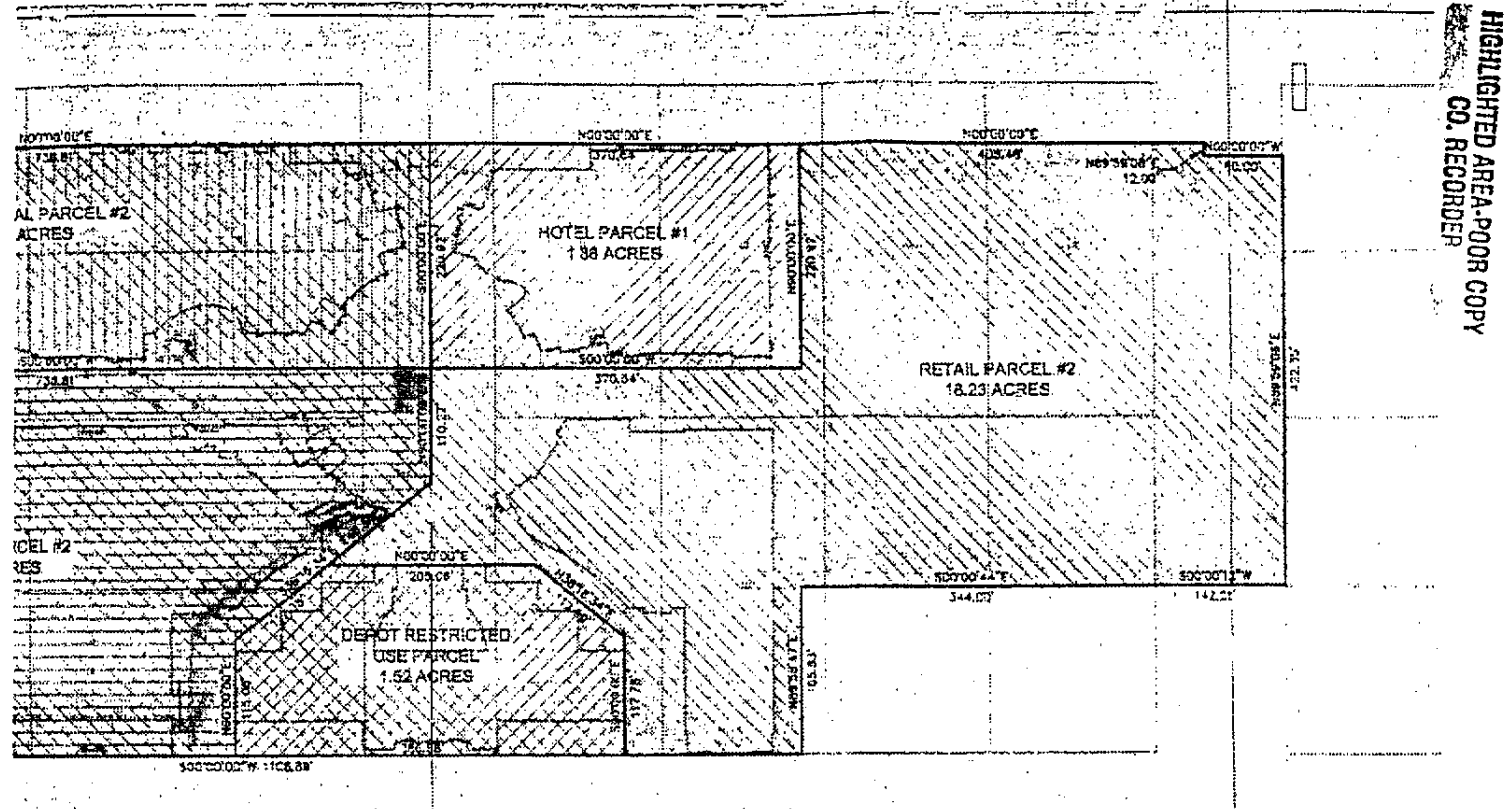
BEGINNING AT A POINT SOUTH, 11.71 FEET AND WEST 1.35 FEET FROM THE SOUTHEAST CORNER OF BLOCK 80, PLAT "A", SALT LAKE CITY SURVEY; THENCE N90°00'00"W, 600.25 FEET; THENCE N00°00'00"E, 738.81 FEET; THENCE S90°00'00"E, 220.92 FEET; THENCE N00°00'00"E, 370.64 FEET; THENCE N90°00'00"W, 220.92 FEET; THENCE N00°00'00"E, 405.48 FEET; THENCE N89°59'06"E, 12.00 FEET; THENCE N00°00'00"W, 80.00 FEET; THENCE N89°59'06"E, 422.35 FEET; THENCE S00°00'12"W, 142.21 FEET; THENCE S00°00'44"E, 344.00 FEET; THENCE N89°58'47"E, 165.83 FEET; THENCE S00°00'00"W, 1108.89 FEET TO THE POINT OF BEGINNING, CONTAINING 18.23 ACRES. (793,910 SQ. FT.)

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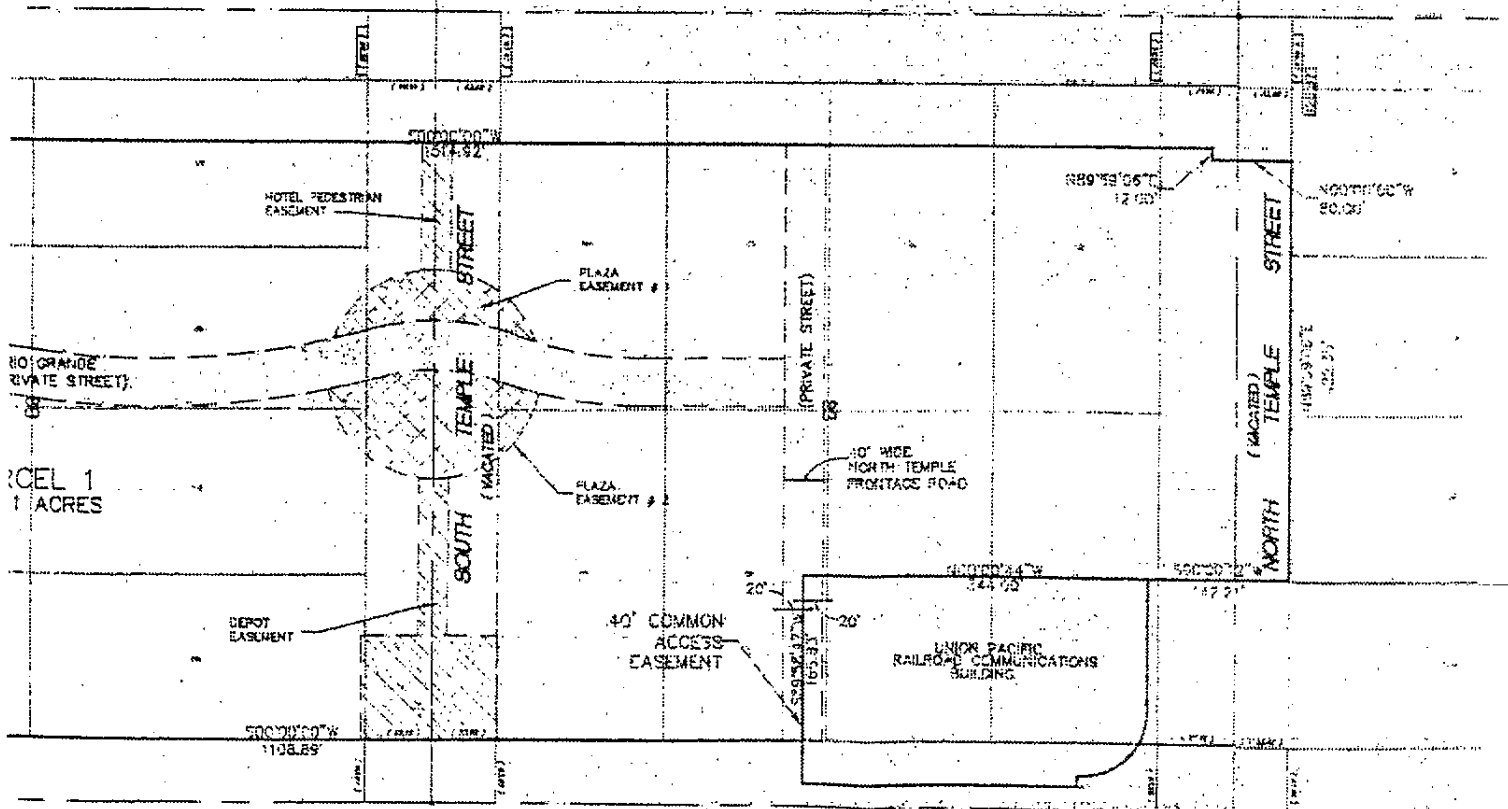


BIT "B"

HIGHLIGHTED AREA - POOR COPY  
CO. RECORDER



ST STREET 500 WEST STREET 500



WEST STREET 400 WEST STREET 400

BK 8336 PG 1236

Exhibit C

Legal Description – Rio Grande Easement

**Legal Description for Rio Grande Easement #1:**

BEGINNING AT A POINT S89°58'15"W, 13.99 FEET FROM THE SOUTHWEST CORNER OF LOT 1, BLOCK 65, PLAT A, SALT LAKE CITY SURVEY; THENCE ALONG THE SOUTHLINE OF SAID BLOCK, S89°58'15"W, 58.02 FEET; THENCE N0°01'01"W, 100.48 FEET; THENCE S90°00'00"E, 8.05 FEET; THENCE N 0°00'06"W, 253.81 FEET; THENCE ALONG A 495.00-FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 10°09'14" A DISTANCE OF 87.72 FEET, SAID CURVE HAVING A CHORD OF N5°04'31"E, 87.61 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A 475.00-FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 10°09'08" A DISTANCE OF 84.17 FEET, SAID CURVE HAVING A CHORD OF N5°04'34"E, 84.05 FEET; THENCE N0°00'00"E 26.89 FEET; THENCE ALONG A 555.00-FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 7°16'05" A DISTANCE OF 70.40 FEET, SAID CURVE HAVING A CHORD OF N3°38'03"W, 70.36 FEET A POINT OF REVERSE CURVATURE; THENCE ALONG A 375.00-FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 8°03'47" A DISTANCE OF 52.77 FEET, SAID CURVE HAVING A CHORD OF N3°14'11"W, 52.73 FEET; THENCE S90°00'00"E, 49.96 FEET; THENCE S0°00'00"W, 5.20 FEET; THENCE ALONG A 325.00-FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 7°16'05" A DISTANCE OF 41.23 FEET, SAID CURVE HAVING A CHORD OF S3°38'03"E, 41.20 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A 605.00-FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 7°16'05" A DISTANCE OF 76.75 FEET, SAID CURVE HAVING A CHORD OF S3°38'03"E, 76.69 FEET; THENCE S0°00'00"E, 26.89 FEET; THENCE ALONG A 525.00-FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 10°09'08" A DISTANCE OF 93.02 FEET, SAID CURVE HAVING A CHORD OF S5°04'34"W, 92.90 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A 445.00-FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 10°09'14" A DISTANCE OF 78.86 FEET, SAID CURVE HAVING A CHORD OF S5°04'31"W, 78.76 FEET; THENCE S0°00'06"E, 354.27 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.79 ACRES. (34,619 SQ. FT.)

**Legal Description for Rio Grande Easement #2:**

BEGINNING AT A POINT SOUTH, 9.71 FEET AND EAST 272.57 FEET FROM THE SOUTHWEST CORNER OF LOT 4, BLOCK 80, PLAT "A", SALT LAKE CITY SURVEY; THENCE N 00°00'00" E, 17.78 FEET; THENCE ALONG A 185.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 8°09'16" A DISTANCE OF 26.33 FEET, SAID CURVE HAVING A CHORD WHICH BEARS N 04°04'38" W, A DISTANCE OF 26.31 FEET; THENCE N 08°09'16" W, 11.85 FEET; THENCE ALONG A 1025.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 15°31'45" A DISTANCE OF 277.81 FEET, SAID CURVE HAVING A CHORD WHICH BEARS N 00°23'23" W, A DISTANCE OF 276.96 FEET; THENCE N 07°22'29" E, 24.79 FEET; THENCE ALONG A 775.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 22°15'57" A DISTANCE OF 301.17 FEET, SAID CURVE HAVING A CHORD WHICH BEARS N 03°45'29" W, A DISTANCE OF 299.28 FEET; THENCE N 14°53'28" W, 24.19 FEET; THENCE ALONG A 233.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 35°20'08" A DISTANCE OF 143.70 FEET, SAID CURVE HAVING A CHORD WHICH BEARS N 02°46'36" E, A DISTANCE OF 141.43 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A 363.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 20°26'40" A DISTANCE OF 129.53 FEET, SAID CURVE HAVING A CHORD WHICH

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BEARS N 10°13'20" E, A DISTANCE OF 128.84 FEET; THENCE N 00°00'00" E, 141.38 FEET; THENCE N 89°58'47" E, 50.00 FEET; THENCE S 00°00'00" W, 141.40 FEET; THENCE ALONG A 413.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 20°26'40" A DISTANCE OF 147.37 FEET, SAID CURVE HAVING A CHORD WHICH BEARS S 10°13'20" W, A DISTANCE OF 146.59 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A 183.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 35°20'08" A DISTANCE OF 112.86 FEET, SAID CURVE HAVING A CHORD WHICH BEARS S 02°46'36" W, A DISTANCE OF 111.08 FEET; THENCE S 14°53'28" E, 24.19 FEET; THENCE ALONG A 825.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 22°15'57" A DISTANCE OF 320.60 FEET, SAID CURVE HAVING A CHORD WHICH BEARS S 03°45'29" E, A DISTANCE OF 318.59 FEET; THENCE S 07°22'29" W 24.79 FEET; THENCE ALONG A 975.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 15°31'45" A DISTANCE OF 264.26 FEET, SAID CURVE HAVING A CHORD WHICH BEARS S 00°23'23" E, A DISTANCE OF 263.45 FEET; THENCE S 08°09'16" E, 11.85 FEET; THENCE ALONG A 235.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 8°09'16" A DISTANCE OF 33.45 FEET, SAID CURVE HAVING A CHORD WHICH BEARS S 04°04'38" E, A DISTANCE OF 33.42 FEET; THENCE S 00°00'00" W, 17.78 FEET; THENCE N 90°00'00" W, 50.00 FEET; TO THE POINT OF BEGINNING AND CONTAINING 1.26 ACRES (54,927 SQ. FT.)

## EXHIBIT "D"

### Legal Description of Office Parcels and Hotel Parcel

#### Legal Description for Hotel Parcel:

BEGINNING AT A POINT SOUTH, 63.90 FEET AND EAST 60.70 FEET FROM THE SOUTHWEST CORNER OF BLOCK 83, PLAT "A", SALT LAKE CITY SURVEY; THENCE N00°00'00"E, 370.64 FEET; THENCE N90°00'00"E, 220.92 FEET; THENCE S00°00'00"W, 370.64 FEET; THENCE N90°00'00"W, 220.92 FEET TO THE POINT OF BEGINNING, CONTAINING 1.88 ACRES. (81,881 SQ. FT.)

#### OFFICE PARCELS

This Exhibit pertains to the office space to be located on the below described tracts and not the retail space to be located on such tracts. The Owner intends to legally subdivide each tract into a separate lot and to record a condominium declaration and record of survey map creating a condominium project and separate condominium units on such tract pursuant to Utah Code Ann. Section 57-8-1 *et seq.* At such time, an amendment to the Agreement modifying this Exhibit to describe only the units of such condominium which are intended to be used for office purposes shall be executed and recorded.

#### Office #1 Parcel:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 65, PLAT "A", SALT LAKE CITY SURVEY; THENCE S89°58'15"W, 369.12 FEET; THENCE N00°00'00"E, 675.02 FEET; THENCE S90°00'00"E, 368.92 FEET; THENCE S00°01'01"E, 674.83 FEET TO THE POINT OF BEGINNING, CONTAINING 5.72 ACRES. (249,062 SQ. FT.)

#### Office #2 Parcel:

BEGINNING AT A POINT SOUTH, 11.71 FEET AND WEST 1.35 FEET FROM THE SOUTHEAST CORNER OF BLOCK 80, PLAT "A", SALT LAKE CITY SURVEY; THENCE N90°00'00"W, 379.33 FEET; THENCE N00°00'00"E, 738.81 FEET; THENCE N90°00'00"E, 110.27 FEET; THENCE S38°16'34"E, 248.59 FEET; THENCE N90°00'00"E 115.08 FEET; THENCE S00°00'00"W, 543.66 FEET TO THE POINT OF BEGINNING, CONTAINING 5.57 ACRES. (242,769 SQ. FT.)