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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:

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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

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CITY RECORDER

**PLAZA PEDESTRIAN AND PUBLIC USE EASEMENT AND
PROGRAMMING AGREEMENT**

THIS GRANT OF PEDESTRIAN AND PUBLIC USE EASEMENT AND PROGRAMMING AGREEMENT (this "Agreement") is made this 23rd day of December, 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 "Restricted Property") and shown on the Site Plan attached as Exhibit "B" (the "Site Plan"). The Restricted Property is 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. The Restricted Property consists of three (3) types of parcels, classified by use: the "Retail Parcels", the "Office Parcels" and the "Hotel Parcel", labeled and identified as such on Exhibits "A" and "B". Such parcels are, and shall only be assessed such portion of the Assessment Lien (as defined in Section 10.13(a) below). As of the date of this Agreement, Owner owns all of the fee interest in and to the Restricted Property.

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 portion of the Restricted Property as an open air public plaza to be located

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between the Union Pacific Depot and a proposed hotel parcel as depicted on the Site Plan (the "Union Pacific Plaza").

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, no-build easement over the Union Pacific Plaza in perpetuity, to make the Union Pacific Plaza available for public and private sponsored events for the benefit of all of the Restricted Property and the general public, and to record such easement against the portion of the Restricted Property constituting the Union Pacific Plaza which is legally described on Exhibit "C" attached hereto and incorporated herein by reference ("Plaza Easement"). The real property constituting the Plaza Easement is sometimes referred to herein as the Plaza Easement or the Union Pacific Plaza.

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 USE AND VIEW EASEMENTS

1.1 *Conveyance of Public Use and View Easement.* Owner hereby reserves and grants a no-build easement and right of way for the benefit of all of the Restricted Property and the general public in accordance with the Rules of Conduct, (i) for pedestrian access; (ii) for the free and uninterrupted enjoyment and public use of light, view and air; over, across and through the Plaza Easement; and for the construction, 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 Plaza Easement. The Plaza Easement granted herein shall be perpetual. Owner reserves the right to adopt, enforce and post reasonable rules of conduct (the "Rules of Conduct") governing the use and maintenance of the Union Pacific Plaza, consistent with the terms of this Agreement. Owner reserves the right to include in the Rules of Conduct a prohibition against use of the Union Pacific Plaza 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; bicycling; and other sports activities.

1.2 ***Design and Construction of Union Pacific Plaza and Easement.***

The Union Pacific Plaza 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 the Union Pacific Plaza), 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. The Parties acknowledge that the design may include provision for landscaping, kiosks, and furniture located on or adjacent to the Union Pacific Plaza so long as use of the Union Pacific Plaza as a major public plaza and gathering place is not impaired. Construction of the Union Pacific Plaza shall commence when the Restricted Property is first improved or redeveloped and shall be completed by the date City issues Certificates of Occupancy for the Union Pacific Depot and the hotel to be constructed as part of the Developer Improvements. Developer Improvements constructed on the Union Pacific Plaza 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 Union Pacific Plaza shall be open to the general public for pedestrian access and public use, at a minimum, during all hours and days of the year during which the majority of pedestrian access areas in Liberty Park in Salt Lake City are open to the general public. Notwithstanding the foregoing, the Union Pacific Plaza may be temporarily closed to accommodate special public and private events staged at the Union Pacific Plaza.

1.4 ***Limited Construction.*** Except as otherwise provided in Section 1.3, neither Owner nor its successors and assigns shall construct any building or other structure on any portion of the Union Pacific Plaza unless permitted by the approved design pursuant to Section 1.2, or engage in any other act, unless permitted by the approved design contemplated by Section 1.2, which would obstruct the right granted herein to Owners and occupants of the Restricted Property and to the general public of pedestrian access over, across and through the Union Pacific Plaza.

2. PROGRAMMING OF UNION PACIFIC PLAZA

The Union Pacific Plaza is an urban plaza which will require a high degree of programming of events and activities to enhance its enjoyment to visitors and encourage maximum usage. Owner may elect, in its discretion, to employ a manager to perform all or part of the programming events and activities ("Program Manager"). There shall be a minimum of twenty (20) public events programmed by Owner or Program Manager per year on the Union Pacific Plaza. Owner or Program Manager may elect, in their discretion, to enter into contracts with vendors, concessionaires and others to support the programming of the Union Pacific Plaza. Owner shall determine the hours during which programmed events and activities will occur with respect to the Union Pacific Plaza.

3. MAINTENANCE

3.1 *Performance of Maintenance.* Owner shall: repair, replace, restore and maintain the Union Pacific Plaza in an attractive, first-class, high quality condition; keep the Union Pacific Plaza clean and free of rubbish, debris, filth, refuse, snow, ice, standing water, graffiti and hazards to persons using the Union Pacific Plaza; inspect the Union Pacific Plaza 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 Union Pacific Plaza. City and Agency shall have no obligation whatsoever to repair, replace, restore or maintain the Union Pacific Plaza; provided, City may become obligated therefore in accordance with and to the extent set forth in Section 10.15.

3.2 *Cost of Maintenance and Programming.* The cost of maintenance of the Union Pacific Plaza and the cost of the programming obligations set forth above will be shared pro-rata by fee simple owners of the Restricted Property and their successors and assigns.

4. 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

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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 10.11.

5. 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.

6. 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.

7. 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.

8. 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, 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 Union Pacific Plaza and including, without limitation, any Claims or Actions relating to the use or non-use of the Union Pacific Plaza for activities that would be protected by the United States Constitution or the Utah State Constitution if such activities were conducted on land owned by the 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.

9. DAMAGE OR DESTRUCTION

If the Developer Improvements located on the Union Pacific Plaza 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 Union Pacific Plaza and restore all 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.

10. MISCELLANEOUS

10.1 *Compliance with Law.* Owner shall not use the Union Pacific Plaza or permit anything to be done on or about the Union Pacific Plaza, 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 Union Pacific Plaza.

10.2 *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 Union Pacific Plaza or of the Restricted Property is and shall be conclusively deemed to have consented and agreed to be bound by every covenant, condition, and restriction contained herein which applies to their respective parcel(s), whether or not any reference to this Agreement is contained in the instrument by which such person or entity acquired an interest in such property.

10.3 *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.

10.4 *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.

10.5 *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 Restricted Property, and City and Agency. Any such written amendment shall become valid when recorded with the Salt Lake County Recorder's office against the Restricted Property.

10.6 *Rights of Agency and City.* The Parties acknowledge and agree that Agency and City are deemed beneficiaries 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 bordered by the

Union Pacific Plaza 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.

10.7 **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 Union Pacific Plaza and the Restricted Property, as provided herein, and all future owners of the Union Pacific Plaza and the Restricted Property, to the fullest extent permitted by law and equity.

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

10.9 **Not a Public Dedication.** This Agreement creates an easement in favor of Owners of the Restricted Property, City and Agency for the benefit of 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 the Union Pacific Plaza 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 herein expressed. Owner shall be permitted to close the Union Pacific Plaza 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.

10.10 **Not a Public Forum.** Owner reserves all rights necessary to establish that the Union Pacific Plaza shall not be deemed a public forum as contemplated by the Utah Constitution and/or the United States Constitution.

10.11 **Mortgagee Protection.**

(a) **Definitions.** As used in this Section 10.11 each of the following terms shall have the indicated meaning:

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

- (ii) "Mortgagee" means the mortgagee under a mortgage, or the beneficiary under a deed of trust or the secured party under any security agreement recorded with respect to the Restricted Property or any portion thereof in the Official Records.
- (iii) "Official Records" means the official records of the Salt Lake County Recorder, State of Utah.
- (iv) "Qualified Mortgagee" means a Mortgagee which has given at least fifteen (15) days written notice 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 Restricted Property.

(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 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 such additional information is supplied, 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.

10.12 Successor Owners. After Owner conveys fee title to any portion of the Restricted Property, the grantee shall assume all of the obligations of Owner arising after the date of such conveyance. Such grantee of the Restricted Property shall constitute an "Owner" for all purposes under this Agreement. If an Owner has disposed of fee title to all of the Restricted Property, 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 Restricted Property (i.e., there is more than one "Owner"), Owner of the Retail Parcels shall be obligated to perform all of the obligations of Owner under this Agreement. If there is more than one Owner of the Retail Parcels, such Owners of the Retail Parcels shall be jointly and severally obligated to perform the obligations of Owner under this Agreement; provided, upon written requests, Agency and City shall agree on a reasonable basis 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 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 10.13(a) below), based upon the ratio which the leaseable area in all buildings to be located on the Retail Parcel 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.

10.13 *Assessment Lien.*

(a) **Assessment Lien Procedure.** In the event any sum of money shall be payable by Owner pursuant to Section 4 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 4, as extended for any Qualified Mortgagee pursuant to the provisions of Section 10.11, then Agency or City, as the case may be, shall have the right to record, in the Official Records with respect to the Restricted Property, an assessment lien (the "Assessment Lien"), together with interest thereon at the Default Rate, all of which shall set forth the then delinquent amount of the Monetary Obligation and shall allocate said amounts among the Retail Parcels, the Hotel Parcel and the Office Parcels as provided by this Agreement. Upon recordation of such Assessment Lien, the delinquent Monetary Obligation, together with interest thereon at the Default Rate, shall constitute a lien upon the Restricted Property to the extent of such allocation. 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 Restricted Property or Owner of the Restricted Property by taking either or both of the following actions, concurrently or separately:

(1) Bringing an action at law against Owner of the Restricted Property.

(2) Foreclosing the Assessment Lien against the Restricted Property 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 Restricted Property; 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, the Assessments of the District described in Section 10.15;

(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 Restricted Property 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 Restricted Property shall have the right to contest, in a court of competent jurisdiction, the recordation or enforcement of any Assessment Lien against the Restricted Property 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.

10.14. *Liability of Owners of Office Parcels and Hotel Parcels.* In the event that Owner conveys and transfers all right, title and interest in and to any of the Office Parcels or the Hotel Parcel to a third person, such grantee shall not be obligated to perform the obligations of Owner under this Agreement, but shall be liable to contribute and pay its "Pro-Rata Share" of the cost of performing such obligations, and shall be subject to Assessment Lien pursuant to Section 10.13 to the extent of its "Pro-Rata Share". The "Pro-Rata Share" of Owners of the Office Parcels and the Hotel Parcel shall be determined as follows:

(a) The "Pro-Rata Share" of Owner of each Office Parcel shall be equal to fifteen cents (\$.15) per annum for each net leaseable square foot of office space (as defined by "BOMA" standards) located in the building on such parcel.

b) The "Pro-Rata Share" of Owner of the Hotel Parcel shall be One Hundred Thousand Dollars (\$100,000.00) per year.

(c) The amounts specified in Subsections (a) and (b) shall be increased annually as of January in each year after 2002 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.

10.15 *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 10.15(d). Once an Arbitrator is selected, such Arbitrator shall conduct any and all arbitrations occurring pursuant to Section 10.15(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 Plaza 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 10.15(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 10.13 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 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 10.15(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

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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 10.13 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 10.13).

(f) To the extent permitted by law, Agency or City may cause any outstanding Assessment Lien under Section 10.13 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 liability company
by its general partner

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

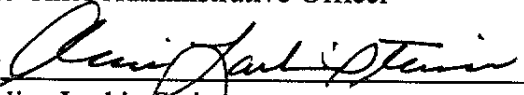
THE BOYER COMPANY, L.C., a Utah limited liability company

By 
Its Manager

REDEVELOPMENT AGENCY OF SALT LAKE CITY

By 
Deedee Corradini

Its Chief Administrative Officer

By 
Alice Larkin Steiner
Its Executive Director

Approved as to form by
Legal Counsel:

Jones, Waldo, Holbrook & McDonough:

R. Berger

SALT LAKE CITY CORPORATION

By *Deedee Corradini*
Deedee Corradini
Mayor

Attest and Countersign:

Christina Neek
Chief Deputy City Recorder

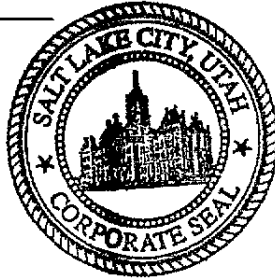
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CITY RECORDER

Approved as to form by

Chris Bahall



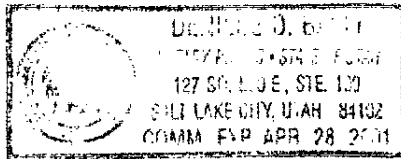
STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 22 day of December, 1999, 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.

Deanne D. Halli
NOTARY PUBLIC
Residing at: Salt Lake County

My Commission Expires:

4-28-01



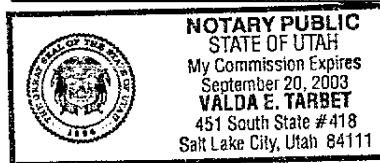
STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 23rd day of December, 1999, by Deedee Corradini and Alice Larkin Steiner, the Chief Administrative Officer and Executive Director, respectively, of Redevelopment Agency of Salt Lake City, a public agency.

Valda E. Tarbet
NOTARY PUBLIC
Residing at:

My Commission Expires:

9/20/03



STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

On the 23rd day of December, 1999, 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. Tabet

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

9/20/03

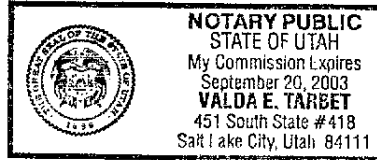


Exhibit A

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.)

BK 8336 PG 1258

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.

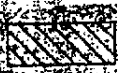
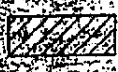

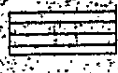
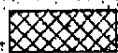
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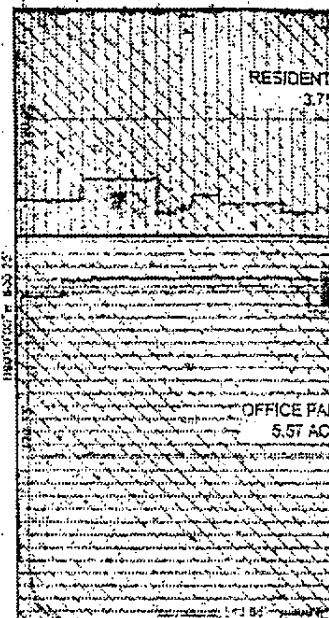
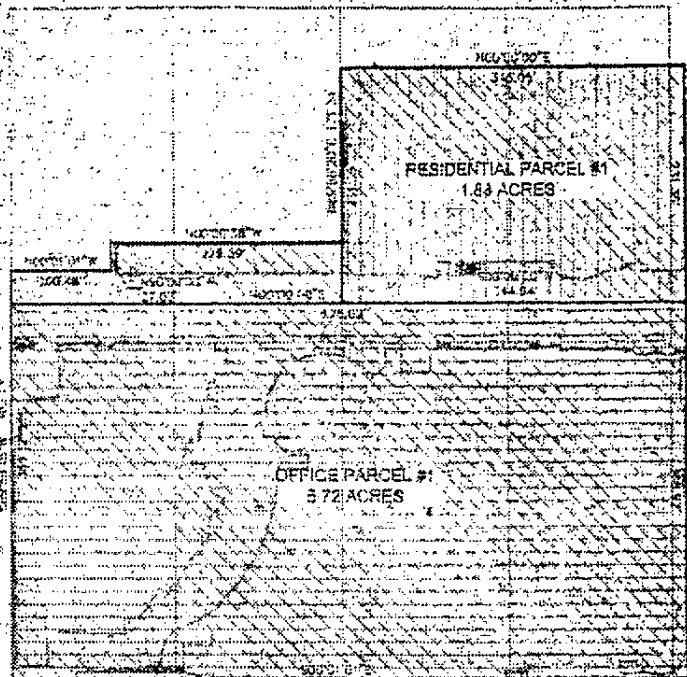
BEGINNING AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 65, PLAT "A", SALT LAKE CITY SURVEY; THENCE S89°58'15"W, 369.12 FEET; THENCE N00°00'00"E, 675.02 FEET; THENCE S90°00'00"E, 368.92 FEET; THENCE S00°01'01"E, 674.83 FEET TO THE POINT OF BEGINNING, CONTAINING 5.72 ACRES. (249,062 SQ. FT.)

Office #2 Parcel:

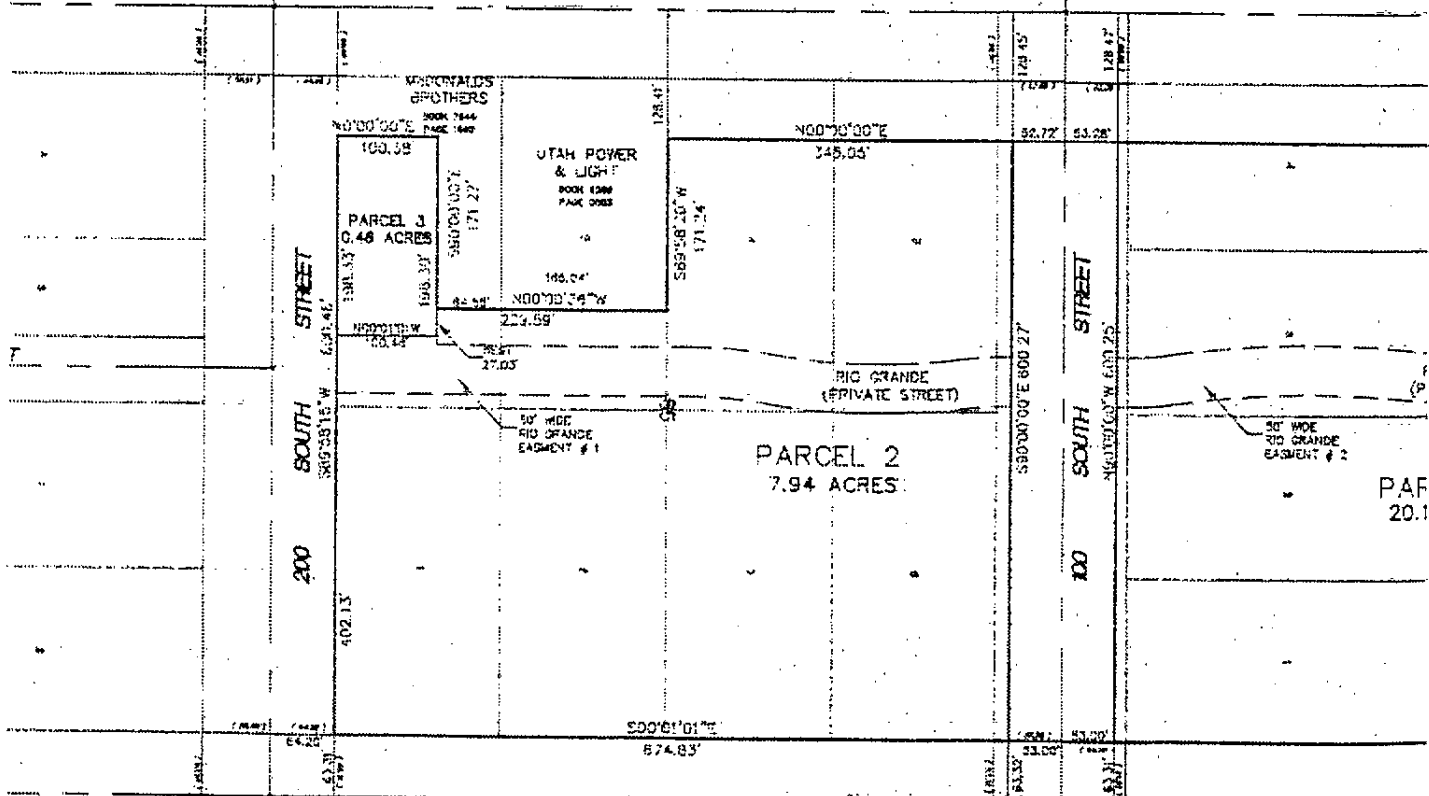
BEGINNING AT A POINT SOUTH, 11.71 FEET AND WEST 1.35 FEET FROM THE SOUTHEAST CORNER OF BLOCK 80, PLAT "A", SALT LAKE CITY SURVEY; THENCE N90°00'00"W, 379.33 FEET; THENCE N00°00'00"E, 738.81 FEET; THENCE N90°00'00"E, 110.27 FEET; THENCE S38°16'34"E, 248.59 FEET; THENCE N90°00'00"E 115.08 FEET; THENCE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

LEGEND

-  RETAIL PARCEL
-  HOTEL PARCEL
-  RESIDENTIAL PARCEL
-  OFFICE PARCEL
-  DEPOT PARCEL



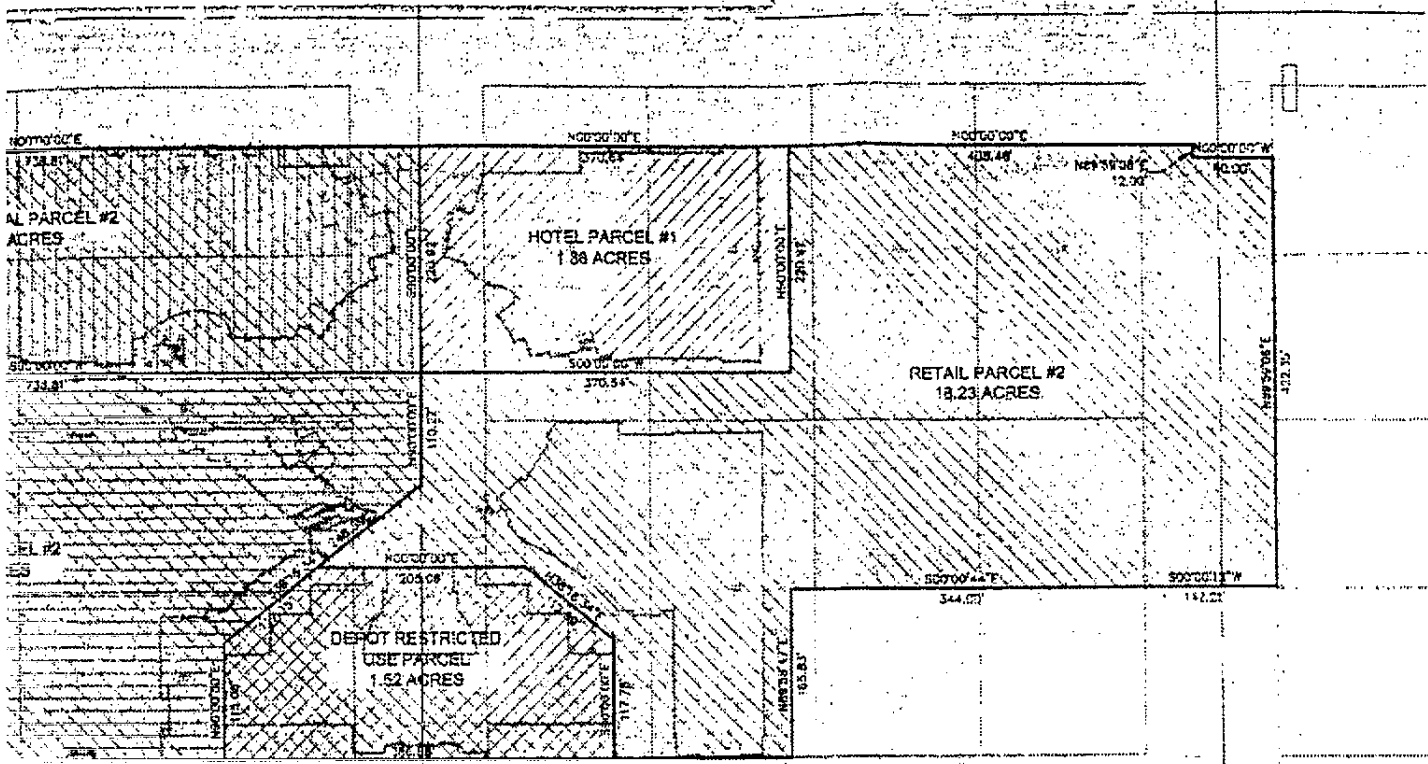
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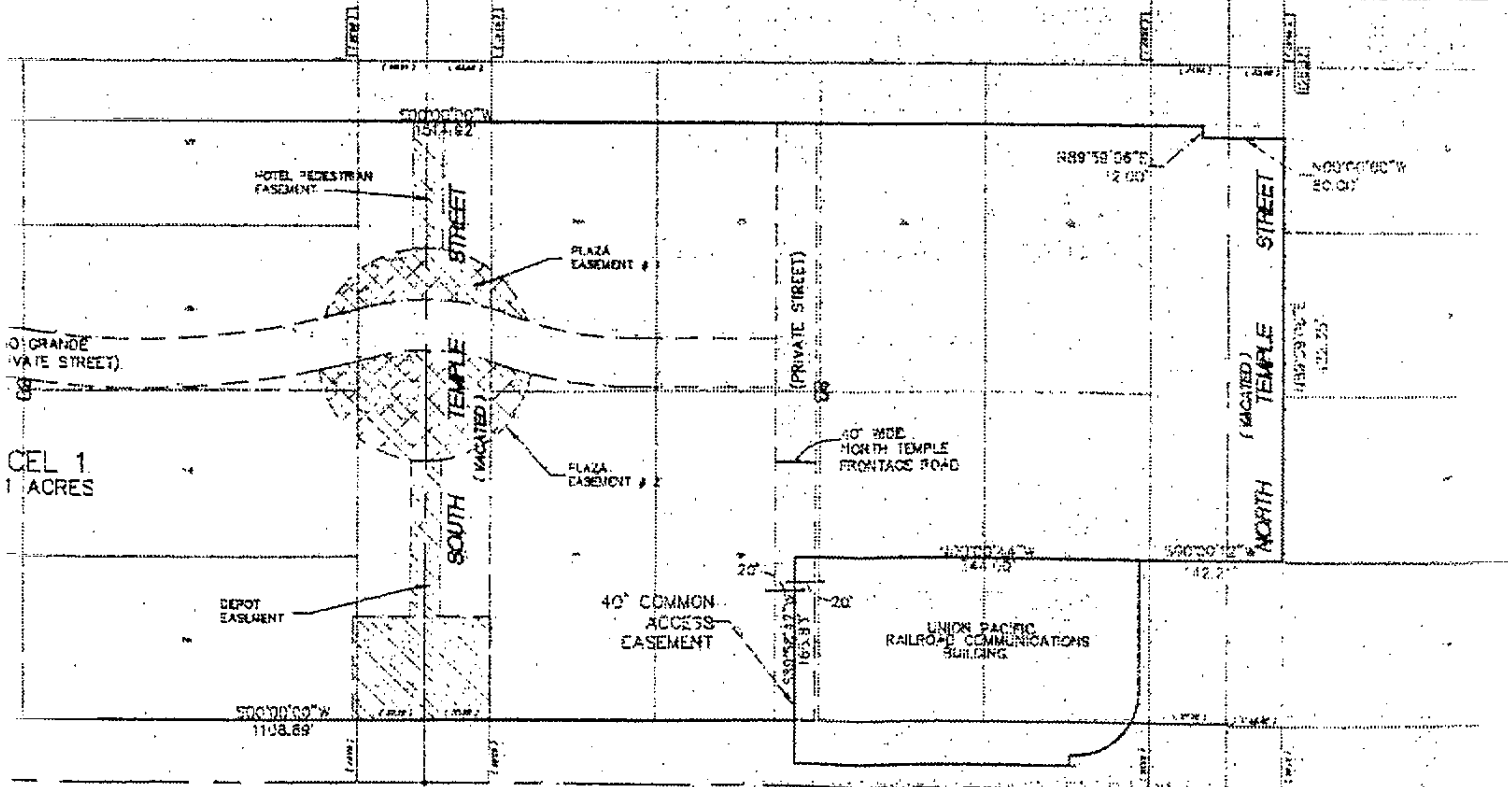
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IT "B"

HIGHLIGHTED AREA-POOR COPY
CO RECORDER



STREET
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STREET
WEST STREET
400 WEST STREET
400

BK 8336 PG 1261

Exhibit C

Legal Description – Plaza Easement

Plaza Easement #1:

BEGINNING AT A POINT 33.14 FEET SOUTH AND 72.93 FEET WEST OF THE NORTHEAST CORNER OF LOT 6, BLOCK 80, PLAT "A", SALT LAKE CITY SURVEY; THENCE ALONG A NON-TANGENT CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 106.55 FEET, THROUGH A CENTRAL ANGLE OF $141^{\circ}29'52''$ A DISTANCE OF 263.13 FEET, SAID CURVE HAVING A CHORD $N0^{\circ}39'27''E$, 201.18 FEET TO THE WEST LINE OF RIO GRANDE EASEMENT #2; THENCE WITH SAID LINE, ALONG A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 363.00 FEET, THROUGH A CENTRAL ANGLE OF $3^{\circ}03'25''$ A DISTANCE OF 19.37 FEET, SAID CURVE HAVING A CHORD $S18^{\circ}54'58''W$, 19.37 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A 233.00-FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF $35^{\circ}20'08''$ A DISTANCE OF 143.70 FEET, SAID CURVE HAVING A CHORD OF $S2^{\circ}46'36''W$, 141.43 FEET; THENCE $S14^{\circ}53'28''E$, 24.19 FEET; THENCE ALONG A 775.00-FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $1^{\circ}23'16''$ A DISTANCE OF 18.77 FEET, SAID CURVE HAVING A CHORD $S14^{\circ}11'50''E$, 18.77 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.18 ACRES (7,931 SQ. FT.)

Plaza Easement #2:

BEGINNING AT A POINT 39.91 FEET NORTH AND 17.20 FEET WEST OF THE SOUTHEAST CORNER OF LOT 2, BLOCK 83, PLAT "A", SALT LAKE CITY SURVEY; THENCE ALONG A NON-TANGENT CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 106.55 FEET, THROUGH A CENTRAL ANGLE OF $160^{\circ}54'52''$ A DISTANCE OF 299.25 FEET, SAID CURVE HAVING A CHORD $S0^{\circ}48'15''W$, 210.14 FEET TO THE EAST LINE OF RIO GRANDE EASEMENT #2; THENCE WITH SAID LINE ALONG A NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 825.00 FEET, THROUGH A CENTRAL ANGLE OF $2^{\circ}35'07''$ A DISTANCE OF 37.23 FEET, SAID CURVE HAVING A CHORD OF $N13^{\circ}35'55''W$, 37.22 FEET; THENCE $N14^{\circ}53'28''W$, 24.19 FEET; THENCE ALONG 183.00-FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $35^{\circ}20'08''$ A DISTANCE OF 112.86 FEET, SAID CURVE HAVING A CHORD OF $N2^{\circ}46'36''E$, 111.08 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG 413.00-FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF $5^{\circ}46'00''$ A DISTANCE OF 41.57 FEET, SAID CURVE HAVING A CHORD OF $N17^{\circ}33'40''E$, 41.55 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.39 ACRES. (16,947 SQ. FT.)